

Email response to the Competition and Market Authority (CMA) [consultation on the approach proposed by the Subsidy Advice Unit \(SAU\) in undertaking its monitoring function as set out in section 65 of the Subsidy Control Act 2022.](#)

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My three key observations / comments are as follows:

Resourcing in local government:

As can be seen from the number of referrals to the SAU, the number of large subsidies issued by local government far exceeds the government's projections. Historically there has been poor awareness of the nature and scope of large subsidies issued by local government. Even the largest local government bodies struggle to find the right expertise internally to understand the statutory guidance and undertake a thorough principle assessment and so are reliant on external advisers for the economic and financial elements of a detailed assessment. This is compounded by the broad range of functions in local government as expertise built up in one team (for example providing a large grant to subsidise a regeneration scheme) will not translate across to a subsidy in a very different field – for example subsidising an energy project or EV charging facility.

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This links to an over-reliance on information and assurances from funding recipients. We have seen local authorities rely almost exclusively on a principle assessments carried out by grant recipients. This is a hangover from the state aid regime where recipients would confirm compliance with clear GBER requirements. This is a huge risk and one the SAU is already cognisant of as it has already commented on overreliance on information from recipients.

Finally there is also a general lack of awareness. We know several authorities are simply unaware of their obligations to log subsidies on the transparency database as virtually all local authorities in the country are involved in some kind of subsidy and many have no entries on the database (or certainly did not the last time I checked). Subsidy compliance is not given the same weighting or awareness as other more familiar areas such as public procurement – any many chief executives are simply unaware of the regime.

The regime would be far more effective if awareness was increased within local government and appropriate resourcing made available. Guidance on what would be a proportionate level of assessment would also assist, although I appreciate this is difficult though as it will vary depending on the nature and impact of the subsidy. When providing feedback on a principle assessment referred to the SAU, a steer on what further assessment may be proportionate (specifically to what degree) would be more helpful than general observations that avenues could have been explored further – as more detailed analysis will always be possible but local government would benefit from feedback on how far to go.

Remedies and enforcement:

Given the short timescales for challenge and general lack of awareness we expect there to be very few challenges to subsidy decisions which are important in incentivising compliance by government bodies. A complaints / review service similar to the cabinet office Public Procurement Review Service (previously the mystery shopper service) may assist with this. In my experience the main deterrent to non-compliance currently comes from the risk of audit and funding from another body being withdrawn. That is not present where a public body is using its own resources.

Referrals to the SAU

My team's experience of referrals to the SAU has been very positive. Officers have always been helpful and willing to work with referring authorities which has been welcomed.

The nature of the SAU reports (which are a function of the SAU role) is slightly problematic though. Suggestions for improvements to a principle assessment are helpful, but the fact it is issued into the public domain is problematic for public bodies who are often risk averse. A public report highlighting the flaws in an assessment provides ammunition to challengers and many public bodies are seeking to structure subsidies to fall below the thresholds to avoid this scrutiny and airing of issues. This is unfortunate as the feedback is helpful and having the feedback available for other authorities to learn from will help improve compliance more widely.

An alternative system would be to provide this feedback to the authority in question privately (noting that FOI may still apply of course) and then provide more general, collated observations on referrals on a regular basis, perhaps quarterly. This will still be helpful for other public bodies even if it is not specific to individual referrals and in my view, would result in more authorities referring projects to the SAU – particularly for SSOI where referral is not mandatory. Given that third parties see the feedback on a principle assessment without seeing the underlying assessment anyway, I believe a collated list of observations would be almost as useful without deterring referrals.

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