
FINAL NOTICE

Ms Sherrie Jean Thackray

Transfer Gurus Limited

11 May 2021

ACTION

1. For the reasons set out in this Final Notice and pursuant to section 390(1) of the Act, the Authority has decided to object to Ms Sherrie Jean Thackray's control over Transfer Gurus Limited and to give this Final Notice.

SUMMARY OF REASONS

2. By its Warning Notice dated 25 February 2021, the Authority gave notice that it proposed to object to the acquisition by Ms Sherrie Jean Thackray ("Ms Thackray") of 100% of the shares of Transfer Gurus Limited ("the Firm" or "the Target") (the "Acquisition") and that Ms Thackray was entitled to make representations to the Authority about that proposed action.
3. As no representations have been received by the Authority from Ms Thackray within the time allowed by the Warning Notice, the default procedures in paragraph 2.3.2G of the Authority's Decision Procedure and Penalties Manual apply, permitting the Authority to treat the matters referred to in its Warning Notice as undisputed and, accordingly, to give a decision notice.
4. By its Decision Notice dated 1 April 2021, the Authority gave notice that it decided to object to the Acquisition.
5. Ms Thackray had 28 days from the date the Decision Notice was given to refer the matter to the Tribunal. No referral was made to the Tribunal within this period of time or to date.

6. Under section 390(1) of the Act, the Authority, having decided to object to the Acquisition and there having been no reference of that decision to the Tribunal, must give Ms Thackray Final Notice of its objection.
7. The Authority considers that there are reasonable grounds for objecting to the Acquisition on the basis of the following matters set out in the Act:
 - 7.1. The person acquired control without giving notice under section 178 (1) of the Act (section 191A (2) (a) of the Act). Ms Thackray acquired 100% of the Firm on 1 September 2019 and only gave notice under section 178 (1) on 25 August 2020.
 - 7.2. The information provided by the section 178 notice giver is incomplete (section 185 (3) (b) of the Act). Ms Thackray submitted a section 178 form that was blank after page 3 and has not provided the information the Authority repeatedly requested.
 - 7.3. The reputation of the section 178 notice giver (section 186(a) of the Act). Failure to seek and obtain approval prior to the Acquisition is a criminal offence. Ms Thackray's subsequent failure to submit a complete Notification and respond to the Authority's information requests, having been informed that she was guilty of an offence, raises concerns regarding both her integrity and professional competence. This is of particular concern given that Ms Thackray is the sole controller of the Firm.
 - 7.4. The reputation and experience of those directing the business of the Firm (section 186(b) of the Act). The Firm has failed to register with the HM Revenue & Customs ("HMRC"), has not submitted regulatory returns and has not updated its Payment Services Directive Individuals ("PSD Individuals"), including since the Acquisition. These failings strongly suggest that the persons directing its business do not possess appropriate knowledge, skills and experience. This is of particular concern given that Ms Thackray is the sole director, has not been approved by the Authority and appears to be based overseas.
 - 7.5. Ms Thackray's apparent absence from the UK, coupled with the Firm's continuous lack of registration with the HMRC, constitutes reasonable grounds that in connection with the Acquisition the risk of money laundering activities could increase (section 186 (f) (ii) of the Act). This is of particular concern given the Firm's permission for Money Remittance and the Authority's lack of information on the Firm's operations or systems and controls.
8. The Authority considers that based on the information available there are reasonable grounds to object to the Acquisition by reference to sections 191A (2) (a) and 185 (3) (b) and the assessment criteria in section 186 (a), (b) and (f) (ii) of the Act. In particular, the Authority cannot be satisfied, taking into account the need to ensure the sound and prudent conduct of the affairs of the Firm, that Ms Thackray is a fit and proper person to have control over the Firm.

9. Section 191B of the Act allows the Authority to give a restriction notice to a person in certain circumstances, which may direct that the shares or voting power in question be subject to one or more of a number of restrictions. The circumstances in which a restriction notice may be given are:
 - 9.1. A person has control over a UK authorised person by virtue of holding shares or voting power; and
 - 9.2. In relation to the shares or voting power, the Authority has given the person a warning notice or a decision notice under section 189 of 191A or a final notice confirming a decision notice was given under one of those sections.
10. Given the failings set out in paragraph 7, the Authority has decided to also give Ms Thackray a restriction notice. The relevant restrictions remain in place until further notice.

DEFINITIONS

11. The definitions below are used in this Final Notice:

“the Act” means the Financial Services and Markets Act 2000;

“the Acquisition” means the acquisition by Ms Thackray of 100% of the shares of the target firm, Transfer Gurus Limited;

“the Authority” means the Financial Conduct Authority;

“the Firm” or “the Target” means Transfer Gurus Limited;

“Gabriel” means the Authority’s online system for collecting and storing regulatory data from firms;

“the Notification” means the notification dated 25 August 2020 made under section 178 of the Act provided by Ms Thackray, notifying the Authority of the Acquisition;

“MLRs 2017” means Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;

“Ms Thackray” means Ms Sherrie Jean Thackray;

“PSD Individual” means Payment Services Directive Individual responsible for payment services at a payment institution;

“PSRs 2017” means Payment Services Regulations 2017;

“SPI” means small payment institution;

“the Warning Notice” means the warning notice dated 25 February 2021 given to Ms Thackray by the Authority in relation to the Acquisition pursuant to section 191A (4) of the Act;

“the Decision Notice” means the decision notice dated 1 April 2021 given to Ms Thackray by the Authority in relation to the Acquisition pursuant to section 191A (6) of the Act; and

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

FACTS AND MATTERS

Background

12. The Firm was established on 21 March 2017 as Kimberly Forex UK Limited. It is a Payment Services Firm (Small Payments Institution (“SPI”)) registered with the Authority on 15 May 2018 for the regulated activity of “Money Remittance” only and operates under the revised Payment Services Directive (“PSD2”) implemented in the UK by the Payments Services Regulations 2017 (“PSRs 2017”). It changed its name to Ipayguru Limited on 17 July 2019 and subsequently to Transfer Gurus Ltd on 2 December 2019.
13. Ms Thackray acquired 100% ownership of the Firm on 1 September 2019. This information is based on the Companies House records and Ms Thackray’s email to the Authority dated 11 September 2020. Ms Thackray is a British national and a UK resident but has indicated in her email on 10 September 2020 that at the time, she was in the United Arab Emirates (“the UAE”). According to the Companies House Register, she is the only active director at the Firm.

Assessment

14. The Authority objects to Ms Thackray’s acquisition of control in relation to the Firm on the following grounds.

Section 191A (2) (a) of the Act - The person acquired or increased control without giving notice under section 178(1) where notice was required

15. According to the Companies House PSC01 filing received on 26 May 2020, Ms Thackray acquired “75% or more of the shares” in the Target, then registered under the name of Ipayguru Limited, on 1 September 2019.
16. Ms Thackray first contacted the Authority regarding the Acquisition on 7 August 2020.
17. Ms Thackray submitted the Notification to the Authority on 25 August 2020, almost a year after the Acquisition.
18. In her email to the Authority dated 11 September 2020 Ms Thackray clarified that she “became 100% shareholder before receiving FCA approval”.

Section 185 (3) (b) of the Act – The information provided by the notice giver is incomplete

19. The Notification submitted to the Authority on 25 August 2020 contained only Ms Thackray's name as proposed controller, the name and Firm Reference Number of the Target, and confirmation that there are no PRA-regulated firms involved. The s178 form submitted was blank after page 3 with no attachments or additional information.
20. The Authority asked Ms Thackray to provide a completed s178 form with all the required supporting information on 3 September 2020 and on 11 September 2020, in response to her request, granted her additional time for the provision of required information until 18 September 2020.
21. On 16 September 2020, the Authority explained the post notification implications to Ms Thackray, including that it is a criminal offence to acquire control without the Authority's approval.
22. Ms Thackray did not respond to this email or to the subsequent two emails from the Authority on 29 September and 13 October 2020. To date the Authority has not received a response from Ms Thackray.
23. Section 191A(3)(b) of the Act states that in objecting to a person's control over an authorised firm, the Authority may take into account whether the person has cooperated with any information requests made. Accordingly, in reaching its decision, the Authority is taking into account Ms Thackray's lack of response to the Authority's repeated requests for information.
24. Regarding the assessment criteria set out in section 186 of the Act, the Authority considers the following matters to be relevant.
25. Ms Thackray:
 - (1) Failed to seek the Authority's approval prior to acquiring control in the Target.
 - (2) Formally notified the Authority almost a year after acquiring control in the Target and almost three months after having been asked by the Authority to update its records.
 - (3) Failed to submit a complete Notification when notifying the Authority retrospectively.
 - (4) Failed to respond to the Authority's requests for a complete Notification, having been granted the additional time she requested in which to do so.
 - (5) Failed to respond to the above requests having been informed that it is a criminal offence to acquire control without approval.
26. The Target has failed to comply with its regulatory requirements as set out below. Although these failings may have occurred prior to the Acquisition, they have not been addressed since the Acquisition, despite repeated communications from the Authority to the Firm. At the time the Authority raised these failings with the Target, Ms Thackray was the sole owner of the Firm and one of only two directors. Accordingly, these failings can reasonably be attributed to her, at least in part.

27. In an email dated 14 May 2020, the Authority asked the Firm to:

- (1) Apply for registration with HMRC for the purposes of the MLRs 2017;
- (2) Ensure its controllers are up to date;
- (3) Ensure its approved persons are up to date;
- (4) Ensure its contact details registered with the Authority are correct;
- (5) Register for Gabriel and submit outstanding returns; and
- (6) Pay two outstanding invoices.

28. The Authority has considered the following information regarding the above failings.

29. Since its registration, including following the Acquisition, the Target has failed to register with the HMRC for the purposes of MLRs 2017. Registration with HMRC is one of the conditions for registration as an SPI under Regulation 14 of the PSRs 2017.

30. In addition, in the period between October and December 2019, i.e. post-Acquisition, the Firm changed its address, name and directors, yet it first contacted the Authority in relation to updating its details on 10 February 2020.

31. Two persons responsible for payment services at the Firm resigned as Company Directors on 8 January 2019 and 11 July 2019 respectively. It is unclear whether they remained with the Firm in some other capacity. To date, the Firm has not submitted any application to update its PSD Individuals.

32. Both the Firm and Ms Thackray contacted the Authority, on 10 February 2020 and 7 and 25 August 2020 respectively, in relation to the matters identified in paragraph 27 above as well as requesting access to the Authority's reporting systems. On each occasion, the Authority provided guidance on the relevant processes to be followed. However, these were not followed up by either Ms Thackray or the Firm.

33. The Authority also notes the following relevant information from Companies House Register:

- (1) Ms Thackray became a director of the Firm on 25 October 2019 and has been the sole director since 13 July 2020.
- (2) Since Ms Thackray acquired control, four directors have resigned, including two appointed shortly before and two appointed shortly after the Acquisition. The Authority has not received a PSD Individual form in relation to any of these individuals.
- (3) The Firm filed:
 - a. a micro-entity balance sheet as at 31 March 2018 showing only net liabilities due within 1 year of £45,405;

- b. financial statements (balance sheet only) for the year ended 31 March 2019, which state the Firm has been dormant throughout the 'current year and previous period'. These report NIL employees and only net liabilities due within 1 year of £45,405, unchanged since the last filing. It is not clear what these liabilities relate to.
34. The Firm does not appear to have a principal user for Gabriel and has not submitted regulatory returns on Gabriel since its registration. It currently has 14 returns outstanding since 31 December 2018. This is despite the contacts made in February and August 2020 by the Firm and Ms Thackray set out above regarding accessing and using the Authority's reporting systems. Therefore, the Authority has no information on the Firm's operations since registration.
35. Regarding the Firm's failure to pay its outstanding invoices, the Authority notes that in its calls to the Authority in February 2020 the Firm asked how to pay its outstanding invoices, however, to date it has not paid these. The payment date for these invoices was 1 and 5 September 2019, i.e. after the Acquisition.
36. All of the above failings raise serious concerns about the Acquisition. The Authority considers that they provide reasonable grounds for objecting to the change in control as follows.

Section 186(a) of the Act - Reputation of the section 178 notice-giver

37. The Authority considers that Ms Thackray's failure to seek and obtain the Authority's approval prior to the Acquisition and her subsequent failure to respond to the Authority's information requests, raise concerns regarding both her integrity and professional competence and constitute reasonable grounds to question Ms Thackray's reputation. This is of particular concern given that Ms Thackray is the sole controller of the Firm.
38. The Authority particularly considers the fact that having failed to comply with the obligation to notify the Authority of the Acquisition, Ms Thackray is in effect guilty of an offence. Having been informed of this on numerous occasions, she failed to promptly address the Authority's concerns about the criminal conduct which casts doubts on her integrity.

Section 186(b) of the Act - Reputation, knowledge, skills and experience of any person who will direct the business of the Target

39. The Authority considers the fact that the Target's failure to meet its regulatory requirements persisted after the Acquisition, significantly that it has failed to register with the HMRC, strongly suggests that the persons directing its business do not possess appropriate knowledge, skills and experience to ensure the sound and prudent conduct of its affairs.
40. The Authority's concerns in this regard are further compounded by the fact that the Target's governance rests solely with Ms Thackray, as she is the sole shareholder and the only active director, and it appears that there are no approved

persons in the Target's business. Ms Thackray is not an approved person and appears to be based in the UAE.

41. The Authority notes that Regulation 14 (6) of the PSRs 2017 requires an SPI to satisfy the Authority that its controllers are fit and proper having regard to the need to ensure the sound and prudent conduct of its affairs. Regulation 14 (7) further states that the persons responsible for the management of the institution are of good repute and possess appropriate knowledge and experience to provide payment services.
42. For the purposes of the assessment, the Authority has regard, amongst others, to the controller's criminal record, whether they were subject to any disciplinary proceedings, whether they are subject to any existing investigation and whether they demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system. In determining the competence, the Authority will have regard to knowledge, experience and training of the relevant persons to be able to perform the activity of payments services.
43. Due to the incomplete Notification, the Authority does not have the above information for the purposes of its assessment and cannot therefore be satisfied that Ms Thackray is fit and proper or that the persons managing the institution are competent and capable.
44. However, the Target's and Ms Thackray's regulatory failings identified above are indicative of a lack of understanding of the relevant requirements and of such persons not being ready and willing to comply with the standards of the regulatory system.

Section 186(f) (ii) of the Act - Increased risk of money laundering or terrorist financing

45. The Firm has not registered with the HMRC since its registration as an SPI.
46. The Authority considers that the absence of the controller from the UK (given that Ms Thackray appears to be based in UAE), coupled with the continuous lack of registration with the HMRC, constitutes reasonable grounds that in connection with the Acquisition the risk of money laundering activities could increase.
47. In this regard, the Authority also notes that the Target's failure to register with the HMRC means that the Target has failed to meet the condition for registration under Regulation 14(11) of the PSRs 2017.
48. The Authority further notes that risks of money laundering and terrorist financing are particularly relevant to payment services and that the Target has permission for Money Remittance and its website lists a number of services including transferring money abroad.
49. Given the incomplete Notification and the absence of any regulatory returns submitted since the Acquisition, the Authority has no information on the Target's operations or its business plan in connection with the Acquisition. Absent any information, including in relation to PSD Individuals since the Acquisition, the

Authority cannot assess the adequacy of the Target's systems and controls to prevent money laundering and terrorist financing.

50. For these reasons, the Authority considers that there are reasonable grounds to suspect that the risk of money laundering in connection with the Acquisition could increase.

IMPORTANT NOTICES

51. The Final Notice is given under section 390(1) of the Act.

Publication

52. 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.

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

Authority contacts

54. For more information concerning this matter generally, contact Michelle O'Bryan, Manager, Change in Control, at the Authority (direct line: 020 7066 4780/email: michelle.obryan@fca.org.uk).



Sarah Hayes
Chair of the Regulatory Transactions Committee

ANNEX – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

Relevant Statutory Provisions

- (1) The requirement to notify the Authority is set out in section 178 of the Act. It states that:
 - (a) A person who decides to acquire or increase control over a UK authorised person must give the Authority notice in writing before making the acquisition.
 - (b) For the purposes of calculations relating to this section, the holding of shares or voting power by a person ("A1") includes any shares or voting power held by another ("A2") if A1 and A2 are acting in concert.
 - (c) In this Part, a notice given under this section is a "section 178 notice" and a person giving notice is a "section 178 notice-giver".
- (2) The test is set out in section 185 of the Act which provides that:
 - (a) Where the Authority receives a section 178 notice, it must—
 - (i) determine whether to approve the acquisition to which it relates unconditionally; or
 - (ii) propose to—
 - a. approve the acquisition subject to conditions (see section 187); or
 - b. object to the acquisition.
 - (b) The Authority must—
 - (i) consider the suitability of the section 178 notice-giver and the financial soundness of the acquisition in order to ensure the sound and prudent management of the UK authorised person;
 - (ii) have regard to the likely influence that the section 178 notice-giver will have on the UK authorised person; and
 - (iii) disregard the economic needs of the market.
 - (c) The Authority may only object to an acquisition—
 - (i) if there are reasonable grounds for doing so on the basis of the matters set out in section 186; or
 - (ii) if the information provided by the section 178 notice-giver is incomplete.
- (3) The Authority may only object to the section 178 notice-giver if there are reasonable grounds for doing so on the basis of the assessment criteria set out in section 186. Section 186 provides that the matters specified in section 185(3)(a) are—

- (a) the reputation of the section 178 notice-giver;
 - (b) the reputation and experience of any person who will direct the business of the UK authorised person as a result of the proposed acquisition;
 - (c) the financial soundness of the section 178 notice-giver, in particular in relation to the type of business that the UK authorised person pursues or envisages pursuing;
 - (d) whether the UK authorised person will be able to comply with its prudential requirements (including the threshold conditions in relation to all of the regulated activities for which it has or will have permission);
 - (e) if the UK authorised person is to become part of a group as a result of the acquisition, whether that group has a structure which makes it possible to—
 - (i) exercise effective supervision;
 - (ii) exchange information among regulators; and
 - (iii) determine the allocation of responsibility among regulators; and
 - (f) whether there are reasonable grounds to suspect that in connection with the proposed acquisition—
 - (i) money laundering or terrorist financing (within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing) is being or has been committed or attempted; or
 - (ii) the risk of such activity could increase.
- (4) Section 191A (2) states that the Authority may object to a person's control over a UK authorised person if the Authority reasonably believes that:
- (a) the person acquired or increased control without giving notice under section 178(1) in circumstances where notice was required;
 - (b) the person is in breach of a condition imposed under section 187; or
 - (c) there are grounds for objecting to control on the basis of the matters in section 186.
- (5) In accordance with section 191 A (3) (a) the Authority must take into account whether influence exercised by the person is likely to operate to the detriment of the sound and prudent management of the UK authorised person.
- (6) In accordance with section 191 A (3) (b) the Authority may take into account whether the person has co-operated with any information requests made or requirements imposed by the Authority.

- (7) In accordance with section 191 A (4) if the Authority proposes to object to a person's control over a UK authorised person, it must give that person a warning notice.
- (8) In accordance with section 191 A (6) if the Authority decides to object to a person's control over a UK authorised person, it must give that person a decision notice.
- (9) In accordance with section 191 A (7) the person to whom the Authority gives a decision notice under this section may refer the matter to the Tribunal.
- (10) In accordance with section 191 B (1) and (2) the Authority may give notice in writing (a "restriction notice") to a person who (a) has control over a UK authorised person by virtue of holding shares or voting power; and (b) in relation to the shares or voting power, the Authority has given the person a warning notice or a decision notice under section 189 or 191 A or a final notice which confirms a decision notice given under section 189 or 191 A.
- (11) In accordance with section 191 B (3), in a restriction notice, the Authority may direct that shares or voting power to which the notice relates are, until further notice, subject to restrictions, including: except by court order, an agreement to transfer or a transfer of any such shares or voting power is void; or no voting power is to be exercisable.
- (12) In accordance with section 390(1) if the Authority has given a person a decision notice and the matter was not referred to the Tribunal within the required time, the Authority must, on taking the action to which the decision notice relates, give the person a final notice.
- (13) **Regulation 14 of the Payment Services Regulations 2017**, sets out the following conditions for registration as a small payment institution:
 - (1) The FCA may refuse to register an applicant as a small payment institution only if any of the conditions set out in paragraphs (2) to (11) is not met.
 - (2) The application must comply with the requirements of, and any requirements imposed under, regulations 13 and 20.
 - (3) The monthly average over the period of 12 months preceding the application of the total amount of payment transactions executed by the applicant, including any of its agents in the United Kingdom, must not exceed 3 million euros.
 - (4) The business to which the application relates must not include the provision of account information services or payment initiation services.
 - (5) None of the individuals responsible for the management or operation of the business has been convicted of—

(a)an offence under Part 7 of the Proceeds of Crime Act 2002 (money laundering) (1) or under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;

(b)an offence under section 15 (fund-raising), 16 (use and possession), 17 (funding arrangements), 18 (money laundering) or 63 (terrorist finance: jurisdiction) of the Terrorism Act 2000(2);

(c)an offence under the 2000 Act;

(d)an offence under regulation 3, 4 or 6 of the Al-Qaida and Taliban (Asset-Freezing) Regulations 2010(3), or regulation 10 of the ISIL (Da'esh) and Al-Qaida (Asset-Freezing) Regulations 2011 (contravention and circumvention of prohibitions) (4);

(e)an offence under section 11, 12, 13, 14, 15 or 18 of the Terrorist Asset-Freezing etc Act 2010 (offences relating to the freezing of funds etc. of designated persons) (5);

(f)an offence under these Regulations or the Electronic Money Regulations 2011(6); or

(g)any other financial crimes.

(6) Where the applicant is a partnership, an unincorporated association or a body corporate, the applicant must satisfy the FCA that any persons having a qualifying holding in it are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of a small payment institution.

(7) The applicant must satisfy the FCA that—

(a)where the applicant is a body corporate, the directors;

(b)the persons responsible for the management of the institution; and

(c)where relevant, the persons responsible for the management of payment services,

are of good repute and possess appropriate knowledge and experience to provide payment services.

(8) If the applicant is a body corporate which has close links with another person ("CL") the applicant must satisfy the FCA—

(a) that those links are not likely to prevent the FCA's effective supervision of the applicant; and

(b) if it appears to the FCA that CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State ("the foreign provisions"), that neither the foreign provisions, nor any deficiency in their enforcement, would prevent the FCA's effective supervision of the applicant.

(9) Regulation 6(10) (conditions for authorisation: definition of close links) applies for the purposes of paragraph (8) of this regulation as it applies for the purposes of regulation 6(9).

(10) The applicant's head office, registered office or place of residence, as the case may be, must be in the United Kingdom.

(11) The applicant must comply with a requirement of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 to be included in a register maintained under those Regulations where such a requirement applies to the applicant.

(12) For the purposes of paragraph (3) where the applicant has yet to commence the provision of payment services or has been providing payment services for less than 12 months, the monthly average may be based on the projected total amount of payment transactions over a 12-month period.

(13) In paragraph (5) "financial crime" includes any offence involving fraud or dishonesty and, for this purpose, "offence" includes any act or omission which would be an offence if it had taken place in the United Kingdom.

Relevant Guidance

(14) Payment Services and Electronic Money – Our Approach, June 2019

The Authority's "Payment Services and Electronic Money – Our Approach" document describes the Authority's approach to implementing the PSRs, including the information required by the Authority in order to assess whether the applicant satisfies the relevant conditions. We have considered the following sections for the purposes of our assessment:

Assessing fitness and propriety – Honesty, integrity and reputation

3.101 We will assess the fitness and propriety of a controller or an individual on the information provided in the application form, including PSD or EMD Individual forms and other information available to us from our own and external sources. We may ask for more information if required. We require the

disclosure of convictions and investigations. Additionally, we require the disclosure of all spent and unspent criminal convictions and cautions (other than those criminal convictions and cautions that are protected).

3.102 During the application process, we may discuss the assessment of the controller's or individual's fitness and propriety informally with the firm and may retain any notes of those discussions.

3.103 Examples of the matters we will consider for each factor are set out below. It is not possible, however, to list all the matters that would be relevant to a particular controller or individual.

3.104 In determining the honesty, integrity and reputation of a controller or an individual, the following are examples of factors that we will consider. Whether:

- an assessment of the reputation of the controller or individual has already been conducted by a competent authority;
- the person has been convicted of any criminal offence particularly of dishonesty, fraud, or financial crime;
- the person is currently being investigated for any criminal offence. This would include where an individual has been arrested or charged;
- the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a firm, particularly a PI or an EMI. This would include any findings by us, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies (such as HMRC, the Serious Organised Crime Agency, the Serious Fraud Office, etc.) that the individual has breached or contravened any financial services legislation. The regulatory history of the firm or individual is therefore likely to be relevant.
- the person has been the subject of any existing investigation or disciplinary proceedings, by us, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies (such as HMRC, the Serious Organised Crime Agency, the Serious Fraud Office, etc.);
- the person has been refused membership, registration or authorisation of a professional organisation or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body;
- the person has been a director, partner, or concerned in the management, of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation;
- the person has been subject to relevant disciplinary action (including disqualification as company director);
- in the past, the person has been candid and truthful in all their dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory

system and with other legal, regulatory and professional requirements and standards.

3.105 We will consider matters that may have arisen in the UK or elsewhere.

3.106 The 'relevant' matters we refer to above will include offences under legislation relating to companies, banking or other financial services, serious tax offences or other dishonesty, insolvency, insurance, money laundering, market abuse, misconduct or fraud.

3.107 The applicant firm should tell us of all relevant matters, but we will consider the circumstances in relation to the requirements and standards of the PSRs 2017 or EMRs. For example, a conviction for a criminal offence will not automatically mean an application is rejected. We treat each controller's or individual's application on a case-by-case basis, taking into account the seriousness of, and the circumstances surrounding, the offence, the explanation offered by the convicted controller or individual, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the controller's or individual's rehabilitation.

3.108 If a firm is not sure whether something may have an impact on a controller's or an individual's fitness and propriety, the information should be disclosed. We take the non-disclosure of material facts very seriously as it is seen as evidence of current dishonesty. If in doubt, disclose.

Competence, capability and experience

3.109 In determining a controller's or an individual's competence, capability and experience, we will have regard to whether the individual has the:

- knowledge
- experience
- training

to be able to perform the activity of providing payment services.

Qualifying holdings – regulation 14(6) of the PSRs 2017 and regulation 12(1) paragraph 4 of Schedule 3 of the EMRs 3.126

3.126 Where the applicant is a partnership, an unincorporated association or a body corporate, it must provide evidence that any persons having a qualifying holding¹⁷ in it (a 'controller') are suitable having regard to the need to ensure the sound and prudent conduct of the affairs of the small PI or small EMI. For small PIs, the applicant must satisfy us that any controller is fit and proper.

3.127 The information that we will require about qualifying holdings for an application for registration as a small PI is the same as for an application for authorisation as an authorised PI (set out in Part I above) and small PIs will need to submit controller forms for persons with a qualifying holding. Small EMIs will need to identify their controllers in the application form but are not required to submit separate forms for persons with a qualifying holding.