DRN-4290258

The complaint

M, a limited company complains that New Wave Capital Limited trading as Capital on Tap (COT) breached the terms of its agreement.

M seeks payment of damages and is represented in its complaint by a director, Mr T.

What happened

M had a revolving credit agreement with COT with an £8,000 credit limit. In late December 2022, COT asked M about the withdrawals it had been making. M told COT that it was using the money for working capital.

In early January 2023, COT again asked M for an explanation about how the drawdowns were being used within the business and suspended M's access to the account. Mr T responded the same day and then contacted COT towards the end of January 2023 to find out what was happening with the account. COT apologised that it hadn't forwarded M's responses to the correct team to deal with. COT asked Mr T to supply three months bank statements so that it could review the suspension of M's account.

After M provided bank statements to COT, it said the suspension of the account would remain in place because the statements showed that M wasn't actively trading. M says this was incorrect as there was evidence of daily debits and credits. M said that COT hadn't even seen the bank statements at the time it suspended the account.

Mr T says that COT was in in breach of clause 6.2 of its agreement, as it didn't give two months' notice of any changes. Mr T says COT hasn't given it a credible explanation of why it suspended the account. Mr T says M is left with a shortfall in working capital which it holds COT responsible for.

COT agreed that it delayed dealing with the suspension of M's account. For this, it offered M £50. But COT didn't agree that it made a mistake when it suspended M's access to the account. COT told M that it would need to make the next three repayments on time and provide a business bank statement showing that M was actively trading before it would consider whether to lift the suspension.

Our investigator didn't uphold M's complaint. Our investigator explained that the terms of M's agreement allowed COT to suspend access to funds in certain circumstances. After COT received the information it requested from M, it kept the block in place. Our investigator thought that this was in line with the agreement M had with COT.

Our investigator agreed that COT should have sent the information M provided for review more quickly than it did. However, our investigator didn't think this would have changed anything as after carrying out the review, COT thought the block should remain in place.

Our investigator said that while clause 6.2 meant COT should give two months' notice of any change, this wouldn't supersede the other clauses that COT was relying on to suspend M's account. Finally, our investigator said it would be for a court to decide whether there had

been any breach of contract. But he'd seen nothing to suggest that COT did anything wrong.

Mr T wasn't happy with the investigation outcome. He doesn't accept the investigator's interpretation of clause 6.2. Mr T says that by COT not performing its part of the bargain, it has repudiated M's contract. Mr T says it incorrect to say that M isn't trading as it publishes accounts every year and is clearly trading.

Our investigator responded to Mr T's concerns by saying he didn't think COT needed to give M two months' notice before blocking its account. He also thought there were other clauses in the agreement which allowed COT to monitor M's account and request additional information.

As Mr T confirmed to our investigator that he'd used personal funds to support the business of M, our investigator didn't think it was unreasonable of COT to suspend access after viewing M's bank statements. Our investigator didn't think there was any reason why COT shouldn't ask M to repay the money it had borrowed.

Mr T remained unhappy. He said M used the facility in line with the terms of the account. Mr T said COT didn't given it 60 days' notice of the suspension which meant he had to fund M personally. Mr T also said that we'd not clarified part of COT's final response.

Our investigator went back to Mr T to say that he didn't think he'd missed part of clause 6.2 and that he didn't agree with the conclusions Mr T was trying to draw about the wording.

Our investigator agreed that COT's final response could have been worded more clearly but said that it didn't change the outcome of the complaint as ultimately, our investigator thought COT' actions were reasonable. Even if COT had reviewed the information M provided sooner, our investigator thought it would have still decided that M didn't meet its lending criteria.

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.

I'm aware that I have summarised M's complaint. I hope Mr T will understand that I'm not being dismissive of the points that he's made, but this reflects the informal nature of our service. I want to reassure Mr T that I have read everything that he has sent to us. I hope he will understand if I don't address every comment made. I intend to concentrate on what I consider is key to this complaint.

I'm satisfied that under the terms of its agreement with M, COT is allowed to carry out reviews of its customers' accounts and suspend access. So, I am focussing on whether COT acted reasonably when it took both these steps.

The facility which COT provided to M was only to be used for business purposes. COT says that since opening the account, M used it solely to make cash withdrawals which meant it could not easily monitor usage. Because of this, COT asked M what it was using the money for. I think this was a reasonable request permitted under the terms of the agreement.

I appreciate that Mr T responded to COT's information request in late December 2022 but COT appears to have overlooked this and so asked for similar information about the withdrawals at the beginning of January 2023. At this point, COT also suspended access to M's account.

I'm satisfied that under clause 23 of the credit agreement, COT was allowed to suspend M's ability to use the card and stop COT from making payments on M's behalf in certain circumstances, including where there may be unauthorised use of the card or an increased risk that the customer will be unable to repay money owed to COT.

In M's case, COT was concerned about the number of cash withdrawals it was making. So, I don't find it was unreasonable for COT to suspend access while it investigated further. After Mr T provided bank statements, COT could see cash transfers from Mr T's personal account to M's business account. COT was concerned that M wasn't generating enough income to trade and repay the money it borrowed. I think this was a fair concern to have, so I don't find that COT was unreasonable to leave the suspension of M's account in place. Particularly as COT offered to review the suspension further down the line if M provided additional bank statements.

It's unfortunate that COT delayed reviewing the suspension until later in January 2023 after Mr T chased for an update. As the investigator told Mr T, COT didn't change its mind about the suspension after reviewing M's bank statements. So, I can't see that the delay made a difference to the outcome of COT's review. However, I agree that COT should have dealt with the review more quickly than it did. For this, COT offered to credit M's account with points equivalent to £50 to reduce the outstanding balance – I think this was a fair solution.

I do want to address one of Mr T's key points about the suspension of M's account. My understanding is that Mr T believes that as the suspension was a change to the account – COT should have given 60 days' notice beforehand in line with clause 6.2 of the credit agreement. I don't intend any disrespect to Mr T but I disagree with this interpretation. Clause 6.2 provides that if COT wants to make any changes to the terms of the agreement it will give the customer two months' notice in advance of making any change. However, by suspending access to the account, COT was not making a change to the terms. Instead, COT was relying on clause 23 which sets out when and how, it can suspend access to an account.

Under clause 23 there isn't any requirement on COT to give its customer advance notice of the suspension. Instead, clause 23.2 of the agreement says that COT will get in touch to tell a customer that this has happened "as soon as we can". In M's case – COT suspended use of its card in early January 2023 and at the same time contacted Mr T to ask him to discuss the cash withdrawals. So, I'm satisfied that COT acted in line with the terms of the account.

Just because COT suspended M's ability to access more funds doesn't mean that M didn't have to keep making the minimum payments. So, I don't find it reasonable to require COT to write off the outstanding balance or stop taking action to recover any amount which may be due from M.

I'm sorry to disappoint Mr T but for the reasons outlined above, I don't find that COT should do more than it has already offered to do in response to M's complaint. If Mr T still thinks that COT has breached the terms of M's agreement, he is of course free to reject my decision and pursue M's claim by other means, such as through the courts.

My final decision

My decision is that COT has already made an offer which I think is fair. So my final decision is that if it hasn't already done so, New Wave Capital Limited trading as Capital on Tap should credit £50 to M's outstanding balance..

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 11 September 2023.

Gemma Bowen
Ombudsman