

The complaint

Miss D and Mr H complain that QIC Europe Ltd (QIC) declined their claim and avoided their policy following a flood at their property.

What happened

Miss D and Mr H took out a home insurance policy with QIC through an insurance aggregator website in October 2016. The policy renewed annually and in August 2020 Miss D and Mr H submitted a claim following a flood at their property.

During the validation of this claim, QIC says a misrepresentation was identified. QIC says that during a call that took place some 10 days after the claim was reported Mr H confirmed that the property had previously flooded in 2018. QIC says that Miss D and Mr H should've told it about this incident. It says it wouldn't have offered a renewal in 2019 if it had known about the previous flood. QIC considers this to be a careless qualifying misrepresentation. So, it avoided the policy back to 2019, refunded the premiums and declined cover for the claim from 2020.

Miss D and Mr H don't think this is fair, so they brought this complaint to us. Our investigator thought it should be upheld as they didn't think there had been a misrepresentation.

However, QIC doesn't agree with the investigator and has asked for an ombudsman's 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 upholding this complaint. I'll explain why.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

QIC thinks Miss D and Mr H failed to take reasonable care not to make a careless misrepresentation when they renewed the policy in 2019. It says a flood occurred in 2018

and had this flood been declared QIC wouldn't have provided a quotation. As such it avoided the policy back to 2019 as per the remedy available under CIDRA.

QIC says that insurers are interested in the history of flooding as this is a significant rating factor on deciding whether to offer a quotation and on what terms. It says that all leading insurers expect customers to declare previous flooding. Specifically flooding from an outside source and in particular flooding caused by sea, river or rainfall. QIC has pointed to the dictionary definition of a flood which states that a flood is an overflow of water beyond its normal limits e.g. land that is normally dry. QIC says that Miss D and Mr H had every opportunity to declare this flood at renewal in 2019. It says the renewal included a statement of fact which says, *"Your property or any property within 100m of your boundary wall has NOT been affected by flood within the last 10 years"*. The statement of fact has generated *"I agree"* as stated by Miss D and Mr H in 2016. And there's no record of Miss D or Mr H contacting QIC to change this statement.

Miss D and Mr H say that there has been previous flooding, but it was a long time before they moved in. Mr H says it was in 2000/2001 and possibly further flooding in 2008. This is all second-hand knowledge told to them by neighbours. Miss D and Mr H say that in 2018 there was a small build-up of water outside their home. They say (this is taken from a transcript of the call) they've contacted the council and water supplier about the drainage as *"water builds up every now and then"*. They said, *"a couple of years ago the water was about level with the door but obviously not enough rainfall to be a flood, but still went underneath the vents at that point"*.

I have seen a photo of the front door. There's a public footpath right outside and a small step onto it. You step down onto this smaller step from a higher step. There is gravel on each side of the small step, and from what I can see the bottom of the vents are level with the top of the small step. Mr H told QIC in later correspondence that on one occasion there was heavy rain and there was a rise of water outside on the public street. He says the water flowed over the public pavement and entered into the gravel at the front of his house. He said the water disappeared into the gravel, and no water entered the vents. He says there was absolutely no damage to his property. He said he did not believe this small overflow of water would be deemed a flood.

I know QIC want to know about previous floods. This is very important as per the underwriting guidance it has provided. And it's clear from its response to our investigators view, where it sets out numerous similar questions asked by all the other leading insurers that it wants to know about all types of flood. It says it's very concerned about the implications of "flooding" and QIC has very strongly set out the significant impact of flooding. It lists many questions asked by other insurers which use wording such as "previous floods" and "outside sources", "surges" and "heavy rainfall". It also includes a definition of flood which states, *"a substantial and abnormal build-up of water from an external source"*.

But the test isn't what this definition or any other variation of this definition says. The test is what a reasonable consumer would reasonably feel that he or she needed to declare to give QIC a fair presentation of the risk.

The definition of flood is not included in each annual renewal and it would be a lot to expect for a consumer to go and revisit the definition at each renewal to make sure he/she was declaring everything correctly. But I can see that QIC set out very clearly that the consumer has a duty of care to make a fair representation and the statement clearly says QIC wants to know about flooding in the last 10 years. I can also see that QIC has reassured Miss D and Mr H that it doesn't think the misrepresentation was deliberate. It deemed the misrepresentation a "careless error".

So, was there a flood/floods and should Miss D and Mr H have declared it? I don't think the floods from the early 2000's or 2008 are declarable. There are no dates, no information around what happened and it's all very loose information. So, I don't think these alleged floods have any bearing on what subsequently happened. I've read the transcript of the conversation from August 2020, and I've read all Mr H's subsequent letters explaining what happened in 2018. It's clear there's an issue with the local public drainage system that is located outside of Miss D's and Mr H's property boundary. Locals have complained to MP's and the drains have overflowed more than once. But this is quite different to Miss D and Mr H living in a flood plain, or near an external water source that is prone to flooding. (neither party has stated that this is the case). In fact, what seems to be happening is that the public drains either get blocked or aren't fit to take a sudden high volume of water when there is a heavy rainfall. And from the way Mr H describes it, the drains sometimes overflow, and on this one occasion the water came across the path and it soaked into the gravel outside his front door. Mr H in his letter to QIC says he would never have knowingly put his family and their home in such a vulnerable position. He says there's no way he would've jeopardised his home by not declaring a flood. Mr H also says that in hindsight the water overflow outside his house in 2018 has been blown out of all proportion. He says it was a situation where water overflowed onto his property, but he says this was not a flood by any stretch of the imagination. He said no water entered his, or his neighbours' homes.

However, the water overflow does fit QIC's definition of a flood as per its policy terms and conditions. So, I can see why it has caused an issue. But again, as I said before the definition is not the test under CIDRA. The standard test is that of a reasonable consumer.

Mr H says the incident in 2018 was a storm with heavy rainfall in a short space of time (30 mins). In recent years the UK has seen numerous instances of extraordinarily heavy rainfall. We've all seen streets up and down the UK suddenly submerged with water after a sudden heavy rainfall, which then disappears as soon as it appears, thanks to drainage and natural soakage. I'm confident that these types of drain overflow issues after sudden heavy rain are not what a reasonable consumer would deem to be reportable as a risk to an insurer. Most consumers would just see this as a result of very heavy rain. I doubt normal consumers are taking note of every time a blocked or restricted drain causes water to wash across footpaths, soaking into their gardens and front yards. In fact, most consumers mightn't even know a flash flood has happened, as they appear suddenly and disappear just as quickly.

So even if this incident in 2018 is technically deemed a flood as per the policy terms and conditions, I don't think a reasonable consumer would've even thought to declare it never mind think it would impact their risk or their premiums. Looking at the statement provided at renewal I don't believe what it says would trigger a normal consumer to declare as a flood what Mr H described happened in front of his property in 2018. And even if QIC think that maybe Mr H is downplaying the incident because of the subsequent consequences, there's no evidence to support this. The only evidence we have is Mr H's testimony, and if he was trying to back track and gain an advantage, he could just say he was mistaken and there was no incident. Instead he's clarified the story knowing full well it sits into the definition as set out by QIC. And this is key. I appreciate that QIC is applying the strict legal position under CIDRA. But it hasn't considered that the standard of care is that of a reasonable consumer. Mr H has honestly told us that as a reasonable consumer he's presented a fair risk, and to him this incident of overflowing public drains was a fleeting incident and not something that needed to be declared. And as I've set out above, in this specific set of circumstances, I agree.

I know QIC doesn't agree with this and I completely understand why QIC wants to know about all potential risks. And in different circumstances I might agree with the QIC's actions. But in this specific circumstance and based on everything I've seen on file I think it's fair and reasonable to conclude that Miss D and Mr H took reasonable care, at renewal. Therefore,

there is no misrepresentation. As such the actions taken by QIC are unfair and not in line with CIDRA. So, I will be upholding this complaint.

Because of the sequence of events that followed the claim decline Miss D and Mr H suffered distress and inconvenience. And whilst they weren't living in a damaged home, there was still much uncertainty about how and when the problem would be solved – and how it would be paid for. Mr H has set out in particular the family struggles, especially as he was a key worker during the Covid pandemic. Mr H has also set out concerns about paying for two sets of living costs for an indeterminate amount of time and the impact this had on the family's finances alongside Miss D's stress diagnosis. So, I'm satisfied this has had a substantial impact on the family. In these circumstances, I consider QIC should pay compensation proportionate to that impact. So, I think the £1,000 in compensation as set out in our investigators view is a reasonable amount. This payment is solely to compensate for avoidable distress and isn't intended to cover any financial loss.

My final decision

For the reasons set out above, I've decided to uphold Miss D and Mr H's complaint. I require QIC Europe Ltd to:

- pay the claim in full (less excess and any premiums refunded) including any alternative accommodation and a disturbance allowance. This should include additional travel expenses, additional utility bills and any out of pocket expenses Miss D and Mr H had to pay.

However – if QIC hasn't drawn up a schedule of works for the reinstatement then Miss D and Mr H will need to provide details of the cost of the rectification works themselves. Mr H has implied that not everything was completed because of costs and he had undertaken work himself. He's also advised that they weren't able to replace all contents. So QIC need to take into account the claim as a whole and pay what it would've paid if it had been on cover from the start, less any excess and any premiums that were refunded.

- 8% simple interest should be added to the final settlement amount from date of claim to date of settlement offer
- £1,000 compensation should be paid for the distress and inconvenience caused.
- QIC should also remove any record of Miss D and Mr H's policy being voided from its records and any other databases, such as CUE.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D and Mr H to accept or reject my decision before 28 April 2022.

Derek Dunne
Ombudsman