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trading standards law explained

Annex B. Practical checklist

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Using this checklist

This is a quick guide to some of the practical steps you should take, as a second-hand car dealer, to help ensure that you comply with two important pieces of consumer protection law that affect how you deal with your customers.

The Digital Markets, Competition and Consumers Act 2024 (DMCCA) ensures that you deal with consumers fairly and honestly.

The Consumer Rights Act 2015 (CRA) sets out your legal obligations to consumers with regard to the quality of the vehicle and the description you give of it. It also sets out your duties when something goes wrong with the vehicle.

It is important that you read and understand this annex to make sure you are treating your customers properly.

Scope of the checklist

This checklist is not a detailed guide which covers every possible scenario that you may encounter, as much will depend on the circumstances of each case. It should be read in conjunction with the rest of the full guidance.

It is not a substitute for the law itself, nor does it replace the role of a court, which is to provide a definitive interpretation of the law. However, the checklist is intended to help you comply with the law and protect your business's reputation. There is also other important legislation that may apply to you, which is not covered in this checklist.

Remember: it is your responsibility to comply with the law. If you do not comply with the law, you may face enforcement action by Trading Standards or other bodies. You could also lose your customers, some

of whom may have the right to take legal action against you.

For further advice you should contact your local Trading Standards service and/or seek independent legal advice.

Overview of the law

Digital Markets, Competition and Consumers Act 2024

The DMCCA prohibits you, as a second-hand car dealer, from engaging in unfair business practices when you deal with consumers. If you treat your customers fairly, you are likely to be complying with the DMCCA. However, if you mislead, behave aggressively, or otherwise act unfairly towards your customers, you are likely to be in breach of the DMCCA and could face civil or criminal sanction. Unfair business practices can occur before, during or after a transaction between you and a consumer.

Consumer Rights Act 2015

The CRA is the main piece of law that helps consumers to obtain redress when their purchases 'go wrong'. As a second-hand car dealer, you need to know how the law, in relation to the sale of vehicles, affects you and your customers.

Essentially, the CRA states that the vehicles you sell must be of satisfactory quality, be fit for their purpose and match their description; it also states that you must have the right to sell the vehicle.

If not, then you, as the seller, are legally obliged to sort out the problem. The customer will be entitled to several remedies against you, which may include a full refund or a repair or replacement vehicle.

Checklist for second-hand car dealers

Before you sell a vehicle

Pre-sale vehicle history checks

Before you offer any vehicle for sale, you should take all reasonable steps to check its history to ensure that:

- everything you say about the vehicle is true and is not misleading in the way it is presented (even if it is true)
- you find out the important information that your customers need to know

The specific checks you will need to undertake will depend on the circumstances of each vehicle you intend to sell.

Check the vehicle's history - for example:

- is it recorded as stolen?
- is it subject to outstanding finance or charge?

- has it been written off or suffered accident damage?
- is it an ex business-use vehicle, which may have had multiple users (for example, was it previously used as a rental, taxi or driving school vehicle)?

The types of checks you should carry out include:

- conducting a vehicle history check with an independent and reliable company
- asking the seller about the history of the vehicle, but don't just rely on verbal statements
- asking the seller for documents relating to the vehicle, such as the service book
- checking the registration details with the Driver and Vehicle Licensing Agency (DVLA)
- checking MOT test results with the Driver and Vehicle Standards Agency (DVSA)

Keep a full record of all checks carried out; Trading Standards or customers may wish to see them.

Mileage checks

Before exposing any vehicle for sale, you should take all reasonable steps to establish the accuracy of the stated mileage.

Inform customers about mileage discrepancies.

Inform customers prior to sale of the steps you have taken to check the vehicle's mileage, and what you know (or have not been able to find out), about the mileage (or likely mileage). For example, if you know from checking previous MOT records that the vehicle's current odometer reading is wrong and that the vehicle's last recorded mileage was 'x miles', or that the vehicle has travelled 'in excess of x miles', you should inform the customer of this.

The types of basic mileage checks you should carry out include:

- conducting a mileage check with an independent and reliable company
- checking the mileage shown on the MOT certificate with the DVSA
- ensuring the condition of the vehicle is comparable with the described age and mileage

If you discover a discrepancy or suspect the mileage may be incorrect, you should carry out further investigations - for example, checking the mileage with previous registered keepers.

If you are not satisfied that the mileage of a vehicle is accurate, it should not be quoted in advertisements, discussions or negotiations, nor in any documents related to the supply of the vehicle.

Mileage disclaimers

Mileage disclaimers should only be used as a last resort where, after completing all reasonable checks, you identify that the mileage is wrong or it has been impossible to confirm the correct mileage.

Do not rely on mileage disclaimers as a substitute for carrying out reasonable checks on a vehicle.

Do not rely on generic mileage disclaimers as a substitute for giving customers specific information about what you know (or have not been able to find out), about the mileage or likely mileage.

General disclaimers

Avoid the use of disclaimers when dealing with consumers.

Do not use disclaimers that mislead consumers about their legal rights - for example:

- 'Sold as seen'
- 'Trade sale only'
- 'No refund'
- 'Unroadworthy'
- 'Spare or repair'

Checking the vehicle's mechanical condition

Make sure that you have procedures in place for checking the condition of any vehicle you intend to sell; this is to ensure it is safe, roadworthy and of satisfactory quality.

You should arrange for a qualified person to carry out a pre-sale inspection of vehicles to make sure that:

- the vehicle is roadworthy and safe before being exposed for sale
- the vehicle is of 'satisfactory quality' such that it is fit for use on the road, in a condition which reflects its age and price, and is reliable

As part of your due diligence system keep a full record of checks carried out; Trading Standards or customers may wish to see them.

Do not just rely on MOT or service histories.

Vehicles under preparation for sale

Any vehicle you offer for sale must be safe and roadworthy.

Avoid displaying a vehicle for sale before you have had the opportunity to complete all your pre-sale history and mileage checks. Otherwise, you will substantially increase your risk of breaching the law.

Mechanical checks

Make sure that any vehicle that has not yet been inspected to confirm it is safe and roadworthy is marked in such a way as to make this obvious and is removed from the sales areas of your premises.

Only give customers test drives in vehicles that have been checked for safety.

Pre-sale history and mileage checks

Only conclude a sale after all history and mileage checks have been completed.

Telling a customer that the results of checks will be provided after the sale, or using a disclaimer that checks are ongoing, will not remove the risk of you breaching the law.

If a customer signs a pre-contract agreement, make sure that they can withdraw at no cost if they are not happy with the results of the completed checks. Any customer deposits must be refunded in full in such circumstances.

Providing your customers with important information before the sale

Make sure you give your customers the information they need to make an informed decision, before a sale is made.

Remember: you must not omit or hide important information or only provide it after the sale, and you must not give false information to customers or deceive them.

Make sure you tell the customer about any problems or other issues with the vehicle - for example:

- previous insurance write-off / accident history
- 'MOT advisory' items
- unrectified faults
- discrepancies in the service history or mileage
- ex business-use vehicle, which may have had multiple users
- grey import

You should remind consumers that the vehicles you sell must be in conformity with the contract - for example, you might say: 'It is our responsibility to supply you with vehicles that meet your consumer rights. If you have any concerns that we have not met our legal obligations, please contact us.'

Clearly draw the customer's attention to the key terms of any warranty or guarantee you are providing, including, for example:

- what is and isn't covered
- claim limits
- any conditions that need to be followed
- its geographical scope
- the claims procedure

Provide important information in writing. This will protect you and your customers should disputes arise.

We recommend the use of a short checklist, which could be displayed on the vehicle, summarising the key information.

After-sales service

Dealing with complaints and enquiries

Make sure you have an accessible and user-friendly after-sales procedure to ensure that all customer enquiries and complaints are dealt with in an honest, fair, reasonable and professional way.

Deal with complaints promptly and try to resolve them, if at all possible.

Make sure your customer complaints procedure is understood and followed by all staff who may come into contact with the public. It is recommended that you have a written complaints procedure.

Record all complaints and note the final outcome. Keep complaint records.

You must not obstruct customers or refuse to listen to their complaints - for example, by not answering the phone or not responding to letters / emails.

You must not intimidate or pressurise customers into dropping complaints.

Faulty vehicles

Remember: consumer rights law applies to second-hand as well as new vehicles.

Customers are entitled to vehicles of 'satisfactory quality'. This means more than just ensuring the vehicle

is safe and roadworthy; the vehicle should be fit for use on the road, in a condition which reflects its age and price, and reliable.

Where a vehicle you sell is not of 'satisfactory quality', the customer is entitled to ask for any of the following:

- a full refund, within 30 days of taking possession of the vehicle (not including any days spent being repaired)
- a reasonable amount of compensation (or damages)
- a repair or replacement, or where this is not realistically possible
- a partial or full refund, depending on what is reasonable in the circumstances

If the vehicle you sell is not of 'satisfactory quality', the customer is legally entitled to the remedies outlined above.

You are not liable, however:

- for fair wear and tear
- for misuse or accidental damage by the customer
- if you specifically draw to the customer's attention the full extent of any fault or defect before they buy the vehicle
- if the customer examined the vehicle before buying it and should have noticed the fault
- if you sell a vehicle on hire purchase (the customer's legal rights will be against the finance company rather than against you)

The seller has **one** opportunity to provide a remedy such as a repair. If this fails to resolve the problem, the consumer can reject the vehicle.

Where a customer requests a repair or replacement within the first six months after the sale and you dispute their claim, it will be for you to prove that the fault (or inherent cause of the fault) was not present at the time you sold the vehicle.

Where a customer is offered a refund after one or more failed repairs (or replacements), you may be able to make a 'deduction for use' from the refund. However, this deduction should only reflect the usage the consumer has had of the vehicle and **you should not** simply reduce the refund to its second-hand value. See annex A for more information.

Warranties

Remember: any warranty or guarantee you sell or provide for free with the vehicle is in addition to the customer's legal rights under consumer rights law.

You cannot refuse to deal with a customer's complaint about a fault or defect simply on the basis that either:

- the warranty / guarantee has expired
  or
- the type of fault is specifically excluded from its coverage

What matters is whether the vehicle was of 'satisfactory quality' at the time you sold it.

If you offer customers a free warranty / guarantee, make sure that the policy document states that the warranty / guarantee does not affect their legal rights.

Make sure that warranty work is carried out promptly and that your estimated timescale for completion is made clear to the customer before any work has commenced.

< Annex A. Deduction for use calculations: a proposal

> Legislation etc

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