

The complaint

Mr R (through a representative) has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) didn't complete enough affordability checks before providing him with the facility.

What happened

Mr R approached SNC for a Safety Net facility in September 2019. 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 R was not advanced a payday loan.

Mr R was initially given a facility with a £100 credit limit in September 2019. His limit was increased on four occasions, with the final increase – taking the credit limit to £240 in October 2020.

Mr R's facility entered arrears in March 2022 and SNC has told the Financial Ombudsman that an outstanding balance remains due.

One of our adjudicator's looked at Mr R's complaint. She thought the checks SNC carried out before granting this facility were likely proportionate and these checks (which included considering the bank transaction data and a credit search) showed that Mr R would be able to afford the repayments he was committed to making.

Although, she did point out that when Mr R didn't work, he wasn't paid, and in the months leading up to the facility being approved, he was using savings to supplement his living costs. But overall, she concluded SNC had made a reasonable decision to provide the facility as well as the credit limit increases.

The adjudicator also concluded, that due to the way Mr R used the facility, SNC should have stopped allowing him to continue using it from 4 May 2021. At this point in time, the adjudicator was concerned at the way Mr R was repaying the facility and then quickly returning for new funds.

Mr R's representative acknowledged receipt of the adjudicator's assessment and said it had nothing further to add.

SNC disagreed with the assessment, and I've summarised its response below.

- No reasons were given as to why the facility was unaffordable or any justifications that suggested the facility was unsustainable.
- SNC disagrees that continued use of the facility, is itself a bad thing.
- Being indebted is of itself is not enough for it to suspend the facility.
- SNC's monitoring showed the facility was affordable to Mr R and was repaid within a reasonable period of time.

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 R 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 carry out additional affordability assessments.

Finally, Mr R'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 R's facility was approved for £100 SNC needed to satisfy itself that Mr R would be in a position to make the repayment of £20, by carrying out a proportionate check.

In this case, SNC had a fairly good idea of Mr R's income and expenditure because it had read only access to his bank statements for the year preceding the facility being granted. It then used an algorithm to establish what Mr R's income and what his expenditure was. After completing this check, in this case, SNC was satisfied that Mr R 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 prompted it to have carried out further checks before the facility was approved.

To begin with, it would appear Mr R has accepted our adjudicator's opinion, that SNC wasn't wrong to approve his running credit facility or to have increased his credit limit. For the avoidance of doubt, I also don't think SNC was wrong to have initially granted the facility or to have increased the credit limit – although I do have some reservations about Mr R's earnings at the time the facility was provided. But I haven't seen enough, considering the relevantly small facility SNC had provided to say it shouldn't have granted the facility or increased the credit limit.

So, this decision will focus on whether SNC did enough to monitor Mr R'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 R to continue drawing down on the account from 4 May 2021. 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) states that 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 R’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 R’s actual financial position, because throughout the time of him having the facility it had read-only access to his bank account. By this point, SNC had seen read only statements since September 2018 and it had seen how Mr R had used and managed the facility since it was granted in September 2019.

In order to see whether I think it was fair to allow Mr R 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 R returned for further borrowing. After all, if Mr R was drawing down similar 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 R would repay his facility in full (or at the very least the majority of the balance), and then within a short space of time, usually within a day or so, Mr R would start to draw back up towards his available credit limit. It does seem given the pattern of usage that Mr R would do this, typically at least twice each month, and had done so, since the inception of the facility.

When considering all of the information SNC had available to it about Mr R’s circumstances along with the payments SNC was collecting each month, I think by May 2021, it was clear that the facility had become unsustainable - and simply collecting the full outstanding balance on the account and then allowing Mr R to once again start to borrow funds that had been recently collected was detrimental to his financial situation. But instead of doing this SNC allowed Mr R to continue to use the facility.

Indeed, by April 2021, SNC was aware that Mr R’s income was around £1,500 per month and in April 2021 he borrowed almost the full amount available to him from SNC - £236. It is also worth saying here, that Mr R appears to have borrowed money from a family member.

However, his living costs – which are only the payments I can see for rent, travel, utilities and subscription services (and not including items such as food) came to around £1,100. So, the facility may have looked affordable.

However, in July 2021, Mr R repaid over £500 SNC – clearly repayments at this level were no longer sustainable given, the total of his core living costs and repayment to SNC was more than his income, which inevitably meant that in May 2021, he returned and borrowed a total of £240 (up to his credit limit). I think this was because of the hole left in his finances by repaying the facility.

By May 2021, Mr R had demonstrated that he wasn't using the facility as SNC had intended, he was borrowing down and repaying the facility in the same month, and therefore was in effect taking multiple payday loans because he wasn't always benefiting from or making use of the interest free period of time. This patterned continued for the rest of the relationship – the full balance was repaid and then within a day or so Mr R returned for further borrowing.

Overall and having thought about everything I think that SNC should've proactively intervened and contacted Mr R 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 4 May 2021.
- B) Treat all payments Mr R has made towards his account since 4 May 2021 as though they had been repayments of outstanding principal.
- C) If at any point Mr R 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 R. 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 R's credit file from 4 May 2021.

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 2 February 2023.

Robert Walker
Ombudsman