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Independent schools: Can parents get a refund for school closures due to COVID-19?

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As a result of the COVID-19 pandemic, the country has gone into lockdown with all but the most essential businesses closed and strict social distancing rules in place. Since 20 March 2020 schools have been shut save for provision being made for vulnerable children and those whose parents are deemed key workers.

At the time of writing the lockdown is set to continue for some weeks hence, and it is not known when schools will reopen. Many schools are attempting to continue to provide educational services with 'virtual' tuition, or by setting work that pupils can carry out independently at home.

At the same time, parents of children attending fee-paying schools are receiving their invoices for the summer term. Some parents have expressed concern that they are being charged the full amount of fees, arguing that their children are not receiving the same standard of education. For many parents COVID-19 has caused financially uncertain times and payment of school fees may become difficult or impossible.

As a result of these concerns many independent schools are considering some form of reduction in fees for the summer term, offering discounts varying between 10 percent to 30 percent. Many schools are also considering a fee freeze for the next academic year and refunds for certain extras that cannot currently be provided, such as meals and school trips. Similarly, some boarding schools have chosen to reduce or waive boarding charges.

However, not all schools will offer discounts and some will have concerns about cash flow. There is a misconception that independent schools are all wealthy institutions. Many schools have been affected by the economic consequences of the pandemic and a reduction in fee income may even force some schools to close.

The rights and obligations of parents and independent schools are mainly enshrined in each school's terms and conditions – the parent contract. This will typically contain provisions setting out the parties' obligations in the face of an event occurring that is beyond the reasonable control of the parties, known as a 'force majeure' event. Examples are natural disasters, 'acts of God', industrial action and pandemics.

The courts tend to interpret force majeure clauses restrictively, so it is worth checking if the parent contract includes specific reference to disease or pandemics; many do. For example, one independent school in London refers to an “*outbreak of epidemic or pandemic of disease*” and a boarding school in Surrey refers to “*a pandemic or epidemic of disease*” and to “*compliance with any law or governmental order, rule, regulation or direction*”.

The effect of a force majeure clause will ordinarily be to excuse a party from performing its obligations under the contract during the course of the force majeure event, without giving rise to liability to the other party. In relation to the Covid-19 pandemic, and on a strict contractual basis, this means that schools may not be obliged to give any refund to parents for non-performance of their obligations.

If a school does claim that the COVID-19 pandemic is a force majeure event, they may be required to give notice to parents specifying the nature and extent of the disruption and the ways in which they are trying to minimise the effect of the event. Additionally, if the force majeure event continues for a length of time specified in the parent contract (e.g. 120 days), one or both parties may gain the right to terminate the contract.

In reality, schools are likely to want to strike a balance between exercising their contractual rights and keeping parents happy.

Therefore, schools may recognise that they are wholly unable to provide some services during lockdown, such as school meals, boarding and excursions, whereas other obligations can still be performed via alternative means, such as online lessons. Refunds are more likely to be applied for those services that schools are wholly unable to perform.

Overall, whether parents are able to seek a refund or discount in school fees due to COVID-19 will depend on the wording of their contract with the school. Parents should check their individual parent contract carefully, to see if a force majeure clause applies.

However, depending on the overall objective, parents may wish to preserve the relationship with their children’s school. Some schools offer hardship funds to assist parents who are financially in need. Often the best first step for parents who struggle to pay fees is to speak to the school bursar.

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