

## **The complaint**

Mr M is unhappy that QIC Europe Ltd (QIC) declined his claim for damage caused by an escape of water and cancelled his home insurance policy.

## **What happened**

Mr M bought home insurance with QIC through a comparison site when he moved into his home. The following year he renewed the policy without making any changes. Mr M claimed under the policy following an escape of water which caused significant damage to his home. QIC sent a first response assessor who reported that there was cracking to the walls and the house was in poor condition.

QIC declined Mr M's claim and voided his policy because it said he'd not made it aware of the poor condition of his property when he bought the insurance. It said when asked about cracking and the condition of the property when he bought the policy, he'd given incorrect answers.

Mr M complained because he didn't think his home was in poor condition and he wasn't aware of any damp or cracking. He said the survey from when he bought the house the year before didn't mention those issues.

QIC agreed that the survey didn't mention the problems, so it said it wouldn't record the voidance on insurance databases. As Mr M hadn't purposely given incorrect answers, it also refunded his premium.

However, Mr M remained unhappy because before QIC declined his claim, it had stripped out his carpets and flooring. That meant he was left in a worse position than before he made his claim. He wanted QIC to at least replace his flooring.

QIC said that it needed to strip the flooring to start the drying process, and it hadn't charged Mr M for that work, even though he didn't have a valid policy.

Our investigator partially upheld Mr M's complaint. She didn't think QIC had done anything wrong by declining the claim and cancelling the policy. But she did think QIC was responsible for replacing or contributing to the cost of replacing the flooring. Our investigator also thought QIC should cover the cost of disposing of the floor coverings which Mr M had incurred.

QIC didn't agree. It said the floor would always have needed to be stripped out because it was damaged by the escape of water and to allow for drying.

Mr M didn't agree because his home wasn't in poor condition, and even if QIC still cancelled his policy, he thought it should pay for the damage it caused stripping out his flooring.

## ***first provisional decision***

I issued my first provisional decision in August 2022 explaining that I was intending to uphold Mr M's complaint. I've summarised it here.

*QIC cancelled Mr M's policy from the start because it said he gave incorrect answers in response to two clear questions about the condition of his property. When he made his claim for the escape of water, QIC said it wouldn't've provided cover if Mr M had told it he had cracked walls and evidence of damp.*

*When Mr M bought the house in 2020 he had a survey completed and QIC confirmed the survey didn't say anything about cracks in the walls or any issue with damp. I asked for a copy of that survey to see what QIC considered when reaching its decision, but I didn't receive it. As it was in Mr M's favour anyway, I accepted QIC's position that the survey didn't mention any evidence of damp or cracking.*

*I also took into consideration marketing literature that described the house as a "well-presented property", and photos taken by QIC's loss adjuster which appeared to show peeling render and relatively small, wear and tear cracks low down in the render. But I thought it was fair to place more weight on the Home Buyer's survey as an accurate reflection of the condition of the house when Mr M bought it and, subsequently, his policy.*

*I thought it fair to say Mr M took reasonable care not to make a misrepresentation when he bought his policy. That's because he responded to QIC's questions in such a way that reflected the marketing literature and the surveyor's report from when he bought the house. And it was reasonable for him to think that there'd been no significant change over the course of a year when he renewed his policy.*

*Because QIC agreed the survey didn't mention damp or cracked walls, suggesting that Mr M's home was not in poor condition, I considered it likely that QIC would've offered him cover. So, I didn't think it was reasonable to cancel his policy.*

*Given that I didn't think the policy should've been cancelled, my provisional decision was that QIC should reinstate Mr M's policy and reconsider his claim, including the floor coverings, in line with the original policy terms and conditions.*

## **Responses**

QIC didn't agree with my provisional decision. It provided better quality photos of the back of Mr M's home to support its surveyor's opinion that the walls were cracked and damp, and likely in that condition before the escape of water. QIC felt strongly that Mr M hadn't made a fair presentation when he bought the policy, and it remained of the opinion that the policy should be cancelled, and the claim declined.

After I asked for it, Mr M provided a copy of the survey on which both he and QIC had relied during this dispute.

In September 2022, I issued a second provisional decision explaining that I was minded not to uphold Mr M's complaint. Here's what I said:

### ***my second provisional decision***

*The evidence previously unavailable to me casts a different light on the overall circumstances.*

### ***Survey***

*In my first provisional decision, I thought it was reasonable for Mr M to rely on the contents of the survey when he bought his policy. That's still the case. But I'm now aware that the survey was a simple mortgage valuation rather than a Home Buyers or structural survey.*

*The valuation describes the property as being in, "an acceptable condition for lending purposes [and] reflects the fact that there is wear and tear... and that maintenance, repair or upgrading will be required".*

*Further, the valuation says it was prepared to assess for loan security and it was "NOT to advise you of whether you should purchase or to provide a schedule of repairs. If you require this you must arrange your own survey. This valuation report is not a Building (structural) Survey or Home Buyers Report".*

*So, this evidence shows that Mr M would've been aware that his property was in need of maintenance and repair, although the report didn't say what those repairs were.*

*I've considered together the photos QIC provided showing the condition of the rear wall, the valuation report, QIC's surveyor's report, and Mr M's confirmation that he hadn't carried out any repairs or maintenance to the rear wall. Having done so, I'm persuaded that it wasn't a true presentation when Mr M replied "no" to the following question:*

*Within the last 10 years, has your property shown signs of cracking on the internal or external surface of an outside wall or party wall, whether this has been repaired or not?*

*For that reason, I think it was reasonable for QIC to say it would never have offered cover if Mr M had answered "yes" to the question, meaning the policy would never have existed.*

*Under CIDRA, QIC is entitled to treat the policy as if it never existed and return Mr M's premiums, which is what it did. Therefore, I'm satisfied QIC's actions were fair and reasonable.*

### ***Flooring***

*Going back to Mr M's original complaint, he said QIC removed his flooring and left him to dispose of it. I'm aware that QIC removed the flooring to dry out Mr M's property before his claim was declined. During his complaint, QIC agreed to pay for the floor disposal costs he incurred on receipt of evidence. As the policy should never have existed, QIC wouldn't have been responsible for removing the flooring, drying out, or disposal, yet it has incurred these costs. And Mr M would always have needed to have this work done before starting repairs to the water damage. I wouldn't have required QIC to cover the flooring disposal costs, so I think its offer is fair. Therefore, I can't say that QIC caused Mr M any loss, here, because it paid for work to be done for which he would've been responsible.*

*QIC also confirmed that it wouldn't record the voidance on the underwriting database, which means Mr M shouldn't be adversely affected by the cancelled policy. I think that's a fair offer.*

*Overall, in light of the new evidence, I'm satisfied that QIC fairly declined Mr M's claim and voided his policy in line with the outcomes available under CIDRA. I see no reason to require any further action of QIC.*

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

QIC had nothing further to add.

Mr M didn't agree because he'd bought the policy in good faith, and without intention to deliberately mislead QIC. Even so, he doubted that QIC would've declined to offer cover had he answered the questions differently. He thought it would've offered cover at a higher premium, which he has offered to pay.

### **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 looked again at all the evidence, I've decided not to uphold Mr M's complaint. I realise he'll be disappointed, but I'll explain my reasons and address his recent comments.

It's agreed that the damp identified in Mr M's home is not related to the escape of water which was the subject of his claim. The issue in dispute is whether Mr M answered the policy renewal questions correctly in the overall circumstances. And if not, would QIC have offered cover anyway.

The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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.

Mr M pointed out that it's not necessary to have a Home Buyers survey to take out home insurance. He goes on to say that the valuation report would've likely made reference to damp or cracked walls if considered significant enough that insurance might be declined. Mr M said the valuation report and the sales literature support his position, which is that he took reasonable steps to answer the renewal questions correctly.

When I reached my first provisional decision, I'd placed greater weight on an unseen report because both parties agreed it didn't mention damp and maintenance needs. But, once I'd seen the report it was evident that it wasn't based on a survey which would've commented in depth on damp, cracked walls or other specific issues. I've already quoted the relevant parts of the valuation report, which also clearly stated that maintenance and repairs were needed. Mr M confirmed he didn't carry out any repairs, so the condition of the wall would only have got worse by the time he renewed the policy.

So, based on this information, I think QIC could reasonably have expected Mr M to respond to the questions differently at renewal than he did when he first bought the policy.

Mr M questioned the impartiality of the person who completed the report on behalf of QIC and its delay providing photos and the report. For clarification, QIC didn't provide new evidence. It sent me the same photos I'd already seen but in a format which enabled me to

see the detail better. The report was also the same one as that which I'd seen before and included the first response contractor's credentials. The report confirms that the contractor was a member of a relevant trade organisation which provides services independently of QIC. Therefore, I have no reason to doubt their impartiality.

Mr M said he didn't think QIC would've declined to offer insurance if he'd said his walls were damp and cracked – he thinks it would've insured at a higher premium. So, he's offered to pay the extra premium. If QIC had said it would've offered a policy but based on higher premiums, Mr M's suggestion would've been appropriate. But QIC provided evidence of underwriting criteria which confirmed it would've declined to offer cover.

I can't provide that evidence here because it's commercially sensitive information. However, I hope Mr M is reassured that I have seen the criteria and I'm satisfied QIC would've declined cover.

Mr M was unhappy that a piece of evidence I asked QIC for (the valuation report), which he later provided, resulted in my change of decision. Had QIC presented the valuation report to me when I first asked, it's likely I would've reached my final decision sooner and without the need to issue a provisional decision. While I understand Mr M's frustration, the evidence is the same regardless of which party presented it to me, and my decision isn't affected by the presenting party.

In summary, I'm satisfied that the evidence lends greater weight to QIC's position that Mr M's home was showing signs of damp and cracked walls at least when he renewed his policy. He'd been aware from the mortgage valuation report that maintenance and repairs were needed but he confirmed that he didn't complete any. While the escape of water didn't cause either of these problems, the evidence shows that QIC would never have offered the policy if Mr M had answered the renewal questions correctly.

Therefore, in line with CIDRA, the remedy available to QIC is to cancel the policy from the start and refund Mr M's premium. Helpfully, QIC has said it won't record the policy cancellation on the insurance database, so Mr M shouldn't be affected when seeking to buy insurance in the future.

Mr M's original complaint was about the flooring that QIC removed from his home when drying it out after the escape of water. I've already said it's work that would've been done regardless. Here, it was at QIC's expense, and one which it isn't seeking to recover. So, I'm satisfied that there's nothing for QIC to put right in respect of Mr M's complaint.

### **My final decision**

For the reasons I've explained above, and in my provisional decisions, I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 November 2022.

Debra Vaughan  
**Ombudsman**