**SCOTTISH GROCERS’ FEDERATION**

**RETAIL SECTOR GUIDANCE ON THE PUBLIC USE OF FACE COVERINGS**

A number of members have received emails from lawyers representing disgruntled customers claiming harassment after retailers asked customers to leave premises when they were not wearing face coverings.

There is a potential remedy under the provision of goods and services section of the Equality Act 2010 for a customer to claim disability discrimination where they are refused service and are able to demonstrate that they have chosen not to wear a mask because of an underlying disability.

A customer might be able to claim that by being refused serviced they have been treated less favourably and potentially subject to harassment because of disability. It is quite a remote claim, meaning that it does not carry particularly high value but it is clear that lawyers are trying to position this claim even if it is just to secure settlement from retailers rather than actually raising litigation.

The Scottish Government guidance is accessible under the two links attached below:

[**https://www.gov.scot/publications/coronavirus-covid-19-retail-sector-guidance/pages/workforce-planning/#PPE**](https://protect-eu.mimecast.com/s/evSCCERWMI0zDOpFNPMAU)

[**https://www.gov.scot/publications/coronavirus-covid-19-public-use-of-face-coverings/#Enforcement%20measures%20for%20failing%20to%20comply**](https://protect-eu.mimecast.com/s/l3nwCG6WOcOPMEAc7rc-i)

The guidance notes state that “people responsible for relevant premises where face coverings are required should take reasonable steps to promote compliance with the law”. It is important to note that retailers cannot demand that an individual customer produce some form of exemption certificate. The choice to carry an exemption certificate is the individual customer’s and there is no legal obligation upon them to do so. It follows that if a customer chooses not to wear a mask and they say they are exempt from wearing a mask, there is not a way to challenge them. It is the individual’s responsibility and consequently enforcement does not rest with the retailer but rather the police.

The best risk management tool here is to train staff that if somebody does not wear a mask they cannot be refused service. It follows that it is quite difficult to actually challenge a customer who is refusing to wear a mask.

The remedy for this type of disability treatment, if indeed that could be made out is an injury to feelings award which might be in the region of £200 to £500 per customer. There would be a number of obstacles to an individual customer raising this claim not least the question of how the retailer could know that the person was disabled. Clearly disability discrimination can only arise in circumstances where there is actual or constructive knowledge of that disability status. Again, that is why these claims seem quite remote but you should be aware that there are such risks.

In terms of managing this risk, staff should be trained in the regulations as detailed above. Evidently, there will be health and safety considerations and staff are perfectly entitled to ask someone why they are not wearing a mask. However, staff should not refuse to serve a customer where they are not wearing a mask as there might be some form of underlying disability and a potential for disability claims to follow.

Evidently, the Government guidance may be subject to change, in which case we will update this advice note.