DRN-5893425

The complaint

Mr and Mrs D have complained about their building warranty provider Society of Lloyd's (SOL) because it has declined their claim for a defective terrace which is causing water ingress to the property.

What happened

Mr and Mrs D bought a property in 2021, it had the benefit of a ten-year building warranty provided by SOL, beginning in March 2021. Mr and Mrs D noticed various issues with the property, including water coming in via an external first-floor area, which also acted as a roof for their ground floor lounge. They notified the developer. The developer did some work regarding some issues but when Mr and Mrs D chased it again, in December 2023, about the water ingress, the developer declined further involvement.

In January 2024, Mr and Mrs D made a claim to SOL, setting out the efforts they'd made and the responses they'd received from the developer regarding resolving the defect causing the water ingress issue. SOL appointed a loss adjuster who assessed the issue at the property and considered the policy terms. The loss adjuster, having noted the applicable wording for Section 2 of the policy – covering the defects insurance period – turned to the endorsements set out in the certificate. The loss adjuster said water ingress from balconies was excluded, as was any water penetration from any flat roof unless that installation had the benefit of an insurance backed guarantee (IBG). With the area in question being a balcony and not subject of an IBG, the loss adjuster felt the claim failed.

Mr and Mrs D were unhappy with that outcome. They disputed the endorsement regarding balconies applied, as they felt what they had was a terrace. They also thought it was unfair to apply the endorsement for flat roofs because the membrane installed on their terrace was not defective – the defect, they said, was in the fixings of the glass surrounds of the terrace.

SOL considered their complaint and issued a final response letter. It said it agreed with the outcome set out by its loss adjuster – in short, their claim reasonably failed on the basis of the policy endorsements.

Mr and Mrs D decided they needed to get work done to resolve the defect. They did that in August 2024, at a cost of £36,800. Subsequently they complained to the Financial Ombudsman Service about SOL's decline of the claim, asking it to be made to repay their costs and £5,000 compensation.

Our Investigator found SOL had acted unfairly when relying on the endorsements to decline the claim. She felt the structure at Mr and Mrs D's home could reasonably be considered a terrace – so the balcony endorsement did not reasonably apply. She also thought that if the terrace, acting as a flat roof, had not benefitted from an IBG, that had not materially affected the claim. She noted such are often provided or required in case an installer ceases trading, so there is recourse against an insurer, but in this case the developer was still trading. So she felt that endorsement couldn't reasonably be applied either. She said SOL should reconsider the claim and, if it settled it, add interest to any sum paid to Mr and Mrs D in settlement, applied from the date they paid for work to be done.

Regarding compensation, she noted that a lot of Mr and Mrs D's upset had stemmed from the defect and water ingress itself, as well as from the inconvenience of having that resolved. She felt that was all upset which would always naturally have been caused even if SOL had handled the claim fairly and reasonably. She said it should pay £200 for the upset its failure to do that had caused.

Mr and Mrs D said they were happy with that outcome. SOL said it disagreed with it.

SOL said referring to the dictionary definitions for 'balcony' and 'roof terrace', showed the structure in question here was reasonably to be considered a balcony. It said it had been referred to as that on the original plans for the property too. Regarding the IBG it said provision of such is important for customer confidence – so they know work has met required standards. It maintained it was fair for it to rely on both endorsements to decline the claim.

Our Investigator said she wasn't persuaded that referencing the dictionary definitions was appropriate. She clarified that she had considered more appropriate definitions applicable in the British Standard and highlighted that SOL hadn't chosen to apply a definition for 'balcony' in the warranty. Regarding the IBG, she noted that, if there had been one, that would have made SOL's defect warranty superfluous. She felt it was generally an unfair and unreasonable term.

SOL said it still disagreed. It argued the plans for the property were the 'trump card' which showed the structure was definitely a balcony. It said the requirement for an IBG was a common term in structural warranty policies – most exclude cover for flat roofs entirely, only offering cover if there's an IBG. It went on to say that an IBG adds an extra layer of security for the warranty provider, in order they can seek recourse against the IBG insurer if the developer ceases trading.

As SOL didn't agree with our Investigator's view, the complaint was referred to me for an Ombudsman's decision. I found my views on the complaint were the same as that expressed by our Investigator. However, I felt SOL had had a reasonable chance already to consider the claim in line with all of the policy terms. So I felt it should be moving to settle the claim, taking into account Mr and Mrs D's invoice and costs for the work done. I issued a provisional decision to confirm my views on that amended redress.

My provisional findings were:

"balcony endorsement
The first endorsement SOL sought to rely on was specifically for balconies. Mr and Mrs D say their home has a terrace. Debates have occurred about whether dictionary definitions or British Standard definitions reasonably apply. SOL has argued the building plans are the trump card, referring to the area in question as a balcony. But I also note the sales brochure for the property refers to the area as a terrace. In short, if SOL wanted a specific definition to

apply, it had its chance to set that out in the policy wording. I'm satisfied that the area in question can reasonably be referred to as a terrace and, therefore, that the endorsement for balconies cannot reasonably be applied to defeat the claim.

flat roof endorsement
The terrace, in part, functions as a flat roof above the lounge. The endorsement says water penetration for flat roofs will only be covered by SOL if there's an IBG. An IBG might offer some protection to and inspire confidence in a policyholder. But, in theory, so should a structural warranty – they'll have confidence that defects, properly notified within the defect period, will be covered. It won't ensure a property is defect free, but it should be something, should a defect arise, which they can claim against without any unreasonable bars to cover being put in their way. I'm satisfied SOL can't reasonably rely on the flat roof endorsement to defeat the claim.

compensation
Clearly SOL's decline of the claim was frustrating for Mr and Mrs D. They then chose to get the work done and I don't doubt that paying for that whilst waiting for an outcome to their complaint has been worrying and inconvenient. For that upset though, I'm satisfied that £200 compensation is fairly and reasonably due. In saying that I note they accepted our Investigator's explanation that other upset they've encountered and detailed in their complaint, stemmed from the defect itself, rather than any failure of SOL.

I believe SOL needs to accept and move to settle the claim
Mr and Mrs D made their claim in January 2024. SOL's loss adjuster considered the claim on its behalf in spring that year. Including a visit to the property to assess the terrace, and a return visit to consider the window area, during which it was decided that water ingress in that area was being caused by the same issue with the terrace. The loss adjuster's report included a full quote of the Section 2 policy wording, before moving on to quoting what were felt to be relevant policy endorsements. It was the policy endorsements which the loss adjuster felt the claim failed on – not any other part of the policy wording. And SOL's FRL in May 2024 upheld the loss adjuster's findings.

So, this tells me that SOL had the opportunity to consider the claim in full. It assessed the area in question so was able to take a view as to cause and whether the issue in question amounted to a defect under the policy and coverable under Section 2. Having had that opportunity, SOL did not then say, for example, the claim was not made within the time limits which would apply, nor that the issue in question was not a defect as required by the policy. Instead SOL's chosen course for declining the claim were the two endorsements, one regarding balconies and one for flat roofs.

As such, I'm minded to think it is not fair – where I've found SOL's reliance on those two endorsements is unfair and unreasonable, for it to get to review the claim again, afresh, more than a year later and whilst Mr and Mrs D continue to be out of pocket for the cost of resolving matters. This Service expects insurers, acting reasonably, to handle and decide claims promptly and fairly. What that might entail may differ between claims – but where an insurer has had an opportunity to look at everything that might affect a claim, and it thinks it is a claim the policy reasonably shouldn't cover, we'd expect it to set out all of its possible reasons for decline, including any it should reasonably be aware of, at that time.

It is my intention here to say SOL must accept this claim and move to settle it. Mr and Mrs D have had the work done, at a cost of £36,800. The policy does not contain an option for SOL to settle at what it would have cost it to do the work, so its settlement will have to be based on Mr and Mrs D's costs. However, SOL has not yet seen the work Mr and Mrs D had done to resolve the defect. And the cover available under Section 2 states SOL will be liable for paying for anything necessary to repair, replace or rectify any defect; in this case that would

be with the terrace which was allowing/causing water ingress. So, SOL will have to consider what, under the policy and given Mr and Mrs D's costs incurred, it is reasonably liable to pay to settle the claim. To any settlement made, interest will have to be added."

Responses to my initial provisional findings

Mr and Mrs D said they were concerned that my suggested award would still give SOL the opportunity to question their costs, which they didn't think was fair as they believed they'd only done what was needed to complete the repairs. They confirmed they'd sold the property in autumn 2024. They said they did feel more compensation was reasonably due – not least because when they were finally able to sell the house, that sale was in a falling market. But they'd forego that to assist resolution.

SOL disagreed with my findings. It provided a response from its complaint handler, an expert architect's report (which Mr D has seen and has had chance to comment on) and objections put forward by its solicitors.

I've summarised those responses as:

balcony endorsement

- The policy can't offer a definition for everything – but nor does SOL have to accept this balcony was really a terrace just because Mr and Mrs D say it was, and which they only said after the claim was initially declined.
- Sales literature is not accurate evidence and shouldn't be given prominence over "the entirety of the other more reliable evidence".
- The contemporaneous and independent evidence should be given most weight in deciding whether this was a balcony or a terrace – such as the building plans.
- It could be argued that a terrace is a specific type of balcony.
- The architect noted balconies and terraces have certain features – that some may incorporate elements of both.
- The architect said the area in question for Mr and Mrs D's home might best be described as a "terrace-balcony".

flat roof endorsement

- A prior decision by this Service found the respondent insurer on that complaint hadn't done "anything wrong" in adding the flat roof/IBG endorsement to the policy (subject of that decision).
- The content of that prior decision "indicates that the Ombudsman had no reason in principle to find that such an exclusion could not be relied on, and also indicated that such term was not unfair" [sic].
- Most structural warranty policies do not provide cover for flat roofs – in fact it is common industry practice that these are not covered.
- An insurer will then, on occasion, sweep them into cover only if an IBG is obtained.
- It hasn't put an unreasonable bar in Mr and Mrs D's way – it has offered an enhanced level of cover to what they might otherwise have had, ie no cover for the flat roofs.
- It's not for the Ombudsman to say what risks should have been acceptable to it. Especially not when it was only following industry practice.
- To say that the endorsement is unfair would appear to be wrong in law and it's noted that no legislation has been cited as the basis for such a finding.
- There are only limited circumstances in which an insurance policy term can be found to be unfair – and none of them apply here.
- The endorsement for flat roofs is clearly material to the claim because the claim is about a flat roof (the floor of, what it maintains as being, the balcony).
- In any event, materiality is an irrelevant consideration.

Given the substantial further response from SOL, which included new points and fresh evidence, I issued a further provisional decision. In order to deal fully with all the relevant comments made and evidence presented my further findings were lengthy. But the ultimate outcome – that SOL should accept and consider settlement for the claim and pay £200 compensation – remained the same.

My further provisional findings were:

"At this point, whilst I've previously dealt with the balcony versus terrace argument first, I'm going to change the order of things. The balcony endorsement can only reasonably be applied by SOL, if it is agreed the area in question is a balcony – that is still being debated. But what is not in debate is that there was a flat roof. So the flat roof endorsement is really the primary issue to resolve. And I think that is evidenced also by the more detailed and lengthy arguments SOL has put forward regarding the flat roof endorsement. So I'll deal with that issue first.

flat roof endorsement
I have considered the prior decision referenced by SOL. But I don't find it analogous to the issues in question in this complaint. That is because that prior decision focused on whether that respondent insurer should have made sure the developer obtained an IBG before granting the warranty. As such the Ombudsman made no finding on the related endorsement itself – such as whether it was fair or could fairly be applied. Nor was the relevant endorsement quoted in that decision. So even if I accepted what SOL says the decision "indicates" (which I don't), I couldn't reasonably conclude that thinking should be applied by me to this complaint about the endorsement SOL has sought to rely on. That's because I can't be satisfied the endorsements are the same.

It may be helpful at this point to set out the endorsement in question in this complaint:
"Failure of the Flat Roof covering and/or water penetration from the flat roof will be excluded from cover unless and until a suitable insurance backed guarantee for the waterproofing system, materials and installation, is issued and in effect for the duration of the policy."
So, according to the endorsement, if there is no IBG in place – which there was not here – then there is no cover for water ingress from a flat roof.

I note SOL's view that 'most' structural warranties don't include cover for flat roofs. I can see that a leader in the building industry, offering advice on structural warranties, highlights that many warranties exclude such cover. But I'm not persuaded that this area of a property being excluded from such a warranty – designed to offer cover for defects in the structure of the property – is so common it amounts to accepted industry practice. I say this not least given my wealth of experience assessing complaints about this type of cover and knowing that it is not commonly excluded by one of the main new build warranty providers – and that even some policies underwritten by SOL do not contain such an endorsement.

That said, SOL is absolutely correct that it is not for an Ombudsman to get involved in an issue of what risks an insurer should or shouldn't accept. It is up to SOL what risks it wants to offer cover for. But here SOL has chosen to express its desire regarding risk in the form of a policy endorsement, a breach of which it has then chosen to rely on to decline a claim. And so it's necessary for me to consider whether it has acted fairly and reasonably in doing so.

I appreciate the view shared from SOL's solicitors regarding the legal position as they see it. I've considered the points made about the 'limited' legal situations where an insurance term might be found to be unfair. Also that, in the solicitors' view, none of them apply here. I also note that, in the solicitors' view, materiality is an irrelevance. The solicitors do not explain that view any further – but it seems they take this view because materiality isn't a factor of the discourse they've set out on the legal position.

SOL's solicitors, of course, may not be aware of the full extent of this Service's remit. Whilst we take note of legislation and established legal positions, we are able to take a wider view than the courts can. As such, our remit extends to making fair and reasonable outcomes. In that respect materiality is absolutely relevant.

This Service has long held that it is unfair for an insurer to rely on a technical breach of an endorsement – or even of a condition precedent, which given the wording quoted above might better describe the endorsement in question here – to decline a claim. Rather an insurer, wanting to rely on a breach in that way must show the breach was material. And material to the loss which occurred, not the resultant claim made. In its simplest term – that the breach allowed the loss to occur, or increased the chances of a loss occurring.

At this stage, whilst I've seen arguments from SOL about how the IBG would be important to it in terms of limiting its risk and or increasing its chances of recovery, I've seen nothing which shows or even suggests, that having an IBG in place would have either prevented the loss from occurring or reduced the risk of the same. In this case, to be clear, the 'loss' is the defect in the construction of the flat roof which resulted in the leak. An IBG provider might complete some checks before offering a guarantee – but SOL, and other warranty providers, also complete their own risk associated checks before offering their structural warranties. In none of those circumstances are the checks completed by the prospective insurer a guarantee that defects will not occur. After all, if they were, then there would be no need for the resulting cover for the homeowner against faulty installation and defects.

Having reviewed the matter of the flat roof endorsement, I've not seen anything which shows SOL has established the breach – no IBG being in place for the flat roof – was material to the loss which occurred. As such I'm currently satisfied that it's not fair or reasonable for SOL to have relied on the endorsement to decline the claim.

<u>balcony endorsement</u>
This Service accepts that an insurer can't, and doesn't need to, set out a definition for every word or phrase used in a policy. Such would be unworkable in practice. And where a word with an accepted everyday definition, which the insurer is not seeking to depart from, is used, there'd be no useful point in setting out what that definition is. Rather it's quite common and accepted practice for an insurer to only offer a definition for words and phrases to which it wants to ascribe a specific meaning.

Of course, an insurer might not choose to offer a definition for a particular word because it thinks it has an established meaning, only later to find there is room for debate over that meaning. That then may generate a complaint which, at least in part, needs to consider what the 'reasonable' application is of the word (or phrase) in question. Which is what brings us here to this decision.

I can see that SOL thinks I gave greater weight to what the sales document says – that the area in question is a terrace – than what the planning application and other evidence shows – that the area is a balcony. But I think SOL has misunderstood my intent in this respect. Rather what I had sought to do was show that there are documents and definitions in play which each support the respective arguments of the parties. In other words, it's far from clear whether this area should reasonably fall to be considered a 'balcony' or a 'terrace'.

I appreciate that SOL thinks the building plans should be given greater weight – indeed that the balance of the available evidence points to the area being best regarded as a balcony. And I can assure SOL, and Mr and Mrs D, that I am well versed in weighing evidence to reach a fair and reasonable conclusion. I note SOL's comment in this respect though was likely provided prior to its solicitor presenting the expert architect's report. It is often the case that this Service will afford significant evidential weight to such opinions.

Having considered the architect's report, I find I don't agree with SOL's suggestion that a terrace can reasonably be described as a sub-category, or a specific type, of balcony. The report does highlight that a terrace may feature some elements that are found in balconies. But just because an item shares some common features with another, doesn't necessarily mean one should reasonably be considered as a subcategory or a specific type of the other.

The architect's report considers in some detail the British Standard which applies to buildings, specifically balconies and terraces. Of particular note is that a terrace, unlike a balcony, is formed over part of a building. And, here, we know the area in question is accepted as a flat roof (to the ground floor lounge) because SOL has sought to apply the flat roof endorsement to decline the claim. According to the expert – that is not a feature of a balcony, with balconies commonly projecting over empty spaces, or over other balconies and/or terraces.

In his report, the architect notes that size can be important in deciding if an area is a balcony or a terrace – with terraces being larger than balconies. He explains he is unsure, here, whether the size of the area in question at Mr and Mrs D's property was really determinative in this respect. But he notes the area has more than one point of access – suggesting, I think, that a 'small' balcony would likely only be accessed from one room of the property. In reading his comment in that respect I'm mindful that some comparisons available on the internet, discussing the differences between these two types of building feature, do reference that more than one access point tends to be seen on a terrace rather than a balcony. That though, is not a definition applied by the British Standard.

I also have to fairly draw attention here to the fact that the architect does note that the area in question encompasses some features which might be seen both in a balcony and a terrace. For example, identifying that most of the area in question acts as a flat roof for the lounge, a feature of a terrace, but also that the area continues beyond the lounge, "with a relatively small projecting area" extending beyond the lounge's patio doors – like a balcony.

The overall conclusion reached by the architect is there is no precise definition of either a terrace or a balcony. Particularly not when thinking about the specific area in question here. And that the terms 'balcony' and 'terrace' are not "mutually exclusive" – which I take to mean they are not interchangeable terms. He doesn't offer an opinion on SOL's view that a 'terrace' can be considered a sub-category of balcony – only commenting that the British Standard doesn't "consider this question", going on to say "but nor does it exclude it as a possibility". Thinking about the policy and SOL's choice to not apply a definition for 'balcony' whilst assuming that word would naturally extend to a 'terrace'; I find these expert conclusions to be very interesting.

At this point I'll come back to my remit – to find a reasonable answer. I also bear in mind that both sides have been able to present evidence which either supports the area being a balcony or a terrace. I'm mindful the expert architect said the area encompasses features of both a balcony and a terrace – whilst highlighting that neither term seems to perfectly describe the area in question. But also that the architect, overall, noted the area included some key features that belong to a description of a terrace rather than a balcony ie it forms or acts in part as a flat roof and it has more than one access point. With the architect noting

the area of 'flat roof' – a typical feature of a 'terrace' – was larger than the "relatively smaller projecting area" – a 'projection' being a feature common to a balcony. All of which leads me to reasonably think that this area is more like a terrace than it is a balcony.

With that in mind – that this is more like a terrace than a balcony – I have to think then about whether the 'balcony endorsement' can fairly and reasonably be applied by SOL. I don't think it can. SOL is the insurer and in charge of drafting the policy, in doing that it has a duty to make sure it meets its intent without the need for the lay reader to have to add or super-impose their own interpretations to it. SOL chose to not apply a definition of balcony – instead assuming the everyday meaning – which it understood to encompass or be wide enough to include a terrace – was clear enough for all to understand. The debate that has ensued throughout the claim and through my initial provisional decision and which is highlighted by the discussion in the architect's report, shows that's not the case. So there isn't a clearly understood every day meaning of the word 'balcony' and the area in question here is 'more like' a 'terrace'. On that basis I can't reasonably conclude that allowing SOL to apply a 'balcony' endorsement to a 'terrace-like' area, would be a fair outcome.

summary
So, whilst there is a lot of writing above and reasoning setting out my thoughts, the parties will note that really, my position hasn't moved from that set out provisionally. I initially thought that SOL had acted unfairly and unreasonably by seeking to rely on these two endorsements to decline the claim – and I'm still very much of that view. I trust the parties will see from the detail I've set out above that I've carefully considered the further objections SOL has raised, taking careful note of the expert opinion provided, but I've not been persuaded by what's been said to reach a different outcome. It has taken me a little while to review, digest and decide upon what the further comments and evidence show – and I'd like to take the opportunity to thank the parties for their patience whilst I've completed my further provisional decision. Whilst not ideal to be issuing a further provisional decision at this time, it was necessary to do so given the new evidence provided and points raised.

Mr and Mrs D's response to my provisional decision

Mr and Mrs D will likely note that, to this point, I haven't commented on the concerns they raised about my suggested redress. I mean no disrespect by having left this until now – it was important first to set out why my position on the complaint being upheld had not changed. Now the parties can see my thinking on that, I can explain that I'm also not currently intending to make any changes to my suggested redress.

That is because whilst I remain of the view that SOL has already had the chance to consider the application of the policy to the claim, it hasn't yet – because it declined the claim – considered how the policy applies to the claim settlement. I'm satisfied it has liability for the claim – but I'm not a claim handler and so it isn't for me to say, in a situation where the parties have not yet discussed fair settlement, what SOL fairly and reasonably must pay to resolve the claim. The parties will now need to discuss that. I trust this next stage of the claim will resolve without further dispute. However, if that should prove to not be the case, Mr and Mrs D can make a further complaint.

Finally, on compensation, I do note Mr and Mrs D's concerns about the house sale price. However, whilst I note they say the market was falling by the point they sold their house, I've not seen any evidence of that, nor that the house would likely have sold for more had it been put up for sale earlier than it was. But, even seeing that type of detail wouldn't make me think it's reasonable to make SOL compensate Mr and Mrs D for any loss of value – either actual or a loss of expectation. That is because, for that, I'd have to be satisfied that, but for SOL's decline, the claim would have resolved earlier, such that the house would have sold before it did. I'm not persuaded that is the case here.

SOL issued a decline letter in March 2024. If, instead, it had accepted the claim at that point, it would have moved towards assessing what was needed to settle it. This, by all accounts, was quite a bespoke build and I think it would have taken a reasonable length of time for work to be scoped, agreed, started and completed. I bear in mind that Mr and Mrs D's quote for work was dated April 2024, with the final invoice to cover off additional necessary work being issued in August 2024. I presume the work didn't start in April – likely a lead time would have been necessary. But this timeframe serves to illustrate that, even if SOL had accepted the claim in March, completion of any works would be unlikely to have occurred before the summer months were well underway. So I'm not persuaded SOL's unfair and unreasonable decline caused the house sale to be delayed.

I don't doubt that SOL declining the claim was frustrating and worrying for Mr and Mrs D. They obviously chose to challenge SOL's outcome and I know they've spent time since, putting forward their complaint and even responding to my provisional decision and commenting on the architect's view. However, time spent dealing with a complaint isn't something I'll usually award compensation for. Mr and Mrs D were able to take action to prevent the unfair decline affecting their future plans and so they've limited the distress and inconvenience they might otherwise have experienced. I remain of the view that £200 compensation, because SOL unfairly declined their claim, is reasonable in the circumstances. I'm not minded to increase my award."

Responses to my further provisional decision

Mr and Mrs D said they accepted my further provisional decision. SOL said it disagreed with it. It provided a further lengthy reply, including comment from its solicitors.

SOL's response in summary:

Flat roof

- Legal cases involving the Financial Ombudsman Service show Ombudsman can only make fair and reasonable decisions "against the backdrop of the contractual terms in place".
- The Ombudsman here is acting outside of that remit by saying this "endorsement", clearly accepted by the insured when the policy was arranged, can't be relied upon. And it's not for the Ombudsman to change the policy terms or apply a different meaning.
- The Ombudsman contradicted herself because she acknowledged the endorsement meant there was no cover in place.
- Talking about the term in question as an endorsement SOL said, in law an endorsement and a condition precedent are not the same thing.
- So the materiality test for an endorsement rather than a condition precedent, should be 'was the insurer prejudiced' and the answer is 'yes, SOL was prejudiced' because it is being asked to provide cover for a claim which is excluded.
- However, no endorsement has been breached. As the clause in question is a policy exclusion.
- A comment issued by this Service over 20 years ago was quoted. This shows, SOL said, that the Service finds the proper use of exclusion clauses is acceptable.
- The purpose of an exclusion is to restrict the cover the underwriter wants to be liable for and the further provisional decision explains that "*it is not for an Ombudsman to get involved in an issue of what risks an insurer should or shouldn't accept.*
- An explanation was provided about how the policy should be read.
- The flat roof "exclusion" doesn't mean the policyholder has promised to do something. So there can't, therefore, be any breach of the provision.

- Even if there had been, whilst the Ombudsman says she's not seen anything to suggest an IBG in place would have prevented the loss, clearly that was not the view of underwriters' when the policy was arranged and a decision was made to include the "exclusion".
- It maintained that having an IBG in place is material to the claim, because it's clearly SOL's intent to exclude such claims.
- It also said that the breach is material because "without an IBG the breach allowed a loss to occur under the policy that would not otherwise have occurred. That is the breach allowed a loss to occur which is excluded from cover".

Balcony
- This has been much debated and the outcome should be based on what is fair and reasonable in the circumstances of this claim and complaint.
- In that respect there is one indisputable fact – the planning permission referred to this area as a balcony, as did Mr C during the claim until it was declined.
- Viewing this area as a balcony is, therefore, the fair and reasonable outcome which should be reached here.

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.

SOL's response was again quite lengthy. But this time I'm satisfied that nothing new has been raised which materially affects my consideration or findings. As such I'm satisfied a final decision can now be issued.

Flat roof

I note SOL's reference to legal cases involving this Service. I'm satisfied that I have assessed this complaint in light of the backdrop of policy terms, taking into account what's fair and reasonable. I have not sought to change the terms or apply a different meaning. And I'll add that, in this case, the 'insured', Mr and Mrs D, did not arrange the policy so did not, in the way SOL has suggested, enter into the agreement with SOL having had the chance to consider and accept the terms.

I did say in my further provisional findings: "*So, according to the endorsement, if there is no IBG in place – which there was not here – then there is no cover for water ingress from a flat roof".* But as I'm sure SOL is aware it is quite common for an Ombudsman to set out what the actual policy term is that is in question and what outcome a strict interpretation of that term might create. We'll then go on to consider whether that strict interpretation would create a fair and reasonable outcome in the circumstances of the specific complaint before us. Which is what I did here.

I note SOL has offered its response, in part, based on the term in question being an endorsement. But it has also said, in different parts of its reply, that it is not an endorsement. In fact it's been quite adamant in explaining this is instead an exclusion. Also that there's been no 'breach' because the policyholder wasn't required to do anything. SOL has argued materiality was a factor here, and/or there was some prejudice caused to SOL.

I've considered everything said in these respects. If this term is not an endorsement (although it appears on the policy as an endorsement), and only an exclusion then I have to think about whether SOL can fairly rely on this exclusion. To do so it would have to show that having an IBG would have changed the loss. I've seen nothing to show that. It may well be the underwriter, generally speaking, isn't inclined to cover this type of loss when there is no IBG. But that 'general' thinking guides the inclusion of most policy exclusions and this Service routinely considers whether or not the application of a policy exclusion, by an insurer, to reduce or remove its liability for loss, in the specific circumstances of the claim in question, is fair and reasonable. With us routinely applying a test of materiality to do so.

So, at the heart of everything, is the materiality issue. SOL says two things about materiality:

- It is being prejudiced as its being asked to cover a claim it would otherwise decline, as supported by the fact of this term being included in the policy.
- Without the IBG a loss occurred which would otherwise have been avoided.

I explained in my further provisional findings that I was satisfied that the relevant test for materiality had to focus on the loss which had occurred, not the claim. Also that I'd seen nothing which made me think the loss itself would most likely have been avoided, or limited, if an IBG was in place. Nothing in the further comments SOL has provided makes me think I'm wrong to apply that test here, or that the conclusions I reached having done so were unfair and unreasonable. As such I stand by my findings set out in my further provisional decision, which expanded upon my initial provisional findings.

Balcony

I note SOL's response on this. But that seems very much what it said prior to me completing my initial provisional decision. In response to my initial provisional decision, SOL replied with detail from its solicitors and the expert architect's report. I took all of that evidence into account when reaching my further provisional decision. So SOL now reiterating its view on the content of the planning permission and how Mr C referred to this area during the claim, doesn't really assist it. Reiteration of that prior view doesn't sweep away that further evidence and my findings taking it all into account – that the balance of all the evidence shows the term does not have a clearly defined and commonly understood meaning.
I remain of the view that SOL cannot fairly rely on the balcony endorsement to decline this claim for an area which I'm reasonably satisfied is more like, and so can reasonably be described as, a terrace.

Summary

Having considered SOL's responses to my further provisional decision, I find my view on the complaint has not changed. I haven't been persuaded by what's been said to reach a different outcome. As such my final decision is that I uphold this complaint and require SOL to provide the redress set out below at "Putting things right".

Putting things right

I require SOL to:

- Pay £200 compensation.
- Accept the claim and consider settlement for it in line with the warranty terms and the costs incurred by Mr and Mrs D.
- Add 8% simple interest* to any settlement made, applied from the date Mr and Mrs D paid for the work to be done, until payment is made.

* HM Revenue & Customs may require SOL to take off tax from this interest. If asked, it must give Mr and Mrs D a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require Society of Lloyd's to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 17 November 2025.

Fiona Robinson
Ombudsman