



NATIONAL ASSOCIATION
OF MOTOR AUCTIONS

NAMA NEWS JANUARY 2018

Dear Colleagues,

Welcome to 2018! We hope you all had a relaxing and enjoyable break!

This month's newsletter has a number of interesting articles, particularly around the current vehicle market and the general economy, including our own NAMA report, comment from Auto Trader, and the latest summary of business conditions from the Bank of England.

Following our very successful GDPR workshops in 2017, we will be holding two additional workshops looking at the more specific issue of contract remediation. Contract remediation is a crucial element of GDPR compliance and the workshops will show members how to review their third-party contracts. The workshops run again by our retained solicitors TLT, will take place on Thursday 1 February (Fully booked) and Friday 9 March at the Warwick Hilton. If you would like to attend please email louise.woods@rmif.co.uk

You will now have received your invites to this year's NAMA AGM which will be held on the weekend of the 27 & 28 April at the Sheraton Hotel, Lisbon, Portugal. Please note that the venue is very heavily subscribed and we would urge you to confirm your attendance as soon as possible, so we can ensure we have accommodation for all.

We would like to start a NAMA Parliamentary Engagement scheme where we will arrange auction site visit for local constituency MPs. The aim of the scheme is to encourage parliamentary engagement and raise awareness of the significant contribution that the motor auction industry makes to the economy of the UK. If you are interested in taking part in this new programme, please contact our NAMA policy officer, James Waring – james.waring@rmif.co.uk

Finally, if you have any comments about the newsletter, please let us know. We look forward to working with you all in 2018!

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AUCTION ACTIVITY REMAINS STABLE IN DECEMBER

NAMA has published its monthly car auction data report for December 2017.

The report shows that overall in December:

- First time conversion rates decreased slightly by -1.9% to 77.7% from November
- Average selling value increased 2.4% from £5,558 to £5,693 from the previous month, and was up 3.9% from last Decembers figure of £5,477
- Average mileage went down by -0.8% to 63,800 from November but remained static on the same period last year
- The first time premium was -£156 – a -7.6% decline on last month's figure of -£145

Auction activity declined overall in December which is normal for the time of year. Lower demand for cars affected conversion rates and hammer prices.

The New Year has started to see better results, and there is a good supply of vehicles giving buyers a wide choice. Demand has been picking up since the first week of the month, which should help values and conversion rates.

The full NAMA Car Auction report is available from NAMA on request.

MEET THE CHALLENGE OF GDPR COMPLIANCE

The new General Data Protection Regulations (GDPR) which come into force in May 2018 apply to all organisations that control and process personal data.

Failure to comply with GDPR can result in fines of up to €20 million or 4% of annual turnover for the most serious contraventions. Following on from our very successful GDPR workshops held this year, we are holding two additional workshops looking at the more specific issue of contract remediation for GDPR compliance.

Contract remediation is a major element of GDPR compliance and one that is essential for all members. The workshop will look at how members should review their third-party contracts, such as those with manufacturers, finance houses and dealer management systems, to check and rate their GDPR compliance and risk. It will also advise on how you should amend these contracts to make them compliant.

Additionally, we will also ask attendees to bring with them one of their data sharing arrangements to use as an example to be worked through during the workshop.

Dates: Thursday 1 February (FULLY BOOKED) and Friday 9 March

Venue: Hilton Hotel, Stratford Road, Warwick CV34 6RE

Time: 9.30 am refreshments, 10.00 am workshop commences, 3.30 pm close

(A buffet lunch will be provided)

Places will be allocated on a first come first served basis as space is limited. Due the considerable resources required to hold these events, there will be a nominal charge of £99 including VAT per person to attend.

If you would like to attend please contact NAMA on 01788 538303 or email louise.woods@rmif.co.uk

UK NEW CAR MARKET DECLINES IN 2017 BUT DEMAND STILL THIRD HIGHEST IN 10 YEARS

The UK new car market declined in 2017, with annual registrations falling for the first time in six years, according to figures published by the Society of Motor Manufacturers and Traders (SMMT).

A -14.4% decline in December marked the ninth consecutive month of negative growth, resulting in a final annual tally of 2,540,617 units, a fall of -5.7%, but still the third highest level in a decade.

Private, fleet and business registrations were all down in 2017, with demand from private motorists declining

-6.8%, while fleets saw a fall of -4.5%. The biggest percentage losses were seen in business registrations, with the sector ending the year down -7.8%.

The most popular vehicle choices were, once again, superminis, small family cars and SUVs (dual purpose), with the latter the only segment to grow demand in 2017. In fact, one in every five new cars sold in the UK is now dual purpose, up from one in 10 five years ago.

There was good news for the alternatively fuelled vehicle market, which grew 34.8%. A record number of hybrid, plug-in hybrid, battery electric and hydrogen fuel cell cars were registered – resulting in the sector’s highest-ever annual market share of 4.7%. UK consumers buy more plug in cars than anywhere else in Europe and demand grew by a quarter in 2017 – making Britain a key market for these vehicles.

Demand for petrol cars also rose in the year, but by a more modest 2.7%. However, this was not enough to offset a -17.1% decline in diesel registrations – with anti-diesel rhetoric and the potential for tax hikes causing buyers to hesitate. However, these cars remain the right choice for many motorists – especially those who travel longer distances – with lower CO₂, better fuel economy and, with these newer vehicles, dramatically reduced air quality emissions.

Latest calculations by SMMT highlight the money saving benefits of diesel cars, with drivers of diesel-powered D-Segment family vehicles, SUVs and executive cars saving an average of between £300 and £400 a year on their fuel bills. Across all body types, the average is £132 a year – equivalent to an average household’s quarterly electricity budget.

BEST SELLERS

DECEMBER 2017			YEAR-TO-DATE		
①	Volkswagen Golf	6,209	①	Ford Fiesta	94,533
②	Ford Fiesta	5,029	②	Volkswagen Golf	74,605
③	MINI	4,370	③	Ford Focus	69,903
④	Vauxhall Astra	3,837	④	Nissan Qashqai	64,216
⑤	Ford Focus	3,624	⑤	Vauxhall Corsa	52,772
⑥	Nissan Qashqai	3,534	⑥	Vauxhall Astra	49,370
⑦	Vauxhall Mokka X	3,111	⑦	Volkswagen Polo	47,855
⑧	BMW 3 Series	2,860	⑧	MINI	47,669
⑨	Ford Kuga	2,791	⑨	Mercedes-Benz C Class	45,912
⑩	Mercedes-Benz A Class	2,712	⑩	Mercedes-Benz A Class	43,717

December	Total	Diesel	Petrol	AFV	Private	Fleet	Business
2017	152,473	57,612	86,276	8,585	56,917	90,217	5,339
2016	178,022	83,640	88,116	6,266	67,640	102,125	8,257
% change	-14.4%	-31.1%	-2.1%	37.0%	-15.9%	-11.7%	-35.3%
Mkt share 2017		37.8%	56.6%	5.6%	37.3%	59.2%	3.5%
Mkt share 2016		47.0%	49.5%	3.5%	38.0%	57.4%	4.6%

Year-to-date	Total	Diesel	Petrol	AFV	Private	Fleet	Business
2017	2,540,617	1,065,879	1,354,917	119,821	1,123,860	1,319,193	97,564
2016	2,692,786	1,285,188	1,318,707	88,891	1,206,250	1,380,750	105,786
% change	-5.7%	-17.1%	2.7%	34.8%	-6.8%	-4.5%	-7.8%
Mkt share 2017		42.0%	53.3%	4.7%	44.2%	51.9%	3.8%
Mkt share 2016		47.7%	49.0%	3.3%	44.8%	51.3%	3.9%

Image source: SMMT

BLACK IS BACK AS UK'S FAVOURITE NEW CAR COLOUR

Black is back as the colour of choice for the UK's new car buyers, taking top spot in 2017 for the first time in five years, according to figures released by the SMMT.

More than half a million (515,970) buyers opted for black last year, sending white tumbling to third place after four years at the top. Grey is now the nation's second favourite, as monochrome colours continue to dominate the market with almost 60% of the 2.54 million new cars registered in 2017 ordered in black, grey or white. Blue is now the only primary colour to feature in the top five, with red falling one place to sixth in favour of silver.

Green, orange, bronze and yellow made up the rest of the national top 10, with more buyers than ever before choosing orange and bronze. The trend saw bronze enter the top 10 for the first time since 2011, replacing brown, demand for which fell by -33.2%. Gold's popularity was the fastest growing, with demand up 19.1%, although it remains a niche choice making up just 0.2% of the market.

Regionally, buyers in Northern Ireland, Scotland and Wales bucked the overall national trend, with white remaining their firm favourite. Meanwhile, blue was more popular in Northern Ireland and Wales, ranking third most preferred choice.

In a North/South divide, motorists in the North of England opted for white as their number one colour, 2 whereas those in the South preferred black. The West Midlands and East Midlands were also divided, with black coming out on top in the West and grey in the East.

TOP 10 CAR COLOURS 2017

	Colour	No. Registrations	% market share	% market share change on 2016
1	Black	515,970	20.3%	+0.2%
2	Grey	500,714	19.7%	+2.4%
3	White	482,099	19.0%	-1.5%
4	Blue	405,758	16.0%	+0.6%
5	Silver	254,192	10.0%	-0.1%
6	Red	251,104	9.9%	-1.4%
7	Green	26,834	1.1%	+0.03%
8	Orange	19,064	0.8%	+0.1%
9	Bronze	12,421	0.5%	+0.16%
10	Yellow	10,301	0.4%	-0.1%

Source: SMMT

MOST SEARCHED FOR CAR OF 2017 REVEALED BY AUTO TRADER

The BMW Series 3 was the most searched for car on Auto Trader in 2017 with 40.1 million searches, followed closely by the Volkswagen Golf (39.5 million searches). Although used diesel sales are higher in recent months, Auto Trader's findings show that fewer people are searching for the fuel type. While searches for diesel cars saw a 32% decrease on the same month in 2016, petrol experienced a year-on-year increase of almost 42%.

1. BMW 3 Series – 40,171,608 searches
2. Volkswagen Golf – 39,502,416 searches
3. Mercedes-Benz C-Class – 24,610,776 searches
4. Ford Focus – 22,180,392 searches
5. BMW 1 Series – 21,244,692 searches
6. BMW 5 Series – 20,743,080 searches
7. Ford Fiesta – 20,119,524 searches
8. Audi A3 – 19,550,304 searches
9. Mercedes-Benz E-Class – 19,374,996 searches
10. Vauxhall Astra – 16,888,992 searches

Source: Auto Trader

ACEA EU PASSENGER CAR REGISTRATIONS REACH 10-YEAR HIGH

It is positive to see that demand for new cars in Europe grew by +3.4% in 2017 and reached a 10-year high of 15.6 million units sold.

In 2017, new passenger car registrations experienced an increase of +3.4% on the year before. This marked four consecutive years of growth and the best result since 2007 when 16 million units were registered. Registrations rose in the majority of the largest EU markets: Italy (+7.9%) and Spain (+7.7%) were followed by France (+4.7%) and Germany (+2.7%). In the UK the market declined by -5.7%.

In December 2017, new passenger car registrations in the EU saw a decline of -4.9% to 1,088,498 units. This was mainly due to December having one less working day less in 2017 than the previous year. In December all the largest European markets decreased apart from Spain (+6.2%).

These results confirm the strength of the retail automotive industry and the crucial role it plays in the economy.

The EU new car market is expected to stabilise in 2018, but with rising employment levels and an increasing appetite for new cars across not only the large but also the small and medium markets, new car registrations in Europe are likely to remain at high levels.

BANK OF ENGLAND AGENTS' SUMMARY OF BUSINESS CONDITIONS

This publication includes a summary of economic reports compiled by the Bank of England's Agents between late August 2017 and late November 2017. It generally makes comparisons with activity and prices a year earlier.

This publication also includes a summary of information gathered by the Bank's recently established Decision Maker Panel.

- Recruitment difficulties were a growing concern for businesses as labour shortages had become more generalised across sectors and skill levels.
- Despite this, pay growth had only increased a little, reflecting greater focus on non-pay benefits, a limited number of pay reviews in Q4, and rising input costs. Staff retention and recruitment, and to a lesser degree, inflation, were expected to push pay settlements moderately higher in 2018.
- Consumption growth had eased slightly, reflecting squeezed real incomes and possibly some anticipation of Black Friday. Purchases of big ticket items had eased, and mild weather earlier in the period had weighed on clothing sales.

Full report available here: [Agents' summary of business conditions – 2017 Q4](#)

LEGAL UPDATE



Credit card surcharges banned from 13 February 2018 fees

Government legislation that will make it illegal for any business to charge customers extra for using credit and debit cards will come into force from 13 February 2018. The measure, which is part of a raft of changes being made European wide as a result of the Payment Services Directive, was designed to protect consumers from excessive charges

This is a measure that will have a financial effect on businesses. Current guidance is that any surcharges (over that of a cash transaction) for using credit or debit cards will be illegal and subject to action by trading standards.

There is no obligation on a business to accept any particular form of payment. Businesses remain able to restrict the use of cards by maximum and minimum amounts providing any restrictions are clearly noted prior to any transaction.

ASA Ruling

The Advertising Standards Authority has recently issued guidelines on how ex-fleet vehicles should be advertised for sale. ASA rules now require that any fleet operator selling ex-fleet vehicles to provide information regarding the nature of the vehicle and its use within any advertising.

This follows the reversal of an earlier decision on a complaint where 2 vehicles had been described in advertising as having one owner when in fact that owner was a fleet company and the vehicle was ex-fleet. Within the revised complaint the ASA stated that:

- If a dealer was aware that a vehicle was ex-fleet because it had previously been used for business purposes, then that was material information likely to influence a consumer's decision to purchase it. Furthermore, if a dealer knew that such an ex-fleet vehicle was used by multiple users, then that too, was material information for consumers to make an informed decision.
- Whilst the most recent rulings and guidance have again highlighted the issues, the law behind it is not new and businesses have been under a duty to accurately describe and actively disclose such things under the Consumer Protection from Unfair Trading Regulations (CPRs) for almost a decade.

The CPRs came into force in May 2008 and were amended and strengthened in 2014 by The Consumer Protection (Amendment) Regulations 2014. The CPRs expressly forbid, as the name would suggest, unfair businesses practices that could detrimentally impact a consumer or sway their decision to buy a vehicle. This includes misleading acts, such as describing a vehicle as having one owner when that one owner was a hire company, as well as misleading omissions.

Under the CPRs a trader is required to actively disclose any information that would cause or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

The CPRs are not motor trade specific and do not provide a definitive list of information that should be disclosed. However, it is generally understood that issues such as significant accident damage, multi-user user use, ex-fleet and hire company vehicles as well as taxis and driving school vehicles should all be disclosed.

The CPRs are particularly important as a breach of the regulations is a criminal offence for not only for the company but also where appropriate company officers personally. In addition, a breach of the regulations can entitle consumers to unwind the deal or claim a discount between 25% to 100% or even compensation.

Due Diligence

There is no requirement to disclose anything of which you are not aware. Where a company can establish that they have taken reasonable steps to ensure the accuracy of their description of the vehicle and to ascertain whether there are any material facts that should be disclosed, there will be no breach.

The following actions that would help establish due diligence and protect dealers from prosecution under the CPR's are:

- Vehicle history checks pre-sale
- Vehicle Mileage Check pre-sale
- Disclose Mileage Discrepancies
- Pre-sales mechanical checks
- Check to see if the vehicle is subject to any recalls
- Record all vehicle checks in case there is a need at a later date to refer to them.

Fixed Term Contracts

“I have just checked the cost of my current waste management contract and want to cancel. I have contacted my supplier who has stated that I can’t cancel as I have signed a fixed term contract, what can I do.”

Fixed term contracts are not uncommon in the Motor Industry. There are a number of benefits to them and when used wisely they work well. Unfortunately, they are open to abuse by suppliers who are ambiguous with the terms or misunderstanding where a business does not fully understand all the terms they have agreed to.

You will only have entered into a fixed term contract if this has been expressly agreed between the parties. The first thing to do would be to review the terms and conditions provided at the time of sale. These are the rule book for the dispute and where you have actually signed a copy, these will be binding. As a business you should never sign a contract without reading and understanding the terms.

Contractual terms can also be sent electronically. If these have been received with the invoice and you go on to pay the amount due a court is likely to assume that you have read and understood the terms and intend to be bound by them as if they have been signed.

When terms are provided is also very important. They must be provided at or prior to the contract becoming binding. Some suppliers will try and incorporate terms by reference to their website. It is much more difficult to assess how a court will interpret these. The stage at which they are provided, and the conduct of the companies concerned will affect the outcome. However, the starting point is that where terms have not actually been provided prior to the contract they will not be binding.

Be aware that standard terms can be amended by agreement and can change over time. Once you have found the terms check to see whether you have expressly negotiated something different on the face of the contract particularly with regards to the length of the contract etc....

Even if there is a contractually binding fixed term you may still be able to cancel where the supplier has committed a sufficiently serious breach of contract. However, to do so you must move quickly as the longer you allow a breach to occur the less likely that you can cancel. Should you find yourself in the situation above, contact us at any stage for advice and assistance as appropriate.

Holiday pay – Update

The European Court of Justice (CJEU below) has issued an important case on the issue of holiday pay. A case which employers in the motor industry need to take into account.

In *King V Sash Windows*, Mr King was believed to be self-employed and his employer did not therefore grant him any paid holiday. He brought a claim looking for over 24 weeks of holiday that he had accrued over many years, but not taken either because he was not allowed it or not paid it

throughout his time with Sash Windows. The employer defended the case on the basis that under the Working Time Regulations 1998, if paid holidays are not taken in a leave year, then they are lost.

The CJEU in an important Judgment disagreed and have effectively held that if a worker is prevented from taking paid holiday because the “employer” won’t grant the paid holiday they are being prevented from exercising EU rights and cannot be stopped from bringing a claim just because a new holiday year starts. Insofar as UK Regulations say workers lose that right, they are incompatible with EU law and must be disregarded.

More importantly the CJEU has held that, on these facts, when an employer fails to grant paid holiday to workers they should not be able to benefit from the restrictions on time limits of how much can be carried over. It has also cast further doubt on the EAT’s decision in *Bear Scotland v Fulton* which has suggested any 3 months break in unpaid EU holiday leave could render the period before the 3 month break out of time.

The case is not suggesting that where employees or workers *have* been granted paid leave, but have simply not taken it in the particular leave year, would be able to make similar claims. The case should however be of particular concern to employers who are operating with people they deem to be self-employed and the CJEU appear to be saying that, where people are found to be workers or employees and have been denied EU rights and there shouldn’t be limitations on the claims they can bring in terms of going back in time. Accordingly, it now seems likely they can accumulate large claims, going back many years.

As ever, holiday pay is a rapidly developing area of law so watch this space for future developments.

Motor Industry Legal Services (MILS)

DATES FOR YOUR DIARY

NAMA Executive Meetings, London Offices

Tuesday 20 March 2018

Tuesday 10 July 2018

Tuesday 2 October 2018 (All members)

NAMA AGM 2018

27/28 April 2018, Lisbon, Portugal