

The Equality Act 2010

This factsheet aims to provide people with more information about the Equality Act 2010 and the protected characteristic of disability.

The Equality Act 2010 makes discrimination on the basis of “protected characteristics” unlawful.

A person has a disability if they have a physical or mental impairment, that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. **.Section 6, Equality Act 2010**

What is disability discrimination?

There are different types of disability discrimination, which are summarised briefly here.

A person may be subject to more than one type of discrimination in relation to the same set of circumstances. This can be a complex area.

Disability discrimination occurs when a person is treated less favourably than someone else because of his or her disability. This is referred to as **direct discrimination**.

Discrimination can also happen when a disabled person is placed at a substantial disadvantage because **reasonable adjustments** have not been made to account for their disability.

Discrimination arising from disability occurs when a school treats a disabled pupil unfavourably because of something connected with his or her disability and cannot justify such treatment. This is different from direct discrimination. There does not need to be any intention to treat someone unfavourably.

A school may lawfully treat a pupil in a way that is unfavourable due to something arising from their disability if they can prove that the treatment is ‘a proportionate means of

achieving a legitimate aim'. A legitimate aim may be, for example, to protect the health, safety and welfare of the pupil and other pupils at the school.

Unfavourable treatment will not be proportionate if there is an alternative way of achieving the same outcome, or if the treatment is an ineffective means of achieving the stated goal

Indirect discrimination

Indirect discrimination occurs when a school applies a "provision, criterion or practice" in the same way for all pupils but this has the effect of putting disabled pupils (or pupils with a particular disability) at a particular disadvantage.

A provision, criterion or practice (or PCP) might be a policy, or something less formal that has become an established way of doing things. For example, a specialist senior phase area that can only be accessed by stairs may indirectly discriminate against those who have mobility issues.

A school would not be acting unlawfully if the provision, criteria or practice is justified as a 'proportionate means of achieving a legitimate aim'.

Reasonable Adjustments

Schools have a duty to provide reasonable adjustments for disabled pupils – including the provision of auxiliary aids and services, where appropriate. This might include assistance from a pupil support assistant or the use of electronic communication aids.

Additional Support Needs Tribunal

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Who can make a claim?

- A parent of a child or young person (or the disabled child or young person themselves - where they have capacity to do so) can make a disability discrimination claim. Children aged 12 or over are presumed to have the capacity to bring their own claim. Some children of a younger age may also have capacity.
- The person making the claim is called “the claimant”.

Who is the claim against?

- The claim is formally against the “responsible body” for the school. In the case of public schools in Scotland, this will be the education authority. For independent schools, the responsible body is the “proprietor” or governing body of the school.

Time Limits

- The time limit for making a claim to the Tribunal is 6 months from the date of the alleged discrimination. Where there is a series of discriminatory acts, these may be considered together, with the six month deadline running from the most recent act. This can be a complex area, especially in relation to a failure to make reasonable adjustments.

How do I make a claim?

- A claim can be made using the claim form which is on the Tribunal’s website at <https://www.healthandeducationchamber.scot/additional-support-needs/publications/39>. Claims may be submitted electronically. You may wish to consider seeking legal advice before raising a claim with the tribunal.

What remedies are available?

- The Tribunal has no power to award money as compensation to the claimant. Otherwise the tribunal have the power to do anything that they consider reasonable.
- The tribunal are regularly asked to make a statement that discrimination has occurred; order a written apology from the responsible body, require the responsible body to undertake training and develop policies. Depending on the type of case, a Tribunal may order the admission (or readmission) of a child to a particular school.
- The President of the additional support needs Tribunals has powers to monitor how well a school is complying with the order of a Tribunal. This includes powers to refer the case to Scottish Ministers in the event of a failure to comply.