

Made on behalf of: Applicant/Proposed Class Representative
Name of witness: Anthony John Maton
Number of statement: 2
Exhibits: AJM4 – AJM5 and Confidential AJM6 – AJM8
Date: 17 April 2020

IN THE COMPETITION APPEAL TRIBUNAL

Case Number: 1336/7/7/19

BETWEEN:

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

SECOND WITNESS STATEMENT OF ANTHONY JOHN MATON

I, **ANTHONY JOHN MATON**, of Hausfeld & Co LLP, 12 Gough Square, London, EC4A 3DW, **WILL SAY AS FOLLOWS:**

Introduction

1. I am a solicitor of the Senior Courts of England and Wales and Managing Partner of Hausfeld & Co. LLP in London (“**Hausfeld**”).
2. I have previously provided a witness statement dated 10 December 2019 in support of Phillip Evans’ application before the Competition Appeal Tribunal (the “**Tribunal**”) for a Collective

Proceedings Order (“CPO”) to pursue collective proceedings on behalf of two classes of person who entered into certain types of foreign exchange transactions in the European Economic Area between 18 December 2007 and 31 January 2013 (the “**Evans Application**”). Together with David Lawne, I am the Partner at Hausfeld with oversight of the Evans Application.

3. This is my second witness statement in these proceedings. It addresses the following matters:
 - a. first, I explain the amendments that Mr Evans is seeking to make to the Evans Application. The amended documents will be filed with the Tribunal along with this witness statement; and
 - b. second, I provide additional information relating to Mr Evans’ funding and insurance arrangements.
4. I confirm that, unless otherwise stated, the contents of this witness statement are within my own knowledge, and are true to the best of my knowledge, information and belief. Where the facts are not within my own knowledge, I have indicated my sources of information or belief.
5. I also confirm that, for the avoidance of doubt, in giving this statement I do not disclose any information that is subject to legal professional privilege, nor is any waiver of such privilege intended by this statement.
6. There are now produced and shown to me **exhibits AJM4 – AJM5** and **Confidential¹ exhibits AJM6 – AJM8** which I refer to below and which I exhibit to this statement.

A. Amendments to the Evans Application

7. Pursuant to paragraph 9 of the Tribunal’s directions order dated 18 March 2020 (the “**Directions Order**”), Mr Evans has been granted permission to amend the Evans Application in consequence of the disclosure of the confidential versions of the two decisions of the European Commission in Case COMP/40135 – FOREX dated 16 May 2019 (the “**Confidential Decisions**”) and is required to file and serve the amended Application within four weeks of such disclosure. Pursuant to paragraph 4(a) of the Directions Order, the Confidential Decisions were provided to Mr Evans by way of disclosure into a confidentiality ring (the “**Joint Confidentiality Ring**” as defined in

¹ As I explain further in paragraphs 27-28 below, these exhibits are marked confidential as they include documents which fall within the meaning of “Outer Confidentiality Ring Information” as defined in the Tribunal’s joint confidentiality ring order made on 18 March 2020 (and drawn on 19 March 2020) (the “**Joint Confidentiality Ring Order**”).

the Directions Order) on 20 March 2020, and therefore the amended Evans Application must be filed and served by 17 April 2020.

8. In the course of amending the Evans Application in consequence of disclosure of the Confidential Decisions, Mr Evans and his representatives have identified certain minor amendments that it would be appropriate to make to the Evans Application at the same time. Those amendments are: (i) updating amendments to reflect matters that have occurred since the Evans Application was filed; and (ii) minor amendments in order to clarify certain matters in the Application. As these amendments are beyond the scope of the permission to amend the Evans Application granted by paragraph 9 of the Directions Order, Mr Evans is aware that these amendments must be made either with the written consent of the Proposed Defendants or with the permission of the Tribunal, pursuant to Rule 32 of the Competition Appeal Tribunal Rules 2015.
9. Accordingly, Hausfeld wrote to the Proposed Defendants on 9 April 2020 to inform them of Mr Evans' intention to make those additional amendments and proposed an approach to enable the amendments to be made with their consent. This letter was also copied to the Tribunal and to the legal representatives of Michael O'Higgins FX Class Representative Limited (the "**O'Higgins PCR**"). A copy of this letter is exhibited at **AJM4 [4-6]**.
10. By way of further explanation to the amendments made to the Evans Application, I summarise them below under two categories:
 - (a) amendments which are consequential on the disclosure of the Confidential Decisions, and are in accordance with the Directions Order; and
 - (b) amendments which are not consequential on the disclosure of the Confidential Decisions, but which update or clarify certain matters in the Evans Application. As I have explained above, Mr Evans will seek the Proposed Defendants' consent to those amendments.

Consequential amendments following disclosure of the Confidential Decisions

11. As I have explained in paragraphs 12-15 of my first witness statement dated 10 December 2019, on 1 October 2019, Mr Evans obtained copies of the non-confidential versions of the two decisions of the European Commission in Case COMP/40135 – FOREX, directly from the Commission via a request pursuant to the EU's Access to Documents Regulation. As such, the Collective Proceedings Claim Form filed with the Tribunal on 11 December 2019 was prepared on the basis of the non-confidential versions of those Decisions.

12. Accordingly, amendments have been made to the Collective Proceedings Claim Form to reflect the limited additional information contained in the Confidential Decisions. Those amendments are contained in paragraphs 14A, 21, 23, 24A-C, 27, 93 , 175, 196 (including footnote 142), 198, 201, 201A (including footnotes 149A-L), 210A, 211A (including footnote 166A), 213A (including footnotes 168A and 168B), 215A (including footnotes 170A and 170B), 219A (including footnote 174A), 236 and 268 and footnote 59. All amendments to the Collective Proceedings Claim Form are marked up in red, and I will refer to the amended version of the Collective Proceedings Claim Form in this statement as the “**Amended Collective Proceedings Claim Form**”.
13. Further, as the Amended Collective Proceedings Claim Form now refers to confidential information in the Confidential Decisions, and those documents were disclosed into the Joint Confidentiality Ring, the Amended Collective Proceedings Claim Form has been marked up to identify confidential material as highlighted yellow and contained in square brackets.
14. Mr Evans has also provided the Confidential Decisions to the three experts who prepared reports in connection with the Evans Application: Mr Richard Knight, Professor Dagfinn Rime and Mr John Ramirez. They have each confirmed in a letter addressed to my firm that the additional information contained in the Confidential Decisions does not change any of the conclusions or commentary that they provided in their reports. Accordingly:
 - a. Mr Knight and Mr Ramirez have confirmed that they do not wish to make any amendments to their reports consequent on disclosure of the Confidential Decisions at this stage² but they reserve their rights to refer to, or rely on, the information contained in the Confidential Decisions at a later stage in the proceedings (**AJM5 [1, 4-5]**); and
 - b. Professor Rime has identified that he wishes to make a minor amendment to paragraph 139 of his report to reflect that he has now read the Confidential Decisions. A copy of his letter, dated 16 April 2020, is enclosed at **AJM5 [2-3]**. While Professor Rime’s letter refers to enclosing an updated report, this has not been exhibited to my statement as it will be served separately. Professor Rime has also reserved his right to refer to, or rely on, the information contained in the Confidential Decisions at a later stage in the proceedings.
15. The amendments to the Amended Collective Proceedings Claim Form and to Professor Rime’s report, summarised above, are within the scope of the Directions Order.

² However, Mr Ramirez has identified three minor amendments that he wishes to make to his report, which I address at paragraph 17 below.

Updating/clarification amendments

16. In addition, Mr Evans has made certain further amendments to the Collective Proceedings Claim Form. As explained in paragraph 10 above, these amendments are: (i) updating amendments to reflect matters that have occurred since the Evans Application was filed; and (ii) minor amendments in order to clarify certain matters in the Application. Specifically, they include amendments which:
- a. reflect that service on Barclays Capital Inc., Citigroup Inc. and JPMorgan Chase & Co has been effected out of the jurisdiction in accordance with the Tribunal's Order dated 17 December 2019 (see paragraphs 37, 42, 55 and 268 and footnote 221 of the Amended Collective Proceedings Claim Form) and that the Tribunal has ordered, pursuant to paragraph 1 of the Directions Order, that the Evans Application be treated as proceedings in England and Wales (see paragraph 268A of the Amended Collective Proceedings Claim Form);
 - b. reflect the Tribunal's judgment of 6 March 2020, in which it was held that there should be a single substantive hearing, taking place in March 2021, to decide both "*whether a CPO should be made at all and, if so, to which class representative*" as between Mr Evans and O'Higgins PCR³ (see paragraph 129 of the Amended Collective Proceedings Claim Form);
 - c. update certain statements regarding the O'Higgins Application⁴ and the proceedings in the Commercial Court issued under CL-2018-000840 in *Allianz Global Investors GmbH and others v Barclays Bank Plc and others* that have been superseded by more recent developments (see footnotes 107 and 108 and paragraphs 126 and 127 of the Amended Collective Proceedings Claim Form);
 - d. update the position in relation to Mr Evans' funding and insurance arrangements (as to which, see paragraphs 20 – 27 below, and paragraphs 130 and 131 of the Amended Collective Proceedings Claim Form);
 - e. correct an error in the registered company number of the Fourteenth Proposed Defendant (see paragraph 57 of the Amended Collective Proceedings Claim Form); and

³ *Michael O'Higgins FX Class Representative Limited v Barclays Bank Plc and Others; Phillip Evans v Barclays Bank Plc and Others* [2020] CAT 9 (the "**Judgment on the Timing of the Carriage Dispute**") at paragraph 75.

⁴ Pursuant to paragraph 4 of the Directions Order, Mr Evans and O'Higgins PCR exchanged their respective CPO applications on 20 March 2020.

- f. correct typographical errors and to update references to the annexes to the Collective Proceedings Claim Form (see in particular paragraph 27 and footnotes 2 and 11 of the Amended Collective Proceedings Claim Form).
17. Further, Mr Ramirez has identified that he wishes to make three minor amendments to his report. Those amendments are explained in his letter to my firm exhibited at **AJM5 [4-5]**. While Mr Ramirez’s letter refers to enclosing an updated report, this has not been exhibited to my statement as it will be served separately.
18. As noted above, Mr Evans will seek the Proposed Defendants’ consent to the above amendments and Hausfeld will write to the Tribunal to update it once we have received their response(s).
19. In the interest of administrative efficiency, Mr Evans has not sought to update any of the other documents filed in support of the Evans Application. Mr Evans reserves his right to seek to make further amendments to take account of new developments in advance of the hearing in March 2021.⁵

B. Mr Evans’ funding and insurance arrangements

20. As explained in the Collective Proceedings Claim Form (see paragraph 130(c)) and in the first witness statement of Mr Evans dated 10 December 2019 (the “**First Evans Statement**”) (see paragraph 78), Mr Evans acquired ATE insurance in the sum of up to £10 million to cover any costs orders made against him in respect of recoverable costs incurred after a CPO is made in his favour.⁶
21. At paragraph 79 of the First Evans Statement, Mr Evans explained that he intended to acquire additional ATE insurance after the Evans Application was filed and more generally to keep ATE insurance under review throughout the proceedings.
22. Mr Evans has now taken out an excess layer of ATE insurance in the sum of up to £4 million with PartnerRe Ireland Insurance DAC (the “**PartnerRe Policy**”). As a result, the total level of ATE insurance for adverse costs incurred after a CPO is made in Mr Evans’ favour is £14 million.

⁵ For example, I note that in the Judgment on the Timing of the Carriage Dispute, the Tribunal indicated (at paragraph 73) that Mr Evans may need to adduce evidence going to the relative merits of the Evans Application and the competing application by O’Higgins PCR.

⁶ See Mr Evans’ ATE insurance policy with Quantum Legal Costs Cover Limited (“**QLCC**”) as agent for Hamilton Insurance DAC (the “**First ATE Policy**”). For the reasons explained further at paragraphs 25 – 27 below, the First ATE Policy is exhibited at **Confidential AJM7**.

23. Mr Evans will continue to monitor the level of ATE insurance throughout these proceedings to ensure that there is adequate provision for the Proposed Defendants' recoverable costs and he intends to acquire additional ATE insurance as and when appropriate.

Confidential treatment of ATE policy with PartnerRe

24. Mr Evans explained at paragraphs 80 – 82 of the First Evans Statement that the Litigation Funding Agreement (“LFA”) and First ATE Policy contained commercially sensitive information. This is also the case for the PartnerRe Policy. Mr Evans is therefore designating the PartnerRe Policy as Outer Confidentiality Ring Information in accordance with paragraph 6 of the Joint Confidentiality Ring Order. Accordingly, I exhibit the PartnerRe Policy separately at **Confidential AJM8**.

Disclosure of unredacted versions of funding documentation

25. At paragraph 81 of the First Evans Statement, Mr Evans explained that the versions of his LFA and First ATE Policy filed with the Tribunal (and now served on the Proposed Defendants and the O’Higgins PCR within the Joint Confidentiality Ring) contained redactions to details of the funder’s fee and ATE insurance premiums on the basis that this information might provide insight into the risk assessment of the Evans Application.
26. By a letter to my firm dated 3 April 2020, the O’Higgins PCR’s legal representatives (“**Scott+Scott**”) requested that Mr Evans disclose unredacted versions of his LFA and First ATE Policy and provide a copy of the priorities deed referenced at Appendix A of the First ATE Policy (Scott+Scott’s letter is exhibited at **AJM4 [1-3]**). [REDACTED]
- [REDACTED]
- [REDACTED].

27. Whilst Mr Evans does not agree with the arguments raised in Scott+Scott’s letter, he is content, in the interests of transparency, to disclose versions of his funding and insurance documents (including the priorities deed referenced at Appendix A of the First ATE Policy), which are unredacted, save for his personal address, into the Joint Confidentiality Ring. I therefore exhibit, at **Confidential AJM6** and **Confidential AJM7** respectively, copies of Mr Evans’ LFA and First ATE Policy which contain no redactions save for Mr Evans’ personal address. Finally, I confirm that the only redaction applied to the PartnerRe Policy exhibited at **Confidential AJM8** is in respect of Mr Evans’ personal address.

28. For the avoidance of doubt, Mr Evans designates all of the funding and insurance documents referred to in paragraph 27 above as Outer Confidentiality Ring Information in accordance with paragraph 6 of the Joint Confidentiality Ring Order.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: 

Date: 17 April 2020