DRN-1699318

## Complaint

Miss H has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) irresponsibly lent to her which caused her to be financially dependent on its loans. Miss H says SNC should have noticed that the loans were increasing in size and her repeated use was an indicator that she could not afford the repayments.

I issued my provisional decision saying that Miss H's complaint should be upheld in part. A copy of the background to the complaint and my provisional findings follow this and form part of this final decision:

## What I said in my provisional decision:

*Miss H approached SNC for a Safety Net facility in January 2016. This was a running credit account where a consumer could either request funds up to their credit limit, or funds would be deposited into their bank account once their account balance fell below a "safety net" amount of the customer's choosing.*

*Miss H was initially given a facility with a £300 credit limit in January 2016. Her limit was increased on six occasions taking it up to £1,000. Miss H last used her facility in July 2019 and the account was repaid in full.*

*In its final response letter dated 15 November 2019, SNC offered Miss H an ex-gratia payment of £3,000. Miss H declined SNC's offer and asked our service to look into her complaint.*

*One of our adjudicators looked at Miss H's complaint and thought the checks SNC carried out before granting this facility were proportionate. But our adjudicator thought the facility became unaffordable for Miss H around a month after she started using it, and this was something which SNC should have been aware of.*

*Miss H appears to have accepted the adjudicator's findings.*

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.*

*Having carefully thought about everything I've been provided with, I'm intending to partly uphold Miss H's complaint and I've explained my reasons for doing so below.*

*However, what I would add is that both Miss H and SNC appear to accept the adjudicator's recommendation that at least initially the facility was suitable for her. So as this is no longer in dispute I don't intend to making on the granting of the facility. Instead, in this decision I'll be focusing on whether SNC monitored the facility.*

*But in response to the adjudicator's findings SNC provided some us comments around the use of the additional income it could see on the bank statements.*

*SNC says it was within its right to factor in Miss H's ex-partners income when considering if the facility was affordable for Miss H. In particular, SNC has raised the guidance in the FCA's document PS18/19 of 19th July 2018 on Assessing Creditworthiness in Consumer Credit – in particular the content of paragraph 4 of Chapter 3 ("Common misconceptions and proportionality") which provides as follows regarding taking account of other household income than that of the applicant: …Account may be taken of the income of other individuals within the household, or with whom the borrower has shared finances (for example a joint current account), provided that the firm is reasonably satisfied that this will be available to the borrower for repayment of the credit."*

*Additionally, SNC further raises the guidance under CONC 5.2A.12 that states that "The firm must consider the customer's ability to make repayments under the agreement: (2) out of, or using, one or more of the following: (a) the customer's income; (b) income from savings or assets jointly held by the customer with another person, income received by the customer jointly with another person or income received by another person in so far as it is reasonable to expect such income to be available to the customer to make repayments under the agreement".*

*I think it's important to note that the guidance SNC has relied on was within the FCA's Policy Statement dated July 2018 – which is nearly two and a half years after Miss H applied for her facility. And I've already explained, at the start of the decision the regulations that were applicable at the time the facility was granted.*

*However, as I've explained above, Miss H wasn't contractually obliged to completely repay the facility in full when she next got paid and the minimum payment was £20. Given the low monthly repayment she could've made to SNC, I think it was just about reasonable for SNC to have approved the facility based on all the information it gathered about her circumstances.*

*So taking on board all the information SNC saw, I think it could've reasonably concluded that the facility appeared affordable.*

*what happened after the facility was granted*

*Whilst I think it was reasonable for SNC to provide Miss H with her facility that doesn't mean that SNC hasn't done anything wrong. At the time Miss H took out her Safety Net facility, CONC 6.7.2 says: "a firm must monitor the customer's repayment record and take action where there are signs of actual or possible repayment difficulties".*

*Had SNC monitored Miss H's facility, our adjudicator thought that this should have resulted in SNC not lending to Miss H from 21 February 2016. Our adjudicator explained that Miss H's payments to online betting sites and payday loans had increased by this point, which led to her expenses totalling more than her sole income.*

*Whilst SNC should have been monitoring Miss H's facility, I don't agree that SNC should have stopped lending from February 2016. This was still early on in the lending relationship and I don't think a pattern had formed by this point which suggested Miss H was reliant on SNC's lending. Also, I don't think that SNC had enough information to suggest Miss H's circumstances had deteriorated to the point where she was unable to meet her financial obligations.*

*I acknowledge what our adjudicator has said about the increased gambling transactions showing on Miss H's bank statements. I can see that there was a significant amount of winnings paid into the account from an online betting website. Subsequently, around the same amount was then gambled before further winnings were credited on 1 March 2016. Whilst I can't be sure if Miss H or her ex-partner was gambling at the time due to the limited information I have, I'm not persuaded that the gambling transactions were a significant amount of Miss H's income. The transactions were for relatively small amounts which were sporadic in the months leading up to her application for her facility. I'm more persuaded that the increased number of betting transactions were as a result of bet winnings.*

*I can see Miss H continued to borrow from other short-term lenders, and she continued to make payments for rent, direct debts and her normal monthly living costs. But based on everything I've seen about her circumstances, I don't think it was wrong for SNC to have continued still lending to her past February 2016.*

*I do, however, think SNC should have stopped lending to Miss H at the end of April 2016 due to Miss H's circumstances and the way she used her account. I think there were signs that she wasn't using her facility in a sustainable manner and that a pattern had emerged in her use of the facility. I say this because shortly after funds were received in Miss H's account, she was clearing her loan balance in full. But within a few weeks, mostly within a couple of days, she had requested further funds drawing up to her maximum credit limit. This is important, because as I've mentioned when SNC approved the facility, it was entitled to believe that Miss H would repay what she owed over a reasonable period of time. But a few months into her borrowing, it was clear this was not happening.*

*In addition to this, Miss H repeatedly requested to borrow a larger amount each month. Her credit limit was initially approved for £300 but had increased to £630 by April 2016. Only three months in, this was more than double what she originally borrowed. I believe these were not the actions of someone in a stable financial position.*

*In addition to the way Miss H used her facility by the end of April 2016, SNC would have seen that she continued to make repayments to other short-term lenders during this period. I can also see a large number of cash withdrawals were still being drawn out of her account. These cash withdrawals were regular and had averaged around £2,082 in the previous three months. So therefore, I think this is something which SNC should have considered when monitoring Miss H's circumstances.*

*By 29 April 2016, I think Miss H had used her account in a way that showed her borrowing had become somewhat harmful and unsustainable. She was showing a potential reliance on SNC's facility as she needed to borrow each month, whilst increasing her credit limit. And she would borrow her maximum credit limit within a few days of repaying what she owed in full. Her request on 29 April 2016 was the fifth time she had used her facility this way.*

*Miss H went on to request a further 109 deposits whilst holding the facility for a further three years. So although this wasn't a payday loan, Miss H was in effect using the facility as such and not how it was intended.*

*Overall, I think SNC should've withdrawn the facility from 29 April 2016 and not allowed Miss H to continue using it from this date. So I think Miss H has lost out as a result of SNC's actions*

**What I've decided – and why**

In my provisional decision I invited both parties to let me have any further comments and evidence. Miss H didn't have any further comments. SNC has given us some additional comments.

I've carefully considered everything SNC has told us. In summary it said:

- In line with guidance at the time, SNC did monitor the facility and it assessed the affordability on a weekly basis.
- Based on the weekly affordability checks SNC carried out, it was satisfied that Miss H was in a position to take on and continue to use the facility.
- SNC doesn't agree that Miss H was repaying her borrowing in full, rather than repaying the drawdowns over a reasonable period of time.
- At the point that I decided that SNC should not have allowed any further borrowing, SNC says that Miss H was still in a position to afford the lending.
- SNC says that Miss H's limit was initially granted as £1,000 but it allowed her "a risk cap" to start borrowing at £300
- SNC considered 77% of the cash transfers, withdrawals and uncategorised debts as "*non disposable expenditure*" and from the end of April the bank statement show that no harm was being caused to her. For example there were only a couple occasions where Miss H incurred unpaid direct debit fees.
- SNC disagrees that Miss H was using the account as if it was like payday loan, instead she was using the facility as if it was an overdraft.

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

I've taken on board what SNC about how the facility was being used and what its monitoring of it showed, but having thought about these comments, I still think Miss H's complaint should be upheld and I've explained why below.

I appreciate that SNC has clarified how initially in approved a limit of £1,000 but started off lower and then gradually increased it. However, the credit agreement that it has provided shows that it initially provided a £300 limit. Whatever, the case may be, I didn't comment on whether the facility should've been provided in the provisional decision because both parties appeared to have accepted the adjudicator\s reasoning as to why it wasn't unreasonable for it to be granted – regardless of the credit limit set by SNC.

Firstly, I'll mention the regulation that was applicable at the time, from the Consumer Credit Source Book (CONC)

CONC 5.2 includes some guidance on the sorts of things a lender needs to bear in mind when considering its obligations under CONC 5.2.1. Section 5.2.4(2) says "*a firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer.*

*The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation*."

And CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1(1) says *"In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.".*

CONC 5.3.1(2) then says *"The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences."*

So, although the facility may have appeared to have been pounds and pence affordable for Miss H, I do have consider whether the account was being used as was its intended purpose and being repaid sustainably – after all it was a requirement for SNC to consider this.

What I would point out is that SNC had already increased Miss H's available credit from £300 when the account was opened to £630. So SNC must have believed that Miss H was able to afford the increase. However, given how Miss H was using the facility I don't think it was reasonable of SNC to have believed that Miss H would repay each drawdown over a reasonable period of time. Instead, given the manner in which Miss H used the account to date, it was far more likely that Miss H would instead borrow the full £630 and have to repay this plus any interest that had accrued the next time funds were received into the account.

As I explained in the provisional decision, I have to be mindful of how Miss H was using this facility, after all the credit agreement provided by SNC says *"….assuming a credit limit of £1200 and to be drawn down immediately and in full and repaid within one year period in equal monthly instalments along with interest…"*

So as I explained in the provisional decision, there is a clear indication that Miss H wouldn't be expected to repay what is owed in one go, but instead, her repayments were due to be repaid over a number of months.

I'd also point out the daily interest rate is 0.8% but this is capped for each drawdown for a maximum of 40 days. So if it took Miss H 50 days to repay a drawdown, interest would only be charged for the first 40 days. However, the manner in which Miss H used the facility meant that interest was always charged, because it seems none of Miss H's drawdowns went on for longer than 40 days.

So if a customer is drawing down the full amount available to them, or taking multiple drawdowns and then repaying in full what is owed (plus interest) when funds are received into the account, I no longer thing it would be reasonable of SNC to believe that the customer would be repaying these loans over a reasonable period of time. Indeed, if they are repaying what is owed every time they have been paid, there is an argument to say that SNC needed to consider the maximum the consumer *could* repay and use that figure as the basis of its affordability assessment and monitoring of the facility.

And if we look at when drawdowns were taken relative to when Miss H made repayments, we see that up to the end of April, every time Miss H made a repayment a drawdown would be made within days, and sometimes within a matter of hours. To me, that would suggest that Miss H was having problems managing her money, as why would there be a need to borrow so quickly? This pattern is concerning and ought to have alerted SNC to there being a problem.

I've noted what SNC has said about its product being like an overdraft. But it didn't provide an overdraft to Miss H. In any event, even if I were to accept SNC's argument (to be clear I don't), the regulatory requirement for a lender to monitor an account holder's account usage and repayment record applies to all credit providers including overdraft ones. And, in this case, overall, the pattern of Miss H's usage was akin to a customer who uses payday loans. So even though SNC didn't provide a payday loan to Miss H her pattern of usage suggested

that she may have struggling to manage their commitments and I think it's fair and reasonable to expect SNC to have taken this into account.

So I still think SNC was wrong to have allowed Miss H to continue to drawdown on the facility from 29 April 2016.

**Putting things right**

To put things right for Miss H, SNC should:

- remove any unpaid interest fee and charges and then refund all the interest and charges applied to Miss H's facility from 29 April 2016 onwards;
- add 8% interest per year simple on the above interest and charges from the date they were date to the date of settlement*
- remove any adverse information recorded on Miss H's credit file as a result of not stopping the facility from 29 April 2016.

*HM Revenue & Customs requires SNC to take off tax from this interest. SNC must give Miss H a certificate showing how much tax it's taken off if she asks for one.

**My final decision**

For the reasons I've explained above I partly uphold Miss H's complaint.

Indigo Michael Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 24 April 2020.

Robert Walker
**Ombudsman**