

Obviously we are very disappointed that whilst in our understanding there appeared to be a consensus understanding that there has been an apparent breach of State Aid rules by DCC, that this case seems to have been technically dismissed by way of a 2 to 1 split verdict on 2 key issues:

1. As Frankovitch Damages awards have seemingly either all been settled, withdrawn or failed, the actual evidence of our case ought not to be heard; as if somehow pre-determined by destiny to automatically meet the same fate, and;
2. Poor timing, that due to long delays, Brexit and Covid, we find ourselves in the legislative ether between the old EU rules on State Aid and the new UK rules, not yet enacted.

To be very clear, for us the technical legal instruments of Frankovitch damages and the technicalities of Brexit and its impacts upon State Rules, have never been the substance of the issue. What is at hand, is the level playing field in the Trade Waste sector and the effects of state subsidies upon it; a level playing field we argue that should open to all, including councils, when playing by the same rule book. What we have here is a Local Authority, who by any lay persons definition can only be described to be leveraging state assets to further a commercial business undertaking. That is what we are looking to stop, and whilst we will be considering our next course of action, be that an application to appeal this decision to the Supreme Court, or to await the enactment of the new legislation, free of the technicalities of who hasn't technically won what before under the old system, or to ensure VAT is rightfully paid on any such commercial activity, the fight for the level playing field is far from over. Our goal has always been one of public transparency and accountability, whilst DCC have arguably sought to constantly suppress information, deny its existence, and prevent the evidence from being heard, only for it to selectively appear in 2 very different versions of the truth, one as a special legal regime and the other as a commercial undertaking that generates twice the profit levels of the private sector average; evidence which was key to the current issue. Unfortunately for us, the judiciary thus far seems to oblige whatever version of the Local Authority narrative of the day. The Warren VAT judgement states that where such profits occur, among other factors, then those councils are deemed to be outside of a special legal regime for VAT purposes and that the material facts for each council, must be therefore be established. This current judgement rather suggests that in the face of an apparently acknowledged breach of State Aid, then applications should be technically struck out before any evidence to establish the facts can be determined, and we cannot see how maintaining that seemingly de facto, limbo, position, in the absence of hearing actual evidence, can possibly be considered to be in the public interest.

Of course, in light of Justice Warren's judgement and Durham County Council's evidenced commercial activity, delivering commercial profits falling outside of any Special legal regime, we can only wonder as to the size of the obvious shortfall in associated VAT payments and over what period, which will clearly be a matter for HMRC to now take up with DCC; clearly an obvious outcome of presenting a case and submissions of above board commerciality, to defend a breach State Aid claim. As we keep saying, eventually all this Local Authority hunting with the hounds and running with the foxes will have to stop, and every case, regardless of outcome, gets us nearer to that outcome.