

The complaint

Mr R complains that New Wave Capital Limited (trading as Capital on Tap) unfairly reported adverse credit information about him.

What happened

In March 2017 Mr R was a director of a limited company. He made an application to Capital on Tap on his company's behalf, and Capital on Tap agreed to lend the company money. Mr R provided a personal guarantee for his company's borrowing in 2017, then a further personal guarantee when changes were made to the borrowing in December 2019.

Capital on Tap told us:

- In October 2022 Mr R's bank notified it that he had cancelled his direct debit for the loan repayment. Later that month, the direct debit for the contractual loan payment failed.
- It attempted to contact Mr R several times during October and November 2022, by text, email, and phone. It was unable to contact him, and it was still not receiving loan payments – so it sent a default notice on 13 December 2022 asking him to pay just over £2,700 by 4 January 2023. It explained that if he did not make that payment by that date, it would take various actions – including reporting his default to credit reference agencies.
- It made three attempts to telephone Mr R during December 2022, and a further three attempts in early January 2023. It says it also sent him three emails between 13 December 2022 and 10 January 2023 asking him to get in touch, but he did not do so – nor did it pay the amount it had requested.
- It wrote to him on 10 January 2023 to say that if he didn't pay the full balance of the loan by 24 January 2023, then it would report his default to credit reference agencies, instruct third parties to try and recover money from him, and consider taking legal action against him.
- It made four further attempts to telephone Mr R between 13 and 20 January 2023, but again was unsuccessful.
- The termination notice expired on 24 January 2023, by which point it had not received any contact from Mr R. It therefore reported the default, as it had said it would do.
- Mr R contacted it on 1 March 2023 setting out his intention to make several payments. It attempted to call him, but was unable to get through and so it sent an email hoping to arrange a convenient time to discuss setting up an arrangement to pay. The arrangement was not set up until 30 March 2023 due to communication delays.

- The debt was settled in full as of 5 June 2023. It has updated Mr R's credit file to show that the account has been paid, but it will not remove the marker on his credit file completely.
- Mr R requested copies of the default notice and termination letter in March 2023, but it did not provide those copies at that time. It sent reconstructed copies to him in August 2023 (which may not have been precisely identical to the originals), and subsequently offered to pay him £60 for the inconvenience and delay in providing the documents.

Mr R told us:

- His company experienced financial difficulties due to Covid. It did not trade at all in 2022/23, and he was making payments to the loan from his personal financial reserves.
- Unfortunately, the payments went into arrears, and although he was making arrangements to clear the balance Capital on Tap terminated the loan account without sending him any prior notification.
- Capital on Tap's online portal did not include any information about the default or termination letters.
- He acknowledges that Capital on Tap says it sent him a letter of termination, but he does not accept that it actually sent such a letter. He said that Capital on Tap refused to share a copy of the letter with him, and it is not transparent in its communications. If it had sent him a letter informing him of its intention to terminate the contract, he would have acted on that letter. He suspects that the default and termination letters were not in fact sent on the dates Capital on Tap says they were sent, but were in fact generated after he made a complaint.
- He does not accept Capital on Tap's offer to pay him £60. To resolve his complaint, he would like the adverse information on his personal credit file to be removed.

One of our investigators looked at Mr R's complaint, but did not uphold it. On balance, he was satisfied that Capital on Tap had sent the letters it told us it had sent. Our investigator's view was that Mr R failed to tell Capital on Tap about his company's financial problems, then ignored Capital on Tap's repeated attempts to discuss the matter. Capital on Tap was entitled to send a default notice to Mr R and to report what had happened to credit reference agencies.

Mr R did not accept our investigator's findings, and so the matter was referred to me.

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, there is very little I can add to what our investigator has already said. Overall, I think that Capital on Tap treated Mr R fairly.

The primary issue in dispute here is whether Capital on Tap sent the default notice and termination letter to Mr R in December 2022 and January 2023 respectively. As an

ombudsman, I make my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in the light of the evidence.

I acknowledge that Mr R does not accept that Capital on Tap sent him the relevant letters, but on balance I consider it more likely than not that the letters were sent. It is unfortunate that Capital on Tap did not provide copies as soon as Mr R requested them, but I don't think that implies that Capital on Tap falsely generated the letters at a later point. In my view, it does not matter whether Capital on Tap reconstructed the letters from its computer records or provided copies from paper files. Based on the information I have seen, I am satisfied that Capital on Tap did send Mr R the information it says it sent.

In any event, everyone agrees that Mr R's company did not make its loan repayments as they fell due, and that Mr R had personally guaranteed his company's debt. Mr R would have known payments were not being made, and it was open to him to contact Capital on Tap himself before March 2023.

It's clear that Mr R has been through an extremely difficult time, but in the overall circumstances here I don't think it would be fair for me to criticise Capital on Tap for the information it provided to credit reference agencies. I have seen nothing to suggest that that information was inaccurate.

However, I do think Capital on Tap's failure to send Mr R copies of the relevant letters as soon as he requested them will have caused him some avoidable distress. I note that Capital on Tap has offered to pay £60 to apologise for that distress, and I see no basis on which I could order it to increase that amount.

Putting things right

I make no direction in respect of Capital on Tap's decision to report information about Mr R to credit reference agencies, because I have seen nothing to suggest that Capital on Tap did anything wrong in making those reports.

Capital on Tap should pay Mr R the £60 it has already offered to apologise for its delay in providing copy documentation to him.

My final decision

My final decision is that New Wave Capital Limited (trading as Capital on Tap) must pay Mr R £60.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 June 2024.

Laura Colman
Ombudsman