

## The complaint

Mr R complains as a representative of T, a business, about the handling of its claim by its commercial insurer, QIC Europe Limited and agents. References to QIC include its agents.

## What happened

I set out the background to the complaint within my provisional decision and also here.

*T suffered an escape of water on its premises in January 2020, which caused significant damage and meant the business had to close. Mr R said a plumber accepted he had caused the leak and QIC appointed claims handlers, B, who provided dehumidifiers. Mr R said that after this the claim became protracted as it was investigated by QIC, and T was closed from January 2020 to mid-December 2021 when T's premises were repaired.*

*QIC said it was notified of the escape of water a week after it had occurred and five months after the policy started. B said T's policy covers tenant's improvements (£10,000), contents and business interruption, but the building was insured elsewhere so there was no cover from QIC for renovations.*

*T appointed Mr R as loss assessor and he said problems arose from B's inexperienced loss adjuster. He said calls weren't returned, emails ignored, and site meetings cancelled without notice. He said they were told in September 2020 the claim was back on track with business interruption payment agreed. But a new loss adjuster was appointed and although the rent part of the claim was paid at £22,000 no further payment was received until January 2021 and this was less than previously agreed, with nothing for the reinstatement of the building.*

*B said it had intended to install dehumidifiers at T's premises, but Mr R instructed a separate firm for this. B did then take responsibility for the drying out with agreement of the building insurer, which it said was completed by early March 2020. Mr R said the claim stalled after this point. B said a payment was authorised on the claim and it received the first list of contents from T in June 2020. B said an interim payment was made in August, followed by a final payment for the contents in September 2020. It offered T payment for nine months business interruption, based on its accountants' assessment.*

*T and its landlord decided to carry out substantial renovations, which B said were greater than the insured work and complicated the claim due to conflicting objectives. B said it couldn't use its own contractors to carry out improvements and didn't have control over the site or the timeframe, otherwise it could have finished its work in five months. It said the improvements couldn't be determined until the strip out of the premises and then the scope of building work had been finalised by the building insurer. It said it received the scope of work in October 2020 following the tender process for the renovations. It then needed to review this for improvement works to decide what costs it should pay.*

*B said it found discrepancies between T's lease and insurance policy which it investigated. It said that following revision of the building issues and lease, it offered payment in September, including business interruption until September 2020 so that T could move back and get the business operational. B also offered £10,000 for the tenant improvement works as T was*

*'significantly under insured'. T rejected this offer of settlement as unfair. B said when it became aware that much of the work concerned improvements it increased the allowance for this by £90,000 by offsetting the limit against the unused cover for contents. B said it did this to assist T with the costs of the claim.*

*B said the claim was mostly managed by the building insurer's loss adjuster, who said that improvements constituted most of the work. B said it was told in November that T had arranged contractors based on authorisation given by the building insurer's loss adjuster. B said it wasn't consulted about this and it was premature, but once it completed its assessment, it offered settlement of the claim on 17 January 2021.*

*QIC paid T £60,000 in January 2021, which it said was partly for restoration of the building and partly for business interruption. It said T was entitled to only six and a half months' cover as it was responsible for the delays. Mr R said payment was previously promised for the full period of nine months' business interruption with a further three months to be considered together with rent arrears of £36,875 and increased material costs. He said as a direct result of B's incompetence and significant delays T has suffered substantial losses.*

*T complained to B about its handling of the claim but said it didn't receive the response of 19 February 2021. B's response said details of all claim payments had been sent that month and of a final payment offered in settlement of all liabilities. B said without further information it wouldn't review the claim further. Mr R referred the complaint to our service outside of the time limit, but QIC didn't raise an objection to us considering the complaint. Mr R said QIC was in possession of correspondence which set out QIC's responsibilities/position under the claim from an early stage.*

*Our investigator didn't recommend the complaint be upheld. He said QIC had insured tenants' improvements, contents and business interruption, but the building is owned and insured elsewhere. He said QIC's response to the claim was timely and reasonable but slowed from March 2020 onwards. He didn't think QIC was at fault for this as T and its landlord wanted renovations which complicated matters, causing much of the delay.*

*The investigator said QIC didn't have control over the site and had to postpone the insured work until the building insurer completed strip out and finalised its scope of work. He said when QIC was told much of the work was tenants' improvements, not covered by the building's insurer, it progressed the claim. But T was underinsured for improvements, and so QIC offset the limit against T's policy limit for contents to reduce T's underinsurance.*

*Mr R disagreed and requested an ombudsman review the complaint. He said this should include T's loss of revenue and increased cost of materials. He said B caused delays by poor communications; not understanding T's responsibilities under the lease and delayed agreement about the apportionment of reinstatement costs between insurers. Mr R said QIC launched a further investigation into T at the start of 2021 which wasted another four weeks.'*

### **My provisional findings and the parties' responses**

In my provisional findings I said I intended to partly uphold the complaint and to require QIC to pay T's business interruption for nine months (less the six and half months already paid). I considered the delays that affected the claim, and the handling and payments for the reinstatement works and business interruption. I wanted to see if QIC had acted in accordance with the terms and conditions of the policy and treated T fairly.

Mr R said most of the period of T's closure was due to QIC's failure to complete the claim in a timely manner and this cost T a prolonged loss of income. I thought that had the work been limited to reinstatement, as largely required by QIC in response to T's claim, it would have

been completed well within the two years taken. But T's improvements, and the involvement of its landlord's insurer concerning renovations including external works caused B to lose control of the claim and led to delays. I didn't agree with Mr R that the renovation work couldn't have interfered with the insured work that was QIC's responsibility. I thought his conclusion ignored the degree to which the claim was affected by other parties and work outside of QIC's control.

When it became obvious that T had very limited cover for the tenants' improvements it intended to carry out, QIC reapportioned cover from the unclaimed part of the contents cover to allow a much greater payment to T. Although Mr R says T appreciated this decision, he said it was outweighed by the delays.

From my review, I didn't find QIC responsible for most of the delays though there were areas where it could have progressed the claim more effectively. B could have communicated and made payments more promptly and been clearer about what they covered. I also thought its replacement of the loss adjuster and abortive investigation at the start of 2021 and recovery from the third party held up progress, as did the time it took to investigate T's lease.

I thought B was entitled to complete these processes and accepted they held up progress. Mr R says the claim stalled due to B's negligence. I thought the main reason was the arrangements for the additional work carried out by T and its landlord's insurer. The covid lockdown also had an adverse effect on all building projects, which was outside QIC's control. QIC had to wait for T's list of contents which took over five months and for the scope of works from the building insurer (in late October 2020) and then decide which works were covered by the claim. B complained to T in February 2021 that it had still not received the original estimates for how the tender documents were calculated.

QIC didn't want to start the insured work without agreement about respective responsibilities. I thought that was reasonable, but I didn't agree with Mr R that the delay in reaching this point was entirely the fault of QIC and B. The agreement between insurers was reached in November 2020 and I've seen evidence that B pressed for this beforehand.

Mr R said T's main contractor withdrew due to non-payment by QIC. QIC had made an interim payment before this and was resolving the issue of insured and uninsured work, both of which the contractor was involved in. B said the contractor was appointed before it had the opportunity to assess the scope of work, and this led to delays. I think by this stage it was understandable that T wanted to progress the work.

Mr R said B reneged on the previously agreed business interruption period of 12 months (the policy limit) and the sum of £94,000 (from January to September 2020 with an agreement to assess the remaining three months in December 2020). I didn't see a formal agreement, but it had been mentioned and B obtained an assessment of losses from its accountants. B did say to T that it, *'allowed the business interruption to be extended until September...'*. This meant QIC intended to pay T for nine months' business interruption, but B then restricted this to six and half months on the basis that T had caused the delays. QIC applied the reduced period retrospectively and I thought this was unfair.

I thought B's estimate of five months to complete the insured work during the covid lockdown was probably unrealistic even without the additional work. Although I didn't think B caused most of the delays, it was responsible for those that I had described. I thought B saying it would pay for nine months' business interruption was reasonable as I thought it would have taken that long to complete the insured work and this accorded with other significant escape of water claims I have seen from that time. I said it was fair for QIC to decline to cover business interruption for the period of renovations beyond September 2020. Had T decided

to carry out this work outside of an insurance claim it would have had to bear the loss of profits that would have been involved for the period of the work.

I thought T was entitled to place some reliance on QIC's offer from September 2020, which lasted through to January 2021 when the payment was again described as 'interim'. T said it was its intention to accept the payment on an interim basis and B confirmed in January 2021 that a further business interruption payment had yet to be agreed. The payment of £60,000 that followed was described as covering reinstatement and business interruption.

Given that more time was taken dealing with the improvements than insured work I thought it was the responsibility of T and its landlord's insurer to coordinate the project for all aspects of the work. From what I'd seen, failures by QIC and its agents were outweighed by the lack of coordination of the works and by QIC's decision to greatly increase the payment available for the improvements T wanted to make to its premises. This increased the cover T was entitled to from £10,000 to £100,000 and I thought this offset other failures of service by QIC and its agents referred to and any increased cost of materials or loss of goodwill by T.

In conclusion, I could see how hard Mr R pressed B and QIC for answers to questions and payments for T. And I can see there were some delays, but overall this is a claim affected by improvements and renovation work carried on alongside the repairs and this was beyond QIC's control.

I said that if Mr R disagrees, he should provide a detailed timeline of communications and events from the claim to show that delays were QIC's responsibility. He should also provide information about the appointment of the main contractor for the non-insured work and how QIC's agents were informed. And support his point that QIC possessed correspondence which would have set out QIC's responsibilities/position under the claim from an early stage.

QIC responded to the provisional decision by accepting the findings and agreed to pay the further business interruption that I had put forward.

Mr R responded on behalf of T to say that additional work at the premises was at the behest of T's landlords and within a different part of the building to that occupied by T. He said it was only external rendering and replacement of windows and was of much less value than the insured work and so T didn't feel it necessary to inform QIC. Mr R said the windows were replaced by November 2020 while agreement was sought by the parties to the insured work.

Mr R acknowledged T's delays in providing B with invoices and estimates for contents, but said up until June 2020 no one had any issues with the pace of the claim. Mr R said B failed to examine the lease properly in June 2020 and took far too long to resolve its issues. But he said T agrees that QIC's reapportionment of cover was a fair offset against delays after February 2021. He said by QIC's estimation of the reinstatement work T would have been at the limit of their business interruption under the policy and so it should pay for 12 months.

Mr R said T believed that QIC's loss adjuster intended to pay for business interruption of 12 months as demonstrated by his request to QIC for a 12-month payment for T's rent. He acknowledged that a lesser figure was agreed for rent to stay below B's authorisation limit. He said a contemporaneous view of intentions towards business interruption should be taken not the hindsight view subsequently taken by QIC. The conclusion would be allowance of the full 12 months business interruption for T.

### **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.

I have reconsidered all of the issues and findings from my provisional decision. Having done so I remain of the view that settlement of the complaint should be as I've set out within my provisional decision and for the reasons I have given.

I suggested that Mr R provide a timeline of communications and events of the claim to show that delays were QIC's responsibility. And information about the appointment of the main contractor for the non-insured work and how QIC's agents were informed. And support his point that QIC has correspondence setting out its responsibilities under the claim from an early stage. But he hasn't done so.

Mr R has sent copies of emails that show the frustration with the claim loss adjuster's slow progress between June and September 2020. And the consideration of T's business interruption claim from October 2020.

In terms of the slow progress of the claim I said this was due to more time being taken dealing with the renovations and improvements than the repairs. I think it was down to T's agents and its landlord's insurer to coordinate the project for all aspects of the work.

Mr R discounts this saying that a very limited amount of work was carried out not involving insured repairs, and only included windows and rendering. In Mr R's previous summary of T's complaint he said the renovations included replacement of window frames and casements, rendering and roof repairs involving scaffolding. QIC described the non-insured work as substantial.

In my provisional decision I was referring to all of the work carried out at the premises. I have looked at this again in light of Mr R's comments and I think that most of the work was in fact insured repairs and tenant's improvements which QIC agreed to cover. The problems arose in that QIC were not involved in the tender and appointment of contractors by T for this work, before liability for the works had been established by B. This meant that valuable time was lost and B lost control of the site.

Having said this, I remain of the view that the claim was also mismanaged by QIC and its agents, but I have concluded that the greater delay arose from the contractors and the site being outside of QIC's control. Additionally QIC had to wait for T's list of contents which took over five months and for the scope of works from the building insurer (in late October 2020) and then decide which works were covered by the claim.

I agree with Mr R that it took QIC too long to resolve lease and policy questions and this held up the claim from June 2020 – the frustration with lack of progress is obvious. However, these questions were resolved in September 2020, and this is within the period of business interruption that I set out for compensation.

Mr R said that payment of 12-months business interruption was QIC's loss adjuster's expressed intention at the time and should be paid as the loss adjuster requested this period for T's rent claim. The fact is the loss adjuster negotiated a lesser figure to cover nine months' rent and that is what was paid to T. This period of rent is equivalent to the period of business interruption I have recommended QIC cover for T.

Mr R said that even without the delays caused by B from June 2020 T would have reached the 12-month limit in the policy for business interruption. But in the 'Consideration of Business Interruption' of October 2020 he advised *'it was expected that the repairs would be completed after a few months, and if the workers were not paid they may have left to find work elsewhere, which would result in a loss of trade once the business reopened...'*.

I recommended nine months for business interruption because I thought the insured repairs could have been completed in that time and that B had given T an expectation that it would pay this amount. I remain of the view that had the work been managed and coordinated properly it should have been completed in this time.

QIC increased the tenant's improvement cover from £10,000 to £100,000 and I still think this offset other failures of service by QIC and its agents referred to and any increased cost of materials or loss of goodwill by T.

### **Putting things right**

In conclusion, I think that fair and reasonable redress to T for the delays which QIC and its agents were responsible is for QIC to pay the period of business interruption for T it initially offered. This is for nine months up until September 2020. QIC can deduct the period of about six and a half months business interruption it has already paid to T. However, it should add 8% simple interest to this amount calculated from September 2020 up to the date it makes payment as the benefit of this money has been unfairly denied to T for this period.

### **My final decision**

For the reasons I have given above it is my final decision that the complaint is upheld in part. I require QIC Europe Limited to pay for T's business interruption for nine months (less the six and half months already paid) according to the assessment of how this should be calculated within the policy, as follows:

*'The amount by which the Gross Profit during the Indemnity Period as a result of the Damage falls short of the Gross Profit which would have been received during the Indemnity Period had no Damage occurred [...] less any sum saved during the Indemnity Period in respect of charges or Business expenses payable out of Gross Profit which cease or are reduced as a result of the Damage.'*

The amount calculated for business interruption should be paid together with interest at 8% simple from the date when the previous payment for business interruption was made to T to the date when the payment is made by QIC Europe Limited in respect of this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 7 April 2023.

Andrew Fraser  
**Ombudsman**