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Impact of COVID 19

FA Charter Standard Clubs FAQs

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Please note

This guidance has been prepared in order to illustrate and comment in general terms on issues anticipated to affect Charter Standard Clubs as at 2 April 2020. However, please note that the subject matter covered above is in no way exhaustive and the material does not stand on its own nor is it intended to be relied upon as a substitute for obtaining specific legal and/or tax advice. Each club's individual circumstances will differ. The information contained in this note is given in good faith but any liability of The FA or their professional advisers (including their respective members or employees) to you or any third party which may arise out of the reliance by you or any other party of the contents of this publication is hereby excluded to the fullest extent permitted by law. We would strongly recommend that you consult professional advisers on specific issues before acting or refraining from action on any of the contents of this note.

Muckle LLP
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Guidance Note 1: Membership Subscriptions

Since grassroots football has now concluded for the 2019/20 season, what do we do about the payment of subs?

This will depend upon the payment terms and related provisions set out in the Club's governing document and any rules and/or byelaws laid down by the Club from time to time.

In an unincorporated club, the governing document will typically be the constitution, with any rules and/or byelaws prescribed by the management committee for the time being of the Club.

If the Club is incorporated, whether as a company limited by guarantee or by shares, the governing document will be the articles of association. Any rules and/or byelaws relating to membership subscriptions will be set down by the board of directors from time to time.

Finally, if the Club is a charitable incorporated organisation (CIO), the governing document will be a constitution (either (i) 'foundation' model, if it is trustee-controlled, or (ii) association model, if it is controlled by the membership) with any byelaws prescribed by the trustees.

In each case, each member's acceptance of the terms of the Club's governing document (and any related document(s) laid down under it) and any additional terms agreed to as part of the membership application process (e.g. terms on a membership form) will form, in essence, a contract between the member and the Club.

It is unlikely that a typical basic set of rules and byelaws would deal expressly with the waiver or suspension of the requirement to pay subscriptions due to events beyond the Club's control. If it does, the relevant procedural formalities should be followed, but it is more likely that any such decision would rest at the discretion of the club's governing body.

By way of example, the suggested FA Club rules for unincorporated associations set out in Appendix 4 of the FA's Guide to Club Structures (available on the Muckle website here: **The FA's Guide to Club Structures**) provides expressly at clause

6: Annual Membership Fee

(a) An annual fee payable by each member shall be determined from time to time by the Club Committee and set at a level that will not pose a significant obstacle to community participation. Any fee shall be payable on a success application for membership and annually by each member. Fees shall not be repayable.

(b) The Club Committee shall have the authority to levy further subscriptions from the members as are reasonably necessary to fulfil the objects of the Club.

Clause 6(a) therefore makes it emphatically clear that any annual membership fee shall not be repayable.

There is further discretion under clause 6(b) for the Club to "levy further subscriptions from the members as are reasonably necessary" and, in most cases, subscriptions will be paid on a monthly basis for at least 10 months of the year.

If a club's governing document addresses this issue expressly as above, membership fees become the club's property and would not be repayable.

Although there is, under English law, in appropriate extenuating circumstances, an implied power for a club's governing body to address a member's obligation to pay his or her subscription, this should be considered in the context of the financial viability of the club.

This, ultimately, leaves any variation, reduction in subscriptions and/or suspension of the obligation to pay subscriptions in the hands of and at the discretion of the governing body of the Club (namely the management committee, board of directors, board of trustees or equivalent, as the case may be) to determine what is in the best interests of the Club and its members.

This will, inevitably, require an objective consideration of the economic impact on the Club if subscriptions were to cease for an indefinite period during these unprecedented times. Could the club afford to continue if its members did not continue to pay their subscriptions?

It should, however, be borne in mind that grassroots clubs, by their very nature, depend hugely on membership subscriptions and, depending on their status (e.g. CASC or charity), voluntary donations in addition to annual fees and subscriptions in order to ensure that the Club remains solvent and able to provide opportunities for the benefit of its members. Any withdrawal of regular support could have a significant impact on the financial standing of the club.

While it is appreciated that these are testing times for those concerned at all levels of both the amateur and professional game, it would ultimately be determined by a decision on the part of the Club's governing body.

So, what happens if a member falls behind in paying subs while this situation continues?

There is no implied term of the contract of membership that if the member fails to pay a subscription by the specified date, or within a reasonable time of it becoming due, his membership will lapse.

Should a member's subscription payments fall into arrears, the Club's primary remedy would be to bring a claim against the member for the arrears of subscription.

In most cases, the rules will provide that if membership subscriptions are not paid by the required date, the membership will lapse automatically and/or further action could be taken. For instance, The FA template Rules state at Rule 7:

7. Resignation and Expulsion

(a) A member shall cease to be a member of the Club if, and from the date on which, he/she gives notice to the Club Committee of his / her resignation. A member whose annual membership fee or further subscription is more than two (2) months in arrears shall be deemed to have resigned.

However, there are no doubt extenuating circumstances at this time which are likely to affect a member's ability to fulfil his obligation to pay his or her subscriptions.

While such a right may exist, it should be for the governing body of each Club to determine what they consider to be in the best interests of their Club and its members at this time, exercising their own independent judgment and being fully cognisant of the Club's current and future financial obligations.

If, without continuing membership support, a Club is unable to pay its debts as they fall due, professional advice should be taken in order to effect a solvent closure.

Guidance Note 2: Contractual Rights and Obligations in relation to Suppliers

Some of our suppliers are likely to be affected by Coronavirus disruption, where does this leave us in terms of contracts?

Many business and organisations are finding it difficult to perform their obligations under existing contracts due to the restrictions and recommendations placed upon them in the current circumstances surrounding the Coronavirus outbreak. This may be due to shortages in their own supplies and services, restrictions on travel and/or absence of large parts of the workforce due to self-isolation. It may even be as a result of their own decision, under government guidance or requirements, to shut down production or services.

In general, the basic position is that where there is a contract (whether written or verbal), each party has committed themselves to perform their agreed obligations and if they do not do so, then they will be in breach of contract.

However, many contracts contain provisions which deal with events of "force majeure", the purpose of which is to excuse a party from performing their obligations (and hence not being in breach of contract) where their performance of those obligations is prevented or delayed by an event beyond its reasonable control.

How Force Majeure works

Whether a supplier is excused from performing their obligations under their contract with you really depends on the wording of the contract.

If there is a "force majeure" clause, what does "force majeure event" actually cover? There is no legal definition so whether the Coronavirus pandemic is a force majeure event comes down to the wording of the contract and whether pandemic is either expressly mentioned or falls within catch-all wording such as "events beyond a party's reasonable control".

Has the supplier complied with the requirements of the force majeure provisions in the contract? In many cases the supplier is required to give notice of the circumstances and attempt to mitigate their impact on the performance of the contract by using workarounds if possible.

It is also worth considering the exact wording of the clauses - is the supplier actually excused from performing its obligations? If the force majeure clause states that the force majeure event must 'prevent' performance, the relevant party will need to demonstrate that performance is either a physical or legal impossibility and not just difficult or unprofitable. A recommendation or guidance from the Government not to do something is different to a legal requirement. An increase in the cost of performing its obligations, for example, is unlikely to be sufficient to trigger protection for the supplier under a force majeure clause (unless the drafting expressly permits this).

What happens next? A force majeure clause will normally only suspend the supplier's obligations for a specified period of time. After that period, there may be a right for the innocent party (or in some cases either party) to terminate the agreement if the force majeure event continues. Again, this all depends on the wording of the clause – if there are no provisions allowing for termination after a specified period then the force majeure clause is likely to provide indefinite relief from performance unless and until the force majeure circumstances come to an end.

Mitigate your loss

If the club starts to feel the impact of suppliers not being able to fulfil their obligations under the contract, it is vital that appropriate steps are taken to limit and therefore mitigate any loss that you are likely to incur. This is because if you are able to claim damages from a supplier as a result of its breach of contract, then you have a duty to have minimised the impact of those losses as far as possible.

It may be that your business needs to consider getting goods or materials from another supplier, even if this more expensive, to avoid incurring bigger losses as a result of not having the requisite supplies available.

Is the contract "frustrated"?

If the contract in question does not contain a force majeure clause which operates to relieve them of their obligations during this period then your supplier must perform the contract, this is an absolute obligation. There is a chance that an English law doctrine of "frustration" may apply but the courts have historically been very strict in allowing it to be applied to contracts.

If a contract is "frustrated" then the contract will fall away and generally speaking each party is entitled to be put back into the position they were in before the contract was entered into, i.e. moneys paid over should be repaid and obligations cease.

In general, frustration applies where something occurs after the contract has been entered into, is not due to the fault of either party and renders further performance illegal, impossible or makes it radically different from that contemplated by the parties when they entered into the contract.

As lawyers we would never advise trying to rely on frustration alone as it is always down the courts' narrow interpretation as to whether an event will constitute frustration of the contract or not, but guidance can be taken from decisions of the courts in the past and of possible similarity to the Corona Virus restrictions are the "coronation cases" where contracts could not be performed as contemplated when the coronation of King Edward VII was postponed due to illness. In those circumstances the contracts in question were deemed to have been frustrated.

Frustration will not be permitted where the contract is simply more expensive to perform, an alternative means of performance is available or the seller has been let down by its own supplier.

Can I terminate the contract if the supplier has breached its obligations?

There is commonly a termination clause in most contracts which allows termination of the contract if the other party is in breach. Usually the term "material breach" is left open to interpretation and means a breach which goes to the heart of the contract and is a breach of a fundamental term. Commonly, a failure to perform on time, or deliver goods on time, is not a fundamental breach of contract entitling you to terminate. If you wish to terminate a contract for material breach then we would always recommend that legal advice is sought to establish that you do indeed have grounds for doing so.

Should you keep paying suppliers?

Sometimes a force majeure clause in a contract will be specific as to whether the unaffected party should continue to perform its obligations (i.e. paying the supplier) where the supplier is affected by force majeure. However, this is not very common in day to day commercial contracts. It is unlikely that a court would require a customer to keep paying a supplier in circumstances where the supplier was not performing (and if the supplier is in breach, the principle of mitigation of loss would dictate that you should not pay the supplier for services or supplies not actually performed). In general, most of your contracts will operate so that invoices are only sent for goods actually supplied or services actually delivered, so this will not be an issue, but in the event that you have an ongoing contract with fixed regular payments, further advice should be sought as to whether you should stop those payments where the supplier is not performing its side of the contract.

Practical steps

We would suggest that you take action now for all supply contracts that you have in place:

- Check whether any contracts are exclusive – do they allow you to find alternative sources of supply if needed?
- Do they contain force majeure clauses, and if so what does force majeure lead to, does it include a right to terminate?
- Is the supplier actually prevented from performing its obligations?
- Are you able to establish a dialogue with suppliers now to ascertain whether they anticipate any difficulties in performing their contracts?
- Where contracts will not be performed, are there any alternatives or workarounds that can be put in place?

Guidance Note 3: Overseas Tours

We have an overseas tour planned for end of season and have already paid our deposit, what are our options?

1. As a starting point, ask the tour operator to confirm whether it still plans to go ahead with the trip and what its position is on refunds. Try to understand (a) what the operator plans to charge and (b) why it claims to be entitled to charge it. Different tour operators are adopting different stances, for example your operator may:

1.1 offer you a refund;
1.2 try to keep the deposit but not try to recover the remaining cost of the trip;
1.3 try to keep the deposit and try to recover the remaining cost of the trip; or
1.4 try to keep the deposit and offer you the option of taking the trip some other time.

2. If the travel operator is being difficult and you have travel insurance then you should speak to your insurer. Different insurance policies will have different conditions, however it's possible that your insurance allows you to cancel a trip (and recover the deposit/other cost from the insurer) if the UK Foreign Office advises against "all but essential travel"[1], or if the area you are to travel to is affected by an epidemic. Check the terms of your policy. The insurer won't want to pay out unnecessarily and they may expect you to try to "push back" against the travel operator.

What if we don't have insurance?

3. Assuming you can't rely on insurance, what is the position on refunds/further charges by the tour operator? The short answer is "it depends".

Cancellation clauses and the Package Travel Regulations

4. Most travel terms and conditions (**Ts & Cs**) will include a clause which seeks to determine what happens if a party cancels. For example:

4.1 **If you cancel:** the Ts & Cs may say that if you cancel within "X" days of the trip, then a stated percentage of the charges will be payable. Typically this varies from (a) 100% (if you cancel at short notice) to (b) forfeit of the deposit (if you give a couple of months' notice).
4.2 **If they cancel:** it is likely that the Ts & Cs will contain a clause allowing the tour operator to cancel/change the trip. In those circumstances, the Ts & Cs may say you are entitled to a refund of the deposit.

5. If **The Package Travel and Linked Travel Arrangements Regulations 2018** (the **Regulations**) apply to you, then you may be entitled to cancel and get a refund (even if the Ts & Cs say otherwise). To explain:

5.1 the Travel Regulations apply to "packages" offered to "travellers"[2] **except** where the package is purchased on the basis of a "general agreement"[3]. A trip will generally be a "package" if it combines 2 or more different types of travel service (such as flights and accommodation). If it looks like a package, it probably is one.

[1] Which is the case as at 24 March 2020.
[2] A "traveller" is an individual who is either seeking to conclude a contract, or is entitled to travel on the basis of the contract concluded.
[3] i.e. an agreement concluded between "a trader and another person acting for a trade, business, craft or profession, for the purpose of booking travel arrangements in connection with that trade, business, craft or profession". The exact scope of this definition is unclear. Government guidance states *"we consider that this exemption applies where companies make bookings through framework contracts with business travel agencies. In contrast, small businesses and professionals often use the same booking channels as holidaymakers and require a similar level of protection…"*

5.2 If you fall within the Regulations then under Regulation 12:

5.2.1 you have the right to terminate the package travel contract at any time before it starts, subject to payment of an "appropriate and justifiable termination fee;"[4] and

5.2.2 you can terminate without paying any termination fee and ask for a full refund of any payments made for the package, if there has been:

"unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity which significantly affect (a) the performance of the package or (b) the carriage of passengers

5.3 In these extraordinary times, you should have a good argument that the circumstances are "unavoidable and extraordinary" and are entitled to get out of the contract (and recover money paid). Again, the Government Guidance on the Regulations may be a helpful thing to point to here.[5]

5.4 It is also worth noting that Regulation 11 restricts the tour operator's ability to vary the terms of a package unless the Ts&Cs allow this and the change is insignificant. This may be relevant if the tour operator tries to vary your package.

[4] This should reflect the expected cost savings to the travel operator.
[5] "The Package Travel and Linked Travel Arrangements Regulations 2018: Guidance for Businesses", published by Department for Business, Energy & Industrial Strategy (see para 36).

What if we can't rely on the Regulations?

6. Little is certain in the current circumstances but many clubs will have a decent argument that the Regulations apply. That should carry some weight in discussions/ negotiations with a travel operator.

7. However if the Regulations do not apply (perhaps because the package has been purchased on the basis of a "general agreement") then it is important to give further consideration to the terms of the Ts & Cs between you and the travel operator. Every set of Ts & Cs is different, but here are some key points to be aware of:

7.1 "Force majeure" clauses:

7.1.1 there are all sorts of events that can occur after a contract has been performed that prevent one or both parties from performing their obligations. Very often the contract will set out a list of such events (so-called "force majeure" events) that entitle a party not to perform its side of the bargain. These events will often (but not always) include pandemics or epidemics.

7.1.2 You should check to see if there is a force majeure clause you can rely on in the Ts & Cs. Often however, any force majeure clause will be expressed to benefit the tour operator, but not the customer.

7.2 Frustration:

7.2.1 If you cannot rely on a force majeure clause, it may be possible to argue that the contract has been "frustrated" and that you are entitled (a) to a refund of your deposit and (b) not to pay any further charges.

7.2.2 "Frustration" is a legal principle that may apply in a situation where after the contract is formed, an event which occurs which makes further performance by the parties impossible or radically different from that contemplated at the time of the contract.

7.2.3 In a situation where a destination country is effectively in lock-down, or where airlines cease to operate, you might be able to argue that the contract has been frustrated. Under **The Law Reform (Frustrated Contracts) Act 1943:**

7.2.3.1 Money paid before the frustrating event (such as a deposit) can be recovered, subject to any expenses incurred by the other party (s1(2));

7.2.3.2 Further sums cease to be payable.

7.2.4 Bear in mind that Courts tend to be reluctant to hold that a contract has been frustrated if the parties' contract has already made express provision for the consequences of the event which has occurred. For example, if the parties have included a force majeure clause which sets out what is to happen in the relevant situation. The precise wording of the Ts & Cs may be important here.

7.2.5 Even though frustration can be hard to establish, these are exceptional times and it may be a helpful argument to run in a negotiation with the travel operator.

7.3 Unfair contract terms:

7.3.1 It is worth bearing in mind that there is also legislation aimed at protecting parties who deal on another party's standard Ts & Cs from "unfair" contract terms.

7.3.2 If a travel operator's Ts&Cs contain hidden/excessive termination charges or something that tries to limit your legal rights then you might be able to argue that such terms are "unfair". If a Court decides that a term is unfair then it is treated as void.

7.3.3 The two main pieces of legislation aimed at dealing with unfair contract terms are listed as follows. The detail of these statutes is beyond the scope of this note but we highlight a couple of key points as follows:

7.3.3.1 **The Consumer Rights Act 2015:** This only applies to a contract for goods/services between a trader and a "consumer"[6]. Depending on your club structure, it may be contended that grassroots club members of an unincorporated association club fall within this category. If your club is incorporated as a limited company (or similar, e.g. CIO), see 7.3.3.2 below. In broad terms, a term may be treated as unfair if it causes a significant imbalance in the parties' rights and obligations, to the detriment of the consumer". An unfair term is not binding on a consumer.

7.3.3.2 **The Unfair Contract Terms Act 1977:** This protects businesses, as well as consumers, from another party's unfair standard Ts & Cs). Under section 3, a party (such as a travel operator) cannot rely on a term which claims to allow it to deliver a substantially different service from that which was expected unless that term is "reasonable".

Checklist

- Ask the travel company whether it plans to refund your deposit and if not, why not;
- Check the position with your insurer
- Consider whether you have an argument to be entitled to terminate and recover the deposit under the Package Travel Regulations. If so, point this out to the travel company;
- If not, consider whether you can rely on a force majeure clause. If so, point this out.
- If not, consider whether there are arguments you can run around frustration or unfair terms.

[6] "Consumer" means an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.

Guidance Note 4: Club Operations

We manage the club administration from our clubhouse, which also has a bar and café. Can we continue to operate?

As of 23 March 2020, the Government announced social distancing measures in light of the COVID-19 outbreak. These new measures include requiring people to stay at home except for very limited purposes and closing non-essential shops and community spaces, both of which have a direct impact on the management of the club from its clubhouse and, if you have such amenities, the running of the bar and café.

1. Managing the club administration

The governing body of the club (namely the management committee of an unincorporated association, board of directors of a company, trustees of a charity) will be responsible for its general control and management which, at the date of writing this guidance note, remains unchanged under, to the extent they are applicable, company and charity law. Accordingly, the administration of the club should continue in as normal manner as possible.

2. Working from home

2.1.1 Under the new measures, UK residents have been asked by the Government to stay at home unless they have one of four reasons for leaving. One of these reasons is travelling to and from work, but only where they cannot work from home.

2.1.2 You should make every effort within the club's means to ensure that committee/board members and employees are able to work from home, limiting their exposure and risk to their health. This includes providing suitable IT and equipment to enable remote working.

2.1.3 You should review the club's governing document (constitution for an unincorporated association, articles of association for a company, constitution for a CIO etc) and identify whether the club is able to hold meetings and effect decisions remotely, whether using technology such as conference calls or video calls and/or written resolutions. You should also check the articles relating to notices and communications to make sure that meetings can be called by way of email or notice on the club's website.

2.1.4 If you require any resolutions to be passed while the new measures are in place, the governing document should explain whether this can be done effectively outside a meeting. This may include signing resolutions in several copies (in hard copy or by email), each signed by one or more of the members.

3. Work that cannot be done from home

3.1 If the club is unable to provide facilities for its committee/directors or employees to work from home, the committee/directors should consider whether the reason for asking any person to travel to the clubhouse is absolutely necessary. If the committee/directors decide that you are unable to fulfil their respective duties working remotely, you should where possible follow Public Health England guidelines for being present in a workplace, including:

3.1.1 maintaining a 2 metre distance from others; and

3.1.2 washing hands with soap and water often and for at least 20 seconds.

3.2 Please note, separate Governmental advice is available for individuals or households who are isolating and for the most vulnerable who need to be shielded, who should not travel to the workplace for any reason.

4. The bar and café

4.1 To reduce social contact, the Government has ordered certain businesses and venues to close, including food and drink establishments within members' clubs, cafés and canteens.

4.2 What could happen if we stay open?

4.2.1 A business operating in contravention of the Health Protection (Coronavirus, Business Closures) Regulations 2020 will be committing an offence.

4.2.2 Environmental Health and Trading Standards officers will monitor the situation and businesses that are in breach will be subject to prohibition notices, and potentially unlimited fines.

4.3 Is there any financial or business support available?

Yes, please refer to our guidance **here** for full details on Government-backed financial assistance measures.

There are several options available in support of businesses during this time, and you should seek more specific advice from the club's accountant or financial adviser. Support options include:

4.3.1 **Employees.** A comprehensive series of measures were announced by Her Majesty's Treasury on 20 March 2020, supporting wages and cash-flow for businesses. This includes the Coronavirus Job Retention Scheme, under which HMRC will reimburse 80% of employees' wages, up to £2,500 per month;

4.3.2 **Business loans.** The Coronavirus Business Interruption Loan Scheme supports small and medium-sized businesses with access to loans, overdrafts, invoice finance and asset finance of up to £5 million and for up to six years;

4.3.3 **Cash grant.** The Retail, Hospitality and Leisure Grant (RHLG), which was announced on 16 March 2020, makes businesses and premises in the retail, hospitality and leisure sectors eligible for cash grants of up to £25,000 per property. If the club owns property with a rateable value of up to £15,000, it will receive a grant of £10,000. If the property's rateable value is between £15,001 and £51,000, it will receive a grant of £25,000; and

4.3.4 **Business rates holiday.** The Government has put in place a business rates holiday for businesses and premises in the retail, hospitality and/or leisure sector from April 2020.

At the time of writing, the additional measures will initially last for the three weeks from 23 March, at which point the Government will review and relax them if the evidence shows this is possible.

Sport England Community Emergency Fund

Finally, Sport England has announced that grassroots clubs can apply to a new Community Emergency Fund if they are experiencing financial difficulty arising from coronavirus. Eligibility criteria and further details for awards of between £300 to £10,000 may be found **here**. Applications are open and can be made online until **31 July 2020**.

Guidance Note 5: Facilities Hire

We have block booking hire arrangements with local schools and leisure providers which have closed due to the virus. Where does this leave us if we cannot use facilities we have already paid for?

With schools and leisure facilities being closed across the country as a consequence of coronavirus, organisations which have block booking arrangements with those schools and leisure facilities will have been left unable to use the booked premises as expected and agreed.

In many instances, pre-payment will have been made for the access to and use of the facilities which will no longer be available. In these circumstances, you will be wondering whether you able to get your money back. In this guidance note, we explain the things you should consider in these circumstances.

Specific contract terms

As a starting point, you should check whether you have a written contract with the school or leisure provider. Most schools and leisure providers will require a hirer to sign a booking form into which it will seek to incorporate standard terms of hire.

If you do, this should be reviewed to see if there are any helpful terms which might provide for what should happen in circumstances where the facilities cannot be made available. The contract may include specific provisions explaining the circumstances in which booking fee(s) might be returned to you or setting out what should happen if the facilities become unavailable for any reason.

Even if you don't have a formal contract, you should check whether is anything in writing (including in any emails) which sets out the terms of your relationship with the school or leisure facility. There may be helpful statements which have been made in those communications about what should happen where the facilities are unavailable and whether you should be reimbursed in those instances.

Force majeure

In addition to specific terms which may detail what is to happen where the booked facilities become unavailable, many written contracts contain a "force majeure" clause. This is a provision which excuses one or both parties from performance of the contract in some way following the occurrence of certain events.

Its ultimate underlying principle is that on the occurrence of certain events which are, broadly speaking, *"beyond or outside a party's control",* that party is excused from, or entitled to suspend performance of all or part of its obligations. If such a clause applies, that party will **not** be liable for its failure to perform the obligations. Specified events can typically include, amongst others, acts of God, natural disasters, terrorism and industrial action.

Such clauses typically specify a period (e.g. one to three months), which should be commensurate with the contract duration, during which the party affected by the force majeure event is excused from performing its obligations. If the force majeure event continues beyond this period, there is often a right for either party to terminate the contract.

The scope and implications of a force majeure clause depend on the exact wording used. This means that the terms of the relevant contract will need to be considered to determine whether such a clause might operate to require the school or leisure operator to reimburse you the booking fee for any bookings or sessions which the provider is then unable to fulfil due to coronavirus imposed closure of the facility.

Dispute resolution

Written contracts usually explain what should happen where there is any dispute between the parties.

If the school/leisure facility refuses to return any payments to you for bookings where you haven't been able to use the facilities, you should review the contract to see what it says about how any disputes should be resolved. As with force majeure clauses, dispute resolution clause vary between contracts, so the specifics of how this should be done in any particular instance will depend on what the relevant contract says.

If the school/leisure facility refuses to return advance payments to you for failed bookings, even through escalation through the dispute resolution procedure, under English law you will ultimately be able to make a claim for damages for breach of contract (as the school/leisure facility has not upheld its end of the bargain). The claim would be to recover the sums which you have paid but not had the benefit of as a consequence of the closure of the school or leisure facility.

Can we cancel?

Following The FA's announcement on 26 March 2020 that grassroots football is now concluded for the 2019/20 season, clubs will be looking at their requirements and commitments for what would have been the remainder of the season.

We find that many schools and leisure operators take payment in instalments to assist cash flow for grassroots community clubs; for example, in three tranches, one payable each term. If this is the case, the summer term payment may not fall due for payment until after Easter. Will the club still need use of the facilities at that time? If not, can you cancel the booking? If you cancel the booking, are you required to pay any fees to the school or leisure operator?

All of this will ultimately depend on the terms agreed between the parties and duration of the hire period.

It should also be borne in mind that the terms of any contract can be varied or the contract terminated by mutual consent, so making an amicable approach to your provider would be a good first step.

Could the contract be deemed to be frustrated?

Depending on (i) how long the current Government restrictions on schools and leisure facilities continue and (ii) the current expiry date of the contract, the parties may not be able to fulfil their obligations during the remainder of the contract term. If that is the case, it may be possible to contend that the contract is frustrated; but this is a high bar to achieve so legal advice on the specific circumstances will be required. In general terms, a contract is 'frustrated' and may be discharged on the grounds of frustration when something occurs after the formation of the contract which renders it either:

(i) physically or commercially impossible to fulfil the contract, or
(ii) transforms the obligation to perform into a radically different obligation from that undertaken at the moment of entry into the contract.

So, with this in mind, consider the impact of Government restrictions on public gatherings over the remainder of the hire period under an existing booking.

Next steps

We would recommend that you speak to the school/leisure facility concerned in the first instance to see if you can agree directly with them that you are reimbursed any lost and/or cancelled booking fees.

However, if this is unsuccessful, we would recommend that you seek legal advice about the options available to you in relation to the relevant contract (in particular because, as you will see from the above, the specifics of the relevant arrangement will differ in each case).

Guidance Note 6: Employment

We employ a small number of staff to run the club, maintain the ground and operate the bar. How does this situation affect our employment obligations?

The first thing for the club to do is identify clearly who it employs and on what terms. It needs to be clear that these people are not contractors or possibly even volunteers.

If they are employed then they may have a contract of employment which sets out the terms under which they work for the club. If no contract exists they may still be employees in which case they will be receiving a salary and the club will be making deductions for tax and national insurance.

There are lots of different ways people work such as full-time, part-time or on an 'as and when' basis, also known as zero hours workers. Understanding their status is very important in deciding what to do next as employees have employment rights which may be affected by the changes the club needs to make.

The current situation will raise lots of issues and challenges for the club. The bar will not be open for the foreseeable future and there will be no need for bar staff. However, the pitches and facilities may need to be maintained.

The situation has developed very quickly and is changing on an almost daily basis. The club should seek advice wherever it can and there is valuable information available from the Government to assist any employer. This information is regularly updated:

Guidance to employers and businesses about covid-19

Following the Government's recent announcements, it is likely the club will have already closed and sent all staff home. Those staff who are capable of working at home should do so but not all jobs are suitable for home working – such as the groundsman. If the club decides that ground maintenance and/or security is essential, currently the groundsman could continue to carry out his duties but the club should refer frequently to applicable Government guidance. The club needs to ensure they can only do so safely and without unnecessary contact with anybody else. A risk assessment should be considered and his working hours limited to essential work only.

The club should also keep the necessity of this work under constant review in line with any guidance published by the Government. The safety of staff is of paramount importance and all employers are under a duty of care for their employees' health and wellbeing. Failure to show this due consideration can result in future claims being brought.

The current situation will raise lots of issues and challenges for the club and its staff. As it stands, the bar will not be open for the foreseeable future and there will be no need for bar staff. Without bar receipts, match fees and subscriptions, how is the club to pay its staff?

The most important thing is to consider available options, take advice if you need to and choose the best way forward for your club. There are lots of cost saving measures that various businesses and organisations have put in place to tackle this crisis.

Help is available from the Government through the Government's Coronavirus Job Retention Scheme (Furlough) which is due to be implemented very soon. A more detailed note can be found at:

Covid-19 business support

As of today, there is very little practical information out about how it will work so it is important to keep up to date with the information provided on the Government website. While we wait on the particulars, the current understanding is that 80% of an employee's wages will be paid for by the Government, up to a maximum of £2,500 per month. The employer is not obliged to contribute the remaining 20% although it may choose to do so.

Clubs should consider their financial standing and make use of this option if needed.

To be eligible for the Scheme, employees will have to enter into a 'furlough' agreement with their employer. This requires agreement from both parties (e.g. an employee cannot just declare they are now a furlough worker or vice versa).

The effect and criteria of this agreement is that employees remain employed by the club but they cannot work in any capacity. It is to provide protection to those people who would either be laid off or made redundant. The club should consider whether the scheme would be suitable for its staff. It may well be ideal for the bar staff but not currently for the groundsman if he is to continue maintaining the facility. This position may of course change if and when any further restrictions are implemented on the type of work that can continue and clubs are reminded of the continuous risk assessment mentioned above.

Where help is available to the club through schemes like this it should explore the opportunity. If the scheme is not suitable and all the staff are not eligible then the club should look at alternatives such as reasonably requesting employees to take their holiday. Again, there is a cost and it is a short-term solution to what might be a longer term problem. There are also notice requirements which may make this unattractive.

As a last resort, the club could consider making them redundant but there may be a cost involved or they could agree a period of unpaid leave with them. If the club has no option but to consider redundancy, it must be careful to follow a fair redundancy process, despite the very unusual times we find ourselves in, or risk a possible claim in the future.

If any option is being considered that would result in a change to the employees' terms and conditions then it is sensible to take legal advice if it is not possible to reach an agreement with the staff about the changes that are necessary to secure the future of the club in these uncertain times.

Guidance Note 7: Financial Assistance

Our club is going to experience some financial difficulty in the short term due to loss of matchday and related income. What financial assistance is available for clubs?

Many clubs at all levels of the game will be experiencing similar cash flow issues during these unprecedented times, so it is important to consider what options may be available to your club as part of the Government's coronavirus measures.

Full details and current status of each of these can be found here:

Job retention scheme

Among these, the Government has recently announced the new Coronavirus Business Interruption Loan Scheme (**CBILS**) which may be of assistance to your club if you are suffering from a loss of matchday and related income due to the coronavirus.

This may be of interest to clubs in Steps 1 to 4, in particular, and any club which pays its players and charges admission to games.

What is the CBILS?

This is a new scheme which has been put in place by the British Business Bank, to provide small businesses with facilities of up to £5m if they are experiencing lost or deferred revenues. There are a number of facilities available, such as term loans, overdrafts, invoice finance and asset finance.

Will your club be eligible?

The scheme is available to small businesses from all sectors. To be eligible, your club must:

- be UK based with annual turnover of no more than £45m;
- have a borrowing proposal which, if it were not for the Covid-19 pandemic, would be considered viable by a lender;
- generate more than 50% of its turnover from trading activity (i.e. matchday, commercial and related income);
- use the CBILS-backed facility to support primarily trading within the UK.

Key features

Term loans and asset finance is available on terms of up to six years.

Overdraft and invoice finance facilities are available for up to three years. The Government will cover any lender-levied fees and interest for the first 12 months of the facility meaning that there is no upfront cost and initially lower payments for the Club.

The facilities will be provided by the 40+ accredited lenders that have been approved by the British Business Bank. Application criteria may differ from one lender to another. At the lender's discretion, they are able to provide unsecured lending for facilities of £250,000 and under.

The scheme provides the lender with a partial guarantee (of 80%) from the Government against the outstanding facility balance.

How do you apply?

In the first instance, contact your existing bank and see whether they offer CBILS.

You should approach the lender via their website. Due to the recent Government guidance, it is not recommended that you go into the branch. The lender will inform you of the information that they require to consider your application. The lender will make the decision as to whether you qualify for CBILS or not.

It is important to note that if the lender can offer finance on ordinary commercial terms, they will do so and will not rely on CBILS unless necessary.

You will need to evidence that the business was viable **prior to coronavirus**. The lender will be looking to establish if the provision of a CBILS facility will enable the business to trade out of short-term difficulty.

Other points to note

CBILS will run for an initial period of six months. The Government has confirmed that they will extend this if necessary.

Lenders are experiencing a high volume of calls and requests regarding CBILS and waiting times are likely to be increased because of this.

Banks are unlikely to lend to clubs which remain structured as unincorporated associations. They will want to see that the club is an incorporated entity with a proven track record of financial stability.

The situation is evolving on a daily basis. The most helpful resource for up to date information is the CBILS website:

Business interruption loan scheme

CBILS is just one of many measures that the Government has put in place to try and protect businesses through this difficult time.

For details of the Government's job retention support scheme for employers, please see our guidance **here**.

It is always worth considering alternative financing options and these can be found through the Government website:

Covid-19 support for businesses

Sport England Community Emergency Fund

Finally, Sport England has announced that grassroots clubs can apply to a new Community Emergency Fund if they are experiencing financial difficulty arising from coronavirus. Eligibility criteria and further details for awards of between £300 to £10,000 may be found **here**. Applications are open and can be made online until **31 July 2020**.

Guidance Note 8: Directors' Duties

Our club is incorporated but is having to review its financial projections for the remainder of this season and next based on reduced income. What are our duties as directors?

As directors of an incorporated club (company limited by shares or guarantee) you are responsible for the general control and management of the club, which at the moment and in these unprecedented circumstances, is proving difficult for not only clubs, but other businesses alike.

At the date of writing, your duties as a director under company law remain unchanged. On this basis, we have outlined these below.

1. Act within the scope of your powers

The powers we refer to here are those which are listed in your articles of association your governing document.

The powers normally allow the club to be able to deal with any property, borrow or raise money, invest, lend and often include a general power to do any such lawful thing that is incidental or conducive to the objects of the club.

Generally, your objects will be, amongst others, to promote community participation in sport (although wording will vary club to club).

All directors must ensure they act within these powers and promote the company's adopted objects (i.e. stated purposes for which it exists).

2. Promote the success of the club (in relation to achieving its objects) having regard (amongst other matters) to:

2.1 the likely consequences of any decision in the long term;

This will be difficult, as it is hard to predict what is going to happen at the moment and how long the current situation may last. The Government is issuing guidance daily and the situation is constantly changing, so you should refer back to this frequently in order to ensure you are in a suitably informed position.

Accordingly, it is important that directors ensure they document their decisions and ensure that they have considered the potential consequences of any actions they take, before they take them.

It is also really important to ensure all the directors have the relevant information available to them, in order to make decisions.

At the moment, it is not possible to hold meetings where directors are all present in the same room. However, a lot of clubs will have provision in their articles of association to use email, telephone or video conferencing to conduct business, and make decisions. If you do, then you should. Again, ensure you keep a written record of those decisions and do your research before agreeing your next action. If you are unsure, seek professional advice.

If there are no such provisions in your articles, and if you decide to hold meetings electronically, you should record your decision to do so to demonstrate good governance of the club and consider amending your articles to allow for this in the future.

Please refer to our guidance **here** on maintaining club operations.

A serving director has implied authority to bind a company, so during this period and while directors are not able to meet personally, it would be inappropriate for a single director to act unilaterally. If required, a board should consider introducing a scheme of delegation if certain powers are to be conferred on any one or more directors.

Remember, while you may not be able to predict the future, you can still make well-considered decisions, exercising your own independent judgement, based on the likelihood of what you consider (acting reasonably) might happen in the future.

As the guidance and information from the Government changes, keep your decisions under review and react accordingly.

2.2 the interests of the club's employees;

This will only apply to some clubs who employ staff.

Please refer to our guidance **here** on employer obligations and responsibilities.

2.3 the need to foster the company's business relationships with suppliers, customers and others;

Please refer to our guidance **here** on contracts and supplier relationship issues.

2.4 the impact of the club's operations on the community and the environment; and

Any decision made by directors may impact on your local communities, for example, the ability to allow your members to take part and play football and when you can start to operate again.

When you are able to, and where possible, keep your members up to date with the steps the club is taking to address the situation though available lawful means (appropriate notice on website, social media posting, email/correspondence to those members who have consented to being contacted for GDPR purposes etc).

2.5 the desirability of the club in maintaining a reputation for high standards of business conduct.

Directors can do this by ensuring that they act appropriately, keep members up-to-date and make decisions carefully. Reputational risk to the club and potential damage to its brand should be considered in your decision-making.

3. Exercise independent judgement;

This applies to **all** decisions.

Directors are not prevented from relying on advice, provided that they can show they exercised their own independent judgment in deciding whether they should follow the advice given to them or take a different course of action.

You should do so from an informed position, so if you need additional information to decide, ensure you get it before proceeding.

4. Exercise reasonable care, skill and diligence;

Directors should exercise the reasonable care, skill and diligence which would be exercised by a reasonably diligent person. Panic will not be an excuse, so do take some time to consider any actions you may need to take.

Directors should keep themselves informed about the club's affairs. If a particular individual has specialist knowledge, or if the directors have the ability to delegate tasks to those who have the specialist knowledge, then they should.

Reliance on advice, or reliance on anyone to whom a task is delegated does not mean that the directors are not responsible for those decisions.

Directors are responsible for any decisions made by the company, even if they did not make them personally or were unaware of them.

5. Avoid conflicts of interest;

Directors must not put themselves in a position where there is a conflict, or a potential conflict, between their personal duties, those they owe to the club or those owed to a third party.

Conflicted directors must declare any conflict, or potential conflict of interest and follow the rules set out in the club' articles of association in the normal way.

6. Not accept benefits from third parties conferred by reason of his/her being a director; and

Directors must not exploit their position, as a director, in order to obtain a personal benefit.

7. Declare an interest in proposed transactions or arrangements with the club.

A director must declare any interest, whether direct or indirect. Such declaration must be made before the club enters into the proposed transaction or arrangement.

What are the potential consequences of failing to comply?

In the normal course of business, as directors of an incorporated club, you will generally not be liable for the debts or liabilities of the club.

However, this limit on liability does **not** apply if the club trades (i) wrongfully (where you ought to have known that the company could not pay its debts as they fall due) or (ii) fraudulently (where you knew that the company could not pay its debts as they fall due). Both trading positions relate to insolvency of the club and, in turn, loss to its creditors. These are both strictly criminal offences.

However, directors will take some comfort from the Government's announcement of the temporary suspension of wrongful trading provisions on 28 March:

Regulations temporarily suspended

Most articles of association will contain an appropriate indemnity in favour of the directors, under which you will be entitled to be indemnified (in essence, held harmless) for any personal liability which you suffer in the ordinary course of your duties as a director, where you have acted reasonably, prudently and within the scope of your conferred powers.

Has there been any change to statutory filing requirements in response to coronavirus disruption?

Companies will automatically and immediately be granted a three-month extension to the filing of their annual accounts following a fast-track online process.

In these difficult times, as directors, you may have to make some hard decisions in order to try and preserve the club's future. If you are unsure, take professional advice before proceeding.

Guidance Note 9: Data Protection

How does coronavirus affect data protection compliance requirements for our club?

As a club, you are likely to retain and process the personal data of your members, volunteers and third parties. This means that for the purpose of the General Data Protection Regulations (**GDPR**), the club will be classified as a data controller.

It is therefore important that you are aware of and remain mindful of your obligations as a data controller under the GDPR while taking necessary measures to prevent the spread of Coronavirus.

It has been two years since the implementation of the GDPR (effective from 25 May 2018) and organisations are often still uncomfortable identifying the lawful basis applicable to their processing of personal data.

To recap, a data controller can process personal data under any of the following lawful bases:

- consent;
- necessary for the performance of a contract;
- necessary for compliance with a legal obligation;
- necessary in order to protect the vital interest of the data subject;
- processing is necessary for the performance of a task carried out in the public interest;
- processing is necessary for the purpose of the legitimate interests pursued by the controller or by a third party.

Processing of personal data will likely be required in connection with the pandemic facing us all at this time. For example, you may need to use contact details to allow you to update members of the club in light of Coronavirus. The lawful basis for processing relating to the outbreak for an organisation would in all probability be legitimate interest, in the public interest or in compliance with a legal obligation.

The Information Commissioners' Office (**ICO**) has launched a dedicated information hub on the impact of Coronavirus on data protection:

Coronavirus information hub

In particular, the blog by Ian Hulme, Director of Regulatory Assurance at The ICO contains a number of useful, practical steps and will be of particular interest to community clubs:

Blog community groups and covid

The ICO has stated that it is aware that organisations need to divert resource towards dealing with the issues that Coronavirus is presenting. The ICO has stated that it will not penalise organisations where they know there has had to be prioritisation and/or adaptation at this time.

The ICO are not able to extend statutory timescales (such as the period to respond to a subject access request made by a data subject) however, they will be making it clear to data subjects through their own channels that there may be delays to responses during the pandemic.

If you are a larger club and also employ individuals, it is important to consider your obligations under employment law.

In terms of employer/employee responsibility, data protection does not stop organisations from informing employees about Coronavirus cases within its organisation; in fact the ICO has been clear that organisations should actively be doing this to fulfil their duty of care to employees. However, the ICO has reminded organisations to be mindful of how they do so.

For example, in many cases it is unlikely to be necessary to name individuals widely within an organisation and you should think about which other information is actually necessary to be shared with the employees to discharge your duty of care. If you consider it needs to be shared in order to comply with your duty of care, then you should make a note of your reasoning in case needed for any future reference.

If we need to manage the club remotely with staff and/or volunteers working from their home, what implications does this have for the security of club members' personal data?

With many employees now working from home, this means that it is highly likely that committee meetings and AGMs may be either postponed or held via video conferencing facilities (provided that the club has the ability to do so).

Data protection does not stop committee members carrying out any work in relation to the club at home; however, clubs will still need to consider security measures for safe homeworking (particularly when processing any personal data) and the ICO has stressed that organisations should apply the same level of standards as in ordinary circumstances.

This will, for example, apply to the secure storage and disposal of any hard copy documentation containing personal data while home working. This should continue to be handled securely and, if identified for destruction, retained securely until the current restrictions abate then shredded as soon as possible and disposed of securely to preserve confidentiality. With this in mind, a final reminder that home refuse collection or similar services should not be used in any capacity for the disposal of any club documentation containing personal data.

Guidance Note 10: Sponsorship Contracts

We have contracts in place with our sponsors which we are now unable to fulfil – what is our position?

Depending on what level your club plays at, it may be the case that there will be no further games this season at which sponsorship rights can be exercised by the sponsors. The season has, at the time of writing, concluded for all clubs operating below Step 2 in the **National League Pyramid**.

Your position will always depend on the precise wording of the sponsorship contract in question. We have seen contracts which require the club to host a minimum number of games, and/or to allow sponsorship rights at a minimum number and/or type of games and/or to provide such rights until a specified date, typically 30 June, being the end of the football year. However, we have also seen sponsorship contracts which grant sponsorship rights at, for example, "all games played in the 2019/20 season" without specifying which and how many games.

Clearly, if there is no obligation on you to host a minimum number or type of games, then you might not be in breach of the contract at all by not hosting games, and this entirely depends on what your obligations as a club are under the sponsorship contract.

The rest of this note explores your position assuming that you are obliged to host and/or carry out some positive obligations for the sponsor during the period when Coronavirus restrictions are in place, and you are prevented from doing so as a result of those restrictions.

In general, the basic position is that where there is a contract (whether written or verbal), each party has committed themselves to perform their agreed obligations and if they do not do so, then they will be in breach of contract.

However, many contracts contain provisions which deal with events of "force majeure", the purpose of which is to excuse a party from performing their obligations (and hence not being in breach of contract) where their performance of those obligations is prevented or delayed by an event beyond its reasonable control.

Force Majeure Events

Once again, it is all down to the wording of the contract.

Whether you are excused from a breach of contract as a result of the Coronavirus restrictions really depends on the wording of the agreement and whether, in particular, there is a clause which deals with "force majeure" events.

A force majeure clause will usually excuse you from performing your side of the contract if this results from circumstances you cannot control (a "force majeure event").

What constitutes a "force majeure event" varies from contract to contract, and a clear examination of the wording in each case is needed. Sometimes, Epidemic or Pandemic is expressly mentioned in the definition, or sometimes it can fall within 'catch-all' wording such as "events beyond a party's reasonable control". In some cases, it may not actually be covered by the clause, so caution is needed with the wording.

Make sure you read the force majeure clause carefully as it often contains time-critical obligations on you to notify the sponsor if you are affected by defined 'Force Majeure Events' (such as Coronavirus restrictions).

In many cases you will be required to give notice of the force majeure circumstances, how they are impacting your ability to perform the contract and require to attempt to mitigate their impact on the performance of the contract by using workarounds if possible. Make sure you serve any notices in the required time frame and in the format required in the contract for service of notices (remember to check any express "Notices" clauses too to ensure that you are fully compliant in terms of the format and method of delivery of the notice – often e-mail is not a valid way to serve a formal notice).

Again, it is critical to consider the exact wording of the clause – are you actually excused from performing your obligations? If the force majeure clause states that the force majeure event must 'prevent' performance, you will need to demonstrate that performance is either a physical or legal impossibility and not just difficult or unprofitable.

In the case of:

(i) Step 2 and above, the season has not yet concluded and is on hold pending further announcement, so any failure to perform an outstanding obligation has not yet manifested;

(ii) Step 3 and below, the season has concluded so no further games may be played and, it is fairly clear that performance of obligations to host those games in the 2019/20 season is now an impossibility.

Please note that a recommendation or guidance from the Government not to do something is different to a legal requirement again, precise attention to the wording is needed.

What happens next?

A force majeure clause will normally only suspend your obligations for a specified period of time.

After that period, there may be a right for the sponsor (or in some cases either party) to terminate the contract if the force majeure event continues. Again, this all depends on the wording of the clause – if there are no provisions allowing for termination after a specified period then the force majeure clause is likely to provide indefinite relief from performance unless and until the force majeure circumstances come to an end.

Is the contract "frustrated"?

If the contract in question does not contain a force majeure clause which operates to relieve you of your obligations during this period then you must perform the contract, this is an absolute obligation. There is a chance that an English law doctrine of "frustration" may apply but the courts have historically been very strict in allowing it to be applied to contracts.

If a contract is "frustrated" then the contract will fall away and generally speaking each party is entitled to be put back into the position they were in before the contract was entered into, i.e. monies paid over should be repaid and obligations cease.

In general, frustration applies where something occurs after the contract has been entered into, is not due to the fault of either party and renders further performance illegal, impossible or makes it radically different from that contemplated by the parties when they entered into the contract. This could, for instance, be the case if you have contracted to 30 June 2020 to provide sponsorship services at games which have now been cancelled.

We would never advise trying to rely on frustration alone as it is always down to the courts' narrow interpretation as to whether an event will constitute frustration of the contract or not; but guidance can be taken from decisions of the courts in the past.

Can the sponsor terminate the contract?

This is only likely to be relevant where the sponsorship contract covers a period beyond the current season.

There is commonly a termination clause in most contracts which allows termination of the contract if the other party is in breach. Usually the term "material breach" is left open to interpretation and means a breach which goes to the heart of the contract and is a breach of a fundamental term. A failure to provide the sponsorship opportunities is a fairly fundamental breach of the contract; but remember that if you are excused by a force majeure clause then you are not in breach of contract and this cannot apply.

There are likely to be separate termination rights linked to non-performance as a result of a force majeure event, as mentioned above. If you are being threatened with termination as a result of non-performance then you should seek legal advice as it may be that the correct procedure has not been followed by the sponsor and there are in fact no grounds for termination.

Will you have to repay sponsorship money?

If you benefit from a valid force majeure clause in the contract, then you will not be in breach of the contract if the provisions excuse you from performing as described above.

This means that damages for breach of contract will not be payable. However, there is a legal doctrine that a party should not benefit from payment for services not actually performed and so it may be the case that a court would require repayment of a fair portion of the sponsorship money where sponsorship opportunities have not been provided, even if due to force majeure circumstances.

It is likely that sponsors will be asking for the money back sooner rather than later if they are going to go down this route, and it would be very unlikely that you would receive court papers requiring repayment of the sponsorship money without written correspondence and discussions preceding this stage. In any event, most of the contracts in question will have a dispute resolution procedure written into them which should be followed before any sums can be claimed through the courts.

Practical steps

We would suggest that you take action now for all supply contracts that you have in place:

- Check whether you will actually be in breach of your obligations under your contracts
- Do they contain force majeure clauses, and if so what does force majeure lead to, does it include a right to terminate?
- Are you actually prevented from performing your obligations?
- What termination rights does the sponsor have?
- Are you able to establish a dialogue with sponsors now to strike up a dialogue about how you can provide sponsorship opportunities by different means rather than repaying pre-paid sponsorship money?

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