

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/200935/24072019

Date First Issued:

24/07/2019

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

03/09/2019 - (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), Elmdon Trading Estate, Bickenhall Lane, 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 in accordance with Press Distribution Charter (PDC) Standard 2.1 and to fulfil retailers' orders where there is sufficient copy to do so in accordance with PDC Standard 4.1.

By PDC Stage 2 Complaint dated 08/08/2019 Mr. M. alleges that he received his supply of newspapers and magazines late on 18 occasions between 18/07/2019 and 08/08/2019. He advised that his RDT was 05.40. Furthermore that on 07/06/2019, 13/06/2019, 14/06/2019 and 21/07/2019 SN failed to fulfil his newspaper and magazine orders.

By letter dated 13/08/2019 SN responded to the complaint by advising Mr. M. that it had investigated his complaint between 01/07/2019 and 12/08/2019 and that it had only been late on 08/07/2019, 09/07/2019, 11/07/2019, 16/07/2019, 17/07/2019 and 21/07/2019. In the correspondence Mr. Maan's RDT was given as 05.40, however SN included an 'Actual Delivery Time' log in which Mr. M.'s RDT was cited as 06.15 on weekdays and 06.30 at weekends. SN cited a new driver and late inbound newspaper deliveries. SN apologised for any inconvenienced caused.

I sought further and better particulars from each party seeking evidence as to the Mr. M.'s RDT. Mr. M. forwarded me a copy of a letter from SN dated 21/07/2017 that indicated it had given him a new RDT time of 05.40.

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

1. SN clearly has a problem supplying Mr. M.'s newspapers and magazines in sufficient time to meet the RDT of 05.40. It claims to have missed the RDT on 6 occasions between 01/07/2019 and 12/08/2019 but this has been measured against an erroneous RDT of 06.15 for weekdays and 06.30 weekends. If the true RDT of 05.40 is applied to the log there are 35 instances of lateness over the designated period.

2. This complaint is upheld and Mr. M. is entitled to restitution. For the avoidance of doubt and for the information of both parties I take this opportunity to set out the restitution payable in cases of late supply and missing copy 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. If SN considers that a publisher is responsible for the lateness because of its late inbound 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.

For magazines There is an agreed magazine specific criteria for lateness which provides that ~~M~~Magazines will be delivered in time for day of sale+.

4. Mr. M. must now prepare a schedule of his losses caused by the SN service failures between 24/07/2019 and 08/08/2019. 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.

5. I am assuming that the problems relating to the quality of delivery have been sorted out.

6. If Mr. M. 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.

Neil Robinson

Signature of Arbitrator: _____

Date September 15th 2019

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

15/09/2019

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

18/09/2019