

The complaint

Mrs H and Mr H complain about QIC Europe Ltd (QIC) declining a claim under their home insurance policy for damage to their property caused by bad weather.

QIC use agents to administer the policy and to assess claims. Reference to QIC includes these agents.

What happened

In February 2022, at the time of Storm Eunice, Mrs H and Mr H's property suffered roof damage, with a chimney pot being blown off which fell onto the roof and broke a tile. They contacted QIC to tell them about the damage and lodge a claim.

Given the volume of claims because of Storm Eunice, QIC advised Mrs H and Mr H to engage their own contractor to repair the damage (even if a temporary repair) to avoid further damage. Mrs H and Mr H engaged a local firm to carry out a repair. Because the size of roof tile wasn't available, the contractor used a smaller tile they had available and made good the difference with mortar. Because the chimney wasn't in use, they capped it off. Mrs H and Mr H paid £550 for the repair.

QIC then arranged for a surveyor to visit the property and assess the damage and whether it had been directly caused by the storm. The surveyor noted the chimney had been capped off (but not ventilated) and the repair to the tile was poorly carried out because a smaller tile had been used. Because the surveyor concluded the repair had been carried out poorly, QIC declined to reimburse Mrs H and Mr H the cost. Because of the poor workmanship, QIC said they also wouldn't be able to appoint their contractor to carry out a permanent repair. But they offered a cash settlement of £724.84 for Mrs H and Mr H to carry out the repair (less the policy excess of £200). Once the repair was completed, QIC said they'd also reimburse any VAT element (on production of an appropriate invoice) up to a value of £144.98.

Mrs H and Mr H were reluctant to accept the cash settlement, as they would have preferred the repair work to be carried out by a contractor appointed by QIC. However, following further consideration by QIC, they contacted Mrs H and Mr H to say their claim was being declined because they didn't consider the [original] damage was consistent with a storm.

Mrs H and Mr H challenged QIC's decision, who treated it as a complaint. But they didn't uphold it. In their final response QIC accepted there were storm conditions at the time of the incident. But they confirmed their decision not to reimburse Mrs H and Mr H for the initial repair, on the grounds of an exclusion in the policy for poor workmanship. They also said they'd considered Mrs H and Mr H's claim against other insured perils under the policy but were satisfied none were applicable.

Mrs H and Mr H then complained to this service. They said they'd followed QIC's advice to engage a contractor to make a repair as soon as possible (even a temporary repair) to prevent further damage. As they weren't roofers, they accepted the contractor's view about using slightly smaller tiles (given the size of tiles on their roof weren't available) and capping the chimney. They didn't feel QIC had acted fairly in declining their claim, and they wanted

the chimney and roof repaired under the policy. They also wanted reimbursement of the £550 paid for the initial repair. They'd also found the experience stressful.

Our investigator didn't uphold the complaint, concluding QIC hadn't acted unfairly. He thought the chimney was already in poor condition with signs of ageing and deterioration, and this was the main cause of the damage (not the weather). He thought, on the balance of probabilities, more likely than not the chimney would have withstood the weather conditions had it been in a better state of maintenance. As the policy excluded cover for damage caused by gradual or maintenance-related loss, QIC acted reasonably in declining the claim. While Mrs H and Mr H said QIC instructed them to proceed with a repair, they would have needed to pay for the repairs regardless of whether QIC declined the claim before or after the repairs were carried out. While QIC considered the cost of the [tile] repair under the accidental damage section of the policy, it didn't accept the cost as it was less than the policy excess. The investigator didn't think this unfair.

Mrs H and Mr H disagreed with the investigator's conclusions and requested an ombudsman review the complaint.

In my findings, from photographs of the chimney after the storm, the damage was to the pot itself, which appeared broken off at a point above the level of the base. This didn't suggest a problem with the mortar, which remained in place, as did the lower part and base of the pot. So, I wasn't persuaded gradual deterioration was the cause of the pot breaking off. Given the wind speed on the date of the incident, I thought the more likely cause was the very high winds, particularly given the exposed location of the pot.

Together with the principle of the onus on an insurer to show an exclusion applies, I concluded QIC hadn't shown enough to apply the exclusion. So, they hadn't acted fairly in declining the claim for the damage that occurred in the storm.

On QIC declining to pay for the cost of the repair carried out by the contractor engaged by Mrs H and Mr H, I concluded QIC hadn't acted fairly and reasonably. While QIC hadn't provided call recordings of conversations with Mrs H and Mr H when they contacted them to report the damage, I didn't have any reason to doubt what they said about being told by QIC to engage a contractor to make a repair (even a temporary repair) to prevent further damage. Nor had QIC disputed this. It was also consistent with policy terms on making a temporary repair to reduce further loss or damage. So, I thought Mrs H and Mr H acted reasonably on what they'd been told by QIC.

On the issue of the repair workmanship, I thought it wasn't clear whether the repair was only intended to be temporary (rather than permanent). However, from the description of what happened and the nature of the repair carried out (capping the chimney and using a slightly smaller tile with additional mortar) this suggested it may have been intended as a temporary repair to seal the chimney and roof against further bad weather (and damage). If so, the issue of workmanship wasn't key. So, I didn't think it reasonable for QIC to use the exclusion to decline to pay for the repair. Nor was I persuaded by QIC's view Mrs H and Mr H breached a policy condition preventing the full validation of the claim, as QIC subsequently declined the claim. So, it didn't seem they were prevented from validating the claim. Having reached these conclusions, I considered what QIC needed to do to put things right. I thought they should reimburse Mrs H and Mr H for the repair carried out (including, as appropriate, any VAT). On the claim for the damage caused by the storm, I thought they should assess the claim in line with the remaining terms and conditions of the policy. I also thought Mrs H and Mr H should receive £200 compensation for distress and inconvenience.

Because I reached different conclusions from our investigator, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

What I've provisionally decided – and why

My role here is to decide whether QIC has acted fairly towards Mrs H and Mr H.

The main element of Mrs H and Mr H's complaint is that QIC unfairly declined their claim for the cost of the repair they had carried out, on the grounds the repair was carried out with poor workmanship. They are also unhappy, secondly, that QIC – while accepting there were storm conditions at the time of the incident – declined the claim on the grounds the damage from the incident wasn't consistent with a storm. Mrs H and Mr H don't agree, saying the initial repair was carried out by a contractor they engaged, having been advised to do so by QIC (to avoid further damage to their property). Mrs H and Mr H are also unhappy at the stress the incident and the handling of the claim has caused them.

Taking the second issue first, I've considered the three key issues we consider in cases where there's storm damage:

- Do we agree that storm conditions occurred on or around the date the damage is said to have happened?*
- Is the damage claimed for consistent with damage that a storm typically causes?*
- Were the storm conditions the main (or dominant) cause of the damage?*

On the first question, in their final response QIC accept there were storm conditions around Mrs H and Mr H's property at the time of the incident, with the weather reports recording a highest wind speed of 77 mph. This met the policy definition for a storm event. It also accords with the weather report describing the wind as "violent storm force gusts...". The reports from the weather firm this service uses also indicate storm conditions at the time of the incident. So, I've concluded there were storm conditions at the time of the incident.

On the second question, the photographs I've seen indicate the chimney pot has broken off and there's a broken tile (from the chimney pot debris as it fell). In their case notes, QIC state the damage to the chimney pot isn't consistent with a storm. But I don't agree – both types of damage are ones we'd expect in storm conditions, particularly high winds. So, I've concluded the damage is consistent with that a storm typically causes.

The third question is therefore key. In their final response, QIC said the claim (for damage that occurred in the storm) had been declined on the grounds of an exclusion for poor workmanship. They referred to the following extract from the policy terms and conditions:

"Section 13

Loss or damage caused by poor workmanship, use of faulty materials (including latent defects) or poor design (a latent defect is a fault which exists, but which only causes a problem at a later stage)."

However, this exclusion was used to decline Mrs H and Mr H's claim for the cost of the repair of the damage from the storm - I don't think it's relevant to the question of the initial damage itself.

As part of our investigation of Mrs H and Mr H's complaint, QIC told us they'd declined the claim for damage because the damage to the chimney was due to its poor condition before the storm (not the storm itself). As such, the cause of the damage was gradual deterioration and the storm merely highlighted this, rather than being the cause of the damage. I've considered this view carefully, together with the report from QIC's surveyor and the photographs available of the chimney and the roof, both in the immediate aftermath of the

storm and after the repair was carried out. Taking these into account, I've concluded QIC haven't acted fairly in declining the claim. I'll set out why I've come to this conclusion.

Firstly, as a general principle, where a policyholder makes a claim for damage or loss under a policy, the onus is on them to show there was an insured event that caused the damage or loss. In this case, given my conclusions there were storm conditions at the time of the incident, and the damage is consistent with that we'd expect to see in a storm, I think it's reasonable to conclude there was an insured event (storm) that caused damage.

However, where an insurer relies on an exclusion in the policy to decline a claim (as QIC have done) then the onus is on them to show the exclusion applies. Looking at the available information and evidence, I don't think QIC have done so in the specific circumstances of this case, so I'll explain why I've come to this view.

Looking at the photographs of the chimney taken immediately after the storm (but before the repair) I can see some cracking of the mortar on top of the chimney stack, forming the base on which the chimney pot sat. There's also some moss around the base of the pot. But the damage was to the pot itself, which appears to have broken off at a point above the level of the base (which remains in place, as does the mortar around the base). This doesn't suggest a problem with the mortar, which remains in place, as does the lower part and base of the chimney pot. So, I'm not persuaded any gradual deterioration there may have been was the cause of the pot breaking off. Given the speed of the wind on the date of the incident (QIC refer to gusts of up to 77mph) I think the more likely cause of the pot breaking off was the very high winds, particularly given the location of the pot meant it was more exposed.

Together with the point that the onus is on the insurer to show the exclusion applies, I've concluded QIC haven't shown enough to apply the exclusion. So, they haven't acted fairly in declining the claim for the damage that occurred in the storm. I'll come on to set out what I consider QIC should do to put things right.

Coming back to the main element of the complaint, QIC declined to pay for the cost of the repair carried out by the contractor engaged by Mrs H and Mr H. Mrs H and Mr H say (given the volume of claims due to Storm Eunice) they followed QIC's advice to engage a contractor to make a repair as soon as possible (even a temporary repair) to prevent further damage. As they weren't roofers, they accepted the contractor's view about using a slightly smaller tile and capping the chimney. QIC say they declined the claim for the cost of repair due to the exclusion for poor workmanship.

While not mentioned in their final response, as part of our investigation of Mrs H and Mr H's complaint, QIC provided a further ground for declining the claim, based on the Claims procedures and conditions section of the policy, stating that:

"You may carry out any temporary repairs that are necessary to reduce any further loss or damage but do not carry out any permanent repair without first getting our written permission"

QIC say Mrs H and Mr H completed repairs which prevented full validation of the claim, which breaches the condition.

I've considered both views carefully, but I've concluded QIC haven't acted fairly and reasonably in declining to pay for the cost of the repair.

I've reached this conclusion for several reasons. First, while QIC haven't provided any call recordings of conversations they had with Mrs H and Mr H when they contacted them to report the damage, I don't have any reason to doubt what they've said about being told by QIC to engage a contractor to make a repair (even a temporary repair) to prevent further

damage. Nor have QIC disputed this. It's also consistent with the above policy terms about making a temporary repair necessary to reduce any further loss or damage. So, I think Mrs H and Mr H acted reasonably on what they'd been told by QIC.

On the issue of the workmanship of the repair, what's not clear is whether the repair was only intended to be temporary (rather than permanent). However, from the description of what happened and the nature of the repair carried out (capping the chimney and using a slightly smaller tile with additional mortar) this suggests it may have been intended as a temporary repair to seal the chimney and roof against further bad weather (and the damage that it might then cause). If that was the case, then I think the issue of workmanship isn't the key point (if the repair achieved the aim of securing the chimney and roof, pending a permanent repair). So, I don't think it's reasonable for QIC to use the exclusion to decline to pay for the cost of the repair.

Nor am I persuaded by QIC's view Mrs H and Mr H breached the above condition, preventing the full validation of the claim. As well as Mrs H and Mr H following QIC's advice to engage a contractor to make a repair (even if temporary) as QIC subsequently declined the claim for the damage in the storm (due to the condition of the chimney), it doesn't seem to me they were prevented from validating the claim – given they subsequently declined it.

Having reached these conclusions, I've considered what I think QIC need to do to put things right. On the issue of the repair, I think they should reimburse Mrs H and Mr H for the cost of the repair carried out (including, as appropriate, any VAT element). On the issue of the claim for the damage caused by the storm, as I don't think they've acted fairly in using the exclusion for gradual deterioration to decline the claim, they should assess the claim in line with the remaining terms and conditions of the policy. This may involve (as it did originally, before they declined the claim) making a cash settlement. In both cases, this should be subject to any policy excess that applies.

I've also considered Mrs H and Mr H's point about the stress the incident and the handling of the claim has caused them. Looking at what happened, the sequence of events (including being made a cash settlement which was then withdrawn) I think Mrs H and Mr H will have suffered distress and inconvenience. Taking account of all the circumstances of the case, I think £200 compensation for distress and inconvenience would be fair.

My provisional decision

For the reasons set out above, it's my provisional decision to uphold Mrs H and Mr H's complaint. I intend to require QIC Europe Ltd to:

- Assess the claim for damage from the storm in line with the remaining terms and conditions of the policy.
- Reimburse Mrs H and Mr H for the cost of the repair carried out (including, as appropriate, any VAT element).
- Pay £200 compensation for distress and inconvenience.

In addition, given Mrs H and Mr H have paid the cost of the repair, I think it's reasonable to add interest, at a rate of 8% simple, from the date Mrs H and Mr H paid the cost to the date QIC Europe Ltd reimburse them.

QIC Europe Ltd must pay the compensation within 28 days of the date on which we tell them Mrs H and Mr H accept my final decision. If they pay later than this, they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Mrs H and Mr H responded to say they accepted the provisional decision.

QIC responded with two points. First, on the damage to the chimney, they provided a photograph they said showed it to already be in poor condition [before the storm] with heavy moss visible and what appeared to be older cracks around the mortar where the chimney stack was previously. They thought the chimney would have withstood the weather conditions had it been in a better state of maintenance. So, the chimney was gradually deteriorating prior to the incident. Gradual deterioration was a policy exclusion and therefore the claim would not be covered.

Second, on Mrs H and Mr H having been advised to carry out repairs, QIC said that the recording of the call, when Mrs H and Mr H first told them of the damage, indicates that their agent tells them that *"we will ask you to make any temporary repairs to make sure there is no further damage."* QIC went on to add that they consider temporary repairs to be minimal, to mitigate any further damage (for example, using a tarpaulin sheet to cover the affected area). But as the repairs carried out [by the contractor engaged by Mrs H and Mr H] included capping the chimney and using mortar, they considered that to be a long-term repair – and as such, excluded under the policy.

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.

My role here is to decide whether QIC have acted fairly towards Mrs H and Mr H.

I've considered both points made by QIC in their response.

On the damage to the chimney, which QIC say was already in a poor condition and was gradually deteriorating prior to the incident, I've thought about this carefully. However, I don't agree. I'd noted in my provisional decision there was some cracking of the mortar on top of the chimney stack, as well as some moss around the base of the pot. However, the damage was to the pot itself, which appeared to have broken off at a point above the level of the base (which remained in place, as did the mortar around the base). This doesn't suggest a problem with the mortar. So, I wasn't persuaded any gradual deterioration there may have been was the cause of the pot breaking off. The photograph provided by QIC doesn't change this conclusion – the chimney stack is intact, as is the mortar. So, it hasn't failed. Given this, I haven't changed my provisional conclusion QIC unfairly used the gradual deterioration exclusion to decline the claim.

On the second point, the repair by the contractor engaged by Mrs H and Mr H, I haven't been provided with the full recording from which QIC have quoted. But taking the quote as provided, it confirms what I said in my provisional decision about Mrs H and Mr H having been advised to carry out temporary repairs. While I can appreciate what QIC say about the nature of temporary repairs (such as a tarpaulin) they've not provided any evidence to indicate Mrs H and Mr H were told specifically what kind of temporary repair to make (or that any repair shouldn't include mortar). I think it was reasonable for Mrs H and Mr H to engage a contractor and for them to determine the form of repair.

Even, if the repair was seen to be long-term, given my conclusion that QIC have unfairly declined the claim for damage, then QIC would have had to assess the claim and (if accepted) pay for a repair (or pay for a temporary then a permanent repair). In those circumstances, I haven't changed my conclusion that QIC should reimburse Mrs H and Mr H for the cost of the repair. It would then be for QIC to assess whether the repair carried out

needs to be replaced by a different (permanent) repair. So, I haven't changed my mind on this point.

Taking these conclusions together, my final decision remains the same as my provisional decision.

My final decision

For the reasons set out above, it's my final decision to uphold Mrs H and Mr H's complaint. I require QIC Europe Ltd to:

- Assess the claim for damage from the storm in line with the remaining terms and conditions of the policy.
- Reimburse Mrs H and Mr H for the cost of the repair carried out (including, as appropriate, any VAT element).
- Pay £200 compensation for distress and inconvenience.

In addition, given Mrs H and Mr H have paid the cost of the repair, I think it's reasonable to add interest, at a rate of 8% simple, from the date Mrs H and Mr H paid the cost to the date QIC Europe Ltd reimburse them.

QIC Europe Ltd must pay the compensation within 28 days of the date on which we tell them Mrs H and Mr H accept my final decision. If they pay later than this, they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 29 November 2022.

Paul King
Ombudsman