

The complaint

Mr P complains that New Wave Capital Limited, trading as Capital on Tap (Capital on Tap) shouldn't have accepted his personal guarantee (the Guarantee) for a business debt.

What happened

The background to this complaint is well known to the parties so, I won't repeat it in detail.

Briefly, they are as follows:

Mr P was the director of a company, which I'll refer to as L. In December 2022, L applied for and was granted a credit facility of £35,000.

Capital on Tap have told us that:

- Further to L's credit application, Mr P was asked to follow their on-line signup procedure. This included the opportunity to download and read the terms and conditions of the facility agreement (the Agreement) and the incorporated Guarantee which set out its own terms and conditions.
- To complete the sign-up procedure confirming his acceptance of the Agreement and Guarantee, Mr P was asked to sign into his customer portal to set up an account – which he did.
- Once the Agreement and Guarantee were signed, an automated 'welcome' email was sent to Mr P enclosing a copy of the signed documents for his records. And Mr P was advised that they could be accessed via the online portal at any time.
- In June 2023, they wrote to L to say its credit was being reduced to £12,000 and on 5 July 2023, Capital on Tap did so.
- Afterwards, no further payments towards the facility were received from L and arrears began to accrue on L's account.
- Although starting in August 2023, attempts were made to contact Mr P, including by emails on 19 September 2023 about the arrears, and on 22 September 2023 to give notification that the account was at risk of suspension, nonetheless, payments remained outstanding.
- On 26 September 2023, Mr P contacted them to offer £50 per month to help clear the arrears. But they didn't think that was enough. And despite subsequent emails requesting Mr P makes a revised offer and a reminder that the account was supported by a personal guarantee, Mr P did not respond.
- On 12 January 2024, they sold L's account to debt recovery agents.

Mr P didn't think Capital on Tap's actions were fair. He told them L had ceased trading as a direct result of their decision to reduce its facility to £12,000. Under the circumstances, he didn't think he should be held responsible for L's debts under the Guarantee. And especially,

he argued, because the Guarantee should never have been accepted by Capital on Tap given his credit history and low credit score at the time the facility was granted to L.

Capital on Tap didn't think they'd done anything wrong and rejected Mr P's complaint. In summary, they said:

- Despite the Agreement being unregulated meaning - the requirements for affordability assessments do not apply, nonetheless, as a responsible lender all their lending decisions involve a creditworthiness assessment.
- In the circumstances of this case, they followed all necessary procedures. And in this connection, their credit decisions were not only based on Mr P's personal history but also T's credit report, which was in good standing at the time of the application in 2022.
- They carried out checks on Mr P's credit file and took into account that there were certain adverse entries from 2020. But the file also showed that Mr P had been consistently maintaining payments towards his debts in the previous 12 months. And payments on other credit facilities, including a hire purchase agreement were up to date. So, there was no obvious reason for concluding Mr P wasn't acceptable as a guarantor.

Unhappy with Capital on Tap's response to the complaint, Mr P referred it to this service to look into.

Our investigator looked into the complaint but didn't think it should be upheld. In summary, she said:

- Bearing in mind that the Agreement was unregulated, in relation to Mr P, the rules concerning affordability were irrelevant to determine his suitability as a guarantor of L's credit facility.
- Nonetheless, having regard to the Lending Standards Board's indication of what constitutes good industry practice, she believed Capital on Tap were compliant in their approach towards Mr P. Especially in view of their submission regarding the various checks that they carried out before accepting Mr P as guarantor.
- Considering the outcome of those checks and how they were weighed by Capital on Tap, she didn't think their decision to accept Mr P as a guarantor of L's facility was unreasonable.

Mr P didn't accept the investigator's conclusions and so, his case has been referred to me for review and final decision.

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 should make clear at the outset that I am not considering the extension of the credit facility to L. Mr P has not complained about that. Rather his complaint is about his acceptance as a guarantor of the facility. He has not argued he was misled or didn't understand what he was signing up to. Specifically, his case is that he didn't have a good enough credit record to be accepted by Capital on Tap as a guarantor and Capital on Tap made an error when they accepted him. As this is the crux of Mr P's case, I've focussed my consideration on that.

Having looked into Mr P's case very carefully, however, there is little that I can usefully add to what our investigator has already said.

I agree with our investigator that the type of business lending that forms the background to this complaint is unregulated - meaning there are no specific regulations that Capital on Tap needed to comply with. More to the point, as guarantor of business borrowing, Mr P does not get the same protection as he would have done had he been complaining about the affordability of, for example, a personal loan.

In spite of that, good industry practice is nonetheless a relevant consideration in the circumstances of this case. And the Lending Standards Board's Standard of Lending Practice provides a framework of what is good industry practice when it comes to the taking of personal guarantees by business lenders.

Having considered the relevant provisions, I'm satisfied they were observed by Capital on Tap in the circumstances of this case. I'll explain why.

The Standards provide that lenders should inform their customers if any security (for example a guarantee) is required in support of the borrowing. And if so, the reason. Also, clear information should be provided to make the guarantor aware of their obligations as guarantors and they should also make sure the amount of the guarantee isn't disproportionate to the amount being borrowed. Taking independent legal advice is also to be recommended.

With the above principles in mind, I've looked closely at the Guarantee. I note the following. It is headed in bold:

IMPORTANT – PLEASE READ THE FOLLOWING NOTE BEFORE SIGNING THE GUARANTEE

It then goes on to state:

“This is a personal guarantee and indemnity. By signing the guarantee contained in the Agreement you might become liable instead of or as well as the Borrower.

New Wave Capital Limited will hold this Guarantee as security for the Borrower's debts and other liabilities to New Wave Capital Limited as set out in this Guarantee. New Wave Capital Limited can, on demand, make you pay all the Borrower's debts however and whenever they arise and/or your liabilities under this Guarantee.

We strongly recommend that you take independent legal advice before agreeing to be bound by this guarantee and also read the Agreement which this guarantee relates to.”

I am satisfied that it was made clear to Mr P that not only was he signing a personal guarantee but that the effect of doing so was that he could be made liable for L's debts.

I have not ignored what is at the heart of Mr P's case which is that he was in no credit worthy position to be able to give the guarantee.

But although reasonably I would expect Capital on Tap as lender, to assess whether L as borrower could afford the credit facility it applied for in 2022, there is no obligation on them as the provider of unregulated business lending to conduct credit checks on Mr P as guarantor. Although, I wouldn't have concluded Capital on Tap were in error for failing to

carry out such checks on Mr P, nonetheless, I'm satisfied from the evidence they submitted that they did so in any event and concluded reasonably Mr P was acceptable as guarantor.

In the circumstances of this case, I do not find that Capital on Tap have done anything wrong.

My final decision

For the reasons given 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 P to accept or reject my decision before 21 July 2025.

Asher Gordon
Ombudsman