

The complaint

Miss B is unhappy that QIC Europe Ltd declined a claim she made on her home insurance policy for damage caused by subsidence.

What happened

The circumstances of this complaint aren't in dispute, so I'll summarise the main points:

- Miss B noticed damage to her extension and got in touch with QIC.
- QIC appointed a surveyor, who inspected the damage and arranged for investigations to be carried out.
- QIC declined the claim because it said the damage had been caused by poor design. It said investigation had shown the extension foundation was 175mm deep. But guidelines at the time of construction said a minimum depth of 450mm should be achieved – and current guidelines said 750mm. And it said damage at the front of the main building hadn't been caused by subsidence.
- Our investigator thought the complaint should be upheld. He said QIC had relied on recent guidelines, but the extension had been built in the 1970s – so it wasn't fair to rely on those guidelines. He also noted that meant the extension had stood for around 50 years at the time of the claim. In these circumstances, he didn't think it would be fair for QIC to decline the claim for poor design. He asked QIC to accept the claim and pay £500 compensation.
- Miss B accepted our investigator's findings. QIC didn't. After further discussion, an agreement couldn't be reached, so the complaint has been passed to me.

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.

- The policy covers damage caused by subsidence, subject to a number of terms and conditions. QIC has accepted the extension has been damaged by subsidence.
- QIC has relied on a policy term to decline the claim. It says: *We don't cover the following ... loss or damage caused by poor workmanship, faulty materials, latent defects or poor design.*
- I understand QIC considers the depth of the foundation amounts to poor design. The onus is on QIC to show why it would be fair to decline the claim for this reason.
- QIC has referred to guidelines by a builder of new homes, N, from 2007. It later referred to Building Regulations from 2010. Our investigator has pointed out that neither of these standards are relevant as the extension was built in the 1970s. QIC

has accepted these guidelines don't apply but has continued to rely on them to explain why it thinks the foundation has been poorly designed.

- I find QIC's position baffling. It accepts the guidelines don't apply – and only came into force around 40 years *after* the relevant time – yet it continues to rely on them. It hasn't explained why guidance from 2007-2010 can reasonably be considered indicative of good practice from the 1970s. So I don't find its argument persuasive.
- I won't be taking into account the standards QIC has referred to as they didn't apply at the relevant time – and QIC hasn't persuaded me it would be fair to take them into account for any other reason. That means those standards aren't relevant here.
- What would be relevant is evidence of any guidelines, regulations or best practice from the time the extension was built to show how it should have been designed. QIC has conceded it has no evidence along these lines. So, despite not being able to show what standards applied to foundation design at the relevant time, it maintains the foundation design is poor and the depth is inadequate. Again, I find it difficult to understand the logic of QIC's position.
- QIC has argued the foundation is inadequate for a number of reasons. In summary:
 - The foundation depth didn't take into consideration the soil type.
 - The extension foundation is shallower than the main house.
 - Had the foundation been deeper, the damage wouldn't have occurred.
- These comments haven't been provided by a relevant professional, such as a surveyor or engineer. And they're not supported by reference to any guidelines, regulations or best practice. Nor have they been explained in any detail. For example, what is the soil type and how should it have been taken into account at the time of construction? And what depth is the main house foundation and why should the extension foundation have matched it?
- Whilst I agree in principle that with a sufficiently deep foundation, the damage is unlikely to have happened, that's true of most subsidence problems. But that doesn't explain why the foundation was poorly designed at the time it was built. And if I accepted that any foundation which leads to subsidence was poorly designed because it could have been built deeper, it's likely most subsidence claims would be declined. This doesn't strike me as a fair position for an insurer to take.
- Even if QIC was able to show the foundation was poorly designed, I would also take into account other relevant factors. Here, the foundation had stood for around 50 years at the time of damage. Having performed its function for such a long period of time, I'm not persuaded it would be fair to consider it poorly designed. QIC says the problem has been highlighted by drier weather over recent years. But there have been many periods of significant dry weather since the 1970s which have, at times, led to large volumes of subsidence claims. QIC hasn't explained why the foundation was able to withstand those dry periods if it was inadequate.
- Overall, I'm not satisfied QIC has shown it would be fair to decline the claim on the basis the foundation was poorly designed. To put things right, it should now accept the claim for the extension.
- I also think QIC should pay compensation. Had it handled things fairly, the claim would have been accepted a long time ago – around a year sooner. In the meantime,

Miss B has had to ensure the uncertainty of whether QIC would deal with the problem or whether she would be left to pay for it. She's also had to live with the damage for longer than she should have done. In the circumstances, I'm satisfied the £500 suggested by our investigator is reasonable and proportionate.

- Miss B has also noted cracking to the main building, not just the extension. QIC's surveyor didn't think this damage was caused by subsidence. They said there was a 'lack of cracking externally' and no 'stepped cracking'. More recently Miss B has taken photos, which she thinks shows cracking indicative of downward movement.
- The only professional opinion about this cracking is from QIC's surveyor. I haven't seen anything from a surveyor or engineer to challenge QIC's position. So, based on the evidence available to me, I don't think QIC has acted unfairly on this point. But I understand Miss B will share the recent photos with QIC. I would expect it to ensure a suitably qualified and experienced professional considers the damage and whether it has been caused by subsidence and let Miss B know.

My final decision

I uphold this complaint. I require QIC Europe Ltd to:

- Accept the subsidence claim for the extension.
- Pay £500 compensation.

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

James Neville
Ombudsman