

**From: Association of London  
Environmental Health Managers**  
4th Floor  
18 St. Cross Street  
London  
EC1N 8UN



**To: Graham Russell,  
CEO Office of Product Safety & Standards**

**1<sup>st</sup> February 2021**

Dear Graham,

I am writing to you on behalf of London local authority environmental health managers to explain the irreconcilable position local authority enforcement teams are currently facing in their dual role of public health protection, and enforcers of the Covid 19 legislation. Local authorities are responsible for business enforcement of the legislation, and the circumstances they face are preventing robust control of unnecessary person to person contact. This will inevitably slow down the drop in transmission of the disease and could extend the need for lockdown restrictions.

OPSS is the first point of contact for local authorities with queries in relation to their front line enforcement role, due to its position within the Department for Business and its ready links with other Government departments' policy holders. Although OPSS is not the policy holder in relation to Covid 19 enforcement, the OPSS team provides feedback from the relevant government departments and issues guidance and support materials for local authority enforcement teams. This role is very welcome and provides a direct link from local authority enforcers to the specific government policy makers. OPSS advice, notice templates and regular webinars provide a very useful service to discuss issues emerging within local authorities, but OPSS also take the role of messenger on behalf of the Government and that can result in some areas of conflict. OPSS has confirmed that the overarching purpose of the Regulations is to reduce the spread of Covid 19 but has also consistently advised of the need to apply the law, and that and the supporting guidance is to clarify the Government's intent and is not itself enforceable. This puts local authorities in an impossible position.

We understand the purpose of the guidance is to outline standards of expected behaviour without criminalising those businesses that do not comply. In essence the guidance explains the 'spirit' of the legislation. However, guidance that gives the policy intention without also providing the legislation to back it up is toothless and unworkable in practice. The current situation facing enforcement teams is that businesses (particularly larger chain businesses with legal teams that are prepared to challenge local authority enforcers) may not always meet this guidance and can, as a result, fail to comply with the spirit of the legislation. This has led to higher footfall in town and retail centres and it blurs the otherwise clear 'Stay at Home' message.

Local authority environmental health teams routinely take action to protect public health and they have been consistently thwarted in these aims at each stage of the pandemic. The regular changes to the legislation, while necessary to control the spread of the virus, introduce a new set of enforcement problems with each change. We do, of course, understand that preparing legislation at speed is tricky, but the time it takes to introduce changes to improve effectiveness and iron out problems means that further legislation changes are introduced before updates can take effect. It also gives the appearance that a wide range of businesses and multi-outlet chains, (which feedback

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from enforcement teams indicates are taking the most advantage of the potential legal exemptions and limitations of the legislation,) are able to apply an unacceptable degree of influence over how the legislation is applied on the ground. This is seen by many enforcement teams as an aggressive refusal to work within the supporting guidance and by implication a refusal to accept the intention of the policy makers. We trust this is due to ineffective drafting of legislation rather than by design but it is a difficult position to defend locally when local authorities are forcing smaller specialist businesses to close. This is particularly uncomfortable for local authorities because many of the independent businesses forced to close are operated by and serve their local black and other ethnic minority communities and gives the impression that there is a discriminatory element to the enforcement of the legislation.

The legislative framework is built around the requirement to close specific business types that takes no account of the current retail environment which largely consists of businesses selling a wide range of products that do not fit neatly into the 'businesses required to close' definitions. It is relatively straight forward for larger businesses to adapt their product base to include items that are sold by 'businesses that are allowed to open,' paving the way for more high street businesses opening their doors, particularly where they don't see action taken against other businesses that are refusing to comply with the spirit of the legislation. Local authority enforcement teams are facing significant pressure from their elected members and public health teams to take action against businesses that are flouting the guidance as they fight to reduce very high levels of Covid 19 but the legislation does not provide the tools to do this effectively. The requirement to close is therefore directed to small, specialist retailers, many of whom are local independent traders and ethnic minority businesses, who feel resentful about the apparent unfairness of the way legislation is enforced with the refusal of many mixed retail premises to comply with the Covid 19 legislative guidance.

The following widely encountered problems of inappropriate use of exemptions have been raised by local authorities in London following introduction of the third lockdown;

- the guidance advises the cordoning off non-essential areas in mixed retail businesses but this is not enforceable and some larger companies are aggressively rejecting attempts by local authorities to encourage compliance with the guidance.
- businesses such as homeware stores are stocking a few building products to claim legitimate trade;
- stationers are using money exchange or parcel delivery/collection to enable their wider non-essential business to open even though the majority of the trade is not this essential activity;
- some premises have started selling food and are registering as food premises to enable them to trade;
- many mixed retail premises sell a small amount of food and are aggressively claiming this is a significant proportion of their trade;
- traders with a small element of repair are opening their wider retail businesses.

There has been much discussion and no agreement about how local authority enforcement teams manage mixed retail businesses that are demonstrably refusing to comply with the Covid 19 supporting guidance. This begs the question, is there any point in spending time and energy producing non-statutory guidance as it risks not serving any useful purpose. We call on the Government and BEIS to use their influence to encourage better compliance with the Covid 19 guidance or to make the guidance statutory.

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With different boroughs taking different approaches with mixed retail premises there will be inconsistencies, especially for multi outlet businesses, many of which are largely remaining open. Some boroughs are making all small retail outlets selling homeware products close, while others allow them to keep trading to provide a fairer trading environment with the mixed retail businesses who are remaining open.

It is being suggested that Primary Authorities will have a role working with national businesses to approve Covid 19 legal compliance standards and it is expected that some may issue assured guidance. However, it is disappointing to note that, where local authorities have tried to act to make businesses comply with guidance as a result of high Covid infection levels and a public health need to reduce Covid transmission, they have faced intransigence from some businesses. We also understand that on occasion Primary Authorities are supporting the approach taken by their business partner, despite the business taking a policy decision not to comply with Covid 19 guidance.

'Click and collect' is widely offered within high street businesses for a wide range of 'non-essential' goods which encourages greater footfall and blurs the 'Stay at Home' message. We would like this exemption removed from the legislation. Local authority managers consider this activity significantly reduces the local ability to manage the spread of the virus. In addition to the general problem of encouraging people to leave home for non-essential reasons, some businesses are using the 'click and collect' exemption to allow customers into their stores to browse and purchase other goods. While this activity is prohibited, it is not easy to gather sufficient evidence to demonstrate non-compliance using the very limited resources available in local authority enforcement teams.

The looseness of the legislation and the unenforceable supporting guidance has resulted in a wide range of creative attempts by non-essential businesses to continue to operate. This has resulted in high numbers of complaints to local authorities adding to the pressure on already over-stretched local authority enforcement teams.

Another growing problem being reported is widespread non-compliance with Covid 19 requirements by delivery drivers working for the main takeaway food delivery platforms. Issues include not wearing face coverings in food businesses, no social distancing between groups of drivers and a range of anti-social behaviour being reported in and around town centres. Local authorities have had little response when these issues have been raised directly with the platforms, and this is an area which could be dealt with either via Primary Authority partnerships or at government level on behalf of local authorities.

We would urge OPSS to use their position to take a lead role with business and primary authority partners to ensure the spirit and intention of the Covid 19 legislation is fairly and consistently applied across all retail industry.

**Actions required:**

- 1) OPSS should use their position within BEIS to strongly encourage large businesses, including supermarket chains, to follow Covid 19 supporting guidance.
- 2) Supporting guidance needs to be made statutory and legal action must be an option where there is a clear business decision to not comply with the supporting guidance, as this undermines the spirit and overall effectiveness of the legislation.
- 3) OPSS can take a lead role with business and use the primary authority scheme to encourage participating businesses to comply with the Covid 19 legislation and the supporting guidance.
- 4) We request the Government policy holder remove the 'click and collect' option for non-essential goods.

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- 5) OPSS should work with takeaway delivery platforms to encourage them to take appropriate action to ensure delivery staff working for them comply with Covid 19 requirements.

We would be grateful for all action OPSS can take on our behalf to provide a workable legal framework for local authority enforcement teams. Effective law enforcement and dutiful public response relies upon clarity, comprehension and consistency. Both businesses and the public will lose trust if this is not the fundamental basis of the enforcement approach and trust of public authorities is hard to restore once compromised.

Yours sincerely,



Steve Miller

Alehm Chairman on behalf of the Alehm Executive Board

**Alehm Executive Board**

Steve Miller  
Jon Averbs  
Lucy Urquhart  
Rick Mason

Paul Morse  
Gavin Douglas  
Ellis Turner  
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