

The complaint

Ms S complains about how QIC Europe Ltd (QIC) dealt with a claim under her home insurance policy for damage to her property caused by an escape of water.

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

What happened

In March 2020 Ms S contacted QIC to tell them there was a leak coming from ground level affecting her property. The leak was subsequently found to be coming from a neighbour's property, which the local water company fixed. At the point Ms S contacted QIC, it was just before the government introduced regulations and restrictions due to the Covid 19 pandemic. QIC instructed a field surveyor to visit the property to inspect the damage, but because of the restrictions, this couldn't take place.

QIC tried to validate the claim by their in-house Surveying Team, but due to the nature of the claim, it was decided a visit to the property by a field surveyor was required. But the visit didn't take place until the beginning of December 2020. After which the field surveyor's report was reviewed and a cash settlement offered later in the month (which Ms S accepted the same day). In making the cash settlement, QIC applied an excess of £750 (for a claim arising from an escape of water).

Subsequently, Ms S contacted QIC in May 2022 to tell them of a potentially new – but related – issue in respect of a wall at her property that was damp. In support of her new claim, Ms S provided a report from a surveyor (SRS) which said the damage was due to the original leak. However, QIC declined the claim, saying the damage was due to rising damp, which would fall under a policy exclusion for anything that happened gradually.

Ms S complained to QIC, unhappy at the time it had taken for the visit from the field surveyor to inspect the damage from the leak, the application of the £750 excess, and the decline of her claim. But QIC didn't uphold the complaint. In their final response, on the time taken for the field surveyor visit, QIC acknowledged the time it took (and the inconvenience caused to Ms S) but this was due to the regulations and restrictions put in place by the government (not QIC). On the issue of the application of the excess, QIC referred to the policy schedule relating to a claim under the *Escape of water or oil* section, which set out the excess as £750. On the decline of Ms R's claim, having reviewed the report from SRS, QIC noted it referred to rising damp. They also said the policy contained an exclusion for any gradual or maintenance related loss or damage. Rising damp occurred gradually over time, so it fell under the exclusion. QIC concluded the claim had been correctly declined.

Ms S then complained to this service, unhappy at QIC not upholding her complaint. She said she'd had to chase QIC to arrange a field surveyor visit, and the Covid 19 restrictions ended in July – but it took until November to arrange a visit to her property, which she thought was too long. On the excess for escape of water, she said the damage was caused by a burst pipe on her neighbour's property. So, it wasn't flooding or escape of water (nor within her control). On the 2022 claim, she said the wall had not dried out from the leaking

[neighbour's] pipe – so it was related to the original claim. Her surveyor stated the damage (the damp) was due to the burst pipe – it wasn't rising damp.

She said she hadn't had her property repaired as the wall hadn't dried out. And she'd spent £160 on a survey. She wanted QIC to cover the cost of the survey and to tank the wall, which was necessary after water damage to a property of its age. She also wanted the issue of the excess to be reviewed and the amount paid by QIC in their cash settlement (as she wasn't aware at the time of how much it would cost to repair the damage to her property (from the escape of water). Nor that she could have rejected the settlement.

Our investigator upheld the complaint in part. He thought that while the initial Covid 19 restrictions had been lifted in July 2020, the delay until the field surveyor visit in December 2020 was likely to have been unavoidable because of the knock-on effects of the restrictions having been in place. So, it wouldn't have been within QIC's control and therefore he couldn't fairly ask QIC to compensate Ms S for the delay. On the excess applied to the cash settlement, the investigator thought the policy terms were clear and that the leak from a neighbour's pipe would properly fall under the escape of water section of the policy. So, QIC had fairly applied the excess.

On the claim for damage in 2022, the investigator noted a reference in SRS's report to "*instrumental measurements indicated rising damp*". But while the policy exclusion was clear, the investigator didn't think QIC had assessed the claim fairly. He noted an email from SRS that the damp was caused by the leak from the neighbour's pipe, which was clear. It was unfair for QIC to base their decline of the claim on one excerpt from the report. So, QIC had not shown they'd applied the exclusion fairly. To put things right, he thought QIC should deal with Ms S's claim.

QIC disagreed with the investigator's conclusions on the issue of their decline of the 2022 claim. and asked that an ombudsman review the complaint. They referred to an extract of the report saying that at the time of the survey it wasn't established exactly what the leak was or if there was any long-term damage under the property or if the escape of water had dislodged any soil under the property. Having reviewed the report and having it reviewed by their in-house Surveying Team they thought they'd assessed the claim fairly (and declined the claim).

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 has acted fairly towards Ms S.

There are three main elements in Ms S's complaint. Taking them in chronological order, the first is the time taken for QIC to assess the original claim made in March 2020 for the damage caused by the leak from the neighbour's property. More specifically, the time taken for QIC to arrange a visit from their field surveyor (the visit took place at the beginning of December 2020). Ms S says she'd had to chase QIC to arrange the visit, and the Covid 19 restrictions ended in July – but it took until November to arrange a visit to her property, which she thinks is too long. QIC acknowledge the time for the visit to take place (and the inconvenience to Ms S) but this was due to the regulations and restrictions put in place by the government.

Having considered both views carefully, together with the supporting evidence and information, I'm more persuaded by QIC's view. The timing of the notification of the original claim was immediately before the government announced the first national lockdown,

together with the associated regulations and restrictions. Given the lifting of restrictions in July (some four months later) I think it's reasonable to conclude there would have been a backlog created (in addition to claims made during the period of lockdown). In those circumstances, I think it's reasonable to conclude the backlog would have taken some time to clear.

I've also noted that once the field surveyor visit took place, followed by review of their report, QIC made a cash settlement offer later the same month (which Ms S accepted). Which I think supports the view QIC acted in a timely way to assess the claim after the visit.

The second issue is the application of the £750 excess to the cash settlement made in December 2020. Ms S says the leak was caused by a neighbour's pipe. So, it wasn't flooding or escape of water (nor within her control). QIC refer to the policy terms relating to a claim under the *Escape of water or oil* section. The policy schedule set out the applicable excess was £750. So, they've correctly applied this to the cash settlement.

QIC refer to the following extract from the policy schedule:

Escape of water or oil excess £750 *The amount of each buildings escape of water or oil claim you will have to pay*

This is what the policy schedule sets out, so I think it's clear. Ms S says the leak was caused by a neighbour's pipe. So, it wasn't flooding or escape of water (nor within her control). I don't agree. There was clearly a leak – an escape of water from the neighbour's pipe – that caused damage to Ms S's property. The fact it came from the neighbour's pipe doesn't change the fact it was an escape of water (a burst pipe).

So, I've concluded QIC correctly applied the appropriate policy excess under the terms of the policy.

While Ms S was unhappy with the excess applied, she also mentioned the amount paid by QIC in their cash settlement (as she wasn't aware at the time of how much it would cost to repair the damage to her property. Nor that she could have rejected the settlement. However, I'm not persuaded by her view. Under the terms of the policy, QIC are able to offer a cash settlement if they accept a claim (as one of the options they can choose). It's then up to the policyholder whether they choose to accept the settlement (as Ms S did) or to reject it. I think it reasonable that Ms S had the opportunity to consider the settlement and – if she wished – to compare it to any independent contractor estimates of the repair cost. If she felt the settlement wasn't sufficient, she could have challenged or rejected it.

The third issue is the decline of the claim in May 2022 for damage from damp. Ms S says the wall had not dried out from the leaking neighbour's pipe – so it was related to the original claim. Her surveyor (SRS) states the damp was due to the burst pipe – it wasn't rising damp. QIC say the surveyor's report states the damage is due to rising damp and refer to another part of the report mentioning uncertainties about the cause of the damage.

On this issue, having considered all the evidence and information available, including that provided by Ms S (and SRS) and by QIC, I've concluded QIC haven't acted fairly in declining to consider Ms S's claim further. I'll come on to consider what I think is a reasonable resolution in this case, but first I'll set out the reasons I've come to my conclusion. In declining the claim, and in their final response, QIC refer to the following exclusion in the *General Exclusions* section of the policy terms and conditions:

"12. Any gradual or maintenance-related loss or damage

Loss or damage as a result of wear and tear, fall in value over time, gradual deterioration (whether you were aware of it or not), the effects of the light or the atmosphere, normal settlement, warping or shrinkage, rusting or corrosion, wet or dry rot (regardless of the cause), fungus, mould or infestation and costs that arise from using or maintaining your buildings and contents normally.”

I think this wording would reasonably be interpreted to include rising damp. So, the question then becomes whether the evidence indicates that rising damp (as generally understood) was likely to have been the cause of the damage (as QIC contend). Or (as Ms S contends, based on the stated opinion of SRS) it was a result of the leak from the neighbour's property.

In their final response, QIC refer to the following excerpt from SRS's report:

“...instrumental measurements indicated rising damp.”

In their response to our investigator's view, QIC refer to the following reference in their field surveyor's report:

“At the time of the survey it was not established exactly what the leak was. It was also not established if there is any long-term damage under the property or if the escape of water has dislodged any soil etc. under the property.”

Looking at the full report from which this reference is taken, it refers to the ingress of water appearing to come from the neighbour's property (possibly the garden). It also notes Ms S saying the leak was found in the neighbour's garden and was fixed by the local water company. I've noted the report makes no mention of rising damp.

For her part, Ms S refers to a separate email from SRS after their report. In the email (which she provided to QIC) SRS states:

“The rising damp present has been caused by the flooding due to saturation of the wall bases which have been bridged and compromised therefore has caused failure to the original damp proof course.

Thus, the reason for the containment of the 'ground salts' and the need to install a new chemical damp proof course, this is 'standard practice' after any flood affecting an older property..

My report clearly states that the damage to the plaster is due to the flood and not rising damp.

PLEASE NOTE The rising damp is the direct cause due to the flood and not a natural failure of the original damp proof course.”

I've considered both views carefully, but I'm more persuaded by the opinion of SRS, as the surveyor who inspected the property and produced the report. And reading the report as a whole, it clearly indicates the damp in the wall was due to the leak from the neighbour's property (a burst mains water pipe). And not from a gradual impact of rising damp (the reference above to 'not a natural failure of the original damp proof course').

I've also considered the principle that where an insurer relies on an exclusion in the policy to decline a claim, then the onus is on them to show the exclusion applies. Given my conclusion that I'm more persuaded by the stated opinion of SRS – which QIC have not sought to refute directly - I don't think QIC have done enough to show they've acted fairly and reasonably in applying the exclusion to decline the claim.

Having reached these conclusions, I've thought about what I think would be a fair and reasonable outcome to the complaint and what QIC need to do to put things right. As I've concluded QIC can't rely on the exclusion for damage occurring gradually to decline Ms S's claim, I think they should assess the claim, including the cost of SRS's report (£160 plus VAT) in line with the remaining terms and conditions of the policy (including any excess, as appropriate).

My final decision

For the reasons set out above, it's my final decision to uphold Ms S's complaint in part. I require QIC Europe Ltd to:

- Assess the claim, including the cost of SRS's report (£160 plus VAT) in line with the remaining terms and conditions of the policy (including any excess, as appropriate).

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 22 June 2023.

Paul King
Ombudsman