

complaint

Mr H and Miss B, via their representative, Mr B, have complained about their home insurer QIC Europe Limited, in respect of a claim they made when the mains stop-cock at their home burst, flooding the property.

background

The leak occurred on 15 February 2019. Mr H and Miss B called QIC and it agreed costs for them to stay with Mr B until a drying company could attend. The drying company told QIC the home was habitable so it told Mr H and Miss B that it wouldn't pay for them to stay away from home any more. Mr B, on their behalf, argued that the home wasn't habitable, amongst other things the drying company had said the ambient temperature in the home had to stay at 32 degrees centigrade which, Mr B said, was more than just uncomfortable for the family. QIC initially wouldn't change its view, the drying company had advised that the heat could be reduced when the family were at home but, after about six weeks, QIC relented and agreed to pay Mr H and Miss B's costs incurred to date and to continue paying costs moving forwards. They were paying Mr B £100 a day to stay at his home.

The drying company initially felt the house would dry quite quickly, likely by mid-March. However, on its first review it was found that the property hadn't dried. Some thermo-plastic tiles were then lifted from the kitchen floor, but the base units, with tiling underneath them, were still in place. At a third review the drying company felt the property still hadn't dried. At some point the base units were taken out but the remaining tiles were left in place. The drying company thought there must be a pre-existing issue of damp at the property. It noted some missing mortar from external brickwork and that some mortar was bridging the damp proof course. It said the sealing and finish around some windows was poor – and that might be causing damp in the property too. It said that photos of the kitchen showed salt deposits on the wall, indicative of a damp problem.

QIC reviewed the claim and said it wouldn't continue to look to repair the water damage at the property. It felt it couldn't reasonably do that as with the pre-existing damp issues it couldn't guarantee repairs. It said it would settle in cash, based on what it would have paid to complete the water leak repairs, and for two months accommodation for Mr H and Miss B, but not based on the rate it had been paying so far. It said it would pay equivalent to a rental property, or if they provided invoices, for a reasonably priced hotel, along with a food allowance.

Mr B didn't think QIC had acted fairly and he obtained a report from a damp specialist, as well as a window fitting company. He also noted that when Mr H and Miss B had bought the home, just a few months before the leak, they'd had a home buyer's survey completed. Mr B said this showed there was no damp.

Mr B complained to us and, during our investigation into the complaint, the evidence Mr B had provided was sent to QIC. QIC said the report from the window company didn't hold much weight as it didn't address the issue of the area around the windows. It said the damp specialist report was lacking as the expert hadn't commented on the visible salt deposits on the kitchen walls. Regarding the homebuyer's survey, QIC said this did in fact identify an issue of damp in the kitchen, in the area of the fireplace. All told, it said it had been fair for it to conclude that there had been pre-existing damp issues at the property.

Following review of the evidence and comments from both parties, our investigator thought QIC had acted fairly in respect of the damage claim. As such he didn't recommend that it increase its settlement offer, or reimburse the costs incurred for the expert reports obtained. But he felt QIC should pay a further £100 regarding the accommodation costs incurred. He also felt it had caused delays so it should pay £300 compensation.

Mr B didn't agree with the findings. He provided a quote which had been received for repair of the property. He said Mr H and Miss B wanted to get on with things and they couldn't trust QIC to come back and complete the works needed. They felt it would be fair to make it pay based on their costs as set out in the quote. Mr B also said that currently the couple couldn't afford to move to a rental property or a hotel, he was currently allowing them credit but ultimately they would have to pay him £100/day for the period they'd been staying with him and QIC should cover this cost as it hadn't settled the claim fairly.

The complaint came to me for a decision to be made. In short, I felt QIC should be paying for the repair and a disturbance allowance, but not the accommodation costs. I issued a provisional decision, the findings of which were:

"I think QIC did act unfairly by extricating itself from the contract to repair and moving the claim to a cash settlement. I also think it was wrong to restrict the cash settlement as it did. In short it hasn't persuaded me that there was a pre-existing issue at the property which was likely stopping the property drying or that might have impacted any repairs it undertook. But I'm not going to require it to pay accommodation costs at the rate requested by Mr B. I've set out my findings below and both parties will have chance to respond before I make a final decision.

I think errors did occur during QIC's attempts to dry the property. Thermo-plastic tiles weren't initially lifted, which meant water from the leak was trapped in the concrete floor underneath. And the fact of the role these type of tiles play in a property with a concrete floor also seems to have been overlooked – the tiles laid on a coating of bitumen act as damp proofing (which is why water from leaks also gets trapped underneath them). Whilst lifting the tiles is necessary to dry the property, this has the unfortunate side-effect of also removing an important damp proofing mechanism for the property. Further, base units weren't initially removed, and even when they were, tiles remained in place underneath.

I've considered the photos provided by QIC, but I have to say I can't see any significant area of salt deposits. I think the damp specialist's report is persuasive, and whilst I note QIC's criticism that the expert doesn't comment on the salting – I can't reasonably criticise him for not commenting on something I'm not persuaded is there. The damp expert is satisfied there is no rising damp occurring at the property and whilst the skirting board is significantly wet, he's explained why that is unlikely to be related to any pre-existing damp issue.

I also have to bear in mind that whilst the homebuyer's survey does refer to an issue of moisture damage in the kitchen, that is found to be related to condensation in respect of a very specific area, from a very specific cause. This doesn't mean that the home, or even the kitchen, as a whole is likely affected by a pre-existing issue of damp. And whilst the surveyor said he thought the plaster in the area of the chimney breast was likely deteriorating, the photos of the stripped kitchen, provided by QIC suggests that the surveyor's concerns were unfounded.

Whilst I can see QIC's point of view in respect of the window fitter's report, I bear in mind that its findings seem to echo what the surveyor saw when completing the home buyer's

report. Whilst the surveyor noted some missing bricks and masonry, he didn't identify any issue of damp in the walls, externally or internally, with floors or ceilings. His investigation wasn't an invasive one, but I'd have thought that any significant issue of damp – such as to reasonably prevent the proper completion of long lasting water damage repairs, would have had some visible or on other ways tangible effect – for example he was able to comment on the plaster in the area of the chimney breast in the kitchen.

In any event, the damp specialist's report, as I said, is, in my view, persuasive evidence of there not being any issue of pre-existing damp at Mr H and Miss B's home. I'm also mindful that whilst QIC felt it could reasonably rely on the possibility of a pre-existing issue to withdraw from the repair contract, I'm not persuaded such action, even if a pre-existing issue had been present, would have been reasonable. The reasonable course of action in this type of situation is usually for the insurer to halt works whilst giving the policyholder a chance to complete necessary uninsured work. And in some cases an insurer will even be expected to take on works such as tanking if doing so is necessary to ensure proper completion of the repairs it has started.

It also needs to be borne in mind that, despite the policy term which allows QIC to settle in cash based on its cost for repair, in a situation where an insurer is choosing to not complete repairs, this service won't usually find settlement based on its cost to repair to be fair. So QIC's forced cash settlement should always have been based on Mr H and Miss B's cost to complete the insured repairs.

As I understand it, the work – reinstating the building and fitting a new kitchen – has now all been done and paid for by Mr B. Mr B said that Mr H and Miss B had just wanted to get on with things and I can understand that. I also think it's fair to say that QIC had made its position, that it didn't want to be involved with the reinstatement work any further, quite clear too. So it falls to me, as part of deciding what QIC must do to make up for its failure to handle the claim properly, to say, what QIC must pay and/or do to put things right.

I accept Mr B paid for the work to be done in order to mitigate the situation QIC had left Mr H and Miss B in. I don't think that negates QIC's liability to Mr H and Miss B for the cost of the work. I've seen the invoice for reinstating the kitchen and there is nothing on it that makes me think work was completed which QIC likely wasn't liable for. For example the invoice only relates to replacing damaged kitchen units, it doesn't refer to fitting a new kitchen as a whole. And I can see that further monies were paid to the contractor to account for 'uninsured' work. But QIC can consider the invoice content in response to my provisional decision. At the minute though I think QIC should pay the invoiced amount of £8,347. But I'm not going to award interest as Mr H and Miss B, as QIC's policyholders, have not been out of pocket for this sum.

I'm also intending to include a direction in my final decision (should it remain the same) that QIC considers a settlement for the replacement kitchen parts. QIC, as far as I can see, never progressed the claim as far as considering what fair settlement for replacing/partially replacing the kitchen would be. It isn't for me then, at this point, to try and assess and pick out from the retailers invoice which parts are and are not for QIC to pay for. Nor to try and determine if the new kitchen is a reasonably like-for-like replacement of the old one. QIC will have to consider the matter in the first instance, taking into account the policy terms and conditions but also any relevant approaches often applied by this service – such as partial settlement being made for items that match but aren't damaged. If Mr H and Miss B are unhappy with QIC's offer then they can make a further complaint.

In updating me as to what was spent in reinstating the kitchen, Mr B shared invoices for appliances and flooring. The complaint file suggests that any damaged appliances and the flooring were settled by QIC previously, so I take it these documents were shared for completeness only.

As is the usual approach of this service, if Mr H and Miss B can show they incurred any costs for the expert reports they provided, I think QIC should reimburse those, plus interest from the date they were paid. Whilst the window fitter report isn't entirely persuasive in its own right, I think QIC caused Mr H and Miss B to have to try and defend their position and they did that the best they could. I'm not persuaded it would be fair to say they should bear any costs that resulted from that unfair action. So I'm going to say QIC should reimburse the cost of the window report too (if Mr H and Miss B were charged for it).

I understand why QIC wasn't happy to keep paying for the family to stay with Mr B at a cost of £100 per day. That isn't a reasonable cost for staying in a family members home – it's more like a cost a family might incur for staying in a hotel, but the two are not the same. And the policy only requires QIC to cover reasonable costs. Further, I can't fairly require QIC to pay accommodation costs based on what Mr H and Miss B might have paid to stay elsewhere, at a reasonable rate for that type of accommodation, because they haven't had that cost. I know Mr B has said he is currently allowing Mr H and Miss B a period of credit, but they have known for a long time that QIC wasn't prepared to keep paying their requested costs of £100 per day. And I'm not persuaded that position was unfair. So if they should now find themselves owing Mr B money, that isn't something I can fairly make QIC pay recompense for.

That being said it is often the case that insurers will pay a disturbance allowance to a policyholder, where the policyholder stays with family. This allows the policyholder to contribute to the costs of increased bills which occur due to the increased size of the household. Albeit that traditionally a disturbance allowance is paid to account for extra costs incurred by the policyholder for staying somewhere like a hotel with limited food and laundry facilities, for example. I also note that travel costs for the family are reported as being higher whilst living at Mr B's address. So I don't think it's unreasonable to think they are likely experiencing some extra costs. Therefore, I'm prepared to say that QIC should be paying them a disturbance allowance. The normal figure for such allowance is £10 per adult and £5 per child, and I think it reasonable that QIC should pay this.

This allowance should begin from 8 July 2019 which I understand QIC had previously made an accommodation payment until. As Mr B was able to fund the completion of the reinstatement work the family were able to move home at the beginning of March this year. So that means QIC should pay the allowance until 29 February 2020. In saying that I bear in mind that with young children and asthma sufferers in the family it isn't appropriate to consider the house was habitable until all the work had been finished.

From what I have seen Mr B has mostly represented Mr H and Miss B. So, to an extent, I think they've been shielded from a lot of upset generated by QIC's unfair decision. But the type of assistance received from Mr B hasn't stopped them feeling upset and frustrated at their home being left in a state of disrepair, and their having to live elsewhere. I'm prepared to say, given I'm suggesting a cash settlement is paid which will end the parties involvement, it makes sense for me to award compensation to date as well. I'm of the view that £1,500 compensation is fairly and reasonably due by QIC to make up for the distress and inconvenience its unfair actions in respect of this claim caused Mr H and Miss B."

QIC said it had no further information to add. Mr B asked for further consideration to be given to the invoice he'd supplied for laminate kitchen flooring. He said QIC had not paid for this before. QIC said it had made a payment in March 2019 to settle what it saw as its liability for the buildings claim, and that included an amount for the flooring. I noted that if QIC had made a settlement for the buildings claim, that would impact on the redress I'd provisionally suggested I'd award. I reviewed matters and told both parties that I thought QIC had *not* previously made a payment for the buildings claim and it *should* pay the invoice for the flooring. The key points of what I said were:

"The only reference on QIC's originally submitted file in regards to a possible settlement for the buildings work was in an email dated 23 May 2019. It refers to the results of a recent visit and that following this it has costed the repairs totalling £4,433.08 (exclusive of VAT). It says that to this sum it will add £1,590 for alternative accommodation costs. That would make the total £6,023.08. To date I've not seen the scope that the email suggests was completed following the recent visit referred to, or that this proffered sum was paid to Mr H and Miss B. QIC's evidence of having made a settlement payment pre-dates this by around two months, relating as it does to March 2019."

Regarding the March 2019 payment QIC has said that following it completing a scope on 21 March 2019, it made a bank payment to Mr H and Miss B. The sum paid was £4,152.68, and this was net of the £500 policy excess. QIC said the total sum (£4,652.68) included the cost of repairs scoped on 21 March 2019, plus some sums for alternative accommodation and a food allowance. I can't see any emails on the file from around this time that advised a payment of this amount was being made or what that payment was being made for. But in an email dated 21 March 2019 Mr B had told QIC that, with a few caveats, he accepted the sum put forward for the contents settlement. He's provided the spreadsheet setting out the contents claim and the total there is £4,473.19. The caveats were that he wanted more for shoes and boots, plus some accommodation and utility costs. On 25 March 2019 QIC's representative thanked Mr B for his email and confirmed that payment should be made the following day.

At this time then I think the payment QIC has shown was made on 26 March 2019 was most likely paid in settlement of the contents element of the claim (with a few sums being added for accommodation and utility costs). Therefore, I'm minded to think that QIC has not paid anything against the buildings claim. So I won't need to make any allowance in my final award for previous payments having been made, but I will need to add an award for the cost of the vinyl flooring Mr H and Miss B had fitted. The invoice for that, which QIC has seen, is £413.00 (with no VAT to be added). I intend to make QIC pay this sum."

Mr B confirmed that the payment in March 2019 had been made in respect of the contents claim. QIC did not object to anything I'd said and agreed to pay the invoice.

Mr B provided more detail about the kitchen re-fit. He asked that I consider that detail now.

my findings

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

I understand why Mr B would want me to determine now what QIC should pay for the kitchen re-fit. But, as I explained provisionally, QIC needs a chance to consider that first.

Mr B's request for the kitchen re-fit costs hasn't changed my mind about the redress I provisionally said I'd award for that. And both parties have otherwise not objected to my provisional and interim findings. Therefore, those findings remain unchanged and now form part of the findings of this, my final decision.

my final decision

I uphold this complaint in part. I require QIC Europe Ltd to:

- Pay £8,347 in settlement of the building damage repair, which includes the labour costs for reinstating damaged parts of the kitchen.
- Pay £413 for replacement kitchen flooring.
- Consider the part of the claim for the replacement kitchen, any settlement made should be based on the policy's terms and conditions, excluding any that allow settlement based on the cost to QIC for completing work, but also taking into account relevant approaches often applied by this service.
- Pay Mr H and Miss B a disturbance allowance equal to £10 per adult and £5 per child per day from 8 July 2019 until 29 February 2020.
- Pay Mr H and Miss B £1,500 compensation for the distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Miss B to accept or reject my decision before 24 December 2020.

Fiona Robinson
ombudsman