

## Press Distribution Charter

### Stage 2 - Independent Arbitration Decision

PDC Reference Number:

PDC/239611/190522

Date First Issued:

19.05.2022

Name of Arbitrator:

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

Date complaint sent to Arbitrator:

05/07/2022

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr. G.) and Smiths News (SN), Unit 45, Elmdon Trading Estate, Bickenhill Lane, Birmingham, West Midlands, 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 contrary to Press Distribution Charter (PDC) Standard 3rd Edition 2.1.

By Step 1 Complaint form dated 19/05/2022 Mr. G. claimed that on 26/04/2022 (05.50), 27/04/2022 (06.20) and 29/04/2022 (05.30). SN delivered later than his RDT of 05.10 and that Home News Delivery rounds were delayed as a result. Mr. G. had already submitted a restitution claim to SN that was rejected.

By email dated 03/05/2022 SN rejected the claim for restitution claiming that the service failures on 26th and 29th April were not serious and the instance on 27th April was caused by late inbound delivery by the publisher.

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

1. There seems to be little doubt that Mr. G.'s deliveries, as detailed above, were late although there is small difference in the parties recorded actual delivery time.
2. SN maintain that on 26/04/2022 and 29/04/2022 the service failures were not serious enough to warrant a PDC Complaint.
3. The PDC Complaints process makes it clear that the process is not designed to deal with small issues, but to cater for serious or persistent problems. Seriousness is determined by the circumstances of each individual case. Persistence as, relating to newspapers, is defined by the same problem occurring three times in three weeks for Monday to Friday newspapers, or three times in six weeks for Saturday or Sunday newspapers.
4. Based on the information before me I do not need to consider whether or not the service failures in this case can be considered as serious as they quite clearly occur within a three-week period and may therefore be considered as persistent.
5. If SN considered that the publisher was responsible for the lateness because of its late delivery, the retail complaint should have been referred to the appropriate 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.

6. Having regard to points 1 - 5 above I adjudicate in favour of Mr. G.
7. Based upon the evidence that has been submitted to me it would appear that Mr. G. is claiming 55p per delivered copy for the days of service failure. If this is the basis of his restitution claim he is mistaken. Where the wholesaler was at fault for late delivery of product restitution of 55p per copy delivered is only awarded when the lateness necessitated the **redelivery** of HND copy. In this case Mr. G. claims on the basis that the service failure caused HND to be late.
8. Mr. G. cannot claim restitution of 55p per copy in this instance.
9. Mr. G. can however claim for lost margin on the sale of newspapers. If he decides to pursue redress in this way he must prepare a schedule of his losses on the days concerned and 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.

*Neil Robinson*

Signature of Arbitrator: \_\_\_\_\_

Date: 11th July 2022

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

12/07/2022

Date Independent Arbitration Decision  
sent to Wholesaler & Retailer:

13/07/2022