



Decision

Child's Name: The child
Date of Birth: 2005
Claim of: Parents
Date of hearing: 2021

Persons Present: *LA Representative (A)*
LA Representative (B)

1. The parents have sought to bring a claim for disability discrimination under the Equality Act 2010 in respect of their child.
2. This case has been considered by a full tribunal panel at a case management hearing today to clarify the details of how the parents put the claim and to consider, following that clarification, whether the case should be heard at a full hearing.
3. The parents represented themselves today, with the father taking the lead. The school was represented by LA Representative (A) and LA Representative (B) who appeared on behalf of the local authority, who have a care order in respect of the child. Each of them has made submissions to us, and we are grateful for their assistance.
4. In addition to the submissions we have heard, we have read in full the bundle of papers, although some of the copied hand writing was difficult to make out. In reaching our decision we have considered all the evidence we have read and heard, the Equality Act 2010 the Code of Practice.
5. Clarification has previously been sought of the parent's case by way of directions issued in June 2021. We note that in the school's Case Statement they have written, "we are unable to ascertain the precise nature of the claim." Despite the response we have received to those directions, it was still difficult to understand quite how this claim was put, and so today's case management hearing was arranged. The remedy sought by the parents was clarified, however, in that they wish the exclusion of the child in April 2021 to be expunged from the child's school records.
6. **History –** The child is currently 15 years of age and will shortly be 16. The child lives with their parents and attends at a High School.
7. In April 2021 the child was excluded from school for a period of seven days as a result of an incident on that date. In April it appears the precursor to this

incident occurred. In April a football was kicked so that it hit the child in the face. This made the child angry, and they attempted to hit the child who kicked the ball but failed to do so. The school's description of the incident on that date in April is as follows:

“At approximately 1059 hours on a date in April, the child started a fight with another child in the yr 7 bubble. They pursued the other child around the yr 7 bubble for around 2 minutes throwing the odd punch. The other child adopted a defensive boxer's stance and threw the odd 'jab' to defend themselves whilst continually walking backwards in an effort to get away from the child. The child persisted with walking towards the other child causing the other child to walk under the covered walk way by the Hall. When the other child turned their back to walk away, the child attacked the other child from behind. The head master then intervened, but the child persisted by throwing punches and kicking out despite being restrained by the Head. No injury's sustained by either party. All details captured on CCTV - Old system camera from 1101 and new system Camera 5 from 1059 hours.”

8. The Child's account is as follows:

“April” Yesterday lunch break I was outside and the child kicked the ball in my face and then I got mad and tried to throw a punch at them and failed save for the child then threw me into a bench and I tried to get up and run at the child but failed because I had pulled a muscle in my leg and then the fight was broke up by a teacher and that was the end of it for yesterday.

“April – the following day”. Today I came into school and thought hey let's have a fight and I waited outside trying to jump the other child and it failed and then the other child backed up and I kept following them and in the end, it was nothing more than a massive embarrassment and then that's when the teacher intervened.”

9. We note that the school's description is taken following viewing of the CCTV footage, and therefore should be reasonably accurate, and that it in fact tallies with what the child has written. Accordingly, the incident in April was premeditated with the child being the aggressor and not desisting despite the other child backing away and did not desist even when the headteacher intervened.
10. It was because of the incident in April that the child was excluded. When advised that the child was at risk of permanent exclusion the child's response was to make threats to publicly strangle the other child with a chain.
11. **Date of the Claim** – Within the application the parents refer to a date in March 2021 as the date when discrimination occurred. They were asked why this date was significant, given that there is nothing in the papers elsewhere to identify its significance. After some consideration, they told us that they believed this was the date that the child commenced some new medication. Otherwise, the date does not appear to be significant.

12. **Disability** – The first point that must be established in any claim for disability discrimination is that the individual concerned has a disability. The earliest reference we have in the papers to the issue of disability is in a letter by a Doctor dated the February 2021. This was sent to the child’s GP and was copied to the parents and social worker, but not to the school. This was a review appointment and so clearly the child had seen the Doctor previously, but we do not know when. The diagnosis is given as “*Low mood, OCD, Family relationship difficulty, challenging behaviour, ADD.*” In relation to how this diagnosis affected the child at school we note the following is recorded:

“Recently in school the child said that they were getting into trouble a lot for minor issues such as talking and messing around in class. We had some ADHD rating scales back. It is clear that the child is not overly hyperactive, but it does highlight some issues with ADD....”

The child was not keen to attempt a trial of medication for their ADHD because they said they were concerned about the potential side-effects. The Doctor considered that they did not really wish to seek assistance to change. It is also noted that the child was having significant difficulties with their sleep pattern at the time as they were using their mother’s phone late into the night.

13. We also note the contents of a further letter from the Doctor dated June 2021. This letter refers to aggression in school, but has not attributed it specifically to any disability, as follows:

“The child has been a little more settled in some ways, the child says their OCD is far better and this was confirmed by their Parent, and they have not had the aggressive problems they have had in the past at school.”

This letter was not shared with the school either.

14. Given the complexity of the child’s diagnosis, and the consequent difficulty in attributing any behaviour to a specific element of it, we asked the parents what they relied upon in terms of the child’s disability for the purposes of this claim. The Parent’s answer was as follows:

“Not of sound mind due to compounding medications”

15. The parents were clear that the child’s difficulties in April resulted from the fairly recent change in their medication leading to a change in their behaviour. They told us that soon afterwards they stopped taking the additional medication, but we do not know precisely when this was.

16. **The Law** – Section 6 of the equality act 2010 defines disability as follows:

“Disability

(1)A person (P) has a disability if—

(a)P has a physical or mental impairment, and

(b)the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.”

17. The definition is expanded upon in schedule one as follows:

“The effect of an impairment is long-term if—

(a)it has lasted for at least 12 months,

(b)it is likely to last for at least 12 months, or

(c)it is likely to last for the rest of the life of the person affected.”

18. Upon the information provided to us by the parents, the child's behaviour on the date in April is not related to a disability that comes within the above definition. They were clear that the position was a temporary one due to a change in their medication, and it appears to have lasted at most for a period of a few weeks. It cannot therefore be described as long-term. As the child cannot be shown to have a disability within the meaning of the Act this claim must fail.

19. For the sake of completeness, we have also considered some other issues as set out below.

20.Connection to the child's Medication – Both in their written documentation and today the parents have confirmed that they consider the child's behaviour was caused by the additional medication that had been prescribed for the child. They accepted that they had no expert evidence to support this conclusion and that it had been derived largely from reading about the possible side effects of the medication in the leaflet that accompanied it. We were told that the child had been shown the leaflet and considered that several of the side-effects were suffered by them. We were not given any other information about how these side-effects had manifested themselves prior to the date in April. The parents confirmed that they had no intention to call the psychiatrist at the hearing.

21. We do not regard this evidence as capable of establishing a link between any changes in the child's behaviour and the medication that the child was taking. It amounts to little more than supposition on the part of the child and the parents, and to succeed in establishing an evidential link expert evidence would be required.

22. **School's Knowledge of the Disability** –The Parent told us that on a morning in April at 8:30 am they telephoned the school indicating that the child was having some difficulties because of the medication. This appears to be

reference to some misbehaviour on the school bus the night before on the way home. We note that in a meeting in May 2021 the Parent asked that school staff should sensitively be made aware of the child's medical conditions. This of course postdates the relevant incident.

23. It is not clear from the papers that the school were aware of the child's diagnosis, and neither was this asserted by the parents. They relied upon the telephone call in April alone. Aside from the issue of the ability of the school to assimilate this information in such a short period of time, it is difficult to see how the school could have in anyway deliberately discriminated against the child under the Act if it was unaware of the disability: and this would provide a defence under some sections of the Act.
24. Further, given the premeditated nature of the attack by the child, it is difficult to see how the child has been treated in anyway unfavourably in our view in respect of the exclusion. This was clearly not the child's emotions getting the better of them on the spur of the moment. It is therefore difficult to see how it can be attributable to any of the diagnosis set out above, and difficult to see therefore why any additional allowances should be made for them in terms of the exclusion imposed.
25. **The Regulations** – The Tribunal has the power to strike out a Claim under Regulation 29, as below and has at all times to apply the overriding objective:

Power to strike out the appeal or claim

29.—(1) The Secretary of the Tribunal must, at any stage of the appeal or claim if the local authority or the responsible body applies, or the President or the tribunal panel so directs, serve a notice on the appellant or the claimant stating that it has been proposed that the whole or part of the appeal or the claim should be struck out on one of the grounds specified in paragraph (2) or for want of prosecution.

(2) The grounds referred to in paragraph (1) are that the appeal or the claim—

(a) is made otherwise than in accordance with these Regulations;

(b) is not, or is no longer, within the jurisdiction of the Tribunal;

(c) discloses no reasonable grounds;

(d) is an abuse of the Tribunal's process.

(3) The notice under paragraph (1) must invite the appellant or the claimant to make representations.

(4) For the purposes of this regulation—

(a) a notice inviting representations must inform the appellant or the claimant that the appellant or the claimant may, within a period (no less than 5

working days) specified in the notice, either make written representations or request an opportunity to make oral representations;

(b) representations are made if—

(i) in the case of written representations, they are made within the specified period; and

(ii) in the case of oral representations, the party proposing to make them has requested an opportunity to do so within the specified period.

(5) The President or the tribunal panel may, after considering any representations made by the appellant or the claimant, order that the whole or part of the appeal or the claim is struck out on one of the grounds specified in paragraph (2) or for want of prosecution.

(6) An order under paragraph (5) may be made without holding a hearing unless the appellant or the claimant requests the opportunity to make oral representations.

(7) If oral representations are made in accordance with paragraph (6), the President or the tribunal panel may consider the oral representations at the beginning of the hearing of the substantive appeal or claim.

(8) If the whole of an appeal application or a claim application is struck out under paragraph (5) the proceedings to which the appeal or claim relates are deemed to be concluded.

The overriding objective

6.—(1) The overriding objective of these Regulations is to enable the President or the tribunal panel to deal with appeals and claims fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the appeal or the claim in ways which are proportionate to the importance of the case and the complexity of the issues;

(b) avoiding, as far as the President or the tribunal panel considers appropriate, unnecessary formality in the proceedings under these Regulations;

(c) ensuring, so far as practicable, that the parties are on an equal footing procedurally and are able to participate fully in the proceedings, including facilitating any party to present any appeal or claim without advocating the course the party should take;

(d) using the special expertise of the President or the tribunal panel effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The President or the tribunal panel must seek to give effect to the overriding objective of these Regulations when the President or the tribunal panel—

(a) exercises any function under these Regulations; or

(b) interprets any regulation.

(4) In particular, the President or the tribunal panel must manage appeals and claims actively in accordance with the overriding objective of these Regulations.

26. Applying the overriding objective to this claim it appears to the tribunal panel that it would not be necessary for a full hearing to take place for the issues to be resolved and they can be fairly and justly dealt with by allowing the parents an opportunity to make submissions as to why the case should not be struck out, should they wish to do so.

26. **Conclusion** - It appears that there are no reasonable grounds made out for this claim to continue. If there are none it should not be permitted to proceed, and the claim will come to an end after it is struck out. The Regulations require an opportunity to be given to the parents to make submissions as to why the claim should not be struck out and directions are given below to provide them with this opportunity.

Order

1. The Secretary of the Tribunal must serve a notice on the parents stating that it has been proposed that the whole of the claim should be struck out on one of the grounds specified in paragraph (2), namely (c), that it discloses no reasonable grounds.
2. The parents shall either make written representations indicating why the claim should not be struck out or request an opportunity to make oral representations to say why it should not be struck out, by 4 pm on a date in October 2021.
3. After considering any oral or written submissions the Tribunal Panel will consider whether the claim should be struck out after the date in October 2021.

Dated September 2021