

## **The complaint**

Mr W 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 W couldn't afford the repayments.

## **What happened**

Mr W approached SNC for a Safety Net facility in August 2018. 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 W was not advanced a payday loan.

Mr W was initially given a facility with a £300 credit limit. His limit was increased on a further three occasions with his final increase – taking the credit limit to £420 in February 2019. Mr W had some problems repaying his facility and SNC has told the Financial Ombudsman that as of October 2022 around £544 remains outstanding.

Mr W referred his complaint to the Financial Ombudsman Service after SNC had considered it and concluded it was reasonable to provide the facility to him.

An adjudicator reviewed Mr W's complaint. She thought the checks SNC carried out before granting this facility were likely proportionate and showed that Mr W could afford to maintain his facility.

The adjudicator also concluded that due to what SNC could see in the bank transaction data such as returned direct debit payments and making token payments towards his council tax meant it wasn't reasonable for it to have increased the credit limit in October 2018. This is the point the adjudicator upheld the complaint from.

SNC agreed with the proposed outcome, and it made an offer to settle the complaint based on upholding the complaint from the credit limit increase which it says occurred on 23 October 2018. SNC explained that as Mr W would still have an outstanding balance but this would be reduced to £232.30 once the refund, 8% simple interest and then tax deducted has been applied.

The offer was put to Mr W, and he said he wasn't happy with the outcome. But no further comments were provided as to why.

As no agreement could be reached the complaint 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 W wasn't given a payday loan. 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 ongoing affordability assessments.

Finally, Mr W'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 W's facility was approved for £300 SNC needed to satisfy itself that Mr W 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 W'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 W's income and expenditure was, after completing this check, in this case, SNC was satisfied that Mr W could afford the minimum repayment towards the facility.

SNC also carried out a credit search before the facility was granted. I've considered the summary of results SNC has provided, and while it knew that Mr W had defaulted on at least one account within the previous 12 months – SNC says the fact he was making repayments to a debt collection agency shows that Mr W was making headway into repaying his defaulted accounts.

In my view, 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.

Having reviewed the bank transaction data in the 90 days leading up to the facility being granted, I agree with the adjudicator that based on what SNC saw it was just about reasonable to have initially given Mr W his credit facility.

SNC had reviewed Mr W's bank transaction data from the end of May 2018. And looking at the full months (June and July 2018) I can see Mr W's monthly income is broadly in line with what SNC calculated it to be around £1,100. However, there are through the months a number of transfers into Mr W's account from third parties.

I can also see that Mr W had regular outgoings for things such as a telephone, television subscription service and food. Based on his monthly expenditure, it was reasonable for SNC to believe Mr W had sufficient funds to meet the repayments for his facility.

However, there is some concerning information due to the number of debt collectors that Mr W is paying for what is likely historic debts. The bank transaction data shows Mr W was making payments to at least 3 different companies. But, as there weren't any recent defaults, it's entirely likely the payments to the third parties related to historic debts that Mr W was now repaying.

Thinking, about everything else that I can see in the bank transaction data, I do think it was just about reasonable for the facility to be approved, as it seemed that Mr W would be in a position to afford to repay and service the facility within a reasonable period of time.

Although I don't think SNC was wrong to have initially granted the facility, I've gone on to consider how Mr W used the facility and what the bank transaction data showed SNC. But it's worth bearing in mind that SNC accepted the adjudicator's outcome to uphold the complaint from the October 2018. So, in this part of the decision, I'll be focusing on whether it was right or wrong to have allowed Mr W to use the account from its inception – August 2018 until the point that SNC has already agreed to uphold from, 23 October 2018.

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 W'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 had a good indication of Mr W's actual financial position, because throughout the time of him having the facility it had read-only access to his bank account.

In order to see whether I think it was fair to allow Mr W to continue to use the facility, I've considered whether there was any change to Mr W's situation which could be visible in the bank transaction data SNC had access to.

Initially, after the facility was approved, Mr W's bank transaction data doesn't show too much of a change - he is still receiving a similar wage each month and there are still a number of credits and debits to third parties. Mr W's outgoings remain broadly similar as well, for example he is still paying the debt collection agencies.

However, Mr W starts to have a number of returned direct debits each month – and this is a sign according to CONC 1.3 of a customer likely experiencing financial difficulties.

In addition, Mr W also starts to borrow from a high-cost loan provider – he borrowed £250 at the end of September 2018 and this loan would need repaying on top of the money that Mr W owed SNC as well as his other living monthly expenditure.

Overall, looking at the bank statements, it does seem that Mr W's financial position deteriorated, not that long after the facility was granted to him and I do agree, that the point at which the credit limit was increased in October 2018 was the point when SNC ought to have realised that Mr W was no longer in the position to repay and service the facility and that he was likely having problems managing his money.

Therefore, as SNC has already agreed to do, I do think a fair and reasonable point for the complaint to be upheld is when the credit limit was increased on 23 October 2018.

SNC has already accepted it was wrong to have increased Mr W's credit limit in October 2018 – and it has made an offer to settle the complaint from this point in time. For

completeness, I've outlined below what SNC has already agreed to do in order to put things right below.

### **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.

For completeness and in line with what SNC has already agreed to it, it shouldn't have allowed Mr W to use the credit facility from the credit limit increase on 23 October 2018.

- A) Remove all the unpaid interest, fees and charges from the account from 23 October 2018.
- B) Treat all payments Mr W has made towards their account since 23 October 2018 as though they had been repayments of outstanding principal.
- C) If at any point Mr W 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 W. 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 W's credit file from 23 October 2018.

It is likely an outstanding balance will remain due to SNC, and I'd remind SNC of its obligation to treat Mr W fairly and with forbearance – if necessary.

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 December 2022.

Robert Walker  
**Ombudsman**