



Business in Focus



Car traders and consumer law

Guidance for dealerships

Make sure your business complies with consumer law

businesscompanion
trading standards law explained

This guide was produced as part of a business advice project by the Department for Business, Energy and Industrial Strategy and the Chartered Trading Standards Institute.





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www.businesscompanion.info

Foreword

Leon Livermore, Chief Executive, Chartered Trading Standards Institute

Around two million used cars are sold in the United Kingdom every year. On average, just over a third of UK car buyers seriously consider purchasing a used car over a new one. The used car market is vital for millions of people, and the public must be confident that the car they are buying is safe and secure. If we can't achieve that, then both consumers and business will suffer.

The used car market is more significant today than it has ever been, and competition is high. Unfortunately, car complaints remain among the most numerous type of complaints to consumer protection bodies. It's a fact of life that cars can break down. Business must make sure that it is open and transparent with consumers and conform to its legal responsibilities before, during and after sales.

Used car sales is a complex marketplace, but fortunately, the Chartered Trading Standards Institute (CTSI) and the Department for Business, Energy and Industrial Strategy (BEIS) have collaborated to produce this focused and accessible guide for the used car industry. Whether you are a large franchise or a small independent dealer, all used car dealers should read this guide. It is endorsed by trading standards bodies throughout the United Kingdom, in England, Scotland, Wales and Northern Ireland.

Together we can build a better used car industry for both consumers and business. It all starts by reading this guide.

“Car complaints remain among the most numerous type of complaints to consumer protection bodies.”

Index

Using this guidance..... 6

PART A: Complying with the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) 8

2. Introduction..... 8

3. Overview of the CPRs 9

4. Breaches of the CPRs 10

Giving false information to, or deceiving, consumers 10

Giving insufficient information to consumers 12

Acting aggressively..... 13

Banned practices..... 14

Failing to act in accordance with reasonable expectations of acceptable trading practice..... 15

Assessing whether your business practices are unfair 15

Flowchart: Is your business practice unfair?..... 16

5. Steps to help you comply with the CPRs..... 17

Pre-sale checks..... 17

Checking the mechanical condition of the vehicle21

Vehicles under preparation22

Providing consumers with important information prior to the sale23

Warranties/guarantees24

After-sales service.....25

6. Auction sales.....26

7. What happens if you don't comply with the CPRs?27

PART B: Your obligations under the Consumer Rights Act 2015 (CRA).....30

8. Introduction.....30

9. Your legal obligations31

Make sure that the vehicle is of satisfactory quality.....31

Make sure that the vehicle is fit for purpose.....33

Make sure that the vehicle corresponds with any description you give to it.....33

Make sure you have the right to sell the vehicle34

Your customer's rights35

Time limit for bringing a claim39

Summary of remedies39

Flowchart: Summary of consumer remedies 40

10. Finance agreements41

11. Warranties/guarantees.....42

12. Attempting to limit your liability under the CRA43

13. What happens if you don't comply with the CRA?.....43

14. Other aspects of the CRA 44

Service contracts 44

Features of the Consumer Rights Act 2015 not covered by this guidance.....47



PART C: Your obligations under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) 48

15. Introduction to CCRs 48

'Pre-contract' information requirements 48

Practicalities & consequences 50

PART D: Your obligations under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 52

16. Alternative Dispute Resolution (ADR) 52

ADR Information Requirements 53

PART E: Your obligations under the Price Marking Order 2004 and the Consumer Rights (Payment Surcharges) Regulations 2012 54

17. Pricing and payment 54

Your obligations to consumers 54

What are the general requirements in relation to pricing? 54

Payment surcharges 54

ANNEX A: Matters relevant to Misleading Actions 56

ANNEX B: Banned practices (CPRs Schedule 1) 57

Using this guidance

Scope

1.1

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 give of 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 which a trader must give to a consumer before and after making a sale, how that information should be given, and the right for consumers to change their minds when buying at a distance or off-premises.

1.2

The guidance is in five 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 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 C** contains guidance on your legal obligations to consumers under CCRs, summarising in particular pre-contract information requirements. **Part D** briefly looks at the law on 'Alternative Dispute Resolution' (ADR). **Part E** sets out details on pricing and payment provisions.

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 vehicles¹ – 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, this guidance does not deal with business-to-business trade sales, which are covered by other law, e.g. BPRs². 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: www.fca.org.uk

1. Where the customer is buying the vehicle for purposes not related to their business

2. Business Protection from Misleading Marketing Regulations 2008 (BPRs)

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 Trading Standards or other bodies³. 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 (see Chapters 7 and 13 for more information).

Where can I get further advice?

1.10

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 (postcode search website below) and/or seek independent legal advice.

www.tradingstandards.uk/consumers

1.11

Business Companion is a Government-supported website that provides information for businesses and individuals who need to know about trading standards and consumer protection legislation.

www.businesscompanion.info

The Advertising Standards Authority (ASA) publish guidance on the application of their Advertising Codes. www.asa.org.uk

About this guide

1.12

This guide has been developed by Trading Standards professionals from across the United Kingdom, including members of the Chartered Trading Standards Institute and representatives of the Society of Chief Officers of Trading Standards in Scotland (SCOTSS).

www.tradingstandards.uk

www.scotss.org

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

³ Car dealers will usually deal with their local Trading Standards service but other agencies also have a role, e.g. Competition & Markets Authority, Financial Conduct Authority, Department for the Economy in Northern Ireland, Which?

See also – www.gov.uk/government/publications/consumer-protection-enforcement-guidance-cma58

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

2. Introduction

2.1

The CPRs 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

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, which came into force on 1 October 2014, also created a private right of redress^{4a} for consumers who have been the victim of misleading actions or aggressive practices (see paragraph 7.5).

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 UK Government issued general guidance document on the CPRs:

'Guidance on the Consumer Protection from Unfair Trading Regulations 2008' [OFT1008]^{4b}

The original legislation (which has been amended) can be found at:

www.legislation.gov.uk/ukxi/2008/1277

“If you mislead, behave aggressively, or otherwise act unfairly towards consumers, then you may be in breach of the CPRs.”

4a. www.gov.uk/government/publications/misleading-and-aggressive-selling-new-rights-for-consumers

4b. www.gov.uk/government/publications/consumer-protection-from-unfair-trading-regulations-traders

3. Overview of the CPRs

3.1

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.

3.2

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 (i.e. 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.

3.3

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 decision⁵; 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 auction⁶.
- 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.

“The CPRs set out broad rules outlining when business practices are unfair.”

⁵. We use ‘take a different decision’ as shorthand for ‘take a transactional decision that they would not have taken otherwise’.

⁶. Chapter 6 expands on the CPRs requirements in relation to auctions.

4. Breaches of the CPRs

4.1

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 – 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**). 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 factors⁷

“It is a breach of the CPRs to give false information to consumers, or to deceive consumers.”

⁷ Further information on the main factors is set out in paragraph 7.7 of guidance document OFT1008. See www.gov.uk/government/publications/consumer-protection-from-unfair-trading-regulations-traders

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**.

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 ACTIONS⁸:

- 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 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.

⁸. See Paragraph 2.3 for details on the use of EXAMPLES in this document. Each example is subject to the ‘take a different decision’ test, which as a reminder is shorthand for ‘take a transactional decision that they would not have taken otherwise’.

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 informed decisions (misleading omissions⁹). 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.

4.6

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 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 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 accident¹⁰ 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.¹¹
- Failing to disclose that a vehicle for sale is an ex-business use vehicle which may have had multiple users¹², 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.

9. 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.

10. 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 cause, or are likely to cause, the average consumer to take a different decision (**aggressive practices**).

4.8

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 decision as a result.

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.

“It is a breach of the CPRs to engage in practices that intimidate or exploit consumers.”

11. 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. Examples of compulsory charges are: • a non-optional administration fee that must be paid for a service

12. 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. See also footnote 9 above.

Banned practices (Schedule 1)

4.9

There are a number of other business practices which are considered unfair in all circumstances and which are prohibited (banned practices) (Full list in ANNEX B).

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 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 sells 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, 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)

4.10

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.¹³

4.11

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 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 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.

4.12

The unfair practices highlighted at paragraphs 4.2 – 4.9 above may also contravene the requirements of ‘professional diligence’.

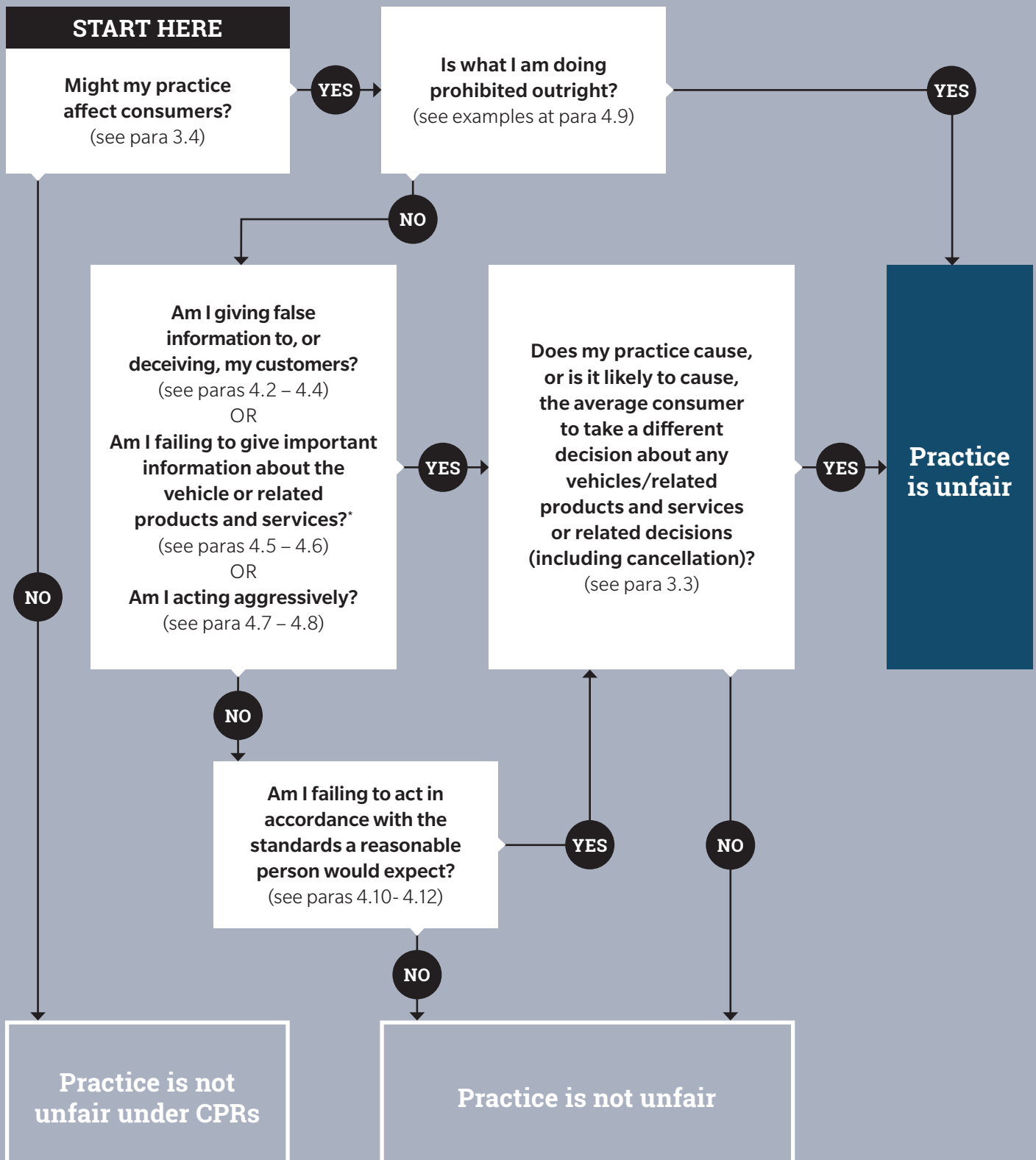
Assessing whether your business practices are unfair

4.13

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

¹³ 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 the average consumer makes.

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 general guidance document on the CPRs, 'Guidance on the Consumer Protection from Unfair Trading Regulations 2008' (See paragraph 2.4)

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.

“Before you expose any vehicle for sale you should take all reasonable precautions and exercise all due diligence.”

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.¹⁴
- 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.
- 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 DVLA database:
www.gov.uk/get-vehicle-information-from-dvla
- 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) at:
www.gov.uk/check-mot-history

¹⁴ 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.

5.7

Generally, before exposing any vehicle for sale you should take all reasonable steps to establish the accuracy of the stated mileage.¹⁵

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 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).

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. Various companies including CDL Vehicle Information Services, Experian and HPI can provide a full Mileage Investigation Service. With effect from spring 2018, 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 that information is available via the following links:

www.gov.uk/request-information-from-dvla and **www.gov.uk/government/publications/giving-people-information-from-our-vehicle-record**

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.

¹⁵. There may be very limited exceptions, for example where a vehicle has been pre-registered.

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 2015, 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 2015, so the currently displayed mileage of 52,000 is incorrect

5.15

In such circumstances, Trading Standards 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 2015, 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 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 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.

“You should also take reasonable steps to ensure that the vehicles you sell are of satisfactory quality.”

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. For further product safety information see:

www.businesscompanion.info/product-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 conditions of the pre-contract agreement have not been met.

“Any vehicle that is likely to appear to the consumer to be on offer for sale must be in a safe and roadworthy condition.”

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 (see also Part E)
 - 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 damage¹⁶
 - 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 (5.30).
- 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.¹⁷ **Consumers should be given time to read any written information.**

5.29

As a matter of good business practice, Trading Standards 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.

¹⁶ 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.

¹⁷ Hiding important information in small print may also amount to a breach of the Consumer Rights Act 2015.

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

“Any relevant document published by the warranty/guarantee provider should also be handed over to the consumer.”

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
- 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.

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. Trading Standards 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. You should be aware of the role of Alternative Dispute Resolution (ADR) providers. See Part D

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 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 Chapter 14)

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 paragraph 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.businesscompanion.info/b2b-marketing

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. 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.

7.2

If you are convicted of committing an offence under the CPRs the penalties are:

- On summary conviction in the Magistrates Court (in England and Wales), an unlimited fine. On summary conviction in the Sheriff or District Court in Scotland, a fine not exceeding the statutory maximum – currently £10,000
- 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

Trading Standards 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 seeking an undertaking from you or applying for a court order to prevent or stop actual or likely breaches of the CPRs. Breach of any order could lead to up to two years imprisonment and/or an unlimited fine.

ENHANCED CONSUMER MEASURES (ECMS)

7.4

The Court may include ECMs in an enforcement order. Trading Standards (or another enforcer) may also seek to include ECMs in an undertaking. ECMs are measures which aim to achieve one or more of:

- redress for consumers who have suffered loss from breaches of consumer law;
- remedies from traders who have breached consumer law to improve their compliance and reduce the likelihood of future breaches;
- remedies to give consumers more information so they can exercise greater choice and help improve the functioning of the market for consumers and other businesses

CIVIL CLAIMS

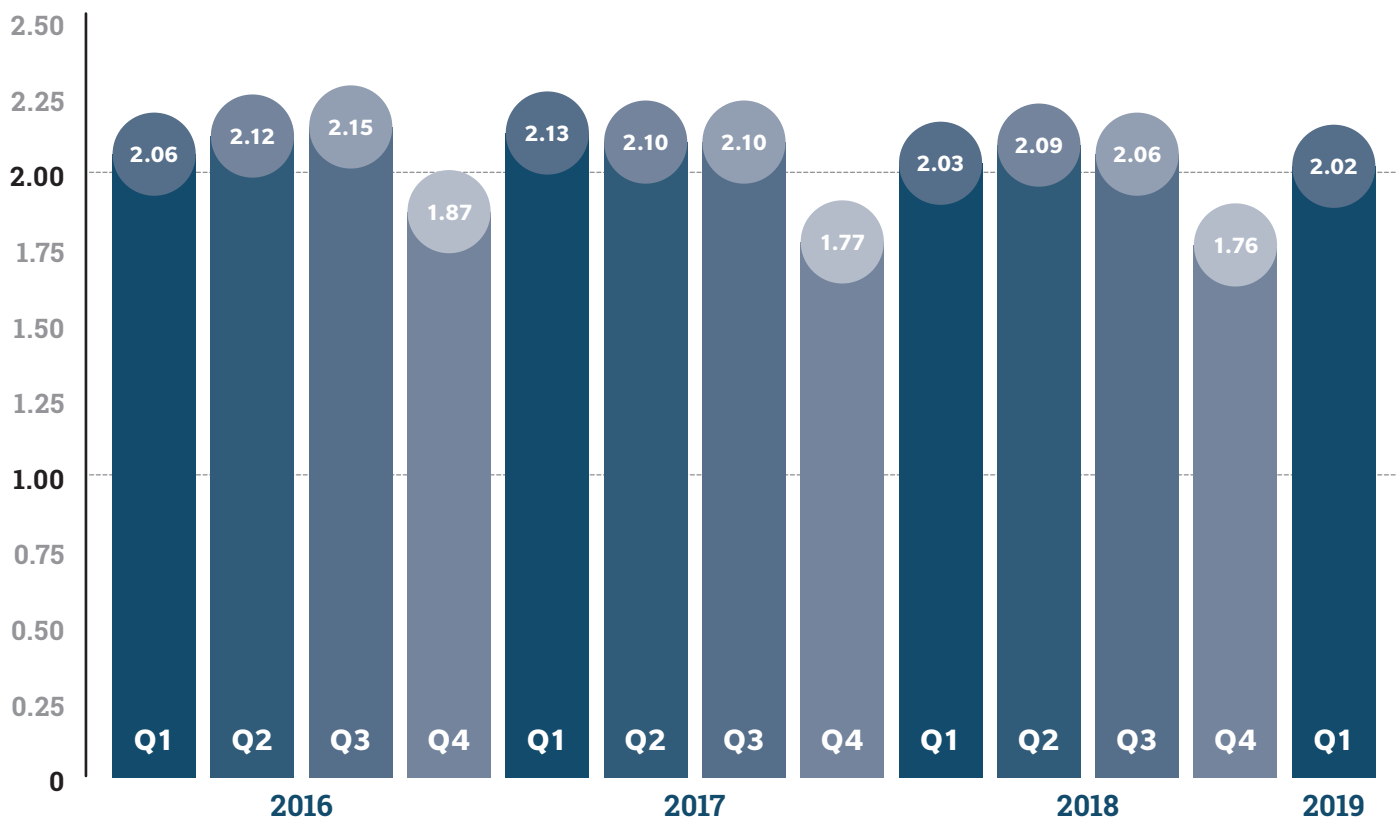
7.5

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 can be found at: www.gov.uk/government/publications/misleading-and-aggressive-selling-new-rights-for-consumers

“Local authority Trading Standards services have a duty to enforce the CPRs.”

Used Cars: The Numbers

Units sold (millions)¹



Key stats

50,623

The number of complaints received by CiTA about used car traders in 2017.²

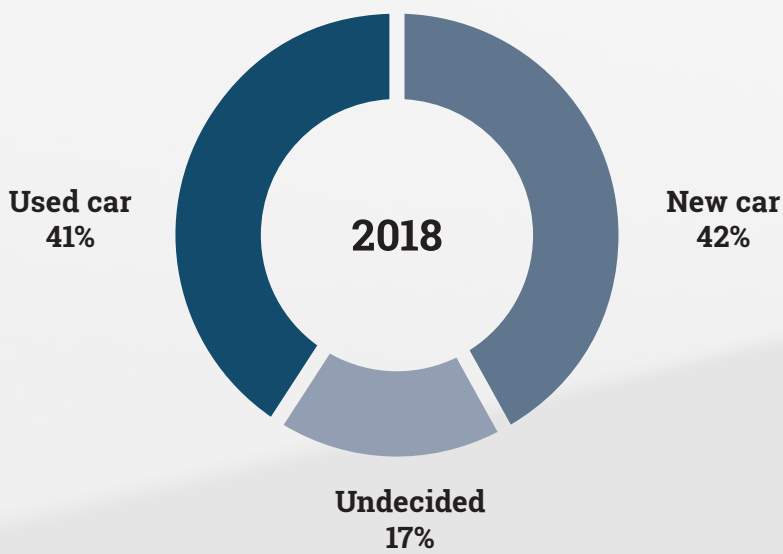
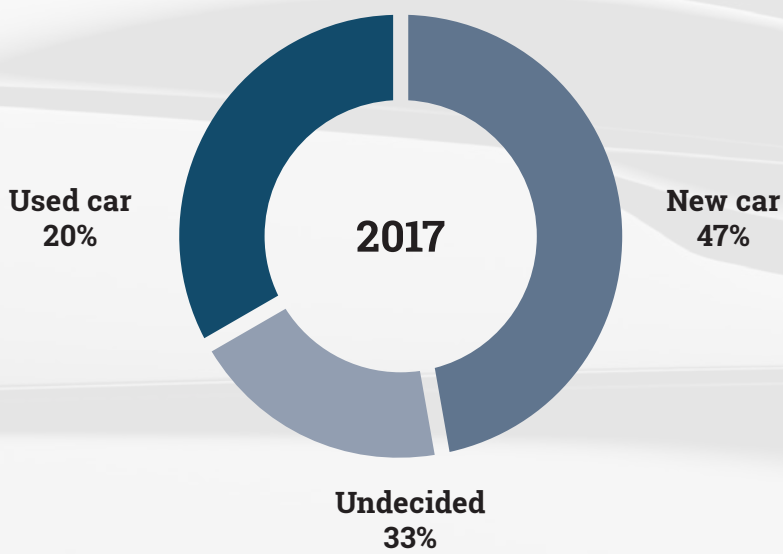
7.95m

The number of units sold on the used car market in 2018.³

53%

The percentage of car buyers in 2018 who visited dealerships to research.⁴

Consumer preference: Next vehicle purchase⁵



Sources: 1. Society of Motor Manufacturers and Traders | 2. National Trading Standards intelligence | 3. Society of Motor Manufacturers and Traders | 4. Close Brothers Motor Finance | 5. Close Brothers Motor Finance

Part B: Your obligations under the Consumer Rights Act 2015 (CRA)

8. Introduction

8.1

The Consumer Rights Act 2015 (CRA) now 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.

8.2

The law on the sale of goods has evolved over many years. Previous legislation included the Sale of Goods Act 1979 (SoGA), as amended. From 1 October 2015, this was 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 B of this guidance only applies to sales to consumers.

8.3

A number of the provisions of SoGA – e.g. “**satisfactory quality**” and “**as described**” – are little changed in the CRA. But there are also new provisions, such as the 30 day “**short-term right to reject**” and the “**one repair or replacement**” rule.

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 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 paragraph 4.2).

“If you fail to fulfil your obligations under the CRA, a customer can take court action against you for breach of contract.”

9. Your legal obligations

9.1

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

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

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 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.

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.

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). 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.

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, e.g. the hand brake cable is worn but this is only discovered when the hand brake ceases to function after two months.

9.7

You are liable for **public statements**¹⁸ about the characteristics of the vehicle made by you or the manufacturer, e.g. in advertising, product brochures etc.

9.8

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. 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.

EXAMPLE: 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 £20,000. The car is described as having a state-of-the-art bluetooth sound system. The audio 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’ audio systems. Following significant repair attempts you cannot fix the audio connectivity problem. This vehicle is unlikely to be of satisfactory quality.
- A consumer buys a 10-year-old car from you for £3500. 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.

¹⁸ You will not be liable for public statements 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; or the consumer’s decision could not have been influenced by it.

Make sure that the vehicle is fit for purpose

9.9

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.

9.10

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: 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 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.

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

9.11

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

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

If you sell a vehicle which you describe as '2012 registered, a 1600cc engine, and has air-conditioning' you must ensure that it has been registered in that year, has a 1600cc engine size and that it 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 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.

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: 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.

“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.”

After the sale Your customer's rights

9.15

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

9.16

For a period of 30 days after the sale, if the vehicle fails to meet any of the requirements detailed in paragraphs 9.1- 9.11, 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.

9.17

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

Car develops 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.

9.18

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

A consumer discovers that a one-year old car he bought from you for £19,000 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. 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. If the findings in the report are reasonable and validate the consumer's complaint, you should accept the car back and provide a full refund. The consumer does not have to agree to other remedies, e.g. 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 his lost income for that day.

“In the event of rejection, the consumer must receive a refund without undue delay.”

Repair or replacement

9.19

If a breach of contract (as described in para 9.15) arises after 30 days, the consumer has a right to a repair or replacement. Generally the consumer can choose which remedy he prefers, although the choice must not be impossible to fulfil or disproportionate compared to the other remedy.

EXAMPLE: REPLACEMENT DISPROPORTIONATE

You sell a car which 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 which 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.

9.20

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

ONE repair or replacement

9.21

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 he agrees to it.

9.22

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.

9.23

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 "high-end" car with a key-less entry system option. This is discussed in detail and is clearly a main priority. You source and sell the consumer an almost new car but unfortunately the key-less entry system 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 key-less entry system. The consumer can seek a refund.

9.24

When a consumer is pursuing a repair or replacement remedy to a breach of 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 paragraph 9.18 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 “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

9.25

If you do apply a deduction for use, it must reflect the use that the consumer has had from the goods. The law does not prescribe how to calculate the deduction. But you must be able to show that it reflects the use that the consumer has had, rather than, for example, reducing the refund to the current second-hand value of the goods. 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. For example, in the case of a car, you will have evidence of the mileage, whereas for other goods you might need to assess the wear and tear that the goods show. In some situations there may be no evidence either way. (Extract from Page 52 of BIS/15/567 – Consumer Rights Act: Goods Guidance for Business – September 2015.)

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.

Reduction in Price

9.26

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.

9.27

This remedy is available to a consumer as an alternative to the final right to reject and becomes available under the same circumstances, i.e. 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 him that you will source specialist help in repairing the problem. He contacts 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. He is likely to be able to claim from you a price reduction equal to the amount paid for the repair.

9.28

It is also worth remembering that there is nothing to prevent 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

9.29

In addition to the obligations described above, a consumer may also have a claim for additional sums, e.g. 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

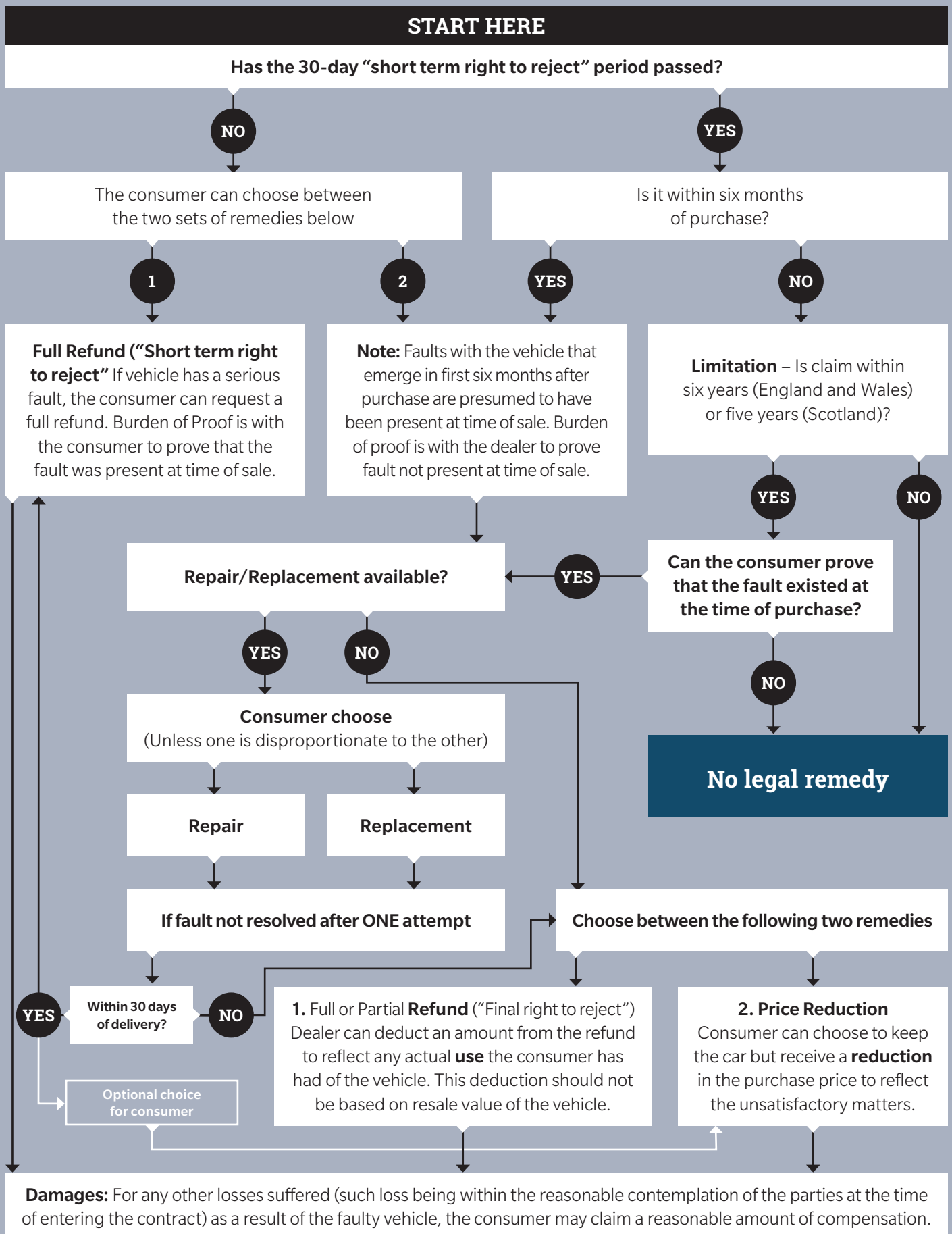
9.30

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.

Summary of remedies

9.31

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



10. Finance agreements

10.1

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 paragraphs 9.1 to 9.14 above for the details of the applicable provisions.

10.2

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.

10.3

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 consumers have exactly the same termination rights.

10.4

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, 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. (Consumer Credit Act 1974 Sections 102 & 175)

EXAMPLE: DEFECTIVE CAR ON PCP

A consumer receives delivery of a pre-registered almost new £30,000 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 provisions. 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 should be put back in the same position they were at the outset and responsibility for that ultimately lies with the finance company, but the dealership will inevitably play a coordinating role under the terms of their brokerage/agency agreement.

“Dealers have some obligations in terms of acting as a conduit between the consumer and the finance company.”

11. Warranties/guarantees

11.1

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

11.2

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.

11.3

There is a pre-contract information requirement under CCRs (see paragraph 15.7) to give information on any guarantee or warranty you offer.

EXAMPLES:

- 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.

“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.”

12. Attempting to limit your liability under the CRA

12.1

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

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

13.1

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

ALTERNATIVE DISPUTE RESOLUTION

13.2

Another option for a consumer is to use an Alternative Dispute Resolution (ADR) provider (see Chapter 16 for more details). This may be a dedicated motor trade scheme (e.g. the Motor Ombudsman; Scottish Motor Trade Association's Complaints Conciliation Service) or a general provider such as the Consumer Ombudsman. If you are signed up to a members' scheme you must co-operate 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 at paragraph 16.7.

You may also face enforcement action.

ENTERPRISE ACT 2002

13.3

Trading Standards can take civil enforcement action against you under Part 8 of the Enterprise Act 2002 in respect of breaches of the CRA 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.

CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008

13.4

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.

14. Other aspects of the Consumer Rights Act

Service contracts

STATUTORY RIGHTS

14.1

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

14.2

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.
- The service must be done for a reasonable price. A service will often specify a price, or it will be clear about how the price will be calculated (for example, an hourly rate). Where the agreement does not specify a price or method for calculating price, the service must be done for a reasonable price.

- 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

14.3

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

14.4

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

REPEAT PERFORMANCE**14.5**

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.

14.6

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

PRICE REDUCTION**14.7**

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

14.8

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, he may therefore be entitled to some money back.

OTHER REMEDIES**14.9**

The remedies under the Consumer Rights Act 2015 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.

14.10

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

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.

14.11

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

14.12

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.

14.13

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.

14.14

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.

14.15

A consumer has no rights to claim for faults that appear as a result of fair wear and tear.

DEALING WITH COMPLAINTS

14.16

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, you should put things right promptly. If you dispute liability, you should give a clear explanation of your reasons.

TIME LIMITS FOR COURT ACTION

14.17

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.

14.18

For a breach of contract, a consumer can bring a claim to court within six years of discovering a fault (five years in Scotland). If you have offered a guarantee on the work then you have to honour the guarantee.

14.19

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.

Features of the Consumer Rights Act 2015 not covered by this guidance

UNFAIR CONTRACT TERMS

14.20

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.

For more information please visit these websites:

www.businesscompanion.info/unfair-contract-terms

www.gov.uk/government/publications/consumer-protection-from-unfair-trading-regulations-traders

ENFORCEMENT POWERS

14.21

The Consumer Rights Act 2015 consolidates the enforcement powers of Trading Standards officials, for more information see:

www.businesscompanion.info

“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.”

Part C: Your obligations under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs)

15. Introduction to CCRs

15.1

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) apply to most businesses that enter into contracts¹⁹ with consumers. The Regulations impose very detailed information and cancellation rules surrounding 'distance sales', (e.g. 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.

15.2

Most car dealers now have their own websites to advertise cars but true online car selling where cars are regularly SOLD online has not developed into a mainstream activity. The majority of cars are still sold on business premises. However if you are operating a real distance selling scheme (or concluding car sales in consumers' homes or other non-business premises) then you must give the buyer 14 days to change their mind and cancel as well as providing a list of information both before the contract is concluded and then in writing in a "durable medium" (e.g. paper or email) after the purchase is agreed. See also: www.businesscompanion.info/distance-sales

EXAMPLE

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 would most likely be a cancellable distance sales contract giving the buyer 14 days from the date of delivery to examine the car and send the vehicle back.

15.3

Currently the majority of second-hand car dealers do not routinely sell cars online or in the home. Accordingly some of the very detailed CCRs rules do not apply to the average car retailer, but there are some important contractual and pre-contract information provisions that do.

'Pre-contract' Information requirements for on-premises (forecourt) sales

15.4

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 (e.g. forecourt dealerships, other business premises). The information must be given in a clear and comprehensible manner, if that information is not already apparent from the context (i.e. fairly obvious). The full list of the 11 information requirements is set out in the table (15.5) overleaf along with an explanation over how each item may apply to the motor trade.

¹⁹. Financial products offered by car dealers have specific information provision obligations as required by the Financial Conduct Authority. See www.fca.org.uk/firms/consumer-credit for more information.

15.5

TABLE OF PRE-CONTRACT INFORMATION REQUIREMENTS FOR 'ON-PREMISES' (FORECOURT ETC.) 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. In Scotland many local authorities have car dealer licence conditions which already require certain information to be displayed on vehicles. See also paragraph 4.5 in relation to the CPRs.
(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 should also be informed of a telephone number for further contact (See paragraph 15.11). You should make clear your legal name, 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 E)
(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 consumer should clearly understand the expectations of the seller in terms of payment including the arrangements for part-exchange vehicle or other deposits.
(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 CTSI approved codes of practice and some trade associations and professional bodies will also require a policy to be in place, which must be made available to consumers. (See Chapter 16 on ADRs)
(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 paragraph 15.7 overleaf
(h) where applicable, the existence and the conditions of after-sales services and commercial guarantees;	See paragraph 15.7 overleaf
(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;	Unlikely to apply to used car sales however digital accessories are becoming more prevalent so this may become more relevant.
(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.	Unlikely to apply to used car sales however digital accessories are becoming more prevalent so this may become more relevant.

PRACTICALITIES & CONSEQUENCES

15.6

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 do 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 him 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 & GUARANTEES

15.7

The specific requirement to remind buyers that a seller is under a legal duty to supply goods that are conforming 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, i.e. those basic legal rights set out in the Consumer Rights Act 2015 (See Part B). 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 Chapter 11)

MAKING CHANGES

15.8

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 the consumer as required by this regulation is to be treated as a term of the contract.

DEFAULT OPTIONS FOR ADDITIONAL CHARGES

15.9

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 should always be asked to expressly **consent** to additional charges.

15.10

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****15.11**

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 should not pay more to contact you about his purchase than he would to phone a friend or relative.

15.12

Consumers who are charged more than the basic rate are entitled to claim any overcharge back from you.

ENFORCEMENT**15.13**

Trading standards services can apply for a court order requiring you to comply. If the order is not complied with the maximum penalty is an unlimited fine and two years' imprisonment.

“Failure to provide the required information would allow a buyer to claim that you have breached your contract with him and the buyer could seek legal redress.”

Part D: Your obligations under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

16. Alternative Dispute Resolution

16.1

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 law²⁰ 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?

16.2

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?

16.3

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 (e.g. offers a payment plan) then, under financial services legislation the trader will be in general 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.

16.4

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

16.5

A full list of approved²¹ ADR providers is maintained on the website: www.tradingstandards.uk/ADRbodies

16.6

Current approved Motor Trade ADR Schemes include: www.themotorombudsman.org www.nationalconciliationservice.co.uk

See also paragraph 13.2

²⁰. Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (as amended)

²¹. Approved by the Chartered Trading Standards Institute (CTSI)

ADR INFORMATION REQUIREMENTS**16.7**

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.

16.8

Where a trader is considering a consumer complaint then 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.)

16.9

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.

16.10

Further information on ADR and Online Dispute Resolution (ODR) can be found at:

www.businesscompanion.info/ADR

“Although traders do not have to agree to use ADR for a consumer dispute, they are required to provide certain information about ADR to consumers.”

Part E: Your obligations under the Price Marking Order 2004 and the Consumer Rights (Payment Surcharges) Regulations 2012

17. Pricing and Payment

Your obligations to consumers

THE SELLING PRICE

17.1

The law on price marking²² 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 should be clearly visible to your customers without them having to ask for it.

17.2

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.

WHAT ABOUT ONLINE?

17.3

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

What are the general requirements in relation to pricing?

17.4

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 whether or not to purchase goods. An example of this would be failing to inform a customer of a compulsory additional charge.

WHAT ABOUT ADDITIONAL CHARGES?

17.5

Additional charges should 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 FOR TRADERS ON PRICING PRACTICES

17.6

CTSI has produced detailed guidance on pricing practices that contains information for traders on good practice regarding pricing.
www.businesscompanion.info/prices

Payment surcharges

17.7

In most cases, surcharges for electronic or card payments are not permitted. Since January 2018, businesses are no longer 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.

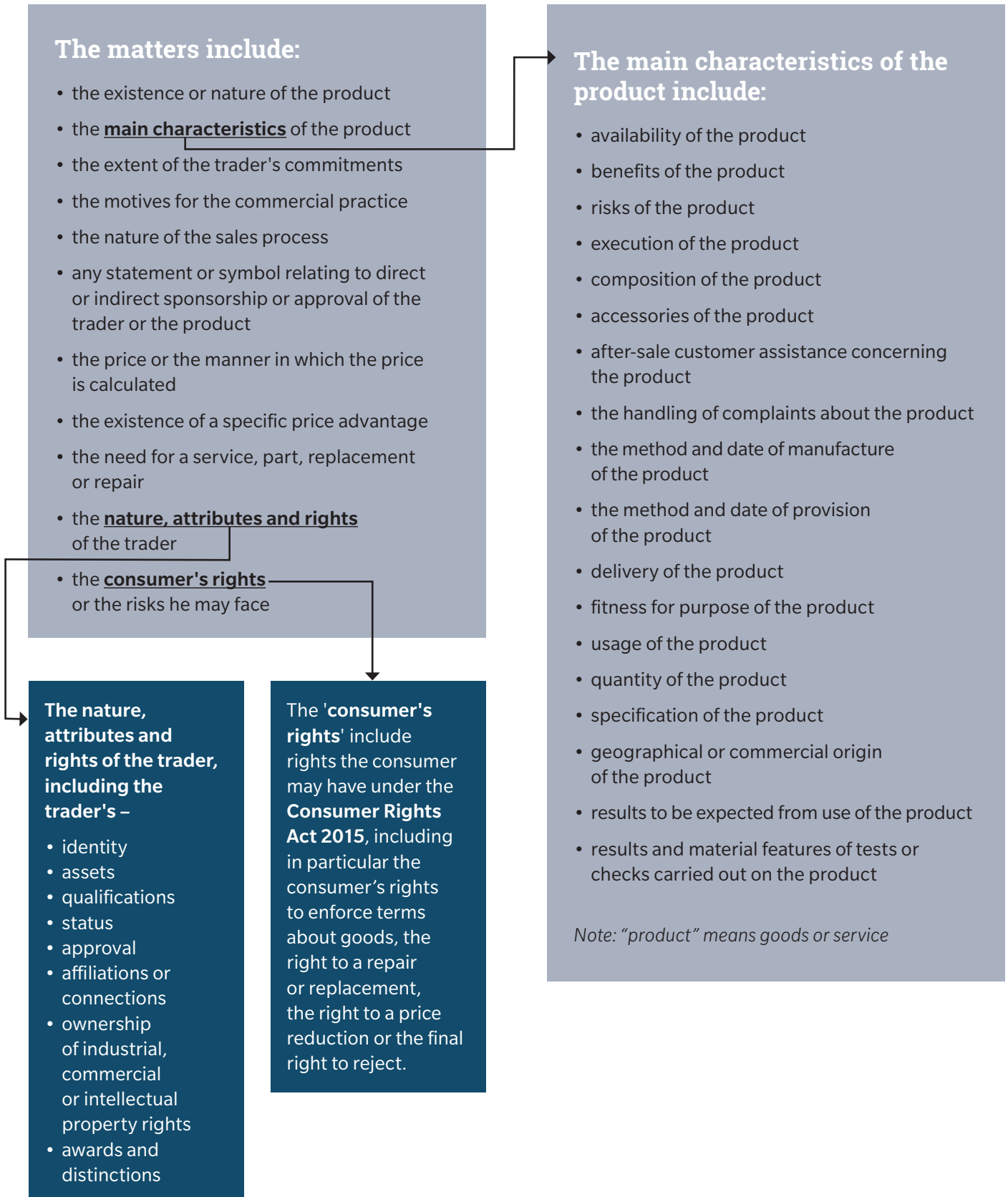
www.businesscompanion.info/payment-surcharges

www.gov.uk/government/publications/payment-surcharges

22. Price Marking Order 2004 (as amended)

“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”

Annex A: Matters relevant to Misleading Actions



Annex B: 31 Banned practices (CPRs 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 which 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 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 his 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 he is 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 which gives the consumer the impression that he has already ordered the marketed product when he has not.
22. Falsely claiming or creating the impression that the trader is not acting for purposes relating to his 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 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, e-mail 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 which 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 his 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 he does 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.

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