

The complaint

Mrs L complains that QIC Europe Ltd declined a claim she made under home insurance policy for damage to her garage.

Reference to QIC includes its agents and representatives.

What happened

As the circumstances of this complaint aren't in dispute, I'll summarise what's happened.

- Mrs L removed a wooden structure attached to her garage and discovered cracking to the garage. She said the land on the other side of the nearby property boundary had been dug away and undermined the garage structure. She got in touch with QIC about it in June 2022.
- QIC appointed a surveyor who inspected the problem, agreed it was covered by the policy, and offered a settlement for the claim. Mrs L thought this wouldn't solve the underlying structural problem and took advice from a structural engineer.
- QIC then declined the claim by relying on two policy terms. It said ivy growth on the garage meant it was in a poor state of repair and, without the wooden structure, it was open on one side. It said neither of these things were covered by the policy.
- Mrs L complained in April 2023 because she didn't think it was fair to decline the claim. She also said the claim had taken too long, communication had been lacking, and QIC had declined the claim after offering her a settlement for it.
- QIC maintained the claim should be declined due to the two policy terms. It also said the damage hadn't been caused by any of the events covered by the policy.
- Our investigator thought the complaint should be upheld. She said QIC should continue with the claim and pay Mrs L £200 compensation.
- QIC disagreed. It provided photos to highlight the ivy growth and lack of a garage door. Mrs L provided photos to show how the garage looked when the wooden structure was in place. She said it was removed around February 2022. Our investigator wasn't persuaded to change her mind.
- An agreement couldn't be reached, so the complaint has been passed 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.

- The policy covers damage to the garage caused in a number of specific ways. The relevant ways in this case are landslip and malicious damage.
- QIC's surveyor said the neighbour had dug up to the garage and this had caused the damage, although the neighbour denied they were responsible. The surveyor said the cause of damage was 'ground movement'.
- Mrs L's structural engineer said excavations by the neighbour near the boundary had undermined the garage and caused damage. They gave advice about how to put the problem right.
- Mrs L has suggested the cause of the damage is negligence by the neighbour when digging down near the boundary line. Negligence, in itself, isn't covered by the policy. The damage would need to be caused maliciously or in another specific way set out in the policy, for it to be covered.
- For damage to be considered malicious, I would usually expect to see evidence that it was caused deliberately. Although I don't think that can be ruled out definitively here, I haven't seen any evidence to show that's likely what happened. Whilst the neighbour's excavation may have been unwise, that doesn't mean it was malicious.
- Landslip is defined in the policy as "sudden movement of soil on a slope or gradual creep of a slope over a period of time". At the boundary, close to the garage, there's a difference in ground level – Mrs L's property is around 1m higher. There seems to be agreement between the professionals that the excavation caused ground movement at the boundary. So I'm satisfied the evidence shows landslip, as defined by the policy, caused damage to the garage.
- QIC has pointed to two policy terms to decline the claim:
 - "we will not cover the costs of repairs or replacements, where the costs arise though you failing to regularly maintain the buildings properly".
 - Garages aren't covered at all if they're "open on one or more sides".
- Looking at the first term, the photos clearly show ivy growth on the garage. But neither professional has suggested the ivy growth is the cause of the damage. So the evidence doesn't persuade me that the claim costs have arisen due to a lack of maintenance – they've arisen due to the neighbour's excavation. That means it would be unfair to decline the claim outright as a result of this policy term.
- The second term is relevant because, after removing the wooden structure, the garage is open on one side. Taken at face value, I think that means the policy didn't cover the garage at all, from the moment the wooden structure was removed. But I'm not persuaded it would be fair to take the policy term at face value here.
- The garage wasn't open originally – the wooden structure was effectively an extension that covered the entire front of the garage. When it was removed, that left one side open. That happened relatively shortly before the start of the claim. It hadn't, for example, been left open for years. And the damage hasn't happened because one side became open, for example, if vandals had damaged it due to easy access. So, in these particular circumstances, I'm not satisfied it would be fair and reasonable to rely on the policy term to decline the claim.

- Overall, that means I'm satisfied the damage was caused in a way covered by the policy – and it wouldn't be fair to decline the claim based on the two policy terms QIC has raised. As a result, QIC should now accept the claim. The remaining terms and conditions of the policy will still apply.
- QIC will need to take steps to settle the claim fairly. I know Mrs L is concerned about the stability of the ground, as well as the damage to garage. The structural engineer recommended how to provide stability, including a retaining wall. Other options may be available, and it will be open to QIC to consider the appropriate options. They will be influenced by the extent to which the neighbour is prepared to cooperate.
- Mrs L should be aware that QIC can't force the neighbour to pay for any work and/or allow QIC to carry out any work on their property – although QIC is entitled to ask the neighbour to do these things if it considers that appropriate.
- Mrs L's complaint is also about the way the claim has been handled. At the time QIC responded to her complaint, it had been ongoing for around ten months. That seems a very long time to inspect the damage and make a settlement offer, then decline the claim based on information that could have been known from an early stage. It's disappointing to see an offer be made and then withdrawn in these circumstances. And it seems Mrs L has had to chase QIC many times for updates during the claim.
- Overall, I'm satisfied the way the claim was handled caused some avoidable distress and inconvenience to Mrs L. I think the £200 compensation suggested by our investigator is reasonable in the circumstances.
- If Mrs L would like QIC to reimburse the cost of her structural engineer's advice, she's entitled to share the invoice with it and I'd expect it to consider paying.

My final decision

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

- Accept the claim, subject to the remaining terms and conditions of the policy.
- Pay £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 18 January 2024.

James Neville
Ombudsman