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FINAL NOTICE

To: **Transway Ltd**

Reference
Number: **540288**

Address: **57 Bethune Road, London, N16 5EE**

Date: **30 July 2019**

1. ACTION

- 1.1 By an application dated 11 October 2018 (the "Application") Transway Ltd ("Transway") applied under Regulation 13 of the Payment Services Regulations 2017 (the "PSRs 2017") for re-registration as a small payment institution:
- 1.2 The Application was complete on receipt.
- 1.3 The Authority has refused the Application.

2. SUMMARY OF REASONS

- 2.2 On the basis of the facts and matters described below, the Authority has concluded that Transway has not satisfied the conditions for registration as a small payment institution set out in in regulation 14(6) and (7) of the PSRs 2017. These conditions require the applicant to satisfy the Authority that persons with a qualifying holding in the applicant are fit and proper persons and that the directors, and persons responsible for the management, of the applicant are of good repute.
- 2.3 Mr Singer is the sole director of Transway and is responsible for the management of Transway. Mr Singer is also the sole shareholder (and therefore a controller, with a qualifying holding) of the company.
- 2.4 The Authority is not satisfied that Mr Singer is fit and proper or of good repute. This is because Mr Singer, on behalf of Transway, failed to disclose to the Authority matters material to the Authority's assessment of his fitness and propriety, and good repute, as the sole director and shareholder of Transway. As a small payment institution registered under the Payment Services Regulations 2009 (the "PSRs 2009"), Transway had an obligation to notify the Authority of any significant change in circumstances relevant to its fulfilment of the conditions for registration. Transway, which at all material times was managed by Mr Singer as the sole director and controller, failed to do so. Additionally, Mr Singer failed, on Transway's behalf, to provide disclosure of material matters in the Application. In the Authority's view, he failed to appreciate the need to disclose these matters, and this demonstrates a serious failure by Mr Singer to understand important requirements of the regulatory regime.
- 2.5 Accordingly, the Authority has concluded that Mr Singer has not demonstrated a readiness and willingness to comply with the standards and requirements of the regulatory system, has not been candid in his dealings with the Authority and has not demonstrated an adequate level of competence and capability. The Authority is therefore not satisfied that Mr Singer is fit and proper, having regard to the need to ensure the sound and proper conduct of Transway's affairs; it is therefore also not satisfied that he is of good repute. For these reasons, Transway has not met the conditions for registration in regulation 14(6) and (7) and the Authority decided to refuse the Application.
- 2.6 By reason of its Decision Notice dated 19 June 2019, the Authority gave Transway notice that it had decided to refuse the Application.
- 2.7 Transway Ltd had 28 days from the date the Decision Notice was given to refer the matter to the Upper Tribunal. No referral was made to the Upper Tribunal within this period of time or to date.
- 2.8 Under section 390(1) of the Act (which applies by reason of paragraph 10 of Schedule 6, Part 1 of the PSRs 2017), the Authority, having decided to refuse the Application and there having been no reference of that decision to the Tribunal, must give to Transway this Final Notice of its refusal.

3. DEFINITIONS

3.1 The definitions below are used in this Final Notice.

"Act" means the Financial Services and Markets Act 2000 (as modified and applied by the PSRs 2017);

"Application" mean the application referred to in paragraph 1 of this Notice;

"Application Form" means an 'Application for Re-registration' form submitted to the Authority by Transway, being the form referred to in paragraph x of this Notice;

"authorised payment institution" has the meaning set out in the PSRs 2017;

"Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"Current Approach Document" means the publication entitled '*Payment Services and Electronic Money – Our Approach. The FCA's role under the Payment Services Regulations 2017 and the Electronic Money Regulations 2011*';

"HMRC" means Her Majesty's Revenue and Customs;

"PI" means and authorised payment institution or a small payment institution

"Previous Approach Document" mean the publication entitled '*The FCA's role under the Payment Services Regulations 2009 – Our Approach*', published in June 2013;

"PSD Individual Form" means a 'PSD Individual' form submitted to the Authority by Transway in relation to Mr Singer, dated 14 February 2013, being the form referred to in paragraph x of this Notice;

"PSRs 2009" means the Payment Services Regulations 2009;

"PSRs 2012" means the Payment Services Regulations 2012;

"PSRs 2017" means the Payment Services Regulations 2017;

"small payment institution" has the meaning set out in the PSRs 2017; and

"Transway" means Transway Ltd.

4. RELEVANT REGULATORY PROVISIONS

4.1 Details of the regulations and the Authority's guidance relevant to this Notice are set out in Annex A.

5. FACTS AND MATTERS

Background of the application

- 5.1 Transway was incorporated on 12 February 2004. Mr Moishe Singer is, and has at all material times been, the 100% shareholder and sole director of Transway, and responsible for its management.
- 5.2 Transway was first registered with the Authority as a small payment institution on 16 August 2011 under the PSRs 2009. It was re-registered with the Authority on 21 September 2013 in accordance with the requirements of the PSRs 2012.
- 5.3 The PSRs 2012 introduced requirements that controllers of small payment institutions must be fit and proper, and that their directors and the persons responsible for their management must be of good repute and have the necessary expertise to provide payment services. Accordingly, in February 2013, in the course of Transway's application for re-registration pursuant to the requirements of the PSRs 2012, Transway provided information to the Authority regarding Mr Singer in the PSD Individual Form.
- 5.4 The PSD Individual Form contained questions relating to, amongst other things, involvement in criminal investigations, ongoing civil proceedings and regulatory matters. In particular, the PSD Individual Form confirmed:
 - i. That neither Mr Singer nor any firm at which he held a position of influence had ever been the subject of a criminal investigation (even where not resulting in a conviction);
 - ii. That no firm at which Mr Singer held a position of influence had ever been ordered to produce documents pursuant to any criminal investigation or been the subject of a search pursuant to any criminal investigation;
 - iii. That Mr Singer was not subject to ongoing civil proceedings; and
 - iv. That no firm at which Mr Singer held a position of influence had during his association with that firm ever been criticised, censured, disciplined, suspended, fined or been the subject of any other disciplinary or intervention action by any regulatory body.

The Application

- 5.5 In October 2018, Transway applied to be re-registered with the Authority as a small payment institution pursuant to the requirements of the PSRs 2017. To this end, Transway filed with the Authority the Application Form and completed a declaration confirming the accuracy of the information provided. Mr Singer was responsible for the Application and signed the accompanying declaration.
- 5.6 The Application Form included questions which asked Transway to confirm that information previously provided by the firm was up to date for both the firm's PSD individuals (which includes the applicant's directors where an applicant is a company, and the persons responsible for its management) and controllers. Both questions were answered 'yes' by Transway. Mr Singer has told the Authority (and the Authority accepts) that he "did not think to check" the answers given previously, and whether they should be updated.
- 5.7 On 14 November 2018, the Authority wrote to Mr Singer on behalf of Transway, in the course of considering the Application, asking him to confirm that there had been no changes to information he had previously provided to the Authority; this was to include any information about individuals or controllers, such as changes to addresses, or to responses to the disclosure questions.

Compliance consultants engaged by Transway replied on Transway's behalf stating that there were no changes after submission of the application.

Criminal Investigation and Civil Cash Forfeiture Proceedings

- 5.8 The Authority conducted background searches in the course of assessing the Application.
- 5.9 As a result of these searches, the Authority identified that Transway was the subject of investigative actions in connection with a criminal investigation into money laundering. In October 2016, the police searched the premises of Transway and seized documents and other materials. The police also seized from Transway approximately £750,000 in cash, pursuant to the Proceeds of Crime Act 2002. Mr Singer was interviewed by the police under caution, and provided the police with written statements.
- 5.10 The police subsequently applied for an order seeking the forfeiture of approximately £689,000 of the cash seized from Transway. They commenced civil cash forfeiture proceedings against Mr Singer in February 2018 and a hearing to determine the application was listed for April 2019. These proceedings were withdrawn by the police on 7 February 2019.
- 5.11 Mr Singer did not notify the Authority, on behalf of Transway, of the investigative actions taken against him and Transway or the subsequent cash forfeiture proceedings, either at the time these events occurred or as part of the Application.

HMRC Disciplinary Action

- 5.12 The Authority also identified that HMRC visited Transway in 2013 in its capacity as the firm's regulator in relation to money laundering. In February 2013, HMRC wrote to Transway informing it that HMRC had identified a number of weaknesses with Transway's anti-money laundering and counter-terrorism financing procedures which constituted breaches of the Money Laundering Regulations 2007. These included failures by Transway to: establish and maintain policies and procedures; apply customer due diligence measures; and conduct appropriate and risk-sensitive ongoing monitoring of business customers.
- 5.13 In 2015, HMRC imposed a fine on Transway of £2,500 in relation to these breaches.
- 5.14 Mr Singer did not notify the Authority, on behalf of Transway, of these matters, either at the time they occurred or as part of the Application.

6. IMPACT ON THE CONDITIONS FOR REGISTRATION

- 6.1 Pursuant to regulation 14(1) of the PSRs 2017, the Authority may refuse an application for registration as a small payment institution only if any of the conditions in paragraphs (2) to (11) of regulation 14 are not met. The Authority is of the view, for the reasons set out below, that Transway has not satisfied the conditions in regulation 14(6) and (7).
- 6.2 The Authority places considerable importance on receiving accurate and complete information from those it regulates. Pursuant to regulation 32 of the PSRs 2009, Transway had an obligation to ensure that it notified the Authority

without undue delay of any significant change in the firm's circumstances relevant to fulfilment of the conditions of registration as a small payment institution, A similar obligation applies to small payment institutions now registered under the PSRs 2017. As made clear in the guidance set out in both the Previous Approach Document and the Current Approach Document, the Authority considers that the requirement to notify it of a significant change in circumstances includes notification of matters that may impact on the fitness and propriety of the controllers of a payment institution and the good repute of its directors.

- 6.3 Mr Singer is, and was at all material times, the sole director of Transway and therefore responsible for its compliance with its regulatory obligations, including its obligation to notify the Authority of significant changes in the firm's circumstances. It is the Authority's view that each of: (i) the involvement of Mr Singer and Transway in the criminal investigation into money laundering, including the search of Transway's premises; (ii) the subsequent civil cash forfeiture proceedings; and (iii) the criticisms and subsequent disciplinary action by HMRC should have been notified to the Authority, because:
- v. Each of these matters related to, and occurred in connection with, the conduct by Transway of its payment services business; and
 - vi. Each of these matters was relevant to the assessment of Mr Singer's fitness and propriety, and whether he was of good repute, and was therefore material to the firm's ability to meet the conditions of registration.
- 6.4 Contrary to its regulatory obligations, Mr Singer did not notify the Authority of any of these matters on behalf of Transway at the time they occurred.
- 6.5 Moreover, the matters described above all occurred before Mr Singer submitted the Application. It is the view of the Authority that Mr Singer should have disclosed in Transway's Application each of: (i) the criminal investigative steps taken against Transway, including the search of its premises; (ii) the civil cash forfeiture proceedings; and (iii) HMRC's criticisms and subsequent disciplinary action. Specifically, the Authority considers that these matters should have been disclosed in response to the questions in the Application Form requiring Transway to confirm that information previously provided for the firm's PSD individuals and controllers was up to date. Each of these matters was relevant to the Authority's determination of the Application and the assessment of whether Transway met the conditions for registration under the PSRs 2017. However, Mr Singer did not disclose the above matters in the Application. Nor did he do so (or instruct the compliance consultants to do so on Transway's behalf) when prompted by the Authority to confirm that there had been no changes to the information supplied, including in relation to the disclosure questions.
- 6.6 As set out in the Current Approach Document, in considering whether an individual is fit and proper and of good repute for the purposes of regulations 14(6) and (7), the Authority will consider, amongst other things, the individual's competence, capability and experience. The factors the Authority will take into account include whether 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 standards of the regulatory

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

- 6.7 As the Current Approach Document makes clear, the Authority takes the non-disclosure of relevant information very seriously. The firm was involved in a criminal investigation into money laundering, in which a search of its premises was conducted. The cash forfeiture proceedings arose from the firm's involvement in that investigation and sought the forfeiture of a substantial sum as the proceeds of crime. The HMRC criticisms, and its subsequent disciplinary action, resulted from failings in the firm's anti-money laundering systems and controls. These matters therefore concerned issues relating to financial crime, and they occurred in the context of the firm conducting its payment services business and were material matters that should have been disclosed to the Authority.
- 6.8 It is the view of the Authority that the failure to disclose these matters demonstrates a serious failure by Mr Singer to understand important requirements of the regulatory regime: in particular, the conditions for registration as a small payment institution and the requirement to notify the Authority of any significant change in circumstances relevant to Transway's fulfilment of the conditions for registration. The Authority considers that Mr Singer's failure to understand the requirements for ongoing disclosure, and to check the previous disclosures made when asked to confirm that the underlying information had not changed, and update the information accordingly, demonstrate a serious lack of competence and capability.
- 6.9 In the light of the matters described above, the Authority is not satisfied that Mr Singer is fit and proper or of good repute. The Authority has therefore refused the Application.

7. REPRESENTATIONS

- 7.1 Annex B contains a brief summary of the key representations made by Transway 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 Transway, whether or not set out in Annex B.

8. IMPORTANT NOTICES

- 8.1 This Final Notice is given to Transway Ltd under section 390(1) of the Act (as applied by paragraph 10 of Schedule 6, Part 1 of the PSRs 2017).

Publication

- 8.2 By reason of paragraph 10 of Schedule 6, Part 1 of the PSRs 2017, sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Final 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 Transway or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

- 8.4 For more information concerning this matter generally, contact Paul Ullah, Manager, Retail Authorisations Department at the Authority (direct line: 020 7066 5104 / email: paul.ullah@fca.org.uk).

James O'Connell
Senior Manager
Retail Department, Authorisations Division

ANNEX A

REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

Relevant Statutory Provisions

The Payment Services Regulations 2017 (as in force from 13 January 2018)

- 1.1 By Regulation 9(7) and Regulation 15 of the PSRs 2017, if the Authority proposes to refuse an application for registration it must give the applicant a warning notice.
- 1.2 Regulation 13(1) requires an application for registration as a small payment institution to contain, or be accompanied by, the information required by the Authority.
- 1.3 Regulation 13(4) states that at any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- 1.4 Regulation 14(1) states that the Authority may refuse to register an applicant as a small payment institution only if any of the conditions set out in paragraphs (2) to (11) are not met.
- 1.5 Regulation 14(6) states that *"where the applicant is a partnership, an unincorporated association or a body corporate, the applicant must satisfy the Authority 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"*.
- 1.6 Regulation 14(7) states that *"the applicant must satisfy the Authority that:*
 - 1.7 *where the applicant is a body corporate, the directors;*
 - 1.8 *the persons responsible for the management of the institution; and*
 - 1.9 *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"*.
- 1.7 Regulation 37(1) states that *"Where it becomes apparent to an authorised payment institution or a small payment institution that there is, or is likely to be, a significant change in circumstances which is relevant to... in the case of a small payment institution, its fulfilment of any of the conditions set out in regulation 14(5) to (11) (conditions for registration as a small payment institution).*
- 1.8 Schedule 6, Part 1 (10) states that Part 26 of the Act applies save for the modifications detailed.

The Payment Services Regulations 2009 (as amended by the Payment Services Regulations 2012) (as in force between 1 October 2012 and 12 January 2018)

- 1.9 Regulation 13 stated that the Authority might refuse to register an applicant as a small payment institution only if any of the conditions set out in paragraphs (2) to (6) was not met.
- 1.10 Paragraph 13(4A) provided: "Where the applicant is a partnership, an unincorporated association or a body corporate, the applicant must satisfy the [Authority] 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".
- 1.11 Paragraph 13 (4B) provided: "The applicant must satisfy the [Authority] that:
- 1.11.1 where the applicant is a body corporate, the directors;
 - 1.11.2 the persons responsible for the management of the institution; and
 - 1.11.3 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".
- 1.12 Regulation 32(1) provided: "Where it becomes apparent to a small payment institution that there is, or is likely to be, a significant change in circumstances which is relevant to ... its fulfilment of any of the conditions set out in regulation (4) to (6) ... it must provide the Authority with details of the change without undue delay ..".

Relevant Guidance

"Payment Services and Electronic Money - Our Approach. The FCA 's role under the Payment Services Regulations 2017 and the Electronic Money Regulations 2011" (the "Current Approach Document")

- 1.13 In exercising its powers in relation to the approval of an application for registration as a small payment institution, the Authority must have regard to guidance published in the Authority's 'Our approach' document, including the section titled 'Authorisation and registration'. The version of the 'Our approach' document current at the date of the application was published in July 2018.
- 1.14 The paragraphs relevant to the refusal of the Application are set out below.

Chapter 3: Authorisation and registration

- 1.15 In exercising its powers in relation to the approval of an application for registration as a small payment institution, the Authority must have regard to guidance published in the Authority's 'Our approach' document, including the section titled 'Authorisation and registration'. The version of the 'Our approach' document current at the date of the application was published in July 2018.
- 1.16 The paragraphs relevant to the proposal to refuse the Application are set out below.
- 1.17 Paragraphs 3.90 to 3.99 and 3.128 to 3.129 set out guidance on Regulation 14(6). These paragraphs state (amongst other things) that the FCA considers fitness and propriety for the purposes of Regulation 14(6) to incorporate the

following essential factors, namely the (i) honesty, integrity and reputation (ii) competence and capability and (iii) financial soundness of the person with a qualifying holding having regard to the need to ensure the sound and prudent management of a payment institution.

- 1.18 Paragraph 3.98 of the Approach Document identifies examples of factors that the FCA will consider when assessing the honesty, integrity and reputation of a controller. These factors include whether 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 standards of the regulatory system and with other legal, regulatory and professional requirements and standards.
- 1.19 Paragraph 3.111 of the Approach Document makes clear that the FCA takes the non-disclosure of material facts very seriously as it is seen as evidence of current dishonesty.
- 1.20 In paragraph 3.107 of the Approach Document 2018, it is explained that matters that the Authority will have regard to when considering honesty, integrity and reputation include (but are not limited to) involvement in relevant criminal proceedings or ongoing investigations, relevant civil cases and relevant disciplinary action. It is explained that "relevant" matters will include offences under legislation relating to companies, financial services, money laundering or misconduct (paragraph 3.109) and that each application is considered on a case-by-case basis (paragraph 3.110).
- 1.21 Paragraph 3.130 sets out guidance on Regulation 14(7). This paragraph states that in its assessment of whether a director is of good repute, the Authority will consider the same essential factors relating to fitness and propriety set out in paragraphs 3.90 to 3.99 in relation to controllers.

Chapter 4: Change in circumstances of authorisation or registration

- 1.22 Paragraph 4.8 states that there is a general requirement where it becomes apparent to a PI or EMI that there is, or is likely to be, a significant change in circumstances, which is relevant to its fulfilment of the conditions for authorisation or registration, the PI or EMI must provide us with details of the change without undue delay.
- 1.23 Paragraph 4.32 states that it is a condition of authorisation and registration that anyone with a qualifying holding in an authorised or small EMI or PI must be a 'fit and proper' person. It states that we expect to be notified if there are or will be significant changes likely to affect these conditions without undue delay.
- 1.24 Paragraph 4.36 states that PIs must notify the FCA of any changes in the details of existing PSD Individuals, including matters relating to fitness and propriety. It indicates how the firm should notify of these changes via the Notification of changes to PSD Individual' form.
- 1.25 Paragraph 4.40 provided guidance regarding changes affecting the fitness and propriety of individuals. When a PI becomes aware of information that may have an impact on the fit and proper condition applying to 'directors/persons responsible' for management of the PI and its payment services, the PI should notify us using the 'Notification of changes to PSD individual' form. The FCA will then assess the information against the fitness and propriety requirements

previously described before notifying the PI of the action the FCA intends to take.

**“The FCA’s role under the Payment Services Regulations 2009 – Our Approach”
– June 2013** (the “Previous Approach Document”)

- 1.26 The paragraphs of the Previous Approach Document relevant to the decision to refuse the Application are set out below.

Chapter 3: Authorisation and registration

- 1.27 Guidance regarding those factors relevant to the Authority’s assessment of fitness and propriety included (in paragraph 3.126) examples of the matters relevant to the assessment of honesty, integrity and reputation, including:
- i) Whether the person had been investigated for any criminal offence;
 - ii) Whether the person had been the subject of any existing or previous investigation or disciplinary proceedings, including by government bodies or agencies (such as HMRC), and
 - iii) Whether the person had been the subject of any adverse finding in civil proceedings, including any findings by government bodies or agencies (such as HMRC).

- 1.28 Paragraph 3.127 stated that ‘relevant’ matters for these purposes included offences under legislation relating to financial services and money laundering.

Chapter 4: Changes in circumstances of authorisation or registration

- 1.29 Paragraph 4.7 states that *“The general requirement is that where it becomes apparent to a PI that there is, or is likely to be, a significant change in circumstances, which is relevant to its fulfilment of the conditions for authorisation or registration, it must provide us with details of the change without undue delay. We would generally consider ‘without undue delay’ to mean within 28 days of the change occurring at the latest”*.
- 1.30 Paragraph 4.20 states *“A PI must also notify us of any changes in the details of existing PSD individuals, such as name changes and matters relating to fitness and propriety. It should do this using the ‘Notification of changes to PSD individual’ form”*.
- 1.31 Paragraph 4.24 provides additional guidance, stating ‘Where a PI becomes aware of information that may have an impact on the fit and proper condition applying to directors and persons responsible for management of the payment institution and its payment services activities it should notify us using the ‘Notification of changes to PSD individual’ form. We will examine the information, assess it against the fitness and propriety requirements previously explained, and notify the PI of the action that we intend to take.

ANNEX B

REPRESENTATIONS

- 1.1 Transway's representations (in italics), and the Authority's conclusions in respect of them, are set out below.

Burden of proof

- 1.2 *The burden of proof is not on Transway or Mr Singer; Mr Singer should be presumed to be fit and proper and of good repute unless the evidence positively establishes the converse.*
- 1.3 Regulation 14(6) and (7) of the PSRs 2017 (set out in Annex A), respectively, require the applicant to satisfy the Authority that persons having a qualifying holding in it are fit and proper and that the directors and the persons responsible for its management are of good repute. Accordingly, the burden of proof lies with Transway to demonstrate these matters to the satisfaction of the Authority. For the reasons set out in this Notice, it has not done so.

Lack of substance or seriousness to the matters not disclosed

- 1.4 *The search of Transway's premises by the police did not result in any criminal charges against Mr Singer or Transway. Mr Singer's attendance at his police interview was voluntary and the police have confirmed that he was never subject to a "full" investigation, and the Authority has accepted that neither Mr Singer nor Transway was the focus of the investigation. At no point during the process did Mr Singer feel he was in danger of criminal charges being brought against him. The civil forfeiture proceedings did not allege misconduct on Transway's (or Mr Singer's) part. They were misconceived and ultimately dropped as soon as Transway provided the police with evidence.*
- 1.5 *The criticisms of Transway made by HMRC did not allege deliberate misconduct, and Mr Singer, on behalf of Transway, took remedial steps to address the issues raised. On subsequent visits in 2013 and 2014, HMRC assessed Transway's procedures as satisfactory in other respects.*
- 1.6 *In the light of the position as set out in paragraphs 4 and 5 above, Mr Singer did not appreciate that there was anything relating to the criminal investigation, the civil forfeiture proceedings or the HMRC criticisms or fine that meant the information previously provided in the course of Transway's 2013 application for re-registration was now inaccurate, or otherwise that these matters required disclosure. He cannot now recall whether he considered the question whether there was anything to disclose in relation to the criminal investigation and the civil forfeiture proceedings, but his feeling that he was innocent caused him to think that these matters were not really anything to do with him.*
- 1.7 The Authority's conclusion that Mr Singer is not fit and proper, or of good repute, is based on his failure to disclose relevant matters to the Authority on behalf of Transway. The Authority does not allege any criminal wrongdoing by Mr Singer or Transway. It is immaterial whether or not criminal charges were brought, whether or not the civil forfeiture proceedings against Transway ultimately succeeded, and whether or not HMRC alleged deliberate misconduct, or has ongoing concerns about Transway. The relevant events were serious, and fell squarely within the scope of matters which ought to have been

disclosed by Transway to the Authority, but Mr Singer did not do so on Transway's behalf, either at the time they happened or in the course of the Application, in response first to clear questions in the Application Form and then to a specific enquiry by a member of the Authority's Authorisations team. Further, the Authority notes that Mr Singer completed the Application Form and responded to the Authority's enquiry at a stage when the civil forfeiture proceedings were still ongoing; the proceedings themselves, and the investigation which gave rise to them would therefore have been at the forefront of Mr Singer's mind.

The criminal investigation arguably did not require disclosure

- 1.8 *The police have confirmed that Mr Singer and Transway were never subject to a "full" investigation and the Authority has accepted that they were not the focus of the investigation. It is therefore arguable that they were not "the subject of" a criminal investigation, and that their involvement in the investigation accordingly did not require disclosure, because it did not render inaccurate the answer "no" to the following questions on the PSD Individual Form: "Has the PSD individual ever been the subject of a criminal investigation?" and "Has any firm at which the PSD individual holds or has held a position of influence ever ... been the subject of any criminal investigation?".*
- 1.9 As Transway's premises were searched, with documents and materials seized, and Mr Singer was interviewed under caution by the police (albeit voluntarily), the Authority does not accept that neither Mr Singer nor Transway was the subject of a criminal investigation, albeit it may not have been a "full" investigation and they were not the focus of the investigation. Accordingly, it considers that the investigation ought to have been disclosed by Mr Singer on Transway's behalf (especially in the light of the stress laid on the importance of full disclosure in the Current Approach Document and the Previous Approach Document). In any event, even if it were the case that the investigation would not have fallen to be disclosed on its own, Transway and Mr Singer do not dispute that the search and the forfeiture proceedings arising out of it should have been disclosed, and a disclosure of these would inevitably have necessitated an explanation of the investigation itself. They also do not dispute that he should have disclosed, on Transway's behalf, the HMRC criticisms and subsequent fine. The Authority considers that, taken together, these matters amount to serious non-disclosures.

The non-disclosures were a mistake from Mr Singer has learned, and it would be disproportionate to refuse the Application

- 1.10 *Mr Singer does not come from a background in payment services or regulation. His payment services business began at a time when the industry was not regulated apart from a requirement for registration with HMRC in relation to money laundering. He did, however, retain the services of compliance consultants to provide on-site assistance to Transway for one hour per month from 2013 onwards.*
- 1.11 *Mr Singer completed both the 2013 re-registration application and the Application with the guidance of the compliance consultants, who were aware of the cash forfeiture issue at the time of the Application. Notwithstanding this, Mr Singer accepts he must take responsibility on behalf of Transway for the failures, although the involvement of the consultants should be regarded as a mitigating factor. The Application Form did not repeat the questions from the*

PSD Individual Form and Mr Singer did not think to check the answers given in the latter and consider whether they should be updated.

- 1.12 *Mr Singer has learned a lesson from these proceedings. He is very sorry for his misjudgement and now understands the need to be more scrupulous in responding to questions from the Authority. He is willing to go on training courses to improve his knowledge of Authority requirements, especially in relation to small payment institutions, including disclosure requirements. He is a man of good character, as attested to in a number of statements from character witnesses, which he has produced.*
- 1.13 *The refusal of the Application would put an end to a part of Mr Singer's livelihood. It would be disproportionate to refuse the Application.*
- 1.14 A background outside payment services and regulation does not excuse Mr Singer's failure to understand the requirements on a firm engaged in payment services, including the obligation to make disclosure to the Authority as necessary on an ongoing basis, and to answer the disclosure questions fully and accurately. The Authority notes that Transway accepts that the role of compliance consultants in dealing with the Application does not excuse its failures and the Authority considers that it does not mitigate those failures either: the responsibility to make appropriate disclosure was Mr Singer's on behalf of Transway, and he was aware of the questions in the course of the Application and of the matters which should have been disclosed. The questions were clear in referring to answers previously given by Transway, and Mr Singer failed to review those answers on Transway's behalf to verify their ongoing accuracy and to make the appropriate disclosures.
- 1.15 The Authority has made no finding that Mr Singer is not of good character and notes Mr Singer's expressions of regret and his willingness to take steps to improve his lack of competence and capability (although it notes that, to date, it appears he has taken no actual steps in relation to training courses). However, the Authority must consider whether it is satisfied that Mr Singer is fit and proper, and of good repute, at the current time. For the reasons set out in this Notice, it is not so satisfied (although it would be open to Transway to seek to satisfy the Authority of those matters, should it wish to make a new application for registration as a small payment institution at any point in the future).
- 1.16 As the Authority, for the reasons set out in this Notice, is not satisfied that Mr Singer is fit and proper, or of good repute, it does not consider it would be disproportionate to refuse the Application, and considers that it is appropriate to do so.