

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC241070/25-08-18

Date First Issued:

14/09/2018

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

29/09/2018

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mrs Retailer and Smiths News (SN), 5 Mead Avenue, Houndstone Business Park, Yeovil, Somerset, BA22 8RT. This complaint concerns alleged failure by Smiths News to deliver all titles and their appropriate sections, no later than the Retail Delivery Time, or Scheduled Delivery Time, for the day of sale contrary to Standard 2.1 of the Press Distribution Charter (PDC).

Mrs Retailer complains that as from 20/08/2018 she started receiving her news supply late. Her shop opens at 06.00 and prior to 20/08/2018 her delivery had always been "around 6am". Since 20/08/2018 her supply has been arriving considerably later than 06.00, often after 07.15. The problem persists and is damaging her trade with Home News Delivery customers terminating the service and passing trade being hit. Mrs Retailer raised a PDC Stage 2 Complaint on 25/08/2018.

By letter dated 31st August 2018 SN responded to the complaint thanking Mrs Retailer for engaging in conversation with it during the course of which it had explained that insufficient SN staff had been available to assist a new contract driver on her designated round beyond the two days on which this had occurred. SN had spoken to the contractor who had undertaken to supply support for the new driver and would "consider putting the run on a 28 day improvement notice". SN apologised to Mrs Retailer and assured her that she would see some improvement.

In Mrs Retailer's Stage 3 Retailer Statement of Case she details a considerable number of further instances of late supply to 14/09/2018.

In SN's Stage 3 Wholesale Statement of Case it acknowledges the disruption to Mrs Retailer's supply and indicates that it has implemented operational changes that should have a positive effect on the timeliness of her supply. SN undertakes to monitor Mrs Retailer's regularly in order to ensure improvement. SN pointed out that Mrs Retailer's RDT is 06.30 and accepted that it had been late on 10 occasions between 04/08/2018 and 20/09/2018. "As a gesture of goodwill" SN made a calculation of Mrs Retailer's restitution for two days HND costs "where the driver was late by more than 30 minutes". SN also made a restitution payment of one week's Delivery Service Charge at £48.96.

Having carefully considered the evidence before me, I adjudicate as follows:

1. It is my opinion that Mrs Retailer might have been historically accustomed to a delivery time prior to 06.00 and assumed that her RDT was at that time or thereabouts. She has not advised me of what she considers her RDT to be.
2. SN has an RDT of 06.30 for Mrs Retailer on its computer system.
3. SN, by its own admission, failed to meet Mrs Retailer's RDT on 10 occasions between 04/08/2018 and 20/09/2018 based on a 06.30 RDT. If a 06.00 RDT is applied, that figure becomes 29.

4. It would seem that this is a temporary problem caused by a new delivery driver, but there is an underlying issue relating to Mrs Retailer's RDT. I recommend that Mrs Retailer make a formal request for a review of her RDT thereby enabling her the possibility of an RDT nearer 06.00 if operationally possible to SN.

5. On the occasions when SN delivered later than Mrs Retailer's RDT of 06.30 she 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.

6. Mrs Retailer must now prepare a schedule of her losses caused by the SN service failures between 04/08/2018 and 25/08/2018. Once completed, she 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. SN to deduct from the resultant figure such sums as it has already paid out in restitution.

7. If Mrs 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.

8. SN is reminded that restitution as set out in (5) above is payable for instances of lateness subsequent to 25/08/2018 and ongoing.

Neil Robinson

Signature of Arbitrator: _____

Date: 5th September 2018

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

05/10/2018

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

09/10/2018