

## The complaint

Mrs M, through her representative, complains that Indigo Michael Limited, trading as SafetyNet Credit, approved a credit facility account for her without explaining what it was all about.

Her representative submitted the complaint letter to Indigo Michael in October 2020 which referred to the facility as '*short term credit finance product*' and that it had been mis-sold, and one of the reasons given by Mrs M's representative was '*Insufficient assessment and verification of outgoings were undertaken. In turn, insufficient affordable checks were conducted. Had they been undertaken it would have been apparent that the loans and accrued interest could not be sustainably repaid.*'

## What happened

Mrs M approached Indigo Michael for a credit facility in August 2019. 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. This was not a payday loan arrangement.

Mrs M was initially given a facility with a £450 credit limit in August 2019. Her limit was increased on a further two occasions with the final increase over the following weeks which took her credit limit to £600 in November 2019. Indigo Michael has told us that there was no further lending advanced to Mrs M after arrears occurred on the account in November 2019. A repayment plan was in place around November 2019 and the account was repaid in full in February 2021.

Mrs M instructed her representative in October 2020 and in the form she completed for that representative which formed part of her instructions to it, this is what she said:

*'I applied online and originally it was £750. I was asked if I had online banking and they asked to do an open banking check. The loan was allowed which was fine until it came to the end of the month and the full amount that I had borrowed was taken from my wages to repay the loan. I was not made aware this would happen and so was shocked to see that I [sic] only had half my wage left. I then applied to borrow the same amount which was allowed. ... Things were not made clear at the beginning or I would have never put myself into this hardship'*

Mrs M's representative sent to Indigo Michael its Letter of Authority (LOA) from Mrs M, and its complaint letter in October 2020. It framed the complaint as the mis-selling of five payday loans and included the form Mrs M had filled out in which she had said all this.

In response, Indigo Michael wrote to Mrs M's representative in October 2020 rejecting it as being a complaint received from what it considered to have been an unauthorised representative. So, it did not investigate and invited Mrs M to contact it directly to verify the instruction to the representative. Indigo Michael says it never heard from Mrs M directly.

Mrs M's representative referred her complaint to the Financial Ombudsman in March 2021

explaining it had not received a final response letter from Indigo Michael and asking us to advance the complaint.

In April 2021 Indigo Michael told us that it did not believe the Financial Ombudsman had the jurisdiction to consider Mrs M's complaint because it had not received a complaint from the customer or satisfactory evidence of their appointment of a third party to submit a complaint on their behalf.

The Financial Ombudsman continued to ask for Indigo Michael's account information and later in 2021, Indigo Michael did send us some details about Mrs M's application and her credit facility and our adjudicator considered it in 2022.

In March 2022 our adjudicator sent her view to both parties in which she said she thought that Indigo Michael ought not to have approved the facility for Mrs M.

Indigo Michael responded to object at length about the fact that we had advanced the complaint and reasserted its view that the Financial Ombudsman had no jurisdiction over it.

Indigo Michael made no reference to the merits part of our adjudicator's assessment of the complaint.

Our adjudicator responded to explain that the Financial Ombudsman had received a referral which she considered had been correctly made to the Financial Ombudsman on 15 March 2021 and we had informed Indigo Michael by email on 9 April 2021 that we would be looking into the complaint. As all these events happened more than eight weeks ago – the required time in the Dispute Resolution (DISP) rules which govern complaint - our adjudicator gave her view that this meant the complaint was within the jurisdiction of the Financial Ombudsman Service.

So, as the complaint had an unresolved jurisdiction issue and the merits of the complaint had not been agreed, to it was passed to me to decide.

I deal with the two elements I am being asked to consider separately under different headings.

### **Why I can look at this complaint**

I've considered all the available evidence and arguments provided by Indigo Michael as to why it considers this complaint to be outside of the Financial Ombudsman Service's jurisdiction. And I remind Indigo Michael that jurisdiction is a matter which the Financial Ombudsman determines and not the parties approaching it as complainant or respondent.

I've thought carefully about what Indigo Michael has said, but like our adjudicator explained, I'm not persuaded there is any reason why the Financial Ombudsman can't consider this complaint.

It is disappointing that Indigo Michael has taken the stance that it has in relation to this particular jurisdiction issue considering that, in my view, it is patently incorrect and it seems that Indigo Michael is simply delaying the resolution of this complaint.

Indigo Michael has clearly had significantly longer than the eight weeks afforded to it by the DISP rules to investigate and issue a final response to this complaint. Mrs M complained through her representative to Indigo Michael in October 2020 and I've seen nothing to persuade me Mrs M hadn't correctly authorised her representative.

The complaint was referred here in March 2021, and the Financial Ombudsman then wrote to Indigo Michael in April 2021 explaining the complaint was now being taken forward. It is now over a year since the complaint was originally made, and since it was referred to us, but Indigo Michael nonetheless disputes that it has not had eight weeks to consider the complaint. This is clearly wrong in my opinion.

Indigo Michael has had more than eight weeks in which to investigate the complaint and issue a response. I'm therefore satisfied that the Financial Ombudsman has jurisdiction to consider this matter in accordance with DISP and I can proceed to issue a decision on the merits of Mrs M's complaint, which is what I have gone on to do in the next part of this decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have considered 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 Mrs 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.

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 several things a lender could consider before agreeing to lend. The key element was that any checks needed to be proportionate and had to consider several different things, including how much was being advanced.

Mrs M 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 Mrs M would be able to both service and then repay this facility within a reasonable period.

To start with, Mrs M wasn't given a payday loan. It's disappointing that Mrs M's representative has framed the complaint incorrectly. Mrs M was provided with a credit facility where there was an expectation it would be repaid within a reasonable period. Interest is charged on any balance at 0.8% per day for the first 40 days following the drawdown. After the 40 days, a consumer will pay no further interest on that drawdown.

Throughout the lifetime of an account, Indigo Michael maintains read-only access to their bank statements to monitor a consumer's finances and to allow it to carry out additional affordability assessments.

Mrs M's expected repayment would be calculated to be 5% of the amount due plus any interest, fees or charges. But, a minimum amount of £20 would be expected to be paid.

Therefore, when Mrs M's facility was approved for £450 Indigo Michael needed to satisfy itself that Mrs M would be able to make the repayment of around £20, by carrying out a proportionate check.

In this case, Indigo Michael had a fairly good idea of Mrs M's income and expenditure because it had 'read only' access to her bank statements for several months preceding the facility being granted. It then used an algorithm to establish what Mrs M's income and expenditure was. After completing these checks Indigo Michael was satisfied that Mrs M could afford the minimum repayment towards the facility. It also carried out a credit search before the facility was granted. I've considered the summary of results Indigo Michael has provided.

Mrs M's explanation of her complaint to her representative and forwarded to Indigo Michael states that she was fine about the 'loan' and her real complaint seems to be that she did not understand the product.

She has said –

*The loan was allowed which was fine*

*Things were not made clear at the beginning or I would have never put myself into this hardship*

And the 'hardship' to which she refers was the fact that she found it difficult to repay.

So, I do not consider Mrs M's explanation to fit entirely with what her representative framed later as an irresponsible lending complaint.

However, Mrs M's complaint letter to Indigo Michael and the complaint form when Mrs M's complaint was referred here does refer to unaffordability:

*'Our client pursues a complaint relating to the mis-selling of short term credit against its parent company, Indigo Michael Ltd. [Mrs M] reports being in a debt spiral to the extent that loans were not affordable. It is alleged that Indigo Michael Ltd did not properly undertake affordability checks at each new instance of borrowing or assess signs of [Mrs M's] over indebtedness.'*

Our adjudicator approached it as an irresponsible lending complaint and did a thorough analysis.

Mrs M explained that the account she held was with her husband. Her income was from one source I will refer to as 'Income Source 1' and her husband's income was from another company and I will refer to it as 'Income Source 2'.

Mrs M informed our adjudicator:

*'All the long and short term loans on the account were in my name only. I had to pay them on a monthly basis and the normal household bills were split between us. My husband paid 70% of the rent as I would not have had enough money left to live on.'*

Our adjudicator asked Mrs M to send us some details of those loans – either by way of statements of accounts or a copy of her personal credit file – so that we could see the details and check in which names those other loans were held. But Mrs M has not been able to send us those details. In those circumstances I can't conclude that any, or all, of the loans or short term loans being paid for out of the joint account were hers alone.

Indigo Michael has sent us records of the information it wishes to share with us as part of the investigation and one record shows that it knew Mrs M's income was £1,200 from Income Source 1 and names that company as it appears on the bank statements transactions lists.

And yet it has assessed the income and expenditure on the basis that the income was around £3,666.

In accordance with CONC 5.2A.12, the FCA does envisage that a joint account can be the account a lender (here Indigo Michael) reviews before approving the facility. That part of CONC says:

*'The firm must consider the customer's ability to make repayments under the agreement:*

*(1) ....*

*(2) out of, or using, one or more of the following:*

*(a) the customer's income;*

*(b) income from savings or assets jointly held by the customer with another person, income received by the customer jointly with another person or income received by another person in so far as it is reasonable to expect such income to be available to the customer to make repayments under the agreement; and/or*

*(c) savings or other assets where the customer has indicated clearly an intention to repay (wholly or partly) using them;*

*(3) without the customer having to borrow to meet the repayments;*

*(4) without failing to make any other payment the customer has a contractual or statutory obligation to make; and*

*(5) without the repayments having a significant adverse impact on the customer's financial situation.'*

As I have demonstrated earlier, Indigo Michael seemed to know that Mrs M's salary was around £1,200 and from Income Source 1, and yet it appears to have assessed the joint income and outgoings as one money source, so I have reviewed it in the same way. Which means that it is irrelevant as to which individual had which of the loans to which Mrs M refers.

Although I am not able to distinguish which are Mrs M's transactions and which are those belonging to her husband, and I am not able to tell which of the other credit commitments are ones in Mrs M's name or her husband's name, I have looked at it holistically as that seems to have been the approach Indigo Michael took.

The transaction lists for the months leading up to August 2019 reveal:

- regular debt collector payments each month which indicate that they already had money troubles in the recent past,
- five different types of high cost lending arrangements which were either payments to, or credits from, a series of different lenders, plus a guarantor loan arrangement
- housing costs of £700 each month which had been designated by Indigo Michael's algorithm as 'disposable expenditure', which I understand to mean, in effect, non-essential expenditure. And I consider this to have been mis-categorised.

Therefore, Indigo Michael's calculation that the money left over was £1,201 needs to have been reduced by the housing cost of £700 = £501. Still, with the clear evidence that Mrs M and her husband were paying for and taking lots of credit regularly, then I agree with our adjudicator that this facility should not have been approved.

I uphold the complaint for Mrs M.

## **Putting things right**

Our understanding is that the debt has been repaid in February 2021. So, to put things right, Indigo Michael must:

- A) remove all the unpaid interest, fees, and charges from the account from August 2019.
- B) rework the account to treat all payments Mrs M made towards the account since August 2019 as though they had been repayments of outstanding principal.
- C) if at any point Mrs M would've been in credit on her account after considering the above, Indigo Michael will need to refund any overpayments with 8% simple interest\* calculated on these payments, from the date they would have arisen, to the date the refund is paid.
- D) my understanding is that there is no outstanding balance, but if there is an outstanding principal balance, then Indigo Michael can use any refunds calculated as part of "C" to repay this. If a balance remains after this then Indigo Michael should try to come to a mutually agreeable repayment plan with Mrs M for the outstanding balance.
- E) Indigo Michael should remove any adverse payment information recorded on Mrs M's credit file from August 2019.

\*HM Revenue & Customs requires Indigo Michael to take off tax from this interest. It must give Mrs M a certificate showing how much tax it's taken off if she asks for one.

## **My final decision**

My final decision is that I uphold Mrs M's complaint and Indigo Michael Limited needs to do as I have directed in the 'putting things right' part of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 8 June 2022.

Rachael Williams  
**Ombudsman**