

Derbyshire County Council

Meeting with Cabinet Member, Health and Communities

11 February 2014

Report of the Strategic Director, Health and Communities

CONSUMER ADVICE WHEN BUYING A SECOND-HAND CAR

1. Purpose of the report:

To inform the Cabinet Member, Health and Communities of consumer issues when buying a second-hand car and to inform the Cabinet Member of the results of a prosecution.

2. Information and analysis:

2.1 Buying a car is usually the second most expensive purchase, after accommodation, that most consumers will make in their lifetime. Sadly, complaints about second-hand cars are consistently the highest category of consumer complaints. The Trading Standards Division works closely with the Citizens Advice Consumer Service (CACS - formerly Consumer Direct) to provide advice and support to local consumers who are dissatisfied with goods or services that they have purchased. CACS provide contract law advice and will refer any potential criminal breaches or complaints from vulnerable local residents to Trading Standards for further consideration.

2.2 In brief when buying a second-hand car consumers are entitled to a vehicle that is:

- **Of a satisfactory quality** - of a standard that a reasonable person would regard as satisfactory taking account of the price, age, mileage and condition at the time of sale.
- **Fit for its intended purpose or a purpose that you made known to the trader** - fit to be driven on the road.
- **As described** - the vehicle should correspond with any description applied to it. In some circumstances, the trader may be liable for any statement made by the manufacturer of the goods, and
- **In a roadworthy condition** – would pass an MOT test and is safe to be driven on the road.

A breach of the first three criteria could give rise to a breach of contract and entitle the consumer to compensation or a full refund depending on the extent of any fault. The sale of a misdescribed or unroadworthy car is also a criminal offence and again depending on the significance and circumstances could lead to a trading standards criminal investigation and, if necessary, a prosecution.

There is much pre-shopping advice available to consumers when thinking about buying a car available on the Derbyshire County Council website:

http://www.derbyshire.gov.uk/images/ca01_tcm44-8189.pdf

- 2.3 The most recent data produced by Citizens Advice indicate that 500,000 consumers complained about £3.5 billion worth of faulty goods and services in the year ending March 2013. Once again complaints about second-hand cars (45,425) was the highest category of complaints with mobile phone contracts (11,974) and repairs from an independent garage (11,437) second and third.

**Top 10 Consumer Complaints received by Citizens Advice
April 2012 to February 2013**

Top ten problematic products	Number of complaints
Used cars bought from an independent dealer	45,425
Mobile phone contracts	11,974
Repairs from an independent garage	11,437
Upholstered furniture	10,632
Mobile phone handsets	10,268
Lap-tops, notebooks and tablet PCs	10,241
Women's clothing	9,293
General building work	8,726
TVs	8,511
Beds and mattresses	7,868

- 2.4 Complaints about second-hand cars are also prevalent from Derbyshire residents with complaints from independent dealers topping the list for both 2012/13 and for the first six months of the current financial year.

	2012 / 2013	2013 / 2014 (to 30.9.13)
From franchise dealers	151	77
From independent dealers	1154	671
From private sellers	101	49
Other	14	8
TOTALS	1420	805

- 2.5 One complaint received by Derbyshire Trading Standards has resulted in a recent successful prosecution. In June last year we received a complaint from a 17 year old who had bought her first car from an independent car trader in the south of the county. She purchased a V registration Citroen Saxo and paid £500. The car was described as being in 'excellent condition throughout' and 'sold as seen'. As she had not passed her driving test she had to wait a couple of weeks

before she could drive the car and unfortunately her first trip in July ended in disaster when the car over-heated with steam coming out of the bonnet. She took the car to a local mechanic who found a host of faults and advised her to get a refund. This was refused by the car dealer and so she complained to CACS who referred the complaint to Derbyshire Trading Standards.

- 2.6 We had the car examined and our expert reported that there were indeed a host of faults – two of which were so bad that the car was unroadworthy under Section 75 of the Road Traffic Act 1988 – ie it was a danger to anyone in the car or other road users. The safety defects were that both front brake discs were excessively worn and corroded and there was corrosion affecting structural parts of the car (the offside rear inner wheel arch was holed near the suspension mounting point and the nearside rear inner wheel arch was holed near the rear seatbelt upper mounting point).
- 2.7 As well as the charge for the dangerous car, the car trader faced three other charges under the Consumer Protection from Unfair Trading Regulations 2008; one for describing the car as in “excellent condition throughout”. This was clearly false and second-hand car traders have a responsibility to ensure that the cars they sell conform to any description that they apply. He was also charged for using the expression “sold as seen” in separate receipts given for the initial deposit and the payment of the outstanding balance. The phrase “sold as seen” is illegal because any phrase or wording that could imply that a consumers’ civil contract rights are limited could dissuade the consumer from seeking redress for a breach of contract. In this case the dealer did indeed seek to rely on the phrase by denying the purchaser any form of redress.
- 2.8 The case was heard at Derby Magistrates Court on 16th January and the trader concerned pleaded guilty. In mitigation he claimed that he was unaware that the car was dangerous and that the brakes felt ok to him. He had received some training as a mechanic and had been in the motor trade for over 20 years. Judge Alderson, in passing sentence said that the dealer had sold over 40 cars and would have known that this particular car was not in ‘excellent condition’. He imposed fines of £1,500 costs of £1,950 and ordered the trader to pay £500 compensation to the purchaser. The car trader has also ceased trading.
- 2.9 There is always demand for cheap second-hand cars – particularly when budgets are tight. However, there is no excuse for selling misdescribed or unroadworthy vehicles. Car traders have a responsibility for ensuring that cars they sell are in a roadworthy condition and not misdescribed. Consumers can protect themselves by checking a vehicle’s service history and seeking a recent MoT and by researching the market and knowing their consumer rights before making a purchase. If buying privately it is always advisable to ask for a new MOT and take someone who has knowledge and experience of cars if you do not. Members of the public can also seek out car dealers that are members of Derbyshire’s Trusted Trader Scheme.

3 Other considerations:

In preparing this report the relevance of the following factors has been considered; financial, legal, prevention of crime and disorder, equality of opportunity; and environmental, health, human resources, property and transport considerations.

4 Background papers:

None

5 Key Decision:

No

6 Call-in:

Is it required that call-in be waived for any decision on this report?

No

7. Strategic Director's recommendation:

That the Cabinet Member, Health and Communities note the report.

David Lowe
Strategic Director
Health and Communities