

The complaint

Mr L has complained about his let property insurer QIC Europe Ltd in reference to the settlement it has offered to him for his fire damage claim.

What happened

Mr L's property suffered a fire in April 2020. He made a claim and QIC began investigating it. It had some concerns initially and it was October 2020 before it accepted the claim. It then asked Mr L for quotes for reinstatement. When those were received QIC felt they didn't contain enough detail to explain the costs. A quantity surveyor was appointed and visited the premises in February 2021. The reinstatement was then put to tender. Once the tender was completed, QIC appointed a contractor to do the strip-out work. That was completed by September 2021.

Mr L had been unhappy about the claim's progress, not least because his period for loss of rent payable under the policy had run out. So he complained. Which resulted in QIC paying £400 compensation to Mr L – explained in a final response dated 6 September 2021. And, following Mr L complaining to this service, one of our Investigators recommended that it pay an extra four months of lost rent, but not any more compensation. She looked at what had happened, to the point of strip-out completing, and felt QIC had caused delays in the first six months of the claim, such that it wasn't fair for QIC to just pay for the rent-loss period set in the policy. QIC and Mr L both agreed to the recommendation.

In October 2021, following the strip-out work completing, QIC's loss adjusters raised a concern about the cost of remaining repairs. They noted costs had gone up in the last year and felt the remaining repairs would exceed the sum insured. They said that looking at previous rates the property had likely been underinsured in 2020 too. So they recommended the rest of the claim was settled in cash. QIC, noting a quote Mr L had submitted for the remaining work, decided to pay Mr L the limit on the policy, less what it had spent already on repairs. In February 2022, QIC paid Mr L £223,336.23, which was the sum insured of £300,000 less the costs for the surveyor and strip-out work. Mr L wasn't happy – his quote from November 2021, for the reinstatement, was for £293,653.20. He complained again.

QIC wasn't minded to do anything else. Our Investigator felt that it wasn't fair for QIC, it having caused delays, to rely on the sum insured for settlement. She felt it should be paying Mr L what it would cost him for repair and £500 compensation. QIC didn't agree. It said it had first become concerned about the sum insured in December 2020, it had discussed its concerns in this respect with Mr L in May 2021 and his quote in November 2021 confirmed them. It said that, had it told Mr L earlier, it wouldn't have changed the costs he was facing. In respect of compensation it said it was concerned that this had already been dealt with in the previous complaint. Mr L's complaint was passed for an Ombudsman's consideration.

I was also minded to uphold the complaint. But my reasoning for doing so was different to that expressed by our Investigator, and I felt a more specific award, including a further payment for lost rent, was required to resolve matters. I also needed to make both parties aware of our award limit. So I issued a provisional decision, my findings of which were:

"If an insurer starts to repair a property, the sum insured can't be relied upon as a limit to which the reinstatement work can be completed to. That is because, by starting work, an insurer has, effectively, entered into a contract to repair the property. Only if something happens, which was previously unknown and unforeseeable, can that contract fairly and reasonably be set-aside.

Here QIC knew what the sum insured was at the outset. And it took some time in the early stages of the claim to ensure it had liability for the loss. A usual step for an insurer at the very beginning is to check whether the property is adequately insured. QIC's loss adjuster's reports from 2020, and through until its report number 9 issued in October 2021, don't indicate that there were any concerns about the level of insurance Mr L held. So the adjuster either didn't check, or did and was happy the property was adequately insured. Either way QIC had the opportunity to assure itself of that before it chose to appoint a surveyor and complete strip-out works at the property. It is also the case that the Covid-19 pandemic had begun even before Mr L's claim was made, and by February 2021, it was becoming clear that the pandemic was on-going, with effects of the previous year alone, on the country, already proving to be significant. But QIC still began to repair Mr L's property. So I think it can't, fairly and reasonably walk away from that contract, revert to the policy cover and settle based only on the sum insured.

Further, it is clear to me from the loss adjuster's reports and comments to this service, that the increased cost of materials which occurred in late 2021, largely as a result of the Covid-19 pandemic, was a big factor in the cost of reinstating Mr L's property increasing beyond the sum insured. And whilst I haven't assessed the period before October 2021 myself, our Investigator found that there had been delays by QIC in progressing the claim in that period. And QIC agreed that this was the case. So if those delays had been avoided, the works would have started sooner – by at least four months by all accounts. Which may well have avoided at least some of the effects of the increasing costs that, during 2021, began to occur. So I think that QIC's delays likely prejudiced Mr L's position.

In addition, QIC has argued that Mr L, regardless of the increased costs following the Covid-19 pandemic, was always underinsured. As I said, QIC didn't raise that issue earlier in the claim and it entered into a contract for repair. I stand by what I've said in that respect. But I also bear in mind that if QIC had identified an underinsurance concern at the outset – it could have chosen then to settle in cash rather than repair. It would then have been possible for Mr L to proceed with the work in 2020, using a contractor of his choosing and making decisions himself about the work that was needed to reinstate the property given the funds he had available to him. So, if Mr L was underinsured when the fire occurred in 2020, and QIC failed to identify this at the outset, or noted it and went ahead with repairs anyway, only to stop in 2021, I think it prejudiced Mr L's position further. Its actions left Mr L with costs that he could well have avoided or at least mitigated to some degree.

So, taking all that into account, I don't think it's fair or reasonable for QIC to settle based on the sum insured. I think it should pay Mr L's cost for repair as set out in his quote from November 2021. QIC has already paid Mr L £223,336.23. And Mr L's quote for £293,653.20, includes VAT of £48,942.20. QIC should pay Mr L's cost for VAT, but only once invoices are presented to it showing work has been done and VAT is due. In the meantime, it should pay Mr L's cost excluding VAT of £244,711.00, less the £223,336.23 it has paid already – £21,374.77.

I also think that QIC reasonably knew by the beginning of November 2021 that it wasn't prepared to continue with repairing the property – and that a sum in excess of £200,000 would need to be paid to settle in cash in the way it wanted. But it was February 2022 before it made a payment to Mr L. I think that was too long. So I'm going to require QIC to pay Mr L an amount equivalent to interest on the sum of £244,711.00 from 1 November 2020 until*

9 February 2022, when QIC paid £223,336.23 to Mr L. And then further interest* on the remaining £21,374.77, from 10 February 2022 until that sum is paid to Mr L. Also, if Mr L presents VAT invoices to QIC, it should pay the VAT shown as due for the work in the November 2021 quote, up to the value of £48,942.20. It should pay this within 14 days of the date it receives the invoices, or it will have to add interest* to the VAT sum due from the date of receipt until settlement is made.

I think the sum QIC paid to Mr L, in February 2022, whilst not all he needed to complete the work, was a substantial sum. It should have been enough for him to start reinstating the property and complete most of the work necessary for repair. But he couldn't begin to do that until he got the funds in February 2022. And I've said I think there was delay in that respect from November 2021. Which means Mr L lost a further three months of rent on account of QIC's delays. I think it is only fair then that it pays further compensation to make up for this additional financial loss. I'm going to require it to pay Mr L £3,900 being the sum of three month's rent (where annual rent was accepted as £15,600, making monthly rent £1,300), and I'm going to require QIC to add interest to this from 1 February 2022. That is an arbitrary date – because of the length of the claim, delays etc, I don't know when Mr L should really have had the benefit of that rental income. Awarding interest from 1 February is, in my view, a fair date to apply it from, which generally reflects that Mr L has been without money due to QIC's delays.*

I think that following the strip-out work completing in autumn 2021, Mr L was caused further upset by QIC. As I've said there were delays in the settlement being made. And the settlement itself, which Mr L was unhappy about, was in my view unfair and unreasonable. It created a position for Mr L that QIC shouldn't have left him in at that time, and the sum in question was unfairly and unreasonably limited to the sum insured. So I do think further compensation of £500 is fairly and reasonably due to Mr L.

I need to mention here though, that whilst I am of the view that the additional sums listed above should be paid, I can only make awards to the limits that apply to this service. In this case, given the date of the loss and the date Mr L complained, the applicable limit is £355,000. And that limit usually includes payments already made on the claim. I can recommend that QIC makes payments to Mr L, over and above that sum. But, even if my final decision remains the same and Mr L accepts it within the deadline given, QIC won't be bound to pay what I've recommended, although it may choose to. And if Mr L has accepted my final decision but QIC doesn't choose to honour my recommendations, it is unlikely he will be able to go to court for any recommended sum outstanding. Regarding any final decision I make, Mr L may wish to seek legal advice before deciding whether or not to accept it."

Mr L said he was happy with the decision. QIC said it couldn't agree with it.

In summary QIC said:

- It had not/did not start to repair the property – all it did was cover the cost of strip-out work in order that the full cost for what it would take to reinstate the property could be understood.
- It had not caused delays to the claim in 2020.
- It had paid compensation and lost rent for the period up to October 2020 as a commercial decision, not in acceptance of any liability for delays.
- Mr L was asked in October 2020 to provide reinstatement quotes, but did not do so until January 2021.
- His quote was inadequate and insufficient, in terms of scope and costs, there was a lack of detail and items were missing. In its view, this quote should not be accepted as a proper and full quote.

- It was May 2021 when the issue of underinsurance was raised with Mr L.
- It was only when the strip-out work completed in September 2021 that the full extent of reinstatement works became known and it became obvious, following a fully scoped and costed estimate being put forward in November 2021, that the sum insured was insufficient.
- It did not opt to settle the claim based on average, which it could have done (and which would have meant a much lower payment was made to Mr L than the £223,336 it had paid).
- Mr L indicated in February 2022 that he was prepared to accept a sum of £253,000 in full and final settlement of the claim.
- If the Financial Ombudsman is to award anything, the total of any awards should not exceed the sum subject of that indicative acceptance.
- The sum insured for loss of rent on the policy has been exhausted.
- It is not known whether and, if so, to what extent Mr L has started the repairs.
- If the cost of repair has increased due to the Covid-19 pandemic, that is not something indemnifiable under the policy – not taking into account case law.
- Interest is further not fairly applicable at the rate of 8%, as that exceeds the Bank of England base rate.

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 did not pay Mr L so he could appoint a contractor to do strip-out works. Rather QIC appointed a contractor which completed the strip-out work at the property. That is the first stage of repair where a building is damaged by fire. I am satisfied that QIC, by its actions, effectively entered into a contract to repair the property.

I appreciate that the fire at Mr L's premises occurred during the first month of the nationwide restrictions put in place in 2020 as the result of the Covid-19 pandemic. And due to the previous complaint made to and resolved by our service, I am not looking at how the claim was generally handled or progressed at that time. But I can reasonably bear in mind that, in September 2021 QIC accepted that there had been some delays in the claims progress. And our Investigator in resolving that complaint found about four months of delay had occurred, which QIC accepted. In any event, delays in the claim before September 2021 were not my only reason for finding that QIC should settle this loss beyond the sum allowed for in the policy. I also identified a delay in making the settlement payment to Mr L. And the fact that QIC only identified, what it has termed as underinsurance, very late in the claim and having started, as I've said, to repair the property.

I also understand that QIC had needed to get an estimate from Mr L. And that when Mr L presented an estimate to it, it had concerns about it.

I knew when I issued my provisional decision that QIC had told us that it had become aware of underinsurance in December 2020 and then discussed its concerns in this respect with Mr L in May 2021. But QIC's file notes do not reflect any such conversation. And the reports compiled by QIC's loss adjuster don't suggest that is the case either. As I said provisionally, the first mention of underinsurance was in the loss adjuster's report issued in October 2021. This makes no reference to underinsurance having been discussed with Mr L in May 2021, and prior to that October 2021 report, there was no report in May 2021, only in April 2021.

The October report was made after the strip-out work was completed. I accept that once that was done, a better idea of the reinstatement costs could be gained. But the sum insured for

buildings is usually meant to reflect what it would cost for the property to be rebuilt. And that is something loss adjusters are adept at determining even when viewing a heavily damaged property – it is not usually necessary to wait for the building to be stripped out for an expert to determine what it would cost to rebuild it. Indeed QIC's loss adjuster, whilst not including anything in its early claim reports to confirm this, did tell our Investigator, during her assessment of this complaint, that it was satisfied that the sum insured was sufficient at the time of the loss.

I note that QIC did not choose to settle the claim based on average. And I accept that there is a policy clause which, in certain circumstances, would allow QIC to do that. But because QIC did not choose to rely on that clause, I have not assessed whether or not it would likely apply here. But settling based on average, or restricting the payout to the sum insured, both seek to limit QIC's liability for the loss. And that is what I'm considering here, what my provisional findings focused on – whether QIC, in this situation here, can fairly and reasonably limit its liability for the loss due to alleged underinsurance. Nothing QIC has said in reply to my provisional decision, makes me think that it can.

I think it's fair to say that when QIC told Mr L it would only be settling based on the sum insured less what it had already paid, he really did not agree that was fair. I think it's also fair to say that he then tried to mitigate his loss by attempting to negotiate an improved settlement with QIC. But QIC wasn't minded to negotiate or offer a revised settlement and told Mr L his choice was to accept the settlement offered, and/or ask the Financial Ombudsman Service to consider his complaint. Mr L chose the latter and I've found, provisionally and now finally, that QIC's offer was unfair and unreasonable. Mr L believed the offer was unfair but did not know that was the case. Now I'm satisfied that it was unfair and unreasonable and I've explained, from my informed position as Ombudsman, what is needed to put that right – including an additional payment to compensate Mr L for lost rent – regardless of the policy cover and on account of the delayed claim settlement. What I feel is needed is more than what Mr L had tried to negotiate with QIC for. And I don't think it would be fair or reasonable for me to hold Mr L's well-intentioned but uninformed attempt at negotiating a resolution against him by saying that the matter can now be settled by QIC paying just that requested sum.

This service, where there is a delay in a claim, often makes awards of interest at 8%, regardless of the Bank of England base rate. That is largely akin to awards the courts make for delays. Whether or not Mr L has done any repairs doesn't change the fact that the settlement of £223,336.23 was, in my view, delayed. And I've also found it was less than what QIC fairly and reasonably should pay in settlement of the claim. So even when the bulk of the claim was settled in February 2022, it was light by around £21,000, not including VAT. VAT is often paid once work is done. And if QIC had identified underinsurance at the outset of the claim, as I think it reasonably should've done had it wanted to rely on that to limit its claim outlay, it could've settled with Mr L then. He could then have done work and asked for VAT to be paid too – all likely before the increases in the cost of work, referenced by QIC's loss adjuster, occurred in late 2021. So I'm not persuaded the case law, referenced by QIC, where one case relates to what the policy allows for and both pre-date the Financial Conduct Authority's rules on fair handling of insurance claims where a failure to handle a claim fairly can result in damages, are that relevant here.

Having considered QIC's reply disagreeing with my provisional decision, I've not been persuaded to change my views expressed therein. As such, my provisional findings, along with my comments above, are now those of this my final decision.

Putting things right

I uphold this complaint. In this case, I can award fair compensation to be paid by QIC up

to £355,000, plus any interest and/or costs, or interest on costs, that I consider appropriate. If I think that fair compensation is more than £355,000, I may recommend that the business pays the balance. I am mindful that here it's possible that some of my redress may exceed the £355,000 limit which applies to Mr L's complaint, so I am making an award and a recommendation.

My award

I require QIC Europe Ltd to pay Mr L:

- £21,374.77 being the outstanding cost to him for repairs, based on the November 2021 quote, not including VAT.
- £3,900 as compensation for lost rent.
- £500 compensation for distress and inconvenience.

These sums, taken with the claim total QIC has paid already, all fall within my award limit of £355,000. I am awarding interest* on these sums too. I've set out my interest awards below. As explained above, interest* payments are not subject to the award limit.

I also require QIC to cover Mr L's cost for VAT. I've said that QIC's maximum liability for that is £48,942.20. It isn't yet known what VAT Mr L has incurred. But it seems likely that some or all of his VAT cost will take the total redress due beyond the limit I can make awards to of £355,000. So I require QIC to, as far as my award limit of £355,000 allows, pay Mr L:

- A sum equivalent to VAT Mr L incurs on work subject of the November 2021 quote, up to a maximum value of £48,942.20. This is subject to Mr L submitting invoices to QIC showing VAT on the quoted work is due.

I further require QIC to make the following payments of interest* which are not subject to my award limit:

- An amount equivalent to interest* on the sum of £244,711.00 applied from 1 November 2021 until 9 February 2022.
- An amount equivalent to interest* on the sum of £21,374.77 applied from 10 February 2022 until settlement is made.
- If Mr L submits VAT invoices to QIC and it doesn't pay the VAT due to him for the work on the November 2021 quote, up to its maximum of £48,942.20, as the limit allows or it chooses to pay regardless, within 14 days, an amount equivalent to interest* due on any sum payable to Mr L, from the date the VAT invoices were received by it until payment is made.
- An amount equivalent to interest* on the sum of £3,900 from 1 February 2022 until settlement is made.

My recommendation

I recommend that, in the event the VAT sum due to Mr L takes the redress sums in total beyond my award limit of £355,000, that QIC still pays the VAT amount due in full.

This recommendation is not part of my determination or award. Even if my final decision remains the same and Mr L accepts it within the deadline set, QIC doesn't have to do what I've recommended. It's unlikely that Mr L can accept my decision and go to court to ask for the balance if the recommendation is not honoured. Mr L may want to get independent legal advice before deciding whether or not to accept any final decision I make.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs requires QIC to take off tax from this interest. If asked, it must give Mr L a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require and recommend that QIC Europe Ltd provides the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 20 April 2023.

Fiona Robinson
Ombudsman