

Automotive Law update

Questions and Answers

December 2018

Q	A
If a customer signs finance documents at a dealership having done everything else off site, is this deemed a distance sale	This is unlikely to be a distance sale as the contract documents have been signed on business premises.
Should we be disclosing ex-rental car history on our website where car is featured?	Yes.
Do you have any views on the scope of the decisions which are being made by the Financial Services Ombudsman in relation not just to the financial transaction but also to the underlying vehicle transaction? Should matters of satisfactory quality not be a question for the Motor Ombudsman?	<p>The Motor Ombudsman's approach for vehicles sold on finance is that they will handle any disputes relating to the quality of the vehicle or the sales process. If the complaint solely relates to the sale of the finance or the finance product, they will refer the consumer to the Financial Ombudsman Service (FOS). On the rare occasion a complaint is about both the vehicle and the finance, they will decide who they think is most appropriate.</p> <p>However, where there is a regulated finance product (which covers virtually all types of car finance), FOS can consider the complaint, including any satisfactory quality element. Whilst The Motor Ombudsman has found that FOS will refer complaints to them, particularly where it involves an aspect of the sales</p>

	<p>process or the service provided by the dealership, it is FOS' decision on whether to accept a complaint or refer it elsewhere.</p> <p>Accredited businesses should always ensure that they direct consumers to The Motor Ombudsman in their final response when the complaint relates to the vehicle or sales process, rather than the finance.</p>
Comment-with finance docs would rights of withdrawal not have precedence over distance sales?	If a customer has purchased a car on a distance sale <i>and</i> on a regulated finance product, the customer will be entitled to rely on both finance cancellation rights and distance sale cancellation rights.
My question is around WLTP. My understanding is that figures for fuel consumption and CO2 include options. Is this your understanding or is it sufficient to have separate fuel consumption and co2 figures with reference to a configurator which shows the figures including options?	WLTP calculations include all options fitted <i>before</i> registration. With regard to how the information is presented we recommend that this is compliant with the newly published VCA guidance (We are still working through this ourselves!)
Are there any changes expected in the handling of customers invoking their finance rights to a problem vehicle where the car has been fully prepared properly - their feels an assumption a dealer has to fix it from finance houses	<p>Our anecdotal information is that the FOS decisions have been very consumer friendly. Unfortunately, the decisions are not officially published so it is very difficult to see trends. We do not anticipate that this will change.</p> <p>The FOS decisions are against the finance provider and whether the finance provider has a right to then make a claim against the selling dealer will be dependent on the contract that is in place between the finance provider and the dealer.</p>
If a customer orders a new car that needs building where there is not an equivalent car available to view in the dealership, is this a distance sale?	Not necessarily. It will only be a distance sale if it has been conducted by distance means e.g. by telephone, fax, internet.
In relation to the Ex-Fleet case, how do you define "business use" in the context of the requirement to disclose vehicle history? Many vehicles in company car schemes will be for employees' personal use but occasionally may be used for business purposes, such as visiting dealers. What will be the classification of the vehicle in such cases and would they still be classed as "business use"?	Unfortunately, the Glyn Hopkin/Fiat Chrysler ASA case (see here) casts a very wide net on what it considered business use. If a company, rather than an individual, has owned the car, then it is likely to be classed as business use.

<p>Hi - just to clarify - there is a little bit of a pattern appearing where someone has had a car for a couple of years - a problem develops that they do not wish to pay for and the warranty has expired so they then contact the finance company to say they will stop paying for the vehicle</p>	<p>In a situation where the warranty has expired, and the customer has had the car for a couple of years we think there is a strong case to reject the claim from the customer. Each case will however be different and needs to be considered on its own facts.</p>
<p>Consumers sometimes have different expectations on what is satisfactory quality. Is there any thought of adding some example cases on the TMO website to help both dealers and consumers have a better appreciation from the cases TMO have dealt with.</p>	<p>There is a variety of case studies published on the Motor Ombudsman's website and this is updated on a regular basis. They are grouped by Code of Practice and cover a wide range of disputes. You can find the Case Studies section of our website here: https://www.themotorombudsman.org/category/case-studies</p> <p>And here are links to some that relate to vehicle sales:</p> <p>https://www.themotorombudsman.org/case-studies/randomly-opening-tailgate</p> <p>http://www.themotorombudsman.org/case-studies/vehicle-sales/suspected-coolant-leak</p> <p>https://www.themotorombudsman.org/case-studies/mileage-misrepresentation</p> <p>Additionally, accredited businesses are welcome to call The Motor Ombudsman's Information Line on 0345 241 3008 if they need guidance on their approach to a dispute.</p>

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