Dealing with your PCO in times of trouble

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With the arrival of the new year and nearing of the end of the NHS business year, people begin to look at their UDA capacity and wonder whether they will meet the 96% UDA target on their contracts. Hopefully this is well in hand, but for some people it can lead to a more frenzied rush to close out the year. Some practices might be struggling to hit the target because of unexpected things happening to their practice which are well beyond their control. Luckily GDS and PDS contracts generally have an allowance for this built into their contract called 'Force Majeure' which many practices are not aware of.

So, what are the usual categories that fit the criteria of a Force Majeure event?

- Death of a performer or individual provider
- Death or sudden serious illness of a close relative or a significant performer
- Significant period of absence due to accident or sudden serious ill health of a significant performer
- Physical damage to premises
- Essential services failure
- Pest infestation
- Significant adverse weather, such as a hurricane which causes damage preventing the premises use for a minimum of a three-week period
- Prolonged industrial action.

Unfortunately, this is not a cure all for the problem's practices face and the wording is in many cases fairly ambiguous. The events affecting the practice must be significant and prolonged. At the BDA we often have practices struggling due to inclement winter weather where snow forces road closures

or prevents staff from being able to get to work. The stance from the NHS has been that harsh winter weather in the UK is expected, leading to this not qualifying for a Force Majeure event. However, if this happens in conjunction with other events it will be taken into consideration especially if it also results in physical damage to your practice premises.

What are the unacceptable circumstances?

- Renovation or refurbishment of premises
- Adverse weather
- Planned events such as weddings, elective surgery, annual leave or other similar events
- Long term sickness causing some incapacity disability, maternity, paternity or adoption leave of a performer – after the initial onset of the illness or notification of parental leave it becomes possible to plan for the performer's absence or replacement.

It is recommended that you contact your LDC if there is an event that affects your practice or the wider area. They may be more familiar with the local area teams' protocol for Force Majeure and will have experience dealing with meteorological problems or pandemics in the area. If multiple practices are affected, they may be able to make a stronger case for Force Majeure by drawing together the affected practices and presenting it as one case as opposed to each practice individually apply for Force Majeure. On a more local level they may have contacts available to them to help alleviate some of the pressures on your practice immediately following the event. The BDA also has assistance available in the form of confidential counselling and emotional support through 'Health Assured' which members can rely on 24 hours a day.

If affected by Force Majeure, what do you need to do?

You should refer to your business continuity plan to help know what steps to take to get

the practice back on track and to know what other organisations need to be alerted if you have to close the practice. If the practice isn't forced to close but service will be affected, you must notify the NHS within five working days of any event which could affect your ability to meet your UDA/UOA target. If the practice is forced to close you will be notifying the NHS sooner than this or it could be taken as a breach of contract. The first step is a preliminary notification with rough details of what has happened, how many UDA/UOAs might be lost because of it and what the practice is doing to mitigate against this. The NHS will acknowledge receipt and for some practices that may be the end of it. If you hit your 96% target there will be no further steps or sanctions. If, however at the end of the year you have not hit your target, you will have to work out more accurately how many units of activity were lost due to the event.

First you must calculate the average activity of your performers per day, which will then allow you to work out the amount of activity that was lost due to the practice being unable to open. The NHS will then consider this application, decide whether to allow the roll over and if successful calculate the amount of activity that is allowed to be rolled over. If accepted there will not be sanctions, financial or otherwise imposed on the contract. However, you will then have to complete the rolled over activity within the agreed timeframe on top of your usual contract activity.

Unfortunately, none of this is guaranteed and it is up to your area team to agree whether your situation meets the Force Majeure requirements. It is therefore better to ensure that you do hit the 96% target or risk facing sanctions.

BDA members can access further advice about Force Majeure from the BDA Advisory Services by contacting the Business and NHS Team on 020 7535 5864. ♦

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