

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/240747/15072019

Date First Issued:

15/07/2019

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

25/07/2019

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Ms. Retailer and Telegraph Media Group (TMG), 111 Buckingham Palace Road, London, SW1W 0SR. This complaint concerns alleged failure by TMG 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 in accordance with Press Distribution Charter (PDC) Standard 2.1.

Ms. K. complains that on 12th June 2019 'The Telegraph' was delivered late to it by Smiths News, Bournemouth, as a result of a publisher re-run. Ms. K's staff had departed for the day and she was unable to arrange delivery thereby losing 70 sales and the corresponding margin. Ms. K. is of the opinion that this instance of lateness was sufficient to satisfy the PDC criteria for "serious" lateness. Ms. K. availed itself of support from the National Federation of Retail Newsagents (NFRN) in making a claim for restitution for the lost margin caused by the service failure. The NFRN wrote to TMG on 13/06/2019 and 26/06/2019 without a response. On 09/07/2019 the NFRN wrote a further letter to TMG addressing the complaint and requesting the letter to be regarded as a PDC Stage 2 Complaint if the restitution claimed was not forthcoming.

TMG responded by email dated 12/07/2019 and advised Ms. K. that it had suffered production issues (paper breaks and folder issues) throughout the print run and this caused late distribution. It had used an additional 19 vehicles in order to mitigate the adverse effect on distribution, but the title did have to be re-run to certain locations including SN, Bournemouth. TMG advanced the opinion that the complaint did not satisfy the industry definition of "persistent" and that lateness for two hours was the standard amount of time for a double run and was therefore not excessive and not "serious" as required to bring a Stage 2 Complaint under the PDC Complaints Process. The claim for restitution was rejected.

The NFRN did not prepare a formal PDC Stage 2 Complaint and sought to rely on its letter of 09/07/2019 to TMG which was responded to by TMG by email on 12/07/2019. Both parties to this dispute have specifically requested that I treat the above-mentioned exchange of correspondence as a PDC Stage 2 Complaint and have submitted PDC Stage 3 Statement of Cases.

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

1. There seems to be no dispute as to the basic facts in this matter. On 12/06/2019 Smiths News, Bournemouth, failed to deliver to Ms. K. by her RDT due to late incoming delivery by the publisher. The publisher was forced to re-run to the wholesaler due to production difficulties concerning a series of paper breaks and folder issues. This was a service failure covered by PDC Standard 2.1 as detailed above.
2. As a result of the service failure Ms. K. was entitled to make a complaint under the PDC Complaints process. This complaint should/would have been at Stage 1 (Informal Discussion)

and I note that on behalf of Ms. K. the NFRN corresponded with TMG on 13/06/2019 and 26/06/2019 in an attempt to resolve the matter, but TMG failed to respond.

3. TMG had 48 hours from 09.22 on 13/06 /2019 in which to try and resolve the matter. They did not respond at all and therefore Ms. K. was justified in pursuing her claim under Stage 2 of the PDC Complaints Process.

4. Both parties to this dispute have raised the question of "serious" as only "serious or persistent" service failures can be taken to Stage 2 and 3 of the PDC Complaints Process. "Persistent" is defined by an industry agreement and is clearly not relevant in this case. "Serious" is determined by the circumstances of each individual case and is not prescribed by the PDC or industry agreement.

5. When, and if, I have to determine whether a complaint is "serious" I look to how severe the service failure was to the retailer in terms of size, number, quality and/or impact to the business.

6. This complaint is about Publisher Restitution in the sum of £27.09. Having done a limited amount of research into Lunns Newsagency, I do not consider that the service failure in itself was "serious" and therefore not normally capable of being escalated to Stage 2 and 3 of the PDC Complaints Process. However, Ms. K. tried to raise the matter as a Stage1 PDC Complaint and due to TMG's failure to even acknowledge the complaint it became a more serious matter and thereby capable of a PDC Stage 2 or Stage 3 Complaint.

7. Publisher lateness for newspapers is clearly defined by industry agreement 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.

8. Where the publisher is late in accordance with (7) above a retailer may be entitled to restitution if the service failure is "serious or persistent".

9. 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.

10. TMG to pay £27.09 to Ms. K.

Signature of Arbitrator: Neil Robinson (email)

Date: 29th July 2019

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

30/07/2019

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

31/07/2019