



## **DECISION**

**Date of Birth:** 2010  
**Claim of:** The Parent  
**Against:** The Responsible Body (RB)  
**Date of Hearing:** 2023

### **Persons Present:**

The Parent	<i>Parent/Claimant</i>
RB Representative	<i>Headteacher</i>
Witness	<i>Deputy Headteacher</i>
LA Manager	<i>Observer</i>

### **A. Claim**

1. The Parent claims that the Responsible Body discriminated against their Child.

### **B. Preliminary Issues**

2. The Headteacher of the School had previously confirmed to the Tribunal that they are authorised to represent the Responsible Body and that the Responsible Body is aware of this claim of discrimination brought against them and of this hearing.
3. The RB applied to admit an exchange of emails between the Headteacher and the Parent as late evidence. The Parent had no objection as the emails had in any event been sent to them. Accordingly, the emails were admitted as late evidence in accordance with regulation 47(1)(a) of the Education Tribunal for Wales Regulations 2021.
4. The hearing was conducted remotely.

## **C. Facts**

5. The Child was born in 2010. The Claimant is the Child's Parent. This claim is brought under the Equality Act 2010 (EA 2010).
6. The Child was a year 7 pupil at the School when the alleged acts of discrimination initially occurred. The Claimant alleges that the discrimination arises out of the failure by the school to provide any form of education to the Child when the Child was absent from school. The Claimant alleges that these acts are ongoing.
7. The Responsible Body as defined in EA 2010 is the Governing Body of the School (RB).
8. The RB does not accept that the Child has a disability as defined in section 6 EA 2010, although it does not actively oppose that assertion.
9. Section 6 of the EA 2010 reads:

**6(1) A Person (P) has a disability if –**  
**(a) P has a physical or mental impairment and**  
**(b) the impairment has a substantial long term adverse effect of P's ability to carry out normal day-to-day activities.**

10. The application filed by the Claimant does not specify under which section of the EA 2010 that this claim is made.
11. Given the nature of the allegations the Tribunal proceeds on the basis that the Claimant alleges that the RB has failed to make reasonable adjustments by providing education for the Child whilst the Child is unable to attend school.
12. A duty to make reasonable adjustments is imposed under sections 20 and 21 EA 2010. For the purpose of this section the person who is referred to as A is the person upon whom the duty is imposed. The tribunal considers the first requirement specified in section 20(3) to be the relevant section:

**20(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as is reasonable to take to avoid the disadvantage.**

13. The EA 2010 further confirms that the duty imposed applies to schools that:

**85 (2) The responsible body of a school must not discriminate against a pupil –**

**(a) In the way it provides education for the pupil**

**(b) .....**

**(c) by not providing education for the pupil**

14. The Parent did not specify the remedy that they seek in their written application. However, during the hearing the Parent indicated that the remedy they sought was for education to be provided for the Child.

**D. Tribunal's Decision with Reasons**

15. We have considered all the written evidence and submissions presented to the tribunal prior to the hearing and all the oral submissions given at the hearing. We have considered the relevant provisions of the Equality Act 2010 and the relevant guidance. We conclude as follows.
16. The first issue for the tribunal is to establish whether the Child meets the criteria to be considered as disabled for the purposes of the EA 2010. The burden of proof falls on the Claimant to establish this on the balance of probabilities.
17. The RB's position is that it has insufficient expertise to conclude that the Child satisfies the definition of disability. Accordingly, the Headteacher did not make submissions either way, leaving the matter for the tribunal to decide.
18. The Child has experienced several adverse childhood experiences, including their Parents untimely death with cancer, their Grandparents diagnosis of dementia, the COVID lockdowns and an incident in August 2020 when the Child was a passenger on a jet ski with an adult friend. The adult friend suffered a heart attack, fell into the sea and drowned. The Child was then left stranded for some time.
19. The Child started at the School in September 2021, but became unsettled and has not attended school since November 2021. The Parent described how the Child suffered what the Parent termed a mental breakdown. The Child was not eating; the Child was in physical pain and at times was unable to see. The Child has refused to meet with CAMHS, their GP and Team Around the Family. The Parent reported

that the Child's anxieties are crippling and that the Child only feels safe in their own home. The Parent says that the Child is unable to visit any of the local towns by themselves, but that the Child finds some comfort by running. When not out running, the Child spends their days in the house on the computer. The Parent says that they are attempting to teach the Child life skills. The Parent describes the Child as an intelligent child, who wants to learn. The Child has a small network of friends, but is not able to cope outside the home.

20. Given that the Child has not been prepared to meet with any professionals there is no formal diagnosis, and the tribunal was not presented with any written evidence. A formal diagnosis is not of course a pre-requisite for a finding of disability to satisfy the criteria.
21. The tribunal is satisfied from the evidence given by The Parent that the Child has a mental impairment caused by their adverse childhood experiences. This impairment has been present since at least November 2021, and is continuing and affecting the Child's daily life. This satisfies the definition of "long-term effect". The EA 2010 states that when deciding whether a person is disabled then the long-term effect of the impairment must last at least twelve months. This is the case here. In addition to being long term, the disability must have a substantial adverse effect on a person's normal day-to-day activities. Attending school is a normal day-to-day activity for a young person and the Child has not been able to attend school.
22. Having considered the evidence the tribunal is satisfied that the Child is not attending school because of their disability and not for any other reason.
23. The tribunal concludes that the Child is disabled for the purposes of the EA 2010, and accordingly the claim can proceed.
24. Unfortunately, the Child has not been receptive to the efforts of various professionals over a period of almost two years, and any assistance that is offered has been rejected.
25. The Parent is of the view that the professionals involved should persevere more with the Child. The Parent believes that they must realise that the Child will not initially accept any assistance, but that with perseverance the Child may be persuaded to change their attitude. The Parent, by way of example, indicated that CAMHS had offered two appointments, but as the Child failed to attend them the Child's case has been closed and the Child has not been offered any further appointments. The Parent considers that it is highly unlikely that the

Child will ever be able go back to school, but that it is essential that the Child has some form of alternative package of education.

26. The RB's position is that it has made every effort to engage with the Child and the Parent and will continue to do so.
27. The tribunal bundle contains a chronology of efforts made by the school to engage with the family. One example is an arrangement for the Child to attend their old primary school with a member of staff from the School also attending in the hope that the Child would be able to build up a relationship with the teacher to pave the way for reintegrating into the School. However, those efforts did not bear fruit with the Child becoming hostile and abusive towards the teacher.
28. An email is produced in the bundle sent by the Child, unbeknown to the Parent where the Child's hostility towards the school is apparent, and where the Child's states that they have no intention of engaging with any member of staff from the School, and that the Child simply wants to be left alone.
29. The situation is now critical in that the Child has received no formal education for almost two years. Sadly, it is not a situation that is likely to be resolved overnight.
30. The Headteacher is sympathetic towards the Child and the Parent and recognises the difficulties faced by both. The Headteacher considers that the school had done all in its power to resolve the situation. The school has pursued all the normal strategies and has also adopted more unconventional methods. The school had involved the Head of Year, a school counsellor, a referral has been made to CAMHS and to the Team Around the Family, and in addition efforts are continuing to endeavour to get the Child to build a trusting relationship with an ELSA support at the school.
31. The school's current strategy is for the ELSA support to meet periodically with the Child to attempt to build a relationship with the Child. Once this occurs then the school will provide an educational package for the Child at home. The Headteacher stressed that they consider it essential that more than one meeting occurs between the Child and the ELSA support should occur before any schoolwork is sent to the home. One of the difficulties faced by the school is that the Child's current performance levels are not known, so it is difficult to tailor any work to meet the Child's educational needs.

32. There is an IDP in place prepared and maintained by the school, albeit this is based on some historical information and without the benefit of any current assessments.
33. A meeting was arranged between the Child and the ELSA support in July 2023. This meeting was relatively positive. The intention was to hold a further meeting in September 2023. This meeting has not occurred, and it appears that any attempt to arrange a meeting has been deferred to await the outcome of this hearing.
34. There is no doubt that the Headteacher and the school have been committed in searching for ways to reintegrate the Child into school. However, it remains the case that the Child has not received any education for almost two years. We recognise that the Child has not been receptive to the offers of assistance, and that there have been communication issues periodically with the claimant.
35. The tribunal finds that there are two areas of concern. It seems that a plan was formulated in the autumn term of 2022 which included arranging a series of virtual meetings between the Child and the ELSA support, to build the relationship, collect information to formulate an IDP and then to provide some work for the Child to complete at home. Whilst this was a clear strategy, the meetings between the Child and the ELSA support have been inconsistently and intermittently arranged. An initial meeting was held in October 2022. A further meeting was proposed for November 2022, but this appears not to have occurred. A meeting was then held in July 2022 with the intention of a follow up meeting being held in September 2023. This however was not followed up and at the date of this claim hearing no further meeting had been arranged. This should have been pursued immediately at the beginning of the new term. There was no reason to await the outcome of this hearing. The tribunal concludes that whilst the strategy may in principle be appropriate, it should have been offered sooner than October 2022, and thereafter pursued rigorously and consistently. This omission leads the panel to the conclusion that the Child has been discriminated against in that the Child has been treated unfavourably and placed at a substantial disadvantage when compared to other children.
36. Another area of concern to the tribunal is the role of the Local Authority (LA). The Headteacher indicated that the LA has been involved in the ongoing discussions regarding the Child. However, there was no evidence of such involvement in the bundle, and neither did the Headteacher offer any specific details as to the support offered by the LA. The LA should have been proactively involved from the outset and should have assumed responsibility for maintaining the IDP. It is

accepted that very little information is available to formulate an IDP, but the LA's resources are greater, and it should be better placed to address this extremely difficult and complex situation.

37. This claim therefore succeeds in light of the finding made in paragraph 35. By way of remedy the RB is directed to provide education at home for the Child. The tribunal realises that this may prove to be a challenge, but all avenues must rigorously and consistently be explored with the full involvement of the LA.

**Order:** Claim upheld

**Dated November 2023**