



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AC/24/0071

Witness List:

Witnesses for Claimant:

The claimant

Consultant Psychiatrist (witness F)

Witnesses for Responsible Body:

Head teacher school A (witness A)

Guidance teacher school A (witness B)

Educational Psychologist (witness C)

Education Officer (witness D)

Principal Teacher of COS (witness E)

Claim

1. This is a claim in which the claimant argues that the responsible body has discriminated against the pupil in the way it provided education to her, under section 85(2)(a) of the Equality Act 2010 (**2010 Act**).

Decision

2. We find that the responsible body discriminated against the pupil under section 85(2)(a) of the 2010 Act in two respects:
 - a. In delaying to make provision for outreach teaching between March 2021 and March 2023; and
 - b. In failing to formulate a documented plan for the provision of education to the pupil with a view to her return to full time school education.

3. We make the following remedies, under paragraph 9 of Schedule 17 of the 2010 Act:
 - a. We find that discrimination has occurred, under sections 13 and 15 of the 2010 Act, in the respects explained in each of paragraphs 2 a. and b. above.
 - b. We order that the responsible body issues a written apology to the claimant and pupil within 14 days of the issue of this decision. That apology must comply with the Scottish Public Services Ombudsman's Guidance on Apology.
 - c. We order that the responsible body prepares and publishes to all parents and pupils a written policy on approaches to and steps to be taken to secure the return to school of pupils who struggle to attend school for whatever reason (including due to the impact of a disability and/or additional support needs). The policy must be focused on ensuring that out of school provision for pupils to whom it applies is delivered as quickly as possible and to ensure that proper documentary planning (including specified timescales) are in place for each pupil working towards their return to school. This policy must be formulated and be in place by August 2025, or by such other date as the parties agree. The policy must be subject to regular (at least annual) review.
 - d. We order the responsible body to prepare an Individualised Education Plan (**IEP**) for the pupil. That IEP must set out the objectives for the remaining school education of the pupil, how those objectives will be met and who will deliver them. The IEP must include timescales. It must also include details on transition planning for the pupil's post-school stage. The claimant and the pupil must be given an opportunity to contribute to the wording of the IEP. The IEP must be finalised by early March 2025, or by such other date as the parties agree.

Process

4. The claim was managed to a hearing in a case management call in June 2024. The hearing took place in three days in November 2024 and January 2025. Parties lodged written submissions following the hearing.
5. The bundle consists of T001-058, C001-197 (including documents permitted to be added late in the absence of opposition at C134-168 and written submissions) and RB001-097 (including written submissions).
6. The pupil's views on the claim are recorded in an advocacy report dated October 2024 (T030-032). Those views were taken by video call and are recorded as a series of questions and answers (T031-032). In broad terms, the pupil expresses disappointment, anger and a lack of trust around the provisions made for her in school. She expresses the view that it is too late for her now to benefit from school education. The pupil provides some examples of events that have led to her forming these views, such as: different timetables, a separate room that she could not always use, unjustified detentions, not being allowed out of class early to take medication, sitting in corridors or the school hall alone with no support when anxious and not being left alone when having a panic attack.
7. We heard oral evidence from seven witnesses (including the claimant). Each witness provided a written statement (or, in the case of witness F, a report). The witnesses did not, in their oral evidence, depart in any material way from their witness statements.

There were no credibility or reliability issues around the evidence of any of the witnesses: the parties' submissions and our decision are based on an interpretation of the evidence.

Findings in Fact

8. The pupil has a number of diagnoses, namely: autistic spectrum condition (**ASC**, diagnosed in October 2017), attention deficit hyperactivity disorder (**ADHD**, diagnosed in March 2016), gender dysphoria and severe depression.
9. As a result of these conditions, the pupil suffers from low mood, severe anxiety and sometimes has panic attacks.
10. The child is currently under the supervision of the local Child and Adolescent Mental Health Services (**CAMHS**).
11. The pupil's ASC causes her to become anxious, especially in noisy environments.
12. The pupil is prescribed anti-depressant medication, which she takes each day. This medication is prescribed to help the pupil manage anxiety. The pupil was prescribed medication for her ADHD symptoms, but this is no longer prescribed.
13. As a result of her conditions, the pupil suffers from a sustained level of high anxiety, leading to social withdrawal (including from school).
14. During 2021, the pupil received therapy from psychological services, but that input has concluded.
15. The pupil began attending school A in secondary year 1 (**S1**, August 2019 - June 2020). In the first term that year, the pupil attended on a full-time basis. A support plan was in place, allowing the pupil to leave each class 10 minutes early (to avoid the noise of crowds of pupils changing classes), allowing her not to wear school uniform (on account of sensory issues as a result of her ASC) and allowing her to leave 5 minutes early at the end of the school day. The plan also allowed the pupil to have access to certain quiet areas of the school, when needed. During the second term in S1, the pupil's school attendance reduced.
16. During secondary year 2 at school A (**S2**, August 2020 - June 2021), the pupil's school attendance level dropped. She only attended for 33 full days out of a total of 117 between August 2020 and March 2021. From March 2021 to the end of that school year, she had 65 days off school. A further 4 days were marked as medical absences.
17. The pupil had educational psychology input during her primary 7 education. That input was made available again, at the claimant's request, from the end of S2.
18. The pupil's attendance in secondary year 3 at school A (**S3**, August 2021 - June 2022) reduced further. Her mental health deteriorated, leading to her calling an ambulance in November 2021. Following this incident, the pupil started seeing CAMHS. The pupil stopped attending school completely in November 2021.
19. A part-time timetable was put in place for the pupil for term 2 of S3. The pupil attended only sporadically during that term. Between August 2021 and March 2022, she attended

for 26 days out of a possible 110 days. The pupil attended school A for an hour now and again between January and June 2022.

20. This paragraph has been removed by the Chamber President for reasons of privacy under rule 101(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.

21. In around November 2021, the claimant attended a meeting with witnesses A and B, an educational psychologist, school A's deputy head teacher and a social worker. The claimant made it clear that the pupil's mental health was her priority.

22. During secondary year 4 (**S4**, August 2022-June 2023) and secondary year 5 (**S5**, August 2023 - June 2024), the pupil did not attend school A.

23. At a Team Around the Child (**TAC**) meeting in February 2023, the responsible body agreed to make provision for support for the pupil through its service, Communication Outreach Service (**COS**). The aim of COS support is to help pupils who are not attending school to support them to re-engage and to return to school.

24. COS support for the pupil support consisted of contact with an Outreach Teacher, witness E, for two hours per week on Friday afternoons, starting in March 2023. The COS support helped the pupil achieve National 4 qualifications in English and Numeracy. Witness E provided this support in the pupil's home since the pupil did not wish to attend at school A's support bases, where COS input is usually provided.

25. Witness E struggled to engage the pupil in the COS sessions. The pupil would usually engage for only 30 minutes of each 2 hour session. The pupil did not complete any work she was given between sessions.

26. The pupil asked witness E to help her to achieve National 5 English. Witness E declined since she is not qualified as an English teacher. Achieving this qualification would have involved doing work in class with an English teacher, supplemented by homework and independent study.

27. Witness E was asked by her line manager to work with the pupil on next steps, and she met with the pupil to discuss these in August or September 2023 (at the start of S5). The pupil did not wish to engage with education and this continued between September and December 2023. Witness E provided the pupil with course options, and witness E and the pupil agreed to work on this starting in early 2024. In early March 2024, the pupil moved house, and preparations for this took place in January and February 2024. Witness E offered sessions in a Community Learning and Development Centre, but the pupil declined since the house move was making her too anxious.

28. During March - April 2024, the pupil attended school B for sessions with witness E. The pupil struggled to engage during these sessions and did not do any of the work set for between sessions.

29. In April 2024, the pupil agreed to attend school A with witness E, and they attended there in May 2024. The visit lasted for 40 minutes. Witness E and the pupil walked around the school and discussed what courses the pupil could do on leaving school.

30. Witness E attempted to engage the pupil in support sessions with her during May and June 2024, but for various reasons, these were cancelled or were not productive. During this period, the pupil indicated to witness E that she wanted to leave school and then stated that she had changed her mind and wanted to be educated outwith school A.
31. In June 2024, the pupil was offered a place on the a school avoidance programme (**the programme**) run by the responsible body. As a result, the COS support for the pupil came to an end, since COS and support from the programme cannot both be offered. The pupil has missed some sessions of the programme.
32. The support available to the pupil via the programme involves 1 to 1 educational support for two hours per week at school C. This support is due to increase to 3 hours per week. The programme provision is designed for pupils in S1-S4, with a view to re-engaging them in mainstream education. That provision involves contact between the pupil and a teacher, with no peer interaction. The pupil remains on the roll of school A. No work is currently being provided by school A.
33. Since the pupil started attending school A, the claimant has been in regular contact, in writing, orally and in meetings, with the school and responsible body professionals, providing information about the pupil's difficulties and expressing her concern about the pupil's school education.
34. From around November 2021, the claimant has been in regular contact with school A and the responsible body with suggestions of support for the pupil, in particular more 1:1 hours and educational provisions at alternative schools or facilities.
35. Regular TAC meetings have taken place, namely on around 10 occasions between November 2022 and May 2024.

Reasons for the Decision

36. The parties agree that the pupil has a disability, meeting the test set out in section 6 of the 2010 Act. Given our findings in fact at paragraphs 8-13 above, the test in section 6 is clearly met.
37. The claimant's case is that the responsible body discriminated against the pupil in the way it provides education for her under section 85(2)(a) of the 2010 Act. In order to succeed, the claimant needs to provide some evidence of disadvantage/unfavourable treatment to the pupil caused by the responsible body's treatment in this area (concepts central to all of the main forms of discrimination under sections 13, 15 and 19-21 of the 2010 Act). This idea of disadvantage/unfavourable treatment has been described as follows:

...it has the sense of placing a hurdle in front of, or creating a particular difficulty for, or disadvantaging a person ... The determination of that which is unfavourable involves an assessment in which a broad view is to be taken and which is to be judged by broad experience of life. (Lord Carnwath in *Trustees of Swansea University Pension Scheme v Williams* [2019] 1 WLR 93 (Supreme Court) (**Williams**)).

38. There is no material difference between the concepts of unfavorable treatment and disadvantage: *The Technical Guidance for Schools in Scotland* published in 2014 (and updated in 2023) by the Equality and Human Rights Commission (**Technical Guidance**), paragraphs 5.44 and 5.21, an approach approved by the court in *Williams*.
39. Although the burden of proof on the claimant is not onerous, she requires to establish facts from which we could decide that the responsible body discriminated against the pupil (section 136(2) of the 2010 Act). Facts can only derive from evidence (directly or by inference). We may not find facts from assertion, assumption, suspicion or speculation.
40. The claimant in her written submissions addresses each type of discrimination, namely direct, indirect, arising from disability and failure in complying with the duty to make adjustments. We will come to each in turn, but first we will outline our position on the question of disadvantage.

Disadvantage

(a) Lack of a full-time timetable

41. The claimant argues that the pupil has been disadvantaged by only having had a part-time timetable for much of her schooling, with the consequence that she has not had access to peers, she has been isolated and has been unable to achieve academically.
42. We accept that all of these things represent a disadvantage to the pupil. As a specialist tribunal, we are aware of the benefits of socialisation and of peer learning opportunities, including working in groups. These aspects of attending school can make learning enjoyable and effective and help school pupils get ready for life as an adult. However, while we accept that the pupil's disability impacts on her everyday life, especially given her anxiety, we are not satisfied that there is sufficient evidence to make a link between her disability and an inability to attend school A, even on the basis of the initial burden of proof on the claimant under section 136(2) of the 2010 Act.
43. As the responsible body points out in its written submission (paragraphs 9-12), the pupil has accessed the school A building, as well as the buildings of other schools, over the last few years. We accept that there is a difference between coming to a school for a meeting (such as a TAC meeting, attended by the pupil in April 2024 – see witness E's statement at RB054, paragraph 16), and during periods when the school is quiet on one hand, and on the other hand attending a school classroom during class time. However, there is no evidence to establish a link between the pupil's anxiety and her non-attendance at school A. To find that such a link exists requires speculation on our part. Witness F, the only skilled mental health witness, declined to make that link, restricting his opinion to stating that children with conditions such as those the pupil have can find school challenging. Witness F did say that his understanding was that as an autistic person, the pupil may find the pressure of high school and sensory overload issues difficult, making attending school a challenge. However, it was clear that witness F was speaking in general terms, and on the basis of what he had been told by the claimant. Earlier in his evidence, he stated that he had not assessed the pupil as unable to attend classes, since this is not something he would specifically assess.

44. It is clear (from the views that the pupil expressed to the advocacy worker – summarised at paragraph 6 above) that there was a serious loss of trust by the pupil in school A. This stems from the pupil's perception that school A did not follow the plan in place, with negative consequences for her. It is possible that this loss of trust was the main motivator for the pupil to stop attending school. It could well be that the reason is a combination of the pupil's anxiety and a loss of trust. It is not possible to know which of these factors, and in what proportion, caused the pupil to refuse to return to school on a full-time basis, and, for some of the time, hardly at all. We note that the pupil did not stop attending school A altogether after November 2021; she attended now and again between January and June 2022, suggesting that her anxiety did not prevent her from attending at all during that period.

(b) Lack of full-time 1:1 support

45. The claimant also argues that the failure by the responsible body to put in place full time 1:1 education after her attendance levels at school fell represented a disadvantage caused by her disability. We do not agree. There is no evidence to suggest that full-time 1:1 support would have been (or is) appropriate for the pupil. It is clear that the pupil struggled to engage with much less than full time 1:1 support. Indeed, she struggled to engage with two hours per week of such support (see our findings in fact at paragraphs 24 and 25 above). This continues under the programme, where witness D notes that engagement is not consistent (witness statement, paragraph 18, RB066). It is possible that had more 1:1 support been made available at an earlier stage, that it might have been more successful, but that connects with the delay point (explored below) and such a conclusion would be speculative. Indeed, any evidence that exists about 1:1 support for the pupil suggests that its use on a full-time basis would not have been wise: see the view expressed by witness, C, Educational Psychologist, in his witness statement at paragraph 15 (RB060).

(c) Delay in reacting to diminishing attendance levels

46. The claimant argues that the responsible body ought to have acted much earlier in the pupil's school career to provide her with 1:1 support (main submission, paragraph 84).

47. We agree that the responsible body delayed in making specialist educational provision for the pupil. By the end of March 2021, it ought to have been clear to the responsible body that the pupil was having serious attendance problems, having attended on only 33 of 171 full school days. The responsible body should have acted then to put in place an alternative plan for the pupil's schooling, involving outreach schooling. The first COS support did not begin until March 2023, two years later. No-one will know what impact earlier intervention may have made for the pupil, but a gap of two years in its introduction represents a significant disadvantage since it was a lost opportunity for early intervention before matters became worse. In considering the witness statement of witness A, there is no mention of the period prior to November 2021 (witness A was the head teacher at school A since August 2020). Even taking the period from November 2021 (by which time school A staff started to react), a further significant period passed until the introduction of community educational support for the pupil, at the end of March 2023, 16 months later. It was a further year before the first TAC meeting took place (November 2022: see the list at RB050). There is no doubt that these delays represented a significant disadvantage to the pupil.

(d) Lack of planning

48. The claimant points to the lack of planning for the pupil's return to full time education at school A (see the written submission, paragraphs 36, 81 and 85).
49. We agree that the responsible body failed to produce an a general planning document setting out short, medium and long term steps for the re-introduction of the pupil back into full time education in school A (or another school). There is reference in the evidence to a 'Support Plan' and a document with that title is in the bundle (C033), but no reference was made to this in the oral evidence, so we do not know when it was prepared, by whom and for what purpose. In any event, looking at its content, it is not really a plan at all, rather a list of relevant information (the title the document itself bears). It seems that the Support Plan is a reference to the plan for classroom arrangements for the pupil, such as being allowed to leave 10 minutes early and being allowed to use certain quiet spaces in the school. It is not clear whether or not that Plan was recorded in a document, we assume not.
50. No planning document exists for the pupil (at least in the information provided to us). There are notes of the TAC minutes, each containing 'Next Steps' (for example, RB005-006, RB007-008, RB026-027, RB035-050). However, the 'Next Steps' represent a reaction to what was happening at the point in time of each meeting. There was no overarching plan setting the general direction of travel or its pace. There was therefore nothing for the claimant, the pupil or the responsible body to measure the responsible body's progress against. Such a plan would, of course, have been a flexible one, which could have been changed and updated according to progress (or lack of it). This would have enabled the responsible body to detect if a change of direction or emphasis was needed. This lack of a planning document most likely contributed to the delay in providing outreach support for the pupil (discussed above). This planning document ought to have been put in place in the Spring of 2021, following the obvious and serious lack of attendance issue that had, by that time, developed. This need for a plan at that point applied in particular to the pupil, who the responsible body and school A staff were well aware had significant diagnoses and issues with coping at school as a result.
51. We should add that there were a number of references to the pupil's 'Personal Learning Plan' (**PLP**). That plan was said by witness E to have come from the TAC meeting in February 2023 (see her witness statement at paragraph 3, RB051). The notes of that meeting are at RB039-040. Witness E refers to the PLP as being that the pupil would receive support in completing National 4 English and Maths work and then go to college. That may have been the plan at that time, but it can hardly be said to constitute a comprehensive plan for the pupil's future education. It is better described as 'Next steps'. In any event, the PLP was not in place until February 2023, almost two years after it ought to have been clear that a serious problem had developed. The support plan (as discussed above) was in place since S1, but this was not a plan for re-integration. Once again, it seems that the PLP was never recorded in writing, as such.

(e) Steps taken

52. The responsible body sets out a summary of the support they have offered/provided to the pupil. While we accept that a significant number of steps have been taken by the responsible body, these do not cancel out (or even mitigate) the delay and planning omissions noted above.

(f) Other possible disadvantages

53. The claimant refers to a number of other aspects of the pupil's education which she claims were inadequate, such as how school A dealt with bullying allegations and how they school did not always honour the support plan in place. However, the primary focus of the claimant's submissions is on how the responsible body handled the pupil's timetable and educational input after she stopped attending school A on a full time basis. We have decided to only deal with the latter aspects, and not the former, due to the focus in the claimant's written submissions. Had we been asked to consider the other matters raised, we would not have found there to have been sufficient evidence of disadvantage to the pupil. The events relied upon are several years old and there is no direct evidence to support the contention that school A staff did not take proper steps to implement the support plan: most of the evidence of this came from the claimant, who was not present on any of the relevant occasions.
54. There is also reference to the impact the lack of out of school provision for the pupil may have had on her. No-one will ever know what would have happened had the pupil been provided with different support to that made available. That support may have worked very well, not at all or anywhere in between. We cannot speculate about that, we can only draw inferences from the available evidence.

Discrimination

55. In this section, we will consider whether the disadvantages suffered by the pupil amounted to discrimination under the 2010 Act.

(a) Direct discrimination

56. We agree with the claimant's assertion that direct discrimination under section 13 of the 2010 Act occurred.
57. On the delay in putting in place outreach education, a non-disabled pupil would be provided with that education continuously, and would not suffer any gap in their education. A gap (or reduction in volume) in a child's education clearly constitutes less favourable treatment than where there is no such gap (or reduction in volume).
58. While we cannot conclude that the pupil's non-attendance at school was caused by her disability, it is clear that her reduction in attendance was so caused. Indeed, this is a matter of agreement: the Joint minute of agreed facts (T035, paragraph 24) states:
- [The pupil] stopped attending school due to her anxiety and she was having regular panic attacks at school and did not feel she was being supported enough by teachers.
59. This places a firm link between the pupil's disability and her decision to stop attending school. The delay in putting in place outreach support was not explained by the responsible body. Even if it were, there is no 'defence' to actions that constitute direct discrimination.

60. Taking all of this together, the responsible body treated the pupil less favourably than it treats others who are not disabled, by delaying in making provision for outreach education.
61. Turning to the lack of a documented plan for the re-introduction of the pupil back into full time education, again this represents less favourable treatment than the responsible body treats non-disabled pupils. There is a clear link between the pupil's disability and the need for such a plan since it is accepted that the pupil stopped attending school for reasons linked with her disability (see above).
62. Non-disabled pupils (or pupils who have a disability that does not affect their school attendance) do not need such a plan, as they would be attending school on a regular basis. As a specialist tribunal, we can infer that the planning in place for such a pupil would be their class timetable, which would set out how their teaching would be delivered. Further planning documents would (again we may infer) exist, such as subject guidance documents, setting out the curriculum, learning outcomes and assessment methods for each subject. This would all be in place for pupils who attend school A (and other mainstream schools managed by the responsible body) at the same educational level as the pupil (at the secondary school level the pupil was at, in this case S2-S6). This means that a comparator with materially similar circumstances exists for the purposes of section 23(1) of the 2010 Act.
63. The planning discrimination persists to date since such a plan had, by the time of the hearing, not been produced.

(b) Discrimination arising from disability

64. The relevant unfavourable treatment is the delay and lack of planning referred to above.
65. This treatment arose in consequence of the pupil's disability, as discussed above.
66. This means that the tests in section 15(1)(a) are met.
67. This form of discrimination occurs where, in addition, the responsible body cannot show that the treatment is a proportionate means of achieving a legitimate aim (section 15(1)(b) of the 2010 Act). The wording of this provision makes it clear that the burden of proof of it lies on the responsible body.
68. The responsible body has failed to adduce any evidence or explanation that could suggest that the delay or lack of planning represented the pursuit of a legitimate aim.
69. Acting with speed to resolve an issue relating to a child's education is of considerable importance. Where a delay occurs (especially a lengthy one, as happened here – of at least two years) this is likely to cause a significant issue for the educational development of the child. As a specialist tribunal, we are aware of danger of lost educational development opportunities that come from inaction/lack of adequate action over a period of time. The time that a child spends at school is limited. If that time is not used to its maximum advantage, significant detriment can follow. Pupils who are receiving a full-time education in school will progress significantly in a two year period.

70. Again, our specialism tells us of the need for adequate planning. Children who have a disability (or additional support needs, or both) are customarily subject to formal planning for their education, in the form of, for example, an Individualised Education Plan. Such plans, in our experience, usually set out educational objectives, support to be provided and how that support is to be delivered. Indeed, planning is a subject discussed in detail in the *Code of Practice Supporting Children's Learning: Statutory Guidance on the Education (Additional Support for Learning) Scotland Act 2004*, Third Edition, 2017, paragraphs 82-91 on pages 49-51. Mention is made there of the possible need for a Child's Plan under section 33 of the Children and Young People (Scotland) Act 2014 (**2014 Act**). We appreciate that the Code of Practice is directly relevant to the Education (Additional Support for Learning)(Scotland) Act 2004 (**2004 Act**), applicable for children with additional support needs. However, it is clear that the pupil has additional support needs (as well as a disability) and so the 2004 Act applies to her. In any event, section 33 of the 2014 Act applies to all children who meet the tests, whether they are disabled, have additional support needs or neither.

71. The reason for this discussion is to highlight the importance of formal written planning for children who face challenges at school. Although the legislation referred to (2004 and 2014 Acts) were not mentioned by the parties, the lack of planning was squarely covered by the claimant in the written submissions, and an IEP is one of the remedies sought. Even aside from the 2004 and 2014 Acts, there can be no legitimate reason for the responsible body not to have had in place a detailed, time quantified plan for the re-integration of the pupil back into school A. Such a plan would have provided clarity, direction and structure for the pupil, all of which are beneficial to any pupil, but especially to pupils with ASC. That plan ought to have been in place, at the latest, by the end of academic session 2020-21, and should have been subject to regular consultation and review. It was not in place by the date of the hearing, and so is well over three years overdue.

72. This means that both parts of section 15(1) are met and section 15(2) clearly does not apply (since the responsible body was aware of the pupil's disability from before the start of her secondary school education). Discrimination arising from disability therefore occurred.

(c) Indirect discrimination

73. Before we can make a finding of indirect discrimination under section 19 of the 2010 Act, we must find that the responsible body applied a discriminatory provision, criterion or practice (**PCP**) to the pupil related to her disability.

74. For the PCP, the claimant alleges that the responsible body provides full time education only to children who are able to physically access a school building.

75. Since we conclude that there is insufficient evidence to establish a link between the pupil's disability and an inability to physically access school A (see above at paragraphs 41-44), we cannot conclude that the conditions for indirect discrimination are met.

76. In any event, there is no evidence that such a PCP exists. As the responsible body explains in its written submissions (paragraph 30), the evidence indicated that the responsible body's policy is to make provision to meet each pupil's needs. There was nothing in the evidence available to us to suggest that there was a policy or practice

against the provision of full time education outside school premises. The fact that there was no evidence that such provision is being made for any pupil within the responsible body's area is not evidence that such provision is never made.

77. For these reasons, we are not satisfied that the disadvantages of delay and lack of planning amounted to indirect discrimination.

(d) Duty to make adjustments

78. We agree with the claimant that the delay in making outreach educational provision and the lack of a documentary plan for the return of the pupil to full-time education at school A represent failures under section 21 of the 2010 Act to comply with the duty under section 20 of that Act.

79. More specifically, these failures are in meeting the first requirement (in section 20(3) of the 2010 Act), since there are PCPs which put the pupil at a substantial disadvantage in relation to a relevant matter in comparison with a non-disabled pupil, and the responsible body did not take reasonable steps to avoid that disadvantage.

80. Although the claimant identifies the PCP initially as the same one as she identifies for the purposes of indirect discrimination (see paragraph 84 of its main submission, and our discussion of that PCP at paragraph 76 above), the claimant goes on to refer to reasonable steps including an appropriate plan to manage an increase in the pupil's access to education (written submission, paragraph 85). The claimant also refers to delay in the provision of 1:1 support, in the context of this type of discrimination (paragraph 84). While the claimant does not, then, identify the lack of a plan or the delay as a PCP, both are mentioned in the context of this type of discrimination. We take the view that the responsible body was put on notice in the submissions that these two matters were being relied upon as part of the case for this type of discrimination.

81. In these circumstances, we feel able to consider whether the delay and lack of planning represented PCPs for the purposes of this type of discrimination. We conclude that they do not. The definition of PCP is broad and includes arrangements, the way in which education is offered or provided, one-off decisions and proposals or directions to do something in a particular way. Also, they may be formal or informal (having developed in this way): see the Technical Guidance, paragraph 5.24. The courts have held that the phrase should be construed widely as including any formal or informal policies, rules, practices, arrangements or qualifications including one-off decisions and actions: *Ishola v Transport for London* [2020] ICR 1204, Court of Appeal, at paragraph 28, approving the Code of Practice for Employment, 2011.

82. The decision not to put in place outreach teaching for the pupil between March 2021 and March 2023 was an individual decision about the pupil only. We are not satisfied that it represents a PCP. This applies also to the omission to make a plan for the return of the pupil to full time education. While these are matters that applied only to the pupil, and so could conceivably be PCPs, they do not have the flavour of a policy or practice since they must involve doing something in a particular way. There is no evidence to support this here.

83. Since there was no PCP, this form of discrimination did not occur.

Remedies

84. The claimant seeks seven remedies in total.
85. The first, a finding that discrimination has occurred, follows from our conclusion on the claimant's case. The second, an apology, also follows since there should be accountability where the legal obligations of the responsible body have not been met, to the detriment of the pupil. The claimant has asked that a verbal apology is provided to the pupil, but this is not required: a written apology will be sufficient.
86. The third remedy sought is an order that the pupil receives full time 1:1 or 1:2 educational support outside school or a bespoke education package amounting to full time education with access to all curricular areas. We decline to make this remedy. The pupil is receiving 2 hours of 1:1 education per week, soon to increase to 3 hours. That is significantly less than full time support. There is no evidence to suggest that this is needed, or would be good for the pupil. It would not obviate or reduce the adverse effect of the discrimination on the pupil (2010 Act, Schedule 17, paragraph 9(3)(a)). It is a long time since the pupil has been in full time education, and a sudden shift to this in what is likely to be the final few months of her school education may well cause more harm than good, as it would be a significant change at high speed. We understand the argument that 1:1 support could have been provided earlier (although that is disputed by the responsible body) but ordering it now would not be a reasonable or proportionate step.
87. The fourth remedy sought is a review of policies for pupils who are unable to attend the physical space of a school building. The responsible body explained that it had no 'fixed policy' for pupils who face barriers attending school (written submissions, paragraph 30). While we appreciate that any policy in this area would not be 'fixed' (in the sense of being inflexible), the absence of a policy has contributed to how the pupil was treated. As a specialist tribunal, we are aware of the harm that can come from non-attendance at school where a disability or additional support needs contributes to or causes this. The socialisation and group learning experience is a significant part of what makes school so enjoyable and useful. It prepares pupils for life as an adult, both socially and academically. It is surprising to note the absence of a policy in this area. Such a policy could, of course, cater for the individual circumstances of each pupil, while setting out some general parameters within which actions are taken. We have, therefore, ordered that such a policy is created. We have not specified precisely what should be included in that policy, since this is a matter for the responsible body. Some general requirements are, however, specified, reflecting the difficulties (delay of provision and lack of documentary planning) the pupil in this claim experienced.
88. The fifth remedy sought are IEP and Wellbeing Plans to be prepared in conjunction with the claimant and the pupil. We are satisfied that this is a reasonable remedy and that this might reduce the impact of the discrimination on the pupil. Since the lack of a proper planning document is one of the findings of discrimination, ordering that one is produced is the natural way to deal with this. We appreciate that the pupil may well be in her final year of education (although there is no evidence that this is definitively the case), but a plan even for the final few months, to include any transition planning, will assist in the short term. We have allowed only a short period for this plan to be produced, for obvious reasons, but consultation with the claimant and pupil, even within that short timeframe, is achievable.

89. The sixth and seventh remedies seek orders for counselling and wellbeing services and a home link worker. There is no evidential basis for these remedies. The pupil did previously receive counselling, but there was no evidence to indicate that she requires it now. Indeed, the evidence suggests that the pupil did not find the counselling she received useful (RB024, recording the pupil's views in November 2021). Witness C in his oral evidence explained that the pupil did not find counselling to have been helpful, and that it had been offered by CAMHS. The role of CAMHS in counselling was mentioned by witness B in her oral evidence too. We note that the pupil remains a CAMHS patient. It seems to us that any counselling needs ought to be routed through CAMHS, not the responsible body. On the home link worker, this is something that could be considered for inclusion in the IEP the responsible body must now produce. It is not something that featured to any material degree in the available evidence.

Paragraphs 9, 10, 18, 27, 31, 32 and 45 in this decision have been edited by the Chamber President for reasons of anonymity and privacy under rule 101(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.