



Compliance Notice (Section 75)

John Duignan Motors,
Unit 7, New Townspark Industrial Estate,
Longford,
Co Longford

Competition and Consumer
Protection Commission
PO Box 12585
Dublin 1

1. I, William Fahy, an Authorised Officer of the Competition and Consumer Protection Commission, duly authorised under Section 35 of the Competition and Consumer Protection Act 2014, hereby give you notice, pursuant to Section 75(2) of the Consumer Protection Act 2007, that I am of the opinion that you engaged in a misleading commercial practice under Part 3 of the Consumer Protection Act 2007, such a misleading commercial practice being a prohibited act or practice as defined by Section 67(a) of the Consumer Protection Act 2007.
2. The contravention contained herein relates to your failure to provide material information to an average consumer thereby causing that consumer to make a transactional decision which that consumer would not have otherwise made.

3. Statement of alleged contravention

3.1. That you, John Duignan, a trader, trading as "John Duignan Motors", New Townspark Industrial Estate, Longford Town, Co. Longford, from 20 July 2015 until and including 10 August 2015 for the purposes of Section 46(1) of the Consumer Protection Act 2007, engaged in a misleading commercial practice by omitting or concealing material information that an average consumer needed, in the context, to make an informed transactional decision ("material information") and such practice caused an average consumer to make a transactional decision which that consumer would not otherwise have made.

4. My opinion

- 4.1. S.42(1) of the Consumer Protection Act 2007 ('the CPA') provides that a trader shall not engage in a misleading commercial practice.
- 4.2. S.46(1) of the CPA provides that a commercial practice is misleading if the trader omits or conceals material information that the average consumer would need, in the context, to make an informed transactional decision ("material information") and such practice

would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make.

- 4.3. S.46(2)(a)(ii) of the CPA further provides that for the purposes of S.46(1) that a commercial practice is misleading if the trader provides material information in a manner that is unclear, unintelligible, ambiguous or untimely.
5. I am of the opinion that between the 20 July 2015 until and including 10 August 2015 you failed to provide such material information to a consumer, in regard to previous mechanical damage repairs, including the timing belt repairs, of motor vehicle Ford Focus estate registered number 08 LS 6557. You omitted to provide material information the average consumer would need in the context, disclosing the extent of the damage to the vehicle and omitted to provide material information concerning the extensive repairs necessarily carried out to repair the vehicle damage caused by the timing belt breakage.
6. I am of the opinion that from the 20 July 2015 until and including 10 August 2015 you provided information regarding motor vehicle 08 LS 6557 in such a manner, including the overall presentation of the information, that it deceived, the average consumer, even if the information was factually correct, such a practice being a prohibited commercial practice for the purposes of the Consumer Protection Act 2007.
7. I am of the opinion that you, trading as John Duignan Motors, provided material information referred to in section 46 (1) of the Consumer Protection Act 2007 in a manner that was unclear, unintelligible, ambiguous or untimely and that such practice would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make.
8. The reasons for my opinion in this regard are based on the following:
 - 8.1. That you, John Duignan, trading as "John Duignan Motors", trading at Unit 7, New Townspark Industrial Estate, Longford Town, Co Longford, can be described as a 'trader' for the purposes of the Consumer Protection Act 2007.
 - 8.2. That you, John Duignan, trading as "John Duignan Motors", trading at Unit 7, New Townspark Industrial Estate, Longford Town, Co Longford, on or about 20 July 2015, advertised a motor vehicle, 2008 Ford Focus estate 1.8 TDCI estate (subsequently registered with registration number 08 LS 6557), for sale on the donedeal.ie website. The advert described the said motor vehicle as having, inter alia, new timing belts and full service just done. The advert omitted to provide information concerning the extent of the damage to the said motor vehicle caused by a timing belt breaking or that the timing belts repair was necessary due to a breakage. I am of the opinion that the description of the timing belt repairs, as described in the advert, was unclear and ambiguous and would have been likely to cause and average consumer to make a transactional decision that the average consumer would not otherwise make. The consumer, for the purposes of this compliance notice, saw this advert.

- 8.3. That you, John Duignan, trading as "John Duignan Motors", trading at Unit 7, New Townspark Industrial Estate, Longford Town, Co Longford, on or about the 28 July 2015 issued a "John Duignan Motors" Receipt No 87, for a non-refundable deposit of €500.00, to the consumer, which mentioned "previous mechanical repairs including timing belts" to the said motor vehicle. The receipt did not describe the damage to the said motor vehicle caused by a timing belt breaking or indicate that the timing belts repair was necessary due to breakage. The receipt omitted to describe the extent of the damage caused by the timing belt breaking. I am of the opinion that the material information contained in the receipt was unclear and ambiguous regarding the repairs to the timing belts of the vehicle and such practice caused the consumer to make a transactional decision that the consumer would not otherwise have made. .
- 8.4. That you, John Duignan, trading as "John Duignan Motors", trading at Unit 7, New Townspark Industrial Estate, Longford Town, Co Longford, on or about the 10 August 2015 issued a "John Duignan Motors" Invoice No 0189 to a consumer, on which it mentioned; "previous mechanical damage repairs including timing belts" to the said motor vehicle. The invoice omitted to provide material information describing the damage to the said motor vehicle caused by a timing belt breaking or that the timing belts repair was necessary due to breakage. I am of the opinion that the description in the invoice was unclear, ambiguous and untimely regarding the extent of the repairs to the vehicle caused by the timing belts breaking.
- 8.5. That you, John Duignan, trading as "John Duignan Motors", trading at Unit 7, New Townspark Industrial Estate, Longford Town, Co Longford, on or about the 10 August 2015 issued a "John Duignan Motors" Invoice No 0189 to the consumer, which makes a reference to "Cat C". Category C is a term used by the Insurance Industry to describe vehicle damage that is repairable but total repair costs would exceed the pre-accident value of the vehicle making the repair of the vehicle uneconomic to an Insurance Underwriter. The consumer was not informed that the said motor vehicle had previously been the subject of an insurance claim and had been designated a Category C write-off. I am of the opinion that the description in the invoice was unclear, ambiguous, unintelligible and untimely regarding the extent of the repairs to the vehicle caused by the timing belts breaking.
- 8.6. I am of the opinion that at all times while the consumer was in the course of making a transactional decision, you were fully aware of the extent of the damage to the said vehicle. I base this opinion on the fact that in reply to a letter dated 25 February 2016 from the consumer, regarding motor vehicle 08 LS 6557, that you, John Duignan, trading as "John Duignan Motors", trading at Unit 7, New Townspark Industrial Estate, Longford Town, Co Longford, on or about 11 April 2016 by letter to the consumer, indicated that the timing belt of the motor vehicle "had broken". At no time prior to receipt of this letter of reply was the consumer informed by you that the timing belt of the said motor vehicle had broken. I am of the opinion that the description of the

damage to the vehicle, as described in the letter, was untimely and that by delaying in providing the consumer with such information you engaged in a practice caused the consumer to make a transactional decision that the consumer would not otherwise have made.

8.7. I believe that you, John Duignan, trading as "John Duignan Motors", trading at Unit 7, New Townspark Industrial Estate, Longford Town, Co Longford, on or about the 20 July 2015 and on or about the 10 August 2015 provided material information in relation to mechanical repairs to motor vehicle, Ford Focus estate registered number 08 LS 6557, to the consumer, in a manner that was unclear, unintelligible, ambiguous or untimely and caused the consumer to make a transactional decision that the consumer would not otherwise have made.

9. Compliance direction and requirements

9.1. You, John Duignan, a trader, trading as "John Duignan Motors", trading at Unit 7, New Townspark Industrial Estate, Longford Town, Co Longford, are hereby directed to remedy the matter occasioning this notice by providing all material information concerning the prior history of motor vehicle Ford Focus Estate registered number 08 LS 6557 to the consumer who made a transactional decision to purchase the vehicle from you on the 28 July 201 and who took possession of the vehicle from you on the 10 August 2015

9.2. Cease engaging in the prohibited commercial practice of omitting or concealing material information that the average consumer would need, in the context, to make an informed transactional decision.

9.3. You must comply with this compliance direction by 30 June 2017.

10. Appeal

10.1. You may appeal this Compliance Notice to the District Court in the district court district in which the notice is served within 14 days after its service.

10.2. The form and manner of such an appeal is that to be found in the District Court Rules, Schedule D, Form No: 100.1. This is available from the registrar at your local District Court office.

10.3. In the event that you decide to appeal the Compliance Notice, you must, at the same time, notify the Competition and Consumer Protection Commission at the above address. You must also notify the Competition and Consumer Protection Commission of the grounds for the appeal.

10.4. If an appeal is not made in accordance with Section 75 of the Consumer Protection Act 2007 and within 14 days after service of the Compliance Notice, this notice will be treated as not disputed, you will be deemed to have accepted the notice and to have agreed to comply with the compliance direction and requirements and any failure or refusal to so comply is an offence and, on summary conviction, you will be liable to the fine and penalties set out in Part 5, Chapter 4 of the Consumer Protection Act, 2007.

Signature: 

William Fahy

Authorised Officer

Competition and Consumer Protection Commission

Date: 7th June 2017