

Press Distribution Charter

Step 2 - Independent Arbitration Decision

PDC Reference Number:

PDC/130596/15082023

Date First Issued:

15/08/2023

Name of Arbitrator:

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

Date complaint sent to Arbitrator:

13/10/2023

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Ms. W. and Menzies Distribution Limited (MD), Stockton-on-Tees, TS18 3SE. This complaint concerns alleged failure by MD to deliver all titles and their appropriate sections no later than the Retailer Delivery Time (RDT) or Scheduled Delivery Time (SDT) for the day of sale and to deliver all titles and their appropriate sections/supplements contrary to its 'Customer Service Pledge', Fourth Edition.

By Press Distribution Charter (PDC) Step 1 Complaint dated between 26/09/2023 Ms. W. claims that on numerous unspecified occasions MD delivered her newspapers and magazines later than her RDT. She indicates an RDT of 05.30. She maintains that delivery was rarely before 05.45 and that her delivery driver was delivering to her out of sequence. She made numerous complaints to MD as the service failures caused her significant stress and financial loss.

MD does not appear to have acknowledged or responded to this PDC Step 1 Complaint. However, Ms. W. made a number of Step1 Complaints prior to this one. A number of these were acknowledged and/or responded to and there appears to have been an on-going dialogue between MD and Ms. W. on the service failures cited.

By PDC Step 2 - Arbitration Statement of Case MD confirmed Ms. W.'s RDT as 05.30 and admitted that the RDT had been missed on a number of occasions since 01/09/2023. MD blamed the service failures on a "combination of publisher late arrival times (titles arriving 15 minutes before or after cut-off) and driver issues which has delayed departures."

As an interim measure, before a full review and permanent solution implemented, MD placed Ms. W. at position one on the run. It also instigated a daily supervised check on Ms. W.'s supply to ensure pack accuracy with a report on this going to senior management. MD reiterated that it was in very regular contact with Ms. W. regarding her issues.

Having carefully considered the evidence before me I adjudicate as follows:

1. Under Part 1 of MD's 'Customer Service Pledge', Fourth Edition an RDT is defined 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 delivery needs and your busy periods" an SDT is defined as "a time set if an RDT can't be reached."

2. Furthermore under the Customer Service Pledge MD undertakes that "Subject to publisher inbound deliveries to us, we will deliver all titles and their appropriate sections and supplements no later than the RDT or SDT on the day of sale.

We will deliver all product to you in a secure, saleable condition"

3. I must first consider whether this complaint is 'serious/persistent'. Unfortunately the evidence that I have received from Ms. W. in respect of the complaint under review lacks specific detail in that she did not provide me with actual arrival times, volume of title involved or her financial loss. In these circumstances the impact of the service failures cannot be assessed. However, I have received evidence of other PDC Step 1 Complaints initiated by Ms. W. on 29/6/2023, 15/08/2023, 21/08/2023, 23/08/2023 and 25/08/2023 indicating to me that there were service issues that clearly indicate persistence.

4. MD has directly admitted to service failures onward from 01/09/2023 however this does not cover the period under review. Having said that I have sufficient evidence before me to indicate persistent lateness that justifies these complaints.

5. MD indicates that the service failures are as a result of "a combination of publisher late arrival times (titles arriving 15 minutes before or after cut-off) and driver issues." Driver issues are totally at the control of MD and it must exercise the disciplines necessary to ensure efficient running of its logistics. As for late publisher in bound deliveries the Press Distribution Charter provides that:

"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-weekday specific period.

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

6. If MD considers that newspaper publisher inbound deliveries were late, by the definition above, and it caused late delivery to the retailer, it should have forwarded the PDC Step 1 Complaint onto the appropriate publisher.

7. MD is bound to pay restitution to Ms. W. and I am pleased to note that it has taken steps to facilitate this.

8. 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.

9. Ms. W. must now prepare a comprehensive schedule of her losses caused by the MD service failures during the three months prior to 26/09/2023 (from 26/06/2023). Once completed, she 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 20th October 2023

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

20/10/2023

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

23/10/2023

