

Office Of Fair Trading
Litigation Unit
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28 JUN 2012

BY ERC

General Form of Judgment or Order

In the	
Derby	
County Court	
Claim Number	2DE00371
Date	26 June 2012



OFFICE OF FAIR TRADING	1 st Claimant Ref LU120256/CL
OPTIMUM CARE MOBILITY LTD	1 st Defendant Ref
GARY FREDERICK PRICE	2 nd Defendant Ref TGS.ELD.91997.2
MRS LINDA ANNE PRICE	3 rd Defendant Ref TGS.ELD.91997.2
CHRISTOPHER RICHARD HAYBALL	4 th Defendant Ref

Before His Honour Judge Inglis sitting at Nottingham County Court, Sitting At, Nottingham Magistrates' Court, Carrington Street, Nottingham, Nottinghamshire, NG2 1EE

PENAL NOTICE AND ENFORCEMENT ORDER (AGAINST THE FIRST DEFENDANT, OPTIMUM CARE MOBILITY LIMITED)

UPON AN APPLICATION by the Claimant dated 10 May 2012 for default judgment against the Fourth Defendant pursuant to CPR 12.1(a)

IT IS HEREBY ORDERED THAT:

IF YOU, OPTIMUM CARE MOBILITY LIMITED, DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO BE FINED OR TO HAVE YOUR ASSETS SEIZED AND ANY OF YOUR DIRECTORS MAY ALSO BE LIABLE FOR IMPRISONMENT OR TO BE FINED OR TO HAVE THEIR ASSETS SEIZED

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

The court office at Derby County Court, Combined Court Centre, Morledge, Derby, DE1 2XE is open between 10 a.m. and 4 p.m. Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number. Tel: 01332 622600 Fax: 01332 622543

UPON A CLAIM UNDER the Enterprise Act 2002, the Consumer Protection from Unfair Trading Regulations 2008; the

Consumer Credit Act 1974; and the Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008 filed on 20 March 2012 in the Derby County Court, subsequently transferred to the Nottingham County Court, Claim No. 2DE00371

IT IS ORDERED THAT

1. In this Order, the following definitions apply:

(1) Any reference to "the Defendant" means the First Defendant and includes the Defendant acting by itself, its directors, officers, servants, employees or agents, or by any other means whatsoever including through the giving of instructions or encouragement.

(2) Any reference to 'the CCA' is a reference to the Consumer Credit Act 1974.

(3) Any reference to 'the CCRs' is a reference to the Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008.

(4) Any reference to 'the CPRs' is a reference to the Consumer Protection from Unfair Trading Regulations 2008.

2. The Defendant shall not continue or repeat the conduct set out in paragraph 4 below.

3. The Defendant shall not in the course of their business(es) or any other business(es) engage in the conduct set out in paragraph 4 below.

4. The conduct referred to in paragraphs 2 to 3 above is as follows.

(1) Offering credit, by whomsoever provided, to any consumer without holding a licence which entitles them so to do.

(2) Introducing any consumer to any consumer credit business or ancillary consumer credit business within the meaning of the CCA, without holding a licence which entitles them so to do.

(3) Failing to give written notice to any consumer of their right to cancel a contract under regulation 7 of the CCRs, including by tearing off or otherwise failing to provide any such written notice attached to documentation provided to consumers.

(4) Failing or refusing to accept a notice of cancellation provided by any consumer in accordance with regulations 7 and/or 8 of the CCRs.

(5) Failing or refusing to repay to any consumer, as soon as is practicable after service of any such notice of cancellation by or on behalf of that consumer, any and all sums paid by that consumer pursuant to the contract in question (unless entitled not to do so by reason of any provision in the CCRs).

(6) Falsely claiming to be associated with, approved by, acting on behalf of or otherwise connected with any public or medical body or charity, such as the National Health Service or any department of any local authority.

(7) Failing expressly to inform any consumer at an early stage in any telephone conversation and in any visit to the consumer's home that they are not associated with, approved by, acting on behalf of or otherwise connected with any public or medical body or charity, such as the National Health Service or any department of any local authority (unless they are so associated, approved etc.).

(8) Failing to inform any consumer at an early stage in any telephone conversation and in any home visit that they are acting for a private company whose purpose is to sell goods and of the name of that company (unless they are not acting for such a company).

(9) Failing to inform any consumer during any telephone call at which a visit to the consumer's home is arranged that the purpose, or a purpose, of any such visit is to seek to sell goods to the consumer (unless that is not the purpose, or a purpose, of any such visit).

(10) Falsely giving the impression to any consumer that they are medically qualified, or otherwise qualified to make medical judgments, including by describing any home visit as being for an 'assessment' (or materially similar use of language) or by asking questions about the consumer's health, medication or treatment unless (i) such questions are no more than is necessary in order to ensure that any particular product which is being proposed is suitable, and (ii) the consumer is informed expressly that they are not medically qualified.

(11) Claiming that any product is available for sale at a price which is either (i) significantly higher than the price at which they would be prepared to sell it, or (ii) significantly higher than any recommended retail price, or (iii) significantly higher than the price at which it was generally available for sale, with a view either to making a sale of the product at an improperly and/or misleadingly inflated price or to giving the consumer the impression that he or she is receiving a genuine discount.

(12) Falsely claiming or giving the misleading impression that any competitor or other business has gone out of business.

(13) Falsely claiming or giving the misleading impression that any competitor or other business is part of the same company or group of companies or is otherwise connected with them.

(14) Making persistent and unwanted telephone calls to any consumer, including by making any telephone call to any consumer after having been asked by the consumer or by any person acting on his or her behalf not to do so.

(15) Conducting a personal visit to any consumer's home having been asked by the consumer or by any person acting on his or her behalf not to do so or, in the absence of an express invitation by the consumer or a person acting on his or her behalf, having previously been asked to leave the consumer's home.

(16) Failing to leave any consumer's home as soon as is practicable having been asked by the consumer or by any person on his or her behalf to do so.

(17) Remaining in any consumer's home for longer than two hours during any one visit or series of visits during one day (unless the consumer has expressly, specifically and freely consented to a longer visit or series of visits without having been placed under any duress whatsoever).

(18) Remaining in any consumer's home or concluding any contract with any consumer if they are or become aware that the consumer is not mentally competent to conclude such a contract (unless the consumer is accompanied

by a person lawfully authorised to act on his or her behalf) or is distressed or confused (unless the consumer is accompanied by a competent family member, friend or other appropriate adult).

5. All further proceedings under Claim Number 2DE00371 against the Defendant are hereby stayed, except that each party has permission to apply to vary or discharge this order

6. The Defendant to pay the Claimant's costs to be assessed if not agreed.

Dated 22 June 2012

