DRN-6117832

The complaint

P, a limited company, complains U K Insurance Limited ('UKI') unfairly declined a claim it made on its commercial property insurance policy.

Mr H, a director of P, brings the complaint on P's behalf. P is also professionally represented in this complaint, but for ease of reading, I have just referred to P and UKI.

What happened

In 2022, P engaged a third-party company to supply and install solar roof panels on three of the roofs at its insured premises. The third-party company obtained a structural roof-loading appraisal as part of the works, which said the existing roof structure was sufficient to withstand the addition of the solar panels, and no further strengthening was required. The solar panels were subsequently installed in November 2022.

In July 2023, P took out a commercial property insurance policy underwritten by UKI. The policy was an "all risks" policy which provided cover for P's warehouse premises, which comprised of four warehouses with flat roofs to which the solar panels had been attached.

In September 2023, the fire alarm was triggered at P's premises which was set off by an escape of water from the sprinkler system. P later commissioned a structural engineer to inspect and report on the damage which identified the leak had resulted from movement in the roof trusses beneath the slopes that supported the solar panels. The report concluded that the roof's trusses had buckled out of plane under load and sections of the internal ceiling had collapsed, but roof areas that didn't have solar panels installed above them showed no equivalent movement.

P raised a claim to UKI who investigated but ultimately declined to cover it. They said the proximate cause of the loss was a design fault, because the roof structure was not capable of bearing the additional load of the solar panels. UKI relied on a policy exclusion which said damage caused by, or consisting of defective design, wouldn't be covered. UKI also said the claim was excluded as a latent defect.

P was unhappy with UKI's decline of the claim, so it raised a complaint. UKI considered the complaint but maintained their decision. They said the installation of the solar panels included an assessment of the existing roof structure onto which the panels were to be installed. As such, UKI considered that the proximate cause of the loss was the incorrect assessment of the structure of the roof which wasn't strengthened to accommodate the extra load. P ultimately remained unhappy with UKI's response to its complaint – so, it brought the complaint to this Service.

An Investigator looked at what had happened and recommended the complaint should be upheld. He said he wasn't satisfied UKI had shown either of the exclusions for faulty or defective design or latent defect applied in the circumstances. The Investigator set out that he thought the collapse of the roof was not due to a defect in the roof itself and therefore considered the damage was caused by an accidental event, rather than by "its own" defective design or materials and recommended UKI reassess the claim without relying on the policy exclusions.

P accepted the recommended conclusions of the Investigator, but UKI did not. They said the roof and solar panels formed a part of the same insured property, and the failure arose from poor design of that combined system. UKI outlined the Investigator's approach drew an "artificial" distinction between the roof and solar panels and maintained that, properly construed, the exclusions in the policy applied in the circumstances.

UKI asked for an Ombudsman to consider the complaint, and I then issued a provisional decision in which I said the following:

> *"I want to first explain that I won't be repeating the entirety of the complaint history here in my decision or commenting on every point raised. The timeline of the complaint is well known to P and UKI and both parties have made detailed submissions through their legal representatives. I've considered everything provided, but I'm not going to comment on each point individually.*
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> *Instead, I've focused on what I consider to be the key points I need to think about in order to reach a fair and reasonable conclusion. This is not intended as a discourtesy, it simply reflects the key function of this Service; to resolve disputes quickly, and with minimum formality. The core issue of this complaint for me to decide is therefore whether it was fair for UKI to apply the policy exclusions that they did.*
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> *I should also set out that one of the things I'm required to take into account is the relevant law. UKI has submitted several court cases which they say support their coverage position, one of which is the case of Wood v Capita Insurance Services Ltd [2017]. In that case, the court said that an insurance policy is to be interpreted objectively by asking what a reasonable person, with all the available background knowledge which would reasonably have been available to the parties when they entered the contract, would have understood the language to mean. I've had this in mind when reaching my decision.*
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> *The policy operates on an "all risks" basis and the relevant policy terms say cover is provided for: "Any Accidental Cause excluding:…Damage to the Property insured caused by or consisting of: i. inherent vice, latent defect, gradual deterioration, wear and tear, frost, change in water table level, <u>its own faulty or defective design or materials</u>". (my emphasis)*
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> *The first point I've considered is P's submissions that a "defective design" exclusion only covers the design of the buildings when they were originally constructed. But I do not think that it is consistent with either the wording of the policy or commercial common sense to say that this would be the case, given that the definition of "Buildings" covers things which might be added or refurbished from time to time. Therefore, I think it was fair for UKI to say the defective design exclusion included the design for updating the existing roof structure to accommodate the weight of the solar panels.*
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> *The evidence I have considered as part of this complaint shows the roof trusses beneath the slopes of the flat roofs of the insured premises distorted and failed under the additional load of the solar panels installed in November 2022. But areas without panels did not show equivalent movement. The parties agree that the roof had been structurally sound for around 25 years beforehand, with no recorded instability. So, the evidence indicates to me that the installation of the solar panel system was flawed, in that there was a miscalculation of whether the existing roofs could support the addition of the solar panels. This is acknowledged by both parties, so the issue*

for me to determine is whether it was fair for UKI to apply for exclusion for damage caused by "its own faulty or defective design or materials". P says that in order for UKI to rely on that exclusion, they must show the roof failed because of a defect inherent in its own design or construction.

P has made detailed submissions setting out why it considers the solar panels and the roof itself were not part of the same "Property insured" under the policy. In response, UKI has said that once the panels were attached to the roof, they became part of the same single insured property. And they don't believe there can reasonably be an "artificial distinction…between the roof on the one hand and the solar panels on the other".

I should first point out that I do not think UKI's policy supports that the solar panels would be considered part of the same "Property insured" once installed. This is because the policy extensions specifically exclude cover for "any electricity generating equipment other than emergency back-up power equipment…". This suggests to me that the solar panels would be considered distinct items to the roof itself and would likely fall into the category of being excluded under the "Covered Equipment" extension.

However, while I do not think that the solar panels qualify as "Property insured" for the purposes of the Accidental Damage cover, that doesn't mean that their presence on the roof is irrelevant when considering whether the roof itself, which is "Property insured", was defectively designed for the use it was being put to. I say this because the solar panels were installed in November 2022, before P took out cover with UKI in July 2023. That means that at the start of the policy, UKI was not insuring the roof or buildings as originally constructed, they were insuring a roof with the solar panels already installed.

Ultimately, it appears that all parties accept that the roof failed because of a faulty design of the supporting structure required to support the solar panels. And the result was that the solar panels were added to the roof without the roof being strengthened first. As such, I think it's fair and reasonable to conclude that, where the roof was not strengthened to meet the purpose it was being used for, the exclusion for "its own faulty or defective design" applies.

Ultimately, where an insurer seeks to rely on an exclusion, it is for the insurer to demonstrate that the exclusion applies. Having considered all the available evidence and submissions of both parties, I'm persuaded UKI has done this in relation to the defective design exclusion. The question is whether the damage arose from the Property insured's own defective design, and in this case, I'm satisfied it did. I also find that the policy does not limit the defective design exclusion only to defects arising when the property was originally constructed. Finally, for the avoidance of doubt, I have not found it necessary to make a finding as to whether the exclusion for "latent defects" applies to the claim, given my findings above."

I invited both parties to respond to my provisional findings. UKI did not provide any further information for me to consider. P, via its representative, sent a detailed reply, the key points of which said:

- The roof had been structurally sound for around 25 years, and but for the installation of the solar panels, it would have continued in use and been serviceable.
- P maintained that the roof (which I had found was 'property insured') was not faulty or of defective design. P said a design cannot be 'defective' simply because it cannot support a new, external load it was never intended to bear.

- P disagreed with my interpretation of the exclusion wording and said an ordinary policyholder would assume UKI's intention was to exclude damage that had either been longstanding or always present since it was designed or over time subject to wear and tear.
- The Supreme Court case of *Financial Conduct Authority v Arch Insurance (UK) Ltd. [2021]*, set out that the words of an insurance contract are to be assessed by what a reasonable person would understand them to mean.
- Where there is ambiguity in a contract of insurance the benefit of doubt is given to the insured and not the insurer.
- Because of the differing views produced by the parties involved, P said there was ambiguity as to how the clause should be interpreted and as such, it would be fair and reasonable P be given the benefit of the doubt.
- The policy exclusion for faulty or defective workmanship did not apply as the exclusion specifically refers to this being on the part of the insured or their employees, not a third party.

As both parties have now had the opportunity to provide a response to my provisional findings, I will set out my final decision below.

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.

I appreciate P's points around the roof having been structurally sound for many years prior to the installation of the solar panels. And P also says a design cannot be 'defective' simply because it cannot support a new, external load it was never intended to bear. But I do not agree with that interpretation, and ultimately, the question I am required to decide isn't whether the roof was defective when it was originally constructed, but rather, at the start of the policy, whether the roof was defectively designed for the use it was being put to.

At the time the policy was incepted, UKI wasn't just insuring a bare roof which had stood trouble-free for 25 years. They were insuring a roof with solar panels already installed. And I think that, where a structure has been adapted for a new purpose, and hasn't been strengthened to accommodate those adaptions, it's fair and reasonable to conclude that the structure's own design is defective for that use, even if it performed adequately for a different use for many years previously.

I should also make it clear my findings are not that the exclusion for faulty or defective workmanship applies here, but rather the roof (as insured property) failed due to its own defective design for the purpose it was being used, regardless of who miscalculated the loading when the solar panels were installed.

I've also thought about P's submissions about where there is ambiguity in how the policy wording should be interpreted, that ambiguity should be resolved in the favour of the insured. While I recognise the parties have taken different views on how the exclusion clause should operate, I don't think this means it is ambiguous. I'm satisfied when the wording is read in the context of the policy as a whole, it can be understood and applied fairly and produces a result which makes commercial common sense. And while P says that an ordinary policyholder would understand UKI's intention was to exclude damage that had either been longstanding or always present since it was designed or over time subject to wear and tear, I do not think that is consistent with the wording of the policy, given that the definition of "Buildings" covers things which might be added or refurbished from time to time.

I appreciate this is not the answer P was hoping for, but I'm ultimately satisfied UKI has shown the exclusion applies, because the insured roof, as it existed at the time of inception, was defectively designed for the use it was being put to.

My final decision

For the reasons I have outlined above, my final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 27 February 2026.

Stephen Howard
Ombudsman