

complaint

Mr M has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) didn't carry out sufficient affordability checks before granting him a Safety Net facility in 2016. Mr M also says had SNC carried out sufficient checks, it would've seen that he couldn't afford it.

background

The background to this complaint was set out in my provisional decision dated 31 May 2019. An extract from this is attached and forms part of this final decision, so I will not repeat that information here.

In my provisional decision I set out why I was minded to uphold the complaint. I invited both parties to let me have any further comments and evidence. SNC didn't respond and so didn't provide anything further for me to consider. Mr M told us he didn't have anything further to add.

my findings

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

Mr M has accepted the findings of the provisional decision, and SNC hasn't responded, so I don't know what, if anything, it disagrees with. However, no new information has been provided so I see no reason to depart from the findings and outcome I reached in the provisional decision.

what SNC should do to put things right

To put things right for Mr M, SNC should:

- refund all the interest and charges applied to Mr M's Safety Net facility; and
- add interest at 8% per year simple on the above interest and charges from the date they were paid to the date of settlement †;
- remove any adverse information recorded on Mr M's credit file as a result of this facility having been given to him.

I understand that Mr M has an outstanding balance remaining on his Safety Net facility. If after having removed all the interest and charges applied from the outset, an outstanding balance remains, SNC can deduct this from the amount it now needs to pay Mr M.

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

my final decision

For the reasons given above, and in my provisional decision I uphold Mr M's complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 August 2019.

Robert Walker
ombudsman

EXTRACT FROM PROVISIONAL DECISION

complaint

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background

Mr M approached SNC for a Safety Net facility in 2016. 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 M was initially given a facility with a £400 credit limit in December 2016. His limit was then increased to £430 in January 2017.

One of our adjudicators looked at Mr M's complaint. He thought the checks SNC carried out before granting this facility were proportionate and so he didn't think it was wrong of SNC to have granted the facility. The adjudicator took account of the facts that there wasn't any significant adverse credit file information that SNC was aware of at the time. In addition, while the bank statements did show some gambling the adjudicator didn't think it was sufficient to have prevented SNC from granting the facility, as it would've believed that Mr M could afford the minimum repayment he was expected to make.

Mr M didn't agree with the adjudicator's assessment. He said that his income wasn't as high as the adjudicator believed. Mr M also believes that we hadn't considered his gambling losses. No agreement was reached, so the case has now been passed to me for a 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. 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 intending to uphold Mr M's complaint in full and I've explained my reasons for doing so below.

the relevant regulations in place at the time Mr M was given his Safety Net facility

I think it would be helpful for me to start by explaining that SNC gave Mr 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 Mr 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 that was due to be repaid.

I’ve kept all this in mind when thinking about whether SNC did what it needed to before agreeing to Mr M’s Safety Net facility. As explained, Mr 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 information for it to be able to understand whether Mr M would likely be able to service and then repay his facility within a reasonable period of time.

why I think SNC needed to do more before agreeing to give Mr M his Safety Net facility

SNC says it reviewed Mr M’s bank transaction data for the 90 days prior to the facility being approved. And having done so, it says it was satisfied Mr M wasn’t experiencing difficulty meeting his existing commitments. So therefore, it was likely he would be able to afford the payments he was committed to making.

SNC also carried out a credit check before the facility was provided, and it has provided us with the results. It was aware of some adverse information, such as a default. I don’t think this information on its own would’ve automatically led to SNC declining Mr M’s request for a facility. So based on the combined results of its review of Mr M’s banking transactions and the credit check SNC believed Mr M would be able to maintain the facility he was offered.

However, unlike the adjudicator, I don’t think SNC’s checks went far enough before granting the facility. Indeed, I think actually SNC needed to go further because I don’t think it is enough to simply obtain information about a consumer. What SNC also needed to do was react to what it was seeing, in a proportionate manner.

In this case, SNC’s checks showed that at times substantial sums of money were being transferred from the account it was reviewing to and from a third party electronic payments provider. This was on top of the transactions that SNC saw and categorised as gambling.

To be clear, I don’t think, in this instance that SNC needed to ask Mr M for access to his third party electronic payments provider account before agreeing to grant him the facility. But where a lender is aware that such a significant proportion of a consumer’s incoming funds are being transferred to other accounts and there are other flags in the transaction data obtained, I think it is proportionate to carry out further enquiries into these other accounts.

Given the amount of money being transferred along with the sheer number of gambling transactions that SNC saw, I think that SNC should’ve asked Mr M for more information in order to find out what was happening.

what I think SNC would've most likely found out if it had asked further questions

Even though I think that SNC should've asked Mr M further questions before giving this facility this doesn't, on its own, mean Mr M's complaint should be upheld. After all it's possible that further checks would've simply shown SNC that Mr M would most likely have been able to repay his Safety Net facility within a reasonable period of time. I therefore would see no reason why it shouldn't have given him the facility. This is because Mr M won't have lost out because of SNC's failure to carry out proportionate checks and there'd be no reason for me to uphold the complaint.

But if further checks would most likely have shown Mr M was unlikely to have been able to repay this facility then SNC would've seen that it shouldn't have lent to him. And this would mean that Mr M lost out because of SNC's failure to carry out proportionate checks. So there'd be grounds to uphold Mr M's complaint.

As proportionate checks weren't carried out I can't know what exactly they would have shown. But Mr M has provided us with some further clarification about his financial circumstances at the time the facility was granted. So I've been able to get a picture of what they were like.

I've carefully considered everything Mr M's told us as well as the information SNC has provided into its review of Mr M's financial position. Having done so, I don't think Mr M had the capacity to take on his Safety Net facility. As I've explained, based on what SNC had seen, I think that proportionate checks would've extended into finding out about more about the transactions in Mr M's account rather than simply adding up the credits received and deducting any outgoings.

I think if such checks had been carried out at that time they would've shown that Mr M was spending significant amounts of money on betting websites, indeed SNC was already aware of the majority of this following its review of his bank statements. However, in addition Mr M has also confirmed that the third party electronic payments provider transactions that were visible were also gambling transactions.

For example, in the month of October Mr M made 26 separate attempts to send money to his third party electronic payments provider account. And he appears to have moved around £3,800 out of his account and received credits of around £1,652. This is on top of the gambling that SNC categorised of £670.

And, in the month before the facility was approved (November 2016) SNC categorised £998 of gambling while also being aware of living costs (I've only counted direct debits or standing orders) of at least £1,500. And in the month of December, SNC was aware of over £4,811 of gambling.

I accept that SNC may have believed that Mr M's income was higher than it was, but it could only have believed this because it was counting credits to his accounts from his third party electronic payments provider account as well as any credits from gambling websites and online casinos. So in affect, SNC was counting gambling winnings as income, which I don't think is fair and reasonable. These winnings are not guaranteed and are not a sustainable source of income.

So, had SNC carried out further checks, it's likely that it would've seen that Mr M was spending significant amounts of money on gambling each month, and I think it's more likely than not it wouldn't have lent to him. I say this because it would've been clear that Mr M did have any disposable income in order to be able to afford the repayments to SNC in a sustainable manner without suffering adverse financial consequences.

Overall I think not only did SNC fail to carry out proportionate checks before giving Mr M his Safety Net facility, but that Mr M also lost out as a result of this.