

# Press Distribution Charter

## Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/127589/260313

Date First Issued:

26/03/2013

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

7th May 2013

### Independent Arbitration Decision

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

Retailer A claims that Menzies Distribution (MD) failed to respond to a Customer Complaint Form sent by him. He further maintains that MD failed to honour various agreements with him regarding credit for telephone calls that he made to it concerning service failures.

MD refute that any standing agreement to award credit for telephone calls existed, however point out that it did make a goodwill payment to Retailer A while informal discussions on the issues took place. It believed that the matter had been resolved during informal discussions and, accordingly the matter had been settled. In these circumstances, MD expected that Retailer A would cease a practice of deducting sums from his invoice payments.

Having considered this matter at great length and reviewed the evidence submitted, I adjudicate as follows:

1. As the newspaper and magazine industry Independent Arbitrator I am only able to adjudicate on issues covered by the Press Distribution Charter (PDC). Menzies Distribution's 'Our Service Pledge' does cover most of the PDC standards, but does include issues which are not included in the PDC and these items do not fall under my jurisdiction. Furthermore, I have no remit at all to consider disputes concerning terms and conditions of supply that exist between a wholesaler and a retailer.

2. Neither the PDC or MD's 'Our Service Pledge' require that credit be allowed for retailers telephone calls made as a result of service failures and, accordingly, I am unable to adjudicate on this part of the complaint.

3. Hopefully in the best interests of both parties, I will make observations on this complaint. At Paragraph 8 (E) of MD's Terms and Conditions of Sale there is provision for the refund of telephone costs as follows, " Customers may also receive a refund in respect of telephone costs incurred when claiming shortages. No other telephone costs will be refunded." and I understand it is under this provision that Retailer is relying. This provision is no guarantee that refunds or credit will or should be given for telephone calls on all service issues. There are three limitations contained within this provision. Firstly, the word "may" is used which indicates that MD might or might not make such payments at its own discretion. It does not make such payments compulsory by the use of a word such as 'will'. Secondly, the payment/credit will only be made upon "reasonable request". Accordingly, the question arises as to what is reasonable and what is not. As far as I am concerned, it would apply as per the definitions that are applicable to "persistence" in the PDC. That is, three occurrences in a two week period for newspapers Monday to Saturday, three occurrences in a six week period for Sunday newspapers and three occurrences in six issues for magazine titles. Finally, it is made abundantly clear that any refund/credit awarded will be in respect of shortages only and no other telephone costs will be refunded.

4. Had this issue been passed to me as a complaint concerning a service failure covered by the PDC and/or MD's 'Our Service Pledge', I would have been able to award restitution. Where a wholesaler has failed to meet a standard and restitution is appropriate, the arbitrator may order a wholesaler to restore to a Retailer A any loss directly resulting

from the service failure that is determined to have taken place and this would cover the cost of telephone calls concerning the service failure

5. It is very clear from Paragraph 8 (D) of MD's terms and conditions of supply that Retailer A should not make deductions from invoice payments because of a dispute. He should desist from this practice.

6. I am able to adjudicate on the allegation that MD failed to respond to a Customer Complaint Form. Unfortunately, Retailer A did not forward me a copy of his originating complaint or proof of posting in respect of the same, hence I have no evidence that the Customer Complaint Form was actually sent. In spite of this, it appears, from MD's Statement of Case, that it did not respond to the completed Customer Complaint Form as it considered that the complaint had been resolved through informal discussion and the matter had therefore been settled. In view of this, I find that MD did not respond to the Customer Complaint Form and suggest that in the future MD serve written notice on the complainant to the effect that it considers the matter to have been resolved.

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

**Date:** 17/5/2013

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

**Date form returned to PDC Administrator:**

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