

The complaint

Mr R complains about the way SMFL dealt with his claim that a car it supplied to him under a hire purchase agreement wasn't of satisfactory quality.

What happened

Mr R entered into a hire purchase agreement for a vehicle on 29 May 2023. Before collection of the vehicle, an MOT was arranged on 30 May 2023 but it had failed due to the nearside front shock absorbers having a serious fluid leak. The dealership rectified this and the vehicle later passed its MOT on 8 June 2023 and Mr R collected the vehicle. At this time, the vehicle was around ten years old and had travelled around 103,813 miles.

On 1 September 2023, Mr R says the vehicle experienced an intermittent warning light so he had taken it to his preferred garage. Upon inspection, no relevant fault codes were found so he was advised to monitor the issue and return if the issue resurfaced. On 30 October 2023, the light reappeared so he had booked the car in for an inspection on 2 November 2023. On the way to the garage, Mr R heard a loud bang. He managed to drive the vehicle to the garage who confirmed there was a crack on the front differential housing.

In November 2023, Mr R raised a complaint with SMFL who commissioned an independent inspection report to be carried out. This was conducted by Scotia in December 2023, who identified that the vehicle had a front differential failure which required further investigation and repair. The report also suggested that the fault had the characteristics of transmission binding which can be as result of the tyres not being maintained within 2mm of each other based on the manufacturer's guidance. The report stated the front tyres had 4mm of tread remaining with the rear tyres having between 1.5 to 2mm remaining. In Scotia's opinion, they believe this has induced the differential damage. The inspection concluded that it was Mr R's responsibility to maintain the vehicle as per the manufacturer's specifications.

On 20 December 2023, SMFL responded to Mr R's complaint and stated that the independent inspection report concluded that the faults would not have been present or developing at the time of sale. They said it was for Mr R to check the tyre depths and ensure these met the manufacturer's tolerances.

Unhappy with SMFL's response, Mr R referred a complaint to our service to investigate. Following this, Mr R paid for the repairs required on 8 January 2024.

Our investigator considered the evidence presented to our service and concluded that she would've expected Mr R to have been supplied with a vehicle that had satisfactory tyres at the point of supply. Because the investigator wasn't persuaded that this had been the case, she considered the car wasn't of satisfactory quality when supplied and felt SMFL should pay for the total cost of the repairs carried out. Along with this, she recommended SMFL to return the monthly repayment for the period Mr R had no use of the vehicle along with £300 compensation.

SMFL didn't accept the investigator's conclusions and reiterated that it was Mr R's responsibility to maintain the vehicle and regularly check the tyres which he did not do so.

So, as the complaint hasn't been resolved informally, the complaint has been referred to me to decide.

I issued my provisional decision on 21 February 2025, where I set out the following:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

SMFL supplied Mr R with a vehicle under a hire purchase agreement - a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it.

The Consumer Rights Act 2015 (CRA) is of particular relevance to this complaint. One effect of the CRA is that the hire purchase agreement is to be read as including a term that the car would be of satisfactory quality.

Section 9 of the CRA says that the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, other circumstances could be things like the vehicle's history, age and mileage. The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Mr R claims that he was provided with a vehicle that was not of satisfactory quality. I'm aware this vehicle was over ten years old at the point of supply, having covered over 103,000 miles. With this in mind, I think it's fair to say a reasonable person would expect the condition of the vehicle to be markedly less than that of a new car. Acquiring a used vehicle brings with it a greater likelihood of items needing repair or replacement sooner than with a new vehicle. So, in this case, I'd need to be satisfied that the failure of the vehicle was due to something other than problems one might reasonably expect to arise on a car of this age and mileage.

Where information is unclear or facts are in dispute, I've reached my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances. Having considered this, I think Mr R was supplied with a vehicle that was not of satisfactory quality. I'll explain why.

Our investigator noted that there was an advisory on the MOT certificate due to the rear tyres being close to legal limit/worn on edges. The independent inspection report stated that the tyres on the vehicle were outside of the manufacturer's tolerances which has induced the differential damage. Our investigator concluded that as the rear tyres were close to the legal limit and outside of the manufacturer's tolerances, she felt that these should have been replaced prior to Mr R collecting the vehicle. Because they weren't, she deemed the car wasn't of satisfactory quality.

I've carefully considered the contents of the independent inspection report conducted by Scotia. I think it's important to note that Scotia weren't able to fully inspect the vehicle due to its location so it couldn't definitively assess the differential failure. It's now not possible to

conduct a further investigation as the item has been replaced.

At the time of this report, Scotia have confirmed that the front tyres had a 4mm centre tread remaining in December 2023 with the rear tyres having between 1.5-2mm tread remaining. Having inspected the vehicle at roadside, Scotia confirm that the symptoms all have the characteristics of transmission binding. It states that the manufacturer's guidance is that the tyres must be maintained within 2mm of each other to prevent transmission binding. As the tyres weren't within 2mm of each other, Scotia believe this has induced the differential damage. I see no reason not to rely on this information to better understand the reasons why the front differential casing experienced a fault in November 2023.

However, I need to consider whether the fault experienced was present or developing at the point of sale. Having regard for the Scotia report's conclusions about the likely cause of the failure, I think it's probable that the fault Mr R experienced was induced by the fact that the treads on the tyres were not within 2mm of each other. If I'm right about that, I think it's likely the issue Mr R experienced with the front differential was developing at the point of sale and I'll explain why.

The MOT that was carried out on 8 June 2023 highlighted that the rear tyres were close to legal limit. However, there was no mention of the front tyres at the time. At the time of the independent inspection, the tread of the front tyres had a depth of 4mm so I think it's reasonable to say that it would have been more than 4mm at the point of supply considering Mr R travelled over 4,000 miles at the time of the inspection. Unfortunately, I haven't been able to ascertain the exact depth of the tyre treads at the point of the supply but there seems no obvious reason why the respective treads would wear at significantly different rates over just 4,000 miles, and so I consider it more likely than not that the difference between the treads had exceeded 2mm at (and prior to) the point of supply.

Relying on Scotia's report, transmission binding is the stress or torque created in the components of a vehicle when it is placed in four wheel drive and made to turn corners. As Scotia mentioned, the tyres must be maintained within 2mm of each other to prevent transmission binding and as the tyres weren't, this induced the differential damage. I've already mentioned that I'm satisfied, on balance, that the tyres weren't within 2mm at the point of supply. I therefore think the stress caused to the differential was brewing over time and most importantly before the point of supply. As Scotia said "keep driving and something has to give" and eventually the front differential cracked in November 2023, most likely as a result of damage sustained over a period of time, resulting in Mr R having to incur repair costs.

For these reasons, I'm minded to uphold this complaint.

Putting things right

I'm recommending SMFL to pay for some of repair costs Mr R has had to pay.

Mr R replaced all four tyres at the same time as replacing the front differential. I don't think SMFL need to cover the cost of the tyre replacements. I say this as the tyres supplied to Mr R at the time of supply weren't faulty. I accept that the rear tyres were close to legal limit but these weren't illegal nor unroadworthy. I think Mr R would also have been aware of this when the vehicle was collected and the rear tyres would have needed to be replaced sooner or later. Although the depth of the tyre treads weren't within 2mm of each other, I wouldn't have expected all four tyres to be changed prior to Mr R acquiring the vehicle. With this in mind, I think it's only fair SMFL pay for repairing the fault that I think was present or developing at the time of sale - that being with the front differential.

We've shared a copy of the invoice Mr R has paid. The cost of replacement tyres totalled £576 including VAT so I think SMFL can deduct this from the settlement it pays Mr R.

From 2 November 2023 to 8 January 2024, Mr R did not have use of the vehicle under this agreement. A courtesy vehicle wasn't provided so Mr R incurred other costs relating to alternative transport. As Mr R didn't have use of his vehicle, I think it's only fair for SMFL to return the monthly repayments he made during this period adding 8% simple yearly interest on these amounts.

The investigator also recommended £300 for the distress and inconvenience caused to him. Mr R raised his concerns with SMFL shortly after he experienced the issue with his vehicle. Had SMFL paid for the repairs earlier, I think this would have significantly reduced the impact this whole situation has had on him. Mr R has described the financial implications of paying for another vehicle as well as this one. I'm already asking SMFL to repay the monthly payments he's made to it whilst he didn't have use of this vehicle however I don't think this reflects the stress and inconvenience this matter has caused him – having a knock on effect financially with not being able to maintain other essential bills. As a result, I think the award of £300 reflects the distress and inconvenience caused to Mr R.

My provisional decision

Subject to any further comments or submissions I receive from either party, I'm minded to uphold this complaint and direct Specialist Motor Finance Limited to:

- Refund the payments he had made to Specialist Motor Finance Limited between 2 November 2023 and 8 January 2024;*
- Pay 8% simple yearly interest on these monthly repayments from the date of these payments until the date of settlement;*
- Mr R paid a total of £3,981 for repairs. As stated above, Specialist Motor Finance Limited can deduct the cost of replacing all tyres equating to £576. So, it should refund a total sum of £3,405; and*
- Pay Mr R £300 compensation for the distress and inconvenience caused to him.*

Responses to my provisional decision

Mr R responded to my provisional decision accepting my findings. However, he's since experienced further issues with the vehicle. He has notified SMFL of these issues so it is now for SMFL to consider what Mr R has said and respond to him directly. If Mr R remains unhappy with a response to a complaint, he can contact us and we'll be able to confirm if it's a complaint we're able to investigate.

SMFL responded to my findings disagreeing with my provisional findings. It feels I've dismissed Scotia's opinion of when the faults were developing. They reiterated that Scotia's opinion is that the faults wouldn't have been present or developing at the point of sale and instead were due to the tyre treads not being checked regularly. They also questioned why I had referenced Scotia inspected the vehicle on the roadside and didn't think this had any relevance to the overall outcome of the report. SMFL confirmed Scotia were also provided with the information they received from the inspecting garage and took this into consideration when writing their report.

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'd first like to say that I haven't dismissed Scotia's opinions within its report. However, I've also considered all the information and evidence provided to me to reach a decision on what I think is most likely to have happened. My role is to determine if the vehicle supplied to Mr R was of satisfactory quality at the point of supply.

Scotia have said *due to the tyres being outside of the manufacturers wear tolerances, this has induced consequential damage to the transmission*. As Scotia say, due to the tyre treads not being within 2mm of each other, that has caused transmission binding which the expert believes has induced the differential damage. As I said in my provisional decision, I think it's likely the tyre treads weren't within 2mm of each other at the point of supply based on the advisories on the MOT conducted around the same time. That would suggest the progressive deterioration of the front differential is likely to have been brewing for some time, and most importantly before the point of supply, even if the ultimate failure of this part happened after Mr R started using the car. So, based on the evidence I have, I think it's likely the fault with the front differential was developing at the point of sale.

In relation to my comment about Scotia inspecting the vehicle on the roadside - Scotia's expert said the restricted visual roadside inspection confirms the vehicle has a front differential failure that requires further investigation and repair. Further investigative work has not taken place so along with the findings in the report, I've also considered all the other information available to me to ascertain whether I think this fault was present or developing at the point of supply. And as I've explained, I think it's likely the underlying cause of the issue Mr R experienced with the front differential was developing at the point of supply. So, I conclude that the car was not of satisfactory quality when SMFL supplied it to Mr R.

Having considered the further submissions presented to me, I have come to the same overall conclusions as set out in my provisional decision and for the reasons I've set out above.

Putting things right

To settle this complaint, I direct Specialist Motor Finance Limited to:

- Refund the payments he had made to Specialist Motor Finance Limited between 2 November 2023 and 8 January 2024;
- Pay 8% simple yearly interest on these monthly repayments from the date of these payments until the date of settlement;
- Mr R paid a total of £3,981 for repairs. As stated above, Specialist Motor Finance Limited can deduct the cost of replacing all tyres equating to £576. So, it should refund a total sum of £3,405; and
- Pay Mr R £300 compensation for the distress and inconvenience caused to him.

*if Specialist Motor Finance Limited considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr R how much it's taken off. It should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold Mr R's complaint and direct Specialist Motor Finance Limited to settle the complaint in accordance with what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 4 April 2025.

Sameena Ali
Ombudsman