

The complaint

Mr B complains that Next Retail Limited (“NRL”) has acted unfairly in relation to applying a charge to an account he has with it.

What happened

Mr B bought an item of clothing online from NRL. Mr B used finance provided by NRL to purchase the item. Mr B was dissatisfied with the item and decided to return it. By mistake he sent back the wrong item of clothing. However, NRL did not realise this at first because the label from the original item had been resewn onto the returned item. Once this error came to light, Mr B sent NRL the correct item and it in turn gave him a refund for the item.

However, a clause in the finance agreement between Mr B and NRL allows NRL to add an investigation charge to Mr B’s account in these circumstances, and initially NRL did add this charge to Mr B’s account. However, later, as a goodwill gesture, it refunded this charge. This left a credit balance of £20 on Mr B’s account which NRL also refunded.

Mr B objected to being charged the investigation charge in the first place and complained to NRL about this. In Mr B’s opinion NRL’s staff had not been clear about why the charge was applied to his account. In particular, Mr B indicates NRL ought not to have levied the charge if it does not correlate to the time spent by staff on dealing with the return. And if this is what the charge covers then he wanted a breakdown of the costs incurred.

In any event, Mr B also indicated this clause was hidden in the small print of the finance contract, so it was unfair for NRL to rely on this provision.

Moreover, Mr B considered that NRL had wasted his time and caused him distress. Also, Mr B considered that in refunding the £20 credit balance that arose from refunding the investigation charge, NRL was conceding it had acted incorrectly.

Therefore for all of these reasons, Mr B asked that NRL pay him £250 to compensate him for distress and inconvenience. It appears that Mr B also asked NRL to close his account.

NRL responded that it was entitled to add the investigation charge to Mr B’s account, and it declined to pay Mr B £250. NRL closed Mr B’s account.

Dissatisfied, Mr B complained to this service.

One of our investigators looked into Mr B’s complaint. Our investigator explained that this service only has the power to look at the part of Mr B’s complaint that relates to NRL’s actions as a lender under a regulated finance agreement. Therefore this service only looked at this part of the complaint.

Our investigator did not recommend that Mr B’s complaint ought to be upheld.

NRL accepted our investigator’s recommendation, Mr B did not. Our investigator asked Mr B to tell us why he did not accept the recommendation, Mr B declined to give his reasons.

Mr B asked that an ombudsman review his complaint.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

It does not seem that there is any dispute between the parties about the sequence of events that led up to the charge being imposed (i.e. the purchase of one shirt and subsequent return of two shirts). In any event, even if there was a disagreement about this, as we have already explained, we'd have no power to look at that part of the complaint, as it is to do with NRL's actions as a retailer rather than as a lender under a regulated credit agreement. And this service can look at NRL's actions as a lender but can't look at complaints about NRL's actions as a retailer. Moreover, it is not clear if Mr B intends to complain about NRL's actions as a retailer as his communications have focused on the investigation charge (i.e. NRL's actions as a lender under a regulated finance agreement).

The crux of this complaint is whether NRL acted fairly in imposing the investigation charge and whether NRL ought fairly to pay Mr B £250 compensation as a result of adding this charge to his account.

I've seen a sample copy of the finance contract between Mr B and NRL. I've no reason to doubt this contract reflects the contract the parties signed. In any event, neither party is disputing this. I think it is reasonable to assume, as a starting point, that when a person enters into an agreement – they understand the terms of the agreement and they are agreeing to be bound by them. The finance contract provides that NRL can add the investigation charge to Mr B's account in these circumstances. Specifically it 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."

Therefore on the face of it NRL was entitled to add the £35 to Mr B's account.

Mr B suggests that NRL's staff at various times did not explain why it was requiring him to pay the charge. In particular, Mr B wanted information to show that the charge equated to the staff costs NRL incurred in handling the return. But I think what charge NRL charges is a commercial judgement for it to make. I'm not saying NRL can do whatever it wishes as long as it making its own commercial decisions. What I'd say is we don't interfere if businesses are operating fairly, and I'm satisfied this is the case here. Moreover, I don't find it unreasonable that the staff members were not able to tell Mr B whether the charge was linked to the amount of time spent on investigating the return.

Further, Mr B indicates that NRL made it hard to know he was agreeing to the investigation charge when he contracted with it because the clause is hidden away in the small print. I don't agree, rather I am satisfied that the clause is in plain sight on page two of a four page agreement. Therefore I find that it is fair and reasonable that NRL can rely on the clause.

In any event, as a goodwill gesture, NRL has refunded the investigation charge. But I'll add if NRL had not already done this, I would not have said it had to do this. In other words, I'm satisfied that NRL has already done more than I think it was fair and reasonable to ask it to do.

Also as a goodwill gesture, NRL refunded the credit balance which arose when it refunded the investigation charge. Mr B characterises the £20 refund goodwill gesture as an admission from NRL that it did something wrong. However, I'd say it is quite the reverse. A business makes a goodwill gesture when it thinks it has done nothing wrong but decides to make a gesture in any case. Moreover, it's a moot point as I've already found that NRL did nothing wrong in applying the investigation charge to Mr B's account. It follows that any action that flows from the refund of the investigation charge is not something that shows that NRL made a mistake, nor does it entitle Mr B to compensation. That said given that NRL closed Mr B's account I would have expected it to refund any credit balance.

It follows from what I've said above that I have no proper basis for saying that NRL needs to pay Mr B compensation for distress and inconvenience.

Therefore, for all of these reasons, I don't uphold this complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 September 2023.

Joyce Gordon
Ombudsman