

**Compliance Notice (Section 75)**

**To:**  
Mybrook Motors Limited  
13 Kilgarron Park  
Enniskerry  
Co. Wicklow

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, Mybrook Motors Limited, notice**, pursuant to Section 75(2) of the Consumer Protection Act 2007, that I am of the opinion that Mybrook Motors Limited engaged in a prohibited act or practice as further described herein and **hereby direct Mybrook Motors Limited** to remedy that contravention in the manner set out below.

**A. Statement of alleged contraventions**

That Mybrook Motors Limited, a trader within the meaning of the Consumer Protection Act 2007, on a date between 29 March 2016 and 30 March 2016, engaged in a misleading commercial practice by providing false information in relation to the usage or prior history of a motor vehicle offered by Mybrook Motors Limited for sale and that information would be likely to cause an average consumer 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(1) of the Consumer Protection Act 2007 provides that a commercial practice is misleading if it includes the provision of false information 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(1) of the Consumer Protection Act 2007.

**B. My opinion**

I am of the opinion:

1. That Mybrook Motors Limited, trading as The Car Crew, Corrig Court, Corrig Road, Sandyford Industrial Estate, Dublin 18 was a trader within the meaning of the Consumer Protection Act 2007 on 29-30 March 2016;
2. That Mybrook Motors Limited obtained a motor vehicle BMW 320, registered number 05C40966 (the *Motor Vehicle*) with a mileage of 135,000 miles on 10 February 2016. The Motor Vehicle was then advertised for sale on-line by Mybrook Motors Limited as having a mileage of 106,000 miles/170,590 kms. On 29 March 2016, this advertisement was viewed

by an individual who was a consumer within the meaning of the Consumer Protection Act 2007 (the *Consumer*);

3. That on 30 March 2016, at Corrig Court, Corrig Road, Sandyford Industrial Estate, Dublin 18, Sam Campbell, a salesperson acting on behalf of Mybrook Motors Limited, sold the Motor Vehicle (the *Transaction*) displaying the advertised mileage to the Consumer;
4. That the Consumer would not have purchased the Motor Vehicle if Mybrook Motors Limited, had informed the Consumer of the true mileage of the Motor Vehicle;
5. Therefore, you, Mybrook Motors Limited, provided false information to the Consumer in relation to the usage or prior history of the Motor Vehicle, namely the Motor Vehicle's mileage, and caused the Consumer to make a transactional decision that the Consumer would not otherwise have made, thereby engaging in a misleading commercial practice which is a prohibited act or practice within the meaning of section 67 of the Consumer Protection Act 2007.

### **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:

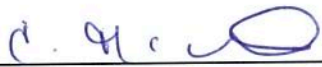
1. Information provided to the Competition and Consumer Protection Commission (CCPC) by the Consumer and a third party who was involved in the Transaction. The Consumer stated that she was attracted to the Motor Vehicle by the low mileage advertised. The Consumer further stated that she would not have purchased the Motor Vehicle if she had known that the mileage of the Motor Vehicle was higher than advertised;
2. A copy of the advertisement displayed on [www.carzone.ie](http://www.carzone.ie) which described the Motor Vehicle as having a mileage of 106,000 miles / 170,590 km, and which was viewed by the Consumer;
3. An invoice headed "The Car Crew" relating to the Transaction;
4. Records obtained from the Companies Registration Office relating to the registration of "The Car Crew" as a trading name by Mybrook Motors Limited;
5. Information, provided to the CCPC by Gilmore's Kingscourt Limited to the effect that the Motor Vehicle had a mileage reading of 135,000 miles on 10 February 2016 when it was sold by that company to Mybrook Motors Limited trading as The Car Crew in a trade sale;
6. Records obtained from the Office of the Revenue Commissioners which indicate that the Motor Vehicle had a mileage reading of 126,293 miles on 12 October 2015.
7. An interview which I conducted with Sam Campbell, on 23 October 2017, in the course of which Sam Campbell admitted his involvement in the Transaction and acknowledged that the Motor Vehicle had a mileage discrepancy.

#### **D. Compliance direction and requirements**

1. Mybrook Motors Limited, is hereby directed to comply with the prohibition on engaging in a misleading commercial practice provided by section 42(1) of the Consumer Protection Act 2007.
  2. Mybrook Motors Limited, is hereby directed to cease engaging in misleading commercial practices contrary to section 47 and as described by section 43 of the Consumer Protection Act 2007.
  3. Mybrook Motors Limited, is hereby required to provide true and accurate information in all Mybrook Motors Limited communications, including advertisements, with or to consumers with respect to the usage and prior history of every motor vehicle advertised or offered for sale by Mybrook Motors Limited.
  4. Mybrook Motors Limited, is hereby required to ensure that appropriate due diligence is carried out on the history and usage of every motor vehicle offered for sale by Mybrook Motors Limited.
  5. Mybrook Motors Limited, is hereby required to ensure that a record of the due diligence carried out on the history and usage referred to in paragraph 4) above is maintained 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 Mybrook Motors Limited.
- a) Mybrook Motors Limited must comply with this compliance direction and requirements by **7 May 2019**.
  - b) Mybrook Motors Limited 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 Mybrook Motors Limited wishes to appeal, this form should be completed and lodged with the District Court Clerk at Mybrook Motors Limited's local District Court office.
  - d) In the event that Mybrook Motors Limited decides to appeal the Compliance Notice, Mybrook Motors Limited must, at the same time, notify the Competition and Consumer Protection Commission at the above address. Mybrook Motors Limited 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, Mybrook Motors Limited 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 Mybrook Motors Limited fails to comply with this Compliance Notice, Mybrook Motors Limited 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: 09 April 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 section .....of 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.