

Compliance Notice

Section 75 of the Consumer Protection Act 2007

To:

Damien Byrne
c/o N4 Autopoint Limited
N4 Business Park,
Lower Kennelsfort Road,
Palmerstown,
Dublin

Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

I, Stephen Bass, 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, Damien Byrne, 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 **hereby direct Damien Byrne** to remedy that contravention in the manner set out below.

A. Statement of alleged contraventions

That you, Damien Byrne, a trader within the meaning of the Consumer Protection Act 2007 (the “2007 Act”), on 11 January 2017, engaged in misleading commercial practices by providing false information regarding a vehicle’s usage or prior history, namely it’s mileage, as described by section 43(1) of the 2007 Act and such being a matter set out in section 43(3)(b)(vii) of the 2007 Act, and that such a misleading practice caused the consumer to make a transactional decision that the average consumer would not otherwise made.

B. My opinion

I am of the opinion that Damien Byrne has committed or engaged in a misleading commercial practice, namely that you provided false information in respect of a vehicle’s prior usage or history, such a practice being a prohibited commercial practice for the purposes of the 2007 Act.

C. Reasons for my opinion

The reasons for my opinion are based on the following:

1. That you, Damien Byrne, were an employee of N4 Autopoint Limited and that you were a trader within the meaning of the 2007 Act in January 2017;
2. That on 11 January 2017 at you, Damien Byrne, acting on behalf of N4 Autopoint Limited, used a false name David Brown and sold a Skoda Octavia (the “Vehicle”), which had been advertised as having an odometer reading of 115,000 miles (the *Transaction*) displaying the advertised mileage to a Consumer (the “Consumer”) within the meaning of the 2007 Act.;

3. A previous owner of the car who purchased it from N4 Autopoint on 28 May 2013 after establishing that the odometer had been tampered with to reflect less than the true mileage of the Vehicle, made you aware of the discrepancy in the mileage, returned it to you on 2 June 2016 and was refunded;
4. Having been made aware of the discrepancy between the mileage reflected on the odometer and the true mileage, by the previous consumer, you sold the Vehicle to another Consumer without informing them of said discrepancy;
5. The advertisements published by Donedeal.ie had the incorrect mileage stated thereon;
6. The UK's MOT testing service has provided information which shows a higher mileage on 19 April 2011 for the motor vehicle than when it was sold by N4 Autopoint;

D. Compliance direction and requirements

1. You, Damien Byrne, are hereby required to provide true and accurate information in all your 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 you, whether on behalf of your employer or otherwise.
2. You, Damien Byrne, are hereby required to ensure that appropriate due diligence is carried out on the history and usage of every motor vehicle offered for sale by you, whether on behalf of your employer or otherwise.
3. You, Damien Byrne, are 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 you, whether on behalf of your employer or otherwise. This record must be made available to the CCPC for inspection on request.
4.
 - a) You must comply with this compliance direction and requirements by **26 January 2021**.
 - 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 and, on summary conviction, you will be liable to the fine and penalties set out in Chapter 4 of the Consumer Protection Act 2007.

Signature: _____



Stephen Bass

Authorised Officer

Competition and Consumer Protection Commission

15 December 2020

This information is intended for information purposes only and does not constitute part of the Compliance Notice.

Compliance Notice Notes

Consumer Protection Act 2007 (2007 Act)

1.	Section 75(6) of the 2007 Act requires a person, when lodging an appeal, to, at the same time, notify the Competition and Consumer Protection Commission of the appeal and the grounds for the appeal. The Commission is entitled to appear, be heard and adduce evidence on the hearing of the appeal.
2.	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.
3.	If there is no appeal under section 75(5) of the 2007 Act, the compliance notice takes effect on the later of the following: a) 14 days after the notice is served. b) the day specified in the notice.
4.	An Authorised Officer may: a) withdraw a compliance notice at any time, or b) if no appeal is made or pending under section 75(5) of the 2007 Act, extend the date by which the recipient is to comply with the compliance direction and requirements.
5.	Withdrawal of a compliance notice does not prevent the service of another compliance direction or requirement specified in a compliance notice, whether it relates to the same matter or a different matter.
6.	In accordance with section 75(13) of the 2007 Act, if a compliance notice takes effect, the Commission is required to publish the compliance notice, or cause it to be published in any form or manner it considers appropriate.
7.	Section 86 of the 2007 Act requires the Commission to maintain a "Consumer Protection List" of names and addresses of persons together with a description of their trade,

	business or profession and the particulars of the matter occasioning any enforcement actions taken by the Commission. This includes persons against whom compliance notices have taken effect.
8.	Any person who, without a reasonable excuse, fails to comply with a direction or requirement specified in a compliance notice commits an offence and, on summary conviction, is liable to the fines and penalties set out in section 79 of the 2007 Act.
9.	<p>Section 79(1) of the 2007 Act provides that a person guilty of an offence under the Consumer Protection Act 2007 is liable on summary conviction to the following fines and penalties:</p> <ul style="list-style-type: none"> a) a fine not exceeding €3000 or up to 6 months imprisonment or both, b) on any subsequent summary conviction, a fine not exceeding €5000, or imprisonment for a term not exceeding 12 months or both. <p>If, after being convicted for an offence, a person continues to contravene the requirement or prohibition to which the offence relates, the person is guilty of a further offence on each day the contravention continues and for each such offence is liable on summary conviction to a fine not exceeding €500.</p>
10.	In accordance with section 75(14) of the 2007 Act, the issuing of this notice does not prevent the commencement of proceedings for an offence.

District Court - Schedule C - Forms in civil proceedings

S.I. No. 17 of 2014

No. 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*