

Managing risk in the automotive sector



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In the fourth of a series of articles Mark Henry, partner and head of automotive industry group at Birketts Solicitors (a top 100 UK law firm), looks at some of the key areas for managing risk in your automotive business.

- Holiday pay** - watch out, recent European case law held that where workers are obliged to work overtime this must be taken into account when calculating their holiday pay - this case is having a real impact on employers. Additionally, with another case due to be heard in Spring 2015 relating to commission and holiday pay, it is highly likely that average commission will also need to be taken into account when calculating workers' holiday pay in the near future.
- Managing customer claims** - on receipt of a letter intimating a claim respond promptly, if only to acknowledge it. Immediately isolate relevant documents, preserve any relevant equipment and get any relevant personnel to commit their story to writing. Identify whether assistance from an expert is required, think about whether that assistance is likely to lead to expert evidence in due course (in which case, identify an independent expert and instruct properly). It is important to try to understand what the claimant wants, but also to identify the desired outcome for you and the steps required to achieve it. Look for the obvious and least painful solution. If you need third party help to achieve a solution think about mediation or an expert evaluation by a jointly instructed expert. If you have negotiations with the claimant be alert to the need to use "without prejudice" correspondence, and if you have meetings with the claimant make detailed notes. Remember that if the meeting is to discuss settlement then it should be held on a "without prejudice" basis. If a solution can be agreed then ensure that this is a final solution, with no possibility of any further claims. Always remember that you should TAKE ADVICE if you are unsure and that principles cost money!
- Exits/disposals** - whilst under the latest franchise agreements (reflecting the greater freedoms for manufacturers under the current Block Exemption Regulations (BER)) manufacturers have an even more significant input on your exit/business change of ownership, still the fundamentals remain - pre-sale grooming/preparation being at the heart of this. Including, spotting and addressing the "traps" to watch out for (such as pre-emption rights on properties in favour of manufacturers), removing other impediments to sale (such as settling major disputes) and getting your tax planning/structure right to enable entrepreneurs/owners to get the 10% effective rate for disposals.

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Birketts

Superior premises



NEW LOOK: Bentley's new CI will be rolled out across its UK network

The booming car market means carmakers are looking for upgraded and new premises

John Kirwan

Car retailing is a notoriously cyclical trade, acutely sensitive to any curtailment in consumer spending. It goes into recession earlier than most other sectors and comes out faster.

At the moment UK dealers are in the ascendancy. The Motor Trader Top 200 for 2014 showed that overall profit for dealers grew by 29% to £722m on turnover up 12% to £52bn. These are good times, even, perhaps, the best of times.

This is reflected in the amount of property for sale in the marketplace. Bill Bexson, managing director of Automotive Property Consultancy, is one specialist who says there is less for sale now than a year ago.

"There are many fewer dealerships for sale in 2014 than was the case a year ago. The vacancy rate, broadly the proportion of the total stock that is vacant, has fallen from just over 4% in 2012 to under 2.5% this year.

"Vacancy rates are unlikely to rise any time soon. The number of requirements for new dealership sites has risen from 37 in 2012 to 246 currently. The shortage of existing sites is exacerbated by planning delays on the delivery of new sites," he said.

Alisdair James, partner with Rapleys also believes there is significantly less dealership property on the market now with demand generally exceeding supply.

"In the last 12 months and off the back of 32 months of consecutive growth in the new car sales, the market has changed from one of consolidation and disposal to acquisition, with a

number of groups seeking both new business opportunities, and relocations where existing facilities do not meet manufacturers' requirements.

"In addition demand for dealership sites for non-automotive use has also increased, with the discount food operators proving to be strong."

As new car sales surged and dealers prospered, carmakers have upped the stakes in terms of corporate standards and showroom upgrades. A case in point is Bentley which has revealed

its new corporate look for its showrooms at its showcase

CW1 house factory facility in Crewe. The new design is being rolled out to its 22 UK dealers.

Tom Rigg principal surveyor with GVA said more brands and groups are looking for superior premises in one way or another.

"More dealership stock is available as franchises relocate but we also have more requirements from dealer groups and manufacturers who are looking for larger or better located premises.

"Competition for land in prime trading positions, both within the dealer sector and from other uses is growing more intense as the economy improves. We are starting to see dealers build upwards as well as outwards in higher value areas, creating two- or even multi-storey showrooms to cope with expanded product lines and to adequately showcase used vehicles where display parking is limited."

Overall, with buoyant new car sales there is less property on the market now than a year ago. And good times also mean carmakers placing more demands on dealers to upgrade existing dealerships and move to larger premises in order to display ever larger vehicle ranges. **MT**

2.5%
Dealership vacancy rate in 2014