
FINAL NOTICE

To: **Christopher Paul Brotherton**

Date of Birth: **12 December 1985**

Date: 25 July 2018

1. ACTION

- 1.1. The Financial Conduct Authority (the 'Authority') has made an order prohibiting Mr Brotherton from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm (the 'Prohibition Order'). The Prohibition Order is effective from the date of this Final Notice.
- 1.2. Mr Brotherton agreed to settle at an early stage of the Authority's investigation.

2. SUMMARY OF REASONS

- 2.1. Individuals engaged in the provision of financial services must not resort to providing false and misleading information to customers in order to induce or encourage customers to pay fees and charges for services. This is particularly the case where customers may be susceptible to such inducements by reason of economic hardship. Ensuring that customers are treated fairly and not subjected

to dishonest marketing tactics is important to the Authority's consumer protection objective.

2.2. Mr Brotherton was a director and shareholder of Secure My Money Limited (the 'Firm' or 'Secure My Money'), an online credit broker. The Firm ran various websites under different brands including LoanZoo, i-loansdirect, and The1Loan.

2.3. Between 15 November 2013 and 30 May 2014 (the 'Relevant Period'), Mr Brotherton demonstrated a lack of honesty and integrity in that he caused or permitted the Firm to present false and misleading information to its customers and treat its customers unfairly by:

- (1) Running a credit broker which claimed to search hundreds of lenders and to match customers to the best loan offers but which simply presented all customers with the same standard list of offers (many of which were not even lenders);
- (2) Misrepresenting to customers that they had been approved by a lender for a loan when they had not;
- (3) Failing to make it clear that a fee would be charged (with some customers unaware they were dealing with a broker);
- (4) Misrepresenting to customers that it was taking card payment details for the purposes of account verification when it was taking card details in order to deduct fees;
- (5) Passing customer information to third parties other than lenders without consent, including dishonestly redirecting customers attempting to access loan offers to a third party for re-sale of those customers' details, thereby creating a risk that the Firm's customers would be redirected to other credit brokers and charged further fees;
- (6) Charging customers monthly "membership fees" without consent; and
- (7) Failing to pay refunds to customers who had requested them in a timely manner (or in some cases at all).

2.4. In addition, Mr Brotherton permitted a third party, Mr Mark Robert Kennedy to operate his own fee charging credit broker under cover of the Firm's Consumer

Credit Licence (and from 1 April 2014, under cover of the Firm's Interim Permission from the Authority). In total, Mr Brotherton permitted the Firm to transfer over £3.3 million of fees paid by customers to Mr Kennedy.

- 2.5. Mr Brotherton also permitted or caused funds properly owing to the Firm to be diverted to another company to whom the funds were not legitimately payable in order to benefit himself and his fellow directors.
- 2.6. Furthermore, in May 2014, Mr Brotherton allowed a director of the Firm to make a false and misleading statement to the Authority that the Firm's websites were closed to new customers when he knew that they were not. Mr Brotherton also allowed another director of the Firm to make false and misleading statements to the Authority that the Firm did not charge customers any fees other than an up-front fee and only passed customer information on to lenders, when he knew that both statements were untrue.
- 2.7. The Firm received customer fees totalling over £7.2 million between 15 November 2013 and 31 July 2014, in connection with its own and Mr Kennedy's business, of which approximately £1,432,077 was refunded to customers. Mr Brotherton personally received at least £145,929.84 from the Firm's trading activities from the start of the Relevant Period until the Firm went into voluntary liquidation on 31 July 2014.
- 2.8. The Authority considers the actions of Mr Brotherton to be particularly serious as the Firm's customer base included customers on low incomes least able to afford the Firm's fees and charges. One customer stated that: *"I am a young, vulnerable single mother on basic benefits who also suffers with depression. The fact that you have taken payments from my account without permission has made my financial situation worse and had a negative effect on my mental health and well-being."* Another customer stated that she had been left with no money to feed her child as a result of being charged a fee without her knowledge.
- 2.9. The Authority therefore made an order, pursuant to section 56 of the Act, prohibiting Mr Brotherton from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm.

- 2.10. The Authority considers that this action is necessary and proportionate and that it supports the Authority's operational objective of securing an appropriate degree of protection for consumers.

3. DEFINITIONS

- 3.1. The definitions below are used in this Final Notice.

"the Act" means the Financial Services and Markets Act 2000

"the Authority" means the Financial Conduct Authority

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber)

4. FACTS AND MATTERS

- 4.1. Mr Brotherton was a director of Secure My Money, an online credit broker based in Macclesfield, Cheshire. The Firm was incorporated on 21 July 2011. It held a Consumer Credit Licence from the Office of Fair Trading from 25 April 2012, and from 1 April 2014, when consumer credit regulation transferred to the Authority, an Interim Permission to conduct credit brokerage and debt counselling activities.

- 4.2. The directors at the Firm during the Relevant Period were as follows:

- (1) Mr Brotherton was a director between 15 June 2012 and 18 March 2014, and then remained with the Firm as an employee until 30 May 2014.
- (2) Mr Edward John Booth was a director between 21 July 2011 and 30 May 2014, before resigning from the Firm on 30 May 2014.
- (3) Mr David James Carter Mullins was a director between 01 April 2013 and 30 May 2014 (and was reappointed as a director on 11 June 2014).

- 4.3. Mr Kennedy was a director after the Relevant Period, between 30 May 2014 and 11 June 2014.

- 4.4. The Firm operated various websites under different brands including i-Loansdirect and LoanZoo. From 15 November 2013, the Firm also operated a website branded The1Loan on behalf of Mr Kennedy. Other than in respect of branding, the websites were materially the same.

Secure My Money's websites – the customer journey

- 4.5. The Firm did not advertise, and only a small minority of customers went direct to the Firm's websites. For these 'direct' customers, the customer journey began with the home page and proceeded through a series of pages in which customers were prompted to provide personal information about their circumstances and borrowing requirements before arriving at the "landing page" described in paragraphs 4.10-4.14 below. These webpages disclosed that the Firm was a credit broker not a lender and contained a statement that '*We search hundreds of lenders*'.
- 4.6. The significant majority of the Firm's customers first arrived on the Firm's website having been directed from third party lead generation websites. The Firm bought customer 'leads' in the form of basic information about the customer's personal circumstances and borrowing requirements from the lead generation companies. Customers seeking a loan who entered their details into a loan-finding function on the lead generator's website were redirected by the lead generator to one of Secure My Money's websites. In the Relevant Period the Firm spent approximately £1.8 million on leads for SMM's business. This did not include leads purchased by Mr Kennedy for his business operated through SMM.
- 4.7. Although not visible to the customer, the process by which the Firm acquired the customer lead was fully automated via 'pingtree' software, which facilitated the buying and selling of customer leads via an affiliate network. The affiliate network was in effect an online marketplace for buyers and sellers of customer information, with its members including lenders and other third parties such as credit brokers. Secure My Money bought and sold customer information via various affiliate networks. As described further at paragraph 4.39, the Firm bought customer leads from an affiliate via a pingtree, and then sold the customer's details to another affiliate which may send the customer through a different pingtree.
- 4.8. A pingtree works by arranging 'buyers' of leads into tiers based on the price they are willing to pay for a customer lead. Some buyers within a pingtree are only willing to purchase leads with particular characteristics. The buyers willing to pay the most are offered a lead first. The lead is then automatically offered to others until a buyer purchases the lead or all the buyers in the pingtree are exhausted. From the customers' viewpoint, they were either presented with a page from the

website of the entity that had purchased the lead relating to them; or if no-one had bought the lead, they received a message from the lead generator informing them that it had been unable to find a loan for them.

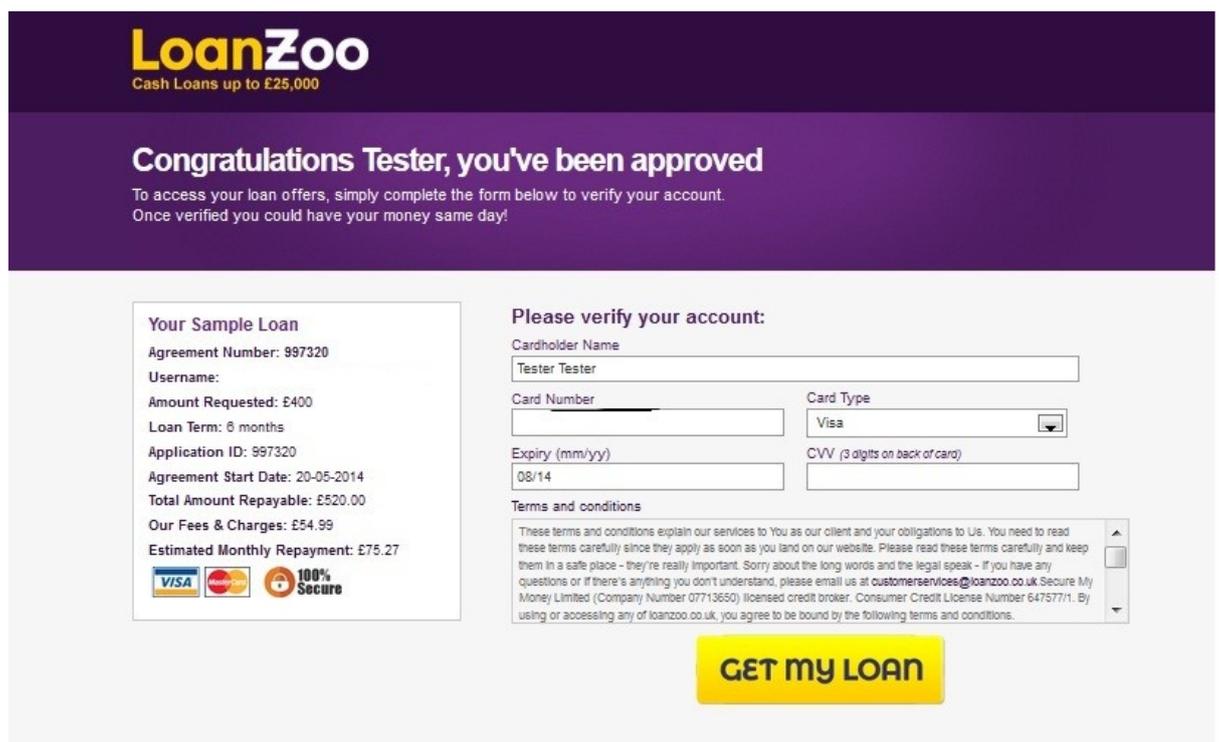
- 4.9. Customers whose "lead" information had been purchased by Secure My Money were redirected to the "landing page" of the website of one of Secure My Money's brands as described in paragraphs 4.10-4.14 below.

The LoanZoo landing page

- 4.10. The majority of the Firm's customers obtained from lead generators arrived on the Firm's website at the landing page. The landing page was headed: **'Congratulations, [Name of applicant], you've been approved'**.

- 4.11. Below this appeared the following message:

'To access your loan offers, simply complete the form below to verify your account. Once verified you could have your money same day!'



- 4.12. On the left hand side, the Landing Page included a "sample loan" box setting out details of a loan agreement, including an agreement number, the customer's username, the amount requested, the loan term, an application ID, agreement

start date, total amount repayable and estimated monthly repayment. Within the same box were the words 'Our Fees & Charges' together with a monetary amount corresponding to the fee charged by the Firm.

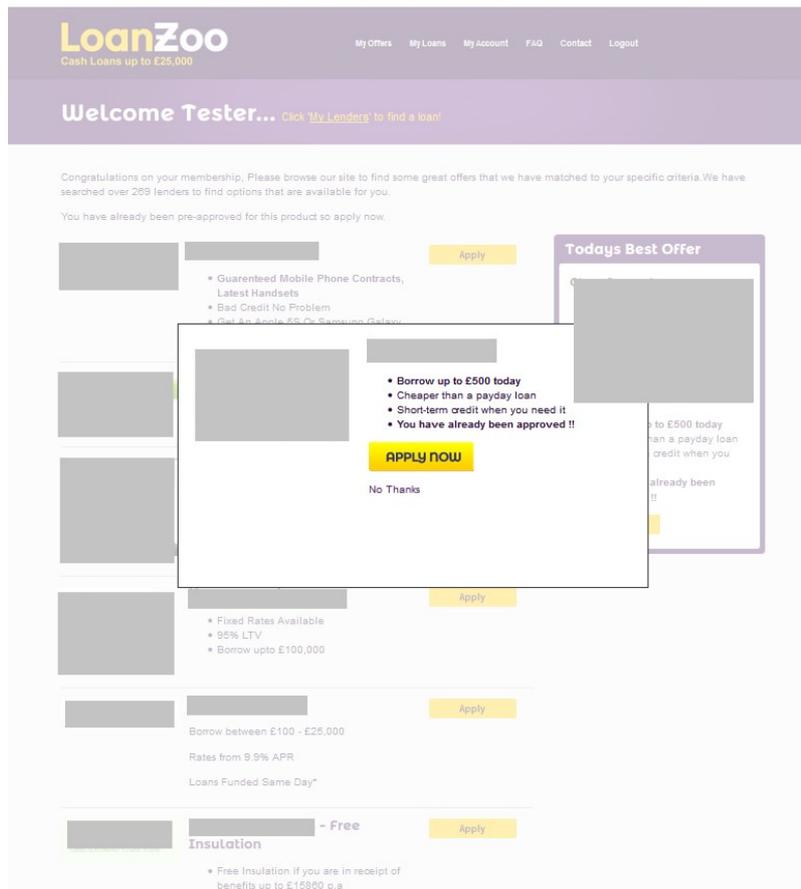
- 4.13. On the right hand side, the words 'Please verify your account' appeared above input boxes for debit or credit card details. Within a narrow scrollable box were the first few lines of the Firm's terms and conditions, and immediately below that was a prominent yellow button labelled 'GET MY LOAN'.
- 4.14. The terms and conditions varied slightly across the Firm's brands and over time. The examples the Authority has seen contained disclosures about the Firm's fees and charges and the use it would make of the customer's personal data. However, this information was not visible unless the customer scrolled down within the terms and conditions box.

The "membership area"

- 4.15. Customers who clicked on the 'GET MY LOAN' button were sent to a set of pages known as the "membership area". At the top of the first page were the words:

'Congratulations on your membership. Please browse our site to find some great offers that we have matched to your specific criteria. We have searched over 269 lenders to find options that are available for you.

You have already been pre-approved for this product so apply now'.



4.16. The page displayed a list of icons of various entities. Customers could choose to click on one or more of these icons. They included a few well known payday lenders as well as companies offering non-loan products such as mobile phone contracts and other credit brokers.

How Secure My Money’s websites misled customers

The landing page

4.17. As explained at paragraph 4.10-4.12 above, customers searching for loans online were told they had ‘been approved’ and shown a “sample loan” appearing to match their borrowing requirements. However, the Firm did not contact or send customer information to any lenders. The ‘sample loan’ was populated from information about the customers’ borrowing needs gathered from customers (either by the Firm or by the lead generator) and had not come from a lender, despite the customer purportedly being given an “agreement number” and “agreement start date”.

- 4.18. In interview, Mr Brotherton said that he believed the wording '*you've been approved*' potentially meant that the customer has been approved by a lender for a loan. Mr Brotherton admitted that '*you'd presume*' that the "sample loan" was one of the offers that the customer could access.
- 4.19. One customer who had visited the Firm's website told the Authority that he thought he was dealing with a lender. He said '*I believed I had been approved for the loan I required as the page stated "you've been approved" and the sample loan agreement showed the loan I wanted.*' He added that he thought he was entering his card details so that his debit card could be verified in preparation for the repayment of the loan. This was consistent with his previous experience of payday lenders who typically checked that the customer's debit or payment card was active before releasing funds.
- 4.20. Mr Brotherton conceded that if someone did not read the Terms and Conditions the Firm's fees were not clearly disclosed to customers on the landing page.

The membership area

- 4.21. Despite the statements on the Firm's websites that it searched "hundreds of lenders", or "269 lenders", the same standard list of "offers" was presented to all customers in the membership area.
- 4.22. As Mr Brotherton knew, the "offers" included icons of payday lenders who could easily be found free of charge via an internet search engine. Some "offers" were not loan providers, for example offers of free insulation or guaranteed mobile telephone contracts.
- 4.23. The Firm's systems recorded whether or not customers clicked on offers, but did not communicate with lenders to see which (if any) customers had been offered loans.

The Firm's fees and charges

- 4.24. The Firm's fees varied across its brands and increased over time. However, for the majority of the Relevant Period, the Firm charged customers a fee of between £39.99 and £69.99 for its services. From around May 2014, the Firm also began charging customers a recurring monthly fee of £4.99 in addition to the up-front fee. In total the Firm took in over £7.2 million from customers in fees during the

Relevant Period in relation to SMM's and Mr Kennedy's businesses, incurring card processing fees of approximately £1 million from service providers.

- 4.25. Under the Firm's terms and conditions, if the fee could not be collected at the first attempt because the customer had insufficient funds, the Firm could make continued attempts to collect the fee on a daily basis for up to the next 60 days. As a result, fees could be charged to the customer's account as and when sufficient funds became available, for example when the customer's wages or benefit payments were credited to their account.
- 4.26. Throughout the Relevant Period, the Firm received complaints from customers claiming to have been unaware that they would be charged a fee. The size of the fee had a significant impact on customers with low incomes. For example, one customer wrote to the Firm stating *"I am a young, vulnerable single mother on basic benefits who also suffers with depression. The fact that you have taken payments from my account without permission has made my financial situation worse and had a negative effect on my mental health and well-being."* Another customer told the Firm that she was unaware that a fee would be charged and had been left with no money to feed her child.
- 4.27. Approximately 20% of the Firm's customers requested a refund from the Firm, and a further 5% obtained 'chargebacks' via their card issuer. Between January 2014 and late May 2014, the Financial Ombudsman Service received 656 complaints about the Firm. Mr Brotherton was aware that the Firm received high numbers of complaints from customers unaware they would be charged. Mr Brotherton was aware of the wording on the websites but failed to take action to improve disclosure of fees or remove misleading information about the nature of the service provided by the Firm. In fact, the Firm did revise its wording for its landing page on or around 26 March 2014 at the suggestion of an employee. The new landing page was briefly live, and clearly set out that a payment would be taken and when, but was taken off-line and replaced with the original landing page on 8 April 2014 at the request of Mr Brotherton because its use had led to a fall in the numbers of customers entering their card details and a corresponding drop in revenue for the Firm.
- 4.28. The serious consequences for some customers of unexpected fees were aggravated by the Firm's delay in paying customer refunds. Under the Firm's cancellation procedures, customers were entitled to a full refund if they requested

one within 14 days, and thereafter to a refund less a £5 administration charge. However, customers were obliged to wait for a minimum of 30 days before the refund was paid. A standard email was sent to the customer in the following terms:

'we can confirm receipt of your cancellation form, we do condition 30 days as our basic time frame as we need to notify the individual lenders we contacted on your behalf to ensure that you have not entered in to any financial agreements with them.....having hundreds of lenders means this process takes time, it is in your interests this happens as this will ensure lenders desist from contacting you with potential solutions and stop working on your behalf to find you a loan'

- 4.29. Mr Brotherton knew this was misleading as the Firm did not search for or contact lenders and had no means of discovering whether the customer had received a loan. In addition, receiving a refund did not affect whether third parties continued to send marketing messages to customers.
- 4.30. Another route to obtain a refund of the fee was for customers to request a "chargeback" or refund from their card provider, most commonly on the grounds that they had not authorised the payment of the fee. Between 01 November 2013 and 31 July 2014, 14,246 of the Firm's customers requested chargebacks. However, as Mr Brotherton knew, it was the Firm's policy to defend chargeback requests where customers claimed not to have authorised the payment of the fee by producing copies of the website terms and conditions referring to the fee and the landing page on which the customer had entered their card details. As Mr Brotherton knew, the terms and conditions were not visible to customers unless they had scrolled down through the text box on the landing page, and the request for card details was misleading in that it did not state that a fee would be charged but asked customers to provide card details in order to "verify your account". In the circumstances, whether or not customers received a refund could depend on whether they requested a refund from the Firm or applied to their card provider for a chargeback. The Firm did not tell customers who had been refused a chargeback under the card scheme rules that they could still obtain a refund from the Firm.
- 4.31. A number of customers who requested refunds from the Firm did not get them. For example, Customer A first wrote to the Firm on 2 May 2014 saying that she

had never been on the website and asking for a refund. After an interval of 12 days, the Firm sent the standard email set out in paragraph 4.28 above, but did not repay the £58.99 fee.

- 4.32. In total approximately £1.4 million was repaid to customers in chargebacks and refunds during the Relevant Period. At the instigation of SMM's bankers and liquidators, not Mr Brotherton and his fellow directors, a further £33,564.17 was repaid to customers after the Firm had gone into liquidation.

"Membership" fees

- 4.33. On 10 April 2014, Mr Kennedy made certain proposals to Mr Brotherton, Mr Mullins and Mr Booth for changes to the Firm's services in order to increase revenue. This included a suggestion for charging customers a recurring monthly £4.99 membership fee in addition to the existing fee.
- 4.34. At this time the Firm's customer terms and conditions did not permit the Firm to charge customers any fees other than the initial fee. Terms and conditions emailed to a customer on 13 April 2014 did not provide for a monthly membership fee. The terms and conditions were changed in order to provide for charging monthly membership fees on/no earlier than 14 May 2014.
- 4.35. On 14 May 2014, Mr Kennedy sent instructions to the Firm's IT consultant to set up monthly payment runs of £4.99 for all existing customers, backdated to 1 March 2014. The Firm had no contractual right to collect monthly fees from existing customers.
- 4.36. As Mr Brotherton knew, just as in the case of the up-front fees, customers would only know that they would be charged recurring fees if they had read through the terms and conditions on the Firm's website.

Misuse of customer information

- 4.37. In addition to purchasing customer leads, the Firm sold on customer information it had collected on its websites or purchased from lead generators to third parties in return for commission payments. The Authority has not been able to determine the amount earned by selling data, as the proceeds were not always passed through the Firm's books.
- 4.38. One customer told the Authority that after visiting The1Loan website he was *'bombarded with marketing in the form of text messages, emails and sometimes telephone calls'*. He said that sometimes he received up to 30 text messages in one day.
- 4.39. Another method by which the Firm passed customer information to others was by inserting a link to a pingtree underneath the icon of a lender in the members' area, in the place of a link to the lender. Customers who clicked on the lender's icon in the expectation of being transferred to the lender's website were instead sent down a pingtree without their knowledge, and redirected to the website of whichever entity had purchased their data in that pingtree. The purchaser could have been another fee charging credit broker rather than a lender, giving rise to the risk that customers could be charged a further fee by the other credit broker. Mr Mullins was responsible for instigating this practice, but Mr Brotherton was aware of it and benefitted financially from it.
- 4.40. On 19 May 2014 the Authority asked the Firm to investigate why customers who had visited the Firm's websites were complaining of having been charged fees by multiple credit brokers (see paragraph 4.51 below). On that date Mr Kennedy performed tests on the Firm's website, after which he sent an email to Mr Brotherton, Mr Mullins and Mr Booth and as follows:
- 'I clicked all links in my portal and either got a broken link or another fee charger. I am certain some numpty customer then went on to fill the form in again and paid twice leading to this issue. I have turned it off in the1loan.'*
- 4.41. When the Authority directly questioned the Firm about the customers being charged fees by other credit brokers after visiting the Firm's websites, Mr Brotherton failed to inform the Authority of the possibility that the redirection of

the Firm's customers to a pingtree was the cause of customers incurring multiple fees.

The1Loan brand and the relationship with Mr Kennedy

- 4.42. The Firm's relationship with Mr Kennedy commenced in September 2013 when it approached him for a short term loan of £100,000 and for access to his technical expertise to help develop a new credit brokerage platform in return for a 25% shareholding in the Firm. Mr Kennedy agreed to these proposals. On 15 November 2013, Mr Kennedy proposed to Mr Brotherton, Mr Mullins and Mr Booth that he should run his brand The1Loan through the Firm's merchant accounts as his own 'private white label fee charger' and keep the proceeds for himself. Mr Kennedy wrote:

Guys,

I'll pump in the cash later this morning.....

To reciprocate I'd like to borrow one [bank] MID [merchant identification account] (unused) from the business and run my own Pingtree traffic down this as a white label, using my tech platform and brand the1loan.

Loanzoo, ispy, i-loansdirect etc can run as normal dow [sic] the remaining MIDs, (though I suggest we dread the load) and Dave will canvass all the usual suspects for traffic.

In effect the1loan will become thepaydaynetworks, private white label fee charger which it keeps the proceeds of. Proceeds down the other brands from all the other pingtrees are SMM's as normal.

Sure you're all cool with lending the MID, let me know gents. Be around next week as we're finally live.

- 4.43. Mr Kennedy's proposal was accepted, and the Firm agreed to transfer all the proceeds of The1Loan brand to Leadgen (UK) Limited ("Leadgen"), a firm of which Mr Kennedy was both a director and shareholder. The Firm provided administration services for The1Loan brand, including collecting in and transferring fees for The1loan brand to Leadgen daily, and dealing with customer complaints and refunds on its behalf. The Firm handled refunds by paying them

out from its own funds on a daily basis and invoicing them back to Leadgen weekly. The Firm also charged Leadgen 50% of the cost of the Firm's customer services staff salaries and certain other overheads of the Firm. Mr Kennedy alone dealt with purchasing leads for The1loan.

- 4.44. In March 2014, Mr Kennedy agreed to pay Mr Brotherton and the other directors personally (not the Firm) the sum of £10,000 per month each for continued use of the Firm's merchant account. However, he did not in fact make any payments.
- 4.45. Between 21 November 2013 and 12 June 2014 over £3.3 million in customer fees was transferred from the Firm's accounts to an account of Leadgen under the above arrangements.

Misuse of the Firm's funds

- 4.46. Between 6 January 2014 and 19 August 2014, a series of payments were received into a bank account in the name of a non-trading company called Affiliate Tree Limited ("Affiliate Tree"). Mr Booth was the founder, and sole shareholder of Affiliate Tree, as well as a director. Mr Brotherton and Mr Mullins were both directors of Affiliate Tree.
- 4.47. Of the payments received into Affiliate Tree's bank account, payments totalling £124,617.09 were received from third parties as payment for customer data (leads) that these parties received from the Firm. The Firm had purchased these leads from other lead generators.
- 4.48. A further £50,000 was received into Affiliate Tree's bank account from another online credit broker as payment for use of the Firm's IT platform.
- 4.49. These payments, totalling £174,617.09, were split by Mr Brotherton, Mr Mullins, and Mr Booth and their respective shares in the payments were transferred from Affiliate Tree's bank account into their personal bank accounts.
- 4.50. In the Authority's view, the monies received by Affiliate Tree belonged to the Firm, since it was the Firm which had acquired the customer data and it was the Firm which had rights to the IT platform. These monies should therefore have been paid to the Firm, but were misappropriated by Mr Brotherton, Mr Mullins and Mr Booth for their own benefit.

Misleading the Authority

- 4.51. On 19 May 2014, having received numerous complaints about the Firm from customers, the Authority contacted the Firm. The Authority's immediate concern was the possibility that customers' card details were being held insecurely, as it had received reports that certain customers who had entered their card details on the Firm's websites had also had been charged fees by other credit brokers without the customers' consent. The Authority also informed the Firm that some customers were claiming not to have been aware that the Firm would charge a fee, or had believed their card details were required for identification purposes only.
- 4.52. Mr Brotherton was not the author of all communications between the Authority and representatives of the Firm in this period, but responses from others were circulated to him, and he knew what the Authority was being told.
- 4.53. On 20 May 2014 Mr Booth sent to the Authority screen shots of web pages from what he said were "*both our sites*"; these were webpages for LoanZoo and i-loansdirect but not for The1loan website, the existence of which was not disclosed to the Authority. Mr Booth attempted to allay the Authority's concerns about customers visiting the Firm's sites being charged fees by third parties by providing information about the security of the payments area of the sites. No mention was made of the possibility that customers were being charged fees by third parties as a result of the Firm having redirected customers in the membership area of the website to other credit brokers' websites without customers' knowledge, despite Mr Kennedy pointing this out at the time as the probable cause of multiple fees being incurred.
- 4.54. Following the Authority's request for the customer websites to be taken down, on 20 May 2014, Mr Kennedy amended the The1loan customer website to add a member login box to the home page. This prevented any new customers on The1loan's home page from progressing any further through the website. Mr Kennedy emailed Mr Brotherton, Mr Mullins and Mr Booth to inform them that '*the1loan site looks down with a member login dialog sitting above a grey'd out site*'. Later on the same day Mr Kennedy sent a further email to Mr Brotherton, Mr Mullins and Mr Booth in relation to the other websites operated by the Firm, suggesting that '*we can always "take them down" for now like the1loan appears taken down but we all know is not*'. Mr Mullins then sent an email to the Firm's

external IT consultant asking him to “*change loanzoo and I-loans to mirror the log in only site that is now 1loan ASAP please?*”. This was duly done.

- 4.55. Later on 20 May 2014, Mr Booth informed the Authority that the two websites he had disclosed to the Authority would be closed to new customers ultimately by 10am the next although existing customers would still be able to log in to the sites. Mr Booth’s email was forwarded to Mr Brotherton. As Mr Brotherton knew, Mr Booth’s statement was false and misleading because most new customers were transferred to the landing pages from third party lead generators’ websites and never saw the home pages. There were no log ins or other restrictions for new customers entering the sites on the landing pages, and the Firm continued to trade, collect fees from new customers and purchase leads from lead generators. The Firm received £295,163.93 in customer fees between 20 May 2014 and 25 June 2014 (when the Firm’s websites were no longer able to process payments due to the Firm’s merchant account being frozen), and spent at least £78,601 on acquiring leads. The Authority recognises that some of these customer fees may relate to customers signing up before 20 May 2014 and further that Mr Brotherton had resigned from the Firm by 30 May 2014. However, it is clear that the Firm continued to allow new customers to sign-up for services after the Firm’s Directors had told the Authority that its websites were closed to new customers.
- 4.56. Mr Brotherton was further aware that Mr Mullins made false and misleading statements to the Authority but took no steps to correct Mr Mullins’ statements. On 29 May 2014, in an email to the Authority copied to Mr Brotherton, Mr Mullins falsely stated that the Firm’s fee structure was a ‘*one-off payment of either £54.99 or £58.99 across all brands to act as a financial broker for 6 months*’ when as Mr Brotherton knew the Firm had implemented recurring monthly membership fees of £4.99 in addition to the ‘one-off’ fee. In the same email Mr Mullins certified that the Firm only passed customer information on to lenders, which Mr Brotherton also knew to be untrue, and failed to disclose key information relating to the possible cause of certain customers being charged by multiple credit brokers, simply telling the Authority that it had ‘*performed numerous full system tests....to try to establish where the problem lies*’.

5. FAILINGS

- 5.1. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

Lack of Honesty and Integrity

Operating an unfair and misleading customer website

- 5.2. As Mr Brotherton knew, the Firm's websites gave customers the misleading impression that the Firm would search for a loan matching their borrowing requirements if they provided personal information about themselves, including their card details. The true purpose of collecting customer information on the Firm's websites was first to populate a 'sample loan' agreement in order to deceive the customer into believing a loan offer had been made and provide their card details for the fee, and secondly to sell on customer data (excepting card details) to third parties.
- 5.3. At all times Mr Brotherton knew that:
- (i) The Firm's website did not search for lenders;
 - (ii) The Firm's website did not "approve" customers for a loan;
 - (iii) The "sample loan agreement" was not an offer of a loan;
 - (iv) Customers' card details were not required to verify their account;
 - (v) Information about fees in the Firm's terms and conditions was not visible to customers unless they scrolled through them so many customers were unaware that they would be charged a fee;
 - (vi) Information about the use the Firm would make of customers' personal data in the Firm's terms and conditions was also not visible unless customers scrolled through them so many customers were unaware personal information about them would be passed to third parties.
- 5.4. Mr Brotherton was aware of the wording on the website, and was aware of customer complaints about unauthorised payment charges. He was also aware that from around 8 April 2014 when clearer disclosure of fees was given, fewer customers were willing to provide card details, and personally requested that

changes to the Firm's websites to improve clarity of fee disclosure were reversed as soon as they impacted the Firm's revenue.

Charging customers monthly "membership fees" without consent

- 5.5. On or around 14 May 2014, the Firm implemented membership fees and updated its terms and conditions. Mr Brotherton was not copied in Mr Kennedy's email in which he arranged for recurring monthly membership fees of £4.99 to be taken backdated to 1 March 2014, while the firm's terms and conditions did not permit it to charge monthly fees until 14 May 2014. It is unclear whether Mr Brotherton was aware of this. However, Mr Brotherton was aware that the membership fee had been implemented by 20 May 2014 and knew, just as in the case of the upfront fees, customers would only know that they would be charged recurring fees if they had read through the terms and conditions on the Firm's website.

Failing to pay refunds

- 5.6. Mr Brotherton knew at all times that customers seeking refunds were being impeded from obtaining them, first by the imposition of a month-long waiting period for paying refunds, and secondly by the Firm's policy of defending chargeback claims from customers on the grounds that they had voluntarily provided card details and that fees were disclosed in the terms and conditions despite the fact that the Firm's websites contained misleading information about the reasons card details were required, and that customers would not see the fee information unless they scrolled through the terms and conditions.

Misuse of customers' personal information

- 5.7. Mr Brotherton knew that the Firm's website did not make it clear to customers that personal information about them could be passed on to third parties for marketing purposes. In particular, he knew that no upfront disclosure of the Firm's data processing policy was provided and information in the terms and conditions was not visible to customers unless they scrolled through the terms and conditions.
- 5.8. Mr Brotherton was aware that Mr Mullins made changes to the Firm's website which resulted in customers clicking on loan offers being sent down a pingtree knowing that this created a risk that other credit brokers would also charge the customers fees.

Allowing Mr Kennedy to operate his own credit broker under cover of the Firm's licence/Interim Permission

- 5.9. Mr Brotherton permitted Mr Kennedy to run his own credit broker business under cover of the Firm's consumer credit licence and interim permission. He permitted the Firm to misrepresent to the Authority that The1loan was a trading name of the Firm when he knew it was at all times Mr Kennedy's own trading name. In doing so he enabled Mr Kennedy to sidestep the regulatory authorisation requirements designed to protect consumers.

Diverting funds from the Firm for his own benefit

- 5.10. Mr Brotherton permitted or caused £174,617.09 properly owing to the Firm to be diverted to another company to whom the funds were not legitimately payable for the benefit of himself and his fellow directors, and to the detriment of the creditors of the Firm, who were in large part the Firm's customers seeking refunds.

Misleading the Authority

- 5.11. Mr Brotherton failed to correct false and misleading statements to the Authority from others, with the intention of preventing or delaying the Authority from taking action to prevent the Firm from trading with new customers.

6. SANCTION

- 6.1. Given the nature and seriousness of the failings outlined above, the Authority considers that Mr Brotherton's conduct demonstrates a lack of honesty and integrity such that it appears to the Authority that Mr Brotherton is not a fit and proper person to perform any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm.
- 6.2. The Authority considers that this Prohibition Order is necessary and proportionate and that it supports the Authority's operational objective of securing an appropriate degree of protection for consumers.

7. PROCEDURAL MATTERS

Decision maker

7.1. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

7.2. This Final Notice is given under and in accordance with section 390 of the Act. The following statutory rights are important.

Publicity

7.3. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this Final Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Mr Brotherton or prejudicial to the interest of consumers or detrimental to the stability of the UK financial system.

7.4. The Authority intends to publish such information about the matters to which this Final Notice relates as it considers appropriate.

Authority contacts

7.5. For more information concerning this matter generally, contact Paul Smith (direct line: 020 7066 0410) of the Enforcement and Market Oversight Division of the Authority.

Bill Sillett,

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

Annex A

RELEVANT REGULATORY PROVISIONS

1. The Authority's operational objectives include securing an appropriate degree of protection for consumers (section 1C of the Act).
2. Section 56(1) of the Act provides that the Authority may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, an exempt person, or designated professional person.

The Enforcement Guide (EG)

3. The Authority's policy in relation to exercising its power to issue a prohibition order is set out in chapter 9 of its Enforcement Guide.
4. **EG 9.5.1** sets out that where the Authority is considering whether to make a prohibition order against someone who is not an approved person, the Authority will consider the severity of the risk posed by the individual and may prohibit him where it considers that it is appropriate to achieve the Authority's statutory objectives.
5. **EG 9.5.2** provides that, when considering whether to exercise its power to make a prohibition order against such an individual, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to, the factors set out in EG 9.3.2. Those factors include: whether the individual is fit and proper to perform functions in relation to regulated activities (noting that criteria are set out in FIT 2.1, 2.2. and 2.3); the relevance and materiality of any matters indicating unfitness; the length of time since the occurrence of any matters indicating unfitness; and the severity of the risk which the individual poses to consumers and to confidence in the financial system.

Fit and Proper Test for Approved Persons (FIT)

6. The Authority has issued guidance on the fitness and propriety of individuals in FIT.
7. **FIT 1.3.1BG(1)** states that the most important considerations when assessing the fitness and propriety of a person include that person's honesty, integrity and reputation.
8. **FIT 2.1.3G** sets out that in determining a person's honesty, integrity and reputation, the Authority will have regard to all relevant matters including...

(5) whether the person has contravened any of the requirements and standards of the regulatory system or equivalent standards or requirements of other regulatory authorities (including a previous regulator)...

(13) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.