

The complaint

Ms P (through a representative) has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) provided her with a credit facility she couldn't afford to repay.

What happened

Ms P approached SNC for a Safety Net facility in February 2016. 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 P was not advanced a payday loan.

Ms P was initially given a facility with a £300 limit on 7 February 2016. Her limit was increased on a further nine occasions with her final increase taking Ms P's credit limit to £500 by September 2017.

Ms P has had some problems repaying the facility and SNC has told the Financial Ombudsman the account was sold to a third-party collection agency in December 2020.

One of our adjudicator's looked at Ms P's complaint and he thought SNC shouldn't have granted the facility. The adjudicator explained that based on SNC's credit search results from the time it was aware that she had defaulted on 10 credit accounts.

The adjudicator concluded these defaults were likely to be recent because he could see payments to a third-party debt collection company and these payments didn't start appearing on Ms P's bank transaction data until a couple of weeks before the facility was approved. Finally, the adjudicator could see Ms P was using high cost short-term lenders and there were regular payments for betting transactions.

Ms P's representative acknowledged receipt of the adjudicator's assessment, but no further comments were provided.

SNC disagreed with the assessment. In summary, it said:

- SNC said that none of the defaults it knew about had been recorded within the previous two years. One of the credit reports it obtained suggested some were more than four years old. SNC says this shows an improving financial position at the time the credit was advanced.
- The repayments Ms P was making to the third-party collection agencies shows that she was managing her debts.
- SNC's affordability calculator also took the payments towards the debt collection agencies into account when deciding whether she had enough disposable income.
- Ms P's net spend on other credit commitments was low and while SNC was aware of the betting transactions, in its view, these weren't a concern for it.
- SNC says its product is akin to an overdraft and there isn't anything in the usage of the facility to suggest that Ms P wasn't using it as intended.

The adjudicator responded to SNC's concerns. He explained that the defaults were only part

of the reason why the complaint had been upheld. He said that the large payments to debt collectors weren't visible before January 2016, so it stands to reason that these were recently set up.

It was also clear to the adjudicator that Ms P was making small repayments to the debt collection agencies which indicated she was likely having repayment problems.

While the adjudicator partially agreed about the net spending on the gambling transactions the overall picture that he gathered from SNC's checks was one that Ms P couldn't afford her facility.

SNC responded, still not agreeing and requested the complaint be passed to an ombudsman. It also, at this time provided further detailed results from its credit checks.

As no agreement could be reached the complaint was passed to me and I issued a provisional decision. I explained why I was intending to uphold Ms P's complaint in part, but not until November 2016.

A copy of the background to the complaint and my provisional findings follow this in italics and forms part of this final decision.

What I concluded in the provisional decision

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 P 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 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 Ms P 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 Ms P had the facility SNC maintained read-only access to her bank statements, in order to allow SNC to monitor Ms P's finances and to allow it to carry out additional affordability assessments.

Finally, Ms P'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 P's facility was approved for £300 SNC needed to satisfy itself that Ms P would be in a position to make the repayment of around £20 per month, by carrying out a proportionate check.

In this case, SNC had a fairly good idea of Ms P'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 Ms P's income and expenditure was, after completing these checks, in this case, SNC was satisfied that Ms P could afford the minimum repayment towards the facility.

The adjudicator thought, the facility should be upheld from the start because SNC was aware that Ms P had 10 defaults recorded on her credit file and she'd recently starting to make repayments to a third-party debt collection agency, which the adjudicator thought was connected to the defaults. He also said, given the other items that Ms P was spending on such as betting transactions that the facility shouldn't have been provided.

I've already summarised at the start of this decision SNC's comments in relation to this. Having considered what, it has said and following a review of the bank transaction data I don't think I can reasonably conclude that the facility was unaffordable for Ms P and I've explained why below.

Firstly, SNC was aware of the 10 defaults that the adjudicator mentioned. SNC also knew the total value of those defaults was around £7,000. But, the information SNC received from one of the credit reference agencies shows the most recent of the ten defaults was recorded around 32 months before the facility was granted. This, in my view is too far removed from the start date of the facility for SNC to have been concerned that Ms P was having current financial difficulties.

If anything, it is a sign, that around 3 years ago Ms P was likely having significant difficulties which resulted in some of her credit accounts defaulting. But I don't think it would be fair or reasonable to assume that Ms P may have had problems repaying this new facility because she'd had some significant repayment problems in the past. Especially in light of the amount of credit being advanced and how those repayments were structured.

So, I don't think the defaults are sufficient to say that the facility was irresponsibly lent. But, as the adjudicator pointed out, during the 90-day review period, SNC also saw that Ms P had started to make repayments to a third-party debt collection company. It's likely, given the number of monthly repayments I can see that these payments were connected to some or all of the defaulted accounts that SNC saw in the credit file.

The fact, that these repayments appeared in the transaction data isn't in my view sufficient to uphold the complaint from the inception of the facility. The repayments were factored into SNC's affordability checks and they do show a willing by Ms P to repay the outstanding debts that she owed.

I can also see that Ms P was spending some monies each month on betting transactions, but I don't think the number, or the total value of those transactions would've led SNC to conclude the facility wasn't affordable for Ms P given the other costs that SNC could see.

In my view, SNC carried out a proportionate check before the facility was approved. It knew that Ms P income was around £1,300 from her employer. In addition, even taking into account the betting transactions as well as the payments to the third-party collection agency the facility would've still looked affordable to SNC.

Her outgoings for things such as her living costs as well as payments to the debt collectors, betting transactions and payments to other high cost credit providers came to around £800. So, SNC would've reasonably believed that Ms P had more than enough disposable income to be able to afford the repayments she was committed to making.

I'm, therefore, not intending to uphold the facility from the start because I think SNC made a reasonable decision to advance it.

Monitoring the facility

Although I don't think SNC was wrong to have initially granted the facility, I have gone on to think about whether there was a point in the lending relationship that showed SNC, Ms P was likely having difficulties repaying the facility.

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 P'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 Ms P's actual financial position, because throughout the time of her having the facility it had read-only access to her bank account so it had a good idea of her income and outgoings.

When looking at what happened after the facility was approved, I've considered each time a credit limit increase was applied, to see whether the increase was affordable. I've then gone on to consider the overall lending relationship. But I only needed to consider a review up to November 2017, because after this date SNC had frozen Ms P's account.

In order to see whether I think it was fair to allow Ms P 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 P returned for further borrowing. After all, if Ms P 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 P would typically repay her facility in full, and then she'd then start to draw back up towards available credit limit. In addition to this, there are indicators, that Ms P was having to borrow from SNC in order to meet her other commitments to other high cost credit providers for example the repayment to a high cost loan provider in November 2016 – shortly after a further credit was received.

When considering all of the information SNC had available to it about Ms P's circumstances along with the payments SNC was collecting each month, I think by 28 November 2016, it was clear that the facility had become unsustainable - and simply collecting the full (or almost the full) outstanding balance on the account and then allowing Ms P to once again borrow the funds that had been recently collected was detrimental to her financial situation.

But instead of doing this SNC allowed Ms P to continue to use the facility.

By now, Ms P had been using the facility for almost a year, and there wasn't an appreciable time that she wasn't indebted to SNC.

At this time, I think SNC would've also seen that Ms P was still making repayments to other high cost short term credit providers. And Ms P was still spending on betting transactions each month. In addition to this, the repayments to the third-party debt collector had actually decreased since the turn of the year. Ms P starting by paying the company £60 but by November 2016, Ms P was repaying them £20 for the same number of accounts – this would indicate that Ms P was having difficulties because the third party debt collector had likely accepted that she couldn't afford to continue to make payments of £60 per month. After all, if she was able to afford more, why would the third party accept less.

Finally, in October 2016, Ms P had a number of returned direct debt payments, which to me, shows Ms P was having problems managing her finances.

So, when SNC further allowed Ms P to drawdown on the facility, she had demonstrated that she wasn't using the facility as SNC had intended, she was quickly borrowing 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.

When considering all of the information SNC had available to it about Ms P circumstances along with the payments SNC was collecting each month, I think by 28 November 2016 it was clear that the facility had become unsustainable - and simply collecting the full outstanding balance on the account and then allowing Ms P to once again borrow the funds that had been recently collected was detrimental to her financial situation.

Overall and having thought about everything I think that SNC should've proactively intervened and contacted Ms P to arrange for her to repay what she owed within a reasonable period of time. I've outlined below what I'm intending to ask SNC to do in order to put things right for Ms P.

Response to the provisional decision

Both SNC and Ms P were asked to respond to the provisional decision with any further comments or evidence for my consideration as soon as possible, but no later than 3 June 2022.

Ms P's representative told us that Ms P accepted the findings made in the provisional decision.

SNC also responded and it made an offer to settle the complaint in line with the proposed recommendation. It has explained, that after removing the unpaid interest on the outstanding balance, refunding the interest, adding 8% simple interest and deducting tax it would pay Ms P £661.89.

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.

Both SNC and Ms P accepted the findings I laid out in the provisional decision. So, I see no reason to depart from the findings that I have made.

I still think SNC shouldn't have allowed Ms P to drawdown on the facility after 28 November 2016 because by this point in time it was clear the facility was no longer sustainable for Ms P.

I've outlined below what SNC needs to do in order to put things right for Ms P.

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 28 November 2016.
- B. Treat all payments Ms P has made towards the account since the start of the facility as though they had been repayments of outstanding principal.
- C. If at any point Ms P 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 Ms P.
- E. SNC should remove any adverse payment information recorded on Ms P's credit file about this facility from 28 November 2016.

*HM Revenue & Customs requires SNC to take off tax from this interest. SNC must give Ms P 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 and in the provisional decision, I'm upholding Ms P's complaint in part.

Indigo Michael Limited should put things right as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 6 July 2022.

Robert Walker
Ombudsman