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FCA
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Mr J S Pollard
Senior Coroner
Coroner's Court
1 Mount Tabor Street
Stockport SK1 3AG

24 October 2014
Your Ref: JSP/KA/00298-2013

RECEIVED
29 OCT 2014

Dear Mr Pollard

Re: Kane Samuel SPARHAM-PRICE (Deceased)

Thank you for your letter of 9th September and report sent pursuant to paragraph 7(1) of Schedule 5 to the Coroners and Justice Act 2009. Please accept this letter as our formal response under paragraph 7(2) of Schedule 5 to such Act.

Firstly I ask that you pass on my condolences to Mr Sparham- Price's family, I was extremely sorry to hear of the sad circumstances surrounding the death of the late Mr Sparham-Price.

In your recent letter, you suggest that *"there ought to be a statutory minimum amount which MUST be left in an account (say £10.00) to avoid absolute destitution; and as I understand you set and regulate the rules, you might look at this with a view to preventing further deaths"*.

I understand completely the sentiment behind this recommendation however wanted to explain why it would be undesirable to introduce rules along the lines you propose. I also thought it would be helpful to explain what action we have already taken in this area and outline what further action we will take to help reduce the risk of deaths occurring in similar circumstances.

As outlined below we have already taken action in this area through the restriction on the use of Continuous Payment Authorities (CPAs) to take partial payments from an account. We believe that this (together with our other conduct standards) will mitigate the likelihood of consumers being left with a zero balance on their account, although we do recognise it is a possibility that only a small balance will remain.

The ability of lenders to access a consumer's bank account to ascertain what residual balance may be available would raise significant concerns about privacy. In practical terms, it might not be effective as by the time a fund transfer is processed (later that day); there is no guarantee that other payments will not have depleted the balance on the account in the meantime. We therefore understand your proposal to be that current account providers should not process a payment request from a payday lender if to do so would result in the balance on a consumer's bank account falling below £10. We believe that this proposal could potentially result in other adverse consequences for consumers. For example, it would not be clear whether refusing a payment request to protect a residual amount would actually leave consumers in a better or worse position in the longer term (if it leaves a greater debt to service). Consumers might also face the prospect of incurring additional fees for failed payments if payments are blocked to protect a residual amount. It is also difficult to see how such an arrangement would apply where an overdraft facility is available.

As you may be aware, the regulation of consumer credit, including high-cost short-term credit (payday loans), transferred from the Office of Fair Trading to the Financial Conduct Authority (FCA) on 1st April 2014. This transfer has resulted in a number of significant changes to the way in which payday lenders and others are regulated, which I believe will improve the conduct of firms and outcomes for consumers in this sector.

We have introduced new rules for providers of high-cost short-term credit. These rules contain a number of new restrictions that will significantly reduce the scope for consumer detriment.

The rules restrict the number of times that high-cost short-term credit lenders can, for example, 'roll over', or extend a loan, to two occasions. While a roll over may work well for some, we were concerned that loans that were repeatedly rolled over could lead to an unsustainable debt burden for many consumers. In addition, before rolling over a loan lenders have to give the consumer an information sheet that explains where and how to get free debt advice.

As indicated above, we have also introduced restrictions on the use of CPAs for high-cost short-term credit lenders. I note that the use of CPAs, whereby such lenders can 'clear out' a consumer's account, is a key concern highlighted in your report. We found that some lenders were using CPAs as a debt collection method and that some consumers were left in significant difficulties and unable to pay for essentials such as food and heating. Broadly, lenders may not make more than two attempts to use a CPA to take a repayment and, importantly, can no longer use a CPA to take a part-payment. This restriction should mitigate the likelihood of lenders 'clearing out' a consumer's account, as payment will only be taken where the amount can be taken in full. Multiple attempts to exercise the CPA are prohibited.

In addition, high-cost short-term lenders must also now include a prominent risk warning on all financial promotions. The warning must include a link to The Money Advice Service, which has introduced specific advice for consumers considering payday loans. This is available at:

https://www.moneyadviceservice.org.uk/en/payday-loans

We have also recently consulted on introducing a price cap on high-cost short-term credit from 2nd January 2015. We plan to publish final rules on the cap in early November, which will meet a duty given to us by the Government to secure an appropriate degree of protection for consumers against excessive charges in this market.

As a part of the transfer of regulation to the FCA, firms providing high-cost short-term credit will have to apply for authorisation from 1st December 2014. Firms carrying out regulated consumer credit activities must follow certain rules about how they manage their businesses and treat consumers. These include rules made by us, which are in our Handbook, and the requirements of the Consumer Credit Act (CCA) and secondary legislation. A number of former CCA requirements have been moved into our Handbook, along with key elements of guidance issued by the Office of Fair Trading.

Our detailed conduct standards for firms carrying out consumer credit activities are set out in our Consumer Credit Sourcebook (known as CONC). CONC contains rules on affordability, forbearance, communications and appropriate treatment of customers with mental capacity limitations. Broadly, the purpose of the affordability requirements is to ensure that consumers do not borrow such that repayment is unsustainable, whilst the forbearance requirements help to ensure that those in financial distress receive adequate breathing space. Lenders must also consider the vulnerability of consumers where they understand, or reasonably suspect, that the consumer displays indications of some form of mental capacity limitation.

The authorisation process will rigorously assess the business models of lenders operating in this sector to ensure that consumers are treated fairly. Firms will not be authorised if they cannot demonstrate that they are able to comply with the price cap and other FCA rules, including those on rollovers and CPAs outlined above. Once they are authorised, we will pro-actively supervise these firms.

As you may be aware, Wonga has recently entered into an agreement with the FCA to make significant changes to its business, on the basis that it was not taking adequate steps to assess customers' ability to meet repayments in a sustainable manner. Wonga has implemented measures to improve its affordability assessments, which reflects our determination to drive up standards in the consumer credit market

Whilst I am sympathetic to the intention of your proposal, I believe that the action we have already taken in this area will achieve essentially the same effect whilst minimising the potential for other adverse consequences.

Overall I am confident that a combination of new rules across a number of areas together with the rigorous new authorisation and supervision regime for payday lenders demonstrate that appropriate and reasonable action has now been taken to reduce the risk of deaths occurring in similar circumstances.

Yours sincerely

[redacted]

Martin Wheatley
Chief Executive