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Common Considerations for Membership Agreements in New Zealand, re-opening under Level 2

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New Zealand will return to 'Level 2' at some stage soon (possibly in a number of weeks). This means exercise facilities will be able to offer face to face services to their members, which in turn raises a number of questions. Below is a list of common questions and our answers.

Note: This document does not constitute legal advice. It summarises our interpretation of specific questions using wording commonly found in membership agreements and terms.

We recommend:

1. specifically reviewing the contract(s) used with your members. Consult with your lawyer and/or your billing company where needed for guidance and interpretation.
2. review any communications you may have sent members, to ensure your practices will be in line with what you may have communicated.
3. consider longer term issues with any policies you set – in what circumstance do you wish to be more generous than the law requires.

Re-starting DDs

Q1: Once back at Level 2, are we able to automatically restart billing all our Direct Debit customers for memberships (those that have not suspended or cancelled)?

A1: Yes, as long as this is communicated to members.

Suspension fees

Q2: Can a suspension fee be charged?

A2a: During level 3 and 4: No fees of any kind should be charged unless the specifically approved by the member. During L3 and L4 suspension fees should not be implied to be 'expected'. By default no charges of any kind during

A2b: During level 2: Yes, as long as the member has the right to use the facility.

A reminder to consider medical reasons for suspension (including those with health conditions or risk profiles that may make returning to the gym unsafe for them) – consider waiving any suspension fees in such cases.

In all cases, any suspension fees must have been made clear in the membership agreement/terms & conditions.

Refund requests

Q3: What happens if someone who paid a lump sum requests a refund?

A3: If there is a legitimate reason that they are unable to use their membership (which could be a number of factors, but in a CV19 environment may include attendance being unsafe for the person due to their health, or losing their job) then they may be entitled to a refund.

The calculation is to work out the proportion of the membership unused and then deduct from this fair reasonable projected costs for the unused period.

e.g. paid \$1,200 for 12 months. 8 months in the member requests refund (with good reason).

Refund calculation (note: numbers are examples only – use your own):

\$1,200 for 12 months = \$100 per month paid.

4 months unused membership

Assuming costs for the gym are \$30,000 per month and there are 500 members = \$60 a month per person. \$100 - \$60 (costs) = \$40/month refund.

Refund: \$40 x 4 months = \$160 total refund)

Cancellations

Q4: What if someone wants to cancel while we are closed (e.g. Level 3 or 4) and we have a '30 days notice' or similar type clause?

A4: The answer to this is somewhat ambiguous. Our advice is not to charge any of the '30 day' period as a fee, as the member is unable to use the membership. Some are considering charging and allowing the member to use the 30 days once they re-open, but we believe this runs the risk of being seen by the Commerce Commission as an unfair contract term.

Q5: Someone wants to cancel their membership and they are inside their contracted term?

A5: The Commerce Commission has released a document for common contract scenarios related to COVID-19 and it includes reference to gym contracts. The term they use is the member may cancel 'without penalty'. Our interpretation of this is that this means no **additional** fees, but any normal cancellation fees (if there are any) can apply

Important Note: This means we interpret this to mean you **can** charge the normal fees, this **does not mean you should charge them** in all circumstances. We suggest developing a policy that is fair to both your facility, and those that may be suffering hardship (financial, health or other) due to COVID-19.