

The complaint

Ms T complains about the quality of a car she has been financing through an agreement with Hyundai Capital UK Limited (Hyundai).

What happened

I issued a provisional decision on this complaint last month. An extract from that provisional decision is set out below.

Ms S took receipt of a used car in June 2023. She financed the deal through a conditional sale agreement with Hyundai. At the point of supply the car had already completed 66,981 miles and was about seven years old.

In May 2024, the engine failed, and subsequent inspections confirmed that a con rod had broken through the engine casing and the turbo was seized. The warranty company agreed to pay for a refurbished engine but as one wasn't available, they wouldn't pay the extra £3,105.50 to rebuild one. Ms S complained to Hyundai, but they rejected her complaint explaining that they hadn't been provided with sufficient evidence to suggest the fault was present or developing when they had supplied the car to Ms S.

Ms S referred her complaint to this service and our investigator thought it should be upheld. She explained that it seemed the car had failed because of a lack of servicing before it was supplied to Ms S and that it hadn't been of satisfactory quality.

Hyundai didn't agree with the investigator's opinion. They commissioned an independent inspection that concluded the damage was unlikely to have been present when the car was supplied but when that didn't persuade our investigator to change her mind, they asked for a final decision by an ombudsman.

What I've provisionally 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 know it will disappoint Ms S, but I'm not expecting to uphold this complaint. I'll explain why. Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Ms S acquired her car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Hyundai, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. It says that when we consider if a car has been of satisfactory quality, we should consider whether it has been durable.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Ms S, and the car's service record. The car here was seven years old and had already completed about 66,981 miles. The advertisement for the car didn't list any service history.

An old car with a high mileage will not be expected to be as good as a newer car with a low mileage, but it should still be fit for use on the road, in a condition that reflects its age and price. Similarly, a car without a full-service record would still be expected to be fit for the road but as such a car would have experienced more wear and tear than a fully serviced car, I think a reasonable person would expect it to experience problems as a result of that additional wear and tear, more rapidly than would otherwise be the case.

There's no dispute that there is a fault with this car. The reports from the dealership explain that there's a hole in the engine as a con rod has been ejected. The turbo has also seized. The experts agree that the fault has occurred due to a lack of lubrication and that it's likely the lack of lubrication was due to the car not being serviced properly before Ms S took receipt of it.

I've been provided with a copy of the advertisement for the car and that doesn't show that the car was advertised with any preexisting service history. So, I think it's reasonable to suggest Ms S should have been aware of that.

The car failed after Ms S had been able to cover almost an additional 16,000 miles in it and after she'd been in possession of the car for about eleven months. I've considered whether the car could, therefore, be considered to have been durable and I think it could. While con rods, their bearings and turbos may be expected to last considerably longer on a properly serviced car, this car hadn't been serviced properly. It was supposed to have had seven services before it was supplied to Ms S but had only had one, just before it was supplied to her. In those circumstances oil will have solidified from not being changed regularly and the car will not have received adequate protection from the wear imposed by mechanical movement. I think, therefore, that a failure of this kind could have been expected on a car that had by that time, covered about 82,000 miles and was about eight years old.

While I think the damage created by the lack of servicing would have been present and developing when the car was supplied to Ms S, I think the car was likely to have been in the condition expected of a car that hadn't been serviced for seven years and I don't, therefore, think it would be fair to suggest the car was of unsatisfactory quality when supplied.

It's for those reasons that I don't think Hyundai have been unreasonable here and I'm not expecting to ask them to take any action.

My provisional decision

For the reasons I've given above, I'm not expecting to uphold this complaint.

The parties' responses to my provisional decision

Hyundai didn't respond but Ms S did. She was unsettled/upset that I'd referred to her as Ms S in the provisional decision and she disagreed with it, she explained:

"1) In the final paragraph on page 2, Mr McMahon states that "it was supposed to have had seven services before it was supplied to Ms S (typo?) but had only one, just before it was supplied to her." He also goes on to say in paragraph 2 of page 3 that "I think the car was likely to have been in the condition expected of a car that hadn't been serviced for seven years". Evidence provided by myself shows that the car was serviced at 21,136 miles. It was then serviced again at 66,891 miles. Additionally, a partial service history, meaning one or more records are missing, but there is evidence of at least once service documented (as is here), can occur for various reasons, including lost or misplaced paperwork, so that is not to say that further service inspections did not take place. The car was in a very good condition when bought, with no scratches on the exterior, and one would expect that a vehicle that was in a good condition on the outside, and thus cared for, would also have been looked after within its mechanics.

2) The law states that you would expect a car to be of satisfactory quality, taking into account the age, mileage and price paid for the vehicle. I paid £10,899, which was the average price for a Hyundai Tucson in May 2023. I did not pay a reduced price, which would reflect a poor service history and the expectation that it might suffer complete engine failure within one year. Any car that is bought within the UK, and therefore is protected under the Consumer Rights Act 2015, should be roadworthy, reliable, and of a quality consistent with its age and price paid. Again, I paid the average price for that specific make and model at the time of sale, and Hyundai Worcester, who are the experts, set the price in line with the average price for that make and model. I attach a copy of another advert to show the average price.

3) Furthermore, the simple fact that Hyundai Worcester advertised the car, knowing it had a part service history, set the car at the average price, meaning they expected an average person would purchase the vehicle in that condition. Therefore, the average person would not expect the vehicle to suffer complete engine failure within one year of purchase. Hyundai Worcester are the experts and the average person would buy the car in good faith.

4) A reasonable person, who does not understand the inner workings of an engine, should not be held accountable for complete engine failure within one year of purchasing a £10,899 car. The provisional decision suggests that a reasonable person should purchase a car for the average market price, and be expected to then instruct a garage to complete a very comprehensive inspection of the car, which includes taking apart the engine. If I had, for example, purchased the vehicle for a much lower price, such as £8,000, from a non-reputable garage then the reasonable person would expect the cheaper product may be priced to reflect that it may not be as durable as the more expensive car, considering the average price was £10-£11k. I purchased the vehicle from a Hyundai Dealership with the description of "Buy your next new car with confidence....giving you peace of mind and transparency that you are dealing directly with a trusted company". A reasonable person would buy a cheaper car, not the average price, if consumers were not somewhat protected from incidents such as this.

5) To suggest that a failure of this kind could have been expected seems grossly unfair, when the law is supposed to protect buyers from unfair treatment. There was no warning that there was anything whatsoever wrong with the engine, for example an engine management light or low oil indicator. There was also no problem with engine power. A noise began in the engine to indicate that something was wrong and I

immediately travelled to the hard shoulder on the M5. Once out of the vehicle, I could see that oil was pouring out of my car onto the M5 and there was a trail from where I had travelled from the outside lane. I could have been seriously injured. I have no expert knowledge of a car engine, so to suggest that I should have known it could have experienced complete engine failure because of a partial service history, does not seem fair and what the law is intended for.

6) The advert that I, myself, produced, after contacting Auto Trader was not a full copy of the original advert. I did state this in my email when providing you with the copy of the expired advert. To simply state that "The advertisement for the car didn't list any service history" is not a true representation of the evidence provided, and infers that it did not have a service history. The copy of the expired advert that was produced did not contain any information in the section related to service history, since it was a historic advert. It also lists the previous owners as '0' within the same section, which we know is not true. It is unfortunate that I do not have the original advert, nor the personalised video that was sent to me by Hyundai Worcester. However, I do not feel that the absence of proof can automatically be assumed that I would have bought a car advertised as not having any service history, as I do not believe I would have considered a vehicle advertised as such.

7) Mr McMahon also states that "an old car with a high mileage will not be expected to be as good as a newer car with low mileage, but should still be fit for use on the road, in a condition that reflects its age and price". The vehicle purchased was only 7 years old, with a mileage of 66,891 and advertised as a 'low mileage car', with the average price of a car in that make and model.

8) He goes on to say that "a car without a full-service record would still be expected to be fit for the road but as such a car would have experienced more wear and tear than a fully serviced car. I think a reasonable person would expect it to experience problems as a result of that additional wear and tear". Wear and tear, from my understanding relates to the natural deterioration due to normal usage and aging and the expected decline in condition, such as minor scuffs to paint, dirt marks on interior, tread depth on tires, and brake pads/discs. Wear and tear does not relate to neglect or improper use of a vehicle. Case DRN-4745906 also states 'I don't think a buyer would expect this car to be in perfect condition - I think they'd probably expect some parts to have suffered a bit of wear and tear. But I think they'd still expect it to be free from anything other than minor faults when it was supplied - and to be able to drive it for a reasonable amount of time without major issues.' I therefore do not accept that the developing fault with the car, which the Ombudsman has stated he accepts, at time of purchase, was something that a reasonable person would have expected it to experience, given the price of £10,899.

9) The provisional decision states that the "damage would have been present and developing when the car was supplied to Ms S". If it was developing, then how was I sold a car of satisfactory quality? The fault was present, when purchased, and I did not pay a price that reflected this. Price is a qualifying factor within the term 'satisfactory quality' as described in the Consumer Rights Act 2015.

10) As per the dealership report, the fault is a result of a con rod being ejected from the engine and through the engine wall. You can expect a well maintained car to last around 300,000 miles, and, in general, a conventional car will last approximately 200,000 miles. A con rod is not part of a service inspection, nor an MOT, since it is expected to last the lifetime of a vehicle.

11) Furthermore, there have been recalls relating to the premature wear of connecting

rod bearings in some 2016 Hyundai Tucson 1.7 CRDi models. These recalls can lead to potential engine damage and in some cases, engine fires.

12) Case number DRN-4471782 has very similar circumstances to my case and yet it was found in the applicants favour.

To summarise, I am a law abiding citizen who bought a car, in good faith, from a reputable dealership. For my employment, I am required to transport children with Social, Emotional and Mental Health needs and therefore require a reliable car. Many people purchase a vehicle with a part service history, and the average person would still expect this to be durable and of a certain quality, considering the price paid. I paid the average price for the Hyundai Tucson 1.7 which had completed 66,891 miles. I believe, the average person (to whom I must be judged against), would have expected a car of that make, model and price to be durable and to not have been developing an issue with the engine, which lead to catastrophic engine failure within one year of purchase”.

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'm very sorry to have referred to Ms T as Ms S. I meant no disrespect when doing so.

I've considered the whole of Ms T's response, but I won't comment on all of it, I'll focus on what I feel is relevant.

I've considered whether Ms T paid an 'average price' for the car, but I don't think she did. I've reviewed valuations and the market value of the car at the point of supply was £11,715. If the car was in a poor condition the valuation data suggests the price would reduce by about £500. Ms T paid £10,899 for the car and that appears to be in line with expectations for a car in a poor condition. So, I don't think it would be fair to suggest that she paid more for the car than could have been expected. Ms T has explained that the car was in “*very good condition when bought, with no scratches on the exterior*” it seems likely to me that in those circumstances it was the inadequate service history that was likely to have meant the car was sold for lower than market value. I see no reason, therefore, to suggest that the price paid meant the car should have been more durable than it was.

I understand that there may have been no warning that anything was wrong with the car when Ms T took receipt of it, but as I've explained I think a car with such a poor service record would have been expected to have suffered more wear and tear than would have been usual for a well serviced model. The wear would have been developing for some time and it's for that reason that I don't think the failure suggested a lack of durability.

While Ms T has explained that there may have been recalls on cars of this make and model for premature con rod bearing wear, I don't think I have sufficient evidence to suggest that Ms T's car was one of those, and I'm not persuaded the fault this car experienced is likely to have been because of a manufacturing fault. The experts agree that the fault has occurred due to a lack of lubrication and that it's likely the lack of lubrication was due to the car not being serviced properly before Ms T took receipt of it.

Ms T has referred me to another complaint our service has considered in which she says there were similar failings and our service found in favour of the consumer. Cases are considered by this service on their own merits. I don't think that case had identical features to the one Ms T has referred to us nor do I think the case gives me cause to reconsider this decision.

Overall, I don't think this car was of unsatisfactory quality and I'm not upholding this complaint.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 20 June 2025.

Phillip McMahon
Ombudsman