



Rule 14.04

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDING LIST**

Case: S ECI 2021 04738

Filed on: 05/05/2023 03:59 PM

No. S ECI 2021 04738

BETWEEN

PAUL LEIGHTON MUMFORD

First Plaintiff

-and-

GAYLE MUMFORD

Second Plaintiff

-and-

EML PAYMENTS LTD

Defendant

DEFENCE TO AMENDED STATEMENT OF CLAIM

Filed pursuant to order 1 of the orders made by the Honourable Justice Nichols on 6 March 2023 as varied by order 1 of the orders made 2 May 2023

Date of Document: 5 May 2023	Solicitor's Code: 420
Filed on behalf of: the Defendant	Telephone: (03) 9288 1234
Prepared by: Herbert Smith Freehills	Ref: 82732284
Level 22	Email: harry.edwards@hsf.com
80 Collins Street	
MELBOURNE VIC 3000	

Preliminary

- A In this Defence, a reference to the “**PFS Business**” means the business conducted by Prepaid Financial Services (Ireland) Limited (**PFSIL**) and its subsidiaries, including PFS Card Services (Ireland) Limited (**PCSIL**) and Prepaid Financial Services Limited (**PFS UK**).
- B For the purposes of this Defence, terms defined in the Amended Statement of Claim filed on ~~16 December 2024~~ 16 February 2023 are adopted unless the context indicates otherwise.

- C For ease of reference, the defendant adopts the headings used in the Amended Statement of Claim but makes no admission thereby, and does not plead to those headings.
- D In accordance with general principles and usual practice, the defendant has not pleaded to the particulars in the Amended Statement of Claim, and nothing in this defence should be taken to be an admission of any fact alleged in the particulars to the Statement of Claim.

In answer to the allegations in the Amended Statement of Claim, the defendant says as follows.

A.1 The Plaintiffs and Group Members

1. It does not plead to paragraph 1 as it contains no allegation against it.
2. As to paragraph 2, it:
 - (a) admits that the plaintiffs were recorded on the EML share register as holders of 10,150 ordinary fully paid shares on 12 May 2021;
 - (b) says further that the plaintiffs sold their shares on 21 May 2021;
 - (c) otherwise does not know and cannot admit the allegations.
3. As to paragraph 3, it:
 - (a) admits that there were more than seven persons who met the conditions referred to in paragraphs 1(a) and 1(c) of the Amended Statement of Claim;
 - (b) otherwise denies the allegations.

A.2 The Defendant

4. It admits paragraph 4.
5. As to paragraph 5:
 - (a) it admits subparagraph (a);
 - (b) it admits subparagraph (b);
 - (c) it admits subparagraph (c);
 - (d) it admits subparagraph (d);
 - (e) as to subparagraph (e), it:
 - i. says that:

- (A) pursuant to s 1362A of the Corporations Act, the operation of s 674(2) of the Corporations Act in its application to the defendant was modified by the Corporations (Coronavirus Economic Response) Determination (No 2) and (No 4);
 - (B) by reason of the modifications to s 674(2) of the Corporations Act effected by those legislative instruments, at all material times between 26 May 2020 and 22 March 2021, EML was not obliged under s 674(2) of the Corporations Act to notify the ASX of information unless, inter alia, it knew or was reckless or negligent with respect to whether the information would, if it were generally available, have a material effect on the price or value of ED securities of the defendant;
- ii. admits that during the Relevant Period, the Continuous Disclosure Obligations applied to it ~~on and from~~ between 23 March 2021 and 13 August 2021;
 - iii. says further that on and from 14 August 2021:
 - (A) section 674 of the Corporations Act has not been a civil penalty provision or a financial services civil penalty provision within the meaning of ss 1317E(3) and 1317HA of the Corporations Act;
 - (B) section 674 of the Corporations Act has not been a section 1325 order provision within the meaning of section 1325(7) of the Corporations Act;
 - (C) such that the plaintiffs are not entitled to an order for compensation under sections 1317HA or 1325 of the Corporations Act for damage caused by any conduct of EML in contravention of section 674.
 - iv. otherwise denies the allegations.
6. It admits paragraph 6. As to paragraph 6:
- (a) it says that on and from 14 August 2021:
 - i. pursuant to s 1041H(4) of the Corporations Act, if EML engaged in conduct that did not contravene subsection 674A(2) of the

Corporations Act, but would contravene that subsection if paragraph 674A(2)(d) contained the same text as paragraph 674(2)(d), EML's engaging in that conduct did not contravene s 1041H; and

- ii. pursuant to s 12DA(3) of the ASIC Act, if EML engaged in conduct that did not contravene subsection 674A(2) of the Corporations Act, but would contravene that subsection if paragraph 674A(2)(d) contained the same text as paragraph 674(2)(d), EML's engaging in that conduct did not contravene s 12DA of the ASIC Act;

(b) it otherwise admits the allegations.

B EML's Business

B.1 Relevant EML committees and personnel

Audit and Risk Committee

7. It admits paragraph 7.

Directors and officers of EML

8. It admits paragraph 8.
9. It admits paragraph 9 save to say that Mr Liddy was only a member of the Audit & Risk Committee from 10 August 2012 to 20 April 2021 and from 11 July 2022 to 22 February 2023.
10. It admits paragraph 10.
11. It admits paragraph 11 save to say that Mr Adcock was Chair of the Audit & Risk Committee from 23 August 2017.
12. It admits paragraph 12.
13. ~~It admits As to paragraph 13, it: and says further that Mr Wenk was at all material times from 26 November 2019 to June 2021:~~

(aa) admits that at all material times from July 2018 Mr Wenk was EML's Group General Counsel;

(a) admits that from 26 November 2019 to 29 June 2021 Mr Wenk was a joint Company Secretary of EML along with Ms Tissera-Isaacs;

- (b) ~~in the premises,~~ admits that from 26 November 2019 to 29 June 2021 Mr Wenk was an officer of EML within the meaning of s 9 of the Corporations Act and 19.12 of the ASX Listing Rules;
- (c) otherwise denies the allegations.
14. It admits paragraph 14 and says further that, between 26 November 2019 and 29 June 2021, Ms Tissera-Isaacs was a joint Company Secretary along with Mr Wenk.
15. It admits paragraph 15.
16. As to paragraph 16, it:
- (a) admits that, during the Relevant Period, Mr Betts was EML's Chief Risk and Compliance Officer;
- (aa) it denies subparagraph (aa) and says that from 25 September 2020 until 1 April 2022, Stefan Gadiot was the Chief Risk Officer of PCSIL, and from 1 April 2022 to the end of the Relevant Period, Mr Salvador was the Chief Risk Officer of PCSIL (in an interim capacity from 1 April to 19 June 2022 and permanently appointed following the CBI's approval on 20 June 2022);
- (b) says that from ~~about 27 February 2021 to 15 June 2021 the end of the Relevant Period,~~ Mr Betts was an interim director of PCSIL;
- (c) admits that during the period that he was an interim director of PCSIL, Mr Betts was an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules;
- (d) says further that Mr Betts did not have the authority or responsibility for planning, directing and controlling the activities of EML, either directly or indirectly;

Particulars

EML determined in 2018 and in 2020 that Mr Betts was not a Key Management Personnel for the purpose of the applicable accounting standards (AASB124).

EML's Delegations of Authority Policy dated 5 June 2020.

- (e) otherwise denies the allegations.
17. As to paragraph 17, it:
- (a) admits that, at all material times from March 2009 until 31 March 2021, Mr Moran's title was the Chief Executive Officer of PFSIL;

- (b) says that Mr Moran ceased to have any substantive role in the EML business or the PFS Business from 28 February 2021, and his employment ceased on 31 March 2021;
- (c) says that, from on or about 31 March 2020:
 - i. PFSIL has been a wholly owned subsidiary of EML Payments European Holdings Limited, which entity has in turn been a wholly owned subsidiary of EML;
 - ii. notwithstanding his title as CEO and the terms of the delegations of authority policy referred to in the particulars to paragraph 16(d) above, in practice, while Mr Moran remained in his role, all material strategic decisions in respect of the PFS Business were made by Mr Cregan and Mr Shore without the participation of Mr Moran;
- (d) says further that Mr Moran has never had the authority or responsibility for planning, directing and controlling the activities of EML, either directly or indirectly;

Particulars

EML determined in 2020 that Mr Moran was not a Key Management Personnel for the purpose of the applicable accounting standards (AASB124).

- (e) otherwise denies the allegations.
18. As to paragraph 18, it:
- (a) says that from about June 2011 to March 2021, Mr Britton was the Commercial Director of PFS UK, which was a wholly owned subsidiary of PFSIL;
 - (aa) admits that from 1 April 2021 to 3 August 2021 Mr Britton was the interim CEO of PCSIL;
 - (b) says that from about March 2021 to 3 August 2021 ~~the end of the Relevant Period~~, Mr Britton was CEO Europe;
 - (c) admits that during the periods that he was CEO Europe and interim CEO of PCSIL, Mr Britton was an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules;
 - (d) says further that, prior to the appointment of Ms Evans in August 2021, save for the periods during which he was CEO Europe and interim CEO of PCSIL,

all material strategic decisions in respect of the PFS Business were made by Mr Cregan and Mr Shore without the participation of Mr Britton;

(da) says further that Mr Britton's employment ceased on 29 October 2021; and

(e) it otherwise denies the allegations.

19. As to paragraph 19:

(a) it admits that, at all material times from 31 March 2020, Ms Evans was the regional CEO for EML's business in Europe, Middle East and Africa (**EMEA**) save for a period between February 2021 and August 2021 when she was in a newly created role, Product Director, Platforms, which focused on product and innovation;

(b) it says that, prior to 3 August 2021 during the Relevant Period, Ms Evans' role did not include responsibility for the PFS Business, whether in EMEA or otherwise;

(c) it says further that Ms Evans prior to 3 August 2021 has never had the authority or responsibility for planning, directing and controlling the activities of EML, either directly or indirectly;

Particulars

EML determined in 2020 that Ms Evans was not a Key Management Personnel for the purpose of the applicable accounting standards (AASB124).

(ca) it says further that from 3 August 2021 until October 2022 Ms Evans was the interim CEO of PCSIL;

(cb) it admits that during the period that she was interim CEO of PCSIL, Ms Evans was an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules;

(d) it otherwise denies the allegations.

19A It admits paragraph 19A.

19B It admits paragraph 19B.

19C As to paragraph 19C, it:

(a) admits sub-paragraph 19C(a);

(b) _____ says that Mr Gatt did not have the capacity to affect significantly EML's financial standing, nor did he participate in making decisions that affect the whole or a substantial part of the business of EML;

Particulars

Mr Gatt reported to the Group CFO and had limited authority. He did not attend EML or PCSIL Board meetings or EML Audit & Risk Committee meetings in the Relevant Period.

EML's Delegation of Authority Policy dated 19 October 2021.

(c) _____ otherwise denies the allegations.

19D As to paragraph 19D, it:

(a) _____ admits that from 7 March 2022 Mr Gaughran was the General Counsel for EML Europe;

(b) _____ says that as general counsel for Europe, Mr Gaughran did not have the capacity to affect significantly EML's financial standing, and to the extent he participated in making decisions that affected a substantial part of the business of EML did so only by way of giving advice in his professional capacity;

(c) _____ otherwise denies the allegations.

19E As to paragraph 19E, it:

(a) _____ admits that from 21 March 2022 Ms Power was the European Compliance & Regulatory Director of EML;

(b) _____ says that Ms Power was not a director of EML or any of its subsidiaries, and reported to Mr Betts in the Relevant Period;

(c) _____ otherwise denies the allegations.

19F It denies the allegations in paragraph 19F and says that Mr Nuvoloni was the interim Head of Compliance for PCSIL from 7 March 2022 and reported to Ms Power.

19G It denies the allegations in paragraph 19G and says that Mr Salvador was the Head of Risk Management for PCSIL from 6 September 2021, reporting to Mr Gadiot, and from 1 April 2022 to the end of the Relevant Period, Mr Salvador was the Chief Risk

Officer of PCSIL (in an interim capacity from 1 April to 19 June 2022 and permanently appointed following the CBI's approval on 20 June 2022), reporting to Mr Betts.

19H It denies the allegations in paragraph 19H and says that Mr Gadiot was the Chief Risk Officer of PCSIL from September 2020 to 1 April 2022 and reported to Mr Betts.

20. As to paragraph 20, it:

- (a) refers to and repeats paragraphs 8 to 19H above;
- (b) admits that, for the purposes of r 3.1 of the ASX Listing Rules, EML is or became aware of information if, and as soon as, Mr Cregan, Mr Liddy, Ms Wilson, Mr Adcock, Mr Gresham, Mr Wenk, Ms Tissera-Isaacs, Mr Shore, Mr Betts, Ms Evans, Ms Shand, Mr Curneen or Mr Britton had, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of EML;
- (c) says further that the effect of rr 3.1 and 19.12 of the ASX Listing Rules was not to deem EML to have been or become aware of information which Mr Betts, Ms Evans or Mr Britton had, or ought reasonably to have, come into possession of prior to them becoming an officer of EML, or in the case of Mr Betts, Mr Britton and Mr Wenk after ceasing to be an officer of EML;
- (d) says further that it will rely at trial upon the full terms and effect of rr 3.1 and 19.12 of the ASX Listing Rules;
- (e) otherwise denies the allegations.

B.2 EML and its acquisition of PFS

21. It admits paragraph 21.

22. It admits paragraph 22 and says further that:

- (a) PFSIL was founded in 2008 primarily as a reseller of pre-paid cards;
- (b) by the time EML agreed to acquire PFSIL, and at all material times thereafter, the PFS Business had evolved to include provision of white-label payments and banking-as-a-service technology.

23. It admits paragraph 23.

24. It admits paragraph 24.

25. It admits paragraph 25.

25A It admits paragraph 25A.

26. It admits paragraph 26.

B.3 Regulation of PFS

27. As to paragraph 27, it:

- (a) admits that at all material times prior to 19 December 2020:
 - i. the PFS Business in the European Economic Area (**PFS EU Business**) and the PFS Business in the UK primarily operated through PFS UK;
 - ii. PFS UK was authorised to operate as an electronic money institution under the *Electronic Money Regulations 2011 (UK Authorisation)*;
 - iii. up until around April 2013, PFS UK was regulated by the Financial Services Authority (**FSA**), being the UK's competent authority for the regulation of electronic money institutions;
 - iv. since around April 2013, PFS UK has been regulated by the Financial Conduct Authority (**FCA**), being the entity which replaced the FSA as the UK's competent authority for regulation of electronic institutions from April 2013;
 - v. the UK Authorisation permitted PFS UK to operate lawfully as an electronic money institution throughout the European Economic Area under passporting arrangements;
- (b) refers to and repeats paragraph 27(1)A below;
- (c) otherwise denies the allegations.

~~27(1)-A.~~ Further to paragraph 27, it says:

- (a) at all material times prior to 19 December 2020, PFS UK operated a branch in Ireland and the PFS EU Business included the provision of e-money and payment services in Ireland;
- (b) at all material times prior to 19 December 2020, PFS UK was subject to regulation by the CBI in relation to the operation of its Irish branch including, inter alia, compliance with AML/CTF obligations under the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* (Ireland) (**CJ Act**);

- (c) from around 4 April 2019, PCSIL has been authorised to operate as an electronic money institution under the *European Communities (Electronic Money) Regulations 2011 (Irish Authorisation)*;
- (d) the Irish Authorisation permits PCSIL lawfully to operate as an electronic money institution in the European Economic Area under passporting arrangements;
- (e) the Irish Authorisation was granted to PCSIL on the basis that PCSIL had robust governance arrangements including:
 - i. a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
 - ii. effective procedures to identify, manage, monitor and report the risks to which it is, or might be, exposed;
 - iii. adequate internal control mechanisms, including sound administrative and accounting procedures;
- (f) prior to 19 December 2020, the PFS EU Business was operated primarily through PFS UK under its UK Authorisation and not through PCSIL under its Irish Authorisation;
- (g) from 19 December 2020, the PFS EU Business has been operated primarily through PCSIL under its Irish Authorisation;
- (h) at all material times, PFS UK and PCSIL were, in practice, managed as one business, operated in the same manner by the same personnel, and had the same AML/CTF risk and control frameworks.

27A. It admits paragraph 27A.

28. It admits paragraph 28. ~~As to paragraph 28, it:~~

- ~~(a) admits that from 19 December 2020, the PFS EU Business operated through PCSIL, which was regulated in Ireland by the CBI;~~
- ~~(b) otherwise denies the allegations.~~

28A. It admits paragraph 28A.

28B. As to paragraph 28B, it:

- (a) admits subparagraph (a);
- (b) denies the allegations in subparagraph (b) and says that there was no transaction volume limit condition imposed by the CBI Authorisation.

Particulars

Authorisation Letter from the CBI to PCSIL dated 4 April 2019, Schedule 2 (Specified Conditions and Requirements).

28C. It denies the allegations in paragraph 28C, refers to and repeats subparagraph 28B(b) above and says further that the business model described in PCSIL's application for authorisation did not nominate a particular transaction volume but did specifically contemplate significant growth including through the migration of PFS UK's non-UK business to PCSIL.

Particulars

PCSIL Application for Authorisation as an Electronic Money Institution dated 20 December 2018.

28D. It admits paragraph 28D.

28E. It admits paragraph 28E.

28F. It admits paragraph 28F.

28G. It admits paragraph 28G.

28H. Save to say that the powers granted to the CBI under the Central Bank Act were required to be exercised lawfully, it admits paragraph 28H.

29. It admits that the CBI had power to issue directions of the kind referred to in paragraph 29 of the Amended Statement of Claim and says further that:

- (a) the CBI's power to give a CBI Written Direction was subject to the conditions set out in s 45(1) of the Central Bank Act;
- (b) it will rely at trial upon the full terms and effect of that Act.

30. Save to say that any decision by the CBI to issue a CBI Written Direction was required to be made lawfully, it admits paragraph 30 and says further that the CBI could not make and issue a CBI Written Direction to PCSIL unless the conditions for a CBI Written Direction were satisfied.

B.4 ML/TF Risks Investigations and enforcement action by banking regulators

31. As to paragraph 31, it:

- (a) ~~it says that the paragraph is vexatious for the want of proper particulars and liable to be struck out;~~

~~(b) under cover of that objection, it:~~

- i. admits that the PFS Business included issuing a range of prepaid card programs;
- ii. says that the nature and extent of any AML/CTF risk varied based on the nature of the particular prepaid card program and the customer;
- iii. otherwise denies the allegations.

BA. WHAT EML SAID PRIOR TO 21 MAY 2021

31A. It admits paragraph 31A.

BA.1 19 August 2020

31B. It admits paragraph 31B and says further that:

- (a) the Corporate Governance Statement was issued in accordance with EML's obligations under the ASX Listing Rules, including rr 4.7.1 and 4.7.4;
- (b) those rules require a Corporate Governance Statement to be given to the ASX annually, either incorporated in or provided at the same time as, the company's annual report;
- (c) ASX Listing Rule 4.10.3 requires such a statement to specify the date at which it is current, which must be the entity's balance date or a later date specified by the entity;
- (d) in accordance with r 4.10.3, the Corporate Governance Statement stated that it was accurate and up to date as at 19 August 2020;
- (e) the Corporate Governance Statement did not give rise to any representation by EML that, and was not likely to lead a reader of the statement to form the impression that, the matters set out in the Corporate Governance Statement:
 - i. were accurate and up to date on or after 20 August 2020; or
 - ii. reflected or took into account events or circumstances occurring on or after 20 August 2020.

31C. As to paragraph 31C, it:

- (a) says that:
 - i. the 2020 Corporate Governance Statement was approved by the EML Board;

ii. Mr Wenk authorised its lodgement;

(b) otherwise denies the allegations.

31D. It admits the Corporate Governance Statement included statements to the effect pleaded in paragraph 31D and says further that it will rely at trial upon the full terms and effect of the Corporate Governance Statement.

31E. It admits paragraph 31E.

31F. It admits that the 2020 Appendix 4E and Annual Report included statements to the effect pleaded in paragraph 31F and says further that that it will rely at trial upon the full terms and effect of the Corporate Governance Statement.

BA.2 30 October 2020

31G. It admits paragraph 31G.

31H. As to paragraph 31H, it:

(a) admits that the 2020 AGM Presentation included statements to the effect pleaded in subparagraph (a);

(b) denies subparagraph (b) and says that the presentation stated “can the executive team continue to expand ...and can we continue to...find new use cases and customers? If we can, our debit volumes will grow into the future, and so too will our revenues”;

(c) admits that the 2020 AGM Presentation included statements to the effect pleaded in subparagraph (c);

(d) admits that the 2020 AGM Presentation included statements to the effect pleaded in subparagraph (d) and says that EML further stated that it was “not commenting on consensus broker estimates”;

(e) denies subparagraph (e) and says that the presentation stated that “We operate in a heavily regulated industry and are responsible for moving and reconciling billions of dollars a month, so systems, infrastructure and regulatory and compliance are bits of the iceberg under the surface that investors don’t necessarily see, but without it you’ve got no business being in this business”;

(f) says further that:

i. the slides displayed at the 2020 AGM Presentation contained a Notice and Disclaimer which made clear that the information given

was general in nature, did not purport to be complete, was provided as at 30 June 2020, would not be corrected or updated (subject to any legal obligation to do so), may contain forward looking statements of intent, belief or expectations, should not be relied upon as investment advice, and should not be relied upon given the unpredictable and volatile nature of the business and global economic conditions;

Particulars

2020 AGM Presentation, page 17.

ii. it will rely at trial upon the full terms and effect of the 2020 AGM Presentation.

BA.3 Compliance Representations

31I. As to paragraph 31I:

(a) it denies subparagraph (a);

(b) as to subparagraph (b), it:

i. admits that the 2020 Corporate Governance Statement represented that EML's opinion was that its governance framework included robust systems of risk management;

ii. refers to and repeats paragraph 31B(e) above;

iii. otherwise denies subparagraph (b);

(c) it denies subparagraph (c);

(d) refers to and repeats paragraphs 31B(e) and 31H(f)(i) above.

31J It denies paragraph 31J and says alternatively that if EML made the Compliance Representations, such representations were statements of opinion for which EML had a reasonable basis at the time the statements were made.

31K It denies paragraph 31K and refers and repeats paragraph 31B(e), 31H(f) and 31J above.

BA.4 17 February 2021

31L. It admits paragraph 31L.

31M. It admits that the 1H21 Interim Results Announcement contained statements to the effect of those pleaded in paragraph 31M and says further that it will rely at trial upon the full terms and effect of the 1H21 Interim Results Announcement.

BB PCSIL's ENGAGEMENT WITH THE CBI

BB.1 PCSIL's alleged growth in business beyond what was notified to the CBI

32. As to paragraph 32, it:

- (a) admits that as a result of the matters pleaded at subparagraphs 27(1)(f) and (g) above, PCSIL significantly increased the number and value of payment transactions that it was executing in 1QFY21 compared to the prior quarter;
- (b) refers to and repeats subparagraph 28B(b) above;
- (c) otherwise denies paragraph 32.

~~Save to say that a fine and sanctions were imposed upon PFS UK not PFSIL, it admits paragraph 32 and says further that:~~

- ~~(d) the conduct the subject of the French Prudential Supervision and Resolution Authority (**ACPR**) fine related to PFS UK's operations in France between January and November 2017;~~
- ~~(e) at all material times, the matters referred to in paragraph 32 of the Statement of Claim were public and generally available information;~~
- ~~(f) improvements to the AML/CTF risk and control frameworks were implemented in the PFS Business after November 2017;~~

Particulars

- ~~i. PCSIL improved its AML/CTF risk and control frameworks by hiring additional compliance personnel; increasing the headcount of compliance personnel from around 22 to 40 personnel following EML's acquisition.~~
- ~~ii. In around October 2020, PCSIL established a Business Risk & Compliance Committee and implemented an Operational Risk Management Policy.~~
- ~~iii. In around October 2020, PCSIL enhanced its Know Your Business (**KYB**) processes with the~~

~~purchase of the Bureau Van Dijk global KYB AML solutions Orbis and Compliance Catalyst.~~

- ~~iv. In around October 2020, PCSIL enhanced its Know Your Customer (KYC) software with the purchase of eKYC, Adriad Next, a document verification and scanning service.~~
- ~~v. In around November 2020, PCSIL enhanced its KYC compliance software with the purchase of eKYC, Jumio, an end to end identity verification and authentication solution to enhance automated KYC processes.~~
- ~~vi. Following EML's acquisition of PCSIL, PCSIL sought the CBI's approval to add additional Directors, including an independent non-Executive Chairman, to the PCSIL Board.~~

~~(g) in the premises, the AML/CTF risk and control frameworks applicable to the PFS Business during the Relevant Period were materially different to the risk and control frameworks that existed between January and November 2017 in respect of PFS UK's operations in France.~~

32A. It denies paragraph 32A, refers to and repeats paragraphs 28B(b), 28C and 32 above and says further that PCSIL informed the CBI of the proposed transfer of business from PFS UK to PCSIL in preparation for Brexit.

Particulars

PCSIL first notified the CBI of its intention to migrate 65 European programmes from PFS UK to PCSIL on 21 April 2020.

There was ongoing dialogue and correspondence between PCSIL and the CBI regarding Brexit migration over the period to January 2021. This information was contained in:

1. Email from PCSIL to the CBI dated 21 April 2020.
2. Emails between PCSIL and the CBI during the period 2 October 2020 to 11 January 2021.

3. Further particulars may be provided prior to trial.

BB.2 CBI engagement with PCSIL (December 2020 to May 2021)

19 December 2020 CBI Letter

33. As to paragraph 33, it:

- (a) admits that, on or about 16 December 2020, the CBI published on its website the 19 December 2020 CBI Letter;
- (b) refers to and repeats paragraph 34 below;
- (c) otherwise denies the allegations.

34. It admits paragraph 34 and:

- (a) says that:
 - i. the letter was not specific to PCSIL, but was addressed to CEOs of financial institutions required to be registered under s 108A of the CJ Act and thus subject to regulatory oversight by the CBI (**Schedule 2 Firms**);
 - ii. the stated purposes of the letter were:
 - (A) to provide an overview of findings identified by the CBI in the course of supervisory engagements with registered Schedule 2 Firms undertaken by the CBI since January 2020;
 - (B) to set out the CBI's expectations in relation to all Schedule 2 Firms;
 - iii. Appendix A to the letter purported to outline the key findings identified by the CBI in the course of its supervisory engagement with certain Schedule 2 Firms in 2020 and to outline the CBI's expectations in relation to those findings for all Schedule 2 Firms;
 - iv. the letter indicated that the CBI expected recipients of the letter (including PCSIL) to carefully consider its contents, bring it to the attention of the firm's Board and relevant committees, assess the firm against the areas outlined in Appendix A and address any issues relevant to the firm;
 - v. the letter did not:

- (A) make any adverse findings by the CBI ~~of the kind referred to in paragraph 50(a) of the Statement of Claim (being adverse findings~~ in respect of PCSIL's compliance with AML/CTF regulations);
 - (B) otherwise contain any findings by the CBI regarding the AML/CTF risk control frameworks and governance applicable to the PFS Business;
- (b) it says further that the letter did not cause EML or any of the persons identified in paragraph 20 of the Amended Statement of Claim, to become aware of, and it is not the case that the letter ought reasonably to have caused those persons to become aware of, the ~~"CBI Response Information"~~ "PCSIL Control Standard Information" (pleaded in paragraph 49B of the Amended Statement of Claim), or the "PCSIL Required Remediation Information" (as alleged in paragraph 50 of the Amended Statement of Claim).

35. As to paragraph 35:

- (a) it says the paragraph is embarrassing and liable to be struck out;
- (b) under cover of that objection, it:
 - i. says PCSIL is a regulated business which regularly interacts with the CBI in the ordinary course of its business;

Particulars

The CBI has broad statutory powers to regulate e-money institutions, which included ongoing reporting and approval requirements under:

- (A) Chapter 8 of the CJ Act;
- (B) Part 2 and 4 of the *European Communities (Electronic Money) Regulations 2011* (Ireland);
- (C) Part 3 of the *Central Bank Reform Act 2010* (Ireland).

Further particulars may be provided prior to trial.

- ii. admits that, in the context of transitioning the PFS EU Business from the United Kingdom to Ireland as a consequence of Brexit, during the Relevant Period, it was usual for PCSIL to have

interactions with the CBI in relation to regulatory, compliance, governance and internal control matters;

iii. otherwise denies the allegations.

8 January 2021 report on PFS UK

35A. It admits paragraph 35A.

35B. It denies paragraph 35B and says further that:

- (a) the 8 January 2021 Report related to an inspection by the CBI of PFS UK;
- (b) the 8 January 2021 Report was a final report which recorded the actions that PFS UK had taken to address ten findings of the CBI arising from its inspection;

Particulars

1. The ten findings were that:

- (A) the firm's Money Laundering and Terrorist Financing Risk Assessment document required enhancement;
- (B) the firm's AML/CFT/FS Policies and Procedures required enhancement;
- (C) the firm failed to implement adequate measures to comply with requirements set out under section 33 of the CJA 2010 in that: (A) the firm did not have a policy to address its obligations under section 54(3)(c) of that Act to keep documents and information in relation to customers up to date; and (B) that whilst the firm was engaged in a review and remediation exercise regarding its customer book, it had not documented its approach in its AML/CFT control framework;
- (D) the firm had failed to demonstrate an effective system in place to ensure the adequacy of service from external providers because the firm was using a

third-party service provider to verify the authenticity of customer identification documents, but there should be a service level agreement with the relevant provider and the firm should carry out assurance testing to ensure the service provided was satisfactory;

(E) the firm's transaction monitoring framework required enhancement;

(F) the firm's assurance testing and compliance monitoring framework required enhancement;

(G) the firm's practices with respect to the Suspicious Transaction Reports Process required enhancement;

(H) the firm's AML/CFT Training Program required enhancement;

(I) the firm's financial sanctions and PEP screening process required enhancement;

(J) the firm's record keeping policy required enhancement.

The 8 January 2021 Report records at pages 3 to 16 the actions taken by PFS UK in response to the findings. the 8 January 2021 Report indicated that the CBI was satisfied that the actions taken by PFS UK adequately addressed each of its findings;

2. That the CBI was so satisfied is to be inferred from the fact that the 8 January 2021 Report states in respect of each finding that the CBI had noted the actions taken by the firm in response to the finding and that the CBI considered the finding to be closed.

(c) it refers to and repeats paragraph 27(1)(h):

(d) the 8 January 2021 Report did not cause EML to become aware of, and it is not the case that the report ought reasonably to have caused it to become aware of, the “PCSIL Control Standard Information” (alleged in paragraph 49B of the Amended Statement of Claim), or the “PCSIL Required Remediation Information” (as alleged in paragraph 50 of the Amended Statement of Claim).

8 January 2021 inspection of PCSIL

35C. It admits paragraph 35C.

35D. It admits paragraph 35D.

35E. Save to say that the last section 22 information request from the CBI to PCSIL prior to the First 13 May Letter was received on 10 May 2021, it admits paragraph 35E.

35F. It admits paragraph 35F and says that the inspection was conducted remotely via WebEx sessions on 9 February, 11 and 12 March, and 8 April 2021.

CBI gives written notice of concerns

35G. Save to say that the letter was received by EML on 8 May 2021, it admits paragraph 35G.

35H. As to paragraph 35H:

(a) save to say that the letter stated that the CBI considered the increases to the firm’s activity levels “likely constitute a material change” to PCSIL’s business model, it admits the letter contained a statement to the effect alleged in subparagraph (a):

(b) it admits the letter contained a statement to the effect pleaded in subparagraph (b):

(c) as to subparagraph (c):

i. it admits the letter contained a statement to the effect pleaded in subparagraph (i):

ii. it admits the letter contained a statement to the effect pleaded in subparagraph (ii), and says further that PCSIL advised the CBI on 26 February 2021 that Mr Moran would depart on 31 March 2021, and sought approval for Mr Betts as a PCF appointment. PCSIL followed up Mr Betts’ PCF application on 31 March 2021.

- iii. it denies subparagraph (iii);
 - iv. it admits the letter contained a statement to the effect pleaded in subparagraph (iv);
 - v. it admits the letter contained a statement to the effect pleaded in subparagraph (v);
- (d) it admits the letter contained a statement to the effect pleaded in subparagraph (d);
- (e) it admits the letter contained a statement to the effect pleaded in subparagraph (e);
- (f) it admits the letter contained a statement to the effect pleaded in subparagraph (f);
- (g) says that it will refer at trial to the full terms and effect of the 7 May 2021 Letter;
- (h) says further that the 7 May 2021 Letter did not cause EML to become aware of, and it is not the case that the report ought reasonably to have caused it to become aware of, the “PCSIL Control Standard Information” (alleged in paragraph 49B of the Amended Statement of Claim), or the “PCSIL Required Remediation Information” (as alleged in paragraph 50 of the Amended Statement of Claim).
- 35I. It admits paragraph 35I.
- 35J. It admits that the 10 May 2021 Letter contained statements to the effect pleaded in paragraph 35J and says further that it will refer at trial to the full terms and effect of the letter.
- 35K. It admits paragraph 35K.
- 35L. It admits paragraph 35L and says further that the 12 May 2021 Email did not cause EML to become aware of, and it is not the case that the email ought reasonably to have caused it to become aware of, the “PCSIL Control Standard Information” (alleged in paragraph 49B of the Amended Statement of Claim), or the “PCSIL Required Remediation Information” (as alleged in paragraph 50 of the Amended Statement of Claim).
36. Save to say that Brendan O’Kelly was Legal Counsel of EML Payments European Holdings Limited, it admits paragraph 36. As to paragraph 36 it:

- ~~(a) admits that the 13 May 2021 Teleconference was attended by representatives of CBI, PCSIL and EML;~~
- ~~(b) says that the PCSIL and EML representatives were Andrew Betts, Lee Britton, Michelle Bennett, Stefan Gadiot, Brendan O'Kelly and Cathal Smyth;~~
- ~~(c) denies that Mr Shore attended the teleconference.~~

37. As to paragraph 37:

- (a) as to subparagraph (a), it admits that, during the 13 May 2021 Teleconference, the CBI made statements to the effect that it had significant concerns regarding PCSIL's AML/CTF control frameworks and governance;
- (b) as to subparagraph (b), it admits that during the 13 May 2021 Teleconference the CBI made statements to the effect that it was minded to issue PCSIL with a CBI Written Direction;
- (c) it says further that the CBI had not, at any time prior to 13 May 2021, stated or indicated that it was minded to issue PCSIL with a CBI Written Direction;
- (d) it refers to and repeats paragraphs 39(b) to 39(g) below;
- (e) it otherwise denies the allegations.

38. ~~Save to say that Mr Shore did not receive the 13 May 2021 CBI Letter from CBI, it~~
It admits paragraph 38.

38A. Save to say that it denies the characterisation of the 13 May 2021 CBI Letter in subparagraph (e), as setting out "at length and in detail" the suspected breaches, it admits that the 13 May 2021 CBI Letter contained statements to the effect pleaded in paragraph 38A, says further that it will refer at trial to the full terms and effect of the 13 May 2021 CBI Letter and refers to and repeats paragraph 39 below.

39. As to paragraph 39:

- (a) it admits that the 13 May 2021 CBI Letter contained statements to the effect that:
 - i. the CBI held significant concerns regarding PCSIL's AML/CTF risk and control frameworks and governance;
 - ii. the CBI was minded to issue PCSIL with certain CBI Written Directions as specified in the letter (**Proposed CBI Written Directions**);

- (b) it says that the 13 May 2021 CBI Letter and the 13 May 2021 Report only concerned PCSIL's AML/CTF risk and control frameworks and governance and not that of the broader EML business;
- (c) it says that, at all material times, no evidence was provided to PCSIL of:
 - i. PCSIL's products in fact being used to conduct money laundering or counter-terrorism financing activities;
 - ii. failings with respect to EML or PCSIL's capital adequacy, solvency or safeguarding of consumer funds;
- (d) it says that the 13 May 2021 CBI Letter and the 13 May 2021 Report:
 - i. contained draft proposed findings and preliminary observations only;
 - ii. outlined suspected breaches but did not contain any final findings;
 - iii. invited PCSIL to make submissions as to why the Proposed CBI Written Directions should not be made;
- (e) it says that, following receipt of the 13 May 2021 CBI Letter:
 - i. PCSIL provided written submissions to the CBI as to why the Proposed CBI Written Directions should not be made;
 - ii. PCSIL informed the CBI, as was in fact the case, that:
 - (A) it disagreed with observations made by the CBI in the 13 May 2021 CBI Letter, including the 13 May 2021 Report ~~Preliminary Observations Report~~ annexed to that letter;
 - (B) some or all of the issues identified in the 13 May 2021 CBI Letter and 13 May 2021 Report could be explained and clarified and tempered when considered in the context of PCSIL's business;

Particulars

PCSIL informed the CBI of these matters in letters from PCSIL to the CBI dated 27 May 2021. Further particulars may be provided prior to trial.

- iii. PCSIL actively engaged with the CBI on a remediation program which PCSIL thereafter designed and implemented;
- iv. the CBI never made the Proposed CBI Written Directions;

v. the CBI has not made final decisions in respect of any of the suspected breaches outlined in the 13 May 2021 CBI Letter and 13 May 2021 Report;

- (f) it says that the statements in the 13 May 2021 CBI Letter and 13 May 2021 Report were made in circumstances where the PFS Business's AML/CTF risk control frameworks and governance had been the subject of previous regulatory inspections, in 2019 and 2020, which did not result in any finding to the effect that the standard of AML/CTF risk control frameworks and governance was such as to justify the regulatory action suggested in the Proposed CBI Written Direction, nor did those inspections result in any such action;

Particulars

The regulatory inspections between around 2018 and 2020 included:

- i. ~~An inspection by the CBI of PFS UK which commenced prior to October 2019 and~~ The inspection by the CBI of PFS UK referred to in paragraph 35B(a) above, which the CBI advised PFS UK had been closed on or about 8 January 2021, being the same day that the CBI's inspection of PCSIL commenced.
- ii. An inspection by the FCA of PFS UK's AML/CTF risk and control frameworks which occurred between 15 January 2019 and 26 February 2019 and closed on or about 16 January 2021.
- iii. The Probability Risk and Impact System (PRISM) "Low Impact" categorisation letter from the CBI to PCSIL dated 18 December 2020.

Further particulars may be provided prior to trial.

- (g) at all material times, EML considered, as was in fact the case, that:
- i. the standard of PCSIL's AML/CTF risk control frameworks and governance were not such as to justify the Proposed CBI Written Directions;

- ii. the Proposed CBI Written Directions were not justified by reason of the matters referred to in the 13 May 2021 CBI Letter.

39A. It admits paragraph 39A.

39B. It admits paragraph 39B.

39C. As to paragraph 39C:

(a) it admits that the 13 May 2021 Report contained preliminary observations of the CBI to the effect pleaded in subparagraphs (a) to (l);

(b) refers to and repeats paragraph 39 above;

(c) otherwise denies the allegations.

40. It admits paragraph 40.

41. It admits paragraph 41.

C The 19 May 2021 Disclosure and its Impact

C.1 19 May 2021

42. It admits paragraph 42.

43. It admits paragraph 43.

44. It admits paragraph 44.

C.2 Price effect of the 19 May 2021 Announcement

45. As to paragraph 45, it:

(a) admits that the closing price of EML's shares was \$5.15 on Friday 14 May 2021 and dropped to a closing price of \$2.80 on Wednesday 19 May 2021;

(b) refers to and repeats paragraph 43 above;

(c) refers to and repeats paragraphs 74, 74A and 75 below;

(d) otherwise denies the allegations.

D The True Position

D.1 Standard of PFS's AML/CTF Risk Control Frameworks

46. ~~[Not used]-As to paragraph 46, it:~~

~~(a) admits that, at the time EML agreed to buy PFSIL, the PFS Business's AML/CTF risk control frameworks and governance were not of as high a~~

~~standard as the AML/CTF risk control frameworks and governance that EML had developed and implemented in other parts of its business;~~

~~(b) — otherwise denies the allegations.~~

47. ~~[Not used] As to paragraph 47, it:~~

~~(a) — admits that, after it completed the acquisition of PFSIL, EML implemented improvements to the PFS Business's risk control frameworks and governance, including in relation to AML/CTF risks;~~

~~(b) — otherwise denies the allegations.~~

48. ~~[Not used] As to paragraph 48, it:~~

~~(a) — says that it continued to implement improvements to the PFS Business's risk control frameworks and governance, including in relation to AML/CTF risks after the end of the Relevant Period;~~

~~(b) — otherwise denies the allegations.~~

49. ~~[Not used] As to paragraph 49, it:~~

~~(a) — admits that, during the Relevant Period, the PFS Business's AML/CTF risk control frameworks and governance were not of as high a standard as the AML/CTF risk control frameworks and governance that EML had developed and implemented in other parts of its business (**PFS Information**);~~

~~(b) — says that the AML/CTF risk control frameworks and governance that EML had developed and implemented in other parts of its business were of a high standard which exceeded the minimum standard required to meet its regulatory obligations;~~

~~(c) — says further that EML was not aware that, and it was not in fact the case that, the standard of the PFS Business's AML/CTF risk control frameworks and governance during the Relevant Period was such as to:~~

~~i. — justify the Proposed CBI Written Directions or make it likely that, or give rise to a material risk that, CBI would make such directions;~~

~~ii. — otherwise justify the making of a CBI Written Direction of a kind that would have a material impact on EML's earnings or make it likely that, or give rise to a material risk that, CBI would make such a direction;~~

iii. ~~otherwise be likely to have a materially adverse effect on EML's earnings or the price or value of its securities.~~

~~(d) otherwise denies the allegations.~~

49A As to paragraph 49A, it:

(a) refers to and repeats subparagraphs 39(d), 39(e) and 39C above;

(b) admits that there were vacancies on the PCSIL Board;

(c) otherwise denies the allegations.

49B As to paragraph 49B, it refers to and repeats paragraph 49A and:

(a) admits that it was aware of the views of the CBI expressed in the 19 December 2020 CBI Letter, 8 January 2021 Report, 7 May 2021 Letter, 10 May 2021 Letter, 12 May 2021 Email and First 13 May 2021 Letter on and from about the dates that each letter and report was received;

(b) refers to and repeats paragraphs 32A to 41 above in relation to the CBI's engagement with PCSIL between December 2020 and May 2021;

(c) says further that it does not know the views of regulatory authorities, including the CBI, at all times up to 18 May 2021;

(d) otherwise denies the allegations.

D.2 CBI Response – Required Remediation

50. As to paragraph 50:

(a) it denies subparagraph (a) and refers to and repeats paragraph 49A above; it denies subparagraph (a) and refers to and repeats paragraph 34 and 39 above regarding the content and effect of the 19 December 2020 CBI Letter and the 13 May 2021 CBI Letter;

(b) it denies subparagraph (b) and refers to and repeats paragraph 49A above;

(c) it denies subparagraph (c) and says further that:

i. on or about 15 April 2021, the CBI informed PCSIL that PCSIL would be issued with a preliminary findings report prior to the issuance of a final findings report and that the CBI would schedule a close out meeting with PCSIL prior to issuing a preliminary findings report;

Particulars

Email from the CBI to PCSIL on 15 April 2021.

- ii.1. the CBI did not issue PCSIL with a preliminary findings report or schedule a close out meeting with PCSIL at any time prior to 13 May 2021; and
- iii.2. if at any time from 19 December 2020 it was likely, or there was a material risk, that the CBI would make a CBI Written Direction in respect of PCSIL requiring it to undertake remediation of its AML/CTF risk control frameworks applicable to PCSIL and constraining its growth, which would result in material impacts to EML's earnings (which is denied), then such likelihood or risk did not arise before 10pm (AEST) on 13 May 2021.

D.3 PCSIL Remediation Impacts

50A. It says that paragraph 50A is embarrassing and liable to be struck out, and under cover of that objection, it:

- (a) _____ refers to and repeats paragraphs 39 and 49A above;
- (b) _____ admits that remediation was required to satisfy the CBI;
- (c) _____ says that:
 - i. _____ the expected nature, extent and therefore cost of remediation that would satisfy the CBI was unknown as at 19 May 2021;
 - ii. _____ the ongoing structural changes to personnel and processes that would satisfy the CBI, and therefore the expected change in ongoing overheads, was unknown as at 19 May 2021;
- (d) _____ admits that to the extent that ongoing structural changes to personnel and processes increased overheads, such changes could materially impact the profits of PCSIL;
- (e) _____ says further that, it:
 - i. _____ recorded extraordinary expenditure in its financial statements to address the alleged CBI Issues of:
 - 1. \$2.1 million in FY21;
 - 2. \$7.037 million in FY22;

ii. that expenditure was incurred by EML;

iii. admits that the extraordinary expenditure incurred by EML in FY22 to address the alleged CBI Issues was material expenditure which impacted the profits of EML;

(f) says further that:

i. it recorded a provision in its financial statements in FY21 and FY22 for likely costs in relation to the alleged CBI Issues, including professional advisory and any potential enforcement action by CBI (such as fines);

ii. a provision has no impact on profitability;

(g) says further that:

i. on 7 June 2021 it announced to the market that:

1. *“immediate one-off costs incurred for legal ... and professional advisory ... fees are expected to be less than \$2 million in FY21. In addition, we may see an impact of delayed program launches on establishment income and transaction fees which we cannot quantify at this time”;*

2. *“Financial impacts for FY22 cannot be fully determined at this time.”*

Particulars

7 June 2021 ASX Announcement.

ii. on 17 August 2021 it announced to the market that:

1. it had incurred or provided for \$11.4m in FY2021 in relation to professional advisory, remediation and other potential costs (including a penalty) associated with resolving the alleged CBI Issues, of which \$2.1m was incurred and \$9.3m was provided for likely future expenses;

2. *“The Group recognises provisions ... utilising information that is known as at the reporting date”;*

3. The CBI investigation and response was still ongoing, had not been finalised and remained unresolved;

4. “Additional costs may be incurred consequential to this matter, which are unknown or do not meet the criteria to be provided at 30 June 2021”;

5. “Provisions are management’s best estimate of the expenditure required to settle the present obligation at the end of the reporting period”;

Particulars

1. 17 August 2021 ASX Announcement.

2. 17 August 2021 FY21 Results Investor Presentation.

iii. on 18 August 2021 it told the market that it expected to see a higher cost base driven by the requirement to add roles in Europe in connection with the CBI’s expectations;

Particulars

18 August 2021 Investor Call.

iv. on 17 November 2021 it announced to the market that PCSIL would carry increased overheads in terms of personnel and systems to meet or exceed best practice and the CBI’s requirements;

Particulars

17 November 2021 ASX Announcement.

v. on 16 February 2022 it disclosed its half-year results to the market, including that:

1. it was impacted by non-recurring costs associated with the CBI remediation project of \$2.2 million and a further provision of \$953,000 was made;

2. that provision “represents management’s best estimate of the Group’s liability for remediation and potential fines or enforcement costs associated with the regulatory issues”;

3. “Overheads are tracking in line with expectations announced at our AGM in November with higher overheads driven by new roles in Europe to address CBI matters, higher insurance costs and higher internal and external audit fees”;

Particulars

16 February 2022 ASX Announcement.

vi. on 22 August 2022 it announced its FY22 results to the market, including that \$7.037 million of the provision in relation to the alleged CBI Issues had been utilised and a further provision of \$3.955 million was made;

Particulars

22 August 2022 ASX Announcement.

(h) otherwise denies the allegations.

50B. It says paragraph 50B is embarrassing and liable to be struck out, and under cover of that objection, it:

(a) admits that as at 19 May 2021 the CBI had said that it was minded to issue a direction preventing the issue of further electronic money on behalf of PCSIL, additional funds from being placed on payment accounts maintained by PCSIL, the appointment of further distributors, or the transfer of customers or distributors to others without prior CBI approval;

Particulars

First 13 May 2021 Letter.

(b) admits that on 5 July 2021 the CBI told PCSIL that the CBI's view was that PCSIL should not seek to materially grow its business during the remediation period and that the CBI expected PCSIL to outline in its proposed remediation plan how it would ensure the business does not grow materially until the CBI is satisfied with the implementation of remediation;

Particulars

Letter from the CBI to PCSIL dated 5 July 2021.

(c) admits that as at 6 October 2021 the CBI had said that it was minded to issue a direction preventing the appointment of further distributors, limiting growth in Incoming Payment Value, and reducing by 75% the current product limits in respect of particular products;

Particulars

Letter from the CBI to PCSIL dated 6 October 2021
(October Minded To Letter).

(d) admits that as at 23 November 2021 the CBI had said that it was minded to direct that PCSIL's growth in Incoming Payment Volume be limited for 12 months to 10% above baseline based on January to August 2021;

Particulars

Letter from the CBI to PCSIL dated 23 November 2021.

(e) admits that in the event the CBI made a direction limiting growth it was likely to be in place until remediation was completed;

(f) admits that on 9 December 2021 the CBI issued a direction requiring PCSIL to ensure that the total Incoming Payment Value for the period 9 December 2021 to 8 December 2022 is not in excess of 10% above the baseline (**9 December 2021 Direction**);

Particulars

Letter from the CBI to PCSIL dated 9 December 2021.

(g) admits that as of the dates of the "Minded To" letters (13 May, 6 October and 23 November 2021) there was a material risk that the CBI would, in fact, issue a direction limiting growth but says that risk should be assessed in light of the fact that PCSIL was engaging with the CBI during the period, and the CBI had indicated it had not reached a final decision and was open to engagement as to how the issues raised in the First 13 May 2021 Letter could be addressed;

Particulars

Letter from the CBI to PCSIL dated 5 July 2021.

(h) admits that following receipt of the First 13 May 2021 Letter, PCSIL took steps to put new distributors on hold, and developed and implemented an Interim Material Growth Policy, which was approved by the PCSIL Board on 12 August 2021;

(i) otherwise denies the allegations and refers to and repeats paragraphs 39, 49A above and paragraph 50E(e) and 53AAB(b) below and says further that it was not the case that a restriction on growth in payment volumes would necessarily have a material impact upon profitability, because termination of high-volume low-margin business would allow growth within the restriction in higher margin business.

50C It says paragraph 50C is embarrassing and liable to be struck out, and under cover of that objection, it:

(a) admits that remediation was required to satisfy the CBI and refers to and repeats paragraphs 39 and 49A;

(b) says that:

i. it was not possible to know how long remediation would take to be completed until the remediation plan had been developed in or about July 2021;

ii. the timelines in any remediation plan were estimates, based upon the information available at the time;

iii. EML could not know whether and when any given remediation plan would satisfy the CBI unless and until CBI had confirmed it was so satisfied;

(c) says further that:

i. it engaged PwC in late May 2021 to provide project management, subject matter expertise and advice to assist with the development and delivery of a remediation plan to satisfy the CBI;

ii. in June 2021 an Executive Steering Committee was formed of PCSIL and EML senior management and PwC representatives to oversee the preparation and progress of the remediation plan (**SteerCo**);

iii. a draft remediation plan prepared with the assistance of PwC was presented to the CBI on 13 July 2021 and provided to the CBI on 15 July 2021. At that time, the best estimate of the time it would take to complete the steps in the plan was 12 months, with the bulk of the work to be undertaken in the first six months;

iv. a final remediation plan was provided to the CBI on 23 July 2021 which addressed matters including each of the preliminary findings in the First 13 May Letter. The plan provided for the majority of items to be complete by 31 December 2021 with the remaining items completed by 31 March 2022;

v. SteerCo monitored progress of the remediation plan and reported on progress to the PCSIL Board and the EML Board;

- vi. an updated remediation plan was provided to the CBI on 4 May 2022. The plan provided for the majority of items to be complete by 30 June 2022, with some AML risk assessment items to be carried out by 30 September 2022, and third-party assurance completed by 30 December 2022;
 - vii. approximately 90% of the deliverables set out in the remediation plan were completed by 30 June 2022;
 - viii. following feedback from the CBI in June 2022 that it was not satisfied with the remediation plan, PCSIL revised the sequencing and approach taken to the risk assessment of its distributors, corporates and customers;
 - ix. a revised remediation plan was provided to the CBI on 22 July 2022. The plan provided for remediation to be completed by 31 January 2023, with third-party assurance to be completed by 30 June 2023;
- (d) otherwise denies the allegations.

50D. As to paragraph 50D, it admits that as at 25 July 2022 (and 1 January 2022 and 31 March 2022), EML had not completed the implementation of its remediation plan in relation to the alleged CBI Issues to the satisfaction of the CBI, refers to and repeats paragraph 50C above.

D.4 PCSIL Growth Information Limitation

50E. As to paragraph 50E, it:

- (a) admits that on 9 December 2021, the CBI made the 9 December 2021 Direction;
- (b) says that the baseline was 12 times the average January to August 2021 monthly Incoming Payment Value in accordance with the terms of the 9 December 2021 Direction;
- (c) admits that the 9 December 2021 Direction was due to expire on 8 December 2022 subject to any extension or variation of that date by the CBI;
- (d) otherwise denies the allegations;
- (e) says that EML considered, as was in fact the case, that the 9 December 2021 Direction would not have a material impact on EML's expected financial performance because:

- i. high volume/low-margin programs could be terminated with limited impact on profit;
- ii. terminating such programs would thereafter allow for higher-margin payment growth, within the 10% above baseline limit;
- iii. analysis had been conducted identifying programs that could be terminated or were ending that would create capacity for growth in higher-margin programs;
- iv. PCSIL was already operating pursuant to its Interim Material Growth Policy, as approved by the PCSIL Board on 12 August 2021, and on 30 November 2021 had voluntarily undertaken to operate under a growth restriction that was the same as the 9 December 2021 Direction, from 1 December 2021 to 30 November 2022;

Particulars

- 1. PCSIL Interim Material Growth Policy dated approved on 12 August 2021.
- 2. Letter from PCSIL to the CBI dated 30 November 2021.
- v. PCSIL's FY22 budget was adjusted following the First 13 May 2021 Letter to remove growth-related revenue;
- vi. in light of (i) to (v) above, the 9 December 2021 Direction would not alter EML's FY22 guidance;
- (f) says further that it made the following disclosures in relation to the imposition of a growth restriction by the CBI:
 - i. on 19 May 2021, EML announced to the market that the proposed directions in the First 13 May 2021 Letter "*could materially impact the European operations of the Prepaid Financial Services business, including potentially restricting PCSIL's activities under the Irish authorisation*";

Particulars

- 19 May 2021 ASX Announcement.
- ii. on 17 August 2021, EML informed the market that it was "*in dialogue with the CBI regarding restriction of material growth in*

PCSIL's business, with the expectation that such restrictions would only apply during the remediation phase. Any such restrictions are likely to affect the number of new programs PCSIL is permitted to launch while restrictions apply";

Particulars

17 August 2021 ASX Announcement.

- iii. on 7 October 2021, EML announced to the market that it had received correspondence from the CBI with potential directions which could materially impact the European PFS Business, and that the CBI had proposed certain limits be applied to programs that if implemented, could have a negative impact of the PCSIL business;

Particulars

7 October 2021 ASX Announcement.

- iv. on 17 November 2021 at its AGM, EML told the market that the "CBI has been concerned about the rapid rate of growth of PCSIL. We think this can be managed and we have already eliminated some legacy, high volume and low margin programmes under PCSIL and created significant headroom for growth at potentially better margins";

Particulars

17 November 2021 ASX Announcement.

- v. on 25 November 2021, EML announced to the market that the "CBI intends a material growth limitation over PCSIL's total payment volumes will be imposed for 12 months or rescinded earlier following third party verification to confirm PCSIL's remediation plan has been effectively implemented. ... As advised at the 2021 Annual General Meeting, PCSIL has been removing higher volume lower yielding programs to enable it to comply with a material growth restriction and is confident it can meet these obligations";

Particulars

25 November 2021 ASX Announcement.

- vi. on 16 February 2022 in its FY22 Interim Report EML told the market that the "CBI has imposed material growth restrictions on this

licence until the remediation plan is completed. The Group has taken actions to terminate specific high volume programs which do not provide the revenue return the Group expects and as a result the licence restrictions are not expected to have a material impact at this time”.

Particulars

16 February 2022 ASX Announcement.

- vii. on 6 July 2022, EML announced to the market that a new programme “is expected to utilise a material proportion of the growth cap imposed on our European licence by the Central Bank of Ireland (CBI) and that remains in place until expiry in December 2022 – subject to any CBI decision as to removal or amendment of the cap”.

Particulars

6 July 2022 ASX Announcement.

~~E EML’s Statements Prior to 21 May 2021~~

51. ~~[Not used] It admits paragraph 51.~~

~~E.1 Corporate Governance Statement~~

52. ~~[Not used] It admits paragraph 52 and says further that:~~

- ~~(a) the Corporate Governance Statement was issued in accordance with EML’s obligations under the ASX Listing Rules, including rr 4.7.1 and 4.7.4;~~
- ~~(b) those rules require a Corporate Governance Statement to be given to the ASX annually, either incorporated in or provided at the same time as, the company’s annual report;~~
- ~~(c) ASX Listing Rule 4.10.3 requires such a statement to specify the date at which it is current, which must be the entity’s balance date or a later date specified by the entity;~~
- ~~(d) in accordance with r 4.10.3, the Corporate Governance Statement stated that it was accurate and up to date as at 19 August 2020;~~
- ~~(e) the Corporate Governance Statement did not give rise to any representation by EML that, and was not likely to lead a reader of the statement to form the impression that, the matters set out in the Corporate Governance Statement;~~

- i. ~~were accurate and up to date on or after 20 August 2020; or~~
- ii. ~~reflected or took into account events or circumstances occurring on or after 20 August 2020.~~

53. [Not used] ~~It admits the Corporate Governance Statement included statements to the effect set out in paragraph 53 and says further that it will rely at trial upon the full terms and effect of the Corporate Governance Statement.~~

E WHAT EML SAID FROM 19 MAY 2021 TO 7 OCTOBER 2021

E1. 19 May 2021 to 16 August 2021

53A. It refers to and repeats paragraph 44 and says further that it will refer at trial to the full term and effect of the 19 May 2021 Announcement.

53B. It admits paragraph 53B.

53C. It admits paragraph 53C.

53D. It admits paragraph 53D and says further that it will refer at trial to the full terms and effect of the 7 June 2021 Announcement.

53E. It denies paragraph 53E, refers to and repeats paragraphs 26, 50A(c) and 50A(g) above, and says further that it expressly informed the market on 19 May 2021 that:

- (a) the CBI Issues could materially impact the European PFS Business;
- (b) the European PFS Business represented approximately 27% of EML's global consolidated revenue;
- (c) given the early stages of discussion with the CBI it was presently unable to estimate the potential costs and impacts of the CBI Issues;
- (d) that the reaffirmation of its FY21 guidance was excluding the costs and impacts of the CBI Issues.

E.2. 17 August 2021 and 18 August 2021

53F. It admits paragraph 53F.

53G. It admits paragraph 53G.

53H. Save to say that Cregan was a participant in the 18 August 2021 Investor Call (rather than the "17 August 2021 Investor Call" as alleged in subparagraph (a)), it admits paragraph 53H.

53I. As to paragraph 53I, it:

- (a) admits the 17 August 2021 Presentation contained statements to the effect alleged in subparagraph (a);
- (b) admits the 17 August 2021 ASX Announcement contained statements to the effect alleged in subparagraph (b);
- (c) admits the 18 August 2021 Investor Call transcript contained statements to the effect alleged in subparagraph (c);
- (d) admits that the 18 August 2021 Investor Call transcript contained a statement to the effect alleged in subparagraph (d);
- (e) admits that the 18 August 2021 Investor Call transcript contained a statement to the effect alleged in subparagraph (e);
- (f) admits that the 17 August 2021 ASX Announcement contained a statement to the effect alleged in subparagraph (f);
- (g) says that the 17 August 2021 Presentation, the 17 August 2021 ASX Announcement and the 18 August 2021 Investor Call transcript also contained the following statements:
- i. Key assumptions underlying the FY22 guidance include “*that the provisions we’ve taken up in the FY21 year is sufficient to cover the actual costs that we’re going to incur in FY22 and also that the remediation plan we’ve outlined for the CBI is completed on schedule*” (18 August 2021 Investor Call);
 - ii. “*What we cannot do, and we haven’t done since May is give a running commentary of our dialogue with the Central Bank of Ireland or to speculate on a certain outcome*” (18 August 2021 Investor Call);
 - iii. the CBI investigation and response was still ongoing, had not been finalised and remained unresolved; (17 August 2021 ASX Announcement)
 - iv. “*This presentation may contain forward looking statements including statements regarding our intent, belief or current expectations with respect to EML’s businesses and operations, ...specific provisions, contingent liabilities and risk management practices. Readers are cautioned not to place undue reliance on any forward looking statements*”; (17 August 2021 Presentation)

v. The three scenarios used to evaluate projections each assume the CBI investigation and remediation will be resolved over a maximum 24 month period; (17 August 2021 ASX Announcement)

vi. “The provision [for CBI Issues] involves significant management estimation of the probability and quantum of outflows for remediation and potential fines or enforcement costs associate with the regulatory concerns”; (17 August 2021 ASX Announcement)

(h) says further that it will refer at trial to the full terms and effect of the 17 August 2021 Presentation, the 17 August 2021 ASX Announcement and the 18 August 2021 Investor Call transcript.

53J. As to paragraph 53J, it:

(a) admits that on 17 August 2021 it represented to the market that:

i. PCSIL was implementing a remediation plan in relation to the alleged CBI Issues;

ii. its intention was to substantially complete the remediation by the end of the 2021 calendar year, with remaining items to be completed by the end of March 2022;

(Remediation Timing Intention Representation)

(b) says that the Remediation Timing Intention Representation was true, in that PCSIL was implementing a remediation plan in relation to the alleged CBI Issues and it was EML’s intention to complete the remediation in that time frame;

(c) otherwise denies the allegations;

(d) refers to and repeats paragraphs 39, 49A, 50C(b)(iii), 53E and 53I above;

(e) says that even if it did make the Remediation Plan Representations (which is denied) such representations are statements of intent with regard to future matters for which it had a reasonable basis.

Particulars

1. EML refers to and repeats subparagraph 50C(c) above.

2. Further particulars may be provided prior to trial.

53K. It admits paragraph 53K and says further that the representations were true in that EML did on 17 August 2021 expect its GDV, revenue, underlying EBITDA and NPATA to be within the represented ranges.

53L. As to paragraph 53L, it:

- (a) admits that on 17 August 2021 it represented to the market that:
 - i. it had made a provision of \$9.3 million for remediation, advisory and other enforcement costs that were likely to be incurred;
 - ii. the provision of \$9.3 million was management's best estimate as at 30 June 2021;
- (b) otherwise denies the allegations;
- (c) refers to and repeats paragraphs 50A and 53I above;
- (d) says that even if it did make the Remediation Plan Impacts Representation or the FY22 Guidance Unaffected by the CBI Issues Representation (which is denied) such representations are statements of opinion with regard to future matters for which it had a reasonable basis.

Particulars

1. EML refers to and repeats paragraphs 50A and 50C(c) above, and says that the provision was calculated on the basis of the remediation plan developed with the assistance of PwC and submitted to the CBI on 23 July 2021.
2. The FY21 Financial Statements were audited by an independent auditor.
3. Further particulars may be provided prior to trial.

E.3 Continuing Representations

53M. As to paragraph 53M, it:

- (a) denies subparagraph (a) and refers to and repeats paragraph 53J in relation to the Remediation Plan Adequacy Representation;
- (b) denies subparagraph (b) and refers to and repeats paragraph 53J in relation to the Remediation Plan Timing Representation;
- (c) admits subparagraph (c) and says further that the representation was true in that EML did, between 17 August 2021 and 7 October 2021, expect its

GDV, revenue, underlying EBITDA and NPATA to be within the represented ranges;

- (d) denies subparagraph (d) and refers to and repeats paragraph 53L in relation to the Remediation Plan Impacts Representation;
- (e) denies subparagraph (e) and refers to and repeats paragraph 53L in relation to the FY22 Guidance Unaffected by Remediation Plan Representation;
- (f) says further that even if the representations in subparagraphs (a), (b), (d) and (e) were made on 17 August 2021 (which is denied), such representations were statements of intention or opinion as at the date they were made, and not continuing representations by silence.

Particulars

1. EML refers to and repeats subparagraphs 53L(g)(ii) and (iv) above.
2. The 17 August 2021 ASX Announcement included a disclaimer which stated “*The content of this update is provided as at 17 August 2021 ...reliance should not be placed on the content of this presentation or opinions contained in it. Further, subject to any legal obligation to do so, EML does not have any obligation to correct or update the content of this presentation*”.

EA. THE 7 OCTOBER 2021 DISCLOSURE AND ALLEGED IMPACT

EA.1 7 October 2021

53N It admits paragraph 53N.

53O It admits paragraph 53O.

EA.2 Alleged price effect of the 7 October 2021 Announcement

53P As to paragraph 53P, it:

- (a) admits that the closing price of EML’s shares on 7 October 2021 was \$3.70 and on 8 October 2021 was \$3.16;
- (b) refers to and repeats paragraph 53N above;
- (c) refers to and repeats paragraphs 74 to 75 below;
- (d) otherwise denies the allegations.

EB. WHAT EML SAID FROM 7 OCTOBER 2021 TO 25 APRIL 2022**EB.1 7 October 2021**

53Q. It repeats paragraph 53O above.

53R. As to paragraph 53R, it:

- (a) denies subparagraph (a) and refers to and repeats paragraph 53J in relation to the Remediation Plan Adequacy Representation;
- (b) denies subparagraph (b) and refers to and repeats paragraph 53J in relation to the Remediation Plan Timing Representation;
- (c) denies subparagraph (c), and says alternatively that if EML impliedly repeated the FY22 Guidance Representation, the representation was true in that EML did on 7 October 2021, expect its GDV, revenue, underlying EBITDA and NPATA to be within the represented ranges;
- (d) denies subparagraph (d) and refers to and repeats paragraph 53L in relation to the FY22 Guidance Unaffected by Remediation Plan Representation;
- (e) says further that even if the representations in subparagraphs (a), (b), and (d) were made on 17 August 2021 (which is denied), such representations were statements of intention or opinion as at the date they were made, and not continuing representations by silence.

Particulars

EML refers to and repeats the particulars to subparagraph 53M(f).

53S. As to paragraph 53S:

- (a) as to subparagraph (a):
 - i. it refers to and repeats paragraph 53L;
 - ii. it admits that the 7 October 2021 Announcement disclosed that PCSIL's growth policy could be impacted by the CBI Written Directions;
 - iii. says further that it will refer at trial to the full terms of the 7 October 2021 Announcement;
 - iv. otherwise denies the subparagraph;

(b) it denies subparagraph (b) refers to and repeats paragraphs 50E(f)(i) to (iii), 53L and 53R above and says alternatively that, if EML made the Modified Remediation Plan Impacts Representation (which is denied), the representation was a statement of opinion for which EML had reasonable grounds.

Particulars

EML refers to and repeats the particulars to subparagraph 53L(d) above.

EB.2 17 and 25 November 2021

53T. It admits paragraph 53T.

53U It admits that at the 2021 AGM Martin made statements to the effect alleged in paragraph 53U.

53V. It admits that at the 2021 AGM, Cregan made statements to the effect alleged in paragraph 53V.

53W. It admits paragraph 53W.

53X. It admits paragraph 53X.

53Y. It admits that the 25 November 2021 Announcement contained a statement to the affect alleged in paragraph 53Y.

53Z. As to paragraph 53Z, it:

(a) denies subparagraph (a) and refers to and repeats paragraph 53J in relation to the Remediation Plan Adequacy Representation;

(b) it admits that it repeated the Remediation Timing Intention Representation and otherwise denies subparagraph (b) and refers to and repeats paragraph 53J in relation to the Remediation Plan Timing Representation;

(c) it denies subparagraph (c) and says alternatively that if EML impliedly repeated the FY22 Guidance Representation, the representation was true in that EML did on 17 and 25 November 2021, expect its GDV, revenue, underlying EBITDA and NPATA to be within the represented ranges;

(d) it denies subparagraph (d) and refers to and repeats paragraph 53L in relation to the FY22 Guidance Unaffected by Remediation Plan Representation;

- (e) it denies subparagraph (e) and refers to and repeats paragraph 53L in relation to the Remediation Plan Impacts Representation and paragraph 53S in relation to the Modified Remediation Plan Impacts Representation;
- (f) says further that even if the representations in subparagraphs (a), (b), (d) and (e) were made on 17 August 2021 (which is denied), or in relation to the Modified Remediation Plan Impacts Representation, on 7 October 2021, such representations were statements of intention or opinion as at the date they were made, and not continuing representations by silence.

Particulars

EML refers to and repeats the particulars to subparagraph 53M(f).

EB.3 16 February 2022.

53AA. It admits paragraph 53AA.

53AB. It admits paragraph 53AB.

53AC. Save to say that the reference in the fourth bullet point of subparagraph (b) to “24-46%” should say “34-46%”, it admits that the 16 February 2022 Announcement contained statements to the effect of those pleaded in paragraph 54AC and says further that:

- (a) the reaffirmation of FY22 guidance pleaded in subparagraph 53AC(b) was reaffirmation of the updated guidance announced at the AGM on 17 November 2021;
- (b) the 16 February 2022 Announcement also contained statements to the effect pleaded at subparagraphs 50A(g)(v) and 50E(f)(vi) above, and it will rely at trial upon the full terms and effect of the 16 February 2022 Announcement.

53AD. As to paragraph 53AD, it:

- (a) denies subparagraph (a) and refers to and repeats paragraph 53J in relation to the Remediation Plan Adequacy Representation;
- (b) denies subparagraph (b) and refers to and repeats paragraph 53J in relation to the Remediation Plan Timing Representation;
- (c) says as to subparagraph (c), that it:
- i. refers to and repeats subparagraph 53AC(a) above;

- ii. admits subparagraph (c) insofar as the FY22 Guidance Representation related to underlying EBITDA and NPATA (which remained unchanged from the representation made on 17 August 2021);
 - iii. otherwise denies subparagraph (c);
 - iv. says further that the FY22 Guidance Representation in relation to EBITDA and NPATA was true in that EML did on 16 February 2022 expect its underlying EBITDA and NPATA to be within the represented ranges;
- (d) denies paragraph (d) and refers to and repeats paragraph 53L in relation to the Remediation Plan Impacts Representation and paragraph 53S in relation to the Modified Remediation Plan Impacts Representation;
- (e) denies subparagraph (e) and refers to and repeats paragraph 53L in relation to the FY22 Guidance Unaffected by Remediation Plan Representation;
- (f) says further that even if the representations in subparagraphs (a), (d) and (e) were made on 17 August 2021 (which is denied), or in relation to the Modified Remediation Plan Impacts Representation, on 7 October 2021, such representations were statements of intention or opinion as at the date they were made, and not continuing representations by silence.

Particulars

EML refers to and repeats the particulars to subparagraph 53M(f).

EB.4 Continuing Representations

53AE As to paragraph 53AE, it:

- (a) denies subparagraph (a) and refers to and repeats paragraph 53J in relation to the Remediation Plan Adequacy Representation;
- (b) denies subparagraph (b) and refers to and repeats paragraph 53J in relation to the Remediation Plan Timing Representation;
- (c) refers to and repeats subparagraph 53AD(c) above and otherwise denies subparagraph (c) in relation to the FY22 Guidance Representation;
- (d) denies paragraph (d) and refers to and repeats paragraph 53L in relation to the Remediation Plan Impacts Representation and paragraph 53S in relation to the Modified Remediation Plan Impacts Representation;

(e) denies subparagraph (e) and refers to and repeats paragraph 53L in relation to the FY22 Guidance Unaffected by Remediation Plan Representation.

(f) says further that even if the Representations in subparagraphs (a), (b), (d) and (e) were made on 17 August 2021 (which is denied), or in relation to the Modified Remediation Plan Impacts Representation, on 7 October 2021, such representations were statements of intention or opinion as at the date they were made, and not continuing representations by silence.

Particulars

EML refers to and repeats the particulars to subparagraph 53M(f).

EC THE 26 APRIL 2022 DISCLOSURE AND ITS IMPACT

EC.1 26 April 2022

53AF It admits paragraph 53AF.

53AG It admits the 26 April 2022 Announcement contained statements to the effect alleged in paragraph 53AG and says further that:

(a) the 26 April 2022 Announcement also contained the following statements:

i. “Continued progress on CBI remediation toward 30 June 2022 completion date (prior to independent assurance)”;

ii. a Notice and Disclaimer which made clear that the information given was general in nature, did not purport to be complete, was provided as at 26 April 2022, would not be corrected or updated (subject to any legal obligation to do so), may contain forward looking statements of intent, belief or expectations, should not be relied upon as investment advice, and should not be relied upon given the unpredictable and volatile nature of the business and global economic conditions;

(b) it will refer at trial to the full terms and effect of the 26 April 2022 Announcement.

EC.2 The price impact of the 26 April 2022 Announcement

53AH As to paragraph 53AH:

(a) on the assumption that the first reference to 26 April 2022 in the particulars provided is intended to be 22 April 2022, it admits that the closing price of

EML's shares on 22 April 2022 was \$2.71 and that the closing price on 26 April 2022 was \$1.665;

- (b) it refers to and repeats paragraph 53AF above;
- (c) it refers to and repeats paragraphs 74 to 75 below;
- (d) otherwise denies the allegations.

ED WHAT EML SAID FROM 26 APRIL 2022 to 25 JUNE 2022

53AI It repeats paragraph 53AG.

53AJ As to paragraph 53AJ, it:

- (a) denies subparagraph (a) and refers to and repeats paragraph 53J in relation to the Remediation Plan Adequacy Representation; and
- (b) denies subparagraph (b) and refers to and repeats paragraphs 53J and 53AG(a)(i) in relation to the Remediation Plan Timing Representation;
- (c) says further that even if the Representations in subparagraphs (a) and (b) made on 17 August 2021 (which is denied) such representations were statements of intention as at the date they were made, and not continuing representations by silence.

Particulars

EML refers to and repeats the particulars to subparagraph 53M(f).

53AK As to paragraph 53AK, it:

- (a) says the allegation in subparagraph (a) is embarrassing and liable to be struck out, and under cover of that objection, it admits that on 26 April 2022 it updated its FY22 guidance and otherwise denies subparagraph (a);
- (b) denies subparagraph (b) and refers to and repeats paragraph 53L above;
- (c) says that even if it did make the Modified FY22 Guidance Unaffected by the CBI Issues Representation (which is denied) such representation is a statement of opinion with regard to future matters for which it had a reasonable basis.

Particulars

1. The update to the FY22 guidance was made close in time to the end of the forecast period

(being the end of FY22) on the basis of the factors disclosed on 26 April 2022 and on the basis of information regarding the CBI remediation and financial performance of EML in the year to date.

2. At the time of the FY22 guidance, EML had no reason to believe the alleged CBI Issues or the implementation of the remediation plan during the remainder of FY22 would have a material impact upon the FY22 guidance.
3. EML's FY22 results were within the FY22 guidance announced on 26 April 2022, with the exception of underlying EBITDA which was \$820,000 below the guidance range, and underlying NPATA which was \$2.1 million above the guidance range (22 August 2022 ASX Announcement – FY22 results).
4. Further particulars may be provided prior to trial.

EE THE 25 JULY 2022 DISCLOSURE AND ITS IMPACT

EE.1 25 July 2022

53AL It admits paragraph 53AL.

53AM It admits that the 25 July 2022 Announcement contained statements to the effect alleged in paragraph 53AM and says further that it will refer at trial to the full terms and effect of the announcement.

E.2 Price impact of the 25 July 2022 Announcement

53AN As to paragraph 53AN:

- (a) it admits that the closing price of EML's shares on 22 July 2022 was \$1.195 and on 25 July 2022 was \$0.93;
- (b) it refers to and repeats paragraphs 53AL, 74 and 75;
- (c) otherwise denies the allegations.

EF THE ALLEGED TRUE POSITION (19 MAY 2021 TO 25 JULY 2022)

53AO It says that paragraph 53AO is embarrassing and liable to be struck out, and under cover of that objection, it:

- (a) admits that as at 19 May 2021, PCSIL had not finalised a remediation plan in relation to the alleged CBI Issues;
- (b) refers to and repeats paragraphs 50A(c)(i), 50C(b) and 50C(c) above;
- (c) says that EML could not know whether any given remediation plan would satisfy the CBI unless and until the CBI had confirmed it was so satisfied;
- (d) says that as at 19 May 2021 it did not consider that PCSIL had a remediation plan that would satisfy the CBI by any particular time, or at all;
- (e) otherwise denies the allegations.

EF.2 The alleged true state of the Remediation Plan's Cost Impact as at and from 19 May 2021

53AP It says that paragraph 53AP is embarrassing and liable to be struck out, and under cover of that objection, it:

- (a) refers to and repeats paragraphs 50A and 53E above;
- (b) says that as at 19 May 2021 it did not consider that the implementation of PCSIL's remediation plan was likely to have a relatively minor impact on EML's financial performance and would not materially affect it beyond the incurrence of relatively minor one-off costs;
- (c) otherwise denies the allegations.

EF.3 The alleged true state of the Remediation Plan as at 17 August 2021

53AQ It says paragraph 53AQ is embarrassing and liable to be struck out, and under cover of that objection, it:

- (a) refers to and repeats paragraphs 50C and 53AO(c) above;
- (b) otherwise denies the allegations;
- (c) says that as at 17 August 2021:
 - i. PCSIL had submitted a remediation plan to the CBI;
 - ii. that plan had been developed with the assistance of PwC who were expert advisors in the field;
 - iii. PCSIL had received no indication from the CBI that it was not satisfied with the remediation plan.

EF.4 The alleged true state of the Remediation Plan Timing Implementation as at 17 August 2021

53AR It says that paragraph 53AR is embarrassing and liable to be struck out, and under cover of that objection, it denies paragraph 53AR and refers to and repeats paragraphs 50C and 53J(a) above.

EF.5 The alleged true state of the Remediation Plan's Cost Impact as at and from 17 August 2021

53AS It says that paragraph 53AS is embarrassing and liable to be struck out, and under cover of that objection, it denies paragraph 53AS and refers to and repeats paragraphs 50A, 50C and 53L above.

EF.6 The alleged true state of the Remediation Plan's Cost as at and from 7 October 2021

53AT. It says that paragraph 53AT is embarrassing and liable to be struck out, and under cover of that objection:

(a) it denies subparagraph (a) and refers to and repeats paragraphs 50A, 50C, 53L and 53S above;

(b) as to subparagraph (b), it:

i. says as at 7 October 2021 it did not consider that limits on PCSIL's growth were unlikely to eventuate;

ii. refers to and repeats paragraphs 50B, 50E and 53S above;

iii. otherwise denies the allegations.

EF.7 The alleged true state of PCSIL's Growth Limitation

53AU. It refers to and repeats paragraph 50E and otherwise denies paragraph 53AU.

EF.8 The alleged true state of the Incomplete Remediation Plan Implementation as at and from 1 January 2022

53AV It admits paragraph 53AV and refers to and repeats paragraph 50D above.

EF.9 The alleged true cost of the PCSIL Remediation Plan as at 26 April 2022

53AW. It denies paragraph 53AW, refers to and repeats paragraph 53AD(c)(iv) and the particulars to subparagraph 53AK(c) above and says that its FY22 guidance remained unchanged after 26 April 2022.

EF.10 The alleged true cost of the PCSIL Remediation Plan on and from 19 May 2021

53AX As to paragraph 53AX it refers to and repeats paragraph 50A above and otherwise denies the allegations.

EF.11 The alleged true state of the PCSIL Remediation Impact on Growth on and from 19 May 2021

53AY As to paragraph 53AY it refers to and repeats paragraphs 50B and 50E above and otherwise denies the allegations.

EF.12 The alleged true state of the PCSIL Remediation Completion Timing on and from 19 May 2021

53AZ It says paragraph 53AZ is embarrassing and liable to be struck out, and under cover of that objection it refers to and repeats paragraphs 39C, 50C and 50D above and otherwise denies the allegations.

EF.13 The alleged true state of PCSIL's Control Standards

53AAA As to paragraph 53AAA:

- (a) it refers to and repeats paragraphs 49A and 49B above;
- (b) otherwise denies paragraph 53AAA.

EF.14 PCSIL's alleged true growth position resulting from the CBI Growth Limitation

53AAB As to paragraph 53AAB:

- (a) it refers to and repeats paragraphs 50B(f) and (h) and 50E above;
- (b) it admits that PCSIL complied with the 9 December 2021 Direction in that PCSIL ensured its total Incoming Payment Value during the Relevant Period, from 9 December 2021, did not exceed 10% of the baseline, which was 12 times PCSIL's average Incoming Payment Value for the months January to August 2021;
- (c) it admits that the 9 December 2021 Direction curtailed PCSIL's ability to grow its total Income Payment Value during the Relevant Period, from 9 December 2021, more than 10% above the baseline;
- (d) otherwise denies the allegation.

F Misleading or Deceptive Conduct**F.1 Compliance Representations (19 December 2020 to 19 May 2021)**

54. [Not used] As to paragraph 54:

- (a) ~~it denies subparagraph (a);~~
- (b) ~~it denies subparagraph (b);~~
- (c) ~~it admits subparagraph (c);~~
- (d) ~~it says further that if, on 19 August 2020, EML represented the matters alleged in subparagraphs 54(a) to 54(c) of the Amended Statement of Claim (which is denied in respect of subparagraphs (a) and (b)), EML only represented that those matters existed or were true as at 19 August 2020.~~

55. ~~[Not used] It denies the allegations in paragraph 55 and says alternatively that if, on 19 August 2020, EML made the alleged Compliance Basis Representation (which is denied), such representations were statements of opinion, for which EML had a reasonable basis as at 19 August 2020.~~

Particulars

~~EML refers to and repeats paragraph 58 below.~~

56. ~~[Not used] It denies the allegations in paragraph 56 and refers to and repeats paragraph 52 above.~~

F.2 ~~Misleading or deceptive conduct~~

57. As to paragraph 57, it:

- (a) admits that, if EML made each of the Compliance Representations and/or the Compliance Basis Representation as alleged (which is denied), the making of those representations would constitute conduct in trade or commerce;
- (b) otherwise denies the allegations.

58. It denies paragraph 58 and says further that:

- (a) in relation to the plaintiffs' reliance on paragraphs 46 to 49, 49A, 49B and 50 of the Amended Statement of Claim, it refers to and repeats the corresponding paragraphs of this defence paragraphs 46 to 49;
- (aa) it denies that it made the Compliance Representations or Compliance Basis Representations and refers to and repeats paragraphs 31I and 31J;
- (b) ~~even if the Compliance Representations and Compliance Basis Representation were made~~ further or alternatively
 - i. the alleged representations related to EML's business as a whole and were not confined or specific to the PFS Business;

ii. had the alleged representations been made (which is denied), they would have reasonably been understood as statements of EML's opinion;

iii. EML had reasonable grounds for those opinions;

iv. further or alternatively, had the alleged representations been made (which is denied), they would have been were true and accurate having regard to the governance practices and framework of EML as a whole;

~~(c) in the premises, even if the Compliance Representations and Compliance Basis Representation were made, the making of those representations was not conduct which was misleading or deceptive or liable to mislead or deceive.~~

59. It denies paragraph 59 and, in relation to the plaintiffs' reliance on paragraph 58 paragraphs 46 to 50 of the Amended Statement of Claim, refers to and repeats paragraphs 46 to 50 58 above and says further that even if EML made the Compliance Representations and did not have reasonable grounds for making or maintaining the Compliance Representations as alleged in paragraph 59 (which is denied), it does not follow that the Compliance Representations were misleading or deceptive or likely to mislead or deceive;

60. As to paragraph 60:

(a) the allegation is embarrassing, discloses no causes of action and is liable to be struck out;

(b) under cover of that objection, it denies paragraph 60 and, in relation to the plaintiffs' reliance on paragraphs 54 57 to 59 of the Amended Statement of Claim, refers to and repeats paragraphs 54 57 to 59 above.

F.2 Minor Impacts Representation (19 May 2021 / 17 August 2021)

60A As to paragraph 60A, it:

(a) admits that, if EML made the representation as pleaded (which is denied), the making of the representation would constitute conduct in trade or commerce;

(b) otherwise denies the allegations.

60B It denies paragraph 60B, refers to and repeats paragraphs 53E and 53AP above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50C and

53AO to 53AP of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence.

60C It denies paragraph 60C.

60D. As to paragraph 60D:

(a) the allegation is embarrassing, discloses no causes of action and is liable to be struck out;

(b) under cover of that objection, it denies paragraph 60D and, in relation to the plaintiffs' reliance on paragraphs 60A to 60C of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence.

F.3 Remediation Plan Adequacy and Timing Representations (17 August 2021 onwards)

60E As to paragraph 60E, it:

(a) admits that, if EML made the representations, as pleaded (which is denied), the making of the representations would constitute conduct in trade or commerce;

(b) otherwise denies the allegations.

60F As to paragraph 60F, it:

(a) denies subparagraph (a), refers to and repeats paragraphs 53J, 53M, 53R, 53Z, 53AD, 53AE, 53AJ, 53AO, 53AQ, 53AR and 53AZ above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50D and 53AQ to 53AS of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence;

(b) denies subparagraph (b), refers to and repeats paragraphs 53J, 53R, 53AE, 53AJ, 53AO, 53AQ, 53AR and 53AZ above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50E, 53AQ to 53AS and 53AT of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence; and

(c) denies subparagraph (c), refers to and repeats paragraphs 53J, 53Z, 53AE, 53AJ, 53AO, 53AQ, 53AR and 53AZ above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50E, 53AQ to 53AS and 53AT, 53 AU and 53AV of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence.

60G It denies paragraph 60G.

60H It denies paragraph 60H and, in relation to the plaintiffs' reliance on paragraphs 60E to 60G of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence.

F.4 FY22 Guidance Representations (17 August 2021 onwards)

60I As to paragraph 60I, it:

(a) admits that, to the extent that EML made the FY22 Guidance Representations, the making of the representations would constitute conduct in trade or commerce;

(b) otherwise denies the allegations.

60J As to paragraph 60J, it:

(a) denies subparagraph (a), refers to and repeats paragraphs 53K, 53M, 53R, 53Z and 53AD above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50E and 53AW to 53AS of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence;

(b) denies subparagraph (b), refers to and repeats paragraphs 53K, 53R and 53AE above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50E and 53AW to 53AS and 53AT of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence;

(c) denies subparagraph (c), refers to and repeats paragraphs 53K and 53AE above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50E and 53AW to 53AS and 53AT and 53AU of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence;

(d) denies subparagraph (d), refers to and repeats paragraphs 53K, 53AD and 53AE above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50E and 53AW to 53AS and 53AT, 53AU and 53AV of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence;

(e) says further that the FY22 Guidance Representations were representations of present expectation and not representations as to future matters.

60K It denies paragraph 60K, refers to and repeats subparagraph 60J(e) above and says further that the FY22 Guidance Representations were true.

60L It denies paragraph 60L and, in relation to the plaintiffs' reliance on paragraphs 60I to 60K of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence.

F.5 Remediation Plan Impacts Representation (17 August 2021 onwards)

60M As to paragraph 60M, it:

(a) admits that, if EML made the representation as pleaded (which is denied), the making of the representation would constitute conduct in trade or commerce;

(b) otherwise denies the allegations.

60N It denies paragraph 60N, refers to and repeats paragraphs 53L, 53M, 53AS and 53AT(a) above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50 and 50A to 50C of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence.

60O It denies paragraph 60O.

60P It denies paragraph 60P and, in relation to the plaintiffs' reliance upon paragraphs 60M to 60P, it refers to and repeats the corresponding paragraphs of this defence.

F.6 FY22 Guidance Unaffected by CBI Issues Representation (17 August 2021 onwards)

60Q As to paragraph 60Q, it:

(a) admits that, if EML made the representation as pleaded (which is denied), the making of the representation would constitute conduct in trade or commerce;

(b) otherwise denies the allegations.

60R As to paragraph 60R:

(a) it denies subparagraph (a), refers to and repeats paragraphs 53L, 53M, 53R, 53Z, 53AD and 53AS above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50E and 53AQ to 53AS of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence;

(b) it denies subparagraph (b), refers to and repeats paragraphs 53L, 53R, 53AE, and 53AS above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50E and 53AW to 53AS and 53AT of the

Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence;

(c) it denies subparagraph (c), refers to and repeats paragraphs 53L, 53AE, and 53AS above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50E and 53AW to 53AS and 53AT and 53AV of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence;

(d) it denies subparagraph (d), refers to and repeats paragraphs 53L, 53AD, 53AE, and 53AS above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50E and 53AW to 53AS and 53AT, 53AU and 53AV of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence.

60S It denies paragraph 60S.

60T It denies paragraph 60T and, in relation to the plaintiffs' reliance on paragraphs 60Q to 60S of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence.

F.7 Modified Remediation Plan Impacts Representation (7 October 2021)

60U As to paragraph 60U, it:

(a) admits that, if EML made the representation as pleaded (which is denied), the making of the representation would constitute conduct in trade or commerce;

(b) otherwise denies the allegations.

60V As to paragraph 60V, it:

(a) denies subparagraph (a), refers to and repeats paragraphs 50S, 50AE and 50AT above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50D and 53AQ to 53AS and 53AT of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence;

(b) denies subparagraph (b), refers to and repeats paragraphs 50S, 50AE and 50AT above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50E and 53AQ to 53AS, 53AT and 53AU of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence;

(c) denies subparagraph (c), refers to and repeats paragraphs 50S, 50AE and 50AT above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50E and 53AQ to 53AS, 53AT, 53AU and 53AV of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence;

(d) denies subparagraph (d), refers to and repeats paragraphs 50S, 50AE and 50AT above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50E and 53AQ to 53AS and 53AT, 53AU, 53AV and 53AW of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence.

60W It denies paragraph 60W.

60X It denies paragraph 60X and, in relation to the plaintiffs' reliance on paragraphs 60U to 60W of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence.

F.8 Modified FY22 Guidance Representations (26 April 2022)

60Y It says that paragraph 60Y is embarrassing and liable to be struck out. Under cover of that objection it:

(a) admits that, to the extent that EML made the Modified FY22 Guidance Representations, the making of the representations would constitute conduct in trade or commerce;

(b) otherwise denies the allegations.

60Z It says that paragraph 60Z is embarrassing and liable to be struck out. Under cover of that objection it:

(a) denies paragraph 60Z, refers to and repeats paragraph 53AK(a) above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50E and 53AQ to 53AS, 53AT, 53AU, 53AV and 53AW of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence;

(b) says further that to the extent they were made the FY22 Guidance Representations were representations of present expectation and not representations as to future matters.

60AA It says that paragraph 60AA is embarrassing and liable to be struck out. Under cover of that objection it denies paragraph 60AA, refers to and repeats subparagraphs

53AK(a) and 60Z(b) above and says further that to the extent they were made the Modified FY22 Guidance Representations were true.

60AB It says that paragraph 60AB is embarrassing and liable to be struck out. Under cover of that objection it denies paragraph 60AB and, in relation to the plaintiffs' reliance upon paragraphs 60Y to 60AA of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence.

F.9 Modified FY22 Guidance Unaffected by CBI Issues Representations (26 April 2022)

60AC As to paragraph 60AC, it:

(a) admits that, to the extent that EML made the Modified FY22 Guidance Unaffected by CBI Issues Representations (which is denied), the making of the representations would constitute conduct in trade or commerce;

(b) otherwise denies the allegations.

60AD It denies paragraph 60AD, refers to and repeats paragraphs 53AK(b), 53AK(c) and 53AW above and, in relation to the plaintiffs' reliance on paragraphs 49A, 49B, 50, 50A to 50E and 53AQ to 53AS, 53AT, 53AU, 53AV and 53AW of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence;

60AE It denies paragraph 60AE, refers to and repeats paragraph 53W above.

60AF It denies paragraph 60AF and, in relation to the plaintiffs' reliance upon paragraphs 60AC to 60AE of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence.

G Continuous Disclosure Contraventions

G.1 PFS Alleged PCSIL Control Standard Information Contravention

61. As to paragraph 61:

(a) as to subparagraph (a), it admits that it was aware of the matters admitted in paragraph 49B(a) above, refers to and repeats paragraph 49B above and otherwise denies the allegations; as to subparagraph (a), it:

i. admits that during the Relevant Period it was aware of the PFS Information;

ii. otherwise denies the allegations;

- (b) it denies subparagraph (b) and refers to and repeats paragraph 49B above;
~~and refers to and repeats paragraph 49(c) above;~~
- (c) as to subparagraph (c):
- i. it says that the subparagraph is embarrassing and liable to be struck out;
 - ii. under cover of that objection, it denies the subparagraph and refers to and repeats paragraph 49B above ~~27A(h), 39(d), 39(g), 39(h), 49 and 50 above, and 62 below.~~
62. It admits paragraph 62 and refers to and repeats paragraph 49B above. ~~and says further that, the PFS Information and, if and to the extent it existed (which is denied), the PFS Control Standard Information:~~
- (a) ~~was information which had been made known in a manner that would be likely to bring it to the attention of persons who commonly invest in EML Shares;~~

Particulars

EML relies upon:

- i. ~~the information disclosed by EML at its Annual General Meeting held on 19 November 2019, the video of which is and at all material times since 19 November 2019 has been publicly available on EML Payments YouTube channel, including the following statements made by EML's Chair:~~

~~"But there's always a chance that something comes out of the blue and sets you back a bit, but we've also got a lot of work out skills in the business so in the case of this new acquisition just a couple of things I think we should say is, we will be putting in our own compliance people and lifting, if you like, the industrial quality of compliance because private companies aren't — they don't run themselves quite like listed public companies and also the finance function. They're the two areas where Tom and the guys will be putting in resources in the first instance because we've got got the — that side of their business up to industrial strength. I mean its running fine~~

but it's not where we would want it as a global business so I think you'll see in a year or so those businesses really kick on for us."

ii. ~~the information disclosed in an investor presentation entitled "Acquisition of Prepaid Financial Services and Equity Raising" dated 11 November 2019, a copy of which formed part of EML's ASX Market Announcement on 11 November 2019, including the statement that:~~

~~"Following completion of the Acquisition, EML will be responsible for any outstanding liabilities that PFS has incurred prior to the Acquisition... and which may result in EML being liable for fines and penalties or subject to other sanctions. Such liabilities could include liabilities relating to... failure by PFS to hold required regulatory approvals, authorisations or licences, regulatory actions (including without limitation in relation to any such failure), health and safety claims, warranty or performance claims, liabilities relating to deferred consideration payable under acquisition agreements previously entered into by PFS, historical tax liabilities and other liabilities.~~

~~For example, EML is aware that on 24 September 2019, the French banking regulator ("ACPR") published an enforcement action against PFS and imposed a €1 million fine. The ACPR enforcement decision will remain published on the ACPR website for 5 years. The ACPR identified regulatory breaches by PFS, broadly relating to failures by PFS to carry out a robust 'know your customer' processes and report suspicious transactions to the French regulator. No remediation or corrective measures are imposed by the ACPR in its decision, but the ACPR may carry out further on-site inspections. PFS may be subject to other similar regulatory actions...~~

~~Such liabilities may adversely affect the financial performance or position of EML and even put at risk the group's capacity to carry on its business, either at all or in one or more of the geographic regions in which the group currently operates, and may be more costly than expected to remedy."~~

~~Further particulars may be provided prior to trial.~~

- (b) ~~further or alternatively, was information which could be deduced, concluded or inferred from the information referred to in the particulars to subparagraph (a) above;~~
 - (c) ~~in the premises, by reason of s 676 of the Corporations Act, was generally available.~~
63. It denies paragraph 63, refers to and repeats paragraph 62 49B above, and says alternatively that, if the ~~PFS~~ PCSIL Control Standard Information was information which, but for ASX Listing Rule 3.1A, was information which EML became obliged to tell the ASX during the Relevant Period to 19 May 2021 (which is denied), then:
- (a) the information comprised matters of supposition or was insufficiently definite to warrant disclosure;
 - (b) the information was confidential and the ASX had not formed the view that the information had ceased to be confidential;
 - (c) a reasonable person would not have expected the information to be disclosed;
 - (d) in the premises, the information was within the exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A.
64. It admits paragraph 64 and refers to and repeats paragraph 49B above. ~~As to paragraph 64, it:~~
- (a) ~~refers to and repeats paragraph 62 above;~~
 - (b) ~~says that, in the circumstances, it was not obliged further to communicate the PFS Control Standard Information to the ASX before 19 May 2021;~~
 - (c) ~~otherwise denies the allegations.~~
65. It denies paragraph 65 and, in relation to the plaintiffs' reliance upon paragraphs 61 to 64 of the Amended Statement of Claim, refers to and repeats paragraphs 61 to 64 above.

G.2 Alleged PCSIL Required Remediation Information Contravention CBI Response Information

66. As to paragraph 66:

- (a) it denies subparagraph (a) and refers to and repeats paragraph 50 above;
- (b) it denies subparagraph (b) and says further that a reasonable person would not expect the information to have a material effect on the price or value of EML shares when considered in light of the matters pleaded in paragraphs 50 above and 67(a) and (b) below; and refers to and repeats paragraph 50 above;
- (c) as to subparagraph (c):
 - i. it says that the subparagraph is embarrassing and liable to be struck out;
 - ii. under cover of that objection, it denies the subparagraph and refers to and repeats paragraph 50 above 27A(h), 34, 39 and 50 above.

67. ~~As to paragraph 67, it refers to and repeats paragraph 50 and otherwise admits paragraph 67.~~ As to paragraph 67, on the assumption that the reference to “Remediation Plan Information” is intended to be a reference to the “PCSIL Required Remediation Information”, it:

- (a) says that the information contained in announcements, presentations and calls made by EML during the Relevant Period, including the information pleaded to in subparagraph (b) below, was generally available on and from the date of those announcements, presentations and calls;

Particulars

EML relies upon the 19 May 2021 Announcement, 7 June 2021 Announcement, 17 August 2021 ASX Announcement, 17 August 2021 Presentation, the 18 August 2021 Investor Call, 7 October 2021 Announcement, transcript of the 2021 AGM, 17 November 2021 Announcement, 25 November 2021 Announcement, 26 February 2022 Announcement, 16 February 2022 Presentation, 16 February 2022 Investor Call, and 26 April 2022 Announcement. Further particulars may be provided prior to trial.

(b) says further that the following information was generally available during the Relevant Period:

- i. on and from 19 May 2021, that the CBI had raised significant regulatory concerns relating to PCSIL's AML/CTF risk and control framework and governance;
- ii. on and from 19 May 2021, that the CBI considered that one or more conditions for it issuing a CBI Written Direction may be satisfied;
- iii. on and from 19 May 2021, that there was a material risk that the CBI would issue CBI Written Directions to PCSIL which could have a material adverse impact on EML, including directions limiting growth;
- iv. on and from 19 May 2021, that EML would be implementing remediation activities to address the CBI's concerns, which activities were likely to be substantial;

Particulars

- 1. The information referred to above was contained in and/or constituted matters that could be deduced, concluded or inferred from the information in the 19 May 2021 Announcement.
 - 2. Further particulars may be provided prior to trial.
- v. on and from no later than 17 August 2021:
- (A) that EML was implementing an extensive remediation plan to address the CBI's concerns;
 - (B) that EML was in dialogue with the CBI about, and that the CBI was likely to issue, a restriction on growth of PCSIL's business which was likely to apply during the remediation phase;

Particulars

The information was contained in:

- 1. the 17 August 2021 Presentation and/or constituted matters that could be deduced, concluded or inferred from the information in the presentation.

2. Market analyst report prepared by Canaccord Genuity dated 18 August 2021.

3. Market analyst report prepared by Edison dated 20 August 2021.

vi. on and from no later than 7 October 2021, that:

- (A) PCSIL had received further correspondence from the CBI regarding its regulatory concerns in relation to PCSIL and potential directions, including but not limited to the remediation plan and material growth;
- (B) the potential directions could materially impact the European operations of PCSIL;
- (C) the CBI had proposed that certain limits be applied to programs that, if implemented, could have a negative impact on the PCSIL business;

Particulars

The information was contained in the 7 October 2021 Announcement.

vii. on and from no later than 25 November 2021, that the CBI intends to impose a material growth limitation over PCSIL's total payment volumes for 12 months or rescinded earlier following third party verification to confirm PCSIL's remediation plan had been effectively implemented;

Particulars

The information was contained in the 25 November 2021 Announcement.

viii. on and from no later than 16 February 2022, that the CBI had imposed material growth restrictions on PCSIL until the remediation plan was completed;

Particulars

The information was contained in the 16 February 2022 Presentation.

ix. at all times on and from 19 May 2021 to 25 July 2022, that EML was implementing but had not yet completed its remediation plan in relation to the CBI Issues.

Particulars

1. The information was contained in and/or constituted matters that could be deduced, concluded or inferred from the announcements pleaded in subparagraphs (i) to (vii) and the particulars to subparagraph 67(a) above.

2. Further particulars may be provided prior to trial.

(c) says that a reasonable investor would at all material times have known of the matters referred to in paragraph 50C(b)(iii) above;

(d) it otherwise admits the allegations.

68. On the assumption that the reference to “Remediation Plan Information” is intended to be a reference to the “PCSIL Required Remediation Information”, it denies paragraph 68 and says:

(a) to the extent, but for ASX Listing Rule 3.1A, the alleged PCSIL Required Remediation Information was information which, during any part of the Relevant Period on and from 17 August 2021, EML became obliged to tell the ASX (which is denied), then:

i. the information ~~pleaded in subparagraphs 50(b) and 50(c) of the Statement of Claim:~~

(A) comprised matters of supposition or was insufficiently definite to warrant disclosure; and/or

(B) concerned an incomplete proposal or negotiation;

(b) the information was confidential and ASX had not formed the view that the information had ceased to be confidential;

i. a reasonable person would not have expected the information to be disclosed;

ii. in the premises, the information was within the exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A;

(c) further that:

- i. the 19 May 2021 Announcement contained the information that EML was obliged to tell the ASX in relation to the matters the subject of the alleged PCSIL Required Remediation Information pursuant to its obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act;
- ii. the 19 May 2021 Announcement was made in circumstances where:
 - (A) PCSIL received the CBI's letter at 11.12pm on Thursday 13 May 2021;
 - (B) EML requested a trading halt on the morning of Monday 17 May 2021, prior to the market opening;
 - (C) between the time it received the 13 May 2021 CBI Letter and the time of the 19 May 2021 Announcement, EML considered its Continuous Disclosure Obligations and the form of the announcement that should be made to the ASX;
 - (D) EML made the 19 May 2021 Announcement on the morning of Wednesday 19 May 2021 before trading resumed;
- iii. in the premises, EML at all material times complied with its obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act.

69. ~~It refers to and repeats paragraph~~ As to paragraph 69, it says that it communicated the matters pleaded in paragraphs 67 and 68(b) above and otherwise admits paragraph 69.

70. It denies paragraph 70 and, in relation to the plaintiffs' reliance on paragraphs 66 to 69 of the Amended Statement of Claim, refers to and repeats paragraphs 66 to 69 above.

G.3 Alleged Required Remediation Impact and Timing Information Contravention

70A As to paragraph 70A:

- (a) it denies subparagraph (a) and refers to and repeats paragraphs 50A (in relation to the PCSIL Remediation Cost Impact Information), 50B (in relation

to the PCSIL Remediation Growth Impact Information), and 50C (in relation to the PCSIL Remediation Impact Timing Information);

(b) it denies subparagraph (b) and says further that a reasonable person would not expect the information to have a material effect on the price or value of EML shares when considered in light of the matters pleaded in paragraphs 50A, 50B and 50C above and 70B below;

(c) as to subparagraph (c):

i. it says that the subparagraph is embarrassing and liable to be struck out;

ii. under cover of that objection, it denies the subparagraph and refers to and repeats paragraphs 50A, 50B, and 50C above.

70B As to paragraph 70B:

(a) it says the information pleaded in paragraphs 50A(g), 67(a) and 67(b) was generally available during the Relevant Period;

(b) otherwise admits the allegations.

70C It denies paragraph 70C and says further that to the extent, but for ASX Listing Rule 3.1A, the pleaded PCSIL Remediation Cost Impact Information, PCSIL Remediation Growth Impact Information and PCSIL Remediation Impact Timing Information was information that, during any part of the Relevant Period, was not generally available and which EML became obliged to tell the ASX (which is denied), then:

(a) the information:

i. comprised matters of supposition or was insufficiently definite to warrant disclosure; and/or

ii. concerned an incomplete proposal or negotiation;

(b) the information was confidential and ASX had not formed the view that the information had ceased to be confidential; and

(c) a reasonable person would not have expected the information to be disclosed.

in the premises, the information was within the exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A.

70D As to paragraph 70D, it says that it communicated the matters pleaded in 50A(g), 67(a) and 67(b) above and otherwise admits the allegations.

70E It denies paragraph 70E and, in relation to the plaintiffs' reliance on paragraphs 70A to 70D of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence.

G.4 Alleged CBI Limitation Growth Contravention

70F As to paragraph 70F, on the assumption that the reference to "CBI Limitation Growth Information" is intended to be a reference to the "CBI Growth Limitation Information" pleaded in paragraph 50E:

(a) it admits that it was aware of the matters admitted in paragraph 50E above and otherwise denies the allegations in subparagraph (a);

(b) it denies the allegations in subparagraph (b) and says further that a reasonable person would not expect the information to have a material effect on the price or value of EML shares when considered in light of the matters pleaded in paragraphs 50E above and 70G below;

(c) as to subparagraph (c):

i. it says that the subparagraph is embarrassing and liable to be struck out;

ii. under cover of that objection, it denies the subparagraph and refers to and repeats paragraph 50E above.

70G As to paragraph 70G, it says that the information pleaded in paragraphs 50E(f), 67(a) and 67(b) above was generally available during the Relevant Period and otherwise admits paragraph 70G.

70H It denies paragraph 70H and refers to and repeats paragraphs 70F and 70G above.

70I As to paragraph 70I, it says that it communicated the matters pleaded in paragraphs 50E(f), 67(a) and 67(b) above and otherwise admits paragraph 70I.

70J It denies paragraph 70J and, in relation to the plaintiffs' reliance upon paragraphs 70F to 70I of the Amended Statement of Claim, refers to and repeats the corresponding paragraphs of this defence.

G.5 Alleged Incomplete Remediation Plan Information Contravention

70K As to paragraph 70K

(a) it admits that during the period between 1 January 2022 to 25 July 2022 EML was aware that it had not yet completed the implementation of a remediation

plan in relation to the CBI Issues to the satisfaction of the CBI and refers to and repeats paragraph 50C above;

(b) it denies subparagraph (e) and says further that a reasonable person would not expect the information to have a material effect on the price or value of EML shares when considered in light of the matters pleaded in paragraph 70L below;

(c) as to subparagraph (f):

i. it says that the subparagraph is embarrassing and liable to be struck out;

ii. under cover of that objection, it denies the subparagraph and refers to and repeats subparagraph (b) above.

70L It denies paragraph 70L and says further that at all times on and from 19 May 2021 to 25 July 2022 the information pleaded in paragraphs 67(a) and 67(b) above was generally available.

70M It denies paragraph 70M and refers to and repeats paragraphs 70K and 70L above.

70N. It denies paragraph 70N and says further that it communicated the information pleaded in paragraph 70L above.

70O It denies paragraph 70O and, in relation to the plaintiffs' reliance upon paragraphs 70K to 70N of the Amended Statement of Claim, it refers to and repeats the corresponding paragraphs of this defence.

H Alleged Contravening Conduct Causing Group Members Loss

H.1 Acquisition of EML Shares

71. It admits that, during the Relevant Period, the plaintiffs acquired interests in EML Shares and otherwise does not know and cannot admit paragraph 71.

H.2 Market-based causation

72. As to paragraph 72, it:

(a) admits that the EML Shares traded in a market operated by the ASX;

(b) admits that the market was regulated by, inter alia, the ASX Listing Rules and s 674(2) of the Corporations Act;

(c) admits that EML had the obligations pleaded in paragraphs 5 and 6 above;

- (d) admits that the price or value of EML shares would reasonably be expected to have been informed or affected by information disclosed in accordance with the ASX Listing Rules and s 674(2) of the Corporations Act;
- (e) otherwise denies the allegations.

73. It denies paragraph 73.

74. It denies paragraph 74 and says further that it is not possible for a Market Contravention that is continuing to be the cause of a decline in share price in the circumstances pleaded in paragraph 74 of the Amended Statement of Claim.

74A. Further to paragraph 74 above, if it is found that:

- (a) the alleged “Market Contraventions” occurred (which is denied); and
- (b) the declines in the price of EML shares pleaded in paragraphs 45, 53P, 53AH and 53AN of the Amended Statement of Claim were caused or materially contributed to by the market’s reaction to the information contained in the 19 May 2021 Announcement, 7 October 2021 Announcement, 26 April 2022 Announcement, and 25 July 2022 Announcement (which is also denied),

then the defendant says further that:

- (c) the information contained in those announcements ~~the 19 May 2021 Announcement:~~
 - i. is materially different to the alleged Material Information PFS Control Standard Information ~~and the alleged CBI Response Information~~, the non-disclosure of which is alleged to give rise to the Continuous Disclosure Contravention;
 - ii. is materially different to the information that would have been necessary to be disclosed by EML to avoid the alleged Continuous Disclosure Contravention;
 - iii. is materially different to any ‘correction’ or ‘qualification’ of the alleged Material Representations Compliance Representations (the absence of which is alleged ~~in paragraphs 59 of the Amended Statement of Claim~~ to give rise to the Misleading Conduct Contraventions) that would have been reasonably necessary to be made, further or alternatively that would have been likely to have

been made, by EML in order to avoid the Misleading Conduct Contraventions occurring;

- (d) in the premises, the decline in the price of EML Shares referred to in paragraph 74 ~~pleaded in paragraphs 45~~ of the Amended Statement of Claim could not have been caused or materially contributed to by the market's reaction to the alleged Market Contraventions.

75. It says paragraph 75 is embarrassing and liable to be struck out, and under cover of that objection, it:

- (a) refers to and repeats paragraphs ~~62 and 68(b)~~, 70B, 70G and 70L above;
- (b) says that, if the alleged Material Information existed and was required to be but was not disclosed by EML (which is denied):
- i. the disclosure required would depend on the point in time such disclosure was required or made;
 - ii. EML would also have disclosed further contextual information;

Particulars

Particulars will be provided following expert evidence.

- (c) denies paragraph 75.

H.3 Reliance

76. It denies the allegations in paragraph 76.

H.4 Loss and damage

77. It denies the allegations in paragraph 77, refers to and repeats paragraph 5(e)(iii) above and says further that those Group Members who ~~sold shares prior to 17 May 2021~~ sold those shares in a market affected by the same (alleged) misinformation in which they purchased those shares, and therefore have suffered no loss in respect of those shares:

- (a) sold shares prior to 17 May 2021;
- (b) bought shares and sold those shares between 19 May 2021 and 7 October 2021;
- (c) bought shares and sold those shares between 7 October 2021 and 25 April 2022

(d) bought shares and sold those shares between 25 April 2022 and 25 July 2022,

(e) bought and sold those shares in a market affected by the same (alleged) misinformation in which they purchased those shares, and therefore have suffered no loss in respect of those shares.

R C A HIGGINS

T SPENCER BRUCE

K RAGHAVAN

Dated ~~23 May 2022~~ 5 May 2023



Herbert Smith Freehills
Solicitors for the defendant