

The complaint

Mrs M, through her representative, complains that Indigo Michael Limited, trading as SafetyNet Credit, lent to her irresponsibly.

What happened

Mrs M was approved for a line of credit with Indigo Michael. Mrs M approached Indigo Michael for a Safety Net facility in December 2017 and the initial credit limit was £250.

This was a running credit account where a consumer could either request funds up to their pre-agreed 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.

Using information from Indigo Michael, here is a table of the credit limit increases:

Date	Existing Limit	Increase	New Limit
December 2017	£0	£250	£250
January 2018	£250	£30	£280
February 2018	£280	£60	£340
March 2018	£340	£90	£430
April 2018	£430	£90	£520
May 2018	£520	£90	£610
June 2018	£610	£120	£730
July 2018	£730	£90	£820
Aug 2018	£820	£90	£910
September 2018	£910	£50	£960

Mrs M’s representative has framed her complaint as a mis-sale of a series of high cost short term or payday loans. But Mrs M did not apply for, and did not receive, any payday loans from Indigo Michael.

After Mrs M had complained to Indigo Michael, it raised objections in November 2020, to the complaint being one it could look at. Indigo Michael wrote to Mrs M’s representative rejecting it as being a complaint received from a properly authorised representative of Mrs M. So, it did not investigate and invited Mrs M to contact it directly to verify the instruction to the representative. Indigo Michael says it never heard from Mrs M directly.

Mrs M’s representative referred her complaint to the Financial Ombudsman in April 2021 explaining it had not received a final response letter from Indigo Michael and asking us to advance the complaint.

In April 2021 Indigo Michael told us that it did not believe the Financial Ombudsman had the jurisdiction to consider Mrs M’s complaint because it had not received a complaint from the customer or satisfactory evidence of their appointment of a third party to submit a complaint on their behalf.

The Financial Ombudsman continued to ask for Indigo Michael’s account information and

later in 2021, Indigo Michael did send us some details about Mrs M's application and her credit facility and our adjudicator considered it in 2022.

In March 2022 our adjudicator sent his view to both parties in which he said he thought that Indigo Michael was right to have approved the facility for Mrs M. And the first few credit limit increases (see the credit limit table in the main body of the decision) were satisfactory. But our adjudicator thought that the credit limit increase in June 2018 (and those after that) ought not to have taken place. So, he thought that Indigo Michael should put things right for Mrs M. He said:

'Between 20 April 2018 and 25 May 2018, the bank transaction data you saw showed that Mrs M had taken six short term loans, some less than a week apart and each one larger than the previous starting at £150 and increasing up to £650. Between the May and June credit limit increases Mrs M appears to pay around £2,800 just to these short term loans, which was a significant portion of the monthly income you calculated at this point and was before taking into account any other expenditure.

In these circumstances, it ought to have been apparent that Mrs M was unlikely to have been able to repay what they owed in a sustainable way. So SafetyNet Credit should have not agreed the credit limit increase and treated Mrs M with forbearance rather than continue to allow the Mrs M to drawdown on the facility. ...

In the month before the 5 June 2018 limit increase Mrs M repaid a total of around £867 to SafetyNet Credit, which was a significant portion of the disposable income you calculated at this point of £1,066.'

Indigo Michael responded and has made no reference to the alleged CMC lack of authority. I take it that the objection to the CMC is not live any longer.

Indigo Michael's responses have focussed on why it disagreed with our adjudicator's assessment and on the merits. Some of those points were not well articulated and difficult to decipher but I have summarised them here. Indigo Michael has said:

- the bank account does not show large net repayments
- Indigo Michael does not use payday lender income as standalone income
- the transactions...cancelled the expenditure out at the end of the month
- Mrs M...had a net income from payday lender transactions of £73.28, and Indigo Michael did not consider this income
- with reference to the other high cost loans in May 2018, it says *'this is ..a one off and we do not see this again...'*
- Mrs M maintained her regular payments to its credit facility account
- Indigo Michael says that for it to withdraw its credit facility from Mrs M would have been a financial shock – so it felt it was justified not to suspend the account earlier than September 2018 which is when it has told us it did suspend the account.
- if the usage of the other lender's high cost credit loans had continued with Mrs M and it had seen those in her account transactions then Indigo Michael would have acted earlier.

Our adjudicator maintained his view and so the unresolved complaint was passed to me to decide.

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 considered the law, any relevant regulatory rules and good industry practice at the time the facility was provided.

To start with, Mrs M 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. 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.

Mrs M's representative has received our adjudicator's view and has passed it to Mrs M but since then no additional comments or evidence has been sent. From that it seems that Mrs M does not disagree with the adjudicator's assessment. So, the non-uphold of the original credit facility approval appears to have been agreed. I consider that resolved and I will look at the issues arising since the credit facility was approved in December 2017.

Indigo Michael gave Mrs 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.

Overall, the guidance didn't require Indigo Michael 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 that Mrs M had the facility Indigo Michael maintained 'read-only' access to her bank statements to monitor Mrs M's finances and to allow it to carry out additional affordability assessments.

Mrs M'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 Mrs M's facility was approved for £250 Indigo Michael needed to satisfy itself that Mrs M would be able to make the repayment of around £20 each month by carrying out a proportionate check.

In this case, Indigo Michael had a fairly good idea of Mrs M'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 M's income and expenditure was, and after completing this check, in this case, Indigo Michael was satisfied that Mrs M could afford the minimum repayment towards the facility.

Mrs M was paid weekly about £272 which translates to approximately £1,178 each month. Mrs M has confirmed that her income was around £13,000 per year. And Mrs M has told us that she did used to receive money from her partner and she'd pay money back to him too. I come back to this later in the decision.

Indigo Michael has provided us with its summary of how it read Mrs M's bank transactions and this gave it information which was that her cumulative monthly income was around £2,598. Indigo Michael has explained that was a combination of her salary of about £1,237 a month plus transfers into her account of £1,310 and another small source of income too.

Some elements to note about the Indigo Michael reading of Mrs M's transactional history after it had approved the facility in December 2017 is that

- it included bank transfers into her account as part of her income and some of these appeared to have come either from her own bank accounts or her partner's
- that income calculation by Indigo Michael increased as the months went by so that for May 2018 it was £3,098, for June 2018 it was £3,317 and July it was £3,274. By October 2018 Indigo Michael was recording Mrs M's income as £3,400 a month.

This seems very high for a person who has declared the type of work she did and that she earned around £13,000 each year (gross).

So, I asked Indigo Michael about this last point and it said

'Regarding the income calculations, the system reports on the document mentioned pulls an average over the length of the facility. In our assessment we manually verified that there was a sufficient income throughout to repay the minimum payment required. In addition there was a sufficient disposable income to repay the entire balance if borrowed all at once over a reasonable period of time'

Indigo Michael seems to be saying that it took an average over the months. So, I have done the same. And having done that it seemed clearer to place it into a table of my own and these are for the period 2 January 2018 to 29 June 2018. I have chosen that period as its soon after the facility was approved up to the end of the month in which our adjudicator thought that Indigo Michael ought to have suspended the account. The figures are approximate.

	Mrs M's salary	transfers from and to Mrs M's own accounts	Transfers to and from Mrs M's partner's accounts	
Incoming money	£7,335	£4,240	£9,600	
Payments out	n/a	£1,474	£2,884	
Net total income from this source	£7,335	£2,766	£6,716	TOTAL £16,817 Over 6 months = £2,802 each month

And so, I accept that Mrs M did receive a composite income in the region of £2,802 when averaged out as I have shown I have done in the table above. The higher income figures Indigo Michael has used I can't explain. But I do think that as Mrs M received regular sums from her partner, and these appear not to be loans or sums her partner expected her to repay, then it seems it was money Mrs M relied on and that was their arrangement. Mrs M has told us about this.

I am not satisfied that Mrs M has told us about the money coming from her own bank accounts – the ones other than the one to which Indigo Michael had 'read only' access. Mrs M transferred into the account Indigo Michael viewed, over £4,000 and only transferred back out £1,400 which leaves about £2,700 which appears to have come from her savings of some kind.

Indigo Michael calculated from looking at Mrs M's bank transactions that the essential expenditure Mrs M had to spend each month was about £1,714. So Indigo Michael's view

was that Mrs M had plenty left over each month to afford the minimum required each month for its credit facility. I agree and as I said earlier, Mrs M does not appear to dispute the fact that the facility being granted was an issue.

Indigo Michael said that it carried out a credit search before the facility was granted. I've considered the summary of results Indigo Michael has provided, and, I don't think these results read on their own would've led Indigo Michael to either decline the application or prompt it to have carried out further checks into Mrs M's situation before the facility was approved.

Indigo Michael has explained to our adjudicator that when Mrs M had declared some financial difficulties to it then:

'we placed them on a payment arrangement, where the limit is suspended and interest was frozen on this occasion. They entered their payment arrangement first 05/09/2018, further plans were arranged after this initial one. Regarding the balance, this was sold to a debt collector 29/09/2020 after about 9 months of missed payments.'

The other high cost lending in May and June 2018

Mrs M took from one other high cost lender a series of loans between April and June 2018 and the capital amounts taken amounted to several thousands of pounds. Our adjudicator calculated it to be around £2,800 and I think it may have been more than that. Either way it was a lot in a short time. And using the figures I have I can see that Mrs M paid back to that lender around £3,224 between April and August 2018.

And as Indigo Michael has said – this had not happened before during the time Indigo Michael had been monitoring the transactions since January 2018. As part of the reason it carries on with the 'read only' monitoring of the account, is to ensure that it can check that Mrs M is able to afford their credit facility, it makes no sense to me that its reaction was to increase her credit limit immediately afterwards in June 2018. Which I think was wrong.

It would not have known in June 2018 that things with Mrs M's account would return to the 'normal' Indigo Michael maintains it has seen by analysing her transaction history before that date. I do not see how it would have known that the other high cost lending was temporary.

What it called 'temporary' additional credit requirements from the other lender was not treated as an alert to it that there may be a financial issue with Mrs M. And its answer was to increase Mrs M's credit limit again in June 2018 and several times beyond that. And had increased it by £90 in May 2018 as well.

I do not accept that Indigo Michael's rationale for not suspending Mrs M's account earlier than September 2018 was because it was concerned about the financial shock it may have caused her. It had enough information to know that for some reason Mrs M had chosen to take several thousand pounds in high cost short term loans. And I think that when monitoring the credit facility account by reviewing her own bank transactions it got it wrong when it raised her credit limit in June 2018, having already done so in May 2018.

I uphold Mrs M's complaint from the June 2018 increase in credit limit.

Putting things right

If Indigo Michael has sold the outstanding debt, Indigo Michael should buy it back if it is able to do so and then take the following steps.

If Indigo Michael is not able to buy the debts back, then it should liaise with the new debt owner to achieve the results outlined below.

A) Remove all the unpaid interest, fees and charges from the account from 5 June 2018.

B) Treat all payments Mrs M has made towards her account since 5 June 2018 as though they had been repayments of outstanding principal.

C) If at any point Mrs M would have been in credit on her account after considering the above, Indigo Michael 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 made.

If there is an outstanding principal balance, then Indigo Michael can use any refunds calculated as part of "C" to repay this. If a balance remains after this then Indigo Michael should try to agree an affordable repayment plan with Mrs M.

D) If Indigo Michael has previously written-off any principal, then Indigo Michael shouldn't pursue outstanding balances made up only of principal Indigo Michael have already written-off.

E) Indigo Michael should remove any adverse payment information recorded on Mrs M's credit file from 5 June 2018.

**HMRC para requires Indigo Michael to take off tax from this interest. Indigo Michael must give Mrs M a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold Mrs M's complaint in part and I direct that Indigo Michael Limited does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 8 August 2022.

Rachael Williams
Ombudsman