

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/200935/220119

Date First Issued:

22/01/2019

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

01/03/2019

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 or Scheduled Delivery Time for the day of sale, contrary to Press Distribution Charter (PDC) Standards 2.1 and 4.1.

By PDC Stage 2 Complaint dated 05/02/2019 Mr Retailer maintains that SN:

1. Claim that his Retail Delivery Time (RDT) is 06.15 when he understands it to be 05.40.
2. Persistently delivered late throughout January and February 2019.
3. On 05/02/2019 failed to deliver 48 copies of the 'Sun' which were eventually delivered at 09.30.
4. Made false accusations against Mrs Retailer.

In his Stage 3 - Retailer Statement of Case Mr Retailer detailed his late deliveries as 11th, 12th, 16th, 18th, 19th, 23rd, 24th, 25th, 26th, 27th, & 31st January 2019 and 2nd, 12th & 13th February 2019.

SN responded to the Stage 2 Complaint by undated letter apologising for its lateness on 05/02/2019 and promising to speak with the delivery driver in order to ensure that he understands the need to arrive at Mr Retailer's by the required RDT. SN did not address the remaining items on Mr Retailer's list of complaints. In its Stage 3 - Wholesaler Statement of Case Form SN indicated that it had processed restitution for Mr Retailer in the sum of £7.20 based on loss of sales and additional Home News Delivery costs.

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

1. The scope of my jurisdiction is limited to determining whether a wholesaler, distributor or publisher has failed to meet one of the standards set out in the PDC. I am not at liberty to go beyond that and accordingly I will not be adjudicating on the unfortunate breakdown in communications that occurred between Mrs Retailer and SN.
2. After seeking further and better particulars from Mr Retailer. I have received a copy of a letter dated 21/07/2017 from Ms. Teresa Hughes, SN Operations Team Leader, to Mr Retailer. stating quite clearly that his RDT was 05.40. In these circumstances, I have no hesitation in directing that Mr Retailer has an RDT of 05.40 and that any delivery of copy by SN after that time is to be considered a failure to meet PDC Standard 2.1.
3. In his Stage 3 - Retailer Statement of Case Mr Retailer has detailed incidents of lateness throughout January and February 2019 and I confirm that each of these represents a failure by SN to meet PDC Standard 2.1 and restitution should/could be paid.

4. 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.

5. If Mr Retailer so wishes he should now prepare and submit full details of his restitution claim to SN, having proper regard to this adjudication as set out above. SN is directed to consider that claim, having proper regard to this adjudication. SN will make restitution payments accordingly and if there is any dispute between the parties, the matter is to be referred back to me.

6. If Mr 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.

7. The PDC does not award compensation for stress.

Neil Robinson

Signature of Arbitrator: _____

Date: 4th March 2019

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

04/03/2019

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

06/03/2019