

## PFCC Decision Report

**Report reference number:** 083/2022

**Classification:** Not protectively marked

**Title of report:** Amendments to the PFCC's Standard Grant Agreement

**Area of county / stakeholders affected:** All grant recipients, countywide

**Report by:** Pippa Brent-Isherwood (Chief Executive and Monitoring Officer)

**Chief Officer:** Pippa Brent-Isherwood (Chief Executive and Monitoring Officer)

**Date of report:** 21 June 2022

**Enquiries to:** Pippa Brent-Isherwood (Chief Executive and Monitoring Officer)

### 1. Executive Summary

Following recent queries and requests for amendments to the PFCC's standard grant agreement from various grant recipients, along with concerns expressed by the PFCC, the PFCC's legal advisors have been engaged to carry out a review of the template document and to propose any recommended changes to it. This report sets out the outcomes of this work and proposes an updated standard grant agreement for adoption by the PFCC.

### 2. Recommendations

That the PFCC adopts that updated standard grant agreement attached at Appendix 2.

### 3. Background to the Proposal

Following recent queries and requests for amendments to the PFCC's standard grant agreement from various grant recipients, along with concerns expressed by the PFCC (particularly relating to the requirement for grant recipients to credit the PFCC as a

funder in associated publicity), the PFCC's legal advisors have been engaged to carry out a review of the template document and to propose any recommended changes to it.

In summary, the review found that the existing standard grant agreement fulfils its purpose, in as much as it specifies the grant that will be paid and the purpose(s) to which it is to be put and requires the grant to be applied to that purpose with a right to recover or suspend the grant in the event of breach. The PFCC has broad termination rights on which the obligation to continue funding comes to an end, and also has audit rights, whilst the recipient has an obligation to retain certain information. The recipient is also required to give various warranties confirming that it has the necessary expertise to deliver the project, and will comply with health and safety requirements, relevant legislation and statutory guidance etc. However, updates are proposed in respect of several areas in order to improve the protections for the PFCC.

#### **4. Proposal and Associated Benefits**

The proposed changes may be summarised as follows:

- Clause 1 has been updated to define the term “project”.
- Clause 1 permits the PFCC to terminate the grant agreement if an “Insolvency Event” occurs. The definition of such an event has been broadened to include circumstances whereby the recipient suspends or ceases (or threatens to suspend or cease) operating all or a substantial part of its business, or whereby the recipient becomes unable to pay its debts as they fall due. An additional right has also been included at clause 15.2 to terminate where there is a significant deterioration in the recipient's financial position.
- Clause 2 has been renamed “Purpose of Grant” and has been updated to include an explicit statement that the recipient must use the grant only for the delivery of the project in accordance with the agreed purpose. A clause has also been included to confirm that the recipient must not, without the prior written consent of the PFCC:
  - Make any material changes to the project
  - Use any portion of the grant for any purpose or activity outside the project
  - Purchase buildings or land, or
  - Spend any of the grant on liabilities incurred before the grant period or to pay for any expenditure commitments entered into before the grant period.
- The standard agreement now explicitly confirms that:
  - Liabilities arising at the end of the project (including any redundancy liabilities in respect of staff employed by the recipient to deliver the project) must be managed and paid for by the recipient, and there will be no further funding made available by the PFCC for this purpose, and
  - The recipient is responsible for the provision of all equipment and materials required to carry out the project, and there will be no further funding made available by the PFCC for this purpose.
- Clause 10 has been updated to provide additional circumstances in which the PFCC will have rights to reduce, suspend or withhold grant payments, including where:

- The recipient does not start delivering the project within an agreed longstop date (e.g. within three months of the agreed start date) and does not give the PFCC a reasonable explanation for the delay, or
  - The PFCC considers that the recipient has not made satisfactory progress in delivering the project, or
  - The recipient obtains duplicate funding from a third party for the project.
- In relation to publicity, clauses have been added to:
  - Require the recipient to stop using the PFCC's logo when the grant agreement terminates
  - Require the recipient to return or destroy materials containing intellectual property rights as requested by the PFCC when the grant agreement terminates.
  - Prevent the recipient from publishing written material relating to the project or the PFCC without their prior written consent.
  - Require the recipient to comply with any reasonable branding guidelines when using the PFCC's name and logo.
  - Require the recipient to comply with reasonable requests from the PFCC to provide reports, photographs, case studies etc where requested to assist the PFCC in their promotional activities.
- Obligations have been included within clause 12 for the recipient to maintain employer's liability insurance (where relevant) as well as public liability insurance. The recipient must now also maintain its insurance policies with a reputable insurance company and provide evidence of insurance to the PFCC on request. For a smaller recipient body, the PFCC may wish to use clause 12.1 only. This requires the recipient to hold insurance in relation to all relevant risks. Clause 12.2 can be included where the PFCC wishes to specify specific insurance levels and can be tailored accordingly. Of the levels specified, it should be noted that £5 million is the minimum legal requirement for employer's liability insurance.
- Clause 14 now provides that:
  - All intellectual property created prior to the grant ("Background IP") remains with its originator and that Background IP is licenced to the other party to the extent necessary to make use of the outputs of the projects
  - Intellectual property created in the course of the project ("Foreground IP") by the recipient is the property of the recipient ("Recipient Foreground IP"), while Foreground IP created by the PFCC alone or jointly with the recipient in the course of the project is the property of the PFCC ("PFCC Foreground IP")
  - Recipient Foreground IP is licensed to the PFCC on terms that the PFCC can do with it as it will; the only limitation is that the PFCC will also be able to use that IP so the PFCC would not be able to develop the IP on an exclusive basis. If the PFCC wanted to do this, it would need to commission the recipient to create that IP under a services contract. In the context of a grant, the recipient will need to be able to use that IP for its own purposes.
  - PFCC Foreground IP is licensed to the Recipient on a royalty free basis for use in relation to the 'Purpose' of the project only.
- Clause 15 now confirms the duration of the grant agreement, and the rights and obligations in the agreement that will survive its expiry or termination.

- Restrictions have been added relating to third party funding, which require the recipient to be transparent about other funding it receives for the project.

The proposed amendments and additions provide greater detail and clarity to grant recipients and improve the protections for the PFCC by:

- Giving the PFCC a broader right to terminate a funding agreement where the recipient is experiencing financial difficulties.
- Giving the PFCC a recourse for breach of contract if the grant is misused.
- Making it easier for the PFCC to ensure compliance.
- Ensuring that there is no duplicate funding.
- Confirming the PFCC's rights to access the outcomes of any grant funded work and ensuring that any intellectual property rights in materials developed by the PFCC before or during the grant period in relation to the project remain the property of the PFCC.

The proposed updated agreement is attached in tracked and clean copy at Appendices 1 and 2 respectively.

## **5. Options Analysis**

The PFCC's legal advisors have confirmed that the standard grant agreement is acceptable as currently drafted. The PFCC could therefore decide to continue to utilise it unaltered. However, the amendments and additions summarised above and incorporated into the documents attached at Appendices 1 and 2 are designed to improve the protections for the PFCC and are therefore recommended.

As set out above, some of the clauses have been drafted in a manner that permits them to be tailored to the size and scope of the recipient. Any of the clauses in the document proposed for adoption at Appendix 2 may be varied in consultation / negotiation with any individual grant recipient, however it is recommended that advice is taken from the statutory officers, and possibly also the PFCC's legal advisors, before doing so.

## **6. Consultation and Engagement**

This work has arisen as a result of feedback received from grant recipients and has been undertaken on the PFCC's behalf by their legal advisors.

## **7. Strategic Links**

The Police and Crime Plan sets out how the PFCC will commission and grant fund services to help deliver the Plan and their other statutory duties. The PFCC is able to allocate crime and disorder reduction grants in order to secure reductions in crime and disorder, to support victims, and to work with partners to create a joined-up response to local problems.

## **8. Police operational implications**

There are no operational implications for Essex Police arising directly from this report.

## **9. Financial implications**

The legal costs (exclusive of VAT) for the review of the grant agreement currently total approximately £3,250.

## **10. Legal implications**

Some of the amendments and additions proposed reflect the requirements of English law (e.g. the obligation to hold employer's liability insurance, where relevant), whilst others are matters for the PFCC's discretion.

## **11. Staffing implications**

There are no staffing implications for the PFCC arising directly from this report.

## **12. Equality, Diversity and Inclusion implications**

Clause 9.1.4 has been updated to define the Public Sector Equality Duty to which the PFCC is subject.

## **13. Risks and Mitigations**

Through its grant agreement, the PFCC is making a grant and it is therefore not unreasonable that any loss it may suffer as a result is covered in full by the grantee. For this reason, the grantee's liability is not limited in the document proposed for adoption at Appendix 2.

## **14. Governance Boards**

The proposed amendments to the PFCC's standard grant agreement have been discussed at the Management Team meeting on 18 May 2022 and at the Senior Management Team meeting on 21 June 2022.

## **15. Links to Future Plans**

If adopted, the updated standard grant agreement will remain in use until any circumstances give rise to a further review.

## **16. Background Papers and Appendices**

Appendix 1 – Template Grant Agreement (comparison copy) 17062022

Appendix 2 - Template Grant Agreement (clean copy) 17062022

**Report Approval**

The report will be signed off by the PFCC's Chief Executive and Chief Finance Officer prior to review and sign off by the PFCC / DPFCC.

Chief Executive / M.O. Sign: 

Print: P. Brent-Isherwood

Date: 21 June 2022

Chief Finance Officer Sign: 

Print: Janet Perry

Date: 26 July 2022

**Publication**

Is the report for publication? YES  NO

If 'NO', please give reasons for non-publication (Where relevant, cite the security classification of the document(s). State 'None' if applicable)

None

If the report is not for publication, the Chief Executive will decide if and how the public can be informed of the decision.

**Redaction**

If the report is for publication, is redaction required:

1. Of Decision Sheet? YES  NO  2. Of Appendix? YES  NO

If 'YES', please provide details of required redaction:

N/A

Date redaction carried out: .....

**Chief Finance Officer / Chief Executive Sign Off – for Redactions only**

If redaction is required, the Treasurer or Chief Executive is to sign off that redaction has been completed.

Sign: .....

Print: .....

**Chief Executive / Chief Finance Officer**

**Decision and Final Sign Off**

I agree the recommendations to this report:

Sign: 

Print: Roger Hirst

**PFCC**

**Date signed:** 12th September 2022

I do not agree the recommendations to this report because:

.....  
.....  
.....

Sign:

Print:

**PFCC/Deputy PFCC**

**Date signed:**