



Department for
Business, Energy
& Industrial Strategy

Lord Callanan
Minister for Business, Energy and
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Lord Fox
House of Lords
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28 March 2022

Dear Lord Fox,

Following the Report stage for the Subsidy Control Bill on 22 March 2022, I am writing in response to your request for clarification around the process for challenging a specific subsidy granted under a scheme.

Under Clause 70(2) an interested party may not apply to the Competition Appeal Tribunal to review a decision to give a subsidy under a scheme. It is only the scheme itself that may be challenged.

Subsidy schemes are an important way of avoiding duplicative and unnecessary administrative burden when granting multiple subsidies of the same type.

Of course, the Government wishes to promote compliance with the subsidy control regime rather than undermine it. This Bill does not allow public authorities to establish schemes as a way of getting around the requirements of the regime, but precisely because the terms of a scheme mean that all subsidies given under it will be compliant with the subsidy control regime.

That is because a public authority must not make a scheme unless it is of the view that all the subsidies provided for under the scheme will be consistent with the subsidy control principles. The public authority will then set out clear terms for the scheme, which all subsidies granted under the scheme must comply with.

As discussed in Committee, the transparency requirements of the regime mean that a potential interested party will be able to identify whether their interests may be affected by the making of schemes and giving of subsidies. To return to your example of an interested party objecting to a subsidy given under a scheme to a specific business: the possibility that a scheme might allow a subsidy to be given to that business would be apparent from the information made available in the scheme's transparency disclosure. The potential interested party will therefore know from the outset whether they may have some interest in challenging the scheme.

If an interested party considers that the scheme is not compliant with the principles, or other subsidy control requirements, then it can be challenged within the normal limitation period, which generally lasts until one month after the details of the scheme have been uploaded on the database.

The interested party could also make a pre-action information request to seek further information, with a corresponding extension of the limitation period.

There are, however, two circumstances in which a subsidy given, or purportedly given, under a scheme could indeed be subject to challenge.

The first circumstance is if a subsidy *claims* to come under a scheme but falls outside the scheme's parameters. In that case, an interested party may seek to challenge the subsidy on the grounds it has not in fact been given under a scheme, and should therefore be treated as a standalone subsidy – for which the limitation period has not ended.

Subsidies over £100,000 must be uploaded to the transparency database, including those given under schemes. This means potential interested parties can examine, on the database, subsidies of above £100,000 given under a scheme and gauge their consistency with the parameters of the scheme. If an interested party has reason to think that a subsidy does fall outside the scope or terms of a scheme, then they may ask the Competition Appeal Tribunal to consider this question.

If the Competition Appeal Tribunal does indeed find that the subsidy should have been treated as a standalone subsidy, it could also be asked to determine whether the relevant subsidy control requirements, including the principles, have been met. If the Tribunal finds that the relevant subsidy control requirements have not been met, then it will be able to order the same remedies as in any other subsidy review.

The other circumstance is there are grounds to believe that a decision to give a subsidy within a scheme has been made in a way that is irrational, biased, or otherwise contrary to general public law principles. In that scenario, judicial review through the relevant general courts is available to challenge that decision on those grounds, even if there is no question of compliance with the substantive subsidy control requirements.

I hope that this additional information provides the clarity you were seeking. I am copying this letter to Lord McNicol, and will be placing a copy of this letter in the Libraries of the House.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Martin Callanan', with a long horizontal flourish extending to the right.

Lord Callanan
Minister for Business, Energy & Corporate Responsibility