

The complaint

Mr M complains about his insurer, QIC Europe Limited (QIC) under his home insurance policy. Mr M's complaint is about how QIC handled a claim for problems with a septic tank at his property.

Any reference to QIC in this decision includes their agents.

What happened

In January 2022 Mr M noticed that – despite being emptied twice in a few weeks – the septic tank in his garden was overflowing. He contacted QIC to report the problem and was told the issue would be covered under his home insurance policy.

QIC appointed a drainage company (C) to assess the problem. They visited the property and pumped out the tank. In their report, C noted some blockage of the inlet inspection chamber, as well as likely tree root ingress into the outlet pipework from nearby trees (causing the system to back up and overflow). The tank would also need replacing with a new sewage treatment plant because the existing tank and system didn't comply with current regulations.

Mr M was told that work would proceed on the tank, but this didn't happen, so he followed up with QIC. He was then told they would clear the root ingress, but they wouldn't pay to replace his tank and system as the need for this wasn't due to the issue with the tree root ingress. Rather, it was needed to conform to regulations.

Mr M was unhappy at this as he didn't think just repairing the pipework would fix the issues with his tank. And he'd be left with a tank that would overflow and a sewage system that would (illegally) be discharging into a local stream.

Mr M then complained to QIC, but they didn't uphold the complaint. In their final response they confirmed their decision to partially decline his claim. QIC said they'd considered the claim under the *Accidental damage to mains services* section of the policy. They referred to C's report conclusion that the cause of the problem was tree root ingress to one section of pipe to the tank. QIC confirmed they would cover this under the policy, offering a cash settlement of £450 (less the policy excess of £350) based on excavation and replacement of the damaged section of pipe. QIC also noted the pipe was shared between Mr M and his neighbour, so the cash settlement figure was 50% of the full cost of replacement (£900).

QIC also noted (due to the change in regulations) an isolated repair of the pipe wouldn't be possible and the whole tank and system would need replacement. But the policy wouldn't cover this, as the need wasn't a direct result of the issue (the tree root ingress) and existed before the problem with the pipe. So, QIC wouldn't pay to replace the tank and system.

Mr M then complained to this service. He said the problems with the tank meant he couldn't use his garden because of the overflow from the tank (and into a pond). Nor could he use the property toilets freely. He wanted QIC to fix the problems with his tank properly with a lasting solution (that didn't overflow).

Our investigator upheld the complaint, concluding QIC should have done more to consider the claim. She thought it wasn't fair for QIC to only offer a settlement based on a repair that couldn't be carried out in isolation. She also noted the neighbour's insurer had agreed to pay 50% of the cost of the new sewage treatment plant. She thought QIC should contribute 25% of the cost of the new plant (and Mr M to contribute the remaining 25%). She also thought QIC should pay Mr M £250 for distress and inconvenience.

QIC disagreed with the investigator's view and asked that an ombudsman review the complaint. They said their position on the claim remained unchanged. In my findings I concluded QIC acted reasonably in accepting that part of the claim, relating to the damaged pipework, under the *Accidental damage to mains services* section of the policy. I also thought it reasonable to have offered a cash settlement based on repair to the damaged section of pipe (based on the rates they could obtain from their contractor). Given the shared pipework with Mr M's neighbour, I also thought it reasonable for QIC to offer 50% of the gross estimated cost of the repair (£900) less the excess that would apply to any claim.

On the issue of whether QIC should cover the cost of replacing (upgrading) the tank and system, I concluded QIC should apply a section of the policy to the claim that referred to the cost of keeping to government or other local authority requirements.

On the point that Mr M's neighbour's insurer agreed to cover 50% of the cost of the replacement sewage system, while my role wasn't to consider whether his neighbour's insurer acted fairly towards his neighbour, I took this into account in deciding what I thought reasonable in Mr M's case.

While the condition about keeping to government or local government requirements might indicate QIC should meet the cost of the replacement sewage plant (to meet the current regulations) I wasn't persuaded it would be fair or reasonable in the circumstances of this case. I concluded this because C's report notes the septic tank is of "*ageing condition*". While this could have been considered gradual deterioration, the issue with the tank was the result of the tree root ingress).

Taking these points into consideration, I thought a fair and reasonable outcome would be for QIC to pay 25% of the estimated cost of a replacement sewage system (subject to any policy excess). Not 50%, given the shared ownership between Mr M and his neighbour. That would leave the remaining 25% to be borne by Mr M.

I also considered the issue of compensation. Taking account of all the circumstances I thought £250 was fair and reasonable compensation for the distress and inconvenience caused to Mr M.

Because I reached my conclusions based on differing grounds to those of 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 M.

The key issue in Mr M's complaint is that QIC are only offering a cash settlement to cover (50%) of the estimated cost of repairing just the damaged pipe. They aren't covering the cost of a replacement sewage plant to meet current regulations. Mr M says they should, so he has a working, legally compliant system. QIC say they accept the policy covers the damage to the pipe (from the tree root ingress) as accidental damage. But the policy wouldn't cover a

replacement sewage plant, as this isn't a direct result of the tree root ingress and existed before the problem with the pipe.

I've considered this issue carefully, together with the representations, evidence and information provided by Mr M and by QIC. Having done so, I've concluded QIC haven't acted fairly in limiting their cash settlement offer to repairing the damaged pipe – but not covering the replacement of the tank and system. I'll set out why I've come to this conclusion.

While it isn't the key area of disagreement, I've first considered QIC's acceptance of part of the claim, relating to the damaged pipework, under the Accidental damage to mains services section of the policy. It states:

"13. Accidental damage to mains services

We will pay the costs of repairing accidental damage to underground pipes, tanks, cables and services (including their inspection covers) that reach from the buildings to the public supply and septic tanks, which you are legally responsible for.

In their final response, QIC also refer to the following definition of 'accidental damage':

"Accidental damage

Sudden, unexpected and physical damage which:

- a. Happens at a specific time; and*
- b. Was not deliberate; and*
- c. Was caused by something external and identifiable."*

As QIC have accepted damage to the section of pipe under the section, I think that's reasonable. I've also noted the policy definition of "buildings" includes: "permanently installed septic tanks, cesspits..."

I also think it's reasonable for them to have offered a cash settlement based on repair to the damaged section of pipe (based on the rates they could obtain from their contractor). Insurers can negotiate discounted rates from contractors, due to the volume of work they place with contractors. This means the rates are likely to be less than an individual consumer could obtain. Given the shared pipework with Mr M's neighbour, I also think it's reasonable for QIC to offer 50% of the gross estimated cost of the repair (£900) less the excess that would apply to any claim.

Returning to the key issue of whether QIC should cover the cost of replacing (upgrading) the tank and system, in their final response, QIC don't refer to a specific part of the policy as the basis for their view that a replacement sewage plant wouldn't be covered. So, I've looked at what the policy terms and conditions provide for. The Accidental damage to mains services section of the policy goes on to state:

X We don't cover:

- a. Loss or damage due to wear and tear or gradual deterioration;*
- b. Loss or damage caused by gradual deterioration which means an installation has reached the end of its useful life..."*

However, I've also noted the following section that the policy provides as standard when buildings insurance cover is taken out:

13. Buildings fees and clearing debris

Following a successful claim for loss or damage under Section 1 – Buildings, we will pay:

- a. ...*
- b. the cost to keep to government or local authority requirements (but not if they told you about these requirements before the loss or damage happened)...*

Looking at this, given the definition of “buildings” includes: “permanently installed septic tanks, cesspits...”, then I think it’s reasonable to apply this section of the policy to the claim for damage to the septic tank. QIC accepted the claim for damage as accidental damage, but I think it’s reasonable to apply the same section. As the requirement for a new sewage plant stems from current regulations, I think that would be encompassed within the phrase “government or local authority requirements.”

I’ve also considered the point made by Mr M that his neighbour’s insurer has agreed to cover 50% of the cost of the replacement sewage system. While my role is to consider the specific circumstances of this case and decide whether QIC have acted fairly towards Mr M (not whether his neighbour’s insurer have acted fairly towards his neighbour) I have taken this into account in deciding what’s reasonable in this case.

While the above condition about keeping to government or local government requirements might indicate QIC should meet the cost of the replacement sewage plant (so it meets the current regulations) I’m not persuaded that would be fair or reasonable in the circumstances of this case. I say that because C’s report notes the septic tank is of “ageing condition”. The photographs in C’s report support his observation. While this might also be considered to be gradual deterioration, the issue with the tank wasn’t the result of gradual deterioration (it was the result of the tree root ingress).

Taking these points into consideration, I think a fair and reasonable outcome in this case would be for QIC to pay 25% of the estimated cost of a replacement sewage system (subject to any policy excess). Not 50%, given the shared ownership between Mr M and his neighbour. That would leave the remaining 25% to be borne by Mr M.

I’ve also considered the issue of compensation. Mr M has described the impact of having an overflowing septic tank on his garden, pond and being able to fully use the toilets at his property. I think this will have caused him distress and inconvenience. Taking account of all the circumstances I think £250 is fair and reasonable compensation for the distress and inconvenience caused to Mr M.

My provisional decision

For the reasons set out above, my provisional decision is that I uphold Mr M’s complaint. I intend to require QIC Europe Limited to:

- Pay 25% of the estimated cost of a replacement sewage plant (subject to any policy excess)*
- Pay Mr M £250 compensation for distress and inconvenience.*

QIC Europe Limited must pay the compensation within 28 days of the date on which we tell them Mr M accepts 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 M responded to say he accepted the findings and conclusions in the provisional decision. QIC didn’t respond by the date requested.

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 M.

As Mr M has accepted my provisional decision findings and conclusions, and QIC haven't responded, then my provisional findings and conclusions remain unchanged.

My final decision

For the reasons set out above, my final decision is that I uphold Mr M's complaint. I require QIC Europe Limited to:

- Pay 25% of the estimated cost of a replacement sewage plant (subject to any policy excess)
- Pay Mr M £250 compensation for distress and inconvenience.

QIC Europe Limited must pay the compensation within 28 days of the date on which we tell them Mr M accepts 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 M to accept or reject my decision before 20 February 2023.

Paul King
Ombudsman