**CABINET OFFICE QUERIES ON PPN 02/20**

**FROM THE EDUCATION SECTOR**

The following queries have been raised in connection with guidance issued by the Cabinet Office, specifically PPN content relating to supplier relief.

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|  | **QUERY** | **Department for Education RESPONSE**  **(22.04.2020 -** [**PPN0220.QUESTIONS@education.gov.uk**](mailto:PPN0220.QUESTIONS@education.gov.uk)**)** |
|  | **The following all relate to the provision of outsourced services** |  |
| 1 | General Guidance | * [PPN02/20](https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19) is time-limited and applies through to 30 June 2020 * PPN02/20 is advisory only. It does not bind contracting authorities to do anything other than what they feel is appropriate under these challenging and complex circumstances. * You need to ensure you apply the necessary financial and governance controls such as set out in the Local Scheme for Financing Schools for Local Authority Maintained Schools and the Academies Financial Handbook for Academy Schools. * Please refer to [DfE Coronavirus (COVID-19): financial support for education, early years and children’s social care](https://www.gov.uk/government/publications/coronavirus-covid-19-financial-support-for-education-early-years-and-childrens-social-care/coronavirus-covid-19-financial-support-for-education-early-years-and-childrens-social-care) |
| 2 | Does the Trust have to pay the supplier the full contractual rate even though no service is being delivered? | Please note the General Guidance above (1)  The following are extracts from the PPN02/20 [Cabinet Office FAQs](https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19)  **A supplier is unable to continue fully delivering their contract due to the COVID-19 outbreak - does the contracting authority still pay them?**  If a supplier is at risk, the contracting authority should continue to pay them as normal for the next 3 months [April, May, June 2020], 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.  **What is the definition of an ‘at risk’ supplier in PPN 02/20? Who determines this?**  This is at the discretion of the contracting authority and, where appropriate, 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.  **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.  **Should contracting authorities continue to pay suppliers where the contract does not have a volume commitment?**  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  **If the contract is volume or output based, how do we calculate value of payments?**  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.  **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?**  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 COVID19 support schemes such as the CJRS.  **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?**  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](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877260/PPN02_20_Model_Interim_Payment_Terms_v1.pdf) provide provisions for this.  **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? or should I wait?**  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](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877260/PPN02_20_Model_Interim_Payment_Terms_v1.pdf) provide provisions for this.  [Source: Cabinet Office FAQs](https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19) |
| 3 | Can the Trust insist the supplier put staff on to the furlough scheme and then negotiate a reduced invoice? | Please note the General Guidance above (1).  Trusts can seek to negotiate reduced payments (e.g. for reduced service provision) but cannot insist that supplier staff are “furloughed”. |
| 4 | Is there any central government help for schools on the increased costs as we are now paying for catering & transport services where previously there may have been some parent subsidy etc? | Trusts are not expected to make payments to suppliers if the usual source of funding (e.g. parental funding) is no longer available.  Please refer to [DfE Coronavirus (COVID-19): financial support for education, early years and children’s social care](https://www.gov.uk/government/publications/coronavirus-covid-19-financial-support-for-education-early-years-and-childrens-social-care/coronavirus-covid-19-financial-support-for-education-early-years-and-childrens-social-care) |
| 5 | There still seems to be uncertainty about the correct way to handle school catering contracts where the bulk of the income/funding is paid to the contractor direct by parents.  Can contractors furlough staff and claim the 80% funding for the part of the contract funded by parents and schools should continue to pay the same contribution as before the closure? | *Staff who are not working to deliver public contracts and not covered by continuing payments under public contracts can be furloughed if they qualify under the Coronavirus Job Retention Scheme.*  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](https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme) 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.  [Source: Cabinet Office FAQs](https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19) |
| 6 | Is there a chance that suppliers with public funded contracts will be refused the furlough 80% grant.  With some of our contracts we wish to pursue a temporary contract variation and ensure that they apply for the grant.  Suppliers believe they may not be approved for the grant and we must follow the PPN. What is the correct position?  Can schools and colleges furlough catering, cleaning and security staff if the contractor insists that the contract terms change, and the college has to or wants to take on the staff? | Please note the General Guidance above (1).  Please refer to the eligibility criteria for the [Coronavirus Job Retention Scheme](https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme). |
| 7 | We have received an invoice from one of our Catering Contractors within one of our Academies, that is looking to invoice us the equivalent of a month’s sales. Usually the majority of sales come from the Students directly. I have read the guidance available and my understanding is that contractors cannot make profits from these payments. Currently there will be no food supply costs, which is a large proportion of the costs that the sales cover. The invoicing surely should be based on the actual costs they are incurring rather than historic sales on average of three months. Further clarification by the government regarding Catering Contractors would be much appreciated. I am concerned that we are going to be invoiced large amounts that we are not in a position to pay ourselves | As below (8). |
| 8 | Our catering provider as one of the largest catering providers are having daily conversations with the cabinet office with regard to their contracts with schools. They have been in contact to inform me that they are unable to furlough their staff (as they state they are an extension of the public sector) so they will therefore be invoicing schools for food stock, employment, overheads, sundries and operational costs from Mar 20th – 30th June as a result of the PPN notice. Schools are expected to pay these invoices and there will be a process to reclaim these costs.  I have not heard from any official channels that this will be the process. Are you able to help clarify please? | *As per the published guidance on School Food Contracts below, payments should be limited to the cost of free school meals and universal infant free school meals.*  We advise that you speak to your catering provider(s) about your arrangements in response to coronavirus (COVID-19).  The Cabinet Office has published [guidance for public bodies on payment of suppliers that are at risk](https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19). Some suppliers may face risks in terms of their financial viability, ability to retain staff, and their supply chains. Public sector contracting authorities must act now to ensure that suppliers that are at risk are in a position to resume normal contract delivery once the outbreak is over.  In line with Procurement Policy Note 02/20, contracting authorities should 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. The government will continue to provide schools with their expected funding, including funding to cover free school meals and universal infant free school meals, throughout this period of closure.  You should, therefore, continue to make payments to food suppliers that are considered at risk in relation to the cost of free school meals and universal infant free school meals. This does not apply to the costs of meals usually purchased by parents for children who are not eligible for free school meals. Such payment to suppliers should be made on the basis of the previous 3 months’ invoices, and only where suppliers agree to act on an open book basis and make cost data available to the contracting authority.  The government is determined to support businesses that are affected by coronavirus (COVID-19) and has announced a [package of measures to support businesses](https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses).  [Source: DfE COVID-19 free school meals guidance for schools](https://www.gov.uk/government/publications/covid-19-free-school-meals-guidance/covid-19-free-school-meals-guidance-for-schools) |