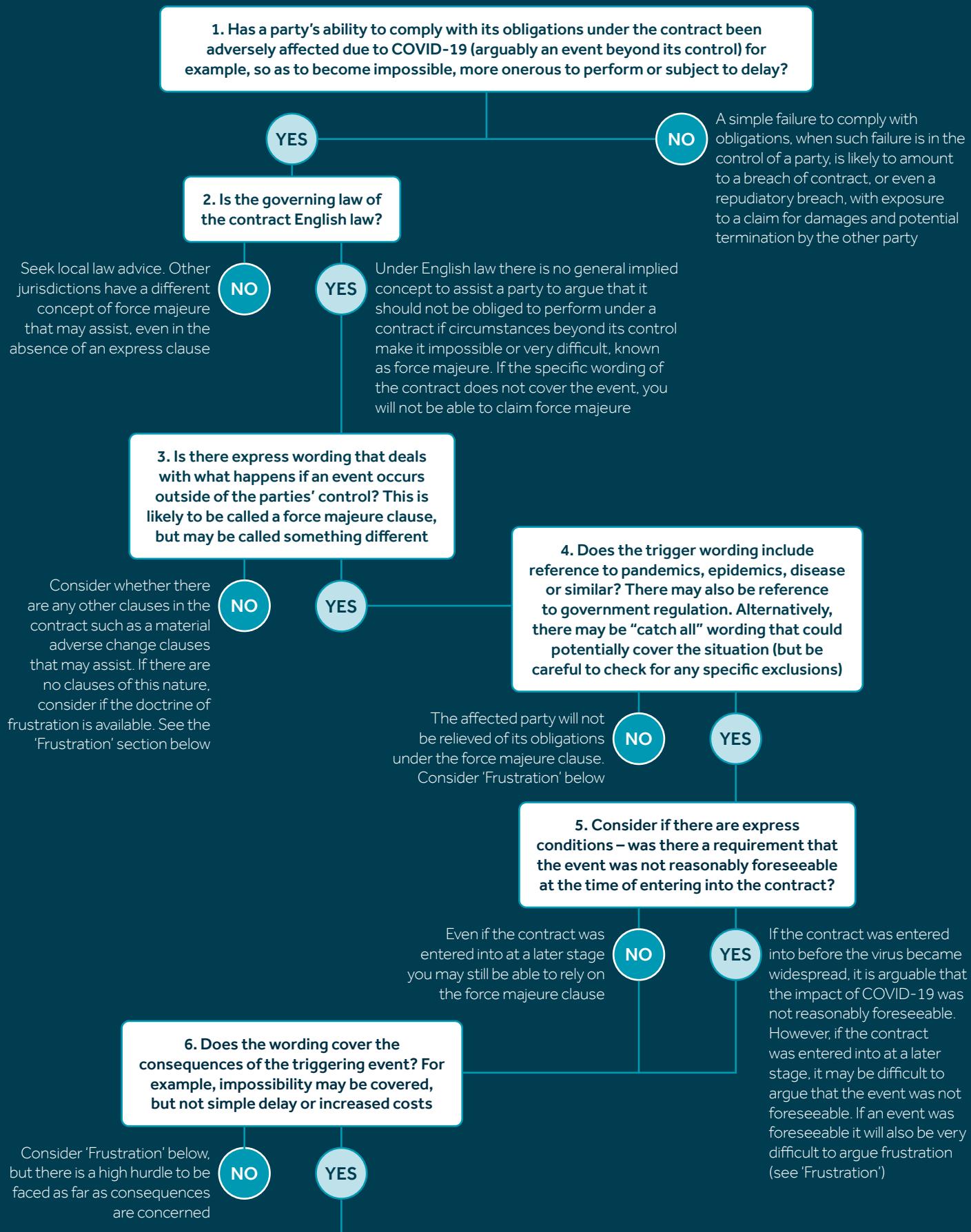


# Force Majeure Flowchart

The contractual issues highlighted more than any other by the COVID-19 pandemic are the force majeure clause and the principle of frustration. This flowchart is designed to help you with a systematic practical approach to these key concepts.



**7. Is the triggering event the cause of the failure to comply with obligations? Would the obligation have been complied with if the event covered by the force majeure event had not occurred?**

The courts take a fairly restrictive interpretation of force majeure clauses. If a party would not have complied with its obligations because of another factor that is not covered by the clause, that party may not be able to rely on force majeure

**NO**

**YES**

**8. Are there any requirements to provide notice and further information on the occurrence of a force majeure event or to follow any procedures?**

**NO**

**YES**

In order to rely on force majeure you need to strictly comply with the requirements

**9. Are there any mitigation requirements ?**

In practice parties should still take steps to minimise the impact of COVID-19 as far as possible. If a party could have taken steps to mitigate its impact, but did not, it is going to be difficult to argue that the triggering event actually caused it to be unable to perform its obligations

**NO**

**YES**

You need to be able to show that you have taken reasonable steps to avoid/ mitigate the force majeure event and its consequences

**10. What are the consequences of a force majeure event occurring? Do some obligations under the contract continue, even if others are suspended?**

**NO**

**YES**

You need to be very clear about the continuing obligations and comply with these

**11. Does the contract provide for a right to terminate on the occurrence of a force majeure event or after a period of time?**

**NO**

**YES**

There may be obligations that can continue despite the force majeure event and these need to be complied with unless frustration applies, see 'Frustration'

Ensure that the force majeure event has occurred and that any requirements for service of a termination notice are met. While reserving your rights under the contract, consider if there are any other commercial options that may be in the interest of both parties to consider

**12. Is the contract with a consumer?**

There is considered to be a better balance of power between two businesses than a business and a consumer, therefore a force majeure clause in a business contract is likely to be valid, although if a contract is on standard terms the clause has to be reasonable

**NO**

**YES**

A force majeure clause in a business to consumer contract may be considered unfair under consumer rights legislation

# Frustration Flowchart

If the contract does not address the adverse consequences of COVID-19 or resulting government legislation, it may be possible to argue that the contact is frustrated. This is a difficult legal argument to succeed on, as it is very narrowly construed, however if successful, the contract will automatically terminate. There are statutory provisions that address sums already paid and expenses incurred.

To show frustration there needs to be:



## Who to contact



**Nick White**  
Partner, Commercial  
[Nick.White@crsblaw.com](mailto:Nick.White@crsblaw.com)  
+44 (0)20 7438 2294