Neutral citation [2025] CAT 47

IN THE COMPETITION APPEAL TRIBUNAL

Case Nos: 1642/12/13/24

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

14 August 2025

Before:

HODGE MALEK KC
(Chair)
SIR IAIN MCMILLAN CBE FRSE DL
TIMOTHY SAWYER CBE

Sitting as a Tribunal in England and Wales

BETWEEN:

MR AUBREY WEIS

Appellant

- v –

GREATER MANCHESTER COMBINED AUTHORITY

Respondent

Determined on the papers

RULING (PERMISSION TO APPEAL)

---

1. On 24 July 2025 the Tribunal issued its judgment, dismissing the Appellant's application for review, under section 70(1) of the Subsidy Control Act 2022 (the "Act"), of the Respondent's decision to grant alleged subsidies, as defined in section 2(1) of the Act, comprising loans to both Trinity and New Jackson (Contour): [2025] CAT 41 ("the Judgment").

2. On 7 August 2025 the Appellant filed an application for permission to appeal the Judgment (the "PTA Application"). The Respondent filed brief written submissions in response to the PTA Application on 13 August 2025.

3. In summary, the Appellant submits that the Tribunal erred in law by failing correctly to apply orthodox judicial review principles to the GMCA Committee's decision of 22 March 2024. In particular, the Tribunal failed lawfully to consider and decide whether in making the decision, based on the information and advice before it as at the date of the decision, the Respondent complied with its statutory and public law obligations.

4. Instead of conducting a judicial review of the decision based on the information and advice that was before the decision-maker on 22 March 2024, the Appellant contends that the Tribunal fundamentally misdirected itself:

   (1) The Tribunal had regard to and principally relied upon the interest rate setting paper ("IRSP") produced by the Respondent (Mr Walmsley) after (i) the date of the Relevant Decision; and (ii) the Respondent received the Appellant's substantive pre-action letter challenging the lawfulness of the Respondent's decision-making process and seeking disclosure of the contemporaneous decision-making records.

   (2) The Tribunal conducted and relied upon its own analysis of whether the "terms [of the loans] are more favourable to [the recipients] than the terms that might reasonably have been expected to have been available on the market to the [recipients]" (i.e. whether or not the interest rates complied with the 'CMO principle' pursuant to s. 3(2) of the Act). The Tribunal's task pursuant to the Act was not to consider or decide this

issue for itself, but rather to apply orthodox judicial review principles to the decision, based on the information and advice that was before the decision-maker as at 22 March 2024.

5. The Appellant submits that the Tribunal's approach replicates the errors of law that were considered, and corrected, by the Court of Appeal in *Kenyon v SSHCLG* [2020] EWCA Civ 302 (see [28] to [30]) and *R (007 Stratford Taxis Limited) v Stratford on Avon District Council* [2011] EWCA Civ 160.

6. In our view, none of the Appellant's grounds of appeal discloses any error of law on which permission to appeal should be granted.

7. At [16] of the Judgment the Tribunal explained that it had utilised its expertise to understand the process and form an assessment of the terms of the 2024 Renaker Loans. As regards the margin of discretion to be afforded to the Tribunal, this was addressed by the Tribunal at [125] of the Judgment (citing the Court of Appeal judgment in *Cérélia v CMA* [2024] EWCA Civ 352).[1]

8. The Tribunal found in the Judgment at [185] that the process followed by the Respondent in entering the 2024 Loans was rational and not inherently defective. Once the decision was made by the GMCA Committee that was not the end of the process as before the loans were entered into several critical steps such as due diligence and legal review had to be undertaken prior to the actual loan agreements being signed. The Tribunal made clear that in determining whether the Respondent had granted an unlawful subsidy to Renaker the Tribunal would need to consider the whole process including the various stages leading up to that decision as well as the due diligence and final terms of the 2024 Renaker Loans: see [153] of the Judgment.

9. The decision of the Respondent to grant the loans was based on the material contained in the Part B Report, which was before the GMCA Committee and provided a clear summary of the proposed 2024 Renaker Loans, their

[1] See, also, the recent Court of Appeal judgment in *Le Patourel v BT* [2025] EWCA Civ 1061, where the Court explained the approach to be taken on an application for permission to appeal at [11]-[12].

background, the key terms, security, rates/pricing and relevant ratios: see [83] and [195] of the Judgment.

10. The IRSP served an important purpose of showing whether the development proposal and loans stand up to assessment and diligence and therefore whether the pricing proposed is still appropriate: see [87]. As set out in the Judgment, the IRSP provided more detail and a deeper analysis than in the Part B Report and displayed the thinking of the Investment Team as to why the rates were appropriate and had the analysis changed during the due diligence process (such as a result of an unfavourable Red Book valuation) the perception as to the appropriate rates then this would have had to be fed into what were to be the final terms of the 2024 Renaker Loans. The key drivers for the rates and terms had not changed from those set out in the Part B papers before the GMCA Committee: see [195] to [198].

11. It is important to note that the Appellant relied heavily on the IRSP in support of its argument that the terms of the 2024 Renaker Loans were uncommercial and that the Respondent had disregarded the Guidance and the Reference Rate Communication: see [165] of the Judgment. The Tribunal concluded, however, that the analysis in the IRSP complied with the relevant guidance: see [197] - [204] of the Judgment.

12. The Tribunal noted that the GMCA had a great deal of experience in lending and understanding the lending market. Not only was there the Investment Team, but within the Gateway Panel and Credit Committee there were experts in the field on lending. There was recent experience in lending on a club basis: see [189] – [190], and [202] of the Judgment. The Tribunal also noted that the Renaker Group had a good track record and no history of default: see [201].

13. As to the authorities to which the Appellant refers, both *Kenyon* and *Stratford* concerned *ex post facto* attempts to rely upon evidence that was not before the relevant decision-maker. By contrast, the Tribunal explained in the Judgment that it would not look simply at the terms of the GMCA Committee decision on 22 March 2024 - it would need to consider the whole process: see para 8 above. The Tribunal also considered that it is standard in the lending industry for

indicative rates to be given prior to formal credit or other committee approval: see [186] of the Judgment.

14. As to the Appellant's submission that the Tribunal erred in law in applying the CMO principle under s.3(2) of the Act, this does not, in our view, advance any arguable case.

15. The Tribunal relied on a consistent line of Court of Appeal authority in *Sky Blue Sports* (see [102]-[103]) and *Bulb Energy* (see [104]-[106]) and correctly applied the CMO principle: see [205] of the Judgment.

16. The Appellant submits that the Tribunal erred in law in holding: (i) at [203] of the Judgment that the Respondent had regard to the statutory guidance issued under the Act; and (ii) at [198] of the Judgment that the language in the Reference Rate Communication "*depending on available collateral*" means that it was not necessary to add 4% to the interest rate charged on the loans in respect of creditworthiness.

17. Relatedly, the Appellant argues that the Tribunal erred in law in holding that it was lawful for the Respondent to reduce the interest rate applicable to the loans by 4% on the ground that the SPV borrowers were ultimately beneficially owned by Mr Daren Whitaker. According to the Appellant, no rational commercial market operator would have reduced the interest rate applicable to the loans by 4% in these circumstances.

18. In the Judgment the Tribunal addressed the essential terms of the 2024 Renaker Loans and found that the interest rates on both loans were not unreasonably low, and that the security provided was substantial: see [192] to [194]. The security included a debenture over the two SPVs and shareholder security agreements over the shares in the two SPVs: see [193(4)]. The Tribunal explained that it did not consider that under the Reference Rate Communication any time there is a SPV as a borrower there must be an automatic 4% margin over the base rate and that "[t[here is a degree of flexibility inherent in the reference in brackets to "depending on available collateral"", and in the present case there was substantial collateral as well as protective conditions: see [198] of the Judgment.

The Tribunal held that Mr Walmsley was entitled to take the view that it was not necessary or required for 4% to be added over the base rate as a minimum, and that this was a reasonable approach and other lenders in the commercial field would have been entitled to take the same approach in assessing the impact on margin of the fact that the borrowers were both SPVs: see [199].

19. Finally, the Appellant submits that the Tribunal erred in law in failing to address and make findings in respect of material issues of fact which were addressed in the Appellant's submissions, in particular:

(1) The fact that the Respondent's own contemporaneous minutes of the Gateway Panel record that there was no consideration by the panel of whether the interest rates on the loans complied with the CMO principle.

(2) The fact that the Respondent's own contemporaneous minutes of the Credit Committee record that there was no consideration by the panel of whether the interest rates on the loans complied with the CMO principle.

(3) The fact that the Respondent's own internal emails record that Mr Whitaker wished to agree the interest rates on the loans with officers before engaging with the Respondent's governance process.

(4) The fact that the Respondent's own witness evidence admitted that the IRSP was never provided to or considered by the Relevant Decision-Maker.

(5) The fact that the IRSP was produced by him for the first time 2-3 days after the Respondent received the Appellant's pre-action letter of claim, and that Mr Walmsley was aware of the letter when writing the IRSP.

20. None of these points have any merit and can be shortly dealt with.

21. In relation to (1) and (2), both the Gateway Panel and the Credit Committee included persons with considerable lending experience (see para 12 above), it is unrealistic to suggest that just because the rates are not described as commercial

rates in the minutes that those committees did not consider the rates. Had they considered that the rates were not on market terms, they would have of course noted that.

22. In relation to (3), the Tribunal explained in the Judgment that it was not irregular for an officer of the Respondent to agree in principle indicative interest rates with Mr Whitaker at a meeting on 13 February 2024 prior to the GMCA Committee decision on 22 March 2024: it is entirely standard in the lending industry for indicative rates to be given prior to formal credit or other committee approval and both sides will often wish to discuss the interest rates in mind at an early stage in order to decide whether to proceed further: see [186] of the Judgment.

23. As to (4), this was addressed by the Tribunal in the Judgment and is dealt with at para 10 above.

24. As to (5), whether or not Mr Walmsley was aware of the letter at the time he put together the first draft of the IRSP is irrelevant. As explained in the evidence he followed the usual practice of the Investment Team to produce the draft after the GMCA meeting.

25. Accordingly, we do not consider that there is a reasonable prospect of the appeal succeeding. The PTA Application is dismissed.

Hodge Malek KC Chair	Sir Iain McMillan CBE FRSE DL	Timothy Sawyer CBE

Charles Dhanowa CBE, KC (*Hon*)
Registrar

Date: 14 August 2025