

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AC/24/0258

Claim

1. This is a claim in relation to the child. The claim is brought by his mother, the claimant, in terms of section 116(1)(c) and Part 3, Schedule 17 of the Equality Act 2010 (**2010 Act**). The claim was received in October 2024.

Decision

2. I find that the responsible body has contravened section 15 (discrimination arising from disability) of the 2010 Act. Specifically, the responsible body:
 - a) placed the child on a part-time timetable, which had effect from April 2024 until February 2025;
 - b) failed to adequately communicate to the claimant that she was not required to agree to the child being placed on a part-time timetable;
 - c) failed to adequately communicate to the claimant that if she did not agree to a part-time timetable, that it would not necessarily lead to his exclusion from school;
 - d) failed to adequately communicate to the claimant the terms of their own Exclusion Policy and the national guidance on same; and
 - e) did not take reasonable steps to ensure that the child could return to a full-time timetable as soon as possible.
3. Accordingly, the child was subject to unfavourable treatment (being placed on the part-time timetable), and the responsible body are not able to show that this was a proportionate means of achieving a legitimate aim. In terms of paragraph 9 of Schedule 17 of the 2010 Act, having found that a contravention has occurred, I therefore determine that the responsible body unlawfully discriminated against the child in consequence of something arising from his disability.

Orders

4. I order the responsible body to:
 - a) issue a written apology to the claimant and the child within 14 days of the date of this decision; and

- b) ensure that the responsible body's staff at school A undertake relevant training with a focus on understanding attention deficit hyperactivity disorder (**ADHD**) and ensuring inclusion for pupils with ADHD, within six months of the date of this decision.

Process

- 5. The claimant lodged a case statement and associated documents in November 2024. By way of a case statement lodged, the responsible body stated that they did not intend to resist the claim.
- 6. At a case management call in December 2024, parties' representatives sought a suspension of proceedings in terms of rule 70 of The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (all following rule references are from these Rules of Procedure) on the basis that the child had entered a phased return to full time education, with a view to him starting the new school year in January 2025 on a full time basis. The case was suspended until January 2025. A further suspension was granted in January 2025, to allow the proposed arrangements to be implemented and for the child to begin his new school.
- 7. Parties' representatives jointly sought that a decision be made by the Tribunal without a hearing (in terms of rule 83(2)(b)) and in terms to be agreed by the parties (rule 96(2)). This decision is made in the terms proposed by the parties. Having considered the terms of their proposed decision and the documents lodged by both parties, I am satisfied that it is appropriate to do so.
- 8. Parties have confirmed that the child is now receiving full-time education (by way of a split placement between school A and the provision within school B). Had this not been the case, a further order would have been sought requiring his readmission to a full-time timetable at school, and doing so as quickly as possible, consistent with allowing an appropriate transition period.

Findings in Fact

- 9. The child has ADHD (report of a Speciality Doctor and Nurse Specialist (CAMHS) dated March 2023 at C013-017).
- 10. The child was at the relevant times, a pupil at school A, which is a mainstream primary school managed by the responsible body.
- 11. In April 2024, following an incident within the school, the claimant was asked to take the child home from school. The claimant was informed that the child would be excluded if she did not do so, or at the very least, this was the clear impression she gained.
- 12. Following this, the child was readmitted to the school on a part-time basis only.
- 13. The child remained on a part-time timetable until February 2025.
- 14. At the date of this decision the child is now receiving full-time education (by way of a split placement between school A and the provision within school B).

Reasons for the Decision

The legal tests

15. Parties agree and I am satisfied on the evidence that the child is a disabled person in terms of section 6 of the 2010 Act.
16. The Council is the responsible body for the school in terms of section 85(9) of the 2010 Act.
17. In April 2024, following an incident within the school, the claimant was asked to take the child home from school. She was informed that he would be excluded if she did not do so, or at the very least, this was the clear impression she gained. The responsible body accepts that communication was not clear on this point. The responsible body accepts that the circumstances which led to the incident were related to the child's disability. This amounts to discrimination against the child by subjecting him to any other detriment (section 85(2)(f) of the 2010 Act). It is not necessary to determine whether this also amounted to an exclusion in terms of section 85(2)(e) of the 2010 Act.

United Nations Convention on the Rights of the Child (UNCRC)

18. It is not necessary for the purposes of this claim to determine whether there was also a breach of Article 28 of the UNCRC – the child's right to education.

Conclusion

19. It is not disputed that the claimant has been unlawfully discriminated against. On reviewing the facts as agreed in the case statements and the other documents lodged, I agree that this is the case. I am satisfied that the child was treated unfavourably. Being on a part-time timetable undoubtedly had a detrimental effect on the child's education, his self-esteem and sense of inclusion, as outlined by the claimant. The responsible body accepts that the child suffered a detriment as a result.
20. The responsible body has identified a split placement for the child with an 'SEBN' (social, emotional and behavioural needs) provision. The claimant is happy with this proposal, which will be (together) a full-time timetable for the child. This arrangement began in February 2025.
25. Parties are agreed as to the terms of this decision and the remedies to be ordered.