

The complaint

Mr W complains that QIC Europe Ltd (“QIC”) has unfairly handled a claim made under his buildings insurance policy.

Any reference to QIC or Mr W includes respective agents or representatives.

What happened

The background of this complaint is well known between parties, so I’ll summarise events.

- Mr W holds his buildings insurance with QIC. He made an accidental damage claim related to damage to underground pipes. He said he was notified of potential loss and damage by his water company.
- QIC reviewed the damage and determined that a leak it discovered (at the side of the property) was not caused by accidental damage and no other insured peril. It also referred to there being an exclusion within its policy that meant it wouldn’t cover any gradual or maintenance related loss or damage which included gradual deterioration and wear and tear.
- Mr W disagreed, and had his own contractor complete a review of the site. He said they determined there were two leaks to the underground pipes (one at the side, and one at the back of the property). And that back one was the main one, which was caused by a rock going through the pipe causing a sudden break in the main supply pipe. Mr W says he had to incur costs of around £3,000 to have the water leak repaired.
- One of our Investigators looked at what happened and upheld the complaint, saying:
 - QIC’s contractors had failed to determine the cause of the leak or why they believed the damage wasn’t accidental.
 - Mr W’s contractor confirmed there were two leaks – which QIC appeared to have missed. The Investigator said the damage caused by the rock appeared to meet the terms of accidental damage.
 - So, she directed QIC to accept the claim as accidental damage to underground services in line with the remaining terms of the policy. She also directed QIC to pay Mr W £100 in compensation.
- Mr W agreed with the view, putting forward that QIC should cover the actual cost of repairs he paid, as opposed to any potential reduced costs QIC would’ve paid using its own contractors.
- QIC didn’t agree to the assessment, saying:
 - Its report stated:

“The engineers excavated at the point of entry in slabs at the side of property next to extension. Squeezed off black alkathene pipe and proved the leak to be under the extension.”
 - So, in their expert opinion they concluded no evidence of accidental damage.

QIC said it disagreed it had not identified where the leak is located and established it was underneath the policyholder's property.

- As the leak continued under the property there was no external force able to access this to cause accidental damage. And typically, the cause of damage of this type was as a result of ground movement or gradual deterioration which cannot be considered accidental.
- It said for a rock to go through the pipe accidentally, the pipe would've needed to be exposed. And as such it would've discovered this within its site visit.
- The Investigator looked again but didn't change her mind. She said it was incorrect to say the damage could not be damaged externally due to it being underground and referred it to our published approach. She also said the report QIC was relying upon wasn't detailed and didn't explain why the agent believed the damage wasn't accidental – and simply saying it wasn't covered without explanation wasn't persuasive.
- QIC reviewed the comments from Mr W's engineer. These included photos of damage, and commentary that rocks on the pipework would go through the pipe with vibration. It said it had not seen these previously and questioned why they attended several months after the initial QIC review. And QIC said if the damage with the second leak was present at the time of its own review, it believed it would've identified it. Furthermore, it said rocks penetrating through pipework over time would not amount to accidental damage. It also challenged the evidence, saying this was not an official report, and was only an email chain with limited photographic evidence.

The Investigator didn't change her mind, so the matter was passed to me for an Ombudsman's decision. I issued my provisional thoughts on 15 April 2024. I've included an extract of this below.

"I'll start by outlining what Mr W's policy covers him for.

The insured peril in question under the policy is "Accidental damage to mains services", which is defined as:

"We will pay the costs of repairing **accidental damage** to underground pipes, tanks, cables and services (including their inspection covers) that reach from the **buildings** to the public supply and septic tanks, which **you** are legally responsible for."

Accidental damage is defined within the policy as:

"Sudden, unexpected and physical damage which:

- i) Happens at a specific time; and
- ii) Was not deliberate; and
- iii) Was caused by something external and identifiable."

In this case there's more than one potential leak that has been discussed. For ease, I'll call these leak one and leak two.

Leak one's position is not in dispute at the side of the property. It was discovered by both QIC's contractors, and Mr W's own contractors. Neither party has put forward that this was caused by an accidental cause. And based on the limited evidence I've been given, it does not appear to be covered by the policy. Mr W himself has said this was not the main leak, and it doesn't appear to be in dispute, so I'll go on to

consider leak two.

Leak two was not identified by QIC's agents. Mr W's contractors have been clear in their communications that it was a separate leak at the back of the property. saying:

“...there were rocks on the pipework which would go through the pipe with vibration.”

And they've provided two photos that show where this is present. There isn't a detailed report alongside this, but in the circumstances I'm satisfied this supports there was most likely a separate leak at the back of the property. And on its face, based on the only available expert opinion I have, this was caused by vibration causing rocks to damage the pipe.

QIC has put forward that it would've noticed such a leak when it completed its visit and questioned why there was a gap in time before Mr W's own agents went out – also potentially suggesting that the damage may have occurred since its visit. I accept it's possible, but based on the timeframe and evidence available, it strikes me as unlikely that a separate leak would've happened in the short period that passed between visits.

I'll first consider whether or not the damage in question amounts to accidental damage. Then if it does, I'll consider whether this is caught by any of the exclusions under the policy that QIC has raised. In doing so I'm proceeding on the basis the most likely cause of the damage to the pipe was due to rocks damaging the pipe due to vibration as Mr W has put forward.

It seems clear to me that such damage would be unexpected, and also was physical damage. I've been given nothing to suggest this was deliberate and it seems the rocks that caused the damage would be external and identifiable.

To meet the full criteria for accidental damage I have to be satisfied the damage happened at a specific time, and that the damage to the pipe was sudden. To be clear this does not mean the cause of the damage is necessarily sudden, which means a long running problem might lead to something else suddenly being damaged.

Mr W in his emails to this Service has referred to the damage occurring to the pipe as a “sudden break”. And if the damage occurred in this manner it would likely persuade me that the damage was sudden. But I've looked at the comments from his contractor – and nothing they've said comments on the nature of the breaking of the pipe. I've been given no photos or evidence or reports to suggest this was a sudden break to the pipe.

And given the nature of rocks causing damage over time to the pipe – in the absence of expert evidence and in my own experience – it strikes me that vibrations forcing rocks into a pipe would've been most likely gradual and would've broken the pipe over time as opposed to a one-time incident where the pipe has for instance shattered or broken suddenly.

This also causes me the difficulty of determining that the incident took place at a specific time. If the event didn't happen at a particular time (as in a single event) and was over time – again it won't meet the criteria of accidental damage. And based on the evidence I have, I'm not satisfied I can safely conclude there was a particular time the incident took place.

As a result, for all of these reasons I'm not currently satisfied there is accidental damage as defined by the policy in this case, and I'm not proposing to uphold the complaint.

I acknowledge QIC has sought to rely on exclusions related to gradual damage in addition to saying there is no insured peril. As I'm satisfied there is no insured peril, I see no reason to discuss these exclusions further."

I provided both parties time to reply. QIC hasn't provided anything further. Mr W responded to say he was disappointed, but had no new evidence to support his position. Mr W has also agreed for the complaint to be passed back to me for a final decision as he had nothing further to add.

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 still not upholding this complaint. I've considered all of the available evidence again, and as I've been given nothing new to consider I see no reason to depart from my provisional decision.

My final decision

For all of the above reasons, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 May 2024.

Jack Baldry
Ombudsman