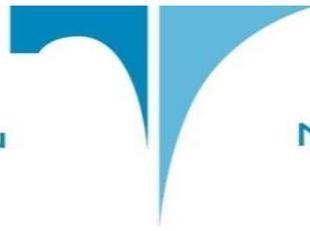


Tribiwnlys Anghenion  
Addysgol Arbennig Cymru



Special Educational  
Needs Tribunal for Wales

# Disability Discrimination in Schools

## Preparing a Case Statement A guide for responsible bodies

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This document is also available in Welsh. Please contact the Tribunal for a Welsh version of this document.

## Language Preference

SENTW welcomes receiving correspondence in Welsh or English. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding. The Tribunal also welcomes phone calls in Welsh or English.

You may submit forms, documents, and make written representations to SENTW in Welsh or English

## About this guide

This guide is to help schools and Responsible Bodies respond to claims made to the Special Educational Needs Tribunal for Wales (SENTW) by parents who think their child has been unlawfully discriminated against because of a disability.

The guide explains how to answer a claim for disability discrimination. It describes each of the steps in the process. Staff who process the claims through the tribunal office are called tribunal clerks. They will handle your letters, telephone calls and queries about the administration of your claim. **They cannot give legal advice.**

The guide deals with how to respond to a claim. It cannot tell you whether you have a good chance of success. Tribunal clerks will be happy to answer queries about the administration of the claim as it proceeds but they cannot give you an opinion about whether you are likely to win or lose, or whether you should take a particular action or step.

## About SENTW

SENTW is a Tribunal, we hear and make decisions about claims against Welsh schools and Local Authorities where there has been disability discrimination in a child's education. SENTW is independent of government and Local Authorities and our decisions are legally binding.

## Overriding Objective and Obligation to Co-operate

The Tribunal's overriding objective is to deal with cases fairly and justly. It is the Tribunal's expectation that parents, representatives, Local Authority officers and responsible bodies, will help further the overriding objective by co-operating with each other and the Tribunal for the purposes of progressing the appeal or the claim.

## Key concepts

The Equality Act protects pupils from disability discrimination and disability related harassment and victimisation. Protection extends to prospective pupils, pupils at the school and in some cases to former pupils. It also protects pupils who do not have a disability against certain types of discrimination and against disability related harassment and victimisation.

## What is a disability?

The Equality Act 2010 says that disability is a physical or mental impairment which has a substantial (more than minor or trivial) and long-term adverse effect (to last for at least a year or the rest of their life) on a person's ability to carry out normal day-to-day activities.

- Wearing glasses does not constitute a disability if that is the only difficulty. Conditions that happen regularly or are only temporary, such as hay fever or broken bones, are excluded as are addiction to alcohol, tobacco and drugs.

## What aspects of Education are covered by the Equality Act?

The Act makes it unlawful to discriminate, harass or victimise a person on grounds of disability in relation to the following areas of school life:

### Admissions

This covers:

- arrangements that are made for deciding who is offered admission as a pupil,
- the terms on which an offer is made to a pupil,
- not admitting a person as a pupil.

### Education and access to any benefit, service and facility

This covers all aspects of school life, including:

- the way education is provided,
- the way that pupils are provided with access to any benefit, facility or service in school,
- not providing education for a pupil,
- not providing a pupil with access to a benefit, facility or service in school,
- by subjecting a pupil to any other detriment.

The law applies equally to what happens at break and lunch-times as well as to what happens during lessons and covers school related activities such as school clubs, after school clubs, sports activities and school trips.

### Exclusions

This covers:

- permanent or fixed term exclusions,
- lunch time exclusions

## What is Disability Discrimination?

Disability discrimination occurs when a person receives worse (less favourable or unfavourable) treatment than another person because of a disability.

Disability discrimination can also occur when a rule or policy or way of doing things has been put in place which disadvantages a particular group of disabled pupils when compared with non disabled pupils and a disabled person is disadvantaged as a result.

## What are the types of Discrimination?

The Equality Act 2010 means that people who have or have had a disability are protected against different types of discrimination. These are:

- direct discrimination;
- indirect discrimination;
- discrimination arising from disability;
- failure to provide a reasonable adjustment for a disabled child;
- harassment; or
- victimisation.

**Direct discrimination**, this occurs when a pupil receives worse (less favourable) treatment than another pupil because of a disability. Direct disability discrimination can also occur where a pupil is treated less favourably because of their association with a disabled pupil or where it is mistakenly thought that they have a disability.

**Indirect discrimination**, this occurs when a rule, policy or practice applies to all pupils / a particular pupil group, but has the effect of putting pupils with a particular disability at a disadvantage compared with non disabled pupils and the rule, policy or practice cannot be justified.

**Discrimination arising from disability**, this occurs when a disabled pupil is treated unfavourably because of a reason related to their disability and the unfair treatment cannot be justified. And, it cannot be shown that the School or Local Authority did not know about the pupil's disability and could not reasonably have been expected to know this.

**Failure to provide a reasonable adjustment for a disabled child**, the school has a duty to take reasonable steps to avoid disadvantage experienced by disabled pupils. This can require steps to be taken in advance of the pupil attending the school. Discrimination occurs when a school has not complied with its duty to take positive steps to ensure that a disabled pupil can fully participate in the education and other services which the school provides.

The school's duty to make reasonable adjustments includes a requirement to provide auxiliary aids and services, such as specialised computer equipment, adapted desks or speech and language therapy. It does not require a school to remove or alter a physical feature. An auxiliary aids or service is anything which provides additional support or assistance to a disabled person.

Matters such as cost, health and safety requirement, and the need to maintain standards, are some factors that may be taken into account when considering whether a particular step is reasonable

**Disability related harassment**; this occurs where a pupil receives unwanted behaviour related to a disability which has the purpose or effect of violating a person's dignity or which is hostile, degrading, humiliating or offensive to the pupil.

**Disability related victimisation**; this occurs when a pupil is treated less favourably because they are taking / have taken or might be taking action in good faith under the Equality Act or because they are supporting such a person.

## When can discrimination be justified?

Even though a pupil may have been treated unfavourably or has been placed at a disadvantage, the discrimination may not be unlawful if the school or Local Authority can show that was justified.

In cases of indirect discrimination and discrimination arising from disability, justified means being able to show that there was a lawful and genuine reason for the treatment and that it was a fair, balanced and reasonable response.

## What about the duty to make reasonable adjustments?

Schools and Local Authorities must take reasonable steps to make sure that disabled pupils, including children who are not yet at school and in some cases former pupils, are not put at a **substantial disadvantage** compared with a non-disabled pupil.

A reasonable step for example may be amending a policy or changing the way things are done.

Schools do not have to alter buildings. This is because schools and Local Authorities have a duty under the Equality Act 2010 to improve access to buildings over time.

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

The Equality Act means that people without a disability are protected against certain types of unlawful conduct, these are:

- **Direct discrimination**; based on association, this occurs when a pupil is treated less favourably because of their association with another person who does have a disability.
- **Direct discrimination**; based on perception, this occurs when a pupil is treated less favourably because it has been mistakenly thought that they have a disability.
- **Disability related harassment**; this occurs where a pupil receives unwanted behaviour related to a disability which has the purpose or effect of violating a person's dignity or which is hostile, degrading, humiliating or offensive to the pupil.
- **Disability related victimisation**; this occurs when a pupil is treated less favourably because they are taking / have taken or might be taking action in good faith under the Equality Act or because they are supporting such a person.

## What claims can SENTW deal with?

SENTW deals with all disability related discrimination, harassment and victimisation claims against schools in Wales, except for claims about:

- maintained school admission decisions (these are currently heard by an admission appeal panel), and
- permanent exclusions from maintained schools (these are currently heard by exclusion appeals panels).

A **maintained school** is a school that is looked after and paid for by a Local Authority.

## Obtaining information – the questions procedure

If someone thinks they may have been discriminated against they can try to obtain information from the School or Local Authority to help them to decide if they have a valid claim or not. If a request for information is made you are not obliged to answer the questions raised, however if you do not do so within 8 weeks of the form being sent or if your answers are considered vague or equivocal then the tribunal panel can take this into account when making its decision.

There is a prescribed form produced by the Government Equalities Office (GEO) that a potential claimant or claimant can use (but they do not have to) if they want to ask questions. There is also a prescribed form on which to respond, if you wish to use it.

You can get a copy of the guidance and forms for the questions procedure from the Government Equalities Office (GEO).

## What else can be done to help resolve the dispute?

### **The schools complaints procedure**

It is usually in everyone's best interests to try and resolve disagreements in the most straight forward way possible. Schools are likely to have a complaints procedure which should be able to deal with complaints of discrimination, harassment or victimisation.

### **Local Authority Dispute Resolution Services**

Local Authorities in Wales must have in place independent disagreement resolution services. The service deals with disputes between parents and schools in relation to Special Educational Needs. In some cases the service is also available to help resolve other disputes.

Your Local Authority will be able to tell you more about this service and whether or not it is available.

In some cases it may be possible to use an independent mediation or conciliation service that deals with school related claims, if there is such a service working in your area.

None of these procedures will affect a claim to SENTW, they are completely separate processes from making a claim to SENTW. A parent can make a claim and continue with these other forms of dispute resolution if they wish.

Even after a claim has been submitted it is sometimes possible to resolve disputes or to agree certain aspects of the claim by discussing it with the parent. It is helpful if you let the Tribunal know about any agreements that are reached.

## Can children make their own claim?

Children and young people can make their own claim.

Existing parental rights will not be affected by the new rights for children to make their own Disability discrimination claim. A parent can still make a claim whether or not their child makes one.

## Time-limit for making a claim

Claims are made to SENTW. A claim must be made by a parent no later than **six months** from when the alleged discrimination or last alleged act of discrimination took place.

This time-limit may be extended in cases where the Equalities and Human Rights Conciliation Service is used, but parents should check with SENTW before the six months is up.

## Responsible Body

Claims are made against the **Responsible Body**. The Responsible Body is the organisation that is responsible for the school - it is usually the School Governors and / or the Local Authority. Claims cannot be made against an individual person like the head-teacher.

## What happens once a claim is registered?

We will notify you when the claim is registered and tell you when you have to send in your case statement and attendance form. You will have 30 working days to submit your case statement and attendance form.

We will also write to the parents to give them the same amount of time for sending us their case statement.

At the end of the case statement period, we will ensure that you and the parents see each other's case statement.

We will also arrange a **hearing**. At the hearing a tribunal panel will consider all the written evidence, as well as anything you, the parents and your respective witnesses have to say.

The whole process, from when we receive a claim to when we make a decision, usually takes about four to five months. It can sometimes take longer if it is a very complex case

## Key issues that you will need to consider:

### Are you the Responsible Body?

The Responsible Body depends on the type of school and the circumstances of each case. In most cases, the Responsible Body will be as set out in the table below, but there can be exceptions.

Type of School	Responsible Body
Maintained school	School Governors, in general
Pupil referral unit	Local Authority
Maintained nursery	Local Authority
All independent schools	The proprietor
Non-maintained special school	The proprietor

If you do not think you are the Responsible Body you should write and tell us straight away, explaining why.

## Your response to the claim

### **Time-limit!**

There is a strict time limit by which we must receive the case statement. We will tell you when you have to send in your case statement and attendance form. You will have 30 working days to submit the information.

### **The Responsible Body must submit the following:**

- a copy of the disputed decision
- all evidence to be relied on which has not already been submitted
- a case statement

The case statement must:

- state whether or not the Responsible Body intends to oppose the claim,
- be signed by a person who is authorised to sign such documents for the Responsible Body

### **If the Responsible Body intends to oppose the claim the case statement must state:**

- the grounds on which the claim or any part of the claim is opposed
- a summary of the facts
- the reasons for the disputed decision
- the steps, if any, already taken to resolve the dispute
- the views of the child concerning the issues raised in the claim, OR
- an explanation of why the Responsible Body has not established the child's views
- the name and address of the Responsible Body's representative
- the address for which documents for the Responsible Body should be sent.

Your case statement response should set out the relevant facts as you know them; about what happened, the child's disability, and background information (e.g. school policies, earlier difficulties).

Any written evidence you want to submit must be in the response or be sent with it. Your response can also set out the arguments you want to put forward. You should go into as much detail as you think is necessary to make your case. The Tribunal's decision can only take into account the evidence the Responsible Body and parent give to us. If you want the Tribunal to take account of something make sure that it is in the evidence.

### **The pupil's disability and your knowledge of it**

You should say whether you accept that the pupil is disabled under the definition in the Equality Act 2010.

If you do not accept that the child is disabled, you should say why. If you accept that the child is disabled, but no-one at the school knew about this or could reasonably have been expected to know about this when the alleged discrimination took place, you should explain this.

Remember that if any member of school staff is informed of a pupil's disability, the school as a whole will be regarded as knowing about it. If no-one knew about it, it will be helpful to set out the steps you have taken to enable parents to notify you of their children's disabilities. If a parent has asked you to keep the nature or the existence of a child's disability confidential, you should tell us.

### **The facts**

You may want to comment on factual issues. Do you accept that what the parents say happened actually did so? If there is some history to the parents claim, which it would be helpful for us to know about, you may wish to summarise this. Is there some basic factual background which the tribunal panel should know?

### **Justification**

If you accept the parents' account of what happened, but consider that the discrimination related to the child's disability was justified, you will need to say why.

You will need to show us that the treatment is intended to meet a legitimate objective in a fair, balanced and reasonable way. You may also want to tell us how you have considered other ways of meeting the objectives that would not have had a discriminatory effect.

Treatment cannot be justified where there is found to be direct discrimination or a failure to make reasonable adjustments.

### **Less favourable treatment**

In considering the claim we may need to establish whether the pupil has experienced discrimination because of their own or someone else's disability. We will need to consider whether the pupil has been treated less favourably than you treat (or would treat) another pupil who does not have the disability.

If you do not consider that the disabled pupil has been treated less favourably than another pupil who does not have the disability, you should tell us about this.

### **Reasonable adjustments**

You may need to tell us about any reasonable adjustment steps you have taken to avoid substantial disadvantage where a provision, criterion or practice has put the disabled pupil at a substantial disadvantage. A substantial disadvantage means something more than minor or trivial.

A reasonable step for example may be amending a policy or changing the way things are done. Schools do not have to alter buildings. Schools and Local Authorities must plan to improve access to buildings over time but this is a different duty.

A reasonable adjustment includes providing auxiliary aids and services. An auxiliary aid or service is anything which provides additional support or assistance to a disabled person.

If you consider that there is no reasonable adjustment that could be made, you should tell us how you have considered what steps might have been taken and why you have concluded that they would not be reasonable.

## Remedies

Whether or not you oppose the claim as a whole, you may wish to give a view on any remedies proposed by the parents. We have included an optional section in the claim form for parents to say what they think should be done to put things right. If they have completed this, please tell us how far you think the measures suggested would be reasonable. If you have suggestions of your own, these may also help us decide what should be done.

## Reaching agreement

Claims only reach us if you and parents have a disagreement, but it is quite in order for discussions between the parties to continue taking place after a claim has been made. It would be helpful if you told us about any parts of the claim that you and the parents have been able to resolve after we received the claim.

## Should we dispute the claim?

The parents claim form includes an optional box in which they can say how they would like to see things put right. These may be things you are prepared to do without need for a Tribunal. If you agree that there has been discrimination but plan to put things right, the parents may be prepared to withdraw their claim.

## If we dispute the claim will we need a lawyer?

Legal representation is not essential at Tribunal hearings. But you may choose to instruct a lawyer to attend in addition to your representative. If you consult a lawyer, or some other representative, you should do so as early as possible.

## What happens if we do not oppose the claim?

If you do not oppose the claim you must write to us to tell us this by the end of the case statement period. You must include information about what action you intend to take to end the discrimination. We will then write to the parent to ask whether they wish to withdraw the claim. If they do not withdraw the claim will go to hearing at which the Responsible Body will not be able to attend.

## What if the Responsible Body does not reply?

If the Responsible Body does not send a response by the end of the time allowed, your claim will be passed to a Tribunal Chair who will decide what action should be taken. This may include refusing to allow the responsible body to take any further part in the proceedings.

## Sending us evidence

When preparing the Responsible Body's case statement, please note:

- papers should be single sided A4 copies and not stapled,
- papers should be in black and white.
- do not add your own page numbers,

- a contents list for all reports and evidence you are submitting with your case statement should be included,
- do not send originals, only photocopies of the original.

## Can we resolve the matter without a hearing?

It will generally be best if disputes can be resolved by agreement between you and the parents. It is quite proper to discuss the matter while a Tribunal claim is pending. Communication difficulties may well have been a factor in the dispute. Parents can use the Equality and Human Rights Commission's independent mediation service. If you take part in conciliation meetings, what you say in these meetings can only be used in a Tribunal hearing with your consent

## Can I submit further information after the case statement?

Written evidence that is submitted after the deadline for case statements is called **late written evidence**. There are restrictions on the admission of late written evidence.

You can ask the tribunal panel on the day of the hearing whether the late evidence can be admitted. The tribunal panel will consider your request so long as:

- both parties agree to the admission of the late written evidence; OR
- you can show that the late written evidence meets the following conditions:
  - the late evidence was not, and could not reasonably have been, available before the end of the deadline for the case statement; and
  - a copy of the late evidence has been sent to SENTW and the other party so that it is received at least 5 clear working days before the hearing.
  - The tribunal panel may only admit the late written evidence after considering any representations from the other party and only if the evidence is unlikely to impede the efficient conduct of the hearing.
  - If the conditions are not met, the tribunal panel may still give permission to a party to submit late written evidence at the hearing if it can be shown that unless the evidence is admitted there is a serious risk of prejudice to the party seeking to rely on it.

The tribunal panel may refuse to admit late written evidence if it is of the view that to do so would be contrary to the interests of justice.

If the late written evidence has not already been copied to SENTW and the other party so that it is received at least 5 clear working days before the hearing, you should bring 5 copies of the late written evidence with you to the hearing.

## Strike out

The Responsible Body can make an application on limited grounds for a claim to be struck out. If the Tribunal strikes out the claim it will bring it to an end. The only grounds on which a claim can be struck out are that the claim:

- Is made otherwise than in accordance with the Tribunal's regulations
- Is not or is no longer within the Tribunal's jurisdiction
- Discloses no reasonable grounds

- Is an abuse of the Tribunal's process

## The Hearing

**A DVD is available to show you what to expect at a hearing. You can ask us for a copy by contacting us.**

We will write to you to let you know the date and time for when the hearing will take place.

We hold hearings throughout Wales and will try to hold your hearing within an hour's travelling distance of the parent's home. We usually hold hearings in public buildings, like hotels. The hearing itself will be in a private room.

We only use venues that are fully accessible for disabled users. Please do let us know if you have any particular needs.

Hearings usually start at 10:00 am. We will confirm the start time by letter. You should aim to arrive at least 30 minutes before the hearing starts. A hearing may take all day but does not normally continue after 5:00 pm.

The claim will be heard by a tribunal panel. One person on the panel is a lawyer who will chair the hearing. The other two members have specialist knowledge and experience of children with special educational needs and disability.

## Who can attend the hearing?

- **A representative from the Responsible Body**

- **A legal representative**

You can have someone at the hearing to represent the Responsible Body whether or not you come yourself. That person does not have to be legally qualified.

- **Witnesses**

You can bring up to two witnesses to the hearing.

Choosing who to bring as witnesses at the hearing can be difficult. Witnesses must expect to answer questions about their evidence. They will need a good knowledge of the facts and reasoning behind the information they give.

- **An advocate**

You can bring someone to communicate the views and wishes of the child.

- **An observer**

## Do I have to tell you who I am bringing to the hearing?

You must tell us who you are bringing to the hearing. We will send you an attendance form to complete. You will need to include the names of everyone you want to bring. **If you do not tell us who you are bringing to the hearing they may not be able to attend the hearing.**

## Can I change who I am bringing to the hearing?

If you make any changes to the people listed on your attendance form you should let us know immediately.

A person named as a witness on your attendance form may be changed by sending written notification of the change to SENTW and the other party so that it is received no later than 5 working days before the hearing.

Any application to change a witness made less than 5 working days before the hearing must be determined by the President or tribunal panel.

## When will I know the Tribunal's decision?

The written decision and reasons will be sent by post usually within 10 working days of the hearing. We will send the decision to you and the parents.

## Will you confirm that there was discrimination

If we decide that there was unlawful discrimination we will say so in our decision. If we disagree with the claim we will dismiss it.

## What can the Tribunal tell the Responsible Body to do?

We can order the Responsible Body to do anything reasonable to put right the discrimination. The law does not allow us to order financial compensation.

The order is legally binding. We can order actions that will help make up for any opportunities that the child has missed or prevent future discrimination. Examples include:

- training of school staff;
- drawing up new guidance for staff;
- changes to school policies;
- extra tuition, to make up for lost learning;
- changing the location of lessons or activities (but not changing physical premises);
- a written apology to your child; and
- trips or other opportunities to make up for activities that your child may have missed.

## How long does the Responsible Body have to carry out the order?

We will tell the Responsible Body to carry out the order within a given time. They must do this by law. If you do not, the tribunal has no powers of enforcement, but there are other steps parents can take to enforce the tribunal's order.

## What can I do if I am not happy about your decision?

Our decision is final. If you think there is a technical problem with the decision and how it was made you can ask us to review it. We will not review our decision simply because you

are not happy with it. We must receive your written request to review within 28 calendar days of the date we issued the decision.

If you think that the decision is wrong in law you can appeal to the Administrative Appeals Chamber of the Upper Tribunal but you must first apply to us for permission to appeal. You must make your application so that we receive it no more than 28 calendar days from the date on the letter which we sent you with the decision.