

Business Clinic

Whether it's a legal, tax, insurance, management or land issue, *Farmers Weekly's* experts can help

Wedding organiser wants refund for 2020 booking

Q We have converted a timbered barn into an attractive venue, mainly used for weddings.

The pandemic has played havoc with our business. Luckily, many couples who had booked for this year have moved their bookings with us to 2021. Where we deal direct with couples, there hasn't been much of a problem.

However, one commercial wedding organiser is demanding that we repay them a £2,000 deposit for a wedding with 150 guests, booked for mid-September this year.

We have not cancelled this wedding, but the future, and how the venue can be used, is uncertain.

With the pandemic in mind, taking a prudent approach we will now only be able to fit in about 35 guests. The organiser also says they have spent money booking catering, a DJ and other services and that they will look to us for these costs.

Please advise on the deposit and their claim for the other costs.



Kate Westbrook
Partner
Thrings

A You are right not to cancel the wedding yet. It is not due to go ahead until September and, at the time of writing, we don't know whether weddings will be able to take place and, if they can, whether the number of guests will be limited (although it sounds as though you've already started considering how to make the venue Covid-19 secure in accordance with current government guidance).

You are currently not in breach of your contract, as you have not yet failed to make the venue available. Given uncertainty surrounding weddings, it's better for both parties to agree to postpone the wedding until a later date (as you have done with other couples).

You cannot force the commercial organiser to accept a revised date unless you have a very specific clause in your contract (this would be unusual and could be void if there is any uncertainty about how it operates).

If you can't make the venue available on



Consumers have different rights to those of commercial customers

the allotted date due to government restrictions, this is likely to be a technical breach of the contract.

Force majeure protection

The "breach" would be excused (and therefore would not lead to a claim for breach of contract) if there is a force majeure clause in your written contract.

Even then, the devil is in the detail – is the pandemic covered by the definition of force majeure and what else does the clause say?

Often a force majeure clause is linked to the right to terminate the contract. In that case, either party might terminate the contract.

The deposit (or part of it after you deduct reasonable costs) might be refundable, but this will depend on the contract terms.

If you don't have a force majeure clause, the legal doctrine of frustration may apply if it is impossible for you to hold the wedding at your venue. This will depend on the situation at the time, but if it applies, the contract is "discharged" and all rights and obligations are cancelled. There are statutory provisions which would allow for the deposit (or some of it) to be reclaimed.

The claims for the other costs threatened by the commercial organiser will depend on how your contract is written. However, where you have a force majeure clause or if frustration applies, it's unlikely you would be held liable for these. If there is no force majeure clause and the wedding cannot take place due to

government restrictions, there is a strong argument that you are not the cause of "wasted costs" and therefore are not liable for them.

Guest capacity

With regard to guest numbers, it's possible there is either a written or an implied contractual term that the venue will be made available with a certain guest capacity. If this needs to be reduced due to government restrictions or following your own risk assessments, this could well be a breach of contract depending on how the contract has been written.

A force majeure clause or frustration might apply here, but it's possible the commercial organiser could claim this to be a major breach of contract, which would entitle them to cancel the contract and claim damages.

Those damages might include repayment of the deposit and any other costs they believe are linked to your breach.

In this case, there might be more of an argument for the "wasted costs" (such as the DJ and catering) or any claims made by the couple to be recovered.

Your contract's limitation of liability clause could protect you here and at least limit the compensation that might be payable. Much rests on the content of your written contract. Readers should also note that the response might differ if the query concerned a couple, as they would hold consumer status in law.

You should seek specialist independent legal advice to assess your situation.

What help can I get for essential fencing repairs?

Q I'm a struggling small farmer. My sheep fencing is rotting and desperately needs replacing.

Contractors want to do longer stretches of fence and not what I could afford in bits now and again.

I understand there are bounce-back loans at a low interest rate. Are they worth having? Can I get any other help? I get subsidy, but it is spent on maintaining the land.

Also, when I bought part of a field, I agreed to be responsible for the stockproof fencing which needs replacing. Which side of the fence should the posts be positioned?



BERND BRUEGGEMANN/ADOBE STOCK



Chris Anderson
Associate partner, rural
Carter Jonas

A Regarding the fencing, I presume the responsibility for the boundary is clearly noted in the conveyance and Land Registry title documents, in which case the construction of the fence is of less concern.

However, it is convention that the posts are positioned on the owner's side of the fence, and the fence itself positioned immediately adjacent to the boundary, so as not to encroach on your neighbour's land.

However, when dealing with lengths of stock fencing, pinpoint accuracy may be of less importance than with residential fencing.

It is good practice and a sensible precaution to inform your neighbour that you are carrying out the work and ensure no disagreement is raised as to the location of the fence.

It is prudent to ensure that parties to a boundary understand the ownership position, and ideally that it is recorded in writing (either in the conveyance or separate boundary agreement).

Such documentation often does not exist when dealing with land boundaries, and so common law (created through court decisions) has built up. As a result of such decisions, presumptions can be made about the legal position of boundaries where there is no evidence opposing them, with the hedge and ditch presumption being one that often affects farmland.

The role of convention

The position of the posts on fencing can help denote the ownership of the boundary by virtue of convention, but actions of the parties over the years, such as who spent time, effort and money erecting and maintaining the fence, are also important. In the absence of any agreement, the cost of maintenance is usually shared equally between the adjoining owners.

You may wish to consult an agent or solicitor if you are uncertain about the ownership of boundaries.

With regard to the cost of fencing, larger contractors will naturally err towards larger contracts. Ask around – there may be someone looking for fencing experience who will charge less just to be given the opportunity, and may carry out smaller sections.

In terms of finance, bounceback loans have recently been launched by the government due to the coronavirus pandemic. The headline rates and figures seem appealing, but payback periods can be relatively short – although it may assist you in the immediate term.

Longer-term funding

Alternatively, institutions such as the Agricultural Mortgage Corporation and others focus solely on farming businesses, and high street banks have agricultural divisions. These lenders may have a better understanding of farming and the specific issues, and may be able to provide more suitable longer-term funding.

It is an unsettling time and there are no easy answers for a small, cash-poor business with limited scope to significantly increase turnover and profit. However, if you are committed to the business and prepared to accept its limitations in favour of the lifestyle you want, then managing your cash, saving wherever you can and exploiting grants and funding will be important parts of your business plan.

Fencing can form part of stewardship schemes in certain circumstances, so they may be of interest.

The gradual reduction of BPS direct payments over the next seven years (timings liable to change) and the Agriculture Bill passing through parliament will have a major effect on farming and the rural sector.

Friends, family, neighbours, support organisations, charities and paid advisers can all help you objectively discuss and critically analyse the options, including some that may be outside your comfort zone.

DO YOU HAVE A QUESTION FOR THE PANEL?

Outline the issue and *Farmers Weekly* will put your question to a member of the panel.

Send your enquiry to Business Clinic, *Farmers Weekly*, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS, and include a telephone number. You can also email fw-businessclinic@markallengroup.com

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