

Report No.

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: **GENERAL PURPOSES AND LICENSING COMMITTEE**

Date: **Wednesday 25th November 2020**

Decision Type: Non-Urgent Non-Executive Non-Key

Title: **COVID 19 PUBLIC PROTECTION ENFORCEMENT UPDATE**

Contact Officer: Rob Vale, Head of Service, Trading Standards & Commercial Regulation
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Chief Officer: Director of Environment and Public Protection

Ward: (All Wards);

1. Reason for report

To provide the committee with a summary of the work undertaken by Public Protection in relation to the COVID 19 pandemic

2. **RECOMMENDATION**

That the committee note the contents of the report.

Impact on Vulnerable Adults and Children

1. Summary of Impact: COVID-19 is often more severe in people who are older than 60 years or who have health conditions like lung or heart disease, diabetes or conditions that affect their immune system.
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Corporate Policy

1. Policy Status: Not Applicable
 2. BBB Priority: Children and Young People Excellent Council Safe Bromley Supporting Independence Vibrant, Thriving Town Centres Healthy Bromley:
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Financial

1. Cost of proposal: No Cost
 2. Ongoing costs: Non-Recurring Cost
 3. Budget head/performance centre: Public Protection
 4. Total current budget for this head: £1.33m
 5. Source of funding: Revenue Budget 2020/2021
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Personnel

1. Number of staff (current and additional): 1 x Licensing, H&S Manager, 1 x Licensing Officer, 5 x admin staff
 2. If from existing staff resources, number of staff hours: NA
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Legal

1. Legal Requirement: Statutory Requirement: The local authority have been given temporary powers to enforce the Health Protection (Coronavirus, Business Closure) Regulations 2020
 2. Call-in: Not Applicable:
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Procurement

1. Summary of Procurement Implications: N/A
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All Wards
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: Not Applicable

3. COMMENTARY

- 3.1 This report sets out a summary of the enforcement action taken by the Public Protection team to the COVID19 pandemic and the introduction of the Health Protection (Coronavirus, Business Closure) Regulations 2020 (The Closure Regulations), and subsequent legislation. In recognition of the skill set of environmental health officers and trading standards officers they were formally placed as lead enforcers by the government.
- 3.2 Following the concept of social distancing being introduced on the 16th March 20, all services and business continuity plans within Public Protection were reviewed and delivery plans were agreed whereby all services would remain operational, albeit on an amended basis.

The legislative framework

- 3.3 The Closure Regulations were enacted on 21 March 2020 in response to the COVID-19 pandemic and required the closure of businesses selling food or drink for consumption on the premises and a wide range of other businesses, to protect against the risks to public health arising from coronavirus.
- 3.4 Local authorities were granted powers of enforcement and all enforcement officers in Public Protection have been designated under the closure regulations and subsequent amendments.
- 3.5 In June 20 the government began to ease the lockdown restrictions with a series of legislative changes allowing business to re-open, and on the 4th July 2020 saw the further easing of restrictions allowing the re-opening of the hospitality sector (pubs and restaurants) and some close contact services (hairdressers and barbers), with strict social distancing rules.
- 3.6 Further regulations enacted on 18th July 2020, made provisions for the local authority to give directions relating to the closure of premises, events and public outdoor places in its area. These regulations were utilised by Public Protection licensing team to cancel three large musical festivals which had been planned to take place in the authority in September 2020.
- 3.7 In September 2020 regulations were introduced which included restrictions on opening hours for licensed premises, social distancing of seated groups, signage and information and track & trace requirements.

Public Protection response during lockdown

- 3.8 A daily data collection return has been in place since the beginning of the COVID 19 outbreak in March collected by the Department for Business, Energy & Industrial Strategy (BEIS) and the Office for Product Safety and Standards (OPSS). The data originally gathered information regarding business closures across England which were required by the Closure Regulations. The data sought to measure the impact of COVID 19 on our resources and report back to MHCLG, Cabinet Office and No10 in order to give them a good understanding of the activity undertaken to date.
- 3.9 As businesses began to re-open, the survey widened in scope to incorporate information regarding issues relating to safer workplace requirements. The Health & Safety Executive (HSE) are now gathering data to help better understand what COVID-19 health and safety activity is taking place in local authorities. In August 2020 the collection of data relating to safer workplaces was transferred to HSE.
- 3.10 Public Protection submitted returns which measured outputs such as the number of contacts with businesses, the number of enquiries from businesses and residents and TABLE 1 below sets out our total returns.

- 3.11 In addition to the enforcement activity outlined in TABLE 1 and 1A, officers contributed to other measures aimed at protecting vulnerable residents and helping to safeguard local businesses from scams and fraud. This included contacting vulnerable residents who were advised on how to avoid scams. Fraud and COVID scams messages were also circulated via social media, letters and through the volunteer network. Environmental Health officers stayed in touch with food businesses with 650 contacts to provide advice on how to operate as a takeaway. A dedicated Officer was assigned to conduct joint COVID-19 Patrols with Police every weekend.
- 3.12 Officers from public protection attended weekly multi agency meetings which include COVID 19 Tactical Group; BCU Leadership and Heads of Community Safety Partnerships and the South London Coronial Area (Bromley, Bexley, Sutton, Croydon) Excess Deaths Steering Group.

Public Protection response since re-opening of non-essential businesses

- 3.13 The Government prepared a phased return of the re-opening of the high street and step three involved the re-opening of most of the remaining businesses and premises that had been required to close, including personal care (such as hairdressers and beauty salons) hospitality (such as food service providers, pubs and accommodation), public places (such as places of worship) and leisure facilities (like cinemas). This was coupled with guidance on how to meet the COVID-19 Secure guidelines.

Enforcement action

- 3.14 Public Protection adopted the 4 E's enforcement tactic to ensure consistency of enforcement across the borough and formed the basis of joint enforcement plans within the Borough Command Unit (BCU). The approach was:

Engage – Be visible in public spaces and talk to people.

Explain – Discuss behaviour and reasons why the legislation is in place

Encourage – Request and negotiate a change in behaviour to ensure compliance with the law.

Enforce – If these measures fail then officers would consider enforcement measures

- 3.15 In Bromley, officers found particular problems around compliance in close contact service businesses, particularly barbers and beauty treatments, where practitioners refused to wear proper or any PPE, posing a risk to themselves and their customers. There was also a lack of compliance in a small proportion of mainly independent pubs, restaurants and cafes around social distancing and contact tracing.
- 3.16 Directions powers were introduced to adequately control businesses once an imminent threat to health has been identified in the Health Protection (Coronavirus Restrictions) (England) No 3 Regulations 2020. This legislation provides wide ranging powers to crack down on emerging incidents where there is a clear risk of infection, but these regulations can only be used where there is clear evidence of an emerging problem, such as a significant increase in cases associated with a business. The support of the local Director of Public Health is required before any action can be taken to confirm the imminent health risk to the public.
- 3.17 These directions powers were engaged by the licensing team in August 2020 in order to deter proposals by organiser to host large music events in the borough in September this year. No directions were issued as two of the businesses withdrew applications for the events and a third matter was denied following a licensing hearing.

- 3.18 In the absence of specific legislation, Public Protection relied on the provision of the Antisocial Behaviour and Crime and Policing Act 2014 (ASBCP Act) and were tasked with moving to the ENFORCE strand of the enforcement strategy in late August 2020 in order to persuade a small but significant number of businesses who were not adhering to covid safe guidance.
- 3.19 In August 2020 officers served 59 Community Protection Warning Notices under the ASBCP Act on a number of close contact (barbers and hairdressers) and licenced premises.
- 3.20 A closure order under section 80 of the ASBCP Act 2014 was enacted following a breach of a Community Protection Notice previously served on a licenced premises where officers had witnessed a “night club” atmosphere with customers singing and dancing and no social distancing between tables. The premises remained closed for two weeks following a court hearing but finally took steps to ensure their business was COVID safe following a further inspection by Public Protection officers and police.

Further legislation introduced by the Government on 24th September 2020

- 3.21 Additional regulations have been introduced since September 2020 which seek to control the spread of Coronavirus. There is an expectation that local authorities will take proportionate action to ensure local business trade within the law.
- 3.22 There are 4 key regulations:
- The Health Protection (Coronavirus, restrictions) No2 (England) Regulations 2020 – known as the Coronavirus Restrictions Regulations
 - The Health Protection (Coronavirus, restrictions) (Obligations of Undertakings) (England) Regulations 2020 – known as the Hospitality Undertakings Regulations
 - The Health Protection (Coronavirus, Collection of Contact Details and related requirements) No2 (England) Regulations 2020 – known as the Contact Details Regulations
 - The Health Protection (Coronavirus, Wearing of face coverings in a relevant place) No2 (England) Regulations 2020 – known as the Face Coverings Regulations
- 3.23 The regulations introduce additional sanctions for local authorities which include powers to issue fixed penalty notices (FPNs) and prosecutions. The FPNs carry a maximum fine of £10,000 for repeat offenders, with the first offence carrying a £1,000 penalty, reduced to £500 if paid within 14 days.
- 3.24 The enforcement strategy adopted by Public Protection will continue to be based on the four E’s and also in accordance with the National Enforcement Concordat being risk based and intelligence led. The strategic approach taken by LBB of using ASB legislation bringing in FPN’s to the enforcement options has now been endorsed by the emerging national policy with specific hospitality sector FPN’s having been enacted through the primary covid regulations as outlined above.

Impact on Licensing

- 3.25 The majority of the premises engaged had some form of licensing input either by the requirement to be licenced or simply requiring a licence for an activity taking place within them.
- 3.26 The public protection administration team were tasked as acting as the distribution hub for all covid related complaints and service requests. This additional workload meant the normal licensing functions of the team were subject to delays and are still subject to back logs. This is

currently 6 months in some cases. This administrative back log has not impacted on the customer as none of the delays have prevented any trader from continuing to operate (within the constrictions placed by the covid regulations). However, it has meant that no renewal inspections have occurred and in some cases low risk new application have been allowed to trade before initial inspection have been able to take place.

3.27 Public Protection also supported colleagues in Environment with the implementation and enforcement of new regulations which introduced the Pavement Licensing regime. This allowed licenced premises and some food outlets in certain circumstances to apply for a licence to have tables and chairs on the public highway.

3.28 During this period, the Licensing Policy has been reviewed. This was undertaken with no review of the current cumulative impact zones (CIZs) currently in place. This is a statutory requirement and will be revisited in due course.

TABLE 1 Activity 27th March 2020 to 31st August 2020

interaction required with business to check compliance/respond to non-compliance closure requirements	Businesses checked by drive by surveys to monitor closures	No. of warnings (verbal & written)	No. of CPNWs & CPNS
1,436	20,237	50	57
Enquiry from business	Enquiry from resident	Enquiry from police/other	Total number of service requests
62	167	40	509

Table 1A – Table of activity 1st September to 30th October 2020

COVID related Visit to a business premises	Other COVID related interaction with a business (emails, phone calls, admin)	Complaint & enquiry about a business	Enforcement action (letters, CPNW, notices)
507	797	135	45

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

4.1 Summary of Impact: COVID-19 is often more severe in people who are older than 60 years or who have health conditions like lung or heart disease, diabetes or conditions that affect their immune system.

5. FINANCIAL IMPLICATIONS

5.1 The cost of enforcement activity is funded from within the existing Public Protection revenue budget of £1.33m in 2020/21.

5.2 Any impact on licensing income will be reflected in the monitoring of the financial impact of Covid-19 reported quarterly to the Executive.

5.3 No FPN's have been issued by the Council.

6. PERSONNEL IMPLICATIONS

- 6.1 Number of staff (current and additional): 1 x Licensing and H&S Manager, 1 Licensing officer, 5 Admin
- 6.2 If from existing staff resources, number of staff hours: Not applicable

7. LEGAL IMPLICATIONS

- 7.1 Legal Requirement: Statutory requirement. The Council is the Licensing Authority under the Licensing Act 2003.

Non-Applicable Sections:	POLICY IMPLICATIONS/PROCUREMENT IMPLICATIONS
Background Documents: (Access via Contact Officer)	