

# Press Distribution Charter

## Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/103450/021211

Date First Issued:

28<sup>th</sup> November 2011

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

2nd February 2012

### Independent Arbitration Decision

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Retailer A, and Menzies Distribution, Ipswich.

This complaint concerns an alleged breach of the Menzies Distribution 'Our Service Pledge':

"Once you have formally agreed your Retailer Delivery Times (RDTs) with us, we will deliver to you by the appropriate RDT each day. Where we haven't made an agreement, we will deliver by our nominated Scheduled Delivery Times (SDTs)."

Retailer A claims that his deliveries have been persistently late between September 2011 and January 2012 inclusive.

Menzies Distribution maintains that, due to changes in publisher scheduled delivery times to it Retailer A, Retail Delivery Time of 4.30 am has had to be altered to an SDT of 5 am.

Delivery times should be calculated in accordance with the principles originally laid down by the Focus on Distribution Initiative (FODI). The process requires a wholesaler to establish each retailer's commercial need through intelligence gathering and meaningful dialogue. The commercial need should be determined with reference to 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 and required delivery times.

The wholesaler should use the information gathered to agree with each retailer a Retail Delivery Time (RDT) by which the wholesaler will deliver newspaper supplies. 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 (for commercial or logistical reasons) then the wholesaler should suggest a Scheduled Delivery Time (SDT) i.e. a time by which the wholesaler is able to deliver to the retailer, based on current arrival times at the wholesale house.

If the retailer is not satisfied with the SDT set by the wholesaler, he has the right to two reviews with the wholesaler, at monthly intervals, examining the impact of the SDT on the retailers business. If the retailer is still unhappy with the SDT he may make an appeal to the Press Distribution Charter's Independent Arbitrator. The arbitrator will determine if the SDT is indeed a reasonable time, in the light of the commercial needs of the retailer on the one hand and the logistical practicalities of the wholesaler on the other, and will determine a time which will be binding on both parties.

From the evidence before me it appears that Retailer A originally had an agreed RDT of 4.30 am but, because of operational realities, Menzies Distribution withdrew the RDT and substituted it with an SDT of 5 am. Unfortunately, it would appear from the evidence before me that insufficient attention was given to due process and the commercial needs of the retailer.

**Cont.**

From the information supplied to me by Retailer A, having set an SDT of 5 am, Menzies Distribution failed to achieve timeliness on some 48 occasions between October 2011 and January 2012 inclusive. By Menzies Distribution's own evidence of actual delivery time, out of the 71 days between 1<sup>st</sup> September 2011 and 10th November 2011 there was no recorded deliver time on 11 occasions. Disregarding these, Retailer A's delivery was late on 21 days out of a recorded total of 60 days. Lateness, according to Menzies Distribution's records, was between one and eight minutes.

Having given consideration to both sets of recorded arrival times, I find that Menzies Distribution, Ipswich, has persistently failed to meet its 'Our Service Pledge'. However, I do not believe that the instances of lateness could have had a substantial commercial impact on Retailer A, especially at 5 am in Frinton on Sea.

As Retailer A did not quantify any loss on the days when Menzies Distribution was late, I am unable to make a restitution award.

In all the circumstances of this case, I recommend that Retailer A and Menzies Distribution, Ipswich, follow the FODI process outlined above. If necessary through to the Press Distribution Charter's Independent Arbitrator who will set a binding SDT on the parties having had regard to Retailer A's commercial need and Menzies Distribution's operational feasibility.

**Signature of Arbitrator:** Neil Robinson (email)

**Date:** 13<sup>th</sup> February 2012

**Seat of Arbitration:** London, England.

**Date form returned to PDC Administrator:**

**Date Independent Arbitration Decision sent to Wholesaler & Retailer:**