

Ian Fenn

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17 March 2022

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J Sainsbury plc

[REDACTED]
[REDACTED]
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By email only

Dear [REDACTED]

Thank you for your reply of 14 April 2022, which I reviewed with interest and, sadly, disappointment.

When I last visited 33 Holborn for a disability-related event, I met Fortnum & Mason, the two cats that patrol the building with their handler each night to keep the building free of rodents. Unfortunately, it doesn't seem that the training by Facilities Management of these two cats has resulted in an enlightened company view towards cats as working animals.

All of the points you make in your letter apply to dogs, and as you have said, Sainsbury's admits assistance dogs and their handlers into stores.

Given your provision of access to assistance dogs and their handlers, you must have found solutions to the issues you raise or have decided that the risk you refer to is one that you accept to support the needs of disabled people and adhere to the law.

Hygiene

The Food Standards Agency confirms that there is nothing in food safety/hygiene legislation preventing assistance animals from accessing establishments where food is being served. The organisation accepts that assistance animal owners have the right to enter food premises such as restaurants and supermarkets with their animals. You acknowledge this by permitting entry to assistance dogs.

Cats are known to be cleaner animals than dogs. My assistance cat Chloe is, of course, regularly groomed. She also typically wears a cat jacket covering 50% of her body. (It is removed for the summer months and replaced with a harness when it would be too hot to wear.)

As a trained chef, I have a professional knowledge of hygiene. I do not visit any food preparation areas with Chloe, and if I needed an item from a supermarket section that seemed problematic, I would ask a member of staff to collect it for me.

Chloe has accompanied me to supermarkets, groceries, and many restaurants, including Dishoom (many times), German Gymnasium, Holborn Dining Rooms (Rosewood Hotel), Ivy Cafe, Palm Court (The

Langham), The Wigmore (The Langham), Wild Honey St James (Sofitel St James), Bill's Restaurant (many times), Din Tai Fung, and Mr Ji.

Behaviour

You refer to a 'badly-behaved assistance cat', but there is no explanation of why you believe an assistance cat would be any different to an assistance dog in terms of behaviour, given the extensive training both receive.

Chloe's training programme followed established assistance dog training, but with differences to accommodate her and my own needs.

The owner-training of assistance dogs is accepted and permitted under the law. As the EHRC and Assistance Dogs UK state on page 5 of their publication 'Assistance dogs: A guide for all businesses [1]', "Assistance dogs can also be owner trained and the owner selects their own dog to fit their own requirements." The same can also be true of assistance cats.

[1] <https://www.equalityhumanrights.com/sites/default/files/assistance-dogs-a-guide-for-all-businesses.pdf>

Chloe travels on my shoulder, supported by a small seat positioned in front of my chest. She is safe and secure in this position and on a leash at all times. This is her safe space. She will not leave this position unless instructed to.

If Chloe did attempt to leave her position, despite her extensive training, I would feel her preparing to move and be able to prevent her from doing so. Assistance dog handlers cannot do the same. They have the leash or harness alone.

Since 20 January 2019, despite several lockdowns, I have visited several hundred venues with Chloe, including hospitals, chemists, supermarkets, cinemas, museums, art galleries, restaurants, and tourist attractions. Among the most notable venues are:

British Library, British Museum, IWM London, IWM North, National Gallery, National History Museum, National Railway Museum, Royal Academy of Arts, Science & Industry Museum, Science Museum, Tate Britain, Tate Liverpool, Tate Modern, Victoria & Albert Museum, The Beatles Story, Bethlem Museum of the Mind, Brighton Museum & Art Gallery, Bristol Aquarium, Bristol Museum & Art Gallery, Bristol Zoo Gardens, Charles Dickens Museum, City of Caves, Design Museum, Florence Nightingale Museum, Foundling Museum, Greater Manchester Police Museum, Great North Museum: Hancock, Horniman Museum, International Slavery Museum, JORVIK Viking Centre, Liverpool Beatles Museum, London Transport Museum, Merseyside Maritime Museum, M-Shed Bristol, Museum of Liverpool, Museum of London, Museum of London Docklands, Museum of the Home, Museum of Transport Greater Manchester, National Justice Museum, Royal Pavilion, Somerset House, SS Great Britain, Tower Bridge Exhibition, Wellcome Collection, York Castle Museum.

Chloe and I have also attended cinema screenings at Clapham Picturehouse, Picturehouse at FACT, Barbican Cinema, BFI Southbank, Curzon Bloomsbury, Curzon Wimbledon, and Showcase Bristol Cinema de Luxe.

During early training, Chloe led to a change in the Staybridge Suites pet policy after trial stays at Stratford and Newcastle. She is now a regular guest at Holiday Inn Bristol City Centre, Hotel Indigo Newcastle, and Holiday Inn Brighton Seafront. She has also stayed at Holiday Inn Nottingham, Holiday

Inn York, Holiday Inn Express London Gatwick, Hotel Indigo Liverpool, and Hotel Indigo Manchester Victoria.

These venues and more have recognised Chloe's training and provided the reasonable adjustments required to allow visits with Chloe. Staff at all venues have commented on her exemplary behaviour.

The rail operators Govia Thameslink Railway, GWR, LNER, Merseyrail, Metrolink, Nottingham Express Transit, and South Western Railway have also granted reasonable adjustments to allow Chloe to travel on their services in a harness and leash rather than in a carrier as the National Rail Conditions of Travel require. She has made hundreds of train journeys in this way.

Defecating/Urinating

You commented on my wording that it is 'unlikely' that Chloe would foul in a public place. The EHRC and Assistance Dogs UK use this exact wording in their publication 'Assistance dogs: A guide for all businesses.' Page 4 of the document states, "Assistance dogs are highly trained which means they... are unlikely to foul in a public place."

I have seen reports on social media of assistance dogs urinating in public places. It is rare, but it does happen. Regardless of this risk, your policy allows assistance dogs and their handlers to visit your stores. You also admit entrance to small children where the same risk exists. So, it seems you are applying a different standard to assistance cats, which is unfair.

The risk of Chloe defecating or urinating in a public place is lower than that of an assistance dog. Cats poop once a day and urinate once or twice a day. Chloe is trained to go to the toilet before leaving our home, and we return before she requires a second trip to the tray. In other words, Chloe's bladder and rectum are empty when we leave for a public place. The same isn't always true of an assistance dog.

Given that it may be possible (but unlikely) that an assistance dog may foul, I consider it responsible ownership to assume this is also possible with Chloe and use the exact wording as the EHRC. I also carry specialist cleaning materials that I have never used.

Allergies in humans

As you must be aware, as many people suffer from allergies to dogs as to cats. So, this is another issue that also applies to assistance dogs, which you say you accommodate.

Page 3, paragraph 1 of 'Information on allergies and fear of guide dogs' [2], published by Guide Dogs UK, states, "Allergies and fear of dogs are not valid reasons for denying access or refusing service to guide dog owners and other assistance dogs."

The document says that the answer is to put management procedures in place to ensure a customer or staff member with an allergy is a short distance away from the animal concerned. This is what I would expect you to do as a responsible employer, with both assistance dogs and assistance cats.

Dog and cat dander, which causes allergic disease, can be found in all public places as it is carried on pet owners' clothing. [3] While there may be more awareness of allergic disease caused by cats rather than dogs, there is evidence that this is down to difficulty clinically identifying dog allergies rather than reality. [4]

Unlike an assistance dog handler, I take steps to reduce the likelihood of Chloe triggering an allergy by treating her coat weekly with Petal Cleanse. This treatment is over 97% effective [5]). I do this through an abundance of caution. Eliminating contact should be effective, as it is with assistance dogs.

- [2] <https://www.rnib.org.uk/sites/default/files/Allergies%20and%20Fear.pdf>
[3] https://inbio.com/images/pdfs/73_Custovic_Clin_Exp_Allergy_1996.pdf [PDF] https://inbio.com/images/pdfs/84_Custovic_Clin_Exp_Allergy_1998.pdf [PDF]
[4] <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5809771/>
[5] <https://www.biolife-international.co.uk/vets-and-healthcare-providers>

Following a review by the Chief Nursing Officer and Director of Infection Prevention and Control, St George's University Hospitals allows Chloe to accompany me to all my appointments with them. I doubt they would have done this if there was a significant risk or concern regarding allergies.

Identification of an assistance animal

In your letter, you state that your store 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." You further add that your colleagues "are not (and could not be) trained to make that assessment."

Referring again to the EHRC and Assistance Dogs UK publication 'Assistance dogs: A guide for all businesses [1],' pages 4/5 state 'Most [assistance dogs] are instantly recognisable by a harness or jacket. However, the law does not require the dog to wear a harness or jacket to identify it as an assistance dog. Some, but not all assistance dog users, will carry an ID book giving information about the assistance dog and the training organisation together with other useful information. Again, this is not a legal requirement and assistance dog users should not be refused a service simply because they do not possess an ID book.'

So, this identification issue also applies to assistance dogs, which you have said you allow into your stores. Therefore, you must have some way of dealing with it.

To aid staff, Chloe's cat jacket identifies her as an assistance animal. A lead cover repeats this message and advises people not to distract her.

Indirect discrimination

Page 8, paragraph 3 of the EHRC publication 'Assistance dogs: A guide for all businesses' provides the following as an example of indirect discrimination:

"For example, a 'no dogs' policy will have a worse impact on disabled people using assistance dogs and could be indirect discrimination unless the policy can be objectively justified."

You have confirmed in your letter that Sainsbury's operates a 'no cats' policy and that it is also your policy to disallow disabled people with an assistance cat. Given that all of the issues you have mentioned also apply to assistance dogs, which you allow, I cannot see where you have objectively justified your policy. If necessary, I am happy for a judge to make this determination.

Failure to make reasonable adjustments

I do not accept that 'there is no adjustment which can reasonably be made' because all of the reasons you have provided for not doing so also apply to dogs and you already make adjustments for the handlers of assistance dogs.

Sainsbury's had two opportunities to consider my request for reasonable adjustments on its merits and in the context of the case's particular circumstances. The company failed to do so. The first was in advance of my store visit when I contacted your social media colleagues on Twitter to establish if I needed to do anything in advance of my visit. The second occasion was in the store itself. Rather than

querying my circumstances, the security officer harassed me to leave while other customers watched. My attempts to explain my situation were shouted down.

Remedy

Since being asked to leave your Clapham Common store, I have requested confirmation from your customer service colleagues that I am welcome in that store and others with my assistance animal. They have provided no assurance, presumably following the policy you have shared.

Therefore, it is my understanding, as I have stated in previous emails and tweets to Sainsbury's, that I am currently refused access to all Sainsbury's stores.

Over the past month, I have passed 20 Sainsbury's stores that I would ordinarily have visited had you not chosen to refuse my requested reasonable adjustments.

As Sainsbury's operates my local store, I must now walk further for my shopping. To do so, I must use public transport rather than walk. Consequently, I believe compensation in the middle bento band is objectively appropriate for my claim, given the ongoing nature of the discrimination.

Next steps

You state that my challenge is to Sainsbury's general policy. However, as I explained in my previous letter, I simply seek an assurance that I can access J Sainsbury plc stores accompanied by my assistance animal and will not see further difficulties of this nature. I believe this is a reasonable request and await your explanation of how you will achieve it.

Response timescale

Due to the very strict limitation period of the Equality Act 2010, I can only allow ten working days for a complete and satisfactory response from J Sainsbury plc. So, no later than 4 May 2022. If a satisfactory response is not received in this timeframe, I will issue a claim for disability discrimination without further notice.

My contact details are shown at the top of this letter.

Yours faithfully,

Ian Fenn