

# Press Distribution Charter

## Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/214558/280212

Date First Issued:

28/02/2012

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

10<sup>th</sup> April 2012

### Independent Arbitration Decision

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Retailer B and Smiths News, Borehamwood, Chester Road, Borehamwood, Herts, WD6 1WS. This complaint concerns Smiths News's failure to deliver 'The Sunday Mirror', 'The Sunday People', 16 'The Star on Sunday' and 14 supplements for 'The Times' on Sunday 5<sup>th</sup> February 2012 contrary to Standard 2.1 of the Press Distribution Charter.

Smiths News accepts that the above mentioned titles were not delivered, but claims that the severe adverse weather conditions prohibited the re-run required in order to get the titles to Retailer B.

Retailer B claims that the weather conditions gave him no problems in relation to the journey from his home in Luton to the shop. Furthermore, that historically re-runs had been carried out in worse conditions. He claims £150 "compensation" in relation to his alleged losses.

Having considered all of the evidence before me and undertaken extensive research into the weather conditions on 5/2/2012, I adjudicate as follows:

1. The Press Distribution Charter is concerned with the minimum level of service that the newspaper and magazine supply chain provides to retailers. With such a complex and time sensitive operation it is inevitable that problems will occur from time to time, especially in bad weather conditions. In such circumstances 'Force Majeure' may apply.
2. In considering 'Force Majeure' I need to consider whether Smiths News's failure to perform its obligation in Standard 2.1 was attributable to any circumstances beyond its reasonable control and whether it took all reasonable steps to minimise any delay or failure.
3. From the evidence that has been presented to me and my own investigation, I am satisfied that the weather conditions in the night of 4<sup>th</sup>/5<sup>th</sup> February 2012 were such that there was undoubtedly serious disruption to traffic on the roads. Indeed the RAC described "a dangerous cocktail of driving conditions" and urged motorists to stay at home. In these circumstances, I believe that the supply chain did remarkably well to get the bulk supply to retailers.
4. Faced with the adverse, and I understand deteriorating, weather conditions, Smiths News had to make a decision concerning re-runs of titles that arrived late at Borehamwood and retail claims. Management also had to consider shortage of staff failing to reach the depot due to the weather conditions and vehicles that had become stuck on the prime delivery. I understand that the driver on Retailer B's round did not return from his initial delivery until 10.19. In these, circumstances, management decided to put its duty of care to its delivery drivers over the need to carry out re-runs. I am satisfied that, on the balance of probabilities, this was the correct decision to make and, accordingly, force majeure does apply in this case. It is interesting to note that a total of nine routes did not re-run on 5<sup>th</sup> February and no other retailer has made a complaint.
5. Turning now to Retailer B's claim for £150 'compensation'. The Press Distribution Charter does not make any provision for 'compensation', but however does embrace 'restitution' which involves restoring the injured party to what has been lost. It is not about compensating for what might have been lost. Restitution will only be awarded for proven losses resulting directly from the breach as far as newspapers and magazines are concerned.
6. If I assume that Retailer B sold out of all the titles that failed to reach him, including 'The Times', which I suspect people would have still purchases despite a missing section, his total loss of profit would be something in the order of £28.00. A long way short of £150.

7. Retailer B asks me to accept that the balance, or a part of the same, may be attributable to the sale of supplementary products. I cannot accept this and respectfully suggest that Retailer B would have probably experienced a reduction in his turnover that day caused by the weather conditions.
8. I am not sure what Retailer B is claiming in respect of calling his wife and son out to assist him as he has not quantified the claim. However, the need to call his family out to assist must have been, in whole or in part, due to his decisions concerning the management of the shop as far as it relates to the sale of newspapers.

With due consideration to the above I dismiss this claim and urge Retailer B to accept the offer being made to him by Smiths News i.e. 30% of the standard sales he would have experienced for those titles on that day.

**Signature of Arbitrator:** Neil Robinson (email)

**Date:** 11<sup>th</sup> April 2012

**Seat of Arbitration:** London, England.

**Date form returned to PDC Administrator:**

**Date Independent Arbitration Decision sent to Wholesaler & Retailer:**