

## Press Distribution Charter

### Stage 3 - Independent Arbitration Decision

**PDC Reference Number:**

120818AC

**Date First Issued:**

30/08/2018

**Name of Arbitrator:**

Neil Robinson

**Date complaint sent to Arbitrator:**

12/09/2018

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mrs Retailer and News UK/Telegraph Live News distributed via Smiths News (SN) 287 Kinson Road, Bournemouth, BH10 5HE. This complaint concerns alleged failure by News UK and Telegraph Live 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 on 12/08/2018 her supply of newspapers was late which resulted in re-run costs for Home News Delivery Customers of 74 'Sunday Telegraph', 76 'Sunday Times' and 54 'Sunday Sun'. She claims her re-run costs were £163, but her Stage 2 restitution claims were £40.70 for 'Sunday Telegraph' and £71.50 for 'Sunday Times'/'Sunday Sun'.

News UK and Telegraph Live News maintain that the vehicle carrying all the above titles experienced a puncture between the Broxbourne Print Site and SN's Bournemouth depot which caused it to be 2hours 30 minutes late. Fleet support had to be called out to change the tyre at the roadside before the vehicle could continue its journey. Both publishers claimed *Force Majeure* at PDC Stage 2 and rejected the claim for restitution.

Having carefully considered the evidence submitted to me in both cases, I adjudicate as follows:

1. The scope of my jurisdiction is limited to determining whether a wholesaler, distributor or publisher failed to meet one of the standards set out in the PDC. I am not required to pass judgement on the fairness of the supply chain or identify perceived flaws within the same as I have been invited to do by the NFRN in these cases.
2. The PDC complaints process is designed to resolve 'serious or persistent' breaches of the standards contained in it. It is not intended to be used for occasional service 'blips'.
3. For the purposes of the Charter 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.
4. Seriousness can only be determined on the circumstances of each case and the Independent Arbitrator has the ultimate determination on this point.
5. In these cases the failure to meet the Charter timeliness standard has not been persistent.

6. Mrs Retailer claims that her re-run costs for Home News Delivery customers were £163 and I consider that to be serious enough for her to be entitled to sue the PDC Complaints Process.

7. Both publishers rejected Mrs Retailer's claim for restitution at PDC Stage 2 citing *Force Majeure*.

8. Any delay in the delivery of newspapers and magazines is to be avoided at all cost as, depending on the length of the delay, there is a risk that the titles are no longer in demand and, as such, constitute a loss of sale for each stage of the supply chain. No element within the newspaper and magazine supply chain wants to lose that copy and generally speaking a time sensitive product reaches the retailer in time for the day of sale on a very regular basis. If it fails to do so the Press Distribution Charter (PDC) and its complaints process is available to provide a remedy for the retailer. However, the Charter and indeed the wholesaler/publisher's Terms of Supply provide for exceptional events which prevent, delay or hinder the performance obligation. This scenario is covered in the Charter by the *Force Majeure* Clause at Section 11 which relates to "any act beyond the reasonable control of any party". An event of *Force Majeure* may result in the affected party being excused from liability for delay or non-performance of its obligations.

9. I consider that the 'blow out' experienced in these cases by, what I assume was, a large lorry could not reasonably have been foreseen or avoided, could not have blame for it assigned to a person nor be protected against. It was therefore most certainly "beyond the reasonable control" of the publisher and as such was a *Force Majeure* event and made it impossible to deliver Mrs Retailer's news products on time.

10. These Stage 3 Complaints fail.

11. One of the publishers involved is "obviously concerned how it got to a Stage 3 in terms of the processes as a Stage 3 is for persistent issues". Unfortunately that publisher has failed to take account of the seriousness aspect of service failures which are not influenced by the concept of persistence. Furthermore, Stage 2 of the PDC Complaint Process requires a wholesaler, publisher or distributor to make a decision on a retail complaint. A person who makes such a decision should be unbiased and act in good faith. He therefore should not be one of the parties in the case, or have an interest in the outcome. This is expressed in the maxim, "no man is permitted to be judge in his own cause". To combat this potential breach of natural justice a retailer is always at liberty to escalate his complaint to a PDC Stage 3 which is adjudicated upon by an independent person.

*Neil Robinson*

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

Date: 14th September 2018

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

14/09/2018

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

26/09/2018