

## Complaint

Miss H has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) didn't complete enough affordability checks before approving her a Safety Net facility. Miss H says SNC should have realised that her debts were increasing.

## Background

Miss H approached SNC for a Safety Net facility in September 2013. 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.

Miss H was initially given a facility with a £250 credit limit in September 2013. Her limit was then increased on a further six occasions with her final increase occurring in February 2016 which took her limit to £710. The facility was repaid and closed in February 2019.

One of our adjudicators looked at Miss H's complaint. He thought the checks SNC carried out before granting this facility were proportionate. And that the information SNC gathered about Miss H's circumstances suggested she would be able to afford the repayments. But due to the way she used the facility, our adjudicator thought SNC should have been stopped allowing Miss H to continue using it from 29 March 2014.

Miss H agreed with our adjudicator's opinion. SNC disagreed and provided the following complaint points:

- Monthly repayments are usually taken automatically when the bank balance increases, minimising the interest charged.
- Miss H's fixed term equivalent repayments were £312.40, which were always less than her disposable income and therefore by the FCA's definition, the product was always affordable.
- SNC offered Miss H its 'breathing space' feature regularly from March 2017, by which she could cap repayments if she found them to be too high. She only took advantage of this feature once - for 2 weeks in April 2018.

As no agreement could be reached the complaint has been passed to me for a 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. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

To begin with, Miss H seems to accept our adjudicator's opinion, that SNC wasn't wrong to approve her running credit facility. As I think the initial approval of her facility is no longer in dispute, I have no reason to reach a finding about that in this final decision. This decision will focus on whether SNC did enough to monitor Miss H's facility whilst she held it and whether there was a point which SNC should have halted any further borrowing on it.

*the relevant regulations in place at the time Miss H was given her Safety Net facility*

In its recent correspondence, SNC has made reference to regulations specifically CONC 5.2A.28. This states that “*a firm should consider the customer's ability to repay the maximum amount of credit available (equivalent to the credit limit) under the agreement within a reasonable period; and may, in considering what is a reasonable period, have regard to the typical time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the credit limit*”.

However, the above regulation came into effect from November 2018. As this was more than five years after Miss H's facility was approved, and nearly four years after our adjudicator thought the complaint should be upheld from – I've not put any weight on this regulation when thinking about whether SNC made an error.

Indeed, at the time the facility was approved, and at the point the adjudicator felt the complaint should be upheld SNC was regulated by the Office of Fair Trading (OFT) with guidance set out in the Irresponsible Lending Guidance (ILG).

#### *monitoring the facility*

Although I don't think SNC was wrong to have initially granted the facility, I do think it was wrong to have allowed Miss H to continue to drawdown on the account when she cleared her outstanding balance in March 2014. And I've explained why below.

At that time, SNC had an obligation to monitor the way Miss H was using her facility. This is outlined in the ILG – Principals for Business 2.2 says;

*“monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing financial difficulty...”*

And SNC was able to monitor the facility because it had access Miss H's bank statements.

This means I think SNC was wrong to have allowed Miss H to take further drawdowns after this date, as for the reason I'll explain below the way she was using the account indicated she wasn't using it in a sustainable manner.

When the facility was granted, I don't think it was unreasonable of SNC to have believed that Miss H would repay the outstanding balance over a reasonable period of time, which could result in monthly repayments of around £20. After all, this is what it was expected, and the way this facility was designed. But if Miss H wasn't using the facility as intended, this could indicate to SNC that she was having wider financial problems.

In order to see whether I think it was fair to allow Miss H to continue to draw down on the facility after March 2014, I've considered the relationship between when repayments were made to SNC; the value of those payments and then when Miss H returned for further borrowing. After all, if Miss H was making significant repayments to SNC, and then quickly drawing down a similar sum again in a matter of days, this ought to have indicated that she wasn't using the facility as it was designed to be used, and she therefore may not have been in a position to afford the repayments.

Looking at the transactions leading up to the balance being cleared at the end of March 2014, I think there was evidence which should've been enough for SNC to have stopped Miss H from take any further drawdowns. I'll set out the evidence for this below.

Miss H was initially given a facility with a £250 limit. Within a few weeks, she had requested further funds drawing up to her that limit. This is important, because when SNC approved the facility, it was entitled to believe that Miss H would repay what she owed over a reasonable period of time. But a few months into her borrowing, it was clear that Miss H wasn't repaying what she borrowed over a reasonable period of time.

Indeed, a review of the statement of account provided by SNC shows that in September, October and November Miss H borrowed, repaid – in full the amount she drew down and then by the middle of the following month Miss H would borrow again.

It appears that Miss H's borrowing behaviour changed in December 2013. On the day she was paid her salary, she paid £296.90 on 20 December 2013 to repay her balance in full. But a week later, she requested £300 which was approximately the same amount as she had recently repaid. Miss H, again, repaid her balance in full the day after. But within three days she had requested the approximately the same amount as what she had just repaid. And this pattern continued throughout January, February and March 2014.

Whilst SNC has said that Miss H could have paid what she owed in monthly instalments, it had evidence that she was not repaying her account in this way. And it needed to consider the manner in which Miss H was using her facility when it monitored the account. Miss H was showing a potential reliance on SNC's facility by needing to borrow each month, borrowing mainly up to her maximum credit limit within a few days of repaying what she owed in full. Although this wasn't a payday loan, Miss H was in effect using the facility as such.

So as I've said, the pattern had been established that Miss H would drawdown, repay a month later and then, because she couldn't sustainably afford the repayments, she would immediately return to SNC in order to fill a hole in her finances caused by making the repayments. Essentially, Miss H wasn't in fact repaying her balance, but paying interest to service the debt over an extended period of time.

SNC had read only access to Miss H's bank statements throughout this period – so it was able to review and monitor her bank activity. And this activity showed that she had continued to borrow and make repayments to other short-term lenders during the period she was borrowing from it. In my view, these were not the actions of someone in a stable financial position.

Miss H was receiving her salary at the end of each month along with child benefits and child tax credits. Her income was averaging around £1,688 in the months previous to 29 March 2014. Miss H's statements show she was paying for a mortgage, insurances, council tax, gas and electric bills. Her outgoings for these bills were equal to around half of her monthly income even without considering her expenses for food, petrol and her repayments to other short term lenders.

In addition to these costs, Miss H was continuing to make regular repayments (potentially to friends and family) of £181 on the last day of the month. Whilst we have little information about these payments, they were regular each month and could be seen on Miss H's statements from the start of her borrowing relationship.

When considering all of the information about Miss H's circumstances along with the repayments she was making each month, I think by 29 March 2014, it was clear that the facility had become unsustainable and allowing Miss H to continue using was detrimental to

her financial situation. I think this is further demonstrated by the way she continued to use the facility for a further five years in the same manner.

Overall, I think SNC should've withdrawn the facility from 29 March 2014 and not allowed Miss H to continue using it from this date.

### **What SNC should do to put things right**

To put things right for Miss H, SNC should:

- Refund all the interest and charges applied to Miss H's facility from 29 March 2014 until the account closed;
- add 8% interest per year simple on the above interest and charges from the date they were due to the date of settlement;\*
- remove any adverse information recorded on Miss H's credit file as a result of not stopping the facility from 29 March 2014.

\*HM Revenue & Customs requires SNC to take off tax from this interest. SNC must give Miss H 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 partly upholding Miss H's complaint.

Indigo Michael Limited should put things right for Miss H as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 15 June 2020.

Robert Walker  
**ombudsman**