

The complaint

Mrs A complains about the way U K Insurance Limited trading as Darwin ('Darwin') handled her insurance claim when her car was damaged by a third party. She's unhappy Darwin has recorded it as a 'fault' claim, that her excesses have not been refunded, and that her renewal premium increased. She doesn't think Darwin did enough to recover its costs from the third party and has been left feeling blamed for damage she had no part in causing.

Mrs A is represented in this complaint by her husband, Mr A, but for ease of reading I'll refer mainly to Mrs A throughout.

What happened

In April 2024 Mrs A's car was parked on the driveway of an address away from home when some tiles were dropped/fell on to it from the roof of the neighbouring property. The roofing company working on the site at the time contacted Mrs A's husband and seemingly accepted responsibility, offering to pay for repairs, but without going through its insurer. Mrs A instead submitted a claim under her comprehensive car insurance policy held with Darwin, and the car was repaired at a cost of almost £4.5k. Mrs A paid her excesses expecting these to be refunded when Darwin had recovered its costs. On 19 April 2024 Darwin sent a letter to the roofing company asking it to provide its insurer's details. It did not receive a response.

At the end of July 2024 Mrs A asked Darwin about the refund. It was only then that Darwin began pursuing the roofing company again. Disappointed with this lack of progress, Mrs A made a complaint. Darwin accepted that it had "*not been proactive in dealing with [the] claim file*" and offered her £75 compensation.

Darwin then made further attempts to contact the roofing company and Mrs A provided further information and evidence to corroborate what had happened, including video footage which captured two individuals retrieving the tiles after impact with the car. When it hadn't managed to get in contact with the roofing company by October 2024, Darwin decided that the prospects of recovery were too low to warrant instructing solicitors, and it abandoned recovery action. It wrote to Mrs A:

"Despite our efforts, we have been unable to recover our costs from the other party involved in the incident, and therefore this claim will show against your policy".

Mrs A then referred her complaint to this service. Darwin told us it had reviewed everything, but it could not identify the roofing company's public liability insurer, could not recover its claim costs, and felt the £75 it had paid in recognition of the initial delay to its recovery attempts was fair.

Our Investigator agreed with Darwin that it didn't need to take any further action. She pointed out that the policy entitled Darwin to "*take over and carry out the negotiation, defence or settlement of any claim in your name, or in the name of any other person covered by this policy*", and said it was up to Darwin to decide whether it wanted to pursue third parties (for example, via the courts). She also thought that after the initial delay Darwin had made reasonable efforts to recover its costs and had acted fairly in recording this as a 'fault' claim.

And she said the compensation amount offered, £75, was fair and reasonable. She didn't think further recovery action on Darwin's part would likely have changed the outcome.

Mrs A didn't accept the Investigator's view and is adamant Darwin could, and should, have recovered its costs from a third party. So, the complaint has been passed to me to decide.

Settlement offer

Having conducted an initial review of the evidence, whilst I said it's not clear that the outcome would have been significantly different if Darwin had acted differently, I thought that Darwin had missed some opportunities to recover its costs, and could have done more to explain its decision to Mrs A. So, I asked Darwin to consider increasing its offer of compensation in an effort to resolve things informally. Darwin reflected on what I said about its recovery efforts and offered to increase its compensation payment from £75 to £300.

Mrs A didn't accept this. Mr A, on her behalf, said Darwin had been "*unfaithful*", and had chosen not to pursue "*multiple avenues*" to recover its costs. He remains unhappy that they, as policyholders, bear the consequences of what happened. He said whilst he's interested in resolving this matter, he's looking for a refund of the excesses paid, a review of the renewal premium paid in September 2024, and more than £700 to reflect the "*time, energy, monies and discomfort, physical & emotional*", caused to them by Darwin through its handling of this claim.

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 broadly in agreement with the Investigator's findings. Ultimately, Darwin was entitled to decide how to settle this claim within the terms of the policy and, although I think there is more Darwin could have done here to pursue recovery from the roofing company in those first three months after the incident, I think it's unlikely that earlier, more thorough, recovery action on Darwin's part would have resulted in recovering the costs from another party. The roofing company may have always been uncontactable or even uninsured, and I note that it has since gone out of business. And other potential third parties, such as the owner of the driveway where the car was parked, are unlikely to have accepted liability readily in the unusual circumstances.

Mrs A is of the view that establishing liability (and recovering costs) was always possible and likely, not least because the roofing company's initial reaction was to accept it had caused the damage and offer to pay for repairs. But a third-party's apology for damage and/or admission of fault in the immediate aftermath of an incident is not conclusive. The fact that the roofing company didn't engage with further correspondence about the incident suggests its position changed, and it's far from certain that Mr A's suggestion of writing to the company's director or secretary would have elicited any response.

I appreciate that what happened to Mrs A's car was unexpected and unfortunate, Darwin's decision to record this as a 'fault' claim has caused much distress, and there has been a financial impact on Mrs A. But the car has been repaired and the insurer, Darwin, is under no obligation to pursue third parties to establish liability and recover the costs of those repairs no matter what. They are allowed to make pragmatic and commercial decisions, and to think about the prospects of success and whether the cost of litigation outweighs the claim value. And even in cases where claim costs are recovered, it's not unusual for insurers to still take these into account for premium setting.

Overall, I don't think Darwin's decision to stop recovery action was unreasonable – it was made after relevant evidence had been considered (including video footage) and after it was clear the roofing company was not engaging.

In recognition of the fact that it didn't do enough initially, Darwin offered Mrs A £75 compensation. It's since offered to increase this to £300 to better reflect the distress caused by its failure to make more concerted recovery efforts closer to the time of the incident. Mr A doesn't think this is sufficient and is looking for a change in the way the claim has been recorded, along with refunds of the excesses paid and any premium increase attributable to the loss of Mrs A's no claims discount.

But as I don't agree that a different outcome was more likely than not going to be achieved here, I can't recommend what Mr A wants. I think, taking everything into account, that Darwin's offer of £300 is fair.

Putting things right

Darwin has already made an offer to pay £300 to settle the complaint and I think this offer is fair in all the circumstances.

My final decision

My final decision is that U K Insurance Limited trading as Darwin should pay Mrs A an amount to bring the total compensation paid under this complaint up to £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 19 June 2025.

Beth Wilcox
Ombudsman