

## **complaint**

S, a limited company, complains about the settlement of a claim by Covea Insurance plc under a commercial insurance policy.

## **background**

S made a claim under the policy following a theft. The person responsible for the theft was an ex-employee (who I'll call Mr Z). The policy provided up to £5,000 cover for loss as a result of employee dishonesty. S claimed for the full £5,000 as around £12,000 had been stolen.

Covea accepted the claim, but limited the payment to £500. S hadn't obtained references for Mr Z. And the policy said it could limit settlement to 10% of the sum insured if S didn't hold references for the individual responsible for the loss. Unhappy with this, S brought a complaint to this service.

Our adjudicator recommended Covea pay the remaining £4,500, plus interest. He accepted the policy allowed Covea to restrict the settlement if references weren't held. But given that S's members had known Mr Z for many years, he could understand why it didn't obtain references. He said he hadn't seen anything to suggest that obtaining references would have changed the outcome.

Covea disagreed with the adjudicator's recommendations, so the matter's been passed to me.

## **my findings**

I've considered all the evidence and arguments to decide what's fair and reasonable in the circumstances of the complaint.

The policy says under clause (1) (c):

*"(1) Our Liability*

*...*

*(c) If, in the event of a claim, you are unable to produce References for a Member of Staff or every Member of Staff acting in Collusion Our maximum liability will be...*

*(i) Ten percent (one tenth) of the Limit of Indemnity shown in the Schedule..."*

S is a social club. Mr Z became a member of S in 2000. Then in 2010, he began working as a committee member – S didn't ask him for references. In 2012, he became club secretary.

In 2014, S dismissed Mr Z. Some time after this, S's accountant discovered there'd been a theft from a gambling machine at its club premises. Approximately £12,000 had been stolen over a nine month period. It was thought Mr Z had duplicated a key to the gambling machine and was responsible for the theft.

The policy explains that if, after 12 months' employment in a 'role without responsibility', a member of staff is transferred or promoted to a 'role with responsibility', then clause (1) (c) won't apply – but only if S wasn't aware of any dishonest act before the transfer or promotion, and any references obtained at the time of employment are produced and didn't contain any evidence of dishonesty.

The policy defines what is meant by a 'role with responsibility'. I've provided S with this definition and it's explained that during his initial two years on the committee Mr Z didn't have a 'role with responsibility'. S has also confirmed that it wasn't aware of any dishonest act by Mr Z before he was later promoted to club secretary (which was a 'role with responsibility').

The issue for me to therefore decide is whether it was reasonable for Covea to restrict the payment because S didn't ask Mr Z for references when he was initially appointed as a member of the committee.

As I understand it, before Mr Z started working for S, he'd been unemployed. The reason for this is because his former employer had stopped trading, so he'd lost his job there.

The policy explains that S should obtain references for members of staff for the 12 months immediately preceding the start of employment. It goes on to say that if the previous employer is no longer trading, then it will accept confirmation of the dates of employment (such as payslips or a P60). It also says that if the member of staff is returning to work after an extended period (presumably this includes a period of unemployment), S should obtain a personal reference from someone not related to the member of staff which should confirm that person's honesty.

I don't know how long Mr Z was unemployed. But it seems that S couldn't have obtained a reference from his previous employer (as it had stopped trading), and so could only have received a personal reference for Mr Z.

Given that members of the committee had known Mr Z for many years in a personal capacity, I wouldn't have expected S to have asked Mr Z for personal references. I further note that when Mr Z first joined S as a club member, his application was supported by two existing club members who were able to vouch for his respectability and fitness to be a member (as required under S's rules).

Taking this into account, it seems very likely that Mr Z would have been able to provide a personal reference had he been asked (I expect S's own members would have been willing to provide this). As S's members knew Mr Z in a personal capacity and had no reason to doubt his honesty before he was appointed as a committee member, I can't see that obtaining a personal reference would have made any difference to its initial decision to appoint him. It's also the case that Mr Z wasn't placed into a 'role with responsibility' until he'd worked at S for two years.

I can understand why the policy terms require references to be obtained. But in the particular circumstances of this case, I don't think obtaining references would have made any difference to the matter. And given that Mr Z was personally known to a number of S's members, I can understand why it didn't ask him to provide personal references before appointing him. Because of this, I find that Covea should pay the full claim.

### **my decision**

My final decision is that I uphold this complaint. I require Covea Insurance plc to pay the remaining £4,500. Interest should be added at the rate of 8% simple per annum (less tax if properly deductible) from the date of claim to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 8 August 2016.

Chantelle Hurn-Ryan  
**ombudsman**