DRN-3429120

The complaint

Mrs A (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

Mrs A approached SNC for a Safety Net facility in March 2018. This was a running credit account where a consumer could either request funds up to their credit limit, or funds could be deposited into their bank account once their account balance fell below a "safety net" amount of the customer's choosing. Mrs A was not advanced a payday loan.

Mrs A was initially given a facility with a £250 credit limit in March 2018. Her limit was increased on a further three occasions with her final increase – taking the credit limit to £400 in June 2018.

Mrs A had some problems repaying her facility and SNC has told the Financial Ombudsman that as of January 2022 an outstanding balance remains of £528.

One of our adjudicator's looked at Mrs A's complaint. He thought SNC hadn't acted unfairly when the facility was initially approved. But he did think SNC shouldn't have increased Mrs A's credit limit to £340 in May 2018 (20 May 2018 based on the statement date). The adjudicator said because Mrs A had taken a significant amount of high cost short-term credit totalling more than £1,800. She also had a significant amount of other credit, such as home credit and rent-to-buy.

Mrs A's representative acknowledged receipt of the adjudicator's assessment 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 A to allow her representative to deal with the case.
- SNC says that due to concerns over the representative's authorisation no valid complaint has ever been made which is why no final response has been issued.
- SNC therefore says it 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 Mrs A's representative has provided a 'wet signature' SNC doesn't have anything to compare it too.
- The approach SNC takes to verify with a consumer is reasonable and has her privacy and data protection in mind.
- 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 his view, SNC had been given more than eight weeks to investigate Mrs A's complaint following the initial complaint made by the representative, then when the complaint was referred to the Financial Ombudsman 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 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 A complained through her representative to SNC in December 2020 (I've seen nothing to persuade me Mrs A hadn't correctly authorised her representative), the complaint was referred here on 3 June 2021, and the Financial Ombudsman then wrote to SNC on 3 June 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 A'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 A 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's finances and to allow it to carry out additional affordability assessments.

Finally, Mrs A'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 A's facility was approved for £250 SNC needed to satisfy itself that Mrs A 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 A'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 A's income and expenditure was, after completing these checks, in this case, SNC was satisfied that Mrs A 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.

To begin with, it would appear Mrs A 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 so I no longer think I need to make a finding about what happened when the facility was granted.

So, this decision will focus on whether SNC did enough to monitor Mrs A'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 Mrs A to continue to draw down on the facility from when the credit limit increased to £340, which the earliest date that could've occurred was 20 May 2018. This is because, by now there were signs that Mrs A's overall indebtedness was becoming unsustainable for her. 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"*

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 A'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 Mrs A's actual financial position, because throughout the time of her having the facility it had read-only access to her bank account. Like the adjudicator, by 20 May 2018, I think SNC had seen enough to have realised that Mrs A's finances had deteriorated.

When the credit limit was increased in May 2018, SNC had seen read only bank statements since December 2017 and it had seen how Mrs A had used and managed the facility since it was granted in March 2018.

From 24 April 2018 until 15 May 2018 – shortly before the credit limit increase took effect, Mrs A had been advanced over £1,800 of principal towards high cost credit – with around 50% of that coming from short term credit providers. To me this is a significant amount of money to have been advanced in a short space of time.

It is therefore reasonable for SNC to have expected in the following month a significant amount of Mrs A's income to go towards repaying this sort of credit – before any other credit commitments and living costs were paid.

On top of this, Mrs A continued to make repayments towards other high cost creditors including home credit and rent-to-buy lenders. It seems at the time Mrs A had five such agreements. She had at least three home credit loans and two credit agreements from a rent-to-buy company which meant she was also committing to spending (on top of the new loans) over £150 a week to such companies or around £600 per month.

By this point in time, SNC was aware, by monitoring Mrs A's bank account, that she had at least nine other credit commitments to what are considered high cost credit providers. Knowing this, I don't think it was sustainable for SNC to continue to allow Mrs A to drawdown on the facility let a lone increase her credit limit. When it was clear, that she was now significantly over indebted and so any new lending wasn't sustainable.

I'm therefore upholding Mrs A's complaint in part, and I've outlined below what SNC needs to do in order to put things right.

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 20 May 2018.
B) Treat all payments Mrs A has made towards the account since 20 May 2018 as though they had been repayments of outstanding principal.
C) If at any point Mrs A 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 above repay this. If a balance remains after this then SNC should try to come to a mutually agreeable repayment plan with Mrs A for the outstanding balance.

E) SNC should remove any adverse payment information recorded on Mrs A's credit file from 20 May 2018.

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

Indigo Michael Limited trading as Safety Net should put things right for Mrs A as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 9 June 2022.

Robert Walker
Ombudsman