

## Press Distribution Charter

### Stage 2 - Independent Arbitration Decision

PDC Reference Number:

PDC/133267/011122

Date First Issued:

01/11/2022

Name of Arbitrator:

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

Date complaint sent to Arbitrator:

03/04/2023

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr. P. and Menzies Distribution Limited (MD), Unit C, Block B Larkfield Trading Estate, New Hythe Lane, Larkfield, Aylesford ME20 6SW. This complaint concerns alleged failure by MD to allow him to receive his full supply from Smiths News under the industry passive selling rules which were established following the Office of Fair Trading consultation into the newspaper and magazine supply chain in 2008.

By on-line Press Distribution Charter Step 1 Complaint dated 01/11/2022 Mr. P. claims that, as stated above, he has been trying since 2020 to receive his full newspaper and magazine supply from Smiths News under the industry passive selling rules which were established following the Office of Fair Trading (OFT) consultation into the news supply chain in 2008. He currently receives magazines, collectables, News UK titles and the Telegraph from Menzies Distribution.

By letter dated 10/11/2022 MD acknowledged the complaint and stated that:

"The supplies you get from Menzies (magazines, collectables and News UK titles) are not packed or delivered within the area your store is located in by Smiths News therefore any changeover of suppliers would be virtually impossible.

Darren Jebb has further advised he will speak with the contractor covering your run and look for ways to improve the timeliness of your delivery however, the E05 route is the first vehicle to leave the estate each morning therefore trying to get an earlier drop time may be difficult."

Mr. P. claims that he has never received a formal response from MD in relation to the complaint,

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

1. There is conflicting evidence concerning whether MD responded to Mr. P.'s Step 1 Press Distribution Charter Complaint dated 01/11/2022 or not.
2. I accept for the purposes of this adjudication that MD did respond to the originating complaint by letter dated 10/11/2022. In these circumstances Mr. P.'s complaint would normally be considered as 'out of time' as the Press Distribution Complaints Process cannot be used if the incident complained of occurred more than three months ago. However I will give a limited adjudication on this case for reasons that will become obvious.

3. As Independent Arbitrator 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 Press Distribution Charter (PDC). I am not at liberty to go beyond that.

4. Passive Sales and Active Sales are legal terms and concepts that apply widely across various industries, they are not exclusive to the news trade as such. The concepts were introduced into the newspaper and magazine industry after the Office of Fair Trading review of the industry in 2008.

5. As a result of that review it was deemed that Passive Sales do not apply to newspapers as they are covered by 'absolute territorial protection' (ATP) and therefore there is no option for a retailer to get a single supplier of the same. However, a retailer can make a Passive Sales request to a wholesaler to supply them magazines and the wholesaler that receives the application has to review it within an accepted legal framework.

6. As this is a legal concept, embedded in Competition Law (and therefore also in publisher contracts) I am unable to fully adjudicate on the same.

*Neil Robinson*

Signature of Arbitrator: \_\_\_\_\_

Date: 4th April 2023

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

04/04/2023

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

13/04/2023