

## The complaint

Mr J has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) didn't complete enough affordability checks before approving his Safety Net facility. Had it done so; it would've realised that Mr J couldn't afford the repayments.

## What happened

Mr J approached SNC for a Safety Net facility in April 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. Mr J was not advanced a payday loan.

Mr J was initially given a facility with a £300 credit limit in April 2016. His limit was increased on a further 12 occasions with his final increase – taking the credit limit to £1,000 in May 2018.

Mr J had some problems repaying his facility and SNC has told the Financial Ombudsman that as of March 2022 an outstanding balance remained due of £177.22. It also seems the facility was suspended in March 2020.

After the complaint was referred to the Financial Ombudsman, SNC made an offer to resolve the complaint. It explained it shouldn't have allowed Mr J to continue to use the facility after 29 December 2019. This offer was put to Mr J, but he didn't accept it and asked for the complaint to be investigated.

An adjudicator reviewed Mr J's complaint. She thought the checks SNC carried out before granting this facility were likely proportionate and showed that Mr J could afford to maintain his facility. But the adjudicator also concluded that due to the way Mr J used the facility, she thought SNC should not have allowed him to continue using it from 6 June 2018. The adjudicator partly upheld the complaint.

Mr J confirmed receipt of the assessment and agreed with it – although he did have some questions around the redress calculation and the tax that may need to be paid.

SNC disagreed with the assessment. In summary, it made the following points.

- Mr J had sufficient disposable income to repay the drawdowns within a reasonable period of time.
- SNC says the way Mr J was using the facility "*is not a bad thing*".
- While Mr J may have been serving the debt, he did have sufficient disposable income to repay the whole balance and therefore SNC wouldn't look to penalise him by withdrawing the facility from him.
- SNC reiterated the offer it made previously was fair and reasonable.

As no agreement could be reached the complaint has been passed to me for a decision.

Later on, Mr J made some additional comments which he wanted the ombudsman to consider. These comments are summarised below;

- He agreed with the outcome the adjudicator reached.
- SNC would take almost his entire salary each month – in order to repay the facility which forced Mr J to re-borrow from it.
- The estimates that SNC used for his income and expenditure were wrong which overestimated his income each month.

### **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 J 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 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, Mr J'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 J's facility was approved for £300 SNC needed to satisfy itself that Mr J would be in a position to make the minimum repayment of £20, by carrying out a proportionate check.

In this case, SNC had a fairly good idea of Mr J'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 J's income and expenditure was, after completing this check, in this case, SNC was satisfied that Mr J 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 Mr J accepts the adjudicator's opinion, that SNC wasn't wrong to approve his credit facility. For the avoidance of doubt, I also don't think SNC was wrong to have initially granted the facility. So, I say no more about this as the approval is no longer in dispute.

So, this decision will focus on whether SNC did enough to monitor Mr J's facility whilst he 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 Mr J to continue drawing down on the account

from 6 June 2018. This is because I think the way he was using the account indicated he 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 Mr J'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 J's actual financial position, because throughout the time of him having the facility it had read-only access to his bank account. By 6 June 2018 I think SNC had seen enough to have realised that Mr J's repayment of the facility was now unsustainable. By this point, SNC had seen read only statements since the end of January 2016 and it had seen how Mr J had used and managed the facility since it was granted in April 2016.

In order to see whether I think it was fair to allow Mr J to continue to drawdown, I've considered the relationship between when repayments were made to SNC, the value of those payments and then when Mr J returned for further borrowing. After all, if Mr J was drawing down similar sums within days of SNC taking a payment from his account this ought to have indicated that SNC was causing him 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 Mr J would typically repay his facility in full (or almost the whole outstanding balance), and then within a day or so, he'd start to draw back up to his available credit limit.

For example, between April 2016 and October 2016 Mr J would typically drawdown the whole credit facility before over the course of the month, making a payment shortly after being paid and then within a few days Mr J would start drawing down on the facility again getting back up towards his credit limit during the course of the month.

From October 2016 until January 2017, Mr J's pattern changed slightly, he would drawdown new money, but then appear to only make close to the minimum payment. Then from November 2017 Mr J would be paid, SNC would then take either the full outstanding balance (or the majority of it) before Mr J returned for further borrowing, normally within a day or so but no more than a week later.

From November 2017, Mr J at times was making significant repayments each month to SNC, at times around half of his salary – and on top of this Mr J had other costs that needed to pay as well as other creditors.

I do accept that Mr J didn't drawdown on the facility between February and October 2017 but during this time he was making repayments to SNC until May 2017. He didn't make any repayments or drawdowns on the facility between June – September 2017. However, even taking this into account, I don't think it detracts from what I've said above given that when Mr J returned for further borrowing the amounts he was borrowing increased.

While I accept what SNC said in response to the adjudicator's assessment in relation to paying the back the facility in a reasonable period of time, I don't think it was reasonable, by June 2018 to believe that Mr J would repay the facility over a reasonable period of time – given this hadn't really happened up to that point.

While there was a gap in usage, outside of this, and due to the increased credit limit Mr J was showing signs that he was borrowing more money each month and therefore his payments were increasing. For example, he drew down around £1,200 in May 2018 and made payments of around £850. These repayments were in my view a significant amount of his salary, given he was receiving an income at this time of around £2,000 per month.

So, I think it is far more likely, that Mr J would drawdown on the facility and then after being paid, SNC would then debit his bank account either with the majority of the outstanding balance or all of it.

In addition to what SNC knew about the way Mr J was now using the facility, he was also, in my view a long-term user of high cost short term credit loans. He had been making regular payments towards these sorts of loans since the start of the facility in April 2016, and by June 2018 he was still making repayments, for example, in March 2018 he repaid nearly £850 to such companies.

In May 2018, Mr J also was advanced another £300 from such a company. Knowing Mr J had been a long term user of this type of credit, which isn't designed for long term use ought to have made SNC realise, that he was likely having longer term money management issues rather than using the high cost credit to fill a short term need.

So from June 2018 Mr J had demonstrated that he wasn't using the facility as SNC had intended, he was borrowing down and repaying either all or the majority of the facility in the same month, and therefore was in effect taking multiple payday loans from SNC because he wasn't really benefiting from or making use of the interest free period of time.

But instead of either not or offering Mr J help, SNC continued to allow him to use the facility for around another four years. This meant that it would default to taking even larger payments from Mr J's account and therefore leaving a greater hole in his finances.

Overall and having thought about everything I think that SNC should've proactively intervened and contacted Mr J to arrange for him to repay what he 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 6 June 2018.
- B) Treat all payments Mr J has made towards their account since 6 June 2018 as though they had been repayments of outstanding principal.

- C) If at any point Mr J 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 J. 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 Mr J's credit file from 6 June 2018.

\*HM Revenue & Customs requires SNC to take off tax from this interest. SNC must give Mr J 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, I'm upholding Mr J's complaint in part.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 9 November 2022.

Robert Walker  
**Ombudsman**