

The complaint

Mr W (a director) complains on behalf of a limited company P that New Wave Capital Limited trading as Capital on Tap (CoT) won't refund what he says are unauthorised payments made on P's credit card.

Although P is the complainant here, for ease of reading, I'll mostly just refer to Mr W throughout where I mean his company P.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide an overview of some of the key events here. Mr W describes how on the evening of 17 October 2024 he went out to a works event. He says he attended various establishments and ended up at a house party with people he'd met that evening. He says it was a night of very heavy drinking and he only has limited recollections. He remembers waking up on a couch, before leaving the house, walking for around 30 minutes before getting a taxi and later a train home.

He says he later became aware that there had been use of his CoT credit card account which he says wasn't him. He says (and has evidenced) that there was also attempted use of other accounts he held (as well as further attempted use of the CoT account). The below transactions are those Mr W is disputing which all took place on 18 October 2024.

Time	Merchant	Authentication Method	Amount
08.13am	'F'	Apple Pay	£1,500
08.35am	'M'	Apple Pay	£2,999.99
08.51am	'D'	Apple Pay	£665.48
08.53am	'D'	Apple Pay	£791.43
09.24am	'DT'	Chip and PIN	£2,500
09.25am	'DT'	Apple Pay	£2,400
09.42	'D'	Apple Pay	£944.37

CoT declined to provide a refund. They pointed out that Mr W's biometrics or phone passcode would've been required for the payments authenticated via Apple Pay. And both his card and PIN would've been required for one of the payments.

Mr W complained and when CoT maintained their position the matter was referred to our service. Although I do note CoT provided a total of £50 compensation for some service issues. One of our Investigators recommended that the complaint should be upheld. In a broad summary he considered the payments to be unauthorised and that they should all be refunded (less £35 in line with the account terms if CoT chose to make that deduction). CoT didn't accept this outcome and the complaint was passed to me to decide.

In January 2026 I issued a provisional decision in which I said:

“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 intending to reach a different outcome to that of our Investigator. So, I’m issuing this provisional decision to give both sides a further opportunity to comment before my decision is finalised.

This complaint is complicated by the fact that I’m dealing with only limited information. Mr W isn’t able to provide much information about the events at the times in question as by his own admission he’d been drinking very heavily, and he simply can’t recall what happened. His allegation is that the payments in dispute were made without his consent or agreement. And, on the face of it, some of the spending does seem unusual and might support that payments were potentially ‘unauthorised’.

I’m going to place weight on the evidence from CoT with regard to the times of the payments and the merchants used as I find this to be more objective and reliable than Mr W’s hazy recollections.

I accept that Mr W was (as he says) on a work night out on the evening of 17 October 2024. There is spending on his card that supports this being the case, specifically a payment (not in dispute) to a bar in the Shoreditch area of London that was made at 10.21pm for around £287. I also accept that it was Mr W who (again as he says) paid for a taxi at 10.40am on 18 October 2024.

Our investigator set out a potential situation in which Mr W was observed during his night out using the passcode to unlock his phone. It was suggested that a third party could then have updated the biometrics on the phone (as they had observed the passcode) which would’ve enabled the authentication (via Apple Pay) of the disputed payments. And where chip and PIN was used, it was suggested that the PIN could’ve been seen in the CoT app. I accept that what was suggested is as a minimum, possible. Although I do note that whilst a passcode is periodically required, my experience is those who have biometric access to their device enabled, use that method the vast majority of the time. But beyond being a possibility, I must decide if what our Investigator suggested (in essence that Mr W had no involvement in the payments) is more likely than not what happened. There are many alternate explanations which include Mr W sharing his device and passcode or authorising the payments himself.

I don’t feel I can place much weight on Mr W’s testimony evidence. He freely admits that he essentially can’t remember the key period of time during which the payments took place. In a call with CoT Mr W was asked whether he lost his phone, if it was given to anybody or if he knew of it’s whereabouts at all times? His reply was “Yeah, to be honest, I don’t know to be honest, so even when I got back, I didn’t know whether the phone had been cloned or what.” In a later call with our Investigator the following exchange took place:

Investigator: “you went back to a house party, what happened then?”

Mr W: “To be honest, I can’t remember... I didn’t even realise or think that anyone had my phone...”

Investigator: “Can you remember giving your phone to somebody?”

Mr W: “No”

Mr W also later said “I do know I had a bit of a ‘blank’ out, I had no idea what happened and even the following day, very little recollection...”

And whilst I don't question Mr W's integrity, there is an element of not being able to have things both ways. So whilst Mr W believes he wouldn't have made these payments or have shared his device / card to allow another to do so, accepting he can't remember, means he also can't know this for sure.

The merchants paid don't entirely support or diminish his allegation as some could quite plausibly have been genuine (large orders to what is primarily a food / drink delivery service 'D' whilst at a house party), whilst I accept others are more suggestive of unauthorised use. So I don't find the merchants paid to be strong evidence either way.

CoT have also raised a very valid point insofar as it would seem highly unusual for a third party to risk discovery / capture by returning Mr W's card and phone to him (after making payments) when there is no real conceivable benefit to them in doing so. Typically, a third party who'd been able to access a device / card to make payments would then either look to offload the phone for a further profit or simply discard it (and the card) quickly after having made payments to minimise any risk of being found to be in possession of items that would be difficult to explain.

This is further supported by Mr W also still being in possession of various bank cards of his (as the evidence shows that he spent on the morning of 18 October 2024 with both his CoT card and a debit card from another bank). If Mr W was incapacitated and another had access to his wallet, and neither of those cards were blocked at the time, it's again difficult to understand why a dishonest third party wouldn't have continued to try to spend on the cards (either via contactless or having discovered the CoT PIN number).

So overall, and accepting that this is balanced, I don't think it was unreasonable for CoT to treat the payments in question as having been authorised by Mr W. There is insufficient evidence to persuade me that the most likely explanation is the alternative to that position. Mr W can't tell us what happened and is working on the assumption that he wouldn't have made the payments he did. And as I've set out above, there is a very narrow set of circumstances which make that a physical possibility. But I just don't think, of all the possible explanations, it was unreasonable for CoT to conclude that it wasn't the most likely.

And as my current finding is to endorse CoT's position that Mr W authorised the payments in dispute, I don't think intervention in any payment by CoT (such as requiring a SMS or in app confirmation) would've made a difference to the payments going through. I also don't think there was anything CoT reasonably could've done once Mr W made his report to them that might have resulted in the recovery of any of the payments made.

I also note that CoT paid a total of £50 compensation for the service they provided in relation to this matter. Keeping in mind that the complainant is P, a limited company, it can't feel distress, and I don't think there was inconvenience or other detriment caused where it would be reasonable for me to increase that compensation.

My provisional decision

For the reasons outlined above, but subject to any further information I receive from either Mr W on behalf of P or CoT, I'm not intending to uphold this complaint."

CoT didn't respond to my provisional decision. Mr W provided a response which I'll address below.

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.

Mr W's response includes that multiple accounts of his were targeted. He says the other financial institutions locked those accounts down and it was only CoT that let transactions go through. I acknowledged above that there was also attempted use of other accounts. But this decision is about the actions of CoT, not other financial institutions. I understand that this has likely been highlighted to support Mr W's position that he wasn't involved in the activity across all his accounts, but nothing regarding the use or attempted use of other accounts held changes my mind as to the outcome of this complaint. This decision is only about the actions of CoT and for the reasons I've set out, I don't think CoT have acted unfairly, this includes in the context of the activity and actions of other institutions who provided Mr W with other accounts.

Mr W also reiterated his position that it wasn't him who authorised the transactions. He also questioned whether there had been a change in biometrics on his phone. I've previously considered this when I've weighed the evidence and I still believe it's more likely than not that this would've required his consent. Mr W also said: *"For clarity, if someone gains access to the phone and apps, they can also access card details within the apps, so the assumption that someone had access to the phone and cards... and then gave them back!?"*. I'm not entirely clear what Mr W means when saying this. I think he is referencing my point about both his phone and cards having been returned to him and proposing an alternate situation where card payments were made with details obtained via apps, rather than physical possession of a card. I've considered this, but the evidence shows that the 09.24am payment was authenticated via Chip and PIN, meaning the physical card itself was used. And even if that weren't the case, my point would stand that it is very uncommon for a dishonest person able to make unauthorised payments on a phone to return it to their victim. As above, there is no conceivable benefit to them doing so against the risk of being caught.

Mr W also questioned what I'd said about P (as the complainant) being unable to experience distress. I maintain this point. P as a limited company is a legal entity in its own right and is separate and distinct from its directors. So I wouldn't make an award to P for being caused distress that it can't feel. I also couldn't make an award to Mr W personally here as he isn't the complainant, P is. A limited company can however experience inconvenience and reputational damage. And in that context, and the circumstances of this complaint, there isn't a reasonable basis upon which I could require CoT to pay more compensation than they already have.

I understand Mr W will naturally be disappointed with my decision. And I acknowledge that this is a balanced case. There are many unknown factors but my role requires I reach an outcome based on what I consider to be more likely than not. And having considered all that has been submitted in response to my provisional decision, I'm still not persuaded that it was unreasonable for CoT to treat the payments as authorised.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or

reject my decision before 13 March 2026.

Richard Annandale
Ombudsman