**DECISION OF THE TRIBUNAL**

1. **Claim**

A Claim, dated 21 March 2012, was received by the Tribunal’s Secretariat on 27 March 2012 alleging unlawful disability discrimination on the part of the Responsible Body.

1. **Summary of the Decision**

The claim succeeds by the consent of the parties, with the approval of the Tribunal. An order of declarator will be made, as set out below.

1. **Procedural History**

The Claim was dated 21 March 2012 and was received by the Tribunal’s secretariat on 27 March 2012. The convener made directions on 27 March 2012 *inter alia* asking the Claimant to set out more fully the claim being advanced and to set out detailed grounds to support the application for there to be a just and equitable extension of time pursuant to Part 3, Schedule 17 Equality Act 2010 and Rule 5 (4) and (6) of the Additional Support Needs Tribunals for Scotland (Disability Claims Procedure) Rules 2011 (The Tribunal Rules).

The Claimant failed to comply with this direction and outside the period for compliance it sought an extension of another ten days. On 13 April 2012 the convener partly acceded to the Claimant’s motion and granted an additional period until 12 pm on 18 April 2012 for compliance with the earlier directions. The Claimant filed and served further information on 18 April 2012 but failed to set out detailed grounds in relation to the just and equitable extension of time.

On 20 April 2012 the convener refused to strike out the Claimant’s claim but directed that the Responsible Body’s motion to strike out and the Claimant’s motion for an extension of time on just and equitable principles be heard together before a Tribunal. The Responsible Body was directed to file and serve its defence to the claim for unlawful disability discrimination, but not its evidence.

At the hearing, which took place on 8 June 2012 the parties drafted an agreed statement of facts. The convener raised, solely as an observation, that the Responsible Body’s pleaded case (see paragraph 7 of its Response) appeared to amount to a breach of the indirect discrimination prohibition as set out in section 19 of the Equality Act 2010.

Solicitor for Responsible Body, who appeared for the Responsible Body, requested a brief adjournment and took instructions. He then accepted before the Tribunal there had been a breach of the prohibition in relation to indirect discrimination in relation to the manner in which the Responsible Body advertised the spare places for the school trip to Paris. Given this admission, Solicitor for Claimant, who appeared for the Claimants, accepted this admission and did not seek to pursue the matters in his clients’ pleaded case. The parties agreed an order for declarator should be made and they drafted the terms of a proposed order for declarator.

1. **Summary of Facts Found**

The parties drafted a statement of agreed facts. Both solicitors signed the statement and its contents are not repeated herein. The statement of agreed facts is appended to this decision as appendix One.

1. **Reasons for Decision**
2. The hearing listed on 8 June 2012 was listed to determine the Responsible Body’s motion for the claim to be struck out and the Claimant’s motion for a just and equitable extension of time pursuant to Part 3, Schedule 17 Equality Act 2010 and Rule 5 (4) and (6) of the Tribunal Rules.
3. The parties agreed at this hearing, which was not set down as a final hearing, that there had been indirect discrimination contrary to s. 19 Equality Act 2010 in the manner by which the Responsible Body’s staff announced spare places, in October 2010, on the school trip which took place in Paris in June 2011.
4. The Tribunal’s reasons are therefore short as the order made below is an order by consent in relation to which both parties are in agreement. However, as the Tribunal is being asked to make an order for declarator, the following brief reasons are set out.
5. The concession made, very properly, by Solicitor for Responsible Body on behalf of the Responsible Body was accepted by the Tribunal as a withdrawal of opposition pursuant to Rule 12 (1) (b) of the Tribunal Rules. Solicitor for Responsible Body in his clear position before the Tribunal was not withdrawing his opposition to the entire claim made by the Claimants. However in the light of Solicitor for Responsible Body’s concession, Solicitor for Claimant on behalf of the Claimants did not seek to pursue any of the other averments made in the claim.
6. There is no formal procedure in the Tribunal Rules for the Tribunal to make an order by consent. However given the withdrawal of opposition to the claim as advanced by the Claimant at the hearing the parties were in agreement and the order sought was made by consent.
7. It follows, that as the Tribunal only has jurisdiction to hear a claim received by the Secretariat before the end of the period of six months beginning when the act complained of was done or by there being a just and equitable extension of time, the Tribunal accepts time should be extended to permit the Tribunal to make the order agreed by the parties. The Tribunal therefore considers it just and equitable to extend time pursuant to rule 5 (6) because the parties accepted it was correct for the Tribunal to make an order for declarator.
8. Section 19 of the 2010 Act states:

*(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*

*(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—*

*(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*

*(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*

*(c) it puts, or would put, B at that disadvantage, and*

*(d) A cannot show it to be a proportionate means of achieving a legitimate aim.*

*(3) The relevant protected characteristics are—*

*age;
disability;
gender reassignment;
marriage and civil partnership;
race;
religion or belief;
sex;
sexual orientation.*

1. Subsection 85 (2) of the 2010 Act states:

(*2) The responsible body of such 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 the school;*

*(f) by subjecting the pupil to any other detriment*.

1. The parties agreed The child is disabled for the purposes of s. 6 of the 2010 Act. The Tribunal agrees.
2. In paragraph 7 of the Responsible Body’s Reply it set out:
	1. the teacher in charge of the Paris trip announced spare places to pupils by way of a tannoy;
	2. “this is not the method of communication that ought to be used”.
	3. a number of distinct groups of pupils were placed at a disadvantage and they were prevented from putting themselves forward for the spare places;
	4. the class teacher, when she used the tannoy announcement forgot about the correct procedure which would have involved advising staff, *especially* in ‘Pupil Support’ and asking them –“as is the norm” whether there were any pupils in the Learning Centre “such as The child” who would benefit from such a trip.
3. The Tribunal agrees with the parties that:
	1. the Responsible Body applied a practice to non disabled persons (the use of the tannoy);
	2. the use of the tannoy put disabled pupils at a particular disadvantage when compared with non disabled pupils (hence the Responsible Body’s position that it would be the norm to ask staff to ascertain if the pupils in the learning Centre would benefit from the trip, and this did not happen);
	3. The child was disadvantaged by the use of the tannoy (she and her parents did not know about the offer of places until much later when the trip was full);
	4. the Responsible Body cannot show using the tannoy was a proportionate means of achieving a legitimate aim (it accepts the usual practice was departed from and the teacher organising the trip forgot the proper procedure).
4. In the circumstances, the Responsible Body has indirectly discriminated against The child in the manner in which it advertised for spare places for the Paris trip which took place in June 2011 and such discrimination contravenes the Responsible Body’s statutory obligations imposed by subsection 85 (2).
5. The Tribunal only considered the omission in relation to indirect discrimination. This decision is limited to that and the Claimants did not seek any findings or relief in relation to direct discrimination, that is to say there is no suggestion the Responsible Body’s staff discriminated against The child because of, or for a reasons related to, her disability.
6. The Tribunal, pursuant to Schedule 17, Part 3, paragraph 9 (2) may make any such order as it thinks fit, subject to finding the contravention has occurred (which we have) and subject to paragraph 9 (3). In all the circumstances of this case and paying particular regard to the agreement of the parties, it is appropriate that the Tribunal makes an order for declarator in the following terms, and that is the order of this Tribunal:

*The Responsible Body indirectly discriminated against The child in the manner by which it allocated spare places for the June 2011 school trip to Paris.*

1. The Tribunal records its thanks to the representatives for the helpful manner in which they represented their respective clients. The concessions made by Solicitor for Responsible Body in particular, were, in the view of the Tribunal correctly made and very properly permitted the resolution of these proceedings in a proportionate and effective manner.