

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC219451/05-12-17

Date First Issued:

06/02/2018

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

15/12/2017 (Further and Better Particulars Required.)

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr Retailer, and Smiths News (SN), Javelin Park, Black Country New Road, Wednesbury, WS10 7ND. This complaint concerns alleged failure by Smiths News to deliver all titles and their appropriate sections no later than the Retailer Delivery Time or Scheduled Delivery Time for the day of sale contrary to Standard 2.1 of the Press Distribution Charter (PDC).

Mr Retailer's shop opens at 05.45 and he had been accustomed to receiving his newspaper and magazine delivery between 05.30 and 05.45. Due to some reconstruction of SN's delivery runs Mr Retailer started receiving his deliveries after 06.30. Mr Retailer made representations to SN and was told that his RDT was in fact 06.30. Mr Retailer was unaware of his RDT. As a result of the logistical changes Mr Retailer believes he is losing between £200.00 and £300.00 a day, but does not support this statement with specific figures. Mr Retailer claims he has made written representations to SN regarding his RDT and requested a Press Distribution Charter (PDC) Stage 2 Complaint Form without responses from SN. Mr Retailer made a Stage 2 Complaint on 04/12/2017.

SN has not attempted to deny that it has been providing poor levels of service to Mr Retailer. Indeed, it has admitted that between 01/11/2017 and 26/01/2018 it has missed Mr Retailer's RDT of 06.30 69.1% of the time. It claims that it has been unable to award restitution to Mr Retailer as it has not been advised of Mr Retailer's loss of margin on sales or the number of his Home News Delivery re-runs. It has addressed Mr Retailer's problems by setting a new RDT of 06.15 and re-organising its delivery runs in order to meet the new RDT. SN maintains that it has no record of an earlier request for a PDC Stage 2 Complaint Form. SN considers that some of its service failure has been caused by late publisher inbound delivery.

Having considered all of the evidence before me I adjudicate as follows:

1. The Retail Delivery Time (RDT) is the time agreed by the wholesaler and retailer as the latest time by which it is operationally feasible for the retailer to receive his newspaper delivery.
2. The wholesaler will have entered the agreed time on an 'RDT Agreement Form'. Both the retailer and the wholesaler should have signed the form and the retailer should have kept a copy.
3. Unfortunately, Mr Retailer was unaware of his RDT and I must therefore assume that the RDT put forward by SN originates from the RDT Agreement and as such is correct.
4. Mr Retailer became accustomed to receiving delivery between 05.30 and 05.45 and, whilst this was actually in advance of his official RDT, he had regarded it as being such.
5. Notwithstanding Mr Retailer's misunderstanding of his RDT, SN has obviously persistently failed to deliver all his titles no later than an RDT of 06.30 and, to its credit, freely admits this.

6. Mr Retailer is entitled to restitution for these service failures as follows:

a) In circumstances where the wholesaler is at fault for the non-delivery of products or under-allocation of product the wholesaler will reimburse the customer for lost margin on the sale of that product.

b) In circumstances where the wholesaler was at fault for late delivery of products and the lateness necessitated the redelivery of HND copy the wholesaler will reimburse the customer 55p per copy redelivered, with a minimum award of £5.50.

7. If SN considers that incidents of lateness have been caused by late inbound publisher deliveries it should pass the Stage 2 Complaint Forms onto the relevant account managers of the publisher /s concerned.

8. Mr Retailer must now submit full details of his restitution claim to SN, having proper regard to this adjudication as set out above. SN is directed to consider that claim, having proper regard to this adjudication. SN will make restitution payments accordingly and if there is any dispute between the parties, the matter is to be referred back to me.

9. If Mr Retailer fails to provide SN with evidence of proven loss on sales of newspapers and magazines within 30 days of the date of this adjudication no restitution need be considered by SN.

10. I am pleased to note that SN has managed to bring forward Mr Retailer's RDT to 06.15 and hope that this alleviates some of his problems.

Neil Robinson

Signature of Arbitrator: _____

Date: 12th February 2018

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

12/02/2018

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

12/02/2018