

Consultation on introducing roadworthiness testing for fast tractors and other technical changes to vehicle testing legislation

INTRODUCTION

The National Franchised Dealers Association (NFDA) and the National Association of Motor Auctions (NAMA) would like to thank the Department for Transport (DfT) for using this consultation to discuss the issue of mileage fraud (vehicle clocking).

The NFDA and NAMA, supported by the wider Retail Motor Industry Federation (RMI) are calling on Government to outlaw all mileage adjustment, mileage adjustment equipment and the businesses that offer mileage adjustment services. It is with this in mind that the NFDA and NAMA have responded to the above consultation, focusing on Question 15 of the document.

The NFDA and NAMA are encouraged by the inclusion of mileage fraud in the consultation and are keen to see this consultation as the first step in developing new legislation to outlaw all mileage adjustment and its associated businesses and equipment.

Both associations would welcome the opportunity to discuss this problem further with DfT officials.

Associations

National Franchised Dealers Associations (NFDA)

NFDA is the leading representative body for the UK's automotive franchise vehicle retailers. The NFDA retains 85% of the vehicle dealer network in membership and has a designated Commercial Vehicle Division.

National Association of Motor Auctions (NAMA)

NAMA represents auction companies selling cars, commercial vehicles, motorcycles, off road vehicles and motor homes. The association holds 90% of the UK's vehicle auction sites within its membership.

Retail Motor Industry Federation (RMI)

The RMI is the UK's retail automotive trade association. The RMI is comprised of seven federated associations representing franchised car and commercial vehicle dealers, independent garages, vehicle bodyshops, motorcycle dealers, independent petrol retailers, auction houses, cherished number plate dealers.

QUESTIONS

Question 15: Do you consider that existing legislative provision is sufficient to tackle the issue of "clocking"? If not, please give your reasons.

EXECUTIVE SUMMARY

15.1. No.

- 15.2 **NFDA and NAMA, with the support of the wider UK automotive industry and RMI, believes new legislation is required to address the growing problem of mileage fraud and mileage adjustment, commonly referred to as “clocking”. Both associations do not believe existing legislation or current methods to monitor mileage fraud are fit for purpose; failing to prevent the crime.**

NFDA recently met with the Rt Hon John Hayes MP and discussed the need for new legislation. During the impromptu meeting at this year’s Conservative Party Conference (3 October 2016), the NFDA explained the growing problem of some consumers also committing mileage fraud (to avoid excess mileage fees) and the ease at which new technology enables people to adjust a vehicles mileage often without detection.

- 15.3 We will be addressing the question in two stages due to the variety of issues surrounding mileage fraud. The issues include: road safety; criminal activity including fraud for financial gain; business and consumer detriment; and reputational damage. First, looking at the ineffectiveness of existing legislation (directly answering question 15) and then the consequential problems occurring from mileage fraud.

Facts:

- One in 20 UK vehicles (1.7 million vehicles) show a discrepancy in mileage
- 2009 – 2014 showed the number of “clocked” cars rose around 10 per cent
- Unscrupulous consumers are also committing mileage fraud to avoid excess mileage penalties
- Mileage fraud is costing consumers approximately £750m annually
- £2000-£4000 is typically added to an average family car through mileage fraud
- 41 per cent of vehicle retailers have part exchanged a car which they have later discovered to have fraudulent mileage.¹

PART 1

Ineffectiveness of existing legislation

Introduction

- 15.4 **The inadequacy of existing legislation begins with the fact that mileage adjustment is not in itself illegal. As the law currently stands, the adjustment of a vehicles mileage is legal. It is only illegal to sell a vehicle with adjusted mileage and not declare it has been adjustment before completion of sale.**

This legal loophole enables businesses to easily and legally offer mileage adjustment services. It then becomes increasingly difficult for authorities, such as Trading Standards, to monitor the activities of these legal businesses and follow up the reasons for use of their services. There is a reliance on Trading Standards to bring forward prosecutions of cases of mileage fraud. In turn, Trading Standards rely on consumers making complaints. This in itself is problematic.

During a survey commissioned by the NFDA’s consumer facing brand, Trusted Dealers, 57.4% of consumers did not know that they needed to check whether a vehicle’s mileage had been altered before purchase². This adds further weight to the difficulties Trading Standards have in monitoring the practices of businesses offering adjustment. Furthermore, it is widely

¹ Source: HPI

² Survey of 1000 consumers commissioned by Trusted Dealers and completed by One Poll, 16 August 2016.

acknowledged and supported by the automotive industry that there is no legal or practical reason for a vehicle's mileage to be adjusted. New legislation is therefore appropriate.

Existing legislation

- 15.5 The pieces of legislation used to convict unscrupulous businesses and consumers of mileage fraud are the Consumer Protection from Unfair Trading Regulations 2008 (2008 Act) and Fraud Act 2006 (2006 Act).
- 15.6 NFDA and NAMA have made a number of Freedom of Information (FOI) requests for details of mileage fraud convictions under both Acts. Under the 2008 Act, the Crown Prosecution Service (CPS) reported only nine prosecutions and six guilty plea convictions in 2013 and the same figures for 2014. The Ministry of Justice could not provide the requested information on the 2006 Act. However, the Department of Enterprise, Trade and Investment (DETI) provided that in 2013 there was only one conviction under the 2006 Act and none in 2014.
- 15.7 The figures show that the conviction rates for mileage fraud are low and information is difficult to obtain. These figures are also in direct contrast with industry (HPI) statistics which provide that one in 20 vehicles show a discrepant mileage³. This demonstrates that the existing legislation is not fit for purpose.
- 15.8 Furthermore, the 2008 Act, which appears to be the more used legislation, is limited in scope. Designed to protect consumers, it will only be used against an unscrupulous business. However, with the rise of some consumers committing mileage fraud to avoid excess mileage payments incorporated in Personal Contract Purchase (PCP) agreements, the scope of legislation must be widened.

NFDA and NAMA encourage the Government to look at creating legislation that encapsulates all mileage adjustment and mileage adjustment fraud into one piece of legislation, avoiding a piecemeal approach to tackling mileage fraud.

- 15.9 It has previously been advised to the NFDA that more use should be made of the 2006 Act. However, the NFDA and NAMA find that this would remain ineffective because the act of mileage adjustment is itself legal. It is increasingly difficult for authorities to monitor both businesses and consumer activity. An outright ban of mileage adjustment would enable any adjustment activity to easily be identified immediately as criminal.

An unnecessary activity

- 15.10 As previously stated, UK auto supports the position that there is no legal or practical reason for a vehicle's mileage to be adjusted. This is supported by both United States of America (USA) Federal Law and legislation in the Republic of Ireland.
- 15.11 NFDA and NAMA believe that the DfT should look at the provisions provided for by USA law and employ similar legislation domestically:

USA Federal Law

49 U.S. Code 32703 – Preventing tampering

U.S. Code > Title 49 > Subtitle VI > Party C > Chapter 327 > 32703

³ HPI *Clacking: The problem, The consequences, The Solution*

A person may not—

- (1) advertise for sale, sell, use, install, or have installed, a device that makes an odometer of a motor vehicle register a mileage different from the mileage the vehicle was driven, as registered by the odometer within the designed tolerance of the manufacturer of the odometer;
- (2) disconnect, reset, alter, or have disconnected, reset, or altered, an odometer of a motor vehicle intending to change the mileage registered by the odometer;
- (3) with intent to defraud, operate a motor vehicle on a street, road, or highway if the person knows that the odometer of the vehicle is disconnected or not operating;

- 15.12 During an Office of Fair Trading (OFT) report⁴, the OFT provided the following comments on the legitimacy of adjusting a vehicle's mileage:

*'Based on discussions with reputable garages we believe that occasions where there are **legitimate reasons to correct a car's mileage are very rare**. Yet there are over 50 businesses in the UK openly offering 'mileage correction services'. The adverts for these services often describe the services as 'discreet' or 'untraceable' and seek to disclaim responsibility for any illegal activity. Since the legitimate instances of mileage adjustment appear to be very rare and, we believe, insufficient to keep 50 companies in business, **we have a strong suspicion that many of these companies adjust mileages for illegitimate reasons**. We take the view that the commercial practices of mileage correction businesses may breach the CPRs where the provision of such services is 'directly connected with the ... promotion, sale or supply of a car to consumers'*

- 15.13 When members of the NFDA were asked about cases of consumers requiring mileage adjustment in their garages, dealers stated that they were not experiencing consumers bringing vehicles to dealerships for mileage adjustment. This sentiment was also endorsed by some of the NFDA's counterparts within the RMI.
- 15.14 Representatives from the National Association of Bodyshops (NAB) reported that at one-time vehicle accidents and collisions would have sometimes changed an odometer's mileage readings; however, this is now exceptionally rare. The most common cause for legitimate adjustments is now from theft or vandal damage; however, the NAB confirmed that even this is limited.
- 15.15 The Independent Garage Association (IGA) explained, as the majority of modern cars (those with electronic odometers) store the recorded mileage in the Electronic Control Unit (ECU) rather than the actual display, under most circumstances, dashboard or instrumentation repairs or replacement are unlikely to require the adjustment of a vehicle's mileage by the repairer.

OFT Recommendations

⁴ Office of Fair Trading, *The second-hand car market* – An OFT market study, March 2010, p.8-9

- 15.17 In March 2010, the OFT published 'The Second-hand Car Market' market study (2010 Market Study). As explained above, the report made reference to the issue of mileage fraud, stating that it '**remains a persistent and damaging consumer crime**'.
- 15.18 During this time, investigations were made by Trading Standards Services and the police, uncovering 'major incidences of car clocking fraud', of which one prosecution involved 320 cars (£1.5m)⁵. The OFT made the following recommendation that Government should:

***...consider 'the introduction of legislation to outlaw mileage correction services (unless for specific legitimate reasons) and their advertising'*⁶.**

The recommendation was not adopted by Government.

- 15.19 The European Commission also published a report in 2015 that acknowledged mileage fraud was a problem across Europe. The report led to the creation of Directive 2014/45/EU⁷.

NFDA and NAMA believe the UK Government must go beyond the Directive and ensure that all mileage adjustment is outlawed.

The limited number of convictions under the 2008 Act and 2006 Act, provide evidence that enabling mileage adjustment to remain legal undermines the ability of authorities to identify and convict perpetrators adjusting mileages for fraudulent reasons, especially in consideration of the ease at which these services can be legally advertised and bought.

MOT register not a deterrent

- 15.20 To date, Government has relied upon current legislation, private data registers (HPI and Experian) and MOT registers to help prevent mileage fraud and to detect it. However, many PCP and lease agreements have three year terms. Consumers can adjust their vehicles' mileage before the vehicle has an MOT. This enables a fraudulent vehicle to easily be part exchanged with a dealership.
- 15.21 Upon discovering an exchanged vehicle has undergone mileage adjustment, vehicle retailers must then declare the vehicles true mileage and sell the vehicle at a much lower retail price, financially penalising retailers.

PART 2

Consequences of mileage fraud

- 15.22 Both NFDA and NAMA have been campaigning for the outlaw of mileage fraud, adjustment equipment and adjustment companies solidly since September 2015. However, this is a problem that the associations have been raising with Government, for many years. Prior to the NFDA's impromptu meeting with the Rt Hon John Hayes MP, the associations have found it difficult to engage the DfT on this serious crime; despite support from a number of Ministers, Lords, MPs and industry bodies. The organisations would now like to take this opportunity to outline the reasons why mileage fraud is a serious crime and must be treated as so with new criminal legislation outlawing any mileage adjustment.

⁵ Office of Fair Trading, *The second-hand car market* – An OFT market study, March 2010, p. 8

⁶ Ibid, p.12

⁷ DIRECTIVE 2014/45/EU on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC, 3 April 2014

Road safety

15.23 Mileage fraud has huge safety implications on road safety. A vehicle's mileage is often an indicator to owners or potential buyers as to the 'wear and tear' of a vehicle and when the vehicle will require servicing. It is widely misunderstood that mileage adjustment is limited to cars and commercial vehicles, however this is also a problem for some of the most vulnerable road users, such as motorcyclists as motorcycles are also susceptible to mileage adjustment. Fraudulent mileage can mean that a vehicle is left without servicing, leaving dangerous faults untouched. This can have devastating and fatal consequences.

Financial loss

15.24 Adjusting a vehicles mileage will significantly increase the value. As a result, mileage fraud is estimated to cost consumers £750m annually⁸.

Value examples:

- By halving the mileage of VW Golf 1.6 GTI from 90,000 to 45,000 an additional £2,190 is added to the value price of the vehicle, resulting in a 25% value increase⁹.
- Removing 50,000 miles off of a three-year-old BMW 5 Series increases the value by £2,580 from £13,380 to £15,960; a value increase of 19%¹⁰.

15.25 Due to the technological advances of mileage adjustment equipment, it is increasingly difficult for retailers to identify signs of odometer fraud. This is despite the wide industry use of private registers and MOT histories. However, upon a business discovering a purchased vehicle has false mileage, the trader must sell the vehicle at the true value price and restore any faults that have occurred because of the additional wear and tear. This can have significant profit loss implications for businesses, as well as causing reputational damage. An example of this was experienced by an NFDA in April 2015:

*“On 1 April 2015, we purchased a Hyundai i40, registration LR12 HYP and we were told that the correct mileage was 23,000 miles. A couple of weeks after collecting the car, the engine had a number of problems and consequently **we had to buy a complete new engine... clearly this vehicle had done more than 23,000 miles.**”*

15.26 In some circumstances, a dealer or auction will have to take back a vehicle that they have unknowingly sold with false mileage. This occurs in business to business transactions and business to consumer transactions. As one NFDA member explains:

“...we have experienced this a couple of times in the last year or so, we bought both vehicles from established traders well known to us. First, a Fiesta bought by the trader from an auction. Once we had established it had incorrect mileage we returned it to the

⁸ Source based on OFT report. In 2010 it was estimated that mileage fraud costs the economy £580m, based on 1/20 cars being discrepant.

⁹ HPI and Glass's, *HPI and Glass's reveal the true cost of clocking* [media release], 11 September 2014, para 2, http://www.sourcewire.com/news/84327/hpi-and-glass-s-reveal-the-true-cost-of-clocking#.VcHai_NVgIM (accessed 11 September 2014)

¹⁰ Ibid para 3

*trader at no loss to ourselves, though we believe it went back through the auctions for someone else to have the problem. The second was an S Max, an ex-leasing vehicle which turned out to have been used as an undercover Police vehicle... the police would not disclose the vehicle mileage to us whilst they had it; all they would say was that the mileage didn't seem right! **Again, the trader took the vehicle back on at no cost to us but someone lost out somewhere further along the line; all costing us a lot of wasted time.***

15.27 On this occasion the NFDA member was lucky not to incur a loss, however, in business to consumer transactions, it is often the unknowing trader that suffers the financial loss.

Reputational damage

15.28 Vehicle retailers and auctioneers are facing problems if they unintentionally sell a used car with false mileage, often sold to them by a third party or in a part exchange agreement. The extent of this problem was identified in an industry survey¹¹, where 41% of vehicle dealers stated that they had part exchanged a car which they later discovered to have a discrepant mileage. Whilst this creates financial burdens on businesses, if the problem is not recognised before a sale, the new purchaser of the vehicle may not become aware of any mechanical issues with the vehicle until after driving the vehicle for a period.

15.29 In these circumstances, reputational damage can occur as some consumers believe the sale was knowingly committed. With the rise of instant online reviews, it is increasingly difficult for businesses to recover from reputational damage.

15.30 Furthermore, in worst case scenarios, a dealer or auction may face legal action from a consumer, again causing financial and reputational problems.

15.31 A NAMA representative explains further the issue:

*Mileage fraud is an issue auctions take very seriously. The reputation of an auction is important to give buyers and sellers confidence in the process. **Auction houses have been supplying mileage sales data to data companies to enhance mileage checks and to help eradicate the problem.** Whilst these are important measures, they do not completely prevent or uncover "clocking" and therefore there is only so much, as an industry, we can do. **More needs to be done by the Government and Trading Standards to stamp the practice out and help the industry and the safety of the general public.***

Criminal activity

15.32 Mileage fraud is also used by criminal gangs that conspire to 'con' customers, traders and auctions into paying false retail prices for vehicles. This is often accompanied with false paperwork created for onward sale.

15.33 Furthermore, some criminal gangs are using mileage fraud as a method to launder money. Buying vehicles with illegal money, adjusting their mileages and selling these to auction for profit and to clear themselves of illegal cash.

¹¹ HPI Clocking: The problem, The consequences, The Solution

15.34 In a recent case in Birmingham (June 2016), a father and son were issued prison sentences for their part in a wide-ranging fraud network. The gang wiped four million miles from vehicle odometers between 2007 – 2011, selling vehicles averagely for £600,000. This gained profits of £175,000. In one case, 100,000 miles were removed from a vehicle's mileage. Whilst Birmingham City Council brought the case forward, this was only following years of complaints from consumers. Unfortunately, industry research¹² has shown that just under 50 per cent of dealers say their customers are not aware of the dangers of buying tampered vehicles, with many consumers admitting they are unaware of how to identify the signs of mileage adjustment. NFDA's consumer brand, Trusted Dealers identified that 57.40% of customers were unaware as to how to check whether a vehicle's mileage had been altered. With mileage adjustment equipment so readily available for purchase on the internet, legislation is required. It is irresponsible to continue with the current strategy of relying on unaware consumers to detect and report fraudulent activity and an unmanageable pressure on local authorities and Trading Standards.

CONCLUDING REMARKS

- 15.35 Government has continuously relied upon existing legislation and Trading Standards to identify, prevent and stop mileage fraud. However, as the practice of mileage adjustment remains legal, the UK's loop hole which legally allows mileage adjustment is making existing statutory instruments and preventative measures, such as MOT histories, ineffective. Trading Standards do not have the resources to spend time proactively finding cases of mileage fraud, especially amongst the millions of consumers, unscrupulous traders and legal businesses offering adjustment. This has led to a reliance on consumers to report cases of fraudulent activity who are often unaware of the practice and how to uncover it.
- 15.36 The automotive industry is calling on Government to follow the 2010 recommendations of the OFT and outlaw mileage adjustment, the companies that practice it and the sale, purchase and possession and manufacturer of mileage adjustment equipment. The need for legitimate mileage adjustment is increasingly rare, if at all in existence. It is imperative the UK outlaws all mileage adjustment and its associated components, following the practices of the USA (since 1994) and the Republic of Ireland (in 2014).

¹² HPI Clocking: *The problem, The consequences, The Solution*