

The complaint

M is a company, which has brought this complaint through its director, Mr S. He complains that solicitors who represented him in matrimonial proceedings acted negligently. Because he paid the solicitors in part using a credit facility provided by New Wave Capital Limited, he seeks reimbursement from it. New Wave Capital trades as Capital on Tap.

What happened

Capital on Tap provides lending facilities to corporate clients. M has a revolving credit facility with a £25,000 limit and a linked card which can be used both to make payments to merchants and for cash withdrawals.

In July 2024 Mr S used M's card to pay over £2,000 to a firm of solicitors he had engaged to advise and represent him in matrimonial proceedings.

Shortly after he made the payment, Mr S contacted Capital on Tap to dispute the payment. Over a series of calls he explained, in summary, that the solicitors had been negligent in their advice and their representation of him. Because he had paid them using M's credit card, he wanted Capital on Tap to provide a refund.

Capital on Tap declined Mr S's request. It said that the nature of the dispute with the solicitors meant that it was not suitable for a chargeback claim. And, because the credit facility was provided to M, a company, section 75 of the Consumer Credit Act 1974 ("section 75") did not apply.

Mr S referred M's complaint to this service. One of our investigators considered what had happened but did not recommend that the complaint be upheld. Mr S did not accept her assessment and asked that an ombudsman review the case.

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.

Chargeback

Where goods or services are paid for with a debit or credit card and a dispute arises, it is sometimes possible to resolve that dispute through the chargeback process. Where goods or services are paid for with a debit or credit card and a dispute arises, it is often possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes (in this case, Visa). A card issuer (here, Capital on Tap) raises a claim through the scheme against the merchant's provider of card facilities. That provider will then consider whether the claim meets the relevant criteria for chargeback (if necessary, seeking evidence from the merchant) before responding to the claim. Where necessary, the scheme provides for arbitration between the financial businesses.

Chargeback is however primarily a scheme for resolving disputes about payment settlements – including, for example, where payments are not authorised or are duplicated, or where goods have been paid for but not delivered. It can also be used where goods or services are not as described or are defective – which is broadly what Mr S alleges here.

Chargeback can therefore have the effect in some cases of resolving disputes between merchants and consumers, but it is not always an appropriate or effective mechanism for achieving that aim.

There is no legal or regulatory obligation on a card issuer to pursue a chargeback claim, but this service takes the view that they should do so where there is a reasonable prospect of success.

Mr S's dispute with the solicitors was a complex one. They had been acting for him for around three years, and it appears he had expressed some dissatisfaction with them on several occasions. The payment itself was one of several Mr S had made. In the circumstances, I think that Capital on Tap was entitled to take the view that chargeback was not an appropriate means to try and resolve the dispute between Mr S and his solicitors. It was clear that the solicitors would defend any claim and, in my view, it was unlikely that, if the issue had gone to arbitration, Mr S would have achieved a favourable outcome.

It follows that Capital on Tap acted reasonably in deciding not to pursue chargeback.

Section 75

Section 75(1) says:

If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

It references section 12 of the Consumer Credit Act, which says:

A debtor-creditor-supplier agreement is a regulated consumer credit agreement ...

In order for section 75 to apply, therefore, the credit agreement used to finance the transaction must be a regulated consumer credit agreement. Section 8 defines a “consumer credit agreement” as “... an agreement between an individual (“the debtor”) and any other person (“the creditor”) by which the creditor provides the debtor with credit of any amount.”

But M, the debtor in this case, is not an individual, the definition of which is wide enough to include sole traders but not companies. It follows that section 75 does not apply in this case and that Capital on Tap's response to Mr S's claim was reasonable.

My final decision

For these reasons, my final decision is that I do not uphold M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 28 May 2025.

Mike Ingram
Ombudsman