

The complaint

Mr L and Miss P have complained that QIC Europe Ltd unfairly declined part of a claim under their home insurance policy.

What happened

Mr L and Miss P had two separate leaks in their basement, one from the sink waste in the kitchen and another from the washing machine in the utility room. After the leaks were fixed, their surveyor advised that the leaks had caused the wooden floorboards and joists to rot. So in February 2023 they made a claim to QIC for the damage caused by the water leaks. This was shortly before the birth of their first child.

QIC sent a surveyor to inspect the damage. He reported that the damage wasn't consistent with a one-off water leak. He said the joists had been laid directly on the basement subsoil with no evidence of a damp proof membrane. He thought moisture rising up from the ground had caused them to rot. QIC declined the claim on the basis that Mr L and Miss P weren't covered for any gradual or maintenance-related loss or damage and also poor workmanship.

After Mr L and Miss P provided additional evidence from another surveyor, QIC agreed to be responsible for the damage that had occurred above ground level.

After the complaint had been brought to this service, QIC offered Mr L and Miss P £250 for the delay in dealing with the claim as at one point there'd been no response to Mr L's emails for almost two months.

Mr L and Miss P brought their complaint to this service. Our Investigator recommended that QIC should reimburse Mr L and Miss P for what they'd spent on repairing the damage under the floor and their second surveyor's costs plus interest and pay an additional £250 compensation.

QIC asked its surveyor to review the claim file. He thought the lack of a damp proof membrane had caused the damage below floor level. As QIC didn't agree, the matter has been referred 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.

We aren't experts in building matters. Instead, we generally rely on the expert evidence provided by the parties.

In this case the first expert who inspected the damage on behalf of Mr L and Miss P was a quantity surveyor. He said the flooring was a combination of slate tiles laid on 50% suspended floor with the joists sitting on slates and the other half was a solid floor. He noted that some of the floorboards had clear water staining on the top.

He confirmed that *“the leaks from the kitchen sink waste pipe and the washing machine has caused the decay due to the wood being persistently damp with a moisture content of 40-60 percent, which has then created the right conditions for the spores to germinate and decay the timber. The damage caused is a direct consequence of the escape of water described.”*

QIC's first assessor sent a two-page report after his inspection. He noted that amongst other damage the timber floor joists had decayed. He said the main cause of the damage was the water leaks. When asked whether there were any pre-existing or ongoing internal building defects or issues that were not peril-related, he answered “No”.

QIC sent its inhouse surveyor to inspect the damage in March 2023. He reported that:

“The kitchen sink unit had already been removed and part of the flooring had been exposed prior to my attendance to reveal the floor joists, the floor joists had clearly been subject to moisture as they were in a poor state and have completely deteriorated, parts of the plywood boarding that was affixed on top of the floor joist was still structurally sound with no signs of rotting. ...

The floor joist had been laid directly onto the basement sub soil with no evidence of a DPM [damp proof membrane], insulation or any vapour barrier of any kind. Additionally, there is no visible gap/void separating the joist to the ground/ sub soil. Consequently, the joist over time have been subjected to the natural ground moisture (Capillary action) causing them to rot and deteriorating over time.”

Mr L and Miss P then instructed a chartered building surveyor. He advised as follows:

“the timber floor joists exposed were set on slate (damp proof) stone/concrete packers to keep the timber floor joists elevated from being in contact with the sub-soil base. This is the norm in a 1900's mid terrace property with basements in the area.”

He found that while some of the floor joists had decayed, other areas were completely dry indicating that the damage had been caused by the leaks rather than moisture coming up from the ground which logically would have affected all the joists. He also noted the rot had started from the top of the floor joists, not from the base again suggesting that they'd been affected by a leak above ground. He thought the damage had been caused by leaks that weren't detectable or evident at the time.

Lastly QIC instructed a chartered surveyor to review the evidence in the claim file. He saw *“little evidence of an actual Damp Proof Membrane beneath the floor or indeed running up the walls as one would expect in a basement”*. He didn't think the pieces of slates under the timber joists amounted to a damp proof course or that there was sufficient ventilation in the sub-floor area. QIC said that confirmed its original assessment that the joists had been damaged by ground moisture.

As the experts in this case disagree with each other, I have to decide which expert's evidence I'm more persuaded by. One of the factors I take into account is whether the expert actually saw the damage in person. I note that the second surveyor instructed by QIC, though professionally qualified, only carried out a desk-based review of the previous reports. I also look at the professional qualifications of the parties. We asked QIC for details of its inhouse surveyor's qualifications. It replied that its *“employees have sufficient experience and qualifications to fulfil their role”*.

In this case I place most reliance on the report provided by Mr L and Miss P's chartered building surveyor as that is a relevant qualification for this type of report and he actually inspected the damage in person. The reasons he gave for his opinion seemed to me to be

well-supported by his annotated photos. He explained in detail why he thought the findings of QIC's inhouse surveyor were incorrect. As Mr L and Miss P's chartered building surveyor concluded that the joists had been damaged by water leaks, it follows that I don't think QIC treated Mr L and Miss P fairly in saying that the damage hadn't been caused by the water leaks. I'm also more persuaded by the finding of Mr L and Miss P's surveyor that there was a damp proof course and so no poor workmanship for a house of its age.

Although the damage was caused by an insured event (the water leaks), on a strict reading of the policy QIC was still entitled to decline this part of the claim as the policy doesn't cover damage that happens gradually. Some damage by its very nature happens gradually - such as dry and wet rot. However QIC will be aware of the view of this service that if we think the consumer shouldn't (or shouldn't reasonably) have been aware of the damage happening gradually – and that they made the claim or took reasonable action as soon as they became aware - we're likely to say that a fair and reasonable outcome is that the insurer shouldn't rely on this exclusion and should pay the claim. In this case I don't think Mr L and Miss P would have known about the gradual damage until it was too late to prevent it. As they couldn't have done any more, it seems unfair for them to lose out as a result of this exclusion. So in order to treat them fairly I think QIC should settle this part of their claim.

As Mr L and Miss P's second surveyor's report changed the outcome of the claim, I think it's only fair that QIC should reimburse them for the cost of the report. It should also add simple interest at 8 per cent because if this aspect of the claim had been accepted in the first place, Mr L and Miss P wouldn't have had to incur the cost of commissioning the report.

Lastly in addition to the delay in dealing with their claim, Mr L and Miss P suffered the trouble and upset of having to arrange and pay for the repairs to the floor in order to have a working kitchen again. This was unnecessarily stressful for them around the time of the birth of their first child. In the circumstances I think it's fair and reasonable that QIC should pay a further £250 compensation (making a total of £500) in respect of this.

My final decision

For the reasons set out above, I uphold this complaint and require QIC Europe Ltd to:

- reimburse Mr L and Miss P for the amount they spent on repairing the damage to their basement floor (including the floor joists) and the cost of their second surveyor's report;
- pay 8% simple interest on those costs from the date(s) the costs were incurred to the date of settlement; and
- pay an additional £250 compensation.

If QIC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr L and Miss P how much it's taken off. It should also give Mr L and Miss P a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Miss P to accept or reject my decision before 11 November 2024.

Elizabeth Grant
Ombudsman