

## Inclusive Services and Public Functions: Remembering the Equality Act 2010

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Catalina Devandas Aguilar, the UN Special Rapporteur on the Rights of Persons with Disabilities) has [recently said](#):

“COVID-19 is hitting hard in our community, feeding on and deepening the historical and structural discrimination against people with disabilities. Governments must act fast to guarantee that all COVID-19 responses are accessible, and disability-inclusive.”

Disability-inclusive responses to emergency situations, including pandemics, are required by [Article 11 of the United Nations Convention on the Rights of Persons with Disabilities](#).

Closer to home, the All-Party Parliamentary Group on Disability has sent a [letter to Boris Johnson](#), stressing that the government's responses to COVID-19 must be disability-inclusive and urging the government to do much more to ensure this. The Equality Act 2010 includes important duties which can help drive disability-inclusive responses to the COVID-19 situation. Importantly, the Coronavirus Act 2020 has not rolled these obligations back – so Equality Act duties still apply in full force.

Relevant obligations under the Equality Act include the [Public Sector Equality Duty](#) (PSED) which requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between disabled and non-disabled people. This is a process rather than an outcome duty – regulating what should be taken into account when decisions are made, but not the ultimate outcome or content of those decisions. Process is extremely important, however, and taking disability equality into account when decisions are made will change very many outcomes.

Another important Equality Act duty is the [reasonable adjustment duty](#) – the duty to take reasonable steps to ensure that disabled people are not subjected to any disadvantage because of physical features; provisions, criteria or practices; or the failure of a duty-bearer to provide some kind of aid or service. In the employment context, these reasonable adjustment duties are entirely reactive, in that they require responses to remove a potential disadvantage encountered by a specific individual. In the provision of services and public functions, however, they have a strong anticipatory element. They are owed to disabled people generally and need to be carried out regardless of whether any particular individual has requested an adjustment or encountered a problem. They impose a duty on providers of services and public functions to continuously anticipate what barriers their actions, their decisions, their policies, their practices and their physical space and features may have for different groups of disabled people, and to take such steps as are reasonable to ensure that disabled people are not actually disadvantaged. They thus carry obligations of process and also obligations of outcome or content – and failure to comply amounts to disability discrimination.

During the lockdown phase of this crisis, disabled people have turned to the anticipatory reasonable adjustment duty as a means of bringing legal action against the government and others for disadvantage they have experienced. One example concerns the [accessibility of the televised government coronavirus briefings which, for many weeks, did not have live sign language interpretation](#). A discrimination case, based on these facts, is currently being brought by about 300 sign language users. Another example concerns supermarkets and access to food. Many shops seem to have understood the ‘extremely vulnerable’ [list so as to alleviate themselves of duties to make](#)

[adjustments for people not on that list](#). This meant that, contrary to the anticipatory reasonable adjustment duty, some shops did not take steps to adjust their COVID-related policies and practices in order to minimise wholly predictable types of disadvantage for disabled people. For example, websites were sometimes inaccessible or difficult for disabled people (for example, with visual impairments) to use, but no phone option was provided as an alternative. Queuing can be extremely difficult for disabled people who cannot stand for long, but frequently no seats were provided. Many disabled people need assistance in identifying and locating items, but policies preventing more than one person entering a shop at a time meant they could not be accompanied and assisted by a member of their own household or carer with whom they already had regular contact. On the basis of facts such as these, disabled people have again come forward in their hundreds to bring cases of disability discrimination against supermarkets.

These cases are very significant. This is partly because of the numbers involved – they are the first major disability discrimination class actions in the UK. They are also important because they heighten the profile of the Equality Act’s proactive duties and their requirement for government and for providers of services to take disabled people into account in their responses to the Coronavirus Crisis. The purpose of the Equality Act is not just to provide successful claimants with damages for breach. It is to drive systemic change and to ensure that we as a society become more rather than less inclusive.

Equality Act obligations, such as the PSED and the anticipatory reasonable adjustment duty, must be at the heart of plans for the lifting of lockdown and longer-term management of the pandemic in the UK. We must remember that the anticipatory reasonable adjustment duty applies not just to public bodies, but to any provider of services to the public. Providers of services and public functions must anticipate how their plans to reduce the rate of infection might disadvantage disabled people, and take reasonable steps to avoid or minimise these problems. Do possible one-way physically-distanced systems mean using routes which are not step-free – and, if so, would there be alternative routes or could the steps be removed? Will those routes be navigable for people who cannot see visual markings, and are there things that could be done to provide greater clarity to visually impaired people? Is there a risk that requiring the wearing of face masks could prevent people with hearing impairments lip-reading – and, if so, could transparent masks be required at least for staff in public-facing roles? These are the types of question that the Equality Act duties require providers of services and public functions to address. How they do so will be critical to the inclusion of disabled people in the months and years to come.

#### **Recommendations:**

- 1. Government should comply with the Equality Act’s proactive duties to consider the disability impact of its COVID-related policies and practices**, and to anticipate and take steps to avoid or mitigate any potential disadvantage which might otherwise be caused to disabled people.
- 1. Government should work with disabled people’s organisations and the Equality and Human Rights Commission to produce authoritative guidance for providers of services and public functions on ensuring that infection-reduction policies and practices are developed and implemented in ways that do not disadvantage or exclude disabled people, in line with the UN’s [Disability-Inclusive Response to COVID-19](#).**
- 2. Government should implement recommendations made by [the 2016 House of Lords Select Committee Report on the Equality Act 2010 and Disability](#), and by the [Women and Equalities Committee](#)**, on enhancing the enforcement of the Equality Act 2010, both by removing deterrents to individuals bringing disability discrimination cases; and by measures which embed the monitoring and enforcement of relevant duties in the work of regulatory and inspection bodies.