

## **The complaint**

Mr B complains about the actions of New Wave Capital Limited (trading as Capital on Tap) which have meant that he is being pursued for a debt owed by his company.

## **What happened**

Mr B told us:

- His limited company which I'll call 'S' took out a credit facility with New Wave for £4,000 in March 2017. In December 2019, New Wave began offering cards through a card scheme which I'll 'V' for the first time, instead of the previous card scheme which had been provided by 'M'. So, Mr B signed a new agreement. In 2018, S's limit increased to £6,900, in 2019 it increased to £16,600, in 2020 it increased to £27,000 and by March 2021, S's limit had increased to over £40,000.
- He decided to close S in July 2022 and asked New Wave to reduce the outstanding balance on the account as the company had already repaid nearly £14,000 but it wouldn't do so. He agreed a repayment plan with New Wave to repay £200 per month but this was only for six months, and he'd felt obligated to accept this.
- In November 2022, he asked New Wave again to reduce S's outstanding balance to around £14,000 to help him repay it. However, New Wave refused the offer and then sold S's account to a debt collection company (which I'll call 'Z') for around £13,700 – less than Mr B had offered – which he felt was unfair. He also thought the balance was too high as incorrect charges had been applied to S's account.
- He hadn't been aware that S's credit agreement had been supported by a personal guarantee. New Wave hadn't made this clear to him and if he'd signed the agreement, he hadn't understood this due to his vulnerability.

New Wave told us:

- S requested a revolving credit facility (the loan) in March 2017. After carrying out its checks, it sent Mr B – as director of S – the details so he could log into the customer portal and review and accept the agreement. Mr B signed a subsequent credit agreement and personal guarantee in December 2019 when it began issuing cards under a scheme provided by V rather than M.
- Mr B had been given the loan agreement and a personal guarantee agreement which he ticked electronically to say he understood and accepted. As a lender, it asks that all borrowers are personally guaranteed by their directors.
- Mr B had been given the opportunity to download a review all documents before agreeing to them, and the documents highlighted that it was recommended that borrowers seek legal advice before accepting the agreement. The agreement clauses made it clear that if S couldn't repay the loan, then New Wave would seek repayment from Mr B.

- Mr B contacted it in July 2022 and said that S was closing, and he intended to open a new business. Mr B requested the account be transferred to the new business, but this didn't meet its eligibility criteria, so his request was declined. It had reminded Mr B of his outstanding balance and the personal guarantee that was held for S's debt.
- In August 2022, Mr B again asked for the account to be moved to the new business, but he wasn't a director, so the request was declined. Then in September 2022, it received notification that S was now inactive, so their account had ceased with immediate effect.
- Mr B requested an arrangement to repay S's account. During September and October 2022, this was discussed and agreed with Mr B – eventually agreement was accepted with repayment of £200 per month which started in November 2022. The agreement was met until April 2023 when the payment was missed. S's account was terminated, and the debt sold to Z.
- Mr B was unhappy that S's debt had been sold to Z, but it had acted in line with the account terms and conditions by doing so. It didn't think it had acted unfairly.

Our investigator didn't recommend the complaint be upheld. He was satisfied that Mr B had given the personal guarantee in 2017, and even if he hadn't, he said that Mr B had given a new personal guarantee in 2019 when New Wave moved from M to V as the card scheme provider. He also said that Mr B had emailed New Wave in September 2022 and said that he understood the account had a personal guarantee. The investigator also noted Mr B's comments about the sale of the debt even though he was vulnerable. But he said that Mr B wasn't New Wave's customer, S was so this was reasonable. He also said that complaint handling wasn't something we could consider.

Mr B didn't agree. He said that New Wave had taken advantage of him as he was vulnerable and that he hadn't understood the documents he'd been signing and what they had meant. He accepted that New Wave could sell accounts, but it shouldn't have sold his as it was aware of his vulnerability. He believed that New Wave had acted unreasonably.

I issued a provisional decision on 29 April 2024. I said the following:

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 decided to uphold it in part. I'll explain why. Firstly, I need to make clear to Mr B that as S entered into an unregulated credit agreement with New Wave, the rules around affordability for guarantors, treating customers fairly and dealing with customers with vulnerabilities are different to a regulated agreement. So, when considering if New Wave has treated Mr B fairly, we consider what would be considered good industry practice, for example guidance from the Lending Standards Board.

Mr B told us that he hadn't understood the personal guarantee when he signed it, and that New Wave had taken advantage of him due to his vulnerabilities. However, I've seen that S's agreement and the personal guarantee documents say that guarantors should seek independent legal advice before agreeing to be bound by them. I haven't seen any evidence that Mr B made New Wave aware that he didn't understand the implications of what he was signing, or that he made the lender

aware of his vulnerabilities before November 2022. I also think it's reasonable to believe that as Mr B was aware of his needs, he could have sought assistance before signing any documents – in the same way he did when bringing his complaint to our service. So, I think it was fair for New Wave to rely on the personal guarantee(s) provided by Mr B to support S's borrowing.

Mr B also says that New Wave behaved unreasonably in its interactions with him after it had called upon the personal guarantee, and it was aware of his vulnerabilities – in particular he feels it was unfair for the lender to review the repayment plan every six months. But I think it was reasonable that New Wave wanted to periodically review Mr B's circumstances. Mr B had agreed to make a substantially reduced repayment, and given that he'd told New Wave he had a limited income, I think it was understandable that it wanted to review the repayments were still affordable and that his circumstances hadn't changed during that period.

I recognise that Mr B says he told New Wave that he would find this regular contact stressful due to his vulnerabilities, and that he feels this was a deliberate act by the lender so it could sell on the outstanding debt. However, whilst the expectation is that New Wave should support Mr B, and make reasonable adjustments as required, this doesn't mean that the lender has to provide a bespoke process for him, such as not contacting him further. This also wouldn't be in line with what we'd expect New Wave to do as a responsible lender.

New Wave has told us that once Mr B had made it aware of his circumstances, it stopped charging him interest, and agreed an affordable repayment plan for six months with him. It also asked that Mr B contact it after the six months had passed so it could agree a new repayment plan – but he didn't do so. However, in any event, regardless of the term of the reduced repayment agreement, it was still able to pass the debt to a third-party as it had done here. I can see that New Wave did make Mr B aware that it could pass the debt on to a third-party - even if the agreement was still in place - in its email to him in November 2022.

It's a commercial decision that New Wave is able to make on how it manages accounts that haven't met their repayments or have defaulted. So, I don't think New Wave behaved unreasonably in passing Mr B's debt to a third-party. However, I do think New Wave could have supported Mr B better when he initially made the lender aware of his circumstances. I say this because, whilst New Wave did stop charging Mr B interest in November 2022, he'd contacted the lender in early September 2022, and again in late September and early October and it hadn't taken any action. So, it took two months for the lender to provide Mr B with any assistance, despite being aware he was in financial difficulty. I don't think this was fair.

I put my thoughts on this to New Wave, and the lender has agreed that it should have provided Mr B with assistance sooner. It has therefore offered to remove the interest that was applied to Mr B's account from 12 September until 11 November 2022, and pay £200 compensation for the inconvenience caused by not assisting him more quickly. I think this offer is fair under all the circumstances.

I recognise that Mr B will be disappointed with my decision as he wanted New Wave to take back the debt from the third party, reduce the outstanding balance to £14,000, and allow him to continue with his reduced repayment plan until the full debt is repaid. However, as I don't think New Wave behaved unreasonably in passing the debt to the third-party, I won't be asking the lender to do anything further here. As the debt is now managed by a third-party, Mr B should contact the third-party to discuss an affordable repayment plan.

I invited Mr B and New Wave to give me any more evidence and information they wanted me to consider before issuing my final decision. Neither Mr B, nor New Wave responded to say whether they agreed or disagreed with the provisional decision or had anything further to add.

### **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, as both Mr B and New Wave haven't responded to say they accepted or rejected the decision, or had anything further to add, I see no reason to reach a different conclusion. So, this decision confirms the findings set out in my provisional decision.

### **My final decision**

My final decision is that I uphold this complaint.

New Wave Capital Limited has now made an offer to refund Mr B the interest it charged from 12 September 2022 to 11 November 2022, along with paying £200 compensation for the inconvenience caused to Mr B. I think this offer is fair in all the circumstances, and I don't intend to order New Wave Capital Limited to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 June 2024.

Jenny Lomax  
**Ombudsman**