

## **The complaint**

Mrs B (through a representative) has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) provided her with a credit facility she couldn't afford to repay.

## **What happened**

Mrs B approached SNC for a Safety Net facility in November 2017. 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. Mrs B was not advanced a payday loan.

Mrs B was initially given a facility with a £350 limit in November 2017. Her limit was increased on a further eight occasions with her final increase taking Mrs B's credit limit to £670 in April 2019.

SNC has told the Financial Ombudsman Service an outstanding balance remains and the balance on the facility as of September 2021 was £806.13.

One of our adjudicator's looked at Mrs B's complaint and she thought SNC shouldn't have granted the facility. The read only bank statements that SNC had access to showed that Mrs B had a significant number of outstanding high cost short-term credit loans and Mrs B was already making monthly repayments to a number of debt management providers. So, she thought Mrs B couldn't afford to take on this facility.

Mrs B's representative acknowledged receipt of the adjudicator's assessment, but no further comments were provided.

SNC disagreed with the assessment. In summary, it didn't make any points about the outcome that was reached. Instead, it focused on whether the Financial Ombudsman had jurisdiction to consider the complaint. In summary it said:

- It hasn't received proper authorisation from Mrs B to allow her representative to deal with the case.
- SNC says that due to concerns over the representative's authorisation no valid complaint has ever been made which is why no final response has been issued.
- SNC therefore says it doesn't believe the Financial Ombudsman has jurisdiction because no final response has been issued and so doesn't constitute a complaint as laid down by the rules (DISP).
- Although Mrs B's representative has provided a 'wet signature' SNC doesn't have anything to compare it too.
- The approach SNC takes to verify with a consumer is reasonable and has her privacy and data protection in mind.
- SNC has had concerns about the authority given and this has been backed up by the content of a 'Dear CEO' letter from the industry regulator.

The adjudicator responded to SNC's concerns. She explained SNC had been given more than eight weeks to investigate Mrs B's complaint following the representative's complaint and from when we informed SNC that the complaint would be taken on and progressed. As no agreement could be reached the complaint has been passed to me for a decision.

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

I've considered all the available evidence and arguments provided by SNC as to why it considers this complaint to be outside of the Financial Ombudsman Service's jurisdiction.

I've thought carefully about what SNC 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 SNC has taken the stance that it has in relation to this particular jurisdiction issue considering that, in my view, it is patently incorrect and is therefore simply delaying the resolution of this complaint.

SNC has clearly had significantly longer than the eight weeks afforded to it by the Dispute Resolution (DISP) rules to investigate and issue a final response to this complaint. Mrs B complained through her representative to SNC in December 2020 (I've seen nothing to persuade me Mrs B hadn't correctly authorised the representative), the complaint was referred here on 1 June 2021, and the Financial Ombudsman then wrote to SNC on 3 June 2021 explaining the complaint was now being taken forward.

It is now nearly a year later and well over a year since the complaint was originally made, but the firm nonetheless disputes that it has not had the eight weeks to consider the complaint. This is clearly wrong in my opinion.

SNC 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 can proceed to issue a decision on the merits of Mrs B's complaint.

### **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've also taken into account the law, any relevant regulatory rules and good industry practice at the time the facility was provided.

To start with, Mrs B wasn't given a payday loan. Instead she was provided with a credit facility where there was an expectation it would be repaid within a reasonable period of time. Interest is charged on any balance at 0.8% per day for the first 40 days following a drawdown. After 40 days, a consumer will pay no further interest on that drawdown.

I think it would be helpful for me to start by explaining that SNC gave Mrs B 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.

Overall, the guidance didn't require SNC to carry out any set level of checks, but it did require its checks to be proportionate and any checks had to consider a number of different things, such as how much was being lent and when the borrowing was due to be repaid. Put

simply, the lender had to gather enough information so that it could make an informed decision on the lending.

Throughout the lifetime that Mrs B had the facility SNC maintained read-only access to her bank statements to allow SNC to monitor Mrs B's finances and to allow it to carry out additional affordability assessments.

Finally, Mrs B'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 B's facility was approved for £350 SNC needed to satisfy itself that Mrs B would be in a position to make the repayment of around £20 per month, by carrying out a proportionate check.

In this case, SNC had a fairly good idea of Mrs B's income and expenditure because it had 'read only' access to her bank statements for the 90 days preceding the facility being granted. It then used an algorithm to establish what Mrs B's income and expenditure was, after completing these checks, in this case, SNC was satisfied that Mrs B 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 the results SNC has provided, and, I don't think these results on their own would've led SNC to either decline the application or prompt it to have carried out further checks into Mrs B's situation before the facility was approved.

However, having reviewed the bank transaction data in the 90 days leading up to the facility being granted, I agree with the adjudicator that based on what SNC had access to it shouldn't have advanced the facility.

The facility was approved on 12 November 2017, and SNC would've been aware from the transaction data, that Mrs B had repayment plans, for at least six different credit accounts to four different third-party debt collection companies. An indication that Mrs B had previously had some significant repayment problems that she still wasn't recovered from, because Mrs B was making only small individual repayments to these companies totalling around £110 per month.

It isn't unreasonable to conclude that if Mrs B could've afforded more than these companies would've expected her to repay given these were outstanding debts that needed to be paid. On balance, I'm satisfied that Mrs B couldn't afford to repay these companies any more than she already was.

But this does show, that Mrs B has had previous repayment problems which I think continued given what else SNC was aware of at the time.

In addition to this, SNC was aware that Mrs B was a regular user of high cost-short term credit in the months leading up to the facility being approved and had taken loans from at least four different companies. Indeed, at the end of October 2017, Mrs B had made repayments to two different providers to cover four different outstanding loans.

Knowing a consumer is both making a number of repayments each month towards previously unpaid creditors and is regularly using high cost credit ought to have alerted SNC that Mrs B wasn't in a position to take on the facility in a sustainable manner. SNC had access to the data and should've realised this by the checks it carried out.

So overall, the evidence of Mrs B using high cost short term loans and that she had a number of payment plans to debt management companies is to me, an indication of her having financial difficulties, and leads me to conclude that Mrs B wasn't able to afford the facility that SNC had advanced her.

I'm therefore upholding Mrs B's complaint in full and I don't think SNC should've approved the facility.

### **Putting 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.

- A) Remove all the unpaid interest, fees and charges from the start of the facility.
- B) Treat all payments Mrs B has made towards her account since the start of the facility as though they had been repayments of outstanding principal.
- C) If at any point Mrs B would've been in credit on her account after considering the above, SNC 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) If there is an outstanding principal balance, then SNC can use any refunds calculated to repay this. If a balance remains after this, then SNC should try to agree an affordable repayment plan with Mrs B. If SNC has previously written-off any principal, then it shouldn't pursue outstanding balances made up only of principal it has already written-off.
- E) SNC should remove any adverse payment information recorded on Mrs B's credit file about this facility.

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

### **My final decision**

For the reasons I've explained above, I'm upholding Mrs B's complaint in full.

Indigo Michael Limited should put things right for Mrs B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 9 June 2022.

Robert Walker  
**Ombudsman**