

Arts Council England and Arts Council of Wales's response to the Competition and Markets Authority's Subsidy Advice Unit's consultation on the proposed approach to monitoring under the Subsidy Control Act 2022

March 2024

This is a joint response submitted by Arts Council England and Arts Council of Wales.

Arts Council England is the national development agency for creativity and culture. We have set out our strategic vision in 'Let's Create' that by 2030 we want England to be a country in which the creativity of each of us is valued, and where every one of us has access to a remarkable range of high-quality cultural experiences. We invest public money from Government and the National Lottery to deliver 'Let's Create' which supports the arts, museum, and library sectors.

Arts Council of Wales is an independent charity, established by Royal Charter in 1994. It is a Welsh Government Sponsored Body whose members are appointed by the Welsh Government.

The Welsh Government provides the majority of our funding. We also distribute funding from the National Lottery and raise additional money for the arts where we can from a variety of public and private sector sources. Our vision is of a creative Wales where the arts are central to the life and well-being of the nation, making our country an exciting and vibrant place to live, work and visit.

### **Section 3: The effectiveness of the operation of the Act**

#### **3.13 Do you agree with the SAU's proposed scope for monitoring the effectiveness of the operation the Act? If not, what should be changed and why?**

The scope proposed within the review appears reasonable for awards that are reviewed and classed as subsidies. We would suggest 3.4 should be broadened to also include the initial reviews and assessments conducted by public authorities. The review should consider the effectiveness of the current language, guidance and definitions in the current Act in enabling public authorities to effectively complete a four limb test.. Presently, ambiguity in both the definitions of economic and non-economic and a definition or threshold for when awards are capable of causing economic harm or distortion prevent the Arts Councils from effectively making this judgement.

#### **3.14 Do you agree with the methodology and evidence proposed? If not, what should be done or used?**

Presently, it appears there is minimal consideration or recognition of the lengthy work public authorities undertake in determining whether proposed financial assistance is either a subsidy or not. We would suggest that the methodology and

evidence proposal should be expanded to cover the work public authorities are undertaking for assistance that is not classed as a subsidy.

#### **Section 4: Competition and investment**

##### **4.16 Do you think the proposed evidence and sources identified are appropriate to meet the scope of the review? If not, what other evidence and sources should be considered and why?**

The proposed evidence and sources appear thorough and well considered. We would suggest that the approach could be broadened to include wider third parties- for example Legal firms or practitioners specialising or providing advice on Subsidy Control matters. It is clear that a number of public authorities are utilising third parties for advice and this appears relevant for the review.

##### **4.17 Are there particular factors that should be considered as part of the proposed case studies?**

We would also suggest explicitly considering a range of types of financial assistance for use as case studies, at varying financial value. In particular, a review of level of analysis required for smaller awards up to £1,000,000 and how competition should be assessed in a proportionate manner.

##### **Additional queries:**

- Will the CMA SAU comment on any identified or highlighted ambiguity in the statutory guidance – particularly where it affects the ability to effectively monitor the application and effectiveness of the regime?
- Will the CMA SAU comment on the effectiveness of the streamlined schemes? Will there be any comment on the development or creation of new streamlined schemes in the future?