

The complaint

Mr T (through a representative) has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) provided him with a credit facility he couldn't afford to repay.

What happened

Mr T approached SNC for a Safety Net facility in November 2016. This was a running credit account where a consumer could either request funds up to his credit limit, or funds would be deposited into his bank account once the account balance fell below a "safety net" amount of the customer's choosing. Mr T was not advanced a payday loan.

Mr T was initially given a facility with a £200 limit on 26 November 2016. His limit was increased on a further five occasions with the final increase taking Mr T's credit limit to £460 in July 2017.

Mr T has had some problems repaying the facility and SNC has told the Financial Ombudsman that as of January 2022 an outstanding balance remains due of £306.60.

An adjudicator looked at Mr T's complaint and he thought SNC had made a reasonable decision to initially approve the facility for Mr T. But he didn't think SNC ought to have allowed Mr T to drawdown on the facility after 5 August 2017.

In the adjudicator's view, Mr T was now having problems managing his money because he had recently set up to pay a third-party collection agency.

Mr T's representative acknowledged receipt of the adjudicator's assessment, but no further comments were provided.

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

- It hasn't received proper authorisation from Mr T 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 T'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 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. He explained SNC had been given more than eight weeks to investigate Mr T'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.

I then issued a provisional decision firstly explaining that there wasn't any jurisdiction reason why the Financial Ombudsman couldn't consider the complaint. I also intended to partly uphold Mr T's complaint but for a slightly different reason than the adjudicator.

A copy of my provisional findings follow this in italics and form part of this final decision. However, before my provisional decision, I've again outlined below why this complaint can be considered.

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 careful 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. Mr T complained through his representative to SNC in January 2021 (I've seen nothing to persuade me Mr T hadn't correctly authorised his representative).

The complaint was referred here on 10 June 2021, and the Financial Ombudsman then wrote to SNC on 14 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 Mr T's complaint.

What I said in my 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, Mr T 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 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 Mr T 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 T had the facility SNC maintained read-only access to his bank statements, to allow SNC to monitor Mr T's finances and to allow it to carry out additional affordability assessments.

Finally, Mr T'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 T's facility was approved for £200 SNC needed to satisfy itself that Mr T 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 Mr T'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 T's income and expenditure was, after completing these checks, in this case, SNC was satisfied that Mr T could afford the minimum repayment towards the facility.

The adjudicator upheld Mr T's complaint from August 2017, meaning he thought it was reasonable for the facility to have been approved. Neither Mr T's representative nor SNC disagree with this. I therefore no longer think this is in dispute. But for the avoidance of doubt, based on what SNC saw before granting the facility it was reasonable of it to conclude that Mr T would be able to repay the facility over a reasonable period of time.

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, Mr T 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 Mr T'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 Mr T's actual financial position, because

throughout the time of him having the facility it had read-only access to his bank account so it had a good idea of her income and outgoings.

Instead, I'm focussing on whether by August 2017 it was reasonable for SNC to have taken action to have stopped Mr T's use of the facility – which is the point the adjudicator upheld from.

As I explained above, he said there was indications that Mr T's financial position was worsening because he recently started to make new payments to a new third party debt collection company. But I don't think this, on its own is sufficient to say that Mr T was having or likely having financial difficulties.

Mr T was already making weekly repayments to two third party debt collection agents – totalling nearly £20 a week. However, in July two further payments totalling an additional £10 per week are started to be paid to another, third debt management company. Which as the adjudicator pointed out most likely related to historic debts that Mr T was in a position to now start making repayments for.

Overall, Mr T was repaying around £30 a week towards at least 4 separate credit accounts that defaulted and were sold to a third-party collection agency. This is a sign that Mr T may have been having financial difficulties. But it would also be reasonable to conclude it was a sign that Mr T was trying to repay older debt because he was now in a position to do so. I don't think the debt repayments along, are sufficient to uphold the complaint.

However, having reviewed the bank transaction data there is in my view, enough other concerning information to led me to conclude Mr T's complaint should be upheld.

It's clear from the bank transaction data that the only source of income for Mr T is from his job where he received a weekly salary of between £350 and £400. The exact amount of salary does go up and down week on week but seems to be between these two amounts. I've kept this in mind when thinking what I can see in the bank statements.

In addition to this there are a number of direct debits and standing orders set up on Mr T's account – the monthly repayment towards these along comes to around £315. However, that clearly isn't all of Mr T's living costs.

Mr T did have regular payments for petrol and food and also Mr T withdrew significant amounts of money each month. In July 2017 for example he had withdrawn £1,100. This wasn't a one off, indeed, the largest expenditure each month was on cash withdrawals. From the bank transaction data I can also see that, in June 2017 he withdrew £1,600 and £1,100 in May 2017.

So, there was a pattern that Mr T would, regularly withdraw at least £1,100 per month. It isn't clear what Mr T was using the cash on, but given how regular these withdrawals were, and were apparent in each month since the facility had been approved I do think SNC had to consider very carefully whether further allowing Mr T to draw down on the facility was reasonable.

I therefore think it was reasonable for SNC to have taken these cash withdrawals into account because, it is likely, given the pattern of the withdrawals to date that Mr T would've – moving forward continued to take out, each month significant amounts of cash.

On top of the above, there are two other factors that I think needed to be considered. Firstly, at least once a month since January 2017, Mr T was having problems making his regular contractual repayments to other creditors because he'd be charged an unpaid transaction

fee. Meaning his bank had charged him a fee to process a payment because he didn't have sufficient funds in which to fund it.

Given the content of CONC 1.3 I think this is another clear sign that Mr T was having problems managing his finances and by July, given it was shortly after the credit limit had been increased again I think SNC really needed to consider whether allowing Mr T to continue to use the facility was in the best interest of Mr T.

Secondly, Mr T was clearly, by this point in time using the SNC facility to supplement his living costs. As I've said apart from the credits from SNC the other source of income was his weekly salary and as I've outlined above, with the cash withdrawals, direct debits and standings orders this was already around the total of Mr T's monthly income.

But, in July Mr T repaid SNC nearly £1,700 which was more than his monthly income before taking into account the living costs that we know Mr T had. The amount repaid to SNC was above what Mr T typically repaid SNC throughout the course of the year. But he would typically repay around £1,000 each month – which is still a significant sum when considering the cash withdrawals as well as the other living costs that I said, SNC would've seen.

So, when SNC further allowed Mr T to drawdown on the facility, he had demonstrated that he wasn't using the facility as SNC had intended, he was quickly borrowing down and repaying the facility in the same month, and therefore was in effect taking multiple payday loans because he wasn't benefiting from or making use of the interest free period of time.

When considering all of the information SNC had available to it about Mr T circumstances along with the payments SNC was collecting each month, I think by 5 August 2017 it was clear that the facility had become unsustainable and unaffordable.

Overall and having thought about everything I think that SNC should've proactively intervened and contacted Mr T to arrange for him to repay what he 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 Mr T.

I'm therefore intending to uphold Mr T's complaint from the same point as the adjudicator but for slightly different reasons.

Response to the provisional decision

Mr T (and / or his representative) and SNC were asked to respond to the provisional decision as soon as possible, but no later than 29 June 2022.

SNC didn't respond to the provisional decision.

Mr T's representative initially acknowledged the provisional decision before later confirming he was happy with the proposed outcome.

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.

Neither Mr T nor SNC have provided any new evidence or comments for me to consider. I therefore see no reason to depart from the findings that I reached in the provisional decision.

So, I still think it was reasonable, for SNC to have initially approved the facility. However, by 5 August 2017 there were signs in the way that the facility was being used as well as what SNC could see in the transaction data that ought to have led SNC to have stopped Mr T from using the facility.

I've outlined below what SNC needs to do in order to put things right for Mr T.

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 5 August 2017.
- B. Treat all payments Mr T has made towards the account since 5 August 2017 as though they had been repayments of outstanding principal.
- C. If at any point Mr T 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 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 Mr T.
- E. SNC should remove any adverse payment information recorded on Mr T's credit file about this facility from 5 August 2017.

*HM Revenue & Customs requires SNC to take off tax from this interest. SNC must give Mr T 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 and in the provisional decision, I'm upholding Mr T's complaint in part.

Indigo Michael Limited should put things right for Mr T as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 28 July 2022.

Robert Walker
Ombudsman