

## **The complaint**

Ms A complains about Next Retail Limited's refusal to recredit the value of a purchase she made, as well as an associated investigation charge, using her running account credit facility.

## **What happened**

Ms A used her running account credit account to both purchase and finance a pair of sandals in May 2023 for £44.00. She says that she subsequently returned the goods at a retail store using a returns locker.

Next subsequently told Ms A that it had received a box without the goods inside. It reapplied the cost of the purchase as well as a £35 investigation fee. It also blocked her account and said it would be closed when the balance is repaid.

Ms A didn't think that was fair. She raised a complaint with Next about it and also said that she'd been told the charge would be waived.

Next said that it had checked the store's locker for the goods and reviewed the CCTV footage of the return, but it maintained it had received an empty package. It also reiterated that the account was blocked and would be closed when any balances were repaid.

Ms A referred the matter to this service. In the meantime, Next accepted that it had given Ms A the impression the fee would be removed. It offered to pay Ms A £20 compensation by way of an apology for the poor service.

Our investigator said that Ms A's dispute about goods being returned and whether she ought to pay for them was a complaint about a retail activity carried on by Next. They didn't think we had the power to look into that matter.

They said we could consider how Next had handled Ms A's credit agreement though. Specifically, they found that Next had acted in line with its agreement with Ms A by deciding to block and subsequently close the account. They accepted that the agreement allowed Next to charge a £35 investigation fee, but didn't think that Next had applied the fee fairly taking into account what had happened and the level of evidence provided.

Next disagreed. It said it had carried out a thorough investigation into what had happened and maintained the £35 fee had been applied correctly. Ms A agreed with our investigator's conclusions.

The case was passed to me to make a final decision on it. Before issuing this decision I shared some initial impressions with Next – broadly that it had provided very little by way of evidence relating to its investigation into what had happened.

In response, it provided pictures of the empty box it said it had received.

## What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

This complaint is about whether or not Next is acting fairly in relation to running a credit account regulated by the Consumer Credit Act 1974. It's a regulated agreement and one which this service has the power to consider a complaint about. That is, so far as the complaint arises from Next carrying on an activity specified under our rules.

Broadly speaking, our rules (known as DISP and found in the Financial Conduct Authority's handbook) say that we can consider complaints about a business covered by our jurisdiction as long as the complaint is about a regulated activity, or other specified.

Next is covered by this service's jurisdiction, but it has acted in two different capacities in dealing with Ms A. There's an important distinction to be made here, and it's relevant to whether or not the complaint relates to an activity we can consider.

When it sold goods to Ms A Next was acting as a retailer. It was also acting as a retailer in deciding whether or not to accept the subsequent return of the goods. In raising the issue about whether or not Next ought to have accepted that Ms A returned the goods, Ms A has relied on rights she might have had against Next as a retailer. So, the issue Ms A raises about whether or not Next received the goods she says she returned relate to Next's role as a retailer. This service does not have the power to consider a complaint about Next's activities as a retailer. So, I make no finding on this point.

Ms A's agreement set out that Next would provide lending for certain purchases and also the terms on which she would be required to repay that lending. It doesn't say that Ms A need not repay the lending in the event of a dispute about the provision or return of the goods. And it's clear there's a dispute about whether or not the goods were returned.

So, taking that into account, it wouldn't be fair for me to say that Next has not acted fairly by asking Ms A to repay the lending it provided for the goods she purchased. That being said, the term which Next relies on in applying a £35 investigation charge is in Ms A's credit agreement. So, I can say whether it's been applied fairly.

The particular term says;

*"If you return or attempt to return, substitute or alternative items when using our returns facility for any item an investigation charge of £35 will be added to the balance owing on your account."*

In determining whether or not this term applies, I'd expect Next to have robust and reliable evidence to justify its application. I think it's unlikely in cases like this that either party would be able to definitively show whether the goods were or weren't in the box that was returned. So, when the evidence is incomplete, inconclusive or contradictory, as it is here, I've made my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.

In support of the application of the fee Next has provided pictures of an empty cardboard box as well as a CCTV clip which it says shows Ms A putting a box into its returns locker. It's also said that it checked the returns locker in case the goods had fallen out of the packaging.

I've carefully considered what I think this evidence shows. I don't think the CCTV footage is clear enough to show what was returned. I'm aware that Next contends it shows a flat

cardboard box being returned, but I'm not persuaded that's the case. From the footage it looks to me that a box of some kind was placed in the returns locker. But that's as much as I think one can reasonably discern from the footage.

Next has also provided a picture of an empty box. As above, I appreciate that it's challenging to demonstrate an absence of something, or in this case, to show that the goods weren't in the box Ms A returned at the outset. Nonetheless, I'd expect Next to demonstrate that it's investigated possible explanations for what's happened here.

I might have expected Next to offer a detailed account of what was received and its condition, to show whether it's possible the box's contents could've escaped or could've been accessed during the returns process. I might also have expected Next to provide tracking information as well as comments from couriers or the warehouse which received the package and identified the contents were missing. Next says it's carried out a thorough investigation into what's happened, but I don't think it's provided sufficient evidence of that.

I think it's therefore fair to say there's likely evidence which could've been relied on to reasonably determine the likelihood of whether the goods were returned and therefore whether this charge is justified. As that evidence hasn't been captured and/ or provided by Next, I don't think I can fairly say, on balance, that the charge has been applied fairly. As a result, I require Next to remove it and rework Miss A's account as though it hadn't been applied. Additionally, I also think Next should pay Ms A the £20 compensation it offered her for misinformation given.

Lastly, I agree with what our investigator said on Next's decision to block Ms A's account. The agreement allows Next to block the account and terminate the agreement. Whilst I understand that Ms A might be frustrated by Next's decision to do this, I don't find that Next has treated Ms A unfairly in this respect.

### **My final decision**

For the reasons explained above, my final decision is that I require Next Retail Limited to rework Ms A's account as though the £35 charge had not been applied, and to pay her £20 compensation if it has not done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 27 October 2023.

Stephen Trapp  
**Ombudsman**