IN THE ISLE OF MAN FINANCIAL SERVICES TRIBUNAL

BETWEEN:

AAO TECHNOLOGIES LIMITED Appellant

and

THE ISLE OF MAN FINANCIAL SERVICES AUTHORITY Respondent

and

(1) IN THE MATTER OF THE APPEAL dated 29 September to appeal against a decision of the Respondent dated 8 September 2022 to reject an application seeking registration to be granted to the Appellant pursuant to the Designated Businesses (Registration and Oversight) Act 2015 FST 2022-03 ("the First Appeal")

and

(2) IN THE MATTER OF THE APPEAL dated 29 September in respect of a decision by the Respondent dated 16 September 2022 pursuant to issue a public statement regarding a contravention of section 7 of the Designated Businesses (Registration and Oversight) Act 2015 FST 2022-04 ("the Second Appeal")

ORDER OF THE CHAIRMAN PURSUANT TO THE FINANCIAL SERVICES TRIBUNAL RULES ("RULES") 5(2)(a) and (f), 11(1), 11 (4)(l) and 11(4)(u), 27 AND SECTION 33 OF THE DESIGNATED BUSINESSES (REGISTRATION AND OVERSIGHT) ACT 2015

Key issues considered in this Order:

- The Tribunal having assumed jurisdiction, and the appeals process having begun, the Respondent has subsequently - external to the proceedings - revoked the two decisions against which the Appellant appeals and has expressed its opinion that the Tribunal has thereby been deprived of its jurisdiction and become *functus officio.*
- Is such revocation by the Respondent and its denial of the Tribunal's continuing jurisdiction vexatious, abusive, disruptive or otherwise unreasonable so as to empower the Chairman to accede to the Appellant's application that a costs order be made against the Respondent pursuant to Rule 27(3) of the Financial Services Tribunal Rules 2015?

1. The Appeals - Chairman's authority

1.1 The Appellant sought in an appeal dated 29 September 2022 ("the First Appeal") to appeal against a decision of the Respondent dated 8 September 2022 to reject an application seeking registration to be granted to the Appellant pursuant to the Designated Businesses (Registration and Oversight) Act 2015 ("the Act").

1.2 The Appellant sought in an appeal dated 29 September 2022 ("the Second Appeal") to appeal against a decision of the Respondent pursuant to the Act that an expedited public statement ("Public Statement") be issued, in accordance with sections 27(1)(b)(i) and 28(2)(b) of the Act, in the form set out in a Notice given by the Respondent to the Appellant dated 16 September 2022 ("Notice").

1.3 The Financial Services Tribunal Rules 2015 (as amended) ("Rule/Rules") Rule 11(1) empowers the Chairman or the Tribunal to manage proceedings. The Chairman:

> *May at any time, either on the application of a party or on the Chairman's […] own initiative, make an order in relation to any matter which appears to the Chairman […] to be appropriate.*

1.4 Rule 11(4) gives examples of orders which may be made under Rule 11(1). Rules 11(4)(l) and (u) provide:

> *(l) that different appeals be considered together;*
>
> *(u) that a party make a payment in respect of the costs incurred by another party;*

1.5 The Appellant and the Respondent have raised no objection to the Chairman considering the First Appeal and the Second Appeal together when considering whether it is appropriate that a costs order be made.

1.6 The Chairman sitting alone makes the present Order.

2. Overriding objective

2.1 In making the present Order the Chairman has observed the overriding objective set out in Rules 5(1) and 5(2)(a), (b) and (f) which provide:

> *(1) The overriding objective of these Rules is to enable the Tribunal and the Chairman to deal with cases fairly and justly.*
>
> *(2) Dealing with a case fairly and justly includes, so far as practicable —*
>
> *(a) dealing with the appeal in ways which are proportionate to its importance, the complexity of the issues, the anticipated costs and the resources of the parties;*
>
> *(b) avoiding unnecessary formality and seeking flexibility in the proceedings;[…]*
>
> *(f) dealing with the appeal in a way which is in the public interest.*

3. Chairman's authority to award costs

3.1 The Chairman's authority to award costs is found (in so far as relevant to the present Order) in Rules 27(2) and (3):

> *(2) The Tribunal or Chairman must not make a costs order in any proceedings unless paragraph (3), (4), (5) or (6) applies.*

(3) The Tribunal or Chairman may make a costs order if in its or his opinion — (a) in bringing the proceedings, that party, or (b) in conducting the proceedings, that party or that party's representative, has acted vexatiously, abusively, disruptively or otherwise unreasonably.

4. The nature of the Tribunal's jurisdiction

4.1 The Chairman regards as persuasive and applies the dictum of Sir Geoffrey Vos, Chancellor of the High Court, delivering the judgment of the English Court of Appeal in *British Telecommunications Plc v The Office of Communications [2018] EWCA Civ 2542* (at paragraph 64) (to which the Tribunal has been referred by the Respondent in its Submissions on costs):

Tribunals should be the masters of their own procedure, fashioned in accordance with their own procedural rules, always provided that that procedure is not in conflict with any applicable legal principles.

4.2 In exercising its functions the Tribunal does so *de novo.*

4.3 Under sub-section 33(1) of the Act:

(1) A person aggrieved may appeal, in accordance with rules made under section 8 (rules of procedure) of the Tribunals Act 2006, to the Tribunal on the grounds that any of the following decisions of the Authority was unreasonable having regard to all the circumstances of the case —

(a) refusal to register the person under section 9 (grant or refusal of registration); […]

(g) issue of a public statement to the person under section 27 (public statements) (which appeal may be made before or after the issuing of the statement);

4.4 Under sub-sections 33(2) to (5) of the Act:

(2) On the determination of an appeal under this section the Tribunal must confirm, vary or revoke the decision in question.

(3) Any variation or revocation of a decision does not affect the previous operation of that decision or anything duly done or suffered under it.

(4) Without limiting subsection (3), a decision of the Tribunal on an appeal under this section is binding on the Authority and the applicant.

(5) An appeal lies to the Court, in accordance with rules of court, on a question of law from any decision of the Tribunal.

4.5 The authority of the Tribunal is circumscribed by the permitted grounds of appeal found in Rule 6A of the Financial Services Tribunal Rules 2015 (as amended):

(a) the disputed decision is based on an error of fact; or

(b) the disputed decision is wrong in law; or

(c) the regulatory authority's exercise of its discretion in relation to the disputed decision was so unreasonable that no reasonable regulatory authority would have exercised its discretion in such a manner.

4.6 It follows from section 33(5) of the Act that the Tribunal is empowered to determine the facts of any appeal and that the High Court is bound by such a determination. There is, therefore, no right of Appeal from a decision of the Tribunal under Rule 6A(a) in circumstances where the Tribunal rules that the disputed decision is based on an error of fact. An Appeal will lie to the High Court on any decision of the Tribunal that the disputed decision is wrong in law (Rule 6A(b)).

4.7 The Tribunal adopts a broad interpretation of its powers under Rule 6A(c) and is not constrained to review only the Act and the Rules but also to take into account any legal principle which has a bearing on the Appeal which the Appellant or the Respondent shall submit in argument.

5. Chronology

5.1 By e mail dated 29 September 2022 the Appellant delivered to the Respondent (in accordance with Rule 6(2)) copies of the First Appeal and Second Appeal.

5.2 By letter to the Clerk to the Tribunal dated 29 September 2022 the Appellant's Advocates referred the Chairman to paragraph 20 of the Grounds of Appeal relating to the Second Appeal in which the Appellant sought an urgent case management Order under Rule 11(1) and Rule 11(4)(x)

and under section 28(4) of the Act that the Public Statement not be published until after the final determination of the First Appeal.

5.3 In the Notice the Respondent stated that the Appellant was in breach of section 7 of the Act as a result of "holding itself out as carrying on a designated business, specifically convertible virtual currency activity" without having been registered (such registration being refused by the Respondent) and that this "may cause confusion to consumers". The Respondent therefore determined that "it is in the public interest to expedite publication of the statement in-line with section 28(2)(b) of the Act".

5.4 The Respondent therefore proposed, on the grounds of public interest, to exercise a right to issue the Public Statement earlier than the one month period provided for in section 28(1) of the Act, which in the case of the Notice would have been 16 October 2022.

5.5 The matter came before the Chairman sitting alone, exercising his authority under Rule 11(4)(x):

> *(x) that a public statement under section 27 of the Designated Businesses (Registration and Oversight) Act 2015 (public statements) must not be issued before any specified date or event in accordance with section 28(4) of that Act.*

5.6 On 30 September 2022 the following Order was made by the Chairman:

> *4. Order*
>
> *4.1 For the reasons set out and with the authority referred to above IT IS ORDERED by the Chairman that the Public Statement not be issued by the Respondent before the First Appeal and the Second Appeal have been determined by the Tribunal (or before the First Appeal and the Second Appeal have been withdrawn by the Appellant or have been struck out by the Chairman or Tribunal under Rule 15). Should the Appellant be unsuccessful in its appeals or should those appeals have been withdrawn or struck out the Public Statement may should the Respondent so desire be issued in accordance with the provisions of sections 27(1)(b)(i) and 28(2)(b) of the Act.*
>
> *4.2 On the facts of the present determination the Chairman has no authority to make a costs order under Rule 27.*

5.7 By e mail dated 24 October 2022 the Respondent informed the Clerk to the Tribunal:

The Respondent will not resist the above-mentioned appeals of the Appellant. On Friday 21 October 2022, the Respondent formally notified the Appellant that it has withdrawn and revoked, in their entirety, each of the decisions of the Respondent that are the subject of the appeals, namely:

1. *the decision of the Authority dated 8 September 2022 to refuse an application for registration with the Authority by AAO Technologies Limited pursuant to section 9 of the Designated Businesses (Registration and Oversight) Act 2015 (the "**Act**"); and*
2. *the decision of the Authority dated 16 September 2022 relating to the Authority's issuing an expedited public statement in accordance with sections 27(1)(b)(i) and 28(2)(b) of the Act.*

The decisions of the Respondent (to withdraw and revoke its above-mentioned decisions in their entirety) have been communicated directly to the Appellant and it, of course, remains a matter for the Appellant to consider whether it wishes to continue with its appeals. Although the Respondent will not be resisting the appeals, it will resist any order for costs that might arise from the Appellant continuing with, what the Respondent now considers to be, vexatious, frivolous and entirely unnecessary appeals (now that the decisions against which the Appellant is appealing have been revoked it is, in the opinion of the Respondent, entirely unnecessary for the Tribunal to consider the making of an order or determination to revoke, confirm or vary the decisions of the Respondent that no longer exist or apply). The Respondent has sought and fully intends to re-engage with the Appellant in order to progress its application to register as soon as is practicable with it pursuant to the Act and has indicated to the Appellant the areas in which the Respondent requires clarification/confirmation in order to progress matters with it as soon as practicable. There are a number of matters (some pre-dating and some post-dating the date of the commencement of the appeals) on which the Respondent is yet to receive satisfaction (in accordance with the Respondent's policies, protocols and procedures which are relied upon by it for all applications to register with it pursuant to the Act) and the Respondent has communicated to the Appellant its intention to work closely with the Appellant to conclude such matters expeditiously.

5.8 The matter came again before the Chairman, who was prepared to exercise his discretion under Rule 8(1)(b) as to the manner and filing of a Reply under Rule 8, conscious of the overriding objectives referred to in paragraph 2.1 of this Order, and issued a further Order on 7 November 2022

under which *inter alia* the Chairman accepted the Respondent's e mail dated 24 October 2022 as constituting the Respondent's duly delivered Reply.

5.9 The Chairman drew attention to the revocation by the Respondent of its decisions, the Order of 7 November 2022 stating:

> *4.1 The Chairman notes that as the discretion of the Tribunal under section 33(2) of the Act is to confirm, vary or revoke the decision in question, it must follow that pending the determination by the Tribunal of the matters placed before it (in circumstances where an appeal has not been withdrawn or struck out) that decision is suspended.*
>
> *4.2 The Chairman nevertheless recognises that the Respondent has unilaterally "withdrawn and revoked, in their entirety, each of the decisions of the Respondent that are the subject of the appeals" and that for the Tribunal to regard such revocation by the Respondent as ultra vires as being an attempt on the part of the Respondent to usurp the Tribunal's authority under section 33(2) of the Act, (neither of the appeals having been withdrawn by the Appellant or struck out by the Tribunal) would on the facts of the present appeals be over-formalistic and contrary to the overriding objectives of the Tribunal.*
>
> *4.3 The Chairman therefore confirms that the residual jurisdiction of the Tribunal in the matter of the present appeals is confined to the making of a costs order under Rule 27.*

5.10 Having thus confirmed the continuing jurisdiction of the Tribunal in the matter of costs, the Order of 7 November 2022 concluded that other than in relation to the consideration by the Chairman pursuant to Rule 27 of the making of a costs Order the First Appeal and the Second Appeal are stayed and gave directions for the filing of costs submissions and of responses to costs submissions.

5.11 Neither the Appellant nor the Respondent has indicated to the Tribunal that either would seek substantively to challenge the Order of 7 November 2022. The directions (filing dates) set out in paragraph 5 of the Order were subsequently amended by the Chairman on 9 November 2022 at the request of the Appellant with the consent of the Respondent.

5.12 The Respondent in its Submissions on costs and in its Response to the Appellant's submissions on costs has however challenged the jurisdiction of the Tribunal and of the Chairman.

The Chairman wishes to clarify that paragraph 4.2 of his Order of 7 November 2022 is therefore spent, as reflected in the Order presently made.

6. The Appellant's submissions on costs

6.1 The Appellant's written submissions on costs are dated 25 November 2022. The Chairman has fully considered the submissions. In light of the conclusions which the Chairman has reached and which are reflected in the terms of the present Order it is necessary for the Chairman to refer only to paragraphs 5a. to 5c. of the submissions, which are in the following terms:

> *5. The Appellant seeks an order for costs of and incidental to the Appeals pursuant to Rule 27 for the following reasons:*
>
> *a. The action of the Respondent in unilaterally revoking the First Decision (instead of not contesting the First Appeal, but contesting the relief sought – namely the requested variation of the First Decision so that the Application would be granted) satisfies Rule 27(3)(b) since a unilateral revocation of a decision amounts to the Respondent conducting the proceedings either abusively, disruptively and/or otherwise unreasonably. The conduct of the Respondent in unilaterally revoking the First Decision was manifestly unfair and inequitable since it stopped the First Appeal proceeding any further and has deprived the Appellant of the right to pursue, argue and/or obtain its primary remedy from the Tribunal – a variation of the First Decision.*
>
> *b. The decision by the Respondent in unilaterally revoking the First Decision was also unreasonable, disruptive and/or abusive since it also deprived the Appellant of its aim of achieving a swift resolution of matters without further delay (given the Application had been considered for 5 months by the Respondent). In this regard, the Appellant had specifically made applications to the Tribunal in the respective Grounds of Appeals seeking urgent directions/determination of the Appeals, citing uncertainty that the Appeals had caused to its business and the fact that it had a substantial number of employees whose future unfortunately depended upon the outcome of the First Appeal. The regrettable action of the Respondent in withdrawing the First Decision, instead of letting it reach an outcome via the Tribunal as envisioned under the Rules, has caused serious prejudice to the Appellant as it means matters haven't progressed any further, which is exactly what the Appellant had sought specifically to avoid by appealing to the Tribunal. Avoiding delay is listed at Rule 5(2)(e) as a key concern of the Tribunal under the overriding objective.*
>
> *c. No explanation whatsoever for the unilateral revocation of Decisions and/or apology has been provided by the Respondent to date, and there has been a total lack of transparency. The lack of any transparent explanation/apology further supports the Appellant's assertion that the Respondent in unilaterally withdrawing the Decisions during the Appeals has acted abusively,*

disruptively and/or otherwise unreasonably. If the Chairman has any doubt at all regarding the motivation of the Respondent then the Appellant avers that in circumstances where there was no transparent and/or satisfactory explanation at all from the Respondent as to the reason for its unilateral revocation of the Decisions and/or the provision of any apology then the Tribunal is entitled to draw an adverse inference in respect of the conduct of the Respondent in that its unilateral revocation of the Decisions was undertaken with an abusive, disruptive and/or at the very least an unreasonable motivation.

7. The Respondent's submissions on costs

7.1 The Respondent's written submissions on costs are dated 25 November 2022. These were received by e mail on 25 November by the Clerk to the Tribunal within the time set under the Order of 7 November 2022 (as amended on 9 November 2022). Shortly after the deadline set in that Order (at 16:36) the Respondent e mailed the Clerk to the Tribunal and the Appellant:

Dear all

With apologies for the inconvenience, but after discussion with Mark Emery, the Authority has deleted part of para 9 of the submissions sent an hour ago and request that the attached stand as its submissions on costs and be referred to the Chairman in place of the previous version which should be deleted.

Paul Freeman

Isle of Man Financial Services Authority

7.2 The Appellant having raised no objection to the late amendment and in accordance with the overriding objective found in Rule 5(2)(b) that unnecessary formality should be avoided, the Chairman accepts the late amended submissions as having been duly filed and disregards the version first received.

7.3 In paragraphs 3 and 19 of its submissions the Respondent writes:

3. The Respondent submits that the only paragraph of the Rules that might be relevant to this matter is paragraph (3)(b) of rule 27 of the Rules. The Respondent notes that in order for there to be any award of costs, the burden is on the Appellant to prove and to establish that the Respondent acted vexatiously, abusively, disruptively or otherwise unreasonably ***in conducting the proceedings*** *(emphasis added)*

19. *The Respondent rejects entirely any submission made by the Appellant to date that the Authority has acted in a manner that has been anything but fair, reasonable, impartial and independent.*

7.4 The Chairman observes that the Appellant does not bear the burden of proof as suggested by the Respondent. Rule 27(3) is unambiguous in conferring discretion on the Tribunal or Chairman, and opens with the words: "*The Tribunal or Chairman may make a costs order if in its or his opinion*".

7.5 The Respondent in paragraph 4 of its submissions points to the requirement under Rule 27(3) that a party against whom an order for costs may be made *"has acted vexatiously, abusively, disruptively or otherwise unreasonably"*.

7.6 As regards its own conduct, the Respondent provides examples of its co-operation with the Tribunal which the Chairman notes and in paragraphs 6, 9, 10 and 17 of its submissions states:

6. *The Respondent submits and maintains that it (and all of its representatives) have never acted vexatiously, abusively, disruptively or otherwise unreasonably in conducting the proceedings. The Respondent submits that it has co-operated fully with all orders made by the Chairman and acted in a timely manner and in accordance with the Rules throughout its conduct of the proceedings.*

9. *The Respondent has not at any stage or in any manner acted to disrupt the proceedings or acted in an abusive manner.*

10. *As a consequence of the foregoing, it is submitted that the Chairman does not have jurisdiction to make a costs order pursuant to the Rules and ought not to make any such order; the relevant prescriptive requirements of the Rules in relation to the making of costs orders have not been satisfied or established in the circumstances. Indeed, it is the submission of the Respondent that the hurdle for its behaviour to be deemed to have been vexatious, abusive, disruptive or otherwise unreasonable in conducting the proceedings is a high one and has not been satisfied on the facts of the present matter.*

17. *The Respondent also wishes for it to be noted, for completeness, that the appeals of the Appellant have not progressed to full hearings because of the Respondent's prompt revocation*

of its decisions. The Respondent submits that this is illustrative of the reasonable and pragmatic approach that has been adopted by it (and its representatives) throughout the Respondent's conduct of the proceedings. The Respondent's reasonable behaviour is also demonstrated by the fact that it agreed to both appeals of the Appellant being heard together (as requested by the Chairman) and through its not seeking to oppose the application of the Appellant to stay the Second Decision (as such term is defined in the Appellant's 'Grounds of Appeal' dated 29 September 2022).

7.7 The respondent submits in the alternative in paragraph 11 of its submissions:

11. *In the alternative, it is the submission of the Respondent that should the Chairman determine that he does have jurisdiction to make a costs order pursuant to rule 27 of the Rules, such costs order ought to require each party to only bear its own costs in their entirety. This is because the Respondent (and its representatives) has acted in good faith throughout.*

7.8 The Chairman observes that Rule 27(3) applies when a party *"has acted vexatiously, abusively, disruptively or otherwise unreasonably".* It focusses on the conduct of a single party which in the opinion of the Tribunal or Chairman has so acted. Neither the Tribunal nor the Chairman is thereby prevented from applying Rule 27(3) to more than one party if in their opinion more than one party has so acted. In the context of Rule 27(3) however an order in the terms suggested by the Respondent that each party bear its own costs, which would merely reflect the status quo, would be no substantive order at all save in what may be regarded as an exceptional circumstance that *each of the parties had so acted in equal measure.*

7.9 The Respondent in paragraphs 12 to 16 of its submissions submits that should the Chairman assume jurisdiction under Rule 27(3)(b) any costs order should only cover the period and work conducted in relation to the proceedings and not otherwise. The Respondent, observing that the term is not itself defined in Rule 27, offers guidance as to what is meant by "conducting the proceedings" for the purposes of Rule 27 with specific reference to the First Appeal and Second Appeal which the Chairman notes.

7.10 As an overarching submission, the Respondent in paragraph 5 of its submissions, alluding to its revocation on 21 October 2022 of the decisions which are the subject of the First Appeal and the Second Appeal, denies the continuing jurisdiction of the Tribunal:

5. *It is submitted that there is no general power or discretion to order costs when the subject of a proceeding falls away, in circumstances, for example, where a regulatory decision is withdrawn and a regulatory body acted reasonably and in good faith (as was the case in the present matter) and there is no vexatious, abusive, disruptive or similar conduct.*

7.11 In a further overarching submission, the Respondent in paragraphs 18 and 20 of its submissions contends that for a costs order to be made against the Respondent in its capacity as a regulatory authority would have a "chilling effect":

18. *Whilst the Respondent acknowledges that it has fully revoked its decisions (the subject of the appeals), it does not accept that its original decisions were fundamentally flawed and rejects entirely any characterisation of the same that might be made by the Appellant. For the Respondent to be exposed to the risk of an adverse costs order simply because decisions made by it, in good faith, were promptly withdrawn, after further consideration, might have a 'chilling effect' on the exercise of its regulatory and statutory obligations as a result of fear of exposure by it to undue financial prejudice, to the public disadvantage.*

20. *The making of a costs order against the Respondent in this matter would act as a deterrent against taking sensible decisions, in light of litigation, not only for the parties in this claim, but all parties before the Tribunal in the future. It would not therefore be in the interests of the overriding objective.*

7.12 To assist the Tribunal the Respondent has provided copies of English decisions to which reference is made and consideration is given in paragraph 10 of this Order ("The principles to be applied").

8. The Appellant's responses to the Respondent's submissions on costs

8.1 The Appellant's responses to the Respondent's written submissions on costs are dated 9 December 2022.

8.2 The Appellant cites the decision of the (United Kingdom) Upper Tribunal Tax and Chancery Chamber in *The Commissioners for Her Majesty's Revenue and Customs and Jackson Grundy*

Limited [2017] UKUT 0180 (TCC) to which reference is made and consideration is given in paragraph 10.2 of this Order ("The principles to be applied").

8.3 In paragraph 3 the Appellant observes that the English authorities provided by the Respondent as part of its Submission on Costs:

> *do not progress matters any further than the above broad statement of principle (for example, the Respondent's reliance upon each of the decisions in British Telecom, Gorlov v ICA and Baxendale-Walker v Law Society is entirely misplaced, since differently-worded costs rules/legal tests applied in each of those cases), and in any event each case will be highly fact specific.*

8.4 In paragraph 4 the Appellant rejects the "technical and overly-legalistic approach" of the Respondent and itself adopts "a more pragmatic approach".

8.5 In light of the conclusions which the Chairman has reached and which are reflected in the terms of the present Order it is necessary for the Chairman to refer to paragraphs 4a. to 4c and to 5:

> *4. Whilst the Respondent has adopted a technical and overly-legalistic approach towards its submissions (addressed below), the Appellant has taken a more pragmatic approach, asserting broadly that on the facts of this case the threshold condition for costs has been met because:*
>
> *a. In contrast to an appeal concerning merely quashing a decision, the revocation of the Decisions deprived the Appellant of the right to pursue, argue and/or obtain its primary remedy from the Tribunal – a variation of the First Decision so that the Application is granted.*
>
> *b. The effect of the revocation of the Decisions by the Respondent was that it increased delay, which was precisely what was sought to be avoided by the Appeals.*
>
> *c. No explanation of the revocation of the Decisions has been put forward by the Respondent, and with the Respondent failing to provide any transparent comfort on what further information/documentation is required to re-consider the Application and confirmation that the Application would be re-considered by fresh decision-makers within the Respondent's organisation, the revocation did not amount to a "good revocation" and will likely result in a further immediate appeal to the Tribunal concerning the same matters.*

d. […]

5. The Appellant highlights a number of fundamental flaws contained within the Respondent's Written Submissions:

a. At paragraphs 5-7 of the Respondent's Written Submissions it does not appear to engage with the Appellant's primary submissions that for the various reasons above at paragraph 4(a)-(d) it is the nature of the revocation of the Decisions themselves which amounted to the abusive, disruptive and/or unreasonable conduct.

b. Whilst the Respondent has submitted six cases and appears to suggest that revocation is an ordinary exercise of its powers, none of the cases relied upon by the Respondent match the current situation where a revocation has occurred to dispose of proceedings and/or more specifically where revocation has been used in circumstances where a variation of a decision of the respondent has been the primary remedy sought by an appellant.

c. At paragraph 8 of the Respondent's Written Submissions the Respondent has outlined that in revoking the Decisions it carefully considered all relevant matters. However, to date it has failed to outline what was considered and why it unilaterally revoked the Decisions. Whilst the reasonable assumption can be made that the Decisions were unilaterally revoked because they were plainly wrong, the Respondent has positively asserted later at paragraph 18 of its Written Submissions that whilst it did revoke the Decisions "it does not accept that its original decisions were fundamentally flawed and rejects entirely any characterisation of the same that might be made by the Appellant". Whilst the Respondent has been keen to outline the reasons why unilaterally revoking the Decisions were not made, it has consistently refused to outline its reasons why they were. The Respondent has also failed to outline the crucial ancillary matters of ensuring that only fresh decision-makers are involved going forward and transparently outlining what documentation is required for the re-determination of the Application. The Appellant asserts that in these circumstances this is not a "good revocation" by the Respondent.

d. Paragraphs 12-16 and paragraph 21 of the Respondent's Written Submission highlight the underlying weakness in the Respondent's arguments on costs. At paragraph 13 of its written submissions the Respondent seeks to advance an argument that whatever conduct has occurred, only conduct within the very limited time period between the date of Appeals and the dates of the unilateral revocations of the Decision can be considered by the Tribunal, since after the revocations of the Decisions the Appeals were no longer continuing. This submission is however entirely unnecessary, since save for the highlighting the conduct on the appeal time limits which is relevant to limb six of the legal test under Jackson Grundy in accordance with paragraph 4.d) above the

Appellant has not relied upon any of the Respondent's conduct prior to the Appeal dates, and also the unilateral revocations (being the primary issue relied upon by the Appellant in support of its applications for costs) plainly fall within the date of proceedings. The submission by the Respondent that unilateral revocation of the Decisions meant that Tribunal proceedings were no longer continuing is also obviously flawed, since proceedings have continued for the purposes of costs (with the Decisions stayed pending resolution of the same) with orders of the Tribunal issued on 30 September 2022 and 7 November 2022. This overly technical and legalistic approach to the issue of costs does not advance the Respondent's argument any further.

e. *At paragraphs 17 - 19 of the Respondent's Written Submissions the Appellant would highlight that whilst revocation may be appropriate in circumstances where only a quashing order is sought from the Tribunal and there is no related involvement between the parties going forward, in circumstances where a variation of the First Decision was sought and where no comfort was provided on independence and transparency, for the reasons outlined above at paragraph 4(a)-(d) and in the Appellant's Written Submissions revocation in the way utilised in this case was a wholly improper step for the Respondent to take, amounting to an abuse of process.*

f. *At paragraph 20 the Appellant would counter to highlight that a costs order and public judgment in these specific circumstances where a unilateral revocation has been used inappropriately by the Respondent would further the overriding objective since it will provide a similar deterrent to the Respondent in future in ensuring that such a draconian step of revocation will only be utilised where it is strictly necessary and appropriate to do so.*

9. The Respondent's responses to the Appellant's submissions on costs

9.1 The Respondent's responses to the Appellant's written submissions on costs are dated 9 December 2022.

9.2 The Respondent Engages with the Tribunal "for completeness" notwithstanding that it expressly rejects any continuing jurisdiction on the part of the Chairman or of the Tribunal (references to paragraph numbers being to the corresponding paragraphs in the Appellant's Submissions on Costs). In light of the conclusions which the Chairman has reached and which are reflected in the terms of the present Order it is necessary for the Chairman to refer only to paragraphs 2, 5 to 7, 13 and 16 of the responses, which are in the following terms

2. *The Respondent maintains its position that neither the Tribunal nor the Chairman has jurisdiction to make a costs order pursuant to the Rules and ought not to make any such order. The relevant prescriptive requirements of the Rules in relation to the making of costs orders have not been satisfied or established in the circumstances and the Appellant Submissions have not changed this stance.*

4. *Paragraph 5.a. - the Respondent submits that it did not act abusively, disruptively and/or unreasonably in revoking the First Decision and notes that such action was entirely within its powers and a matter entirely within its discretion and subject to its legislative powers. The Respondent further notes that the First Decision was itself made unilaterally by the Respondent. As such, it is entirely logical that any revocation of such decision would also be made unilaterally by the Respondent. The Respondent notes that such decision was made in good faith and further notes that the Appellant has not submitted any evidence to the contrary. The Respondent notes, for completeness, that the Appellant will, if aggrieved by any future decisions of the Respondent made pursuant to section 9 of the Designated Businesses (Registration and Oversight) Act 2015, have further and separate recourse to the Tribunal. The Appellant exercised its right to appeal to the Tribunal against the First Decision and the Respondent, thereafter, exercised its right to unilaterally revoke the First Decision. This act of the Respondent brought to an end the jurisdiction of the Tribunal in relation to the First Decision. The Respondent acted at all times within the parameters and the prescriptive requirements of the Rules and its legislative framework when making decisions.*

5. *Paragraph 5.b. – the decision of the Respondent to revoke the First Decision in a reasonable and timely manner has provided a swift resolution to these matters as well as providing clarity to the Appellant. It is therefore not accurate to say that the Respondent has deprived the Appellant of its aim of achieving a swift resolution of matters without delay. The decision of the Respondent to revoke the First Decision was made clearly and unambiguously and was communicated to the Clerk to the Tribunal and the Appellant in accordance with the prescriptive requirements of the Rules. Such decision of the Respondent to revoke the First Decision has undoubtedly saved all parties significant time and costs because matters have not progressed to a full hearing or determination of the Tribunal. The Respondent fails to understand how a revocation of the First Decision (against which the Appellant has appealed) could be said to have been unreasonable, disruptive and/or abusive and it respectfully submits that the Appellant has not established this to be the case. [remaining text of paragraph 5 omitted]*

6. *Paragraph 5.c. – the Respondent is not obliged to provide reasons for its revocation of the First Decision and it submits that the drawing of an adverse inference by the Chairman or the Tribunal here would be entirely inappropriate and without basis or merit.*

7. *Paragraph 5.d. – the Respondent rejects the characterisation of the email of Mr Quinn as being "bold". It is an entirely sensible and logical conclusion that a decision, once withdrawn and revoked in full, no longer exists and is no longer in effect. The nature of the Second Decision (including the contents of its proposed public statement) is not relevant to the considerations of the Chairman in relation to costs because the Second Decision has been revoked in full and no longer has any effect.*

13. *Paragraphs 6, 7 and 8 – the Respondent remains of the view that neither the Tribunal nor the Chairman has the requisite jurisdiction to make a costs order in relation to this matter. Should the Chairman make a determination that the Respondent has acted vexatiously, abusively, disruptively or otherwise unreasonably in conducting the proceedings, the Respondent submits that the Chairman may only make a costs order in accordance with paragraph (3)(b) of Rule 27 of the Rules in relation to acts of the Respondent (or its representatives) in 'conducting the proceedings'. 'Conducting the proceedings' should only cover the period and acts of the parties conducted in relation to the proceedings and not otherwise. [remaining text of paragraph 13 omitted]*

16. *For the reasons noted above, the Respondent submits that neither the Tribunal nor the Chairman has the requisite jurisdiction (in accordance with the narrow and prescriptive parameters of Rule 27 of the Rules) to make a costs order and that no order as to costs should follow, nor be published. It was within the power and the discretion of the Respondent to revoke each of the First Decision and the Second Decision and this was done in good faith in a timely and unambiguous manner. The Appellant has failed to satisfy the burden upon it to demonstrate that the Respondent (or any of its representatives), in conducting the proceedings, has acted vexatiously, abusively, disruptively or otherwise unreasonably and no costs order should follow.*

10. The principles to be applied

10.1 The Respondent in its submissions on costs has referred the Tribunal to a number of English authorities which examine those principles which should be applied when determining whether or not an order for costs may or should be made against a regulatory authority. The Chairman has taken all submitted authorities into account in reaching his decision, but has found it necessary to refer in the present Order merely to some of them.

10.2 The Appellant in its responses to the Respondent's submissions on costs has referred the Tribunal to the decision of the United Kingdom's Upper Tribunal, Tax and Chancery Chamber in *The Commissioners for Her Majesty's Revenue and Customs and Jackson Grundy Limited [2017] UKUT 0180 (TCC)* [*Grundy*] which (in paragraph 47) examines what is referred to as a "threshold condition" in assessing the reasonableness of the conduct of a party against whom an order for costs is sought. The Chairman has taken this into account in reaching his decision.

10.3 The Appellant in its responses to the Respondent's submissions on costs has questioned the relevance or applicability of the English authorities submitted by the Respondent, in the following terms (see paragraph 8.3 of this Order, repeated here for ease of reference):

> *do not progress matters any further than the above broad statement of principle (for example, the Respondent's reliance upon each of the decisions in British Telecom, Gorlov v ICA and Baxendale-Walker v Law Society is entirely misplaced, since differently-worded costs rules/legal tests applied in each of those cases), and in any event each case will be highly fact specific.*

10.4 The Chairman is not of the same opinion as the Appellant noting that the same objection would by extension apply to the Appellant's reliance on *Grundy*. The English authorities lay down the principles to be applied range across the work of a number of English tribunals, each bound by its own rules of procedure, but this notwithstanding the principles are of general application.

10.5 The Chairman takes into account that English authorities are at best of mere persuasive authority in the Isle of Man. He places reliance on the dictum of Deemster Corlett in *Hudson v Department of Health* (judgment 1 May 2013):

> *… one of the main reasons for the introduction of the 2009 Rules of Court [the Rules of the High Court of Justice of the Isle of Man 2009] was so that the Manx Courts could benefit from the tried and tested English Civil Procedure Rules and benefit from the decisions of the English*

Courts on those rules. It was becoming increasingly difficult for this Court to reliably deal with applications under the old 1952 Rules. As I say one of the main reasons for the introduction was so that we could rely on English authority, bearing in mind always that the Court has an overriding ability in certain cases, where there is good reason, not to follow those decisions….

10.6 The principles to which the Tribunal has been referred by the Respondent and by the Appellant were formulated at the beginning of the present century and have not been set aside by the English Courts in the intervening years. They are of general application to the work of tribunals. The Chairman is of the opinion that in the absence of any Manx authority to the contrary (no such authority having been cited to the Tribunal in the present case) there is good reason to follow those decisions and to apply those principles to the facts of the present appeals.

10.7 The principles were first laid down by Lord Bingham of Cornhill CJ in *City of Bradford Metropolitan District Council v Booth [2000] COD 338* [*"Bradford"*]. In that case the Bradford Justices ordered the appellant District Council to pay the costs of the respondent's successful appeal against the council's refusal to renew his private hire vehicle licence.

I would accordingly hold that the proper approach to questions of this kind can for convenience be summarised in three propositions:

1. Section 64(1) confers a discretion upon a magistrates' court to make such order as to costs as it thinks just and reasonable. That provision applies both to the quantum of the costs (if any) to be paid, but also as to the party (if any) which should pay them.

2. What the court will think just and reasonable will depend on all the relevant facts and circumstances of the case before the court. The court may think it just and reasonable that costs should follow that event, but need not think so in all cases covered by the subsection.

3. Where a complainant has successfully challenged before justices an administrative decision made by a police or regulatory authority acting honestly, reasonably, properly and on grounds that reasonably appeared to be sound, in exercise of its public duty, the court should consider, in addition to any other relevant fact or circumstances, both (i) the financial prejudice to the particular complainant in the particular circumstances if an order for costs is not made in his favour, and (ii) the need to encourage public authorities to make and stand by honest, reasonable and apparently sound administrative decisions made in the public interest without fear of exposure to undue financial prejudice if the decision is successfully challenged.

10.8 The English Courts have confirmed that the principles enunciated by Lord Bingham of Cornhill CJ in *Bradford* are not confined to the facts of that case. In *Regina (Perinpanathan) v City of Westminster Magistrates' Court [2010] EWCA Civ 40* [*"Perinpanathan"*] Lord Neuberger stated:

> *65. Lord Bingham CJ said that his three principles applied to "questions of this kind", and it is therefore potentially open to arguments as to how far they were intended to apply outside appeals against vehicle licensing decisions. However, it seems to me that the way he expressed himself suggests that he was intending to refer to any case where the police or a regulatory authority was carrying through what was essentially an "administrative decision", which I understand to mean the performance of one of its regulatory functions […]*
>
> *73. So far as principle is concerned, [Baxendale-Walker]* [see paragraph 10.12 of this Order] *has given strong support to the notion that Lord Bingham CJ's three principles should apply where a regulatory body is reasonably carrying out its functions in court proceedings, at least where the rules of that court contain no presumption or principle that costs follow the event. The effect of the reasoning is that, just because a disciplinary body's functions have to be carried out before a tribunal with a power to order costs, it does not follow that there is a presumption that the tribunal ought to order the disciplinary body to pay the costs if it is unsuccessful, and that, when deciding what order to make, the tribunal should approach the question by reference to Lord Bingham CJ's three principles. […]*
>
> *76. The principles appear to me to be well founded, as one would expect bearing in mind their source. In a case where regulatory or disciplinary bodies, or the police, carrying out regulatory functions, have acted reasonably in opposing the grant of relief, or in pursuing a claim, it seems appropriate that there should not be a presumption that they should pay the other party's costs.*

10.9 The general applicability of the principles across all English tribunals weas further confirmed by Sir Geoffrey Vos, Chancellor of the High Court, delivering the judgment of the English Court of Appeal in *British Telecommunications Plc v The Office of Communications [2018] EWCA Civ 2542* (at paragraph 66):

> *[I]t is undoubted that the language used in each of Bradford, Baxendale-Walker and Perinpanathan is in very general terms that is capable of direct, if analogous, application to the circumstances of the present case. […]. It is enough to say that in each of these authorities, the courts contemplated that the principles they were enunciating would be of significance and application in other areas.*

10.10 Focussing on the issue of *reasonableness* on the part of a regulatory authority Jackson J in *The Queen on the Application of Peter Gorlov v The Institute of Chartered Accountants in England and Wales [2001] EWCH Admin 220* [*"Gorlov"*] cited the principles laid down in *Bradford* and (at paragraphs 36 and 37) stated:

> *36. How do the principles set out apply to the present case? It is clear both from the wording of regulation 29 and from the authorities cited that costs do not necessarily follow the event. The fact that the claimant won his appeal before the Appeal Panel is a factor in his favour. It is not, however, decisive.*
>
> *37. One then turns to wider matters. The Institute is a professional body which, acting in the public interest, brings disciplinary proceedings against accountants. That is a factor which points against any automatic award of costs in disciplinary proceedings which fail. The present case, however, has special features. The disciplinary proceedings brought by the Institute were a shambles from start to finish. […] The conduct of the Institute throughout the disciplinary proceedings was of course honest and well intentioned. That conduct was, however, misguided. Mistake was piled upon mistake. In my view, the Institute's conduct was unreasonable.*

10.11 From a combined reading of *Bradford* and *Gorlov* the Chairman notes that costs do not necessarily follow the event but that unreasonableness on the part of a regulatory authority may expose it to an order for costs being made against it.

10.12 A further aspect however must be considered. Is unreasonable conduct on the part of a regulatory authority sufficient to ground an order for costs against it, or ought the very fact that the regulatory authority is carrying out a public function render it immune? The question was examined by the English Court of Appeal in *Paul Baxendale-Walker v The Law Society [2007] EWCA Civ 233* [*"Baxendale-Walker"*] Laws LJ delivering the judgment of the court. The case concerned the exercise by the Law Society of England and Wales as regulator of disciplinary action against an English Solicitor accused of misconduct. Laws LJ introduced the idea of "a chilling effect" (at paragraph 39):

> *Unless the complaint is improperly brought, or, for example, proceeds as it did in Gorlov , as a "shambles from start to finish", when the Law Society is discharging its responsibilities as a regulator of the profession, an order for costs should not ordinarily be made against it on the basis that costs follow the event. The "event" is simply one factor for consideration. It is not a starting point. There is no assumption that an order for costs in favour of a solicitor who has successfully defeated an allegation of professional misconduct will automatically follow. One*

crucial feature which should inform the Tribunal's costs decision is that the proceedings were brought by the Law Society in exercise of its regulatory responsibility, in the public interest and the maintenance of proper professional standards. For the Law Society to be exposed to the risk of an adverse costs order simply because properly brought proceedings were unsuccessful might have a chilling effect on the exercise of its regulatory obligations, to the public disadvantage.

10.13 The Chairman draws the conclusion from the dictum of Laws LJ quoted in paragraph 10.12 of this Order that notwithstanding any "chilling effect" on a regulator, that regulator may, in circumstances where its conduct has been fundamentally flawed, nevertheless not be presumed to be entitled to immunity from an application for an order for costs against it.

11. Revocation of the decisions of the Respondent: principle to be applied

11.1 The principle to be applied when considering the *vires* of the Respondent to revoke the decisions which are the subject of the First Appeal and Second Appeal, subsequent to the filing of the First Appeal and of the Second Appeal and the consequent assumption of jurisdiction by the Tribunal, is found in an earlier ruling of the Tribunal in *In the matter of the Financial Services Act 2008 and In the matter of an Application for a review of the decision taken by the Financial Supervision Commission, namely, the issue of a Warning Notice dated 24 October 2011 to each of Pritesh Ramesh Desai, Nigel Andrew Anthony McFarlane and Jayne Marian Evelt (10 January 2013)* [*Desai and others*]*:*

48. When constituted to hear an Appeal, the Financial Services Tribunal exercises its powers under Regulation 24 [now Rule 6A]. It must do so. It is not a matter of the Tribunal's discretion whether or not to grant relief. The Tribunal is obliged to confirm, vary or revoke the decision in question. ***Therefore once an Appeal against a decision of the FSC has been made to the Tribunal that decision, although remaining in force pending the outcome of the Appeal, owes its continuing existence to the Tribunal.*** *The Tribunal is not reviewing the decision making process of the FSC. The Tribunal is part of the decision making process of the FSC. The Tribunal is not a Court and has no Doleance powers. [**emphasis added**]*

11.2 That the effect of a decision of the Respondent appealed against may be suspended by the Tribunal or the Chairman pending the determination of the appeal (Rule 11(4)(j)) supports this

proposition in *Desai and others.* Throughout the appeals process, authority to confirm, vary, revoke or suspend the decision lies with the Tribunal or the Chairman and not with the Respondent.

12. Definition of "bringing" and "conducting" the proceedings

12.1 Both the Appellant and the Respondent have offered interpretations of the words "bringing the proceedings" and "conducting the proceedings", generically "in the proceedings" to support their respective views as to from which point in the proceedings a costs order would be applied and the scope of preparatory work which is to be included. In light of the scope of the Order presently made under Rules 27(10)(b) and (c) the Chairman notes but need not comment on those interpretations.

13. Reasons for the decision of the Chairman to award costs against the Respondent

13.1 The Chairman awards costs against the Respondent in respect of the First Appeal and of the Second Appeal for the reasons set out in this paragraph 13, on the basis of the facts referred to in this Order and applying the authorities and principles to which reference is made in this Order.

13.2 The Respondent maintains that (notwithstanding the commencement of the appeals process and the assumption of jurisdiction by the Tribunal) it has absolute discretion to revoke its decisions which are the subject of the First Appeal and of the Second Appeal.

13.3 The Respondent further maintains that, it having revoked the decisions, the First Appeal and the Second Appeal have become "vexatious, frivolous and entirely unnecessary" and that it is "entirely unnecessary for the Tribunal to consider the making of an order or determination to revoke, confirm or vary the decisions of the Respondents that no longer exist or apply".

13.4 The Respondent has misunderstood its powers. On the principle in *Desai and others* referred to in paragraph 11.1 of this Order the decisions continued in existence notwithstanding their purported revocation. Throughout the appeals process, authority to confirm, vary, revoke or suspend the decision lies with the Tribunal or the Chairman and not with the Respondent. The First Appeal and the Second Appeal had not therefore become "vexatious, frivolous and entirely unnecessary" and the authority of the Tribunal under section 33(2) of the Act was in no way diminished or impaired.

13.5 The effect of a revocation following the commencement of appeals proceedings if held to be *intra vires* the Respondent would be to undermine the appeals jurisdiction of the Tribunal and to usurp its authority under section 33(2) of the Act.

13.6 The inherent ambiguity in the Respondent's assertions based on its purported revocation of the decisions is also of concern. In notifying the Clerk to the Tribunal on 24 October 2022 of the revocations (deemed to be the Respondent's Reply) the Respondent writes that it "will not resist the above-mentioned appeals" yet goes on to assert that the appeals and any exercise of its authority by the Tribunal are unnecessary because the decisions "no longer exist or apply". Not resisting an appeal on the one hand and making what in substance amounts to an assertion that the Tribunal is *functus officio* are incompatible propositions.

13.7 It is also of concern that the purported revocations would not have had the effect of extending to the Appellant the relief it sought, which was in the First Appeal a variation of the Respondent's decision. Instead, the revocation would have had the effect of returning the Appellant to the *status quo ante*, setting all the Appellant's efforts in relation to the First Appeal and the Second Appeal at nought and making its expenses and outgoings redundant. This is apparent from the Respondent's own explanation found it its Reply that the refusal to register the Appellant under the Act is not reversed. The application process is simply recommenced (see paragraph 5.7 of this Order). The Respondent writes that "there are a number of matters (some pre-dating and some post-dating the date of the commencement of the appeals) ion which the Respondent is yet to receive satisfaction". The conclusion which the Chairman draws is that the Respondent, no longer confident of its approach, has wished to wipe the slate clean and to start over afresh.

13.8 In exercising its functions the Tribunal does so *de novo.* The Tribunal and the Chairman have wide discretionary powers in the management of an appeal, *inter alia* discretion to require that a party provide additional information (Rule 11(4)(c)), to adjourn the proceedings so that the parties may seek to resolve the dispute by conciliation (Rule 11(4)(h)), and to vary or revoke other orders made in the proceedings (Rule 11(4)(n)). The Respondent therefore would have had ample opportunity to seek the further clarification which it required of the Appellant to enable the Respondent to determine to what extent it would resist or concede points in the appeals, *whilst continuing to participate in the appeals process*.

13.9 The Chairman accepts (noting however that the point has not been argued before the Tribunal or the Chairman) that for such period as the Respondent engaged with the appeals process it did so in a manner which on the authorities and under the principles which the Chairman applies in making this Order was not open to characterisation as vexatious, abusive, disruptive or otherwise unreasonable.

13.10 In the opinion of the Chairman the attempted yet wholly *ultra vires* revocation of its decisions referred to in its Reply by the Respondent, having the effect of usurping the authority of the Tribunal and of the Chairman, of returning the Appellant to the *status quo ante* and thereby undermining the whole appeals process, was of itself unreasonable.

13.11 The Chairman turns now to the question of the "chilling effect" referred to by Laws LJ in *Baxendale-Walker* and by the Respondent which in paragraph 18 of its Submission on costs stated:

> *For the Respondent to be exposed to the risk of an adverse costs order simply because decisions made by it, in good faith, were promptly withdrawn, after further consideration, might have a 'chilling effect' on the exercise of its regulatory and statutory obligations as a result of fear of exposure by it to undue financial prejudice, to the public disadvantage.*

13.12 The need to avoid the "chilling effect" presupposes that a regulator has acted reasonably in reaching the decision which is the subject of an appeal and has engaged reasonably in the appeals process. Appeals are lost and won, and for a regulator to face adverse costs orders simply for losing an appeal which it had resisted in good faith would in the Chairman's opinion not be in the public interest.

13.13 The conduct of the Respondent in relation to the First Appeal and the Second Appeal has been of a wholly different character. Just as the Respondent has a public function which it is required to perform, so do the Tribunal and the Chairman. The jurisdiction of the Tribunal and of the Chairman cannot be nullified and their authority rendered *functus officio* with regard to an appeal by any action on the part of the Respondent, whether or not that action was deliberate in the sense of having been intended to have such consequences or alternatively whether the Respondent simply failed to grasp the likely (or inevitable) consequences. To determine otherwise would be to acquiesce in an action of the Respondent which if permitted to form a precedent would - contrary to the statutory function conferred on the Tribunal and to the obvious detriment of public interest - empower the Respondent *to nullify at any stage* any future appeals process before the Tribunal.

13.14 In summary, in revoking its decisions after the appeals process had begun, that revocation having the effect not of satisfying the Appellant's claims but instead resulting in the Appellant's position being returned to the *status quo ante*, and in seeking to render the Tribunal *functus officio*, the Respondent exceeded its powers and in doing so acted unreasonably. Therein lies the basis for an award of costs against the Respondent under Rule 27(3)(b).

14. Order

For the reasons set out and with the authority referred to above IT IS ORDERED by the Chairman that:

14.1 Pursuant to Rule 11(4)(n) the Chairman's Order of 7 November 2022 is varied by the deletion of paragraph 4.2.

14.2 Pursuant to Rules 27(3)(b) and 27(10)(b) and (c):

14.2.1 The Respondent shall pay to the Appellant in respect of the whole of the Appellant's costs of the First Appeal and of the Second Appeal such sum as may be agreed and shall no later than 4pm on 27 February 2023 inform the Clerk to the Tribunal in writing of the agreed sum so that the Chairman may so Order; or should the parties inform the Clerk to the Tribunal in writing within such period that they are unable to conclude an agreement,

14.2.1 The Respondent shall pay to the Appellant in respect of the whole of the Appellant's costs of the First Appeal and of the Second Appeal such sum as shall be decided by way of assessment in the High Court in accordance with the rules of court.

Paul R Beckett

Chairman, Isle of Man Financial Services Tribunal

16 January 2023