Dear Mr Director

Consumer Credit Act 1974
Licensee: Generic Payday Loans Limited
Licence Number: 123456

I refer to Generic Payday Loans Limited’s (GPL) standard consumer credit licence number 123456 issued under the Consumer Credit Act 1974 (the Act) on 1 January 2000. I am writing to advise GPL of the areas of concern identified by the Office of Fair Trading (OFT) during its recent investigations for the compliance review of the payday lending market, which may be relevant to GPL’s continuing fitness to hold a consumer credit licence.

OFT Action to date

As part of the OFT review of the payday lending sector’s compliance with the 'Irresponsible Lending - OFT guidance for creditors' (ILG), the Act and other relevant law and guidance, Anytown’s Trading Standards Services (TSS) visited GPL’s business premises on 01/04/2012 to review compliance.

In addition to that visit the OFT has conducted other investigations relevant to GPL’s fitness to hold a licence and has identified further areas of concern. The areas of concern identified during the compliance inspection and other OFT investigations are summarised in a table attached at Annex A to this letter. The matters identified in Annex A indicate that, in our view, GPL may not be complying fully with the ILG, the Act and other relevant law and guidance.
On 20 November 2012 we wrote to lenders and the trade associations warning that we expected lenders to examine their procedures and processes in the light of concerns highlighted in our interim report. We have concluded our compliance review and published a final report on 6 March 2013. We have written to all lenders, including GPL, warning that they must complete that examination of their procedures and processes by reference to all the areas of concern highlighted in the report. You can view our final report at: www.oft.gov.uk/payday.

Action needed by GPL

We are now writing to request that GPL addresses any matters that have been highlighted in our final report, and that have not yet been rectified, with particular reference to the specific areas of concern indentified in Annex A. GPL must provide an audit report demonstrating to the OFT the changes that have been implemented to ensure that GPL is complying with its legal obligations and the minimum standards the OFT expects of licensees. As the content of that report may be relevant to GPL’s continuing fitness to hold a consumer credit licence, GPL may also wish to obtain its own legal advice on these matters.

In response to this letter GPL should:

- take immediate action to rectify any areas of concern identified in the attached Annex A that have not yet been addressed,
- within 14 days, i.e. by [DATE], respond to the OFT to confirm receipt of this letter and that necessary changes will be effected, and
- within 12 weeks, i.e. by [DATE], provide an audit report to the OFT setting out how the identified areas of concern have been rectified, and the effective date of any changes implemented.

The identified concerns are matters that may be relevant to GPL’s continuing fitness to hold a consumer credit licence. The audit report therefore needs to contain clear and compelling evidence of compliance in relation to each concern identified. It will not be sufficient to merely assert that changes have been made or that you are now compliant.

In our view, the most reliable way of presenting the evidence is in the form of a report from an independent auditor that confirms the remedial action that has been taken to ensure compliance with the ILG, the Act and other relevant law and
guidance. In the event that the content of the report is not sufficient to enable the OFT to be satisfied that the identified concerns have been addressed, or if no report is provided, this will also be a matter relevant to GPL’s continuing fitness to hold a licence.

**Failure to comply**

A failure to adhere to legal obligations or OFT guidance can be considered by the OFT under section 25 of the Act as matters relevant to fitness and could result in formal licensing action, such as revocation under section 32 of the Act, or the imposition of requirements under section 33A of the Act.

Please note that licensing action can be taken in relation to historical breaches of the law and guidance, including any matters referred to in Annex A, as well as in respect of new or continuing breaches.

**The OFT’s role in monitoring fitness generally**

It is your responsibility to ensure compliance with all relevant law and guidance. The areas of concern identified in Annex A are a list only of those specific areas of non-compliance identified by the OFT during recent investigations, which was not an exhaustive review of GPL’s compliance. For the avoidance of doubt, the fact that a practice is not mentioned in Annex A is not an indication that the OFT has approved it.

In its ongoing role of monitoring GPL’s fitness to hold a licence, the OFT will not be confined to reviewing the matters identified in Annex A, but will also look more widely at GPL’s business practices and ongoing compliance with all relevant legislation and OFT guidance. An OFT compliance visit can be undertaken at any time during the currency of a consumer credit licence, and we may decide to visit GPL again in the future.

All correspondence regarding this letter should be sent to Marie Whitley, Head, Payday Lending Compliance Review team either by email to review.pdl@oft.gsi.gov.uk or by post to:
Marie Whitley  
Head, Payday Lending Compliance Review team  
Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
London EC4Y 8JX  
Telephone: 020 7211 xxxx

I am sending a copy of this letter in confidence, for information purposes, to the Head of the local authority TSS for Anytown, which is the enforcement authority responsible for monitoring the conduct of licensees in your area.

Yours sincerely

Gordon Ramsay  
Deputy Director, Investigations and Enforcement  
Consumer Credit Group

Enc: Annex A
ANNEX A

Licence Number 123456 Generic Payday Loans Limited (‘GPL’)

Introduction: The information below is derived from the visit conducted by Anytown’s Trading Standards Services (the inspection officer) and the further investigations of the Office of Fair Trading (OFT) into GPL’s compliance with the Consumer Credit Act 1974, the OFT’s ‘Irresponsible Lending Guidance for creditors’ and other relevant law and guidance.

References in this document to ‘unsatisfactory business practices’ means matters to which the OFT may have regard when assessing fitness as evidence tending to show engagement in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not) or that appear to the OFT to involve irresponsible lending (sections 25(2A)(e) and (2B) of the Consumer Credit Act 1974).

<table>
<thead>
<tr>
<th>Legislation/Regulation/ Guidance</th>
<th>What is required</th>
<th>Compliance concern</th>
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<tbody>
<tr>
<td>1. ADVERTISING/MARKETING (INCLUDING ON-LINE ADVERTISING)</td>
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<td>(a) Regulations 3, 5 and 6 of the Consumer Protection from Unfair Trading Regulations 2008 (S.I.2008/1277)</td>
<td>It is a prohibited unfair commercial practice, and an offence, to include false or deceptive information, or to omit or hide material information, or to provide material information in a manner which is unclear, unintelligible, ambiguous or untimely, the result of which causes or is likely to cause the average</td>
<td>The OFT accessed GPL’s website at <a href="http://www.genericloan.net">www.genericloan.net</a> on 5 June 2013. The information presented there did not provide a balanced picture of the key features and risks of taking out payday loans.</td>
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Paragraphs 5.8 and 5.12 of the Irresponsible Lending Guidance (OFT1107)

It is an unsatisfactory or unfair/deceptive business practice to employ the use of advertising, and/or other promotional material, and/or other oral or written representations which:

- understate, mask or omit material information regarding key risks to the borrower, or
- present or omit key information relevant to a borrowing decision such as to actually or potentially create a false or misleading impression.

The debtor under a regulated consumer credit agreement must not be obliged to pay interest on sums which, in breach of the agreement, are unpaid by him at a rate—

(a) Where the total charge for credit includes an item in respect of interest, exceeding the rate of that interest, or
(b) In any other case, exceeding what would be the rate of the total charge for credit if any items included in the total

Section 93 Consumer Credit Act 1974, c.39

Information on key risks and consequences, for example the default charges applied in the event of late repayment, were either not made clear, or not included on the website at all.

Where risks or consequences were included, they were not given due prominence. For example, the website did not include, or did not give due prominence to, the key consequences of taking out a payday loan, such that it is expensive as a means of longer term borrowing and would not be suitable for supporting sustained borrowing over longer periods.

Another example of a potentially misleading omission is that it is not made clear to prospective borrowers that the costs of borrowing will be significantly higher dependent upon when the borrower applies for the loan relative to their payday date given that the loan period appears to vary dependent on when the applicant’s next payday is, but the charge applied appears to be the same in all cases. It is also not
| (b) | Paragraph 5.12 of the Irresponsible Lending Guidance (OFT1107) | Employing the use of advertising and/or other promotional material, and/or other oral or written representations which either present or omit key information relevant to a borrowing decision such as to actually or potentially create a false or misleading impression is a deceptive and/or unfair practice. Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being **unsustainable** for the borrower in question. This involves more than solely assessing the likelihood of the borrower being able to repay the credit in question. Creditors should take reasonable steps to assess a borrower’s likely ability to be able to meet repayments under the credit agreement in a **sustainable** manner. | Other examples of potentially misleading statements observed on the website include:

- ‘You are only 5 minutes away from getting your loan’
- ‘Instant approval’
- ‘Decision in minutes...’
- ‘Instant payday loans ....cash in your account and available to withdraw in hours or even minutes!’

These will be misleading statements if they are false or deceptive, for example as to the likely speed of processing the application or of the paying over of the loan monies.

In particular, the statements may be misleading because it is not made clear to borrowers that loan applications (and charge for credit by virtue of section 20(2) were disregarded. clear therefore what interest rate applies under the agreement or how interest in the event of default would be calculated. |
| Regulation 6 of the Consumer Credit (Advertisements) Regulations 2010 (S.I. 2010/1970) | Creditors should also take account of the fact that the risk of the credit being unsustainable will be directly related to the amount of the credit granted (and associated interest/charges etc) relative to the borrower’s financial situation.

Failing to undertake a reasonable assessment of affordability in an individual case or cases is an unsatisfactory business practice.

A credit advertisement must specify the representative APR if the advertisement:
- indicates in any way that credit is available to persons who might otherwise consider their access to credit restricted, or
- indicates in any way that any of the terms on which credit is available is more favourable than corresponding terms applied in any other case or by any other creditors, or
- includes an incentive to apply for credit or to enter into an agreement under which credit is provided.

The representative APR must be given greater payments) will only be processed during GPL’s opening hours, namely 9.30-5.30 Monday to Friday and 9.30-12.30 on Saturday. Also, there is no corresponding reference made to the additional fee charged for same day payout (£15) or that otherwise the loan may take up to five banking days to reach the borrower’s account. (Nor is any explanation provided for why it would potentially take so long to advance the borrowed funds after a loan has been approved.)

Borrowers are also not warned that even if the same day payout fee is paid they might not receive their funds the same day because GPL will need to undertake manual verification checks, such as telephoning the employer, before approving the loan.

If the claims made about speed of approval/payment are true, such statements may evidence irresponsible lending. They suggest that that either no affordability assessments are being undertaken, which would be an unfair business practice, or |
prominence that any indication or incentive of the kind referred to above.

| (c) | Regulation 10(d) of the Consumer Credit (Advertisements) Regulations 2010 (S.I. 2010/1970) | A credit advertisement must not include the expression ‘loan guaranteed’ or ‘pre-approved’ or any similar expression, except where the agreement is free of any conditions regarding the credit status of the debtor. Employing the use of advertising and/or other promotional material (including a ‘trading name’ or ‘logo’), and/or other oral or written representations, which suggest, either expressly or by implication, that credit is available regardless of the borrower’s financial status. |

|  | Paragraph 5.2 of the Irresponsible Lending Guidance (OFT1107) | The website also appears to be targeting borrowers with poor credit history. For example, it includes the following statements:

   ‘Poor credit history, don’t worry’
   ‘Even if you have been turned down by other lenders, we can help’
   ‘As long as you are over 18 and have a UK debit card you can qualify for a loan....’
   ‘No credit checks – we trust you to repay’ |
| Regulations 6 and 7 of the Consumer Credit (Advertisements) Regulations 2010 (S.I. 2010/1970) | A credit advertisement must specify the representative APR if the advertisement:
• indicates in any way that credit is available to persons who might otherwise consider their access to credit restricted, or
• indicates in any way that any of the terms on which credit is available is more favourable than corresponding terms applied in any other case or by any other creditors, or
• includes an incentive to apply for credit or to enter into an agreement under which credit is provided.

The representative APR must be given greater prominence than any indication or incentive of the kind referred to above.

An APR must be denoted in an advertisement as ‘%APR’ and the representative APR must be accompanied by the word ‘representative’.

It is a prohibited unfair commercial practice, |
| Regulations 3, 5 and 6 | And in the FAQs, it is stated:
‘Q. What if I have bad credit? Will I be able to take out a payday loan?
A. – Yes. We offer bad credit payday loans so don’t worry.’

These statements will be misleading if they are false or deceptive. In particular, they imply that credit is available regardless of the borrower’s financial circumstances, and that a borrower is likely to be approved for a loan as long as they meet the stated criteria, even if they have a bad credit history. It is not made clear to borrowers, however, that to qualify for a loan with GPL they must also be in regular employment and have a minimum monthly income of £750. Borrowers are also not advised that, in all cases, a call will have to be made to their employer to verify their employment before the loan will be approved.

Also, although GPL advertises that it does not undertake credit checks, on the Terms and Conditions webpage it is stated:
| (d) Regulations 3, 5 and 6 of the Consumer Protection from Unfair Trading Regulations 2008 (S.I.2008/1277) | It is a prohibited unfair commercial practice, and an offence, to include false or deceptive information, or to omit or hide material information, or to provide material information in a manner which is unclear, unintelligible, ambiguous or untimely, the result of which causes or is likely to cause the average consumer to take a transactional decision he would not otherwise have taken. Employing the use of advertising and/or other promotional material, and/or other oral or
Paragraph 5.12 of the | ‘Should we deem it necessary, we may check records about you including: Our own databases, The databases of Credit Reference Agencies (CRAs) or Fraud Prevention Agencies (FPAs)….’ and that ‘Once a CRA has received an enquiry from us, they will make a record on your credit file which may then, in turn, be seen by other lenders.’ Therefore, the statements made that GPL does not undertake credit checks may be false or deceptive, and thus misleading.

GPL’s website also appears to be misleading in respect of the amount that new customers can borrow. For example, on the homepage is it stated ‘Instant cash loans from £50-£1000. Apply now’. The website does not explain, however, that GPL’s lending policy restricts the maximum amount that a new customer can borrow to £200, and that GPL will only make loans of up to £1000 to existing borrowers who have already borrowed, and
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<th><strong>Irresponsible Lending Guidance (OFT1107)</strong></th>
<th>written representations which either present or omit key information relevant to a borrowing decision such as to actually or potentially create a false or misleading impression is a deceptive and/or unfair practice.</th>
<th>repaid, several previous loans (the lending limit being increased by £200 each time).</th>
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| **(e) Paragraph 2.3 of the Irresponsible Lending Guidance (OFT1107)** | Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not.  
Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited. | There are several statements on GPL’s website that appear to promote irresponsible borrowing, for example by encouraging borrowers to use payday loans for inappropriate purposes including refinancing existing credit commitments that the borrower already cannot repay sustainably.  
Examples include:  
‘Our loans can be used for any purpose, no questions asked....[to pay] an unexpected credit card bill...’  
‘Don’t miss out on that special purchase, why wait until payday when you can have money in your account today....’  
‘as long as your loan is paid back on time you could improve your credit rating...’  
‘...cheaper than using an overdraft or |
credit (if known) is an unsatisfactory business practice.

This includes promoting a short-term loan product such as a payday loan, which would be expensive as a means of longer term borrowing, as being suitable for supporting sustained borrowing over longer periods.

incurring default fees on a credit card…’

‘a convenient way to get money when you need it fast’

And on the FAQs page it states:
‘Q. What if I can’t repay my loan in full on my next payday?
A. Don’t worry – contact us and we can defer full repayment of your loan for another 30 days (a monthly fee applies)’

| (f) Regulations 4(1) and 5 of the Consumer Credit (Advertisements) Regulations 2010 (S.I. 2010/1970) | Where a credit advertisement includes a rate of interest or an amount relating to the cost of the credit other than the representative APR, the advertisement shall also include standard information by means of a representative example.

This includes: the rate and type of interest, any charges levied including the total charge for credit; the total amount of credit and the total amount to be repaid; the duration of the agreement and the representative APR.

The example must be labelled as a

The OFT also noted that GPL’s website does not contain a ‘representative example’ that complies with the statutory requirements, but instead includes ‘illustrative loan details’.

The ‘illustrative loan details’ provided do not contain all of the standard information required to be included in a representative example. For example, they do not include a rate of interest, or details of the faster payment fees where these might be expected to be paid in more than 51% of cases. The example also incorrectly refers
‘representative example’ and all the standard information must be presented together, with each item of information being given equal prominence and the example being given greater prominence than any other cost (or prescribed) information.

The representative APR is an APR at or below which the advertiser reasonably expects, at the date on which the advertisement is published, that credit will be provided under at least 51% of the consumer credit agreements entered into as a result of the advertisement.

A credit advertisement must specify the representative APR if the advertisement:
- indicates in any way that credit is available to persons who might otherwise consider their access to credit restricted, or
- indicates in any way that any of the terms on which credit is available is more

to the representative APR as being the ‘example APR’.

Finally, the standard information is not given greater prominence than the other cost information - it is located at the very bottom of the web page and can only even be seen if the consumer scrolls the field of vision down to show the very bottom of the webpage.

In addition, there are narrative references to the Representative APR on GPL’s website that undermine the purposes of including it as a comparison tool. For example:

‘The APR is not a useful measure of the cost of borrowing for a few days or months because it is calculated on the cost of borrowing over a yearly basis. This makes the APR look artificially high....’

‘What is important is how much the loan actually costs, which is why [GPL] sets out the total cost of borrowing which is fixed for loans of up to 30 days’

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<th>Regulation 1(3) of the Consumer Credit (Advertisements) Regulations 2010 (S.I. 2010/1970)</th>
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|   | favourable than corresponding terms applied in any other case or by any other creditors, or  
|   | • includes an incentive to apply for credit or to enter into an agreement under which credit is provided.  
|   | An APR must be denoted in an advertisement as ‘%APR’ and the representative APR must be accompanied by the word ‘representative’.  
| (h) | Regulation 1(3) of the Consumer Credit (Advertisements) Regulations 2010 (S.I. 2010/1970) | The representative APR is an APR at or below which the advertiser reasonably expects, at the date on which the advertisement is published, that credit will be provided under at least 51% of the consumer credit agreements entered into as a result of the advertisement.  
|   | The representative APR is stated to be 360% but this does not appear to have been calculated accurately given that the amount charged by GPL to borrow £100 over 30 days is £30.  
|   | It is also unclear whether this calculation takes account of the additional fees charged for same day payout (£15), or what interest rate is used in the calculation given that the amount charged (£30 per £100) remains the same even if the loan is taken out for a period of less than 30 days.  
|   | ‘The APR is misleading for short term loans....’  
|   | Such statements are likely to confuse the average consumer and undermine the value of including the representative APR as a cost comparator.  
|   | Finally, the APR was not cited in the correct statutory form and was described as being the ‘example APR’.  

## 2. PRE-CONTRACT INFORMATION AND ADEQUATE EXPLANATIONS

| (a)        | Section 55 of the Consumer Credit Act 1974, c.39 | The prescribed information must be disclosed in the prescribed manner to the debtor before a regulated agreement is made. Otherwise, the agreement is enforceable against the debtor on an order of the court only. Before a credit agreement is made, the creditor must provide the debtor with an adequate explanation of the matters referred to in section 55A(2) in order to place the debtor in a position enabling him to assess whether the agreement is adapted to his needs and his financial situation. The matters in section 55A(2) are:
(a) the features of the agreement which may make the credit unsuitable for particular types of use (b) how much the debtor will have to pay periodically and, where the amount can be determined, in total under the agreement (c) the features of the agreement which may have a significant adverse effect in a way | The inspection officer reported that GPL provides the Pre-contract Credit Information (PCI) and adequate explanation in an email sent to the borrower after the application had been submitted and ‘pre-approved’ (by passing automated ‘credit and identity’ checking) and at the same time that the borrower is asked to electronically ‘sign’ the loan agreement (at the end of the application process. It is not clear what processes (if any) GPL has in place for checking that the borrower has opened the e-mailed documents (for example via an embedded validation link or by asking the borrower) and whether the borrower has read and understood them. On the basis of the information given to the inspection officer, it seems possible that borrowers may enter into a credit agreement without first being clearly presented with the PCI and adequate |
| Paragraph 3.13 of the Irresponsible Lending Guidance (OFT 1107) | which the debtor is unlikely to foresee (d) the principal consequences arising from a failure to make payments under the agreement at the times required, and (e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised. | The OFT considers that borrowers should be able to shop around for credit without a footprint being left on their credit files which could impair their credit rating. This would be facilitated by creditors undertaking ‘quotation searches’ as distinct from ‘application searches’ when appropriate to do so. |
| Paragraph 3.15 of the Irresponsible Lending Guidance (OFT 1107) | Failing to establish and implement clear and effective policies and procedures for the provision of adequate explanations is an unsatisfactory business practice. Creditors selling credit products via the internet need to ensure that a borrower is not able to enter into a credit agreement without first seeing the required information and adequate explanation, and having an opportunity to read it and ask questions. | explanation and without having read or understood these, or even being advised to read them. It also appears that the PCI and adequate explanation are provided to the borrower only after a search with a Credit Reference Agency (CRA) has already been undertaken. Accordingly, by the time the PCI is provided, the borrower is not likely to be in a position to be able to consider the PCI and shop around because of the record of the credit search, which can impact on the borrower’s credit rating. This is of particular concern given that GPL expressly advertises (see 1(c) above) that it does not undertake credit checks and also borrowers are not warned of any potential detrimental impact on their credit rating of such a search being made/recorded. |
### Paragraph 3.13 of the Irresponsible Lending Guidance (OFT 1107)

When providing an explanation for a payday loan, the creditor should include an explanation of the effect of extending the life of a credit agreement or ‘rolling over’ loans.

It is an unsatisfactory business practice to fail to communicate to the borrower:
- the features of the agreement (if any) which may make the credit to be provided under the agreement unsuitable for particular types of use;
- the features of the agreement which may operate in a manner which would have a significant adverse effect on the borrower in a way which the borrower would be unlikely to foresee;
- the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised,

### Paragraphs 3.21, 3.23 and 3.25 of the Irresponsible Lending Guidance (OFT1107)

It is a deceptive or unfair practice to fail to document the CPA appropriately or to fail to explain it adequately before entering into the credit agreement. The explanation must, at least, include what a CPA is and how it works and how it will be applied by the creditor.

The standard form of adequate explanation provided to the inspection offer did not comply with all of the statutory requirements.

In particular, the adequate explanation:
- did not explain the features of the agreement that may make the credit unsuitable for particular types of use, such as it being an expensive form of credit and not suitable for sustaining borrowing over long periods,
- did not include any explanation about the use of Continuous Payment Authority, its scope or how it would be applied by GPL,
- did not explain the effect of extending the life of the credit agreement or ‘rolling over’ loans,
- did not refer to the right of withdrawal under section 66A of the Consumer Credit Act 1974, or how and when this right may be exercised or the effect of such exercise.
| (c) | Paragraph 3.16 and 3.27 of the Irresponsible Lending Guidance (OFT1107) | Failing to implement procedures to enable borrowers to be able to ask for – and obtain ready access to – further information or explanation about the agreement or failing to advise the borrower how to ask the creditor (or a person acting for the creditor) for further information and explanation are unsatisfactory business practices. | When the adequate explanation and PCI documents are e-mailed to the borrower, GPL does not appear to also advise the borrower how they can obtain further information or explanation if required. |
| (d) | Paragraph 3.29 of the Irresponsible Lending Guidance (OFT1107) | It is an unsatisfactory business practice, and harassment, to pressurise a borrower to sign up to a credit agreement without affording him a reasonable opportunity to:  
• ask questions about the agreement,  
• consider the information provided by the creditor about the agreement  
• ask for and obtain further information and explanation. | It is an unsatisfactory business practice, and harassment, to pressurise a borrower to sign up to a credit agreement without affording him a reasonable opportunity to:  
• ask questions about the agreement,  
• consider the information provided by the creditor about the agreement  
• ask for and obtain further information and explanation. | When the adequate explanation and PCI documents are e-mailed to the borrower, GPL does not appear to also advise the borrower how they can obtain further information or explanation if required. |
<p>| | Paragraph 5.10 of the Irresponsible Lending Guidance (OFT1107) | It is an unsatisfactory business practice to inappropriately encourage, induce or incentivise a borrower to sign up to an agreement quickly, without allowing the borrower time to consider pre-contract information and explanations. | It is an unsatisfactory business practice to inappropriately encourage, induce or incentivise a borrower to sign up to an agreement quickly, without allowing the borrower time to consider pre-contract information and explanations. | It is an unsatisfactory business practice to inappropriately encourage, induce or incentivise a borrower to sign up to an agreement quickly, without allowing the borrower time to consider pre-contract information and explanations. | When the adequate explanation and PCI documents are e-mailed to the borrower, GPL does not appear to also advise the borrower how they can obtain further information or explanation if required. |
| | Regulations 3, 5 and 6 | It is a prohibited unfair commercial practice, | It is a prohibited unfair commercial practice, | It is a prohibited unfair commercial practice, | When the adequate explanation and PCI documents are e-mailed to the borrower, GPL does not appear to also advise the borrower how they can obtain further information or explanation if required. |</p>
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<th>of the Consumer Protection from Unfair Trading Regulations 2008 (S.I.2008/1277)</th>
<th>and an offence, to include false or deceptive information, or to omit or hide material information, or to provide material information in a manner which is unclear, unintelligible, ambiguous or untimely, the result of which causes or is likely to cause the average consumer to take a transactional decision he would not otherwise have taken.</th>
<th>deposit of funds was not likely to be routinely achievable in practice and therefore that the statement made about money being made available within 12 minutes was likely to be misleading. Also, as the borrower is not told about the e-mail enclosing the PCI and adequate explanation being sent separately, the statement about timing is also likely to encourage or incentivise the borrower to sign up to the agreement quickly, before having an appropriate opportunity to consider the PCI and adequate explanation.</th>
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<tr>
<td>3. AFFORDABILITY ASSESSMENTS</td>
<td>Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being <strong>unsustainable</strong> for the borrower in question. This involves more than <strong>solely</strong> assessing the likelihood of the borrower being able to repay the credit in question. Creditors</td>
<td>According to the information given to the inspection officer, GPL advised that of all new loans issued in 2011/12 (calculated at 12,345 loans), 28 per cent were repaid by the due date, 61 per cent were subsequently ‘deferred’ or refinanced and 38 per cent were defaulted on (the default figure may include some duplicate counting.</td>
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should take reasonable steps to assess a borrower’s likely ability to be able to meet repayments under the credit agreement in a **sustainable manner**.

In ‘a sustainable manner’ means credit that can be repaid by the borrower without undue difficulty – in particular without incurring or increasing problem indebtedness - and over the life of the credit agreement and out of income or available savings.

Creditors should also take account of the fact that the risk of the credit being unsustainable will be directly related to the amount of the credit granted (and associated interest/charges etc) relative to the borrower’s financial situation.

Failing to undertake a reasonable assessment of affordability in an individual case or cases is an unsatisfactory business practice.

| (b) | **Paragraphs 4.19 and 4.21 of the Irresponsible Lending Guidance** | Failing to establish and implement clear and effective policies and procedures for the reasonable assessment of affordability is an unsatisfactory business practice. | GPL’s policy for assessing affordability at the time of the inspection visit did not require borrowers to provide any |
| (OFT1107) | Unsatisfactory business practice.  
Failing to consider sufficient information to be able to reasonably assess affordability prior to granting credit is an unsatisfactory business practice. | Information about their regular outgoings, including essential expenses (such as rent and food) or other credit commitments, such as would allow GPL to assess the likelihood of that particular borrower being able to repay the lending in a sustainable manner. |
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<td>(c) Paragraph 8.3 of the Irresponsible Lending Guidance (OFT1107)</td>
<td>Creditors must provide such documents or information as is necessary for the OFT to form a view as to whether the practices and procedures that they employ are effective. Amongst the matters that the OFT is likely to wish to consider are whether the creditor’s practices and procedures are appropriate to assess a prospective borrower’s ability to be able to afford to meet repayments over the life of a credit agreement in a sustainable and have been effectively implemented in practice, and are monitored and appropriately amended on the basis of the results of such monitoring as and when appropriate to do so.</td>
<td>Based on the information provided to the inspection officer, GPL did not appear to have monitored or amended its policy for assessing affordability as appropriate, for example in response to the high levels of borrowers that were routinely demonstrating an inability to repay their lending sustainably.</td>
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<td>(d) Paragraphs 4.4, 4.8 and 4.16 of the Irresponsible Lending Guidance</td>
<td>Sustainable lending means the borrower being able to make repayments (absent any changes in personal circumstances that were not</td>
<td>In addition to its 30-day loan product GPL offers short-term instalment loans of up to six months duration with the repayment</td>
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reasonably foreseeable) while also meeting other debt repayments and other normal/reasonable outgoings and without having to borrow further to meet such commitments.

Where the assessment of affordability suggests that a borrower is unlikely to be able to meet repayments under a credit agreement in a sustainable manner over the life of the agreement, that amount or duration of credit should not be made available.

Creditors should also take account of the fact that the risk of the credit being unsustainable will be directly related to the amount of the credit granted (and associated interest/charges etc) relative to the borrower’s financial situation.

<p>| schedule aligned with the borrower’s pay dates and the interest rates charged at the equivalent of 1% per day. |
| In relation to the instalment product, the OFT notes that the length of the loan is fixed by reference to the amount borrowed and also that the monthly instalments are different each month, with the initial payments being higher than subsequent payments. |
| It was not clear from the information and documents provided to the inspection officer why the borrower is required to repay the loan in unequal monthly instalments, or why the borrowing can only be for a fixed duration dependent on the total overall amount borrowed. |
| It is also not clear how these factors are taken into account by GPL when it assesses affordability - the amount of each monthly instalment, and the overall duration of the lending, being relevant factors to the assessment of whether the proposed |</p>
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<td><strong>4. ROLLOVERS (INCLUDING DEFERRED, REFINANCED AND EXTENDED LOANS)</strong></td>
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<tr>
<td>(a)</td>
<td><strong>Paragraph 5.5 of the Irresponsible Lending Guidance (OFT1107)</strong></td>
<td>Promoting the sale of a particular credit product to an individual borrower in circumstances in which the creditor has reason to believe that the product is <strong>clearly</strong> unsuitable for that borrower given his financial circumstances and/or his intended use of the credit (if known) is an unsatisfactory business practice.</td>
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|   | **Paragraph 6.25 of the Irresponsible Lending Guidance (OFT1107)** | It is a deceptive or unfair business practice to repeatedly refinance (or ‘roll over’) a borrower’s existing credit commitment for a short-term credit product in a way that is unsustainable or otherwise harmful.  
This includes allowing a borrower to sequentially enter into a number of separate agreements for short-term loan products, where the overall effect is to increase the borrower’s indebtedness in an unsustainable manner. |
|   |   | At the time of the inspection visit GPL advised that it did not allow rollovers.  
However, when the inspection officer spoke to the call centre staff during the visit he was told that customers who could not afford to repay their loan could request a ‘deferral’, which meant the repayment of the loan capital would be deferred to the following payday as long as the customer paid an additional month’s interest charge on or before the original due repayment date (see further 4(b) below).  
In addition, GPL advised that it did allow borrowers to take out sequential loans. For example, the FAQs on the website state:  
‘Q. If I pay back my loan in full, how long do I have to wait until I can borrow again?’  
A – If your loan has been repaid in full then
| Regulations 3, 5 and 6 of the Consumer Protection from Unfair Trading Regulations 2008 (S.I.2008/1277) | The general purpose of payday loans is to act as a short-term solution to temporary cash flow problems. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are likely to be more suitable. It is a prohibited unfair commercial practice, and an offence, to include false or deceptive information, or to omit or hide material information, or to provide material information in a manner which is unclear, unintelligible, ambiguous or untimely, the result of which causes or is likely to cause the average consumer to take a transactional decision he would not otherwise have taken. You can apply for a new loan in as little as one hour after your repayment has cleared.’ Allowing borrowers to take out sequential loans in this manner has the same result as allowing rollovers because it has the effect of turning a loan suitable for short-term borrowing, into medium or longer-term borrowing, for which other credit products are likely to be more suitable. For example, the customer records provided to the inspection officer indicated that a significant proportion of GPL’s borrowers had taken out sequential loans, on a monthly basis, for each of the last 12 months. Presumably also, GPL would be counting within its figures of borrowers who had repaid sustainably (see para 3(a) above) people who had immediately subsequently ‘re-borrowed’ the same, or higher, amount. |
|---|---|---|---|
| (b) Sections 55, 55A and 55B of the Consumer Credit Act 1974, c.39 | Before making a credit agreement the creditor must: • provide the Pre-contract Credit Information In relation to ‘deferrals’, the inspection officer was advised that a ‘deferral’ could be set up over the phone, as long as the |
| Paragraph 3.12 of the Irresponsible Lending Guidance (OFT1107) | (PCI) • provide an adequate explanation, and • undertake an assessment of the creditworthiness of the debtor. An adequate explanation should be given for each new regulated consumer credit agreement before it is made (including any modifying agreement). A modifying agreement is deemed to give rise to a new agreement by virtue of section 82(2) of the Consumer Credit Act 1974. If a borrower cannot make a due repayment creditors should accommodate this without formally extending the duration of the agreement. If the duration is extended formally, however, creditors should not increase the total amount payable to unsustainable levels or otherwise cause an adverse impact on the borrower’s overall financial situation. Before granting credit (or significantly increasing the amount of credit) creditors should take reasonable steps to assess a consumer paid the interest charge by debit or credit card, and that a fresh affordability assessment was not undertaken at that stage. It is not clear therefore how the fact that the borrower was unable to repay their existing credit sustainably is then factored into GPL’s decision to further extend the credit offered. Furthermore, if the ‘deferral’ amounts to a new or modifying loan agreement then all of the statutory requirements for a new loan should be complied with before it is entered into, including the provision of a new PCI and adequate explanation, fresh creditworthiness and affordability checks being undertaken, and the new loan must be documented accordingly. Given the practices adopted by GPL there seems to be a clear risk that borrowers may be inappropriately encouraged to increase, aggregate or roll over debt to unsustainable levels. This risk is further exacerbated by the fact |
borrower’s likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

Granting an application for credit when, on the basis of an affordability assessment it is known, or ought to be suspected, that the credit is likely to be unsustainable is an unsatisfactory business practice.

Inappropriately encouraging borrowers to increase, aggregate or roll over debt to unsustainable levels is an unsatisfactory business practice.

that GPL allows repayments to be made using a credit card, rather than a debit card, as this also amounts to a refinancing of the existing borrowing (albeit with a different lender).

5. FORBEARANCE AND DEBT COLLECTION

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<tr>
<th>(a)</th>
<th>Paragraph 2.3 of the Irresponsible Lending Guidance (OFT1107)</th>
<th>Creditors should show forbearance and consideration towards borrowers experiencing difficulty. We would expect creditors to work with such borrowers with a view to providing them with reasonable time and opportunity to meet repayments.</th>
<th>The inspection officer reported that, at the time of the inspection visit, GPL did not:</th>
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<td>Paragraph 6.2 of the</td>
<td>Failing to monitor a borrower’s repayment</td>
<td>• have written policies or procedures for dealing with borrowers who fall into arrears or default or who are in financial difficulty;</td>
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<td>• actively monitor borrower’s</td>
</tr>
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<td>Irresponsible Lending Guidance (OFT1107)</td>
<td>Paragraphs 7.2, 7.3 and 7.4 of the Irresponsible Lending Guidance (OFT 1107)</td>
<td>(b) Paragraph 3.7(a), (i), (j), (p) and (q) of the Debt Collection Guidance (OFT664Rev2)</td>
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| record is an unsatisfactory business practice. The OFT considers that lenders should take appropriate action, including notifying the borrower of the potential risk of an escalating debt, and signposting the borrower to not-for-profit providers of free independent debt advice, when/if there are signs of apparent/possible repayment difficulties. The following are unsatisfactory business practices:  
- Failing to establish and implement clear, effective, and appropriate, policies and procedures for dealing with borrowers whose accounts fall into arrears.  
- Failing to treat borrowers in default or arrears difficulties with understanding and due consideration.  
- Failing to treat borrowers in default or arrears difficulties with forbearance.  
Further, in light of the information provided to the inspection officer that GPL permits borrowers who cannot afford to repay to ‘defer’ repayment of their loans, with additional charges being added, or permits such borrowers to take out sequential loans, it is not clear to what extent, and in what circumstances, borrowers would ever be offered a repayment plan or other forbearance measure instead of, or in preference to, a ‘deferral’ (extension) or formal collections procedures. | It is harassment, and an unfair or improper practice to:  
- contact debtors at unreasonable times or unreasonable intervals,  
- pressurise debtors to pay more than they can afford. The OFT has received a number of complaints concerning GPL’s debt collection practices that suggest that it has:  
- failed to accept reasonable repayment plans offered by borrowers experiencing... |
can reasonably afford without experiencing undue difficulty or to pay within an unreasonably short period,
• fail to allow for alternative, affordable, repayment amounts when a reasonable proposal is made by a debtor, and
• inappropriately disclose, or threaten to disclose, debt details to third parties.
• act in a way likely to be publicly embarrassing to the debtor, either deliberately or negligently.

financial difficulties,
• used aggressive debt collection practices, including contacting borrowers at work when they have specifically asked not to be contacted using that number, calling borrowers repeatedly within a short period of time, and/or and threatening to leave a message if their calls are not answered by the debtor.

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| (c) Paragraph 3.9(m)(i) of the Debt Collection Guidance (OFT664Rev2) | It is a deceptive or unfair practice to use the CPA other than as set out in the credit agreement or without the informed consent of the debtor or a relevant third party. For example, by:
• debiting a higher amount than agreed, or adding default fees or other sums unless specifically agreed;
• debiting a lesser amount than agreed, unless it was specifically agreed that this could be done if the full amount was not available (or under a repayment plan);
• debiting an account before the due date for repayment (as specified in or under the credit agreement), and/or partial payments, on each day up to 45 days past the repayment date. |

At the time of the inspection visit GPL advised that it did not use Continuous Payment Authority (CPA).

However, in the copy loan agreement provided to the inspection officer it states that GPL will automatically take payments from a borrower’s bank account using their debit card details and that if the first attempt is unsuccessful that GPL will make further attempts to collect the full amount due together with default fees and charges, and/or partial payments, on each day up to 45 days past the repayment date.
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<th>(d)</th>
<th><strong>Paragraph 3.9(j) of the Debt Collection Guidance (OFT664Rev2)</strong></th>
<th>It is an unfair or improper practice to <em>require</em> an individual to prove he is not the actual debtor who owes an outstanding debt. The OFT considers that businesses should seek to ensure that they have accurate and adequate data, prior to pursuing debtors for outstanding debts, by taking appropriate steps to verify the data.</th>
<th>The inspection officer reported that GPL will not suspend the active pursuit of a debt where an individual disputes that he is the debtor and alleges that the loan has been obtained fraudulently unless the individual provides ‘compelling evidence’ of this, such as a crime report.</th>
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<td>6.</td>
<td>COMPLAINTS HANDLING</td>
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<td>(a)</td>
<td><strong>FCA Handbook Dispute Resolution (DISP) Rule 1.3.1 and 1.3.2</strong></td>
<td>Licence holders must establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints. These procedures must allow complaints to be made by any reasonable means.</td>
<td>GPL does not publish information regarding its complaints handling procedures on its website but advised the inspection officer that it always required consumers to submit complaints in writing, and also that it specifically would not record, categorise, or respond to a matter as a complaint if it was an issue raised during a telephone call.</td>
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<td>(b)</td>
<td><strong>FCA Handbook Dispute Resolution (DISP) Rule 1.6.2</strong></td>
<td>The creditor must, by the end of eight weeks after its receipt of the complaint, send the complainant a final response, together with a copy of the Financial Ombudsman Service (FOS) leaflet ‘Your Complaint and the Ombudsman’ and inform the complainant that the complaint may be referred to the Financial Ombudsman Service within 6 months.</td>
<td>At the time of the inspection visit GPL did not have a supply of the Financial Ombudsman leaflet ‘Your Complaint and the Ombudsman’ and did not, in the final complaints responses reviewed by the inspection officer, advise complainants that their complaint could be referred to the FOS within 6 months.</td>
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<th>7.</th>
<th>REGULATORY COMPLIANCE</th>
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<td>(a)</td>
<td><strong>Section 61 of the Consumer Credit Act 1974, c.39</strong></td>
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| Section 176A Consumer Credit Act 1974, c.39 | agreement is signed in the prescribed manner by both the debtor and by or on behalf of the creditor. A document is transmitted electronically under this section where:
- the person to whom it is transmitted agrees that it may be delivered by being transmitted to a particular electronic address in a particular electronic form
- it is transmitted to that address in that form, and
- the form in which the document is transmitted is such that the information is capable of being stored for future reference for an appropriate period in a way which allows the information to be reproduced without change. | the credit agreement will have been properly executed and whether there is a valid electronic signature in all cases, particularly in relation to those loans that have been deferred or extended (refinanced) and are new or modifying agreements. |

| (b) Section 157(A1) of the Consumer Credit Act 1974, c.39 | Where a creditor under a prospective regulated agreement decided not to proceed with it on the basis of information obtained by the creditor from a credit reference agency, the creditor must, when informing the debtor of the decision:
- inform the debtor that this decision has been taken | GPL advised the inspection officer that if the identity and verification checks undertaken with a credit reference agency flag a problem then the consumer is told that they have been declined for a loan, but will not be told why the loan has been declined. In particular borrowers are not |
| (c) | **Section 4 and Schedules 1 and 2 to the Data Protection Act 1998, c. 29** | Personal data must be processed fairly and lawfully (Schedule 2).

Appropriate technical and organisational measures must be taken against unauthorised or unlawful processing of personal data and against accidental loss, or destruction of, or damage to, personal data. | The inspection officer was advised by GPL that it operated a ‘refer a friend’ scheme. Under the scheme GPL said it will pay £25 to existing customers if they make referrals of friends and family whose subsequent applications for loans are successful.

It was not clear from GPL’s advertising whether GPL seek the express consent of the third party loan application before paying the reward to the referrer. If this is not done then payment of the ‘referral fee’ could be a breach of the Data Protection Act as payment (or non-payment) of the fee will disclose personal information about the friend to the referred (i.e. whether or not the friend has been accepted for a loan). |
| (d) | **Paragraphs 8.1 and 8.4 of the Irresponsible** | The OFT expects creditors to take reasonable steps to ensure that they have suitable | At the time of the inspection visit the inspection officer reported that GPL had no |
| **Lending Guidance (OFT 1107)** | business practices and procedures in place to facilitate their own compliance (for example, through training, auditing, disciplinary policies/procedures or any other means necessary and appropriate to the business), and to facilitate and monitor compliance by their staff, agents and associates, implementing any changes as necessary. Policies, practices and procedures should be documented and capable of being made available for the consideration of the OFT and/or the relevant Local Authority Trading Standards Service. They should contain sufficient detail in respect of the actual procedures employed to allow the OFT to be able to form a view as to whether the procedures appear appropriate. Creditors may be asked to provide a record of the checks they undertake to assess whether, in practice, they are giving effect to their documented practices and procedures. A document outlining the business’ policies and procedures for assessing affordability, for formal staff training manuals and very few written policies or procedures. Where written policies and procedures did exist they were not dated, incomplete or inconsistent with the actual practices and procedures implemented by staff. An example of this is in relation to rollovers where GPL told the inspection officer that it did not allow rollovers, yet it did allow sequential loans, deferral (extension) and refinancing to an instalment product. |
example, which simply stated that 'appropriate means are employed to assess affordability and ability to repay', or words of similar effect, would not be considered to contain sufficient detail in the absence of more information on the specific means employed.