



# 1. MAKING A CLAIM

This guide is designed to help you, as the parent or claimant, to decide whether a claim can be made.

The Tribunals can hear and decide claims of disability discrimination of persons in school education in Scotland under the [Equality Act 2010](#). Claims can be made by the person's parent or by the person if they have capacity to make the claim.

## **What is a disability and disability discrimination?**

**Disability:** The [2010 Equality Act, Part 2, Chapter 1, Section 6 \(1\)](#) defines a person with a disability as a person who has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his/her ability to carry out normal day to day activities. The condition should be in existence for at least a year.

**Disability discrimination:** Disability discrimination can occur when a person is treated less favourably than someone else because of his or her disability. 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.

## **What conditions are not covered by the definition?**

Children who wear glasses are not covered if that is their only difficulty. Conditions that happen regularly (such as hay fever) or are only temporary, (such as broken bones), are excluded, as are addiction to alcohol, tobacco and drugs.

## **Can a child without a disability ever be discriminated against?**

If you or your child are not disabled, but are victimised (treated worse than others) by a school or local authority because you have given evidence or information in connection with a claim that you or another person is making, or proposing to make, against the responsible body, you may be able to make a claim for victimisation under the [Equality Act 2010](#).

## **What can I claim about?**

The Tribunals can hear claims of disability discrimination where this occurs in an education setting in Scotland. **This covers a school managed by an education authority, an independent school or a grant aided school.**

[Equality Act 2010, Part 6, Chapter 1, Section 85 \(8\)](#)

[Education \(Scotland\) Act 1980, Section 73 \(c\) or \(d\)](#)



## **Responsible Body**

Your claim is against the 'responsible body', which is the organisation the law says will be responsible in cases of disability discrimination. In the case of public schools in Scotland this will be the education authority. If the discrimination occurred in an independent school, the responsible body is the owner or governing body of the school.

## **Admissions**

The responsible body must not discriminate because of a pupil's disability.

This would apply:

- In the way in which the responsible body has decided who will get a place in schools;
- In the terms on which they offer pupils a place at the school; and
- By refusing to accept, or deliberately not accepting an application from a disabled pupil for admission.



## **Exclusions**

It is against the law for the responsible body to discriminate against a disabled pupil by excluding him/her from the school because of their disability or where the behaviour resulting in the exclusion arises due to their disability. This applies whether it is a permanent or fixed term exclusion.

## **Education and Associated Services**

A school must not discriminate in the education and associated services it provides for disabled pupils. This covers all aspects of school life and the teaching provided to pupils. It also covers periods during lunch times, other breaks and after school activities. The responsible body of a school has a duty to make reasonable adjustments to support the disabled pupils.

[Equality Act 2010, Part 6, Chapter 1, Section 85](#)

[Equality Act 2010, Part 6, Chapter 1, Section 85 \(6\)](#)



## **What remedies are available?**

The Tribunal has no power to award money as compensation for any discrimination that may have taken place. If the claim is decided in your favour, the Tribunal may order the following remedies:

- A statement that discrimination has occurred;
- A written apology;
- Training to be provided to school staff;
- Policies to be developed;
- Re-instatement in the school;
- You may also indicate any other remedy not stated above.

Please note that whatever you request, the Tribunal may decide that there is a more appropriate remedy and may direct that this be awarded as well or instead.



# 2. STARTING A CLAIM

## Time Limits

The time limit for making claims is 6 months from the date of the alleged discrimination. The exception would be if your dispute has been sent for conciliation, where you would have a further 3 months to apply. [Equality Act 2006, Section 27](#). Where there is a continuing omission then the discrimination is still ongoing.

## Conciliation

A referral can be made by the Equalities and Human Rights Commission for the provision of conciliation services in respect of disputes. [Equality Act 2006, Section 27 \(1\)\(c\)](#).

The contact details are as follows:

Telephone: 0845 604 5510

Textphone: 0845 604 5520

Fax: 0845 604 5530

Opening Hours: Monday—Friday, 08:00—18:00

Postal address:

Equality and Human Rights Commission Helpline Scotland

Freepost RRLL-GYLB-UJTA

The Optima Building

58 Robertson Street

Glasgow

G2 8DU

If parties take up this service, a hearing may prove unnecessary or they may find that some disputed issues are resolved and the hearing becomes more focussed.

### **Who can make a claim?**

The Tribunals can consider a claim from a parent of a child who is disabled or the disabled person where the person has the capacity to make a claim. [Equality Act 2010, Schedule 17, Part 3, Section 8](#). “Parent” is defined in [section 135 of the Education \(Scotland\) Act 1980](#) as including guardians and any person who is liable to maintain or has the actual custody of a child or young person. Whenever “parent” is mentioned in this guide, this definition applies.

A person “lacks capacity” if they are incapable of doing something by reason of mental illness, development disorder or learning disability or of an inability to communicate because of a physical disability. A child of 12 is presumed to have the capacity to bring their own claim. A child of a younger age may also have the capacity and can make their own claim if they wish to do so.



## **What do I need to show?**

If you make a claim to the Tribunals, the following will need to be clear:

- That your child is disabled;
- That the alleged discrimination was connected to your child's disability;
- That the alleged discrimination was not justified in the case of indirect discrimination;
- What it is that you are asking the Tribunal to do.

## **When can discrimination be justified?**

Even though your child may have been treated less favourably than other pupils, or has been placed at a disadvantage, the discrimination will not be illegal if the school or local authority can show that it was justified in the circumstances. For example, discrimination may be justified:

- When a disabled pupil is refused admission to a school, as a result of a "permitted form of selection" - that is, a legal way of choosing pupils;
- Because an adjustment would involve providing aids and services or removing or altering a physical feature (these are not included in the definition of reasonable adjustments a school has to make);

- Because of the costs and practicality of making a “reasonable adjustment”; and
- Because of health and safety issues.

These are matters that you should remember when making your claim.

### **What's involved?**

A parent or person who has the capacity to make a claim, may do so by completing the claim form which asks for the information necessary to make a valid claim. A paper copy can be sent but if you have internet access, you can complete and submit a claim form online. A claim may be made in writing and signed by the claimant but a claim submitted electronically will normally be accepted without the claimant's signature. If you have told us that a representative is acting for you, all correspondence will be addressed to the representative.

It is helpful to include as much relevant information as possible with the claim form. Documents such as letters from the school or education authority which relate to the matter you are claiming about should be included. Information about the disability in question should also be included along with any other relevant documents. If there is further information required, a form

requesting supplementary information will be sent to you. Do not send original documents, please make photocopies of these to send to the Tribunals.

If the Tribunal can deal with the claim, we will send a copy of the claim and accompanying documents to the responsible body and invite them to respond. At that time you will normally also be advised of the provisional date of the hearing.

### **Consolidation of hearings**

There may be more than one claim about the same person or about a similar issue. A convener can make a decision to enable the claims to be heard at a single hearing. The Tribunals also deal with references (appeals) regarding the additional support needs of children and young people. If your claim relates to a child or young person for whom there has already been a reference lodged, the convener may consolidate the hearings for the reference and the claim, if this is appropriate.



## **Case statement period**

In most circumstances, a 20 working day case statement period will apply. The period will begin on the second working day the claim is received. This means that you will have a further 4 weeks to add to the information you provided with your claim. You should submit all written evidence to be relied on and which has not already been submitted. The case statement can also include a written statement of the views of the person to whom the claim relates. Any documents submitted will be copied to the responsible body involved, who will then have 10 working days to respond.

The response from the responsible body will be collated along with the claim form and any information submitted with it and your case statement. These documents will be numbered and sent to you or your representative and the responsible body.



## **Withdrawal of claim**

You may withdraw your claim at any point prior to the hearing and during the hearing. Once a claim has been withdrawn it will then be dismissed.

It may be that the responsible body has decided to agree with your claim and take action to end the discrimination. If the responsible body does not oppose your claim, this does not mean that you need to withdraw your claim. A convener may make a declaratory decision on the basis of the papers and no oral hearing will be necessary.

## **Witnesses**

Before the case statement period ends, parties should consider who they might want to bring as a witness and provide a list of names to the Secretary. Each party is entitled to call up to 5 witnesses to give evidence. The convener may, in exceptional circumstances, permit more witnesses. The parties themselves may also give evidence. In some cases the evidence of one or two people may be sufficient to decide the claim.

Parties should consider whether the witnesses they wish to call will be available to attend on the notified hearing date. A witness can give written evidence or speak to the Tribunal by telephone

conference call if personal attendance is not possible. If a witness is reluctant to attend, or may have difficulty in getting time away from work to attend, you can apply to the convener who may cite the witness to attend.

### **Representation**

Parents or children will often be unfamiliar with the Tribunal process and may want somebody to represent them at the hearing. This could be a family member, friend or someone from a representative organisation or someone with a legal qualification. If representation is opted for, this should be confirmed in writing and all communication will normally only be sent to the named representative.

Legal aid may be available but this will depend on each individual's circumstances. In some instances, sponsorship can be obtained from the Equality and Human Rights Commission if legal aid is not available. The responsible body can be represented and may instruct who it wishes to present its case. The responsible body should advise us in writing who will be presenting its case.



Whoever represents, or if parties are unrepresented, the Tribunal will normally take the lead in questioning witnesses but will permit parties to question where additional information requires to be heard.

You and the responsible body can choose to have a representative or change a representative at any point prior to the hearing but it is important that the party informs the Secretary in writing without delay. Where the reference is unopposed by the responsible body or both parties choose not to attend there will be no notified hearing but the Tribunal will deliberate and a decision will be issued.

### **Pre-hearing conference calls**

The convener will usually hold a telephone conference call before the hearing date to discuss how the hearing will proceed, confirm what witnesses are to be called, agree a running order and deal with any other preliminary matters. No special equipment is required to take part in a conference call. The case officer will send all information that is required to those who will be



taking part in the call. Guidance published by the President on conference calls is available on the [Tribunals' website](#).

The hearing date will only be changed in exceptional circumstances and if there is a problem with the date that has been set, parties should inform the Secretary immediately, stating the reason why the date is unsuitable. Parties will receive at least 10 working days notice of the hearing if there requires to be any change.

## Hearings

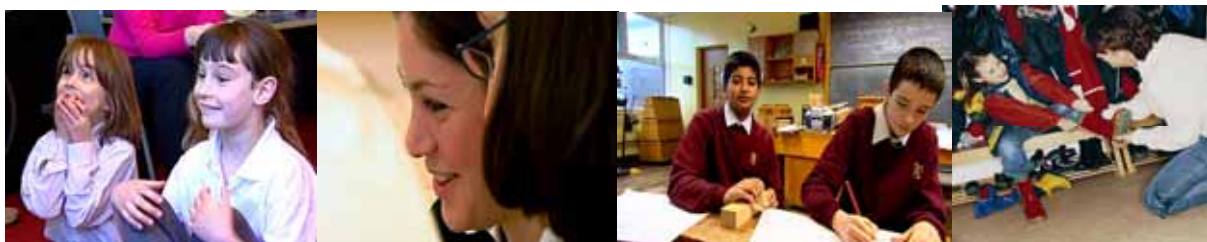
Hearings are held in a variety of venues across Scotland which can include Scottish Government buildings, business centres, universities, colleges, tribunal suites, hotels and even in local authority accommodation where parties consent. The choice of venue is important to ensure that it is private and convenient for parties. If you have any access needs or special requirements, please inform the case officer.



Hearings normally commence at 10:30 and can last a full day. Start times may be altered by the convener and will be notified to parties. Complex cases may require even more time. Each party will have a private waiting room where refreshments are provided.

The Tribunals normally hold hearings in private. For that reason, witnesses will normally be in the hearing room only when giving their evidence. They will not be allowed to observe either before or after this period. The case officer will come for the witness when the Tribunal is ready. Provisional times for hearing witnesses may also be agreed, normally at the pre-hearing conference call to minimise inconvenience to witnesses.

A child who is the claimant may give evidence and any child over the age of 12 who is not the claimant can also give evidence. A child under the age of 12 who is not the claimant can only give evidence where the convener of the Tribunal considers the evidence is necessary to enable a fair hearing and that the welfare and interests of the child are not prejudiced.



## Decision

Depending on the complexity of the issues under consideration the convener may give a verbal decision at the end of the hearing, if parties so wish. The Tribunal can deliberate on the issue within a relatively short time. In all cases parties will receive a **full written statement** of the decision. This should be issued within 10 working days. If the decision is likely to take longer, parties will be informed.

The Tribunal does not have the power to award money as compensation for any discrimination but it will make an order as it thinks fit.



# 3. AFTER THE TRIBUNAL

## Further appeal rights

Following the issue of a decision of the Tribunal, a party may make an application to the Tribunal for the decision to be varied or revoked. [The Additional Support Needs Tribunals for Scotland \(Disability Claims Procedure\) Rules 2011, Rule 47.](#)

The Tribunal may review, vary or revoke the decision if the Tribunal is satisfied that:

- Its decision was based on an error of fact or in law;
- A party who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented and the interests of justice require; or
- Otherwise that the interests of justice require.

An application to review in any of the above circumstances must be received by the Secretary, not later than one month after the date on which the party was sent the decision. The application should fully state the reasons for seeking a review. The Secretary will send a copy of the application to all relevant parties involved with the claim within 10 days of receiving it.



The review will be decided as soon as it is reasonably practical by the Tribunal which made the decision. Where it is not practical to do so, the President will appoint another Tribunal. The Tribunal may dispense with a hearing if both parties agree to do so in writing.

After reviewing the decision and the decision is to be varied or revoked, the Tribunal will substitute it for a suitable decision. The Tribunal may order a rehearing for the same Tribunal that made the decision or a different Tribunal.

Either party may also make an appeal direct to the Court of Session or after a review application has been refused or if the party wishes to appeal the varied decision. A party cannot appeal simply on the grounds that it does not agree with the outcome; an error in law must be identified. This is usually where the Tribunal has not correctly applied the law or has not explained its decision adequately. Appeals to the Court of Session must be made within 42 days of the Tribunal decision being issued.



# **4. WHERE CAN I GET MORE INFORMATION?**

This guide provides a simple introduction. If you have unanswered questions about the process, please contact us.

## **The Additional Support Needs Tribunals for Scotland**

**Europa Building**

**450 Argyle Street**

**Glasgow**

**G2 8LG**

**Email: [inquiries@asntscotland.gov.uk](mailto:inquiries@asntscotland.gov.uk)**

**Helpline: 0845 120 2906** (charged at local rate)

Monday—Friday (9am—4pm)