

## **The complaint**

Miss R 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**

Miss R purchased a bottle of perfume using her credit facility with Next in February 2022. She says she chose to return the goods to Next as she was entitled to.

Next subsequently said it had only received a box back, not the perfume itself. It reapplied the charge for the perfume and added a £35 investigation fee to Miss R's account.

Miss R raised a complaint with Next because she said the perfume had been returned.

Next issued a final response to Miss R in April 2022. In summary, it said it was satisfied that the perfume had been in the package delivered to Miss R, but was absent from the package it received back. It noted that Miss R had received the goods on 13 February 2022, but it was returned on 14 March 2022. It also said that Miss R had had a high level of deliveries and returns going missing, so it asked her to collect and return future deliveries in store. It declined to remove the charge for the perfume as well as the £35 investigation fee.

Miss R referred the matter to this service. Our investigator said that in the circumstances Next was acting as a retailer and as a finance provider. They said that whether Next had received the perfume back and if it had been justified in asking Miss R to pay the charge for it was a retail activity, a point which we didn't have the power to consider. However, they said that the £35 administration charge Next had applied was set out in Miss R's finance agreement, and we did have the power to say whether that charge had been applied fairly and correctly.

Our investigator accepted that Miss R's agreement allowed Next to apply a £35 investigation fee if Miss R attempted to return or substitute non-faulty used items. However, she wasn't persuaded that was what had happened in the circumstances. As a result, she didn't think the £35 fee had been applied correctly and Next should therefore remove it from Miss R's account.

Miss R initially said that she believed the issue related to her credit facility so we ought to be able to comment on whether Next should remove the charge for the goods. But, ultimately she said she'd accept what our investigator recommended.

Next said that it was confident in its processes and maintained that it hadn't received the perfume back, so it thought the £35 charge had been applied correctly.

The case has been passed to me to decide what should happen.

## **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 Miss R. 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 perfume to Miss R, 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 Miss R returned the goods, Miss R has relied on rights she might have had against Next as a retailer. So, the issue Miss R raises about whether or not Next received the perfume 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.

That being said, Next has also acted as the provider of regulated lending to Miss R, and it's asked her to repay sums in relation to her purchase. I can consider whether Next is acting fairly in asking Miss R to repay the lending it provided in respect of the purchase of the perfume, taking into account everything that's happened.

Miss R's agreement set out that Next would provide lending for certain purchases and also the terms on which Miss R would be required to repay that lending. It doesn't say that Miss R 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 Miss R to repay the lending it provided for the perfume she purchased.

That being said, the term which Next relies on in applying a £35 investigation charge is in Miss R'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.

Next has provided a picture of a box of perfume, as well as comments from someone in its warehouse to say that the box was empty, and that Miss R has a high return rate.

Whether or not Miss R had a high return rate is, in my view, immaterial to whether this particular item was returned. And, whilst I appreciate it's difficult to demonstrate the absence of something, I'd have expected Next to be able to demonstrate more than it has. For example, detailed pictures of the packaging, comments from couriers as well as tracking information.

As I understand it, Miss R returned the goods shortly after receiving them and the box itself was housed in a larger box for transport, which she says was unopened. It would've been beneficial to have seen pictures of the larger box to determine, for example, whether it could have possibly been tampered with at some point along its journey. Or even if it had been opened at all. However, Next has only provided a picture of the box of perfume.

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 perfume was 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 R's account as though it hadn't been applied.

### **My final decision**

For the reasons explained above, my final decision is that I require Next Retail Limited to remove the £35 charge it applied to Miss R's account and rework the account as though it had not been applied in the first instance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 27 April 2023.

Stephen Trapp  
**Ombudsman**