

**PUBS: TIME TO REAP THE REWARDS (but do *please* take care...)**

Jeremy Phillips QC

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The end of lockdown for pubs and bars is a moment of truth for the leisure industry. For more than 100 days the pubs of England, hub of so many people's social lives, have been obliged to close their doors. Few, if any, foresaw such an event and too many will not have survived its passing. Although there has been a steady decline in the number of pubs in the UK over the past 40 years, never before has there been such a sudden and unforeseen threat to the leisure industry as that currently posed by the coronavirus.

Across the pond, this 4<sup>th</sup> July will certainly see a wave of Independence Day parties. In the southern and central republican states many will be particularly unrestrained as great scepticism (sporadically and unwisely encouraged by the President) abounds concerning the whole pandemic. Here in England there is great cause too for celebration, but tempered with appropriate self-control. As we arrive (we hope), at the 'end of the beginning', many of us will be returning to our local watering holes for that long-awaited celebratory drink, but with a suitable degree of caution.

The atmosphere will, no doubt, be very different to that when we last visited. Screens and hand sanitisers will abound. In the busier venues there will be staff dedicated to monitor social distancing and where possible, customers will be encouraged to book online. There will be more service to tables and these will be strategically placed to allow for at least 1 metre between customers (rather than the dreaded 2 metres which the government took so long to renounce - and which would have been fatal to virtually all establishments). The proviso to re-opening under the '1 metre+' regime, however, is that a range of other measures must be used as appropriate to secure public safety. These include the use of partitions, signs, one-way systems and floor markings to help distancing, regular cleaning of surfaces and disposable menus. The historic standing crush at the bar will be but a fond distant memory...

Where friends and family assemble, those gathering indoors may only involve groups of up to 2 households (including the so-called support bubbles), whilst outdoors such gatherings may also comprise groups of no more than 6 people from different households. The quid pro quo for pubs and restaurants of following the COVID-19 secure guidelines and putting other appropriate social

distancing measures in place, however, is that they will then allowed to exceed the usual limit of 30 people on the premises.

Operators will also be expected to maintain a temporary register of visitors' contact details in case a future NHS Test and Tracing exercise is required.

Beyond the premises, operators are asked to work with their 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.'

In submitting to pressure from the hospitality industry and its many millions of workers, the government has attempted to protect public health by the issue of a detailed 43-page guidance document. This contains a multitude of recommendations and suggestions. Whilst the larger pub companies and restaurant chains have the training, resources and understanding to consider and implement appropriate measures, many smaller local and often privately owned outlets will not. It is these venues, in particular, which must be at risk of an unparalleled demand and enthusiasm for their services. Whilst pressing business imperatives will understandably make maximising sales almost irresistible, equally great caution needs to be exercised if they are to avoid incidents which could ultimately prove terminal for their business.

In particular, the potentially toxic combination of a long pent-up demand for socialising, combined with the public safety requirement to encourage drinking and socialising outdoors, is likely in many places to generate complaints from adjoining residents who may well have enjoyed a period of unusual peace and quiet for the past 3 months. Their possible concerns as to unprecedented levels of outdoor consumption – as licensees perfectly understandably seek to recover from the catastrophic impact to their business and livelihood – will be fuelled by a degree of righteous indignation as inevitably instances of 'unsafe' social mixing occur. Arguments advancing these two entirely reasonable - but often diametrically opposed positions - are likely to be heated.

For these reasons, licensees and their staff will have to be far more focused than they have been hitherto on complying with a range of rather detailed requirements in the guidelines, than on meeting their or their employer's commercial targets.

Indeed, the situation is not dissimilar to the situation which occurred on the coming into force of the Health Act 2006. The Act made it the duty of anyone who was concerned in the management of smoke-free premises to stop smoking. A largely unforeseen consequence of that initiative – ultimately welcomed by most of the public – was that many who lived in close proximity to pubs

and clubs then found that (particularly in the summer months, but to some extent all year round), they had to put up with customers drinking & smoking in areas adjoining their own properties.

One unwelcome consequence of the current combination of circumstances is that the police and licensing authorities, as well as magistrates where prosecutions arise, will be forced back to the pre-August 2005 situation when New Labour's (generally de-regulating) Licensing Act 2003 came into force. Before that under historic licensing legislation, licensing justices were frequently obliged to consider at length and in great detail such esoteric questions as whether a particular sandwich with beetroot & pickles be said to be a 'table meal' (which could justify 1 hour extra drinking time)? Similarly, in late night bars and clubs, could drinking be said to be 'ancillary' in an area used for music & dancing and food such as to justify drinking until up to 2am, or even 3am in central London? Food and drink (metaphorically) for licensing lawyers, but few others...

Now, looking ahead, where licensees are found to be in breach of the latest regulations and guidance they could, in addition to prohibition and penalty notices, fines and prosecutions, and much worse, face reviews of their licences, so threatening the complete loss of their livelihood.

In summary, assuming that it is actually supported by the scientific evidence, the relaxation lockdown is undoubtedly a development greatly to be welcomed. Licensees must, however, recognise that, as ever in life, great opportunities are accompanied by significant risks. Whether these come home to roost will depend upon the ability of each premises and its staff to accommodate these novel restrictions against a background of unprecedented demand...

**Jeremy Phillips QC is editor in chief of Paterson's Licensing Acts. The views expressed, however, are his own.**