

The complaint

Ms M has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) didn't complete enough affordability checks before approving her Safety Net facility. She said the facility put her into a cycle of re-borrowing where as soon as she'd paid her facility, she'd need to borrow again in order to cover her bills.

What happened

Ms M approached SNC for a Safety Net facility in June 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. Ms M was not advanced a payday loan.

Ms M was initially given a facility with a £300 credit limit on 18 June 2018. Her limit was increased on a further six occasions with her final increase – taking the credit limit to £1,000 by October 2019. Ms M's credit limit was then decreased on two occasions, taking her limit to £910 in April 2022.

SNC's statement of account shows that as of November 2022 an outstanding balance remains due.

One of our adjudicator's looked at Ms M's complaint. She thought the checks SNC carried out before granting this facility were likely proportionate and she didn't uphold the complaint about the facility being granted or the credit limit increases that took Ms M's limit to £1,000.

The adjudicator also concluded that due to the way Ms M used the facility, SNC should have prevented Ms M from taking further drawdowns after 15 October 2020. At this point in time, the adjudicator was concerned at the way Ms M was using the facility as Ms M would appear to repay what was owed and then come back fairly quickly for further borrowing. The complaint was partly upheld.

Ms M acknowledged receipt of the adjudicator's assessment and she didn't have anything further to add.

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

- There were periods of time when Ms M didn't use the facility to its fullest extent.
- There are also times when Ms M didn't drawdown on the facility for a number of months.
- Ms M had a sufficient amount of disposable income each month to afford the repayments.

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.

SNC needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Ms M could repay the facility in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure.

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that SNC was required to establish whether Ms M could sustainably repay the facility – not just whether the facility was affordable on a strict pounds and pence calculation.

Of course, the facility being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

To start with, Ms M wasn't given a payday loan. Instead, she 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 finance and to allow it to carry out additional affordability assessments.

Finally, Ms M'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 Ms M's facility was approved for £300 SNC needed to satisfy itself that Ms M would be in a position to make the repayment of £20, by carrying out a proportionate check.

As Ms M appears to have accepted the outcome that was reached by the adjudicator. So, I no longer think SNC's decision to approve the facility is in dispute. Neither do I think are the credit limit increases up to £1,000 are in dispute. As no dispute remains, I won't be making a finding about those aspects of the complaint.

Instead, this decision will focus on whether SNC did enough to monitor Ms M's facility whilst she held it and whether there was a point which SNC should have halted any further borrowing on it. The adjudicator suggested this point was reached in October 2020.

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 Ms M’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 Ms M’s actual financial position, because throughout the time of her having the facility it had read-only access to her bank account. I also think, by October 2020 SNC had seen enough to have realised that Ms M’s repayment of the facility was now unsustainable.

In order to see whether I think it was fair to allow Ms M to continue to drawdown, I’ve considered the relationship between when repayments were made to SNC, the value of those payments and then when Ms M returned for further borrowing. After all, if Ms M was drawing down similar sums within days of SNC taking a payment from her account this ought to have indicated that SNC was causing her 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 Ms M would typically repay her facility, and then within a day or so, she’d draw back up to her available credit limit. But this pattern had been ongoing since the start of the lending relationship.

I accept that in this time there were two periods where Ms M wasn’t indebted to SNC. These are between October 2018 and April 2019 and then between May 2020 to August 2020. However, while this may show, that for these periods, Ms M didn’t have a need for credit. I don’t think it undermines the point that I’ve made about how Ms M used the facility between its inception and the uphold point of October 2020.

When considering all of the information SNC had available to it about Ms M’s circumstances along with the payments SNC was collecting each month, I think by October 2020, it was clear that the facility had become unsustainable - and simply collecting the full outstanding balance on the account and then allowing Ms M to once again borrow the funds that had been recently collected was detrimental to her financial situation.

For example, in September 2020, Ms M over the course of the month borrowed £2,000 from SNC and made repayments of £2,232. The amount Ms M repaid was actually the same as her monthly income – and on top of this she still had living costs to pay such as repaying another personal loan and a credit card. A similar pattern can also be observed in February 2020 – she repaid SNC over £1,500 against an income of around £1,800.

After the point that the complaint has been upheld, the above pattern broadly continued, I accept that Ms M didn’t always fully utilise the available credit but she still on a regular basis returned for further funds after SNC had collected its payment.

It isn't clear to me, how SNC thought Ms M would be able to manage her monthly finances, when there are times, as demonstrated above, where almost of all her income would be used to repay the facility. She would then have no choice but to return to SNC for further credit, in order to fill the hole in her finances, caused by making the payments to it.

So, when SNC allowed Ms M to continue using the facility after October 2020, Ms M had demonstrated that she wasn't using the facility as SNC had intended, she was borrowing down and repaying the facility in the same month, and therefore was in effect taking multiple payday loans because she wasn't benefiting from or making use of the interest free period of time.

Overall and having thought about everything I think that SNC should've proactively intervened and contacted Ms M to arrange for her to repay what she 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 15 October 2020.
- B) Treat all payments Ms M has made towards their account since 15 October 2020 as though they had been repayments of outstanding principal.
- C) If at any point Ms M would've been in credit on her 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 Ms M. 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 Ms M's credit file from 15 October 2020.

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

My final decision

For the reasons I've explained above, I'm upholding Ms M's complaint in part.

Indigo Michael Limited should put things right for Ms M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 7 February 2023.

Robert Walker
Ombudsman