



Unwelcome Signs – Hospitality Regulation after the Covid Crisis

The hospitality industry is reeling in the wake of the Covid pandemic. The experiences of the last two years have exposed aspects of regulation and decision-making in this field that will have ongoing implications for legal practitioners for a long time to come, and are worth examining in more detail.

By Sarah Clover, barrister, Kings Chambers

As the nation has begun cautiously to contemplate life without Covid restrictions, the Government has promised to: “set out our long-term strategy for living with Covid-19”. It appears that every business now needs such a strategy, in a regulatory landscape that has changed considerably, and will continue to develop at a rapid rate. In assessing the havoc that the pandemic has wrought over the last two years, nobody now speaks in terms of a return to “normal”, as there is a sombre understanding that everything has altered to some degree, and that what lies ahead is uncharted, and in many respects, driven by factors that have nothing to do with the businesses themselves.

Many of the Covid measures and restrictions hit the hospitality industry catastrophically, including the periods of inability to trade sustainably, or at all; the specific restrictions on hours of opening, table service or covid passports, and the chronic staff shortages. As the recovery phase unfolds, entrenched changes in the trading environment have an ongoing influence that could not have been predicted.

One of the Plan B strictures being lifted is the requirement to work from home. The enforced absence from work places has cut a swathe through town and city centre outlets and venues that picked up the lunchtime and after work market. Even the formidable retail hubs of London were turned into ghost towns with the disappearance of tourists and workers. Businesses scrambled to explore and adapt to takeaway services and home deliveries, with varying degrees of success. As with the video conferencing explosion, however, these new circumstances forced former commuters to try stay-at-home lifestyles that they would not have considered before, and in significant numbers they have embraced the novelties into their lives, triggering a culture shift in behaviour and permanent new habits. Whilst many in the work force could not wait to get back to their offices, many more realised that it was not necessary or even desirable to do so. The focus of work breaks for them has shifted to

local outlets or even their kitchens, and the focus of their evening entertainment has moved more often to their living rooms.

For those premises that survived and waited hopefully for the return of their former customer base, the pandemic crisis is far from over. Academic studies (Eg: University of Sheffield Department of Economics 2021) into the long term impact of Covid-19 have demonstrated that city centres could lose £3 billion due to permanent changes caused by the effects of the virus on consumer behaviour, particularly the shifts to home working. One study found that in 2022, the average UK worker will be working from home one day a week more than they were prior to the pandemic, and this is expected to be a permanent shift. Even at that level, there will be huge consequences for the retail and hospitality industries, and the behaviour will not be evenly spread in any predictable pattern. The study estimates that approximately 77,000 hospitality and retail workers could be forced to relocate or lose their jobs completely, which will see amplified impacts on low income workers, and exacerbate inequalities between affluent and poverty afflicted areas.

The report noted that city centres may have to transform themselves in order to remain sustainable, including a transition to more residential use instead of a retail focus, but this carries difficulties of its own. Many local planning authority policies seek to concentrate retail activity heavily into city centres, to promote every aspect of sustainability, from retail prosperity, to cutting car travel and air pollution. Random dilution of the retail offer will have destabilising impacts across the board.

Layered on top of this is the volatility of post-Covid visitor behaviour. In the immediate aftermath of the lockdown periods, there was a notable impact on consumer reaction to the day time economy, and even more acutely to the night time economy, which could be categorised very roughly as those who remained reluctant to go out, and those who could not wait. The ones driven by pent-up demand included those with

criminal motivations, and the incidences of drug abuse, sexual assault and anti-social behaviour in the night time hours, including the alarming “spiking” phenomenon soared exponentially, to the dismay in particular of the Police and other regulators. Whether this settles into a longer term trend remains to be seen, but in the short term, it has only served to alienate a significant contingent of law enforcers. It has also served to harden attitudes towards the night time economy that were formed or exacerbated during the pandemic restrictions: namely, that the hospitality industry presented disproportionate risks and needed fundamentally to be restricted and controlled as opposed to being fostered.

Appeals from Ministers for a more balanced approach towards an industry in peril appear to have fallen significantly on deaf ears. In April 2020, Kit Malthouse, Home Office Minister wrote a letter to the Chairs of licensing committees in local authorities, identifying “key areas where licensing authorities may wish to consider a pragmatic and more flexible approach during this outbreak, while ensuring the licensing objectives are safe-guarded”. The letter set out a balanced perspective, acknowledging the undoubted obstacles confronting businesses trying to comply with the strict letter of their licence conditions as they struggle to re-establish their operations in a post-pandemic environment.

These businesses face a perfect storm. Just as they find themselves in need of more experienced and competent staff, and additional door security details to handle the challenges of post-lockdown demand, they confront the worst shortages in modern memory as a consequence of furloughing and uncertainty causing thousands to leave the industry, and Brexit impacts compounding the effect. While the regulators are clamping down as never before, the industry finds itself in the worst position possible to comply with regulation, and with the least sympathy it has ever been afforded. Defences beginning with “Due to Covid” are cutting very little ice in any quarter.



Regulations

At the same time, ironically, there is an increasing awakening to the vital and fundamental role that hospitality premises play in the operation of healthy urban life. Everyone will be able to think of ways in which they have missed their own preferred leisure time in a hospitality setting. The opportunities offered by food, drink and entertainment venues for sociability and cultural experiences in the lives of communities, as well as the contribution to employment, supply chains and the local economy are critical and indispensable. There is a growing recognition amongst all politicians, local and national, that a heavy handed approach to the industry in the wake of the pandemic is going to prove disastrous in a very wide context: and, in fact, that the disaster has already begun.

An extinction event for these businesses leaves a dramatically different look and feel to the places where we live and work, not only at night, but also during the day. This disconcerting transformation is being accelerated by a significant new influx of residents taking occupation of their newly built or converted urban centre apartments. The extension of permitted development rights has meant that offices no longer required for the home based workforce have been readily converted to residential units, driven by a national housing shortage and the imperative to boost unit numbers, almost at any cost. This might be thought to bring a welcome new customer base for the town centre night time economy in particular, but the irony is that,

frequently, the exact opposite is the case. Those that buy their new homes in a flush of metropolitan enthusiasm all too often find that a change of personal life circumstances, perhaps in the form of a birth, a bereavement or a change in shift patterns means that they suddenly value sleep significantly more than the city slicker lifestyle. Instead of moving away, however, they attempt to complain their environment into quiet submission. This should not be as effective as it commonly transpires to be. The local authority planning officers who granted the residential planning permission, and the licensing officers who granted the premises licences for the noise generating venues very often did not consult with each other before those exercises, and it appears, with wearing predictability that neither department discusses the situation with the environmental health colleagues down the corridor, who are under a duty to deal with the noise complaints that typically arise years later, when it is all too late.

It is obvious in hindsight that these urban land use relationships should have been front loaded with negotiation, at the times of the grants of the respective authorisations. Instead, the competing neighbours are torn apart in acrimonious regulatory battles, that often see the venues creating the noise stripped of their rights to continue, when they were the ones in peaceful, if not quiet occupation and causing no harm in the original status quo. There is increasing push back against this

outcome, with savvy licensees who spot the planning notices on lamp posts for new development in their area robustly highlighting the predicted future fall out before the Council has even begun to debate their decision. This is the territory of the Agent of Change principle, which is a policy tool in the National Planning Policy Framework that serves to point out these issues and require decision makers and developers to take them into account, with a view to protecting and not burdening existing noise sources in the neighbourhood.

These complex factors combine to form a highly complex, multi-faceted regulatory landscape going forward. The calls for deregulation and also for stronger regulation have gone up simultaneously, and this will be an area to watch closely over the next few years, to see which influences prevail, and how they impact upon decision making. In the meantime, all of these factors have had a damaging effect on the relationships between regulators and the regulated, in a legal arena which particularly promotes the benefits of partnership working. At this difficult time, there is too little of this in evidence, and the work of law and policy makers now must surely be to address these imbalances and find more solutions for the common good.

Sarah Clover, barrister, Kings Chambers

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