To the best of our knowledge, the "*SYSTEMATIC*" FCA regulatory and supervisory failure in relation to Lendy Ltd.

FundingSecure Action Group (FSAG)
which includes:
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Email: FSAGFCA@yahoo.com

22nd February 2022

Email: john.glen.mp@parliament.uk

By Email only:

Dear John Glen, MP (as City Minister and Economic Secretary to the Treasury).

We write to you in your specific capacity as City Minister and Economic Secretary to the Treasury.

You will be aware of the collapse of Lendy Ltd (a Peer-to-Peer {P2P} platform) as you will no doubt have seen a detailed preliminary dossier illustrating some of the failings of the FCA regarding the regulation and supervision of Lendy Ltd, an FCA authorised company, which was sent to Rishi Sunak MP (and others including the Treasury Select Committee) and also found its way to the FCA.

Regulated companies offering P2P platforms and services like Lendy (formerly branded and trading as Saving Stream) were made an item of Public Interest by the Government who promoted them heavily and in fact extended their public use to include ISA's (IFISA's) and Pension Schemes (SIPPs) within their product ranges that were allowed to be sold to the general public. With the collapse of Lendy, it is also now in the Public Interest that the Treasury acts to prevent any cover up of the FCA regulatory and supervisory failings and orders an Independent Review of the FCA in relation to its failure to regulate and supervise a member firm (Lendy). As Minister with responsibility for Treasury matters, you will be fully aware that the conditions have been met under the Financial Services Act 2012 part 5 for you to instigate such a review in the Public Interest.

The Government must already recognise that there is a problem with the FCA as it has set up the Transparency Task Force via the APPG on Personal Banking and Fairer Financial Services to reform the FCA. You are involved with the TTF in Parliament and have made speeches relating to the collapse of London Capital & Finance (due to its regulatory and supervisory failures), claiming this to be a unique case which of course it absolutely is not, as can be illustrated by other similar collapses of regulated firms. Hence, this letter should come as no surprise.

We lenders at Lendy (a FCA regulated firm) lent in a regulated product (and also a non-regulated product unbeknown and importantly, concealed from us), in good faith and subsequently came to realise, that in our opinion, the FCA regulation and supervision was substantially defective for the purpose of regulating and supervising Peer to Peer companies to ensure a relatively safe investment environment for the general public, ultimately resulting in significant losses for the clients/lenders.

The incredibly high cessation rate of trading and/or exiting of this relatively new industry by peer-to peer companies, (we estimate 27 so far, which is approaching 50% of the entire Peer-to-Peer industry) with some companies running into difficulties very shortly after having gained full authorisation, coupled by the many tens of millions of pounds lost by its everyday clients / lenders, suggests that something was seriously wrong in the manner in which the industry has been allowed by the FCA to operate. Some of these companies were the largest (by capital entrusted to them or client numbers), most widely advertised, prominent and well-known in the p2p industry. In addition to Lendy, some of

the more high-profile failures include FundingSecure, Collateral, MoneyThing, House Crowd and Business Loan Network (aka ThinCats). As FundingSecure Action Group is dealing with both Lendy and FundingSecure, we will be writing to you in relation to FundingSecure under separate cover.

We note that these multiple devastating failures in the P2P industry are leading to in excess of 50% losses for the retail clients in numerous cases. There are many more companies from RateSetter to Growth Street that had to employ emergency measures to stay afloat, thereby severely restricting the withdrawal of lenders capital. LendingWorks had to impose negative interest rates to stay afloat. Other companies (notably, Funding Circle) had to resort to providing government CBILS and to all intents and purposes locking out retail lenders, to stay in operation. RateSetter, due to balance sheet losses (another top three peer-to-peer company) allowed itself to be acquired by Metro Bank, and Zopa (yet another top three peer-to-peer company) has decided to exit the peer-to-peer industry altogether as noted in a recent press announcement, "*Sadly, over the last few years, customer trust in P2P investing has been damaged by a small number of businesses whose approach led to material losses for customers investing in those platforms. Linked to this, the changing regulation in the sector has made it challenging to grow and remain commercially viable*.", Special emphasis should be noted regarding the words "**customer trust ……has been damaged**" in the industry in the above statement by Zopa.

Something is very wrong with the way in which the industry was allowed to develop by the FCA considering this list of companies contains the companies with the highest amount of clients' capital entrusted to them, all under the auspices of the FCA. This list does not contain, nor name the still surviving P2P companies that have millions, and in some cases multi-millions in negative shareholder equity. Anyone thinking this is "normal" really needs to reassess the situation in more detail.

In a matter of a few very short years, the FCA has moved from a virtually non-existent, feather-touch approach to supervision and regulation of the peer-to-peer industry as with Lendy, to an iron clad approach, enforcing the most stringent measures for the regulation of the industry. Clearly one of these methods of regulation for P2P by the FCA is WRONG! It is the clients who they are supposed to look out for who suffered as a consequence of this action, or previous inaction.

In our opinion, there are many FCA regulatory and supervisory failures at Lendy, of which in this brief letter, we list just 5 examples plus some pointers to others.

For the avoidance of doubt, here are the 11 FCA Principles which must be abided by.

PRIN 2.1 The Principles

1 Integrity	A *firm* must conduct its business with integrity.
2 Skill, care and diligence	A *firm* must conduct its business with due skill, care and diligence.
3 Management and control	A *firm* must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
4 Financial prudence	A *firm* must maintain adequate financial resources.
5 Market conduct	A *firm* must observe proper standards of market conduct.
6 Customers' interests	A *firm* must pay due regard to the interests of its *customers* and treat them fairly.
7 Communications with clients	A *firm* must pay due regard to the information needs of its *clients*, and communicate information to them in a way which is clear, fair and not misleading.
8 Conflicts of interest	A *firm* must manage conflicts of interest fairly, both between itself and its *customers* and between a *customer* and another *client*.
9 Customers: relationships of trust	A *firm* must take reasonable care to ensure the suitability of its advice and discretionary decisions for any *customer* who is entitled to rely upon its judgment.
10 Clients' assets	A *firm* must arrange adequate protection for *clients'* assets when it is responsible for them.
11 Relations with regulators	A *firm* must deal with its regulators in an open and cooperative way, and must disclose to the *FCA* appropriately anything relating to the *firm* of which that regulator would reasonably expect notice.

1: The FCA allowed Lendy to sell non-regulated loans to everyday retail clients on a FCA regulated platform without informing or making known to the clients of this platform that they were unregulated products. This is similar to the situation at London Capital & Finance (LC&F) and FundingSecure.

There are 2 categories of unregulated loans which were mis-sold, or mis-promoted:

(a) Model 1 (M1) loans in which the lenders, unbeknown to them, lent to Lendy who in-turn lent to the borrower. These are not even P2P loans but were mis-sold as P2P loans by Lendy (under the auspices of the FCA) and unknowingly purchased as such by the lenders.

(b) Model 1 (M1) and Model 2 (M2) loans that were purportedly structured to be a true peer to peer loans and 36H compliant were not so in all cases. Any lender who lent £25,000 or more into these loans (Model 1 and/or Model 2) has not (we now know) lent into true Peer-to-Peer loans under Article 36H and Article 60L of the Regulated Activities Order, as P2P loans are limited to £25,000 per loan.

In neither case, did the FCA or Lendy advise lenders that these products were unregulated.

This appears to be a breach of Principles 1, 2, 6, 7, 8, and 10 as well as a failure by the FCA to monitor compliance of its regulations.

2: The FCA failed to follow-up and enforce remedial action it had ordered. Two examples:

(a) Lendy issued an email to all lenders in 2015 advising that it would convert Model 1 loans to the regulated version (Model 2), being 36H compliant loans. Some 6 years later, there are still claimed to be 5 unregulated loans (one in dispute) and for these, lenders have now been told that the money they lent, now belongs to Lendy (the company) and M1 lenders are just unsecured creditors for their debt (even though lenders lent their money to Lendy for a specific purpose, i.e. to lend on to the ultimate borrower). In addition, any money recovered from personal guarantees and valuers in these M1 loans is stated as also belonging to the company. In effect, lenders money, through the administration process, has changed ownership from the lender to the company. A recent court case announced that M1 loans had a face value (meaning loan amount) of around £12,000,000. Contractual interest and bonus due to lenders increase that debt to c£15,000,000. Lenders in those loans, as unsecured creditors could, after the costs of administration are deducted, lose 100% of their money. This is NOT “secured lending” for the general public as widely publicised by Lendy and endorsed by the FCA.

(b) The FCA ordered remedial action on some Model 2 loans but only lenders who had complained about the mis-promotion of those loans were offered compensation. None of the other lenders/clients were offered compensation (most of the other lenders were totally unaware that compensation had even been offered!), and the FCA did not insist that compensation was offered to all affected lenders, despite the other clients having been mis-promoted the exact same loans, as they were all offered under the same T&Cs.

This is definitely not aligned with the FCA's Treat Customers Fairly (TCF) code of conduct and that under Principle 6, or indeed the communication Principle 7 in which "a firm must pay due regard to the information needs of its *clients*, and communicate information to them in a way which is clear, fair and not misleading".

This appears to be a breach of Principles 1, 2, 6, 7, 8, and 10 as well as a failure by the FCA to monitor compliance of its regulations.

3: The FCA granted Lendy Full Authorisation in July 2018 when it knew that Lendy had a loan book comprising of nearly all defaulted loans (although they were not labelled as such, and to all intents and purposes, totally mis-represented to everyday clients) and that the business was in serious financial difficulties.

In a letter from the Chief Executive of the FCA, Andrew Bailey, to Lord Myners dated 30th July 2019, it states:

"*If we [FCA] had taken the decision to not authorise [Lendy] there was a risk that the FCA would not be able to ensure the remediation plan progressed as planned, and there was an additional question over whether any redress could have been made if the firm was unable to trade. This could have led to increased consumer harm*".

Please note that the above statement from the FCA acknowledges that consumers were already being harmed by Lendy, otherwise it would not state "*increased*" consumer harm. The FCA is supposed to protect consumers (lenders) from harm. Of particular note, the FCA allowed Lendy to continue the remediation plan until administration, and yet, the consumers still lost greatly. This was a very poor decision and course of action by the FCA.

Also, please note, that despite Full Authorisation being used as an excuse to ensure that the remediation plan progressed as planned, it did NOT, and to this day, Model 1 loans still exist (as non 36H compliant loans) as noted elsewhere in this document, around 6 years after they were supposed to be converted to M2 loans and the FCA let this continue to the cost of lenders.

This appears to be a breach of
SUP 1A.3.2A sections 1 to 6 inclusive and section 8 with special emphasis on "*seek to obtain redress for affected consumers*",
SUP 1A.3.2A.2 of material concern, "*significant harm has been caused to consumers*",
SUP 1A.3.4.1 and 1A.3.4.2 "*pre-emptive identification of harm through review and assessments of firms portfolios*".

4: The FCA appear not to have had any adequate control over the monitoring or enforcement of compliance of its regulations. Two examples follow:

(a) The FCA failed to recognise for a very long time that the name "Saving Stream" (the former brand name of Lendy Ltd from 2014 to March 2017) was understood by the lenders to be a "savings" platform and not a lending platform.

In 2016, one of the FCA's principal concerns was that Lendy's use of the "Saving Stream" trading name was misleading. Court documents reveal that the FCA wrote to Lendy Ltd on 12th August 2016:

"you have presented a P2P agreement as a 'savings' vehicle. However, it is an investment with a very different risk profile to a savings vehicle
... We consider that the use of the trading name 'saving stream' is misleading for the reasons set out above ... Please reply to us in writing by 2 September 2016 telling us what you have done to change your trading name".

The FCA failed to enforce its regulation to ensure that Lendy Ltd changed the "Saving Stream" brand name until the end of March 2017 and with Lendy being operational in 2014, the FCA allowed the use of the name for around 3 years. It can therefore be argued that the FCA, having initially accepted the trading name from the outset meant the clients were effectively being presented and promoted safe "savings" products, and having failed to act for several years by not enforcing correction until the end of March 2017, the FCA must accept responsibility for any loss which any lender has suffered for any loan part purchased before the end of March 2017, many of which remain on the platform to this day and will yield a massive loss, or near total loss, under the auspices of the FCA and Joint

Administrators. The failure of the FCA to enforce the name change would have also encouraged more funds to flow into this safe "savings" platform as there were good returns for no risk as savings products carry no risk.

(b) A further failure by the FCA to enforce compliance is that even today, over two years post the appointment of Administrators, the Joint Administrators are still chasing the owners of suspect accounts for non-completed Anti-Money Laundering forms. The Joint Administrators also appear to be spending (wasting!) M1 lenders money by re-verifying previously verified accounts (Sipp and Company accounts).

This appears to be a breach of SUP 1A.3.2A sections 1 to 6 inclusive and section 8 with special emphasis on "*seek to obtain redress for affected consumers*",
SUP 1A.3.2A.2 of material concern, "*significant harm has been caused to consumers*",

This also appears to be a clear breach of Principles 1, 2, 6, 7, 8, and 10 as well as a failure by the FCA to monitor compliance of its regulations.

5: The FCA failed to prevent misleading financial promotions including misrepresentation and omission of key information.

In court cases CR-20190BHM-000443 and 4, on 28th June 2021, it was stated in court that documents filed in advance of the hearing, that as early as Aug 2016 the FCA wrote to Lendy stating that its internet advertisements:

"*may not meet our requirements to be fair, clear and not misleading, and ... present a potentially misleading impression of the returns available and the nature and safety of the investments".* Point 4a above also comes into this category.

Further claims include the revelation that in "June 2017, the Authority wrote again, raising concerns over how the funding of interest payments was explained, failures to flag the fact that loans being traded in the secondary market had already gone into default, and the claims made by Lendy about its Provision Fund.

In relation to the Provision Fund, the FCA stated that the promotional material did not meet the 'clear, fair and not misleading' requirements in rule 4.2.1R of the FCA Conduct of Business Sourcebook as

"*investors cannot accurately gauge the likely protection it might afford and the suggestion is that there is 2% of the total live loan amount, which may not be correct"* and *"the risk of not being paid out by the Provision Fund is concealed*".

In relation to general advertising and promotion of the platform, concerns were raised in an 11 page letter regarding inaccurate and misleading promotion as early as August 2016 and include an FCA view that:

"*we [the FCA] do not consider that it is a fair description of loan-based crowd funding to describe it as secure or safe" ...*

and consider that Lendy

"emphasised the benefits of investing [meaning lending], and underplayed the risks of the investment [meaning lending]".

"we [the FCA] have some concerns that these advertisements do not comply with our rules and guidance in the Conduct of Business Sourcebook (COBS). We consider that your [Lendy trading as Saving Stream] advertisements may not meet our requirements to be fair, clear and not misleading [Principle 7], and that they present a potentially misleading impression of the returns available and the nature and safety of the investments".

At the date of the letter, it is understood that some £157 million had already been loaned on the platform by over 9000 lenders.

Hence, the FCA knew about these issues, but failed to ensure their remediation requirements were implemented, either at all or immediately and allowed more money to flow onto the platform from retail clients, a failing which the lenders are now counting the cost of.

More information showing further evidence of FCA regulatory and supervisory failure is apparently expected to be made public in due course.

This appears to be a breach of Principles 1, 2, 6, 7, 8, and 10 as well as a failure by the FCA to monitor compliance of its regulations.

Additional items of significant concern and apparent oversight by the FCA, in our opinion and to the best of our knowledge in regard to the operations of Lendy which justify an independent review include the following:

1: The FCA failed to spot substantial potential Director Fraud at Lendy, c £6.8m (High Court case ref: BL-2020-000856)

2: The FCA failed to enforce the "Wind Down" plan publicised to lenders and which such plan formed part of the regulatory framework.

3: The FCA was aware of the mis-use and mis-promotion of the Provision Fund but failed to act.

4: The FCA failed to stop the launch of the Wealth Fund when it knew the platform was in financial difficulties.

5: The FCA allowed Lendy to operate a “Ponzi” scheme (PLB084/166).

6: The FCA allowed Lendy to operate a Pseudo - Ponzi scheme (most loans).

7: The FCA failed to spot mis-selling, re interest supposedly held on account as part of loan amount in at least one case (PBL199).

8: The FCA failed to understand the impact on lenders by changing the overdue loans rules.

9: The FCA failed to ensure ALL lenders were treated fairly - NDA for some lenders.

10: The FCA failed in ensuring the set up of the Security Trust was correct (ie for the benefit of lenders only).

11: The FCA failed to spot the "Misconduct" clause in the Lendy T&C.

12: The FCA failed to spot issues under its "review of portfolios" procedure.

13: The FCA failed to check the heavily publicised Lendy Due Diligence process comprising of 49 checks per loan application.

14: The FCA failed to ensure no conflict of interest at Lendy (DFL012).

15: The FCA failed with regard to loan extensions and their advantage to Lendy Ltd (now over turned by Court), with the expense of this court action born fully by the lenders as a result.

16: The FCA failed to check that the T&C were in line with the borrowers loan agreements.

17: The FCA failed to monitor Lendy in relation to imperfection of security documents.

18: The FCA failed to protect lenders by approving a costly Administration process that is eating up significant parts of any remaining lenders funds that are recovered and failed to ensure Lenders were made aware that this could happen before they joined the platform and instead, allowed

Lendy to promote the "wind down" plan which would have been at no cost to lenders.

19: The FCA's regulation (or lack of) during Administration.

20: The FCA failed to spot a conflict of interest when approving Administrators and actually approved the same Administrators for the Company, the Security Trust and the Provision fund.

21: The FCA failed to protect lenders - "Full and Final Settlement" action taken by the Administrators removes lenders rights to pursue borrowers.

22: The FCA failed to assist lenders in the "waterfall" court case during Administration.

23: The FCA failed to intervene regarding loan DFL002 during Administration, a loan recovery which the Administrators are claiming as belonging to the company and not the lenders (yet was funded by the lenders), with a dispute value of around £2,200,000

24: The FCA failed to thoroughly check out Directors, who have (mainly to the detriment of lenders) apparently:

(a) possibly orchestrated Fraud against the lenders and HMRC to the value of £6.8m:
(b) possibly used an alias without disclosure to the FCA:
(c) failed to provide lenders with copies of their loan contracts:
(d) failed to have clear T&Cs for lenders:
(e) applied new T&C (detrimental to lenders/retail clients) on a retrospective basis:
(f) failed to always disclose common borrowers across several loans:
(g) failed to inform lenders of the higher risk of development loans:
(h) rolled bridging loans into development loans, where the risks are now known to be much higher for development loans:
(i) failed to identify one loan as a hybrid loan and classed it as a lower risk bridge loan (PBL065):
(j) failed to obtain realistic (instead of overstated) RICS valuations by (in some cases) allowing the borrowers to source their own valuations:
(k) failed to disclose the extra risks associated with "residual" valuations:
(l) breached the T&C and marketing details by allowing the maximum LTV to well exceed 70%:
(m) conflated LTV and LTGDV/GDLTV, even putting the figures in the same column:
(n) failed to give accurate updates and instead strung lenders along:
(o) continually used the phrase "No investor lost money", now most will lost the majority of funds:
(p) failed to honour the overall security package which appears to be well overstated:
(q) failed to disclose to lenders the impact on returns if all loan tranches were not filled:
(r) failed to ensure that lenders could not be sued by borrowers:
(s) possibly allowed a conflict of interest on DFL012 whereby the director is apparently the owner of the freehold but failed to disclose this:
(t) failed to accurately check the accuracy of security documents (eg DFL001 ransom strip):
(u) failed to comply with FCA voluntary restrictions:
(v) offered a credit facility to lenders without having authorisation to do so:
(w) failed to ensure loan details were correctly stated in DFL002 at least:

The London Capital & Finance saga is currently being discussed in Parliament as you are aware and involved with so there is no reason why a potentially worse case of regulatory and supervisory failure by the FCA at Lendy, cannot be treated the same. There cannot be one rule for one and another rule for another and the Treasury claim that LC&F is unique is by no means the case by any stretch of the imagination.

A copy of this letter, whilst addressed directly to yourself, is being sent to a range of MP's, including those in the opposition parties as well as those currently in power. It may also find itself in other places.

We therefore seek your assistance as an MP and Minister with Treasury responsibility to ensure that a full Independent Review is conducted into the FCA 's regulation and supervision of Lendy as the conditions of the Financial Services Act 2012, Part 5 have certainly been met as Peer to Peer was

heavily promoted as being in the Public Interest, and even extended by the Government to IFISA's and SIPP's and now that Lendy has failed, that too is absolutely in the Public Interest and a Independent Review is most certainly required without further delay.

Lendy lenders/clients who have joined up to this campaign so far are represented by around 55% (356) of all MPs in Parliament, covering all major political parties.

We look forward to hearing from you in due course.

Yours faithfully,

FSAG - Lendy Action Group FCA Section

* Affected individuals (with new members joining continually as they discover our existence) have given their full support in writing (via email) to be co-signatories to this letter and for FSAG members to represent them in this joint matter. A few members are writing to their own MP and also lodging less detailed complaints to the FCA in regards to Lendy, yet felt the need to join the group initiative due to a lack of satisfactory response by the FCA to their plight.

In no particular order – the co-signatories:

* The signatories names have been removed for this public letter but were included in the letter to John Glen MP and other political figures.