

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/103225/230312

Date First Issued:

23/03/2012

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

25th April 2012

Independent Arbitration Decision

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

This complaint principally concerns an alleged breach of Menzies Distribution's 'Our Service Pledge' Section 1.1:

"All customers with whom we have signed off an RDT (Retail Delivery Time) will receive deliveries by the agreed time. Where no RDT is agreed, we will deliver to the recorded SDT (Scheduled Delivery Time). Compliance to RDT & SDT is occasionally beyond our control."

Retailer B also alleges poor communication by Menzies Distribution, Ipswich, shortages and accesses of supply and failure to record accurate delivery times at his shop.

Menzies Distribution (MD) maintains that when Retailer B took over the shop in May 2011 it had a Retail Delivery Time (RDT) of 07.00. Following representations from Retailer B concerning his RDT and his commercial need, the RDT was altered to 06.30. MD claims that delivery at Retailer B's shop is regularly between 06.10 and 06.20 and therefore Retailer B does receive deliveries within his RDT/STD. It denies any failure of communication with its customer.

Delivery times should be calculated in accordance with an established industry best practice. 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.

Having given consideration to all the evidence submitted to me by both parties, I adjudicate as follows:

- a) Unfortunately, Retailer B does not have the right to dictate his deliver time to MD, Ipswich. An RDT or SDT must be established in accordance with the process set out above. If an RDT cannot be agreed by mutual agreement, then an SDT must be set by MD and Retailer B has the right to two reviews of that SDT with MD. If Retailer B is still dissatisfied with his SDT he may refer the matter to the Independent Arbitrator for determination.

- b) Retailer B must understand that wholesalers have to determine their delivery rounds based on the Scheduled Arrival Times of publishers at the depot, the time required to break bulk & load delivery vans and the geographical logistics of each delivery round.
- c) Any changes to the makeup of a delivery round to benefit any one retailer may result in a disadvantage to one or more retailers on the same round.
- d) I suspect that Retailer B's claims of late delivery are based on his desired delivery time rather than his prescribed RDT/SDT.
- e) I am of the opinion that, in the absence of any agreement to the contrary, Retailer B has an RDT of 07.00. He was offered an RDT of 06.30 on 3/4/2012, but rejected the same and, as far as I can tell, no STD has been suggested. In these circumstances, I believe that MD has not failed to meet Standard 1.1. Of its 'Our Service Pledge'.
- f) As Retailer B acquired this shop in May 2011 and intended to start home news delivery, I believe a review of his RDT should have been considered using the process outlined above.
- g) I am satisfied that MD did undertake some evidence gathering in furtherance of a review, but regret the fact that the House Manager, did not see fit to make contact with Retailer B when he undertook his surveillance on Tuesday 3rd April 2012. In my experience direct engagement is more likely to resolve issues rather than phone calls or anonymous letters/emails.
- h) As I understand it, MD has now offered a temporary RDT of 06.00 for the duration of three months. Following this period, a review will be carried out considering the impact that an earlier delivery time has had on Retailer B's business and the extent, if any, of disadvantage to other retailers on the round. Unfortunately, Retailer B has rejected this eminently sensible offer.
- i) There does seem to have been a breakdown in communications between MD and Retailer B and I believe that to some extent this has added to the problem and perhaps hindered resolution. I note particularly Retailer B's 'imenzies' contact between 26/1/2012 and 19/3/2012 which of which I have no evidence of an MD response.
- j) There are allegations regarding the quality of delivery concerning short supply, over supply and missing supplements/magazines. I am going to assume that these have been dealt with through usual channels and appropriate remedial action taken by MD.

In all the circumstances of this case, I recommend that Retailer B accepts the offer of an interim three month RDT of 06.00 and uses this period to grow his business and improve sales – surely a goal for the whole supply chain. At the end of the said three month period, Retailer B must provide evidence to support his commercial need and MD must put forward any disadvantages to itself or other retailers affected by the changes. There should be a meeting to review the findings and discuss the way forward. If a resolution cannot be found by the parties at the review, Retailer B is to refer the matter back to me and I will set an SDT that will be binding on both parties.

Signature of Arbitrator: Neil Robinson (email)

Date: 1st May 2012

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

Date Independent Arbitration Decision sent to Wholesaler & Retailer: