**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS**
**OF ENGLAND AND WALES**
**COMMERCIAL COURT (QBD)**
**FINANCIAL LIST**

**Claim No: FL-2018-000009**

**B E T W E E N:**

**(1) LEEDS CITY COUNCIL**
**(2) GREATER MANCHESTER COMBINED AUTHORITY**
**(3) NEWCASTLE CITY COUNCIL**
**(4) NORTH EAST LINCOLNSHIRE COUNCIL**
**(5) NOTTINGHAM CITY COUNCIL**
**(6) OLDHAM COUNCIL**
**(7) SHEFFIELD COUNCIL**

**Claimants**

**- and -**

**BARCLAYS BANK PLC**

**Defendant**

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# PARTICULARS OF CLAIM

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## A. THE PARTIES

1. The Claimants, save for the Second Claimant, are local authorities established pursuant to the Local Government Act 1972 (the **"LGA 1972"**). The Second Claimant is a combined authority established pursuant to the Local Democracy, Economic Development and Construction Act 2009 (the "**LDEDCA 2009**") and the Greater Manchester Combined Authority Order 2011 (the "**GMCAO 2011**").

2. At all material times each of the Claimants:

   (1) exercised their powers to borrow money within the limits set out in Part 1 of the Local Government Act 2003 (the **"LGA 2003"**), including the requirement to determine and keep under review how much money they could afford to borrow under section 3(1) of the LGA 2003; and

(2) in exercising their powers under section 3(1) of the LGA 2003, were required to have regard to the Prudential Code for Capital Finance in Local Authorities (the **"Prudential Code"**) and the Code of Practice for Treasury Management in the Public Services (the **"Code of Practice"**), as amended and/or reissued from time-to-time.

3. The Defendant (**"Barclays"**) is a retail and investment bank which has its registered office at 1 Churchill Place, London, E14 5HP. At all material times Barclays:

(1) offered a variety of banking and related services, including the provision of so-called lender-option, borrower-option (**"LOBO"**) loans; and

(2) was an authorised person for the purposes of the Financial Services and Markets Act 2000 (the **"FSMA"**) and was thereby required to act in accordance with the Principles for Businesses (the **"PRIN"**), published by the Financial Services (now Conduct) Authority (the **"FSA"** or **"FCA"**), as amended from time-to-time.

## B. LIBOR

4. LIBOR was, at all material times, a series of interest rate benchmarks, calculated across 10 currencies and 15 tenors, and administered by the British Bankers' Association (the "**BBA**"). It is and was fundamental to the stable and efficient operation of UK and international financial markets.

5. At all material times, the process for setting LIBOR operated (or was intended to operate) in general terms as follows:

(1) LIBOR (for each currency and tenor) was calculated as an average of the submissions made by a number of banks (**"Panel Banks"**) selected by the BBA. Barclays was one of the major banks that was a member of the panels for all 10 LIBOR currencies.

(2) Each business day, Barclays (and each of the other members of the relevant panel) were required to make submissions to Thomson Reuters on behalf of and/or as agent for the BBA in response to the following question:

> "At what rate could you borrow funds, were you to do so by asking for and then accepting inter-bank offers in a reasonable market size just prior to 11am?"
>
> (the **"BBA Definition"**).

(3) Once Thomson Reuters had received submissions from each of the panel members, it would rank them in descending order and then exclude the highest and lowest quartile of the submissions.

(4) The remaining submissions were then averaged in order to create a LIBOR rate.

(5) This process was repeated for every currency and maturity, producing 150 rates every business day for 10 different currencies and 15 different tenors or maturities.

6. The process described above continued until the transfer of the administration of LIBOR from the BBA to ICE Benchmark Administration Limited on or around 1 February 2014.

## C. THE LOBO LOANS

7. Between around September 2006 and July 2008, Barclays proposed and subsequently entered into a series of LOBO loans with each of the Claimants (the **"LOBO Loans"**). Further particulars of each of the relevant LOBO Loans are set out in **Schedules 1 and 2**.

8. The LOBO Loans were long-term debt instruments pursuant to which each of the Claimants agreed to borrow, and Barclays agreed to lend, unsecured funds of between £3,000,000 and £30,000,000 for periods of between 60 and 70 years.

9. Under each of the LOBO Loans identified in **Schedule 2** (the **"Range LOBO Loans"**), the interest rate was expressly set by reference to 6-month GBP LIBOR, such that the interest rate which was payable by the relevant Claimant was one of two alternative fixed sums, depending on whether 6-month GBP LIBOR fell within or outside a specified range.

10. Under each of the LOBO Loans:

(1) Barclays had the option, on certain pre-defined dates (the **"Lender Option Dates"**), to increase the interest rate which was payable by the relevant Claimant by serving

a contractual notice prior to the relevant Lender Option Date (the **"Lender Option"**); and

(2) the Claimants had the option to repay the balance of the relevant LOBO Loan on the Lender Option Date, if (and only if) Barclays elected to exercise its Lender Option (the **"Borrower Option"**).

11. Further, the Claimants were obliged to pay "Breakage Costs" to Barclays in the event that:

(1) they repaid the balance of the LOBO Loan on any date other than (a) a Lender's Option Date (in relation to which Barclays had elected to exercise its Lender Option) or (b) the contractual date for repayment (the **"Specified Date"**); or

(2) Barclays made a demand for repayment of the LOBO Loan following a payment default by the relevant Claimant; or

(3) the full amount of the LOBO Loan was not drawn on the drawdown date for any reason (other than as a result of a default on the part of Barclays).

12. "Breakage Costs" were defined in each of the LOBO Loans in materially identical terms as being either:

> "… the amount that [Barclays] would need to pay to another financial institution selected by it as consideration for an agreement by that financial institution to:
>
> > make the fixed interest payments to [Barclays] that it would otherwise have been entitled to receive from the Council under the Loan if the Loan had been outstanding until the Specified Date in exchange for receiving LIBOR flat from [Barclays] in accordance with the same payment profile, on the same terms and including the same features as the Loan (including the rights of [Barclays] with respect thereto)" (emphasis added).
>
> or:
>
> "… the amount that [Barclays] would need to pay to another financial institution selected by it as consideration for an agreement by that financial institution to:
>
> (a) replace the fixed interest payments that [Barclays] would otherwise have been entitled to receive from the Council under the Loan if the Loan had been outstanding until the Specified Date in accordance with the same payment

profile, on the same terms and including the same features as the Loan (including the rights of [Barclays] with respect thereto); and

(b) receive LIBOR flat in exchange, on the amount of Loan and at the same frequency as specified in "Interest" above, until the Specified Date…" (emphasis added).

13. In the premises, LIBOR was an integral feature of each of the LOBO Loans, being:

(1) fundamental to the calculation of any "Breakage Costs"; and/or

(2) in relation to each of the Range LOBO Loans, fundamental to the determination of each interest payment.

14. Between around June 2016 and December 2017, Barclays either unilaterally or with the agreement of the relevant Claimants took the following steps:

(1) in relation to each of the Range LOBO Loans, it amended the definition of "Interest" and replaced it with a new definition which provided for the payment of a fixed rate; and

(2) in relation to each of the LOBO Loans, it permanently waived its Lender Option to increase the interest rate payable by the Claimants on any future Lender Option Date.

15. The effect of the above was that, from the date of the relevant waiver or agreement:

(1) the LOBO Loans were effectively converted into fixed interest rate loans, for the remainder of their contractual terms;

(2) the Claimants lost the benefit of their Borrower Option of repaying the LOBO Loans without having to pay "Breakage Costs" on a Lender Option Date (given that this was conditional upon Barclays exercising its option to increase interest rates); and

(3) in any and all circumstances in which the Claimants sought to repay the LOBO Loans prior to maturity, they would be required to pay "Breakage Costs" to Barclays.

16. The Claimants will rely on each of the LOBO Loans at trial for their full terms and effects.

## D. LIBOR MANIPULATION

### The LIBOR Representations

17. In the course of proposing and/or transacting each of the LOBO Loans and, in particular, in putting forward transactions which were referenced to LIBOR, Barclays impliedly represented to each of the Claimants that:

    (1) Barclays was not itself manipulating LIBOR (and/or GBP LIBOR) and did not intend to do so in the future (**"LIBOR Representation 1"**); and/or

    (2) Barclays had no reason to believe that LIBOR (and/or GBP LIBOR) was being manipulated or that it would be manipulated in the future (**"LIBOR Representation 2"**).

    (the **"LIBOR Representations"**).

18. The LIBOR Representations were not corrected by Barclays and remained in effect at the time of and/or were repeated by Barclays upon entering into each subsequent LOBO Loan.

### Falsity of the LIBOR Representations

19. The LIBOR Representations were false. Pending disclosure and/or the provision of further information by Barclays, the best particulars which the Claimants are able to provide as to falsity are set out at paragraphs 20-24 below.

20. Barclays has already admitted, accepted and/or acknowledged or otherwise offered or entered into settlement agreements with a number of regulators who made extensive findings of LIBOR-related misconduct and/or manipulation against Barclays, including in:

    (1) The FSA Final Notice dated 27 June 2012;

    (2) the US Commodity Futures Trading Commission (the **"CFTC"**) Order dated 27 June 2012; and

(3) the United States Department of Justice (the **"DoJ"**) Non-Prosecution Agreement (**"NPA"**) and Statement of Facts dated 26 June 2012.

21. Further, pursuant to the terms of its NPA with the DoJ, Barclays has agreed not to make any public statement contradicting the matters set out in the DoJ's Statement of Facts.

22. The period during which LIBOR manipulation was found to have occurred was between at least January 2005 and June 2010.

23. The Claimants will rely on the FSA Final Notice, the CFTC Order and the DoJ Statement of Facts (together, the **"LIBOR Findings"**) at trial for their full terms and effects. In addition, they will rely on the contents of the report published on 18 August 2012 by the House of Commons Treasury Committee, *"Fixing LIBOR: some preliminary findings"* (the **"Treasury Committee Report"**), which is referred to in more detail in **Schedule 3**.

24. Barclays disclosed extensive documentary and other evidence to the DoJ, the CFTC and the FSA for the purposes of their investigations, of which only a small and anonymised selection is referred to in the LIBOR Findings. The Claimants reserve the right to plead further to these particulars of falsity upon the provision of disclosure by Barclays of evidence and/or information relating to LIBOR manipulation (including, but not limited to, that previously submitted to regulators). However, without prejudice to that, the Claimants will rely (in particular) upon the following facts and matters set out in the LIBOR Findings:

(1) *"On numerous occasions"* between at least January 2005 and June 2009, Barclays made LIBOR submissions to the BBA which inappropriately took into account requests made by interest rate derivative traders at Barclays and/or at other banks and/or also attempted to influence the LIBOR submissions of other Panel Banks by making inappropriate requests to external traders (**"Trader Manipulation"**).

(2) *"On numerous occasions"* between at least August 2007 and May 2009, Barclays made LIBOR submissions to the BBA which inappropriately took into account concerns about the negative media perception of Barclays' LIBOR submissions (**"Lowballing"**).

(3) Between at least January 2005 and June 2010, Barclays failed to have *"adequate risk management systems"* or *"effective controls"* in place in relation to the process of making LIBOR submissions to the BBA and, prior to December 2009, Barclays had *"no specific systems and controls in place"* in relation to the process of making LIBOR submissions (the **"Systems and Controls Failings"**). In particular, Barclays did not:

(a) put in place any (or any effective) policies giving clear guidance about the importance of the integrity of the process of determining LIBOR submissions;

(b) provide any (or any effective) training to its LIBOR submitters about the process of making LIBOR submissions and the appropriateness (or otherwise) of requests for favorable LIBOR submissions; and/or

(c) carry out any (or any effective) formal monitoring of its LIBOR submissions.

(4) In light of the fact and extent of the Systems and Controls Failings (set out above):

(a) Barclays does not appear to have had any or any sufficient system or process for making proper LIBOR submissions to the BBA in accordance with the terms and requirements of the BBA Definition until at least December 2009.

(b) In this context, the nature and extent of the LIBOR manipulation and/or other LIBOR-related misconduct by Barclays set out in the Regulatory Findings and/or as otherwise referred to herein are symptomatic of a *"system"* or *"process"* which caused or permitted Barclays' own money markets and/or derivatives and/or other subjective interests to inform Barclays' LIBOR submissions between at least January 2005 and December 2009. It is to be inferred that Barclays' "*LIBOR setting or submitting process*" was systemically flawed and prone to manipulation to suit Barclays' own subjective commercial interests. The Claimants reserve the right to plead further in this regard once Barclays has provided proper disclosure and information as to its "*LIBOR setting or submitting process*", whatever that may have actually entailed.

(5) *"Senior management"* at *"high levels within Barclays"* expressed concerns about the negative publicity which Barclays' LIBOR submissions had attracted in or around September 2007, which resulted in instructions being given by less senior managers to Barclays' LIBOR submitters to reduce the level of their LIBOR submissions in order to avoid further adverse media comment. From around September 2007 onwards, Barclays determined its LIBOR submissions whilst taking senior management's concerns about negative media or other publicity into account.

(6) During the financial crisis, Barclays believed that the LIBOR submissions which were being made by certain other Panel Banks were inappropriate and/or that certain Panel Banks were understating their LIBOR submissions. Barclays raised its concerns about the accuracy of the LIBOR submissions being made by other Panel Banks with a number of external entities, including (without limitation) the FSA, the Bank of England, the Federal Reserve Bank of New York and/or the BBA.

(7) Barclays received communications from the BBA on at least 17 April 2008 and 2 May 2008 which referred to concerns which had been raised with the BBA about the accuracy of LIBOR submissions being made by Panel Banks at or around that time.

(8) Barclays' LIBOR-related misconduct was *"widespread"*, involving *"multiple desks, traders, offices and currencies, including [US Dollar], Sterling, Euro and Yen"*, occurred over a number of years and, at times, took place on *"an almost daily basis"*.

**Barclays' Fraud**

25. Barclays (acting through its agents, officers and/or employees) made the LIBOR Representations fraudulently in that it knew that the LIBOR Representations were false and/or had no belief in their truth and/or was reckless as to whether or not they were true. For these purposes, the relevant knowledge was:

(1) that Barclays was proposing to customers, such as the Claimants, that they enter into financial transactions, such as the LOBO Loans, which contained obligations which were measured by reference to LIBOR, such that the LIBOR Representations were being made or might be made to such customers; and

(2) that such representations were or might be false.

26. Pending disclosure and/or the provision of further information by Barclays, the best particulars that the Claimants can provide are that it is reasonably to be inferred that at least each of the following individuals (the **"Relevant Individuals"**) had the relevant knowledge:

(1) Each of the LIBOR submitters and/or managers and/or senior managers and/or members of Barclays' *"senior management"* referred to in the LIBOR Findings.

(2) Any executive officers of Barclays who had knowledge (including blind eye knowledge) of any of the instances of LIBOR manipulation set out in the LIBOR Findings. In this regard, it is to be inferred from the scale and duration of the attempts to manipulate LIBOR revealed by the LIBOR Findings, the management *"instructions"* and the references to *"upstairs"* and *"internal political pressure"* that the manipulation of LIBOR was known about at a very senior level within Barclays.

(3) Those persons within Barclays who instructed and/or directed LIBOR submitters to make false and/or inappropriate LIBOR submissions to the BBA.

(4) Those persons within Barclays who exercised management and/or control over (a) its LIBOR submissions and/or (b) traders who made requests to LIBOR submitters.

(5) Those persons within Barclays' compliance department who were aware of the particular instances of actual or attempted manipulation of LIBOR identified in the LIBOR Findings and/or to whom internal concerns about Barclays' LIBOR submissions were *"escalated"* on three separate occasions between 2007 and 2008.

(6) The individuals in Barclays' *"senior management"* who are referred to at paragraphs 13, 14, 102, 112, 114 and 140 of the FSA Final Notice as having expressed *"concerns"* about negative media comment as to the level of Barclays' LIBOR submissions and whose concerns were subsequently taken into account by Barclays in determining its LIBOR submissions.

(7) The persons in Barclays' compliance department and/or senior management who are referred to at paragraph 172 of the FSA Final Notice as being the persons to whom concerns raised by a Barclays LIBOR submitter on or around 4 December 2007 (including concerns that Barclays had been making false and/or inappropriate LIBOR submissions and/or that it was being *"dishonest by definition"*) were *"escalated"*.

(8) The individual *"in senior management"* who is referred to at paragraph 179 of the FSA Final Notice as having reiterated an instruction to reduce Barclays' LIBOR submissions at a meeting with Barclays' LIBOR submitters on 6 November 2008.

27. Further or alternatively, the Claimants rely on each of the facts and matters set out in **Schedule 3** to these Particulars of Claim, from which it is reasonably to be inferred that each of the following employees and/or agents of Barclays had the relevant knowledge:

(1) Mr Bob Diamond (the President of Barclays and Chief Executive of Barclays Capital); and/or

(2) Mr John Varley (the Group Chief Executive of Barclays); and/or

(3) Mr Jerry del Missier (the Chief Operating Officer of Barclays Capital); and/or

(4) Mr Rich Ricci (the head of Investment Banking at Barclays Capital); and/or

(5) Mr Chris Lucas (the Group Finance Director of Barclays); and/or

(6) Mr Jonathan Stone (the Barclays Group Treasurer); and/or

(7) Mr Miles Storey (the Head of Group Liquidity at Barclays); and/or

(8) Mr Stephen Morse (the Head of Barclays' Compliance Department); and/or

(9) Mr Mark Dearlove (the Head of Barclays' Money Market Desk in London and the Global Head of Non-Sterling Liquidity); and/or

(10) the following individuals at Barclays who were responsible for making LIBOR submissions to the BBA on its behalf, namely: Mr Peter Johnson and/or Mr Peter Spence and/or Mr Ian Pike and/or Mr Kenneth Baynes.

28. Mr Johnson was subsequently investigated and prosecuted for fraud by the Serious Fraud Office. He pleaded guilty and was sentenced to four years in prison in July 2016.

29. Further, insofar as may be necessary, the Claimants will contend that each of the Relevant Individuals:

(1) could have prevented the false LIBOR Representations from being made had they made the facts which rendered the LIBOR Representations false more widely known; and/or

(2) had a duty, power or responsibility to see that such false LIBOR Representations were not made to persons such as the Claimants. Accordingly, it is to be inferred that they deliberately or recklessly abstained from intervening and thereby permitted the LIBOR Representations to be made by the agents, officers and/or employees of Barclays who were responsible for proposing and/or transacting each of the LOBO Loans with the Claimants in ignorance of the true facts and/or thereby impliedly authorised the making of the false LIBOR Representations to each of the Claimants.

**Reliance and Inducement**

30. The LIBOR Representations were material and the Claimants relied on and/or were induced by each of the LIBOR Representations in entering into each of the LOBO Loans.

31. Further, Barclays knew and/or intended that potential customers, such as the Claimants, would rely on and/or be induced by the LIBOR Representations when deciding whether to enter into transactions with Barclays which were referenced to LIBOR, such as the LOBO Loans and/or was aware that they would do so in the absence of unforeseen events.

32. Further, insofar as may be necessary, the Claimants will contend that they would not have entered into the LOBO Loans (or any of them) but for:

(1) the LIBOR Representations (or any of them) having been made by Barclays; and/or

(2) Barclays having failed to correct the LIBOR Representations (or any of them).

## E. RESCISSION

33. By reason of Barclays' fraudulent misrepresentations (as pleaded above), each of the LOBO Loans was or is liable to be rescinded and each of the Claimants:

(1) rescinded each of the LOBO Loans by the Claim Form issued on 26 June 2018 and/or by the letter from their solicitors, Hausfeld & Co LLP, to Barclays dated 27 June 2018; and/or

(2) hereby rescinds each of the LOBO Loans to which it was a party; and/or

(3) is entitled to and claims declarations that each of its LOBO Loans have been or are liable to be rescinded; and/or

(4) is entitled to and claims rescission of each of its LOBO Loans by order of the Court; and/or

(5) is entitled to and claims restitution of all net sums which it has paid to Barclays under each of its LOBO Loans (after giving credit for the remaining balance of such loans).

34. Further, the Claimants claim interest on such sums as may be awarded to them pursuant to section 35A of the Senior Courts Act 1981 at such rate(s) and for such period(s) as the Court may think just.

AND EACH OF THE CLAIMANTS CLAIM:

(1) declarations as pleaded above;
(2) rescission of each of their LOBO Loans;
(3) restitution of sums paid under and in relation to each of their LOBO Loans;
(4) interest as pleaded above;
(5) such further or other relief as the Court may consider just;
(6) costs.

TIM LORD QC

KYLE LAWSON

**STATEMENT OF TRUTH**

The Claimants believe that the facts in these Particulars of Claim are true. I am duly authorised by the Claimants to sign this statement on their behalf.

Signed: 

Name: Lucy Pert

Position: Partner

Date: 25 January 2019

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**BARCLAYS BANK PLC**
**Defendant**

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# PARTICULARS OF CLAIM

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