

A shout-out for the cultural sector
Philip Kolvin QC

Among the 9,817 words of the government's guidance for pubs and bars, 23 resemble a casual, drive-by shooting: *"At this time, venues should not permit live performances, including drama, comedy and music, to take place in front of a live audience."* For the cultural sector, which is interwoven with the hospitality sector to the point of symbiosis, these words hang heavy, uttered without explanation, without reasoning, without objective justification, just heard like a gun-shot in the night.

The source of this stricture is unclear. Reputedly, it emanates from Public Health England, which has admittedly been under pressure to become a human shield for the government's political decision to turn 2 metres into 1. But understanding the source of a rule is not the same as understanding its rationale.

The government web-site explains live performances carry *"an increased risk of transmission"*, as might *"patrons needing to raise their voices to be heard over background music"*. For good measure it adds that *"There may be an additional risk of infection in environments where you or others are singing, chanting, shouting or conversing loudly."* The barrister in me sniffs out a thin argument as a werewolf senses blood. "Increased over what, Mr. Civil Servant?" "And are you stopping pubs playing recorded background music? So why prevent live background music?" "And isn't 'may' not just a limp admission that you don't know?" Actually I am not like that at all, I exaggerate for effect.

But while the government blusters, the industry suffers. The Music Venue Trust estimates that 93% of its members' venues won't survive until the autumn. In a study for the Cultural Industries Federation, Oxford Economics predicted a loss of 406,000 jobs this year, with £3bn lost in the music sector alone. In the absence of national leadership, it is unsurprising to see the industry trying to take matters into their own hands, with Festival Republic's Melvin Benn going public with his Full Capacity Plan.

And the science linking viral transmission with live performance is remarkably thin, with the debate centring on the transmission of aerosol. One recent study from the Department of Otolaryngology at Iowa University concluded that, for wind players, the risks could not be established and players should make their own judgments based on risk tolerance, which is not a practical solution for publicans who now have to manage their own front-lines so as to protect their workers and customers. In Berlin, the leading orchestras commissioned guidance from epidemiological researchers, who found that even wind instruments didn't project droplets very far, and suggested distancing of 1.5 metres, although the research has been criticised for not focussing on aerosols, which apparently hang around for longer. So the experimental research of a fluid mechanics expert Professor Christian Kähler of the Military University, Munich, which investigated droplets and aerosols is potentially important, for it demonstrates that singers might create risk by singing closely together, but are not responsible for a dangerous expulsion of any kind of fluid.

The absence of good evidence is a double-edged sword, simultaneously supporting a relaxation of restrictions and a precautionary approach. Advocates of the former will note that the government guidance about live performance is just that: guidance. It is not the law. It creates no criminal liabilities. That means that a publican could risk assess a live performance and conclude that, with appropriate mitigation, it creates no additional risk at all. If everyone

is socially distanced, would a single pianist tip the balance, or a singer behind a Perspex screen?

But another corollary of the hole where leadership should be is that, as research shows, most of the public does not trust the government on this anyway. They are making their own decisions. And right now, the public is not ready to return to live gigs. A Music Venue Trust poll of nearly 30,000 people showed that only 36% of people think it would be safe to attend a show. A pub which decided to depart from the guidelines on musical performance, even on the basis of good scientific advice, may not see a financial return but would be risking its reputation.

Which brings me finally to support. The German government has pledged 1bn Euros to support arts establishments emerging from the crisis. France's support fund is seven times that. Against which Britain's zero seems a bit on the light side.

British culture is one of our greatest employers, leading exports, source of soft power and prestige, and is the soul of our nation. Back to those 23 devastating little words. The government should do better.

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