

## **The complaint**

Mr K has complained about the way QIC Europe Ltd has handled a claim he made under his home insurance policy for subsidence.

## **What happened**

The circumstances of this complaint aren't in dispute, so I'll summarise the main points:

- In January 2022, Mr K got in touch with QIC to make a claim for subsidence damage. It was established the problem had been caused by a leaking pipe. QIC declined the claim as it thought the damage pre-dated its policy. Mr K had the pipe repaired.
- Mr K complained and referred it to this Service. An Ombudsman found QIC had acted unfairly. They required QIC to consider the claim further by monitoring for a minimum period of six months.
- Mr K said he'd taken it upon himself to have the building damage repaired. As a result, QIC was unable to carry out monitoring as the Ombudsman had required. So Mr K submitted his costs of around £12,000 to QIC to consider.
- QIC said it wouldn't meet Mr K's costs because he'd breached a policy condition requiring him to obtain QIC's permission before carrying out permanent repairs. It said he'd prejudiced its position by carrying out repairs without its agreement, as it hadn't been able to consider the claim further, as the Ombudsman required. And, if it had accepted the claim, it hadn't been able to finalise its own scope of repairs and/or offer its own contractor to carry out the work.
- However, its surveyor had prepared an initial outline of the scope of repair. That came to £1,148.13 excluding VAT. QIC offered to pay that sum, less the £1,000 subsidence excess, to settle the claim. It also offered to pay the £229.63 VAT if Mr K was able to show he paid VAT for the work he had carried out.
- Our investigator thought the complaint should be upheld and Mr K's costs met. He said Mr K had been told by QIC that the claim had been declined, so he was entitled to have the repairs carried out. Whilst he'd breached the condition QIC noted, he only did so because of QIC's actions – which were later found to be unfair.
- QIC disagreed and reiterated its earlier points. As an agreement wasn't reached, the complaint has been passed to me.

## **My provisional decision**

I recently issued a provisional decision in which I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

- It's important to start by setting out the scope of this complaint. I can't reconsider any matters already considered by the Ombudsman in the previous complaint. They considered QIC's decision to decline the claim – up to and including its complaint response in August 2022, including the professional opinions available at that time.
- The Ombudsman's decision turned on whether there was, or had been, active subsidence movement since the policy began in August 2021. QIC would only be required to accept a claim if there had been. The Ombudsman wasn't persuaded the professional opinion available at the time was sufficient to make a finding about this. In part, because they hadn't seen any monitoring to show movement. As a result, they said QIC should carry out monitoring and use that information to consider whether there had been active subsidence movement since the policy began.
- However, after the decision was made, Mr K said he'd already repaired the building. So it wasn't possible for QIC to carry out monitoring. As a result, it said its position had been prejudiced because it couldn't determine whether there had been any movement – and therefore whether it should accept a claim for subsidence. And, if it were to accept a claim, it couldn't determine what work it would have carried out or how much it would have cost.
- I can understand why Mr K may have felt he should carry out repairs promptly and not risk the property deteriorating further. And, ultimately, it's his property, so he's entitled to repair it if he wishes. However, that doesn't necessarily mean the damage was covered by the policy – or, if it was, that it would be fair for QIC to meet Mr K's costs in full. Even if the claim had been accepted, QIC may have been able to resolve the claim for a lower amount.
- During the investigation for this complaint, Mr K said he'd monitored the damage in 2022, until the repairs were carried out, and shared the results with this Service. He noted no movement had been observed at that time. And he said there was no sign of movement since the repairs were carried out.
- This means the only monitoring information available doesn't show any movement. And no other monitoring or investigations can be done because of the repairs. So I think it was reasonable for QIC to say its position had been prejudiced – it had no way of investigating the subsidence problem further.
- No professional opinion about the subsidence problem has been provided since the Ombudsman's decision. Coupled with the lack of evidence to show movement, I haven't seen any evidence to show subsidence has occurred during the policy. So, I'm not persuaded QIC was obliged to accept a subsidence claim.
- QIC has offered to pay £148.13, which is the cost of its initial scope of repair, less the £1,000 excess. It's also offered to pay up to a further £229.63 if Mr K can show he paid VAT to at least this value on the work. I recognise this is much less than Mr K paid. But, put simply, it hasn't been shown that QIC was required to pay anything under the policy. So I don't think its offer is unreasonable in the circumstances.
- I can see Mr K paid £19.67 VAT on one invoice and £81.07 on another, making £100.74. It's not clear that any other work attracted VAT. Added to £148.13 is £248.87. So that's the amount QIC should pay. That leaves up to a further £128.89 of VAT that QIC will pay Mr K if he can show he paid more VAT than I've seen.

## 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.

- Both parties responded to my provisional decision. QIC said it accepted my decision.
- Mr K provided a number of comments, which I've read and considered. I won't respond to each and every point made, I'll focus on those I consider most relevant to reaching and explaining my final decision. This isn't meant as a discourtesy to Mr K, it's simply a reflection of the informal nature of this Service.
- Mr K noted the main point of dispute about the claim was the timing of the subsidence damage. In a nutshell, whether there had been active subsidence movement since the policy began in August 2021. QIC would only be required to accept a claim if there had been. Mr K explained why he thought there had been subsidence movement around late 2021, so the claim should be accepted.
- In an earlier complaint, another Ombudsman considered claim events up to and including the QIC complaint response in August 2022, including the professional opinions available at that time. I can't reconsider the Ombudsman's findings. So whilst Mr K has discussed those professional opinions, I can't consider or comment on them. The other Ombudsman wasn't persuaded those opinions showed there was active subsidence movement at the relevant time, so that position stands.
- The previous Ombudsman said QIC should carry out monitoring. However, that wasn't possible for QIC to do as Mr K had repaired the damage by that time. Mr K says QIC had the opportunity to monitor earlier in the claim, but it didn't do so. That meant any lack of monitoring information is really QIC's fault. I don't think I need to make a finding on this point, because Mr K had the property monitored in 2022 – so monitoring information from the relevant time is available.
- That monitoring showed no movement. Mr K said this proved the movement was a one off event up to the time the pipe was repaired in June 2022. I don't follow this reasoning. Whilst it's *possible* there was subsidence movement in late 2021 which was stopped by repairing the pipe, I'm not persuaded the evidence shows that's the *likely* position. The monitoring didn't show any movement in 2022, so it doesn't show that active subsidence movement happened at the relevant time. And I haven't seen any professional opinion, since the first complaint, which suggests otherwise or supports the position Mr K has taken.
- Overall, that means there remains no evidence to show active subsidence movement at the relevant time. So there remains nothing to show QIC should have accepted the subsidence claim. As a result, I'm satisfied QIC has acted fairly by offering to make a payment based on its original scope of repairs. I'm not persuaded it needs to go further and make payments in line with the work Mr K carried out. Neither party questioned the figures I proposed, so I won't change them.

## My final decision

I uphold this complaint

I require QIC Europe Ltd to pay £248.87

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 5 September 2024.

James Neville  
**Ombudsman**