

The complaint

Mr M complains that Indigo Michael Limited (trading as SafetyNet Credit (SNC)) lent to him irresponsibly.

What happened

Mr M was given a SafetyNet credit facility in August 2017. 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.

The initial credit limit provided to Mr M in August 2017 was £200. SNC has told us the limit had increased to £710 by March 2018. It seems Mr M had some financial difficulties because when he referred his complaint to this service, there was an outstanding balance on the facility, that needed to be repaid.

One of our adjudicators looked at Mr M’s complaint. He thought the facility shouldn’t have been given to him as he didn’t think Mr M could affordably meet the repayments, or repay the debt within a reasonable time, out of his available income without further borrowing.

SNC didn’t agree with the assessment. SNC says that based on their review and calculations, Mr M had a disposable income of around £955 per month. So, it considers that the facility was affordable.

Mr M didn’t have any further comments following the adjudicator’s assessment. As no agreement has been reached, the complaint has been passed to me for a final decision.

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.

I’ve also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

the regulations in place when Mr M was given the SafetyNet facility

I think it would be helpful for me to start by explaining that SNC gave Mr M this facility when it was regulated by the Financial Conduct Authority (“FCA”). And the relevant regulatory rules in place at the time were set out in the Consumer Credit Sourcebook (“CONC”) section of the FCA Handbook of rules and guidance.

Section 5.2.1(2) of CONC set out what a lender needed to do before agreeing to give a consumer a loan of this type. And it says a firm had to consider “*the potential for the commitments under the regulated credit agreement to adversely impact the customer’s financial situation*” as well as “*the ability of the customer to make repayments as they fall due*”

over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement (like Mr M's Safety Net facility), to make payments within a reasonable period."

CONC 5.2 also 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."*

The guidance didn't require SNC to carry out compulsory checks, but it did require its checks to be proportionate. And any checks had to consider a number of different things, such as how much was being lent and when the borrowing was due to be repaid. Put simply, the lender had to gather enough information so that it could make an informed decision on the lending.

SNC was also required to establish whether Mr M could sustainably make his repayments – not just whether the repayments were affordable on a strict pounds and pence calculation. The repayments being affordable on this basis *might* be an indication Mr M could sustainably make his repayments. But it doesn't automatically follow that this is the case. There may be situations for example where consumers have shown signs of financial difficulty, calling into question their ability to sustain repayments.

CONC 1.3 outlines some examples of what "financial difficulties" (which, of course, would be intrinsically linked to, and at the heart of, any "repayment difficulties") may look like:

"The following matters, among others, of which a firm is aware or ought reasonably to be aware, may indicate that a customer is in financial difficulties;

- (1) consecutively failing to meet minimum repayments in relation to a credit card or store card;*
- (2) adverse accurate entries on a credit file, which are not in dispute;*
- (3) outstanding county court judgments for non-payment of debt;*
- (4) inability to meet repayments out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the customer having to borrow further to repay existing debts, or the customer only being able to meet repayments of debts by the disposal of assets or security;*
- (5) consecutively failing to meet repayments when due;*
- (6) agreement to a debt management plan or other debt solution;*
- (7) evidence of discussions with a firm (including a not-for-profit debt advice body) with a view to entering into a debt management plan or other debt solution or to seeking debt counselling."*

I've kept all of this in mind when thinking about whether SNC did what it needed to do before agreeing to Mr M's SafetyNet facility.

what happened when the facility was granted

SNC says it reviewed Mr M's bank transaction data to decide if it would lend. SNC has provided a copy of the statements it appears to have looked at which cover a period of 90 days before the facility was approved. It considered what it saw in the bank statements together with the results of the credit checks. Having done so, SNC was satisfied Mr M wasn't having trouble meeting his existing commitments and would be able to maintain the facility he was offered.

Looking at Mr M's statements I can see his employer paid him weekly and that he also received monthly child benefit payments. These income sources provided an overall monthly income around £1,268 to £1,479.

However, SNC has suggested Mr M's income was almost £2,776 but I don't think it has shown this was Mr M's regular income that it could've reasonably relied on when assessing the application. SNC appears to have considered *other* transfer payments into his account. These payments varied considerably and there is no consistent pattern of payment. Mr M also had transfers out of his account on occasion back to the same source.

As a responsible lender I think as a minimum SNC should have asked Mr M about these payments before deciding what it should consider in order to fairly decide his level of income whether the facility was affordable and sustainable.

For example, Mr M has explained to this service that some of the payments are for child support (around £136/£156 per month) and household expenses he paid to his partner (around £251/£261 per month). And that he paid rent of £495 which I can see in his bank statements.

Mr M has also explained that he wasn't able to maintain rental payments each month because of his financial difficulties. Furthermore, he has explained that the bulk of the *other* transfer payments were payments to and from friends because he'd borrowed money from them that needed to be repaid.

I think Mr M has provided a reasonable explanation about these transfers payments which I think SNC would've become aware of had it made reasonable enquiries. So, except for the child care, rent and household costs, I don't think it is fair to include these as either a regular income or monthly expense.

I think what these transfers do show is that Mr M had underlying financial difficulties and struggled to manage his money. I can also see that in June 2017 the irregular outgoing payments (those that weren't part of Mr M's regular expenses) exceeded the incoming ones. And in July 2017 the payments in and out were broadly similar. So, I don't think they really added to Mr M's income.

Crucially, from what I can see, Mr M's regular monthly expenses, such as for rent, food, travel, car finance, child care, household costs etc exceeded his regular monthly income. So, with no surplus income Mr M didn't appear to be in a position where he could take back control of his finances and no longer rely on his friends.

In addition to this, Mr M's statements show he was paying overdraft charges and there are some returned direct debits which, as CONC 1.3 (4) points out, is a sign that a customer could be having financial difficulties.

Looking at all of this together, I think that Mr M's circumstances suggested that he was struggling to maintain control of his finances. I think this is something that SNC ought reasonably to have been aware of through his bank statements and further enquiries with Mr M. As a result, there was a clear risk that the facility wasn't going to be repaid in an affordable and sustainable manner.

I don't think therefore that SNC should have granted the facility.

Putting things right

If SNC has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps. If it isn't able to buy the debts back, then it should liaise with the new debt owner to achieve the same results:

- remove any unpaid interest fees and charges from the current outstanding balance and then refund all the interest, fees and charges applied to Mr M's facility from the outset of the facility;
- add interest at 8% per year simple on the above interest and charges from the date they were paid to the date of settlement*;
- then deduct from the above refund any unpaid principal that remains due. If the above refund is sufficient to repay what Mr M owes, then the remainder of the refund should then be paid directly to Mr M;

If, however, the refund above isn't sufficient to repay the outstanding principal, then SNC and Mr M should try and come to a mutually agreeable repayment plan in order to repay what is owed. But I'd remind SNC of its obligation to treat Mr M fairly;

- remove any adverse information recorded on Mr M's credit file from the outset of the facility.

*HM Revenue & Customs requires SNC to take off tax from this interest. SNC must give Mr M a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons given above, I uphold Mr M's complaint in full.

Indigo Michael Limited should put things right for Mr M as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 October 2020.

Robert Walker
Ombudsman