

## The complaint

Mr M complains about how Advantage Insurance Company Limited (Advantage) dealt with a claim under his home contents insurance policy.

Advantage use agents to administer the policy and to assess claims. References to Advantage include these agents.

## What happened

In January 2023 Mr M was driving home from an equestrian centre. After a while Mr M noticed being flashed by oncoming traffic. Mr M pulled over and found the tailgate of his vehicle was open. Having checked the boot of his vehicle, Mr M realised his partner's bag was no longer in the vehicle as it had fallen out of the boot while the tailgate was open, and he was driving along. The bag contained an engagement ring, a further ring, a watch, purse and other contents. Mr M went back over the route he'd travelled but couldn't find the bag.

Mr M contacted Advantage to tell them about the incident and loss of the bag and its contents. He provided a list of the items lost, with receipts where available. Advantage appointed a contents specialist (S) to assess the claim. Following S's report, Advantage asked for further information about the circumstances of the incident, including details of the journey during which the loss occurred, what Mr M had done to try and find the missing bag. Mr M responded and there was a subsequent call with Advantage to discuss the claim.

However, they didn't accept Mr M's version of what had happened and declined the claim. Advantage said Mr M told them the vehicle tailgate had a proximity sensor which allowed the tailgate to open (by accident) when someone was behind the tailgate. However, Advantage said Mr M's vehicle had a horse trailer attached at the time of the incident, so it wasn't likely the tailgate could have opened from someone walking behind the tailgate. Advantage said Mr M also told them the vehicle didn't have any warning to tell the driver the tailgate was open while the vehicle was being driven – but their research on the make, model and age of the vehicle indicated it did have a warning for an open tailgate.

Based on these points, Advantage didn't accept the bag and contents had been lost in the way described by Mr M and he hadn't provided a plausible explanation for the tailgate opening. Nor did they think it plausible an open tailgate wouldn't have been noticed while the vehicle was being driven for the ten minutes Mr M said he was driving before pulling over and finding the tailgate open, due to the noise that would have been generated and the vehicle's automated warnings of an open tailgate.

Unhappy at the decline of his claim, Mr M complained to Advantage. He challenged the grounds Advantage gave for declining the claim, including the specific points made by Advantage in their letter declining the claim.

Advantage didn't uphold the complaint. In their final response they referred to their letter of May 2023 declining the claim and said, having reviewed the letter, they wouldn't change their decision. The principal reason for this was Mr M had provided information after making his claim that didn't correlate with the information he originally provided.

Mr M then complained to this Service, unhappy at Advantage declining his claim. He'd been affected financially by having to try and replace the lost items, which had significant sentimental value for him and his partner. He'd provided several reasons why the tailgate could have been open in the way he described and why he and his partner wouldn't have known it was open. He wanted Advantage to accept his claim in full.

Our investigator initially didn't uphold the complaint, concluding Mr M hadn't done enough to show he had a valid claim and Advantage had acted in line with the terms of the policy. The investigator thought it likely Mr M would have had some form of warning the tailgate was open, even if visible (on the dashboard) rather than audible. On the balance of probabilities, he thought Advantage had valid concerns about the claim and Mr M hadn't done enough to dispel those concerns. So, he wouldn't be asking Advantage to do anything more.

Mr M disagreed with the investigator's initial view, providing video evidence of his vehicle he said supported his case and the circumstances of the incident and claim. Specifically, there was no audible warning if the tailgate was open when the vehicle was being driven and that the tailgate could be opened by a proximity sensor picking up a 'gesture' at the side of the vehicle (not just behind the tailgate).

Having considered Mr M's additional evidence, the investigator issued a second view upholding the complaint, concluding Advantage's reasons for declining the claim weren't fair or sufficient. He thought Mr M's additional evidence showed his version of events was plausible, so Advantage should reconsider the claim in line with the remaining terms and conditions of the policy. If the claim was settled, Advantage should also add interest.

As Advantage didn't respond to the investigator's second view, the complaint has been passed to me to review.

### **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 Advantage have acted fairly towards Mr M.

The main element of Mr M's complaint is that Advantage have acted unfairly by not accepting his claim, disputing his version of events that led to the loss of his partner's bag and its contents. Mr M says the bag fell out of the boot of his vehicle while travelling, as the tailgate was open - which he didn't notice until flashed by oncoming traffic. Advantage say the information provided by Mr M after his claim doesn't correlate with the information provided originally. They also challenge Mr M's version of events could have happened in the way he described.

In considering both views, I've carefully considered all the evidence and information provided both by Mr M and by Advantage, including that provided by Mr M to Advantage to support his claim. I've also considered the further video evidence provided by Mr M in response to the investigator's initial view (which the investigator provided to Advantage). In doing so, I should note that my role isn't to assess the merits or otherwise of Mr M's claim – it's to decide whether Advantage have acted fairly towards Mr M. Having done so, I've concluded they haven't acted fairly and reasonably. I'll set out why I've come to this conclusion.

I've considered the circumstances of the incident and loss described by Mr M and whether they are plausible. In doing so, I've also considered the concerns (the grounds) raised by Advantage about the incident.

From what I've seen, the tailgate on the make and model of Mr M's vehicle does have a proximity sensor that opens the tailgate when someone is close to the tailgate. Ordinarily, this would operate when someone approaches the rear of the vehicle, typically with the intention of opening the tailgate to place items in or take them out. Looking at one of the videos provided by Mr M of his vehicle, it shows the proximity sensor opening the tailgate when someone walks past the side of the vehicle around the rear. This indicates the tailgate can be opened by the proximity sensor other than at the rear of the vehicle behind the tailgate. So, I've concluded Advantage's point the horse box would have precluded opening of the tailgate isn't the case.

A second point is whether Mr M should have been alerted to the tailgate being open while driving, through some form of alarm or other warning. Looking at another of the videos provided by Mr M, there is a visual alert through a warning signal on the car dashboard – but not an audible alarm, bleep or other signal. A dashboard light is less likely to be noticed than an audible alarm or sound.

A third point from Advantage is that the tailgate being open would have generated noise which Mr M would have noticed and then realised it was open. Mr M has said this wasn't the case, as his partner had the passenger window open, which would have itself made noise and obscure any noise coming from the open tailgate. Given the proximity of the passenger window to Mr M and his partner, I think this is plausible.

Advantage also say Mr M should have been able to locate the bag had it fallen out of the open tailgate, when he retraced the journey. Looking at Advantage's case notes, there's an indication from Mr M of the most likely points on the journey the bag is likely to have fallen from the boot, which is also plausible.

I've also noted that Advantage have had the opportunity to challenge the further evidence from Mr M, including the videos, but haven't done so.

I've also considered the general principle that when a policyholder makes a claim, the onus is on them to show there has been loss or damage under one of the insured perils. Taking all the above conclusions into account, on the balance of probabilities in the specific circumstances of the case, I've concluded Mr M has done enough to do this. And Advantage haven't shown reasonable grounds to show that he hasn't.

So, I've concluded Advantage haven't acted fairly and reasonably in declining Mr M's claim on the grounds they've set out.

Having concluded this, I've considered what Advantage need to do to put things right. As I said earlier, it isn't the role of this Service to assess claims. So, Advantage should re-assess Mr M's claim in accordance with the remaining terms and conditions of the policy. If they decide to settle the claim, they should also add interest, at a rate of 8% simple, from the date they declined Mr M's claim to the date they settle the claim.

### **My final decision**

For the reasons set out above, it's my final decision to uphold Mr M's complaint. I require Advantage Insurance Company Limited to:

- re-assess Mr M's claim in accordance with the remaining terms and conditions of the policy.

If they decide to settle the claim, they should also add interest, as a rate of 8% simple, from the date they declined Mr M's claim to the date they settle the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 June 2024.

Paul King  
**Ombudsman**