

## **The complaint**

Mr R and Mrs R complain about QIC Europe Ltd's decision to decline a claim they made after an escape of water at their home.

## **What happened**

The background to this complaint is well known to both parties, so I'll provide only a brief summary here. I'd like to assure both parties that I have read and carefully considered all of the information and evidence we have on file relating to this case.

When I refer below to actions being taken by QIC, I may be referring to actions taken by their agents.

Mr R and Mrs R have a home insurance policy underwritten by QIC which covers their home and its contents. They made a claim in July 2020 after noticing water damage to their basement.

The property is not conventionally built. Access at the front of the property is to the top floor of three. The two lower floors are below the ground level at the front of the property. The ground falls away quite sharply so that the two lower floors are above the level of the ground at the back of the house.

QIC sent out a loss adjuster to assess the claim. And, following the loss adjuster's report, they said they were declining the claim because the damage was due to failure of the tanking at the property (which covers the two lower storeys at the front of the house), which was the result of poor or defective workmanship or design in the installation of the tanking.

Mr R and Mrs R then had a number of contractors and/or experts inspect the property. I'll cover this in more detail below, but the upshot was that in March 2021 (seven months or so after the loss adjuster's visit), a leak detection survey suggested that the issues were mainly due to a leak in the mains water supply pipe where it entered the property on the top storey.

QIC then carried out a further inspection – alongside a loss assessor appointed by Mr R and Mrs R – in April 2021. Again, I'll cover this in more detail below. But the leak to the mains water supply pipe was eventually repaired in July 2021 – around a year after the claim had first been made.

Mr R and Mrs R complained to QIC about their decision to decline the claim and asked them to re-consider their position.

QIC said their decision to decline the claim had been correct. They said the cause of the damage was gradually operating and should have been noticed – and notified to them - much sooner.

And they said Mr R and Mrs R had failed to mitigate their loss after the first loss adjuster's visit in August 2020. They also maintained that the damage was consistent with penetrating or rising damp rather than with a leak at the top of the property.

Mr R and Mrs R weren't happy with this outcome and brought their complaint to us. They want QIC to accept their claim. And they want compensation for the trouble and upset they've suffered as a result of the effective loss of use of much of their home since 2020.

Our investigator looked into it and didn't think QIC had done anything wrong.

Mr R and Mrs R disagreed and asked for a final decision from an ombudsman.

I also disagreed with the outcome proposed by our investigator. So, I issued a provisional decision. This allowed both QIC and Mr R and Mrs R the chance to provide further information or evidence and/or to comment on my thinking before I issue my final decision in this case.

### **My provisional decision**

In my provisional decision, I said:

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

#### *The policy terms*

I'll start with the terms of Mr R and Mrs R's policy. I don't believe there's any dispute about what those terms say or mean.

In short, QIC are entitled to decline the claim if the damage to the property is the result of poor workmanship or design in the installation of the tanking.

They'd also be entitled to decline the claim if the damage were due to gradually operating causes. QIC are aware of our approach to this fairly standard exclusion in home insurance policies. And they haven't disagreed with it in this case.

In short, we think this exclusion can only fairly be applied where it can be shown that the policyholders were – or should have been - aware of the damage occurring. In their final response to Mr R and Mrs R's complaint, QIC have said they (Mr R and Mrs R) were aware of the damage occurring several months before they made the claim.

QIC would also be entitled to decline the claim (or at the very least reduce the proportion of the repair costs they were willing to pay) if Mr R and Mrs R failed to mitigate on-going damage at the property.

So, there are three potential legitimate reasons for the decision to decline the claim in play in this case, as per the policy terms – poor workmanship / design in the tanking; failure to notify QIC when the damage became apparent; and/or failure to mitigate on-going damage.

The key question for me then is whether any of those reasons stand up to scrutiny in the circumstances of this particular case. I'll consider each of them below.

#### *Poor workmanship / design in the tanking*

Further evidence which has come to light suggests that the issues with the property are not – and were not – caused primarily by a failure in the tanking.

The loss adjuster's report, following his visit in August 2020, says there were no

detectable leaks. Almost by a process of elimination, he concludes that the issue must be to do with the tanking. There is no actual detailed inspection of the tanking at that point and no real evidence that it was poorly designed, installed or maintained.

The leak detection report commissioned by Mr R and Mrs R from March 2021 then states quite definitively that there leaks at the stopcock (relatively minor) and between the meter and the stopcock (relatively major). And that the latter is the principal cause of the water ingress to the property.

Once that leak was fixed, the ingress appears to have ceased, according to Mr R and Mrs R and their loss assessor.

So, the culprit has been identified (and fixed). And it wasn't the tanking. It was a significant leak from the mains water supply into the property (between the meter and the stopcock).

To be fair, I believe QIC have recognised this – and are now relying more on the following two arguments to maintain their decision to decline the claim. If not, they can let me know – and tell me why – in response to this provisional decision

*Failure to notify QIC of on-going damage at the earliest point it was - or ought to have been - apparent to Mr R and Mrs R*

The exact date of the notification of loss isn't recorded in QIC's claim notes (oddly). However, QIC contacted Mr R and Mrs R on 29 July to ask whether they intended to proceed with a claim following the earlier notification.

It's likely that QIC only chased Mr R and Mrs R about their possible claim after a week or more. So, I suspect the first notification of loss must have been around or before 22 July or so. If either party can enlighten me as to the exact date in response to this provisional decision, that would be appreciated.

QIC's loss adjuster attended the property on 12 August 2020 – about three weeks after the (assumed) first notification of loss.

His report says the damage was extensive by that time. The paintwork was blistered and wallpaper coming away from the walls. And QIC say that shows the damage must have been on-going for some time.

The water usage data provided by Mr R and Mrs R shows a very significant increase in the water used at the property between the previous six-month period (October 2019 to April 2020) and the six months between April and October 2020. That indicates a fairly significant leak (and loss of water) starting at some point between April 2020 (three months before Mr R and Mrs R first notified QIC) and October 2020.

Given the date of first notification, it's reasonable to believe that leak started at some point between April 2020 and July 2020. And given the leap in water usage, it's reasonable to think the leak was quite significant. The loss assessor has equated this, at its height, to around a bathtub full of water leaking into the property each week.

So, it may not be altogether surprising that when QIC first attended the property – three weeks after the first notification from Mr R and Mrs R – the damage was fairly extensive.

Within that three week period, a significant amount of water appears to have escaped from the mains supply and infiltrated down to the bottom of the front of the house.

I don't think then that QIC can conclude that the extensive damage noted by the loss adjuster in August 2020 would – or should – have been apparent to Mr R and Mrs R significantly far in advance of their first notification of the loss in July 2020.

The loss adjuster's report also says Mr R and Mrs R reported having first noticed the damage "*in the last few months*" (the loss adjuster's own words). Mr R and Mrs R say they can't recall saying that.

Even if they had, I think it's a stretch to conclude that means they first spotted the damage months before the first notification of loss. For one thing, it would clearly have been an off- the-cuff guess, made in conversation and on the spot. For another, if indeed it was said, it was said at least three weeks after the first notification of loss.

QIC have also said that Mr R and Mrs R told the leak detection company – which attended in March 2021 – that the issues had been on-going for "*approximately a year*" (the words are taken from the leak detection company's report).

I don't think this validates the idea that Mr R and Mrs R had spotted the damage significantly in advance of the first notification of loss either. I note the use of the word "*approximately*". And I note the leak detection company are reporting something Mr R and Mrs R may have said at some distance in time (around 9-10 months) after the first notification of loss.

QIC have also suggested that the issues with the property began even before Mr R and Mrs R bought it and moved in. They've supplied images from Zoopla from 2017, when the property was up for sale. And they say these show that signs of damp were already evident at that point.

If anything, those images show a very slight discoloration in the paint on one area of one wall. So slight that our investigator had to ask QIC to circle the part of the image they thought showed the damage.

As I've said above, the issues at the property are now clearly shown to be related to a significant leak which started at some point between April and July 2020. And the idea that the property was damp before purchase is also contradicted by the buyers' survey Mr R and Mrs R had carried out before they bought the property.

Finally, I can understand why QIC have raised questions about the speed of notification of the loss given what's reported as having been said by Mr R and Mrs R. They may not have been very precise in their estimates of the timescales when they spoke to the loss adjuster and/or the leak detection company.

However, it's very difficult to see what motivation Mr R and Mrs R might have had for ignoring significant damage at their property for any period of time. In essence, on the face of it, it makes no sense that they'd have recognised a problem at the property in, say, April 2020 (which looks like the earliest possible time the leak may have started), but failed to notify that to QIC until two or three months or so later.

#### *Alleged failure to mitigate*

QIC say they can't be held responsible for – or asked to pay for repairs to – damage which occurred much after their loss adjuster's first visit in August 2020. Or after the

leak detection survey in March 2021.

They say that, in effect, it took Mr R and Mrs R around a year to rectify a problem that was evident in July 2020 - the final repairs to the water mains supply having been carried out in mid-July 2021.

I note, of course, that this was a period in which there was a fairly harsh lockdown due to COVID. And that may have slowed things down in terms of Mr R and Mrs R getting contractors to their property to carry out surveys and/or works.

There are in essence two periods in question here, making up the 11 or 12 months between the claim being made and the leak being fixed.

After QIC's loss adjuster's visit in August 2020, it was around seven months before Mr R and Mrs R had the leak detection inspection carried out (on 8 March 2021). QIC say that's despite their loss adjuster advising Mr R and Mrs R to check whether there was a leak.

And then after the leak detection survey (on 8 March 2021), it was around four months before the leak was fixed. QIC says that's despite it being obvious that the leak needed to be repaired to prevent further damage to the property.

I don't think QIC's arguments about either period stand up. I'll explain why.

I'm interested in the detail of the loss adjuster's report following the visit in August 2020. He said – unequivocally – that the issue was due to a failure in the tanking. He said he couldn't find any signs of a leak. But it was worth Mr R and Mrs R having further checks carried out to see whether (in his own words) "*there is any leaking pipe work within the basement walls causing damage*".

QIC's point is that Mr R and Mrs R didn't have those recommended checks carried out until March 2021 – by which time the damage would have become much worse.

Firstly, I don't think it was unreasonable, given the certainty about the tanking failure in the loss adjuster's report, for Mr R and Mrs R to focus first on assessing the tanking. And again, I am mindful of the fact that this was during COVID-related restrictions.

I can see that Mr R and Mrs R had two specialists out to inspect the property after the loss adjuster's visit. They also had an engineer to inspect the boiler which they suspected at the time may have been a source of a leak (it was not, as it turned out).

The first specialist suggested extensive and intrusive works to determine the state of the tanking. The second suggested a complete leak detection survey given that the issue might well not be with the tanking. That's what prompted Mr R and Mrs R to commission the leak detection specialist.

As we now know, the leak detection specialist identified the significant leak at the mains water supply pipe – which now appears to have been the main cause of the issues at the property.

The point is that had Mr R and Mrs R taken the loss adjuster's advice in August 2020, they would not have discovered that major leak. The loss adjuster said they should check if there were leaks in pipes in the *basement walls* (see the direct quote above).

Mr R and Mrs R could have done that as soon as you like, and they would not have been any closer to understanding the true cause of the issues at the property – which actually sat two floors up from the basement walls at the water mains supply pipe at the front of the house.

So, I don't think QIC can justifiably claim that their loss adjuster put Mr R and Mrs R on the right track, but they simply failed to act quickly enough on his recommendations.

In fact, the loss adjuster's report completely misled Mr and Mrs R into thinking the issue was definitely with the tanking – and that any (small) leak in the pipes *in the basement* was merely adding in a small way to that more significant problem.

Turning now to the delay between the leak detection report (8 March 2021) and the leak getting fixed (on 15 July 2021, it seems – although Mr R and Mrs R might be kind enough to confirm the exact date in response to this provisional decision), I can see that Mr R and Mrs R's loss assessor tried to contact QIC fairly soon after that inspection – I believe to get agreement to go ahead with the repairs to the identified leaks.

QIC didn't respond immediately. When they did, they suggested a joint visit to the property (before any further action was taken). That visit eventually took place on 9 April 2024 – around a month after the leak detection survey. I can currently see no reason to regard anyone but QIC as responsible for that delay.

QIC's agent's report of that visit is illuminating. It says there is a leak that is immediately obvious – the (relatively) small leak at the stopcock. And a possible further leak on the water supply pipe. And the report says:

*"I have advised the policyholder to first fix the leak we can see, assess the situation then if the meter is still running we know there is a second leak and can address..."*

So, the upshot of that meeting is that Mr R and Mrs R are advised to get the stopcock leak fixed first before doing anything else. That appears to be what they did. And the main leak was therefore left until July 2021 before it was fixed. Again, I note that COVID restrictions were in place at the relevant time.

I don't think QIC can reasonably or fairly blame Mr R and Mrs R for the lack of mitigation after the leak detection survey when it was QIC's agents who insisted on visiting the property first, took a month to do so, and then advised Mr R and Mrs R to fix the stopcock leak and then re-assess before doing anything else.

### *Summary*

In short, it seems very likely now that the damage to the property was not caused by a defective design or installation of the tanking but was due to a major leak from the mains water supply pipe.

It also seems more likely than not that Mr R and Mrs R reported the problem to QIC very soon after they noticed it. The increase in water usage at the property indicates that the leak started some time after April 2020.

It also appears to me that QIC blamed Mr R and Mrs R for delays in mitigation of the damage. But in fact, they led Mr R and Mrs R astray.

At the first visit (in August 2020) they said the issue was the tanking (without any doubt) – but told Mr R and Mrs R to check for leaks in the *pipes in the basement walls*. In fact, there were no leaks in those pipes – the catastrophic leak was two storeys up.

At the second visit (in March 2021) – the report says Mr R and Mrs R should fix the (small) known leak on the stopcock and then re-assess before doing anything else. In the meantime, the other leak allowed approximately a bathtub of water per week down into Mr R and Mrs R's house.

So, unless I receive further information or evidence in response to this provisional decision which persuades me to change my view, I'm minded to uphold Mr R and Mrs R's complaint. There were three possible reasons that QIC might have legitimately declined the claim, but none of them seems to me to stand up to close scrutiny

*What I'm minded to require QIC to do to put things right*

The policy terms say QIC will pay for repairs to damage caused by escapes of water, but not for repairs to the apparatus or pipe from which the water escaped.

So, I don't think QIC are responsible for the cost of getting the mains water supply pipe fixed. But they are responsible for repairing the damage caused to the rest of Mr R and Mrs R's house by that leak.

And therefore, I'm minded to require QIC to accept the claim and settle it in line with the terms of the policy.

I also note that the policy allows for payment of £500 for each period of insurance for added water costs as a result of escaping water. And I'm minded to require QIC to make such a payment for each insurance period between July 2020 and July 2021. I assume this will be two annual policies (and 2 x £500), but either party can correct me if that assumption is wrong.

I'm also minded to require QIC to add interest to those payments at 8% simple per annum. That's because Mr R and Mrs R have been deprived of that money from the time they paid those water bills. The interest to be calculated from the date Mr R and Mrs R paid their water bills, which no doubt they can evidence for QIC.

I'm also minded to require QIC to pay Mr R and Mrs R £2,500 in compensation for the trouble and upset they've experienced due to QIC's errors or omissions.

In suggesting that award, I've taken into account the significant stress and worry caused to Mr R and Mrs R. They were worried for more than a year that the stability and inhabitability of their house was at risk. They have had the worry since the leak was repaired of not knowing if the damage to their property would be fixed.

Mr R and Mrs R have also lost the use of a large proportion of their house for a number of years. And they've been exposed to damp and spores which may have affected – or may in future affect – their health.

They have also been put to considerable inconvenience in terms of having to arrange inspections and reports which wouldn't have been necessary but for QIC's errors - and in having to make their arguments to QIC time and again."

## **The responses to my provisional decision**

Mr R and Mrs R responded to say they agreed with my provisional decision.

QIC also responded. They said they disagreed with what I'd proposed. I'll summarise their arguments below.

QIC also confirmed the date of first notification of the loss was 27 July 2020. And the surveyor's visit took place on 7 August 2020, rather than five days later (the date the report was drafted).

QIC say the surveyor's report (August 2020) clearly describes damage which has been on-going for significantly longer than the 11 days since the first notification of loss – and which would have been noticeable to Mr R and Mrs R well before 27 July 2020.

They agree that the evidence from the conversations with Mr R and Mrs R about when the damage started is "*circumstantial*" (their own words).

But they maintain that the Zoopla images from 2017 are more significant than I said in my provisional decision. In particular, they say the images show blistering to the plaster as well as the discoloration I noted.

QIC say there was no notification of damage to them between 2017, when damage was already evident, and July 2020 when Mr R and Mrs R first contacted them to make the claim. And there was no mitigation of the damage during that period either. They point to the policy terms which require both early notification and mitigation to prevent or limit any loss or damage.

## **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'm grateful to QIC for confirming the dates of the first notification of loss and the first surveyor's visit. The former is a day or two later than I'd assumed. And the latter is earlier. But the small difference in dates doesn't affect my thinking on the case.

QIC say the surveyor (in August 2020) describes damage which must have been in evidence well before July 2020 when the claim was made.

I understand QIC's point. And I can't be *absolutely certain*, from the evidence we have, that there wasn't noticeable damage before July 2020.

However, on balance, I'm not convinced that the damage referred to in the report – wallpaper coming away from the walls and paint blistering – wasn't caused by what appears to have been a very significant ingress of water in late July and early August 2020 (whether that was between 22 July and 12 August, or between 27 July and 7 August). I explained in my provisional decision why I thought that water ingress in that period was likely very significant.

As I said in my provisional decision, it would be hard to understand Mr R and Mrs R's motivation for living with that kind of clear and serious damage (wallpaper hanging off and point blistering), or anything close to it, for any period of time before reporting it to their insurer.



As for the Zoopla photographs, I can understand QIC's point, but I'm still of the view that any evident damage is relatively minor. And, as I said, there's other evidence, including the survey carried out at the time of purchase, to suggest that there wasn't a problem when Mr R and Mrs R moved into the property.

In summary, I have to make a decision based on the balance of probabilities. There's a very straightforward, simple and well-evidenced explanation for the issues in Mr R and Mrs R's basement.

There was a very significant escape of water from the pipe entering the front of the property on the top storey. That went on for some time, with a large amount of water escaping *inside* the waterproof envelope of the house (in part made up by the tanking on the lower two storeys).

None of that is in dispute. So, when I look for an explanation of the causes of the water damage to the property, I have an immediate and well-evidenced candidate. And one which occurred in the period around the first notification of claim. There is no doubt at all that that escape of water has caused significant damage.

The evidence for earlier causes of (noticeable) damage is more tenuous and less convincing and, in short, anything but certain.

So, whilst I can understand QIC's position on this claim, I'm not persuaded I have any extra evidence, information or arguments to persuade me to change my mind about the outcome of the case.

### **Putting things right**

I said in my provisional decision (above) what I thought QIC needed to do to put things right for Mr R and Mrs R. And, as I say, I have no reason to change my mind after the submissions by the parties in response to that provisional decision.

What I'm going to now require QIC to do is also set out in the section below.

### **My final decision**

For the reasons set out above, I uphold Mr R and Mrs R's complaint.

QIC Europe Ltd must now:

- accept and settle the claim in line with the terms of the policy;
- pay Mr R and Mrs R £500 (for each period of insurance between July 2020 and July 2021) for additional and avoidable increases in water costs – adding interest at 8% simple per annum to those payments; and
- pay Mr R and Mrs R £2,500 in compensation for their trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 2 January 2025.

Neil Marshall  
**Ombudsman**