

The complaint

Mr G complains QIC Europe Ltd (“QIC”) has unfairly declined a claim he made on his buildings insurance policy for subsidence.

What happened

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

- Mr G made a claim for subsidence damage to his garage.
- QIC declined it for two reasons. It thought the damage pre-dated inception of the policy and it had been caused by alterations Mr G had made to his driveway.
- Mr G referred a complaint about that to this Service. An Ombudsman made a final decision in July 2022. He wasn’t persuaded QIC had acted fairly when relying on those reasons and upheld the complaint. Amongst other things, he told QIC to reassess the claim in line with the remaining terms and conditions of the policy.
- QIC did so. It carried out a drainage survey and a ground investigation. It accepted the damage had been caused by subsidence. But it declined the claim because it said that was a result of poor workmanship, which is excluded by the policy.
- Mr G thought this was unfair and referred a second complaint to this Service.
- Our investigator thought the complaint should be upheld. She wasn’t persuaded that QIC had shown the damage had been caused by poor workmanship. She asked it to accept the claim and pay £150 compensation.
- Mr G accepted this. QIC didn’t. It said it had taken advice from a surveyor, S, who had reviewed the investigations and made a qualified assessment. And S had confirmed the garage foundation was unsuitable.

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 can’t reconsider anything already considered by the Ombudsman in the previous complaint. My consideration will be limited to the events that followed his final decision in July 2022. That’s mainly QIC’s decision to decline the claim for poor workmanship.

The policy covers damage caused by subsidence, subject to a number of terms and conditions. The relevant one here is that damage caused by “poor workmanship, use of faulty materials or poor design” isn’t covered.

QIC accepts the damage was caused by subsidence but it thinks this was brought about due to the poor design and/or workmanship of the garage, particularly the foundation. The onus is on QIC to show why it would be fair to rely on this term to decline the claim.

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.

I understand the property, including the garage, was built sometime between 1965 and 1975. Mr G bought it in 2018 and reported the damage to QIC in 2020. So, at the time he made the claim, the garage had stood for around 45-55 years.

In the previous complaint, the Ombudsman found the damage had started after the policy began. In part this was based on the findings of an engineer that no movement was recorded when Mr G bought the property. So I think it's fair to say the garage has likely been structurally sound for at least 45 years.

QIC says there was no requirement for the garage to meet Building Regulations at the time it was built. As our investigator has pointed out, that means the garage didn't need to comply with these Regulations. QIC hasn't raised any other standards or guidelines it thinks the garage should have been constructed in line with.

QIC took advice from S, a chartered surveyor. I know Mr G has concerns that S didn't inspect the damage first hand before providing their comments. I'll take that into account, but I don't think it would be fair to disregard S' professional opinion as it had access to photos, investigation results, and reports.

S described the construction of the garage foundation as "inadequate and un-engineered". Noting the subsoil had a fairly high shrinkage potential and there was a lot of vegetation nearby, outside the boundary of the property, S said the foundation was "an incident waiting to happen". In part this was also because S thought there was likely to be little in the way of a foundation nearest the vegetation to resist shrinkage of the clay.

It's clear S thinks the garage foundation could have been better constructed. However, it's not clear how S thinks it *should* have been constructed. No regulations, guidelines or standards from the relevant time have been put forward. So, whilst the construction may be imperfect, especially by the standards of today, I'm not persuaded it was defective according to the standards of the time it was built.

Even if the construction were shown to be defective by the standards of the relevant time, I bear in mind the garage has stood problem free for at least 45 years, possibly longer. In my view, that means it has stood the test of time. If the foundation had been so poorly designed and/or built that it was defective and failure was inevitable, I would have expected it to failed long ago. Because it hasn't, I'm not satisfied QIC has shown the exclusion applies.

I also take into account that Mr G bought the property in 2018 and at that time no potential movement problems were identified. In these circumstances, I'm not satisfied it would be fair to apply the exclusion as I think Mr G took reasonable steps to ensure the garage was likely to be structurally sound.

To put things right, QIC should now accept the claim. It should also pay £150 compensation for the delay caused by not accepting the claim earlier. This amount is in addition to anything awarded by the Ombudsman in the previous case.

My final decision

I uphold this complaint.

I require QIC Europe Ltd to:

- Accept the claim
- Pay £150 compensation*

*QIC must pay compensation within 28 days of the date on which we tell it Mr G accepts my final decision. If it pays later than this, it must also pay interest on the compensation 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 G to accept or reject my decision before 13 July 2023.

James Neville
Ombudsman