

## Press Distribution Charter

### Stage 3 - Independent Arbitration Decision

**PDC Reference Number:**

PDC237482/29-05-18

**Date First Issued:**

29/05/2018

**Name of Arbitrator:**

Neil Robinson

**Date complaint sent to Arbitrator:**

29/06/2018

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr Retailer and Smiths News (SN), Units 1 - 2, 39 Chartwell Road, Lancing, BN15 8TU. 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 Standard 2.1 of the Press Distribution Charter (PDC).

Mr Retailer alleges late delivery of his newspapers and magazines on the following days: 19/05/2018 - 06.25, 20/05/2018 - 06.25, 21/05/2018 - 6.50, 22/05/2018 - 6.27 and 26/05/2018 - 06.20. He submitted a complaint to SN in April 2018 and received assurances that the situation regarding late deliveries would improve. He also received a visit from Ann Lockyer during the course of which he was asked to withdraw his complaint. Three days after the visit deliveries started arriving late again. He tried to contact Ms. Lockyer without success and she failed to respond to messages. Mr Retailer made a Stage 2 Complaint on 07/06/2018. At Stage 3 Mr Retailer reiterated his cause and provided further specific examples of lateness between 27/05/2018 and 17/06/2018.

In response to Mr Retailer's Stage 2 Complaint SN cited five incidents of late delivery "over the last 10 days". Three of these concerned late inbound delivery by the publisher and/or bunching of publisher deliveries. It advised Mr Retailer that it had looked at various ways of delivering to him earlier, but eventually determined that it was not feasible. SN did not address the incidents of lateness set out in Mr Retailer's Stage 2 Complaint. SN pointed out that Mr Retailer's RDT is 06.15 Monday - Saturday and 06.45 on Sunday. At Stage 3 SN advises that Mr Retailer has not requested an earlier RDT. However, goes on to reiterate that it has examined ways of improving Mr Retailer's RDT, but decided that it was not practically possible without disadvantaging other retailers. It supplied details of Mr Retailer's Actual Delivery Times between 01/06/2018 and 28/06/2018 which demonstrated that delivery was late on nine days out of the 28 quoted.

Having carefully considered all of the evidence submitted I adjudicate as follows:

1. As Independent Arbitrator I have to make a judgement as to whether the issue under review had been properly dealt with at Stage 2 of the Press Distribution Charter (PDC) Complaints Process. Quite clearly, SN has failed to directly address its lateness on 19/05/2018 - 06.25, 20/05/2018 - 06.25, 21/05/2018 - 6.50, 22/05/2018 - 6.27 and 26/05/2018 - 06.20. However, it did indirectly approach the issues surrounding lateness of delivery.
2. As a result of SN's failure to deliver to Mr Retailer no later than his RDT as detailed in (1) above, he is entitled to restitution 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.

3. Mr Retailer must now prepare a schedule of his losses caused by the SN service failures as detailed in (1) above. Once completed, he must submit the same to SN for settlement. SN must settle the same unless there is a dispute, in which case the issue should be referred back to me for further adjudication.

4. If SN considers that the publisher is responsible for the lateness because of its late delivery, the retail complaint can be referred to the publisher. Publisher lateness for newspapers is defined as follows:

a) Cut-off minus 15 minutes.

Or

b) Where a publisher has given reasoned formal notification to a wholesaler that cut- off time cannot be met, the average arrival time for a title over a 10 week day specific period.

5. Mr Retailer must understand that his RDT is a time by which it is agreed that he has a commercial need for the copies and which is considered by the wholesaler to be operationally feasible. His 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

Once his commercial needs have been established it is for the wholesaler to look at its 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.

6. SN has indicated that it has informally considered Mr Retailer's RDT with a view to making it earlier but decided that it is not operationally feasible.

7. SN is reminded that a high level of customer service is important to all the partners within the supply chain. Wholesalers should be committed to delivering such levels to its customers.

*Neil Robinson*

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

Date: 9th July 2018

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

09/07/2018

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

12/07/2018