

The complaint

Mr M complains that Advantage Insurance Company Limited rejected a claim on his home contents insurance and cancelled the policy.

Where I refer to Advantage, this includes its agents and claims handlers acting on its behalf.

What happened

Mr M had an insurance policy underwritten by Advantage, which had been taken out in 2020 and renewed in 2021 and 2022.

In October 2022, Mr M called to make a claim for a lost mobile phone claim. The phone belonged to his wife (Mrs M) and she spoke to the call handler to explain that she had lost the phone while on holiday recently. She then said they also wanted to claim for damage to the sofa and carpet in their living room, which had been caused by an iron falling onto the floor.

Mrs M explained that before going on holiday, she was ironing clothes in the living room and dropped the iron which bounced off the sofa and then on to the carpet. This damaged both the carpet and sofa.

Advantage arranged for the claim about the damage caused by the iron to be investigated. The investigation report said Mrs M had said the ironing board collapsed causing the iron to fall and bounce off the sofa onto the carpet, damaging both.

In a later call, Mrs M said:

- Her dog had pulled the power lead, which caused the iron to fall onto the sofa next to where she was standing and bounce onto the carpet under the ironing board.
- She had never said the ironing board collapsed and didn't know why that had been recorded as happening.
- She normally irons in the same place in the living room. She had dropped the iron on a previous occasion and though she had instinctively tried to catch it, it had caused a mark on a different part of the carpet
- She doesn't always iron in exactly the same place as it depends on where others are sitting.

Advantage said in view of the different accounts of what had happened and the damaged areas not being consistent with her accounts, it couldn't agree to settle the claim. It didn't accept that the iron bounced from the sofa causing damage to both the sofa and the carpet in the same incident.

Advantage referred to the fraud clause in the policy terms and said this allowed it to reject the claim and cancel or void the policy. On this basis, it rejected the claim and said the policy would be cancelled from 3 October 2022 (the date of the initial call to make the two claims). As a result, the claim for the lost mobile phone wasn't covered.

In another letter dated the same date, Advantage said it had voided the policy from 1 August

2022 (the date of the most recent renewal), meaning it was treated as if it had never existed, and that it would collect an outstanding balance of £64.92 from Mr M's bank card.

Mr M complained but Advantage didn't change its decision so he referred the complaint to this Service.

Our investigator said it wasn't reasonable to cancel the policy; there was evidence of damage and Advantage hadn't shown the claim was fraudulent. She agreed it hadn't been given enough evidence to validate the claim concerning the iron so it was fair to reject that claim, but if Mrs M could provide further details Advantage could reconsider.

She asked Advantage to

- remove any records of a fraudulent claim from internal or external records;
- reinstate the policy and look into the mobile phone claim in line with the remaining terms and conditions; and
- refund any voidance fees Mr M incurred as a result of the policy being voided.

Advantage hasn't accepted these recommendations and has requested an ombudsman's decision. It says:

- the policy was cancelled, not voided;
- the cancellation is in line with the policy terms, which allow it to cancel where the policyholder makes or tries to make a fraudulent claim or "*where your insurer...reasonably suspects fraud*";
- because it suspects fraud the policy has been cancelled from the date the carpet burn occurred meaning any claims after that would not be covered, which is fair.

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.

The policy terms include a 'Fraud' clause. This says where the policyholder (or someone acting on their behalf) makes a fraudulent claim, provides false information or documents, or deliberately misleads the insurer, then depending on the circumstances Advantage

"...may be entitled to refuse to pay the claim to which the alleged fraud or falsehood relates. They may also be entitled to cancel or avoid the policy without refunding your premium"

When Advantage wrote to Mr M rejecting the claim and cancelling the policy, it referred to this term.

There's also a policy term that sets out Advantage's right to cancel the policy, which says it may

"...cancel this policy without giving you notice and without refunding your premium if you:

- *Make or try to make a fraudulent claim under this policy or where your insurer or us reasonably suspects fraud..."*

(In this definition, "Us" refers to the firm that sold the policy to Mr M.)

When considering this complaint, the starting point is the policy terms and conditions as they set out the terms of the insurance contract. But I also need to take into account any relevant law, together with regulators' rules, guidance and standards.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim.

The relevant law is the Insurance Act 2015, which says:

- (1) If the insured makes a fraudulent claim under a contract of insurance—
- a) the insurer is not liable to pay the claim,
 - b) the insurer may recover from the insured any sums paid by the insurer to the insured in respect of the claim, and
 - c) in addition, the insurer may by notice to the insured treat the contract as having been terminated with effect from the time of the fraudulent act.

I need to decide what is more likely to have happened on the balance of probabilities, based on the available evidence. As Advantage says the policy was cancelled due to fraud, the test is whether it is more likely than not that Mr M committed fraud. The remedies set out in the Insurance Act apply where there has been a fraudulent claim. It isn't enough for an insurer to say certain things make fraud a possibility – it needs to provide evidence that it's more likely than not the consumer has made a fraudulent claim.

I've looked at carefully at the grounds on which Advantage made its decision and the evidence it relied on. Having done so, I don't think its decision was fair.

Advantage says the accounts given were inconsistent. A key point seems to be that its investigation report noted Mrs M as saying the ironing board collapsed, and that's different from the accounts given in the phone calls.

Mrs M hasn't mentioned the ironing board collapsing in any of the phone calls, or in any accounts given to this Service. There is evidence in the photos of damage caused by an iron on the carpet, and this is consistent with it happening due to Mrs M ironing in front of the sofa. I don't think Advantage has shown, on the balance of probabilities, that the claim was fraudulent.

It's also relevant that Advantage wasn't clear about its decision, in particular whether the policy was cancelled or voided. Different letters sent on the same day gave different explanations. And it has referred to different policy terms at different times. It seems to me Advantage wasn't clear what the basis of its decision was.

In response to the investigator's view Advantage has confirmed it has cancelled the policy, not voided it. It is relying on the clause that allows it to cancel where it "*reasonably suspects fraud*".

I don't consider that fair. The Insurance Act sets out the remedies that may be applied where a claim is fraudulent and Advantage needs to show, on the balance of probabilities, the claim was fraudulent. It wouldn't be fair to cancel the policy just because it suspects something might be fraudulent.

I appreciate that Advantage says it doesn't think the claim happened in the way Mr M says it did. This doesn't necessarily mean there is fraud, but it might be a valid reason for not paying a claim. A policyholder does need to show they have a valid claim under the policy. Mrs M hasn't clarified exactly she was standing or explained in full detail how the damage happened. Advantage could say it didn't have enough information to validate the claim. If Mrs M is able to confirm these details, Advantage can consider whether it then has enough information to validate the claim. Without that information it may be reasonable to reject it – but that's not the same as proving the claim was fraudulent.

For these reasons I agree with the investigator that Advantage should not have treated this as a fraudulent claim and to put things right it should:

- remove any records of a fraudulent claim from all internal and external records and remove any fraud markers it may have recorded;
- reinstate the policy and assess the mobile phone claim in line with the remaining terms and conditions (including any policy limits, excesses and premiums due); and
- refund any voidance fees Mr M incurred as a result of the policy being voided or cancelled.

My final decision

I uphold the complaint and direct Advantage Insurance Company Limited to take the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 November 2023.

Peter Whiteley
Ombudsman