

## The complaint

I, a limited company, has complained New Wave Capital Limited did nothing to protect them from being the victim of a scam.

## What happened

Mr H is a director of I and is representing them in their complaint. I will refer to both interchangeably throughout my decision.

Mr H knew an individual (Mr S) who had recently taken up a role as an energy broker. As I was interested in getting a better energy deal, they engaged Mr S to provide them with consultancy services. This was to negotiate a better energy deal with a new provider.

On 13 March 2024 Mr S's company invoiced I. This confirmed a charge of £13,800 which was a consultancy charge of £11,000 and an arrangement fee of £500 plus VAT. I made two payments using its revolving credit facility with Capital on Tap at the end of March.

A couple of months later Mr H was alerted the payments had gone to a separate named entity than the one he'd thought he was paying. He was also concerned there'd been some fraudulent use of a VAT registration. He got in touch with Capital on Tap to confirm the two payments had been unauthorised.

Capital on Tap started to process a chargeback dispute under the international card scheme rules. They subsequently discovered the payments had been authorised by I, and confirmed the chargebacks had been successfully defended. Mr H confirmed I had been the victim of a scam and asked Capital on Tap to pursue this further. They declined to do so relying on chargeback rules.

Mr H brought I's complaint to the ombudsman service.

Our investigator reviewed the evidence. He confirmed that he wouldn't be asking Capital on Tap to do anything further as there was no requirement on a credit provider to use the chargeback scheme if there was no likely chance of success.

Mr H disagreed with this. He asked an ombudsman to consider I's complaint. He specifically highlighted his view that:

- Capital on Tap ignored "*indisputable evidence of fraud*";
- Capital on Tap reversed a refund and sent funds to a fraudster;
- Capital on Tap misrepresented the chargeback rules;
- Capital on Tap breached the Financial Conduct Authority's principles for businesses
- The view misrepresents the seriousness of Capital on Tap's failures.

## 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.

Having done so, I've reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

I won't be writing in detail about the different aspects of what happened. I hope neither party thinks I'm being disrespectful but my decision concentrates on what I believe are the key aspects which lead to my conclusion.

I don't doubt Mr H's strong belief that I has been scammed. There's no doubt that £13,800 was paid out for a service they didn't receive in full. But it's worth stating up front that I'm not completely sure that I was the victim of a scam or whether Mr S was providing a genuine service on behalf of another company and things just went wrong.

Mr H provided evidence from energy providers confirming they are not aware of Mr S's business activities. But I've also not seen any original contract between I and Mr S and his company and what Mr H expected Mr S to be providing.

I can see why Mr H felt he was right to tell Capital on Tap that the two transactions were unauthorised. He'd just discovered that the money had gone to a slightly differently-named merchant. That said, it is not at all unusual for merchants to use completely different names when card payments are being processed and I'm sure Mr H is well aware of this. I think it may have been much better if Mr H had been upfront with Capital on Tap and state that they'd not received the service I was buying.

When our service reviews financial providers use of the chargeback scheme, we consider what those rules require them to do. Whilst these are not compulsory, we do expect financial providers to make claims using their dispute process unless there is no likely chance of success. So when I look at I's claim, Capital on Tap had already submitted a chargeback that these payments had not been authorised. However, I had authorised the two transactions, so I'm not surprised that Capital on Tap had to accept the defence put forward by the merchant. When Mr H asked them to resubmit a claim on different grounds, I can see why Capital on Tap declined to do so as they wouldn't have considered the chance of success to be likely. And that's apart from the fact that the scheme rules do state "*an issuer must not initiate a Dispute for the same transaction more than once*". Customers don't get to pick and choose which rule suits them best based on what gets turned down first.

I don't believe Capital on Tap misrepresented the chargeback rules in their dealings with I.

Mr H is also incorrect when he says Capital on Tap returned money to a fraudster. Capital on Tap temporarily refunded I £13,800 when the chargeback claim was initiated. However, that doesn't mean they had the funds themselves, just that they were required after the claim process had started to refund their customer, whilst warning them the funds would be removed if the claim proved unsuccessful.

Mr H has accused Capital on Tap of ignoring evidence of fraud. As I've stated above, and contrary to Mr H's view, I'm not sure this is as indisputable as he claims. In any case, Capital on Tap hadn't enabled the fraud in any way so I'm not sure why Mr H believes they should have done more. There is only one party that is guilty of fraud if fraud there was, and that appears to be Mr S.

It therefore follows as the charges that Mr H has laid against Capital on Tap do not apply, then I don't believe they have breached their requirements under the FCA guidelines either.

Like our investigator I considered whether Capital on Tap should have identified there was anything wrong with the payments I was making. But on what grounds? Mr H's evidence to our service confirms that he had a personal relationship with Mr S and at the time of payment had no cause to believe anything was wrong. Capital on Tap would have had no basis for stopping properly authorised transactions and if they'd questioned Mr H, I'm sure he'd have been happy for these to proceed.

I appreciate that Mr H is angry about what's happened. It's true that I has lost out and didn't receive a service they believed they were paying for. However, I don't believe under the basis we consider these complaints, that it would be fair or reasonable to ask Capital on Tap to do anything further.

### **My final decision**

For the reasons given, my final decision is not to uphold I's complaint against New Wave Capital Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask I to accept or reject my decision before 22 October 2025.

Sandra Quinn  
**Ombudsman**