

## **COVID-19: Holiday Park Closures Pitch fee refunds and other areas for consideration**

### **What does the legal advice mean for holiday park operators?**

The legal advice obtained by the NCC addresses the question of pitch fee refunds purely from a contractual basis and assumes that you, the park operator, have a written contract – the licence agreement – with each of your holiday caravan owners.

The effects of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (and similar regulations in Wales, Scotland and NI) which prescribe that Parks must close (unless there are permitted exceptions) and that no one must travel to a second home without reasonable excuse are clear.

The legal advice indicates that for a caravan owner to claim that they are entitled to money back from the park owner they first need to establish that they have a legal basis or 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 caravan owner will need to establish a legal cause of action which entitles them to a full or partial refund of the pitch fee for 2020/2021.

#### In summary:

- Any breach of an express or implied contractual obligation is unlikely
- Therefore, there is no legal justification to claim a refund of the pitch fee or anything else
- Even if a court were to be persuaded that there was a breach of contractual obligation, any claim for damages (such as loss of lettings), could be defended on the basis that it is currently:
  - illegal for the holiday park to be open; and
  - illegal for holiday caravan owners or their guests to come to the park
- Counsel's advice is positive, 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

Nevertheless, any decision to adopt this approach should be taken with great care, mindful of the lasting impact such a decision will have on your **short-term finances** **but also** the loyal owners who have committed to and invested in this leisure lifestyle. Possible reputational damage to your business may follow.

It will ultimately be for each park business to decide the best strategy for them, based first **on what the business can afford in order to maintain financial stability** and then on a number of practical issues: retaining loyal customers; your ability to make any refund and if so when; the level of any refund and how that will be made.

## To refund or not to refund pitch fees

This is a decision for each park business based on the best strategy for them, and taking account of a number of practical issues: retaining loyal customers; your ability to make any refund and if so when; the level of any refund and how that will be made. One size will not fit all.

Whatever you decide, it must be **appropriate, fair and consistent.**

Customer retention - it is less costly to retain an existing customer than it is to find a new one, so consider the needs and possible losses to your current customer database depending on the decision you decide to make. Approach any refund in a fair and considerate way, designed to demonstrate that you acknowledge that this situation is neither their fault nor yours. **Where possible, give your customers options so that they have the power to make their own choice.**

Refunds – if you decide that some form of refund is appropriate – and this is the approach now being taken by many parks – you will need to consider what form that refund takes and also from when the refund takes effect. Options include:

- a full refund for each complete week that the park is closed starting from Monday 23 March 2020
- a partial refund for each complete week that the park is closed with a sum deducted to cover the security of the holiday caravan on the pitch and the necessary maintenance of the park to ensure that safety and other standards/duties are maintained while it is 'unoccupied'
- a partial refund to account for the loss of access to the caravan and the park's facilities
- crediting the amount of pitch fees paid for the number of weeks the park is closed into the next years r pitch fee when that becomes due i.e. so 12 months due from November 2020 becomes 9 months due if the park was closed for 3 months
- a cash refund – some owners may be experiencing exceptional circumstances as a result of the COVID-19 (see below); these should be considered on a case by case basis if owners contact you, and handled in strict confidence and with sensitivity
- a credit amount against the purchase of a new holiday caravan or accessories such as patios or decking or refunded with the sale of the home should the owner decide to leave the park.

Refunds for those who remained in their holiday caravan - where holiday caravan owners are permitted to remain in their caravan during the enforced closure period in accordance with the Government's criteria -

<https://www.gov.uk/guidance/covid-19-advice-for-accommodation-providers> because:

- they do not have a permanent residence or
- the park provides accommodation to key workers or
- vulnerable groups, such as homeless households through arrangements with local authorities and other public bodies

then any refund should reflect the lack of access to the facilities that they could have enjoyed during normal opening e.g. access to bars, restaurants, club house, leisure facilities etc.

If you are able to calculate the value of these facilities on a weekly basis, then that could be reflected in a discount on the next season's pitch fees. The whole issue of residential mis-use of holiday caravans will need to be dealt with carefully, sensitively and consistently.

There is no set way to undertake this exercise as the current situation is unprecedented, but we would strongly advise keeping the interests of your customers front and centre whilst forming your strategy.

Non-payment of pitch fees - the impact of the COVID-19 provisions extends to businesses and owners. Many owners may now find themselves in very different financial circumstances. While most will have already paid this season's pitch fees in full, others may have individual payment agreements in place to pay the balance in monthly instalments. The closure of the park and access to both their caravan and the facilities is provoking some to withhold their payment completely. There may be lots of different reasons for this e.g. loss of job, delays in receiving universal credit, illness, bereavement.

While any refusal to pay the pitch fee constitutes a breach of contract, it is in everyone's interest to take time to talk through any failure to pay with the caravan owner, explain your position as a park in these unusual times and to try and agree some arrangement for the pitch fees to be paid taking into account the reasons given by the caravan owner for not paying. Most caravan owners aren't looking to leave the park by either terminating their own agreement or by having it terminated by the park owner. It is worth the time and effort to try and agree a way forward.

It's worth remembering, too, that those caravan owners who hire out their caravan (either through your rental scheme or on a private rental basis) are more than likely to rely on this rental income to pay next year's pitch fees. The closure provisions will have had a direct impact on these owners, so consider what you can do to assist them with meeting these payments; extending credit terms initially and /or reducing commission on their letting income for 2021 to help them accrue back the lost income.

## Other remedies and gestures of goodwill

Consider what else you can do to show you value and wish to retain your existing owners – and perhaps attract new ones in the future. These could include:

- waiving any pitch fee increase for the 2020-2021 season
- extending the contractual opening season – subject to both the existing planning status of your park and any relevant conditions of the planning permission and any relevant site licensing conditions – so that owners can use their caravan for longer to make up for the time lost since March
- allowing owners to pay pitch fees monthly
- deferring the payment of any balance of pitch fees in full until one month after the park re-opens
- offering limited free access to all facilities (where previously charged) on park as a thank-you for the owner's patience
- a special rate for any holiday bookings introduced by existing caravan owners up to and including June 2021
- a re-opening celebration party – free to owners and guests
- An extension of time to the agreement period so as to allow them to keep their caravan on the park for an additional period of time. This would be in lieu of any refund

Business rates refunds – the business rates 'holiday' differs across the different nations of the UK. Where rates are re-charged back to your park by the local authority, caravan owners who have made a contribution to the rates in their pitch fee should have the benefit passed on in due course:

**England** – All businesses in England including holiday parks have been granted a '12-month holiday' from payment of Business Rates for the 2020-2021 tax year. The relief is available from 1 April 2020 – 31 March 2021. Businesses do not need to apply for the relief – it will be re-charged automatically. For more information visit:

<https://www.gov.uk/guidance/check-if-your-retail-hospitality-or-leisure-business-is-eligible-for-business-rates-relief-due-to-coronavirus-covid-19>

**Wales** – all retail, leisure and hospitality businesses (including holiday caravan parks) with a rateable value of £500,000 or below will receive 100% non-domestic rates relief in 2020-2021. For more information on the rates relief in Wales download the guidance [here](#).

**Northern Ireland** – a business rates 'holiday' will be applied to most business ratepayers, including holiday caravan parks, for a three-month period. This means that

no rates will be charged for April, May and June and represents a 25 percent reduction in the annual bill for 2020-2021.

The amount does not need to be paid back and businesses do not need to request or apply for the reduction – it will happen automatically. The next rates bill is not due to be delivered until June and at this stage businesses can still choose to pay their bill in monthly instalments between June 2020 and March 2021

For those businesses that pay by direct debit the payment plans will be automatically updated to collect payments from June. For more information visit:

<https://www.nibusinessinfo.co.uk/business-support/business-rates-holiday-ni-only>

**Scotland** - retail, hospitality and leisure businesses (including caravan parks that are occupied including those that have closed temporarily due to the Government coronavirus advice) will receive 100% rates relief. Businesses do not need to apply for the relief – it will be applied automatically to the rates bill by your local authority. For more information on the position in Scotland visit:

<https://www.mygov.scot/non-domestic-rates-coronavirus/>

### Clear communication

Applying a fair, transparent and consistent customer centric policy will demonstrate that you have considered all circumstances and are treating everyone equally:

- (i) Decide on your policy and communicate it clear and concisely in writing by email and letter. You may also wish to publish it on your website, but this should be done *in addition to* individual letters and emails.
- (ii) Be prepared to offer an explanation as to how you reached your decision, and how you calculated the refund.
- (iii) To minimise negative feedback, make sure your communications empathise with your caravan owner's situation, acknowledge their frustrations and emphasise that this is an unprecedented but temporary situation and that you are looking forward to reopening as soon as the non-essential travel restriction and lockdown is lifted
- (iv) Where possible, give your customers options so that they have the power to make their own choice.

### Be aware

You will never please all of the people all of the time and, whatever policy you decide to make must be right for your business. Park staff, on the front line will need to be able to deal with enquiries and complaints quickly and consistently:

- (i) ensure your park managers and anyone on customer care lines know what the policy decision is, how it is applied and to whom they should refer if

they have any questions

- (ii) make sure that strategies are in place to address queries and complaints quickly
- (iii) ensure that your complaints procedure is clear and understood by all staff members and
- (iv) nominate one or two staff members (depending on the size of the park) to be the first point of call for complaints to ensure consistency in responses. Ensure that these staff members are adequately trained and supported by senior managers.

### Unchartered waters

These are exceptionally difficult and deeply troubling times for everyone. Lifting the ban on non-essential travel and the re-opening of holiday parks - and effectively the 2020 holiday season - so people can enjoy their holiday caravan and all that your park has to offer lies at the heart of the future of your business.

That is why the focus of the NCC's lobbying activities is the removal of the closure notices on parks, which is crucial to the health of the whole industry - **but only when judged safe to do so.**

In the meantime, as far as you are able, make your owners feel valued so that you can re-emerge with a strong, loyal owner base on which to build by:

- putting customer service at the heart of every decision – customers are your future
- keeping communications clear and transparent
- being fair and consistent.