
SECOND SUPERVISORY NOTICE

To: **VS1 Business Services (Europe) Ltd ("VS1")**

Firm Reference
Number: **540958**

Dated: **10 October 2019**

ACTION

1. On 23 July 2019, pursuant to Regulation 12 of the PSR, the Authority gave VS1 a First Supervisory Notice which notified VS1 of the Authority's decision to vary the authorisation granted to VS1 under Part 2 of the PSR, by removing from VS1's authorisation, with immediate effect, the payment service for which the Authority had granted authorisation. For the reasons given in this Second Supervisory Notice, the Authority has decided not to rescind the variation of VS1's authorisation. Accordingly, VS1 continues not to be authorised to provide the money remittance payment service.

REASONS FOR ACTION

2. On the basis of the facts and matters described in this Second Supervisory Notice, having considered the representations made by VS1 on the First Supervisory Notice, it continues to appear to the Authority that VS1 breached Regulation 37 of the PSR (and, as applicable, Regulation 32 of the 2009 PSR) by failing to disclose significant changes in its circumstances which are relevant to its ability to meet the conditions for authorisation detailed in Regulations 6(6) and 6(7) of the PSR (and the corresponding provisions of the 2009 PSR).
3. It also continues to appear to the Authority that VS1 is not meeting the conditions for authorisation contained in Regulation 6(6)(a)-(c) of the PSR which are directed

at ensuring that an authorised payment institution is run in a sound and prudent manner.

4. Further, it continues to appear to the Authority that the variation of VS1's authorisation, as described in paragraph 1 above, remains desirable to protect the interests of consumers. VS1's authorisation as a money remitter would constitute a risk to consumers because it appears that VS1 is not run in a sound and prudent manner and because VS1 failed to disclose certain serious and highly relevant matters to the Authority. A firm which does not disclose such matters to its regulator poses an inherent risk to consumers.
5. It also continues to appear to the Authority that, in all the circumstances, allowing VS1 to carry out payment services would constitute a threat to the stability of, or trust held in, the payment system in which it is involved.
6. As a result, the Authority has decided not to rescind the variation of VS1's authorisation.

DEFINITIONS

7. The definitions below are used in this First Supervisory Notice (and in the Annex):
 - "the 2009 PSR" means the Payment Services Regulations 2009;
 - "the Act" means the Financial Services and Markets Act 2000;
 - "the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;
 - "Bank 1" means a bank authorised in the UK;
 - "Company A" means the company from which VS1 sublet its business premises in June 2016;
 - "the First Supervisory Notice" means the First Supervisory Notice given to VS1 dated 23 July 2019;
 - "the Handbook" means the Authority's Handbook of Rules and Guidance;
 - "MLRO" means Money Laundering Reporting Officer;
 - "the MPS" means the Metropolitan Police Service;
 - "Mr A" means an individual who, until 25 September 2019, was a Person Responsible for Payment Services at VS1, as well as being a director and shareholder;
 - "POCA" means the Proceeds of Crime Act 2002;

"the Production Orders" means the Production Orders served on VS1 and Mr A under POCA in March 2019;

"the PSR" means the Payment Services Regulations 2017;

"qualifying holding" means a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking;

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber); and

"VS1" means the authorised payment institution VS1 Business Services (Europe) Ltd.

FACTS AND MATTERS RELIED ON

8. VS1 was first authorised by the Authority to engage in money remittance activities on 25 November 2011 under the 2009 PSR. On 13 June 2018, VS1 was permitted under the PSR to engage in money remittance activities as an authorised payment institution. In order to be authorised under the PSR, VS1 was required to submit an application to the Authority. Mr A was, until 25 September 2019, one of two directors of VS1, with a qualifying holding in the firm. VS1 appears to operate and offer consumer-facing services through a website it maintains under its approved trading names.
9. Since at least June 2016, VS1 and Mr A have been the subject of a criminal investigation by the MPS. As part of this, a search warrant was executed in June 2016 at VS1's then principal place of business and head office premises. The search warrant stated that it was issued under POCA in respect of a money laundering investigation and resulted in the seizure of items including Mr A's laptop.
10. On 15 February 2017, Bank A, VS1's bank at the time, wrote to VS1 to inform it that the bank was unilaterally closing all of VS1's accounts and cancelling all other banking arrangements with the firm.
11. In March 2019, as part of the MPS investigation which had resulted in the execution of the search warrant in 2016, the MPS served Production Orders under POCA on VS1 and Mr A, requiring the production of material potentially relevant to that investigation. Subsequently, in April and May 2019, Mr A was interviewed under caution by the MPS three times, on suspicion of committing serious criminal offences.

12. Regulation 32 of the 2009 PSR and Regulation 37 of the PSR, as applicable, required all of the above matters to be disclosed to the Authority without undue delay. Neither VS1 nor Mr A notified the Authority at any time about the execution of the search warrant, the seizure of material, the closure of VS1's bank accounts, the Production Orders or Mr A's interviews under caution.
13. In its 2018 application for authorisation under the PSR, VS1 was required to provide information regarding the suitability of Mr A, including relevant information on criminal investigations. The execution of the search warrant and the seizure of Mr A's laptop by the MPS in 2016 were not mentioned in VS1's application.
14. In April 2019, VS1 informed the Authority that it had recently gained a new UK bank account and was trading. This increased the need for the Authority to take urgent action.

FAILINGS

15. The statutory provisions relevant to this Second Supervisory Notice are set out in Annex A.
16. From the facts and matters described above, the Authority, having regard to its operational objectives, which include the protection of consumers, has reached the following conclusions:
 - It should have been apparent to VS1 that the execution of the search warrant at VS1's business premises in 2016 under POCA in respect of a money laundering investigation, and the resulting seizure of items including Mr A's laptop, was a significant change of circumstances which was relevant to the firm's fulfilment of the conditions for authorisation set out in: (a) Regulation 6(5) of the 2009 PSR, namely that the firm must conduct its affairs in a sound and prudent manner, including the need for the firm to have effective risk management procedures and adequate internal controls; and (b) Regulations 6(6)(a) and 6(6)(b) of the 2009 PSR, namely that persons with a qualifying holding in the firm must be fit and proper persons and the firm's directors must be of good repute.
 - It should have been apparent to VS1 that the Production Orders, served on VS1 and Mr A under POCA in March 2019, and Mr A's subsequent interviews under caution on suspicion of committing serious criminal offences, constituted a significant change of circumstances which was relevant to the

firm's fulfilment of the conditions for authorisation set out in: (a) Regulation 6(6) of the PSR, namely that the firm must conduct its affairs in a sound and prudent manner, including the need for the firm to have robust governance arrangements, effective risk management procedures and adequate internal controls; and (b) Regulations 6(7)(a) and 6(7)(b) of the PSR, namely that persons with a qualifying holding in the firm must be fit and proper persons and the firm's directors must be of good repute.

- Therefore, the criminal investigation being carried out by the MPS, of which VS1 was aware, should have been disclosed to the Authority in 2016 and in 2019, and VS1's failure to do so appears to constitute a breach of Regulation 37 of the PSR and Regulation 32 of the 2009 PSR, as applicable. In addition, it should have been disclosed when VS1 was applying to the Authority in 2018 for authorisation under the PSR.
- Further, it should have been apparent to VS1 that the unilateral closure of VS1's bank accounts by Bank A in 2017 was a significant change in circumstances which was relevant to the firm's fulfilment of: (a) the conditions for authorisation set out in Regulation 6(5) of the 2009 PSR, which provisions were in force at the time, namely that the firm must conduct its affairs in a sound and prudent manner; and (b) the safeguarding requirements set out in Regulation 19 of the 2009 PSR (Regulation 6(6)(d) made this a condition of authorisation).
- Therefore, the Authority considers that the fact of the cancellation of VS1's bank accounts by Bank A should have been disclosed to the Authority, and VS1's failure to do so appears to constitute a breach of Regulation 32 of the PSR 2009 (and Regulation 37 of the PSR).
- As a result of the non-disclosures set out above, it also appears that VS1 does not meet the conditions for authorisation set out in Regulation 6(6) of the PSR, regarding the need to ensure the sound and prudent conduct of the affairs of the institution. In light of VS1's failure to disclose information of this nature, the Authority is concerned that VS1 may lack robust governance arrangements, effective procedures to identify, manage, monitor and report risk, and adequate internal control mechanisms.

- The Authority considers that the variation of VS1's authorisation remains desirable in order to protect the interests of consumers. This is because it appears that VS1 is not run in a sound and prudent manner and because VS1's non-disclosures related to serious and highly relevant information of which the Authority would expect to be notified. A firm which is not run in a sound and prudent manner and which does not engage with its regulator to disclose serious matters presents an inherent risk to consumers.
- The Authority considers that VS1's failure to disclose information is so serious that its provision of payment services would constitute a threat to the trust held in the payment services system.
- It therefore appears to the Authority that it was appropriate to vary VS1's authorisation in the manner described above, with immediate effect, pursuant to Regulation 12 of the PSR, and that it is not appropriate to rescind that variation. This is also in line with the Authority's operational objectives, specifically the consumer protection objective.

REPRESENTATIONS

17. Annex B contains a brief summary of the key representations made by VS1 and how they have been dealt with. In making the decision which gave rise to the obligation to give this Second Supervisory Notice, the Authority has taken into account all of the representations made by VS1, whether or not set out in Annex B.

PROCEDURAL MATTERS

18. This Second Supervisory Notice is given under Regulation 12(9) of the PSR and in accordance with paragraph 12(11) of the PSR.

Decision Maker

19. The decision which gave rise to the obligation to give this Second Supervisory Notice was made by the Authority's Regulatory Decisions Committee.
20. The following statutory rights are important.

The Tribunal

21. VS1 has the right to refer the matter to which this Second Supervisory Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal

Procedure (Upper Tribunal) Rules 2008, VS1 has 28 days from the date on which this Second Supervisory Notice is given to it to refer the matter to the Tribunal.

22. A reference to the Tribunal can be made by way of a completed reference notice (Form FTC3) signed by VS1 and filed with a copy of this Second Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5th Floor, The Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: uttc@hmcts.gsi.gov.uk).
23. For further information on the Tribunal VS1 should refer to the HM Courts and Tribunals Service website. The following page includes guidance on making a reference to the Tribunal, the relevant form to complete (Form FTC3) and notes on that form:

<http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
24. VS1 should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Saad Nasarullah at the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.

Publicity

25. VS1 should note that section 391 of the Act, as applied by paragraph 10 of Schedule 6 to the PSR, requires the Authority, when this Second Supervisory Notice takes effect, to publish such information about the matter as it considers appropriate.

Authority Contacts

26. For more information concerning this matter generally, VS1 should contact Saad Nasarullah at the Authority (direct line: 020 7066 1940).

Mark Roberts, Manager DMC Secretariat on behalf of

Elizabeth France
Deputy Chair, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1(B) of the Act include the protection of consumers.
2. Regulation 8 of the PSR provides that the Authority may vary a firm's authorisation by adding or removing a payment service from those for which it was granted authorisation. The Authority is authorised by Regulation 12 of the PSR to vary an authorised person's PSR permissions as specified in Regulation 8 where it appears to the Authority that:
 - a) the person appears unlikely to meet any of the conditions for authorisation in Regulation 6(4) – (9) of the PSR, or does not inform the Authority of a major change in circumstance which is relevant to its meeting those conditions for authorisation (Regulation 12(1)(a));
 - b) the person would constitute a threat to trust in a payment system by continuing to provide a particular payment service or payment services (Regulation 12(1)(c)); or
 - c) the variation is desirable to protect the interests of consumers (Regulation 12(1)(d)).
3. Regulation 12(3) of the PSR allows such a variation to take effect immediately (or on a specified date) only if the Authority having regard to the ground on which it is exercising its power, reasonably considers that it is necessary for the variation to take effect immediately (or on that date).
4. Regulation 6 of the PSR sets out the conditions for authorisation, which include:
 - a) The applicant must satisfy the Authority that, taking into account the need to ensure the sound and prudent conduct of the affairs of the institution, it has—
 - i. robust governance arrangements for its payment service business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility (Regulation 6(6)(a));

- ii. effective procedures to identify, manage, monitor and report any risks to which it might be exposed (Regulation 6(6)(b)); and
- iii. adequate internal control mechanisms, including sound administrative, risk management and accounting procedures (Regulation 6(6)(c)),

which are comprehensive and proportionate to the nature, scale and complexity of the payment services to be provided by the institution.

- b) The applicant must satisfy the Authority that any persons having a qualifying holding in it are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of an authorised payment institution (Regulation 6(7)(a));
 - c) The applicant must satisfy the Authority that the directors and persons responsible for the management of the institution and, where relevant, the persons responsible for the management of payment services, are of good repute (Regulation 6(7)(b));
 - d) The applicant must satisfy the Authority that it has taken adequate measures for the purpose of safeguarding payment service users' funds in accordance with Regulation 23 (safeguarding requirements) (Regulation 6(7)(d)).
5. Regulation 23 of the PSR sets out the safeguarding requirements, including in Regulation 23(6) that, where the authorised payment institution continues to hold the relevant funds at the end of the business day following the day on which they were received, it must place them in a separate account that it holds with an authorised credit institution or the Bank of England (or invest the relevant funds in such secure, liquid assets as the Authority may approve and place those assets in a separate account with an authorised custodian). Relevant funds are defined in Regulation 23(1) to mean any sums received from, or for the benefit of, a payment service user for the execution of a payment transaction.
6. Regulation 37 of the PSR sets out an authorised payment institution's duty to notify the Authority without undue delay where it becomes apparent to that authorised payment institution that there is, or is likely to be, a significant change in circumstances which is relevant to its fulfilment of any of the conditions set out in Regulation 6(4) to (9) (conditions for authorisation).

7. The 2009 PSR has corresponding provisions to those mentioned in paragraphs 4 to 6 above in Regulations 6, 19 and 32.
8. Section 391 of the Act, as applied by paragraph 10 of Schedule 6 to the PSR, provides that:

"[...]

- (5) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.
- (6) The [Authority] may not publish information under this section if, in its opinion, publication of the information would be
 - (a) unfair to the person with respect to whom the action was taken (or was proposed to be taken).
 - (b) prejudicial to the interests of consumers, or
 - (c) detrimental to the suitability of the UK financial system.
- (7) Information is to be published under this section in such manner as the [Authority] considers appropriate.
- (8) For the purposes of determining when a supervisory notice takes effect, a matter to which the notice relates is open to review if
 - (a) the period during which any person may refer the matter to the Tribunal is still running;
 - (b) the matter has been referred to the Tribunal but has not been dealt with;
 - (c) the matter has been referred to the Tribunal and dealt with but the period during which an appeal may be brought against the Tribunal's decision is still running; or
 - (d) such an appeal has been brought but has not been determined."

RELEVANT HANDBOOK PROVISIONS

9. The Authority's policy in relation to its enforcement powers is set out in the Enforcement Guide (EG), certain provisions of which are summarised below.
10. EG 19.20 outlines the Authority's approach to enforcing the provisions of the PSR. EG 19.20.5 provides that the PSR, for the most part, mirror the Authority's investigative, sanctioning and regulatory powers under the Act and that the Authority has decided to adopt procedures and policies in relation to the use of those powers akin to those it has under the Act.
11. The Authority considers that the powers under Regulation 12(1) of the PSR are similar to those under sections 55J and 55L of the Act and that the provisions of EG 8 "Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms" are applicable.

Imposing requirements on the Authority's own initiative

12. EG 8.2.1 provides that the Authority will have regard to its statutory objectives and the range of regulatory tools that are available to it, when it considers how it should deal with a concern about a firm. The Authority will also have regard to: (1) the responsibilities of a firm's management to deal with concerns about the firm or about the way its business is being or has been run; and (2) the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve.
13. EG 8.2.3 provides that the Authority may exercise its formal powers under section 55J or 55L of the Act, where the Authority considers it is appropriate to ensure a firm meets its regulatory requirements.
14. EG 8.4.4 states that examples of requirements that the Authority may consider imposing when exercising its own-initiative power in support of its enforcement function include, inter alia: a requirement not to take on new business; a requirement not to hold or control client money; and a requirement that prohibits the disposal or dealings with a firm's assets.

Use of the own-initiative powers in urgent cases

15. EG 8.3.1 states that the Authority may impose a requirement so that it takes effect immediately or on a specified date if it reasonably considers it necessary for

the requirement to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.

16. EG 8.3.2 provides that the circumstances in which the Authority will consider exercising its own initiative power as a matter of urgency, include where the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately (EG 8.3.2(1)).
17. EG 8.3.3 sets out a non-exhaustive list of situations in which the Authority will consider exercising its own-initiative powers as a matter of urgency. EG 8.3.3(1) suggests that the Authority may consider urgent own-initiative action if there is information indicating a significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests. EG 8.3.3(2) suggests that the Authority may consider using this power where it has received information that a firm's conduct has put it at risk of being used for the purposes of financial crime. EG 8.3.3(3) states that the Authority will consider using its urgent own-initiative powers where a firm has submitted to the Authority inaccurate or misleading information so that the Authority is seriously concerned about the firm's ability to meet its regulatory obligations. EG 8.3.3(4) states that the Authority will consider using its urgent own-initiative powers where there are circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions (here, the "threshold conditions" equate to the conditions for authorisation set out in the 2009 PSR and PSR, as applicable).
18. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an urgent imposition of a requirement is appropriate and sets out a non-exhaustive list of factors which will determine whether the urgent exercise of the Authority's own-initiative powers is an appropriate response to serious concerns, including: the nature of any false or misleading information, including where the information relates to the firm's potential involvement in financial crime (EG 8.3.4(3)); the seriousness of any suspected breach of the requirements of the legislation or the rules and the steps that need to be taken to correct that breach (EG 8.3.4(4)); the risk the firm has been or may be used to facilitate financial crime (EG 8.3.4(6)); and the impact which the use of the Authority's own-initiative powers will have on the firm's business and on its consumers (EG 8.3.4(9)).

ANNEX B

REPRESENTATIONS

1. VS1's representations (in italics) and the Authority's conclusions in respect of them are set out below.

Variation of VS1's authorisation is disproportionate

2. *It is disproportionate to vary VS1's authorisation in the manner proposed. The extent of VS1's breach of the PSR and the 2009 PSR has been overstated, mitigating factors have not been fully presented and considered, and changes in the company's governance, including the departure and replacement of Mr A as a director, meet any threat to consumer safety. The variation of VS1's authorisation should therefore be rescinded.*
3. The Authority considers it is appropriate and proportionate for the variation of VS1's authorisation not to be rescinded, for the reasons given in this Second Supervisory Notice. The Authority's conclusions regarding the specific reasons given by VS1 as to why the variation of VS1's authorisation should be rescinded are set out below.

The 2016 search and seizure by the MPS

4. *In 2016, there was no indication and/or VS1 did not appreciate that Mr A was a suspect in the MPS investigation or that the business of VS1 was itself under investigation. VS1 sublet its business premises from Company A, which also occupied the premises and was a customer of VS1. The search by the MPS related to a number of businesses and premises, and the search warrant in respect of VS1's premises authorised seizure of items from Company A as well as VS1. Many arrests of persons connected with other companies across the operation were made, however neither Mr A nor any other person connected with VS1 was arrested or interviewed under caution, and Mr A's own home was not searched.*
5. *Mr A's laptop was seized in the search, but was returned to him within two weeks, and neither he nor VS1 had any further contact from the MPS after the 2016 search until 2019. VS1 understood that the investigation concerned allegations of money laundering and involved Company A as one of a number of businesses under investigation. Given the work that VS1 carried out for Company A, there was an*

apparent explanation as to why the search warrant allowed for the seizure of items from VS1. It was therefore reasonable for VS1 to consider that it was only of ancillary interest to the MPS. Accordingly, VS1 concluded on a reasonable basis that there was no significant change of circumstances to report to the Authority and that its systems and personnel remained appropriate.

6. *It is also possible that Mr A thought that the Authority already knew of the search, or was even present at it, as the search warrant stated that persons authorised to accompany the MPS on the search included staff from the Authority.*
7. The search warrant provided to VS1 during the search of its premises in June 2016 stated that it was issued under POCA in respect of a money laundering investigation and authorised the MPS to seize a broad variety of records relating to VS1's and Company A's businesses. The Authority considers that the wording of the search warrant should have led VS1 to conclude that it was subject to a criminal investigation. Given the small size of VS1's business and the prominence of Mr A as one of only two directors at the firm at the time (and he was also a "Person Responsible for Payment Services" at VS1), and given that Mr A's laptop was seized by the MPS, it would also have been reasonable to infer that Mr A was under investigation by the MPS.
8. In any event, the test in Regulation 32 of the 2009 PSR as to whether information should be notified to the Authority is whether the information is relevant to the firm's fulfilment of Regulation 6 of the 2009 PSR. Therefore, regardless of who precisely VS1 believed was under investigation by the MPS, the fact that VS1's premises had been searched by the MPS pursuant to a warrant granted under POCA, and had resulted in the seizure of Mr A's laptop, clearly needed to be disclosed to the Authority, because it was relevant to assessing VS1's fulfilment of Regulation 6(5) and 6(6) of the 2009 PSR. Further, given that Company A was a customer of VS1, VS1's knowledge that the search also related to Company A and its understanding that Company A was being investigated in relation to allegations of money laundering, was also information that should have been disclosed to the Authority, as it was relevant to whether VS1 was conducting its affairs in a sound and prudent manner and therefore to VS1's fulfilment of Regulation 6(5) of the 2009 PSR. However, VS1 did not disclose this and continued to conduct business with Company A.

9. Even if Mr A thought that the Authority might already know of the search conducted by the MPS, VS1 was still required to notify the Authority of it and the seizure of his laptop.

The 2018 application

10. *As VS1 did not appreciate that it and Mr A were under investigation in 2016, or that they remained under investigation after the search, when VS1 submitted its application for authorisation under the PSR in 2018, it reasonably concluded that Mr A was not subject to a pending criminal investigation and so did not disclose the MPS investigation.*
11. In its application for authorisation under the PSR in 2018, VS1 was under an obligation to disclose the information set out in Guidelines 15 and 16 of the European Banking Authority's Authorisation Guidelines. Guideline 15 required the disclosure of information relating to the suitability of persons with a qualifying holding in the applicant firm, including, at 15.2(c)(iv), information regarding "any pending criminal investigations". Guideline 16 required the disclosure of information relating to the suitability of the applicant's directors, including, at 16.1(d), evidence of a director's honesty, integrity and reputation, including "relevant information on criminal investigations".
12. To comply with Guidelines 15 and 16, VS1 should have disclosed the fact that, in June 2016, a search warrant had been executed at its premises pursuant to POCA, resulting in the seizure of Mr A's laptop. Even if VS1 believed that there was no ongoing criminal investigation of Mr A, that was not a reason not to disclose this information under Guideline 16, which did not limit the information required to ongoing criminal investigations.

The 2019 interviews

13. *The failure to inform the Authority of Mr A's interviews under caution in 2019 is mitigated by a number of factors:*
 - a. *Although the interviews were part of the same umbrella investigation as the 2016 search, the basis and scope of the part of the investigation that concerned Mr A was much narrower than that which it is understood was*

being investigated in 2016, such that this amounted to a fresh allegation or sub-allegation and Mr A was being treated as a suspect for the first time.

- b. It was assumed reasonably that the MPS had already contacted the Authority, so that whilst VS1 accepts a duty to report the matter to the Authority in May 2019, the failure to do so has to be seen against a context in which it was believed the Authority was already aware of the situation.*
- c. VS1 was not trading at the time in question other than as a referrer of business to other authorised payment service providers, so there was no present or ongoing risk to the public.*
- d. The matters put in interview to Mr A are allegations and no admissions of criminality have been made.*

14. *Further, it was Mr A who was responsible for the lack of disclosure of the Production Orders and the interviews under caution and, as mentioned in paragraph 25(a) below, he has now resigned as a director of the firm.*

15. The mitigating factors mentioned by VS1 do not relieve the firm of its obligation to notify the Authority under Regulation 37 of the PSR of Mr A's interviews under caution, nor do they materially lessen the seriousness of VS1's failings.

16. Mr A's being interviewed under caution pursuant to an MPS investigation, regardless of VS1's purported views of the scope of the investigation and whether it posed a risk to the public, needed to be disclosed by VS1 directly to the Authority. This remains the case even if VS1 believed the MPS would notify the Authority. This is because the fact of the investigation would be relevant to assessing VS1's compliance with Regulation 6(6) and (7) of the PSR.

17. The Authority is not suggesting that the fact of the MPS interviews alone means Mr A lacks fitness and propriety. Rather, the Authority's concern is that VS1 was under an obligation to notify the Authority of the interviews, and failed to do so.

18. For the reasons given in paragraphs 26 to 28 below, the Authority does not consider that Mr A's resignation as a director of VS1 satisfactorily addresses its concerns with the firm.

Non-disclosure of changes in VS1's banking arrangements

19. *In respect of the failure to disclose changes in VS1's banking arrangements:*

- a. *At the time Bank A closed VS1's bank accounts, VS1 was only processing business for one customer. VS1 informed the customer it would no longer be able to assist them, and they ceased transacting through VS1 and so had no client funds in the account when it was closed. VS1 did not report the closure of the account to the Authority as the business did not hold any client funds. This might have been an oversight.*
- b. *There was no actual risk to the public because no trading took place in the relevant or following year which required banking facilities.*
- c. *The reason for Bank A's decision to withdraw its banking services is unknown. It would be wrong to infer any misconduct by VS1 from these events beyond the fact of the failure to make disclosures to the Authority.*

20. Having a bank account is highly relevant to whether a payment services firm meets the conditions for authorisation under the PSR or the 2009 PSR, as a bank account is fundamental to the operation of any financial services firm. The Authority considers the non-disclosure by VS1 of the unilateral closure of its bank accounts to be an extremely serious failure, which demonstrates that it does not have appropriate governance arrangements in place and does not meet the conditions for authorisation.

21. Whether or not VS1 was carrying out trading which required banking facilities is not relevant to its obligation to inform the Authority of the removal of those banking facilities in the first place. Further, the evidence seen by the Authority suggests that VS1 was trading at least until the point that Bank A took steps to restrict the operation of its banking facilities in February 2017. The Authority also notes that VS1's only customer at this time was Company A, which, as VS1 was aware, was the subject of a money laundering investigation.

22. The Authority is not inferring any misconduct by VS1 from Bank A's decision to withdraw its banking services. Instead, VS1's non-disclosure of Bank A's decision is one of the reasons for the Authority's decision not to rescind the variation of VS1's authorisation.

Proposals to meet the Authority's concerns

23. *The fact that Mr A has been interviewed under caution by the MPS would not mean as a matter of course that he would fail the fit and proper person test in the PSR. In any event, as mentioned in paragraph 25(a) below, Mr A has resigned his directorship and has divested or will divest himself of his shareholding in VS1, so the question of his ongoing suitability need not be resolved.*
24. *The degree of fault on the part of VS1 is significantly lower than has been presumed, primarily because it is only recently that VS1 has appreciated or had reason to conclude that Mr A is a suspect in a police investigation.*
25. *However, given that a degree of fault is accepted, and given the importance of the safeguarding requirements and the protection of the public, VS1 proposes the following steps to meet the Authority's concerns:*
- a. *Mr A has resigned as a director, has sold or will sell his shareholding to VS1's majority shareholder and will have no further involvement in the business.*
 - b. *Two new directors and a new MLRO, all of whom have appropriate experience, have been or will be appointed. Although VS1's majority shareholder will remain as a director, that will not pose a risk to consumers as he is not under investigation by the MPS and it was Mr A who was primarily responsible for any non-disclosures.*
26. The Authority considers that the concerns set out in this Second Supervisory Notice are not satisfactorily addressed by VS1's proposals. Currently, VS1's majority shareholder is the only director of VS1. He has been a director since 1 February 2011 and must have been aware of the search warrant, the seizure of material, Bank A's removal of VS1's bank accounts and the Production Orders. As VS1's directors at the relevant times, the majority shareholder and Mr A were both responsible for VS1's failure to make the required disclosures to the Authority, so Mr A's resignation and sale of his shareholding to the majority shareholder, and the addition of new directors and an MLRO, do not satisfactorily address the Authority's concerns with the governance of the firm.
27. On 3 September 2019, the Authority interviewed one of the proposed new directors and the new MLRO. They informed the Authority that remedial work is required in

respect of VS1's procedures, Anti-Money Laundering controls and business plan, and that this would only take place once the Authority had made a final decision regarding VS1's authorisation. The Authority considers that it would not be appropriate to rescind the variation of VS1's authorisation whilst this remedial work remains outstanding. If VS1 addresses all of the Authority's concerns, then it is entitled to apply in due course to the Authority for its authorisation to be varied to allow it to resume business, with the application to be assessed at that time.

Relevant comparator case

28. *The Authority referred in its Enforcement Submissions Document to the First Supervisory Notice issued to Coutts Automobiles Limited on 20 December 2018 as a relevant comparator case. However, that case related to more serious failings than those alleged in respect of VS1.*
29. *In addition, Coutts Automobiles Limited failed to comply with Principle 11 of the Authority's Principles for Businesses, which requires a firm to be open and cooperative in its dealings with the Authority and to disclose to the Authority anything relating to the firm of which the Authority would reasonably expect notice. In contrast, the requirements for notification under Regulation 32 of the 2009 PSR and Regulation 37 of the PSR are narrower and the need to notify the Authority is less clear.*
30. The Authority accepts that aspects of the Coutts Automobiles Limited case concerned additional serious matters, which are not present in this case. However, the Authority does not consider that this undermines its decision not to rescind the variation of VS1's authorisation. The Coutts Automobiles Limited case also involved a failure to notify the Authority, and that was regarded as a discrete ground for the action taken.
31. The Authority acknowledges that the disclosure requirements under Principle 11 are wider than under Regulation 32 of the 2009 PSR and Regulation 37 of the PSR, but for the reasons given in this Second Supervisory Notice, the Authority considers that VS1 should have notified the Authority of the MPS investigation and Bank A's closure of its bank accounts, and that by not doing so, it appears to have breached these Regulations.

