



## Consumer Awareness: Buying a second hand car.

Issued: 14th May 2021

### Background

As part of its 2021 Consumer Awareness Programme, the Office of Fair Trading (OFT) is issuing guidance for local consumers in relation to their consumer rights when buying second hand cars.

Aside from homes, cars are usually the most expensive items that consumers purchase. As a result, the potential for consumer harm if things go wrong is significant.

This guidance aims to give practical information to Gibraltar consumers and to make them aware of their consumer rights. Common complaints received by the OFT in relation to second hand car purchases have been used to compile this guidance.

### Why buy a used car?

Buying a used car can be substantially cheaper than buying an equivalent car brand new. Consumers can therefore benefit from substantial depreciation in the value of a new car shortly after their first registration. According to the [UK's Automobile Association \(AA\)](#):

*"The average new car will have a residual value of around 40% of its new price after three years ... or in other words will have lost around 60% of its value at an average of 20% per year."*

Residuals however depend on the particular car, its specifications, its condition, its use and other market conditions.

It is important however that consumers are careful to choose a good and well-kept car. Regardless of a used car's mileage all cars should be inspected to ensure that they have been adequately maintained.

### Research the car you want to buy

Once you have identified a used car that interests you, check what its specifications are. Cars which are the same model can vary significantly depending on their trim level. This can include:

1. different types and sizes of engine,
2. different interiors (e.g. leather seats)
3. slightly different exteriors (e.g. bigger alloy wheels and body kits)
4. different gadgets and infotainment systems (e.g. parking sensors, upgraded sound systems and safety equipment).

As a result, the price of the same make and model of car can vary substantially, with the most sought after examples (usually the cars with the best specifications) being more expensive.

We would therefore strongly suggest that you research the car you want to buy online to check what specifications you are after and to get an indication of what the car's price should be. There are many websites which provide you with this information and may even provide you with items to check before buying particular models. You can also get information about whether a

particular car manufacturer or model is considered unreliable. It is worth taking the time to do your research so you avoid future problems, which may be expensive to rectify.

### Manufacturer's warranties

If the car is fairly new it may still be under the manufacturer's warranty. This will give you extra comfort if it develops a fault. Please note however that some manufacturers require their cars to be serviced by approved garages, otherwise the warranty will be void. You should check this before you buy.

Also note that some second hand car dealers may offer you warranties for cars they sell, even if the manufacturer's warranty has lapsed. Ask about these and the terms and conditions before you buy. These should be provided to you in writing.

### **Viewing the car**

Once you have decided on a used car you want to buy you should arrange a viewing. Ask the seller to confirm the car's specification in advance. Understand what car you are going to see and the features of the car you are buying.

At the viewing:

1. Check the car's mileage. Low mileage cars have been used less, but will likely be more expensive as a result.
2. Ask about the car's service history. All cars need to be serviced at regular intervals. These are essential to ensure that the car has been kept in good order and may be relevant if the car is still under manufacturer's warranty. Every time the car is serviced there should either be a stamp in the car's documentation or an appropriate invoice.
3. Check the outside of the car for damage. If it is parked on the street arrange to view the car in daylight. It is harder to spot damage to the car if it is wet, so avoid rainy days. Take your time to look over the panels.
4. Check the wheels. Have the alloy wheels been scuffed? If the tyres are excessively or unevenly worn this can indicate the car has not been maintained, that the car has had a crash or that there is a problem with the car.
5. Check the inside of the car for wear and tear. If it is a family car, check the back seats as children can cause accelerated wear and tear.
6. Check all the switchgear and electric accessories work. In particular check that all the windows open fully, the air-conditioning is working and ask to be shown how the infotainment system works (e.g. ask to see how a phone connects to the system).
7. Take the car for a test drive. This is a must! Does the car drive as you expect? Listen for unusual noises. Note that you will need to make sure you are insured to do this.

Consider whether you should have an independent mechanic check the car. This may appear to be an unnecessary expense or inconvenient, but if a major issue is identified, then you could save a lot of money!

### **Buying from another person – Private sales**

Whenever you are buying from another person this will not be a commercial transaction and you will not have the same rights as if you buy from a used car dealer (see below).

When you have agreed a fair price for the car with the seller, make sure you agree:

1. how the purchase price will be paid and by when; and
2. how and when you will be given the keys to the car; and

3. who will be responsible for transferring the legal ownership of the car to you. This is normally the buyer's responsibility. It is important that the car is registered with the new owner at the Driver and Vehicle Licensing Department (DVLD) (<https://www.facebook.com/DVLDGIB>)

### Faults with the car

If you are buying a car from a private seller it is your responsibility to ensure that the car is in good order before you buy. It will be very difficult to claim for any faults the car develops after you buy it unless you were misled. If that is the case the law of contract would apply to the private sale. Any disputes that you cannot resolve directly with the seller may require you to take legal action. The OFT can only offer limited guidance in these scenarios and cannot investigate the matter.

### **Buying from a used car dealer**

If you are buying a car from a used car dealer you have statutory consumer rights.

### Purchasing the car

Before purchasing, ask for the vehicle's details and its price to be sent to you in writing along with any other agreed terms. This should include whether there is any warranty for the car and whether there are any special requirements, e.g. servicing with a specific garage.

If you are buying the car in cash request a receipt in order to have proof of purchase.

### Your rights

You have statutory rights when you buy a car from a dealer. Gibraltar law requires the car to be:

1. Of satisfactory quality - this means that the car should meet the standards that any reasonable person would expect. This should reflect the car's condition taking into account:
  - a) any identified defects;
  - b) the car's age and mileage; and
  - c) the price you are paying for it.
2. Fit for its purpose - this means that the car must be fit for the purpose it is generally intended for and any other use that the business has told you it can be used for e.g. it is four-wheel drive or capable of towing a caravan.
3. As described - this means that the car must be as described by the seller. In most circumstances, it also means that the car must conform to any advertising claims made about it.

In summary, the car must be fit to be on the road and reasonably reliable. Reliability however will depend on the car's condition which will be reflected in its age and the price paid.

### Faults with the car

If the car develops a fault after it was recently purchased and/or you have not used it much you may be entitled to redress. The below are examples of the kind of redress you may be entitled to, although these vary on a case-by-case basis:

1. You may be entitled to a repair:
  - a) if the fault is only minor and can be easily repaired; and
  - b) if the car has developed a major fault but you have been using the car for some time and/or have travelled longer distances in it.

If a repair is so significant that it adds to the value of the car, the trader may expect you to pay something towards the cost of the repair to reflect this.

2. You may be entitled to compensation:
  - a) If a repair will take a long time (although some dealers may offer you a courtesy vehicle while you wait); and
  - b) If the fault with the car caused damage to anything else or you are out of pocket in any other way.
3. You may be entitled to reject the car and get a refund:
  - a) for a major fault;
  - b) for a significant misleading description; and
  - c) if the car is beyond repair.

If a refund is offered, the trader may make a reduction from the price you paid to allow for the use you have had from the car. Any refund due should include any part exchange allowance given for your old car if the trader has already disposed of it.

### **When you are not able to claim from a car dealer**

You will not be able to take action against the business if the car has a fault and:

1. you examined the car before you bought it and the fault was obvious;
2. the trader pointed out the fault before you completed the purchase (unless there are other faults or the car is not as described);
3. you have damaged the car, altered the car or failed to maintain it; and/or
4. the fault is as a result of normal wear and tear.

You may also not be able to take action against the business if you have allowed a third party to carry out repairs to the car before consulting with the business.

### **Resolving the problem - How to seek redress**

If a fault has developed, we recommend that you take the following steps.

1. If the problem appears to be a major fault, stop using the car at once.
2. Contact the trader straight away. If you contact them in person or over the phone follow up the conversation with an e-mail to have a record. Any written communication should:
  - a) Set out the problem which has developed;
  - b) Make it clear that you want the business to resolve it and what remedy you want: a refund, repair and/or compensation;
  - c) If at this stage you feel that you have the right to a refund and wish to return the car, you must write to the trader and reject the car unrepaired. Note however that this is for major faults and that most car faults are repairable; and
3. Do not let anybody else repair the car at this stage. The business will not necessarily be responsible for the costs of the repairs if you do so. Always speak to the dealer first.
4. Put together all the documents and any evidence, including details of any warranty you were given when you bought the car

Some faults are not easy to identify and repair straight away. You should therefore give a responsive business a reasonable opportunity to repair the car. If the trader offers to do something, but not what you have asked for you can try to negotiate with them so that they attempt a different approach. Be

reasonable and practical in what you are prepared to accept however. Where the reason for the fault is not obvious, sometimes it can be better to compromise.

### Sample rejection letter.

If you want to reject the car and request a full refund, you can use [this sample letter](#) to write to the trader and exercise your right to reject the car. This however should only be used where there is a major issues with the car.

### Minor issues

Many issues may not necessarily be faults and may be easily resolved. Before reporting a fault check that there really is one:

1. refer to the car's manual; or
2. research how to resolve the issue online as there may be a simple solution. This is more appropriate for non-mechanical issues (e.g. software). We do not recommend tackling mechanical faults if you have no mechanical experience.

### **Where the dealer refuses to resolve the problem**

If the business:

1. does not respond to or appropriately deals with the complaint;
2. refuses to offer redress; or
3. offers you redress which you do not think is appropriate,

you may wish to inform the business in writing that you are willing to take the matter further. You can submit a complaint to the OFT or formally take legal action against the business.

### OFT investigations

The OFT will only be able to investigate complaints of business practices which may be causing harm to consumers generally. Following its investigations the OFT may take appropriate action to prevent similar business practices in future.

The OFT's investigation into your complaint may lead the business to offer you redress, however this is not guaranteed. Please note that the OFT is not empowered to assist you to obtain redress from the dealer, be it by way of financial compensation or otherwise.

### Legal action

You can commence legal action to require the business to give you compensation for your loss through the courts. This however can be expensive and you are not guaranteed a favourable outcome. Where possible you should consider mediation before going to court.

Also note that you will require evidence to present to court to substantiate your claim. Be sure you have a strong case. Do not waste time and money on a legal case you cannot win. We strongly recommend you seek legal advice before proceeding.

If your claim does not surpass £10,000 you may claim against the business through the Small Claims Court. Whereas you do not need legal representation for this court, it is advisable you seek professional legal advice before starting this process.

### **Contact us**

We hope the above is of assistance. If you have any queries or have encountered any problems, please contact the OFT's Consumer Protection Team:

Email: [consumer.protection@gibraltar.gov.gi](mailto:consumer.protection@gibraltar.gov.gi)

Tel: +350 20071700

For up to date consumer guidance visit our website or follow our social media accounts:

Web: [www.oft.gov.gi](http://www.oft.gov.gi)



Facebook - OFT Gibraltar



Instagram - @OFTgib



Twitter - @OFTGib

**The above is provided by way of guidance only and does not constitute legal advice nor should it be relied upon as such. For specific legal advice we would strongly suggest you contact a lawyer.**