

## The Lime One guide to buying a vehicle

For most people, buying a vehicle is the second largest expenditure they make. Before making that purchase it is important that you understand your rights. Your rights are based on

- Statute – the laws made by parliament
- Contract – your contract with the seller which can be verbal or written

*Point to note; always take someone else with you when buying privately – it really makes a difference if it comes down to your word against that of the seller.*

### 1 DOES THE SELLER OWN THE VEHICLE?

The most important thing you need to be sure about is whether the seller actually owns the vehicle you want to buy and/or has the right to sell it to you.

Under the Sale of Goods Act 1979 (as amended by The Sale and Supply of Goods Act 1994 and The Sale and Supply of Goods to Consumers Regulations 2002) – SOGA - if you, as a buyer, buy a vehicle

- (i) that is not owned by the person you pay AND/OR
- (ii) from a person who does not have the right to sell it

then even if you honestly believe that they do own it and have the right to sell, you can still end up losing the vehicle or being stuck with any existing finance on it.

Although the law implies that the seller has the right to sell there are still 2 major risk areas

- a stolen vehicle
- a vehicle still the subject of a finance agreement

### What can I do to avoid this?

You can obtain a search, **before** you buy the vehicle. Companies such as HPI offer a search for about £40 which checks for stolen vehicles and those subject to finance but also looks at whether the vehicle -

- was previously involved in an accident, designated as an insurance “write-off” but repaired even though it should not have been
- has been clocked – the milometer tampered with to make it appear that the vehicle has done less miles than it actually has
- is cloned – where one vehicle appears to be another. This could be, for example, a stolen vehicle whose identification marks are removed/disguised and “fitted” with the marks of another perfectly legitimate vehicle of the same make so that, in effect, you have 2 or more vehicles that have the same identification marks.

Checks like the HPI check usually come with a guarantee up to about £10,000 to reimburse you against “financial loss you suffer arising from inaccurate or incomplete information” supplied by them but do check their Terms & Conditions

## **2 WHAT IF THERE IS A FAULT/PROBLEM WITH THE VEHICLE?**

### **A Buying from a Trader**

Under SOGA a vehicle should be

- (1) Of satisfactory quality AND
- (2) Fit for any particular purpose made known to the seller AND
- (3) Match the description

Satisfactory quality means “of a standard that a reasonable person would consider to be satisfactory” and includes

- fitness for all purposes which such vehicles are “commonly supplied”
- state and condition, including their appearance and finish
- freedom from minor defects
- safety and durability

You must take into account the age of the vehicle and price paid, so for example, you would not expect an 8 year old vehicle purchased for £1000 to have no defects at all nor would you expect it to perform as a new vehicle would.

You can't complain if you

- were told about the defect before you agreed to buy
- examined the vehicle and it was so obvious that you should have seen the fault
- made a mistake when purchasing the vehicle
- just changed your mind about it
- caused the damage you wish to complain about (believe it or not, it happens)
- have seen the vehicle offered for sale at a cheaper price

#### **What remedies do I have?**

Ignore a trader who tells you to “take it up with the manufacturer”. Your contract is with the Trader and it is their responsibility to put this right. However, you may also have rights against the manufacturer, and, where you bought the vehicle using credit either by certain types of credit agreement or credit card, subject to meeting criteria (useful if trader is no longer in business).

You have 3 primary options if the vehicle is faulty at the time of sale:

#### **(A) Reject and Refund**

The important thing here is to make sure you tell the trader as soon as you find the fault that you wish to reject the vehicle and have a refund because if the law considers that you have “accepted” the vehicle with the fault, then you lose the right to a refund.

You may be considered to have “accepted” the vehicle with the fault if you

- tell the trader you accept it as it is
- leave it for longer than a “reasonable” time to reject the vehicle. There is no definition of a “reasonable” time because this is considered in the individual circumstances, (and what is fair to the parties involved will also be taken into consideration) but you need to show that you acted quickly in telling the trader

- have “acted in a way inconsistent with” the trader’s ownership. For example, you have altered or customised it after delivery.

Even if you allow a trader to repair the fault and it is not repaired satisfactorily you may still be able to reject and get a refund.

To exercise this option you need to prove that the vehicle was faulty at the time of purchase (burden of proof).

### **(2) Repair or replacement**

You can ask for a repair or replacement to be carried out within a “reasonable” time provided it doesn’t cost more than you paid for the vehicle. If the fault can’t be put right or it would be too expensive to do that, then taking into account the type of fault, you have the right to some or all of your money back.

For the first six months, it is for the trader to show the vehicle was not faulty when purchased (reversed burden of proof). After that, it is again up to you to prove that the vehicle was faulty

### **(3) A reasonable amount of compensation, called damages in law**

If you “accepted” the vehicle your option may be to accept the trader’s offer to repair/rectify the fault. If the fault can’t be put right or it would be too expensive to do that, then you may be able to claim damages, provided you behaved reasonably and kept expenses to a minimum (no Bentley for a hire car when your vehicle is a Fiat Panda)

You may have different rights if the sale was:

- (1) Conducted entirely by distance selling (no face-to-face contact at all) e.g. on-line
- (2) You used credit to buy (see later)
- (3) As a result of an unsolicited (you did not ask for it) visit or phone call to your home

### **TIPS for Reporting the fault**

- Act quickly
- Make a note of when and where you first contacted the trader about the fault - preferably telephone and then send a letter by Royal Mail Special Delivery (signed for)
- Stop using the vehicle
- Keep a record of what happens next

### **B Buying from a Private Seller**

Unfortunately, when you buy from a private seller you do not have the same rights as offered by SOGA, above. The law starts with the basic assumption of “Buyer Beware!”.

You may have some redress against the seller, for example if you start proceedings in the County Court), and you may be assisted if the seller has committed a criminal offence (e.g. involving the police if the vehicle is stolen) but you need to be sure the seller is worth pursuing (you can find the seller and that he can afford to pay!).

### **TIPS when buying from a Private Seller**

- Make sure you look at the vehicle carefully (consider using a checklist and then consider getting an expert’s report about the condition (e.g. RAC or AA) and a status check (e.g. HPI check)
- Check the vehicle’s paperwork and identification marks

- Go to the seller's home rather than meeting them elsewhere
- Get a signed, dated receipt with the seller's details (name, address etc) on
- Watch out for traders who sell "dodgy" vehicles pretending to be private sellers to avoid your rights (e.g. someone selling more than one car, same telephone number in a lot of ads)

### **C Buying from Auction**

This may limit your rights and you need to look at the auctioneer's Terms and Conditions which must be available to you before you buy (displayed, booklet etc).

Sellers often use a disclaimer "sold as seen" which virtually puts you in the same position as buying from a private seller.

### **D Buying from the Internet**

You have the same rights against the seller, dependent on whether they are a trader or individual. However, the Distance Selling Regulations will probably apply.

This main added protection is that, subject to meeting certain criteria you may have a "cooling off period", usually of 7 days from the date of delivery of the vehicle, which means that you may be able to cancel the order.

### **E Internet Auctions**

In most cases the internet auction is merely a venue for displaying goods so the site is generally not liable in any way but you should read their Terms and Conditions and those of any seller.

Otherwise, you have the same rights as above against the seller, dependent on whether they are a trader or individual.

Internet auctions are not subject to any additional protection offered by the Distance Selling Regulations

## **3 FINANCE AND CREDIT CARD PAYMENTS**

If you buy your vehicle using credit you may have extra support.

If the sale is over £100 but less than £30,000 and you use a credit card (but not Switch or other debit cards), to pay for all or part of the sale price then under S75 of the Consumer Credit Act 1974 the Credit Card Company becomes a party to the agreement and has equal liability with the trader where there is a breach of contract

Certain credit agreements (a personal loan or a credit agreement which the trader organises) also mean you have extra rights and may be able to involve the finance company, again under S75 of the Consumer Credit Act 1974, if the trader has misrepresented the vehicle or is in breach of the contract with you.

## **4 MISREPRESENTATION**

This is a very complicated area of law but, basically, if the seller makes a statement of fact about the vehicle to you, and you rely on that fact, and that statement is untrue you may have a claim against the seller relating to that misrepresentation.

## **5 GUARANTEES OR WARRANTIES**

These are basically the same thing and are extra to your rights as a buyer (not instead of) but check the terms carefully.

## 6 OTHER TIPS

Remember the golden rule – if something sounds too good to be true then it probably is!

Trading Standards – this is a government agency that may be able to assist you with enforcing your rights against a trader

Criminal Offences include selling a vehicle which is

- Stolen
- Unsafe, or has a false description or is advertised at a misleading price, but only when sold by a trader

