

DIRECTION (INDIVIDUAL PREMISES)

THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ENGLAND) (NO. 3) REGULATIONS 2020 (No.2020/750)¹, REGULATION 4(1)

1. **Bury Council (“the Authority”)**, in exercise of the powers conferred by **regulation 4(1) of the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 (“the No. 3 Regulations”)²**, gives the following direction.
2. The Authority considers that the following conditions are met—
 - a. this direction responds to a serious and imminent threat to public health;
 - b. this direction is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the Authority’s area; and
 - c. the prohibitions, requirements or restrictions imposed by this direction are a proportionate means of achieving that purpose.
3. Before giving this Direction, the Authority has had regard to—
 - a. any advice given to it by its Director of Public Health; and
 - b. the need to ensure that members of the public have access to essential public services and goods (including whether the individual premises forms part of essential infrastructure).
4. The Authority has taken reasonable steps to give advance notice of this direction to a person carrying on managing a business and the owner of the premises.

¹ SI 2020/750 accessed at <https://www.legislation.gov.uk/uksi/2020/750/contents/made>; guidance on local authority powers at: <https://www.gov.uk/government/publications/local-authority-powers-to-impose-restrictions-under-coronavirus-regulations/local-authority-powers-to-impose-restrictions-health-protection-coronavirus-restrictions-england-no3-regulations-2020>

² In this Direction, any reference to a regulation is a reference to a regulation of the Health Protection (Coronavirus Restriction) (No. 3) (England) 2020 (S.I. 2020/750).

DIRECTION

Person and premises

This Direction is given to

Mr John Clarke, The Brambles, Crossley Farm, Lily Lane, Ashton-Under-Lyne Tameside OL6 9AE who is the Premises Licence Holder for the premises to which the direction relates, **David Lapworth** who is the Declared Business Partner / Manager for the premises and **Mr Andrew Pope, 159 Butterstile Lane Prestwich Greater Manchester, M25 9UW** who is the Designated Premises Supervisor for the premises to which this direction relates.

5. This Direction is given in respect of Kavern Klub 107 The Rock Bury (“the Premises”).

Directed actions

6. **This Direction requires the following:**

The premises must close.

No persons shall be admitted to the premises unless employed there or contracted to work there.

Timing and duration of direction

7. Any actions required to put into effect the restrictions set out in paragraph 6 must be undertaken by **10am on Wednesday 16th September 2020** The restrictions set out in paragraph 6 have effect until **10am on Wednesday 30th September 2020**.
8. In accordance with Regulation 2(2)(b) of the No. 3 Regulations, the Authority will review this Direction at least **once every seven days**. If the Authority considers that one or more of the conditions in regulation 2(1) are no longer met in relation to the Direction, it will either be revoked without replacement or revoked and replaced with another direction.

Grounds for Direction

9. This Direction is given on the basis that:

Restrictions on gatherings have been implemented in Bury, Greater Manchester due to rising Coronavirus infection rates. Gatherings between different households and in the community are of particular concern and are increasing transmission rates.

The premises to which this direction relates has failed to implement appropriate social distancing controls and failed to manage the behaviour of staff and customers on site.

See Annex A for additional details.

Consequences of not meeting the requirements of the Direction

10. If this Direction is not complied with the Authority may issue a Prohibition Notice³ against you or may commence criminal proceedings against you.

11. A person commits an offence if, without reasonable excuse, the person:⁴

- contravenes a direction under regulation 4(1); or
- obstructs a person carrying out a function under the No. 3 Regulations, including any local authority designated officer under regulation 12 or a constable.

Such an offence is punishable on summary conviction by an **unlimited fine**.

Appeal/representations

12. If you believe that this Direction should not have been issued, and/or it contains incorrect information, please inform the specified point of contact set out below, setting out your reason(s).

13. You have a right to appeal against this Direction to a magistrates' court by way of complaint for an order.⁵ There is a time limit of up to six months from the date of issue of this Direction to appeal to the Magistrates' Court. However, bear in mind that this Direction will be reviewed by the Authority at least every seven days and it will decide whether to revoke this Direction or revoke and replace it with another direction.

³ See regulation 12(2) of the No. 3 Regulations.

⁴ See regulation 13(1) of the No. 3 Regulations.

⁵ See regulation 4(9)(a) of the No. 3 Regulations.

14. You also have the right to make representations to the Secretary of State about this Direction.⁶ The Secretary of State must consider any such representations as soon as is reasonably practicable, and decide whether it would be appropriate to exercise the Secretary of State's powers set out in regulation 3 of the No. 3 Regulations. The Secretary of State may direct the Authority to revoke this Direction, or revoke and replace this Direction. The Secretary of State must provide written reasons for the decision to the person who made the representations and to the Authority
15. In making any representations to the Secretary of State about this Direction, the recipient of the Direction should do this via NHS Test and Trace, with representations emailed to directionnotification@dhsc.gov.uk. This should include:
- a. The name of the Authority;
 - b. The reference listed at the top of this Direction DB/PP/PL1167- 551999 ;
 - c. An explanation as to how you have been impacted by the Direction and their relationship to the premises, such as whether you are the owner, occupier or involved in managing entry into, or departure from, the Premises, as set out in Regulation 4(5) of the No.3 Regulations;
 - d. An explanation of the basis upon which the Direction should not have been made and was or is not appropriate, with reference to the conditions set out in Regulation 2(1) / paragraph 2 of this Direction;
 - e. Any evidence which supports this contention; and
 - f. What action you would like to be taken.
- 16. You are still required to comply with this direction pending the outcome of any appeal to the magistrates' court or the Secretary of State.**
17. You may wish to obtain independent legal advice should you seek to pursue an appeal.

⁶ See regulation 4(9)(b) of the No. 3 Regulations.

Additional powers and requirements that accompany this Direction

Publication

18. This Direction may be published in such manner as the Authority considers appropriate to bring it to the attention of other persons who may be affected by it.

Notification

19. The Authority is required to notify any local authority whose area is adjacent to the initiating authority's area of this Direction (and any revocation of the Direction) by the No. 3 Regulations. All Greater Manchester Local Authorities have been notified of the service of this Direction.

20. The Authority is required to notify the Secretary of State as soon as reasonably practicable after the Direction is given.



Donna Ball
Executive Director of Operations
Bury Council

Appeal Details

You have the right to appeal against this Direction to Manchester and Salford Magistrates' Court, Crown Square, Manchester, M60 1PR on the grounds that one or more of the three conditions above have not been met. Any appeal must be made within 6 months from the date that the direction is made. You may appeal by means of laying a complaint at the court for an order and serving a summons upon the Council. You may also make representations to the Secretary of State.

The address for service of the summons is: The Council Solicitor, Bury Town Hall, Knowsley Street, Bury, BL9 0SW.

Annex A

a. **This direction responds to a serious and imminent threat to public health**

Restrictions on gatherings have been implemented in Bury and Greater Manchester, and now across England due to rising coronavirus infection rates. Gatherings between different households are of particular concern and are increasing transmission rates.

Bury has been experiencing an increase in the number and rate of new cases of the Coronavirus (COVID-19) over the past month and a significant increase in the past week, such that the local authority is now on the government's watchlist and on 'red alert'. This indicates that the rate of increase in new cases of COVID-19 in Bury is amongst the highest in England. Local data suggests that the majority of new cases of COVID-19 are occurring in the community, rather than in communal establishments, such as residential care or nursing homes. We also know that an increasing proportion of new cases of COVID-19 are in younger people.

These two factors combined mean that hospitality settings have the potential to be a particularly potent source of transmission for COVID-19 if these premises are not managed in a way that is compliant with the current regulations.

b. **This direction is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the Authority's area**

The premises to which this direction relates has failed to implement appropriate social distancing controls, and failed to ensure only persons from the same household are socialising on the premise.

Council Officers accompanied by GMP Officers attended the premises on the 14th August at 20:50 a large number of people (30+) were stood around, crowding the bar, no social distancing was being observed and very loud music was being played. The manager was told to immediately turn the volume down and get customers to sit down. The manager claimed to be carrying out a soft launch and was trying to adhere to what he believed were vague guidelines. There was a heated debate about 'nightclub' status. He claimed that he would not be opening on Saturday night but would reopen the following weekend.

On the 17th August 2020 - a warning letter was sent to the premises.

On the 20th August – Licensing Enforcement Officer holds a telephone call with Mr Lapworth, Mr Clarkes business partner, and follows up the advice by email attaching guidance issued by the government on the safe opening of bars and a letter from GMP in association with Bury council containing links to HSE advising on risk assessing your business

At 01:30 21st August 2020 Council Officers accompanied by GMP Officers attended the premises it was found to be crowded. Large numbers of customers were stood up and moving around no social distancing was in place and groups of customers over 8 in number were all sat together. The Music was very loud. The manager was spoken to outside and warned that no previous advice or warnings had been followed and no action taken by the premise as a result.

Council Officers accompanied by GMP Officers attended the premises on the 22nd August 2020 to conduct an inspection of measures in place. It was established that the premises was very crowded with a number of customers stood up and moving around, The duty manager was spoken to outside the premises and admitted to having 104 people inside and only seating for 72 there was no social distancing and groups of more than 8 people sat together not social distancing greater than 1 metre The manager was told to ask people to leave to reduce to capacity, so that everyone could be sat down and. The level of music being played had increased and the manger was told to turn this down.

Later the same evening the officers returned to find the bar had stopped serving and was trying to move people out, however there was still a number of people stood up finishing drinks. The premises was warned during the visit and told a warning letter would follow. The premises was warned during the visit and by letter sent 23rd August 2020.

On the 25th August 2020 The Premise Licence Holder was telephoned by the Licensing Officer and spoke with him at length about the findings on recent enforcement visits, the premise licence holder appeared to be completely oblivious of what had been going on. He was asked to put in writing what actions he would be putting in place to remedy the non-compliances and breaches.

On the 30th August Council Officers attended the premises and found a large group of people congregating outside the premises with no attempt at social distancing controls being imposed, upon entry into the premises Council officers found people stood at the bar, large groups of customers socialising with no social distancing controls in place, loud music being played over which the officers could not conduct an ordinary conversation. Mr D Lapworth was informed that action should be taken and warned about this conduct.

Council Officers attended again at 01:20 31st August 2020 and found the front doors to be locked they entered the premises via the rear entrance and noticed loud music was being played, large groups were sat together with 8 plus people around a number of tables with less than 1m social distancing being observed . The person declaring to be in charge Mr D Lapworth was again warned of this. The management explained they believed the venue was now being operated more safely, it was clear that this was not the case as multiple breaches of government guidance were found.

Despite previous visits to the premises and advice to rectify these issues, appropriate action has not been taken by the management of the premises.

On the 3rd September a Final Warning Letter was emailed to Mr J Clarke the Premise Licence Holder and hand delivered to the Kavern Klub at 107 The Rock Bury.

On the 11th September 2020 Council Officers visited the premises and found loud music being played customers standing up, groups of customers of more than 8 people seated together, immediate action was requested re social distancing and the moving of tables

On the 12th September GMP officers attended the premise and it is reported that social distancing was not being observed and immediate action was required.

c. The prohibitions, requirements or restrictions imposed by this direction are a proportionate means of achieving that purpose.

Bury is seeing an increasing rate of new COVID-19 cases and now has a higher rate than most other areas in the country. We must act quickly to stop any further increase in infection rates to protect our residents.

Consideration has been given to issuing a Direction to restrict numbers at the venue however due to the lack of appropriate control being implemented at the premises and the disregard of risk and covid secure arrangements demonstrated by premises management, closure of the premises is required to protect public health and limit the spread of coronavirus.