

## **The complaint**

Mr S complains about how U K Insurance Limited trading as Darwin (Darwin) recorded a claim under his motor insurance policy, affecting his premium for a follow-on on policy with another insurer.

References to Darwin in this decision include their agents.

## **What happened**

In August 2023 Mr S was involved in a collision. He told Darwin about the incident, the nature of which meant he didn't want to make a claim. He said Darwin told him it would be recorded as a 'notification only' incident as neither party to the collision would make a claim. Mr S's policy then expired, as Darwin declined to quote for a renewal.

Mr S took out a policy with another insurer from April 2024 but received a phone call a few days later saying he'd stated he had ten years' No Claims Discount (NCD) when taking out their policy, but their information was that he had nine years' NCD. Because of the difference, Mr S had to pay an additional premium of £159.74. A few weeks later he received an email from Darwin showing an open claim. Unhappy at having the incident recorded as an open claim and the effect on his NCD and new policy premium, Mr S complained to Darwin (July 2024).

Mr S received two phone calls from someone purporting to be from Darwin, but he wasn't sure they were genuine calls. He then received an email from Darwin at the beginning of September including an update No Claims Discount (NCD) position, showing the claim as 'closed'. As he hadn't had a response to his complaint, he emailed Darwin and was told they had emailed their final response at the end of July 2024. Mr S said he hadn't received the emails, after which they sent him a copy of the final response by post, which arrived towards the end of September.

In their final response, Darwin said they'd tried to contact Mr S to discuss his complaint. The final response noted Mr S's policy was taken out in April 2023, but Darwin weren't able to quote for a policy renewal, informing Mr S of this before the policy was due for renewal in April 2024. Darwin went on to say they were upholding Mr S's complaint about the claim in respect of the incident in August 2023 being shown as 'open'. Darwin apologised and said their claims team had closed the claim as 'notification only' and they'd issued an updated confirmation of NCD.

Mr S then complained to this Service. He was unhappy at being charged an additional premium of £159.74 by his new insurer, meaning he was out of pocket. He was also unhappy Darwin didn't resolve his complaint within the eight weeks allowed for a business to respond to a complaint. He wanted Darwin to reimburse the £159.74 he'd been charged and a further £100 compensation for their error and not dealing with his complaint properly.

Our investigator initially upheld the complaint, concluding Darwin hadn't acted fairly. On the recording of the claim in respect of the incident in August 2023, the investigator thought it took longer than it should have done to close the claim (it was eight months from the date of

the incident to the renewal date of Mr S's policy). While Darwin had apologised, the investigator thought Mr S shouldn't be out of pocket for their mistake in not closing the claim sooner. However, standard practice where an open claim was subsequently closed (as non-fault) was for the current insurer to re-quote the policy premium based on the updated claim status. And as it was the new insurer that had charged the additional premium, it wouldn't be reasonable to ask Darwin to reimburse it to Mr S.

However, the error meant Mr S lost access to the additional premium he'd paid and he'd had to go back and forth between Darwin and his new insurer, causing him inconvenience. And under the Consumer Duty, the investigator didn't think Darwin avoided causing foreseeable harm to Mr S and pursue his financial objectives. To put things right, the investigator thought Darwin should pay Mr S £100 compensation. They should also ensure all internal and external claim databases were updated with the correct 'notification only' (non-fault) status.

On the issue of Darwin not issuing their final response within eight weeks of Mr S's complaint, the investigator noted Darwin had provided a copy of the email containing their final response sent on the date of the response (the end of July 2024). The address to which the email was sent was the same as that Mr S had used to email Darwin. The investigator concluded Darwin hadn't acted unfairly or unreasonably when issuing their final response.

Mr S responded to the investigator's initial view to say he'd received a call from a complaints specialist at Darwin, around the time he received the final response through the post. Mr S said he was told Darwin had sent the final response to an incorrect email address. Mr S said he was also told that if he could provide proof of the additional premium he'd paid to his new insurer, Darwin would reimburse it.

Darwin disagreed with the investigator's initial view, saying that at no point in his complaint to them had Mr S mentioned his new insurer had charged an additional premium. The onus should be on Mr S to provide them with evidence of the financial impact. So, they didn't think they should pay compensation to Mr S, when they'd updated his NCD record and sent it to Mr S when requested.

Following further investigation, our investigator noted Mr S had a conversation with the complaints specialist towards the end of September in which he mentioned the additional premium. The complaints specialist said Darwin could provide them with evidence of the additional premium and they would consider it, or he could include it in his complaint to this Service (which is what Mr S did).

Darwin maintained their disagreement with the investigator's view, so the complaint has been passed to me to consider.

### **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.

My role here is to decide whether Darwin have acted fairly towards Mr S.

The two main issues in Mr S's complaint are. Firstly, he was charged an additional premium by his new insurer because Darwin hadn't closed the claim in respect of the incident he was involved with in August 2023, which had affected his NCD entitlement in the eyes of his new insurer. Darwin accept they should have closed the claim sooner but say Mr S hadn't raised the issue of the additional premium when he made his complaint to them in July 2024 (though they accept he raised it subsequently, in September 2024).

The second issue is that he says Darwin didn't issue their final response within the eight-week period. Darwin say they did issue it, by email, providing a copy of the email.

I've first considered the second issue, whether Darwin issued their final response within the eight-week period businesses have in which to respond to a consumer complaint. Mr S maintains he never received it, only obtaining a copy by post in September 2024 when he contacted Darwin.

Darwin have provided a copy of the email sent which included the final response (and revised confirmation of entitlement to NCD) which is dated 31 July 2024. The email address to which it was sent matches that I've seen used by Mr S in an email exchange with Darwin (provided by Mr S when bringing his complaint to this Service) in August and September 2024, in which he says he hasn't received a final response to his complaint. The start of that email exchange is an email from Darwin on 31 July referring to an amended confirmation of NCD entitlement. It uses the same email address as that subsequently used by Mr S.

Looking at the copy email provided by Darwin they say shows they sent the final response in July, the email address they use only differs in the use of capital letters for Mr S's forename and surname – I don't think this would have led the email not to have been delivered.

So, on the evidence available, I can't conclude Darwin didn't send their final response in July 2024, within the eight-week period for final responses.

Turning to the first issue, I've seen confirmation from Mr S's new insurer that they contacted him in May 2024 about a discrepancy in his NCD. Mr S told them he had 10 years NCD when completing his quote online, whereas the new insurer could only see he had nine years NCD. Because of the discrepancy, the new insurer said they would cancel the policy unless Mr S paid an additional premium of £159.74.

Darwin closed the claim (as non-fault) as part of their final response to Mr S's complaint to them in July 2024, issuing an updated confirmation of NCD entitlement at the same time. Given the incident that initially gave rise to a claim being logged occurred in August 2023, with Mr S saying he didn't want to make a claim when notifying Darwin (as the policy required him to do, even when not making a claim) then I think it should have been closed (as notification only) sooner than it was, when it was unlikely that a claim would be received from any third party. Had it been, Mr S's NCD wouldn't have been affected and he wouldn't have had his new insurer contact him to charge an additional premium.

At this point, it's important to note that this decision covers the actions of Darwin as Mr S's previous insurer. It doesn't cover the actions of his new insurer in charging Mr S an additional premium when they became aware of the discrepancy in NCD entitlement. And it was the new insurer that charged the premium.

Where a claim is recorded as 'open' but subsequently closed (without any claim or outlay incurred) then it is standard practice for this to be confirmed by the relevant insurer and, as necessary, an updated confirmation of NCD entitlement issued. Which is what happened in this case. Where a consumer has taken out a new policy with a different insurer (as here) then they can use the updated claim record and/or NCD entitlement to ask their new insurer to re-calculate the policy premium. This provides for the consumer to be put back into the position they would have been at the time they took out their policy, had the claim been closed - rather than open – at that point.

Applying this approach in this case, then Mr S can use the revised confirmation of NCD entitlement to ask his new insurer to re-calculate his premium and, as appropriate, refund

the difference (reduction) in premium. So, I won't be asking Darwin to refund the additional £159.74 Mr S was charged by his new insurer.

However, Mr S has still suffered inconvenience from having to challenge Darwin on the closure of his claim and has suffered a financial impact from the claim still being open at the time he took out his new policy (when I've concluded it was open for longer than it should). He's also had to follow up the issue with Darwin and his new insurer, to put him back in the position he would have been had the claim been closed earlier.

At this point, I've considered what Darwin have said in disagreeing with our investigator's view. While Mr S may not have mentioned it as part of his complaint to Darwin in July 2024, this doesn't alter the fact the claim should have been closed sooner than it was and that as a consequence he suffered inconvenience from having to resolve the resulting issues with his new policy premium. And get Darwin to close the claim and issue an updated confirmation of NCD. So, I don't agree with what Darwin have argued.

Having reached these conclusions, I've considered what I think Darwin should do to put things right. On the claim, as it appears that no claim has been received either from Mr S or any third party, then Darwin will not have made any outlays on the claim (such as repair costs for either party). So, I think the claim should be recorded as 'notification only' on any internal or external databases.

But as I've said, Mr S has suffered inconvenience from what happened and having to resolve matters. Considering the circumstances of the case alongside the published guidance from this Service on awards for distress and inconvenience, then I think £100 compensation would be fair and reasonable.

In coming to this conclusion, I've also had regard to Consumer Duty, one of the Financial Conduct Authority's (FCA) Principles for businesses. The Consumer Principle – Principle 12 – says: *"A firm must act to deliver good outcomes for retail consumers"*. One of the cross-cutting rules setting out how businesses should act to deliver good outcomes for customers is to *"Avoid causing foreseeable harm to retail customers"*. In this case, Darwin will be aware that the Consumer Duty requires them to avoid causing foreseeable harm to retail customers.

### **My final decision**

For the reasons set out above, it's my final decision to uphold Mr S's complaint. I require U K Insurance Limited trading as Darwin to:

- Ensure that the claim is recorded as 'notification only' on all internal and external databases.
- Pay Mr S £100 compensation for distress and inconvenience.

U K Insurance Limited trading as Darwin must pay the compensation within 28 days of the date we tell them Mr S accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 May 2025.

Paul King  
**Ombudsman**