

PRESS RELEASE**Green light for £2.7 billion FX Claim UK collective action against 6 banks on opt-out basis**

London, 25 July 2023 – The Court of Appeal ruled today that FX Claim UK, the collective action brought by Phillip Evans against six banking groups over alleged foreign exchange manipulation, can proceed as ‘opt out’ collective proceedings. This ruling overturns the Competition Appeal Tribunal’s (CAT) earlier decision to limit the claims to ‘opt-in’ proceedings. In addition, the Court of Appeal dismissed an appeal by a competing applicant for certification, Michael O’Higgins FX Class Representative Ltd, thereby confirming the CAT’s decision that Mr Evans should have carriage of the claims.

The result of the judgment is that claims on behalf of tens of thousands of class members with estimated value approaching £2.7 billion can now proceed against the 6 international banks identified as being involved in the anti-competitive conduct relating to FX. This is the first opt-out collective action primarily on behalf of businesses that has been allowed to proceed by the courts. Mr Evans is represented by Hausfeld.

Reacting to the Court of Appeal's decision, Mr. Evans commented:

“I am delighted with the Court of Appeal's decision to allow our claims to proceed on an opt-out basis. This ruling acknowledges the practical difficulties of opt-in legal proceedings and confirms the access to justice principle which underpins the collective action regime. The opt-out approach is crucial to ensure that claims may be pursued on behalf of all affected individuals and businesses.

I am also pleased that the CAT's carriage decision was upheld and look forward as class representative to championing the interests of those affected by the banks' misconduct.”

Mr. Evans' legal team, led by Hausfeld partner and Global Co-chair, Anthony Maton, also welcomed the Court of Appeal's decision:

“A judgment of this nature was required for all those UK businesses – big and small – who have suffered loss as a result of the manipulation of the FX markets to achieve restitution. The path to restitution can now begin and I ask the banks involved to come forward and agree fair and adequate compensation for those affected by their illegal behaviour.

We also welcome the Court of Appeal's verdict in the carriage dispute. Mr. Evans has been vindicated in his view that his claim was better placed to properly seek compensation for the class.”

The claims

In December 2019 Phillip Evans, former Inquiry Chair at the Competition Markets Authority, filed an application to bring opt-out collective proceedings against six major banks (Barclays, Citibank, The Royal Bank of Scotland/NatWest, JPMorgan, UBS and MUFG Bank). The banks participated in unlawful foreign exchange spot trading cartels and later admitted their misconduct to the European Commission, which fined them more than €1.1 billion.

Mr Evans seeks to represent the interests of tens of thousands of participants in the foreign exchange market by claiming damages for the harm alleged to have been caused by the banks’ unlawful conduct,

which took place between 2007 to 2013. The total damages sought in the claims are estimated to approach £2.7 billion.

The CAT's decision

The CAT considered Mr Evans' application during a five-day hearing in July 2021 alongside a similar application by Mr O'Higgins. There were two issues for the CAT to decide:

- first, whether the claims should be certified and, if so, whether they should be certified on an opt-in basis (in which class members must opt-in to the proceedings at the outset) or opt-out (in which class members are automatically included in the claims unless they opt-out); and
- second, due to similarities between Mr Evans' application and Mr O'Higgins' application, the CAT had to decide which was more suitable to act as class representative. This was known as the 'carriage dispute'.

The CAT gave judgment in March 2022. It decided that the claims should be certified but declined to certify them on an opt-out basis, basing its decision primarily on concerns about the strength of the claims and its view that opt-in proceedings would be practicable. However, the Tribunal's decision was not unanimous: a dissenting judgment from the third member of the Tribunal, Paul Lomas, stated that the claims should proceed on an opt-out basis. On the second issue, the CAT's panel unanimously agreed that, if the claims were to continue on an opt-out basis, they would decide the carriage dispute in favour of Mr Evans' application.

The Court of Appeal's judgment

Both Mr Evans and Mr O'Higgins appealed the CAT's decision on certification and their appeals were heard during a four-day hearing before the Court of Appeal in April 2023. In a decisive judgment handed down earlier today, the Court of Appeal upheld the appeals and confirmed that Mr Evans' claims should be certified on an opt-out basis.

- The CAT erred in law in its approach to deciding between opt-in and opt-out proceedings. In particular, the CAT had not explained why opt-in proceedings were preferable and it had wrongly decided to prefer opt-in proceedings despite accepting that this would, in reality, bring the claims to an end.
- The CAT's criticisms of the strengths of the claims were premature. No evidence had been provided by the banks. In addition, the European Commission had published a further infringement decision (relating to the so-called 'Sterling Lads' chatroom) which post-dated the CAT's judgment and provided more relevant information about the banks' misconduct and its impact on the market.
- The Court of Appeal also considered Mr O'Higgins' appeal of the CAT's decision to prefer Mr Evans in the carriage dispute. The Court of Appeal dismissed Mr O'Higgins' appeal, thereby confirming Mr Evans as class representative with carriage of the claims.

Ends

For media enquiries

Matt Baldwin, Coast Communications

matt@coastcommunications.co.uk

020 3805 772 – 07930 439 739

Notes to Editors:**The Claim:**

- To learn more about Mr Evans' claim, please visit www.fxclaimuk.com.
- Phillip Evans has worked tirelessly on behalf of victims of anti-competitive conduct for the last 20 years. His previous positions include Inquiry Chair at the CMA and Senior Policy Advisor at Which?. He is currently Special Adviser for Competition, Consumer and Trade Policy at Fipra.
- Mr Evans' consultative panel is chaired by Lord Carlile of Berriew QC, a crossbench member of the House of Lords who was a part time judge for 28 years in the High Court and the Competition Appeal Tribunal.

About Hausfeld:

- Hausfeld is a leading global disputes-only law firm with significant expertise in all aspects of collective redress and group claims, including abuse of dominance litigation against Big Tech and other large corporates. The firm pioneered the Trucks Cartel litigation in the UK, Germany and the Netherlands and has acted on some of the most complex damages claims of the last decade: on the "Interchange Fee" litigation against Visa and Mastercard; against six financial institutions over their participation in unlawful price-fixing of the foreign exchange currency markets; and against Google, Apple, Amazon and Qualcomm in relation to alleged anti-competitive behaviour in a wide range of abuse of dominance actions. [For more info on Hausfeld' collective redress practice](#).
- Hausfeld & Co LLP's US affiliate, Hausfeld LLP, was co-lead counsel in a class action against sixteen banks for manipulation of the FX market in the US. Settlements totalling over \$2.3 billion were reached with fifteen of the sixteen banks.
- The Hausfeld team advising on FX Claim UK is led by Anthony Maton (Partner) and David Lawne (Partner) and supported by Rachael Baillie (Senior Associate), Chrysanthi Bampali (Senior Associate) and Dexter Stevens (Associate). Hausfeld has instructed the following barristers: Aidan Robertson KC, Victoria Wakefield KC, Benjamin Williams KC, Jamie Carpenter KC, David Bailey and Sophie Bird.

The Competition Appeal Tribunal:

- The Competition Appeal Tribunal is a specialist judicial body with cross-disciplinary expertise in law, economics, business and accountancy which hears and decides cases involving competition or economic regulatory issues.