

The complaint

Mr G complains QIC Europe Ltd (“QIC”) has unfairly declined a claim he’s made on his buildings insurance policy.

What happened

I have previously issued two provisional decisions on this matter dated 12 January 2021 and 12 May 2021. The details of this complaint are well known to the parties so I’ve supplied a summary here of the background and what I said in my provisional decisions.

- Mr G has a buildings insurance policy underwritten by QIC. His garage was damaged by subsidence and he claimed on his policy.
- After some investigation, QIC declined the claim as it said the evidence showed the damage pre-dated inception of the policy and it thought the subsidence was likely as a result of alterations to Mr G’s driveway and this was excluded under the policy.
- Our Investigator upheld the complaint and told QIC to reassess the claim against the remaining terms of the policy and pay Mr G £150. QIC disagreed with this and asked for an Ombudsman’s decision.
- In my first provisional decision I said QIC had fairly applied the exclusion. I didn’t need to comment on whether the damage was pre-existing as I’d already concluded QIC acted fairly when it declined the claim.
- Unhappy with this conclusion, Mr G arranged for his own expert report which concluded the damage was most likely caused by vegetation to the right of the garage. It also said there was evidence to show the damage didn’t pre-date inception. But it said further investigation would be required to underline the cause.
- Following this, I issued a second provisional decision. I concluded there wasn’t enough evidence to say it was more likely the damage pre-dated policy inception so I didn’t think QIC acted fairly when it declined the claim for this reason. While Mr G’s report called into question QIC’s findings, I didn’t think it was sufficiently certain for me to safely conclude which of the causes was most likely.
- QIC had suggested it could appoint an independent expert to assess the damage and its likely cause. In my decision, I said I thought this was a reasonable step in the circumstances.

Following this, QIC instructed an independent expert and provided this Service a copy of the report which our Investigator also shared with Mr G.

The report concluded:

- There was no visible disturbance by tree roots on the paved drive and paving in the rear garden so it was difficult to attribute the level of movement seen to root

disturbance.

- Based on the visual inspection, the expert was confidently of the opinion the root cause was the poor garage roof and surface water drainage where a rainwater pipe at the rear discharges directly into the ground. This had caused the slab to be undermined by the draining forward and washing away of the sub-base the slab's constructed on.

QIC made no further comment on the report. Mr G said he still had concerns about the expert's suitability and the report was inconclusive and required further investigation such as trial holes and soil samples to establish ground conditions and root encroachment.

I provided the parties with an update explaining why I intended to uphold the complaint but received no further comment from either.

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.

- I've thoroughly read and considered the report provided by the independent expert and remain satisfied with his credentials. The report is detailed and clearly explains the expert's findings and conclusions, supported by photographic evidence and narrative and, overall, I find it persuasive. The report rules out root disturbance as there's none visible to the drive or rear paving.
- It clearly identifies the guttering at the rear of the garage discharges via a rainwater pipe which isn't connected to a soakaway and instead discharges directly onto the ground around the affected concrete slab. The slab is moving away from the building which it says indicates the sub base beneath the concrete slab has moved, likely due to the discharge of rainwater at the rear of the garage. This has caused the slab to be undermined by the water draining forwards and washing away the sub base the slab is constructed on.
- I find this explanation, persuasive and compelling and I'm satisfied this drainage issue is more likely than not the cause of the movement.
- QIC declined the claim for two reasons. The first was that the damage pre-dated policy inception and I explained in my provisional decision of 12 May 2022 why I disagreed with this and considered this reason for decline to be unfair. My view on this remains unchanged.
- The second was its view the alterations to the driveway had likely caused the subsidence and the claim was therefore excluded under the policy terms.
- I'm satisfied the report by the independent expert doesn't support this view and the expert is confident it's been caused by something unrelated to this decline reason - the drainage issue. In short, I now have two expert reports that don't support QIC's position.
- So, for the reasons I've explained, I will be upholding Mr G's complaint as I'm not persuaded it declined the claim fairly based on the reasons it gave.

My final decision

My final decision is that I uphold this complaint and direct QIC Europe Ltd to:

- Reassess the claim in its entirety on the basis of the drainage issue being the likely causal factor, in line with the remaining policy terms and conditions.
- Let Mr G know the outcome and provide him with its detailed proposals for dealing with the subsidence and damage – keeping in mind the recommendations in the report – within 28 days of this Service confirming Mr G has accepted my final decision.
- Reimburse Mr G the cost of the expert report he had undertaken once he provides it with supporting evidence of the cost he paid.
- Pay Mr G £150 for the distress and inconvenience he experienced due to the unfair decline of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 August 2022.

Paul Phillips
Ombudsman