



7 CRITICAL MISTAKES TO AVOID WHEN CAR BUYING

Toyota, Honda, Nissan and Hyundai are but some of the big name car manufacturer that have recalled cars in the recent past for replacement of faulty parts. Intense competition between car manufacturers means they are constantly looking for cheaper ways to make their cars and the installation of cheaper parts is an unfortunate result. The risk of a recall is weighed against the benefit of being able to undercut the competition in price and therefore sell more cars. Approximately 6000 complaints about cars were received by the National Consumer Agency (NCA) in 2009 of which 18% related to new cars and 63% related to second-hand cars. In this Download from O'Shea Legal we look at the rights of the car buyer and offer the essential *Top 7 Car Buyer Tips* to protect you before your purchase....

HAVE YOU UNWITTINGLY BOUGHT A DUD CAR FROM A DEALER?

What if, having taken delivery of your new pride and joy a problem or sometimes several problems start to manifest? If a new car develops a fault and is the subject of a recall then the problem is resolved by the garage at no cost to the owner. However, most faults are not subject to recalls and it may not be that simple to get satisfaction from the seller. Difficulties frequently arise when the seller loses interest and you feel you are getting the runaround. At what stage are you entitled to cancel the contract and ask for a replacement or your money back? For how long after the deal can you insist on getting a fault repaired at no cost to you? What happens if you have been back to the garage on innumerable occasions, have failed to get satisfaction and you feel you are being driven around the bend (sorry!)?

When you buy a car, new or secondhand, from a dealer you are entitled to rely on the following protections:

A: The Sale of Goods and Supply of Services Act 1980 which provides that a car should be free from any defect that would render it a danger to the public and that it should be roadworthy and of merchantable quality and fit for purpose. "There are clear statutory duties on people who sell motor vehicles to ensure they are of marketable quality and in a roadworthy condition," said Judge Smyth in the Circuit Court in a faulty car claim against Fowlers Motors Ireland Limited.

Disclaimer (because you knew there had to be one!).

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B: The Warranty that comes with a new car. This will often offer clarity in relation to replacement of parts and labour within the warranty period. The Warranty is in addition to your consumer rights which frequently entitle you to most of (sometimes more than!) the benefits contained in the warranty in any event. If a car develops a fault outside the warranty period all is not lost. If the problem arises from an inherent fault which has not been addressed within the warranty period, then you could still insist on the dealer rectifying the fault if you were not appraised of the potential problem. This applies whether or not the dealer knew of the fault. The dealer may deny the existence of an inherent fault in which case an independent expert would have to be brought in to give evidence that the part should not be giving problems even allowing for normal wear and tear;

C: Representations made by the car salesman during pre sale negotiations. These assurances will often be critical if you have to take the dealer to court and a judge is considering your claim. Judge Smyth in the Fowlers Motors case has told car buyers not to trust everyone they meet on garage forecourts. The NCA receives many complaints about customers being misled about the number of owners and mileage or about the car having been involved in a crash. "People should be alert and have cars examined before they buy them and make sure they are getting the proper documentation. Fowlers Motors Ireland Ltd, of Millennium Business Park, Cappagh Road, Finglas, had sold an entirely defective, unroadworthy and probably dangerous vehicle", the judge said when he awarded damages against it. In another case Judge Matthew Deery said that "no warranty", "sold as seen" and other get-out clauses frequently used by dealers are not legally binding particularly if the salesman talked up a car's good points to secure the sale. He said the buyer, Francis White, was entitled to believe the car – which cost €13,000 – was "in fair and straight condition", as represented to him by the salesman in Motoright Ltd in the Greenhills Industrial Estate in Walkinstown. The judge found in favour of the buyer and awarded him €13,000 against Motoright and directed the car be returned to the garage.

PRIVATELY BOUGHT SECOND HAND CARS.

A buyer from a private seller has very little protection and is subject to the 'buyer beware' rule. A dealer selling from a private address is obliged to disclose to you that he is selling in the course of a business and you will have the same legal protections described above. A private seller is required, when asked, to give accurate and truthful information about the car and must not make false representations. Unlike the situation described above where a car is bought from a garage or a dealer, there is no obligation on a private seller to disclose all faults of which he or she may or may not be aware. The onus is on the buyer to ask the right questions. Therefore, if you buy a car privately which you discover the next day has a faulty engine you have no comeback. If however you had asked is the engine in good condition and the answer was 'yes', then you could possibly maintain a claim if you could prove that the seller knew there was a problem at the time of sale. The NCA have produced an invaluable advice booklet for car buyers containing a list of critical questions to ask a seller.

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ADVICE – TOP 7 CAR BUYER TIPS.

The following are the top 7 most important tips for car buying that will guarantee to put you back in the driving seat (sorry again!):

TIP 1:

Always bring somebody with you to witness the conversation with the dealer. Make a note of what he says about the car. If you have to sue the seller for a dud car then this witness will be critical in winning your case. Chances are the seller will deny everything in court and the Judge will only have the independent witness to rely on.

TIP 2:

Ask the right questions. Contact me by email for a complimentary booklet produced by the NCA containing the critical questions or download it from their web site www.consumerconnect.ie.

TIP 3:

When buying from a private seller, never buy the car at a car park or public area. You need to know the home address in case you have to follow up with problems. The home address should match the car document address. Always cross check the sellers ID by asking for their driving license.

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TIP 4:

Always have the car checked by a competent mechanic from a reputable garage, especially if buying it privately. If the mechanic overlooks an obvious fault, you may be able to claim against the garage who employ him for negligence in carrying out the inspection. Your chances of recovering your losses increase substantially if you have two defendants instead of just one.

TIP 5:

Do a 'Car History Check' and a 'Car Finance Check' either through the Society of The Irish Motor Industry' or on the internet for a modest cost.

TIP 6:

Test drive the car during the day and preferably when the car is dry. The engine should be started from cold.

TIP 7:

Did you know - WOMEN make the DECISION when buying a new car! An experienced forecourt salesman will tell you that when figures are presented to prospective car buyers, men always look at their wives before answering. They can tell by the wife's body language whether she thinks it's a good deal or not. I know many men are saying, "I wear the pants in my family." Yea right, but your wife probably picked them out for you! Women always get the new cars too. They may say, this is a car for my husband, but women get the new cars and men drive the old ones. So my advice is, if you want the best deal, send in the heavy guns to do the negotiations

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