



Coimisiún um  
Iomalocht agus  
Cosaint Tomhaltóirí

Competition and  
Consumer Protection  
Commission

Consumer Protection Act 2007

## Compliance Notice (Section 75)

Michael Hughes

Competition and Consumer Protection Commission

Bloom House

Railway Street

Dublin 20

Dublin 1

I, Colette McGuigan, 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 commercial practice being a prohibited act or practice as defined by Section 67(a) of the Consumer Protection Act 2007.

The contravention contained herein relates to the provision of misleading information by Michael Hughes relating to the usage or prior history of a motor vehicle thereby causing an average consumer to be deceived or misled and to make a transactional decision which that consumer would not have otherwise made.

### Statement of alleged contraventions

That you, Michael Hughes, a trader for the purposes of the Consumer Protection Act 2007, on a date between 11 August 2015 and 15 August 2015, engaged in a misleading commercial practice by causing an average consumer to be deceived or misled in relation to the usage or prior history of a motor vehicle offered by you for sale and to make a transactional decision that the average consumer would not otherwise make.

Section 42(1) of the Consumer Protection Act 2007 provides that a trader shall not engage in a misleading commercial practice. Section 43(2) of the Consumer Protection Act 2007 provides that a commercial practice is misleading if it would be likely to cause the average consumer to be deceived or misled in relation to the main characteristics of a product, including its usage or prior history (as identified by Section 43(3)(b)(vii)), and to make a transactional decision that the average consumer would not otherwise make. Section 47 of the Consumer Protection Act 2007 provides that it is an offence to engage in a misleading commercial practice as described by Section 43(2) of the Consumer Protection Act 2007.

### My opinion

I am of the opinion that Michael Hughes misled or deceived a consumer in relation to the prior usage or history of a motor vehicle by providing misleading information pertaining to previous damage to

the car, such a practice being a misleading commercial practice for the purposes of the Consumer Protection Act 2007.

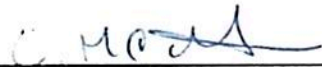
The reasons for my opinion in this regard are based on the following:

1. You, Michael Hughes, trading at [REDACTED], Dublin 20, can be described as a trader for the purposes of the Consumer Protection Act 2007 on the basis that you advertised for sale at least ten (10) motor vehicles in 2015.
2. You, Michael Hughes, obtained a motor vehicle Fiat Punto, registered number 05D44424 (the *Motor Vehicle*) in a crashed state from a salvage dealer in May 2011. The Motor Vehicle had been involved in a crash on 7 May 2011 and was a Category C write off.
3. Between 22 July 2015 and 16 August 2015, you, Michael Hughes, offered for sale the Motor Vehicle on the websites [www.donedeal.com](http://www.donedeal.com) and [www.adverts.ie](http://www.adverts.ie).
4. On a date between 11 August 2015 and 15 August 2015, a consumer, for the purposes of the Consumer Protection Act 2007, contacted you, Michael Hughes, to enquire about the Motor Vehicle and visited you at [REDACTED] Dublin 20 to test drive the Motor Vehicle. On two occasions between 11 August 2015 and 15 August 2015 the consumer asked you whether the Motor Vehicle had ever been crashed in a road traffic accident and you, Michael Hughes, responded in the negative.
5. On or about 15 August 2015, the consumer made a transactional decision to purchase the Motor Vehicle from you and took possession of the Motor Vehicle from you.
6. I believe, between 11 August and 15 August 2015, you were aware that the Motor Vehicle had crash damage and was a Category C write off. My opinion is based on the evidence that you obtained the Motor Vehicle in a crashed state, as a Category C write off.
7. In my opinion, the consumer would not have purchased the Motor Vehicle if you had informed the consumer that the Motor Vehicle had been previously crashed or was a Category C write off.
8. I have established, and you have confirmed, that the consumer purchased the Motor Vehicle from you for €1,450.00.
9. Therefore, I believe that you, Michael Hughes, trading at [REDACTED] Dublin 20, misled or deceived the consumer in relation to the usage or prior history of the Motor Vehicle, namely the previous crash damage to the Motor Vehicle, and caused the consumer to make a transactional decision that the consumer would not otherwise have made.

### **Compliance direction and requirements**

1. Michael Hughes, a trader, is hereby directed to comply with the prohibition on misleading commercial practices provided by section 42(1) of the 2007 Act.
2. Michael Hughes, a trader, is hereby directed to cease engaging in misleading commercial practice contrary to Section 47 and as described by Section 43(2) and Section 43(3)(b)(vii) of the Consumer Protection Act 2007.
3. Michael Hughes, a trader, is hereby directed to remedy the matter occasioning this notice by compensating the consumer €1,450.00.
4. Michael Hughes, a trader, is hereby required to provide true and accurate information in all communications, including advertisements, with or to consumers with respect to the usage and prior history of its products.
5. Michael Hughes, a trader, is hereby required to carry out appropriate due diligence on the history and usage of every motor vehicle offered for sale by Michael Hughes.
6. Michael Hughes, a trader, is hereby required to maintain a record of the due diligence carried out on the history and usage referred to in paragraph 5) above for a period of three (3) years from the date of advertisement or the date of sale, whichever is later, of every used vehicle advertised or offered for sale by Michael Hughes.
  - a) You must comply with this compliance direction and requirements by **04 September 2018**.
  - b) 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.
  - c) The form and manner of such an appeal is that to be found in the District Court Rules, Form 40D.01 Schedule C. This is available from the registrar at your local District Court office.
  - d) 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.
  - e) 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.

- f) A copy of Section 75 Consumer Protection Act is attached to this Compliance Notice. It is intended for information purposes only and does not constitute part of the Compliance Notice.

Signature:  \_\_\_\_\_

Colette McGuigan

Authorised Officer

Competition and Consumer Protection Commission

Date: 07 August 2018

Consumer Protection Act 2007

Chapter 3

Compliance Notices

75.— (1) In this section “ prohibited act or practice” does not include a contravention of a regulation under section 57 (respecting price display regulations).

(2) An authorised officer who is of the opinion that a person is committing or engaging in, or has committed or engaged in, a prohibited act or practice or is contravening or has contravened an enactment specified in Schedule 5 may serve, personally or by post, a written notice on that person (a “compliance notice”).

(3) A compliance notice shall be signed and dated by the authorised officer and shall—

(a) contain a statement of the alleged contravention (identifying the relevant enactment), the opinion referred to in subsection (2) and the reasons for that opinion,

(b) direct the person to remedy the contravention or the matters occasioning that notice, including any other requirement that the authorised officer considers appropriate in order to remedy the contravention or matter (the “compliance direction and requirements”),

(c) specify the date by which the person is to comply with the compliance direction and requirements,

(d) contain a statement that the person may appeal the notice to the District Court within 14 days after service of the notice, including information specifying—

(i) the form and manner of such an appeal, and

(ii) the service address of the Agency for purposes of notifying the Agency under subsection (6),

and

(e) contain a statement that, if an appeal is not made in accordance with this section and within the time specified in paragraph (d), then—

(i) the notice will be treated as not disputed,

(ii) the person will be deemed to have accepted the notice and have agreed to comply with the compliance direction and requirements, and

(iii) any failure or refusal to so comply is an offence and, on summary conviction, the person will be liable to the fine and penalties set out in Chapter 4 .

(4) The date specified under subsection (3)(c) shall not be earlier than the end of the period within which an appeal may be made under subsection (5).

(5) If the person on whom the compliance notice is served wishes to dispute the notice, the person may, no later than 14 days after the notice is served and in accordance with this section and in the form and manner specified in the notice, appeal the notice to a judge of the District Court in the district court district in which the notice was served.

(6) A person who appeals under subsection (5) shall at the same time notify the Agency of the appeal and the grounds for the appeal and the Agency shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(7) In determining an appeal under this section, the judge may confirm, vary or cancel the compliance notice, if satisfied that it is reasonable to do so.

(8) If on appeal the compliance notice is not cancelled, the notice takes effect on the later of the following:

(a) the day after the day on which the notice is confirmed or varied on appeal;

(b) if the appeal is withdrawn by the appellant, the day after the day it is withdrawn;

(c) the day specified in the notice.

(9) If there is no appeal under subsection (5), the compliance notice takes effect on the later of the following:

(a) 14 days after the notice is served on the person;

(b) the day specified in the notice.

(10) An authorised officer may—

(a) withdraw a compliance notice at any time, or

(b) if no appeal is made or pending under subsection (5), extend the date specified in the notice under subsection (3)(c).

(11) A person commits an offence who, without reasonable excuse, fails to comply with a compliance direction or requirement specified in a compliance notice and, on summary conviction, is liable to the fines and penalties provided in Chapter 4.

(12) Withdrawal of a compliance notice under subsection (10) does not prevent the service of another compliance notice, whether in respect of the same matter or a different matter.

(13) If a compliance notice takes effect in accordance with this section, the Agency shall publish the compliance notice, or cause it to be published, in any form or manner the Agency considers appropriate.

(14) Nothing in this section prevents the commencement of proceedings for an offence.