

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. Mr M also says, had SNC carried out sufficient checks, it would've seen that he couldn't afford it.

background

Mr M approached SNC for a Safety Net facility in April 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.

Mr M was initially given a facility with a £100 credit limit in April 2013. His limit was then increased incrementally until it reached £170 in September 2013.

SNC reviewed Mr M's complaint and offered, as a gesture of goodwill, to write off the remaining balance of £190, which included unpaid capital of £121.02. Mr M didn't accept this offer and brought his complaint to our service.

One of our adjudicators looked at Mr M's complaint. She thought the checks SNC carried out before granting this facility were proportionate. However, the information SNC had available to it suggested that Mr M wouldn't be able to afford the repayments.

The adjudicator could see in the period leading up to the facility being approved that Mr M had taken out and repaid a significant amount of short-term lending. This suggested he had wider financial difficulties. In addition to this, the adjudicator could see that Mr M was spending significant sums on betting websites, which should've suggested to SNC that Mr M may not be able to repay his borrowing.

Overall, the adjudicator didn't think that SNC should've granted the facility, or any of the additional credit limit increases.

Mr M appears to have agreed with the adjudicator's recommendation, about whether the facility should've been provided. However, he has asked for an additional payment of compensation. He says the default recorded by SNC has impacted his ability to obtain further credit main stream credit providers. Mr M says as a result of not being able to borrow from high street lenders, he has had to borrow a significant sum from more expensive credit providers. He considers a sum of £1,000 to be reasonable.

SNC didn't respond to the adjudicator's assessment. So we don't know what it thinks about it. No agreement was reached, so the case has now been passed to me for a 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.

Having carefully thought about everything I've been provided with, I'm upholding Mr M's complaint in relation to SNC's decision to provide the facility. But I won't be upholding Mr M's claim for further compensation. I've explained my reasons for doing so below.

the relevant regulations in place at the time Mr M was given the 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.

To be clear, Mr M wasn't given a payday loan where he had to repay all of what he borrowed plus the interest due when he next got paid. He was given a facility where there was an expectation that he'd repay what he borrowed plus the interest due within a reasonable period of time, and at the start of the facility the minimum payment Mr M would've been expected to make was less than £20 per month. CONC doesn't set out what a 'reasonable period of time' is. So I think it's important to note that a 'reasonable period of time' will always be dependent on the circumstances of the individual case.

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 this facility within a reasonable period of time.

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 credit checks before the facility was provided, and it has provided us with the results. At the time of the facility being approved it was aware of some adverse information recorded with two credit reference agencies. SNC knew that within the last three months an account of Mr M's had defaulted, and he owed around £8,800 to other creditors excluding any mortgage.

I don't think this information on its own would've *automatically* led to SNC declining Mr M's request for a facility. But I do think, based on the combined results of its review of Mr M's banking transactions and the credit check, that SNC couldn't reasonably have believed he would be able to maintain the facility he was offered. In short, what SNC hasn't done is react to the information that it saw in either Mr M's bank statements or the credit check results.

SNC hasn't commented on the adjudicator's findings, which means it hasn't offered any evidence or arguments against them. So taking on board what I've seen, I do agree that this facility wasn't sustainable for Mr M from the onset, and for broadly the same reason as the adjudicator came to.

At the point that SNC approved the facility, it seems to me, that they had a fairly accurate idea of what Mr M's salaried income was – around £2,600 per month. However, SNC says that Mr M's income was actually larger than this. It has included benefit payments in reach that conclusion, which I don't consider to be unreasonable as these payments are used towards living costs.

However, I do have some concerns as to what SNC was counting as credits into the account. It seems there are instances, where it has categorised payday loans and gambling winnings as income, which, in my view is not correct. These weren't regular sources of income, and indeed, this is money that either wasn't guaranteed or needed to be repaid. And so SNC appears to have inflated Mr M's income.

As I've mentioned above SNC had read only access to Mr M's bank statements for the 90 days leading up to the facility being approved. And in that period, it was aware of a significant number of short-term loans being taken out and repaid. Indeed, some of these payday loans haven't been categorised by SNC's system correctly. So the number and amount that Mr M had taken was greater than SNC's system led it to believe.

From the bank statements that SNC has provide it looks like that Mr M had repaid nearly £2,600 to some lenders, and had borrowed just over £2,700 from the other short term loan providers.

Given the amounts Mr M was borrowing, relative to his income and what SNC believed to be his disposable income, I think it ought to have had some concerns that Mr M was having problems managing his finances. After all, Mr M was repaying other short term lending companies on average nearly £900 each month.

The overview of Mr M's account balance, showed that throughout the course of the time that he borrowed from SNC his account was significantly overdrawn. Although on its own, this wouldn't be a reason to automatically decline the facility, taken with the betting websites, and use of other short terms loans this should've indicated to SNC that Mr M wasn't in a position to take on this borrowing.

I can also see some payments to debt collection agents. While individual these payments wouldn't have affected the overall affordability, they do suggest that in the recent past Mr M had had some financial problems to the extent that companies were engaged in collection action – which ought to have raised some concerns with SNC around Mr M's ability to repay this facility.

Finally, I can see a number of online betting payments, Mr M appears to have spent around £1,200 on gambling in the 90 days leading up to the facility being approved. Again, on its own, this may not have been enough to decline the facility. But when combined with all the other factors that I've seen, I think this showed that Mr M was in no position to sustainably repay the borrowing he was asking for.

Overall, I don't think SNC should've provided this facility to Mr M, so it therefore follows that I don't think SNC should've allowed any of the credit limit increases either.

other considerations

Mr M has asked us to consider a payment of around £1,000 for the impact that the default SNC applied to his credit file had on him which included affecting his ability to obtain credit from high street providers.

Firstly, I'm very sorry to hear about the impact Mr M says this facility had on his finances as well as his health. And although, for the reasons I've outlined below I'm not intending to make an award, I am no way dismissing the health and financial problems Mr M says he had.

While I have no doubt having this facility didn't in the long run help Mr M's finances, this is already reflected in the award, as we're asking SNC to add 8% simple interest, in reflection of the fact that he has been deprived of the use of these funds.

However, what I cannot conclude, given what I can see on the bank statements is that the sole reason or even main, for the financial difficulty he has suffered is as a result of this facility. After all, I can see that Mr M was already borrowing from other short-term loan providers at least 90 days before this facility was approved.

Equally, while SNC will need now need to remove the default, I've not seen anything to suggest that the sole or main reason that Mr M has been unable to make use of main stream credit providers is as a result of the default applied by SNC. In short, the evidence does not suggest that Mr M's financial situation, or his credit file, would've been in any way substantially better had SNC not agreed to this lending.

And so, taking everything together including what Mr M has told us, it seems that while SNC shouldn't have provided him with this facility, I can't agree with his request to pay him £1,000.

what SNC should do to put things right

To put things right for Mr M, SNC should:

- remove any unpaid interest fees and charges from the current outstanding balance and then refund all the interest and charges applied to Mr M's Safety Net facility;
- add interest at 8% per year simple on the above interest and charges from the date they were paid to the date of settlement †;
- then deduct from the above refund any unpaid principal that remains due. If the above refund is sufficient to repay what Mr M owes, then the remainder of the refund should then be paid directly to Mr M.

If, however, the refund above isn't sufficient to repay the outstanding principal, then SNC and Mr M should try and come to a mutually agreeable repayment plan in order to repay what is owed. But I'd remind SNC of its obligation to treat Mr M *fairly*.

- remove any adverse information recorded on Mr M's credit file as a result of this facility having been given to him.

†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 I'm upholding Mr M's complaint.

Indigo Michael Limited should pay Mr M compensation 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 22 December 2019.

Robert Walker
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