

Policy Reference: PC1

**NHS CORBY CLINICAL  
COMMISSIONING GROUP**

---

*Policy for Managing Adverse Events*

---

<b>Author's name &amp; Title:</b>	NHS England
<b>Sponsor's name &amp; Title:</b>	Caron Williams, Director of Commissioning & Strategy
<b>Review date:</b>	August 2018
<b>Description:</b>	Policy for Managing Adverse Events
<b>Audience:</b>	All Staff of NHS Corby CCG (including members of the Governing Body), All contractors, Bidders and members of the CCG

### Consultation

Date	Name	Title and /or Organisation
August 2016	Caron Williams	Director of Commissioning & Strategy
August 2016	Julie Lemmy	Head of Primary Care

<b>Approved by:</b>	Primary Care Commissioning Committee	<b>Date:</b>	16 August 2016
<b>Ratified by:</b>	Primary Care Commissioning Committee	<b>Date</b>	16 August 2016

### Version control

Name	Date	Version	Reason	Status
1.0	August 2016	1.0	New Policy	Ratified

## Contents

1.	Background.....	4
2.	Contract Wording .....	4
3.	Contract Compliance.....	6
4.	Clinical Governance & Risk Management/Termination .....	7
5.	Appeals .....	7
6.	Payment and Contract System.....	7
Annex 1	Contractor’s Preliminary Notice of Force Majeure Events .....	9
Annex 2	Acknowledgement of Contractor Notification.....	11

## 1. Background

- 1.1 Adverse incidents are dealt with in the force majeure provisions of the standard GMS, PMS and APMS contracts. Although these provisions are not required by the GMS Regulations, the PMS Regulations or the APMS Directions, the majority of GMS, PMS and APMS contracts will include them.
- 1.2 The Commissioner is advised to check that the force majeure provisions are included in each contract and if they are to follow the guidance in this policy. This policy is only applicable where the contract in question has retained the recommended force majeure provisions.
- 1.3 The contractor is responsible for informing the Commissioner of any force majeure event.

## 2. Contract Wording

- 2.1 Clause 27.5 of the standard GMS contract states that:

"27.5.1 Neither party shall be responsible to the other for any failure or delay in performance of its obligations and duties under this Contract which is caused by circumstances or events beyond the reasonable control of a party. However, the affected party must promptly on the occurrence of such circumstances or events:

- (a) inform the other party in writing of such circumstances or events and of what obligation or duty they have delayed or prevented being performed; and
- (b) take all action within its power to comply with the terms of this Contract as fully and promptly as possible.

27.5.2 Unless the affected party takes such steps, clause 27.5.1 shall not have the effect of absolving it from its obligations

under this Contract. For the avoidance of doubt, any actions or omissions of either party's personnel or any failures of either party's systems, procedures, premises or equipment shall not be deemed to be circumstances or events beyond the reasonable control of the relevant party for the purposes of this clause, unless the cause of failure was beyond reasonable control.

27.5.3. If the affected party is delayed or prevented from performing its obligations and duties under the Contract for a continuous period of 3 months, then either party may terminate this Contract by notice in writing within such period as is reasonable in the circumstances (which shall be no shorter than 28 days).

27.5.4. The termination shall not take effect at the end of the notice period if the affected party is able to resume performance of its obligations and duties under the Contract within the period of notice specified in accordance with clause 27.5.3 above, or if the other party otherwise consents."

2.2 The provision of individual PMS and APMS contracts should be reviewed and advice sought.

2.3 A force majeure event is one which is caused by circumstances beyond the reasonable control of either the Commissioner or the contractor that could not have been avoided or mitigated with reasonable care and where the event has had a material effect on the fulfilment of the contract.

2.4 Examples of events that may invoke the force majeure provisions are as follows:

2.4.1 Fire;

2.4.2 Flood;

- 2.4.3 Severe weather conditions and for which precautions are not ordinarily taken to avoid or mitigate the impact (for example a severe hurricane);
  - 2.4.4 Industrial action which significantly affects the provision of public services or services upon which the party is reliant;
  - 2.4.5 Death of a significant performer or close relative;
  - 2.4.6 Pandemic disease or circumstances that might otherwise be considered “an act of God”;
  - 2.4.7 War;
  - 2.4.8 Civil war (whether declared or undeclared);
  - 2.4.9 Riot or armed conflict;
  - 2.4.10 Radioactive, chemical or biological contamination;
  - 2.4.11 Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed;
  - 2.4.12 Acts of terrorism;
  - 2.4.13 Explosion.
- 2.5 Examples of events that would not be considered force majeure events are as follows:
- 2.5.1 Refurbishment of practice premises;
  - 2.5.2 Adverse weather in the winter months (including snow and ice);
  - 2.5.3 Planned events (including elective surgery, leave, weddings and similar events);
  - 2.5.4 Long term sickness, maternity/paternity or adoption leave.

### **3. Contract Compliance**

- 3.1 All contractors will likely be obliged under the terms of their contracts to promptly notify the Commissioner 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.

- 3.2 Failure to notify the Commissioner will mean that the contractor is not absolved from its obligations under the contract.
- 3.3 Neither party will be responsible to the other for any failure to delay in performing its obligations and duties under the contract which is caused by an event of force majeure
- 3.4 A template notification is provided in Annex 1 which the Commissioner can send to the contractor for completion.

## **4. Clinical Governance & Risk Management/Termination**

- 4.1 If the consequence of the contractor's failure to deliver services is significant and poses a risk to patient safety or the efficiency of wider primary care services, the Commissioner may wish to consider recording the incident on the risk register or consider whether it may invoke its termination rights.
- 4.2 If the service provision is delayed or prevented for a continuous period of three months then either party will likely be able to terminate the agreement by notice in writing within a period which is reasonable (and no less than 28 days). This termination will not take effect where the service is resumed within the period of notice or if the contractor consents to this.

## **5. Appeals**

- 5.1 The parties should refer to the policy on managing disputes (chapter 11) for the process in relation to dispute.

## **6. Payment and Contract System**

- 6.1 The parties should discuss the effect of force majeure on payments by the Commissioner to the contractor. The Commissioner should use its reasonable discretion in determining payments with regard to the need for the contractor

to continue to provide services once it is no longer affected by the force majeure event provided the contract has not been terminated.

## Annex 1

### Contractor's Preliminary Notice of Force Majeure Event

#### 1. Introduction

- 1.1 This template must be submitted to the Commissioner should an unplanned event occur due to circumstances or events beyond the reasonable control of the contractor that could have a detrimental impact on service provision and may result in underperformance as at year end.
- 1.2 Notification must be provided to the Commissioner within three working days of its occurrence.
- 1.3 The template should be typed to ensure legibility and emailed to the Commissioner as well as being served in accordance with the notice provisions of the contract to avoid the possibility of it being lost in the post.
- 1.4 The Commissioner will record that the event has happened and provide the contractor with an acknowledgment letter, a template for which is provided in Annex 2.
- 1.5 No evidence is required at the preliminary advice stage but may be required later.

Force majeure - Notification of an unplanned event	
Date notified:	
Practice address:	
Contract number:	

I/we refer to the force majeure provisions in our contract and write to notify you that as a result of the unplanned event detailed below it may not be possible to deliver the activity required by the contract.

Date(s) of event:	
Description of event:	
Action being taken to mitigate loss of service:	

## Annex 2

### Acknowledgement of Contractor Notification

[date]

Dear [name]

Notification of unplanned event

Contract number: [insert]

Practice address: [insert]

Thank you for advising us of an unplanned event which may affect delivery of the services under the contract.

Yours sincerely

[name]

[title]