



Neutral citation [2026] CAT 47

Case Nos: 1751/5/7/25  
1760/12/13/25

**IN THE COMPETITION APPEAL TRIBUNAL**

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

5 June 2026

Before:

THE HONOURABLE MRS JUSTICE BACON  
(President)  
ROBERT HERGA  
PABLO IBÁÑEZ COLOMO

Sitting as a Tribunal in England and Wales

BETWEEN:

(1) MR GRAHAM THOMAS  
(2) BEK DEVELOPMENTS LTD  
(3) ALLEYHAUS LTD  
(4) DALES AND MOORS DEVELOPMENTS LTD  
(5) MASONIC HALL LTD

Claimants

- v -

**DURHAM COUNTY COUNCIL**

Defendant

AND BETWEEN:

(1) BEK DEVELOPMENTS LTD  
(2) ALLEYHAUS LTD  
(3) DALES AND MOORS DEVELOPMENTS LTD  
(4) MASONIC HALL LTD

Applicants

- v -

**DURHAM COUNTY COUNCIL**

Respondent

Heard at the Rolls Building, Fetter Lane, London EC4A 1NL  
on 15 April 2026

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**JUDGMENT**

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## APPEARANCES

Emily Hayward (instructed by Nexa Law Limited) appeared on behalf of the claimants/applicants.

Richard Howell (instructed by DWF Law LLP) appeared on behalf of the defendant/respondent.

## CONTENTS

<b>A.</b>	<b>Introduction .....</b>	<b>5</b>
<b>B.</b>	<b>Witness evidence .....</b>	<b>6</b>
<b>C.</b>	<b>Factual background.....</b>	<b>8</b>
<b>D.</b>	<b>Procedural background .....</b>	<b>10</b>
	(1) The original and amended claims.....	10
	(2) DCC's applications .....	12
	(3) Adjournment of the hearing .....	13
	(4) Developments at the hearing .....	14
<b>E.</b>	<b>The issues.....</b>	<b>15</b>
<b>F.</b>	<b>The CA98 claim .....</b>	<b>16</b>
	(1) The parties' initial submissions.....	16
	(2) The submissions at the hearing .....	18
	(3) Legal framework .....	19
	(4) The Tribunal's analysis .....	21
<b>G.</b>	<b>The subsidy claim .....</b>	<b>23</b>
	(1) The parties' initial submissions.....	23
	(2) The submissions at the hearing .....	25
	(3) Legal framework .....	26
	(4) The Tribunal's analysis .....	29
	(a) <i>Preliminary comments</i> .....	29
	(b) <i>The Weis judgment</i> .....	31
	(c) <i>The necessity for a final decision</i> .....	32
	(d) <i>Application to the present case</i> .....	36
<b>H.</b>	<b>Disposition .....</b>	<b>38</b>

## A. INTRODUCTION

1. This is the Tribunal's judgment following a hearing in these proceedings held on 15 April 2026 to address amendment and strike-out applications made in two related claims: (i) a claim under the Competition Act 1998 (**CA98**); and (ii) an application for review under s. 70 of the Subsidy Control Act 2022 (**SCA**). Both proceedings concern decisions made by Durham County Council to allocate regeneration funding and related grants to entities in respect of sites in Bishop Auckland, a town in County Durham.
2. The claimants in the claim under the CA98 (the **CA98 claim**) are Mr Graham Thomas and four companies of which he is the sole director and shareholder. Each of the second to fifth claimants are registered in the UK and carry out real estate and/or property development activities. The applicants in the claim under the SCA (the **subsidy claim**) are the same, save that Mr Graham Thomas is not a party. For convenience, this judgment will refer to the **claimants** to indicate both the claimants in the CA98 claim and the applicants in the subsidy claim, unless stated otherwise.
3. The defendant and respondent in these claims is Durham County Council (**DCC**), the unitary authority for the non-metropolitan county of Durham. Among its activities, DCC has been pursuing a number of initiatives to improve Bishop Auckland town centre. In particular, DCC has made grants pursuant to several schemes established and funded by central government, including the £3.6 billion Towns Fund, and the Future High Streets Fund. DCC has used funding from the latter to establish a Property Reuse Fund, the stated aim of which is to support businesses with expansion and bring empty buildings back into use.
4. As explained further below, the claimants did not have legal representation during some of the periods leading to the hearing on 15 April 2026 (the **hearing**). By the time of the hearing, however, they had secured the assistance of both solicitors and counsel, and were represented at the hearing by Ms Hayward. DCC was represented at the hearing by Mr Howell.

5. At the hearing the claimants sought to amend the CA98 claim and to stay (and subsequently amend) the subsidy claim. DCC sought to strike out both claims. The Tribunal struck out the CA98 claim at the hearing, with reasons to follow; this judgment sets out the reasons for that decision. The Tribunal reserved judgment on the subsidy claim; for the reasons set out in this judgment, the Tribunal concludes that the subsidy claim should also be struck out.

**B. WITNESS EVIDENCE**

6. The parties filed witness evidence from six witnesses for the purposes of the applications to be determined at the hearing. The claimants' evidence was as follows:

- (1) A witness statement dated 7 April 2026 from Lee Chisman-Russell, at the time a solicitor at TupperS Law Limited (**TupperS Law**) who were instructed on behalf of the claimants (as described below, he has now moved to Nexa Law). Mr Chisman-Russell's evidence was provided in response to DCC's security for costs application. He set out information on the background to and merits of the CA98 claim, the claimants' funding and insurance position, and contended that an award of security against the claimants would result in the stifling of the claimants' claim.

- (2) A witness statement dated 7 April 2026 from Graham Paul Thomas, the first claimant in the CA98 claim. Mr Thomas' evidence was likewise provided in response to DCC's security for costs application. He set out information on the structure and function of the Second to Fifth claimants, the financial position of each of the claimants, the availability of litigation funding for these proceedings and the consequences for the claimants if an award of security were to be made against them.

7. DCC's evidence was as follows:

- (1) A witness statement dated 20 October 2025 from James Etherington, a solicitor employed as a Legal Manager and Deputy Monitoring Officer at DCC, with responsibility for providing legal advice in respect of

commercial matters such as property, contracts, procurement, subsidy control and litigation. Mr Etherington's evidence was provided in support of DCC's application dated 20 October 2025 seeking various directions in response to the claimants' original claim form. He set out background details relating to the grants and alleged grants at issue in these proceedings.

- (2) A witness statement dated 30 January 2026 from Graham Wood, an Economic Manager for Regeneration, Economy and Growth at DCC, with responsibility for the development and delivery of town centre regeneration programmes, community development initiatives and skills services for residents. Mr Wood's evidence was provided in response to the claimants' application to amend their claim form on 5 December 2025. He set out details on factual matters relating to, amongst other things, the retail space available in Bishop Auckland, the development of 9–11 Newgate Street, and the claimants' proposed town centre developments.
- (3) A witness statement dated 30 January 2026 from Christopher Gee, a solicitor and partner at DWF Law LLP instructed on behalf of DCC in these proceedings. Mr Gee's evidence was provided in support of DCC's application for security for costs. He set out various matters regarding the background and procedural history to these proceedings, and the grounds underpinning DCC's security for costs application.
- (4) A witness statement dated 5 March 2026 from Debbie Hackett, an in-house solicitor at DCC who is responsible for providing legal advice in relation to contracts, procurement, and broader commercial matters. Ms Hackett provided an update on the progress of the various proposed subsidy agreements mentioned in Mr Etherington's evidence.

## C. FACTUAL BACKGROUND

8. The CA98 claim and subsidy claim both concern the giving of grants by DCC for the purpose of regenerating Bishop Auckland. The focus of the claims is on the following grants or proposed grants:

- (1) DCC's decision to award up to £3,715,139 to Stack Bishop Auckland Limited (**STACK**) and Hold Group Limited for the purpose of developing 9–11 Newgate Street, Bishop Auckland, a property owned by DCC (the **first STACK grant**). The award was publicly announced on 22 December 2022, and a grant funding agreement was entered into on 1 March 2023, providing for payment to be made in the period between 1 March 2023 and 28 February 2024. Once the redevelopment is complete, DCC will then lease the site to STACK at a commercial rent.
- (2) DCC's proposal to provide an additional £2 million to STACK for the purpose of further construction work at 9–11 Newgate Street, Bishop Auckland (the **second STACK grant**). If granted, this funding will be awarded from the North East Mayoral Combined Authority (**NECA**) to DCC, with DCC then transferring the funds to STACK. DCC made an application for this funding to NECA in April 2025, and the Mayor of NECA has made comments to the press indicating that a grant will be made, but NECA has not yet made a formal decision on the application. As a result, DCC has not made any final decision on the second STACK grant.
- (3) DCC's proposal to award £3.1 million to The Auckland Project (**TAP**) for the purpose of redeveloping properties at 32–38 Market Place, Bishop Auckland, into a 60-bedroom boutique hotel (the **TAP Market Place grant**). This award was publicly announced in a press release on 28 October 2022, and the grant funding agreement is under consideration by DCC, but no final funding decision has been taken.

- (4) DCC’s decision to award £887,000 to TAP for the purpose of refurbishing a building to provide a new space for creative businesses (the **TAP Artist Hub grant**). This award was publicly announced on 28 October 2022. The grant funding agreement, entered into on 11 June 2025 and varied on 5 March 2026, provided for the final payment instalment to be made on 31 March 2026.
9. The claimants have also sought (and to some extent received) funding from DCC for the redevelopment of the following properties in Bishop Auckland:
  - (1) The second claimant owns 47 Newgate Street, and received grant funding from DCC in order for that property to be refurbished to provide two retail units and 10 residential accommodation units. DCC said that the project received an award of £315,788 from the Property Reuse Grant, alongside a further £124,145 grant for redeveloping the façade of the property. According to DCC, the second claimant breached the terms of the relevant grant funding agreement by failing to complete the works on time. That led DCC to terminate the agreement on 4 September 2025, reserving its rights to claw back the grants paid.
  - (2) The third and fourth claimants own 69–71 Newgate Street, and have sought development funding for these properties from DCC. DCC’s position is that it is not prepared to progress discussions concerning the funding of these developments, given the failure to complete the redevelopment of 47 Newgate Street, and the arrears owed by various of the claimants on interest-free loans granted by DCC in order to facilitate the acquisition of 49 and 69–71 Newgate Street.
  - (3) The fifth claimant owns the Masonic Hall located on 25–26 Victoria Avenue, which Mr Thomas is seeking to redevelop. Mr Thomas has also expressed an interest in acquiring and redeveloping the former Mechanics Institute in Bishop Auckland. DCC has not so far been willing to agree funding for either of these projects, not least given the outstanding issues with the claimants’ Newgate Street properties.

## D. PROCEDURAL BACKGROUND

10. The procedural background to these proceedings is somewhat protracted, and is necessary to set out in some detail.

### (1) The original and amended claims

11. The claimants' original claim form was filed with the Tribunal on 19 September 2025, at a time when the claimants had no formal legal representation. Although entitled "Notice of Appeal", it purported to be a claim brought under s. 47A of the CA98, and was therefore filed by the Tribunal as a CA98 claim. In addition to alleging breaches of the CA98, however, the claim also alleged breaches of subsidy control law, public procurement law, public law and EU law. While the central challenge in the claim appeared to concern the four grants described at §8 above, the claim form also referred to DCC's failure to grant further funding for the claimants' redevelopment projects (or proposed projects) described at §9 above.

12. The Tribunal also notes that the original claim form made reference to an apparently fictitious case (*Mid Kent College v Kent County Council* [2019] EWHC 217 (TCC)), gave an incorrect citation for another case, and made reference to numerous further authorities (including judgments of the European Court) without any explanation of their relevance. It is not clear how these case-law references made their way into the claim form.

13. On 20 October 2025 DCC filed an application seeking the following directions:

- (1) DCC requested that insofar as the claim constituted an application for review under s. 70 SCA, it should be treated as being subject to Part 2 of the Competition Appeal Tribunal's Rules 2015 (the **Tribunal Rules**) (which governs appeals before the Tribunal, including subsidy control appeals) as opposed to Part 4 (which governs claims under s. 47A CA98).

- (2) DCC sought an order declaring that the Tribunal has no jurisdiction over the claim insofar as it concerns breaches of public procurement law, or breaches of Articles 101–102 and/or 107 TFEU; alternatively it sought an order striking out these elements of the claim.
  - (3) Insofar as the allegations fell within s. 47A CA98, DCC argued that they should be struck out or summarily dismissed; alternatively that the claimants should be required to amend their claim to ensure that it complied with the Tribunal Rules and properly particularised the alleged losses.
  - (4) Insofar as the allegations related to breaches of the subsidy control requirements under the SCA, DCC said that those allegations should be either struck out or stayed.
14. On 31 October 2025 the claimants filed a draft amended claim form (the **first amended claim form**). This confined the claim to be a claim under s. 47A CA98, alleging breaches of the prohibitions in Chapter I and Chapter II CA98 in relation to the four grants described at §8 above. Before DCC had stated its position on that application, however, Mr Thomas wrote to the Tribunal on 5 November 2025 (copying DCC) seeking permission to amend the document filed on 31 October 2025. When DCC asked for details of the amendment sought, Mr Thomas responded indicating that he wished to amend to bring a claim under “section 70 of the Act competition appeal”. No further details or draft pleading were provided.
15. DCC then wrote to the Tribunal stating it did not consent to the claimants amending their claim form, on the basis that even in amended form it was bound to fail. DCC also stated that the substance of the proposed further amendment was unclear, and inferred that the claimants meant to refer to s. 70 SCA rather than s. 70 CA98. The Tribunal therefore directed that the claimants file and serve: (i) a final draft of their proposed amended claim form, containing all of the claimants’ proposed amendments, and (ii) any proposed notice of appeal under s. 70 SCA if the claimants sought to apply for a review under the SCA.

16. On 5 December 2025 the claimants filed a further draft of their amended claim form (the **second amended claim form**), together with a separate notice of appeal under s. 70 SCA which specifically addressed the claimants' claims under the SCA. While the second amended claim form and notice of appeal did not refer to any legal representatives for the claimants, and both documents were therefore signed by Mr Thomas as a litigant in person, both documents have the appearance of being drafted by lawyers, and set out a position that was significantly narrower than the case previously advanced. In particular:

(1) The second amended claim form advanced allegations of infringements of the Chapter I and II prohibitions only in relation to DCC's conduct in relation to the first STACK grant, although the claimants referred to the proposed TAP grants by way of factual context. It was not alleged that DCC's decisions in relation to the claimants' developments and proposed developments at Newgate Street or elsewhere amounted to infringements of competition law.

(2) The subsidy claim was advanced only in relation to the second STACK grant and the TAP Market Place grant.

17. On 7 January 2026 the Tribunal indicated its intention to consolidate the CA98 claim with the subsidy claim, at least for the purposes of the present hearing. On 14 January 2026, following a question from the Tribunal, the claimants confirmed that if permission to rely upon the second amended claim form was refused, they did not seek to proceed with the claim on the basis of the original claim form.

**(2) DCC's applications**

18. In a letter dated 30 January 2026 DCC opposed the claimants' application to amend on the basis of the second amended claim form. It maintained that the CA98 claim had no real prospect of success, constituted an abuse of process, and/or was inadequately particularised. Accordingly, DCC said that the claimants' CA98 claim should be struck out (the **strike-out application**).

19. In the event that the claimants' application to amend its CA98 claim was granted, DCC sought security for costs as against the Second to Fifth claimants of £396,473.63 plus VAT (the **security for costs application**).
20. In relation to the subsidy claim, DCC no longer contended that this should be struck out, but said that it should be stayed on the basis that DCC had not yet entered into any funding agreement with either STACK or TAP in relation to the second STACK grant and the TAP Market Place grant (the **stay application**).
21. On 20 February 2026 the claimants filed lengthy submissions opposing all three of DCC's applications. Again, while those submissions were signed by Mr Thomas, they have the appearance of being drafted by lawyers. DCC's submissions in reply were filed on 6 March 2026. As set out above, both parties filed evidence in support of their positions on the applications.

**(3) Adjournment of the hearing**

22. The hearing to address DCC's applications was originally listed to take place on 25 March 2026. On 16 March 2026, the claimants applied to the Tribunal for an adjournment of the hearing, on the basis that they were "no longer" represented by legal counsel and needed further time to obtain new legal representation and prepare their case. It was, however, unclear what length of adjournment was sought, what legal representation the claimants had previously had (given that no solicitors were at any point on the record), and how likely it was that the claimants would be able to secure legal representation in time for an adjourned hearing. On that basis the Tribunal refused to adjourn the hearing.
23. The claimants then applied to the Tribunal again on 20 March 2026, in an application sent by Mr Chisman-Russell. He said that the claimants had recently instructed both TupperS Law and counsel, and requested that the hearing be adjourned in order to provide the new legal team a meaningful opportunity to review the proceedings and properly prepare for the hearing. In those circumstances the Tribunal granted the renewed adjournment application and

relisted the hearing for 15 April 2026 (albeit without prejudice to the position on the costs of the adjournment).

24. On 7 April 2026 the claimants filed evidence in response to DCC’s security for costs application, in the form of witness statements from Mr Chisman-Russell and Mr Thomas. Mr Chisman-Russell, in particular, maintained the position that the CA98 claim was more likely than not to succeed, and contended that the position pleaded in the second amended claim form was plainly arguable and advanced a “conventional damages case”. He noted that the second amended claim form did not advance any subsidy control allegations, and that references to grant funding were relied upon only as “factual context” relevant to the alleged infringements of the Chapter I and II prohibitions. He said that the claim had been “framed with some care” to focus on issues that had been “deliberately confined”.
25. On 8 April 2026, the Tribunal was notified that the claimants were now represented by Nexa Law Limited (**Nexa Law**) following Mr Chisman-Russell’s move to that firm. Nexa Law confirmed, however, that despite this change in representation, the claimants’ instructing solicitor (i.e. Mr Chisman-Russell) and “wider legal team” remained in place such that this change would cause no interruption to the conduct of these proceedings.
26. On the afternoon of 14 April 2026, however, less than a day before the hearing, the Tribunal received an email from Mr Chisman-Russell to say that he was unwell and would not be able to attend the hearing. The only attendees for the claimants at the hearing were therefore Ms Hayward and Mr Thomas.

**(4) Developments at the hearing**

27. As set out further below, it became apparent during the hearing that Ms Hayward was unable to explain or justify the CA98 case advanced in the second amended claim form, and ultimately accepted that the CA98 claim could not be pursued in the form pleaded in that document. Instead she sought permission from the Tribunal to file a further amended claim advancing a different basis for

the alleged competition law infringements. DCC opposed that application and maintained that the CA98 claim should be struck out.

28. As regards the subsidy claim, following receipt of the parties' skeleton arguments, the Tribunal wrote to the parties on 13 April 2026 informing them that it wished to hear further submissions at the hearing as to the correctness of the reasoning at §152 of the Tribunal's judgment in *Weis v Greater Manchester Combined Authority* [2025] CAT 41, a matter relevant to the Tribunal's jurisdiction in relation to the subsidy claim.
29. DCC then notified the claimants (at shortly before 1pm on 13 April 2026) that in light of the Tribunal's letter DCC intended to invite the Tribunal to strike out the subsidy claim in its entirety at the hearing, on the basis that §152 of *Weis* was incorrectly decided and that the Tribunal therefore lacked jurisdiction over the subsidy claim. In the alternative, if the Tribunal did have jurisdiction, DCC maintained its stay application. Mr Howell then pursued that position at the hearing. Ms Hayward, in response, opposed the strike out of the claim, but dropped her opposition to the stay of the claim.

## **E. THE ISSUES**

30. In light of the procedural developments outlined above, the matters for determination are as follows:
  - (1) Whether the claimants' application at the hearing to amend their CA98 claim further should be granted, or whether the CA98 claim should instead be struck out.
  - (2) In the event that the claimants are given permission to amend, whether security for costs should be ordered in favour of DCC.
  - (3) Whether the subsidy claim should be struck out (as contended for by DCC) or stayed (as contended for by the claimants).
31. We address these issues in that order below.

## **F. THE CA98 CLAIM**

### **(1) The parties' initial submissions**

32. The second amended claim form alleged that DCC is the freehold owner and principal redeveloper of various commercial sites in Bishop Auckland town centre, including but not limited to 9–11 Newgate Street, 25–29 Newgate Street and Premises A–D on Fore Bondgate. “These sites” were said to be the “only suitable premises for hospitality, leisure and mixed-use operations of the scale required by the claimants.” The claimants alleged that STACK and TAP, through the funding agreements with DCC (described at §8 above), secured the “only commercially viable town centre premises capable of sustaining hospitality, leisure, or mixed-use operations on the scale proposed by the claimants.”
33. The claimants then alleged that DCC infringed the Chapter I prohibition by entering into an agreement with STACK pursuant to which STACK and DCC coordinated redevelopment at 9–11 Newgate Street under aligned commercial terms; and DCC agreed to channel redevelopment opportunities and selective grants to STACK while denying equivalent opportunities to the claimants. That conduct was said to have had the object or effect of restricting competition by, among other things, foreclosing rival operators including the claimants.
34. The claimants' case on the Chapter II prohibition, again as set out in the second amended claim form, was that DCC holds a dominant position in the market comprising the supply of commercial premises suitable for hospitality, leisure and associated retail uses in Bishop Auckland town centre. The basis of that allegation was a claim that DCC was the “sole owner and controller of the core commercial landholdings and the principal redeveloper of Bishop Auckland town centre”, which gave it “unilateral control” over “which operators gain access to the market, which sites are developed, which tenants receive viable terms and the timing and conditions of commercial redevelopment”. DCC was said to have abused that dominant position by granting STACK favourable access to commercial premises while denying or frustrating access for the claimants, thereby foreclosing the market.

35. The second amended claim form contended that DCC's competition law infringements caused the claimants to suffer losses of £3.6 million as a result of the foreclosure of their commercial opportunities.
36. As noted above, Mr Chisman-Russell's witness statement asserted that the CA98 claim was likely to succeed. Ms Hayward's skeleton argument likewise contended that the second amended claim form set out a conventional and legally recognisable claim, which pleaded sufficient material facts in support of the allegations of breaches of the Chapter I and II prohibitions.
37. DCC's position was that the CA98 claim, as set out (finally) in the second amended claim form, should be struck out on the basis that it had no real prospect of success, was an abuse of process and/or was inadequately particularised. At the outset, DCC said that it was *not* the freehold owner of 25 or 27–29 Newgate Street, and that “Premises A–D” on Fore Bondgate do not exist. In any event, DCC said that the claim that these properties were the only suitable premises for hospitality, leisure and mixed-use operations of the scale required by the claimants was fanciful: apart from anything else, it was contradicted by the fact that the claimants themselves own properties in Bishop Auckland town centre which they have been attempting to redevelop for these purposes, as well as by DCC's uncontradicted witness evidence that there are numerous other sites in the relevant area that could be redeveloped by the claimants.
38. As to the claimants' Chapter I claim, DCC noted that the first STACK grant was made following a competitive public procurement process in which the claimants did not bid or express any interest in bidding, and that no factual basis whatsoever had been put forward for the supposed agreement between DCC and STACK to channel redevelopment opportunities to STACK while denying equivalent opportunities to the claimants.
39. Regarding the claim made under Chapter II of the CA98, DCC submitted that the claimants' market definition was hopelessly vague, and their case on dominance incoherent, given that DCC only owns around 12.8% of the available commercial floorspace in Bishop Auckland town centre, and does not own most

of the properties identified by the claimants as the relevant sites for the purposes of this claim. Nor was there any prospect of establishing an abuse of any dominant position, given that the first STACK grant was awarded following a competitive public procurement.

**(2) The submissions at the hearing**

40. At the hearing, it rapidly became apparent that Ms Hayward was unable to articulate a coherent basis for the claim as pleaded in the second amended claim form. In response to questions from the Tribunal, she backed away from the pleaded case based on the supply of commercial properties in Bishop Auckland town centre, and instead sought to advance a different case concerning properties said to be “capable of supporting regeneration-backed scale-appropriate hospitality and mixed use operations”. She explained this as referring to sites whose redevelopment depended on public-sector funding. On that reformulation, DCC’s alleged dominance was said to derive not simply from ownership of the relevant properties, but rather (primarily) from its alleged control over access to funding for redevelopment or regeneration.
41. As to the claimants’ case on the alleged infringements of competition law by DCC, Ms Hayward said that 9–11 Newgate Street “wasn’t actually placed ... on the market in the same way that it ordinarily would have been”, because an agreement in principle was made prior to the public procurement exercise. The alleged foreclosure of competitors such as the claimants was said to have resulted from the fact that available grant funding was “all tied” to the grant funding that was earmarked to STACK for that property, such that there was no funding available for other properties. She later added that the claimants also relied on the development through the TAP Market Place grant as another example of grant funding that was “inextricably linked to access to that property”, and contended that “the procedure that was involved in accessing that property fell short of what Chapter I says is permissible”.
42. Ms Hayward accepted that this was a completely different case to the case set out in the second amended claim form. When asked whether that meant that she no longer pursued the amendment application, she said “I think so”. She said

that the claim would essentially relate to DCC's ownership of 9–11 Newgate Street and the funding that that property attracted, as well as the "access" to Market Place Hotel (although it was not clear what she meant by this). Ms Hayward accepted that this would require "substantial amendment" of the case set out in the second amended claim, albeit that she said that the underlying facts remained the same.

43. Ms Hayward asked that the Tribunal permit a further attempt by the claimants to plead their case on that basis, rather than striking the claim out in its entirety. She candidly acknowledged that this would effectively be a "fourth bite of the cherry".
44. Mr Howell resisted any further amendment by the claimants. He said it was by now apparent that the claim could not be maintained; and that the claimants had had ample opportunity to set out their case in the three iterations of the claim form already filed. He therefore maintained DCC's application to strike out the claim.

### **(3) Legal framework**

45. Rule 41(1)(b) of the Tribunal Rules provides that the Tribunal may, of its own initiative or on the application of a party and after giving the parties an opportunity to be heard, strike out in whole or in part a claim if it considers that there are no reasonable grounds for making the claim.
46. Strike out under the Tribunal Rules is approached on the same basis as in the High Court under the Civil Procedure Rules: *Gutmann v First MTR South Western Trains* [2021] CAT 31, §52. The relevant principles are not in dispute. In considering an application for strike out, it is necessary to consider whether the claimant has a realistic as opposed to a fanciful prospect of success. While the Tribunal should not automatically accept the claimant's factual contentions at face value, it will normally do so unless those factual assertions are demonstrably unsupportable: *BSV v Bittylicious* [2024] CAT 48, §36.

47. There was no dispute that the threshold for whether a claim has a realistic prospect of success is relatively low. Nevertheless, as the Tribunal emphasised in *Forrest Fresh Foods v Coca-Cola* [2021] CAT 29, §§26–28 the onus is on a claimant to plead a properly particularised claim. That is necessary in order to enable the defendant to know the case it has to meet, so that the parties can properly prepare for trial, and that unnecessary costs are not expended and court time wasted on points that are not in issue and which lead nowhere. The particulars of claim should therefore set out the essential facts which go to make up each essential element of the cause of action.
48. That is particularly important in a competition claim, which involves a serious allegation of breach of a “quasi-criminal law”, and which can lead to financial penalties as well as civil liability: *Sel-Imperial v The British Standards Institution* [2010] EWHC 854 (Ch), §§17–18. A claimant advancing a claim of infringement of competition law must therefore identify (i) the relevant primary facts which are the foundation of that claim, (ii) the way in which those facts are said to infringe the relevant competition law provision(s) relied upon, and (iii) the way in which that alleged infringement is said to have resulted in the loss or damage claimed: *Forrest Fresh Foods* §30.
49. A claimant may seek to meet an application for strike out with a draft amended pleading. In that situation, Rule 32 of the Tribunal Rules allows for a claim form to be amended either with the written consent of all parties or with the permission of the Tribunal.
50. As with the Tribunal’s strike out jurisdiction under Rule 41(1)(b), in deciding whether to give permission to amend a claim form under Rule 32, the Tribunal will be guided by the principles applied under the CPR: *Boyle v Govia* [2025] CAT 16, §48. The Tribunal will therefore only give permission to amend where the amended claim has a real prospect of success: see by analogy *Kawasaki Kisen Kaisha v Kemball* [2021] 3 All ER 978 *per* Popplewell LJ at §17.
51. That requires the amended pleading to be coherent, properly particularised, and supported by evidential material that establishes a sufficiently arguable case that the allegations are correct: *Kawasaki Kisen Kaisha v Kemball*, §18. As the

Tribunal emphasised in *Forrest Fresh Foods* §§31–32, it is not sufficient for the claimant to ask for permission to amend on the basis of an entirely unformulated alternative case:

“If there are deficiencies in one or more aspects of the pleaded case ... a claimant might seek to meet an application for strike out/summary judgment with a draft amended pleading that seeks to address those deficiencies. It is, however, quite different for a party to acknowledge that a claim is inadequately particularised, without advancing any coherent submission whatsoever as to what further particulars might be forthcoming if the case were permitted to proceed.

That effectively invites the Tribunal to speculate as to what case might potentially be advanced if it were to be repleaded. But that is not the function of this Tribunal or any court. The Tribunal’s role is to assess the case on the materials before it. It is not for the Tribunal to suggest to a claimant how its case might properly be pleaded; nor can the Tribunal even begin to assess an amorphous hypothetical case that might be put forward if the claimant were permitted to go away and have another go.”

**(4) The Tribunal’s analysis**

52. As set out above, Ms Hayward was unable at the hearing to explain or justify the claim set out in the second amended claim form on any coherent basis, and eventually abandoned it. She confirmed that the claimants did not seek to pursue an application to amend in the terms set out in the second amended claim form, and instead sought to advance a claim on quite different terms. She therefore sought yet another opportunity for the claimants to formulate their CA98 claim.
53. The Tribunal refused that application at the hearing. The claimants have, by now, had repeated opportunities to set out their case in a coherent and properly particularised manner. While the Tribunal acknowledges that when the claim was initially filed the claimants were not legally represented, the second amended claim form appeared to have been drafted by lawyers (albeit not on the record), and by the time of the hearing the claimants were represented by both solicitors and counsel. Mr Chisman-Russell, the claimants’ solicitor, is apparently a competition law specialist, and Ms Hayward’s page on her chambers website states that she has previously been instructed on various competition cases. The fact that the claimants had secured legal representation was, indeed, precisely the basis on which the hearing was adjourned (as set out

at §23 above), in order for the claimants' new solicitors and counsel to prepare their case.

54. The position is, therefore, that by the time of the hearing the claimants were represented by lawyers with competition law experience, and were advancing what was already the third iteration of their case. That was a case that Mr Chisman-Russell, in his witness statement, had confidently asserted was not only arguable but more likely than not to succeed. Ms Hayward had likewise in her skeleton argument contended that the claim as repleaded plainly met the threshold of establishing a real prospect of success, on the basis that it set out a conventional and legally recognisable claim.
55. That being the case, the claimants cannot (as Ms Hayward sought to do at the hearing) rely on the fact that they were, at earlier stages of the proceedings, unrepresented, as a reason for their failure to articulate a coherent claim in terms that they sought to pursue. If there was a proper basis for their CA98 claim, that could and should have been set out in the second amended claim, alongside the evidence of Mr Chisman-Russell and Ms Hayward's skeleton argument.
56. Ms Hayward's attempt to put forward a completely reformulated claim on her feet at the hearing was, we regret to say, hopeless. As far as we were able to understand it, Ms Hayward sought in some way to suggest that DCC had a dominant position on the basis of its grant of development funding. She did not explain how the market should on that analysis be defined, how DCC could be characterised as an "undertaking" on that market for the purposes of the Chapter I and II prohibitions, or how the conduct alleged could amount to an infringement of competition law. Her contentions as to potential irregularities in the award of the first STACK grant and DCC's proposal to award the TAP Market Place Grant were bare assertions, which were not supported by the pleaded case or any evidence before the Tribunal.
57. The Tribunal's comments in *Forrest Fresh Foods* therefore apply *a fortiori* in the present case: the Tribunal's role is to assess the case on the materials before it. It is not for the Tribunal to speculate as to whether a claimant might hypothetically be able to advance a completely different claim on a basis that

has not been formulated at all, let alone in a way that meets the essential requirements for a pleading of a competition law infringement.

58. We do not, therefore, consider it appropriate to give the claimants a fourth opportunity to set out their competition law claim. Permission to amend is refused. Since the claimants have confirmed that they do not seek to proceed with the claim on the basis of the original claim form, the consequence is that there is no remaining pleaded claim. The CA98 claim is therefore struck out.

59. In the circumstances it is not necessary to consider DCC's application for security for costs, and no submissions were made on this application at the hearing for that reason.

## **G. THE SUBSIDY CLAIM**

### **(1) The parties' initial submissions**

60. The subsidy claim, as reformulated in the notice of appeal filed on 5 December 2025, is now only advanced in relation to two grants: the second STACK grant and the TAP Market Place grant. DCC accepts that in each of these cases, if the grant is made, it will give rise to a subsidy within the meaning of s. 2 of the SCA, and will therefore need to be entered onto the subsidy database pursuant to s. 33(1) of the SCA. It is, however, common ground that DCC has not, in either case, taken a final decision to grant the subsidy in question. DCC's position in its evidence and the submissions of Mr Howell (none of which was disputed by the claimants) was as follows:

- (1) In relation to the second STACK grant, as set out above, DCC has applied to NECA for additional funding for the purposes of this grant. That request for funding was made on the basis of a provisional assessment by DCC of how the subsidy control principles would be satisfied if the grant were to be made. NECA has, however, not yet made a decision on that application; DCC has therefore not made a final decision on the award of the funding to STACK; and no grant funding agreement has been entered into between DCC and NECA. At the

hearing, Mr Howell said on instructions that any decision by DCC was “at least” several months away.

(2) In relation to the TAP Market Place grant, Ms Hackett’s witness statement confirmed that DCC was in the process of “considering” a grant funding agreement, and in parallel its subsidy assessment (which the Tribunal understands to mean an assessment under the subsidy control principles), and that its decision-making might be finalised “within the coming weeks”, although Ms Hackett was unable to provide a firm time estimate. At the hearing, Mr Howell said on instructions that DCC was continuing to carry out its subsidy assessment, had asked for further information from TAP in order to inform its assessment under the subsidy control principles, and would only make a final decision on funding once that information had been received.

61. On that basis, DCC contended that no decision to give a subsidy had been taken, and that the Tribunal therefore did not have jurisdiction to review DCC’s decision-making under s. 70(1) of the SCA. DCC considered that the contrary position adopted by the Tribunal at §152 of its judgment in the *Weis* case was incorrect. Nevertheless, prior to the hearing, DCC’s position was that the Tribunal should assume that it had jurisdiction, consistent with *Weis*, but should exercise that jurisdiction by granting a stay of the subsidy claim until any subsidies had been given.

62. The claimants’ position was that *Weis* was correctly decided, and that reviewable decisions had been adopted by DCC in relation to both the second STACK grant and the TAP Market Place grant. Ms Hayward’s submission was that there was a distinction between a “decision to give a subsidy” and the actual giving of a subsidy. In the present case, she said, DCC had identified the relevant beneficiaries, determined the proposed quantum and progressed its internal review process in relation to both grants. She contended that this amounted to a decision to give a subsidy in each case.

63. Accordingly, prior to the hearing, the claimants opposed DCC’s application for a stay. Ms Hayward argued that the Tribunal could nevertheless consider any

subsequent developments in the decision-making process as part of its review of DCC's decisions.

**(2) The submissions at the hearing**

64. At the hearing, following the exchange of correspondence set out above, Mr Howell changed his position and invited the Tribunal to strike out the subsidy claim in its entirety on the grounds of lack of jurisdiction. In his oral submissions he developed his submission that no reviewable decision within the meaning of s. 70(1) of the SCA had been taken by DCC. In the alternative, he maintained the position that the proceedings should be stayed until final subsidy decisions had been taken by DCC.
65. Ms Hayward's position at the hearing was rather difficult to follow, but she eventually accepted that a stay of the subsidy claim would be appropriate, irrespective of whether DCC had jurisdiction under s. 70(1) of the SCA. However, she resisted a strike-out even if the Tribunal lacked jurisdiction, on the grounds that it would require the claimants to bring a fresh subsidy challenge, in circumstances where the uncertainty as to when there would be a challengeable decision might prejudice the claimants' plans to continue their developments.
66. Having made those submissions, Ms Hayward sought permission to file further written submissions on this point. The Tribunal declined to permit that. The claimants' position on jurisdiction had already been set out, in some detail, in Ms Hayward's skeleton argument. The only question that the claimants had not considered in their skeleton argument was whether, if they were wrong on that point, the subsidy claim should be struck out rather than stayed. The claimants had, however, been on notice since two days before the hearing that DCC intended to raise that issue in light of the Tribunal's request for submissions on the *Weis* judgment. That gave the claimants and their legal representatives sufficient time to consider their response to that application prior to the hearing. We also note, for the avoidance of doubt, that we were not shown any indication from the claimants, prior to the hearing, that they objected to DCC raising this point. Nor did Ms Hayward provide any particular reason why she or the

claimants had been unable to consider the issue of strike out, in the time since the claimants were notified of DCC's intentions in that regard.

67. We therefore address this issue on the basis of the parties' written submissions prior to the hearing, together with their oral submissions at the hearing. On the basis of those submissions, the first question to consider is whether the Tribunal does indeed have jurisdiction under the SCA to review a decision to grant a subsidy "in principle", at a stage before the final decision has been taken by the relevant public authority. The second question is whether, in the light of the answer to the first question, the subsidy claim should be stayed or struck out.

### **(3) Legal framework**

68. A "subsidy" is defined in s. 2 of the SCA as follows:

"(1) In this Act, "subsidy" means financial assistance which –

(a) is given, directly or indirectly, from public resources by a public authority;

(b) confers an economic advantage on one or more enterprises;

(c) is specific, that is, is such that it benefits one or more enterprises over one or more other enterprises with respect to the production of goods or the provision of services; and

(d) has, or is capable of having, an effect on –

(i) competition or investment within the United Kingdom,

(ii) trade between the United Kingdom and a country or territory outside the United Kingdom, or

(iii) investment as between the United Kingdom and a country or territory outside the United Kingdom.

(2) For the purposes of this Act, the means by which financial assistance may be given include –

(a) a direct transfer of funds (such as grants or loans);

(b) a contingent transfer of funds (such as guarantees);

(c) the forgoing of revenue that is otherwise due;

(d) the provision of goods or services;

(e) the purchase of goods or services.

(3) Financial assistance given from the person's resources by a person who is not a public authority is to be treated for the purposes of subsection (1)(a) as financial assistance given from public resources by a public authority if the involvement of a public authority in the decision to give financial assistance is such that the decision is, in substance, the decision of the public authority.

(4) For the purposes of subsection (3), the factors which may be taken into account when considering the involvement of a public authority in the decision of a person to give financial assistance include, in particular, factors relating to –

(a) the control exercised over that person by that public authority, or

(b) the relationship between that person and that public authority.

(5) For the purposes of this Act, financial assistance is to be treated as given to an enterprise if the enterprise has an enforceable right to the financial assistance.”

69. It is not in dispute that for these purposes DCC is a public authority (as defined by s. 6(1)).

70. Section 12(1) sets out a requirement for a public authority to consider the subsidy control principles before deciding to give an individual subsidy:

“(1) A public authority –

(a) must consider the subsidy control principles before deciding to give a subsidy, and

(b) must not give the subsidy unless it is of the view that the subsidy is consistent with those principles.”

71. Where a subsidy is given by a public authority, s. 33 sets out a transparency duty to enter that subsidy in the subsidy database established pursuant to s. 32. Section 33(1) provides:

“A public authority must ensure that an entry in the subsidy database is made in respect of –

(a) a subsidy given by the authority (subject to subsection (2)), and

(b) a subsidy scheme made by the authority.”

72. Under s. 33(3)(c), for subsidies other than tax measures, the entry in the subsidy database must be made “within three months of confirmation of the decision to give the subsidy or make the subsidy scheme”. The requirement to make an

entry in the subsidy database is subject to specific exceptions (not material in this case) set out in s. 33(2).

73. The Tribunal’s jurisdiction to review a subsidy decision is conferred by s. 70 of the SCA, which provides in relevant part as follows:

“(1) An interested party who is aggrieved by the making of a subsidy decision may apply to the Competition Appeal Tribunal for a review of the decision.

...

(5) In determining the application, the Tribunal must apply the same principles as would be applied – (a) in the case of proceedings in England and Wales or Northern Ireland, by the High Court in determining proceedings on judicial review; ...

...

(7) In this Part – ... ‘subsidy decision’ means a decision to give a subsidy or make a subsidy scheme; ...”

74. The time limits for seeking a review of a subsidy under s. 70 are set out in s. 71, which inserts a new Rule 98A into the Tribunal Rules. That rule requires an application under s. 70 to be made by sending a notice of appeal within a month from the “relevant date” in relation to the decision. The relevant date is either the “transparency date” or, where an applicant seeks pre-action information under s. 76 within one month of the transparency date, the date on which the requested information is provided. The transparency date is in turn either the date on which the subsidy is entered into the public subsidy database pursuant to s. 33(1) or (5) of the SCA or, in particular circumstances where the duty to make an entry on the subsidy database “does not apply” to a subsidy or scheme, the date on which the applicant knew or should have known of the decision: Rule 98A(4)(b).

75. In the case of *New Lottery v Gambling Commission* [2026] CAT 14, §179, the Tribunal held, by analogy with the time limits set out in s. 71 and Rule 98A, that where the public authority has not treated the assistance as a subsidy, any appeal under s. 70 should normally be brought within one month of the date on which the applicant was or should have been aware of the decision, unless within that period a request is made for the provision of information, in which

case the proceedings should normally be issued within a month of the information being provided.

76. Section 76 sets out the public authority’s duty to provide pre-action information. It provides (so far as relevant):

“(1) An interested party may make a request to a public authority for information about a subsidy, or subsidy scheme, that the authority has given or made.

(2) A request under subsection (1) –

(a) must be made in writing; and

(b) must state that it is being made only for the purpose of deciding whether to apply for a review of a subsidy decision under section 70, on the ground that the decision did not comply with a requirement of Chapter 1 or 2 of Part 2.

(3) Where a public authority receives a request under subsection (1), the authority must provide such information as would enable, or assist in, the making of a determination as to whether the subsidy was given, or the scheme was made, in accordance with the requirements of Chapters 1 and 2 of Part 2.

(4) The information must be provided by the public authority –

(a) in writing, and

(b) within 28 days of receiving the request for information.”

#### **(4) The Tribunal’s analysis**

##### ***(a) Preliminary comments***

77. It follows from the statutory scheme set out above that, for individual subsidies (as opposed to subsidies granted under subsidy schemes) there is a distinction between (i) the making of a “subsidy decision”, or in other words a “decision to give a subsidy”, (ii) the “giving” of a subsidy, and (iii) the actual transfer of funds to the beneficiary of the subsidy.

78. The making of a “subsidy decision” is the trigger for reviewability under s. 70(1). That decision also starts time running for the requirement under s. 33 to enter the subsidy in the subsidy database: s. 33(3)(c) requires that entry to be made within three months of confirmation of the decision to give the subsidy.

79. Other provisions of the SCA are engaged by the actual “giving” of individual subsidies. Section 14 thus notes that Chapter 2 of Part 2 of the SCA “prohibits the giving of certain subsidies” and imposes requirements in relation to the “giving of certain other subsidies”; s. 52 requires public authorities to request a report from the CMA before “giving” certain types of subsidies; and the provisions in s. 76 regarding requests for and provision of pre-action information in relation to individual subsidies apply only when those subsidies are “given”.
80. The distinction drawn between a “decision” to give an individual subsidy and the actual “giving” of the subsidy is particularly clear in provisions such as s. 12(1), which juxtapose a requirement to consider the subsidy control principles before “deciding to give a subsidy” (s. 12(1)(a)) with a prohibition on “giving the subsidy” unless the public authority is of the view that the subsidy is consistent with those principles (s. 12(1)(b)). The same distinction appears in s. 13(1). A “decision” to give an individual subsidy is therefore not necessarily the same as the “giving” of the subsidy itself. It is of course possible for one and the same act to constitute both the subsidy decision and the giving of the subsidy, but the statutory framework recognises that these may not necessarily occur in the same act or at the same time.
81. Likewise, the “giving” of a subsidy does not necessarily mean an immediate transfer of funds or provision of other financial assistance to the beneficiary of a subsidy. Rather, what is required is the grant of an “enforceable right” to the financial assistance: s. 2(5). A subsidy may therefore be treated as “given” for the purposes of the SCA where (for example) a grant agreement has been signed by the public authority, even if the transfer of funds pursuant to that grant agreement is specified to take place at some later date.
82. On the basis of that statutory scheme, Mr Howell recognised that a decision to give a subsidy, within the meaning of the SCA, is not necessarily coterminous with the execution of formal legal documentation granting that subsidy, such as the final grant agreement. Nor, *a fortiori*, does a decision to give a subsidy require an actual transfer of funds or other provision of financial assistance to the beneficiary.

83. Nevertheless, he submitted that a decision to grant a subsidy must require a formal final decision of the public authority, and that a provisional decision, or decision “in principle”, is not sufficient for these purposes. In that regard, he submitted that the final sentence of §152 of the Tribunal’s judgment in *Weis* was incorrectly decided and should not be followed.

**(b) *The Weis judgment***

84. The application for review in the *Weis* case concerned a decision by the Greater Manchester Combined Authority (the **GMCA**) to grant loans to two related companies for the development of residential properties on parcels of land in Manchester. A decision in principle to grant the loans had been taken on 22 March 2024, but the due diligence process leading to the finalisation of the commercial terms of the loans was still ongoing at that stage, and the GMCA therefore denied that a reviewable subsidy decision had been taken. Mr Weis nevertheless filed his subsidy appeal on 7 June 2024, seeking an expedited determination of his challenge.

85. Ahead of the case management hearing on 30 October 2024, however, the parties agreed that the proceedings should be stayed pending the execution of the transaction documents for the contested loans. Directions were therefore given for the disclosure to be provided by the GMCA following the completion of the final transaction documents, and for amended pleadings to be filed following that disclosure. The loans were formally completed on 22 November 2024, the key related documents were then disclosed, and Mr Weis filed an amended notice of appeal providing the specific grounds on which it was said that the loans were not on commercial terms and amounted to a subsidy. The hearing took place thereafter.

86. In those circumstances, by the time of the hearing the final loans had been executed and implemented, and it was therefore undisputed that a reviewable decision to grant an alleged subsidy had been taken, so as to engage the Tribunal’s jurisdiction under s. 70. The Tribunal nevertheless considered, in its judgment, when the relevant decision had been taken, and made the following comments:

“151. In the present case, it is alleged that the subsidy decision was taken on 22 March 2024 by the GMCA Committee when it decided to approve the granting of the two loans, subject to due diligence and actual wording of the loan agreements, delegating the authority to the Treasurer to sign and enter into the 2024 Renaker Loans.

152. Although it is not until the date of the entry of the 2024 Renaker Loans on 22 November 2024 that the borrowers had an enforceable right to financial assistance within the meaning of s. 2(5), this does not mean that there was no subsidy decision challengeable before then. S. 70(1) of the Act provides that an interested party aggrieved by the making of a subsidy decision may apply to the Tribunal for a review of the decision. Under s. 70(7) a subsidy decision means a decision to give a subsidy (or make a subsidy scheme). It is not a requirement under s. 70 that before an application is made to the Tribunal financial assistance must have already been given within the meaning of ss. 2(5) and 3(2) of the Act. The subsidy decision within the meaning of s. 70 was taken on 22 March 2024.

153. In determining the key issue in this case as to whether or not the 2024 Renaker Loans amount to financial assistance which confers an economic advantage, the Tribunal does not simply look at the terms of the GMCA Committee decision on 22 March 2024. It needs 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. It will also consider the internal records on the setting of the interest and other terms. In the present case both parties relied on, for example, various drafts of the IRSP.”

87. Accordingly, on the assumption that the loans did indeed amount to a subsidy within the meaning of s. 2 of the SCA, the Tribunal therefore regarded the 22 March 2024 as the reviewable “subsidy decision” for the purposes of s. 70. It nevertheless emphasised that in reviewing that decision it was necessary for the Tribunal to consider not only the terms of that decision (and the process leading to that decision), but also the GMCA’s due diligence and the final terms of the loans. In substance, therefore, the Tribunal did not confine its review to the decision in principle taken in March 2024, but reviewed the final terms agreed in November 2024.

***(c) The necessity for a final decision***

88. The observation of the Tribunal at §152 of its judgment in *Weis* to the effect that a subsidy decision does not have to entail an enforceable right to financial assistance is, in our view, undoubtedly correct. As we have set out above, the statutory scheme of the SCA draws a distinction between a decision to give a subsidy and the actual giving of a subsidy. It was therefore common ground before us that a decision to give a subsidy that is reviewable under s. 70(1) may

precede the execution of the formal legal documents that grant the subsidy, such as the execution of a loan agreement.

89. We do not, however, consider that the requirement under s. 70(1) for the public authority to have taken a “decision to give a subsidy” can be met where what has been taken is only a provisional or “in principle” decision to provide the assistance said to be a subsidy, subject to further consideration and review following due diligence or other steps in the decision-making process. Rather, what is contemplated by s. 70 is a final decision on the transaction or measure in question, albeit that it may be the case that further administrative, as opposed to substantive, steps are required to embody that decision in a formal and enforceable agreement.
90. That interpretation follows from the statutory scheme set out in the SCA. Section 12(1) requires the public authority to consider the subsidy control principles before deciding to give a subsidy. That requirement was clearly not intended to operate at the stage of a provisional or “in principle” decision. As the present case illustrates, a public authority may well make a provisional decision (whether or not accompanied by a provisional assessment under the subsidy control principles), which is then followed by a final assessment under the subsidy control principles once final information has been obtained, including a possible report from the CMA, due diligence carried out, and the final terms of the relevant transaction determined. Indeed, an authority is unlikely to be in a position to make a final assessment under the subsidy control principles until it has completed due diligence and finalised the terms of the transaction.
91. Likewise, where the authority is provisionally of the view that the relevant transaction does not constitute a subsidy, for example because it does not provide a benefit on terms more favourable than the terms that might reasonably have been expected to have been available on the market (i.e. applying the commercial market operator principle set out in s. 3 of the SCA), it is unlikely that a final decision on that point will be possible before the final terms of the transaction have been determined. Only once those terms have been ascertained

is the authority likely to be able to form a view as to whether those terms are consistent with those that would be available on the market.

92. The consequence of treating an earlier provisional decision as a “subsidy decision” for the purposes of s. 70(1) of the SCA would therefore be to render challengeable, in the Tribunal, a decision that did not incorporate any, or any final, assessment of the subsidy control principles, and which may not even have reached a final determination as to whether the transaction constitutes a subsidy or not.
93. The result would be that in practice the Tribunal would have to stay the proceedings until a final decision had been reached – as was ordered in the *Weis* case. Ms Hayward ultimately acknowledged that a stay would also need to be granted in the present case, if the subsidy claim was not struck out. She therefore did not seek to persuade the Tribunal that its review of DCC’s decisions in relation to the second STACK grant and the TAP Market Place grant could sensibly take place before final decisions granting those two subsidies had been taken.
94. It cannot, however, have been intended that the review mechanism should operate in a way as to render ostensibly reviewable, under s. 70(1), a decision which in practice the Tribunal cannot review until some later and uncertain point in time when a final decision has been taken, if one is taken at all. The consequence would be proceedings that would immediately have to be put on hold for an indefinite period of time. Such an outcome would be inconsistent with the intention in the legislation (as emphasised by the strict time limits set out in s. 71 and Rule 98A) that subsidy challenges should proceed on a tight timetable. As the Tribunal observed in *New Lottery*, §178, the reason for those strict time-limits is that there would otherwise be uncertainty for all those involved and the risk of undue interference with good administration.
95. As Mr Howell also pointed out, the provisions in s. 76 concerning the making of a pre-action information request and the duty of the public authority to provide information in response to that request are only engaged (for an individual subsidy) once that subsidy has been “given”. An application under s.

70 for review of a subsidy decision may of course be made without requesting pre-action information. But the fact that a specific procedure for pre-action information is set out in the SCA, which is designed (as s. 76(2)(b) makes clear) to enable the interested party to decide whether to apply for a review of the subsidy decision, implies that the interested party was intended to have the ability to request pre-action information before applying to the Tribunal for review.

96. That interpretation is consistent with s. 70(1) being engaged only once a final decision to give the subsidy has been taken. At that point, the interested party will know that, once the subsidy is given, it may request pre-action information in order to decide whether to apply for a review. If, by contrast, the public authority has taken only a provisional decision, no duty to provide pre-action information arises under s. 76. Any application for review would therefore have to be made without the benefit of information which the statutory scheme expressly contemplates should be available before such an application is made. That also supports the conclusion that s. 70(1) is not intended to operate at the stage of a provisional decision.
97. As a related point, none of the time limits set out in s. 71 and Rule 98A would operate in respect of a provisional decision to give a subsidy, since there would at that stage be no entry into the subsidy database or pre-action information to start time running. Those time limits have been applied by analogy to a situation where a public authority adopts a final decision granting assistance but does not treat that as a subsidy: *New Lottery* §179. Ms Hayward acknowledged that s. 71 and Rule 98A reflect an intent for any review by the Tribunal to occur shortly after a reviewable decision was made, and suggested that those time limits should therefore also, in some way, apply to a provisional decision. But it is difficult to see how an applicant could be criticised for delaying its subsidy appeal to such a time as a final decision had been taken, enabling it to request pre-action information under s. 76. Ms Hayward ultimately offered no answer to that problem.
98. We agree with Mr Howell that this, again, supports the conclusion that s. 70(1) is not intended to apply to a provisional decision. (Indeed, as Mr Howell pointed

out, if Ms Hayward was correct in her submission that any application for review under s. 70(1) should be brought shortly after a decision in principle was taken, there would be strong grounds for striking out the present subsidy claim on grounds of delay).

99. The correct interpretation of s. 70(1) in respect of an individual subsidy is therefore, in our judgment, that an application for review to the Tribunal may be made once the relevant authority has taken a formal, final decision to give a subsidy, or to provide assistance which the applicant considers to be a subsidy, even if the authority disputes that characterisation. Section 70(1) does not provide for a review by the Tribunal of any earlier stage in the decision-making process leading up to that decision. In that regard our conclusion differs from the view expressed by the Tribunal in the last sentence of §152 of the judgment in the *Weis* case.
100. The point at which a final decision to give a subsidy is taken will be fact-specific in any case. In some cases, that decision may be coterminous with the actual grant of the subsidy, or financial assistance said to be a subsidy. In other cases, the decision may precede the actual grant of the subsidy, for example where a final decision is taken by the authority, but authority is then delegated to the responsible officer of that authority to execute the relevant agreements that constitute the grant of the subsidy.

***(d) Application to the present case***

101. In the present case, it is common ground that DCC has not taken a final decision to grant either the second STACK grant or the TAP Market Place grant. It therefore follows from the analysis above that the Tribunal does not have jurisdiction to review either of those proposed grants under s. 70(1).
102. The question is then whether the subsidy claim should be struck out on that basis (as Mr Howell contended), or stayed (as Ms Hayward contended). We have concluded that the claim should be struck out. We reach that conclusion for three main reasons.

103. First, there is no clear timeframe for a final decision in relation to either of the two grants. In relation to the second STACK grant, we were told that any decision was at least several months away. In relation to the TAP Market Place grant, Ms Hackett's witness statement in March suggested that a decision might be finalised within weeks, but it was apparent at the hearing that DCC's decision-making process was still continuing, and there was no further indication of when a decision might eventually be made.
104. Secondly, it is quite apparent that any subsidy claim in respect of a final decision regarding the second STACK grant and/or the TAP Market Place grant will require comprehensive rewriting, to reflect the final terms of those grants, if they are ultimately made, and DCC's assessment under the subsidy control principles in relation to those grants. Ms Hayward acknowledged that in her submissions. In those circumstances, there is nothing to be gained from staying the claim: it will in any event have to be resubmitted in entirely amended form. Ms Hayward was not able to identify any benefit to either the claimants or to the Tribunal from retaining, in stayed form, the subsidy claim as currently drafted, other than that the claimants would not incur the immediate costs of strike-out if the proceedings were to be stayed.
105. Thirdly, by contrast, a stay of the subsidy claim in its current form is likely to generate considerable procedural complexity, in the event that (as seems entirely possible, and even likely) any final decisions confirming the second STACK grant and the TAP Market Place grant are adopted at different times. The Tribunal and the parties will in that case be confronted with the prospect of lifting the stay and requiring repleading of different parts of the subsidy claim at different points in time. Indeed, it is not inconceivable that one or other grant might not ultimately be given at all. That will create uncertainty and increase the burden on not only the Tribunal but also on all of the parties.
106. A far preferable course is for the claimants if so advised to file fresh applications for review following the final decisions on each grant (if final subsidy decisions are indeed taken), on the basis of the timetable specified in s. 71 and Rule 98A. If the result is then that applications for the review of separate subsidy decisions

are filed at different times, the Tribunal will be able to take appropriate case management decisions as to how to proceed.

107. The subsidy claim is therefore also struck out.

## **H. DISPOSITION**

108. For the reasons set out above:

(1) In relation to the CA98 claim, the claimants' amendment application is refused and DCC's strike-out application is granted. The CA98 claim is therefore struck out.

(2) In relation to the subsidy claim, DCC's strike-out application is also granted, and the subsidy claim is therefore also struck out.

109. This judgment is unanimous.

The Honourable Mrs  
Justice Bacon  
President

Robert Herga

Professor Pablo Ibáñez  
Colomo

Charles Dhanowa CBE, KC. (*Hon*)  
Registrar

Date: 5 June 2026