

Complaint

Mr P has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) didn't complete enough affordability checks before approving his Safety Net facility. Mr P says he had to borrow his full credit limit on a weekly basis, and it was irresponsible for SNC to keep increasing his credit limit as he was clearly dependant on the facility.

Background

Mr P approached SNC for a Safety Net facility in March 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 P was initially given a facility with a £200 credit limit in March 2016. His limit was increased on a further nine occasions with his final increase – taking his credit limit to £800 in July 2018. The most recent correspondence from SNC shows there is an outstanding balance of around £600 as of February 2019.

One of our adjudicators looked at Mr P's complaint. She thought the checks SNC carried out before granting this facility were proportionate. And that the information SNC gathered about Mr P's circumstances suggested he would be able to afford the repayments he was committed to making.

But due to the way Mr P used the facility –our adjudicator thought SNC should have stopped allowing him to continue using it from 9 July 2016.

Mr P agreed with our adjudicator's opinion. SNC disagreed and provided the following points:

- SNC thinks the product was eminently affordable throughout the duration based on Mr P's disposable income and the increases were well within his affordability profile.
- The increases to Mr P's credit limit were not as a result of changes in his circumstances, but as a result of SNC's increasing confidence in the management of his account.
- Over the life of the account (around 30 months), Mr P paid much more in principal than in interest (over 8 times more) and never paid any other fees and charges.

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 facility was provided.

To begin with, Mr P seems to accept our adjudicator's opinion, that SNC wasn't wrong to approve his running credit facility. For the avoidance of doubt, I also don't think SNC was wrong to have initially granted the facility. So this decision will focus on whether SNC did enough to monitor Mr P's facility whilst he held it and whether there was a point which SNC should have halted any further borrowing on it.

Although I don't think SNC was wrong to have initially granted the facility, I do think it was unfair for it to have allowed Mr P to continue to drawing down on the account from 9 July 2016. This is because I think the way he was using the account indicated he wasn't using it in a sustainable manner. I'll explain below why I think this is the case.

Firstly, under the provisions outlined in CONC (6.7.2) SNC had to:

"[A firm must] monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties"

And CONC 1.3 outlines some examples of what "financial difficulties" (which, of course, would be intrinsically linked to, and at the heart of, any "repayment difficulties") may look like;

The following matters, among others, of which a firm is aware or ought reasonably to be aware, may indicate that a customer is in financial difficulties;

- (1) consecutively failing to meet minimum repayments in relation to a credit card or store card*
- (2) adverse accurate entries on a credit file, which are not in dispute;*
- (3) outstanding county court judgments for non-payment of debt;*
- (4) inability to meet repayments out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the customer having to borrow further to repay existing debts, or the customer only being able to meet repayments of debts by the disposal of assets or security;*
- (5) consecutively failing to meet repayments when due;*
- (6) agreement to a debt management plan or other debt solution;*
- (7) evidence of discussions with a firm (including a not-for-profit debt advice body) with a view to entering into a debt management plan or other debt solution or to seeking debt counselling.*

So CONC sets out that SNC was required to monitor Mr P's use of the facility and then CONC 1.3 provides indications which could suggest that a customer was in financial difficulty. In addition to this, SNC has a fairly good indication of Mr P's financial position, because throughout the time of him having the facility it had read-only access to his bank account.

In its recent correspondence, SNC has made reference to (CONC) 5.2A.28 which states:

"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, which is after the period I'm considering here. And as SNC hasn't provided any context regarding its referral to this rule I fail to see the relevance of it in this case.

In any event I don't think it was unreasonable of SNC to have believed that Mr P would repay the outstanding balance over a reasonable period of time when the facility was first granted. And I think that this would have resulted in monthly repayments of around £20 –

given a credit limit of £200. After all, this is what was expected, and the way this facility was designed. But if Mr P wasn't using the facility as intended, this could indicate to SNC that he was having wider financial problems.

What I would point out here, is that even though it wasn't unreasonable for SNC to have assessed Mr P's ability to repay on the payments required to clear the balance over a reasonable period of time, at the outset, I'm mindful that the following provision is contained with the credit agreement for the facility;

- *We will only ever take a repayment when your Bank Balance is higher than your SafetyNet Level.*
- *We will never take a repayment which reduces your balance to the SafetyNet Level and therefore triggers a Credit Instalment. To make sure this is the case whenever we take a repayment we will always leave you a balance which is at least £20 above your SafetyNet Level.*
- *Subject to the above, the repayment amount will be the full amount you owe us in outstanding capital and interest whilst leaving you a Bank Balance which is at least £20 above your SafetyNet Level or such lesser amount as will leave you a Bank Balance at least £20 above your SafetyNet Level.*

The final bullet point is clear here – that SNC will collect the *full* amount owed should sufficient funds be present in the borrower's account. So this is why, I think, in this case, when SNC was monitoring the account, it needed to be mindful of Mr P's repayment record.

In order to see whether I think it was fair to allow Mr P to continue to drawdown, I've considered the relationship between when repayments were made to SNC, the value of those payments and then when Mr P returned for further borrowing. After all, if Mr P was drawing down similar sums within days of SNC taking a payment from his account this ought to have indicated that SNC taking the full payment from Mr P's account was causing him to once again borrow the funds that SNC had just taken.

Looking at Mr P's circumstances in the month prior to July 2016, SNC would have seen that Mr P was continuing to take out large amount in cash withdrawals – totalling £1,400 in June 2016. From the start of the borrowing relationship, SNC could see from Mr P's statements that he was regularly drawing out large amounts of cash. And in the four months he held his account, he had drawn out around £1,700 in March, £1,180 in April and £1,540 in May 2016.

These cash withdrawals were equal to the majority of Mr P's wages. This suggests that Mr P had other expenses elsewhere which couldn't be seen on his statements. In any event – the amount of cash being withdrawn couldn't go unexplained and I think this is something which SNC should have enquired about in further detail. Mr P has told us he had a relationship breakdown in 2016 and he was technically homeless. He's told us he was drawing out large amounts of cash to pay for places to stay, eating out a lot and was repaying money he owed to friends. I think the information Mr P told us about his circumstances at the time was reflected on his bank statements. So, I don't think what Mr P told us was unreasonable at the time.

In addition to this, Mr P's statements show a number of returned direct debits and standing orders which had been a regular occurrence on his statements. This was likely due to Mr P being paid weekly and not having enough funds in his account to pay a bill which was coming out monthly. I can also see Mr P had an outstanding payment to another payday lender when he borrowed £445. The repayment for this loan was due in July 2016 and it took

up the majority of his wages which was likely to cause a knock-on effect with his other normal living costs.

In my view, Mr P's account activity should've been enough for SNC to have proactively contacted him to arrange smaller payments as permitted by the agreement and in line with what it would take for the facility to be cleared within a reasonable period, rather than continue taking the full account balance on a regular basis. After all, I don't consider it fair, reasonable and proportionate to on the one hand argue that the facility was affordable because it could be repaid within a reasonable period of time when it never collected payments on this basis. And the credit agreement actually suggests to me that there was never any intention to collect payments on this basis either.

When considering all of the information SNC had available to it about Mr P's circumstances along with the payments SNC was collecting each month, I think by 9 July 2016, it was clear that the facility had become unsustainable - and simply collecting the full outstanding balance on the account and then allowing Mr P to once again borrow the funds that had been recently collected was detrimental to his financial situation. But instead of doing this SNC increased his credit limit. This meant that it would default to taking even larger payments from Mr P's account thus leaving a greater hole in his finances.

I think this is further demonstrated by the way he continued to use the facility for a further two and a half years in the same manner. I think that if SNC had proactively contacted Mr P and arranged to collect smaller payments, which were more in step with what he was able to pay; Mr P wouldn't have needed to keep borrowing as the hole left by SNC's collection of payments wouldn't have kept getting larger.

I've taken on board what SNC says about the cost of facility to Mr P. It has said that Mr P received over £37,000 in funds and only repaid just over £41,000.

SNC says that this means the facility was cheap for Mr P. But I'm not persuaded by SNC's argument or its analysis of the costs. The first reason I believe this is because the interest rate for this product is set at 0.8% per day. This is the same as the maximum daily interest rate high-cost short-term credit providers are permitted to charge. I think it's important to note that high-cost short-term credit providers are only entitled to charge these amounts for short-term periods rather than a reasonable period of time. I accept that SNC's terms and conditions meant that it could only charge this rate for a maximum period of 40 days. But I don't think that this helped Mr P because of the way that SNC was collecting payments from him.

This brings me onto my next concern with SNC's analysis. I think it's somewhat misleading to use a figure of £37,000 in any interest comparison as Mr P never had access to £37,000 from SNC. He only ever had access to a maximum of £800 and, in reality, most of the £37,000 SNC has referred to went back and forth between Mr P's account and SNC. In these circumstances, I don't think it's fair, reasonable or accurate to highlight the amount of interest Mr P paid in comparison to the total funds 'advanced' as Mr P wasn't provided with a loan of £37,000 with payments amortised to clear the balance within a reasonable period of time.

The more accurate way of assessing the cost of Mr P's facility is the amount of interest he paid relative to the funds he was in possession of at any one time. As I've explained the highest credit limit Mr P was provided with was £800. And while Mr P had this facility he had

an average balance of just under £600. He paid a total of £41,380.55 to SNC (as of February 2019) which was £3,883.44 more than the £37,497.11 SNC says he was 'advanced'.

Even then it's my understanding that there was an outstanding balance of around £675 on Mr P's account with SNC in February 2019. So for the roughly three year period I'm looking at Mr P had an average balance of around £600 with SNC and the highest amount of credit he could ever have at one time was £800. Yet he made £3,883.44 more in payments than total funds received and he still owed SNC £675.

So it's clear that SNC collecting Mr P's payments in the way that it did meant that Mr P paid a high amount of interest for access to a relatively small amount of funds. And the fact that Mr P still has an outstanding balance similar to his average over the period I've looked at means that he didn't make any real headway into what he owed. And in reality the amount of interest paid in proportion to the funds Mr P had available is very similar to interest payable on a high-cost short-term credit product. The only difference here of course is that the effect of SNC collecting payments and then providing drawdowns in this way is that it managed to keep this arrangement going for three years, which is something that a high-cost short-term provider wouldn't be able to do on a single agreement. Taking all of this into account I simply don't agree that this was a cheap product, or that SNC's argument means that it treated Mr P fairly and reasonably in this instance.

Overall and having thought about everything I think that SNC should've proactively intervened and contacted Mr P to arrange for him to repay what he owed within a reasonable period of time. Had it done this, I don't think that Mr P would have accepted the credit limit increase in July 2016 or continued using it in the same way from this date. As Mr P went on to pay extra interest and charges because SNC didn't intervene as I think that it ought fairly and reasonably to have done, I think Mr P has lost out as a result of SNC's actions.

What SNC should do to put things right

If the debt has been sold to a third party, SNC should, if it wishes, buy the debt back and then carry out the redress below. If it isn't able to, or doesn't wish to buy the debt back then it needs to work with the third party to achieve the same results.

- Remove all unpaid interest, fees and charges from the outstanding balance that were applied from 9 July 2016,
- SNC should rework the account from 9 July 2016 so Mr P only has to repay the principal borrowed and it should treat any repayments made by Mr P to SNC (and the third party if applicable) as if it went towards the principal balance.
- If and when Mr P had repaid enough to repay the principal, then any overpayment should be refunded to Mr P. To this overpayment 8% simple a year interest should be added from the date of the overpayment came due to the date of settlement*;
- However, if after doing the above, an outstanding principal balance remains, SNC should make an arrangement with Mr P to repay the balance. But I'd remind the lender of its obligation to treat Mr P fairly.
- remove any adverse information recorded on Mr P's credit file as a result of not stopping the facility from 9 July 2016 until the facility is closed,

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

My final decision

For the reasons I've explained above, I'm partly upholding Mr P's complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 June 2020.

Robert Walker
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