

Subsidy Advice Unit Report on the proposed Extension Awards over £1 million subsidy scheme

Referred by Arts Council England

19 December 2024

Subsidy Advice Unit

Part of the Competition and Markets Authority



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1. The Referral

- 1.1 On 4 November 2024, Arts Council England (ACE) requested a report from the Subsidy Advice Unit (the SAU)¹ in relation to the Extension Awards over £1 million subsidy scheme (the Scheme) under section 52 of the Subsidy Control Act 2022 (the Act).²
- 1.2 This report evaluates ACE's assessment of compliance (the Assessment) of the Scheme with the requirements of Chapters 1 and 2 of Part 2 of the Act.³ It is based on the information and evidence included in the Assessment.
- 1.3 This report is provided as non-binding advice to ACE. It does not consider whether the Scheme should be implemented, or directly assess whether it complies with the subsidy control requirements.

Summary

- 1.4 The Assessment uses the four-step structure described in the Statutory Guidance for the United Kingdom Subsidy Control Regime (the [Statutory Guidance](#)) and as reflected in the SAU's Guidance on the operation of the subsidy control functions of the Subsidy Advice Unit (the [SAU Guidance](#)).
- 1.5 In our view, ACE has considered in detail the compliance of the Scheme with the subsidy control principles. In particular, it clearly describes and evidences the policy objective, demonstrates the appropriateness of the Scheme and explains how potential geographical and distributional impacts are addressed.
- 1.6 However, we have identified the following areas for improvement:
 - (a) the Assessment should explain in more detail how the Scheme targets the equity objectives identified (Principle A); and
 - (b) when discussing competition and investment within the UK, the Assessment should more clearly set out the main relevant affected markets, the main categories and scope of organisations with which the funded organisations compete in these markets, and the potential impact of the Scheme on these organisations (Principle F).

¹ The SAU is part of the Competition and Markets Authority

² [Referral of the proposed Extension Awards over £1 million subsidy scheme by Arts Council England - GOV.UK](#)

³ Chapter 1 of Part 2 of the Act requires a public authority to consider the subsidy control principles and energy and environment principles before deciding to give a subsidy. The public authority must not award the subsidy unless it is of the view that it is consistent with those principles. Chapter 2 of Part 2 of the Act prohibits the giving of certain kinds of subsidies and, in relation to certain other categories of subsidy creates a number of requirements with which public authorities must comply.

- 1.7 We discuss these areas below, along with other issues, for consideration by ACE in finalising its assessment.

The referred scheme

- 1.8 Arts Council England is a non-departmental public body whose sponsor department is the Department for Culture, Media and Sport (DCMS). It is England's development agency for creativity and culture.
- 1.9 The Scheme will extend existing funding arrangements that make up ACE's 2023-2026 National Portfolio Investment Programme. It is designed to support the arts and culture sector in delivering the aims of ACE's 10-year strategy Let's Create, and aid stabilisation ahead of the next Investment Programme process.
- 1.10 The Scheme will have an overall budget of £2 billion and will allow for the provision of non-repayable grants of more than £1 million. The Scheme will be open to National Portfolio Organisations, Investment Principles Support Organisations,⁴ and other organisations funded within the 2023-2026 Investment Programme. Eligible organisations must primarily rely on commercial income sources.⁵
- 1.11 The grants can support up to 100% of costs incurred by the organisation in relation to the proposed project or activities set out as part of the application process. The Scheme allows payments for a maximum period of 5 years, although ACE anticipates that most subsidies will cover 2 years. Subsidies awarded under the Scheme will be bound by a grant agreement and will be closely monitored by Arts Council England throughout the lifetime of the award.
- 1.12 Arts Council England explained that the Scheme is a Scheme of Particular Interest because some grants awarded under the Scheme may exceed £10 million.⁶

⁴ National Portfolio Organisations focus on delivering creativity and culture, while Investment Principles Support Organisations offer development support to the sector.

⁵ Eligible beneficiaries must also be properly constituted as an 'organisation' and have a registered address in the UK. It is also expected that enterprises eligible for the Scheme will offer cultural services, activities or programming at a charge to the general public.

⁶ Within the meaning of regulation 3 of [The Subsidy Control \(Subsidies and Schemes of Interest or Particular Interest\) Regulations 2022](#) which sets out the conditions under which a subsidy or scheme is considered to be of particular interest.

2. The SAU's Evaluation

2.1 This section sets out our evaluation of Assessment, following the four-step structure used by ACE.

Step 1: Identifying the policy objective, ensuring it addresses a market failure or equity concern, and determining whether a subsidy is the right tool to use

2.2 Under Step 1, public authorities should consider compliance of a subsidy with:

- (a) Principle A: Subsidies should pursue a specific policy objective in order to remedy an identified market failure or address an equity rationale (such as local or regional disadvantage, social difficulties or distributional concerns); and
- (b) Principle E: Subsidies should be an appropriate policy instrument for achieving their specific policy objective and that objective cannot be achieved through other, less distortive, means.⁷

Policy objectives

2.3 The Assessment states that the policy objective of the Scheme is to support organisations in continuing to deliver public facing activity in line with ACE's 10-year Strategy 'Let's Create'.⁸ It explains that the purpose of the Scheme is to support and remedy the identified equity rationales.

2.4 The Assessment describes how these objectives align with the overarching objective of ACE, and the priority outcomes set out in its 10-year strategy 'Lets Create'.

2.5 In our view, the Assessment clearly describes and evidences the specific policy objective of the Scheme.

Equity Objective

2.6 Equity objectives seek to reduce unequal or unfair outcomes between different groups in society or geographic areas.⁹

2.7 The Assessment identifies equity rationales focused on:

⁷ See [Statutory Guidance](#), paragraphs 3.32–3.56 and the [SAU Guidance](#), paragraphs 4.7–4.11 for further detail.

⁸ [Strategy 2020-2030 | Arts Council England](#)

⁹ [Statutory Guidance](#), paragraphs 3.49–3.53.

- (a) facilitating the broader provision of arts and culture to the public across England;
- (b) the continuation and expansion of arts and culture activities which will be free of charge or at affordable prices that would not otherwise be possible given the high costs faced in providing such productions and provisions, and the proportionate lack of income generated; and
- (c) improved access to workforce opportunities in the arts and culture sector.

- 2.8 It also notes that the Statutory Guidance uses subsidies targeted at extending access to cultural or educational amenities as an example of an equity objective measure.¹⁰
- 2.9 The Assessment identifies an inequality affecting those from lower socio-economic backgrounds in both the arts workforce and its audiences. It explains that cost, time and relevance are barriers which affect access and engagement among those from lower socio-economic backgrounds.
- 2.10 It explains that the Scheme will allow recipients to continue to offer arts and cultural activities to the public which are free to access or at affordable prices that would not otherwise be possible. The public will thus retain access to the cultural offering provided by these organisations, with continued public benefit.
- 2.11 The Assessment includes evidence that engagement with culture and heritage can support wellbeing in adults. It also describes positive externalities related to economic development of local economies, education and skills development, social inclusion and wellbeing, community engagement and social capital, cultural regeneration, innovation and creativity, and the development and maintenance of public spaces and amenities.
- 2.12 In our view, the Assessment clearly describes the equity objectives that the Scheme seeks to address. It should however explain in more detail how the Scheme targets the equity objectives identified. For example, it could explain how the terms and conditions or allocation process of the Scheme are designed to ensure it addresses the inequalities identified, or use evidence to explain the impact of National Portfolio Organisations on the identified inequalities.

¹⁰ [Statutory Guidance](#), paragraph 3.49.

Appropriateness

- 2.13 Public authorities must determine whether a subsidy is the most appropriate instrument for achieving the policy objective. As part of this, they should consider other ways of addressing the market failure or equity issue.¹¹
- 2.14 The Assessment explains that ACE has considered various means to achieve the policy objective, including regulation, tax rebates, loans, guarantees and repayable grants. These options were discounted on the basis that they would not adequately address the funding gap faced by arts organisations, which result in a reduction of the desired activities, or the closure of organisations.
- 2.15 It also discusses direct provision and equity investment, which were rejected as they would impact ACE's relationship with other arts stakeholders and as ACE would not be as well placed as specialist arts organisations to deliver the policy objectives.
- 2.16 In our view, the Assessment demonstrates that ACE has considered other ways of achieving its policy objective and clearly explains and evidences why the Scheme is the most appropriate option.

Step 2: Ensuring that the subsidy is designed to create the right incentives for the beneficiary and bring about a change

- 2.17 Under Step 2, public authorities should consider compliance of a subsidy with:
- (a) Principle C: Subsidies should be designed to bring about a change of economic behaviour of the beneficiary. That change should be something that would not happen without the subsidy and be conducive to achieving its specific policy objective; and
 - (b) Principle D: Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.¹²

Counterfactual

- 2.18 In assessing the counterfactual, public authorities should consider what would likely happen in the future – over both the long and short term – if no subsidy were awarded (the 'do nothing' scenario).¹³

¹¹ [Statutory Guidance](#), paragraphs 3.54–3.56.

¹² See [Statutory Guidance](#), paragraphs 3.57–3.71 and the [SAU Guidance](#), paragraphs 4.12–4.14 for further detail.

¹³ [Statutory Guidance](#), paragraphs 3.60–3.62.

- 2.19 The Assessment sets out a counterfactual scenario where, absent the Scheme, the provision of national arts and culture events provided for free or at a discounted rate, will decline significantly and potentially cease to exist.
- 2.20 The Assessment states that the funding gap that would occur will also likely lead to fewer dedicated staff, reduced event quality and higher pricing, resulting in declining attendances and revenue. It also says that organisations could face increased business and financial risk, compelling them to either find new sources of finance or close. This would heighten competition for alternative funding sources, forcing organisations to adopt a more commercial focus and limit risk taking in favour of more marketable, income-generating content. The Assessment states that reduced production capacity would also affect research, development and innovation in the sector, restricting the production of new events.
- 2.21 The Assessment explains that this would lead to higher ticket prices, a more limited range of events offered and a decline in the number of activities available for national and international distribution. It states that this would have negative implications for audience diversity, talent pipelines and educational work, and that the Scheme’s policy objectives and equity rationale would consequently not be met.
- 2.22 The Assessment explains that, as subsidy support is a long-established feature of arts and culture funding, no quantifiable evidence of the counterfactual exists. It is therefore based on ACE’s longstanding expertise in the sector. The Assessment relies on case studies of selected organisations that failed in their funding applications and a third-party consultancy analysis, which outline the potentially disruptive effects of reduced funding.
- 2.23 In our view, the Assessment clearly describes and evidences what would be likely to happen if the Scheme was not implemented.

Changes in economic behaviour of the beneficiary and additionality

- 2.24 Subsidies must bring about something that would not have occurred without the subsidy.¹⁴ They should not be used to finance a project or activity that the beneficiary would have undertaken in a similar form, manner, and timeframe without the subsidy (‘additionality’).¹⁵
- 2.25 The Assessment sets out that the intended change in economic behaviour is the beneficiaries continuing to invest in the production of free-to-access or nominally priced artistic and cultural events.

¹⁴ [Statutory Guidance](#), paragraph 3.64.

¹⁵ [Statutory Guidance](#), paragraphs 3.63–3.67.

- 2.26 The Assessment states that the Scheme is designed to support operating costs as needed to produce such events, run educational outreach programmes and provide talent-development opportunities, all of which must conform to ACE's 10-year strategy. It explains that the activity to be supplied must be agreed in advance and that a variety of scheme design features are in place to ensure that beneficiaries deliver the stated event for which a subsidy has been issued. These include advance assessment of the application to test whether the costs requested are reasonable and limited to the amount necessary to fulfil the policy objective. The Assessment also explains that post-award monitoring processes, time limits and payment schedules linked to specific performance criteria throughout the lifecycle of the grant are in place.
- 2.27 In our view, the Assessment clearly explains and evidences how subsidies would change the beneficiaries' economic behaviour and that the Scheme supports the continued provision of artistic and cultural activity that would not have occurred absent the Scheme.

Step 3: Considering the distortive impacts that the subsidy may have and keeping them as low as possible

- 2.28 Under Step 3, public authorities should consider compliance of a subsidy with:
- (a) Principle B: Subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it; and
 - (b) Principle F: Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom.¹⁶

Proportionality

- 2.29 The Assessment states that the application and assessment process underpinning this Scheme will test the amount applied for and whether those costs are reasonable and limited to what is necessary to deliver the policy objective, along with internal monitoring requirements and standard terms and conditions.
- 2.30 The Scheme includes a condition that the relevant subsidy is the minimum necessary to properly achieve the policy objective with respect to the project and/or supported activity the applicant presented. The funding is anticipated to address a specifically identified gap in the beneficiary's income between what can be funded from other sources and what is required to finance the business plan/activity plan as submitted. ACE will consider whether further investment

¹⁶ See [Statutory Guidance](#) paragraphs 3.72–3.108 and the [SAU Guidance](#), paragraphs 4.15–4.19 for further detail.

represents public benefit and good value for money. Applicants will be required to submit relevant financial information (eg a draft budget) for assessment.

2.31 The Scheme funding agreement and the associated relationship framework set out various monitoring and review mechanisms, including the requirement to submit board papers, annual reports and audience data as well as regular reviews. The standard terms and conditions include various clauses aimed at ensuring the funding is proportionate and necessary to meet the policy objective including: a requirement to notify ACE of changes to the project; provision for clawback (in the event of monies not being spent, conditions being breached or excess profitability); and a requirement to pay back part of the grant if duplicate funding is provided from another source.

2.32 In our view, the Assessment clearly demonstrates and evidences how the assessment process and the Scheme terms and conditions seek to ensure that the Scheme is proportionate and limited to the minimum necessary to achieve its specific policy objectives, in line with the Statutory Guidance. However, the Assessment could:

- (a) Further explain how ACE's assessment of the minimum grant necessary to properly achieve the policy objective will work in practice, including how it will monitor whether funding is in the public benefit and represents good value for money, and how it will achieve the identified equity objectives. It could for instance do so by including case studies.
- (b) Make better use of some of the evidence presented elsewhere in the Assessment to explain more clearly how the Scheme is proportionate to the policy objectives, for instance the evidence discussed in Step 2 relating to the average amount of subsidy per attendance at the funded activities.

Design of subsidy to minimise negative effects on competition and investment

2.33 The Assessment sets out that the Scheme contains various features in relation to the monitoring and clawback of funding (see paragraph 2.31). These features will help to enforce the terms and conditions of the Scheme which may help to limit its potential to distort competition. Examples of these features include requiring that the funding be used for the specified activities and that no other subsidy is used to fund these. The Assessment also states that these subsidies are designed with clear time limits and can be for a maximum period of 5 years, but it is anticipated that most subsidies given under the Scheme will cover 2 years.

2.34 The Assessment states that funding can in principle support up to 100% of total costs incurred by the enterprise and for many organisations there will be no strict ringfencing of funds. However, it notes that, in practice, the average level of

funding over the last 3 years typically represented around 20% of supported organisations' revenue.

- 2.35 In our view, the Assessment clearly describes and evidences how the design features of the Scheme contribute to minimising any negative effects of the Scheme on competition and investment within the United Kingdom, whilst facilitating achievement of the policy objective. However, it could more clearly set out how the Scheme would seek to limit the potential for the Scheme to confer an advantage on some organisations through funding of general operational costs.

Assessment of effects on competition or investment

- 2.36 The Assessment acknowledges the potential for the Scheme to prevent new market entrants, foster reliance on public funding within the sector and reduce the incentive for private giving contributions to funding.
- 2.37 However, the Assessment explains that: (i) arts and culture production is costly and would not take place to the same extent without subsidies; (ii) other (non-National Portfolio) organisations who provide arts and cultural services also receive subsidies; and (iii) there is a history of co-existence and cross-industry support within the arts and culture sector. It also argues that ACE and other bodies have provided subsidies for this purpose for many years, to the extent that the market has come to expect this and the 'status quo' of the relevant markets affected by the Scheme is one of multiple subsidies or other financial assistance from state bodies on an ongoing basis.
- 2.38 The Assessment sets out evidence that the Scheme will have limited distortive impacts on competition and investment within the UK because it is relatively small compared to the private turnover of arts and culture organisations (£17bn in 2016). It also sets out evidence that shows that awards for the latest round of funding have been open to previously unfunded organisations and spread widely across England,¹⁷ and evidence that many of the organisations who ceased receiving National Portfolio funding in 2023 have either closed or reduced their activity without being replaced by new or existing market entrants, indicating the National Portfolio funding was not a barrier to entry.
- 2.39 The Assessment also notes that the Scheme could potentially have a negative effect on private investment. However, it argues that the evidence presented in relation to Step 2 of the Assessment is clear that organisations are working with a mixed income model and are gaining private investment where possible. It also

¹⁷ Its £444.6 million per annum funds 985 organisations across England - including funding for 275 new organisations, 214 of which were outside of London. Nearly £250 million is being invested outside of London and the South East and rural investment increased by 22% to £44.6 million a year to 110 organisations - a funding increase of 22%.

notes that it in some cases private investment can be conditional on confirmation of ACE funding.

- 2.40 In our view, the Assessment sets out a number of relevant arguments for why the Scheme's impact on competition and investment might be limited, in line with Annex 3 of the Statutory Guidance. However, it should more clearly set out the main relevant affected markets, the main categories and scope of organisations with which the funded organisations compete in these markets, and the potential impact of the Scheme on these organisations. It could include more, and more up-to-date, evidence for the size of markets, the extent of other public funding within the wider arts and culture sector, and the extent of cross collaboration between arts organisations. We also note that the fact that public funding is historically common in the culture sector does not negate the need to conduct a proportionate competitive assessment of the impact of the Scheme compared to a no-subsidy counterfactual.

Step 4: Carrying out the balancing exercise

- 2.41 Public authorities should establish that the benefits of the subsidy (in relation to the specific policy objective) outweigh its negative effects, in particular negative effects on competition or investment within the United Kingdom and on international trade or investment.
- 2.42 Acknowledging the long tradition of public funding for the arts, the Assessment notes that subsidies play an important role in enabling organisations to offer free and discounted access to public facing arts and culture. It states that affordable provision helps attract younger and more diverse audiences.
- 2.43 The Assessment lists a range of additional benefits of the Scheme, including social inclusion and wellbeing, community engagement and social capital, and cultural regeneration. The Assessment discusses the contribution of arts and culture to the UK economy, and states that public investment allows arts organisations to look for new ways to boost their economic viability and sustainability, whilst maintaining free and discounted activities. It sets out other potential spillover effects of such investment, including enabling organisations to offer free training programmes and enable skills-sharing and educational benefits for volunteers, and supporting downstream investment in local artists and commercial creative businesses. ACE considers that this leads to further affordable arts and culture provision, with the public as the eventual beneficiary.
- 2.44 The Assessment recognises relevant potential negative effects of the Scheme in relation to competition and investment in the UK, including market stagnation, reliance within the sector on public funding, and potential distortions derived from reducing costs for certain organisations over others. The Assessment argues that such distortions will in practice be minimal (see paragraphs 2.37 to 2.39).

- 2.45 The Assessment identifies potential effects on international trade and investment. It judges these to be minimal, pointing out that UK investment in arts and culture small compared to other countries. The Assessment also discusses the geographical and distributional impacts of the Scheme, arguing that the use of specific balancing criteria in its decision-making will ensure the fair distribution of accessible arts and culture provision across England.¹⁸
- 2.46 The Assessment concludes that the benefits of the Scheme outweigh the potential negative effects, particularly when accounting for their alignment with wider government priorities laid out by DCMS.¹⁹
- 2.47 In our view, the Assessment has identified relevant benefits of the Scheme and considered its potential negative effects in line with the Statutory Guidance. The Assessment clearly sets out why it expects the negative effects to be minimal, and convincingly explains how potential geographical and distributional impacts are addressed.
- 2.48 However, the Assessment could analyse the benefits of the Scheme more methodically and better explain how they will be targeted at specific groups to address the equity rationale. The shortcomings identified in relation to the competitive assessment may also impact the appreciation of the scale of negative effects of the scheme. While the Assessment makes use of quantitative data to support its arguments, it could provide more recent and diversely sourced evidence.

Other Requirements of the Act

- 2.49 ACE confirmed that no other requirements or prohibitions set out in Chapter 2 of Part 2 of the Act applies to the scheme.

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¹⁸ These balancing criteria include consideration of: Arts Council England's Priority Places; places of historically low Arts Council investment; places of historically low cultural engagement; the spread across the country between rural, towns and cities.

¹⁹ [DCMS Culture White Paper](#)