

complaint

Mr M complains that Indigo Michael trading as SafetyNetCredit ('SafetyNetCredit') lent to him irresponsibly.

background

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 4 July 2016 – a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I felt Mr M's complaint should be upheld and what SafetyNetCredit should do to put matters right. I then invited both parties to provide further submissions before I reconsidered the complaint.

Mr M responded to say he accepted my provisional decision.

SafetyNetCredit responded in the strongest of terms to say it rejected my provisional decision. It responded with the following points:

- It said my provisional decision placed no weight on the fact that Mr M had transferred around £25,000 to savings accounts when he was a customer of SafetyNetCredit. It said that I ignored such savings which seriously distorted the picture of Mr M's financial health.
- It acknowledged that Mr M had payday loans and it might seem odd given he had such savings, but it said the suggestion that he was in financial difficulties defied logic. It said Mr M was free to arrange his own affairs and if he wanted to take out credit and save at the same time he was free to do so (so long as there was no affordability or other issues).
- It again set out examples of the significant transfers to his savings accounts that he made comparable to the interest he was paying for his SafetyNetCredit account.
- It did not consider the fact that Mr M had two defaults to be a reason not to lend to him given it was a sub-prime lender.
- It said the fact that my provisional decision had gone further than the adjudicator's view was not highlighted as a possibility in any documentation and the failure to indicate this may be a procedural error and was against the principles of natural justice.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Although SafetyNetCredit carried out an assessment of Mr M's current account and credit file, I don't think it applied proper consideration to what its searches revealed.

For example, it knew that he had opened and closed numerous credit accounts in the preceding two years and that he had received two payments into his account from other payday lenders in week before he opened his account with it. In addition, it was aware that Mr M had defaults registered on his credit file.

I acknowledge SafetyNetCredit's comments that a default on a credit file doesn't mean it shouldn't lend to customers. I did not suggest that to be the case. But I do think that –

depending on the circumstances of the default – it might mean that it becomes proportionate for a lender to make further enquiries of a customer before deciding to lend.

I set out in my provisional decision that I think significant transfers to a savings account is probably inconsistent with someone who: was paying interest to repeatedly borrow in the region of £200; had defaults within the preceding two years registered on their credit file; had opened 29 and closed 22 credit accounts in the preceding two years; and was clearly borrowing from payday lenders.

However, SafetyNetCredit continues to rely on the fact that Mr M was a man with significant savings to refute the fact that he was in financial difficulties. It said he saved around £25,000 in the two years he borrowed from it and so cannot be in financial difficulties.

For the sake of clarity, I reiterate that I have looked at Mr M's bank statements – specifically the account that SafetyNetCredit looked at, his 'savings' account and two other bank accounts. Money is moved regularly through the accounts in what appears to be an effort to cover outgoing payments and to prevent any given account going overdrawn. There is also a nature and pattern of spending on the account SafetyNetCredit looked at – namely transfers to an online payment wallet – which I think raises questions and which Mr M has credibly told us he used to channel his gambling. This pattern is repeated on other accounts – as well as regular payments to online gambling sites.

Had Mr M been saving at the rate suggested by SafetyNetCredit, I would expect to see a healthy credit balance. Instead, the picture is one of a chaotic set of finances with a reliance on payday lending complicated by gambling.

By way of specific example, between October 2013 and January 2014 there are around twenty payments to payday lenders leaving his bank accounts *each month* in addition to payments to debt collection agencies accounting for on average a third of his salary each month. His full credit file shows that, in addition to the defaults and the numerous credit accounts, he was at that time, in an arrangement to pay with two payday lenders and a credit card provider. He was also in sustained arrears on a home credit loan. I think a reasonable credit search would have revealed something of these financial difficulties.

Had SafetyNetCredit applied meaningful consideration to what it knew of Mr M, it should have been alert to potential financial difficulties and that should have prompted it to make further enquires before lending. For example, although SafetyNetCredit looked at the flow of money through one of Mr M's bank accounts, I can't see that it actually asked him about his income and expenditure, or what his outstanding credit commitments were, or about the fact that he was in arrangements to pay with other lenders.

Even if I were to accept, and I do not, that the transfers to a 'savings' account masked the fact that Mr M was in financial difficulties when SafetyNetCredit first lent to Mr M – I think there were further warning signs during the lifetime of Mr M's relationship with SafetyNetCredit that it overlooked. Most notably, from SafetyNetCredit's own analysis of Mr M's bank account, he paid between £600 and £1,000 each month to payday lenders or pawn brokers between October and December 2014. Yet it went on to allow him to withdraw money over that period – following which he entered into an arrangement to pay with it. And as soon as he cleared the arrears – it allowed him to withdraw money that very same day.

It appears as though Mr M was in an unmanageable cycle of gambling and payday lending. Having carefully reconsidered all of the information here, I don't think it was reasonable for

SafetyNetCredit to lend to Mr M from the outset. I therefore think it should refund all of the interest and charges incurred on this account with interest to be applied to the refunded amount. It should also remove reference to the account from his credit file.

SafetyNetCredit said there had been a procedural error in that none of our documentation indicated that an appeal to an ombudsman could result in a greater award. As a business operating under the jurisdiction of this service, the onus is on SafetyNetCredit to be familiar with our processes. Our rules provide that the ombudsman will determine a complaint based on what is fair and reasonable.

Having undertaken a review of the complaint I reached a different outcome to that of our adjudicator – which I am entitled to do. I issued a provisional decision setting out my thinking and providing SafetyNetCredit with an opportunity to comment – which it did. I have considered and addressed its comments in this final decision, but ultimately I am unpersuaded by them. I cannot see that there has been any procedural error or unfairness here.

my final decision

My final decision is that I uphold this complaint. To settle it Indigo Michael trading as SafetyNetCredit should:

1. refund all interest and charges applied to Mr M's account;
2. pay 8% simple interest per year on the refunded amounts from the date of payment to the date of settlement; and
3. remove reference to the account from his credit file.

If Indigo Michael considers that it's required by HMRC to take off income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a certificate showing this if he asks for one, so he can reclaim the tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 September 2016.

Siobhan Kelly
ombudsman

provisional decision

complaint

Mr M complains that Indigo Michael trading as SafetyNetCredit lent to him irresponsibly.

background

In January 2014, Mr M opened an account with SafetyNetCredit. It was a form of rolling credit with an initial limit of £200 rising to £280 at its highest in August 2015. Mr M was able to withdraw money from the account and repay it as and when he chose to but incurring interest for each day he didn't repay the capital amount. He was able to withdraw money at any point so long as he remained within his credit limit.

Mr M asked us to look at his complaint. We referred it to SafetyNetCredit in the first instance. It did not uphold his complaint. It said it considered its decision to lend to Mr M to have been responsible.

Our adjudicator didn't think SafetyNetCredit had lent responsibly. He asked it to refund all of the interest and charges it had applied to Mr M's account from March 2014 onwards.

SafetyNetCredit didn't agree with our adjudicator and so the matter needs an ombudsman's decision.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

SafetyNetCredit explained its product worked in a similar way to a credit card or an overdraft with customers being allocated a credit limit and then being able to borrow up to that limit. No fee was charged to withdraw money and interest was charged on a daily rate. Mr M was free to withdraw and repay the money so long as he remained within the limit.

It said it conducted a credit check when Mr M first opened the account in January 2014 and there was nothing on his credit file to explicitly suggest it shouldn't lend to Mr M. It said he had no open defaults and had a reasonable credit history.

In addition, it had access to Mr M's bank transaction data which meant it had sight of his salary, income and expenditure – as well as being in a position to watch out for signs of financial distress. Based on Mr M's regular salary and disposable income it said it had no reason to think Mr M could not afford the modest credit limit he was offered. It also highlighted that he regularly made significant savings transfers which it said clearly indicated he was not in financial difficulty.

While I accept that SafetyNetCredit carried out detailed checks, I do not think it applied proper consideration to the results of those checks.

It provided us with a summary of the information it received from its credit search. That showed one account had entered into default in the previous 12 months and another in the previous 24 months. When we asked it for further information, it told us that Mr M had opened 29 and closed 22 credit accounts in the preceding two years.

I acknowledge what SafetyNetCredit has said about regular transfers to a savings account. From the information, SafetyNetCredit provided, Mr M transferred around £25,000 to his savings account over the two or so years it lent to him, around £1,200 of which was in the three months before it lent to him.

But I think significant transfers to a savings account is probably inconsistent with someone who was paying interest to repeatedly borrow in the region of £200, with recent defaults on his credit file and who had opened numerous credit accounts in the preceding two years. And the bank statements it did

look at showed recent borrowing from payday lenders. They also showed a pattern of spending and money transfers which I think warranted further enquiry.

Having considered the information available to SafetyNetCredit as revealed by the credit search and Mr M's bank statements, I think there was enough to have made it alert to potential financial difficulties here and prompted it to make further enquires.

For example it could have spoken to Mr M about his account activity or asked to see statements for his other bank accounts. We obtained those statements and having looked at those I can see numerous payments to and from payday lenders. I think this indicates a reliance on short term lending products and the possibility of using credit to pay credit. And there was a pattern of spending that should have raised questions about the appropriateness of lending here.

I also think there were further warning signs during the lifetime of Mr M's relationship with SafetyNetCredit. For example, I can see from its assessment of his bank account that between January and December 2014 he was making monthly payments to payday lenders. Between October and December 2014 he paid between £600 and £1000 each month to payday lender's or pawn brokers. Yet it went on to allow him to withdraw money over that period – following which he entered into an arrangement to pay with it. And as soon as he cleared the arrears – it allowed him to withdraw money that very same day.

Having very carefully considered the circumstances of this complaint, I am not satisfied that SafetyNetCredit applied proper consideration to the information it had available to it when it first lent to Mr M. It seems as though he was caught in a significant cycle of payday borrowing and was in financial difficulties. Overall, I don't think it was reasonable for SafetyNetCredit to lend to Mr M in these circumstances.

I have taken a slightly different starting point to that of our adjudicator in that I don't think SafetyCreditNet should have lent to Mr M at all. So I think it should refund all interest and charges applied to Mr M's account. It should also remove any information entered on his credit file about the account.

my provisional decision

Subject to any further submissions I receive, my provisional decision is that I uphold this complaint. I intend to instruct Indigo Michael trading as SafetyNetCredit to:

1. refund all interest and charges applied to Mr M's account;
2. pay 8% simple interest per year on the refunded amounts from the date of payment to the date of settlement;
3. remove reference to the account from his credit file.

I now invite both parties to respond by 18 July 2016, after which time I will reconsider the complaint.

Siobhan Kelly
ombudsman