

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

DECISION OF THE TRIBUNAL

Claim

1. This claim was lodged on 25th November 2019. The claimant, who is the child's mother, alleges that the responsible body behaved unlawfully when it excluded the child from the school on four occasions during 2019. The responsible body has conceded that it discriminated against the child in carrying out those exclusions and has agreed to comply with the remedies ultimately sought by the claimant.
2. The claimant has requested that the agreed outcome be formally recorded in a decision of the Tribunal. The responsible body has agreed with this course of action, and has indicated that it does not resist the claim. Both parties agreed that a decision can be made by a legal member sitting alone. I have agreed to do this. This decision is therefore issued under rule 83(2)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366).
3. There was some discussion between the parties and the legal member about the scope of the agreement, and whether it was accepted that all four exclusions were unlawful under the Equality Act 2020 ('the 2010 Act'). In the end, however, this matter was agreed.
4. There was also some comment from the claimant in her e-mail of 11th August 2020, made in response to the responsible body's e-mail of 4th August 2020, in relation to the basis on which the responsible body accepted that all four exclusions occurred in contravention of the 2010 Act. This related to the reference in the e-mail of 4th August 2020 to the impact of the COVID-19 pandemic. While I can understand the claimant's hesitancy on this point, it is clear that the responsible body does accept that all four exclusions were unlawful. It is also clear that the claimant is willing to accept that this concession ought to lead to the claim being concluded on an agreed basis.
5. In reaching this decision and in finding the facts stated below, I am relying on all documents submitted by both parties

Summary of the Decision

6. The Tribunal finds that in excluding the child from the school on 7th February, 16th May, 22nd May and 31st October, all 2019, the responsible body discriminated against the child under s.15 of the 2010 Act, by treating the child unfavourably as a result of a matter arising in consequence of the child's disability. As a result of this finding certain remedies are ordered, as outlined in paragraph 15 below.

Findings of Fact

7. The child is 13 years old.
8. The child has autism spectrum disorder, dyspraxia, delayed fine motor skills and attention hyperactivity disorder.
9. As a result of the child's conditions outlined in paragraph 8 above, the child has sensory issues, suffers from regular emotional breakdowns and can behave aggressively.
10. Further, and again as a result of the child's conditions outlined in paragraph 8 above, he lacks confidence and has low self-esteem; he struggles to relate to people he doesn't know, and with changes in his routine; he struggles to react socially with others; he can behave impulsively and he suffers from anxiety; he requires constant attention and cannot be left alone.
11. The child was excluded from the school on four occasions during 2019: 8th February, 16th May, 22nd May and 31st October. These exclusions followed from behaviour that was directly related to the child's conditions, as described in paragraph 8 above.

Reasons for the Decision

12. The child has a disability under the 2010 Act. This is not in dispute, and it is clear from paragraphs 8-10 above that this is the case.
13. The reasons for this decision are brief, given the responsible body's concession that each of the exclusions of the child were unlawful since they constituted unlawful discrimination under the 2010 Act.
14. In its letter of 21st February 2020, the responsible body accepts that the appropriate form of discrimination in this case is discrimination under s.15 of the 2010 Act, namely discrimination arising from disability. I agree that this form of discrimination is consistent with the evidence available to me. I have reached this conclusion in considering, in particular, the claimant's claim form, the content of which is not disputed by the responsible body. The evidence lodged by the responsible body is consistent with a finding that the exclusions were related to the child's behaviour, which it is accepted was caused by the child's disability.

Remedies

15. The following remedies were agreed between the parties as being appropriate under schedule 17, paragraph 9 of the 2010 Act:
 - a. All exclusions of the child from the school noted on his record since February 2019 are to be removed from the child's school record. This remedy has been implemented as confirmed by the responsible body in its letter of 21st February 2020.

b. The making of a finding by the tribunal to the effect that each exclusion was unlawful and in breach of s.15 of the 2010 Act. This remedy is satisfied by the statement at paragraph 6 above.

c. The issue of an apology by the responsible body to the claimant in relation to those exclusions. This remedy has been satisfied by the issue of the letter of 21st February 2020 by the responsible body to the claimant, in particular at page 2 of the letter.

d. That by 31st December 2020, certain staff training is to be provided by the responsible body to staff at the school, as outlined in the responsible body's letter to the Tribunal of 21st February 2020. This remedy has, at least in part, been met by the provision of training in March 2020. To the extent that the remainder of the promised training has not been provided, this must be completed by the end of 2020.

16. For clarity, the responsible body's letters of 21st February 2020 (letter to the Tribunal addressing the agreed remedies, with a draft apology letter attached) and 27th February 2020 (the final apology letter issued) are attached to this decision.

NOTE: THE LETTERS REFERRED TO IN PARAGRAPH 16. OF THIS DECISION ARE NOT ATTACHED TO THIS PUBLISHED VERSION, TO PRESERVE CONFIDENTIALITY. THIS STEP HAS BEEN TAKEN BY THE CHAMBER PRESIDENT UNDER RULE 101(3)(a)(b)(c) AND (4) OF THE FIRST-TIER TRIBUNAL FOR SCOTLAND HEALTH AND EDUCATION CHAMBER RULES (SCHEDULE TO SSI 2017/366).