

Limited Claims Raise Concerns About Subsidy Act's Efficacy

By **Matthew Hall** (January 23, 2026)

The U.K. Subsidy Control Act 2022, or SCA,[1] came into effect just over three years ago on Jan. 4, 2023. The act established a system of public subsidy oversight and control within the U.K. to replace the European Union state aid regime, which, except in limited cases, no longer applies in the U.K.

Interested third parties, including competitors, can challenge subsidies under the SCA. There have to date been significantly fewer claims than expected. Parties seem unwilling to bring claims or unaware of their rights and this calls into question the effectiveness of the challenge regime.

However, a challenge is a potentially useful tool, and companies should still consider the option in an appropriate situation. Despite limited challenge activity, recent cases show the range of types of financial assistance that can be challenged as an illegal subsidy.



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U.K. Subsidy Control Act 2022

Control of public sector subsidies in the U.K. is a complex area covered by several pieces of legislation. As of Jan. 1, 2021, when the Brexit transition period ended, the U.K. has complied with the commitments on subsidy control set out in its free trade agreements with other countries.

These obligations include, notably, the provisions of the U.K.-EU Trade and Cooperation Agreement[2] and the World Trade Organization rules on subsidies,[3] as well as the relevant provisions within the Northern Ireland Protocol, as amended by the Windsor Framework.[4]

The SCA operates alongside these provisions. Unlike the EU state aid rules, it does not include a notification and approval regime. Instead, it requires public authorities to consider the subsidy control principles in the SCA when designing a subsidy or subsidy scheme. They must not give a subsidy unless they are of the view that it is consistent with the subsidy control principles.

A subsidy arises where a public authority, for example, central, devolved or local government, provides financial assistance to an enterprise that gives it an economic advantage, meaning equivalent support could not have been obtained on commercial terms.

Interested third parties may apply to the Competition Appeal Tribunal for a review of a subsidy. The CAT can then review whether the public authority complied with its duties under the SCA. It has various powers, including to prohibit a public authority from giving a subsidy.

The CAT is also able to review subsidy decisions on general public law grounds. These include that the decision was not within an authority's powers, or was irrational, biased or otherwise unlawful.

Limited Number of Challenges Under SCA

The number of cases under or raising the SCA — 23 per year — is below the number estimated when the SCA was adopted. For several reasons, not least an adverse costs risk, private parties have proven reluctant to bring cases.

So far, only two cases have been determined under the SCA, both decided in favor of the public authority. These concerned loans granted by the Greater Manchester Combined Authority[5] and the award of waste collection services by Durham County Council, both in July last year.[6]

Other cases are at different stages of the process. An appeal by The New Lottery Co. of an alleged subsidy to Camelot U.K. Lotteries Ltd. in May 2025[7] and Bristol Airport's appeal of an alleged subsidy to Cardiff International Airport in June[8] have both had preliminary hearings.

Recent Claims Under SCA

The challenge regime has therefore had a slow start, calling into question its effectiveness in practice and whether it is enough only to rely on challenges by interested third parties.

Nevertheless, challenges are still being tried, and two recent claims have been filed. These show the breadth of issues that can be covered in subsidy appeals, even when the public authority does not consider that its actions amount to the giving of a subsidy.

Graham Thomas v. Durham County Council

A case filed on Sept. 19 by various claimants before the CAT, *Graham Thomas v. Durham County Council*, against the allocation of regeneration funding and related grants by DCC to third parties, including leisure venue STACK and the Auckland Project, was linked with other legal issues.[9] This shows that subsidy control rules can be closely linked to other appeal grounds.

Formally, the case was brought under the Competition Act 1998, which bans anticompetitive agreements and abuse of dominance in the U.K. In addition to that competition law claim, the claim further alleges that the awards amount to a subsidy and are not justified under the SCA. There are also public procurement and public law claims.

The claimants seek a declaration that the awards to STACK and The Auckland Project constitute unlawful subsidies and breach competition and procurement law, as well as compensation.

Zenobe Energy v. Gas and Electricity Markets Authority

The most recent claim was filed on Oct. 22 by Zenobe Energy Ltd.[10] This relates to a decision of the Gas and Electricity Markets Authority, the independent regulator of gas and electricity markets in Great Britain, to make a subsidy scheme in respect of longer-duration energy storage projects. The Gas and Electricity Markets Authority's day-to-day functions are carried out by the Office of Gas and Electricity Markets, or Ofgem.

Zenobe contends that the scheme's design risks distorting competition by enabling supported longer-duration energy storage to compete directly with unsupported short-duration energy storage assets, such as lithium-ion battery systems, which have historically operated without public financial support.

This claim shows the range of decisions and actions that potentially can amount to financial assistance and a subsidy under the SCA.

It also shows that cases where there is disagreement whether an action is a subsidy can be challenged. Ofgem does not accept that there is a subsidy that it should have considered under the SCA. Ofgem's response to a request made under the provisions in the SCA for preaction information about a subsidy scheme was to provide information, but not to indicate that this was a response to that request.

Conclusion

The European Commission enforces EU state aid law alongside claims in national courts. The U.K.'s decision post-Brexit not to create an equivalent power under the SCA for the Competition and Markets Authority, the U.K.'s main competition and consumer protection regulator, was a surprise to many in the EU.

The CMA has an advisory role in some cases, but no power to enforce. The regime instead relies on interested third parties to identify a subsidy and bring challenges themselves in the CAT.

A challenge would normally be brought by a competitor of the beneficiary. However, there are a number of other parties that can be interested parties. A trade association active in the relevant sector, which represents the competitor or competitors of the beneficiary, is one example. Local administrations and the devolved governments may also be considered interested parties in certain circumstances where the subsidy or scheme may adversely affect the interests of people in the areas in which they exercise their responsibilities.

The number of cases brought to date before the CAT has been limited. This results from several issues, not least an adverse costs risk for private parties that lose a case. A competitor needs to have sufficient financial resources to launch the case and to be able to pay the authority's costs should it lose.

In practice, it needs to have good confidence that its likely reward makes it worthwhile taking this risk.

Also of relevance is probably that the U.K. national subsidy register intended to provide details of potential subsidies does not operate well.^[11] This is not least due to practical difficulties using its search function.

Any challenger should be aware that the time to appeal is limited. In most cases, the challenge period runs for one month from the point at which information about the subsidy has been uploaded onto the national transparency register. However, the appeal can be brought before a subsidy is legally committed.

There can also be an appeal where there is no upload to the transparency database, for example because the public body does not consider a subsidy is involved, as in the Zenobe case. Once filed, the CAT tries to move these cases along quickly, including with active case management procedures.

There now seems to be pressure for change. The EU's statement on Oct. 28 at the start of the first trade policy review of the U.K. included the comment that

the EU considers that it is vital to enhance the effectiveness of the United Kingdom's subsidy control system to ensure a level playing field in particular with the EU, given our close and important trading relationship.[12]

Although there has not yet been a successful challenge to a subsidy decision, at some stage there will be one. The law is developing rapidly as the initial cases are heard, and each one helps to make the position clearer.

It may not be obvious from a first glance that a subsidy argument is available, but the Zenobe claim shows that measures that could give rise to a subsidy are wide. The potential for a challenge to a subsidy under the SCA should be considered in an appropriate situation, but the challenger will need to move quickly if it appears to have an argument.

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[1] <https://www.legislation.gov.uk/ukpga/2022/23>.

[2] https://commission.europa.eu/strategy-and-policy/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en.

[3] https://www.wto.org/english/tratop_e/scm_e/subs_e.htm.

[4] <https://www.gov.uk/government/publications/the-windsor-framework>.

[5] <https://www.catribunal.org.uk/judgments/1642121324-mr-aubrey-weis-v-greater-manchester-combined-authority-judgment-2025-cat-41-24>.

[6] <https://www.catribunal.org.uk/judgments/1577121323-durham-company-limited-v-durham-county-council-judgment-27-jul-2023>.

[7] <https://www.catribunal.org.uk/cases/1730121325-new-lottery-company-ltd-and-others>.

[8] <https://www.catribunal.org.uk/cases/1740121325-bristol-airport>.

[9] <https://www.catribunal.org.uk/cases/17515725-mr-graham-thomas-others>.

[10] <https://www.catribunal.org.uk/cases/1754121325-zenobe-energy-limited>.

[11] <https://www.gov.uk/guidance/view-subsidies-awarded-by-uk-government>.

[12] https://www.eeas.europa.eu/delegations/world-trade-organization-wto/eu-statement-1st-trade-policy-review-united-kingdom-28-october-2025_en.