

## **The complaint**

R, a limited company, has complained New Wave Capital Limited, trading as Capital on Tap, continues to hold them liable for a debt that isn't theirs.

Mr A is a director of R and represents R in their complaint.

## **What happened**

In December 2019 after being pursued for a debt by a company (who I'll call L), Mr A complained to Capital on Tap. As far as he was concerned R had never applied for the credit card in its name which was related to this debt. Capital on Tap believed as they'd sold the debt to L, it was no longer their responsibility to consider R's fraud claim.

Mr A brought R's complaint to the ombudsman service.

Our investigator considered the evidence provided to us by Capital on Tap. This included copies of Mr A holding his passport which had been used as an ID check when setting up the credit card. On this basis our investigator felt it was most likely R had taken out the credit agreement.

Mr A showed that the transactions – relating to the £4,000 spent on the credit card – could not have been completed by him. He also indicated that he knew who'd been living in the property – a previous business address for R – and how they'd have been able to commit the fraud.

Our investigator revised her view and confirmed she didn't think R had taken out the credit card. She asked Capital on Tap to sort out what had happened and pay R £100 for the inconvenience caused.

Capital on Tap subsequently confirmed they were aware of a discrepancy between the bank account information they held on record relating to R's application and Mr A. However they still believed R could have been collusive in the fraud. They asked an ombudsman to consider R'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.

Having done so, I've reached the same outcome as our investigator. I'll explain why.

There's only one real issue at the heart of this complaint. If R didn't complete the credit card application or benefit from the money, can Capital on Tap still hold it liable?

To help me reach a decision, I've considered evidence from Capital on Tap including details of the credit card application which was completed online along with the supporting evidence they collated to complete their ID checks. We've also got evidence from Mr A, on R's behalf, including evidence which shows where Mr A was at times the credit card was being used

elsewhere.

Based on the most recent testimony from Capital on Tap, I don't believe there's now any dispute: R didn't take out the credit card. They have confirmed that the banking details belonged to another person resident at the address previously used by R (but not lived at by Mr A). The card was sent to this previous business address. Email and mobile phone numbers differ from those of Mr A. Whilst it's not unusual for people to use different phones and email addresses, there's nothing to suggest here that the details on the application match R or Mr A.

As business correspondence was sent to this previous address, I'm satisfied that the individual living there had enough information which they could use to make a fraudulent application in R's name.

Based on this, I'm satisfied R didn't apply for the credit card.

I've seen from Mr A's evidence that he – and the individual who appeared to be using the credit card – were often in different locations. Mr A has shared a work log which shows he was providing work services at the same time fraudulent transactions were taking place.

I've seen nothing to indicate that R has benefitted in any way from these transactions.

I've considered Capital on Tap's argument that R could have been collusive in this fraud. I accept this possibility.

However taking into consideration the effort Mr A has gone to in showing someone else was committing this fraud, I don't think this is the most likely situation here. I'd suggest that he would have been taking a large risk with R's reputation and the impact this potentially could have on his credit record by being collusive in a fraud where R was being pursued for the debt.

Overall I believe R didn't apply for this credit card. As Capital on Tap has no contractual agreement with R and I can't see that R benefitted from the funds, they can't ask R to repay the money or lodge any data about this agreement on R – or Mr A's – credit record.

### **Putting things right**

On the basis I've decided R didn't take out this credit card, or benefit from it, I will be asking Capital on Tap to clear any information from R's credit record about this credit card, cancel the credit card and stop asking R or Mr A to repay any debt.

I'm aware that Capital on Tap has already sold this debt on to a debt recovery agent, L. They'll need to make arrangements with L to ensure they also take no action to pursue Mr A or R for the debt. I leave it up to them to decide what arrangements are suitable as long as there is no impact on R.

Capital on Tap was insistent that they had no liability for reviewing whether fraud had happened at the point of application because they'd subsequently sold the debt. They argued this was for L to consider. This is incorrect and I'm sure this added to the inconvenience R had gone through in trying to get things sorted. On this basis I believe it's fair R is given £100 compensation for the inconvenience caused.

I may have considered other redress but in this case where the complainant is a limited company, our rules don't allow us to offer compensation for the trouble and distress caused to Mr A personally.

### **My final decision**

For the reasons I've given, my final decision is to instruct New Wave Capital Limited, trading as Capital on Tap, to, in liaison with L:

- Cancel the credit card in R's name;
- Stop pursuing R for repayment of a credit card debt as it didn't apply for it; and
- Remove any information from R's credit record (and Mr A if applicable) relating to this credit card, including any default data.
- Pay R £100 for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 22 March 2022.

Sandra Quinn  
**Ombudsman**