

The complaint

Mr A and Mrs K have complained about their motor insurance broker, Hyperformance Ltd. They believe it gave their insurer incorrect information, which caused their insurer to avoid their policy (treat it as though it had never existed) and, by association, decline their claim.

What happened

In November 2020 Mr A was arranging a new insurance policy. He did a search online but had to call Hyperformance to complete the application. The application was then completed over a series of calls. Both online and during the conversation he had with Hyperformance, Mr A said he was a self-employed taxi driver.

In March 2021 Mr A, whilst driving his car, was involved in an accident with another driver. The accident was Mr A's fault. He made a claim and during the insurer's validation enquiries Mr A told it he wasn't working and hadn't been for some time. It transpired he hadn't been working when the policy was arranged. Mr A said he had told Hyperformance that whilst he is a taxi driver who works on a self-employed basis, he wasn't taking on work at the time the policy was arranged (due to the pandemic). The insurer felt Mr A was unemployed, and said if it had been told that, when the policy was arranged, it wouldn't have offered cover. Despite Mr A's overtures to it, it wasn't minded to change its view that either Mr A or the broker working for him, had misrepresented the position. So it said it would be avoiding his cover and wouldn't be dealing with his claim, or returning any premiums to him.

Mr A felt Hyperformance had failed to listen to him when he called it to arrange cover, which had resulted in it giving incorrect information to the insurer. So he complained to Hyperformance. Hyperformance said that Mr A, during the application process, had twice given his occupation as a self-employed taxi driver. It didn't think it had done anything wrong. Mr A and Mrs K complained to this service.

Our investigator felt that during the part of the application process that took place over the phone, when the application was nearly completed, just prior to payment being taken, Hyperformance had failed to check the application details through with Mr A. That was even though Mr A had specifically asked it to do so. She thought this failure had likely caused Hyperformance to give incorrect information to the insurer. She said that as Mr A and Mrs K had, effectively, had no cover, Hyperformance should return to them the premium paid.

Mr A and Mrs K indicated they were happy with the outcome. Hyperformance didn't respond. Because an agreement between the parties wasn't reached the complaint was passed to me for consideration. I felt Hyperformance did fail Mr A and Mrs K during the calls Mr A had with it when arranging insurance. But I felt its failure occurred earlier than that identified by our investigator. I also felt Hyperformance needed to do more than that suggested by our investigator to put things right. So I issued a provisional decision (my findings from which are copied in the section below setting out what I've decided and why).

Mr A and Mrs K indicated they were satisfied with my findings, they said they had nothing to add. Hyperformance said it disagreed with them. In summary it disputed the conclusions I had reached about its failures during the call.

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 said provisionally:

"I note that Mr A has told us he is self-employed as a taxi driver. Mr A has explained – and I have no reason to disbelieve him – that he works on a self-employed basis and since 2017 has only worked part-time hours. But that when the pandemic began, he stepped back to protect himself, so he wasn't working any hours at all. I've then thought about that explanation when considering the application process Mr A went through, particularly in respect of the calls he had with Hyperformance.

When Mr A called Hyperformance he had already completed part of the policy application online, where he had been asked, I think, to state his occupation status, and then give details of his type of work. Mr A said he was self-employed as a taxi driver. Given the explanation I've set out above, I don't think Mr A including that detail online was untrue.

The detail about Mr A being a self-employed taxi driver was then seen by Hyperformance when Mr A called it. Listening to the relevant call I note that Hyperformance's advisor is talking at speed. The advisor comes over as ticking off points from the application in a way that suggests he is not expecting to encounter any errors or be given any contradictory information from Mr A. So much so that my impression, particularly when it comes to the discussion about Mr A's employment, is that the advisor is not really listening to Mr A. At a crucial point when Mr A is providing clarification about the type of taxi-driving he does, the advisor has already moved on and is asking Mr A to clarify that he is self-employed. But it appears to me that, at this point, Mr A is still expanding on the previous issue and in doing so says the name of a transport organisation he does work for on a self-employed basis. In my view he doesn't actually answer the advisor's request to confirm he is "self-employed". As soon as Mr A finishes giving the name of the transport organisation, the advisor moves on to the next issue. The advisor either doesn't realise that Mr A didn't confirm he was self-employed, or assumes that Mr A giving the name of the transport company equated to an agreement from Mr A that he is self-employed. The conversation moved on from there and, a minute or so later, during the same call, Mr A says to the advisor that he doesn't currently have a works car due to the pandemic. He says this whilst adding that the car he is insuring is his own personal car and not used for work. I can only think the advisor wasn't really paying attention to what Mr A said at this time – otherwise I'd have thought he'd have wanted to know how a self-employed taxi-driver, currently working, was doing his job without either, a 'work' car or using his own car, for transporting passengers. Overall, I think the advisor didn't listen to Mr A, and that if he had, and then taken the time to talk to Mr A about his circumstances a little, the correct detail, as the insurer wanted to know it, would have come to light.

It was always up to Mr A to give correct information to Hyperformance. And I think, given what he was asked and how the conversation progressed, Mr A did that. After all, a self-employed person can choose how many hours they wish to work, and at the time the policy was arranged Mr A had simply chosen not to work any hours. So I can understand that, in his own mind, Mr A was/is still a self-employed taxi driver. And it wouldn't have taken much, other than a little bit of attention being paid, followed by a quick probing question, for Hyperformance's advisor to find out that Mr A wasn't working at all. That key information could then have been used to complete his and Mrs K's insurance application. I don't believe it's unreasonable to think, in the circumstances here, that is what Hyperformance should have done. And that its failure to do so left Mr A and Mrs K without cover at a crucial time."

In replying to my provisional findings, Hyperformance said it accepts that in the beginning of the call the advisor is speaking quickly, but then they slow down and are clearly paying attention to Mr A. And a request for clarification on the number of miles is asked for – so Hyperformance thinks it's unfair to say the advisor was just checking things off. Hyperformance also points out that the advisor repeats the name of the transport organisation back to Mr A – so it feels the advisor was listening. It set out a transcript of the two sections of the call I had referred to. And it explained that it has a duty to minimise data, meaning it's only allowed to ask about and record material facts pertinent to the cover in question.

Hyperformance went on to argue that if Mr A was being truthful about being self-employed, then the insurer's act of avoidance should be challenged. And, it said, it thinks if Mr A was actually receiving benefits then he didn't clearly represent his position when arranging the cover. For example, it feels that when he said he wasn't using his car for work, he should have volunteered that he wasn't working. Hyperformance said it has no liability to make assumptions that detail is or might be missing from a policyholder's application, or to question the validity of a reasonable response. That said, it does train its advisors to ask follow up questions where such is needed for the purpose of clarity. But it didn't think any clarification was needed here, as Mr A had said, in writing and verbally, that he was a self-employed taxi driver, and it must be careful not to be seen to "*interrogate*" customers.

I understand Hyperformance has a different take to me on the way the call progressed and what its advisor should have done. I note the transcript it has set out. But for me the transcript doesn't properly capture the speed and context of the conversation. Only listening to the call allows one to fully understand, and thereby assess, how it was handled and if a failure occurred. There may be times where the advisor slows down, and he does question the mileage given. I also accept that the advisor clearly heard Mr A speak the name of the transport company. But I'm still not persuaded that means the advisor was really listening to Mr A at that particular point. If he'd really been listening I think he'd have noted that Mr A speaking that name was not in answer to the question he had just asked about whether Mr A was self-employed.

As I said provisionally, Mr A should always have given correct information. And I accept that as an intermediary Hyperformance can take detail given to it at face value – it isn't meant to assume detail given is wrong or seek to verify it. But, to pick up on Hyperformance's own comment in reply, it should be asking follow up questions where such is needed for clarity. Here, as I said provisionally, Mr A had said he was a taxi-driver, but that he wasn't using his personal car for work – *and nor did he have a work car*. I can't understand why Hyperformance thinks that didn't need clarifying as without a car he couldn't be working and the insurer would want to know if he wasn't working. And whilst Mr A likely didn't understand the importance of not working any hours whilst still viewing himself as self-employed, Hyperformance did.

I said provisionally I thought Hyperformance failed Mr A, and I remain of that view. In short, in my view, Hyperformance failed Mr A because it didn't pick up on a point in respect of a material fact, pertinent to the cover in question, which reasonably needed simple clarification. Its failure directly led to the insurer avoiding Mr A and Mrs K's policy, and it reasonably has to compensate them for that, including for the distress and inconvenience they were caused.

Putting things right

I note Mr A accepted fault for the accident he was involved in and that the insurer has dealt with the claim from the other driver. So it might be that the insurer may ask Mr A and Mrs K

to pay it back its claim settlement costs. If it does then I think Hyperformance reasonably needs to cover the costs the insurer seeks from Mr A and Mrs K. That's because I think the insurer only voided the policy because of Hyperformance's mistakes, so I don't think it would be fair for Mr A and Mrs K to be left out of pocket due to any recovery action it chooses to take against them. So if Mr A and Mrs K do receive a demand for payment from their insurer, they should forward this to Hyperformance for payment. It should pay the sum required without delay. If they have to pay it, or any part of it, to avoid costs because Hyperformance doesn't act quickly enough to settle the amount, it will have to reimburse them what they pay to the insurer, plus interest* from the date they make the payment until settlement is made.

If, as a result of the accident, Mr A and Mrs K have damage to their car that they wish to be repaired, they should submit repair invoices to Hyperformance for it to consider so it can make a reasonable payment to them to cover the cost of repairs necessary to fix the accident damage.

However, I note Mr A and Mrs K have previously indicated they'd just like to have their premium back. I will leave it as an option for them to have Hyperformance to do this. But they should understand that if they choose for Hyperformance to refund their premium, it will be like they weren't insured. So the redress I've set out above, in respect of the insurer recovering costs and repairing the damage to their own car, will not apply. They can have their premium back **or** have Hyperformance, effectively, take on liability for the claim (theirs and the other driver's). I can't reasonably require it to both pay to them the cost of the policy **and** be liable, instead of the insurer, for the cover the policy gives.

If Mr A and Mrs K, having considered what I've said in the preceding paragraph, want Hyperformance to refund their premium, it should do this, plus interest*. So Hyperformance, if this option is chosen, will have to refund the total premium amount, plus interest from the date of the avoidance until settlement is made. From the premium amount it will not be able to keep any costs or charges which, under its normal cancellation rules, it might usually be able to withhold.

Hyperformance can't amend the record of the avoidance as it is not the insurer. So it should write a letter to Mr A and Mrs K, which they can use when applying for future cover. The letter will explain that the policy avoidance is not their fault. And if the policy Mr A and Mr K currently have is more expensive (assuming they declared the avoidance when applying for it) than the one which was avoided, they should send proof of the cost and what they declared to the new insurer to Hyperformance and it will need to reimburse to them the difference in price, plus interest* from the date the extra costs were paid until settlement is made.

I can see that this situation has been very frustrating for Mr A and Mrs K. They had an accident for which they expected to be covered, but found out that wasn't to be. I'm satisfied that £250 is fair and reasonable compensation in the circumstances.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. If Hyperformance considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr A and Mrs K, it should tell them how much it's taken off. It should also give Mr A and Mrs K a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold this complaint. I require Hyperformance Ltd to provide the redress set out above at *"putting things right"*.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs K to accept or reject my decision before 16 March 2022.

Fiona Robinson

Ombudsman