

State Aid Strike Out Judgement with regard to Durham County Council as a Commercial Waste Undertaking.

The determination of the court to summarily strike out our company's valid legal claim without the chance to even have the volume of evidence considered by the court, is indeed very disappointing and we are led to believe, a rather extreme stance for the court to take, in the absence of hearing the actual evidence of the case. We brought this case before the British court as seemingly; having made a complaint to the European Commission, it was taking an interminable amount of time to receive any feedback from them. As such, with Brexit on the horizon, we took advice and thought it best to bring a cause of action before the British court, and indeed the Covid 19 pandemic has substantially delayed proceedings.

Durham County Council would have it that this is a complex subject. However, in essence, as we see it, the case is a very simple one. It's a matter of an arm of the state, in this case Durham County Council, using taxpayer and central government funds to make use of as much as 30% discounts in the cost of providing commercial waste collections to private businesses, when compared to the cost base of a typical, well run, private sector undertaking. It then uses those discounted costs, also known as a subsidy, to undercut the commercial marketplace, in turn generating substantially enhanced profits, over and beyond what the entire private sector can expect to enjoy. Indeed, the concept is so simple, any average Joe can see it is morally incorrect that the state should be using taxpayers' money to subsidise waste collections from businesses and undercut a commercial marketplace. We argue that when the full evidence and facts are considered, then being morally incorrect, is underpinned by also being legally incorrect. This is a position that Durham County Council has gone to great lengths to prevent.

From the outset four years ago, Durham County Council has, in our experience, sought to obfuscate, suppress and deny the release of public information under the Freedom of Information Act, to avoid being held to account. It has done so consistently and simultaneously on the grounds of protecting their "commercial interests", quite a juxtaposition. However, when pressed on issues of state aid, Durham County Council then pivots and seemingly looks to take shelter behind Section 451b of the Environmental Protection Act 1990 claiming that they are obliged by it to offer these services. In fact, s451b merely places duty on local authorities to "arrange" for the collection of commercial waste not to directly supply the provision, and even then, only "if requested". As per established EU judgement such an obligation on a local authority would have to be clearly defined in order to avoid state aid issues applying. In our view, a duty to arrange, in no way confers an obligation of direct service delivery. Furthermore, any such provision is required to be transparently and objectively assessed in advance by the public body, which evidentially, it has not.

Indeed, Durham County Council, despite trying to alter their argument mid proceedings, sought to take refuge in the British court behind the woolly provisions of section 451b of the Environment Action Act 1990. At this stage at least, the judge in this case has preferred to accept that position, based upon references to submissions made by DCC in respect of an argument that the judgement states would not be considered, given its late presentation. Given the late presentation, we were not afforded an opportunity to provide a legitimate full rebuttal of those disallowed representations. The Court also considered that an injunction was not available to us given that it would be ineffective after the changes due to be implemented (the exact detail of which is unknown at the present time) on 31 December as a result of Brexit. Had it not been for Covid-19 we consider that we would have had the opportunity to present our arguments to the court sooner so that the impending deadline would have been immaterial.

Obviously, we fundamentally disagree with the Judgement and our full evidence, **not heard**, can clearly demonstrate the commercial activity of Durham County Council which is actively furthering and marketing a business whilst hiding behind a public duty contained in section 451b. Our evidence also demonstrates in detail how that provision is markedly different from the identical provisions of section 451a, concerning domestic collections. In short, how the service delivered under the guise of a statutory obligation to commercial businesses has a massively enhanced service experience compared to that which the householder receives.

Categorically this has never been about some big fishing trip for evidence, merely disclosure and public scrutiny of that which should already exist, financial accounts that Durham County Council ought to have always had with regard to domestic versus commercial collections, yet continue to resist any disclosure or transparency, thereof.

Whilst any decision is yet to be finalised by the Commission, we have been provided with some very limited information and invited to respond. It appears to us that the information provided by the UK authorities centres around the alleged financial self-sufficiency of the commercial waste collection services on a commercial footing. We have severe concerns around the accuracy of the information apparently provided to the Commission to support this with regard to Durham County Council and will be seeking verification and clarification over its integrity and substance, in due course. In our view, it further demonstrates that Durham County Council operate the commercial waste collection service as a commercial business and not in accordance with a public duty as alleged in the English courts and certainly any definition of a Transparent manner.

Essentially it seems to us that the game being played by Durham County Council, we can only describe as the legal hokey-cokey, where they selectively “pick&mix” arguments, for whichever jurisdiction they are trying to avoid a negative determination. We have a volume of evidence to support our position but so far we have been prevented from presenting this to the court and we consider that this is by absolute design. It is, we say, indisputable that Durham County Council are:

- 1) granted assistance through the use of State Funds and Resources including that which it derives from the domestic market and not in the normal course of business;
- 2) conferred multiple advantages through the use of that assistance in acting as a commercial Undertaking, which can and does apply to Public bodies and for which there is evidence of substantially reduced costs and increased profits;
- 3) That assistance has the net effect of distorting competition in their favour.
- 4) The issue does affect Trade between Member states;
- 5) That Section 451b of the EPA 1990 does not permit DCC carte blanche to act in a commercial matter, irrespective of State Aid rules, as per existing EU Judgement.

For all of these reasons and more, we will be appealing the decision and continue with our fight for public sector transparency. This is categorically not some form of moral crusade, or a witch hunt, as Durham County Council would have it framed, this is merely a determination to protect the commercial marketplace from being undermined by the deliberate abuse state assets and a fair, objective and transparent analysis of public information, rather than what can only be described as an apparent cloak of secrecy, under which DCC have structured and maintain, to undertake commercial collections.

This country has a long history of preferring the representations of abusive parties, over the abused, yet history shows that with time and a lot of determination, such positions never age well; the matter is far from finished, we will endeavour to continuing shining light in the areas others, prefer to remain dark with the aim of reaching our ultimate goal of public scrutiny and transparency in this regard. At the end of the day, if 100 people in the street were randomly asked, with only the briefest of explanations of the scope and impact of the state subsidies involved and the resulting distortion of the marketplace, then 99 of those people would agree with our position, and the other 1, well, that person would undoubtedly work for the council. **END**