

Scottish Enterprise response to CMA consultations on:

- **Guidance on the operation of the subsidy control functions of the Subsidy Advice Unit; and**
- **Statement of Policy on the Enforcement of the SAU's Information Gathering Powers**

10 August 2022

By email to: SAU@cma.gov.uk

Question 1: Do you agree with the objectives for pre-referral engagement? (3.6 – 3.10)

The objectives for pre-referral engagement seem clear, reasonable and appropriate. It may be helpful to indicate the anticipated duration of such discussions and the timescale within which public authorities might expect a response to an initial approach.

Question 2: Do you agree with the proposed approach to transparency (including publication of summary information at the time of a referral)? (3.18 – 3.23)

The principle of transparency is understood and accepted as a key component of the subsidy control regime. It may be helpful to include more detail on the summary information to be published, as this may influence how public authorities develop referral submissions.

The draft guidance indicates that third-party submissions will not be published. This does not appear to be transparent and it may be useful for the guidance to explain why these submissions are not to be published, even in summary form. It seems appropriate that public authorities are given a reasonable time to review and respond to any third-party submissions. Our view is that the guidance should be clear that this will be part of the process.

Question 3: Do you agree with the proposed approach to the treatment of confidential information? (3.28 – 3.40)

The proposed approach to the treatment of confidential information seems clear and reasonable. It may be advantageous to share the final draft report with public authorities prior to publication to ensure alignment on information to be released. It may also be helpful for SAU to identify any potential for differing opinions on confidentiality as early in the process as possible.

Question 4: What might public authorities, beneficiaries, and other interested parties expect to be included in SAU reports? In particular, how much advice should the SAU give on how to improve the assessment or modify the subsidy or scheme? (4.26 – 4.29)

The proposed content of the SAU reports seems clear and reasonable. It feels desirable for the SAU to include advice that highlights any issues, signposts to things to consider further and suggests any additional potential evidence sources as appropriate. It may also be worth considering whether some SAU advice may be provided on a more informal basis, for example through a call.

Question 5: What might stakeholders find useful to see included in the SAU's monitoring reports? (4.30 – 4.32)

It may be useful to include:

- information on stakeholder analysis: how stakeholders have been identified / who has been identified, and why?
- volume details: figures for non-referral engagements / voluntary referrals / mandatory referrals in relation to each scheme / category. This would give an indication of where there are bodies struggling with application of certain points and provide a gap analysis of where further guidance is required.

At 4.31(d), we suggest the minimal financial assistance threshold is included.

Question 6: Do you agree with the SAU's Prioritisation Principles? (5.1 – 5.8)

The Prioritisation Principles seem clear and reasonable.

Other comments on Guidance on the operation of the subsidy control functions of the Subsidy Advice Unit

Overall, the guidance is clear and user friendly. It provides a useful indication on how a referral is expected to work in practice. The inclusion of a process map and framework is welcomed.

As mentioned in our answer to question 3, it would be seem desirable for final reports to be shared with public authorities prior to publication where possible. This would not only serve as a cross check for any confidential information, but also allow public authorities to take steps to prepare a public statement on the report where appropriate.

Comments on Statement of Policy on the Enforcement of the SAU's Information Gathering Powers

The Statement is clear, user friendly and seems to cover all relevant factors.

Where information is to be requested from public authorities for the purposes of SAU monitoring reports, it would be helpful to have advance notice of the anticipated timing of such requests and an indication of the format and scope of requests. This will assist public authorities in providing requested information in good time.