

The complaint

Mr T complains that New Wave Capital Limited, trading as Capital On Tap (COT) treated him unfairly when he acted as a personal guarantor on a company credit card.

What happened

The details of this complaint are known to all parties, so I'll give just a broad overview here.

Mr T is a director of a company which I'll call E.

In July 2023, Mr T, acting on behalf of E, successfully applied for a business credit card with COT. To complete the application process, Mr T was asked by COT to use its customer online portal and review key documents.

These key documents included the Credit Agreement and a Personal Guarantee, that COT required Mr T to agree to in order to guarantee any outstanding debts should E default.

Mr T didn't complete this process immediately so, in September 2023, COT phoned Mr T to see if he still wanted to complete the application on behalf of E. COT explained the features and benefits of the card and, following the call, Mr T completed the application process, and the credit card facility became active.

In December 2023 the credit card account fell into arrears. COT attempted unsuccessfully to contact Mr T to discuss the arrears and remind him of the personal guarantee.

COT continued to try and contact Mr T and, because it didn't receive any payment or contact, issued a Notice of Default in January 2024 and terminated the agreement in February 2024.

In May 2024, COT sold the account and outstanding debt to a collection agency.

Mr T complained to COT.

He said the Personal Guarantee that he signed was unfair and he wouldn't have entered into the agreement if all the implications had been clearly explained. Mr T said the Personal Guarantee was a personal financial obligation agreement and should be treated as such.

COT didn't agree. It said all the necessary information had been made available to Mr T before he signed the Personal Guarantee and that it was within its rights to enforce it.

Mr T wasn't satisfied with this response so brought the complaint to this Service.

Our Investigator reviewed the complaint and didn't think COT had done anything wrong.

She thought Mr T had been given all the necessary information, the application process was correctly followed, and COT was within its rights to enforce the Personal Guarantee.

Mr T was unhappy with this response, so the complaint has been passed to me for a 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.

Much of the evidence I've looked at relates to the sale of the credit card to E. The circumstances surrounding the sale process were the subject of a separate complaint and so I make no further comment here.

In this decision I've only considered Mr T's complaint that the Personal Guarantee he signed to support the credit card he applied for, on E's behalf, was unfair.

I've first considered if COT provided Mr T with all the necessary information relating to the credit card and, especially, the Personal Guarantee, so he could make an informed decision whether or not to enter into the agreement.

I can see that following the application, the Personal Guarantee and Credit Card Agreement were made available to Mr T and that, once Mr T had reviewed and electronically signed them, COT sent Mr T a follow up email which enclosed copies of the signed documents.

I've read a copy of the Personal Guarantee and think it's clear on the implications for Mr T in the event of E failing to make repayments of any outstanding debt and his overall responsibilities in general. I can also see Mr T was advised to seek legal advice before agreeing to be bound by the guarantee and this advice is clearly written on the front page of the agreement.

So, I think COT provided Mr T with all the necessary information for him to understand the implications and responsibilities of taking the credit card facility, on behalf of E, and the implications to himself as Personal Guarantor.

I also haven't seen any evidence to suggest Mr T was pressured into signing the Personal Guarantee. He applied for the credit card in July 2023 and, as it wasn't immediately activated, COT followed up with a call to Mr T in September 2023.

I've listened to this call and note Mr T was provided with product information and what he needed to do to activate the card. Mr T then made the decision to activate the card following the call and I've seen no evidence of any pressure to do that. COT provided him with product information and instruction on how to activate the card and then allowed Mr T to decide whether or not to go ahead. So, I don't think the credit card was mis-sold.

In his response, Mr T has said the Personal Guarantee agreement is unfair and should be invalidated. He says the guarantee creates a consumer-facing obligation and should be subject to responsible lending rules, which would include affordability checks on the guarantor's personal financial circumstances.

Mr T thinks the Personal Guarantee documentation should be more widely separated from the Credit Card Agreement when sent to customers to make it more visible. And Mr T also thinks the unlimited liability aspect of the personal guarantee is unfair as it creates a disproportionate burden on the guarantor.

I've thought carefully about Mr T's comments and having done so I don't agree, and I'll explain why.

The credit agreement between E and COT, that Mr T applied for on behalf of E and acted as Personal Guarantor on, was unregulated and so the regulations and processes Mr T thinks COT should have followed don't apply. That said, I would expect COT to have acted responsibly when deciding to offer E credit facilities.

From the evidence I've seen, COT undertook creditworthiness checks on E as part of the application process but not on Mr T himself. I think this is fair as it wasn't Mr T but E who was applying for borrowing. COT might have chosen to consider Mr T's ability to repay any outstanding debt under his Personal Guarantee, but I don't think this was something it was obliged to do. COT made Mr T fully aware of his obligations before he signed the agreement, and I don't think it was obliged to do anything more.

Mr T has said he thinks the unlimited liability nature of the guarantee is unfair, but the Personal Guarantee that Mr T agreed to was very clear on the extent of Mr T's potential obligations in the event of E defaulting. I also think Mr T's proximity to E would have given him a degree of visibility and influence to control and/or be aware of any potential liabilities that may fall to him under the Personal Guarantee.

Finally, Mr T thinks the Personal Guarantee document should be better separated from the Credit Card Agreement when sent to customers to avoid any risk of confusion of responsibility. I can understand why Mr T thinks this might be helpful but, again, I don't think this is something COT was obliged to do.

The Personal Guarantee agreement I've seen that was sent to Mr T was clearly titled and contained, on its front-page, clear warnings and descriptions of the nature of the agreement, including the advice to seek legal advice before entering into the agreement. And I think this was sufficient to allow Mr T to enter into the agreement in full knowledge of what obligations it placed upon him.

When providing its evidence to this complaint, COT has accepted that it made errors when Mr T made his formal complaint by not acknowledging his concerns regarding the Personal Guarantee.

Complaint handling isn't a regulated activity and so it's outside the jurisdiction of this Service. So, I can't consider any aspect of COT's handling of Mr T's formal complaint.

Having said this, COT have offered Mr T £150 and apologised for its failings regarding this. I can see Mr T has accepted this and this seems a fair and reasonable reflection of the distress and inconvenience this will have caused him.

I'm sorry to note Mr T's financial difficulties but, in summary, I think COT made Mr T fully aware of his obligations under the Personal Guarantee before he signed it to support the credit card he applied for on E's behalf. And, as I don't think the Personal Guarantee was unfair, I can't reasonably say that it should be invalidated.

My final decision

For the reasons stated above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or

reject my decision before 21 November 2025.

Ben Castell
Ombudsman