

BLO/589/22

IN THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO. 3548394 IN THE NAME OF CORNERSTONE FS PLC FOR THE TRADE MARK

CORNERSTONE

IN CLASSES 9, 35, 36 AND 42

AND THE OPPOSITION THERETO UNDER NO. 600001698 BY CORNERSTONE FX LIMITED

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF CHARLOTTE CHAMPION (O/096/22) DATED 4 FEBRUARY 2022.

DECISION

Introduction

1. This is an appeal by Cornerstone FS PLC ("**Appellant**") from decision O/096/22 of Ms C. Champion ("**Decision**") concerning the opposition by Cornerstone FX Limited ("**Respondent**") to application number 3548394 for CORNERSTONE, filed on 23 October 2020 in respect of the following goods and services:


Class 9: Mobile application software relating to financial management and account management, for use with smartphones, tablet computers and laptop computers; computer programs for use in financial management, account management; computer software for use in accessing, tracking, managing, analysing, downloading and dashboard reporting of financial information and investments; software platform to enable users to make financial transactions; computer software for accessing and managing financial and investment portfolios; computer software for accessing and managing accountancy information; all of the aforesaid in relation to financial management and services; all the aforesaid excluding goods relating to talent acquisition and talent management systems, training and learning facilities in order to optimise workplaces for employees and employers, business consulting services in relation to financial matters for employees and training of employees in the field of accounting, finance and management.

Class 35: Business organisation, business advice; business management advice; business advisory services; accounting services; business management services relating to financial management; advertising services relating to financial investment; financial marketing; business data analysis; data processing and data verification services; updating of information on a computer database; distribution of printed advertising materials; personnel management consultancy and administration services; all of the aforesaid in relation to financial management and services; all of the aforesaid excluding services relating to talent acquisition and talent management systems, training and learning facilities in order to optimise workplaces for employees and employers, business consulting services in relation to financial matters for employees and training of employees in the field of accounting, finance and management.

Class 36: Financial services; financial management; asset and fund management; investment services; capital investment; financial advisory and consultancy services; financial analysis and research services, financial forecasting; financing and funding services; monetary affairs, financial investment, capital investment, private equity investment, infrastructure investment, financial portfolio management; life assurance services; pension services, pension fund administration and management, mortgaging, banking, trustee services, nominee services, brokers and agents for bonds and other securities; funds transfer services, financial advisory and consultancy services, financial analysis and research services, financial forecasting, financial planning and financing services for securing funds, investment management and consultation, financial consultation pertaining to wealth management; financial management consultancy and administration services; advice, information and consultancy relating to all the aforementioned services; wealth management and investment management; all of the aforesaid in relation to financial management and services; all of the aforesaid excluding services relating to talent acquisition and talent management systems, training and learning facilities in order to optimise workplaces for employees and employers, business consulting services in relation to financial matters for employees and training of employees in the field of accounting, finance and management.

Class 42: Providing a platform for initiating and handling financial investments; providing a customer portal for the management of financial information; providing temporary on-line use of downloadable computer software for accessing, tracking, managing, analysing, downloading and dashboard reporting of financial information and investments; providing a website featuring non-downloadable software for use in database management, compiling and tracking information and data; providing a website featuring non-downloadable software for presenting a user dashboard of custom information; Designing of printed advertising materials'; all of the aforesaid in relation to financial management and services; all of the aforesaid excluding services relating to talent acquisition and talent management systems, training and learning facilities in order to optimise workplaces for employees and employers, business consulting services in relation to financial matters for employees and training of employees in the field of accounting, finance and management.

2. The Respondent relied upon the following mark ("**Earlier Mark**"):

Mark	Number	Filing & registration date	Class	Specification relied upon
 CORNERSTONE FX	3531889	10/09/20, 15/01/21	36	Financial clearing house service.

3. In the Decision, C. Champion for the Registrar held that the opposition was partially successful.
4. On 4 March 2022 the Appellant filed a Notice to Appeal to the Appointed Person against the Decision under Section 76 of the Trade Marks Act 1994.

The Hearing Officer’s decision

5. The Hearing Officer held as follows (in summary, and insofar as is relevant to this appeal):
 - a. The average consumer of the Appellant’s services will comprise both businesses and the general public.

- b. In either case, the average consumer will pay a high degree of attention when selecting the services. Visual considerations will predominate in the contracting of the services, but aural considerations may also play a part.
- c. The Earlier Mark is inherently distinctive to a medium degree, with the word CORNERSTONE being the dominant component.
- d. The marks are aurally similar to a medium degree, visually similar to at least a medium degree, and conceptually similar to a high degree.
- e. The Hearing Officer divided the Appellant’s services into categories. She found that “financial services” are identical to the Respondent’s services, and “funds transfer services” are similar to a high degree. Of the remaining services, she found that some are similar to a medium, low-medium or low degree, and some are dissimilar.
- f. There is a likelihood of direct confusion between Cornerstone and the Earlier Mark in respect of all the services, save those which are dissimilar.
- g. Even if there is no direct confusion, there is a likelihood of indirect confusion in respect of the same services.

Grounds of Appeal

- 6. The application as regards “*financial services*” and “*funds transfer services*” is no longer pursued by the Appellant. The services which form the subject of this appeal are summarised in a table helpfully provided in Mr Malynicz QC’s skeleton argument, which I reproduce below.

	Services	Degree of similarity (Hearing Officer’s decision)
<i>Class 36</i>		
1.	<i>Brokers and agents for bonds and other securities</i>	Medium
2.	<i>Financial management; asset and fund management; investment services; capital investment; financial advisory and consultancy services; financing and funding services; monetary affairs, financial investment, capital investment, private equity investment, infrastructure investment, financial portfolio management; financial advisory and consultancy services; financial planning and financing services for securing funds, investment management and consultation, financial consultation pertaining to wealth management; financial management consultancy and administration services; wealth management and investment management</i>	Medium
3.	<i>Pension services, pension fund administration and management, mortgaging, banking, trustee services, nominee services; advice, information and consultancy relating to all the aforementioned services</i>	Low

Class 42		
4.	<p><i>Providing a platform for initiating and handling financial investments; providing a customer portal for the management of financial information; providing temporary on- line use of downloadable computer software for accessing, tracking, managing, analysing, downloading and dashboard reporting of financial information and investments; providing a website featuring non-downloadable software for use in database management, compiling and tracking information and data; providing a website featuring non-downloadable software for presenting a user dashboard of custom information; all of the aforesaid in relation to financial management and services</i></p>	Medium

7. In the Statement of Grounds of Appeal and the skeleton argument, the Appellant made three distinct criticisms of the Decision:
- a. **Interpretation of “financial clearing house services”:** The Hearing Officer construed these services too broadly, erring both (a) by not identifying the core meanings of the term and (b) by reaching an interpretation not open on the evidence.
 - b. **Similarity of services:** The Hearing Officer failed to have proper regard to the burden of proof and the requirement of evidence to establish similarity in relation to specialist services. Further, she wrongly applied the test in *Boston Scientific* as regards complementarity. Further, her interpretation of “financial clearing house services” wrongly affected her assessment of similarity.
 - c. **Likelihood of confusion:** The Hearing Officer failed to have proper regard to the high degree of circumspection of the average consumer. Further, the above identified cumulative errors bore upon her assessment of a likelihood of confusion.
8. The Appellant’s Counsel, Mr Malynicz QC, expanded upon the above at the hearing, and I set out below further details as are necessary to understand my overall conclusions. I am grateful to Mr Malynicz QC for his clear written and oral submissions, which I found very helpful. The Respondent did not file any submissions or attend the hearing. I have read the Respondent’s written submissions to the Hearing Officer, and have taken them into account in making this decision.

Standard of review

9. The approach to be adopted in an appeal hearing has been laid down a number of times in case law, both in general terms (e.g. by the Supreme Court in *Actavis Group PTC v. ICOS Corporation* [2019] UKSC 1671) and specifically in relation to appeals before the Appointed Person (Daniel Alexander Q.C. sitting as the Appointed Person in *TT Education Ltd v Pie Corbett Consultancy Ltd* (O/017/17), approved by Arnold J in *Apple Inc. v Arcadia Trading Limited* [2017] EWHC 440 (Ch)). These cases establish the following principles:
- Appeals to the appointed person are by way of review, not re-hearing;

- It is necessary for the appellant to satisfy the appeal tribunal that there was a distinct and material error of principle in the Hearing Officer’s decision, or that the Hearing Officer was wrong;
 - In the case of conclusions on primary facts it is only in a rare case, such as where that conclusion was one for which there was no evidence in support, which was based on a misunderstanding of the evidence, or which no reasonable judge could have reached, that the Appointed Person should interfere with it;
 - In the case of a multifactorial assessment or evaluation, the Appointed Person should show a real reluctance, but not the very highest degree of reluctance, to interfere in the absence of a distinct and material error of principle. Special caution is required before overturning such decisions. In particular, where an Appointed Person has doubts as to whether the Registrar was right, he or she should consider with particular care whether the decision really was wrong or whether it is just not one which the appellate court would have made in a situation where reasonable people may differ as to the outcome of such a multifactorial evaluation;
 - Situations where the Registrar's decision will be treated as wrong encompass those in which a decision is (a) unsupportable, (b) simply wrong (c) where the view expressed by the Registrar is one about which the Appointed Person is doubtful but, on balance, concludes was wrong. It is not necessary for the degree of error to be 'clearly' or 'plainly' wrong to warrant appellate interference but mere doubt about the decision will not suffice;
 - The Appointed Person should not treat a decision as containing an error of principle simply because of a belief that the decision could have been better expressed. Appellate courts should not rush to find misdirections warranting reversal simply because they might have reached a different conclusion on the facts or expressed themselves differently. Moreover, in evaluating the evidence the Appointed Person is entitled to assume, absent good reason to the contrary, that the Registrar has taken all of the evidence into account.
10. In addition to the above, Mr Iain Purvis QC sitting as the Appointed Person in *ROCHESTER Trade Mark*, BL O/049/17, made the following observations at paragraph 33:

“... the reluctance of the Appointed Person to interfere with a decision of a Hearing Officer on likelihood of confusion is quite high for at least the following reasons:

(i) The decision involves the consideration of a large number of factors, whose relative weight is not laid down by law but is a matter of judgment for the tribunal on the particular facts of each case

(ii) The legal test ‘likely to cause confusion amongst the average consumer’ is inherently imprecise, not least because the average consumer is not a real person

(iii) The Hearing Officer is an experienced and well-trained tribunal, who deals with far more cases on a day-to-day basis than the Appellate tribunal

(iv) The legal test involves a prediction as to how the public might react to the presence of two trade marks in ordinary use in trade. Any wise person who has practised in this

field will have come to recognize that it is often very difficult to make such a prediction with confidence

Any sensible Appellate tribunal will therefore apply a healthy degree of self-doubt to its own opinion on the result of the legal test in any particular case.”

11. I shall bear all the above in mind when reviewing the Decision.

Discussion

12. Looking at the various alleged errors of principle in turn, my analysis is as follows.

- (1) **Interpretation of “*financial clearing house services*”**
- (2) **Similarity of services**

13. For reasons which I shall make clear below, I shall consider the first two grounds together.

14. The Hearing Officer, correctly, reminded herself at paragraph 14 that “terms used to specify services should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms and that an unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers”.

15. The Hearing Officer summarised the evidence submitted thus (paragraph 16):

“In their submissions in lieu of a hearing, the parties both define the Opponent’s services as: “*an intermediary between buyers and sellers of financial instruments*”. The Applicant references this definition as taken from the CFA (Chartered Financial Analyst) Institute. To this definition, the Opponent adds that the services are:

“a central body through which derivatives and securities trading takes place. In practice all financial transactions are passed through a financial clearing house behind the scenes, however all payments would be seen by customers as originating from or going to the customer-facing financial service provider.”

16. She added at paragraph 21:

“The proceedings before me were brought through the fast track opposition procedure and I have therefore not had the benefit of any evidence from the parties on the nature of clearing house services and how these function within the financial services market. The Opponent explains that all financial transactions use clearing houses, however, I consider that this factor alone would not lead to a finding of similarity”.

17. In my view, the critical characteristics of “*clearing house services*”, as revealed by the evidence before the Hearing Officer, is that they are provided “behind the scenes” and are not customer-facing. As the Respondent said in its submissions to the Hearing Officer, customers will see payments as originating from or going to the customer-facing financial service provider, and not to or from the clearing house. I accept Mr Malynicz QC’s description of “*clearing house services*” as “*a back-office, mechanical aspect which provides an unseen infrastructure which facilitates a host of downstream services, to which it is different*”.

18. In this regard, I found the following analogy, set forth in Marks & Clerk’s Grounds of Appeal and adopted by Mr Malynicz QC in oral submissions, illustrative and helpful:

“An analogous situation would be where you have a restaurant providing restaurant services under the name “Abacus” and a recruitment firm providing services also under the name “Abacus” and who provide temporary agency catering staff to work in restaurants. The customers to the restaurant do not know that some of the staff are temporary agency staff and even if they do they do not know the name of the agency that supplies the staff. They simply use the restaurant services provided by the restaurant under the Abacus name”.

19. In the above, customers of the restaurant will neither know nor care about the identity of the firm providing staff to the restaurant. On the evidence submitted to the Hearing Officer, I consider that the same can be said of users of services which require the involvement of “clearing house services” – the user will be concerned only with the customer-facing financial service provider, will be unlikely to know about the involvement of the clearing house, and even if they do know about it, will not know the name of the clearing house.
20. At paragraphs 45 and 46, the Hearing Officer concluded that the average consumer of the Appellant’s and Respondent’s services will be, respectively, “business users, although the general public will also be relevant in respect of services such as pensions and banking”, and “a financial specialist, or broker who arranges the sale or purchase of financial products.
21. As for assessing similarity of services, the Hearing Officer reminded herself of the comments of the General Court in *Boston Scientific Ltd v Office for Harmonization in the Internal Market* in respect of “complementarity” of goods and services, and summarised the approach as follows (paragraph 20):

“In other words, there are two requirements for goods and services to be complementary, first is the indispensable or important relationship between the goods or services, and second is that because of that relationship, consumers think that the goods or services derive from the same undertaking. I keep this in mind as I compare the respective goods and services”.
22. I now turn to the Hearing Officer’s analysis of each of the services set out in the table at paragraph 6 above.
23. For “*brokers and agents for bonds and other securities*” (row 1 of the table), she made a finding of similarity to a medium degree, based on the following:
 - The Applicant’s brokers and agents will arrange the purchase of bonds and securities on behalf of their client’;
 - The Opponent’s services provide an intermediary between the buyer and seller of the financial instrument who will take responsibility for the completion of the transaction;
 - The channels of trade of the Applicant’s and Opponent’s services will therefore be the same;
 - The services will also align in their overall intended purpose, which is for the sale and purchase of financial instruments.
24. In my view, given the characteristics of “clearing house services”, which was common ground between the parties, the third and fourth bullet points above are simply incorrect. The average consumers of the services are different, and there was no evidence before the Hearing Officer to support any notion of a substantial overlap between the respective average consumers. The

nature of the services themselves are different – consumer-facing services in the case of the Appellant, “behind the scenes” facilitatory services in the case of the Respondent. In my view, the row 1 services are no more similar to “clearing house services” than, say, “Financial analysis and research services”, which the Hearing Officer found to be dissimilar.

25. Furthermore, although the Hearing Officer did not need to go on to consider whether the row 1 services are complementary to “clearing house services”, in my view no such finding would have been open to her. Whereas there is clearly an important, probably indispensable relationship between the broker/agent services and the clearing house services, there was no evidence before the Hearing Officer to suggest that consumers would think that the services derive from the same undertaking. In fact, all the evidence pointed the other way. The Respondent submitted that “all payments would be seen by customers as originating from or going to the customer-facing financial service provider”. The average consumer of the services is not the same. The second limb of the *Boston Scientific* test is therefore not made out on the facts.
26. For “Financial management; asset and fund management; etc” (row 2 of the table), the Hearing Officer made a finding of similarity to a medium degree, on the following basis:
 - An important aspect of the provision of such services will be the purchase and sale of financial instruments by the service provider;
 - The service provider will need to work closely with a clearing house in offering their services;
 - The services share the same intended purpose, in respect of the completion of financial transactions for investments;
 - The respective services share the same channels of trade.
27. Mr Malynicz QC contended that there was no evidence before the Hearing Officer to support the second bullet point above, which was furthermore contrary to fact. That may well be correct, but again, I consider that the more fundamental objection to the finding of similarity is the same as set out in paragraphs 24-25 above – the services are inherently different in nature and user. The intended purposes are also different - the clearing house facilitates a trade in the derivatives or securities market, whereas the Appellant’s services are for consumers to manage their finances etc.
28. Again, because the Hearing Officer found the services to be inherently similar, she did not need to go on to consider complementarity. However, the mere fact that clearing house services are used alongside the Appellant’s services does not of itself mean that they are complementary for trade mark law purposes. Customers would need to believe that the services are provided by the same undertaking, and there was no evidence before the Hearing Officer to support such a proposition, particularly where the average consumer is not the same.
29. For “Pension services, pension fund administration and management, etc” (row 3 of the table), the Hearing Officer made a finding of a low degree of similarity, based on the following factors:
 - An aspect of each of the above listed services will be the sale and purchase of financial instruments, with pension funds and professional trustees making investments, financial nominees holding investments for others and with mortgage providers and banks providing financial products;
 - A clearing house will be involved in the completion of such transactions;

- The channels of trade of the respective service providers will be the same.
30. Mr Malynicz QC criticised this on the basis that there is no evidence to support the involvement of a clearing house in the completion of pension service and mortgaging transactions. Again, though, in my view the fundamental objection is the substantial difference in the nature, user and purpose of the services. “Behind the scenes” clearing services are not similar to (consumer-facing) pension services etc, the users are different, and the intended purposes are also different - the clearing house facilitates a trade in the derivatives or securities market, whereas the Appellant’s services are for consumers to manage their pensions etc.
31. Nor could the services be said to be complementary, as there was no evidence to support the mandatory requirement that users of the Appellant’s services would believe that the Respondent’s clearing house services are provided by the same undertaking, or vice versa.
32. Finally, for “*Providing a platform for initiating and handling financial investments, etc*” (row 4 of the table), the Hearing Officer made a finding of a low degree of similarity, based on the following factors:
- The services all concern the provision of the technical means to manage investments and other financial matters;
 - The Hearing Officer took judicial notice that a clearing house operating in the 21st century would utilise electronic means in the provision of their services, i.e. to act as an intermediary in the sale and purchase of financial instruments;
 - It cannot be ruled out that a financial clearing house would be responsible for providing the software services to enable consumers to access and manage their investment services;
 - There is therefore a complementary relationship between the Opponent’s clearing house services and the Applicant’s services listed above, with consumers of financial clearing houses expecting the service provider to also be responsible for the platform through which they manage their investments;
 - The respective services would share the same users and intended purpose.
33. Mr Malynicz QC made a number of criticisms of the above. First, he contended that the scope of the doctrine of taking judicial notice - “matters being so notorious or clearly established or susceptible of demonstration by reference to a readily obtainable and authoritative source that evidence of their existence is unnecessary” - was plainly exceeded by using it to make findings in relation to the scope of financial services. Secondly, in any case, the use of judicial notice contradicted the evidence before her that that financial clearing houses are not visible to consumers and operate in relation to derivatives and securities trading, and not investments as may be accessed by consumers. Thirdly, by stating that “it cannot be ruled out” that a financial clearing house would be involved, she reversed the burden of proof and placed the onus on the applicant to show dissimilarity.
34. I consider that there is some force in each of the above criticisms, although I am not necessarily persuaded that these cross the threshold of an “error of principle”, sufficient to justify intervention by this Tribunal. Again, though, the same issues as set out above in relation to the other services apply equally here. Properly construed on a narrow basis, “clearing house services” are fundamentally different to all the row 4 services. They have different users, and different purposes. There was no evidence to suggest that users of the Appellant’s services

would believe that the Respondent's clearing house services are provided by the same undertaking, or vice versa, and therefore no complementarity.

An error of principle?

35. It is clear that my assessment of similarity of the services is substantially different from that of the Hearing Officer. Bearing in mind the principles cited at paragraphs 9-10 above, however, the fact that I would have reached a different conclusion is irrelevant, unless I am persuaded that there has been an error of principle on the part of the Hearing Officer, or that her decision was wrong. I have therefore given this issue anxious consideration.
36. In my view, the issues raised in the first and second grounds of appeal – the interpretation of *“financial clearing house services”* and the assessment of similarity of services – are very substantially, perhaps inextricably, linked. It is not straightforward to identify precisely why a finding of similarity was made in respect of any given service – was it because the Hearing Officer gave a wide interpretation to the meaning of *“financial clearing house services”*, or was it because, having applied the legal principles she cites, she concluded that the Appellant's services are similar, notwithstanding the narrow scope of the Respondent's services?
37. The Appellant contends that the Hearing Officer erred in both regards. For example, it contends that at paragraph 37 of the Decision, by including *“software services to enable consumers to access and manage their investment services”* within the scope of *“financial clearing house services”*, she departed from the core meanings of *“financial clearing house services”*. For my part, I am not sure that that is the case. The Hearing Officer reminded herself that services are to be narrowly construed, and adopted the narrow construction which was common ground between the parties. In my view, the findings of similarity by the Hearing Officer are probably a consequence of her approach to assessing similarity, rather than of her construction of *“financial clearing house services”*.
38. I am persuaded, however, that the Hearing Officer has made the following distinct and material errors of principle:
 - Having concluded that the average consumer for the Appellant's and Respondent's services are different, and with no evidence of substantial overlap between the two, she did not take that into account when assessing similarity;
 - Having correctly identified that *“financial clearing house services”* are *“behind the scenes”* and not customer-facing, she failed to take that into account when assessing similarity with the Appellant's consumer-facing services;
 - Finally, having identified the correct legal test for assessing complementarity, when applying it she did not take into account the second requirement that *“consumers think that the goods or services derive from the same undertaking”*.
39. Accordingly, therefore, I am entitled to substitute my own findings on similarity for those of the Hearing Officer. I find that all of the contested services, as listed in the table in paragraph 6 above, are dissimilar to *“financial clearing house services”*. Given that, the Oppositions (based only on section 5(2)(b) of the Trade Marks Act 1994) must fail.

(3) **Likelihood of confusion**

40. Given the above, I can deal with this third ground fairly briefly. The Appellant submitted that the Hearing Officer “failed to have proper regard to the high degree of circumspection of the average consumer. Further, the above identified cumulative errors bore upon her assessment of a likelihood of confusion”.
41. The Hearing Officer did make a finding at paragraph 45 that the average consumer of the Appellant’s services “will pay a high degree of attention as the services have important financial consequences for both types of consumer [business and consumer]”. Similarly, for the Respondent’s services, at paragraph 46 she said “Given the technical nature of the service and that it involves possibly large sums of money, I consider that a high degree of attention will be paid by the professional consumer”. She further reminded herself, when considering likelihood of confusion, of the average consumer’s high degree of attention (paragraphs 70 and 71).
42. I do not, therefore, accept that the Hearing Officer fell into error in this regard. Had I rejected the first two grounds of appeal, I would therefore not have interfered with her finding of a likelihood of confusion. Given, though, that I have found that the Appellant’s services are dissimilar to “*financial clearing house services*”, the question of likelihood of confusion simply does not arise.

Conclusion

43. In addition to the services listed in paragraph 75 of the Decision, the application will proceed to registration for the following goods and services:

Class 36: Brokers and agents for bonds and other securities; Financial management; asset and fund management; investment services; capital investment; financial advisory and consultancy services; financing and funding services; monetary affairs, financial investment, capital investment, private equity investment, infrastructure investment, financial portfolio management; financial advisory and consultancy services; financial planning and financing services for securing funds, investment management and consultation, financial consultation pertaining to wealth management; financial management consultancy and administration services; wealth management and investment management; Pension services, pension fund administration and management, mortgaging, banking, trustee services, nominee services; advice, information and consultancy relating to all the aforementioned services.

Class 42: Providing a platform for initiating and handling financial investments; providing a customer portal for the management of financial information; providing temporary on-line use of downloadable computer software for accessing, tracking, managing, analysing, downloading and dashboard reporting of financial information and investments; providing a website featuring non-downloadable software for use in database management, compiling and tracking information and data; providing a website featuring non-downloadable software for presenting a user dashboard of custom information; all of the aforesaid in relation to financial management and services

Costs

44. Clearly, the Appellant has been the successful party in this appeal. I order that the Respondent should pay the Appellant £1,200 by way of costs of this appeal, comprising:
 - Preparation of Appellant’s Notice: £600
 - Attendance at hearing: £600.

45. As for the costs below, the Hearing Officer ordered that, as each party had achieved some success, each party should bear its own costs. Clearly, as a result of this appeal, the Appellant has now achieved a greater degree of success than the Respondent, albeit that the Respondent has succeeded in removing two broad classes of services – “*financial services*” and “*funds transfer services*” – from the application. Accordingly, I order that the Respondent should pay 75% of the following sums, applying the scale in Tribunal Practice Notice 2/2016:

Filing counterstatement and considering notice of opposition:	£500
Written submissions:	£500
Total:	£1,000

46. The total costs award to the Appellant is accordingly £1,950.

Dr. Brian Whitehead

11 July 2022

Representation

Mr Simon Malynicz QC of Counsel for the Applicant / Appellant, instructed by Marks & Clerk LLP
Bates Wells & Braithwaite LLP for the Opponent / Respondent, who took no part in the appeal