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|                           | <b><u>Agenda Item: 7</u></b>  |
| <b>Report to:</b>         | <b>Local Outbreak Engagement Board</b>                                  |
| <b>Date:</b>              | <b>29 July 2020</b>   |
| <b>TITLE:</b>             | <b>BIRMINGHAM CITY COUNCIL TEST AND TRACE<br/>IMPLEMENTATION UPDATE</b> |
| <b>Organisation</b>       | <b>Birmingham City Council</b>  |
| <b>Presenting Officer</b> | <b>Dr Justin Varney<br/>Director of Public Health</b>                   |

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| <b>Report Type:</b> | <b>For discussion</b> |
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**1. Purpose:**

To inform the Board on progress with implementation of the local test and trace programme within Birmingham

**2. Recommendation**

3.1 The Board is asked to note for discussion at the meeting.

**4. Report Body**

4.1 The paper summarises the progress since the last meeting implementing the local test and trace programme elements within Birmingham. The implementation of the communication and engagement plan and the budget outline are covered under separate items.

4.2 The key points to highlight from the report are:

**• Governance**

- The Outbreak Engagement Board has been formally approved by the Health and Wellbeing Board.
- The Health Protection Forum has met twice since the last board (fortnightly)
- The Test and Trace Cell is meeting weekly and the outbreak setting groups are meeting twice weekly

**• Structure**

- Recruitment through internal secondment and agency recruitment has started for the fixed term test and trace programme team, this is circa 31 WTE posts and this may expand further as new requirements

become clearer. Posts are being appointed for 6 months with potential extension to 12 months.

- Once the fixed term structure is established the Public Health Division will re-establish more business as usual functions but all staff will rotate through the fixed term structure as surge capacity and this allows potential surge increase for the response function by another 30 WTE.
- The current team structure is in Annex A.

- **Testing Sites in Birmingham**

- Testing sites are managed by NHS England. Testing is free for any symptomatic individuals or people who have been asked to test by the NHS or public health because of an outbreak. Individuals require an appointment booked through the NHS website or by ringing 119.
- There are three ways to undertake testing:
  - Drive through testing through either the mobile testing sites or regional testing sites, there are three mobile testing sites in Birmingham in the car parks at Brewery St Coach Station, Mosely Rugby Football Club and Birmingham City Football Stadium. Work is ongoing to identify more potential mobile sites.
  - Walk-through testing at the site at Viller Street in Newtown. This is a pilot site and in the first 14 days has tested over 1,600 individuals. The site is managed by Deloitte/NHSE and has bilingual staff and translation support on site and over 95% of individuals attending the site have booked through the 119 or NHS website.
  - Postal testing enables anyone to get a kit sent to their home and they are asked to then post it back into a specified mailbox to help reduce the time to get a result.
- Individuals are receiving results within 48-72hrs, results are faster via the drive-through and walk-through sites.
- Testing uptake in Birmingham is fluctuating, as of the 23<sup>rd</sup> July the rate of testing was 472 tests/100,000 population, this is the 4<sup>th</sup> highest in the region but remains lower than optimal compared to the national trend.
- The Council is currently working with the NHSE/DHSC to explore other potential testing sites, particularly expanding the walk-through provision and ensuring there are potential pop-up sites identified in each ward of the city as part of the outbreak response planning.

- **Data Access**

- There has been significant improvement in the data access for the Council. Annex B includes a summary of the arrangements from a letter sent to the Council from Duncan Selbie, CEO of Public Health England on the 20<sup>th</sup> July outlining the current level of access.

- There remain some significant gaps, especially around the intelligence on the demographic of testing uptake which limits the ability of local teams to understand poor uptake and target a response.
- Data is also often limited in its completeness, particularly regarding workplace and there seems to be limited information from the national contact tracing service on social gatherings which may be underpinning spread locally.
- The Council continues to work with Public Health England and the NHS Test and Trace Service to strengthen the approach.

- **Enforcement Powers**
  - National Government has published further guidance on enforcement powers relating to Covid. These are summarised in Annex C.
  - As part of the fixed term test and trace function the Council is expanding the Environmental Health Officer resource.
  - Environmental Health is working closely with West Midlands Police to take a proactive approach to engagement, education and enforcement. This includes:
    - Working with Public Health to engage and follow up individuals who have been lost to follow up by the national and regional contact tracing service or if there are areas of concern.
    - Education and engagement visits and contact with workplaces and businesses to support them with Covid safety approach and understand any further needs.

- **Scenario and Stress Testing**
  - The Council has developed a series of outbreak scenarios to stress test our local outbreak response. These were developed with support from West Midlands Public Health England. (Annex D)
  - The outbreak scenarios were used by the Health protection cell and the setting specific cells to test approaches and understanding.
  - These were also shared through the Health Protection Forum with NHS partners.
  - A further set of rising tide and neighbouring area rises scenarios are being developed to test the wider Council approach.

#### 4.3 Key actions being taken next:

- Complete recruitment of fixed term test and trace core team
- Scoping of further mobile testing sites and potential for further walk-through testing facilities to increase access to citizens without cars
- Further work to strengthen business awareness of covid-19 safe practice
- Stress test plans and cross-Council response against regional scenarios

| <b>6. Risk Analysis</b>  |                   |               |  |
|--|-------------------|---------------|--|
| <b>Identified Risk</b>   | <b>Likelihood</b> | <b>Impact</b> | <b>Actions to Manage Risk</b>  |
| Unable to appoint to the test and trace core team              | Low               | High          | Multi-strand approach to recruitment through internal secondment and agency appointment.   |
| Poor testing uptake leading to uncontrolled spread of Covid-19 | Medium            | High          | Increased testing facilities/ access across the City<br>Community engagement<br>Multi-lingual coms<br>Business engagement                  |
| Limited compliance with guidelines                             | Medium            | High          | Increased environmental capacity to support education and enforcement<br>Community engagement<br>Multi-lingual coms<br>Business engagement |

The following people have been involved in the preparation of this board paper:

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## **Annexes**

Annex A: Test and Trace Fixed-Term Structure

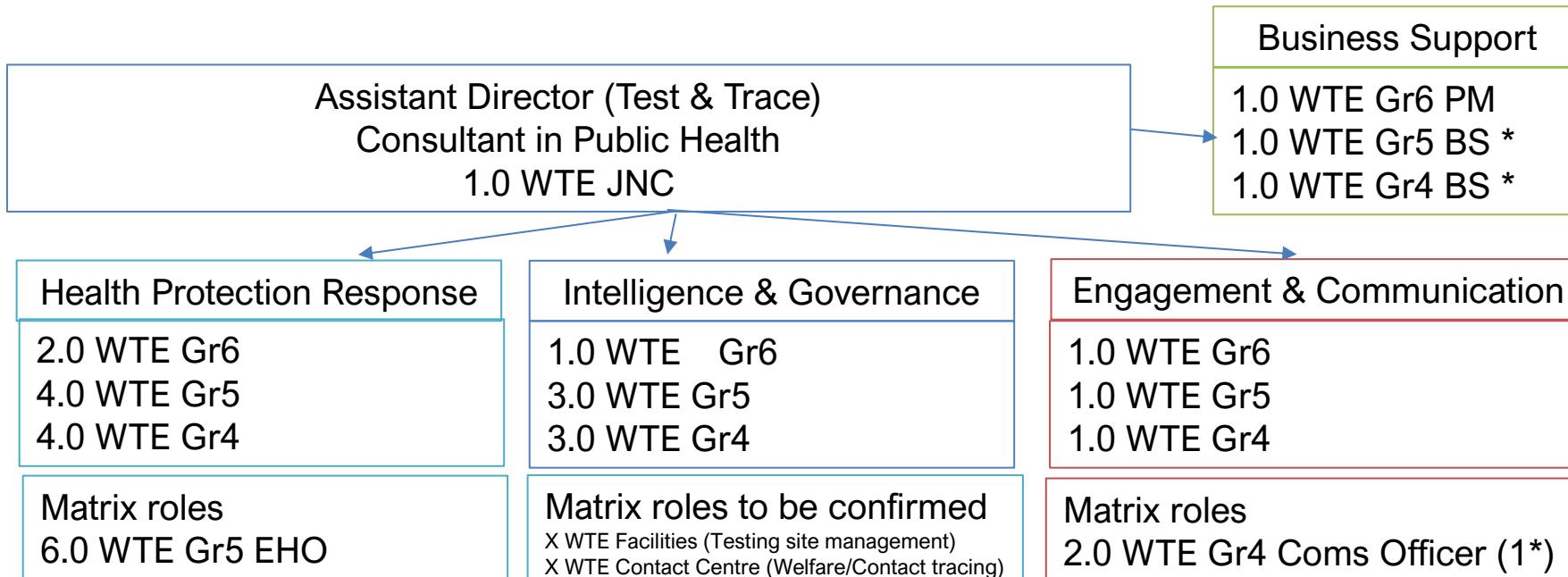
Annex B: Data Sharing Summary from PHE

Annex C: Local authority powers to impose restrictions: Health Protection (Coronavirus, Restrictions) ( England ) ( No.3 ) Regulations 2020

Annex D: Outbreak Scenario Testing Summary

## Annex A: Test and Trace Fixed-Term Structure

31 WTE dedicated new roles  
6-12 months agency & secondment opportunities (\* in post already)  
Health Protection Response function is 7 days a week 08:00-18:00 with Consultant cover 24/7  
PH Rotational staff provide 3<sup>rd</sup> pillar of HP response to cover the rota/leave



PH Division Rotational Staff – rotating in 1 week blocks  
1.0 WTE PH Consultant, 1.0 WTE Gr6, 2.0 WTE Gr5, 2.0 WTE Gr4

## Annex B: Summary of Current Data Access (Public Health England 20<sup>th</sup> July 2020)

### Data in the public domain

#### Summary of national figures

- National figures for COVID-19 tests, cases, deaths for the UK and every country of the UK are produced daily <https://www.gov.uk/guidance/coronavirus-covid-19-information-for-the-public>
- National figures for the NHS Test and Trace service are produced weekly. This includes numbers of people tested; people testing positive; time taken for results to become available; numbers of people transferred to the contact tracing service; the time taken for them to be reached; close contacts identified for complex and non-complex cases, and the time taken for them to be reached.  
<https://www.gov.uk/government/collections/nhs-test-and-trace-statistics-england-weekly-reports>

#### Public dashboards with geographic breakdown

- The Weekly Coronavirus Disease 2019 (COVID -19) Surveillance Report, produced by Public Health England (PHE), summarises information from a variety of surveillance systems covering *national* data on cases, age, gender, rates, ethnicity, NHS111, google searches, general practice consultations, emergency attendances, hospitalisation rates deaths (age, ethnicity, excess mortality) antibody testing, global data. There is also *regional* data and weekly rates of cases by *local authority including a PHE top 10 of UTAs with the highest weekly rate of cases*  
[www.gov.uk/government/publications/national-covid-19-surveillance-reports](http://www.gov.uk/government/publications/national-covid-19-surveillance-reports)
- The Coronavirus (COVID-19) in the UK dashboard contains information at UTLA and LTLA level on cases and rates and is updated daily <https://coronavirus.data.gov.uk/>
- A new dashboard, launched on 25 June, has been updated with sub-national data including people tested and positive cases at national, regional and local authority level. This includes the ability to view epidemic curves and 7-day averages as well as the ability to look at positive cases as a proportion of all tests
- From 10 July, weekly case numbers at middle layer super output area (MSOA) were available on a map and in a spreadsheet (in the “about data” section)  
<https://coronavirus-staging.data.gov.uk/>

- On Friday 3 July, NHS-Digital released a public version of the Containment dashboard, Progression, that enables triages and cases to be tracked through time at UTLA level: that includes, by UTLA, the number of people with coronavirus identified through an NHS lab (Pillar 1) or from a commercial swab testing (Pillar 2). In addition, the count (not people) of triages of coronavirus symptoms through NHS Pathways by calls to NHS 111 and 999 and through NHS111 online  
<https://digital.nhs.uk/dashboards/progression>

## Individual (record) level data accessible by local authorities

- From 24 June PHE started providing record-level test data, enabled through a data sharing agreement with Directors of Public Health (DsPH). This contains additional information such as full postcode, age and ethnicity where available
- From Friday 17 July, PHE started providing daily individual test and case data, having previously provided weekly data
- Under this arrangement, a Data Sharing Agreement is in place enabling the local authorities to be the data controllers and therefore they are responsible for what they share and publish. The local authority must ensure compliance with the relevant standards

### Information on individual cases to help outbreak management

- PHE shares information with DsPH as part of the routine investigation of outbreaks and incidents. This includes information on individual cases and their contacts as required to support the public health response. This continues as the usual part of the management of COVID-19 outbreaks in specific settings or groups
- From Monday 20 July and to augment the standing local arrangements between PHE and DsPH, PHE will share daily fully identifiable (including names) test, case and contact tracing data via a dashboard with DsPH to further support their investigation of the COVID-19 outbreak

### Aggregated and interactive dashboards and reports accessible to approved users

- All the following (except the Containment and LRF dashboard) products are currently available to DsPH

### Local Authority Covid-19 Containment Dashboard

- This dashboard, produced by NHS-Digital, has been available since 11 June and provides a picture in the local area of cases and Covid triage data. There is a geographic breakdown to LTLA of the number of tests conducted, the total number of positive cases and a rolling average, as well as information on 111, 999 and online triage cases related to COVID-19. It enables easy comparison of areas
- From 6 July the number of positive tests and 111 and 999 telephony triages is available to LSOA level. This dashboard is updated daily with a three-day lag due to the changeable nature of new data
- The next development is to provide data at the full postcode level within the dashboard. Given this information is more sensitive it is reliant on a more robust security infrastructure that is being developed including Two Factor Authentication. Access to this NHS Digital dashboard has been temporarily delayed but is due to be rolled out shortly

### Contact tracing

- PHE produce a daily contact tracing report – this report provides information on contact tracing activity at a regional and UTLA level. This includes cases invited, cases completed, contacts identified, contacts reached, including aggregate totals of contacts associated with incidents
- A more detailed contact tracing report is produced weekly with a set of quality and epidemiological information including numbers of cases, case outcomes, number of contacts, contact outcomes, numbers of contacts per case and by exposure setting and time to completion. Data is presented at regional and UTLA level

### Daily Situational Report

- PHE provides a daily situational report - this is a *national summary* of tests, cases, ethnicity, residential property type, workplace outbreaks, contacts by exposure settings/activities, links to healthcare settings. There is breakdown for some of this data by *region*. By *local authority* there is information on those UTLA's with the highest rates of incidence, testing, positivity rates, exceedances, outbreaks in educational settings. The aim is to bring together much of the information and intelligence on where the epidemic is currently taking place both in terms of place and groups of the population to help inform local action. It is anticipated that the Covid-19 Situational Awareness Summary will be shared with the *public* in the next few days

### Daily Exceedance Report

- PHE provides a regional daily exceedance report to DsPH. Exceedance scores are calculated using the current and historic data on cases of COVID-19 for each lower tier local authority area. An exceedance means that an area has a greater than expected rate of infection compared with the usual background rate for that location. This is a way of assessing a recent change in incidence in that area. Every day, PHE produce in depth reports for the areas that have exceeded (RED reports) shared with appropriate DsPH

### Daily Surveillance Report

- PHE produce a daily surveillance report. The report provides descriptive information (trends and demography) at health protection team and local authority level of case data, testing data, in-hospital mortality data, outbreaks reported in a range of settings, syndromic surveillance data (GP out-of-hours calls, NHS 111 calls, emergency department attendances) and COVID-19 Hospitalisation in England Surveillance System (CHESS) data

### Bespoke epidemiological reports (deep dives)

- In addition, PHE Field Service teams also support local partners with more detailed epidemiological analyses as needed to inform local action and agreed locally

### Local Resilience Forum Dashboard

- The LRF dashboard is run by MHCLG to show multiple data points showing whole system response and resilience. It is accessible through the Local Resilience Forums and contains indicators such as police workforce, food supply, proportions of population shielding and ventilator availability

## **Annex C: Local authority powers to impose restrictions: Health Protection (Coronavirus, Restrictions) ( England ) ( No.3 ) Regulations 2020**

From the 18th July 2020, local authorities in England have been given powers to impose restrictions to help prevent the spread of COVID-19. Below are a list of frequently asked questions derived from the latest government guidelines at the time of writing (22/07/20) which can be found [here](#).

### **What are these powers designed to do?**

These Regulations allow local authorities to respond to a serious and imminent threat to public health and to prevent COVID-19 transmission in a local authority's area where this is necessary and proportionate to manage spread of the coronavirus in the local authority's area.

### **What do these Regulations allow?**

The Regulations include powers for local authorities to :

- restrict access to, or close, individual premises (Regulation 4),
- prohibit certain events (or types of event) from taking place (Regulation 5) and
- restrict access to, or close, public outdoor places (or types of outdoor public places) (Regulation 6) .

following procedural requirements set out in the Regulations. Local authorities are encouraged to seek advice in advance of exercising powers under the Regulations , should they require any practical support, and may contact NHS Test and Trace at [directionnotification@dhsc.gov.uk](mailto:directionnotification@dhsc.gov.uk)

Regulation 3 also allows the Secretary of State to direct a local authority to issue a direction where the Secretary of State considers the conditions above have been met and can also direct a local authority to revoke an existing direction ( with or without a replacement direction ) where the above conditions are no longer met.

### **What do these Regulations not allow?**

The Regulations prohibit the local authority to make directions in relation to premises which form part of essential infrastructure. This includes a range of infrastructure that provide essential public services and goods. It also includes vehicles, trains or aircraft used for public transport, or the carriage or haulage of goods, and a vessel where the direction would be likely to have the effect of preventing a changeover of crew.

Further examples of essential infrastructure can be found [here](#). The list is not however exhaustive and local authorities should use their discretion to consider whether premises could be considered essential local or national infrastructure before using the power. If local authorities are unsure whether a particular premises falls within the scope of the essential infrastructure exemption, they should direct queries to the relevant government department, or to NHS Test and Trace Regional Support and Assurance Teams.

### **What conditions must be met before a direction under the Regulations can be made ? To make a direction under the Regulations a local authority needs to be satisfied that the following 3 conditions are met :**

1. the direction responds to a serious and imminent threat to public health in the local authority's area
2. the direction is necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in the local authority's area of coronavirus
3. the prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose

### **Where should local authorities seek evidence to prove the above conditions have been met?**

Before making a direction, local authorities will need to gather sufficient evidence to demonstrate that the above conditions have been met.

Such evidence may come from a range of sources e.g.

- Information provided to the local authority from local experts,
- Through the Local Resilience Forum,
- From NHS Test and Trace (including the Joint Biosecurity Centre (JBC)),
- From Public Health England (PHE) and from other sources.

A local authority must consult with the director of public health and assess whether the conditions for taking action have been met.

### **With whom should a local authority consult prior to issuing a direction?**

As well as the director of public health , a local authority should also consult the police prior to issuing a direction, and any neighbouring police forces if the direction prohibits, requires or restricts access to a premise, event or public outdoor place that is situated against a Local Resilience Forum boundary.

Local authorities should be clear about why they are taking directive action and communicate this clearly to the Secretary of State, the person(s) to whom the direction applies and, where appropriate, those impacted by the direction.

### **Do local authorities need to notify businesses/premise users affected by the direction and what must the notice contain?**

A local authority must take reasonable steps to give advance notice of the direction to both:

1. a person carrying on a business from the premises to which the direction relates
2. any person who owns or occupies the premises, if different from 1.

Notice of the direction should be issued by a local authority in the form of a written letter and/or email communication to the owner or occupier of the premises, clearly stating the powers under which the direction is being made, the reason for invoking, or revoking, the direction, the date and time on which the prohibition, requirement or restriction comes into effect, and the date and time on which it will end. Where the direction is made on the direction of the Secretary of State, that should be also be stated.

Where a restriction , prohibition , or requirement will also impact upon other persons , the local authority should also publish in such a manner it considers appropriate , to bring it to the attention of those who may be affected by it.

### **Are there any other considerations prior to issuing a direction?**

Prior to issuing a direction, local authorities must have due regard to the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010 and should consider carrying out an equalities impact assessment to determine whether the measure may disproportionately affect people with protected characteristics.

### **Would the local authority be prohibited from taking action if a disproportionate impact is likely?**

Identifying disproportionate impact would not prohibit a local authority from taking action, but this should be balanced against the wider public health risk in a local authority's area, and mitigations should be considered and implemented wherever possible.

### **What must a direction state?**

Any direction issued by a local authority under the Regulations will need to state the date and time on which the prohibition, requirement or restriction comes into effect, and the date

and time on which it will end. This should include the basis on which the three conditions are met and why a specific prohibition, requirement or restriction is necessary.

#### **How often must a local authority review a direction?**

A local authority must review a direction it has issued under the Regulations at least every seven days and determine whether the three conditions for making the direction continue to be met.

#### **When must a direction be lifted?**

If at any stage the threshold for restrictions is no longer met (there is no longer a serious and imminent threat to public health, or the measures are not deemed to be necessary and proportionate to prevent or control the incidence or spread of infection in the local authority's area), the direction should be immediately revoked or replaced with a direction which meets the threshold set out above.

#### **Can a direction be appealed against and how?**

Those directly impacted by any direction under these Regulations, including the owner or occupier of premises or event organiser against whom a direction applies, have the right of appeal through the magistrates' courts and may make representations to the Secretary of State.

The appeal against a direction can be made using the information found [here](#)

#### **Can a local authority close individual premises ( Regulation 4 ) ?**

Regulation 4 provides a power for local authorities to make directions about individual premises , for the purpose of : closing the premises, restricting entry to the premises, or securing restrictions in relation to the location of persons in the premises. The 3 conditions must still be met for making a direction. A local authority has a duty to have regard to the need to ensure the public has access to essential public services and goods before issuing a direction.

#### **Can a local authority place restrictions on events and why ( Regulation 5 )?**

Regulation 5 provides a power for local authorities to prohibit certain events (or types of event) from taking place, where it responds to a serious and imminent threat to public health relating to coronavirus and is necessary and proportionate to prevent or provide a public health response to the incidence or spread of infection in their area.

#### **What needs to be considered when considering placing restrictions on events?**

As well as considering Public Sector Equality Duty obligations , local authorities would be expected, at a minimum, to:

- gather the relevant evidence, such as the location of the event, disease prevalence and transmission rates in the area, and the risks associated with the event, including for example, the anticipated level of attendance and the activities that are due to take place
- consult neighbouring authorities of both tiers where relevant, (and the other tier in 2-tier authorities), concerning use of the power
- engage with partners through the local Safety Advisory Group and Local Resilience Forum to ensure emergency services are aware of proposals and manage risk, including the risk that people may travel to other local spaces

#### **On whom can a direction under Regulation 5 impose prohibitions, requirements or restrictions ?**

A direction under this regulation may only have the effect of imposing prohibitions, requirements or restrictions on:

- the owner or occupier of premises for an event to which the direction relates
- the organiser of such an event

- any other person involved in holding such an event. This does not include people planning to attend the event, with no involvement in its organisation – these individuals could not commit an offence as a result of such a direction being made

### **How is notification given of a direction under Regulation 5 in respect of an event ?**

Notice of the direction should be issued by a local authority in the form of a written letter and/or email communication to the organiser of the event and/ or the owner or occupier of the premises where the event is being held, or any other person involved in holding such an event, clearly stating the powers under which the direction is being made, the reason for invoking, or revoking, the direction, the date and time on which the prohibition, requirement or restriction comes into effect, and the date and time on which they will end.

Where the direction is made on the direction of the Secretary of State, that should be also be stated. The notification must also give details of the right of appeal to a magistrates' court, provide an address for service of any summons (including the Secretary of State where it is based on his direction) and the time limit for appealing (see link). Where a direction is made , the event organiser and /or owner or occupier of a premises must fulfil the requirement of the direction until the appeal is resolved.

### **Can local authorities close or restrict access to public outdoor spaces (Regulation 6)?**

Regulation 6 provides a power for local authorities to direct the closure of, or restrict access to, a public outdoor place (or public outdoor places of a specified description), where it responds to a serious and imminent threat to public health relating to coronavirus and is necessary and proportionate to prevent or provide a public health response to the incidence or spread of infection in their area.

Local authorities would be expected, at a minimum, to:

- gather the relevant evidence, such as geographical boundary of the space, disease prevalence and transmission rates, and evidence relating to the risk attached
- consult neighbouring authorities of both tiers where relevant (and the other tier in two tier authorities), about proposals to exercise the power
- engage with partners through the Local Resilience Forum to ensure emergency services are aware of proposals and manage risk, including the risk that people may travel to other local spaces

### **What else should be considered when considering a direction in respect of a public outdoor space ?**

Where a local authority is considering making a direction under Regulation 6 that would close, or otherwise impact upon, any part of the Strategic Road Network (SRN) the local authority should consult with Highways England (with respect to the SRN) and should have regard to any advice received, regarding impacts on the SRN, before making its direction. The local authority should use best endeavours to consult as early as possible, and no later than 24 hours, before a direction under Regulation 6 is made.

Where a restriction, prohibition or requirement relates to Crown land , a further agreement with an appropriate authority is required.

### **What notification must be given in relation to direction in respect of public outdoor places ?**

The local authority must take reasonable steps to give advance notice of the direction to a person carrying on a business from premises within the public outdoor place to which the direction relates . Notice of the direction should be issued by a local authority in the form of a written letter and/or email communication, clearly stating: the powers under which the direction is being made; the reason for invoking or revoking the direction; the date and time on which the prohibition, requirement or restriction comes into effect; and the date and time on which it will end.

Where the direction is made on the direction of the Secretary of State, that should be also be stated. The notification must also give details of the right of appeal to a magistrates' court, provide an address for service of any summons (including the Secretary of State where it is based on his direction) and the time limit for appealing (see link).

### **Who is responsible for restricting access to public outdoor places affected by a direction?**

A local authority which has given a direction under regulation 6(1) must take reasonable steps to prevent or restrict public access to the public outdoor place or places to which the direction relates in accordance with the direction. People (other than the local authority) who own, occupy or are responsible for part of the public outdoor place must also take reasonable steps to prevent or restrict public access to the area in accordance with the direction.

It will be important for the local authority to describe the area in sufficient detail when issuing a notice. A local authority must publish details of any restrictions on its website and should consider other measures to draw this to the attention of anyone who may be affected , including through notices at or near the area being closed, social media posts , press notices and notices on arterial roads where this seems appropriate.

### **What might be considered a “ reasonable excuse “ for someone to access the restricted public outdoor place ?**

Once a direction is made, people will not be allowed to enter or remain in the area, subject to the terms of the direction, without a reasonable excuse. The regulations provide a non-exhaustive list of reasonable excuses, which include that people may enter the land where it is reasonably necessary for work purposes. For the avoidance of doubt, it is intended that this would include providers of freight and haulage services. Access also needs to be provided for utility companies carrying out essential maintenance and repair works and highway authorities carrying out road works.

### **What about residents living in the restricted area?**

Although all possible uses of the power cannot be known at present, it is expected that the power would not be exercised so as to restrict social interaction between people living in the area and outside. It is expected that directions will be drawn in such a way that visitors from outside the area, such as friends and family, would be able to visit people living within the area, unless the movement of people has been restricted within other regulations. It is not expected that directions will prevent people from travelling within an area if the start and end of their journeys are outside it, for example long distance motorway journeys that pass through the area.

### **What if the restriction in respect of a public outdoor place restricts access to premises in the vicinity ?**

A direction relating to a public outdoor place should not be used as a means to indirectly control premises, should the closure of a public outdoor place restrict access to premises in the vicinity. If the closure of a public outdoor place is deemed to be a necessary and proportionate measure, consideration should also be given to restriction of access to premises that may be an indirect consequence of such action. Any closure of premises will need to be considered separately in accordance with Regulation 4 and should not be the indirect consequence of restricting access to a public outdoor place.

### **When should the Secretary of State be notified of a direction and what should be included in the notice?**

When a local authority issues a direction, they should notify the Secretary of State as soon as possible after making a direction, and it is advised this should be no longer than 24 hours

after issuing. This should be done via NHS Test and Trace, with notifications emailed to [directionnotification@dhsc.gov.uk](mailto:directionnotification@dhsc.gov.uk), marked for the attention of the appropriate regional team. This should include a copy of the direction, the reason for issuing the direction, the location or area the direction relates to, the organisations and groups of people expected to be directly and indirectly affected by the direction, the stakeholders consulted on the decision on the direction (including NHS Test and Trace Regional Support and Assurance Teams, government departments and PHE), the date and time on which the restriction comes into effect, and the date and time on which it will end.

### **What if a direction affects a neighbouring authority?**

If a direction is issued by a local authority, it must notify any neighbouring authorities (i.e. any local authority whose area is adjacent to the initiating authority's area) that may be impacted as a result of the direction. This should be proportionate to the direction taken, and may take the form of an email to neighbouring authorities summarising the direction and rationale if it relates to the closure of a small single premise, but may require much greater detail and coordination across local authorities if the direction applies to a large public outdoor place.

To avoid an unnecessary ripple effect of direction, there is no obligation on the part of the local authority in receipt of the notification to in turn notify neighbouring authorities, unless there is a large outbreak across multiple areas, where this may be necessary and proportionate.

### **What if a neighbouring authority notifies Birmingham City Council of a direction affecting them?**

Where a local authority has been notified it must consider, as soon as may be reasonably practicable, whether to exercise its own powers under the Regulations and must notify the initiating local authority of what it has decided to do.

It may be necessary to coordinate action across a regional level and you should engage with neighbouring authorities through your Local Resilience Forum, or through other channels as appropriate.

### **How can members of the public appeal against a direction and what must they prove to be successful?**

The recipient of a direction has the right of appeal through the magistrates' courts. Should they wish to appeal a direction, it should be lodged as soon as possible and, where possible, submitted within the 7-day review period.

An appellant would need to be able to satisfy the court on the balance of probabilities that the decision made by the local authority was wrong – in that it did not satisfy the three conditions listed above – and bring forward any supplementary evidence to support the appeal. This may include reasons as to why the appellant deems the direction should not have been made, and why the local authority's reasons for taking action do not meet the conditions as they are set out in Regulation 2(1).

Where the direction was made on the direction of the Secretary of State, the appeal must be heard against both the Secretary of State and the local authority and the magistrates' court must issue summonses against both of them.

### **Can a persons affected by a direction make representations to the Secretary of State?**

The recipient of a direction may make representations to the Secretary of State about the direction. This should be done via NHS Test and Trace, with representations emailed to [directionnotification@dhsc.gov.uk](mailto:directionnotification@dhsc.gov.uk). This should include:

- details about the recipient of the direction and how they have been impacted

- demonstration of why the direction should not have been made and was not appropriate, based on the conditions set out in Regulation 2(1)
- any supporting evidence
- what action they would like to be taken as a result

NHS Test and Trace will expedite the matter to the Secretary of State, before considering the evidence provided and respond as soon as is reasonably practicable. The Secretary of State will provide written reasons for his decisions to the person who made the representations and the local authority which gave the direction. If the Secretary of State decides that the conditions for issuing a direction were not (or are no longer) met, they may direct the local authority to revoke the direction, or to replace it with a further direction that would satisfy the conditions.

**How can requirements of a direction be enforced?**

Where a local authority designated officer or a police officer or PCSO reasonably believes that a person is in contravention of a prohibition, requirement or restriction as set out in the regulations, they may take such action as is necessary and proportionate to enforce a direction.

A local authority designated officer may issue a prohibition notice to a person who contravenes a direction , for example by failing to close premises that have had a direction placed upon them to restrict or prohibit access.

**If an offence has taken place in contravention of a direction what can be done?**

Where it is reasonably believed that a person aged 18 or over has committed an offence under the regulations, an authorised person – a local authority designated officer (in respect of breach of a direction relating to premises under regulation 4(1) or events under regulations 5(1), failure of an owner or occupier of land in a public outdoor space to which a direction under regulation 6 applies to take reasonable steps to restrict access to that land, or obstruction of a local authority officer) or a police officer or PCSO (in respect of obstruction of an officer, or failure to comply with a direction or reasonable instruction given by a police officer or with a prohibition notice) – may issue a Fixed Penalty Notice (FPN). If paid within 28 days beginning from the day after the date of the notice no proceedings may be taken in respect of the offence.

The amount of the FPN will be £100 for a first offence (reduced to £50 if paid within 14 days), doubling upon further offences up to a maximum of £3,200.

A person who fails to comply with a direction , without reasonable excuse , commits an offence punishable on summary conviction by a fine ( Regulation 13 ) . Proceedings for an offence under the Regulations may be brought by a local authority , the Crown Prosecution Service and any person designated by the Secretary of State ( Regulation 15 ) . Liability to conviction in respect of such an offence may be discharged by payment of a FPN as detailed above.

Dated : 22nd July 2020

PLEASE NOTE that all legislation is subject to change . It is therefore recommended that legal advice and guidance is sought in respect of issues covered by this briefing note . Please contact Catherine Parkinson ( Interim City Solicitor and Monitoring Officer )

## Annex D: Outbreak Scenario Testing Summary

A series of outbreak scenarios were developed by the Director of Public Health with support from West Midlands Public Health Centre. These have been shared as good practice across the region.

The scenarios were tailored to the three outbreak setting response groups as follows:

### Early years and education settings

- Secondary school setting
- University setting
- Out of school education setting
- Special school setting
- Early years setting
- Youth setting

### Clinical and Social Care settings

- In-patient clinical setting
- GP practice setting
- Retirement community setting
- Private cosmetic clinical setting
- Domiciliary care setting
- Pharmacy setting

### Other settings

- Large multiple occupancy workplace setting
- Geographical clustering situation
- Community of identity cluster situation
- Homeless community situation
- Specific ethnic community cluster situation
- Spike in deaths in a specific community

These were developed to test and explore any gaps in our approach and think through any issues in response before the situation arises.

Further scenarios have been developed for a regional and local 'rising tide' scenarios which will be used during August to test the response alongside the regional discussions about stress testing.

The following pages provide some examples of the scenarios and the response from the exercises, the Other settings group is still working through their scenarios so these are draft responses for those scenarios.

## Birmingham Outbreak Situation Testing Scenarios Examples

| Outbreak Response Team            | Scenario Summary  | Response Summary   | Key points of learning  |
|-----------------------------------|---|--|---|
| Clinical and Social Care Settings | <p><i>In-patient Setting Situation</i></p> <p>PHE have notified us of five linked cases identified one of the cities inpatient hospital site, the cases are a mix of staff and patients who have been spread across 3-10 days since admission. All cases are linked to the renal ward and day-dialysis unit. PHE feel that this is likely to be acquired in hospital rather than the community.</p> <p>PHE have recommended enhanced testing of staff and patients in the ward and staff linked to the ward and unit.</p> | <p><b>Testing</b></p> <ul style="list-style-type: none"> <li>Testing will be organised by the hospital for their staff and patients</li> <li>Test all staff working on ward / unit and all patients from 12 days ago until now.</li> <li>Consider whether to test day dialysis patients</li> <li>Consider need to test transport services for day cases</li> <li>Consider backward contact tracing to identify the source</li> <li>Hospital responsible for contact tracing</li> </ul> <p><b>Communication</b></p> <ul style="list-style-type: none"> <li>Communication needed with: <ul style="list-style-type: none"> <li>Staff on the unit</li> <li>Wider staff</li> <li>Patients, their families and their GPs</li> <li>Partners (LA, CCG, PHE, NHSE/I)</li> </ul> </li> <li>Proactive and reactive comms</li> <li>Need multi-agency comms plan – hospital, CCG, LA, PHE, NHSE/I. Hospital would be lead for coms.</li> <li>Expect media interest</li> </ul> <p>Consider any cross border issues, might need to engage other LAs dependent on patient flows.</p> | <p>NHS Directors of Infection Prevention and Control (DIPC) are key and DPH is currently working with them to ensure plans in place for this type of scenario, especially around contact tracing and backward tracing to identify source of spread.</p> <p>Important to consider cross-border patient and staff flows, especially for specialist units.</p> |

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| <p>Clinical and Social Care Settings</p>  | <p><i>Private Clinical Setting</i></p> <p>PHE have notified us of three cases in clinical and admin staff working in a cosmetic procedure clinic.</p> <p>The clinic has been reluctant to disclose the level of PPE used and has been providing facial procedures which are currently prohibited.</p> <p>PHE feel that there has been a PPE breach and patients are at risk. So far 25 patients have been identified at direct risk and a further 5 staff.</p> <p>PHE have recommended all patients and staff self-isolate and are tested.</p> | <p><b>Testing</b></p> <ul style="list-style-type: none"> <li>Testing provision can be arranged through test and trace community swabbing if required or through pillar 2 (drive through/ postal testing).</li> </ul> <p><b>Communication</b></p> <ul style="list-style-type: none"> <li>Need communication to staff and customers, with advice on self isolation</li> <li>LA comms lead with support from PHE</li> <li>Consider external comms, may be media interest</li> </ul> <p><b>Community engagement</b></p> <ul style="list-style-type: none"> <li>Consider community engagement locally in terms of “what to look out for if you are attending venues or buying services”</li> <li>Encourage people not to accept unsafe services</li> <li>Promote whistleblowing opportunities</li> </ul> <p><b>Enforcement</b></p> <ul style="list-style-type: none"> <li>Involvement of Care Quality Commission as regulator due to breach of guidelines and undertaking prohibited procedures.</li> </ul> | <p>Importance of pro-active engagement with private sector clinical settings and need to work with regulator to ensure clear approach planned for breach of PPE and restricted procedures.</p> |
| <p>Early Years and Education Settings</p> | <p><i>University Settings Situation</i></p> <p>PHE have notified us of seventeen linked cases identified one of the cities Universities, the cases are a mix of students and staff who have been attending different</p>   | <p><b>Testing</b></p> <ul style="list-style-type: none"> <li>Consider ‘pop-up’ testing on site to increase access and support for testing alongside pillar 2 testing.</li> </ul> <p><b>Communication</b></p> <ul style="list-style-type: none"> <li>Work with university coms team to support coms to students and staff</li> </ul>  | <p>Already discussions with universities about internal contact tracing support and ability to map out staff and student contacts and consider social aspects</p>                              |

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|                                    | <p>on-site meetings and teaching sessions.</p> <p>PHE have recommended mass testing of all students and staff and closing the main lecture and social sites for deep cleaning.</p>  | <ul style="list-style-type: none"> <li>Consider local community coms and reassurances</li> </ul> <p><b>Community engagement</b></p> <ul style="list-style-type: none"> <li>Consider community cohesion issues</li> </ul> <p><b>Governance/ Enforcement</b></p> <ul style="list-style-type: none"> <li>Review risk assessment approach with setting and opportunities for strengthening</li> </ul>   | <p>e.g. freshers week and non-campus activities.</p>   |
| Early Years and Education Settings | <p><i>Out of School Education Settings Situation</i></p> <p>PHE have notified us of ten cases identified linked to an religious education setting. The cases involve a range of children of different ages and one of the religious scholars. The cases all attended classes on the same day but were in different age groups and classrooms in the same faith setting. There was also three prayer sessions on the same day. PHE have recommended testing of all students and staff and deep cleaning.</p> | <p><b>Testing</b></p> <ul style="list-style-type: none"> <li>Consider 'pop-up' testing on site to increase access and support for testing of children alongside pillar 2 testing.</li> </ul> <p><b>Communication</b></p> <ul style="list-style-type: none"> <li>Prepare coms for faith congregation as well as wider community working with faith leaders to support them</li> </ul> <p><b>Community engagement</b></p> <ul style="list-style-type: none"> <li>Consider community cohesion issues</li> <li>Engage local community as well as faith community</li> </ul> <p><b>Governance/Enforcement</b></p> <ul style="list-style-type: none"> <li>Review risk assessment approach with faith setting and opportunities for strengthening</li> </ul> | <p>Engagement with out of school settings is in place if registered with LA but risk potential around unregistered settings which may be school and very specific to minority communities.</p> |

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| Other Settings | <p><b>Community of Identity</b></p> <p>PHE have notified us of ten cases identified linked to young gay and bisexual black men. Cases span a three week period and were picked up through a concern raised via the local HIV service. Contact tracing has identified a range of exposures linked to sexual and social encounters, primarily through online apps and websites.</p> <p>PHE have recommended enhanced engagement and awareness work with LGBT community and specifically focused on men who have sex with men within the Asian community.</p> | <p><b>Testing</b></p> <ul style="list-style-type: none"> <li>Work with LGBT Centre and Umbrella service to do proactive outreach testing to gay and bisexual community.</li> <li>Need to consider how to reach men who have sex with men who do not identify as gay or bisexual</li> </ul> <p><b>Communication</b></p> <ul style="list-style-type: none"> <li>Work with LGBT Centre on proactive communication</li> <li>Work with African and Caribbean community organisations on proactive communication</li> <li>Potential to work with sexual network apps and websites to increase targeted messaging on staying safe during Covid-19 and access to testing</li> </ul> <p><b>Community engagement</b></p> <ul style="list-style-type: none"> <li>Consider community cohesion issues and specifically risk of increased homophobic hate crime</li> <li>Engage local LGBT and African and Caribbean communities</li> </ul> | PHE highlighted that national contact tracing system is unlikely to identify sexual networks as a vector of transmission of Covid-19 and this is a gap in the current surveillance. |
| Other Settings | <p><b>Homeless Setting Situation</b></p> <p>PHE have notified us of three cases of Covid-19 among street homeless population, one was identified in custody, one through substance misuse service and one in</p>   | <p><b>Testing</b></p> <ul style="list-style-type: none"> <li>Community testing service to work with homeless specialist health services and street outreach to increase access to testing.</li> <li>Work with substance misuse services to align additional testing access points with misuse support services.</li> </ul>  | Part of the current plan for the community swabbing support service is to train up specialist health services to support swabbing and this scenario reinforces this.                |

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|  | <p>the homeless hotel accommodation. The cases know each other but are sleeping in different settings.</p> <p>PHE have recommended proactive testing and engagement with the street homeless population</p> | <ul style="list-style-type: none"> <li>Work with homeless setting services to do proactive outreach testing in homeless hostel settings.</li> </ul> <p><b>Communication</b></p> <ul style="list-style-type: none"> <li>Work with homeless setting service providers on proactive communication with homeless people and staff</li> <li>May need enhanced translated resources and support for testing</li> <li>Wider community communication</li> <li>Communication with wider workforce connecting with homeless population e.g. BID officers, police</li> </ul> <p><b>Community engagement</b></p> <ul style="list-style-type: none"> <li>Consider stigmatization around hotel accommodation location and wider homeless community</li> </ul> <p><b>Governance/Enforcement</b></p> <ul style="list-style-type: none"> <li>Review the risk assessment and infection control procedures in the hotel accommodation</li> </ul> | <p>Potential to work through this scenario with the homeless partnership groups to test the understanding and response from providers.</p> |
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