

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/120050/031018

Date First Issued:

28/10/2018

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

07/11/2018 (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), 1 Claylands Road, Edinburgh, EH28 8LF. This complaint concerns alleged failure by Menzies Distribution Limited to deliver to the retailer by the Retailer Delivery Time (RDT) each day or by the Scheduled Delivery Time (SDT) where no RDT agreement exists contrary to the MD 'Customer Service Pledge' Third Edition.

By 'Customer Complaint' dated 27/09/2018 Mr Retailer complained that his delivery had started arriving at approximately 07.00 and he had an RDT of 05.50. The lateness was having a big impact on his business. The problem had been formally complained about earlier in the year, but with an improvement in delivery times, had been withdrawn. Mr Retailer did not cite specific details of the dates upon which he claims MD was late, nor identified/quantified any loss.

In its response dated 19/10/2018 MD attached a detailed report showing Mr Retailer's actual delivery times and that, on average, Mr Retailer's RDT of 06.15 had been met. It admitted that occasionally the RDT had not been met and blamed this on late publisher arrival times at the branch and late running at the branch. MD advised Mr Retailer that it was about to undertake a review of his round that would hopefully improve delivery time by 15 minutes. At Stage 3 MD reiterated its Stage 2 Response and added that it had identified occasions when the delivery contractor had not been delivering Mr Retailer's round in the appropriate order. It also identified publisher bunching as a contributory factor when it had run late. Restitution Forms had been forwarded to Mr Retailer

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

1. Mr Retailer, at various times, has given his RDT as 05.50 and 05.55. Further to my request for further and better particulars he seems to accept that it is in fact 06.15, being the RDT that was applicable to his shop on transfer of ownership in 2015.
2. MD does not deny that it has, on occasions, delivered late to Mr Retailer based on an RDT of 06.15.
3. MD suggests that it has done all it can to assist Mr Retailer by delivering earlier having proper regard for the impact on other retailers. It has also committed to further review.
4. Mr Retailer could request a formal review of his RDT, but I feel that debate has taken place over the RDT and MD does not consider that it is operational feasible to meet Mr. S's commercial need for the copies. I accept that MD is trying to accommodate Mr Retailer's need for an earlier RDT.

5. MD recognises that Mr Retailer is entitled to restitution on the occasions when it has been late 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.

6. If MD considers that a publisher is responsible for the lateness because of its late delivery to the depot, 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.

7. MD cannot absolve its responsibilities in cases of publisher bunching or inappropriate action by its delivery contractors.

8. If Mr Retailer wishes to pursue a claim for restitution he should now prepare a schedule of his losses caused by the MD service failures. 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.

Neil Robinson

Signature of Arbitrator: _____

Date: 23rd November 2018

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

23/11/2018

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

03/12/2018