

## **The complaint**

N, a company, complains about a claim it made on its QIC Europe Ltd ('QIC') business protection insurance policy.

N says QIC treated it unfairly when assessing its claim.

N's complaint is brought by a representative on its behalf but for ease of reference I shall refer to all submissions as being N's own.

In this decision all references to QIC include their claims handlers.

## **What happened**

N operates as a restaurant. In July 2021 N's business premises was damaged by flooding. N made a claim on its business protection insurance policy to QIC for damage to its stock, fixtures, fittings, wines and spirits. It also made a claim for business interruption as N was unable to trade during the time its property was damaged. This complaint is about that claim specifically.

N says that QIC didn't properly assess its claim and relied on flawed information to offer only 16 weeks' worth of business interruption cover when it was closed for much longer. N says the policy allows up to 12 months' worth of business interruption cover, but QIC have unreasonably limited this. It's also unhappy that QIC refused to make any interim payments to it in respect of business interruption cover when it was struggling financially.

QIC on the other hand say they relied on information from their loss adjuster that the property was dried out much sooner than N states and that the delay in getting N trading was due to its landlord's failure to accept liability and reinstate the property within a timely manner, which is not a peril covered by the policy. QIC says that N's landlord is responsible for the additional weeks of business interruption N is claiming for.

Our investigator considered N's complaint on two occasions. Initially she didn't uphold it. She said that N hadn't shown that the amount of loss it was claiming had resulted from the damage caused by the flood and that if it could show the repairs were estimated to take more than 16 weeks QIC should consider this further. QIC accepted this but N didn't. After N provided further information, the investigator, she said that QIC should increase the business interruption payment to 26 weeks to take account of the time the repairs took but excluding a period of 2/3 months which represented unnecessary delays in the work completing, which QIC weren't responsible for. QIC accepted the investigator's second view, but N didn't so the matter was passed to me to determine.

I issued a provisional decision upholding N's complaint earlier this month along the following lines:

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

*Having done so, I intend to depart from the investigator's findings and uphold N's complaint.*

*I'll explain why.*

*The starting point is the policy terms. They say:*

*"SECTION 2 – BUSINESS INTERRUPTION the Insurer will indemnify the Insured in respect of ii. the amount of loss resulting from the Damage."*

*So, the issue I need to decide here is whether the loss resulted from the damage caused by the original flood.*

*QIC rely on a drying certificate to say the drying to N's premises was completed by their own agents in August 2021. They say that the work required to put the premises back into its original state should have taken no more than 4-6 weeks beyond this. They have however accepted the investigator's view that they should pay a claim for 26 weeks in total which takes into account the work taking considerably longer but excluding 2/3 months of delays they weren't responsible for.*

*N on the other hand says the premises wasn't dry at all in August 2021 and needed to be dried out properly. Since the investigator issued both her views, N was provided with a copy of the drying certificate and underlying report from QIC. N has said that the premises was not dry after QIC's agents attended and what they did was an initial clean up rather than proper drying. N says the premises wasn't dry until September 2022. This was because their landlord's insurer arranged to dry the premises, completing that in February 2022 then noted additional water pooling which required further stripping and drying. They say this is evidenced by the drying report they're relying on.*

*I've seen both reports. QIC's agent's report states:*

*"This documents confirms that moisture levels in the property detailed below have been returned to a satisfactory level and pre loss condition (Subject to any information detailed in the "Notes/exclusions" section below."*

*Under "Notes/exclusions" it says:*

*"The damaged areas are within a tanked (Waterproofed) cellar. Behind the tanking moisture will remain present. The property has been stabilised and no further drying will be required as any remaining moisture sits behind the tanking (Waterproofing)."*

*N says that the flood to its basement was considerable. It contained 4/5 feet of flood water and sewage which meant the room had to be properly stripped out to facilitate drying, including the removal of floor and wall tiles and the opening of stud walls to treat them for mould and bacteria. N has provided photographs of the basement in the immediate aftermath of the flood. It also says that it doesn't recall QIC's agent using any drying equipment- rather they cleaned the room with a jet wash, mops and squigies. N says there were no working electrics in the room at that time, so it wasn't possible to use drying equipment in there and there was no temporary board set up at this time.*

*The report N has produced is from its landlord's drying agent. The report sets out the property was not dry when they first came on board and the landlord's insurer's loss adjuster has provided evidence to say that when the property was dried in February 2022, a puddle appeared in the far corner near the temporary electric board and readings taken showed there were still elevated levels of moisture. The loss adjuster says this was caused by the tanking being breached which was because of the flood. As a result, the basement had to be tanked and dried again so the drying wasn't complete until September 2022- over a year after QIC's agents came in. The loss adjuster has also confirmed that the works required to put the property back into its original state were completed around December 2022 following*

*the drying being concluded.*

*Given the wealth of evidence provided by N, I'm satisfied that its property wasn't dry in August 2021. I think this is supported by QIC's agent's own report which refers to moisture sitting behind tanking, which was then later found to be breached. And given the readings by N's landlord's drying agents, I'm satisfied the basement did clearly require substantial work to ensure it was properly dried. And even when this was undertaken, it wasn't found to address everything so more work and more drying were needed and further work was required to reinstate the property. From everything I've seen, it's clear to me that the drying and work took considerably longer than QIC has determined. And given the nature of the flooding and the work required, I don't think QIC were right to limit the claim in the way that they did. As such I uphold N's complaint and direct QIC to put things right in the way I've set out below.*

### **Putting things right**

*Given the length of drying and works required, the claim will breach the policy limit. That's because the flood occurred in July 2021 and the works required to rectify the damage weren't complete until December 2022. Even if I discount 2/3 months for problems with the landlord, that QIC weren't responsible for, the claim still breaches the limit payable for business interruption which amounts to 12 months. As such I think QIC should pay the maximum benefit available under this section of the policy in satisfaction of N's claim.*

*I've also thought about N's complaint that QIC didn't make any interim payments to it under the policy for business interruption when it was struggling financially. Whilst I don't think QIC were obliged to do this, I do think it would have been reasonable for them to consider this sooner, particularly because they'd already agreed to pay up to 16 weeks of business interruption insurance. As such I think QIC should pay N interest of 8% per year simple from the date they made any payments to N (if any) until they pay the remainder of the claim I've determined here. If no payments have been made for the business interruption insurance claim, then QIC should pay interest one month from the date upon which the claim was made, until the remainder is discharged.*

*Finally, this claim would have caused N considerable inconvenience. So, whilst I can't consider a claim for distress, because N is not a natural person, I think the inconvenience alone in having to continually challenge QIC means they are entitled to compensation of £350. I think this figure adequately compensates N for the inconvenience caused to it."*

I asked both parties to provide me with anymore comments or evidence. Both parties responded. N has accepted my findings, but QIC has not. In summary QIC says:

- There was a matter with the landlord that prevented liability being admitted until September 2021, two months after the incident. That's not something they are responsible for- N's landlord is.
- They have not seen the evidence provided by N's landlord's drying agent.
- The mitigation work their agents completed was because the floor was flooded with sewage and N needed their help.
- The drying certificate their agents provided set out that the damaged areas were tanked and the property had been stabilized so no further drying would be required. If that's correct the damage to the tanking which is contended caused further flooding must have occurred later and not as a result of the original flood.
- Because of the above QIC should not be responsible for anymore than 6 months of business interruption because the first 2/3 months of the claim was down to the landlord. Anything beyond this should be funded by the landlord.

Because QIC don't agree with my provisional findings, the matter has been returned to me to decide.

### **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.

Having done so, I'm not persuaded to depart from the conclusions I reached in my provisional decision and remain of the view that N's complaint should be upheld in the way I set out there.

I've taken on board what QIC has said about the additional evidence N provided me with from the landlord's agents and the fact that QIC hadn't seen it before. But QIC didn't request a copy of this evidence to comment on. And given they haven't asked to do so and instead have made submissions about it to the extent that they think N's basement was dry when their agents left it- so the problem must be as a result of something other than the original flood- I've thought about how likely this was. As I said in my provisional decision, I'm not persuaded by the content of QIC's agents report as determinative. That's because:

- The flood damage was considerable the basement contained 4/5 feet of water and sewage. Even from a layperson's perspective, I'm not satisfied that cleaning it with a jet wash, mops and squigies was enough to dry it after that kind of flood.
- There was no evidence of proper drying equipment being used which is supported by N's testimony about there being no electrics in the basement to enable this.
- N's testimony about the considerable work needed to dry out the basement (including stripping back the basement and removing the floor and wall tiles to treat them for mould and bacteria is persuasive in light of the scale of the damage).
- N's landlord's drying agent and loss adjuster's evidence supports the property wasn't dry- even when they'd done considerable work to enable it to be dry. Again, this is consistent with the scale of the flood.
- The loss adjuster's evidence is clear that the cause of the tanking being breached was as a result of the flood.

In light of that, I don't agree that the further work needed was caused by some other unknown event other than the flood.

In terms of the claim for business interruption and how much should be paid by QIC in respect of this, I have taken on board their comments in respect of the policy limit. The policy terms say:

#### ***"SECTION 2 - BUSINESS INTERRUPTION***

*In the event of Damage to the Property used by the Insured for the purposes of the Business carried on by the Insured at the Premises during the Period of Insurance from the Insured Perils under Section 1*

- a) resulting in interruption or interference with the Business or*
- b) which prevents the Insured from tracing or establishing customers' Outstanding Debit Balances in whole or in part as a result of the Insured's books of account at the Premises being damaged*

*the Insurer will indemnify the Insured in respect of*

- i. the amount of loss resulting from such interruption or interference provided that at the*

*time of the Damage there shall be in force an insurance covering the interest of the Insured in the Property at the Premises and that liability shall be admitted or payment made therefore or payment would have been made or liability admitted but for the operation of a proviso in the insurance excluding liability for losses below a specified amount*

ii. *the amount of loss resulting from the Damage*

***The liability of the Insurer under this Section shall not exceed in respect of any item its Sum Insured or Limit stated in this Policy or the Schedule at the time of the event"***  
(my emphasis in bold.)

The policy schedule says:

**"SUMS INSURED AND LIMITS OF LIABILITY**

***Business Interruption (Gross Profit) -12 months***

***£250,000"***

There is nothing in the policy schedule which limits the timeframe applicable to the claim in any given policy year. Indeed, the only requirement is for there to be buildings insurance in place, which was the case, because N's landlord's policy was engaged during the course of the claim. As a result, the cover extends to a claim for 12 months of loss of gross profit up to a limit of £250,000. If QIC had intended to limit that to the gross profit applicable in any policy year, then they should have provided for it in the policy terms. But as things stand, the terms don't say that. So N is entitled to the benefit of those limits even if they carry on beyond the expiry of the policy. That extends beyond the 2/3 months I have said QIC aren't obliged to fund.

**Putting things right**

For the reasons set out within my provisional decision and in this final decision, I direct QIC to put things right as follows:

Given the length of drying and works required, the claim will breach the policy limit. That's because the flood occurred in July 2021 and the works required to rectify the damage weren't complete until December 2022. Even if I discount 2/3 months for problems with the landlord that QIC weren't responsible for, the claim still breaches the limit payable for business interruption, which amounts to 12 months. As such I think QIC should pay the maximum benefit available under this section of the policy in satisfaction of N's claim.

I've also thought about N's complaint that QIC didn't make any interim payments to it under the policy for business interruption when it was struggling financially. Whilst I don't think QIC were obliged to do this, I do think it would have been reasonable for them to consider this sooner, particularly because they'd already agreed to pay up to 16 weeks of business interruption insurance. As such I think QIC should pay N interest of 8% per year simple from the date they made any payments to N (if any) until they pay the remainder of the claim I've determined here.

Finally, this claim would have caused N considerable inconvenience. So, whilst I can't consider a claim for distress, because N is not a natural person, I think the inconvenience alone in having to continually challenge QIC means they are entitled to compensation of £350. I think this figure adequately compensates N for the inconvenience caused to it.

**My final decision**

For the reasons set out above, I uphold N's complain against QIC Europe Ltd and direct it to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 15 December 2023.

Lale Hussein-Venn  
**Ombudsman**