



DECISION

Date of Birth: 2005
Appeal of: The Parents
Type of appeal: Disability Discrimination Claim
Against: The Responsible Body
Date of hearings: 2020

Persons present:	The Parent	<i>Parent</i>
	The Parent	<i>Parent</i>
	Parent Representative	<i>Counsel</i>
	Parent Witness	<i>Specialist</i>
		<i>Teacher</i>
	Parent Witness	<i>Speech & Language Therapist</i>
	Responsible Body Representative	<i>Headteacher</i>
	Responsible Body Representative	<i>ex Chair of Governors</i>
	Responsible Body Witness	<i>ALNCo</i>

Appeal

1. The Parents claim that the Governing Body of the High School, as the responsible body, discriminated against their child.

Preliminary Issues

2. The Head teacher of the High School, confirmed that they were authorised to represent the Governing Body of the High School and that the Governing Body was aware of this claim for discrimination and of the Tribunal hearing.
3. This claim was originally listed for hearing in December 2019, but was adjourned on that day after the Claimant was granted permission to introduce late evidence in the form of a speech and language therapy report prepared by the Specialist Speech and Language therapist dated October 2019.

4. On allowing the application to admit the report as late evidence the tribunal adjourned the claim to allow the High School to consider this evidence. Directions were made for the filing of supplemental case statements, and the claim was adjourned to be heard over two days.
5. Further directions were issued in December 2019 at the request of the RB to enable them to obtain a report from a speech and language therapist employed by the Health Board. This report compiled by the Senior Specialist Speech and Language therapist for the Local Authority Neurodevelopmental Team dated January 2020 was filed with the supplemental case statement.
6. The hearing of the claim commenced in March 2020 with the intention that it be concluded by the end of March.
7. At the commencement of the hearing the RB applied for the admission of late evidence in the form of a Neurodevelopmental assessment summary compiled by the Doctor, Community Paediatrician and the Neurodevelopmental Nurse Practitioner. Although the report was dated the 22nd January 2020 it was not received by the school until the 9th March 2020, having been posted to the school by second class post on the 5th March 2020. The parents had also been sent a copy of the report and were aware of its contents. In the circumstances, given that the content of this report was extremely relevant to the deliberations of the tribunal, the application was granted under regulation 50(5).
8. The claim was adjourned part heard at the start of March to the scheduled second day in late March 2020.
9. However, by then the whole country was besieged by the Covid pandemic and in a state of lockdown. The hearing in late March was adjourned to a date to be fixed.
10. Both parties declined an invitation by the tribunal to conclude the hearing by way of written submissions. The matter was eventually relisted for a remote hearing in October 2020. Unfortunately, it was not possible to conclude the evidence on that day as a result of the Head teacher of the High School having to leave the tribunal hearing to deal with a Covid-related incident at the school.
11. Eventually the evidence was concluded in December 2020, and both parties made their closing submissions.

Facts

12. The child was born in 2005 and is now fifteen years and seven months of age. The claimants are the child's Parents. This claim is brought under the Equality Act 2010 (EA).
13. The child was a year 10 pupil at the High School when the alleged discrimination occurred. The responsible body as defined by the Act accordingly is the Governing Body of the High School.
14. The RB does not accept that the child has a disability as defined in section 6 Equality Act 2010. This section states that 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".
15. In this claim the parents allege discrimination arising from disability as defined in section 15 EA which reads:
 - 15(1) A person (A) discriminates against a disabled person (B) if:
 - (a) A treats B unfavourably because of something arising in consequence of B's disability and
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
16. The EA places a duty upon the RB to make reasonable adjustments and section 20 defines this duty as comprising three requirements. For the purposes of this claim the relevant requirement is set out in section 20(3) in the following terms:

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 it is reasonable to have to take to avoid the disadvantage.
17. Section 21 provides that a failure to comply with the above requirement is a failure to comply with the duty to make reasonable adjustments, which amounts to discrimination against the disabled person.
18. Section 85 confirms that the duties set out above apply to schools and subsection 85(2) provides that a responsible body of a school must not discriminate against a pupil – (a) in the way it provides education for the pupil, (b) in the way it affords the pupil access to a benefit, facility or

service (c) by not providing education for the pupil (d) by not affording the pupil access to a benefit, facility or service (e) by excluding the pupil from school and (f) by subjecting the pupil to other detriment.

19. Subsection 85(6) provides that “a duty to make reasonable adjustments applies to the responsible body of such a school”. In this case the responsible body is the Governing Body
20. The parents issued their claim for discrimination in August 2019. In general, the events complained of giving rise to the alleged discrimination occurred between February 2018 and July 2019.
21. The remedies sought by the claimants are:
 - i. Meeting between parents and school to consider what reasonable adjustments could be made to the disciplinary procedure in so far as it affects the child.
 - ii. Training and guidance for teaching and support staff about young children with learning disabilities
 - iii. Training and guidance for all teaching and support staff about autism including Asperger’s
 - iv. Training and guidance for all teaching and support staff about ADD/ADHD.
 - v. Refresher/training courses for the above
 - vi. The child to be provided with a teaching assistant
 - vii. Recommendations in the report provided to be implemented
 - viii. A written apology to the child and to the claimants

Tribunal’s decision with reasons

22. We have carefully considered all the written evidence and submissions presented to the tribunal prior to the hearing and the oral evidence and submissions given at the hearing. We have also considered the provisions of the Equality Act and the guidance to that Act. We conclude as follows.
23. The RB dispute that the child is disabled as defined by section 6 EA. There are several components to this definition which means that in general:
 - The person concerned must have an impairment that is either physical or mental
 - The impairment must have adverse effects which are substantial
 - Substantial adverse effects must be long term, and

- Long term and substantial adverse effects must be effects on normal day to day activities

All the above factors must be considered when determining whether a person is disabled.

24. First of all, we need to clarify and correct certain declarations made by each party in their case statements arising from an earlier decision of SENTW in connection with an appeal brought by the parents against the refusal of the County Council to carry out a statutory assessment of the child's special educational needs. This appeal was heard in June 2017. In the first instance the parents contend that the SENTW decision (the Decision) dated the July 2017 finds that the child is disabled in accordance with the EA. That is not the case. That Decision was made in an appeal against the refusal of the local authority to carry out a statutory assessment. Accordingly, that tribunal panel was not considering whether or not the child had a disability as defined by the EA and neither did it make any such findings in its decision.
25. Secondly the RB refers in its case statement to the following part of the Decision which reads:

“We find that there was no indication of a special educational need which required provision, and which might therefore require an assessment. In particular there was no sufficient evidence that the child's medical difficulties impact upon the child's educational needs”.

Again, this finding has no bearing upon the question of whether or not the child is disabled within the meaning of the EA. It should be noted that the previous tribunal did make a finding that the child has special educational needs. The tribunal then went on to find that the child's special educational needs did not require any additional provision. It further found that the child's medical condition, namely the atrial flutter, did not impact upon the child's special educational needs.

26. In a report dated November 2016 the Specialist Teacher concluded that the child is dyslexic. They also raised the possibility that the child 'has dyspraxic traits'. The Specialist Teacher report contains the following definition for dyslexia namely:

Dyslexia is a specific learning difficulty that mainly affects the development in literacy and language related skills. It is likely to be present at birth and to be life-long in its effects. It is characterised by difficulties with phonological processing, rapid naming working

memory, processing speed and the automatic development of skills that may not match up to an individual's other cognitive abilities. It tends to be resistant to conventional teaching methods, but its effect can be mitigated by appropriately specific intervention, including the application of information technology and supported counselling. (BDA Management Board 2007)

The Decision records that the tribunal accepted the evidence of the Specialist Teacher in relation to the child having a diagnosis of Dyslexia and that the child has the difficulties that they identified in their report.

27. The child's individual education plans for December 2017, November 2018 and June 2019 record that the child has a diagnosis of dyslexia.
28. In October 2018 by a Doctor, Consultant Paediatrician concluded that the child fulfils the DSM 5 criteria for autism spectrum (Asperger's Syndrome). However, a further report dated January 2020 by a Doctor, Community Paediatrician and the Neurodevelopmental Nurse Practitioner compiled following a multi-disciplinary assessment draws a different conclusion:

"The information collected about the child was considered by the assessing team and following thorough discussion it has been agreed that the child does not display difficulties across the dyad of impairment and therefore it was agreed that he does not meet the diagnostic criteria for autism spectrum disorder (ASD). Equally it was agreed that the child does not display difficulties associated with Attention Deficit Hyperactivity Disorder (ADHD) and the child does not meet the diagnostic criteria for ADHD.

The assessing team however agreed that there are some traits in the child's behaviour that are seen in children who do have a diagnosis of ASD, but several other observations noted during the assessment meant that the child did not meet the diagnostic criteria for ASD.

It is noted that the child remains open to the Neurodevelopmental team due to the child's needs as the child was considered to have Neurodevelopmental difficulties rather than a specific diagnosis.

29. The bundle of evidence contains several speech and language therapy reports. Two assessments were prepared by the Specialist Speech and Language Therapist with the Health Board dated January 2018 and November 2018. In both reports they conclude that "*The child has some difficulties with auditory memory and social skills. The child's speech,*

language and reasoning skills are age appropriate". In each report they identify strategies required to address the child's difficulties with auditory memory and with social situations. In particular in their first report they indicate that the child "would benefit from a social skills group". The strategies identified remain the same in the second report, and they recommend that the child's progress with the targets should continue to be monitored.

30. A further report was prepared by two Speech and Language Therapists, following a visit to school in July 2020 and a clinic session in July 2020. In this report the therapists conclude that "the child demonstrated consistently functional communication skills during the assessment sessions". It is further stated that "assessment indicates that the child's auditory and working-memory skills fall within the average range for a student of their age" and the report concludes in relation to literacy skills and anxiety and attention difficulties that "Informal observations during the child's assessment sessions indicated no significant concerns about the child's presentation in either area. School staff report that although there have been concerns in the past, there are now no concerns regarding the child's attention, listening, behaviour or social communication skills within the school setting". The therapists conclude that no further support from Speech and Language Therapy services is required, and the child was as a result discharged from the service.
31. In October 2019 the Specialist Speech and Language Therapist engaged on a private basis by the parents, provided a speech and language report. The tribunal also heard oral evidence from the Specialist Speech and Language Therapist. They concludes that the child presents with:
 - i. higher level language difficulties
 - ii. social/pragmatic difficulties
 - iii. mild word retrieval difficulties

The Specialist Speech and Language Therapist recommends support for the child in school in relation to higher level language and the child's social communication.

32. The RB obtained a speech and language therapy overview from Senior Specialist Speech and Language therapist for the Local Authority Neurodevelopmental Team. The Senior Specialist Speech and Language Therapist for the Local Authority Neurodevelopmental Team's report is an overview of the reports of the two Speech and Language Therapists and that of the Specialist Speech and Language Therapist engaged on a private basis by the parents. The Senior Specialist

Speech and Language therapist does not appear to have been provided with the reports of the Specialist Speech and Language Therapist with the Health Board. Whilst the Senior Specialist Speech and Language therapist for the Local Authority Neurodevelopmental Team agrees with the conclusions drawn by the Speech and Language Therapists, they make some constructive comments, focusing on the delivery of language and communication support. They identify in particular “that the role of the SALT is key to developing a tailored language and communication profile (with the child’s input) and safely delegating this information down to staff so that others working closely with the child under the ways in which the child will need to adapt their communication when working with the child”.

33. In assessing the report of the Specialist Speech and Language Therapist engaged on a private basis by the parents, Senior Specialist Speech and Language Therapist for the Local Authority Neurodevelopmental Team, believes that this report goes some way to making specific recommendations for staff which are felt by them to be very appropriate, and whilst the Senior Specialist Speech and Language Therapist for the Local Authority Neurodevelopmental Team does not consider it necessary for the child to access weekly speech and language therapy, states that *“the child may benefit from accessing a social communication group in school where the child would be supported to develop the child’s understanding of social rules and to provide the child with a safe space to practice strategies to manage aspects of the child’s communication which do not come naturally to the child. This would need to be tailored and involve a SALT in ensuring that staff have the skills to deliver this. This is also dependant on the child wishing to engage in a group setting. Rather than weekly speech and language therapy sessions being of direct benefit to the child, the child is more likely to manage from building a good relationship with a key member of staff (who the child trusts and who understands the child) who the child can access when needed, to support the child with social problem solving and help the child to “unpick” situations as and when they arise.”*
34. This tribunal is not required to make any findings about the child’s special educational needs, and it is not necessary for us to resolve specific differences between the speech and language therapists. However, the weight of the evidence clearly establishes that the child has social communication difficulties that require additional support. Furthermore, this is a need that is recognised by the school in the individual education plans produced for the child.

35. The individual education plan produced for the child in November 2018 and in June 2019 confirms that the child should receive additional support at the School Action Plus level of the Code of Practice for Wales and identifies the following target areas i) communication and interaction, ii) cognition and learning and iii) behavioural, emotional and social development.

36. The Individual Education Plan provides the following description of the child, namely:

“The child has a diagnosis of dyslexia with traits of dyspraxia. In October 2018 the child received a diagnosis of Asperger’s. The child receives input from SALT. The child has difficulties with self-awareness, self-esteem, auditory memory and ability to interpret what information means before it is lost. The child will think of answers after the teacher may have moved on so they must be given extra time and must have homework written in the child’s explanation book in clear precise steps. The child may appear as if the child is daydreaming, however this is the child’s way of dealing with a difficult situation. The child may appear as if the child is being rude or mean to others, but the child does struggle with expressing how the child is feeling. The child will not always ask for help when needed. The child suffers from an atrial flutter heart condition and is under the cardiology team at the Hospital. The child suffers with anxiety which can make this worse. The child will benefit from a lot of support, guidance and reassurance and from sitting close to a TA in lessons where possible.”

37. As set out in the Guidance to the Equality Act in relation to the meaning of impairment ‘*The definition requires that the effects which a person may experience must arise from a physical or mental impairment. The term physical or mental impairment should be given its ordinary meaning. It is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness.*’

38. In relation to the ASD diagnosis, the tribunal prefers the evidence of the Doctor, Community Paediatrician, and the Neurodevelopmental Nurse Practitioner because their conclusions are based upon the considered view of more than one professional as part of a multi-disciplinary assessment conducted in accordance with established guidelines. Having said that although the multi-disciplinary assessment concludes that the child does not meet the diagnostic criteria for ASD or for ADHD it does recognise that the child has some traits that are recognised in children who do have a diagnosis of ASD and that the child should be

considered to have neurodevelopmental difficulties. That in itself establishes a mental impairment.

39. Furthermore, the child has a diagnosis of dyslexia. This diagnosis is not questioned by other professionals and neither was it effectively challenged by the RB during the hearing. We were urged by the Responsible Body ex-Chair of the Governing Body, during their closing submission to disregard the evidence of the Specialist Teacher as it was not independent in nature. However, the tribunal does not accept that argument. The Specialist Teacher initially made their dyslexia diagnosis in 2016 and it remains unchallenged. Nothing was raised in this hearing to cast doubt on that diagnosis. The Guidance lists dyslexia as an example of an impairment giving rise to a disability.
40. The tribunal therefore finds on the balance of probabilities that the child has an impairment that satisfies one element of the definition.
41. Having found that the child has a mental impairment then we must consider whether that impairment has an adverse effect which is substantial in nature. To quote from the Guidance to the EA produced by HM Government (referred to as the Guidance) “the requirement that an adverse effect on normal day to day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people”. The EA s 212(1) defines a substantial effect as being more than a minor or trivial effect. The threshold accordingly is not a high one. The RB’s position is whilst it acknowledges that the child may have a mental impairment, this impairment is not substantial. The RB argues that the tribunal should disregard the evidence of the Specialist Teacher and prefer the NHS speech and language therapy reports which indicate that the child has been discharged from the speech and language therapy service. The RB further urges us to focus on that aspect of the Doctor, Community Paediatrician, the Neurodevelopmental Nurse Practitioner, the Neurodevelopmental report which states that the child does not meet the diagnostic criteria for autism spectrum disorder nor the diagnostic criteria for ADHD.
42. Guidance on the interpretation of ‘substantial’ is drawn from the Employment Appeal Tribunal case of **Aderemi v London & South Eastern Railway Ltd UKEAT/0316/12/KN**. Paragraph 14 of the judgement states “*It is clear from the definition in section 6(1) (b) of the Equality Act 2010 that what a Tribunal has to consider is on adverse effect, and that it is an adverse effect not upon them carrying out normal*

day to day activities, but upon their ability to do so. Because the effect is adverse, the focus of a Tribunal must necessarily be upon that which a Claimant maintains they cannot do as a result of their physical or mental impairment”.

43. The Employment Appeal Tribunal in the Aderemi decision quoted with approval from an earlier decision of the Employment Appeal Tribunal in the case of **Patterson v Metropolitan Police Commissioner [2007] IRLR763** which states “*The only proper approach to establishing whether the disadvantage was substantial is to [assess] the effect of the disability on the individual. This involves considering how in fact they carry out the activity compared with how they would do it if not suffering the impairment. If that difference is more than the kind of difference one might expect taking a cross section of the population, then the effects are substantial.*”
44. The first tier Employment tribunal in the case of Patterson found that although the claimant, who was dyslexic, was disadvantaged when compared to the child’s non-dyslexic colleagues in high pressure exam situations, the child was not disadvantaged with reference to the “ordinary average norm of the population as a whole and did not therefore have a disability”. The child had produced high quality written work as a Chief Inspector. The Employment Appeal Tribunal however found that the first tier tribunal had applied the wrong test. The appropriate test to apply was to consider how the claimant in fact carried out the activity compared with how the child would do it if not suffering the impairment. As is set out in the Guidance the comparison should be with the way that the person might be expected to carry out the activity compared with someone who does not have the impairment.
45. When applying the above test in the child’s case, one need only read the description contained in the child’s Individual Education Plan. The target areas identified as requiring attention are, ‘Communication and Interaction’, Cognition and Learning’, ‘Behavioural Emotional and Social Development’. The child requires additional literary support for thirty minutes each week and requires extra time and reader support in all tests and exams. It is further stated that the child may appear as if the child is dreaming, however this is the child way of dealing with a difficult situation. The child may appear as if the child is being rude or mean to others, but the child does struggle with expressing how the child is feeling. It is clear that the support that is required and the support that the child receives is more than one would normally expect a mainstream pupil to receive when looking at a cross-section of the school population.

When taking into the account the statutory definition of 'substantial' as meaning more than minor or trivial, then the tribunal is satisfied that the cumulative effects of the impairments experienced by the child are substantial.

46. The child has been diagnosed as being dyslexic in 2016. It is not a diagnosis that is disputed and indeed the school has clearly accepted the diagnosis of dyslexia when formulating the child's Individual Educational Plan's. There is general acceptance that dyslexia is life-long in its effects. The definition of dyslexia is set out at paragraph 26. Therefore, this in itself satisfies the requirement for the disadvantage to be long term in its effect namely to last for at least twelve months. The Neuro developmental difficulties and the social communication difficulties are also long lasting and in themselves are sufficient to satisfy the definition.
47. The long-term and substantial effects must affect the child's normal day to day activities. Attending school is a normal day to day activity for a child of the child's age. The child disability affects the child's ability to undertake and complete the child written work and also affects the child's communication and interaction with others.
48. Taking into account all the above all the finds then the tribunal concludes that the child is disabled as defined in section 6 of the Equality Act 2010. The tribunal considers it surprising that the RB argued to the contrary, given that the description of the child's needs contained in the Individual Education Plans produced by the school clearly identify that the child fulfils the statutory criteria. The RB seemed to approach the matter from the perspective of the child's special educational needs and not from the perspective of the Equality Act. It is important not to conflate both issues which are two separate statutory regimes and with different duties and obligations.
49. Having established that the child is able to rely on the protection of the Equality Act 2010, we turn to the specific incidents of discrimination complained of by the child's Parents.
50. The first area of concern for the Claimants are the periodic detentions imposed upon the child. The Parent has on several occasions raised the issue with the school, but to their mind to no avail.
51. The RB's case was set out forcefully by the Headteacher who stated that the school employs a range of different sanctions including break-time detentions, lunch-time detentions (usually 20 minutes), social isolation-whole lunchtime silent supervision, afterschool detentions, Friday night

SLT detentions and weekend detentions. The Headteacher states that the child has only ever received sanctions at the very lowest level.

52. The Headteacher pointed out that the lower level break time detentions were imposed on the child on thirty occasions out of a possible two thousand three hundred possible instances. At most the detentions were for a period of fifteen minutes. The number of detentions imposed on the child are well below the average for other pupils with special educational needs. The Headteacher explained that the purpose of the detention is not punitive. The staff are fully briefed about what is appropriate and they are asked to provide extra warnings before any detention is imposed. The consequences are explained to all children.
53. The Headteacher argues that because the frequency of the detentions are reducing, this shows that the sanction has been effective in achieving the desired purpose. The Headteacher argues that the school has made a reasonable adjustment by imposing the lowest level of sanction and from the perspective of the school there have been no reports of any adverse effect on the child of these actions. The school believes that the child appreciates that there are consequences to the child's actions. The school's behaviour policy is included in the bundle which contains a summary of the sanctions. There is no separate behaviour policy for children with special educational needs and/or a disability indicating how those children are to be sanctioned.
54. The Claimants argue that the sanctions are having an adverse effect on the child, and that the child's anger and frustration are frequently displayed when at home. The child's Parents wrote to the school in February 2018 to explain the child's reaction to detention and their feelings regarding the same. The Claimants argue that these detentions amount to discrimination arising from the child's disability (section 15 EA 2010).
55. The first question therefore is whether the treatment is unfavourable. That is a subjective test, and the tribunal is satisfied, that the child considers that they are being treated unfavourably when the child is the subject of a detention. As the Specialist Speech and Language Therapist engaged on a private basis by the parents, indicated in their evidence, the child doesn't understand the point of detention. The important question however is whether the unfavourable treatment is "because of something arising in consequence of the disability".
56. It is established and recognised by the school in the Individual Education Plan that the child has social and communication issues. The child also

has literacy difficulties which means that the child requires extra time to complete tasks. In addition, the child requires homework to be written in the explanation book in clear and concise steps.

57. The main theme running through the detentions is that they were imposed either as a result of the child failing to complete work in time or for appearing rude and argumentative. At this stage we remind ourselves of the decision of Laing J in **Hall v Chief Constable of West Yorkshire [2015] IRLR 893** in dealing with an appeal against a decision of the Employment Tribunal where the tribunal at first instance had concluded that the disability had to be the cause of the respondent's actions not merely the background circumstance. Mrs Justice Laing on appeal held that this was a clear error of law. She concluded that Parliament's intention in enacting section 15 of the EA was to reverse the effect of previous case law and to loosen the causal connection which is required between the disability and any unfavourable treatment. The Claimant therefore need only show that there is some causal link between the disability and the unfavourable treatment.
58. The school regards the detentions as having a positive effect on the child and regards the decreasing number of detentions as evidence that they are having a positive effect. The reasonable adjustment that the school claims is that detentions are at the lower end of the scale of sanctions. However, it cannot be a reasonable adjustment to impose a sanction similar to others who do not have a disability. The RB does not appear to have prepared an Equality Act impact assessment in respect of the use of sanctions on children with a disability. It is of concern that the Headteacher indicated that they did not know how many children in the school are disabled in accordance with s6 Equality Act 2010. The tribunal also noted the Headteacher's statement that they treat all children the same at the school. Whilst that that may be a laudable statement in terms of providing opportunities it is a statement that immediately falls foul of the Equality Act as the whole purpose of that Act in so far as it relates to schools is to ensure that disabled children should not be treated the same other children who do not have a physical or mental impairment. Reasonable adjustments must be made for disabled children where possible.
59. The Counsel Parental Representative on behalf of the Claimants conceded in their closing submission that they were not arguing that there may be occasions when a period of detention could be appropriate but that it is discriminatory to impose a period of detention for not completing work. It is known, and recorded in the child's Individual Education Plans, that the child has social communication issues, and that

the child requires extra time with the child's work both in terms of processing instruction and competing written work. Imposing a period of detention has not assisted in making the child any quicker in completing the child's work. The reasonable adjustment should be a proactive means of assisting the child to understand and complete the child's work and not a reactive step of a form of sanction when the work is not completed.

60. The tribunal does not intend to assess each, and every detention imposed but we do find that any detention imposed for not completing work or arising out of the child's inability to process instruction is discrimination arising from the child's disability for which no reasonable adjustment was made. The RB cannot argue that it was not aware of the child's difficulties as they are set out in the Individual Education Plans compiled by the school.
61. The second issue complained of by the parents relates to the 'derogatory' remarks entered in the child's exercise books. It should be said that the comments that have been seen by the tribunal are not derogatory or offensive remarks in themselves and are comments of a nature that routinely appear in school exercise books. In some instances, the comments are simply a bald statement of fact and in other cases the comments are a little terse.
62. However, the comments must be considered in the context of the child's difficulties with social communication and the child's often literal understanding of what is said. As also highlighted in the IEP's the child has difficulties with the child self-awareness and self-esteem. The parents argue that a reasonable adjustment could have been made in the child's case whereby a negative comment is balanced by a positive comment. Again, the test is whether the child considers that the child is unfavourably treated. The comments are not intentionally intended to treat the child unfavourably but from the child's perspective that is the outcome. Because of the child's disability, the same approach as is adopted with other children is not appropriate and a reasonable adjustment ought to be made. As suggested by the Claimants a reasonable adjustment in the circumstances would have been to balance a negative comment with a positive comment. Given the child's difficulties the tribunal finds that the child was treated unfavourably in that no reasonable adjustment was made when making comments in the child's exercise books. As result the child suffered discrimination arising from the child's disability.

63. The parents claim that the child was further discriminated against by the RB as a result of a failure to provide an oral language modifier. The claimants further allege that the failure of the school to pursue this provision is a failure to make reasonable adjustments.
64. The tribunal does not however consider that there is any evidence to support this aspect of the claim. The issue of the provision of an oral language modifier was first raised by an advocate acting on behalf of the Parents in November 2018 but that assertion is not supported by any evidence. The tribunal does not consider that the RB has discriminated against the child in this regard and neither has there any failure to make reasonable adjustments.
65. Whilst the child does not have a statement of special educational needs, the child is supported at the school action plus level of the Code of Practice. The IEP for December 2017 identifies that the child is to be provided with a social skills group every fortnight. The IEP for November 2018 identifies a social skills group (a 6 week programme during year 8) and the IEP for June 2019 also identifies the provision of a social skills group.
66. It is a common theme in the speech and language therapy reports that the child needs a social skills group. The two Speech and Language Therapists report sets out that the preferred method of support was through small group sessions based on the 'Talkabout' programme. The Parent took issue with this recommendation and advocated the use of a social stories/comic strip conversations approach instead. The reason for not adopting this approach is clearly set out in the two Speech and Language Therapists report at page 345 of the main bundle. The result is that no support for social communication has been provided to the child, a situation compounded by the lockdown restriction from March 2020 onwards.
67. However, notwithstanding the Parent's intervention there were clear recommendations from the Speech and Language Therapists as to the type of programme to be provided and arrangements should have been made to deliver this provision. The Parent's asserted to the tribunal, given their role as a teaching assistant in a special school, that they should also be considered an expert in speech and language therapy. With the greatest respect to the Parent their professional experience as a teaching assistant does not make them an expert in speech and language therapy as the Parent has neither the requisite professional qualifications and training nor the professional experience of working as a speech and language therapist. The tribunal accepts the evidence of

the speech and language therapists in this regard and the school should have done likewise. However, this does not seem to be the reason for the non-delivery of any social skills provision to the child.

68. An email (page 259 of the main bundle) dated June 2019 from a Teacher to the Parent which states inter alia 'Social skills lessons have not taken place this year with year 8 due to a number of factors including timetabling and staff absence'.
69. The child has clearly received unfavourable treatment in that the child has not been provided with a social skills group and the above e-mail sets out the reason why the child has not received this support and demonstrates that no reasonable adjustments were made to ensure that the child was provided with some form of additional support for the child's social skills difficulties.
70. The Parents make a similar complaint that the child was the subject of discrimination due to the lack of additional literacy support. However, the tribunal does not consider that the evidence supports this allegation. It seems that the child was provided with 30 minutes additional support on a withdrawal basis each week. It is also noted that the child himself is resistant to receiving any Teaching Assistant support.
71. Overall, therefore the tribunal finds that the RB has discriminated against the child in that the child has been treated unfavourably and that unfavourable treatment was because of something arising in consequence of the child's disability. There was a failure on the part of the RB to make reasonable adjustments and accordingly the RB cannot demonstrate that the treatment was a proportionate means of achieving a legitimate aim.
72. In terms of the remedies claimed it is not appropriate to order the provision of a Teaching Assistant as the child has shown no inclination to engage with any adult support and it does not appear that the child's needs are such as to require support of this nature. In addition, the evidence is that the school has already engaged in ASD/ADHD training.
73. The Equality Act policy requires reviewing and updating and there should be specific Equality Act training for the staff.
74. Without making a specific direction to that effect it is hoped that the school and the parents can collaborate constructively to identify all reasonable adjustments that are required to ensure that the child does not experience any further unfavourable treatment.

75. In the circumstances the claim succeeds, and the following remedies are ordered:

- i) The Chair of the Governing Body shall within 28 days send a written apology to the child on behalf of the Governing Body (providing a copy to the child's Parents and to the Tribunal Secretariat) acknowledging that the child is disabled within the meaning of the Equality Act 2010 and that the school misunderstood the child's level of difficulties.
- ii) That the Governing Body shall review and update all its Equality Act policies and also prepare an Equality Act impact assessment of its Behaviour policy
- iii) That the whole school undertakes specific Equality Act training

Order: Claim Allowed

Dated April 2021