

The complaint

Ms W (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

Ms W approached SNC for a Safety Net facility in January 2020. 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. Ms W was not advanced a payday loan.

Ms W was initially given a facility with a £200 credit limit in January 2020. Her limit was increased on a further four occasions with her final increase – taking the credit limit to £440 in November 2020.

Ms W had some problems repaying her facility. SNC has told us payments have been made through a debt management plan. SNC told us that as of December 2020, Ms W's remaining outstanding balance was £435.75.

One of our adjudicator's looked at Ms W's complaint. He thought it was reasonable for SNC to have granted the facility.

The adjudicator also concluded that due to the way Ms W used the facility through SNC should have stopped allowing her to continue using it from the credit limit increase that occurred around 21 September 2021.

Ms W'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 Ms W 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 Ms W'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 the ombudsman referral letter. He explained SNC had been given more than eight weeks to investigate Ms W'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. Ms W complained through her representative to SNC in December 2020 (I've seen nothing to persuade me Ms W hadn't correctly authorised her representative), the complaint was referred here on 21 May 2021, and the Financial Ombudsman then wrote to SNC on 1 June 2021 explaining the complaint was now being taken forward.

It is now nearly a year later and well 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 Ms W'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, Ms W 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, Ms W'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 Ms W's facility was approved for £200 SNC needed to satisfy itself that Ms W 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 Ms W's income and expenditure because it had read only access to her bank statements for the year preceding the facility being granted. It then used an algorithm to establish what Ms W's income and expenditure was, after completing this check, in this case, SNC was satisfied that Ms W 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 Ms W 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 Ms W'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 Ms W to continue drawing down on the account from 21 September 2020. This is because I think 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 Ms W's use of the facility and then CONC 1.3 provides indications which could suggest that a customer was in or likely having financial difficulty.

In addition to this, SNC has a good indication of Ms W's actual financial position, because throughout the time of her having the facility it had read-only access to her bank account. In my view, by 21 September 2020, I think SNC had seen enough to have realised that Ms W's repayment of the facility were now unsustainable.

When the credit limit was increased further on this date, SNC had seen read only bank statements since January 2019 and it had seen how Ms W had used and managed the facility since it was granted in January 2020.

In order to see whether I think it was fair to allow Ms W to continue to drawdown, I've considered the relationship between when repayments were made to SNC, the value of those payments and then when Ms W returned for further borrowing. After all, if Ms W 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 Ms W would typically repay her facility in full, and then within a day or so, she'd draw back up to her available credit limit. For example, Ms W, drew down up to her credit limit on 14 August 2020, which was the same day that SNC had taken a payment (as a result of Ms W being paid) to fully repay the facility. Ms W then repaid and drew down on the facility again on 18 August 2020.

In addition to this, and which I mention below, Ms W was already spending significant amounts of her income each month servicing her existing credit commitments. But this pattern had been ongoing since the start of the lending relationship.

When considering all of the information, by 21 September 2020, it was, in my view clear that the facility had become unsustainable - and simply collecting the full outstanding balance on the account and then allowing Ms W to once again borrow the funds that had been recently collected was detrimental to her financial situation. But instead of doing this SNC increased her credit limit. This meant that it would default to taking even larger payments from Ms W's account thus leaving a greater hole in her finances.

So when SNC further increased Ms W's credit limit around 21 September 2020 Ms W had demonstrated that she wasn't using the facility as SNC had intended, she was quickly drawing down and repaying the facility in the same month, and therefore was in effect taking multiple payday loans because she wasn't benefiting from or making use of the interest free period of time.

Given the above, I think SNC should've taken steps to not allow Ms W to continue to use the facility.

However, on top of the above, there was further evidence that SNC ought to have firstly not allowed the facility credit limit to be increased and secondly stopped Ms W from taking further drawdowns.

I also think, given the credit commitments that are visible in the bank transaction data, that Ms W was likely having problems anyway. She had at least by August 2020 17 credit commitments each month, this ranged from catalogue shopping account, payments to a

utility supplier, high cost long term loans, car finance and direct debits for car insurance and mobile phone bills to name a few.

Overall, these commitments came to around £1,200 per month against a salary income of around £1,500. This only left Ms W with around £300 to repay a facility with a credit limit of £320 (which would likely be repaid in full each month) and cover other living costs that I can see in the bank transaction data that isn't accounted for above, such as payments for petrol and food.

Overall and having thought about everything I think that SNC should've proactively intervened and contacted Ms W 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 21 September 2020.
- B) Treat all payments Ms W has made towards the account since 21 September 2020 as though they had been repayments of outstanding principal.
- C) If at any point Ms W 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 come to a mutually affordable repayment plan with Ms W.
- E) SNC should remove any adverse payment information recorded on Ms W's credit file from 21 September 2020.

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

Indigo Michael Limited should put things right for Ms W as set out above.

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

Robert Walker
Ombudsman