

The complaint

Mrs F and X complain about QIC Europe Limited (QIC) who declined their claim under their home insurance policy.

What happened

Following a named storm, Mrs F and X contacted QIC as there was damage caused to their polytunnel and various external parts of their property. QIC sent a surveyor to inspect the damage. QIC said that the damage to the polytunnel wasn't covered as a polytunnel wasn't deemed to be a permanent structure. So, the claim was declined.

Mrs F and X complained to QIC. In its final response, QIC maintained its position, that the polytunnel wasn't a permanent structure and it didn't meet its definition of a building. Further, it said that the polytunnel would be considered contents. And as this particular content was outside the home (under the storm terms) it wasn't covered under the policy, the claim would remain declined. Finally, it said that accidental damage cover wouldn't apply as it didn't cover contents outside the home.

Mrs F and X were given their referral rights and referred a complaint to our service. One of our investigators considered the complaint and thought it should be upheld. He said that the polytunnel had been in its location for 33 years. And had been secured by concrete and metal posts. His view was that the polytunnel was a permanent structure and as such could be defined as a building.

He also said that a polytunnel didn't appear within the list of inclusions and was open to interpretation. So that the benefit of the doubt should be in favour of Mrs F and X. He recommended that QIC re-consider the claim under the remaining policy terms. He also said that QIC should pay Mrs F and X £250 compensation for the trouble and upset caused, due to the delay that occurred during the claims process.

Mrs F and X accepted the view. QIC did not. It said that a polytunnel wasn't and couldn't be a permanent structure or considered to be a building, but a use of land. It said that the polytunnel wasn't covered under the policy and it wouldn't cover the claim. In addition, it said that the compensation for the delay wouldn't be paid either. So, it asked for a decision from an ombudsman.

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 will uphold this complaint, for much the same reasons as our investigator. And I'll explain why I think this is fair.

I have reviewed the policy terms and conditions to see whether QIC had dealt with the claim fairly and in line with the policy terms and conditions. And I note that it has made a number of detailed comments. I hope the fact that I don't respond in similar detail here won't be taken as a discourtesy. As an informal dispute resolution service, we are tasked with reaching a fair and reasonable conclusion with the minimum of formality. In doing so, it isn't necessary for me to respond to every point made, but to concentrate on the nub of the issue. Mrs F and X made a claim for damage to their polytunnel following a storm. QIC declined the claim on the basis that the polytunnel was not and could not be considered to be a permanent structure. It accepted that there had been storm conditions. But it said that the policy terms and conditions meant that the polytunnel couldn't be defined as a building. And as such, it would be considered to be contents. And as the polytunnel was outside, contents cover didn't apply.

QIC also relied upon case law. In that it said that due to the transient nature of the polytunnel, it couldn't be deemed to be a building as planning permission wasn't required. And for all these reasons, QIC declined the claim.

The main issues are whether the polytunnel can be considered a permanent structure and whether the polytunnel meets QIC's definition of a building.

QIC said that the polytunnel couldn't be considered a permanent structure and that it didn't meet the definition of a building as per the policy terms and conditions. And as such didn't require planning permission.

Mrs F and X said that the polytunnel had been installed for around 33 years and was constructed out of metal which had been secured with concrete footings. They also said that the storm merely twisted the frame of the polytunnel, rather than moved it. So, this meant that the structure could be considered as permanent.

Given that the polytunnel had been in situ for around 33 years and more importantly the way in which it was attached to the land – namely with concrete, I'm persuaded that it could reasonably be considered to be a permanent structure. So, I've next looked at whether the polytunnel met QIC's definition of a building.

The terms and conditions define a building as:

'Buildings - Any permanent structure within the boundaries of your property.

This includes: - The structure of your home; - Permanently installed septic tanks, cesspits and domestic fixed central-heating gas or oil tanks; - Drives, patios, footpaths and terraces; - Boundary and garden walls; - Gates, fences and hedges; - Permanently installed swimming pools, fixed hot tubs and their fixtures and fittings, covers, enclosures and accessories; - Permanently fixed, professionally installed wind turbines as long as you have told us about these and are following the manufacturers guidelines when using them; - Hard tennis courts; - Plants, trees, flowers and shrubs not in moveable pots or containers; - Radio and television aerials, satellite dishes, their fittings and masts; and - The underground services, inspection hatches and covers supplying your home which you are responsible for.

Buildings also includes the permanent fixtures and fittings in or mounted upon the buildings that could not easily be removed and reused, such as fixed solar panels (that have been professionally installed), fixed sanitary fittings (for example, toilets, sinks and baths), and laminated, wood effect or vinyl floor coverings. All items must belong to you, or be your legal responsibility, and must be used for domestic or business administration purposes.

Buildings does not include: 1. Marquees and their accessories; and 2. Swimming pools, hot tubs, Jacuzzis and their fixtures and fittings, covers, enclosures and accessories which are not permanently installed.'

From the definition that QIC has relied upon to decline the claim, what is of note is that there is no specific mention of a polytunnel. But, as the list within the terms and conditions state: *'this includes'* rather than *'this is limited to'* means that the list doesn't appear to be exhaustive and as such is open to interpretation. And as I think it is open to interpretation, any doubt would be in favour of Mrs F and X. Also, there are a few items such as plants, shrubs, flowers, which I think are easily moved (yet are covered). Whereas the polytunnel, in my view is not so easily moved as it is concreted into the ground, including metal posts.

Consequently, I do think that the polytunnel can be considered to be a permanent structure within the boundaries of Mrs F and X's property, that could not easily be moved or reused. And on a fair and reasonable basis, I think it fits within QIC's broad definition of a permanent structure. And so, it follows that I don't agree with QIC's conclusion that the polytunnel isn't a building either.

QIC also said that as planning permission wasn't required for the polytunnel this meant that it couldn't be deemed as a building. But, having reviewed the policy terms and conditions, I can't see reference made in them about planning permission. Consequently, I don't think it's fair or reasonable for QIC to rely on this point as a reason for the claim to be declined.

Taking all of the evidence into consideration, I'm persuaded that the polytunnel is a permanent structure and that it could reasonably be defined as a building. Accordingly, I think that QIC were not fair by declining the claim for those reasons. So, to be fair to both parties, I think it would be reasonable for QIC to reassess the claim, within the remaining policy terms and conditions.

I also note that there were avoidable delays during the claims process and that Mrs F and X said that they lost valuable growing time due to not being able to use the polytunnel. As such, I think QIC ought to recognise the trouble and upset that this would've caused to Mrs F and X. And for this, I recommend that QIC pay compensation of £250 to reflect this.

Putting things right

To put matters right, I direct QIC as below.

My final decision

For the reasons given, I uphold Mrs F and X's complaint.

To put matters right, QIC Europe Limited to:

Reassess the claim under the remaining policy terms and conditions.

Pay Mrs F and X £250 compensation for the trouble and upset caused.

QIC Europe Limited must pay the compensation within 28 days of the date on which we tell it Mrs F and X accept my final decision. If it pays later than this, it must also pay interest on the amount from the date of my final decision to the date of payment at 8% a year simple.

If QIC Europe Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs F and X how much it's taken off. It should also give Mrs F and X a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and X to accept or reject my decision before 31 January 2023.

Ayisha Savage
Ombudsman