

## **The complaint**

Two charities, which I will collectively refer to as C, complain about the decline of their Commercial Buildings insurance claim by QBE UK Limited.

## **What happened**

The following is intended only as a brief summary. Additionally, even where other parties have been involved in the communications, etc. I have largely just referred to C and QBE.

C held a commercial insurance policy underwritten by QBE. In 2021, C's property was undergoing building works. Apparently, the contractor did not appropriately waterproof the site, causing the building to suffer an ingress of water. This seemingly occurred in June 2021.

C initially pursued this third party contractor, but they went into liquidation. After being unsuccessful in pursuing other insurance routes, C notified QBE. The formal notification of the claim was not made until April 2023.

QBE declined the claim, citing the following condition within C's policy:

"As a condition precedent to the right to be indemnified under this Policy the Insurers must be Notified as soon as practicable during the Period of Insurance...

of any circumstance(s) of which [C] shall become aware which may give rise to a Claim"

C was unhappy with this outcome, eventually bringing its complaint to the Financial Ombudsman Service. However, our Investigator did not recommend that the complaint should be upheld. He thought it was clear that C was in breach of this condition. And that C had not demonstrated that QBE had not suffered prejudice as a result of this breach.

C remained unsatisfied, so its complaint has been passed to me for a 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 am not upholding this complaint. I'll explain why.

Firstly, I will just note that both parties have made detailed submissions. I have considered all of this, but I am not going to be commenting on everything. Instead, I will be focussing on the key issues. This is not intended as a discourtesy. But rather reflects the informal nature of the Financial Ombudsman Service.

The first thing to determine is whether there has been a breach of the above condition.

There is some indication that the event leading to the claim may have been briefly discussed between C's representative and QBE in December 2022. But, even if this is the case, and even if this potential conversation could be considered enough to meet the requirements of the policy, this was still about a year and half after the damage was caused. So, I do not consider it is necessary for me to make a finding on this specific date.

C has argued that the wording of the clause requires C to make an assessment of whether an incident is likely to lead to a claim. To an extent this is true. And there may be circumstances where it is not appropriate for an insurer to rely on such a clause, where such a burden has been placed on a policyholder. However, I need to consider the circumstances of this case.

C's property suffered significant damage. The claim estimates are in the region of £150,000. And C was clearly aware of this damage having been caused. It was also aware that its building was insured by QBE. I consider it is fair and reasonable to conclude that C ought to have realised that a situation where extensive damage had been caused to its building might give rise to a claim on a policy insuring that building.

I do appreciate that C initially pursued other avenues before bringing the claim under the policy. And, potentially, it might not have realised that these avenues would prove unsuccessful. But I consider the event that led to the claim arising was the damage that was caused to its property, not the liquidation of the contractor and/or failure of other insurance to respond. And once this damage had taken place, I consider that C ought to have notified QBE.

C did not notify QBE within a reasonable time period. So, I consider that the above condition has been breached.

C has said that QBE has not demonstrated that it has been prejudiced as a result of this breach. I would point out that the onus is actually on C to demonstrate that QBE has not been prejudiced. Regardless, I am satisfied that QBE has suffered a detriment due to the late notification of the claim.

QBE has referred to there being some uncertainty over the timing and circumstances of the claim. And has pointed to the difficulties that would exist in establishing this now. Not only might the various individuals involved be difficult to track down, their memories would not be as clear on the events as they would have been at the time. It is also quite possible that the damage to the property has worsened over time. I note that C has said that the condition of the property has not deteriorated, but this has not been evidenced. And would be difficult to verify without QBE having been given the opportunity to establish the condition of the property at the time of the event. Lastly, it is likely that the price of carrying out the necessary works has increased over the last few years. I note C has said that an adjustment could be made for this, though QBE has pointed out that this in itself would require additional effort.

Taken as a whole, I am satisfied that QBE has most likely suffered a detriment from C's late notification of the claim/circumstances which might lead to the claim. And so, C has not demonstrated that there has been no detriment caused by its breach.

In summary, I consider that C was in breach of the above condition precedent within the policy. And that this breach was detrimental to QBE. Ultimately, I consider QBE's reliance on this, to decline the claim, fair and reasonable in all of the circumstances of this complaint. It follows that I am unable to direct QBE to do anything further in response to the complaint.

**My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 17 June 2025.

Sam Thomas  
**Ombudsman**