



Public Sector England Webinar – Subsidy Control Bill

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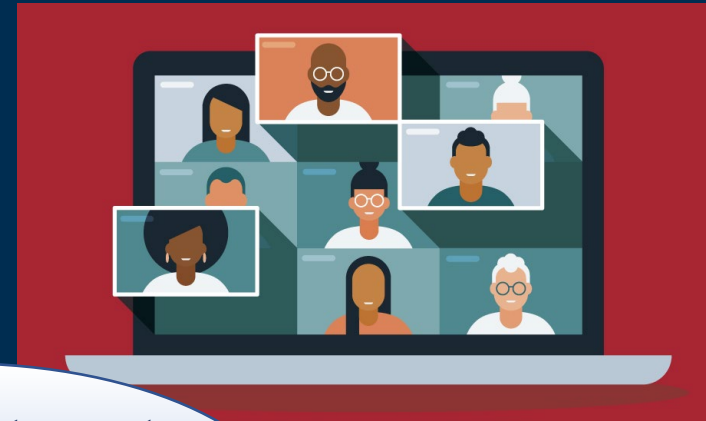
13^h July 2021

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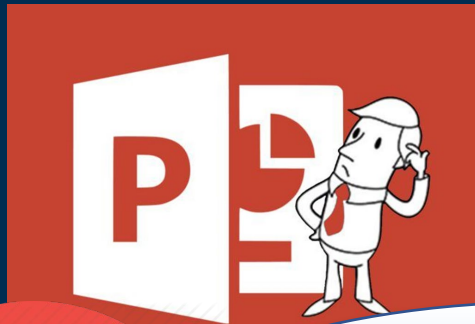
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CHAT

Agenda

- Trade and Co-operation Agreement
- Definition of Subsidy
- Subsidy Control Principles
- Prohibitions
- Exemptions
- Enforcement and Appeals

Trade and Co-Operation Agreement

- Agreement between United Kingdom and European Union
- Established thresholds, principles, prohibitions and exemptions
- World Trade Organisation rules on subsidies

Subsidy

- Financial assistance which:
 - Is given from public resources
 - Confers an economic advantage
 - Is specific
 - Has or is capable of having an effect on competition within the United Kingdom; trade between United Kingdom and a country or territory outside UK; investment between UK and country or territory outside UK

Subsidy Control Principles

- Public authority must not give a subsidy unless it regards it as consistent with subsidy control principles
- Public authority must not give a subsidy relating to energy and environment unless it regards it as consistent with energy and environment principles

Subsidy Control Principles

- Subsidy should:
 - Pursue a policy objective to remedy market failure or address equity rationale
 - Be proportionate to the objective
 - Be designed to change economic behaviour of beneficiary
 - Not compensate for costs beneficiary would have funded anyway

Subsidy control principles

- Subsidy should
 - Be appropriate to achieve objective that cannot be achieved through less distortive means.
 - Minimise any negative effects on competition or investment within the United Kingdom
 - Beneficial effects should outweigh negative effects

Environment Principles

- Subsidies relating to energy and environment should
 - Incentivise beneficiary to deliver secure, affordable and sustainable energy system and well-functioning and competitive energy market or increase environmental protection
 - Not relieve beneficiary from liability as a polluter

Environment Principles

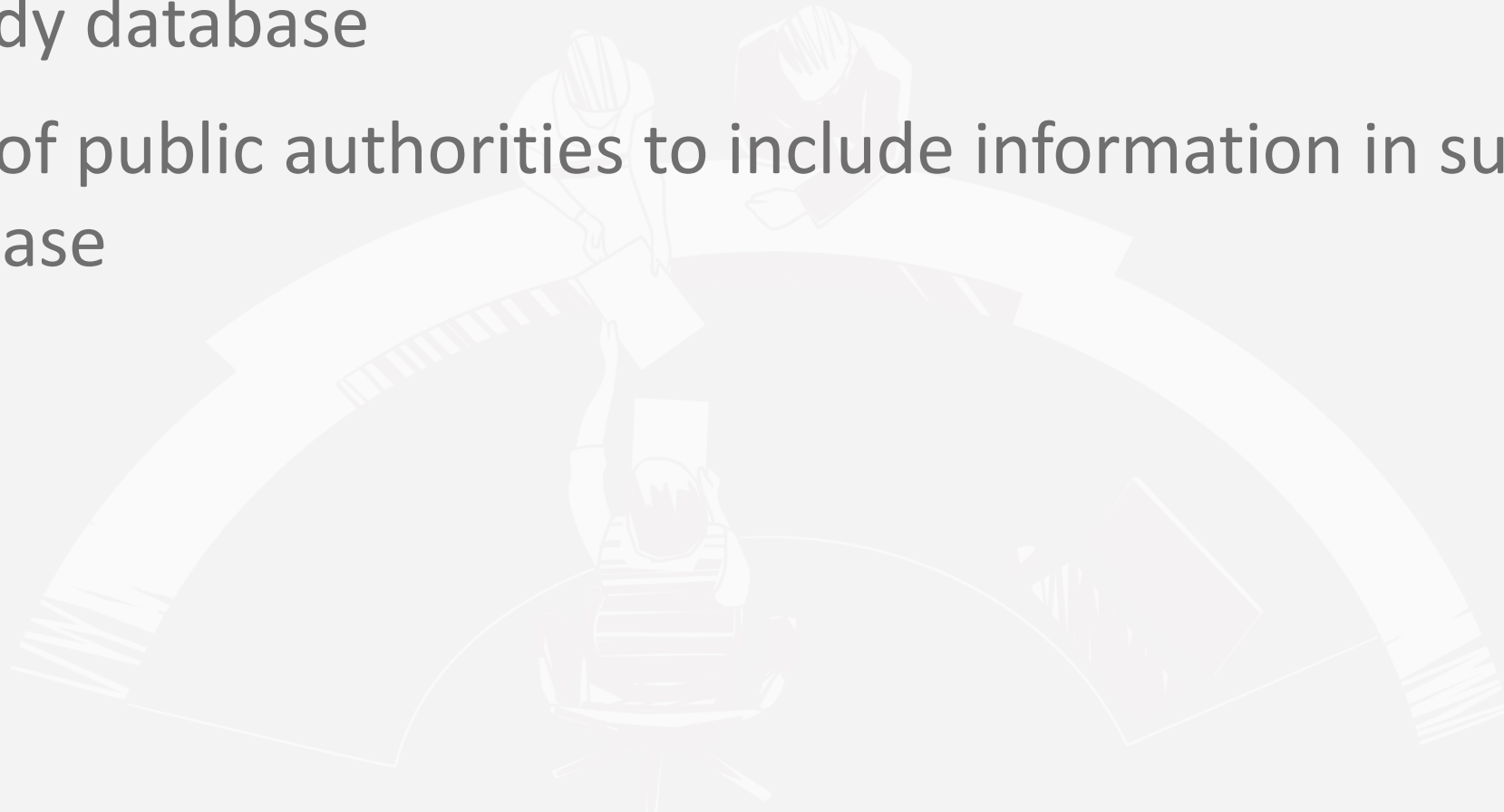
- Subsidy for electricity generation adequacy, renewable energy or cogeneration should:
 - Not undermine UK compliance with Trade and Co-operation Agreement
 - Not unnecessarily affect efficient use of electricity interconnectors
 - Be determined by transparent, non-discriminatory and effective competitive process
- Partial exemption from energy-related taxes and levies must not exceed total amount of tax or levy
- Compensation for increases in electricity costs restricted to sectors at significant risk

Environment Principles

- Subsidy for decarbonisation of emissions linked to industrial activities must reduce greenhouse gas emissions and emissions directly resulting from industrial activities
- Subsidy for improvements of energy efficiency of industrial activities must improve energy efficiency by reducing energy consumption

Transparency

- Subsidy database
- Duty of public authorities to include information in subsidy database



Prohibitions

- Unlimited guarantees
- Subsidy contingent on export performance
- Subsidy contingent on use of domestic goods or services
- Subsidy requiring relocation of activities within UK
- Subsidy to rescue or restructure ailing or insolvent enterprises except under specified conditions

Prohibitions

- Subsidy to restructure ailing or insolvent deposit taker or insurance companies except under specified conditions
- Subsidy for insurer that provides export credit insurance except under specified conditions
- Subsidy for air carrier for the operation of a route except under specified conditions

Minimal financial assistance

- Subsidy control requirements do not apply to minimal financial assistance if total minimal and SPEI financial assistance does not exceed £315,000 over three financial years

Services of public economic interest assistance

- Subsidy control requirements do not apply to assistance for services of public economic interest if total minimal and SPEI financial assistance does not exceed £725,000 over three financial years

Services of public economic interest

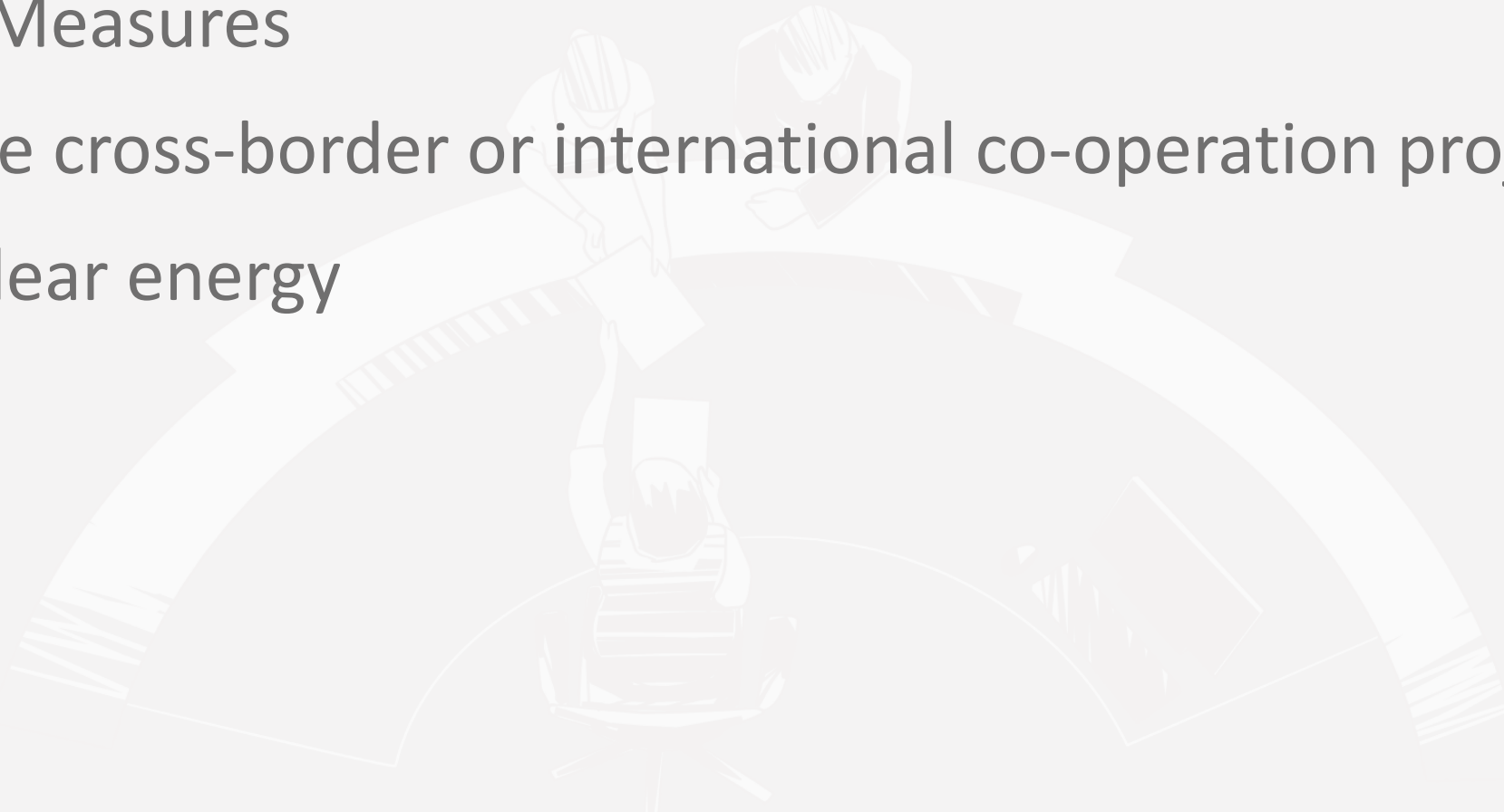
- Services of particular importance to society that would not be supplied without public intervention
- Subsidy must be limited to what is necessary
- Subsidy must be given in a transparent manner

Exemptions

- Natural disasters and other exceptional circumstances
- National or global economic emergencies
- National security
- Bank of England monetary policy
- Financial stability
- Legacy and withdrawal agreement subsidies

Exemptions

- Tax Measures
- Large cross-border or international co-operation projects
- Nuclear energy



Referrals to Competition and Markets Authority

- Public authority must request report from CMA:
 - before giving subsidy or making subsidy scheme of particular interest or
 - If directed by Secretary of State
- Public authority may voluntarily request report from CMA
- Cooling off period after CMA report

Referrals to Competition and Markets Authority

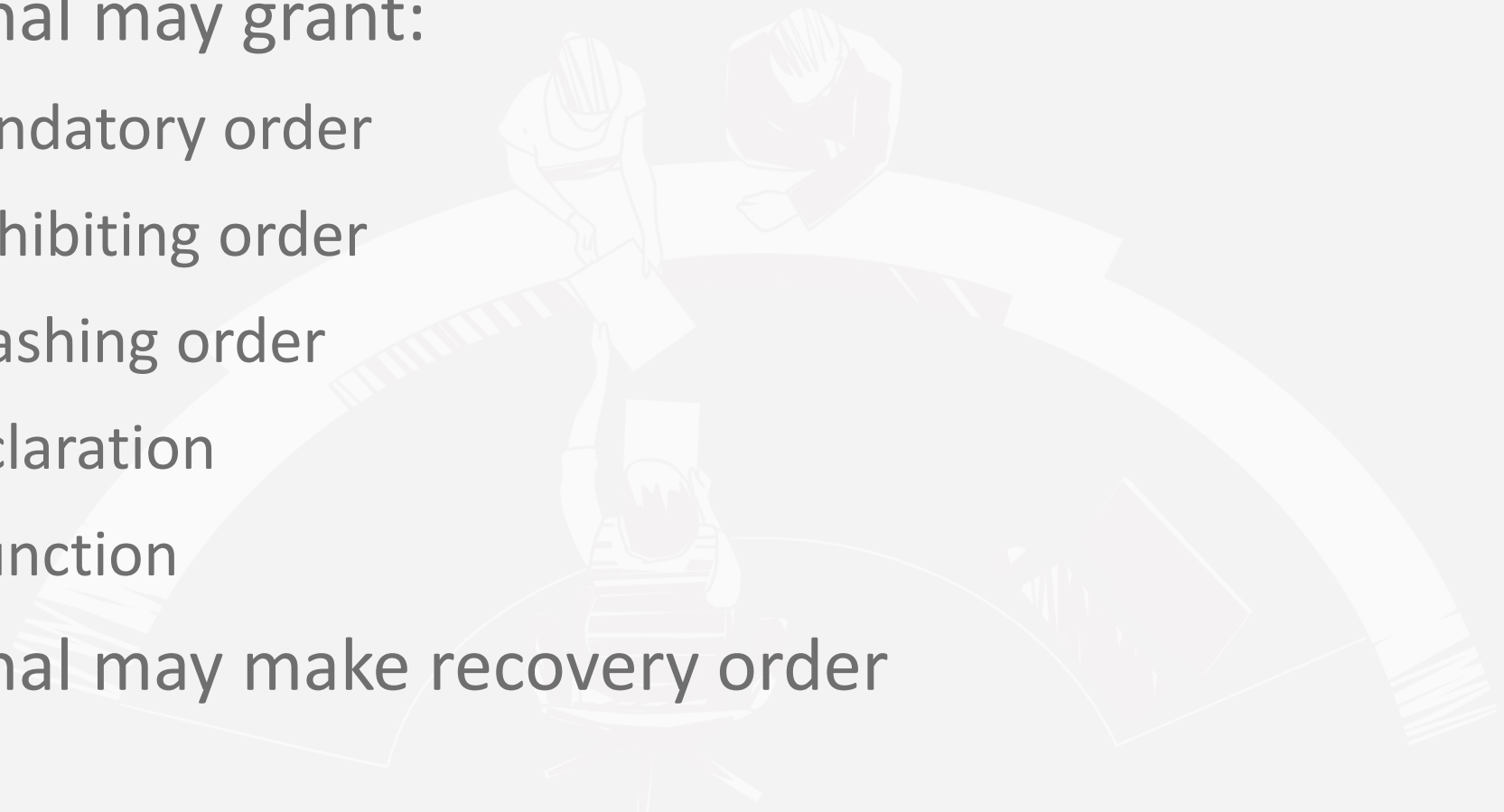
- Secretary of State may refer subsidy or subsidy scheme to CMA after award if Secretary of State considers:
 - There has been failure to comply with subsidy control requirements
 - There is a risk of negative effects on competition or investment within the United Kingdom.

Appeal

- Appeal may be made to Competition Appeals Tribunal, seeking review of subsidy decision
- One month time limit
- Unless Tribunal directs, effect of subsidy decision is not suspended

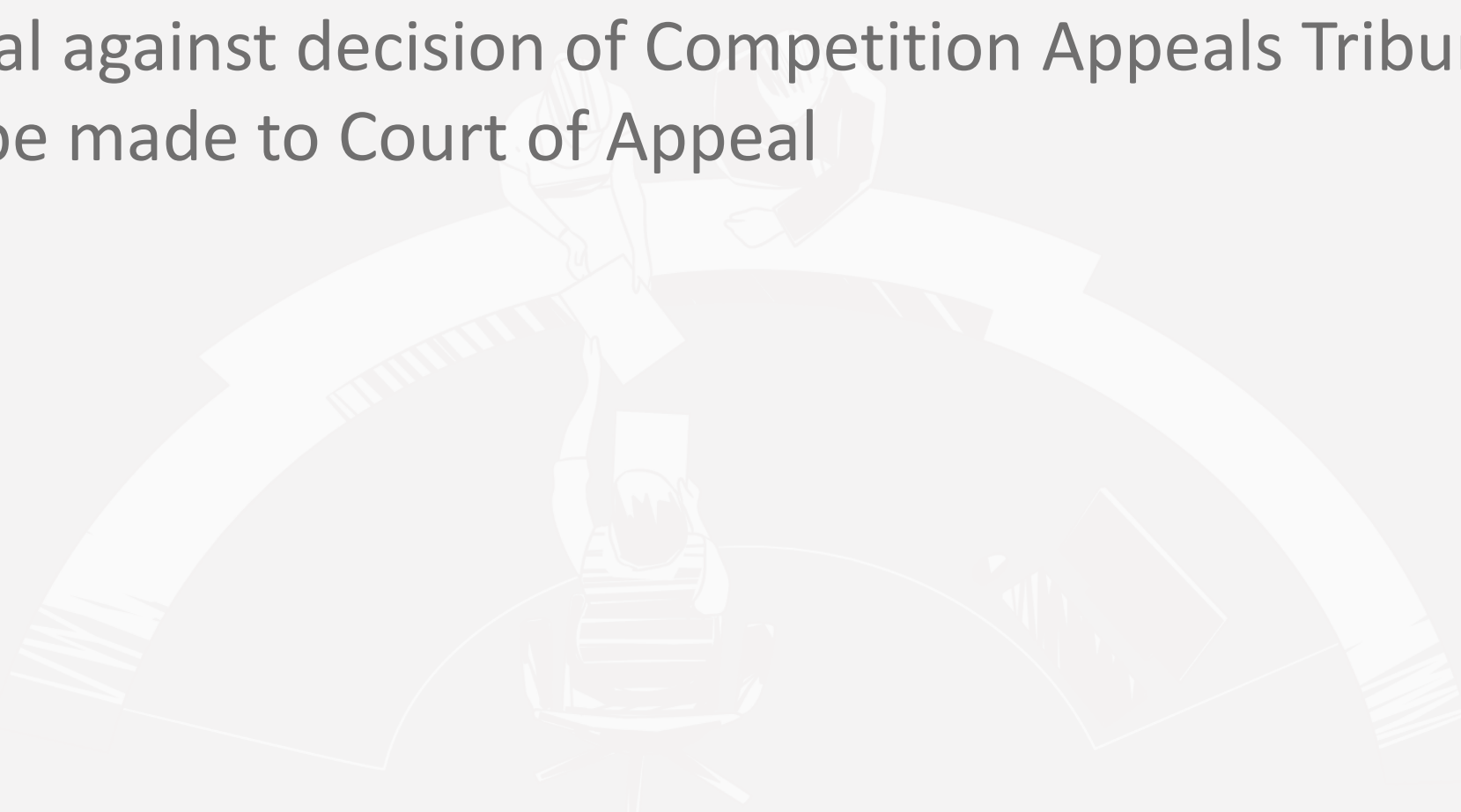
Appeal

- Tribunal may grant:
 - Mandatory order
 - Prohibiting order
 - Quashing order
 - Declaration
 - Injunction
- Tribunal may make recovery order



Further Appeal

- Appeal against decision of Competition Appeals Tribunal may be made to Court of Appeal



Guidance

- Government guidance:
 - Overview
 - Process for granting subsidies
 - Transparency obligations
 - Updated guidance on UK's international subsidy control commitments

Conclusions

- Ensure you have robust processes to:
 - Identify market terms
 - Analyse proposed subsidies against subsidy control principles
 - Record and report subsidies

Any questions



Next Webinar

Borrowing by Local Authorities

Tuesday 20th July 2021 10:00am - 11:00am

This session will consider the borrowing powers of local authorities and issues relevant to the exercise of these powers. This will include reference to borrowing from the Public Works Loan Board and guidance on borrowing by local authorities.

Clare Hardy, Central, Devolved & Local Government

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