

## **The complaint**

Mr G (through a representative) has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) provided him with a credit facility he couldn't afford to repay.

## **What happened**

Mr G 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 would be deposited into their bank account once their account balance fell below a "safety net" amount of the customer's choosing. Mr G was not advanced a payday loan.

Mr G was initially given a facility with a £450 in March 2018. His limit was increased on a further three occasions with his final increase taking Mr G's credit limit to £750 by October 2018.

SNC has told the Financial Ombudsman Service the balance on the facility was fully repaid on 31 July 2019.

One of our adjudicator's looked at Mr G's complaint and he thought SNC shouldn't have granted the facility. The read only bank statements that SNC had access to showed that Mr G was spending a significant amount on betting websites meaning each month and so he couldn't afford or sustain the facility.

Mr G'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 Mr G to allow his 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 Mr G's representative has provided a 'wet signature' SNC doesn't have anything to compare it too.
- The approach SNC takes to verify a consumer is reasonable and has his 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. He explained SNC had been given more than eight weeks to investigate Mr G's complaint following the representative's complaint and from when we informed SNC that the complaint would be taken on and progressed.

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

To start with, Mr G wasn't given a payday loan. Instead he 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 Mr G 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 that Mr G had the facility SNC maintained read-only access to his bank statements, in order for it to allow SNC to monitor Mr G's finances and to allow it to carry out additional affordability assessments.

Finally, Mr G'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 Mr G's facility was approved for £450 SNC needed to satisfy itself that Mr G would be in a position to make the repayment of around £30 per month, by carrying out a proportionate check.

In this case, SNC had a fairly good idea of Mr G's income and expenditure because it had read only access to his bank statements for the 90 days preceding the facility being granted. It then used an algorithm to establish what Mr G's income and expenditure was, after completing this check, in this case, SNC was satisfied that Mr G 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 the results SNC has provided, and, I don't think these results would've led SNC to either decline the application or prompt it to have carried out further checks into Mr G's situation before the facility was approved.

Having reviewed the bank transaction data in the 90 days leading up to the facility being granted, I agree with the adjudicator that based on what SNC saw it shouldn't have advanced the facility.

The facility was approved at the end of March 2018, and SNC would've been aware from the transaction data, that Mr G had spent almost his entire monthly income on gambling

transactions by 5 March 2018. His income was around £1,800 and he spent in March just over £1,500 on such transactions.

SNC also would've seen that after Mr G carried out those transactions there is very little movement on the rest of the account for the remainder of the month – the majority of the transactions being daily overdraft charges. A similar pattern of behaviour can be seen in Mr G's bank transaction data for January and February 2018.

SNC had access to the data and should've seen this, and having seen it, the only reasonable conclusion which can be drawn is that Mr G wasn't in any position to afford the repayments he was committed to making neither where the payments he was due to make sustainable.

It's also worth noting here that 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.

It is clear from the bank statements that in the month of the facility being approved, Mr G didn't have sufficient funds in order to meet all his commitments because I can see two returned direct debits, and this follows on from the one returned payment I can see in February 2018.

On top of the returned payments and betting, I can also see that Mr G took out a high cost short-term loan at the start of March 2018 for £500 – which cost Mr G more than £600 to repay at the start of April 2018. This loan alone was a commitment for almost a third of his salary. This loan was outstanding at the time the facility was approved, but Mr G had taken similar loans for similar amounts in January and February 2018. It's therefore reasonable to conclude that Mr G would carry on taking such loans in the future.

So overall, the evidence of Mr G starting to use high cost short term loans and returned direct debits that indicated he was having financial difficulties along with the multiple payments to gambling website leads me to conclude that Mr G wasn't able to afford the facility that SNC had advanced him.

I'm therefore upholding Mr G's complaint in full and I don't think SNC should've approved the facility.

### **Putting things right**

SNC shouldn't have approved the facility for Mr G and I've outlined below what it needs to do in order to put things right for him.

- A) Remove all the unpaid interest, fees and charges from the account from the start.
- B) Treat all payments Mr G has made towards his account since it opened as though they had been repayments towards the outstanding principal.
- C) If at any point Mr G would've been in credit on his 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 complaint is settled.
- D) SNC should remove any adverse payment information recorded on Mr G's credit file from when the account was opened.

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

### **My final decision**

For the reasons I've explained above, I'm upholding Mr G's complaint in full.

Indigo Michael Limited trading as Safety Net Credit should put things right for Mr G as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 3 June 2022.

Robert Walker  
**Ombudsman**