

## **complaint**

Ms M has complained that Indigo Michael Limited (trading as Safety Net Credit ("SNC")) irresponsibly gave her and then increased a Safety Net facility in 2016.

## **background**

Ms M approached SNC for a Safety Net facility in late 2015. 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 customers choosing.

Ms M was initially given a facility with an initial credit limit of £400 in January 2016. Her limit was increased in increments until it reached £1,000.00 in September 2016.

One of our adjudicators looked at Ms M's complaint. He thought the checks SNC carried out before granting this facility were proportionate and so didn't think Ms M's complaint should be upheld. Ms M disagreed and asked for an ombudsman to look at his case.

## **my findings**

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 loans were offered.

Having carefully thought about everything I've been provided with, I'm not upholding Ms M's complaint. I'd like to explain the reasons for my decision.

Ms M says it was irresponsible for SNC to have given her this Safety Net facility. I think it would be helpful for me to start by explaining that SNC gave Ms M this facility when it was regulated by the Financial Conduct Authority ("FCA"). And the relevant regulatory rules in place at the time were set out in the Consumer Credit Sourcebook ("CONC") section of the FCA Handbook of rules and guidance.

Section 5.2.1(2) of CONC set out what a lender needed to do before agreeing to give a consumer a loan of this type. And it says a firm had to consider *"the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation"* as well as *"the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement (like Ms M's Safety Net facility), to make payments within a reasonable period."*

CONC 5.2 also includes some guidance on the sorts of things a lender needs to bear in mind when considering its obligations under CONC 5.2.1. Section 5.2.4(2) says *"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 contains further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1(1) says *"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) then says *“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.”*

In practice all of this meant that a lender had to take proportionate steps to ensure a consumer would've been able to repay what they were borrowing in a sustainable manner without it adversely impacting on their financial situation. Put simply the lender had to gather enough information so that it could make an informed decision on the lending.

Although the guidance didn't set out compulsory checks it did list a number of things a lender could take into account before agreeing to lend. The key thing was that it required a lender's checks to be proportionate. And any checks had to take into account a number of different things, such as how much was being lent and when what was being borrowed was due to be repaid.

I've kept all of this in mind when thinking about whether SNC did what it needed to before agreeing to Ms M's Safety Net facility. As explained, Ms M was given what was an open-ended credit facility. So overall I think that this means the checks SNC carried out had to provide enough for it to be able to understand whether Ms M would be able to both service and then repay her facility within a reasonable period of time.

SNC says it reviewed Ms M's bank transaction data for the three months prior to the facility being approved. And having done so it was satisfied Ms M wasn't experiencing difficulty meeting her existing commitments. It combined this information with credit checks and decided that Ms M would be able to maintain the facility he was offered.

Having carefully thought about everything provided and weighed this against what I've seen on Ms M's actual bank statements, while I don't entirely agree with all of the methodology used by SNC – for example, classifying all funds credited into Ms M's account as income, I do think SNC's checks were proportionate taking all the circumstances into account.

As explained, Ms M wasn't given a payday loan where she had to repay all of what she borrowed plus the interest due when she next got paid. She was given a facility where there was an expectation that she'd repay what she borrowed plus the interest due within a reasonable period of time. CONC doesn't set out what a reasonable period of time is. So I think it's important to note that a reasonable period of time will always be dependent on the circumstances of the individual case.

In this case, I think Ms M's bank statements – in the period leading up to her facility being approved – show that she did have enough disposable income to both service and repay a facility of £400 within a reasonable period of time.

I know that Ms M had historic payday loans, that there were also historic defaults recorded on the credit check SNC carried out (although not as many as on the credit file Ms M's provided) and that Ms M entered a debt management partway through having the facility. But I don't think that this means SNC shouldn't have lent to Ms M under any circumstances.

I think that the presence of payday lending, historic defaults and a debt management plan on Ms M's credit file means that SNC had to better scrutinise Ms M's income and expenditure. And by monitoring Ms M's bank account for three months before lending to her, I think that SNC did this here. Indeed, for whatever reason, Ms M doesn't appear to have taken after she was given her Safety Net facility until she started running into difficulties paying it back.

I've also thought about what Ms M's said about her gambling. But I don't think that SNC picked up all of Ms M's gambling transactions. From what I've seen a lot of them took place using a method which meant the transactions were more difficult to see. So I don't think it's unreasonable if these transactions weren't classified as gambling transactions when SNC carried out its affordability assessment.

In any event, even when those additional transactions are added to those that were picked up, I don't think it was enough to indicate that SNC shouldn't have lent to Ms M under any circumstances. Ms M's gambling increased in months where there were significant credits, which isn't in itself indicative of someone who is gambling, or more important borrowing, unsustainably. Ms M was making cash withdrawals. And I accept that it's possible these funds were also being used to gamble. But I've not seen enough here to persuade me that SNC realised this, or that it ought to have done either.

Equally as Ms M wasn't contractually obliged to completely repay her facility in full when she next got paid and the amount of interest she'd have to pay was capped, I don't agree it was unaffordable when it was first given to her – even taking into account the gambling (given her relatively low commitments elsewhere) or when the her credit limit was increased.

I accept that Ms M's financial position did worsen and as SNC continued monitoring Ms M's account, I think it had an obligation to step in when it saw this. But I think that SNC did that here. This is because SNC stopped Ms M from being able to draw down further funds. So I think that SNC did act responsibly and I don't think that Ms M's eventual difficulty in repaying her Safety Net facility means that it shouldn't have been given to her in the first place.

I want to reassure Ms M that I've looked at everything provided and thought about everything he's said. But having done so, I think the checks SNC carried out before giving Ms M's Safety Net facility were proportionate. So I'm not upholding this complaint.

I appreciate this'll be disappointing for Ms M, but I hope she'll understand the reasons for my decision and at least feel her concerns have been listened to. As Ms M currently has an outstanding balance, I'd remind SNC of its obligation to treat her positively and sympathetically should she be experiencing financial difficulty.

### **my final decision**

My final decision is that I'm not upholding Ms M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 18 January 2018.

Jeshen Narayanan  
**ombudsman**