

## Press Distribution Charter

### Stage 3 - Independent Arbitration Decision

**PDC Reference Number:**

PDC224294090418

**Date First Issued:**

11042018

**Name of Arbitrator:**

Neil Robinson

**Date complaint sent to Arbitrator:**

19/04/2018

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr Retailer and Smiths News (SN), Unit 45, Elmdon Trading Estate, Bickenhill Lane, Marston Green, Solihull, Birmingham, B37 7HE. This complaint concerns alleged failure by Smiths News to deliver all titles and their appropriate sections, no later than the Retailer Delivery Time (RDT), or Scheduled Delivery Time (SDT), for the day of sale contrary to Press Distribution Charter (PDC) Standard 2.1.

Mr Retailer complains that on Saturday 24/03/2018 SN failed to deliver 24 'Daily Telegraph' which comprise his normal order. He further complains that delivery failures are a regular occurrence and that he is losing trade as a result. He seeks 'compensation' for loss of trade.

SN does not deny the service failure. It apologised to Mr Retailer and undertook to initiate a 100% check prior to the driver leaving the depot and to forward Mr Retailer's paperwork daily in a pre-checked envelope. In its Stage 3 Wholesale Statement of Case SN maintains that the measures it put in place are working and that Mr Retailer recognises this.

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

1. Retailers can only use the PDC Complaints Process if the alleged service failure complained of is 'serious or persistent'.

2. Persistent is defined as follows:

Newspapers – The same problem occurs three times in three weeks for Monday to Friday newspapers three times in six weeks for Saturday or Sunday newspapers.

Magazines – The same problem occurs three times in six issues of a weekly, fortnightly or monthly magazine.

3. Mr Retailer complains about an event that occurred on 24/03/2018 and makes fleeting reference to similar occurrences. By failing to detail further incidences of alleged service failures I cannot satisfy myself that his complaint meets the 'persistent' requirement.

4. Seriousness can only be determined on the circumstances of each case and the Independent Arbitrator has the ultimate determination on this point. I do not consider that this single service failure can be regarded as 'serious'.

5. Having regard to points (3) and (4) above this complaint fails.

6. Mr Retailer sought 'compensation for loss of trade'. For future reference, he is reminded that the PDC Complaints Process can only consider a claim for 'restitution' which restores the injured party to what has been lost. Any restitution ordered would be for proven loss resulting directly from the breach of standard over the period covered specifically by the complaint. Specific detail of loss suffered will always be required.

Neil Robinson

Signature of Arbitrator: \_\_\_\_\_

Date: 3rd May 2018

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

04/05/2018

Date Independent Arbitration Decision  
sent to Wholesaler & Retailer:

11/05/2018