

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC217762/01022017

Date First Issued:

01/02/2017

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

22/02/2017

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mrs Retailer, and Smiths News (SN), Chester Road, Hertsmere Industrial Park, Borehamwood, WD6 1WS. This complaint concerns alleged failure by Smiths News to deliver titles no later than Mrs Retailer Retailer Delivery Time (RDT) or Scheduled Delivery Time (SDT).

Mrs Retailer claims that for 18 years her shop was serviced by SN's Hammersmith Depot at "an agreed time of 4 a.m.". She did not experience any problems with timeliness of delivery. Approximately 10 years ago SN moved her servicing depot to Borehamwood and her newspapers have not been arriving at "the agreed RDT time of 4 a.m." As a result she claims to have lost 500 customers.

For its part, SN maintain that the RDT of 4 a.m. set by the Hammersmith Depot cannot be met at Borehamwood as the NMA cut-off time at that depot is 4.15 a.m. with the first scheduled delivery van away at 4.30 a.m. As the loading up and journey time to Mrs Retailer shop is 23 minutes, her SDT was fixed at 5.15 a.m. SN admits that between 29/01/2017 - 20/02/2017 it did Mrs Retailer SDT on 4 occasions.

Having considered all of the evidence in this case, I adjudicate as follows:

1. RDTs and SDTs originated from an industry initiative to maximise sales of newspapers to end consumers. It was to be achieved by meeting the delivery time needs of consumers and the retailers who supply them, supporting both home-delivered and casual sales. Performance was to be monitored by agreeing and measuring key indicators, transparent to all parties, in areas including delivery times from wholesalers to retailers.
2. The PDC defines the Retail Delivery Time as the time agreed by the wholesaler and retailer as the last time by which it is operationally feasible for the retailer to receive his newspaper delivery.
3. The SDT is given to a retailer where an RDT could not be agreed. The SDT is the time by which the wholesaler is able to deliver to the retailer, based on current arrival times to the wholesale house.
4. The RDT is a time by which it is agreed that the retailer has a commercial need for the copies and which is considered by the wholesaler to be operationally feasible. If the wholesaler is unable to agree an RDT with a retailer then the wholesaler will suggest a Scheduled Delivery Time (SDT) i.e. a time by which the wholesaler is able to deliver to the retailer.

5. The retailer's commercial need is based on a number of factors including:

- Shop opening time
- Home News Delivery rounds
- Manual or computerised systems for marking up
- Casual sales patterns e.g. local shift changes
- Rounds preparation
- Weekend versus weekday patterns
- Delivery times

6. Once the commercial needs of the retailer has been established it is for the wholesaler to look at his commercial needs, logistics and the current arrival times at the wholesale house. This will determine whether it is operationally feasible to match the retailer's commercial need.

7. The RDT and SDT are not contractual terms; however they are binding until such time as either party experiences special circumstances which cause a need for a review. This will include a retailer starting home delivery, the opening of a new housing estate near the shop or the changing of the wholesale depot supplying the shop concerned.

8. In this case, the wholesale depot for the retailer was changed which necessitated a review of the original RDT. The NMA cut-off time at Borehamwood, her new supply depot, was 4.15 a.m. and the first scheduled delivery van away was 4.30 a.m. It was, and is, impossible for Borehamwood to meet the RDT set by the Hammersmith depot. As a result of that review, Mrs Retailer RDT of 4 a.m. was changed to an SDT of 5.15 a.m.

9. Unfortunately, Mrs Retailer has to accept this fact and be regulated in her delivery times by the newly created SDT.

10. SN has admitted failing to deliver before Mrs Retailer SDT on four occasions between 29/01/2017 - 20/02/2017. It is now for Mrs Retailer to quantify her loss on these four occasions and submit it to SN for consideration.

11. If satisfied with the claim submitted, SN must honour it and pay restitution accordingly.

Neil Robinson

Signature of Arbitrator: _____

Date: 28th February 2017

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

28/02/2017

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

28.02.2017