

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/129956/05092019

Date First Issued:

05/09/2019

Name of Arbitrator:

Neil Robinson B. A. (Law), M.C.I.Arb.

Date complaint sent to Arbitrator:

18/09/2019

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr. Retailer and Menzies Distribution Limited (MD), Lockheed Close, Preston Farm Industrial Estate, Stockton, TS18 3SE. This complaint concerns alleged failure by MD to deliver all titles and their appropriate sections no later than the Retailer Delivery Time or Scheduled Delivery Time for the day of sale contrary to Part 1 of its 'Customer Service Pledge', Third Edition.

Mr. S. has not forwarded a copy of his Stage 2 Customer Complaint Form but MD has. The undated complaint form merely states "Restitution claims four of rejected re late publisher's information attached." However Mr. S. has submitted a PDC Stage 3 - Retailer Statement of Case in which he details his case as being in relation to late delivery of his newspapers and magazines on 31/08/2018, 10/11/2018, 07/03/2019 and 08/03/2019. Mr. S. maintains that the lateness was caused by late publisher inbound delivery and that MD had referred the complaint to the appropriate newspaper publisher for consideration but has heard nothing since.

MD did not respond to Mr. S.'s Stage 2 Complaint, but has submitted a PDC Stage 3 - Wholesale Statement of Case in which it maintains that it was not late on one occasion, not excessively late on another and made late by inbound publisher deliveries on the other two. Within correspondence it claimed that Mr. S. had not submitted a PDC Stage 2 Complaint. In response to this Mr. S. pointed out that a Stage 2 Complaint was signed on behalf of MD by an Ian McLain on 07/08/2019.

Having carefully considered the evidence submitted to me I adjudicate as follows:

1. The scope of my jurisdiction is limited to determining whether a wholesaler, distributor or publisher has failed to meet one of the standards set out in the PDC. I am not at liberty to go beyond that. I am satisfied that in this case a PDC Stage 2 Complaint was initiated by Mr. S. and that MD failed to respond to that complaint.

2. The PDC complaints process is designed to resolve 'serious or persistent' breaches of the standards contained in it. It is not intended to be used for occasional service 'blips'. Seriousness can only be determined on the circumstances of each case and the Independent Arbitrator has the ultimate determination on this point. Persistent is defined as follows:

Newspapers . The same problem occurs three times in three weeks for Monday to Friday newspapers three times in six weeks for Saturday or Sunday newspapers.

Magazines . The same problem occurs three times in six issues of a weekly, fortnightly or monthly magazine.

3. These complaints do not amount to 'persistent' as per the above definition and insufficient detail has been provided by Mr. S. to enable me to determine whether they were 'serious'.

4. 'The Guidance Notes for Retailers' at page 3 clearly advises retailers that:

"The Press Distribution Complaints Process cannot be used if the incident complained of occurred more than three months ago."

The incidents complained of by Mr. S. all occur outside of the said three month limit (prior to MD signing for the complaint form on 07/08/2019) and must therefore fail.

5. 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.

6. Again for the avoidance of doubt, if MD considered that a publisher was responsible for the lateness because of its late inbound delivery, the retail complaint should have been referred to the appropriate 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. For future reference MD is not able to declare that a publisher was responsible for its lateness as a result of late publisher inbound deliveries and ignore a Stage 2 Complaint. It must forward the complaint on to the appropriate publisher for consideration.

Neil Robinson

Signature of Arbitrator: _____

Date: 25th September 2019

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

26/09/2019

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

01/10/2019