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## FINAL NOTICE

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To: **Andrew Barry Hart**

Date  
of birth: 17 December 1967

Individual  
Reference  
Number: ABH01050

Date: 28 September 2016

### **1. ACTION**

- 1.1. For the reasons given in this notice, the Authority hereby makes an order, pursuant to section 56 of the Act, prohibiting Andrew Barry Hart from performing any function in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm. This order takes effect from 28 September 2016.
- 1.2. By a Decision Notice dated 31 July 2015, the Authority notified Mr Hart that, having taken into account his written representations, pursuant to section 56 of the Act, the Authority had decided to prohibit him from performing any function in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm.

- 1.3. Mr Hart referred the matter to the Tribunal on 26 August 2015. On 10 August 2016, Mr Hart requested that his reference be withdrawn and, on 24 August 2016, the Tribunal gave its consent to the withdrawal of Mr Hart's reference.

## **2. SUMMARY OF REASONS**

- 2.1. On the basis of the facts and matters described below, the Authority has concluded that Mr Hart is not fit and proper to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, and that he should be prohibited from doing so.

- 2.2. The Authority considers that Mr Hart is not fit and proper because he lacks integrity and competence. Mr Hart lacks integrity because, throughout the relevant period, he took a reckless approach to managing the Firm and to complying with regulatory requirements, as is evidenced by his actions and omissions in recklessly:

- (a) contributing to unfair business practices carried on by WPPL and to the Firm'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 the Firm'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.

- 2.3. Mr Hart lacks competence because, during the relevant period, he failed to take reasonable steps to:

- (a) implement adequate systems and controls, including appropriate policies and procedures;
- (b) ensure that WPPL dealt adequately with customer complaints;
- (c) provide adequate oversight of, or training to, WPPL staff members; and
- (d) ensure that loan agreements entered into by WPPL complied with applicable regulatory requirements.

- 2.4. 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.

- 2.5. Mr Hart's reckless approach to managing the Firm, and to complying with regulatory requirements, continued after the end of the relevant period. This was demonstrated by Mr Hart's failure to take adequate steps to prevent WPPL from communicating with customers in a manner that breached the terms of the VREQ.
- 2.6. The impact of Mr Hart's conduct is particularly serious because his actions resulted in WPPL failing to comply throughout the relevant period with the regulatory requirements and standards applicable to payday lenders. As a consequence, WPPL's customers were not afforded the minimum standard of treatment they could expect in accordance with relevant legal and regulatory requirements. His conduct had a direct impact on WPPL's customers, in that they were often not treated fairly, their complaints were commonly disregarded, they had excessive sums taken out of their accounts and they were frequently misled. These improper and aggressive practices in some cases caused financial loss to WPPL's customers, many of whom were already in financial difficulties, and also risked causing customers emotional distress.
- 2.7. The Authority considers that this action is necessary and proportionate, and supports its operational objective of securing an appropriate degree of protection for consumers.

### **3. DEFINITIONS**

- 3.1. The definitions below are used in this Final 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) 'CPA' means continuous payment authority, an arrangement under which a consumer consents to a business making one or more requests for payment from the consumer's payment account (but excluding a direct debit). The full definition of CPA can be found in the 'Glossary' section of the Handbook;
  - (f) 'DISP' means the Dispute Resolution section of the Handbook;
  - (g) 'EG' means the Authority's Enforcement Guide;
  - (h) 'FIT' means the Fit and Proper test for Approved Persons section of the Handbook;
  - (i) 'Handbook' means the Authority's Handbook of rules and guidance;
  - (j) '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;
  - (k) 'OFT' means the Office of Fair Trading;
  - (l) 'PRIN' means the Principles for Businesses section of the Handbook;

- (m) 'Principle 6' means the sixth principle of PRIN, which reads '*A firm must pay due regard to the interests of its customers and treat them fairly*';
- (n) 'relevant period' means the period from 1 April 2014 to 28 August 2014, the date of the VREQ;
- (o) 'SUP' means the Supervision section of the Handbook;
- (p) 'SYSC' means the Senior Management Arrangements, Systems and Controls section of the Handbook;
- (q) 'Transfer Order' means the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013;
- (r) 'Tribunal' means the Upper Tribunal (Tax and Chancery Chamber);
- (s) '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 summarised in paragraph 4.8; and
- (t) 'WPPL' or 'the Firm' means Wage Payment and Payday Loans Limited.

#### **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. An interim permission regime was introduced by the Transfer Order 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.
- 4.2. Also on 1 April 2014, OFT guidance relating to consumer credit activities was incorporated into new rules and guidance set out in the CONC section of the Handbook. Under the interim permission regime, during the transitional period (which ended on 30 September 2014) consumer credit firms would not be treated as having breached a rule in CONC where they were able to demonstrate compliance with rules that corresponded to the requirements in CONC (for example, CCA provisions or OFT guidance). On the basis of the facts and matters set out below, Mr Hart has failed to demonstrate such compliance by WPPL.

##### ***WPPL***

- 4.3. During the relevant period, WPPL was a consumer credit firm that provided payday loans (a form of high-cost short-term credit) under the trading names 'Payday Overdraft', 'Wagepayday' and 'Doshloans'. Companies House records show that the Firm is ultimately owned by Mr Hart, who is also its sole director. The Firm was issued with a Consumer Credit Licence by the OFT on 13 January 2010. It added the trading names of Doshloans.com, Paydayoverdraft.com and Wagepayday.co.uk on 24 December 2010 and was, therefore, licensed to engage in the licensable activities of consumer credit lending using those trading names from that date. Between 1 April 2014 and 28 September 2016, WPPL held an interim permission 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 to the Authority for full authorisation under Part 4A of the Act. On 28 September 2016, the Authority issued a Final Notice to WPPL cancelling WPPL's interim permission.

- 4.4. During the relevant period, WPPL had no high street presence and customers applied for loans via its websites. On 26 March 2014, shortly before the transition of consumer credit regulation from the OFT to the Authority, WPPL expanded its business by purchasing the loan book of another payday lender, Firm A. This transaction took place following the suspension of Firm A's Consumer Credit Licence by the OFT. During the relevant period, the Firm provided payday loans to former customers of Firm A as well as to its own new customers. It also collected outstanding debts from customers of Firm A (whose loans were assigned to WPPL as a consequence of its purchase of Firm A's loan book).
- 4.5. Throughout the relevant period, WPPL's staff included two individuals who had previously been employed by Firm A. These individuals, who have since left the Firm, were based at WPPL's premises and conducted most of the Firm's day-to-day interaction with customers, including the administration of its lending and collection activities. One of these individuals ('A') reported to the second individual ('B'), who in turn reported to Mr Hart. Mr Hart, as sole director, is, and always has been, the only senior manager of the Firm. During the relevant period, he generally attended WPPL's premises only once a week, and instead contacted staff regularly by telephone or email. On occasion, as described below, he interacted directly with customers via email.
- 4.6. During the relevant period, customers applied for loans via WPPL's websites ([www.paydayoverdraft.com](http://www.paydayoverdraft.com) and [www.doshloans.com](http://www.doshloans.com)). The customer completed an online application form, a process which required them to provide information including their personal details, employment status, monthly income, monthly expenses, homeowner status, bank details and average bank account balance. During the online application process, the customer was informed that they would be required to submit bank statements and payslips (however, as described at paragraph 4.19 below, on some occasions this 'requirement' was waived by WPPL). Following completion of the application form, the customer received an email either declining the application or approving it in principle. If approved, the customer was given the option (but was not required) to upload documents such as bank statements and payslips. The customer was then invited to log into the relevant website to sign their loan agreement online. The signed loan agreement was then made available for the customer to download from the relevant WPPL website, and the funds were issued.
- 4.7. Mr Hart informed the Authority that the loan book purchased by WPPL from Firm A in March 2014 comprised 1,296 loans with a value of approximately £250,000. In June 2014, the Firm's turnover for that year was forecast to be £145,000. Information from WPPL's records indicates that at 21 August 2014 the Firm had approximately 1,431 customers. Of these customers, approximately 90% were in full-time employment, approximately 68% had a declared monthly income of between £1,000 and £2,000, and approximately 86% were non-homeowners. The average age of the Firm's customers was 32.
- 4.8. 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 was (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 had previously taken CPA payments in relation to the same loan agreements. WPPL was also required to maintain full records of contact with customers who had contacted the Firm about repayment and who made arrangements to pay. As at the date of this Final Notice, WPPL's interim permission has been cancelled.

### ***Mr Hart's role and responsibilities***

- 4.9. Mr Hart is not an approved person, nor was he an approved person during the relevant period. During the interim permission period following the transfer of regulation of the consumer credit sector to the Authority, there was no requirement for senior managers of consumer credit firms to be approved (CONC 12.1.4R). Upon application for full authorisation, such individuals will need to become approved persons.
- 4.10. Consequently, Mr Hart was not within the scope of the Authority's approved persons regime during the relevant period. However, as sole director he retained responsibilities for oversight of WPPL's business, including its staff. His competence and the manner in which he chose to run the business impacted directly on the risks WPPL posed to consumers. In the view of the Authority, Mr Hart's responsibilities throughout the relevant period included:
- (a) taking reasonable steps to ensure that WPPL's business was organised so that it could be controlled effectively;
  - (b) exercising due skill, care and diligence in managing the Firm's business; and
  - (c) taking reasonable steps to ensure that WPPL's business complied with relevant regulatory requirements and standards. This included the Principle 6 requirement on firms to pay due regard to the interests of customers and treat them fairly.
- 4.11. Mr Hart acknowledged to the Authority that he had overall responsibility for WPPL's business. He also acknowledged that he was responsible for the Firm's debt collection policies and procedures, monitoring the Firm's business, handling customer complaints and ensuring that the Firm operated in a compliant way.
- 4.12. In terms of his day to day role at WPPL, Mr Hart was responsible for the supervision of WPPL's staff. He was also responsible for authorising the funding of loans to customers and releasing the funds from WPPL's bank account. Further, during the relevant period, Mr Hart regularly communicated directly with customers of WPPL, often in connection with issues relating to the repayment of their loans.

### ***Unfair treatment of customers***

#### Creditworthiness and affordability

- 4.13. The Authority's rules require lenders to assess the creditworthiness of a customer before entering into a loan agreement with them (CONC 5.2.1R). This should include an assessment of the affordability of the loan to the customer. The extent and scope of the assessment may include factors such as: the type of credit; the amount of the credit; the cost of the credit; the customer's financial position at the time of seeking the credit; the customer's credit history (including any indication that the customer is experiencing or has experienced financial difficulties); the customer's existing financial commitments (including any

repayments due under other loan agreements and other major outgoings known to the lender); the customer's future financial commitments; any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer; and the vulnerability of the customer (CONC 5.2.3G).

- 4.14. The types and sources of information a firm should use when undertaking a creditworthiness assessment include some or all of the following, depending on what is proportionate in the circumstances: the firm's record of its previous dealings with the customer; evidence of the customer's income; evidence of the customer's expenditure; the customer's credit score; a credit reference agency report; and information provided by the customer (CONC 5.2.4G(3)).
- 4.15. In assessing creditworthiness, the firm should take into account more than assessing the customer's ability to repay the credit (CONC 5.3.1G(1)). The assessment should include the firm taking reasonable steps to assess the customer's ability to meet repayment in a sustainable manner without incurring financial difficulties or experiencing significant adverse consequences (CONC 5.3.1G(2)). 'Sustainable' means that the customer should be able to make repayments on time, while meeting other reasonable commitments and without having to borrow to meet the repayments (CONC 5.3.1G(6)(a)). Firms are required to implement clear and effective policies and procedures to make reasonable creditworthiness assessments (CONC 5.3.2R).
- 4.16. Mr Hart failed to take reasonable steps to ensure that WPPL had in place adequate policies and procedures relating to creditworthiness and affordability. Throughout the relevant period, the Firm had no such adequate policies or procedures in place. Mr Hart provided the Authority with a document describing the loan application process that he claimed was in place prior to the Authority's visit to WPPL on 21 August 2014. However, this document (which appeared to have been created only a short time before being provided to the Authority) did not include a detailed policy and/or procedure for assessing affordability. In relation to affordability, it merely stated:

*'Affordability is calculated on the portal with information provided by the client*

*(a) If affordability is £200 or less auto "decline"*

*(b) If affordability is above £200 we go through the verification process'.*

- 4.17. Accordingly, the loan application process document did not evidence that adequate creditworthiness and affordability assessments were required, and performed, by the Firm during the relevant period.
- 4.18. Throughout the relevant period, WPPL staff members were not required to adhere to a specific process when making lending decisions. As noted at paragraph 4.6, during the online application process customers were informed of the purported 'requirement' to submit bank statements and payslips. Upon receiving email confirmation that their application had been approved in principle (i.e. *after* WPPL had agreed to grant the loan), customers were given the *option* (but were not *required*) to send bank statements and payslips. However, apart from assertions by Mr Hart and WPPL staff members that they reviewed submitted customer bank statements, there is no other evidence to indicate that the Firm ever considered this information when making lending decisions.

- 4.19. The purported 'affordability assessments' described by Mr Hart and the WPPL staff members were never documented. Further, on some occasions WPPL staff members advised customers that, contrary to information provided during the loan application process, they were not required to provide bank statements. Mr Hart was made aware that WPPL staff members were doing this in May 2014, when he received an email from a customer who stated, '*I was told to ignore all requests for Bank statements and payslips*', yet there is no evidence that he investigated how widespread the practice was or took any steps either to stop it or to introduce a policy setting out the circumstances in which it would be appropriate for WPPL staff members to undertake an affordability assessment without requiring such information.
- 4.20. Due to the absence of any policies on creditworthiness and affordability, lending decisions were made informally and subjectively. The determining factor in a decision to lend was whether the Firm considered the customer likely to pay back the loan, rather than whether the loan was affordable to the customer. This assessment was often based on the relationship WPPL staff members had with the customer, or the subjective impressions they had of the customer, in particular whether the customer had a history of paying back loans and was therefore considered a 'good payer'.
- 4.21. In view of these practices, the Authority considers that the Firm failed adequately to assess whether the loans it advanced were affordable to its customers. For example, in May 2014, Customer A was approved for a loan of £100. WPPL sent Customer A a signed agreement in respect of their loan application before asking the customer to send a payslip and bank statement. The bank statement subsequently provided to WPPL indicated that Customer A had: (i) recently taken out a loan with another payday lender; (ii) made frequent payments to an online gambling firm, a pawnbroker, and other payday lenders (these payments amounted to approximately 54% of Customer A's net monthly employment income); and (iii) recently incurred a £90 bank charge in respect of a returned direct debit. The bank statement also showed a payment to a debt management firm. Despite these strong indicators that the customer was unable to meet repayments in a sustainable manner, WPPL went on to advance the loan requested by Customer A without considering affordability.
- 4.22. In another case, in May 2014 Customer B was approved for a loan of £150. This customer was also sent a signed loan agreement before being asked to provide a bank statement and payslip. Customer B then submitted a bank statement which indicated that they had recently taken out loans totalling approximately 53% of their net monthly employment income from five other payday lenders. The bank statement also showed that Customer B was making payments totalling approximately 56% of their net monthly employment income to 11 payday lenders including WPPL. Further, payments to two debt collection companies indicated that Customer B was in financial difficulty. Despite these indicators, WPPL advanced the loan without considering whether it was affordable to Customer B.
- 4.23. In July 2014, Customer C provided WPPL with a bank statement and payslip (again, after they had already received their signed loan agreement). The bank statement showed that Customer C had, during the previous month: (i) taken out a loan with a payday lender other than WPPL; (ii) made payments to three other payday lenders; (iii) made 52 payments, totalling approximately 97% of Customer C's net monthly employment income, to two online gambling companies; and (iv) made a payment to a debt collection company. WPPL advanced a loan of £235 to Customer C the following day. There is no evidence



to indicate that the Firm assessed the affordability of this loan in light of the information contained in Customer C's bank statement.

#### Forbearance

- 4.24. The Authority's rules require lenders to treat customers in default or arrears difficulties with forbearance and due consideration (CONC 7.3.4R). A lender should pay due regard to its obligations to treat customers in default or arrears difficulties fairly (CONC 7.3.2G), and should allow such customers reasonable time and opportunity to repay their debt (CONC 7.3.6G). Further, a lender must not pressurise a customer to: (i) pay a debt in a single repayment (or very few repayments) or in unreasonably large amounts where this would have an adverse impact on the customer's financial circumstances; (ii) pay a debt within an unreasonably short period of time; or (iii) raise funds to repay a debt by selling their property, borrowing money or increasing existing borrowing (CONC 7.3.10R).
- 4.25. Mr Hart failed to take reasonable steps during the relevant period to ensure that WPPL had adequate policies and procedures in place in relation to forbearance and complied with these rules and guidance. A number of WPPL customers appear to have struggled to repay their loans on time. For example, some customers asked for extensions of time for repayment (also known as 'rollovers'). In one case, a customer asked to increase their loan amount as otherwise they would '*only ask [WPPL] for more later in the month*', suggesting that they were in financial difficulty. Despite these indicators that a number of customers were unable to afford their loans, Mr Hart took no action to put in place policies and procedures that might prevent this problem from arising or which would enable WPPL to respond appropriately to customers who were unable to afford their loans.
- 4.26. WPPL did not maintain a record of customers who were having repayment problems and who were in arrears or in default. Rather than showing appropriate forbearance and giving reasonable time and opportunity for the repayment of existing debts, WPPL's practice was to offer such customers new loans on an immediate basis ('re-loans'), sometimes for higher amounts, on condition that they clear their outstanding balances. Mr Hart was aware of this practice and, on the following occasion, was directly involved in it:
- (a) On 1 April 2014, Customer D contacted WPPL to request an extension of time for repayment of their £150 loan. Mr Hart replied to Customer D, '*That's not possible. You have 2 loan extension [sic]. Please pay off and reapply. You are due to pay £208.55 on the 6<sup>th</sup>. Do you want an increase?*' Customer D repaid the outstanding loan the following day and immediately took out a new loan for a higher amount (£200). There is no evidence to indicate that WPPL assessed the affordability of the new loan to Customer D.
  - (b) When Customer D's new loan became due for repayment (in early May 2014), they again requested an extension of time. Mr Hart was aware of this extension, which was granted upon payment of a fee.
  - (c) Customer D requested, and was granted, further extensions of time for repayment in May, June and July 2014. The multiple extensions requested were indicators that Customer D had become trapped in a cycle of borrowing. Despite these indicators, WPPL failed to consider whether Customer D was in financial difficulties and should be shown forbearance, as required by CONC 7.3.4R.

- (d) On 30 July 2014, Customer D contacted WPPL indicating that they had lost their job, were in serious financial difficulties, and were extremely distressed. It was only at this point in time, and in response to Customer D's request to enter into a repayment plan, that WPPL showed forbearance by offering to freeze the balance on the account.

'Faster payment' charge

- 4.27. During the relevant period, WPPL charged customers a fee for funding loans via the 'Faster Payments Service' (this was also described as a 'same day' charge). Funds transferred via this service were to be made available in the recipient's account within a few hours. The amount of the fee ranged from £10 to £35, depending on the size of the customer's loan. The fee was payable to WPPL in advance and was deducted from the total loan amount advanced to the customer, i.e. a customer who was approved for a loan of £50 and who requested a faster payment was charged a fee of £10 and, therefore, received £40 from the £50 loan after deduction of the fee. The interest on the loan was applied to the full amount of £50.
- 4.28. During the relevant period, WPPL received a number of complaints from customers who, having contractually agreed to pay the faster payment fee, expected to receive funds on the same day their loans were approved but whose loans were delayed, in some cases by several days. These delays risked causing financial difficulties for customers who did not receive their loans when expected. Where payment was delayed, WPPL refunded the faster payment charge only if the customer complained. Rather than simply paying back the faster payment fee, however, WPPL's practice was to apply a discount to the customer's outstanding loan.
- 4.29. For example, on 28 May 2014, WPPL approved a new loan for Customer E. On 2 June 2014, Customer E, who had requested the faster payment service, asked WPPL if the loan would be transferred that day and was told that it would be paid 'shortly'. By 11 June 2014, Customer E, who had still not received the funds, complained, 'I keep paying £15 a time for it to be [the] same day and it's always the day after or after that. Just a waste of money'. Customer E was told that WPPL was having 'technical issues' with its bank and that the loan should be funded by the next day. Customer E then asked if they would still have to pay the £15 faster payment fee, and was told that it would be deducted from the total amount payable when the loan was funded. By 13 June 2014, more than two weeks after their application had been approved by WPPL, Customer E had still not received their loan.
- 4.30. Mr Hart was involved in WPPL's practice of charging customers a faster payment fee in circumstances where there was a delay before the loan was paid. At 12.36pm on 20 May 2014, a WPPL staff member sent Mr Hart an email asking him to transfer four separate loan amounts to four individual customers and to deduct a £15 faster payment fee from each loan. Mr Hart responded later that day, 'all tomorrow'. All four customers were then sent their money the following day, but each had been charged the £15 for the faster payment service.
- 4.31. On 15 July 2014, Mr Hart received an email from a WPPL staff member stating that the Firm should charge everyone this fee as 'we need all we can get', adding, 'I'll add discounts to everyone's account on the back end and say sorry blah blah system error blah blah'. The staff member went on to comment that other customers would have to wait for their loans 'until the 18<sup>th</sup> when we get a lot of cash come through'. This email to Mr Hart clearly indicated that: (i) the Firm had approved loans that it was unable to fund; (ii) the funding shortfall (or part of it)

would be addressed by charging customers for a faster payment service that the Firm was unable to provide; and (iii) customers were going to be misled about the reasons for the planned delays in providing the service for which they had agreed to pay. The following day, WPPL told a complaining customer that the payment delay was due to a technical issue. Mr Hart did not take any action during the relevant period to investigate how widespread these unfair and misleading practices were or to stop them.

#### Misleading and unfair communications with customers

- 4.32. The Authority's rules require lenders to ensure that their communications with customers are clear, fair and not misleading (CONC 3.3.1R). During the relevant period, Mr Hart failed to take adequate steps to ensure that WPPL staff members complied with this requirement. Emails and text messages from WPPL staff to customers were routinely aggressive and threatening in tone, and misleading in content. Customers whose accounts were in arrears were often pressured to make repayments in unreasonably short periods of time, contrary to the Authority's rules in CONC 7.3.10(2)R.
- 4.33. For example, on Friday 15 August 2014, Customer F (whose account was in arrears) received the following text messages, which the Authority considers to be aggressive and improper, from WPPL (which was chasing repayment):
- (a) At or around 17:00 that day, Customer F was told by a WPPL staff member, *'Don't worry about payment now'*, and that they would soon receive documentation explaining the next steps.
  - (b) At 20:06 that evening, however, Customer F received a text message from the same staff member stating, *'Please take this as an official notice of default. An email will follow on Monday and a hard copy in the post. Your balance, with default charges and interest is £1342.45p [...] We will issue county court papers within 14 days from receipt of the hard copy default notice. I'm sorry but the excuses became intolerable.'* This text message was misleading, as it did not constitute an official notice of default (which must be in the form specified by the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983).
  - (c) Customer F responded, *'[...] You said not to worry about payment earlier and then you have said this. I am confused and concerned that a [£]650 loan can incur charges totalling over double?'* This response indicated that WPPL had failed to provide Customer F with a breakdown of the sum owed.
  - (d) In subsequent text messages, the WPPL staff member commented to Customer F, *'6 hours to get in touch with your wife [to discuss repayment] ... come on mate I wasn't born yesterday'*, *'[...] you have no intention of paying and have been wasting my time'*, and *'Stop wasting my time [...] It's 9pm there are no excuses.'*
  - (e) Customer F replied, *'But you told me not to do it tonight! I am not wasting your time. I am trying to work out what you want me to do!'*
  - (f) The WPPL staff member responded, *'I told you not to pay after 5.30 when this was supposed to be done LONG before then. I'll speak to my boss and sort if this is paid by NO LATER than 9am tomorrow.'*

- (g) At 08:39 the next day (a Saturday), Customer F received a further text message from WPPL stating, *'You have 35 mins to sort this out.'*
- 4.34. Mr Hart communicated with customers in an aggressive and improper manner himself. For example, on 7 May 2014, he sent a bulk email to customers who were in default. The email, which had the subject line *'Can we help?'*, stated:
- 'you have failed to make payment as you had agreed.*
- What can I do to help?*
- Can we agree a new repayment plan?*
- If we can I will not issue a default letter to you today and start a process that involves time and cost.*
- Reply **yes** if interested and respond to the next email that follows.'*
- 4.35. When one customer replied 'yes' to Mr Hart's email, he responded with, *'It's ok saying yes but you have to pay. Please catch up your payment today yes?'* He replied to another customer, *'How can I believe you this time?'* A relative of a third customer replied to Mr Hart, stating, *'[the customer] is ill at present. A payment plan would be good, wouldn't be able to afford much a month as it seems [the customer] has had a few of these loans, got [themselves] in trouble which has been a factor in an overdose.'* Notwithstanding the indicators that the customer was extremely vulnerable and in financial difficulty, rather than offering to show forbearance, Mr Hart's only response was, *'What is the offer per month please?'*
- 4.36. On 20 May 2014, Mr Hart sent emails to a number of customers indicating that their accounts were in default. The email began, *'my name is Andrew and I am in charge of the legal department'*. This statement was misleading as WPPL had no legal department during the relevant period. The email invited customers in receipt of a default letter to contact Mr Hart to *'find a way forward to resolve this'*. Mr Hart's response to one customer who replied to his email was, *'payment today [...] we have had enough'*.
- 4.37. Mr Hart, in his role as WPPL's sole director and senior manager, did not take any steps to: (i) provide training to staff regarding the relevant regulatory requirements on customer communications; (ii) supervise staff to ensure compliance with those requirements; or (iii) monitor the Firm's communications with customers (telephone calls, emails and text messages) for compliance purposes. Consequently, staff members, including Mr Hart, routinely communicated with customers in a manner that was aggressive, improper and unfair.

#### Threats of legal action

- 4.38. During the relevant period, WPPL regularly threatened to take legal action against customers whose loan accounts were in arrears. These threats were misleading as at that time the Firm did not intend to commence such action. The Authority's view is that these threats were intended to frighten customers into making repayments that they were potentially unable to afford, in breach of CONC 7.3.18R. Mr Hart not only failed to provide sufficient oversight and supervision of WPPL staff to prevent this from occurring, but also contributed to this unfair business practice by making such a threat himself.

- 4.39. Further, WPPL falsely told one customer that it had obtained County Court Judgments ('CCJs') against them, and added the costs of the alleged legal proceedings to their accounts. Mr Hart was made aware of this:
- (a) In June 2014, Mr Hart was copied into an e-mail sent by Customer G to another WPPL staff member. Customer G had previously been informed that the Firm had obtained a CCJ against them and had been charged additional costs of £360 as a result. In fact, no CCJ had been obtained. Customer G told the employee, copied to Mr Hart, *'I have recently been advised that there was never a CCJ and the additional amounts I have paid were not requested by the court.'*
  - (b) In a subsequent email to that WPPL staff member, Customer G commented, *'The documents you sent to me as court documents were not from a court. I have had these checked.'*
  - (c) The WPPL staff member replied, explaining that WPPL had commenced but subsequently discontinued proceedings against Customer G. The staff member also told Customer G that the charges associated with the proceedings were *'legitimate'*, even though no CCJ had been obtained.
  - (d) In a subsequent email, Customer G indicated that the court documents they had received from the Firm appeared not to be genuine, as they were *'not even on formal/correct colour paper'*.
- 4.40. Mr Hart failed to take any action to address the serious issues raised by Customer G.

#### Collection of excessive repayment amounts

- 4.41. Mr Hart failed to take reasonable steps during the relevant period to ensure that WPPL had in place adequate systems and controls to collect correct repayment amounts from customers. Consequently, on some occasions WPPL took repayments in excess of the amounts that had been specifically agreed with customers. This risked causing detriment to customers, who were left short of funds and who may have incurred consequential losses, such as bank charges for unauthorised overdrafts and/or unpaid direct debits.
- 4.42. Mr Hart also failed to take reasonable steps to ensure that the Firm treated fairly those customers from whom it had taken incorrect payments. On receiving complaints about this issue, WPPL staff members failed to provide immediate refunds of the amounts taken in error and instead advised affected customers to apply for re-loans. For example:
- (a) On 1 May 2014, Customer H was informed that WPPL had taken a payment of £195 (which represented their outstanding loan balance) in error, rather than the agreed instalment of £45.
  - (b) Rather than offer a refund of the excess amount collected (£150), a WPPL staff member told Customer H to apply for a re-loan in respect of the overpayment.
  - (c) When Customer H asked the staff member to credit the incorrectly debited £150 back to their card, they were told that a refund would take up to a week but that a re-loan for that amount could be processed in 30 minutes.

- (d) When Customer H insisted on an immediate refund, the matter was escalated to another WPPL staff member. This staff member informed Customer H that if the Firm were to process the refund requested, the funds would not reach their account for at least another 10 days, but if they applied for a new loan for £150, the funds could be transferred that day.
  - (e) Despite Customer H's repeated requests that the incorrectly taken funds should be refunded to their card that day, the second staff member continued to insist that a refund would take several days and advised Customer H to apply for a re-loan.
  - (f) When Customer H eventually did apply for a re-loan, their application was not processed.
  - (g) On 6 May 2014 (five days after the excess payment had been debited from Customer H's card), Mr Hart was forwarded an email exchange between Customer H and the second staff member. The staff member asked Mr Hart to issue a £150 re-loan to Customer H '*so he stops complaining*'. Despite receiving this email exchange, which made clear Customer H's experience, Mr Hart did not take any action to ensure that the customer was treated fairly (such as expediting the refund and offering redress for any inconvenience caused by the Firm's error).
  - (h) By 12 May 2014, Customer H had still not received the re-loan. At that point, they were informed that the funds would be in their account on 14 May, i.e. almost two weeks after WPPL had taken the excessive, incorrect repayment.
- 4.43. Further, on one occasion WPPL took a 'repayment' despite the fact that it had not actually advanced a loan to the individual concerned. Eleven days after the customer first alerted WPPL to this issue, the case was escalated to Mr Hart, who indicated that he would issue a refund the same day. He in fact failed to issue the refund for a further six days. This meant that the individual concerned, who had requested that the issue be dealt with immediately, had to wait 17 days to receive a refund.

#### Inadequate complaint handling

- 4.44. The Authority's rules require firms, including payday lenders, to implement effective and transparent procedures for the reasonable and prompt handling of complaints (DISP 1.3.1R). Firms are required to implement appropriate management controls and to take reasonable steps to ensure that, in handling complaints, they identify and remedy any recurring or systemic problems (by, for example, analysing the causes of individual complaints to identify common root causes and, where reasonable to do so, correcting such root causes) (DISP 1.3.3R).
- 4.45. Mr Hart failed to take reasonable steps to ensure that WPPL: (i) had in place adequate policies and procedures for dealing with customer complaints; and (ii) dealt adequately with customer complaints. During the relevant period, WPPL had no complaint handling policy or procedures in place. It also did not maintain a record of complaints and, therefore, had no way to monitor the number and type of complaints received.
- 4.46. As a consequence, the Firm failed to:

- (a) log as complaints customer expressions of dissatisfaction with its service;
  - (b) analyse the causes of complaints in order to identify common root causes; and
  - (c) deal fairly with complaints.
- 4.47. For example, the issues raised by Customers G and H (described at paragraphs 4.39 and 4.42 above), and of which Mr Hart was aware, were not recorded as complaints. There was a pattern of complaints about the same issues (for example, failure to advance loans on the same day, and misleading customers about court proceedings), which Mr Hart and the Firm failed to identify. Further, despite the detriment caused by the Firm's actions in these cases, none of the complainants were treated fairly, and none were offered redress. These outcomes were a consequence of Mr Hart's failure to put in place the policies, procedures and training that were required in order to ensure that WPPL complied with the Authority's complaint handling rules.

### ***Inadequate systems and controls***

#### General absence of policies and procedures

- 4.48. In addition to the specific examples of a lack of policies and procedures described at paragraphs 4.16, 4.25 and 4.45 above (relating to creditworthiness and affordability, forbearance and complaint handling), Mr Hart failed more generally to take reasonable steps to ensure that WPPL had in place policies and procedures (including scripts or other guidance for telephone calls with customers) that were appropriate to its business activities. During the relevant period, WPPL had no written policies and procedures in place, contravening the requirement for a firm to establish, implement and maintain adequate policies and procedures that are sufficient to ensure its compliance (including that of its staff) with regulatory requirements (SYSC 6.1.1R). Mr Hart should have been especially aware of the need for written policies and procedures, in the light of WPPL's purchase of the loan book of another payday lender shortly before the relevant period commenced (see paragraph 4.4). The fact that the loan book was acquired from a firm whose licence had been suspended by the OFT, and that WPPL's staff included two individuals who had previously been employed at that firm, made the risks of not doing this even more obvious.
- 4.49. Mr Hart provided the Authority with documents describing processes that he claimed were in place prior to the Authority's visit to WPPL on 21 August 2014. However, these documents (which appeared to have been created after that visit) were deficient in that they did not contain detailed policies and procedures that would have enabled the Firm to comply with relevant regulatory requirements. The documents did not, therefore, evidence that adequate policies or procedures were in place during the relevant period. Following the visit, the Authority was provided with a draft Compliance Manual that set out a framework of policies and procedures relevant to WPPL's business activities. Due to the restrictions on WPPL's business activities resulting from the imposition of the VREQ, this manual was never finalised or implemented.
- 4.50. In response to a request from the Authority to provide details of all of WPPL's bank accounts covering the period from 1 April to 3 October 2014, Mr Hart provided details of three accounts held by the Firm. However, during the relevant period a WPPL staff member sent text messages to customers asking them to make payments into a different account. Mr Hart informed the Authority that this was not a WPPL bank account and that he did not know that the WPPL staff

member was making these requests. Mr Hart's lack of awareness meant he was not able to reconcile payments and outstanding balances for customers, putting customers at risk. This demonstrates the seriousness of Mr Hart's failure to take reasonable steps to implement adequate systems and controls in respect of WPPL's business.

#### Staff oversight and training

- 4.51. As a consequence of the lack of policies and procedures in place at WPPL, throughout the relevant period Mr Hart failed adequately to supervise or assess and monitor the competence of WPPL's staff members, or to ensure that WPPL provided them with adequate training. In particular, there was no record of the Firm having provided any training on the requirements set out in CONC, despite these rules and guidance having come into force on 1 April 2014.

#### Use of personal mobile telephones to contact customers

- 4.52. Mr Hart failed to take reasonable steps to ensure that WPPL had in place appropriate systems for communicating with customers, which would have mitigated the risk of WPPL staff failing to comply with the relevant requirements and standards of the regulatory system. Consequently, throughout the relevant period, WPPL staff members regularly used their personal mobile telephones ('personal mobiles') to contact customers (via calls and text messages). By including their personal mobile numbers in their WPPL email signatures, WPPL staff members, including Mr Hart, encouraged customers to contact them this way.
- 4.53. These practices gave rise to compliance risks, as WPPL was less likely to be able to monitor the content and frequency of such communications and, consequently, their compliance with regulatory requirements. In fact, the Firm failed entirely to monitor customer communications made using staff members' personal mobiles. Further, the retention of WPPL customers' personal data (e.g. names and contact details) on staff members' personal mobiles gave rise to a risk of a breach of customer confidentiality.
- 4.54. During the relevant period, Mr Hart received emails making it clear that WPPL staff members were regularly communicating with WPPL customers by text message and/or out of normal business hours (which was only possible through the use of personal mobiles, as staff members had not been provided with WPPL mobile telephones which were able to make outgoing calls or send text messages). Despite being aware of this, Mr Hart failed to take any action to mitigate the risks arising from these practices.

#### Inadequate information security arrangements

- 4.55. Mr Hart also failed to take reasonable steps during the relevant period to ensure that WPPL had in place adequate security arrangements to protect confidential and sensitive customer data held on WPPL's IT systems. The documents provided to the Firm by customers included scanned copies of payslips, bank statements, identity documents (e.g. driving licences and passports) and proof of address (e.g. utility bills). WPPL had poor systems in place to prevent unauthorised access to this highly sensitive information. For example, the computers at WPPL's offices were set up to remember users' passwords, meaning that anyone on the premises potentially had access to customers' personal data. Information security breaches increase the risk of identity theft and financial crime (such as fraud) and, therefore, have the potential to cause significant harm and distress to



individuals affected by such breaches. Mr Hart did not implement any information security measures to mitigate this risk.

#### Inadequate record-keeping arrangements

- 4.56. The Authority's rules require firms, including payday lenders, to keep orderly records of their business and internal organisation, including in relation to all services and transactions undertaken. The records kept must be sufficient to monitor compliance with regulatory requirements (SYSC 9.1.1R).
- 4.57. Mr Hart failed to take reasonable steps to ensure that WPPL had in place adequate systems to record details of the Firm's contact with customers or recent repayment activity, despite being aware of issues arising as a result of the inadequate systems. Throughout the relevant period, the systems in place were not sufficient to systematically record details of staff members' communications and significant discussions with customers (such as a repayment plan agreed with a customer experiencing financial difficulties), or to enable staff, including Mr Hart, to identify recent repayments. This gave rise to the risk that WPPL would treat customers unfairly, for example by contacting customers with unreasonable frequency, asking them to provide information or make repayments when they had already done so, or acting in a manner that was not consistent with an agreement previously reached. In fact, WPPL staff, including Mr Hart, in some cases did contact customers to chase repayments, only to be informed that the customer had already paid the agreed amount. For example:
- (a) On 28 June 2014, Mr Hart informed Customer I by email: *"you failed to pay on time and were £5.00 short. You now need to pay £30 in total to get your account back from defaulting before a further £35 is charged. Please pay today."*
  - (b) Customer I replied that he had paid the amount asked for by another WPPL staff member the previous day. This was confirmed by the WPPL staff member.

#### Compliance with CPA rules

- 4.58. The Authority's rules limit lenders of high-cost short-term credit to two unsuccessful attempts to use a CPA to take a repayment and prevent such firms from using a CPA to take part payments (CONC 7.6.12R(1)). This rule came into force on 1 July 2014.
- 4.59. Mr Hart failed to take reasonable steps during the relevant period to implement adequate systems to ensure compliance with these requirements when they came into force. Mr Hart was aware that WPPL's systems did not prevent WPPL staff members from making multiple, manual CPA attempts and did not record the number of CPA attempts made or the individual collection amounts attempted (the systems in place recorded only the total amount collected per account), yet he did not take any action to address this. These system limitations gave rise to a risk of customer detriment, as they severely restricted WPPL's ability to: (i) monitor compliance with regulatory requirements relating to CPAs; and (ii) identify breaches of those requirements.

#### Non-compliant loan agreements

- 4.60. Mr Hart also failed to take reasonable steps during the relevant period to ensure that the loan agreements that WPPL entered into with customers complied with applicable regulatory requirements. In particular, the form of agreement used by

WPPL misstated key terms such as the rate of interest charged and the term of the loan. For example, the interest rate was variously described as 30% or 300%. The Consumer Credit (Agreements) Regulations 2010 (made pursuant to CCA section 60) require such information to be provided in loan agreements. Any agreement containing such errors is unclear and potentially misleading. Further, any agreement that misstates these key terms fails to comply with the statutory requirements relating to loan agreements, is improperly executed and, consequently, is not enforceable without a court order (pursuant to CCA section 65). The information contained in the form of loan agreement used by WPPL was also presented in an unclear and confusing manner. For example, the loan agreement appeared to set out a number of incomplete examples for the calculation of the APR, but did not clearly explain how the APR was calculated in relation to the loan in question.

### ***Breach of the VREQ***

- 4.61. The requirements imposed by the VREQ on WPPL included that, from 28 August 2014:

*"1.9 WPPL shall not engage in any outbound collection of any debts due to it under regulated agreements aside from that permitted by paragraph 1.9 below [**Note: this is an error and should read 1.11**] (including but not limited to outbound collection calls, postal communications, electronic communications and SMS messaging).*

*1.11 For customers who contact WPPL about repayment of monies owed and to make an arrangement to pay, WPPL will maintain full records of the correspondence (be it letter, email, text message or telephone recording), which will be made available to the FCA on a regular basis with a summary of arrangements made."*

- 4.62. On 3 March 2015, Mr Hart on behalf of WPPL supplied the Authority with e-mail correspondence which included:

- (a) Emails sent by WPPL to three customers in September 2014, copied to Mr Hart, which stated: *"We could not collect payment for your loan today on your nominated pay date. Current total to repay is [£x]. To avoid your account falling into arrears please get in touch with our office ASAP ... we would be more than happy to discuss your options with you."*; and
- (b) Emails sent by WPPL to two customers in October 2014, copied to Mr Hart, which stated: *"Your loan is due on the [date]. Please advise if you wish to repay the full amount or extend the loan."*

- 4.63. In the Authority's view, by either seeking repayment of a loan or reminding customers that, under the terms of a loan agreement, their loans were due to be repaid, WPPL engaged in outbound collection of debts due to it under regulated agreements and therefore acted in breach of clause 1.9 of the VREQ.

- 4.64. Mr Hart signed the VREQ on behalf of WPPL and was responsible for ensuring that WPPL did not breach the terms of the VREQ. The emails sent to WPPL's customers demonstrate that Mr Hart failed to take adequate steps to prevent communications between WPPL and customers in a manner that breached the terms of the VREQ.

## 5. FAILINGS

- 5.1. The statutory and regulatory provisions relevant to this Final Notice are referred to in Annex A.
- 5.2. For the reasons given below, the Authority considers that Mr Hart is not a fit and proper person as a consequence of his lack of integrity and competence.
- 5.3. In assessing Mr Hart's fitness and propriety, the Authority has had regard to FIT and other relevant regulatory provisions. The Authority's considerations in assessing a person's fitness and propriety include that person's honesty and integrity and their competence and capability.

### Integrity

- 5.4. Mr Hart's conduct demonstrates a lack of integrity because, throughout the relevant period, he took a reckless approach to managing the Firm and to complying with regulatory requirements. This is evidenced by his actions and omissions in recklessly:
  - (a) contributing to:
    - i. WPPL's unfair business practices relating to faster payment charges, misleading and threatening communications to customers and misleading threats of legal action; and
    - ii. WPPL's failure to comply with regulatory requirements relating to forbearance;
  - (b) failing to address, and turning a blind eye to, WPPL's unfair business practices relating to faster payment charges, misleading and threatening communications to customers, misleading threats of legal action, and the collection of excessive repayment amounts from customers. Mr Hart was aware of these practices, which had the effect of misleading and intimidating the Firm'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.
- 5.5. Mr Hart's reckless approach to managing the firm, and to complying with regulatory requirements, continued after the end of the relevant period. This is demonstrated by Mr Hart's failure to take adequate steps to prevent WPPL from communicating with customers in a manner that breached the terms of the VREQ.

## Competence

- 5.6. Mr Hart's conduct demonstrates a serious lack of competence because, during the relevant period, he failed to take reasonable steps to:
- (a) implement any policies and procedures appropriate to WPPL's business activities, including in relation to complaint handling;
  - (b) ensure that WPPL dealt adequately with customer complaints;
  - (c) provide adequate oversight of, or training to, WPPL staff members;
  - (d) implement adequate systems relating to information security; and
  - (e) ensure that the loan agreements entered into with customers by WPPL complied with applicable regulatory requirements.
- 5.7. 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.

## **6. SANCTION**

- 6.1. Under section 56 of the Act, the Authority may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, a person who is an exempt person in relation to that activity or a person to whom, as a result of Part 20 of the Act, the general prohibition does not apply in relation to that activity. Guidance in FIT sets out the criteria for assessing fitness and propriety. The criteria include the person's competence and integrity.
- 6.2. Mr Hart is not an approved person, and was not an approved person during the relevant period. The Authority can, however, prohibit individuals, even if they are not approved. Given all the circumstances, and noting that Mr Hart is not an approved person, the Authority considers that it is appropriate to impose a full prohibition order in accordance with the Authority's policy set out in EG 9.1.1 and in light of EG 9.5.1 and 9.5.2.
- 6.3. This sanction supports the Authority's operational objective of securing an appropriate degree of protection for consumers. The Authority's effective use of its power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the Authority to achieve its statutory objectives.
- 6.4. Mr Hart has demonstrated a lack of integrity and competence in his conduct in relation to the regulated activities carried on by WPPL, for the reasons given above. For those reasons, he is not fit and proper and so the Authority hereby makes an order, pursuant to section 56 of the Act, prohibiting him from carrying out any function in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm. This order takes effect from 28 September 2016.

## **7. REPRESENTATIONS**

- 7.1. Annex B contains a brief summary of the key representations made by Mr Hart and how they have been considered and dealt with. In making the decision which gave rise to the obligation to give this Final 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**

### ***Decision maker***

- 8.1. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.
- 8.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

### ***Publicity***

- 8.3. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Mr Hart or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 8.4. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### ***Authority contacts***

- 8.5. For more information concerning this matter generally, contact Matthew Hendin (direct line: 020 7066 0236) of the Enforcement and Market Oversight Division of the Authority.

Rebecca Irving

Project Sponsor

Financial Conduct Authority, Enforcement and Market Oversight Division

## **ANNEX A**

### **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

#### **1. RELEVANT STATUTORY PROVISIONS**

##### ***Statutory objectives and powers of the Authority***

- 1.1 The Authority's statutory objectives, set out in section 1B(3) of the Act, include the consumer protection objective.
- 1.2 Section 56 of the Act provides that the Authority may make an order prohibiting an individual, whether an approved person or not, from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20 of the Act, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.
- 1.3 Under Part 4A of the Act, a firm that held a valid Consumer Credit Licence issued by the OFT prior to 1 April 2014, is permitted to carry on its consumer credit business on or after 1 April 2014 by means of an interim permission, issued by the Authority pursuant to Article 56 of the Transfer Order. The Authority requires any firm granted an interim permission to make a full application for authorisation on or before a date notified by the Authority.

##### ***Consumer credit agreements***

- 1.4 The CCA was established for consumer protection purposes, including regulating the form and content of regulated credit agreements. Regulations made pursuant to CCA section 60(1) prescribe the form and content of such agreements. These are the Consumer Credit (Agreements) Regulations 2010 (the '2010 Agreements Regulations').
- 1.5 CCA section 65(1) states that a 'regulated credit agreement' that has been 'improperly executed' is only enforceable against the debtor on the order of a court.
- 1.6 Under CCA section 61(1), a regulated credit agreement is not properly executed unless it: (a) is in the prescribed form, contains all the prescribed terms and is signed in the prescribed manner; (b) embodies all the terms of the agreement, other than implied terms; and (c) when presented to the debtor for signature, is in such a state that all its terms are readily legible.
- 1.7 Regulation 3(1) of the 2010 Agreements Regulations provides that regulated credit agreements must contain all of the information set out in column 2 of Schedule 1 to the 2010 Agreements Regulations, insofar as that information relates to the type of agreement referred to in column 1. The information required includes the duration of the agreement and the applicable rate of interest.
- 1.8 CCA section 87(1) states that service of a notice on the debtor or hirer in accordance with CCA section 88 (a 'default notice') is necessary before the

creditor or owner can become entitled, by reason of any breach by the debtor or hirer of a regulated agreement, to: (a) terminate the agreement; (b) demand earlier payment of any sum; (c) recover possession of any goods or land; (d) treat any right conferred on the debtor or hirer as terminated, restricted or deferred; or (e) enforce any security. CCA section 88(1) states that the default notice must be in the prescribed form and specify: (a) the nature of the alleged breach; (b) if the breach is capable of remedy, what action is required to remedy it and the date before that action is to be taken; and (c) if the breach is not capable of remedy, the sum (if any) required to be paid as compensation for the breach, and the date before which it is to be paid. Regulation 2(2) of the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983 (made pursuant to CCA section 88) requires any notice to be given by a creditor or owner in relation to a regulated agreement to a debtor or hirer under CCA section 87(1) to contain: (a) a statement that the notice is served under CCA section 87(1); (b) the information set out in paragraphs 1 to 3, 6 and 8 of Schedule 2 to those Regulations (these relate to: the details of the agreement; the parties to the agreement; details of the breach and the action required to remedy, or pay compensation for, the breach; the action intended to be taken by the creditor or owner; and information relating to any requirement under the notice to pay a sum of money); and (c) statements in the form specified in paragraphs 4, 5, 7, 8A and 9 to 11 of that Schedule (these relate to: the consequences if the breach is remedied or compensation paid; the consequences of a failure to comply with the default notice; statements concerning a hire-purchase or conditional sale agreement relating to goods; rights to end a hire purchase or conditional sale agreement; statements relating to the right to apply to the courts for a time order; statements regarding the charging of post-judgment interest; and general statements).

- 1.9 The term 'regulated credit agreement' is defined in Article 60B(3) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ('RAO'). Under RAO Article 60B(3), the definition of a 'credit agreement' includes an agreement between an individual ('A') and any other person ('B') under which B provides A with credit of any amount. A 'regulated credit agreement' is any 'credit agreement' which is not exempt.
- 1.10 RAO Article 36A(1) gives a list of credit broking activities governed by Part 4A of the Act. These include: (d) presenting or offering an agreement which would, if entered into, be a regulated credit agreement; (e) undertaking preparatory work in order to assist an individual to enter into a regulated credit agreement; and (f) entering into a regulated credit agreement on behalf of a lender.

## **2. RELEVANT REGULATORY PROVISIONS**

### ***The Fit and Proper Test for Approved Persons***

- 2.1 The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the fitness and propriety of an individual who is not an approved person.
- 2.2 FIT 1.3.1G provides that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's (i) honesty, integrity and reputation, (ii) competence and capability, and (iii) financial soundness.
- 2.3 In determining a person's honesty, integrity and reputation, FIT 2.1.1G provides that the Authority will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G. FIT 2.1.3G includes whether the person

demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3G(13)).

***The Authority's policy for exercising its power to make a prohibition order***

- 2.4 The Authority's policy in relation to prohibition orders is set out in EG chapter 9.
- 2.5 EG 9.1.1 provides that the Authority's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the Authority to work towards achieving its operational objectives. The Authority may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.
- 2.6 EG 9.2.2 sets out the general scope of the Authority's powers in respect of prohibition orders, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.
- 2.7 EG 9.5.1 to 9.5.2 provide guidance on the Authority's exercise of its power to make a prohibition order against an individual who is not an approved person. The Authority will consider the severity of the risk posed by the individual and may prohibit the individual where it considers this is appropriate to achieve one or more of its statutory objectives.
- 2.8 When considering whether to exercise its power to make a prohibition order against such an individual, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to, the factors set out in EG 9.3.2.
- 2.9 EG 9.3.2 states that, when deciding whether to make a prohibition order against an approved person and/or withdraw his approval, the Authority will consider all the relevant circumstances of the case which may include, but are not limited to, the following factors:
- (a) Whether, and to what extent, the approved person has (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules) or failed to comply with any directly applicable Community regulation made under MiFID or any directly applicable provision of the auction regulation (EG 9.3.2(3)(b));
  - (b) the relevance and materiality of any matters indicating unfitness (EG 9.3.2(5));
  - (c) the length of time since the occurrence of any matters indicating unfitness (EG 9.3.2(6));
  - (d) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.3.2(8)); and
  - (e) the previous disciplinary record and general compliance history of the individual including whether the Authority, any previous regulator,



designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual (EG 9.3.2(9)).

### ***The Principles for Businesses***

- 2.10 PRIN sets out the fundamental obligations to which a firm must adhere. PRIN 2.1.1R lists 11 principles that a firm should follow in their role as a regulated business (the 'Principles for Businesses').
- 2.11 The Principles for Businesses apply to regulated firms. A 'regulated firm' includes any firm that: enters into a regulated credit agreement as lender; or exercises (or has the right to exercise) the lender's rights and duties under a regulated credit agreement.
- 2.12 Principle 6 (customers' interests) requires that a firm should treat its customers fairly and give sufficient regard to their interests.

### ***SYSC: Senior Management Arrangements, Systems and Controls***

- 2.13 SYSC is designed to ensure that firms' directors and senior managers take practical responsibility for their firms' arrangements that are likely to be of interest to the appropriate regulator. This means a firm must take reasonable care to organise and control its affairs in an effective and responsible manner; and to give responsibility of effective and responsible organisation to specific directors and senior managers.
- 2.14 SYSC 6.1.1R stipulates that firms must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm, including its managers, employees and appointed representatives (or where applicable, tied agents). This is to ensure firms meet their obligations under the regulatory system and counter the risk that they might be used to further financial crime.
- 2.15 SYSC 9.1.1R requires that a firm must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it. These records must be sufficient for the regulator to monitor the firm's activities and, in particular, for the regulator to ascertain whether or not the firm has complied with all its obligations in respect of its customers.

### ***CONC: Consumer Credit sourcebook***

- 2.16 CONC is the specialist sourcebook for credit-related regulated activities, including: entering into a regulated credit agreement as lender; exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement; and debt collecting (CONC 1.2.1R). The purpose of CONC is to set out the obligations to which firms carrying out these activities are expected to adhere. A firm is required to ensure that its employees and agents comply with CONC (CONC 1.2.2R(1)). This is in addition to the requirements that a firm is already required to follow under PRIN and SYSC. The rules in CONC came into force on 1 April 2014.
- 2.17 CONC 3.3.1R deals with communications with consumers and financial promotions and states the broad rule that a firm must ensure that a communication or a financial promotion is clear, fair and not misleading.

- 2.18 CONC 5.2.1R addresses creditworthiness assessments made before an agreement is entered into. It stipulates that a firm must make an assessment of the customer's creditworthiness before making a regulated credit agreement (CONC 5.2.1R (1)).<sup>1</sup> The assessment made by the firm needs to consider how the commitments of the agreement may adversely impact the customer's financial situation, taking into account any information the firm is aware of when the agreement is made. The firm must also consider the customer's ability to make the necessary repayments when due; or, within a reasonable period if it is an open-end agreement (CONC 5.2.1R (2)(a)-(b)).<sup>2</sup> The assessment of creditworthiness must be based on sufficient information that has been obtained, where appropriate from the customer, and where necessary from a credit reference agency (CONC 5.2.1R (3)(a)-(b)).<sup>3</sup>
- 2.19 The rules set out in CONC 5.2.1R(4) set out the agreements where the above rules on creditworthiness assessments do not apply. These include: (a) an agreement secured on land; or (b) an agreement under which a person takes an article in pawn.<sup>4</sup>
- 2.20 The rules also do not apply to: (a) a non-commercial agreement; (b) a borrower-lender agreement enabling the borrower to overdraw on a current account; or (c) a small borrower-lender-supplier agreement for restricted-use credit (CONC 5.2.1R(5)).<sup>5</sup>
- 2.21 CONC 5.2.1R(6) stipulates that the agreements referred to in CONC 5.2.1R(5), and therefore to which this rule do apply are: (a) a borrower-lender agreement enabling the borrower to overdraw on a current account which is an authorised business overdraft agreement or an authorised non-business overdraft agreement; and (b) a borrower-lender agreement enabling the borrower to overdraw on a current account which would be an authorised non-business overdraft agreement but for the fact that the credit is not repayable on demand or within three months.<sup>6</sup>
- 2.22 CONC 5.2.3G states that the extent and scope of the creditworthiness assessment of an individual by a firm should be dependent upon and proportionate to one or more of: (1) the type of credit; (2) the amount of credit; (3) the cost of the credit; (4) the financial position of the customer at the time of seeking credit; (5) the customer's credit history, including any indications that they may be experiencing or may have experienced financial difficulties; (6) the customer's existing financial commitments, including any other credit agreements and regular outgoings known to the firm; (7) any future financial commitments of the customer; (8) any future changes in the customer's circumstances which may adversely affect them financially; and (9) any vulnerability of the customer or limitation of the customer's mental capacity, where this is known by or reasonably suspected by the firm.<sup>7</sup>
- 2.23 CONC 5.2.4(3)G requires that a firm should consider the types and sources of information that it uses in its required assessment of creditworthiness. The types

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<sup>1</sup> A corresponding rule is set out in CCA section 55B(1).

<sup>2</sup> A corresponding rule is set out in sections 4.1 and 4.3 of the OFT guidance document '*Irresponsible Lending – OFT guidance for creditors*' ('ILG').

<sup>3</sup> A corresponding rule is set out in CCA section 55B(3).

<sup>4</sup> A corresponding rule is set out in CCA section 55B(4).

<sup>5</sup> A corresponding rule is set out in CCA section 74.

<sup>6</sup> A corresponding rule is set out in CCA section 74(1B)-(1D)

<sup>7</sup> A corresponding rule is set out in ILG section 4.10.

and sources of information should include some, or all, of the following (depending on the circumstances): (a) its record of previous dealings; (b) evidence of income; (c) evidence of expenditure; (d) a credit score; (e) a credit reference agency report; and (f) information provided by the customer.<sup>8</sup>

- 2.24 CONC 5.3.1(2)G stipulates that in conducting a creditworthiness assessment, reasonable steps should be made by the firm to assess the customer's ability to meet repayments of the regulated credit agreement in a manner that is sustainable. This means that the customer should not be incurring financial difficulties or experiencing significant adverse consequences in meeting the repayments of the agreement.<sup>9</sup> For the purpose of CONC, 'sustainable' means that repayment under the regulated agreement can be made by the customer without undue difficulties. In particular this should mean that: (i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and (ii) without having to borrow to meet the repayments (CONC 5.3.1G (6)(a)(i)-(ii)).<sup>10</sup>
- 2.25 Clear and effective policies and procedures must be established and implemented by the firm to insure that reasonable creditworthiness assessments are made (CONC 5.3.2R).<sup>11</sup>
- 2.26 CONC 7.3.2G requires that when a firm is dealing with customers in default, or in arrears difficulties, the firm should pay due regard to its obligations to treat such customers fairly.<sup>12</sup> Furthermore, firms must treat such customers with forbearance and due consideration (CONC 7.3.4R<sup>13</sup>) and, where a customer is in default or in arrears difficulties, the firm should allow reasonable time and opportunity to repay the debt (CONC7.3.6G).<sup>14</sup>
- 2.27 Under CONC 7.3.10R, a firm must not press a customer with regard to repayments. This means that a firm must not press a customer into paying the debt in a single or very few repayments or in unreasonably large amounts, when to do so would adversely impact the customer's financial circumstances (CONC 7.3.10R(1)).<sup>15</sup> A firm must not put pressure on the customer to repay the debt within an unreasonably short period of time, or press them into raising funds to repay the debt by: selling their property; borrowing money elsewhere; or increasing existing borrowing (CONC 7.3.10R(2)-(3)).<sup>16</sup> A firm must not threaten to commence court action to apply pressure to a customer who is in default, or arrears difficulties, to pay more than they can reasonably afford (CONC 7.3.18R).<sup>17</sup>
- 2.28 If a firm has attempted to collect any sum due for high-cost short-term credit under a CPA (requested from a payment service provider) in connection with the

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<sup>8</sup> A corresponding rule is set out in ILG section 4.12.

<sup>9</sup> A corresponding rule is set out in ILG sections 4.1 to 4.2

<sup>10</sup> A corresponding rule is set out in ILG sections 4.3 to 4.4.

<sup>11</sup> A corresponding rule is set out in ILG sections 4.18 to 4.19.

<sup>12</sup> Corresponding rules are set out in ILG sections 7.1 and 7.12 and section 2.2 of the OFT guidance document '*Debt Collection Guidance*' ('DCG').

<sup>13</sup> Corresponding rules are set out in ILG sections 7.1 and 7.3 to 7.4 and DCG section 2.2.

<sup>14</sup> A corresponding rule is set out in DCG section 2.2.

<sup>15</sup> A corresponding rule is set out in ILG sections 7.1 and 7.18.

<sup>16</sup> Corresponding rules are set out in DCG sections 3.7(b) and (i) and ILG sections 7.1 and 7.18.

<sup>17</sup> A corresponding rule is set out in ILG section 7.1 and 7.14.

same agreement on two previous occasions, and on those occasions the payment request was refused, it must not request payment again (CONC 7.6.12(1)).

- 2.29 Under CONC 12.1.4R, SUP 10A (which establishes and marks the boundaries of the Authority's approved persons regime) does not apply to a firm with only an interim permission.

***DISP: Dispute Resolution: Complaints***

- 2.30 DISP sets out detailed requirements for handling complaints, and how complaints are to be dealt with by the respondent and the Financial Ombudsman Service.
- 2.31 Firms are required to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints (DISP 1.3.1R).
- 2.32 For the purposes of DISP, a complaint is any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of (or failure to provide) a financial service, which: (a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and (b) relates to an activity of a firm under the jurisdiction of the Financial Ombudsman Service. By DISP 2.3.1R, a firm that: enters into a regulated credit agreement as lender; exercises (or has the right to exercise) a lender's rights and duties under a regulated credit agreement; or collects debts is under the compulsory jurisdiction of the Financial Ombudsman Service.
- 2.33 When dealing with complaints that do not relate to MiFID (Markets in Financial Instruments Directive) business, the respondent must put in place appropriate management controls and take reasonable steps to ensure that when handling complaints it identifies and remedies any recurring or systematic problems (DISP 1.3.3R). Examples of how this could be achieved include: (1) analysing the cause of the complaint to identify the root cause; (2) considering whether the root cause might also affect other processes or products in the business (including those not directly complained about); and (3) where reasonable, correcting the root causes of the complaint.

## ANNEX B

### REPRESENTATIONS

1. Mr Hart's representations (in italics), and the Authority's conclusions in respect of them, are set out below:

#### Unfair action by the Authority

2. *Mr Hart and WPPL are being made scapegoats for the payday loans industry. Other payday lenders have behaved worse than WPPL but the Authority has allowed them to make changes and then continue in business. The action taken against Mr Hart and WPPL is unfair and disproportionate compared to that being taken against other payday lenders.*

The Authority's Regulatory Decisions Committee decided to take the action set out in this Final Notice based on the evidence put before it in this specific case.

In any event, the Authority does not accept that Mr Hart and WPPL are being made scapegoats. It considers the case to be distinctive as Mr Hart was responsible for systemic failures at WPPL which covered all aspects of lending activities, from the time of applying for a loan to the treatment of customers in default or financial difficulties.

Other payday lenders that have been subject to voluntary requirements have behaved differently to WPPL, for example, by openly acknowledging and apologising for their failures, taking steps to overhaul their systems and controls, substantially changing their lending model, committing to paying redress to consumers, being subject to skilled person reviews and replacing the management that were in charge at the time of their failings.

3. *The Authority was biased and prejudiced in its investigation into Mr Hart and WPPL. For example, the Authority ignored WPPL's offer to write off the loan book it purchased from Firm A.*

The Authority does not consider that Mr Hart's complaints against the Authority undermine the evidence relied upon by it in reaching its decision (which has been made by the Regulatory Decisions Committee, a committee of the Authority which is independent from the Authority's Enforcement and Market Oversight Division). Mr Hart's complaints about the conduct of the Authority may be pursued by him using the Complaints Scheme established under the Financial Services Act 2012, and the Authority does not address their substance in this Final Notice.

4. *The Authority has shown no flexibility and provided no assistance to Mr Hart which could have helped him to run the business compliantly.*

The Authority's view is that this representation demonstrates that Mr Hart does not understand what is expected of a firm regulated by the Authority as it is not the Authority's role to provide compliance services to firms that it regulates. Mr Hart's repeated misunderstanding of this point in his representations adds to the Authority's concerns about his competence, especially given the length of time he has been managing a consumer credit business.

5. *No account has been taken of the fact that Mr Hart did not attempt to collect the debts that WPPL had acquired in the loan book that it bought from Firm A.*

In the Authority's view, WPPL did attempt to collect these debts by communicating with customers of Firm A to inform them that WPPL had bought their debt and that WPPL was legally entitled to recover it.

6. *The voluntary application for the VREQ was not signed voluntarily. Mr Hart was led to believe this was only a temporary measure.*

The Authority notes that WPPL was legally represented at the time it applied for the VREQ, and its view is that Mr Hart was aware of the implications of the VREQ. The Authority imposed the VREQ prior to carrying out a full review of the evidence gathered at the unannounced visit on 21 August 2014; after carrying out the full review it reached the conclusion that it was not appropriate to remove the VREQ.

The Authority's Regulatory Decisions Committee did not make the decision to impose the VREQ, and its decision to take the action described in this Final Notice was made independently of that decision, after considering all relevant material, including Mr Hart's representations.

#### Transitional period for interim permission regime

7. *Mr Hart believed that firms granted interim permission had six months after the Authority took over regulation of consumer credit from the OFT (i.e. until 30 September 2014) to ensure that they met the standards that the Authority expected of them. He considers they would have been fully compliant by that time if the VREQ had not been imposed.*

The Authority's Policy Statement PS14/3: Detailed rules for the FCA regime for consumer credit, published in February 2014, made it clear, at paragraphs 11.3 to 11.5, that during the transitional period (from 1 April 2014 until 30 September 2014) consumer credit firms would not be treated as having breached a rule in CONC where they were able to demonstrate compliance with rules that corresponded to the requirements in CONC (for example, CCA provisions or OFT guidance). As is stated in paragraph 4.2 of this Final Notice, the Authority's view is that Mr Hart has failed to demonstrate such compliance by WPPL.

#### Cherry-picked examples of misconduct

8. *The Authority has made sweeping statements, reaching broad conclusions based on cherry-picked instances of misconduct. For example, the occasions when the Faster Payment Service failed to work satisfactorily, and the occasions when WPPL collected excessive repayment amounts, were very few in comparison to the number of loans that WPPL made.*

The Authority considers that the conclusions set out in this Final Notice fairly reflect the evidence considered by the Authority in deciding to take the action described in the Final Notice. WPPL's known failings were widespread and repeated, and Mr Hart has not provided evidence that during the relevant period he took action to address the failings or put in place any controls, policies, procedures or training that would reduce the risk of misconduct in the future.

#### Creditworthiness and affordability

9. *WPPL did consider affordability before advancing a loan. WPPL staff members knew Firm A's clients well, there were standard checks on WPPL's systems and in many cases wage slips and bank statements were requested. Where bank statements were submitted, they were checked. If no bank statements were*

*submitted, this does not mean that an affordability assessment was not carried out: other checks were carried out instead. Credit checks are a better test of affordability than bank statements, which could be misleading. WPPL would never lend money unless they considered the loan affordable.*

Apart from assertions by Mr Hart and other WPPL staff members, there is no evidence that affordability assessments were carried out by WPPL before advancing a loan. Lending decisions lacked objectivity and were often based on a subjective assessment of whether the customer was considered a 'good payer'. The fact that WPPL advanced loans when bank statements showed evidence of payday loans from other creditors or regular gambling payments, as was the case for Customers A, B and C, supports the view that WPPL did not consider affordability in the manner required by CONC. Where bank statements were not submitted, Mr Hart did not know in any particular case what checks, if any, had been carried out.

#### Forbearance

10. *In respect of the allegation that Mr Hart was directly involved in WPPL's failure to comply with regulatory requirements regarding forbearance, he asked Customer D "Do you want an increase?" because the customer had asked for one in telephone conversations. It did not mean the customer would get an increase.*

As is described in paragraph 4.26 of this Final Notice, Customer D did take out a new loan for a higher amount after Mr Hart had asked this question. The customer then requested extensions of time for repayment in each of the following three months. The Authority's view is that, despite these indicators that Customer D had become trapped in a cycle of borrowing, WPPL failed to consider whether Customer D was in financial difficulties and should be shown forbearance.

#### 'Faster payment' charge

11. *Where concerns were raised in respect of a faster payment charge, the charge was refunded and an apology was offered. In fact all faster payment charges taken in error were refunded, whether or not the customer complained. WPPL has decided not to use the Faster Payment Service in future.*

Mr Hart has not provided any evidence that all faster payment charges taken in error were refunded. As is demonstrated by the email of 15 July 2014, it was WPPL's practice to apply a discount to the customer's outstanding loan rather than refund a delayed faster payment charge. The fact that WPPL has decided not to use the Faster Payment Service in future does not affect the Authority's conclusions in respect of Mr Hart's failings in relation to faster payment charges during the relevant period. It was not WPPL's intention during the relevant period to stop using the Faster Payment Service, as is evidenced by the fact that the faster payment charge was mentioned in the draft Compliance Manual.

12. *In respect of the email received by Mr Hart on 15 July 2014, the proposal to charge everyone the faster payment fee was not agreed by Mr Hart.*

The Authority acknowledges that at least two of the recipients of the 15 July 2014 email received payment without being charged the faster payment fee. However, as is stated in paragraph 4.31 of this Final Notice, the Authority's concern is that Mr Hart did not take any action to investigate how widespread were WPPL's unfair and misleading practices in respect of faster payment charges or to stop them.

### Misleading and unfair communications with customers

13. *The communications with customers were not threatening, and in any case the text messages sent to Customer F were sent outside of work hours, without the authority of WPPL or Mr Hart, and the funds were not transferred to a WPPL bank account.*

In the Authority's view, the evidence shows that communications from WPPL staff to customers were routinely aggressive and threatening in tone, including the text messages sent to Customer F. Moreover, as is mentioned in paragraph 4.34 of this Final Notice, Mr Hart communicated with customers in an aggressive and improper manner himself. The fact that text messages were sent outside of work hours without his authority does not mitigate his failure to take adequate steps to ensure that WPPL staff members' communications with customers were clear, fair and not misleading.

### Threats of legal action

14. *WPPL had previously sued customers, so it is not correct to say it had no intention to do so. It did not have time to do so during the relevant period because it was dealing with issues resulting from its purchase of Firm A's loan book. In any case, it was entitled to commence court action and it was not unreasonable to notify customers that a failure to repay could lead to court action.*

The Authority's view is that, even if WPPL had previously sued customers, it had no intention to commence legal action on the occasions it threatened to do so during the relevant period. The Authority has not seen any evidence that WPPL considered, prior to commencing legal action, whether the customer could reasonably afford to make the payment. Accordingly, the Authority has concluded that WPPL acted in breach of CONC 7.3.18R, which provides that a firm must not threaten to commence court action to apply pressure to a customer who is in default, or arrears difficulties, to pay more than they can reasonably afford.

### Inadequate complaint handling

15. *There have been no defaults, nor any complaints, since 1 April 2014, and only one complaint since 2010.*

The Authority's view is that Mr Hart and WPPL are not able to recognise or define a complaint, as he made it clear in his representations that he considers that expressions of dissatisfaction which are not pursued do not constitute a complaint. The Authority's view is that there were many other complaints made during the relevant period.

### Inadequate systems and controls

16. *The systems and controls concerns raised by the Authority relate to the fact that Firm A withdrew the portal which WPPL had inherited from it in advance of the date agreed by the firms. After Firm A withdrew the portal, WPPL did not have enough time before the Authority's visit on 21 August 2014 to ensure its systems were adequate.*

The Authority considers that Mr Hart was aware that Firm A would withdraw the portal within four months of WPPL's purchase of its loan book, yet took inadequate action to manage the risks arising from the withdrawal. The Authority would also have expected WPPL, which had been in business for four years prior



to acquiring Firm A's loan book, to already have in place systems and controls which it could use in respect of the acquired loan book.

17. *WPPL's systems and controls during the relevant period reflected the fact it was a small business with a too informal approach. The WPPL staff during the relevant period no longer work for WPPL and, with the assistance of a law firm and compliance consultants, WPPL now has robust systems in place.*

The Authority has not seen any evidence that WPPL has made changes to its systems and controls. The Authority's decision to prohibit Mr Hart is based on serious failings that affected all aspects of WPPL's dealings with its customers, as a result of which the Authority considers that Mr Hart is not fit and proper to carry out functions in relation to regulated activities.

#### Policies and procedures

18. *WPPL did have policies and procedures during the relevant period, but these were not written down.*

As a result of its lack of written policies and procedures, WPPL contravened the requirement in SYSC 6.1.1R for a firm to establish, implement and maintain adequate policies and procedures that are sufficient to ensure its compliance with regulatory requirements. Without written policies and procedures, it is not clear how WPPL staff would have known what policies and procedures were in place, or how Mr Hart would have checked on WPPL staff members' compliance with policies and procedures.

19. *WPPL has created new policies and procedures but, due to the VREQ, has not been able to implement them. This includes procedures relating to affordability, forbearance, communications with customers, taking legal action, collection of repayments, complaint handling and the use of CPAs. Mr Hart has therefore not been given the opportunity to address the concerns raised and demonstrate that he can fulfil his responsibilities as director of WPPL in accordance with the Authority's requirements.*

Mr Hart did provide the Authority, after the VREQ was in place, with a draft Compliance Manual that set out a framework of policies and procedures relevant to WPPL's business activities. This draft manual did not address key topics in sufficient detail (e.g. affordability), contained a number of mistakes and inconsistencies and some of the policies were incomplete, so the new policies and procedures would not be adequate if implemented as drafted. The Authority accepts that, as a result of the VREQ, Mr Hart has not had an opportunity to put in place new policies and procedures and to address the concerns raised. However, the Authority does not consider it appropriate to give Mr Hart this opportunity given its concerns over his fitness and propriety outlined in this Final Notice.

20. *WPPL's new policies and procedures will ensure compliance so any concerns the Authority may have had about Mr Hart's and WPPL's actions during the relevant period will not arise in future.*

As is mentioned above, the Authority's view is that the draft Compliance Manual was incomplete and inadequate. In any case, regardless of any concerns about the quality of the draft policies and procedures themselves, Mr Hart lacks the fitness and propriety to assess their adequacy and to implement and maintain them.

### Staff oversight and training

21. *One of WPPL's staff members, who previously worked at Firm A, managed the business on Mr Hart's behalf. Mr Hart was satisfied he was competent to do so from his interview and regular meetings with him, and from the fact that the OFT had said there were no issues with taking him on. Mr Hart also trusted the experience of the other WPPL staff member who had previously worked at Firm A as the OFT had also not raised any concerns about him. Mr Hart held induction and training sessions for WPPL staff members, including on the WPPL systems, CONC, assessing affordability and compliance procedures. It is unfair to allege that Mr Hart did not have oversight of them as he was constantly in touch.*

It was Mr Hart's responsibility to carry out due diligence and checks on individuals he wished to hire to ensure their suitability and competence. The OFT had no power to prohibit or comment on the conduct of individuals at firms licenced by it, so could not have endorsed WPPL's staff members, and Mr Hart should not have relied on the lack of concerns expressed by the OFT. Mr Hart also had a responsibility to oversee WPPL's staff members, including checking the accuracy of what he was told and quality-checking their work. The Authority's view is that he failed to do this adequately, and the fact that he generally visited WPPL's offices only once a week contributed to this failure. In addition, Mr Hart has not provided any record of the training that he says he carried out, nor were any procedures, manuals or systems put in place other than the credit check system which WPPL used and which was provided to WPPL staff members after Firm A withdrew its portal. The Authority's conclusion is that no substantive training was provided to WPPL staff members.

### Use of personal mobile telephones to contact customers

22. *Personal mobile numbers were removed from WPPL staff members' email signatures, except for Mr Hart's email signature as he had no direct access to clients in day-to-day matters and needed the number for company matters.*

Mr Hart is not correct to claim that personal mobile numbers were removed from WPPL staff members' email signatures as they were included throughout the relevant period.

23. *Mr Hart was not aware that WPPL staff members were using personal mobiles to communicate with customers and was not aware of the text messages sent to customers. Some previous customers of Firm A already had the personal mobile numbers of WPPL staff members who had previously worked at Firm A, so he could not prevent these customers from contacting these WPPL staff members. He did, however, ask WPPL staff members not to contact customers by text message. Where there were text communications with customers, they were initiated by the customer.*

As is described in paragraph 4.54 of this Final Notice, Mr Hart received emails making it clear that WPPL staff members were using their personal mobiles to communicate with WPPL customers. The phone numbers of these personal mobiles were different to those they used when working at Firm A. WPPL staff members did initiate some text communications with customers, for example, some of the text communications with Customer F described at paragraph 4.33 of this Final Notice. The Authority's view is that Mr Hart failed to take any action to mitigate the risks arising from these practices.

### Inadequate information security arrangements

24. *The information security arrangements were adequate. Personal data was held securely offsite and no data was ever breached or lost.*

Sensitive customer data was held on WPPL's IT systems, and WPPL had poor systems in place to prevent unauthorised access to this information. Mr Hart had a duty to take reasonable steps to ensure that WPPL had in place adequate security arrangements to protect confidential data; the fact that WPPL is not aware of any data being lost does not demonstrate that adequate security arrangements were in place.

#### Compliance with CPA rules

25. *Mr Hart was only aware of one occasion where there were multiple attempts to use a CPA to take a repayment. That mistake was dealt with and Mr Hart informed WPPL staff members not to adopt that practice. If WPPL's systems had been inadequate, this would have happened on more occasions. WPPL's systems no longer allow more than two unsuccessful attempts to use a CPA unless done manually, and only Mr Hart has the log-in codes.*

In the Authority's view, Mr Hart has not demonstrated that he took any action to address the concerns that WPPL's systems did not prevent WPPL staff members from making multiple, manual CPA attempts and did not record the number of CPA attempts made or the individual collection amounts attempted. The Authority's conclusion that Mr Hart is not fit and proper is based on his actions during and after the relevant period; even if WPPL's systems have been improved since the Authority brought the problem to Mr Hart's attention, that does not of itself demonstrate that Mr Hart is a fit and proper person.

#### Non-compliant loan agreements

26. *WPPL's loan agreements were reviewed by a lawyer to ensure that they met the Authority's requirements and were compliant.*

The Authority has not been provided with any evidence that a lawyer reviewed WPPL's loan agreements and found them satisfactory. The Authority's view is that WPPL's loan agreements were not compliant, for the reasons given in paragraph 4.60 of this Final Notice.

#### Breach of the VREQ

27. *In respect of WPPL's breach of the VREQ, the emails sent to customers were system generated and, once WPPL became aware of them, the system was altered so that no further attempts would be made.*

The Authority accepts that Mr Hart may not have intended for WPPL to breach the VREQ, but still considers that he acted recklessly in failing to take adequate steps to prevent the breach, despite being aware of the importance of the VREQ.

#### Mr Hart's integrity

28. *Mr Hart did not act recklessly and does not lack integrity. He has not hurt any customers or caused any customers to raise any concerns. He does not accept that he is not fit and proper to work in the financial services sector.*

The Authority has concluded that Mr Hart does lack integrity, for the reasons given in paragraphs 5.4 to 5.5 of this Final Notice. The Authority also considers that Mr Hart lacks competence for the reasons given in paragraphs 5.6 to 5.7 of

this Final Notice. For these reasons, the Authority considers that Mr Hart is not fit and proper to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, and that he should be prohibited from doing so.