



Rule 14.04

Case: S ECI 2021 04738

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

No. S ECI 2021 04738

BETWEEN

PAUL LEIGHTON MUMFORD

First Plaintiff

-and-

GAYLE MUMFORD

Second Plaintiff

-and-

EML PAYMENTS LTD

Defendant

DEFENCE TO FURTHER AMENDED STATEMENT OF CLAIM

Filed pursuant to order 13 of the orders made by the Honourable Justice Nichols on 20
February 2025

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Preliminary

- A In this Defence, a reference to: (1) 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**); (2) the “**PFS EU Business**” means the PFS Business in the European Economic Area; (3) PFS means the corporate group comprising PFSIL and its subsidiaries.
- B For the purposes of this Defence, terms defined in the Further Amended Statement of Claim filed on 24 February 2025 (**FASOC**) are adopted unless the context indicates otherwise.
- C For ease of reference, the defendant adopts the headings used in the FASOC 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 FASOC, and nothing in this defence should be taken to be an admission of any fact alleged in the particulars to the FASOC.

In answer to the allegations in the FASOC, the defendant says as follows:

A. PRELIMINARY

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 20 May 2021 which settled on 24 May 2021;
 - (c) otherwise does not 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 FASOC;

- (b) otherwise denies the allegations.

A.2 The Defendant

4. It admits paragraph 4.
5. As to paragraph 5, it:
 - (a) admits subparagraph (a);
 - (b) admits subparagraph (b);
 - (c) admits subparagraph (c);
 - (d) admits subparagraph (d);
 - (e) save to say that it will rely at trial on the full terms and effect of the statutory provisions referred to in paragraph 5(e) of the FASOC, it admits subparagraph (e).
6. As to paragraph 6, it:
 - (a) 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;
 - (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) 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.
10. It admits paragraph 10.
11. Save to say that Adcock was Chair of the Audit & Risk Committee from 23 August 2017, it admits paragraph 11.
12. It admits paragraph 12.
13. As to paragraph 13, it:
- (a) admits that, at all material times from July 2018, Wenk was EML's Group General Counsel;
 - (b) admits that, from 14 November 2018 to 29 June 2021, Wenk was Company Secretary of EML (jointly with Tissera-Isaacs from 26 November 2019 to 29 June 2021);
 - (c) admits that, from 14 November 2018 to 29 June 2021, Wenk was an officer of EML within the meaning of s 9 of the Corporations Act and 19.12 of the ASX Listing Rules;
 - (d) otherwise denies the allegations.
14. It admits paragraph 14.
15. It admits paragraph 15.
16. As to paragraph 16, it:
- (a) admits subparagraph (a);

- (b) admits subparagraph (b);
- (c) admits that, during the period that he was an interim director of PCSIL, 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 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 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 (EML.0028.0001.0001).

EML's Delegations of Authority Policy dated 19 October 2021 (EML.0042.0021.5666).

- (e) otherwise denies the allegations.
17. As to paragraph 17, it:
- (a) admits that, at all material times from 4 April 2019 until 26 February 2021, Moran was the Chief Executive Officer of PCSIL;
 - (b) says that Moran's employment ceased on 26 February 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 Moran remained in his role, all material strategic decisions in respect

of the PFS Business were made by Cregan and Shore without the participation of Moran;

- (d) says further that 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 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, Britton was the Commercial Director of PFS UK, which was a wholly owned subsidiary of PFSIL;
- (b) admits that from 1 April 2021 to 3 August 2021, Britton was the interim CEO of PCSIL;
- (c) admits subparagraph (c);
- (d) admits subparagraph (d);
- (e) otherwise denies the allegations.

19. As to paragraph 19, it:

- (a) admits that, at all material times from 31 March 2020, 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) says that, prior to 3 August 2021, Evans' role did not include responsibility for the PFS Business, whether in EMEA or otherwise;
- (c) says further that, prior to 3 August 2021, Evans 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 Evans was not a Key Management Personnel for the purpose of the applicable accounting standards (AASB124).

- (d) admits that, at all material times from 3 August 2021, Evans was the interim CEO of PCSIL;
 - (e) admits that, during the period that she was interim CEO of PCSIL, 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;
 - (f) otherwise denies the allegations.
20. It admits paragraph 20.
21. It admits paragraph 21.
22. As to paragraph 22, it:
- (a) admits subparagraph (a);
 - (b) says that 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

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 Periods.

EML's Delegations of Authority Policy dated 19 October 2021 (EML.0042.0021.5666).

- (c) otherwise denies the allegations.
23. As to paragraph 23, it:
- (a) admits that, from 7 March 2022, Gaughran was the General Counsel for EML Europe;

- (b) says that, as general counsel for Europe, 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.

24. As to paragraph 24, it:

- (a) admits that, from 21 March 2022, Power was the European Compliance & Regulatory Director of EML;
- (b) says that Power did not have the capacity to affect significantly EML's financial standing, nor did she participate in making decisions that affect the whole or a substantial part of the business of EML.

Particulars

Power was not a director of EML or any of its subsidiaries, and reported to Betts in the Second Relevant Period.

EML's Delegations of Authority Policy dated 19 October 2021 (EML.0042.0021.5666).

- (c) otherwise denies the allegations.

25. As to paragraph 25, it:

- (a) says that Nuvoloni's employment ceased on 30 June 2022, and otherwise admits subparagraph (a);
- (b) says that Nuvoloni reported to Power;
- (c) otherwise denies the allegations.

26. As to paragraph 26, it:

- (a) denies the allegations;
- (b) says that Salvador:

- (i) from 6 September 2021, was the Head of Risk Management for PCSIL reporting to Gadiot;
- (ii) from 1 April 2022 until the end of the Second Relevant Period, 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 Betts.

27. As to paragraph 27, it:

- (a) admits subparagraph (a);
- (b) admits subparagraph (b);
- (c) says that Gadiot 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

Gadiot reported to Betts and had limited authority. He did not attend EML Board meetings in the Relevant Period.

EML's Delegations of Authority Policy dated 5 June 2020 (EML.0028.0001.0001).

EML's Delegations of Authority Policy dated 19 October 2021 (EML.0042.0021.5666).

- (d) otherwise denies the allegations.

28. As to paragraph 28, it:

- (a) refers to and repeats paragraphs 8 to 27 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, Cregan, Liddy, Wilson, Adcock, Gresham, Wenk, Tissera-Isaacs, Shore, Betts, Evans, Shand, Curneen or 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 Betts, Evans or Britton had, or ought reasonably to have, come into possession of prior to them becoming an officer of EML, or in the case of Betts, Britton and 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

- 29. It admits paragraph 29.
- 30. It admits paragraph 30.
- 31. It admits paragraph 31.
- 32. It admits paragraph 32.
- 33. It admits paragraph 33.
- 34. It admits paragraph 34.
- 35. It admits paragraph 35.

B.3 Regulation of PFS

- 36. It admits paragraph 36.
- 37. As to paragraph 37, it:
 - (a) says that the rationale for PCSIL seeking authorisation was stated in section 2.6 of PCSIL's EMI Application (EML.0099.0001.0215);
 - (b) otherwise denies the allegations.
- 38. As to paragraph 38, it:
 - (a) says the paragraph is embarrassing in circumstances where it does not identify the source of the alleged "requirement";

- (b) under cover of that objection, it does not admit the allegations.
39. As to paragraph 39, it:
- (a) admits that PCSIL's EMI Application included a forecast budget as pleaded in subparagraph (a);
 - (b) denies the allegations in subparagraph (b) and says further that PCSIL's EMI Application included statements to the following effect:
 - (i) the anticipated volume of clients (e-money holders) that the applicant will issue e-money to were:
 - (A) in the first 6 months, 300,000;
 - (B) in the first 12 months, 500,000;
 - (C) in the first 18 months, 700,000;
 - (ii) the anticipated volume of daily transactions within the first 18 months were:
 - (A) in the first 6 months, 42,073;
 - (B) in the first 12 months, 49,434;
 - (C) in the first 18 months, 52,149;
 - (iii) the anticipated values of daily transactions within the first 18 months were:
 - (A) in the first 6 months, €2,734,742;
 - (B) in the first 12 months, €3,460,364;
 - (C) in the first 18 months, €3,911,151.
40. As to paragraph 40, it:
- (a) admits that, at all material times prior to 19 December 2020:
 - (i) the 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) says further that:
- (i) 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;
 - (ii) 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) (**CJA 2010**);
 - (iii) 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**);
 - (iv) the Irish Authorisation permitted PCSIL to lawfully operate as an EMI in the European Economic Area under passporting arrangements;
 - (v) the Irish Authorisation was granted to PCSIL on the basis that PCSIL had robust governance arrangements including:

- (A) a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
 - (B) effective procedures to identify, manage, monitor and report the risks to which it is, or might be, exposed;
 - (C) adequate internal control mechanisms, including sound administrative and accounting procedures;
- (vi) 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;
 - (vii) from 19 December 2020, the PFS EU Business was operated primarily through PCSIL under its Irish Authorisation;
 - (viii) 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;
- (c) otherwise denies the allegations.
- 41. It admits paragraph 41.
 - 42. It admits paragraph 42.
 - 43. It admits paragraph 43.
 - 44. It admits paragraph 44.
 - 45. As to paragraph 45, it:
 - (a) denies the allegations;
 - (b) says that there was no transaction volume limit condition imposed by the CBI Authorisation;
 - (c) says further that the business model described in PCSIL's EMI Application 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's EMI Application dated 20 December 2018.

46. It admits paragraph 46.
47. It admits paragraph 47.
48. It admits paragraph 48.
49. It admits paragraph 49.
50. Save to say that the powers granted to the CBI under the Central Bank Act were required to be exercised lawfully, it admits paragraph 50.
51. As to paragraph 51, it:
 - (a) admits that the CBI had power to issue directions of the kind referred to in paragraph 51;
 - (b) says further that:
 - (i) 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;
 - (ii) it will rely at trial upon the full terms and effect of that Act.
52. As to paragraph 52, it:
 - (a) admits the allegations, save to say that any decision by the CBI to issue a CBI Written Direction was required to be made lawfully;
 - (b) 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

53. As to paragraph 53, it:
 - (a) admits that the PFS Business included issuing a range of prepaid card programs;

- (b) admits there was a risk such cards could be sought to be used for ML/TF;
- (c) says further that the nature and extent of any AML/CTF risk varied based on various matters including the nature of the particular prepaid card program and the customer;
- (d) otherwise denies the allegations.

C. WHAT EML SAID PRIOR TO 21 MAY 2021

54. It admits paragraph 54.

C.1 19 August 2020

55. It admits paragraph 55.

56. It admits paragraph 56.

57. It admits the 2020 Corporate Governance Statement included statements to the effect pleaded in paragraph 57 and says further that it will rely at trial upon the full terms and effect of the 2020 Corporate Governance Statement.

58. It admits paragraph 58.

59. As to paragraph 59, it:

- (a) admits that the 2020 Appendix 4E and Annual Report included statements to the effect pleaded;
- (b) says further that that it will rely at trial upon the full terms and effect of the 2020 Appendix 4E and Annual Report.

C.2 30 October 2020

60. It admits paragraph 60.

61. As to paragraph 61, 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 2020 AGM 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.

C.3 17 February 2021

62. It admits paragraph 62.

63. As to paragraph 63, it:

- (a) admits that the 1H21 Interim Results Announcement contained statements to the effect pleaded;
- (b) says further that it will rely at trial upon the full terms and effect of the 1H21 Interim Results Announcement.

D. KEY EVENTS

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

64. As to paragraph 64, it:

- (a) admits that, as a result of the matters pleaded at subparagraphs 40(b)(vi) and 40(b)(vii) above, PCSIL increased the number and value of payment transactions that it was executing in 1QFY21 compared to the prior quarter;
- (b) refers to and repeats paragraph 45 above;
- (c) otherwise denies the allegations.

65. As to paragraph 65, it:

- (a) denies the allegations;
- (b) refers to and repeats paragraphs 45 and 64 above;
- (c) 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:

- A. Email from PCSIL to the CBI dated 21 April 2020 (EML.0015.0015.6706);
- B. Email from PCSIL to the CBI dated 24 September 2020 (EML.0098.0055.2925; EML.0098.0055.2953);
- C. Emails between PCSIL and the CBI during the period 2 October 2020 to 11 January 2021 (EML.0015.0015.6982; EML.0001.0015.6066; EML.0001.0027.0483).

D.2 23 September 2020 CBI Report

66. As to paragraph 66, it:

- (a) denies the allegations;
- (b) says that in about June 2018, the CBI commenced an AML/CTF inspection into PFS UK (**2018 CBI Inspection**);
- (c) says that on 24 October 2019, the CBI issued its final findings report in relation to the 2018 CBI Inspection (**2019 Final Findings Report**) which set out:
 - (i) ten findings as to deficiencies identified, and/or enhancement required, by the CBI in relation to PFS UK's AML/CTF frameworks; and
 - (ii) actions the CBI proposed that PFS UK take in relation to each finding;
- (d) says that on 7 November 2019 and on 23 September 2020, PFS provided updates to the CBI regarding the remediation actions that had been put in place in response to the 2019 Final Findings Report (**PFS Final Findings Response**);
- (e) says that on 30 September 2020, the CBI indicated to PFS that it expected to close the 2018 CBI Inspection within the next two weeks;
- (f) says that on 8 January 2021, the CBI:

- (i) informed PFS that it had noted the remediation update provided by PFS on 23 September 2020 and that the CBI considered all of the findings of the 2018 CBI Inspection to be closed;
- (ii) provided PFS with an updated version of the 2019 Final Findings Report (**2021 Close Out Report**) which noted PFS's remediation updates and indicated that the CBI considered all findings and proposed actions to be closed;
- (g) says that the CBI did not:
 - (i) impose any fine on PFS UK in relation to the findings of the 2018 CBI Inspection;
 - (ii) take any action under s 45 of the Central Bank Act in relation to the findings of the 2018 CBI Inspection;
 - (iii) otherwise take any enforcement action in relation to the findings of the 2018 CBI Inspection.

67. As to paragraph 67, it:

- (a) refers to and repeats paragraph 66 above;
- (b) says that it will refer at trial to the full terms and effect of the 2019 Final Findings Report, PFS Final Findings Response and the 2021 Close Out Report;
- (c) otherwise denies the allegations.

D.3 22 October 2020 CBI Email

68. It admits paragraph 68.

69. As to paragraph 69, it:

- (a) admits that the 22 October 2020 Email contained statements similar to those pleaded in paragraph 69;
- (b) says that it will refer at trial to the full terms and effect of the 22 October 2020 Email;
- (c) otherwise denies the allegations.

D.4 19 December 2020 CBI Letter

70. As to paragraph 70, it:

- (a) admits that, on or about 16 December 2020, the CBI published on its website the “19 December 2020 CBI Letter”, which is in fact a letter dated 16 December 2020 (**Dear CEO Letter**);
- (b) says that the Dear CEO Letter was not specific to PCSIL, but was addressed to CEOs of financial institutions that carried out one or more of the activities specified in Schedule 2 of the CJA 2010 (**Schedule 2 Firms**);
- (c) says further that on 16 December 2020, the CBI issued a press release in relation to the Dear CEO Letter, which stated that the CBI’s supervisory engagements revealed a low level of compliance amongst Schedule 2 Firms;

Particulars

CBI Press Release dated 16 December 2020 entitled “Central Bank publishes “Dear CEO” letter to Schedule 2 firms on low level compliance with Anti-Money Laundering and Counter Financing of Terrorism obligations”.

- (d) otherwise denies the allegations.

71. As to paragraph 71, it:

- (a) 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 EMIs, which included ongoing reporting and approval requirements under:

- A. Chapter 8 of the CJA 2010;
- 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).

- (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 First 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.

D.5 8 January 2021 report on PFS UK

72. As to paragraph 72, it:

- (a) admits that, on 8 January 2021, the CBI issued the 2021 Close Out Report;
- (b) refers to and repeats paragraph 66 above;
- (c) otherwise denies the allegations.

73. It denies paragraph 73 and refers to and repeats paragraph 66 above.

D.6 8 January 2021 inspection of PCSIL

74. It admits paragraph 74.

75. It admits that the 8 January 2021 Letter stated that CBI intended to conduct an AML/CTF and EU Financial inspection of PCSIL (**2021 CBI Inspection**).

76. 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 11 May 2021, it admits paragraph 76.

77. It admits paragraph 77 and says further that the inspection was conducted remotely via WebEx sessions on 9 February, 11 and 12 March, and 8 April 2021.

78. As to paragraph 78, it:

- (a) admits that, on 8 April 2021, Gadiot and Elaine Maher on behalf of PCSIL attended a meeting with representatives of the CBI;
- (b) admits that the CBI commented on deficiencies that the CBI considered to exist in PCSIL's AML/CTF frameworks and controls;
- (c) refers to and repeats its admission in paragraph 162(b)(ii) below;
- (d) says further that Gadiot and Maher have not been employed by EML or PFS since April 2022 and August 2022, respectively;
- (e) otherwise does not admit the allegations.

D.7 CBI gives written notice of concerns (7 to 13 May 2021)

79. Save to say that the letter was received by EML on 8 May 2021, it admits paragraph 79.

80. As to paragraph 80, it:

- (a) save to say that the 7 May 2021 Letter stated that the CBI considered the increases to the firm's activity levels "likely constitute a material change" to PCSIL's business model, admits the 7 May 2021 Letter contained a statement to the effect pleaded in subparagraph (a);
- (b) admits the 7 May 2021 Letter contained a statement to the effect pleaded in subparagraph (b);
- (c) as to subparagraph (c):
 - (i) admits the 7 May 2021 Letter contained a statement to the effect pleaded in subparagraph (i);
 - (ii) admits the 7 May 2021 Letter contained a statement to the effect pleaded in subparagraph (ii) and says further that PCSIL advised the CBI on 26 February 2021 that Moran would resign, and sought approval for Betts as a Pre-Approval Controlled Function (**PCF**) appointment. PCSIL followed up Betts' PCF application on 28 April 2021;

- (iii) denies subparagraph (iii);
 - (iv) admits the 7 May 2021 Letter contained a statement to the effect pleaded in subparagraph (iv);
 - (v) admits the 7 May 2021 Letter contained a statement to the effect pleaded in subparagraph (v);
 - (d) admits the 7 May 2021 Letter contained a statement to the effect pleaded in subparagraph (d);
 - (e) admits the 7 May 2021 Letter contained a statement to the effect pleaded in subparagraph (e);
 - (f) admits the 7 May 2021 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.
81. It admits paragraph 81.
82. It admits that the 10 May 2021 Letter contained statements to the effect pleaded in paragraph 82 and says further that it will refer at trial to the full terms and effect of the 10 May 2021 Letter.
83. It admits paragraph 83.
84. It admits paragraph 84.
85. Save to say that O’Kelly was Legal Counsel of EML Payments European Holdings Limited, it admits paragraph 85.
86. As to paragraph 86, it:
- (a) as to subparagraph (a), 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), 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) 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) otherwise denies the allegations.
87. It admits paragraph 87 and says further that:
- (a) the letter enclosed, as appendix 2, a Preliminary Observation Report which purported to detail “the most material deficiencies identified” by the CBI during the 2021 CBI Inspection (**Initial POR**);
 - (b) on 30 June 2021, the CBI advised PCSIL that the Initial POR was not complete and that a further version of the Initial POR would be provided when available;
 - (c) on 9 July 2021, the CBI provided PCSIL with a finalised version of the Initial POR, being the “Final POR” as defined in paragraph 112(d) of the FASOC (**Finalised POR**).
88. As to paragraph 88, it:
- (a) save that it denies the characterisation of the First 13 May 2021 Letter, in subparagraph (e), as setting out “at length and in detail” the suspected breaches, admits that the First 13 May 2021 Letter contained statements to the effect pleaded;
 - (b) says that it will refer at trial to the full terms and effect of the First 13 May 2021 Letter.
89. It admits paragraph 89.
90. It admits paragraph 90.
91. It denies paragraph 91 and says it will refer at trial to the full terms and effect of the First and Second 13 May 2021 Letters and the Initial POR.

92. It admits paragraph 92.

93. It admits paragraph 93.

D.8 17 May 2021 Letter

94. It admits paragraph 94.

95. As to paragraph 95, it:

- (a) admits that the 17 May 2021 Letter contained statements similar to those pleaded in paragraph 95;
- (b) says that it will refer at trial to the full terms and effect of the 17 May 2021 Letter;
- (c) otherwise denies the allegations.

96. It admits paragraph 96.

97. It admits paragraph 97.

98. As to paragraph 98, it:

- (a) it admits that Cregan, Shore, Betts, Wenk and Tissera-Isaacs attended one or more meetings of the CBI Subcommittee;
- (b) denies that all of those individuals attended all CBI Subcommittee meetings;
- (c) otherwise denies the allegations.

D.9 Events following 19 May 2021

99. As to paragraph 99, it:

- (a) admits that the 24 May 2021 email says “All passporting notifications issued from PFS will be placed on hold until further investigation can be conducted”;
- (b) otherwise denies the allegations.

100. It admits that the 27 May 2021 Letter responded to the First 13 May 2021 Letter and otherwise denies paragraph 100.

101. As to paragraph 101, it:

- (a) admits that the 27 May 2021 Letter contained statements to the effect pleaded in paragraph 101;
- (b) says that it will refer at trial to the full terms and effect of the 27 May 2021 Letter.

102. It admits paragraph 102.

103. As to paragraph 103, save that the words “at this point in time” were included after the words “notifications to the Central Bank”, it admits the allegations.

104. It admits paragraph 104.

105. As to paragraph 105, it:

- (a) admits that Britton was a member of the CBI Steer Co between June 2021 and 3 August 2021;
- (b) admits that Evans was a member of the CBI Steer Co from November 2021;
- (c) admits that Cregan, Wenk, Shore, Betts, and Gadiot were members of the CBI Steer Co;
- (d) otherwise denies the allegation.

106. As to paragraph 106, it:

- (a) admits that
 - (i) the CBI Steer Co met from time to time after 9 June 2021;
 - (ii) not all tasks forming part of PCSIL’s remediation plan were completed within the timeframe initially planned;
- (b) otherwise says that paragraph 106 is embarrassing by reason of the failure to identify the “various stages” in respect of which completion dates were allegedly not met, were extended or did not exist; and
- (c) under cover of that objection it does not admit the allegation.

107. It admits paragraph 107.

108. As to paragraph 108, it:

- (a) admits the 30 June 2021 Letter contained statements to the effect pleaded in paragraph 108;
- (b) says that it will refer at trial to the full terms and effect of the 30 June 2021 Letter.

109. It admits paragraph 109.

110. As to paragraph 110, it:

- (a) admits subparagraph (a);
- (b) as to subparagraph (b), admits that the 5 July 2021 Letter stated that “PCSIL’s apparent lack of understanding of how to appropriately assess its ML/TF risk is consistent with the Central Bank’s findings in the *Initial POR* that PCSIL’s identification and management of ML/TF risk is not appropriately focused on its actual risk exposures arising from the sector in which it operates and its business model”;
- (c) admits the 5 July 2021 Letter contained a statement to the effect pleaded in subparagraph (c);
- (d) admits the 5 July 2021 Letter contained a statement to the effect pleaded in subparagraph (d);
- (e) admits subparagraph (e);
- (f) admits the 5 July 2021 Letter contained a statement to the effect pleaded in subparagraph (f);
- (g) admits the 5 July 2021 Letter contained a statement to the effect pleaded in subparagraph (g);
- (h) admits the 5 July 2021 Letter contained a statement to the effect pleaded in subparagraph (h);
- (i) admits the 5 July 2021 Letter contained a statement that: “The Central Bank notes that PCSIL has limits in place for the majority of its programmes, such as maximum

balance, maximum daily load and maximum number of loads. While limits do not remove ML/TF risk, they can be supportive of reducing risk exposures. Additionally, limits can be used in the determination of triggers to initiate further investigation of potentially suspicious transactions. Accordingly, the Central Bank expects PCSIL to ensure as a matter of priority that its limits are set at levels that can assist in the reduction of ML/TF risk exposure and the generation of appropriate triggers. The Central Bank is not satisfied that PCSIL's limits are currently set at levels that can adequately achieve this. The Central Bank therefore expects PCSIL to undertake, as a priority item, a review of current card limits across all programmes, with a view to recalibrating the limits so that they reduce ML/TF risk during the Interim Period”;

- (j) says that it will refer at trial to the full terms and effect of the 5 July 2021 Letter;
- (k) says further that at all material times PCSIL's card programs were subject to limits such as maximum amounts that could be loaded onto a card per day and a maximum balance permitted on a card at any time;
- (l) says further that:
 - (i) in July 2021, PCSIL commenced undertaking a review of the limits applied across its programmes (**Limits Review**);
 - (ii) on 23 July 2021, PCSIL informed the CBI that the Limits Review was being performed in conjunction with PCSIL's overall risk assessment, and that, if required, changes to limits would be made on a case by case basis;
 - (iii) on 19 August 2021, PCSIL provided to the CBI its methodology for the Limits Review and invited any questions or comments;
 - (iv) between 19 August 2021 and 6 October 2021:
 - (A) the CBI did not provide any feedback to PCSIL about the methodology for the Limits Review;

- (B) the CBI did not indicate that it was considering or was minded to impose the Proposed Program Limits Direction (as defined in paragraph 130(b)(iii) below);
- (C) the CBI did not indicate that it required or expected limits to be imposed upon a significant number of PCSIL's programs;
- (m) says that it will refer at trial to the full terms and effect of the 5 July 2021 Letter;
- (n) otherwise denies the allegations.

D.10 9 July 2021 Letter and Final POR

111. It admits paragraph 111.

112. As to paragraph 112, it:

- (a) admits subparagraph (a);
- (b) admits that the letter contained statements to the effect pleaded in subparagraph (b);
- (c) admits that the letter contained statements to the effect pleaded in subparagraph (c);
- (d) admits subparagraph (d) and says further that the document enclosed was the Finalised POR;
- (e) admits the letter contained statements to the effect pleaded in subparagraph (e);
- (f) says that it will refer at trial on the full terms and effect of the 9 July 2021 Letter.

113. As to paragraph 113, it:

- (a) admits that the Finalised POR contained statements to the effect pleaded in paragraph 113;
- (b) says further that it will refer at trial to the full terms and effect of the Finalised POR.

D.11 Events following 9 July 2021 up to 17 August 2021 ASX Announcement

114. It admits paragraph 114.

115. It admits paragraph 115.

116. As to paragraph 116, it:

- (a) admits that the Draft EY Report contained statements to the effect pleaded in paragraph 116;
- (b) says that it will refer at trial to the full terms and effect of the Draft EY Report;
- (c) otherwise denies the allegations.

117. It admits paragraph 117.

118. It admits that the 21 July 2021 Letter contained a statement substantially to the effect pleaded at paragraph 118 and says that it will refer at trial to the full terms and effect of the 21 July 2021 Letter.

119. It admits paragraph 119.

120. As to paragraph 120, it:

- (a) admits that the 23 July 2021 Letter included an appendix containing PCSIL's comments on the Finalised POR;
- (b) admits that, in respect of some findings, the appendix included comments that PCSIL acknowledges the findings outlined by the CBI;
- (c) admits that the appendix set out the actions PCSIL intended to take in response to the CBI's findings and proposed actions set out in the Finalised POR;
- (d) says that the 23 July 2021 Letter stated that PCSIL was looking to obtain additional AML/CTF resources with a view to completing specific remediation activities ahead of projected timelines where possible;
- (e) says further that the 23 July 2021 Letter stated that "Whilst PCSIL may not necessarily agree with all of the CBI's findings, particularly as regards breaches of relevant legislation, our primary focus is the development and implementation of a

comprehensive remediation plan which satisfies CBI's expectations and ensures that PCSIL continuously meets its regulatory requirements, ensures effective risk management and demonstrates that a governance and compliance mind-set is in place throughout the firm. Consistently with that sentiment, PCSIL has not sought at this stage to debate the CBI's findings; rather, PCSIL considers that its primary and current focus should be on the successful implementation of the remediation plan and enhancement actions";

(f) refers to and repeats paragraph 161 below;

(g) otherwise denies the allegations.

121. It admits paragraph 121.

122. As to paragraph 122, it:

(a) admits the 30 July 2021 Email contained a statement substantially to the effect pleaded in paragraph 122;

(b) says that the "number of key items" scheduled to be finalised at the board meeting, as identified in the letter, were a revised risk matrix related to assessment of programmes and a metric to be used to define the future material growth of PCSIL;

(c) says that the letter noted that PCSIL proposed to submit the information following the outcome of the board meeting scheduled for 4 August 2021 and stated that the CBI was agreeable to meeting PCSIL following its submission;

(d) says that it will refer at trial to the full terms and effect of the 30 July 2021 Email.

123. It admits paragraph 123.

124. It admits paragraph 124.

125. It admits paragraph 125.

126. As to paragraph 126, it:

(a) admits subparagraph (a);

(b) admits subparagraph (b);

- (c) save to say that the words “(rather than limits)” did not appear in the 16 August 2021 Email, admits subparagraph (c);
- (d) admits that after the statements pleaded in subparagraphs (a) to (c), the 16 August 2021 Email contained a statement that: “Separately, in its letter of 5 July 2021, the Central Bank set out its expectation that the firm undertakes, as priority item, a review of current card limits across all programmes, with a view to recalibrating the limits so that they reduce AML/TF risk during the Interim Period. It is requested that the firm provides written details of its proposed approach in this recalibration, including an articulation of the rationale for the approach being proposed. For the avoidance of doubt, the interim measure in this regard is separate to any work that the firm may be proposing to undertake as part of its remediation plan to review and put in place appropriate limits for the longer term”;
- (e) says that it will refer at trial to the full terms and effect of the 16 August 2021 Email;
- (f) otherwise denies the allegations.

D.12 Events between 17 August 2021 and 9 October 2021 ASX announcements

127. Save to say the 20 August 2021 Letter was sent by PCSIL on 20 August 2021, it admits paragraph 127.

128. As to paragraph 128, it:

- (a) admits that the 20 August 2021 Letter responded to the 16 August 2021 Email;
- (b) as to subparagraph (b):
 - (i) admits the 20 August 2021 Letter contained statements to the effect pleaded in subparagraph (i);
 - (ii) admits the 20 August 2021 Letter contained statements to the effect pleaded in subparagraph (ii);
 - (iii) denies subparagraph (iii);

- (iv) says further that it will refer at trial to the full terms and effect of the 20 August 2021 Letter.

129. It admits paragraph 129.

130. As to paragraph 130, it:

- (a) admits the 6 October 2021 Letter contained statements substantially to the effect pleaded;
- (b) says that the 6 October 2021 Letter stated that the CBI was minded to impose the following directions on PCSIL pursuant to section 45(1) of the Central Bank Act:
 - (i) “1. The Firm shall not appoint any further distributors without the Central Bank’s prior consent”;
 - (ii) “2. The Firm shall ensure that total Incoming Payment Value for the period from 1 November 2021 to 31 October 2022 is not in excess of 10% above the baseline, with the baseline being 12 times the average year to date (January to September 2021) monthly incoming payment value” (**Initial Proposed Growth Limit Direction**);
 - (iii) “3. The Firm shall reduce by 75% the current product limits in place in respect of each the following:
 - value of loading of e-money products
 - value of Single Euro Payments Area (SEPA) transfers;
 - ATM withdrawals;
 - the maximum value (i.e. balance) which can be stored electronically on the product”;
- (c) further says that the 6 October 2021 Letter stated:
 - (i) in relation to Direction 2, Incoming Payment Value is made up of gross debit volumes for e-money services and incoming payment volumes for non e-

- money related payment services. The baseline is 12 times the average year to date (January to September 2021) monthly Incoming Payment Value;
- (ii) the CBI was satisfied with the interim steps that had been taken by PCSIL to address the CBI's concerns related to governance in circumstances where the board now comprised a minimum of four directors, interim appointments had been made to previously vacant pre-approved control function (PCF) positions and the full Board was currently overseeing the implementation of the Remediation Plan;
- (d) says that, through the 7 October 2021 Announcement, EML immediately disclosed that the CBI had proposed limits be applied to programs which if implemented could have a negative impact on the PCSIL business;
 - (e) says that, on 28 October 2021, PCSIL sent a response to the 6 October 2021 Letter in which it stated that the Proposed Program Limits Direction did not represent a reasonable, necessary or proportionate response;
 - (f) says that, on 23 November 2021, the CBI:
 - (i) provided PCSIL with a further "minded to" letter which no longer included the Proposed Program Limits Direction;
 - (ii) informed PCSIL that based on the information that had been provided by PCSIL regarding the work that was being carried out in relation to limits, the CBI was satisfied to continue to engage with PCSIL with a view to agreeing appropriate limits to be put in place;
 - (g) says that the CBI never imposed the Proposed Program Limits Direction;
 - (h) says that it will refer at trial to the full terms and effect of the 6 October 2021 Letter.

D.13 Events between 9 October 2021 and 25 November 2021 ASX Announcements

131. It admits paragraph 131.

132. As to paragraph 132, it:

- (a) admits that the 19 October 2021 Letter contained statements substantially to the effect pleaded in paragraph 132;
- (b) says that it will refer at trial to the full terms and effect of the 19 October 2021 Letter.

133. It admits paragraph 133.

134. As to paragraph 134, it:

- (a) admits the allegations;
- (b) says that:
 - (i) the 19 October 2021 Letter referred to at paragraph 132 above, inter alia, provided preliminary comments regarding the 6 October 2021 Letter;
 - (ii) Evans and Geaney, a PCSIL director, met with the CBI on 22 October 2021;
 - (iii) the 28 October 2021 Letter in part overlapped with the 19 October 2021 Letter and the matters discussed during the meeting on 22 October 2021;
 - (iv) the stated purpose of the 28 October 2021 Letter was to (i) inform the CBI of the outcome of PCSIL's Limits Review, and changes consequent upon it, and (ii) provide further material and submissions relevant to the directions proposed in the 6 October 2021 Letter;
- (c) says further that it will refer at trial the full terms and effect of the 28 October 2021 Letter.

135. As to paragraph 135, it:

- (a) says that the 23 November 2021 Letter was received by Evans on 24 November 2021;
- (b) says that the Proposed Program Limits Direction raised by the CBI in the 6 October 2021 Letter would have constituted a broad-based reduction in limit controls on programs;

- (c) says that, in the 23 November 2021 Letter, the CBI stated that: “based on the information that has been provided by the Firm regarding the work that is being carried out in relation to limits, including the Limits Review and Recalibration Methodology, the Central Bank is satisfied to continue to engage with the Firm with a view to agreeing appropriate limits to be put in place to mitigate the risks arising from the identified deficiencies in the Interim Period. The Central Bank expressly reserves the right to consider the issuance of directions in due course if this engagement with the Firm does not result in the implementation by the Firm of limits that are calibrated appropriately to reflect the underlying inherent ML/TF risk of programme customers and support the overall reduction of ML/TF risks in the Firm”;
- (d) says that the 23 November 2021 Letter conveyed that the CBI:
 - (i) was no longer of the opinion that the Proposed Program Limits Direction, or any other direction imposing a broad-based reduction in limit controls on programs, was necessary in the interests of the proper and effective regulation of a regulated financial services provider;
 - (ii) was no longer minded to issue the Proposed Program Limits Direction, or any other direction imposing a broad based reduction in limit controls on programs;
 - (iii) was satisfied that the CBI’s proposed material growth limit would achieve the CBI’s aim of limiting the growth of PCSIL during the Interim Period;
- (e) subject to the foregoing, admits that by 25 November 2021 the CBI had not made an express statement to PCSIL that broad-based reductions in limit controls on programs would not be imposed by the CBI on PCSIL;
- (f) otherwise denies the allegations.

136. It admits paragraph 136.

137. As to paragraph 137, it:

- (a) admits the 23 November 2021 Letter contained statements to the effect pleaded;
- (b) says that it will refer at trial to the full terms and effect of the 23 November 2021 Letter;
- (c) says that the direction which the CBI stated it was minded to make in the 23 November 2021 Letter is hereafter referred to as the “**Revised Proposed Growth Limit Direction**”;
- (d) says that the baseline for the purposes of the Revised Proposed Growth Limit Direction was 12 times the average January 2021 to August 2021 monthly Incoming Payment Value;
- (e) says that the baseline referred to in subparagraph (d) above reflected a modification to the Initial Proposed Growth Limit Direction that was requested by PCSIL and accepted by the CBI;
- (f) says that the 23 November 2021 Letter stated that the decision on how to comply with the Revised Proposed Growth Limit Direction was the responsibility of PCSIL;
- (g) says further that EML considered, as was in fact the case, that the Revised Proposed Growth Limit Direction would not have a material impact on EML’s 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 that 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;
- (v) on 30 November 2021 PCSIL voluntarily undertook to operate under a growth restriction that was the same as the Revised Proposed Growth Limit Direction from 1 December 2021 to 30 November 2022.

Particulars

- A. PCSIL Interim Material Growth Policy dated 10 August 2021 and amended on 13 December 2021 (EML.5000.0001.1479).
- B. Letter from PCSIL to the CBI dated 30 November 2021.

D.14 Events between 25 November 2021 and 16 February 2022 ASX announcements

138. It admits paragraph 138.

139. As to paragraph 139, it:

- (a) admits that in the 30 November 2021 Letter, PCSIL:
 - (i) stated that it continued to prioritise the successful implementation of its remediation plan;
 - (ii) stated that it expected the remediation plan to be substantially complete by 31 March 2022, but changes to Cardholder limits and terms and conditions would only take effect after the time required for mandatory notifications, which would see the remediation plan complete by the end of June 2022;
 - (iii) suggested to the CBI that, rather than divert existing resources to the further consideration of the material growth issue, PCSIL agree to stay within the 10% growth limit for the for the period 1 December 2021 to 30 November 2022;
 - (iv) made the suggestion in subparagraph (iii) above while noting the CBI's indication that the growth limit may be rescinded in advance of the 12-month period if remediation is completed and independently verified to be implemented effectively;

- (v) stated that the Board of PCSIL would be closely monitoring growth during the intervening period, and managing growth so as to stay within the 10% limit for the whole of the period up to 30 November 2022, but PCSIL was hopeful of coming back to the CBI by 30 June 2022, being the date it expected the remediation plan to be complete;
 - (b) says that it will refer at trial to the full terms and effect of the 30 November 2021 Letter;
 - (c) otherwise denies the allegations.
140. It admits paragraph 140.
141. As to paragraph 141, it:
- (a) admits the allegations;
 - (b) refers to and repeats paragraph 137(g) above;
 - (c) says that the direction made by the CBI in the 9 December 2021 Letter (**Growth Limit Direction**) was in the same terms as the Revised Proposed Growth Limit Direction.
142. It admits paragraph 142.
143. It admits paragraph 143 and says that it will refer at trial to the full terms and effect of the 14 January 2022 Letter.
144. It admits that Evans attended the 10 February 2022 Meeting and otherwise denies paragraph 144.
145. As to paragraph 145, it:
- (a) says that on 15 February 2022 the CBI sent a letter to PCSIL communicating, among other things, that a meeting had taken place on 10 February 2022 during which representatives of the CBI stated the matters pleaded at paragraphs (a) to (f);
 - (b) says that at the 10 February 2022 Meeting representatives of the CBI:

- (i) provided feedback to PCSIL on the remediation plan and advised it that sequencing and timelines needed further examination; and
- (ii) stated that the CBI would like input into the scope of the third-party assurance;
- (c) otherwise does not admit paragraph 145.

146. It admits paragraph 146.

147. As to paragraph 147, it:

- (a) says that the 15 February 2022 Letter was received by Gadiot on 16 February 2022;
- (b) admits that the 15 February 2022 Letter contained statements to the effect pleaded in subparagraph (a);
- (c) admits subparagraph (b).

D.15 Events between the 16 February 2022 and 26 April 2022 ASX announcements

148. It admits paragraph 148.

149. As to paragraph 149, it:

- (a) admits the allegations;
- (b) says that the 18 February 2022 Letter:
 - (i) summarised the actions that PCSIL had taken and actions which it was scheduled to undertake in relation to the Limits Review programme;
 - (ii) stated among other things, that:
 - (A) PCSIL had written to clients over a two-week period in December advising them that their limits would be reduced and that, in order to comply with terms and conditions, PCSIL was required to provide a notice period which expired on 18 February 2022;

- (B) the 1st tranche of 1.2 million card and/or wallet holders, across 38 programmes, would be updated in line with the new limit thresholds on 18 February 2022;
 - (C) the limits policy would be reviewed by senior management and submitted to the PCSIL board for review and approval on 2 March 2022;
 - (c) stated that PCSIL was available at any stage to discuss its recalibration project or to answer any questions from the CBI.
150. It admits paragraph 150.
151. It admits paragraph 151 and says that it will refer at trial to the full terms and effect of the 3 March 2022 letter.
152. It admits paragraph 152.
153. It admits that the 9 April 2022 Email contained statements to the effect pleaded in paragraph 153.
154. It admits paragraph 154.
155. As to paragraph 155, it:
- (a) admits that the 12 April 2022 Letter stated that a new methodology and approach to the development of PCSIL's AML/CTF business wide risk assessment had been designed, submitted to the PCSIL Board for review and challenge, and approved by the PCSIL Board on 3 March 2022;
 - (b) admits that the 12 April 2022 Letter stated that:
 - (i) PCSIL's review of its distributors and customers was a significant piece of work for which plans were currently underway;
 - (ii) "In relation to the end of March date provided in the Firm's 15 March 2022 response for the newly implemented policies and procedures, the

Remediation Programme Steering Committee approved a revised date of 30 July 2022 for completion of this part of the programme”;

- (c) admits that the 12 April 2022 Letter contained a statement to the effect pleaded in subparagraph (c);
- (d) says that it will refer at trial to the full terms and effect of the 12 April 2022 Letter;
- (e) otherwise denies the allegations.

D.16 Events between the 26 April 2022 and 25 July 2022 ASX announcements

156. It admits paragraph 156.

157. As to paragraph 157, it:

- (a) subject to subparagraph (b) below, admits that the 16 June 2022 Letter contained statements to the effect pleaded;
- (b) says in respect of:
 - (i) subparagraph (c), the letter referred to the requirements of Part 4 of the CJA 2010;
 - (ii) subparagraph (j), PCSIL’s updated remediation plan slides included the European Banking Authority risk factor guidelines which were issued by the European Banking Authority, not the CBI;
- (c) in respect of subparagraph (i), says that:
 - (i) less than 8% of cardholders were likely to be affected by the 30% reduction in limits referred to in the 16 June 2022 Letter;
 - (ii) the 30% reduction in limits referred to in the 16 June 2022 Letter was not likely to have implications for PCSIL’s revenue;
- (d) says that it will refer at trial to the full terms and effect of the 16 June 2022 Letter.

158. It admits paragraph 158.

159. As to paragraph 159, it:

- (a) admits the allegations;

- (b) refers to and repeats paragraph 157(c) above;
- (c) says that it will refer at trial to the full terms and effect of the 1 July 2022 Letter.

D.17 Events after the 25 July 2022 ASX announcement

160. As to paragraph 160, it:

- (a) says that the letter stated that most of the customer remediation was expected to be completed by September 2023, and that PCSIL expected starting the Third-Party Assurance Review in Q4 2023 or before; and
- (b) otherwise denies the allegations.

E. THE TRUE POSITION AND INFORMATION

E.1 PCSIL Control Standard Information

161. As to paragraph 161, it:

- (a) admits that the Finalised POR set out the CBI's view as to material deficiencies the CBI had purportedly identified during the 2021 CBI Inspection;
- (b) says that PCSIL communicated to the CBI that it did not agree with various findings in the Finalised POR;

Particulars

Letter from PCSIL to CBI dated 27 May 2021 (EML.0068.0001.0163, Part B); Letter from PCSIL to CBI dated 23 July 2021 (EML.0045.0014.6997, Appendix). The letters expressed disagreement with various findings contained in the Finalised POR including findings that:

- A. PCSIL's risk assessment methodology does not document the means by which PCSIL has assessed its AML/CTF risk and related controls in the Business Risk Assessment;
- B. PCSIL's risk assessment methodology does not address that the rationales for the ratings assigned to inherent risk sub-categories should be documented;
- C. PCSIL's risk assessment methodology does not adequately address terrorist financing risk;
- D. the CBI suspected PCSIL had breached s 37(4)(a) of the CJA 2010 with respect to two sampled customers;

- E. the CBI suspected PCSIL failed to evidence screening in relation to 20 card holder identification numbers (**CHIDs**);
- F. the CBI suspected PCSIL had breached s 30A of the CJA 2010;
- G. the CBI suspected PCSIL had breached ss 30A(1)(a) and 30A(1)(e) of the CJA 2010;
- H. the CBI suspected PCSIL had breached s 30A(1)(c) of the CJA 2010;
- I. the CBI suspected PCSIL had breached s 54(3)(b) of the CJA 2010;
- J. the CBI suspected PCSIL had breached s 53(3)(f) of the CJA 2010;
- K. the CBI suspected PCSIL had breached s 54(3)(l) of the CJA 2010;
- L. the CBI suspected PCSIL had breached s 37 of the CJA 2010;
- M. the CBI suspected PCSIL had breached ss 54(1) and 54(3)(l) of the CJA 2010;
- N. the CBI suspected PCSIL had breached s 54(6) of the CJA 2010;
- O. the CBI suspected PCSIL had breached ss 54(1) and 54(3)(h) of the CJA 2010.

(c) otherwise denies the allegations.

162. As to paragraph 162, it:

- (a) says the pleading is embarrassing and liable to be struck out by reason of the lack of particularity of the notion of “the features and characteristics identified in the Final POR” in paragraph 161, and the unparticularised notion, in paragraph 162, that by reason of these “features and characteristics”, there were “significant deficiencies in PCSIL’s AML/CTF risk and control frameworks and governance”;
- (b) under cover of that objection, it:
 - (i) refers to and repeats paragraph 161 above;
 - (ii) admits that, during the First Relevant Period, there were weaknesses in PCSIL’s AML/CTF risk and control frameworks and governance, and says further that, following its acquisition of PFS, and during the First Relevant Period, EML implemented improvements to the AML/CTF frameworks and governance applicable to PCSIL to address these weaknesses;

Particulars

EML refers to and repeats the particulars to paragraph 234(c)(i) below.

- (iii) denies that the weaknesses referred to in paragraph 162(b)(ii) above were “significant” in the sense of being likely to result in regulatory action:
 - (A) of the kind referred to in the First 13 May 2021 Letter; or
 - (B) that would otherwise materially restrict PCSIL’s activities in Europe;
- (iv) otherwise denies the allegations.

163. As to paragraph 163, it refers to and repeats paragraph 161 above and otherwise denies the allegation.

164. As to paragraph 164, it:

- (a) says the pleading in the alternative “on and from each day after 19 December 2020” is liable to be struck out because it:
 - (i) is vexatious or oppressive by reason of pleading 152 alternative cases; and/or
 - (ii) fails to disclose any predicate material facts to support an alternative case on each day thereby pleaded;
- (b) under cover of that objection:
 - (i) as to subparagraph (a):
 - (A) refers to and repeats paragraph 162 above;
 - (B) admits that, since on or about 17 December 2020, PCSIL was the entity through which PFS EU Business was conducted;
 - (C) otherwise denies subparagraph (a);
 - (ii) as to subparagraph (b):
 - (A) refers to and repeats paragraph 162 above;
 - (B) admits that it was not known to EML whether weaknesses in PCSIL’s AML/CTF risk and control frameworks and governance would give rise

- to any regulatory consequences and, if so, what those regulatory consequences would be;
- (C) admits that CBI had a range of powers under s 45 of the Central Bank Act including powers to restrict PCSIL's activities in Europe;
- (D) otherwise denies subparagraph (b);
- (iii) as to subparagraph (c):
 - (A) refers to and repeats paragraph 162 above;
 - (B) admits that, at all material times, including during the First Relevant Period, EML in conducting its business would cooperate with regulators, including the CBI, to the extent required;
 - (C) otherwise denies subparagraph (c).

E.2 August Program Limits Information

165. As to paragraph 165, it:

- (a) as to subparagraph (a):
 - (i) admits that the First 13 May 2021 Letter contained a statement substantially to the effect pleaded in subparagraph (i);
 - (ii) admits that the 17 May 2021 Letter contained a statement to the effect pleaded in subparagraph (ii);
 - (iii) refers to and repeats paragraph 113 above and otherwise denies subparagraph (iii);
 - (iv) refers to and repeats paragraph 110 above and otherwise denies subparagraph (iv);
 - (v) admits that the 16 August 2021 Email contained a statement substantially to the effect pleaded in subparagraph (v);
 - (vi) says further that it will refer at trial to the full terms and effect of the correspondence referred to in subparagraphs (i) to (v) above;

- (vii) otherwise denies the allegations;
- (b) as to subparagraph (b):
 - (i) refers to and repeats paragraphs 51 and 52 above;
 - (ii) admits that, subject to the requirements of the Central Bank Act, a direction that PCSIL reduce its card limits is a direction within the scope of the CBI's powers under ss 45(1) and 45(3)(e) of the Central Bank Act;
- (c) says that the allegation in subparagraph (c) is embarrassing and under cover of that objection it does not admit the allegation and refers to and repeats paragraph 110 above; and
- (d) says further that the August Program Limits Information (as pleaded at paragraph 166 of the FASOC) was not conveyed by the matters pleaded in paragraph 165.

166. As to paragraph 166, it:

- (a) says the pleading in the alternative "on and from each day after 18 August 2021" is liable to be struck out because it:
 - (i) is vexatious or oppressive by reason of pleading 49 alternative cases; and/or
 - (ii) fails to disclose any predicate material facts to support an alternative case on each day thereby pleaded;
- (b) under cover of that objection, denies paragraph 166 and refers to and repeats paragraphs 110(j)-110(l), 130 and 165(d) above.

E.3 Initial PCSIL Remediation Timing Information

167. As to paragraph 167, it:

- (a) says that the allegation is embarrassing and liable to be struck out by reason of:
 - (i) the lack of particularity as to the alleged "AML/CTF regulatory compliance issues raised by the CBI";
 - (ii) the lack of particularity as to what remediation it is alleged was "required to address" those issues;

- (iii) the lack of particularity as to the meaning of “to the CBI’s satisfaction”;
- (iv) the lack of particularity as to whether, and if so what, distinction is intended between the allegation that the remediation was unlikely to be “completed” and the allegation that the remediation was unlikely to be “finalised”;
- (b) says further that the pleading in the alternative “on and from each day after 18 August 2021” is liable to be struck out because it:
 - (i) is vexatious or oppressive by reason of pleading 180 alternative cases; and/or
 - (ii) fails to disclose any predicate material facts to support an alternative case on each day thereby pleaded;
- (c) under cover of those objections:
 - (i) admits that on 23 July 2021, PCSIL provided the CBI with a remediation plan;
 - (ii) says further that:
 - (A) the CBI did not, at any time prior to 16 February 2022, inform PCSIL that it was of the view that PCSIL’s remediation plan was unlikely to be completed and finalised until towards the end of calendar year 2022;
 - (B) the 23 November 2021 Letter and the 9 December 2021 Letter conveyed, by implication, that the CBI regarded it as possible that PCSIL’s remediation plan could be completed and verified to its satisfaction in less than 12 months;
 - (iii) otherwise denies the allegations.

E.4 First Guidance Inability Information

168. As to paragraph 168, it:

- (a) says the pleading is embarrassing and liable to be struck out by reason of the unparticularised notion of EML being unable to “reliably” forecast its earnings, profitability and growth;

- (b) says further that the pleading in the alternative “on and from each day after 18 August 2021” is liable to be struck out because it:
 - (i) is vexatious or oppressive by reason of pleading 97 alternative cases; and/or
 - (ii) fails to disclose any predicate material facts to support an alternative case on each day thereby pleaded;
- (c) under cover of those objections:
 - (i) admits that, on and from 18 August 2021, EML was not able to say with certainty what its earnings, profitability and growth in FY22 would be;
 - (ii) otherwise denies the allegations;
 - (iii) refers to and repeats paragraph 183 below;
 - (iv) says that, on 17 August 2021, EML provided guidance in relation to its Underlying EBITDA, Underlying NPATA, GDV and Revenue (**FY22 Guidance**);
 - (v) says that the FY22 Guidance was subject to the assumptions and qualifications set out in the 17 August 2021 Presentation, 17 August 2021 ASX Announcement and 18 August 2021 Investor Call;
 - (vi) says that the FY22 Guidance was informed by EML’s FY22 budget and financial analysis performed by EML’s finance team;
 - (vii) says that EML’s FY22 Underlying NPATA and Revenue results were within the FY22 Guidance range;
 - (viii) says that EML did not, on or after 17 August 2021, provide guidance as to its earnings or profitability other than on an underlying basis which excluded, inter alia, costs related to the CBI issues.

E.5 November Program Limits Information

169. As to paragraph 169, it:

- (a) says that the pleading in the alternative “on and from each day after 25 November 2021” is liable to be struck out because it:
 - (i) is vexatious or oppressive by reason of pleading 240 alternative cases; and/or
 - (ii) fails to disclose any predicate material facts to support an alternative case on each day thereby pleaded;
- (b) under cover of that objection:
 - (i) denies the allegations;
 - (ii) refers to and repeats paragraphs 110(j)-110(l), 130(f)-130(g), 135 and 159 above;
 - (iii) says that 6 October 2021 Letter stated that the CBI was minded to impose directions for a period of 12 months, not until remediation was completed and finalised to the CBI’s satisfaction.

E.6 PCSIL Growth Impact Timing Information

170. As to paragraph 170, it:

- (a) says that the pleading in the alternative “on and from each day after 25 November 2021” is liable to be struck out because it:
 - (i) is vexatious or oppressive by reason of pleading 240 alternative cases; and/or
 - (ii) fails to disclose any predicate material facts to support an alternate case on each day thereby pleaded;
- (b) under cover of that objection:
 - (i) refers to and repeats paragraph 141 above (including its admission of paragraph 141(b) of the FASOC);

- (ii) admits that the Growth Limit Direction would, for the period that it was in force, impact PCSIL's ability to grow its European business and refers to and repeats paragraph 137(g) above;
- (iii) says that PCSIL at all material times intended to approach the CBI to seek to have the Growth Limit Direction lifted in advance of the 12-month period, if its remediation was completed and independently verified as having been effectively implemented;
- (iv) says that it was not certain, on and from 25 November 2021, that the Growth Limit Direction would continue throughout 2022;
- (v) otherwise denies the allegations.

E.7 Second Guidance Inability Information

171. As to paragraph 171, it:

- (a) says the pleading is embarrassing and liable to be struck out by reason of the unparticularised notion of EML being unable to "reliably" forecast its earnings, profitability and growth;
- (b) says further that the pleading in the alternative "on and from each day after 25 November 2021" is liable to be struck out because it:
 - (i) is vexatious or oppressive by reason of pleading 151 alternative cases; and/or
 - (ii) fails to disclose any predicate material facts to support an alternative case on each day thereby pleaded;
- (c) under cover of those objections:
 - (i) admits that on and from 25 November 2021, EML was not able to say with certainty what its earnings, profitability and growth in FY22 would be;
 - (ii) otherwise denies the allegations;

- (iii) says that, at the 2021 AGM, EML updated its FY22 Guidance (**Updated FY22 Guidance**);
- (iv) says that the Updated FY22 Guidance was subject to the assumptions and qualifications referred to in paragraph 190 below;
- (v) says that the Updated FY22 Guidance was informed by financial analysis performed by EML's finance team;
- (vi) says that EML's FY22 Underlying NPATA and Revenue results were within the Updated FY22 Guidance range;
- (vii) says that, on 16 February 2022, EML further updated its FY22 Guidance (**Further Updated FY22 Guidance**);
- (viii) says that the Further Updated FY22 Guidance was subject to the assumptions and qualifications referred to in paragraph 197 below;
- (ix) says that the Further Updated FY22 Guidance was informed by financial analysis performed by EML's finance team;
- (x) says that EML's Underlying NPATA, GDV and Revenue results were within or above the Further Updated FY22 Guidance range;
- (xi) say that EML's Underlying EBITDA was 1.58% below the Updated FY22 Guidance range;
- (xii) says that EML did not, on or after 25 November 2021, provide guidance as to its earnings or profitability other than on an underlying basis which excluded, inter alia, costs related to the CBI issues.

E.8 Revised PCSIL Remediation Timing Information

172. As to paragraph 172, it:

- (a) says that the allegation is embarrassing and liable to be struck out by reason of:
 - (i) the lack of particularity as to the alleged "AML/CTF regulatory compliance issues raised by the CBI";

- (ii) the lack of particularity as to what remediation it is alleged was “required to address” those issues;
 - (iii) the lack of particularity as to the meaning of “to the CBI’s satisfaction”;
 - (iv) the lack of particularity as to whether, and if so what, distinction is intended between the allegation that the remediation was unlikely to be “completed” and the allegation that the remediation was unlikely to be “finalised”;
 - (v) the indeterminate date range of “February 2023 (or later)”;
- (b) says further that the pleading in the alternative “on and from each day after 16 February 2022” is liable to be struck out because it:
- (i) is vexatious or oppressive by reason of pleading 158 alternative cases; and/or
 - (ii) fails to disclose any predicate material facts to support an alternative case on each day thereby pleaded;
- (c) under cover of those objections:
- (i) refers to and repeats paragraph 167(c) above;
 - (ii) admits that on 6 October 2021 the CBI stated that it was the CBI’s expectation that PCSIL would obtain third-party assurance with respect to the adequacy and effectiveness of the remediation implemented;

Particulars

The statement was contained in the 6 October 2021 Letter.

- (iii) admits that on 23 November 2021 the CBI stated that the CBI expects the PCSIL Board to demonstrate that the remediation plan has been effectively implemented and will require independent third-party verification to confirm that the remediation plan has been effectively implemented;

Particulars

The statement was contained in the 23 November 2021 Letter.

(iv) admits that:

- (A) on 21 July 2022, the PCSIL Board approved a revised remediation plan with third-party assurance review commencing on 1 May 2023;
- (B) accordingly, from 21 July 2022, the CBI was unlikely to regard it as being confirmed that PCSIL's remediation plan had been effectively implemented until after May 2023.

(v) otherwise denies the allegations.

F. THE 19 MAY 2021 DISCLOSURE AND ITS IMPACT

F.1 19 May 2021

173. It admits paragraph 173.

174. It admits paragraph 174.

175. It admits paragraph 175

F.2 Price effect of the 19 May 2021 Announcement

176. As to paragraph 176, 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 174 above;
- (c) refers to and repeats paragraphs 277 to 278 below;
- (d) otherwise denies the allegations.

G. WHAT EML SAID FROM 19 MAY 2021 TO 7 OCTOBER 2021

G.1 19 May 2021 to 16 August 2021

177. It admits paragraph 177.

178. It admits paragraph 178.

179. It admits paragraph 179 and says further that it will refer at trial to the full terms and effect of the 7 June 2021 Announcement.

G.2 17 August 2021 and 18 August 2021

180. It admits paragraph 180.

181. It admits paragraph 181.

182. It admits paragraph 182.

183. As to paragraph 183, it:

- (a) admits the 17 August 2021 Presentation contained statements to the effect pleaded in subparagraph (a);
- (b) admits the 17 August 2021 ASX Announcement contained statements to the effect pleaded in subparagraph (b);
- (c) admits the 18 August 2021 Investor Call transcript contained statements to the effect pleaded in subparagraph (c);
- (d) admits that the 18 August 2021 Investor Call transcript contained a statement to the effect pleaded in subparagraph (d);
- (e) admits that the 18 August 2021 Investor Call transcript contained a statement to the effect pleaded in subparagraph (e);
- (f) admits that the 17 August 2021 ASX Announcement contained a statement to the effect pleaded 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 included “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) “This 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);
- (vii) “Underlying EBITDA is equivalent to the net profit/(loss) for the period including R&D tax offset and **excluding** share-based payments, depreciation and amortisation expense, acquisition expenses, non-cash unrealised foreign exchange and any costs related to the CBI matter which are included within the Statement of Profit or Loss and Other Comprehensive Income” (17 August 2021 Presentation);
- (viii) “Underlying NPATA represents the profit generated by the business excluding all acquisition related costs including; amortisation, contingent

considerations, share based payments, cash expenses that relate to acquisitions and any costs related to the CBI matter” (17 August 2021 Presentation);

- (h) says 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;
- (i) says further that the matters pleaded in paragraphs 180 to 183 do not convey the August 2021 Remediation Timing Representation (as pleaded at paragraph 216 of the FASOC);
- (j) otherwise deny the allegations.

H. THE 7 OCTOBER 2021 DISCLOSURE AND ITS IMPACT

H.1 7 October 2021

184. It admits paragraph 184.

185. It admits paragraph 185.

H.2 Price effect of the 7 October 2021 Announcement

186. As to paragraph 186, 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 184 above;
- (c) refers to and repeats paragraphs 277 to 278 below;
- (d) otherwise denies the allegations.

I. WHAT EML SAID FROM 7 OCTOBER 2021 TO 25 APRIL 2022

I.1 17 and 25 November 2021

187. It admits paragraph 187.

188. It admits that, at the 2021 AGM, Martin made statements to the effect pleaded in paragraph 188.

189. It admits that, at the 2021 AGM, Cregan made statements to the effect pleaded in paragraph 189.

190. It admits paragraph 190 and says further that:

(a) EML:

- (i) decreased its FY22 Guidance range in relation to GDV from \$93-\$100 billion to \$81-\$88 billion;
- (ii) increased its FY22 Guidance range in relation to revenue from \$220-\$225 million to \$230-\$250 million;
- (iii) did not change its FY22 Guidance for Underlying EBITDA and Underlying NPATA;

(b) the presentation EML gave at the 2021 AGM (**2021 AGM Presentation**) stated that:

- (i) Underlying EBITDA is equivalent to the net profit/(loss) for the period including R&D tax offset and excluding share-based payments, depreciation and amortisation expense, acquisition expenses, non-cash unrealised foreign exchange and any costs related to the CBI matter which are included within the Statement of Profit or Loss and Other Comprehensive Income;
- (ii) Underlying NPATA represents the profit generated by the business excluding all acquisition related costs including amortisation, contingent considerations, share-based payments, cash expenses that relate to acquisitions and any costs related to the CBI matter;

- (iii) the Updated FY22 Guidance was based on the Assumptions identified on page 17 including “Provisions booked for remediation and any potential enforcement action of the CBI matter are sufficient to cover actual costs incurred”;
- (iv) EML does not guarantee any particular rate of return or the performance of EML;
- (v) “information conveyed at the AGM may contain forward looking statements including statements regarding our intent, belief or current expectations with respect to EML’s businesses and operations, ... those receiving the information are cautioned not to place undue reliance on any forward looking statements...

Unless otherwise indicated, the information is provided as at 30 June 2021.”

- (vi) “Given the uncertain, unpredictable and volatile nature of business and economic conditions across the world as a consequence of the COVID-19 pandemic, reliance should not be placed on the content of the presentations, opinions or responses during the AGM. Further, subject to any legal obligation to do so, EML does not have any obligation to correct or update the information conveyed at the AGM”;

(c) EML will refer at trial to the full terms and effect of the 2021 AGM Presentation.

191. It admits paragraph 191.

192. It admits paragraph 192.

193. It admits paragraph 193 and says further that the matters pleaded in paragraphs 187 to 193 of the FASOC did not convey the November 2021 Remediation/Growth Representations (as pleaded at paragraph 222 of the FASOC).

194. As to paragraph 194, it:

- (a) admits that the closing price of EML shares on 24 November 2021 was \$2.75 and on 25 November 2021 was \$3.61;
- (b) otherwise denies the allegations.

I.2 16 February 2022

195. It admits paragraph 195.

196. It admits paragraph 196.

197. As to paragraph 197, it:

- (a) save to say that the reference in the fourth bullet point of subparagraph (b) to “24-46%” should say “34-46%”, admits that the 16 February 2022 Announcement contained statements to the effect of those pleaded;
- (b) says further that:
 - (i) the reaffirmation of FY22 guidance pleaded in subparagraph (b) was reaffirmation of the updated guidance announced at the AGM on 17 November 2021, i.e., the Updated FY22 Guidance;
 - (ii) the 16 February 2022 Announcement also contained statements to the effect that:
 - (A) EML 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;
 - (B) 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”;
 - (C) “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”;
- (D) “Additional costs may be incurred consequential to this matter [the CBI remediation project], which are unknown or do not meet the criteria to be provided at 31 December 2021”;
- (iii) it will rely at trial upon the full terms and effect of the 16 February 2022 Announcement;
- (iv) the matters pleaded at paragraphs 195 to 197 did not convey the February 2022 Remediation Timing Representation (as pleaded at paragraph 228 of the FASOC).

J. THE 26 APRIL 2022 DISCLOSURE AND ITS IMPACT

J.1 26 April 2022

198. It admits paragraph 198.

199. As to paragraph 199, it:

- (a) admits that the 26 April 2022 Announcement contained statements to the effect pleaded;
- (b) says further that:
- (i) the 26 April 2022 Announcement also contained the following statements:
- (A) “Continued progress on CBI remediation toward 30 June 2022 completion date (prior to independent assurance)”;
- (B) 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;

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

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

200. As to paragraph 200, it:

- (a) 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) refers to and repeats paragraph 198 above and 277 to 278 below;
- (c) otherwise denies the allegations.

K. THE 25 JULY 2022 DISCLOSURE AND ITS IMPACT

K.1 25 July 2022

201. It admits paragraph 201.

202. It admits that the 25 July 2022 Announcement contained statements to the effect pleaded in paragraph 202 and says further that it will refer at trial to the full terms and effect of the 25 July 2022 Announcement.

K.2 Price impact of the 25 July 2022 Announcement

203. As to paragraph 203, it:

- (a) 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) refers to and repeats paragraphs 201 above and 277 to 278 below;
- (c) otherwise denies the allegations.

L. MISLEADING OR DECEPTIVE CONDUCT

L.1 First Guidance Ability Representation (18 August 2021)

204. It denies paragraph 204 and refers to and repeats paragraphs 168 and 183(g) above.

205. It denies paragraph 205.

206. As to paragraph 206, it:

- (a) admits that if it made the First Guidance Ability Representation (which is denied),
the making of the representation would constitute conduct in trade or commerce;
- (b) otherwise denies the allegations.

207. It denies paragraph 207 and refers to and repeats paragraph 204 above.

208. It denies paragraph 208.

209. It denies paragraph 209 and refers to and repeats paragraphs 204 to 208 above.

L.2 Second Guidance Ability Representation (25 November 2021)

210. It denies paragraph 210 and refers to and repeats paragraphs 171 and 190(b) above.

211. It denies paragraph 211.

212. As to paragraph 212, it:

- (a) admits that, if it made the First Guidance Ability Representation (which is denied),
the making of the representation would constitute conduct in trade or commerce;
- (b) otherwise denies the allegations.

213. It denies paragraph 213 and refers to and repeats paragraph 210 above.

214. It denies paragraph 214.

215. It denies paragraph 215 and refers to and repeats paragraphs 210 to 215 above.

L.3 August 2021 Remediation Timing Representation

216. It denies paragraph 216 and refers to and repeats paragraph 183 above.

217. It denies paragraph 217.

218. As to paragraph 218, it:

- (a) admits that, if it made the August 2021 Remediation Timing Representation (which is denied) the making of the representation would constitute conduct in trade or commerce;
- (b) otherwise denies the allegations.

219. It denies paragraph 219 and refers to and repeats paragraph 216 above.

220. It denies paragraph 220 and refers to and repeats paragraph 216 above.

221. It denies paragraph 221 and refers to and repeats paragraphs 216 to 220 above.

L.4 November 2021 Remediation/Growth Representations

222. It denies paragraph 222 and refers to and repeats paragraphs 193 and 216 above.

223. It denies paragraph 223.

224. As to paragraph 224, it:

- (a) admits that, if it made the November 2021 Remediation/Growth Representations (which is denied) the making of the representations would constitute conduct in trade or commerce;
- (b) otherwise denies the allegations.

225. It denies paragraph 225 and refers to and repeats paragraphs 222 above and 226(c) below.

226. As to paragraph 226, it:

- (a) denies the allegations;
- (b) refers to and repeats paragraph 222 above;
- (c) alternatively if (which is denied), EML by the 25 November 2021 Announcement made the representation pleaded in paragraph 222(b)(ii) of the FASOC, the representation was true.

Particulars

A. The material growth limit imposed by the CBI as pleaded at paragraph 141 of the FASOC was not a “broad-based reduction in limits across existing programs”.

B. The CBI never imposed the Proposed Program Limits Direction.

227. It denies paragraph 227 and refers to and repeats paragraphs 222 to 226 above.

L.5 February 2022 Remediation/Growth Representations

228. It denies paragraph 228 and refers to and repeats paragraph 197 above.

229. It denies paragraph 229.

230. As to paragraph 230, it:

(a) admits that, if it made the February 2022 Remediation/Growth Representations (which is denied) the making of the representations would constitute conduct in trade or commerce;

(b) otherwise denies the allegations.

231. It denies paragraph 231 and refers to and repeats paragraphs 228 above and 232(c) below.

232. As to paragraph 232, it:

(a) denies the allegations;

(b) refers to and repeats paragraph 228 above;

(c) alternatively if (which is denied), EML made the representation pleaded in paragraph 228(b)(ii) of the FASOC, the representation was true.

Particulars

A. The material growth limit imposed by the CBI as pleaded at paragraph 141 of the FASOC was not a “broad-based reduction in limits across existing programs”.

B. The CBI never imposed the Proposed Program Limits Direction.

233. It denies paragraph 233 and refers to and repeats paragraphs 228 to 232 above.

M. CONTINUOUS DISCLOSURE CONTRAVENTIONS

M.1 PCSIL Control Standard Information Contravention

234. As to paragraph 234, it:

- (a) denies the allegations and refers to and repeats paragraph 164 above;
- (b) alternatively, it refers to and repeats paragraph 235 below and says that if (which is denied) EML was aware of the PCSIL Control Standard Information, the information was not information that a reasonable person would expect to have a material effect on the price or value of EML Shares;
- (c) further or alternatively, it says that if (which is denied) EML was aware of the PCSIL Control Standard Information, the information was not information that a reasonable person would expect to have a material effect on the price or value of EML Shares having regard to the information referred to in paragraph 235(b) below and/or the following information:
 - (i) prior to its acquisition of PFS, EML:
 - (A) undertook a due diligence exercise which identified weaknesses in the AML/CTF Frameworks;
 - (B) formed the view that such weaknesses could be improved over time to meet EML's standard; and/or
 - (ii) in February 2020, FCA and CBI provided their approvals for EML's change of control application to acquire PFS; and/or
 - (iii) since its acquisition of PFS in March 2020, EML had been and was continuing to implement improvements to the AML/CTF frameworks and governance applicable to PCSIL; and/or

Particulars

The improvements that PCSIL was implementing during the First Relevant Period include:

- A. enhancing PCSIL's transaction monitoring and fraud detection systems through the implementation of a new electronic transaction monitoring system known as GBG Predator;
- B. enhancing PCSIL's Know Your Customer systems through the implementation and rolling out of automated identify verification platforms, AriadNext and Jumio;
- C. enhancing PCSIL's Know Your Business (**KYB**) compliance and monitoring through the implementation of the Bureau Van Dijk KYB AML solutions Orbis and Compliance Catalyst;
- D. recruiting additional personnel to fill various PCF positions.
- E. establishing a new outsourcing policy and undertaking a review and gap analysis of all outsourcing agreements and services;
- F. investing further resources in the risk and compliance department.

Further particulars may be provided prior to trial.

- (iv) the AML/CTF risk and control frameworks of PFS UK had, in the circumstances pleaded in paragraph 40(b)(viii) above, been the subject of regulatory inspections by the FCA in the UK and the CBI between 2018 and 2021 (**Past Regulatory Inspections**);

Particulars

The Past Regulatory Inspections comprised:

- A. The 2018 CBI Inspection;
- B. A Financial Crime assessment of PFS UK conducted by the FCA's Financial Crime Specialist Supervision Department in February 2018 as part of a thematic review on money laundering and terrorist financing risk in the e-money sector (**FCA Financial Crime Assessment**);
- C. An assessment performed by the FCA in connection with an application by PFS to the Bank of England for access to Real-time Gross Settlement, which included the commissioning of a Skilled Persons Report by Eversheds Sutherland (International) LLP (**FCA RTGS Assessment**).

- (v) The Past Regulatory Inspections:
 - (A) involved the regulators undertaking an assessment of the appropriateness of PFS UK's AML/CTF frameworks;
 - (B) resulted in the regulator issuing findings which identified deficiencies in, and areas for improvement in relation to, the AML/CTF frameworks;
 - (C) resulted in PFS UK engaging with the regulators (being the FCA and CBI, respectively) in relation to the undertaking of remediation activities;
 - (D) resulted in the Past Regulatory Inspections being closed without the regulator imposing any fine on PFS UK or taking any action similar to the actions that CBI was empowered to take under ss 45(3)(a) to (c) or (f) to (g) of the Central Bank Act; and/or
- (vi) PFS UK was subject to an AML/CTF audit by Mastercard in 2020 on completion of which Mastercard provided its observations and recommendations to enhance AML/CTF Frameworks and allowed PFS UK to remediate without restricting, suspending or revoking its license; and/or
- (vii) the CBI commenced the 2021 CBI Inspection on 8 January 2021 which had not been completed by the end of the First Relevant Period to 19 May 2021.

235. As to paragraph 235, it:

- (a) says that the substance of the PCSIL Control Standard Information was generally available on or before 19 May 2021;

Particulars

- A. Expert Report of Mozammel Ali (**Ali Report**), Sections 3.2.1 and 6.1.
- B. Expert Report of Sanjay Unni (**Unni Report**), Section 5.2.
- (b) says further or alternatively the following information was generally available during the First Relevant Period:

(i) as to subparagraph 164(a) of the PCSIL Control Standard Information as pleaded in the FASOC:

(A) that there were or were likely to be weaknesses in the AML/CTF risk and control frameworks and governance applicable to the PFS Business; and/or

Particulars

The information referred to in subparagraph 235(b)(i)(A) was disclosed in, alternatively could be deducted, concluded or inferred from:

A. The following information disclosed by EML's Chairman at its Annual General Meeting held on 13 November 2019:

"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 get 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."

B. 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:

"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 onsite inspections.”

- (B) that since 17 December 2020, as a result of Brexit, PCSIL was operating the PFS European Business;
- (ii) as to subparagraph 164(b) of the PCSIL Control Standard Information as pleaded in the FASOC:
 - (A) that CBI had a range of powers under s 45 of the Central Bank Act including ones which could restrict PCSIL’s activities in Europe;
 - (B) that it was possible that the CBI could take action against a regulated financial service provider, including PCSIL, pursuant to s 45 of the Central Bank Act;
- (iii) as to subparagraph 164(c) of the PCSIL Control Standard Information as pleaded in the FASOC, that EML in conducting its business would cooperate with regulators, including the CBI, to the extent required;

Particulars

The information could be deducted, concluded or inferred from EML’s status as a publicly listed company and the absence of any information indicating that EML in conducting its business did not cooperate with regulators to the extent required.

- (c) otherwise admits that, save for the information referred to in subparagraphs (a) and (b) above, the PCSIL Control Standard Information was not generally available within the meaning of s 674(2)(c) (**Not Generally Available PCSIL Control Standard Information**).

236. It denies paragraph 236 and refers to and repeats paragraphs 234 and 235 above.

236A. In further answer to paragraphs 234 to 236 of the FASOC, it says that, if and to the extent that the PCSIL Control Standard Information was information of which PCSIL was aware and which was not generally available during the First Relevant Period:

- (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 expect the information to be disclosed, such that, pursuant to ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to the PCSIL Control Standard Information.

237. As to paragraph 237, it:

- (a) admits that EML did not communicate the Not Generally Available PCSIL Control Standard Information to the ASX before 19 May 2021;
- (b) otherwise denies the allegations.

238. It denies paragraph 238.

M.2 August Program Limits Information

239. In answer to paragraph 239, it:

- (a) denies the allegations;
- (b) refers to and repeats paragraph 166 above;
- (c) alternatively, refers to and repeats paragraph 240(c) below and says that if (which is denied) EML was aware of the August Program Limits Information, the information was not information that a reasonable person would expect to have a material effect on the price or value of EML Shares;
- (d) further or alternatively, says that if (which is denied) EML was aware of the August Program Limits Information, the information was not information that a reasonable person would expect to have a material effect on the price or value of EML Shares having regard to the information referred to in paragraph 240(c) below and/or the following information:

- (i) the CBI had not told PCSIL that it required or expected limits to be imposed upon a significant number of PCSIL's programs which could materially impact PCSIL's European operations and the August Program Limits Information was accordingly a matter of supposition; and/or
- (ii) PCSIL had informed the CBI that it was undertaking the Limits Review and, if required, changes to limits would be made on a case-by-case basis; and/or
- (iii) the CBI had not:
 - (A) identified how many or which programs it required or expected limits to be imposed upon;
 - (B) identified the limit which it expected or required to be imposed on those programs;
 - (C) indicated that the outcome of PCSIL's Limits Review, including any recalibration of limits that PCSIL would implement following that review, would not be satisfactory to the CBI; and/or
- (iv) it was not known:
 - (A) whether the CBI would require PCSIL to impose limits;
 - (B) if the CBI required PCSIL to impose limits, how many or which programs would be affected;
 - (C) if the CBI required PCSIL to impose limits, whether the limits the CBI required to be imposed would have, or would be likely to have, any material impact on PCSIL's European operations;
 - (D) if the CBI required PCSIL to impose limits, and those limits would have, or would be likely to have, a material impact on PCSIL's operations, what that impact would be.

240. As to paragraph 240, it:

- (a) refers to and repeats paragraph 166 above;

- (b) denies the allegation and says that, to the extent the August Program Limits Information existed, the August Program Limits Information was disclosed by EML's ASX announcements on 17 August 2021;

Particulars

Unni Report, Sections 6.1 and 6.2.

- (c) alternatively if the August Program Limits Information existed and was not generally available, says information was generally available between 19 May 2021 and 7 October 2021 that there was a risk that the CBI would issue directions to PCSIL, including directions restricting PCSIL's activities under the Irish Authorisation, which could materially impact the European operations of the PFS Business;

Particulars

The information was disclosed in or could be deduced, concluded or inferred from:

- A. The 19 May 2021 Announcement which disclosed that the CBI had indicated it was minded to issue directions to PCSIL pursuant to s 45 of the Central Bank Act and that the directions, if made, could materially impact the European operations of the PFS Business, including potentially restricting PCSIL's activities under the Irish authorisation;
- B. The 7 June 2021 Announcement disclosed that EML remained in ongoing dialogue with the CBI in relation to their concerns and that there was no statutory timeframe for the CBI to finalise its consideration of the matter;
- C. The absence of any disclosure by EML that the CBI had closed its investigation or decided not to issue directions to PCSIL, including directions restricting PCSIL's activities under the Irish Authorisation, which could materially impact the European operations of the PFS Business restricting PCSIL's activities under the Irish Authorisation.

241. It denies paragraph 241.

241A. It says further or alternatively to paragraphs 239 to 241 above, if (which is denied) EML

became obliged to tell the ASX the August Program Limits Information:

- (a) the information comprised matters of supposition or was insufficiently definite to warrant disclosure; or
 - (b) the information concerned an incomplete proposal or negotiation; and
 - (c) the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
 - (d) a reasonable person would not expect the information to be disclosed,
- such that, pursuant to ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to the August Program Limits Information.

242. As to paragraph 242, it:

- (a) refers to and repeats paragraph 240 above;
- (b) otherwise admits the paragraph.

243. It denies paragraph 243.

M.3 Initial PCSIL Remediation Timing Information

244. As to paragraph 244, it:

- (a) denies the allegations;
- (b) refers to and repeats paragraph 167 above;
- (c) says alternatively that if (which is denied), EML was aware of the Initial PCSIL Remediation Timing Information, it refers to and repeats paragraph 245 below and denies that the Initial PCSIL Remediation Timing Information was information that a reasonable person would expect to have a material effect on the price or value of EML Shares.

245. As to paragraph 245, it:

- (a) refers to and repeats paragraph 167 above;

- (b) says that the following information was generally available between 18 August 2021 and 15 February 2022:
 - (i) the information conveyed by the 17 August 2021 Presentation, 17 August 2021 ASX Announcement, and 18 August 2021 Investor Call, including that EML is engaged in regular contact with the CBI in the relation to the implementation of its remediation plan and that EML expected the remediation plan to be substantively complete by the end of the 2021 calendar year, with remaining items remediated by the end of March 2022;
 - (ii) the information conveyed by the 25 November 2021 Announcement, that the CBI was minded to impose the Revised Proposed Growth Limit Direction for 12 months;
- (c) otherwise admits the paragraph.

246. It denies paragraph 246.

247. It admits paragraph 247 and refers to and repeats paragraph 245 above.

248. It denies paragraph 248.

M.4 First Guidance Inability Information

249. As to paragraph 249, it:

- (a) denies the allegations;
- (b) refers to and repeats paragraph 168 above;
- (c) alternatively if (which is denied), EML was aware of the First Guidance Inability Information, refers to and repeats paragraph 250 below and denies that the First Guidance Inability Information was information that a reasonable person would expect to have a material effect on the price or value of EML Shares.

250. As to paragraph 250, it:

- (a) refers to and repeats paragraph 168 above;

(b) says that the information which was generally available until 26 April 2022 included that:

- (i) EML was unable to say with certainty its earnings, profitability or growth for FY22;
- (ii) EML had not provided any forecasts or guidance as to its earnings or profitability for FY22 other than on an underlying basis which excluded the costs related to the CBI matter;
- (iii) the information conveyed by the 17 August 2021 Presentation, the 17 August 2021 ASX Announcement and the 18 August 2021 Investor Call transcript, including the information pleaded at paragraph 183(g) above;
- (iv) the information conveyed by the 2021 AGM Presentation, including the information pleaded at 190(b) above;

(c) otherwise admits paragraph 250.

251. It denies paragraph 251.

252. It admits paragraph 252 and refers to and repeats paragraph 250 above.

253. It denies paragraph 253.

M.5 November Program Limits Information

254. As to paragraph 254, it:

- (a) denies the allegations;
- (b) refers to and repeats paragraph 169 above;
- (c) says alternatively that, if (which is denied) EML was aware of the November Program Limits Information, the information was not information that a reasonable person would expect to have a material effect on the price or value of EML Shares;
- (d) further or alternatively, says that if (which is denied) EML was aware of the November Program Limits Information, the information was not information that a

reasonable person would expect to have a material effect on the price or value of EML Shares having regard to the following information:

- (i) CBI had not told PCSIL that it required or expected limits to be imposed upon a significant number of PCSIL's programs which could materially impact PCSIL's European operations and the November Program Limits Information was accordingly a matter of supposition; and/or
- (ii) PCSIL had informed the CBI that it was undertaking the Limits Review and, if required, changes to limits would be made on a case by case basis; and/or
- (iii) the CBI had not:
 - (A) identified how many or which programs it required or expected limits to be imposed upon;
 - (B) identified the limit which it expected or required to be imposed on those programs;
 - (C) indicated that the outcome of PCSIL's Limits Review, including any recalibration of limits that PCSIL would implement following that review, would not be satisfactory to the CBI; and/or
- (iv) it was not known:
 - (A) whether the CBI would require PCSIL to impose limits;
 - (B) if the CBI required PCSIL to impose limits, how many or which programs would be affected;
 - (C) if the CBI required PCSIL to impose limits, whether the limits the CBI required to be imposed would have, or would be likely to have, any material impact on PCSIL's European operations;
 - (D) if the CBI required PCSIL to impose limits, and those limits would have, or would be likely to have, a material impact on PCSIL's operations, what that impact would be.

255. As to paragraph 255, it:

- (a) refers to and repeats paragraph 169 above;
- (b) denies the allegation and says that, to the extent the information existed, the November Program Limits Information was disclosed by EML's ASX announcements on 17 August 2021 and remained generally available thereafter.

Particulars

Unni Report, Section 10.2

256. It denies paragraph 256.

256A. It says further or alternatively to paragraphs 254 to 256 above, that if (which is denied)

EML became obliged to tell the ASX the November Program Limits Information:

- (a) the information comprised matters of supposition or was insufficiently definite to warrant disclosure; or
- (b) the information concerned an incomplete proposal or negotiation; and
- (c) the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
- (d) a reasonable person would not expect the information to be disclosed, such that, pursuant to ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to the November Program Limits Information.

257. It admits paragraph 257.

258. It denies paragraph 258.

M.6 PCSIL Growth Impact Timing Information

259. As to paragraph 259, it:

- (a) denies the allegations;
- (b) refers to and repeats paragraph 170 above;

- (c) alternatively, if (which is denied) EML was aware of the PCSIL Growth Impact Timing Information, it refers to and repeats paragraph 260 below and denies that the PCSIL Growth Impact Timing Information was information that a reasonable person would expect to have a material effect on the price or value of EML Shares.

260. As to paragraph 260, it:

- (a) refers to and repeats paragraph 170 above;
- (b) says that the information pleaded in paragraph 245 above was generally available prior to 25 July 2022;
- (c) otherwise admits the allegation.

261. It denies paragraph 261.

262. It refers to and repeats paragraph 260 above and otherwise admits paragraph 262.

263. It denies paragraph 263.

M.7 Second Guidance Inability Information

264. As to paragraph 264, it:

- (a) denies the allegations;
- (b) refers to and repeats paragraph 171 above;
- (c) alternatively, if (which is denied) EML was aware of the Second Guidance Inability Information, it refers to and repeats paragraph 265 below and denies that the Second Guidance Inability Information was information that a reasonable person would expect to have a material effect on the price or value of EML Shares.

265. As to paragraph 265, it:

- (a) refers to and repeats paragraph 171 above;
- (b) says that the information which was generally available until 26 April 2022 included that:
 - (i) EML was unable to say with certainty its earnings, profitability or growth for FY22;

- (ii) EML had not provided any forecasts or guidance as to its earnings or profitability for FY22 other than on an underlying basis which excluded the costs related to the CBI matter;
 - (iii) EML had not provided any forecasts of its growth for FY22;
 - (iv) the information conveyed by the 17 August 2021 Presentation, the 17 August 2021 ASX Announcement and the 18 August 2021 Investor Call transcript, including the information pleaded at paragraph 183(g) above;
 - (v) the information conveyed by the 2021 AGM Presentation, including the information pleaded at 190(b) above;
 - (vi) the information conveyed by the 16 February 2022 Announcement, 16 February 2022 Presentation and 16 February 2022 Investor Call, including the information pleaded at paragraph 197 above;
- (c) otherwise admits paragraph 265.

266. It denies paragraph 266.

267. It admits paragraph 267 and refers to and repeats paragraph 265 above.

268. It denies paragraph 268.

M.8 Revised PCSIL Remediation Timing Information

269. As to paragraph 269, it:

- (a) denies the allegations;
- (b) refers to and repeats paragraph 172 above;
- (c) admits that it was aware of the matters admitted in paragraph 172(c)(i) during the period referred to therein;
- (d) says alternatively that, if (which is denied) EML was aware of the Revised PCSIL Remediation Timing Information, it refers to and repeats paragraph 270 below and in light of the information that was generally available, denies that the Revised

PCSIL Remediation Timing Information was information that a reasonable person would expect to have a material effect on the price or value of EML Shares.

270. As to paragraph 270, it:

- (a) refers to and repeats paragraph 172 above;
- (b) says that the following information was generally available between 16 February 2022 and the end of the Second Relevant Period:
 - (i) the information conveyed by the 17 August 2021 Presentation, 17 August 2021 ASX Announcement, and 18 August 2021 Investor Call, including that EML is engaged in regular contact with the CBI in the relation to the implementation of its remediation plan and that EML expected the remediation plan to be substantively complete by the end of the 2021 calendar year, with remaining items remediated by the end of March 2022;
 - (ii) the information conveyed by the 25 November 2021 Announcement, that the CBI was minded to impose the Revised Proposed Growth Limit Direction for 12 months;
 - (iii) the information conveyed by the 16 February 2022 Announcement, 16 February 2022 Presentation and 16 February 2022 Investor Call, including that EML is working cooperatively with the CBI to address the CBI's concerns and has developed a remediation plan that it expects to be finalised in mid-2022, and that the material growth restriction was in place until December 2022;
 - (iv) the information conveyed by the 26 April 2022 Announcement including that EML was making progress on remediation toward a 30 June 2022 completion date prior to independent assurance;
- (c) otherwise admits the allegations.

271. It denies paragraph 271.

272. It admits paragraph 272 and refers to and repeats paragraph 270 above.

273. It denies paragraph 273.

N. CONTRAVENING CONDUCT CAUSED GROUP MEMBERS' LOSS

N.1 Acquisition of EML Shares

274. It admits that, during the Relevant Periods, the plaintiffs acquired interests in EML Shares and otherwise does not admit paragraph 274.

N.2 Market-based causation

275. As to paragraph 275, 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 referred to 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.

276. It denies paragraph 276.

277. It denies paragraph 277 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 277 of the FASOC.

277A. Further to paragraph 277 above, if it is found that:

- (a) the pleaded Market Contraventions occurred (which is denied); and
- (b) the declines in the price of EML shares pleaded in paragraphs 176, 186, 194, 200, and 203 above 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, 25 November 2021 Announcement, 26 April 2022 Announcement, and 25 July 2022 Announcement (which is also denied),

the defendants say further that:

- (c) the information contained in those announcements is materially different to the pleaded Material Information, the non-disclosure of which is alleged to give rise to the Continuous Disclosure Contravention;
- (d) in the premises, the decline in the price of EML Shares referred to in paragraph 277 of the FASOC could not have been caused or materially contributed to by the market's reaction to the pleaded Market Contraventions.

278. It denies paragraph 278.

N.3 Reliance

279. It denies paragraph 279.

N.4 Loss and damage

280. It denies the allegations in paragraph 280.

Dated 13 May 2025

R C A HIGGINS
T SPENCER BRUCE
K RAGHAVAN
K J BROWNE



Herbert Smith Freehills
Solicitors for the defendant