Class Representative
W H Merricks
Fourth Witness Statement
Exhibit WHM4
16 January 2025

Case Number: 1266/7/7/16

IN THE COMPETITION APPEAL TRIBUNAL

BETWEEN:

WALTER HUGH MERRICKS CBE

Class Representative

and

(1) MASTERCARD INCORPORATED

(2) MASTERCARD INTERNATIONAL INCORPORATED

(3) MASTERCARD EUROPE S.A. (formerly Mastercard Europe S.P.R.L)

Defendants

(the "Collective Proceedings")

FOURTH WITNESS STATEMENT OF WALTER HUGH MERRICKS CBE

Key to highlighting:
Category A Confidential Information is confidential vis-à-vis third parties only and is highlighted in green
Category B Confidential Information is confidential vis-à-vis Mastercard and third parties (on the basis of confidentiality and legal professional privilege) and is highlighted in turquoise

I, **WALTER HUGH MERRICKS CBE**, of a private residential address in London, United Kingdom will say as follows:

1. I am authorised by the Competition Appeal Tribunal ("**Tribunal**") to act as the class representative in these Collective Proceedings under Section 47B(8) of the Competition Act 1998 (the "**Competition Act**"), pursuant to paragraph 99(1) of the Tribunal's judgment dated 18 August 2021.

2. This is my fourth witness statement in these Collective Proceedings, which I make in support of my joint application with the Defendants to seek a collective settlement agreement order ("**CSAO Application**"), and in particular, to explain: (i) why I consider the settlement agreement reached between myself and the Defendants on 3 December 2024 (the "**Settlement Agreement**") is just and reasonable; and (ii) why I consider that settling the Collective Proceedings at this juncture, on the terms agreed with the Defendants, is in the best interests of the class that I represent (the "**Class**").

3. In this statement, I address the following:

   3.1 The background to the Settlement Agreement;

   3.2 The remaining issues to be tried and the prospects of succeeding at trial on those issues, based on advice I have received, no privilege being waived as to any such advice;

   3.3 The negotiations that led to the settlement that has been agreed, dealings with my litigation funder (Innsworth Capital Limited, referred to as "**Innsworth**"), and the reasons why I consider the Settlement Agreement to be just and reasonable, and in the best interest of the Class;

   3.4 The proposals for distribution of damages to the Class and the return to Innsworth; and

   3.5 The proposed notice and administration plan ("**NAP**").

4. The facts and matters set out in this witness statement are true to the best of my knowledge, information and belief. Where they are not within my own knowledge, I state the source of my information or belief. I have been assisted by my solicitors in the preparation of this witness statement but the contents of the statement constitute my evidence.

5. Nothing in this witness statement is intended to waive the legal privilege or without prejudice privilege protections attaching to the information exchanged between me (or my legal representatives) and (i) Mastercard (or its legal representatives) or (ii) Innsworth (or its legal representatives). All correspondence between my legal representatives and Mastercard's legal representatives which is privileged but has been exhibited to this witness statement, is provided to the Tribunal on a limited basis only, so that privilege is otherwise maintained as against all third parties, on the basis Mastercard has agreed to this limited waiver of privilege.

6. There is now shown and produced to me marked "**WHM4**" a bundle of documents to which I refer in this witness statement by page numbers in square brackets in the form [**WHM4/tab/page**], which comprise true copies of the documents that I refer to in this witness statement.

Background to the Proposed Settlement Agreement

7. The background to the Collective Proceedings and a summary of the key issues and procedural history are set out in paragraphs 7-23 of the CSAO Application and which I do not propose to repeat. I use the defined terms set out in the CSAO Application unless stated otherwise.

8. As set out in the CSAO Application, the Collective Proceedings have been ongoing for over eight years and in that time the Tribunal has determined many of the disputed issues. Whilst I have prevailed on a number of the key issues, the Tribunal has ruled against me on certain key issues, most importantly, in the Causation Judgment and the Limitation Rulings. This, along with certain other developments, has had very significant downward impact on the quantum that was being originally

claimed – over 95% of the original quantum being claimed is now either at serious risk or not recoverable.

9. The single most significant issue in the Collective Proceedings that determines whether the Class can recover in aggregate billions of pounds in damages as originally claimed back in 2016, or only hundreds of millions as reflected in the settlement, is whether I can establish causation in respect of UK domestic IFs. To be able to sustain a claim in the billions of pounds, I need to establish legal and factual causation between the Infringement (which relates to unlawful Intra-EEA MIFs and UK domestic IFs. As I address further below, the Tribunal's finding against me in the Causation Judgment on the issue of causation in fact, has put at serious risk 95% of the original claim value given that the vast majority of transactions in respect of which I was claiming are domestic and subject to UK domestic IFs.

10. The Limitation Rulings, absent a successful appeal (which I address further below), have precluded me from claiming in respect of the early part of the claim: that is, transactions in England, Wales and Northern Ireland from 22 May 1992 to 20 June 1997 (the "**Shorter Claim Period**"), although I did prevail in respect of prescription under Scots law, so claims for class members in Scotland are recoverable from 22 May 1992 (the "**Total Claim Period**").

11. Whilst the Tribunal found in my favour in the Exemptibility Judgment, and in relation to the Applicable Law Issue (which were later confirmed on appeal), these issues are of relatively less importance in terms of quantum as they relate to the claim in respect of the 5% of transactions to which the Intra-EEA MIF applied. Whilst significant in ruling that the lawful counterfactual Intra-EEA MIFs is zero, the Exemptibility Judgment's impact on the claim value is only substantial if I am able to recover in respect of UK domestic IFs.

12. The current status of the Collective Proceedings to date is that I have succeeded in establishing that the full value of the unlawful Intra-EEA MIFs is potentially recoverable in damages for the Total Claim Period in respect of claims governed

by Scots law, and for the Shorter Claim Period for the remainder. This will be subject to how much of the illegal Intra-EEA MIF will be found to have been passed on to consumers in the ongoing trial of the Merchant Pass-on Issue and Acquirer Pass-on Issue (the "**Pass-on Trial**"), and how much should be deducted in respect of alleged benefits conferred by Mastercard to consumers as a result of the Infringement. My claim in respect of interest, which is limited to simple interest after the Tribunal disallowed my claim for compound interest, is subject to the remaining Interest Rate Issue (see below).

13. I address below the remaining issues which have not yet been (fully) resolved as these are fundamental to the assessment of the proposed settlement, namely: a Future Counterfactual Trial; the pending Limitation Appeal; the ongoing Pass-on Trial; and the remaining quantum issues. I will then turn to the negotiations that led to the settlement that I have agreed with Mastercard, including my dealings with Innsworth, and reasons why I consider the Settlement Agreement to be just and reasonable. I then deal with the issues of distribution to the Class, the return to Innsworth and the NAP.

The Causation Judgment and prospects of a Future Counterfactual Trial

14. From the outset of the Collective Proceedings, causation was known to be the most significant issue, and Mastercard had been public about its position that there was no relevant causal connection between the unlawful Intra-EEA MIFs and UK domestic IFs. It was also Mastercard that proactively sought to bring this issue forward as a preliminary issue, knowing that success on it would reduce my claim by 95%. As it turned out, the Tribunal considered that it could not address the counterfactual issue pending Mastercard's appeal of the Exemptibility Judgment, so it decided to proceed with a bifurcated approach to causation. In the first instance, it set down a trial to deal with whether there was causation in the factual world.

15. The Causation Judgment was handed down on 26 February 2024. It has proved to be my most significant defeat to date because, as explained above and in the

CSAO Application, the Causation Issue determines whether I can claim on behalf of the Class in respect of UK domestic IFs (as well as in respect of the Intra-EEA MIF) which determines whether the damages suffered by the Class is in the billions of pounds or hundreds of millions of pounds. Given its importance, I sought to appeal the Causation Judgment. [redacted] Unfortunately, my application for permission to appeal ("**PTA Application**") was refused by the Court of Appeal on 9 June 2024.

16. Following the refusal of my PTA Application, as set out in the CSAO Application at paragraph 47, Mastercard has in correspondence sought to advance yet further preliminary issues in respect of the remaining causation issues, which it has claimed would potentially be even more dispositive of the Causation Issue. In response, my solicitors raised various questions regarding Mastercard's position and also indicated that it would be necessary for both sides to engage in a further round of pleading amendments in respect of the counterfactual, before any consideration could properly be given to whether there should be further preliminary issues or there should be a single Further Counterfactual Trial. [redacted]

17. I have taken advice from my solicitors and Marie Demetriou KC regarding the remaining causation issues and my prospects in a Future Counterfactual Trial. Given the potential need to litigate these issues should the CSAO Application not be granted, I obviously cannot disclose publicly or to Mastercard the details of that

advice nor waive the legal privilege over that advice. The details of the advice I have received are addressed at paras 17-19 of Mr Bronfentrinker's legal memorandum [**WHM4/1/8**], which the Tribunal will be able to consider. However, to allow Represented Persons to understand my decision to settle at the level I have agreed with Mastercard, I provide some high-level summary remarks regarding a Future Counterfactual Trial.

18. The remaining causation issues raise complex and novel questions of law about the scope of what the hypothetical counterfactual world can be, and the extent to which arguments could be advanced that the Visa interchange fees, which were found by the Tribunal in the Causation Judgment to be the key influencing factor on the UK domestic IFs in the factual world, can be excluded from the counterfactual world on the basis that the Visa interchange fees are themselves unlawful. A further challenge in a Future Counterfactual Trial would be gathering evidence that would support what would have happened in this hypothetical world. My experience in the Collective Proceedings to date suggests that obtaining such evidence is highly challenging, and has been an issue for me throughout on each of the issues which have gone to trial. As the class representative, I have no direct knowledge of relevant facts and do not have ready access to potential witnesses, so I have to rely on disclosure and expert evidence to rebut the witness evidence of Mastercard. The issue will be establishing what the banks would have done if they were unable to have a multilateral interchange fee that operates as a fallback in the event that bilateral interchange fees were not agreed. It goes without saying that Mastercard has access to its member banks and so has had no difficulty throughout the Collective Proceedings in getting witness evidence from the banks, and indeed, Michael Hawkins who was formerly of NatWest, has given evidence in two trials and been found to be a reliable witness whose evidence has been accepted by the Tribunal. In contrast, my legal team has had great difficulty in identifying witnesses. They have found that persons who used to work at banks and were involved in interchange fees have generally remained in the financial services sector as consultants and have been unwilling to give evidence that would be seen to be adverse to the schemes.

19. The difficulties for a class representative to get strong witness evidence is demonstrated by the fact that the two factual witnesses that I was able to get to assist me in relation to the Limitation Issues and for the trial that led to the Causation Judgment, have not fared well compared to Mastercard's witness evidence. Given that the Future Counterfactual Trial would involve the establishment of a hypothetical world, it is not something on which disclosure will assist (and in any event, given that it relates to a period that started in the 1990s (1992 if I am successful in respect of limitation, or 1997 if I am not), and Mastercard has very limited documentary disclosure that remains available), nor is it a matter on which experts can offer much assistance. It is a matter that will require witness evidence, from individuals who can credibly set out their views as to what would have happened with the unlawful interchange fee arrangements purged from the counterfactual world. The fact is that Mastercard will be much better placed to advance witness evidence than I will be.

20. Going forward to a Future Counterfactual Trial, I would need to overcome the findings in the Causation Judgment, in particular in relation to the relevance of the Visa interchange fees to the Mastercard UK domestic IFs/Intra-EEA MIFs. I would also need to meet the Tribunal's findings at paragraph 170 of the Causation Judgment, where it noted that even when the Intra-EEA MIF was reduced to zero in 2008, the UK MIF remained unchanged at 1.2%. The Tribunal found that this provided a "*striking example of the lack of connection*" between the Intra-EEA MIF and the UK domestic IF.

21. The Tribunal also noted at paragraph 172 of the Causation Judgment that I also need to address "*various assumptions about the counterfactual world*". This will entail my addressing complex and novel legal issues that will require me to meet the burden of proving factual and legal causation between the unlawful Intra-EEA MIFs and the UK domestic IFs in circumstances where I have a very significant disadvantage as compared to Mastercard when it comes to getting witness evidence to address what would have occurred in the hypothetical world. In light of this, and based on advice from Ms Demetriou KC, over which privilege is not

waived, I consider there to be very significant challenges in recovering any damages in respect of UK domestic IFs [redacted][1]

The Limitation Appeal

22. A description of the Limitation Rulings and the permission I was granted to appeal the EU law point are set out in the CSAO Application. At the time of the Settlement Agreement, no hearing date had yet been listed for the appeal, although the Court of Appeal Registry wrote to the parties on 24 December 2024 to identify potential hearing dates in March to June 2025. The parties wrote to the Court of Appeal listing office on 13 January 2025, proposing alternative listing dates between June to July 2025 due to counsel availability issues and a response is awaited.[2] A listing date being pursued in the event that the CSAO Application is not granted.

23. As reflected in the ruling on permission to appeal from the Tribunal, I consider I have reasonable arguments regarding the EU law point. However, it is also the case that for my appeal to succeed, it would require the Court of Appeal to find the Limitation Act 1980 to be incompatible with EU law (where EU law continues to apply), and in doing so, to distinguish its prior ruling in *Arcadia*.[3] I recognise that in circumstances where the UK has left the EU, it would be a bold step by the Court of Appeal to set aside a limitation statute that has been in place for nearly half a century on the basis of EU law. At the time of entering the Settlement Agreement, I took account of advice from Ms Demetriou KC given at the time at which permission to appeal was sought and obtained, there being no waiver of privilege over that advice which is addressed at paras 17-19 of Mr Bronfentrinker's legal

[1] [redacted] (over which privilege is not waived). I considered this with my legal team, including Ms Demetriou KC, and concluded that it does not alter my assessment of the prospects of obtaining damages in respect of UK domestic IFs. This is further addressed at paras 17-19 of Mr Bronfentrinker's legal memorandum [**WHM4/1/8**].

[2] [**WHM4/2/42**].

[3] *Arcadia Group Brands Ltd & Ors v Visa Inc & Ors* [2015] EWCA Civ 883.

memorandum [**WHM4/1/8**], and concluded that the [redacted]

24. Since then, it now appears that my prospects of succeeding on the Limitation Appeal [redacted], following the judgment of the Court of Appeal in the Merchant Umbrella Proceedings.[4] The Court of Appeal there considered whether the Limitation Act 1980 was incompatible with EU law, and rejected related EU law arguments advanced by the merchants. Furthermore, the Court of Appeal affirmed its prior decision in *Arcadia*, stating that this was a judgment that found that English limitation periods are consistent with EU law principles, which undermines one of my grounds of appeal. A fuller analysis of the Court of Appeal judgment and its implications for the Limitation Appeal are addressed at paras 26-27 of Mr Bronfentrinker's legal memorandum [**WHM4/1/11**].

The Pass-on Trial

25. The Pass-on Trial is ongoing. The evidence on the Merchant Pass-on Issue was heard in November and December 2024, and the evidence on the Acquirer Pass-on Issue and closing submissions on both Merchant Pass-on and Acquirer Pass-on are due to be heard from 24 March 2025 to 4 April 2025.

26. The outcome of the Pass-on Trial will determine what portion of the overcharge caused by the unlawful interchange fees can be recovered in damages by the Class. For example, if either the Acquirer Pass-on rate or the Merchant Pass-on rate is 0%, then the damages would be zero, and if together they amount to 75%, the damages would be 75% of the value of the overcharge, subject to adjustment for any other remaining quantum issues (which I address further below).

27. The Pass-on Trial is unusual and I believe is only the second time that an issue has proceeded to trial under the Tribunal's UPO Practice Direction (the first being Trial 1 in the Merchant Umbrella Proceedings regarding liability issues across the

[4] *Umbrella Interchange Fee Claimants v Umbrella Interchange Fee Defendants* [2024] EWCA Civ 1559.

different merchant proceedings). The Pass-on Trial has involved considering pass-on in both the Collective Proceedings and the Merchant Umbrella Proceedings. The decision to seek be included in a UPO that covered pass-on was first taken back in 2022, for two reasons. First, Mastercard was seeking to face two ways by arguing that there was complete pass-on from merchants to consumers in defence of the merchant claims, whereas it was denying pass-on from merchants to consumers in the Collective Proceedings. The strategy formulated by my legal team was to have pass-on determined at a single trial in the Merchant Umbrella Proceedings and the Collective Proceedings, with a view to adopting the position that Mastercard was arguing in respect of high merchant pass-on in the defence of merchant claims and arguing that there was no basis to consider the position to be different in the period covered by the Collective Proceedings. Second, whereas I was aware that Mastercard appeared confident in relation to the Causation Issue and was eager to have this determined as one of the first issues, [redacted] As it turned out, the decision on my application for a UPO was delayed by the Tribunal on a number of occasions, and was opposed by Mastercard. It was, however, ultimately granted on 31 May 2024.

28. The parties' positions going into the trial on Merchant Pass-on cover the full spectrum. My position, along with that of Visa (given it is not facing a consumer claim) is that there is near full pass-on. My economic expert, Mr Justin Coombs of Compass Lexecon, had calculated that the UK wide pass-on rate was around 91%. On the other hand, the merchants argued there was low pass-on: their economic expert found that the likely 'maximum' pass-on rates ranged between 0% and 47.5%, depending on the sector, and that for 25 out of the merchants' 30 sectors, there was no basis for concluding that the MSC had been passed on at all. Then there was Mastercard in the middle, with its economic expert finding high pass-on of between 70%-100% for around 68% of merchants in the UK economy during the merchant claim period, but then asserting it was likely to be materially lower

during the claim period covered by the Collective Proceedings, and questioning whether it could even be calculated due to an absence of evidence relating to that period. Furthermore, Mastercard was running legal arguments in defence to the Collective Proceedings to the effect that I bore the burden of proof to establish pass-on to consumers, and that I was unable to discharge that burden such that there should be a finding of no pass-on on the evidence.[5]

29. In addition to having to establish Merchant Pass-on, I also need to prove Acquirer Pass-on, which is the extent to which acquiring banks passed on the overcharge in the interchange fees to merchants through increased merchant service charges ("**MSCs**"), which merchants paid to enable cards to be used by their customers. In the more recent claim period covered by the Merchant Umbrella Proceedings, the larger merchants which represent the vast majority of consumer purchases, have been on what are referred to as IC+ and IC++ contracts, which have a contractual provision in them that require acquiring banks to pass on any cost increases or decreases in the interchange fee to the merchant. In contrast, during the claim period covered by the Collective Proceedings, the vast majority (and in the very early periods, the entirety) of merchants were on what are referred to as blended contracts, where acquirers charge merchants a single MSC that combines both the Mastercard and Visa interchange fees. Blended contracts are silent as to whether changes in interchange fees are passed on or not.

30. Expert evidence has yet to be filed for the Acquirer Pass-on trial. Therefore, at the time of the Settlement Agreement, my position was based on publicly available information and economic theory, resulting in my case being that there was total or near total pass-on by acquirers to merchants, and my understanding of the other parties' positions on Acquirer Pass-on which was based on their preliminary statements filed previously in the Merchant Umbrella Proceedings. My position is broadly also the position of the merchants, with whom I am aligned. In contrast, Visa and Mastercard took the position that while they accepted that there was

[5] See paragraphs 106-109 of Mastercard's Responsive Case Legal Wrapper for Trial 2 dated 9 October 2024.

complete pass-on for merchants on IC+ and IC++ contracts, they consider the position will be different (and lower) for merchants on blended contracts. Significantly, prior to entering the Settlement Agreement, the only available study on the issue of Acquirer Pass-on was an interim report from the Payment Services Regulator from December 2023 (**"PSR**"), which found that overall, approximately 95% of interchange fee increases were passed on by acquirers to merchants having regard to all contract types, so including the IC+ and IC++ contracts, but importantly, it also estimated that only 75% of interchange fee increases were passed on to merchants on blended contracts (within 12 – 18 months of the increase) [**WHM4/3/45**].

31. The actual position on Acquirer Pass-on will depend on the analysis of data that has been provided by the three largest central acquirers, Worldpay, Global Payments, and Barclays, as well as data that has been disclosed by the PSR. The data from the three acquirers only became available to my economic experts, Compass Lexecon, on 15 November, 21 November, and 4 December 2024 respectively, and they are now in the process of analysing that data to prepare my positive case should the CSAO Application not be granted and I need to continue on with Pass-on Trial. I note that since entering the Settlement Agreement, the PSR has issued its final report entitled 'Market review of UK-EEA consumer cross-border interchange fees: Final report' (13 December 2024), which contains broadly consistent findings with the interim report: namely, it estimates 95% pass through overall and, albeit on a conservative basis, 75% pass through to merchants on blended contracts, which is clearly unhelpful in terms of my establishing full or near-full pass-on from acquirers to merchants in my claim period (for which all or many of the merchants were on blended contracts) [**WHM4/4/49**].

32. The Pass-on Trial, especially in relation to Merchant Pass-on, raises complex and novel legal and factual issues, which I understand give rise to significant uncertainty. There are issues around how the Tribunal will weigh up the analysis undertaken by Mr Coombs (and Visa's economic expert) relying for the most part on public data on costs and prices, with the analysis undertaken by the experts for

the merchants relying on merchant specific data. There are also questions around what weight is to be placed on the qualitative merchant evidence. Furthermore, the merchants argue that they did not pass-on / that there was low pass-on by them during their claim periods (the economic experts for the merchants found sector pass-on rates of between 0% and 47.5%). If that is the case, given I submit that there is no reason for the merchant pass-on rates to be different between the two claim periods, if the Tribunal agrees with the merchants, then this would likely mean that the Tribunal would also find low pass-on in my claim period for at least those sectors represented by the merchants that have participated in the pass-on trial.

33. I also understand from my legal team that the possible outcome on Merchant Pass-on is also more uncertain as a result of the change in the constitution of the Tribunal. The Pass-on Trial was case managed, very closely, by the former President, who had issued various rulings over the course of a number of years regarding the evidence and shape of the Pass-on Trial. However, the actual hearing itself had a different Chairman in Mr Justice Green. This change is notable as the Chairman had very recently presided over and given judgment in *Royal Mail*[6] where the Tribunal found that very small overcharges were not passed on due to a lack of causation, and the issue of factual causation was a heavily disputed issue in Trial 2. Despite my understanding being that I should do well on Merchant Pass-on, it is an issue that carries very significant risk in that, should I fail to establish Merchant Pass-on, or Acquirer Pass-on, then the Class would recover nothing from the Collective Proceedings. However low, the attendant litigation risk was always there that it could not be ruled out that I simply fail to establish pass-on to consumers.

34. During the preparations for the Pass-on Trial, I became concerned with how I was perceived in the eyes of the Pass-on Trial panel. In particular, it was both unfortunate and unhelpful that shortly before the Pass-on Trial, I made an expert

[6] *Royal Mail Group Limited v DAF Trucks & Ors* [2023] CAT 6.

shopping application which was unsuccessful and resulted in indemnity costs being awarded against me. The ruling of the Tribunal was highly critical, stating that my application had "*an extremely tactical feel to it*" and that I had "*gone too far in this Application*".[7] Proceeding with that application proved to be a poor move. As this was the first time my case had come before Mr Justice Green who had taken over as the Chair for the Pass-on Trial, I was understandably concerned as to what impact this might have on the Tribunal's perception of my case on pass-on.

35. At the conclusion of the evidence on Merchant Pass-on, and having regard to advice I have received on how that part of the Pass-on Trial has gone, which is addressed at paras 39-43 of Mr Bronfentrinker's legal memorandum [**WHM4/1/17**], and given the final report of the PSR [**WHM4/4/46**], I consider that my decision to enter the Settlement Agreement is entirely justified.

Other remaining quantum issues

36. There are four remaining material quantum issues.

37. Three of these issues relate to the counterfactual - specifically, whether a reduction in interchange fees would have been offset in the counterfactual by:

    37.1 Mastercard charging higher prices or offering lower benefits to Mastercard card holders as a result of interchange fees being lower and if so, the value of any benefits lost by Represented Persons that were Mastercard cardholders in the counterfactual (the "**Benefits Issue**");

    37.2 changes in Mastercard's scheme rules in relation to matters such as fraud, cardholder default and/or time of payment (the "**Scheme Changes Issue**"); and

[7] [2024] CAT 74, para 34

37.3 issuers and cardholders switching to other payment schemes or payment methods and paying similar or higher charges to those charged in the factual (the "**Switching Issue**").

38. The Benefits Issue, Scheme Changes Issue and Switching Issue have not yet been determined or considered by the Tribunal. As the issues relate to the counterfactual, they were not considered under the Causation Judgment, but would likely be considered under any Future Counterfactual Trial. Mastercard addresses the Benefits Issue in its Re-Amended Defence and asserts that any loss suffered by the Class must be reduced (by way of a credit) for the benefits that Represented Persons who were Mastercard card holders received as a result of interchange fees being higher than would otherwise have been the case. Mastercard has not yet sought to attribute a value to these benefits and given the information asymmetry it is not something I have yet sought to assess with my legal advisors or seek to quantify with my experts. However, I am aware that in the case of credit cards, there are various benefits such as cash back, free travel insurance, and other benefits. I also recognise that if in the counterfactual issuing banks were not paid an interchange fee, did not charge cardholders for having a credit card, or could not otherwise raise the revenue provided by the interchange fee, then cardholders may not have received such benefits. I also understand from my legal team that [redacted] (see paras 44-45 of Mr Bronfentrinker's legal memorandum [**WHM4/1/20**]). Therefore, there is a real risk that the overall claim may be reduced by reason of the Benefits Issue.

39. The fourth remaining quantum issue relates to the appropriate simple interest rate to be applied to any aggregate damages awarded to the Class (the "**Interest Rate Issue**"). As for the Interest Rate Issue, having lost on the Compound Interest Issue (as discussed at paragraph 12 above), I was granted permission to amend my pleading to seek simple interest at a rate of 5% above the prevailing Bank of England base rate. At the time of making this amendment, I was aware from my legal team that [redacted]

[redacted] (there being no waiver of privilege over that advice). When granting me permission to amend my pleading as regards the simple interest rate, the Tribunal stated: "*we are all agreed: we think this is a matter, if it is a debatable point, if it cannot be struck out, then the amendment should be allowed. … Whether 5 per cent can indeed be sustained will be a matter for argument at trial*."[8] [redacted] In my settlement negotiations with Mastercard, I relied on these authorities to argue for a rate of 3.5% above the base rate. Since agreeing the Settlement Agreement, the Tribunal has issued its judgment in *Justin Le Patourel v BT Group PLC*[9], in which it stated that had it found damage to the class of consumers in that case, it would have awarded simple interest at the rate of 2% above the Bank of England base rate.[10]

The Negotiations that lead to the Settlement Agreement and the involvement and stance of Innsworth

40. Whilst there had been some prior exchanges between myself and Mastercard in relation to settlement, the negotiations that gave rise to the Settlement Agreement commenced on 12 August 2024. It was the view of my legal team, [redacted]

[8] *Walter Hugh Merricks CBE v Mastercard Incorporated and Others* (1266/7/7/16), Tribunal's ruling of 14 January 2022, page 2, lines 3 – 16.

[9] [2024] CAT 76.

[10] [2024] CAT 76, [1427].

[redacted]

41. The reason I say this and why I am very clear that this was not only my intention, but also the view of Innsworth, is because [redacted]

42. [redacted] so as a condition of providing me with further funds to allow me to proceed with the Pass-on Trial and the Limitation Appeal, it required that I agree to amend the LFA (exhibited at **[WHM/5/50]**) so as to give up my exclusive control over the conduct of the litigation and in particular over settlement, by agreeing to a binding Kings Counsel process in the event of any disagreement between us about whether to accept or make a settlement offer.

43. I viewed this as a clear attempt by Innsworth to seek to take a greater role in trying to [redacted]. I was not pleased with having to cede the full control that I had under the LFA, in particular given that the LFA already had a non-binding Kings Counsel process for dealing with any disagreements about settlement and this had never been engaged by Innsworth, so there seemed no reason to now use my need for funding to provide for a binding Kings Counsel process other than Innsworth wanting to reduce my control over the conduct of the proceedings. I ultimately concluded that it was in the best interests of the Class to ensure the further funding to allow the Collective Proceedings to continue and to seek to agree a settlement, so I accepted the amendment to the LFA in return for the further funding.

44. At this stage, it was the firm view of myself and my legal team, [redacted] if the amendment to the LFA was notified to Mastercard, and in particular, [redacted] I and my legal advisors also considered that [redacted] Therefore, it was agreed with Innsworth that [redacted] However, as [redacted] it was agreed that the Tribunal would be informed of the amendment on 8 November 2024. [redacted]

[redacted]

45. Accordingly, as at July 2024, the agreed position between myself and Innsworth was that [redacted]

46. Around this time, Compass Lexecon prepared possible scenarios of the potential aggregate damages that could be recovered based on various assumed outcomes on the issues that were in dispute between myself and Mastercard, which are reflected in Mr Coombs' letter exhibited to this statement at [**WHM4/6/81**]. This document which Compass Lexecon has prepared at my request for this witness statement, sets out differing scenarios based on various assumed outcomes (or very similar ones) that I was considering at the time I started the negotiations with Mastercard. The scenarios show a range of what my legal team considered to be damages outcomes from a low of around £85m to a high of around £8bn, based on combinations of various assumptions regarding whether I succeeded on the Intra-EEA MIF transactions only or whether I also prevailed on UK domestic IFs, along with the outcome on limitation, pass-on, and interest.

47. In consulting with Innsworth (as required under the LFA and in the context of the discussions regarding securing further funding as referred to above), I indicated [redacted]. However, I wanted them to indicate what they would be willing to accept by way of their return, as it was clear that at this level of settlement, it was not going to be realistic for them to look to receive a return of around £400m provided for under the LFA (based on an

assumed total expenditure by Innsworth of £40m as at the date of the discussions).

[redacted] Accordingly, I made a without prejudice save as to costs offer to Mastercard of [redacted] in full and final settlement Collective Proceedings, inclusive of costs and the return to Innsworth.

48. [redacted] I considered this offer to be too low, and considered that Mastercard should improve its offer. Having regard to the various merits of the remaining issues, it was clear to me that [redacted] I made the revised offer to Mastercard of [redacted] on [redacted]

[redacted]

49. In October 2024, I was expecting Mastercard to counter, but it did not. [redacted]. This was a surprising and concerning development, [redacted] It also became clear to me that unless I was willing to conclude a settlement at [redacted], I was going to again be in funding difficulties as I did not have sufficient funds to see the Collective Proceedings through to a final litigated conclusion because [redacted] This raised the further problem that a condition of the CPO is that there is sufficient funding for the Collective Proceedings,[11] meaning that if a settlement was not agreed, and further funding was not provided, then [redacted]

50. In the circumstances, whilst I continued to consider my settlement strategy in light of Mastercard refusing to increase its offer, [redacted] At this point, the letter to the Tribunal informing it of the amendment to my LFA to bring in the binding KC process had been sent [**WHM4/7/91**]. Unfortunately, [redacted], Mastercard suspected from the letter to the Tribunal that there may be an issue as

[11] Competition Appeal Tribunal Rules 2015, rule 78(2)(d); Competition Appeal Tribunal Guide to Proceedings, paragraphs 6.30, 6.33. See also Further Judgment on the Application for a CPO in these Proceedings, [2021] CAT 28, paragraphs [20]-[23] where the Tribunal considered the adequacy of the funding arrangements.

between me and Innsworth and it requested confirmation that I had sufficient funding to get through the Pass-on Trial and also to get to a litigated conclusion of the Collective Proceedings [**WHM4/8/100**]. This was a yet further [redacted] This made it imperative that I now secure the further funding, and I asked my solicitors to seek all the further funding I would require to get to the end of the Collective Proceedings.

51. [redacted] I was troubled by the Innsworth condition, [redacted] It seemed to me that yet again, Innsworth was looking to leverage my need for further funding to get more control and involvement by it in the conduct of the Collective Proceedings. Rather, [redacted]

52. Around this point, I had my solicitors engage with Mastercard's solicitors in order to try and break the negotiation impasse as I continued to consider that [redacted] These discussions succeeded in getting Mastercard to improve its offer and [redacted]

[redacted]. There were then some [redacted], and a figure of [redacted] was floated by my solicitors. However, [redacted].

53. At this point, the position crystalised. Having engaged in detailed and careful negotiations with Mastercard, it was very clear how it viewed its potential exposure and [redacted]. So unless I could be sure that continuing to litigate, [redacted], would result in overall success at the end of the proceedings, then I needed to settle. At this stage, [redacted] In addition to the position of Mastercard, I also had to take into consideration that by not settling and continuing with the litigation, I would need further funding and that was only being offered on [redacted]

[redacted] Having done so, I concluded that continuing the Collective Proceedings, including a Future Counterfactual Trial, [redacted]

54. First and foremost, having regard to advice received on remaining issues and the risk that it was possible that by continuing to litigate any recovery could be at risk, I did not believe that fighting on would allow me to obtain a better recovery for the Class (see above at paragraphs 17-21). In my view, my prospects of obtaining a higher settlement, in particular in a Future Counterfactual Trial, would only have been further diminished if I were forced to instruct new solicitors more than eight years after the Collective Proceedings had begun.

55. Second, as the settlement negotiations unfolded and I consulted with Innsworth about a possible settlement, it became apparent that the only distribution model that would be acceptable to Innsworth was a per capita distribution, which would involve dividing the Settlement Sum by the total number of Represented Persons (i.e. approximately 44 million) so as to give a potential settlement amount of £4.50 per person. Few Represented Persons would claim such sums, leaving the vast majority of the settlement sum as unclaimed damages, which Innsworth would seek to claim as its return. That being Innsworth's position, even if I would be able to obtain a higher settlement amount from Mastercard at some later date (which I did not, and do not, consider likely), this would be of no material benefit to the Class. This is because even assuming I would be able to double the settlement amount to £400 million, [redacted] on a per capita distribution, this would increase the amount claimable by Represented Persons from £4.50 to £9 per person. This would result in a similar outcome in terms of there being low take-up from Represented Persons and would just have the same effect of only benefiting Innsworth rather than the Class.

56. In light of all the matters set out above, I concluded that it was in the best interest of the Class for me to accept the £200m settlement offer, an outcome that I

considered was just and reasonable. I indicated this to Innsworth, along with the fact that I was minded to put forward a distribution methodology that was based on ascertaining the likely take up by Represented Persons and calculating a distribution based on the number thus ascertained. Innsworth indicated that they would oppose such a settlement and asserted that I would be in breach of my obligations under the LFA. They stated they would commence arbitration proceedings against me, including a claim for damages.

57. Despite this stance taken by Innsworth, I remained of the view that the interests of the Class were best served by agreeing the £200m settlement, so I indicated to Mastercard that I was minded to accept the offer. However, because of the stance taken by Innsworth, and given the provisions in the LFA about the non-binding Kings Counsel process, I explained to Mastercard that I could not formally agree the settlement until I had gone through that process. I therefore, requested that Mastercard extend the date by which the £200m offer would otherwise expire. Mastercard agreed to extend it to 29 November 2024. In light of that, I then proposed to Innsworth that we engage the non-binding Kings Counsel process, and I instructed my solicitors to make enquiries about barristers who were available and conflict free to undertake the role, sharing potential names with Innsworth. However, Innsworth refused to engage in the process, claiming it could not be completed within a few days. I disagreed, but they outright refused to participate in a non-binding Kings Counsel process. In light of this, on 29 November 2024, I confirmed to Mastercard that I could now proceed to accept the offer.

58. After having indicated to Mastercard that I was minded to accept the settlement at £200m for the Class, but was unable to formally do so whilst exploring the Kings Counsel process, I explained to Mastercard that I was facing the threat of an arbitration claim [redacted] against me personally by Innsworth. Whilst that did not alter my assessment and decision making on whether to accept the settlement at £200m, I did raise whether Mastercard would be able to assist me in this regard. Various options were discussed, and ultimately, despite the years of having been adverse to each other, Mastercard decided it would make available the sum of £10

million in order to deal with the threatened arbitration against me. As it turned out, on [redacted], the date on which the settlement was agreed, Innsworth commenced an LCIA arbitration against me. [redacted] Once again, whilst none of this has deterred me from doing that which I consider to be in the best interests of the Class, it goes without saying that having a very large litigation funder commence arbitration proceedings [redacted] has been very distressing for me and my family.

The settlement is just and reasonable

59. The terms of the Settlement Agreement, and the bases for the Settlement Sum of £200m are set out in detail in the CSAO Application.

60. I consider £200m to be just and reasonable because:

60.1 It gives full value for the claims in respect of the Intra-EEA MIF;

60.2 It accounts for an overall (combining merchant and acquirer) pass-on rate of [redacted]%. Having regard to advice I received at the time I agreed the settlement and now taking account of how the Merchant Pass-on Trial has gone, along with the final report of the PSR, and the possibility (even if low) of my not succeeding on pass-on so that the Class recovers nothing, I consider this to be a good position;

60.3 It applies an interest rate of Bank of England plus 3.5%, which now seems generous in light of the rate of Bank of England plus 2% endorsed in the recent ruling in *Le Patourel*;;

60.4 It makes no deduction in respect of the Benefits Issue;

60.5 While it gives no value for the claims in respect of UK domestic IF transactions, or claims prior to 20 June 1997 (save for claims governed by Scots law), this reflects my views on the prospects of my succeeding on these issues at trial as explained above at paragraphs 9-21; and

60.6 It includes "*all of the Parties' fees, costs and expenses that have been or will be incurred in the future in pursuing the Proceedings*". The losses I have suffered to date have resulted in a number of substantial costs orders against me, for which I, or more accurately, Innsworth, has had to pay Mastercard £6.73 million in interim payments on account. By agreeing to forego its right to adverse costs, Mastercard has relinquished its right to further adverse costs in the region of £1.8 million to £7.1 million. The Settlement Agreement avoids a significant costs liability for me (and therefore Innsworth). If Innsworth were to face this liability which is a realistic possibility, then Innsworth would not only want to recover those costs but earn a return on those costs out of a recovery later on.

Distribution proposal

61. The proposals for distribution of the Settlement Sum have been set out in detail in the CSAO Application and I do not repeat them here. There are, however, a number of overarching points that I would like to make:

61.1 In circumstances where I have had to accept that following over eight years of litigation, the claims are realistically worth hundreds of millions rather than billions, this has the unfortunate outcome that neither the Class nor Innsworth are able to recover that which I had hoped when I commenced the proceedings back in 2016.

61.2 I have an obligation as the Class Representative to act in the best interests of the Class, which I believe involves seeking to get as much of the £200m into the hands of Represented Persons as possible. However, I also have obligations to Innsworth under the LFA to use my best endeavours to get

them the return provided for in the LFA out of the undistributed damages. Therefore, to the extent that I propose a distribution which would enable more to go to the Represented Persons and make less available to Innsworth, I risk it being further alleged by Innsworth that I am in breach of my contractual obligations under the LFA. Similarly, to the extent that the distribution methodology makes it less likely that Represented Persons will participate in the distribution so as to bring about a larger sum of undistributed damages, then it will be said I am not acting in accordance with my duties to the Class. I therefore consider myself to be in a difficult position in which I have sought to balance my competing obligations as best I can, but ultimately the Tribunal needs to determine where that balance properly lies.

61.3 I am aware of various public statements made by the former President of the Tribunal to the effect that it would be wrong for collective proceedings to result in the "lions share" of sums recovered going to lawyers and funders rather than to class members. I share that opinion. It is my view therefore that the distribution methodology to be adopted needs to make it likely that at least half (if not more) of the £200m is received by Represented Persons. Anything less will simply fuel criticisms of the regime as benefitting only litigation funders and advisors, which as a strong advocate of the collective action regime, I consider would be very unfortunate.

61.4 Equally, the regime only can function with the financial backing of claims by litigation funders. To that end, I consider it important that Innsworth is able to recover the full amount it has expended on the Collective Proceedings. In the circumstances, this is quite a favourable outcome. Having regard to how the Collective Proceedings have turned out and the level of the settlement, despite the LFA entitling Innsworth to payment out of the undistributed damages, I propose to ring fence in Pot 2 a sum that will give Innsworth a full recovery on what it has paid out in enabling me to pursue

and achieve the settlement for the Class.[12] Beyond this, I also propose that the amount in Pot 3, which could be up to £54,432,053.72, is made available to give Innsworth a further return of more than 100% on its investment. However, I recognise that this could mean that Innsworth would get half (or possibly more if all of Pot 1 is not distributed) of the Settlement Sum, and I recognise that there are reasonable arguments that some of the Settlement Sum should be paid to an appropriate charity that will indirectly benefit the non-participating Represented Persons. However, because of my contractual obligations under the LFA, this is not something I can advance.

62. With respect to the distribution of the £100m to the Represented Persons that come forward, as I indicated above, I do not consider that proceeding on the basis of dividing that sum by the number of Represented Persons would be fair – noting that a fair distribution is what the Supreme Court said is required when it considered my case.[13] To my mind, a fair distribution, which gives me the greatest prospect of getting all of the £100m in the pockets of Represented Persons is to proceed on the basis of a realistic expected participation level. In that regard, I have considered analysis undertaken for me by Epiq based on its experience of handling mass consumer claim distributions and also other comparable cases Epiq has been able to identify in other jurisdictions. Their analysis is exhibited at [**WHM4/9/103**], and concludes that a 5% participation level – which in my case would mean around 2.2 million individuals – is realistic.

63. I also note that given the absence of any relevant information regarding the behaviour of UK consumers, and mindful that in other settlement approval hearings the Tribunal has noted the absence and need for UK data, Portland Communications has been engaged (at Mastercard's expense, but in which I and

[12] In relation to the Pot 2 figure, as at the date of the settlement hearing that will be primarily based on spend as at 30 November 2024 (see paragraph 73a of the CSAO Application). Costs continue to be incurred both as regards settlement and as regards pass-on therefore the figure is a best estimate of costs but there will need to be an exercise undertaken when all work is concluded to calculate the actual figure for Pot 2 at the end.

[13] [2020] UKSC 51, [149].

my solicitors have been fully involved) to undertake a survey of several thousand UK consumers to assess the likely participation rates based on the per Represented Person potential returns. The results of this survey will be available ahead of hearing of the CSAO Application and to the extent that the results suggest that the participation rates are materially different to those identified by Epiq, I will review and update as necessary my distribution proposal. However, at the time of preparing this witness statement I propose to proceed on the basis that 5% of Represented Persons will come forward and on that basis, I propose to work on the assumption that this would result in each Represented Person out of the 2.2 million who come forward receiving £45. However, that figure will flex up or down depending on the actual number of Represented Persons that come forward to participate in the distribution, albeit to ensure there is not a windfall gain in the event that there is a very low level of participation, I consider it appropriate to apply a cap to the sum available to each person and I consider the amount of £70 to be fair and reasonable having regard to how the Collective Proceedings have turned out.

64. Another point I have considered is whether Scottish Class members should receive more damages than the English, Welsh, and Northern Irish Class members, given that I won the Scottish prescription issue. However, I decided against this for the following reasons:

64.1 My economic experts, Compass Lexecon, have calculated the likely level of additional compensation each Scottish Class member would receive if I allocated a portion of the Settlement Sum to the 1992-1997 Scottish claims and distributed it to Scottish Class members. The Compass Lexecon analysis [**WHM4/6/81**] shows that on the same take-up of 5%, Scottish Class members would be entitled to £51.28 per Represented Person and English, Welsh, and Northern Irish Class members would receive £44.74 a difference of £6.54. Given this difference is small, and the sum could of course be lower if a higher take-up is achieved, I consider it would be

disproportionate and could be more costly to create a distribution system that distinguished between Scottish Represented Persons and other Represented Persons.

64.2 I am also conscious that Epiq has indicated that the simplicity of the claims process is a very important factor regarding the likely level of take-up. In order to compensate Scottish Class members more, I would have to create a more complicated claim form with more requested of Represented Persons to verify if they were Scottish Class members at the time. Asking for additional details going back some 30 years could dissuade people given they may no longer recall that information. Overall, the potential effect of discouraging take-up need to be compared to the small further sums Scottish Represented Persons could get.

64.3 I also consider the noticing and media campaign - which is on the basis of a clear single message that Class members may receive £45 – would be less effective. Introducing differing indications of the likely compensation levels would just create confusion and uncertainty that could have an adverse impact on take-up.

65. Finally, I address the return to Innsworth. For the purposes of this witness statement, my solicitors requested that Innsworth confirm the amount that they have paid out in the course of the Collective Proceedings on my fees, disbursements and in costs to Mastercard, less the amount it has received by way of costs payments from Mastercard. This figure amounts to £42,221,100.29.[14] Further based on the information available to my solicitors, the best estimate of anticipated costs is £5,119,692.28. Accordingly, the total costs, fees and

[14] This figure excludes the sum of £352,765 which Innsworth is seeking in relation to its own costs, the reasonableness of which I have not been able to asses at this juncture. The figure also excludes the sum of £151,585.50 which I have reasonably incurred but which Innsworth is refusing to pay and remains subject to discussions between Innsworth and I. The LFA provides for a 90 days period from the day the dispute is raised, 13 January 2025, for the dispute on costs to be resolved. There is not 90 days available ahead of the hearing of the CSAO Application. I will seek to resolve the issue before the CSAO Application Hearing but if that is not possible, I will seek that those costs are paid from the Settlement Sum. I will provide the Tribunal with an updated schedule of costs at the CSAO Application hearing.

disbursements, after account is taken of adverse costs orders in my favour that have resulted in Innsworth being paid, will be approximately £45,567,946.28.

66. In addition, there is a further sum of £2,396,611, which was paid by my prior litigation funder, Burford. At the time that Burford terminated my litigation funding agreement in 2017 when the application for a CPO was originally refused, there was a disagreement as to whether Burford would have any trailing entitlement in the Collective Proceedings after Innsworth stepped in to take on the funding. I understand that in around 2021 when the Collective Proceedings were remitted by the Supreme Court and it was clear that the CPO would be granted, [redacted] I considered that Burford had no entitlements after it terminated the litigation funding agreement, [redacted]

67. There is a final point regarding the sum to be paid to Innsworth to ensure it has received a full return of what it has paid out in the Collective Proceedings. Throughout the course of the Collective Proceedings, and as most recently as at the end of last year, Innsworth has repeatedly reserved its right under the LFA and standard lawyer terms that my solicitors have entered into with Innsworth, to take my legal fees to taxation. For the purposes of the CSAO Application, I had my solicitors request that Innsworth confirm that they will not be seeking to do so in order that there be a settled amount incurred by Innsworth that can be used to

determine its return. Unhelpfully, Innsworth has refused to provide this confirmation. This is problematic, in circumstances where I am proposing ringfencing money for the benefit of the funder that will as a result not be available to participating Represented Persons, non-participating Represented Persons or an appropriate charity. What cannot happen is that the Tribunal allows Innsworth to be paid a sum out of Pot 2 reflecting a full return on what it has expended and also makes it an award out of Pot 3 to provide it with a further return based on its actual investment in the Collective Proceedings, and for Innsworth to later go and seek to recover what it paid in the way of fees through a detailed taxation. That would produce a windfall gain to Innsworth beyond that which the Tribunal considered it should get and that would be at the expense of the Class and/or a charity. Should Innsworth not provide this confirmation ahead of the CSAO Application hearing, then I do not see how I can propose ringfencing money to the funder's benefit because the money being ringfenced may not be reflective of final and settled expenditure by Innsworth.

Noticing and administration

Notice of the CSAO Application

68. I understand that Rule 94(4)(f) of the Rules requires me to set out the form and manner by which I, as the class representative, intend to give notice of the CSAO Application to Class members so that they have the opportunity to make submissions in respect of the proposed settlement (the "**Settlement Hearing Notice**").

69. The draft Settlement Hearing Notice that will be used to notify Class members of the CSAO Application and related hearing was sent to the Tribunal on 14 January 2025 for its consideration together with draft proposed directions for the hearing that were agreed with Mastercard. The Settlement Hearing Notice was then agreed between the parties on 15 January 2025. As set out at paragraph 6.2 of the NAP which is exhibited to this statement at [**WHM4/10/126-7**], Epiq will publish the approved Settlement Hearing Notice on the claim website in the form approved by

the Tribunal, which is how the Class was notified back in 2016 of the hearing of the application for a CPO. In addition to that, the Settlement Hearing Notice or a summary of that notice will be emailed to registrants who have registered on the claim website for updates, and sent to media contacts by the specialist public relations firm that I have engaged throughout the course of the Collective Proceedings, James Baxter Media Ltd ("**JBM**"). I would expect given the media interest since the start of the Collective Proceedings that they will report on the hearing to determine whether the settlement will be approved.[15] I consider that the proposed method of giving notice of the CSAO Application is reasonable and proportionate, bearing in mind the costs associated with noticing and the short period of time that will be available between the Tribunal approving the Settlement Hearing Notice and the start of the hearing to determine the CSAO Application. The steps that I am proposing to take to give notice of the CSAO Application and settlement hearing to the class go beyond what was determined to be sufficient by the Tribunal when notice was given of the original application for a CPO.

Notice of the CSAO

70. I am also aware of my obligations under Rule 94(13) of the Rules, which requires me to give notice to Class members of the CSAO (if made by the Tribunal) and the terms of the settlement, in a form and manner approved by the Tribunal. I understand that there is guidance on what such a notice should contain at paragraphs 6.141 to 6.144 of the Guide. Subject to the approval of the Tribunal, the draft notice attached to the draft CSAO filed with the Tribunal will be used to give notice to Class members of the CSAO and settlement terms (the "**CSAO Notice**").

71. As set out at Section 7 of the NAP [**WHM4/10/127**], the CSAO noticing period will continue for three months and will involve: publishing the CSAO Notice on the claim website; emailing the CSAO Notice to registrants who have previously registered on the claim website for updates; a public relations campaign conducted

[15] See Section 6 of the NAP [**WHM4/10/126-7**], and paragraph 51 of the CSAO Application.

by JBM; paid newspaper advertisements; online internet banner advertisements (including on social media platforms); and sponsored search listings. I consider that Epiq's proposed notice campaign is reasonable and proportionate, including as to costs, having regard to the Settlement Sum.

72. As set out at paragraph 5.1.2 of the NAP [**WHM4/10/126**], the three month noticing period will coincide with the periods in which Class members will be able to opt in to or out of the settlement and make a claim for a share of the Settlement Sum (the "**Notice and Claim Period**"). I consider this is a sensible approach, as it ensures that Class members are able to submit a claim for their share of the damages at the time they receive notice of the settlement. It will also help to streamline the process and reduce the burden on non-UK domiciled Class members, as they will be able to opt in to the settlement and make a claim for damages at the same time. Epiq has designed the claim filing process to make it as easy as possible for Class members to make a claim, and allow individuals to opt in to the settlement and make a claim for damages in the same form. In adopting this approach, I understand that Epiq is mindful that the easier it is for Class members to make a claim, the more likely they are to come forward and participate in the distribution. I would like to get as many Class members to come forward as possible.

73. As set out at paragraph 5.1.2 of the NAP [**WHM4/10/126**], the Notice and Claim Period will commence within 30 days of the CSAO having been made and run for three months. This will then be followed by short periods in which the claims will be processed (including checked for fraud) and validated, and then distributed once the total number of valid claims and any required pro rata adjustment to the payment amount are known.[16] Epiq assures me that the measures it proposed to employ to remove fraudulent and duplicate claims are robust and proportionate, based on its extensive experience of handling large consumer distributions. More

[16] See paragraphs 5.1.3 to 5.1.5 of the NAP [**WHM4/10/126],** and paragraphs 81 to 85 of the CSAO Application.

details about the timeline of the notice campaign and claims administration are at Sections 5, 7, 8 and 9 of the NAP [**WHM4/10/125-39**].

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings of 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.

Walter Hugh Merricks CBE

Dated: 16 January 2025

Case Number: 1266/7/7/16

IN THE COMPETITION APPEAL TRIBUNAL

BETWEEN:

WALTER HUGH MERRICKS CBE

Class Representative

-and-

MASTERCARD INCORPORATED
MASTERCARD INTERNATIONAL INCORPORATED
MASTERCARD EUROPE S.A. (formerly MASTERCARD EUROPE S.P.R.L.)

Defendants

FOURTH WITNESS STATEMENT OF WALTER HUGH MERRICKS CBE

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