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

FundingSecure Action Group (FSAG)
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25th 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 FundingSecure 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 FundingSecure 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 FundingSecure 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 FundingSecure, 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 (FundingSecure). 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 FundingSecure (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 FundingSecure, some of the more high-profile failures include Lendy, Collateral, MoneyThing, House Crowd and Business Loan Network (aka ThinCats).

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 FundingSecure, 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 FundingSecure, 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 a Change of Control in 2018 despite the negative contents of a report by Grant Thornton into FundingSecure. The individuals, as approved by the FCA, were unable to tackle the task at hand; specifically, the problematic loan book that was not being actively and successfully managed to return lenders their capital, interest and bonus interest. Both individuals went on to further, and separate Peer-to-Peer entities (CrowdLords and The HouseCrowd), only for both of those companies to also enter wind-down and administration.

2: The FCA allowed FundingSecure to promote non-regulated loans to clients on a FCA regulated platform without informing anyone that they were unregulated products. This is similar to the situation at London Capital & Finance (LC&F) and Lendy.

Loans that were purportedly structured to be a true peer to peer loans and 36H compliant were (we now know) not so in all cases. Any lender who lent £25,000 or more into these loans cannot be considered 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.

Neither the FCA or FundingSecure advised 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.

3: The FCA failed to check that funds held by FundingSecure for the lenders were ring-fenced and in fact no such legal protection existed. The funds concerned were lenders' funds that had been co-mingled (**against CASS regulations**) with company funds. Simple checks which the FCA should easily have picked up, if not during their initial pre-authorisation processes, then at least during their checks when a Change of Control was approved in October 2018 appear not to have happened. **The FCA failed the same necessary check on two separate occasions.**

The "ring-fencing" of lenders' funds appears to have been flagrantly ignored, by utilising lenders' own funds to run the company and company funds to also pay lenders interest when the interest could not be extracted from some borrower(s). This not only resulting in an accounting black hole that needed plugging in order for the company to survive for a few extra months, but as was announced on 17th May 2021, a creditor is in the initial process of filing a claim against the lenders (not the company*) based upon Quistclose trust.

*Note that the lenders did not issue the Bond, FundingSecure issued the Bond and so it is FundingSecure the company, or the directors who promoted the issuing of the Bond who should be liable for this matter and not the innocent lenders. It would appear that the Administrators, who were appointed by the creditors, do not share this view and their primary concern is for the creditors only.

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.

4: The FCA appeared to have had very little, if any, control over the monitoring or enforcement of compliance of its regulations.

(a) The FCA appear to have had very little control, or did not care about the monitoring of compliance of its regulations with FundingSecure. During the Change of Control procedure in October 2018, the FCA (to the best of our knowledge) required ex-Director, Mr Rajinder Kumar, to attend to, and be responsible for rectifying the sub-par historic loan book, which he refused to accept liability for. The FCA **STILL** went on to grant the Change of Control to Mr Kumar in October 2018. The FCA should have been aware at that time that FundingSecure would likely fail due to the mounting costs of legal actions that FundingSecure was embroiled with, coupled with

the multitude of mounting unredeemed loans that were not generating fees for sufficient working capital for Funding Secure to carry on daily operations.

(b) The FCA, under the leadership of Andrew Bailey, had already started to investigate FundingSecure Ltd by 2018 and found numerous areas of concern which they were unaware of, but should of course been aware of during the initial authorisation process c2013. These included such areas as the lenders' security assets not being held correctly in trust on behalf of the lenders, and as mentioned above that the clients' funds were being unlawfully co-mingled (**against CASS regulations**) for purposes other than allowed. The FCA ordered remediation but by the time the company entered Administration, only a hand full of loans out of hundreds had been corrected. This is over a period of years.

The FCA, however, instead of stopping the company taking further deposits until the issue had been resolved, or placing a warning sign on the FCA website, allowed FundingSecure to continue accepting deposits until a few days before it was placed into administration in October 2019. Due to this lack of action by the FCA, the vast majority of retail clients who had accounts at FundingSecure had no idea whatsoever about the dire straits that Funding Secure was experiencing (both legal and financial), let alone the new clients that FundingSecure was actively recruiting in the months before its collapse.

Where the FCA did intervene, they failed to ensure that this intervention was not hidden and remedial action was completed.

(c) In addition, prior to a Change of Control at FundingSecure in October 2018, the FCA received numerous complaints about FundingSecure over their mis-handling of loans that had exceeded their redemption date by years in some instances. FundingSecure did NOT adequately enforce the rights of its lending clients, as per their duties under Article 36H.

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.

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

(a) The FCA failed to recognise that the trading name "FundingSecure" implied "secure" products and as such would attract the retail lenders in their droves seeking safety for their capital. The FCA not only permitted FundingSecure to allow its trade name to contain the word "secure", but also allowed this name to be displayed as a permanent fixed header on all the web pages of the platform. There is no way that anyone using the platform would not see the word "Secure" regardless of which page they were accessing. This would have a subconscious effect upon the retail lenders by giving them a false sense of security. Again, the FCA, by allowing this name, encouraged more inflow of funds to this visually "safe" platform when it was in known financial and legal difficulties.

(b) An example of misleading financial promotions was known to the FCA in 2018 when it was discovered by them (and not published to lenders) that the security assets were not held properly in Trust and that the client funds were not ring fenced. It clearly stated in the client T&Cs that the assets lent against were held on trust on behalf of the lenders and that client monies were segregated from company monies.

(c) The FCA also failed to ensure that FundingSecure advised their client base that various tranches in loans do NOT rank equally (Charter House loans, numerous tranches). Despite different tranches being secured by a first charge (and most having the same interest rate), they are further down the repayment hierarchical ladder. There was no way for clients to ascertain this information from the loan overview

page as it was not mentioned, and as such, most lenders who believed they were secure with a first charge, of a 5th tranche loan offering, are to lose ALL capital.

(d) Another example of mis-selling/promotion was the loan for "Land in Lytham". This was promoted as a first charge loan when in fact it was not and this has impacted the true LTV and the risk profile. However, with security offered as a first charge coupled with very low LTV (17%), lenders had no means of ascertaining that this loan could now be worthless.

(e) The FCA took no action when FundingSecure was organising high profile "promotional events" to entice lenders to deposit additional funds into the platform, literally weeks before the FundingSecure cash runway ran out completely. Several events were hosted in a private-members only club in London in July 2019 and in a private box at Lord's Cricket Ground in August 2019 during The Ashes. This is nothing short of a last-ditch enticement attempt.

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.

There also 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*".

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 FundingSecure which justify an independent review include the following:

1: The FCA failed to spot substantial potential Fraud at FundingSecure, c £16.0m including c £8.0m of fraud in one case alone (High Court case ref: BL-2019-001045), plus other fraud including potential Director Fraud (Stanley Grove).

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 failed to stop the launch of the "FS 30-day Access" fund when it knew the platform was in financial difficulties.

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

5: The FCA failed to ensure that valuations were to the benefit of the lenders.

6: The FCA allowed borrowers to obtain their own valuations within the regulations.

7: The FCA failed in ensuring the setup of the Security Trust was correct (i.e., for the benefit of lenders - it appears that it was set up for the benefit of the Company which is contrary to the T&C).

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

9: The FCA failed to check the FundingSecure Due Diligence process.

10: The FCA failed to ensure FundingSecure complied with its T&C in relation to security of moveable assets (in some cases, it did not take them into its own possession as promoted and assured to the lenders).

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

12: The FCA failed to ensure FundingSecure eliminated vague and opaque contractual Terms and Conditions.

13: 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 FundingSecure to promote the "wind down" plan which would have been initiated at no cost to lenders.

14: The FCA failed to recognise that the name "FundingSecure" implied "secure" and not "risky"

15: The FCA failed to regulate FundingSecure during Administration.

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

17: The FCA failed to offer assistance to the lenders in a court case relating to the Administrators deducting 5% extra fees from the recoveries (the 5% case), contrary to lenders' T&Cs.

18: The FCA failed to follow up remedial action which it had ordered.

19: The FCA failed in monitoring and enforcement of compliance.

20: The FCA failed to ensure that FundingSecure made it known that Pawnbroking contracts do not allow lenders to pursue borrowers and personal guarantees when there is a shortfall.

21: The FCA failed to stop FundingSecure making misleading financial promotions.

22: The FCA failed to prevent FundingSecure offering multiple rollover loan extensions/renewals (hiding the fact that some borrowers could not repay the full or any, in some instances, capital amounts).

23: The FCA failed to stop FundingSecure offering "off platform" loans to selected clients.

24: The FCA failed to ensure that FundingSecure responded to requests for information from the Financial Ombudsman Service.

25: The FCA failed to ensure clients who were owed compensation by Financial Ombudsmen judgements were made right either before the Change of Control was authorised or before FundingSecure fell into administration.

26: The FCA failed to question occurrences when FundingSecure increased the number of tranches in a loan and the amount of the loan during a **live** loan.

27: The FCA failed to stop FundingSecure from collecting interest and crediting it to its own company account.

28: The FCA failed to notice and/or stop a conflict of interest between Directors (and their families) and Director Fraud

29: The FCA failed to ensure that the IT system containing the client data was secure and accessible in the event of an emergency by having an additional/reserve experienced person fully conversant with its operation (note it is totally dependent on one person, and worryingly remains so to this day, even under the Joint Administration!).

30: The FCA have not intervened in the case of receivers refusing to acknowledge lenders have a "Right" to a charge on a property they advanced a loan against

31: The FCA failed to ensure that more than one person was needed to effect control of some critical aspects of the business.

32: The FCA failed in compliance of regulation and supervision (or lack of) during Administration in relation to assets.

33: The FCA failed to stop the Administrators apportioning lenders funds (to pass to FundingSecure) when no such point is mentioned in the lenders T&Cs. This is known as the "settlements" issue.

34: The FCA placed an extra financial burden on lenders as they are now being charged to recover their money. Neither the FCA or FundingSecure ever mentioned this to lenders.

35: The FCA failed to ensure the Administrators act in the best interests of lenders and pursue Personal Guarantees and/or Valuation companies

36: The FCA failed to intervene during Administration regarding "historic data" being restricted for historic loans which was not restricted prior to Administration.

37: The FCA failed to act in relation to a breach of "Duty of Care" by Administrators and breach of supervision by the FCA (ref email issued by Administrators claiming they had no funds to pursue borrowers, thus advising the borrowers that they are not likely to be pursued to recover the remaining outstanding funds owed to lenders due to a shortfall in the repayments to lenders).

38: The FCA failed to correct the Administrators claim of being "neutral" in the court case when their testimony in court indicated otherwise.

39: The FCA failed to sufficiently monitor the Directors, who have (mainly to the detriment of lenders) apparently:

(a) possibly (in at least one case) orchestrated Fraud against the lenders (Stanley Grove loan):
(b) possibly allowed (through negligence) around £16m of fraud by other parties:
(c) failed to provide lenders with copies of their loan contracts:
(d) failed to have clear T&Cs for lenders:
(e) failed to always disclose common borrowers across several loans:
(f) failed to inform lenders of the higher risk of development loans:
(g) failed to obtain realistic (instead of overstated) RICS valuations:
(h) failed to disclose the extra risks associated with "residual" valuations:
(i) breached the T&C and marketing details by allowing the maximum LTV to well exceed 70%:
(j) conflated LTV and LTGDV/GDLTV, (even the Ombudsman agreed FundingSecure did not make this clear):
(k) failed to give accurate updates and instead strung lenders along with false hope:
(l) failed to honour the overall security package which appears to be well overstated:
(m) failed to disclose to lenders the impact on returns if all loan tranches were not filled:
(n) failed to accurately check the accuracy of security documents (e.g., Stanley Grove and others):
(o) failed to always ensure and take possession of moveable items as was stated in the T&C:

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 FundingSecure, 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 FundingSecure 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 FundingSecure (an IFISA provider) has failed, that too is absolutely in the Public Interest and a Independent Review is most certainly required without further delay.

FundingSecure lenders/clients who have joined up to this campaign so far are represented by around 48.5% (316) of all MPs in Parliament, covering all major political parties.

We look forward to hearing from you in due course.

Yours faithfully,

FundingSecure Action Group

* 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 FundingSecure, 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.