



Car traders and consumer law

Guidance for businesses on the consumer law surrounding car sales

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trading standards law explained

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INTRODUCTION

The background to this guidance

Using this guidance

This guidance is intended to help you, as a second-hand car dealer, to comply with important pieces of consumer protection law that affect how you deal with consumers, including:

- the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), which ensure that you deal with consumers fairly and honestly
- the Consumer Rights Act 2015 (CRA), which sets out your legal obligations to consumers with regard to the quality of the vehicle and the description you provide for it. It also sets out your duties when something goes wrong with the vehicle
- the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs), which set out the information that a trader must give to a consumer before and after making a sale, how that information could be given, and the right for consumers to change their minds when buying at a distance or off-premises

The guidance is in five parts. Part 1 contains guidance on how to comply with the CPRs, including a flowchart to help you assess whether any of your business practices are likely to be unfair. Part 2 contains guidance on your legal obligations to consumers under the CRA, including a flowchart summarising the legal remedies consumers are entitled to where the vehicles you sell are not of 'satisfactory quality'. For those car dealers who also service cars, there is a short

explanation of the requirements of the CRA in relation to service contracts. Part 3 contains guidance on your legal obligations to consumers under the CCRs, summarising in particular pre-contract information requirements. Part 4 briefly looks at the law on 'alternative dispute resolution' (ADR). Part 5 sets out details on pricing and payment provisions.

The guidance not only applies to the selling of second-hand cars but also other vehicles (such as second-hand motorcycles and light commercial vehicles) when you make a sale to a consumer. When it comes to consumer law, electric / hybrid vehicles are no different to those that run on traditional fuels, so the guidance applies equally to them. By 'second-hand' the guidance is referring to any vehicle with a previous user.

Not all points listed will apply to every dealer, nor is the guidance intended to be exhaustive. It deals with problems in the second-hand car market, based upon the experience of enforcers, industry, consumer groups and other stakeholders.

This guidance 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 guidance is intended to help you to comply with the law and protect your business's reputation.

This guidance is also intended to be of use to enforcers and to consumer advisors in understanding what trading practices are likely to be prohibited.

There is other important legislation which may apply to you, which is not covered in this guidance.

For example, this guidance does not deal with business-to-business trade sales, which are covered by other legislation - for example, the Business Protection from Misleading

Marketing Regulations 2008 (BPRs), which are essentially a business-to-business counterpart to the CPRs. Also, if you sell vehicles on finance, consumer credit legislation applies. The primary regulator of consumer credit, the Financial Conduct Authority (FCA), has information for sellers on its website.

What do I need to do?

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

What happens if I don't comply with the law?

If you do not comply with the law, you may face enforcement action by Trading Standards or other bodies*. This could ultimately result in court action and it would be for the courts to decide if legislation has been breached. You could also lose your customers, some of whom may have the right to take legal action against you.

[*Car dealers will usually deal with their local Trading Standards service, but other agencies also have a role - for example, the Competition and Markets Authority (CMA) and the FCA. See also, the CMA's Consumer Protection: Enforcement Guidance.]

Where can I get further advice?

This guidance does not provide legal or other advice and, if in doubt as to your obligations, you are strongly recommended to obtain advice from your local authority Trading Standards service and/or seek independent legal advice.

The Advertising Standards Authority (ASA) publishes guidance on the application of its Advertising Codes.

PART 1. CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS

Complying with the Consumer Protection from Unfair Trading Regulations 2008

Introduction to the CPRs

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) replaced and expanded upon many of the provisions of the Trade Descriptions Act 1968 and other legislation. Many of the detailed rules around trade descriptions were replaced with a general ban on unfair trading. The changes apply to second-hand car dealers, as well as other traders whose business practices may affect consumers.

The CPRs prohibit 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 CPRs and may face criminal or civil enforcement action. The Consumer Protection (Amendment) Regulations 2014 created a private right of redress for consumers who have been the victim of misleading actions or aggressive practices (see 'Civil claims' below).

This guidance sets out some examples of the kinds of trading practice or conduct, specific to second-hand vehicle sales, which are likely to be considered unfair under the CPRs. 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 CPRs may occur.

The guidance should be read in conjunction with the UK Government-issued guidance document on the CPRs.

Overview of the CPRs

The CPRs prohibit 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 CPRs set out broad rules outlining when business practices are unfair. These fall into five 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 behaviour. Acting aggressively - for example, through sales techniques that use harassment, coercion or undue influence.
4. Failing to act in accordance with reasonable expectations of acceptable trading practice (in other words, acting in a way that falls below the level of care and skill which 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. In addition, the CPRs ban 31 specific practices outright. For a practice to be unfair under the first four rules above, it must cause, or be likely to cause, the average consumer to take a different transactional decision - 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

Note: in this guide, 'take a different transactional decision' is used as shorthand for 'take a transactional decision they would not have taken otherwise'.

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 does not only relate to pre-shopping but includes after-sales and continues for the lifetime of the product.

In the CPRs, 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 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 CPRs

If you fail to comply with the CPRs you may be in breach of the law. Enforcers (such as the CMA and local Trading Standards) may take civil enforcement action in respect of any breach of the CPRs under Part 8 of the Enterprise Act 2002. There are also a number of criminal offences under the CPRs.

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

It is a breach of the CPRs to give false information to consumers, or to deceive consumers, where this is likely to cause the average consumer to take a different transactional decision (regulation 5: "Misleading actions").

The CPRs specify three types of misleading actions:

- misleading information generally
- 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* consumers are likely to take into account in making decisions relating to products - for example, the main characteristics of the product and the price or the way it is calculated. The full list is set out in annex A.

[*Further information on the main factors is set out in paragraph 7.7 of the UK Government-issued guidance

document on the CPRs.]

An unfair business practice may mislead consumers through the false information it contains, or through the practice itself, or because its overall presentation is deceptive or 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 in advertising on the vehicle itself, in the showroom, in a newspaper, website, email, text, or other types of documentation provided to the prospective buyer
- visually - for example, through the use of pictures of vehicles
- in television or radio advertising

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' or 'Trade sale only' or '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 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 CPRs to mislead consumers by failing to give them the information they need in order to make informed decisions (regulation 6: "Misleading Omissions").

This includes the final decision to buy, but also includes 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.

This might, for example, be by omitting or hiding important information you are aware of (or you should reasonably have been aware of as a professional in the motor trade) or by providing important information in an unclear, unintelligible, ambiguous, or untimely manner, where this is likely to cause the average consumer to take a different transactional decision.

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 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 up-front price if they are compulsory. A failure to include compulsory charges in the up-front 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 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.

Acting aggressively (aggressive business practices)

It is a breach of the CPRs to engage in practices that intimidate or exploit consumers, restricting their conduct or ability to make free or informed choices and which cause, or are likely to cause, the average consumer to take a different transactional decision (regulation 7: "Aggressive commercial practices").

A commercial practice is aggressive if it significantly impairs (or is likely to significantly impair)

the average consumer's freedom of choice or conduct in relation to goods or services through the use of harassment, coercion or undue influence and the average consumer takes, or is likely to take, a different transactional decision 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 a number of other business practices that are considered unfair in all circumstances and are prohibited (banned practices). They are detailed in Schedule 1 to the CPRs and the full list is given in annex B.

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 10) - for example, by misleading consumers about the extent to which an offered warranty or guarantee enhances the rights which 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 18) - 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 22) - 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 07734 765890.' The advertisement gives the impression that the seller is not selling as a trader, which would breach the CPRs.

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

It is a breach of the CPRs 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 change the decision that an average consumer would make (regulation 3: "Prohibition

of unfair commercial practices").

The general prohibition applies to practices that materially distort the economic behaviour of the average consumer with regard to the product (or are likely to). 'Material distortion' means that a practice impairs the average consumer's ability to make an informed decision. The impairment must be significant enough to change the decisions that the average consumer makes.

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) and if you are shown to have knowingly or recklessly failed to do so, and this changes or is likely to change the decisions 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 to redress under the Consumer Rights Act 2015 - for example, if you refuse to listen to complaints or wrongly tell consumers that they have no right to 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 CPRs. The original version of the flowchart can be found on p. 12 of the UK Government-issued guidance document on the CPRs.

Steps to help you comply with the CPRs

We set out below some of the practical steps you can take to help your business comply with the CPRs.

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.

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 which 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 instance, 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 you have the vehicle registration mark and maker details, you can check the MOT test results and history (if the vehicle is more than three years old) on the GOV.UK website.

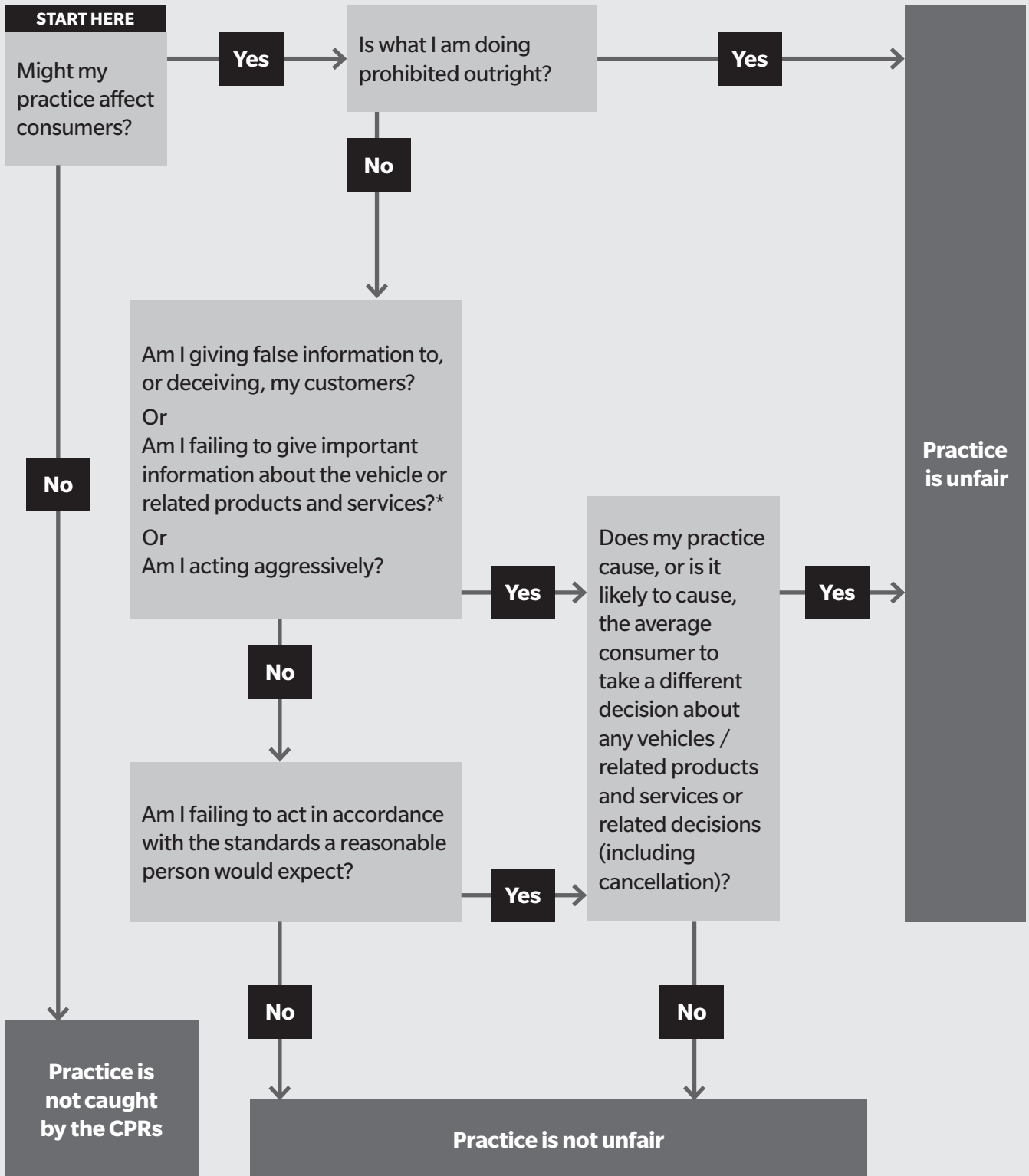
Generally, before exposing any vehicle for sale, it is best practice to take all reasonable steps to establish the accuracy of the stated mileage. There may be very limited exceptions to this - for example, where a vehicle has been pre-registered. In most circumstances, you would be expected in the first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

Flowchart. Is your business practice unfair?



[*In some situations (where an invitation to purchase is made) certain specified information must always be provided unless apparent. Further information about invitations to purchase can be found in the with the UK Government-issued guidance document on the CPRs.]

information suggesting that the mileage may be incorrect. Various companies including CDL Vehicle Information Services, Experian and HPI 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 share 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, or in any documents related to the supply of the vehicle which 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 CPRs. 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 2023, 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 that showed the vehicle had a recorded mileage of 136,000 in August 2023, so the currently displayed mileage of 52,000 is incorrect.

In such circumstances, it is recommended that you use a prominent written notice, such as 'MOT test records show this vehicle had a recorded mileage of 136,000 in August 2023, so the currently displayed mileage of 52,000 is incorrect', which 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 CPRs. 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.

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 CPRs to state or create the impression that a product can legally be sold when it cannot (banned practice 9). 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 CPRs.

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 Consumer Rights Act 2015, 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 CPRs. 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.

Vehicles under preparation for sale

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.

Pre-sale history and mileage checks

You will substantially increase the risk of breaching the CPRs 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 CPRs 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.

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 or hide such information, or provide it in an unclear, unintelligible, ambiguous or untimely manner.

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

- price (see also part 5 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 which 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 CPRs do 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 CPRs. Providing important information in writing will help you to comply with the requirements of professional diligence and will also protect both you and consumers should disputes arise 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 Consumer Rights Act 2015). 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 not covered by the warranty or guarantee.

After-sales service Complaints and enquiries

The following are all best practice for 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 4).

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

- by providing 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

- carrying 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 Consumer Rights Act 2015 (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 different transactional decision is prohibited under the CPRs (see 'Acting aggressively (aggressive business practices)' above).

Auction sales

The CPRs apply 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, for instance:

- applying misleading descriptions to vehicles 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 in fact 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 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 the 'Business-to-business marketing' guide.

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

If you do not comply with the CPRs, you may face enforcement action. Local authority Trading Standards services have a duty to enforce the CPRs. Enforcers can use a range

of tools to ensure that traders are complying with the CPRs, including criminal and/or civil enforcement.

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

Civil claims

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 on the GOV.UK website.

PART 2. CONSUMER RIGHTS ACT

Complying with the Consumer Rights Act 2015

Introduction to the CRA

The Consumer Rights Act 2015 (CRA) governs the sale of goods (including cars) to consumers.

As a second-hand car dealer, you need to know how the law affects you and your customers.

The law on the sale of goods has evolved over many years. Previous legislation included the Sale of Goods Act 1979 (SoGA). Since 1 October 2015, this has been largely replaced by Part 1 of the CRA for sales to consumers. SoGA continues to apply to sales to business buyers. Please note that part 2 of this guidance only applies to sales to consumers.

A number of the provisions of SoGA (for example, 'satisfactory quality' and 'as described') were little changed in the CRA. But there were also new provisions, such as the 30-day 'short-term right to reject' and the 'one repair or replacement' rule.

Note: some of the examples given have been simplified to illustrate particular points.

If you fail to fulfil your obligations under the CRA, a customer can take court action against you for breach of contract. You may also face enforcement action by Trading Standards. Failing to meet your obligations under the CRA may, in some cases, also constitute a breach of the CPRs (see 'Giving false information to, or deceiving, consumers' in part 1).

When you sell a second-hand vehicle to a consumer, you have certain legal obligations under the CRA.

Before the sale Make sure that the vehicle is of satisfactory quality

Consumers are entitled to vehicles of 'satisfactory quality'. Satisfactory quality means that the vehicle you sell must be of a standard that a reasonable person would expect, taking into account a number of factors including the vehicle's:

- age
- value / worth and price
- history (including mileage)
- intended use
- make
- durability
- safety
- description (spoken or in writing)
- freedom from minor defects
- appearance and finish

Whether a vehicle is of satisfactory quality will therefore depend on the particular facts and on the extent to which the actual condition of the vehicle matches the consumer's reasonable expectations. For example, in judging whether a recently bought seven-year-old car is of satisfactory quality, it would be reasonable to take account of the price of the car. This

could be far less than for a new vehicle and so expectations should be lower. It would also be reasonable to assume that the performance might not be as good and the quality of the finish could fall far short of new condition.

In summary, with second-hand cars, it is reasonable to expect some wear and tear and for it not to be in the perfect condition of a new car - for example, there may be some scratches to the paintwork. However, it would still need to conform to any description given to it and should be judged in accordance with the standard and performance that was reasonable to expect in a similar car of that age, mileage and model.

Examples - satisfactory quality

You sell a car, but your mechanic fails to tighten a wheel properly. Shortly after purchase, the consumer is driving the car and the wheel comes off, causing significant damage to the suspension. The car is not of satisfactory quality.

A consumer buys a six-month-old car from you for £30,000. The car is described as having a state-of-the-art smartphone-linked media system. The media system is faulty and fails to connect with the owner's iPhone or her husband's Android phone, both of which have been shown to be compatible with other cars' media systems. Following significant repair attempts, you still cannot fix the smartphone connectivity problem. This vehicle is unlikely to be of satisfactory quality.

A consumer buys a 10-year-old car from you for £3,500. You fully disclose all the known history of the car, including its having travelled 120,000 miles and had four previous owners. After four months, a fault develops with the

clutch, which needs to be replaced. Industry experience shows that clutches on this model of car typically need replacing on average after eight years or 100,000 miles. This is likely to be deemed 'fair wear and tear' and so the car would not be unsatisfactory under the CRA.

Some points to remember

It is not sufficient that a vehicle is merely roadworthy and safe under the Road Traffic Act 1988 and/or the General Product Safety Regulations 2005. The requirement of satisfactory quality extends to other matters besides safety and roadworthiness.

Even where a vehicle has a minor defect, it may still be of unsatisfactory quality - for example, if that defect has a serious knock-on effect (for instance, where the defect causes extensive damage so that the vehicle can never be restored to its previous condition, or the defect renders it dangerous to drive the vehicle).

When a used vehicle develops a fault after purchase, whether that renders the car to not be of satisfactory quality will depend on many factors, including the price, age, mileage and any description applied to the car.

You are liable for faults with the vehicle that were present at the time you sold it (where they mean the vehicle was not of satisfactory quality), even though they may only become apparent later on, in so called 'latent' or 'inherent' faults.

In some instances, the specific fault complained about may not have been present at the time of purchase, but the inherent cause of the problem could have rendered the vehicle unsatisfactory at the time of sale - for example, the hand brake cable is worn but this is only discovered when the hand brake ceases to function after

two months.

You are liable for public statements about the characteristics of the vehicle made by you or the manufacturer - for example, in advertising, product brochures, etc.

However, you will not be liable for public statements in any of the following circumstances, where you can prove that:

- you were not and could not reasonably have been aware of the statement when you made the contract
 - the statement was publicly withdrawn or corrected before the goods were sold / hired
 - the consumer's decision could not have been influenced by it
- Furthermore, you are not liable:
- for fair wear and tear, where the vehicle broke down or fault emerged through normal use
 - for misuse or accidental damage to the vehicle by the consumer
 - if you specifically draw to the consumer's attention the full extent of any fault or defect before they buy the vehicle - for example, if you draw to the consumer's attention that a vehicle has a specific worn part before they decide to buy it
 - if the consumer examined the vehicle before buying it and should have noticed the fault.

Note: where the vehicle is examined by the consumer rather than an expert, this mainly applies to cosmetic defects, such as scratches or dents that are obvious. You will remain liable for defects that were not apparent on a reasonable examination

Make sure that the vehicle is fit for purpose

The consumer must be able to use the vehicle for the purposes that you

would normally expect from a vehicle. This means not only driving the vehicle from one place to another, but doing so with the appropriate degree of comfort, ease of handling and reliability that a reasonable person would expect from that vehicle. If a vehicle keeps breaking down, then it is not fit for purpose.

Where the consumer says (or when it should be obvious to you) that the vehicle is wanted for a particular purpose (even if that is a purpose for which the vehicle is not usually supplied) and you agree that it will meet those requirements, then the vehicle will have to be reasonably fit for that purpose. If you are not confident that the vehicle will meet the consumer's particular requirements, it is best practice that you make this clear to them, preferably by putting it in writing to protect yourself against future claims.

Example - fit for purpose

A consumer explains to you that he wants a car that is suitable for towing his caravan and tells you the weight that is required to be towed. He is assured by you that a particular car is suitable to meet his requirements. You will subsequently be liable if the car you sold was not sufficiently powerful to tow the caravan, as the consumer relied on your expertise. The car was not fit for the particular purpose the consumer made known to you at the time of sale.

Make sure that the vehicle corresponds with any description you give to it

Any description of the vehicle must be accurate; this applies to a wide range of methods of description, including information given:

- over the telephone

- in the course of discussions in person, prior to the sale of the vehicle
- in writing in advertising on the vehicle or in the showroom
- in a newspaper, website, email or text
- in television or radio advertisements
- in documentation provided to the prospective buyer
- in a sales listing on a social media site

If the vehicle does not correspond with the description, you will be in breach of contract. You may also be in breach of the CPRs.

Example - as described

You sell a vehicle that you describe as '2012 registered, a 1,600cc engine, and has air-conditioning'. You must ensure that it has been registered in that year, has a 1,600cc engine size and that it has working air-conditioning.

Make sure you have the right to sell the vehicle

You must ensure that you have the right to sell the vehicle and in the case of an agreement to sell, that you will have such a right when the vehicle is sold. If you do not have the right to sell the vehicle, the consumer has the right to reject the vehicle and recover the purchase price.

You should, therefore, check that the vehicle is not subject to a pre-existing finance agreement before you offer it for sale. If the credit or finance agreement (for example, hire purchase) remains unpaid when you purchase the vehicle, you will not acquire good title (legal ownership). In that case, the lender may have a right to take possession of the vehicle. If the vehicle is still subject to a finance agreement and you sell it to a private

buyer (who doesn't know about the finance), then that buyer is likely to get good title and keep the car. You could then be legally liable to the finance company and the private buyer.

If you fail to check whether a vehicle is subject to outstanding finance, you will also increase your risk of breaching the CPRs.

Example - right to sell (title)

You purchase a car (for example, as a part-exchange) which has an outstanding hire purchase agreement on it. You then sell the car to a consumer. You will not have acquired good title to the car and the consumer is entitled to exercise their right to reject the vehicle and reclaim the purchase price from you. The consumer may, in certain circumstances, instead decide to keep the car. You could then find yourself liable to the finance company who provided the hire purchase agreement.

After the sale

Your customer's rights

If you fail to fulfil your obligations under the CRA (in respect of either satisfactory quality, fitness for purpose, description or the right to sell the vehicle), you will be in breach of contract and the consumer will be entitled to a number of remedies against you. What remedy the consumer is entitled to will depend on a number of factors, including:

- how long ago you sold the vehicle to the consumer
- the remedy the consumer is asking for
- the seriousness of any fault or defect
- whether the fault or defect keeps recurring
- the cost of carrying out repairs or replacing the vehicle

- what is possible in the circumstances
- proportionality
- the need to avoid 'significant inconvenience' to the consumer

The short-term right to reject

For a period of 30 days after the sale, if the vehicle fails to meet any of the requirements detailed in the sections 'Make sure that the vehicle is of satisfactory quality' to 'Make sure that the vehicle corresponds with any description you give to it' above, the consumer can 'reject' it and receive a full refund. The 30 days starts when the consumer receives the vehicle and does not include any days that it is back in the garage for repairs.

Example - misdescribed history

You describe the car as having one careful owner but it has had four private owners, all consecutively registered as keepers. The consumer discovers this after three weeks and considers that you have breached the legal requirement that the car matches the description you applied to it. The consumer has a right to reject the car and receive a full refund. You may have also committed an offence under the CPRs.

If the consumer asks for repair or replacement during the initial 30 days, the period is paused so that the consumer has the remainder of the 30-day period or seven days (whichever is later) to check whether the repair or replacement has been successful and to decide whether to reject the goods.

Example - waiting period

The car develops a fault on day 26 and is returned to the dealership for repair. The car is returned on day 29

said to have been repaired; if it has not been repaired satisfactorily, the consumer has until day 36 to reject the vehicle.

In the event of rejection, the consumer must receive a refund without undue delay, and in any event, within 14 days of the trader agreeing that the consumer is entitled to a refund. In such cases, if you want the consumer to return the vehicle to where they took possession of it (for example, at your premises), you must make this requirement part of the contract and notify the consumer clearly prior to purchase. Otherwise, the consumer only has to make the vehicle available for collection by you, regardless of where they live. Note too that, even where the return location of the car is part of the contract, the consumer may be able to claim reasonable expenses (such as, employing a recovery service for a broken-down vehicle) if they are obliged to return the car to a different location from where they originally took possession.

Example - rejection

A consumer discovers that a one-year-old car they bought from you for £29,000 a few days ago has a major engine fault. The consumer was from a different region of the UK and took possession of the car at your premises. Your contract contained a term obliging the consumer to return the car to where they took possession of it if exercising their right to reject. They complain to you straight away and request a full refund, but you dispute their claim. They take the car to an independent garage and they confirm that the engine was in a very poor condition when sold. The consumer provides you with a written report of the

garage's findings and asks you for their money back. If the findings in the report are reasonable and validate the consumer's complaint, you must accept the car back and provide a full refund. The consumer does not have to agree to other remedies - for example, repair. The consumer takes a day off work to return the car to your premises and then brings a claim for damages against you for their lost income for that day.

Repair or replacement

If a breach of contract (as described in the 'Your customer's rights' section above) arises after 30 days, the consumer has a right to a repair or replacement. Generally, the consumer can choose which remedy they prefer, although the choice must not be impossible to fulfil or disproportionate compared to the other remedy.

Example - replacement disproportionate

You sell a car that has an unusually low mileage and good condition for a vehicle of its age and model. After two months, a problem arises with the gearbox that can be easily and quickly repaired by your mechanic. The consumer seeks a replacement, but you know that it will be very difficult and time consuming to source a sufficiently similar car. It is likely that the consumer's demand is disproportionate and they would have to accept a repair.

The remedy must be supplied to the consumer at no extra cost, within a reasonable time and without significant inconvenience to the consumer.

One opportunity to repair or replace satisfactorily

The trader has one opportunity to provide a remedy. If this fails to resolve the problem, the consumer can reject the vehicle. So, if an attempted repair does not resolve a fault or if a replacement vehicle is not of satisfactory quality, the consumer can seek a refund at that stage, without having to give the trader further opportunities to resolve the matter. This does not prevent the consumer from accepting a further attempt at repair or replacement if they agree to it.

A remedy is also deemed to have failed if it is not supplied in a reasonable time, or if significant inconvenience has been caused to the consumer. Again, the consumer can seek a refund in such circumstances.

Example - failed repair

You sell a two-year-old car with average mileage to a consumer, but a significant problem develops with the engine after three months. You take the car in and attempt to repair. Within a week of receiving the car back, the consumer realises that the problem has recurred and the repair has failed. You want to have another go at fixing the problem, but the consumer can insist on rejection and refund.

The concepts of 'reasonable time' and 'significant inconvenience' are not defined in detail and will depend on the circumstances of each case.

Example - failed replacement

A consumer comes to you looking for a specific car with adaptive cruise control. This is discussed in detail and is clearly a main priority. You source and sell the consumer an almost new car but unfortunately the adaptive cruise control does not always work properly, and the consumer returns

the vehicle to you. There is no repair option so you replace the car with a similar model, but it also has problems with the adaptive cruise control. The consumer can seek a refund.

When a consumer is pursuing a repair or replacement remedy to a breach of the CRA, a dealer must 'bear any necessary costs incurred' in carrying out the remedy. This would include the cost of returning the vehicle to the garage. Note that the provision excluding the cost of returning a car to the garage in the event of rejection (see 'The short term right to reject' section above) does not apply where a repair or replacement is being sought. Instead, the remedy must be supplied 'free of charge'.

Example - significant inconvenience

You sell a used car to a consumer and a fault develops after a few weeks. You agree that you are liable to repair but due to the need to order unusual parts and a busy period at your business the vehicle will not be ready for several weeks. This may be deemed to be a 'significant inconvenience' and so the supply of a courtesy car will ensure that the consumer cannot insist on a refund at this stage.

Deduction for use

If a consumer rejects a vehicle after one or more failed repairs or replacements, you may be able to make a 'deduction for use' from the refund, which reflects the use that the consumer has had of the vehicle before rejecting it.

Example - deduction for use

A £25,000 pre-registered car develops a serious gearbox issue

after five weeks of use and the car is replaced by the dealer with a near identical vehicle. Four months later, the replacement vehicle develops the same gearbox fault and the consumer rejects the car, seeking a refund. The consumer had travelled 4,000 trouble-free miles in the past five months before the gearbox failed for the second time. The dealer can take into account the miles travelled and any other relevant objective assessments when calculating the final refund. Simply refunding the current second-hand value of the vehicle would not be acceptable.

Example - no reduction in refund

A consumer buys a £35,000 motorhome and travels abroad doing 5,000 miles in 21 days. The consumer discovers a significant inherent electrical fault. The buyer can reject the vehicle and claim a full refund despite the extensive use due to this being a breach of satisfactory quality claimed in the first 30 days.

For more information on deduction for use, see annex C.

Reduction in price

Another possible remedy for the sale of an unsatisfactory vehicle is for the buyer to keep it but receive a reduction in the purchase price to reflect its failings. A price reduction must be an appropriate amount, which will depend on all the circumstances of the claim. It can be any amount up to the whole price.

This remedy is available to a consumer as an alternative to the final right to reject and becomes available under the same circumstances - that is, either after one repair or

replacement has failed, or if a repair or replacement has not been supplied in a reasonable time or without significant inconvenience to the consumer. In these circumstances, the consumer can choose between a price reduction and rejection (with a possible deduction for use).

Example - price reduction

The consumer reports that the music system in a car sold by you doesn't work and you inform them that you will source specialist help in repairing the problem. They contact you repeatedly over the next three months, but no progress is made in resolving the problem and the consumer employs another garage to fix it. They are likely to be able to claim from you a price reduction equal to the amount paid for the repair.

It is also worth remembering that there is nothing to prevent a buyer and seller agreeing on a remedy that is agreeable to both parties, even if all the standard processes of the CRA have not been followed. The consumer must freely agree and not be coerced in any way.

Example - quick solution

A consumer reports several minor faults with a car you have sold. To save time and effort, you suggest that, instead of attempting to remedy the problems, you will make a proportionate reduction in the price. The consumer accepts your offer.

Other costs

In addition to the obligations described above, a consumer may also have a claim for additional sums - for example, the cost of an independent report carried out on a faulty vehicle

to prove their claim. Such additional sums must be reasonable and directly connected to the unsatisfactory nature of the vehicle.

Time limit for bringing a claim

A consumer can take legal action up to six years from the date they bought the vehicle. In Scotland, they can take legal action within five years of discovering a fault; however, no claim can be taken to court after ten years from the date of purchase. This does not mean that the vehicle has to last or be fault-free for six years; it is the time limit for making a claim in respect of a fault that was present at the time of sale.

Summary of remedies

This flowchart summarises the consumer remedies where a vehicle is of unsatisfactory quality: 'Summary of consumer remedies'.

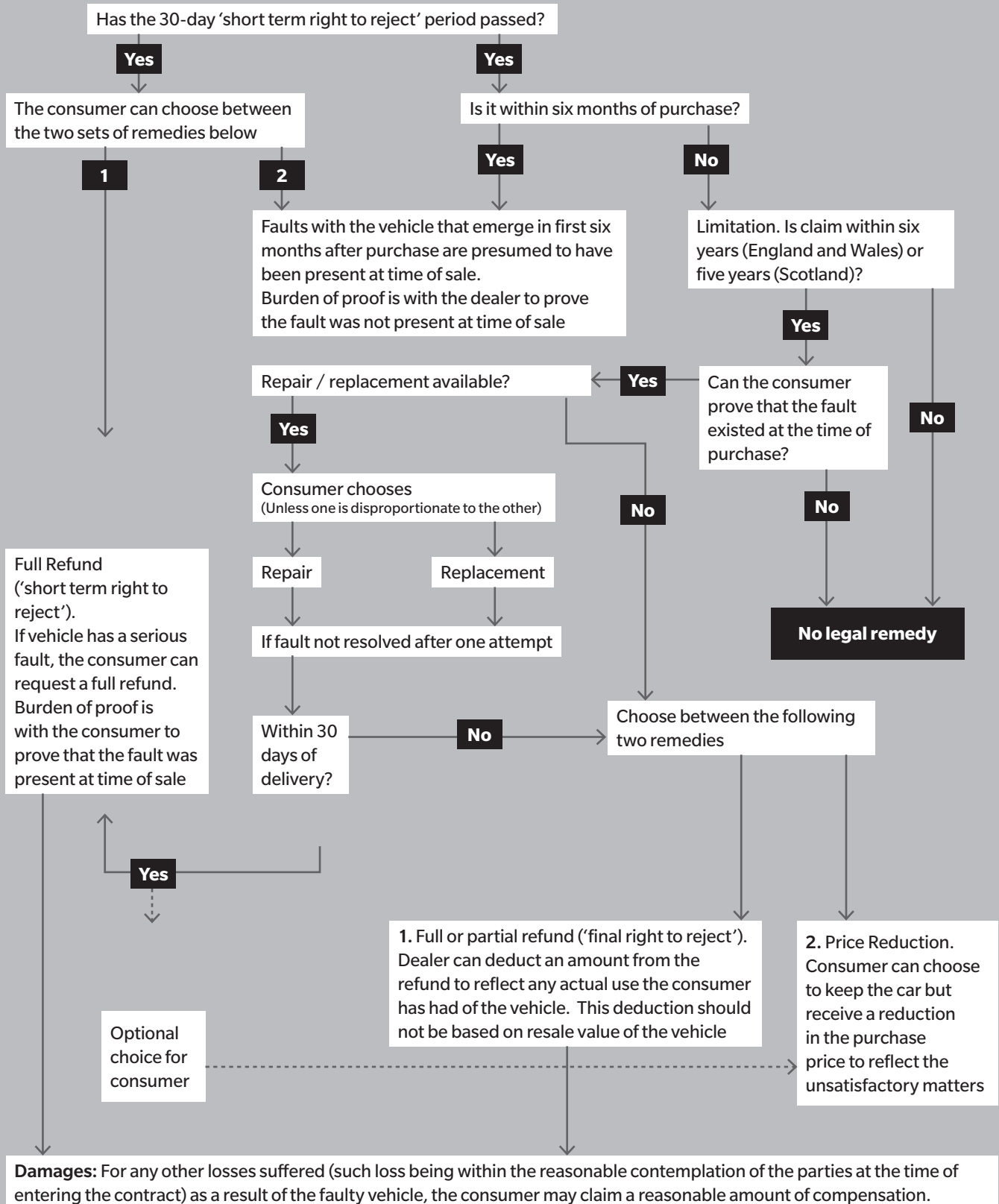
Finance agreements

The provisions of the CRA also apply to the supply of vehicles to consumers through a range of finance agreements, including hire purchase (HP), personal contract purchase (PCP) and personal contract hire (PCH). See 'Your legal obligations' above for the details of the applicable provisions.

However, under such contracts, a consumer's legal rights and remedies are against the finance company and not the car dealer. The dealer's obligations are to the finance company and will be detailed in the agreement between the two businesses.

A consumer also has other rights under hire purchase agreements. These include the right to terminate the agreement without penalty if more than half of the total price has been paid. PCP agreements are a type of hire purchase agreement and

Flowchart. Summary of consumer remedies for the sale of faulty second-hand vehicles not of 'satisfactory quality'



consumers have exactly the same termination rights.

Additionally, dealers have some obligations in terms of acting as a conduit between the consumer and the finance company. For example, if a consumer supplies a written note of cancellation to a dealer, this must be forwarded to the finance company. Furthermore, if a consumer has the right to rescind (unwind or reject) a contract and they give notice of that rejection to the dealer who introduced them to the finance company, then the dealer is obliged to pass that notice to the finance company. (Sections 102 and 175 of the Consumer Credit Act 1974.)

Example - defective car on PCP

A consumer receives delivery of a pre-registered, almost new £40,000 car under a PCP plan. The car develops a serious gearbox fault one week later. The consumer rejects the vehicle at the supplying dealership under the 30-day provision. They do not have to accept a repair and the warranty is irrelevant. The garage must properly inform the finance company of the consumer's decision. The consumer must be put back in the same position they were in at the outset and responsibility for that ultimately lies with the finance company, but the dealership is likely to play a coordinating role under the terms of their brokerage / agency agreement.

Warranties and guarantees

Any warranty or guarantee you sell or provide for free with the vehicle is in addition to the consumer's legal rights under the CRA. It is not a substitute for those legal rights.

You cannot, for instance, refuse

to deal with a consumer's complaint about a fault or defect with a vehicle simply on the grounds that:

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

Free warranties / guarantees

If you offer the consumer a free warranty or guarantee, it:

- is legally binding
- must be written in English and in plain intelligible words
- must state that it does not affect the consumer's legal rights
- must be made available for viewing by consumers before purchase

There is a pre-contract information requirement under the CCRs (see 'Cancellation rights and performance requirements' in part 3) to give information on any guarantee or warranty you offer.

Examples - warranties

A consumer buys a four-year-old car from a dealer at a cost of £15,000. The dealer provides the consumer with a free three-month warranty with the car. The engine seizes up after four months due to a fault; it will be presumed to have been present at the time of purchase in the absence of any proof from the dealer to the contrary. The dealer cannot then refuse to repair or replace the car simply because it is out of warranty. The consumer is entitled to a repair or replacement as the car was not of satisfactory quality at the time of purchase.

A consumer buys a five-year-old car from a dealer at cost of £7,000. The dealer also sells the consumer a 12-month warranty with the car.

The gearbox fails after four months due to a fault; it will be presumed to have been present at the time of purchase in the absence of any proof from the dealer to the contrary.

The warranty cover specifically excludes problems with the gearbox. The dealer cannot refuse to repair the gearbox because it is not covered by the warranty. Statutory rights still apply, and the consumer is entitled to a repair or replacement as the car was not of satisfactory quality at the time of purchase.

Attempting to limit your liability under the CRA

A consumer's legal rights under the CRA cannot be taken away or restricted, and any attempt by you to do so, by using an exclusion clause or similar notice, will be void and therefore unenforceable (you will not be able to rely on it in a dispute with a consumer).

Examples - unlawful words or statements

Sellers cannot use words or statements in sales to consumers such as 'Sold as seen', 'Unroadworthy', 'Trade sale only', 'No refund', 'Spare or repair' or 'Sold as scrap', even if the statement 'this does not affect your statutory rights' is included.

Including terms in a contract that require the consumer to make declarations about what had or had not been said about a vehicle's mileage and defects and/or affirming that they had examined the vehicle and had any faults pointed out to them. Such terms could be used to exclude liability arising under the CRA. If untrue, such 'declarations' mislead

consumers who may wrongly assume that they have signed away their rights. Where they are true, such declarations are unnecessary.

Service contracts

Statutory rights

When you service a consumer's vehicle, you have certain legal obligations under the CRA.

If you supply a service, you must meet the following standards:

- the service must be carried out with reasonable care and skill. This means that you must, as a minimum, work to the same standard as any reasonably competent person in the motor trade
- information given in writing or orally to the consumer is binding where the consumer relies on it. This will include quotations and any promises about timescales or about the extent or scope of the service. This applies if the consumer takes account of this information in deciding whether to buy the service or to make any decision about the service subsequently
- where the agreement does not specify a price or a method for calculating price, the service must be done for a 'reasonable price'. Typically, this will be judged against the prices that other similar traders might have charged
 - the service must be carried out within a reasonable time. Often, a contract will specify a date or time for the service to be performed or completed. Where there is no agreement about time, the timescale must nevertheless be reasonable. What is reasonable depends on the type of service and all other relevant circumstances

Remedy for breach

If you breach the contract by failing to meet the required standards for the supply of services, the consumer can require you to put things right.

In these circumstances, the law says that the consumer is entitled to repeat performance of the service or to a price reduction.

Repeat performance

This remedy is available where the trader fails to exercise reasonable care and skill, or where they breach a requirement arising from information they have given about the service. The consumer can require you to repeat the service in order to complete it properly. This work must be done at no cost to the consumer, within a reasonable time and without causing significant inconvenience to the consumer.

The consumer cannot ask for repeat performance where it would be impossible to finish providing the service to the required standard.

Price reduction

The consumer can claim a price reduction for a service where repeat performance is impossible or cannot be done within a reasonable time and without causing significant inconvenience.

The amount of the price reduction will depend on how serious the breaches were, and it can be anything up to 100% of the price. If the consumer has already paid in full or in part for the service, they may therefore be entitled to some money back.

Other remedies

The remedies under the CRA do not include a right for the consumer to have someone else complete the service and then to charge this to the original motor trader.

However, the Act does not take away the consumer's existing legal rights, which can include claiming compensation.

Normally, a consumer will be happy to let you put things right, but there are cases where the service has been performed so badly that it would be unreasonable to expect the consumer to give the trader a second chance. There may also be circumstances where it would be impractical to do so.

Example - other remedies

Your mechanic repairs a vehicle, but two days later it breaks down hundreds of miles from the original garage due to the work not being done correctly. The consumer may be entitled simply to claim the cost of remedial work by another motor trader.

However, even in the example above, it makes good sense for the consumer to discuss his concerns and intentions with the original motor trader first in order to try to come to some sort of agreement about this.

Exceptions: when the consumer cannot make a claim

A consumer cannot make a claim where, despite the service being carried out with reasonable care and skill, it does not achieve the consumer's desired outcome, unless that outcome has been agreed first.

A consumer cannot make a claim where it is the consumer, and not the trader, who is responsible for things going wrong. If, against the trader's advice, a consumer asks the trader to use inappropriate methods or to take short cuts to save money, the consumer has no claim to the extent that these methods or short cuts give a disappointing result. If a trader

agrees to do work on this basis, it is advisable to make a written record of what has been agreed and of the risks of poor results.

A consumer cannot claim for damage they cause. Nor can they claim if they simply change their mind about wanting the goods or services, unless the contract allows them to do so through a cooling-off period or right to cancel. A consumer has no rights to claim for faults that appear as a result of fair wear and tear.

Dealing with complaints

Under the Provision of Services Regulations 2009, traders are under a legal duty to respond to consumer complaints as quickly as possible and to make their best efforts to resolve those complaints. This means that traders must respond to phone calls, emails and letters of complaint. Where a complaint appears to be valid, it is recommended that you put things right promptly. If you dispute liability, it is best practice to give a clear explanation of your reasons.

Time limits for court action

Where goods are installed as part of a service, consumers can expect those goods not to fail prematurely, even if the reasonable life expectancy of those goods is several years. However, there is a time limit that eventually prevents consumers from making a claim through the courts.

For a breach of contract, a consumer can bring a claim to court within six years of discovering a fault. In Scotland, they can take legal action within five years of discovering a fault; however, no claim can be taken to court after ten years from the date of purchase. If you have offered a guarantee on the work, then you have to honour the guarantee.

This does not mean all goods have

to last this length of time, but this is the time limit that the law gives a consumer to take legal action.

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

If you do not honour your obligations under the CRA, the consumer may bring a court claim against you.

Alternative dispute resolution

Another option for a consumer is to use an 'alternative dispute resolution' (ADR) provider (see part 4 of this guidance for more details). This may be a dedicated motor trade scheme (for example, the Motor Ombudsman or Scottish Motor Trade Association's Complaints Conciliation Service) or a general provider. If you are signed up to a members' scheme, you must cooperate with that ADR process. If you are not a member of a scheme and are contacted by a general ADR provider, you are not under an obligation to participate. However, in many cases it may be suitable to do so, especially to avoid the expense and inconvenience of potential court action. Note that you are also obliged to provide the information listed in the 'ADR information requirements' section of part 4. You may also face enforcement action.

Enterprise Act 2002

Trading Standards can take civil enforcement action against you under Part 8 of the Enterprise Act 2002 in respect of breaches of the CRA that harm the 'collective interests of consumers' in the United Kingdom. Enforcers can use a range of tools to ensure that traders are complying with the law.

More information on Trading Standards' powers can be found in 'Trading Standards: powers, enforcement and penalties'.

Consumer Protection from Unfair Trading Regulations 2008

Failing to meet your obligations under the CRA may also constitute a breach of the CPRs - for example, where you:

- mislead consumers about their legal rights
- systematically fail to carry out pre-sale mechanical checks before you advertise, market or sell vehicles
- obstruct consumers who have bought vehicles of unsatisfactory quality from you and are trying to exercise their rights to redress under the CRA - for example, if you refuse to listen to complaints or wrongly tell consumers that they have no right to redress

Features of the CRA not covered by this guidance

Unfair contract terms

The Consumer Rights Act 2015 also covers the use of unfair terms in consumer contracts. This is a specialised area of law and is not covered in this document.

Further information can be found in the Competition and Markets Authority's [Unfair Contract Terms Guidance: Guidance on the Unfair Terms Provisions in the Consumer Rights Act 2015](#), which is available on the GOV.UK website. Brief information can also be found in Business Companion's '[Unfair contract terms](#)' guide.

Enforcement powers

The Consumer Rights Act 2015 consolidates the enforcement powers of Trading Standards officials. Further information on Trading Standards officers' powers can be found in the 'Trading Standards: powers, enforcement and penalties' guide.

PART 3. CONSUMER CONTRACTS REGULATIONS

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

Introduction to the CCRs

While most cars are still displayed and sold on traditional 'forecourt' premises, a significant number are now sold in other ways, including online. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) apply to most businesses that enter into contracts with consumers*, whatever the method of sale, including dealers who only operate on-premises (forecourts), where an obligation to provide certain pre-contract information exists. The Regulations impose detailed information, cancellation and performance rules surrounding 'distance sales', (for example, internet selling under what is referred to as an 'organised distance sales scheme') and also contracts concluded in consumers' homes or other non-business premises.

[*Financial products offered by car dealers have specific information provision obligations, as required by the Financial Conduct Authority (FCA). Information on consumer credit firms is available on the FCA website.]

Pre-contract information requirements for on-premises (forecourt) sales

Car dealers, together with other retailers of goods, are obliged to give consumers certain information before the consumer is bound by an on-premises contract (for example, forecourt dealerships

or other business premises). The information must be given in a clear and comprehensible manner, if that information is not already apparent from the context (that is, fairly obvious). The full list of the 11 information requirements is set out in the table below, along with an explanation about how each item may apply to the motor trade.

Pre-contract information requirements for distance and off-premises sales

If you are operating (see examples) a real distance selling scheme (or concluding car sales in consumers' homes or other non-business premises), you must:

- provide specified pre-contract information about the car and your business
- when an agreement is formed to sell a car, supply a further list of specified information in a 'durable medium' (for example, paper, email or placing the information in your customer's personal account area of your website, which they can access by logging in)
- allow the buyer a 14-day 'cooling off period' to change their mind and cancel the purchase. No reason is required to be given for cancellation and there is no requirement for there to be anything wrong with the car
- meet specified performance criteria in relation to timescales for supply of the car or refunds if relevant

Further information can be found in the 'Consumer contracts: distance sales' guide on the Business Companion website.

Example - fully online sales (distance sales)

A car dealer regularly sells cars

over the internet and accepts payment online, delivering cars to the buyer without the buyer coming to the dealership at any time. In this scenario, these sales are cancellable distance sales contracts, giving the buyer 14 days from the date of delivery to examine the car and send the vehicle back if they change their mind.

Example - mix of online and in-person (distance sales)

A car dealership advertises cars online on its website. A buyer orders a car and pays a deposit but must pick the car up from the dealership where full paperwork is exchanged and full payment mechanisms arranged. According to the explicit wording on the website and the confirmation email received by the buyer, the online actions commit the buyer to the sale and a contract is formed online. This is a distance sale and so the consumer has 14 days after they collect the car from the dealership to exercise their right to cancel.

Example - mix of online and in-person (not distance sales)

A car dealership advertises cars online on its website. A buyer can put a hold on a car for a set period, with a view to visiting the dealership to conclude the contract, make full arrangements including payment and collect the vehicle. On visiting the dealership, the buyer signs contract paperwork and picks up the car. This is an 'on-premises' sale and is not a distance sale, and so the consumer has no cooling-off period and no cancellation rights.

PRE-CONTRACT INFORMATION REQUIREMENTS FOR ON-PREMISES SALES

Information requirement	Application in the motor trade
(a) The main characteristics of the goods or services, to the extent appropriate to the medium of communication and to the goods or services	A motor car is a complex device with a range of characteristics that will be of importance to a potential buyer. See also 'Giving insufficient information to consumers' in part 1
(b) The identity of the trader (such as the trader's trading name), the geographical address at which the trader is established and the trader's telephone number	Your name and address may be obvious for customers on your premises, but they must also be informed of a telephone number for further contact (See 'Introduction to CCRs' above). You should make your legal name clear - for example, John Smith t/a ACME cars or ACME (123) Ltd t/a 123 Motors
(c) The total price of the goods or services, inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated	Motor vehicles offered for sale already have to be accompanied by a price or a very obvious price list (See also part 5)
(d) Where applicable, all additional delivery charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable	These may be indicated on advertisements if you are willing to deliver vehicles as an occasional service
(e) Where applicable, the arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods or to perform the service	The expectations of the seller in terms of payment (including the arrangements for part-exchange vehicle or other deposits) must be communicated clearly so that the consumer should be able to understand them
(f) Where applicable, the trader's complaint-handling policy	If you have one, explain your complaint-handling policy. Note: Providers of services should already have a complaint-handling policy in place as required by the Provision of Services Regulations 2009. In addition, the CTSI Approved Code scheme and some trade associations and professional bodies will also require a policy to be in place, which must be made available to consumers (see part 4)
(g) In the case of a sales contract, a reminder that the trader is under a legal duty to supply goods that are in conformity with the contract	See 'Cancellation rights and performance requirements' below
(h) Where applicable, the existence and the conditions of after-sales services and commercial guarantees	See 'Cancellation rights and performance requirements' below
(i) The duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract	Unlikely to apply to used car sales
(j) Where applicable, the functionality, including applicable technical protection measures, of digital content	Digital accessories are now fundamental for most drivers and these may relate to the operation of the vehicle as well as obvious extras, such as the digital audio system and satellite navigation
(k) Where applicable, any relevant compatibility of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of	There are growing numbers of potential applications, many requiring enhanced mobile phone connectivity which may not always be available - for example, 5G for advanced driver-assistance systems

[*The letters in the above table match those given for the particular requirement in Schedule 1 to the CCRs.]

PRE-CONTRACT INFORMATION REQUIREMENTS FOR DISTANCE AND OFF-PREMISES SALES

Information requirement	Application in the motor trade
(a*) The main characteristics of the goods or services, to the extent appropriate to the medium of communication and to the goods or services	A motor car is a complex device with a range of characteristics that will be of importance to a potential buyer. See also ‘Giving insufficient information to consumers’ in part 1
(b) / (c) The identity of the trader (such as the trader’s trading name), the geographical address at which the trader is established and, where available, the trader’s telephone number, fax number and e-mail address, to enable the consumer to contact the trader quickly and communicate efficiently	You must make your legal name clear - for example, John Smith t/a ACME cars or ACME (123) Ltd t/a 123 Motors
(d) Where the trader is acting on behalf of another trader, the geographical address and identity of that other trader	Provide full details of any other business on whose behalf you are acting
(e) If different from the address provided in accordance with requirement (c) above, the geographical address of the place of business of the trader, and, where the trader acts on behalf of another trader, the geographical address of the place of business of that other trader, where the consumer can address any complaints	As above
(f) The total price of the goods or services, inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated	Motor vehicles offered for sale already must be accompanied by a price or a very obvious price list (see also part 5). Any additional charges must be included, and the total price payable must be clear to the buyer
(g) Where applicable, all additional delivery charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable	If your online sales service includes delivery to the consumer for a charge, that charge must be clearly indicated. This will not be relevant if the consumer collects the car from your premises
(h) In the case of a contract of indeterminate duration or a contract containing a subscription, the total costs per billing period or (where such contracts are charged at a fixed rate) the total monthly costs	Unlikely to apply to used car sales
(i) The cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate	For example, premium rate phone lines
(j) The arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods or to perform the services	The expectations of the seller in terms of payment (including the arrangements for part-exchange vehicle or other deposits) must be communicated clearly so that the consumer should be able to understand them. Delivery or collection arrangements must be indicated
(k) Where applicable, the trader’s complaint-handling policy	If you have one, explain your complaint-handling policy. Note: Providers of services should already have a complaint-handling policy in place as required by the Provision of Services Regulations 2009. In addition, the CTSI Approved Code scheme and some trade associations and professional bodies will also require a policy to be in place, which must be made available to consumers (see part 4)

Information requirement	Application in the motor trade
(l) Where a right to cancel exists, the conditions, time limit and procedures for exercising that right	Most online sales give the buyer two weeks to cancel without giving a reason. Full details of this right and how to exercise it must be indicated. Some of the exemptions that apply to the right to cancel can be found in the 'Consumer contracts: distance sales' guide
(m) Where applicable, that the consumer will have to bear the cost of returning the goods in case of cancellation and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods	This provision may be important in online car sales where return costs could be significant. If you seek to have the consumer bear the costs of returning a vehicle cancelled during the cooling off period, you must make the conditions and likely costs clear
(n) That, if the consumer exercises the right to cancel after having made a request in accordance with regulation 36(1), the consumer is to be liable to pay the trader reasonable costs in accordance with regulation 36(4)	This relates to service contracts and is not relevant to most distance car sales
(o) Where under regulation 28, 36 or 37 there is no right to cancel or the right to cancel may be lost, the information that the consumer will not benefit from a right to cancel, or the circumstances under which the consumer loses the right to cancel	Some exemptions to the right to cancel exist. For further information, see the 'Consumer contracts: distance sales' guide
(p) In the case of a sales contract, a reminder that the trader is under a legal duty to supply goods that are in conformity with the contract	See 'Cancellation rights and performance requirements' below
(q) Where applicable, the existence and the conditions of after-sale customer assistance, after-sales services and commercial guarantees	See 'Cancellation rights and performance requirements' below
(r) The existence of relevant codes of conduct, as defined in regulation 5(3)(b) of the Consumer Protection from Unfair Trading Regulations 2008, and how copies of them can be obtained, where applicable	If you are a member of a trade association or similar body and committed to comply with its code of conduct you must indicate this
(s) / (t) The duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract; where applicable, the minimum duration of the consumer's obligations under the contract	Unlikely to apply to used car sales
(u) Where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader	Details of any required deposit payments or other financial guarantees must be indicated
(j) Where applicable, the functionality, including applicable technical protection measures, of digital content	Digital accessories are now fundamental for most drivers and these may relate to the operation of the vehicle as well as obvious extras, such as the digital audio system and satellite navigation
(k) Where applicable, any relevant compatibility of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of	There are growing numbers of potential applications - for example, connection to mobile phone or other device
(x) Where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it	If your sales are subject to any alternative dispute resolution (ADR) scheme, such as from a trade association or other code membership, you must give details (see part 4)

[*The letters in the above table match those given for the particular requirement in Schedule 2 to the CCRs.]

Cancellation rights and performance requirements

In general, online consumer buyers can cancel a purchase for up to 14 days after they receive the goods, without giving a reason and without there being anything wrong with the purchase. This is totally separate from the rights provided by the CRA in relation to satisfactory quality and description. You must accept a cancellation that is done correctly by a consumer under the CCRs and reimburse the consumer within 14 days. Unless a specific timescale is agreed in the contract with a consumer, you must deliver or otherwise make available a vehicle without undue delay and not more than 30 days after the contract was entered into.

Practicalities and consequences

How dealers practically pass on the relevant information prior to the conclusion of a contract is not set out in strict detail, allowing you some flexibility in how you provide these details. The Regulations say that the information must be given before the contract is concluded, in a clear and comprehensible manner. The information does not have to be in writing, but having it in writing does provide retailers with some certainty over the actual content relayed to consumers. Failure to provide the required information would allow a buyer to claim that you have breached your contract with them, and the buyer could seek legal redress. There would also be a potential claim if any of the required information that you had provided was incorrect.

Rights and guarantees

The specific requirement to remind buyers that a seller is under a legal duty to supply goods that conform

with the contract was new to consumer law when introduced in 2014. It has long been the case that when sellers made statements about the contractual terms of sale, that they were obliged to make clear that 'this did not affect the consumer's statutory rights'. This new information provision goes one step further in that retailers are now obliged to openly and explicitly make clear that consumers have legal (statutory) rights - that is, those basic legal rights set out in the Consumer Rights Act 2015 (See part 2).

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". Sellers also have to give information on the existence and conditions of any commercial guarantee or warranty issued with a vehicle (see 'Warranties and guarantees' in part 2).

Making changes

Making changes to any of the information given before entering into the contract, or later, is not effective unless expressly agreed between the consumer and the trader. Any information that you give to the consumer, as required by this Regulation, is to be treated as a term of the contract.

Default options for additional charges

Where there are additional items linked to the main contract (for example, gap insurance or chargeable warranties), paying for these items must not be the default option. Consumers must always be asked to expressly consent to any additional charges. Consumers will not be liable for any additional payments that they

have not actively consented to, and they have the right to request that they are refunded for these payments.

Basic rate telephone helpline charges

If you provide a telephone line for consumers to contact you in relation to a contract that they have entered into with you, you cannot charge more than a basic rate for this service. Therefore, you can only charge normal geographic or mobile rates. A consumer must not have to pay more to contact you about their purchase than they would to phone a friend or relative. Consumers who are charged more than the basic rate are entitled to claim any overcharge back from you.

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

If a business does not comply with the CCRs, Trading Standards services can take action under the Enterprise Act 2002, including applying for a court order. For more information, see 'Trading Standards: powers, enforcement and penalties'.

PART 4. ALTERNATIVE DISPUTE RESOLUTION REGULATIONS

Complying with the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

Introduction to ADR

When there is a dispute between a consumer and a trader, there are a range of options for resolving the dispute without going to court. These options can often be quicker and cheaper, and lead to a more satisfactory solution, than taking legal action. The law seeks to promote the use of 'alternative dispute resolution'

(ADR) by ensuring that suitable options are available in all consumer disputes, and requiring traders to inform consumers whether they are willing to use ADR.

What is ADR?

ADR is any process for the resolution of a dispute out of court. The simplest and most common form of ADR is direct negotiation, and this often leads to a solution. Where direct negotiation does not resolve the dispute, a range of other options may be available. In broad terms, ADR can take two forms:

- in some types of ADR, the process allows the parties to the dispute to decide their own outcome, often with the help of a neutral third party. This is typically the case for direct negotiation, conciliation and mediation
- in other types of ADR, the outcome is decided by someone who is not a party to the dispute. This is what happens in adjudication, arbitration and ombudsman schemes

Is ADR compulsory?

ADR is generally not compulsory for motor traders unless it is required by the rules of a trader's trade association or by the term of a contract. It may be compulsory, however, in relation to other services offered by a motor trader. For example, if the trader sells financial services (for example, offers a payment plan) then, under financial services legislation, the trader will, in general, be obliged to engage in ADR for such services. Such a trader will need to place details of the Financial Ombudsman Service (FOS) on its website and in its terms and conditions for its financial services.

Where ADR is not compulsory, businesses can, if they wish, voluntarily sign up to an approved

ADR scheme. A full list of CTSI-approved ADR providers is maintained on the Chartered Trading Standards Institute website. Current approved Motor Trade ADR Schemes include The Motor Ombudsman and the National Conciliation Service.

See also 'Alternative dispute resolution' in part 3.

ADR information requirements

Although traders do not have to agree to use ADR for a consumer dispute (unless it is compulsory for them by law, by scheme membership or by contract), they are required to provide certain information about ADR to consumers.

Where a trader is considering a consumer complaint, at the point where the trader's internal complaint-handling procedure is exhausted, they must provide the consumer with the following information:

- a statement that the trader cannot settle the complaint with the consumer
- the name and website address of an ADR provider that could deal with the complaint, if the consumer wishes to use ADR
- whether the trader is obliged or prepared to submit to an ADR procedure operated by that provider
- in other words, the trader has to give the consumer details of an ADR provider but does not have to agree to use ADR

The information must be provided in a 'durable medium' (for example, a letter or an email) and it will normally form part of the final 'deadlock' letter in response to a consumer complaint.

Further information can be found in the 'Alternative dispute resolution' guide.

PART 5. PRICE MARKING ORDER / PAYMENT SURCHARGES REGULATIONS

Complying with the Price Marking Order 2004 and the Consumer Rights (Payment Surcharges) Regulations 2012

Pricing and payment

The selling price

The law on price marking states that where motor vehicles and other goods are offered for sale to consumers, they must have their price clearly indicated. The pricing information must be clearly legible, unambiguous, easily identifiable and inclusive of VAT and any other taxes. This information must be clearly visible to your customers without them having to ask for it. The selling price is, by definition, the final price and must, therefore, include the unavoidable and foreseeable components of the price, components that are necessarily payable by the consumer.

Pricing when selling online

Pricing information is required in both the retail forecourt environment and when selling by distance means, such as online.

General requirements in relation to pricing

The law prohibits businesses from misleading their customers - for example, displaying goods at a lower price than actually charged, or showing a sale price when the higher price was never charged. The law also prohibits a trader from omitting or hiding information a consumer would need to make a decision regarding whether or not to purchase goods. An example of this would be failing to inform a customer of a compulsory additional charge.

Additional charges

Additional charges must be included in the up-front selling price if they are compulsory. A failure to include compulsory charges in the up-front price may breach the law.

Guidance on pricing practices

CTSI has produced detailed Guidance for Traders on Pricing Practices that contains information for traders on good practice regarding pricing. It can be found in the 'Providing price information' guide.

Payment surcharges

In most cases, surcharges for electronic or card payments are not permitted. Since January 2018, businesses have not been permitted to impose surcharges for paying by debit card, credit card or electronic payment services. The ban on surcharges does not apply to commercial debit or credit cards.

The Business Companion guide 'Payment surcharges' has more information on this. Alternatively, the Department for Business and Trade has produced its own guidance on payment surcharges, which can be found on the GOV.UK website.

ANNEX A. MISLEADING ACTIONS

Matters relevant to 'misleading actions' under the CPRs

Background

As discussed in part 1, 'misleading actions' are covered in the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). The CPRs prohibit misleading actions that cause, or are likely to cause, the average consumer to take a different transactional decision.

Relevant matters

These include:

- the existence or nature of the product
- the main characteristics of the product
- the extent of the trader's commitments
- the motives for the commercial practice
- 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 nature, attributes and rights of the trader
- the consumer's rights or the risks they may face

Main characteristics of the product

These include:

- availability of the product
- benefits of the product
- risks of the product
- execution of the product
- composition of the product
- accessories of the product
- after-sale customer assistance concerning the product
- the handling of complaints about the product
- the method and date of manufacture of the product
- the method and date of provision of the product
- delivery of the product
- fitness for purpose of the product usage of the product
- quantity of the product
- specification of the product
- geographical or commercial

origin of the product

- results to be expected from use of the product
- results and material features of tests or checks carried out on the product

Note: 'product' means goods or service.

The nature, attributes and rights of the trader

These include the trader's:

- identity
- assets
- qualifications
- status
- approval
- affiliations or connections
- ownership of industrial, commercial or intellectual property rights
- awards and distinctions

The consumer's rights

These include rights the consumer may have under the Consumer Rights Act 2015, including in particular the consumer's rights to enforce terms about goods, the right to a repair or replacement, the right to a price reduction or the final right to reject.

ANNEX B. BANNED PRACTICES

The 31 practices that the CPRs ban outright

List of banned practices

Schedule 1 to the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) lists 31 practices that "are in all circumstances considered unfair". The following is the list of practices as it appears in the current version of Schedule 1.

1. Claiming to be a signatory to a code of conduct when the trader is not.
2. Displaying a trust mark, quality

mark or equivalent without having obtained the necessary authorisation.

- 3.** Claiming that a code of conduct has an endorsement from a public or other body that it does not have.
- 4.** Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when the trader, the commercial practices or the product have not or making such a claim without complying with the terms of the approval, endorsement or authorisation.
- 5.** Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply, or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).
- 6.** Making an invitation to purchase products at a specified price and then:
 - (a) refusing to show the advertised item to consumers,
 - (b) refusing to take orders for it or deliver it within a reasonable time, or
 - (c) demonstrating a defective sample of it,
 with the intention of promoting a different product (bait and switch).
- 7.** Falsely stating that a product 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 and deprive consumers of sufficient opportunity or time to make an informed choice.
- 8.** Undertaking to provide after-sales service to consumers with whom

the trader has communicated prior to a transaction in a language which is not English (in the case of a trader located in the United Kingdom) or not an official language of the EEA State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.

- 9.** Stating or otherwise creating the impression that a product can legally be sold when it cannot.
- 10.** Presenting rights given to consumers in law as a distinctive feature of the trader's offer.
- 11.** Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).
- 12.** Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or their family if the consumer does not purchase the product.
- 13.** Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.
- 14.** Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.
- 15.** Claiming that the trader is about to cease trading or move premises when they are not.

16. Claiming that products are able to facilitate winning in games of chance.

- 17.** Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.
- 18.** Passing 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.
- 19.** Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.
- 20.** Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.
- 21.** Including in marketing material an invoice or similar document seeking payment that gives the consumer the impression that they have already ordered the marketed product when they have not.
- 22.** Falsely claiming or creating the impression that the trader is not acting for purposes relating to their trade, business, craft or profession, or falsely representing oneself as a consumer.
- 23.** Creating the false impression that after-sales service in relation to a product is available in the United Kingdom (if the product is sold there) or in an EEA State other than the one in which the product is sold.
- 24.** Creating the impression that the consumer cannot leave the premises until a contract is formed.
- 25.** Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return, except in circumstances and

to the extent justified to enforce a contractual obligation.

26. Making persistent and unwanted solicitations by telephone, fax, email or other remote media except in circumstances and to the extent justified to enforce a contractual obligation.

27. Requiring a consumer who wishes to claim on an insurance policy to produce documents that could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising their contractual rights.

28. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.

29. Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer.

30. Explicitly informing a consumer that if they do not buy the product or service, the trader's job or livelihood will be in jeopardy.

31. Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either:

- (a) there is no prize or other equivalent benefit, or
- (b) taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

ANNEX C. DEDUCTION FOR USE CALCULATIONS: A PROPOSAL

A possible method for calculating the deduction that may be made for the consumer's use of the vehicle

Deducting an amount for use of a vehicle in line with CRA requirements

Note: the deduction-for-use calculation method in this annex is not obligatory; only the courts can give an authoritative interpretation of the law.

If a vehicle is rejected by a consumer after one or more failed repairs or replacements, you may be able to make a 'deduction for use' from the refund. This deduction should reflect the usage the consumer has had of the vehicle and so a consumer who has had 5,000 miles' use from the car can expect a larger deduction than another who has only driven it for 500 miles. Reductions to refunds can only be applied if the buyer rejects the car after the 'short term right to reject' period has ended.

The law does not prescribe how to calculate the deduction, but it must reflect the value of the **use** that the consumer has had of the vehicle, so that in effect the consumer is paying a charge for that use. You can consider all relevant information (for example, the type of goods, the intended use, expected lifespan, etc) when assessing how much use the consumer has had and what level of deduction would be appropriate to reflect this. With cars, mileage travelled is likely to be a key factor.

It is important to recognise that a deduction for use assessment should only consider actual usage of the vehicle and not simply imposing a current part-exchange valuation. It would not be appropriate to simply consult a professional vehicle valuation tool and refund the current part-exchange figure. Such tools

reflect a range of factors including live market conditions, depreciation statistics and future retail margins, which are unlikely to be relevant when calculating an appropriate sum for the partial use a consumer has had of a rejected vehicle.

The Consumer Rights Act 2015 (CRA) does not create a method on how to calculate a deduction for use, so sellers must come to an agreed figure using a fair and justified approach. As regulators, Trading Standards services might also be asked to assess the fairness of deduction-for-use calculations.

Given the potential lack of certainty over how to calculate fair and appropriate deductions for use, the Chartered Trading Standards Institute has generated the following calculation approach, which may provide a useful point of reference when evaluating the appropriateness of deduction-for-use calculations. The approach can be used by businesses and regulators to judge whether a deduction-for-use figure is appropriate and fair. The method laid out in this guide is suggested as one approach that uses the various key factors involved in calculating an appropriate deduction-for-use figure. Car dealers or their trade bodies may be able to formulate a different system that is a valid mechanism for calculating fair and lawful deductions for use.

Starting point

A key assumption in this suggested method is that the total value of use that a vehicle provides across its entire lifespan could not exceed the original new price of the car. Therefore, if a car cost £25,000 new, the maximum total use that vehicle could provide over its entire lifespan is £25,000.

Next, the value of use derived from a premium vehicle will be higher than

a basic car and similarly over time, due to wear and tear, cars will have decreased usability. For that reason, a calculation of use value may factor in the quality of vehicle and reflect declining usability over time.

The method further assumes that a vehicle has a 12-year life span, divided into four equal periods. To reflect the decreasing value of use due to wear and tear over time, the method proposes that 40% of the value of use is associated with the first three years,

30% with the next three years, then 20% with years seven to nine, and 10% with the final three years. The method next assumes that, on average, cars travel around 12,000 miles a year. This means that over 12 years a vehicle would travel 144,000 miles, or 36,000 miles in each three-year period.

Key assumptions

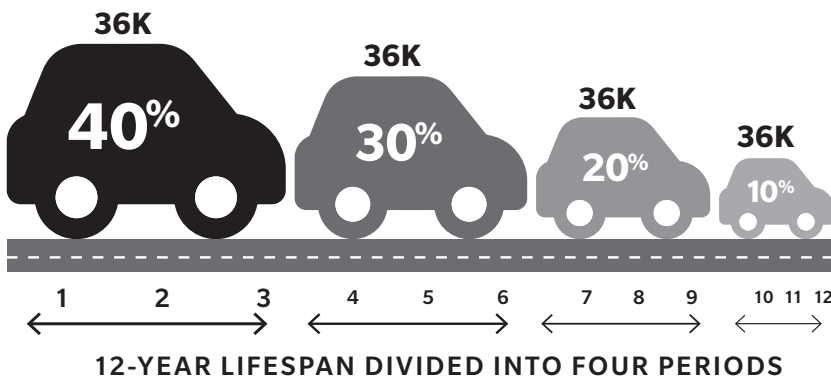
In summary, this method makes four key assumptions:

- the total value of a vehicle’s use

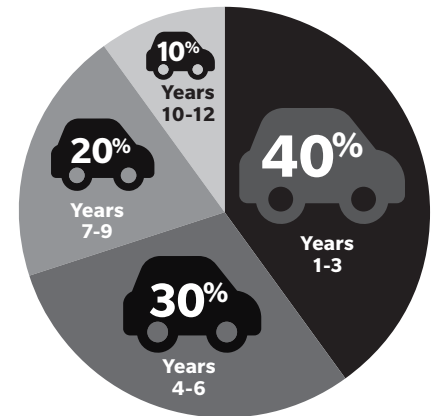
across its lifetime amounts to the original new price of a car (a figure available to the motor vehicle retail sector)

- an average vehicle has a lifetime of 12 years
- a vehicle travels on average 12,000 miles per year
- 40% of the value of use is associated with the first three years, 30% with the next three years, then 20% with years seven to nine, and 10% with the final three years

The following graph shows the percentage distribution-of-use value across the lifetime of a vehicle and 36,000 portion of total mileage across four age periods:



The following pie chart shows lifetime value.



Calculation basics

Pulling the key assumptions together, the method proposes that the average or nominal use per mile for a vehicle before any age-weighting factor would be:

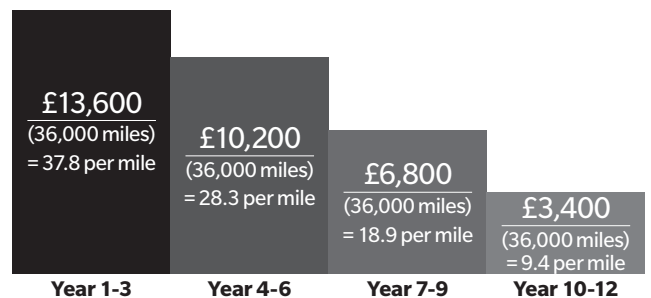
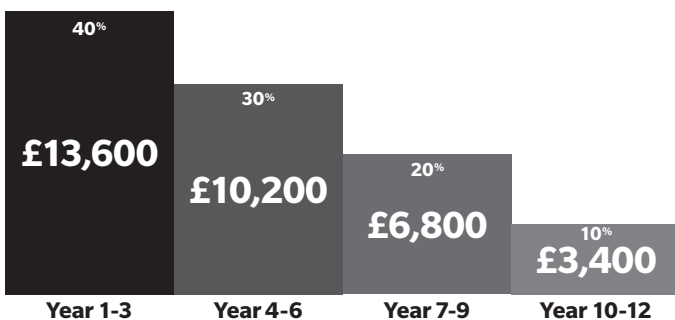
• use per mile = $\frac{\text{new car price}}{144,000}$

• After adopting the relevant age weightings*, the calculations for each of the 36,000-mile periods are:

- use (period 1) = $0.4 \times \frac{\text{new car price}}{36,000}$
- use (period 2) = $0.3 \times \frac{\text{new car price}}{36,000}$

- use (period 3) = $0.2 \times \frac{\text{new car price}}{36,000}$
- use (period 4) = $0.1 \times \frac{\text{new car price}}{36,000}$

[*The applicable weighting is based on the age of the vehicle at the time of sale, not when it was rejected.]



The graph above shows an example; with the new price of the car being £34,000, it shows how the total value of use is distributed across the four age bands:

• £13,600 + £10,200 + £6,800 + £3,400 = £34,000

Assuming a 12-year and 12,000 miles per annum lifespan, a nominal use per mile rate can be calculated for each age band, as shown in the graph above.

Example calculations

Example 1

A car that is two and a half years old when sold (period 1 weighting factor is 0.4), and according to trade data had an original new list price of £27,450, would have a use mileage rate of:

- use (period 1) = $0.4 \times \left(\frac{£27,450}{36,000}\right) = £0.305$ (or 30.5p per mile)

The table below shows the mileage use rate for the four periods, based on the car costing £27,450 when new.

Period	Mileage use rate
Period 1 (years one to three - the example above)	30.5p
Period 2 (years four to six)	23p
Period 3 (years seven to nine)	15.2p
Period 4 (years 10 to 12)	7.6p

Therefore, if this example car was sold for £17,500 when two and a half years old, and the consumer drove 1,200 miles before finally rejecting the faulty vehicle, the calculated deduction for use would be:

- $1,200 \times £0.305 = £366$

This gives a final refund of:

- $£17,500 - £366 = £17,134$

Example 2

A car that is five years old when sold (period 2 weighting factor is 0.3), and according to trade data had an original new list price of £22,200, would have a use mileage rate of:

- use (period 2) = $0.3 \times \left(\frac{£22,200}{36,000}\right) = £0.185$ (or 18.5p per mile)

The table below shows the mileage use rate for the four periods, based on the car costing £22,200 when new. Mileage use rate for example 2

Period	Mileage use rate
Period 1 (years one to three)	24.7p
Period 2 (years four to six - the example above)	18.5p
Period 3 (years seven to nine)	12.3p
Period 4 (years 10 to 12)	6.2p

Therefore, if this example car was sold for £10,500 at five years old, and the consumer drove 1,600 miles before finally rejecting the faulty vehicle, the calculated deduction for use would be:

- $1,600 \times £0.185 = £296$
- This gives a final refund of:
- $£10,500 - £296 = £10,204$

Example 3

A car that is eight years old when sold (period 3 weighting factor is 0.2), and according to trade data had an original new list price of £15,300, would have a use mileage rate of:

- use (period 3) = $0.2 \times \left(\frac{£15,300}{36,000}\right) = £0.085$ (or 8.5p per mile)

The table below shows the mileage use rate for the four periods, based on the car costing £15,300 when new. Mileage use rate for example 3

Period	Mileage use rate
Period 1 (years one to three)	17p
Period 2 (years four to six)	12.8p
Period 3 (years seven to nine - the example above)	8.5p
Period 4 (years 10 to 12)	4.2p

Therefore, if this example car was sold for £4,500 at eight years old, and the consumer drove 470 miles before finally rejecting the faulty vehicle, the calculated deduction for use would be:

- $470 \times £0.085 = £39.95$
- This gives a final refund of:
- $£4,500 - £39.95 = £4,460.05$

Example 4

A car that is 10 years old when sold (period 4 weighting factor is 0.1), and according to trade data had an original new list price of £37,800, would have a use mileage rate of:

- use (period 4) = $0.1 \times \left(\frac{£37,800}{36,000}\right) = £0.105$ (or 10.5p per mile)

The table below shows the mileage use rate for the four periods, based on the car costing £37,800 when new. Mileage use rate for example 4

Period	Mileage use rate
Period 1 (years one to three)	42p
Period 2 (years four to six)	31.5p
Period 3 (years seven to nine)	21p
Period 4 (years 10 to 12 - the example above)	10.5p

Therefore, if this example car was sold for £7,000 at ten years old, and the consumer drove 1,300 miles before finally rejecting the faulty vehicle, the calculated deduction for use would be:

- $1,300 \times £0.105 = £136.50$

This gives a final refund of:

- $£7,000 - £136.50 = £6,863.50$

ANNEX D. PRACTICAL CHECKLIST

Complying with the CPRs and the CRA

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 Consumer Protection from Unfair Trading Regulations 2008 (CPRs) ensure 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 Consumer Protection from Unfair Trading Regulations 2008 (CPRs)

The CPRs prohibit 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 CPRs. However, if you mislead, behave aggressively, or otherwise act unfairly towards your customers, you are likely to be in breach of the CPRs 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 (CRA)

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, 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 C 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.

LEGISLATION ETC

The laws featured in this guide / update information

Trading Standards

For more information on the work of Trading Standards services - and the possible consequences of not abiding by the law - please see 'Trading Standards: powers, enforcement and penalties'.

In this update

Extra information on distance sales (sales made via the internet etc) and a new annex on deduction for use. General detail has also been added. Last reviewed / updated: May 2024

Key legislation

- Consumer Credit Act 1974
- Road Traffic Act 1988
- Enterprise Act 2002
- Price Marking Order 2004
- General Product Safety Regulations 2005
- Business Protection from Misleading Marketing Regulations 2008
- Consumer Protection from Unfair Trading Regulations 2008
- Provision of Services Regulations 2009
- Consumer Rights (Payment Surcharges) Regulations 2012
- Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
- Consumer Protection (Amendment) Regulations 2014
- Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015
- Consumer Rights Act 2015

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 changes to legislation can be found by following the above links and clicking on the 'More Resources' tab.