

## The complaint

Ms T and Mr D have complained that QIC Europe Limited ('QIC') declined their claim for water damage under their home insurance policy. For the avoidance of doubt, the term 'QIC' also refers to QIC's agents and contractors for the purposes of this decision.

## What happened

Ms T and Mr D purchased their home in June 2019, having obtained a homebuyers' survey in March 2019. They purchased a home insurance policy with QIC in May 2020, which they renewed in 2021. In 2021, Ms T and Mr D became concerned about damp-related damage at their property. In August 2021, Ms T and Mr D were informed by the relevant water utility company that there was a significant leak from a pipe under their property. Ms T and Mr D notified QIC and made a claim for the internal damage under their home insurance policy. QIC declined the claim under a policy exclusion, stating that the damage occurred gradually. It also considered that the damage would have been clearly visible to Ms T and Mr D and that they failed to take appropriate action to mitigate the damage from occurring.

As Ms T and Mr D were unhappy with the decision made by QIC to decline their claim, they referred the matter to this service. An Ombudsman issued a final decision in November 2022 and upheld Ms T and Mr D's complaint. He directed QIC to proceed with the claim and QIC duly made an offer to cash settle Ms T and Mr D's claim in the sum of £6,500 plus VAT. Ms T and Mr D queried this and QIC asked them for further evidence. QIC then re-considered and declined the claim, stating that the evidence showed that the damage had existed prior to Ms T and Mr D taking out cover.

Following further complaint, QIC maintained its stance and Ms T and Mr D referred their complaint to this service. The relevant investigator didn't uphold the complaint. She couldn't see that any specialist investigation was undertaken before exchange of contracts as advised in the homebuyers' survey which identified several issues with damp. It was her view that the leak from the pipe had been going on for some time. She thought that it was likely that Ms T and Mr D were aware, or ought reasonably to have been aware, of the relevant damage before they purchased the policy. The investigator concluded that QIC hadn't acted unreasonably or unfairly in this case.

Ms T and Mr D were unhappy with the outcome of their complaint. They considered that QIC should pay £10,000 to settle their claim and compensate them for the distress and inconvenience caused. The matter was therefore referred to me for decision in my role as Ombudsman. In January 2024, I issued a provisional decision for this complaint and explained why I was minded to uphold Ms T and Mr D's complaint as follows; -

*'The key issue for me to consider is whether QIC applied the terms and conditions of the policy in a fair and reasonable manner by declining Ms T and Mr D's claim for a second time, on this occasion under the exclusion clause relating to pre-existing damage. My provisional conclusion is that QIC didn't act fairly and reasonably in doing so. I'll explain why.'*

*In reaching this provisional decision, I've also considered the submissions of the parties as summarised below. Turning firstly to what Ms T and Mr D have said, they explained that*

*they'd originally taken out their insurance policy with QIC in May 2020. They said that the first sign of water damage appeared in May 2021, two years after moving in and there had been no visible damage before this. They said they hadn't been aware of the leak under the property, and believed the damage was being caused by rising damp and this was also the opinion of their damp-proofing experts, so they planned for work to take place. They then received a call from the utility company in August 2021, informing them that they'd detected a large leak at the property, releasing over 200 litres of water per hour under the house.*

*Ms T and Mr D have said that the company confirmed that 'a leak is identified by a sudden increase on the usage through the bulk meter which would trigger a request for leakage inspectors to investigate the matter further.' Ms T and Mr D added that the company was only alerted to an increase and a loss of water at the property in August 2021. They said that this evidenced that 'this leak could only have been going on for, at most, a matter of months.' They said they took immediate action and replaced the water pipe, and this stopped the leak. Ms T and Mr D said they then realised that this had caused the damage to internal walls, flooring, skirting, door frames and tiles and so contacted QIC. They said it was untrue and unfair to say that they'd done nothing to rectify the issues. They felt they did all they could to identify any problems and to act on them when they occurred.*

*Following the Ombudsman's decision in November 2022, Ms T and Mr D considered that QIC had used delaying tactics, but eventually offered a cash settlement of £6,500 plus VAT in March 2023, and they asked QIC to check if one specific item had been included in the settlement amount. QIC said it would check and let Ms T and Mr D know the next day. Two days later however, QIC contacted Ms T and Mr D to say that it had decided to re-investigate and requested further documentation, before declining the claim again in June 2023.*

*As for the pre-purchase homebuyer's survey, Ms T and Mr D said that they'd immediately acted on the mention of damp. The vendors showed evidence that a damp proof course ('DPC') had been installed in the relevant walls in July 2018. They engaged a builder to review the property for damp and, 'he found only low levels which he explained to us was consistent with a property that had had a DPC in the past year (a DPC can take a year to dry out so low levels would be normal, showing the level of damp to be in decline)'. Ms T and Mr D had therefore been reassured and completed the purchase. They considered that this provided evidence that there was no damage present at that time. They said that QIC cited issues from the survey that had nothing to do with the claim damage. For examples issues had been identified with external walls, however the current issue was to do with internal walls in the middle of the house. As for cracked and damaged tiles, Ms T and Mr D said that these didn't form part of the claim. They only wanted water-damaged tiles to be refurbished.*

*Finally, Ms T and Mr D said that their home had been in a state of disrepair for a lengthy period. They said they'd remedied the pipe leak under the property at a cost of £1,000, but wanted QIC to pay for the necessary repairs and decoration as a result of the leak. They said that the process had been extremely stressful and taken a great deal of time and energy at a time when they had a young family. They didn't consider that QIC's original offer of £6,500 plus VAT was enough to cover the work and for what they termed 'intolerable stress' over three years. They said that QIC's original surveyor suggested the damage would cost over £10,000 to put right and considered that QIC should now pay this amount.*

*I now turn to QIC's submissions. Following Ms T and Mr D's contact in September 2021, QIC instructed its claims management agents to investigate the damage. It also instructed a surveyor to visit the property. It recognised that the damage could in principle be covered under the 'Escape of Water' peril in the policy. It concluded however that, 'the damage has clearly been occurring over a long period of time and was noticeable.' It didn't consider that the leak was a one-off incident and thought that it had occurred gradually. As a result, it said that the gradual damage exclusion in the policy applied.*

*As to the Ombudsman's final decision of November 2022 requiring QIC to proceed with the claim, its surveyor was re-instructed to assess the damage and agents were instructed to carry out drying works. QIC then contacted Ms T and Mr D with a settlement offer, however Ms T and Mr D weren't satisfied with the figure offered, so QIC then further considered the scope of works and report. During this process, it asked Ms T and Mr D to provide the damp report they'd commissioned and a report highlighting the work that had been undertaken. It also asked for Ms T and Mr D's homebuyers' survey to settle the claim.*

*Based on the extent of the damage at the property, it considered that it was 'likely that this has been ongoing for a significant period and prior to the inception of your policy.' Following sight of relevant documents, it referred to dampness to the walls as well as other issues identified in the survey prior to purchasing the property. It concluded that the policy didn't cover damage or defects that were present prior to the policy inception. It therefore considered that it had acted correctly in declining Ms T and Mr D's claim. In its final response letter of June 2023, it again referred to the 'existing damage' exclusion. It confirmed that it wouldn't cover loss or damage that had happened before the insurance policy started and that the damage was present at the date of purchase and prior to policy inception.*

*QIC considered that the home buyer survey report dated March 2019 identified damp issues as a defect that was 'serious and/or need to be repaired, replaced or investigated urgently'. It considered that Ms T and Mr D's damp proofing report dated May 2021 also found high moisture readings to a couple of walls and provided a quote for damp proofing works. It said that the same report also found 'high levels of damp to floorboards touching the wall and advises on further investigation.' QIC also noted evidence of damage from its own claims agent's report of September 2021 and its engineers confirmed there was a live leak.*

*In the circumstances, I've now considered the wording of the homebuyers' survey dated March 2019 as referenced by QIC. It said that dampness was detected at low level to the main walls and that further specialist investigation was required. It said, 'Any structural floor timbers which are in contact with damp masonry are at risk from decay and you should instruct your specialist firm to check the sub-floor timbers for defects and again carry out appropriate remedial treatment as required.' It also mentioned a small number of damaged or missing floor tiles which it said should be repaired. Finally, it referred to internal decorations being generally satisfactory. As to the report from Ms T and Mr D's damp proofing experts dated May 2021, this found high moisture readings to walls and provided a quote for damp proofing works to the middle room. The same report also found high levels of damp to floorboards touching the wall and advised further investigation.*

*I've also considered the wording of QIC's surveyor's report as well as photographic evidence. It noted that the floorboards were water stained with damp, 'damp meter reading confirming this to be the result of the recently discovered escape of water' and would need replacing. It also noted that the damp had spread up certain skirting boards and door linings which would also need replacing. It acknowledged that the party wall which housed the stairs was severely affected with the decor debonding in places. It said that 'Damp meter readings also confirmed this to be the result of the failure to the main water pipe.' The same surveyor had advised that the leak appeared to pre-date purchase 'with the wash out of the ground beneath the hall tiles being something that we would expect to take longer than two years.' QIC concluded however that there was evidence of dampness to the walls, along with other damage prior to Ms T and Mr purchasing their property. They said that there was no evidence to show that these defects or issues were repaired or replaced, or that any further investigations took place. It considered that its decision to decline Ms T and Mr D's claim was therefore correct.*

*I now turn to the reasons for my provisional decision to uphold Ms T and Mr D's claim. The*

starting point for this provisional decision will be the terms and conditions of the relevant policy. Damage caused by escape of water is covered in principle. In the 'General Exclusions' section of the policy, damage caused by the following is not covered: -'9. Existing damage – Loss or damage which happens before your insurance policy starts, 12. Any gradual or maintenance-related loss or damage – Loss or damage as a result of gradual causes including: - wear and tear...gradual deterioration (whether you were aware of it or not)...'. In the 'General Conditions' section of the policy, it states: '10. Reasonable care and preventing loss – a) you must take all necessary and reasonable steps to prevent or limit accident, injury, loss or damage to your buildings and contents or liability to others b) you must make sure that your buildings are maintained in a good state of repair...If you make a claim under this policy and we decide that the loss, damage, liability, cost or expense that led to the claim was caused or was made worse by you failing to meet your obligations under this clause, we may refuse to pay the claim...'

I note that QIC originally declined the claim in 2021 under the gradual damage exclusion. It also referred however to the existing damage exclusion and the general condition about taking reasonable care to prevent loss as above. The relevant Ombudsman specifically referred to the gradual causes exclusion and came to a final decision that QIC must proceed with the claim. I note that QIC then however turned down the same claim in 2023 under the pre-existing damage exclusion.

Having carefully considered all submissions and evidence, including the relevant expert reports, on a provisional basis I don't consider that QIC has applied the exclusion clauses and general conditions in a fair and reasonable manner. The gradual damage exclusion issue has already been determined by an Ombudsman in November 2022. I therefore turn to the general exclusion relating to existing damage.

Whilst the homebuyers' survey noted that dampness was detected at low level to the main walls and that further specialist investigation was required, I don't consider that there is any evidence of damaged or discoloured floorboards, skirting boards, door frames or decoration as detailed in QIC's surveyor's report in 2021. I find Ms T and Mr D's evidence persuasive in relation to the extent and relatively sudden nature of the leak. They'd instructed a damp specialist company in May 2021, however, I've no reason to doubt what Ms T and Mr D have said, that this expert thought that the problem was to do with rising damp. He'd also been unable to immediately detect a leak, no doubt as the leak was occurring under the property.

I also have no reason to doubt that it was only when the utility company notified Ms T and Mr D that the nature and extent of the problem became apparent. I consider that the likely volume of water which was leaking would have caused the type of damage which Ms T and Mr D reported to QIC over a matter of months rather than a matter of years. The fact that the utility company was only alerted to an issue in August 2021 through its systems, suggests that the pipe failure arose relatively suddenly or became much worse suddenly. I also agree with the view of the previous Ombudsman that if the damage had been visible for a long time, more visible damage would be expected. For instance, the peeling paint on the staircase wall, which wasn't referenced in the housebuyers' survey two years previously which referred to generally satisfactory internal decoration. In conclusion, I consider it very likely that the issues identified in the report of QIC's surveyor weren't the same issues identified in the homebuyers' survey. I also note that it had referenced issues in the homebuyers' survey which were unrelated to the claim.

I'm also persuaded on a provisional basis that Ms T and Mr D had taken note of the homebuyers' survey recommendations and had taken them seriously by contacting the vendors and their own builder. I'm persuaded that they were assured that a damp proof course had indeed been installed prior to purchase and that there is a reasonable argument that any residual issues of damp would be in decline. In the circumstances, I consider that

*the most likely scenario was that there had been some historical damp issues at the property which had been addressed through installation of a damp proof course. However, the claim damage in the middle of the property was likely to have been caused by the significant pipe leak. Also, the wash-out water damage to tiles which was different from the few cracked tiles identified in the homebuyers' survey. On a provisional basis, I therefore conclude that the damp identified in 2019 wasn't the same physical damage identified in 2021 and was unlikely to have been present prior to purchase or before the insurance policy started.*

*As to the General Condition about taking reasonable care and preventing loss, in the light of my provisional conclusions above, I'm satisfied that Ms T and Mr D took all necessary and reasonable steps to prevent or limit damage to their home once that damage became apparent in 2021. They did so by instructing their own damp specialist and planning damp proofing work, up until the point when the cause of damage became clear in August 2021, and they then promptly notified their insurer. For the avoidance of doubt therefore, and on a provisional basis, I don't consider that it was fair or reasonable for QIC to rely upon any of the General Exclusions or Conditions of the relevant policy to decline this claim. I consider that Ms T and Mr D did as much as could reasonably be expected in all the circumstances when faced with a significant and unexpected escape of water event at their property. It is reasonable that they should expect to be covered for damage caused by this event.*

*I note that QIC offered a cash settlement of £6,500 plus VAT to Ms T and Mr D in March 2023 and it then withdrew on this offer, using a policy exclusion which it had also referenced in its 2021 response letter. In the light of the above provisional findings, I don't consider that it acted in a fair and reasonable manner in doing so. I've no reason to disbelieve what Ms T and Mr D have said, in the absence of a priced scope of works from QIC, that QIC's surveyor indicated to them that he considered that the remedial work could cost in the region of £10,000. I've noted the original offer of settlement was £7,700 (including VAT). The service would generally expect annual simple interest of 8% to be paid from the date that settlement should have happened early in 2023 and the date it's actually paid. In addition, the cost of labour and materials will have increased since that date. In all the circumstances and on a provisional basis, I'm minded to require QIC to pay a cash settlement of £9,200 in relation to the necessary repairs and reinstatement.*

*Whilst I recognise that this figure isn't based on an exact calculation, I provisionally conclude that this provides a fair outcome for both parties, taking into account both the original settlement offer and what Ms T and Mr D were likely to have been told by QIC's surveyor, albeit probably on an informal basis. I consider that this will allow Ms T and Mr D to progress necessary works to place them back in the position they would have been prior to the incident in 2021.*

*Finally, because I consider that QIC acted in an unfair and unreasonable manner in declining Ms T and Mr D's claim on a second occasion, I provisionally conclude that QIC should pay a further sum in compensation. Whilst I appreciate that the damage hasn't prevented Ms T and Mr D from living in their home, I consider that QIC should compensate them for the unnecessary distress and inconvenience caused, as it would have been over and above the distress caused by the incident itself. I'm mindful that their home remained in a state of disrepair for much longer than had been necessary in a situation where they had a young family and therefore an identified vulnerability. I also consider that the way in which QIC had handled the matter in initially offering settlement and then unfairly withdrawing that settlement would have caused distress and anxiety. I'm therefore minded to also require QIC to pay £500 in compensation for the distress and inconvenience caused.'*

*In my provisional decision, I asked both Ms T and Mr D and QIC Europe Ltd if they had any further comments or evidence which they would like me to consider before I made a final decision.*

## 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.

Ms T and Mr D accepted the provisional decision and didn't have anything further to add, however QIC didn't agree with it, and provided detailed submissions, summarised and considered as follows.

QIC produced several images taken by the surveyor who was instructed to attend the property in September 2021 and stated, *'it's evident from these images that this damage has been occurring for a considerable amount of time.'* I've carefully studied these images and on balance, do not agree. I consider that the most likely scenario is that the damage is consistent with Ms T and Mr D's submissions that this damage started to appear in May 2021 rather than over a period of two years. The volume of water which will have discharged from such a significant leak from the spring to autumn of 2021 was likely to have caused the visible damage. This is supported by the lack of reference to damage to central walls and skirting boards in the pre-purchase survey.

As to the issues identified in the surveyor's report of September 2021, QIC considered that it was just as likely that the damage occurred from an on-going leak underneath the house. It said that as no leak detection happened until after notification of a very significant leak from the utility company, *'your view cannot be 100% evidenced.'* However, I consider that the most likely explanation is that the significant leak was relatively recent. It was first identified by the utility company through a sudden increase in usage and had not been detected by the utility company previously, nor by Ms T and Mr D's damp-proofing experts in May 2021. In the circumstances I don't consider that it was fair or reasonable to say that Ms T and Mr D should have been aware of this significant and recent leak.

QIC is mistaken in its suggestion that an Ombudsman's decision needs to be *'100% evidenced'*. Ombudsman decisions are reached on the basis of the civil burden of proof. In other words, decisions are reached on the balance of probabilities and not on the basis of beyond all reasonable doubt. Ombudsmen therefore reach their decisions based on what is the more likely explanation of events.

As to the damage, QIC considered that it was located in the same area as that identified by the surveyor who carried out the pre-purchase survey, and *'detected at low level to the main walls, the same areas that can be seen in the images attached.'* I consider that the main walls refer to the external walls and not to the walls at the centre of the property which were identified as the main areas of concern in the 2021 reports. QIC argue that as no repairs were carried out between 2019 and 2021, then *'this must be the same damage.'* However, I don't share this view. Whilst some damp was evident in 2019, this was likely to be in a different area to the location of the actual damage which was visible in 2021. As explained in the provisional decision, the pre-purchase survey referred to the *'generally satisfactory internal decoration'* and didn't identify any damage to the stair wall or the timbers or skirting boards in the area affected in 2021.

QIC made the point that it couldn't see that the damp specialist instructed by Ms T and Mr D *'even undertook leak detection'*. It said that the specialist therefore didn't rule out that the damage was as the result of a leak that was occurring. Again, I refer to the civil burden of proof as above. In conclusion, I'm persuaded that it's more likely than not that the damage in this case had been caused by the significant but reasonably recent leak, and that it couldn't reasonably expect Ms T and Mr D to discover the source of the recent problem any earlier.

QIC accepted that Ms T and Mr D were only notified of a leak when the utility company made them aware of it. However, it repeated that the pre-purchase survey *'was clear that damage was evident at the time of the survey'*. It said that this was further evidenced by the fact that they were clearly advised that further investigation into the cause was required by a specialist firm. I consider this to be a valid argument, and it would have been wise for Ms T and Mr D to have engaged specialists at this stage.

This needs to be balanced against the valid point that Ms T and Mr D subsequently received confirmation that damp-proofing treatment had been carried out prior to purchase and that any residual issues would be in decline. Regardless of this, and as previously stated, I'm satisfied on the balance of probabilities that the damage, which is the subject of this claim, isn't connected to the historical damp issues. On the balance of probabilities, I've concluded that even if specialist investigations had been carried out in 2019, the leak wouldn't have been found sooner. As above, in the light of the available evidence, I remain of the view that it's more probable than not that the pipe failure and the water leak arose relatively suddenly or became much worse suddenly in 2021 and long after the policy had been inception.

QIC added that it considered that the internal damage seen at the time of the pre-purchase survey had only got worse and no new areas of damage had occurred since Ms T and Mr D were notified of the leak. It concluded that *'the damage in the property must be related to the leak.'* Whilst I understand that QIC is adamant that the damage happened before inception of the relevant policy, I don't consider that the evidence supports this position. The reasoning in the provisional decision and above explains in detail the reasons for this conclusion.

As to the general condition requiring reasonable care to prevent loss, QIC pointed out that it didn't agree that Ms T and Mr D took all necessary steps to mitigate further damage. It reached this view as the report from Ms T and Mr D's damp specialist was 26 months after the pre-purchase survey. It said that this meant that the damage had *'been left to get gradually worse during this time and no other investigations were carried out during this time.'* Nevertheless, I remain of the view that based on the available evidence, the damage to the relevant internal walls only appeared in May 2021 and was caused by a recent and very significant leak from a pipe under the property.

Subject to the points noted and accepted as above, in all the circumstances, I've concluded that the provisional decision provides a fair and reasonable outcome to the matter, and I uphold Ms T and Mr D's complaint as follows.

### **My final decision**

For the reasons given above, I uphold Ms T and Mr D's complaint and require QIC Europe Limited to pay them the following sums within 28 days of acceptance by Ms T and Mr D of the Final Decision:

- A cash settlement of £9,200 in total, and
- Compensation of £500 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T and Mr D to accept or reject my decision before 27 March 2024.

Claire Jones  
**Ombudsman**