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Bae Abertawe
Swansea Bay University
Health Board



Meeting Date	12th November 2020	Agenda Item	5.4
Report Title	Project Bank Accounts – Capital Schemes		
Report Author	Andrew Biston, Head of Accounting & Governance		
Report Sponsor	Darren Griffiths, Interim Director of Finance		
Presented by	Andrew Biston, Head of Accounting & Governance		
Freedom of Information	Open		
Purpose of the Report	The purpose of this paper is to update the Audit Committee on progress and to seek approval for the approach to the set up and management of Project Bank Accounts.		
Key Issues	<p>The Welsh Government in its letter of 11th November 2019 to all Health Boards and Trusts set out the requirement that Project Bank Accounts will be a condition of Full Business Case or Business Justification Case approval.</p> <p>Project Bank Accounts are ‘ring-fenced bank accounts’ with Trust status that act solely as a receptacle for transferring funds from the Health Board / Trust to the Supply Chain Partners and Supply Chain Members.</p> <p>Project Bank Accounts can be single or dual authority. In line with other health boards in Wales and standing financial Instructions, the health board seeks approval to use a single authority account.</p> <p>Project Bank Accounts must comply with the UK Government’s Cabinet Office minimum requirements for Project Bank Accounts.</p> <p>Account applications forms and bank mandates must be signed as deeds and the process for signing determined by the health board’s own governance arrangements.</p> <p>A Project Bank Account is required for the Singleton Hospital cladding scheme. No other health boards currently have such accounts in place but the health board is liaising with Aneurin Bevan and Cwm Taf Health Boards who are also required to have such accounts in place in the near future.</p>		

Specific Action Required (please ✓ one only)	Information	Discussion	Assurance	Approval
Recommendations	<p>Members are asked to:</p> <ul style="list-style-type: none"> • Note the requirement to set up Project Bank Accounts in line with the requirement confirmed by Welsh Government in its letter to health boards and Trusts of 11th November 2019. • Approve the use of single authority Project Bank Accounts for all schemes requiring Project Bank Accounts within Swansea Bay University Health Board. • Approve the proposal that the Director of Finance be the officer delegated to complete the accounts application form and bank mandate for all Project Bank Accounts and that the Director of Finance be responsible for ensuring that the Project Bank Account complies with the UK Government's Cabinet Office minimum requirements for Project Bank Accounts. 			

PROJECT BANK ACCOUNTS – CAPITAL SCHEMES

1. INTRODUCTION

- 1.1. The Welsh Government in its letter of 11th November 2019 to all Health Boards and Trusts set out the requirement that Project Bank Accounts will be a condition of Full Business Case or Business Justification Case approval on all construction contracts valued at £2m (Exc VAT) which are delivered, funded or part funded by Welsh Government.
- 1.2. Guidance on the establishment and operation of Project Bank Accounts within NHS Wales has been issued by Specialist Estates Services within the NHS Wales Shared Services Partnership. Blake Morgan provided legal advice to NWSSP.
- 1.3. Project Bank Accounts have been developed in response to poor Supply Chain payment practices that persist in the construction industry. They represent best practice in providing security and certainty of payment to the Supply Chain and can deliver efficiency savings. In addition to this, they provide certainty on how much, and when, payment is made; and they build trust between supply team members, and underpin collaborative working to achieve Best Value for Money for projects delivered for Health Boards and Trusts.
- 1.4. The Project Bank Account must be operational within 3 weeks of issue of Confirmation Notice Nr.2 at commencement of Stage 4: Construction. The agreement between the Health Board or Trust and the Supply Chain Partner on the form of account, and the setting up of the account, is undertaken during Stage 3: Full Business Case Development. It will be a requirement for this detail to be set out in the FBC (or Business Justification Case) documentation submitted to Welsh Government for scrutiny.
- 1.5. The Health Board is now at the stage where it is required to set up a Project Bank Account in respect of the Singleton cladding scheme. Whilst no other health board has a Project Bank Account in place at present, schemes in Aneurin Bevan and Cwm Taf Morgannwg Health Boards are running broadly in parallel with the Swansea Bay scheme and the three health boards are working through the process at the same time sharing knowledge as it is gained.
- 1.6. The purpose of this paper is to update the Audit Committee on progress and to seek approval for the approach to the set up and management of Project Bank Accounts.

2. BACKGROUND

- 2.1 There are two different types of party involved in a Project Bank Account.

These are:

- **Trustees** – the Health Board / Trust and / or the Supply Chain Partner who have responsibility for authorising the payments to be made out of the Project Bank Account; and
- **Beneficiaries** – the Supply Chain Partner and any participating Supply Chain Members who receive monies paid out of the Project Bank Account (N.B. Any Supplier involved in the delivery of the project can be a Beneficiary)

A Project Bank Account:

- Is simply a payment mechanism
- Is simple and cost effective to set up and operate for all parties
- Can provide insolvency protection for the money been paid into the PBA
- Provides visibility over the timing and value of payments to the supply chain.
- Can be audited easily by the Health Board / Trust.
- Supports collaborative working and allows suppliers to focus on delivery

A Project Bank Account does not:

- Involve Health Board / Trust prefunding
- Cut across contractual provisions governing the preparation and submission of interim applications or the valuation, authorisation or certification of interim payments
- Take away the SCP responsibility for managing and selecting the supply chain so that the work is performed in accordance with the contract. The Health Board / Trust role is merely to confirm payment transfers from the account
- Remove statutory obligations for VAT, taxation accounting liabilities etc. from the Health Board / Trust or Suppliers
- Add any more than a minimal cost for bank charges to the project, as interest earned by the account can be used by the contractor to off-set banking fees

2.2 Project Bank Accounts are ‘ring-fenced bank accounts’ with Trust status that act solely as a receptacle for transferring funds from the Health Board / Trust to the Supply Chain Partners and Supply Chain Members. As the Project Bank Account has Trust status, monies can only be paid to the named Beneficiaries of the account e.g. Supply Chain Partners and participating Supply Chain Members. All costs of setting up a Project Bank Account rest with the Supply Chain Partner.

2.3 Contracts for NHS Building for Wales National and Regional Supply Chain Partner Frameworks include provision for the use of joint or sole Project Bank Accounts. The decision on which of these options to adopt will be determined

by both of the contracting parties and will be influenced by the internal governance arrangements of each Health Board or Trust:

- Dual Authority - joint account opened in both names;
- Single Authority– sole account

Essentially, the Single Authority approach requires that only the Supply Chain Partner is named on the bank mandate, whereas the Dual Authority approach requires the Health Board / Trust and the Supply Chain Partner to be joint signatories of the Account. The key differences between the Dual Authority and Single Authority methods are summarised in the table below:

Dual Authority	Single Authority
Health Board / Trust and Supply Chain Partner are joint account holders	Supply Chain Partner is the sole account holder.
Only the Health Board / Trust can deposit funds into the Project Bank Account	The Health Board / Trust and the Supply Chain Partner can deposit funds into the Project Bank Account
Health Board / Trust has to authorise payment to the Supply Chain	The payment detail is agreed when the SCP's application for payment is assessed and certified by the Health Board / Trust appointed Consultants. The SCP instructs the bank to make payment in line with the certification.*
If funds deposited are insufficient to pay amounts due to the Supply Chain in full, additional sums must be paid by the responsible entity outside the terms of the Project Bank Account.	In these circumstances, the SCP has the ability to top up the Project Bank Account so that the Supply Chain is paid in full
Health Board / Trust and Supply Chain Partner are joint trustees	Supply Chain Partner is the sole trustee

2.4 In line with Aneurin Bevan and Cwm Taf Morgannwg Health Boards and in accordance with Standing Financial Instructions, the health board be using the single authority bank account.

2.5 As mentioned in paragraph 1.3 above, the process of agreeing and setting up a Project Bank Account must be undertaken during Stage 3: Full Business Case Development (or Business Justification Case), and be completed prior to the submission of the Full Business Case (or Business Justification Case) to Welsh Government for approval. The table below details the set up and payment procedure required for Project Bank Accounts.

Item	Procedure	Notes
1.	At commencement of Stage 3: Full Business Case (or Business Justification Case) Development. Health Board or Trust requests completion and return of: <ul style="list-style-type: none"> - Request to set up PBA - Trust Deed - Bank Mandate 	<i>Supply Chain Partner required to complete and sign all three and return within agreed timescales– must be signed by the appropriate person e.g. Director / Company Secretary or both.</i>
2.	When forms are returned they are countersigned by the appropriate person within the Health Board or Trust.	<i>Determined by Health Board / Trusts own Governance arrangements</i>
3.	Health Board or Trust and Supply Chain Partner agree: <ul style="list-style-type: none"> - The Bank to open the Project Bank Account - Whether the account is to be a sole account or joint account. 	<i>The Project Bank Account product must comply with the Cabinet office minimum requirements. See annex 1</i> <i>The Bank does not have to be one which either Supply Chain Partner or the Health Board or Trust has an existing relationship – but, if new, due diligence checks will need to be undertaken.</i> <i>Whether a sole or joint account, the Health Board or Trust should remain involved in the decision of which bank is used.</i>
4.	Health Board or Trust and Supply Chain Partner agree the Supply Chain	<i>The Health Board or Trust should assume inclusion</i>

Item	Procedure	Notes
	Members involved in the Project Bank Account. Any known at the time of issuing Confirmation Notice 2 are joined to the Trust Deed.	<i>of all unless there are exceptions agreed with the Supply Chain Partner.</i>
5.	Any Supply Chain Members appointed after issue of Confirmation Notice 2 and who will be paid through the Project Bank Account, sign a Joining Deed when appointed. This is counter-signed by contracting parties.	<i>Joining Deed to include Supply Chain Members bank details. Supply Chain Partner adds the Supply Chain Members details to internet bank system.</i>
6.	First payment - the normal assessment of payment is made by the Supply Chain Partner and the Health Board or Trust in collaboration with their appointed Consultants. The Health Board or Trust certifies payment to the Supply Chain Partner and completes a Project Bank Account payment Authorisation form listing payments to be made from the account to the Supply Chain Partner and Supply Chain Members that month.	<i>The process of preparing and certifying monthly valuations or milestones remains unaltered by the Project Bank Account. The key change is that the main contractor also submits a breakdown setting out payments due to them and each named supplier.</i>
7.	Payments are authorised through the bank's internet banking system by designated persons within the Health Board or Trust and Supply Chain Partner organisations.	
8.	Upon clearing of funds in the Project Bank Account payment is made to all parties listed on the payment authorisation.	<i>The HBs / Trusts funds will take approximately 3 days to clear.</i>
9.	The Health Board or Trust checks payments have been made correctly.	

2.6 As can be seen from the table above, when setting up a Project Bank Account both the Health Board or Trust and Supply Chain Partner must return a completed Account Application form to the chosen bank and adhere to any due diligence requirements; complete and sign a Trust Deed, along with a

Bank Mandate and ensure that the Project Bank Account complies with the UK Government's Cabinet Office minimum requirements for the Project Bank Account. The Cabinet Office minimum requirements and examples of these documents are attached as **appendices** to this report.

- 2.7 The requirement to sign the Trust deed and bank mandate is determined by the Health Board's own governance arrangements and is it his process that the Audit Committee is asked to approve as part of this process update.
- 2.8 It is proposed that as for all other bank mandates and in line with SFI's which state that only the Director of Finance is authorised to set up bank accounts, that the account application form and bank mandate be signed by the Director of Finance and a copy lodged with both the Finance and Capital Planning Departments.
- 2.9 In addition to the requirements for the completion of the account application form, it is proposed that the Director of Finance shall ensure that the Project Bank Account meets the UK Government's Cabinet Office minimum requirements for the Project Bank Account.
- 2.10 Whilst it is not anticipated at this stage that there will be any requirement to change the processes for verification of payment certificates submitted by the main contractor, initial discussions have begun with NWSSP Accounts Payable to put in place processes to ensure that payment is made to the Project Bank Account for capital schemes which require such accounts. This process will need to be agreed before any payments are made as the same contractor could be working on capital schemes either within the same health board or across health boards where payments are required to be made to different bank accounts.

3 GOVERNANCE AND RISK ISSUES

- 3.1 As the requirement to set up Project Bank Accounts is new then it is essential that the governance arrangements for the operation of such accounts is agreed by the Audit Committee and arrangements embedded in the health board's governance arrangements. Indeed the guidance issued by Welsh Government confirms that the officer responsible for the completion and signing of forms such as the account application form and bank mandate is determined by the health boards own governance arrangements. This paper begins to address these requirement by requesting agreement form the Audit Committee to the use of single authority Project Bank Accounts and to the proposal that the Director of Finance is responsible for signing of the account application form, and bank mandate and for ensuring compliance with the UK Government's Cabinet Office minimum requirements for the Project Bank Account.
- 3.2 Further governance arrangements will be documented in the model Standing Financial Instructions which are currently being updated by a sub group of the

Directors of Finance for review by Board Secretaries and ratification and formal issue by Welsh Government.

3.3 In addition relevant financial control procedures will be updated to reflect the day to day operational requirement around the use of Project Bank Account including :

- FCP 9 – banking arrangements
- FCP 14 – non pay expenditure
- FCP 15 – capital investment, fixed asset registers and security of assets.

4 FINANCIAL IMPLICATIONS

4.1 There are no financial implications for the health board in the introduction of Project Bank Accounts as the health board will continue to make payments to the main contractor in line with the contractual timescales as is now the case. The financial implications directly affect the main contractors' relationship with its subcontractors, these implications relating mainly to cashflow. Furthermore, all costs associated with the setting up of Project bank Accounts rests with the supply chain partner (main contractor) not the health board.

5 RECOMMENDATIONS

5.1 The Audit Committee is asked to note the requirement to set up Project Bank Accounts in line with the requirement confirmed by Welsh Government in its letter to health boards and Trusts of 11th November 2019.

5.2 The Audit Committee is asked to approve the use of single authority Project bank Accounts for all schemes requiring Project Bank Accounts within Swansea Bay University Health Board.

5.3 The Audit Committee is asked to approve the proposal that the Director of Finance be the officer delegated to complete the accounts application form and bank mandate for all Project Bank Accounts and that the Director of Finance be responsible for ensuring that the Project Bank Account complies with the UK Government's Cabinet Office minimum requirements for Project Bank Accounts.

Appendices

UK Government's Cabinet Office minimum requirements for the Project Bank Account

These minimum requirements are based on recommendations made by the Government Construction Board (GCB) Fair payment user group and sets out some minimum requirements for the Project Bank Account:

1. The account needs to be linked to a Trust Deed so that the money is ring-fenced and can only operate with joint agreement of both parties.
2. The banking service provided should not materially alter the operation of the Trust Deed or the PBA.
3. To be a beneficiary of the PBA the Deed of Adherence must join the parties.
4. Dual agreement is to be required before the payment is to be made, i.e. the lead contractor / client knows that it can only act when both parties have agreed to the payment and one party can not alter the payment without the agreement of the other party.
5. The bank must be informed and acknowledge that a Trust Deed exists and that operation of the payments are governed by this Deed.
6. Transactions must be easily available for the client to view from the bank report no more than one day after payment.
7. All of the contractors and sub-contractors signed up to the PBA Trust Deed should be paid at the same time. Once authorisation has been given by the Trustees, payments are made typically made within 3-5 working days.
8. Payments from the PBA should only be able to be made to the contractor and other named supplier beneficiaries.
9. No cheque facility is to be made available on the account.
10. No overdraft facility is to be available on the account.
11. Confirmation is to be obtained from the PBA bank that monies are held in Trust and that they cannot be used to offset any other contractor/supply chain liabilities.
12. There is an obligation on the Lead Contractor to inform the client and appropriate members of the supply chain and trustees of any changes to the PBA with respect to alteration to any terms and payment authorisations.

Example Request to Open a Project Bank Account Form

The information attached to this form contains personal information and must be held, processed and transmitted in accordance with the Data Protection Act 1998

Account type

The Project Bank Account shall have trust status. The trustees will be the Employer, the Contractor and the Named Suppliers as set out in the Trust Deed, and where required the Joining Deed(s). Copies of these documents will be provided to the Bank providing the Project Bank Account.

The Project Bank Account must:

- be subject to the bank terms and conditions attached at Annex 1;
- have no overdraft facility;
- have no cheque facility;
- accept authorisation of payment from the account only where it bears a signature of an authorised representative of the Employer and a signature of an authorised representative of the Contractor; and
- allow payments from the account only to trustees who have executed the trust deed or a joining deed.

Regulatory Assurance

The Project Bank Account will be used to facilitate payments to the Contractor and Named Suppliers in respect of a construction contract between the Employer and Contractor for

_____ (the Works).

Money deposited in the account will be provided by the Employer wholly or mainly from public funds.

Application to open a bank account

We request (name of bank): _____

of (address): _____

to open a Project Bank Account in the names of:

_____ (Employer) and

_____ (Contractor).

The account name shall be:

The account shall operate in accordance with the bank terms and conditions attached.

Employer

Signed on behalf of the *Employer* on (date): _____

Signature: _____ Position¹: _____

Name of Signatory: _____

Home Address: _____

Confirmation of the identity and home address of the above signatory must be provided. These must be in the name of the person who has signed above:

Requirements for confirmation of identity and home address:

A clear photocopy of the identification page of the passport or photographic counterpart of the driving licence must be attached. This is to be certified as a true and accurate copy by the Project Manager.

A clear photocopy of the document that evidences the home address such as a utility bill showing the name and home address must be attached. This is to be certified as a true and accurate copy by the Project Manager.

¹ To be signed by a director of a limited company (authorised to do so) or partner of a partnership (authorised to do so) or senior official of public body (authorised to do so) or an individual sole trader.

Contractor

Signed on behalf of the *Contractor* on (date): _____

Signature: _____ Position²: _____

Name of Signatory: _____

Home Address: _____

Confirmation of the identity and home address of the above signatory must be provided. These must be in the name of the person who has signed above:

Requirements for confirmation of identity and home address:

A clear photocopy of the identification page of the passport or photographic counterpart of the driving licence must be attached. This is to be certified as a true and accurate copy by the Project Manager.

A clear photocopy of the document that evidences the home address such as a utility bill showing the name and home address must be attached. This is to be certified as a true and accurate copy by the Project Manager.

² To be signed by a director of a limited company (authorised to do so) or partner of a partnership (authorised to do so) or an individual sole trader.

Example Bank Mandate

[Insert the instructions as to the operation of the bank account as agreed between the account holders and the bank]

EXECUTED and DELIVERED as a DEED

Director

by **[INSERT NAME OF CLIENT]**

acting by:

Director/Secretary

EXECUTED and DELIVERED as a DEED

Director

by **[INSERT NAME OF CONTRACTOR]**

acting by:

Director/Secretary

EXECUTED and DELIVERED as a DEED

Director

by **[INSERT NAME OF SUB-CONTRACTOR]**

acting by:

Director/Secretary

Governance and Assurance		
Link to Enabling Objectives <i>(please choose)</i>	Supporting better health and wellbeing by actively promoting and empowering people to live well in resilient communities	
	Partnerships for Improving Health and Wellbeing	<input type="checkbox"/>
	Co-Production and Health Literacy	<input type="checkbox"/>
	Digitally Enabled Health and Wellbeing	<input type="checkbox"/>
	Deliver better care through excellent health and care services achieving the outcomes that matter most to people	
	Best Value Outcomes and High Quality Care	<input checked="" type="checkbox"/>
	Partnerships for Care	<input type="checkbox"/>
	Excellent Staff	<input checked="" type="checkbox"/>
	Digitally Enabled Care	<input type="checkbox"/>
	Outstanding Research, Innovation, Education and Learning	<input type="checkbox"/>
Health and Care Standards		
<i>(please choose)</i>	Staying Healthy	<input checked="" type="checkbox"/>
	Safe Care	<input checked="" type="checkbox"/>
	Effective Care	<input checked="" type="checkbox"/>
	Dignified Care	<input checked="" type="checkbox"/>
	Timely Care	<input checked="" type="checkbox"/>
	Individual Care	<input checked="" type="checkbox"/>
	Staff and Resources	<input checked="" type="checkbox"/>
Quality, Safety and Patient Experience		
<p>The introduction of Project bank Accounts is designed to improve the quality and timing of payments to subcontractors through</p> <ul style="list-style-type: none"> • Accelerated payments through the supply chain • Supply chain spend and payment flows are transparent and provide a mechanism to measure payment timescales down the supply chain • Payment terms through the supply chain are determined by the Health Board / Trust rather than SCP further up the supply chain • Risks & costs linked to payment delays are mitigated through faster payment • Risk of supply chain failure is reduced as a result of improved cash flow • Supply chain achieve cost benefits resulting from early and certain payments • Provide a mechanism to measure payment timescales down the supply chain • All monies paid into the account are secure • Linked to a Trust Deed and provides insolvency protection for the supply chain 		
Financial Implications		
The financial implications are detailed in the main body of the report.		
Legal Implications (including equality and diversity assessment)		
The legal implications are detailed in the main body of the report.		

Staffing Implications	
Whilst there are no direct staffing implications associated with this report it must be noted that the introduction of Project Bank Accounts may result in additional work for both the capital planning and finance teams.	
Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)	
Project Bank Accounts represent best practice in providing security and certainty of payment to the Supply Chain and can deliver efficiency savings. In addition to this, they provide certainty on how much, and when, payment is made; and they build trust between supply team members, and underpin collaborative working to achieve Best Value for Money for projects delivered for Health Boards and Trusts.	
Report History	This is the first report to the Audit Committee in respect of Project Bank Accounts.
Appendices	The appendices provide the detail of the UK Government's Cabinet Office minimum requirements for the Project Bank Accounts as well as model templates for the account application form and bank mandate.