Browne Jacobson

Greater Manchester Combined Authority v developer: Key lessons on subsidy control for local authorities

08 August 2025 Alex Kynoch

The Greater Manchester Combined Authority (Respondent) has successfully defended a challenge in the Competition Appeal Tribunal (CAT), brought by a developer (Appellant) against its decision to award around £120m of loans to a competing developer.

The challenge was brought under the Subsidy Control Act 2022 asserting that the loan arrangements gave rise to an impermissible subsidy.

Case background

The Respondent had loaned sums of around £120m to one of the Appellant's competitors, to support the delivery of a high-quality housing project within the area covered by the local authority (the Loans).

The Appellant claimed that the Loans were in breach of section 3(2) of the Act on the basis they had been granted on non-commercial, "non-market terms", amounting to a subsidy which "distorted the proper and fair operation of the relevant market" in and around the area.

The Respondent argued the decision to make the Loans did not amount to an unlawful subsidy at the time of the Appellant's application in June 2024, as the decision was still in principle and not yet formally executed, which could not amount to a subsidy decision capable of being challenged under section 70(1)).

Upon execution of the Loans, the Respondent maintained that they did not amount to financial assistance conferring an economic advantage for the purposes of the Act, because they had been made on commercial terms that were in line with the market.

The judgment

The Appellant criticised the conduct of the Respondent, claiming that the in-principle decision to make the Loans in March 2024 had been the point at which a subsidy decision had been made, and so its decision-making process had fallen foul of the Act.

While the CAT agreed that the timing of the decision to award the purported subsidy was determinative for the purposes of the Act, it considered that discussing indicative rates with the Recipient was standard practice in the lending decision-making process, even prior to any formal market analysis or due diligence being conducted.

The CAT considered that the Respondent's funding team possessed the expertise to have been aware of commercially available rates upon which the indicative rates were based, and that the Loan proposal had been overseen by individuals with considerable lending experience within the Gateway Panel and Credit Committee. They were satisfied the risk profile was consistent with what would have been deemed acceptable by a Commercial Market Operator (CMO), without having particular a focus on the Statutory Guidance.

In particular, the CAT agreed that the Loan terms were such that even in the event of a default, "it was most probable that the Respondent would recover the full amount of the loans plus interest" due to the low loan-to-value ratios, which, in addition to the reasonable interest rates, were consistent with what a commercial lender would have offered.

Furthermore, the CAT was of the view that while The Subsidy Control (Gross Cash Amount and Gross Cash Equivalent) Regulations 2022 are a useful indicator in setting rates, they were not determinative of whether the Loans conferred an economic advantage where the Respondent's funding team had considered various factors to justify the rates they had adopted.

As such, the CAT deemed the Respondent's decision-making process to be "perfectly rational" and that its committee, with their lending expertise, had approved the Loans on terms which "cannot be fairly categorised as low or obviously below market or commercial rates, bearing in mind the level of sick and security".

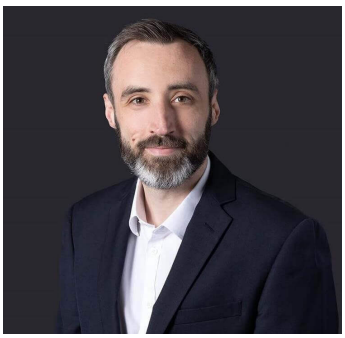
Therefore, the CAT did not consider the Loans had amounted to a subsidy that offered an economic advantage under section 3(2) of the Act.

Key lessons learnt for local authorities on subsidy control

This case offers clarity for local authorities making lending decisions on the definition of a subsidy under the Act and how a CMO principle may be applied. In particular:

- the judgment demonstrates a broad interpretation of what constitutes a subsidy decision under the Act, since the CAT deemed the Appellant entitled to challenge the Respondent's in principle decision to make the loans ahead of them being formally binding on the recipient;
- the judgment did not hinge on whether or not the Respondent had taken the approaches in the statutory guidance, because it had demonstrated the relevant expertise and followed the processes necessary to carry out the same level of assessment that a CMO would when making its lending decision. Sub-central authorities should take care in relying on this permissive approach, as few sub-central authorities will have this level of expertise in-house;
- although the CAT acknowledged the significance of the 2022 Regulations, they merely bolstered the Respondent's lending decision and the CAT did not consider them to be a determinative factor in the adoption of rates. Similarly the relevance of the EU reference rates was limited to the Respondent's funding agreement with central government, so this would not usually be relevant to a CMO assessment; and
- the Tribunal referenced the judgments of Sky Blue Sports & Leisure Limited v Coventry City Council 2014, and R (Sky Blue Sports) v Coventry City Council 2016 in its justification for applying the CMO principle when considering whether the Loans were unlawful subsidies. This suggests that (despite being a domestic judgment under the preceding EU State Aid law) the principles continue to be relevant under the new subsidy regime.

Contact



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