

## The complaint

Mrs F complains about the way Barclays Bank UK PLC trading as Barclaycard handled her claim for a refund.

## What happened

In July 2024, Mrs F purchased a mattress online from a retailer I'll refer to as 'J'. The purchase price was £1,220, and she used her Barclaycard to make part payment.

Mrs F says the mattress wasn't available in store to test but says she was told by a retail assistant at J that she could order online and return it within 14 days if she wasn't happy with it. Mrs F did order the mattress online, it arrived, and she slept on it within a few days of delivery. She adds that the shipping covering was removed by the delivery company without her asking it to. Mrs F says that the mattress was much firmer than advertised and what she was told in store, and so she contacted J to return the item or have it replaced with a softer mattress.

J didn't accept the return. Stating that it didn't accept the return of mattresses where there is 'no sleep' trial, and where the protective packing has been removed – citing its hygiene policy – unless the mattress was faulty (which it wasn't). Mrs F says that J refused both her statutory and legal right to return the mattress within 14 days. And referred to case law which supports her view that the mattress shouldn't fall under J's hygiene policy. And because J refused to refund her, Mrs F made a claim to Barclaycard under Section 75 of the Consumer Credit Act ("Section 75").

Barclaycard said that Mrs F didn't have a valid chargeback or Section 75 claim. In its view, J's terms and conditions state the mattress could be returned within 14 days only if it had been unopened and unused. So, Mrs F's claim failed on both grounds. So, it didn't agree to uphold the claim for breach of contract and/or misrepresentation, When Barclaycard maintained its position following a complaint from Mrs F, she referred matters to us.

An Investigator recommended upholding the complaint. In brief, they thought Mrs F had correctly exercised her cancellation rights under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ('CCRs'). And as a result, our investigator thought Barclaycard was liable to refund Mrs F under Section 75 for breach of contract. The investigator recommended Barclaycard refund Mrs F the full cost of the mattress adding 8% simple interest. They also recommended a deduction of no more than £29.95 which is what Mrs F would have been required to pay had she returned the mattress.

Mrs F accepted the Investigator's view. But Barclaycard didn't. In summary, it said: because the mattress had been used, there was no breach of contract; J weren't required to accept a return and provide a refund for hygiene reasons and not being able to resell the mattress; and for a number of reasons, the caselaw referred to by Mrs F and our investigator doesn't change the outcome of the claim. Because an agreement couldn't be reached, the complaint has been passed to me to decide on the matter.

I previously issued a provisional decision on this case. That's because while it was intention to come to the same outcome as the Investigator, I didn't think Barclaycard needed to provide Mrs F will a refund of the full cost of the mattress. Because of this, I wanted to give both parties the chance to respond with anything else they wanted me to consider before I came to my final decision on the case.

I have copied my provisional findings below, which also forms part of this final decision.

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

*Having considered all the evidence available, it is my current view that Mrs F's complaint should be upheld. However, I'm reaching a different view on the redress from that of our investigator. I'll explain why.*

*I have read and taken into account all of the information provided by both parties, in reaching my provisional decision. If I've not reflected something that's been said it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless I think it's relevant to the crux of the complaint.*

*When a consumer approaches their credit card issuer about a problem with a payment made using their credit card, there are two avenues via which the business might be able help. The card issuer can try to reclaim the amount (or part of the amount) the consumer paid on their card, via the dispute resolution mechanism operated by the card scheme and which is often known as "chargeback". It can also consider honouring a claim under Section 75.*

*In this case, it appears both parties accept that a claim under the chargeback scheme would have had little prospect of success. For completeness, I agree with this. That's because a chargeback claim would be decided on the expressed terms and conditions in the agreement J had with Mrs F. Which I'm satisfied everyone is in agreement that J hasn't acted outside of its own terms and conditions.*

*So, what's left for me to decide is if Barclaycard had treated Mrs F fairly when assessing her claim under Section 75. Section 75 allows Mrs F to make a claim against Barclaycard in respect of the item she bought using her credit card. For Section 75 to apply, certain criteria need to be satisfied relating to things like the parties to the transaction, the way the payment was made and the cost of the goods. I am satisfied this is met and Section 75 applies here.*

*In order for Mrs F's claim under Section 75 to be successful, there would need to be evidence that either there has been a breach in contract, or a misrepresentation of the goods Mrs F purchased. Mrs F has accepted that there isn't enough evidence to support her claim that the goods were misrepresented. I'm minded to agree with this too – that's because the misrepresentation here relates to the firmness of the mattress, which is essentially subjective and down to opinion. It would be difficult to be able to say with any certainty, that it was wrong of J to have described the mattress in the way it did. So, I'm not persuaded that a misrepresentation has occurred, or at least I don't have enough evidence to come to the view that one has occurred. However, Mrs F maintains that J breached the contract by refusing her right to return the mattress. I agree with her on this point, and I'll explain why below.*

*A breach of contract can be a breach of an "express" term of a contract – meaning something which is written into it. Or it can be a breach of what is usually referred to as an*

*“implied” term, which is a term treated as being included in the contract due to, for example, legislation such as the Consumer Rights Act 2015 and the CCRs (the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013) which says that it must be.*

*I haven’t seen a copy of the terms that were applicable at the time Mrs F purchased the mattress. So, in the absence of these, I have looked at the current terms and conditions available on J’s website, which I’m of the view is likely to be similar, if not the same as the terms Mrs F agreed to when she purchased the mattress. I can see that J’s website says certain products can’t be returned due to ‘hygiene reasons’. There’s a list of products that it believes falls into the hygiene category, and a mattress is one of them (unless indicated in a supplier promotion). For this reason, I can’t conclude that there was a breach in the expressed terms in Mrs F’s contract with J. I say this because the terms state a mattress can’t be returned.*

*I have also considered the implied terms; in particular the CCRs. The CCRs apply to, amongst other things, distance sales. Again, it doesn’t appear to be in dispute here that the mattress purchase falls under the definition of ‘distance’ sale as stated in the regulations, and therefore the CCR’s are a relevant consideration in this case. The CCRs state that a consumer has the right to cancel a contract within 14 days – all parties appear to agree that this is the case, and that Mrs F did exercise her right to cancel the contract within the specified time period.*

*The CCRs (Section 28) states that some products are exempt from cancellation rights - examples of these are for custom made goods, or goods which may expire rapidly. However, subsection 3 is particularly relevant in this case and states: The rights conferred by this Part cease to be available in the following circumstances—(a)in the case of a contract for the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons, if they become unsealed after delivery; Barclaycard argue that the exemption applies here because ultimately, the mattress once unsealed and used couldn’t be returned to J due to hygiene reasons. But Mrs F thinks otherwise, citing case law to support her view - slewo - schlafen leben wohnen GmbH v Sascha Ledowski.*

*The case law Mrs F has provided reference to is from the European courts. I note Barclaycard has said that UK law supersedes European law, and that a UK judge has more freedom now to depart from such case law. This might well be the case. But in this instance, I’m satisfied that I should take the findings of the judge into account when coming to my conclusion, particularly in the absence of any case law that contradicts this. The CCRs are derived from European law. And the judge has made a finding on the whether the claimant could exercise their right to cancel the contract within 14 days where the hygiene seal on a mattress had been removed – the judge pays particular attention to the exemption for goods sealed for hygiene reasons where that seal has been removed – as is the case here.*

*The judge found that removing the hygiene seal of a mattress did not mean that it couldn’t be returned for hygiene reasons, and that steps could be taken to make the mattress resaleable after return – referring to deep cleaning and that hotel mattresses are slept on by multiple people. The judge’s finding was “goods such as a mattress, from which the protective film has been removed by the consumer after delivery, do not come within the scope of the concept of ‘sealed goods which are not suitable for return due to health protection or hygiene reasons and which have been unsealed by the consumer after delivery”.*

*So, whilst Barclaycard argues UK law supersedes European law, in this case, I don’t think the findings made by the judge contradict anything in the CCRs. Instead, it is my view that it provides further clarity and reasoning, given that there are no examples in the CCRs as to*

*what might be considered a sealed good which wouldn't be suitable for return due to health or hygiene reasons. Therefore, it is my view that Mrs F should have been allowed to exercise her right to return the mattress, and that she wasn't exempt from doing so under the CCRs. And because J hadn't allowed Mrs F to exercise this right, it had breached the implied terms of the contract she had with it.*

*Barclaycard has provided this Service with an extract from a consumer protection website, I'll refer to as 'W'. In summary, W says that a consumer would struggle to get their money back if they ordered a mattress and tried to return it just because they thought, for example, it was too firm. It also states that it would be difficult to claim that a mattress was still hygienic if it had been unwrapped and slept on. So, taking this at face value does support Barclaycard's view that the mattress, as used, falls under the exemption and so the cancellation rights don't apply. But it isn't clear where W has got the information from that this would apply to a mattress – as this isn't specified in the CCRs, or anywhere else that I've seen. And because I don't know where this information has come from, it would seem unreasonable to rely solely on what W has said on its website. And I'm satisfied that I should place more weight on the findings made by the judge in the case law Mrs F has referenced.*

*Overall then, there isn't anything in the CCRs that provides further context on what would and wouldn't be deemed an item that could be returned due to hygiene reasons. And in the absence of anything else that the parties have made available to me, I'm persuaded that it would be more reasonable for me to rely on the findings of the judge in determining that a mattress shouldn't fall under the hygiene exemption, as opposed to the information provided on W's website. It follows that, having due regard to the law, that Barclaycard should reasonably have concluded it was liable under Section 75 for breach of contract under the joint liability it had with J. And because it did not, I don't think it's acted fairly or reasonably by not agreeing to refund Mrs J.*

*Given that I'm of the view that Mrs F ought to have been able to exercise her right to withdraw from the contract, I will now go on to decide how Barclaycard should remedy the breach in the contract. I'll start by saying that I'm not going to ask Barclaycard to refund Mrs F the full amount of the mattress. I say this because the CCRs allow for the trader (J in this case) to apply a reduction in the reimbursement amount where the goods have diminished in value as a result of handling by the consumer (Mrs F). Section 34 (9), (10) and (12) are relevant here and say:*

*“(9) If (in the case of a sales contract) the value of the goods is diminished by any amount as a result of handling of the goods by the consumer beyond what is necessary to establish the nature, characteristics and functioning of the goods, the trader may recover that amount from the consumer, up to the contract price.*

*(10) An amount that may be recovered under paragraph (9)—  
(a) may be deducted from the amount to be reimbursed under paragraph (1);  
(b) otherwise, must be paid by the consumer to the trader.*

*...*

*(12) For the purposes of paragraph (9) handling is beyond what is necessary to establish the nature, characteristics and functioning of the goods if, in particular, it goes beyond the sort of handling that might reasonably be allowed in a shop”.*

*In this case, Mrs F has, in my view, handled the mattress beyond what is necessary to establish the nature, characteristic and functioning of the goods. I say this because, clearly, Mrs F wouldn't have been able to handle the mattress to the extent she did, had she inspected it in a store – i.e. she wouldn't have been able to sleep on it for the night. In my*

*view, the handling has likely diminished the value. J wouldn't be able to resell the mattress at the same price after it had been slept on by Mrs F – it would likely need cleaning at a cost, and/or reselling at a reduced price. Therefore, I don't think it would be fair for me to conclude here that Mrs F should get the full cost of the mattress back.*

*In determining what the reduction for use should be, I have considered the cost of a new mattress in comparison to one that has been used and is for sale in a refurbished condition. On average, the percentage price reduction from a new mattress to a refurbished one of the same kind is around 30%. So, I think it fair and reasonable that Barclaycard deduct 30% off the price Mrs F paid for the mattress.*

*For the reasons set out above, I'm minded upholding this complaint and make the following award:*

- Rework Mrs F's credit card account as though £834 (£1,220 less 30%) paid to J had been refunded on 15 July 2024. This would involve refunding the £834, any interest which was charged on it and any other fees Mrs F has incurred in relation to the amount.*
- If reworking the account results in Mrs F having had a credit balance on it at any point, then Barclaycard must calculate 8% simple interest per year on this credit balance from the point at which it would have arisen, to the point at which it would have ceased to exist. If a credit balance remains on the account after this step then Barclaycard should pay this to Mrs F.*
- Arrange for the goods to be collected from Mrs F or otherwise disposed of, as set out above. This must be done at a cost of no more than £29.95 to Mrs F."*

Mrs F responded to the provisional decision and while she accepted the majority of my findings; she didn't agree that a 30% reduction was fair. I have summarised her main points below:

- The proposed 30% deduction is justified in the provisional decision by a generic market proxy average from a new to a refurbished mattress, rather than by the evidence of the actual diminution attributable to her mattress at the time of cancellation (e.g. cleaning/inspection costs and any minimal markdown necessary to resell).
- Reg. 34 of the CCRs requires an item-specific, proportionate assessment. A flat "refurbished vs new" average risks over-estimating loss and is not tethered to the real, provable diminution caused by Mrs F's brief use.
- If full refund is not applied replace the 30% with an evidence-based, minimal deduction reflecting actual, demonstrable diminution under reg. 34(9), (10), (12)—for example, documented cleaning/inspection costs and any necessary, modest resale markdown directly attributable to the brief pre-cancellation use.
- Confirmation that the assessment point for any deduction was at the point of cancellation.
- There was an error in my calculation of the 30% reduction – this should be £854, and not £834 as set out in the provisional findings.

Barclaycard didn't object to my provisional findings.

### **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.

Having considered all of the available evidence again, I uphold Mrs F's complaint; for the same reasons as set out in my provisional findings. However, I note now that the main point in dispute here is how I proposed to put things right for Mrs F in relation to the deduction.

I'll start by saying that I haven't seen anything in regulation 34 of the CCRs that requires an item specific assessment of how a deduction should be calculated. And given that my role here is to decide on a fair and reasonable way to put things right, it is my view that by assessing comparable 'new' to 'refurbished' mattresses for sale in the market is a fair way to reflect how the mattress has diminished in value by it having been used.

I accept that the use of the mattress at the time of cancellation was brief; but nevertheless, would still likely be classed as having been 'used' for the purposes of reselling and considering how it had diminished in value. I also find it likely that similar steps would need to be taken to put the mattress back in a resalable position following 'brief' use as it would a mattress that had been used over a longer period of time.

I note that Mrs F has said that a more in-depth review should be carried out in relation to assessing the cost of inspection, cleaning, and a deduction for reduced resale value. But she hasn't provided any information for me to consider on this point. So, in the absence of other evidence of the exact diminution in value of this specific mattress and bearing in mind the informal nature of this service, I think the method of calculation I've used is reasonable in the circumstances. Therefore, I'm satisfied that by comparing the sale of new to refurbished mattresses in the market fairly reflects the value by which the goods have diminished, and I'm persuaded that a 30% reduction is fair here.

I'd also like to apologise to the parties for the error in my provisional findings – the value of the mattress following a 30% reduction would be £854 (and not £834). I will make this amendment in the 'putting things right' section below.

### **Putting things right**

I order Barclaycard to put things right by:

- Barclaycard has provided evidence to show that Mrs F paid off the full statement balance following the mattress purchase – and so she wasn't charged interest on the transaction. With this in mind, it doesn't appear that there's any contractual interest to refund here. So, Barclaycard should rework Mrs F's credit card account as though £854 (£1,220 less 30%) paid to J had been refunded on 15 July 2024. This would involve refunding the £854, any interest which was charged on it and any other fees Mrs F has incurred in relation to the amount (although as I've explained, I understand no interest was incurred on this transaction).
- If reworking the account results in Mrs F having had a credit balance on it at any point, then Barclaycard must calculate 8% simple interest per year on this credit balance from the point at which it would have arisen, to the point at which it would have ceased to exist. If a credit balance remains on the account after this step, then Barclaycard should pay this to Mrs F.
- Barclaycard has said it would pay Mrs F £30 to arrange for disposal of the mattress herself. Mrs F appears to be acceptant of this position. So, I'll require Barclaycard to pay Mrs F £30 for disposal of the mattress.

### **My final decision**

For the reasons set out above, I uphold Mrs F's complaint. I order Barclays Bank UK PLC trading as Barclaycard to put things right for Mrs F by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 7 January 2026.

Sophie Wilkinson  
**Ombudsman**