

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC22056/24/01/2014

Date First Issued:

23/1/2014

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

3/3/2014 (Further and Better Particulars requested three times)

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr Retailer, and Smiths News, Brailsford Way, Chilwell Meadows Business Park, Beeston, Nottingham, NG9 6DH and COMAG, Tavistock Road, West Drayton, Middlesex, UB7 7QE. This complaint concerns alleged failure by Smiths News to supply back copies of 'Knit & Stitch', provide satisfactory explanation, respond to emails and make deductions to his account for a charity without his authorisation.

This complaint has two distinctly separate subject matters, the part-work problem and subsequent communication failure and the charitable donations being charged to Mr Retailer account. In the circumstances, I will address the issues separately especially as COMAG has been enjoined in the part-work issue.

Mr Retailer complains that he placed an order with Smiths News for 'Knit & Stitch' Parts 2 and 40 and his orders were not met, thereby failing to meet the requirements of the Press Distribution Charter (PDC) Second Edition Section 3. He claims that at the time of commencing this PDC Complaint (28/2/2014) he had been waiting 48 weeks for Part 2 and 9 weeks for Part 40. He also complains of Smith's News failure to keep him properly informed in relation to his order and to respond to communication in contravention of PDC Standards 4.12 and 9.5.

For its part, Smiths News maintain that the lack of availability of 'Knit & Stitch' copy within the supply chain caused its failure to supply the miscellaneous orders and enjoined COMAG as a respondent in its capacity as the magazines distributor. Smiths News failed to comment on the communication issues within its Stage 3 submissions, but at Stage 2 made it clear that "The time it has taken and lack of updates is totally unacceptable and we can totally appreciate your frustration".

COMAG maintains that it does retain a limited volume of stock to fulfil requests for back copies, however the stock is limited and constantly being called upon. Once this stock has been used up it is difficult to replace. An order for 'Knit & Stitch' Part 2 was received on 17/7/2013, but no stock was available and accordingly an order was placed with the publisher. An order was received late October for Part 40, but there was no stock again and subsequent enquiry revealed that there was a reduced print run on that particular issue of the title. COMAG eventually sent Part 2 and 40 to Mr Retailer in February 2014 after communicating with him and explaining the difficulties it had experienced in obtaining them.

Having considered the submissions made to me, I adjudicate as follows:

1. Part works form a particularly difficult sector of the magazine supply chain due to the fact that they are collectables and the end consumer will ultimately require the entire series. Obviously, the responsibility for acquiring every part falls on the retailer at first instance.

2. It is clear to me that the magazine supply chain has let Mr Retailer down in this case. Mr Retailer has obtained a customer for 'Knit & Stitch' and she joined at Volume 6. Mr Retailer was then asked to obtain volumes 1 - 5, which he did from Smiths News. The customer then continues with the title as a regular order. Unfortunately, Issue 2 remained unfulfilled until supplied by Comag in March of this year - quite clearly an unacceptable delay.

3. Issue 40 had an on sale date of 17/10/2013 and Mr Retailer failed to receive sufficient copy to supply his regular customer and I understand that Smiths News, Nottingham, and COMAG had no stock available due to a reduced print run by the publisher. Once again, quite clearly unacceptable. By Volume 40 the publisher should have had a clear indication as to what the print run should be in order to provide copy for the regular copies.

4. Mr Retailer duly ordered back numbers of Volume 2 and 40 and Smiths News entered the orders within the 'Due Book Process' which subsequently let Mr Retailer down and resulted in lack of availability of his order until his complaint was escalated to PDC Stage 3 when COMAG sourced Volumes 2 and 40 and delivered to him. It is a great pity that the supply chain was not able to put sufficient effort into sourcing the missing volumes at an earlier stage.

5. Smiths News failed to keep Mr Retailer properly informed in relation to the supply chain problem and ignored requests for information from Mr and Mrs Retailer. I find that Smiths News failed to achieve Press Distribution Charter Edition 2 standards 4.12 and 9.5

6. I am concerned that the current process for obtaining back issues of magazines is not as robust as it should be. It would seem that orders for back issues are placed in the 'Due Book' and left for long periods without proper review. I urge Smiths News to introduce frequent reviews of the Due Book and ensure that more time is devoted to chasing outstanding orders.

7. The PDC sets out to correct supply chain problems which result in breaches of its standards and I am pleased to note that Mr Retailer and his customer did eventually receive the copy ordered. However Mr Retailer has made a number of claims for 'compensation' for:

a) Possible return of 48 part-works	£216.00
b) Loss of future profit on part-works	£33.75 (later amended up to £135)
c) Loss of impulse trade	£237.50 (from £142.50)
d) Complaint attendance cost	£30.00
e) Injury to reputation	£30.00

Where appropriate, I can make an award to restore to a complainant any loss directly resulting from a failure to achieve a Press Distribution Charter standard. The amount of restitution is limited to an amount that restores the complainant to the position he/she would have been in had the failure to meet the Standard not taken place. However, any restitution ordered is limited to proven losses arising in relation to sales of newspapers and magazines over the period covered by the complaint.

8. With regard to the complaint under review:

a) There has been no evidence submitted that Mr Retailer has had to refund any payments made by his customer for 48 part-works and indeed Mr Retailer indicates that the return is only "possible". No award.

b) There is contradictory evidence relating to the remaining part-works. Whilst Mr Retailer, by letter dated 9/3/2014, has forwarded a letter from his customer which indicates that she has stopped the order for 'Knit & Stitch' because of the missing volumes, there is also a statement from COMAG which indicates that in a conversation with Mr Retailer he advised that the customer stopped the order as a result of her moving jobs and passing by the shop. I feel that I cannot ignore the letter from the customer and, accordingly, I find that Mr Retailer has suffered a loss as a result of the delay in supplying Issues 2 and 40 of 'Knit & Stitch'. Mr Retailer originally claimed his loss of profit on 30 issues of the title and later amended this up to claim recovery of the cover price on 30 issues. Upon investigation, it would appear that the title is scheduled for 104 issues and therefore Mr Retailer is entitled to the loss of profit on 54 issues which I calculate to be £60.75. Such sum to be paid by Smiths News.

c) Under the newspaper and magazine dispute resolution process, I can only award restitution for losses arising in relation to magazines. No award.

d) From the evidence submitted by Mr Retailer it would appear that he visited Smiths News, Nottingham, with a view to meeting with management in an attempt to resolve his issue. Mr Retailer was not summoned to a meeting by Smiths News. Mr Retailer makes an amended claim of £60 (16/4/2014) based on "small claims rules". Such costs are not provided for within the newspaper and magazine dispute resolution process. In the circumstances, there is no award.

e) Under the newspaper and magazine dispute resolution process injury to reputation is not covered.

I turn now to the NewstrAid deductions that were applied to Mr Retailer account without his consent.

Mr Retailer complains that 30p per week was being added to his account with Smiths News as a charitable donation to NewstrAid. Such contribution had not been authorised by him and he claims the "HMRC model 6 years rule to calculate the claim for refund" which he calculates at £93.60.

Smiths News respond by pointing out that in January/February 2008 customers were sent a brochure describing the work of the charity and advising about a change in donations from 20p. per week to 30p. per week. The literature also pointed out that customers could opt out at any time.

NewstrAid has always refunded money to retailers who have paid unknowingly and do not wish to continue. In this incidence it has agreed to refund Mr Retailer for the amount donated when Mr Retailer advises the total amount that he believes he has paid unknowingly.

If Mr Retailer can substantiate his claim for 6 years donations, I suggest he forwards the details to Smiths News who will arrange for NewstrAid to send him a cheque accordingly.

Signature of Arbitrator: Neil Robinson (email)

Date: 1st May 2014

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

1/5/2014

Date Independent Arbitration Decision
sent to Wholesaler & Retailer:

01/05/2014