

Guidance to NHS trusts, NHS foundation trusts and clinical commissioning groups on the Cabinet Office Procurement Policy Note PPN 02/20

20 April 2020

Summary

This guidance document is for NHS trusts, NHS foundation trusts and clinical commissioning groups (referred to here as 'NHS organisations'). It sets out how NHS organisations should interpret the Cabinet Office's PPN 02/20 issued on 20 March 2020 in connection with payment of 'at risk' suppliers to NHS organisations and how those aspects should be locally implemented. This guidance does not substitute PPN 02/20 for NHS organisations. All NHS organisations should continue to observe the full scope of PPN 02/20, but should do so alongside this guidance on the specific matters set out in more detail here.

This guidance does not replace any primary or secondary care guidance issued in relation to 2020/21 contracting and should be read in conjunction with [Revised arrangements for NHS contracting and payment during the COVID-19 pandemic](#).

Prompt payment

The NHS is an important customer to many businesses, and it is vitally important we ensure that cash flows as promptly as possible during COVID-19. Therefore, with immediate effect all NHS organisations must aim to implement the following:

- payment of all invoices within 7 days of receipt of goods and service¹
- process part payments on the undisputed elements of all invoices currently on hold
- ensure that all invoice queries are resolved within a further 7 days.

To ensure the changes to payment terms do not put unnecessary burden on government banking service and providers of financial services, we ask that all organisations:

- maximise the use of BACS/RFT payment runs where possible
- process payments early in the banking day
- use standard business processes to transact payments rather than Urgent Manual RFT, Chaps or Faster payments.

The interim financial regime introduced to support NHS organisations at this time, has been designed to ensure sufficient cash is available to the NHS to implement these changes. If any NHS organisation does not have access to sufficient cash to improve payment times, this should be escalated to regional teams.

PPN 02/20 does not in any way, shape or form, remove the normal fiduciary duties that NHS organisations as publicly funded entities operate under. This means that financial governance must be maintained. This includes the responsibility to ensure accurate record keeping, verification and authorisation processes happen/are complete before payments are made to suppliers.

As per PPN 02/20, NHS organisations should work with all suppliers to ensure business continuity is maintained wherever possible and that business continuity plans are robust and enacted. PPN 02/20, however, does not remove responsibilities from suppliers under the terms of their contracts with organisations either in the supply of services, or in the requirement to provide timely and accurate supporting information for all monies claimed as owed. Any request to vary, extend or significantly change contractual terms must be permitted by law, be with the agreement of all parties and no obligation to accept such

¹ Please note PPN 02/20 (page 6) states that the public sector must pay suppliers within 30 days under the Public Contracts Regulations 2015 (PCR) (and recommends shortening this timescale to accelerate payment). To clarify, this part of the PCR does not apply to providers of healthcare service contracts (for example, there is no statutory obligation on a CCG to pay an NHS trust under a healthcare services contract between those parties within 30 days of the NHS trust's invoice, contractual payment terms will apply), therefore, the starting point may be different to that reflected in PPN 02/20.

proposals should be inferred from the PPN. Commercial and legal advice should be sought if necessary, as it may not be permissible or desirable to amend contractual terms in all circumstances.

Prepayment

PPN 02/20 does allow for some flexibilities on the part of a contracting authority if their accounting officer deems it both necessary and appropriate. The intention behind these flexibilities is to ensure that accounting officers at either a national or local level can make strategic decisions to support key suppliers during COVID-19.

Before any flexibility is exercised by an accounting officer there must be an onus on the supplier to evidence that they have explored all other options to either mitigate costs or improve their cash flow. Central advice will be provided on clarification that should be sought from suppliers before any prepayments are agreed. It is important to note that PPN 02/20 does not create any automatic entitlement to prepayment.

In connection with any prepayment:

- It is expected that prepayments will only be appropriate in extremely limited and exceptional circumstances (see also paragraph 8 of PPN 02/20). Prepayments may be authorised by the accounting officer, against contractual values, where goods and services are expected to be supplied at contractual volumes. This may be to support an increase in supplier stock holding at the contracting authorities' request or in exceptional circumstances to provide cash support.
- Any prepayment agreed must conform to the parameters set out in PPN 02/20 in that it must not exceed 25% of the contracted value and must cease by 30 June 2020.
- These advance payments must be reconciled back to actual goods and services received and accurately recorded in the accounting records. Further cash support will not normally be provided to support these local decisions.
- Prepayments should not be authorised against contracts which contain no contractual volume commitment.
- NHS organisations should carefully consider the extent of payments (including prepayments) to be made to suppliers that are underperforming and subject to an existing improvement plan.

Payment for goods and/or services where provision is reduced or paused temporarily

The flexibilities under PPN 02/20 also extend to areas where the supply of goods and services is not expected to be maintained at pre COVID-19 levels during the period.

There will be a number of suppliers that supply goods/services used by many NHS organisations and therefore there is a requirement for national co-ordination regarding payment where goods and/or services will not be received in time or in full or provision thereof may be paused due to COVID-19. It is highly unlikely that local NHS organisations have sufficient visibility of the national market to ascertain the strategic importance of a supplier. Therefore, if suppliers contact local NHS organisations, the NHS organisation should contact england.nhsfinance-covidresponse@nhs.net for support and assistance before making any agreement.

- NHS England and NHS Improvement will ensure that, where payments are agreed (on an emergency basis), it will be on an open book basis to ensure there is not profiteering or cross subsidisation and that the supplier has taken all appropriate mitigations. Any advance payments will be at cost and will be reconciled back to actual goods and services received. The cost of goods and services not ultimately received will be recorded as losses and special payments either locally or nationally. Local organisations will be expected to support NHS England and NHS Improvement teams with reconciliations.
- Where such payments are advised by NHS England and NHS Improvement, they will be nationally funded.
- It may be entirely appropriate, at the request of the NHS organisation, for some suppliers to provide alternative goods or services as a result of COVID-19. For example, the redeployment of staff to support frontline care. If the level of resources that would normally be deployed within the standard contract are repurposed, this is acceptable under the PPN and payments should be recorded in the most appropriate manner and should not be treated as a loss or special payment where the resources are fully utilised.
- There may be some providers/suppliers operating on a 'no guaranteed volume' basis whose capacity at local level within any one system may not be deemed strategically important, but whose collective capacity, assessed across England as a whole, will be essential in the post COVID-19 period. NHS England and NHS Improvement will confirm in due course any national arrangements put in place for payments to such providers/suppliers.

Other suppliers and claims

PPN 02/20 is only one aspect of the wide-ranging support packages which have been put in place. Other suppliers requesting prepayment, payments which vary from contractual obligations, or other novel approaches, should be directed to the other sources of government support such as Coronavirus business interruption loans or the Coronavirus Job Retention scheme.

Duration and updates

This guidance remains valid for the term of the PPN. The current term expires on 30 June 2020. The measures outlined in this guidance will be continually reviewed and may be modified from time to time to reflect the emerging situation.

Questions

If you have any questions, please submit them to:
england.nhsfinance-covidresponse@nhs.net