DRN-5481215

The complaint

A company which I'll refer to as V, complains about New Wave Capital Limited trading as Capital on Tap's decision (CoT) to increase the limit on its credit facility.

V is also unhappy that when later its outstanding debt was sold to a third party, CoT began returning its payments. It says that what CoT's did led to the debt being called in and its director threatened with legal recovery under his personal guarantee.

In bringing this complaint, V is represented by its director who I'll refer to as Mr D.

What happened

There's little dispute between V and CoT about the main events in this case. As I understand them, they are as follows:

- In February 2017, CoT and V had an agreement to provide a £4,000 credit card facility (the Facility) to V. At the same time, Mr D gave CoT a personal guarantee to support the Facility.

- Although as mentioned below, three years later, a new agreement was concluded between CoT and V, I'm satisfied that in all material respects, the terms and conditions of the new agreement were the same as the one concluded in 2017. So, to avoid any doubt, when in this final decision I refer to the Facility, I mean the credit card agreement that existed between CoT and V at the relevant time.

- In October 2017, there was a modest £400 increase in V's credit limit making it £4,400. Between 2019 and 2020, further increases took place as follows:

  - April 2019 - £8,000
  - September 2019 - £15,000
  - January 2020 - £25,000.

- In February 2020, V and CoT had a new agreement due to CoT's transfer of business to a new card scheme. And later in the year – in November 2020, V's credit limit was increased still further to £33,000.

- In September 2021, because V started having difficulties in maintaining its monthly repayments, the Facility went into arrears.

- In February 2022, CoT reduced V's credit limit from £33,000 to £30,000 and in July 2022 they cancelled it. Following the cancellation, CoT and V agreed a payment arrangement whereby initially V would make monthly payments of £100 towards the outstanding debt. This was later increased to £250.

- In May 2023, CoT sold the debt to a third party who I'll refer to as R. Nonetheless, CoT continued accepting payments towards the debt which were then forwarded to

R. But in January 2024, CoT stopped doing this and instead, returned the payments to V. However, Mr D felt that CoT hadn't dealt with them fairly in that regard. But more fundamentally he was unhappy that CoT increased V's credit limit over the preceding years which he believed ultimately led to its subsequent repayment difficulties.

- CoT didn't agree they'd done anything wrong. They maintained that in their dealings with V, they'd dealt with V in accordance with the terms and conditions of the Facility. And furthermore, that routinely they'd informed V about increases in the credit limit as and when they occurred.

- Unhappy with CoT's response to this, on V's behalf, Mr D asked our service to investigate the matter.

- After the complaint was referred to our service, CoT responded to V's concern about their decision in January 2024 to stop accepting payments towards the outstanding balance of the Facility. CoT said they'd changed their bank details in January 2024 and this led to the rejection of V's payments after this date. They accepted they didn't tell V about the change as they should have done. And so, in acknowledgement of their error, CoT offered V £150 in compensation.

But this didn't resolve V's complaint and therefore our investigator investigated the whole complaint. In summary, she came to the following conclusions:

  - Although V's credit limit started out at £4000, the terms and conditions of the Facility provided that this could be changed later, as occurred after 2017. They also provided that in the event CoT made such changes, V would be informed by email and it was.

  - When in February 2020, a new facility was agreed with V, in all relevant respects the terms and conditions remained the same – including CoT's ability to increase the credit limit. So, at the time, CoT were also able to increase the limit to £25,000.

  - However, before CoT increased V's credit limit, she expected them to assess V's ability to pay the increased repayments – including a review of V's income, payment history and any information recorded with credit reference agencies.

  - Based on the evidence CoT provided, she was satisfied that CoT did so. She was persuaded that they considered V's turnover at the time of each increase and concluded it was sufficient for them to increase V's credit limit. In addition, she had seen from V's statements that without any default, V was regularly meeting its repayment obligations.

  - So, based on all the above, she was satisfied that there were no obvious affordability concerns at the time of the increases – meaning CoT hadn't been unreasonable on the occasions they increased V's credit limit.

  - She noted CoT's explanation for failing to accept V's payments from January 2024. In particular their acknowledgement that this happened because they failed to inform V about the change in their bank details.

- She noted that CoT wrote to V on 17 May 2023 to let it know they'd sold the debt to R. And at the same time CoT agreed that they would continue to transfer V's payments to R which they failed to do after January 2024. So, as well as their failure to tell V about the change to their bank details and their failure to pass on its payments, CoT provided poor service. However, she believed the £150 compensation that CoT offered for the inconvenience caused to V was reasonable.

- She didn't agree there was evidence to support V's submission that the inability by R to collect payments after January 2024 meant R then demanded that V repay the entire outstanding debt.

V didn't accept the investigator's conclusion and so, its case has been assigned 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.

Where the evidence is incomplete or inconclusive (as indeed some of it is here) I provide my decision on the balance of probabilities – meaning, that I consider what is most likely to have happened by reviewing the available evidence and taking into consideration all of the circumstances.

Having reviewed V's complaint, I agree with the investigator's conclusions and for mainly the same reasons. I'll explain why in a bit more detail.

Increasing V's credit limit

I started by reviewing the terms and conditions of the Facility as this governs the relationship between CoT and V.

Cause 4, of the 2017 Facility says:

"4. *Initial Credit Limit: Your initial credit limit is £4,000.00. 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 33".*

And clause 33 states that:

"33. *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;"

On the basis of clause 4, I'm satisfied that from time to time, CoT were able to increase V's credit limit. Indeed, that's a matter for their commercial discretion. And generally speaking, it's not my job as ombudsman to interfere with how CoT applied that discretion. However, what I can do is assess whether CoT applied their discretion fairly and reasonably when between 2017 and 2020 they increased V's credit limit.

In this connection, I agree with the investigator that a relevant consideration would be whether CoT made sure that V was able to afford the repayments on the increased limit.

CoT have told us they did so. For example, that they considered V's turnover and were satisfied it was sufficient to accommodate the increase without it being a credit risk.

CoT's conclusion seems to be supported by Mr D. I say that because I've listened to the various calls Mr D had with CoT when agreeing a payment arrangement to help decrease the arrears on the Facility. Mr D acknowledged that it was the Covid 19 pandemic that largely impacted V's profitability. Meaning, that it was the challenging trading environment post pandemic that caused its difficulties. He explained that pre pandemic, V had operated profitably and met all its payment obligations.

There is other evidence too that tend to support the conclusion that V wasn't an obvious credit risk when the increases in its credit limit took place. I agree with the investigator's observation that V's account statements gave no indication there might be affordability concerns. Rather, the statements illustrate that V had been making regular payments towards the Facility without any defaults which Mr D also acknowledged in his conversations with CoT.

So, I don't believe on the occasions between 2017 and 2020, when CoT increased V's credit limit, that they did this unfairly or unreasonably.

Finally, I thought about whether having increased V's credit limit as CoT were entitled to do, CoT did also observe their obligations under Clause 33. I'm satisfied they did. I am satisfied that V was made aware of the increases by emails. And in fairness to Mr D, it's no part of his case on behalf of V, that CoT omitted to do so.

declined payments after January 2024

CoT have acknowledged that they failed to inform V of the change in their bank details. Payments using the old bank details therefore continued. From January 2024 through to February 2025, V's payments were returned.

CoT have acknowledged their errors. Including breaching the undertaking they gave to V in their letter dated 17 May 2023 that they would forward V's payments to R which they didn't do after January 2024. So, I don't need to provide a comment in that regard. And I was pleased to have seen that CoT offered V compensation in an attempt to rectify their error. All I need to do therefore is decide whether CoT need to do anything further.

I acknowledge Mr D doesn't agree CoT's offer of compensation is enough. So, I've thought about that.

I'm satisfied V has not suffered a financial loss in the circumstances of this case. V's case against CoT centres around the return of the payments it tried to make towards its debt. And I'm satisfied V would have been inconvenienced by what CoT did in that regard.

We publish information on our website about our approach to awards for non-financial loss. This is available at:

https://www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience

Determining an appropriate award for inconvenience can be difficult. But having thought about the general framework which this service considers when deciding on compensation amounts for inconvenience as detailed in the guidance, as well as applying my own judgement I don't agree the impact of CoT's errors on V was significant as to warrant a further increase in the £150 they have offered.

Did CoT's failure to pass on payments to R lead to the debt being called in as well as the threat of recovery action against Mr D?

To begin with I've considered Mr D's submission regarding how CoT's decided to return V's payments after January 2024 impacted him. In particular, being threatened with legal proceedings personally including the repossession of his home.

Whilst I sympathise with Mr D, it's important to note that this complaint has been brought to this service in the name of V, the limited company – which is because under our rules V is the eligible complainant in this instance. So, I'm unable to consider any impact that Mr D may have experienced himself in a personal capacity. I can only consider therefore how the impact of the events in question may have affected V. In other words, whether the impact of CoT's failure to pass on V's payments contrary to the undertaking they'd given to V caused R to call in V's debt.

I note that the payments in question were not paid to R but returned to V for about a year - from January 2024 to February 2025

I accept that the failure to make repayments towards a debt would be a reason a financial business might call in that debt. Mr D submitted it was shortly after payments began to be returned in January 2024 that R called in the entire debt.

I've not seen the correspondence V received from R in that connection. But it would be unusual for a debt to be called in without prior notification of this and for the debtor to be given the opportunity to rectify this to avoid it from happening. I can't rule out the possibility R did so in this case.

Additionally, considering V's payments were being returned to it from January 2024, I also believe it would have been evident to Mr D that they were not being directed towards repaying V's debt. And whilst I acknowledge this was as a result of CoT's error, nonetheless, I would generally expect V to make reasonable changes to mitigate the impact of that error.

CoT have submitted that despite the many months after January 2024 that V's payments kept being returned, they were never contacted to query the reason.

I would agree it to be reasonable for Mr D to have done more to resolve this.

Furthermore, I agree with the investigator's observation that Mr D complained to us in August 2024 about the returned payments. On 13 August 2024, CoT wrote to V regarding the consequence of missing payments. Referring to the terms and conditions of the Facility, CoT said it would be entitled to:

> "sell your debt and we or the purchaser may take legal action to recover money you owe us"

But V continued with the pattern of payments for a further six months with the same results.

When all of that is put together, I don't have sufficient evidence to reasonably conclude it was CoT's action that caused R to call in the debt as Mr D has submitted.

Putting things right

In the circumstances of this case, however, and for the reasons explained above, I'm satisfied CoT's error inconvenienced V. But I'm also satisfied the £150 compensation CoT have offered fairly reflects the impact on V and is a fair way to resolve this complaint

My final decision

My final decision is I uphold this complaint. In full and final settlement of it, I recommend that New Wave Capital Limited trading as Capital on Tap pay V £150 in compensation .

Under the rules of the Financial Ombudsman Service, I'm required to ask V to accept or reject my decision before 5 September 2025.

Asher Gordon
Ombudsman