

AGREEMENT AND UNDERTAKING**The Competition and Consumer Protection Commission****-And-****Derek Delaney**

This Agreement and Undertaking (the “Undertaking”) is made by and between the Competition and Consumer Protection Commission (the “CCPC”) and Derek Delaney on the date set forth below. The Undertaking of Derek Delaney contained herein is accepted by the CCPC pursuant to section 73 of the Consumer Protection Act 2007 (the “2007 Act”). The CCPC and Derek Delaney are referred to collectively herein as the “Parties”.

WHEREAS:

- A. The CCPC is a statutory body and its functions pursuant to section 10 of the Competition and Consumer Protection Act 2014 (the “2014 Act”) include *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 2007 Act;
 - (iii) to enforce the 2007 Act;
 - (iv) to encourage compliance with the 2007 Act.
- B. Derek Delaney of 21A Boyne Meadows, Edenderry, Co Offaly, makes available in the course of business used cars for sale to consumers. At all material times Derek Delaney was the registered owner of the registered business Derek Delaney Motors of 232 North Circular Road, Dublin 7. Derek Delaney is a trader for the purposes of the 2007 Act.

- C. On 7 November 2016, Kevin Brennan, a salesman employed by Derek Delaney, sold a used car to a consumer on behalf of Derek Delaney Motors which displayed an incorrect odometer reading at the trading premises of Derek Delaney Motors at 232 North Circular Road, Dublin 7.
- D. On or about 27 February 2017, the CCPC commenced an investigation into alleged misleading commercial practices in respect of the sale of the car sold on 7 November 2016. Following the investigation, the CCPC has reason to believe that Derek Delaney has committed or engaged in a misleading commercial practice prohibited under section 42 (and as described by sections 43(2) and 43(3)(b)(vii)), and contrary to section 47 of the 2007 Act.
- E. As a result of the CCPC's investigation, Derek Delaney has agreed to enter into this Undertaking and to give the undertakings set out in paragraph 1 below.

IT IS HEREBY AGREED AS FOLLOWS:

- 1. Derek Delaney undertakes that: -
 - a) he shall comply with the prohibition on misleading commercial practices as provided by section 42 of the 2007 Act;
 - b) he shall refrain from committing or engaging in misleading commercial practices in the course of his business, in particular, as described by sections 43(2) and 43(3)(b)(vii) of the 2007 Act and contrary to section 47 of the 2007 Act;
 - c) he shall carry out appropriate due diligence on the history and usage of every vehicle offered for sale in the course of his trade;

d) he shall provide consumers with a correct and accurate mileage reading of every vehicle offered for sale by Derek Delaney in the course of his trade;

e) he shall maintain a record of the due diligence carried out on the history and usage referred to at c) 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 Derek Delaney; and

f) within four weeks of receiving an application from the consumer Derek Delaney will pay the sum of €2,000 (two thousand euro) as compensation to the consumer prejudiced by the misleading commercial practice in which he has engaged.

2. In consideration of the Undertaking furnished by Derek Delaney set out herein, the CCPC agrees that it will not take further action in this matter with respect to criminal proceedings or to initiate criminal proceedings against Derek Delaney. Nothing in this agreement shall be construed so as to impair the CCPC's right to institute civil or criminal proceedings for any matter not specifically described herein.
3. This Undertaking shall be and is intended by the Parties to be a binding agreement. Pursuant to section 73(7) of the 2007 Act, should Derek Delaney fail to comply with the terms and condition of the Undertaking, the CCPC may apply to the Circuit Court or the High Court for a prohibition order pursuant to section 71 of the 2007 Act.
4. The terms "and" and "or" as used herein have both conjunctive and disjunctive meanings.
5. This Undertaking will take effect on 18 October 2018

Dated this 18 day of October 2018

AGREED TO AND ACCEPTED BY:

Signed:



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

Signed:



Derek Delaney