



## **DECISION**

**Date of Birth:** 2007  
**Claim of:** The Parent  
**Against:** The Governing Body of the School  
**Date of hearing:** 2022  
**Persons present:** The Parent *Parent*  
The Parent *Second Parent*  
The RB Counsel *Counsel*  
The RB Solicitor *Solicitor*  
The RB Witness *Head Teacher*  
The RB Witness *Assistant Head Teacher*

### Introduction

1. The Child was born in 2007. They live with their parent where they attend Secondary School. This is a claim by the child's parent that the Child has been discriminated against because of their disability. In their original claim form, the parent refers to a number of incidents in which they say the actions of the school amounted to unlawful discrimination. By virtue of the order of 21.7.21 the responsible body was ordered to file witness statements from any member of staff who was directly involved with the matters complained of since the incident in April 21, along with any contemporaneous or other documents related to those incidents.
2. By the time the evidence was prepared a further incident had occurred which involved potential danger to other children in the school and we indicated at the start of the hearing that we would consider that incident along with the four most recent incidents set out in the claim form as the factual basis for our decision. The responsible body had headed the incidents in their documentation, and we shall use those headings for convenience within this decision. They were:  
  
The bin incident, 16.4.21  
The restorative conversation, 21.4.21  
The ball incident, 4.5.21  
The toilet incident, 10.5.21  
The scissors incident, 21.5.21
3. From the papers it was plain that these incidents are illustrative of a history of disciplinary infractions, which for any child would involve some form of guidance, correction or punishment. That entire history is not something in respect of which we will make express findings, as to do so would be a disproportionate use of time and resources, nevertheless, it is still an important backdrop to the claim, and we bear in mind that the child's parents and the school have had differences of opinion going back some time. The child's parents made plain in preliminary comments that they have been concerned about a pattern of incidents which they described as traumatic for the child. The Second Parent said that in respect of that history, the school have closed ranks. The Parent also made reference to witnesses' hands being

tied. Although we did not probe those comments at that point, it became clear from some of the Parent's questions and evidence throughout the hearing, that they regard the actions of the school staff as being tainted by some form of dishonesty or improper motive. The same can be seen within the correspondence in the bundle. The second Parent attended the hearing for only a very short period, but even her comment points to some form of dishonesty, as her words can carry only one meaning, namely that members of staff are attempting to hide or deny the truth of what has happened. This is something we will return to in due course.

4. In total we had statements from six members of staff and a wealth of documentary material. We had a detailed picture of all of the incidents with which we were concerned. The directions order of 21.7.21 had made plain that, from the information that was available at that time, it was clear that there was a factual dispute which would have to be determined before we could go on to consider the question of discrimination. We referred the parent to the directions order and emphasised to them the importance of clear findings of fact. We invited them to clarify whether they accepted the factual evidence provided by the school or whether they disputed it. The parent told us that they disputed the facts presented by the school and that they wanted to call the child to give evidence. After some discussion we stood the matter down to give the parent the opportunity to consider carefully with the second Parent, whether they wanted to make an application for the child to be permitted to give evidence.
5. When we reconvened, the parent indicated that they did not wish to make an application to call the child, and they also informed us that the child's second Parent, who had been present by telephone, had left the hearing and would not be attending. The parent recognised that there was no evidence in the bundle to which they could point as being supportive of the version of events given to them by the child, however they indicated that their case on the facts would rely on the internal contradictions within the evidence from the school.
6. We pause at this point to emphasise that we did all we could to enable the parent to put their case, which included breaks for them to give thought to what they had heard. On a number of occasions, they asked for direct guidance, which we were unable to give. To do so would have crossed the line, as set out in the overriding objective (Reg. 6(1)(c)), which makes plain that we must not advocate the particular course that any party should take. At one point, having been asked whether they had finished asking questions of the witnesses, the parent expressed the view, and not for the first time, that it was for us to decide if we had heard enough, and it was almost impossible to get an answer from them, so much so that the case was stood down and they were invited to consider their position carefully and then to give a direct yes or no answer to that particular question. On re-convening they were still hesitant in their answer but told us that they did have further questions, and those matters were dealt with. When they had finished, we were then satisfied that there were no matters outstanding which the parent wanted to raise with any of the witnesses.
7. During the hearing, the parent's vacillation was noteworthy, for example, in respect of the scissor's incident, at the close of day one of the hearing they told us that the child's exclusion was improper, but when asked about it by Counsel on the second day, said *"I have no problem at all with the sanction*

for this". Their straightforward answer was in stark contrast to their general approach when asked to be clear what their case was. More than once, they were asked, but were unwilling to say in simple terms, whether or not they accepted as true, what was said by the members of staff in relation to the facts of the incidents.

8. As we record below, the parent did make some concessions in respect of the facts of the case nevertheless we are satisfied that it is necessary for us to take a detailed approach to our findings. The parent makes serious allegations in their claim, including direct discrimination, a stated disregard for the child's disability in favour of punitive methods, and disability related harassment. In the circumstances we propose to make clear findings of fact in respect of the incidents under consideration, and then go on to ask ourselves whether there has been discrimination.

#### The bin incident

9. There was a considerable amount of detail available to us in respect of this incident. It was difficult to know whether the parent challenged the veracity of any of the witnesses in respect of the facts. When asked if they accepted what was said by the Head Teacher of the School, their response was that "*there are errors and omissions*". Counsel later asked them where those errors were and again without answering properly, they simply said "*there are elements in issue*". Counsel asked the Parent whether they accepted that the child may have given an inaccurate account of events to them in order to downplay what they had done, knowing it was wrong. The parent said yes. At this point Counsel asked him whether there was any reason why the school should lie and then asked them were they suggesting that the school was in fact lying. Again the parent declined to give a straightforward answer and simply said "*I wasn't there*". Pressed by Counsel, who asked was there any evidence that the school might have a reason to lie, the parent said no.
10. When the teacher approached the child near to the bins they told him that they would be in detention. This was the subject of correspondence between the parent and the school and indeed was one of the matters complained of in the parent's claim. The parent questioned the Head Teacher of the School as to whether the giving of a detention was the cause of the child becoming anxious and they were clear to us that in their view, the use of the word 'detention' was in itself discriminatory. The Head Teacher of the School accepted that the choice of words wasn't the wisest. They recognised that the teacher regretted saying it and could only suggest that it was possible it would cause a response, but it is helpful to look at the detail of the bin incident in the teacher's statement (p670).
11. The teacher made his way towards the child as soon as they had seen them on the bins and it was whilst they were with the child and another teacher, near the entrance to the block, that the teacher told the child they would be in detention (p551). They then walked back to the classroom. There is no indication of any misbehaviour or agitated reaction on the child's part despite having been told what was to happen. There was very little of the child's lunch break left and the teacher then gave the lesson. There is no mention in the teacher's statement, nor his contemporaneous note (p676) of any misbehaviour or reaction from the child during the lesson. At the end of the lesson the teacher asked the child to stay for detention. The other pupils left the classroom and the child was given some paper to keep them busy with doodling. There was still no misbehaviour or agitation from the child despite

them being the only pupil left in the room and believing that they were being kept behind for detention. It was only when the teacher asked the child to walk up to room 2 that there was any sign of agitation and then at that point the child started swearing at the teacher. The teacher left the child in the supervision of two other teachers and went to report the matter to the head of year. When the head of year arrived in the room they found the child to be agitated and frantically pacing up and down and whilst we are not told what they said to the head of year they described it as “*what appeared to be a conjured up story where they weren’t at fault*”. The child then calmed down (p665). To be clear, we confirm that we accept the evidence of the teacher and the head of year in respect of this incident.

12. We are not satisfied that this was an episode of dysregulation beyond the child’s control. They had been caught out doing something they knew they shouldn’t and was well aware of what was going to happen even before the start of the lesson. It was only when the teacher asked them to walk with them to Room 2 that the child became abusive. When the head of year entered the room they were not met by a child who, in words the parent is given to using, loses cognition during periods of dysregulation. They were met by a child who gave them a conjured up, exculpatory explanation for what they had been up to, after which they were immediately calm. After the incident, the child strongly denied to his parent that they had been dysregulated (p551) and we agree. It is more likely that this was an episode of behaviour, over just a few minutes in total, which was a deliberate choice on the child’s part to avoid responsibility for their actions. Their use of bad language to the teacher to bring the process of accountability to an abrupt end, is unsurprising. The parent said in an e-mail dealing with the bin incident:

*“I continue to be bemused by why it is such a huge deal for teachers to be sworn at that it requires a child to be excluded .... Again, I would like to remind you that children that assault other children have received a lesser punishment in this school. That very fact strongly suggests that perhaps in a rather draconian and somewhat misguided manner the Head teacher wishes for teachers to carry (or feel they carry) an elevated status to children because of the power they hold over them. They do not” (p552)*

13. We remind ourselves at this point of the evidence of the Assistant Head Teacher, whose aim with the child is to teach them resilience, to enable them to face up to their responsibilities. This incident illustrates just how important that process is.
14. We accept the evidence of the school in respect of this incident, and further, we are satisfied that the teacher did not cause the child’s anxiety. The first mention of detention is too remote from the abusive behaviour.
15. We were concerned that the parent was anxious to deflect our attention away from the child’s behaviour and how it was managed, and onto the more general point about the wisdom or otherwise of leaving the bins area open. They seemed to want to make much of the fact that the school now keeps the bin enclosure locked even though for quite some time, it had been left open for ease of use. Counsel asked the parent whether he thought the child knew that they were not allowed to climb onto the bins. They couldn’t say,

and then went on to tell us that the child *“has low impulse control, and in survival mode, brain information doesn't exist”*.

16. We are in no doubt that the child understood that they are not permitted in the bin area and that they should not be climbing on top of them. Their Statement of Special Educational Needs merits citing verbatim, as it demonstrates, and unarguably so in our view, that the child does not have a cognitive deficit which would be any kind of barrier to them understanding what is expected of their behaviour in school

*“Psychological psychometric assessment suggests that the child's cognitive skills are below average. A breakdown of their scores shows that their non verbal skills are within the average range. Their processing speed is well above average and they have a stronger visual memory than an auditory one. Interestingly the educational and child psychologist notes that the child's school performance is significantly better so it is possible that their cognitive ability may actually be higher.”* (p.786)

17. Our focus was on the child's reaction to being admonished and how the school managed that. The child's decision to climb on the bins was not caused by the bin compound being open. We are satisfied it was something they simply chose to do, knowing that they ought not to do it.

#### The restorative conversation

18. In their claim and in an email sent to the Assistant Head Teacher on the afternoon of the restorative conversation (p51) the parent makes four allegations against the Acting Head Teacher
  - a. That they became obviously agitated during the conversation
  - b. That they raised their voice
  - c. That at one point their demeanour was one of anger
  - d. That they called after the child as they walked away  
*“There will be consequences for this”*
19. Before the Assistant Head Teacher gave evidence about this, the parent was asked whether they accepted the Assistant Head Teacher's description of events as being true. They said no, and it was impressed upon them that they must put their case clearly to the Assistant Head Teacher in respect of that, to enable them to respond. After a considerable pause, the parent indicated that there were no issues of fact arising from this incident. When questioned later by Counsel they confirmed that they accepted what the Assistant Head Teacher had said about the events of the conversation.
20. For the avoidance of doubt, we accept what the Assistant Head Teacher wrote and said about the sequence of events at the restorative conversation and we reject the allegations made in writing by the parent, in accordance with their concessions.

#### The ball incident

21. In their original claim the parent said that the child and a friend found a football on the roof of a building and somehow managed to fetch it down. (p17). They claim that they were playing with the ball in the Year 8 court and

then some Year 9 children in the next court claimed it was theirs. They go on to say that the teacher, who was called by the year 9 children, without any investigation, assumed that the ball belonged to them and told them to give it back. The parent accepted that the child had told the teacher that the ball was not theirs, although they claimed it did not belong to the Year 9 children either.

The case the parent put to the Head Teacher was different. They allege that the child's friends already had the ball in the Year 8 court when the child arrived there and that they simply joined in the playing. The child was adamant that the Head Teacher, earlier in his evidence, had said that they did not know who the ball belonged to. They were reminded of what the Head Teacher had actually said, which was that they had subsequently established that the ball did belong to a year 9 pupil but that at the time of the incident they knew that the ball did not belong to the child because the teacher had told them that the ball had come over the fence from the Year 9 play area into the Year 8 play area, the Year 9 pupils asked for it back and the child refused, although eventually they kicked the ball back into the Year 9 yard when the Head Teacher asked for it.

22. The parent told us that they could not dispute the teacher's version of events but pointed out that it was hearsay. They are correct in that, but we have to take account of their duty of candour as a member of school staff reporting a playground incident to the head teacher and we have to ask ourselves what reason would they have to be in any way dishonest. There isn't one.

23. Which brings us onto the dispute in relation to the Head Teacher's actions immediately thereafter. The Head Teacher told us that they asked the child to come with them so that they could talk quietly. They said the child was repeatedly swearing and they described the teacher as upset. The Head Teacher told us that they were calm in their manner and that their intention was to move the child away from his peers. They were concerned to prevent any further agitation in the child., An LSA, who was also present, tried to engage the child in order to maintain calm. The Head Teacher told us that they would walk on a little and the child would follow behind and then catch up and they would continue. The Head Teacher was conscious of the child's demeanour and said that they quietly and clearly explained to the child that they wanted to find an empty room for them to have a chat and that the LSA would be there. They never got to a room as the child walked off.
24. We were concerned that at this point the parent accused the Head Teacher of simply toying with the child. The Head Teacher denied that, and repeated that their intention was to find an empty room to talk with the child calmly. They also denied, as was put to him by the parent, that the whole purpose of their actions throughout the incident was simply to show others that they were in control.
25. The parent's allegation that a head teacher would toy with a child with special educational needs during an incident of misbehaviour in front of other pupils is an extremely serious matter as it goes beyond a mere allegation of poor professional judgement and into deliberate choice and improper motive. We expressly reject as wholly without evidential basis, any suggestion that the Head Teacher was toying with the child or that they were motivated by anything other than speaking to the child in private about their behaviour.
26. In respect of the facts of this incident, we accept the Head Teacher's evidence, and that includes what was reported to him by the teacher.

#### The toilet incident

27. With their original application the parent had included a number of documents one of which was an email from the Assistant Head Teacher dated 11.5.21. In that email they set out the school's view of events that day when the child had been involved in

an incident in the toilets. They and others had thrown water and paper towels around on the floor creating a hazard. The Assistant Head Teacher indicated that they were satisfied that the child was involved in that incident. In their reply later that day, the parent said that the child maintained that the mess had been created before they entered the toilets.

28. When the Head Teacher was giving evidence on the first day of the hearing and we were about to hear about the toilet incident, the parent told us that they agreed with the Assistant Head of Year's actions.
29. Counsel referred the parent to their email of 11.5.21 and also to the note in the school's record of occurrences, and asked whether they still disputed what was said. The parent accepted that the child was involved in the incident, although they limited that involvement to turning a tap on. Toilet paper was used to block sinks and the toilets had to be closed until the school could arrange for cleaning services.
30. We accept the evidence of the school in relation to this matter.

#### The scissors incident

31. This incident was referred to in the statement of the Head Teacher. We also had the contemporaneous note (p592). The parent told us that they were well aware of the incident and in fact had discussed it with the child. The parent put to the Head Teacher that the child had made sure that there was no other pupil close by, and that they had done it for a dare. The Head Teacher told us that this incident occurred during the lunch break and that there were many pupils close by when the child was throwing the scissors. They said that the child was throwing the scissors at a grass bank which was situated alongside a path leading to an entrance into one of the buildings. They also confirmed in their statement, that the child was verbally aggressive to another member of staff who was supervising at the time.
32. The parent then said to us that they had been sad to hear about the incident. They had talked about it with the child after school on the day it had occurred, and was disappointed in them. They went on to say that the exclusion was improper, however, when asked later by Counsel whether they thought that the response of the school was reasonable they said "*I have no problem at all with the sanction for this.*"
33. The Head Teacher's evidence is supported by the contemporaneous note which recorded the incident as occurring at lunchtime, when large numbers of pupils would be milling around, and we bear in mind the parent's acceptance that the child is likely to minimise their involvement in disciplinary matters when they report them back to them after school. We accept what the Head Teacher told us about this incident.
34. The scissors incident on 21.5.21 was not the only incident involving sharp or bladed instruments. We also had contemporaneous notes of the following:



*“The child had been brought into room 32 by the Head Teacher to return a load of pairs of scissors that the child had taken”. (p590. 20.5.21)*

*“The child was given the opportunity for restorative practice. They attended. They had scissors in their pocket and they were asked to hand them over or put them in their pocket.*

*It was brought to my attention by two members of staff that the child had a pair of scissors in their trouser pocket. When I kindly asked the child for them to be handed over at the beginning 15 minutes into lesson 5, they refused saying they were theirs and they could do what they wanted with them and they were not going to give them to me. I said I would call pastoral, their reaction was, go on then”. (p.595, 26.5.21)*

*“Stole a needle from another pupil. They were not given a needle for their task so there is no need to be anywhere near this pupil or for them to have it. Refused to return the needle to the pupil. I then had to get involved which meant approaching the child again this makes me feel uncomfortable. (in respect of covid infection)” (p.610, 1.7.21)*

35. These notes ought to have been more detailed and the authors should have been identified. Greater care should be taken in that regard in the future.
36. Although by the second day of the hearing the parent had told us that they had no problem at all with the sanction for the scissors incident, we were concerned at the extent to which they minimised the child's responsibility for what happened, and the danger to others. Even in closing submissions they said to us that the child is very vulnerable, that they were dared to do it and that boys more senior to them had been the leaders in the whole business. There is nothing anywhere in the evidence which supports that version of events, and when the throwing incident is set alongside the other matters that we have cited from the contemporaneous notes, we are satisfied that the child was not acting at the behest of others, and was entirely responsible for their own actions.

### Has there been unlawful discrimination

#### Section 13, direct discrimination

37. Our starting point is to ask ourselves firstly, whether the child has been treated less favourably by the school than other children and then if so, was that less favourable treatment because of their disability. The school has faced numerous complaints from the parent about how they have provided for the child's educational needs and we feel it is important to consider their approach in some detail.
38. The Responsible Body's case hinged very much on the lengths to which the school has gone to treat the child more favourably than other non-disabled children would be treated. They make two key points in this regard. Firstly, the sanctions applicable to the child for level 1 and level 2 behaviours are far more

limited than those which might be used where non-disabled pupils have misbehaved. Secondly, the school has taken a far more lenient approach to the application of policy generally. Those two factors gave rise to the positive support plan (p506) which is divided into coloured zones to guide the responses of staff, and the pastoral support plan (p512). Those documents were agreed by the parents at a meeting on 27.2.20 (p504). We note also that as part of this process the school consulted an Educational Psychologist who referred the child to the Behaviour Support Community Team which in turn led to assistance from that team. The Educational Psychologist and the Behaviour Community Support Team jointly recommended the introduction of well-being walks as a distraction technique to remove the child from situations they were finding difficult, and that advice was incorporated into the school's day-to-day approach.

39. The Head Teacher also set in train a variety of trial arrangements for TA support to see if any particular approach could be effective, without success.
40. In March 2020 school closed as a result of lockdown. When it reopened there was a dispute about the COVID risk assessment for the child and as a result, the child did not return to school until 1<sup>st</sup> October 2020. Additional support was then put in place. The school ALNCo, was to closely monitor the child, and the LSAs reported to them on a daily basis. In November, the child was involved in a fight with another pupil for which both were disciplined. There was then a further lockdown after which the child was moved to another class in the hope of avoiding disruptive incidents such as the fight. The move did not have any positive effect. At the end of the Easter holidays in 2021 the child was moved to another class again in the hope that it would have a positive effect on behaviour. Shortly after that there was the bin incident.
41. We are satisfied that the school took a responsible and proportionate approach to planning its support programme for the child and our conclusions were fortified by what we read and heard from the Head Teacher and Assistant Head Teacher..
42. We were particularly impressed by the Assistant Head Teacher and their evidence in respect of the restorative conversation. They told us that in general they were guided by the child's statement and recognised the importance of developing their own understanding of the child's support needs. They were clear that without that understanding, it is impossible to deal with any child's needs. They told us that restorative conversations are embedded within the school's disciplinary policy and they are not just techniques used with the child.
43. The Assistant Head Teacher described the restorative conversation in some detail, which was consistent with their statement. They described the child as uncomfortable but not anxious, and they were quite satisfied that the child knew why they were there. The Assistant Head Teacher also indicated that they had told the parent in advance about the purpose of the restorative conversation and had hoped that they would have prepared the child over the weekend. They were in no doubt that the child understood what was being said, and that the questions put to the child were phrased to take account of their needs. One of the things which struck us about the Assistant Head Teacher's evidence was their explanation of the purpose of the restorative conversation.

It was, they said, aimed at developing the child's resilience, which is an essential part of dealing with problems that the child presently walks away from. They have seen the child respond very positively in different conversations with them and they had hoped to encourage genuine cooperation on that day from the child, who they described as a kind child at heart. On this occasion it didn't work. They confirmed that there was no reprimand, that the child was not belittled, and that there was no conflict, but the whole process was difficult for the child because of the extent to which they had learned to walk away. The Assistant Head Teacher emphasised again that the aim of the school is to develop a resilience in the child. A common theme throughout the documented history is the child's unwillingness to accept any responsibility for their actions when they are called to account, and the school is to be complimented for its efforts to engage the child in a learning process which will begin to address that.

44. We mentioned the detail of this incident because it exemplifies the thought and care which has gone into, not just the plans for supporting the child, but also into the implementation of those plans on the ground when staff deal with incidents. Support techniques have not always proved successful, which the Assistant Head Teacher readily accepted, however no adjustments for any child with a disability can guarantee success every time, nor are they expected to, they simply have to be reasonable. We accept what the Assistant Head Teacher said to us about adapting the plans for the child. They described every intervention as situation led. They quizzed teachers, and they ensure generally that teachers use the information which is available in IDPs, annual reviews, the amber/red system and any ALNCo records. They regard advice from educational psychology as very much an integral part of planning his approach to supporting any child.
45. The Assistant Head Teacher's concluding comment and the response from the parent, which brought the evidence to a close, was noteworthy. The Assistant Head Teacher said: *"I have made mistakes but I have learned from them. Sometimes I get it wrong"*. The parent interjected to say that no one has ever said that to them before. The Assistant Head Teacher, whose demeanour at that point revealed a sense of real disappointment rather than anything else, said *"In November 2020 that's exactly what the Head Teacher said to you, I remember that conversation explicitly"*.
46. That brief exchange captures one of the key elements to this case. The school has worked hard to adapt its approach to the child's needs, but there is little, if any, recognition of that from the Parent. The school hasn't always got things right, but it has been willing to reflect on its own actions and take advice from other professionals. It has been patient and understanding with the child. The extent of its forbearance is well illustrated within the papers. The briefest consideration of the child's behaviour record from starting at school in September 2019 until the review in January 2020, reveals a clear picture of spontaneous and unprovoked, but controlled aggression towards other pupils, targeting of those who might be vulnerable, with abusive behaviour towards staff when they intervene. The lenience with which the school approached these incidents set the scene for their dealings with the child thereafter. We agree with what the Responsible Body say in their case statement

*“The child was not treated less favourably than non-disabled pupils. To the contrary, they were in fact treated considerably more favourably in relation to the application of the school’s disciplinary policy. They were shown considerable forbearance in the application of sanctions. A non-disabled pupil would have faced harsher sanctions, and faced them earlier, than was the case with the child” (p402)*

47. The question we have to consider is straightforward. Has the responsible body treated the child less favourably than it would treat other children? We are satisfied that it has not. It has made reasonable adjustments on a continuing basis since the child’s arrival, taking into account their statement, the contribution of their parents and professional advice. We can find no fault with the approach taken by the school to the child’s needs.
48. At one point the parent suggested to us that the adjustments made for the child set them apart from their peers but that is the whole point of reasonable adjustments within the meaning of the Equality Act. The child is different from their peers and treating them in the same way as others might be treated would leave the school open to the suggestion that they were discriminating against them.

#### Section 15, discrimination arising from disability

49. In respect of any sanctions imposed upon the child we must ask ourselves whether any went beyond the limits of a proportionate means of achieving a legitimate aim. The starting point for this question is the extent of the child’s misbehaviour. This has been a persistent feature of their presentation since they arrived at school. It has caused distress to their fellow pupils and has put them at risk of harm. They had targeted two vulnerable pupils, one because they had Down’s syndrome, and the other because they wear specially adapted shoes. They had been aggressive and abusive to other pupils and staff on many occasions, and it is beyond question that the school was right to attempt to reduce or contain that behaviour and to use suitably adapted disciplinary methods to do it. The protection of other pupils and the maintenance of discipline, without doubt, are legitimate aims for the school, as they are for any school. Only a finding that the sanctions which were imposed on the child were disproportionate could open the door to a conclusion of discrimination under this section.
50. We can find no reliable evidence on which to conclude that any sanctions which were imposed on the child were disproportionate. On the contrary, the school has looked to avoid the kind of measures which would be taken in respect of non-ALN pupils. We have in mind the child’s behaviour in respect of the bin incident, or to be more accurate the way he spoke to the Head teacher in the aftermath. Despite the fact that such behaviour would ordinarily result in formal detention or fixed term exclusion, the Head teacher, on the recommendation of the Assistant Head Teacher, concluded that there should be a restorative conversation.
51. It is correct of course, that there have been fixed term exclusions and formal detentions for the child, but we are satisfied that they have been proportionate,

for example, on the day after the scissor throwing incident, the child kicked a ball at another pupil which resulted in that child needing medical attention. The Head teacher imposed a fixed term exclusion having considered both incidents together. We accept the Head teacher's evidence that similar dangerous incidents involving a non-ALN pupil would probably have resulted in permanent exclusion (p436). The ramifications of this incident did not end there. When the child returned to school, they were extremely disruptive and abusive, to such an extent that it was decided to try a restorative conversation at lunchtime (p593- 595). This was the occasion when the child refused to hand over a pair of scissors and they simply walked away. The Head teacher telephoned the parent to inform them of what had gone on. The parent's response was a compelling illustration of what the Responsible Body asserts is virtually a complete disregard on the part of the parent for the real and important interests of other pupils and the wider school community. The parent told the Head teacher that school "*needed to find a way to work around the child's anger*" and then went on to complain about the way in which staff had handled the aforesaid incidents.

#### Section 19, indirect discrimination

52. We are satisfied that at no time has any member of staff applied a provision, criterion, or practice to the child in a way which has put him at any disadvantage compared to a child who is not disabled. There is no evidence which could underpin such a conclusion.

#### Section 26, harassment

53. The parent claims that the child was subject to harassment because of their disability. We have asked ourselves whether the conduct of the school at any time amounted to a violation of the child's dignity or whether it created an intimidating, degrading, hostile, humiliating, or offensive environment for the child. We are satisfied that the evidence does not support a conclusion of harassment. On the contrary, as we have indicated above, we are satisfied that the school has done everything it possibly could to deal with the child in a proportionate manner which recognised their disability, but was in keeping with the seriousness of their conduct.
54. The school's approach is illustrated perfectly by the ball incident when the Head teacher did what he could to avoid speaking with the child in front of the other pupils. To have done otherwise would have caused the child's behaviour to deteriorate and may well have created an environment which could be described as intimidating or humiliating for the child, and indeed would have gone against the agreed red zone strategy and the advice of the Educational Psychologist and the Behaviour Support Community Team.
55. The parent was forthright when they said to us that the Head teacher should have dealt with the child there and then in front of the crowd of pupils watching, but it is manifestly obvious that the Head teacher approach was correct. The parent also suggested that the Head teacher should have co-regulated, but that technique is wholly unsuited to such situations, and in any event, that has no bearing on where such discussion, whether co-regulation or something more formal, should take place. The parent was asked more than once to consider that point, but avoided giving an answer.

## The professional integrity of School staff

56. We have touched on this matter already, but we feel it is important that we deal fully with our concern at the approach of the parent. They are, of course, like any other parent, entitled to put their complaints before us for determination, but as we indicated in our introductory paragraphs, they put the credibility and integrity of the Head teacher and his staff in issue. Their allegations included deliberate discrimination because of the child's disability. They even go to the extent of accusing the Head teacher of treating the child in discriminatory fashion for personal satisfaction or pleasure. The words "toying with the child" in respect of the ball incident can have no other meaning.
57. Counsel put to the parent that they were combative in their attitude to the school and that he simply accepted the child's account of incidents wholesale, all of which led to disproportionate arguments. The parent responded by telling us that they were prepared to stand up where others wouldn't. Even when referred by Counsel to his e-mails complaining about the child's one match ban after being sent off in a school rugby match (p.494 and 497), and being asked if they could recognise that their reaction was something greater than the events themselves, the parent was quite clear that their response had been proportionate and said to us "*what choice do you have when you're ignored*". But they had not been ignored. The Head teacher had written to the parent to explain the one match ban. The e-mails in response illustrate perfectly Counsel's point and underpin our conclusion that the parent is combative in their dealings with the school, and that they do accept the child's account of incidents wholesale, leading to disproportionate response.
58. That disproportionate response has brought with it a degree of unjustifiable suspicion. Threaded through the papers is unwarranted criticism of the Head teacher and his colleagues. The following are just some examples. After only one term at school when the child had the benefit of 1:1 support, and the school was trying to engage with the parents as a result of continued unacceptable behaviour, the parent had this to say:
- "The child is now so very much on the radar for so many of the teachers, TAs and even the pupils ... they've got a target on their back because they're vulnerable and doesn't do things the way people expect or want them to ... easy pickings for adults and children alike"* (p484).
59. At one point, the parent suggests that the school's approach to managing the child's behaviour will be "*undoing ten years of parenting*" and that the school will be "*creating its own monster*" (p497).

60. During questions to the Head teacher about the nature of 1:1 support, the parent even alleged that the school was happy to sit back and watch while the child's behaviour deteriorated.
61. Professionals who owe a duty of care to a child can expect to be criticised if they fail in that duty, but equally, when criticism is without foundation, we ought not to shrink from saying so. The Head teacher and his colleagues have been faced with serious allegations which go beyond mere repeated errors or lack of judgement. There is no reliable evidence whatsoever to support a conclusion that they have been in any way dishonest, or have performed their duties in a way which could be described as negligent or unprofessional, and we expressly reject every assertion of that nature made by the parent.

#### Correspondence after the hearing

62. On the day after the hearing concluded, the parent sent an e-mail to the secretariat. They expressed some concern that Counsel had informed us during the hearing that the point had been reached where it was decided that a mainstream school could no longer meet the child's needs. The Parent felt that the information may have had an effect upon our thinking. They wrote that they had decided not to inform us of the placement decision, and added that had they also introduced evidence of the up-to-date opinion of the Educational Psychologist, it may have further altered our thinking, but they then went on to do just that. They included in their e-mail, comments which had been made to them by the school's ALNCo and the Educational Psychologist in respect of placement, and suggested that those comments meant that it was more likely that the child had been discriminated against.
63. We make plain that we took no account of what Counsel told us. The parent describes what Counsel said as being the introduction of a theme by way of late information which was accepted by the chair. When Counsel informed us of the proposed change of placement for the child, the reply was simply an acknowledgement by way of thanks. There was no acceptance of late evidence, or information as it is referred to by the parent, nor even mention of it. There was no theme introduced into the case. What Counsel told us had no bearing whatsoever on our decision. Further, we took no account of the parent's introduction of the comments which they said had been made to them by the ALNCo and the educational psychologist.

64. Claim dismissed

**Dated February 2022**

**Chair**