

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/129956/060318

Date First Issued:

03/03/2018

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

04/04/2018 (Further and Better Particulars Required.)

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr Retailer and Menzies Distribution Limited (MD), Lockheed Close, Preston Farm Industrial Estate, Stockton, TS18 3SE. This complaint concerns alleged failure by MD to deliver all titles and their appropriate sections no later than the Retailer Delivery Time or Scheduled Delivery Time for the day of sale contrary to Part 1 of its 'Customer Service Pledge', Third Edition.

Mr Retailer purchased his shop on 06/09/2014 and until 2017 his news delivery was arriving between 04.45 and 05.15. From July 2017 he started receiving product much later and contacted MD about the situation. During the course of these discussions he was informed that his RDT was in fact 06.30. Whilst no formal change to his RDT was initiated, it was generally agreed by MD staff that, as Mr Retailer opened at 05.00, his RDT needed to be earlier than 06.30. Mr Retailer completed a 'Newspaper Distribution Questionnaire' on 14/11/2017 setting out his position. Mr Retailer lodged a formal complaint on 03/03/2018 which was signed for at MD on 06/03/2018. A receipt only acknowledgement of the complaint dated 09/03/2018 was received from MD. No detailed response was forwarded to Mr Retailer within 28 days.

MD points out that Mr Retailer's RDT is 06.30 and accordingly his delivery had only been late on four occasions between 16/09/2017 and 30/12/2017. MD blames bunched publisher inbounds and the fact that Mr Retailer had been getting delivery direct from Newsquest, but MD had taken over Newsquest and there had been logistical changes as a result of that. MD was trying to accommodate an earlier RDT for Mr Retailer, but was hampered in this by late inbound publisher deliveries.

Having considered all of the evidence submitted in this case, I adjudicate as follows:

1. The MD 'Customer Service Pledge', Third Edition defines a retailers RDT as the "mutually agreed time we will deliver your supplies. It's based on a number of factors such as your opening time, your home delivery needs and your busy periods."
2. The RDT is usually arrived at by assessing the retailer's commercial need for the copies and that considered by the wholesaler to be operationally feasible.
3. Unfortunately, it would appear that neither Mr Retailer nor MD has any written record of an RDT, but MD has been operating on the basis of a 06.30 RDT. It is my opinion that Mr Retailer might have been historically accustomed to a delivery time between 04.45 and 05.15 and assumed that his RDT was around this time.

4. The MD 'Customer Service Pledge', Third Edition provides that "If we haven't made an agreement, we will deliver by our nominated Scheduled Delivery Times (SDTs)." As no agreement on an RDT appears to have been entered into between Mr Retailer and MD, I must regard 06.30 as Mr Retailer's SDT.

5. Having regard to the fact that Mr Retailer's SDT is 06.30 it would mean that MD was late in its delivery on four occasions between 16/09/2017 and 30/12/2017.

6. The Press Distribution Charter complaints process cannot be used if the incident complained of occurred more than three months prior to the date of the Stage 2 Complaint. In these circumstances, I can only consider the various submissions as far as they relate to the three months prior to 03/03/2018 i.e. 03/12/2017. Applying these date parameters to Mr Retailer's complaint, MD was late on 17/12/2017 and 30/12/2017.

7. To make a Stage 3 Complaint the service failures need to be serious or persistent. Seriousness can only be determined on the circumstances of each case and, unfortunately, I have insufficient evidence that enables me to make determination on this. Persistence is defined as follows:

Newspapers – The same problem occurs three times in three weeks for Monday to Friday newspapers three times in six weeks for Saturday or Sunday newspapers.

Magazines – The same problem occurs three times in six issues of a weekly, fortnightly or monthly magazine.

Having regard to Point (6) above, I cannot conclude that there has been persistent lateness in this case.

8. There has obviously been a failure here by the parties to agree a RDT and I am pleased to note that MD has made a commitment to negotiate a new RDT for Mr Retailer

9. The parties are reminded that the retailer's commercial need is based on a number of factors including:

- 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
- Delivery times

Once the commercial need of the retailer has been established it is for the wholesaler to look at his commercial needs, logistics and the current arrival times at the wholesale house. This will determine whether it is operationally feasible to match the retailer's commercial need.

10. I sincerely hope that Mr Retailer's need for an earlier RDT can be accommodated by MD despite its logistical changes.

11. On a practical note, MD's 'Customer Complaints Form' needs to have a facility to date it!

Neil Robinson

Signature of Arbitrator: _____

Date: 23rd April 2018

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

24/04/2018

Date Independent Arbitration Decision
sent to Wholesaler & Retailer:

27/04/2018