



OFFICE OF FAIR TRADING

Selling Second-Hand Cars

**A report by the
Office of Fair Trading**

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SELLING SECOND-HAND CARS

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FOREWORD

by the Director General of Fair Trading

For most consumers in the United Kingdom, buying a used car is one of the most expensive purchases they make. Furthermore, many consumers do not have the necessary experience or knowledge to enable them to make an informed buying decision and there are significant potential problems of which many people are unaware. The main problems are incorrect mileage readings, difficulty in establishing ownership, mechanical condition and safety. None of these problems is new and they are all very serious. Clocked or stolen cars can involve substantial financial loss as can undetected mechanical faults. Where safety is compromised, however, the risks are even greater. Every unsafe car on the road has the potential to damage the lives of its owner, passengers and other road users. I believe that action must be taken to significantly reduce the risks in buying a used car.

I was pleased by the reception given to the consultation paper published by my Office at the end of 1996, and send my sincere thanks to all those who responded to it.

This report contains my recommendations for reforms which I believe would significantly improve consumer welfare in this area. These recommendations are addressed in the main to Government, but also to a number of others who have the potential to help. At the same time I am issuing a new guidance booklet for consumers which includes a checklist to assist them in the process of buying a car. I am grateful to all those organisations who will be helping with the distribution of this advice.

I very much hope that everyone with an interest in this subject will continue to work towards the common goal of improving standards of trade and raising consumer awareness.

John S Bridgeman

Director General of Fair Trading

1 INTRODUCTION

- 1.1 Problems arising from buying a used car are the most common cause of consumer complaint recorded by local authority trading standards departments and Citizens Advice Bureaux. The consultation paper *The Purchase of Used Cars*, published by the Office of Fair Trading (OFT) in December 1996, discussed the four principal areas of difficulty:
- **clocking** - odometer fraud is estimated to net £100 million a year in illegal profits;
 - **vehicle title** - with difficulty in establishing ownership, purchasers may acquire cars that have been stolen or which are subject to hire-purchase or other financial charges;
 - **vehicle safety** - cars involved in accidents may be badly repaired and returned to the road;
 - **mechanical condition** - car buyers can be duped through their own lack of expertise and the poor information they are given by dealers.
- 1.2 More than 600 copies of the OFT paper were distributed by the end of the consultation period in March of this year. The level of interest it aroused and the nature of the observations made by respondents indicated that its concerns were widely shared. All those who responded to the paper are listed in Annex A, while Annex B summarises the main comments made.
- 1.3 This report sets out the conclusions that have been drawn following careful consideration of the comments received. It makes a number of recommendations which - taken together - should significantly reduce consumer detriment.
- 1.4 The consultation paper put forward three types of approach which might counter problems in the used-car market: information-based; regulatory; and technical. The responses suggest that a technological remedy is unlikely to be available in the short term; no recommendations are made in this respect. The comments received reveal a compelling need for information-based and regulatory remedies. Despite numerous information-based initiatives having been introduced there is clearly still room for improvement. But the most pressing need is for stronger regulation.
- 1.5 Any improvement in the short term requires urgent action now. It is time to introduce a regulatory system which is sufficiently robust both to improve the practices of poor dealers and to ban those who flagrantly trade on the ignorance of their customers.

2 THE REGULATORY APPROACH

The need for regulation

- 2.1 Regulation is not something to be advocated lightly. It can be awkward and expensive, and it may be oppressive - possibly posing a threat to competitive business enterprise. But when a trading activity is capable of damaging consumers' interests - whether by harming many of them slightly, or a few more severely - it may be necessary to prevent some people from engaging in that trade, and to police activity within it.
- 2.2 A clear majority of respondents thought that the used-car trade subjected consumers to particular risk. The Association of Chief Police Officers of England, Wales, and Northern Ireland (ACPO) expressed a common view when it noted: 'it has to be recognised that the used-car market has traditionally provided the less scrupulous element in society with an opportunity to make money from the less well informed'.
- 2.3 There was broad agreement on the consultation paper's analysis of the problems in the used-car trade, and its assessment of their nature and scale. Some respondents suggested that the extent of problems and the level of unscrupulous trading had been underestimated. For example, the Finance and Leasing Association (FLA) wrote: 'In 1995, the total market for cars was 9.8 million, of which 7.9 million were used cars. The value of the used-car market in 1995 was £23.3 billion, the highest figure ever recorded . . . Based on the value, volume and source of used-car sales, we believe that private purchasers of used cars are potentially at risk to a sum well in excess of £1 billion per annum'.
- 2.4 A research survey undertaken for the OFT by Taylor Nelson in February 1997 suggested that three in every five individuals over the age of 17 had bought a used car at some point in their lives and that 17% of them had had cause to complain within six months of purchase. Among purchasers generally, almost half thought that hidden mechanical faults presented the greatest risk.¹
- 2.5 Respondents to the consultation paper expressed frustration at the lack of an effective response to consumers' concerns, and many called for change. Support was expressed for the various initiatives taken by trade associations, enforcement authorities, motoring organisations and others. However, many respondents felt that the time has come to take action sufficiently rigorous to bring about a real improvement in the experience of consumers.

1 Copies of the Taylor Nelson survey report can be obtained from Office of Fair Trading, Room 306, Field House, 15-25 Bream's Buildings, London, EC4A 1PR.

Self-regulation

- 2.6 In many cases, industries or trading sectors regulate themselves through a trade association or similar organisation. This body draws up standards of conduct which member firms are expected to observe - and it undertakes to discipline those who do not. The primary aim is to safeguard the interests of members generally and to protect the reputation of the industry as a whole. More sophisticated self-regulatory regimes may provide for a bonding arrangement - as in the travel trade - with funds set aside for the relief of distress caused by the failure of individual member companies. The provision of independent conciliation or arbitration to deal with serious complaints is a common feature of such self-regulation (and an essential element if the code as a whole is to meet with the approval of the Director General of Fair Trading). Consumers seeking redress may find such procedures cheaper and less daunting than taking action in the courts.
- 2.7 Several factors have been cited in favour of self-regulation as opposed to statutory controls. Codes of practice are inherently more flexible than any procedures laid down by central or local government bodies, and they can be speedily adapted to take account of changing circumstances. The regulators themselves have practical experience of the trade and are well qualified to detect, assess and counter the effect of bad practices. And the administration costs of self-regulation are carried by the trade concerned - although doubtless they are ultimately borne by those consumers that the scheme is designed to benefit.¹
- 2.8 The Fair Trading Act 1973 lays a duty on the Director General to encourage different trading sectors to establish codes of practice. The motor trade associations have been assiduous in drawing up such codes - together with more detailed subsidiary member guidance - all designed to promote high standards of consumer care. The Retail Motor Industry Federation (RMIF) offers a low-cost arbitration and conciliation service, and undertakes to discipline members found not to be acting in accordance with the agreed standards. The principal motor code is supported by the Director General.
- 2.9 In the main, respondents to the consultation paper felt that self-regulation in the motor trade could not provide a sufficient answer to consumer difficulties. Most problem traders are not members of trade associations. Such non-members have no direct incentive to observe the standards the associations lay down and, where upholding those standards involves additional costs (as it usually does), they enjoy a clear price advantage - if not one of quality. In addition, many consumers do not understand what function trade associations serve, nor how they might benefit by purchasing from an association member. The Taylor Nelson survey showed that many car-buyers placed

¹ For a discussion of self-regulation through codes of practice, see the OFT consultation paper *Voluntary Codes of Practice* (December 1996).

no value on such membership: 45% of the sample questioned did not know if their dealer belonged to a relevant association.

Licensing schemes

- 2.10 The consultation paper discussed the suggestion of establishing some kind of licensing scheme for motor dealers, and the idea drew significant support (see Annex B). The basic aim would be to enable enforcement authorities to remove from the market those traders with the worst record for abusing consumer trust. Such a scheme might also define the worst practices, and introduce set standards which licence-holders would have to observe - although this would greatly increase the cost of enforcing it.
- 2.11 There are two main types of licensing scheme: negative licensing, where traders do not require to be licensed before setting up in business, but can be banned if they transgress clearly defined rules of conduct; and positive licensing, where they have to demonstrate their 'fitness' before they can start trading. Many respondents favoured a positive licensing system but there was also support for a negative scheme.
- 2.12 An example of negative licensing is provided by the procedures established under the Estate Agents Act 1979. By contrast, the scheme established under the Consumer Credit Act 1974 provides an example of positive licensing. Both Acts specify criteria against which 'fitness' to engage in the activity should be judged. For the most part, those in the Consumer Credit Act, in particular, are fairly broad. Only in a few specialist areas - such as pawnbroking - are detailed standards of conduct laid down. Otherwise, the only generally applicable criterion is a non-specific requirement of 'fitness' to hold a licence. This is assessed when a trader applies for a credit licence and on a continuing basis once it has been granted - by reference to any evidence of wrongdoing and unfair practices that comes to the attention of the OFT. While the Act does set out guidance on the definition of 'fitness', the Director General has complete discretion to take into account any circumstances he considers relevant.
- 2.13 Partly because of the need to screen all applicants, positive licensing schemes are likely to be more costly to administer than negative ones. To a large extent, however, the cost of a negative scheme will depend on the scale of the monitoring activity undertaken by the licensing authority. If a negative scheme involves intensive monitoring, supported by a database of all relevant traders, the overall costs to the authority and to the trade may not be very different. A positive scheme clearly has the advantage of vetting those who wish to enter the trade and ensuring a significant degree of preventive supervision by the licensing authority.
- 2.14 But positive schemes do have disadvantages. Very substantial resources would be needed at a local level to police a positive motor dealer licensing scheme fully, particularly if it were to lay down detailed standards of conduct. If sufficient resources

were not available, intending purchasers of used cars would still be likely to be at risk from undetected unlicensed traders and licensed traders who breach the conditions of their licences. In these circumstances, the existence of the licence might, in itself, lull customers into a false sense of security about the risks they face.

- 2.15 A positive licensing scheme may also constitute a barrier to entry to the market by involving a degree of cost or bureaucracy. This may reduce competition. A further disadvantage of such a scheme is its potential for disputes about demarcation. Clearly, the question of who must, and who need not, have a licence is a fundamental consideration - and, with it, the issue of whether regulatory control is being evaded. A dealer might find it all too easy to redefine himself as a motor mechanic who sells second-hand vehicles as a side-line. While it would be possible, through investigation, to detect obvious instances of evasion of control, this would place another burden on local enforcement authorities. If, alternatively, *everyone* having any connection with the motor trade were to be brought within the scope of licensing, then the task of monitoring fitness and compliance with standards would become larger and more complex, the additional burden on traders of the licensing system would be felt more widely, and its costs would inevitably have to be passed on to more consumers.
- 2.16 Car dealers are already subject to a number of different types of control. For example, most are licensed under the Consumer Credit Act: on average, every year, 30-40 dealers are refused licences, or have their licences removed. Without being able to offer credit it is difficult for the majority of motor dealers to trade successfully, and the refusal or revocation of a licence is therefore a severe sanction. Action against potential and existing licensees is not confined to malpractice in the use or selling of credit. Other behaviour is covered, including all kinds of deceitful or oppressive business practices. The Director General has recently issued guidelines explaining in detail what is considered unfair practice in 'non-status' lending. In future, breach of these guidelines will be taken into account in assessing 'fitness' to hold a consumer credit licence. Following on from this action, the Director General is now considering, after due consultation, whether to take a similar course in relation to car dealers who hold credit licences.
- 2.17 Some Scottish local authorities operate licensing schemes for car dealers in their area under the Civic Government (Scotland) Act 1982. The OFT has been provided with no definitive information on the operation of these schemes upon which it could make any assessment of additional benefits and costs. The consultative document quoted a Scottish Consumer Council report of 1988, which had concluded that the schemes had had little impact. Responsibility for their operation has only recently passed from the old district councils to the trading standards departments in the new unitary authorities. The Consumers' Association felt that more detailed information was required on the operation of existing and prospective licensing schemes before one could say whether

voluntary or mandatory licensing represented the best way forward. Clearly, at this stage, it is difficult to draw any firm conclusions from the Scottish schemes.

- 2.18 Among respondents generally, there was considerable support for the idea of introducing a statutory licensing scheme for the motor trade in order to modify behaviour through licence conditions - with the ultimate sanction of being able to remove the licences of unsatisfactory traders. Loss of the ability to trade was cited as the most effective deterrent to indulging in shady practices. We believe that the objectives of such a licensing scheme - to the extent that they cannot be pursued under the Consumer Credit Act, because not all traders do hold credit licences - could be achieved by the reforms to Part III of the Fair Trading Act outlined in the following paragraphs.

Reform of current legislation

- 2.19 Like all other traders, car dealers are subject to the provisions of Part III of the Fair Trading Act. The Director General has proposed fundamental reform of these provisions in order to improve the ability of enforcement authorities to address malpractice and, in particular, to make it possible to ban rogue traders. These are central features of the type of licensing system advocated by many respondents. The provisions would cover all sectors of the motor trades, for example dealers, motor auctions, repair services - and, here again, many of those calling for licensing felt that all these sectors should be licensed.
- 2.20 Part III of the Fair Trading Act empowers the Director General to act against traders who have persisted in a course of conduct which is unfair to consumers, in that it is detrimental to them, and involves breaches of the law or of duties (such as those under contracts) enforceable at law. This power was introduced with the intention of providing a rapid means of countering unfair trading practices. And yet, twenty-four years later, many of the practices which the provisions were intended to eliminate persist, and they continue to concern consumer and enforcement interests.
- 2.21 Experience of operating these powers has shown that they are, at best, extremely time-consuming in eliminating consumer detriment and, at worst, ineffective - particularly against small traders. Problems include the unwieldy and inflexible nature of the procedures to be followed, the high standard of proof required before any action can be enforced through the courts, and the lack of appropriate penalties. The following paragraphs describe two cases which illustrate how what was originally envisaged as an innovative and wide-ranging power to protect consumers tends to be slow, complex and ineffective in practice. Other examples could have been chosen.
- 2.22 In one current case, following a series of convictions, a trader gave the Director General assurances in 1989 about his future conduct. Despite this, he went on

committing the same offence of dishonesty and, in 1994, the OFT eventually secured that he gave assurances to the court to cease this course of conduct. Nevertheless, he subsequently continued as before and was later convicted of the same offences, so that now, in 1997, the Director General has enough evidence of further transgressions to bring an action for contempt of court. In the meantime, however, the trader has gone bankrupt and has retired from business because of age and ill-health. Pressing the case against him would now serve little public purpose - although he was able to carry on cheating the public for no less than eight years.

- 2.23 In another case, in March 1984 a trader eventually returned signed assurances that had been requested on 8 August 1983. Throughout the remainder of 1984 further complaints about the same trader indicated that he was paying no regard to the assurances he had given. He, too, continued his unfair conduct despite court proceedings for breach of the assurances. These were begun in February 1985, but it was not until late 1986 that a court order was made. The trader still did not abandon his malpractices and, in January 1993, the OFT took proceedings for contempt of the 1986 court order. In September 1994, the trader was found to be in contempt of court and was fined £500. Despite warnings given to the trader by his local trading standards department and by the OFT, complaints against him still continued. Further contempt proceedings were authorised in October 1996. Finally, in August 1997, 14 years after the OFT initiated action, the court found the trader to be in contempt and he was sentenced to nine and a half months imprisonment, suspended for two years.
- 2.24 Action under Part III of the Fair Trading Act can be instigated only after a body of evidence has been assembled to show that a trader has 'persisted in a course of conduct' that is unfair, as well as demonstrating that the malpractice is likely to continue in the future. The requirement to show 'persistence' has made it very difficult for prompt action to be taken. Furthermore, in the first instance, action cannot go beyond requesting traders to sign written assurances about their future conduct, which may take months to negotiate. Even then, such assurances often have little real effect on the way those traders conduct business. There is no penalty for failure to comply with them. All the Director General can do, after he has found a sufficient body of fresh evidence, is to seek a restraining order from the court. Only once a court order has been made and further evidence has been collected to show that it has been broken can serious action be taken. The trader may then be fined or imprisoned for contempt of court. There are, however, technical difficulties with contempt actions, and, at this as at every other stage, if a trader has changed business, or too much time has elapsed between instances of the unacceptable practices identified, the whole process may have to be repeated.
- 2.25 Successive Directors General have expressed their concern about the operation of Part III of the Fair Trading Act. Specific proposals which would make it an important protection for consumers generally, and particularly in the used-car market, have

recently been put forward by the present Director General, John Bridgeman. He has proposed that his powers under Part III be shared with local trading standards authorities. This would mean that, where appropriate, action could be taken more promptly at a local level. This is essential, given the relative ease with which a business selling used cars can be moved. The 'persistence' requirement needs to be relaxed. Above all, enforcement should, in the first instance, be by an order that simply requires the trader to discontinue (or not repeat) a course of conduct if it meets stated criteria of unfairness. This would eliminate the delays inherent in seeking assurances. The trader would be safeguarded by rights to require review of a proposal to make an order, and a right of appeal to a judicial body when an order has been made.

- 2.26 Where the enforcement authority has evidence that a trader is failing to comply with an order that has come into effect, it should have the power to ask the judicial body to take action against that trader - who would of course be able to argue his or her case in the normal way. But if it found against the trader, it would have the power to impose sanctions, including not only a fine, but a ban from carrying on a trade or trades as principal for a given period. This would ensure that a trader could not simply collect a punishment and continue in business, as in the cases described.
- 2.27 Thus the procedure would have the effect of a negative licensing scheme, enabling a trader to be banned from the market. Failure to comply with the order should be a criminal offence punishable by a fine or imprisonment.
- 2.28 Breach of the criminal law or of civil law obligations to a customer already constitutes unfairness under the Act. There has long been debate about whether, and how, this definition should be capable of adjustment in the face of new oppressive practices. This is currently the subject of discussion between the OFT and the Department of Trade and Industry.
- 2.29 **RECOMMENDATION 1 - Reform of Part III of the Fair Trading Act should be given urgent consideration.**

Mileage adjustment services and disclaimers

- 2.30 A dealer who sells a car that is falsely described, for instance where its mileage reading has been altered, commits an offence. The consultation paper drew attention to the fact that 'mileage adjustment services' - by which odometer readings can be changed - are readily available, commenting that 'the circumstances in which a customer might wish an odometer reading to be altered without having any intention of clocking a vehicle are difficult to imagine . . . it is unacceptable, then, that such businesses are able to advertise their service'. It is clear that the number of advertisements has grown, while it also appears that such services are touted outside

car auctions. Many respondents supported the view expressed by the OFT and suggested that there should be a clear offence of carrying out such a service (unless for specific legitimate reasons) and of advertising the service.

2.31 Many enforcement authorities expressed concern about the use of disclaimers which, as the law stands, can be used to negate the mileage description shown by the odometer. Disclaimers are often used routinely with little or no effort being made to check the accuracy of the odometer reading. At best, this deprives intending purchasers of useful information; at worst, it gives dishonest dealers an alibi - while allowing them to indicate orally that a clocked mileage is correct. Respondents to the consultation paper were agreed that consumers need reliable mileage information. We share the widespread concern about disclaimers and believe that consideration should be given to addressing the issue. The law might be changed to make disclaimers ineffective where reasonable checks on mileage have not been made. Alternatively, reform of Part III of the Fair Trading Act might offer a way of tackling the indiscriminate use of disclaimers without primary legislation. The OFT will, in any event, consider the extent to which it can be cited as an unfair business practice in the context of licensing action under the Consumer Credit Act.

2.32 **RECOMMENDATION 2 - Urgent consideration should be given to the introduction of legislation to outlaw mileage correction/alteration services and their advertising. Consideration should be given to addressing the issue of disclaimers by a change in the law and by licensing action under the Consumer Credit Act.**

Penalties under existing legislation

2.33 Although many respondents felt that penalties under the Trade Descriptions Act 1968 relating to application of a false description and sale of misdescribed goods should be increased, others felt that this was not the answer. The courts had tended not to make use of maximum penalties. Increased penalties would not in themselves provide an answer to continuing consumer problems. What is needed is a more radical mechanism to tackle problem traders, which will provide a stronger deterrent to trading malpractice than existing legislation. Part III of the Fair Trading Act was intended to address the problem of persistence in trading malpractice but has failed to do so adequately. The reforms now proposed should enable it to do so effectively. The appropriate penalty would be to deny the offender access to customers.

Title

2.34 The consultation paper's suggestion that cars should be issued with title deeds similar to those for land did not meet with much enthusiasm. Considerable doubts were

expressed about the practicability of applying such a system in the faster-moving motor trade.

- 2.35 An alternative idea, also canvassed in the consultation paper, was the establishment of a central public register of title to vehicles. This drew a mixed response, with doubts being expressed that such a register could act as an effective guarantee of title given the nature of the industry. There was concern that a statutory register would place the onus on private purchasers to check whether cars are subject to outstanding hire-purchase agreements. It is far from clear that, as it would affect consumers, the introduction of a new public register would represent an adequate exchange for loss of the ‘innocent purchaser’ rights they currently enjoy under Part III of the Hire Purchase Act 1964. There would necessarily be a cost involved in consulting the register. And dishonest sellers would inevitably do their best to persuade would-be car-buyers that they had no need to consult the register and might be successful if consumer awareness of, or confidence in, the register was low.

Mechanical breakdown insurance

- 2.36 The suggestion that the sale of mechanical breakdown insurance (MBI) policies should be subject to a cooling-off period met with a mixed response. Some respondents suggested that cooling-off periods were more appropriate in instances where high-pressure sales techniques were used and that this was not generally the case. Others had encountered evidence of such techniques and recommended a minimum cooling-off period of 14 days. The granting of cooling-off periods is something that should be encouraged as is the use of plain language to explain clearly to consumers their rights.
- 2.37 Cancellation rights and the use of plain language in consumer contracts are among the issues addressed by the Unfair Terms in Consumer Contracts Regulations 1994, which conferred new powers on the OFT. These powers have been vigorously implemented, and the OFT has already exercised them in relation to an unsatisfactory MBI contract. It will continue to take appropriate action when unfairness in such contracts comes to its attention.

Forecourt inspections

- 2.38 Several enforcement authorities, and their representative organisations, felt that trading standards officers should be given powers under the roadworthiness provisions of the road traffic legislation to inspect vehicles on garage forecourts. However, while others disagreed, some respondents clearly believed that the powers to carry out such inspections already existed, under the General Product Safety Regulations 1994, which require consumer products to be safe, apply to motor vehicles, and empower trading standards officers to inspect vehicles offered for sale. It would not be appropriate to

recommend new powers if, in fact, those powers already exist, but there is obviously a need to clarify the position.

2.39 **RECOMMENDATION 3 - The extent of existing powers relating to inspection of vehicles on garage forecourts should be clarified.**

3 INFORMATION-BASED APPROACHES

- 3.1 The root of the problem faced by consumers, particularly where relatively complex products are concerned, is a lack of information and an imbalance of information between them and specialist traders. In the used-car market, buyers may have unreasonable expectations and may be totally reliant on the trader for information. One way of addressing problems in the motor trade, therefore, is to improve the information available to consumers.

Improving the information held by databases and consumer access to the information

- 3.2 Respondents to the consultation document generally welcomed the growth of motor databases, but noted that only a small proportion of consumers were likely to pay for the use of the service. As the use of such databases becomes more common, and more firms enter the database market, the cost of access is likely to fall further. This should encourage more use of the service, as would continuing improvements in the accuracy of the data held. As database compilers discover ever-more imaginative ways of finding and absorbing data, the reliability of their product will increase - both for consumers and traders.
- 3.3 There are two principal ways in which the effectiveness of mileage information held on databases can be improved. The first is by the extension of the present voluntary notification of mileage by the parties at transfer of vehicle on Form V5 (issued by the Driver and Vehicle Licensing Agency - DVLA) to a mandatory system.¹ It is true that the mileage would be entered by an interested party but, under the joint notification process, there is less likelihood of the system being abused purely for the purpose of making a false mileage history. The DVLA already makes all mileage figures captured available to the database companies, so that a mandatory requirement would increase the volume of information available rather than further increase the risk of fraud.
- 3.4 Many respondents favoured a mandatory system and some suggested that notification of mileages should take place on re-taxing, when MOT certificates are issued, and when vehicles are serviced by dealerships as well as at sale and purchase of cars. Clearly, the sooner and the more frequently that mileage details are 'captured' the more difficult it will be to conceal falsification of odometer readings.
- 3.5 **RECOMMENDATION 4 - The current voluntary arrangement for entry of vehicle mileage on Form V5 when sent to the DVLA should be made mandatory,**

¹ Form V5 is the vehicle registration document, sometimes known as the logbook. It is issued by the DVLA and includes information about the vehicle and the names and addresses of the current and the two previous keepers. Since March 1997, it has been the responsibility of the seller to pass details of the buyer to the DVLA.

on the understanding that the DVLA will continue to make the mileage information available to motor database compilers.

- 3.6 The second - potentially more effective - way of improving mileage data capture on databases is to ensure that such information collected during the course of MOT tests is transmitted to the companies concerned. Collection of mileage data by MOT testers represents the only mandatory collection by third parties. MOT test centres are shortly to be connected to a central MOT computer system. This should enable the data to be collected at little cost.
- 3.7 **RECOMMENDATION 5 - MOT test mileage data should be made available to all motor database companies. In the first three post-registration years, when MOT tests are not required, individual owners should have an opportunity to notify databases of mileage,**
- 3.8 It is not only the MOT testing system which is likely to be computerised. Most franchised dealerships and many service and repair garages are increasingly connected to some kind of multi-user computer system, where the possibility exists of passing on information about the history of vehicles to external databases. It appears that commercial companies are already beginning to buy information from such sources, and this development is to be welcomed - although firms will have to take care that they do not contravene the provisions of the Data Protection Act 1984.
- 3.9 **RECOMMENDATION 6 - All those bodies that handle information about vehicles should be encouraged to make it available to motor database companies.**

Pre-sale information about vehicles

- 3.10 The question arises, when buying through a dealer, should the purchaser have to pay for a database check. Dealers have access to database files at cheaper, bulk-discount rates and may already have checked a database to protect their own position. It would seem reasonable to expect that dealers will make known the findings of their checks to prospective purchasers.
- 3.11 **RECOMMENDATION 7 - Traders should make available to prospective purchasers any information about dealers' checks with database companies on vehicles for sale. The date on which the relevant check was made should be clearly displayed.**

Information on mechanical condition

- 3.12 In the year to 30 September 1996, a total of 84,479 complaints about the purchase of second-hand cars were recorded by local authority trading standards departments and Citizens Advice Bureaux. Of these, more than 50,000 concerned 'defective goods or substandard service' - that is, they mainly related to the mechanical condition of vehicles. The statistical record reinforces the view of ACPO that: 'there is no doubt that it is the actual mechanical condition of a used car that causes most concern among potential buyers and few of these possess the requisite technical knowledge to adequately assess vehicle condition'.
- 3.13 It is the imbalance between the technical and mechanical competence of dealers and buyers which lies at the heart of most consumer problems in this area (and in the area of repairs and servicing). Consumers can protect themselves by purchasing the expertise of professional mechanics, via independent inspection services. But these do not usually offer indemnity should the inspection itself miss significant technical defects. The consumer would have to claim damages where an expert can be shown to have provided an unsatisfactory service.
- 3.14 The two most helpful means of assisting consumers are: first, to make sure that cars are inspected and prepared properly by dealers before sale, so that consumers gain benefit from buying from a professional; and second, to ensure that an adequate description is provided so that consumers know what they are being offered and can seek redress if what they buy turns out to be different or defective by comparison. However consumers buying at the very lowest prices are unlikely to consider the use of independent inspection services given that their price will represent a substantial proportion of the money they are prepared to pay for a car.
- 3.15 It is important that consumers are given a detailed written statement about the condition of the cars they buy. Many of their rights to redress stem from how the product is described. The RMIF has produced a pre-sales inspection checklist which could be adopted as a standard outline. Several other such dealer checklists are available from trading standards and other sources, such as trade associations and motoring organisations. The consumer survey undertaken for the OFT by Taylor Nelson indicated that most consumers would like to have a list of potential mechanical faults so that they could make a check at the time of purchase, together with information about their legal rights.

Informing consumers

- 3.16 A number of respondents stressed the importance of consumer education in helping people when buying used cars. Some respondents felt that consumers had unrealistic expectations stemming from lack of knowledge of what to expect when buying a car. This needs to be addressed. Consumers need to be informed of their rights and

obligations, of the means for redress if anything goes wrong, and the avenues through which information and advice about vehicles for sale may be obtained before purchase.

- 3.17 Calls for more action on consumer information came from a number of commentators. The Consumers' Association suggested that much could be done by trade bodies and consumer organisations to provide consumers with a checklist of questions they should ask prior to purchase of a used car.
- 3.18 The OFT has prepared a new consumer advisory booklet, *Buying a used car? How to get the best deal*, which contains such a checklist. The booklet is available, free of charge, from:

Office of Fair Trading
PO Box 172
East Molesey
KT8 0XW

- 3.19 **RECOMMENDATION 8 - All bodies with an interest in the used-car market should consider how they can contribute further to the education of consumers, so that they know their rights, the risks involved in buying a used car and what protection is available.**

4 TECHNOLOGICAL APPROACHES

The responses received to the consultation paper indicate no real consensus on the viability of technological approaches. In the circumstances no recommendations are made in this respect.

Anti-theft devices

- 4.1 The European Secure Vehicle Alliance (ESVA) has examined car crime statistics. It notes that, following concerted Home Office action the situation is now that 'it is older vehicles - on average nine years old - that are most vulnerable to theft', although not all of them are stolen in order to re-sell. Older vehicles are commonly not fitted with anti-theft devices although simple devices can be purchased for use on them.
- 4.2 Tracking technology may represent the ultimate response to the threat of vehicle theft in the future and may also provide law enforcement officials with a realistic chance of catching thieves. The Motor Industry Research Association commented that 'by the next millennium, capacity may exist to track all vehicles, which again may deter all but the most sophisticated thieves'.

Odometers

- 4.3 The OFT's 1980 report *Consumer Difficulties in the Used-Car Sector* recommended that 'legislation should be considered to require the introduction of tamper-proof odometers in all new vehicles sold in the United Kingdom'.
- 4.4 In the intervening years, however, there have been few signs of the development of a tamper-proof odometer, and there remains little agreement about how best to provide a technically robust solution. Car clockers seem to have been quite capable of keeping up with developments in odometer technology. Moreover, the Society of Motor Manufacturers and Traders (SMMT) warns of the potential competition difficulties in the European context if United Kingdom manufacturers or trade associations were to 'go it alone' in insisting on particular technologies. Emphasis might more usefully be placed on information-based approaches to beating the clockers.

Smart cards

- 4.5 Smart-card technology is a major growth area. But it does not appear that the time has yet come for smart cards to be a reliable source of all relevant aspects of a vehicle's history, although they may be a source of protection for the future. We note also the comment by the Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS) that: 'the "chipping" or copying of smart cards is already well recorded in relation to mobile phones and satellite decoders'.

Post-accident repairs

- 4.6 The consultation paper drew attention to the new Salvage Code introduced by the Association of British Insurers (ABI) in collaboration with a number of other bodies. No evidence was subsequently submitted about the way the scheme was working in practice, although, in its response, the ABI did say that ‘insurers are reviewing and will continue to monitor the effectiveness of the Salvage Code’. Responses varied as to the likely effectiveness of the code but several respondents welcomed its introduction as a practicable way of addressing the removal of the most potentially dangerous vehicles from the road. There was no consensus on other measures that could be taken to protect consumers. Respondents who commented on the fitting of visible VIN (vehicle identification number) plates in cars held different views about the usefulness of such a measure in protecting consumers against purchasing stolen cars.
- 4.7 If car owners are to be persuaded to have post-accident inspections carried out there must be financial advantage in addition to the benefits of peace of mind. As well as recording notifications of total loss claims made against vehicles, computer databases could also record details of successful post-accident repair, which might encourage consumers to ensure that their vehicles have been made safe.

5 SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

Reform of current legislation [paragraph 2.29] - Part III of the Fair Trading Act should be reformed as described.

RECOMMENDATION 2

Mileage adjustment services and disclaimers [paragraph 2.32] - Urgent consideration should be given to introduction of legislation to outlaw mileage correction/alteration services and their advertising. Consideration should be given to addressing the issue of disclaimers by a change in the law and by licensing action under the Consumer Credit Act.

RECOMMENDATION 3

Forecourt inspections [paragraph 2.39] - The extent of existing powers relating to inspection of vehicles on garage forecourts should be clarified.

RECOMMENDATION 4

Mileage notification [paragraph 3.5] - The current voluntary arrangement for entry of vehicle mileage on form V5 when sent to the DVLA should be made mandatory, on the understanding that the DVLA will continue to make this mileage information available to motor database compilers.

RECOMMENDATION 5

MOT computerisation [paragraph 3.7] - MOT test mileage data should be made available to all motor database companies. In the first three post-registration years, when MOT tests are not required, individual owners should have an opportunity to notify databases of mileage.

RECOMMENDATION 6

Motor databases [paragraph 3.9] - All those bodies that handle information about vehicles should be encouraged to make it available to motor database companies.

RECOMMENDATION 7

Database check certification [paragraph 3.11] - Traders should make available to prospective purchasers any information held by database companies about dealer' checks on vehicles for sale. The date on which the relevant check was made should be clearly displayed.

RECOMMENDATION 8

Consumer education [paragraph 3.19] All bodies with an interest in the used-car market should consider how they can contribute further to the education of consumers, so that they know their rights, the risks involved in buying a used car and what protection is available.

ANNEXES

A LIST OF RESPONDENTS TO THE CONSULTATION PAPER

Aberdeen Environmental Health and Consumer Protection Department	East Dunbartonshire Environmental & Consumer Services Department
Adjudicating Officer (OFT)	Edinburgh Trading Standards Service
Mr Tony Allen	Essex Trading Standards Department
Association of British Insurers	European Secure Vehicle Alliance
Association of Chief Police Officers in Scotland	Falkirk Environmental & Consumer Protection Services
Association of Chief Police Officers of England, Wales and Northern Ireland	Fife Trading Standards Service
Association of London Chief Trading Standards Officers	Finance and Leasing Association
Automobile Association	Glasgow Consumer and Trading Standards Division
Automobile Buyers Services Ltd	Hampshire Trading Standards Service
Automotive Answers	Institute of Trading Standards Administration
Barking and Dagenham Health and Consumer Services	International Car Distribution Programme Ltd
Barnsley Consumer and Environmental Services	Inverclyde Consumer Protection and Trading Standards Department
Bexley Directorate of Environmental Services	Law Society
Birmingham Environmental Services Department	Lawdata Ltd
British Vehicle Rental and Leasing Association	Lex Service plc
Caerphilly Trading Standards	Lincolnshire Trading Standards Division
Cardiff Business Partnership	Local Authorities Coordinating Body on Food and Trading Standards
Cheshire Trading Standards	Motor Industry Research Association
Consumer Credit Trade Association	National Car Auctions
Consumers' Association	National Federation of Consumer Groups
Credit Industry Fraud Avoidance System	Neath Port Talbot Environment and Consumer Services
Department of Economic Development Northern Ireland - Trading Standards Branch	RAC Motoring Services
Department of Transport	Retail Motor Industry Federation
Devon Department of Trading Standards	Mr J T C Scott
Dumfries and Galloway Trading Standards	Society of Chief Officers of Trading Standards in Scotland
	Society of Motor Manufacturers and Traders Ltd
	Somerset Trading Standards
	DepartmentSouth Ayrshire Trading

Standards Service
Southwark Consumer and Money Advice
Centre
Suffolk Trading Standards Department
Sunderland Trading Standards Division
Thames Valley Partnership
Thames Valley Police
Vehicle Mileage Check Ltd
Wales Trading Standards Group Fair
Trading Panel
West of England Chief Officers Fair
Trading Panel
Westminster Consumer Protection
Division
Wigan Trading Standards
York Trading Standards

B SUMMARY OF RESPONSES TO THE CONSULTATION PAPER

The respondents

- B.1 A total of sixty-two responses were received, of which thirty-five came from individual authorities, their representative bodies and individual enforcement officers. Although the majority of respondents represented the enforcement community, most of the major interest groups in the motor industry were represented in some form. A full list of respondents is given in Annex A.

Regulation

Self-regulation

- B.2 In the main, respondents felt that self-regulation in the motor trade could not provide a sufficient answer to consumer difficulties. Trade associations do not include the majority of problem traders in their membership. Respondents' views were mixed on the question of whether safety issues could be addressed by more effective self-regulation, with eleven saying they could not, and eight, including a retailer and one of the motoring organisations, suggesting that there might be some benefit.
- B.3 Some respondents suggested that the position of trade associations could be strengthened if they improved the standards required of members and by stronger discipline, such as expulsion, of members who failed to observe these raised standards.

Licensing

- B.4 The consultation paper asked whether a licensing scheme was needed to regulate car dealers. Thirty-one respondents replied specifically to this question. The vast majority of these agreed with the proposition. These included the two major trade associations (RMIF and SMMT)
- B.5 LACOTS and the Institute of Trading Standards Administration (ITSA) supported a central licensing scheme of car dealers based on the Scottish model with enforcement by local trading standards departments; many individual authorities agreed. Many respondents who favoured licensing thought that it should extend to auctions and repair shops. Licensing would provide the enforcement authorities with tougher and necessary sanctions, such as the removal of trade licences.
- B.6 There was some variation in the type of scheme preferred, with some respondents favouring negative licensing and others a positive licensing scheme. Generally those in favour of licensing felt that it should be a locally enforced system but some concern

was expressed about the scope for inconsistency of approach between local enforcement authorities.

- B.7 There was little consensus and very little information provided on the cost implications of any licensing system. Some respondents felt that costs would be high whereas others suggested costs would be low or could be kept low for consumers in some way - for instance, by being met by the trade or offset by savings in current compliance costs. Respondents with experience of licensing schemes in Scotland did not provide any detailed information on their operation. It has not been possible to address fully the cost implications. Nor has it been possible to comment on the effectiveness of current schemes.
- B.8 The Consumers' Association suggested that the OFT carry out research into planned and existing schemes, working with trading standards departments who were planning to introduce licensing schemes or had already done so. The Association felt that without more detailed information on the operation of existing and prospective schemes, it was difficult to say whether voluntary or mandatory licensing would represent the best way forward.

Clocking

Odometers

- B.9 The majority of respondents who addressed the issue of clocking thought that displayed mileages should be retained - despite the risk that they might have been tampered with.
- B.10 Views were divided on whether tamper-proof odometers would provide a solution. There was little consistency among the interest groups represented, except that representatives of the police tended to think that tamper-proof odometers might be technically possible. Only one-third of other respondents thought that tamper-proof odometers were a practicable possibility, but they did not go on to identify any technical problems with them.
- B.11 Only two respondents expressed the view that the cost of introducing tamper-proof odometers would be small enough to be acceptable to consumers. Others suggested that the cost was likely to be a disincentive to fitting the equipment.

Smart cards

- B.12 Views also differed about the use of smart cards as an answer to clocking. Such cards would carry the history - including the mileage - of vehicles. Mileage data could be routinely entered into the card's memory at specific intervals. There were marked

differences of opinion about the viability of smart cards, even within interest groups. There was also little consensus about the possible costs of a smart card information scheme, or their impact on consumer demand.

Commercial databases and other data sources

- B.13 There was strong support for the role of commercial databases in fighting clocking. Most respondents cited databases as a principle answer to clocking but some felt that the collection of information might be improved. Doubts about databases being a solution to the problem were limited and focused on aspects which may be assumed to improve with time - such as accessibility and the comprehensiveness of data held.
- B.14 Respondents had been asked what additional features (such as MOT mileages) would enable database companies to provide a satisfactory history for vehicles. The most common suggestion was that mileages recorded at the time of MOT tests should be made available to database companies. Asked if MOT recording systems should be computerised, all twenty-six of those who replied agreed that this would be a helpful step against clocking.
- B.15 It was generally thought that any increase in the cost of MOT tests following the computerisation of test centres would be offset by the commercial value of the information gathered - with the funds raised by the sale of model-specific data and the saving in enforcement costs achieved by restricting the activities of fraudsters being sufficient to counter the costs of computerisation.
- B.16 A significant number of respondents said that they would like to see mileage notification on the DVLA's Form V5 made mandatory when the ownership of any vehicle changed hands.
- B.17 The next most common suggestion for improvement of data was that mileage information should be collected and transmitted by both servicing garages and vehicle licensing authorities. Two trade associations suggested that auction houses should input mileage data to such databases.

Penalties under existing legislation

- B.18 Many of those who commented on existing penalties felt that those under section 1 of the Trade Descriptions Act (the application of a false description and sale of misdescribed goods) should be increased. Most of these respondents were enforcement bodies. However, other enforcement authorities felt that increased fines or other amendments of the legislation were not the answer. Some suggested that there should be a new Act dealing specifically with motor traders. Tougher sanctions

such as the removal of trade licences were required; rogue traders needed the threat of loss of livelihood.

Mileage adjustment services and disclaimers

- B.19 The consultation paper drew attention to the fact that ‘mileage adjustment services’ - by which odometer readings can be changed - are readily available, and commented that ‘the circumstances in which a customer might wish an odometer reading to be altered without having any intention of clocking a vehicle are difficult to imagine . . . it is unacceptable, then, that such businesses are able to advertise their service’. Many respondents shared this view and suggested that there should be a clear offence of carrying out such a service (unless for specific legitimate reasons) and of advertising it.
- B.20 Many enforcement authorities expressed concern about the routine use of disclaimers which can be used to negate the mileage description contained in the odometer reading. Respondents were agreed that consumers need accurate mileage information.

Title to vehicles

- B.21 The consultation document posed questions relating to the two major hazards for consumers regarding the ownership of used cars offered for sale - namely, that they might have been stolen or be subject to a financial charge. While less than a quarter of respondents addressed the question of whether manufacturers should do more to prevent car theft, they were unanimous in saying that they should. Insurance representatives said that, in recent years, the manufacturers had significantly improved car security, and this had been achieved almost entirely through pressure from the insurance industry. There was little consensus about what should be done to improve the situation further.
- B.22 The suggestion that cars should be issued with title deeds on the lines of the land registry did not meet with much enthusiasm. The Law Society put forward a number of objections: ‘We do not think that a title deed system is appropriate for movable goods of this kind. It would be likely to be expensive to administer. It would be necessary to deal with losses of deeds. Land title deeds are normally lodged with a bank or solicitors’ firms. Limited or inconvenient access causes no difficulty as title deeds are generally only required on property transfer. Vehicle registration has to be proved more often, eg in connection with road traffic offences, so vehicle deeds would not tend to be kept securely’. Any paper document is liable to fraud and it is highly unlikely that a title registration system would be improved by the use of title deeds.

- B.23 A register might take many different forms, and the general concept is discussed further in Chapter 2 of the present report. Among those respondents who were in favour of the idea, the main advantages were thought to be its compulsory nature and the existence of information about title. There was no consensus about who should administer a register, the largest number (four) suggesting it should be run by the DVLA. The Law Society did not favour the setting up of a new register of title to vehicles, whether statutory or voluntary, and suggested that the DVLA register could be expanded so that it provided an accurate and up-to-date record of the history of individual vehicles. Other respondents thought that this subject was not a major concern for consumers generally, albeit that - when a problem did occur - it was of considerable concern to the individual consumer involved. Several enforcement authorities thought that a register of title to vehicles might give consumers a false sense of security; they might believe that all possible problems, such as those involving mileage fraud and accidental damage, were eradicated.
- B.24 Asked whether a licensing scheme for dealers would have any impact on the problem of sale of stolen cars, or those subject to finance agreements, respondents were again very positive, with most trading standards authorities expressing the view that licensing would have a beneficial impact. The majority thought that there should be a national system, with standardised terms and conditions, operated by trading standards officers.
- B.25 Less than half of respondents replied to the question asking whether commercial database companies were the answer to the problem of title; many felt that the commercial databases played an important part in addressing the problems. Respondents emphasised the need for accurate and easily accessible information. The Consumers' Association felt that there was a strong consumer case for clear, reliable information about stolen cars, those subject to outstanding hire purchase, mileage, and insurance write-offs. While it was acknowledged that commercial databases went some way towards meeting the need for information, they were not the answer to the problem of title: the best way of ensuring the availability of reliable information would be by an addition to the remit of the DVLA.

Vehicle safety

- B.26 On the question of whether safety issues could be addressed by more effective self-regulation, respondents' views were mixed - with eleven feeling they could not, and eight, including a retailer and one of the motoring organisations, thinking that there might be some benefit. Although many respondents expressed some misgiving about the scope or operation of the scheme, the new ITSA/ABI code of practice on vehicle salvage after accident damage was seen by the vast majority as a positive development.

- B.27 Opinions were more divided on the question of whether the MOT test should be expanded to include checks for structural weakness or safety. While a majority (thirteen) felt that this would be a positive development, ten others (including both leading motoring associations) thought it would be impractical or undesirable, mainly because of the costs involved, which would be prohibitive. Asked generally about whether legal requirements on vehicle safety should be strengthened, sixteen thought that they should and four disagreed.

Forecourt inspections

- B.28 The most common suggestion for improvement was that trading standards officers should be given powers to inspect vehicles on sale on garage forecourts. This was mooted almost exclusively by individual trading standards departments, together with their representative bodies, ITSA and LACOTS. Those advocating new powers thought that the Road Traffic Act 1988 would have to be amended accordingly. Some individual departments, however, believed that the General Product Safety Regulations 1994 already gave them the necessary powers.

The mechanical condition of vehicles

- B.29 Respondents gave a variety of replies to the question of how to increase consumer confidence when buying and providing redress where a car is not of reasonable quality. Several advocated the introduction of a licensing scheme or suggested improvements in the history of vehicles, a number making specific reference to a pre-sales checklist, four proposed stronger self-regulation or easier redress mechanisms, and three wanted to see greater consumer education. Some respondents wrote to suggest how the position of trade associations could be strengthened; in the main this was by improvement in the standards required of members and by stronger discipline (by expulsion, for example) of those members who failed to observe them.

Vehicle identification numbers

- B.30 Respondents who commented on the fitting of visible VIN plates in cars held different views about the usefulness of such a measure in protecting consumers against buying stolen vehicles. One police association said that there was no consensus on its value as a security measure.

Consumer information

- B.31 Many respondents emphasised the importance of consumer education in helping people when buying used cars. Some felt that consumers had unrealistic expectations deriving from their lack of knowledge. Respondents felt that consumers needed information on their rights and obligations and to know where they could obtain

advice and information about cars before purchasing. They also needed to know what redress mechanisms existed should anything go wrong.