“Whilst the judgement can be seen as a score draw on the issues, unfortunately we needed to be successful on both points not just one.

“It seems at face value, rather disappointingly, that the Tribunal has come up with its own interpretation of the Subsidy Control Act, that would mean that the Act is only applicable where there are 2 different legal entities, one offering and the other, receiving subsidy, not the same entity making use of taxpayers assets i.e. subsidising itself. This was a position not raised by either party involved and was first introduced by the Tribunal on the day one of the hearing. Furthermore, it seems a position that initially appears to us, to be contrary to the persuasive positions of both the Secretary of State’s guidance on the Subsidy Control Act and to the preceding State Aid legislation.

“Obviously, we will have to consider the full judgement in some detail over the next few weeks and decide whether to make motions to appeal it or not. However, we believe, as it stands, that Local Authorities can simply manipulate any loose statutory obligation, or future obligation they may obtain, and use that to place goods and services on any established market, without any regard to market forces, all outside of the Localism Act, where they would otherwise be held accountable. What next, double glazing sales; solar panel production.

“It would appear that councils are prohibited from making a profit (despite actually doing so) and that section 45(4) of the EPA, requiring a reasonable charge to made to recover costs, that “reasonable” does not mean having to reasonably consider market forces in a capitalist economy either, and this we have always felt, simply cannot be correct. By way of illustration, if we look at another example outside of this case, Sunderland and Gateshead councils it seems, both dispose of waste under the same waste disposal contract, and therefore cost; both have a similar, mainly urban and semi-urban geography to collect from, so then, how does the former charge 2.5 times more, per 1100 Litre general waste bin, than the latter, whilst apparently neither is simultaneously making a profit, nor incurring a loss, both are allegedly simply applying a “reasonable charge”. Really! Example’s such as this we argue, just serve to illustrate that the practical reality is, something is thoroughly rotten in the state of Denmark.

“That said, the judgement does not particularly address the issue of the Polluter Pays Principle either, and whether in that regard, it is even lawful for Local Authorities to provide below market waste collections than Waste Producers would otherwise be expected to pay on the open market.

“Whilst we feel that Durham County Council has, as we see it, wriggled off the hook once again, each time we learn something and therefore we will consider our next steps very carefully, whether that be; to look to appeal this judgement, make efforts for the government to match the legislation to the guidance, in face of this judgement if the interpretation is not as intended, or an entirely different course of action. That Durham County Council have apparently been cited in the Judgement as falling below the expected standard of a Local Authority with regard to matters of transparency, whilst of no surprise to us based upon our experiences, is welcome, though it’s a shame from our perspective, that there was no scope to explore the motivation for such.

“The whole industry is aware of this problem, but with many of the bigger players willing to accept the practices in return for a few large public sector contracts here or there, their silence is seemingly all but assured. What can't be allowed to persist though, is this council notion that they can place goods and services on markets, for less than market cost, at the enjoyment of the taxpayer. Afterall, its 2023, not 1973.”