

12 November 2020

## **COVID-19 compliance and enforcement and wider update**

### **Purpose of report**

For information.

### **Summary**

This paper updates the Board on COVID-19 compliance and enforcement activity the team have been supporting since the previous Board meeting (as well as on wider COVID-19 work by the team) and accompanies a presentation from Birmingham City Council's Interim Assistant Director of Regulation and Enforcement, Paul Lankester.

### **Recommendation**

That members of the Board note and comment on the update.

### **Action**

Officers to action any matters arising from the discussion as appropriate.

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12 November 2020

## **COVID-19 compliance and enforcement and wider update**

### **Background**

1. This paper updates the Board on COVID-19 compliance and enforcement activity the team have been supporting since the previous Board meeting, as well as on wider COVID-19 work by the team.
2. The team has been engaged in ongoing work around COVID-19 compliance and enforcement since the summer, with particularly intensive work since September as new regulations have been introduced, amended and - this week – replaced with a return to regulations mirroring the original business closure regulations in March.
3. The extent of this work has significantly impacted team capacity to focus on other areas of work, including modern slavery and resilience work. The team will review progress on wider aspects of the Board's work plan at the end of the year to assess the extent to which COVID-19 work could further delay planned activity, and what scope there is to address this.

### **Issues**

4. Our recent work has focused on influencing the development, interpretation and enforcement of regulations being used for COVID-19 compliance and enforcement; highlighting to Government the challenges councils are experiencing on the ground, and supporting councils in their work on this.
5. From the outset of businesses reopening in summer, we have been working with councils and the Government to strengthen the tools councils have to help ensure local businesses and premises are COVID secure. Inevitably, given the speed with which policy approaches and legislation have had to be developed, there have been some issues with the regulations councils have been working to enforce and we have been encouraging Government to share draft policy and regulations with the LGA and councils so we can identify issues before regulations are made.
6. The initial approach coming out of the first lockdown was that key requirements (for example, around collecting contact details of customers) were set out in guidance, rather than legislation, with the focus on using the Health and Safety At Work Act 1974 (HSWA) to require businesses to operate in a COVID secure way.
7. The LGA and councils highlighted challenges around using HSWA to take action linked to COVID-19, with the Health and Safety Executive expressing the view that prohibition notices could not be used, and improvement notices having a long lead in period were not suitable when quick changes are required to prevent the risk of the virus spreading in premises. We also emphasised the need for key requirements to be set out in legislation, rather than non-binding guidance.

12 November 2020

8. As an alternative to HSWA, some councils have also used powers available to them under the Licensing Act and Anti-Social Behaviour legislation. Paul Lankester, Interim Assistant Director (Regulation and Enforcement) in Birmingham City Council's Neighbourhoods Directorate will be attending the Board meeting to talk about the enforcement work the council has undertaken.
9. The Government, led by the Ministry of Housing, Communities and Local Government (MHCLG), has gone to significant efforts to engage with councils on compliance and enforcement issues and has responded positively to the suggestions from councils. As Board members will be aware, a series of regulations were introduced over the summer putting into law the requirements on businesses to take steps to make their businesses and premises COVID-secure, with particular obligations on hospitality premises. Councils were given COVID-specific powers to close businesses through the use of directions issued under the 'no 3 regulations', which give councils powers to close businesses and stop events from happening where there is a serious and imminent threat to public health, following consultation with the director of public health and notification to the Secretary of State.
10. More recently the Government has accepted the need, as put forward by the LGA and councils, for councils to have further powers to issue improvement notices requiring businesses to take rapid steps to implement COVID-secure measures and, where these are not immediately complied with, issue closure notices more quickly than through the no 3 direction powers. These are powers that councils environmental health and trading standards officers are experienced in using, and which can provide a more powerful incentive for business to comply with than the fixed penalty notices currently available under the COVID-secure regulations.
11. One area where the LGA played a role in influencing policy was in relation to the high-profile announcement of the COVID marshals scheme. The final outcome, with flexibility for councils to spend the funding in a way that best suited their areas – for example through backfilling enforcement roles, supporting overtime, recruiting marshals or stewards – was very similar to a proposal the LGA had previously made to MHCLG for additional enforcement funding. **Board members may find it interesting to hear how Birmingham intend to use the funding they have received from the COVID-marshals fund.**
12. Alongside ongoing policy development, we have also been seeking to provide support to frontline officers. We recently held a webinar for more than 100 council officers and plan to hold a further session later this month. Additionally, following a discussion we convened with officers from councils in tier 3 areas, we developed a [short guidance note](#) for councils on the interpretation of the key issues within the tier 3 regulations, in particular.

12 November 2020

13. With the new national lockdown now in force, the focus has now returned to business closures, and we are engaging with the Office for Product Safety and Standards (which provides guidance and templates to councils on the regulations) on a number of queries relating to the interpretation of the regulations.
14. We are also supporting the development of the approach to supporting local residents to self-isolate, with councils responsible for investigating any complaints about employers refusing to allow workers to self-isolate and triaging any cases where individuals may need support (or equally may need to be referred to the police if they are willfully refusing to self-isolate despite being advised to be NHS Test and Trace).

#### **Wider COVID-19 activity**

15. Alongside intensive work on compliance and enforcement, members of the team are continuing to support other aspects of COVID-19 work.

#### ***Clinically extremely vulnerable people***

16. With the introduction of the second lockdown, the Government has issued new guidance to people identified as clinically extremely vulnerable (CEV) to COVID-19. While the new guidance does not reintroduce the full shielding programme, the CEV cohort is being advised not to go to work if they cannot work from home, or visit shops or pharmacies, and to contact their local council if they need basic support or assistance with accessing food. County and unitary councils have received funding equivalent to £14.60 per head of CEV population in their area for the 28-day period up to 2 December to support this activity.
17. Members of the team have been supporting the LGA's work on CEV people and shielding since March, and will continue to do so in the coming weeks.

#### ***Test, trace and outbreak management***

18. The work to assist councils in providing support to CEV people is part of a wider LGA workstream on testing, tracing and outbreak management. Since the last Board meeting the LGA has continued to highlight issues related to test and trace, in particular the speed with which the details of people who need to be traced are passed to local authorities where the national system has been unable to contact those people. More broadly the LGA has also been raising issues with the quality and flow of data from central to local government related to local outbreak management.
19. With the introduction of a second lockdown the LGA is seeking to shape the development of the test and trace system once the national restrictions are lifted in December, so the benefits of having councils involved in the test and trace system are maximised. This includes looking to share the learning from the mass testing pilots being conducted in Liverpool and in a small number of other areas in the North West.

12 November 2020

20. Alongside that work, the LGA has been involved with councils, MHCLG and the Department of Work and Pensions in the development of the payment system to enable people on low incomes to self-isolate if they have come into contact with someone who is COVID positive. The system went live in mid-October.

### ***Funeral attendance and the Health Protection Regulations 2020***

21. On 28 September 2020, the updated [Health Protection \(Coronavirus, Restrictions\) \(Self Isolation\) \(England\) Regulations 2020 \(the Regulations\)](#) came into force. Under these Regulations, there are notable exemptions to the legal requirement to self-isolate, including an exemption which allows individuals testing positive for coronavirus, whether symptomatic or asymptomatic, to attend the funeral of a close family member [see section 2(3)(b)(v)].
22. Alongside the Regulations, the Government produced [COVID-19: guidance for managing a funeral during the coronavirus pandemic](#) (funeral guidance) on 23 October 2020. The updated funeral guidance strongly recommends that people with symptoms of COVID-19, and those required to self-isolate, should not attend and are encouraged to participate virtually. If they do attend in person, there are several minimum safety requirements that mourners must adhere to, including: maintaining social distancing; wearing surgical grade Type IIR face masks, properly fitted; and advising other mourners that they are in the self-isolation period.
23. There was a four-week delay between the publication of the Regulations and releasing updated funeral guidance, which led to considerable uncertainty for the sector. Several councils communicated their concerns about their ability to provide funeral services, due to the potential health and safety risk having COVID-19 positive people in attendance poses to council staff and other mourners where the funeral is held at a council cemetery or crematorium.
24. Councils are beginning to implement local responses to mitigate the risks and to protect staff. The LGA is aware that some of these measures are, however, in contravention of the Regulations. Officers have been lobbying the Cabinet Office and the Ministry of Housing, Communities and Local Government for greater clarity regarding the practical and financial implications for councils and funeral directors to meet their legal obligations under the new Regulations.

### **Financial implications**

25. This work is being undertaken from within existing staff budgets and resources, but as noted above, this is impacting on the teams' ability to undertake other activity. With some areas of work escalating due to the new lockdown, the LGA's senior

12 November 2020

management team are currently reviewing resourcing to identify areas where additional support may be required.

### **Next steps**

26. We will continue to engage with councils and relevant Government departments on the issues set out in this paper.
  
27. With increased awareness of the important role that local regulatory services play in their communities, we also want to make the case for work to strengthen the resilience of these services. COVID-19 has highlighted the challenges in this area, while the forthcoming impact of the end of the EU transition period risks further increasing the pressures on some councils. As the Board will recall, we developed a [submission](#) to the spending review with the Chartered Trading Standards Institute and Chartered Institute of Environmental Health, and we will continue to look for opportunities to highlight this.