

The complaint

Ms Y (through a representative) has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) didn't complete enough affordability checks before approving her Safety Net facility.

What happened

Ms Y approached SNC for a Safety Net facility in January 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. Ms Y was not advanced a payday loan.

Ms Y was initially given a facility with a £100 credit limit in January 2017. Her limit was increased on a further 14 occasions with her final increase – taking the credit limit to £900 in June 2018.

Ms Y had some problems repaying her facility and SNC has told the Financial Ombudsman that as of November 2021 an outstanding balance remained of £1,140.39.

One of our adjudicator's looked at Ms Y's complaint. She thought the checks SNC carried out before granting this facility were likely proportionate even though she did have some concerns about the number of bank transfers into and out of Ms Y's bank account. But without any further information from Ms Y she wasn't able to look at it any further. But, the information SNC gathered about Ms Y's circumstances suggested she would be able to afford the repayments she was committed to making.

The adjudicator also concluded that due to the way Ms Y used the facility, SNC should have stopped allowing her to continue using it from 21 August 2017. At this point in time, the adjudicator was concerned at the way Ms Y was using the facility and she was still using other forms of expensive, high cost credit.

Ms Y's representative acknowledged receipt of the adjudicator's assessment and the ombudsman referral letter but no further comments were provided.

SNC disagreed with the assessment because it doesn't believe the Financial Ombudsman should be able to look at the complaint. In summary, it made the following points;

- it hasn't received proper authorisation from Ms Y to allow her representative to deal with the case;
- it hasn't received anything from Ms Y – such as an email confirming she has appointed her representatives;
- due to no email being received SNC says that no valid complaint has ever been made which is why no final response has been issued;
- SNC doesn't believe the Financial Ombudsman has jurisdiction because no final response has been issued and so doesn't constitute a complaint as laid down by the rules (DISP);
- Although Ms Y's representative has provided a 'wet signature' SNC doesn't have

- anything to compare it to;
- The approach SNC takes to verify a consumer is reasonable and has her privacy and data protection in mind and
- SNC has had concerns about the authority given and this has been backed up by the content of a 'Dear CEO' letter from the industry regulator.

The adjudicator responded to SNC's concerns in the ombudsman referral letter. In her view, SNC had been given more than eight weeks to investigate Ms Y's complaint following the initial complaint made by the representative and then from when we informed SNC that the complaint would be taken on.

As no agreement could be reached the complaint has been passed to me for a decision.

Why I can look at this complaint

I've considered all the available evidence and arguments provided by SNC as to why it considers this complaint to be outside of the Financial Ombudsman Service's jurisdiction.

I've thought carefully about what SNC has said, but like our adjudicator explained, I'm not persuaded there is any reason why the Financial Ombudsman can't consider this complaint.

It is disappointing that SNC has taken the stance that it has in relation to this particular jurisdiction issue considering that, in my view, it is patently incorrect and is therefore simply delaying the resolution of this complaint.

SNC has clearly had significantly longer than the eight weeks afforded to it by the Dispute Resolution (DISP) rules to investigate and issue a final response to this complaint. Ms Y complained through her representative to SNC in October 2020 (I've seen nothing to persuade me Ms Y hadn't correctly authorised her representative), the complaint was referred here on 4 March 2021, and the Financial Ombudsman then wrote to SNC on 18 March 2021 explaining the complaint was now being taken forward. It is now nearly a year later and over a year since the complaint was originally made, but the firm nonetheless disputes that it has had eight weeks to consider the complaint. This is clearly wrong in my opinion.

SNC has had more than eight weeks in which to investigate the complaint and issue a response. I'm therefore satisfied that the Financial Ombudsman has jurisdiction to consider this matter in accordance with DISP and can proceed to issue a decision on the merits of Ms Y's complaint.

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 facility was provided.

To start with, Ms Y wasn't given a payday loan. Instead she was provided with a credit facility where there was an expectation it would be repaid within a reasonable period of time. Interest is charged on any balance at 0.8% per day for the first 40 days following the drawdown. After the 40 days, a consumer will pay no further interest on that drawdown.

Throughout the lifetime of a consumer having the facility SNC maintains read-only access to their bank statements, in order to allow it to monitor a consumer finances and to allow it to carry out additional affordability assessments.

Finally, Ms Y's expected repayment would be calculated to be 5% of the amount due plus any interest, fees or charges. But, a minimum amount of £20 would be expected to be paid. Therefore, when Ms Y's facility was approved for £100 SNC needed to satisfy itself that Ms Y would be in a position to make the repayment of £20, by carrying out a proportionate check.

In this case, SNC had a fairly good idea of Ms Y's income and expenditure because it had read only access to her bank statements for the 90 days preceding the facility being granted. It then used an algorithm to establish what Ms Y's income and expenditure was, after completing this check, in this case, SNC was satisfied that Ms Y could afford the minimum repayment towards the facility.

It also carried out a credit search before the facility was granted. I've considered the summary of results SNC has provided, and there doesn't appear to have been anything in those results which would've led SNC to either decline the application or prompt it to have carried out further checks before the facility was approved.

It seems Ms Y seems to accept our adjudicator's opinion, that SNC wasn't wrong to approve her running credit facility. For the avoidance of doubt, I also don't think SNC was wrong to have initially granted the facility – although like the adjudicator I do have some reservations about the number of bank transfers. But I haven't seen enough to say that SNC shouldn't have granted the facility.

So, this decision will focus on whether SNC did enough to monitor Ms Y's facility whilst she held it and whether there was a point which SNC should have halted any further borrowing on it.

Although I don't think SNC was wrong to have initially granted the facility, I do think, like the adjudicator it was unfair for it to have allowed Ms Y to continue drawing down on the account from 21 August 2017. This is because I think the way she was using the account indicated she wasn't using it in a sustainable manner. I'll explain below why I think this is the case.

At the time, and during the use of the facility, SNC was regulated by the Financial Conduct Authority. The guidance and rules for credit providers has been laid out by the FCA in its Consumer Credit Sourcebook (CONC). I think it reasonable to see what the FCA has said in CONC and how it applies to this case.

CONC (6.7.2) SNC had to:

"A firm must monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties"

And 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 – but CONC 1.3 makes it clear the list is not exhaustive.

So CONC sets out that SNC was required to monitor Ms Y's use of the facility and then CONC 1.3 provides indications which could suggest that a customer was in financial difficulty.

In addition to this, SNC has a good indication of Ms Y's actual financial position, because throughout the time of her having the facility it had read-only access to her bank account.

When the credit limit was increased further on this date, SNC had seen read only statements since the end of October 2016 and it had seen how Ms Y had used and managed the facility since it was granted in January 2017.

In order to see whether I think it was fair to allow Ms Y to continue to drawdown, I've considered the relationship between when repayments were made to SNC, the value of those payments and then when Ms Y returned for further borrowing.

After all, if Ms Y was drawing down similar sums within days of SNC taking a payment from her account this ought to have indicated that SNC was causing her to once again borrow the funds that SNC had just taken.

By monitoring the facility – as it was required to do, SNC would've realised that Ms Y would repay her facility in full, and then within a day or so, she'd draw back up to her available credit limit. In addition to this, there are indicators, that Ms Y was having to borrow from SNC in order to meet her other commitments to other high cost credit providers for example the repayment to a high cost loan provider on 20 July 2017. But this pattern had been ongoing since the start of the lending relationship.

At this time, I think SNC would've also seen that Ms Y was making repayments to a home credit provider and regular repayments to another high cost, short term credit provider. But importantly, as SNC had access to her bank statements, it would've seen that Ms Y was using the high cost short term loan provider in a similar manner to how she was using SNC's facility. Ms Y would repay the loan, and then very quickly take a new one, normally within a day or so. Which in my mind is another sign of possible financial difficulties.

So when SNC further increased Ms Y's credit limit around 21 August 2017 Ms Y had demonstrated that she wasn't using the facility as SNC had intended, she was quickly borrowing down and repaying the facility in the same month, and therefore she wasn't benefiting from or making use of the interest free period of time.

When considering all of the information SNC had available to it about Ms Y's circumstances along with the payments SNC was collecting each month, I think by 21 August 2017, it was clear that the facility had become unsustainable - and simply collecting the full outstanding balance on the account and then allowing Ms Y to once again borrow the funds that had been recently collected was detrimental to her financial situation. But instead of doing this SNC increased her credit limit. This meant that it would default to taking even larger payments from Ms Y's account thus leaving a greater hole in her finances.

Overall and having thought about everything I think that SNC should've proactively intervened and contacted Ms Y to arrange for her to repay what she owed within a reasonable period of time.

Putting things right

If the debt has been sold to a third party, SNC should, if it wishes, buy the debt back and then carry out the redress below. If it isn't able to or doesn't wish to buy the debt back then it needs to work with the third party to achieve the same results.

- A) Remove all the unpaid interest, fees and charges from the account from 21 August 2017.
- B) Treat all payments Ms Y has made towards their account since 21 August 2017 as though they had been repayments of outstanding principal.
- C) If at any point Ms Y would've been in credit on her account after considering the above, SNC will need to refund any overpayments with 8% simple interest* calculated on these payments, from the date they would have arisen, to the date the refund is paid.
- D) If there is an outstanding principal balance, then SNC can use any refunds calculated as part of "C" to repay this. If a balance remains after this then SNC should try to agree an affordable repayment plan with Ms Y. If SNC has previously written-off any principal, then it shouldn't pursue outstanding balances made up only of principal it has already written-off.
- E) SNC should remove any adverse payment information recorded on Ms Y's credit file from 21 August 2017.

*HM Revenue & Customs requires SNC to take off tax from this interest. SNC must give Ms Y 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'm upholding Ms Y's complaint in part.

Indigo Michael Limited should put things right for Ms Y as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Y to accept or reject my decision before 30 March 2022.

Robert Walker
Ombudsman