

IN THE COMPETITION APPEAL TRIBUNAL
BETWEEN:

Case Number: []

PHILLIP EVANS

Applicant / Proposed
Class Representative

and

- (1) BARCLAYS BANK PLC
- (2) BARCLAYS CAPITAL INC.
- (3) BARCLAYS PLC
- (4) BARCLAYS EXECUTION SERVICES LIMITED
- (5) CITIBANK, N.A.
- (6) CITIGROUP, INC.
- (7) MUFG BANK, LTD
- (8) MITSUBISHI UFJ FINANCIAL GROUP, INC.
- (9) J.P. MORGAN EUROPE LIMITED
- (10) J.P. MORGAN LIMITED
- (11) JPMORGAN CHASE BANK, N.A.
- (12) JPMORGAN CHASE & CO
- (13) NATWEST MARKETS PLC
- (14) THE ROYAL BANK OF SCOTLAND
GROUP PLC
- (15) UBS AG

Proposed Defendants

EXHIBIT "PGE2"
TO THE WITNESS STATEMENT OF PHILLIP GWYN JAMES
EVANS

This is the Exhibit marked "PGE2" referred to in the First Witness Statement of PHILLIP GWYN JAMES EVANS dated this 10th day of December 2019.

Foreign Exchange Collective Action Consultative Panel – Terms of Reference

1. Background to the Proposed Collective Proceedings

- 1.1. Mr Phil Evans (the “**Proposed Class Representative**”) has instructed Hausfeld & Co. LLP to investigate and prepare a collective action against certain banks (the “**Defendants**”) that have been found by the European Commission¹ to have participated in infringements of Article 101 TFEU and Article 53 of the EEA Agreement, relating to the foreign exchange spot market (the “**Proposed Collective Proceedings**”).
- 1.2. The infringements identified by the European Commission consist of two cartels in the Spot Foreign Exchange Market. They are identified in two decisions (the “**Decisions**”), namely:
 - (a) The *Forex – Three Way Banana Split* decision imposes a total fine of €811,197,000 on Barclays, The Royal Bank of Scotland (RBS), Citigroup and JP Morgan; and
 - (b) The *Forex – Essex Express* decision imposes a total fine of €257,682,000 on Barclays, RBS and MUFG Bank (formerly the Bank of Tokyo-Mitsubishi).
- 1.3. UBS is also an addressee of the Decisions, but it was not fined as it revealed the existence of the cartels to the European Commission.
- 1.4. The cartels relate to the following currencies: British Pound, United States Dollar, Australian Dollar, Canadian Dollar, New Zealand Dollar, Japanese Yen, Swiss Franc, the Euro, Danish Krone, Swedish Krona and Norwegian Krone (the “**Relevant Currencies**”).
- 1.5. In particular, the European Commission found that individual traders at the Defendants shared, via online chatrooms, the following commercially sensitive information:
 - (a) details concerning outstanding customer orders, including the customer’s identity, the currencies involved, and the amount to be traded;
 - (b) the bid/ask spread applicable to specific transactions;
 - (c) their open risk positions; and
 - (d) other details of current or planned trading activities.
- 1.6. The Proposed Collective Proceedings will seek damages for losses suffered as a result of the infringements identified in the Decisions. The specific class of parties falling within the scope of the claim (the “**Class**”) will be defined, and the harm arising from the infringements will be quantified in the course of the Proposed Collective

¹ In two decisions, see European Commission Press Release, 16 May 2019: “*Antitrust: Commission fines for Barclays, RBS, Citigroup, JPMorgan and MUFG €1.07 billion for participating in foreign exchange spot trading cartel*”, available at https://europa.eu/rapid/press-release_IP-19-2568_en.htm, accessed 21 August 2019.

Proceedings and with the benefit of economic evidence.

- 1.7. The Proposed Collective Proceedings will be a 'follow-on' damages claim relying upon the Decisions as evidence of the Defendants' infringements of competition law.

2. The role of the Consultative Panel

- 2.1. Mr Evans is proposing to apply for a Collective Proceedings Order from the Competition Appeal Tribunal permitting him, as class representative, to bring opt-out collective proceedings against the Defendants.

- 2.2. In order to fulfil his duties and obligations to the Class, and in particular to assist him to ensure that he is always acting fairly and adequately in the interests of all class members, Mr Evans has determined that it would be of assistance to him and of benefit to the Class as a whole, if he had the benefit of advice from a panel of individuals with particular experience concerning the foreign exchange market and competition litigation (the "**Consultative Panel**").

- 2.3. The role of the Consultative Panel will be to assist Mr Evans to further his objective to act in the best interests of the Class when carrying out his role as class representative. The nature of such assistance will be at Mr Evans' discretion, but is likely to include participating in telephone conferences and in-person conferences with Mr Evans from time to time throughout the duration of the Proposed Collective Proceedings and commenting on documents produced for the purposes of the Proposed Collective Proceedings.

- 2.4. For the avoidance of doubt, Mr Evans:

- (a) is under no obligation to seek the advice of the Consultative Panel;
- (b) is under no obligation to follow or accept the advice of the Consultative Panel;
and
- (c) chooses to seek advice solely at his own discretion.

- 2.5. Panel members will be reimbursed for their time spent serving as a member of the Consultative Panel at the rates set out in individual retainer letters, annexed to these Terms of Reference.

- 2.6. Should Mr Evans decide to sound out the Consultative Panel, the views of the members will be advisory only, and members of the Consultative Panel will carry no liability in relation to the views expressed.

- 2.7. Mr Evans is responsible for appointing and removing members of the Consultative Panel and may do so at his sole discretion.

- 2.8. Members of the Consultative Panel will serve on the Consultative Panel for as long as

they wish and may resign at any time.

3. Consultative Panel members

3.1. *Lord Carlile of Berriew CBE QC – lead panel member*

Lord Carlile is a former member of the Competition Appeal Tribunal. Lord Carlile was called to the Bar by Gray’s Inn in 1970 and was appointed Queen’s Counsel in 1984. He sat as a Recorder of the High Court and as a Deputy High Court Judge until 2014.

In addition to his legal career, Lord Carlile was MP for Montgomeryshire in Mid Wales from 1983 to 1997, during which time he served as spokesperson on a range of issues, including home affairs and the law. He was leader of the Welsh Liberal Democrats from 1992 to 1997. He was appointed a Life Peer in 1999, and now sits on the cross-benches. He was Independent Reviewer of Terrorism Legislations from 2001 - 2011. Until 2007, he was Head of Chambers at 9-12 Bell Yard.

3.2. *Dr Philip Marsden*

Dr Marsden is Professor of Law and Economics at the College of Europe, Bruges, teaching the core competition courses within the masters of law. He is also currently a competition and enforcement case decision maker at various concurrent regulators, specialising in financial services.

Previously, Dr Marsden has held positions as member of the Board of the Office of Fair Trading, then as Inquiry Chair and Senior Director, Case Decision Groups, at the Competition and Markets Authority, where he worked on mergers, market investigations and antitrust cases. In his 30 year career to date he has worked as a prosecutor, defence counsel, enforcement official and advisor to corporates and governments.

Signed: _____

Print name: _____

Date: _____