

To the Women and Equalities Committee: Unequal impact: Coronavirus (Covid-19) and the impact on people with protected characteristics

This written evidence is submitted by Fry Law.

1. Fry Law tackles disability discrimination cases for disabled people when accessing services. Most of our work is in the County Court and relates to consumer-based interactions between service providers and service users, although this sometimes overlaps with public services requiring Judicial Review.
2. The firm and its lawyers hold a number of Court of Appeal authorities on disability discrimination and we acted for the Claimant in the first disability discrimination Supreme Court case of FirstGroup Plc (Respondent) v Paulley (Appellant) Judgment date. 18 Jan 2017. Neutral citation number [2017] UKSC 4. Case ID. UKSC 2015/0025 relating to accessible transport.
3. The firm regularly provides pro bono support for disabled peoples' organisations and has provided legal strategies in support of various campaigns which build awareness, empower people to enforce their rights, promote access to justice and improve inclusion.
4. Much of our contact with disabled people is through social media, which is an accessible medium for people to ask questions, share experiences, and ask for help when they need it. Since the middle of March, we have experienced unprecedented demand for help, leading to a substantial rise in the number of cases we are handling. The issues we set out below are based on this experience.

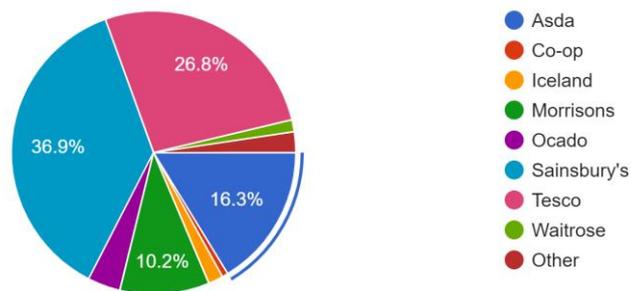
How people have been affected by the illness or the response to it?

5. Overwhelmingly disabled people who are either in isolation or are shielding are experiencing problems with accessing services remotely; typically, on-line.
6. Specifically, the impact has been greatest in accessing Supermarkets for groceries. We were contacted in mid-March by people complaining that delivery slots for their shopping were too far away and exploring whether it would be a reasonable adjustment for a supermarket to obtain that delivery more quickly than other customers on the basis that they could not leave the house to obtain their groceries independently.
7. We provided a template letter for people to download for free from our website and within one month over 350 people and organisations downloaded and shared it. 300 people having felt ignored have now instructed us to take legal action in order to enforce what we believe are their rights to reasonable adjustments.

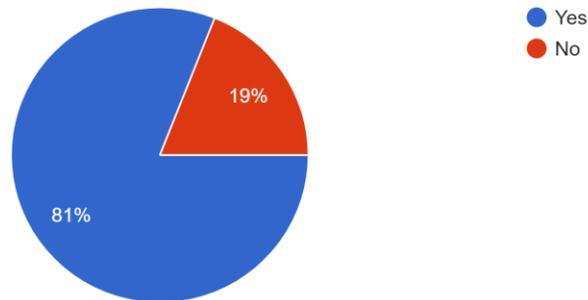
8. There are numerous issues which have arisen as a result of the intense focus on the way that supermarket services are delivered; many of the challenges would not have been taken up in pre-Corona times, because people had alternative means of accessing services.
9. For example, a Blind client of ours could fill an on-line shopping cart but not complete his shop because the website was not accessible to his screen reading technology. Ordinarily he would have just gone to his local supermarket. But now, he can't access the supermarket because he requires sighted assistance and cannot take anyone in with him. He would have no means of navigating the space, identifying how close he was to other people or see what the products he wanted to buy without a personal assistant. He has been told that Supermarket staff are too busy to do that.
10. Suddenly, the inaccessible website is much more of a problem.
11. People with Mobility Impairments and not shielding have also been affected by failures to consider their needs. Supermarkets have changed car park layouts apparently without regard for the need to prioritise disabled parking bays. Queuing systems appear not to have recognised that some people cannot stand for long periods of time. Disabled people needing assistance in-store either to communicate with staff, or for other reasons including reaching items from shelves or paying have been denied by requirements that only one person can enter at a time.
12. Disabled people who are shielding, even those who have had years of using online supermarket services and paid for weekly booking slots having been unable to access the service at all.
13. It is not safe for their families to go to the supermarkets because of the risk that they will become infected.
14. Some people with specific allergies or autistic people with dietary routines have complained that policies restricting access to no more than a limited number of products are also causing disadvantages, and distress.
15. In short, the difficulty is that supermarkets have failed to identify disabled customers and they appear not to have considered what adjustments might be necessary to accommodate them until this crisis has arisen.
16. Some appear to have set up customer service telephone lines to register for priority service, but these are clearly inaccessible to over 87,000 Deaf people for whom British Sign Language (BSL) English is their first language. In any event, these numbers lead to a recorded message advising of the need to register with the 'Clinically Vulnerable' list on the .gov website.
17. Most disabled people do not qualify for that list and we have concerns that supermarkets are confusing the legally recognised definition of disability as set out in Section 6 of the Equality Act with the very limited qualification for access as set out in that list. As a result they are leaving otherwise vulnerable people without food. Some of our clients have turned to Food Banks for support and one woman contacted us to say that she was disabled and shielding with two children and all she had in the house was dog food.

18. We are aware that the Equality & Human Rights Commission (EHRC) has written to the British Retail Consortium to express their concerns about the above. We would ask the Government to issue guidance to Supermarkets reminding them of their duty to make reasonable adjustments for disabled customers and to work with disabled peoples' organisations in finding solutions. It may be that the EHRC is able to undertake an investigation in to the way that supermarkets are treating disabled people?
19. As at the time of drafting this submission, the claims we are handling provided us with the following data:

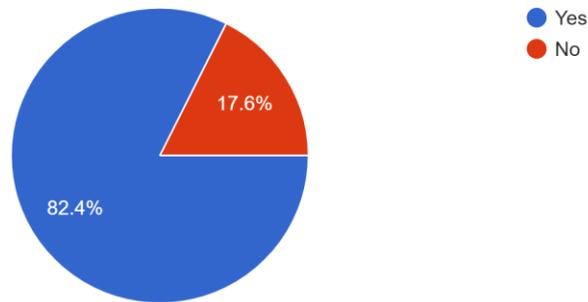
Who do you prefer to shop with?
295 responses



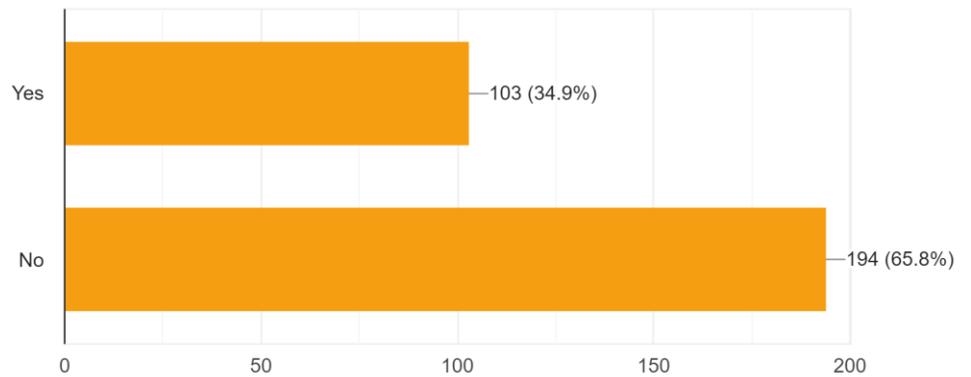
Have you ever shopped for groceries online before Covid-19 crisis?
295 responses



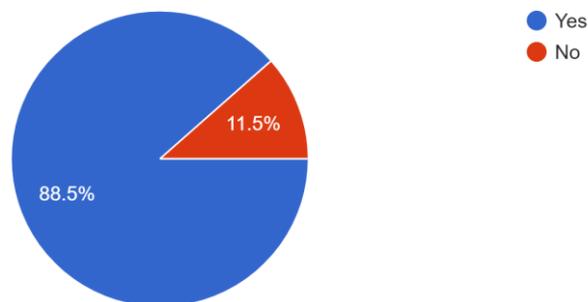
Would you consider shopping for groceries online as your preferred method in future?
295 responses



Are you signed up to the Government list of 'Clinically extremely vulnerable' people?
295 responses



Are you currently required under government guidelines to 'shield' or self-isolate for 12 weeks OR you can't physically access the supermarket without...te that this may also include issues with queuing.
295 responses



20. We are also aware of significant confusion and concern about the Government's 'Extremely Clinically Vulnerable list'.

21. Whilst we recognise that the Government created this list with the best of intentions and to assist tackling the problem with supermarkets that we have raised, there are clearly both legal and ethical issues regarding the compilation of a state-owned register of people with disabilities, what data is being disclosed, with what safeguards.
22. Firstly, with regard to the disclosure of data to 'trusted supermarkets and other suppliers', there appear to have been additions to the 'Privacy' policy at the bottom of the link for the spreadsheet since the issue was first raised by Disability Rights UK to clarify that no confidential health or care information is to be shared. However, there is no definition of 'Supermarket' or which are trusted, or why. There is no definition of 'other suppliers'. There is no indication as to how this data will be safeguarded and into whose hands it will fall.
23. Secondly, and with regard to the register itself, we are concerned that it is built on the medical model of disability by requiring as we understand it an NHS Number. As long ago as 2015 the Government Equalities Office recognised the Social Model of disability and recommended the model for use by all government departments in the way they interact with disabled people. The outdated medical model recognises people as disabled by their own impairments or medical conditions rather than being disabled by factors external to those conditions.
24. According to section 6 of the Equality Act, disability is defined as a physical or a mental condition which has a substantial and long-term impact on a person's ability to undertake normal day to day activities. Whilst we are not suggesting that everyone covered by this definition falls into the category of those who require assistance with shopping, it certainly goes beyond the list that you have set out.
25. There are 14 million people with disabilities in the UK. It is estimated that only 1.5 Million people may qualify under the 'Register' above.
26. As referenced above we are also concerned that by putting such a narrow interpretation on disability in the context of supermarkets, it is being applied in this context, which damages the socially important principles behind the equality legislation.
27. It would be helpful if the Committee could obtain confirmation as to what is to be done with this list. Many supermarkets have insurance and banking divisions, and link with many other household stores in their group structures. Disabled people have not opted into the sharing of their information for this purpose.
28. Could the Committee confirm that the list will be deleted, and set a timescale for that? Could it also identify what safeguards are in place to prevent the sharing of the data, and what involvement and guidance DEFRA and the Information Commissioner has been giving to Supermarkets in this regard?
29. In any event, the list itself appears to be of any use to disabled people who were already registered to one supermarket. We have been told by one person on that list that Sainsbury's accepted them, but Tesco did not. This does not sit comfortably with the Equality Act obligations set out above.

Access to Information

30. The Government appears to have been very poor at observing its obligations to provide information in an accessible format.
31. We have supported the 'Where is the Interpreter' Campaign set up by Lynn Stewart-Taylor which criticises the Prime Minister's Office for failure to provide 'on stage' BSL English Interpreting support for Deaf People.
32. The following daily briefings were not accessible to BSL English speakers at all:
 - 03/03/20 – The Prime Minister Set out a plan to tackle the outbreak
 - 06/03/20 – The Prime Minister Announced new funding in fight against Covid-19
 - 09/03/20 – The Prime Minister Made a further statement on Coronavirus
 - 12/03/20 - The Prime Minister Made a further statement on Coronavirus
 - 15/03/20 - The Prime Minister announced the start of daily Coronavirus briefings to keep the public informed about how to protect themselves
 - 16/03/20 - The Prime Minister announced a series of restrictions on movement
 - 17/03/20 - The Prime Minister talked about the anticipated effect on the NHS, further steps implemented, increased NHS capacity. Rishi Sunak announced £350bn fund for businesses and workers.
 - 18/03/20 - The Prime Minister explained that Schools were to be closed and gave further information about keyworkers
 - 19/03/20 - The Prime Minister encouraged unnecessary gatherings in pubs, bars and restaurants
33. At the time of drafting this submission 169 deaf people have contacted us to register support for a Judicial Review. Out of that number 68% told us that being unable to follow that information made them feel stressed and anxious, and excluded at a time when underlying levels of uncertainty, social change and anxiety were high already.
34. We are concerned that Deaf People have been considered an afterthought, which indicates that the duty to consider the need for inclusion in accordance with the Public Sector Equality duty is far from mainstream.
35. When challenged, the Government has responded by requiring the BBC to provide 'in screen' studio interpreting on the BBC News Channel only. This is in marked contrast with the First Minister of Scotland and the First Minister of Wales who ensure that BSL English Interpreters are provided at every live briefing.
36. We would like the Committee to identify why there was no BSL English Interpreting provided for the first 9 briefings at all, and why the Prime Minister is so reluctant to provide that

support now. Specifically, we are concerned that there will be information relevant to the relaxation of present restrictions which will be especially important to Deaf People and their families.

37. Blind People have also been let down by the Government. The letter from Downing Street, with a leaflet about the Coronavirus was sent in typed paper format to Blind People. This is particularly egregious where the Government knows who is Blind because they are paid benefits.
38. The Government is able to send information in alternative formats including by text message.
39. We understand that Blind people have also been asked to sign paper documents, with wet signatures for access to work forms.

Access to Justice

40. There have been very scant resources for disabled people to receive free legal advice on-line. A co-operative of lawyers has attempted to remedy that by creation of 'Disability Rights Advice TV' founded by us, and Catherine Casserley of Cloisters Chambers on a voluntary basis. We have had audiences of over 1,000 people some weeks, which indicates the demand for information. However we have concerns that access to individual support is significantly reduced as advice centres are closed or reduce their functionality.
41. We hear that Ombudsmen services are essentially paused, meaning that many important challenges cannot be resolved.
42. Our own experience is that there are now significant delays in resolutions of cases through Trials, and that in the context of disability discrimination cases where injunctive relief is requested that Claimants affected by policies and practices that they believe disadvantage them remain in force for longer.
43. We have cases listed for Trial in April which have been moved to a date not before October 2020. We would like to see the Courts (and Tribunals) re-listing cases for disability discrimination where injunctive relief is sought, as priority against other civil cases.
44. There is an opportunity for the Court Service to apply some of the innovation arising from remote working, including video conferencing to facilitate the restoration of hearings and Trials. We would urge the Court to recognise that BSL English Interpreters, and Live Captioning are available and improve accessibility. This will be particularly important for Litigants in Person and in the Small Claims Track.
45. We would also ask the Committee to note that the Limitation period for commencing proceedings in Equality Act services cases is 6 months from the date of discrimination. We have consistently argued that this is unreasonably short (compared especially to the 3 years in personal injury cases). However, given the lack of availability of legal representation and resource, and the likelihood that service providers will also be unable to respond to complaints quickly we ask the Committee to seek an extension to the Limitation period from 6 months to 1 year.

Whether there may be unforeseen consequences to measures brought in to ease the burden on frontline staff, for example relaxing the measures under the Mental Health Act and Care Act)

46. We are aware of significant concerns about the transition of disabled children with care needs approaching the age of 18 into revised assessments as ordinarily required under the Care Act, and the need for care needs to be assessed quickly as they may escalate without adequate support. Discussions on the theme were held between Baroness Jane Campbell of Surbiton, Neil Crowther, Steve Broach, Barrister at 39 Essex Street and also Mitchell Woolf, Solicitor at Scott Moncrieff Solicitors. I attach links to recordings of those discussions on the Disability Rights Advice TV platform:
- https://us02web.zoom.us/rec/share/vMpxF5jsrWFJe4Xv6HDvdocQT6m-T6a81yAdrPoFykk8TZCZR1j_VBBEASAAKQC (Password: k6*V138%)
- https://us02web.zoom.us/rec/share/xe5WBbu37GhOZ53u5F35aIE-Po_caaa82ykZ_PEOj0mDN6kQMFBiMLCch7GCK Password: 3X\$993H6
47. We have also been asked to raise concerns about the lawfulness of the “Visitor guidance” document, published on the 8th April 2020 (Publications approval reference: 001559, and found here: https://www.england.nhs.uk/coronavirus/wp-content/uploads/sites/52/2020/03/C0030_Visitor-Guidance_8-April-2020.pdf).
48. In short, there is no indication that any regard has been had to the equality of opportunity for disabled people beyond the distress of those with dementia, mental health issues and autism and inadequate regard to the impact of the decision not to allow them to be accompanied by (at least) one Care Assistant.
49. The impact of this guidance, which does not appear to have been drafted in conjunction with disabled peoples’ organisations or with due regard to the Public Sector Equality duty, is that disabled people with physical disabilities or people with communication needs will be disadvantaged, and potentially harmed by being refused a ‘plus one’ on admission to hospital.
50. Also on the subject of health, we contributed towards the letter sent by Disability Rights UK to the British Medical Association, which can be found here: <https://www.disabilityrightsuk.org/news/2020/april/covid-19-and-rights-disabled-people> and which raised concerns that disabled people might not receive treatment.

Summary

51. In conclusion, our concern as evidenced by the substantial surge in demand for help experienced at Fry Law in the first month of Covid-19 is that decisions are being taken quickly without adequate consideration of the duties to make reasonable adjustments to avoid disadvantage to disabled people. It is important that these obligations are recognised as being important to the health of disabled people as well as necessary for mainstream inclusion.
52. Government should be leading by example, and also issuing strong guidance to the service sector, in particular to Supermarkets to ensure that their Equality obligations are revisited.

Author:

Christopher Fry
Fry Law
Globe Works
Kelham Island
Sheffield
S6 3AE

chris.fry@frylaw.co.uk

Dated: 30/04/2020