



Coimisiún um
Iomláocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

Consumer Protection Act 2007

Compliance Notice (Section 75)

To:
James Darcy

Swords
County Dublin

Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

I, Colette McGuigan, an Authorised Officer of the Competition and Consumer Protection Commission, duly appointed 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 prohibited act or practice as further described herein, and I hereby direct you to remedy that contravention in the manner set out below.

A. Statement of alleged contraventions

That you, James Darcy, a trader for the purposes of the Consumer Protection Act 2007, on 7 January 2016, 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.

B. My opinion

I am of the opinion:

1. that on 7 January 2016, you, James Darcy, trading as North County Used Cars and a director of NCU Cars Limited, a company having a registered address of 2 Baker's Close, Lusk Village, Co. Dublin, were a trader within the meaning of the Consumer Protection Act 2007;
2. that you, James Darcy, obtained a motor vehicle, Citroen C3, registration number 131KY475 (the *Motor Vehicle*) in the course of your trade which had been involved in a crash on 17 June

2015 and was assessed following that crash on behalf of the owner's insurers as a Category D write off;

3. that on 7 January 2016 at the premises of North County Used Cars located in the townland of Turnapin Great, Co. Dublin, you, James Darcy, sold the Motor Vehicle to an individual who was a consumer within the meaning of the Consumer Protection Act 2007 (the *Consumer*);
4. that in the course of the sale of the Motor Vehicle to the Consumer on 7 January 2016 (the *Transaction*), you, James Darcy, deceived or misled the Consumer in relation to the prior history of the Motor Vehicle;
5. that the Consumer would not have purchased the Motor Vehicle if you, James Darcy, had informed the Consumer that the Motor Vehicle had a previous crash history and was a category D insurance write-off;
6. that you, James Darcy, a trader for the purposes of the Consumer Protection Act 2007, on 7 January 2016, engaged in a misleading commercial practice by causing the Consumer to be deceived or misled in relation to the usage or prior history of the Motor Vehicle offered by you for sale and to make a transactional decision that the average consumer would not otherwise make, thereby engaging in a prohibited act or practice within the meaning of section 74(1)(a) of the Consumer Protection Act 2007; and
7. that as a result of the prohibited act or practice referred to at paragraph 6 above, the Consumer incurred the following costs totalling €3,051.10:
 - a. Assessment by a motor engineer which was required by the Consumer's insurance company: €307.50;
 - b. Repairs, National Car Testing, and post-repair motor engineer assessment: €2,450.00; and
 - c. Car rental while the Motor Vehicle was repaired: €293.60.

C. Reasons for my opinion

I have formed my opinion on the basis of information received during my investigation in relation to the Transaction, in particular, but not limited to, the following:

1. information provided to the CCPC by the Consumer and a third party who was witness to the Transaction. The Consumer stated that he was informed by you, in the course of the Transaction, that the Motor Vehicle had not previously been crashed. The Consumer further stated that he would not have purchased the Motor Vehicle if he had known that it had previously been crashed;
2. an invoice headed "North County Used Cars" relating to the sale of the Motor Vehicle on 7 January 2016;

3. an inspection of the Motor Vehicle, carried out on 6 September 2016, by an independent motor engineer, who found evidence of previous poor quality repairs that had been completed to the Motor Vehicle and concluded that the Motor Vehicle was not roadworthy and had a number of dangerous defects;
4. an inspection of the Motor Vehicle, carried out on 1 July 2015, by an engineer who assessed the Motor Vehicle as a category D write off; and
5. an interview which I conducted with you, James Darcy, on 6 February 2018, in the course of which you admitted your involvement in the Transaction and your knowledge that the Motor Vehicle had been crashed.

D. Compliance direction and requirements

1. You, James Darcy are hereby directed to comply with the prohibition on misleading commercial practices provided by section 42(1) of the Consumer Protection Act 2007.
2. You, James Darcy, are 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 every motor vehicles advertised or offered for sale by you.
3. You, James Darcy are hereby directed to remedy the matter occasioning this notice by compensating the Consumer in the amount of €3,051.10, such sum to be lodged by you to the account of the CCPC (IBAN _____ using the reference V-2016-133. The amount may be made in full or in six monthly payments of €508.51 made on the 15th of each month, starting on 15 March 2019.
 - a) You must comply with this compliance direction and requirements by **16 August 2019**.
 - 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, a copy of which is attached to this Compliance Notice. If you wish to appeal, this form should be completed and lodged with the District Court Clerk 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.

- f) If you fail to comply with this Compliance Notice, you may be liable to the fines and penalties set out in Part 5, Chapter 4 of the Consumer Protection Act, 2007, namely:
- on a first summary conviction for an offence under the Consumer Protection Act 2007 to a fine not exceeding €4,000 and/or imprisonment for a term not exceeding 6 months or both; and
 - on any subsequent summary conviction for an offence under the Consumer Protection Act 2007 to a fine not exceeding €5,000 and / or imprisonment for up to 12 months.
- g) 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: 15 February 2019

Form: 40D.01 Notice of appeal to District Court

S.I. No. 17 of 2014

40D.01

Notice of appeal to District Court

*Schedule C
O.40D, r. 3*

District Court Area of
District No.
Record number:

In the matter of sectionof the*[insert details of the relevant enactment relied on]*

Between

..... Appellant

..... Respondent

TAKE NOTICE that the above-named appellant, of will appeal at the sitting of the District Court to be held at..... on the day of 20.... at a.m./p.m. from the *notice *decision * direction of the respondent, of *served *given on the day of 20.... at *in the above Court *(area and) district aforesaid under section of the (*title of enactment*)

whereby (*give details of the notice, decision or direction appealed from*)

And the appellant will apply for [*Specify any further or consequential relief or orders sought in accordance with the enactment e.g. An order granting the applicant a licence to , etc*]

The grounds for the appeal are as follows: [*set out in summary the grounds of the appeal*].

Particular legal provisions relied on in the appeal [*identify any particular legal provisions relied on in the appeal*].

LIST OF DOCUMENTS ON WHICH THE APPELLANT WILL RELY AND COPIES OF WHICH ARE ATTACHED

	Document	Date	Description
1	<i>e.g. prohibition notice</i>	<i>1 September 2013</i>	<i>Prohibition notice issued by the respondent to the appellant</i>

2	<i>e.g. letter</i>	<i>1 September 2013</i>	<i>Letter by the respondent sending the prohibition notice to the appellant</i>
Etc			

Signed:

*(Solicitor for the) appellant

To: District Court Clerk at

And: *(Solicitor for the) respondent of

This notice of appeal has been filed with the District Court Clerk at and issued on the day of 20....

**delete where inapplicable*

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.