

The complaint

E, a limited company, complains Covea Insurance plc turned down a claim it made on its Childcare & Business Combined insurance policy.

What happened

In October 2022 E contacted its broker to let it know about a claim on its policy with Covea. It subsequently provided further information about this to Covea. It said a director of the business (who at the time was working as an administrator) had stolen a significant amount of money from it during 2022. It claimed on the 'Employee Dishonesty' section of its policy.

There was some discussion between Covea and E as to whether the director was also an employee and so covered by this section of the policy. After considering evidence from E (including his contract of employment) it accepted he was. However, it said there was an exclusion in the policy for 'Theft by Principals' which it thought applied here. And it didn't think E had complied with conditions in the policy including that it should have dual control in place for payments from bank accounts.

In his most recent view our investigator agreed the 'Theft by Principals' exclusion didn't cover theft by an official. And the definition of that included a director, partner or employee. However, he didn't think it was fair for the policy to cover 'Employee Dishonesty' on the one hand but then withdraw that cover in its entirety under the general exclusion. He didn't agree Covea could use this to turn down the claim.

However, he wasn't satisfied E had met the policy conditions as they relate to dual control. And he thought not doing so had increased the risk of the loss occurring in the circumstances in which it did. If that condition had been complied with the director would have been unable to transfer funds from E's bank account without authorisation from someone else. He also concluded it would have been possible for E to comply with the condition. So he thought Covea was entitled to rely on this in turning down the claim.

E didn't agree. In summary it said:

- Its bank had only offered a dual control facility from 2021 and so it wouldn't have been possible for it to comply with the clause prior to that date. It believed the facility had been created for charities and wasn't aimed at business customers.
- It thought any grey area should be considered in its favour and said Covea had tried to turn down the claim for different reasons which it had shown to be incorrect (for example in relation to whether a director could also be an employee). Given this, and the fact it was a long-standing customer of Covea, it thought it should honour the claim.

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.

The relevant rules and industry guidelines say Covea has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

E's policy does cover 'Employee Dishonesty' and says (subject to other terms) *"we will pay you for direct loss of money or property belonging to you or for which you are responsible caused by theft which is...committed within the territorial limits by any employee during the period of insurance and during the uninterrupted service of such employee with you"*.

However, the policy contains a general exclusion which says it doesn't cover *"theft or attempted theft where any official or any member of an official's family or household be concerned as principal or accessory"*. And 'official' is defined as *"you and any director, partner or employee of the business"*.

I agree those terms are in conflict with each other; the policy provides cover for theft by an employee but the general exclusion removes that cover in its entirety. So the effect is to give cover with one hand (the insuring clause) and then take it away with the other (the exclusion clause). The legal position is that the insuring clause and exclusion clause need to be read together. If either clause is looked at in isolation, the consumer would or would not have cover, depending on which of the clauses one considers. I don't think it's fair to say cover given by the insuring clause is taken away by the exclusion and agree Covea can't use that to turn down E's claim.

However, that's not the only issue because it's also relied on the fact that E hasn't met other conditions of its policy. And within the Employee Dishonesty' section the policy says:

"It is a condition precedent to our liability under this Section that the following minimum levels of control are used by you, unless otherwise agreed by us...you must operate a system of dual control and independent validation for all payments from bank accounts, including the drawing and signing of cheques and the use of electronic funds transfers"

I don't think it's in dispute E's arrangements with its bank didn't meet that condition. It says its bank only offered a dual control facility from 2021 which it wasn't aware of when the fraud took place. However, as the policy says *"you must operate"* I don't think those arrangements would necessarily have to be with E's bank. Depending on their nature I think it's possible internal controls could have met the requirements. And I understand E did have some internal controls because it told us payments over £2,000 needed approval from two administrators. However, the policy terms say *"all payments"* must be subject to a dual control system. So I'm satisfied there has been a breach of the condition here.

Under the provisions of the Insurance Act 2015 in order to turn down a claim for a breach of a condition like this the failure to comply needs to have increased the risk of the loss which actually occurred in the circumstances in which it did. It's for the insured to show it didn't. On the face of it I think it's hard to argue this breach didn't increase the risk of loss. If a dual control system had been in place the other director would have been required to obtain authorisation for the transactions he was making.

I appreciate he might have sought ways to circumvent that but the test isn't whether the loss would have been prevented but whether the breach increased the risk of the loss occurring. E hasn't provided any evidence to suggest it didn't. So I think it was reasonable of Covea to conclude non-compliance with the condition did increase the risk of the loss occurring (in the circumstances in which it did).

I've also considered whether it's fair for Covea to rely on that condition. E says its bank didn't provide a dual control facility until 2021 and this was primarily aimed at charities. But I don't

think that would have prevented it from making use of it. And if that system wasn't right for it then I'm aware other banks also offer this service. In any event, as I've said, E could have put in place its own processes to ensure compliance with the policy terms. In addition the policy says these terms apply "*unless otherwise agreed by us*". So if E felt it was impractical to comply with this term in relation to, for example, very low value transactions that's something it could have discussed with Covea.

I appreciate Covea did seek to rely on other terms when turning down the claim but it did reference the dual control issue in its initial claim decline letter in January 2023. I recognise in later correspondence it focused more on issues connected to the director's employment status and the exclusion clause. But that doesn't prevent it also relying on the dual control issue. And I don't think there is a grey area over the interpretation of this clause. Nor do I think the fact E is a long-standing customer of Covea's provides me with grounds to require it to pay the claim either.

I appreciate there's likely to be a significant impact on E if its claim isn't paid. I was very sorry to learn it may have to close. But the question for me is whether Covea has correctly and fairly turned down the claim it made. For the reasons I've explained I think it has.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 4 January 2024.

James Park
Ombudsman