

The complaint

Mr L is unhappy that New Wave Capital Limited trading as “Capital on Tap” is pursuing him for the repayment of a debt under a personal guarantee he’s said he didn’t agree to.

What happened

Mr L was the director and owner of a limited company – “L”. In October 2020 L took out a credit card facility with Capital on Tap which included a personal guarantee from Mr L.

In October 2023 the account fell into arrears and in December 2023 the facility was cancelled. Capital on Tap contacted Mr L to confirm he would be pursued personally if L was unable to repay the amount owed in full. In February 2024 L went into liquidation and the debt with Capital on Tap was sold to a third party as it had not been repaid.

Mr L has told us:

- He didn’t agree to provide a personal guarantee in relation to this debt. In support of this he explained he’d previously been through bankruptcy due to debt he was pursued for under a personal guarantee. As a result of this situation he was given the advice not to enter into such an agreement again which he would’ve followed. None of the other debts linked to his former limited company include personal guarantees which he feels supports that it’s not something he would’ve agreed to
- He also said that as a result of the previous bankruptcy he no longer has any personal assets. So wouldn’t have agreed to a personal guarantee knowing he wouldn’t have the means to repay it should it be necessary. He also believes this would’ve been apparent to Capital on tap had it done proper checks when the loan was approved.
- He doesn’t feel Capital on tap has provided evidence the guarantee has actually been signed by him as it’s been signed electronically. He believes the law supports the documents produced by Capital on Tap don’t allow it to pursue him for the debt.

Capital on Tap has said:

- It’s satisfied Mr L signed the personal guarantee in line with its processes which required him to log into its customer portal, set up an account using his persona data, review and sign both the credit agreement for the borrowing and the personal guarantee.
- Capital on Tap has no record of any discussions with Mr L about the guarantee where he queried this or suggested he had concerns about entering into it. It’s satisfied the documentation he was provided was clear and a signed copy was sent to him by email after he accepted it.
- In January 2023 Capital on Tap wrote to Mr L about some changes to the interest applicable to the account. This correspondence refers to the personal guarantee

linked to the lending. Capital on Tap has no record of Mr L querying it at this point. He also didn't opt to close the facility at this point which was an option available to him if he was unhappy with the lending arrangement.

Our investigator looked into Mr L's complaint and didn't uphold it. They felt the evidence available supported that Mr L likely had agreed to the personal guarantee and therefore Capital on Tap wasn't acting unfairly in pursuing him for the outstanding debt. Mr L didn't accept this so the complaint has been passed 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.

Capital on Tap and Mr L have provided different accounts of what happened in this case. In situations like this one, I have to look at all the available evidence and make a decision about what I think is more likely to have happened on balance. Having done so in this case, I think it's more likely that Mr L did accept the personal guarantee. I'll explain why.

Capital on Tap's records show the personal guarantee agreement in this case was provided alongside the borrowing agreement Mr L isn't disputing he accepted. And this is what I would expect. As the borrowing in this case was dependent on the personal guarantee being accepted, I think it's likely this was provided alongside the agreement for the borrowing for Mr L to accept.

The personal guarantee document has been signed electronically. This required Mr L, as the person acting with authority for the borrower, to create an account with Capital on Tap, sign into its platform using information individual to him and then tick two boxes. One confirming he had read and understood the terms of the borrowing for the limited company, and a separate one that said:

"...2. By ticking this box, I confirm that (a) I have read and accept the personal guarantee within these terms and conditions and (b) I understand that I am personally responsible under the personal guarantee."

The personal guarantee clearly sets out that Mr L may be liable for the money borrowed by the limited company he was director and owner of. So I don't think would've been unclear to Mr L what he was agreeing to.

Mr L hasn't suggested he was misled by anyone, or that he was told the personal guarantee he accepted wasn't valid or wouldn't apply in some way. So it's not clear what believes has happened here. Whilst he's provided the reasons he says he wouldn't have chosen to sign a personal guarantee, he hasn't provided much information about what he believed this document was, why it appeared alongside the borrowing he isn't disputing or whether he discussed this with Capital on Tap at any point.

Capital on Tap's records show the personal guarantee was accepted, and that it then sent Mr L a copy of it by email after it was signed along with the terms of the borrowing. Capital on Tap doesn't have any record of Mr L questioning or querying the personal guarantee if he didn't expect to see it.

As I've mentioned, Capital on Tap has confirmed the personal guarantee was a requirement of the borrowing, which isn't unusual. So Mr L would've needed to have ticked the box I've quoted above in order to progress with the application and in order for his company to

borrow the money. And given the credit facility was fully utilised by the limited company, I think this supports that it did want or need access to the borrowing.

Mr L seems to have suggested he had no knowledge of the personal guarantee, but he's also then raised a number of legal arguments that he believes support the signature on the personal guarantee isn't valid and that Capital on Tap hasn't provided evidence that the personal guarantee was actually signed. Our service isn't a court of law. And while we do take relevant law into account, my role is to make a decision about what I think is fair and reasonable and what I think is more likely to have happened, on balance, in all the circumstances.

Based on what I've seen I think Mr L was given clear information about what he was being asked to agree to and that he followed a process to confirm his understanding and acceptance. So I think his intention to accept the borrowing and the personal guarantee was clear.

I understand Mr L says he wouldn't have agreed to the personal guarantee and he's gone into detail about why all his personal circumstances and previous experience with personal guarantees support this. But whilst I've taken this into account, I don't think it outweighs the evidence I've outlined above.

Mr L has suggested Capital on Tap had a greater obligation to check if the personal guarantee was affordable to him given his lack of personal assets – which he says it wasn't. But the lending Capital on Tap was providing was to L, not to Mr L. Mr L would only have been expected to repay the debt if L was unable to repay it. So it would've been appropriate for Capital on Tap to consider L's affordability and not Mr L's. I'd also add that this lending was unregulated. So the affordability checks and requirements aren't the same as Mr L might expect from personal, regulated lending.

That said, Capital on Tap has shown us that it did check Mr L's credit file for any adverse information or indication of financial difficulty before the lending was offered. I think this was proportionate and reasonable in this case. Overall, I'm satisfied Capital on Tap is entitled to hold Mr L liable for the debt and I think he likely provided a personal guarantee for the borrowing.

My final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 20 November 2025.

Faye Brownhill
Ombudsman