

## **The complaint**

Mr B and Mrs B complain about how QIC Europe Ltd (QIC) dealt with 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, around the time of Storm Franklin, several large trees in a neighbouring property to Mr B and Mrs B were blown over. While they fell into the neighbour's garden, the tree root-balls were uplifted when the trees fell, causing damage to the foundations and structure of a log cabin in Mr B and Mrs B's garden (which they were using as a home office), close to the boundary with their neighbour. The damage left the cabin unsafe to use.

They contacted QIC to tell them about the damage and lodge a claim. QIC appointed a surveyor to visit the property and assess the damage. The surveyor visited the property at the beginning of March 2022. At the same time, QIC noted Mr B and Mrs B's preference for one of their contractors to carry out the repair work, but said the lead times for work to begin could be up to six weeks (given industry issues of availability and shortage of materials, as well as the effects of the Covid Pandemic). Given this, QIC asked whether they would consider an alternative of a cash settlement.

The surveyor returned the following week with a building contractor (T) who assessed the damage and work needed to reinstate the cabin. During the visit, Mr B and Mrs B say they were asked whether they would consider a cash settlement for the claim, given the nature of the damage and the complexity of the work needed to re-build the log cabin. Mr B and Mrs B say a figure of £11,500 was mentioned. However, Mr B and Mrs B said they would prefer the rebuilding work to be carried out by QIC's contractor.

Later that month, Mr B and Mrs B obtained a quote from the firm that installed the cabin (which was bespoke) for a replacement cabin (£9,048 including VAT and installation, with a lead time of 8-10 weeks).

QIC then made a cash settlement offer of about £4,500. Mr B and Mrs B rejected the offer and made a formal complaint to QIC. They also complained about the time being taken to settle the claim. They were also unhappy at QIC refusing to provide details of their building contractor's estimate (which was the basis of the cash settlement offer).

QIC didn't uphold the complaint, maintaining their cash settlement offer was fair. They said the claim had been considered (and accepted) under the 'Falling Objects' section of the policy (falling trees). They said they instructed T to complete the repairs. However, T couldn't complete the repairs due to the condition of the boundary between Mr B and Mrs B and their neighbour (which they said would need a retaining wall to be built, but wouldn't be related to the incident and therefore wouldn't be covered under the policy), so T weren't able to offer warranted work on the repair. Consequently, QIC were only able to offer a cash settlement.

QIC further confirmed the scope of works for the repair from their in-house surveyor had been costed at £5,552 (£4,427 plus £925 VAT, less the policy excess of £100).

Mr B and Mrs B then complained to this service. They were unhappy at being left with a damaged log cabin on an unstable base (and that further bad weather would lead to the failure of the foundations and the cabin to collapse). They were also unhappy at the time taken to assess the claim and what they saw as QIC not making a formal offer to resolve the situation. They wanted QIC to offer a realistic cash settlement (and to show how the figure had been arrived at) so Mr B and Mrs B could repair the damage to the cabin.

Our investigator initially didn't uphold the complaint, concluding QIC had acted fairly. But Mr B and Mrs B supplied further information and representations about the boundary with their neighbour. They also said the condition of the cabin had deteriorated such that QIC and T didn't think it would be possible to reassemble the cabin to an appropriate standard (as had been planned when the original scope of works was produced). So, the investigator thought the cost of replacing the cabin (not simply reassembling it) should be added to the scope of works. Which would meet the policy reference to rebuilding in the same form, size, style and condition as when it was new. The investigator concluded the case and the settlement offer hadn't been dealt with fairly by QIC.

To resolve the complaint, the investigator thought a further scope of work should include the reinstatement of the retaining feature (fence) that Mr B and Mrs B said they'd put up within their boundary. And include the cost of replacing the cabin in full (to return it to its condition before the incident). Once the revised scope had been prepared, a new settlement should be offered to Mr B and Mrs B.

QIC disagreed with the investigator's conclusions and asked that an ombudsman review the complaint. They said the cabin could be rebuilt and wouldn't need to be replaced from new. So, the original scope of work (which was based on reassembling the cabin) was still appropriate as a basis for the cash settlement offered.

In my findings, I wasn't persuaded QIC acted fairly towards Mr B and Mrs B in the cash settlement they offered.

Having reached this conclusion, I thought QIC should revise the scope of works to include provision for the cabin to be replaced, rather than reassembled, and for reinstatement of the boundary fence. The revised scope of works should then form the basis of a new cash settlement offer to Mr B and Mrs B.

I also considered that part of Mr B and Mrs B's complaint about the time taken by QIC in assessing the claim and offering a cash settlement. From the sequence of events and what happened, it appeared formal confirmation of the offer wasn't made until June 2022. I think Mr B and Mrs B suffered distress and inconvenience from what happened. Considering the circumstances of the case, I thought QIC should pay Mr B and Mrs B £150 in compensation for distress and inconvenience.

Because I reached different conclusions to 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 Mr B and Mrs B.*

*The main element of Mr B and Mrs B's complaint is that QIC haven't made a reasonable offer to settle the claim, saying it is significantly less than would be needed to reinstate the*

cabin. QIC say they've made a fair and reasonable cash settlement based on a costed scope of works from their surveyor (and estimate from their building contractor).

The first point I've considered is that, while the damage was the result of trees blown down at the time of Storm Franklin, QIC didn't consider the claim under the storm section of the policy (sub section 3 of Section 1 – Buildings cover in the policy). Rather, they considered the claim under sub section 10 (Falling objects) which states:

“We will cover loss or damage caused by:

- a. Falling telegraph poles, lamp posts, fixed ariels, satellite dishes, fixed solar panels and masts; or
- b. Falling trees and branches.”

While they didn't assess the claim specifically under the storm section, from the information I've seen about the weather conditions at the time of the incident (both from QIC and from the weather firm this service uses) there were storm conditions. The damage is also consistent with that expected in a storm, and from what I've seen there isn't doubt the storm (by blowing over the trees) was the main (dominant) cause of the damage. So, while I'm satisfied the claim could have been assessed (and accepted) under storm damage, I've considered QIC's assessment of the claim under the falling objects section of the policy.

I've then considered the substantive issue, how QIC have handled the claim. Firstly, the settlement they've offered and, secondly, the time taken to deal with the claim.

On the first question, in their final response QIC say the nature of the boundary with Mr B and Mrs B's neighbour means they can't offer a warranted repair (reinstatement) of the cabin. So, they have to offer a cash settlement. While Mr B and Mrs B have provided evidence about the boundary fence they erected within their property, in making their complaint (and responding to our investigator's view) they've asked for QIC to make what they consider to be a fair and reasonable cash settlement to enable them to restore their cabin to the condition it was before the incident. Given this – as well as QIC saying they will only offer a cash settlement - I've gone on to consider the basis of the cash settlement.

As a point of principle (and as the policy terms and conditions provide) a cash settlement under the policy is based on a scope of work prepared by QIC's surveyor, in conjunction with their contractor (T). That scope is then used as the basis for the cash settlement using the rates QIC can obtain from their contractor. It's common for insurers to be able, due to the amount of work they commission from contractors, to negotiate discounted rates for carrying out work to repair damage. I think that's reasonable, so the issue in this case comes down to the scope of the work to be included. QIC say their original scope is a fair and reasonable basis for the cash settlement they've offered. But Mr B and Mrs B disagree.

I've considered the original scope of work, and think it includes what I'd expect given the nature of the damage. I've also considered the key area of disagreement - whether the scope should include replacing the cabin (rather than rebuilding the existing cabin) and whether the boundary fence Mr B and Mrs B say they built on their side of the boundary should be included (as it was damaged in the incident).

On the first point, whether the cabin should be rebuilt or replaced, I've considered carefully what Mr B and Mrs B have said and the information they've provided in support. I've also considered QIC's view, including on the views provided by Mr B and Mrs B. Having done so, I've concluded the scope of work should include provision for the cabin to be replaced, rather than reassembled. The scope of work produced was based on the assumption the cabin could be reassembled once the foundations and underpinning ground had been restored

*(and that the cabin could be disassembled and stored on site at the property while work on the foundations and underpinning was carried out.*

*However, Mr B and Mrs B say the cabin was warped by the impact of the trees falling at the time of the incident (what they describe as a 'whiplash' effect). Not that it became warped in the time after the incident, or the way it was kept. On balance, I'm persuaded by what they've said (including their account of discussions with QIC's surveyor and T at the time of their visits). So, I think the scope of work should be revised to include a replacement cabin, not rebuilding the existing cabin.*

*Turning to the issue of the boundary fence Mr B and Mrs B say they installed, within the boundary of their property, I've considered what Mr B and Mrs B have said, including the evidence and information in support. I'm persuaded by what they've said, and having been provided with the information, QIC have not specifically challenged what Mr B and Mrs B have said. So, I've concluded it would be reasonable to include an element for reinstatement of the boundary fence within a revised scope of work. While the Falling Objects sub section excludes cover for fences, as the damage from the falling trees was the result of storm conditions (and the storm sub section doesn't include such an exclusion) I don't think it would be reasonable to use the Falling Objects exclusion to avoid including reinstatement of the boundary fence in a revised scope of works.*

*Taking all these conclusions into account, then I'm not persuaded QIC have acted fairly towards Mr B and Mrs B in the cash settlement they've offered.*

*Having reached this conclusion, I think QIC should revise the scope of works to include provision for the cabin to be replaced, rather than reassembled, and for reinstatement of the boundary fence. The revised scope of works should then form the basis of a new cash settlement offer to Mr B and Mrs B.*

*I've also considered that part of Mr B and Mrs B's complaint about the time taken by QIC in assessing the claim and offering a cash settlement. From what I've seen about the sequence of events and what happened, while QIC (through their surveyor) indicated the value of their cash settlement at the time of their inspection visit, it appears formal confirmation of the offer wasn't made until June 2022. I think Mr B and Mrs B suffered distress and inconvenience from what has happened. Considering all the circumstances of the case, I think QIC should pay Mr B and Mrs B £150 in compensation for distress and inconvenience.*

#### *My provisional decision*

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

- revise the scope of works to include provision for the cabin to be replaced, rather than reassembled, and for reinstatement of the boundary fence. The revised scope of works should then form the basis of a new cash settlement offer to Mr B and Mrs B.*
- Pay Mr B and Mrs B £150 in compensation for distress and inconvenience.*

*QIC Europe Ltd must pay the compensation within 28 days of the date on which we tell them Mr B and Mrs B 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.*

*Mr B and Mrs B responded to say they had no further evidence to provide. They did ask that the reinstatement of the boundary fence the provisional decision said should be included in a revised scope of works, should include a suitable retaining structure.*

QIC responded to say they had no additional information to be considered.

### **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 Mr B and Mrs B.

On the point raised by Mr B and Mrs B, while it's a technical detail I'd expect QIC to consider when revising the scope of work, I would expect any revised scope on reinstatement of the boundary fence to include all elements necessary to return it to the condition it was in before the incident. If this included a suitable retaining structure, then I'd expect it to be included.

Taking these points together, then my provisional findings and conclusions remain unchanged.

### **My final decision**

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

- revise the scope of works to include provision for the cabin to be replaced, rather than reassembled, and for reinstatement of the boundary fence. The revised scope of works should then form the basis of a new cash settlement offer to Mr B and Mrs B.
- Pay Mr B and Mrs B £150 in compensation for distress and inconvenience.

QIC Europe Ltd must pay the compensation within 28 days of the date on which we tell them Mr B and Mrs B 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 Mr B and Mrs B to accept or reject my decision before 3 February 2023.

Paul King  
**Ombudsman**