

# Helpdesk factsheet

**Knowledge is power, so the following information on the law and your rights as a consumer may help you to solve your car-buying problems yourself**



## BUYING FROM A DEALER



**WHEN YOU BUY** a car – new or second-hand – from a dealer, you enter into a contract. This contract is governed chiefly by the Sale of Goods Act, 1979 (as amended by the Sale & Supply of Goods Act, 1994 and the Sale and Supply of Goods to Consumers Regulations, 2002), and gives the buyer certain rights. The Act says that a car must be:

### 1. 'of satisfactory quality'

It must be as good as any reasonable person would expect, taking into account what you paid and how it was described. In some cases, the dealer may also be liable for claims made for the car by its manufacturer. 'Satisfactory quality' includes the appearance of the car, its safety and its durability. If it is new, it should be free from even minor defects. If it is second-hand, what you can expect depends on how old it is, how many miles it has done and what you paid for it.

### 2. 'fit for purpose'

It must do what you'd reasonably expect of a car of its size, price and type. It should also do whatever the seller promises.

### 3. 'as described'

The car should correspond in every detail with any advert you saw for it and anything the salesman says about it. If you are promised a new car, it should arrive perfect and unused. If it is second-hand, the mileage should be genuine and anything you are told about its past should be true.

If you find your car does not live up to these qualifications, you have the right to make a complaint to your dealer and to expect compensation or a refund.

However, you are not entitled to anything if:

- The fault is one that the salesman pointed out before you bought
- The fault was so obvious that you really should have noticed it before buying
- You damage the car yourself
- You made a mistake: it won't fit into your garage, the ride is too harsh, you don't like the colour
- You change your mind about buying, or have seen the car cheaper elsewhere

But you may have additional rights if:

- You buy via the internet, or without ever visiting the dealer's showroom, so everything is done by email, fax, post or phone. If this is the case, you can change your mind for any reason and withdraw from the sale at any time up to seven days after receipt of your car. You will need to return it unused and in perfect condition, and unless the car is faulty you'll also have to foot the bill for returning it.
- You buy on credit. Depending on the type of loan and how it is put together, you may find that the lender is responsible for getting the seller to put right any problems.

**Note that used cars bought from a dealer are still covered by the Sale of Goods Act. However, if the price is lower because of a fault that is pointed out, or should have been obvious to you on inspection, you can't later complain about it.**

### WHAT ARE YOU ENTITLED TO ASK FOR?

If the car is faulty, you are legally entitled to request one of the following from the dealer you bought it from:

#### 1. A full refund

This is possible when the car has not been

'accepted'. Under the Sale of goods Act, 'acceptance' is indicated by any of the following:

- You tell the dealer you have accepted the car
- You have altered the car – say, by adding a spoiler or a new stereo
- You keep the car for longer than a reasonable time without telling the seller that you have rejected it. There is no set 'reasonable time' in the Act but, from past cases, the limit may be as short as three weeks after taking delivery. Ultimately, it may be for a judge to decide what is fair. For this reason you must contact the seller quickly once a fault appears.

If the car is deemed to have been accepted, then you are entitled to the following...

### 2. Compensation

This may be enough to pay for repairs or be based on the price paid for the car minus an allowance for time owned/mileage covered – it depends on the age of the car, the extent of the repairs and the preferred outcome for both parties if the case went to court.

### 3. Repair or replacement

The dealer can refuse replacement if a repair is a more sensible solution (this would ultimately be decided by a judge in a court of law). However, any repair must be carried out by the dealer within a reasonable time and without causing significant inconvenience. It must also be successful. If the car suffers exactly the same fault a few weeks later, the buyer can then claim compensation or a refund. The dealer may not keep repairing the same fault unless it is clearly the most sensible thing to do. Unfortunately, the law does not lay down exactly what 'reasonable' or 'significant' might mean. These are for buyer and seller to negotiate upon, although a judge would have the last word.

### Clocking

If you discover that the used car you have bought has a false mileage reading and there was no sticker on the windscreen warning that the odometer may be wrong, you may have a claim for both a false description and misrepresentation. It's a criminal offence for dealers to make a false statement about the cars they sell - including mileage. If you have bought a clocked car from a dealer, contact your local Trading Standards Department - it may consider criminal proceedings. You should then consult a price guide (such as the What Car? Used Car Price Guide) to find out the true value of the car against the purported value when clocked. This will be the sum which you can claim (subject to a reduction to take account of the wear and tear you have put on the vehicle).

Put your claim plus supporting evidence in writing to the dealer. Threaten to sue if he fails to respond within a specified time using the small claims procedure. If the full amount claimed is not forthcoming (probably the case), think laterally. Could he offer free servicing, new tyres or an immobiliser etc? Be tactful in threatening to report to Trading Standards - criminal proceedings could prove to be much more expensive in the long term. If you don't contact them you must seek adequate compensation as the trade-off.

### WHO CAN YOU CLAIM AGAINST?

**The dealer** - under the Sale of Goods Act

**The manufacturer** - only under the terms of the guarantee, if you have one

**A credit company** - if the car is bought using a loan secured on it

### HOW TO COMPLAIN

A car dealer is unlikely in the first instance to accept your protestations and offer a refund. To get around these hurdles, be prepared to complain to the most senior manager. Always confirm in writing, keep copies for yourself, your solicitor and motoring organisations such as the SMMT, RMIF etc (see Who Can Help?, below).

If necessary, leave your car on the forecourt, noisily return the keys to the sales manager and make 'time of the essence'. Put a deadline on their response - tell them you'll allow seven days for a refund or you will be instructing your solicitor.

If the car is on finance, contact the credit company concerned to see if it can intervene. Always keep a note of any expenses you incur as a result of the problem - these should be recoverable from the dealer. If it's a really serious problem, you should consider stopping

the payments until the defect has been rectified. However, you should only do this in a really extreme case - withholding payments can rebound on you, leaving you with debt penalties and black marks on your credit rating which could hamper future loans.

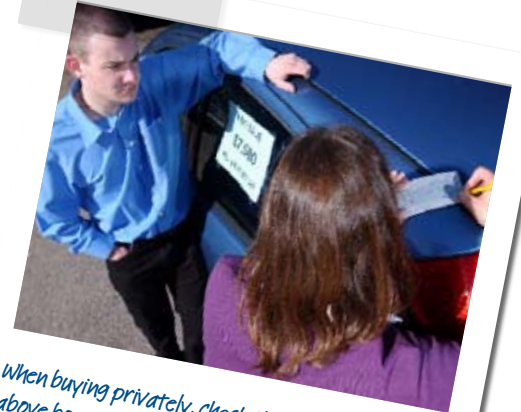
If your car has been pre-owned, rejecting it outright will be difficult in all but the most extreme cases. Once a problem is apparent, you should take it back to the dealer as soon as possible to give them the first opportunity of repair. Note that how soon the problems develop, how much you paid for the car and the severity of the problem will all affect the dealer's contribution to the repair costs. If the gearbox fails on a £500 high-mileage run-around after eight weeks don't expect the dealer to welcome you with open arms. If it fails on a £15,000 car with only 6000 miles, you can expect the dealer to carry out the repair free of charge. Reasonableness is the watchword here.

If the garage makes several attempts to repair your car but is either incapable or unwilling to rectify the problem, consider taking your car elsewhere. Bear in mind, however, that the associated risk is that you will be lumbered with a second repair bill.

To recover this outlay you may have to sue, so be sure of your evidence. The word of one garage mechanic against that of another will not suffice. You would probably need to enlist the support of an independent expert, the cost of which you should be able to add to your total claim.



**WHEN YOU BUY** a car from a private seller, the Sale of Goods Act doesn't apply and it is very much a case of 'buyer beware'. The vehicle must be 'as described', but need not be 'of satisfactory quality' or 'fit for purpose'. A car should be roadworthy, but that's about it. You could take action by suing via the county court, using the small claims service if the amount disputed is £4999 or less (in England and Wales; in Scotland, the limit is only £750), but the law doesn't give you much to go on unless you've been misled.



*When buying privately, check the car's history is above board by calling HPI*

With this in mind, it's definitely worth knowing what to look out for when buying privately, to avoid the kind of pitfalls that could see you landed with a lemon. These include:

### Ringed

This is the process whereby stolen cars are given a new identity from written-off and scrapped vehicles. It should not be a problem when buying from a dealer, but it's definitely worth watching out for if buying privately.

A simple call to HPI (see Who Can Help?, below) should alert you to vehicles at risk. If you buy a ringed car, it is effectively a ghost - but the body with the false ID is very much alive and still owned by somebody (or more likely his insurer).

Because the car has been stolen, you don't actually own it and could get involved in complex proceedings with its previous owner. You will probably have to come to some arrangement with the insurer to buy back, possibly at a nominal sum, what you thought you already owned. The correct ID will then have to be reinstated on the car. Your own insurers probably won't be interested because you weren't insuring a car which you legally owned. Confused? You may need to enlist the support of a solicitor or local CAB.

### Stolen Cars

Again, this should not be a problem if buying from most reputable dealers. However, given the tidal wave of car crime, many stolen cars are still passing through the trade. If you do buy a stolen car, you never actually get a good title to it. The true owner from whom it was stolen (or his insurers if he's been paid out) can lawfully repossess it from you. You have no rights whatsoever over the vehicle but would be left with having to sue the person who

# WHATCAR?

## Help & Advice

"sold" it to you for the purchase price. Again, a call to HPI could be of huge benefit. For a small fee they will search their registers to see if the car has been stolen, written-off or is still subject to finance.

### Cars on HP

Another confusing area of law. Under a finance agreement the car is owned by the HP company until the last payment has been made. The person making the payments therefore has no right to sell the vehicle – many try, however. Unlike stolen cars, you will get a good title to the car if you buy as a private purchaser without notice of any undischarged HP agreement. This is quite clear. Don't let the police or anyone else tell you otherwise. The finance company then has a right of action against the person who has sold you the car in good faith.

## BUYING AT AUCTION



**IF YOU BUY** from an auction the law considers you to be, in effect, a trader. That reduces your rights. In trade-to-trade transactions it is possible for either side to limit liability to each other. For this reason, it is possible for auction houses to exclude used cars from the Sale of Goods Act, and most do.

Most auctions give you a limited time to try out your car after you've bought it. This may only be a matter of hours, so read the small print affecting the deal. However, if you buy a new car at auction, this will be covered by the Sale of Goods Act.

### WARRANTIES

These are in addition to any rights you may have under the Sale of Goods Act or other laws. If issued by the manufacturer, you could sue if the promises made in it aren't kept. But be sure to read the small print. The manufacturer specifies how long the warranty lasts and what it covers. It also decides what rules apply and what's excluded. Most insist that the car is serviced at recommended time/mileage intervals.

Note also that many warranties issued with new cars reduce the cover given after the first year. Warranties given with second-hand cars are often in the form of mechanical breakdown insurance (MBI). These insure against serious faults and pay out should they

happen. But an MBI can be quite expensive according to the level of cover you require. Carefully check the small print for exclusions and conditions. Most will insist upon at least an oil service within 6 months or 6000 miles. A failure to comply will invalidate the policy. Remember, too, that the protection offered by a warranty is merely in addition to your statutory rights under the Sale of Goods Act.

### WHO CAN HELP?

The following organisations offer consumer advice and support for motorists.

#### The National Conciliation Service

Tel 01788 538317

Web [www.rmif.co.uk](http://www.rmif.co.uk)

#### Customer Relations Department, Society of Motor Manufacturers and Traders (SMMT)

Tel 020 7235 7000

Web [www.smmt.co.uk](http://www.smmt.co.uk)

#### Customer Complaints Service, Scottish Motor Trade Association (SMTA)

Tel 0131 331 5510

Web [www.smta.co.uk](http://www.smta.co.uk)

In consultation with the Office of Fair Trading, the above three bodies govern the conduct of manufacturers and dealers in relation to the supply of new and used cars, parts and accessories, car servicing and repair and manufacturers' warranties (but not MBI policies). They have a Code of Practice and conciliation service which is binding on you and member garages: if you don't agree with the decision reached, you can't then take the matter further. Note that conciliation is usually assessed on written evidence only – you can't argue your case in person – and, for that reason, may prove worthwhile only if evidence can be presented clearly, and fully, on paper.

### HPI

Tel 0845 300 8905

Web [www.hpcheck.com](http://www.hpcheck.com)

For a relatively small fee, HPI will check the history of your prospective used car.

### Institute of Automotive Engineers Assessors

Tel 01543 266906

Web [www.iaea.uk.com](http://www.iaea.uk.com)

Can provide you with independent, expert opinions

### Insurance Ombudsman

Tel 0845 080 1800

Web [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

If you have exhausted the internal complaints procedure of the insurer concerned.



*Note: cars bought at auction are often excluded from the Sale of Goods Act*

### AA

Tel 0800 085 3007

Web [www.theaa.com](http://www.theaa.com)

Will direct you to independent companies carrying out used car inspections

### RAC

Tel 0345 300 400 (members only); 0800 336600 (vehicle inspections)

Web [www.rac.co.uk](http://www.rac.co.uk)

### Vehicle and Operator Services Agency

Tel 0870 6060440

Web [www.vosa.gov.uk](http://www.vosa.gov.uk)

Check for re-calls affecting your car. Ring 0870 3300444 to check if a MoT test certificate is genuine

### Trading Standards Office

Contact your local authority

### Local County Courts

Legal action or the threat thereof may be a useful weapon (in England and Wales) in resolving a stalemate. For claims of under £5000 (£750 in Scotland) you can use the DIY procedure of the Small Claims division. You don't need a lawyer and you won't be penalised in costs even if you lose. All it will cost you is the issue fee of the summons, which is added to your claim if successful.

File a claim online at [www.moneyclaim.gov.uk](http://www.moneyclaim.gov.uk). To obtain advice, ring 0845 601 5935

The key to effective litigation is to be clear, concise and not too wordy. Keep to the facts. Evidence will come later if it proceeds to a hearing (more than 90 per cent settle long before). If you obtain a county court judgment, the details will then be entered on a central register – bad news for most companies. And remember that local press are always on the lookout for a good consumer story.

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