businesscompanion
trading standards law explained

Part 1. Digital Markets, Competition and Consumers Act

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Introduction to the DMCCA

Part 4, Chapter 1 of the Digital Markets, Competition and Consumers Act 2024 (DMCCA) applies to second-hand car dealers, as well as other traders whose business practices may affect consumers.

The DMCCA prohibits traders from engaging in unfair commercial practices in connection with the promotion, sale and supply of products to or from consumers. If you mislead, behave aggressively, or otherwise act unfairly towards consumers, then you may be in breach of the DMCCA and may face criminal or civil enforcement action.

This guidance sets out some examples of the kinds of trading practice or conduct, specific to second-hand vehicle sales, that are likely to be considered unfair under the DMCCA. It also sets out some of the practical steps you can take to help you comply with the law. The examples given do not cover every situation or practice in which a breach of the DMCCA may occur.

The guidance should be read in conjunction with *Unfair Commercial Practices: Guidance on the Protection*

from Unfair Trading Provisions in the Digital Markets, Competition and Consumers Act 2024 (CMA207), which was produced by the Competition and Markets Authority (CMA).

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) included a private right of redress for consumers who have been the victim of misleading actions or aggressive practices. This will be replaced by similar provisions in the DMCCA, but at the time of writing, this part of the CPRs remains in force. See 'Civil claims' below for more information.

Overview of the DMCCA

Part 4, Chapter 1 of the DMCCA prohibits you, as a second-hand car dealer, from engaging in unfair business practices in connection with the promotion, sale and supply of vehicles or other services to consumers.

The DMCCA set out broad rules outlining when business practices are unfair. These fall into six main categories.

1. Misleading actions. Giving false information to, or deceiving, consumers - for example, through false or deceptive advertisements or statements.

2. Misleading omissions. Giving insufficient information to consumers - for example, leaving out or hiding important information.

3. Aggressive practices. Acting aggressively - for example, through sales techniques that use harassment, coercion or undue influence.

4. Contraventions of the requirements of professional diligence (in other words, acting in a way that falls below the level of care and skill that may be expected, taking account of honest market practice and general principles of good faith). This is intended to act as safety net protection for all consumers.

5. Omitting material information from invitations to purchase. The DMCCA requires certain specified information to be included whenever there is an invitation to purchase, unless that information is already apparent (such as the address of the business, when standing in a car dealership).

6. In addition, the DMCCA bans 32 specific practices outright.

For a practice to be unfair under the first five rules above, it must be likely to cause the average consumer to take a transactional decision that they would not have taken otherwise - for example, where they cause the consumer to do one or more of the following:

- view the vehicle when they would not otherwise have done so
- buy the vehicle when they would not otherwise have done so
- buy the vehicle at a higher price or on more disadvantageous terms than they would have otherwise done
- not pursue a legitimate complaint when they would otherwise have done so

A 'transactional decision' means any decision taken by the consumer concerning the purchasing of the product or whether to exercise a contractual right in relation to the product, including decisions not to act. This relates not only to pre-shopping, but also includes after-sales, and it continues for the lifetime of the product.

More information about the legal meaning of 'material information', 'invitation to purchase' and 'transactional decision' can be found in 'Protection from unfair trading (criminal law)'.

In the DMCCA, a 'product' is not just goods, but also digital content and services; therefore, a transactional decision also applies to a service on a motor vehicle.

Unfair business practices can occur:

- before, during or after a transaction between a trader and consumer - for example, in relation to misleading advertisements or failure to honour after-sales service
- further up the supply chain between traders, where the practice has the potential to affect both consumers and traders - for example, where a second-hand car dealer misdescribes a vehicle at an auction and it is likely that the trade buyer will sell the vehicle on to a consumer and/or a consumer may buy it directly at the auction
- where a trader purchases a product from a consumer - for example, where a second-hand car dealer misleads the consumer about some characteristic of a part-exchanged vehicle

Breaches of the DMCCA

If you fail to comply with the DMCCA, you may be in breach of the law. Enforcers (such as the CMA and local Trading Standards services) may take civil enforcement action in respect of any breach of the DMCCA under Part 3 of the DMCCA ("Enforcement of consumer protection law"). There are also a number of criminal offences under the DMCCA.

Giving false information to, or deceiving, consumers (misleading actions)

It is a breach of the DMCCA to give false or misleading information to consumers, or to deceive consumers, where this is likely to cause the average consumer to take a transactional decision that they would not have taken otherwise (section 226: "Misleading actions").

The DMCCA specifies four types of misleading actions:

- providing false or misleading information generally
- an overall presentation that is likely to deceive the average consumer
- creating confusion with competitors' products
- failing to honour firm and verifiable commitments made in a code of conduct

The false information, or deception, relates to one or more pieces of information in a (wide-ranging) list and includes the main factors that consumers are likely to take into account when making decisions relating to products - for example, the main characteristics of the product and the price or the way it is calculated.

The types of false information, or presentational matter, relevant to a transactional decision is intentionally unrestricted; however, it would likely relate to key types of information or matters relevant to the motor trade, including:

- the main characteristics of the product, such as:
    - specification
    - fitness for purpose of the product
    - usage or results to be expected from use of the product
    - accessories for the product
    - the method and date of manufacture or provision of the product
    - results and material features of tests or checks carried out on the product
    - delivery of the product

    - after-sale customer assistance concerning the product
    - handling of complaints about the product
- the nature of the sales process
- any statement or symbol relating to direct or indirect sponsorship or approval of the trader or the product
- the price or the manner in which the price is calculated
- the existence of a specific price advantage
- the need for a service, part, replacement or repair
- the consumer's rights or the risks they may face

An unfair business practice may mislead consumers in different ways:

- through the false information it contains
- through the practice itself
- because its overall presentation is likely to be deceptive

Misleading information may be given verbally, in writing or visually. This could include, for example:

- providing information verbally over the telephone, or in the course of discussions prior to the sale of the vehicle
- in writing:
    - part of the advertising on the vehicle itself
    - in the showroom
    - in a newspaper
    - on a website
    - in an email or text message
    - other types of documentation provided to the prospective buyer
- visually - for example, through the use of pictures of vehicles
- in television or radio advertising

For further information, see the 'Misleading actions' chapter of *Unfair Commercial Practices: Guidance on the Protection from Unfair Trading Provisions in the Digital Markets, Competition and Consumers Act 2024* (CMA207).

> **Examples: misleading actions**
> Misrepresenting the specification or history of the vehicle - for example, by making misleading statements about the service history, any previous accident damage, number of previous owners, the technical specification (such as engine size or MPG), insurance grouping or environmental performance.
>
> Supplying, offering to supply or advertising for sale a clocked vehicle.
>
> Altering, or arranging for the alteration of, the odometer reading.
>
> Advertising a vehicle for sale at one price (for example, on a website or in a newspaper) when the actual sale price of the vehicle is higher.
>
> Falsely claiming that a vehicle history check has been carried out with a vehicle checking service.
>
> Misleading consumers about their statutory or other rights - for example, by using words or statements such as 'Sold as seen', 'Trade sale only', 'No refund' or 'Spare or repair', even if the statement 'This does not affect your statutory rights' is included.

Creating a misleading impression about the previous usage of a vehicle - for example, giving the impression that a vehicle has had one previous user through the use of statements such as 'one previous owner', when in fact it has had multiple previous users.

Misleading consumers about the value of a vehicle that you intend to purchase from them in part exchange - for example, making false statements about the condition of the vehicle.

Giving insufficient information to consumers (misleading omissions)

It is a breach of the DMCCA to mislead consumers by failing to give them the information they need in order to make informed decisions (section 227: "Misleading omissions").

This means providing important information in a manner that is unclear, untimely or that the consumer is unlikely to see, and where this is likely to cause the average consumer to take a transactional decision that they would not have taken otherwise. For example, omitting or hiding important information you are aware of (or you should reasonably have been aware of as a professional in the motor trade).

As well as the final decision to buy, this also covers a wide range of decisions that have been or may be taken by consumers in relation to products. This is wide in chronological scope, covering decisions taken before, during and after a contract is formed.

When deciding whether a practice misleads by omission, the courts will take account of the context. Consideration of the context includes any limitations of the communication medium used (of space or time) that make it impractical to give the necessary information. In such circumstances, if other means have been used by the trader to convey this information, these will be relevant.

Examples: misleading omissions
Failing to disclose the existence and results of checks carried out on the vehicle (for example, mechanical, history and mileage checks) and any adverse information that you have found out or are otherwise aware of - for example:

- the vehicle's previous accident and/or insurance write off history. However, if the accident damage was only minor and was rectified (for example, a paint job was undertaken to remove a scratch), it is unlikely to be important information that the consumer needs to make an informed choice
- discrepancies in the mileage or service history of the vehicle
- faults with the vehicle that have not been rectified

Failing to disclose details of any additional charges payable (for example, 'administration fees') until the point of sale. Additional charges should be included in the advertised price if they are compulsory. A failure to include compulsory charges in the advertised price may breach the Regulations. An example of a non-compulsory charge would be a non-optional administration fee that must be paid for a service.

Failing to disclose that a vehicle for sale is an ex business-use vehicle that may have had multiple users - for example, a vehicle that has previously been used for rental, as a taxi or by a driving school; in such circumstances, it is not sufficient to only inform the consumer of the mileage and

the number of previous owners. Following its decision in Glyn Hopkin and Fiat Chrysler Automobiles UK Ltd, the Advertising Standards Authority (ASA) has set out that it expects fleet operators, and approved dealers purchasing directly from them, to provide information about the ex-fleet nature of any vehicle for sale to be included in advertising (as material information). If the ex-fleet vehicle was used by multiple users whilst part of the fleet, then that is also likely to be considered material information that must be included. For independent dealers, the ASA's approach is likely to vary on a case-by-case basis, depending on how reasonable it would be to expect that the dealership could, or should, have obtained such information.

Failing to draw the consumer's attention to the key elements of any warranty / guarantee, including (for example) details of what is and is not covered, claim limits, the conditions that need to be followed for the warranty / guarantee to remain valid, and the geographical scope of the warranty / guarantee.

Omission of material information from an invitation to purchase

It is a breach of the DMCCA to omit certain specified 'material information' from practices that amount to 'an invitation to purchase'. This is an unfair practice regardless of whether it is likely to impact a consumer's transactional decision. When a car trader gives information to consumers about a product and its price, this will normally be an 'invitation to purchase'. A car offered for sale on a forecourt is an invitation to purchase; a vehicle advertised on a trader's website is also an invitation to purchase, regardless of whether it can be purchased online.

The following text is taken from the 'Omission of material information from an invitation to purchase' chapter of *Unfair Commercial Practices: Guidance on the Protection from Unfair Trading Provisions in the Digital Markets, Competition and Consumers Act 2024* (CMA207); see the guidance itself for the footnotes, which have been removed here.

"A list of the categories of information that the consumer must be given is set out in section 230(2) of the DMCC Act and is summarised below:

- the main characteristics of the product - for example, what it is and what it does - to the extent appropriate to the means used to communicate the invitation to purchase and the nature of the product. The main characteristics described should correspond to the price indicated - for example, where the price given is for a basic model, the main characteristics should make clear the product is a basic model
- either the total price of the product (including any mandatory fees, taxes, charges or other payments that the consumer must pay if they purchase the product); or
- where the total price cannot be reasonably calculated in advance, because of the nature of the product, the way the total price will be calculated, to enable the consumer to calculate the price
- any optional freight, delivery or postal charges, including any taxes, not included in the total price of the product (or where these cannot reasonably be calculated in advance, the fact that such charges may be payable)
- the identity of the trader, such as their personal or trading name, and the identity of any other person on whose behalf the trader is acting
- the contact information of the trader, namely:
    - the address of their place of business
    - if different from the above, the address at which they will accept service of documents

    - any existing email address used by the trader for conducting business
- if the trader is acting on behalf of another person (for example, as an agent, subcontractor or representative), that other person's contact information
- for products involving a right of withdrawal or cancellation, the existence of such rights
- if the trader is using any arrangements for payment, delivery, performance or complaint handling that are different from the trader's published practice, information about these alternative arrangements
- any information which the trader is required under any other legislative provision to give to a consumer as part of an invitation to purchase

"The invitation to purchase must provide all the material information clearly, in a timely way and in a way that the consumer is likely to see it. A trader that fails to do so will be considered to have omitted that information, even though it has been provided in some form.

"Further information about how to present material pricing information, including the prohibitions on drip pricing and partitioned pricing can be found in the CMA's *Unfair Commercial Practices: Price Transparency* guidance (CMA209)."

Business email address means any existing email address used by the trader for conducting business. A business enquiry web contact form is not an email address.

The **total price** of a product includes any fees, taxes, charges or other payments that the consumer will necessarily incur if the consumer purchases the product. So-called administration fees should be included in the total price.

Acting aggressively (aggressive business practices)

It is a breach of the DMCCA to engage in practices that intimidate or exploit consumers, restricting their conduct or ability to make free or informed choices, and that are likely to cause the average consumer to take a transactional decision that they would not have taken otherwise (section 228: "Aggressive practices").

A commercial practice is aggressive if it is likely to significantly impair the average consumer's freedom of choice or conduct in relation to products through the use of harassment, coercion or undue influence, and the average consumer is likely to take a transactional decision that they would not have taken otherwise as a result.

> **Examples: aggressive practices**
> Engaging in high-pressure selling techniques to sell a vehicle or to sell additional services, such as finance, insurance or warranties - for example, by keeping consumers at your premises for a long time with a view of getting them to agree to buy a vehicle in order to get away.
>
> Exploiting a consumer's misfortune or circumstances and/or a position of power over a consumer - for example, refusing to return a deposit made on a vehicle that a consumer is legally entitled to.
>
> Intimidating, pressurising or coercing consumers into dropping complaints against your business - for example, by the use of threatening or abusive language or behaviour.
>
> Insisting that a consumer's claims for rectifying a fault with the vehicle are made under a

purchased warranty, thus restricting their right for the vehicle to be repaired under the contract they have with you.

Banned practices

There are 32 business practices that are considered to be unfair in all circumstances and are prohibited. These are known as banned practices.

More information about these banned practices can be found in 'Protection from unfair trading (criminal law)'. The full list appears in Schedule 20 to the DMCCA.

Examples: banned practices
You must not claim to be a signatory to a code of practice when you are not (banned practice 1) - for example, by falsely claiming to have signed up to a motor trade association code of practice.

You must not claim to have been approved, endorsed or authorised by a public or private body when you have not, or make such a claim without complying with the terms of the approval, endorsement or authorisation (banned practice 4) - for example, by falsely claiming or creating the impression that:

- you are a member of a motor trade association
- vehicles have been checked by motoring organisations or that checks are used which meet such motoring organisation standards when they do not

You must not use 'bait and switch' tactics (banned practice 6) - for example, by:

- advertising a base model at a low price, despite knowing you only have vehicles with higher specifications in stock or available
- advertising a desirable vehicle at a 'bargain' price even though you know it has already been sold, with the aim of promoting a less desirable or more expensive model

You must not falsely state that a vehicle will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision from the consumer (banned practice 7) - for example, a dealer falsely telling a consumer that the 'special offer price' will be increased the next day, in order to pressurise them into making an immediate decision to buy the vehicle.

You must not present rights given to consumers in law as a distinctive feature of your service (banned practice 11) - for example, by misleading consumers about the extent to which an offered warranty or guarantee enhances the rights that the consumer would, in any event, enjoy in law.

You must not pass on materially inaccurate information on market conditions or on the possibility of finding the product, with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions (banned practice 20) - for example, falsely claiming a vehicle is in short supply and selling at £20,000, when it is not particularly rare and is available widely at £15,000.

> You must not falsely claim, or create the impression, that you are acting for purposes unrelated to your business or falsely represent yourself as a private seller (banned practice 25) - for example, a second-hand car dealer puts a used car on or near a road and displays a handwritten advertisement reading 'One careful owner. Good family run-around. £2,000 or nearest offer. Call Jack on ... .' The advertisement gives the impression that the seller is not selling as a trader, which would breach the DMCCA.

Failing to act in accordance with reasonable expectations of acceptable trading practice (general prohibition of unfair business practices)

It is a breach of the DMCCA to fail to act in accordance with honest market practice or in good faith in your dealings with consumers (known as 'professional diligence'), where such dealings are likely to cause the average consumer to take a transactional decision that they would not have taken otherwise (section 225: "Prohibition of unfair commercial practices").

You are required to deal with consumers professionally and fairly, according to reasonable expectations. If you fail to do so, you could be in breach of the law, even if the poor practice is widespread in the industry. If you are shown to have knowingly or recklessly failed to do so, and this is likely to change the decisions that the average consumer makes, you may be committing a criminal offence.

> **Examples: breaches of professional diligence**
> Systematically failing to carry out the pre-sale checks that you would reasonably be expected to undertake in relation to the mechanical condition, history and mileage of a vehicle before you advertise, market or sell it.
>
> Obstructing consumers who have bought vehicles of unsatisfactory quality from you and are trying to exercise their contractual rights of redress under the Consumer Rights Act 2015 (CRA) - for example, if you refuse to listen to complaints or wrongly tell consumers that they have no rights of redress (such as to reject the vehicle or have it repaired or replaced by you).
>
> Failing to deal with complaints at all or in an honest, fair, reasonable and professional manner.

The unfair practices highlighted in the 'Giving false information to, or deceiving, consumers' section may also contravene the requirements of 'professional diligence'.

Assessing whether your business practices are unfair

The flowchart 'Is your business practice unfair?' will help you to assess whether any of your business practices are likely to be unfair under the DMCCA.

Steps to help you comply with the DMCCA

Some of the practical steps you can take to help your business comply with the DMCCA.

Pre-sale checks

Before you expose any vehicle for sale, you must take all reasonable precautions and exercise all due diligence to ensure that:

- any information you give to consumers, in whatever form, is accurate; it is your responsibility to check that everything you say or specify about a vehicle is true and accurate
- you find out the important information that consumers need in order to make an informed purchasing decision

As part of your due diligence system, you should keep a full record of all checks carried out on every vehicle. Trading Standards staff (as well as your customers) may wish to see such records if they deem it necessary.

Examples of the types of checks you may need to carry out are given below. The specific checks you need to undertake will depend on the circumstances of each vehicle you intend to sell to consumers. If you decide not to undertake certain checks, you will need to be able to show that you were justified in making that decision, and that it was reasonable in those particular circumstances for you not to do those checks.

Mileage and history

Vehicle history

Before exposing any vehicle for sale, you must take all reasonable steps to check the vehicle's history - for example, whether it:

- is recorded as stolen
- is subject to outstanding finance or charge
- has been written off as an insurance loss or accident-damaged*
- is an ex business-use vehicle that may have had multiple users

[* It may not always be possible to find out whether a vehicle has been the subject of accident damage if it was not recorded as an insurance claim. However, you should take all reasonable steps to identify whether the vehicle has been accident-damaged - for example, by conducting a vehicle history check or asking the seller to declare any such damage.]

Also check that you have good title to sell the car - for example, if the car is still subject to a hire purchase agreement, you do not own it.

In most circumstances, you would be expected in the first instance to at least conduct a vehicle history check with an independent and reliable company. Ensure that your chosen vehicle history check provider can supply the level of information necessary for you to meet your responsibilities. Alternatively, you may make and record your own effective enquiries. Other checks may include:

- asking the seller about the history of the vehicle. Is it correct, incorrect or unknown?
- writing the information on your purchase invoice and asking the seller to sign it. Do not rely on verbal statements only
- asking the seller for documents relating to the vehicle - for example, the service book and bills for

servicing

Government vehicle databases

Checking the vehicle's registration details on the Driver and Vehicle Licensing Agency (DVLA) database.

Checking with the Driver and Vehicle Standards Agency (DVSA). If the vehicle is more than three years old, and you have the vehicle registration mark and maker details, you can check the MOT test results and history on the GOV.UK website.

Generally, before exposing any vehicle for sale, it is best practice to take all reasonable steps to establish the accuracy of the stated mileage. There may be very limited exceptions to this - for example, where a vehicle has been pre-registered.

In most circumstances, you would be expected in the first instance to at least conduct a mileage check on the vehicle with an independent and reliable company. Other checks may include:

- checking the MOT history on the DVSA database as outlined above
- ensuring that the internal and external condition of the vehicle is comparable with the described age and mileage of the vehicle. The condition / appearance of the vehicle may give cause to suspect the accuracy of the mileage reading (for example, worn out seats / pedals, but low mileage on the odometer)

It is best practice to carry out further investigations if a discrepancy is discovered in the mileage record through the basic checks you have carried out, or as a result of any other information suggesting that the mileage may be incorrect. Various companies can provide a full mileage investigation service.

Vehicle Registration Certificates (V5C) no longer contain details of the previous keeper of the vehicle. Should you need to get in touch with previous keepers, and you can demonstrate that you have reasonable cause for requesting this information, you can request their contact details from the DVLA. Information on how to request information about a vehicle or its registered keeper from the DVLA, as well as how the DVLA shares information, can be found on the GOV.UK website.

Unless you are satisfied that the mileage of a vehicle shown by its odometer is accurate, such mileage must not be quoted in advertisements, discussions or negotiations, nor in any documents related to the supply of a vehicle that is ultimately destined for supply to consumers.

Informing consumers about mileage discrepancies

As well as taking all reasonable steps to establish the vehicle's mileage, it is recommended that you inform the consumer, prior to sale, of:

- the steps you have taken
- what you have found out or not been able to find out, or know, about the mileage or likely mileage. For example, if you know from checking the last MOT test record that the vehicle's current odometer reading is wrong and that the last recorded mileage was 'x miles' or that the vehicle has travelled 'in excess of x miles', provide consumers with this information

Mileage disclaimers

Do not rely on a mileage disclaimer as a substitute for carrying out reasonable checks on a vehicle; to do so is likely to substantially increase the risk of you breaching the DMCCA. Mileage disclaimers should only be used as a last resort where, after completing all reasonable checks, you either identify:

- that the mileage is incorrect
  or
- that it has been impossible to verify the correct mileage

Do not rely on generic mileage disclaimers as a substitute for giving consumers specific information about what you have found out or not been able to find out, or know, about the vehicle's mileage or likely mileage. This is likely to be material information that the consumer needs in order to make an informed choice. For example, if the vehicle's odometer displays 52,000 miles, but a check of MOT test records shows that the vehicle had a previously recorded mileage of 136,000 in August 2025, do not rely solely on a generic disclaimer, such as 'the mileage is incorrect and should be disregarded' or 'the mileage may not be true and should not be relied on as an indication of the distance the vehicle has travelled'. It is recommended that you inform the consumer that you have checked the last MOT test record, which showed the vehicle had a recorded mileage of 136,000 in August 2025, so the currently displayed mileage of 52,000 is incorrect. In such circumstances, it is recommended that you the use a prominent written notice, such as 'MOT test records show that this vehicle had a recorded mileage of 136,000 in August 2025, so the currently displayed mileage of 52,000 is incorrect'; this provides the consumer with the important information they need to make an informed decision.

Minor mileage discrepancies resulting from test drives

Where there is a minor difference in the stated mileage of a vehicle (recorded when the vehicle was taken into stock), as a result of the vehicle having been test driven by a small number of prospective buyers, it is unlikely that there will be a breach of the DMCCA. Inform consumers of the reason for this minor mileage discrepancy. If the mileage increases materially as a result of having been test driven, adjust the stated mileage accordingly.

Selling before history and mileage checks have been completed

You will substantially increase the risk of breaching the DMCCA if you display for sale or sell a vehicle to a consumer before you have had the opportunity to complete all of your pre-sale history and mileage checks. Simply telling the consumer that the results will be provided to them after the sale will not remove the risk of a breach of the DMCCA being committed. Using a disclaimer that explains the true circumstances (for example, that mileage investigation checks are ongoing and the mileage should be disregarded) cannot substitute for completing proper checks on a vehicle.

There may be limited circumstances in which you do find a buyer before completing all of your pre-sale history and mileage checks; however, it is not recommended that you conclude the sale before all of the checks have been completed. In such circumstances, consumers must be able to decline to buy the vehicle at no cost to them if they are not happy with the findings of the completed checks. It is best practice, therefore, for any pre-contract agreement to include a clause that allows consumers to withdraw at no cost to them if they are not satisfied as a result of the findings of the completed checks.

Any deposits that have been paid must be refunded in full if the conditions of the pre-contract agreement have not been met.

Checking the mechanical condition of the vehicle

Roadworthiness

It is best practice to have procedures in place to check that the vehicles you supply, offer to supply or expose for sale are safe and roadworthy. It is not sufficient to rely on MOT or service histories. This will usually mean arranging for a suitably qualified or competent person to carry out pre-sale mechanical

inspections of vehicles, and any problems that make them unroadworthy must be rectified.

It is a breach of the DMCCA to state or create the impression that a product can legally be sold when it cannot (banned practice 10). To the extent that the unroadworthiness of any vehicle under the Road Traffic Act 1988, or the General Product Safety Regulations 2005, makes it an offence to supply such a vehicle, offer to supply it or expose it for sale on your forecourt, in your showroom or other part of your premises including on the highway, doing so may also breach the DMCCA.

Satisfactory quality

It is also best practice for you to take reasonable steps (through the pre-inspection procedures you have in place) to ensure that the vehicles you sell are of satisfactory quality and are fit for their purpose under the CRA, taking into account the age, mileage, condition, description and value of each vehicle. If you systematically fail to carry out such pre-sale mechanical checks, you may breach the DMCCA. Prospective buyers must be made aware, prior to sale, of any faults identified.

It is best practice to keep a record of inspections carried out on every vehicle. You may want to refer to them in the case of a complaint.

Pre-sale mechanical checks

Any vehicle that is likely to appear to the consumer to be on offer for sale (for example, where it has a price on it or appears alongside other vehicles on offer for sale even with no price on it) must be in a safe and roadworthy condition.

It is recommended that vehicles which have not yet been checked to confirm they are safe and roadworthy are marked in such a way to make this obvious and are removed from the sales areas of your premises. It is best practice for vehicles in such a condition to not have a price, or other indication that they are available for sale, displayed on or near them.

You must not give consumers test drives in vehicles which have not been checked for safety.

Further information on safety laws is available in the 'Product safety' area of the Business Companion website.

Providing consumers with important information prior to the sale

You must give consumers the information they need to make an informed choice before a sale is made. You must not omit such information, or provide it in an unclear or untimely manner, or in such a way that the consumer is unlikely to see it.

Consumers must be given information about the main characteristics of the vehicle prior to the sale - for example:

- price (see also part 4 of this guidance)
- make, model, engine capacity and other physical characteristics
- history

You should also give consumers other types of information before the sale. Non-exhaustive examples include:

- any problems or issues you are (or ought to be) aware of, after taking all reasonable steps - for example:
    - if the vehicle has been written off as an insurance loss or has suffered accident damage*
    - if the vehicle was imported into the UK from outside of the European Union (grey import)
    - if there are any 'MOT advisory' items
    - discrepancies in the mileage or service history of the vehicle
    - faults with the vehicle that have not been rectified
- if the vehicle is an ex business-use vehicle that may have had multiple users - for example, a vehicle that has previously been used for rental, as a taxi or by a driving school
- details of the key elements of any warranty or guarantee offered (See 'Warranties and guarantees' below)
- details of your after-sales service and procedures

[*If the accident damage was only minor and was rectified (for example, a paint repair was undertaken to remove a scratch), it is unlikely to be important information that the consumer needs to make an informed choice.]

The DMCCA does not specify the format in which important information should be provided to consumers before the sale is made. However, only providing such information verbally (rather than in writing as well) may increase the risk of you breaching the DMCCA. Providing important information in writing will help you to comply with the requirements of professional diligence and will also protect both you and the consumer if a dispute arises after the sale about what was said. If any important information is provided by alternative means, then you will need to be able to demonstrate how you have complied with the information requirements.

Where you provide important information in writing, it must be clear and prominent in the documentation given to the consumer and drawn to their attention before the sale is made. It is not sufficient to include such material information in small print or in a bundle of documents handed to the consumer at the time of sale (hiding important information in small print may also amount to a breach of the CRA). It is best practice to give consumers ample time to read any written information.

As a matter of good business practice, it is strongly recommended that such information is provided in the form of a short summary document, such as a checklist, which could be displayed on the vehicle.

Warranties and guarantees

If a warranty or guarantee is part of the contract, the key elements must be clearly drawn to the attention of consumers prior to the sale. This includes, for example:

- details of what is covered and what is not covered
- claim limits
- conditions that need to be followed for the warranty / guarantee to remain valid
- the geographical scope of the warranty / guarantee
- the claims procedure

Any relevant document published by the warranty / guarantee provider should also be handed over to the consumer. The consumer should be advised of the type of warranty / guarantee that is being provided - for example:

- manufacturer's
- free extended manufacturer's / dealer's
- insurance-backed

- dealer's own warranty / guarantee

The consumer should be informed of the identity of the warranty / guarantee provider and the address to which claims may be directed. The different types of warranty / guarantee and any significant differences between them should be explained to consumers, as appropriate. Consumers are entitled to a copy of the guarantee in writing when requested.

You should also give advice to consumers about who they should address a claim to if they have a problem regarding defective parts and accessories that are not covered by the warranty or guarantee.

After-sales service

Complaints and enquiries

The following are all best practice methods of dealing with complaints and enquiries effectively, and without leading consumers to complain further.

Have an accessible, appropriate and user-friendly after-sales procedure to ensure that all consumer enquiries are dealt with in an honest, fair, professional and reasonable manner.

Have an effective customer complaints procedure, understood and followed by all staff who may come into contact with the public. It is recommended that you have a written complaints procedure.

Deal with complaints promptly, effectively and in a professional manner.

Make your best efforts to find a satisfactory solution to complaints. You need to ensure that the steps you take to satisfy the consumer are in accordance with reasonable expectations.

Record all complaints and note the final outcome. It is recommended that you keep complaint records for future reference.

Co-operate with any appropriate representative or intermediary (for example, a Trading Standards service or Citizens Advice Bureau) consulted by a consumer in respect of a complaint. You should also be aware of the role of alternative dispute resolution (ADR) providers (see part 2).

Warranties

You should ensure that warranty work is carried out promptly and that your estimated timescale for completion is made clear to the consumer before any work has commenced. You should keep the consumer informed if it is subsequently discovered that the work has to take longer - for example, because further problems have been discovered.

Contractual obligations

If you follow practices and procedures to ensure that you fulfil your contractual commitments to consumers, you are less likely to fall foul of the law - for example:

- provide appropriate redress to consumers who are seeking to enforce their contractual rights against you under the CRA, where vehicles are of unsatisfactory quality, unfit for their purpose or not as you described them
- carry out repairs to consumers' faulty vehicles with reasonable care and skill and within a

reasonable time (or within the specific time agreed), in accordance with your legal obligations under the CRA (see part 2)

Aggressive practices

You must not intimidate, pressurise or coerce consumers (for example, through the use of threatening or abusive language, or threatening to take action that cannot legally be taken) into dropping complaints against your business. Any aggressive practice that is likely to cause an average consumer to take a transactional decision that they would not have taken otherwise is prohibited under the DMCCA (see 'Acting aggressively (aggressive business practices)' above).

Auction sales

The DMCCA applies to the sale of second-hand vehicles through public auctions that are either open to consumers, or where it is likely that trade buyers will sell the vehicle on to consumers. Consumers may have lower expectations when buying from an auction than through other sales channels. Consequently, they may have fewer reasonable expectations on the type of checks that sellers will have carried out prior to auctioning their vehicles.

However, as a seller you must not engage in unfair practices, such as the following:

- applying misleading descriptions to vehicles that you auction - for example, in relation to the vehicle's specification, history, mileage (for instance, arranging for a vehicle to be clocked and selling it through an auction, or warranting an odometer reading as accurate when you know it is incorrect or have been unable to verify its accuracy), or mechanical condition (for instance, describing a vehicle as having 'no major mechanical faults' when you know this is not the case or are unable to determine whether or not this is the case)
- failing to disclose important information on the auction sale entry form about the vehicle - for example, in relation to its:
    - history - for example, auctioneers may require sellers to disclose whether the vehicle has previously been an insurance total loss, sustained serious accident damage, been owned or used by the Police or been owned or used as a taxi, been re-registered or imported or had a change of registration number, or is subject to outstanding finance
    - mechanical condition - for example, describing a vehicle as having 'specified faults' and failing to disclose all the faults that you are aware of

When selling vehicles to other traders, either at auction or elsewhere, the Business Protection from Misleading Marketing Regulations 2008 (BPRs) will also apply. The BPRs prohibit businesses from advertising products in a way that misleads traders. Further information on the BPRs can be found in 'Business-to-business marketing'.

What happens if you don't comply with the DMCCA?

If you do not comply with the DMCCA, you may face enforcement action. Local authority Trading Standards services have a duty to enforce the DMCCA. Enforcers can use a range of tools to ensure that traders are complying with the DMCCA, including criminal and/or civil enforcement.

For more information, see 'Trading Standards: powers, enforcement and penalties'.

Civil claims

The rights of redress for consumers who have been affected by unfair commercial practices have not yet transferred to the DMCCA and are still to be found in the CPRs.

In certain circumstances, consumers may make a claim against a trader for breaches of some of the CPRs' principles, in particular where misleading statements have been made about products, and that information was relied upon.

Further guidance on consumers' rights can be found in 'Protection from unfair trading (consumers' rights of redress)'.

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