

## The complaint

Mr S complains about a personal guarantee that he gave to New Wave Capital Limited trading as Capital on Tap (Capital on Tap), in support of his company's debt. In particular, Mr S has told us that the amount for which he gave the guarantee was limited to £8000, whereas he is now being asked to repay in excess of £17,500.

A representative, who I'll refer to as Ms P is bringing this complaint on Mr S' behalf.

## What happened

As I understand it, the background to this case, is as follows:

- Mr S was the director of a company which I'll refer to as T.
- On 3 April 2019, T applied to Capital on Tap for a business credit card (the Card) which was approved with an initial credit limit of £6,000.
- At the same time, and in completion of their agreement, Mr S signed a Revolving Credit Facility Agreement (the Agreement) and a Personal Guarantee (the Guarantee), the terms of which I'll come to later.
- On 28 August, Capital on Tap e-mailed all their customers, including T, to say they were switching cards from a Business Mastercard to a Visa Corporate Credit Card and that this would happen on 31 October 2019.
- Capital on tap added:  
*By then, you'll have received your new Visa card in the post, and you'll just need to activate it online, accept the new terms and conditions and you'll be good to go!'*
- On 6 September, Capital on Tap increased the credit limit on the Card to £8,000.
- On 25 October, Capital on Tap e-mailed T again to say that there was a delay in the switch it had been notified of in August. But, nonetheless, it would receive the new card on 14 December.
- On 2 December 2019 on behalf of T, Mr S signed a new Revolving Credit Agreement and Personal Guarantee. Later, on 4 December 2019 a new card was issued to T.
- On 17 December 2019, the credit limit on the Card was increased again - to £13,000.
- There were two further increases on 10 November 2020 and 27 January 2021 to £18,000 and £24,000 respectively.
- In advance of each increase, Capital on Tap notified T by e-mail of the proposed new limit.
- In 2021, T began experiencing financial difficulties and arrears began to accrue on its card account.
- On 25 November 2021, Capital on Tap cancelled the Card and to help clear the accrued arrears, they agreed a repayment plan with Mr S in which he agreed to pay

£300 per month.

- By March 2022, the outstanding debt stood at £17,729.26 and Capital on Tap sold the debt to recovery agents.
- T was dissolved in August 2023 and Mr S was asked to repay the full amount of the debt just mentioned.
- But Mr S didn't think that was fair. He believed he should only be liable for £8,000 because he said this was the amount for which he gave Capital on Tap a guarantee.
- Capital on Tap didn't agree. They said Mr S' guarantee was never limited as he claimed. Rather they maintained that under the terms of the Guarantee he was liable for all of T's debts as incurred from time to time.

As Mr S's complaint remained unresolved, he referred it to this service to look into.

Our investigator didn't uphold the complaint. She said – in summary that:

- Although the credit limit on the Card may have been for a set amount initially, nonetheless, under the Agreement Capital on Tap were able to increase that limit and, in the process, tell T what it had done.
- The Guarantee wasn't for a specific amount either. Rather it covered all future borrowing by T.
- Further still, when on 6 September Capital on Tap increased the credit limit on the Card to £8,000, Mr S was sent an e-mail notification to that effect. And although at the time of the increase Mr S wasn't sent a new Revolving Credit Facility Agreement or Personal Guarantee to sign, Capital on Tap wouldn't have needed to do so. And nor were they obliged to ask Mr S to sign a new personal guarantee each time the credit limit was increased since the Guarantee was given in support of all T's borrowing.
- Although Mr S was asked to sign a second agreement and personal guarantee on 2 December 2019, that was because Capital on Tap were switching card providers. That meant that all customers would have to sign a new Revolving Credit Facility Agreement and Personal Guarantee if they wanted to continue using the facility. In other words, Mr S wasn't asked to sign the documents because of the credit limit increase from £6000 to £8000.
- Mr S signed these documents on 2 December 2019, but his position was not altered in the sense that here too Capital on Tap confirmed it had the right to set T's credit limit from time to time. Also the Personal Guarantee covered all future borrowing.

Mr S didn't accept the investigator's conclusions and, on his behalf, Ms P has asked for an ombudsman to review the matter. She provided the following submissions – which I summarise:

- When the limit on the Card was increased to £8,000, Mr S signed a document putting him on notice of his increased liability. Mr S was aware of it then and he chose to proceed.
- The three further credit limit increases were communicated to T as 'Great News'. There was no mention of any further increase in Mr S' guarantee liability. Mr S was not therefore afforded the opportunity as guarantor to decide if he wanted to take on additional personal liability.
- T was experiencing financial difficulties and was trying to stay afloat when the credit increases were confirmed. The funds were utilized in the hope of keeping T afloat.

- However, if Mr S had been notified that his personal guarantee liability would increase, T would not have agreed to the increased credit limit. Rather Mr S would have taken the company into liquidation much earlier, at least when his personal liability stood at £8,000.
- In any case, there were warning signs that T was struggling financially which ought to have been obvious to Capital on Tap. And yet they continued to increase the credit limit on the Card (three times from December 2019 to January 2021). This was negligent. Each increase should have been accompanied by a clear notification to Mr S to make sure he accepted the additional personal liability.

### **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 agree with the investigator's conclusions and for broadly the same reasons. I'll explain why

The specific issues for me to decide are in essence straightforward:

- Were Capital on Tap able periodically to increase the credit limit on the Card and;
- Was Mr S' liability for T's debt capped at £8,000, regardless of any subsequent increase in that debt.

My starting point has been to look at the terms and conditions of the relevant documents that govern the relationship between Mr S and Capital on Tap - which is primarily the Guarantee. However, the Agreement is important too because it sets out the scope of T's debt for which under the Guarantee, Mr S was agreeing to be liable.

I start with the Agreement which says:

*"4. Initial Credit Limit: Your initial credit limit is £6,000.00 (the "Credit Limit"). This is the maximum credit amount that is available to you at any one time. This can be changed later. We will tell you about any changes to your credit limit in the ways set out in Clause 35".*

And Clause 35 says:

*"35. Messaging and electronic communications: This Agreement and all other communications between the parties are to be provided by way of SMS (text) messaging and electronic means (except where the Consumer Credit Act 1974 or any other law or regulation prevents us from communicating with you electronically).*

*By signing the Agreement you agree to:*

- a) receive communications from us and to send communications to us by electronic mail at the e-mail addresses stated above;*
- b) receive communication by SMS messaging;*

Based on the terms and conditions of the Agreement, I am satisfied Capital on Tap were able to increase the credit limit on the Card. In my opinion Clause 4 of the Agreement makes that clear. The first increase took place on 6 September 2019 where the limit increased by £2,000 – so from £6,000 to £8,000. And, in compliance with clause 35, I can see that Capital on Tap sent an email to T dated 6 September 2019 alerting it of the increase.

Next, I turn to the Guarantee – the relevant clauses of which say:

- “2. *In consideration of our agreeing to enter into the Agreement and permit drawdown under the Agreement, the Guarantor, being a director or member of the Borrower hereby unconditionally and personally guarantees the payment of all monies due and owing to us, including our assignees and successors.*
3. *In the event that the Borrower does not make any payment in full as required by the Agreement, then we shall have the immediate right to request that the Guarantor makes any such payment and/or makes good any shortfall where the Borrower has paid less than required.*
4. *The Guarantor agrees to make such payment on demand as though the Guarantor was a party to the Agreement”.*

Given the terms of the Guarantee, I agree with the investigator that Mr S would not have needed a new agreement or guarantee at the time of the 6 September 2019 increase in order for him to become liable for the additional £2000. Not least because Clause 2 of the Guarantee explains that it is an “all monies guarantee – meaning it didn’t just cover the initial £6,000 and subsequent £8,000 increase in T’s credit limit. In other words, as an “all monies” guarantee – all of T’s debts both present and future were secured by it.

That being said, I acknowledge Mr S’ point that it’s not so much the increase in the credit limit to £8,000 that is concerning. In fact, Mr S was happy for his liability to be fixed at this amount and believes it should.

Mr S’ point is that the increases that followed shouldn’t be his responsibility. Especially because Capital on Tap failed to give any accompanying warning of the simultaneous increase in his guaranteed liability when the new agreement that he signed on 2 December 2019 showed that to be £8,000.

I’ve thought carefully about this point. But I disagree with Mr S. In light of the clear explanation of the nature of the Guarantee, - ie that it was an “all monies” guarantee, I don’t think I could fairly say Capital on Tap did anything wrong by not warning Mr S that his liability would correspondingly increase with the increases from time to time in the credit limit on the Card.

Here I agree with the investigator, that Capital on Tap’s decision to issue fresh documentation on 2 December 2019, wasn’t to give effect to the £8,000 which as Mr S rightly says is contained in the new credit agreement. The increase to £8,000 had already taken place on 6 September 2019.

In any event I would add that the signing by Mr S of fresh documents on 2 December 2019 isn’t a pivotal point for me when considering what is the fair and reasonable outcome in this case. I say that because the new agreement and guarantee didn’t alter the fundamental and determining issue in this case. In other words, that Capital on Tap’s had the ability to increase the credit limit on the Card and the “all monies” nature of the Guarantee Mr S gave in support ultimately meant he’s liable for the increased amounts.

I also thought about Mr S’ argument that Capital on Tap ought to have been alive to the warning signs that T was struggling financially yet they still continued to increase the credit limit on the Card.

However, any allegation that Capital on Tap lent irresponsibly to T would have to be a complaint brought by T. But I appreciate that since it no longer exists because it has now been dissolved it cannot do so. But more to the point, Capital on Tap had no obligation to warn Mr S as guarantor that his liability was increasing because of the increase in the credit being extended to T. Given the clear terms of the Guarantee, reasonably Mr S ought to have been aware of this.

Mr S has explained that T was experiencing financial difficulties and trying to stay afloat when the increases were confirmed to it as “good news”. And he says the funds were utilized in the hope of keeping the business alive. That’s an understandable position. So, I think it’s reasonable to conclude Mr S thought the increases in the credit limit was in T’s best interest.

I acknowledge that Mr S will be very disappointed with my decision. But having taken all the evidence into account, including the further arguments Ms P has provided after our investigator issued her opinion, I haven’t been persuaded Capital on Tap has done anything wrong in this case.

### **My final decision**

For the reasons I’ve explained above, my final decision is I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 7 March 2025.

Asher Gordon  
**Ombudsman**