

MICHAEL O’HIGGINS FX CLASS REPRESENTATIVE LIMITED
FUNDING AND INSURANCE ARRANGEMENTS

FUNDING

On 26 July 2019, Michael O’Higgins FX Class Representative Limited (the “**O’Higgins**”) entered into a litigation funding agreement (“**LFA**”) with Therium Litigation Finance Atlas AFP IC, an entity that is part of the Therium Group (together, “**Therium**”).

Founded in 2009, Therium is one of the longest-established litigation funders in the world. It is a founding member of the Association of Litigation Funders of England and Wales and is ranked as a Tier 1 Litigation Funder in Chambers and Partners’ litigation support directory in the category “*Litigation Support Rankings: Litigation Funding in UK-Wide*”.

Therium has committed **£29,375,043** to fund all elements of O’Higgins’s claim, such amounts to be paid in tranches as the litigation progresses. This funding will pay for all of the costs of running the litigation, including barristers’ fees, solicitors’ fees, experts’ fees and other disbursements (such as website and PR costs). As explained below, a portion of the committed capital of £29,375,043 has also been allocated to pay premiums on the After The Event (“**ATE**”) insurance policies that have been obtained by O’Higgins.

Under the terms of the LFA, if the O’Higgins’s claim is successful and an award of damages is made to the class of persons O’Higgins is seeking to represent (the “**Proposed Class**”), Therium would be entitled to receive both repayment of all sums invested (i.e. up to £29,375,043 depending on the amounts drawn down/”incepted” at the relevant time), plus an additional sum which is to be calculated as either a multiple of the funds committed to the claim or, if greater, a percentage of the total value of the damages awarded by the Tribunal.

Importantly, however, Therium will only be paid from money that is left over after all members of the class who wish to do so come forward to claim their share of the damages and if the Competition Appeal Tribunal approves the payments. Therium’s return does not come from class members, and if the claim is not successful, Therium will not be paid at all.

Therium does not exercise any control over the conduct of the litigation and does not, for example, have the right to decide whether or not O’Higgins should accept any settlement offer that may be made.

ADVERSE COSTS PROTECTION: ATE

English litigation operates on a “loser pays” basis. While O’Higgins has every confidence in (i) the success of its application for a collective proceedings order and (ii) the claim itself, it has in place arrangements with a number of ATE insurers to pay the recoverable costs of the proposed defendants in these proceedings (the “**Proposed Defendants**”) in the event of a costs award in their favour. This insurance has been brokered by two highly experience ATE brokers, The Judge Limited and Willis Towers Watson.

These arrangements consist of **£33.5 million in ATE insurance cover**, across five different layers of cover (from the “primary” to the “fourth excess” layer). All of the participating ATE insurers have an A- or better rating with major rating agencies. O’Higgins understands its ATE cover to be the highest ever procured by a claimant in UK collective proceedings and has been arranged at the cost of approximately £5 million in premiums, as budgeted for in Appendix 1 to the LFA.

For the avoidance of doubt, there is no risk that any member of the class could be required to pay any of the banks’ costs if the claim is unsuccessful.