

## **The complaint**

The estate of Mrs K complains about the way Fly Now Pay Later Limited ('FNPL') handled Mrs K's claim in respect of flights she bought using a loan from it but was unable to utilise because of the Covid-19 pandemic.

The estate of Mrs K is represented in this complaint by its administrator, Mr K.

## **What happened**

In January 2020 Mrs K booked return flights for her and her family via a travel agent I'll call G, who in turn booked them through another agent I'll call W. The flights were due to depart in August 2020 and cost £2,560.28. The return journey consisted of two legs, Kos to Vienna and Vienna to London Heathrow.

Mrs K paid for the flights using a fixed sum loan with FNPL arranged via G. She borrowed £2,560.28 repayable over 12 monthly instalments. The loan had a transaction fee of £435.25 which Mrs K paid to FNPL on the day she signed the agreement. So, the total sum to repay on the loan was £2,995.53.

In June 2020 W told Mrs K the second leg of her return flight had been cancelled. Mrs K said she contacted W but was told it would cost another £600 for an alternative flight.

Mrs K contacted FNPL to ask what happened next as she wouldn't be able to get home from her trip if she travelled. FNPL told Mrs K to wait and see what happens and not to cancel her other flights given the ever-changing situation with the Covid-19 pandemic. Having been unable to secure replacement flights Mrs K did not travel and asked G and FNPL for a refund of her flights.

FNPL told Mrs K that the respective airlines had provided refunds to G on her outbound flight and the second leg of her return flight and these had then been credited to her loan account. But it said the first leg of her return flight went ahead so no refund had been provided for that.

Mrs K asked FNPL how she could withdraw the refund from her loan account. FNPL told her she couldn't withdraw the refund because it had been set off against the outstanding balance on her loan as per the terms of the loan agreement. FNPL paid £111.90 to Mrs K which it said was the overpaid amount on the loan taking into account the refund, the sums she'd repaid and the amount she still owed on the loan.

Mrs K said she was expecting a refund of all the amounts she'd paid to FNPL (the transaction fee of £435.25 and four repayments of £213.36) seeing as there was no way she was able to fly to her destination or get all of the way back.

Sadly, Mrs K passed away while her complaint was with this service. The administrator of her estate, Mr K, took over the complaint.

I issued a provisional decision in December 2022 setting out why I thought the complaint should be upheld. I said I planned to tell FNPL to pay the estate of Mrs K £1,176.79 with interest plus compensation of £500 for the distress and inconvenience caused to Mrs K while she was alive.

Both the administrator of Mrs K's estate and FNPL agreed with my provisional decision. So, I'm issuing a final decision to finalise matters.

### **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.

The administrator of Mrs K's estate and FNPL both agreed with my provisional decision. So, I see no reason to change the findings I made and the conclusion I reached. I've therefore effectively repeated what I said in my provisional decision below.

This complaint is now brought by Mr K on behalf of the estate of Mrs K. However, I'll refer to Mrs K where necessary in my decision as she experienced most of the events referred to throughout.

I'm looking at the actions of FNPL in this complaint and how it handled Mrs K's claim for a refund. In doing so I'm required to take account of relevant legislation which in this case includes, among other things, Section 75 Consumer Credit Act 1974 ('Section 75').

Section 75 provides that subject to certain criteria being met the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

Those criteria include things such as the price of the services purchased must be within certain financial limits (which is the case here) and there must be a debtor-creditor-supplier relationship in place.

On that second criteria this means there must have been a relationship between Mrs K, FNPL and G. Mrs K entered into a contract with G for the provision of its booking services, her loan was with FNPL and FNPL said it paid G. So, I'm satisfied the necessary relationship was made out here.

I therefore need to consider whether there was a breach of contract or misrepresentation by G. There's no suggestion of a misrepresentation so I've not considered that any further.

Turning now to breach of contract, there's no dispute that the second leg of Mrs K's return flight was cancelled and I see G refunded the cost of this flight to FNPL. But what did this mean for the first leg of Mrs K's return flight which seemingly did go ahead but was in effect of no use to Mrs K without the connecting second leg or a replacement?

To help me answer this, I've looked first at the booking information G sent to Mrs K. It's clear from this that what had been booked in respect of the return journey was transport from Kos to London Heathrow (via a change at Vienna).

Looking now at the relevant terms relating to delays or cancellations in Mrs K's contract with G, these set out the following:

#### *Article 9. Delays and Cancellations*

*Scenario A (More than 72 hours to departure) – (G) guarantees to a change or cancellation of flight(s) announced more than 72 hours prior to departure of the first concerned flight, which may negatively impact your ability to reach your destination or your arrival to a destination shall be postponed for more than 24 hours after the original scheduled arrival, i.e. due to flight change(s) or cancellation(s) you would either miss your flight connection(s) or your flight(s) would be cancelled (hereinafter referred as “Scenario A”).*

*In this case, you learn about a change or cancellation of four flight(s) under Scenario A You must inform (G) of such a change or cancellation without undue delay either by telephone or e-mail. Should you fail to inform us about such flight change(s) or cancellation(s) without undue delay, you will not be entitled to the guarantee. In case, We are informed first about the change or cancellation of your flight(s) according to Scenario A, We will contact You within a reasonable time after we learn about such flight change(s) or cancellation(s).*

*Scenario B (Less than 78 hours to departure) – (G) guarantees to a flight delay(s) or cancellation(s) of Flight(s) announced less than 72 hours prior to departure of the first concerned flight, which may negatively impact your ability to reach your destination or your arrival to the destination shall be postponed for more than 24 hours after the original scheduled arrival, i.e. due to the flight delay(s) or cancellation(s) you would either miss your flight(s) connection(s) or your flight(s) would be cancelled (hereinafter referred as “Scenario B”).*

*In this case, if You learn about a flight delay(s) or cancellation(s) of your flight under Scenario B, you are obliged to inform us of such flight delay(s) or cancellation(s) without undue delay either by telephone or via e-mail as displayed on our website. Should you fail to inform us about such flight delay(s) or cancellation(s) without undue delay, You will not be entitled to the guarantee. In case, We are informed first about the flight delay(s) or cancellation(s) of your flight under Scenario B, (G) will contact you within a reasonable time after we learn about it.*

*After We are informed about the flight delay(s) or cancellation(s) under Scenario B, you may choose one of the following solutions at your discretion: (i) (G) will search for an alternative transportation to your destination and should we find a reasonable alternative We will offer you an alternative flight(s) or other means of transportation to your destination entirely at Our expense. (ii) (G) will refund you the price you paid for all the unused Flights en route to your destination. (iii) Should you be offered any of the aforementioned alternatives by the airline and/or airport, (G) is absolved of all responsibility to further compensate and/or reimburse you.*

Scenario A is the relevant one here seeing as Mrs K's flights were cancelled more than 48 hours before her scheduled departure.

I found it very difficult to make sense of the term as it is not written in plain and intelligible language. The term appears to attempt to legislate for what should happen when a delay or cancellation occurs more than 72 hours before departure and where that cancellation prevents a consumer from reaching their ultimate destination more than 24 hours after the original scheduled arrival. But it doesn't explain what G has to do in such event. It appears the drafting is incomplete.

Scenario B is much clearer as to what G promises to do if the same situation occurs less than 48 hours before departure – setting out that an alternative flight at no additional cost or a refund will be provided of all unused flights en-route to the destination.

In trying to make sense of the term it seems unlikely to me that scenario A would have been included in the contract if there was no intention to legislate for what should happen in such a scenario.

I've also taken into account section 69 Consumer Rights Act 2015 which sets out that if a term in a consumer contract could have different meanings, the meaning that is most favourable to the consumer is to prevail. Here the contract could be read to mean that G intended to promise to do something in the event that cancellation of a flight more than 48 hours before departure would prevent Mrs K from reaching her destination. Or it could be read to be mean that G promised nothing at all in such a scenario.

That promise might have been an offer of a refund, a credit note, or the provision of an alternative flight at no extra cost just to name a few examples. Importantly, I note that in scenario B, G offered to provide a refund for all unused flights en-route to the destination. This is relevant here because Mrs K was claiming a refund on her flight which was not seemingly cancelled but was part of her overall return journey home from Kos to London and so was affected by the cancellation of the second leg of the journey.

It is of course possible that the separation of the two scenarios in the clause was done with the intention to provide for slightly different remedies. It seems improbable however (given the only things that really separate the two clauses is the timing of the cancellation) that such remedies would have been significantly different from those in scenario B.

So, I don't find it unreasonable here that in searching for the meaning of scenario A, I look to what was broadly promised in scenario B. And in any event, I note the wording that is included about scenario A talks about impacts on connecting flights and cancellations preventing a consumer from reaching their destination. So, it seems the clause was drafted with the intention of legislating for what should happen to connected flights in the event one part of the overall journey was cancelled.

Everything considered, the meaning of the clause that was most favourable to Mrs K in this case seems to be that scenario A would include broadly similar obligations to those in scenario B. In other words, provisions for compensation in respect of connecting flights where the cancellation of one flight on a route impacted the overall journey – as was the case here.

G only provided a refund of the second leg of the return journey to Mrs K but offered nothing in respect of the first, even though they were on the same overall route. On balance therefore, and given my analysis above, that looks to have been a breach of contract for which Mrs K could likely have claimed the cost of the first leg of her return flight.

Thinking about how things should have transpired if such refund had been provided, I note Mrs K's contract with G stated that where a refund was to be paid to a customer using a FNPL loan, that refund would be paid to FNPL and credited to her loan account.

Furthermore, the terms of Mrs K's loan agreement with FNPL provided that:

*'Where refund proceeds are credited to your loan account, we will adjust the Transaction Fee so that you will only pay the amount you would have paid for the amount of the adjusted loan'*

The terms also set out that the transaction fee would be 17% of the amount of credit. With this refund added to the other refunds she'd received; Mrs K would have received all of her flight costs back and therefore the amount of the 'adjusted loan' would have been zero.

In accordance with FNPL's terms therefore the transaction fee would have reduced to zero. This means Mrs K should not have had to pay anything to FNPL.

On that same point, (and while the impact is lessened given the conclusion I am making as to what FNPL should pay to the estate of Mrs K), it is worthy of note that FNPL did not adjust the transaction fee on Mrs K's loan like it should have in respect of the refunds she did actually receive from G.

G credited a total of £1,818.74 to Mrs K's loan account in refunds. However, looking at what was returned to Mrs K it's apparent FNPL did not adjust the transaction fee at all. After the refunds from G the 'adjusted loan' was £741.54. So, the transaction fee should have reduced from £435.25 to £126.06. And the difference should have been paid back to Mrs K. This sum falls away now given the conclusion I've reached below as to what must be paid to Mrs K. But the matter remains relevant for my considerations as to whether compensation for distress and inconvenience should be paid – which I assess later.

Taking everything into account, I don't find FNPL treated Mrs K fairly in its handling of her request for a refund. And she lost out as a result because she didn't receive a refund of the cost of her flight when she should have and had to pay a transaction fee she wasn't required to pay. I find it fair and reasonable that FNPL returns all of Mrs K's payments (less what it already returned) to her estate plus interest. I calculate this to be £1,176.79.

FNPL's handling of this matter, (particularly its failure to adjust the transaction fee when it's clear it should have) no doubt caused Mrs K distress and inconvenience. She'd told FNPL that she needed as much money back as she could get to help her make memories in the end stages of her life and it will no doubt have caused her considerable distress that FNPL would not return money she was contractually entitled to under her loan agreement. I do not underestimate the impact this would have had on Mrs K given her circumstances and I assess fair compensation at £500.

### **My final decision**

For the reasons I've explained above I uphold the estate of Mrs K's complaint. To put things right Fly Now Pay Later Limited must pay it:

- £1,176.79 plus interest at 8% simple per annum from the date it declined Mrs K's request for a refund on 10 February 2021 until the date of settlement\*.
- £500 for the distress and inconvenience that was caused to Mrs K.

\*If Fly Now Pay Later Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell the estate of Mrs K how much it's taken off. It should also give the estate of Mrs K a tax deduction certificate if it asks for one, so it can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K on behalf of the estate of Mrs K to accept or reject my decision before 11 January 2023.

Michael Ball  
**Ombudsman**