

## Used car sales

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### **This guidance is for England, Scotland & Wales**

If you sell used vehicles then the descriptions you give the vehicles are controlled by the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). The CPRs are a wide-ranging piece of legislation that make it a criminal offence for a trader to engage in commercial practices that mislead in respect of goods and services. An action or omission may be seen as misleading if it affects or is likely to affect the consumer's decision to purchase, or make any other 'transactional decision' as it is known in the CPRs.

A 'transactional decision' is 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.

The misleading element could be in the form of providing false information or using an inaccurate description, or the omission of facts about a product or service that a consumer would need to make a transactional decision.

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 require detailed information to be given to consumers and introduce a 14-day cancellation period for off-premises and distance contracts. In addition the Regulations prohibit the use of so-called negative options to sell additional products that are incidental to the main contract. These Regulations affect most businesses that contract with consumers, irrespective of where and how the contract is entered into.

The Road Traffic Act 1988 and the General Product Safety Regulations 2005 create an obligation on a trader to ensure any vehicle they sell is safe and roadworthy.

The Consumer Rights Act 2015 outlines your obligations as a trader to a consumer when you supply goods. It also contains the remedies available to consumers when things go wrong.

## General descriptions

It is a breach of the CPRs to engage in an 'unfair commercial practice'. A practice is unfair if it is either:

- a 'misleading action' (it contains false or misleading information and is therefore untruthful, or if it deceives or is likely to deceive a consumer)  
... or
- a 'misleading omission' (it omits information that an average consumer needs to make an informed transactional decision)

... and this causes or is likely to cause an average consumer to take a different transactional decision.

Examples of misleading actions:

- giving false information regarding the mileage a vehicle has travelled. See 'Mileage of used vehicles' for more detailed guidance on common problems associated with odometers, and in particular the use of disclaimers
- describing a car as in excellent condition when there is an existing fault with the vehicle
- misleading consumers about their statutory rights by using statements such as 'sold as seen' or 'trade sale'
- advertising a car for sale at a particular price, without including, in that price, any additional 'administration' or other non-optional charges

Examples of misleading omissions:

- failing to inform a consumer that a car has previously been a category C or category D insurance write-off
- failing to inform the consumer when there is a discrepancy in the mileage history
- failing to include 'administration', 'delivery' or other non-optional charges in the advertised price for a car
- failing to inform the consumer that, in a diesel car, the diesel particulate filter has been removed or tampered with, which will lead to an automatic fail of any MOT test and will require an expensive replacement

These misleading actions and omissions can be made verbally, in writing, by illustration or by implication. They can be made by anyone in your business, and both the staff member making the misleading statements and officers of the company can commit offences.

In addition, the CPRs also list a number of business practices that are considered unfair in all circumstances (without the requirement to show that the practice has caused or is likely to cause the consumer to make a transactional decision they would not have taken otherwise). One of these banned practices is to falsely claim or create the impression that the trader is not acting for purposes relating to their business or falsely represent themselves as a consumer - for example, a car trader advertising cars online or in newspapers and magazines stating or creating the impression they are a private seller.

Any individual that sells a vehicle, whether they are a trader or not, must make sure the description is correct - for example, the make / model / engine size and any other technical description.

For more detail on the CPRs please see 'Consumer protection from unfair trading'.

## How can a trader avoid committing an offence?

The Regulations provide a trader with the defence that the commission of an offence was due to a mistake, reliance on information supplied to them, the act or default of another person, an accident or some other cause beyond the trader's control; and that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by themselves or any person under their control.

In simple terms, this means that a process should exist to avoid unfair commercial practices, and that the process should be followed by all employees. Typical steps may include:

- carrying out MOT history checks on the GOV.UK website (bear in mind that although a valid MOT certificate or service history helps in assessing the condition of a vehicle, they should not be relied upon as an indication that a vehicle is roadworthy)
- contacting traders that have previously serviced the vehicle to establish the service history is correct
- ensuring all staff are trained and have access to all the relevant details on a vehicle
- ensuring records are kept of any checks that you make

For specific steps that can be taken relating to odometer displays on used vehicles see 'Mileage of used vehicles'.

## Safety: your responsibilities

The General Product Safety Regulations 2005 create offences for traders that supply unsafe products; see 'General product safety: distributors'.

The Road Traffic Act 1988 makes it illegal for any person (including private individuals) to sell, offer to sell or supply, and expose for sale an unroadworthy vehicle.

If you have a vehicle on your forecourt that is unsafe or unroadworthy you could be committing a criminal offence.

If you have a vehicle that is to be sold as spares or for repair then this must be clearly indicated and should not be sold with any MOT or road tax. You should not allow the vehicle to be driven from your premises.

## Consumer rights

The Consumer Rights Act 2015 is one of the main pieces of consumer law that covers a trader's obligations to a consumer when they sell goods.

Essentially the law states that any goods you sell must:

- be of satisfactory quality
- be fit for any particular purpose made known to the seller
- match the description, sample or model
- be installed correctly, where installation has been agreed as part of the contract

You must also have a legal right to sell the vehicle.

If a vehicle you sell does not meet all of the above then you are legally obliged to sort out the issues. If you do not, then a consumer can take you to court for breach of contract.

Depending on a number of factors (for example, the time at which a fault becomes apparent) the remedies available to the consumer include a repair, replacement, or a full or partial refund. The consumer may also be entitled to damages for additional losses they have incurred due to the breach of contract, such as the cost of recovering a broken-down vehicle.

The Act also states that if the consumer shows the vehicle is faulty in some way and, within the first six months of purchase, chooses a repair, replacement, price reduction or the final right to reject, it is automatically assumed that the fault was there at the time of delivery unless you can prove otherwise. This is called the 'reverse burden of proof'. After six months the consumer has to prove that the fault was there at the time of delivery. The consumer must also prove the fault was there at the time of delivery if they exercise the short-term right (30 days) to reject goods.

If the consumer rejects the goods by using their short-term right to reject they would be entitled to a full refund. If the consumer rejects the goods by using their final right to reject they would be entitled to a refund minus an amount for use of the motor vehicle. Any deduction made by the trader must be reasonable and justified.

You must not attempt to restrict a consumer's rights by using such phrases as 'sold as seen' or 'trade sale'.

For more information, including more detail on the short-term right and final right to reject, see 'The sale & supply of goods'.

## **Distance & off-premises sales**

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 create a requirement to provide a list of information to consumers before they enter into a contract on-premises, off-premises (such as in a consumer's home) or at a distance (for example, via the internet or telephone). In addition the Regulations prohibit the use of so-called negative options (pre-ticked boxes) to sell additional products to consumers that are incidental to the main contract.

The information you must give or make available to consumers includes such things as:

- your identity (trading name)
- geographical address
- telephone number
- email address
- the main characteristics of the goods or services
- total price of the goods or services, including all taxes (VAT, for example). If the price is not known, you must give details of how the price will be calculated
- time that you will take to deliver the goods or services

If there are after-sales services or guarantees available you must make the consumer aware of this and any applicable conditions.

If you sell vehicles off-premises or at a distance you are required to give the consumer a 14-day cancellation period. For sales contracts the 14-day cancellation period ends 14 days after the day on which the consumer took physical possession of the goods. It is also important to note that if you do not state that following cancellation the consumer is responsible for returning the vehicle to you at their own cost, then they may have a claim against you for any reasonable costs incurred in doing this.

For more information on the specific requirements contained in these Regulations see:

- 'Consumer contracts: distance sales'
- 'Consumer contracts: off-premises sales'
- 'Consumer contracts: on-premises sales'

## **Warranties**

Any warranty or guarantee you supply either free of charge or sell separately with a vehicle is in addition to a consumer's legal rights. You cannot refuse to deal with a complaint because it is excluded from a warranty or the warranty period has expired. Any warranty you give is legally binding.

## **Offering credit**

Other important legislation exists if you sell vehicles on finance. If you offer credit, or introduce people to sources of credit, you need to be authorised by the Financial Conduct Authority (FCA); see 'Credit & other financial matters'.

## **Penalties**

Failure to comply with trading standards law can lead to enforcement action and to sanctions, which may include a fine and/or imprisonment. For more information please see 'Trading standards: powers, enforcement & penalties'.

## **Key legislation**

Road Traffic Act 1988

General Product Safety Regulations 2005

Consumer Protection from Unfair Trading Regulations 2008

Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

Consumer Rights Act 2015

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## **Please note**

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links may only show the original version of the legislation, although some amending legislation is linked to separately where it is directly related to the content of a guide. Information on amendments to legislation can be found on each link's 'More Resources' tab.

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