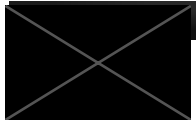


Mr I Fenn



*By email only*

14 April 2022

Dear Sir,

1. We write in response to your letter of 17 March 2022.
2. By that letter, you suggested that Sainsbury's policy of not permitting animals other than assistance dogs to enter its stores is either indirectly discriminatory, or amounts to a failure to make reasonable adjustments.
3. We would like to start by recognising that you did not feel welcome at our store. It is important to us that all customers feel welcome, and it is a matter of considerable regret to us that you did not.
4. The purpose of this letter is to explain why, in our view, our currently policy complies with all applicable law, and reflects a delicate balance between competing considerations.<sup>1</sup> We have reflected very carefully on this and discussed the matter with counsel.
5. We understand that the balance struck by Sainsbury's is not the balance you would have struck were you in our position. We hope you can understand, in turn, why we feel that our policy strikes the right balance, in light of the explanation set out in this letter.

### **The Reasons for Our Policy**

6. Sainsbury's operates a policy of not permitting animals other than assistance dogs into our stores. The reasons for this policy are (non-exhaustively) as follows.
  - 6.1. **First**, it is a step we consider we must take to discharge our obligations under food safety legislation. Pursuant to Regulation (EC) No 852/2004 on the hygiene of foodstuffs, a copy of which we attach to this letter, we are required to "*ensure that all stages of production, processing and distribution of food ... satisfy the relevant hygiene requirements*" (Art. 3). Annex II Chapter IX(4) provides:

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<sup>1</sup> Accordingly, it should not be inferred from this letter that Sainsbury's accepts that you have a disability within the meaning of the Equality Act 2010, that people with whom you share any such disability would be put to a particular disadvantage by our policy, or that you face any (substantial) disadvantage as a result of the policy. Should you (unwisely) decide to pursue litigation, this will all be a matter for evidence at trial.

*Adequate procedures are to be in place to control pests. Adequate procedures are also to be in place to prevent domestic animals from having access to places where food is prepared, handled or stored (or, where the competent authority so permits in special cases, to prevent such access from resulting in contamination).*

- 6.2. This point is particularly important because, (a) in many of our stores, food is prepared for consumption in cafes, concessions and the like; and (b) produce is sold unwrapped, some of it a short distance from the ground. For the reasons given below, we do not consider this is a “*special case*” where we can prevent access to such animals from resulting in contamination.
- 6.3. **Second**, we must consider the risks to colleagues, customers and property arising from permitting entry to any assistance cat (or other animal) which a person brings to a store. We cannot exclude the possibility of customers and colleagues (to whom we owe duties as our employees) being injured by a badly behaved assistance cat. Were a cat (or other assistance animal) to jump into a box of unwrapped produce, all that produce would have to be thrown away.
- 6.4. **Third**, we must consider the risk of animals defecating or urinating in the stores. We note that you say Chloe is “*unlikely*” to do that. We understand your point, but given the hygiene risks associated with her doing so, and the demands on colleagues to clean up after her, we consider that to still be too great a chance.
- 6.5. **Fourth**, many of these incidents, in addition to being distressing for other customers and a violation of food and/or workplace safety law, would expose us to civil liability.
- 6.6. **Fifth**, we must consider our colleagues and customers who are allergic to cats.
7. We note you say that Chloe is neutered and treated, and so is less likely to trigger allergies; and is well-trained, so these problems will not arise.
8. The problem with this is that it will not be true of all assistance cats. Your challenge is to Sainsbury’s general policy. Even if it were to be said that Sainsbury’s should make an exception for cats like Chloe, we do not think that would solve the problems above. Sainsbury’s would face a serious practical issue in applying such an exception.
  - 8.1. **First**, our colleagues cannot know, when a person presents at the store with (for example) an assistance cat, that the cat is trained, and groomed, to a standard that will ensure that all customers can be kept safe and food hygiene secured. Our colleagues are not (and could not be) trained to make that assessment.
  - 8.2. **Second**, individuals who bring assistance cats to the store may well not be aware of the relevant food hygiene and workplace safety standards, in order to assess whether their animal complies with them. They may not be able to offer an objective view of how well-behaved or disruptive the animal is. To be clear, we are not saying that about you and Chloe, specifically. We are saying that it is a risk we have to consider when deciding what our general policy will be.
9. The problem is therefore one of knowing, *at the time a customer presents with an assistance cat*, whether we can keep colleagues and customers safe and comply with our legal obligations. Even if that would be the case in respect of some assistance cats or other animals, it will not be true for all.

10. In those circumstances, a bright-line rule is the only way we can ensure colleague, customer, and food safety. It is for these reasons, after careful reflection, that we are confident that our present policy strikes the right balance.

### **Your Proposed Claims**

#### *Indirect Discrimination*

11. Pursuant to s. 19(2)(d) Equality Act 2010, a policy which would otherwise fall foul of s. 19 will be lawful if it is a proportionate means of achieving a legitimate aim. In this case, the legitimate aim is our compliance with food and workplace safety law, as well as customer and colleague safety, aims which the measure we have adopted rationally pursues. For the reasons given above, it is a proportionate measure to have adopted in the circumstances.

#### *Failure to Make Reasonable Adjustments*

12. A service-provider is required only to make such adjustments as are reasonable. For the reasons given above, there is no adjustment which can reasonably be made in this case. The simple fact is that Sainsbury's cannot safeguard health, safety and hygiene without the policy which it has adopted, in light of the risks we identify above. Accordingly, insofar as the relevant reasonable adjustment you seek is for Sainsbury's to permit assistance animals other than dogs, we do not accept that this adjustment is reasonable.

#### *Remedy*

13. For the avoidance of doubt, your suggestion that your claim warrants compensation in the middle *Vento* band is not accepted. Even were a Court to agree with your case on breach, this case involves a single, isolated incident, coupled with Twitter communication either side of that incident. Sainsbury's acted in good faith and with no intention to discriminate. Such a case falls plainly at the lower end of the lower band (and indeed, may not warrant damages at all, pursuant to s. 119(5) of the Equality Act).

#### *The Parameters of Your Claim*

14. We did not understand your letter to make any allegation of any other breach of the Equality Act 2010. You do say that your "*list of allegations is not exhaustive*". The pre-action protocol requires you to identify "*the basis on which the claim is made*" (see ¶6(a)); and so we proceed on the basis that you do not presently intend to issue a claim on any other ground.
15. We hope that this letter is an adequate explanation of our position, but should you consider further correspondence to be necessary, we would be grateful if, from now on, you could address any correspondence to the Legal Team rather than to Mr Roberts.

Yours faithfully,

**Sainsbury's Group Legal Services**