

The complaint

A company I'll call M, complains that New Wave Capital Limited trading as Capital on Tap hasn't reimbursed a payment that was made as part of a scam.

What happened

Mr C is the director of M and brings this complaint on M's behalf.

Mr C received a call in July 2024 from a scammer impersonating Capital on Tap's fraud team. Mr C completed security and was persuaded that there was fraudulent activity on the account. He's described being distracted by the fact he was driving at the time.

During the call Mr C was persuaded to share an OTP that Capital on Tap had sent to him via SMS. This was used to authenticate a payment, but Capital on Tap blocked this transaction. Mr C also reported being manipulated into completing steps in his banking app to confirm that he had made that first attempted payment by the scammer. The scammer then reattempted the payment after it was unblocked. They used a new OTP sent to Mr C to authenticate a second payment attempt, and this time the payment was successful. When Mr C realised he wasn't supposed to share these codes, he identified it was a scam and called Capital on Tap to report the matter.

Capital on Tap held M liable for the payment based on the level of involvement from Mr C in enabling the payment to be made.

When Mr C referred the complaint to our service on M's behalf, the investigator upheld the complaint. In summary they didn't think the payment was authorised or that Mr C was liable on the basis of gross negligence.

Capital on Tap didn't agree – in summary it said:

- It blocked the first payment attempt due to suspected fraud and Mr C confirmed the first it was genuine. If Mr C hadn't done this, the card would have been terminated.
- The disputed payment was only successful because Mr C shared an OTP. The SMS specifically said not to share the code, even with Capital on Tap.
- Mr C had received well over a hundred SMS messages in the past that were used to authenticate payments, so he was familiar with them.
- It had previously provided Mr C with a significant amount of information warning him about scams and not to take the steps he did. It also had a feature in its banking app that Mr C could have used to check if the call was genuine which he didn't use.

The matter was passed to me for consideration by an ombudsman and I issued my provisional decision on 4 November 2025 – here I explained that I didn't intend on upholding the complaint on the basis that I thought Capital on Tap could treat the payment as authorised and that I didn't think it needed to do more to prevent or recover the payment in the circumstances.

Mr C didn't agree on behalf of M; he said he hadn't given consent to the payment because he was deceived into the steps he took, was driving, and in shock. Mr C also appeared to question whether Capital on Tap could prove he confirmed the first attempted payment was genuine on his device. Further Mr C said the fact Capital on Tap blocked the initial payment attempted supports that it was irregular.

Capital on Tap didn't respond by the deadline set, so I've taken it that it has nothing further to add.

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 not upholding this complaint. I'll explain why.

Under the relevant law – the Payment Services Regulations 2017 (PSRs) – the starting point is that M is liable for authorised payments and Capital on Tap is liable for unauthorised payments. So, I'll address this point first.

Can Capital on Tap fairly treat the disputed payment as authorised?

Where a payment is authorised, that will often be because the customer has made the payment themselves. But there are other circumstances where a payment can fairly be considered authorised, such as where the customer has given permission for someone else to make a payment on their behalf or they've told their payment service provider they want a payment to go ahead.

It's common ground that Mr C was the victim of a scam, and it doesn't appear to be in dispute that he shared the OTP codes. While Mr C has raised whether Capital on Tap can show he confirmed the first attempted payment as genuine in his app, he appears to accept he may have done so. I think it's more likely than not that he did complete these steps in his banking app to confirm the first payment was made by him – this is because when Mr C initially reported the fraud, he confirmed he had done this, and I have seen no evidence to the contrary.

I understand Mr C doesn't think M should be held liable for the payment because ultimately, he was scammed, and M has lost this money to fraud.

I've considered the steps Mr C took as part of this scam.

- When the scammer attempted the first payment to merchant B, Mr C received an SMS that said "*One-time PIN is ***** for the transaction of 5454.47 GBP at (merchant B) using Capital on Tap card ****. Expires in 10 mins. Don't share this code, even with us.*"
- Mr C shared this OTP believing he was providing the caller with access to his account.
- Capital on Tap blocked this payment and sent Mr C a push notification that said "*We've blocked a transaction at (merchant B). Please confirm if this was you.*" The screen then sets out the following transaction information: The merchant the payment was to, the amount, the card being used, and the date and time. It asked Mr C to select either "*Yes, this was me.*" Or "*No, I do not recognize this transaction.*"
- Mr C selected "*Yes, this was me*" believing he was verifying himself.
- The next screen says "*You can now retry this transaction. Thanks for letting us know.*"

Now we know that this transaction was you, we've unblocked (merchant B) so you can now retry".

- When the payment was reattempted, Capital on Tap sent Mr C a second SMS containing an OTP with the same message as for the first attempted payment, as set out above.
- Mr C shared this code believing it was needed to prevent payments and secure the account. It was used to authenticate the second attempted payment which was successful.

While I appreciate Mr C was manipulated by a scammer and that he didn't want the payment to go ahead, I've needed to think carefully about the significant role Mr C played in making the disputed payment appear authorised.

It's not in dispute that Capital on Tap sent the OTPs to Mr C's mobile number. And for the reasons explained, I'm satisfied he did verify himself using his genuine device to access his banking app.

Capital on Tap asked Mr C about a specific payment, and I'm persuaded he confirmed directly to it "*yes, this was me*". I consider that Mr C effectively told Capital on Tap that the payment was genuine and that he wanted that payment to go ahead. So, when the payment was reattempted, bearing in mind it was for the same amount and to the same merchant, Capital on Tap reasonably considered Mr C had authorised the payment.

I understand Mr C was driving at the time and so may not have read any of the above communication from Capital on Tap fully. But Capital on Tap did provide him with information about the payment and he completed the steps I've set out above.

I also understand Mr C was manipulated and deceived so doesn't consider that he gave genuine consent. It's important to note that consent can mean different things in different contexts, and the tests vary depending on the applicable law. For example, the requirements around consent in a healthcare setting are different to a data protection setting. Under the PSRs, giving consent to a payment is a formal concept. Consent is given when an agreed procedure is completed by the payer. The reasons of the payer for doing so are not referenced, nor is there a requirement for the payer to have wanted to make the payment.

So, I don't consider that Mr C's full understanding of events at the time to be a requirement for a payment to be treated as authorised. Rather it is the steps Mr C took that Capital on Tap relied on that are relevant. And as I've said, I'm persuaded he was specifically asked about a payment and confirmed it was genuine, before Capital on Tap processed the payment when it was reattempted. For these reasons I think Capital on Tap can fairly hold M liable for the payment.

Did Capital on Tap miss an opportunity to prevent M's loss?

In broad terms, the starting position at law is that Capital on Tap is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the PSRs and the terms and conditions of the customer's account.

Having taken into account longstanding regulatory expectations and requirements, and what I consider to be good industry practice, Capital on Tap ought to have been on the look-out for the possibility of fraud and made additional checks before processing payments in some circumstances.

Mr C says that the fact the initial payment was blocked shows it was irregular. But as I've said, I consider that it was reasonable for Capital on Tap to accept it was a genuine payment

attempt - which appears to have been the risk it detected - when Mr C verified himself and the payment in his banking app. Here I'm considering whether Capital on Tap ought to have other concerns that M might be at risk of financial harm from fraud, for example as the victim of a scam. I have reviewed M's account statements and note it is a business account. Having considered the overall account activity, when the disputed payment was made, its value, and who it was made to, I'm not persuaded Capital on Tap ought to have found it suspicious, such that it ought to have made enquiries of Mr C before processing it.

I appreciate the payment may still have been pending when Mr C reported it. But as it had already been processed by Capital on Tap, it couldn't have declined or frozen the payment at that point.

For these reasons, I don't think Capital on Tap missed an opportunity to prevent M's losses.

Should Capital on Tap have done more to recover M's funds?

As the disputed payment was made using Mr C's credit card, and M is a limited company, the applicable route to recover the payment would have been the chargeback process. The rules are set by the relevant card scheme to settle disputes with the merchant.

Capital on Tap would only be expected to raise a chargeback if it thought it had a reasonable prospect of success. Given how the payment was authenticated, it's unlikely a chargeback on the grounds of fraud would have been successful under the scheme rules. And as the payment appears to have gone to a genuine merchant, there's no evidence to suggest they didn't provide goods or services in return for the payment - even if this was to someone else. So, a claim raised on that ground would also likely be unsuccessful.

For these reasons, I don't think Capital on Tap needed to do more to attempt to recover M's funds once aware of the issue.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 18 December 2025.

Stephanie Mitchell
Ombudsman