
FINAL NOTICE

Eternal Peace Funeral Plans Limited

22 December 2022

ACTION

1. By an application dated 6 June 2022, Eternal Peace Funeral Plans Ltd ("EPFPL") applied under section 55A of the Act for Part 4A permission to carry on the regulated activities of:
 - a. Agreeing to carry on a regulated activity;
 - b. Entering as provider into a funeral plan contract;
 - c. Carrying out a funeral plan contract as provider;
2. The Application is incomplete.
3. For the reasons stated below, the Authority has refused the Application as it cannot ensure that EPFPL will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act.

SUMMARY OF REASONS

4. By its Warning Notice the Authority gave notice that it proposed to refuse the Application and that EPFPL was entitled to make representations to the Authority about that proposed action. EPFPL made representations to the Authority, however these representations were inadequate and failed to address the concerns raised in the Warning Notice.

5. EPFPL has made three applications for authorisation. All three applications (including the Application) have been incomplete and missing vital documents and information that should have been provided by EPFPL at the point it submitted its application. The documents that EPFPL have provided in support of the current and previous applications have been lacking in important detail and demonstrate a limited understanding of the regulatory requirements applicable to EPFPL's business. The Authority is therefore not satisfied that EPFPL is ready, willing, and organised to be authorised.
6. The Authority has made repeated requests during the application process for information from EPFPL, which in many cases the Firm has failed to address promptly or at all. For example, EPFPL stated that as part of its customer acquisition model it intends to make use of three lead generators who will be paid to provide customer leads. The Authority has asked repeatedly for further information regarding the use of lead generators and how they will be remunerated. EPFPL has failed to provide this information, without which the Authority cannot be satisfied that EPFPL will comply with the Authority's rules which prohibit the payment of commissions to those distributing funeral plans or introducing customers. Consequently, the Authority cannot be satisfied that it will receive adequate information from EPFPL to enable it to effectively supervise the Firm and determine whether it is complying with the requirements and standards under the regulatory system.
7. The Authority carried out a competency interview in November 2021 with Mr Raymond Gainey, who is proposed as the sole director SMF 3 (Executive Director) and holder of the compliance oversight senior management function (SMF 16). This interview, which was conducted in assessing EPFPL's second application for authorisation, gave rise to serious concerns as to Mr Gainey's competence. Mr Gainey received feedback on our concerns on 26 November 2021 and was given the opportunity to undertake a further interview but failed to make himself available prior to the withdrawal of the Firm's second application, leaving these concerns unresolved. Mr Gainey has provided no evidence with the Application that he has undertaken relevant training since November 2021. Moreover, the Authority has identified numerous issues with the Application which demonstrate a poor understanding of regulatory requirements. Given Mr Gainey's responsibility for the application, the Authority considers this to be evidence that its concerns as to his competence remain unresolved.
8. The Authority has concerns as to the adequacy of EPFPL's trust arrangements and the Firm's understanding of the applicable regulatory requirements. One of the two trustees sits on EPFPL's risk committee and product and investment committee, raising questions as to whether the Trust complies with the Authority's requirement that more than half of the trustees should be unconnected to EPFPL. Additionally, EPFPL has provided inconsistent information regarding the appointment of an investment manager to invest Trust funds.

9. The SAR provided for the Trust showed a solvency level of 85.5%, meaning that the Trust's resources were not sufficient to meet the costs of funeral plans. Whilst EPFPL has taken steps to remedy this shortfall, the Authority remains concerned by risks arising from the matters described in the SAR which might impact on the solvency level of the Trust. First, the Trust's assets are currently held in cash, but the SAR assumes an investment strategy that will achieve levels of return above inflation. The Authority has been provided with no evidence to support the reasonableness of this assumption. Moreover, the SAR assumes that EPFPL will meet the Trust's ongoing expenses. However, the Authority cannot be satisfied that EPFPL has the resources to meet these expenses.
10. For the reasons set out herein, the Authority cannot ensure that EPFPL will satisfy, and continue to satisfy, threshold conditions 2C (Effective Supervision), 2D (Appropriate Resources), and 2E (Suitability).
11. The Authority considers the funeral planning portfolio and firms that sit within it as high risk due to the increased potential for consumer harm due to the high levels of vulnerable customers these products are predominantly sold to.

DEFINITIONS

12. The definitions below are used in this Final Notice.

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

"the Application" means the application referred to in paragraph 1 above.

"the Authority" means the Financial Conduct Authority.

"COND" means the part of the Authority's Handbook that deals with Threshold Conditions

"EPFPL" or "the Firm" means Eternal Peace Funeral Plans Ltd

"FPCOB" means Funeral Plan Conduct of Business Sourcebook part of the Authority's Handbook

"PERG" means the Perimeter Guidance Manual part of the Authority's Handbook

"PROD" means Product Intervention and Product Governance Sourcebook part of the Authority's Handbook

"SAR" means a solvency assessment report, being a report produced in accordance with FPCOB 3.2.2R and 3.2.3R which assesses the assets and liabilities of a trust for trust-backed funeral plans.

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

“the Trust” means The Eternal Peace Funeral Plans Trust, administered by Quantum Trustees Limited.

“Appropriate Resources threshold condition” means the threshold condition set out in paragraph 2D to Schedule 6 of the Act.

“Effective Supervision threshold condition” means the threshold condition set out in paragraph 2C of Schedule 6 of the Act.

“Suitability threshold condition” means the threshold condition set out in paragraph 2E to Schedule 6 of the Act.

FACTS AND MATTERS

Background to the Firm

13. EPFPL was incorporated on 17 January 2020. Mr Raymond Gainey is the sole director and shareholder of EPFPL. He is proposed as the sole approved person, holding the SMF1 (Chief Executive), SMF3 (Executive Director) and SMF16 (Compliance Oversight) functions.
14. EPFPL is a trust-backed funeral plan provider which currently has approximately 84 funeral plan contracts. Funds received by EPFPL from its customers under funeral plan contracts are to be held by the Trust.
15. EPFPL offers five core products. It offers two direct cremation services and three burials services, which vary in terms of the services and costs included and accordingly vary in price. EPFPL provides customers with the option to pay in full with an up-front lumpsum payment, or alternatively to pay by instalment over a maximum 10-year payment plan.
16. EPFPL has made a total of three separate applications for authorisation. The Application was received by the Authority on 6 June 2022. As part of the Application, EPFPL submitted a business plan and other supporting documentation.

Ready, Willing & Organised

17. On 31 October 2021, the Firm made an application for authorisation as a funeral plan intermediary. Following its initial assessment of the application, the Authority identified that EPFPL was a funeral plan provider rather than an intermediary. Further to a telephone call with the Authorisations team on 1 November 2021, EPFPL withdrew its application and, as a gesture of goodwill, the Authority provided a full refund of the Firm’s application fee of £2500. In the course of that telephone discussion, the Authority made clear to Mr Gainey that the application submitted was flawed and incomplete. In particular, it was explained that EPFPL had not provided a

SAR for the Trust and that the Authority would expect to receive a SAR as part of a complete application. The Authority also explained that EPFPL must conduct appropriate due diligence when preparing an application, and familiarise itself with the Authority's policy statements and funeral plans rules before submitting another application. The Authority further explained that, if the Firm rushed the next application without conducting the required due diligence, there was a risk it might be rejected as incomplete and/or inadequate. EPFPL confirmed the withdrawal of the first application in writing on 3 November 2021.

18. On 15 November 2021, EPFPL made an application as a funeral plan provider. On an initial assessment of the documents by the Authority, it again became apparent that the application was inadequate and the Firm had not exercised appropriate due diligence as advised by the Authority. In particular:

- a. EPFPL had failed to provide a SAR despite it being an essential document for a funeral plan provider application, without which, the application was incomplete.
- b. The wind down plan was deficient; it comprised of one paragraph at the end of a document titled "EP risk mitigation". There was no reference to essential requirements such as scenario analysis, sequenced actions for each scenario, reverse stress testing, timeline for winding down, communications to customers and so on.
- c. The compliance monitoring programme document was generic and not tailored to the risks inherent in the business. It failed to describe the actions the SMF16 (Compliance Oversight) and relevant staff will take to ensure the firm complies with applicable rules and guidance at all times. It was also missing example MI to monitor ongoing compliance with FCA rules.
- d. The business plan did not include relevant detail. It did not cover the points laid out in COND 2.7.8G (which the Authority expects to see as a minimum) and did not identify rules relevant to EPFPL's business or explain how the Firm would comply with those rules.

19. After numerous requests for missing information and documents, which EPFPL failed to provide, the Authorisations team had a telephone call with Mr Gainey on 2 February 2022 during which it was explained that Authorisations was minded to recommend the refusal of the application. This was followed up with an email explaining the shortcomings with the application. EPFPL consequently withdrew its application on 8 February 2022. A partial refund of £5000 of the application fee was provided as a goodwill gesture. Again, the Authority re-iterated the importance of EPFPL being ready, willing and organised for regulation, and that any future application should be strongly improved before submission.

20. On 6 June 2022, the Firm submitted the Application for authorisation, which again, is inadequate and missing several vital documents/information which should have been provided at submission.

Inadequacy of the Application

21. As part of the Application, EPFPL submitted various documents, policies and procedures on 6 June 2022. However, as set out below, EPFPL has failed to provide some essential documents – despite several requests. Where documents have been submitted, the Authority has reviewed all the information provided and, in many cases, found that they are not of an appropriate standard.

22. EPFPL has been unable to illustrate that it is ready willing and organised for regulation. Throughout the application process, it has provided information and documents which are inconsistent, incomplete and even inaccurate. Key examples of this are provided below:

- a. EPFPL did not provide a SAR for the Trust when it submitted the Application, despite it being on the list of essential documents required at the point of submission of an application. The SAR was first requested on 29 November 2021 in the course of the Authority's assessment of the second application and EPFPL confirmed that this would be ready in three weeks. The Authority has repeatedly requested the SAR since this initial request, the last time being on 2 August 2022. EPFPL eventually provided a SAR for the Trust on 31 August 2022, over nine months after it was first requested by the Authority and almost three months after the Application was made.
- b. The business plan is non-compliant and inconsistent with the Application. For example, the regulatory permissions listed in the business plan do not match those sought in the Application and the business plan wrongly defines EPFPL as an IFPRU firm (an IFPRU investment firm being a particular type of wholesale investment firm that has, for instance, different capital requirements to a funeral plan provider). The business plan makes no reference to the essential requirements laid out in COND 2.7.8 G nor any mention of PERG, PROD or FPCOB rules applicable to EPFPL. For instance, the business plan contains no details of EPFPL's products and how those products comply with the fair value requirements in PROD 7.2. There is also mention of future plans to introduce insurance-backed funeral plans but neither the business plan nor any other document provides an explanation of how this will be implemented. These are some of the key concerns with the business plan.
- c. The wind-down plan, another essential document in a funeral plan provider application, is highly deficient. It is a few lines written on one half of an A4 page. No stress testing has been undertaken and it lacks any valuable detail. The brevity and paucity of detail indicates a failure

to give proper consideration to the contents of the wind-down plan and a general lack of care.

- d. Other essential documents that are inadequate include, but are not limited to, EPFPL's complaints monitoring policy, vulnerable customer policy, customer welcome letter, current data book, Information Commissioner's Office (ICO) registration document and compliance monitoring procedures. All of these documents are generic and lacking in appropriate detail. For example:
 - i. The compliance monitoring programme is insufficient. It is a generic one-page document which is not tailored to the risks inherent in the business
 - ii. The current data book is incomprehensible, with figures that do not add up.
 - iii. The complaints monitoring policy does not contain any details of EPFPL's procedure for identifying the root causes of complaints or any example management information for root cause analysis.
 - e. EPFPL has also failed to provide some documents at all. Some of the essential missing documents include, but are not limited to, the third year of the required three-year financial forecasts, a copy of the funeral plan summary document issued to customers prior to the conclusion of a funeral plan contract, or example management information (MI) produced in relation to complaints handling, root cause analysis and correction. The application form (that was completed by EPFPL) makes clear that all of these documents are required at the point an application is submitted.
23. The Authority expects applicants for authorisation to demonstrate through the application process that they are ready, willing and organised to comply with the requirements of regulation. In this case, the Authority has explained to EPFPL on several occasions the importance of ensuring familiarity with regulatory requirements, conducting proper due diligence prior to submitting an application and demonstrating that EPFPL is ready, willing and organised. Despite this, the second application and the Application have involved an iterative process where the Authority has had to repeatedly request missing documents that should have been available at the point the application was made.
24. Moreover, some of the inadequacies with the Application set out above were also problems in the two previous applications and specifically drawn to EPFPL's attention by the Authority. In particular, the importance of the SAR was made clear to EPFPL in the telephone conversation on 1 November 2021, and on further occasions in the course of the Authority's assessment of the second application. Similarly, the business plan that was submitted with the second application also failed to refer to the key rules from the

Authority's Handbook applicable to EPFPL, a matter drawn to the Firm's attention on several occasions.

Lead Generation

25. The Application states that EPFPL intends to use three third party lead generators to source potential customers and that these lead generators will be remunerated by "money received from sale". The Authority asked EPFPL for further information about its use of lead generators, but none has been provided. Without further information, the Authority cannot be satisfied that EPFPL will comply with the ban on the payment of commission set out in FPCOB 6.5.2R.
26. Additionally, the Authority notes that EPFPL's financial forecasts anticipate over £750,000 will be spent on lead generation in the first two years alone, with an introducer's fee equating to £400 per funeral plan. Whilst this appears to be consistent with the business plan (which refers to an "Agent Fee" of £400), the current book data submitted by EPFPL includes commissions of up to £850 on some plans. The Authority asked EPFPL to confirm how its lead generators are remunerated and, despite this being information that should be readily available to EPFPL, has received no response. Moreover, EPFPL has provided no explanation as to how the pricing of its products and the elements that make up that price comply with the fair value requirements in PROD 7.2. The Authority therefore cannot be satisfied that EPFPL has a proper understanding of and will comply with those requirements.

Competency of Senior Management applicant

27. On 24 November 2021, the Authority conducted a competency interview with Mr Gainey as the proposed candidate for SMF 3 (Executive Director) and SMF 16 (Compliance Officer). Mr Gainey was unable to demonstrate adequate competence to hold the senior manager functions applied for. He failed to demonstrate knowledge of basic requirements such as the Authority's Threshold Conditions and how the Principles for Businesses are relevant to the Firm's business. Mr Gainey did not demonstrate an understanding of the role of the SMF 16 and was unable to explain how EPFPL could comply with the Authority's rules and requirements. In the interview, Mr Gainey stated that he needed more time to prepare for the interview and that he would be ready for a re-interview the next week. The Authority sent an email to Mr Gainey in follow up to the interview on 26 November 2021 explaining its concerns that Mr Gainey had not demonstrated that he was fit to hold the role of SMF16.
28. The Authority agreed to schedule a further interview so that Mr Gainey could properly prepare and undertake training. It was agreed that a further call to assess his competence would take place on 10 December 2021. Mr Gainey was then unable to make the 10 December 2021 date and the

interview was rescheduled for 12 January 2022. On the request of Mr Gainey, the interview was again rearranged for 4 February 2022. On 2 February 2022, Mr Gainey asked for the interview to be “*delayed until he gets his head around*” the applicable regulatory requirements with no date provided of when he would be ready.

29. The competency interview conducted on 24 November 2021 gave rise to serious concerns as to Mr Gainey’s competence to perform the SMF 3 (Executive Director) and SMF 16 (Compliance Officer) roles. Mr Gainey failed to make himself available for a further interview prior to the withdrawal of EPFPL’s second application on 8 February 2022, leaving these concerns unresolved. Mr Gainey has not provided any evidence with the Application to show that he has undertaken any relevant training since November 2021. Moreover, as set out above, there are serious issues with the Application, many of which show a lack of understanding of regulatory requirements. Mr Gainey is the person responsible for the Application and the Authority considers the poor quality of the Application as evidence that the concerns as to Mr Gainey’s competence are unresolved.

Compliance of the Trust arrangements

30. Where funeral plans are trust-backed, FPCOB 3.1.9R requires that the trust arrangements deliver certain objectives. These include that more than half of the trustees must be unconnected with the funeral plan provider. EPFPL’s Application and business plan make clear that one of the two trustees of the Trust also sits on EPFPL’s Risk Committee and its Investment and Product Committee. The Authority’s rules in FPCOB provide that a person will not be unconnected where the business relationship between the person and the funeral plan provider might reasonably be expected to give rise to a community of interest between them and the funeral plan provider. EPFPL has not explained how it satisfies the requirement in FPCOB 3.1.9R given that the trustee’s position on EPFPL’s committees appears, on the face of it, potentially to give rise to a community of interest between the trustee and the Firm.
31. Furthermore, FPCOB 3.1.9R(6) requires that the trust arrangements must ensure that the trustees appoint an independent fund manager to manage the assets of the trust. In correspondence with the Authority, EPFPL confirmed that the trustees have not appointed an independent fund manager to manage the trust assets and instead trust assets are being held in a nominated trust bank account held by the trustees. This is inconsistent with the business plan which mentions ‘*payments into the trust account being invested*’. Moreover, in a telephone conversation with the Authority that took place on 9 August 2022, Mr Gainey stated that no fund manager has been appointed and “*our actuary said we needed this but I didn’t want to invest the monies – because they belong to the clients*”. However, in a subsequent email, Mr Gainey explained that the Trust has an investment mandate and a financial adviser but currently the funds are held by the Trust in cash pending the determination of the Application by the Authority.

32. In light of the above, the Authority is concerned that EPFPL lacks a proper understanding of and has not paid sufficient regard to the rules applicable to the Trust.

Solvency of the Trust

33. EPFPL provided a SAR for the Trust on 31 August 2022, which assesses the value of the Trust's assets and liabilities as at 1 June 2022. The SAR showed that the Trust had a funding level of 85.5% and that there was a deficit of £7300 meaning that the assets of the Trust were not sufficient to cover its liabilities and to pay funeral costs as they fell due.

34. Despite the obvious concerns identified in the SAR, when EPFPL provided the SAR to the Authority it failed to acknowledge the Trust's funding shortfall, explain how it proposed to resolve the material deficit or supply any remediation plan addressing the apparent insolvency. It was only during a follow-up call to the Firm to query the deficit that the Authority was informed that c.£7300 had been deposited into the trust bringing the solvency of the trust up to 100%.

35. Although the Firm has remedied the solvency level of the trust, the Authority remains seriously concerned by certain risks arising from the SAR.

36. The SAR provides no information as to the proposed investment strategy of the Trust. As explained in para 30 above, EPFPL's assets are currently held in cash. However, the SAR assumes that the investment strategy will generate a return above inflation and has conducted the valuation using a discount rate that implies a significant degree of risk in the investment strategy. This gives rise to two concerns. First, the longer the Trust assets remain in cash and the greater the delay in following the assumed investment strategy, the worse the solvency level will become. Secondly, the Authority has been provided with no explanation as to the appropriateness of the level of investment risk proposed. As explained above, EPFPL has told the Authority that it has an investment mandate in place with a financial adviser. However, the Authority has not been provided with any explanation as to the terms of that mandate (including whether it mirrors the assumed investment strategy adopted in the SAR) or the basis on which EPFPL considers the investment strategy to be appropriate.

37. The SAR does not allow for Trust expenses (such as audit and actuary fees) as it states that these expenses are currently being met by EPFPL. EPFPL has not provided the Authority with evidence to show that it has taken into account the need to meet these expenses and has the resources to do so. There is no reference in EPFPL's business plan to the Firm meeting the Trust's expenses and the Firm's financial projections do not appear to provide for this. The Authority has not been provided with any estimate of the yearly costs of the Trust that are to be met by EPFPL and cannot be

satisfied, on the basis of the limited financial information provided by EPFPL, that the Firm will have adequate resources to cover the Trust's expenses. If EPFPL is unable to meet the Trust's expenses, it is likely that the Trust will have to pay its costs from its own resources which might impact on its solvency level.

IMPACT ON THE THRESHOLD CONDITIONS

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

38. In light of the facts and matters set out above and for the reasons set out below, the Authority cannot ensure that, if the Application were granted, EPFPL would satisfy, and continue to satisfy, the following threshold conditions:

Effective Supervision Threshold Condition 2C

39. According to the Effective Supervision Threshold Condition, a firm must be capable of being effectively supervised by the Authority having regard to all of the circumstances. The guidance sent out in COND 2.3.3.(1)G provides, in assessing this threshold condition, the Authority will consider whether it is likely that it will receive adequate information from a firm to enable it to determine whether a firm is complying with the requirements and standards under the regulatory system, and whether a firm is ready, willing and organised to comply with Principle 11 (relations with regulators).

40. Throughout the application process (both for the second application and the Application), EPFPL has failed to provide vital information and the information which has been supplied has been inadequate, unclear and even contradictory at times. The Authority has had to make multiple requests for information that should have been provided at the point of submission and which should have been readily available to EPFPL. Whilst the Authority recognises that an applicant may require some assistance during the application process, it is not the role of the Authority to enter into protracted correspondence with the Firm to address shortcomings in the information provided. It is for EPFPL to demonstrate to the Authority upon applying for authorisation that it can meet the Effective Supervision Threshold Condition.

41. In light of these matters, EPFPL has not satisfied the Authority that it is capable of being effectively supervised. As such, the Authority is not satisfied that EPFPL satisfies and will continue to satisfy the Effective Supervision Threshold Condition.

Appropriate Resources Threshold Condition 2D

42. Paragraph 2D of Schedule 6 to the Act sets out that:

(1) The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.

(2) The matters which are relevant in determining whether A has appropriate non-financial resources include—

(a) the skills and experience of those who manage A's affairs;

43. Mr Gainey is proposed as the sole controlled function holder for EPFPL and in particular is proposed to hold the SMF 16 (Compliance Oversight) function. The Authority had serious concerns as to Mr Gainey's competence following the competency interview. Mr Gainey failed to make himself available for a further interview and the Authority has received no evidence that would address its concerns regarding Mr Gainey's competence. The Authority's concerns are increased by the poor quality of the Application, which shows a lack of understanding of the applicable regulatory requirements. Accordingly, the Authority is not satisfied that EPFPL has adequate non-financial resources in respect of the skills and experience of those who manage the Firm's affairs.

44. As to financial resources, the SAR provided by EPFPL showed a solvency level of 85.5%. Whilst EPFPL has injected funds to remedy this deficit, the Authority remains concerned about risks identified from the SAR which might impact on the Trust's solvency level. EPFPL has not provided any details of its proposed investment strategy and therefore the Authority cannot be satisfied as to the reasonableness of the assumptions in the SAR as to the investment returns. Moreover, the Authority has not been provided with information from EPFPL to show that it will be able to meet the Trust's expenses, as assumed by the SAR. The Authority therefore cannot be assured that EPFPL has the resources to meet these expenses. If it does not, this may impact on the Trust's solvency level. As such, EPFPL has not satisfied the Authority that it has sufficient financial resources.

45. For the reasons above, the Authority is not satisfied that EPFPL's financial and non-financial resources will be appropriate in relation to the regulated activities it seeks to carry on.

Suitability Threshold Condition 2E

46. Paragraph 2E of Schedule 6 to the Act sets out that a firm must be a fit and proper person having regard to all the circumstances, including-

- a. The need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;*
- b. Whether A has complied and is complying with requirements imposed by the FCA in the exercise of its functions, or requests made by the FCA,*

- relating to the provision of information to the FCA and, where A has so complied or is so complying, the manner of that compliance;*
- c. Whether those who manage A's affairs have adequate skills and experience and act with probity;*
 - d. Whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner*

47. Associated guidance in COND 2.5.4 G for this threshold condition provides that the FCA may have regard to whether the firm:

- a. Conducts, or will conduct, its business with integrity and in compliance with proper standards;*
- b. Has, or will have a competent and prudent management; and*
- c. Can demonstrate that it conducts or will conduct, its affairs with the exercise of due skill, care and diligence.*

48. The Authority is not satisfied that EPFPL satisfies and will continue satisfy the Suitability threshold condition.

- a. The Application is EPFPL's third attempt to apply for authorisation. In the course of previous applications, the Authority provided feedback to EPFPL and directed the Firm to relevant resources. Despite this, the Application is missing key documents and information that was requested at the point of submission. Of those documents that were provided, in many cases these lacked important detail, were inconsistent or inaccurate, and failed to pay appropriate regard to applicable regulatory requirements.
- b. The Authority has requested further information from EPFPL in the course of the application process. Consistent with its conduct in relation to previous applications, EPFPL has repeatedly failed to provide information which should be readily available to it.
- c. The Authority cannot be satisfied that EPFPL has a proper understanding of and will adhere to applicable regulatory requirements. In particular, EPFPL's Application raises questions as to the Firm's compliance with the requirements in FPCOB relating to the remuneration of lead generators, in PROD relating to fair value and product governance, and in FPCOB relating to the trust arrangements. EPFPL's failure to refer to and address these requirements in the Application and through the application process demonstrates a lack of understanding of the regulatory requirements application to the regulated activity it proposes to undertake.
- d. The Authority is not satisfied that Mr Gainey, as the sole approved person, has adequate skills and experience to competently manage EPFPL's affairs. The competency interview conducted with Mr Gainey gave rise to serious concerns as to his understanding of his role and the requirements of the business. The Authority has been provided with no evidence to allay these concerns.

49. As such, the Authority is not satisfied that EPFPL's business will be managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner or that EPFPL is ready, willing and organised to comply with the requirements and standards under the regulatory system.

50. On the basis of the facts and matters described above, the Authority cannot ensure that EPFPL will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which EPFPL would have permission if the Application was granted. The Authority accordingly has refused the Application.

PROCEDURAL MATTERS

Representations

51. Annex B contains a summary of the of the key representations made by EPFPL and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by *EPFPL*.

Important Notices

52. This Final Notice is given under section 390 of the Act.

Publication

53. 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 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 you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

Relevant Statutory Provisions

1. Section 55A(1) of the Act provides for an application for permission to carry on one or more regulated activities to be made to the appropriate regulator. Section 55A(2) defines the “appropriate regulator” for different applications.
2. Section 55B(3) of the Act provides that, in giving or varying permission, imposing or varying a requirement, or giving consent, under any provision of Part 4A of the Act, each regulator must ensure that the person concerned will satisfy, and continue to satisfy, in relation to all of the regulated activities for which the person has or will have permission, the threshold conditions for which that regulator is responsible.
3. The threshold conditions that relate to the current application are set out in Part 2 of Schedule 6 to the Act. In brief, the threshold conditions relate to:
 - (1) Threshold condition 2C: Effective supervision
 - (2) Threshold condition 2D: Appropriate resources
 - (3) Threshold condition 2E: Suitability

Relevant provisions of the Authority’s Handbook

Threshold Conditions - COND

4. In exercising its powers in relation to the granting of a Part 4A permission, the Authority has regard to guidance published in the Authority’s Handbook, including the part entitled ‘Threshold Conditions’ (“COND”). Provisions relevant to the consideration of the current application include those set out below.

General guidance

5. COND 1.3.2G(2) states that, in relation to threshold conditions 2D to 2F, the Authority will consider whether a firm is ready, willing and organised to comply on a continuing basis with the requirements and standards under the regulatory system which will apply to the firm if it is granted Part 4A permission.
6. Under COND 1.3.3AG, in determining the weight to be given to any relevant matter, the Authority will consider its significance in relation to the regulated activities for which the firm has, or will have, permission, in the context of its ability to supervise the firm adequately, having regard to the

Authority's statutory objectives. In this context, a series of matters may be significant when taken together, even though each of them in isolation might not give serious cause for concern.

7. COND 1.3.3BG provides that, in determining whether the firm will satisfy, and continue to satisfy, the FCA threshold conditions, the FCA will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.
8. COND 1.3.3CG provides that, when assessing the FCA threshold conditions, the FCA may have regard to any person appearing to be, or likely to be, in a relevant relationship with the firm, in accordance with section 55R of the Act (Persons connected with an applicant). For example, a firm's controllers, its directors or partners, other persons with close links to the firm (see COND 2.3), and other persons that exert influence on the firm which might pose a risk to the firm's satisfaction of the FCA threshold conditions, would be in a relevant relationship with the firm.

Threshold Condition 2C: Effective supervision

9. COND 2.3.3G states that, when the FCA is assessing threshold condition 2C, factors which the FCA will take into consideration include, among other things, whether:
 - (1) it is likely that the FCA will receive adequate information from the firm, and those persons with whom the firm has close links, to enable it to determine whether the firm is complying with the requirements and standards under the regulatory system for which the FCA is responsible and to identify and assess the impact on its statutory objectives; this will include consideration of whether the firm is ready, willing and organised to comply with Principle 11 (Relations with regulators and the rules in SUP on the provision of information to the FCA;
 - (2) the structure and geographical spread of the firm, the group to which it belongs and other persons with whom the firm has close links, might hinder the provision of adequate and reliable flows of information to the FCA; factors which may hinder these flows include the fact there may be branches or connected companies in territories which supervise companies to a different standard or territories with laws which restrict the free flow of information, although the FCA will consider the totality of information available from all sources; and
 - (4) in respect of a firm not carrying on, or seeking to carry on, a PRA-regulated activity, it is possible to assess with confidence the overall financial position of the group at any particular time; factors which may make this difficult include lack of audited consolidated accounts for a group, if companies in the same group as the firm have different

financial years and accounting dates and if they do not share common auditors.

Threshold condition 2D: Appropriate Resources

10. COND 2.4.2G(2) states that the FCA will interpret the term 'appropriate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources (though only in the case of firms not carrying on, or seeking to carry on, a PRA-regulated activity), non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.
11. COND 2.4.2G(3) states that high level systems and control requirements are in SYSC. The FCA will consider whether the firm is ready, willing and organised to comply with these and other applicable systems and controls requirements when assessing if it has appropriate non-financial resources for the purpose of threshold condition 2D.
12. COND 2.4.2G(4) states that detailed financial resources requirements are in the relevant section of the Prudential Standards part of the FCA Handbook, including specific provisions for particular types of regulated activity. The FCA will consider whether firms (other than firms carrying on, or seeking to carry on, PRA-regulated activities) are ready, willing and organised to comply with these requirements when assessing if they have appropriate financial resources for the purposes of threshold condition 2D.
13. COND 2.4.4G states that, when assessing whether a firm has appropriate resources, the Authority will have regard to matters including:
 - a) whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times; andwhether the resources of the firm are commensurate with the likely risks it will face.

Threshold condition 2E: Suitability

14. COND 2.5.2G(2) states that the FCA will also take into consideration anything that could influence a firm's continuing ability to satisfy threshold condition 2E. Examples include the firm's position within a UK or international group, information provided by overseas regulators about the firm, and the firm's plans to seek to vary its Part 4A permission to carry on additional regulated activities once it has been granted that permission.

15.COND 2.5.4G(2) states that examples of the kind of general considerations to which the FCA may have regard when assessing whether a firm will satisfy, and continue to satisfy, threshold condition 2E include, but are not limited to, whether the firm:

- (a) conducts, or will conduct, its business with integrity and in compliance with proper standards;
- (b) has, or will have, a competent and prudent management; and
- (c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

ANNEX B – REPRESENTATIONS

1. A summary of the representations made by EPFPL, and the Authority's conclusions in respect of them (in italics), is set out below.
2. EPFPL states that it has taken action to address the areas of concern in the Warning Notice. It says that, having looked at the company structure, EPFPL has decided that it needs to employ "more experienced individuals in regulated roles to be in a position to strengthen the firm in a regulated industry".
3. EPFPL says that it has conducted an extensive search and that it now has the right people to move the company forward. In particular, EPFPL says that it has identified an individual that the firm would like to employ as its compliance officer and appoint as a director. It is said that this individual is already an FCA approved person, holding the CF30 (Customer) controlled function. EPFPL's representations, which were made on 24 October 2022, refer to a meeting with this individual planned for that day.
4. EPFPL's position is that, following the meeting with this individual, the firm is confident that it can address all the areas of concern in the Warning Notice. On that basis, EPFPL asked for more time to improve its application.
5. *The Authority's view is that EPFPL's representations do not address the concerns as set out in the Warning Notice.*
6. *EPFPL's representations state that the firm has taken steps to address the areas of concern in the Warning Notice. However, there is no detail as to what steps have been taken or how they will address the concerns raised.*
7. *The only step mentioned by EPFPL in its representations is its intention to appoint a compliance officer. However, EPFPL has provided no details as to the identity or qualifications of this individual, other than the fact the individual holds a controlled function at another firm (although the Authority notes that the individual does not hold a compliance function). Moreover, it is clear from EPFPL's representations that the appointment of the compliance officer has not yet been made and may still be subject to discussion with the individual in question.*
8. *EPFPL has provided no explanation as to how the proposed appointment will address the concerns in the Warning Notice. As explained in this Final Notice, this is EPFPL's third application for authorisation. Each of its applications have been missing vital documents and information and have failed to address concerns raised in previous applications. It is for this, and the other reasons set out in this Final Notice, that the Authority does not consider EPFPL to be ready, willing and organised. EPFPL's written representations, and the unsubstantiated promise to appoint a compliance officer, do not alleviate these concerns.*