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## FINAL NOTICE

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**To:** **Mark Robert Kennedy**

**Date of Birth:** **1 November 1964**

**Date:** **25 July 2018**

### **1. ACTION**

1.1. For the reasons set out below, the Authority has made an order prohibiting Mr Kennedy from performing any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm. The prohibition order is effective from the date of this Final Notice.

### **2. REASONS FOR THE ACTION**

2.1. Mr Kennedy was a shareholder, and for a short period between 30 May 2014 and 11 June 2014 the sole director, of Secure My Money, an online credit broker. The Firm went into liquidation on 31 July 2014, and was dissolved on 9 March 2017.

2.2. During the Relevant Period, Mr Kennedy demonstrated a lack of honesty and integrity in that he:

- (1) operated his own credit broker business branded "The1loan" under cover of the Firm's consumer credit licence (up to 31 March 2014) and (thereafter) interim permission;
- (2) caused the Firm to provide false and misleading information to customers on the The1loan website and treat these customers unfairly by:
  - (i) claiming that the website searched hundreds of lenders and matched customers to the best loan offers when in fact it simply presented all customers with the same standard list of offers (some of which were not even lenders);

- (ii) misrepresenting to customers using the website that they had been approved by a lender for a loan when they had not (with some customers unaware they were dealing with a broker);
  - (iii) failing to make it clear to customers that it would charge them a fee;
  - (iv) misrepresenting to customers that payment card details were required for the purposes of account verification when they were in fact used in order to charge fees; and
  - (v) charging customers monthly "membership fees" without consent;
- (3) caused the Firm to operate websites for other brands that provided false and misleading information to customers and treated customers unfairly in a similar way to the The1loan website.
- 2.3. Further, in May 2014, Mr Kennedy was knowingly concerned in the submission of false and misleading statements to the Authority by others, including a false and misleading statement that the Firm's websites had been closed to new customers when he knew they had not.
- 2.4. The Firm collected customer fees totalling over £7.2 million during the Relevant Period, including over £3.3 million collected on behalf of Mr Kennedy's business and transferred to his company. Based on these figures, the Authority estimates that in the region of 124,000 customers were charged a fee by the Firm. The Authority considers the actions of Mr Kennedy to be particularly serious as his customer base included customers on low incomes least able to afford to pay fees and charges.
- 2.5. The Authority therefore made an order, pursuant to section 56 of the Act, prohibiting Mr Kennedy from performing any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm.
- 2.6. The Authority considers that this action is necessary and proportionate and that it advances 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:

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

"Authority" means the Financial Conduct Authority;

"DEPP" means the Authority's Decision Procedure and Penalties manual;

"Firm" or "Secure My Money" means Secure My Money Limited;

"Leadgen" means Leadgen (UK) Limited;

"Relevant Period" means 15 November 2013 to 31 July 2014;

“Tribunal” means the Upper Tribunal (Tax and Chancery Chamber);

“the Warning Notice” means the warning notice given to Mr Kennedy dated 11 April 2018; and

“the Decision Notice” means the decision notice given to Mr Kennedy dated 31 May 2018.

#### **4. FACTS AND MATTERS**

- 4.1. The Firm was incorporated on 21 July 2011. It held a consumer credit licence from the Office of Fair Trading from 25 April 2012 until 31 March 2014; from 1 April 2014, when consumer credit regulation was transferred to the Authority, it held an interim permission to conduct credit brokerage and debt counselling activities. The Firm went into liquidation on 31 July 2014 and was dissolved on 9 March 2017.
- 4.2. Between 6 November 2013 and 16 June 2014, Mr Kennedy was a shareholder of Secure My Money, an online credit broker based in Macclesfield, Cheshire and was involved in its management. Between 30 May 2014 and 11 June 2014 he was its sole director.
- 4.3. The other directors of the Firm during the Relevant Period were as follows:
  - (1) Mr Edward John Booth was a director between 21 July 2011 and 30 May 2014, before resigning from the Firm on 30 May 2014.
  - (2) Mr Christopher Paul 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.
  - (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.
- 4.4. The Firm operated various websites under different brands including i-Loansdirect and LoanZoo. From 15 November 2013, the Firm also provided administration services and permitted the use of its payment accounts for Mr Kennedy’s credit broker business branded The1Loan. Other than in respect of branding, all the websites were materially the same.

#### **The1Loan brand and the Firm’s relationship with Mr Kennedy**

- 4.5. 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 consumer credit broker technology platform in return for a 25% shareholding in the Firm.
- 4.6. At this time, Mr Kennedy was a director and shareholder of Leadgen, a lead generation business which held a consumer credit licence to conduct consumer credit broking activities. Mr Mullins introduced Mr Kennedy to the Firm as a potential investor with the technical expertise needed to develop the Firm’s IT capability. Mr Kennedy agreed to lend the Firm £100,000, and to arrange for the development of a new consumer credit broking technology platform, in return for a 25% shareholding in the Firm.
- 4.7. The Firm was not granted a formal licence to use the credit broking technology platform that was developed for it by arrangement with Mr Kennedy. While he enabled the Firm to

have access to the technology and to integrate it with their front-end customer websites, Mr Kennedy retained control over the Firm's access and could withdraw it at will. He also controlled access to the owner/original developer of the technology, to whom the Firm paid a monthly support fee of £5,000. As the Firm operated exclusively online, this control gave Mr Kennedy significant leverage over the Firm.

4.8. Mr Kennedy took an active role in developing the Firm's business as well as its technological capability. In addition to introducing expert website developers to the Firm to help develop a new technology platform, he:

- (i) arranged for the Firm's websites to be redesigned;
- (ii) personally interacted with the developers to ensure that customers who entered the sites via affiliates would be directed straight to the sites' landing pages;
- (iii) contributed to the products and services accessible to customers through the websites including adding links to his own sub-prime mobile phones contract website; and
- (iv) made numerous proposals for the Firm's future strategy including setting up a "pingtree" (an online marketplace for buying and selling customer leads) and implementing a premium rate telephone number for customers requesting refunds of fees which would charge them £5 per minute. These suggestions do not appear to have been implemented.

4.9. Mr Kennedy was also the driving force behind the introduction of recurring monthly fees for customers in May 2014.

4.10. On 15 November 2013, shortly before transferring loan funds to the Firm, Mr Kennedy proposed to the directors that he should be allowed to operate his own credit broker business through the Firm under his The1loan brand, using the Firm's merchant account to collect fees from customers. He described this as a "private white label fee charger". 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 [the Firm's] as normal.*

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

- 4.11. Mr Kennedy's proposal was accepted, and the Firm also agreed to provide administration services including handling customer complaints and refunds for The1loan brand customers. The Firm handled refunds for The1loan customers by paying them out from its own funds on a daily basis and invoicing them back to Leadgen weekly. The Firm charged Leadgen 50% of the cost of its customer services staff salaries and certain other overheads of the Firm to compensate for the additional work being undertaken to service Mr Kennedy's brand. Mr Kennedy personally dealt with purchasing leads for The1loan without assistance from the Firm, and retained full control over decisions relating to how much traffic should be directed through the The1Loan brand.
- 4.12. 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.
- 4.13. In March 2014, Mr Kennedy agreed to pay Mr Mullins and the other directors personally (not the Firm) the additional sum of £10,000 per month each for continued use of the Firm's merchant account. However, the Authority has seen no evidence that such payments were made.
- 4.14. On or around 26 May 2014, Mr Kennedy opened a new merchant account for the The1Loan brand in the name of Leadgen with another account provider, and used this account to collect fees from customers of other brands operated by Leadgen, including directloans.uk.com and theloanline.com. This resulted in charges appearing in the bank records of customers of directloans.uk.com and theloanline.com as payments to The1loan, leading to complaints from these customers that they had been charged a fee by an entity with which they had had no dealings.
- 4.15. Mr Kennedy became the sole director of the Firm on 30 May 2014, but resigned on 11 June 2014. On 11 June 2014 a newspaper article had been published criticising credit brokers' practices which identified The1loan.
- 4.16. In interview with the Authority Mr Kennedy denied that he had been involved in the management of the Firm. He said that his role had been limited to providing loan funds, access to a credit broking platform and technical assistance to set it up. He also denied that the The1loan brand was his business and asserted that the money he had received from the Firm's merchant account was not customer fees but commission for leads provided to the Firm through Leadgen. The Authority does not accept these assertions in view of the evidence.
- 4.17. Mr Kennedy's email quoted in paragraph 4.10 above does not mention commission but simply states that Leadgen would "keep the proceeds" of the The1loan brand. Furthermore, on 13 March 2014, Mr Kennedy wrote to a new lead supplier, stating "*Dave and I work together, I manage the1loan brand and he manages Loanzoo*". On 6 May 2014, Mr Kennedy emailed a different third party stating "*Dave and I are Directors of both [Secure My Money and Leadgen] and all of the traffic through [the Firm] is generated by Leadgen. I am probably not allowed to say this but [the Firm] is third party processing our traffic*". In a later email to the directors of the Firm dated 12 May 2014 Mr Kennedy wrote: "*I have a couple of MIDs approved and am integrating to these to move traffic to a new brand www.theloanline.com which is being knocked up as we speak. The1loan will run down to nothing during the course of this month or more likely next month, though I will still work the recurrings if this proves successful.*" In the Authority's view this shows that Mr Kennedy personally controlled The1loan business.

4.18. The directors of the Firm have also stated in interview that The1loan was Mr Kennedy's brand, that they agreed to let Mr Kennedy use the Firm's merchant account for The1loan and that all fees collected from The1loan customers were transferred to Mr Kennedy.

- (1) David Mullins stated: "... he [Mark Kennedy] said he wanted to use ... one of the merchant accounts to direct his traffic, via ThePaydayNetwork [Leadgen's pingtree], directly to The1loan... We had to put The1loan on our.. Secure My Money's [Authority] licence, which we did – on the interim permission... And he wanted to run exclusively his traffic from ThePaydayNetwork into The1loan... Every single payment ever taken for The1loan went to Leadgen". Mr Mullins further stated: "The1loan was a brand that was Mark's that he wanted to run and that was part of the change of the initial deal that happened... it wasn't our brand."
- (2) Mr Booth stated: "... the money that was generated by Mark's brand through obviously the merchant bank would obviously land in our bank accounts. It would be Leadgen where the money was paid because obviously Mark's traffic through Mark's site and then we'd invoice Leadgen for the office costs and all the rest of it."
- (3) Mr Brotherton stated: "Well, The1loan, he was just – it's – from what I can – what I knew, it's just a brand that – because he was a director at that point, of Secure My Money. And it was just a brand that was his brand, it was his – it was just his. It wasn't anything to do with any arrangement that he sort of had with Secure My Money, as far as I knew. It was just his brand on there – it was his traffic, that was all his."

#### *Access to IT systems, websites and bank accounts*

4.19. The directors had administrator access rights to the back-end systems for the Firm's Loanzoo brand and the The1loan brand but Mr Booth and Mr Brotherton's access did not include financial information for The1loan. Mr Mullins could also access financial information relating to the The1loan brand. Mr Kennedy and the original software developer of the site had the highest levels of access, and could restrict or remove the directors' access to the systems at will.

4.20. Anyone could view the Firm's front-end websites as a customer. Messrs Mullins, Booth, Brotherton and Kennedy could make changes to the customer websites, although it was generally left to Mr Kennedy to decide on the content of the The1loan website.

4.21. Mr Kennedy did not have authority to deal with any of the Firm's business banking or merchant accounts, but he could view customer payments in the Firm's card payment gateway account.

#### *The websites*

4.22. The websites for the Firm's brands and the The1loan brand operated in the same way. They were not advertised, so only a small minority of customers went direct to the websites. For these "direct" customers, the customer journey began at the websites' home pages and proceeded through a series of loan application pages in which customers were prompted to provide personal information about their circumstances and borrowing requirements before arriving at a page known as the "landing page" described in

paragraphs 4.30 – 4.34 below. The application pages contained a statement that the relevant brand (including The1loan) was a trading name of the Firm. They also disclosed that the Firm was a credit broker not a lender, and stated that “We search hundreds of lenders”.

The screenshot shows the The1Loan website's application form. The header includes the logo 'The1Loan' with the tagline 'Fast Cash Loans up to £25,000', a navigation menu (Home, Our Loans, Our Lenders, About Us, FAQ, Contact, Login), and an 'Apply Now' button. Below the header is a banner with the text 'We search hundreds of lenders' and a photo of a smiling couple. The main form is titled 'Tell us about your Loan' and contains several sections: 'Loan Amount', 'Loan Term', and 'Loan Purpose' (all dropdown menus); 'Your contact details' with fields for 'Your Title', 'First Name', 'Last Name', 'Date of Birth (DDMMYY)' (with Day, Month, and Year dropdowns), 'Email Address', 'Mobile Phone', and 'Home Phone'; and 'Your address details' with fields for 'Post Code', 'House Name/Number', 'Street', 'Town/City', 'County', 'Home Status', and 'Time at Address'.

- 4.23. These pages also contained a pre-ticked box (which could be “un-ticked”) confirming that the customer had consented to receiving marketing communications from third parties, and a tick box to confirm that the customer had read the Firm’s Terms and Conditions.
- 4.24. The significant majority of the customers using the websites were not “direct” customers but had been redirected to them from third party lead generation websites. The Firm, and Leadgen for the The1loan brand, 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 the websites.
- 4.25. Although not visible to the customer, the process by which the customer leads were acquired 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 and Leadgen bought and sold customer information via various affiliate networks. Leadgen also operated its own lead generation business.
- 4.26. 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.

- 4.27. Customers whose "lead" information had been purchased by Secure My Money or Leadgen were redirected to the "landing page" of the relevant brand, which was usually the payment or approval page (as set out in paragraphs 4.30-4.34 below). However, certain non-direct customers appear to have arrived at earlier pages, and thus – like direct customers – may have seen statements such as "we search hundreds of lenders" and been asked to tick boxes to confirm their consent to marketing and that they had read the site's terms and conditions.
- 4.28. In addition to purchasing customer leads, the Firm and Mr Kennedy sold on customer information collected on the websites or purchased from lead generators to third parties in return for commission payments.
- 4.29. One customer told the Authority that after visiting the 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.

*The landing page*

- 4.30. The landing pages were similar for all the brands. For example, the landing page for the The1Loan website was headed: "***Congratulations, [Name of applicant], you've been accepted***".
- 4.31. Below this appeared the following message:

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





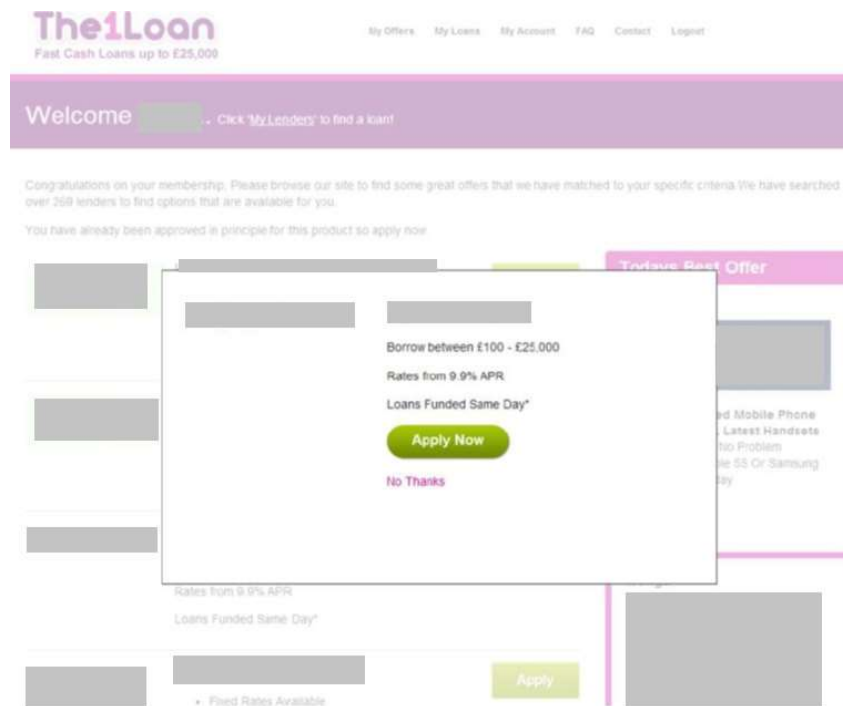
- 4.32. On the left hand side, the landing page included a “Your loan summary” box setting out details of a loan agreement, including an agreement number, the customer’s username, the amount requested, the loan term, an application ID, agreement start date, total amount repayable and estimated monthly repayment. Within the same box were the words “Our Fees & Charges” together with a monetary amount corresponding to the fee charged by the Firm.
- 4.33. On the right hand side, the words “Method of Payment” (or at times, the alternative wording “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 green button labelled “Get My Loan”.
- 4.34. The terms and conditions varied slightly across the brands and over time. The examples the Authority has seen contained disclosures about fees and charges and the use the Firm would make of the customer’s personal data. However, this information was not visible unless the customer scrolled down within the narrow terms and conditions box. The tick boxes confirming that customers had read the terms and conditions and consented to receive marketing communications only appeared on the application pages preceding the landing page, so most customers did not see them. It appears that the terms and conditions were emailed to customers after the application was completed. However, by this time Secure My Money had already used the customers’ card details to charge fees.

*The “membership area”*

- 4.35. 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 to you.*

*You have already been approved in principle for this product so apply now”.*



- 4.36. 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 the websites misled customers**

#### *The landing page*

- 4.37. As explained at paragraph 4.30-4.34 above, the landing page for The1loan told customers they had *“been accepted”* and showed them a *“loan summary”* appearing to match their borrowing requirements. However, contact had not been made with any lenders. The *“loan summary”* was populated from information about the customers’ borrowing needs gathered from customers and had not come from a lender, despite the customer purportedly being given an *“agreement number”* and *“agreement start date”*.
- 4.38. In interview, Mr Kennedy denied responsibility for statements appearing on any of the websites, including The1loan. He said that his input into the design of the websites had been limited to aesthetic considerations. Mr Kennedy said the wording *“you’ve been approved”* (as displayed on the LoanZoo landing page) meant the *“system has approved the customer”* based on the criteria entered. He did not accept that customers would take the wording to mean they had been approved by a lender, or that customers seeing the *“sample loan”* would think that it was a real loan offer from a real lender (although he accepted that this was a possible interpretation of the words). Mr Kennedy accepted that

the wording “*verify your account*” was ambiguous, but thought that the wording “*our fees and charges*” would be taken to refer to the credit broker’s charges.

- 4.39. One customer who had visited the The1loan website told the Authority that he had 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.
- 4.40. In the Authority’s view, it is not plausible for Mr Kennedy to assert that he was unaware of the statements made on the websites or that they were misleading. Mr Kennedy accepts that he saw the webpages. In the Authority’s view it is not credible that he could have reviewed the websites for aesthetic features without reading the words. All the websites ran off the same technology platform and had the same functionality, which Mr Kennedy helped to specify and test before the sites were launched. Further, the wording on Leadgen’s Theloanline.com landing page (which was Mr Kennedy’s business alone and was not connected to the Firm) was virtually the same as that of The1Loan.

#### *The membership area*

- 4.41. Despite the statements on the websites that they searched “*hundreds of lenders*”, or “*269 lenders*”, the same standard list of “*offers*” was presented to all customers in the membership area.
- 4.42. 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.
- 4.43. Mr Kennedy was familiar with the contents of the membership area and involved himself in decisions about what should be included, for example links to his own subprime mobile telephone contracts site. He encouraged Mr Booth and Mr Brotherton to add further offers to the members’ area for “*compliance, justification of the fee and generally to make some cash*”. Mr Kennedy knew that 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, they included offers of free insulation.
- 4.44. In interview, Mr Kennedy said that he was not responsible for adding offers to the membership area. He said that he did not know that the Firm’s websites claimed to search hundreds of lenders, but accepted that the claim would be misleading if they did not in fact do so. In the Authority’s view, it is not plausible that Mr Kennedy, having tested the site and helped develop the sites, would not know that the system did not communicate with lenders and he should therefore have known that the statements on the websites about searching hundreds of lenders were misleading.

#### **Customer fees and charges**

- 4.45. Customer fees varied across the brands and increased over time. For the majority of the Relevant Period, customers were charged a fee of between £39.99 and £69.99 when they entered their card details on the landing page. From around May 2014, recurring monthly fees of £4.99 began to be charged in addition to the up-front fee.

- 4.46. Under the websites' terms and conditions, if the fee could not be collected at the first attempt because the customer had insufficient funds, further attempts could be made 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. This was disclosed within the websites' terms and conditions (but was not visible unless customers scrolled through the terms and conditions).
- 4.47. 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.
- 4.48. Approximately 20% of the customers requested a refund, and a further 5% obtained "chargebacks" via their card issuer. Between January 2014 and late May 2014, the Financial Ombudsman Service received 656 complaints relating to the Firm's brands and The1loan. A number of The1loan's customers complained that they had not even visited The1loan's website. Mr Kennedy was aware that the Firm received high numbers of complaints from customers claiming not to have known they would be charged a fee, including customers of The1loan.
- 4.49. The Authority estimates that in the region of 124,000 customers were charged a fee by the Firm. A total of approximately £1.4 million was paid back to customers in refunds and chargebacks in the Relevant Period, and a further £33,564.17 was returned by the Firm's liquidators and bankers after the Firm went into liquidation. Part of this related to chargebacks and refunds of fees charged by The1loan and paid to Leadgen. The Firm bore the upfront cost of refunds for The1loan and although it invoiced Leadgen for refunds, Leadgen ceased to pay the invoices after March 2014 even though Mr Kennedy still required all The1loan fees to be transferred to Leadgen daily. Eventually the Firm ran out of money to pay for refunds. A member of the Firm's staff stated that she had been told by Mr Mullins that they could not offset unpaid invoices against fees due to Leadgen for The1loan because if they did, Mr Kennedy would remove the Firm's access to its IT systems.

#### *"Membership" fees*

- 4.50. On 10 April 2014, Mr Kennedy made certain proposals to the directors for changes to the Firm's services in order to increase revenue. This included a proposal to charge customers a recurring monthly £4.99 membership fee in addition to the initial fee. At this time, as Mr Kennedy knew, the customer terms and conditions did not provide for charging customers any fees other than the initial fee.
- 4.51. 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.
- 4.52. Although there was no contractual basis for charging a fee to any customer who signed up prior to 14 May 2014, backdated fees were collected from 1 March 2014. Even for new customers visiting the websites on or after 14 May 2014, the information that they would

be charged recurring fees would only become clear if they scrolled through the terms and conditions on the website. As explained in paragraph 4.23 above, the pages before the landing page contained a tick box to confirm that the customer had read the Firm's Terms and Conditions but the significant majority of the Firm's customers were not "direct" customers and were redirected to the landing page. Those customers did not see the pages that contained the tick box.

### **Misleading the Authority**

- 4.53. On 19 May 2014, having received numerous complaints 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 websites registered to the Firm had also 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 a fee would be charged, or had believed their card details were required for identification purposes only.
- 4.54. Mr Kennedy was not the author of the communications between the Authority and the Firm in this period, but responses from others were discussed with or circulated to him in draft prior to sending, and he knew what the Authority was being told. Mr Kennedy was also involved in making certain changes to the webpages in order "*to smarten up the offers in the portal and get plenty of references to the charges on the homepage*" following concerns raised by the Authority about transparency of the websites. The revised webpages provided to the Authority included a prominent statement on the front page of both the LoanZoo and i-loansdirect.co.uk websites, "*We charge a loan search fee of £54.99*". However, the majority of customers did not arrive on the homepage, as Mr Kennedy was aware. No changes were made to the landing pages, and the screenshots provided to the Authority did not refer to any additional £4.99 membership charge.

#### *Failing to inform the Authority of the likely cause of multiple fee charging*

- 4.55. One of the methods by which customer information was passed to third parties 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 another credit broker. Mr Mullins was responsible for this practice, and the Authority accepts that Mr Kennedy was not aware of it until on or around 19 May 2014.
- 4.56. On 19 May 2014 Mr Kennedy performed tests on the members' area on the Firm's and the The1loan websites, after which he sent an email to Mr Mullins, Mr Booth and Mr Brotherton 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."*
- 4.57. 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 the The1loan website, indicating these were the only sites the Firm was operating at that time. Mr Booth attempted to allay the Authority's concerns about customers who visited these 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 redirection of customers in the membership area of the website to other credit brokers' websites without customers' knowledge, despite Mr Kennedy pointing this out a day earlier as the probable cause of multiple fees being incurred.

- 4.58. Mr Kennedy failed to inform the Authority (either at the time or when he became sole director of the Firm on 30 May 2014) of the possibility that the redirection of the Firm's customers to a pingtree was the cause of customers incurring multiple fees although he knew that the Authority had directly asked the Firm to investigate how this was happening.

*Misleading the Authority on the closure of the websites*

- 4.59. 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 the The1loan's home page from progressing any further through the The1loan website. Mr Kennedy emailed the directors 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 the directors in relation to the Firm's websites, 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 (copying Mr Kennedy) asking him to "*change loanzoo and I-loans to mirror the log in only site that is now 1loan ASAP please?*" This was done.
- 4.60. 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 by 10am the next day although existing customers would still be able to log in to these sites.
- 4.61. Mr Kennedy was aware that most new customers were transferred straight to the landing pages from third party lead generators' websites and never saw the home pages on either the Firm's websites or the The1loan website. There were no logins or other restrictions for new customers entering the sites on the landing pages, and the Firm and Mr Kennedy continued to trade, collect fees from new customers and purchase leads from lead generators. The Firm received approximately £295,163.93 in customer fees between 20 May 2014 and 25 June 2014. This sum included fees collected for The1loan, at least until 26 May when Mr Kennedy opened a new merchant account for Leadgen. On 26 June 2014 the Firm's merchant account was frozen and it ceased to be able to collect fees. In the same period the Firm spent at least £78,601 on acquiring new leads.
- 4.62. The Authority recognises that some of the customer fees collected after 20 May 2014 may have related to customers signing up before that date. However, it is clear that the Firm and Mr Kennedy continued to collect card details and fees from new customers after they had deliberately altered the websites to make the Authority think this was not possible.

## **5. FAILINGS**

- 5.1. The statutory and regulatory provisions relevant to this Final Notice are set out in the Annex.

### **Lack of Honesty and Integrity**

#### ***Operating an unfair and misleading customer website***

- 5.2. As Mr Kennedy knew, the Firm's websites and the The1loan website gave customers the misleading impression that they would search for and display offers of loans matching the customers' borrowing requirements if customers provided personal information about themselves, including their card details. In the Authority's view, the true purposes of collecting customer information on the websites were, first, to populate a "sample loan" agreement in order to deceive the customer into believing a loan offer had been made and providing their card details so that the Firm could charge them a fee and, secondly, to sell on customer data (excepting card details) to third parties.
- 5.3. At all times Mr Kennedy knew that:
- (i) The websites did not search for lenders;
  - (ii) The websites 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 for the purpose of verifying an account;
  - (v) Information about fees in the terms and conditions was not visible to customers unless they scrolled through them (in a narrow box), while there was no tick box for customers to confirm they had read the terms and conditions on the landing page which left many customers unaware that they would be charged a fee;
- 5.4. Mr Kennedy was aware of the wording on the websites and that customers made complaints about unauthorised payments being charged.

#### ***Charging customers monthly "membership fees" without consent***

- 5.5. On or around 14 May 2014, Mr Kennedy arranged for recurring monthly membership fees of £4.99 to be taken backdated to 1 March 2014, although he was aware that the firm's terms and conditions did not permit it to charge monthly fees until 14 May 2014.

#### ***Operating a credit broker business under cover of the Firm's licence/interim permission***

- 5.6. Mr Kennedy operated 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 (and the public via the Authority's Interim Permission Consumer Credit Register) that The1loan was a trading name of the Firm when he knew it was at all times his own trading name. The effect was that Mr Kennedy distanced himself from the The1loan business, preventing the Authority and others (for example, The1loan customers seeking refunds, including during the period after Secure My Money had entered liquidation) from making a connection between Leadgen (UK) Limited and the The1loan brand.

### ***Misleading the Authority***

- 5.7. Mr Kennedy was knowingly concerned in the making of false and misleading statements to the Authority by directors of the Firm and was further aware that relevant information was being withheld from the Authority in order to deter the Authority from taking action to prevent the Firm or himself from collecting fees from customers.
- 5.8. The Firm made changes to its websites 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. It appears that Mr Kennedy was not initially aware of these changes. When Mr Kennedy discovered the changes, he immediately "turned off" the redirections believing it to be the source of the multiple charging issue that the Authority had raised concerns with the Firm about, but failed to inform the Authority (either at the time or when he became sole director of the Firm on 30 May 2014) or to ensure that others at the Firm did so.

## **6. SANCTION**

- 6.1. Given the nature and seriousness of the failings outlined above, the Authority considers that Mr Kennedy's conduct demonstrates a lack of honesty and integrity such that it appears to the Authority that Mr Kennedy is not a fit and proper person, and accordingly that he should be prohibited from performing any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm.
- 6.2. The Authority considers that this action is necessary and proportionate and that it advances the Authority's operational objective of securing an appropriate degree of protection for consumers.

## **7. REPRESENTATIONS**

- 7.2. Through the Warning Notice, the Authority gave notice that it proposed to take the action described above and Mr Kennedy was given the opportunity to make representations to the Authority about that proposed action.
- 7.3. No representations having been received by the Authority from Mr Kennedy within the time allowed by the Warning Notice, the default procedures in DEPP 2.3.2G of the Authority's Decision Procedure and Penalties manual permit the allegations/matters described in the Warning Notice, and repeated in the Decision Notice, to be regarded as undisputed.

## **8. PROCEDURAL MATTERS**

- 8.1. This Final Notice is given to Mr Kennedy under and in accordance with section 390 of the Act.
- 8.2. The following paragraphs are important.

### **Decision maker**

- 8.3. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.



### **Publicity**

- 8.4 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 Kennedy or prejudicial to the interest of consumers or detrimental to the stability of the UK financial system. The Authority intends to publish such information about the matters to which this Final Notice relates as it considers appropriate.

### **Contact**

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

Bill Sillett,

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

## **ANNEX**

### **RELEVANT STATUTORY 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.