

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/102630/151119

Date First Issued:

15/11/2019

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

01/01/2020 (Further and Better Particulars Requested.)

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In the matter of the Arbitration Act 1996 and in the matter of a dispute between Retailer Mr. P and Menzies Distribution (MD), Bugsby's Way, Greenwich Peninsula, London SE10 0GD. This complaint concerns alleged failure by Menzies Distribution to deliver all titles and their appropriate sections and supplements no later than the RDT or SDT on the day of sale contrary to 'Pledge on Deliveries' which forms part of MD's 'Customer Service Pledge - Fourth Edition'.

By Stage 2 Complaint dated 11/11/2019 Mr. P. alleges that on 20 detailed occasions between 04/11/2019 and 16/12/2019 MD delivered late to him, sometimes by as much as four hours. Mr. P advises that his opening time is 06.30 every day and that he had submitted a completed 'Newspaper Distribution Questionnaire' to MD that identified the times by which he must receive his delivery as 06.25 Monday - Friday, 06.25 Saturday and 06.55 Sunday. Mr. P. was asked to provide evidence establishing his Retail Delivery Time, but could not.

By response to the complaint dated 02/12/2019 MD apologised for the poor service issues and indicated that it had moved the route from a contract driver to an experienced permanent member of staff who was familiar with Mr. P.'s round. MD noted an RDT for Mr. P. of 06.55 and could see no reason why it could not achieve that time, subject to inbound publisher timeliness. MD undertook to monitor Mr. P.'s delivery times from 09/12/2019. MD was asked to provide evidence of Mr. P's RDT, but was unable to do so. In its Stage 3 submissions MD advised that, as from 30/12/2019, Mr. P. was to be moved to a different round that should better accommodate Mr. P.'s delivery requirements.

After careful consideration of the evidence submitted to me I adjudicate as follows:

1. MD's 'Customer Service Pledge - Fourth Edition' at page 5 defines Retail Delivery Time 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 news delivery needs and your busy period."
2. Hence 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
3. 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

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

5. This process does not seem to have taken place in the case under review and I suspect that an RDT has not been mutually agreed.

6. Notwithstanding that, it is clear to me that MD has delivered late to Mr. P. on a number of occasions even if we take MD's "Requested Delivery Time", a term which is not accepted by the industry, as being Mr. P.'s Retail Delivery Time.

7. For the avoidance of doubt and for the information of both parties I take this opportunity to set out the restitution payable in cases of late supply and missing copy as follows:

a) In circumstances where the wholesaler is at fault for the non-delivery of products or under-allocation of product the wholesaler will reimburse the customer for lost margin on the sale of that product.

b) In circumstances where the wholesaler was at fault for late delivery of products and the lateness necessitated the redelivery of HND copy the wholesaler will reimburse the customer 55p per copy redelivered, with a minimum award of £5.50.

8. If Mr. P. wishes to seek restitution in this case he must prepare a schedule of his losses caused by the MD service failures between 04/11/2019 and 16/12/2019. Once completed, he must submit the same to MD for settlement. MD must settle the same unless there is a dispute, in which case the issue should be referred back to me for further adjudication. If Mr. P. fails to provide MD with evidence of proven loss on sales of newspapers and magazines within 30 days of the date of this adjudication no restitution need be considered by MD.

9. If MD considers that the publisher is responsible for the lateness because of its late inbound delivery, the retail complaint can be referred to the publisher. Publisher lateness for newspapers is defined as follows:

a) Cut-off minus 15 minutes.

Or

b) Where a publisher has given reasoned formal notification to a wholesaler that cut-off time cannot be met, the average arrival time for a title over a 10 week day specific period.

For magazines There is an agreed magazine specific criteria for lateness which provides that ~~M~~Magazines will be delivered in time for day of sale+.

10. I trust that the introduction of an experienced driver and the change of rounds for Mr. P. have resulted in Mr. P. receiving supply in a timely manner.

Neil Robinson

Signature of Arbitrator: _____

Date 3rd January 2020

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

03/01/2020

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

06/01/2020