

Court applies state aid rules in lease dispute (*R (on the application of Sky Blue Sports & Leisure Ltd) v Coventry City Council*)

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Local Government analysis: James Goudie QC, joint head of chambers at 11 King's Bench Walk (KBW), explains how the Court of Appeal reached its conclusion, in a dispute over a lease extension, that the extension granted to the owners of a football club by a local authority was not state aid.

R (n the application of Sky Blue Sports & Leisure Ltd and others) v Coventry City Council [\[2018\] EWCA Civ 2252](#)

What are the practical implications of this case?

This case decided that a lease extension granted by the city council did not constitute state aid. The decision is of interest not least because a previous decision of the Court of Appeal in proceedings between the same parties had held that a loan granted by the city council was not state aid—see *R (on the application of Sky Blue Sports and Leisure Ltd and another) v Coventry City Council and others* [\[2016\] EWCA Civ 453](#), [\[2016\] All ER \(D\) 120 \(May\)](#).

Both the loan and the lease extension had been granted to Arena Coventry Ltd (ACL), which was half-and-half owned by the city council and a local charity.

What was the background?

ACL operates the Ricoh Arena in Coventry. Coventry City Football Club play their home games there. So too now do Wasps Rugby Club.

The claimants/appellants in both cases are the owners of the football club. ACL had a lease from the council.

In the first judicial review the Court of Appeal approved the summary of relevant principles set out by the first instance judge, Hickinbottom J, as he then was. Applying those principles, the judge and the Court of Appeal found that a loan made by the council to ACL was not state aid. This was because a private market operator, in the council's position, might also have made the loan, and done so on the same terms as to interest, security etc.

The second judicial review was an attempted challenge to the council's later decision to extend the length of ACL's lease of the Ricoh Arena. This decision was taken as part of a wider transaction between the council and the charity on the one hand, and Wasps Rugby Club on the other. The council and the charity sold their respective shares in ACL for the same price to Wasps. That sale was not alleged to be state aid.

What did the court decide?

The Court of Appeal in the second judicial review was concerned only with whether the lease extension was state aid.

The court ruled that it was not arguable that it was. Audit firm KPMG had valued the lease extension, and the council had achieved a price at the top of KPMG's range.

The Court of Appeal recognised the general legal principle that a public authority does not have to use a tender or open marketing process in every case in order to avoid granting state aid. An authority can also avoid doing so if it achieves a price that is consistent with an independent market valuation.

The Court of Appeal ruled that, when applying this test, the court must focus on the assets actually sold by the authority, and the market value of those assets. In this case, the only assets sold by the council were its 50% share in ACL, and the lease extension.

The claimants had expressly disavowed any intention to challenge the share sale. McCombe LJ noted that this concession was 'inevitable', because the council had achieved the same price as a direct private market comparator—

the other 50% shareholder in ACL. In doing so, His Lordship affirmed another basis on which an authority can avoid granting any state aid—if it achieves a price consistent with that of a private market operator in materially the same circumstances.

The claimants were therefore limited to challenging the lease extension. However, His Lordship noted that they had not adduced any competing valuation of that asset. Instead, they relied on valuations of ACL's 250-year lease of the arena in Wasps' hands after the overall transaction had been completed. This was not the correct approach. The state aid rules required the court to focus on the assets actually sold by the council, and whether it achieved a market price for those assets.

The claimants' approach would require the court to include in its assessment other assets not even sold by the council—namely ACL's prior lease of the arena and the charity's 50% share in ACL. The claimants could not rely on valuations of those different assets to challenge the only valuation of the lease extension, which had been provided by KPMG. The council achieved a price consistent with that valuation, and it was therefore unarguable that it had granted any state aid.

James Goudie QC (with Ronnie Dennis of 11 KBW) has appeared for Coventry City Council at all stages in both sets of proceedings, instructed by the council's legal department. He has advised the council in relation to the Ricoh Arena and state aid since 2003, and frequently advises on state aid and 'best consideration' and 'best value' issues, as well as local authority vires issues and local authority and other public authority procurement. This includes, very recently, the first High Court case on what constitutes a (services) concession contract under the 2016 Concession Contracts Regulations—Ocean Outdoor UK Ltd v Hammersmith & Fulham LBC [\(2018\) EWHC 2508 \(TCC\)](#), in which he appeared successfully for the London borough council (with Joanne Clement of 11 KBW). James is listed in directories as a leading silk in fields including administrative and public law, local government law and public procurement.

Interviewed by Kate Beaumont.

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