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## FINAL NOTICE

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**To:** **Ron Treherne IFA Ltd**

**Address:** **15 Lon Werdd, Cardiff, South Glamorgan, CF5 4SS**

**FRN:** **521950**

**Dated:** **20 May 2021**

### **ACTION**

1. For the reasons set out in this Final Notice, the Authority has cancelled Treherne's Part 4A permission.

### **REASONS FOR THE ACTION**

2. The Authority issued to Treherne the Decision Notice which notified Treherne that for the reasons given below and pursuant to section 55J of the Act, the Authority had decided to cancel Treherne's Part 4A permission.
3. Treherne has not referred the matter to the Tribunal within 28 days of the date on which the Decision Notice was given to it.
4. Accordingly, the Authority has today cancelled Treherne's Part 4A permission.

### **DEFINITIONS**

5. The definitions below are used in this Final Notice (and in the Annex):

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

“the appropriate resources Threshold Condition” means the threshold condition set out in paragraph 2D of Schedule 6 to the Act;

“the Authority” means the Financial Conduct Authority;

“COND” means the Threshold Conditions which is part of the Handbook;

“Consumer 1” and “Consumer 2” refer to two individual consumers who respectively sent individual complaints to the FOS in relation to Treherne and were subsequently given the FOS Awards;

“the Decision Notice” means the decision notice given to Ron Treherne IFA Ltd dated 21 April 2021;

“DISP” means the Dispute Resolution: Complaints Manual which is part of the Handbook;

“EG” means the Enforcement Guide;

“the FOS” means the Financial Ombudsman Service;

“the FOS Awards” means the Final Decisions made by the FOS in March 2018 against Treherne in favour of Consumer 1 and Consumer 2;

“the first FOS Award” means the Final Decision made by the FOS in March 2018 against Treherne in favour of Consumer 1;

“the Handbook” means the Authority’s Handbook of rules and guidance;

“IPRU-INV” means the Interim Prudential Sourcebook Investment Business section of the Handbook;

“Part 4A permission” means the permission granted to Treherne under Part 4A of the Act;

“PII” means Professional Indemnity Insurance;

“the PII Rules” means the Authority Rules IPRU-INV 13.1.5R in the IPRU-INV;

“the Principles” means the Authority’s Principles for Businesses;

“the RDC” means the Regulatory Decisions Committee of the Authority;

“the second FOS Award” means the Final Decision made by the FOS in March 2018 against Treherne in favour of Consumer 2;

“SIPP” means self-invested personal pension;

“the suitability Threshold Condition” means the threshold condition set out in paragraph 2E of Schedule 6 to the Act;

“the Threshold Conditions” means the threshold conditions set out in Schedule 6 to the Act;

“Treherne” means Ron Treherne IFA Ltd;

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

“VREQ” means the Voluntary Application for an Imposition of Requirement dated 13 June 2019; and

“the Warning Notice” means the warning notice given to Ron Treherne IFA Ltd dated 24 March 2021.

## **FACTS AND MATTERS**

### **Non-payment of FOS awards**

6. Consumer 1’s complaint to the FOS related to the advice he received from Treherne to transfer his existing pension into a SIPP, to mainly invest in Firm A. Consumer 1 claims that Treherne did not adequately assess the suitability for Consumer 1 of the investment in Firm A, and that he should not have been advised to transfer his pension into a SIPP. The FOS Award instructed Treherne to calculate fair compensation by comparing the value of Consumer 1’s pension (if he had not transferred into a SIPP) with the current value of his SIPP.
7. On 10 April 2018, Consumer 1 accepted the first FOS Award, at which stage the FOS decision became binding on him and Treherne, which has not sought judicial review of the FOS Award (which therefore remains binding on it under section 228(5) of the Act). Treherne has failed to comply with the first FOS Award, despite repeated requests by the FOS and the Authority that it do so.
8. Consumer 2’s complaint to the FOS related to the advice he received from Treherne to transfer his existing pension into a SIPP to mainly invest in Firm B. Consumer 2 claimed that Treherne did not adequately assess the suitability of the investment in Firm B, and that he should not have been advised to transfer his pension into a SIPP. The second FOS Award instructed Treherne to pay Consumer 2 a lump sum of £132,124.47.
9. On 5 April 2018, Consumer 2 accepted the second FOS Award, at which stage the FOS decision became binding on him and Treherne, which has not sought judicial review of the FOS Award (which therefore remains binding on it under section 228(5) of the Act). Treherne has failed to comply with the second FOS Award, despite repeated requests by the FOS and the Authority that it do so.

### **No evidence that PII has been obtained**

10. Treherne has failed to demonstrate that it has valid PII cover. The Authority has given Treherne ample opportunity to provide evidence that it holds valid PII cover, but has not received any such evidence. Treherne informed the Authority by email on 8 February 2019 that Mr Ronald Treherne had been retired for five months and no longer practiced as an IFA, and was intending to apply for cancellation of Treherne’s Part 4A permission. However, to date no such application to cancel Treherne’s authorisation has been received by the Authority. This suggests that Treherne is not intending to obtain PII cover.

## **VREQ**

11. On 26 June 2019, Treherne entered into a VREQ with the Authority, which prevented Treherne from advising on investments, advising on P2P agreements, arranging deals in investments business and making arrangements for investment business.

## **FAILINGS**

12. The Authority has concluded, on the basis of the facts and matters described above, that Treherne is failing to satisfy the suitability Threshold Condition, in that the Authority is satisfied that Treherne is not a fit and proper person having regard to all the circumstances. In the opinion of the Authority, Treherne has failed to satisfy the Authority that it is conducting its affairs in an appropriate manner, having regard in particular to the interests of consumers. Specifically, Treherne has failed to comply with the FOS Awards made against it, despite repeated requests by the FOS and the Authority that it do so. By not complying with the FOS Awards, Treherne has breached DISP 3.7.12R(1) and Principle 6 (Customers' interests) and Principle 11 (Relations with regulators) of the Principles.
13. Further, Treherne has failed to provide evidence that it has PII. Treherne therefore appears to be failing to satisfy the appropriate resources Threshold Condition.
14. Accordingly, the Authority considers that Treherne's Part 4A permissions should be cancelled.
15. The statutory and regulatory provisions relevant to this Final Notice are set out in the Annex.

## **REPRESENTATIONS**

16. Through the Warning Notice, the Authority gave notice that it proposed to take the action described above and Treherne was given the opportunity to make representations to the Authority about that proposed action.
17. Following receipt of the Warning Notice, Treherne informed the Authority that it did not agree with the proposed action, and refuted the claims made by Consumer 1 and Consumer 2, but it did not intend to appeal the decision.
18. The Authority has therefore decided to cancel Treherne's Part 4A permission for the reasons described above.

## **PROCEDURAL MATTERS**

19. This Final Notice is given to Treherne in accordance with section 390(1) of the Act.
20. The following paragraphs are important.

### **Decision Maker**

21. The decision which gave rise to the obligation to give this Final Notice was made by the Chair of the RDC.

**Publicity**

22. The Authority must publish such information about the matter to which this Final Notice relates as it considers appropriate. This information may be published in such a 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 Treherne or prejudicial to the interests of consumers.
23. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**Contact**

24. For more information concerning this matter generally, please contact Saad Nasarullah of the Enforcement & Market Oversight Division at the Authority (direct line: 020 7066 1940).

**Anna Couzens**  
**Manager, Threshold Conditions Team**  
**Enforcement and Market Oversight Division**  
**Financial Conduct Authority**

## **ANNEX**

### **RELEVANT STATUTORY PROVISIONS**

1. The Authority's operational objectives established in section 1(B) of the Act include securing an appropriate degree of protection for consumers.
2. The Authority is authorised by section 55J of the Act to cancel an authorised person's Part 4A permission, where it appears to the Authority that it is failing to satisfy the Threshold Conditions.
3. Section 228(5) of the Act provides that if the complainant notifies the FOS that they accept the determination, it is binding on the respondent and the complainant, and is final.
4. The suitability Threshold Condition provides, in relation to a person ("A") carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

"A must be a fit and proper person having regard to all the circumstances, including –

  - (c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers
  - (f) 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."
5. In exercising its power to cancel a firm's Part 4A permission, the Authority must have regard to guidance published in the Handbook and in regulatory guides, such as EG. The relevant main considerations in relation to the proposed cancellation action specified above are set out below.

#### **Relevant Rule FOS Awards**

6. DISP 3.7.12R(1) requires that a respondent (Treherne is a respondent under the definition given in the Handbook) complies promptly with any award or direction made by the FOS.

#### **Relevant Principles**

7. Principle 6 (Customers' interests) of the Principles requires a firm to pay due regard to the interests of its customers and treat them fairly.
8. Principle 11 (Relations with regulators) of the Principles states that a firm must deal with its regulators in an open and co-operative way, and must disclose to the appropriate regulator anything relating to the firm of which that regulator would reasonably expect notice.

#### **Relevant Rule PII cover**

9. Between 1 October 2018 and 31 December 2020, the PII Rules required that:

“A *firm* must take out and maintain at all times professional indemnity insurance that is at least equal to the requirements in this section from:

- (1) an *insurance undertaking* authorised to transact professional indemnity insurance in the EEA; or
- (2) a person of equivalent status in:
  - (a) a Zone A country;
  - (b) the Channel Islands, Gibraltar, Bermuda or the Isle of Man.”

10. From 1 January 2021, the PII Rules require that:

“A *firm* must take out and maintain at all times professional indemnity insurance that is at least equal to the requirements in this section from:

- (1) an *insurance undertaking* authorised to transact professional indemnity insurance in the UK; or
- (2) a person of equivalent status in:
  - (a) a Zone A country;
  - (b) the Channel Islands, Gibraltar, Bermuda or the Isle of Man.”

### **Guidance concerning the Threshold Conditions**

11. Guidance on the Threshold Conditions is set out in the part of the Handbook entitled Threshold Conditions (“COND”).

#### COND 2.4 Appropriate resources: Paragraph 2D of Schedule 6 to the Act

12. COND 2.4.1AUK(1) reproduces the relevant statutory provision that the resources of the person concerned must be appropriate in relation to the regulated activities that it carries on or seeks to carry on.

13. COND 2.4.1AUK(3)(a) states that the matters which are relevant in determining whether a firm has appropriate financial resources include the provision the firm makes in respect of liabilities.

14. COND 2.4.2G(2) provides that, in this context, the Authority will interpret the term ‘appropriate’ as meaning sufficient in terms of quantity, quality and availability, and ‘resources’ as including all financial resources, non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holding of or access to cash and other liquid assets, human resources and effective means by which to manage risks.

15. COND 2.4.4G(2) provides that the relevant matters to which the Authority may have

regard when assessing whether a firm will satisfy, and continue to satisfy, the appropriate resources threshold condition may include whether the firm is likely to have difficulties in complying with any of the Authority's prudential rules (COND 2.4.4G(2)(a)).

COND 2.5 – Suitability: Paragraph 2E of Schedule 6 to the Act

16. COND 2.5.1AUK reproduces the relevant statutory provision that a person concerned must be a fit and proper person having regard to all the circumstances, including, amongst other things, whether its business is being managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner.
17. COND 2.5.1BG confirms that paragraph 2E of Schedule 6 to the Act sets out the suitability Threshold Condition for firms carrying on, or seeking to carry on, regulated activities which do not consist of or include a PRA-regulated activity.
18. COND 2.5.2G states that the Authority will take into consideration anything that could influence a firm's continuing ability to satisfy the suitability Threshold Condition.
19. COND 2.5.6G gives examples of the kind of particular considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the suitability Threshold Condition including, but not limited to, whether:
  - the firm has been open and co-operative in all its dealings with the Authority and is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6G(1)); and
  - the firm has contravened, amongst other things, any provisions of the regulatory system, which includes the Principles and other rules (COND 2.5.6G(4)).

**OTHER RELEVANT REGULATORY PROVISIONS**

20. The Authority's policy in relation to its enforcement powers is set out in the Enforcement Guide (EG), certain provisions of which are summarised below.
21. EG 8.1.1(1) reflects the provisions of section 55J of the Act that the Authority may use its own-initiative power to vary or cancel the permission of an authorised firm where a firm is failing or is likely to fail to satisfy the threshold conditions.

**Cancelling a firm's Part 4A permission on the Authority's own initiative**

22. The Authority's policy in relation to its enforcement powers is set out in EG.
23. EG 8.1.1(1) provides that the Authority may use its own initiative power to vary or cancel the permission of an authorised person under section 55J of the Act, where the person is failing or is likely to fail to satisfy the Threshold Conditions.
24. EG 8.5.1(1) states that the Authority will consider cancelling a firm's Part 4A permission using its own initiative powers contained in section 55J of the Act in circumstances where the Authority has very serious concerns about the firm, or the way its business is or has been conducted.
25. EG 8.5.2 provides examples of the types of circumstances in which the Authority may



cancel a firm's Part 4A permission and EG 8.5.2(1) specifies that non-compliance with an award made by the FOS against a firm is one such circumstance.