



## DECISION

<b>Date of Birth:</b>	2012	
<b>Appeal of:</b>	The Parents	
<b>Against:</b>	The Responsible Body of Primary School	
<b>Date of hearing:</b>	2023	
<b>Persons present:</b>	The Parent	<i>Parent</i>
	The Parent	<i>Parent</i>
	The Parent's Advocate/Helper	<i>Advocate</i>
	The Responsible Body Legal Representative	<i>RB Barrister</i>
	The Responsible Body Chair of Governors	<i>Chair of Governors</i>
	The Responsible Body Witness	<i>Head Teacher</i>
	The Responsible Body Witness	<i>ALNCo</i>

### Introduction

1. The Child is aged ten. The Child lives with their parents and sibling. The Child is a pupil at School Primary School where they are in their final year. The Child has always required some additional support in school however, their disability for the purposes of this claim is the diagnosis of Tourette's Syndrome made by a Doctor in 2022. Prior to this diagnosis support for the Child has always come from within universal provision. It is not necessary for us to summarise that history.
2. In their case statement, the responsible body accepts that the Child has a disability which engages the Equality Act.
3. There are five heads of claim, and we shall deal with them by number as set out by the parents.

### Claim 1

4. This first element of the claim arises from an e-mail sent by the Parent to the school in 2022. There then follows a sequence of emails between the parents and the school which paint a clear evidential picture of communication up until the planning meeting which took place in 2022.
5. These emails reveal a troubling resistance on the part of the Parents to cooperate with the school. Cooperation is a two-way process which ordinarily, in the case of a child who has just been diagnosed with a disability, would start

with open and frank discussion and immediate disclosure of any clinical or professional advice which may contribute to the planning process for support in school. It is manifestly obvious that a school, which has a duty of care to make reasonable adjustments for a disabled child, would need sight of such advice.

6. Unsurprisingly this sequence of emails was the subject of cross examination by the RB Barrister. The answers from the Parents reinforced our conclusion that it was they, and not the school, who were uncooperative. There was a rigidity to their evidence which troubled us. When pressed by the RB Barrister to explain why they did not disclose the report of the Doctor when requested on six occasions, they repeated either that it wasn't needed or had no bearing on the meeting. They repeated more than once what they had written in the e-mail of 2022, namely that there was no obligation on them to give it.
7. The RB Barrister referred the Parents to their e-mail to the Head Teacher in 2022 when the Parent described being at a loss as to what had changed since the ALNCo's first e-mail, yet just an hour earlier, the Head Teacher had not only repeated the request for the Doctors report but had said that *"we are keen to have all of the information to hand so that we do not put inappropriate measures in place or practices that we will need to retract on receipt of the clinical and professional advice"*. The RB Barrister suggested that the need to have sight of the report had by this stage become critical. The Parent again replied that the diagnosis report should not be necessary. It is unarguable that the Head Teacher had set out the explanation in terms which were both simple and compelling, but still, the Parents would not provide it. It was impossible to fathom their motive for resistance, but it is plain from their complaints in 2022, that they see the school as tainted by a degree of hostility towards them, to which we will return later.
8. The Doctors report was eventually provided by the Parents, but just two hours before the start of the meeting which took place 2022 to discuss the planning of the Child's support needs. Pressed by the RB Barrister as to why the report was provided so late, the Parents repeated that they were under no obligation to provide it, although the Parent at one point said *"We always said we'd send it"*. The RB Barrister asked what the benefit was in sending it two hours prior to the meeting and the Parent replied *"It wasn't important that they received this. The Doctor had no bearing on the meeting"*. The Parent added that *"All of the emails were a complete waste of time and all that was needed was a 20 minute chat after school"*.
9. The RB Barrister referred the Parents to the Head Teachers first e-mail in 2022, and asked why they thought that the school did not need sight of the Doctors report. They repeated that the school did not need sight of it and simply added their view that *"we would have a meeting, sit down, and share the diagnosis there and then"*.
10. When we heard from the ALNCo, who was challenged by the Parent in respect of delay, the ALNCo response, that any delay was caused not by them but by the Parents, laid bare an obvious frustration at the failure of the Parents to

cooperate. The Head Teacher shared that frustration and repeated to us what they had written in their e-mails to the Parent, namely, that seeing clinical advice would enable the school to identify additional support which could supplement what was already there for the Child. The Head Teacher emphasised the obvious point that early intervention is key for supporting any additional needs and that every contribution to the planning process is important, including from professionals.

11. We are in no doubt that the school acted with due diligence in the steps that they took to arrange the planning meeting within a month of the initial request. We wholeheartedly share the view of the ALNCo and the Head Teacher that it was right to ensure that every contribution to the planning process was given careful thought and at the earliest stage possible. It is unarguable that the advice of the Doctor was a crucial component of that process. Further, effective planning could not possibly be undertaken in the 'quick chat' which was referred to more than once by the Parent in their emails. Attempting to plan for the Child's support needs within a quick chat, or even worse, a quick chat without the school having knowledge of the Doctors advice, would almost certainly have led to poor decision-making, possible confusion or distress for the Child, and justifiable criticism that there had been failure to make reasonable adjustments through lack of rigour and proper evaluation.
12. We reject the first element of claim 1 that there was unreasonable delay on the part of the school in arranging the meeting to review the Child's needs. On the contrary they did all that they could in the circumstances to gather in all necessary information which was required at the planning meeting, and their repeated requests for sight of the Doctors report were unreasonably refused. Eventual disclosure of the report a mere two hours before the meeting in 2022 falls well short of what could be described as cooperation. It is simply a further illustration of a pattern of responses on the part of the Parents, the explanations for which were wholly without merit.
13. We turn now to the second element of claim 1, which is unreasonable delay in enabling the Child to give a presentation to their class about their Tourette's Syndrome. Before we turn to the sequence of events in relation to this matter, we wish to make clear that we accept without hesitation the description that we have from the school, both within the papers and in oral evidence, in respect of the Child's presentation. The ALNCo was highly persuasive in that regard. More than once the Parents described the Child as suffering in school, but the evidence paints a very different picture. The ALNCo told us that the Child is settled in school and that the Child has always been open with staff about their wishes. The Child has never wanted the school to take any steps which made them stand out as being different from their peers. The Head Teacher also told us that the Child was not suffering in school. Doubt, if there were any, is dispelled by the school's entry in the comments report (p231). On 9.6.22 the school described the Child as rehearsing songs for the church flower festival "*with gusto and was congratulated by the head teacher (the Child was fabulous!) The Child positively beamed! ... but then shortly after informed their parents that they hated singing*". Just a few days later the Parent informed the school that the Child had been distressed the previous night in

relation to singing and that the Parent reassured the Child that they didn't have to do it. We make no comment as to why there was such a contrast in the Child's presentation, we simply observe that there is no objective evidence which could lead us to doubt that the Child was happy in school. The Parent suggested that the Child was masking, but the Child's teachers are well aware of the Child's additional needs and we are satisfied that the extract we cite above is an illustration of a happy child, the Child who is described in the most positive terms in the end of year reports, which make plain how well they was doing.

14. We are satisfied that the Child was a happy child in school who enjoyed a trusting relationship with their teachers, and that the Child expressed their genuine wishes and feelings when the prospect of a presentation was raised. At that time the Child did not want to do it.
15. When the Child got to the point of expressing a willingness to do the presentation it took place just four days later and we cannot see how any criticism can be levelled at the school in respect of this matter. We reject the second element of claim 1 as being wholly without foundation.

#### Claim 2

16. When the school was first told about the Child's diagnosis in 2022 the ALNCo set in train a series of enquiries aimed at obtaining professional advice in order to plan properly for the Child's support needs. The ALNCo contacted CAMHS and made a request for advice from the educational psychology service. It is common amongst local authorities to have in place a consultation scheme which provides ready access to a consortium of various health, educational, and other professionals.
17. The Parents felt strongly that the ALNCo should have contacted Tourettes Action, a charity which offers support to individuals and their families. They had been in touch with a member of staff. The member of staff is not a medical professional, but one of the education managers at the charity. The RB Barrister challenged the Parents as to why the ALNCo should have gone to Tourettes Action rather than the consortium for advice. The initial answer was somewhat vague, the Parent told us about incorrect statements which had been made, and repeated to us that they had given the name of Tourettes Action to the ALNCo. Pressed by the RB Barrister to explain what disadvantage came from not contacting Tourettes Action, the Parent said there might have been some guidance and added "*the member of staff lives in the real world*". When it was suggested to the Parent that CAMHS and the educational psychologist provided all of the expertise that was needed, the Parent replied that "*CAMHS are not Tourettes experts.*"
18. The substance of claim 2 is not that any elements of the support which were put in place for the Child were deficient, but rather that there was a failure to make timely enquiry of a specialist organisation. The ALNCo, as we have stated above, began enquiries immediately. In 2022 the ALNCo informed the

Parent that they had arranged a meeting with the educational psychologist which was imminent, and they had been in touch with CAMHS.

19. The ALNCo acted in a timely manner, and we are also satisfied that their enquiries of CAMHS and educational psychology were properly directed and sufficient for the purposes of planning support for the Child. The Child had been diagnosed with a neurological condition and we cannot see any basis on which the ALNCo can be criticised for seeking advice from those with clinical and professional expertise.
20. It was plain from the claim document (at p29) and the evidence of the Parents that they hold a firm belief, not only, that Tourette's Action ought to have been the primary source of advice, but that neither CAMHS nor education psychology have satisfactory knowledge of Tourette's and indeed had misled the school with incorrect information. The offending comment appeared to have been advice, mentioned by the ALNCo at the meeting in 2022, that the Child should get better and hopefully grow out of it completely. The Parent told us that they corrected the ALNCo by telling them that the Child's condition is permanent but that symptoms may dissipate or disappear. The ALNCo interjected at this point to say to us "*That was what I meant*". There is no difference in substance between what was said by the ALNCo and what was said by the Parent and there is certainly no basis upon which the advice from CAMHS, as paraphrased by the ALNCo, could be described as misleading.
21. We were told that Tourette's Action and Tictok Therapy were shocked and upset at reading the Parents claim document. Whatever the detail of what was said, it can only have reinforced the Parents beliefs, which are fixed and unshakeable. The intensity of those beliefs was threaded through the hearing bundle, the oral evidence and the written submissions that the Parent read to us in closing and provided by e-mail after the hearing. This is something to which we will return later.
22. For the reasons we have stated we reject claim 2 as being wholly without merit.

### Claim 3

23. This claim was of particular concern to us as it can only be interpreted as an allegation of deliberate discrimination arising from hostility or malice. In their claim, the Parents described the actions of the Head Teacher as active discrimination however when the Parent gave evidence on the first day they went further. The Parent said of the refusal notice:

*"It was at this point we knew it was personal against the Child and us .... It was deliberate".*

24. The Parents had been referred to paragraph 54 of the statement of the Head Teacher (p300) where they say that the first they knew of their additional correspondence with the school secretary was at the complaints meeting in

2022. The Head Teacher had seen the originating request but had asked for further information. It was this further information which the Head Teacher was referring to in their statement. The Parent alleged that what the Head Teacher said was not true. The allegation is an extremely serious one, not only that the Head Teacher had lied at the complaints meeting, but that the Head Teacher was lying to us in their statement.

25. Faced with an allegation which comprised dishonesty and malice, we felt obliged, when we adjourned after the first day, to hear from the school secretary. The secretary had been involved in the processing of the application by the Parents to take the Child on holiday during term-time. In view of the seriousness of the allegations we required a statement from the school secretary, which was provided. The school secretary exhibited a copy of the print-out which was given to the Head Teacher on the morning of said date in 2022. That print-out is not a copy of original application. It is a summary of requests for authorised absence in table form, completed by a member of the admin staff, with space for the Head Teachers decision.
26. We do not propose to rehearse the school secretary's written evidence. We also remind ourselves that we are not here to review administrative practices.
27. In their statement, the school secretary explained that the holiday refusal came about as a result of a sequence of errors. The secretary's evidence was that firstly, the Head Teacher did not read the original request on the Gateway and that the secretary did not read the final paragraph. It was only later in the school secretary's evidence, when it was suggested that whoever made the entries in the table of requests must have read the final paragraph of the request because it referred to the Easter holiday, that the secretary told us that the original entry was completed by the Head Teacher's secretary and not by them. Whilst this was not made clear within the school secretary's statement it would have been disproportionate to have enquired further as this claim is focused upon the actions of the Head Teacher after they became aware of the original request.
28. The Head Teacher did not see the originating request. The Head Teacher saw the print-out exhibited to the school secretary's statement and simply wrote in the margin that more information was required, which is unsurprising given that the entry on the print-out did not include the Parents reason for wanting to take the Child out of school in term time. We are satisfied that what followed thereafter was down to error on the part of the school secretary. The school secretary's evidence was important as it was them who was responsible for follow-up enquiries in respect of holiday applications, and for keeping the Head Teacher informed. The school secretary told us that the Head Teacher did not see any of the follow-up correspondence, even when the two of them spoke in the briefest exchange prior to the school secretary sending the refusal notice. At one point the school secretary said to us that the Head Teacher did get the additional information albeit a couple of days later, but that was in contrast to the secretary's evidence that they did not show the Head Teacher any document after handing them the completed table in 2022.

29. We are satisfied that the school secretary was mistaken in their oral evidence about information being provided to the Head Teacher a couple of days later. The school secretary was obviously nervous, flustered on occasion, and more than once fell back onto referring us to paragraphs in their statement. They clearly found the process of giving evidence to be difficult, but the secretary was not dishonest.
30. The Head Teacher could not accurately recall what was said between them on the morning of said date in 22. The Head Teacher made no mention of the conversation in their statement, but in evidence made plain it was just seconds and that they still needed the additional information. The school secretary did not print off the additional information that morning.
31. As to why the school secretary issued the refusal notice, the secretary could not expand in evidence on what they said at paragraph 21 of their statement. The school secretary thought mistakenly that the absence had not been approved despite recalling in paragraph 19, that the Head Teacher reiterated the need for additional information.
32. There are just two conclusions we can draw. Either the Head Teacher and the school secretary are telling us the truth, or the Head Teacher lied about their knowledge of the explanation and instructed the school secretary to issue the refusal notice, and both of them are lying to us about what happened, and indeed are conspiring to hide the truth of their conversation on the morning of said date in 2022.
33. We can only act on facts, either admitted or proved, and we are not satisfied that the evidence proves either the Head Teacher or the school secretary to be dishonest. We only have a broad indication of what was said when the school secretary interrupted the meeting on the morning of said date in 2022 and it would amount to unconscionable guesswork on our part were we to leap to the conclusion that the Head Teacher instructed the school secretary to issue the refusal notice
34. Whatever was said, the school secretary went back to their office and sent out the standard refusal notice. We are satisfied that the school secretary did so in error and that the Head Teacher did not know anything of the interim correspondence. We reject the allegation that the Head Teacher acted with any malign intent or was in any way dishonest before us.
35. Before closing submissions, the Parent was asked whether the Parents stood by their allegation, cited at paragraph 23 above, which was read back to them *verbatim*. The Parent said yes that they did. We will return to this later.

#### Claim 4

36. There is no dispute of fact in respect of this claim. We have the form that was filled in by the Parent for the referral to Daffodils, and we have the response of the ALNCo dated 2022, written on the day they received it, which suggests

that the GP might be better placed to sign the document. There then follows an exchange of emails which leads on said date in 2022 to the ALNCo explaining their reluctance and offering an alternative form of words for the referral. They wrote:

*“Please send in the form again as we can bear witness to some low level anxiety presenting as a tick behaviour but I hope you understand that I won't be able to bear witness to the ‘rage attacks at home’ which is why I suggested it was signed by the Child's GP the consultant that the Child saw or a camhs practitioner who have used the full complement of the information you offered in their summary and recommendations. I will need to be specific about this on the form”.*

37. The Parent asserted that the ALNCo was aware of rage attacks at home, firstly from the referral that was made in respect of the Child's sibling in 2018 and secondly from being shown a recording of the Child. The ALNCo told us, and we accept, that they have never seen a recording of the Child in a state of rage. In addition, whilst the 2018 referral repeats what the parents were telling the school, the school's own observations make no mention of rage or anything like it. On the contrary, the school notes that the Child's behaviour is exemplary, and the Child is described as well behaved and well adjusted. The only concern expressed in respect of the Child is that the school feels there is some underlying anxiety, the root cause of which was yet to be discovered at that time. A contemporaneous note of a telephone call which appears to have been made by a social worker to the Headteacher on a date in 2018, some three weeks after the referral, confirms no problems with the Child.
38. The school's view of the Child is repeated on a date in 2019, when the Chair of the School Governors wrote to the Parent, having discussed the Child with the Head Teacher, and reassured the Parent that the advice of the Head Teacher was that the Child had no additional learning needs and that there were no school related matters in relation to the Child. We are satisfied beyond doubt that the school have never seen anything in the Child's presentation which would cause them to suspect that the Child experiences anything other than mild anxiety, or that the Child has any unmet needs.
39. Again, there is no basis upon which the ALNCo can be criticised. The ALNCo was asked to attest to something about which they had no knowledge, and which was going to be used as a basis for therapeutic support for the Child. In their written closing submissions the Parent submitted that it is standard practice for schools to sign forms, especially when they can attest to everything that is accurately cited by a parent. The Parent was either unable or unwilling to see the glaring contradiction in what they said. The whole basis of attesting to a state of affairs is personal knowledge of the truth of the same, not confirming what someone else says. The Parent was challenged on this a number of times during the hearing, but the Parents remained fixed in their view. We reject this claim as wholly without merit.



### Claim 5

40. In closing the RB Barrister suggested that claim 5 was nebulous and that it is not clear what the specific allegations are. We agree. The Parents assert that EOTAS was resisted by the local authority in order to support the position of the school, which was not listening to parental concerns, yet they themselves have indicated that have always wanted the Child to be educated in mainstream and have selected a local high school for the Child's secondary education.
41. We find it impossible to discern how a child such as the Child should even be considered for EOTAS. As an expert panel we are well aware of the broad criteria which would need to be met before a child would be considered suitable and we remind ourselves of how the Child has been described in the documentary evidence and by the witnesses from school, starting with the observation in the Child's siblings social services referral, right through to today. The Child's class teacher's comments in the concluding section of the Child's annual report for 2022 describe the Child in the most positive of terms, and we note in particular the maturity and self-confidence that the Child shows in approaching the Class Teacher when things might get on top of them a little, notwithstanding the Class Teacher's comment that the Child could come to them a little more. There is nothing in that summary which could support or even prompt consideration of education for the Child otherwise than in school. This element of the claim flies in the face of the Child's exemplary behaviour in school, the Child's determination and their achievements; and we reject it.

### The tests for discrimination

42. The responsible body in their case statement helpfully set out the law in respect of disability discrimination. We have considered carefully the requirements of each of those tests and we are satisfied that there is nothing in this claim which would underpin a claim for disability discrimination of any kind. In all the matters complained of the school has acted with due diligence and taken all reasonable steps to meet the Child's needs. All five heads of claim fail for the reasons we have set out above and there is not one single aspect of the parents' case which causes us to hesitate in that conclusion.
43. Claim 3 requires separate and further consideration.
44. We indicated above more than once that we would return to some aspects of the parents' case in our concluding remarks. Before we do that, we make the obvious point that the errors which occurred between the application for a term time holiday and the issue of the refusal notice, could and should have been avoided. They would in any circumstances give rise to frustration and annoyance on the part of parents, and it is clear that in this case the frustration felt by the Parents fed into their underlying disappointment in the Head Teacher and their colleagues, which appears to be deep seated. There is however a clear dividing line between a sense of ongoing disappointment and

the degree of suspicion which found expression in the case presented to us, to which we now turn. We do so because the Parents have put in issue the honesty, integrity and judgement of people who have a duty of care towards the Child, for which they are answerable both to the Child's parents and the wider public.

45. We were provided with a copy of the Parents closing submissions. The Parent was asked when the case was stood down for lunch to give very careful thought to what they wanted to say to us. We remind ourselves that this was when the Parent was also asked whether they stood by the allegation cited at paragraph 23 above. These were not submissions which were put together in any kind of rush, and there can be no doubt that what is said is an accurate summary of the firmly held beliefs of the Parents.
46. Those submissions put the specific claims within a wider context, which imports allegations of malice, conspiracy and a callous indifference towards both the Parents, and the Child's educational needs. They describe the last four years as an ordeal, where the parents have faced an agenda, and that a common theme throughout that time is merely a pretence that reasonable adjustments are agreed but thereafter are blocked by the school, which then shuts down communication. The Child is described as having suffered due to unwillingness to support them, so much so that the Parents remark upon what they regard as a lack of remorse on the part of the school for that suffering.
47. We have not enquired into the history of this case however we cannot determine the matters which are directly in issue in isolation from those closing submissions. We make plain that there was nothing in the evidence either written or oral, which justified those submissions or cast even a shred of doubt on the honesty, integrity and good faith of the Head Teacher and their colleagues.

***ORDER: Claim dismissed***

Dated March 2023