

Complaint

Mr M has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) provided him a facility despite reviewing his bank statements which showed that he was gambling.

Background

Mr M approached SNC for a Safety Net facility in December 2018. 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 £450 limit. In total Mr M took two drawdowns, one on 22 December 2018 for £300 and then another one the next day for £150. Based on the statement of account provided by SNC, Mr M has had some problems repaying the facility, and an outstanding balance remains.

SNC reviewed the complaint, and based on the circumstances that Mr M found himself in, it agreed to waive the interest fees and charges on the outstanding balance and collect just the principal that was lent. It also said that once the balance has been repaid, Mr M’s credit file will be updated. Mr M didn’t accept this offer and instead brought his complaint to our service.

One of our adjudicators looked at Mr M’s complaint. He thought SNC’s offer to resolve the complaint was fair and reasonable – so he didn’t think SNC needed to do any more than what it had already agreed to do.

Mr M disagreed with our adjudicator’s assessment. In response he said he was given a facility he couldn’t afford to repay and the facility pushed him deeper into debt so the debt should be written off.

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.

As SNC has made an offer to settle the complaint, I don’t think in this complaint I need to make a finding on whether the SNC facility should or shouldn’t have been granted. Equally, given Mr M made his complaint fairly quickly, the facility didn’t run for a very long nor were there multiple drawdowns. So in this decision I’ll be considering whether the offer SNC has made in order to settle the complaint is fair and reasonable.

The adjudicator didn’t make a finding on whether the facility ought to have been provided, because in their view the offer made was fair and reasonable. So to start with it may help if I explain this service’s approach to what we think a lender should do to put things right for something, if we think a facility shouldn’t have been granted.

When a business has made an error – either because it accepts one has been made or we decide something has gone wrong – the starting point, for this service, is that a consumer should be put back into the position they would've been in had an error not been made. However, that is not always possible especially in cases that involve lending money.

In cases of irresponsible lending, such as this, this service has to acknowledge that the consumer has received a sum of money and has had the benefit of it. This is why in such cases we ask the lender to refund any extra that has been repaid by a consumer, so for example interest and charges. We also direct an additional interest payment to the consumer to reflect the loss of use of the funds. This has the effect of providing the consumer with an interest free loan. By doing this, in our view, a fair outcome is reached.

Turning to the specifics of this case, Mr M was granted a facility with a £450 limit – and I can see that this was drawn-down fairly quickly. But the statement of account provided to us from SNC shows that no repayments have been made – so this means, given our approach to these cases, there isn't money to be refunded directly to Mr M.

The balance that SNC has been chasing includes unpaid interest, fees and charges. Had this service decided the facility shouldn't have been granted we'd have asked SNC to remove those, meaning that it was only entitled to collect the principal sum lent of £450. SNC has already agreed to collect only the principal lent – which is in line with this service's approach – so I don't think SNC needs to do any more than what has already agreed too.

I've thought what Mr M has told us and I do have with sympathy for Mr M's position. I can quite understand why he wants the outstanding balance written off, and his liability for this facility to be ended. But, in the circumstances of the case, I'm not in a position to ask SNC to do that. I know Mr M will be disappointed by my decision – and I've explained why below.

This is because Mr M has had use of the funds and I don't think it would be fair in this case, to ask SNC to write off this balance. Mr M, as I've said, has used these funds and I think SNC is entitled to recover what was lent – which it is what it is proposing to do.

I accept that Mr M hasn't been in a position to repay any of the outstanding balance due, but I can't say in this case, that should mean SNC should write the balance off. But what SNC should do is treat Mr M fairly when dealing with him and consider all reasonable courses of action.

I appreciate this decision will come as a disappointment to Mr M, but I want to assure him that I've listened to his concerns, but on this occasion, I think the offer made by SNC to resolve the complaint is fair and reasonable.

Finally, what I would add is that SNC and Mr M ought to try and work together to repay the capital amount outstanding but I'd remind SNC of its obligation to treat Mr M fairly when doing so.

My final decision

For the reasons given above, the offer Indigo Michael Limited made to settle Mr M's complaint is fair and reasonable and it isn't required to undertake any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 June 2020.

Robert Walker
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