

# **Subsidy Advice Unit Report on the proposed subsidy to Lakeland Forum (Fermanagh and Omagh District Council)**

**Referred by Fermanagh and Omagh District  
Council**

**19 December 2023**

**Subsidy Advice Unit**

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Part of the Competition and Markets Authority

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# 1. Introduction

- 1.1 This report is an evaluation prepared by the Subsidy Advice Unit (SAU), part of the Competition and Markets Authority, under section 59 of the Subsidy Control Act 2022 (the Act).
- 1.2 The SAU has evaluated Fermanagh and Omagh District Council's (the Council) assessment of compliance of the proposed subsidy for the redevelopment of the Lakeland Forum, with the requirements of Chapters 1 and 2 of Part 2 of the Act (the Assessment).<sup>1</sup>
- 1.3 This report is based on the information provided to the SAU by the Council in its Assessment and evidence submitted relevant to that Assessment.
- 1.4 This report is provided as non-binding advice to the Council. The purpose of the SAU's report is not to make a recommendation on whether the subsidy should be given, or directly assess whether it complies with the subsidy control requirements. The Council is ultimately responsible for granting the subsidy, based on its own assessment, having the benefit of the SAU's evaluation.
- 1.5 A summary of our observations is set out at section 2 of this report.

## The referred subsidy<sup>2</sup>

- 1.6 The Council is a local government authority that primarily covers the southwest region of Northern Ireland (NI), including County Fermanagh and parts of County Tyrone. The Lakeland Forum is the Council's main leisure centre in County Fermanagh, located in Enniskillen. The Lakeland Forum is owned and operated by the Council and provides a range of facilities to the local community.<sup>3</sup> The Assessment states that the Lakeland Forum has reached the end of its economic life and is suffering from significant deterioration.
- 1.7 The Council is seeking to award a subsidy to redevelop and improve the Lakeland Forum to enable better access to a range of health and well-being activities in an economically and socially disadvantaged area. The Council envisages that the Lakeland Forum will also attract visitors to Enniskillen and help improve the local economy.

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<sup>1</sup> Chapter 1 of Part 2 of the Act requires a public authority to consider the subsidy control principles and energy and environment principles before deciding to give a subsidy. The public authority must not award the subsidy unless it is of the view that it is consistent with those principles. Chapter 2 of Part 2 of the Act prohibits the giving of certain kinds of subsidies and, in relation to certain other categories of subsidy creates a number of requirements with which public authorities must comply.

<sup>2</sup> [Referral of proposed subsidy to Lakeland Forum \(Fermanagh and Omagh District Council\) by Fermanagh and Omagh District Council - GOV.UK \(www.gov.uk\)](#)

<sup>3</sup> These include: a swimming pool, sports hall, gym, indoor play area, function rooms and outdoor sports facilities.

- 1.8 The proposed subsidy is a grant of £45.7 million, comprising of £25.7 million provided by the Council and the remaining £20 million originating from the Department for Levelling Up, Housing and Communities (DLUHC) Levelling Up Fund. The subsidy is designed to cover the majority of the capital costs of developing the Lakeland Forum into a high-quality attraction that provides a range of indoor and outdoor facilities that incorporate the surrounding park, waterside and Lough Erne.

### **SAU referral process**

- 1.9 On 1 November 2023, the Council requested a report from the SAU in relation to the proposed subsidy for the refurbishment of the Lakeland Forum.
- 1.10 The Council explained that the subsidy is a Subsidy of Particular Interest<sup>4</sup> because its value exceeds £10 million.
- 1.11 The SAU notified the Council on 7 November 2023 that it would prepare and publish a report within 30 working days (ie on or before 19 December 2023).<sup>5</sup> The SAU published details of the referral on 7 November 2023.<sup>6</sup>

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<sup>4</sup> In the information provided under section 52(2) of the Act.

<sup>5</sup> Sections 53(1) and 53(2) of the Act.

<sup>6</sup> [Referral of proposed subsidy to Lakeland Forum \(Fermanagh and Omagh District Council\) by Fermanagh and Omagh District Council - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/referral-of-proposed-subsidy-to-lakeland-forum-fermanagh-and-omagh-district-council)

## 2. Summary of the SAU's observations

- 2.1 The Assessment is drafted in line with the four-step structure described in the Statutory Guidance for the United Kingdom Subsidy Control Regime (the [Statutory Guidance](#)) and as reflected in the SAU's Guidance on the operation of the subsidy control functions of the Subsidy Advice Unit (the [SAU Guidance](#)).
- 2.2 The Council sets out in its Assessment that, for the purpose of section 2(1) of the Act,<sup>7</sup> it considered whether a subsidy is financial assistance given, directly or indirectly, from public resources by a public authority and conferring an economic advantage on one or more enterprises, including in light of the Competition Appeal Tribunal's judgment in *Durham Company Limited*.<sup>8</sup> The Council has explained why it considers that, for the purposes of this Assessment, the test under section 2(1) was met.<sup>9</sup>
- 2.3 We have a defined role in the subsidy control regime, set out in the Act,<sup>10</sup> and it is not our role to determine what constitutes a subsidy. Public authorities are responsible for determining whether the financial assistance they are proposing to provide meets the definition of a subsidy before referral to the SAU.<sup>11</sup>
- 2.4 The Assessment could be strengthened in the following areas:
- (a) In relation to Principle C, by describing the counterfactual in more detail and by explaining, with evidence and analysis, how it was selected. In particular, the Assessment could explain in more detail how a conclusion was reached that the existing Lakeland Forum would not be maintained and repaired.
  - (b) In relation to Principle B, by explaining in more detail how the subsidy is designed to give assurance that its size is limited to what is necessary to achieve the policy objectives
- 2.5 As a general point, the Assessment provides valuable supporting evidence to support its analysis, including a helpful Market Review report (Market Review) commissioned by the Council, which sets out an assessment of local competition impacts. The Assessment would have benefitted from more precise referencing and signposting to specific evidence and analysis within supporting documents.

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<sup>7</sup> Section 2(1) of the Act.

<sup>8</sup> [1577/12/13/23 The Durham Company Limited v Durham County Council - Judgment | 27 Jul 2023 \(catribunal.org.uk\)](#) which found that a subsidy must be given by a public authority to a separate enterprise and that the public authority in that case could not subsidise itself.

<sup>9</sup> In particular, the Council considered whether the public funding is given to a separate legal person and whether the purpose of the Council's activity is economic such that it is an "enterprise" for the purposes of s.7(2) of the Act.

<sup>10</sup> Part 4 of the Act.

<sup>11</sup> [Statutory Guidance](#), paragraph 1.24.

### **3. The SAU's Evaluation**

3.1 This section sets out our evaluation of the Assessment, following the four-step framework structure used by the Council.

#### **Step 1: Identifying the policy objective, ensuring it addresses a market failure or equity concern, and determining whether a subsidy is the right tool to use**

3.2 The first step involves an evaluation of the Assessment against:

- (a) Principle A: Subsidies should pursue a specific policy objective in order to (a) remedy an identified market failure or (b) address an equity rationale (such as local or regional disadvantage, social difficulties or distributional concerns); and
- (b) Principle E: Subsidies should be an appropriate policy instrument for achieving their specific policy objective and that objective cannot be achieved through other, less distortive, means.<sup>12</sup>

#### **Policy objectives**

3.3 The Assessment sets out that the policy objective of the subsidy is to replace and improve the Lakeland Forum to enable better access to a range of health and well-being activities in an economically and socially disadvantaged area.

3.4 The Council also envisages that the improved facilities will attract visitors to Enniskillen and help to improve the local economy.

3.5 We consider that the Assessment clearly sets out the policy objective and effectively articulates the underlying reasons for its policy aims. The Assessment could have been strengthened by explaining how the Council's stated objectives align with the wider objectives of the DLUHC Levelling Up Fund, and how these might be achieved through the provision of the subsidy.

#### **Equity objective**

3.6 The Statutory Guidance sets out that equity objectives seek to reduce unequal or unfair outcomes between different groups in society or geographic areas.<sup>13</sup>

3.7 The Assessment explains that the equity objectives of the subsidy are to:

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<sup>12</sup> Further information about the Principles A and E can be found in the [Statutory Guidance](#) (paragraphs 3.32 to 3.56) and the [SAU Guidance](#) (paragraphs 4.7 to 4.11).

<sup>13</sup> [Statutory Guidance](#), paragraphs 3.49 to 3.53.

- (a) contribute to healthier lifestyles amongst the people of Fermanagh and Omagh by providing increased access to a wider range of specialist leisure and well-being facilities; and
  - (b) help to improve the local economy by providing an attraction which people visit.
- 3.8 The Assessment explains that the subsidy aims to improve equity issues arising from economic and social challenges in the Fermanagh and Omagh district. It supports this by setting out that within the Lakeland Forum catchment area nearly half (47%) of individuals live in the top third of the most deprived communities in NI, and nearly one quarter (24%) live in the top third of the most health-deprived communities in NI.
- 3.9 The Assessment provides evidence, including statistical indicators, to further support its policy objective and demonstrate a link between economic disadvantages and overall well-being. It explains that poverty affects health directly and indirectly in various ways, including financial strain, poorer housing and living environments, poor diet, and limited access to employment services and opportunities.
- 3.10 Furthermore, the Assessment explains that in areas of deprivation, particularly in rural areas such as Fermanagh and Omagh, businesses have insufficient incentive to invest due to lower footfall and less disposable income within the area. In addition, the Assessment states that Fermanagh and Omagh is the most sparsely populated area in NI, where the lower population density combined with longstanding deprivation discourages private investment. As a result, businesses, particularly those in leisure and health facilities that can have high start-up costs, have insufficient incentive to invest in providing such services in these areas. This leads to residents having fewer opportunities to access health facilities.
- 3.11 In our view, the Assessment clearly articulates a regional inequality and provides evidence to support the equity objectives that underpin the subsidy and demonstrate existing inequalities and deprivation in the Fermanagh and Omagh district.
- 3.12 Assessment indicates that some individuals benefit from concessionary pricing. Additional information on how these individuals in particular will benefit from the facility could strengthen the equity rationale.

**Consideration of alternative policy options and why the subsidy is the most appropriate and least distortive instrument**

- 3.13 In order to comply with Principle E, public authorities should consider why the decision to give a subsidy is the most appropriate instrument for addressing the



identified policy objective, and why other means are not appropriate for achieving the identified policy objective.<sup>14</sup>

- 3.14 The Assessment and supporting evidence explain that the objective to replace and improve the existing Lakeland Forum could not be delivered to the size and scale proposed, absent the subsidy.
- 3.15 The Assessment lists a series of alternative options that the Council considered for achieving the specific policy objective (to improve the Lakeland Forum). To improve its wider policy objective (access to health benefits), the Council had also considered financial assistance for well-being support without new facilities (for example, through home-based exercises supported by online trainers).
- 3.16 These options were discounted because they would not deliver the desired outcomes. In the case of home-based provision, the absence of a new facility was expected to lead to reduced benefits to health and the local economy. The Council considers it does not have the power to implement relevant tax breaks or regulation, and it has concluded that commercial investment or other alternative forms of financial support are unviable due to the scale of the viability gap.
- 3.17 The Assessment also sets out that the delivery of the equity objectives through a reduced subsidy was considered, and a number of different design options with respect to location and accommodation were evaluated. The Assessment sets out that an options appraisal matrix and scoring mechanism was employed to identify the preferred option.
- 3.18 The Assessment also states (in Step 2) that an alternative policy option, where support from the Levelling Up Fund had not been received, was to provide a refurbished facility. In this scenario, the facility would remain very energy inefficient, leading to elevated operating costs and therefore diminishing the facility's future viability and sustainability. The Assessment concludes that this would adversely affect the health and wellbeing of local residents, potentially resulting in escalated health and social care costs and therefore not addressing the equity objectives.
- 3.19 In our view, the Assessment and supporting evidence demonstrates that the Council has considered other ways of achieving the policy objective and identifies why these alternatives are not the most appropriate instruments.
- 3.20 The Assessment could be strengthened by providing additional explanation of why a lower level of subsidy would not deliver the stated policy aims.

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<sup>14</sup> [Statutory Guidance](#), paragraphs 3.54 to 3.46.

## **Step 2: Ensuring that the subsidy is designed to create the right incentives for the beneficiary and bring about a change**

3.21 The second step involves an evaluation of the assessment against:

- (a) Principle C: First, subsidies should be designed to bring about a change of economic behaviour of the beneficiary. Second, that change, in relation to a subsidy, should be conducive to achieving its specific policy objective, and something that would not happen without the subsidy; and
- (b) Principle D: Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.<sup>15</sup>

### **Counterfactual assessment**

3.22 In assessing the counterfactual, the Statutory Guidance explains that public authorities should assess any change against a baseline of what would happen in the absence of the subsidy (the ‘do nothing’ scenario).<sup>16</sup> This baseline would not necessarily be the current ‘as is’ situation (the ‘status quo’) but what would likely happen in the future – over both the long and short term – if no subsidy were awarded.

3.23 The Assessment states that, ‘the baseline [...] is that the Lakeland Forum will not be rebuilt and improved as proposed in the Business Case’. It explains that:

- (a) ‘The building is close to the end of its useful life’ and ‘as the facility enters its 47<sup>th</sup> year, it is suffering from significant deterioration and will, in due course, present health and safety challenges that render it unworkable’.
- (b) ‘The Lakeland Forum development cannot afford to proceed if funded on a commercial basis only. The leisure centre has been a loss-making enterprise, therefore there has not been the income to fund further works’.

3.24 The Assessment refers to a conclusion in the Outline Business Case that, ‘in the absence of [DLUHC Levelling Up Fund] support, whilst substantive refurbishment works would likely take place at the Lakeland Forum, the facility would continue to be very energy inefficient, likely leading to increase operating costs and further diminishing its future viability/sustainability’.

3.25 The Outline Business Case describes a scenario where the existing Lakeland Forum would continue ‘as currently operated with the historic operational costs

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<sup>15</sup> Further information about the Principles C and D can be found in the [Statutory Guidance](#) (paragraphs 3.57 to 3.71) and the [SAU Guidance](#), paragraphs 4.12 to 4.14).

<sup>16</sup> [Statutory Guidance](#), paragraphs 3.60 to 3.62.

continuing in initial period and then increasing to closure in 15 years as not fit for purpose’.

- 3.26 We infer from the statements in the main body of the Assessment and the Outline Business Case that the existing Lakeland Forum is expected to close in around 15 years’ time, absent the subsidy.
- 3.27 We consider that the Assessment could be improved by describing the counterfactual more clearly and by explaining, with evidence and analysis, how it was chosen as being the most likely.
- 3.28 In our view, while the existing Lakeland Forum may be lossmaking and ‘suffering from significant deterioration’, it does not necessarily follow that it will ultimately close and not be replaced, absent the subsidy.
- 3.29 We observe that the Council has a significant role in determining the future of the Lakeland Forum because it owns and operates the facility. The Assessment could be strengthened by describing in more detail how the counterfactual and other potential scenarios (where the Council takes different courses of action) were assessed.
- 3.30 For example, the Assessment could describe, with supporting evidence and analysis, why the described counterfactual was judged to be more likely than another potential scenario where the Council makes a capital investment in order to overcome the health and safety concerns, replace parts which have (and/or are expected to become) obsolete, and improve the existing Lakeland Forum’s energy efficiency without rebuilding the facility in its entirety.

### **Changes in economic behaviour of the beneficiary**

- 3.31 The Statutory Guidance sets out that subsidies must bring about something that would not have occurred without the subsidy.<sup>17</sup> In demonstrating this, public authorities should consider the likely change or additional net benefit.
- 3.32 The Assessment makes three observations:
- (a) ‘The relevant works to be funded have not yet started nor are they procured nor legally committed in any way, and nor can the works be started in any sense until the funding position is resolved’.
  - (b) The ‘activity that will occur with the subsidy is the delivery of the new Lakeland Forum’.

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<sup>17</sup> [Statutory Guidance](#), paragraph 3.64.

(c) 'The behaviour change is demonstrated by the Lakeland Forum works going ahead in the near future with the subsidy, which otherwise would simply not happen at all'.

- 3.33 The Assessment explains at a high-level that the change in economic behaviour which the subsidy is intended to bring about is the rebuilding and improvement of the existing Lakeland Forum against a counterfactual where it would continue to deteriorate and eventually close.
- 3.34 During the course of our evaluation, the Council clarified that a competitive process to appoint a contractor is expected to commence in December 2023 and be completed in January 2024.
- 3.35 We note that the existing Lakeland Forum is suffering from significant deterioration. Further, during the course of our evaluation, the Council told us that, 'The existing fitness suit is c. 400m<sup>2</sup> and prior to Covid pandemic, was a c.100 station gym. The new fitness suit is 20% larger at c.500m<sup>2</sup> and is also to provide c.100 stations'.
- 3.36 In our view, the Assessment explains how the new Lakeland Forum (once completed) will support the specific policy objectives by providing 'better' access to a range of health and well-being activities, and by allowing continuing access to those activities beyond the date that the existing Lakeland Forum would close under the counterfactual.

### **Additionality assessment**

- 3.37 According to the Statutory Guidance, 'additionality' means that subsidies should not be used to finance a project or activity that the beneficiary would have undertaken in a similar form, manner, and timeframe without the subsidy.<sup>18</sup> Further, 'subsidies should not normally compensate for 'business as usual' costs – in other words, those costs that the beneficiary would have incurred and had to fund itself in the absence of any subsidy'.<sup>19</sup>
- 3.38 The Assessment states that 'the Council is satisfied that the funding is directed towards one-off capital costs for additional activity'. It explains that the existing facility 'is not being simply replaced like for like. Instead, the proposal is to be much more ambitious in order to generate benefits for the wider community'.
- 3.39 The Assessment sets out the Council's conclusion that 'this Project would not happen in the manner or to the extent proposed without support from the Levelling Up fund'. It concludes that the subsidy cannot be compensation for 'business as

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<sup>18</sup> [Statutory Guidance](#), paragraphs 3.63 to 3.67.

<sup>19</sup> [Statutory Guidance](#), paragraph 3.66.

usual' costs, because the redevelopment and improvement of the existing Lakeland Forum would not be undertaken without the subsidy.

- 3.40 We consider that the assessment of Principle D is supported by references to the counterfactual and the need for support from the DLUHC Levelling Up Fund towards the Lakeland Forum.
- 3.41 In our view, the Assessment clearly explains its conclusion that the subsidy will not compensate for costs which the beneficiary would have funded in the absence of any subsidy.

### **Step 3: Considering the distortive impacts that the subsidy may have and keeping them as low as possible.**

- 3.42 The third step involves an evaluation of the assessment against:
- (a) Principle B: Subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it; and
  - (b) Principle F: Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom.<sup>20</sup>

## **Proportionality**

### **Limited to what is necessary**

- 3.43 The Assessment states that the 'level of the subsidy in this instance has been designed in order to be the minimum required to deliver the outcome'. It goes on to explain that, 'by limiting the subsidy to an identified viability gap, the Council is helping to demonstrate that the subsidy is proportionate to what is necessary to unlock the infrastructure development'.
- 3.44 The Assessment states that 'the Council has calculated that the viability gap for the updated and improved facility is £56,587,053 million based upon a useful economic life of 45 years following completion'. This amount is made up of three components:
- (a) The estimated capital cost (£45.7 million of which is considered to represent a subsidy);

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<sup>20</sup> Further information about the Principles B and F can be found in the [Statutory Guidance](#) (paragraphs 3.72 to 3.108) and the [SAU Guidance](#) (paragraphs 4.15 to 4.19).

- (b) An additional forecast net operating deficit over 45 years, excluding depreciation; and
  - (c) Parts of the Lakeland Forum which are considered to be for the public realm, and therefore not treated as being part of the subsidy.
- 3.45 The Assessment sets out three 'headline points' regarding the size of the viability gap:
  - (a) 'The Council has discretion as to how it determines the viability gap, subject to acting reasonably'.
  - (b) 'The Council is running the current facility at a loss, which will reduce as a result of the investment, but not to a degree which covers the capital costs'. The Assessment observes that, 'there will be no operating profit ...from which to finance commercial borrowing, hence the need for subsidy against 100% of investment costs, such is the viability gap'.
  - (c) 'By using a procured developer the Council reduces the impact on the market and has kept costs down'
- 3.46 During the course of our evaluation, the Council clarified that a contractor for the construction work is to be appointed through a UK Procurement Policy compliant Framework utilising a competitive award process. Further, drafting of the tender documents for this competitive process is currently underway.
- 3.47 We observe that the use of a competitive tender process for the selection of the contractor can give assurance that the size of the subsidy is limited to what is necessary to achieve the policy objectives.
- 3.48 We find that the Assessment could be strengthened by explaining in more detail why the viability gap for the purposes of the subsidy is not the same as the estimated capital cost of completing the project. In particular, given that the policy objective is to replace and upgrade the existing Lakeland Forum, we consider that the Assessment could explain the relevance to the assessment of Principle B, which should describe a change in behaviour, of including the forecast operating losses over 45 years.
- 3.49 We infer from the statements about the new Lakeland Forum being expected to be loss making that the Council has formed the view that third parties will not have a commercial incentive to contribute any amount towards the viability gap and, therefore, will not do so. If that is the case, we consider that this is a reasoned explanation for the Council's conclusion that it will require to bear the whole capital cost of building the new Lakeland Forum.

3.50 We consider that the Assessment could be improved by explaining in more detail how the subsidy is designed to give assurance that its size is limited to what is necessary to achieve the policy objectives and if any other analysis or advice has been reviewed. For example, it could be commensurate for the Assessment to describe the procurement process in more detail and refer to additional analysis and/or independent advice used to assess the reasonableness of the size of the subsidy.

### **Proportionate to the specific policy objective**

3.51 The Assessment does not directly address the question of proportionality to the specific policy objective, though certain monetised benefits are set out (under Step 1 and in supporting evidence<sup>21</sup>) which indicate a favourable benefit cost ratio, which could have been included in the Assessment. Various other non-monetised benefits are also discussed.

### **Design of subsidy to minimise negative effects on competition and investment**

3.52 The Assessment states that the Council has considered the design of the intervention and sought to identify ways in which the distortive effects of the subsidy may be minimised. Specifically:

- (a) a procurement process for the works, to limit the size of the subsidy needed;
- (b) this funding is for a one-off cost which will replace existing infrastructure, rather than ongoing costs;
- (c) implementation of project management processes and milestones to minimise the time over which the subsidy is spent;
- (d) the Council will ring-fence the funding awarded;
- (e) an intention to avoid distorting the premium and medium range gym market through the Lakeland's pricing policy for non-concessionary customers.

3.53 As described above, the Assessment gives brief coverage under Principle F of various subsidy characteristics identified as relevant in the Statutory Guidance. In terms of the 'nature of the instrument',<sup>22</sup> the Assessment includes a brief discussion of non-grant subsidy options (loan; loan guarantee; tax breaks) in its discussion of Principle E in Step 1.

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<sup>21</sup> The DLUHC Levelling Up Fund application (Document 3.8).

<sup>22</sup> [Statutory Guidance](#), paragraphs 3.80 to 3.82.

3.54 Intentions around pricing relative to competitors are a matter of future Council policy and are not themselves part of the subsidy design.

### **Assessment of effects on competition or investment**

3.55 The Assessment discusses potential effects on competition in relation to swimming pool facilities, gym and fitness suites, and soft play provision in the Enniskillen area. It cross-refers to an independent Market Review commissioned by the Council for the purposes of its responsibilities under the Act, and the application of Principle F in particular.

3.56 The Assessment suggests little or no impact on markets for swimming pool facilities or soft play provision on the basis of absence of directly comparable offers in the local area.

3.57 For gyms and fitness suites, the Assessment refers to the Council's Market Review which identified 20 gyms or fitness suites located within 30 minutes of the Lakeland Forum,<sup>23</sup> covering a range of different types of gym offering. It suggests that a public sector gym will not be the preferred choice for many gym-goers, but that they often offer a good fit for those on lower incomes, as well as people who are more physically inactive and need a more supportive environment.

3.58 The Assessment states that an impact (of the subsidy) on other providers cannot be ruled out, but is considered relatively small. It states that the Lakeland Forum gym will be of similar scale to current provision in terms of number of stations. It notes that the existence of the current facility has not prevented substantive growth in private sector gym provision in the area over the past decade. The Assessment suggests that 'the "size of the cake" is likely to increase over time for all providers of health and well-being services if the Council succeeds in creating an exercise culture.

3.59 We consider that the Assessment effectively addresses the main questions on potential competitive impacts, and includes some helpful local market analysis in relation to the main commercial market activities, drawing on its Market Review. It recognises that a degree of segmentation of gyms by type (budget, mid-range, premium) may be relevant to how closely different facilities compete with each other (as has been a feature of previous CMA merger decisions).<sup>24</sup>

3.60 In our view, the 'do nothing' counterfactual of a gradual decline and exit of Lakeland Forum facilities (rather than the status quo) should be factored into the consideration of potential competition effects. The Assessment could better consider the potential impact on actual and potential competitors (the market

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<sup>23</sup> And eight within 10 minutes.

<sup>24</sup> Albeit that specific evidence on gym pricing is somewhat limited.



distortion) as being the restriction of their opportunity to expand their customer numbers or enter the local market<sup>25</sup> in the counterfactual (not just the impact on existing competitors of Lakeland Forum having newer/better facilities).

3.61 The Market Review explores this aspect more fully than the Assessment itself, including the possibility of entry by budget gym operators, and argues that a considerable cohort of Lakeland Forum's target audience may be lost from the market in the counterfactual scenario, since private sector alternatives may not be attractive to them.<sup>26</sup> The potential for Lakeland Forum to grow the overall gym and fitness market by 'creating an exercise culture' is hard to evaluate.

#### **Step 4: Carrying out the balancing exercise**

3.62 The fourth step involves an evaluation of the assessment against subsidy control Principle G: subsidies' beneficial effects (in terms of achieving their specific policy objective) should outweigh any negative effects, including in particular negative effects on: (a) competition or investment within the United Kingdom; (b) international trade or investment.<sup>27</sup>

3.63 The Assessment lists the beneficial effects of the subsidy which relate to the overall health and wellbeing of the local community in Fermanagh. These benefits include improved access to public sport and other well-being activities, including the provision of swimming lessons for young people. The Council envisages that this will lead to increased physical activity in the local community and could therefore reduce the prevalence of illnesses such as obesity, heart disease, and type 2 diabetes. Furthermore, the Assessment explains that the improved access to these activities is expected to have a positive impact on mental health, workplace productivity and fostering community pride.

3.64 In addition, the Assessment explains that the subsidy will lead to increased footfall in and around Enniskillen, which in turn will help to support the local economy and town centre regeneration.

3.65 The Assessment also sets out wider policy benefits of the subsidy, highlighting how the Lakeland Forum can be used to support strategic partners, such as health organisations and local businesses, to deliver targeted support to people with specific needs and encourage tourism in Enniskillen.

3.66 We consider that the Council clearly sets out the benefits of the subsidy in relation to the Council's specific policy objective, providing evidence and quantifying some of the benefits to support its analysis.

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<sup>25</sup> In principle the possibility of entry may also apply to soft play facilities.

<sup>26</sup> Pages 31 to 32 of the Market Review.

<sup>27</sup> See [Statutory Guidance](#) (paragraphs 3.109 to 3.117) and [SAU Guidance](#) (paragraphs 4.20 to 4.22) for further detail.

- 3.67 The Assessment identifies some potential negative effects on competition and investment in the UK ('distortion of trade'), however it suggests that any such impact would be limited and outweighed by the benefits of the subsidy. Furthermore, it states that any negative effects would be mitigated through the Council's implementation of a pricing policy for non-concessionary customers that aligns with those in the private sector, and by providing a gym and fitness suite that is equivalent to the existing provision.
- 3.68 Clarification was sought from the Council as to the likely impacts on cross-border trade with the Republic of Ireland. The Council explained that the facility primarily serves the local community, with 60% of Lakeland Forum users living within a 10 minutes' drive away. Additionally, the Council highlighted that 0.6% of current members of the Lakeland Forum come from the Republic of Ireland, with the majority of these being pay-as-you-go users, likely to be visitors rather than regular customers. The Council concluded that whilst there is some cross-border interaction, any impacts on cross-border trade with the Republic of Ireland would be minimal.
- 3.69 The Assessment takes a high-level approach to balancing the benefits of the subsidy against the negative impact. In our view this is commensurate, given the evidence provided of limited local effects. Their conclusion could have been strengthened by pointing to the parallel of typical models of council-provided leisure centres throughout the UK which co-exist with private sector provision, as referenced in the Market Review.

## **Other Requirements of the Act**

- 3.70 This step in the evaluation relates to the requirements and prohibitions set out in Chapter 2 of Part 2 of the Act, where these are applicable.<sup>28</sup> The Council has confirmed that none of these prohibitions or other requirements applied to the subsidy.

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<sup>28</sup> [Statutory Guidance](#), Chapter 5