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## FINAL NOTICE

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To: **Wage Payment and Payday Loans Limited**

Company  
Number: 07080688

Firm IP Ref: 633083

Date: 28 September 2016

### **1. ACTION**

- 1.1. For the reasons given in this notice, and pursuant to section 55J of the Act, the Authority hereby cancels WPPL's Interim Permission.
- 1.2. By a Decision Notice dated 31 July 2015, the Authority notified WPPL that, having taken into account its written representations, pursuant to section 55J of the Act, the Authority had decided to cancel its Interim Permission.
- 1.3. WPPL referred the matter to the Tribunal on 26 August 2015. On 10 August 2016, WPPL requested that its reference be withdrawn and, on 24 August 2016, the Tribunal gave its consent to the withdrawal of WPPL's reference.

### **2. SUMMARY OF REASONS**

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

- 2.2. For the reasons given in Mr Hart's Final Notice, the Authority considers that Mr Hart, who is the ultimate owner, controller and sole director of WPPL, is not a fit and proper person because he lacks integrity and competence. Having concluded that Mr Hart is not fit and proper, the Authority has prohibited him from carrying out any regulated activity carried on by an authorised person, exempt person or exempt professional firm pursuant to section 56 of the Act. This order took effect from 28 September 2016.
- 2.3. As Mr Hart has been prohibited, WPPL does not have anyone in place to manage its business.
- 2.4. Accordingly, the Authority considers that WPPL is failing to satisfy Threshold Condition 2D (appropriate resources) because it does not have appropriate resources in relation to the regulated activities it carries on and seeks to carry on. In particular, WPPL does not have appropriate human resources as Mr Hart is the only director of the firm.
- 2.5. Further, the Authority considers that WPPL is failing to satisfy Threshold Condition 2E (suitability) because it is not a fit and proper person having regard to all the circumstances, including its connection with Mr Hart, the nature of the regulated activities that WPPL's Interim Permission permits it to engage in and how it has performed those activities, and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.
- 2.6. The Authority considers that the action set out in paragraph 1.1 above is necessary and proportionate and supports the Authority's operational objective of securing an appropriate degree of protection for consumers.

### **3. DEFINITIONS**

- 3.1. The definitions below are used in this 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) 'COND' means the Threshold Conditions section of the Handbook;
  - (f) 'DISP' means the Dispute Resolution section of the Handbook;
  - (g) 'Handbook' means the Authority's Handbook of rules and guidance;
  - (h) 'high-cost short-term credit' means an unsecured loan that: (i) has an annual percentage rate of 100% or more; (ii) is repayable within a short term; and (iii) is not an overdraft. The full definition of high-cost short-term credit can be found in the 'Glossary' section of the Handbook;
  - (i) 'Mr Hart's Final Notice' means the Final Notice given to Mr Andrew Barry Hart dated 28 September 2016;
  - (j) 'OFT' means the Office of Fair Trading;

- (k) 'relevant period' means the period from 1 April 2014 to 28 August 2014, the date of the VREQ;
- (l) 'SYSC' means the Senior Management Arrangements, Systems and Controls section of the Handbook;
- (m) 'Threshold Conditions' means the threshold conditions set out in Part 1B of Schedule 6 to the Act;
- (n) 'Transfer Order' means the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013;
- (o) 'Tribunal' means the Upper Tribunal (Tax and Chancery Chamber);
- (p) 'VREQ' means the requirements imposed upon WPPL by the Authority on 28 August 2014 following WPPL's voluntary application for their imposition, and which are set out in paragraph 4.4;
- (q) 'WPPL' or 'the Firm' means Wage Payment and Payday Loans Limited; and
- (r) 'WPPL's Interim Permission' means the interim permission under Part 4A of the Act obtained by WPPL on 1 April 2014, following the transfer of consumer credit regulation from the OFT to the Authority, which arose in accordance with article 56 of the Transfer Order.

#### **4. FACTS AND MATTERS**

##### ***Background: regulation of the UK consumer credit sector***

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

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

- 4.2. 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'. The Firm was issued with a Consumer Credit Licence by the OFT on 13 January 2010. Between 1 April 2014 and the date of this Final Notice, WPPL's Interim Permission permitted it to engage in the regulated activities of consumer credit lending, providing credit information services (excluding credit repair) and credit broking. In February 2015 WPPL applied for full authorisation under Part 4A of the Act.
- 4.3. Mr Hart is the ultimate owner (being the sole owner of WPPL's parent company), controller and sole director of WPPL. He is not presently (and was not during the relevant period) within the scope of the Authority's approved persons regime. However, as sole director and, therefore, the Firm's only senior manager, he retained responsibilities for oversight and supervision of the Firm's business, including its staff, during the relevant period.

## **VREQ**

- 4.4. On 21 August 2014, the Authority made an unannounced visit to the Firm. Following this, on 28 August 2014, WPPL applied for the VREQ. Under the terms of the VREQ, WPPL 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.

### **Mr Hart: prohibition**

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

- 4.9. The Authority considers that Mr Hart's lack of competence is further demonstrated by his failure to respond adequately to information that became available to him during the relevant period that pointed to a need for him to provide greater oversight of, and training to, WPPL staff members and to put in place appropriate policies and procedures, including in relation to complaint handling.
- 4.10. In view of Mr Hart's lack of fitness and propriety, the Authority has made an order prohibiting him from performing any function in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm. This order took effect from 28 September 2016. As Mr Hart has been prohibited, WPPL does not have in place anyone to manage its business and has a controller who lacks fitness and integrity.

## **5. FAILINGS**

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

## **6. SANCTION**

- 6.1. The Authority hereby cancels WPPL's Interim Permission. This has the effect that WPPL is no longer permitted to carry out any regulated activities. In relation to WPPL's business as a payday lender, WPPL is therefore not able to exercise, nor does it have the right to exercise, its rights and duties under a regulated credit agreement. In practice, this means that WPPL is not legally able to collect any debts due to it under regulated credit agreements or otherwise deal with its loan book. The Authority has taken account of this, and also WPPL's ability to sell its loan book to a business with appropriate authorisation prior to the Authority's decision to cancel its Interim Permission taking effect, the long period of time that has elapsed since WPPL has entered into regulated credit agreements, and the lack of alternative measures that would secure the appropriate degree of consumer protection, and is satisfied that the action is necessary and proportionate.

## **7. REPRESENTATIONS**

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

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

#### **2. RELEVANT REGULATORY PROVISIONS**

##### ***The Threshold Conditions***

- 2.1. COND 2.4.2G(2) states that the Authority will interpret the term 'appropriate' in relation to Threshold Condition 2D as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources, non-financial resources and means of managing its resources: for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.
- 2.2. COND 2.5.4G states that examples of the kind of general considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, Threshold Condition 2E include whether the firm conducts, or will conduct, its business with integrity and in compliance with proper standards.
- 2.3. COND 2.5.6G states that examples of the kind of particular considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, Threshold Condition 2E include whether the firm has contravened, or is connected with a person who has contravened, any provision of the Act or the regulatory system (COND 2.5.6G(4)).

## ANNEX B

### REPRESENTATIONS

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

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

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

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

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

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

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

The Authority made its decision to cancel WPPL's Interim Permission based on the position at the date of the Decision Notice given to WPPL, which was that Mr Hart remained the ultimate owner, controller and sole director of WPPL. The Authority's position was that if Mr Hart was no longer in those positions, the Authority would continue to hold the view that WPPL did not satisfy the Threshold Conditions unless and until WPPL could demonstrate that it had fit and proper



new management and control in place to be able to operate in compliance with regulatory requirements.