

The complaint

Mr and Mrs H complain QIC Europe Ltd (“QIC”) has unfairly declined a claim they made on their buildings insurance policy for subsidence.

What happened

As the circumstances aren’t in dispute, I’ll summarise the main points:

- Mr and Mrs H got in touch with QIC in September 2021 after noticing crack damage to their home, particularly the sunroom extension.
- QIC carried out some investigations. Mr and Mrs H took advice from a structural engineer. QIC asked a surveyor to consider the evidence. They did so and thought the sunroom foundation wasn’t deep enough for the site conditions.
- QIC declined the claim. It said the damage had been caused by poor workmanship, which is excluded under the policy.
- Unhappy with this, Mr and Mrs H referred their complaint to this Service. They said the sunroom had been approved by their local authority when it was built.
- QIC maintained the foundation wasn’t deep enough. It noted the drainage survey hadn’t shown any leaks and tree roots hadn’t been found in the subsoil investigation. Because of this, it said the shallow foundations had contributed to the subsidence movement. It offered to cover the subsidence damage. But it said it wouldn’t deal with the cause of subsidence, noting this was excluded under the policy.
- Our investigator didn’t think QIC’s offer to cover the subsidence damage only was a fair one in the circumstances. She thought the evidence showed the main cause of subsidence was the clay subsoil. And in order to put this right with a lasting and effective repair, the cause of subsidence would need to be dealt with. She asked QIC to do that and pay £100 compensation.
- QIC didn’t agree with this. It acknowledged that carrying out superstructure repairs without resolving the cause of the movement wouldn’t amount to a lasting and effective resolution. But nonetheless it thought it should be entitled to rely on the exclusion as it was set out in the policy.
- Our investigator said the exclusion QIC was seeking to rely on was unusual and questioned whether it had been highlighted to Mr and Mrs H when the policy was sold. QIC accepted it was an unusual exclusion and it hadn’t been highlighted. It reverted to the exclusion it had relied on earlier about poor workmanship.
- Our investigator considered the complaint again in light of this. She wasn’t satisfied QIC had shown the dominant cause of the subsidence movement was the foundation depth. So she maintained QIC should deal with the claim, including putting right the

cause of subsidence. She also said QIC should reimburse Mr and Mrs H the cost of the structural engineer report they provided during the claim.

- Mr and Mrs H agreed with this. QIC didn't. In summary, it said:
 - The foundation was 360mm deep. That was well below best practice guidance and Building Regulations which recommended a minimum of 650mm and 750mm respectively.
 - It's clear that a deeper foundation would have prevented movement. The main house has a deeper foundation but hasn't experienced movement.
- Our investigator wasn't persuaded to change her mind, 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.

QIC sought to rely on a policy term which said: "we don't cover: ... costs to repair the original cause of subsidence (for example, removing trees)".

After our investigator pointed out this was an unusual policy term, QIC accepted that point and conceded that it hadn't been highlighted at the point of sale, as unusual terms usually would be. It seems to have withdrawn this argument now.

But, for the sake of completeness, I've thought about the position if it isn't withdrawn. It's a highly unusual policy term and yet it wasn't highlighted at the point of sale. So Mr and Mrs H weren't made appropriately aware of it and given the chance to decide if they were prepared to buy a policy containing the term.

Even if the term had been highlighted, it significantly undermines the purpose of providing subsidence cover. As QIC accepted during our investigation, if the underlying cause of subsidence isn't remedied, the building won't be stabilised, and any superstructure repair won't be lasting and effective. This is likely to lead to significant consumer detriment – and this approach isn't at all consistent with the rest of the buildings insurance market.

So even if QIC hasn't withdrawn its reliance on this exclusion, I'm not satisfied it would be fair and reasonable for QIC to rely on this policy term.

Turning to QIC's other reason for declining the claim, it accepts the damage was caused by subsidence. But it says that was a result of a poorly designed foundation. The policy doesn't cover damage caused by "poor workmanship, use of faulty materials or poor design".

For an insurer to rely on this kind of policy term, I'd usually expect it to show:

- when the structure was built
- what the relevant regulations, standards or guidelines were at that time
- how these weren't met
- and how that caused the damage claimed for.

I've considered the evidence QIC has provided about these points.

Mr and Mrs H had the sunroom built in 2004. They've shown it received a Certificate of Completion from their local authority. It confirms the requirements of Building Regulations were satisfied. Mr and Mrs H recently contacted the local authority and they confirmed their view that the foundation depths were compliant with regulations at the time of construction.

QIC has relied on the information contained within a Good Practice Guide for building conservatories which recommends a minimum foundation depth of 650mm. But the document is dated 2016, so it's not relevant to a sunroom built in 2004.

It's also relied on information from Building Regulations which recommends a minimum foundation depth of 750mm. This didn't come into force until July 2004 – after the sunroom had been built. So again, it's not relevant. Prior to that, Regulations didn't specify a minimum foundation depth. What depth was appropriate was a judgement call for the designer, builder and Building Control to make based on the site conditions.

In this case, it's clear that Building Control approved the sunroom foundation and consider it compliant with the regulation of the time. So I can only conclude it was satisfied that relevant Regulation and guidance was satisfactorily taken into account. And, having received sign off from the relevant authority, I'm satisfied Mr and Mrs H took appropriate steps to ensure the sunroom was built to the right standard. I don't think they could reasonably be expected to do more.

So, taking all of this into account, I'm not satisfied QIC has shown the foundation was defective or that the damage was a result of poor workmanship or design of the foundation.

To put things right, it should now accept the claim in full. As I explained above, it wouldn't be fair for QIC to rely on the policy term which excludes dealing with the original cause of the subsidence problem. So QIC will need to establish what the cause is (or causes are) and take appropriate steps to stabilise the building before carrying out repairs.

What exactly is causing the movement and how to put it right hasn't been the primary focus of the complaint – the focus has been whether QIC can fairly decline the claim or not. So I won't make any findings about these points. But I think it's important to note the comments of a chartered structural engineer Mr and Mrs H commissioned. They noted "significant distortion" to the main house, including sloping floors, as well as damage to the sunroom. They also shared some historical context about the likely subsoil conditions and suggested investigations take this into account. QIC should bear this in mind when taking the next steps.

Our investigator asked QIC to reimburse Mr and Mrs H the cost of the engineer report, which is £450. I agree that would be fair in the circumstances. I can understand why Mr and Mrs H turned to an appropriately qualified professional for advice. Their comments set out clearly and persuasively their view that QIC's investigations were inadequate and lacked knowledge of the historical context. Whilst that hasn't had a significant impact on my findings in this decision, I'm satisfied it's contributed meaningfully to the claim and will be helpful when QIC takes the next steps with it.

QIC should also pay £100 compensation for the delay caused by not accepting the claim earlier.

My final decision

I uphold this complaint.

I require QIC Europe Ltd to:

- Accept the claim
- Pay £450 to reimburse the cost of the engineer report*
- Pay £100 compensation*

* QIC must pay the award within 28 days of the date on which we tell it Mr and Mrs H accept my final decision. If it pays later than this, it must also pay interest on the award from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 19 July 2023.

James Neville
Ombudsman