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25 July 2018

Our Ref:

Your Ref:

Dear Mr Leach

REGULATION 28: REPORT TO PREVENT FUTURE DEATHS – MR NASEEB CHUHAN

Thank you for your letters of 6 April and 31 May 2018 and report sent pursuant to paragraph 7, Schedule 5, of the Coroners and Justice Act 2009 and regulations 28 and 29 of the Coroners (Investigations) Regulations 2013. Please accept this letter as our formal response under paragraph 7(2) of Schedule 5 to that Act.

I am sorry to hear of the sad circumstances surrounding the death of Mr Chuhan. I understand that the Chief Coroner may copy this response to a number of interested persons, including the parents of the deceased, to whom I extend my deepest sympathies. We are also copying this letter to Mr Chuhan's parents.

I apologise for the delay in responding substantively. I mentioned in my letter of 12 June that we have received a letter from Mr Chuhan's parents (which I refer to below as the parents' report). They made many detailed points supported by a significant amount of detailed material, which I have taken account of in this response. Since this letter includes confidential information relating to Mr Chuhan and his parents, within the meaning of section 348 of the Financial Services and Markets Act 2000, and personal data for the purposes of the data protection legislation we have requested, and obtained, the parents' consent before disclosing the relevant information to you.

The references in this letter to numbered points correspond to the numbered points made in the parents' report.

Your report and Mr Chuhan's circumstances touch upon several areas that are of great importance to the FCA, including preventing irresponsible lending, consumer vulnerability and the risks associated with payday loans (high-cost short-term credit).

Mr Chuhan's parents have identified serious concerns about the way in which he was treated by several firms which are authorised by the FCA and, at point 6, ask about the FCA's powers. We take accusations of harm very seriously and in cases like this look into what may have gone wrong with firms' systems and controls, which should be designed to identify vulnerable customers. Where we find a firm has failed to act in an appropriate manner we have a number of powers that enable us to intervene. I have asked our supervisory team to look at the evidence provided to us and, where we find wrongdoing, take steps to ensure the firms are acting in an appropriate manner. More generally, our supervisors can refer appropriate cases to enforcement colleagues. Our enforcement powers are described in detail in our Enforcement Guide[1].

I can assure you that, since we took on the regulation of consumer credit in 2014, we have taken, and continue to take, many steps to drive up standards in this market. A key part of this has been assessing against our threshold conditions firms applying for authorisation to engage in credit-related regulated activities. We have also worked closely with many firms to improve how they assess creditworthiness (including affordability) and how they deal with vulnerable customers and those in financial difficulties.

In the rest of this letter, I explain the rules we have in place designed to prevent harm to borrowers and the further action we are taking to improve these. I believe that this will reduce the risk of deaths occurring in similar circumstances. I have grouped my points by reference to the points raised in the parents' report.

Preventing irresponsible lending (points 1, 4, 5 and 8)

I have taken these points together - which cover preventing irresponsible lending, the standards we expect of firms and proportionality of firms' affordability assessments - as they are interlinked.

First, it is important to explain the overarching standards expected of firms carrying out regulated consumer credit activities. They must meet our threshold conditions for authorisation and comply with our high-level principles for businesses and our rules. Principle 6 requires firms to treat customers fairly, and this is supported by detailed conduct of business rules in our Consumer Credit sourcebook (CONC). Firms must also comply with relevant requirements of the Consumer Credit Act 1974 (CCA) and other consumer protection legislation.

We require lenders to assess a borrower's creditworthiness, including affordability, before deciding whether to lend. They must provide pre-contractual information and explanations, highlighting the costs and risks of the loan. Once this has been granted, they must monitor repayments and take appropriate action where there are signs of actual or possible repayment difficulties. Where appropriate, this should include providing contact details for not-for-profit debt advice bodies. If the customer falls into arrears or default, the firm must treat the customer with forbearance and due

[1] https://www.handbook.fca.org.uk/handbook/EG.pdf

consideration, allowing reasonable time to repay. We also have rules in place relating to vulnerable consumers which I refer to further below.

In relation to affordability, we require firms to undertake a creditworthiness assessment before lending based on sufficient information. They must consider the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, and the customer's ability to make repayments when due. Our rules make clear that what is appropriate in any given case will depend on the circumstances, for example, on the type and amount of credit and the potential risks to the customer.

Where appropriate, the firm should have regard to the customer's financial position at the time of seeking credit, including any indications that the customer is experiencing, or has experienced, financial difficulties. The creditworthiness assessment need not, depending on the circumstances, involve a full income and expenditure assessment but, if not, the firm must reasonably satisfy itself by other proportionate means that the customer can afford the credit. Where expenditure is taken into account, it is unlikely to be sufficient for a firm to rely solely on a consumer's declaration (CONC 5.3.1G(4)(b)).

We consulted last July, in CP17/27, on proposed changes to our rules and guidance on assessing creditworthiness (including affordability). These are aimed at further clarifying our regulatory expectations, including that firms must consider the consumer's ability to repay without taking out further borrowing to do so.

These changes are also designed to make clear that an assessment of income is required in almost all cases, unless the firm can demonstrate that it is obvious in the specific circumstances that the credit is affordable. Where income is required to be taken into account, the borrower's non-discretionary expenditure (including credit commitments) would also normally need to be considered, along with any reasonably foreseeable changes in income and expenditure over the period of the credit.

We also consulted on clarifying how expenditure should be taken into account where it is required to form part of the creditworthiness assessment. This includes a proposed rule that a firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the borrower's current non-discretionary expenditure. In the consultation paper, we explain that Office of National Statistics (ONS) data can form the basis of an estimate, in much the same way as Mr Chuhan's parents suggest in their report.

We plan to issue a policy statement, with final rules and guidance, shortly.

Record keeping (point 2)

It is important that firms keep records that enable them, and us, to understand how decisions were made and whether customers were treated fairly. Our Senior Management Arrangements, Systems and Controls sourcebook at SYSC 9.1 sets out our expectations in this regard. This explains that firms should retain records for as long as relevant for the purposes for which they are made.

In CP17/27, we proposed amplifying these requirements to make clear that consumer credit lenders must keep a record of each time they lend, and that this must be sufficiently detailed to demonstrate to us that its creditworthiness assessment was in accordance with our rules.

Role of credit information (point 3)

We recognise that credit information, supplied to and provided by credit reference agencies, can play an important role in firms' affordability assessments. However, as Mr Chuhan's parents note, consumers can experience harm if this information is not shared effectively, on a timely basis or of good quality.

We announced in our Business Plan for 2018/19 our intention to launch a market study on credit information. We will collect evidence to gain a better understanding of the potential for harm in this market and, if necessary, identify remedies. Our aim is to ensure that this important market works as well as possible to maximise the benefits that it can deliver for consumers. We will work with other relevant regulators, including the Information Commissioner's Office.

Vulnerability and debt advice (point 7)

We have specific rules relating to vulnerable customers, including in relation to lending. Our creditworthiness rules expressly require a firm to consider (where appropriate) the vulnerability of a customer when determining the extent and scope of a creditworthiness assessment. A firm must also establish clear, effective and appropriate policies for the fair and appropriate treatment of particularly vulnerable customers. Our rules state that firms should not target consumers with loans which are unsuitable for them if they are indebted.

Consumer vulnerability is an integral part of our recent Future Approach to Consumers consultation and we will be publishing our findings on this in the summer.

We also recognise the additional risks associated with high-cost credit products including payday loans. We have restricted the number of times that payday lenders can refinance a loan, and required them to include a prominent risk warning in advertising. This includes signposting customers to the Money Advice Service.

Speed with which payday loans are granted (point 9)

Our rules cover several areas of pre-contract conduct by lenders. We recognise that automation and innovation is becoming more common place across financial services but we do not specify a minimum timeframe within which a firm's creditworthiness assessment must take place. While automation and innovation can benefit consumers, we also recognise that it can pose risks to the more vulnerable in society.

Our overall approach is to sustain a regulatory environment where consumers and firms can maximise the opportunities of competition, innovation and big data while reducing or mitigating the associated harms.

Cost of payday loans (point 10)

We too had reservations over the potentially high cost of payday loans. One of our first major initiatives after taking on regulation of consumer credit was to consult on a price cap for high-cost short-term loans. This was introduced in January 2015 and limits interest and fees to 0.8% per day of the amount borrowed, with consumers never having to pay more in interest, fees and charges than the amount they borrowed.

We considered setting this cap in terms of the Annual Percentage Rate (APR) but decided not to do so. While it is useful for comparing the basic cost of loans of the same size and duration that are paid back on time, it is not easy to compare loans of different size and length – for example, a shorter loan that costs the same as a longer one would have a much larger APR. Chapter 5 of CP14/10 explains this in more detail.

We reviewed our price cap recently and published a feedback statement in July 2017 (FS17/2). After careful consideration, we decided to maintain the price cap at its current level, with a commitment to review it again within 3 years.

In May we published two consultation papers (CP18/12 and CP18/13) as part of an ongoing review of high-cost credit. There are two aspects to this that are particularly relevant to the concerns raised in this case.

The first is in relation to overdrafts, and particularly the price consumers pay for using them. I note that Mr Chuhan had repeatedly used these. We have published analysis that shows a case for considering more direct intervention in the way that firms price their overdrafts, and we are in the process of inviting views. We are also considering whether and how firms should improve their monitoring of consumers who repeatedly use overdrafts. As part of this, we are looking at how firms could help consumers find the most appropriate form of credit for their needs and to find ways to assist consumers in a pattern of repeated overdraft borrowing. If our further analysis shows that intervention is warranted, we aim to consult on proposed rules by the end of 2018.

Secondly, we are doing work to foster the growth of alternatives to high-cost credit. Greater availability and awareness of alternatives would reduce the number of people turning to high-cost credit services. It would also provide options for consumers who may no longer be able to access high-cost credit after any possible interventions we make. We are keen to improve outcomes for these consumers and in the mid term we think there is scope to explore wider issues with Government and industry. In the short-term, we have already invited firms with innovative alternatives to work with us and trial their approaches.

I hope you will see from the above that we take extremely seriously the risk of harm arising from irresponsible lending in general and high-cost credit in particular. Taken together, I believe that our existing rules, and our current and planned work, demonstrate that we have taken – and continue to take - action which will have the effect of reducing the risk of deaths occurring in similar circumstances to those of Mr Chuhan.

Yours sincerely

General Counsel