



## The Advertising Association

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### RESPONSE TO THE OFFICE OF FAIR TRADING CONSULTATION ON ITS DRAFT GUIDANCE FOR SECOND HAND CAR DEALERS (OFT1152con)

The Advertising Association is the only body representing all sides of the advertising and promotional marketing industries, worth £18.6 billion in 2008. Its membership represents advertisers, agencies, media and support services in the UK. Further information about the organisation is available at: <http://www.adassoc.org.uk/>

#### **1. Introduction & Summary**

1.1. The Advertising Association responds here to the consultation by the Office of Fair Trading (OFT) on its draft guidance for second hand car dealers, which is aimed at assisting such businesses to comply with the Consumer Protection from Unfair Trading Regulations 2008<sup>1</sup> - 'the CPRs' - and the Sale of Goods Act 1979<sup>2</sup> (as amended) - 'the 1979 Act'. Although the primary focus of the draft guidance is the sale of used cars made through forecourts or on other trader premises, the guidance on the CPRs is also of relevance to dealers who sell through auctions<sup>3</sup>. (It is not clear whether the eventual version of the guidance is also intended to apply to other automotive vehicles sold second hand by traders, such as motorcycles.)

1.2. The OFT's draft guidance for second hand car dealers on compliance with the CPRs and the 1979 Act refers to advertising techniques, which has served to elicit this response to the consultation.

1.3. In this submission, the Advertising Association:

- (a) calls on the OFT to include references within the eventual version of the guidance to the non-broadcast and broadcast advertising codes upon which the Advertising Standards Authority (ASA) adjudicates;
- (b) identifies a paragraph within the draft guidance that could usefully be excised, given it merely replicates material that can be found elsewhere in the same document;
- (c) makes observations on the illustrative examples that the OFT has incorporated within its draft guidance, with the objective of rendering them clearer still in the final version;
- (d) comments on the references both to bills of sale and the OFT's *Statement of Consumer Protection Enforcement Principles* within the draft guidance; and,
- (e) requests that one aspect of the flowchart within the draft guidance, which serves to summarize the remedies that may be available to consumers under the 1979 Act, be clarified.

1.4. The Advertising Association looks forward to publication by the OFT of the final version of its guidance, together with a summary of the responses it receives to this consultative exercise. No part of this submission should be treated as if it were confidential in nature.

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<sup>1</sup> Statutory Instrument No. 2008/1277

<sup>2</sup> 1979, Chapter 54

<sup>3</sup> The draft guidance of the OFT for second hand car dealers on compliance with the CPRs and the 1979 Act, intentionally, does not cover the private sale of cars between consumers.

## **2. Responses to specific OFT consultation questions**

2.1. The Advertising Association responds below to Questions 2, 4, 5 and 10 of the consultation being conducted by the OFT.

### **A.2 Does the draft guidance have any significant omissions?**

2.2. Yes, the Advertising Association considers that Section 4 of the draft guidance omits a significant reference. Section 4 is that part of the draft guidance which sets out the offences that are created under the CPRs, including those under Regulation 5 (“Misleading actions”) of that Statutory Instrument.

2.3. Paragraph 4.4 of the draft guidance refers to various forms of non-broadcast advertising, whilst newspaper advertising, for example, is also cited amongst the illustrative examples latterly provided in Section 4.

2.4. In light of this, there would be considerable value in the OFT also referring in Paragraph 4.4 to the non-broadcast and broadcast advertising codes upon which the ASA adjudicates, in the final version of the guidance. These codes are drawn up by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) respectively. Both sets of these codes reflect those provisions of the CPRs of relevance to advertising.

2.5. A reference to radio advertising within Paragraph 4.4 is also recommended, given the likelihood of second hand car dealers using advertising opportunities on local commercial radio to promote their merchandise: hence the logic for directing such businesses to those advertising rules drawn up by BCAP, reflecting as they do the relevant provisions of the CPRs.

2.6. References to various forms of non-broadcast advertising are also contained within Section 8 (which concerns the legal obligations of second hand car dealers under the 1979 Act) of the draft guidance - specifically in Paragraph 8.10. For the reasons already set out above, there would be merit in adding commercial radio to the list of advertising media contained in Paragraph 8.10, as well as for a reference to be included in the same place that directs readers to the existence of the CAP and BCAP codes.

### **A.4 Are there any parts of the draft guidance that are not needed?**

2.7. The inclusion of Paragraph 1.4 of the draft guidance (and the footnote accompanying it) located within Section 1 of the document - which sets out how the guidance is intended to be used – appears to be superfluous. The Advertising Association regards the recommendations made by the OFT that second hand car dealers consult its existing CPRs Guidance (made in Paragraphs 2.5 and 7.3 of the draft document, which are located in segments concerned with the scope of its advice to businesses in respect of the CPRs and the 1979 Act respectively) are sufficient. Consequently, it is recommended that Paragraph 1.4 (and the footnote accompanying it<sup>4</sup>) be deleted, in order to ensure that unnecessary repetition in the final version of the guidance is avoided.

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<sup>4</sup> The weblink to OFT’s *Guidance on the Consumer Protection from Unfair Trading Regulations 2008* provided in the footnote accompanying Paragraph 1.4 of the draft guidance is also incomplete and, consequently, does not function. Clearly this would not need to be addressed if Paragraph 1.4 were simply deleted.

A.5 Are the illustrative examples helpful?
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2.8. Yes, the illustrative examples are considered helpful. The Advertising Association does, however, make recommendations in respect of the two illustrative examples within the draft guidance that appear immediately beneath Paragraph 4.8<sup>5</sup>.

2.9. With respect to the first example, it is recommended that the final two sentences be amended slightly so as to read: "Call Jack on 07734 76589.' The advertisement gives the impression that the seller is not selling as a trader, and would breach the CPRs."

2.10. With respect to the second example, it is recommended that the reference to the relevant prohibition within Schedule 1 of the CPRs be amended so as to read: "(banned practice 6)".

A.10 Are there any further comments you wish to make?
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2.11. With respect to Paragraph 5.4 – which is contained within Section 5 of the draft guidance, where steps that businesses can take to avoid committing offences under the CPRs are set out - it is observed that there is a reference to "security under a bill of sale". The Advertising Association notes that the Department for Business, Innovation & Skills (DBIS) is currently consulting on this form of secured loan product. Depending on the outcome of that DBIS consultation, the reference to bills of sale within the draft guidance *may* deserve amendment before the final version of the OFT document is published.

2.12. With respect to Paragraphs 6.4 and 11.4 – which are contained in Sections 6 and 11 of the draft guidance, where the possible consequences of a failure to comply with the CPRs and the 1979 Act respectively are set out - it is considered that the identical second sentences of each could be rendered clearer still. This could be achieved by redrafting the current wording of both these second sentences within those two Paragraphs so as to read: "The OFT follows the guiding principles set out in its Statement of Consumer Protection Enforcement Principles, details of which can be found at:...".

2.13. With respect to the flowchart<sup>6</sup> contained within that part of the draft guidance concerned with the obligations of second hand car dealers under the 1979 Act - the Advertising Association considers that the opening statement in the penultimate box before the foot of the page is unclear<sup>7</sup>.

12 March 2010

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<sup>5</sup> Paragraph 4.8 is entitled "Banned practices (schedule 1)".

<sup>6</sup> The flowchart is entitled "Summary of Consumer Remedies for the Sale of Faulty Second Hand Cars".

<sup>7</sup> The opening statement within the penultimate box of the flowchart at the foot of the page reads: "If repair and replacement are disproportionate or impossible, or if the dealer fails to act in reasonable time *and without causing unreasonable inconvenience*: full or partial refund." [Emphasis added by respondent.]