

Press Distribution Charter

Stage 2 - Independent Arbitration Decision

PDC Reference Number:

PDC/132077/170322

Date First Issued:

17/03/2022

Name of Arbitrator:

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

Date complaint sent to Arbitrator:

27/04/2022 (Further and Better Particulars required)

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr. W. and Menzies Distribution Limited (MD), 55 Brampton Rd, Eastbourne BN22 9AF. 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 contrary to Part 1 of its 'Customer Service Pledge', Fourth Edition.

By Wholesaler Fast Track Restitution Claim Form dated 02/03/2022 and Complaint Form dated 16/03/2022 Mr. W. claims that on 26/02/2022 his supply from MD was late and as a result he suffered financial hardship. His claim for restitution was rejected by MD.

MD cited late incoming delivery from the publisher, Mail Newspapers, as the cause of the lateness.

The complaint was referred to the said publisher by Mr. W, and by email dated 11/03/2022 Mail Newspapers rejected the claim as delivery into its S. E. London Depot was prior to cut-off and accordingly not late.

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

1. The correct Press Distribution Charter Complaints Process was not followed by MD in its original handling of this complaint. If MD believed that its lateness to Mr. W. was due to late incoming delivery from a customer it should have forwarded the entire complaint to the appropriate publisher for it to determine the case. As this process was not followed I have deemed it expedient to enjoin the publisher, Mail Newspapers, in this adjudication.

2. There does not seem any doubt that Mr. W. did receive supply late on 26/02/2022. The specific issue to be determined is whether the wholesaler or the publisher must assume responsibility for this service failure.

3. MD refused Mr. W.'s claim for restitution on the basis that the publisher was late with incoming deliveries. After considering the National Distribution Monitor (NDM) I note that Mail Newspaper's cut-off time was 04.30.

4. For the purposes of the Press Distribution Charter Complaints Process 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.

5. Applying the definition in (4) above Mail Newspapers needed to have arrived at the MD Eastbourne depot by 04.15 at the latest in order to avoid being responsible for the service failure. The NDM shows that the Daily Mail and 'I' arrived at 04.40 and therefore late.

6. In these circumstances I find that Mr. W.'s complaint fails against MD but is successful against Mail Newspapers.

7. I instruct Mail Newspapers to pay restitution based on the Wholesale Fast Track Restitution Claim dated 02/03/2022. Restitution to be paid for delivery of product that necessitated the redelivery of HND copy at the rate of 43p per copy plus retail margin capped at £60.00 with a minimum award of £5.50.

Neil Robinson

Signature of Arbitrator: _____

Date: 10th May 2022

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

10/05/2022

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

13/05/2022