

## Press Distribution Charter

### Step 2 - Independent Arbitration Decision

**PDC Reference Number:**

PDC/242383/290824

**Date First Issued:**

29/08/2024

**Name of Arbitrator:**

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

**Date complaint sent to Arbitrator:**

17/10/2024 (Further and Better Particulars requested x 3)

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr. Y. and Smiths News (SN), Lingard Lane, Bredbury Park Industrial Estate, Bredbury, Stockport, SK2 2QT. 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) contrary to Paragraph 2.1 of the Press Distribution Charter (PDC) and to pass credit for the same on the next possible invoice/credit note contrary to Paragraph 3.8 of the PDC.

By Press Distribution Charter Step 1 Complaint dated the 29th of August 2024. Mr Y. alleged that he was (a) "having issues with shortage and supply", (b) "throughout July there were three instances where he did not receive supplements resulting in losses" and (c) "shortages are now occurring during the week which are never replenished and claims for credit rejected by SN, due to claiming late".

By letter dated the 5th of September 2024 SN acknowledged the complaint. Within the response it pointed out that Mr Y's claims were made too late as his store did not open until 9 am. SN advised that it had placed Mr Y's account on a quality assurance check in order to ensure that he would not have further experiences of missing newspapers. It also pointed out that Mr Y's opening hours on its system were incorrect which had led to his claims being rejected as being too late. The system had now been amended to reflect the proper opening time. SN apologised for the inconvenience caused.

Unfortunately Mr Y. did not receive SN's acknowledgement of his complaint as it was sent to the incorrect email address, accordingly Mr Y. based his complaint on SN's failure to address his complaint.

Having considered the submissions made to me I was of the opinion that there was insufficient detail provided for me to adjudicate. I requested a number of formal requests for further and better particulars.

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

1. When an arbitrator is faced with adjudicating a complaint that has insufficient detail, the decision-making process becomes challenging and requires a careful approach to balance procedural fairness, efficiency and adherence to arbitration rules.
2. Having considered Mr. Y's Step 1 Complaint I decided that it did not meet the basic level of specificity to proceed. It gave no specific details of the alleged breaches of PDF Standards.

3. In these circumstances I could have dismissed the complaint, however I decided to proceed and request further and better particulars from Mr. Y. In particular I sort the following detail:

"A five-column list for each date that is the subject of the claim showing title name, quantity, cover price, unsalable quantity, and summary amount claimed. There also needs to be an indication if any restitution has been paid."

4. This detail was not forthcoming although I did receive a number of email cascades that purported to provide such detail. It is not the arbitrator's role to assemble the complainants case.

5. To compound this problem Mr. Y. called upon SN to supply details of his claims history throughout the period covered by his complaint to support his case.

6. Unfortunately SN's response to Mr Y's Step 1 Complaint was emailed to an incorrect email address and, as a consequence, was not received within the prescribed time frame for responses. When it did eventually arise it failed to answer any of the three core issues of the complaint relating to shortages of supply.

7. SN did indicate that the reason for refusing Mr. Y's restitution claims was that they were made out of time. However, within SN's response letter dated 05/09/2024 it did admit that it had an incorrect opening time for Mr. Yusuf on its system. PDC Standard 3.4 requires retailers to report shortages of newspapers to their wholesaler within two hours of delivery or shop opening. No further detail in relation to this was supplied.

8. It detailed the steps that it had taken to rectify the delivery problems and made an assertion that Mr. Y's supply was fully restored as from 05/09/2024.

9. SN did supply me with a 'Claims History by Customer' for Mr. Y. covering the period 30/07/2024 - 28/08/2024 which indicated Mr. Y's claims during the said period amounted to £56.17.

10. By email dated 13/11/2024 SN provided a further spread sheet detailing Mr. Y's claim history which included delivery claim titles which had not been cited before by Mr. Y. It maintained that all the titles on the report had been credited.

11. SN has not responded to the PDC complaints made and accordingly SN is deemed to have failed to meet PDC Standards 2.1 and 3.8.

12. At no point within the complaint process has Mr. Y's detailed restitution claimed. In one email he "claims approximately £10 plus loss of regular customers taking their business elsewhere" in another email he "seeks to be compensated for the losses he incurred for the shortages that SN had not credited him due to it having the incorrect opening times on its system."

13. SN has provided detail of Mr. Y's claims history and has indicated that it has all now been credited. In view of the fact that Mr. Y. has relied on SN data to make his complaint the question of restitution will end there.

14. I note that SN has put QA measures in place in order to avoid further failure to meet PDC Standards and that Mr Y. has not had cause to raise further complaints

*Neil Robinson*

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

Date: 26th November 2024

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

27/11/2024

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

28/11/2024