

COBTREE MANOR ESTATE CHARITY COMMITTEE MEETING

Date: Thursday 11 June 2020

Time: 2.00 p.m.

Venue: Remote Meeting - The public proceedings of the meeting will be broadcast live and recorded for playback on the Maidstone Borough Council website

Membership:

Councillors Cox, Daley, Mrs Gooch (Vice-Chairman) and McLoughlin (Chairman)

The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.

AGENDA

Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Urgent Items
4. Notification of Visiting Members
5. Disclosures by Members and Officers
6. Disclosures of Lobbying
7. To consider whether any items should be taken in private because of the possible disclosure of exempt information.
8. Minutes of the meeting held on 18 March 2020 1 - 8
9. Presentation of Petitions (if any)
10. Questions and answer session for members of the public (if any)
11. Questions from Members to the Chairman (if any)
12. Cobtree Contracts Reliefs and Mitigations 9 - 37

Issued on Wednesday 3 June 2020

Continued Over/:

Alison Broom

Alison Broom, Chief Executive

INFORMATION FOR THE PUBLIC

In order to ask a question at this meeting, please call **01622 602899** or email committee@maidstone.gov.uk by 5 p.m. one clear working day before the meeting (i.e. by 5 p.m. on Tuesday 9 June 2020). You will need to provide the full text in writing.

If your question is accepted, you will be provided with instructions as to how you can access the meeting.

In order to make a statement at the invitation of the Chairman, please call 01622 602899 or email committee@maidstone.gov.uk by 5 p.m. one clear working day before the meeting. You will need to tell us which agenda item you wish to make representations on.

If you require this information in an alternative format, please call **01622 602899** or email committee@maidstone.gov.uk.

To find out more about the work of the Committee, please visit www.maidstone.gov.uk.

MAIDSTONE BOROUGH COUNCIL

COBTREE MANOR ESTATE CHARITY COMMITTEE

MINUTES OF THE MEETING HELD ON 18 MARCH 2020

Present: Councillor Mrs Gooch (in the Chair) and
Councillors Cox and English

67. MINUTE'S SILENCE

The Committee and the Officers in attendance observed a minute's silence in memory of Councillor Mrs Wendy Hinder, a Member of the Committee, who had passed away in February.

68. APOLOGIES FOR ABSENCE

It was noted that apologies for absence had been received from the Chairman (Councillor McLoughlin) and Councillor Daley.

In the absence of the Chairman, the Vice-Chairman took the Chair.

69. NOTIFICATION OF SUBSTITUTE MEMBERS

It was noted that Councillor English was substituting for Councillor Daley.

70. URGENT ITEMS

The Chairman said that, in her opinion, the report of the Leisure Manager relating to the Forstal Field Funding Agreement should be taken as an urgent item to enable the deadline for applications for funding from the Heritage Lottery Fund to be met.

71. NOTIFICATION OF VISITING MEMBERS

There were no Visiting Members.

72. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

73. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

74. EXEMPT ITEMS

RESOLVED: That the items on the agenda be taken in public as proposed.

75. MINUTES OF THE MEETING HELD ON 20 JANUARY 2020

RESOLVED: That the Minutes of the meeting held on 20 January 2020 be approved as a correct record and signed.

76. PRESENTATION OF PETITIONS

There were no petitions.

77. QUESTION AND ANSWER SESSION FOR MEMBERS OF THE PUBLIC

There were no questions from members of the public.

78. QUESTIONS FROM MEMBERS TO THE CHAIRMAN

There were no questions from Members to the Chairman.

79. COBTREE MANOR ESTATE FINANCIAL POSITION

The Senior Finance Manager (Client) introduced his report summarising the financial position of the Cobtree Manor Estate as at 29 February 2020. The report covered the Golf Course, Kent Life, Cobtree Manor Park and residential properties. It also included an update on the Service Level Agreement.

Financial Position

The Senior Finance Manager (Client) advised the Committee that:

- The summary totals showed a positive variance of £48,396 at the end of February 2020. The budgeted forecast for the year was for an operational surplus of £55,920, compared to a surplus of £35,596 for 2018/19.
- There were no issues to report at this stage in respect of the Cobtree Golf Course, Kent Life and residential properties.
- In overall terms the budget for Cobtree Manor Park was showing an underspend, but there were some underlying issues. The new Apprentice post was still vacant, and would not be filled this financial year, resulting in an underspend on employee costs. There were some overspends on controlled running costs, but these additional costs had been offset by underspends in other areas such as repairs and maintenance. Car park income continued to be high and the profit share element of the Café contract had realised more income than was forecast. These two income streams together with the underspends on repairs and maintenance and employee costs meant that the overspends were covered.

Service Level Agreement

- The Senior Finance Manager (Client) reminded the Committee that Mid-Kent Legal Services had been asked to redraft the Service Level Agreement (SLA) to ensure that it accurately reflects the complex nature of the relationship between the Charity and the various Council departments. This was to ensure that the roles of the various Officers are clarified sufficiently to ensure that no conflicts of interest arise in their dealings with Charity matters. The aim had been to report the revised draft to this meeting of the Committee. However, due to other work commitments within Mid-Kent Legal Services, the document had not been finalised. It was now planned to report the SLA back to the Committee in July.

In response to questions, the Senior Finance Manager (Client) explained that Mytime, the Golf Course contractor, had been invoiced for the first three quarters of 2019/20 and the invoices had been paid. Planning Solutions, the operators of Kent Life, were invoiced twice a year (in October and April), and had paid the first invoice.

The Head of Regeneration and Economic Development drew the Committee's attention to the potential implications for the Cobtree Manor Estate Charity as a result of the spread of the COVID-19 virus; for example, closure of income generating facilities.

RESOLVED:

1. That the financial position of the Cobtree Manor Estate as at 29 February 2020 be noted.
2. That the progress to date with the Service Level Agreement between the Borough Council and the Charity be noted.

80. COBTREE MANOR ESTATE UPDATE

The Leisure Manager introduced Mr Nigel Holman, the new Cobtree Park Manager, to the Committee.

The Leisure Manager then presented his report providing an update on activities at the Cobtree Manor Estate during the period 1 January to 29 February 2020. It was noted that:

Cobtree Manor Park

- The wet weather experienced recently had impacted on visitor numbers and car park income, but the February half-term holiday had been busy and numbers had been increasing in late February. Now, however, the spread of the COVID-19 virus was likely to have an impact on visitor numbers and income.

- The Cobtree Park Manager had submitted the Green Flag application for the Manor Park, but judging had been suspended due to the spread of the virus.
- The 2020-2030 management plan for the Manor Park was now in the final draft stage and there was an emphasis on sustainability, climate change and biodiversity. The final version of the management plan would be reported to the Committee for approval.
- Some key items of equipment were stolen when the Park Rangers' container was broken into during the half-term holiday. A report would be submitted to a future meeting of the Committee addressing alternative storage solutions. In the meantime the Park Rangers had relocated to the Elephant House building and off-site storage facilities were being used.
- The overflow car park area had not been used this year because of the weather. Investigation of the area had also identified significant root damage to the trees caused by continued car parking. The area was being rested for the time being pending the development of a plan that would balance the protection of the trees with the needs of Park users.
- Quotations had been sought for electronic Park gates which would provide greater flexibility for the Park Team and enable savings to be made in future years. Provision had been made in the current capital programme for security and the initial quotations indicated that the gates could be delivered within this budget. A report would be submitted to a future meeting of the Committee.

Cobtree Manor Park Golf Course

- The wet weather had also impacted on the Golf Course. The number of rounds played was down on 2019 and the Course had to be closed for one week in January. Offers and pricing were being used to reduce the impact of the closure. The Golf Course development works had been put on hold as a result of the spread of the COVID-19 virus.

Kent Life

- Kent Life had won a Red Rosette tourism award for its customer experience and customer service. The operators had completed their annual maintenance work in readiness for 2020. They had refurbished toilets and carried out remedial works on some of the buildings. The Museum was still open, but school visits had been cancelled due to COVID-19.

Residential Properties

- It had been identified that one of the residential properties might become vacant in the near future. A report would be submitted to a future meeting of the Committee setting out possible options in the

event of this or any other of the residential properties becoming vacant.

During the discussion on these items, it was suggested and agreed that:

- Consideration be given to the use of grasscrete paving in the overflow car park area at Cobtree Manor Park and that any new storage facility at the Manor Park should be of sufficient size to accommodate a park utility vehicle and provide secure methods for storing equipment etc. inside.
- The options report in respect of any residential properties that might become vacant in future should include an examination as to whether they might be used by the Borough Council as temporary accommodation subject to this being in accordance with the objects of the Charity.

Cobtree Railway

The Committee then discussed the next steps following the meeting with representatives of the Cobtree Charity Trust Limited and Planning Solutions, the operators of Kent Life, to discuss the viability of the proposed Cobtree Railway project. It was noted that the Managing Director of Planning Solutions had expressed reservations about the viability of the project. He would look at the figures again, but his view was unlikely to change. There was also an element of misunderstanding on the part of the Cobtree Charity Trust Limited about the funding available to the Cobtree Manor Estate Charity as the contribution that the Charity would be required to make was not achievable.

It was suggested and agreed that the Leisure Manager should meet with the Treasurers of the Cobtree Manor Estate Charity and the Cobtree Charity Trust Limited to discuss their respective finances and the potential for collaboration on alternative projects at the Cobtree Manor Estate. It was hoped that after these discussions it would be possible to come to a decision on the proposed Cobtree Railway project.

RESOLVED:

1. That the update on activities at the Cobtree Manor Estate during the period 1 January to 29 February 2020 be noted.
2. That consideration be given to the use of grasscrete paving in the overflow car park area at Cobtree Manor Park.
3. That any new storage facility at Cobtree Manor Park should be of sufficient size to accommodate a park utility vehicle and provide secure methods for storing equipment etc. inside.
4. That the options report in respect of any residential properties that might become vacant in future should include an examination as to whether they might be used by the Borough Council as temporary

accommodation subject to this being in accordance with the objects of the Charity.

5. That the Leisure Manager should meet with the Treasurers of the Cobtree Manor Estate Charity and the Cobtree Charity Trust Limited to discuss their respective finances and the potential for collaboration on projects at the Cobtree Manor Estate.

81. COBTREE MANOR PARK FINANCIAL DELEGATIONS

The Leisure Manager presented his report seeking the Committee's agreement to increasing the spending limits for Officers in relation to operational matters and emergency situations. The Leisure Manager explained that the proposals would enable the Officers to best manage budgetary spend across the Estate, be more responsive to operational needs and emergency situations and deliver the best service to visitors.

The Committee agreed that the Officer spending limits should be increased but considered that the delegation to incur expenditure above the current spending limits should be exercised in consultation with the Chairman and Vice-Chairman of the Committee and be subject to the thresholds set out in the Council's Contract Procedure Rules. This would ensure checks and balances in the way that funds are expended.

RESOLVED:

1. That Officer spending above £5,000 up to a limit of £10,000 plus VAT be approved in consultation with the Chairman and Vice-Chairman of the Committee and this should be accompanied by at least one written quote in advance of ordering.
2. That in emergency situations this amount be increased to £15,000 plus VAT in consultation with the Chairman and Vice-Chairman of the Committee without the need to call a meeting of the Committee although this option is available to the Chairman should he/she consider it necessary.

82. PURCHASE OF PARK UTILITY VEHICLE

The Leisure Manager presented his report seeking authority to purchase a nearly new all-terrain park utility vehicle to support the day-to-day work of the Cobtree Manor Park Team. It was noted that:

Since 2014 the Team had used a second hand golf buggy to access the site and complete routine tasks. The golf buggy had not been modified for maintenance or utility work and it had not been possible to use the vehicle due to the ground conditions following the winter rainfall.

A utility vehicle was a key piece of equipment. It enabled the Park Rangers to access all areas of the Park quickly, to transport tools and materials with them, and to complete tasks efficiently and effectively.

Quotations had been obtained for more suitable vehicles and trade in quotations for the existing golf buggy.

RESOLVED:

1. That budgetary spend of £9,500 be approved for the purchase of a nearly new all-terrain park utility vehicle.
2. That delegated authority be given to the Head of Regeneration and Economic Development, in consultation with the Chairman of the Committee, to agree the final expenditure on the vehicle should the cost be above £9,500.

83. FORSTAL FIELD FUNDING AGREEMENT

The Leisure Manager presented his report updating the Committee on the position with regard to the Cobtree Young Farmers' project to introduce conservation grazing on the Forstal Field and outlining a proposed course of action to enable the Club to secure funding through a Heritage Lottery funded project. It was noted that:

- Funding was dependent upon the Club securing a minimum ten year lease and management agreement in respect of Forstal Field. However, due to its complexity, the document would not be completed in time to meet the deadline for applications for funding (31 March 2020). It was therefore proposed that the Cobtree Manor Estate Charity should enter into a funding agreement with Kent County Council that references the Cobtree Young Farmers and makes the spending of the funding conditional on the lease to the Young Farmers being in place at the time of spending. The Cobtree Manor Estate Charity would pass on all funding and land management obligations to the Young Farmers through the lease of Forstal Field.
- It was further proposed that the Head of Regeneration and Economic Development be given delegated powers to enter into the funding agreement on behalf of the Cobtree Manor Estate Charity when he is satisfied that the risks posed are satisfactorily and suitably mitigated and within acceptable levels.

The Committee agreed the proposed course of action outlined in the report, but considered that the delegation to the Head of Regeneration and Economic Development to enter into the funding agreement should be exercised in consultation with the Chairman of the Committee.

RESOLVED:

1. That delegated authority to enter into a funding agreement with Kent County Council, for the Heritage Lottery's Old Chalk New Downs Fund, be given to the Head of Regeneration and Economic Development who will act on behalf of the Cobtree Manor Estate Charity.

2. That the Head of Regeneration and Economic Development be given delegated authority to enter into the funding agreement, in consultation with the Chairman of the Committee, when he is satisfied that the risks posed are satisfactorily and suitably mitigated and within acceptable levels.

84. DURATION OF MEETING

2.30 p.m. to 4.00 p.m.

Cobtree Manor Estate Charity Committee

11th June 2020

Cobtree Contracts Reliefs and Mitigations

Final Decision-Maker	Cobtree Manor Estate Charity Committee
Lead Head of Service	John Foster – Head of Regeneration and Economic Development
Lead Officer and Report Author	Mike Evans – Leisure Manager
Classification	Public
Wards affected	Boxley

Executive Summary

A report seeking the Cobtree Manor Estate Charity Trust’s authority to agree Covid-related relief with the operators at the Cobtree Estate.

Purpose of Report

In response to the enforced closures of leisure sites at the Cobtree Estate, the Cobtree Manor Estate Charity Committee is asked to make decisions on the contract measures and mitigations it wishes to take with its operators at Cobtree Manor Park Golf Course, Kent Life and Cobtree Café.

This report makes the following recommendations to this Committee:

1. That the rent paid by MyTime Active at Cobtree Manor Park Golf Course is suspended for a period of 58 days, that the payment of the pro rata rent for that 58-day period is waived and the Senior Finance Manager makes provision for this in the Cobtree cashflow forecasts
2. That the contract fee paid by Planning Solutions at Kent Life is suspended for the whole of the Q1 period, that the payment of the Q1 contract fee is waived and the Senior Finance Manager makes provision for this in the Cobtree cashflow forecasts.
3. That all agreements to provide relief are reliant on the operators complying with all of the appropriate actions and qualifying criteria, with the relief being withdrawn should the operator not be eligible or not be in compliance.
4. That authority be given to the Director of Regeneration and Place to instruct Mid-Kent Legal Services to amend the contracts and leases thus incorporating the changes approved in recommendation 1 and recommendation 2 above, and for the amended contracts and other ancillary documents to be entered into by the Council on behalf of Cobtree Manor Estate Charity.
5. That the Leisure Manager continues to monitor the budget and cashflow positions at Cobtree Manor Park Golf Course and Kent Life and that future requests for supplier relief are brought to this committee for future consideration.

Timetable	
<i>Meeting</i>	<i>Date</i>
Cobtree Manor Estate Charity Committee	11th June 2020

Cobtree Contracts Reliefs and Mitigations

CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>Accepting the recommendations will materially improve the Council’s ability to achieve the safe, clean and green priority and the thriving place priority. We set out the reasons other choices will be less effective in section 3 available options.</p>	Mike Evans – Leisure Manager
Cross Cutting Objectives	<p><i>The four cross-cutting objectives are:</i></p> <ul style="list-style-type: none"> • <i>Heritage is Respected</i> • <i>Health Inequalities are Addressed and Reduced</i> • <i>Deprivation and Social Mobility is Improved</i> • <i>Biodiversity and Environmental Sustainability is respected</i> <p>The report recommendations support the achievement of all of the cross-cutting objectives by ensuring the future sustainability of Cobtree Manor Estate and ensuring contractual operations at the estate continue.</p>	Mike Evans – Leisure Manager
Risk Management	Refer to section 5 of the report	Mike Evans – Leisure Manager
Financial	Cashflow is a key consideration for the ongoing operations of the Estate, and this report sets out proposals to ensure there are sufficient financial resources to allow the Estate to continue to operate on a sustainable basis during the current	Paul Holland, Senior Finance Manager

	situation.	
Staffing	We will deliver the recommendations with our current staffing.	John Foster – Head of Regeneration and Economic Development
Legal	Under the Council’s Constitution the Committee as Corporate Trustee is responsible for all matters relating to the Charity with the exception of daily management. which will be undertaken by the Director of Finance and Business Improvement. Accepting this recommendation will align the committee’s procedures more closely to the Council’s constitution	Senior Lawyer – Contracts and Commissioning
Privacy and Data Protection	Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with our retention schedules.	Policy and Information Team
Equalities	No impact identified as a result of the report and recommendations.	Equalities and Corporate Policy Officer
Public Health	We recognise that the recommendations will have a positive impact on population health or that of individuals.	Public Health Officer
Crime and Disorder	There are no crime and disorder implications caused by these recommendations.	Mike Evans – Leisure Manager
Procurement	On accepting the recommendations, the Council will then follow procurement exercises, the PPN guidance and agree any contract changes with operators by way of a variation to the contract. We will complete those exercises in line with financial procedure rules.	Head of Regeneration and Economic Development & Section 151 Officer

2. INTRODUCTION AND BACKGROUND

- 1.1 The Covid-19 pandemic that developed in the UK in March 2020 had huge implications for all sectors and businesses in the Maidstone borough, including those who operate aspects of the Cobtree Manor Estate. The Cobtree Manor Estate Charity (CMEC) holds contracts with MyTime Active for Cobtree Manor Park Golf Course, Planning Solutions for Kent Life, and DAGT for Cobtree Café.
- 1.2 In response to the Covid-19 outbreak the Cobtree operators began to alter their operating procedures from 16 March 2020 onwards until, under instruction from the UK government, the businesses closed and ceased operations on Monday 23 March 2020.
- 1.3 The operators have taken advantage of the government's furlough scheme and business rates relief schemes where they are eligible but they are all left with significant budget pressures.
- 1.4 The *UK Procurement Policy Note 02/20: Supplier Relief due to Covid-19* from the Cabinet Office "sets out information and guidance for public bodies on payment of their suppliers to ensure service continuity during and after the current coronavirus, Covid-19, outbreak. Contracting authorities must act now to ensure suppliers at risk are in a position to resume normal contract delivery once the outbreak is over." The PPN is applicable to all contracting authorities including local authorities and the view of Mid-Kent Legal Services is that it also applies to CMEC. The UK PPN02/20 is available as appendix 1.
- 1.5 In the absence of change of law clauses in the contracts governing the Cobtree operators, CMEC and its operators must follow the UK PPN02/20 guidance and work collaboratively to find solutions.
- 1.6 In the case of operators who make payments to contracting authorities the UK PPN02/20 guidance FAQ document says that operators do not have to pay back this money. Contracting authorities have a future claw-back option where contract delivery is not possible because of the impact of Covid-19. The full statement on this subject is available in *Frequently Asked Questions (FAQs) – Procurement Policy Note 02/20*, which is available at Appendix 2. CMEC should work on the basis that any relief it gives to operators is done so with the expectation that it will not be getting that money back at a later date. This point is a key one in determining how much support CMEC gives its operators in the first instance.
- 1.7 The contract positions at each venue are provided in appendix 3. The payments made to CMEC each year are:
 - The Cobtree Golf Course rent (paid quarterly)
 - The Kent Life contract fee (paid twice yearly)
 - The Cobtree Café base rent (paid quarterly)
 - The Cobtree Café turnover share (paid quarterly)

The shutdown has affected each business differently but each one has requested financial support from CMEC.

Cobtree Manor Park Golf Course

- 1.8 MyTime Active has requested that CMEC waive rental payments for a full year, based on the uncertainty around the economic recovery period. The request is for CMEC to waive this rent and not for it to be paid at a later date. MyTime's profit and loss budget sheet shows that the business was already suffering from the heavy rainfall and flooding that occurred between December and February 2020. With the pandemic the golf course has suffered a business interruption of six months, starting in December 2019 and lasting until May 2020.
- 1.9 At the point of closure the golf course memberships were either frozen where people paid by direct debit, or given an extension where people had paid for 12 months in full. Staff were put on furlough and the clubhouse building was put into hibernation. Cobtree Manor Park Golf Course qualifies for a £10,000 business rates grant. The capital development works at the golf course have been placed on hold because of the Covid-19 pandemic.
- 1.10 At the time of writing the golf course has re-opened with social distancing measures in place in accordance with government and England Golf guidance. These measures limit the number of people who can play each day, which does have an impact on the achievable income. The clubhouse, bar and restaurant all remain closed and the revenue streams for food, drink, functions and group bookings are still hampered by the impacts of Covid-19. MyTime Active have reopened the venue with two members of staff and support from their core team. The majority of staff are still on furlough and MyTime continue to receive Covid-19 Job Retention Scheme support for these staff costs.
- 1.11 MyTime Active pay their annual rent to CMEC in four quarterly payments. At the time of the lockdown their payment in advance for Q4 of 2019/20 was outstanding. Their account is in arrears to the value of one quarterly payment. The payment for the current quarter has also not been invoiced and is the subject of this report.

Kent Life

- 1.12 Since closing on 23 March Planning Solutions has furloughed all Kent Life staff apart from two team members who have been caring for the animals and livestock on site. These staff have been attending site every day, ensuring they do not come into contact with each other, and have been checking the premises as well as caring for and feeding the animals.
- 1.13 Customers' memberships are either frozen or extended, depending on the type of membership they have, and bookings made in advance have been honoured for the future or will be refunded.
- 1.14 Business rates at Kent Life are £0 for the year. The rate payer is Maidstone Borough Council corporate property department and the rateable value is £64,100, which is above the £51,000 qualification threshold. At the moment Kent Life does not qualify for any government grants that could be used as a contribution towards the running costs of the site or the contract.

This is being monitored on an ongoing basis by the Leisure Manager and if the criteria for grants change an application on behalf of Kent Life will be made.

- 1.15 Planning Solutions has provided their full profit and loss budget sheet for 2020 which shows the impact of the Covid-19 lockdown and a forecast of its ongoing impact. The impact at Kent Life has been a loss of all revenue since 23 March 2020. Running costs have been managed but the impact to Kent Life and Planning Solutions is still considerable.
- 1.16 Planning Solutions pays the annual contract fee to CMEC in two six-monthly instalments, due at the end of Q2 and Q4. The payment for Q1 and Q2 due in November 2019 remains outstanding. The payment for Q3 and Q4 became payable during the lockdown and also needs to be invoiced. Because of these two invoices the Kent Life account is currently in arrears by one year's rent.
- 1.17 At the time of writing Kent Life remains closed and there is no indication of when it can re-open. A lot of Kent Life's income is dependent on school trips so even if the site opens soon, the financial impact could extend through July with schools not in a position to resume school trips.

Cobtree Café

- 1.18 DAGT altered the café service on 20 March 2020 and switched to providing take away food and drinks only. They provided service on this basis until 23 March when they were ordered to close as part of the government lockdown. Cobtree Café pays a base rent and a turnover rent to CMEC. The turnover rent for the lockdown period will be £0 because it is based on a percentage share of the turnover.
- 1.19 The café has prepared a plan to re-open on a take-away basis from Sunday 16 May 2020. Mid-Kent Legal Services provided legal advice that the café could operate in this way and given approval for it to re-open. The café prepared risk assessments and documentation in order to re-open but at the time of writing it has still not re-opened.
- 1.20 After giving approval for the café to re-open on a take away basis officers received a force majeure letter from the café operator dated 18 May stating that the owners believed a force majeure event to have occurred and stating that they would be vacating the café.
- 1.21 Mid-Kent Legal Services reviewed the force majeure letter and provided comments. The force majeure request was rejected because it does not comply with the specification of a force majeure request as per the Cobtree Café concession contract and the PPN 02/20 guidance is also very clear that the government wishes to avoid suppliers to the public sector using force majeure clauses for Covid-19 and instead wishes them to use the furlough scheme and the PPN02/20 guidance to remain whole and resume trading at a later date (see appendix 1, page 2, point 9).
- 1.22 Before submitting the force majeure letter Cobtree Café had requested a rental holiday of 100% rent relief for the duration of the closure and 50%

rent relief for the first six months after re-opening in order to mitigate the impacts of the Covid closure. The café has submitted this request and some accompanying financial information for the closure period. Some dialogue about the costs has been had between the Leisure Manager and DAGT. DAGT has declined to submit any additional financial information or provide clarification on a number of points raised by the Leisure Manager.

- 1.23 Section 2. Action of the UK PPN02/20 guidance states, at bullet point 4, that "To qualify, suppliers should agree to act on an open book basis and make cost data available to the contracting authority during this period. They should continue to pay employees and flow down funding to their subcontractors."
- 1.24 The transparency section of the UK PPN02/20 guidance states "All suppliers are expected to operate with integrity. Suppliers should be made aware that in cases where they are found to be taking undue advantage, or failing in their duty to act transparently and with integrity, contracting authorities will take action to recover payments made."
- 1.25 Officers have a number of questions around the financial information that DAGT has submitted for Cobtree Café. Officers have sought clarification on those points but DAGT have thus far declined to provide answers or share any more information. At this time, without receiving any further responses or the clarification required, officers are not confident in making recommendations regarding rental relief for Cobtree Café to CMEC.

Cobtree Manor Park car park

- 1.26 The car park at Cobtree closed to vehicles on 23 March 2020. Since that day car park income has been £0. The park remained open to pedestrians during the lockdown but vehicles were prevented from entering. The car park re-opened on Wednesday 13 May 2020 and was closed for a total of 51 days. The closure period would have included the Easter school holidays, Easter weekend and the first May bank holiday weekend. The same seven-week period in 2019 yielded £16,420.
- 1.27 Car park permits have been extended by two months so that annual permit holders are still able to benefit from a full 12 months of car park permit use.

Cobtree Manor Estate Charity Cashflow

- 1.28 Appendix 3 shows the contract payments made to CMEC by the operators at the Cobtree estate on a quarterly basis. The UK PPN guidance says that CMEC has to take measures to ensure that the operators are whole and able to trade after the Covid-19 restrictions are lifted. Where authorities receive payments they should waive these for the closure period.
- 1.29 It is certainly in CMEC's best interests to ensure that its operators survive the Covid-19 closures and do not go into liquidation or insolvency during the lockdown period. The risks of an operator ceasing to trade outweigh the costs of assisting them during this time. Were an operator to cease trading, CMEC would have to take over the maintenance responsibilities of the site, the operation of the services and the management of the staff involved.

This situation would be less than ideal for CMEC and it should work to ensure its operators are able to trade post-Covid.

- 1.30 The UK PPN02/20 guidance advises contracting authorities to waive contract fees during the Covid-19 lockdown period up to 30 June 2020 inclusive. Officers have been using a quarter-by-quarter approach in their planning. At the time of writing the golf course is partially open after a closure of 58 days and its current usage with a skeleton workforce means it is profitable again. The café has plans in place to re-open but as yet has not done so. Kent Life is still not able to re-open and is still included in the UK Government's lockdown restrictions.
- 1.31 CMEC can explore waiving contract payments for the length of the closure period for each venue or it can aim to choose a period that is the same length for all operators. CMEC may also provide support over a longer period to assist the operators in the recovery periods as well.
- 1.32 Some of the Cobtree operators pay contract fees and some pay rents. CMEC may wish to distinguish between these fees, on the basis that its rent-paying tenants have still had full use and enjoyment of the premises during the closure period while the operators who provide contracted services have not been able to deliver the services relating to their contract fee. Operators who pay a contract fee will have also paid their peppercorn rent to cover the enjoyment of the premises during lockdown. Alternatively, CMEC may wish to treat rent payments and contracted payments the same and give relief to all operators regardless of how they make their payments to CMEC.

3. AVAILABLE OPTIONS

3.1 **Do nothing**

CMEC could choose to ignore the UK PPN02/20 guidance and the requests for support from its operators. This would be against the intention of the UK PPN02/20 guidance and could leave CMEC open to legal challenge from its operators. This option also increases the risk of an operator entering insolvency and risks CMEC having to manage one or more of its venues itself in the future, which would be far more costly than working with the operators to ensure they are whole at the end of the Covid-19 lockdown period. **This option is not recommended**

3.2 **Provide support for the whole of Q1 for the operators at Cobtree Manor Park Golf Course and Kent Life**

CMEC could waive all payments for the period 1 April to 30 June 2020. This would cost CMEC the *Q1 Total* as shown in Appendix 3. This option removes the risk of operators being insolvent at the end of the Covid-19 lockdown period, but it does place added pressure on the CMEC cashflow position. As well as the *Q1 Total* CMEC has also suffered a decrease in car park income estimated to be approximately £16,420. **This option is not recommended.**

3.3 Provide support on a pro rata basis for the period of each site's closure.

CMEC could waive payment for the period 1 April to 30 June 2020 for the operators who have been affected for the whole quarter and give pro-rata support for the operators who have been able to re-open for trade before 30 June 2020.

3.4 This option would mean the total support given to operators is the figure shown as the total in Appendix 4. The businesses have been severely impacted by Covid-19 and will be looking at every available option for as much support from CMEC as possible. CMEC's aim in this process is to ensure its operators survive the Covid-19 lockdown period and are able to trade again afterwards.

3.5 Where operators such as MyTime Active have commenced operations post-lockdown it may be argued they are no longer at risk of not surviving. However, CMEC should offer its support to its operators, in conjunction with the government schemes and help its operators where it can. At all times CMEC must safeguard its own cashflow and its own existence. It must also ensure that it has financial resilience for any future claims and a future second wave in the Covid-19 pandemic. **This option is the recommended option.**

3.6 Provide support to the operators of Cobtree Café.

For the reasons described in paragraphs 1.22, 1.23, 1.24 and 1.25 this option is **not recommended at this time.**

3.7 Maintain dialogue with all operators so that future additional support can be discussed, and further recommendations can be brought to future meetings of this committee

The recovery period from Covid-19 is full of uncertainty. Where operators are unable to open in July, which is beyond the 30 June deadline of the UK PPN02/20 guidance, this committee will need to discuss and consider additional relief on a case by case basis.

3.8 There is also no certainty that the Covid-19 lockdown of March and April 2020 is the only one that will occur this year. The coronavirus pandemic may increase again in future months and there may be a need for another lockdown and additional need for supplier relief.

3.9 In both of these situations officers will bring further reports and recommendations to this committee. **This option is also recommended.**

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

4.1 The first recommended option is to provide contractual relief to MyTime Active, who operate Cobtree Manor Park Golf Course, in the form of the *MyTime Q1 pro rata fee* in appendix 4.

- 4.2 The second recommended option is to provide contractual relief to Planning Solutions, who operate Kent Life, in the form of the *Planning Solutions Q1 fee* also available in appendix 4. Kent Life has been closed for the whole quarter, hence the relief offered being equivalent to that time period.
- 4.3 The third recommended option is to continue dialogue with all operators so that the effectiveness of this contractual relief can be monitored and assessed and any future claims for contractual relief under the UK PPN02/20 guidance can be brought to this committee
- 4.4 This approach ensures that Cobtree's operators are given relief for the period of their closure and also protects CMEC's own cashflow during this period of uncertainty. This approach also ensures CMEC has some resilience for any future closures that occur later in 2020 or in 2021.

Future resilience

- 4.5 Paragraph 4.3 includes within its recommendation scope to reconsider the relief claim at Cobtree Café, should sufficient evidence be received that the operator is eligible to benefit from the UK PPN02/20 guidance. This approach is particularly prudent given the information at paragraphs 1.23, 1.24 and 1.25. The financial impacts to CMEC of accepting these recommendations are shown in appendix 5.

5. RISK

- 5.1 The risks of the Covid-19 pandemic to CMEC centre around its cashflow and its operators' ability to trade. CMEC needs to ensure its operators are in place to recommence trading once the pandemic is over, its operators are able to recommence the provision of services in line with the new social distancing guidance and its operators can run the services profitably.
- 5.2 CMEC relies on the contractual income from its operators to run the Cobtree Manor Park and the wider Cobtree estate and CMEC needs to protect its own cashflow. CMEC also needs to be aware of the risks of an operator not being able to continue in providing the services. If that happens the services will return to CMEC to operate and operating them in house will be far more costly to CMEC.
- 5.3 The risks associated with these proposals, including the risks if CMEC does not act as recommended, have been considered in line with the Council's Risk Management Framework. That consideration is shown in this report at paragraphs 1.29, 3.1, 3.2, 5.1 and 5.2. We are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 The proposals in this report have been developed in consultation with the Head of Regeneration and Economic Development, the Practice Area Team Leader – Contracts and Commissioning, the Senior Finance Manager, and the CMEC Chair and Vice Chair.
-

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 Once CMEC has decided its preferred course of action the Leisure Manager will work with Mid-Kent Legal Services and the operators to vary the service contracts by way of a deed of variation.
- 7.2 The Leisure Manager will ensure the operators work with CMEC on an open book basis, as instructed by the UK PPN02/20 guidance and all financial relief given will be subject to the PPN02/20 criteria
-

8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix 1: *UK Procurement Policy Notice – Supplier Relief due to Covid-19 Action Note PPN 02/20*
 - Appendix 2: *Frequently Asked Questions (FAQs) – Procurement Policy Note 02/20*
 - Appendix 3: CMEC Contract quarterly finances
 - Appendix 4: CMEC Contract pro-rata finances
 - Appendix 5: Cobtree cashflow projections recommendations impact
-

9. BACKGROUND PAPERS

- None



Procurement Policy Note - Supplier relief due to COVID-19

Action Note PPN 02/20

March 2020

Issue

1. This Procurement Policy Note (PPN) sets out information and guidance for public bodies on payment of their suppliers to ensure service continuity during and after the current coronavirus, COVID-19, outbreak. Contracting authorities must act now to ensure suppliers at risk are in a position to resume normal contract delivery once the outbreak is over.

Action

2. All contracting authorities should:
- Urgently review their contract portfolio and inform suppliers who they believe are at risk that they will continue to be paid as normal (even if service delivery is disrupted or temporarily suspended) until at least the end of June.
 - Put in place the most appropriate payment measures to support supplier cash flow; this might include a range of approaches such as forward ordering, payment in advance/pre-payment, interim payments and payment on order (not receipt).
 - If the contract involves payment by results then payment should be on the basis of previous invoices, for example the average monthly payment over the previous three months.
 - To qualify, suppliers should agree to act on an open book basis and make cost data available to the contracting authority during this period. They should continue to pay employees and flow down funding to their subcontractors.
 - Ensure invoices submitted by suppliers are paid immediately on receipt (reconciliation can take place in slower time) in order to maintain cash flow in the supply chain and protect jobs.

Dissemination and Scope

3. This PPN is applicable to all contracting authorities, including central government departments, executive agencies, non-departmental public bodies, local authorities, NHS bodies and the wider public sector (excluding Devolved Administrations). Together these are referred to in this PPN as 'contracting authorities'. This PPN covers goods, services and works contracts being delivered in the UK.

4. Please circulate this PPN across your organisation and to other relevant organisations that you are responsible for, drawing it to the specific attention of those with a commercial and finance role.

Timing

5. With immediate effect until 30 June 2020.

Background

6. The current outbreak of COVID-19 is unprecedented and will have a significant impact on businesses of all sizes. Many suppliers to public bodies will struggle to meet their contractual obligations and this will put their financial viability, ability to retain staff and their supply chains at risk. Contracting authorities should act now to support suppliers at risk so they are better able to cope with the current crises and to resume normal service delivery and fulfil their contractual obligations when the outbreak is over.

7. It is vital that contracting authorities pay all suppliers as quickly as possible to maintain cash flow and protect jobs. Contracting authorities should also take action to continue to pay suppliers at risk due to COVID-19 on a continuity and retention basis. Contracting authorities can consider making advance payments to suppliers if necessary.

8. Central Government organisations should note that Managing Public Money prohibits payment in advance of need in absence of Treasury consent as this is always novel contentious and repercussive. However, in the circumstances Treasury consent is granted for payments in advance of need where the Accounting Officer is satisfied that a value for money case is made by virtue of securing continuity of supply of critical services in the medium and long term. This consent is capped at 25% of the value of the contract and applies until the end of June 2020. HM Treasury will review in mid-June whether this consent needs to be extended for a further period. Consent for payment in advance of need in excess of this amount should be sought from HMT in the usual way. This consent does not alleviate Accounting Officers their usual duties to ensure that spending is regular, proper and value for money or for other contracting authorities to conduct appropriate and proportionate due diligence to ensure such payments are necessary for continuity of supply of critical services.

9. Contracting authorities should aim to work with suppliers and, if appropriate, provide relief against their current contractual terms (for example relief on KPIs and service credits) to maintain business and service continuity rather than accept claims for other forms of contractual relief, such as force majeure.

10. Continuing to make payments to at risk suppliers will present risks including that, despite these exceptional actions, a supplier may still become insolvent. These risks will need to be managed by contracting authorities on a case by case basis.

Contact

11. Further guidance on COVID-19 for individuals, employers and organisations is available on GOV.UK.

12. Enquiries about this PPN should be directed to the helpdesk at info@crowncommercial.gov.uk.

SUPPLIER RELIEF DUE TO COVID-19

INTRODUCTION

The public sector must act quickly and take immediate steps to pay all suppliers as a matter of urgency to support their survival over the coming months.

Where goods and services are either reduced or paused temporarily, authorities should continue to pay at risk suppliers to ensure cash flow and supplier survival. This could include, for example situations where:

- Services are cut short / reduced at short notice due to the impact of COVID-19 and non-payment could result in supply chains collapsing and/or significant financial implications for the supplier.
- It would be value for money and important to business continuity to continue to pay suppliers in the short term (regardless of whether you are able to reconcile at a later stage). This would ensure continuity of services when services can resume.

PPN 01/20 sets out how contracting authorities can amend contracts under Regulation 72 of the Public Contracts Regulations 2015¹. Changes should be captured in contract variation or change note, and make clear that the changes relate only to the COVID-19 situation, include a review provision or time limit, and that it is the authority's decision when things should return to normal.

PAYMENT TO MAINTAIN BUSINESS CONTINUITY

Contracting authorities should confirm with their at risk suppliers that they will continue to pay until at least the end of June, to ensure business and service continuity. Contracting can define their 'at risk suppliers' according to need. In general, this should override provisions in contracts that might require contracting authorities to pay suppliers on a decreasing scale as a result of, for example performance, force majeure or business continuity clauses.

There are a range of ways to support suppliers in maintaining cash flow during this period. Contracting authorities can continue to pay at usual contractual rates, or consider other options such as payment against revised/extended milestones or timescales, interim payments, forward ordering, payment on order or payment in advance/prepayment. Risks associated with advance or pre payment should be carefully considered and documented.

Where contracts operate 'payment by result' or are 'output / outcome' based, payments to suppliers should be made on the basis of a calculation of the average of the last three months invoices. Where possible, any payments made to suppliers during this emergency period should be adjusted to ensure profit margin is not payable on any undelivered aspects of the contract, however this should not delay payments being made.

Suppliers should identify in their invoices which elements of the invoiced amount relates to services they are continuing to supply (i.e. business as usual) and which amounts are attributable to the impact of COVID-19.

Payments should not be made to suppliers where there is no contractual volume commitment to supply, and contracting authorities should carefully consider the extent of payments to be made to suppliers who are underperforming and subject to an existing improvement plan.

¹ Or equivalent procurement regulations

Transparency

Contracting authorities and suppliers should work collaboratively to ensure there is transparency during this period. Suppliers in receipt of public funds on this basis during this period must agree to operate on an 'open book' basis. This means they must make available to the contracting authority any data, including from ledgers, cash-flow forecasts, balance sheets, and profit and loss accounts, as required and requested to demonstrate the payments made to the supplier under contract have been used in the manner intended.

For example, this might include evidence that staff have been paid the right amount and on time, and that cash continues to flow through the supply chain as quickly as possible. Contracting authorities should keep records of decisions and agreements made, and ensure suppliers maintain records to enable future reconciliation if necessary.

Suppliers should not expect to make profits on elements of a contract that are undelivered during this period and all suppliers are expected to operate with integrity. Suppliers should be made aware that in cases where they are found to be taking undue advantage, or failing in their duty to act transparently and with integrity, contracting authorities will take action to recover payments made.

Supplier capacity

Many suppliers will not be able to fulfil their contracts due to action taken elsewhere in the public sector. For example, transport services for school children, due to the closure of schools. Wherever possible, contracting authorities should seek to re-deploy the capacity of those suppliers to other areas of need; this can be implemented via a time-bound variation to the original contract under regulation 72 of the Public Contract Regulations (see PPN 01/20).

OTHER CONTRACTUAL RELIEF

Contracting authorities should work with all suppliers to ensure business continuity is maintained wherever possible and that business continuity plans are robust and are enacted.

If a supplier seeks to invoke a clause relating to a form of contractual relief that would allow them to suspend performance, such as force majeure, contracting authorities should first work with the supplier to amend or vary contracts instead. These variations could include changes to contract requirements, delivery locations, frequency and timing of delivery, targets and performance indicators etc. Changes to the original terms should be limited to the specific circumstances of the situation, and considered on a case by case basis.

Other reliefs sought by a supplier could relate to any contractual obligation but usually takes the form of one, or both, of the following:

- an extension of time for contract performance (eg revised milestones dates or delivery dates, etc);
- a waiver or delay in the ability of the contracting authority to exercise a right and/or remedy (eg to claim liquidated and ascertained damages, service credits or terminate the contract)

Each claim for relief should be considered on a case by case basis, according to the nature of the goods/services/works being supplied, the challenges being faced, the contract terms and the constraints of any statutory requirements, for example the PCR to above-threshold contracts. You should seek specific legal advice as required.

Contracting authorities should take a pragmatic approach. These discussions and any temporary changes agreed should be recorded. The contract should return to its original terms as soon as the impact of the COVID-19 outbreak on the relevant contract is over.

Contracting authorities should not accept claims from suppliers who were already struggling to meet their contractual obligations prior to the COVID-19 outbreak.

Force Majeure

Force majeure is a contractual term which may, (depending on the specific terms of the contract) allow one or both of the parties, when a specified event or events occurs beyond their control:

- to terminate the contract; or
- to be excused from performance of the contract, in whole or in part; or
- to be entitled to suspend performance for the period the event is continuing or to claim an extension of time for performance

It is important that force majeure clauses is not considered in isolation given its impact on other clauses such as exclusivity, liability, liquidated damages and termination rights. It may also be relevant to consider the governing law and jurisdiction clause as contracts subject to foreign law may be interpreted differently by the courts. It may also be an exclusion clause, which is subject to the Unfair Contract Terms Act 1977.

Contracting authorities are not bound to accept a supplier's claim for force majeure and can resist it. You should seek legal advice when dealing with a claim and continue to work with the supplier to maintain service continuity as far as possible. An attempt by a supplier to invoke a force majeure clause without valid cause may mean that the supplier is in breach of contract.

Force majeure clauses do not automatically entitle either party to claim relief. In some cases, a contract will not allow termination at all due to force majeure, and it cannot be forced.

Frustration

It is unlikely a supplier will seek to frustrate a contract if they continue to be paid. However, unlike force majeure, frustration is rarely included as a provision in the contract. Instead, frustration arises where an event, for which the contract makes no sufficient provision, renders performance of the contract impossible or radically changes a party's principal reason for entering into the contract.

If a contract has been frustrated, it terminates automatically and the parties are excused from their future obligations. Any contractual obligations incurred before the time of frustration, such as for the contracting authority to pay outstanding charges to a supplier, remain enforceable. As neither party is at fault in respect of the frustration, neither may claim damages from the other for non-performance after the contract is declared frustrated.

However, the threshold for a contract being declared 'frustrated' is high and the fact that the contract will merely be more expensive to perform, or that the provider will have to perform the contract in a different way as a result of COVID-19 and/or its impact, are highly unlikely to constitute grounds for frustration in itself. You should seek legal advice if a supplier claims 'frustration'.

Excusing Causes, Relief Events and other options

If included in a contract, excusing cause and relief event provisions generally give a supplier

relief from its contractual obligations, which contracting authorities may be able to use to provide relief, for example, to change the KPI regime, payment mechanism or reduce service level requirements. Some contracts may have other relief mechanisms. Whatever the regime, contracting authorities should maximising any commercial flexibilities within the contract, including agreeing new measures such as on meeting lead times, waiving or delaying exercising the authority's rights and/or remedies (e.g. to claim liquidated and ascertained damages, service credits or terminate the contract), revising milestones or delivery dates. In these circumstances, if there is one, use the contract change control procedure to keep records of any changes made and the decision making behind each one. If not, keep your own records.

ACCELERATING PAYMENT OF INVOICES

Contracting authorities should pay suppliers as quickly as possible to maintain cash flow and protect jobs. The public sector must pay suppliers within 30 days under the Public Contracts Regulations 2015 but contracting authorities now need to accelerate their payment practice.

Contracting authorities should act now to ensure payment is made as quickly as possible to their suppliers, including:

- Targeting high value invoices where a prime is reliant on a supply chain to deliver the contract.
- Resolving disputed invoices as a matter of urgency; consider paying immediately and reconciling at a later date in critical situations.
- Take a risk based approach as to whether 2-way matching is always needed (rather than adopt regular 3-way matching against receipt and Purchase Order)
- Encourage suppliers to invoice on a more regular basis to help cash flow (eg every week rather than monthly)

Contracting authorities should consider the following additional contingency measures during the COVID-19 outbreak

Contingency measures - delegated authority to ensure invoices are not delayed

With significant levels of staff absence possible, ensure you have appropriate contingencies in place including sufficient numbers of staff with delegated authority to promptly receipt / authorise an amount due for payment in business units as well as finance teams.

Contract Managers and Business Units

Receipt for goods promptly, do not delay and ensure there is a contingency in place for delegated authority to approve in the event of staff shortages. Monitor flow down to ensure payment is cascading down the supply chain.

Verifying invoices as quickly as possible

Verify an invoice as quickly as possible and do not send invoices back for minor administrative errors and risk causing delay in payment. Continue to undertake necessary checks, however, look to resolve any issues as a matter of urgency and reconcile any minor discrepancies in information at a later stage.

Payment Card Solutions

Use of procurement/payment cards where possible to ensure businesses are paid as quickly as possible. Consider increasing the upper limit of spend, open up categories and ensure an appropriate number of staff have the authority to use.

Invoicing procedures clearly set out for your suppliers

Be clear where suppliers should send their invoice, including email address and the process required. This should be clear on the authority's website. This will minimise the number of invoices with incorrect information and/or being issued to the wrong address. Issue a reminder to all your suppliers to help them best prepare and ask for invoices to be sent in electronically to avoid hard copies sitting in office buildings potentially unattended.



Frequently Asked Questions (FAQs) - Procurement Policy Note 02/20

Before reviewing this document, please read:

- Procurement Policy Note 01/20 – Responding to COVID-19
- Procurement Policy Note 02/20 – Supplier relief due to COVID-19
 - Model Interim Payment Terms
 - Paying Suppliers of Contingent Workers
 - Guidance notes for Construction Contracts

Purpose of the FAQs

Cabinet Office has published three Procurement Policy Notes ([PPN 01/20](#), [PPN 02/20](#) and [PPN 03/20](#)) to support public bodies in their response to COVID-19. This document brings together a set of frequently asked questions (FAQs) regarding the scope and application of PPN 02/20 on supplier relief. The FAQs will be updated regularly and published on GOV.UK.

Who should use the FAQs?

These FAQs are relevant to any contracting authority in scope of PPN 01/20 and PPN 02/20

Contact

Enquiries should be directed to the Crown Commercial Service Helpdesk on info@crowncommercial.gov.uk

Frequently Asked Questions.

Q1 - What organisations are in scope of this PPN 02/20?

A - PPN 02/20 is applicable to all contracting authorities, including central government departments, executive agencies, non-departmental public bodies, local authorities, NHS bodies and the wider public sector. It covers procurements carried out under the Public Contract Regulations 2015, Defence and Security Public Contracts Regulations 2011, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016

Q2 - Does PPN 02/20 apply to grants? In particular those allocated to VCSEs/ NGOs?

A - No. PPN 02/20 is for contracted goods, services and works contracts only.

Q3 - Is PPN 02/20 applicable to devolved administrations?

A - Devolved administrations will publish their own guidance apart from the Welsh Government, who have implemented PPN 02/20 with immediate effect and issued it across the Welsh public sector on 26 March, encouraging public bodies to do likewise (PPN 02/20 does apply to Welsh public bodies but the Welsh Government cannot mandate its use - adoption across Wales will be a matter for the Accounting Officers in each authority).

Q4 - What is the definition of an 'at risk' supplier in PPN 02/20? Who determines this?

A: This is at the discretion of the contracting authority and should be taken on a case by case basis. We anticipate the majority of suppliers will be at risk and authorities do not need to undertake a detailed assessment of suppliers' financial viability but clearly suppliers that are not impacted by COVID-19 do not need to benefit from advantageous terms. The key point is that we expect authorities to apply this as broadly as possible to ensure service continuity and protect infrastructure, supply chains and jobs. The contracting authority has the final decision on whether it deems a supplier is at risk or not.

Q5 - A supplier is unable to continue fully delivering their contract due to the COVID-19 outbreak - does the contracting authority still pay them?

A - If the contracting authority has determined that the supplier is at risk then they should continue to pay them as normal for the next 3 months, even if they are not able to fulfil all their contractual requirements. If the supplier is able to continue delivering their contract as normal, then the contracting authority should pay them as normal.

Q6 - Can I pay suppliers delivering any type of contracts?

A - Yes. Contracting authorities can pay suppliers delivering goods, services and works contracts during this time. Further guidance has been published on GOV.UK to cover construction contracts.

Q7 - Can contracting authorities ask to see evidence from suppliers at any point that the payments made result in staff and supply chain businesses being paid on time?

A - To qualify for payment, suppliers should operate an 'open book' approach. Contracting authorities can agree with suppliers how frequently to undertake a review of their payments. Contracting authorities do not need to wait until the end of the outbreak of COVID-19 before this happens. The Model Interim Payment Terms provide provisions for this.

Q8 - Should contracting authorities continue to pay suppliers where the contract does not have a volume commitment?

A - Payment should not normally be made to suppliers where the contract does not commit any volumes of business to the supplier - for example, where a supplier is on a framework but does not have a regular contracted amount - this is because in these cases the supplier is not reliant on a set amount of regular business to maintain their cash flow. However, contracting authorities should review their contract portfolio for such contracts and make a decision on a case by case basis.

Q9 - If a supplier will continue to be paid in full, even where they are not able to deliver their contract in the usual way, can they make staff on the contract redundant?

A - No. Any supplier continuing to be paid in full under these circumstances must ensure staff on the contract are retained and paid in full, including full sick pay, as set out in the contract. Evidence of this may be required by the contracting authority.

Any supplier intending to make staff cuts and redundancies on the contract should set this out to the contracting authority in advance of taking any action as this may affect payments being made during this period. The Model Interim Payment Terms provide provisions for this.

Q10 - If contracting authorities act to pay suppliers 'immediately' on receipt of invoice, does this mean they can ignore the usual checks?

A - No. Contracting authorities should still continue to undertake basic due diligence checks as normal before payment is released. However, authorities should exercise more flexibility during this period to minimise payment delays. For example, do not send an invoice back for minor administrative errors when the goods / services have been delivered and it matches the Purchase Order number.

Q11 - If an authority makes an advanced payment to a supplier, will that supplier still be expected to provide the goods/services/works that it had been contracted for and not get extra money for it?

A - Yes. Making an advance payment to a supplier would be to ensure service continuity. However, being in receipt of an advance payment does not excuse the supplier from their contractual obligations to deliver. The supplier may subsequently suffer delivery issues due to COVID-19; if this becomes the case then the supplier should discuss next steps with the contracting authority.

Q12 - What is the best way to agree short term changes to contracts with suppliers?

A - Changes, or variations, to contracts should be agreed in accordance with the change control clauses contained in the contracts and documented and agreed by both parties. The Model Interim Payment Terms can be used as the basis for agreeing payments.

Q13 - How should contracting authorities ensure that a supplier receiving relief under PPN 02/20 does not also receive equivalent relief from the Coronavirus Job Retention Scheme (CJRS) or other COVID-19 support schemes from the Government?

A - The payments to be made under PPN 02/20 are for *continuity and retention*; the supplier must be able to deliver in full as set out in the contract when required by the contracting authority.

Suppliers cannot be paid in full under the contract and claim for some or all of the same employees working on the contract under the Coronavirus Job Retention Scheme (CJRS). This is not only a double funding issue, but staff being recompensed under the CJRS would not be able to work.

Suppliers must ensure that all of the parts of the workforce identified to deliver the contract in full are not furloughed during this period (under CJRS) because the supplier is receiving the continuity and retention payment.

Where staff work a proportion of their time on public contracts and a proportion on private sector contracts, the public contracts will take precedence if they are delivering key or critical services, goods or works. This should be discussed with suppliers before action is taken to furlough staff on those contracts.

Only staff not involved in delivering the contract in full could be furloughed under the CJRS. It should be possible for the supplier to claim CJRS for these staff if they qualify under the scheme. Advice on the CJRS is [here](#) and clarifies that workers on public sector contracts should not be furloughed in the first instance.

In order to qualify for payment under PPN 02/20, suppliers should agree to operate on an 'open book' approach. The Model Interim Payment Terms provide provisions for this. As part of this, contracting authorities should agree with them how frequently to undertake a review of their payments.

Any supplier found to have acted fraudulently by claiming under the CJRS (or other COVID-19 support schemes), for workers that are being paid under a public sector contract, may be excluded from future public contracts on grave professional misconduct grounds under regulation 57(8)(c) of the PCRs. .

Q14 - PPN 02/20 addresses commercial agreements where the contracting authority is the buyer. What about instances when a private sector organisation is the buyer and paying the public sector organisations, or public bodies are buying services from each other, and ask for payment relief (i.e a flexibility with the 'normal' timescales in which they pay the public sector organisation).

A - Although the main objective of the PPN is to ensure public sector organisations maintain service continuity from their suppliers during the COVID-19 outbreak we appreciate that there are instances where public sector organisations obtain an income.

Where a public or private sector organisation seeks payment relief due to COVID-19 this should be considered with the same level of flexibility and appropriate payment plans put in place. This should be agreed between both parties on a case by case basis based on the evidence provided by the private sector organisation.

Q15 - Does the supplier have to pay back any money they are paid during this period?

A - In many cases, suppliers in receipt of the continuity and retention payments made under PPN 02/20 will not be required to pay back this money, even if they have not been able to deliver any of the goods, services or works required under the contract due to the impact of COVID-19 during the period.

However, in some cases the goods, services or works paid for during this period may be required to be delivered at a later date. In some cases, and following reconciliation of payments made, the contracting authority may consider a future claw-back of monies paid where delivery will not be made in the future. This should be decided on a case by case basis.

Contracting authorities may seek to recover all or some of those monies if the supplier has been found not to be compliant with the terms of the interim contract variation, for example not complying with open book requirements, not paying staff and subcontractors promptly and in full, etc.

Q16 - What if the current supplier cannot deliver due to the impact of COVID-19 and the contracting authority needs to seek delivery from an alternative supplier? Should the contracting authority pay twice?

A - No. In this situation, as the existing supplier is not able to deliver and the contracting authority needs to seek delivery from an alternative supplier, the existing supplier should instead seek support through one of the other COVID-19 support schemes such as the CJRS.

Q17 - Do advance payments need to be approved by the parent department, or can contracting authorities make their own decisions?

A - Each contracting authority and Accounting Officer should act in line with their usual duties and governance. All decisions relating to advance payments should be made in line with PPN 02/20 and, for central government departments, HM Treasury approvals and Managing Public Money.

Q18 - When a supplier accesses government support such as the CJRS, is it necessary also for them to request non-financial contract relief such as relaxation of KPIs or delivery dates?

A - Yes. If a supplier has accessed the CJRS, they will need to agree with their authority that they will not be delivering against their contract during this time and therefore, they will be able to access non-financial contract relief.

If the contracting authority does continue to pay the supplier under PPN 02/20 for continuity and retention purposes then it must retain staff to be available to work on the contract even if

the services are not required at the moment. In this instance, it would be able to benefit from non-financial relief in addition to payments.

Q19 - What happens if staff are furloughed and subsequently the contracting authority identifies a requirement where the staff are needed to be re-deployed to deliver different services? Can the staff be re-deployed in this way?

A - Yes. Suppliers can take employees off furlough after three weeks have elapsed and still claim for that period under the CJRS. Guidance issued by HMRC regarding the CJRS, sets out that the minimum furlough period for employees is 3 weeks. In all cases suppliers should be transparent with their intentions and operate on an open book basis.

Q20 - Does PPN 02/20 apply to PFI/PF2 contracts?

A - Yes. PFI and PF2 contracts are included in the scope of PPN 02/20, however PFI contractors may not be able to achieve full performance under the PFI contract due to the on-going COVID-19 emergency, including where due to illness in the workforce, and to the need to introduce revised ways of working to protect health and safety.

Where this is the case, it should be agreed locally to moderate contract requirements and standards and payment and performance mechanism arrangements to a point where they support the stable delivery of vital services for the duration of the emergency. In those circumstances normal unitary charge payments to PFI contractors should be maintained (we would recommend having regard to the net level of unitary charge payments over the last three months as a performance baseline) and there should be a temporary moratorium on related payment and performance mechanism deductions/points so that PFI contractors can continue to operate and pay their workforce and suppliers.

We would expect that bespoke contractual documents will be used to implement these temporary arrangements in PFI contracts rather than by the template set out in the Guidance notes on Model Interim Payment Terms - Procurement Policy Note 02/20.

Further guidance has been published by the Infrastructure and Projects Authority and is available [here](#).

Q21 - Is the PPN applicable to concessions where the contracting authority may receive an income?

A - Decision on concessions, such as leisure centres, museums, theatres or other similar arrangements, should be made on a case by case basis. Options include payment of reduced management fees, repurposing services under the agreement, redeployment of staff or use of the space. Contracting authorities are encouraged to pursue arrangements in these circumstances that will maintain value for money through ensuring service continuity. Any concerns about funding shortfalls should be directed to your appropriate finance team.

Q22 - When should supplier relief be considered, i.e. should authorities use other options such as CJRS first before looking to apply PPN 02/20?

A - Contracting authorities should take steps to quickly identify their at risk suppliers and make payments to them for continuity and retention purposes under PPN 02/20. The CJRS makes clear that where employers receive public funding for staff costs, and that funding is continuing, employers are expected to use that money to continue to pay staff in the usual fashion – and correspondingly not furlough them. Organisations who are receiving public funding specifically to provide services necessary to respond to COVID-19 are not expected to furlough staff.

However, there may be some organisations and industries where using the CJRS would be better value for money; in these cases the parties should work together to ensure the relevant contingency is in place for when services need to resume.

Q23 - What happens if the supplier insists they are eligible for contractual relief but the contracting authority disagrees?

If a supplier is insisting that they should be eligible for relief under PPN 02/20 but the contracting authority has not deemed them at risk and therefore not in scope for relief then the authority should review the case to ensure its decision remains robust. If they are out of scope, the authority should point them towards the financial support schemes available from central government such as the CJRS.

Sector-specific questions can be directed to:

For Local Authority funding queries: LGFCovid19Queries@communities.gov.uk

For Department for Education queries: PPN0220.QUESTIONS@education.gov.uk

Appendix 3 - CMEC Contract quarterly finances

This table shows the contract payments paid by operators to CMEC. It also includes the car park income CMEC receives at Cobtree Manor Park

Venue and operator	Contract value	Q1	Q2	Q3	Q4
Cobtree Golf Course MyTime Active	£163,909 per annum Paid in rent through the lease Paid quarterly in advance	£40,977 "MyTime Q1 fee"	£40,977	£40,977	£40,977
Kent Life Planning Solutions	£74,133 per annum Paid as a contract fee Paid twice yearly in six-month instalments in arrears	£18,533 "Planning Solutions Q1 fee"	£18,533	£18,533	£18,533
Cobtree Café	£23,000 base rent £19,032 turnover share (based on 19/20 figures)	£5,750 base rent £5,952 turnover (based on 19/20 figures) "DAGT Q1 fee"	£5,750 base rent £6,460 turnover (based on 19/20 figures)	£5,750 base rent £3,584 turnover (based on 19/20 figures)	£5,750 base rent £3,036 turnover (based on 19/20 figures)
Contracts Total	£280,074	£71,212 "Q1 Total"	£71,720	£68,844	£68,296
Cobtree Manor Park car park income	£109,611 Based on weekly figures from 19/20	£28,379 full quarter £16,420 comparative closure period of 51 days	£40,458	£17,452	£23,322

Appendix 4 – CMEC contracts pro rata finances

This table shows the Q1 payments adjusted on a pro rata basis (based on a maximum period of 100 days from 23 March to 30 June or a shorter period where sites were able to open sooner)

Venue and operator	Contract value	Q1	Amount per day (x/100)	Days closed	Pro rata rate for closure period
Cobtree Golf Course MyTime Active	£163,909 per annum Paid in rent through the lease Paid quarterly in advance	£40,977 "MyTime Q1 fee"	£40,977 / 100 = £409.77	58	£23,766 "MyTime Q1 Pro Rata fee"
Kent Life Planning Solutions	£74,133 per annum Paid as a contract fee Paid twice yearly in six-month instalments in arrears	£18,533 "Planning Solutions Q1 fee"	Still closed	Still closed	£18,533 "Planning Solutions Q1 pro rata fee"
36 Cobtree Café	£23,000 base rent £19,032 turnover share (based on 19/20 figures)	£5,750 base rent £5,952 turnover (based on 19/20 figures) "DAGT Q1 fee"	£5,750 / 100 = £57.50 per day	Still closed	£5,952 "DAGT Q1 Pro Rata fee"
Total					£48,251 "Q1 Pro rata total fee"

APPENDIX 12
COBTREE MANOR ESTATE TRUST - CASHFLOW PROJECTION - IMPACT OF REPORT RECOMMENDATIONS

Year Ending 31st March	2020	2021	2022	2023	2024
Activity					
Golf Course - MBC staff recharges	£13,770	£14,045	£14,326	£14,613	£14,905
Golf Course - Running Costs	£12,800	£13,184	£13,580	£13,987	£14,407
Kent Life - Running costs	£25,890	£26,667	£27,467	£28,291	£29,139
Kent Life - MBC staff recharges	£9,320	£9,506	£9,697	£9,890	£10,088
Manor Park - Running costs	£235,290	£242,349	£249,619	£257,108	£264,821
Manor Park - MBC staff recharges	£46,790	£47,726	£48,680	£49,654	£50,647
Residential Properties - MBC staff recharges	£2,290	£2,336	£2,383	£2,430	£2,479
EXPENDITURE	£346,150	£355,813	£365,751	£375,973	£386,486
Golf Course - Annual payment from operator	£163,909	£140,143	£168,826	£173,891	£179,108
Golf Course - Other income	£5,300	£250	£250	£250	£250
Kent Life - Annual payment from operator	£74,133	£55,600	£74,000	£71,000	£73,000
Manor Park - Car parking income	£90,000	£84,000	£100,000	£100,000	£100,000
Manor Park - Rental income	£31,420	£31,420	£31,420	£31,420	£31,420
Cobtree Charity Trust Ltd. Will Trust Income	£40,000	£40,000	£40,000	£40,000	£40,000
Café/Visitor Centre - Annual payments from operator	£34,000	£28,000	£35,374	£36,081	£36,803
INCOME	£438,762	£379,413	£449,870	£452,642	£460,581
Payment: MBC 2/9ths Golf Course Net Surplus	£31,698	£25,147	£31,371	£32,343	£33,344
Investment Income - Charifund	£40,000	£40,000	£40,000	£40,000	£40,000
NET OPERATIONAL SURPLUS OR DEFICIT (-)	£100,914	£38,453	£92,748	£84,327	£80,751
Capital Expenditure:					
Car park resurfacing loan repayment - total costs £335,000	£67,000	£0	£67,000	£67,000	£67,000
Power Supply (50% to be reimbursed by DAGT)	£26,000	-£3,000	-£3,000	-£3,000	-£3,000
Project Officer - Cobtree railway	£0				
Security Works	£0	£20,000			
Play Barn Repairs (Costs tbc)	£0				
Play Area Refurbishment		£10,000	£10,000	£30,000	
Fencing and boundary works	£0	£5,000			
Interpretation Trail/Arboretum		£2,000			
New Golf Buggy for the Ranger	£9,000				
New containers and associated compound works		£30,000			
New benches and park furniture		£1,000	£1,000	£1,000	
	£102,000	£65,000	£75,000	£95,000	£64,000
ADJUSTED OVERALL SURPLUS/DEFICIT (-)	-£1,086	-£26,547	£17,748	-£10,673	£16,751
Cashflow Forecast:					
Bank Account balance at 1st April	£110,000	£146,000	£144,914	£118,367	£136,115
Payment/receipt of prior year overall surplus/deficit (-)	£36,000	-£1,086	-£26,547	£17,748	-£10,673
Bank Account balance as at 31st March	£146,000	£144,914	£118,367	£136,115	£125,442

Showing the Q1 pro rata rent fee waive
Reduced income from phone mast
Showing the Q1 pro rata contract fee waive

Showing no turnover share for Q1 (based on 1

Loan suspended for one year

Assumes project will not proceed
£20K not spent in 19/20
Works funded from revenue

£2K not spent in 19/20