

AGREEMENT AND UNDERTAKING

The Competition and Consumer Protection Commission (“the Commission”)

-And-

Robert Mc Cabe and Robert McCabe Motors Limited

This Agreement and Undertaking is made by and between the Commission and Robert McCabe and Robert McCabe Motors Limited on the date set forth below. The Undertaking of Robert McCabe and Robert McCabe Motors Limited contained herein is accepted by the Commission pursuant to Section 73 of the Consumer Protection Act 2007 (the ‘2007 Act’).

WHEREAS:

1. Robert McCabe and Robert McCabe Motor Limited makes available in the course of its business used cars for sale to members of the public.
 2. It is a function of the Commission pursuant to section 10 of the 2014 Act, *inter alia* -
 - (i) to promote and protect the interests and welfare of consumers;
 - (ii) to carry out an investigation into any suspected breach of the relevant statutory provisions;
 - (iii) to enforce the relevant statutory provisions;
 - (iv) to encourage compliance with the relevant statutory provisions.
- B. On or about 6 January 2016, the Commission commenced an investigation into alleged misleading commercial practices in respect of

the sale and offer for sale of a used car by a person describing himself as 'Ronan Crawley' and representing himself as a private seller. The investigation ascertained that the person was Robert McCabe the director of Robert McCabe Motors Limited who was selling vehicles in the course of business, and is a trader within the meaning of the 2007 Act.

- C. The Commission's investigation found that Robert McCabe/Robert McCabe Motors Limited made a representation or created the impression that it was not acting for purposes related to the trader's trade when the trader was so acting, a prohibited practice as described by section 55(x)(i) and contrary to section 56 of the 2007 Act.
- D. The Commission also investigated whether the sale and offer for sale by Robert McCabe/Robert McCabe Motors Limited of a used car displaying an odometer showing an incorrect measurement of mileage constituted a misleading commercial practise as defined and prohibited under the Act. The Commission's investigation found that the said practices on the part of Robert McCabe/Robert McCabe Motors Limited has committed or engaged in misleading commercial practices prohibited under Section 42, described by section 43(3)(b)(vii), and contrary to section 47 of the 2007 Act.
- E. As a result of this investigation's findings, the Parties have reached an agreement, as more particularly described below, wherein the Commission accepts an undertaking of certain obligations by Robert McCabe/Robert McCabe Motors Limited in respect of used cars intended for sale in the course of its business.

IT IS HEREBY AGREED AS FOLLOWS:

1. Robert McCabe and Robert McCabe Motors Limited undertakes that: -

- a) it shall comply with the prohibition on misleading commercial practices as provided by section 42 of the 2007 Act;
 - b) it shall refrain from engaging in prohibited commercial practices in the course of its business in particular as described by section 55(1)(x)(i) and contrary to section 56 of the 2007 Act.
 - c) it shall refrain from engaging in misleading commercial practices in the course of its business, in particular, as described by section 43(3)b(vii) of the 2007 Act and contrary to section 47 of the 2007 Act.
 - d) and, within four weeks of receiving an application from any consumer prejudiced by the misleading commercial practices in which it has engaged, will undertake to compensate the said consumer, including the reimbursement of money or return of any other property or thing received from the said consumer in connection with the sale by it of any used car.
2. In consideration of the undertaking furnished by Robert McCabe/Robert McCabe Motors Limited as set out herein, the Commission agrees that it will not take further action with respect to criminal proceedings or to initiate criminal proceedings against Robert McCabe and/or Robert McCabe Motors Limited. Nothing in this agreement shall be construed so as to impair the Commission's right to institute civil or criminal proceedings for any matter not specifically described herein.
 3. The undertaking provided herein shall be binding on the directors, officers, employees, servants, agents, and successors and assigns of Robert McCabe Motors Limited.
 4. The terms "and" and "or" as used herein have both conjunctive and disjunctive meanings.
 5. The Agreement will take effect on 6 February 2017.

Dated this 6 day of February 2017

AGREED TO AND ACCEPTED BY:

Signed:

Eksteen Maritz

Director for and on behalf of the Competition and Consumer
Protection Commission

Signed:

Robert McCabe

Signed:

Robert McCabe

Director for and on behalf of Robert McCabe Motors Limited