



Education Tribunal for Wales

# Claim case statement guidance for respondents

## About this guide

This booklet provides helpful information to responsible bodies about preparing case statements for claims to the Education Tribunal for Wales (ETW). We cannot cover everything that would be useful for every claim. Depending on the nature of the claim, you may not need to send all the information mentioned in this leaflet. If we have already received information with the application, you do not have to tell us again. Please contact ETW if you have any questions about the process.

Tribunal clerks are the staff who process claims. They answer your letters and telephone calls. They can only answer questions about the administration of your case. They cannot give legal advice. This means they cannot give their opinion, or recommend whether you should take a particular action.

## Who this guide is for

This guide is for responsible bodies responding to claims of disability discrimination made to ETW.

## About ETW

ETW hears and makes decisions on appeals about the additional learning needs of children and young people, and claims of disability discrimination. ETW is independent of government and local authorities, and our decisions are legally binding.

## Language Preference

ETW welcomes receiving correspondence and phone calls in Welsh or English. We will respond in Welsh to any correspondence received in Welsh. Corresponding in Welsh will not lead to a delay in our response.

This document is also available in Welsh. Please contact the Tribunal for a Welsh version of this document. You may also submit forms, documents, and make written representations to ETW in Welsh or English.

## Overriding Objective and Obligation to Co-operate

The Tribunal's main intention is to deal with cases fairly and justly. The Tribunal expect all parties to cooperate with each other, and the Tribunal, to progress the case. This may include exchanging information and documents with other parties, or cooperating with the Tribunal's requests more generally.

## Information resources

- [The Equality Act 2010](#)
- [The Education Tribunal for Wales Regulations 2021](#)
- [The Additional Learning Needs Code for Wales 2021](#)
- [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018](#)
- [The Additional Learning Needs \(Wales\) Regulations 2021](#)

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## 1. Introduction to disability discrimination

### What is a disability?

According to the Equality Act 2010, a person has a disability if:

- they have a physical or mental impairment; and
- the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

Common conditions, or conditions that are only temporary (such as hay fever or broken bones) are excluded from the definition. Wearing glasses would not constitute a disability if that was the only difficulty a person faced. A person with glasses would have a disability if they had great difficulty carrying out everyday tasks, even whilst wearing glasses.

Substance addictions are excluded from the definition.

### What aspects of education does the Equality Act cover?

Schools must not discriminate, harass or victimise a person on grounds of disability.

It is unlawful for schools to disfavour or single out pupils, due to their disability, in:

- arrangements made for deciding the admission of pupils;
- the terms on which it makes admission offers;
- not admitting a person as a pupil;
- permanent or fixed term exclusions;
- lunch time exclusions;
- the way it provides education;
- the way it provides pupils with access to benefits, facilities or services in school;
- not providing a pupil with access to a benefit, facility or service in school;
- subjecting a pupil to any detriment in regards to benefits, facilities or services; and
- in not providing education for a pupil.

The law applies to what happens at break, lunch-times and lessons. It also covers school related activities, such as school clubs, after school clubs, sports activities, and school trips. The school has a duty to make reasonable adjustments that help to include all students.

## What is disability discrimination?

Disability discrimination occurs when someone treats another person unfavourably because of a disability.

Disability discrimination can also occur when a rule or way of doing things disadvantages disabled people. If a school policy makes it difficult for a disabled pupil to take part in a school activity, that policy may be discriminatory.

## What are the types of discrimination?

The Equality Act 2010 protects people who have (or have had) a disability against different types of discrimination.

The different types of discrimination are:

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

**Direct discrimination** occurs when someone treats another person unfavourably because of a disability. It is also direct discrimination if they mistakenly think the person has a disability. If someone treats another unfavourably because of their association with a disabled pupil, this is direct discrimination too.

**Indirect discrimination** occurs when a rule, policy or practice has the effect of putting pupils with a particular disability at a disadvantage compared with non-disabled pupils. The school must be able to justify any rule, policy or practice that disadvantages pupils this way.

**Discrimination arising from disability** occurs when a school treats a disabled pupil unfavourably because of a reason related to their disability. If the school or local authority can show that they did not know about the pupil's disability, or could not reasonably have been expected to know, it is not discrimination.

**Failure to provide a reasonable adjustment for a disabled child** occurs when a school does not take reasonable steps to avoid disadvantage experienced by disabled pupils. This requires the school to take steps in advance of the pupil attending the school.

The school has a duty to take positive steps to ensure that a disabled pupil can fully participate in the education and other services that the school provides. The school's duty to make reasonable adjustments includes providing auxiliary aids and services. These include specialised computer equipment, adapted desks or speech and language therapy. An auxiliary aid or service is anything which

provides additional support or assistance to a disabled person. It does not require a school to remove or alter a physical feature of the school.

**Disability related harassment** occurs where a pupil experiences unwanted behaviour, related to a disability, which has the purpose or effect of violating a person's dignity. The behaviour may be hostile, degrading, humiliating or offensive to the pupil.

**Disability related victimisation** occurs when a school treats a pupil unfavourably because they have taken action under the Equality Act. This includes unfavourable treatment of a pupil who is considering taking action, or is supporting a person taking action.

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

Discrimination may be lawful if the school or local authority can justify it. To do so, they must show that there was a lawful and genuine reason for the treatment. They must also prove that their response was fair, balanced and reasonable. This applies to cases of indirect discrimination and discrimination arising from disability.

### **What about the duty to make reasonable adjustments?**

Schools and local authorities must take reasonable steps to make sure that disabled pupils are not put at a significant disadvantage in comparison to non-disabled pupils. For example, a reasonable step may be changing the way schools do things so that disabled students can join in an activity.

Schools do not have to alter buildings as part of a reasonable adjustment. This is because schools and local authorities have a duty under the Equality Act 2010 to improve access to buildings over time instead.

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

People without a disability are protected against certain types of unlawful conduct by the Equality Act 2010.

- **Direct discrimination based on association** occurs when a pupil is treated unfavourably because of their association with a person who does have a disability.
- **Direct discrimination based on perception** occurs when a pupil is treated unfavourably because it has been mistakenly thought that they have a disability.
- **Disability related harassment** occurs where a pupil experiences unwanted behaviour related to a disability which has the purpose or effect of violating a person's dignity. The behaviour may be hostile, degrading, humiliating or offensive to the pupil.

- **Disability related victimisation** occurs when a school treats a pupil unfavourably because they have taken action under the Equality Act. This includes unfavourable treatment of a pupil who is considering taking action, or is supporting a person taking action.

### **What else can we do to resolve the dispute?**

It is usually in everyone's best interests to try and resolve disagreements in the most straight forward way possible. This may include the school's complaints procedure, or the local authority's dispute resolution service. It is still appropriate to discuss the matter with children, parents and young people while a tribunal claim is pending. Communication difficulties may well have been a factor in the dispute.

Applicants may use the Equality and Human Rights Commission's independent mediation service if they wish. If you take part in conciliation meetings, what you say in these meetings can only be used in a Tribunal hearing with your consent.

### **What about local authority dispute resolution services?**

Local authorities in Wales must have independent dispute resolution services (DRS). These services can deal with disputes in relation to additional learning needs. In some cases, the service is also available to help resolve other disputes. Local authorities will be able to tell you more about the service and whether it is available to you.

You may also suggest using other independent mediation or conciliation services.

Even after an applicant has submitted a claim, you might find it useful to have discussions with them. It is sometimes possible to resolve disputes in this way, or to agree certain aspects of the dispute before the Tribunal hearing. If through these discussions, or through DRS, you come to any agreements, it would be helpful if you let the Tribunal know.

## 2. Claims

### What claims can ETW deal with?

ETW deals with most disability related discrimination, harassment and victimisation claims against schools in Wales. We cannot deal with claims about:

- maintained school admission decisions; and
- permanent exclusions from maintained schools.

A maintained school is a school that a local authority looks after and pays for.

Admission appeal panels and exclusion appeal panels hear cases related to these cases.

### Who can make a claim?

Children, their parents, and young people can make claims against responsible bodies. Whoever submits the claim application is known as “the applicant”.

Parental rights are not affected by a child's own claim. The parent of a child may submit a claim even if their child has already done so.

### Who is the responsible body?

Identification of the responsible body depends on the type of school, and the circumstances of each case. We will identify the responsible body when we receive the claim application. The below table may help, though there are exceptions to it.

Type	Responsible body
Maintained school	School governors (as a whole)
Maintained nursery	The nursery's local authority
Pupil referral unit	The unit's local authority
All independent schools	The school's proprietor
Non-maintained special school	The school's proprietor

We also call the responsible body “the respondent” as they must respond to the claim for the Tribunal.

## **What happens after ETW receives a claim application?**

We will notify you when we register a claim and tell you when you have to send in your case statement and attendance form. You will have 4 weeks from the date you receive the applicant's case statement to submit your case statement and attendance form. You will find guidance on submitting attendance forms on the [Publications Register](#) page of our website.

At the end of the case statement period, we will ensure that you and the applicant see each other's case statements. We will also arrange a hearing.

At the hearing a tribunal panel will consider the case statements, as well as anything you, the applicant, 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.

## **Should we dispute the claim?**

The applicant's 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 would do without need for a tribunal hearing. If you agree that there has been discrimination but plan to put things right, the applicant may decide to withdraw their claim.

## **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 and the responsible body will not be able to attend.

## **If we dispute the claim will we need legal representation?**

Legal representation is not essential at tribunal hearings. You may choose to instruct a legal representative to attend along with the person representing the responsible body. If you consult a legal representative, you should do so as early as possible.

## **What if we decide not to reply?**

If the responsible body does not send a response by the end of the time allowed, we will ask a tribunal chair to decide what action we should take. This may include refusing to allow you to take any further part in the proceedings.

## **What is a case statement?**

Your case statement is the information that you want us to look at as part of the case. It is your chance to respond to the claim, and provide evidence.

## **How to submit your case statement**

You can submit your case statement by email or by post.

If submitting by email, please:

- include a content list in Word format, noting name of document, its date and its author;
- submit all other documents in PDF format; and
- provide passwords for any locked documents.

If submitting by post, please:

- send copies rather than original documents;
- include a content list, noting name of document, its date and its author;
- do not staple documents; and
- do not add your own page numbers.

## **The final bundle of papers**

If the appellant is not legally represented, you must provide the final bundle of papers too. You must check with the appellant that they agree with it before submitting it to us. Part 4 of this booklet will explain case bundles in more detail.

If the appellant is legally represented, their representative will send their case statement to us. We will then combine your case statement with the appellant's, and produce the final bundle. We will send the bundle to you and the appellant at least 10 working days before the hearing.

You must help the appellant to prepare their case statement by providing copies of any documents they need. If you do not share documents that you hold, the panel may decide you are trying to withhold evidence that is unhelpful to your case. The appellant must also provide you with any documents they hold, for the same reason.

## **Late written evidence**

You can ask the Tribunal panel at the hearing whether they will consider late written evidence. The Tribunal panel will consider your request if:

- the claimant agrees to include the evidence; or
- you can show that the evidence was not, and could not reasonably have been, available before the deadline. You should send this evidence to the Tribunal

and the claimant so that it arrives at least 5 working days before the hearing. The panel will still consider the claimant's opinion.

This evidence must also be unlikely to get in the way of the efficient management of the hearing. Long or complicated documents introduced at the hearing could cause difficulties or delays.

The tribunal panel may still accept late written evidence that does not meet these conditions. They will only do so if you can show that there is a serious risk of prejudice if the evidence is not accepted.

The tribunal panel will refuse to accept late written evidence if they think that it would be against the interests of justice.

Please bring 5 copies of any written evidence to an in-person hearing if the tribunal and the claimant did not receive it at least 5 working days before.

## **Strike out**

The responsible body can apply for the Tribunal to strike out a claim, in part or in full. If the Tribunal strikes out the claim in full, it will bring the case to an end.

The Tribunal will strike out a claim if it:

- does not conform with the Tribunal's regulations; or
- is not, or is no longer, within the Tribunal's jurisdiction; or
- discloses no reasonable grounds; or
- is an abuse of the Tribunal's process.

You should make any application to strike out a claim in writing, setting out the grounds, and reasons you're relying on, in full.

## **Reaching agreement**

Discussions between the claimant and the responsible body often continue after we have registered a claim. If you come to any agreements with the claimant before the hearing, it would be helpful if you let the Tribunal know.

## **Hearings**

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.

Please see our *Attendance form guidance for respondents (ETW26)* booklet for information on who can attend the hearing.

### 3. What to include in the case statement

#### What information is essential?

Before the case statement deadline, the Tribunal regulations state you must submit:

- a copy of the disputed decision (if applicable);
- a copy of the child or young person's IDP, any documentation attached to or forming part of the IDP and, if available, a copy of the latest review (if applicable);
- a case statement; and
- all other evidence you wish to rely on which the claimant has not already submitted.

The case statement must:

- include the views of the child or young person on the issues raised in the claim, or reasons why these views are not included
- be signed by a person the responsible body has authorised to sign case statements on its behalf; and
- state whether the responsible body intends to oppose the claim.

If the responsible body intends to oppose the claim, its case statement must state:

- the grounds on which the claim, or any part of the claim, is opposed;
- the name and address of its representative and, if available, the representative's telephone number and email address;
- the address where the Tribunal should send documents;
- a summary of the facts relating to the disputed decision;
- the reason or reasons for the disputed decision, if not included in the decision; and
- the steps, if any, already taken to resolve the dispute.

#### What other information should be included?

Your case statement response should set out the relevant facts as you know them. You should detail relevant events, the child's disability, and circumstantial background information (e.g. school policies, earlier difficulties).

Any written evidence you want to submit must be in the response or sent along with it. Your response should 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 provide. 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, or could reasonably have been expected to know 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 claimant say happened actually did happen? If there is some history to the claim which would be helpful for us to know about, you may wish to summarise it. 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.

## 4. Putting a bundle together

### Responsibilities

If the appellant is legally represented, their representative will send their case statement to us. We will then combine your case statement with the appellant's, and produce the final bundle. We will send the bundle to you and the appellant at least 10 working days before the hearing.

If the appellant is not legally represented, you must prepare the final bundle on their behalf.

### Putting a bundle together

A bundle should constitute one PDF file of all documents, and one Word file with an index, detailing the contents of the PDF bundle. The index should detail the type, date, author (including position/profession), and page number for each document.

Where available, a bundle must include:

- 1) The claim application, any amended grounds of the claim and the current IDP (if applicable)
- 2) The Responsible Body's response to the claim and any supplementary or amended response
- 3) Any requests for changes made by a party
- 4) Tribunal orders and any documents ordered to be filed by the Tribunal
- 5) Any relevant correspondence between the parties
- 6) Statements of witnesses to be given in evidence

You will need to ensure that all documents are complete, legible, and not duplicated.

For items 3 to 6, there is a page limit of 200 pages. This page limit is not a target and many cases will not need this number of pages. Items 1 and 2 are not included in the 200 page limit. This ensures parties to the hearing have the opportunity to put their case in full. If you wish to increase the page limit, you will need to apply to the Tribunal. Your request should contain clear reasons about why it is necessary for the fair hearing of the matter.

## **Submitting the bundle**

Before submitting the bundle to the Tribunal, you should send a draft bundle to the appellant for their consideration. If they do not respond within 5 working days, you may presume that they agree with the bundle.

The bundle is due by no later than 10 working days after your case statement period. If the bundle does not follow these guidelines, the Tribunal will give you 3 days to fix any problems. If you fail to meet the deadline, the Tribunal may prevent you from taking part in proceedings.