

**O-565-18**

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATIONS NO 3 172 551 DANCE UK



DANCE AND NO 3 212 726 FOR SERVICES IN CLASS 41 BY 5678

MEDIA GROUP LLC

AND

IN THE MATTER OF OPPOSITION THERETO BY TALPA CONTENT BV

## Background and pleadings

1. 5678 Media Group LLC (the applicant) applied to register the following trade



marks: No 3 172 551 Dance UK Dance and No 3 212 726 in the UK on 1<sup>st</sup> July 2016 and 14<sup>th</sup> February 2017 respectively. No 3 172 551 was accepted and published in the Trade Marks Journal on 30<sup>th</sup> September 2016 in respect of the following services:

Class 41:

*Arranging, conducting and organising dance competitions, social dances, and dance exhibitions, educational services, namely, conducting workshops, seminars, and classes in dance; arranging and organising dance programs and events in different communities.*

2. No 3 212 726 was accepted and published in the Trade Marks Journal on 24<sup>th</sup> February 2017 in respect of the same Class 41 services as above.
3. Talpa Content BV (the opponent) oppose trade mark No 3 172 551 on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (the Act). This is on the basis of the following earlier trade marks: European Union Trade Mark No 1 558 9872 DANCE DANCE DANCE and European Union Trade Mark No 1



440 6441: The following services are primarily relied upon in this opposition:

Class 41:

*Education; Providing of training; Entertainment; Sporting and cultural activities; Compiling, producing, directing and presenting of radio, television, audiovisual, musical, entertainment and theatre programmes; Rental, publishing and lending of sound and/or image recordings containing radio, television, audiovisual, musical, entertainment and theatre programmes; Manufacturing of video films; Organising sporting, cultural, musical and educational events; Arranging and conducting of music events, concerts, festivals, performances and parties; Services of musicians and other performing artists; Performing and composing of music; Rental of audio recordings, sound recording apparatus and musical instruments; Recording, production and post-production of musical works, films and image and/or sound recordings; Publishing, lending and/or rental of musical works, films, video films and image and/or sound recordings; Providing of information in the fields of showbusiness, entertainment, radio and television programmes, motion picture films, culture, education, entertainment and sport (content); Devising concepts for (game) shows on radio and television, including formats; Rental of stage scenery; Rental of radio and television sets; Publishing, lending and providing of books, newspapers, magazines, guides, program listings and other publications; Publishing services; Lottery services; The aforesaid services including via radio, television, teletext, the Internet or other networks, electronic or otherwise; Editorial services (non-publicity); Making photographic, film and video reports; Photography; Arranging of performances in the context of theatrical booking agencies.*

4. The opponent argues that the respective services are identical or similar and that the marks are similar.
5. In respect of trade mark application No 3 212 726, the opposition is brought on the basis of Sections 5(2)(b), 5(3) and 5(4)(a). In respect of Section 5(2)(b), this is brought on the basis of the same earlier EU trade marks (Nos 1

440 6441 and 1 558 9872) as detailed above. In respect of Section 5(2)(b), the opponent claims that the respective services are identical or similar and that the marks are similar.

6. Under Section 5(3), it is earlier trade mark No 1 558 9872 which is solely relied upon. Here, the opponent claims that it enjoys a reputation and that the use of the later trade mark will lead the public to believe that it is a UK-only version of activities covered by the earlier trade mark. Use of the later trade mark will therefore also freeride on the reputation of the earlier trade mark. Finally, there is a risk of dilution to the earlier trade mark as it is presently the only operator in the UK in the field of television that uses repetition in this manner.
7. Under Section 5(4)(a), the opponent relies upon the earlier right DANCE DANCE DANCE which it claims has been used since 8<sup>th</sup> January 2017, throughout the UK, in respect of entertainment services including televised entertainment. The opponent claims it enjoys a goodwill in its earlier right and that use of the later trade mark would mislead consumers to believe that the respective undertakings are connected and offer the same quality. This will lead to damage to the opponent's business including loss of revenue and/or depletion of the value of its mark.
8. The applicant filed counterstatements denying all the claims made.
9. Only the opponent filed evidence in these proceedings. This will be summarised to the extent that it is considered necessary.
10. The applicant filed written submissions which will not be summarised but will be referred to as and where appropriate during this decision.
11. A Hearing took place on 4<sup>th</sup> July 2018, with the opponent represented by Mr David Ivison of Counsel, instructed by Lewis Silkin LLP and the applicant by Mr Edward Bragieli of Counsel, instructed by Trade Mark Wizards Limited.

## Evidence

12. This is a witness statement, dated 30<sup>th</sup> October 2017 from Mr Aaron Newell, a solicitor with Lewis Silkin LLP, the opponent's representatives in this matter.

Mr Newell explains:

- The opponent is the production company behind the television show "Dance Dance Dance", which airs in the UK, Germany, Italy and the Netherlands. Couples (who are celebrities) compete in a televised dance competition. It is hosted by Alesha Dixon who, according to Mr Newell, is a household name in the UK;
- The show's first season in the UK was broadcast on ITV between January and February 2017;
- Viewing figures for the show (during a six-week run) were 4.70 million (week one); 3.82 million (week two); 4 million (week three); 3.59 million (week four) and 3.40 million (week six). Week five figures are unavailable;
- Exhibit AN4 contains a selection of articles about the show. It is noted that it received publicity pre-launch, during its season and afterwards. This includes a celebration of the eventual winners of the show. It is noted that there is an article from the BBC news website, dated 22<sup>nd</sup> July 2016; a further article from the same website, dated 16<sup>th</sup> November 2016 announcing Alesha Dixon as host; an article from the OK magazine website, dated 22<sup>nd</sup> January 2017 regarding controversy on the show; an article from the Guardian, dated 22<sup>nd</sup> July 2016 regarding the launch of the show; a further article from the Guardian, dated 20<sup>th</sup> November 2016, regarding televised dance shows within which Dance Dance Dance is mentioned as a future show; an article from the Sun, which is undated but refers to the show bursting onto screens and describing some of the celebrity couples. It is, in effect, a preview for the final episode of the show and so can be dated as February 2017.
- Exhibit AN5 is information regarding the show's Twitter account. It is noted that as at June 2017 it had 10,700 followers. At the date of the witness statement, this had increased to 14,000 followers;

- Exhibit AN6 contains information from YouTube videos of the final performance of the winning couple. This has seen more than 98,000 views since it was published on 13<sup>th</sup> February 2017.

13. The remainder of the witness statement contains submissions on the grounds of opposition. This will not be summarised but has been taken into account in reaching this decision.

14. Following submissions of the applicant (which are not summarised but have been perused and taken into account), the opponent filed a further witness statement. This is dated 16<sup>th</sup> April 2018 and is again from Mr Aaron Newell. As regards reputation, Mr Newell claims that the TV show enjoyed a market share of 21.1%, though there is no detail as to how the market is defined. There are further examples of media exposure, such as an article that appeared in the Daily Mail, dated 8<sup>th</sup> January 2017; another from The Huff Post in January 2017 and another from The Sun, dated 12<sup>th</sup> February 2017. There is also reference to an article dated April 2017 from The Radio Times, describing the show as “a hit with viewers”.

## **DECISION**

15. It is noted that one of the earlier trade marks relied upon (No 1 558 9872) is currently under attack at the European Union Intellectual Property Office. As such, this decision will focus upon the remaining earlier trade mark (No 1 440 6441) and consider the remaining word only trade mark only if necessary.

### **Section 5(2)(b)**

16. Section 5(2)(b) of the Act is as follows:

“5(2) A trade mark shall not be registered if because-

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

## **Comparison of goods and services**

17. In the judgment of the Court of Justice of the European Union in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

18. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

19. The guidance in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, is also taken into account, specifically where the General Court stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM- Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

20. The earlier services are:

Class 41:

*Education; Providing of training; Entertainment; Sporting and cultural activities; Compiling, producing, directing and presenting of radio, television, audiovisual, musical, entertainment and theatre programmes; Rental, publishing and lending of sound and/or image recordings containing radio, television, audiovisual, musical, entertainment and theatre programmes; Manufacturing of video films; Organising sporting, cultural, musical and educational events; Arranging and conducting of music events, concerts, festivals, performances and parties; Services of musicians and other performing artists; Performing and composing of music; Rental of audio recordings, sound recording apparatus and musical instruments; Recording, production and post-production of musical works, films and image and/or sound recordings; Publishing, lending and/or rental of*

*musical works, films, video films and image and/or sound recordings; Providing of information in the fields of showbusiness, entertainment, radio and television programmes, motion picture films, culture, education, entertainment and sport (content); Devising concepts for (game) shows on radio and television, including formats; Rental of stage scenery; Rental of radio and television sets; Publishing, lending and providing of books, newspapers, magazines, guides, program listings and other publications; Publishing services; Lottery services; The aforesaid services including via radio, television, teletext, the Internet or other networks, electronic or otherwise; Editorial services (non-publicity); Making photographic, film and video reports; Photography; Arranging of performances in the context of theatrical booking agencies.*

21. The later services are:

Class 41:

*Arranging, conducting and organising dance competitions, social dances, and dance exhibitions, educational services, namely, conducting workshops, seminars, and classes in dance; arranging and organising dance programs and events in different communities.*

22. The earlier services include *education* at large. The following later services are included in and, according to the terms in *Meric*, are identical to:

*educational services, namely, conducting workshops, seminars, and classes in dance.*

23. The remaining later terms are: *arranging, conducting and organising dance competitions, social dances, and dance exhibitions, arranging and organising dance programs and events in different communities.* The earlier terms include: *organising sporting, cultural, musical and educational events.* This is a broad term which can include a wide variety of different types of events, including dance. As such the later *organising dance competitions, social*

*dances and dance exhibitions* is considered to be included within the earlier term and so is identical. The same is true for the following later services: *arranging dance competitions, social dances, dance exhibitions, dance programs and events in different communities*. There is considered to be no material difference between “organising” and “arranging” (indeed they can be interchangeable). They are identical.

24. In respect of the later *conducting dance competitions, social dances, dance exhibitions, dance programs and events in different communities*, it is considered that these services are directed towards the same end consumers as the earlier broader terms; they can reasonably be carried out by the same undertaking and will likely have the same channels of trade. They are considered to be similar to a high degree.

## Comparison of marks

25. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

26. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

27. The respective trade marks are shown below:

	<p style="text-align: center;">Dance UK Dance</p> 
<p>Earlier trade mark</p>	<p>Contested trade marks</p>

28. The earlier trade mark is a complex mark comprised of two silhouettes of people dancing either side of the words DANCE DANCE DANCE which appear centrally. The words catch the eye first and are considered to be the mark's dominant feature. Both the repetition of the words and the silhouettes are considered to have distinctive character (the degree of which will be discussed below).

29. The same is true of the later complex trade mark: the stars and (slight) get-up is noted, but the verbal element DANCE UK DANCE is considered dominant (and distinctive).
30. In comparing the earlier trade mark to the word only later mark, I note that visually, the marks coincide in respect of the presence of DANCE appearing both at the beginning and end of the verbal elements present therein. They differ in respect of the substitution of UK for DANCE in the later trade mark as well as in respect of the additional silhouettes in the earlier trade mark. They are similar to a low to medium degree.
31. In respect of the later complex trade mark, there are differences in presentation as shown above. However, there are also similarities in respect of the repetition of Dance (albeit three instances versus two). The words also appear centrally in each of the trade marks. There is therefore considered to be a degree of similarity visually, though this is pitched as being low.
32. Aurally, the earlier trade mark will be referred to as “Dance, Dance, Dance” and the later trade marks as “Dance UK Dance”. The marks therefore differ in respect of the middle element. However, the first and final words are identical. They also both include a repetitive feature. They are considered aurally similar to a medium degree.
33. Conceptually, the earlier trade mark will be understood as referring to movement of the body and feet (usually) to music. The repetition of the word does not alter this message. Rather, it reinforces it. The same meaning is apparent from the later trade marks, albeit with the addition of a geographical location. This difference does have some impact in that it conveys a geographical focus of dance. At the Hearing, Mr Bragiel suggested that it conveyed a message of instruction (to dance) for those dwelling in the UK. However, the earlier trade mark may also convey such an instruction (albeit not geographically specific). Importantly, the inclusion of UK does not have the effect of creating a clear conceptual gap as the core message is still in

respect of Dance. The marks are considered to be conceptually similar to a medium to high degree.

## **Average consumer and the purchasing act**

34. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

35. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

36. The average consumer for the relevant services will be the public at large, including those with a more focussed and/or professional interest in dance. The purchasing act is likely to be reasonably considered with a consumer displaying at least a medium degree of attention. This is because a potential consumer is likely to want to be sure of suitability (for age ranges for example) as well as the genre of dance included. The selection of such services may follow a period of research and/or word of mouth recommendations so both visual and aural considerations are important.

## Distinctive character of the earlier trade mark

37. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

38. The opponent claims that it enjoys a reputation in its earlier word only trade mark. There does not appear to be an equivalent claim in respect of its earlier complex trade mark, which is the primary focus of this decision. There is therefore only the prima facie case to consider. The word “Dance” alone is clearly very weak in respect of dance related services. However, the earlier trade mark employs repetition of the term, together with dancing silhouettes.

This increases its overall degree of inherent distinctiveness. That said, it is considered that the overall degree of distinctiveness remains less than average.

## **GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion.**

39. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

### *The principles*

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

40. I will consider the position as regards the later word only trade mark first. The respective services are identical and highly similar. This is important as the interdependency principle is in operation here. I take into account the

relatively lower degree of distinctiveness of the earlier trade mark relied upon. I also note that the trade marks have been found to be aurally similar to a medium degree and conceptually similar to a medium to high degree. Visually, the degree of similarity is pitched as low to medium. That said, it is considered that the marks have a similar overall impression as a result of the repetition of DANCE and the overall structure of the verbal elements. It is also considered that the differences between the trade marks will be noticed (notably, it is expected that a potential consumer will display at least a medium degree of attention during the purchasing process): UK versus DANCE in the middle of the marks, together with the dancing silhouettes present in the earlier mark. These differences are considered to be sufficient to ensure that there is no likelihood of direct confusion.

41. However, that is not the end of the matter. I also bear in mind the following guidance in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, where Mr Iain Purvis Q.C., as the Appointed Person, explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

42. I also bear in mind the following: *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, where Mr James Mellor Q.C., as the Appointed Person,

stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

43. In these proceedings, the marks share a common element, which is also repeated in a similar manner and with the only verbal difference appearing in the middle of the marks. As already stated above, they have a similar overall impression and a similar rhythm. Bearing all this in mind, it is considered that a consumer, familiar with the earlier trade mark, is likely, upon seeing the later trade mark, to conclude that it is another brand of the owner of the earlier mark, specifically a UK focussed version. It is concluded that there is a likelihood of indirect confusion. As such, the opposition, based upon Section 5(2)(b) against the later word only trade mark succeeds in its entirety.

44. In respect of the later complex trade mark, many of the same considerations apply: identical (and highly similar) services, medium degree of attention displayed, an earlier trade mark with a lower than average degree of distinctiveness. There are also additional visual differences between the marks as already described. Bearing in mind my conclusions above regarding direct confusion, I reach the same conclusion as regards these marks, for which there are additional differences in presentation. There is no likelihood of direct confusion.

45. Turning towards indirect confusion, I take into account the guidance already displayed above. It is true that there are additional visual differences. However, the degree of aural and conceptual similarity remains. The additional differences in presentation do not, in my view, alter the impact of the similarities to the extent that confusion can be avoided. The marks will be referred to as “Dance Dance Dance” and “Dance UK Dance”. It is concluded that consumers familiar with the earlier trade mark are likely, upon being confronted with the later mark, to conclude that it is another brand of the owner of the earlier mark, specifically, a UK focussed version. There is

therefore a likelihood of indirect confusion and as such the opposition succeeds.

## Final Remarks

46. As this earlier trade mark leads to the opposition being successful in its entirety, there is no need to consider the remaining trade mark upon which the opposition is based.

47. As the opposition is successful in its entirety based upon Section 5(2)(b), there is no need to consider the remaining grounds. This is because as is considered clear from the evidence that even if any goodwill and/or reputation is shown to exist, it would be necessarily limited to entertainment in the form of a televised dance show. As such, it is difficult to see how it materially improves the opponent's position.

## COSTS

48. The opponent has been successful and is entitled to a contribution towards its costs. In the circumstances I award the opponent the sum of £1850 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Notice of opposition and statement of grounds (plus accompanying fees) - £600<sup>1</sup>

Preparation and filing of evidence - £500

Preparation for and attendance at Hearing - £750

TOTAL - £1850

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<sup>1</sup> This includes £100 Fast Track Opposition Fee

49. I therefore order 5678 Media Group LLC to pay Talpa Content BV the sum of £1850. The above sum should be paid within 14 days of the expiry of the appeal period or, if there is an appeal, within 14 days of the conclusion of the appeal proceedings.

**Dated this 11th day of September 2018**

**Louise White**

**For the Registrar**