

## The complaint

Mrs H complains about Next Retail Limited's 'Next' refusal to recredit the value of two items she attempted to return, as well as the cost of associated investigation charges applied to her running account credit facility.

## What happened

Mrs H used her running account credit facility with Next to both purchase and finance a black jacket on 21 August 2022 as well as a blue shirt on 31 October 2022. Mrs H says she returned the jacket because it didn't fit and the shirt because the wrong one had been supplied.

Next subsequently sent both items back to Mrs H. It said the goods it had received weren't those it had provided to Mrs H and declined to credit her account with the value of the purchases.

Mrs H disputed this was the case and raised a complaint about Next's refusal to accept her returns. She said that she'd made a member of staff aware that the reason for one of the returns was that she'd received the wrong item, at the time she made the return in a retail store.

Next sent its final response to Mrs H on 11 January 2023. It maintained that incorrect items had been received in respect of Mrs H's returns. It mentioned that it had happened on previous occasions and each time a £35 investigation fee had been applied to Mrs H's account. Next acknowledged what Mrs H had said about telling a member of staff about the reason for the return, but said that it was Mrs H's responsibility to have raised it with its online department. It also decided to prevent the account from being used further and said that once any outstanding balance was repaid the account would be closed.

Mrs H referred her complaint to this service.

Our investigator said that Mrs H'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.

They said we could consider how Next had handled Mrs H's credit agreement though. Specifically, they found that Next had acted in line with its agreement with Mrs H 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 it had applied the fee fairly. Our investigator asked Next to remove any £35 administration fees it had applied relating to the two returns Mrs H attempted.

Next disagreed. It said that it had provided pictures of the items it had received which were clearly different to the items it had supplied to Mrs H.

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.

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. This complaint is about whether or not Next is acting fairly in relation to credit account regulated by the Consumer Credit Act 1974. Broadly speaking, that's an agreement type we have the power to consider a complaint about.

However, Next it has acted in two different capacities in dealing with Mrs H. 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 Mrs H 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 Mrs H returned the goods, Mrs H has relied on rights she might have had against Next as a retailer. So, the issue Mrs H 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.

Mrs H'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 Mrs H 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 Mrs H to repay the lending it provided for the goods she purchased. That being said, the term which Next relies on in applying £35 investigation charges is in Mrs H'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. In other words, Next needs to reasonably demonstrate that Mrs H had at the very least attempted to return goods other than those which she was supplied with.

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.

I don't think it's in dispute that the shirt Next received wasn't the one which Mrs H purchased. Mrs H says she received the wrong shirt she received and the reason she returned it.

Next told this service that its records show that the shirt hadn't been sent to any other

customers prior to Mrs H. But I don't think that's persuasive evidence that the correct item was provided to Mrs H in the first place, it could've been mislabelled for example.

Additionally, I've seen in Next's submission that Mrs H asserted that she'd made a member of a retail store aware that it wasn't the right item, but the return was still accepted. Next has asserted that it's stores will accept returns to avoid confrontation. That's understandable, but I don't think it's fair to accept a return in person, having been made aware of such a discrepancy, only to then charge Mrs H a £35 investigation fee for it having happened. In any case, I'm not persuaded that there's sufficient evidence here to suggest that Mrs H attempted to return an alternative item, so I don't think the charge is justified.

Unlike the shirt, there is a dispute about whether Mrs H returned the jacket she'd been supplied with. I think both parties accept that Mrs H purchased a black jacket. Next says it received a silver jacket with the incorrect tag on it and sent that back to Mrs H. It supplied pictures of the silver jacket, which it says it returned to Mrs H. However, I've also seen that Mrs H provided pictures of the items she says she received back after her attempted return, and those appear to be of the correctly labelled black jacket.

Ultimately, it's not for me to decide whether Mrs H returned or received the correct items, I simply need to determine whether it would be fair for Next to have applied a £35 investigation fee. On balance, I find the evidence presented by both parties to be equally persuasive in this case. However, given that Mrs H provided what appear to be pictures of the correct jacket having been received back, I think it's fair to say that Next could've made further enquiries with the departments which handled that return – asking for testimony from staff or other supporting evidence, such as pictures of the packaging which might show weight discrepancies for examples. In my view Next hasn't provided that level of evidence, and I think both parties have been given a fair opportunity to provide evidence. On that basis, I'm not persuaded that it's fair for Next to charge a £35 investigation fee in respect of the jacket.

From what's been said it's not clear whether one or two £35 investigation fees were charged in respect of the returns addressed above. From the account movements which have been provided, it seems like it might just be one – applied in December 2022. In any case, I don't think it would've been fair for Next to have applied any for the reasons explained above.

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

### **My final decision**

For the reasons explain above, my final decision is that I uphold this complaint.

I require Next Retail Limited trading as Next Directory to rework Mrs H's account as though any £35 investigation fees in respect of the returns set out above had not been applied.

Should that result in a credit balance on Mrs H's account, or if all outstanding sums have already been repaid, then Next should refund the £35 charge(s) to Mrs H directly along with simple interest at 8% per year, calculated from the date the account was repaid to the date of settlement.

If Next considers it necessary to deduct tax from any interest award it should provide Mrs H with a certificate of tax deduction so she may claim a refund from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 25 July 2024.

Stephen Trapp  
**Ombudsman**