CA-2025-002176

IN THE COURT OF APPEAL

ON APPEAL FROM THE COMPETITION APPEAL TRIBUNAL

BETWEEN:

MR AUBREY WEIS

Proposed Appellant

-and-

GREATER MANCHESTER COMBINED AUTHORITY

Proposed Respondent

PTA SKELETON ARGUMENT

On behalf of the Proposed Appellant

References:

- **[CB/tab/page]** refer to the 186-page Core Bundle
- **[UB/tab/page]** refer to the 322-page Revised Unagreed Bundle
- **[SB/tab/page]** refer to the 54-page Supplemental Bundle
- **[Auth/tab/page]** refer to the 1067-page Authorities Bundle

Confidential material is marked with yellow highlighting.

A. Introduction and summary

1. The Proposed Appellant ("**A**") applies for permission to appeal ("**PTA**") the Order (and related judgment ("**the Judgment**")) of the Competition Appeal Tribunal ("**the CAT**") dismissing its claim for judicial review under section 70(1) of the Subsidy Control Act 2022 ("**the Act**") of the decision of the Respondent's ("**R**") governing body comprising the Mayor of Manchester and Councillors representing each of R's constituent local authorities ("**the GMCA Committee**") dated 22 March 2024 ("**the Decision**") to approve:

    a. a loan of up to c. £70.8 million to Trinity Developments (Manchester) Limited ("**Trinity**"), and

b. a loan of up to £69.2 million to New Jackson (Contour) Investments Limited ("**Jackson**"), (together, "**the loans**").

2. This is the first case under the Act to reach this Court, and the first case in which the CAT has considered: (i) the nature and extent of the statutory and public law duties imposed by the Act on public authorities granting financial assistance, and (ii) the nature and scope of the judicial review jurisdiction which the CAT is required and entitled to exercise under the Act. A respectfully submits that the issues arising in the proposed appeal are of substantial public importance and merit the consideration and decision of this Court. For the detailed reasons summarised below, A respectfully invites the Court to grant PTA on the ground that the proposed grounds of appeal (i) have a realistic prospect of success, and (ii) raise issues of public importance justifying the grant of permission.

3. Trinity and Jackson were (and are) special purpose vehicles with no material assets other than the land and related materials intended to be used for the real estate development projects (high rise residential towers) they were established to pursue. The SPVs are ultimately beneficially owned by Daren Whitaker ("**DW**"), a Manchester businessman. DW did not provide any guarantee or indemnity in respect of the loans: Judgment §§86, 193(5) **[CB/7/96, 143]**. GMCA's only recourse in the event of default would thus be against the SPVs.

4. The loans were signed on 22 November 2024, pursuant to the delegation effected by the Decision. The SPVs did not take all of the lending that had been approved by the Decision, with the result that the loans ultimately given by R had an aggregate value of c. £120 million ((i) a loan of £60.7 million to Trinity, and (ii) a loan of £59.3 million to Jackson): Judgment §193(6) **[CB/7/144]**.

5. The evidence before the CAT made clear, and the Judgment either accepts or does not dispute that the Decision was made without the GMCA Committee (the responsible decision-making body): (i) being provided with *any* advice or information at all as to the basis on which the loans were priced, (ii) being provided with any advice or information at all as to whether the interest rates on the loans were consistent with the rates available to the SPVs from the market, (iii) giving any consideration at all to whether or not either

or both of the loans was a *"subsidy"* under the Act, and (iv) giving any consideration at all to the Statutory Guidance (as defined below): Judgment §§152, 196 **[CB/7/131, 144]**.

6. Notwithstanding these omissions, which A submits constitute material flaws in the decision-making process, the Judgment holds that the Decision was lawful. The CAT was only able to reach this conclusion by declining to apply orthodox public law principles to judicially review the Decision. If it had done so, it would not have been possible to avoid the conclusion that (amongst other things) the responsible decision-maker (i.e. the GMCA Committee) had not (i) been provided with material information that was legally required to be considered in relation to the Decision, and (ii) asked, lawfully inquired into, or answered, a required legal question – namely whether or not the interest rates on the loans were consistent with what the SPVs would have been able to obtain from the market, and therefore did not constitute a *"subsidy"* (see s. 3(2) of the Act and the Statutory Guidance).

7. Instead of judicially reviewing the Decision, based on the information that was before the GMCA Committee at the date of the Decision, as it was required to pursuant to s. 70 of the Act, the CAT instead directed itself (Judgment §153 **[CB/7/131]**) to the effect that it could, and should:

    a. have regard to, and principally rely upon, justifications for the interest rates on the loans produced by a junior officer (which R accepted was never placed before or considered by the GMCA Committee) which were written by the officer following receipt by R of A's judicial review pre-action letter raising its concerns in respect of the Decision and seeking disclosure of the decision-making records, and

    b. conduct its own, *de novo*, consideration of whether or not (in its opinion) the pricing of the loans was consistent with market rates.

8. A submits that in so doing the CAT misdirected itself, erred in law and failed lawfully to apply the judicial review jurisdiction conferred upon it by Parliament pursuant to s. 70 of the Act. On the CAT's approach:

a. it is lawful for public authorities to decide to grant very substantial sums of financial assistance to private sector entities (in this case, more than £100 million of public money) without *any* consideration at all of whether the pricing of the arrangements is consistent with the rates the recipient could obtain from the market (cf. s. 3(2) of the Act and the Statutory Guidance); and

b. it will be sufficient to justify the lawfulness of such conduct if: (a) following the receipt of any judicial review pre-action correspondence received under the Act, a junior officer produces an *ex post facto* justification of the pricing that the CAT considers rational, and/or (b) the CAT itself, conducting a *de novo* review of the pricing, considers that the pricing is rational.

9. If the errors of law contained in the Judgment are not corrected by this Court, the legislative scheme and purpose of the Act in preventing the giving of unlawful subsidies will be significantly undermined. The legislative scheme of the Act is that if a public authority proposes to grant a subsidy it must (relevantly): (i) effect publication on a publicly accessible database in order to ensure potential challengers are alerted and can raise any judicial review challenge (see s. 33), and (ii) conduct an assessment of whether or not the subsidy can be justified as consistent with the statutory subsidy control principles ("**SCPs**") (see s. 12). These statutory obligations, and the whole remedial scheme of the Act, can only function effectively if public authorities lawfully consider whether or not proposed financial assistance does or does not give rise to a subsidy *before* deciding whether to grant the financial assistance. If lawful *prior* consideration is not undertaken then the public authority will *never* appreciate that the financial assistance being granted comprises a subsidy, and therefore will not comply with the statutory duties imposed by s. 33 and s. 12 (where applicable). Consequently, third parties prejudiced by the grant of the financial assistance will be deprived of any real or practical opportunity to discover and/or challenge the relevant financial assistance under the Act and the legislative scheme of the Act will be significantly denuded of effect.

B. The Act and the Statutory Guidance

10. Section 2(1)(a)-(d) of the Act defines the meaning of *"subsidy"*. *"financial assistance"* granted by a public authority to an enterprise will constitute a subsidy if the conditions in

(a)-(d) are met **[Auth/1/4]**. It is common ground that the loans comprise financial assistance and that the conditions in s. 2(1)(a), (c) and (d) are satisfied. The only issue in this case was accordingly whether or not the loans *"confer an economic advantage"* within the meaning of s. 2(1)(b).

11. Section 3(2) of the Act provides that the relevant question for a public authority when applying s. 2(1)(b) is whether the terms on which the financial assistance is being granted are more favourable than *"the terms that might reasonably have been expected to have been available on the market to the enterprise"* [**Auth/1/5]**.

12. Section 79(5) of the Act provides that public authorities must have regard to the Statutory Guidance issued by the Secretary of State in respect of the Act, i.e. the content of the Statutory Guidance is a statutory mandatory relevant consideration **[Auth/1/58]**.

13. The Statutory Guidance provides that public authorities **<u>must</u>** give detailed consideration to the s. 3(2) test **<u>before</u>** deciding to provide financial assistance:

> *"1.24 Public authorities **<u>must establish</u>** if financial assistance they are proposing to provide meets the definition of a subsidy under the Act…"* **[Auth/22/771]**

> *"2.1. … **<u>it is therefore key</u>** that public authorities **<u>assess whether the proposed financial assistance falls under the definition of a subsidy</u>** that is set out in the Act."* **[Auth/22/776]**

> *"2.3. The second part of the chapter sets out <u>what public authorities should consider</u> **<u>in determining whether</u>** the subsidy control regime is engaged."* **[Auth/22/776]**

> *"2.13…It is important for those giving financial assistance to be clear that their measure meets all four limbs, to understand whether to proceed to apply the subsidy control requirements as set out in the rest of this guidance."* **[Auth/22/778]**

> *"2.14. For some measures, this will be straightforward <u>to determine</u> – for example, a grant given by central, devolved, or local government to a commercial business is very likely to be a subsidy. <u>In other instances, it will be important</u> <u>to consider carefully</u> **<u>– for example, if there is a question as to whether the</u>** **<u>financial assistance is provided on commercial terms</u>**…"* (emphasis added) **[Auth/22/778]**

"2.23. Further detail on each of the 4 limbs of the test is set out in Annex 1. This annex describes how public authorities should consider whether the test is met, where there is any doubt." (emphasis added) **[Auth/22/781]**

"15.51 For some types of financial assistance this will be a straightforward determination since they are generally not provided on market terms – for example a grant or tax relief. For others – such as a loan… - ***this will be for the public authority to consider.****"* (emphasis added) **[Auth/22/939]**

"15.57 If there is any doubt as to whether financial assistance confers and economic advantage, ***public authorities should carry out a detailed analysis, with regard to the market in question****."* (emphasis added) **[Auth/22/941]**

14. Further, the Statutory Guidance provides (in Annexe 1):

*"**How will an economic advantage be assessed?***

15.57 If there is any doubt as to whether financial assistance confers an economic advantage, public authorities should carry out ***a detailed analysis, with regard to the market in question****.* **[Auth/22/941]**

…

15.60 For the purposes of the CMO principle, it is only a public authority's commercial objectives that are relevant for the assessment. Any public policy objectives should not be included when assessing whether the financial assistance in question confers an economic advantage, on the basis that such objectives would not be applicable to private operators in the relevant market. **[Auth/22/941]**

…

How can public authorities show compliance with the CMO principle?

*15.63 Where seeking to rely on the CMO principle, it is important that public authorities obtain sufficient evidence to show that the financial assistance provided could be made available in the market by a private operator with commercial objectives and is provided on terms that would be acceptable to such a private operator. In certain instances, public authorities can establish compliance with the CMO principle directly by using evidence that is specific to the financial assistance in question, for example where financial assistance is given at the same time and on the same terms as a significant investment by a private operator (also known as 'pari passu') ["**the Pari Passu Method**"]. However, other evidence-based assessments may be undertaken, including the use of benchmarking["**the Benchmarking Method**"] and profitability analysis ["**the Profitability Method**"].*

15.64 Any evaluation of compliance with the CMO should be undertaken with input from experts with appropriate skills and experience. In cases where the commercial assessment is not straightforward, it is recommended that public authorities commission a reputable third party to conduct a report as evidence that the actions proposed to be taken are in accordance with the CMO principle (as it would be in the case, for example, of co-investment with private operators on the same terms or the procurement of goods and services in accordance with public procurement rules)..." **[Auth/22/942]**

15. Section 33 of the Act **[Auth/1/23]** provides that a subsidy must be published in a publicly accessible public database and section 12(1) of the Act **[Auth/1/11]** provides that a public authority must consider the SCPs before deciding to give a subsidy.

16. Section 70 of the Act **[Auth/1/51]** provides that a claim for judicial review may be brought, on any public law grounds, by any interested party aggrieved by a "*subsidy decision*". Section 70(5) **[Auth/1/51]** provides that in determining the application, the CAT must apply *"the same principles as would be applied…in the case of proceedings in England and Wales or Northern Ireland, by the High Court in determining proceedings on judicial review"*. As the Statutory Guidance provides (footnote 105): *"[a] challenge may be brought on general public law grounds on the basis that the decision was, for example, not within the public authority's powers, irrational, biased or otherwise unlawful on any other general public law ground."*. **[Auth/7/913]**

C. Relevant facts

17. A controls substantial property development investments in Manchester. A's concern is that the loans, and other support and/or advantageous treatment, afforded by R to companies owned by DW have distorted the proper and fair operation of the market, to the disadvantage of A and contrary to the wider public interest: Judgment §1 **[CB/7/71]**.

18. R is a statutory public body with functions related to the Greater Manchester local authority area. It comprises, relevantly, the Mayor of Manchester and its constituent councils: Judgment §4 **[CB/7/71]**.

19. The SPVs are ultimately beneficially owned and controlled by DW. DW carries on a property development business using a series of different private limited companies trading under the brand of *"Renaker"*. There is no Renaker ultimate parent company or

corporate group. Rather there are a number of separate SPVs which are owned directly or indirectly by DW: Judgment §§2-3, 86 **[CB/7/71, 96]**.

20. R administers and controls the Greater Manchester Housing Investment Loan Fund ("**the GMHILF**"), which is comprised of funding provided by Central Government pursuant to a funding agreement ("**the FA**"). At the date of the Decision, the capacity of the GMHIILF was £300 million. The FA requires that lending by R must be conducted pursuant to an approved Investment Strategy: Judgment §20 **[CB/7/27]**. The updated 2019 Investment GMHILF Investment Strategy applicable at the date of the Decision provided (relevantly) at §7.2: *"The pricing of all types of loans will be* ***risk-based****, following an assessment of* ***the borrower's*** *financial covenant together with the strength of collateral available for the loan. In order to ensure the lending complies with EU state aid regulations, minimum interest rate margins will be determined using the state aid table published under 'Communication from the Commission the revision of the method for setting the reference and discount rates" (2008/C14/02)."* (emphasis added) **[UB/21/269]**

21. The *'Communication from the Commission on the revision of the method for setting the reference and discount rates'* (OJ C 14, 19.01.2008, p.6.) ("**the RR Communication**") is the EU Commission methodology to calculate proxy interest rates in for public authority lending **[SB/1/2]**. It provides that the applicable interest rate will be identified by combining two components: (i) a base rate, and (ii) a margin. The applicable base rate is determined and published by the EU Commission from time to time in a table which sets out a rate for each EU member state and the UK. The UK base rate between 1 January 2024 and 1 December 2024 was 5.65%: **[UB/28/320]**, Judgment §133 **[CB/7/126].**

22. The margin is determined by applying the matrix set out in the RR Communication **[SB/1/4]**. The matrix allocates a number of basis points (and therefore an interest rate) based on two factors: (i) the creditworthiness of *"the borrower"*; and (ii) the level of collateral provided for the loan (*"The premium applied to obtain the reference rate for a loan is calculated according to the borrower's creditworthiness and collaterals"*): **[SB/1/3]**, Judgment §134 **[CB/7/126]**.

Loan margins in basis points

Rating category	Collateralisation		
	High	**Normal**	**Low**
Strong (AAA-A)	60	75	100
Good (BBB)	75	100	220
Satisfactory (BB)	100	220	400
Weak (B)	220	400	650
Bad/financial difficulties (CCC and below)	400	650	1000

23. The RR Communication provides: *"For borrowers that do not have a credit history or a rating based on a balance sheet approach, such as certain special-purpose companies or start-up companies, the base rate should be increased by* ***at least*** *400 basis points (depending on the available collaterals)..."* **[SB/1/5]**, Judgment §135 **[CB/7/126]**.

24. On 13 February 2024, there was a meeting between a senior officer of R (a Mr Bill Enevoldson ("**BE**")) and DW. R states that no minutes or note of the meeting exist and R elected to serve no witness evidence addressing or explaining the content of the meeting (or, indeed, any witness statement at all from BE). The only document disclosed by R revealing anything of the content of the meeting was a single subsequent email exchange between BE and DW which records, in relevant part (Judgment §75) **[CB/7/86]**: **[UB/22/271]**

25. This exchange (which is referring to the margin agreed to be added to the base rate) records the agreement between BE and DW in relation to the interest rates that was subsequently given effect in the loans.

26. Another email disclosed by R records that DW's commercial strategy was to obtain agreement on the interest rate that would be applied to the loans from R's officers before any engagement with R's governance bodies: **[SB/1/7]**

27. On 22 February 2024, there was a meeting of a 'gateway' panel related to the loans. The gateway panel is an advisory panel comprising 3 independent advisors. It is not a decision-making body of R. Materially, the minutes of the meeting record that there was no discussion or consideration by the panel of the interest rates that had been agreed in respect of the loans **[UB/23/273]**. On 7 March 2025, there was a meeting of a 'credit committee'. The committee comprised senior officers of R, but was not the responsible decision-making body. Materially, the minutes of the committee record that there was no discussion or consideration by the panel of the interest rates that had been agreed in respect of the loans **[UB/24/276]**. R served no witness evidence disputing the accuracy or completeness of the minutes.

28. On 22 March 2024, the GMCA Committee met to consider and decide whether to approve the loans. The (public) Part A Report recorded that "*this report relate to a major strategic decision as set out in the GMCA Constitution*" **[CB/11/177]** but provided no further relevant information. The (private) Part B Report recorded the interest rates that would apply to the loans (i.e. the rates previously agreed between BE and DW), but did not provide *any* advice or information as to: (i) the basis on which the interest rates were formulated, or (ii) whether or not the interest rates were consistent with the pricing that the SPVs could obtain from the market/were consistent with s. 3(2) of the Act **[CB/11/182]**.

29. R's published record of the Decision provided that the loans should be approved and: *"That authority be delegated to the GMCA Treasurer, in consultation with the GMCA*

Solicitor & Monitoring Officer to prepare and effect the necessary legal agreements.” **[SB/3/20]**, Judgment §85 **[CB/7/94]**.

30. Thus, R approved the giving of the loans and authority was delegated to the Treasurer and Monitoring Officer to prepare and execute transaction documents. Materially, there had been no lawful consideration by any of R's officers, the gateway panel, the credit committee or the GMCA Committee of whether the interest rates were consistent with market rates, s. 3(2) of the Act or the Statutory Guidance.

31. On Monday 15 April 2024, A sent R a statutory information request under section 76 of the Act seeking the decision-making documents relating to the Decision recording R's consideration of whether the interest rates on the loans complied with s. 3(2) of the Act **[SB/4/24]**. This was problematic for R, because no such record existed. At 16.58 on Friday 19 April 2024 (i.e. very shortly after R received A's statutory information request) a junior officer of A (Mr Walmsley), who had not attended the February 2024 meeting between BE and DW[redacted], drafted a paper seeking to justify the compliance of the interest rates on the loans with s. 3(2) of the Act (“**the Walmsley paper**”) **[UB/26/296]**. The Walmsley paper sought to justify the interest rates on two main bases:

    a. First, Mr Walmsley purported to apply the RR Communication. In so doing, Mr Walmsley correctly identified that the applicable base rate was 5.65%. As to margin, when considering creditworthiness Mr Walmsley did not apply the matrix to the SPVs (which are SPVs with no trading history etc.) Instead, he purported to apply the matrix to a different, more creditworthy, legal entity ultimately beneficially owned by DW, namely XQ Developments Limited (“**XQDL**”) **[UB/26/298]**. This enabled Mr Walmsley to conclude that only 1% was required to be added to the interest rates on the loans in respect of margin, with the consequence the interest rates that had been approved by the GMCA Committee were compatible with the RR Communication. If Mr Walmsley had applied the RR Communication matrix to the SPVs, as (in A's respectful submission) he was required to, he would have identified that a margin of 4% was required to be added to the interest rates and that the interest rates that had been

approved by the GMCA Committee were therefore non-compliant with the RR Communication.

b. Second, Mr Walmsley recorded that his understanding was that the interest rate on a loan would comply with the Act, and not constitute a subsidy, if it was higher than the rate that would be produced by the application of the provisions contained in the Subsidy Control (Gross Cash Amount and Gross Cash Equivalent) Regulations 2022 ("t**he 2022 Regulations**") **[UB/26/303] [Auth/2/78]**. This was an error of law and misdirection which: (i) R has not attempted to justify or defend in these proceedings and (ii) the CAT has also not accepted (Judgment §197) **[CB/7/145]**.

32. Amongst other things, the Walmsley paper **[UB/26/296]** did not: (i) refer to or consider the Statutory Guidance, or (ii) lawfully consider or inquire into what interest rates would be available to the SPVs from the market in respect of the loans at the relevant point in time. R's witness evidence filed in the proceedings accepted that the Walmsley Paper was never placed before the GMCA Committee and formed no part of the GMCA Committee's decision-making process (Blakey WS5 §27 **[UB/19/242]**). The evidence makes clear that its content does not, and could not, reflect any process of consideration conducted by the GMCA Committee: the GMCA Committee did not have before it any of the information or analysis contained in the paper.

33. On 9 May 2024, R sent its substantive pre-action response. R stated **[SB/7/32]**: *"3. [GMCA] has determined that [the loans] would not constitute subsidies within the meaning of section 2(1) of the Act. This is on the grounds that the loans would be made on a commercial market operator ("CMO") basis, <u>which GMCA has confirmed [decision] by reference to the interest rates set out in the Subsidy Control (Gross Cash Amount and Gross Cash Equivalent) Regulations 2022 in order to ensure that zero financial assistance is provided</u> [fundamental reliance on 2022 Regs and anything above 5.3% fine]"*(emphasis added). R's substantive position was thus that the legal basis on which it relied to justify the lawfulness of the interest rates on the loans was the application of the 2022 Regulations. As noted above, this justification has been entirely abandoned by R in these proceedings and also (correctly) was not accepted by the CAT (Judgment §197) **[CB/7/145]**.

34. On 14 August 2024, members of R's overview and scrutiny committee raised some queries related to the loans. The transcript of the meeting records Ms Blakey (R's principal witness in the proceedings) explaining that the loans had already been *"approved"* and that the due diligence now being conducted in respect of legal title to the sites and valuation of the developments was merely *"confirmatory"* **[UB/25/282, 291]**.

35. In October 2024, Mr Walmsley became aware that XQDL – the company he had relied on for the purpose of the justifications of the interest rates contained in the Walmsley paper – was being liquidated and would cease to exist. In an email disclosed by R, Mr Walmsley stated: *"…I haven't really sought to understand the driver for liquidating XQ I won't have appreciated it means that Daren would in future be providing all investment for all schemes directly rather than through corporate vehicles…"*

36. Notwithstanding XQDL ceasing to exist, the evidence shows that neither Mr Walmsley nor R conducted any inquiry into or consideration of: (i) the reason for the liquidation, (ii) what would occur in relation to the assets previously held by XQDL, or (iii) the nature and extent of DW's liabilities (Judgment §199 **[CB/7/146]**).

37. On 7 and 19 November 2024, members of R's credit committee considered the *"confirmatory"* due diligence on legal title and property valuation. There was no consideration whether the interest rates on the loans complied with market rates, the content of the Walmsley paper, the fact (or implications) of XQDL's liquidation or DW's creditworthiness).

38. On 25 November 2024, Mr Walmsley produced a further iteration of the Walmsley paper **[UB/27/307, 319]**. Limited changes were made to the drafting of the paper to remove direct references to XQDL. However, the changes did not grapple at all with the substantive implications of XQDL ceasing to exist. The paper now justified charging a materially lower rate of interest under the RR Communication in reliance on the personal creditworthiness of DW. However, there was no consideration at all of the basis on which this lawfully could or should be done in circumstances where R had not conducted **<u>any</u>** inquiry at all into the nature and extent of DW's liabilities, and therefore had no

information whatsoever before it enabling it rationally to assess his creditworthiness (Judgment §199 **[CB/7/146]**).

39. On 22 November 2024, R signed the loans and related finance documents pursuant to the GMCA Committee's delegation of 24 March 2024 (Judgment §99 **[CB/7/104]**). The interest rates reflected the agreement between BE and DW that had been reached in February 2024 (Judgment §75 **[CB/7/86]**).

40. Following the admission of a client representative (Mr Joel Weis ("**JW**")) to the confidentiality ring established in the proceedings, A identified publicly available information indicating that the rates of interest charged by private sector lenders for loans to special purpose vehicles controlled by DW were significantly higher than the interest rates charged on the loans by R. The relevant private sector loans ("**the Maslow Loans**") were addressed in A's witness evidence: Weis WS2 §§4.15, 6.2, 6.16, 7.3 **[UB/17/216-221]**. Because R had not conducted any inquiry or consideration into the interest rates available to the SPVs on the market, R's decision-making process had never considered the Maslow Loans (Judgment §191 **[CB/141]**).

D. Submissions in respect of proposed grounds of appeal

1. CAT's failure lawfully to judicially review the decision on basis of the material before the relevant decision-maker/misdirection as to nature and scope of CAT's jurisdiction under s. 70 of the Act

41. The CAT erred in law by failing 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* (22 March 2024), the GMCA Committee (i.e. the responsible decision-maker) complied with its statutory and public law obligations. This was contrary both to s. 70 of the Act **[Auth/1/51]** and binding appellate authority.

42. The CAT's conclusion that the Decision should be held to be lawful had regard to, and principally relied upon, the content of the Walmsley paper. This was an error of law. The Walmsley paper was produced by, and contains the thoughts and arguments of, a junior officer. None of the information or analysis contained in the paper was considered by or formed any part of the reasoning of the responsible decision maker (the GMCA

Committee) – the GMCA Committee had no knowledge of any of the information or analysis advanced in the paper. The paper was written by the junior officer *after:* (i) the date of the Decision, and (ii) R received A's substantive pre-action letter challenging the lawfulness of the Decision and seeking disclosure of the contemporaneous decision-making records. R's own witness evidence stated in terms that the Walmsley paper was **never** provided to, or considered by, the GMCA Committee (Blakey WS5 §27).

43. The CAT also conducted and relied upon its *own de novo* 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 on the loans were compliant with s. 3(2) of the Act): Judgment §193 **[CB/7/141]**. This was also an error of law. Section 70 of the Act does not confer a *de novo* jurisdiction on the CAT. The CAT's task pursuant to s. 70 **[Auth/1/51]** and s. 3(2) **[Auth/1/5]** of the Act was not to consider or decide this issue for itself, but rather to apply orthodox domestic public law principles to judicially review the *"subsidy decision"* of the GMCA Committee, based on the information and advice that was before the GMCA Committee on 22 March 2024.

44. These errors of law permeate the entirety of the CAT's operative reasoning in the Judgment and are encapsulated at §153 **[CB/7/131]**: *"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."*

45. The CAT's errors of law substantially replicate the errors of law that were considered, and corrected, by the Court of Appeal in *R (007 Stratford Taxis Limited) v Stratford on Avon District Council* [2011] EWCA Civ 160 **[Auth/10/301]** and *Kenyon v SSHCLG* [2020] EWCA Civ 302 **[Auth/13/386]**. In *Stratford*, the relevant decision was whether to approve the introduction of a policy requiring wheelchair accessibility in all new black cabs. This was subject to detailed consideration by D's general purposes committee ("**the GPC**") (§§4-5) **[Auth/10/305]**. However, the responsible decision maker was D's

Cabinet ("**the Cabinet**"), not the GPC. When the Cabinet considered, and decided to approve, the new policy on 15 December 2008 it was not provided with, and therefore did not lawfully consider, any adequate summary or account of the legally required relevant considerations (§11) **[Auth/10/308]**.

46. At §§10-11, the unanimous Court of Appeal explained that (i) if the responsible decision maker (in *Stratford*, the Cabinet) does not lawfully consider the legally required considerations when making the relevant decision, then the decision will be unlawful, and (ii) the decision will *not* be rendered lawful because some party or body other than the relevant decision maker (in *Stratford*, the GPC) had *already* given detailed consideration to the legally required considerations **[Auth/10/307]**.

47. In *Kenyon*, the defendant sought to defend the decision subject to judicial review by relying upon both: (i) documents advancing reasoning produced by officers after the date of the relevant decision, and (ii) documents produced by officers *before* the date of the relevant decision, but which had not been considered by the relevant decision maker in making the decision subject to judicial review. At §§28-30 **[Auth/13/401]**, the unanimous Court of Appeal explained why it was not appropriate or permissible for the Court to have regard to <u>*either*</u> category of material in conducting its judicial review of the relevant decision, see in particular §30: *"30. For these reasons, therefore, I have not had any regard to the documents that were not in existence or available at the time of the screening direction of 16 December 2016. In addition, I have also discounted an earlier document, namely the Officer's Report to the Council's Planning Committee dated 5 September 2013, despite the fact that the judge herself set out some of this Report at [35] of her judgment. The reason for discounting it is because there was no reference to this Report (whether express or implied) in either the second respondent's screening opinion, or the first respondent's subsequent screening decision. Whilst Ms Patry may be right to say that the second respondent could be assumed to be aware of the contents of this Report, there was no evidence that it played any part in the particular decision-making process under review. It is therefore not appropriate to have any regard to the Report when considering the rationality of the screening direction."* **[Auth/13/401]**

48. In the present case, the legally required considerations including (in particular): (i) the Statutory Guidance, and (ii) whether the interest rates on the loans were consistent with the rates that the SPVs could obtain from the market, were required to be considered by

the GMCA Committee (i.e. the responsible decision-maker). The evidence demonstrates (and the Judgment accepts) that no such consideration occurred.

49. The binding guidance of the Court of Appeal in *Kenyon* and *Stratford Taxis* was addressed both in A's trial skeleton argument (at §§54-55) **[UB/4/65]** and its oral submissions {Day 1, p134} **[UB/9/45]**. R advanced no submissions either in writing or orally disputing the correctness or applicability of those principles. Notwithstanding this, the Judgment: (i) makes no reference to either authority, and (ii) provides no reasoning justifying the CAT's failure to apply these principles. If the CAT had lawfully applied the applicable legal principles it would have been required to conclude that the Decision was unlawful.

50. At §§7-15 of its reasons for refusing PTA ("**the PTA reasons**") **[CB/9/160]**, the CAT advances various points seeking to justify refusing PTA on this ground. A respectfully submits that none of these points are sustainable.

51. At §7 of the PTA reasons, the CAT prays in aid to its *"expertise"* and *"the margin of discretion"* **[CB/9/160]**. A respectfully submits that these points do not materially assist the CAT in respect of this ground of appeal, which is concerned with errors of law in statutory interpretation and the failure to apply binding precedent, not matters of factual or evaluative assessment.

52. At §8, the CAT repeats its view that R's decision-making process was *"rational and not inherently defective"*, and refers in passing to R's confirmatory due diligence in respect of legal title and property valuation after the decision **[CB/9/160]**. This does not assist: (i) the very issue under this ground of appeal is whether the CAT failed correctly to apply the relevant provisions of the Act and appellate authority in holding that the decision-making process was *"not defective"*, and (ii) R's confirmatory due diligence on legal title and property valuation did not (and could not) address whether the interest rates on the loans were consistent with market rates, and so does not assist the CAT.

53. At §9, the CAT states that the Part B report provided a *"clear summary"* of the loan terms **[CB/9/160]**. A does not dispute that it provided a – brief – summary of certain of the commercial terms. Materially, however, the CAT does not dispute that the Part B report did not address the Statutory Guidance, the basis on which the interest rates were formulated or whether (and if so on what grounds) the interest rates were said to be

consistent with the rates the SPVs could obtain from the market (s. 3(2)) **[Auth/1/5]**. A submits that these were legally required considerations.

54. At §11, the CAT suggests that it did not err in law because A *"…relied heavily on the [Walmsley paper] 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 RR Communication"* **[CB/9/161]**. This is misconceived. A's skeleton argument (§§4, 55) **[UB/4/46, 65]** and oral submissions ({Day 1, p54} **[SB/9/42]** {Day 1, p72} **[SB/9/43]** {Day 2 pp270, 271} **[SB/9/53]**) made expressly clear that its primary case was that the Walmsley paper was inadmissible and irrelevant to the CAT's judicial review of the Decision. In circumstances where R relied on the Walmsley paper (and the CAT indicated during oral argument that it was likely to accept R's case on this point) A was required to advance further and alternative submissions explaining why – if its primary case was not accepted – the CAT should conclude that the analysis contained in the Walmsley paper was legally insufficient and flawed.

55. At §12, the CAT refers to the 'experience' of R's officers or advisers, R's 'recent' experience of lending and DW's 'good track record of repayment' **[CB/9/161]**. None of these points are relevant to the issues of law raised by this ground of appeal: (i) the 'experience' of officers is not an answer to the responsible decision-maker (the GMCA Committee) not receiving information addressing, or lawfully considering, legally required matters, (ii) the 'recent' experience referred to comprises a club loan granted some *four* years ago, at the height of the Covid pandemic, and (iii) a good track record of repayment on the part of DW is unsurprising if, as A submits, loans are being granted by R at below market interest rates.

56. At §13, the CAT seeks to justify its failure to refer to or apply the legal principles set out in *Kenyon* and *Stratford Taxis* because: *"…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."* **[CB/9/161]**. A respectfully submits that this passage demonstrates that the CAT has not read or correctly understood the applicable legal principles. The CAT's statement that the Court of Appeal's judgment in *Stratford* was *"concerned [with] ex post facto attempts to rely upon evidence that was not before the*

relevant decision maker" **[CB/9/161]** is incorrect. As explained above, the legal issue in *Stratford* was that (i) there had been a detailed process of consideration of the legally required matters by the GPC *before* the matter was referred to the responsible decision-maker, i.e. the Cabinet; but (ii) the Cabinet itself was not provided with sufficient information and advice to enable it lawfully to make the relevant decision. *Stratford* is not a case about *"ex post facto"* reasoning. Rather, it is an application of the fundamental public law principle that: (i) in order for a public law decision to be lawful, it is the relevant decision maker, and not some other party or body, who must consider the legally required considerations, and (ii) it is not legally sufficient for some other party or body other than the responsible decision-maker (in *Stratford*, the GPC; and in the present case Mr Walmsley) to have considered the legally required considerations.

57. Similarly, the analysis and findings of the Court of Appeal's judgment in *Kenyon* are not confined to reliance on *ex post facto* reasoning. As the Court of Appeal specifically explained at §30 **[Auth/13/401]**: *"…I have also discounted an* ***earlier*** *document, namely the Officer's Report to the Council's Planning Committee dated 5 September 2013, despite the fact that the judge herself set out some of this Report at [35] of her judgment.* ***The reason for discounting it is because there was no reference to this Report (whether express or implied) in either the second respondent's screening opinion, or the first respondent's subsequent screening decision. Whilst Ms Patry may be right to say that the second respondent could be assumed to be aware of the contents of this Report, there was no evidence that it played any part in the particular decision-making process under review****. It is therefore not appropriate to have any regard to the Report when considering the rationality of the screening direction."* (emphasis added)

58. It follows that the CAT's suggestion that there is some (unspecified) principled distinction to be drawn between its approach in this case and the errors of law identified and corrected by the Court of Appeal in *Stratford* and *Kenyon* (*"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…"*) **[CB/9/161]** is incorrect. The reality is that there is no such distinction to be drawn.

59. At §§14-15 of its PTA reasons **[CB/9/162]** the CAT asserts that its approach is supported by the decisions of the Court of Appeal in *Sky Blue* **[Auth/12/360]** at Judgment §§102-103 **[CB/7/105]** and *Bulb Energy* **[Auth/17/489]** at Judgment §§104-106 **[CB/7/108]**.

This is also misconceived. Neither of the judgments was concerned with, or considered, the application of the legal principles explained in *Stratford*, *Kenyon* and *National Association of Health Stores* and neither judgment provides any support for the CAT's assertion that it was not required to apply those principles.

60. As to *Sky Blue*: (i) first, the only passage of the Court of Appeal's judgment relied on by the CAT is §13 **[Auth/12/364]**, part of which is quoted by the CAT at §103 of the Judgment **[CB/7/105]**. The relevant *dictum* simply records the (uncontroversial) proposition that when determining a *substantive* challenge under EU State aid law to a public authority's evaluative judgment about whether a measure complies with the 'market economy principle' a generous margin of judgment will be applied. This point is of no relevance to this ground of appeal, which is concerned with a logically prior and discrete legal question: namely, whether the responsible decision-maker (the GMCA Committee) was ever provided with, and lawfully considered at all, legally required matters; (ii) second, the relevant paragraph of *Sky Blue* cited by the CAT is concerned with the application of EU State aid law, which forms no part of the domestic legal regime applicable under the Act; (iii) third, on proper analysis, it is apparent that *Sky Blue* is in fact a further authority against the CAT's approach. The grounds of judicial review in *Sky Blue* are summarised in the High Court's judgment at [2014] EWHC 2089 (Admin) §§81-82 **[Auth/11/337]**. Ground 4 was a contention that D's decision to approve the loans in that case was flawed due to regard to irrelevant considerations/irrationality. The Court held that in deciding to make the loans, the relevant decision maker was required to have regard to all legally relevant considerations, and not have regard to irrelevant considerations, referring to *National Health Association* and other authorities: §139 **[Auth/11/353]**. The argument that D had not done so failed on the facts, but the Court accepted that these domestic public law principles applied to the decision. There was no appeal on these points and consequently the issue is not considered further in the Court of Appeal's judgment. There was no claim in *Sky Blue* that the responsible decision-maker had failed to consider at all whether or not the loans in that case complied with market rates. As the Court of Appeal noted, the relevant decision maker in *Sky Blue* had been provided with specific commercial and legal advice establishing that the commercial terms of the loans complied with the market rates (i.e. D had taken precisely the steps which R in this case asserts there was no duty to undertake): *"The external legal advice considered by the Council has not been disclosed, but it may fairly be inferred that the*

Council considered, on advice from these two sources [i.e. both the legal and commercial advice], that in making the loan it was acting lawfully" (§10) **[Auth/12/363]**.

61. As to *Bulb Energy*: (i) first, the only passage of the Court of Appeal's judgment relied on by the CAT is §97 **[Auth/17/516]**, part of which is quoted by the CAT at §106 of the Judgment **[CB/7/108]**. The relevant *dictum* simply records the (uncontroversial) proposition that when determining a *substantive* challenge to a public authority's evaluative judgment made about whether an arrangement complied with the 'market economy principle' a generous margin of judgment will be applied. There was no ground of claim in *Bulb Energy* that the responsible decision-maker, in that case the Secretary of State, was not provided with, or failed lawfully to consider, legally required matters, and the Court of Appeal's judgment has nothing to say about these legal issues; (ii) second, *Bulb Energy* is a case decided under the Brexit transitional regime. Consequently, it also does not materially assist in determining the application of domestic principles of public law to the Act.

<u>2. CAT erred in law in holding that R had lawful regard to the Statutory Guidance</u>

62. The CAT erred in law in holding at §203 **[CB/7/148]** that R had lawful regard to the Statutory Guidance. All of the evidence before the CAT, including R's own contemporaneous documents, showed that the GMCA Committee had not had any regard to the Statutory Guidance at all, i.e. none of R's documents included any refence to the Statutory Guidance whatsoever and none of R's witness statements claimed that R had any regard to the Statutory Guidance. §203 of the Judgment **[CB/7/148]** (which the only passage in which the CAT addresses this issue) does not refer to *any* evidence supporting the assertion that R had regard to the Statutory Guidance, or explain the basis of the CAT's purported finding. Before the CAT, R did not even *attempt* to submit to the CAT that R had regard to the Statutory Guidance. R's submission on this issue, which the Judgment (correctly) does not accept, was that the Statutory Guidance did not include any provision stating that a public authority should consider compliance with s. 3(2) of the Act before deciding to give financial assistance: see R's further subs on s.3(2) §35 **[UB/9/135]**, §49 **[UB/9/137]**). This submission of R was simply wrong, see the relevant references from the Statutory Guidance set out above. If the CAT had not so erred it would have held that the Decision was made without regard at all to the Statutory Guidance and that accordingly the Decision was unlawful.

63. At §16(i) of the PTA reasons **[CB/9/162]**, the CAT briefly summarises this ground of appeal. However, none of the CAT's subsequent reasoning (§§16-18) provides any response or reasons for not accepting this ground of appeal **[CB/9/162]**. A respectfully submits that it follows that PTA should be granted in respect of this ground.

3. CAT erred in law in its interpretation of the RR Communication[1]

64. The CAT erred in law in holding at §198 of the Judgment **[CB/7/145]** that the correct construction of the language contained in the RR Communication *"depending on available collateral"* was that it was not necessary to add 4% to the interest rate charged on the loans in respect of the creditworthiness of the SPVs. The relevant sentence of the Communication states (materially): "*For borrowers that do not have a credit history or a rating based on a balance sheet approach, such as certain special-purpose companies or start-up companies, the base rate should be increased by at least 400 basis points (depending on the available collaterals)…"* (emphasis added) **[SB/1/5]**.

65. The true meaning and effect of this sentence of the Communication is that when a loan is being made to an SPV *"at least"* 4% must be added to the interest rate *and that more may be required to be added* depending on what, if any, collateral the SPV provides in respect of the loan. This, unsurprisingly, reflects the interest rate setting matrix set out within the Communication (see above). The CAT accordingly misconstrued the terms of the Communication. If the CAT had not so erred it would have held that the interest rates charged on the loans were 4% lower than required by the Communication and that it followed that the Decision was unlawful.

66. At §18 of the PTA reasons **[CB/9/162]**, the CAT briefly refers to this ground of appeal. However, the CAT does not provide any reasons supporting its construction of the relevant terms of the Communication or justifying not accepting this ground of appeal. A respectfully submits that it follows that PTA should be granted in respect of this ground.

4. CAT erred in law in holding that R acted lawfully in reducing margin from 4 to 1% in reliance on DW's personal creditworthiness

[1] This ground only arises for consideration if, contrary to A's primary case, the CAT was correct to rely on the content of the Walmsley paper.

67. Relatedly, the CAT erred in law in holding that it was lawful for R to reduce the margin applicable to the loans from 4% to 1% on the ground that the SPV borrowers were ultimately beneficially owned by DW, in circumstances where: (i) DW had not provided any form of guarantee, such that the only covenant provided for the loans was that of 'shell' SPVs, and (ii) R had conducted no due diligence or inquiry into DW's liabilities or overall financial position, such that it was incapable rationally of assessing his creditworthiness (Judgment §199 **[CB/7/146]**). Reducing the margin applicable to the loans from 4% to 1% in these circumstances was contrary to the terms of the Communication. Further and alternatively, no rational commercial market operator (or public body) would have reduced the margin applicable to the loans from 4% to 1% in these circumstances.

68. At §18 of the PTA reasons **[CB/9/162]**, the CAT briefly refers to this ground of appeal and seeks to rebut it by relying on its *de novo* consideration of matters such as the level of risk arising from the loans and sufficiency of the security being offered. A respectfully submits that these points do not provide any answer to this ground of appeal: (i) pursuant to the terms of both the FA and its own 2019 Investment Strategy (see §7.2) **[UB/21/269]** R was required to apply the RR Communication in accordance with its terms, (ii) The RR Communication does not provide that a public authority can disregard the terms of the matrix and reduce the margin applicable to a loan from 4% to 1% on the basis that the beneficial owner of the borrower (who is not providing any guarantee) might have a higher creditworthiness rating; still less permit such a reduction in circumstances where the public authority has no information before it that would enable a lawful consideration of the beneficial owners creditworthiness.

5. CAT erred in law in holding that R had not failed to have regard to relevant considerations

69. The CAT erred in law in holding that R did not fail to have regard to relevant considerations, namely: (i) the Maslow Loans, (ii) concentration risk in respect of DW, and (iii) the fact that for the purposes of obtaining exemption from affordable housing requirements relating to the SPVs R had advanced relied on and advanced financial projections for the SPVs' developments which indicated that the projects were unviable/high risk.

70. As to (i), the best, indeed only, factual evidence that was before the CAT regarding what interest rates are actually charged by the market to DW controlled SPVs in respect of their borrowing was the evidence adduced by A relating to the c. £120 million Maslow Loans. Materially, the Maslow Loans were entered into during the same period as the GMCA/GMPF 'club' loans related to the Blade and Collier's Yard, relied on by both R and the CAT to argue that the interest rates on the loans were consistent with market rates: (Weis WS2 §§4.15, 6.2, 6.16, 7.3) **[UB/17/216-221]**.

71. Maslow required DW to provide XQDL (i.e. a legal entity of substance) as the counterparty for Maslow Loans. The Maslow Loans were thus supported by a much stronger financial covenant, and were subject to significantly lower risk of default than R's lending to DW controlled SPVs. Notwithstanding this, the interest rates charged by Maslow on its loans was circa *double* that of the interest rate charged by GMCA on the Blade/Collier's Yard 'club' loans (Maslow charged LIBOR + 6.5% (in excess of 8% in total) vs GMCA charging 4.3% all in) (Weis WS2 §6.2 **[UB/17/215]**). If the interest rate charged on the Maslow Loans is adjusted to take account of the c. 4% increase in UK base rate that had occurred by the time the loans were given, the implied required rate of interest is c. 12% (i.e. far in excess of the rate charged on the loans by R; and, also much closer to the rate indicated by the lawful application of the RR Communication).

72. The Maslow Loans were never considered by R at any stage of its decision-making process (Judgment §191) **[CB/7/140]** because R did not take even the most rudimentary steps to investigate what rates were available to the SPVs on the market. All of the information provided by Mr Weis related to the Maslow loans was obtained from publicly available sources.

73. At Judgment §191 **[CB/7/140]**, the CAT rejected A's case on this issue in a single, unreasoned, sentence: *"It does not appear that this loan which was not with the GMCA was taken into account, but from the description of its terms, security and ratios as explained in Mr Whitaker's email dated 14 May 2025, it would not have been a particularly helpful comparator in any event"*. A respectfully submits that this was an error of law: (i) as A explained in A's Trial skeleton argument **[UB/4/73]**, the relevant email from DW was not admissible in the proceedings, (ii) DW's email did not provide any detailed or reliable information capable of supporting lawful finding about *"terms, security and ratios"* of the Maslow Loans, (iii) it was not part of the CAT's function to

purport to conduct a *de novo* review of the commercial terms of the Maslow Loans, and the CAT had neither the evidence or expertise lawfully to do so, (iv) no reasons are provided justifying the purported conclusion that it would not have been a *"particularly"* helpful comparator – as the evidence makes clear, it was the best available evidence before the CAT, and (v) the DW email's main argument to dispute the relevance of the Maslow Loans was that the loans were entered into some time ago and therefore are not reliable evidence in respect of *current* market rates. However, the fundamental difficulty with this is that precisely the same point applies the GMCA 'club' loans in respect of the Blade and Collier's Yard, i.e. those loans, which are relied upon by the CAT in its judgment, (and which were approved by R in December 2020) (Judgment §191) **[CB/7/140]** also do not provide any reliable evidence as to market rates available to the SPVs at the date the loans were given in November 2024.

74. As to (ii) there was no, or no lawful, consideration by R (whether in the Part B Report or the Walmsley paper) of concentration risk in respect of DW when determining the interest rates that should apply to the loans. Prior to the Decision, A had written to Mr Burnham specifically drawing attention to these issues and requesting action (Weis WS2 §§6.13-6.14) **[UB/17/218]**. The CAT erred in law at Judgment §201 **[CB/7/147]** in rejecting A's case that this constituted the failure to have regard to a relevant consideration and/or a failure to conduct sufficient inquiry into a relevant matter: any commercial market lender considering whether to grant in excess of £100 million of loans would have regarded the nature and extent of its overall exposure to the relevant borrower (i.e. the concentration risk) as a relevant consideration. §201 of the Judgment **[CB/7/147]** provides no answer to this ground of claim.

75. As to (iii), DW made detailed submissions to MCC (i.e. one of R's constituent local authorities) positively submitting that the SPV developments were so high risk that they should be exempted from MCC's 20% affordable housing requirements. This was accepted by MCC, and DW was duly exempted from the (onerous and costly) affordable housing obligations that would otherwise apply. As the evidence before the CAT explained, underlying economic and market conditions then significantly worsened since the date on which these representations were made by DW i.e. the objective evidence indicated that the viability of the SPV developments should have materially worsened (not improved) over the subsequent period (Lloyd WS §§33-34) **[UB/15/233]**. Notwithstanding this, for the purpose of obtaining the loan funding from GMCA DW

represented that the developments would be radically more profitable than previously stated, were viable (and therefore very low risk) and that accordingly: (i) R should grant up to £140 million of loan funding, and (ii) only a modest rate of interest should be applied to the loans. These (inconsistent) representations were then accepted by R (with MCC as one of its constituent members), without any or any lawful consideration of DW's earlier inconsistent representations and decisions in respect of exemption from the affordable housing obligation summarised above. The issue is not addressed either in the Part B Report of the Walmsley paper, and A submits that it constituted a failure to have regard to a relevant consideration.

76. The CAT erred in law at §200 of the Judgment **[CB/7/147]** in rejecting A's case that this constituted the failure to have regard to a relevant consideration and/or a failure to conduct sufficient inquiry into a relevant matter. A respectfully submits that it is not a satisfactory answer simply to note that R subsequently conducted confirmatory due diligence in respect of property valuation: in circumstances where the material inconsistency in the representations made by DW were never even considered by R or those conducting the confirmatory due diligence, no lawful inquiry was (or could be) conducted into this matter.

E. Conclusion

77. For the reasons summarised above, the Court is respectfully invited to grant permission to appeal.

JOSEPH BARRETT KC

27 August 2025

OLIVER JACKSON

References added 4 June 2026