

Checklist for second hand car dealers

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

© Crown copyright 2010

This publication (excluding the OFT logo) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

Contents

Chapter	Page
1 Using this checklist	1
2 Scope of the checklist	2
3 Overview of the law	3
The Consumer Protection from Unfair Trading Regulations 2008 (CPRs)	3
The Sale of Goods Act 1979 (as amended) (SoGA)	3
4 Checklist for second hand car dealers: complying with the CPRs and the SoGA	4

1. 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), which ensure that you deal with consumers fairly and honestly.
- The Sale of Goods Act 1979, as amended (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.

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

2. 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 Office of Fair Trading's (OFT) accompanying full guidance for second hand car dealers on compliance with the CPRs and SoGA.¹ 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 to comply with the law and protect your business's reputation.

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

Remember: it is your responsibility to comply with the law. If you do not comply 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.

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

¹ You can download a copy of '*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)*' OFT1241 at www.of.gov.uk

3. Overview of the law

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, then you are likely to be complying with the CPRs. However, if you mislead, behave aggressively, or otherwise act unfairly towards your customers, then 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.

SoGA

The SoGA is the main piece 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.

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. The customer will be entitled to a number of remedies against you, which may include a full refund or a repair or replacement vehicle.

4. Checklist for second hand car dealers: complying with the CPRs and the SoGA

Before you sell a vehicle		
Pre-sale vehicle history checks	<p>Before you offer any vehicle for sale you should take all reasonable steps to check its history to make sure that:</p> <ul style="list-style-type: none">• Everything you say about the vehicle is true, or even if true is not misleading in the way it is presented, and• You find out the important information that your customers need to know. <p>The specific checks you will need to undertake will depend on the circumstances of each vehicle you intend to sell.</p>	<p>✓ Check the vehicle's history, for example:</p> <ul style="list-style-type: none">• 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 instance, was it previously used as a rental, taxi or driving school vehicle)? <p>✓ Types of checks you should do include:</p> <ul style="list-style-type: none">• 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 DVLA.• Checking MOT test results with VOSA. <p>✓ Keep a full record of all checks carried out – Trading Standards or customers may wish to see them.</p>

Before you sell a vehicle (cont)

Pre-sale mileage checks

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:

- 1** The steps you have taken to check the vehicle's mileage, and
- 2** What you have found out (or not been able to find out), or know, about the mileage or likely mileage.

✓ **Types of basic mileage checks you should do include:**

- Conducting a mileage check with an independent and reliable company.
- Checking the mileage shown on the MOT certificate with VOSA.
- 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 all previous registered keepers shown in the V5 document.

✗ **Unless you are satisfied that the mileage of a vehicle is accurate, it should not be quoted in advertisements, discussions or negotiations or in any documents related to the supply of the vehicle.**

✓ **You should inform the customer prior to sale of the steps you have taken to check the mileage 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 record 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.

Before you sell a vehicle (cont)

	<p>Mileage disclaimers</p> <p>Mileage disclaimers should only be used as a last resort where after completing all reasonable checks you identify the mileage is wrong or it has been impossible to confirm the correct mileage.</p>	<p>✗ Do not rely on mileage disclaimers as a substitute for carrying out reasonable checks on a vehicle.</p> <p>✗ Do not rely on generic mileage disclaimers as a substitute for giving customers 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.</p>
<p>General disclaimers</p>	<p>Avoid the use of disclaimers when dealing with consumers.</p>	<p>✗ Do not use disclaimers that mislead consumers about their legal rights, for example 'Sold as Seen', 'Trade Sale Only', 'No Refund', 'Unroadworthy' or 'Spare or Repair'.</p>
<p>Checking the vehicle's mechanical condition</p>	<p>Make sure you have procedures in place for checking the condition of any vehicle you intend to sell to ensure it is safe, roadworthy and of satisfactory quality.</p>	<p>✓ You should arrange for a qualified person to carry out a pre-sale inspection of vehicles to make sure that:</p> <ul style="list-style-type: none"> • 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. <p>✓ As part of your due diligence system keep a full record of checks carried out – Trading Standards or customers may wish to see them.</p> <p>✗ Do not just rely on MOT or service histories.</p>

Before you sell a vehicle (cont)

Vehicles under preparation

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

✓ Only give customers test drives in vehicles which 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 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.

Before you sell a vehicle (cont)

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:

- 1** You must not omit or hide important information or only provide it after the sale.
- 2** 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/mileage, ex-business use vehicle which may have had multiple users, grey import.

✔ **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 and 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

<p>Dealing with complaints and enquiries</p>	<p>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.</p>	<ul style="list-style-type: none"> ✓ 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. We recommend 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.
<p>Faulty vehicles</p>	<p>Remember: Sale of Goods law applies to second hand as well as new vehicles.</p> <p>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.</p>	<ul style="list-style-type: none"> ✓ Where a vehicle you sell is not of 'satisfactory quality', the customer is entitled to ask for a: <ul style="list-style-type: none"> • full refund, if this is within a reasonable time of the sale, or • reasonable amount of compensation (or damages), or • repair or replacement, or where this is not realistically possible, a • partial or full refund, depending on what is reasonable in the circumstances.

After sales service (cont)

If the vehicle you sell is not of 'satisfactory quality', the customer is legally entitled to a number of **remedies**.

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.

✓ 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.

After sales service (cont)

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 Sale of Goods law.

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

- Warranty/guarantee has expired, or
- Type of fault is specifically excluded from the 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.

OFT publications are available at:
www.oft.gov.uk/publications

Call **0800 389 3158** to request this
publication in a different format.

Published by the Office of Fair Trading
Printed in the UK on at least 50% recycled paper
Product code OFT1242
Edition 06/10
© Crown copyright 2010

www.oft.gov.uk