

# Press Distribution Charter

## Stage 3 - Independent Arbitration Decision

**PDC Reference Number:**

PDC/223973/00022013

**Date First Issued:**

No Reliable Information

**Name of Arbitrator:**

Neil Robinson

**Date complaint sent to Arbitrator:**

24th June 2013

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr. Retailer, Northamptonshire, and Smiths News, Southgate Way, Orton Southgate, Peterborough, PE2 6YG. This complaint concerns an alleged failure by Smiths News to fulfil an order placed for the 'Peterborough Telegraph' which subsequently resulted in the loss of HND customer.

The basic facts in this case are not disputed by the parties:

- Mr. Retailer placed a regular order for 'The Peterborough Telegraph'.
- It was supplied for a short time.
- Smiths News, Peterborough, realised that the order should not have been accepted as it did not have a contract to distribute the title in the Northampton post coded area. It advised Mr. Retailer accordingly and stopped delivery.
- Mr. Retailer lost his HND customer as a result of these unfortunate events.
- Smiths News subsequently offered Mr. Retailer £45 (£40 according to him) as a good will gesture.
- Mr. Retailer is seeking approximately £500 in compensation for loss of future profits.

Having considered all the evidence forwarded to me, I adjudicate as follows:

1. There is no doubt that Smiths News, Peterborough, should have been in better control of its own business and advised Mr. Retailer immediately the order was placed that it did not have a contract to supply 'The Peterborough Telegraph' to him. Obviously, Mr. Retailer could have advised the customer accordingly and he could have sought alternative arrangements to obtain the title.
2. Smiths News allegedly made contact with the publisher through its Sales Centre and asked the publisher for permission to supply this title out of area. I am surprised that the request was not well received. The Press Distribution Forum would, I am sure, be willing to broker such an arrangement at this late time should the parties wish it.
3. The Press Distribution Charter's dispute resolution process enables me to consider correction and/or restitution. It does not give me a remit to consider 'compensation'.
4. Restitution is about restoring to a retailer any loss directly resulting from a failure to achieve a Press Distribution Charter standard that is determined to have taken place. The amount of restitution is strictly limited to an amount that restores the retailer to the position he/she would have been in had the failure to meet the Standard not taken place. In this case, technically, no standard has been broken and no financial loss was suffered as Mr. Retailer received three copies of 'The Peterborough Telegraph' free of charge.
5. I am unable to consider restitution as to future losses. Even if I were, any award would be for proven loss rather than for a speculative figure based on guess work, which would be too remote.
6. Smiths News has recognised its mistakes in this case and offered a "goodwill gesture" of £45. I suggest that Mr. Retailer accepts the same.
7. There seems to be confusion as to the application of the Press Distribution Charter's dispute resolution process. Mr. Retailer submitted a completed PDC Stage 2 Complaint Form in early February 2013 and did not get a response. He followed it up on a number of occasions as did the NFRN on his behalf. Ultimately, Mr Retailer was offered two good will payments. Smiths News alleges that they did not receive the completed complaint form. I am not in a position to comment on this situation other than to advise retailers to ensure that they get some form of proof of posting the completed complaint form. Wholesalers must record every completed Stage 2 Complaint Form and submit details to the Press Distribution Review Panel Administrator on a monthly basis.

Signature of Arbitrator: Neil Robinson (email)

Date: 3rd July 2013

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

3/7/2013

Date Independent Arbitration Decision  
sent to Wholesaler & Retailer:

3/7/2013