

The NCC has obtained Counsel's advice on whether holiday caravan owners are legally entitled to a refund of all or part of the pitch fees paid for the year because of the government's mandate to close holiday parks due to the coronavirus pandemic.

Counsel was provided with a copy of the NCC Combined Purchase and Licence Agreement, the NCC Code of Practice for holiday home ownership, the old Licence Agreement dating from 2008 and a set of example Park Rules.

For anyone to claim that they are entitled to money back from the holiday park owner they first need to establish that they have a legal justification for the return of the amount claimed. For example, that the holiday park owner is in breach of their legal obligation(s) and as a result the holiday caravan owner has a legal remedy which is the refund of monies already paid. The holiday caravan owner will need to establish a legal cause of action which entitles them to a refund or a partial of the pitch fee for 2020/2021.

The start and end point is the contract documentation for the sale and siting of the holiday caravan.

The issues presented by the current unprecedented times are not straightforward.

Counsel's advice is positive for holiday park owners, but it does come with a health warning. There are no tried and tested legal authorities on the issues raised by this instruction to Counsel. A Court, if tasked to determine the issues may interpret the contract documentation differently and make different findings or draw different conclusions. However, one thing is clear and that is the effect of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 which prescribe that Parks must close (unless there are permitted exceptions) and that no one must travel to a second home without reasonable excuse.

Counsel's advice is summarised below.

Executive Summary

- 1) Breach of an express or implied contractual obligation unlikely
- 2) Therefore, no legal justification to claim a refund of the pitch fee or anything else
- 3) Even if a Court were to be persuaded that there was a breach of contractual obligation, any claim for a refund/anything else, is likely to be defeated on the basis that it is:
 - illegal for the holiday park to be open and
 - illegal for holiday caravan owners to travel to the holiday park

Relevant Legislative Framework

- Under the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ("the Regulations") campsites and holiday caravan parks were forced to close and are to remain closed; and no person may travel to a second home/holiday caravan during the emergency period (from 26 March 2020 until the Secretary of State lifts this restriction) save in the limited permitted exceptions.
- It is a criminal offence to ignore the Regulations without reasonable excuse.
- There are similar Regulations in Scotland, Wales and Northern Ireland.

NCC Holiday Park Holiday Home Ownership Code of Practice

- The code provides additional assurances to caravan owners by NCC member holiday park owners which include: "We will.....ensure that our business, its products and services comply with industry rules, standards and agreements and all relevant laws and statutory regulations"
- The code requires all member holiday parks to comply with statutory regulations which encompass the Regulations.

Express Terms of the Licence Agreement

- Holiday park owners are under an express contractual obligation to provide a pitch – this term is not being broken.
- There may be an entitlement in the park rules which allows the holiday park to close due to a regulatory requirement. Such a rule, providing it is drafted appropriately, is unlikely to be unfair and can be relied on.
- In the absence of a park rule there is no express obligation on a holiday park owner to keep the park open and accessible to holiday caravan owners anyway.
- Therefore, by closing the holiday park, the park owner is not breaking any express contractual obligation because one does not exist in the first place.

Is there a term implied into the Licence Agreement to allow caravan owners access to the Holiday Park and to their holiday caravan?

- In the absence of an express obligation to keep the holiday park open is there an implied obligation to do so?
- It is fair to say that it is implied into the Licence Agreement that a holiday caravan owner will be entitled to access their holiday caravan.
- The question is whether this is an absolute entitlement or a flexible one.
- A holiday park may have a closed season when a caravan cannot be accessed in which case there can be no absolute requirement to allow caravan owners to access their caravan.
- Even if there is no closed season, support can be drawn from the obligation to provide services to the pitch which is not an absolute obligation because it says that services may be interrupted for "reasons beyond our [park owner's] control".
- The pandemic and the Regulations are reasons beyond the holiday park owner's control.
- Therefore, it is unlikely that an implied term would require the holiday park owner to keep the holiday park open when it is illegal to do so.

Are there any potentially unfair/unenforceable terms in the Licence Agreement

- "A term which has the object or effect of obliging the consumer to fulfil all of the consumer's obligations where the trader does not perform the trader's obligations" is unfair and enforceable.
- On the basis that the holiday caravan owner is obliged to pay the pitch fee for the year but the holiday park owner is under no express obligation to keep the park open or any implied obligation to do so because it is illegal to keep the park open, is there a significant imbalance between the rights of the parties to the detriment of the caravan owner? Possibly.

- However, the caravan owner is entitled to give notice to end the Licence Agreement should they wish to do so in accordance with the relevant provisions. The terms of the Licence Agreement about refunds would be engaged. This is a significant counter argument.

No cause of action likely – no legal justification for a claim

- On the basis that there is no breach of obligation (either express or implied) on the part of the holiday park owner there can be no entitlement to any refund of pitch fees nor compensation for anything else including loss of enjoyment.

Illegal anyway if there is a cause of action for breach of contract

- In the unlikely event that the holiday caravan owner was to establish that the holiday park owner is in breach of their contractual obligation(s), there is a defence of illegality.
- Holiday caravan owners agree not to commit a criminal offence at the holiday park. They would be committing a criminal offence if they were to come to the park because of the Regulations. They would not have been able to come to the park or allow anyone else to come to the park (for example, those they had agreed to let to under some separate form of sub-letting agreement).
- This defence is likely to defeat any claim for breach of contract which may be established.

Refund of Pitch Fee possible damages for disappointment and distress

- In the unlikely event that a Court were to find that there had been a breach of contract on the part of the holiday park owner and that the holiday caravan owner could have enjoyed their caravan notwithstanding the Regulations, the most likely types of loss would be:
 - (a) pro rata refund of pitch fee; and
 - (b) damages for disappointment at the loss of entertainment and facilities. This would probably be a small, token amount.