Project Bank Account – Masterclass
19 August 2020

Welcome

Steve Baker
Chair of the LGA Construction Steering Group

Project Bank Account Masterclass Agenda

1. Welcome and introduction **Steve Baker – Chair of the LGA Construction Steering Group**
2. Fair payment – creating a sustainable supply chain **David Hancock, IPA's Construction Director**
3. The Project Bank Account – What is a PBA and how does it work **Rob Taylor Chair of the Government Construction Fair Payment Working Group**
4. PBAs in action – case studies • **East Riding of Yorkshire Council – Mark Ives** • **Environment Agency – Andrew Osborne** • **Welsh Government – Brendan Burke**
5. Q&A to the presenters – all questions will receive a written response **chaired by Steve Baker**
6. Close

LGA Construction Steering group

- **A Group of Council Officers representing all LGA regions who assist the LGA with all construction related issues including publications**
  - LGA National Construction Strategy Category https://www.local.gov.uk/sites/default/files/documents/Construction%20Category%20Strategy%20Final.pdf
  - LGA Effective Construction Frameworks 2020
  - Best Practice Case Studies

- **Attendance on national working groups such as**
  - Grenfell Response Group
  - BSI PAS91 Pre Qualification Questionnaire
  - Various Cabinet Office Groups

LGA Construction Steering group

- **Arrange an Annual Conference in February**

- **Provide best practice advice, webinars and meet industry groups to discuss a range of topics that recently included**
  - COVID-19
  - Brexit
  - Procurement Policy Notes
  - Fair Payments/ Project Bank Accounts/ Retentions
  - Minimum Standards
  - Health & Safety e.g. CLOCS
  - Cartels
  - BIM
  - UK Steel Charter
  - Modern Methods of Construction
  - Carbon Reduction

Fair payment - creating a sustainable supply chain

David Hancock
Construction Director – Infrastructure & Projects Authority, Cabinet Office

Government position

- **Government is required to pay promptly**
  - payment of all valid and undisputed invoices within 30 days
  - Public Contracts Regulations 2015
- **Government is committed to fair payment**
  - encouraging actions to reduce risks to small businesses, including use of PBAs
  - ensuring promptness and certainty around payment
- **Government departments have committed to use PBAs on their construction projects** unless there are compelling reasons not to do so
- **PBAs are suitable for a very wide range of project values** – it depends on the size and value of the supply chain

Local Government Association

Payment practices in the construction sector

Infrastructure and Projects Authority

- **Sector characteristics**
- **High fragmentation** - 99.9% of UK construction firms are SMEs, 83% employing no more than one person.
- **Low margins** - average pre-tax profit margins for the ten largest tier one contractors sits at - 0.5%, however figure is highly variable

Poor practices

Suppliers not being paid fairly or on time

- use of lengthy payment terms
- delaying payment of invoices

And added to this the impact of COVID-19 - this makes it even more important to act responsibly and fairly to support the economy

IMPACT

Smaller companies down the supply chain and their future growth, investment and cashflow

In recent years the number of construction firms falling into administration has risen significantly

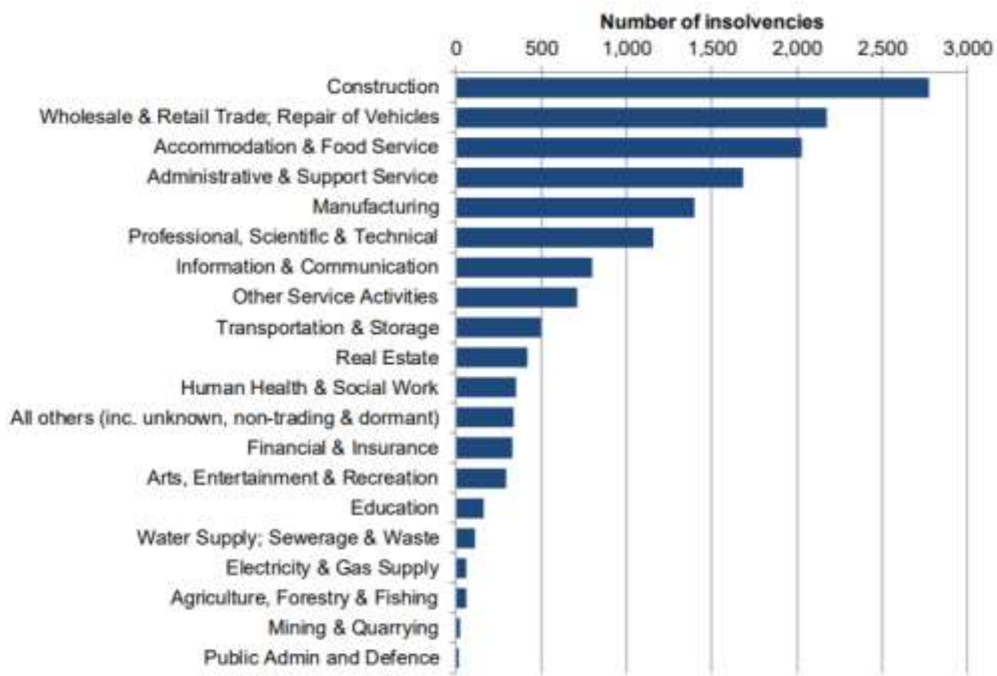
Local Government Association

Construction remains the industry grouping with highest number of insolvencies

Infrastructure and Projects Authority

The construction industry had the highest number of insolvencies in the 12 months ending Q2 2020 - 2,778

The construction industry has had the highest level of insolvencies of any grouping in almost every quarter since Q1 2018.



Sources: Insolvency Service (compulsory liquidations only); Companies House (all other insolvency types)

Wider impact of poor payment practices

Without positive cashflow businesses are unable to innovate, for example use modern methods of construction

Late payment causes stress and mental health issues – *its a big worry if workers wages, bills and mortgages can't be paid*

<u>The vision</u>

To ensure that the industry is no longer characterised by late payment - and PBAs can help us to deliver the vision

The Project Bank Account

Rob Taylor
Chair of the Fair Payment Working Group

Project Bank Accounts

There are two types of Project Bank Accounts:

- The Dual authority, requires the Client and the Contractor to both sign the Bank Mandate.

- The Single authority, this only requires the Contractor to sign the Bank Mandate.

- Banks offering PBA products - Lloyds, Barclays, RBS, Natwest, BNP Paribas Bank, SEB Bank (Skandinaviska Enskilda Banken) and Danske Bank

- Most construction contracts include the provision to introduce PBAs.

Project Bank Accounts

- **PBAs serve three primary objectives**:

- the PBA assets are protected from tier 1 insolvencies (now more relevant than ever given the financial position of many of the UK contractor national contractors);

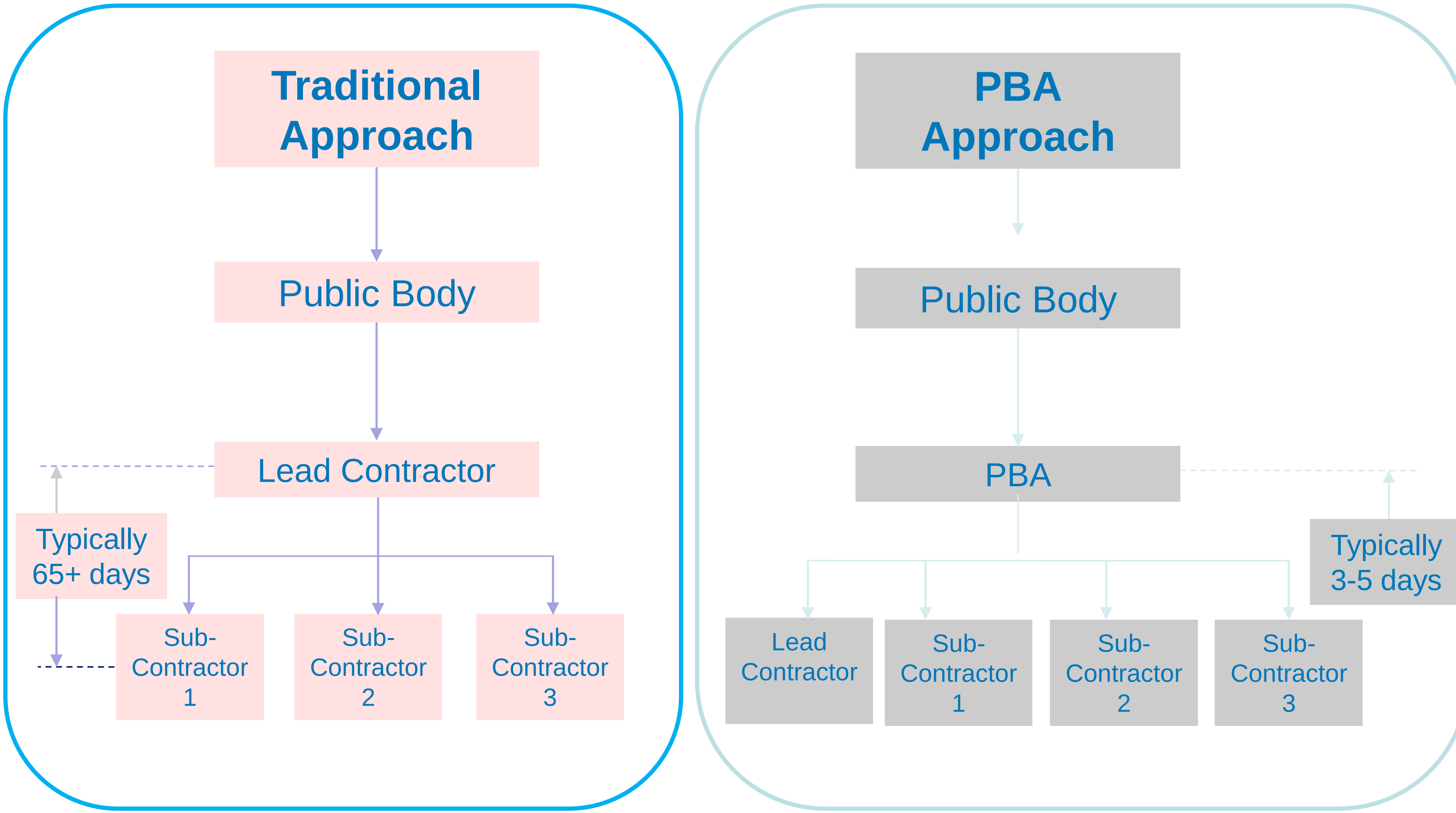
- they ensure regular payments within timescales that are much shorter than those applying where cash has to cascade down through different contracting layers.

- they reduce payment timing disputes and support greater trust and, thus, more collaboration.

Project Bank Accounts

- **What is a Project Bank Account?**
  - **Ring-fenced**; electronic bank account, from which payments are made directly and simultaneously by a client to members of his supply chain.
  - **Accelerates payment;** the tier 1 and 2s usually being paid within 3-5 working days of the Client paying the certified value of the monthly assessment into the PBA.
  - Has **Trust Status;** this secures the funds in it and can only be paid to the beneficiaries – the supply chain members are added either through the Trust Deed or Joining Deed (Deed of Adherence).

Project Bank Accounts



Fair Payment - Project Bank Accounts

Members of the supply chain can be added to the PBA through the Joining Deed or Deed of Adherence.

Water and Environment Management Framework

Schedule 20 page 3 of 7

JOINING DEED

This agreement is made between the Employer, the Contractor and ....(the Additional Subcontractor).

Background

Terms in this deed have the meanings given to them in the contract between .... and .... for ....(the works) and have been applied into the contracts between the Contractor and Subcontractors to give then affect.

The Employer and the Contractor have entered into a contract for the works. The Subcontractor have entered into contracts with the Contractor in connection with the works.

The Employer and the Contractor have established a Project Bank Account to make provision for payment to the Contractor and the Subcontractor.

Agreement

The Employer, the Contractor and the Subcontractor have entered into a deed as set out in Annex 1 (the Trust Deed), and have agreed that the Additional Subcontractor may join that deed.

The Parties to this deed agree that

- the Additional Subcontractor becomes a party to the Trust Deed from the date set out below.
- this deed is subject to English law.
- the benefits under this deed may not be assigned.
- disputes or differences relating to this Joining Deed are to be referred to the English Courts.

Executed as a deed on ....

by

.... (Employer)

.... (Contractor)

.... (Additional Subcontractor)

Project Bank Accounts

Compelling Reason Form

Annex A1

COMPELLING REASON REPORT FOR NOT USING A PROJECT BANK ACCOUNT

Project Officer Contact Details

Name: ____________________

Email: ____________________

Tel No: ____________________

Project Details:

If this covers a portfolio or group of projects please set this out. Attach any supporting evidence, eg where a sub-contractor has opted out from being a beneficiary of the Project Bank Account

The compelling reason for [works] not having a Project Bank Account in place.

Reason:

Name: ____________________

Role: ____________________

Signature: ____________________ **Date:** __________

A copy of this report should be sent to the Fair Payment Working Group care of the IPA Construction Team at - governmentconstructionteam@ipa.gov.uk

PBAs in action – Case Study

Mark Ives
East Riding of Yorkshire Council
YORhub Programme Manager

Why a Pilot scheme was considered
The size of the problem

- At height of the last recession 10 sub-contractors were failing every day
- Almost 1 in 2 failing due to payment problems
- In 2010 Cabinet Office analysis of top 10 construction companies found average number of days to pay their suppliers was 64 days
- More recent declarations from the top 20 construction companies indicate an average of 47 days
- However many subcontractors are recording 60+ days as standard and can be as high as 100
- Limited bank lending to offset payment delays > making situation worse
- Poor payment affects credit rating > making borrowing more expensive

Increased Interest in Fair Payment

Small contractors have 15% of turnover tied-up in late payments

Dozen top contractors owed £1bn in retentions

project bank accounts will force margin rises

PAID

Invoice

Are councils paying promptly?

Contractors suffer at hands of cowboy clients

Carillion: why we need project bank accounts

Carillion crash exposes "toothless" Prompt Payment Code

What a Project Bank Account doesn't do

- It does not involve client prefunding
- It does not cut across contractual provisions governing the preparation and submission of interim applications or the valuation, authorisation or certification of interim payments
- It does not take away the lead contractor's responsibility for managing the supply chain so that the work is performed in accordance with the contract

Does it Work? - A164 Case Study

Cabinet Office claims up to 2.5% savings can be made using PBAs, however further analysis against elements we could benchmark is shown below:

Supply Chain Benefit	1.43% of the sub contract package value
Main contractor dis-benefit	0.26% of the sub contract package value
Administrative Cost	0.12% of the sub contract package value
Client Net Benefit	1.05% of the subcontract package value (equivalent to 0.84% on Project Value)
Claimed overall saving	**2.5%**

A164 Case Study – Tender Breakdown

Bulk of the works carried out by the main contractor as shown below

Sub contractor packages account for 1/3rd of the contract value

Savings offered = £35,787 which equates to 0.43% of Project Value or 1.3% of the total subcontractor package

Sub Contractor Packages	2.786m
Labour	0.717m
Plant	0.662m
Materials	1.897m
Prelims & Supervision	1.455m
Fee/Risk/Other	0.838m
Tender Total	**8.358m**

A164 Case Study - Sub Contract Packages

10 Sub-contractor packages,

6 of which offered savings but accounted for 92% of the sub contractors total package,

Package	Final Value	Saving Offered	%age Saving
Surfacing	1.743m	17,086	1%
Fencing	22,943	583	2.5%
Landscaping	88,114	1,380	1.5%
Traffic Signs	170,311	2,593	1.5%
Street Lighting	515,553	13,815	2.6%
High Friction Surfacing	28,402	292	1%
	2,568,323	**35.7k saving**	**Av. 1.6%**

A164 Case Study – Admin Costs

- No charge to set up PBA, ERYC and the Contractor use same banking group, ERYC set up and managed the account
- Payments up to £100k cost 35p, Payments over £100k cost £10 – (approx. £1300)
- Finance staff charges estimated at £200
- No interest received on money in account and no bank charges incurred
- **Council administration costs equate to 0.05% of total sub contractor package value**

A164 Case Study - Summary

- Alteration made to standard NEC clause, ERYC responsible for the account set up and administration
- Significant experience gained by all parties as to the operation of PBA
- ERYC PBA Protocol Produced – will be used on projects of above £5m and 9 months in duration – currently being reviewed
- Has now been used on further major projects
- Have provided information to other framework users, for university research and to the Fair Payment Working Group
- Benefits are not just financial, assisting in the management contractors and protection of the supply chain

PBAs Dispelling the Myths

Including a PBA has a significant effect on the payment terms in a contract	FALSE
PBAs are expensive to set up and require additional admin staff	FALSE
Contractors claim it takes months to set up a PBA	FALSE
Contractors will charge extra to train their staff on how to use PBA	FALSE
We don’t need a PBA as the main contractor complies with the fair payment charter	FALSE
External funding bodies do not like PBAs	FALSE
Subcontractors would rather PBAs are not used	FALSE
Contractors do not like PBAs as they effect their control of cash flow	TRUE

PBAs in action – case study

Lincoln Flood Defence
Andrew Usborne, Environment Agency

Lincoln Flood Defence Works

- Refurbishment of flood defences in Lincoln
- 7 separate walls
- 3 separate sluices involving 6 new gates
- 5 Recovery Projects from 2019/20 flooding event
- Foss Bank Sheet piled wall
- Working closely with
  - Landowners
  - Canal and River Trust
  - Network Rail

Lincoln Flood Defence Works

- JBA Bentley
- Bank used – HSBC, single authority PBA
- Contract value - £4.5 million
- Major sub contractors signed up to be paid through the PBA
- Total value of sub-contractors being paid through the PBA - £2.7 million
- Early issues now been streamlined
- Good savings for early payment

Lincoln Flood Defence Works

Testimonials

- *JBA Bentley Limited (JBAB) have used Project Bank Accounts (PBAs) extensively on its Asset Delivery Projects awarded under the Water and Environmental Management (WEM) Framework with the EA since its commencement in 2013. On turnover of £130M since the start of the WEM Framework, JBAB have seen that PBAs can greatly improve cashflow to both the main contractor and its supply chain which assists in building sustainable and lasting relationships, improving cashflow and encouraging competitive pricing.*

Lincoln Flood Defence Works

Testimonials

- *These benefits have particularly been noted on our WEM Lincoln Defences project (value £4.5M) which is currently in delivery. The scope of this project includes the refurbishment and improvement of existing flood defences in the city where a total value of £2.25M (96% of our subcontract turnover) has been provided through access to a PBA.*
- *JBAB's experience of PBAs on public sector construction projects such as WEM has been very positive and JBAB would promote the continued use of them for main contractors and the wider supply chain.*

Project Bank Accounts in Wales

Brendan Burke
Commercial & Procurement Directorate
Value Wales – Procurement Policy
Welsh Government

Project Bank Accounts in Wales

- PBA Policy **1 January 2018**

  Applies to **all Welsh Government (WG) contracts valued at +£2m(*Net)**

  *****_£2m Net, excluding VAT, insurance and other costs / overheads, preliminary / design stage costs_.

  Where:

  a) **WG is the client** (Delivered directly by or on behalf of WG Departments)

  b) **WG can apply conditions of funding** (Part or Grant funded e.g. 21st CS)

    - PBAs now a condition of WG funding in major infrastructure programmes
      - 21st Century Schools
      - NHS Wales capital investment
      - Transport for Wales

- **Progress to date**: June 2020 - Pipeline of 43 projects worth £873.8 million

Main features of the PBA policy

Exemptions

a) Contracts / projects valued at less than £2m Net

b) Projects / Contracts shorter than 6 months

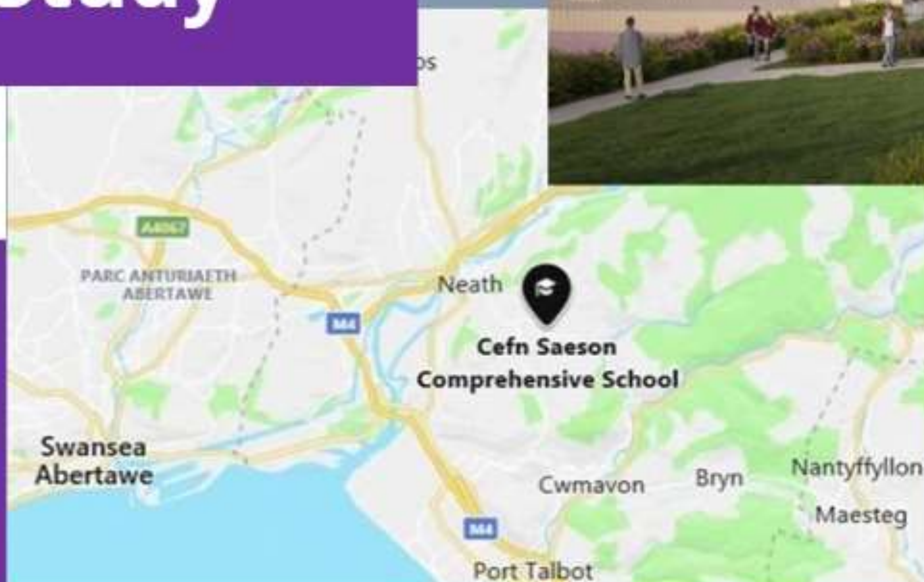
c) If the successful bidder (i.e. Main contractor) gives a firm undertaking to self-deliver and/or to use subcontractors from within the parent company to which the contractor also belongs, such that either one or a combination of the above conditions covers over 75% of the main contract award value.

‘Compelling reasons’

- Where ‘compelling reasons’ are identified not to apply a PBA.
  In such cases a decision report detailing those reasons must be completed and filed to allow for audit.

Cefn Saeson Case Study


(Source: Morgan Sindall)



Project title:
Ysgol Cefn Saeson, secondary school new build for 916 pupils

Project value:	£29 million
Project duration:	120 weeks (2 years, 4 months)
Client:	Neath Port Talbot County Borough Council
Account type:	Single account with Lloyds Bank

Main Contractor

Morgan Sindall Ltd

Subcontractors

"It is the quickest we have ever been paid by any Main Contractor and it gives us the certainty we need to invest back into the company"

Rhydian Thomas
Ian Thomas Construction
(Groundworks contractor)

Steven Sharp
Shufflebottom Limited
(Structural contractor)

(Source: Morgan Sindall)

Main Contractor

Morgan Sindall Ltd

Subcontractors

Rhydian Thomas
Ian Thomas Construction
(Groundworks contractor)

Steven Sharp
Shufflebottom Limited
(Structural contractor)

"There is no difference in what needs to be done on a monthly basis in terms of applying for payment and the shortened payment terms have taken the strain off companies like us. It helped us with having the capital available sooner to make decisions and have increased options in terms of production and outputs in the factory which is also leading to improved time frames to get the steel to site."

(Source: Morgan Sindall)

Main Contractor

Morgan Sindall Ltd

"We have established that there is no greater administrative work and people are receiving money quicker. We genuinely believe this is boosting performances of subcontractors across the site."

"We have had a few conversations with subcontractors surrounding the COVID-19 issues and the fear of this disrupting payments or even worse. The PBA really has provided our supply chain at Cefn Saeson with assurance and a level of certainty for them to carry on delivering on site, safe in the knowledge that their payments will not be affected and their business will not come under further strain, as the funds will always be made available through the PBA facility."

"As Morgan Sindall bank with Lloyds we were able to absorb any banking cost as part of our corporate agreement (so ultimately no cost), however normal bank charges still applied e.g. fee for CHAPS."

Rhydian Thomas
Ian Thomas Construction
(Groundworks contractor)

Steven Sharp
Shufflebottom Limited
(Structural contractor)

(Source: Morgan Sindall)

Questions
&
Close

Steve Baker
Chair of the LGA Construction Steering Group