

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/121900/300518

Date First Issued:

22/05/2018

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

14/05/2018 (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), East Avenue, Linwood, Paisley, PA1 2FD. This complaint concerns alleged failure by Menzies Distribution Limited to deliver to the retailer by the RDT each day or by the Scheduled Delivery Time (SDT) where no RDT agreement exists contrary to the MD 'Customer Service Pledge' Third Edition.

Mr Retailer complains that on 02/03/2018 he received no newspaper or magazine supplies from MD. He understands that there was bad weather at the time, but maintains that a Tesco store opposite to him did receive its supply. He is particularly concerned at having to pay Carriage Service Charge on a day when there was no delivery. He makes particular reference to MD's Service Pledge that states:

"CSC is levied to help cover the cost of transporting your supplies to your premises and returning products to our depot. It's unrelated to other aspects of your service."

Mr Retailer also seeks lost profit on sales that were not possible.

MD confirms that it was unable to deliver to Mr Retailer on the day in question due to extreme weather conditions which resulted in the Meteorological Office issuing a red warning across central Scotland and surrounding areas. Due to the weather conditions staff and contractors were unable to travel to the branch from their homes and this impacted on MD's ability to deliver to stores in the area. Furthermore, police advised people not to travel. Some drivers did report for work and one of those was for round A94 which serviced the Tesco store. Unfortunately, the driver for Mr Retailer's round A16 did not present himself for work. In these circumstances MD maintains that the non-delivery was 'beyond its control' and as such falls under the *force majeure* provision at Section 12 A of its Terms and Conditions.

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

1. This complaint does not fall within my jurisdiction as it is a claim for restitution under MD's 'Customer Service Pledge - Third Edition' pages 36 and 37 'Our Pledge on Restitution', as such an internal process which is not a provision covered by the industry self-regulation process. In these circumstances, there is no ability to refer the case to me as Independent Arbitrator. Had the matter first been raised as a Stage 2 Press Distribution Charter (PDC) Complaint or a Stage 2 complaint from within MD's own internal 'Our Pledge on Complaints' at pages 38 and 39 of 'Customer Service Pledge - Third Edition' there would have been the facility to refer it to me.
2. If Mr Retailer now wishes to raise this matter as a Stage 2 PDC, he must complete a formal Stage 2 Complaint Form and forward it to MD or the Press Distribution Review Panel Administrator at:

67a South Street
Stanground
Peterborough
PE2 8EX

3. Before considering point (2) above I respectfully suggest that Mr. A. takes account of the circumstances surrounding the incidents complained of:

a) There was a red (the highest category of alert) or higher amber weather warning across most of Scotland on the days in question. This means that disruption was inevitable with road conditions extremely difficult and potentially dangerous. The basic advice was "do not travel unless it is absolutely necessary". These warnings covered Glasgow, Edinburgh, much of Lothians, northeast Borders, as well as parts of Fife, Perth & Kinross, Forth Valley, North Lanarkshire, Renfrewshire and Dunbartonshire.

Such unprecedented warnings had to have a negative input on MD's ability to undertake a normal supply, as staff and contractors may or may not have made it into their place of work and there was a real risk of delivery vehicles becoming stranded or crashing. MD, as a responsible employer, had a duty of care to its employees.

b) MD's Terms and Conditions at 12 (a) provide that:

"Force Majeure

The Company may partially or totally suspend, with or without notice, any supply of any Title and/or Goods during any period in which the supply of such Title and/or Goods to the Company or by the Company may be either prevented or delayed or hindered through any circumstances beyond its control including, but without prejudice to the generality of the foregoing, any strikes, lock-outs, labour disputes of any kind, industrial action of any nature whatsoever (whether any of the foregoing relate to the Company's employees or others) fire, floods, storms, weather, health, acts of God, railway delays or cancellations, motor accident or serious traffic congestion, or any shortage or destruction of paper or petrol or diesel supply (or supply of any other necessary material or service) or if any Title is not published, and that the Customer will have no claim against the Company and the Company will not be liable to the Customer for any loss or damage howsoever arising or sustained as a result there from."

This clause clearly gives MD the ability to fully or partially suspend the supply of newspapers and magazines to retailers if circumstances occur that are beyond its control and the weather conditions on the days in question would certainly enable this clause to apply. It follows that retailers would have no claim against MD for any losses suffered as a result of its partial or total failure to supply.

c) Restitution is about restoring the injured party to what has been lost and any restitution ordered should be for proven losses resulting directly from the breach taken over the period covered specifically by the complaint. In order to demonstrate the proven loss for unsold copy to the wholesaler at Stage 2 and to the Independent Arbitrator at Stage 3 it is necessary for the retailer to forward full details as set out in the 'Guidance Notes for Retailers'

Neil Robinson

Signature of Arbitrator: _____

Date: 10th June 2018

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

10/06/2018

Date Independent Arbitration Decision
sent to Wholesaler & Retailer:

20/08/2018