

The complaint

A company, which I will refer to as E, complains that New Wave Capital Limited (trading as Capital on Tap) treated it unfairly in relation to a credit facility.

Mr H, E's director, represents E in this complaint.

What happened

Mr H told us:

- E's Capital on Tap account was approved for funding on 23 February 2022, but then suspended on 12 December 2023 without warning or explanation.
- In the period between approval and suspension, E used the facility exactly as it was designed. No payments were missed, no disputes were raised, there were no defaults, no claims for fraudulent activity, and no requests for credit extensions. E did nothing wrong and everything right, and yet Capital on Tap still suspended (and later closed) E's account.
- Capital on Tap has not pointed to anything about E's behaviour to justify its actions, but it has mentioned adverse information on either E or E's director's credit file. He believes this may refer to an incident relating to his divorce. If so, there is nothing he could have done about that incident; he was not liable for the debt in question.
- In any event, it was not reasonable for Capital on Tap to take his own credit file into account when assessing E's credit facilities. The Companies Act 2013 clearly specifies the circumstances in which a third party may hold a director liable for the acts of a company, and none of those circumstances apply here. In addition, Capital on Tap did not place restrictions on how many directors E could have, or on whether directors could resign. It is completely unreasonable for Capital on Tap to suggest that a future director could be held liable for agreements taken out by E in the past.
- To resolve the complaint, he would like Capital on Tap to refund all the interest it charged during the period of suspension, because Capital on Tap was not providing the service for which it was charging over that period. He would also like compensation for the time and stress the issue caused.

Capital on Tap told us:

- It suspended E's account on 12 December 2023 "following a regular review which revealed an adverse effect noted on either [Mr H's] personal or [E's] business credit file". It emailed Mr H to tell him that he needed to resolve the issue and make the next two payments on time before it could review the suspension.
- It reviewed E's account on 14 June 2024 and decided that it was no longer prepared to offer funding to E.

- It has the right to continually monitor accounts and adjust its lending criteria, and it did nothing wrong when it decided to suspend and then call in E's account.
- It acknowledges that Mr H believes his personal credit should not affect E's business credit facility, but there is a personal guarantee attached to the account. It checked both E and Mr H's credit files to determine E's initial eligibility for the credit facility, but it only performed a soft check on Mr H.
- After it called in E's debt, E has repaid its balance in full and its account has been closed.

One of our investigators looked at this complaint, but did not uphold it. Mr H did not accept our investigator's conclusions, so the matter was referred to me to make a final decision.

My provisional decision

I issued a provisional decision on this complaint, and said:

"[My] provisional conclusions are:

- When E first took out Capital on Tap's credit facility, Mr H gave a personal guarantee for the borrowing.
- It was therefore reasonable for Capital on Tap to take Mr H's personal credit information into account when deciding whether to continue to offer facilities to E.
- Overall, Capital on Tap treated E fairly.

I give more further details about my provisional findings below.

The personal guarantee

I think there might be some confusion on Mr H's part about why Capital on Tap took his personal credit information into account.

When Mr H spoke to our investigator on 14 January 2025, he said he would never have signed the contract in his company's name if he thought that would lead to personal liability for him. He also said that he thought that if a new director had been appointed, Capital on Tap would have attempted to pursue that new director for the company's loan.

However, Capital on Tap's evidence does not suggest that it believed Mr H was liable for E's loan because Mr H was E's director. Instead, Capital on Tap's position is that when the facility was first taken out, Mr H signed *both* a "Revolving Credit Facility Agreement" on behalf of his business E, *and* a "Personal Guarantee and Indemnity" on his own behalf. Capital on Tap has provided the Financial Ombudsman Service with copies of both of those documents, and I accept its evidence. E's Capital on Tap account has since been closed, but as at December 2023 and June 2024 I am satisfied that Mr H was personally liable for E's debt with Capital on Tap.

I have chosen not to address Mr H's comments about the Companies Act 2013 in this provisional decision, because Capital on Tap was not relying on the provisions Mr H mentioned in order to hold Mr H liable. Instead, Capital on Tap was relying on

the personal guarantee Mr H had given. Capital on Tap has not suggested that it would have held any of E's future directors liable for E's debts simply because of their position as director.

Mr H's personal credit information

I consider that it was reasonable of Capital on Tap to take adverse credit information in respect of either E (as the borrower) or Mr H (as the guarantor) into account when deciding whether to continue to offer facilities to E. I wouldn't necessarily expect Capital on Tap to make enquiries about what led to that adverse credit information; I consider that it was entitled to rely on information provided by credit reference agencies.

Mr H appears to accept that there is some adverse credit information on his personal credit file, but he says that results from a divorce and is not his fault. He also says that he is not liable for the relevant debts, and so there is nothing he can do to resolve the issue.

If Mr H believes that another lender has wrongly recorded adverse information about him on his credit file, then it is open to him to ask that other lender to remove the information. However, I would not expect the other lender to remove information if it is in fact correct. I also note that where a debt is held in joint names, I would generally expect a lender to report missed payments to the credit files of both debtors – regardless of any arrangements the debtors have made between themselves as to which of them will make payment.

Capital on Tap's decision to suspend and then close the facility

Mr H has made a point of the fact that neither he nor E did anything wrong, and he says that E's account with Capital on Tap was always up-to-date. I accept that. But Capital on Tap has not said that Mr H or E did anything wrong, and it has not said that it suspended and closed E's facility because of the conduct of E's account. Instead, it said it made its decisions based on adverse information noted on either Mr H or E's credit file.

In other words, Capital on Tap made a commercial decision about the facilities it was prepared to provide. I consider that its decision was reasonable in the circumstances, and it would not be right for me as an ombudsman to interfere with that decision.

Mr H also has drawn my attention to the fact that no other institution called in E's borrowing over the same period, and he suggests that means Capital on Tap made a subjective judgment. I suspect he is right about that – there is usually an element of subjectivity when any lender makes any decisions about its lending criteria. But that doesn't mean Capital on Tap was wrong, and nor does it mean that other lenders who made different decisions based on similar (or even the same) evidence were wrong. Lenders are free to make their own commercial decisions about the circumstances in which they will lend, and they will not all make the same decision about the same borrower in the same set of circumstances.

Capital on Tap's decision to charge interest

Mr H is unhappy that Capital on Tap continued to charge interest after suspending E's account, and he has asked me to order Capital on Tap to refund that interest.

However, I understand that Capital on Tap only changed interest on money that E had borrowed. Once E repaid the borrowing, no further interest was charged. I cannot agree that Capital on Tap was providing no service at all to E between December 2023 and June 2024; E continued to owe the funds it had previously borrowed from Capital on Tap, and Capital on Tap continued to charge interest on the funds it had been lent. The terms and conditions of E's agreement with Capital on Tap allowed Capital on Tap to continue to charge interest, and I see nothing unfair about its decision to do so.

Time and stress

Mr H has spoken eloquently about the difficulties he suffered because of Capital on Tap's decision to suspend H's funding. I understand the timing was particularly difficult for him, leaving him scrambling to obtain alternative funding for his company just before Christmas. I don't underestimate the distress he suffered, but I can't award compensation in this complaint because I don't think Capital on Tap has done anything wrong."

Capital on Tap did not provide any further comments in response to my provisional decision. Mr H did. Briefly, he said:

- He considers that there has been a conflation between a revolving credit facility (the product E signed up for) and a loan. Capital on Tap effectively converted E's revolving credit facility to a loan, a product that E did not request and did not want. No sensible business would have signed up to a loan at the interest rates Capital on Tap charged.
- There is no indication that a personal guarantee was involved, and even today Capital on Tap's website does not clearly mark that this is the case.
- He fully accepts that Capital on Tap had the right to remove the facility, and any suggestion otherwise is not a fair representation of E's claim. He did not ask the Financial Ombudsman Service to reverse Capital on Tap's decision to remove the facility; he only wanted the interest charged to be refunded.
- Capital on Tap entered into a contract with E, and did not make it conditional on the private affairs of E's directors. The correct approach from Capital on Tap would have been to suspend all interest and then allow E to pay the debt back at suspension.
- Overall, he considers that my provisional decision goes against natural justice, because it allows Capital on Tap to get the benefit of its choice to change an agreement wholly in its own favour, while E as a small business is left to carry all the penalties.

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 am sorry to further disappoint Mr H, but I have reached the same conclusions as I did in my provisional decision, for the same reasons. I now confirm those provisional conclusions as final.

It would not be appropriate for me to make any comments as to how Capital on Tap treats its

other customers, or to consider whether Capital on Tap's website does or does not mislead potential new customers. As an ombudsman, my role is to consider the specific circumstances of the dispute in front of me.

As I said in my provisional decision, I am satisfied that Mr H did give a personal guarantee for his company's borrowing. That means I think it was fair for Capital on Tap to take Mr H's personal credit information into account when deciding whether to continue to provide facilities to E.

Mr H is right to say that the practical effect of Capital on Tap's decision to suspend E's facility was to turn that facility from a revolving credit facility to a loan. I have carefully considered Mr H's comments, but I see no reason why Capital on Tap should not have been entitled to continue to charge interest at the contractually agreed rate. If E did not want to pay interest at that rate, then it was open to E to repay the debt (as E ultimately did).

I know that Mr H will strongly disagree with me, but overall I am satisfied that Capital on Tap did treat E fairly.

My final decision

My final decision is that I do not uphold this complaint about New Wave Capital Limited (trading as Capital on Tap).

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 19 March 2025.

Laura Colman
Ombudsman