

complaint

Miss A has complained Indigo Michael Limited, trading as SafetyNet Credit, held her liable for a loan she never applied for. This resulted in a default being placed on her credit record and increased her costs when she went to re-mortgage.

background

In 2015 Miss A's new debit card was intercepted. This was used to get her account details. Three loans were applied for in her name and credited to her bank account. On 12 October 2015 a fraudster then transferred £20 out of Miss A's account 47 times. This was done using another bank's mobile payment service. By this stage Miss A's bank had already cancelled Miss A's debit card. Within a short period they also refunded £958.50 for the payments made without her authority.

Miss A got in touch with the loan companies involved. Two immediately accepted she'd not applied for these but SafetyNet Credit didn't. Over the next three years Miss A tried at various times to contact SafetyNet Credit and sort things out. They continued to believe she'd applied for this loan. In 2016 a default was applied to her credit record although Miss A didn't ever receive a notice to inform her of this.

During this period Miss A also tried to re-mortgage her properties which proved difficult. She felt the new rates she was paying were higher than those she'd paid previously.

In 2018 after getting nowhere, Miss A brought her complaint to the ombudsman service.

After our investigation, SafetyNet Credit agreed they'd remove the default from Miss A's record and accepted the application was "*probably*" made fraudulently. Miss A paid £350 to SafetyNet Credit on 20 September 2019. SafetyNet Credit put in place arrangements to have the default removed.

Miss A wanted us to consider the additional costs she'd had to meet because of the default. This included solicitors' costs and broker fees, as well as early repayment charges and other costs. Our investigator reviewed these in detail and asked SafetyNet Credit to repay most of these to Miss A, except the solicitors' costs. She also looked at the overall impact this had had on Miss A and asked SafetyNet Credit to give her £600 in compensation.

Miss A didn't believe this was enough compensation and was concerned her solicitors' costs weren't being met. SafetyNet Credit felt they couldn't be sure it was fraud. It seemed to them Miss A was unwilling to repay £350 which she'd had since October 2015 and they were unwilling to meet other costs.

Miss A's complaint has been referred to an ombudsman for decision. Her solicitor has also made further comments to the service.

I completed a provisional decision on 16 April 2020. Like our investigator I believed Miss A hadn't applied for the loan. I felt there'd been quite a delay in SafetyNet Credit taking Miss A's concerns seriously so I increased the compensation payable.

Miss A accepted this conclusion. SafetyNet Credit, however, made a number of comments. These included:

- They disputed Miss A had ever contacted them in 2015 when the loan was first granted. Their evidence showed she only contacted them in 2016 after she had received the default notice;
- They disputed my belief they were wrong in placing a default on Miss A's record as they'd been unaware of any issue prior to that time;
- A timeline of their contact with Miss A;
- Their view that as an experienced professional Miss A would have realised immediately the impact of a default notice on her record and she should have taken steps to mitigate the impact earlier;
- They disputed that the default notice alone would have impacted Miss A's ability to re-mortgage and it may well be due to the amount of credit accounts she had open in her name; and
- Re-opening issues around how someone could have taken our a fraudulent loan in Miss A's name when their checking procedures required a number of steps to had been successfully met

I now have all I need to complete my final decision.

my findings

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

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

When I completed my provisional decision I did this after reviewing our investigator's own detailed view of 29 November 2019. This included a clear timeline of what had happened. I've now reviewed this again following SafetyNet Credit's response to my provisional decision. I believe everything was properly covered in the view so I don't feel the need to repeat what was said. I should add, of course, that I did review all the information and the evidence behind it.

SafetyNet Credit referred to a number of issues in their response to the provisional decision. I will refer to these as relevant throughout this decision.

I have covered all the main aspects to this complaint in separate sections below.

fraudulent loan application

Firstly it's worth repeating Miss A was a victim of fraud. I'm in no doubt about this. Her bank immediately treated her as a fraud victim and sorted things out. As did two other loan companies. I've looked at all the evidence around this and believe it was clear from 2015 that Miss A's account had been misused. Someone unknown to her had applied for funds through loans and then made a large number of transfers out of her account.

SafetyNet Credit has told us someone would have needed Miss A's online banking details as well as other information about her to make a fraudulent application. I haven't reviewed in detail how someone was able to access Miss A's bank account and authorise transactions in her name. That isn't the subject of this complaint. But in my experience of disputed

transactions, it is not as unusual as SafetyNet Credit claims that all this information is compromised.

I've not seen sufficient evidence to show Miss A ever made the loan application. SafetyNet Credit therefore has no contractual agreement with her. There was no legal basis for them to have lodged a default on her credit record. SafetyNet Credit has provided us with no evidence to show they carried out an investigation into Miss A's claim about this loan. In 2016 she contacted them to say this was a fraudulent loan application after a default was applied to her credit record.

There's been an implication that Miss A was unwilling to reimburse SafetyNet Credit the original loan amount (which was part of what her own bank reimbursed to her). I don't think this was the case. As SafetyNet Credit never accepted the loan was fraudulent, she'd have been paying them £350 towards what they saw as a debt but which Miss A was adamant wasn't. She couldn't get them to remove the default and it was practically the only limited leverage open to her. As soon as it was clear the default was going to be removed, Miss A immediately called SafetyNet Credit to reimburse them. This was successfully completed on 20 September 2019.

compensation

There are two aspects to the compensation payable. Firstly I believe SafetyNet Credit were in the wrong putting a default on Miss A's credit record as there was no contractual relationship with her. My role, however, is not to punish businesses or decide whether they have breached regulations. That's for the regulator in the relevant field; in this case the Information Commissioner's Office. I review the impact on the individual and what compensation should be payable taking that into account.

I agree with SafetyNet Credit that at the time they placed the default on Miss A's record they may well not have known the loan had been taken out fraudulently. But they were aware of this when Miss A contacted them in April 2016.

The default was on Miss A's record from April 2016 until its removal in late 2019. During this period she was managing her different properties and trying to minimise costs where she could. She quickly found out how difficult this was with a default on her record. She was also looking to buy a car but found herself rejected for finance after companies searched her credit record. I'm not surprised by this.

Our investigator wondered whether Miss A had done enough to mitigate the impact of what happened. It was clear she hadn't come to our service until quite late. This is true. But when she first contacted SafetyNet Credit, she was never given a final response. This would have made it clear she could bring a complaint to us. SafetyNet Credit did not dispute this.

It also seems clear local support advice Miss A sought didn't inform her of this option either. Contrary to what SafetyNet Credit believes, it is completely possible that experienced professionals are caught unawares at moments like this. In any case as I point out below, Miss A took a number of steps to mitigate what had happened.

I've looked at what other steps she took around the time she first found out about the loans. She contacted credit reference agencies and took out protective registration so any future lenders would be aware of what had happened. She also contacted all the lenders involved

as well as the police. I don't think she can be accused of not taking what had happened seriously and not trying to sort things out.

SafetyNet Credit say Miss A didn't get in touch with them for the first time until April 2016. However I note they have not provided us with their full contact records. That said I don't dispute what they say. It is, of course, the impact of what happened from April 2016 onwards on Miss A that I am considering.

It was only in 2017 as Miss A was re-mortgaging that she realised the importance of what had happened and she was left with a default she couldn't shift. It seems to me there were substantial impacts on Miss A throughout the period the default was on her record.

Our investigator assessed £600 to be a fair figure. I believe this to be too low. I'm going to increase this to £1,500. Our website gives examples of what compensation could look like in cases like this – where we judge there to have been a substantial impact. I think somewhere in the range between the bottom (£500) and top (£2,500) of this category seems fair and reasonable.

refund of costs

In our investigator's view of 29 November 2019 she ran through all the individual costs Miss A had asked us to consider. I've reviewed those in detail along with the reasoning. She considered the costs Miss A had referred to her in an email of 15 October 2019. I've also taken into account Miss A's solicitor's email of 10 March 2020 providing us with further comments. I've also considered SafetyNet Credit's detailed submission to us on 29 May 2020.

Like our investigator, I won't be asking SafetyNet Credit to refund Miss A's solicitors' costs. Our service is informal and nobody is required to use solicitors to engage with us. Individuals can and do take their own decisions about when to use solicitors to tackle issues when they think they have no other options to manage their concerns. But this is not a cost we'd normally refund. I see no reason to take a different approach here.

However our investigator highlighted other costs which she felt were directly attributable to the issues arising from Miss A's defaulted credit record. I agree with her assessment.

I have considered SafetyNet Credit's argument there could have been other factors involved. That's possible but I think the overriding aspect that would have impacted her at this time would have been the default placed on her record by SafetyNet Credit for a loan she didn't apply for. It's difficult to ignore Miss A's own broker's analysis that the default was the reason behind the increased costs Miss A had to pay. These included:

- brokers' fee of £250 paid on 4 April 2019 (as evidenced by her bank statement);
- costs associated with having a new lender: their additional search fee of £245 along with landlord's fees of £84, tenancy check of £60, landlord's notice of £15 and bank charges of £42; and
- early repayment charge of £3,194.58 and the administrative fee to redeem the mortgage of £90;

These total £3,980.58. As these are out of pocket costs, it's also fair to ask SafetyNet Credit to add 8% simple interest a year to those costs. Miss A has provided us with evidence to

show most of these – except the brokers' fee – were paid on completion of her mortgage by being deducted from the payment made to her. This was on 24 June 2019.

Our investigator didn't include the cost of interest prior to redemption as she felt Miss A would always have had to repay additional interest whenever she chose to redeem the mortgage. I agree with our investigator's reasoning here and see no need to depart from her conclusions.

She also didn't consider higher interest rates that Miss A may have ended up paying being directly attributable. I agree. Miss A most likely would always have been paying higher interest rates as some of the properties are buy-to-let.

Our investigator also asked SafetyNet Credit to repay £350 to Miss A. This was the amount of the original loans. Obviously this can't be repaid to Miss A and all parties accept this. Miss A repaid the original amount in September 2019 which was the right thing to do.

I have to decide this case on the balance of probabilities, and considering the case overall and on balance I have decided the facts support the outcome as outlined above.

my final decision

For the reasons I've given, my final decision is to instruct Indigo Michael Limited, trading as SafetyNet Credit, to:

- ensure all data related to these credit agreements are removed from Miss A's credit record (this should have been completed in 2019);
- pay Miss A £1,500 compensation for the trouble caused;
- refund Miss A £250 for the cost of her brokers' fee;
- add 8% simple interest to that amount from 4 April 2019 until the date of settlement;
- refund Miss A £3,730.58 for other costs as detailed above; and
- add 8% simple interest to that amount from 24 June 2019 until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 10 July 2020.

Sandra Quinn
ombudsman