**NHSBSA Provider Assurance Dental**

**National Dental Contract Management Service**

**Force Majeure/Exceptional Events**

**Additional guidance for 2020/21**

**Force Majeure/Exceptional Events**

In accordance with the Policy Book for Primary Dental Services, occasionally there are unforeseen circumstances that a contractor may experience which may have a detrimental effect on the delivery of contract activity.

When this happens, in line with the dental policy book*, Contractors are required under the terms of their contracts to promptly notify the Commissioner (which for the purposes of this policy is considered to be within 5 working days) of a force majeure event, detailing the cause or event, what service provision is being delayed or prevented and what action(s) within their power they are taking in order to comply with the terms of the contract as fully and promptly as possible.* Contractors must notify their Regional Teams (RTs) via the completion of a preliminary notice of force majeure event (dental policy document annex 84 .

It is important to note that the payment policy for 2020/21 has been designed around providing a safe level of patient numbers in practice, to accommodate an increase infection prevention and control and social distancing guidance, income protection, and stability in response to the service disruption experienced by practices nationally as a result of the pandemic.  To a large degree, this has removed any need to claim force majeure, as NHS England and NHS Improvement have already reduced the performance requirements and made payments exceeding what would strictly be payable under the contract terms otherwise.

To be considered for further relief for inability to meet even the reduced requirements, would require a contractor to demonstrate that it has been impacted in a specific way over and above the impact that the pandemic has had across the wider contractor group generally.

Some possibilities have been clearly listed in the guidance; the list is not exhaustive.

* Covid-19 outbreak forcing the practice to close, as advised by NHS Test and Trace or a local public health team;
* Staff shortages due to individual members of staff being advised to self-isolate or shield;
* Covid-19 causing disruption to supply chains (PPE, consumables, materials); and
* Delays caused by implementing Covid-19 specific infection prevention and control guidance where contractors had plans that were disrupted by supplier issues.

**Force Majeure/Exceptional Events Operational Workflow**

PAD CW caseworker to use the interim YE data to confirm if the contract has delivered 96% or more of their contracted activity.

PAD CW caseworker to use the interim YE data to confirm if the contract has delivered 96% or more of their TCA?

Following an in-year notification by a contractor of an FM event, RT to identify contracts that may require a full application to be sent during YE categorisation and amend the contract category to **Cat 2 – Force Majeure o/s**

Decision to accept the application with the additional supporting evidence

Dispute escalated by PAD to RT for formal Stage 1 local resolution. A history of contact and any additional evidence supplied by the contractor sent for further consideration.

Dispute received within specified timeframe

Rejected

Accepted

>96%

**NFA** – FM no longer required as the contractor has been able to make up any shortfall in year.

Finalrejection letter sent, including rationale for the decision. Contractor advised that all means of local resolution have now been exhausted and they should contact NHS Resolution if they still do not agree with the outcome.

YE outcome processed in Compass.

RT’s to manage any disputes that are escalated to NHS Resolution and to inform PAD where this happens.

Case closed, YE outcome processed in Compass.

<96%

Rejection letter sent, including rationale for the decision. Contractor advised that they should contact PAD within 28 days should they want to dispute the outcome, providing additional evidence to support the application. Outcome will be included in the YE Letter.

Contractor notified of acceptance and of how many units of activity will be carried forward for completion in the following year. Outcome also included in the YE letter.

No contact within specified timeframe

Decision to reject the application is upheld

PAD to send full application form to contractor and request supporting evidence be supplied. Once received, application and supporting evidence to be sent to RT for consideration (informal local resolution) and RT to notify PAD of the outcome before **20 July 2021.**