

# Guidance for second hand car dealers

Compliance with the Consumer  
Protection from Unfair Trading  
Regulations 2008 and the Sale of  
Goods Act 1979 (as amended)

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# 1. Using the Guidance

## Scope

- 1.1 This guidance is intended to help you, as a second hand car dealer, to comply with two important pieces of consumer protection law that affect how you deal with consumers:
- The Consumer Protection from Unfair Trading Regulations 2008 (CPRs), which ensure that you deal with consumers fairly and honestly.
  - The Sale of Goods Act 1979, as amended<sup>1</sup> (SoGA), which 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.
- 1.2 The guidance is in two parts. **Part A** 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 B** contains guidance on your legal obligations to consumers under the SoGA, including a flowchart summarising the legal remedies consumers are entitled to where the vehicles you sell are not of 'satisfactory quality'.
- 1.3 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<sup>2</sup> – when you make a sale to a consumer. By 'second hand' we mean any vehicle with a previous user.
- 1.4 Not all points listed will apply to every dealer, nor is the guidance intended to be exhaustive. It is based on the experience of enforcers, industry, consumer groups and other stakeholders of problems in the second hand car market.
- 1.5 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.
- 1.6 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.
- 1.7 There is other important legislation which may apply to you, which is not covered in this guidance. For example, if you sell vehicles on finance, consumer credit legislation applies, including the Consumer Credit Act 1974 (as amended) and the forthcoming Consumer Credit Directive. You should read the Office of Fair Trading (OFT) guidance on offering credit at [www.offt.gov.uk](http://www.offt.gov.uk). And if you sell vehicles at a distance,

<sup>1</sup> The Sale of Goods Act 1979 has been amended by the Sale and Supply of Goods Act 1994 and the Sale and Supply of Goods to Consumers Regulations 2002.

<sup>2</sup> Where the customer is buying the vehicle for purposes not related to their business.

for example, over the internet, there is additional legislation – the Consumer Protection (Distance Selling) Regulations 2000 – that applies to such sales. You should read the OFT guidance ‘Cars and other vehicles sold by distance means’, OFT689, which can be found at [www.offt.gov.uk](http://www.offt.gov.uk).

1.13 This guidance is compliant with the Department for Business Innovation and Skills (BIS) Code of Practice on Guidance on Regulation. A copy of the Code can be found at: [www.bis.gov.uk/Policies/better-regulation/code-of-practice-on-guidance-on-regulation](http://www.bis.gov.uk/Policies/better-regulation/code-of-practice-on-guidance-on-regulation).

## What do you need to do?

1.8 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?

1.9 **If you do not comply with the law you may face enforcement action** by your local authority Trading Standards Service (TSS), the OFT or other bodies. You could also lose your customers, some of whom may have the right to take legal action against you (see sections 7 and 14 for more information).

## Where can I get further advice?

1.10 For further advice you should contact your local TSS and/or seek independent legal advice.

## Providing feedback on the guidance

1.11 The guidance will be kept under review and we will consider adding to it on an ongoing basis in the light of user feedback, practical experience and case law.

1.12 If you wish to comment on any aspect of the guidance, you can do so by emailing [second-handcars@oft.gsi.gov.uk](mailto:second-handcars@oft.gsi.gov.uk).

# **Part A: Complying with the Consumer Protection from Unfair Trading Regulations 2008 (CPRs)**

## 2. Introduction

- 2.1 The CPRs<sup>3</sup> came into force in May 2008. They 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.
- 2.2 If you treat consumers fairly, then you are likely to be complying with the CPRs. However, if you mislead, behave aggressively, or otherwise act unfairly towards consumers, then you are likely to be in breach of the CPRs and may face criminal or civil enforcement action.
- 2.3 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 should 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.
- 2.4 The guidance should be read in conjunction with the OFT and BIS's general guidance document on the CPRs, 'Guidance on the Consumer Protection from Unfair Trading Regulations 2008', OFT1008.<sup>4</sup>

<sup>3</sup> Statutory Instrument 2008/1277.

<sup>4</sup> Call 0800 389 3158 for a free copy of this publication or download a copy at [www.of.gov.uk/advice\\_and\\_resources/publications/guidance/cprregs](http://www.of.gov.uk/advice_and_resources/publications/guidance/cprregs).

# 3. Overview of the CPRs

- 3.1 The CPRs prohibit you, as a second hand car dealer, from engaging in unfair business practices when you supply vehicles or other services to consumers.
- 3.2 The CPRs set out broad rules outlining when business practices are unfair. These fall into five main categories.
  - 1. Giving false information to, or deceiving, consumers for example through false or deceptive advertisements or statements.
  - 2. Giving insufficient information to consumers, for example leaving out or hiding important information.
  - 3. 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 (honest market practice/good faith).
  - 5. In addition, the CPRs ban 31 specific practices outright.
- 3.3 For a practice to be unfair under the first four rules above, they must cause, or be likely to cause, the average consumer to take a different decision,<sup>5</sup> for example, where they cause the consumer to:
  - view the vehicle when they would not otherwise have done so, and/or
  - buy the vehicle when they would not otherwise have done so, and/or
  - buy the vehicle at a higher price or on more disadvantageous terms than they would have otherwise done, and/or
  - not pursue a legitimate complaint when they would otherwise have done so.
- 3.4 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 the value of a part-exchanged vehicle.

<sup>5</sup> We use 'take a different decision' as shorthand for 'take a transactional decision that they would not have taken otherwise'.

## 4. Breaches of the CPRs

4.1 If you fail to comply with the CPRs you will be in breach of the law and, as a consequence, you may commit a criminal offence. There are a number of criminal offences under the CPRs, and breaches can also be enforced through civil court injunctions.

### Giving false information to, or deceiving, consumers (misleading actions – regulation 5)

4.2 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 decision (**misleading actions**).

4.3 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.

4.4 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 of 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 (engine size, 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 one previous user – through the use of statements such as 'one previous owner' – when in fact it is an ex-business use vehicle that has had multiple previous users (such as an ex-rental, driving school vehicle or taxi).
- Misleading consumers about the value of a vehicle you intend to purchase from them in part exchange.

## Giving insufficient information to consumers (misleading omissions – regulation 6)

- 4.5 It is a breach of the CPRs to mislead consumers by failing to give them the information they need in order to make an informed decision before the sale<sup>6</sup> (**misleading omissions**).
- 4.6 This might, for example, be by omitting or hiding important information you are aware of or providing important information in an unclear, unintelligible, ambiguous, or untimely manner, where this is likely to cause the average consumer to take a different decision.

### Examples of misleading omissions:

- Failing to disclose the **existence** and **results** of all 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, such as for example:
  - The vehicle's previous accident<sup>7</sup> and/or insurance write off history.
  - 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.
- Failing to disclose that a vehicle for sale 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 – in such circumstances it is not sufficient to only inform the consumer of the mileage and the number of previous owners.
- 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.

<sup>6</sup> Misleading omissions can also occur where you fail to give consumers the information they need in order to make an informed decision during or after the sale.

<sup>7</sup> 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.

## Acting aggressively (aggressive business practices – regulation 7)

- 4.7 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 are likely to cause the average consumer to take a different decision (**aggressive practices**).

### Examples of 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 to 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 (schedule 1)

4.8 There are a number of other business practices which are considered unfair in all circumstances and which are prohibited (**banned practices**).

### Examples of 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 tells a consumer that the 'special offer price' will be increased the next day in order to pressurise him 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 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. £2000 or nearest offer. Call Jack on 07734 765890'. The advertisement gives the impression that the seller is not selling as a trader, and would breach the CPRs.

## **Failing to act in accordance with reasonable expectations of acceptable trading practice (general prohibition of unfair business practices – regulation 3)**

- 4.9 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.
- 4.10 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, you will be committing a criminal offence.

### **Examples of breaches of professional diligence:**

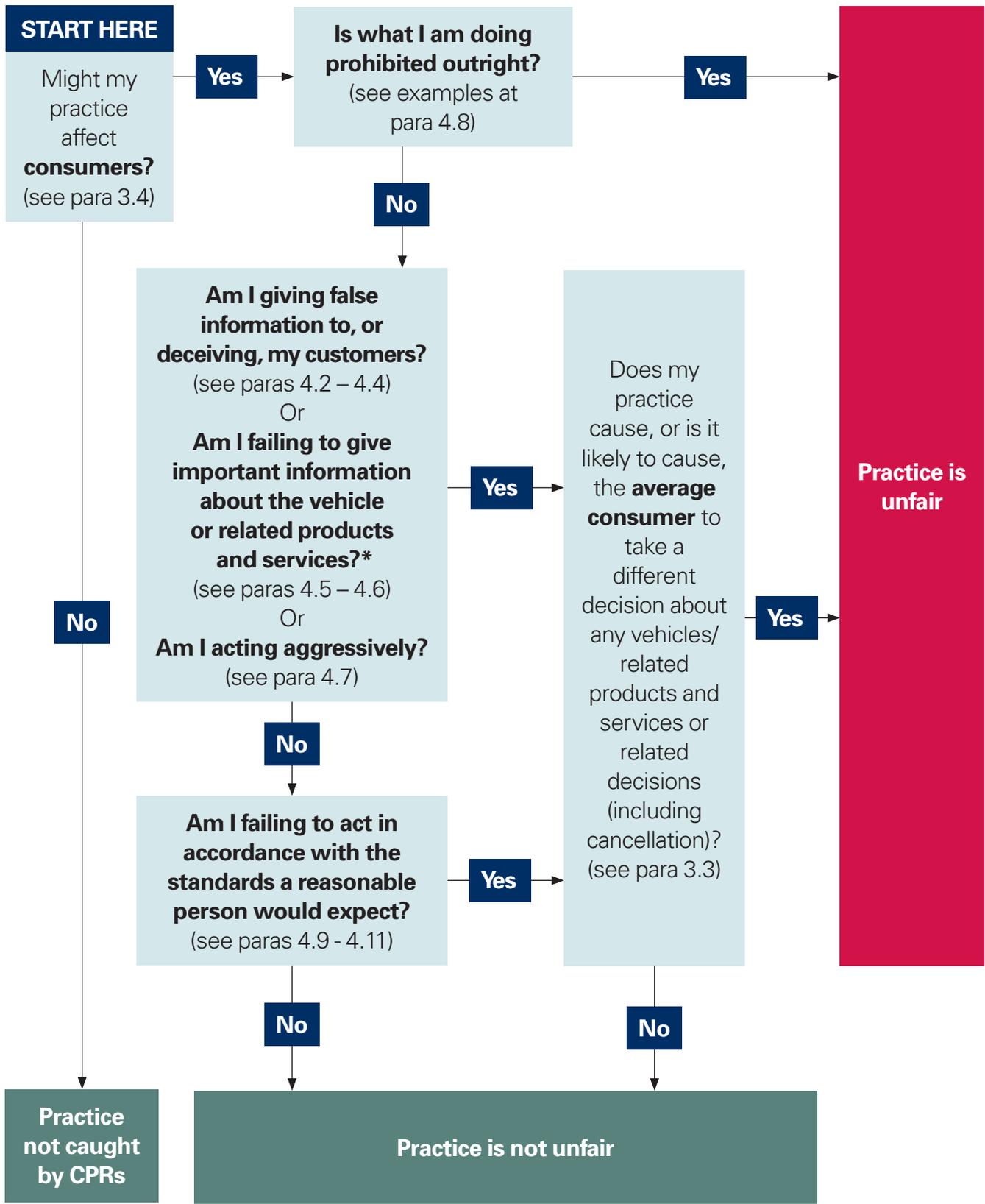
- Systematically failing to carry out the pre-sale checks that you would reasonably be expected to undertake in relation to the mechanical condition, history, and mileage of a vehicle before you advertise, market or sell it.
- Obstructing consumers who have bought vehicles of unsatisfactory quality from you and are trying to exercise their contractual rights to redress under the SoGA – 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.

- 4.11 The unfair practices highlighted at paragraphs 4.2 – 4.8 above may also contravene the requirements of ‘professional diligence’.

## **Assessing whether your business practices are unfair**

- 4.12 The flowchart overleaf will help you to assess whether any of your business practices are likely to be unfair under the CPRs.

# 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 OFT and BIS's general guidance on the CPRs, 'Guidance on the Consumer Protection from Unfair Trading Regulations 2008, OFT1008.

# 5. Steps to help you comply with the CPRs

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

## Pre-sale checks

- 5.2 Before you expose any vehicle for sale you should 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, and
  - You find out the important information that consumers need in order to make an informed purchasing decision.
- 5.3 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.
- 5.4 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

- 5.5 Before exposing any vehicle for sale you should 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.<sup>8</sup>
  - Is an ex-business use vehicle which may have had multiple users.
  - You should 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.
- 5.6 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. You should 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? Write the information on your purchase invoice and ask the seller to sign it – do not rely on verbal statements only.

<sup>8</sup> 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.

- Asking the seller for documents relating to the vehicle, for example the service book and bills for servicing.
  - Checking the vehicle's registration details on the DVLA database.
  - Checking with the Vehicle and Operator Services Agency (VOSA). If you have the document reference number from the V5C registration certificate and the vehicle registration mark, you can check the MOT test results (if the vehicle is more than three years old) at [www.direct.gov.uk/en/Motoring/OwningAVehicle/Mot/DG\\_10020539](http://www.direct.gov.uk/en/Motoring/OwningAVehicle/Mot/DG_10020539).
- 5.9 If a discrepancy is discovered in the mileage record through the basic checks you have carried out or as a result of any other information suggesting that the mileage may be incorrect, you should carry out further investigations, for example checking the mileage with all previous keepers shown in the vehicle V5 registration document. If you do not have this document, you can obtain details of previous owners by contacting the DVLA in Swansea in writing. Some companies such as HPI and Experian can provide a full Mileage Investigation Service that carries out these checks for you.

## Mileage

- 5.7 Generally, before exposing any vehicle for sale you should take all reasonable steps to establish the accuracy of the stated mileage.<sup>9</sup>
- 5.8 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 with VOSA. If you have the document reference number from the V5C registration certificate and the vehicle registration mark, you can check the mileage shown on the MOT history (if the vehicle is more than three years old) at [www.direct.gov.uk/en/Motoring/OwningAVehicle/Mot/DG\\_10020539](http://www.direct.gov.uk/en/Motoring/OwningAVehicle/Mot/DG_10020539).
  - 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).

- 5.10 Unless you are satisfied that the mileage of a vehicle shown by its odometer is accurate, such mileage should 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

- 5.11 As well as taking all reasonable steps to establish the vehicle's mileage, you should inform the consumer prior to sale of:
- The steps you have taken, and
  - 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' you should provide consumers with this information.

<sup>9</sup> There may be very limited exceptions, for example where a vehicle has been pre-registered or is being sold only for scrap.

## Mileage disclaimers

5.12 You should 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 identify that the mileage is incorrect, or
- It has been impossible to verify the correct mileage.

5.13 You should 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 – see further paragraphs 5.14 and 5.15 below. This is likely to be material information that the consumer needs in order to make an informed choice.

5.14 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 May 2010, you should not rely solely on a generic disclaimer such as, for instance, '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'. You should also inform the consumer that you have checked the last MOT test record which showed that the vehicle had a recorded mileage of 136,000 in May 2010, so the currently displayed mileage of 52,000 is incorrect.

5.15 In such circumstances, the OFT recommends the use of a prominent written notice such as: 'MOT test records show this vehicle had a recorded mileage of 136,000 in May 2010, 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

5.16 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. You should inform consumers of the reason for this minor mileage discrepancy. If the mileage increases materially as a result of having been test driven you should adjust the stated mileage accordingly.

## Checking the mechanical condition of the vehicle

### Roadworthiness

5.17 You should ensure that you have procedures in place to check that 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.

5.18 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

5.19 You should also take reasonable steps – through the pre-inspection procedures you have in place – to ensure that the vehicles you sell are of satisfactory quality and fit for their purpose under the SoGA, 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 should be made aware, prior to sale, of any faults identified.

5.20 You should keep a **record** of inspections carried out on every vehicle.

## Vehicles under preparation

### Pre-sale mechanical checks

5.21 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. A vehicle which has not yet been checked to confirm that it is safe and roadworthy should be marked in such a way to make this obvious and removed from the sales

areas of your premises. It should not have a price or other indication that it is available for sale displayed on or near it.

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

### Pre-sale history and mileage checks

5.23 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 him 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.

5.24 There may be limited circumstances in which you do find a buyer before completing all of your pre-sale history and mileage checks – however, you should not conclude the sale before all of the checks have been completed. In such circumstances consumers should 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. Any pre-contract agreement should therefore 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 should be refunded in full if the consumer is not satisfied that the conditions of the pre-contract agreement have been met.

## Providing consumers with important information prior to the sale

- 5.25 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.
- 5.26 Non-exhaustive examples of the types of information you should inform the consumer about prior to the sale include:
- The main characteristics of the vehicle – for example:
    - price
    - make, model, engine capacity and other physical characteristics
    - history.
  - Any problems or issues you are, or ought to be, aware of, after taking all reasonable steps, such as for example:
    - if the vehicle has been written off as an insurance loss or has suffered accident damage<sup>10</sup>
    - 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 paras 5.30 – 5.32).
  - Details of your after-sales service and procedures.
- 5.27 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.
- 5.28 Where you provide important information in writing, it should 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.<sup>11</sup> Consumers should be given time to read any written information.
- 5.29 As a matter of good business practice, the OFT would strongly recommend that such information is provided in the form of a short summary document, such as a **checklist**, which could be displayed on the vehicle.

<sup>10</sup> 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.

<sup>11</sup> Hiding important information in small print may also amount to a breach of the Unfair Terms in Consumer Contracts Regulations 1999.

## Warranties/Guarantees

- 5.30 The key elements of a warranty or guarantee should be clearly drawn to the attention of consumers prior to 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.
- 5.31 Any relevant document published by the warranty/guarantee provider should also be handed over to the consumer. The consumer should be advised of what type of warranty/guarantee is being provided, for example, manufacturer's, free extended manufacturer's/dealer's, insurance backed or 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.
- 5.32 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

- 5.33 You should 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.
- 5.34 You should have an effective customer complaints procedure, understood and followed by all staff who may come into contact with the public. We recommend that you have a written complaints procedure.
- 5.35 You should deal with complaints promptly, effectively and in a professional manner.
- 5.36 You should 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.
- 5.37 You should record all complaints and note the final outcome. You should keep complaint records.
- 5.38 You should cooperate 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.

### Warranties

- 5.39 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

5.40 You should follow practices and procedures that ensure that you fulfil your contractual commitments to consumers, for example:

- By providing appropriate redress to consumers who are seeking to enforce their contractual rights against you under the SoGA 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 Supply of Goods and Services Act 1982 (consumers in Scotland enjoy similar rights under the common law).

## Aggressive practices

5.41 You must not intimidate, pressurise or coerce consumers, for example through the use of threatening or abusive language, or threatening to take action which 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 decision is prohibited under the CPRs (see para 4.7).

## 6. Auction sales

- 6.1 The CPRs apply to the sale of second hand vehicles through public auctions which 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.
- 6.2 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 not able 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 instance, 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 instance, describing a vehicle as ‘specified faults’ and failing to disclose all the faults you are aware of.
- 6.3 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 at [www.offt.gov.uk/business-advice/treating-customers-fairly/advertising/business-protection](http://www.offt.gov.uk/business-advice/treating-customers-fairly/advertising/business-protection)
- 6.4 See section 11 for guidance on the application of the SoGA to auction sales.

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

- 7.1 If you do not comply with the CPRs you may face enforcement action. The OFT, TSS and the Department of Enterprise, Trade and Investment in Northern Ireland (DETI) 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.
- 7.2 If you are convicted of committing an offence under the CPRs the penalties are:
- On summary conviction in the Magistrates Court (Sheriff or District Court in Scotland), a fine not exceeding the statutory maximum – currently £5,000.
  - On conviction on indictment in the Crown Court (Sheriff or High Court of Justiciary in Scotland), an unlimited fine or imprisonment for up to two years, or both.
- 7.3 TSS, the DETI and the OFT may also take civil enforcement action under Part 8 of the Enterprise Act 2002 for a breach of the CPRs (as well as in respect of breaches of other consumer related legislation). This can include applying for a court order to prevent or stop breaches. Breach of any order could lead to up to two years imprisonment and/or an unlimited fine.

# **Part B: Your obligations under the Sale of Goods Act 1979 (as amended) (SoGA)**

## 8. Introduction

- 8.1 The SoGA is one of the main pieces of law helping 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.
- 8.2 The law on the sale of goods has evolved over many years. It is now principally set out in the SoGA which has been amended by the Sale and Supply of Goods Act 1994 and more recently by the Sale and Supply of Goods to Consumers Regulations 2002.
- 8.3 Essentially, the SoGA states that the vehicles you sell must be of satisfactory quality, fit for their purpose and fit their description and that you must have the right to sell the vehicle. If not, you – as the seller – are legally **obliged** to sort out the problem.
- 8.4 Of necessity some of the examples given have been simplified to illustrate particular points.
- 8.5 If you fail to fulfil your obligations under the SoGA, a customer can take court action against you for breach of contract. You may also face enforcement action. Failing to meet your obligations under the SoGA may in some cases also constitute a breach of the CPRs (see paragraph 14.3).

# 9. Your legal obligations

9.1 When you sell a second hand vehicle to a consumer you have certain legal obligations under the SoGA.

## Before the sale

### Make sure that the vehicle is of satisfactory quality

#### What is meant by 'satisfactory' quality?

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

- age
- value/worth
- history
- mileage
- intended use
- make
- durability
- safety
- description (whether made verbally or in writing).

9.3 **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 was of satisfactory quality it would be reasonable to take account of the value 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 – 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.

#### Example:

- An old car with a high mileage will not be expected to be as good as a newer car with a low mileage, but it should still be fit for use on the road, in a condition which reflects its age and price, and reliable.

## Some points to remember

- 9.4 **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.
- 9.5 **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).
- 9.6 **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 – 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.
- 9.7 **You are not liable however:**
- 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. 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 not be able to evade responsibility for defects if they were not apparent on examination. Also, it will only apply where a consumer **actually** examined the vehicle – not to a consumer who has declined an opportunity to do so.

## Make sure that the vehicle is fit for purpose

- 9.8 **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.
- 9.9 **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, you should make this clear to them and put this in writing to protect yourself against future claims.

### Example:

- A consumer explains to you that he wants a car that is suitable for towing his caravan and tells you the weight which is required to be towed. He is assured by you that a particular car is suitable to meet his requirements. You will be subsequently 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.

9.10 If a vehicle is not fit for that particular purpose, the consumer will have a claim against you.

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

9.11 **Any description of the vehicle must be accurate** – for example, when given verbally over the telephone or in the course of discussions prior to the sale of the vehicle, in writing in advertising on the vehicle, in the showroom, in a newspaper, website, email or text, in television or radio advertisements, or in documentation provided to the prospective buyer. 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:

- If you sell a vehicle which you describe as '2003 registered, 1500cc engine, air conditioning' you must ensure that it has been registered in that year, has a 1500cc engine size and has working air conditioning.

## Make sure you have the right to sell the vehicle

9.12 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.

9.13 **You should therefore check that the vehicle is not still subject to a finance agreement.** If the credit or finance agreement (for example, hire purchase) remains unpaid when you purchase the vehicle, you will not acquire title to it and the lender may have the right to take possession of the vehicle. However, as an innocent purchaser, who purchases a vehicle unaware that the vehicle is subject to existing finance under an outstanding hire purchase or conditional sale agreement, the consumer would get good title and would not be subject to the liability of the debt owed on the vehicle.

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

### Example:

- 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.

# After the sale

## Your customer's rights

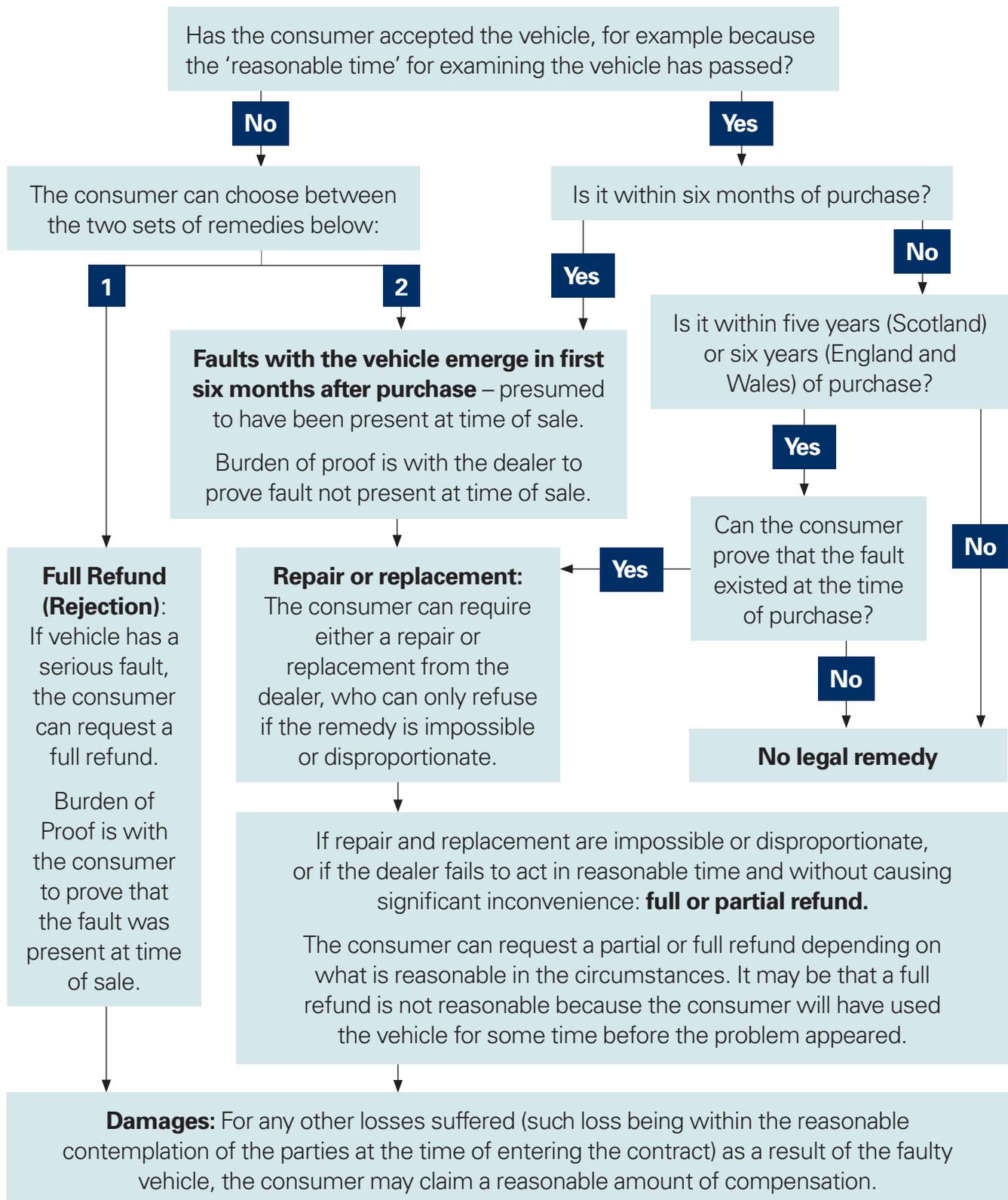
9.15 **If you fail to fulfil your obligations under the SoGA** – in respect of either satisfactory quality, fitness for purpose, description or the right to sell the vehicle – **you will be in breach of contract and the consumer will be entitled to a number of remedies against you.** What remedy the 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.

## Summary of remedies

9.16 The flowchart overleaf summarises the consumer's remedies where a vehicle is of unsatisfactory quality.

# Summary of consumer remedies for the sale of faulty second hand vehicles not of 'satisfactory quality'



## Full refund

- 9.17 **The consumer can request a full refund if this is within a reasonable time of the sale.** 'Reasonable time' is not defined in law and will depend on the facts of each case – it can vary from a few weeks to a number of months. The consumer is not obliged to return the vehicle to you but must make it available for collection.
- 9.18 **If you dispute the consumer's request for a full refund, it is for the consumer to prove that the vehicle was not of satisfactory quality, fit for purpose or as described by you at the time of purchase** [note: the position is different when a consumer requests that you **repair or replace** a faulty vehicle within the **first six months** of purchase from you – see paragraph 9.23]. For example, if you dispute the consumer's claim that the vehicle has a serious fault, the consumer may need to provide evidence to you such as an independent report from a garage showing that the vehicle was unsatisfactory at the time of sale to support their claim.
- 9.19 If the consumer's complaint is valid you must accept the vehicle back and provide a full refund – in such circumstances the consumer is also entitled to claim for reasonable losses suffered, including the cost of any independent report they have paid for to prove their case.

### Example:

- A consumer discovers that a one-year old car he bought from you for £10,000 a few days ago has a major engine fault. He complains to you straight away and requests a full refund but you dispute his claim. He takes 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 his money back. In these circumstances you must accept the car back and provide a full refund, as well as paying for any reasonable losses suffered by the consumer such as the cost of the written report.

- 9.20 **Within the reasonable period after the sale, consumers do not lose their right to reject the vehicle and require their money back simply because they ask for or agree to let you try to repair the vehicle.** Where a consumer agrees to allow you to repair the faulty vehicle (within the reasonable period after the sale) he is still entitled to a refund if the repair turns out to be unsatisfactory or was not done promptly enough.

## Examples:

- A consumer complains that a three-year old car he bought from you for £5,000 two weeks ago is faulty and not of satisfactory quality. He allows you to try to repair the car. The car still has the same faults despite the repairs. The consumer will in these circumstances still be entitled to reject the car for a full refund.
- A consumer complains that a one-year old car he bought from you for £10,000 a week ago is faulty and not of satisfactory quality. He allows you to try to repair the car. The car is off the road for a considerable time whilst you try unsuccessfully to fix the defects. The consumer will in these circumstances still be entitled to reject the car for a full refund.

9.21 If the consumer is not entitled to a full refund – for example, because a ‘reasonable time’ has elapsed, or if they chose not to request this, they can instead claim **a reasonable amount of compensation (damages)**. This is designed to compensate the consumer for the actual losses and so normally amounts to the cost of repair or replacement of the vehicle with one of a similar age, specification and price or the difference in value in the case of misdescribed vehicles. Any direct and predictable expense arising as a result of being supplied with a faulty vehicle can also be claimed by the consumer (Consequential Loss).

## Repair or replacement

- 9.22 A consumer can – if they do not wish (or are not entitled) to reject the vehicle or claim compensation – specifically request either a repair to the vehicle or a replacement vehicle. Any replacement vehicle you offer the consumer should be on a like for like basis, for example of a similar age, mileage and model as the original vehicle at the time the replacement was requested.
- 9.23 **If a consumer seeks a repair or replacement (or when these are not practicable, a partial or full refund) in the first six months after the sale, it will be presumed that the fault or defect was present at the time of the sale.** If you want to dispute the consumer’s claim, it will be for you to prove that the fault or defect was not present at the time of sale, that is, that the vehicle was of satisfactory quality when you sold it. You will need to refute the presumption by providing reasonable evidence. It is not sufficient to rely on a pre-sale ‘tick box’ check of the mechanical condition of the vehicle as evidence that the fault was not present at the time of sale. You will need a more detailed report of the specific check you had carried out on the part. The consumer does not need to provide any proof of the cause of the fault or defect to be entitled to the repair or replacement – it is sufficient that a complaint has been made to you.

### Example:

- A consumer complains to a dealer that a one-year old car he bought from them for £8,000 three months ago has a faulty gearbox. He asks the dealer to repair the car. It will be presumed that the car had a faulty gearbox at the time of sale and the dealer must carry out the repair to the gearbox at no cost to the consumer unless they can prove that the car was of satisfactory quality at the time of sale.

9.24 Where faults or defects with the vehicle only become apparent **after six months**, it is for the consumer to provide evidence that the fault or defect existed at the time of the sale.

9.25 **It is important that the repair or replacement is carried out within a reasonable time and without causing significant inconvenience to the consumer.** You must also bear any costs associated with doing so such as transporting the vehicle to a garage for repairs. Any repairs must also be carried out with reasonable care and skill.

9.26 **If it is impossible or disproportionately expensive to repair a vehicle you can offer a replacement vehicle instead – or vice versa.** A decision on whether the cost is disproportionate should take account of the value of the vehicle if it had conformed to the contract, the significance of the problem (such as the nature of the fault) and whether the alternative remedy could be completed without significant inconvenience to the consumer.

## Partial and full refund

9.27 **If neither a repair nor replacement is realistically possible, the consumer can request a partial or full refund depending on what is reasonable in the circumstances.** It may be the case that a full refund is not the reasonable option because the consumer will have used the vehicle for some time before the problem appeared.

## Switching between remedies

9.28 **Consumers can switch between certain remedies if they find they are getting nowhere.** However, the consumer would have to give you a reasonable time to honour a request before they tried to switch and they could never pursue two remedies at the same time.

### Example:

- A consumer discovers that a one-year old car he bought for £10,000 three months ago is faulty. He takes it to the dealer who agrees to repair the car. The dealer takes over two months to repair the car but the fault persists. The consumer in these circumstances may request a replacement car or a refund instead because the repairs have not remedied the fault, were not carried out within a reasonable time and have caused significant inconvenience to the consumer.

## Time limit for bringing a claim

9.29 A consumer can take legal action up to six years from the date they bought the vehicle (five years in Scotland). 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.

# 10. Hire purchase agreements

- 10.1 The remedies in the SoGA do not apply to vehicles supplied on hire purchase. Where a consumer purchases a vehicle under a hire-purchase agreement, their legal rights are against the finance company (under the Supply of Goods (Implied Terms) Act 1973).
- 10.2 Under the Supply of Goods (Implied Terms) Act 1973, the vehicle must be of satisfactory quality, fit for purpose, correspond with any description given, and the creditor must have the right to sell the vehicle. Where the vehicle does not correspond to any of the above, the consumer may in appropriate circumstances be entitled to reject the vehicle for a full refund or claim compensation.

# 11. Auction sales

- 11.1 The SoGA remedies of repair or replacement, or failing these, partial refund and full refund will not apply to second hand vehicles sold at public auctions where consumers have the opportunity to attend in person. In this situation, the consumer would only enjoy the SoGA rights to initially reject the goods or to request compensation if the vehicle was not of satisfactory quality or misdescribed. However, the auction house may be able to put up notices excluding these rights (subject to a reasonableness test).
- 11.2 Where a consumer purchases a second hand vehicle from an internet or other auction which they do not have the opportunity to attend in person, they will enjoy their full SoGA rights which cannot be excluded.
- 11.3 You should also read the guidance at section 6 on the application of the CPRs to auction sales.

# 12. Warranties/guarantees

- 12.1 Any warranty or guarantee you sell or provide for free with the vehicle is **in addition** to the consumer's legal rights under the SoGA. 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

- 12.2 If you offer the consumer a free warranty or guarantee, it:
- Will be legally binding.
  - Will have to 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.

### Examples:

- A consumer buys a four-year old car from a dealer at a cost of £9,000. 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. The consumer is entitled to a repair or replacement as the car was not of satisfactory quality at the time of purchase.

## 13. Attempting to limit your liability under the SoGA

13.1 A consumer's legal rights under the SoGA 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:

- Using 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 SoGA. If untrue, such 'declarations' are ineffective and may mislead consumers with legitimate grievances that they have signed away their rights. Where they are true, such declarations are unnecessary.

# 14. What happens if you don't comply with the SoGA?

- 14.1 If you do not honour your obligations under the SoGA, the consumer may bring a court claim against you.
- 14.2 **You may also face enforcement action.**  
The OFT, TSS and the DETI can take civil enforcement action against you under Part 8 of the Enterprise Act 2002 in respect of breaches of the SoGA which 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. This can include applying for a court order to prevent or stop breaches. Breach of any order could lead to up to two years imprisonment and/or an unlimited fine.
- 14.3 Failing to meet your obligations under the SoGA 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 SoGA, for example, if you refuse to listen to complaints or wrongly tell consumers that they have no right to redress.

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