

## Licensing Sub-Committee

Tuesday 27 October 2020

10.00 am

Online/Virtual: please contact [andrew.weir@southwark.gov.uk](mailto:andrew.weir@southwark.gov.uk) for a link to the meeting and the instructions for joining the online meeting

## Legal Submissions

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Date: 28 October 2020

BEFORE THE LONDON BOROUGH OF SOUTHWARK'S  
LICENSING SUB-COMMITTEE

A Summary Premises Licence Review under s.53A-D of the Licensing Act 2003

THE COMMISSIONER OF THE METROPOLITAN POLICE

Applicant for Review

- v -

AFRIKIKO RESTAURANT & NIGHT CLUB LTD

(t/a "AFRIKIKO")

871 Old Kent Road, London, SE15 1NX)

Premises Licence Holder

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POLICE WRITTEN SUBMISSIONS

ON FACTS & LAW

For Review Hearing on 27 October 2020

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*[Page references in square brackets are to the Agenda Papers unless otherwise indicated]*

INTRODUCTION

1. "Afrikiko" describes itself as a "*bar, restaurant & club*" serving "*authentic West African Food*" for "*all those that wish to combine fun and enjoyable ambiance with skilful cooking into one extraordinary dining experience.*"<sup>1</sup> The ground floor operates as a restaurant/bar whilst the basement area of the venue operated/operates as a nightclub.

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<sup>1</sup> <https://www.afrikikorestaurant.co.uk/>

2. It is a feature of this case that when inspecting officers arrive at Afrikiko, its customers are ordered to stop dancing by the DJ or others and to sit down in an effort to avoid detection of the reality: that the basement has been operating unlawfully and persistently at weekends as a nightclub, even though such venues have been prohibited from opening by law ever since 21 March 2020 through to the present day.
3. Between 31 July 2020 and 26 September 2020 the Metropolitan Police (“the police”) and/or council officers visited the premises on weekend nights on five occasions. On four of those occasions Afrikiko appeared to be operating as a prohibited nightclub. On the remaining visit the basement club area was closed due to flooding. On no occasion was the premises operating in a risk assessed COVID-secure manner in accordance with regulations.
4. On the final visit, on 26 September, Afrikiko was also found to be operating well beyond the 10pm curfew that had come into force two days earlier amid considerable national publicity. On this final occasion up to 60 persons were barricaded into a basement room, with the power, lights and ventilation cut off by the operator, in an effort to avoid police detection (with the consequent risks to public safety).
5. Additionally, the premises has been found breaching a number of conditions on its premises licence during these visits.
6. This behaviour took place despite both formal and informal warnings given to the licence holder by both the police and local authority officers. The police have tried hard to engage with the operator in line with the “4E’s” approach to policing during the COVID pandemic: Engage, Explain, Encourage, Enforce.
7. Officers have been physically and verbally obstructed in the course of their duties by operators, staff and customers who clearly did not wish to engage with the police and preferred to take the path of defiance and deceit instead.
8. The licence holder has made deliberate attempts to conceal CCTV footage from the police, and to lie about what was going on in the basement to both police officers and to the licensing sub-committee Members who sat in the earlier interim steps hearing. They have treated the law, police and council officers with contempt, disregard and outright hostility.

9. It was only after the final visit on 26 September, when the venue was found to be operating after the 10pm curfew, in breach of COVID regulations, dangerously and with no regard to Government guidance, that the police instigated this summary review on 1 October 2020. Until then, the police displayed considerable restraint. They have acted proportionately and fairly in their approach to Afrikiko throughout.
10. The breaches in this case were persistent, flagrant and deliberate. The premises licence holder, its management and staff, are either unwilling to abide by the law and implement COVID-secure measures in Afrikiko, or they are simply incapable of doing so. Either way, the police have no confidence that - were this sub-committee to permit the venue to re-open as a licensed premises – it would be operated in a manner that promotes the licensing objectives and in compliance with the new 3-Tier COVID related regulations now in force (with London presently in the High Alert Level Tier).
11. The COVID related requirements and measures applying to licensed premises, both those set out in regulations and guidance, are intended to secure the health and safety of Afrikiko's staff, customers and the wider community by reducing the opportunities for a potentially fatal respiratory infection to spread during a national pandemic that has already resulted in over 44,000 deaths in the UK.
12. This is *not* a case involving a one-off inadvertent or unavoidable minor breach of technical requirements due to the COVID-19 pandemic. Nor is the behaviour exhibited the result of an innocent misunderstanding of complex legislation or changing rules by a well-meaning operator doing his very best in difficult circumstances. Indeed, these breaches have occurred despite engagement, advice and warnings from the authorities. At the interim steps hearing on 2 October 2020 the licence holder told the sub-committee that she was "*fully aware of the coronavirus regulations and knew that her premises could not operate as a nightclub and the restrictions on serving alcohol without food*".<sup>2</sup>
13. Rather, the breaches here are the result of deliberate, reckless or, at the very least, grossly negligent actions by the operator in order to further their commercial interests. They have operated without paying any serious regard to the wider consequences to the community of their actions during a national pandemic. Therefore, the police consider this as a serious matter that undermines the licensing objectives.

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<sup>2</sup> See Minutes of Interim Steps hearing at [p.88]

14. The licence holder appears to exert little effective managerial control over this premises, its staff and customers.
15. It is significant that police's application for review has received support from Southwark's Licensing Authority, Health and Safety and Trading Standards teams, acting as responsible authorities.
16. The sub-committee is entitled to take robust, appropriate and proportionate steps, warranted in the public interest, that achieve the twin aims of:
  - a. Preventing this operator from further undermining the licensing objectives, and
  - b. Deterring similar behaviour by this operator or others.<sup>3</sup>
17. As a consequence, the police invite the sub-committee to revoke the premises licence<sup>4</sup>.
18. Should the sub-committee take that step, then the police would ask that, additionally, the sub-committee suspends the premises licence as an interim step pending any appeal.<sup>5</sup>

## **FACTUAL TIMELINE & SUPPORTING POLICE DOCUMENTS**

### ***Pre-2020***

19. **2012 – 2016** – there has been a history on non-compliance with licence conditions under this premises licence prior to its transfer to the current holder in December 2016. However Mr Emmanuel Kpakpah<sup>6</sup> and, more significantly, Mr Daniel Dornor (spelt in various ways within the Agenda Papers) appear to have held an interest in the premises both before and after the transfer of the licence to the current holder.<sup>7</sup> Therefore, they are not immune from blame for this earlier history of non-compliance.

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<sup>3</sup> In relation to licence review decisions also serving the purposes of deterrence, see *East Lindsey District Council v Abu Hanif* [2016] EWHC 1265 (Admin) (per Jay J at §16 and 18) and *R (Bassetlaw District Council) v Worksop Magistrates' Court* [2008] EWHC 3530 (Admin) (per Slade J at §32)

<sup>4</sup> Pursuant to s.53C(3)(e) of Licensing Act 2003 (LA2003)

<sup>5</sup> S.53D(3)(d) LA2003

<sup>6</sup> He ceased to be a Director of the Afrikiko Restaurant & Night Club Ltd on 2 June 2017. See Companies House printout at [p.84]

<sup>7</sup> See Agenda Report, paragraphs 19-36 at [p.5-6]

20. **6 September 2017** – a full Summary Review hearing was held before the Council following a murder outside the premises associated with customers of Afrikiko. The Premises Licence was suspended for 9 weeks, its operating hours reduced, and conditions were added. The Minutes of that meeting record Mr Daniel Dornor<sup>8</sup> was in attendance as the “owner” of Afrikiko (he *also* appeared at the interim steps hearing in these current review proceedings held on 2 October 2020, and is believed to have held an interest in the premises since at least 2014<sup>9</sup>. Ms Zeona Ankrah had been a Director of the current licence holder since 1 June 2017. She remains so today<sup>10</sup>. Although the management structure may be somewhat opaque, there has been a clear continuation of personnel in effective control of Afrikiko from before the 2017 summary review until now. Significantly, the sub-committee’s decision notice gave a very clear warning to this licence holder about the potential consequences of future failures: “The premises licence holder is expected to fully comply with all of the imposed conditions without fail. If further breaches occur in the future that have the effect of undermining the licensing objectives then the police would be well within their rights to instigate a further review of the premises licence and, without binding the hands of a future licensing sub-committee, it is likely that more severe actions would be taken on that occasion.”

21. The Notice of Decision is at [p.38-40].<sup>11</sup>

### ***Since July 2020***

22. **31 July 2020** (Friday) – in response to information that Afrikiko was operating as a nightclub with large groups outside, at around 23:45hrs police officers attended the venue. There were about 10 people outside the door. Police met with Daniel Dornor. The ground floor of the premises was fairly quiet, however loud music could be heard coming from the basement area of the venue which was known to operate as a nightclub pre-pandemic. On entering the basement approximately 20 persons were sitting together. A DJ was behind the DJ booth adjacent to the dancefloor area. The music was being played so loudly that officers had to shout to make themselves heard (a breach of the relevant guidance issued by government on 3 July 2020 strongly recommended against the playing of loud music in entertainment venues

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<sup>8</sup> Sometimes spelt “Dormer” on “Donor”

<sup>9</sup> Agenda Report, paragraph 36 at [p.6]

<sup>10</sup> See Companies House printout at [p.84]

<sup>11</sup> Application at [p.32-35] and Certificate at [p.36-37]

due to the increased risk of COVID-19 infection being spread in the aerosol droplets released when people have to shout in order to communicate with people they are close to).<sup>12</sup>

23. Although no dancing was actually witnessed by the time the police arrived in the basement, the facilities for dancing were clear to officers on the ground who took the view the premises was operating as a nightclub (the guidance suggested operators repurpose dance floors to encourage customers to be seated<sup>13</sup>). Police spoke to the manager who confirmed there was no risk assessment in place but it was “*in the pipeline*” (a breach of the Health and Safety Act 1974 and guidelines). They were advised to correct this before re-opening to the public. The officer recommended that the operator should put tables and chairs on the dancefloor so people would not be tempted to dance. He was advised to read the guidance before re-opening.
24. This incident is evidenced in the witness statement of PS Dempster at [p.48-49]. Bodycam footage is available.
25. **15 August 2020** (Saturday) – officers attended the venue again as a result of a call from Southwark Council indicating there was a large group outside the premises. Officers arrived at about 23:00hrs and entered Afrikiko. In the basement area, loud club-style music was being played that could be heard from outside. About 30 people were present. A DJ was playing music from the DJ booth. Officers could see people dancing on the dancefloor. The lighting was dark with flashing strobe nightclub style lighting. It was clear to officers that Afrikiko was operating as nightclub. Police spoke to Daniel Dornor. He denied people were dancing despite what the police officers had just seen. Mr Dornor produced a risk assessment based on a template issued by the Government. Officers reminded Mr Dornor that he could operate as a bar but not as a nightclub. Officers reminded him that “*everyone’s health is at risk*”. Mr Dornor said he would get security staff to cover the dancefloor. No one was able to operate the CCTV system in response to police requests (in breach of licence conditions) and no premises licence was displayed or could be produced. A formal notification of these offences was served on the operator.<sup>14</sup>
26. This incident is evidenced in the witness statement of PS Dempster at [p.48-49]. Bodycam footage is available.

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<sup>12</sup> “*Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services*”, 3 July 2020 at §4.5

<sup>13</sup> Ibid § 4.5

<sup>14</sup> See [p.50].

27. **19 August 2020** – officers attended the venue on a Wednesday afternoon (at 15:38hrs) in order to serve formal warning notices on the venue (relating to the earlier visit on 15 August). Although the venue was open (though obviously not as a nightclub at that hour of the day) there was no personal licence holder present in a potential breach of the premises licence conditions.
28. Formal notifications relating to the offence (absence of a personal licence holder on site in breach of licence conditions) was served on the operator as well as a s.19 Notice.<sup>15</sup>
29. This visit is summarised in the Timeline at [p.45]. Bodycam footage is available.
30. **29 August 2020** (Friday into Saturday) – at approximately 01:00hrs officers attended Afrikiko. A door supervisor was present who told officers they would have to wait for the manager before carrying out their licensing inspection. Officers entered under their legal powers under the Licensing Act 2003 to carry out their inspection. As officers walked down the narrow staircase to the basement area, a male saw the officers and shouted “*Shut the door! Shut the door!*”. The door to the basement area was then closed. An officer tried to push the door open but it was being braced from the other side. People were trying to stop officers entering the basement area. An officer pushed through the door to see a female on the other side pushing the door shut with two hands. When the officer asked why they were holding the door shut, a male stammered and said “*No one was holding the door, you just pushed the door when she was leaning against it*”.
31. Eventually officers were able to enter the basement area. About 60 men and women, all aged about 18-30, were all standing around inside looking confused. The venue was busy and bustling. There was no social-distancing. An amplified voice (probably the DJ) said “*Sit down, sit in your seats*” and “*No dancing... just look at each other*”. It was apparent to the officers that these people had been dancing to the DJ’s music just before the officers entered, hence why they were found standing and looking confused when the music was most likely swiftly cut-off (there is believed to be a noise cut out device installed at the premises). Nightclub style neon lighting was on. The DJ can be heard on bodycam footage announcing “*I’m going to play music in the background*”. People were dressed in party attire. It appeared to officers that this venue was, once again, operating as a nightclub.

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<sup>15</sup> See [p.51-52].



32. Upstairs Daniel Donor appeared and spoke to officers. Once again he (unconvincingly) denied the venue was operating as a nightclub. Officers warned him that enforcement action could well follow.
33. This incident is evidenced in the witness statement of PC Holley at [p.53-54]. Bodycam footage is available and has been served on the parties.
34. **4 September 2020** (Friday) – council officers attended Afrikiko in the evening at around 20:00hrs in order to obtain CCTV footage that had not yet been supplied. The music on the ground floor was quite loud. Mr Daniel Dornor was present and described himself as “*the owner of the business*”. He said he was a director of the company running the business (Note: he is not a director of the company that holds the premises licence). Officers went into the basement area but there had been a problem with the sewers earlier in the week and so the area was not in use. Officers attempted to watch CCTV footage from previous weekends but Mr Dornor claimed not to know how to play the relevant recordings. A number of licence conditions were being breached. A council officer seized some nightclub lights and speaker cables in order to prevent the premises from re-opening as a nightclub until the law permitted it. A notification of offences form was served on the operator by police at [p.55] as well as a Council issued Prohibition Notice indicating the premises must cease to operate as a nightclub [p.78] and, finally, a notification of licence breaches [p.80].
35. This visit is evidenced in the witness statement of Mr Raymond Moore at [p.56-57] and [p.71]
36. **17 September 2020** (Thursday) – Police officers attended Afrikiko during the day in order to obtain CCTV footage of previous incidents when, it was believed, the premises had operated as a prohibited nightclub. Mr Dornor complained that he was being picked on and officers should visit other venues who were “*packing people in like sardines*”. Officers asked Mr Dornor to identify those venues so they could visit them in turn. Mr Dornor replied “*I’m not giving you the names, I’m not a snitch*”. He continued to “*rant and be obstructive*” towards officers which, an officer notes, “*is not unusual for him when he wants to distract officers from obtaining evidence that may be negative for him*”. Mr Dornor did not agree to show officers the CCTV footage they requested. Instead police left him with a USB memory stick and instructed him to download the relevant CCTV footage from 29 August. (The USB stick was later collected on 26 September and Mr Dornor told the officer that he had downloaded the requested footage. However, when later examined, the USB stick was found to be blank).

37. This visit is evidenced in the witness statement of PC Lynch at [p.66-67].
38. 26 September 2020 (Saturday) – Police officers attended Afrikiko at 22:49hrs to check it was complying with the 10pm curfew regulations that had come into force two days earlier on 24 September. In the front of the club officers could see about 15 people either seated or standing with drinks in their hands. An officer approached the rear door of the premises where he spoke with a “*very nervous looking*” female in a party dress. Officers knocked on the front door. Daniel Dornor was present but, initially did not let the police in. After a few minutes Mr Dornor let the officers enter. In the ground floor restaurant area there were about 8-10 people with bottles of beer sitting at tables eating and drinking. None of the staff were wearing facemasks (as they should be if in close contact with customers).
39. Officers went down to the basement club area. However, the door appeared to be locked (another officer had seen a table pushed up against the door blocking easy entry and, indeed exit). They asked Mr Dornor to unlock it and he feigned surprise (“*what is it locked?*”). Another male told officers “*I think the key is with the cleaner and she has gone home*”. Mr Dornor denied anyone was in the basement.
40. An officer looked at the CCTV monitors but the monitor feeds for all the cameras in the basement area were not working (they had been disconnected). Mr Dornor claimed there was “*a problem with the CCTV*”. This surprised officers, because they had attended Afrikiko just 2 hours earlier that same evening and witnessed the basement CCTV feed was working (and the music was playing very loudly). Officers believed that Mr Dornor was lying and had deliberately cut off the feed to prevent scrutiny of events in the basement that night. Officers remained at the premises for about 20 minutes with Mr Dornor insisting “*the key is coming*”.
41. Officers attempted to push the basement door open. It did slightly open for a few seconds but someone inside slammed it shut. It was clear the people inside were holding it shut. Then all the power to the downstairs area went off putting out the lights. The basement was left in darkness. Officers believed Mr Dornor had tripped the electrical breaker. More police units attended. Then a smartly dressed male came out of the basement and the door was locked behind him. This male spoke to officers who repeated their request to be let in to the basement area. The male refused to open the door for the officers and said he “*wanted to let the people out of the basement*” - but only when the police moved away. Officers attempted to negotiate with the male who was obstructing their attempts to inspect the basement area. The male put

his hand on an officer, tried to obstruct them in the execution of their duties and had to be threatened with arrest.

42. Finally, the door opened. A long line of about 47 - 60 patrons in party dresses and evening dress exited the basement area. The police asked Mr Dornor to put on the lights for safety reasons but he ignored the request. Most, if not all, were carrying cups filled with alcoholic drinks. When most the guests had left, police entered the basement area and found about a dozen stragglers remaining. This included a woman with a baby (at the interim steps hearing Ms Zeona Ankrah, the director of the licence holder, admitted this was her and her baby) but, at the time, she claimed she was doing the cleaning despite wearing full make-up and evening dress attire. This woman told police she thought they were “*disgusting*” for closing the venue.
43. Officers found shisha pipes on the basement tables, together with beer bottles and buckets containing bottles of wine.
44. The people left downstairs were shouting at police using threatening language and posturing. A total of 14 police officers had to attend the premises. Police described the scene as “*hostile and dangerous*” for them. What they had witnessed was “*an appalling and blatant violation*” of the COVID-regulations. As a result of what she had witnessed on the night, PC O’Mahoney, who has worked in the night time economy team for over three years, states “*this is the most dangerous premises I have ever visited*”.
45. At the interim steps hearing on 2 October the licence holder told the sub-committee that the people in the basement area were present for a “*family meeting*” to discuss an incident involving her brother had been stabbed in the chest. This account is unlikely to be true. It is undermined by the following features:
  - a. Why were there 60 customers found in the basement, all in party attire and most with alcoholic drinks?
  - b. If this was an innocent “family meeting” why were attempts made to conceal it from the police by obstructing officer’s entry in to the basement?
  - c. Why lie about the basement door being locked with the key-holder (i.e. “the cleaner”) not being on-site?
  - d. Why cut off the power downstairs to obstruct officers (and, in so doing, possibly also stopping any basement ventilation system in an otherwise unventilated space with people inside)?

- e. Why cut off the CCTV monitoring of the basement area?
  - f. Why did Ms Ankrah, the sole director of the licence holder, claim to be the cleaner despite being in full make-up and an evening dress?
46. The police also witnessed a number of breaches of licence conditions on the night, including:
- a. There was no working extract ventilation in the basement (condition 276)
  - b. CCTV in good working order (c.288). The basement CCTV had been shut off.
  - c. Two door supervisors at the premises after 22:00hrs (c.291). There were no door staff present.
  - d. Id scanning system in operation after 22:00hrs (c.344, 345). It was not in operation.
  - e. Customers in basement area identified with an ink stamp (c.346). None were.
47. This incident is evidenced in the witness statements of PC Holley at [p.58-60] and PC O'Mahoney at [p.61-64]. Bodycam footage of this incident has been uploaded to a cloud link and served on all parties.<sup>16</sup>
48. **1 October 2020** – a Police Superintendent certified that this premises was, in his/her opinion, associated with serious crime. The application for summary review was served later the same day.<sup>17</sup>
49. **2 October 2020** – an interim steps hearing was held before the licensing sub-committee (using a remote video platform). The sole Director of the premises licence holder<sup>18</sup>, Ms Zeona Ankrah appeared, as well as Mr Daniel Dornor, at that hearing. The licence holder indicated that the gathering on 26 September was for a “*family meeting*”. The premises licence was suspended as an interim step pending the full review hearing. The sub-committee concluded that “*it was quite apparent from the evidence provided by the police that she had opened the premises as a nightclub on a number of occasions in deliberate and flagrant breaches of the regulations and guidelines and endangered others by potentially spreading the virus... The premises has shown complete disregard to the [relevant] legislation*”.
50. The Notice of Decision is at [p.86-89].

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<sup>16</sup> Note – the bodycam clocks are set at GMT all year and so appear one hour behind the actual time.

<sup>17</sup> Application at [p.23-28] and Certificate [p.29-31]

<sup>18</sup> See Companies House printout at [p.83-85]

51. 21 October 2020 – Pc Maria O’Mahoney attended Afrikiko to request CCTV footage from 26 September. Mr Dornor was present, but indicated the hard drive had not been working and then “*suddenly*” the cameras covering the basement area were disconnected.
52. This incident is evidenced in the witness statement of PC O’Mahoney at [additional statement dated 21.10.20].
53. 27 October 2020 – full Summary Review hearing before the licensing sub-committee.

### COVID-19 RESTRICTIONS, REGULATIONS & GUIDANCE

54. Since March 2020, Government restrictions on the hospitality trade imposed by Regulations, and operating measures recommended in guidance, have been altered on several occasions in response to the dynamic health challenges facing the UK during the COVID-19 pandemic.
55. A breach of the Regulations is a criminal offence and so engages, among other licensing objectives the prevention of crime and disorder licensing objective.<sup>19</sup>
56. Regardless of the specific terms of COVID-related regulations (and whether or not there is a criminal breach), all licensed operators are subject to a more general legal duty under the Health and Safety at Work Act 1974 to protect the health, safety and welfare of their employees, and other people who might be affected by their business<sup>20</sup>. This includes staff, customers and the wider community. Operators must do whatever is reasonably practicable to achieve this aim.
57. On 3 July 2020, in time for the re-opening of most hospitality premises the following day (“Independence Day”), the Government published important updated and widely circulated COVID-secure guidance for restaurants, pubs, bars and takeaways: “*Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services*”.<sup>21</sup> (A copy of this guidance document is attached for ease of reference).

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<sup>19</sup> See *R(Blackpool Council) v Howitt* [2008] EWHC 3300 (Admin) in relation breaches of regulatory provisions (the smoking ban in pubs) engaging the crime and disorder objective.

<sup>20</sup> See s.2-4 of the Health and Safety at Work Act 1974.

<sup>21</sup> The July document has since been revised, most recently on 15 October 2020

58. Operators are expected to have *regard* to this guidance when complying with their legal duty to ensure that they provide a safe environment for staff and customers. There is no legal duty on an operator to comply with every word or, necessarily, every measure mentioned in such guidance. But the July guidance advises businesses on how to open safely and gives practical considerations of how this can be applied in the premises. In the words of the COVID guidance: <sup>22</sup>

*“Each business will need to translate this into the specific actions it needs to take, depending on the nature of their business, including the size and type of business, how it is organised, operated, managed and regulated. They will also need to monitor these measures to make sure they continue to protect customers and workers.... to help you decide which actions to take, you must carry out an appropriate COVID-19 risk assessment, just as you would for other health and safety related hazards.”*

59. In relation to restaurants, bars and pubs that provide entertainment, including recorded music, the July guidance sets out, at §4.5, a number of “Steps that will usually be needed”, namely:
- a. Determining the viability of entertainment and maximum audience numbers consistent with social distancing outside and within venues and other safety considerations.
  - b. Preventing entertainment, such as broadcasts, that is likely to encourage audience behaviours increasing transmission risk. For example, loud background music, communal dancing, group singing or chanting.
  - c. Reconfiguring indoor entertainment spaces to ensure customers are seated rather than standing. For example repurposing dance floors for customer seating.
  - d. Encouraging use of online ticketing and online contactless payments for entertainment where possible.
  - e. Communicating clearly to customers the arrangements for entertainment and clearly supervising with additional staff if appropriate.
60. Responsible operators should pay serious attention to this guidance and take it into account when ensuring that their operation is run in a COVID-safe and secure manner overall.

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<sup>22</sup> P.5 of 3 July 2020 guidance.

61. As part of this process, operators are legally obliged to carry out a Risk Assessment.<sup>23</sup> Moreover, operators are expected to effectively *implement* the measures set out in their risk assessment.
62. The main point in this case is that when an objective observer looks at the overall steps taken (and, more pertinently, not taken) by this operator in order to achieve a COVID-secure premises, they were wholly inadequate.
63. The following timeline sets out, in summary form, the most relevant restrictions applicable to licensed premises introduced from March 2020 and introduced by way of Regulations:
- a. **21 March**<sup>24</sup> – certain businesses including nightclubs, pubs, bars and restaurants were ordered by regulations to close (with some exceptions for takeaway/delivery of food and drink). (The lockdown relating to movement of persons began five days later on 26 March).
  - b. **4 July**<sup>25</sup> – (“**Independence Day**”) save for nightclubs, discos, dance halls and “any other venue” which opens at night, has a dance floor or other space for dancing by members of the public and provides live or recorded music for dancing<sup>26</sup>, the hospitality industry was permitted to re-open. This included the re-opening of pubs, bars and restaurants. Extensive industry specific guidance was issued by the Government to assist licensed premises in drawing up their risk assessments<sup>27</sup>. A number of measures were proposed to assist operators to provide a COVID-secure environment. These measures included social-distancing (2m or 1m with risk mitigation), reconfiguring seating and tables to maintain social distancing, reducing and managing queues, managing capacity levels in a venue to avoid over-crowding, hygiene and sanitation measures.

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<sup>23</sup> See regs 3-5 of the Management of Health and Safety at Work Regulations 1999

<sup>24</sup> The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020, replaced from 26.3.20 with The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 which also introduced the original “lockdown”.

<sup>25</sup> By way of amendment to the No.2 Regs.

<sup>26</sup> A business does not fall within this type of prohibited premises if it ceases to provide music and dancing.

<sup>27</sup> “*Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services*”, 3 July 2020

- c. **14 September**<sup>28</sup> – the **Rule of 6** was introduced by regulations. Subject to a number of exceptions (including larger households), gatherings in pubs, bars and restaurants were limited to groups of 6 persons who could not mix with other groups.
- d. **18 September**<sup>29</sup> – restaurants, pubs and bars were required to collect the contact details of their customers for **track and trace** purposes (with QR codes mandatory from 24 September). Further obligations<sup>30</sup> were placed on hospitality operators requiring them to take reasonable measures to ensure (subject to certain exceptions) that: (a) table bookings for a group of more than 6 persons are not accepted; (b) groups of more than 6 are not admitted to the premises; (c) mingling between groups is avoided; and (d) an appropriate distance is maintained between tables (i.e. 2m or 1 m if barriers, back to back seating, or other mitigation measures).
- e. **24 September**<sup>31</sup> – amended regulations placed further restrictions on restaurants, pubs and bars (among other venues) from 5am on 24 September. A **curfew** of 10pm-5am was introduced, during which hours businesses “*must not carry on*” that business or “*provide that service*”. (The curfew provisions are headed “*Restrictions on opening hours of businesses and services*”.<sup>32</sup>). After 10pm a premises could still provide a delivery/drive-thru service for food or drink in response to orders but not a take-away service. In addition, for restaurant, pubs and bars that serve alcohol for consumption on the premises, they may only do so if the food or drink is ordered by, and served to, **seated customers** and the operator must take all reasonable steps to ensure the customers remain seated whilst consuming the food or drink<sup>33</sup>. From 24 September both customers and staff (likely to come into close contact with the public) in restaurants and bars were required to wear **face coverings** whilst indoors unless they had a “reasonable excuse”, e.g. to remove a mask where it is reasonably necessary to eat or drink. (Some persons are specifically exempted from the face-covering provisions including police officers, PCSO’s and local authority officers).<sup>34</sup>

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<sup>28</sup> The Health Protection (Coronavirus, Restrictions) (No.2)(England) Regulations 2020 (“the No.2 Regs”)

<sup>29</sup> The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020

<sup>30</sup> The Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations 2020.

<sup>31</sup> By way of amendment to the No.2 Regs.

<sup>32</sup> Reg.4A of No.2 Regs

<sup>33</sup> Reg.4B of No.2 Regs

<sup>34</sup> The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place)(England) Regulations 2020 (as amended)



- f. **28 September**<sup>35</sup> – further obligations were imposed on operators to take all reasonable measures to prohibit customers **singing in groups** of more than 6, or **dancing** on the premises, or playing recorded music at **sound levels** above 85db(A) at source.<sup>36</sup> (These measures were later revoked on 14 October 2020). Also on this day, the requirement on hospitality undertakings to take all reasonable measures to ensure “mingling” between groups did not take place was replaced with a requirement to take such measures to ensure no person in one group “joined” another.
- g. **14 October** – the new 3-Tier Regulations (Medium, High and Very High Alert Levels) were introduced.

## **LEGAL FRAMEWORK**

### ***Full summary review hearing***

- 64. This full summary review hearing is held under s.53C of the Licensing Act 2003 (LA2003).
- 65. The licensing authority must:<sup>37</sup>
  - a. hold a hearing to consider the application for the review and any relevant representations; and
  - b. take such steps as it considers appropriate for the promotion of the licensing objectives.
- 66. The steps available to the licensing authority are: <sup>38</sup>
  - a. to modify the conditions of the licence (which includes changes to permitted hours);
  - b. to exclude a licensable activity from the scope of the licence;
  - c. to remove the designated premises supervisor;

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<sup>35</sup> The Health Protection (Coronavirus, Restrictions) Obligations

<sup>36</sup> The Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations (as amended)

<sup>37</sup> S.53C(2)

<sup>38</sup> Section 53C(3)

- d. to suspend the licence for a period not exceeding three months;
- e. to revoke the licence;

67. Licensing authorities must carry out their functions under the Licensing Act 2003 with a view to the promotion of the licensing objectives.<sup>39</sup>
68. The licensing objectives, all of which may be considered at this full summary review hearing, are:
- a. The prevention of crime and disorder
  - b. The prevention of public nuisance
  - c. Public safety
  - d. The protection of children from harm.
69. Each is of equal importance and the promotion of the four objectives is a paramount consideration at all times.<sup>40</sup>
70. In the case of this premises, the police submit that all the objectives, whether directly or indirectly, are engaged because:
- a. Breaches of the COVID regulations are criminal offences.
  - b. A person acting in a way that increases the risk of spreading an infection such as COVID-19 among the public, is likely to have committed the serious criminal common-law offence of “causing a public nuisance” (which carries a maximum sentence of life imprisonment). This engages both the crime and disorder and nuisance objectives. In the leading modern case of *R v Rimmington & Goldstein* [2005] UKHL 63, the House of Lords approved this definition of the offence (emphasis added):
 

*“A person is guilty of a public nuisance who (a) does an act not warranted by law, or (b) omits to discharge a legal duty, if the effect of the act or omission is to **endanger the life, health, property... or comfort of the public...**”*
  - c. The police suggest that the public safety objective is also engaged. Although public safety is not considered with public health in general, it is concerned with the safety

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<sup>39</sup> Section 4 LA03

<sup>40</sup> S.182 Guidance at paragraph 1.4

of people of using the venue. The police suggest that the safety of a person using this venue is impacted if they were to immediately contract a potentially fatal respiratory illness whilst on the premises. In relation to the public safety objective, the s.182 Guidance states at §2.7:

*“Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person’s health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority’s powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.”*

- d. COVID-19 affects children as well as adults, and so the protection of children from harm objective is also engaged. The s.182 Guidance states at §2.22:

*“The protection of children from harm includes the protection of children from moral, psychological and physical harm.”*

71. Steps taken to promote the licensing objectives should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.<sup>41</sup>
72. In carrying out their licensing functions a licensing authority must have regard to the licensing authority’s Statement of Licensing Policy and the Secretary of State’s Guidance issued under Section 182 of the Licensing Act 2003 (“s.182 Guidance”)<sup>42</sup>.
73. In relation to “Reviews”, the s.182 Guidance recognises that:<sup>43</sup>

*11.1- The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent **a key protection for the community** where*

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<sup>41</sup> S.182 Guidance at 9.43

<sup>42</sup> Section 4, Licensing Act 2003

<sup>43</sup> Chapter 11 “Reviews”. Emphasis added.

*problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.*

74. Similarly, the s.182 Guidance points out, in the context of reviews arising in connection with crime, that the duty of a licensing authority is to make decisions in the interests of the wider community and not simply those of the individual licence holder:

*11.26- Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.*

75. Hearsay evidence is admissible<sup>44</sup> although the High Court has observed that:<sup>45</sup>

*“Some evidence such as gossip, speculation and unsubstantiated innuendo would be rightly disregarded. Other evidence, even if hearsay, might by its source, nature and inherent probability carry a greater degree of credibility. All would depend on the particular facts and circumstances.”*

76. Given these are administrative/civil proceedings, where a factual issue falls to be decided the standard of proof is the balance of probabilities.
77. The promotion of the licensing objectives is ultimately a forward looking exercise. Deterrence is also a proper consideration. In East Lindsey District Council v Abu Hanif (Admin), a licensing case involving the employment of illegal workers, the High Court (Jay J) made important observations of more general application to licence review decisions: <sup>46</sup>

<sup>44</sup> Westminster v. Zestfair, [1989] 88 LGR 288

<sup>45</sup> Leeds City Council v. Hussain [2002] EWHC 1145 (Admin)

<sup>46</sup> [2016] EWHC 1265. See also R (Bassetlaw District Council) v Worksop Magistrates' Court [2008] EWHC 3530 (Admin), when the High Court considered a case where a licence review followed sales of alcohol to underage test-purchasers. Slade J stated at §32: “...Where criminal activity is applicable, as here, wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of

*“The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder. This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.”*

78. Similarly, in *R (Bassetlaw District Council) v Worksop Magistrates’ Court* [2008] EWHC 3530 (Admin), the High Court considered a case where a licence review followed sales of alcohol to underage test-purchasers. Slade J (at §32), referred to deterrence as a proper consideration in the context of licence reviews.

### ***The Role of the Superintendent’s Certificate***

79. The Superintendent’s certificate that accompanied this application for summary review is at [p.29-31]. The application itself is at [p.23-37].<sup>47</sup>
80. Before an application for summary review is made, the police must first obtain a certificate from a senior police officer indicating that in his/her opinion the premises is “*associated with serious crime or serious disorder or both*”.<sup>48</sup>
81. “Serious crime” is defined, by reference to s.81 of the Regulation of Investigatory Powers Act 2000, as crime that satisfies the test in subsection (a) or (b) below:
- (a) that the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; or
  - (b) that the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

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*crime. In those circumstances, deterrence, in my judgment, is an appropriate objective and one contemplated by the guidance issued by the Secretary of State.”*

<sup>47</sup> Although there appears to be some duplication issues in the Agenda Papers.

<sup>48</sup> S.53A(1) of the Licensing Act 2003

82. In *Lalli v Commissioner of Police for the Metropolis* [2015] EWHC 14, the High Court indicated that it is not for the licensing authority to go behind the Superintendent's Certificate.
83. In the course of his judgment, Mr John Howell QC, sitting as a Deputy High Court Judge, stated [at §62]:

*“In my judgment the licensing authority is obliged to conduct the summary review even if it considers that the information available to the officer when he gave the certificate did not establish that the premises were associated with serious crime or serious disorder.”*

And to similar effect [at §75]:

*“Parliament intended that the licensing authority should be entitled to treat an application for a summary review made by the chief officer of police as valid if it is accompanied by a certificate that apparently meets the requirements of section 53A(1) and has not been quashed. The licensing authority is not obliged to consider whether or not it is liable to be quashed.”*

84. The High Court pointed out that the licensing authority's own view as to whether the premises was “associated with serious crime or serious disorder” (even if different to the opinion of the senior police officer who signed the certificate) is not decisive on what steps are necessary/appropriate to take in order to promote the licensing objectives as the summary review hearing. The Deputy High Court Judge stated [at § 63]:

*“The fact (if it be the case) that the licensing authority does not itself consider that any reasons provided for giving the certificate establish that there is an association between the licensed premises and serious crime or serious disorder is not of itself necessarily decisive for any decision about interim steps or for the determination of the summary review itself. The licensing authority may consider interim steps are necessary or appropriate for the prevention of crime and disorder (which is one of the licensing objectives) given further information provided, or representations made, by the chief officer of police or, when determining the summary review, by others... When doing so, as explained above, the authority may consider representations that do not relate to the crime prevention objective (as well, of course as those which do) and, as section 53C(2)(b) of the 2003 Act states, the authority must then take any steps as it considers appropriate for the promotion of the licensing objectives, not merely the crime prevention objective.”*

85. *The Court added:*

*“...given that the certificate of itself has no immediate and direct effect on others and that all the circumstances, including any association that the licensed premises may have with serious crime and disorder, can be examined fairly on the merits when the application for summary review is under consideration.”*

86. Finally, in the context of summary reviews, the Court in Lalli stated [at § 71]:

*“The statutory provisions describing the substantive functions of the licensing authority on receipt of the application for a summary review are focused solely on what may be necessary or appropriate for the promotion of the licensing objectives.”*

### ***Public Sector Equality Duty***

87. The Public Sector Equality Duty (“PSED”) is engaged in this matter, as it is when the Council makes any licensing determination. The obligations on this licensing sub-committee to consider the PSED arise under s.149 of the Equality Act 2010. (Southwark’s Statement of Licensing Policy addresses this issue at page 75).

88. The police positively invite the sub-committee to consider their PSED when reaching their determination in this case.

89. The PSED requires a public authority, in the exercise of its functions (which includes this licensing sub-committee’s determination), to have **due regard** to the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

90. The “protected characteristics” are: age, disability, gender reassignment, pregnancy and maternity, **race**, religion or belief, sex, sexual orientation.<sup>49</sup>
91. The sub-committee will wish to have regard to the “*Brown Principles*”.<sup>50</sup> In summary this means:
- a. Decision-makers must be made aware of their duty to have 'due regard' and to the aims of the duty.
  - b. Due regard is fulfilled before and at the time a particular policy that will or might affect people with protected characteristics is under consideration, as well as at the time a decision is taken.
  - c. Due regard involves a conscious approach and state of mind. A body subject to the duty cannot satisfy the duty by justifying a decision after it has been taken. Attempts to justify a decision as being consistent with the exercise of the duty, when it was not considered before the decision, are not enough to discharge the duty. General regard to the issue of equality is not enough to comply with the duty.
  - d. The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
  - e. The duty has to be integrated within the discharge of the public functions of the body subject to the duty. It is not a question of 'ticking boxes'.
  - f. The duty cannot be delegated and will always remain on the body subject to it.
  - g. It is good practice for those exercising public functions to keep an accurate record showing that they had actually considered the general equality duty and pondered relevant questions. If records are not kept it may make it more difficult, evidentially, for a public authority to persuade a court that it has fulfilled the duty imposed by the equality duties.

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<sup>49</sup> S.149(7) of the Equality Act 2010

<sup>50</sup> Set out in *R(Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158



92. In this case there is, at the time of writing, no evidence before the sub-committee suggesting that a decision to revoke the premises licence of the premises would have an adverse impact on any group of people with protected characteristics (e.g. the BAME community). There are many other venues in London that appeal to the same community as this premises.<sup>51</sup>
93. But, even if such evidence existed, the police submit that there is an overriding public interest in promoting the licensing objectives in the interests of both the users of this premises and the wider community, having had due regard to the PSED. Not least because the increased risks of COVID-19 infection as a result of the acts and omissions of this operator impacts on all communities. This, of course, includes members of the local BAME community who frequent this venue and, as has been widely reported, are suffering disproportionately from the impacts of COVID-19 both in health-terms as well as socio-economic ones.<sup>52</sup>

## CONCLUSION

94. The evidence in this case reveals a course of conduct amounting to persistent, deliberate and flagrant breaches of the licensing laws, COVID-19 regulations and guidance designed to ensure that licensed premises in Southwark operate in a safe manner that reduces the risks to their own customers, staff and the wider community during a national pandemic.
95. The police have no confidence this licence holder has the willingness or ability to promote the licensing objectives in the future.
96. Other, law-abiding, licensed operators are entitled to look at venues like Afrikiko with contempt – because they threaten the future ability of other venues to operate without further restrictions as COVID levels rise in London.
97. The Council is entitled to take robust steps to promote the licensing objectives and also deter this, and other, operators, tempted to operate unlawfully in order to promote their own commercial interests.

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<sup>51</sup> In the case of African restaurants, see e.g. <https://www.timeout.com/london/restaurants/londons-best-african-restaurants>

<sup>52</sup> See e.g.: “*Beyond the data: Understanding the impact of COVID-19 on BAME groups*” Public Health England, June 2020  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/892376/COVID\\_stakeholder\\_engagement\\_synthesis\\_beyond\\_the\\_data.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892376/COVID_stakeholder_engagement_synthesis_beyond_the_data.pdf)

98. For these reasons the police respectfully invite this licensing sub-committee to revoke the premises licence of Afrikiko and impose an interim suspension pending any appeal.

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25 October 2020



HM Government

# Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services

COVID-19 secure guidance for employers, employees and the self-employed

3 July 2020





# Document updates

**Published** 11 May 2020

**Last updated** 3 July 2020

Date	Version	Update	Section
14 June 2020	2.0	Updated guidance on the need to self isolate if advised by the government's track and trace service	3.2 People who need to self-isolate
14 June 2020	2.0	Guidance on test and trace for workers and the need to keep a record of staff shift patterns	7.1 Shift Patterns and Outbreaks
14 June 2020	2.0	Guidance for workers travelling to and from work	4.1 Coming to work and leaving work
14 June 2020	2.0	Guidance on considering the security implication of any implemented risk mitigations	1. Thinking about risk 4.6 Accidents, security, and other incidents
24 June 2020	3.0	Guidance on support bubbles and the need to self-isolate if anyone in your support bubble has COVID-19 symptoms	3.2 People who need to self-isolate
24 June 2020	3.0	Updated guidance on social distancing to reflect 2m, or 1m with risk mitigation where 2m is not viable is acceptable.	1.1 Managing Risk Throughout
24th June 2020	3.0	Updated to expand guidance on takeaways to venues providing service at the venue ahead of planned opening.	2.0 Keeping customer and visitors safe 4.0 Social distancing for workers



# Document updates (continued)

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Date	Version	Update	Section
3 July 2020	4.0	Updated to include link to DHSC guidance on Test and Trace	7.1 Shift Patterns and Outbreaks
3 July 2020	4.0	Updated to include link to DHSC guidance on Test and Trace for temporary records of visitors and customers	2.1 Keeping customers and visitors safe
3 July 2020	4.0	Updated to discourage shouting/loud music	1.1. Managing Risk
3 July 2020	4.0	Updated to include guidance in the event of a local lockdown	1. Thinking about risk
3 July 2020	4.0	Update to the COVID-19 secure poster to reflect 2m, or 1m with risk mitigation where 2m is not viable is acceptable.	1.2 Sharing the results of your risk assessment Webpage
3 July 2020	4.0	Include guidance in the event of a COVID-19 outbreak in the workplace as section 7.1.2	7.1 Shift Patterns and Outbreaks
3 July 2020	4.0	Updated guidance on what business can be open to include self-contained hospitality	Introduction



# Introduction

## What do we mean by 'restaurants, pubs, bars and takeaway services'?

This guidance applies to any food preparation or service setting where food and drink is sold for consumption at venues or for takeaway or delivery. For example, restaurants, pubs, bars, beer gardens, food to go, cafes, self-contained hospitality which can be accessed from the outside of a closed venue, social and similar clubs operating as bars and restaurants, mobile catering and contract catering or similar environments where food and drink is purchased and consumed at a venue in their indoor or outdoor areas or offered for takeaway or delivery.

This guidance also considers entertainment in restaurants, pubs and bars and similar venues where food or drink is served, provided they meet current government criteria for safe reopening.

It does not apply to food preparation or food service in clinical or healthcare settings.

The UK is currently experiencing a public health emergency as a result of the COVID-19 pandemic. As such, it is critical that businesses take a range of measures to keep everyone safe. This document is to help you understand how to work safely and keep your customers safe during this pandemic, ensuring as many people as possible comply with social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable). We hope it gives you freedom within a practical framework to think about what you need to do to continue, or restart, operations during the COVID-19 pandemic. We understand how important it is that you can work safely and support your workers' and customers' health and wellbeing during the COVID-19 pandemic and not contribute to the spread of the virus. We know that many of these businesses are currently closed, by [government regulation](#), for their usual service - this guidance will be useful for those businesses as they develop new ways of working or to help prepare for the time when they are able to reopen. The government is clear that workers should not be forced into an unsafe workplace and the health and safety of workers and customers, and public health, should not be put at risk.

We know many people are also keen to return to or contribute to volunteering. Organisations have a duty of care to volunteers to ensure as far as reasonably practicable they are not exposed to risks to their health and safety. This guidance around working safely during COVID-19 should ensure that volunteers are afforded the same level of protection to their health and safety as others, such as workers and customers.

This document has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) with input from firms, unions, industry bodies and the devolved administrations in Wales, Scotland and Northern Ireland, and in consultation with Public Health England (PHE) and the Health and Safety Executive (HSE).

Public health is devolved in Northern Ireland, Scotland and Wales; this guidance should be considered alongside local public health and safety requirements and legislation in Northern Ireland, Scotland and Wales. For advice to businesses in other parts of the UK please see guidance set by the Northern Ireland Executive, the Scottish Government, and the Welsh Government.

We expect that this document will be updated over time. This version is up to date as of 3 July 2020. You can check for updates at <https://www.gov.uk/workingsafely>. If you have any feedback for us, please email [safer.workplaces@beis.gov.uk](mailto:safer.workplaces@beis.gov.uk).

This document is one of a set of documents about how to work safely in different types of workplace. This one is designed to be relevant for people who work in or run restaurants, pubs, bars and takeaway services.

Employers also providing accommodation services should refer to guidance on Working Safely during COVID-19 in hotels and other accommodation. Employers also providing entertainment may wish to refer to guidance published by the Department of Media, Culture and Sport.





## How to use this guidance

This document sets out guidance on how to open workplaces safely while minimising the risk of spreading COVID-19. It gives practical considerations of how this can be applied in the workplace.

Each business will need to translate this into the specific actions it needs to take, depending on the nature of their business, including the size and type of business, how it is organised, operated, managed and regulated. They will also need to monitor these measures to make sure they continue to protect customers and workers.

This guidance does not supersede any legal obligations relating to health and safety, entertainment licensing and regulations, employment or equalities and it is important that as a business or an employer you continue to comply with your existing obligations, including those relating to individuals with protected characteristics. It contains non-statutory guidance to take into account when complying with these existing obligations. When considering how to apply this guidance, take into account agency workers, contractors and other people, as well as your employees.

**To help you decide which actions to take, you must carry out an appropriate COVID-19 risk assessment, just as you would for other health and safety related hazards. This risk assessment must be done in consultation with unions or workers.**



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# 1. Thinking about risk

**Objective:** That all employers carry out a COVID-19 risk assessment.

COVID-19 is a public health emergency. Everyone needs to assess and manage the risks of COVID-19, and in particular businesses should consider the risks to their workers and customers. As an employer, you also have a legal responsibility to protect workers and others from risk to their health and safety. This means you need to think about the risks they face and do everything reasonably practicable to minimise them, recognising you cannot completely eliminate the risk of COVID-19.

You must make sure that the risk assessment for your business addresses the risks of COVID-19, using this guidance to inform your decisions and control measures. You should also consider the security implications of any decisions and control measures you intend to put in place, as any revisions could present new or altered security risks that may require mitigation. A risk assessment is not about creating huge amounts of paperwork, but rather about identifying sensible measures to control the risks in your workplace. If you have fewer than five workers, or are self-employed, you don't have to write anything down as part of your risk assessment. Your risk assessment will help you decide whether you have done everything you need to. There are interactive tools available to support you from the Health and Safety Executive (HSE) at <https://www.hse.gov.uk/risk/assessment.htm>.

Employers have a duty to consult their people on health and safety. You can do this by listening and talking to them about the work and how you will manage risks from COVID-19. The people who do the work are often the best people to understand the risks in the workplace and will have a view on how to work safely. Involving them in making decisions shows that you take their health and safety seriously. You must consult with the health and safety representative selected by a recognised trade union or, if there isn't one, a representative chosen by workers. As an employer, you cannot decide who the representative will be.

At its most effective, full involvement of your workers creates a culture where relationships between employers and workers are based on collaboration, trust and joint problem solving. As is normal practice, workers should be involved in assessing workplace risks and the development and review of workplace health and safety policies in partnership with the employer.

Employers and workers should always come together to resolve issues. If concerns still cannot be resolved, see below for further steps you can take.

## How to raise a concern:



Contact your employee representative.



Contact your trade union if you have one.



Use the HSE form available at <https://www.hse.gov.uk/contact/concerns.htm>.



Contact HSE by phone on 0300 790 6787.



# 1. Thinking about risk (continued)

Where the enforcing authority, such as the HSE or your local authority, identifies employers who are not taking action to comply with the relevant public health legislation and guidance to control public health risks, they are empowered to take a range of actions to improve control of workplace risks. For example, this would cover employers not taking appropriate action to ensure social distancing, where possible.

Failure to complete a risk assessment which takes account of COVID-19, or completing a risk assessment but failing to put in place sufficient measures to manage the risk of COVID-19, could constitute a breach of health and safety law. The actions the enforcing authority can take include the provision of specific advice to employers to support them to achieve the required standard, through to issuing enforcement notices to help secure improvements. Serious breaches and failure to comply with enforcement notices can constitute a criminal offence, with serious fines and even imprisonment for up to two years. There is also a wider system of enforcement, which includes specific obligations and conditions for licensed premises.

Employers are expected to respond to any advice or notices issued by enforcing authorities rapidly and are required to do so within any timescales imposed by the enforcing authorities. The vast majority of employers are responsible and will join with the UK's fight against COVID-19 by working with the Government and their sector bodies to protect their workers and the public. However, inspectors are carrying out compliance checks nationwide to ensure that employers are taking the necessary steps.

Employers must follow all instructions from authorities in the event of new local restrictions.



# 1.1 Managing risk

**Objective:** To reduce risk to the lowest reasonably practicable level by taking preventative measures, in order of priority.

Employers have a duty to reduce workplace risk to the lowest reasonably practicable level by taking preventative measures. Employers must work with any other employers or contractors sharing the workplace so that everybody's health and safety is protected. In the context of COVID-19 this means protecting the health and safety of your workers and customers by working through these steps in order:

- Ensuring both workers and customers who feel unwell stay at home and do not attend the venue.
- In every workplace, increasing the frequency of handwashing and surface cleaning.
- Businesses and workplaces should make every reasonable effort to enable working from home as a first option. Where working from home is not possible, workplaces should make every reasonable effort to comply with the social distancing guidelines set out by the government (2m, or 1m with risk mitigation where 2m is not viable, is acceptable. You should consider and set out the mitigations you will introduce in your risk assessments).
- Where the social distancing guidelines cannot be followed in full, in relation to a particular activity, businesses should consider whether that activity needs to continue for the business to operate, and if so, take all the mitigating actions possible to reduce the risk of transmission between their staff.
- Further mitigating actions include:
  - Further increasing the frequency of hand washing and surface cleaning.
  - Keeping the activity time involved as short as possible.
  - Using screens or barriers to separate workers from each other and workers from customers at points of service.
  - Using back-to-back or side-to-side working (rather than face-to-face) whenever possible.
  - Reducing the number of people each person has contact with by using 'fixed teams or partnering' (so each person works with only a few others).
- Finally, if people must work face-to-face for a sustained period with more than a small group of fixed partners, then you will need to assess whether the activity can safely go ahead. No one is obliged to work in an unsafe work environment.
- In your assessment you should have particular regard to whether the people doing the work are especially vulnerable to COVID-19.

The recommendations in the rest of this document are ones you must consider as you go through this process. You could also consider any advice that has been produced specifically for your sector, for example by trade associations or trades unions.

If you have not already done so, you should carry out an assessment of the risks posed by COVID-19 in your workplace as soon as possible. If you are currently operating, you are likely to have gone through a lot of this thinking already. We recommend that you use this document to identify any further improvements you should make. You must review the measures you have put in place to make sure they are working. You should also review them if they may no longer be effective or if there are changes in the workplace that could lead to new risks.



## 1.2 Sharing the results of your risk assessment

You must share the results of your risk assessment with your workforce. If possible, you should consider publishing the results on your website (and we would expect all employers with over 50 workers to do so). We would expect all businesses to demonstrate to their workers and customers that they have properly assessed their risk and taken appropriate measures to mitigate this. You should do this by displaying a notification in a prominent place in your business and on your website, if you have one. Below you will find a notice you should display in your workplace to show you have followed this guidance.

### Staying COVID-19 Secure in 2020

We confirm we have complied with the government's guidance on managing the risk of COVID-19

**• FIVE STEPS TO SAFER WORKING TOGETHER •**

- ✓ We have carried out a [COVID-19 risk assessment](#) and shared the results with the people who work here
- ✓ We have [cleaning, handwashing and hygiene procedures](#) in line with guidance
- ✓ We have taken all reasonable steps to [help people work from home](#)
- ✓ We have taken all reasonable steps to [maintain a 2m distance](#) in the workplace
- ✓ Where people cannot keep 2m apart we have ensured at least a 1m distance and taken all the mitigating actions possible to [manage transmission risk](#)

Signed on behalf of employer \_\_\_\_\_ Employer representative signature

Employer \_\_\_\_\_ Employer name      Date \_\_\_\_\_

Who to contact: \_\_\_\_\_ Your Health and Safety Representative  
(or the Health and Safety Executive at [www.hse.gov.uk](http://www.hse.gov.uk) or 0300 003 1647)





## 2. Keeping your customers and visitors safe





## 2.1 Keeping customers and visitors safe

**Objective:** To minimise the risk of transmission and protect the health of customers and visitors in restaurants, pubs, bars and takeaway venues.










- The opening up of the economy following the COVID-19 outbreak is being supported by NHS Test and Trace. You should assist this service by keeping a temporary record of your customers and visitors for 21 days, in a way that is manageable for your business, and assist NHS Test and Trace with requests for that data if needed. This could help contain clusters or outbreaks. Many businesses that take bookings already have systems for recording their customers and visitors – including restaurants, hotels, and hair salons. If you do not already do this, you should do so to help fight the virus. We have worked with industry and relevant bodies to design this system in line with data protection legislation, and further guidance can be found [here](#).
- Indoor gatherings should only be occurring in groups of up to two households (including support bubbles) while outdoor gatherings should only be occurring in groups of up to two households (or support bubbles), or a group of at most six people from any number of households. It is against the law to gather in groups of more than 30 people, except for the limited circumstances as set out in law. In these specific cases, those operating venues should take additional steps to ensure the safety of the public and prevent large gatherings or mass events from taking place. At this time, venues should not permit live performances, including drama, comedy and music, to take place in front of a live audience. Individual businesses or venues should consider the cumulative impact of many venues re-opening in a small area. This means working with local authorities, neighbouring businesses and travel operators to assess this risk and applying additional mitigations. These could include:
  - Further lowering capacity - even if it is possible to safely seat a number of people inside a venue, it may not be safe for them all to travel or enter that venue.
  - Staggering entry times with other venues and taking steps to avoid queues building up in surrounding areas.
  - Arranging one-way travel routes between transport hubs and venues.
  - Advising patrons to avoid particular forms of transport or routes and to avoid crowded areas when in transit to the venue.
- Local authorities should avoid issuing licenses for events that could lead to larger gatherings forming and provide advice to businesses on how to manage events of this type. If appropriate, the Government has powers under schedule 22 of the Coronavirus Act 2020 to close venues hosting large gatherings or prohibit certain events (or types of event) from taking place.





## 2.1 Keeping customers and visitors safe (continued)

### Steps that will usually be needed:

-  Calculating the maximum number of customers that can reasonably follow social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) at the venue. Taking into account total indoor and outdoor space, specific venue characteristics such as furniture as well as likely pinch points and busy areas.
-  Reconfiguring indoor and outdoor seating and tables to maintain social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) between customers of different households or [support bubbles](#). For example, increasing the distance between tables.
-  Working with your local authority or landlord to take into account the impact of your processes, including queues, on public spaces such as high streets and public car parks.
-  Working with neighbouring businesses and local authorities to provide additional parking or facilities such as bike-racks, where possible, to help customers avoid using public transport.
-  Reducing the need for customers to queue, but where this is unavoidable, discouraging customers from queueing indoors and using outside spaces for queueing where available and safe. For example, using some car parks and existing outdoor services areas.
-  Managing outside queues to ensure they do not cause a risk to individuals, other businesses or additional security risks, for example by introducing queuing systems, having staff direct customers and protecting queues from traffic by routing them behind permanent physical structures such as street furniture, bike racks, bollards or putting up barriers.
-  Providing clear guidance on social distancing and hygiene to people on arrival, for example, signage, visual aids and before arrival, such as by phone, on the website or by email.
-  Managing the entry of customers, and the number of customers at a venue, so that all indoor customers are seated with appropriate distancing, and those outdoors have appropriately spaced seating or standing room. This is to ensure that the venue, including areas of congestion does not become overcrowded. Managing entry numbers can be done, for example, through reservation systems, social distancing markings, having customers queue at a safe distance for toilets or bringing payment machines to customers, where possible.
-  Making customers aware of, and encouraging compliance with, limits on gatherings. For example, on arrival or at booking. Indoor gatherings are limited to members of any two households (or support bubbles), while outdoor gatherings are limited to members of any two households (or support bubbles), or a group of at most six people from any number of households.



## 2.1 Keeping customers and visitors safe (continued)

### Steps that will usually be needed:

- Encouraging customers to use hand sanitiser or handwashing facilities as they enter the venue.
- Ensuring any changes to entrances, exits and queue management take into account reasonable adjustments for those who need them, including disabled customers. For example, maintaining pedestrian and parking access for disabled customers.
- Reminding customers who are accompanied by children that they are responsible for supervising them at all times and should follow social distancing guidelines.
- Keeping indoor and soft play areas closed. For guidance on opening outdoor playgrounds safely, see guidance for managing playgrounds published by The Ministry of Housing, Communities and Local Government.
- Looking at how people move through the venue and how you could adjust this to reduce congestion and contact between customers, for example, queue management or one-way flow, where possible.
- Planning for maintaining social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) in the event of adverse weather conditions, being clear that customers cannot seek shelter indoors unless social distancing can be maintained.
- Working with neighbouring businesses and local authorities to consider how to spread the number of people arriving throughout the day for example by staggering opening hours; this will help reduce demand on public transport at key times and avoid overcrowding.
- Determining if schedules for essential services and contractor visits can be revised to reduce interaction and overlap between people, for example, carrying out services at night.





## 2.2 Managing service of food and drink at a venue

**Objective:** To manage interactions at the venue resulting from service of food and drink.

### Steps that will usually be needed:

- ☐ Maintaining social distancing (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) from customers when taking orders from customers.
- ☐ Using social distance markings to remind customers to maintain social distancing (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) between customers of different households or [support bubbles](#).
- ☐ Minimising customer self service of food, cutlery and condiments to reduce risk of transmission. For example, providing cutlery and condiments only when food is served.
- ☐ Providing only disposable condiments or cleaning non-disposable condiment containers after each use.
- ☐ Reducing the number of surfaces touched by both staff and customers. For example, asking customers to remain at a table where possible, or to not lean on counters when collecting takeaways.
- ☐ Encouraging contactless payments where possible and adjusting location of card readers to social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable).
- ☐ Minimising contact between front of house workers and customers at points of service where appropriate. For example, using screens or tables at tills and counters to maintain social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable).
- ☐ Ensuring all outdoor areas, with particular regard to covered areas, have sufficient ventilation. For example, increasing the open sides of a covered area.



## 2.2 Managing service of food and drink at a venue

### 2.2.1 Takeaway or delivery

**Objective:** To manage interactions at the venue resulting from selling food and drinks for takeaway or delivery.

#### Steps that will usually be needed:

- ☐ See [government guidance](#) on food safety for food delivery.
- ☐ Encouraging customers to order online, on apps or over the telephone to reduce queues and stagger pick-up times.
- ☐ Minimising contact between kitchen workers and front of house workers, delivery drivers or riders, for example, by having zones from which delivery drivers can collect packaged food items.
- ☐ Limiting access to venues for people waiting for or collecting takeaways. Setting out clear demarcation for social distancing (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) for delivery drivers, riders or customers queuing. Asking customers to wait outside or in their cars.
- ☐ Working with your local authority, landlord and neighbours to ensure designated waiting areas do not obstruct public spaces.

## 2.2 Managing service of food and drink at a venue

### 2.2.2 Service at the venue

**Objective:** To manage interactions at the venue resulting from service of food and drink in indoor and outdoor services areas.

#### Steps that will usually be needed:

- ☐ Encouraging use of contactless ordering from tables where available. For example, through an ordering app.
- ☐ Adjusting service approaches to minimise staff contact with customers. Indoor table service must be used where possible, alongside further measures such as assigning a single staff member per table. Outdoor table service should also be encouraged, although customers are permitted to stand outside if distanced appropriately. Where bar or counter service is unavoidable, preventing customers from remaining at the bar or counter after ordering.
- ☐ Adjusting processes to prevent customers from congregating at points of service. For example, having only staff collect and return empty glasses to the bar.
- ☐ Minimising contact between kitchen workers and front of house workers. For example, by having zones from which front of house staff can collect food.
- ☐ Encouraging use of outdoor areas for service where possible. For example, increasing outdoor seating or outdoor points of service such as stalls.



## 2.3 Customer toilets

**Objective:** To ensure that toilets are kept open and to ensure/promote good hygiene, social distancing, and cleanliness in toilet facilities.

- Public toilets, portable toilets and toilets inside premises should be kept open and carefully managed to reduce the risk of transmission of COVID-19.

### Steps that will usually be needed:


- Using signs and posters to build awareness of good handwashing technique, the need to increase handwashing frequency and to avoid touching your face, and to cough or sneeze into a tissue which is binned safely, or into your arm if a tissue is not available.
- Consider the use of social distancing marking in areas where queues normally form, and the adoption of a limited entry approach, with one in, one out (whilst avoiding the creation of additional bottlenecks).
- To enable good hand hygiene consider making hand sanitiser available on entry to toilets where safe and practical, and ensure suitable handwashing facilities including running water and liquid soap and suitable options for drying (either paper towels or hand driers) are available.
- Setting clear use and cleaning guidance for toilets, with increased frequency of cleaning in line with usage. Use normal cleaning products, paying attention to frequently hand touched surfaces, and consider use of disposable cloths or paper roll to clean all hard surfaces.
- Keeping the facilities well ventilated, for example by fixing doors open where appropriate.
- Special care should be taken for cleaning of portable toilets and larger toilet blocks.
- Putting up a visible cleaning schedule can keep it up to date and visible.
- Providing more waste facilities and more frequent rubbish collection.





## 2.4 Providing and explaining available guidance


**Objective:** To make sure people understand what they need to do to maintain safety.


### Steps that will usually be needed:


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
Providing clear guidance on expected customer behaviours, social distancing and hygiene to people on or before arrival, for example on online booking forms and on-site signage and visual aids. Explaining to customers that failure to observe safety measures will result in service not being provided.
- 

Providing written or spoken communication of the latest guidelines to both workers and customers inside and outside the venue. You should display posters or information setting out how customers should behave at your venue to keep everyone safe. Consider the particular needs of those with protected characteristics, such as those who are hearing or visually impaired.
- 

Where necessary, informing customers that police and the local authorities have the powers to enforce requirements in relation to social distancing and may instruct customers to disperse, leave an area, issue a fixed penalty notice or take further enforcement action.
- 

Informing customers that they should be prepared to remove face coverings safely if asked to do so by police officers and staff for the purposes of identification.
- 

Encouraging workers to remind customers to follow social distancing advice and clean their hands regularly.
- 

Where visits to venues are required, for example, inbound supplier deliveries or safety critical visitors, providing site guidance on social distancing and hygiene on or before arrival.
- 

Ensuring information provided to customers and visitors, such as advice on the location or size of queues, does not compromise their safety.





### 3. Who should go to work

#### Objective:

That everyone should work from home, unless they cannot work from home.

It is recognised that for people who work in these types of workplace, it is often not possible to work from home.

Nobody should go to work if your business is closed under current government regulations.

People who can work from home should continue to do so. Employers should decide, in consultation with their workers, whether it is viable for them to continue working from home. Where it is decided that workers should come into their place of work then this will need to be reflected in the risk assessment and actions taken to manage the risks of transmission in line with this guidance.

#### Steps that will usually be needed:

- ☐ Considering who is essential to be on site; for example, those not in customer-facing roles such as administrative staff should work from home if at all possible.
- ☐ Planning for the minimum number of people needed at the venue to operate safely and effectively.
- ☐ Monitoring the wellbeing of people who are working from home and helping them stay connected to the rest of the workforce, especially if the majority of their colleagues are on-site.
- ☐ Keeping in touch with off-site workers on their working arrangements including their welfare, mental and physical health and personal security.
- ☐ Providing administrative staff with equipment to work from home safely and effectively, for example, remote access to work systems.



## 3.1 Protecting people who are at higher risk

**Objective:** To protect clinically extremely vulnerable and clinically vulnerable individuals.

- Clinically extremely vulnerable individuals (see definition in Appendix) have been strongly advised not to work outside the home during the pandemic peak and only return to work when community infection rates are low.
- Clinically vulnerable individuals, who are at higher risk of severe illness (for example, people with some pre-existing conditions, see definition in Appendix), have been asked to take extra care in observing social distancing and should be helped to work from home, either in their current role or in an alternative role.
- If clinically vulnerable individuals cannot work from home, they should be offered the option of the safest available on-site roles, enabling them to maintain social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable). If they cannot maintain social distancing you should carefully assess whether this involves an acceptable level of risk. As for any workplace risk you must take into account specific duties to those with protected characteristics, including, for example, expectant mothers who are, as always, entitled to suspension on full pay if suitable roles cannot be found. Particular attention should also be paid to people who live with clinically extremely vulnerable individuals.

### Steps that will usually be needed:



Providing support for workers around mental health and wellbeing. This could include advice or telephone support.



See current guidance for advice on who is in the clinically extremely vulnerable and clinically vulnerable groups.

## 3.2 People who need to self-isolate

**Objective:** To make sure individuals who are advised to stay at home under [existing government guidance](#) to stop infection spreading do not physically come to work. This includes individuals who have symptoms of COVID-19, those who live in a household or are in a [support bubble](#) with someone who has symptoms and those who are advised to self-isolate as part of the government's [test and trace](#) service.

### Steps that will usually be needed:



Enabling workers to work from home while self-isolating if appropriate.



See current guidance for [employees](#) and [employers](#) relating to statutory sick pay due to COVID-19.



See [current guidance](#) for people who have symptoms and those who live with others who have symptoms.





## 3.3 Equality in the workplace

**Objective:** To make sure that nobody is discriminated against.

- In applying this guidance, employers should be mindful of the particular needs of different groups of workers or individuals.
- It is breaking the law to discriminate, directly or indirectly, against anyone because of a protected characteristic such as age, sex, disability, race or ethnicity.
- Employers also have particular responsibilities towards disabled workers and those who are new or expectant mothers.

### Steps that will usually be needed:

- Understanding and taking into account the particular circumstances of those with different protected characteristics.
- Involving and communicating appropriately with workers whose protected characteristics might either expose them to a different degree of risk, or might make any steps you are thinking about inappropriate or challenging for them.
- Considering whether you need to put in place any particular measures or adjustments to take account of your duties under the equalities legislation.
- Making reasonable adjustments to avoid disabled workers being put at a disadvantage, and assessing the health and safety risks for new or expectant mothers.
- Making sure that the steps you take do not have an unjustifiable negative impact on some groups compared to others, for example, those with caring responsibilities or those with religious commitments.





## 4. Social distancing for workers

### Objective:

Ensuring workers maintain social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) wherever possible, including arriving at and departing from work, while in work and when travelling between sites.

- You must maintain social distancing in the venue wherever possible.
- Where the social distancing guidelines cannot be followed in full in relation to a particular activity, businesses should consider whether that activity needs to continue for the business to operate, and, if so, take all the mitigating actions possible to reduce the risk of transmission between their staff. Mitigating actions include:
  - Further increasing the frequency of hand washing and surface cleaning.
  - Keeping the activity time involved as short as possible.
  - Using screens or barriers to separate workers from each other and workers from customers at points of service.
  - Using back-to-back or side-to-side working (rather than face-to-face) whenever possible.
  - Reducing the number of people each person has contact with by using 'fixed teams or partnering' (so each person works with only a few others).
- Social distancing applies to all parts of a business, not just the place where people spend most of their time, but also entrances and exits, break rooms, canteens and similar settings. These are often the most challenging areas to maintain social distancing and workers should be specifically reminded.





## 4.1 Coming to work and leaving work

**Objective:** To maintain social distancing wherever possible, on arrival and departure and to ensure handwashing upon arrival.

### Steps that will usually be needed:



Reduced staffing levels to maintain social distancing

- Staggering arrival and departure times at work to reduce crowding into and out of the venue, taking account of the impact on those with protected characteristics.
- Providing additional parking or facilities such as bike-racks to help people walk, run, or cycle to work where possible.
- Reducing congestion, for example, by having more entry points to the venue. If you have more than one door, consider having one for entering the building and one for exiting.
- Using markings to guide staff coming into or leaving the building.
- Providing handwashing facilities, or hand sanitiser where not possible, at entry and exit points.
- Providing storage for staff clothes and bags.
- Requesting staff change into work uniforms on site using appropriate facilities/changing areas, where social distancing and hygiene guidelines can be met.
- Washing uniforms on site, where appropriate, or requesting workers to regularly wash uniforms at home.
- See [government guidance](#) on travelling to and from work.



## 4.2 Moving around venues

**Objective:** To maintain social distancing wherever possible, while people travel through the venue.

### Steps that will usually be needed:

- ☐ Reducing movement by discouraging non-essential trips within venues, for example, restricting access to some areas, encouraging use of radios, telephones or other electronic devices when sending orders from service areas to kitchens, where permitted, and cleaning them between use.
- ☐ Reducing job and location rotation, for example, assigning workers to specific areas or keeping temporary personnel dedicated to one venue.
- ☐ Introducing more one-way flow routes through buildings through signage that clearly indicate the direction of flow.
- ☐ Reducing maximum occupancy for lifts, providing hand sanitiser for the operation of lifts and encouraging use of stairs wherever possible.
- ☐ Making sure that people with disabilities are able to access lifts.
- ☐ Managing use of high traffic areas including, corridors, lifts and staircases to maintain social distancing.

## 4.3 Working areas

**Objective:** To maintain social distancing between individuals when they are at their working areas.

- For people who work in one place, for example waiter captains or cashiers, working areas should allow them to maintain social distancing from one another as well as the public.
- Working areas should be assigned to an individual as much as possible. If they need to be shared, they should be shared by the smallest possible number of people.
- If it is not possible to ensure working areas comply with social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) then businesses should consider whether that activity needs to continue for the business to operate, and if so take all mitigating actions possible to reduce the risk of transmission.

### Steps that will usually be needed:

- ☐ Reviewing layouts and processes to allow staff to work further apart from each other.
- ☐ Only where it is not possible to move working areas further apart, arranging people to work side-by-side or facing away from each other rather than face-to-face. Where this is not possible, using screens to separate people from each other.
- ☐ Using floor tape or paint to mark areas to help people comply with social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable).



## 4.4 Food preparation areas

**Objective:** To maintain social distancing and reduce contact where possible in kitchens and other food preparation areas.

- COVID-19 is a respiratory illness. It is not known to be transmitted by exposure to food.

### Steps that will usually be needed:

- Following [government guidance](#) on managing food preparation and food service areas.
- Allowing kitchen access to as few people as possible.
- Minimising interaction between kitchen staff and other workers, including when on breaks.
- Putting teams into shifts to restrict the number of workers interacting with each other.
- Spacing working areas to maintain social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) as much as possible, recognising the difficulty of moving equipment such as sinks, hobs and ovens. Consider cleanable panels to separate working areas in larger kitchens.
- Providing floor marking to signal social distancing (2m, or 1m with risk mitigation where 2m is not viable, is acceptable).
- Using 'one way' traffic flows to minimise contact.
- Minimising access to walk-in pantries, fridges and freezers, for example, with only one person being able to access these areas at one point in time.
- Minimising contact at 'handover' points with other staff, such as when presenting food to serving staff and delivery drivers.










## 4.5 Entertainment

**Objective:** To maintain social distancing when providing entertainment within or outside restaurants, pubs, bars and similar venues that serve food or drink.

- For many restaurants, pubs and bars, providing entertainment such as recorded music, live sports broadcasts, quizzes, live musicians or comedians are an important part of their business.
- At this time, venues should not permit live performances, including drama, comedy and music, to take place in front of a live audience. This is important to mitigate the risks of aerosol transmission - from either the performer(s) or their audience. There will be further guidance setting out how performing arts activity can be managed safely in other settings, for instance rehearsing or broadcast without an audience.
- All venues should ensure that steps are taken to avoid people needing to unduly raise their voices to each other. This includes, but is not limited to, refraining from playing music or broadcasts that may encourage shouting, including if played at a volume that makes normal conversation difficult. This is because of the potential for increased risk of transmission, particularly from aerosol transmission. We will develop further guidance, based on scientific evidence, to enable these activities as soon as possible. You should take similar steps to prevent other close contact activities, such as communal dancing.

### Steps that will usually be needed:

-  Determining the viability of entertainment and maximum audience numbers consistent with social distancing outside and within venues and other safety considerations.
-  Preventing entertainment, such as broadcasts, that is likely to encourage audience behaviours increasing transmission risk. For example, loud background music, communal dancing, group singing or chanting.
-  Reconfiguring indoor entertainment spaces to ensure customers are seated rather than standing. For example, repurposing dance floors for customer seating.
-  Encouraging use of online ticketing and online or contactless payments for entertainment where possible.
-  Communicating clearly to customers the arrangements for entertainment and clearly supervising with additional staff if appropriate.



## 4.6 Meetings

**Objective:** To reduce transmission due to face-to-face meetings and maintain social distancing in meetings.

### Steps that will usually be needed:

- ☐ Using remote working tools to avoid in-person meetings.
- ☐ Only absolutely necessary participants should physically attend meetings and should maintain social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable).
- ☐ Avoiding transmission during meetings, for example, avoiding sharing pens, documents and other objects.
- ☐ Providing hand sanitiser in meeting rooms.
- ☐ Holding meetings outdoors or in well-ventilated rooms whenever possible.
- ☐ For areas where regular meetings take place, use floor signage to help people maintain social distancing.

## 4.7 Back of house and common areas

**Objective:** To maintain social distancing while using common areas.

### Steps that will usually be needed:

- ☐ Staggering break times to reduce pressure on the staff break rooms or places to eat and ensuring social distancing is maintained in staff break rooms.
- ☐ Using safe outside areas for breaks.
- ☐ Creating additional space by using other parts of the venue or building that have been freed up by remote working.
- ☐ Installing screens to protect staff in front of house areas or serving customers at till points.
- ☐ Using social distance marking for other common areas such as toilets, showers, lockers and changing rooms and in any other areas where queues typically form.





## 4.8 Accidents, security and other incidents

**Objective:** To prioritise safety during incidents.

- In an emergency, for example, an accident, provision of first aid, fire or break-in, people do not have to comply with social distancing guidelines if it would be unsafe.
- People involved in the provision of assistance to others should pay particular attention to sanitation measures immediately afterwards, including washing hands.

### Steps that will usually be needed:

- ☐ Reviewing your incident and emergency procedures to ensure they reflect the social distancing principles as far as possible.
- ☐ Considering whether you have enough appropriately trained staff to keep people safe. For example, having dedicated staff to encourage social distancing or to manage security.
- ☐ Considering the security implications of any changes you intend to make to your operations and practices in response to COVID-19, as any revisions may present new or altered security risks which may need mitigations.
- ☐ For organisations who conduct physical searches of people, considering how to ensure safety of those conducting searches while maintaining security standards.
- ☐ Following [government guidance](#) on managing security risks.







## 5. Cleaning the workplace





## 5.1 Before reopening

**Objective:** To make sure that any venue that has been closed or partially operated is clean and ready to restart, including:

- An assessment for all sites, or parts of sites, that have been closed, before restarting work.
- Cleaning procedures and providing hand sanitiser before restarting work.

### Steps that will usually be needed:



Checking whether you need to service or adjust ventilation systems, for example, so that they do not automatically reduce ventilation levels due to lower than normal occupancy levels.



Most air conditioning systems do not need adjustment, however where systems serve multiple buildings, or you are unsure, advice should be sought from your heating ventilation and air conditioning (HVAC) engineers or advisers.



Following [guidance](#) on reopening food businesses.



Following [guidance](#) on managing legionella risks.

### Enhanced cleaning measures







**Objective:** To keep the venue clean and prevent transmission by touching contaminated surfaces.

### Steps that will usually be needed:

- ☐ Following [government guidance](#) on cleaning food preparation and food service areas.
- ☐ Wedging doors open, where appropriate, to reduce touchpoints. This does not apply to fire doors.
- ☐ Frequent cleaning of objects and surfaces that are touched regularly including counters, tills, and making sure there are adequate disposal arrangements for cleaning products.
- ☐ Cleaning surfaces and objects between each customer use. For example, cleaning tables, card machines, chairs, trays and laminated menus in view of customers before customer use.
- ☐ If you are cleaning after a known or suspected case of COVID-19 then you should refer to the [specific guidance](#).
- ☐ Frequent cleaning of work areas and equipment between uses, using your usual cleaning products.
- ☐ Maintaining good ventilation in the work environment. For example, opening windows and doors frequently, where possible.

## 5.3 Keeping the kitchen clean

**Objective:** To ensure the highest hygiene standards are operated in kitchen areas.

### Steps that will usually be needed:

- ☐ Recognising that cleaning measures are already stringent in kitchen areas, consider the need for additional cleaning and disinfection measures.
- ☐ Having bins for collection of used towels and staff overalls.
- ☐ Washing hands before handling plates and cutlery.
- ☐ Continuing high frequency of hand washing throughout the day.



## 5.4 Hygiene – handwashing, sanitation facilities and toilets

**Objective:** To help everyone keep good hygiene through the working day.

### Steps that will usually be needed:

- ☐ Following [government guidance](#) on hygiene in food preparation and food service areas.
- ☐ Using signs and posters to build awareness of good handwashing technique, the need to increase handwashing frequency, avoid touching your face and to cough or sneeze into a tissue which is binned safely, or into your arm if a tissue is not available.
- ☐ Providing regular reminders and signage to maintain hygiene standards.
- ☐ Providing hand sanitiser in multiple locations in addition to washrooms.
- ☐ Setting clear use and cleaning guidance for toilets to ensure they are kept clean and social distancing is achieved as much as possible.
- ☐ Enhancing cleaning for busy areas.
- ☐ Special care should be taken for cleaning of portable toilets.
- ☐ Providing more waste facilities and more frequent rubbish collection.
- ☐ Providing hand drying facilities – either paper towels or electrical dryers.
- ☐ Washing hands after handling customer items and before moving onto another task. For example, after collecting used plates for cleaning and before serving food to another table.



**Objective:** To minimise the risk of transmission in changing rooms and showers.

## 5.5 Changing rooms and showers

### Steps that will usually be needed:

- Where shower and changing facilities are required, setting clear use and cleaning guidance for showers, lockers and changing rooms to ensure they are kept clean and clear of personal items and that social distancing is achieved as much as possible.
- Introducing enhanced cleaning of all facilities regularly during the day and at the end of the day.

## 5.6 Handling goods, merchandise, other materials and onsite vehicles

**Objective:** To reduce transmission through contact with objects that come into the venue and vehicles at the worksite.

### Steps that will usually be needed:

- Cleaning procedures for goods and merchandise entering the site.
- Cleaning procedures for the parts of shared equipment you touch before each use.
- Encouraging increased handwashing and introducing more handwashing facilities for workers handling goods and merchandise or providing hand sanitiser where this is not practical.
- Regular cleaning of the inside of shared vehicles that workers may take home.
- Enhanced handling procedures of laundry to prevent potential contamination of surrounding surfaces, to prevent raising dust or dispersing the virus.



## 6. Personal Protective Equipment (PPE) and face coverings





## 6. Personal Protective Equipment (PPE) and face coverings

PPE protects the user against health or safety risks at work. It can include items such as safety helmets, gloves, eye protection, high-visibility clothing, safety footwear and safety harnesses. It also includes respiratory protective equipment, such as face masks.

Where you are already using PPE in your work activity to protect against non-COVID-19 risks, you should continue to do so.

At the start of this document we described the steps you need to take to manage COVID-19 risk in the workplace. This includes working from home and maintaining social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable). When managing the risk of COVID-19, additional PPE beyond what you usually wear is not beneficial. This is because COVID-19 is a different type of risk to the risks you normally face in a workplace, and needs to be managed through social distancing, hygiene and fixed teams or partnering, not through the use of PPE.

The exception is clinical settings, like a hospital, or a small handful of other roles for which Public Health England advises use of PPE. For example, first responders and immigration enforcement officers. If you are in one of these groups you should refer to the advice at:

<https://www.gov.uk/government/publications/coronavirus-covid-19-personal-protective-equipment-ppe-plan/covid-19-personal-protective-equipment-ppe-plan>

and

<https://www.gov.uk/government/publications/covid-19-decontamination-in-non-healthcare-settings/covid-19-decontamination-in-non-healthcare-settings>.

Workplaces should not encourage the precautionary use of extra PPE to protect against COVID-19 outside clinical settings or when responding to a suspected or confirmed case of COVID-19.

Unless you are in a situation where the risk of COVID-19 transmission is very high, your risk assessment should reflect the fact that the role of PPE in providing additional protection is extremely limited. However, if your risk assessment does show that PPE is required, then you must provide this PPE free of charge to workers who need it. Any PPE provided must fit properly.





## 6.1 Face coverings

There are some circumstances when wearing a face covering may be marginally beneficial as a precautionary measure. The evidence suggests that wearing a face covering does not protect you, but it may protect others if you are infected but have not developed symptoms. However, customers and workers who want to wear a face covering should be allowed to do so.

A face covering can be very simple and may be worn in enclosed spaces where social distancing isn't possible. It just needs to cover your mouth and nose. It is not the same as a face mask, such as the surgical masks or respirators used by health and care workers. Similarly, face coverings are not the same as the PPE used to manage risks like dust and spray in an industrial context. Supplies of PPE, including face masks, must continue to be reserved for those who need them to protect against risks in their workplace, such as health and care workers, and those in industrial settings like those exposed to dust hazards.

It is important to know that the evidence of the benefit of using a face covering to protect others is weak and the effect is likely to be small, therefore face coverings are not a replacement for the other ways of managing risk, including minimising time spent in contact, using fixed teams and partnering for close-up work, and increasing hand and surface washing. These other measures remain the best ways of managing risk in the workplace and government would therefore not expect to see employers relying on face coverings as risk management for the purpose of their health and safety assessments.

Wearing a face covering is required by law when travelling as a passenger on public transport in England. Some people don't have to wear a face covering including for [health, age or equality reasons](#). Elsewhere in England it is optional and is not required by law, including in the workplace. If you choose to wear one, it is important to use face coverings properly and wash your hands before putting them on and before and after taking them off.

Employers should support their workers in using face coverings safely if they choose to wear one. This means telling workers:

- Wash your hands thoroughly with soap and water for 20 seconds or use hand sanitiser before putting a face covering on, and before and after removing it.
- When wearing a face covering, avoid touching your face or face covering, as you could contaminate them with germs from your hands.
- Change your face covering if it becomes damp or if you've touched it.
- Continue to wash your hands regularly.
- Change and wash your face covering daily.
- If the material is washable, wash in line with manufacturer's instructions. If it's not washable, dispose of it carefully in your usual waste.
- Practise social distancing wherever possible.

You can make face-coverings at home and can find guidance on how to do this and use them safely on GOV.UK.



## 7. Workforce management










## 7.1 Shift patterns and outbreaks

### 7.1.1 Shift patterns and working groups

**Objective:** To change the way work is organised to create distinct groups and reduce the number of contacts each worker has.

#### Steps that will usually be needed:




-  As far as possible, where staff are split into teams or shift groups, fixing these teams or shift groups so that where contact is unavoidable, this happens between the same people.
-  Considering where congestion caused by people flow and pinch points can be improved. Using one-way systems, staggered shifts and assigned staff mealtimes are possible ways to minimise the risk of transmission.
-  You should assist the Test and Trace service by keeping a temporary record of your staff shift patterns for 21 days and assist NHS Test and Trace with requests for that data if needed. This could help contain clusters or outbreaks. Further guidance can be found [here](#).

## 7.1 Shift patterns and outbreaks

### 7.1.2 Outbreaks in the workplace

**Objective:** To provide guidance in an event of a COVID-19 outbreak in the workplace

#### Steps that will usually be needed:

-  As part of your risk assessment, you should ensure you have an up to date plan in case there is a COVID-19 outbreak. This plan should nominate a single point of contact (SPOC) where possible who should lead on contacting local Public Health teams.
-  If there is more than one case of COVID-19 associated with your workplace, you should contact your local PHE health protection team to report the suspected outbreak. [Find your local PHE health protection team](#).
-  If the local PHE health protection team declares an outbreak, you will be asked to record details of symptomatic staff and assist with identifying contacts. You should therefore ensure all employment records are up to date. You will be provided with information about the outbreak management process, which will help you to implement control measures, assist with communications to staff, and reinforce prevention messages.





**Objective:** To avoid unnecessary work travel and keep people safe when they do need to travel between locations.

## 7.2 Work-related travel

### 7.2.1 Cars, deliveries on motorcycles and bicycles, accommodation and visits

#### Steps that will usually be needed:

- Avoiding using public transport, and aiming to walk, cycle, or drive instead. If using public transport is necessary, wearing a face covering is mandatory.
- Minimising the number of people outside of your household or [support bubble](#) travelling together in any one vehicle, using fixed travel partners, increasing ventilation when possible and avoiding sitting face-to-face.
- Cleaning shared vehicles between shifts or on handover.
- Where workers are required to stay away from their home, centrally logging the stay and making sure any overnight accommodation meets social distancing guidelines.
- Ensuring that delivery drivers or riders maintain good hygiene and wash their hands regularly.










## 7.3.2 Ongoing communications and signage

**Objective:** To make sure all workers are kept up to date with how safety measures are being implemented or updated.

### Steps that will usually be needed:

-  Ongoing engagement with workers, including through trade unions or employee representative groups, to monitor and understand any unforeseen impacts of changes to working environments.
-  Awareness and focus on the importance of mental health at times of uncertainty. The government has published [guidance on the mental health and wellbeing aspects of coronavirus \(COVID-19\)](#).
-  Communicating approaches and operational procedures with suppliers, customers or trade bodies to help their adoption and share experience.
-  Using simple, clear messaging to explain guidelines using images and clear language, with consideration of groups for which English may not be their first language and those with protected characteristics such as visual impairments.
-  Using visual communications, for example, whiteboards or signage, to explain changes to rotas or stock shortages without the need for face-to-face communications.



## 8. Inbound and outbound goods

### Objective:

To maintain social distancing and avoid surface transmission when goods enter and leave the site, especially in high volume situations, for example, distribution centres, despatch areas.

### Steps that will usually be needed:

- ☐ Revising pick-up and drop-off collection points, procedures, signage and markings.
- ☐ Considering methods to reduce frequency of deliveries, for example by ordering larger quantities less often.
- ☐ Minimising unnecessary contact at gatehouse security, yard and warehouse. For example, non-contact deliveries where the nature of the product allows for use of electronic pre-booking.
- ☐ Where possible and safe, having single workers load or unload vehicles.
- ☐ Where possible, using the same pairs of people for loads where more than one is needed.
- ☐ Enabling drivers to access welfare facilities when required, consistent with other guidance.
- ☐ Encouraging drivers to stay in their vehicles where this does not compromise their safety and existing safe working practice, such as preventing drive-aways.
- ☐ Creating one-way flow of traffic in stockrooms.
- ☐ Adjusting put-away and replenishment rules to create space for social distancing. Where social distancing cannot be maintained due to venue design, sufficient mitigation strategies should be designed and implemented.





# Where to obtain further guidance

## COVID-19: what you need to do

<https://www.gov.uk/coronavirus>

## Support for businesses and employers during coronavirus (COVID-19)

<https://www.gov.uk/coronavirus/business-support>

## General guidance for employees during coronavirus (COVID-19)

<https://www.gov.uk/guidance/guidance-and-support-for-employees-during-coronavirus-covid-19>

## COVID-19: cleaning of non-healthcare settings

<https://www.gov.uk/government/publications/covid-19-decontamination-in-non-healthcare-settings>

## COVID-19: guidance for food businesses

<https://www.gov.uk/government/publications/covid-19-guidance-for-food-businesses/guidance-for-food-businesses-on-coronavirus-covid-19>

# Appendix

## Definitions

Common Areas	The term 'common area' refers to areas and amenities which are provided for the common use of more than one person including canteens, reception areas, meeting rooms, areas of worship, toilets, gardens, fire escapes, kitchens, fitness facilities, store rooms, laundry facilities.
Support Bubbles	The term 'support bubble' refers to single adult households, where adults live alone or with dependent children only, expanding their support network so that it includes one other household of any size. Further guidance on this can be found here:  <a href="https://www.gov.uk/guidance/meeting-people-from-outside-your-household">https://www.gov.uk/guidance/meeting-people-from-outside-your-household</a>



# Appendix

## Definitions

Clinically extremely vulnerable	<p>Clinically extremely vulnerable people will have received a letter telling them they are in this group, or will have been told by their GP. Guidance on who is in this group can be found here:</p> <p><a href="https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19">https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19</a></p>
Clinically vulnerable people	<p>Clinically vulnerable people include those aged 70 or over and those with some underlying health conditions, all members of this group are listed in the 'clinically vulnerable' section here:</p> <p><a href="https://www.gov.uk/government/publications/staying-alert-and-safe-social-distancing/staying-alert-and-safe-social-distancing">https://www.gov.uk/government/publications/staying-alert-and-safe-social-distancing/staying-alert-and-safe-social-distancing</a></p>



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## LEGAL SUBMISSIONS ON BEHALF OF THE PREMISES

### Preliminary Point - Are matters relating to Covid the proper subject of a summary review?

As a preliminary point we wish to respectfully submit that a breach of Covid regulation or guidance is not a legitimate basis on which the premises licensing review, let alone a premises licence summary review, may be brought before a licensing committee.

### Summary review

A summary review is brought in circumstances where, in the opinion of a senior police officer, the premises is associated with serious crime and or serious disorder. There is no other matter that is relevant and anything outside of this cannot be considered as relevant for the purposes of the Certificate produced by the senior officer that must accompany the review.

Therefore, the expressions of concern about Covid compliance do not fairly allow for the conclusion that a summary review is the correct mechanism to attend to those concerns.

There are specific powers afforded to the authorities to attend to premises trading otherwise than in a safe and secure Covid manner. An application, for review, is not one of them.

### Summary Review Certificate

The certificate from the Superintendent makes this point eloquently, if unintentionally.

First of all, the officer seeks to rely upon the fact that the previous summary review in 2017 is a necessary part of the current story, so as to allow the application to tie the serious crime association point to the premises. Without that association, of course, the application is invalid. This is in spite of the fact that in November 2019 an application for variation to the premises was granted, in part, by this Licensing Committee. It is fair to observe that whilst the Metropolitan Police objected to the variation application. They make that point within their evidence. However, they did not suggest, at that point, in November 2019, that the premises could fairly "still" be associated with serious crime.

Secondly, whilst it is said in the certificate that public nuisance can be a criminal offence (Rimmington), that is not to fairly state that the circumstances in this case can properly be described as a criminal offence of causing public nuisance. The factual background is prefaced with the fact that the defendant sent racially offensive packages and white powder in the post. The quotation on which the Police here rely obliges the defendant (the criminal if you will) to do an act, or omit to discharge a legal duty, the effect of the act or omission being to endanger life, health and property and not, as the police appear to interpret the case, as to do an act or omit to discharge a legal duty that might in certain circumstances that have not yet been established, cause infection which, for some, might be to endanger health.

Thirdly, the certificate also stretches the argument to suggest that, because the Applicant can identify one public nuisance case, where one person was sentenced to three years custodial prison sentence, the suggestion that that, in some way, allows for the conclusion that this offence (if indeed it is an offence) would likely meet a similar custodial prison sentence is respectfully stretched beyond breaking point. To quote this case, or at least the judge who first passed sentence, (pp10) *"you represent a substantive and significant risk not only of recidivist behaviour but also of an escalating level of severity, as indicated by attempts to lure young adolescent girls into your car."*

That the Summary review statement goes onto to advise that alcohol being sold at the premises would have resulted in substantial financial gain, respectfully, stretches the point again. No evidence appears in the police paperwork to support this proposition.

It's difficult to understand the legitimacy of the review application in the first place. No doubt Mr Grant will say that it is not for a licensing committee to go behind a summary review certificate. Whilst I don't accept that the Lalli case, on which he no doubt relies, could fairly allow for an inappropriate or invalid certificate to go unchallenged, we are of course not dealing with a Summary review. That ship has sailed and the premises have been closed under the committees' direction for more than 3 weeks.

However, at the time of the hearing on 1 October, the premises licence holder was not represented and did not, with respect to them, understand these new and frankly difficult arguments.

It is right that I make the observation that today we are dealing with a review, and so any failing to make these points a month ago does not in any way invalidate them now.

### **Alternate Powers and Controls**

The last paragraph of the certificate that accompanies the Police application for the Summary review states: *"I am of the opinion that the expedited process at the summary review is necessary in order to promote the licensing objectives. Other steps would not achieve the same aim."* In the context of the licensing objectives that may be correct. However, it is right to observe that other measures would achieve the aim of inhibiting Covid regulations and guidance being ignored or breached. That is why the Authorities have been given specific closure and prohibition powers under the Coronavirus legislation The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020

It appears, respectfully, that there is some confusion amongst the Metropolitan Police about the Covid regulations/guidance, and the degree to which they have authority, under the Licensing Act, or the other pertinent legislation, to enforce and deliver compliance. We submit it is not their place, within the Licensing Act, to seek to shoehorn Covid concerns into the Licensing objectives.

### **Public health**

Ultimately this is a public health issue.

The Covid-related legislation is emergency legislation brought in specifically to deal with an international pandemic which is a public health issue. The starting point for this Public health concern is that public health remains outside of the Licensing Act and licensing concerns in England and Wales. It is worth observing that, unlike in Scotland, the public health objective has been rejected not once, on introduction of the Act, but twice, following the House of Lords review of the Licensing Act ten years after its enactment.

The National Guidance under section 182 (paragraph 2.7 onwards) attends to issues of public safety. This specifically and expressly excludes public health from the licensing objectives. It states:

- ***This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation.***
- ***Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above.***
- ***There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act.***
- ***Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.***

This final point about conditions is of particular significance when one considers that on a licensing review, modifications to conditions is one of the five possible outcomes (or a mix thereof), within the discretion of the licensing committee (no formal action; removal of the DPS; suspension of the licence; revocation; and modification to the conditions).

Some cases will fall neatly with each of those categories, others less so. If it is right that some Covid related breach cases ought to be resolved by modification to the licence conditions, relating to cleanliness or hygiene, as seems likely, it is impossible to square that final comment. Putting it another



way, if it is right that conditions may not attend to issues of cleanliness or hygiene, then it is difficult to understand how concerns about, as an example, a lack of compliance with Covid guidance or perhaps a failure to attend to measures within a risk assessment, as an example relating to hand sanitiser or toilet cleaning, could fairly be attended to by a premises licence review decision amending conditions.

The fact that it is expressly removed from the gift of a licensing committee goes to the heart of the matter which is that licensing is not the proper mechanism for determining such matters.

### **Covid as part of the other 3 licensing objectives**

That the other three sections of the national guidance that develop and explain the licensing objectives, (crime and disorder, public nuisance and protection of children from harm) fail to mention public health speaks (if you forgive) volumes. The Government has articulated that public health is not a licensing objective and goes on to explain that public safety is not to be interpreted as being a means to including public health within its remit.

### **Public Nuisance**

The police submissions appear to be that public nuisance can be injurious to health and that therefore Covid concerns can fairly be wrapped up within the public nuisance objective. Respectfully, that is to reverse engineer the point on an unnecessarily academic basis, in an attempt to seek to utilise licensing and the Licensing Act 2003, to control something that is appropriate for other legislation and controls. The attempt to bring this case within the licensing umbrella should be resisted. This is not the same as playing music at a deafening level or releasing noxious smells into the environment. The bar for what is being attempted here is set incredibly high (by the very nature of the case relied upon) and not a justifiable mechanism for what the police are trying to do.

Licensing reviews must be considered in the context of licensing and the licensing objectives and their promotion and nothing else.

But a premises, where the licensing objectives are not being undermined by lack of Covid compliance, where there is nothing in and of itself about the operation of the premises, and there is nothing about the way in which the premises is operating in terms of its Covid controls, or lack thereof, is itself a public nuisance, then that, is not a legitimate engagement of the Licensing Act.

I hope that fairly articulates the point that the objectives are being unnaturally stretched.

### **Protection of Children from Harm**

The same point might equally be made about the Protection of Children from Harm where the extent of the evidence in this case is that the premises licence holders' young child was present. Such concern, as the application may have, can only be articulated as a health concern. There is nothing in and of itself injurious to Children, by a premises failing to deliver a Covid compliant environment.

### **Crime and Disorder**

When turning to the issue of crime and disorder the crimes that are alleged, within the comprehensive reams of paperwork produced by the constabulary, attend to concerns about there being a lack of a personal licence holder at the premises one afternoon and a series of failings around the retention of and production of CCTV.

Those issues attend to the licensing objectives. Those issues may be said by counsel to legitimise the review (although could not fairly be said to legitimise a summary review). It is then for the committee to consider how to attend to those apparent breaches. I am perhaps getting ahead of myself but obviously the licence holder would say, even if all of the concerns that relate to these points were accepted, revocation would appear unlikely.

### **Prosecution / Covid specific sanction-Enforcement**

Furthermore, the various regulations and guidance have been subject to a number of revisions in the past six months. Counsel for the Police sets out in his written submissions a comprehensive commentary about the various elements he says are “in play”. To try to import these into the licensing sphere therefore leads to the bizarre situation where a licensing committee could be asking on review to determine a matter where it might be argued that the crime and disorder objective on the day the application was made, was being undermined, but it could equally be agreed by all parties to be perfectly legal at the time of the hearing. That anomaly, if anomaly it is, is why there is provision for prosecution and for fines being levied for breaches of the regulations. That, we would suggest, is the relevant remedy.

The Closure Regulations (The Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020) came into effect on 18 July. On first reading of the regulations it is fair to say that these provide local authorities with significant new enforcement powers. The circumstances where an authority can exercise these powers are broadly where they consider that there is a serious or imminent threat to public health and it is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the spread of coronavirus within the local authority area. A direction may be given to close the premises, restrict entry to the premises or secure restrictions in relation to the location of persons within the premises. The powers are comprehensive and specifically directed toward Coronavirus concerns.

It must be a reasonable conclusion that these powers being introduced are intended to be used. If, as the constabulary suggest, these powers are either unnecessary or in addition to such powers as existed under the Licensing Act one must simply ask the question, why were they introduced?

I attach a [link](#) from the Charles Holland website, by way of example only, to Authorities using closure powers which makes plain that Durham CC are making liberal use of these powers. The first such document references the Smiths Arms, DH3 4HE whereby the authority directs, in response to a serious and imminent threat to public, that the Premises is to be closed.

The grounds for direction are disclosed in the document but can variously be quoted as:

- (B) *the premises was visited by officers by the local authority and the Durham constabulary where matters were witnessed and contraventions identified*
- (C) *There was evidence that the premises were not following social distancing guidelines*
- (D) *There is no confidence that those managing the premises and running the business are presently operating the premises in a safe manner.*
- (F) *The closure of the premise is necessary for the purpose of preventing and protecting against the instances and spread of infection.*

Of course it may be suggested that what measures Durham County Council take is of no particular concern in Southwark. It does, we would respectfully suggest, fairly rebut any suggestion that no other measures are available to the authorities in regard to these type of Covid related concerns.

### **Local Government Association**

You need not take the licence holders word alone for that. The Local Government Association called, in August this year, for councils to be given the powers to close down pubs and other licensed premises which are failing to comply with Covid19 safety guidelines. I attach a [link](#) to the Local Government Lawyer website. The report makes clear that the LGA, at least, does not believe that the Licensing Act, contains sufficient measures to help delivery of Covid compliance.

Obviously no such reform has been introduced.

### **Director of Public Health**

It is worth also observing that the Director of Public Health (a responsible Authority and consultee) hasn't tried to bring Covid into licensing in this matter by submitting a representation.

### **Covid v Licensing**

It is perhaps not the most attractive point but we are faced here with the simple proposition that such Covid failings as may be evidenced within the Police application could not and should not be written into the licensing legislation because it is convenient to do so. Put simply offences or concerns under the Covid regulations need to be tried or considered under the Covid regulations and controls.

We are, if you will, in the wrong room.