



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference Number: FTS/HEC/AC/25/0033

Claim

1. This claim was made by the child's mother, who is the claimant.
1. The claim was brought in terms of section 116(1)(c) and Schedule 17, Part 3 of the Equality Act 2010 (**the 2010 Act**). The claimant relies on section 85(2)(f) of the 2010 Act, which provides that the responsible body of a school must not discriminate against a pupil by subjecting the pupil to [any other] detriment; and sections 15(1) – discrimination arising from disability and 20 (duty to make adjustments).

Decision

2. The child has been subjected to a detriment for the purposes of section 85(2)(f) of the 2010 Act. The responsible body has contravened section 15 and section 20 of the 2010 Act. specifically, the responsible body:
 - a. failed to prepare (or at least conclude the preparation) of a suitable risk assessment in relation to the child's distress and dysregulation at school (in breach of their duty to make reasonable adjustments under section 20 of the 2010 Act);
 - b. failed to implement adequate control measures or other preventative steps to avoid the child becoming distressed and dysregulated at school (in breach of their duty to make reasonable adjustments under section 20 of the 2010 Act);
 - c. failed to respond in a suitable and appropriate manner to incidents of distress and dysregulation at school (in breach of their duty to make reasonable adjustments under section 20 of the 2010 Act);
 - d. denied the child the opportunity to benefit from a properly formulated, reviewed and implemented risk assessment in relation to his distress and dysregulation at school (which amounts to unfavourable treatment under section 15 of the 2010 Act); and
 - e. isolated and excluded the child within school, denying him the opportunity to benefit from teaching at school and social and educational interaction with peers (which amounts to unfavourable treatment under section 15 of the 2010 Act).
3. The child was subjected to the unfavourable treatment specified at paragraph 2, and the responsible body are not able to show that this was a proportionate means of achieving a legitimate aim.
4. In terms of Schedule 17, Part 3, paragraph 9 of the 2010 Act, having found that a contravention has occurred, I therefore find that the responsible body unlawfully discriminated against the child because of his disability.

5. I now order the responsible body to:
 - a. make arrangements for the training of school staff on autism, such training to be conducted over a two year period commencing by October 2025 and concluded by the end of June 2027;
 - b. develop their policies such that pupils experiencing distress or dysregulation are properly supported;
 - c. prepare a suitable risk assessment for the child (in line with the claimant's proposed changes set out in C013 to C018, and C021 to C027 of the bundle);
 - d. provide suitable support for the child (in line with the claimant's proposed changes); and
 - e. return the child to full-time education within his mainstream class no later than August 2025.

Additional information

6. By way of progress in these matters, parties have confirmed the following and invite me to record this in the decision, which I do below:
 - a. The responsible body has worked with Autism Support to plan a programme of training that will be delivered to the whole school staff team (nursery, primary and secondary) over the next two years. Nursery staff include all partner provider nursery staff.
 - b. The responsible body has completed a review of the Risk Assessment Guidance for Council ELC settings and schools. Implementation of this guidance will commence in August 2025 and be supported by training.
 - c. The school leadership team at **the school** will participate in training on the revised Risk Assessment Guidance and will receive additional in-school support to embed practice. They will also be required to complete training on statutory duties to support children with additional support needs and on existing inclusive practice guidance, including the Staged Intervention Framework, ASN Assessment Framework and Child/Young Person's Plan Framework. This will include a requirement to implement CIRCLE and appropriate universal inclusive supports.
 - d. The responsible body has concluded, and will keep up-to-date and implement a suitable risk assessment for the child (in line with the claimant's proposed changes). The risk assessment now aligns with the child's Child's Plan, which has also been revised to ensure it meets his current needs and this has been shared with the claimant. This will be reviewed in line with the timescales set out within the responsible body's procedures.
7. The responsible body will provide suitable support for the child in school based on the revised Child's Plan and Risk Assessment for the child and reflecting staff development and learning from the professional development provided.

Process

8. The claim form and associated documents were lodged in March 2025. A case statement, attendance form and associated documents were lodged by the claimant in April 2025.
9. The responsible body, by way of an e-mail received in April 2025, stated that they did

not intend to resist the claim. At the same time, the responsible body sought an extension of the deadline for a response, or alternatively a suspension of proceedings in order to agree measures to be taken with the claimant. I extended the case statement period on three occasions following this, the final extension granted to June 2025.

10. In June 2025, the claimant's representative sent an email to the Tribunal, indicating that an agreement had been reached between the parties that the claim could be decided without a hearing in terms of rule 83(2)(b) of The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure and in terms to be agreed by the parties (in terms of rule 96(2)).
11. This decision is made in the terms proposed by the parties. Having considered the terms of the proposed decision, and the documents lodged by both parties, which includes the bundle of documents numbered T001-049 and C001-041, I am satisfied that it is appropriate to do so.

Findings in Fact and Evidence

12. The child has an autism spectrum disorder. He has social communication difficulties and restrictive and repetitive patterns of behaviour. He has significant sensory processing difficulties and difficulties in regulating his emotions and behaviours. He struggles with building and maintaining relationships as well as managing perceived criticism and rejection.
13. The child experiences difficulties in executive functioning which can impact his ability to manage daily tasks and responsibilities. This includes challenges with impulse control, adapting to changes in routine, navigating communication and relationships and regulating his emotions. He can become overwhelmed by sensory inputs and unexpected events. He can find it difficult to respond to questions or requests as it takes him time to process information.
14. As a result of these factors the child can experience distress and dysregulation arising from stimuli or other triggers at school. It is not always clear what specific trigger has led to the child becoming distressed or dysregulated. It can be difficult to predict in advance when the child may become distressed or dysregulated.
15. The child is a pupil at the school (although at the time of lodging the claim he was not attending school). The school is a mainstream school providing nursery, primary and secondary education.
16. An initial draft risk assessment was sent by Depute Head Teacher, to the claimant at the end of January 2024 (C007). In response the claimant returned a copy of that risk assessment with annotated notes and suggestions for amendment (C013).
17. The child was formally excluded from school on two occasions in February and March 2024. At the readmission meetings, a risk assessment for the child was discussed.
18. In May 2024, the claimant requested a current and up to date copy of the risk assessment (C030). The Acting Depute Head Teacher sent a document (C021) to the claimant.
19. In October 2024, the claimant emailed Depute Head Teacher (C036) reiterating her concerns about the child's Challenging Behaviour Risk Assessment (**CBRA**) and asked for the issue to be revisited. The Depute Head Teacher indicated agreement with that, and that she would seek input from the responsible body before getting back to the claimant.

20. Following an allegation made against a member of staff in December 2024, the child experienced exclusion and isolation whilst at school. The child has not had any significant or regular time in his class since early December 2024.
21. During the remainder of Term 3, while he was attending school regularly, the child became increasingly distressed and had very little actual teaching. He routinely missed out on taking part in PE and music, as well as social interaction with his peers due to him being placed in alternatives to exclusion and being removed from class on so many occasions. Being excluded and isolated in this way had a significantly detrimental effect on his education, his wellbeing and his self-esteem.
22. The claimant heard nothing further from the school until, February 2025, she was told in a phone call from Depute Head Teacher, that a review of the child's risk assessment had started and that a further review meeting would take place in March 2025.
23. In an email from Head Teacher, in March 2025 he stated he would request that the child's risk assessment was updated in advance of the Child and Young Persons Planning (CYPP) meeting later in March 2025 (T020).
24. This was all set against a backdrop of the child increasingly becoming distressed or dysregulated at school. The frequency and severity of these incidents has had a significantly detrimental effect on his health, his wellbeing and his education.
25. In March 2025, the child had experienced significant distress in school (described by the claimant as a meltdown) and had been removed to a room on his own. He had been left in that room on his own for a long period of time. No attempt had been made to help him to regulate, and no one had tried to reintegrate him to his learning.
26. On attending the school in response to the school's request, the claimant was taken to the room where the child was. She spent some time with the child in the room. She then left to get the child's bag to get him a snack and to update school staff about how she was trying to engage with him. The child then had a snack and he and the claimant tidied the room.
27. At that point two members of staff also entered the room and began questioning the child. The child was faced with a series of questions from both members of staff and did not have a chance to respond to either of them. This led to the child becoming distressed and dysregulated again (described by the claimant as another meltdown).
28. The claimant was dismayed at the handling of this incident (and others) and decided not to return the child to school until such time as she was satisfied that it was safe for him.
29. A CYPP meeting took place in March 2025, at which the claimant made it clear that having a suitable risk assessment in place was a pre-requisite for the child's safe return to school.
30. In an email in March 2025 the Head Teacher wrote 'Please be reassured that work on [the child's] updated risk assessment is progressing, and we hope to be able to share a draft of this with you soon to gather your views.'
31. In April 2025, a meeting took place between the claimant and the Depute Head Teacher, regarding the child at which time the claimant reiterated that having a suitable risk assessment in place was a pre-requisite for the child's safe return to school. By way of email in April 2025, the Depute Head Teacher sent a copy of a Post Crisis Action Plan

(C039). This document proposes the introduction of a number of features which ought properly to have been part of a risk assessment for the child long before then.

32. At this stage, the risk assessment remained unsuitable for the child's needs. It failed to include or take on board many of the suggestions made by the claimant. It made use of inappropriate language and terminology which suggested an intentionality or bad behaviour on the child's part which was to his enduring and ongoing detriment. For example, the document referred to 'Challenging Behaviour', 'Aggression', 'Refuses to do as asked', 'violent or aggressive behaviour', 'displaying violent behaviours'.
33. The claimant arranged some supervised visits with the child to the school, with a view to preparing for his transition back to school. There were three such visits before the Easter holidays in 2025 and others which followed those holidays. This was the beginning of the process of returning the child to school. Between April and June 2025, the child's return to school was on a reduced timetable and with parental supervision, as the risk assessment had not been concluded. During this period, the child did not return to his mainstream classroom but attended PE with his class on a Monday afternoon. There were some opportunities for peers to join him in the room he worked from but he was (for the most part) isolated from other pupils.
34. The claimant received an email from the school in April 2025 which stated: 'School staff have completed the child's risk assessment and it has been shared with ... inclusion QIO for comment. I hope to then share with yourself.' The risk assessment was not shared with the claimant.

Reasons for the Decision

35. I am satisfied on the facts and after reviewing the documentary evidence that the child is a disabled person in terms of section 6 of the 2010 Act. The circumstances detailed in paragraphs 12 to 34 above are related to the child's disability. This is accepted by the responsible body.
36. The school is a mainstream school providing nursery, primary and secondary education and is managed by the responsible body who is responsible for the school in terms of section 85(9)(c) of the 2010 Act.
37. It is not disputed that the child has been unlawfully discriminated against. I am satisfied on the facts and after considering the documentary evidence that this is the case. This amounts to discrimination against the child by subjecting him to any other detriment (section 85(2)(f)).
38. I am satisfied that the child was treated unfavourably and that the terms of section 15 of the 2010 Act are met. I am also satisfied that the responsible body failed in its reasonable adjustments duty under section 20 of the 2010 Act. This undoubtedly had a detrimental effect on the child's education, his self-esteem, his wellbeing and sense of inclusion. The responsible body accepts that the child suffered a detriment.
39. The responsible body has identified a series of actions that they have started to implement with the aim of returning the child to school on a full-time basis with agreed planning and appropriate support in place for him. These are outlined in greater detail at paragraphs 7 and 8 above.
40. Parties are agreed on the terms of this decision and the remedies to be ordered. My powers are broadly framed and in the circumstances of this case I am satisfied that the

remedies are appropriate. These are specified in the orders I make at paragraph 5 above.

United Nations Convention on the Rights of the Child.

41. Parties are agreed that it is not necessary for the purposes of this claim to determine whether there was also a breach of the child's rights under the UNCRC.