

The complaint

Ms H (through a representative) has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) didn't complete proper affordability checks before approving her Safety Net facility or at each new instance of borrowing.

What happened

Ms H approached SNC for a Safety Net facility in March 2015. 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 H was not advanced a payday loan.

Ms H was initially given a facility with a £200 limit in March 2015. Her limit was then increased on eight separate occasions taking her credit limit to £720 by December 2015.

SNC has told the Financial Ombudsman Service that as of May 2022 Ms H still owed it £946.37.

An adjudicator looked at Ms H's complaint and he thought SNC shouldn't have granted the facility. He said SNC had overestimated Ms H's income, she had a history of repaying significant amounts each month to other high cost short term lenders. Which in the adjudicator's view meant the facility wasn't affordable given on top of her repayments she had day-to-day living costs.

Ms H'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 H 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 H'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 whether authorisation has been given to the representative 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 and he explained SNC had been given more than eight weeks to investigate Ms H'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 H complained through her representative to SNC in September 2021 (I've seen nothing to persuade me Ms H hadn't correctly authorised her representative), the complaint was referred here on 15 November 2021, and the Financial Ombudsman then wrote to SNC on 23 November 2021 explaining the complaint was now being taken forward.

It is now eight months later and nearly 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 H's complaint, which is what I have gone on to do in the next part of this 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, Ms H 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 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 Ms H 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 H had the facility SNC maintained read-only access to her bank statements, in order for it to allow SNC to monitor Ms H's finances and to allow it to carry out additional affordability assessments.

Finally, Ms H'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 H's facility was approved for £200 SNC needed to satisfy itself that Ms H 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 Ms H's income and expenditure because it had read only access to her bank statements for 90 days preceding the facility being granted. It then used an algorithm to establish what Ms H's income and expenditure was, and after completing this check, in this case, SNC was satisfied that Ms H 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 would on their own have led SNC to either decline the application or prompt it to have carried out further checks into Ms H's situation before the facility was approved.

So, SNC may have reasonably believed based solely on the income and expenditure information that Ms H may have been able to afford her repayments. However, there were other indicators within the bank transaction data that has led me to conclude that Ms H couldn't afford the facility.

Having reviewed the transaction data from her bank statements, I agree with the adjudicator, that the facility wasn't affordable and knowing this SNC shouldn't have granted it.

Firstly, the income that Ms H declared to SNC as part of his application of £1,200 per month seems consistent with the payments I can see from her salary. She received £1,254 in January 2015 and £1,175 in February 2015. There were also additional credits each month but even taking those into account Ms H's income wasn't as high as SNC believed. SNC said her income was around £2,000 per month but like the adjudicator I think it's more likely than not at least £500 less than that.

In addition, each month that SNC had the transaction data available for, it could see that Ms H was borrowing each month from the same high cost short term lender – with repayments due to this lender of around £500 each month – which is a not insignificant amount of her income.

Ms H was also regularly taking loans from a credit union, in February 2015 I can see the repayments to the credit union and the high cost short term lender came to nearly £900. At the end of February 2015 – so shortly before this facility was approved, Ms H borrowed another £400 from the high cost credit provider – so this would've needed to be repaid during the time when Ms H had to make repayments towards the facility.

On top of this, there were also living costs that Ms H had – for example, I can see what appears to be a rent payment of £328 and I can also see payments towards food and travel. There are also a number of cash withdrawals (which occur each month) so it's likely some or all of those withdrawals went towards her living costs.

In the month before the facility was approved, I'm satisfied that Ms H's living costs and her credit commitments came to more than her income, so I'm not sure how SNC believed that Ms H had any disposable income to be able to afford the repayments towards this facility.

Clearly, based on the information SNC had available to it, Ms H wasn't in a position to afford the repayments towards this facility because she didn't have sufficient funds in which to cover her existing credit commitments and her living costs.

Overall, given what I've seen in the transaction data I'm upholding Ms H's complaint and I don't think SNC should've approved the facility.

Putting things right

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

- A) Remove all the unpaid interest, fees and charges from the account.
- B) Treat all payments Ms H has made towards their account since the start as though they had been repayments of outstanding principal.
- C) If at any point Ms H 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 H. 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 Ms H's credit file about this facility from the start.

*HM Revenue & Customs requires SNC to take off tax from this interest. SNC must give Ms H 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 H's complaint in full and Indigo Michael Limited should put things right for Ms H as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 25 August 2022.

Robert Walker
Ombudsman