

Forward thinking.
Straight talking.

Surviving the Coronavirus shutdown

Answering your questions on the impact of Covid-19 on the
Sport and Recreation Sector

**SPORT+
RECREATION
ALLIANCE**

Gateley **LEGAL**

Answering your questions today...



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*How does COVID-19 impact
your contractual obligations?*

Force Majeure

A Force Majeure clause is designed to protect one or both parties if something happens that is 'outside their control' and prevents a party from performing the contract

An effective clause, once triggered, will suspend performance of the affected party's obligations whilst the force majeure event is ongoing, until the contract can be "resurrected" when the event is over.

Some force majeure clauses may allow either or both parties to serve notice terminating the agreement after a specified period so that they can make alternative arrangements, which can be as short as 30 days

Will the Covid-19 pandemic constitute Force Majeure?

Does the clause specifically cover the outbreak as a force majeure event?

Interpretation of "prevent", "hinder" or "delay"

Have you taken reasonable steps to mitigate the effect of the pandemic?

Is the pandemic the only cause of your default?

What should you be doing now?

Review all key contracts looking out for any specific terms which talk about termination, cancellation, non-performance or 'force majeure'

Invite communications and early dialogue from contractual partners

Await formal government or governing body instructions before taking any significant action

Seek legal advice if in doubt about whether a force majeure event applies to specific contracts or what other relief may be available

Event Cancellation

What are the implications?

➤ Consider the following...



Frustration

Event makes performance of contract impossible, illegal or radically different from that contemplated at the time of the contract

Contract brought to an end

All obligations cease

*Moving your
organisation online*

IT software considerations

- Check your existing licences to ensure your organisation is not exceeding its support/user limits in order to support more remote employees
- IT vendors and service providers are helping organisations armed with remote collaboration and security tools to enable offsite working
- Keep an eye out for vendors such as Microsoft, Zoom, Cisco etc. who are offering a lot of new deals with a number of providers offering services for free on a trial basis
- When signing up to new contracts, carefully consider your software usage, or future plans for usage, to ensure you will not be in breach of licence terms
- Ensure you carry out reasonable due diligence on any software that you look to procure - avoid signing up to anything just to ensure business continuity
- If there isn't time to negotiate the agreement properly, ensure that there are easy exit rights if the software no longer works for you after things have gone back to normal

Data Protection considerations

➤ The core security requirement under **Article 32 of GDPR** states:

“Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.”

The ICO have also a series of questions and answers on their website, one of which is:

Question:

“More of our staff will be homeworking during the pandemic. What kind of security measures should my organisation have in place for homeworking during this period?”

Answer:

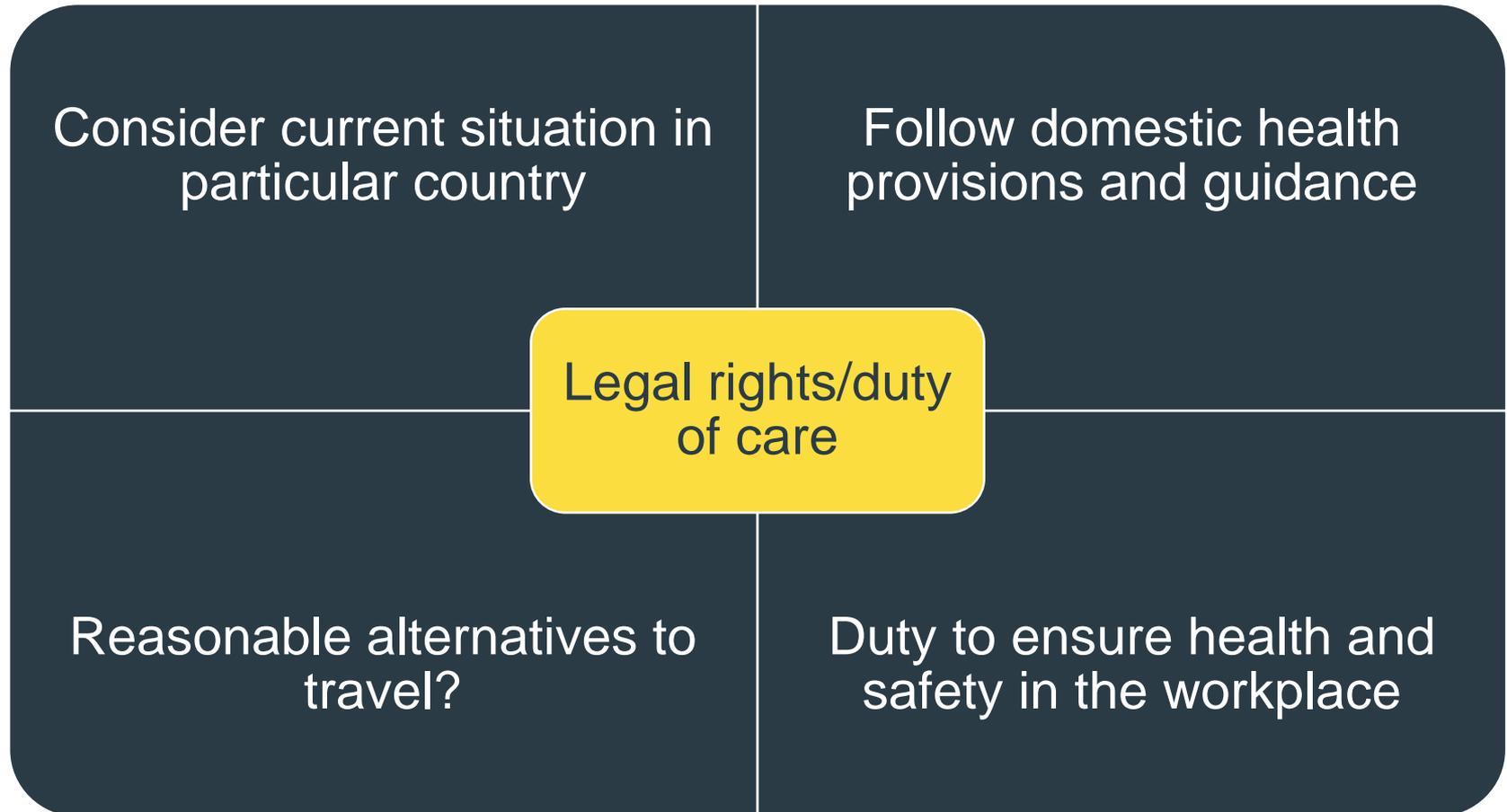
“Data protection is not a barrier to increased and different types of homeworking. During the pandemic, staff may work from home more frequently than usual and they can use their own device or communications equipment. Data protection law doesn't prevent that, but you'll need to consider the same kinds of security measures for homeworking that you'd use in normal circumstances.”

Remote access to databases

- Ensure access is secure, for example only from approved IT devices, via a VPN, using good security and ideally two stage authentication.
- Ensure data is encrypted in transmission at the very least and preferably is encrypted on devices too.
- Track of large or mass downloads or deletions of data, i.e. system monitoring.
- Ensure that giving remote access does not expose the data to greater external threat.
- Make sure that system permissions to alter or delete data are appropriate.
- Consider the ability to remote wipe devices if they are lost or stolen.
- Ensure that virus checking and firewalls are up to date and operational.
- Use granular access permissions where possible, so that only employees who need access to particular data have that access
- Ensure that adequate back-up procedures and disaster recovery procedures are in place, preferably tested, as increased remote access for example may lead to increased risk of malware/ransomware.
- Ensure there is sufficient bandwidth to cope with the remote demand and carrying out of stress tests.
- Procure sufficient number of portable devices for employees to use if they currently use desktop PCs, for example current demand for laptops exceeds supply.

Once global travel bans have been lifted, what about those athletes that still refuse to travel?

Can the athlete justify their refusal to travel?



Your questions...

Thank you

If you have any additional questions not covered in today's webinar or would like any support around matters raised today, please contact us.

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