

The complaint

Ms 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

Ms B approached SNC for a Safety Net facility in June 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. Ms B was not advanced a payday loan.

Ms B was initially given a facility with a £250 limit on 21 June 2017. Her limit was increased on a further eight occasions with her final increase taking Ms B's credit limit to £580 in August 2018.

Ms B has had some problems repaying the facility and SNC has told the Financial Ombudsman the account was sold to a third-party collection agency but has since been returned to it. SNC has told the Financial Ombudsman Service the balance on the facility as of March 2022 was £506.94.

One of our adjudicator's looked at Ms B's complaint and he thought SNC shouldn't have granted the facility to her. The adjudicator explained the read only bank statements that SNC had access to showed that Ms B was spending a significant portion of her monthly income on betting websites. In addition, she also had two payments each month to debt collectors. So, he thought Ms B couldn't afford to take on this facility.

Ms 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 Ms 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 Ms 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. He explained SNC had been given more than eight weeks to investigate Ms 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. Ms B complained through his representative to SNC in October 2020 (I've seen nothing to persuade me Ms B hadn't correctly authorised the representative), the complaint was referred here on 19 March 2021, and the Financial Ombudsman then wrote to SNC on 6 April 2021 explaining the complaint was now being taken forward.

It is now 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 Ms 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, Ms 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 the 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 Ms 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 Ms B had the facility SNC maintained read-only access to her bank statements, to allow SNC to monitor Ms B's finances and to allow it to carry out additional affordability assessments.

Finally, Ms 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 Ms B's facility was approved for £250 SNC needed to satisfy itself that Ms 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 Ms 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 Ms B's income and expenditure was, after completing these checks, in this case, SNC was satisfied that Ms 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 would've led SNC to either decline the application or prompt it to have carried out further checks into Ms B's situation before the facility was approved.

However, having said the above, I've also 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 saw it shouldn't have advanced the facility.

In the 90 days before the facility was approved, I can see that most months Ms B spent a significant portion of her income each month on betting websites. For example, the month before the facility was approved (so looking at May 2017 transactions), Ms B's income was (considering benefit payments and salary) around £1,000. But she spent close to £700 on betting transactions.

A similar picture can also be seen in the April 2017 transaction date – where she spent again around 50% of her income on such transactions. In my view, this information ought to have led SNC to conclude Ms B shouldn't have been advanced any further credit because the repayments were unlikely to be sustainable for her.

In addition, there were signs that Ms B was having problems managing her money because there were a number of returned payment fees into the account as well as unarranged overdraft fees. A further sign in my view that Ms B may have been having financial difficulties.

Looking at the number of betting transactions, the value of those transactions as well as the other information contained within the bank statements that to me indicate financial difficulties – which SNC had access too. In my view, having seen this it ought to have concluded that Ms B shouldn't have been provided with further credit and therefore the facility shouldn't have been provided.

I'm therefore upholding Ms 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 Ms B has made towards the account since the start of the facility as though they had been repayments of outstanding principal.
- C) If at any point Ms 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 as part of "C" to repay this. If a balance remains after this then SNC should try to agree an affordable repayment plan with Ms 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 Ms B's credit file about this facility.

*HM Revenue & Customs requires SNC to take off tax from this interest. SNC must give Ms 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 Ms B's complaint in full.

Indigo Michael Limited should put things right for Ms B as directed above.

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

Robert Walker
Ombudsman