

## **The complaint**

Mr F has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) gave him a facility he couldn't afford. He says, he had to take out payday loans to be able to afford the repayments.

## **What happened**

Mr F approached SNC for a Safety Net facility in September 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. Mr F was not advanced a payday loan.

Mr F was initially given a facility with a £200 limit in September 2017. His limit was then increased on five separate occasions taking his credit limit to £510 by February 2018.

SNC has told the Financial Ombudsman Service that as of April 2022, Mr F still owed it £647.93.

An adjudicator looked at Mr F's complaint and she thought SNC shouldn't have granted the facility. She said SNC had overestimated Mr F's income because it had included transfers from a third party. As a result, he couldn't afford to take on the facility because his outgoings exceeded his income.

On top of this, the adjudicator could see that Mr F was borrowing from a high cost credit provider and she could see in the transaction data there were a number of unarranged overdraft fees and unpaid transactions fees.

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

- The payments visible from a third party should be included in Mr F's income.
- These payments were received each month and were for regular amounts.

The adjudicator went back to SNC and explained why its comments didn't change her mind.

SNC responded and asked for an ombudsman to consider the complaint but it did also say it didn't believe the payments being received from the third party were loans – as the adjudicator suggested - given the references the payments received under were, for example 'food'.

SNC then provided a summary of the incoming and outgoing payments to that third party – which showed the credits were usually greater than the debits to the third party – but this also shows the amount Mr F received from the third party fluctuated from anything between £100 to over £1,100 per month between June 2017 and May 2018.

As no agreement could be reached the case has been passed to me for a 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, Mr F 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 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 Mr F 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 F had the facility SNC maintained read-only access to his bank statements, in order for it to allow SNC to monitor Mr F's finances and to allow it to carry out additional affordability assessments.

Finally, Mr F'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 F's facility was approved for £200 SNC needed to satisfy itself that Mr F 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 Mr F's income and expenditure because it had read only access to his bank statements for 90 days preceding the facility being granted. It then used an algorithm to establish what Mr F's income and expenditure was, and after completing this check, in this case, SNC was satisfied that Mr F 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 Mr F's situation before the facility was approved.

So, SNC may have reasonably believed based solely on the income and expenditure it established from the transaction data that Mr F may have been able to afford his repayments. However, there were other indicators within the bank transaction data that has led me to conclude that Mr F couldn't afford the facility.

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

Firstly, Mr F, as part of his application told SNC that he received around £600 per month in salary and was paid every other week. Looking at the transaction data, the two full months

that SNC had access to – July and August 2017 showed he received – from his salary £357.80 in July and £432 in August 2017.

So, I think it is fair to say that Mr F received a modest income, and SNC has already explained that it knew from the credit checks that he had around £2,600 of existing credit commitments. I think knowing this it ought to have thought very carefully about whether it approved this facility for Mr F given the modest monthly income he received.

However, in this case, SNC has argued that the money he received from the third party provided him with an additional income which made the facility affordable. The adjudicator said, in her view it was likely to be money that had been lent to Mr F and therefore needed to be repaid.

I've thought carefully about this, because SNC is correct in as much as if these credits are counted then it would provide Mr F with additional income and additional means in which to meet his repayments.

So, what I've done is review the amounts received from the third party and then what I can see being debited to them – as can be seen in the transaction data. I've done this because if Mr F was receiving and paying roughly equal amounts then that would, in my mind show that it couldn't really be classed as income because he'd have to transfer out that amount of money. The consequence of that would be a reduced income to be in line with the salary he received, which is mentioned above.

In July 2017 Mr F received around £408 from this third party, however, after reviewing the debits he returned £613 to the third party. So at least, in July, he paid back more than he received. In August 2017 he received over £1,100 of bank credits from the third party and debited over £700.

To me, it's clear the amounts he *could've* received from the third party can and did fluctuate, but equally, there is an attempt from the debit transaction data that some or all of this was returned during the course of the month.

So, whether the money he received was a loan and or to supplement his living costs it is clear from the data that some or all of the funds were being returned over the course of the month. So, while it may not be unreasonable to count some or all of the transfers received, it would also be fair to include the debits as well.

Overall, I think it's fair to say that Mr F's income was modest and the credits received from the third party either did very little to boost his income or actually meant Mr F was transferred more out of his income. This has led me to conclude, that the facility wasn't affordable given the other expenditure that I can see and which is detailed below.

Also, given the credits fluctuate it's very difficult to conclude how much extra money Mr F may or may not have had access to each month. While I thank SNC for providing me with a breakdown of the credits and debits received from the third party until May 2018, I don't think in this case it actually helps. After all it is the transaction data for the months leading up to the facility being approved which I've focused on because this is what SNC needed to consider to determine where he could afford the repayments.

There is also evidence throughout the 90 days of transaction data SNC had access to that Mr F was regularly using and repaying a high cost short term loan provider. In August 2017 for example, he made repayments to this lender towards three outstanding loans totalling £165. On top of this, in this month he also received new loans to the value of £450.

To me, this constant need for new borrowing from a high cost short term lender, as well as showing that he had, at times, at least three loans running concurrently, would not only have taken up a fair amount of Mr F's modest income but also, in my view shows that Mr F was likely already having problems managing his finances. I say this because he was in need of further credit over the 90 days which suggests that he was using these loans to fulfil an ongoing need rather than using them to cover a short term cash flow problem.

On top of this, I can also see payments for what I believe to be car insurance, a gym membership and then living costs for things such as petrol and food. Given the modest income and the fluctuation in money being paid and received from the third party and the evidence of high cost short term credit (and the amounts being paid towards the lending) ought to have led SNC to conclude that Mr F couldn't afford the facility – as he was already over stretched.

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

### **Putting things right**

Mr F has asked, in order to put things right that SNC should write off the balance of the debt, but I don't think that would be fair. But what SNC can't do, given I've concluded the complaint should be upheld is have charged interest on any of the drawdowns. So, what SNC needs to do is ensure that Mr F hasn't been charged any interest for using the facility.

However, should a balance remain, then it is fair and reasonable for SNC to try and recover any outstanding debt. I have therefore seen no reasons to depart from the well-established approach the Financial Ombudsman Service takes when putting things right for these sorts of facilities.

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

- A) Remove all the unpaid interest, fees and charges from the outstanding balance.
- B) Treat all payments Mr F has made towards his account since the start as though they had been repayments of outstanding principal.
- C) If at any point Mr F 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 F. 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. I would remind SNC of its obligation to treat Mr F fairly and with forbearance.
- E) SNC should remove any adverse payment information recorded on Mr F's credit file about this facility from the start.

\*HM Revenue & Customs requires SNC to take off tax from this interest. SNC must give Mr F a certificate showing how much tax it's taken off if he asks for one.

Finally, if Mr F asks, I think it's fair and reasonable for SNC to provide a breakdown of the compensation calculations.

### **My final decision**

For the reasons I've explained above, I'm upholding Mr F's complaint in full.

Indigo Michael Limited should put things right for Mr F as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 26 August 2022.

Robert Walker  
**Ombudsman**