

The complaint

M complains that QBE UK Limited (QBE) is unfairly chasing repayment of an amount it paid to a third party following a claim on its minibus insurance policy

What happened

M's minibus was involved in an accident and a third party submitted a claim. Following an investigation, QBE settled the claim on a 50/50 basis. But it said that M's refusal to cooperate with the investigation breached the policy terms and as such it refused to indemnify M for the outlay. It said it had been compelled to make payment in the settlement of the claim, and because the conditions of its policy hadn't been met, it had the right of recovery of that payment from M.

But M says it did all it could to assist. It says it provided QBE with everything it had available and the stress of having to deal with this claim and the threat of having to now repay approximately £50k - £70k to QBE has been extremely distressing.

M complained to this service. An investigator reviewed the complaint and said that QBE should indemnify M and stop any attempts to recoup what it had paid to the third-party.

QBE hasn't replied so the complaint is now with me for a final decision.

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 planning on upholding this complaint. I'll explain why.

There are two issues here. Was the driver of the minibus on cover? And, has QBE done enough to say that M breached the terms of the policy?

So, let's look at the cover first. The driver originally owned this minibus. However, as he didn't have a Public Service Vehicle Operator's licence, he says he sold the minibus to M. He then drove the minibus for M under the minibus insurance cover that M had with QBE. I've read the submission by M, and I've read the interviews conducted by the independent claim's validation company with both M and the driver of bus. I've seen a copy of the V5 and the screenshot from the DVLA. And I can see that the version of how the driver came to be driving the bus is consistent across all of this evidence.

However, I can see why QBE had concerns. The original owner of the minibus had previously attempted to get cover to drive it under his own name. But even though this was refused, this driver still managed to be driving this minibus at the time of the accident.

But for QBE to say that he wasn't entitled to drive the minibus, under the circumstances as described by all parties, it would need solid evidence that M was acting outside of the policy terms and endorsements. And it would need legal advice to support its decision.

But the story of how the driver came to be driving the minibus is consistent. Yes, I agree the circumstances are slightly unusual, but there is consistency and there's nothing on file from the underwriter to say this arrangement shouldn't have been covered. Looking at the policy terms and endorsements, the driver is covered. I agree it would've been better if the cash transaction following the sale of the minibus had been evidenced. But that single unsupported piece of evidence doesn't mean that all the other evidence, should be disregarded. So, I think the factual evidence provided: the V5; the screenshot from the DVLA; alongside the narrative provided by M; the driver and M's son, far outweighs any reservations QBE might have. As such, I acknowledge QBE's reservations, but I'm satisfied the driver was covered to drive the minibus at the time of the incident.

So, let's look at whether QBE has done enough to say M breached the policy terms.

The policy terms QBE say were breached are as follows:

"5.1 .1 you must notify us as soon as reasonably possible of any incident which may result in a claim under this insurance"

And

"5.2.1 you must give us or the police all information and assistance that may be required in connection with any such incident or claim in respect thereof"

The accident occurred in October 2019. From the file I can see that this accident was reported to the police, and they attended the scene. They wrote to M three months later and advised that they wouldn't be taking any further action. This letter was provided to QBE in April 2020.

I acknowledge there were attempts by QBE to contact both M and the driver. I also acknowledge that QBE was not getting the response it required. But as the claim moved through the process, interviews were conducted, circumstances were explained, and eventually both the background and what happened on the date in question all became clearer.

I can see that QBE carried out an investigation. And I can see that QBE sought legal advice. I can also see that there were numerous internal conversations with senior underwriters based on the evidence that had been collected and the legal advice put forward. But the bar to deny indemnity and seek a refund of costs is very high. And I'm not convinced that QBE had enough to do that in this case.

QBE did the right thing by seeking legal advice. But I can see that there was a hesitation about whether to accept it or not. One underwriter acknowledged that as underwriters they are led by legal expertise. But this same underwriter later writes that she doesn't think that QBE had enough to deny cover. Another underwriter says, *"I guess in close we should act on the legal advice"*. Again, the wording of this email would indicate that there was a hesitation to deny cover.

My sense reading the internal emails and notes was that some case handlers were adamant that something underhand was going on. But others were less convinced. What I really found unusual were the comments in August 2021 from the legal team. It would seem the report produced by the legal team was based solely on the claim's validation interview summary. This report indicates that the interviews had not been watched by the legal team. The report also says that no explanation was given to explain the early lack of cooperation

from the driver or M. He questions the son's involvement and he says it would be entirely justifiable to decline indemnity.

But I'm struggling to understand how such a hardened stance was taken given the email from M's son in June 2021. In this email M's son sets out clearly why there had been a lack of engagement. He explained how he'd become involved and he explained the language difficulties. He answered the questions posed by QBE and these answers were consistent with the claim validation interviews. I can only conclude that the legal team had not seen this evidence as it's not been referenced in their report. This may have caused an issue in QBE as it would be good practice to give more weight to legal advice. But in this case, I can see some case handlers were less convinced, and this is possibly because not everyone was aware of all the evidence on file.

I think QBE was always going to have to carry some liability here. There are internal emails which conclude that QBE would always have ended up paying something out in this case. I can't see anything in the early correspondence on file where QBE told M that it was having difficulty contacting the driver. So, it's difficult to now say that the driver was purposely avoiding talking to QBE. I also note that the driver no longer works for M, and that the minibus has now been sold. Given what we know now, I'm not convinced an earlier statement from the driver would've led to a different percentage split in the settlement. I say this because CCTV was available, there was a police report and other witness statements. So, I think QBE had enough evidence to make its decision on what percentage liability it needed to pay, without the driver's statement.

I think that QBE raised justifiable concerns on this case. It conducted an investigation and it sought legal advice. But I'm not convinced that the legal team had access to or reviewed the full file, and I don't think QBE had enough tangible evidence to support the course of action it is now choosing to take. I acknowledge that QBE struggled to contact both M and the driver. But I don't think this breach in terms had any long-term impact on how QBE eventually settled this claim. I understand that QBE initially looked to stop any action against M. But it's now reinstated solicitors and is intending to resume attempts to reclaim its outlay. As I am upholding this complaint, QBE needs to cease all attempts to obtain any of its outlay from M. If there are any court actions in place against M, these should also be ceased.

My final decision

My final decision is that I uphold this complaint. I require QBE UK Limited to cease any current or planned legal actions against M for the recovery of its outlay and to close down this file.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 24 March 2023.

Derek Dunne
Ombudsman