

How is CAT scrutiny of Schedule 1 reasoning in politically sensitive, regionally significant cases affecting how you frame, evidence, and defend subsidy decisions?

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Bristol Airport v Welsh Ministers

[2026] CAT 30

- First CAT decision on an acknowledged subsidy
- First CAT decision on application of Schedule 1 principles
- First CAT decision on application of the provisions on prohibited subsidies

Cardiff Airport: background

- In 2007 had ~2m pax/year: 2012 ~1m
 - Decline in LCCs
- Wholly owned by WG (since 2013)
 - But separate legal person from WG – no *Durham* point
- 2014-2020: CMO loans of ~£70m
- 3/2020: Pax at 1.7m/year

Cardiff Airport: COVID and post-COVID

- Closed 3/20 to 7/20; Pax down 91%; Welsh travel restrictions
- EU Commission approved £2.9m compensation for losses – never paid
- 2/2021
 - £43m grant (subsidy) – R&R (under TCA)
 - £43m CMO loan

Cardiff Airport – events leading up to the subsidy

- 2023/4 - £7m equity investment for new scanners; CMO
- 12/2023 – CMO loan of £15m (increased to £33m 7/2024); granted on basis WG had in principle decided a subsidy and CM operator would keep airport going (ESCF)

The subsidy: 31/3/2025

- Package 1: Non-passenger business (£105m): maintenance and repair; infrastructure upgrades
- Package 2: Passenger business: £100m for commercial route development
 - Condition of grant that CIAL's arrangements with airlines are on CMO terms: WG has powers to supervise and intervene

Equity rationale

- Principle A: equity objective (regional development)
 - Package 1 to encourage and support aviation-related businesses
 - Package 2 to encourage high value inbound tourism and events business and improve Wales' connectivity; encourage LCCs to increase pax and increase employment at airport
 - Estimated GVA of >£1bn

Effect on competition

- Bristol expansion plans appeared to assume growth at Cardiff
- Bristol concentrating on LCC – this not focus of WG subsidy to Cardiff
- But would monitor effect over time

No-subsidy position

- CIAL a going concern, taking into account credit facility (which it was likely to need to use)
- Pax likely to stall or increase at 3%/year
- Significant chance of future financial difficulty in worst-case scenario

Restructuring subsidy?

- S.20
 - Prohibits restructuring subsidy (with inapplicable exemptions)
 - “restructuring subsidy” is a subsidy “for restructuring an ailing or insolvent enterprise”
- Bristol: if Cardiff A/I then “restructuring subsidy”
- WG: no, if subsidy not “for [the purpose of] restructuring”

CAT on restructuring subsidy

- WG right on natural meaning of words
- Context suggested drafter intended to focus on purpose, not nature of recipient (other prohibitions did focus on recipient)
- Nothing to suggest s.20 must be engaged when recipient is A/I when purpose not to restructure
- Contrast with EU general prohibition on subsidies to undertakings in difficulty (unless R&R) deliberate and permitted by TCA
- Hansard extracts supported intent to diverge
- DBT guidance – provided an example of why difference intended (grant scheme for many SMEs eg COVID)

Was Cardiff Airport A/I?

- WG said no, relying on ESCF
- Bristol said improper to rely on ESCF

“177. It appears that the [WG] reached its conclusion that CIAL was not ailing or insolvent on the basis of the ESCF being in place and providing liquidity support to CIAL as at the date of the Decision. Bristol’s argument that we should somehow disregard the ESCF because it was not compliant with the CMO Principle or because it was inherently linked to the Subsidy lacks any proper basis. Our task is to consider the factual position absent the Subsidy, which was that CIAL had access to the ESCF. This is not a case where a counterfactual is being constructed with discretion about what should or should not be included. It is a simple assessment of the position without the Subsidy, which can most obviously be assessed in this case by looking at what the facts were the day before the Subsidy was granted.”

Schedule 1 reasoning

- CAT: “kitchen sink” case by Bristol

“198. For the most part, the challenges fail simply because they do not in substance illustrate any irrationality but rather illustrate a difference of opinion about the weight to be given to matters which were obviously the subject of consideration by the [WG]”.

Principle A: what was the real objective?

- WG: real objective was regional development, encouraging business to Wales
- Bristol: real objective was ...



CAT approach to the Draig Goch

- “Presence on world stage” statements were all linked to major sporting and cultural events, and not central to reasoning
- May be that plan started with concern to preserve a Welsh airport but moved beyond that in the assessment (and Bristol could not displace presumption that assessment set out true objective)

Principle E: change in behaviour

- Would package 2 work?
 - Bristol – it will be impossible to support LCC on CMO terms
 - CAT – that just speculation
- Overoptimistic Pax forecasts
 - WG had report from expert which identified risks
 - Past examples of airlines withdrawing services not decisive

Principles B and F: proportionality and minimising negatives

- VFM – WG should have a very large margin of discretion
- WG had looked in detail at Bristol and reached a rational conclusion about Bristol's strategy

Principle G: overall balance

- 253: “the balancing exercise which this Principle requires ... is an inherently judgemental exercise which involves a multifactorial assessment, including many uncertain elements.”
- Not enough to disagree or carp at trivial factual “errors”

Section 28: subsidy to airlines?

- No, because of CMO constraint on CIAL
- Not possible to read s.28 as applying to any subsidy that could benefit an airline by means of supporting CMO transactions with airlines
- But CAT noted “practical problems”: how would Bristol know if a deal with an airline is on CMO terms?

Key points

- S.20
 - Be cautious where recipient (possibly) a/i: need a sustainable “not for restructuring” argument, which needs work
- Schedule 1
 - Challenges will be difficult on principles (especially A/G) given value/policy laden judgements

The end of the story?

- CAT refused PTA (very firmly)
- Bristol has now applied to CA for PTA ...

Thank You

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