



## **CODE OF PRACTICE FOR THE NATIONAL ASSOCIATION OF MOTOR AUCTIONS**

(May 2014)

### **INTRODUCTION**

This Code of Practice (the Code), drawn up by the National Association of Motor Auctions (NAMA), sets out standards and provisions to which NAMA expects all its members to adhere in offering and providing their services.

NAMA requires its members to accept the Code in its entirety as part of the conditions of membership of NAMA. **However, the Code does not affect (and should not be relied on as interpreting or supplementing) the separate legal relationship between a member and any third party, including a vendor or purchaser (or between those third parties).**

**As auctioneers of vehicles, it is recognised (unless stated otherwise) that members do not own the vehicles sold through them.** Any complaints regarding the condition quality and suitability would normally be dealt with between the vendor and purchaser of a vehicle and, where relevant, in accordance with the member's terms and conditions of business. It is in members' interests to ensure that this principle is communicated in a clear and timely manner to vendors and purchasers prior to any auction process.

However, for complaints relating to the service or behaviour of a member, that member should provide for such grievances to be dealt with by means of conciliation or, ultimately, by reference to arbitration if conciliation fails. The National Conciliation Service provides a low cost method for settling disputes without the need for expensive and time consuming litigation. **Customers may, of course, have other legal remedies available to them (including their statutory rights), and should not be misled in this respect.**

### **1 GENERAL PRINCIPLES**

- 1.1 Members must act with integrity in their dealings with vendors and purchasers at all times.
- 1.2 Members should be transparent and responsible in the conduct of their business. Members must act with proper skill and care and with the high level of professionalism expected of experienced auctioneers.
- 1.3 Members should ensure that their staff are competent to perform the services to be provided by a member (or, where that employee is a trainee, members shall ensure that they are adequately supervised). Members should ensure that training is available to employees to enable them to meet their obligations.

- 1.4 Members must conduct their business in accordance with applicable law (such compliance is a minimum expectation of membership). Members must comply with judicial decisions that are binding upon them.
- 1.5 A member must comply with applicable anti-bribery and corruption laws and must not offer, give, seek or accept any payment, gift or other benefit in order to gain or in return for giving an improper or unfair advantage.
- 1.6 Members are expected, where required, to co-operate with Trading Standards officers, Police forces and all other law enforcement agencies. Members shall provide such officials with such information which has been requested by them to which they are legally entitled.
- 1.7 Members shall, lawfully and ethically, act in the best interests of the vendor insofar as this relates to the sale of the vendor's property. At the same time, Members shall treat purchasers fairly and honestly (including in relation to the receipt of offers to buy a vehicle).
- 1.8 Members should ensure that their staff, customers and members of the public have reasonable access to this Code.

## **2. TERMS AND CONDITIONS OF BUSINESS**

- 2.1 The terms and conditions under which a member operates should be in clear and intelligible English.
- 2.2 A member should ensure that the latest version of its terms and conditions are those which are displayed or otherwise made available to that member's customers.
- 2.4 Members should use all reasonable opportunities to draw customers' attention to their terms and conditions. This will include referencing them on invoices, vehicle entry forms and at the start of every auction. They should be clearly and conspicuously displayed in members' premises (including on members' websites). The terms and conditions should be readily available upon request.

## **3 VEHICLE ENTRY DETAILS**

- 3.1 The vendor is responsible for the description of a vehicle. Where a member has been requested to complete an entry form on behalf of a vendor and the member has agreed to do so, the member will be responsible for completing the entry form in accordance with the vendor's instructions.
- 3.2 Any entry form produced by a member should ensure that sufficient information is gathered about the vendor and their vehicle including:
  - a) the vendor's full name and address;
  - b) the vehicle's make, model, registration mark, and year of manufacture or first registration, whichever is earlier;
  - c) the vehicle's odometer reading (with an indication of whether it is correct/warranted or incorrect/unwarranted); and
  - d) relevant declarations concerning the vehicle, for example, whether it is an insurance total loss.
- 3.3 Members will ensure that potential purchasers of a vehicle are given reasonable access to the information disclosed by a vendor (and shall seek appropriate consents from the vendor in advance

in this regard, ideally as part of the member's terms and conditions of business). The provision of this information will include some or all of the following:

- (a) displaying the relevant vehicle details on the vehicle so that it is clearly visible;
- (b) ensuring that the information is provided clearly during the auction of the vehicle; or
- (c) providing a catalogue or similar description of the vehicle (whether online or otherwise).

NAMA recommends that members adopt several means of providing information to purchasers to minimise the risk of complaints surrounding access to information.

#### **4 FEES AND CHARGES**

- 4.1 Any charges or commission levied by a member (or the basis upon which its charges etc are calculated) should be clearly communicated to customers. The member should make clear if there are different charges for different services or requirements. For example, a member should clarify whether there are any registration, administration, preparation (valet), transportation or other service fees and what those fees are.
- 4.2 The member should make clear whether charges are inclusive or exclusive of VAT.
- 4.3 The member should make sure that its most important charges are displayed either on its website, at its premises or both. A list of all charges should be readily available to a customer if that customer requests a copy.

#### **5 PURCHASER PROTECTION**

- 5.1 A member should ensure that it makes available easily accessible and clear information on the auction process to prospective purchasers of a vehicle to assist them in taking part in an auction.
- 5.2 A member should have in place a scheme to ensure that there is reasonable protection for a purchaser in respect of any defects in the ownership of a vehicle or any significant issues in relation to the odometer reading of a vehicle.
- 5.4 A member should take steps to protect the security of a purchaser's information. Information should not be disclosed without a purchaser's consent or unless there is a lawful right (or obligation) to disclose information.

#### **6 VENDOR RIGHTS**

- 6.1 A member will, upon a vendor's request, provide that vendor with reasonable access to any information held by the member about the vehicles of that vendor and the terms and conditions under which those vehicles are/will be sold.
- 6.2 Members will give vendors a right of access to any auction at which their vehicle is to appear.
- 6.3 Unless a member has agreed different terms with a vendor, members will remit to the vendor the full price that the vehicle realises by auction or private treaty, less all agreed fees and commission and any such sum which is rightfully due to a finance company.
- 6.4 Members will have reasonable arrangements in place to permit the vendor to withdraw their vehicle from the auction.

- 6.5 A member should take steps to protect the security of a vendor's information. Information should not be disclosed without the vendor's consent or unless there is a lawful right (or obligation) to disclose information.
- 6.6 Subject to paragraph 5.4 above, where a vendor requests information from a member in order to take legal action against a purchaser, members will be expected to release that information promptly and without undue delay.

## **7 COMPETITION LAW COMPLIANCE AND BEST PRACTICE**

- 7.1 Members shall, at all times, conduct their business so as to ensure compliance with applicable competition laws. For example, members shall operate independently and shall not, directly or through any third party, share sensitive confidential and commercial information (Competition Sensitive Information) relating to their own commercial activities, fees or plans with any rival member or otherwise agree to coordinate their commercial terms, prices or strategy with them.
- 7.2 Members are required to comply with money laundering regulations and will ensure that there are appropriate procedures in place to check the identity of customers.
- 7.2 A member should act in accordance with the lawful instructions given to them by a vendor about the sale of a vehicle and the arrangements for payment of the sale proceeds.
- 7.3 Member's must not actively buy and sell vehicles through their own auction unless the vehicles are required for use by the member or their employees. A related company of a member may buy and sell vehicles through auction, but the member must ensure at all times that no undue preference is given to that member's related company in arranging for either the sale or purchase of that vehicle. In each case, members should, where not acting purely as auctioneer and in line with the principles of integrity and transparency, clarify the capacity in which it is acting in respect of any vehicle advertised, auctioned, purchased or sold.
- 7.4 Auction proceedings should, wherever possible, be recorded.

## **8 MEMBER ENTITLEMENTS**

- 8.1 Members may choose to reserve the right to sell by private treaty at the reserve price, or such other price which may be agreed by the vendor, any vehicle which has failed to sell by auction. Members should ensure that their terms and conditions are clear on the conditions that will apply to private treaty sales.
- 8.2 Members are expected to conduct auctions with professional diligence. It will be consistent with this professional diligence for members to refuse a bid at auction.

## **9 ADVERTISING**

- 9.1 Advertising by members must comply with the codes and standards set by the Advertising Standards Authority and with relevant legislation including the requirements of the Consumer Protection from Unfair Trading Regulations 2008. Claims in advertisements and/or features should not be misleading.

## **10 MONITORING AND REMOVAL FROM MEMBERSHIP**

- 10.1 All members will make every effort to make available to vendors and purchasers the NAMA Customer Charter (the Charter) and to publicise the existence of the Charter.
- 10.2 The National Conciliation Service (see section 13 below) will analyse those complaints referred to it. The results of such analysis will be published to the members with such recommendations for the improvement of service to customers as the Executive Council of NAMA from time to time thinks fit. NAMA will monitor the compliance of its members with the Charter (as well as this Code) and discuss with a member any breach of its provisions.
- 10.3 Persistent or serious breaches of the Charter (or this Code) may result in the NAMA Executive Council referring such member to the RMI Disciplinary Committee with a recommendation that the member is removed from membership or that other remedial action is taken. In this regard, the RMI Disciplinary Committee shall, at its absolute discretion, decide whether to remove a member from membership or apply such other sanction as it sees reasonably fit in the circumstances.

## **11 ASSOCIATION WITH NAMA**

- 11.1 Members will ensure that NAMA's membership certificate is prominently displayed at their premises. Members should take steps to make sure that their membership of NAMA is made known to potential vendors and purchasers. Members will be entitled to include NAMA's logo on all documentation (subject always to observing any guidelines published by NAMA in relation to the reproduction and use of the logo).
- 11.2 Members undertake to do their utmost to support NAMA and to participate in its activities and deliberations.
- 11.3 Members shall not, under any circumstances, engage in any activity which brings or is liable to bring NAMA into disrepute or which is otherwise harmful to the reputation of NAMA or its members generally.

## **12 COMPLAINTS HANDLING**

- 12.1 Members must ensure that prompt and effective action is taken with a view to achieving a just settlement of a complaint. To this end, members must have an easily identifiable and accessible arrangement for handling of complaints. There should be a clear complaints process and there should be individuals within the member's organisation who are responsible for the management of complaints (and identified as such).
- 12.2 The member must make provision for dealing with formal complaints. Such a complaint process should require the complainant to set out their complaint in writing. The member's complaint process should clearly describe how long it will take for a member to acknowledge a complaint and how long it will take for a member to respond in full.
- 12.2 If the member does not resolve the complaint to the complainant's reasonable satisfaction, the member should ensure that the complainant is informed that they may refer the matter to NAMA's National Conciliation Service (see section 13 below). Any such complaint may be brought within 12 months of the date of the original transaction. The member should provide the complainant with a copy of this Code and, if relevant, the Charter.
- 12.3 Where complaints are raised through a third party (e.g. the Automobile Association, Royal Automobile Club, Trading Standards Office or a Citizens Advice Bureau) the member must be

satisfied that the third party is acting on behalf of the complainant and has proper authority to do so. If in doubt, the member should make direct contact with the relevant complainant.

### **13 CONCILIATION PROCEDURE FOR SETTLING COMPLAINTS**

13.1 If attempts to reach a satisfactory solution fail, the complainant should have the right to refer his complaint against a member to NAMA's conciliation and arbitration service (the National Conciliation Service). Any such complaint must be in writing.

13.2 The object of the National Conciliation Service shall be the reasonable settlement of any dispute or difference referred to it by a member, vendor or purchaser.

If the complaint lies against a member of NAMA situated in any part of the United Kingdom the address is:

The National Conciliation Service  
2-3 Allerton Road  
Rugby  
Warwickshire CV23 0PA

However, if the complaint refers to a manufacturer's warranty or lies against a vendor who is a member of the SMMT, the address is:

The Customer Relations Department  
Society of Motor Manufacturers and Traders  
71 Great Peter Street  
London  
SW1P 2BN

Or if the complaint lies against a vendor who is a member of the SMTA in Scotland the address is:

Customer Complaints Service  
Scottish Motor Trade Association  
Palmerston House  
10 The Loan  
South Queensferry  
Edinburgh EH30 9NS

13.3 If requested to do so, NAMA will provide the complainant with details of the conciliation process.

13.4 The National Conciliation Service will use its best endeavours to settle the complaint and give such advice as it considers proper, in order that the complainant and the member may reach a fair and reasonable agreement in resolving the dispute.

13.5 In attempting to conciliate between the parties to a dispute, the National Conciliation Service will take full account of the way in which the member's terms and conditions, in so far as they concern the subject matter of the complaint, have been observed.

13.6 If the National Conciliation Service fails to resolve the complaint, members will, subject to any alternative action taken by the complainant, agree to go to arbitration except in those cases where NAMA is of the opinion that it would be unreasonable for a member to be required to do so. In the

event that the complaint is referred to arbitration, details of the nominal fees involved will be confirmed by the National Conciliation Service.

#### **14. ARBITRATION PROCEDURE**

14.1 Parties to arbitration will be asked to pay the registration fee laid down by the RMI Panel of Arbitrators. When, later, the arbitrator makes his award, he will consider whether the registration fee should be returned to the successful party.

14.2 The parties will also be asked to sign an application for arbitration which will be sent, together with the registration fee, to:

RMI Panel of Arbitrators  
C/o The National Conciliation Service  
2<sup>nd</sup> Floor, Chestnut Field House  
Chestnut Field  
Rugby  
Warwickshire CV21 2PA

14.3 In order to keep costs as low as possible, subject to paragraph 14.6 below, the arbitration will be by documents alone. None of the parties to the dispute may be present (whether in person or through representatives).

14.4 The administrator to the RMI Panel of Arbitrators will assemble a file of all relevant documents. The content of the file will be notified to the parties who will be invited to submit any further evidence which they consider pertinent to the case.

14.5 The chairman of the RMI Panel of Arbitrators will appoint a single arbitrator and will make all the necessary arrangements for the arbitration to be conducted as speedily as possible.

14.6 Where all parties agree either at the commencement of, or during the proceedings, an attended hearing may exceptionally be arranged. This will be subject to the arbitrator's agreement and directions as to procedure, and in such cases all costs of the arbitration will devolve upon the parties and will be settled in accordance with the arbitrator's directions as contained in his award.

14.7 The arbitrator will have the power to direct any party to provide him and the other party(ies) with any additional document or information he considers to be relevant to the matter under dispute.

8 The award of the arbitrator will be published in writing to the relevant parties and to the National Conciliation Service.

9 The award of the Arbitrator is enforceable in the Courts by any party.

## CUSTOMER CHARTER

As a member of NAMA we pledge the following to our customers:

- ✓ To promote 'best practice' in the industry
- ✓ To be fair to both seller and purchaser
- ✓ To endeavour to protect the purchaser against defect in title
- ✓ To commit to the NAMA Code of Practice
- ✓ To ensure all staff are familiar with customers' rights under the Code
- ✓ To have an easily identifiable procedure for the handling of complaints
- ✓ To provide access to an independent arbitration facility