

## **The complaint**

Mr M (through a representative) has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) didn't complete proper affordability checks before approving his Safety Net facility.

## **What happened**

Mr M approached SNC for a SafetyNet facility in September 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 M was not advanced a payday loan.

Mr M was initially given a facility with a £200 limit in September 2018. His limit was increased on a further three occasions with his final increase taking Mr M's credit limit to £320 by January 2019.

SNC has told the Financial Ombudsman Service the balance on the facility was fully repaid on 24 August 2020.

One of our adjudicator's looked at Mr M's complaint and he thought SNC shouldn't have granted the facility. Firstly, the adjudicator thought that SNC had overestimated Mr M's income by including some bank transfers whereas the adjudicator thought the income Mr M had declared to SNC was a more accurate reflection of his actual income.

He also said there were signs of financial difficulty because Mr M had some recently returned direct debts, an outstanding high cost short term loan and was spending in the adjudicator's view significant amounts each month on betting websites.

Mr M'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 M 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 M'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 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 in the ombudsman referral letter. He explained SNC had been given more than eight weeks to investigate Mr M'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 M 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 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 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 M had the facility SNC maintained read-only access to his bank statements, in order for it to allow SNC to monitor Mr M's finances and to allow it to carry out additional affordability assessments.

Finally, Mr 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 Mr M's facility was approved for £200 SNC needed to satisfy itself that Mr M would be in a position to make the repayment of around £20 each month by carrying out a proportionate check.

In this case, SNC had a fairly good idea of Mr M'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 M's income and expenditure was, and after completing this check, in this case, SNC was satisfied that Mr M 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, I don't think these results read on their own would've led SNC to either decline the application or prompt it to have carried out further checks into Mr M's situation before the facility was approved.

However, having reviewed the transaction data from his bank statements, I agree with the adjudicator that there were signs of financial difficulties before the facility was granted and knowing this, SNC shouldn't have granted it.

Firstly, the income that Mr M declared to SNC as part of his application of £1,800 per month seems consistent with the payments I can see from benefits.

I accept and as the adjudicator pointed out there were a number of bank transfers from different parties, but the amounts and payees aren't consistent so in this case, I don't think it would be reasonable to include these as regular payments, especially in light of the fact that Mr M was clear that his main source of income was benefits.

So, I think that SNC ought to have based Mr M's income as being £1,800 which means its calculated disposable monthly income of £1,867 can't possibly be correct.

I accept there appears to be minimal living costs, apart from what looks like a payment for car insurance as well as other transactions associated with owning a car such as petrol and tax. However, there are also quite a few cash withdrawals each month, so it may be reasonable to conclude that much of Mr M's other expenditure was paid in cash.

But notwithstanding the lack of living costs in Mr M's bank statements, there were other indicators, which have led me to conclude that he was likely having financial difficulties.

It's 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.

So, when reviewing the statements the fact that there are four returned direct debits in the six weeks before the facility was approved, in my mind is a clear indicator that Mr M was struggling to meet the credit commitments he already had.

At times, leading up to the facility being approved, Mr M looks to have been spending significant amounts of money each month – relative to his income - on unsustainable sources such as betting transactions. For example, in August 2008, the month before the facility was approved Mr M had spent over £1,500 on such transactions.

I accept that in July 2018, Mr M hadn't spent as much on these transactions, but as the amounts he was spending on such transactions increased to a level that meant almost all of Mr M's income was being spent on such transactions, I don't think SNC could confidently believe that the facility was affordable even with an estimated payment of £20 - when taking into account the living costs that Mr M likely had on top of the ones that can be seen within the transaction data.

I'm therefore upholding Mr M's complaint in full and I don't think SNC should've approved the facility. I've outlined below what SNC needs to do in order to put things right for Mr M.

## **Putting things right**

SNC shouldn't have approved the facility for Mr M 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 M has made towards his account since it opened as though they had been repayments towards the outstanding principal.
- C) If at any point Mr M 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 M'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 M 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 M's complaint in full.

Indigo Michael Limited trading as SafetyNet Credit should put things right for Mr M as set out above.

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

Robert Walker  
**Ombudsman**