

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/22/07/2013/69

Date First Issued:

22/7/ 2013

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

20/9/2013. Further detail requested by Arbitrator

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr Retailer and Smiths News. This complaint concerns alleged persistent failure by Smiths News to deliver product on time, determined by his Retailer Delivery Time, and to respond to correspondence relating to the same.

Mr. Retailer claims that his deliveries were late when measured against his RDT on the following dates: 5th, 6th, 7th, 14th, 15th, 18th, 19th, 20th, 21st, 23rd and 27th July 2013. He also claims that Smiths News's Head Office failed to respond to his correspondence concerning the alleged poor service or telephone calls on the same matter.

For its part, Smiths News admits that the delivery service to Retailer's Newsagents during the month of July was unacceptable and failed to meet the retailer's expectations or its own company standards. Smiths News also acknowledges that it failed to communicate properly with Mr. Retailer on this matter for which it apologises. By way of restitution Smiths News offered two weeks Delivery Service Charge which amounted to £98.48.

Mr. Retailer is of the opinion that the offer of £98.48 is insufficient to 'compensate' for his losses.

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

1. By its own admission, Smiths News did fail to meet The Press Distribution Charter (Edition 2) Standard 2.1 and Standard 9.5.
2. The basis of this complaint being escalated to Stage 3 is therefore solely about the quantum of restitution.
3. It is in everybody's interest for disputes between wholesalers and retailers to be resolved and therefore, the prime function of the arbitration process is to correct the problem. However, sometimes restitution may be appropriate.
4. Restitution is restoring the injured party to what has been lost and should not be confused with 'compensation' which has wider parameters and can extend to what might have been lost. In this case, both parties seem to be confusing the two principles.
5. Restitution, within the context of the Press Distribution Charter, is for proven losses on sales of newspapers and magazines resulting directly from the failure to meet a Press Distribution Charter standard.
6. The amount of restitution will be the actual proven loss.
7. If the complainant cannot prove his/her financial loss by documentary evidence etc., I may award restitution up to an amount equal to the value, cost, refund or margin on lost sales.
8. Management/owner time will not be considered for restitution as there is no tangible financial loss and problems with supply are within the duties of such positions.

9. Loss of profit margin on sales of newspapers and magazines can be considered for a restitution payment, but the additional sales of alternative titles sold must be taken into consideration. Loss of margin on the sale of other products will not be considered, nor loss of customers.

10. Fuel costs restitution is calculated by the miles needed to be covered, a figure which is unknown in this case.

11. Telephone and postage costs in respect of the incident complained of can be claimed.

12. Mr. Retailer has been awarded a £98.48 refund of two weeks Delivery Service Charge and within the recent documentation submitted to me, Smiths News has offered a further £98.48 making a total of £196.96. Such sum exceeds the restitution that I am able to award and, accordingly, I find that the restitution paid, or to be paid, to Mr. Retailer is sufficient and adequate.

Signature of Arbitrator: Neil Robinson (email)

Date: 19th October 2013

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

Date Independent Arbitration Decision sent to Wholesaler & Retailer: