

This Decision Notice was superseded by a Final Notice dated 28 September 2016:

<https://www.fca.org.uk/publication/final-notices/wage-payment-payday-loans-limited-2016.pdf>



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DECISION NOTICE

To: Wage Payment and Payday Loans Limited

Company Number: 07080688

Firm IP Ref: 633083

Date: 31 July 2015

1. ACTION

1.1. For the reasons given in this Decision Notice, and pursuant to section 55J of the Act, the Authority has decided to cancel WPPL's Interim Permission.

2. SUMMARY OF REASONS

2.1. On the basis of the facts and matters described below, it appears to the Authority that WPPL is failing to satisfy Threshold Conditions 2D (appropriate resources) and 2E (suitability).

- 2.2. For the reasons given in Mr Hart's Decision Notice, it appears to the Authority that Mr Hart, who is the ultimate owner, controller and sole director of WPPL, is not a fit and proper person because he lacks integrity and competence. Having concluded that Mr Hart is not fit and proper, the Authority has decided to prohibit him from carrying out any regulated activity carried on by an authorised person, exempt person or exempt professional firm pursuant to section 56 of the Act.
- 2.3. If Mr Hart is prohibited, WPPL will not have anyone in place to manage its business.
- 2.4. Accordingly, the Authority considers that WPPL is failing to satisfy Threshold Condition 2D (appropriate resources) because it does not have appropriate resources in relation to the regulated activities it carries on and seeks to carry on. In particular, WPPL does not have appropriate human resources as Mr Hart is the only director of the firm.
- 2.5. Further, the Authority considers that WPPL is failing to satisfy Threshold Condition 2E (suitability) because it is not a fit and proper person having regard to all the circumstances, including its connection with Mr Hart, the nature of the regulated activities that WPPL's Interim Permission permits it to engage in and how it has performed those activities, and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.
- 2.6. The Authority considers that the action set out in paragraph 1.1 above is necessary and proportionate and supports the Authority's operational objective of securing an appropriate degree of protection for consumers.

3. DEFINITIONS

- 3.1. The definitions below are used in this Decision Notice:

- (a) 'Act' means the Financial Services and Markets Act 2000;
- (b) 'Authority' means the Financial Conduct Authority;
- (c) 'CCA' means the Consumer Credit Act 1974;
- (d) 'CONC' means the Consumer Credit section of the Handbook;
- (e) 'COND' means the Threshold Conditions section of the Handbook;
- (f) 'DISP' means the Dispute Resolution section of the Handbook;

- (g) 'Handbook' means the Authority's Handbook of rules and guidance;
- (h) 'high-cost short-term credit' means an unsecured loan that: (i) has an annual percentage rate of 100% or more; (ii) is repayable within a short term; and (iii) is not an overdraft. The full definition of high-cost short-term credit can be found in the 'Glossary' section of the Handbook;
- (i) 'Mr Hart's Decision Notice' means the decision notice given to Mr Andrew Barry Hart dated 31 July 2015;
- (j) 'OFT' means the Office of Fair Trading;
- (k) 'relevant period' means the period from 1 April 2014 to 28 August 2014, the date of the VREQ;
- (l) 'SYSC' means the Senior Management Arrangements, Systems and Controls section of the Handbook;
- (m) 'Threshold Conditions' means the threshold conditions set out in Part 1B of Schedule 6 to the Act;
- (n) 'Transfer Order' means the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013;
- (o) 'Tribunal' means the Upper Tribunal (Tax and Chancery Chamber);
- (p) 'VREQ' means the requirements imposed upon WPPL by the Authority on 28 August 2014 following WPPL's voluntary application for their imposition, and which are set out in paragraph 4.4;
- (q) 'WPPL' or the 'Firm' means Wage Payment and Payday Loans Limited; and
- (r) 'WPPL's Interim Permission' means the interim permission under Part 4A of the Act obtained by WPPL on 1 April 2014, following the transfer of consumer credit regulation from the OFT to the Authority, which arose in accordance with article 56 of the Transfer Order.

4. FACTS AND MATTERS

Background: regulation of the UK consumer credit sector

- 4.1. Prior to 1 April 2014, the UK consumer credit sector was regulated by the OFT under the CCA, which required firms conducting consumer credit activities,

including the provision of high-cost short-term credit such as payday loans, to be licensed. On 1 April 2014, the Authority took over regulation of the consumer credit sector from the OFT and introduced an interim permission regime for firms that held a CCA licence and intended to continue conducting consumer credit activities after 1 April 2014 but were not authorised by the Authority. Under this regime, firms were granted an interim permission under Part 4A of the Act to carry on consumer credit activities.

WPPL

- 4.2. WPPL is a consumer credit firm that provides payday loans (a form of high-cost short-term credit) under the trading names 'Payday Overdraft', 'Wagepayday' and 'Doshloans'. The Firm was issued with a Consumer Credit Licence by the OFT on 13 January 2010. Since 1 April 2014, WPPL's Interim Permission has permitted it to engage in the regulated activities of consumer credit lending, providing credit information services (excluding credit repair) and credit broking. In February 2015 WPPL applied for full authorisation under Part 4A of the Act.
- 4.3. Mr Hart is the ultimate owner (being the sole owner of WPPL's parent company), controller and sole director of WPPL. He is not presently within the scope of the Authority's approved persons regime. However, as sole director and, therefore, the Firm's only senior manager, he retains responsibilities for oversight and supervision of the Firm's business, including its staff.

VREQ

- 4.4. On 21 August 2014, the Authority made an unannounced visit to the Firm. Following this, on 28 August 2014, WPPL applied for the VREQ. Under the terms of the VREQ, WPPL is (in summary) not permitted to: (i) grant new loans or lend additional sums pursuant to existing loan agreements; (ii) engage in outbound debt collection; or (iii) request further CPA payments from customers from whom the Firm has previously taken CPA payments in relation to the same loan agreements. WPPL is also required to maintain full records of contact with customers who have contacted the Firm about repayment and who make arrangements to pay. As at the date of this Decision Notice, WPPL's activities in respect of the consumer credit transactions it has entered into are limited to accepting payments initiated by customers.

Mr Hart: prohibition

- 4.5. The Authority has conducted an investigation into Mr Hart and has identified serious concerns relating to his fitness and propriety. Specifically, the Authority considers that Mr Hart lacks integrity and competence.
- 4.6. The Authority's concerns are set out more fully in Mr Hart's Decision Notice. In summary, the Authority has concluded that Mr Hart lacks integrity because, throughout the relevant period, he took a reckless approach to managing WPPL and to complying with regulatory requirements. This is evidenced by his actions and omissions in recklessly:
- (a) contributing to unfair business practices carried on by WPPL and to WPPL's failure to comply with regulatory requirements;
 - (b) failing to address WPPL's unfair and improper business practices, of which he was aware, and which had the effect of misleading WPPL's customers; and
 - (c) failing to take reasonable steps to:
 - i. implement policies and procedures relating to forbearance and to creditworthiness and affordability; and
 - ii. ensure that WPPL had in place appropriate systems for communicating with customers and for ensuring compliance with regulatory requirements relating to CPAs, and adequate record-keeping arrangements;
- despite being aware that, in relation to these matters, WPPL was not complying, or there was a risk that WPPL would not comply, with all applicable regulatory requirements.
- 4.7. The Authority also considers that Mr Hart lacks integrity because, after the relevant period, he recklessly failed to prevent communications between WPPL and customers in a manner that breached the terms of the VREQ.
- 4.8. The Authority considers that Mr Hart lacks competence because, during the relevant period, he failed to take reasonable steps to: (i) implement adequate systems and controls, including appropriate policies and procedures; (ii) ensure that WPPL dealt adequately with customer complaints; (iii) provide adequate oversight of, or training to, WPPL staff members; and (iv) ensure that loan

agreements entered into by WPPL complied with applicable regulatory requirements.

- 4.9. The Authority considers that Mr Hart's lack of competence is further demonstrated by his failure to respond adequately to information that became available to him during the relevant period that pointed to a need for him to provide greater oversight of, and training to, WPPL staff members and to put in place appropriate policies and procedures, including in relation to complaint handling.
- 4.10. In view of Mr Hart's lack of fitness and propriety, the Authority has decided to prohibit him from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. If Mr Hart is prohibited, WPPL will not have in place anyone to manage its business and will have a controller who lacks fitness and integrity.

5. FAILINGS

- 5.1. The statutory and regulatory provisions relevant to this Decision Notice are referred to in Annex A.
- 5.2. On the basis of the facts and matters described above, the Authority, having regard to its regulatory objectives (which include ensuring an appropriate degree of protection for consumers), has concluded that WPPL:
 - (a) does not have appropriate human resources in relation to the regulated activities it carries on; and
 - (b) is not a fit and proper person having regard to all the circumstances, in particular, because of its connection with Mr Hart (because he is WPPL's sole director and also because of his control over the Firm as its ultimate owner) and because the Authority is not satisfied that WPPL will conduct its affairs soundly and prudently and in compliance with proper standards.
- 5.3. WPPL is therefore failing to satisfy Threshold Conditions 2D and 2E in relation to the regulated activities which WPPL's Interim Permission permits it to carry on.

6. SANCTION

- 6.1. The Authority has decided to cancel WPPL's Interim Permission. This will have the effect that WPPL will not be permitted to carry out any regulated activities. In relation to WPPL's business as a payday lender, WPPL will therefore not be able to exercise, or have the right to exercise, its rights and duties under a regulated

credit agreement. In practice, this means that WPPL will not legally be able to collect any debts due to it under regulated credit agreements or otherwise deal with its loan book. The Authority has taken account of this, and also WPPL's ability to sell its loan book to a business with appropriate authorisation prior to the Authority's decision taking effect, the long period of time that has elapsed since WPPL has entered into regulated credit agreements, and the lack of alternative measures that would secure the appropriate degree of consumer protection, and is satisfied that the action is necessary and proportionate.

7. REPRESENTATIONS

- 7.1. Annex B contains a brief summary of the key representations made by Mr Hart on behalf of WPPL and how they have been dealt with. In making the decision which gave rise to the obligation to give this Decision Notice, the Authority has taken into account all of the representations made by Mr Hart, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

- 8.1. This Decision Notice is given under section 55Z and in accordance with section 388 of the Act.

Decision maker

- 8.2. The decision which gave rise to the obligation to give this Decision Notice was made by the Regulatory Decisions Committee.

The Tribunal

- 8.3. WPPL has the right to refer the matter to which this Decision Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, WPPL has 28 days from the date on which this Decision Notice is given to it to refer the matter to the Tribunal.
- 8.4. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Decision Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email fs@hmcts.gsi.gov.uk).
- 8.5. Further information on the Tribunal, including guidance and a link to 'Forms and leaflets' which include Form FTC3 and notes on that form, can be found on the HM Courts and Tribunal Service website:

<http://www.justice.gov.uk/tribunals/tax-and-chancery-upper-tribunal>.

- 8.6. A copy of Form FTC3 must also be sent to Richard Topham at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS at the same time as filing a reference with the Upper Tribunal.

Access to evidence

- 8.7. Section 394 of the Act applies to this Decision Notice. In accordance with section 394, WPPL has the right to access:
- (a) the material upon which the Authority has relied on in deciding to give this Decision Notice; and
 - (b) the secondary material which, in the opinion of the Authority, might undermine that decision.

This material, other than the material enclosed with the Warning Notice given to Mr Hart on 8 April 2015, was enclosed with the Warning Notice given to WPPL on 8 April 2015. A schedule of all the material which WPPL has the right to access was enclosed with the Warning Notice given to WPPL on 8 April 2015.

Confidentiality and publicity

- 8.8. This Decision Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Section 391 of the Act provides that a person to whom this Decision Notice is given or copied may not publish the Decision Notice or any details concerning it unless the Authority has published the Decision Notice or those details.
- 8.9. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. WPPL should be aware, therefore, that the facts and matters contained in this Decision Notice may be made public.

Contact

- 8.10. For more information concerning this matter generally, contact Richard Topham at the Authority (direct line: 020 7066 1180).

Peter Hinchliffe

Acting Chairman, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

- 1.1. The Authority's operational objectives, set out in section 1B(3) of the Act, include the protection of consumers.
- 1.2. Article 56(9)(b) of the 2013 Order provides that an interim permission is to be treated as a Part 4A permission (except in certain circumstances, not relevant to this Warning Notice).
- 1.3. Section 55B and Schedule 6 to the Act set out the Threshold Conditions, which are conditions that the Authority must ensure a firm will satisfy, and continue to satisfy, in relation to regulated activities for which it has permission.
- 1.4. The Authority is authorised by section 55J of the Act to cancel an authorised person's Part 4A permission, where it appears to the Authority that it is failing, or is likely to fail, to satisfy the Threshold Conditions.
- 1.5. Paragraph 2D of Part 1B of Schedule 6 to the Act provides that the resources of the person concerned must be appropriate in relation to the regulated activities that it carries on or seeks to carry on (Threshold Condition 2D (appropriate resources)).
- 1.6. Paragraph 2E of Part 1B of Schedule 6 to the Act provides that the person concerned must be a fit and proper person having regard to all the circumstances, including its connection with any person, the nature of the regulated activities that it carries on, and whether its business is being managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner (Threshold Condition 2E (suitability)).

2. RELEVANT REGULATORY PROVISIONS

The Threshold Conditions

- 2.1. COND 2.4.2G(2) states that the Authority will interpret the term 'appropriate' in relation to Threshold Condition 2D as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources, non-financial resources and means of managing its resources: for example, capital,

provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.

- 2.2. COND 2.5.4G states that examples of the kind of general considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, Threshold Condition 2E include whether the firm conducts, or will conduct, its business with integrity and in compliance with proper standards.
- 2.3. COND 2.5.6G states that examples of the kind of particular considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, Threshold Condition 2E include whether the firm has contravened, or is connected with a person who has contravened, any provision of the Act or the regulatory system (COND 2.5.6G(4)).

ANNEX B

REPRESENTATIONS

1. A brief summary of the key representations made by Mr Hart in respect of the Authority's proposed action against him, and how they have been dealt with by the Authority, are set out in Annex B of Mr Hart's Decision Notice.
2. In addition, Mr Hart's representations in respect of the Authority's proposed action against WPPL (in italics), and the Authority's conclusions in respect of them, are set out below:
3. *It is the Authority's aim to put several payday lenders out of business and only leave a handful of large businesses remaining.*

The Authority's Regulatory Decisions Committee reached the decision to take the action set out in this Decision Notice based on the evidence put before it, which is specific to Mr Hart and WPPL. The Authority's general approach to regulating consumer credit firms is not relevant to that decision.

4. *At its unannounced visit on 21 August 2014, the Authority incorrectly thought that WPPL was a 'phoenix' of Firm A (i.e. a business operating under a different identity from a previous firm but using the same senior management, staff and business practices in order to carry out the same business as that firm) and wanted to close it on that basis. Once the Authority realised that WPPL was not a phoenix, the Authority took the opportunity to try to find any evidence to support an allegation of non-compliance.*

It is correct that at the time of its unannounced visit the Authority was concerned that WPPL might be a 'phoenix' of Firm A, whose Consumer Credit Licence had been suspended by the OFT. At that visit it became clear to the Authority that WPPL was not a 'phoenix' of Firm A, and the Authority confirmed that to Mr Hart in a telephone call the same day. However, during the visit the Authority identified serious concerns with WPPL's practices which resulted in the Authority inviting WPPL to apply for the VREQ.

5. *WPPL's good track record since obtaining its consumer credit licence in 2010 should be taken into account.*

The Authority's investigation has been focused on WPPL's actions since the Authority took over regulation of consumer credit on 1 April 2014. The Authority has noted WPPL's experience in the consumer credit industry prior to that date, but has not reached a conclusion on whether WPPL had a good track record as it has not seen any evidence on that point. The Authority's assessment of WPPL's conduct has therefore been based on behaviour over the most recent months in which WPPL was providing payday loans, and the Authority considers this is most relevant in assessing whether WPPL are currently fit and proper.

6. *Mr Hart would be willing to sell his interest in WPPL should he be prohibited.*

The Authority has made its decision to cancel WPPL's Interim Permission based on the position at the date of this Decision Notice, which is that Mr Hart remains the ultimate owner, controller and sole director of WPPL. If Mr Hart was no longer in those positions, the Authority would continue to hold the view that WPPL does not satisfy the Threshold Conditions unless and until WPPL can demonstrate that it has fit and proper new management and control in place to be able to operate in compliance with regulatory requirements.