**ANONYMISED DECISION OF THE TRIBUNAL**

1. **Claim**

This is a claim under the Equality Act 2010 for a finding that the Local Authority discriminated against the Child as a result of disability.

1. **Summary of the Decision**

The Tribunal find in favour of the Claimant.

1. **Reasons for the Decision**

**Preliminary Matters**

An oral hearing proceeded in this case on 4th and 5th December.

At the preliminary stage the parties indicated that they were agreed that the child, was disabled in terms of Section 6 of the Equality Act 2010. They were also agreed that the Responsible Body in this case, the education authority, did not seek to advance any defence in terms of Section 15(2) of the Act, that is to say that they had any lack of knowledge of the child’s disability.

The Claimant sought to lodge a late production, being a copy e-mail, and there was no objection to this.

The oral hearing then proceeded. The Claimant led evidence from one witness only, the mother.

**Mother**

The mother of the child gave evidence that the child’s behaviour had been concerning since she was a young child. She had been a “terrible” toddler, quite different to the mother’s two older children. Notwithstanding her behaviour at home, the child had generally been fine during primary school up until the point of Primary 5 or 6. At that point serious incidents began to emerge. The child was in a fight in Primary 6 leading to the involvement of an Educational Psychologist and a referral to a centre. There were further difficulties in Primary 7.

The mother is principal teacher of Art in the child’s high school. As a result she has disseminated to her, on a routine basis at transition, a copy of support plans for any children who have them as they begin S1. She gave evidence that that is how she first learnt that her own daughter had a support plan. She was “gobsmacked”. She did not agree with how the plan was written and with some of what was contained within it and it was subsequently withdrawn by the school as a result of parental objection.

The child’s behaviour in S1 was pretty good. In S2 her behaviour started to unravel. By this point the mother had identified that there were certain things that the child found more challenging, such as any form of change. She gave an example of extreme anxiety being triggered in the child when her laptop had to be removed to go in for repair. She also became aware that the child had certain “rituals”. One of these was that she requires to have some form of IT device near her. In addition she used to sit with her hand over her ear a lot, as if to block out noise. In addition the child was obsessed with horses and talked about them all the time. She was very controlling about things like food and her own space. She liked to find things in the same place.

In S2 there were numerous incidents involving the child at school. On one occasion the child was hiding under the stairwell at school in a distressed state. The child’s pastoral care teacher had at least one meeting, possibly two with the mother and her husband to discuss the child. He sent out an e-mail to staff asking for feedback as to strategies that were successful in dealing with the child. An interim protocol was prepared (C86 of the papers). This included “planned ignoring”. The mother gave evidence that this meant ignoring behaviour that just did not matter.

The mother gave evidence that the child was particularly needy in relation to her i-Pod device. This was not a telephone. Prior to Christmas this device was a small music player. For Christmas she got an i-Pod touch. While this looked very like an i-Phone it was a multi-media device. The child liked to “fiddle” with this. She would also block out sound with it. She seemed to find it tactile. The mother reported that it was hard for the child to sit still. Checking the time also became an obsession for her. She found it difficult to interpret an analogue clock, which is what was in each classroom, and liked to check the time on her i-Pod device.

There was an incident on 22nd February which resulted in the mother being called from her own class to attend because the child was involved in an incident in Science. The mother gave detailed evidence about this incident and the child’s high level of distress resulting from it. The mother felt that the situation could have been dealt with differently and in such a way as it would not have escalated. The incident resulted in the child being formally excluded from school for a half day. The child perceived this as a punishment. The child was distraught when she got home. She was very angry and very upset and very aggrieved. The mother was of the view that this would not be a successful preventative measure for the child as she was not able to understand the process of exclusion.

Following the exclusion it has been very, very hard to get the child back into school. She seemed to have depression. The child was given a diagnosis of Asperger’s syndrome in June but for a substantial period prior to that the school had been operating under a presumptive diagnosis that this was the case. It was clear to the mother that much of the child’s previous behaviour at home could be explained by this diagnosis.

In cross-examination the mother’s evidence was that the child’s use of the i-Pod in class should have been ignored if it was not causing disruption or interfering significantly with the class. It was her understanding that what the child was doing in the science class on 22nd February was not disruptive. Even if it was disruptive it was her evidence that the teacher could have employed a different strategy and should have explored all strategies before calling the Duty Rector to deal with the incident.

The mother was the only witness led by the Claimant. The Responsible Body led evidence from the following three witnesses:-

**Headteacher**

The headteacher is principal of School A Joint Campus which includes School A Primary and School A Academy. She has been principal for four years. She gave evidence that she had experience of pupils with special needs from her previous post as a head teacher in a different local authority and in the post before that where she was depute head in a school with an autism base and inclusion outreach team.

The headteacher had been directly involved with the child whilst she was in primary school as a result of particular difficulties that had arisen. When the child moved from primary to secondary school a profile had been prepared by her P7 teacher (C24 of the papers) but it had been removed at the request of the mother because she had not been consulted about it and was not happy with the content. The classroom teacher thought there had been a discussion about the plan but could not be sure. There were no notes arising from any such discussion. There was no attempt to re-draft or replace the plan.

There were no concerns about the child in S1. In S2 there was an incident in December when the child would not follow the class teacher’s instructions during science in the library and had then been involved in a lengthy incident in the office, described at C20, C22 and C23 and resulting in her exclusion from classes (not school) as referred to at C11. This was an alternative to exclusion from school. As a result of this incident there was also a meeting between the Principal Guidance Teacher and the child’s parents which resulted in an “interim behaviour protocol” being produced. This appears at page C85 and C86 of the papers. The purpose of this was to give staff advice in the way that they dealt with the child. The first strategy was “planned ignoring”. The headteacher’s evidence was that this meant a teacher should ignore behaviour which was not likely to lead to anybody, including the child, being hurt or to significant disruption in class. Certain behaviour could be ignored for a whole period and other behaviour might require direct intervention and redirection with no ignoring of it being possible. This was not followed/ replaced with a full protocol until around February, after the incident resulting in the child’s exclusion.

In January 2012 there was an incident where the child assaulted another pupil in PE class. The child had been standing in a queue waiting to take her turn to vault. Another pupil cut in in front of her and she hit him. This resulted in an exclusion from class for 1.5 days.

The headteacher gave evidence about the incident on 22nd February. She was aware of it when the science teacher who had the child in class called to the school office for the duty rector. (There was a rota of senior staff members who would be called out to deal with serious discipline issues within the school and such procedure was known as “being Duty Rectored”). The duty rector on this occasion was the depute headteacher. He told the headteacher that he had been called to science to deal with the child. He was aware that she had been asked to put her phone away and had repeatedly refused to do so. Normal procedure in relation to phones within the school by that stage was that if a young person refused to put it away when asked by a teacher they were escorted to the office to leave their phone in the school safe where they could uplift it at the end of the day. The headteacher had a discussion with the depute headteacher where she said that that was not a good idea because that was likely to cause the child considerable distress.

The headteacher was asked about her understanding of the incident on 22nd February. She advised that the child had had her phone out on the table in science, which was not unknown. Her understanding was that she had been using it, playing with it and that the science teacher had ignored that for a time. Her understanding was that the science teacher then became concerned that others in the group of five that the child was sitting in were becoming distracted by the phone so he asked the child to put it away. The others at the table were having their attention drawn by the mobile phone which was leading to disruption and she felt, that in these circumstances, the science teacher was correct to ask that it be put away. None of these aspects of her evidence appear in the headteacher’s notes of the incident (C87 of the papers).

The headteacher then gave evidence of her attendance at the science class. She first attempted to get the child to leave the class with her and the child refused to do this. She started to move her table violently and became even more anxious. The other pupils had to be removed from the class for their safety. The child threw her pencil case down the length of her table. The child began to pick up furniture and throw it. The headteacher required to withdraw from the class and the child continued to throw furniture about. The child then sat down in such a way that she could not be seen from the corridor. The headteacher went into the class on several occasions to ask the child to leave with her, before retreating when she refused to do so. This situation continued for a considerable period of time, until the mother arrived.

The headteacher formed the view that she required to formally exclude the child from school as a result of her behaviour, being the behaviour both before and after she arrived. She also gave evidence that she was told it was not always helpful to exclude youngsters, particularly those with additional support needs, on an informal basis.

In cross examination the headteacher confirmed that the school were operating under the presumptive diagnosis of Asperger’s for the child at the date of the incident on 22nd February. She confirmed that there was nothing in her record of the event or in the Authority’s case statement that suggested the child’s use of the phone was disruptive to teaching or learning. However, the witness replied that it was her understanding that that was the case. The headteacher indicated that she believed that she had all the facts when she made the decision to exclude and that had she waited until she had spoken to everybody she would still have done the same thing. It was

The headteacher’s position that the strategies contained within the interim protocol were followed by the school. She indicated, “I am very clear the learning of others was being disrupted”. She also indicated that that was the feedback she had from the depute headteacher and the science teacher and also what she observed herself on her arrival.

**Depute Headteacher**

Depute Teacher at School A Academy where he has worked for 4 years. He is also head of the child’s school house, which gives him pastoral responsibility, along with the principal guidance teacher, for the child.

The depute headteacher gave evidence of being asked to deal with a restorative meeting involving the child in October. The meeting did not go well and broke down resulting in the child becoming agitated and having to be sent home. The depute headteacher was then present at a meeting (following an incident in November in the library) with the Educational Psychologist to discuss the behaviour protocol for the child. The depute headteacher was satisfied with the interim protocol that was produced.

In relation to the incident on 22nd February, the depute headteacher had been the individual called to the classroom as Duty Rector. On arrival he found the child standing outside the class. He asked the child to put her phone away and return to class rather than follow the normal procedure, which would be to ask the pupil to attend the office with him to have the phone locked in the safe. The depute headteacher described the child as “agitated”. When he asked her to put her phone away she started arguing. She just wanted to go back to class and eventually just walked away from him into class, despite the fact that he had asked her to go to the science base to calm down. At that point the depute headteacher returned to the office to report to the headteacher.

In cross-examination the depute headteacher confirmed that he had thought the child had a phone which she had refused to put away. In answer to a question from the Tribunal the depute headteacher indicated that the school issued guidance in August, although he could not be certain about this, in relation to the use of mobile phones. He was unsure if this guidance was communicated to parents. He indicated it was the sending and receiving of text messages in class that was causing the greatest problem.

**Principal Guidance Teacher**

Principal teacher of Guidance at School A Academy and is also a biology teacher. He is responsible for pastoral care of the child’s school house. He has been a guidance teacher for 14 or 15 years. In evidence he indicated that he had known the mother and her children because of the fact that he and the mother had been colleagues for 15 years and thus knew her family personally. As a result he was aware of difficulties the child had in primary school and that the mother and father struggled with the child at home.

The child had a very positive first year at secondary school and was animated, positive and engaged. She was academically very able. He met with her during S1 and no issues at all were identified. As S2 progressed he began to realise the child was struggling and was coming into conflict with her teachers. She was challenging instructions in class and coming into conflict with basic classroom rules. She made a lot of inappropriate comments that resulted in disruption. She very much struggled with restorative meetings that the school wished to have after incidents of poor discipline as she could not understand why the school wanted to go back to discuss an incident when it was in the past. The child simply wanted to “move on”.

 The principal guidance teacher gave evidence that the child had had three different science teachers because there was a rotation of the three separate teachers for biology, chemistry and physics. When he was involved in a restorative process following an incident in the library during science class he first began to suspect that the child may be suffering from Asperger’s syndrome. She would not really engage with him and would not make eye contact. He spoke to the child’s parents and there was a referral to the Centre. The school psychologist was contacted in order to make sure that the right kind of things was being done for the child. The school psychologist advised that the principal guidance teacher advised to find out from teachers what sort of strategies worked for the child. From these responses it became apparent that the child did have difficulties, including a need to know the time, but combined with an inability to read the analogue clock which was in most classrooms.

The principal guidance teacher completed the interim behaviour protocol in consultation with the child’s parents. The principal guidance teacher was aware, from at least 15th February, that the child’s use of her i-Pod Touch was an issue.

In cross examination the principal guidance teacher gave evidence of speaking to the child’s science teacher on 22nd February and on several occasions prior to that about the way to use the interim behaviour protocol because he knew that the child was having a difficulty in science and he wanted guidance as to how to deal with her.

**Submissions for the Claimant**

The claimant’s solicitor began by submitting that Section 136 of the Equality Act 2010 (hereinafter the “2010 Act”) applied to this case. She indicated that the facts here fell within Section 136(2) of the Act which states that “If there are facts from which the court could decide, in the absence of any other explanation, that a person contravened the provision concerned, the court must hold that the contravention occurred”. She was indicating to us that this applied where the claimant had established a *prima facie* case so as to shift the burden of proof to the authority to show that discrimination did not occur.

She indicated in her submission there were three pertinent questions to be answered:

1. Is the child a disabled person within Section 6 of the 2010 Act?

All were agreed that this was the case.

2. Did applying the practice of asking pupils not to use gadgets contravene Section 21 of the 2010 Act?

In answering that question the following matters required to be looked at :

(a) Did the application of that practice place the child at a substantial disadvantage to pupils who were not disabled.

(b) If so, what steps were reasonable for the authority to take to avoid the disadvantage

(c) Did the authority fail to comply with the requirement to take steps?

3. Did the exclusion on 22nd February amount to discrimination arising from a disability in terms of Section 15 of the Act?

In answering this question it was appropriate to consider the following:-

(a) Did the authority treat the child unfavourably as a result of something arising from her disability.

(b) If so, can the authority show that treatment of the child was a proportionate means of achieving a legitimate aim.

**Question 2**

In terms of answering question 2 the claimant’s solicitor advised that Part 6 of the Act applies to education. Section 85(6) of the 2010 Act states that a duty to make reasonable adjustments applies to the responsible body of such a school. Section 85(2)(a) of the 2010 Act states “the responsible body of such a school must not discriminate against a pupil (a) in the way it provides education for the pupil”.

Schedule 13, Section 2(4)(b) of the 2010 Act defines the requirements in relation to relevant matters and includes the provision of education.

In dealing with Question 2(b) the claimant’s solicitor submitted that Section 20(3) of the 2010 Act and detailed the duty on the Authority. It states: “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.” The claimant’s solicitor submitted that this had to be broken down into three aspects: -

(i) **Provision** – she directed us to page 21 of the Equality and Human Rights Commission Publication (What Equality Law means for you as an Education Provider : Schools). She pointed out that here the provision was the practice of asking pupils not to make use of gadgets. She indicated that there was an accepted practice that phones should not be used in class time because they were a distraction and pointed to the evidence of the headteacher to support this.

(ii) **Substantial Disadvantage** – The claimant’s solicitor pointed us to page 26 of the same publication which deals with how the words “substantial disadvantage” should be defined. In the claimants solicitors submission the practice in question here, caused the child a substantial disadvantage. The child finds it difficult to cope in certain environments. She gets fixated on certain items. One of these was the IPod touch. She indicated that there was a general awareness of an ignoring strategy. The child’s use of the i-Pod Touch was an obsessive trait. As well as checking the time she also used it as a coping mechanism. If she was challenged about it she presented difficult behaviour.

(iii) **Such Steps as it is Reasonable to have to Take** – Here we were directed to pages 25 and 27 of the same publication. It was submitted that the reasonable adjustment the Authority ought to have made would have been to completely ignore the child’s use of the i-pod Touch. It was submitted that the child was sensitive in particular environments, most notably in science class. She presented challenging behaviour when confronted. Various teachers were already aware of the position and we were referred to C47, C54, C61, C62 and C63 of the papers. Teachers were also aware generally of ignoring strategies in relation to the child and when those were used it was submitted they were effective. We were directed to a further Equality and Human Rights Commission publication entitled “Reasonable Adjustments for Disabled Pupils – Scotland”, page 8 thereof gives guidance about the factors to be taken into account when considering what adjustments are reasonable. Those which are relevant were:-

* The extent to which any particular step would be effective in overcoming the substantial disadvantage suffered by a pupil. We were advised that the reasonable adjustments proposed here would have been effective.
* The resources of the school. We were advised that this step would not have required resources.
* The financial and other costs of making the adjustment. This would have no cost attached to it.
* The practicability of the Adjustment. This was practical as it was already in use.
* The effect of the disability on the individual. The child’s disability made it very difficult for her to cope.
* The interests of other pupils. We had heard evidence of the child’s behaviour becoming very difficult when challenged so it was thus in the interests of other pupils that these reasonable adjustments were made.

**Question 3**

Turning to Question 3 “Did the exclusion amount to discrimination?” The claimant’s solicitor referred us to Page 63 of the publication referred to earlier “What Equality Law Means for you …” and the paragraph there which states, “Excluding a disabled pupil for behaviour which arises as a consequence of their disability is likely to result in unlawful disability discrimination unless you can show the exclusion was a proportionate means of achieving a legitimate aim.” It was pointed out that exclusion was one of the ways in which a school must not discriminate against a pupil by Claim to Section 85(2)(e) of the 2010 Act.

It was submitted that an exclusion was automatically unfavourable. It was submitted that this exclusion had real and unfavourable effects on the child. It would remain on her record. Since the incident the child’s attendance at school has decreased dramatically and she has only attended school on a few occasions recently and all of that was linked back to the exclusion. Section 15(1)(b) of the 2010 Act could have been relied upon by the Authority here but they had indicated that they did not seek to advance such a defence.

At page 22 of the “What equality law means for you …” publication the question was asked “What is a proportionate means of achieving a legitimate aim”? It was submitted by the claimant’s solicitor that this meant that if the Authority had not complied with their duty to make reasonable adjustments it would be difficult for them to show that a treatment was proportionate, and that this is what was stated in Paragraph 5 of the publication at that page. Here she submitted that a legitimate aim would have been to allow time away from school to reflect, but the Responsible Body had sought to rely on an area not contained within their Case Statement in that the headteacher’s evidence was that the aim of the exclusion was threefold : Firstly to address the child’s behaviour prior to her arrival at the scene; secondly to address her behaviour after her arrival at the scene; and thirdly, that sometimes for a child with additional support needs it could be useful to have a formal exclusion. The claimant’s solicitor submitted that the reasons for the exclusion were important in deciding whether the exclusion was a proportionate means of achieving a legitimate aim. She indicated that the Authority had not sought nor been granted permission to rely on other reasons in terms of Rule 29(4) of the Additional Support Needs Tribunals for Scotland (Disability Claims Procedure) Rules 2011 and in the absence of such leave they should not be allowed to rely on other reasons.

She submitted that even if they were allowed to so rely, their reasons were not a proportionate means of achieving a legitimate aim as the behaviour of the child had been tolerated by other teachers and was initially tolerated by the science teacher: the behaviour after the headteacher arrived was caused by the child’s disability and this could not therefore in itself be a reason for the exclusion as the exclusion could not change her behaviour: and a record could be made by writing everything down yet this would fall short of exclusion.

In relation to proportionality it was submitted that exclusion was not a proportionate response. The exclusion was not necessary. The aim could have been achieved otherwise than by exclusion. It only served to create more negative connotations. It served to have the opposite effect of not calming the child.

Finally, the claimant’s solicitor submitted that reasonable adjustments were not made. The child’s behaviour was as a result of her disability. The school were operating under a presumptive diagnosis of Asperger’s Syndrome. The instruction given to the child to put away her i-pod Touch was given on countless occasions. There was a general awareness amongst teachers that the child used the i-pod touch to “create a bubble”. The child was obsessed with the need to check the time. The principal guidance teacher had several opportunities to update the interim protocol when the issue involving the i-pod came to his attention and he failed to do so.

The claimant’s solicitor finally went through the various remedies sought and made submissions about why these were appropriate.

**Submissions for the Authority**

The responsible body's solicitor indicated that in terms of the submission that they were proceeding on the basis of a case not stated, T11 and T12 show that they had given reason for the exclusion and that those reasons chimed with the evidence given by the headteacher. He could not see any basis for the criticism made as there had been no departure from the case as stated by the Authority.

Turning to the substantive issues the responsible body’s solicitor submitted that the action taken by the Authority was not a discriminatory one. The school did not have a blanket ban on the use of gadgets. In some classes gadgets were allowed, such as art. The policy on gadgets was further extended and relaxed for the child because of her additional support needs and this formed the basis of a reasonable adjustment.

The responsible body’s solicitor advised that planned ignoring as per the interim protocol did not mean ignoring all circumstances, irrespective of the type of behaviour or its impact on others. All witnesses indicated that you could only “ignore so far”. The child could not just be allowed to do what she wanted. The headteacher was clear that the science teacher had described to her a significant disruption to the learning of others.

He considered that in order to decide the issue as a whole what happened in the classroom leading to the child’s behaviour was important. The only evidence about this was that provided by the Head Teacher, which she had obtained from the class teacher. It was a matter for the Tribunal to assess credibility and reliability and he submitted that the headteacher was credible and reliable.

The responsible body’s solicitor submitted that there seemed to be a general acceptance that the interim protocol was fit for purpose and if that is correct it amounted to a reasonable adjustment and the only criticism that could then be made was if it was suggested that the protocol was not followed. The witnesses who spoke to the incident suggested that the protocol was followed.

The emergence of the i-pod as something required by the child such as envisaged by the phrase “creating a bubble” was only after information was gathered from staff and that was on 27th February after the incident concerned. The action taken by the Authority was proportionate insofar as it was appropriate and necessary. The exclusion was of minimal duration and given the level of disruption caused by the child’s behaviour the steps taken were appropriate. There were issues of health and safety caused during the disruption.

Furthermore, what was sought by way of remedy would not be appropriate. It would not benefit the child.

Claim was made to the case *E-v- East Ayrshire Council*  on page 13 thereof where the Sheriff observed that exclusion was necessary to protect discipline.

In this case it was suggested that the child should not be excluded for behaviour that a child who has no protected characteristic would be. It was suggested that a child with no protected characteristic would have been excluded for the same behaviour and that it was appropriate for the class teacher and all concerned to do what they did.

Decision

The Tribunal is grateful to the claimant’s solicitor for her well thought out and well structured submissions on the law. We agree that the relevant statutory provisions are those outlined in her submission. We consider the concession made in respect of question 1 was well made as we agree that the child falls within the definition of a “disabled person” as detailed in section 6 of the 2010 Act.

Moving on to her Question 2 we summarise this as meaning that if the practice in place in the school in relation to mobile phones puts a disabled person (such as the child) at a substantial disadvantage and the Authority fails to take such steps as were reasonable to avoid the disadvantage then there was a failure to make reasonable adjustments as prescribed by section 21(1) and resulting discrimination as prescribed by section 21(2) of the 2010 Act.

The main difficulty here was that we were left with a distinct lack of clarity about the alleged practice or provision in the school in relation to phones. It was not clear whether this was written down anywhere. It wasn’t clear whether all teachers knew of it. It wasn’t clear whether parents and pupils knew of it. It wasn’t clear whether it was to apply to mobile phones only or to music players only or to both (and to other gadgets). This last lack of clarity was important in the child’s case as we accepted she didn’t have a mobile phone out in class (although to add to the confusion some teachers thought her i-pod was an i-phone). As the terms of the practice or provision were unclear it was thus very difficult for the Tribunal to find that the provision or practice put the child at a substantial disadvantage and we do not so find.

We turn now to the general question posed at Question 3 as to whether there was discrimination arising from the child’s disability, the practice in relation to mobile phones and gadgets put to one side.

Section 85(2)(e) is the relevant one. Page 63 of the “What Equality Law Means for you…..” publication states: “Excluding a disabled pupil for behaviour which arises as a consequence of their disability in likely to result in unlawful disability discrimination unless you can show that the exclusion was a proportionate means of achieving a legitimate aim.” In our view it is clear that the child’s behaviour on 22nd February arose “as a consequence of her disability”.

The child behaved as she did as the importance to her of her i-pod (which was a consequence of her Asperger’s Syndrome- her disability) was not recognised. The i-pod operated as a support to keep her anxieties and hyper-sensitivities in check. It also helped her to make time concrete and was a tactile tool for her. The school were operating under a presumptive diagnosis of Asperger’s Syndrome at this time. They should have been aware of the sorts of issues outlined above as being issues that can arise for children with Asperger’s Syndrome. It seems to the Tribunal that all of the child’s behaviour on 22nd February flowed from the initial demand, later repeated by other teachers, that she put her i-pod away and thus arose as a consequence of her disability.

Nonetheless there may still be occasions when exclusion of a pupil with a protected characteristic is necessary and appropriate i.e where it is a proportionate means of achieving a legitimate aim. The Authority submitted that that was the case here, having regard to health and safety (and presumably the need to maintain discipline, although they did not say so in submissions). It is the view of the Tribunal that exclusion in this case was not a proportionate means of achieving a legitimate aim. We agree with the claimant’s solicitor’s submissions in this regard.

It follows that the Tribunal agrees that the child was discriminated against by reason of her disability in terms of section 15 of the 2010 Act.

In terms of remedies we take the view that the intention should be to try to remedy the damage done to the disabled person and to reduce any future disadvantage. With this in mind we order that the exclusion of 22nd February be overturned and removed from the child’s school record and that the school or Authority write to the child explaining that this has been done and why. We also order that the Authority give consideration to appropriate mandatory training on the subject of Asperger’s syndrome to the staff at School A Academy. We do not consider that the remaining remedies sought should be granted.