

The complaint

Mr D, through his representative, complains that Indigo Michael Limited, trading as SafetyNet Credit, lent to him when he could not afford it.

What happened

Mr D's letter of complaint revealed that he did not appear to know the nature of the credit he had applied for with Indigo Michael as he had referred to it as a series of payday loans. This was a credit facility and they were not payday loans.

The credit Indigo Michael offered was a running account credit facility where a consumer could either request funds up to their credit limit, or funds would be deposited into their nominated bank account once their account balance fell below the "safety net" amount of the customer's choosing. There was the option for the customer to make manual withdrawals. The obligation on the customer was that they must repay at least a minimum amount each month.

A feature of the facility was that if the consumer's bank account balance dropped below a pre-set amount then Indigo Michael would effectively transfer money into that account to keep it above a certain balance. This was a feature often used to avoid straying into an unauthorised overdraft. Or if the pre-set limit was set to avoid going beyond the limit for an authorised overdraft then the net effect was the same – avoidance of unauthorised overdraft fees and charges.

Mr D applied in October 2017 and was given a facility with a £400 limit that month and his first drawdown into his bank account for £200 was on 18 October 2017. His credit limit was increased in line with the table below.

Statement dates	Starting Credit Limit
19 November 2017	£400
19 December 2017	£400
19 January 2018	£490
19 February 2018	£640
19 March 2018	£670
19 April 2018	£670
19 May 2018	£670

Indigo Michael says that it carried out checks about Mr D with a credit bureau and was able to analyse his transactional history from his bank account debits and credits it had access on a 'read only' basis to Mr D's bank account.

Mr D says he was in serious financial difficulty at the time and he does not accept that the checks carried out by Indigo Michael were acceptable.

Indigo Michael did not issue a final response letter – for very specific reasons which appear to have been resolved as it has not continued that line of argument with the Financial Ombudsman Service and so I say no more about it. Indigo Michael provided to us the file of papers we needed to proceed with the investigation in September 2022 after Mr D's representative had referred it to the Financial Ombudsman Service in April 2022.

One of our adjudicators looked at the complaint. She had reviewed the copy bank transactions to which Indigo Michael had had access before granting Mr D the credit facility. She had seen that in August 2017, Mr D's account transactions had recorded twelve returned direct debits as well as six returned direct debits in September 2017. And prior to his facility being approved, there had been nine failed direct debits within the first 17 days of October 2017. Furthermore, Mr D's direct debits continued to get returned even after the facility was approved. And it seemed that Mr D had been going into an unarranged overdraft position on his bank account in September and October 2017.

So, our adjudicator upheld the complaint from the beginning as she considered that there was evidence of Mr D having been in financial difficulty before the facility was granted.

Mr D's representative responded to agree to our adjudicator's view.

Indigo Michael's response was to concede that the direct debits being returned may have been a cause for concern but went on to say to us that it felt that this situation was being monitored and felt justified to lend to Mr D. It said that it considered the amounts borrowed within the limits set were repayable within a reasonable period and therefore complied with the regulations surrounding the provision of a credit facility of this nature.

After the adjudicator's view was rejected by Indigo Michael then the complaint was passed to me to decide.

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 have taken into account the law, any relevant regulatory rules and good industry practice at the time the credit account was offered. The Financial Conduct Authority ("FCA") regulated the provision of credit of this kind at the time Mr D applied. And the relevant regulatory rules in place at the time (2017) were set out in the Consumer Credit Sourcebook ("CONC") section of the FCA Handbook of rules and guidance. Those have been updated now but for the 2017 time I have reviewed the relevant regulations.

CONC 5.2 also included some guidance on the sorts of things a lender needed to bear in mind when considering its obligations under CONC 5.2.1. Section 5.2.4(2) said: *"a firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation."*

And CONC 5.3 contained further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1(1) said: *"In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit."*

CONC 5.3.1(2) went on to say: *“The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer’s ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.”*

A lender should gather enough information for it to be able to make an informed decision on the credit limit being offered. Although the guidance and rules themselves did not set out compulsory checks, they did list several things a lender could take into account before agreeing to lend. The key element was that any checks needed to be proportionate and had to consider several different things, including how much was being advanced and the credit limit set and whether it could be repaid within a reasonable time.

I am aware that a minimum payment was the contractual amount due to Indigo Michael and so to address this point I refer to this provision in CONC which was in place at the time:

CONC 5.3.1 (8) *‘For a regulated credit agreement for running-account credit the firm, in making its creditworthiness assessment...*

- (a) should consider the customer’s ability to repay the maximum amount of credit available (equivalent to the credit limit) under the agreement within a reasonable period;*
- (b) [omitted here];*
- (c) should not use the assumption of the amount necessary to make only the minimum repayment each month.*

I’ve reviewed the bank account statements transactions for the period leading up to Indigo Michael approving the facility in October 2017 and I have reviewed the credit search results it had obtained.

I agree with the summary of Mr D’s financial position by our adjudicator. Mr D’s direct debits appeared often to have been returned unpaid which was a sign of a person being in financial 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.

Added to which Mr D had been going into an unarranged overdraft which highlights his inability to keep all his repayments balanced with his income.

The credit search Indigo Michael had carried out showed that it knew Mr D had unsecured debt total of around £4,500 and had had two defaults. The results summary we have been sent is not detailed.

Overall I uphold Mr D’s complaint.

Putting things right

Indigo Michael needs to put things right for Mr D and so it needs to do the following:

- A) Remove all the unpaid interest, fees and charges from the account
- B) Treat all payments Mr D has made towards their account since as though they had

been repayments of outstanding principal.

- C) If at any point Mr D would've been in credit on his account after considering the above, Indigo Michael 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 Indigo Michael can use any refunds calculated as part of "C" to repay this. If a balance remains after this, then Indigo Michael should try to agree an affordable repayment plan with Mr D. If it has previously written-off any principal, then it shouldn't pursue outstanding balances made up only of principal it has already written-off.
- E) Indigo Michael should remove any adverse payment information recorded on Mr D's credit file

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

My final decision

My final decision is that I uphold Mr D's complaint and I direct that Indigo Michael Limited does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 23 December 2022.

Rachael Williams
Ombudsman