

The complaint

Mrs R (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 R approached SNC for a Safety Net facility in November 2017. 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 R was not advanced a payday loan.

Mrs R was initially given a facility with a £500 credit limit in November 2017. Her limit was increased on a further five occasions with her final increase – taking the credit limit to £1,000 in May 2018.

Mrs R had some problems repaying her facility and SNC has told the Financial Ombudsman that it outsourced the collection of the balance to a third party. It has also told us that as of January 2022 Mrs R still had an outstanding balance of £1,134.17.

One of our adjudicator's looked at Mrs R's complaint. He thought it was reasonable for SNC to have granted the facility. But the adjudicator also concluded that the credit limit in April 2018 shouldn't have been granted for the following reasons.

- Mrs R's credit limit had now almost doubled what she started off with.
- Mrs R would frequently repay the facility in full each month before quickly returning for further borrowing and so she wasn't using the facility as SNC had intended.
- The bank statements that SNC had access to showed it that Mrs R was making repayments to at least three different third-party collection firms.
- Further indicators of financial difficulties including evidence of Mrs R being charged unauthorised overdraft fees and returned payment fees.
- There was evidence which showed Mrs R was using high-cost short-term credit.

Mrs R'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 R 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 R'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. He explained SNC had been given more than eight weeks to investigate Mrs R'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.

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 carefully 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 R complained through her representative to SNC in January 2021 (I've seen nothing to persuade me Mrs R hadn't correctly authorised her representative), the complaint was referred here on 9 June 2021, and the Financial Ombudsman then wrote to SNC on 10 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 R'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 R 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 R'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 R's facility was approved for £500 SNC needed to satisfy itself that Mrs R would be in a position to make the repayment of £20, by carrying out a proportionate check.

In this case, SNC had a fairly good idea of Mrs R'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 R's income and expenditure was, after completing this check, in this case, SNC was satisfied that Mrs R 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 R 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, this decision will focus on whether SNC did enough to monitor Mrs R'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 R to continue to use the facility after 8 April 2018. I agree with the adjudicator that the bank transaction data SNC had access to along with 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 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"

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 R's use of the facility and then CONC 1.3 provides indications which could suggest that a customer was in financial difficulty.

SNC has had a good indication of Mrs R's actual financial position, because throughout the time of her having the facility it had read-only access to her bank account. By 8 April 2018 I think SNC had seen enough to have realised that Mrs R's repayment of the facility was now unsustainable.

In order to see whether I think it was fair to allow Mrs R 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 R returned for further borrowing. After all, if Mrs R 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 R would repay her facility in full, and then within a day or so, she'd start drawing back up towards her credit limit. So, the larger her credit limit increased to, the larger her monthly repayments to SNC became. For example, after the credit limit increase occurred Mrs R paid SNC at the end of April 2018 nearly £1,300.

And in other months – such as March 2018 Mrs R would pay on or around the minimum repayment but then immediately drawdown unavailable credit she had. Again, as with paying the facility in full each month, I think this is a further sign that even these smaller payments weren't affordable for her because she quickly needed further funds to cover the whole in making the repayment was leaving in her finances.

In addition, Mrs R's income remained consistent at around £2,700 per month, and I can see from her bank statements that just the repayments to the direct debits and standing orders came to around £1,700 per month.

This left Mrs R around £1,000 to cover the other costs that I can see in her bank statements such as her petrol costs and food. So, her disposable income, would've been smaller than this. Which given the amount that Mrs R was repaying to SNC each month ought to have led SNC to conclude that Mrs R may not have had enough money to afford the credit limit increase especially, as the limit had almost doubled in a fairly short period of time.

At this point, when the credit limit increased I don't think it was reasonable for SNC to have believed that Mrs R would repay the facility over a reasonable period of time, instead, I think it's far more likely that Mrs R would borrow the funds over the course of the month and then have to repay the balance in full.

This in effect, mean that due to Mrs R making full repayment, she had to borrow again from SNC in order to cover her hole in the finances.

When considering all of the information SNC had available to it about Mrs R's circumstances along with the payments SNC was collecting each month, I think by 8 April 2018, it was clear that the facility had become unsustainable - and simply collecting the full outstanding balance on the account and then allowing Mrs R to once again drawdown the funds that had been recently collected was detrimental to her financial situation. But instead of doing this SNC increased his credit limit. This meant that it would lead to taking even larger payments from Mrs R's account thus leaving a greater hole in her finances.

On top of this, SNC would've been aware that Mrs R had one outstanding short-term payday loan and was making a number of repayments each month to three different debt collection agencies – further indication that Mrs R had relatively recent debt that she had struggled to repay.

Overall and having thought about everything I think that SNC should've proactively intervened and contacted Mrs R to arrange for her to repay what she owed within a reasonable period of time.

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 8 April 2018.
- B) Treat all payments Mrs R has made towards their account since 8 April 2018 as though they had been repayments towards outstanding principal.
- C) If at any point Mrs R 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 R. 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 R's credit file from 8 April 2018.

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 10 June 2022.

Robert Walker
Ombudsman