

## **The complaint**

Mrs A complains that New Wave Capital Ltd, trading as “Capital on Tap”, did not fairly or transparently present a personal guarantee.

## **What happened**

Mrs A was the director and owner of a limited company, referred to here as “B”.

In September 2018, B applied to Capital on Tap for a revolving credit facility. The terms of the facility were set out in a credit agreement, to which a personal guarantee was attached. Both the credit agreement and the personal guarantee were electronically signed in September 2018.

In November 2019, Capital on Tap informed Mrs A that it was changing the card provider for the product from Mastercard to Visa and asked her to sign a new agreement. A second credit agreement, which again included a personal guarantee, was electronically signed on 22 November 2019.

In October 2021, B failed to repay an amount due under the account. In January 2022, Capital on Tap and B agreed a repayment arrangement to address the outstanding arrears. However, this arrangement subsequently failed due to non-payment.

Consequently, Capital on Tap issued a default notice on 25 July 2022, followed by a termination letter dated 11 August 2022. The account was then sold to a third party for collection.

Mrs A complained to Capital on Tap in June 2025. She said the personal guarantee in the credit agreement was not clear and that she was unaware she was accepting personal liability for the account. She noted that, for another company loan, the personal guarantee was set out in a separate, witnessed document, leaving no doubt as to its importance. She therefore believed Capital on Tap’s personal guarantee was unfair and not transparently presented. She also questioned whether she had signed the second agreement in November 2019.

Capital on Tap said it had done nothing wrong and that Mrs A electronically signed both agreements and the associated personal guarantees, which clearly set out their terms and personal implications. It said that by signing, she confirmed she understood and agreed to those terms on both occasions.

As Mrs A’s complaint remained unresolved, she referred it to this service to look into.

Our investigator did not think there was anything Capital on Tap should be asked to do. He said a complaint about the first agreement could not be considered because it was signed before 1 April 2019, when our jurisdiction for complaints from guarantors of the debts of their own businesses began. For the second agreement, he found that, although the personal guarantee was contained within the wider agreement, it clearly said that Mrs A would be personally liable.

Therefore, given Mrs A's responsibility to read what she was signing, together with subsequent correspondence confirming her status as a guarantor, he concluded that she ought reasonably to have been aware that she had given a personal guarantee. And, as B failed to repay the debt, he ultimately considered it fair for Capital on Tap to pursue her under the guarantee.

Mrs A didn't agree with the investigator's conclusions and asked for an ombudsman to review her case.

She said she did not notice any subsequent communication from Capital on Tap about the existence of a personal guarantee and would have contacted them had she done so. She said she was not told she was signing a new credit agreement in 2019 and questioned the validity of the personal guarantee, noting that Capital on Tap's audit trail data did not show acceptance of a guarantee at that time. She also highlighted that B has not been dissolved and remains an active company, although it has not traded for some time.

### **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'm sorry to disappoint Mrs A, but I've reached the same conclusion as our investigator for broadly the same reasons. I'll explain why below.

I agree with the investigator that there is a jurisdiction issue in relation to the first agreement. The rules which govern the Financial Ombudsman Service say we can only consider complaints from guarantors of the debts of their own businesses where the guarantee was given on, or after, 1 April 2019. That is when our rules were expanded to include this type of complainant but the change was not retrospective.

As the first guarantee in this case was signed in September 2018, we are unable to consider a complaint about it, and I therefore make no comment on the merits of that agreement. However, I can consider the second guarantee as that was signed after 1 April 2019.

For completeness, I have also considered whether I am precluded from considering this complaint because Mrs A's debt has since been sold to a third party. I do not think I am, as the complaint concerns the way Capital on Tap presented the personal guarantee at the time the agreement was entered into. The substance of the complaint therefore relates to Capital on Tap's actions.

The central issues in this complaint are whether Capital on Tap fairly presented the personal guarantee to Mrs A before it was entered into, and whether Mrs A signed the agreement consenting to that guarantee. I'll address each in turn.

In considering how the personal guarantee was presented, I have taken into account that this was unregulated business lending, meaning there were no specific regulatory requirements governing how Capital on Tap needed to present the information. However, I would still expect Capital on Tap to have acted fairly and in line with good industry practice at the time.

I have considered the Lending Standards Board (LSB)'s Standards of Lending Practice as an indication of good industry practice at the time. These standards set out that lenders should explain when a personal guarantee is required and why, provide clear information about the guarantor's obligations, ensure the guarantee is not disproportionate to the borrowing, and recommend that independent legal advice be sought. I have reviewed the

terms of the second agreement with these standards in mind.

Having done this, I note that the page containing the personal guarantee begins with the following statement set out in bold type:

**“IMPORTANT - PLEASE READ THE FOLLOWING NOTE BEFORE SIGNING THE GUARANTEE:**

**This is a personal guarantee and indemnity. By giving the guarantee contained in this guarantee you might become liable instead of or as well as the Borrower.**

**New Wave Capital Limited will hold this Guarantee as security for the Borrower's debts and other liabilities to New Wave Capital Limited as set out in this Guarantee. New Wave Capital Limited can, on demand, make you pay all the Borrower's debts however and whenever they arise and/or your liabilities under this Guarantee.**

**We strongly recommend that you take independent legal advice before agreeing to be bound by this guarantee and also read the Agreement which this guarantee relates to.”**

The terms of the personal guarantee are then set out in a series of 18 clauses. These include clause four, which says that if the borrower fails to make any payment due under the agreement, Capital on Tap has the immediate right to require the guarantor to make that payment or cover any shortfall. And clause five which says the guarantor agrees to make such a payment on demand, as though they were a party to the agreement themselves.

Having reviewed these terms, I am satisfied that the personal guarantee clearly explains that Mrs A could be personally liable for the money borrowed by B. I therefore do not consider that it would have been unclear to her what she was being asked to agree to.

I recognise that when Mrs A provided a personal guarantee to a different firm this was set out in a separate document that required a witness. However, I do not consider there was any requirement for Capital on Tap to obtain a personal guarantee in that same way here.

I also acknowledge Mrs A's position that she did not realise she was signing a new lending agreement. However, the document she was asked to review, and sign, was 17 pages long and contained detailed information about the credit facility, together with the terms of the personal guarantee discussed above. In my view, it ought reasonably to have been clear that she was being asked to sign an important document that warranted careful review.

Mrs A has further questioned whether she signed the second agreement, noting that certain metadata was missing from material provided by Capital on Tap in response to her subject access request.

I cannot comment on the legal validity of the guarantee itself, as that is ultimately a matter for the courts. However, Capital on Tap has provided a copy of the agreement showing that it was electronically signed, and it has said that Mrs A could not have proceeded with the application without ticking all required boxes, including acceptance of the personal guarantee.

Mrs A does not appear to dispute that she signed the agreement on behalf of B, and I have not been presented with any explanation as to how she could have proceeded without also accepting the personal guarantee. So, on the balance of probabilities, I therefore consider it

likely that she did so.

Turning to Mrs A's concerns about acceptance by tick box, I have seen nothing to suggest that Capital on Tap was prevented from seeking agreement in this format. The tick box clearly stated that it should only be selected if she wished to be legally bound by the terms. I am therefore satisfied that Capital on Tap made it sufficiently clear that, by ticking the box, Mrs A was agreeing to those terms. I also note that the credit agreements signed on behalf of B were completed in the same manner.

I appreciate that being called upon to repay B's debt has been distressing for Mrs A, and I do not underestimate the personal and financial impact this has had on her. However, having carefully considered the circumstances, I am satisfied that Capital on Tap did not act unfairly or unreasonably in its presentation of the personal guarantee here, or in relying on it once B failed to meet its obligations.

### **My final decision**

My final decision is that I do not uphold this complaint against New Wave Capital Ltd trading as "Capital on Tap".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 15 May 2026.

Laura Colman  
**Ombudsman**