ANNEXE F – QUESTIONNAIRES AND SUBMISSIONS

Introduction

F.1 A total of 2576 tailored questionnaires were issued to a cross-section of stakeholders including licensees, trade associations, consumer representative organisations (including debt advisers) and local authority trading standards services (LATSS).

F.2 We received 1013 responses, an overall response rate of 39 per cent. Two-hundred-and-twenty-six respondents said they were payday lenders.

F.3 Separately 31 submissions were received from a cross-section of stakeholders including industry, consumer groups and debt advisers plus parliamentarians and assembly members.

F.4 The questionnaire responses are summarised below, in three categories – payday lenders and trade bodies, consumer organisations (including debt advisers) and LATSS. There is then a section in relation to wider issues.

F.5 The quantitative data below is taken from the responses to the questionnaires (note that not all respondents replied to each question). In addition, stakeholders were invited to submit additional comments on the specific questions, via free text fields, and/or on payday lending issues more generally. These, and the written submissions, are summarised where appropriate below.

Key findings

F.6 Unsurprisingly, most payday lenders claimed to be fully compliant with the Irresponsible Lending Guidance and relevant legislation. However, in a number of cases individual lenders reported that they did not comply with specific elements.

F.7 Consumer organisations and LATSS respondents claimed that irresponsible lending was widespread and bad practice was endemic, in particular in relation to the handling of default and
arrears, debt collection practices, misuse of continuous payment authority (CPA) and inadequate affordability assessments.

F.8 Lack of forbearance was a key concern raised by debt advisers, both free-to-client and commercial. They suggested that payday lenders routinely ignored the ILG and refused to negotiate or to talk to debt advisers. Even where contact was made, lenders were said to be uncooperative and obstructive, despite clear evidence of financial difficulty or a change of circumstances.

F.9 Debt advisers reported that the practice of rolling over loans and giving multiple concurrent payday loans to borrowers was widespread. On average, their clients had rolled over loans four times (with a maximum of 50 times) and the typical client had six different payday loans at the time they sought advice.

F.10 Some respondents called for greater monitoring of compliance with the ILG, and stronger action against those who do not comply. One industry body suggested a more ‘intrusive regulatory environment’ would help ensure fairer treatment of consumers.

F.11 LATSS and adviser respondents called for increased financial education, as consumers were increasingly using payday loans as a source of longer-term borrowing and had ‘a lack of inclination... to critically shop for their credit’. It was felt that this could be addressed by improving financial literacy skills.

**Detailed findings: Payday lenders and trade bodies**

**Irresponsible Lending Guidance**

F.12 Survey responses generally showed high levels of usage and awareness of the ILG across the industry.

F.13 Two-hundred-and-fourteen lenders said they were aware of the ILG – although, worryingly, six lenders were not. Two-hundred-and-six lenders said they had used the ILG, but seven lenders had not.
F.14 One-hundred-and-ninety-five lenders said the ILG was incorporated into their business practices and procedures, but two lenders said it was not.

F.15 Businesses that had recently entered the market said they had used the ILG as a baseline for benchmarking internal processes. Established businesses said they had used it to look afresh at their operations and to test and assess compliance levels.

F.16 One-hundred-and-forty-one lenders said they found all sections of the ILG to be clear and understandable, with a further 69 finding some or most aspects to be clear and understandable.

F.17 Two-hundred-and-one lenders said they found the ILG useful in clarifying what the OFT regarded as unfair practices (one lender did not).

F.18 Fifty lenders said the ILG had raised standards across all parts of the industry, with a further 125 saying it had in some parts. One lender said it had not raised standards at all.

F.19 One-hundred-and-thirty-six lenders said the general principles of fair business practice had had the most impact on their business.

F.20 Thirty-five lenders said aspects of the ILG had caused difficulties for them in terms of compliance, with 13 having difficulty with the chapter on affordability.

F.21 One-hundred-and-twenty-nine lenders said they had received training on the ILG. One-hundred-and-seventy-nine said they provided staff training on the ILG, but 20 did not.

F.22 One-hundred-and-eighty-one lenders said they audited their business to ensure compliance with the ILG, but 12 did not. Forty-seven lenders said they did so at least once a month, and a further 26 once a quarter.

F.23 One-hundred-and-seventy-three lenders said they had procedures in place to alert them to actual or potential breaches of the ILG, but 19 did not.
F.24  Two trade bodies reported that their members had found the ILG useful in clarifying what the OFT regarded as unfair practices and that it had raised standards across the industry.

F.25  One trade body, however, said that its smaller members found the volume and content of the ILG challenging.

F.26  Three trade bodies said they actively raised awareness of the ILG among members, with one running training events. Two said they audited members’ compliance with the ILG. Three said the ILG principles were incorporated into their codes of practice.

Pre-contractual information and explanations

F.27  One-hundred-and-ninety lenders said they provided the required pre-contract credit information (PCI) form, but eight said they did not.

F.28  In terms of an adequate explanation:

- 196 lenders said they explained the total cost of the credit
- 192 said they explained the consequences of failure to make repayments (two did not)
- 182 said they explained charges for non-payment or late payment (nine did not)
- 181 said they explained the right of withdrawal and how and when this might be exercised (five did not)
- 176 said they explained the interest rate and any non-interest charges (12 did not)
- 176 said they explained other fees/charges (14 did not)
- 175 said they explained that payday loans were unsuitable for longer-term borrowing (16 did not)
- 152 said they explained that the cost of the debt would grow if payments were not made (35 did not)
• 150 said they explained how to obtain further information about the agreement (23 did not)

• 135 said they explained the effect of rolling over or refinancing the loan (49 did not)

• 112 said they explained that payday loans were expensive relative to other forms of credit (66 did not).

Affordability assessments

F.29 One-hundred-and-forty-four lenders said they always conducted affordability assessments with a further 15 doing so in certain circumstances. Five lenders said they did not routinely conduct affordability assessments.

F.30 One-hundred-and-sixty-seven lenders said they conducted affordability assessments for all new customers, with 151 doing so for every new loan.

F.31 Fifty-two lenders said they assessed affordability each time a loan was rolled over, with a further 25 doing so the first time it was rolled over. The equivalent figures for refinancing were 39 and 23.

F.32 When asked to describe the processes used to conduct affordability assessments, most lenders said they used a selection of methods, either together or in isolation, depending upon the customer and/or sales channel.

F.33 Almost all high-street lenders said they relied upon the customer’s bank statement to verify income, expenditure, employment and other credit commitments.

F.34 Ninety-three lenders said they carried out credit reference agency (CRA) checks, but 99 said they did not.

F.35 One lender said it always asked customers to expressly confirm that they could afford to repay a loan that had been rolled over.
F.36 Respondents said they had seen a marked increase in the number of consumers applying for multiple loans, with some consumers having ‘as many as eight’ payday loans at the same time.

F.37 Forty lenders said they limited the maximum number of rollovers or refinancing per customer, but 42 said they did not. The average limit reported was four, with a maximum limit of 12.

F.38 Fifty-one lenders said that fewer than 10 per cent of their loans were not repaid on time in 2011. 38 lenders said between 10 and 19 per cent were not, 50 said between 20 and 29 per cent, 12 said between 30 and 39 per cent, and 11 said 40 per cent or more.

F.39 Lenders reported that the typical amount borrowed in 2011 ranged from £50 to £500, with an average loan value of £178.

F.40 One-hundred-and-eighty-one lenders said they had a maximum limit on the amount borrowed, which was £723 on average. One-hundred-and-fifty lenders said they had a minimum borrowing threshold which was £69 on average.

Default and arrears

F.41 Lenders were asked to list the actions they might take when a customer missed a repayment or did not repay in full on the due date:

- 182 lenders said they contacted the customer
- 153 said they sent an arrears letter, 89 an arrears notice and 64 a default notice
- 142 said they renegotiated the repayment terms
- 118 said they initiated a debt collection process
- 111 said they froze, reduced or suspended interest/charges
• 80 said they deducted the outstanding money from the customer’s bank account

• 72 said they offered to roll over the loan, and 18 offered to refinance

• 72 said they directed the customer to a free debt advice provider, and 14 to a fee-charging debt advice provider

• 50 said they initiated legal proceedings.

F.42 A number of individual lenders elaborated on their approach to default and arrears. One said it would look favourably upon payment proposals made by a debt adviser on behalf of a consumer. However, this was refuted by a debt management trade body which said its members found contact with payday lenders to be very challenging, particularly as compared with other creditors.

F.43 Fifty-one lenders said they charged an administration fee or other fee or charge for arranging a payday loan, but 143 said they did not.

F.44 One lender said it applied an average of £179 in fees during a 35-day period following the repayment due date. This included an initial missed payment fee, a further non-payment fee after seven days, a default fee after 35 days and additional charges for issuing debt collection letters.

Detailed findings: Consumer organisations

F.45 Three-hundred-and-thirty-six consumer representative organisations (including free debt advice providers) responded to the questionnaire, and written submissions were received from 16 organisations.

Irresponsible Lending Guidance

F.46 Survey responses showed high levels of usage and awareness of the ILG across this stakeholder group. Two-hundred-and-eighty-
two respondents were aware of the ILG (37 were not) and 218 had used it (57 had not).

F.47 Eighty-eight respondents said they found all sections of the ILG to be clear and understandable, with a further 159 finding some or most aspects to be clear and understandable. Only one respondent said that no aspects were clear and understandable.

F.48 Two-hundred-and-fifteen respondents said they found the ILG useful in clarifying what the OFT regarded as unfair practices, but 11 did not.

F.49 In particular, 176 respondents said they found the general principles of fair business practice to be useful, 160 the chapter on default and arrears and 154 the chapter on affordability.

F.50 One adviser explained that the nature of debt advice work meant that they tended to rely more on the Debt Collection Guidance than the ILG, particularly when trying to persuade payday lending collections departments to stop debt collection activity.

F.51 Ten respondents said the ILG had raised standards in all parts of the industry, with a further 98 saying it had in some parts. Seventy-four respondents said it had not raised standards at all.

F.52 One-hundred-and-eighty-six respondents said that payday lenders were not complying with aspects of the ILG. In particular, 148 said lenders were not complying with the chapter on affordability, 115 on default and arrears, 81 on pre-contractual explanations and 69 the general principles of fair business practice.

Pre-contractual information and explanations

F.53 Nineteen respondents said payday lenders typically provided the PCI form, but 97 said they did not.

F.54 In terms of an adequate explanation:

- 112 respondents said that lenders explained the total cost of the credit (74 said they did not)
• 72 said lenders explained the annual interest rate (74 said they did not)

• 66 said lenders explained the consequences of failing to make payments (78 said they did not)

• 54 said lenders explained charges for non-payment or late payment (95 said they did not)

• 47 said lenders explained that loans were not suitable for longer-term borrowing (115 said they did not)

• 42 said lenders explained any non-interest charges (98 said they did not)

• 42 said lenders explained that the cost would grow if payments were not made (117 said they did not)

• 29 said lenders explained any other fees or charges (105 said they did not)

• 24 said lenders explained the right of withdrawal and how and when this might be exercised (102 said they did not)

• 19 said lenders explained the effect of rolling over or refinancing the loan (122 said they did not)

• 16 said lenders explained that loans were expensive relative to other forms of credit (148 said they did not)

• 18 said lenders explained how to obtain further information (107 said they did not).

F.55 A number of respondents emphasised that loans were often approved in such a fast manner, whether online or face-to-face, that it was difficult for consumers to understand the explanations given or to ask questions. This was often compounded by poor financial literacy, or poor literacy and language skills.
Respondents asserted that, in their experience, borrowers were often so desperate for funds that even if the PCI was provided they did not read or retain it. One adviser said it had never worked with a client who understood the PCI.

Affordability assessments

Eleven respondents believed that that payday lenders typically conducted affordability assessments, but 184 said they did not.

Eleven respondents felt that lenders typically assessed affordability for each new customer, but only three felt they did so for each new loan. No respondent felt lenders assessed affordability when loans were rolled over (although one said they did for initial refinancing).

Seven respondents believed that lenders carried out CRA checks but 143 said they did not.

Many respondents stated that even where affordability assessments were carried out, they were often done to a poor standard. One stated: ‘Having seen the serious financial situations that many clients find themselves in, the true value of any financial assessment undertaken has to be called into question’.

Many respondents reported dealing with payday clients who were unemployed or in receipt of benefit income. A number were of the view that borrowers who might lie about their employment status in applications were unlikely to be identified, raising the spectre of fraudulent applications.

Respondents alleged that lenders targeted the unemployed by displaying signage encouraging applications from those on benefits and by advertising on daytime television. Respondents also claimed that some lenders were prepared to lend to people with bad credit histories such as bankrupts or the homeless.

A few respondents acknowledged that lenders often obtained proof of income, but one suggested this was not checked or analysed. A key concern voiced by this group was that where
checks were conducted, these did not review disposable income, essential expenses or priority payments.

F.64 A number of respondents suggested a clear link between inadequate affordability assessments and an over-reliance on CPAs. One said: ‘Because they can so easily obtain repayment, there is little incentive for them to ensure affordability’.

F.65 The practice of rolling over loans and giving multiple concurrent payday loans to borrowers was said to be widespread. On average, debt advisers reported that clients’ loans had typically been rolled over four times (the highest reported figure was 50).

F.66 Respondents said that, on average, their clients had six separate payday loans at the time they sought advice (the maximum number reported was 15 on average).

F.67 A few respondents cited cases where clients had multiple payday loans from the same lender. One had observed a client receiving three text messages from a payday lender ‘encouraging further loans’ totalling £400. These offers were made even though the lender knew that the client could not repay his existing loans.

Default and arrears

F.68 One-hundred-and-fifteen respondents said that payday lenders were not complying with the ILG chapter on handling of default and arrears and were routinely failing to consider forbearance when dealing with customers experiencing financial difficulties.

F.69 Respondents were asked to list the actions they considered, in the light of their experience, lenders might take when a customer missed a repayment or did not repay in full:

- 163 respondents said lenders contacted the customer
- 157 said lenders deducted the outstanding money from the customer’s bank account
• 131 said lenders offered to roll over the loan, and 93 said they offered to refinance

• 122 said lenders sent an arrears letter, 87 an arrears notice and 62 a default notice

• 111 said lenders initiated a debt collection process, and 31 said they initiated legal proceedings

• 31 said lenders renegotiated the repayment terms

• 12 said lenders directed the customer to a free debt advice provider, and seven said they directed the customer to a fee-charging debt advice provider

• only six said lenders froze, reduced or suspended interest and charges.

F.70 Some respondents highlighted the prevalence of excessive and disproportionate fees and charges being applied to loans in default or arrears. Charging consumers for letters or telephone calls made as part of the collections process was said to be commonplace. The cumulative effect of such charges often made it impossible for consumers to clear their debts.

F.71 One adviser cited a case where a client had been charged for setting up a repayment plan. Another said the problem was so bad that advisers would ‘turn a blind eye’ if clients prioritised repayment of payday loans over other debts, given the severity of consequences for the borrower of not making repayments.

F.72 Another common theme was the difficulties reported by advisers in dealing with payday lenders on behalf of clients. Some respondents said that payday lenders either ignored or refused to deal with third parties, including not acknowledging or responding to letters and telephone calls.

F.73 Even where contact was made, payday lenders were said to be uncooperative, obstructive, difficult to negotiate with and often refusing to provide requested information. A few respondents said
lenders refused to co-operate even when it was explained that their business practices were unsatisfactory according to the ILG. One respondent said that certain lenders ceased contact once the ILG was mentioned.

F.74 Some respondents said that lenders refused to accept smaller payments and were unwilling to negotiate repayment plans. It was alleged that lenders would often cease contact and commence debt collection activities as soon as a third party became involved.

Continuous payment authority

F.75 Respondents claimed that many lenders were misusing CPAs and, as a result, clients either incurred unnecessary overdraft fees or were left with no money in their accounts or insufficient funds for priority or other household debts. In extreme cases, clients were left facing court proceedings and eviction from rental properties after their bank accounts were cleared out by payday lenders.

F.76 Respondents commented that it was difficult for consumers to cancel CPAs. One reported that 20 per cent of its clients had been told by lenders that they could not cancel a CPA. Some said the only way for consumers to stop lenders taking funds was to cancel their bank card, with some consumers even reporting their debit card as lost or stolen in order to achieve this.

Debt collection practices

F.77 Respondents said that payday lenders were engaging in overly aggressive and unfair debt collection practices. Examples included persistent contact with consumers by email, text message and telephone including calls at work. Respondents cited cases where lenders had threatened to inform, or had actually informed, their clients’ employers that they had an outstanding payday loan.

F.78 A few respondents said that payday lenders misrepresented their recovery powers, for example by threatening to send bailiffs round even though no county court judgment had been obtained.
Some respondents described their clients as feeling harassed by the actions of lenders, with one respondent reporting that over one third of its clients felt stressed, adding that ‘many of my clients report that at the point of seeking help they are stressed, ill, anxious and some are suicidal due to the constant contact’.

**Detailed findings: Trading standards services**

**Irresponsible Lending Guidance**

Twenty LATSS departments responded to the questionnaire. Seven said they found all sections of the ILG to be clear and understandable, with a further seven finding some or most aspects to be clear and understandable. No respondent said that no aspects of the ILG were clear and understandable.

Eight respondents said they found the ILG useful when advising licensees on compliance (one did not) and seven found it useful when conducting compliance inspections (two did not). Eight respondents found the ILG useful when dealing with consumers or debt advisers. Five said the ILG made it easier for them to take enforcement action (three said it did not).

One respondent said the ILG had raised standards in all parts of the industry, with a further seven saying it had in some parts. One said it had not raised standards at all in the payday industry. Eleven respondents said there were elements of the ILG which were not being complied with by lenders (two said there were not).

Respondents were asked which areas of the guidance were most complained about. Nine respondents said that complaints principally related to handling of default and arrears, seven to general principles of fair business practice and four to affordability assessments and pre-contractual explanations.

One respondent quoted a lender saying they ‘would be happy to comply and change their business practice on the premise that others within the industry were seen to be complying and as such enforcement was conducted in a uniform and fair manner’.
Another commented that ‘traders have taken advantage and ignored the ILG and lending boundaries in the knowledge that action against them will not be taken’.

**Pre-contractual information and explanations**

Seven respondents believed that payday lenders typically provided the PCI form, but two said they did not.

Five respondents reported that, in their view, lenders did not adequately explain the effect of rolling over or refinancing the loan (three said they did), and four said lenders did not explain how to obtain further information or explanation (five said they did).

One department based its response on the results of a regional mystery shopping survey of 29 payday lenders which found that most sales assistants could not provide key information including the total cost of credit and the consequences of non-payment. In every case the lender was unwilling or unable to quote the APR.

Another respondent stated: ‘Generally the form and content of information is good and is generally well managed corporately. However, often the importance of paperwork is not stressed at a retail level and with many ‘disinterested’ customers disinclined to ask questions serious and substantive mis-selling can occur’.

**Affordability assessments**

Five respondents believed that payday lenders typically conducted affordability assessments, but three said they did not.

The regional survey mentioned above found that one third of the lenders visited said they would not carry out a CRA check. The department stated that ‘half the premises visited indicated that they would still be willing to lend £100 even if a borrower failed a credit check’. Affordability assessments were said to comprise ‘little more than presenting the lender with identification, a payslip, a 30-day bank statement and proof of address’.
F.92 Other respondents said lenders only looked at ‘minimum salary and bank statements that show cleared payments’ and did not consider the person’s essential outgoings and commitments including other payday loans.

F.93 One department said that affordability assessments encompassed ‘minimal systems that look at ongoing commitments/outgoings and rely on the integrity of the borrower. Affordability needs to be couple[d] with a second question[s] of product suitability’.

F.94 Another department said that offering rollovers without conducting an affordability assessment was a common practice.

F.95 The majority of respondents attributed high default rates to ‘poor financial planning by [the] consumer combined with failure of lenders to properly assess affordability. Lenders advance money on the basis they will get payment at the next salary payment and [do] not consider the long-term picture’.

Default and arrears

F.96 The majority of respondents said that, in their experience, lenders typically contacted the consumer if they did not repay, but some suggested the purpose was to initiate a debt collection process rather than to freeze interest or negotiate affordable repayments.

F.97 Respondents said that lenders often subjected consumers to ‘abusive and oppressive telephone calls’. Other aggressive debt collection tactics included contacting employers or family members, making threats to visit consumers at their home or place of work, and threatening to have the consumer investigated for fraud.

Detailed findings: Wider issues

CRA checks

F.98 Respondents broadly agreed that CRA checks were useful for fraud prevention and to facilitate responsible lending, and some suggested that they should be mandatory. A few supported the
idea of creating a central register for storing payday loan data. One lender voiced concern that too much data sharing or compulsory checks would limit consumer choice.

F.99 Lenders claimed that they used a variety of CRAs including not only the larger well-established agencies but also smaller niche or real-time credit checking services specialising in payday loans. Over half said they used more than one CRA.

F.100 LATSS and adviser respondents claimed that most payday lenders were either not carrying out CRA checks or would lend money irrespective of the results of the CRA check.

F.101 One CRA respondent said that credit reference checks should be a key component of affordability assessments. They provided the most complete picture of a customer’s existing credit and non-credit commitments, especially when coupled with evidence of employment and salary status. A credit report also showed how successful consumers had been at servicing credit commitments.

F.102 Adviser respondents highlighted shortcomings in CRA data which was said to be out of date and therefore unreliable, and it was noted that payday lenders did not typically report data to CRAs

**Product regulation**

F.103 One respondent called for payday loans to be banned, but others acknowledged their importance as the only source of credit that increasing numbers of consumers could access. One industry body described payday loans as an important product, provided that lenders complied with the law and OFT guidance.

F.104 A number of respondents, including some licensees, called for tighter regulation or a ‘sensible framework’ for the payday lending industry. Many said restrictions on the level of default fees and administrative charges should be introduced. Others called for a ban on cold-calling by phone and aggressive marketing practices.

F.105 Some respondents called for stricter regulation in the form of capping APRs or the total cost of credit. But just as many raised
concerns about the consequences of interest rate caps which could restrict access to credit and push consumers towards unlicensed lenders.

**Updating the ILG**

F.106 Respondents highlighted a number of areas where amendment to the ILG might be helpful, including:

- specifying unfair practices in relation to CPAs, multiple concurrent loans, rollovers and lending to the unemployed or those in receipt of benefits
- more clarity on issues such as lead generation, advertising standards, dealing with third parties and clearer criteria for conducting affordability assessments.

F.107 There was also a call for the ILG to specify restrictions on payday loans, including the number of times a loan could be rolled over, how often a consumer could take out a payday loan and the number of loans a consumer could have at the same time.

F.108 On advertising, suggestions included restricting the amount of payday advertising, requiring prominent ‘health warnings’ and requiring clearer information to be provided about interest rates, fees and the total cost of credit.

F.109 A few respondents raised concerns about the practices of credit brokers or lead generators sharing and/or selling consumers’ data to payday loan companies.

F.110 One respondent suggested making elements of the ILG mandatory requirements, including the sections covering freezing of interest and charges if notified of a consumer’s financial difficulties and signposting consumers to free independent debt advice providers.

F.111 Other respondents suggested that loans should be unenforceable if the lender was unable to demonstrate compliance with the ILG.
Alternative lending options

F.112 Some respondents suggested that the government should provide greater support to credit unions and community development finance institutions, through publicising and promoting alternative forms of credit. These providers lent to the same consumer group as payday lenders but had better lending practices.

F.113 One respondent suggested ‘state sanctioned alternatives’ such as post offices offering payday style loans with lower interest rates.

Self-regulation

F.114 Two of the main trade bodies said that recent changes to their codes of practice, following intervention from government, should result in improved standards. The ultimate sanction for breach of the codes was expulsion and notification to the OFT.