

IN THE COMPETITION APPEAL TRIBUNAL
IN THE MATTER OF PROPOSED COLLECTIVE PROCEEDINGS
UNDER SECTION 47B OF THE COMPETITION ACT 1998
RELATING TO FOREIGN EXCHANGE RATES

THE O’HIGGINS APPLICATION (Case no. 1329/7/7/19)

BETWEEN:-

MICHAEL O’HIGGINS FX CLASS REPRESENTATIVE LIMITED
(“THE O’HIGGINS PCR”)

Applicant

and

- (1) BARCLAYS BANK PLC**
- (2) BARCLAYS CAPITAL INC.**
- (3) BARCLAYS EXECUTION SERVICES LIMITED**
- (4) BARCLAYS PLC**
- (5) CITIBANK N.A.**
- (6) CITIGROUP INC.**
- (7) JPMORGAN CHASE & CO.**
- (8) JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**
- (9) J.P. MORGAN EUROPE LIMITED**
- (10) J.P. MORGAN LIMITED**
- (11) NATWEST MARKETS PLC**
- (12) NATWEST GROUP PLC**
- (13) UBS AG**

Respondents

and

- (1) MUFG BANK LTD**
- (2) MITSUBISHI UFJ FINANCIAL GROUP INC.**

Proposed Objectors

THE EVANS APPLICATION (Case no. 1336/7/7/19)

BETWEEN:-

MR PHILLIP EVANS
(“THE EVANS PCR”)

Applicant

and

- (1) BARCLAYS BANK PLC**
- (2) BARCLAYS CAPITAL INC.**
- (3) BARCLAYS EXECUTION SERVICES LIMITED**
- (4) BARCLAYS PLC**
- (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) NATWEST GROUP PLC**
- (15) UBS AG**

Respondents

NEUTRAL STATEMENT OF THE O’HIGGINS PCR ON BENEFIT TO THE CLASS
as directed at the Pre-Hearing Review on 21 June 2021

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A. INTRODUCTION

1. As directed at the Pre-Hearing Review on 21 June 2021, this statement summarises the benefit to the class of the O’Higgins PCR’s proposed claim, specifically:
 - (1) The arrangements which the O’Higgins PCR has made to fund its costs of pursuing the class’s claim (see section B).
 - (2) The arrangements which the O’Higgins PCR has made to cover the risk of adverse costs orders from pursuing the class’s claim (see section C).
 - (3) The distribution of claim proceeds to class members which will result from a successful outcome of the O’Higgins PCR’s claim (see section D).
 - (4) In light of the above, the cost of funding, which to the class members is nil (see section E).
2. Further to the Tribunal’s observation that “*there are certain parameters which can be compared on a read-across basis, and it would be helpful to have some form of hard comparator on the metrics there in these papers*”,¹ Annex 1 to this Statement is a comparison of the PCRs’ respective funding arrangements in tabular form.
3. Annex 2 to this Statement is a copy of the O’Higgins PCR’s budget.

B. FUNDING FOR OWN COSTS

4. **Funder:**
 - (1) The O’Higgins PCR has funding from Therium Litigation Finance Atlas AFP IC (“**Therium**”). The Therium group is one of the longest-established litigation funders in the world. It has funded claims valued at USD 36 billion. Since rankings began, it has been ranked as a Tier 1 Litigation Funder in Chambers and Partners.²
 - (2) Therium is a founding member of the Association of Litigation Funders (“**ALF**”). Members of the ALF subscribe to the ALF Code which (a) requires the

¹ Transcript of PHR on 21 June 2021, page 24, lines 10-13.

² Purslow 1, paras. 8-9 {MOH-D/0/3}.

maintenance of sufficient financial resources at all times to cover the member's aggregate funding liabilities and (b) prohibits members from interfering with the conduct of the proceedings or seeking to influence the funded party's legal team to cede any control or conduct of the dispute.³

- (3) The use of Therium as a funder has been endorsed by this Tribunal. In the *Trucks* litigation, Roth J described Therium as a "*leading litigation funder that is commercially active in this field*" and dismissed the suggestion that Therium may not honour its ALF obligations as "*wholly unrealistic*".⁴

5. **Litigation funding agreement ("LFA"):**

- (1) By an LFA dated 26 July 2019,⁵ Therium has committed £29,375,043 to fund all elements of the claim, to be paid in tranches of £8 million, £2.5 million (x8) and £1,375,043 (per Schedule 1 of the LFA). Until a tranche is formally incepted, the funds do not become "*Committed Funds*" and no return is due on them.
- (2) Therium will only receive payment exceeding the costs recovered from the Proposed Defendants if and to the extent that (a) there are unclaimed damages and (b) the Tribunal considers appropriate.⁶
- (3) Therium may terminate the LFA prospectively (leaving accrued obligations intact) if it ceases to be satisfied of the merits or commercial viability of the claim. Any decision to do so must be supported by a QC's opinion on the merits or viability of the claim (clause 16.3). Further, Therium may terminate the LFA if it reasonably considers there to have been a material breach of the LFA not remedied for 20 days (clause 16.4). If the O'Higgins PCR disputes Therium's decision, it is entitled to refer the issue to a binding determination by an independent QC (clause 27.3).
- (4) The LFA is governed by the law of England and Wales and subject to an LCIA arbitration clause (clause 28).

³ Purslow 1, paras. 12-17 {**MOH-D/0/4**}.

⁴ [2019] CAT 26 at [54].

⁵ {**F/1/1**}.

⁶ Purslow 1, paras. 15 and 18(d) {**MOH-D/0/5**}; and see the waterfall arrangements described further below.

6. **Lawyers' fees:**

- (1) Scott+Scott act for the O'Higgins PCR under a 50% reduced rate Conditional Fee Agreement ("CFA"). This operates as follows: on a normal hourly rate of (e.g.) £500ph + VAT, Scott+Scott is entitled to 50% (£250ph + VAT) as the case progresses, from the funding made available by Therium. If the case fails, Scott+Scott will retain only those sums. If the case succeeds, Scott+Scott is entitled to: (a) its normal 'Base Fees' (i.e. the balance of £250ph + VAT); and (b) in addition, a Success Fee of 50% of Base Fees. The total payable would be therefore £750ph + VAT.
- (2) The Success Fee is not recoverable as costs from the Proposed Defendants. Scott+Scott's entitlement to any fees beyond the reduced rate depends on the availability of undistributed damages (see further below).
- (3) Mr O'Higgins was originally paid £400ph and is now paid £420ph. His remuneration is capped at £65,000 in any 12-month period.⁷
- (4) Counsel are retained on a normal hourly rates or brief fee basis and (along with expert fees and other disbursements) paid as the case progresses. These costs, along with Scott+Scott's reduced rate fees, can be described as 'pay as you go' ("PAYG") costs.

7. **Budget:**

- (1) The O'Higgins PCR's aggregate budget for the litigation (£29.375m) for PAYG costs has not changed since the O'Higgins Application was filed. As matters have progressed, it has become possible to refine the allocation of funds within it.
- (2) The original budget⁸ represented Scott+Scott's best endeavours to produce a realistic estimate for these proceedings. It was not 'pared to the bone'; rather, it was prepared so as to contain headroom. Further, it was and is not regarded as a 'target to hit'.⁹ As a consequence, it may well be that some phases will be over-

⁷ O'Higgins 1, para. 46 {MOH-C/0/20}; O'Higgins 3, para. 10 {D/1/5}.

⁸ {MOH-D/2/1}.

⁹ Hollway 5, para. 23 {D/7/7}; Hollway 4, para. 74 {D/3/25}; O'Higgins 3, para. 44 {D/1/19}.

budgeted (and indeed this has already been demonstrated), permitting funds to be used in others.

(3) On 11 June 2021, the O’Higgins PCR filed a revised budget,¹⁰ taking into account its actual and projected expenditure, as at 31 May 2021. That budget is reproduced at Annex 2 to this Statement:

(a) The overall budget remains £29.375 million (c. £16 million post-CPO). The O’Higgins PCR continues to believe that this is a realistic budget for the costs of the proceedings – i.e. this will be enough to pay the PAYG costs. The ‘fat’ in the budget is demonstrated by an underspend in the pre-filing phase of £152,757. The carriage dispute and long lead time to the certification hearing were unanticipated, and have increased pre-CPO costs.¹¹ However, there is sufficient ‘fat’ in the budget to cover these. The budget was revised to reallocate funds. The revisions are explained in detail in Hollway 5, paragraph 24.¹²

(b) In summary, funds have been reallocated from the disclosure phase (£200,000), expert report phase (£900,000), bookbuild phase (£583,000) and notification and administration (£1.8 million). A significant factor is that substantial funds have been spent early – particularly as regards expert work – due to the carriage dispute and other matters, which will not now need to be spent later.

C. FUNDING FOR ADVERSE COSTS

8. ATE policies:

(1) The O’Higgins PCR (and the Proposed Defendants) have the benefit of five layers of ATE insurance. The aggregate limit of indemnity is £33.5m.

(2) Each layer provides for a fixed limit of indemnity in accordance with the terms of the policy. This limit is detailed in column B of the Table below.

¹⁰ Exhibit BAH28 (the “**Revised Budget**”) {D/7.1/2}.

¹¹ See Hollway 5, paras. 12 to 21 {F/7/3-7} for more detail.

¹² {D/7/7}.

- (3) Each of the policies is subject to an anti-avoidance endorsement (“AAE”), as further described below. The AAE significantly varies the terms of the individual contracts of insurance. Each insurer in the ATE programme has agreed to the AAE. As agreed with the Proposed Defendants, the AAE has been incepted pre-CPO only on the Primary Layer;¹³ the remainder will be incepted in the event that the O’Higgins PCR is granted a CPO by the Tribunal and prevails in the carriage dispute.
- (4) The “*Premium*” is defined as the “*Deposit Premium*” and “*Contingent Premium*”:
- (a) The Deposit Premium is payable (with some variations) upon inception, within a fixed period of time, or (in the case of the third excess layer) in tranches with the second tranche upon making of a CPO.
 - (b) The Contingent Premium is payable if the case succeeds.
 - (i) For the primary layer and the first and second excess layers, the level of the Contingent Premium depends on the litigation stage at which the case succeeds. The Stage 1 premium is payable if the case succeeds before the date for disclosure. The Stage 2 premium is payable in the period to 61 days before trial, and the Stage 3 premium thereafter. The staged contingent premiums are alternative and not cumulative.
 - (ii) For the other excess layers, the Contingent Premium is fixed.
 - (c) A premium of £500,000 + IPT was paid for the AAE.

¹³ {F/7}, {F/8} and {F/9}.

Table summarising ATE policies (all figures in GBP) ¹⁴						
A. Layer	B. Cover	C. Deposit	D. Stage 1	E. Stage 2	F. Max Contingent	G. Max Payable
1	£ 6,000,000	£ 1,200,000	£ 1,200,000	£ 2,100,000	£ 2,700,000	£ 3,900,000
2	£ 15,000,000	£ 2,250,000	£ 2,250,000	£ 4,500,000	£ 6,750,000	£ 9,000,000
3	£ 5,500,000	£ 687,500	£ 825,000	£ 1,650,000	£ 2,475,000	£ 3,162,500
4	£ 4,000,000	£ 200,000	£ 3,800,000	£ 3,800,000	£ 3,800,000	£ 4,000,000
5	£ 3,000,000	£ 150,000	£ 2,850,000	£ 2,850,000	£ 2,850,000	£ 3,000,000
AAE	£ -	£ 500,000	£ -	£ -	£ -	£ 500,000
Total	£ 33,500,000	£ 4,987,500	£ 10,925,000	£ 14,900,000	£ 18,575,000	£ 23,562,500

9. **ATE insurers:** The O'Higgins PCR's ATE risk is spread among a large number of reputable insurers:

- (1) Primary Layer: International General Insurance Company (UK) Ltd. ("IGIC"); Legal Protection Group Ltd. on behalf of HDI Global Specialty SE; Navigators Underwriting Agency Ltd.
- (2) First Excess Layer: IGIC; Litica Ltd. (underwritten by Hiscox Insurance Company Ltd.); Lloyds Syndicate 4000 (Pembroke); QBE UK Ltd.
- (3) Second Excess Layer: Amtrust Europe Ltd.; QBE UK Ltd.
- (4) Third Excess Layer: PartnerRe Ireland Insurance DAC.
- (5) Fourth Excess Layer: Litica Ltd. (underwritten by AXA Insurance UK plc).

10. **The AAE:**

- (1) An ATE insurance indemnity can be typically refused by the insurer if relevant conditions or warranties in the policy, or the insured's duty of fair presentation of risk under the Insurance Act 2015, is breached.

¹⁴ The Table includes all stages where applicable. Where the contingent premium is not staged, it includes the same figure for each stage. All figures exclude IPT payable at 12%. 'Max Payable' assumes the maximum contingent premium is due.

- (2) The O'Higgins PCR's ATE insurers have all agreed to enter an AAE which severely circumscribes their ability to avoid payment under the ATE policies and requires direct payment from insurers to the Proposed Defendants entitled to costs. As noted above, the AAE has been incepted only for the Primary Layer at this stage of the claim.
- (3) Insurers cannot rely on any avoidance or similar rights under the policies with the exception of fraudulent or reckless presentation of the risk by the O'Higgins PCR (or where payment would involve a collateral offence e.g. in breach of economic sanctions).
- (4) The insurance proceeds would be held on trust and not therefore fall into the estate of the O'Higgins PCR if it were insolvent.

D. DISTRIBUTION OF CLAIM PROCEEDS

11. The O'Higgins PCR has created plans for a distribution process that is accessible and designed to ensure that the maximum possible number of proposed class members come forward to claim their share of the damages, to ensure maximum benefit to the class.
12. **Team:** The O'Higgins PCR has selected partners with extensive expertise not just in the design of claims administration processes in general, but with direct experience in distributing damages in class actions relating to the FX market:
 - (1) **Claims administrator:** The O'Higgins PCR has appointed Epiq as claims administrator¹⁵ to assist with the management of the communications with the proposed class, including notification of any settlement/damages, and to administer the distribution of the claim proceeds. In Epiq, the proposed class will have the advantage of a claims administrator with unrivalled expertise in the FX class action context having performing these tasks for the US FX class action (the "**US Proceedings**"). Additionally, Epiq has significant experience of administering class actions in the US and Canada, and is involved in a number of collective actions in the UK.¹⁶

¹⁵ Litigation Plan, para. 11 {MOH-C/4/8}.

¹⁶ See Litigation Plan, paras. 12-16 {MOH-C/4/8} and section 2 of the Epiq Plan {MOH-C/5/5}.

- (2) **Damages experts:** The O’Higgins PCR has provisionally engaged Velador Associates (data scientists with particular expertise in FX who are assisting in the distribution process in the US Proceedings) to assist Epiq with both the calculation of damages (including any analysis of data) and the distribution of damages. Their expertise from the US FX proceedings should benefit the class, as well as promoting efficiencies and costs savings.¹⁷
- (3) **Other expert(s):** If additional expertise beyond that of the team currently retained by the O’Higgins PCR is required, that additional expertise will be retained.¹⁸ In particular, the O’Higgins PCR may also use Ankura Consulting Group, who were also retained on the US Proceedings to assist with calculating the amount owed to each class member.¹⁹
13. **Determining quantum:** Scott+Scott’s experience in the US Proceedings (where \$2.3 billion in settlement is being distributed to members of the US class) demonstrates that one can develop a workable and broadly compensatory methodology for determining and distributing the amount owed to each individual class member.²⁰ The US methodology determines each class member’s eligible transaction volumes and then determines the claim value based on various weightings that take account of factors such as currency pair, trade size and degree of information provided by the individual class member.²¹
14. **Process:** While it is too early to determine a definitive methodology at this stage of the Proposed Proceedings, the Litigation Plan and the Epiq Plan identify that Epiq’s work will include the following systems to benefit the class:
- (1) **Notice:** Direct mailing by post and email to specific class members and brokers in the financial services industry; paid print and online media; sponsored search listing on major online search engines; and a PR campaign. The O’Higgins PCR

¹⁷ See Litigation Plan, para. 66 {MOH-C/4/23} and Hollway 1, para. 14 {MOH-E/0/12}.

¹⁸ O’Higgins 4, para. 33 {D/6/12}.

¹⁹ Hollway 1, para. 14 {MOH-E/0/12}.

²⁰ See Hollway 1, para. 13 {MOH-E/0/12}. See also Litigation Plan, paras. 67-72 {MOH-C/4/23}. Ms Hollway has provided updates on the claims administration and distribution process in the US Proceedings during the course of the litigation; these updates show the significant progress of the claims distribution in the US. See Hollway 4, paras. 14-19 {D/3/5}.

²¹ See Hollway 1, para. 12(b) and (c) {MOH-E/0/11}.

intends to leverage the work done in its ongoing communications with the proposed class in working alongside Epiq on the formal notification process.²²

(2) **Distribution:** The O’Higgins PCR intends to tailor the distribution process to the various needs of the proposed class. In particular, Epiq will design and construct a dedicated website page to make the claims process user-friendly, whilst having robust tools to minimise the risk of incomplete claims being filed, and processes to prevent fraudulent, erroneous or duplicative claims.²³ Additionally, should class members so prefer, there will be the option of submitting claim forms by post.²⁴

(3) **Verification and payment:** Class members will have to provide certain information or data to verify the claims,²⁵ which will be processed and analysed, and any follow-up questions asked. If a claim is rejected, the claims administrator will contact the relevant class member, requesting the necessary information to correct the claim and then process the responses. Proposed class members’ payment details will be securely processed, and anti-money laundering checks completed before payment is released.²⁶ The process is designed to ensure that only genuine class members benefit.

15. **Cost of distribution:** The O’Higgins PCR’s position is that the costs of distributing and administering the claims of the proposed class should be recoverable from – or paid directly by – the Proposed Defendants. Nevertheless (as there is not yet precedent to confirm that the Proposed Defendants will be required to meet these costs), the O’Higgins PCR has included £3,031,500 in the Revised Budget to cover such costs.²⁷ This sum should allow for a comprehensive claims administration process to the clear benefit of the class.²⁸

²² See Epiq Plan, sections 6 to 9 {MOH-C/5/10}.

²³ On this point, see Hollway 4, para. 76(a) {D/3/25}.

²⁴ See Epiq Plan, section 10 {MOH-C/5/18}.

²⁵ In particular, verifiable data about their Relevant Foreign Exchange Transaction volumes.

²⁶ See Epiq Plan, sections 10 and 11 {MOH-C/5/18}.

²⁷ See Hollway 5, para. 24(d) {D/7/8}.

²⁸ See Hollway 4, para. 76(a) {D/3/25}.

E. COST OF FUNDING

16. **The cost to the proposed class of the funding arrangements is nil on any eventuality.**
17. **Payment from undistributed damages:** If the O’Higgins PCR is successful in obtaining a settlement or judgment in its favour, it will apply to the Tribunal for a payment in respect of costs, fees and disbursements from undistributed damages²⁹ to be used to repay and provide a return on investment to Therium, the ATE insurers (the “**Insurers**”) and Scott+Scott.
18. **The “waterfall” arrangements:** The Priorities Deed³⁰ between the O’Higgins PCR, Therium and the Insurers provides for the following ‘waterfall’ of payments in the event that there is such a payment from undistributed funds following the expiration of the time period for the class members to come forward and claim their individual damages:
- (1) Pro rata and *pari passu*:
 - (a) Reimbursement of Therium’s outlay.
 - (b) Reimbursement to the Insurers of any adverse costs paid out under the ATE policies.
 - (2) Followed by pro rata and *pari passu*:
 - (a) Solicitors’ unpaid Base Fees and Success Fees.
 - (b) Unpaid ATE premiums to the Insurers.
 - (3) Followed by Therium’s return in full.
 - (4) Remainder to charity.
19. An illustrative example of how the waterfall of payments from undistributed funds works is provided in Exhibit BAH29 at {**D/7/2/2-4**}.³¹

²⁹ CAT Rule 93(4); CAT Guide, paras. 6.87-6.90.

³⁰ {**F/10/1**}.

³¹ As explained in paragraph 34 of Hollway 5 {**D/7/12**}, BAH29 was produced purely in response to Exhibit AJM16 to the statement of Anthony Maton dated 23 April 2021 on behalf of the Evans PCR {**D/9.3/1**}. The use of the AJM16 figures is not to be taken as any form of endorsement, admission of concession by

20. **Funder's return:** Therium is entitled to the repayment of funds advanced and one of:
- (1) 2x to 3x the committed funds depending on timing of recovery; or
 - (2) if larger:
 - (a) 20% of the claim proceeds³² up to £1 billion;
 - (b) 10% of the claim proceeds above £1 billion and below £2 billion;
 - (c) 5% of the claim proceeds above £2 billion.
21. **Price of funding:** Although it is not a cost to the class, Exhibit BAH29 also provides an insight into the price of funding the O'Higgins PCR in terms of the impact on undistributed funds. Under the "*Funder's Fee*" table on page 5 of Exhibit BAH29 {D/7.2/5}, the O'Higgins PCR has included the price of funding per £1 invested. As explained in Hollway 5,³³ this figure is arrived at simply by dividing the total funder return by the total funder outlay in each scenario.

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the O'Higgins PCR that any of the figures/assumptions in AJM16 represent a likely outcome of the litigation.

³² Claim proceeds includes damages and costs recovered from the Proposed Defendants.

³³ See Hollway 5, para. 33 {D/7/11}.

ANNEX 1

Tabular comparison of PCRs' funding arrangements

	O'Higgins	Evans
LFAs		
Date	26.07.19	05.12.19 (amended 08.07.20)
Funder	Therium Litigation Finance Atlas AFP IC (Jersey cell) Member of the Therium Group, an ALF Founding Member	LFA counterparty – Donnybrook Guernsey Limited Bench Walk Capital LLC (parent co. of Donnybrook) Not members of the ALF
Amount	£29.375m Of which £16,343,820 (estimated) available post-CPO ³⁴	£18.654m, now increased to £19.603m as of April 2021 Of which c.£10.760m (estimated) available post-CPO; however, that excludes £3.404m anticipated on further ATE premiums (which the O'Higgins PCR has already incurred), leaving £7.356m ³⁵
Structure	9 tranches described as 'without obligation' Tranches do not become 'committed funds' (and therefore no funder return) unless drawn down (Purslow 1, para. 18b) Tranches are not tied to the budget; each tranche can be drawn when the previous one is exhausted (cl. 2.12)	Each tranche referable to a litigation phase Phase costs capped at phase costs limit (cl. 5.2), but funder can agree to increase the limits (cl. 5.7) Funder return on drawn-down amounts only (Evans 1, para. 81b)
Other funding	N/A	Restriction on finding alternative funding on less advantageous terms to Evans than the LFA (cl. 5.8)

³⁴ Calculated from the Revised Budget, by deducting the "Through CPO" costs and paid ATE deposit premiums from the total funding available. All ATE deposit premiums less £100k+IPT under the 3rd excess layer are payable pre-CPO.

³⁵ The manner in which the Evans PCR has presented his revised budget has made deducing these figures complex. Unhelpfully, the Evans PCR has not included the PAYG costs in his budget. With the information now available, the pre-CPO PAYG costs can be calculated. £10.760m is based on pre-CPO PAYG costs of £8.843m (comprising £3m Hausfeld fees and £1.283m counsel fees (both at reduced rates), £1.714m disbursements, £1.199m VAT and £1.646m ATE premiums). It makes no difference to these figures that Hausfeld may have agreed to defer some of its pre-CPO fees, as these would then need to come out of the post-CPO budget.

Adverse Costs Cover	ATE policies, including AAE, in respect of the cover pre-CPO period	Bench Walk providing a £3m “indemnity” for pre-CPO adverse costs (the “Pre-CPO Security Sum”); held on account by Hausfeld (cl. 8.5) ATE policies post-CPO
Reward	<ul style="list-style-type: none"> • Repayment of funds advanced; and one of: • 2x to 3x the deployed funds depending on timings; or • if larger: <ul style="list-style-type: none"> ○ 20% of the claim proceeds up to £1 billion; ○ 10% of the claim proceeds above £1 billion and below £2 billion; ○ 5% of the claim proceeds above £2 billion 	<ul style="list-style-type: none"> • Two times the Funder’s Outlay; plus • an amount equal to the greater of the Funder’s Outlay or: <ul style="list-style-type: none"> ○ 20% of Proceeds up to £500m; plus ○ 15% of Proceeds thereafter up to £1bn; plus ○ 10% of Proceeds thereafter up to £1.5bn; plus ○ 5% of Proceeds thereafter up to £2bn; plus • In consideration for providing the £3m Pre-CPO Security Sum, the Funder shall be entitled to a fee of 15% interest per annum (compounding annually) on it, for the period from when the monies are advanced until they are repaid
Term’n	Merits, viability and material and unremedied breach of LFA (cl. 16) Subject to QC opinions (cl. 16) and dispute resolution (cl. 27)	Merits, viability, material unremedied breach (cl. 23.3) Funder may terminate if Evans dies/becomes bankrupt/incapacity (cl. 23.2) Termination subject to QC opinion (cl. 22)
Jurisdiction	LCIA London, English Law (cl. 28)	English law and jurisdiction (cl. 35)
Incurred Costs to CPO³⁶		
PAYG conduct costs to CPO	Lawyers’ fees: £2,917,947 Disbursements (including experts): £4,005,676 ³⁷ VAT on the above: £733,600 Total: £7,657,223	Lawyers’ fees: £4,283,660 ³⁸ Disbursements (including experts): £1,714,198 VAT on the above: £1,199,571.65 ³⁹ Total: £7,197,429

³⁶ Both parties’ budgets include costs up to and including the CPO, which comprise incurred costs and estimated costs from the date of the budgets

³⁷ This differs from the “disbursements” figure on the face of the Revised Budget because there “disbursements” includes counsel’s fees before 9 May 2019 (£436,882) and within the “Various work through CPO” item (£1,148,610). Those figures are included in this table as “lawyers’ fees” for ease of comparison. The balance of “Various costs through CPO” item in the revised budget comprises £1,634,898 for experts, £130,218 for the PCR, £27,810 for the claims administrator and £21,846 of misc. expenses.

³⁸ This figure is back-calculated from information in the Evans PCR’s budget and AJM16.

³⁹ VAT calculation assumes the fees of Prof. Rime, Mr Ramirez, Mr Evans and misc. expenses do not attract VAT.

ATE deposit premiums	£4,887,500 + IPT	£1,646,000 + IPT Post CPO estimated: £3,404,000 + IPT Total deposit premium: £5,050,000 + IPT
Priorities Agreement		
Dated	26 July 2019, amended on 4 March 2021	6 December 2019, amended on 7 May 2020 and 19 October 2020
Priorities	<ol style="list-style-type: none"> 1. Funder reimbursement of outlay 2. ATE insurers reimbursement of indemnity payments (1-2 are pro-rata and <i>pari passu</i>) 3. Solicitor unpaid Base Fees and Success Fees 4. Unpaid ATE premiums (3-4 are pro-rata) 5. Funder Return in full 6. Charity 	<ol style="list-style-type: none"> 1. Funder reimbursement of outlay 2. ATE insurers reimbursement of indemnity payments (1-2 are pro-rata and <i>pari passu</i>) 3. Funder's outlay 4. Solicitor and Counsel unpaid Base Fees and Success Fees; 5. Deferred/contingent ATE premiums (3-5 are pro-rata) 6. Funder Fee in full 7. Charity
ATE		
Insurer	Various (para. 9 of Neutral Statement)	Various
Structure	5 layers in place Operative now	4 layers in place + pre-CPO security ATE operative only after CPO granted
Amount	£33.5m	£23m
Premium	See Table below	See Table below
Material exclusions	N/A	Security for Costs orders (cl. 3.5) Lack of Funding leading to stay/dismissal (cl. 3.2)
Anti-Avoidance	<p>Anti-Avoidance Endorsement: applicable unless fraud or reckless presentation of risk</p> <p>AAE provides 'cut through' using trust/authorisation on insurer to pay opponent representatives</p>	<p>cl. 4.1 (Insured conduct obligations) and cl. 4.2 (fair presentation) are each subject to a 'rider'; where breach not deliberate or reckless, insurer shall indemnify</p> <p>cl. 4.5 (claims notification and information obligations) similar rider</p> <p>cl. 4.7 – general anti-avoidance/rescission clause, applies unless a breach of cl. 4.2 or non-payment of premium</p>

Lawyers		
Solicitors Fees	50% reduced rate CFA	50% reduced rate CFA (except that some or all pre-CPO fees at reduced rates have been 'deferred' (Evans 2, para. 89)
Counsel	Standard rates	Reduced rate CFAs at various rates (c.15-25%) per Exhibit AJM16, p.6.

ATE Premium Comparison

O'Higgins

O'Higgins	Cover	Deposit	Stage 1	Stage 2	Max Contingent	Max Payable
1	£ 6,000,000	£ 1,200,000	£ 1,200,000	£ 2,100,000	£ 2,700,000	£ 3,900,000
2	£ 15,000,000	£ 2,250,000	£ 2,250,000	£ 4,500,000	£ 6,750,000	£ 9,000,000
3	£ 5,500,000	£ 687,500	£ 825,000	£ 1,650,000	£ 2,475,000	£ 3,162,500
4	£ 4,000,000	£ 200,000	£ 3,800,000	£ 3,800,000	£ 3,800,000	£ 4,000,000
5	£ 3,000,000	£ 150,000	£ 2,850,000	£ 2,850,000	£ 2,850,000	£ 3,000,000
AAE	£ -	£ 500,000	£ -	£ -	£ -	£ 500,000
Total	£ 33,500,000	£ 4,987,500	£ 10,925,000	£ 14,900,000	£ 18,575,000	£ 23,562,500

Evans	Cover	Stage 1	Stage 2	Stage 3	Max
1	£ 10,000,000	£ 500,000	£ 1,200,000	£ 3,900,000	£ 5,600,000
2	£ 4,000,000	£ 100,000	£ 100,000	£ 3,800,000	£ 4,000,000
3	£ 4,000,000	£ 200,000	£ 480,000	£ 1,720,000	£ 2,400,000
4	£ 5,000,000	£ 250,000	£ 600,000	£ 2,150,000	£ 3,000,000
Total	£ 23,000,000	£ 1,050,000	£ 2,380,000	£ 11,570,000	£ 15,000,000

Expense Ratio	
O'Higgins	70.26%
Evans	65.22%

ANNEX 2

O'Higgins PCR's Revised Budget (as per Exhibit BAH28)

Michael O'Higgins FX Class Representative v Barclays Plc & ors

Litigation Phases	Disbursements	Time Costs @ 50%	VAT	Total
THROUGH CPO				
Barristers (Before 9 May 2019)	436,882			436,882
Strategic Claim Structuring (Before 9 May 2019)	650,051			650,051
Experts (Before 9 May 2019)	1,056,210			1,056,210
Pre-filing costs	484,643	397,749	171,452	1,053,844
Various work through CPO	2,963,382	934,706	562,148	4,460,236
TOTAL THROUGH CPO	£ 5,591,168	£ 1,332,455	£ 733,600	7,657,223
ATE DEPOSIT PREMIUMS				
Primary layer	1,200,000	-	-	1,200,000
Excess layer	3,687,500	-	-	3,687,500
Subtotal ATE deposit premium	£ 4,887,500	-	-	4,887,500
IPT @ 12%	586,500			586,500
Total ATE DEPOSIT PREMIUMS	£ 5,474,000	£ -	£ -	£ 5,474,000
AFTER CPO AND THROUGH TRIAL				
Disclosure	1,516,667	603,000	423,933	2,543,600
Witness statements	327,500	427,125	150,925	905,550
Expert reports	1,190,500	397,500	317,600	1,905,600
Trial Preparation	2,510,500	328,875	567,875	3,407,250
Trial	1,213,000	358,500	314,300	1,885,800
ADR / Settlement discussions	390,500	222,375	122,575	735,450
Contingency	500,000	199,500	139,900	839,400
Interlocutory Hearing	370,500	54,225	84,945	509,670
TOTAL AFTER CPO AND THROUGH TRIAL	£ 8,019,167	£ 2,591,100	£ 2,122,053	£ 12,732,320
Total from inception to end of trial	£ 19,084,334	£ 3,923,555	£ 2,855,654	£ 25,863,543
POST TRIAL				
Notification and Administration	2,200,000	326,250	505,250	3,031,500
Total Post Trial	£ 2,200,000	£ 326,250	£ 505,250	£ 3,031,500
Total from inception through post trial	£ 21,284,334	£ 4,249,805	£ 3,360,904	£ 28,895,043
Bookbuilding & Advisory Committee				
Bookbuilding	190,000	100,000	58,000	348,000
Advisory Committee Fees	110,000	-	22,000	132,000
Total Bookbuilding & Advisory Committee	£ 300,000	£ 100,000	£ 80,000	£ 480,000
Total from inception through post trial including bookbuilding	£ 21,584,334	£ 4,349,805	£ 3,440,904	£ 29,375,043