

The complaint

Mrs E complains about the decision made by Next Retail Limited ('Next') to ask her to repay the cost of items she says were returned, as well as a £35 investigation fee.

What happened

Mrs E used her running account credit facility with Next to purchase shoes in November 2022. She says that she subsequently returned the goods in December 2022 using a returns service provided by Next. The cost of the goods was then refunded to Mrs E's account.

In April 2023 Next wrote to Mrs E to say that the package it had received was not the shoes Mrs E had purchased – rather, it was shoes of a different brand and they'd been worn. Next said it would not accept the return, and that it would reapply the cost of the goods and also apply a £35 investigation fee.

Mrs E raised a complaint with Next. She said it's possible the package might have been opened and the items switched at some point between leaving her possession and arriving with Next. She suggested she'd been the victim of a well-documented scam involving a courier acting on Next's behalf. Lastly, Mrs E raised issue with Next having taken months to arrive at its decision, pointing out that evidence of the package's condition when it left her, such as footage from her video doorbell, was no longer available by that point.

Next issued its final response in May 2023. It didn't agree with Mrs E's complaint and maintained that it had not received the goods sent to Mrs E, so the reapplication of the cost as well as a £35 investigation fee was justified.

Mrs E referred her complaint to this service. She maintained she'd been the victim of a scam and said that she ought not to pay the costs of the goods nor the investigation fee Next applied.

Our investigator said that Next had acted as a retailer in selling Mrs E goods. So her dispute about Next not accepting the return of those goods was not a matter this service had the power to consider a complaint about – and that extended to the trouble and upset that Mrs E said she'd been caused by the situation.

They accepted that the £35 fee Next applied was part of Mrs E's regulated finance agreement, and something that this service did have the power to consider a complaint about. In respect of that charge our investigator said that they'd asked Next for evidence of its investigation into what had happened, particularly details of enquiries it made with the courier in light of Mrs E's assertion as well as pictures of the packaging received.

They said that because Next had not been able to supply that information, they didn't think they'd seen sufficient evidence to show that Next had fairly applied the £35 investigation fee. They recommended Next remove that fee.

From what she said I think that Mrs E broadly agreed with our investigator's position. Next disagreed, said its process was robust and that it had provided sufficient evidence. It said it

had faith in the courier and said there is nothing to suggest anything untoward has happened.

The case has been passed to me to make a decision on it.

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.

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.

Whilst Next comes under this service's jurisdiction, it's acted in two different capacities in dealing with Mrs E.

In selling goods to, and subsequently deciding whether or not to accept the return of those goods, Next is acting as a retailer. In raising the issue about whether or not Next ought to have accepted that Mrs E returned the goods, she's relied on rights she might have had against Next as a retailer. This service does not have the power to consider a complaint about Next's activities as a retailer. So, I cannot make a finding on whether or not Next ought to have accepted Mrs E's return. Mrs E might, however, be able to pursue this issue elsewhere, for example, with an alternative dispute resolution service, should she wish.

Next has also acted as the provider of regulated lending to Mrs E, and it's asked her to repay sums it lent her. The running credit account it provides to Mrs E is regulated by the Consumer Credit Act 1974. This service has the power to consider complaints about that type of agreement. So, I can consider whether Next is acting fairly in asking Mrs E to repay the lending it provided, and I can also find on whether it applied the £35 fee fairly, as the clause which allows Next to do so forms part of that agreement.

The agreement sets out that Next would provide Mrs E with lending for purchases up to a certain limit. It doesn't, however, say that Mrs E needn't repay the lending in the event of a dispute about the provision or return of specific goods. And it's clear there's a dispute about whether or not the goods were returned in this case. So, it wouldn't be fair for me to say that Next has not acted fairly by asking Mrs E to repay the lending it provided.

The term Next relies on applying a £35 investigation fee 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."

Next said it had not been provided with any proof to support Mrs E's complaint and referenced part of its returns policy, which said;

"If you return goods to us, we will not be responsible for any loss or damage to them during transit and we recommend that you use a recorded or secure delivery method. If goods are lost or damaged in transit, we may charge you, or not refund to you, amounts that are attributable to the loss or damage."

However, I understand that Mrs E returned the goods in question using a courier service provided by Next, so I don't think that clause is relevant here, particularly with regard to whether a £35 investigation fee has been fairly applied.

Mrs E's assertion is that the goods were switched at some point after they left her possession. I think it's fair to say that Mrs E's ability to investigate and demonstrate what's most likely happened here is limited. On the other hand, it seems to me that it ought to have been relatively straight forward for Next to investigate matters with the courier.

At the very least I'd expect Next to be able to demonstrate that it had investigated matters. It's not for me to say exactly what that investigation ought to have consisted of, but given Mrs E's assertions, I'd reasonably expect Next to provide things like tracking details – showing where the package was, for how long and who it was handle by – pictures of the package it received, and perhaps comments from the courier, for example.

Next has provided a picture of the item it says it received – a used pair of shoes. It's also provided a screenshot of notes which represent that's what it received. Our investigator asked for pictures of the package received as well as evidence of the investigation into matters with its courier.

From what I've seen, Next didn't provide either of those things. And I think they're relevant to whether the charge has been applied fairly. It would've been beneficial to see both of these things – it'd show the extent to which Next investigated matters and it could've given an indication as to whether the package had been prematurely accessed.

Mrs E, by contrast, has provided what I consider to be a plausible, persuasive and consistent version of events. She says that the goods were handed to Next's courier in a sealed Next branded bag, complete with paperwork. She'd offered to provide evidence of that via her video doorbell, which is no longer available due to the time which passed – over four months – by the point Next applied a £35 fee. I note our investigator asked Next why it took so long to apply the fee and tell Mrs E about it, but I don't think it adequately answered that.

I think it's fair to say there's likely evidence which Next could've provided to reasonably determine whether this charge is justified. It ought reasonably to be able to show that it carried out an investigation into what happened in light of Mrs E's assertions, but in my view it's not demonstrated that it's done that. Additionally, I find that Mrs E has been disadvantaged by the time Next took to handle matters because she's no longer in possession of evidence which might have given an indication as to what happened.

Overall, 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 Mrs E's account as though it hadn't been applied.

My final decision

For the reasons explained above, my final decision is that I uphold this complaint in part, and require Next Retail Limited to rework Mrs E's account as though the £35 fee had not been applied.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 18 January 2024.

Stephen Trapp
Ombudsman