

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/209193/02102019

Date First Issued:

02/10/2019

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

23/10/2019

In the matter of the Arbitration Act 1996 and in the matter of a dispute between the retailer (Mr. U.), and Smiths News (SN), Lingard Lane, Bredbury, Stockport, SK6 2QT. 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.

In his PDC Stage 2 Complaint dated 08/10/2019 Mr. U. maintains that SN delivered titles to him late on all days between 13/09/2019 - 08/10/2019. Mr. U. states that his RDT was and is 05.30. Mr. U. complains that the lateness is disadvantaging his business and that a lot of regular customers have been lost.

By letter dated 15/10/2019 SN state that "we cannot agree to set the RDT as you have requested" and that it could not guarantee to be at his store before 05.30. It refers to correspondence with Mr. U. dated 27/12/2013 and 20/11/2017 that clearly demonstrate that Mr. U. did have an RDT of 05.30. It goes on to advise that the industry had seen massive changes over the years and due to those changes and issues with inbound delivery from publishers meant that an RDT of 05.30 was impossible. SN offered an RDT of 05.45 Monday to Friday and 06.15 Saturday and Sunday.

In its Stage 3 - Wholesale Statement of Case SN indicate that it has made significant changes in its logistics in order to accommodate an RDT of 05.30 for Mr. U. which took place on 24/10/2019. SN understood that Mr. U. was happy with this outcome.

After carefully examining all of the evidence submitted to me, I adjudicate as follows:

1. It is quite clear to me that SN has a fundamental lack of understanding about Retail Delivery Time.
2. The PDC defines the Retail Delivery Time as the time agreed by the wholesaler and retailer as the latest time by which it is operationally feasible for the retailer to receive his newspaper delivery.
3. The SDT is given to a retailer where an RDT could not be agreed. The SDT is the time by which the wholesaler is able to deliver to the retailer, based on current arrival times to the wholesale house.
4. The RDT is a time by which it is agreed that the retailer has a commercial need for the copies and which is considered by the wholesaler to be operationally feasible. If the wholesaler is unable to agree an RDT with a retailer then the wholesaler will suggest a Scheduled Delivery Time (SDT) i.e. a time by which the wholesaler is able to deliver to the retailer.
5. The retailer's 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
6. Once the commercial need of the retailer has been established it is for the wholesaler to look at his 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.

7. The RDT and SDT are not contractual terms; however they are binding until such time as either party experiences special circumstances which cause a need for a review. This will include a retailer starting home delivery, the opening of a new housing estate near the shop or the changing of the wholesale depot supplying the shop concerned.

8. SN's letters to Mr. U. dated 27/12/2013 and 20/11/2017 leave me in no doubt that Mr. U. and SN have agreed an RDT of 05.30 in the past and it is for SN to adhere to that agreement.

9. SN failed to deliver to Mr U. in accordance with PDC Standard 2.1 on all of the occasions listed in the preamble to this adjudication and Mr. U. is able to make a claim for restitution in relation to the same.

10. 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.

11. Mr. U. can, if he so wishes, prepare a schedule of his losses caused by the SN service failures detailed in his complaint. Once completed, he can 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.

12. 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.

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+

13. I trust that Mr. U. is happy with an RDT of 05.30 and that SN now understands the proper processes.

Signature of Arbitrator: Neil Robinson (email)

Date: 31st October 2019

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

31/10/2019

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

04/11/2019