

Press Distribution Charter

Step 2 - Independent Arbitration Decision

PDC Reference Number:

PDC/210280/13.06.23

Date First Issued:

13/06/2023

Name of Arbitrator:

Neil Robinson B.A. (Law), M.C.I.Arb.

Date complaint sent to Arbitrator:

20/07/2023 - Further and Better Details requested

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Miss W. and Smiths News (SN) Unit 3A, Celtic Way, Celtic Lakes, Newport, NP10 8BE. This complaint concerns alleged failure by SN 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 contrary to Press Distribution Charter 3rd Edition (PDC), Standard 2.1.

By On-line Step 1 PDC Complaint dated 13/06/2023 Miss W. claims that her RDT of 05.00 was altered by SN to an SDT of 07.00 and at a later date that STD was changed to 05.30. She pointed out that her shop opening time is 05.00. She believed that her store was moved from 2nd to 6th on the wholesale round. She made many calls to SN in an attempt to improve the timeliness of her delivery. She maintains that SN did not respond to her Step 1 Complaint within the 28 days prescribed by the PDC process or at all. Miss W. did not provide a detailed schedule of the arrival times she complains off nor the losses caused by alleged lateness.

By Step 2 - Arbitration Statement of Case dated 20/07/2023 SN indicated that by letter dated 28/09/2021 it had notified Miss W. that it proposed to change her RDT to an STD of 05.30 Monday to Friday, 05.50 Saturday and 06.05 Sunday. The letter gave Miss W. until 12th October 2021 to make representations on the proposed change. SN accepted that it had experienced problems delivering to Miss W. within her SDT and indicated that it had made restitution payments to her during May - July 2023 totalling £1,440. SN indicated that it had looked at ways to improve its timeliness which had failed and was therefore continuing to explore alternatives.

SN advised that it had failed to respond to the PDC Step 1 Complaint because it was still in the process of investigating the matter.

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

1. I set out the relevant PDC Standards that are applicable in this case as follows:

- a. PDC Standard 2.1 - The wholesaler will 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.
- b. The Retail Delivery Time (RDT) is 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.
- c. A Schedule Delivery Time (SDT) is given to a retailer where an RDT could not be agreed. The SDT is the time by which the wholesaler can deliver to the retailer, based on current arrival times to the wholesale house.
- d. PDC Standard 2.2 - RDTs will only be amended with the prior agreement of the retailer.

- e. PDC Standard 2.3 - If a wholesaler changes an SDT, he must notify the retailer at least 14 days in advance.
- f. PDC Standard - 1.3 The standards of the Press Distribution Charter will be incorporated by each wholesaler into its Terms and Conditions of Business.
3. By letter dated 28/09/2021 SN ambiguously advised Miss W. that it proposed to change her RDT of 05.00 to an SDT of 05.30 Monday to Friday, 05.50 Saturday and 06.05 Sunday.
4. The above-mentioned letter refers to a "Required Delivery Time" which is unrecognised terminology, purports to "propose an SDT but still retaining on record your RDT", refers to "your proposed RDT/SDT" and ends with the sentence "If we don't hear from you we will assume you are happy with the proposed RDT and we will update our systems accordingly." The letter lacks precise detail and therefore I do not consider that it fulfils the requirements of PDC Standard 2.3.
5. Failing to reply to an offer is not acceptance in most cases. Generally you cannot impose an obligation on another to reject one's offer. This is true even if the offer provides that silence will be considered acceptance. There are, however, exceptions to this rule, but I do not need to consider them in this case.
6. I have no evidence before me that indicate Miss. W. responded to the SN letter of 28/09/2021 and she did not raise a PDC Complaint. In these circumstances I believe that she acquiesced to the proposed changes.
7. In these circumstances during the period under review Miss W. had SDTs as detailed above.
8. SN has detailed 18 instances of lateness between 13/04/2023 and 13/06/2023 based on Miss. W.'s SDT.
9. The NFRN made restitution claims based on these service failures covering 14 days prior to the Step1 PDC Complaint and 15 claims for days after the PDC Step 1 Complaint. SN made 24 payments of £60 between 29/04/2023 and 13/07/2023. Unfortunately neither Miss W. or SN correlated the payments made with the restitution claims and I am therefore unable to determine whether payments made cover the restitution due.
10. It is clear that SN did fail to meet PDC Standard 2.1 on numerous occasions. It made restitution payments that don't appear to bear any resemblance to the actual restitution claims. If Miss. W. so wishes she must prepare a comprehensive monetary breakdown of her claims prior to 13/06/2023 and compare it to the £1,440 already paid by SN. If she believes that restitution payments fail to meet her claim she should then submit that detail to SN for its further consideration. SN to settle the claim unless there is a dispute in which case it should be referred back to me.
11. I do not consider that SN can justify failing to respond to a PDC Step 1 Complaint by stating that it was still under investigation. The failure represents a flagrant breach of the PDC Dispute Process's provisions.

Neil Robinson

Signature of Arbitrator: _____

Date: 9th August 2023

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

09/08/2023

Date Independent Arbitration Decision
sent to Wholesaler & Retailer:

11/08/2023