



# A done deal

Gathering detailed witness statements is an imperative part of any rogue trader investigation, from dodgy kitchen sales to car crime. Fraser Coxhill explains

There has been a recent upsurge in complaints about used-car traders. Citizens Advice dealt with around 84,000 consumer problems with second-hand cars in 2013, making it the charity's most complained about issue of that year.

Analysis of complaints made during the first two weeks of September revealed that 83 per cent were about faults. More than half of those faults (53 per cent) occurred within a month of the vehicle being purchased; four out of five of the faulty cars required essential repairs; and 139 (more than 5.5 per cent of the total) were only fit for the scrap heap.

Consumers also complained about aggressive sales tactics, misleading advertising and incorrect information about a car. The introduction, in 2008, of the Consumer Protection from Unfair Trading Regulations (CPRs) was supposed to shield buyers from some of the tactics used by unscrupulous traders. However, recent figures suggest otherwise.

## Root causes

The issue has become so serious that – in November 2013 – then consumer affairs minister, Jo Swinson MP, launched a Used Car Commission to identify the root causes of the high level of complaints. She said: 'Rogue dealers are going to find there is action taken against them. They need to shape up because they are not going to get away with it.' The commission is due to

report its findings and recommendations in April 2014.

Unfortunately, the report will arrive too late for those consumers who have already fallen victim to dodgy dealers, with some potentially serious consequences. One case, featured in a January edition of BBC One's *Inside Out* series, involved Kevin Hemsall of Trade King Car Sales selling a car with a leaking fuel tank. The consumer took the vehicle to a mechanic who said he'd 'never seen anything as dangerous in 30 years in the motor trade'. After an investigation by Nottinghamshire Trading Standards, Hemsall was prosecuted and convicted of selling an unroadworthy car and using aggressive practices, and fined more than £10,000 by Mansfield Magistrates' Court.

In December 2013, another car dealer, based in Leicester, was prosecuted for selling an unroadworthy vehicle after its brakes failed on the journey home. SMS Motors was fined £4,000 and ordered to pay £2,000 in costs.

Trading standards officers play a crucial role in combating such criminality through education and enforcement of rights and responsibilities under the law.

The first step in protecting consumers from the dangers of dodgy second-hand cars must be to raise awareness. They should be aware that, under the Sale of Goods Act 1979, a vehicle must: match its description, as described by the seller,



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“The same principles apply to dodgy cars as to dead bodies: evidential rules apply, whatever the crime” **MARK SOLON**

including any written description in an advertisement; be of satisfactory quality or reasonable condition, considering its age and make, its past history and the price paid; be fit for purpose – if a consumer requests a vehicle that can tow a large caravan, it must be capable of doing the job; be roadworthy – a car is not roadworthy if its brakes, tyres, steering or construction make it unfit for the road. Even if the vehicle has an MOT



certificate, this doesn't necessarily mean it is roadworthy.

Consumers should also be aware of additional steps they can take to protect themselves. Leon Livermore, chief executive of TSI, said: 'It is important for consumers to have the right knowledge when buying a used car. By conducting an HPI check on the car's history, checking the MOT certificate and investigating the seller *before* making a purchase, consumers can ensure they make the best decision and prevent any nasty surprises cropping up in the future.'

Unfortunately, however well-informed consumers and traders are, there will always be cases that require trading standards to investigate and, where appropriate, prosecute offenders in the

criminal courts. Relevant offences in this area include:

- Selling an unroadworthy vehicle, under section 75 of the Road Traffic Act 1988; maximum fine: £5,000.
- Supply of unsafe vehicles, under General Product Safety Regulations 2005; maximum sentence: 12 months' imprisonment (for individuals), £20,000 fine or both.
- Fraud, under the Fraud Act 2006. Conduct that may fall into this category includes 'clocking' odometers to reduce a vehicle's mileage – maximum sentence: 10 years' imprisonment (for individuals), a fine or both.
- Engaging in unfair, misleading or aggressive commercial practices, under the CPRs 2008. Examples include

purporting to restrict consumers' statutory rights by improperly suggesting that vehicles are 'sold as spares'; maximum sentence: two years' imprisonment, a fine or both.

- Those under the Consumer Credit Act 1974. Examples include offering a credit-broker service without holding a licence; maximum sentences vary.

### Practical steps

Investigating such alleged offences can sometimes be labour intensive and complicated, but practical steps can be taken by enforcement officers to help secure a prosecution.

First, trading standards officers (TSOs) should obtain sufficiently detailed witness statements from complainants.

For example, what were the exact terms of the representation made by the dealer as to the condition of the vehicle? Second, TSOs should obtain documentary exhibits from complainants. Were they provided with invoices or advertisements that may support their complaint? Third, TSOs should consider whether the dealer offered or provided any ancillary services that may have been unlawful, such as unlicensed credit services.

Another point to consider is whether lawfully offered ancillary services were actually provided. For example, did the dealer process a warranty with the warranty provider?

**Further questions**

When interacting with the dealer (perhaps during a visit to the premises), TSOs should also beware of questioning a dealer before cautioning them.

If an officer has grounds to suspect someone of committing a criminal offence, that individual should be cautioned before any questions or further questions about their involvement in that offence are put, if their answers may be given in evidence to a court. Even if they remain silent after being cautioned, a lawyer may argue for an 'adverse inference' to be drawn.

When lawfully seizing items during searches of premises, care should be taken by officers at the scene to record the seizure and the exhibiting of items – particularly documentation – so it may be used in subsequent criminal proceedings.

Remember: officers are under a duty to pursue all reasonable lines of enquiry, including those that point away from the suspect. It is also good practice to appoint an exhibits officer.

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Think about the practicalities of seizing computer hard drives and other media, because investigations often involve digital evidence stored on computers and mobile phones, too. Consider what effect this may have on the business and, where it is not feasible to obtain a digitally sound copy of digital material, what will the likely timescale be for returning seized items?

Other examples of best practice would be to collect expert-witness evidence to assess the roadworthiness of vehicles, and to obtain Companies House documents if a company, as well as an individual dealer, is likely to be prosecuted.

Whatever the conclusions of the Used Car Commission as to the recent increase in complaints, it is reasonable to assume that TSOs will continue to play a key role in the detection, investigation and prosecution of dodgy car dealers.

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**Dos and don'ts of mobile phone seizure**



**Do**

- Record (preferably by photograph) what is on the display
- If the device is switched on, turn it off. It is often important to isolate the device from receiving signals from a network to avoid changes being made to the data it contains
- Seal in a tamper-proof manner, in a box, making sure buttons cannot be pressed through the packaging
- Keep a record of what was done, when and by whom
- Submit the telephone to an expert for analysis

**Don't**

- Don't press any buttons other than to turn off the mobile
  - Don't try to access information
- If you do, you may be committing an offence yourself

**Legal training view: Bond Solon**

Mark Solon, of legal training and information company Bond Solon, points out that following procedure is key in any investigation. He says: 'It is impossible to over-emphasise the need to follow correct procedures and best practice to preserve the audit trail of evidence. You must be able to demonstrate an unbroken chain of continuity from seizure of evidence at the scene to what is produced in court. The same principles apply to dodgy cars as to dead bodies: evidential rules apply, whatever the crime.'

Solon illustrates his warning with a cautionary tale about kitchens rather than cars: 'Trading standards officers are

haunted by the spectre of a massive failed operation against kitchen a manufacturer. This involved a raid on offices in 2006 by officers – accompanied by 130 police, anticipating a breach of the peace.'

In the ensuing court action in 2010, the judge ordered Oldham Trading Standards to pay the full costs – around £5 million – of the failed prosecution, which was not based on reliable evidence; he described the raid as 'disproportionate and oppressive', adding: 'Oldham Trading Standards were overwhelmed by the volume of material they recovered. In those circumstances, it was unsurprising that the process of disclosure was inadequate.'



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