

The complaint

Mrs W (through a representative) has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) didn't complete proper affordability checks before approving her Safety Net facility or at each new instance of borrowing.

What happened

Mrs W approached SNC for a Safety Net facility in May 2015. 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. Mrs W was not advanced a payday loan.

Mrs W was initially given a facility with a £250 credit limit in May 2015. Her limit was increased on a further five occasions with her final credit limit increasing to £810 in August 2019. SNC then decreased Mrs W's limit to £630 in November 2019. SNC then increased the limit on a further four occasions taking the credit limit back up to £730 by November 2020.

Mrs W had some problems repaying her facility and SNC has told the Financial Ombudsman that as of November 2021 an outstanding balance remained of £915.82.

One of our adjudicator's looked at Mrs W's complaint. Before the facility was approved SNC had access to 90 days of read only bank statements. In the adjudicator's view, the information SNC gathered about Mrs W's circumstances suggested she would be able to afford the repayments she was committed to making. So, she didn't uphold Mrs W's complaint about the granting of the facility.

However, the adjudicator explained SNC had an obligation to monitor Mrs W's use of the facility. And she thought, from 3 July 2017 SNC ought to have suspended the facility and prevented Mrs W from borrowing further.

She said this because of the way Mrs W had used the facility and the fact that her disposable income – as calculated by SNC, was now the same as her credit limit. In her view, the facility was no longer affordable.

Mrs W'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. In summary, it didn't make any points about the outcome that was reached. Instead, it focused on whether the Financial Ombudsman had jurisdiction to consider the complaint. In summary it said:

- it hasn't received proper authorisation from Mrs W to allow her representative to deal with the case;
- SNC says that no valid complaint has ever been made which is why no final response has been issued;
- Although Mrs W's representative has provided a 'wet signature' SNC doesn't have

- anything to compare it to;
- The approach SNC takes to verify with 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. She explained SNC had been given more than eight weeks to investigate Mrs W's complaint following the initial complaint made by her representative, and then from when we informed SNC that the complaint would be taken on by the Financial Ombudsman.

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 careful 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. Mrs W complained through her representative to SNC in October 2020 (I've seen nothing to persuade me Mrs W hadn't correctly authorised her representative), the complaint was referred here on 19 March 2021, and the Financial Ombudsman then wrote to SNC on 31 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 Mrs W'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, Mrs W 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 a drawdown. After 40 days, a consumer will pay no further interest on that drawdown.

I think it would be helpful for me to start by explaining that SNC gave Mrs W 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.

Overall, the guidance didn’t require SNC to carry out any set level of 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.

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

Finally, Mrs W’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 repaid. Therefore, when Mrs W’s facility was approved for £250 SNC needed to satisfy itself that Mrs W would be in a position to make the repayment of around £20, by carrying out a proportionate check.

In this case, SNC had a fairly good idea of Mrs W’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 Mrs W’s income and expenditure was, after completing this check, in this case, SNC was satisfied that Mrs W 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 prompted it to have carried out further checks into Mrs W’s situation before the facility was approved.

It would appear Mrs W seems to accept our adjudicator’s opinion, that SNC wasn’t wrong to have initially approved her running credit facility. For the avoidance of doubt, I also don’t think SNC was wrong to have initially granted the facility – SNC would’ve thought based on the review of Mrs W’s bank statements that she’d be able to afford to repay her facility within a reasonable period of time.

So, this decision will instead focus on whether SNC did enough to monitor Mrs W’s facility whilst she held it and whether there was a point at which SNC should’ve halted any further drawdowns on it.

Although I don’t think SNC was wrong to have initially granted the facility, I do think, that it was unfair for it to have allowed Mrs W to continue drawing down on the facility after 3 July 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 FCA through 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 Mrs W’s use of the facility and then CONC 1.3 provides indications which could suggest that a customer was in or having financial difficulty.

In addition to this, SNC had a good indication of Mrs W’s actual financial position, because throughout the time of her having the facility it had read-only access to her bank account. And by 3 July 2017 I think SNC had seen enough to have realised that Mrs W’s repayment of the facility was now unsustainable.

In order to see whether I think it was fair to allow Mrs W to continue to drawdown, I’ve considered the relationship between when repayments were made to SNC, the value of those payments and then when Mrs W returned for further borrowing. After all, if Mrs W 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 Mrs W would normally repay her facility in full, and then within a day or so, she’d start drawing funds down back up to her available credit limit.

When considering all of the information SNC had available to it about Mrs W’s circumstances along with the payments SNC was collecting each month, I think by 3 July, it was clear that the facility had become unsustainable - and simply collecting the full outstanding balance on the account and then allowing Mrs W to once again borrow funds taking her back up to her credit limit was detrimental to her financial situation.

This is important, because it was likely, given Mrs W repayment history that the facility would be repaid in full rather than repaying it over a reasonable period of time. This is important because at this time, SNC has calculated Mrs W’s disposable income as being around £740 with a credit limit of £760. So, based on SNC’s own calculations (and taking into account how the facility was used) Mrs W didn’t have enough disposable income repay the facility in full. So, I don’t think it was reasonable of SNC to continue to believe that the facility would be repaid over a reasonable period of time.

In addition, in the months leading up to July 2017 Mrs W is regularly having direct debit payments returned to her account, although some of the payments are for relatively small sums for example of around £10. The fact these payments were returned, and this seems to happen each month. This indicates to me that Mrs W didn’t have sufficient sums each month to meet her obligations, which as the FCA has said in CONC is an indicator of having financial difficulties.

So, by 3 July 2017 Mrs W had demonstrated that she wasn’t using the facility as SNC had intended, she was quickly drawing down and repaying the facility in full in the same month, which wasn’t sustainable.

When considering all of the information SNC had available to it about Mrs W circumstances along with the payments SNC was collecting each month, I think by 3 July 2017, it was clear that the facility had become unsustainable - and simply collecting the full outstanding balance on the account and then allowing Mrs W to once again borrow the funds that had been recently collected was detrimental to her financial situation.

But instead of offering Mrs W help, SNC allowed her to carry on drawing down. This meant that it would default to taking even larger payments from Mrs W's account and therefore leaving a greater hole in her finances.

I'm therefore upholding Mrs W's complaint from 3 July 2017.

Putting things right

If the debt has since 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 3 July 2017.
- B) Treat all payments Mrs W has made towards her account since 3 July 2017 as though they had been repayments of outstanding principal.
- C) If at any point Mrs W 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 Mrs W and I'd remind SNC of its obligation to treat Mrs W fairly and with forbearance. 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 Mrs W's credit file from 3 July 2017.

*HM Revenue & Customs requires SNC to take off tax from this interest. SNC must give Mrs W 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 Mrs W's complaint in part.

Indigo Michael Limited should put things right for Mrs W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 1 April 2022.

Robert Walker
Ombudsman