

Made on behalf of: Applicant/Proposed Class Representative
Name of witness: Phillip Gwyn James Evans
Number of statement: 3
Exhibits: PGE13 – PGE15
Date: 27 September 2021

IN THE COMPETITION APPEAL TRIBUNAL
BETWEEN:

Case Number: 1336/7/7/19

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

Respondents/
Proposed Defendants

**THIRD WITNESS STATEMENT OF
PHILLIP GWYN JAMES EVANS**

I, **PHILLIP GWYN JAMES EVANS**, of a private residential address in Bristol, United Kingdom, will say as follows:

Introduction

1. This is my third witness statement in support of my application for a CPO. I have previously provided witness statements dated 10 December 2019 and 23 April 2021.

2. I confirm that unless otherwise stated, the contents of this witness statement are within my knowledge. The same is 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. In this third witness statement, I adopt the same defined terms as those used in my previous witness statements.
3. For the avoidance of doubt, I confirm that nothing in this witness statement constitutes, or is intended to constitute, a waiver of legal professional privilege. Where I state in this witness statement that my understanding is based on discussions with my legal representatives, I confirm, for the avoidance of doubt, that I do not waive legal professional privilege in this or any regard.
4. There are now produced and shown to me Exhibits **PGE13 – PGE15** which I refer to below and which I exhibit to this statement.
5. The purpose of this statement is to inform the Tribunal about additional funding arrangements which I have made since the CPO hearing in July. While I acknowledge the late stage at which this statement is produced, that is simply a consequence of the timing of those arrangements, which reflect the Tribunal's comments about funding and insurance during the CPO hearing (CPO hearing transcript day 1, page 68, lines 4 – 7 inter alia).

Additional funding

6. In relation to the level of funding available, the Tribunal asked me, on the first day of the CPO hearing, to respond to the submission by the O'Higgins PCR that it had a larger "war chest" of funding (transcript day 1, page 68, lines 1 – 17). In response, I expressed my view that the key consideration is "not a matter of war chests", but instead having the right budget to do the job. I also informed the Tribunal that I was comfortable that I had secured the right budget, with scope for increasing the budget where necessary, and that I remained of that view (transcript day 1, page 69 lines 8 – 17).
7. I continue to believe that the level of funding that I had secured for my claim in these proposed proceedings was appropriate, particularly given that they are at an early stage. I also believe that it cannot be correct that the applicant with the greatest pot of funding available should succeed on certification for that reason alone.

8. However, given the emphasis during the CPO hearing on the potential importance of the level of financial resources available, and in case the Tribunal has any remaining concerns about the level of funding I had secured, I have negotiated an increase of funding with the Funder of £12,000,000. This additional funding breaks down as follows:
 - a. the pre-CPO budget has been increased by £118,776 for the purpose of paying a deposit premium (and associated costs) for additional ATE insurance that I have taken out (see paragraphs 11 and 12 below);
 - b. the post-CPO budget (phase 2 of the Costs Budget) has been increased by £1,881,600 in the post-CPO phase for the purpose of paying a further deposit premium for the additional ATE insurance that I have taken out (see paragraphs 11 and 12 below); and
 - c. the remaining £9,999,624 is included as additional contingency in the Costs Budget to be used if and when required. It effectively operates as an option that I can call upon if I believe it is necessary to incur additional costs over and above the currently budgeted costs.
9. Accordingly, the Funder's overall commitment under the Costs Budget has increased to £34,487,152, including post-CPO funding of £27,830,587. This increase to the Costs Budget has been agreed by way of a side letter to the LFA dated 23 September 2021, which is exhibited at **PGE13**.
10. In addition, should it be necessary to consider any further funding over and above these increases, clause 5.10 of the LFA provides that, upon final determination of a CPO in my favour, the Funder agrees to enter into good faith discussions as to the provision of any further funding.

Additional ATE insurance

11. Although I still remain of the view that the level of ATE insurance in respect of adverse costs that I had secured for the proposed proceedings at the time of the CPO hearing was adequate and appropriate, I have also, given the contrary arguments that were made during the CPO hearing, negotiated and incepted a further layer of ATE insurance with Oxford Insurance Company NC LLC ("**Oxford**") in the sum of £10,500,000.¹ Accordingly, the total level of ATE

¹ I understand from Hausfeld that Oxford Insurance Companies is A rated by A.M. Best.

insurance for adverse costs incurred after a CPO is made in my favour is now £33,500,000. The key policy terms are identical to the earlier layers. A copy of this policy is exhibited at **PGE14**.

12. The deposit premium for the policy with Oxford is payable in two stages: (a) 1% of the limit of indemnity plus IPT is payable within 30 days from the Inception Date (as defined in the policy); and (b) 16% of the level of indemnity plus IPT is payable upon a CPO being granted in my favour. A further deferred and contingent premium of 43% of the limit of indemnity plus IPT, is payable on success in the proposed proceedings.
13. Further, in case it is necessary to obtain further ATE insurance, I have received a non-binding indicative offer from Arcadian Risk Capital for an additional £7.2 million of post-CPO adverse costs cover. If it is necessary to take out this additional cover, I expect to use the additional contingency to pay for the deposit premium. A copy of this offer is exhibited at **PGE15**.

Hausfeld's fees

14. As an additional matter, during the final day of the CPO hearing, Mr Williams QC informed the Tribunal that:

"... I am instructed to say that, if, contrary to expectations, the cost of the disclosure exercise, because Hausfeld have miscalculated what it will cost, is much more expensive and consumes not only what they have budgeted for, but also starts eating into the contingency, then Hausfeld are more than willing to put their money where their mouth is and go no win, no fee on that."
(CPO Hearing Transcript day 5, page 19, lines 7 – 14).
15. For good order, I confirm that my solicitors, Hausfeld & Co LLP ("**Hausfeld**"), have agreed that, in the event that their fees in connection with disclosure in the proposed proceedings exceed the budgeted amount under the costs budget, Hausfeld will not seek payment of those additional fees out of the funded costs. They will be sought from the Proposed Defendants to the extent they are ordered to pay them and otherwise sought as part of the costs payable out of any undistributed damages. In other words, payment of any disclosure costs over and above the budget would become wholly contingent both on success and on the Tribunal approving the recovery of those costs either under an *inter partes* costs order or out of undistributed damages.

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:

Dated: 27 September 2021