DRN-5647729

The complaint

F, a company, complains that QBE UK Limited ("QBE") has unfairly declined a legal expenses claim under its security and fire protection insurance policy.

Any reference to F or QBE includes any respective agents and representatives.

What happened

The background of this complaint will be known between parties, so I've summarised events.

- F held a contract with a company (that I'll call "P"). F would provide servicing and maintenance for P's site under that contract.
- In 2018 an employee of P was seriously injured in relation to a security gate that F had previously maintained.
- In 2019 the Health and Safety Executive ("HSE") – the national regulator for workplace health and safety – wrote to F for information during its investigations. HSE and F also met around this time.
- In March 2023 F was informed a breach of contract claim for damages was being made against it (by "Company A") related to servicing and maintenance of the security gate in question and whether this was completed with reasonable skill, care and to a reasonable standard. Company A also referenced specific maintenance carried out by F and raised concerns about this. Following this F contacted its broker ("Company S") to make a claim under its security and fire protection insurance policy.
- In June 2023 QBE appointed Company K to manage the claim, and QBE indicated F had breached the policy's terms regarding late notification and breach of claims conditions. So, QBE said the policy may not cover this claim.
- F instructed solicitors ("Company T") to represent it and defend its position regarding the breach of contract allegation from Company A.
- QBE instructed Counsel to give their opinion on whether F had breached its policy terms. This view was given in December 2023 and said QBE should either obtain further correspondence/minutes of meetings between F and HSE; decline the claim; or try to reach a pragmatic resolution with the third party.
- On 1 May 2024 QBE declined the claim. It explained this was for late notification. It said while it recognised F may not have felt the circumstances would lead to a claim, F's policy required it to notify the insurer of matters which may give rise to a claim.
- The complaint came to this Service for a review. F has told this Service there was no indication F was responsible for the incident around 2019 at the time of the HSE investigation. Company K requested information and evidence from Company T regarding the late notification, which was provided in October 2024.
- Our Investigator looked at what happened and upheld the complaint, saying:
    - The policy stated F needed to inform the broker as soon as practical, but within 30 days in the event of any other damage, bodily injury, incident,

accident or occurrence, that might give rise to a claim under the policy.

- F said it wasn't aware of the claim against it until it was contacted by the third party in March 2023, and in turn QBE were notified at the end of March 2023.
- QBE approached F around three months after it was notified of the claim – and the Investigator didn't believe this was handled promptly.
- She discussed Counsel's opinion from December 2023 which she summarised as finding it would be inconceivable the possibility of a claim wasn't discussed or in F's minds in 2018.
- The Investigator said she'd found no reasonable justification why it took QBE until May 2024 to decline the claim. And she said QBE could've been more proactive with handling the matter, as no further information or evidence was obtained after Counsel's opinion was provided.
- The Investigator said QBE didn't act fairly when declining the claim at the time it did. She said it was clear Counsel had limited information regarding the meetings and lack of minutes – and while QBE requested this after the claim decline, it should've done this before it made its decision.
- In conclusion QBE hadn't demonstrated it had acted fairly and reasonably by not obtaining further relevant material to inform its decision, and it had failed to show its position had been prejudiced by the alleged late notification.

- The Investigator directed QBE to reconsider the matter in light of the information now obtained regarding the earlier meetings F had, and she awarded £500 in compensation for the handling of the claim.
- QBE responded to say it disagreed. In summary it said:
  - Counsel reviewed various email threads, a report and other evidence submitted by F – and determined the evidence affirms QBE's previous position. And said if F failed to accept this QBE would issue declaratory proceedings against F to affirm it is entitled to refuse indemnity.
- QBE was not required to establish prejudice from the late notification, but there was substantial prejudice as a result of its inability to investigate and obtain contemporary witness evidence and documents at the time of the accident as well as engage with P and Company A at an early stage.
- The Investigator requested a copy of Counsel's opinion to support what QBE had said. And she asked it to further explain how its position was prejudiced. But QBE said it wouldn't provide anything further.
- F since provided recent correspondence between Company T and QBE which further detailed why it disagreed with QBE's conclusion and said the evidence supported there was no reasonable basis for F to have concluded HSE or any other party would look to hold F accountable for the accident.

So, the matter was passed to me for an Ombudsman's decision. I issued a provisional decision on 4 June 2025 outlining my thoughts and why I wasn't intending on upholding this complaint. I've included an extract of this below.

> "In this case both parties have provided substantial submissions. My role requires me to say how I think a complaint should be resolved quickly and with minimal formality. This means I'll focus on what I consider to be the crux of this complaint. Where I don't comment on every point made by parties, this is not intended as a discourtesy nor a reflection that I haven't seen or considered the points, simply that I don't consider it to be necessary to reference them within my decision.

In this case the starting point is the terms of F's policy. Under a section titled "*Claims Conditions*" it states that:

> "*The following conditions 1 – 10 must be complied with after an incident that may give rise to a claim under **your** policy. Breach of these conditions will entitle us to refuse to deal with the relevant claim.*"

Below this it lists the relevant conditions. And under condition 3 it states:

> "***You** or any other party insured by your policy must inform* [broker]*…within as soon as practical but in any event within thirty (30) days in the case of any other **damage**, bodily injury, incident, accident or occurrence, that may give rise to a claim under any **your** policy but not separate specified above.*"

I think these terms are clear that there's a requirement on the policyholder to notify the broker/QBE in the event of the above situations being met that may give rise to a claim under the policy. And this is a common term within insurance policies like this. It's important to insurers that they be given notice of a potential claim promptly so they can investigate the incident properly.

QBE's position is that:

- From April 2018 F was aware there had been a serious incident involving injury to one or more individuals employed by P/Company A;

- P and/or Company A and/or the HSE were investigating the incident; and P and/or the Company A required F's input as the gates implicated in the incident fell within P and and/or Company A's maintenance contract with F. And these had been inspected/serviced by F on 8 November 2017.

QBE states the Policy did not require F to have any immediate knowledge that it had or may have had any liability for such loss, merely that it was at least possible that a claim may result from the incident and that "*objectively evaluated, the circumstances created a reasonable and appreciable possibility that it would give rise to a loss or claim against* [F]"

QBE states the circumstances of the incident and F's involvement both prior to the incident and in the investigations thereafter, that it would have put F on notice that a claim may be made on the Policy.

On its face, I think QBE's interpretation of these facts are persuasive in supporting F would have reasonably known the incident/injury *may* give rise to a claim – even if they didn't think this would be most likely to happen. Simply, F was aware that a serious injury/incident had occurred in relation to something that it had carried out repairs/maintenance to.

QBE says that despite being aware of this incident when it occurred or shortly after and having been made aware of the injury and investigation from the HSE it was not until March 2023 that F reached out to the broker to make a claim. And on that basis, I'd agree the matter was brought very late to QBE's attention and outside of the condition of the policy.

QBE also appointed a barrister to give advice on the matter for the purposes of understanding whether QBE could defend in court its position to decline F's claim due to the lack of notification. I've included part of this commentary below.

> "*In the days following the accident and upon* [F's employee]*'s attendance it is difficult to envisage how the possibility of serious injury (and thereby the possibility of a claim / prosecution) could not have been at the forefront of all parties' minds. It was surely obvious to all that the Claimants would likely bring a claim against their employer, who in turn would pass it on to those charged with maintaining the gates. Why else was* [F's employee] *called to the scene on three separate occasions by three separate parties?*"

I'm minded to agree with these thoughts. And I fail to see that the parties not taking immediate action would've removed the reasonable possibility of action being taken at a later stage.

F has pointed to case law and stated that the wording "*which may give rise to a claim*" should be interpreted to mean circumstances where there is a real (as opposed to fanciful risk to give rise to a claim). And it highlighted the lack of expression of discontent on part of Company A or any other relevant party. I agree with this principle, but for the above reasons in my own opinion, I am not persuaded this was a fanciful risk. The circumstances of the

accident meant there was indeed a real risk given F's role in maintaining machinery that led to the injury occurring.

F's position is that *prior* to receiving a letter before action from Company A, it wouldn't have been reasonable for it to reasonably have considered the incident involving the injured party may give rise to a claim under the policy. It said that P had confirmed it did not hold F liable for the accident – and post incident Company A had continued to renew its contract for another six months. And F said during any conversations with Company A around this time there was no indication that any party held F liable for the incident.

F has said its employee (that QBE's barrister referenced) had met with P in April 2018 and while there were no minutes of the meeting, F says the parties were critical of Company A's conduct. Therefore F states there was no realistic risk of being held liable itself. F also has made other critical comments of the work carried out by Company A. F has also referenced Company A arranging its own monthly preventative checks in relation to security locking systems. As well as another company that F says Company A had used interchangeably with F.

I take on board its comments here, but I don't agree that F's belief that Company A would be found responsible for the incident occurring to be persuasive evidence that an event that may give rise to a claim wasn't unfolding. By this I mean F may well believe that it wasn't responsible for the incident and that Company A (or another party) was instead. But this does not mean that a potential claim against F could not realistically stem from this – and that another party may see this differently than F. And as I've outlined above, I'm satisfied this is more than a fanciful risk.

F has pointed to correspondence from March 2019 from HSE – I've reviewed what has been provided to this Service and HSE references enquiries to understand the role of F had in repairing/servicing/maintaining the gate in question. Within this email there is a section the HSE agent has underlined that says "*You are not under any suspicion of having done anything wrong, and the purpose of my questions is purely to obtain a greater understanding of the background to the incident.*"

F has also referenced an email from March 2023 which says "HSE investigated [F]'s involvement in the matter under investigation; and has, to date, neither identified any

material breaches of the law on the part of the Company nor taken any enforcement action in relation to this" and "…*no legal papers served upon* [F] *in relation to the incident to date have been served by HSE; and any legal papers served with respect to civil matters should not be taken by* [F] *to imply or infer criminal responsibility as discussed…*"

I agree with F's comments here that these indicate that HSE didn't hold it responsible. But I don't believe this alleviates the wider risk for the reasons I've already detailed above. To my understanding, HSE would be looking to investigate whether there had been breaches of health and safety regulations, which is a different question to whether another party might be able to bring a civil claim against F

Our Investigator had previously said she believed QBE should've requested more information before relying on this advice. But I disagree, this barrister's opinion was not for the purposes of a prospects assessment for the purposes of whether the claim would be likely to succeed. This was for QBE's own assurance on its decision/course of action to decline the claim. And given the straight facts of the matter, I don't think it needed to obtain more than it did.

I understand QBE has obtained further comments from its barrister that it says supports its earlier actions. It hasn't provided these to this Service but this isn't something I've relied upon so it hasn't changed my mind or impacted my decision.

For all of these reasons, I'm satisfied QBE's decision that F has made its claim too late, and against the policy conditions is a fair one.

QBE has sought to rely on the condition in question being a condition precedent. This means it says that it hasn't needed to rely on its position being prejudiced given breach of the condition allows QBE to decline the claim without further consideration.

However, QBE gone on to detail several ways it believes it has been prejudiced by this late notification. These include what it considers to be a substantial prejudice as a result of its inability to investigate and obtain contemporary witness evidence and documents at the time of the accident as well as engage with P and Company A at an early stage following the incident.

I'm satisfied that the length of the delay from the incident compared to the date of the claim being made – several years later – does support the prejudice that QBE has described. So, whether the condition amounts to a condition precedent in this case falls away.

The Investigator previously awarded £500 in compensation for poor handling on the part of QBE. I have reviewed the life of the claim and I would agree with her thoughts that there appears to be periods of time where QBE did not progress matters as it should've done. However F is a company and therefore I am unable to award distress on behalf of F's employees. And I'm not satisfied there has been any inconvenience that I can recognise on the part of F so I'm not looking to make any award in this instance."

QBE responded to say it accepted my decision. But F disagreed, providing commentary from a barrister (Mr H) it had appointed. I'll summarise his comments below:

- He detailed the history of the claim and events before and after. He notes that Company A originally was contracted to provide services related to maintenance and

inspections for P but subcontracted this to F. And that F's employee carried out an inspection and service of the respective security gates in the presence of an employee of Company A in November 2017 prior to the incident occurring in April 2018. He states P was clear F was not being investigated nor held liable for the accident. And that a month after the accident, Company A continued F's contract. He also reiterated the events with the HSE highlighting it did not indicate HSE would be investigating F.

- Mr H points that my role as an Ombudsman requires me to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. And that in determining what is fair and reasonable I am required to take into account the relevant law and regulation. Mr H says whether F has complied with the condition in question is a necessary legal question – and he puts forward four considerations to suggest that I change my mind. I've summarised his thoughts:
    - *Time to be considered:* The relevant time for consideration as to whether the accident might give rise to a claim is the time of the incident, rather than any later time and the mere occurrence of the accident is not to be equated with the likelihood that a claim will be made arising out of the incident. Mr H makes reference to case law involving a claimant injured on the forecourt of a petrol station – and the case law supporting that the mere occurrence of an accident without intimation of any blame on the owner of the petrol station could not mean a claim was likely. And the case law supports that whether there is an obligation to notify an occurrence is to be determined by reference to the position immediately after it occurs and knowledge they had at the time.
    - *Objective test:* The test that should be applied in determining if F had complied with the condition is an objective one – based on a hypothetical reasonable person's conclusion, with the actual knowledge of F. Mr H details case law in this area, highlighting Court of Appeal comments which said "*The fact that a claim is made at a later date does not begin to establish or show that an earlier date it was likely to be made.*"
    - *Interpretation of "may give rise to a claim"*: The words "*may give rise to a claim*" should be interpreted as meaning it is more likely than not that a claim would be made in the future. Mr H says it is not sufficient to impose an obligation on F to notify QBE that it was possible there might be a claim – and argues that based on the responses of Company A, P and HSE it could be argued he could have reasonably concluded it was not possible that a claim against F would be made.
    - *No prejudice to QBE:* It is relevant to consider any actual or potential prejudice to QBE caused by late notification – and Mr H didn't believe QBE had shown any and nothing to indicate there could be any material prejudice in investigating the circumstances of the claim at a late stage. He said litigation would run its course, having been delayed by others, and memories may dimmer, but not as a consequence of QBE not knowing about the claim.
    - Mr H concludes that I should be considering the initial period after the incident occurred, the facts known to F at the time, and whether a hypothetical reasonable person would've concluded that it was more likely than not that a claim would be made against F. And in light of the lack of commentary to suggest criticism of F's work, Mr H feels this was not a reasonable conclusion to reach. Furthermore he comments that there would be no motivation for F to conceal the likelihood of the claim if he thought such a likelihood existed.

So, the complaint has been passed back to me for an Ombudsman's 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 not upholding this complaint. I'll explain why.

I've taken into account the arguments put forward by Mr H, and I'll address these particular points in turn. I'll begin by agreeing that my role does require me to consider what is fair and reasonable in the circumstances while taking into account the law, regulation, best practice amongst other things.

- Mr H has focused on the events that immediately followed the accident as the time to consider whether a claim would be likely to occur. These are points I've considered previously within my provisional decision, and I'm still of the belief the circumstances of having worked/maintained the security gates in question prior to a serious injury would give rise to a claim.
- Mr H has asked me to approach this objectively from a position of a reasonable person with the knowledge of F. And he's said the fact a claim was made later should not be seen as likely at an earlier stage. I agree with his comments here, and it is not the subsequent litigation against F but rather the circumstances of the accident which persuades me that there was a real risk a claim might be brought – and not a fanciful one – after the incident took place. And I'm satisfied that would be the belief of a reasonable person knowing the surrounding facts of the time.
- In these circumstances, neither the continuation of a working relationship from Company A, nor the HSE not taking further steps towards F, are enough to persuade me that an occurrence or incident under the policy that may give rise to a claim hadn't happened. Mr H has argued that F should've reasonably been of the belief that F could argue there wasn't a reasonable risk of any legal action being pursued in light of the reactions from the relevant parties. But I disagree with this. I think the circumstances of the accident were clearly severe and significant, with real risks to F based on its connection to the maintenance of the gates. While I understand the parallels Mr H has pointed to in relevant case law, I don't think the circumstances are as similar as he's suggested for the reason of these particular facts creating such a potential responsibility for F.
- Mr H has said he doesn't believe QBE can demonstrate it has been prejudiced by late notification in any event. Again, I simply disagree. I'm satisfied that several years after the event, QBE's inability to investigate and obtain contemporary witness evidence/documentation could well be impactful as it has stated. I believe Mr H has speculated that QBE wouldn't have taken steps at that time to engage with P or Company A at an early stage following the incident – but this is just his belief. And overall I believe QBE's position has been impacted and prejudiced by F's late notification.

For all of these reasons, while I've taken Mr H's arguments – alongside all of those made previously by both sides, this hasn't changed my mind.

My final decision

For all of the above reasons, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 24 July 2025.

Jack Baldry
Ombudsman