

# Appendix I: Litigation during the review period

## Introduction

- I.1 Subsidy control litigation brought under the Act is at an early stage of its evolution. Three judgments were handed down during the review period (a further judgment was handed down just after the review period ended, and two matters remain before the CAT with judgment is still pending). This relatively small number of cases has still allowed the CAT an opportunity to help clarify the standard of reasoning expected of public authorities, as well as provide some initial judicial guidance on the specific matters appealed.
- I.2 This Appendix provides a summary of subsidy control challenges under the Act.

## The Durham Company Limited v Durham County Council [2023] CAT 50<sup>1</sup>

### Challenge

- I.3 The claimant, a private waste collection company competing with the Council's commercial waste collection services, argued that the Council's use of the same vehicles and staff to collect both statutory household waste (which it could not charge for) and commercial waste (which it was obliged to charge for) conferred an economic advantage and therefore amounted to an unlawful subsidy under the Act.

### Issues covered

- I.4 This case was the first subsidy control challenge brought under the Act and provides guidance on the interpretation of 'subsidy', 'decision' and public authorities vs enterprise definitions.

### Current status

- I.5 The CAT has issued its judgment on the matter. The CAT found in favour of the Council, holding that the financial arrangements between the Council's household and commercial waste services did not constitute a subsidy under the Act. In the CAT's view, a public authority cannot subsidise itself and no economic advantage was conferred on a separate enterprise.<sup>2</sup>

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<sup>1</sup> [1577/12/13/23 The Durham Company Limited v Durham County Council | Competition Appeal Tribunal.](#)

<sup>2</sup> In a related procedural decision, on appeal the Court of Appeal overturned the cost caps put in place by the CAT. The CAT refused the claimant's application for permission to appeal the substantive judgment on a point of law. [CA-2023-000770 Durham -v- Durham Judgment Final.](#)

## **Mr Aubrey Weis v Greater Manchester Combined Authority [2025] CAT 41<sup>3</sup>**

### **Challenge**

- I.6 The claimant argued that GMCA's £140 million of loans under the Greater Manchester Housing Investment Loans Fund were unlawful subsidies because they were not made on a commercial market operator basis.

### **Issues covered**

- I.7 This was the second subsidy control challenge brought under the Act, and was the first case to consider how the Commercial Market Operator (CMO) principle operates under the Act. It provides judicial insight into emerging analysis of the Commercial Market Operator principle and the standard of reasoning required in subsidy determinations.

### **Current status**

- I.8 The CAT has issued its judgment on the matter. The CAT found the loans to be on commercial terms – invoking the CMO principle – and therefore did not confer an economic advantage under the Act. The CAT concluded that the GMCA's assessment of interest rates and risks was rational and consistent with market practice. Accordingly, the claimant was unsuccessful.
- I.9 An appeal is pending before the Court of Appeal.<sup>4</sup>

## **The New Lottery Company LTD & Others v The Gambling Commission [2025] CAT 14<sup>5</sup>**

### **Challenge**

- I.10 The appellants were a group of lottery operators, including The New Lottery Company, Northern & Shell plc and Health Lottery ELM. The appellants challenged the Gambling Commission's 2023 decision to provide around £70 million from the National Lottery Distribution Fund toward Camelot (the operator of the National Lottery). The £70 million in funding was provided to Camelot for the purpose of marketing and promoting the National Lottery. The appellants argued that the funding constituted financial assistance that conferred an economic advantage on Camelot, and should therefore be treated as a subsidy under the Act.

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<sup>3</sup> [1642/12/13/24 Mr Aubrey Weis V Greater Manchester Combined Authority - Judgment \[2025\] CAT 41 | 24 Jul 2025.](#)

<sup>4</sup> Weis has been granted leave to appeal by the Court of Appeal (having been refused by the CAT).

<sup>5</sup> [1730/12/13/25 The New Lottery Company Ltd and Others v The Gambling Commission | Competition Appeal Tribunal.](#)

I.11 The appellants argued that the Gambling Commission failed to assess the measure as a subsidy, did not enter it on the subsidy database and did not refer it to the CMA (ie the SAU) for advice, and therefore sought review of that decision in the CAT.

### **Issues covered**

I.12 This decision provides guidance on when regulatory or commercial arrangements involving a public body may constitute a subsidy.

### **Current status**

I.13 The CAT has issued its judgment on the matter. The CAT held no subsidy had been established. Further, in the event that a subsidy had been established, the CAT stated it would in any event have refused relief for delay.

### **Bristol Airport v Welsh Ministers [2026] CAT 30<sup>6</sup>**

#### **Challenge**

I.14 On 20 June 2025, Bristol Airport appealed the Welsh Government's decision to grant a long-term public subsidy package of up to £205.2 million to support Cardiff International Airport Limited. The subsidy was awarded 3 April 2025.

I.15 Bristol Airport's claim contained four appeal grounds. Specifically, Bristol Airport alleged that the Welsh Government, in awarding the subsidy, erred in fact and/or law in that it:

- (a) failed to determine that Cardiff Airport fell within the definition of an "ailing or insolvent enterprise" under section 24 of the Act (Ground 1);
- (b) failed to determine and characterise the subsidy as one for rescue and/or restructuring pursuant to sections 19 and/or 20 of the Act (Ground 2);
- (c) further or alternatively, failed to lawfully apply the subsidy control principles under the Act and concluding that the subsidy could lawfully be granted (Ground 3); and
- (d) further or alternatively, failed to lawfully apply the provisions of section 28 of the Act in so far as any element of the subsidy falls for consideration as a subsidy to air carriers for the operation of air routes (Ground 4).<sup>7</sup>

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<sup>6</sup> [1740/12/13/25 Bristol Airport v Welsh Ministers | Competition Appeal Tribunal.](#)

<sup>7</sup> [1740/12/13/25 - Bristol Airport v Welsh Ministers - Summary of appeal | 22 Jul 2025.](#)

- I.16 The challenge to subsidy to Cardiff Airport was heard by the CAT on 9-10 February 2026.

### **Issues covered**

- I.17 This was the first case where the CAT applied the subsidy control regime to a large public investment, in a context where regional economic development and competition concerns intersect; and it confirmed that a devolved government has a wide margin of discretion to intervene regionally through subsidies under the Act.

### **Current status**

- I.18 The judgment was handed down on 7 April 2026. As this date of 7 April 2026 falls outside the statutory reporting period for this report pursuant to section 65(3)(a) of the Act, this judgment will be considered in the next report as required by section 65(3)(b) of the Act.

## **Zenobē Energy Ltd v Gas and Electricity Markets Authority (GEMA) (2025)<sup>8</sup>**

### **Challenge**

- I.19 Zenobē is challenging a long-duration energy storage ('LEDS') cap-and-floor revenue support scheme introduced by GEMA/Ofgem. The scheme guarantees minimum revenue (the floor) and caps maximum review (the cap) to encourage investment.
- I.20 Specifically in relation to breaches of the Act, Zenobē's appeal alleges, among other things, that GEMA failed to:
- (a) assess the scheme against the Act's principles (e.g., necessity, proportionality and competitive effects);
  - (b) consider the Energy and Environment principles required under the Act; and/or
  - (c) refer the scheme to the SAU as a 'subsidy of particular interest' before implementation.

### **Issues covered**

- I.21 This case considers the application of the regime to regulatory schemes (especially in energy markets). The case is likely to also provide additional guidance on what constitutes a subsidy and a subsidy scheme.

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<sup>8</sup> [1754/12/13/25 Zenobē Energy Limited v Gas and Electricity Markets Authority | Competition Appeal Tribunal.](#)

## **Current status**

I.22 This has been heard by the CAT, and judgment is pending.

## **BEK Developments Ltd and Others v Durham County Council (2026)<sup>9</sup>**

### **Challenge**

I.23 BEK is challenging a decision by Durham County Council to award further grant funding to Stack Bishop Auckland in respect of a redevelopment project of a commercial site, and to provide funding to The Auckland Project for a hotel redevelopment project.

I.24 Specifically, in relation to breaches of the Act, BEK's appeal alleges, amongst other things, that Durham County Council:

- (a) failed to characterise both instances of funding as subsidies under the Act;
- (b) misapplied the subsidy control principles in respect of both instances of funding; and
- (c) failed to consider the subsidy control scheme requirements in respect of both instances of funding.

### **Issues covered**

I.25 This case considers the application of the regime to redevelopment and regeneration projects. This case may also consider what constitutes a subsidy and a subsidy scheme, and on how additional funding towards a project should be treated under the regime.

## **Current status**

I.26 This matter is currently before the CAT, and is still awaiting a hearing date.

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<sup>9</sup> [1760/12/13/25 BEK Developments Ltd and Others v Durham County Council | Competition Appeal Tribunal.](#)