

**TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION NO. 3793453
FOR “THE LAWYER HUB”
IN THE NAME OF LEGALTECH APS
AND OPPOSITION THERETO NO. 437431
BY THELAWYER.COM LIMITED**

DECISION

1. This is an appeal from a successful opposition brought under s.3(6) Trade Marks Act 1994 on the grounds of bad faith.
2. The Applicant/Appellant is Legaltech ApS. It sought to register the mark The Lawyer Hub for a wide range of services in classes 35, 36, 41 and 42.
3. The Opponent/Respondent Thelawyer.com Limited opposed registration on a number of grounds. It was partially successful under s.5(2) but no appeal is pursued in relation to that by either party.
4. There are two relevant decisions which are the subject of this appeal.
5. Following a case management hearing which took place on 14 June 2023 before Hearing Officer Suzanne Hitchings, she ruled that a letter dated 7 September 2022 sent by the Applicant to the Opponent was not privileged and could be relied on by the Opponent as part of its bad faith allegation. I will refer to this as the Case Management Decision.
6. The opposition was determined on the papers following receipt of written submissions by another Hearing Officer, Heather Harrison, in a decision dated 16 September 2025. I will refer to this as the Substantive Decision. In that decision she found the application was made in bad faith on the basis that the letter of 7 September 2022 described it as a defensive registration.
7. In this appeal the Applicant submits that the Opponent should not have been permitted to refer to the 7 September 2022 letter because it was part of a without

prejudice chain of correspondence. As a result and/or in any event it is submitted that the Substantive Decision was wrong.

8. Before me at a hearing which took place on 12 January 2026, the Applicant was represented by Michael Johansen and the Opponent was represented by Mark Holan of Bird & Bird. I am grateful to both parties for their written and oral submissions.

Standard of Appeal

9. There was no dispute as to this. The principles are set out in the well-known cases of *Axogen v Aviv Scientific* [2022] EWHC 95 (Ch), *Lifestyle Equities v Amazon* [2024] UKSC 8 and *Iconix v Dream Pairs* [2025] UKSC 25. I summarised the approach in SOCIAL WORK NEWS (O/0050/24) at [13]:

To paraphrase, an appeal should only be allowed where the decision of the lower court was “wrong”. Absent an error of law, the appellate court would be justified in concluding that the decision of the lower court was wrong if the judge’s conclusion was “outside the bounds within which reasonable disagreement is possible”. In the case of a multifactorial assessment and in the absence of a distinct error of principle, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere.

10. I have sought to apply those principles. It is not enough that a different tribunal might have reached a different conclusion; I must be satisfied that the Hearing Officer(s) was/were wrong in the conclusions they reached.

APPEAL OF THE CASE MANAGEMENT DECISION

11. As alluded to above, the basis for the appeal of the Case Management Decision is that the Hearing Officer was wrong to conclude that the 7 September 2022 letter was not privileged. There were four separate grounds of appeal against this decision which I deal with in context below.
12. I was taken by the Opponent to the authorities on privilege, including *Cutts v Head* [1983] EWCA Civ 8 where Fox LJ explained the term as follows by reference to *Walker v. Wilsher*, 23 Q.B.D. 335:

Lindley L.J., also at p. 337, said that the words “without prejudice” meant without prejudice to the position of the writer of the letter if the terms he proposes are not accepted, but that “according both to authority and to good sense” the answer also must be treated as made without prejudice.

13. In other words, if the writer would be prejudiced in the substantive dispute by a concession made in an attempt to settle the proceedings, such material should be held to be made "without prejudice". In the present case there is little dispute that the writer is prejudiced by the contents of the 7 September 2022 letter because it was successfully relied upon by the Opponent in the opposition. The real question is whether it amounted to a concession made in the course of trying to negotiate a settlement of the dispute.
14. I was also referred to the decision of Coulson J in *Galliford Try Construction EWHC 603 (TCC)* where he summarised some of the other underlying principles as follows:

5.1 General

- (a) "The without prejudice rule is a rule governing the admissibility of evidence and is founded upon the public policy of encouraging litigants to settle their differences rather than litigate them to a finish": Lord Griffiths in *Rush & Tompkins Ltd v Greater London Council* [1989] AC 1280 at 1299.
- (b) "... parties should be encouraged so far as possible to settle their disputes without resort to litigation and should not be discouraged by the knowledge that anything that is said in the course of such negotiations (and that includes of course as much the failure to reply to an offer as an actual reply) may be used to their prejudice in the course of the proceedings": Oliver LJ in *Cutts v Head* [1984] 1 All ER 597 at 605-606.
- (c) The without prejudice rule "has a wide and compelling effect": Robert Walker LJ (as he then was) in *Unilever v Proctor & Gamble* [2001] 1 All ER 783 at 791.

5.2 Negotiations

- (a) The without prejudice rule excludes "all negotiations genuinely aimed at settlement, whether oral or in writing": *Rush & Tompkins*.
- (b) The privilege cannot apply unless there is a dispute which is genuinely the subject of settlement negotiations: *Barnetson v The Framlington Group* [2007] 1 WLR 2443.
- (c) There is a distinction to be drawn between true negotiations and the mere assertion of each side's case or the making of criticisms of the other side's case. The without prejudice rule does not apply to a communication which does not unequivocally indicate the maker's intention to negotiate: *Buckinghamshire County Council v Moran* [1990] Ch 623.

5.3 The 'Without Prejudice' label

- (a) The fact that the label "without prejudice" has or has not been used on a particular document or set of meeting notes is not conclusive evidence that the document is or is not without prejudice: *Rush & Tompkins*.

(b) Negotiations entered into for the purpose of trying to resolve a dispute are, unless the contrary is shown, without prejudice, whether or not they are described as such: *Chocoladenfabriken Lindt v Nestlé Co Ltd* [1978] RPC 287.

15. The Hearing Officer accepted that the absence of any label “Without Prejudice” in the 7 September 2022 letter was not fatal to the Applicant’s case, and I accept that. The test is one of substance and not form.
16. The Applicant accused the Hearing Officer of applying the wrong test – a narrower one than set out in the Trade Marks Manual (ground 1). I reject this. Having reviewed the underlying authorities, I consider the Hearing Officer applied the right test in law, which is correctly summarised in the Manual at §4.20 and to which she referred. The Manual quotes from many of the same authorities as were referred to by Coulson J. in the extract above. The Hearing Officer was correctly asking herself whether the material amounted to concession made in the course of negotiations.
17. Before the Hearing Officer and before me the Applicant relied on the fact that the original letter from Bird & Bird dated 24 August 2022 was marked “Private and Confidential”. Mr Johansen suggested that this would be understood by a Danish lawyer as meaning it should not be referred to in Court.
18. That letter accuses the Applicant of infringing the Opponent’s registered marks and asks for signed undertakings for the following reasons:

For the reasons set out above, The Lawyer is entitled to issue proceedings against your client, including (1) opposition proceedings against the Applications, and (2) trade mark infringement and/or passing off proceedings, depending on your client's use, which would entitle our client to seek, amongst other remedies, injunctive relief (including an interim injunction), delivery up or destruction of all infringing items, damages or an account of profits as well as its legal costs and interest.

However, our client would prefer to settle this matter amicably with your client, rather than entering into protracted opposition proceedings. We ask that your client withdraws the Applications at the EUIPO and UKIPO and provide signed undertakings in the form enclosed by 5pm (BST) on 7 September 2022. ... If your client does not agree, or we do not hear from you by 7 September 2022 we will advise our client to take such further action as is appropriate to protect their interests. This will include filing oppositions against the Applications in the first instance.

19. There was no evidence before the Hearing Officer of Danish law, and although I have no reason not to accept Mr Johansen’s explanation of the custom in Denmark, this is a UK trade mark application/dispute and the law of England and Wales applies

to the characterisation of the correspondence. As to that, Mr Holan correctly described the Bird & Bird letter as “uncompromising” – the very antithesis of an attempted negotiation. It contained no proposal of settlement and simply asked the Applicant to give up in trenchant cease and desist terms. In Coulson J.’s words, it contained no more than “mere assertion of each side's case or the making of criticisms of the other side's case”. So the Bird & Bird letter does not assist the Applicant. There was no “joint privilege” as alleged by the Applicant’s ground 4.

20. As for the Applicant’s own letter dated 7 September 2022, I think the Hearing Officer was entitled to find that it did not contain an offer or a concession or put forward a position by way of attempted negotiation which would cause “prejudice to the position of the writer of the letter if the terms he proposes are not accepted”.
21. The letter first denies that there is any conflict between the respective marks and states:

We have noted that your clients trademark registrations are only figurative.

As you are naturally aware, this means that the trademark only provides protection for the figurative elements of the registered trademark, not the words of the trademark themselves.

We therefore respectfully disagree that your clients earlier figurative trademark rights should prohibit an EUIPO and UK registration of my client's word trademark applications.

22. This is no more than a statement of the Applicant’s case.
23. The Applicant relied on two passages in particular. The first explained as follows (emphasis added):

As you might be aware LEGALTECH ApS has not initiated any use of "The Lawyer Hub" trademark yet, including related domain names.

Your client might find some comfort in the information that LEGALTECH ApS registered "The Attorney Hub" as a word trademark well before the application for "The Lawyer Hub".

The reason for this is that we primarily intend to use "The Attorney Hub" for our homepage and services. For us "Attorney" is the more relevant and used professional title for a qualified legal practitioner in Europe.

However, while also registering the word trademark "Full Stack Attorney", we experienced that a Finnish law firm subsequently tried to register "Full Stack Lawyer" as a trademark, for the same services.

So primarily as a defensive measure, we decided to register the trademarks with both "Attorney" and "Lawyer". We would most likely (and did in the case

of "Full Stack Attorney/ Lawyer" be able to prove "risk of confusion" and therefore have the other application denied for our registered classes - but it takes time and costs money.

So, we simply found it easier and legally cost effective to register both word trademarks. But for "The Lawyer Hub" trademark to be valid long term, we will naturally need to make relevant use of the trademark and have a very basic homepage, which refers potential new customers to "The Attorney Hub".

24. Mr Johansen repeated much of this material before me. There was no question that it was not an accurate statement of the Applicant's intentions.

25. Then at the end, the letter concluded:

Perhaps the most appropriate way to proceed, would be to set up a video-call, to discuss the issues raised in more depth. I have a very important and significant court case at the appeals court this Friday and Monday but would be available after those days.

We only wish a constructive dialogue with your client and see our future services as something your client would want to write about to its readers rather than something to have legal fights about.

In the hope of a constructive future dialogue.

26. The first passage – which is the passage relied on by the Opponent for bad faith – merely states what the Applicant intended to do with its mark. There was no attempt here by the Applicant to negotiate, particularly in the light of what had been said at the start of the letter. The Applicant simply hoped that by explaining its commercial plans the Opponent would give up and not pursue the opposition any further. Contrary to the Applicant's ground 3 in relation to this decision, the Hearing Officer did properly consider the purpose of the statement.

27. The second passage did go on to propose a discussion. The Applicant's ground 2 described this as "conciliatory". The tone was certainly less aggressive than Bird & Bird's letter but the mere suggestion of the possibility of a future discussion does not amount to a concession or to actual negotiations. That discussion might be open or without prejudice or a mixture of both. So the mere proposal of discussions without further detail as to what they might contain does not render the letter privileged. Further, as the Hearing Officer noted, no such discussions actually took place.

28. I have no reason to doubt that the proposal by the Applicant of a discussion was made in the hope that some sort of compromise might be reached. But the proposal of a discussion on its own does not amount to a negotiation and there was no

concession made in the mere proposal of a discussion, which as I have noted might have been open or without prejudice or both.

29. The Hearing Officer found that the mere suggestion of a video call did not render the letter privileged. As will be apparent from my analysis above, I agree. Although matters of privilege are very often nuanced, and the overriding desire to encourage settlement means that the net should usually be cast wide in favour of protecting without prejudice discussions, I am not satisfied that the Hearing Office made any error in her assessment having taken all relevant matters into account. She applied the correct principles to the material before her and made a decision which I cannot say is wrong.
30. I reject the appeal against the Case Management Decision.

THE SUBSTANTIVE DECISION

31. In circumstances where the Applicant has failed in his appeal on the Case Management Decision, the scope of the appeal on bad faith is narrower than it would have been.
32. Mr Johansen had two points of principle which he emphasised before me. As a qualified lawyer, he was concerned that a finding of bad faith was a slight on his professional character. He also maintained that it was no more than sensible business planning for a party to register marks around the trading name which it intended to use, so as to prevent others adopting confusingly similar branding.
33. A layperson might well have some sympathy with both of Mr Johansen's points. However, for better or for worse I have to approach the issues from the perspective of established trade mark law. Under established trade mark law, the registration of marks purely for defensive purposes is not permitted. The rationale for this is that registered trade marks already have a penumbra of protection around them, given by the provisions of ss.10(2) and (3) of the Trade Marks Act 1994 and their European counterparts, which allow protection from the use of similar or even dissimilar marks. The registers would get completely clogged up with applications if it was permissible for parties to apply not only for the marks they intended to use, but also for marks which are similar to those marks. So as a matter of policy the registration of defensive marks is deprecated.
34. For similar reasons, a finding of "bad faith" arising out of the attempted registration of a defensive mark is not to be seen as a comment on the general propriety and/or honesty of the applicant (although there are other types of bad faith conduct which

might be). It is a finding that the application has been made contrary to the principles of trade mark law, but no more. As noted above, trade mark law has its own special rules which, for policy reasons, may not always coincide with the views of a layperson. So I do not consider that a finding of bad faith for the attempted registration of a defensive mark amounts to a professional slight in the way that Mr Johansen was concerned about.

35. With that introduction I turn to the law on bad faith, recently summarised by Lord Kitchin in his *tour de force* judgment in *Skykick v Sky* [2024] UKSC 36. Relevant extracts are as follows:

155. The circumstances which may justify a finding that an application to register a sign as a trade mark was made in bad faith have tended to fall into one of two categories (see, for example, *Koton* at para 46):

(i) where the application was made, not with the intention of engaging fairly in competition but with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties; or

(ii) where the application was made with the intention of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, in particular the essential function of indicating origin – and so enabling the consumer to distinguish the goods and services of one undertaking from others which have a different origin.

36. This is a category (ii) case.

37. Lord Kitchin continued:

Category (ii) cases

181. I turn now to the second category of case where it may be found that a registration is invalid because the application was made in bad faith. This is concerned with cases and circumstances where the application for registration constituted, in respect of all or some of the goods or services for which protection was sought, an abuse of the trade mark system. Here it is not necessary to show that the goods or services of the party asserting bad faith are the same as or similar to those that are the subject of the contested registration; nor is it necessary to show that the parties' respective marks are the same or similar. These may be relevant matters to take into account, but they are by no means essential to a successful objection on this ground.

Establishing a relevant abuse

182. It is necessary, however, to establish two core elements of the impugned activity to make good this objection to the validity of a registration, one objective and the other

subjective. First, despite what may have been formal observance of the relevant trade mark rules, the applicant for the contested registration must have adopted a strategy which meant that the purpose of the rules was not met. Secondly, the applicant must have intended to obtain an advantage from the rules by artificially creating the conditions laid down for securing the registration. Of particular importance here may be whether the application was made with the intention of obtaining an exclusive right for purposes other than those falling within the functions of a trade mark.

38. Lord Kitchin went on to review some of the relevant EU and UK cases, including the following (emphasis added):

Target Ventures

236. Next in time is the judgment of the General Court in *Target Ventures Group Ltd v EUIPO* (Case T-273/19) EU:T:2020:510, which in my view is also supportive of SkyKick's appeal. Here the General Court applied much the same reasoning as the CJEU in *Sky* CJEU but in rather different circumstances. **The question was whether an organisation called Target Partners GmbH, the intervener, which operated a venture capital fund under the mark TARGET PARTNERS, had acted in bad faith when it applied to register the contested mark TARGET VENTURES. It had only used these words as part of the domain names 'www.targetventures.de' and 'www.targetventures.com' and these sites were merely a means of redirection to the intervener's 'www.targetpartners.de' official site.**

237. The General Court answered this question in the affirmative. It emphasised, at para 35, that although an applicant for the registration of a trade mark is not required to indicate or even know precisely, on the date the application is filed, the use that he or she will make of the mark, and (ii) although he or she has a period of five years for beginning actual use consistent with the essential function of a trade mark, the registration of this mark by the intervener without any intention of using it in connection with the goods and services covered by the registration did constitute bad faith. This was because there was no rationale for the application in the light of the aims referred to in Regulation 207/2009. **The court continued, at paras 36–42, that it was apparent from objective, relevant and consistent indicia that the intention of the intervener had not been to put the contested mark to a use falling within the functions of a trade mark but instead to try to protect its own mark TARGET PARTNERS which was the only mark under which it offered its services.**

238. The court also explained, at para 46, that in circumstances such as these, it is not necessary to show that the application was made with a view to targeting a specific third party:

‘... if the intention of the proprietor of the contested mark at the time of filing his or her application for registration is that of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, an examination of whether that proprietor had prior knowledge of a third party’s use of the sign at issue is not a *conditio sine qua non* in order for it to be possible to hold that that proprietor was acting in bad faith. ...’

39. In what is bound to become an oft-cited paragraph, Lord Kitchin provided a comprehensive summary at §240, from where I extract the most relevant points for this case (emphasis added):

- (iii) Bad faith in this context is an autonomous concept of EU law which must be given a uniform interpretation in the European Union, and must be interpreted in the context of Directive 89/104 in the same manner as in the context of Regulation 40/94 (Malaysia Dairy, para 29; Sky CJEU, para 73).
- (iv) While, in accordance with its usual meaning in everyday language, the concept of bad faith presupposes the presence of a dishonest state of mind or intention, **the concept must also be understood in the context of trade mark law, which involves the use of marks in the course of trade**. Further, it must have regard to the objectives of the EU law of trade marks, namely the establishment and functioning of the internal market, and a system of undistorted competition in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trade marks signs which enable consumers, without any possibility of confusion, to distinguish those goods or services from those which have a different origin (Lindt, para 45; Koton, para 45).
- (v) Consequently, the objection will be made out where the proprietor made the application for registration, not with the aim of engaging fairly in competition but either (a) with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties; or **(b) with the intention of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, and in particular the essential function of indicating origin** (Koton, para 46; Sky CJEU, para 75).
...
- (vii) The burden of proving that an application for a registered mark was made in bad faith lies on the party making the allegation. But where the circumstances of the case may lead to a rebuttal of the presumption of good faith, it is for the proprietor of the mark to explain and provide a plausible explanation of the objectives and commercial logic pursued by the application for registration (Hasbro, paras 42 and 43).

(viii) Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all of the factors relevant to the particular case (Lindt, para 37).

...

(x) **Nevertheless, the registration by an applicant of a mark without any intention to use it in relation to the goods and services covered by the registration may constitute bad faith where there is no rationale for the application in the light of the aims referred to in Regulation 40/94 and Directive 89/104 (Sky CJEU, para 77).**

(xi) Such bad faith may, however, be established only where there are objective, relevant and consistent indicia tending to show that, when the application was filed, the applicant for registration had the intention either of undermining, in a manner inconsistent with honest practices, the interests of third parties, or **of obtaining, without targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark (Sky CJEU, para 77).**

40. On the facts of the *Skykick* case, Lord Kitchin found as follows (emphasis added):

251 Here I am persuaded by the reasoning in the decisions of the CJEU to which I have referred that for a person to make an application to register a mark for goods and services **for some purpose which is not contemplated by the legislation and in relation to which that person had no intention (conditional or otherwise) to use the mark as a badge of origin constitutes an abuse – that is to say, a misuse of the system.**

252. I recognise that such an applicant, when given an appropriate opportunity, may provide a reasonable explanation and justification for its actions and in that way answer and dispel any inference that it made the application in bad faith. If, however, it fails to do so, it is in my view open to the tribunal to find that the application was indeed made in bad faith in respect of those goods and services.

The appeal

41. The Hearing Officer had cited from *Skykick* and held in §189:

The use of a trade mark as a net to catch and redirect potential customers to the applicant's official website, which uses a different brand name, is a purpose which does not fall within the functions of a trade mark. This conclusion is consistent with that of the General Court in *Target Ventures Group Ltd v EUIPO*, T-273/19, EU:T:2020:510, a case with similar facts, though of course that decision is not binding on me. It is, in my view, apparent from the applicant's comments, above, that the application was filed not to put it to a use falling within the functions of a trade mark but to obtain an exclusive right in order to expand any protection it legitimately

had, or expected to have, in the name “The Attorney Hub”. Prima facie, that is bad faith.

42. Having reviewed the arguments before her, the Hearing Officer concluded on the first limb of the Opponent’s objection (which is the only one relevant to this appeal):

195. On this first limb, I find that the applicant has not rebutted the prima facie inference of bad faith. It applied for the trade mark not with the intention of using it in accordance with the functions of a trade mark but in order to enlarge the protection of rights in the name “the Attorney Hub” and to make protection of that sign easier. The s. 3(6) ground is made out.

43. Before me the Applicant ran no less than seven grounds of appeal against the Substantive Decision.

44. Ground 1 amounted to a head-on challenge to the notion that defensive registrations could amount to bad faith. As the passages I have highlighted above in *Skykick* demonstrate, including the reference to *Target Ventures* with facts so similar to the facts of the present case, that argument is hopeless. It is well established as a proposition of EU and UK trade mark law that registration for defensive purposes is not permitted under the bad faith provisions because there is no genuine intention to use the mark in relation to the goods or services. A redirection site does not satisfy this requirement.

45. Under ground 2, the Applicant accused the Hearing Officer of mis-assessing the evidence and cherry picking from the correspondence. It was said that she ignored the statement of intent to use. But the *pro forma* statement of intent to use is trumped by the later evidence. I reject this attack as a classic attempt to reargue the points below without identifying any legitimate error.

46. The Applicant went on to say that the multiple filings it made were evidence of a legitimate strategy, and that normal brand protection involved such registration. Whilst it might be normal to try to acquire domain names around the particular brand intended to be used, it is contrary to established trade mark law to register marks in the same way. This is just an attempted rehash of ground 1.

47. Under ground 3 it was said that there was a logical inconsistency because The Lawyer Hub was further away from The Attorney Hub than from The Lawyer, yet there was only a limited overlap under s.5(2) for the latter. But this is irrelevant because Lord Kitchin explained that the considerations for bad faith are different to s.5(2) and do not require a likelihood of confusion. See §181 of *Skykick*.

48. Under ground 4 it was said that the Hearing Officer wrongly reversed the burden of proof. I reject this criticism too. *Skykick* makes clear that although the burden is on the opponent in such cases, once a prima facie argument has been established, as here, it is then up to the applicant to rebut that. It failed to do so in the present case.
49. Ground 5 relied on the Applicant's lack of knowledge about the existence of The Lawyer in the UK. Again this is irrelevant because the relevant test does not involve a comparison of marks and the limb 1 complaint upheld by the Hearing Officer did not depend on any suggestion that the Applicant was deliberately targeting the Opponent. It turned solely on whether the Applicant genuinely intended to use the mark in relation to the goods or services. See §238 of *Skykick*.
50. Finally, under grounds 6 & 7, which were run together, it was said that only those parts of the specification should be crossed out where there was an intention to block or they competed with the Opponent's specification for The Lawyer. Again this misunderstands the test. If there was no proper intention to use across the width of goods and services sought – which were broad in this case – then the whole specification is bad under s.3(6) principles. As explained under ground 5, the test does not require there to be competition or a likelihood of confusion with an existing mark.
51. For all these reasons I find that the Applicant's appeal fails. Once the evidence of the defensive registration was established by the Applicant's letter (which Mr Johansen also repeated to me in oral submissions), the application clearly falls squarely within the type (ii) prohibited case identified in *Skykick*.

Costs

52. The Hearing Officer ordered the Applicant to pay £2300 in costs below. The Applicant did not attempt to appeal costs separately, and although Mr Johansen made submissions before me that the amount was high even if the right substantive decision was reached, repeated in writing following the hearing, I consider that the absence of standalone grounds in the TM55 mean that I am not entitled to review this award. It would be contrary to the practice on appeals such as this, and unfair on the Opponent. In any event, it is notorious that the threshold for appealing an award of costs is high. Further, where there were at least two case management decisions below before the substantive decision, and where I have not been asked to review the entirety of the file because the point was not raised in the TM55, I am unable to say that the award was wrong.

53. On this appeal I take into account the relative brevity of the submissions and the nature of the arguments, together with the existence of the hearing which took place. Doing the best I can I award the Opponent a further £1200 in relation to its costs of the appeal.
54. Therefore I order that the Applicant should pay to the Opponent the total sum of £3500 within 28 days of the date of this decision, namely by 4pm on 16 February 2026.

Thomas Mitcheson KC
The Appointed Person
19 January 2026