

CONCILIATION SERVICE – GUIDANCE NOTES

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A. CONCILIATION SERVICE

- 1.1 The Scottish Motor Trade Association (SMTA) provide an independent conciliation service whereby members of the public who have a complaint against an SMTA member can put forward written representations, which along with the written representations of the SMTA member, are put before a complaints committee who then make a recommendation. This procedure can be put into operation when attempts to resolve the dispute with the SMTA member have failed.
- 1.2 ***As an SMTA member is entitled to reasonable notice of any complaint, a complainant is required to show that they have put their complaint, in writing, to the senior person who represents the member of the SMTA (such as the Managing Director, Partner, Owner, Sales director etc.), in an attempt to resolve the dispute. The complaint notification form should not be completed until that has been done. A copy of the letter sent by the complainant to the senior person who represents the SMTA member must accompany the completed complaint notification form.***
- 1.3 FOR THE AVOIDANCE OF DOUBT, IN RESPECT OF (AND ONLY IN RESPECT OF) THE CONCILIATION PROCEDURE, THE SMTA DO NOT REPRESENT EITHER THE MEMBER OF THE PUBLIC MAKING THE COMPLAINT, OR THE SMTA MEMBER COMPLAINED OF. THE ROLE OF THE SMTA IN THIS REGARD, IS TO PROVIDE A NO COST INDEPENDENT CONCILIATION SERVICE WHICH CAN BE USED BY ANY MEMBER OF THE PUBLIC WHO HAS DEALINGS WITH AN SMTA MEMBER.
2. If at any time either party raises court proceedings, which relate to the complaint, the SMTA will withdraw completely from consideration of the complaint.
3. Either party is free to request that the complaint be referred to arbitration at any time, if they are not satisfied with the recommendation(s) made by the Complaints Committee. The SMTA reserve the right to decide whether arbitration is appropriate. The SMTA decision on whether or not to refer a dispute to arbitration is final.
4. An SMTA member is obliged to co-operate with the complaints' procedure and must allow any complaint to proceed to arbitration if so requested. Failure on the part of an SMTA member to co-operate with the complaints' procedure may lead to disciplinary action being taken against that SMTA member.
5. The SMTA complaints committee will only consider written representations from both the complainant and from the member concerned. Therefore, both parties are required to submit, in writing, everything they wish the SMTA committee to consider about the complaint. Each party should, for their own records, retain copies of everything sent to the SMTA. **If the matter complained of relates to or involves accounts for work done or service reports etc., each party should ensure that they send copies of all invoices, receipts, quotations, reports,**

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estimates and anything else that they wish the committee to consider.

6. When the SMTA receive the complaints' form, a copy of it is sent along with copies of all enclosures to the SMTA member concerned. The SMTA member will send their response to us and we will let the complainant see that, so that they may comment further before the matter goes to committee. Any further comment made will be copied to the SMTA member concerned so that they may comment further if they so wish. Once the SMTA are satisfied that each party has had an opportunity to state their case, the matter is then referred to committee. Attempts will be made to try and resolve the dispute where it is considered expedient to do so.
7. All members of the SMTA are obliged to operate within the SMTA Code of Conduct. Breaches of the Code are dealt with by the SMTA Disciplinary Committee. A copy of the Code of Conduct is available on free of charge from The Scottish Motor Trade Association Ltd.
8. If a member is expelled from the SMTA and there is an outstanding award in favour of a complainant, the SMTA may, at its sole discretion, recompense the complainant.
9. The SMTA may, when they consider it appropriate to do so, pass a complaint direct to arbitration without reference to a complaints committee.
10. When a complaint has been considered by a complaints committee, the committee will, after considering all of the written representations put forward by each party, make a recommendation. The recommendation is not legally binding on either party.
11. The following matters are excluded from the complaints' service offered by the SMTA:
 - i) compensation
 - ii) expenses
 - iii) the cost of hire vehicles
 - iv) loss of business
 - v) loss of use
 - vi) personal injury

B. ARBITRATION SERVICE

1. Arbitration is carried out by an independent panel of qualified arbitrators. The decision of the arbitrator is final and binding in law on all parties.
2. To register for the arbitration service, you will be required to pay a scale fee. This is the only cost involved. All other expenses are borne by the SMTA.
3. The arbitrator will only consider written representations.
4. Once a matter has been passed to the arbitrator, it is outwith the hands of the SMTA.

C. WHAT WE ARE NOT AND DO NOT DO

1. We are not an advisory service with regard to legal rights, methods of complaint available to the public or the like. To obtain such advice on any matter you require to seek independent advice from a solicitor, citizen's advice bureau or other information/advice source.

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2. We only put forward to the Committees the written representations as presented by each party. We cannot and do not recommend or influence either party as to how they should present their case, or what matters they should put forward.
3. We do not provide an inspection service to examine vehicles that are the subject of a complaint. If either party wishes to have a report on the condition of a vehicle to form part of their representations, such a report will require to be obtained at the expense of the party wishing to rely on such a report.
4. We cannot advise or help when a complaint is made in respect of an establishment who are not members of the Scottish Motor Trade Association. A telephone call to the Membership Secretary of the Scottish Motor Trade Association will quickly advise you whether or not a particular establishment is or is not a member of the SMTA.
5. We cannot advise whether or not a complaint is justified.
6. We do not handle complaints regarding vehicles still under the manufacturer's warranty, or where the complaint relates to a manufacturers defect. Such complaints are passed to the member for information and a copy is sent to Motor Codes Ltd (a subsidiary of SMMT) for action as necessary. The address for Motor Codes Ltd is PO Box 44755, London, SW1X 7WU, and telephone number is 0800 692 0825 or E-mail: consumer@motorcodes.co.uk.
7. We do not negotiate with the garage on behalf of the complainant.
8. Our Complaints Committees are not able to deal with legal matters regarding contracts or specific breaches of the law. We would recommend that any complainant with that type of dispute obtain independent advice from a specialist.
9. The SMTA is not a substitute court. If you consider that your complaint should more properly be considered by a court, you are free to take whatever action you consider appropriate. As mentioned above, if a matter is referred to the Courts, the SMTA will not consider the matter further.

D. GENERAL NOTES FOR THE COMPLAINANT

1. Always put your complaint in writing to the senior official in the garage concerned, before referring the matter to the SMTA. The SMTA member is entitled to know, before any formal complaint is made, what it is that you are complaining about and to be given an opportunity to rectify the problem. If you do not know the name of the senior official, contact the garage in order to ascertain his or her name.
2. If you have a meeting with any member of the staff of the establishment concerned regarding your complaint, take detailed notes and always confirm in writing to the senior official any agreement or failure to agree. You may find it useful to take someone with you to act as a witness.

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3. Never allow another garage to start work on a repair, which may fall into a warranty matter. Always allow the garage with which you have the dispute the opportunity to effect a repair. If the member garage refuses confirm that in writing to the garage and at the same time advise them in writing, of what you intend to do next.
4. Be clear as to what your complaint is about. As mentioned above, the SMTA complaints committee will only consider written representations. **It is up to you therefore to set out your complaint in as much detail as you consider to be appropriate, and to submit whatever additional material you consider relevant to your complaint. Do not make excessive demands, you have an obligation to yourself to try and resolve the dispute yourself.**
5. Complain immediately. Delays in making a complaint may affect your case in an adverse manner in the future.
6. The older a vehicle gets, the more expert the maintenance required will be. Take it to an SMTA member, build up a relationship with them, it will be to your advantage. Remember that motor cars are mechanical machines, which sometime break down.
7. If in doubt The SMTA Code of Conduct is the guide by which all SMTA members operate their business. A copy is available from the SMTA free of charge.

E. GENERAL NOTES FOR THE SMTA MEMBER

1. When you receive the complaint form, read it over carefully. Also read over any documents sent with the complaint form such as invoices, reports, covering letters etc.
2. Make notes as you read the complaint and the documents. Answer all of the points made by the complainant. How you answer each point is entirely up to you. The following information (paragraphs 3, 4 and 5) may assist you in deciding how to respond to points made by the complainant.
3. You may wish to deny certain things stated by the complainant. To do this you should say what it is that you deny, give your reasons for the denial and then give an explanation of your version of events. You should take your time and make sure you have responded to all of the points or allegations made by the complainant.
4. You may wish to agree with certain points made by the complainant. If you do agree with anything, you should say exactly what it is you agree with, so that there is no confusion about what it is that you agree with.
5. You may find that you wish to make additional points to those raised by the complainant. You are free to add whatever you consider to be relevant. It is worth repeating here that the complaints committee will only consider written representations. If you want to make a point, you must do so in writing, or it will not be considered.
6. You should let the SMTA have as much information as possible about your version of events. You should state in as much detail as possible what you did for the customer and if necessary submit written statements from any staff who are involved in the matter. This could include sales staff, service staff and anyone who has been involved in the matter complained about.