



Premises Licence Review

Truth Nightclub (Formerly Bentley's of Clacton)

**5 Marine Parade East
Clacton-on-Sea
Essex
CO15 1PT**

Premises Licence Holder: Bentley's of Clacton Ltd

Registered Address: 22 Wenlock road, Hoxton, London, N1 7TA

Supplementary documentary information in support of review.

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Appendix D – Warning from Essex County Council regarding increase in Covid-19 cases

Appendix E – Screenshot from Premises Licence Holder’s social media

Appendix G – Graphic showing rise in Covid-19 cases among younger people

Video Evidence

Exhibit 1 – Recording from Snapchat showing Truth in operation as a nightclub on Friday the 14th of August.

Exhibit 2 – Recording from Bodyworn Footage of PC HALL on the 15th of August showing loud music inside the venue and a conversation with the Designated Premises Supervisor.

1.0 Background Details

1.1. Truth Nightclub is a licensed premises located on Marine Parade East in Clacton on Sea. It occupies the building formerly known as Bentley's.

1.2. The premises number is 18/00146/PREMVA and the current premises licence holder is Bentley's of Clacton Ltd, company number: 11163318. The sole director is Robert Mark Howard.

1.3. At time of writing, the Designated Premises Supervisor is Jenna Howard.

2.0 Circumstances leading to review

2.1 On Friday the 14th of August, the crime and disorder objective of the Licensing Act was undermined at Truth Nightclub in that, on its first night of reopening, the licence holder and Designated Premises Supervisor (DPS) immediately breached The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 in that it operated as a nightclub or otherwise operated as a venue which was open at night, provided music and had a dance floor or other space for dancing with music being played via a live-stream DJ.

2.2 Regulation 4(1) requires that a person responsible for carrying on a business or providing a service which is listed in Schedule 2 must cease to carry on that business or to provide that service during the emergency period.

2.3 Schedule 2 lists 1. Nightclubs, and 2.—(1) Dance halls, discotheques, and any other venue which— (a) opens at night, (b) has a dance floor or other space for dancing by members of the public (and for these purposes members of the venue in question are to be considered members of the public); (c) provides music, whether live or recorded, for dancing.

2.4 This is a criminal offence and one committed by the operators and licence holders of the venue as a calculated act.

2.5 By operating in this fashion they risked potential exposure of hundreds of people via the spreading of coronavirus. The current backdrop shows that Clacton was on the cusp of a local lockdown and remains a high-risk area – Essex Police have evidenced that the premises cannot be trusted to act to support any of the licensing objectives.

3.0 Reasons for Review

3.1 On Saturday the 15th of August, officers from Clacton Town Team - part of the community policing team, were patrolling licensed premises in the town as part of their regular duties. Officers had concerns raised to them by members of the public and staff from various other venues that Truth nightclub had operated in breach of the Health Protection Regulations 2020 the day previously (Friday the 14th), by opening as a nightclub for dancing.

3.2 Evidence obtained from social media shows the inside of the nightclub very busy, no social distancing and with loud music and people dancing. This video supported the suggestion the venue had operated as a night club and is available to hearing as Exhibit 1.

3.3 Officers attended the venue to share their concerns with staff, after initially denying that there was any issue at the club on Friday, once shown the video, door staff conceded that it was taken from inside the nightclub. This was evidenced by way of a witness statement from attending officer Sergeant Moss and confirms that there as indeed a breach on the Friday. This statement can be found under Appendix B.

3.4 On a further visit to the nightclub on Saturday the 15th, officers raised concerns over the management of the queue, which can be viewed as Exhibit 2 to be unmanaged and causing an obstruction on the pavement. This video also shows music being played at a high volume and people entering the dancefloor area of the club. Officers challenged the Designated Premises Supervisor (DPS) that the premises was indeed open as a nightclub and this was accepted by the DPS who stated that she "could not ask people to stop dancing as they were waiting for the bar".

3.5 This is simply not acceptable. Licensees have a responsibility to uphold the four licensing objectives and the operators of Truth have had over a month to prepare and learn from how the licensed trade has responded to the threat of COVID-19, and as such we can attest that opening in breach of the regulations over two consecutive days was a calculated act.

3.6 Nightclubs have been ordered to remain shut due to their high risk of spreading infectious diseases amongst patrons and with COVID-19 spreading faster amongst younger people as shown in Appendix G. These breaches therefore posed a serious risk to the club's visitors and their families.

3.7 These breaches were considered serious enough for Tendring District Council's Environmental Health Team to serve a prohibition notice on the venue on 20/08/2020. This action was necessary to prevent further risk to the public from Truth Nightclub. This notice is attached as Appendix A.

3.8 On Tuesday the 18th of August a meeting was held with the DPS at Clacton Police station. The seriousness of the matter was relayed and the DPS who, in mitigation, reported that there were people dancing while waiting for the bar. It was explained that Essex Police did not accept this as an excuse due to the amount of people dancing and the fact that the volume and presence of a live stream DJ indicated that the venue had deliberately opened as a nightclub.

3.9 It was explained to the DPS that the evidence gathered would be passed to Tendring District Council's Environmental Health Team. The DPS was also informed that Essex Police were considering a review and the seriousness of the matter was compounded due to the fact Clacton has been on the cusp of a local lockdown due to an uptick in COVID-19 cases. See Appendix C and D for warnings issued by Tendring District Council and Essex County Council regarding this increase.

3.10 In addition to this, in response to police attendance and advice given, the Premises Licence Holder took to social media in a clear disregard for authority and reported 'Truth nightclub opening with a power look' as well as abusing the police officers who attended to give advice on the Saturday evening and stating that he wishes to waste police time. The full media post has been attached as Appendix E. It is clear neither the DPS nor the Premises Licence Holder took their responsibilities seriously and have little regard for regulations that have been put in place to protect the most vulnerable in society. This indicates to us that the operators of this venue should not be allowed to continue to operate in this illegal and dangerous manner.

3.11 It is for these reasons Essex Police have proceeded with a review application.

4.0 Outcome Sought

4.1 The current premises licence does little to support the licensing objectives and, while full revocation of the premises licence is an option available to the sub-committee, we suggest that a series of new conditions would be effective in ensuring that the premises can continue to operate in a safe and compliant manner.

4.2 Essex Police are requesting these measures as a proportionate response to the seriousness of the events leading up to this review hearing. We ask that the sub-committee that the following be considered:

- 1) That the licence be suspended for a period of no less than three months;
- 2) That the current Designated Premises Supervisor be removed from the post;
- 3) That the authorisation for the provision of off-sales of alcohol be removed from the licence;
- 4) That the opening hours be reduced to close at 23:30 Monday to Thursday, and 00:30 Friday to Sunday;
- 5) That the licensable hours for the sale of alcohol be reduced to end at 23:00 Monday to Thursday and 00:00 Friday to Sunday;
- 6) That no regulated entertainment be authorised to take place past 23:00;
- 7) At any time the premises is trading past 23:00, and minimum of 4 SIA registered door supervisors shall be employed from 21:00 and until at least 30 minutes after the premises has closed;
- 8) The premises shall have installed and maintain a closed-circuit television surveillance (CCTV) system which at all times complies with the below requirements:

- i) CCTV will be provided in the form a recordable system, capable of providing pictures of evidential quality {in all lighting conditions} particularly facial recognition;
 - ii) CCTV cameras shall cover all entrances {and exits} and the areas where alcohol sales take place;
 - iii) Equipment must be maintained in good working order, be correctly time and date stamped, recordings must be kept in good working order and kept for a minimum period of {31} days;
 - iv) Upon the reasonable request of the police or licensing authority staff, within 48 hours viewable copies of recordings will be provided.
- 9) At all time while SIA registered door supervisors are present, at least one supervisor shall supervise any queue to enter the premises that forms outside the premises.

5.0 Case Law

5.1 Deterrence is an established part of the Licensing Act 2003 – see the cases of R (Bassetlaw District Council) v Worksop Magistrates' Court; [2008] WLR (D) 350 and East Lindsey District Council v Abu Hanif (Trading as Zara's Restaurant and Takeaway), [2016] EWHC 1265 (Admin) where in both cases the High Court stated remedy of the harm or potential harm is not the only consideration and that deterrence is an appropriate consideration in dealing with reviews where there has been activity in connection with crime. This also forms part of the reason Essex Police has applied for a review of the premises licence.

5.2 Deterrence as a legitimate consideration by a licensing sub-committee has been considered before the High Court where remedial measures (such as the imposition of additional conditions) were distinguished from legitimate deterrent (punitive) measures such as revocation.

5.3 *R (Bassetlaw District Council) v Worksop Magistrates' Court; [2008] WLR (D) 350.*

5.4 This was a case where a premises had sold alcohol to under age persons and subsequently the licensing authority suspended the licence. This was overturned on appeal to the Magistrates' Court and subsequently appealed to the High Court by the authority. The premises licence holder argued that they had a policy in place for checking the age of customers but this was not a perfect policy and had not been adhered to and that rather than revoke the licence, instead stringent conditions on proof of age should instead be imposed on the licence.

5.5 Issues considered in the *Bassetlaw* judgement included whether a licensing authority was restricted to remedial action (as opposed to punitive action such as revocation); and the precedence of wider considerations than those relating to an individual holder of a premises licence when certain criminal activities (as

specified in the Guidance) took place.

5.6 It specifically examined (and set aside in the case of ‘certain activities’) those parts of the Guidance now contained within paragraph 11.20 and 11.23, viz.

5.7 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review. However, it will always be important that any detrimental financial impact that may result from a licensing authority’s decision is appropriate and proportionate to the promotion of the licensing objectives.

5.6 In her judgement, Mrs Justice Slade stated (at 32.1 & 33.1 of the citation):

5.7 “Where criminal activity is applicable, as here, wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of crime. In those circumstances, deterrence, in my judgment, is an appropriate objective and one contemplated by the guidance issued by the Secretary of State.(...) However, in my judgment deterrence is an appropriate consideration when the paragraphs specifically directed to dealing with reviews where there has been activity in connection with crime are applicable.”

5.8 *East Lindsey District Council v Abu Hanif (Trading as Zara’s Restaurant and Takeaway), [2016] EWHC 1265 (Admin)*

5.9 This is a recent High Court decision (published April 2016) which related to the employment of an illegal worker and where a prosecution for such had not been instigated.

5.10 Amongst other matters it had been argued for the premises licence holder that the crime prevention objective was not engaged where a prosecution or conviction for a crime was not in place at the time of the licensing hearing. The case reaffirmed the principle that a responsible authority need not wait for the licensing objectives to be undermined, and that in considering whether the crime prevention objective has been engaged a prospective consideration (i.e. what is likely to happen in the future) of what is warranted is a key factor.

5.11 It also reaffirmed the case of *Bassetlaw* in concluding that deterrence is a legitimate consideration of a sub-committee. Mr Justice Jay stated: *“The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder. This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part*

retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence. In any event, I agree with Mr Kolvin that criminal convictions are not required.” (Paragraph 18)

5.12 Mr Justice Jay added: *“Having regard in particular to the twin requirements of prevention and deterrence, there was in my judgment only one answer to this case. The respondent exploited a vulnerable individual from his community by acting in plain, albeit covert, breach of the criminal law. In my view his licence should be revoked.”* (Paragraph This case affirms the fact that the sub-committee are able to take measures to ensure that other premises are deterred from operating in such a way that the licensing objectives are not upheld.



Tendring District Council

The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (S.I. 2020: No.684), as amended¹

PROHIBITION NOTICE

20th August 2020

Part A

To: Mr. Robert Mark Howard and Jenna Howard

At: 5 Marine Parade E, Clacton-on-Sea CO15 1PS

Of: Bentleys of Clacton Ltd

Trading as: Pulse and Truth Nightclub and Dance Club

This Prohibition Notice is served under Regulation 7(2) of The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (the Regulations) as amended and has immediate effect.

The Regulations impose certain restrictions to protect against the risks to public health arising from coronavirus. Failure to comply with the requirements of the Regulations, without reasonable excuse, is a criminal offence.

I, Carol Anne Archibald, designated as a relevant person for the purposes of the Regulations by Tendring District Council, have reasonable grounds for believing that you are contravening a requirement in the Regulations as set out in Part B below and that it is necessary and proportionate to issue this Prohibition Notice to prevent continued contravention of the requirement.

Part B. Contravention of the restrictions

Regulation contravened: Regulation 4(1)

Particulars of the offence

You have both failed, without reasonable excuse, to cease to carry on the business of a night and dancing club where dancing to music provided by a DJ was allowed and a gathering to form, without social distancing being in place and this businesses being listed not to open during the emergency period in paragraph 1 & 2 of Schedule 2 to the Regulations, , other than as permitted by Regulation 4(2) or 4(5)].

¹ S.I. 2020/684, as amended by S.I. 2020/719, S.I. 2020/788, S.I. 2020/800, S.I. 2020/822, S.I. 2020/824 and S.I. 2020/828



Part C. Action required

This Prohibition Notice requires that you immediately cease the activities giving rise to contravention of the Regulations. The activities must not resume before the end of the emergency period². The measures specified below must be taken to prevent continued contravention of the Regulations:

You must cease with immediate effect the operation of the business premises as a night club with dancing.

Part D. Consequences of non-compliance

Failure to comply with this Prohibition Notice, without reasonable excuse, is an offence punishable by a fine on summary conviction in a Magistrates Court.

Part E. Challenging this Prohibition Notice

There is no statutory right to appeal against this Prohibition Notice.

If you consider that the Notice should not have been issued or that the actions required of you are unreasonable or unjust, you can make representations to [*insert name of local authority*] in writing outlining your reasons for challenging the Notice, within [*insert number of days*] of the date on this Notice.

Your challenge will be processed in accordance with Tendring District Council's Complaint Procedure: <https://www.tendringdc.gov.uk/council/consultation-contact-and-complaints/how-complain>

Contact: 01255 686868

Alternatively, you may challenge this Notice by way of Judicial Review. Should you wish to pursue this option, you may wish to consult a lawyer to obtain independent legal advice.

This Notice remains in force even if you have raised a challenge.

Should the local authority's review of your challenge determine that the Notice should be revoked, you will be notified in writing that the Notice has been revoked.

Signed:

Date: 20th August 2020

Name in Capitals: CAROL ANNE ARCHIBALD

Name and Address of Local Authority:

Telephone: 01255 686753

Email: carchibald@tendringdc.gov.uk

²The Secretary of State will publish a direction terminating the emergency period as soon as they consider the restrictions or requirements set out in the Regulations are no longer necessary

OFFICIAL

MG11 (Interactive)

WITNESS STATEMENT

Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

URN [] [] [] []

Statement of: Vanessa Kirsty MOSS Ds 956

Age if under 18: Over 18 (if over 18 insert 'over 18') Occupation: Detective Sergeant

This statement (consisting of 2 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Signature:.....V. K. Moss..... (witness) Date: 17/08/2020

On Saturday 15th August 2020 I was on duty in full uniform Call Sign NN282 in company with PCSO Ladkin when upon information received, the information being a video uploaded on Snapchat the previous evening we attended TRUTH, Marine Parade East, Clacton-On-Sea. This video appeared to show party goers inside of Truth, dancing and not complying with current rules in relation to any social distancing.

At this location PCSO Ladkin saw a doorman he knows to be [REDACTED], I understand he is not the head doorman, but when PCSO Ladkin showed him the footage he confirmed that this footage was taken within TRUTH.

Another doorman came out he had a ginger beard and was trying to say they were complying with requirements and that licencing had been in and approved the level of their music, and that the video couldn't have been recorded there the evening before.

I explained that I was having to raise my voice to have a conversation outside and as this music was coming from within the premises felt it was too loud within the guidelines.

Both myself and PCSO Ladkin explained that they were not to open as a nightclub and that the music should be lowered.

Later that same evening, I re-attended TRUTH and the music had not reduced in volume, it was now after 2000hrs and PCSO Ladkin had finished his duty, and I was now in company of other officers including Pc Moyle and Pc Hall.

Pc Hall had his BWV recording when we asked the doorman with the ginger beard to ask the manager to make themselves known.

Signature: Signature witnessed by:

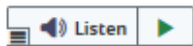
16/08/17

OFFICIAL

A white female with a dark bob came out and started to say they had done nothing wrong. Pc Moyle explained our concerns. You could clearly see through the doorway, that a DJ was running the decks and people were dancing. The manager also said she couldn't ask people to sit when they were dancing, she was told that she would have to at least try. In turn they did agree that they would turn the music down, however when there was no actual action taken by either of them, I intervened and explained that they needed to actually act and turn the music down, she did then go back inside and instruct someone to lower the volume. When the music was lowered, we walked down Orwell Road, and those patrons in the beer garden shouted 'ARE WE BEING CLOSED DOWN?' there was no separate music being played outside. The beer garden was full with most customers standing. Throughout the evening including myself there were 6 officers patrolling the area, all other licenced premises had their queues in order and their music was at an appropriate volume. TRUTH however had to be advised several times about the queue spilling out across the pavement and keeping social distancing. At approximately 0100hrs, some females in the queue asked us to intervene when they couldn't move back in the queue as some more intoxicated males behind them were oblivious to what was being asked of them. Eventually after a short conversation they in fact chose to go home. Shortly afterwards, a number of persons started to be ejected, and by 0130hrs most had spilled out onto Orwell Road, this area is not well lit and some were clearly wanting a fight. One male was physically escorted by his friend and after further encouragement from me did leave. But there were others vomiting as they walked, staggered across the street. During the evening a male calling himself Rob ASBO was asked to move his vehicle from double yellow lines at least twice. An Audi R8 colour blue Index was R88SBO, he also had a Green and Black Range Rover parked on double yellows, which showed as Grey when PNC'd. He purported to be the owner of TRUTH, his vehicles were registered to a London address.

Signature: Signature witnessed by:

Increase in number of cases of COVID-19 in Clacton and Harwich



Friday, 24 July, 2020

COVID-19 GUIDANCE

- Maintain social distancing



- Wear a mask - compulsory now for many shops and stores



- **DO NOT** go out if you have symptoms - and get a test



- Wash your hands regularly



We have seen the first signs of an increase in cases of COVID-19 in Clacton and Harwich.

We want to reassure residents that we are taking necessary action with our partners to understand this and put measures in place to ensure people remain safe. It is essential if this disease is to be controlled that people maintain social distancing measures and follow the **latest government advice**.

The latest data is available through the COVID-19 tracker tool. This shows a small increase in the numbers. Our detailed analysis and knowledge from the Essex and Southend Contact Tracing Service shows that this is mainly in young adults.

The Essex and Southend Contract Tracing Service is working to contact those who may be considered contacts and providing the necessary advice and support. We are also working locally with Tendring District Council's Health Protection team to target key areas and locations to provide specialist advice.

However, it is most important that people remember that COVID-19 is still with us and could increase again at any time unless we observe protective measures. People must stay two meters from each other if they are to avoid transmitting the disease. If this is not possible other measures such as wearing a face covering should be taken. Please continue to be vigilant with handwashing and if you do feel unwell you should isolate yourself and **get a test** via the NHS.

Councillor Neil Stock OBE, Tendring District Council Leader, said the authority is aware of an increase in Covid-19 cases in the area.

"We are working closely with our colleagues at both Essex County Council and Public Health England as part of the overall response," Cllr Stock said.

"We are asking residents to stick to the guidelines which are in place to protect us all. So keep washing your hands regularly, follow social distancing of two-metres, or one metre-plus where that is not possible, wear a face covering when out in public. If you have symptoms, then do not go out, and get yourself tested.

"This applies to everyone, of all ages and genders. If everyone sticks to these guidelines then we have the best possible chance of minimising transmission of coronavirus in our community. If people do not, then we face the potential of a local lockdown as we have seen previously in places like Leicester.

"I would advise people to follow our social media channels and check our website, or that of Essex County Council, for further updates."

Last updated on: 24/07/2020 - 17:13



Tendring Council

10.3K Tweets

Follow

Tendring Council Retweeted



Essex County Council @Essex_CC · 24 Jul

We have seen the first signs of an increase in cases of covid-19 in Clacton and Harwich and want to reassure residents that we are taking necessary action with our partners to understand this and put measures in place to ensure residents remain safe.

**Clacton and Harwich
Coronavirus Update**



6

37

23



Rant*****
So we had a second night which was amazing [redacted] really can't believe how well the place is doing [redacted] trust me I have never seen people lining up to a place like mine 30 mins before doors open,, my asbo team are what I say are the best I do nothing really they do it all, but I feel for them all when they become a target because of me,, so Pc/Wpc what the fuck are you trying to do and just because the ship is tight then show your true colours and then aim at me,,, 28 years you have been doing what you do to me and effect the people around me, just because I have a few pounds that I put loads of hours into getting I didn't do the work but the jobs I give to people done that work,, now this is what makes me think when you turn up with wanting to do something to me and clearly show it's me your targeting yes your a CUNT!! and yes I will play cunt back and waste your time 😏 the longer you spent looking for things will only make me a bigger bad boy and give me the biggest name in a town you can ever make,, it really ends up helping me it doesn't stop me or make me look bad because let's face it I'm not a bad person im just trying to give Clacton something back,, so the place up the road who started the war thank you for helping me open up with the bad boy look I wanted 😏 Truth Night Club opening up with the real power look 😏 and you really have given me the name ASBO who



12:02 [status icons] 61%

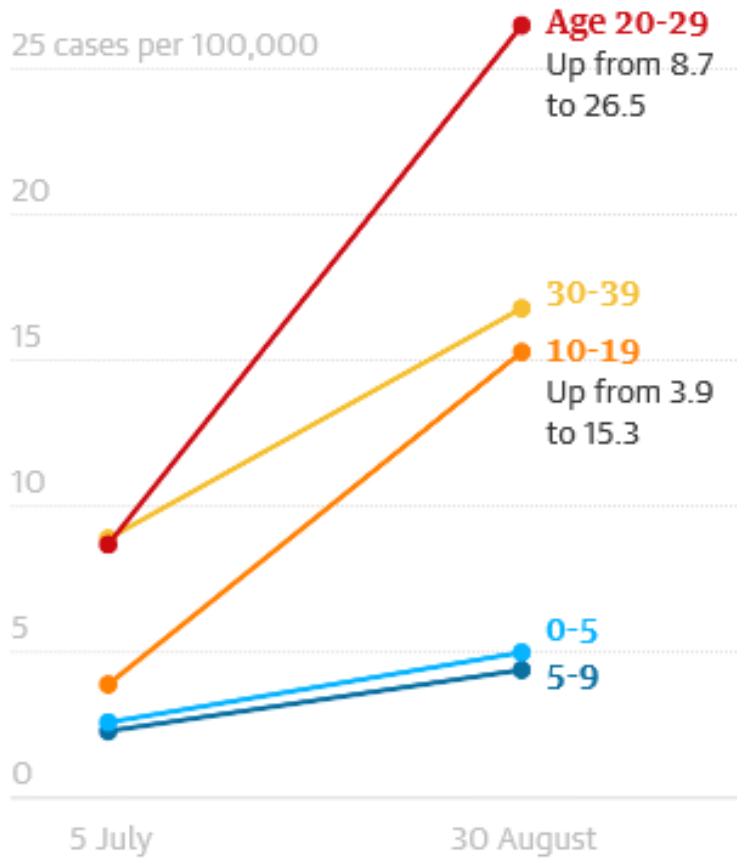
← Search
me or make me look bad because lets face it I'm not a bad person im just trying to give Clacton something back,, so the place up the road who started the war thank you for helping me open up with the bad boy look I wanted 😏 Truth Night Club opening up with the real power look 😏 [redacted] you really have given me the name ASBO who don't give a fuck what you say or do your self,, thank you for your support 😏 yes your be telling my manager and possibly door staff off but I'm the man behind the day so no one else 😏 remember the words people even when I loose I win 😏 and really picking out 2 cars and me moving them didn't piss me off it just made me laugh at you as you in cctv showed you targeted me last night which will be sent to my people to ask why you won't leave me alone yet again 😏 it must really piss you off reading this today I bet so could you please attend next week same time please I might add you to my pay roll as you clearly are in someone's pocket 😏



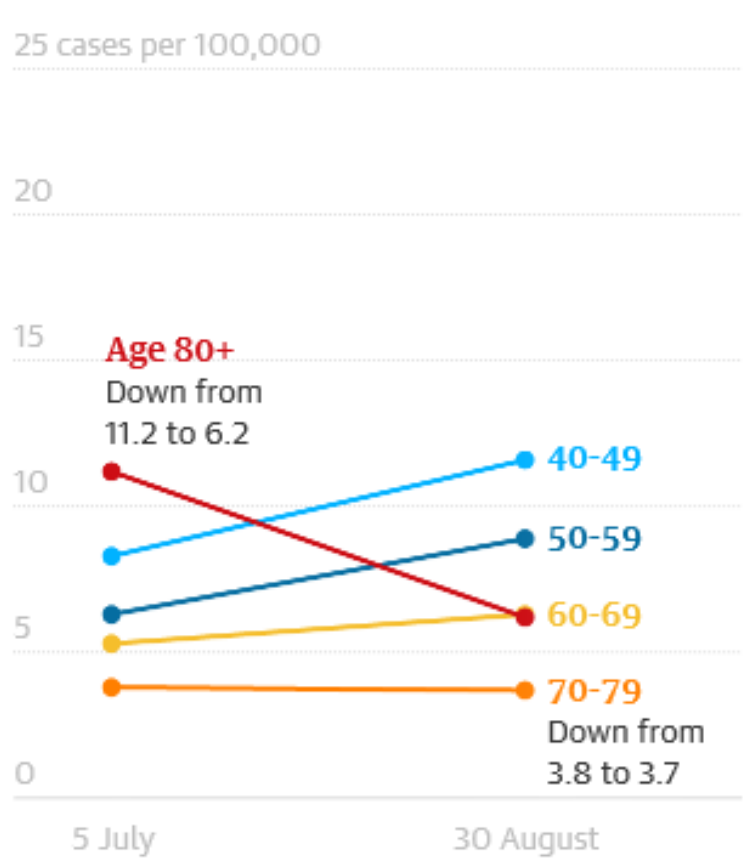
Essex Police ❤️❤️❤️ ASBO's life matters 😏
Loft hurry up open please because I really could do with the help now I can't get all the people in my building so they need a place to go I personally would give up with that shit your doing in TP's it's not working and I'm still saying I'm happy to come be your advertising and promotions manager for free 😏 I'm a flash cunt right now I know but fuck me im good 😏 and I could help you with you even paying me 😏 let's not tell anyone



The rate of positive Covid cases is growing fastest among teenagers and people in their 20s ...



... while rising more slowly among the over-40s, and falling for those age 80 and above



Guardian graphic. Source: Public Health England. Note: Data is for England only

END OF REPORT