

North Yorkshire County Council

Emergency Decision Making powers of the Chief Executive

21 April 2020

Supplier Relief due to Covid-19

Report of the Assistant Chief Executive (Legal and Democratic Services)

1.0	Purpose of report
1.1	To approve the process for considering supplier relief due to Covid-19 in accordance with the Procurement Policy Note 02/20.

2.0 Issues

- 2.1 The current outbreak of Covid-19 is having a significant impact on businesses of all sizes. The Council recognises that a number of suppliers will struggle to meet their contractual obligations and potentially put their financial viability, ability to retain staff and their supply chains at risk. The Council therefore is following Government guidance to support suppliers at risk so that they are able to cope with the current crisis and to resume normal service delivery and fulfil their contractual obligations when the outbreak is over. In addition, the council encourages businesses to seek the wider support that is available from central government which can be found at <https://www.northyorks.gov.uk/help-your-business-during-coronavirus-covid-19> : .
- 2.2 In addition, the Government has issued a Procurement Policy Note entitled PPN 02/20 which provides guidance on how the Council should consider assisting suppliers that are in difficulty. The Council has already undertaken in the short term to:
- pay small and medium suppliers instantly, subject to bank clearing times, instead of the usual 30-day period.
 - Providing free trading standards advice
 - Provide signposting advice to businesses and individuals to access the relevant Government support.
- 2.3 The PPN 02/20 provides that the Council should consider any suppliers who are **at risk** and considering giving assistance which could include:
- (a) the ability to continue to pay at usual contractual rates to maintain cash flow if even if there is a decrease of work
 - (b) consider other options not in the contract such as payment against revised/extended milestones or timescales
 - (c) interim payments

- (d) forward ordering
- (e) payment on order or payment in advance of the agreed payment
- (f) 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.

2.4 The following safeguards will be put in place to ensure that contractors are not abusing the system, namely

- (i) a group of officers will meet to review any request for supplier relief. This group will consider whether the supplier is at risk and consider the assistance to be granted. This group of officers will be called the Supply Chain Resilience Board and will be chaired by the Corporate Director - Strategic Resources [or by the Assistant Chief Executive (Legal and Democratic Services) in his absence];
- (ii) 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. This will require an analysis of the recent historic payments and an adjustment to be made to potentially remove expenses that are no longer incurred (for example petrol where journeys have not been made and other expenses which does not affect crucial supply chains). Therefore, an approach will be taken to consider what payments are to be made to take into account the variable costs that would not be incurred by the contractor and which would not have an impact on their supply chain;
- (iii) suppliers will be asked to identify in their invoices which elements of the invoice amount relates to services they are continuing to supply and which amounts are attributable to the impact of Covid-19;
- (iv) a restrictive view will be taken to suppliers who are under performing and/or subject to an existing improvement plan;
- (v) suppliers will be asked to agree and operate an open book basis this will ensure that they make available to the Council 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 the contract have been used in the manner intended;
- (vi) suppliers will not be expected to make profits on elements of the contract that are undelivered during this period and all suppliers are expected to operate with integrity. If there is any failing in this regard the Council reserves the right to take action to recover the payments made;
- (vii) it is noted under PPN 20 that 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 and where possible the Council should redeploy the capacity of those suppliers to other areas of need.

2.5 In order to ensure that there is a consistent and fair approach taken by the Council in interpreting the provisions of supplier relief under this PPN it is recommended that all relevant decisions are delegated to the Corporate Director - Strategic Resources

or Assistant Chief Executive (Legal and Democratic Services) in his absence in consultation with the Supply Chain Resilience Board. An example flowchart to show how matters will be considered to assist Contractors is attached at appendix 1.

3.0 Financial Implications

3.1 There are significant implications on the Council in regard to the impact of Covid-19. However, it is recognised that the County Council will support businesses in crisis in the ways identified in this report and will ensure that appropriate safeguards are put in place to protect public funds. If there are significant implications on any relief to be provided this will be assessed by the Corporate Director - Strategic Resources before any decision is taken. There is a risk that some of the relief is not able to be reclaimed back and this will be taken into account.

4.0 Legal Implications

4.1 The Council has the legal powers in providing the appropriate relief as identified in PPN 02/20 if these payments are purely to assist cash flow for organisations in difficulty. If there are alternative payments being suggested to assist suppliers, then these payments will need to be risk assessed by Assistant Chief Executive (Legal and Democratic Services) for state aid implications before a payment can be made.

5.0 Equalities Implications

5.1 The decision sought is to approve the process for agreeing Supplier relief in accordance with the Government Guidance and it is not considered that the process would have a negative impact on any protected characteristics as provided in the Equalities Impact Assessment Screening Form at Appendix 2.

6.0 Reasons for Recommendations

5.1 In order for the Council to assist suppliers in these difficult times it is important that an appropriate process is followed to comply with Government guidance regarding supplier relief.

<p>6.0 Recommendation</p> <p>6.1 To delegate the power to the Corporate Director - Strategic Resources [or in his absence the Assistant Chief Executive (Legal and Democratic Services)] in consultation with the Supply Chain Resilience Board to determine any decisions regarding supplier relief and to make any consequential decisions to enact that relief.</p>

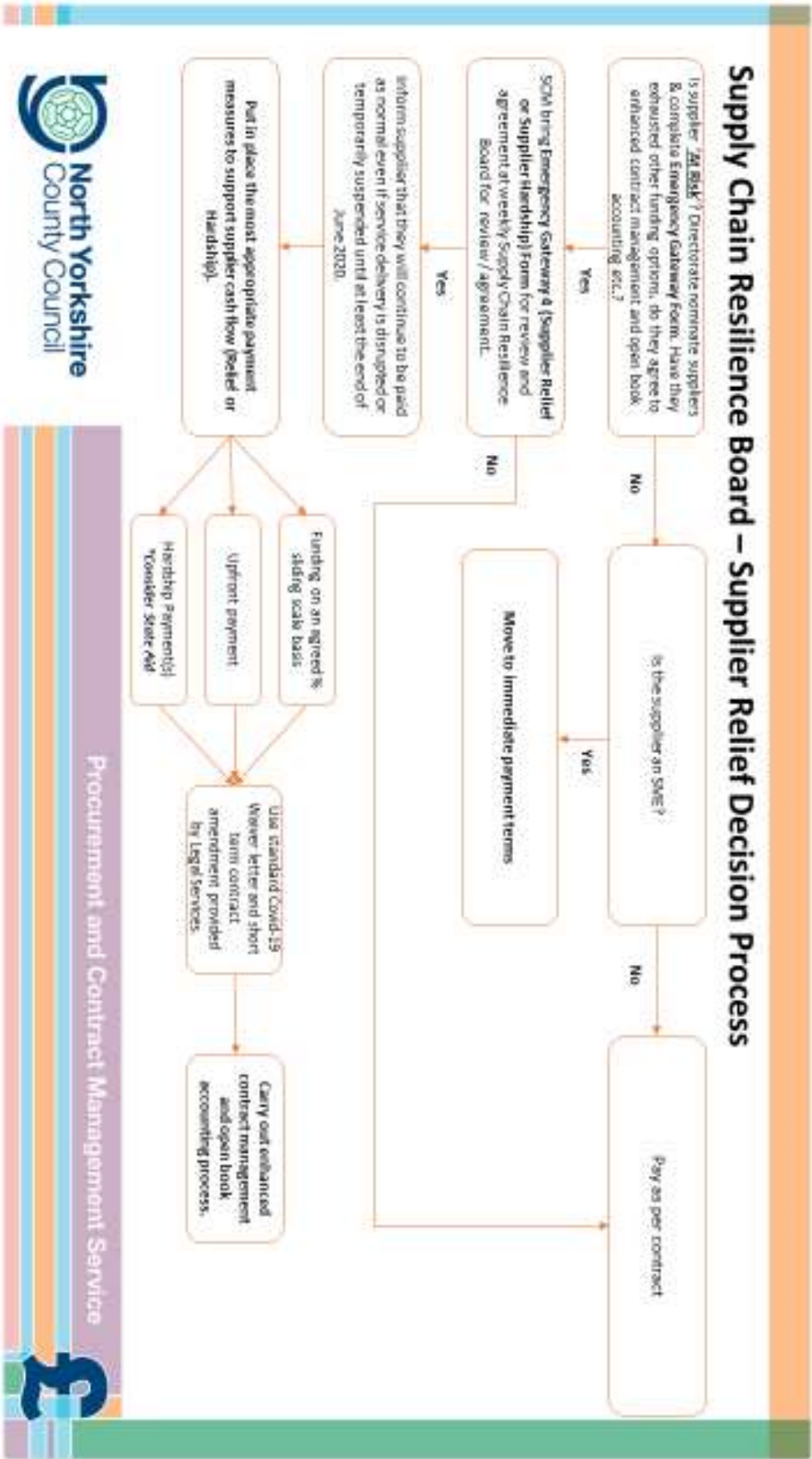
Barry Khan
Assistant Chief Executive (Legal and Democratic Services)

County Hall
Northallerton
20 April 2020

Author of report – Barry Khan
Presenter of report – Barry Khan

Background Documents – None.

Appendix 1: Example Supplier Relief Decision Process



Appendix 2. Equality Impact Assessment Screening Form

Initial equality impact assessment screening form			
This form records an equality screening process to determine the relevance of equality to a proposal, and a decision whether or not a full EIA would be appropriate or proportionate.			
Directorate	Central Services		
Service area	Finance and Legal & Democratic Services		
Proposal being screened	Process for considering supplier relief due to Covid-19		
Officer(s) carrying out screening	Barry Khan		
What are you proposing to do?	To agree a process to consider providing Supplier Relief due to Covid 19 for suppliers to the Council who are in difficulty		
Why are you proposing this? What are the desired outcomes?	This proposal considers government advice in relation to helping the supply chains to local government. The desired outcome is to enable companies to have sufficient funds and cash flow to deal with the immediate impact of Covid19 and to continue operate when the restrictions are removed.		
Does the proposal involve a significant commitment or removal of resources? Please give details.	The proposal will involve committing resources that would usually be spent on the supply chain but will enable a more flexible approach to giving out that resource to deal with the current situation.		
Impact on people with any of the following protected characteristics as defined by the Equality Act 2010, or NYCC's additional agreed characteristics As part of this assessment, please consider the following questions: <ul style="list-style-type: none"> To what extent is this service used by particular groups of people with protected characteristics? Does the proposal relate to functions that previous consultation has identified as important? Do different groups have different needs or experiences in the area the proposal relates to? If for any characteristic it is considered that there is likely to be an adverse impact or you have ticked 'Don't know/no info available', then a full EIA should be carried out where this is proportionate. You are advised to speak to your Equality rep for advice if you are in any doubt.			
Protected characteristic	Potential for adverse impact		Don't know/No info available
	Yes	No	
Age			X

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Disability				X
Sex				X
Race				X
Sexual orientation				X
Gender reassignment				X
Religion or belief				X
Pregnancy or maternity				X
Marriage or civil partnership				X
NYCC additional characteristics				
People in rural areas		X		
People on a low income		X		
Carer (unpaid family or friend)				X
Does the proposal relate to an area where there are known inequalities/probable impacts (e.g. disabled people's access to public transport)? Please give details.	The proposal is to provide greater flexibility to supply chains that are in difficulty which may be more relating to local SMEs.			
Will the proposal have a significant effect on how other organisations operate? (e.g. partners, funding criteria, etc.). Do any of these organisations support people with protected characteristics? Please explain why you have reached this conclusion.	By allowing a flexible approach to payments to suppliers, it will potentially provide a positive impact on SME businesses.			
Decision (Please tick one option)	EIA not relevant or proportionate:	X	Continue to full EIA:	
Reason for decision	The decision is to agree a process for considering requests to provide supplier relief for those organisations that are in financial difficulties. Therefore, it is not considered that this decision will have a negative impact on any protected characteristics.			
Signed (Assistant Director or equivalent)	Barry Khan			
Date	20 th April 2020.			