

complaint

Mr S has complained that Indigo Michael Limited, trading as Safety Net Credit, gave him a Safety Net facility without carrying out proper creditworthiness and affordability checks.

background and findings

I issued my provisional decision on 25 September 2019 and gave Mr S and Indigo Michael until 9 October 2019 to look at it and then send me anything else they wished to me see. Mr S replied to say that he was happy with it.

Indigo Michael was sent the provisional decision at the same time and then another copy by email again on 1 October 2019. We have not heard from Indigo Michael. So I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

As Mr S has accepted my provisional decision and I have no new evidence or points from Indigo Michael, I see no reason to depart from my provisional decision.

My final decision is that I uphold Mr S's complaint from March 2016 to the end of the period when he was a customer with Indigo Michael. My provisional decision is attached and forms part of this final decision.

putting things right - what Indigo Michael should do

Indigo Michael needs to put things right for Mr S and so I ask it to do the following:

- refund all interest paid on the facility from March 2016; and
- pay 8% simple interest* a year on all refunds from the date of payment to the date of settlement; and
- remove the relevant negative payment information about the facility from his credit file.

* HM Revenue & Customs requires Indigo Michael to take off tax from this interest and it must give Mr S a certificate showing how much tax it's taken off if he asks for one.

my final decision

For the reasons set out above and in my provisional decision dated 25 September 2019, I uphold Mr S' complaint.

Indigo Michael Limited should put things right for Mr S in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision on or before 17 November 2019.

Rachael Williams
ombudsman

the provisional decision appears on the next page

my provisional decision dated 25 September 2019**background**

The credit Indigo Michael offered was a running account credit facility where a consumer could either request funds up to their credit limit, or funds would be deposited into their nominated bank account once their account balance fell below the “safety net” amount of the customer’s choosing. There was the option for the customer to make manual withdrawals. The obligation on the customer was that they have to repay at least a minimum amount each month.

A feature of the facility was that if the consumer’s bank account balance dropped below a pre-set amount then Indigo Michael would effectively transfer money into that account to keep it above a certain balance. This was a feature often used to avoid straying into an unauthorised overdraft. Or if the pre-set limit was set to avoid going beyond the limit for an authorised overdraft then the net effect was the same – avoidance of unauthorised overdraft fees and charges.

Mr S applied for the credit facility in March 2016. Indigo Michael assessed the previous 90 days of his bank transactions and assessed that he consistently had a high income and relatively few outgoings.

Indigo Michael has summarised its view as: Mr S ‘...*did not highlight any financial difficulty to [Indigo Michael] at any point, and when credit limits were offered these are subject to acceptance from the customer. He used the product successfully over a long period, and ceased use without an outstanding balance.*’

Using the information from Indigo Michael I have created a brief table to show the dates and the credit limits approved.

date of limit or increase	credit limit or increased sum
10 March 2016	£300
14 April 2016	£330
14 May 2016	£450
13 June 2016	£600
12 July 2016	£720
12 August 2016	£740
14 December 2016	£820
12 January 2017	£890
13 March 2017	£930

One of our adjudicators looked at the complaint and thought that Indigo Michael ‘*did sufficient checks and those checks would have shown that you could afford the facility. You have explained to me that that there were factors that meant you couldn’t afford the facility, but SNC wouldn’t have been aware of these.*’

Mr S describes the credit as a series of ‘loans’ but I think our adjudicator’s explanation has clarified that it was not. Mr S says that several things show ‘*flaws*’ in Indigo Michael’s systems. He has explained on several occasions that while he was a customer of Indigo Michael he used to receive emails from it which said it had noticed changes in his finances such that the credit may be reduced. Mr S says that this was wrong for it to have seen the changes and carry on offering credit.

Mr S has volunteered the information that he was addicted to gambling during this period and that he did not use websites but would remove cash from his account to gamble.

Mr M disagreed with our adjudicator’s opinions and the complaint was passed to me for a decision.

my provisional findings

I have considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have taken into account the law, any relevant regulatory rules and good industry practice at the time the credit account was offered.

The Financial Conduct Authority ("FCA") regulated the provision of credit of this kind at the time Miss M applied. 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.

CONC 5.2 also includes some guidance on the sorts of things a lender needed 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 should gather enough information for it to be able to make an informed decision on the credit limit being offered. Although the guidance and rules themselves did not set out compulsory checks, they did list a number of things a lender could take into account before agreeing to lend. The key element was that any checks needed to be proportionate and had to take into account a number of different things, including how much was being advanced.

Mr S was given an open-ended credit facility. The checks Indigo Michael carried out had to provide enough for it to be able to understand whether Mr S would be able to both service and then repay his facility within a reasonable period of time.

Indigo Michael's submissions to us refer to Mr S' gambling, his income, net gambling losses and gains. It describes Mr S' *'credit and gambling use'* as proportionate and that these were factored into the assessments. It gave some figures of what it described as net losses and net profits in relation to his gambling. And it also says that the gambling transactions *'...would certainly not constitute a reason to cease lending to the customer.'*

I do not agree.

Using the wording of the affordability assessment in the rules in CONC, the checks Indigo Michael was expected to carry out were to be proportionate to a number of factors, including Mr S' *current* financial situation and indications of *present or past* financial difficulties, as well as *future* financial commitments.

My view is that it would not be unreasonable to consider that significant sums being spent on gambling would be a *'current financial situation'* to be taken into account. And it's likely that this could be a fairly strong indication of present financial difficulty.

In addition, it is likely to mean that Mr S may have had an issue with repaying the credit in a 'sustainable' fashion within the meaning of CONC. Gambling is highly likely to lead to debt. And with a debt situation arising out of, or contributed to by, gambling, then a properly carried out affordability assessment was likely to lead a responsible lender to conclude that this credit facility was not sustainable for an applicant in that situation.

As well as this, Indigo Michael has indicated that it was aware of his use of other short term loan (STL) providers and that he had a county court judgement over two years before the initial assessment. And I can see from the files sent to us that Indigo Michael had lists of his STL activity. Mr S had STL debts almost every month. These files also reveal that Mr S was repaying to a debt collection agency £50 a month.

Despite this, Indigo Michael approved the credit facility and then increased the limit from £300 to £930 in about a year. And looking at the way that Mr S used the facility, frequently drawing down and making more than one repayment each month, led to him at times making repayments to Indigo Michael of between £1,700 or over £2,000 in a month. This included the principal borrowed as well as any interest due.

And Indigo Michael was aware of the bank transfers into his account as it said in its final response letter to him: *We could also see regular substantial bank transfers from various other sources that drastically increased the monthly income into your account.*

But on the information I have it does not look to me as though Indigo Michael checked what those were or related to.

minimum payment provision

I am aware that a minimum payment was the contractual amount and so to address this point I refer to this provision in CONC which was in place at the time:

CONC 5.3.1 (8) *For a regulated credit agreement for running-account credit the firm, in making its creditworthiness assessment or the assessment required by CONC 5.2.2R (1):*

(a) 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;

(b) [omitted here];

(c) should not use the assumption of the amount necessary to make only the minimum repayment each month.

I think that Indigo Michael's assessment of Mr S' financial situation was miscalculated and as such then the test to be able to repay this type of credit 'within a reasonable period' (CONC 5.2.1 as it was at the time) was not made out as Mr S was using a great deal of money to gamble. And the comprehensive and proportionate checks Indigo Michael carried out revealed this and still the credit was approved. And Mr S was even less in a position to repay this as the credit limits increased.

My provisional decision is that I am planning to uphold Mr S' complaint from March 2016 to the end of the period when he was a customer with Indigo Michael.

end of extract