

# Education

## How do I make a claim?

A guide to taking a Part 4 Schools DDA case



# **The Equality and Human Rights Commission**

**– the independent advocate for equality and human rights in Britain**

The Equality and Human Rights Commission aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights.

The Commission was established under the Equality Act 2006 and opened in October 2007. We are a non-departmental public body, which means that we are accountable for our public funds but independent of government. We have taken over the roles and duties of the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission and we also have new responsibilities.

The Commission enforces and develops equality legislation on age, disability, gender, race, religion or belief, sexual orientation and transgender status and encourages compliance with the Human Rights Act. We work closely with, and provide advice and guidance to, policymakers, lawyers, government, businesses, the voluntary and public sectors, and individuals.

We have offices in England, Scotland and Wales. For further details please see our website **[www.equalityhumanrights.com](http://www.equalityhumanrights.com)** or contact one of our helplines – contact details can be found on the back cover. If you require this publication in an alternative format and/or language please contact the relevant helpline to discuss your needs. All publications are also available to download and order in a variety of formats from our website.

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# 1. Introduction

Are you the parent\* of a disabled pupil or prospective pupil who has been discriminated against by a school or local education authority (LEA)?

If so, you may be able to make a disability discrimination claim against the school or LEA. Under the Schools sections of Part 4 of the Disability Discrimination Act (DDA), it is against the law for a school or LEA to discriminate against disabled pupils or prospective pupils because of their disability.

The Equality and Human Rights Commission (EHRC) Helpline (see the back cover for details) can give you advice and information about the DDA and about your claim. Other organisations including law centres, Citizens' Advice Bureaux, voluntary organisations or law firms may be able to give you legal advice and represent you. (See section 7 – Useful contacts.)

This booklet should help you to decide if you have a claim and how to pursue it, however it only provides guidance for making claims in England and Wales.

The DRC issued a statutory Code of Practice for Schools (and LEAs) which is available from the EHRC Helpline or the EHRC website [www.equalityhumanrights.com](http://www.equalityhumanrights.com). Although it is not the law itself, the Code is guidance on the law. It also gives practical guidance on how to avoid discrimination against disabled pupils. The Code has to be taken into account by admission appeal panels, independent appeal panels and SENDIST/SENTW when relevant. There is also further information available on the website.

There is a separate guide to assist in making claims under Part 4 of the DDA against providers of Post-16 education. This is available from the EHRC Helpline or website.

In the interests of brevity, the masculine pronoun (he/his) has been used throughout this booklet.

\*Parent includes anyone who is not a parent but has 'parental responsibility' for a child or has care of a child.

## 2. Can I make a claim?

### 2.1 Does the school/LEA have duties under Part 4 (Schools) of the DDA?

The DDA covers all schools in Great Britain, all local education authorities (LEAs) in England and Wales and all education authorities (EAs) in Scotland. This includes independent schools, special schools, sixth forms within schools and nurseries within schools. The claim is made against the body responsible for the school or the LEA. Usually the body responsible for a school is the governing body but this is not always the case. The person you make the claim against is the 'responsible body'.

#### Who is the responsible body?

Type of school	Responsible body
Maintained school	The governing body
Pupil referral unit	The LEA
Maintained nursery school	The LEA
Independent school	The proprietor
Special school that is not maintained by the LEA	The proprietor

### 2.2 Is my child protected by the DDA?

#### Is my child disabled?

The DDA protects disabled people. The DDA sets out the circumstances in which a person is 'disabled'. This is different to any other definition of disability – although clearly there may be an overlap with other definitions. You may be in receipt of disability benefits in respect of your child but this does not necessarily mean that your child meets the

definition of disability under the DDA. By the same token, you do not need to be in receipt of disability benefits to meet the definition. The definition is not the same as the definition of 'special educational needs' used in the Education Act 1996. Your child may have special educational needs and so have a statement or he may have been placed on School Action or School Action Plus. This does not mean that your child will automatically meet the definition of disability. A special educational need affects your child's ability to learn and is not necessarily the same thing as a disability as defined by the DDA. Children may have either a disability, or special educational needs, or both.

The DDA says a person is disabled:

- if he has a **physical or mental impairment**
- which has an **adverse effect** on his ability to carry out **normal day-to-day activities**
- the adverse effect is **substantial** (meaning more than minor or trivial)
- the adverse effect is **long term** (meaning it has lasted for 12 months, or is likely to last for more than 12 months or for the rest of his life).

### **Impairment**

The word 'impairment' describes any condition, state or illness, either mental or physical, visible or hidden. It does not matter whether the impairment has been present since birth or has developed during a person's life.

### **Mental impairment**

A mental impairment could be a life-long condition such as autism or severe dyslexia. A mental impairment could also be a mental illness such as bipolar affective disorder (or 'manic depression').

## **Normal day-to-day activities**

At least one of these areas must be substantially and adversely affected by the impairment:

- mobility
- manual dexterity
- physical co-ordination
- continence
- ability to lift, carry or otherwise move everyday objects
- speech, hearing or eyesight
- memory or ability to concentrate, learn or understand
- understanding of the risk of physical danger.

A normal day-to-day activity is something that is 'normal' for most people, and that is carried out on a daily or regular basis. Normal day-to-day activities do not include activities that are only normal for a particular person or a group of people. For example, hobbies are not normal day-to-day activities because no hobby is 'normal' for most people.

Examples of normal day-to-day activities are getting out of bed, getting washed and dressed, going to school, moving about, travelling, playing, eating, and so on but, in any event, it must come within one of the eight areas of day-to-day activity listed above. Think about what other children of your child's age do during the course of a day or week – can your child do the same things?

If your child is under six years old, the effects of his impairment may not yet be apparent as he has not yet developed the ability to carry out normal day-to-day activities. In this case you should consider the effect his impairment would be likely to have on a person aged six years or over.

## **Substantial adverse effect**

When considering whether an impairment has a substantial adverse effect the DDA says that any treatment or correction should not be taken into account. This includes medical treatment or the use of a prosthesis or other aid (for example, a hearing aid). The only things which are taken into account are glasses or contact lenses. Therefore you should think about the effect which the impairment would have without treatment.

The important thing is to work out exactly how the impairment affects your child. Remember to concentrate on what he **can't** do, or finds difficult, rather than on what he can do.

To decide if an impairment has a substantial adverse effect on normal day-to-day activities, think about the time he spends on a task or activity and the way in which he carries out a task.

### **For example**

If your child has a hearing impairment, being unable to hear someone talking normally in a moderately noisy place such as a classroom may be a substantial adverse effect. Being unable to hear a person speaking normally in a very noisy place such as at a child's birthday party may not.

or

If your child's disability affects his mobility, being unable to travel a short journey as a passenger in a vehicle could be a substantial adverse effect. So could only being able to walk slowly or with unsteady or jerky movements. But having difficulty walking without help for about 1.5 kilometres or a mile without having to stop would not.

## **Medical evidence**

If the school/LEA does not agree that your child is disabled, it is useful to get some medical evidence from your child's GP or consultant about your child's impairment, its effect, any treatment and the likely effect of the impairment without treatment. You may find it helpful to show your child's GP the DDA definition of disability.

## **Severe disfigurements**

A severe disfigurement is considered to be a disability depending on its severity. This will depend partly on where it is on the body; for example a birthmark on the back is unlikely to be a severe disfigurement, whereas a similar mark on the face may be considered severe. You do not have to show that it has a substantial adverse effect on normal day-to-day activities.

## **Special provisions**

- If the effects of the impairment fluctuate they may not always have the same impact on day-to-day activities and the effects may even disappear for periods of time. Fluctuating conditions are covered as long as the substantial adverse effect is more likely than not to recur.
- The 2005 Disability Discrimination Act amended the DDA 1995 so that the definition of disability now includes people with MS, cancer and HIV from the point of diagnosis and removes the requirement that a mental impairment is 'clinically well-recognised' (which has never been necessary for physical impairment).
- Past disabilities are covered provided that, when your child had them, they were long term and had a substantial adverse effect on at least one day-to-day activity.
- If your child is registered as blind or partially sighted he will automatically be considered disabled under the DDA.

Conditions which are specifically excluded from the DDA:

- hayfever
- a tendency to start fires or steal
- exhibitionism
- voyeurism
- a tendency to inflict physical or sexual abuse
- tattoos and decorative body piercings
- addictions to substances

Addictions such as alcohol and nicotine are excluded from the definition of disability, unless they have resulted from medical treatment. For example, an addiction to prescribed painkillers could be covered by the definition if it meets all the conditions outlined above. Subsequent separate conditions which arise from the addiction (for example cancer arising from smoking or cirrhosis of the liver arising from alcohol addiction) are not automatically excluded.

## Checklist – is my child disabled?

You may find this checklist helps you to identify whether or not your child is likely to be covered by the definition of disability in the DDA.

Tick here

### Does he have:

A physical impairment

A mental impairment

**My child's impairment is** \_\_\_\_\_

### My child's impairment has an adverse effect on his:

Mobility

Manual dexterity

Physical co-ordination

Continence

Ability to lift, carry or otherwise move everyday objects

Speech, hearing or eyesight

Memory or ability to learn, concentrate or understand

Understanding of the risk of physical danger

### I think the adverse effect is substantial because:

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### The effect:

Has lasted more than 12 months

Is likely to last more than 12 months

Is likely to last for the rest of his life

### I have the following medical evidence:

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## **Is my child a pupil?**

'Pupil' is defined by the DDA as 'a person for whom education is being provided at a school'.

Some duties under the DDA apply in respect of prospective pupils as well as current pupils.

If you think your child has been discriminated against by a school/LEA as a member of the public rather than as a pupil or prospective pupil, there is a separate guide to taking a claim under Part 3 of the DDA.

## **2.3 Has my child been discriminated against?**

### **Has my child been discriminated against when applying for a place at a school?**

It is unlawful for a school/LEA to discriminate against a disabled person:

- in the arrangements it makes for determining admission to the school as a pupil
- in the terms on which it offers to admit him to the school as a pupil
- by refusing or deliberately omitting to accept an application for his admission to the school as a pupil.

### **Has my child been discriminated against at school?**

It is unlawful for a school to discriminate against a disabled pupil:

- in the education and associated services provided for, or offered to, pupils at the school
- by excluding him from the school either permanently or temporarily.

## **What is 'education and associated services'?**

There is no definition of 'education and associated services' but the Code of Practice gives a list of examples. It covers the whole life of the school including teaching in the classroom, extra-curricular activities, school trips and disciplinary procedures.

## **Has my child been discriminated against by the LEA?**

It is unlawful for a LEA to discriminate against a disabled pupil (or person who may be admitted to a school as a pupil) when carrying out its functions under the Education Acts. The LEA's functions under the Education Acts include:

- provision of school transport
- provision of education for children out of school
- education welfare, school attendance orders and non-attendance issues.

These are referred to as the LEA 'residual duties'. You cannot make a claim against a LEA for anything that the school itself is responsible for.

## **What does 'discriminate' mean?**

According to the DDA there are two main types of disability discrimination:

- (a) unjustified **less favourable treatment** for a reason related to a person's disability and
- (b) unjustified **failure to take reasonable steps**.

It is also unlawful for a school/LEA to 'victimise' (see section 2.5).

For your claim to succeed, the Tribunal, admission appeal panel or independent appeal panel will have to decide that

your child has been the subject of any of these forms of discrimination.

### **Less favourable treatment**

A school/LEA discriminates against a disabled person if it treats him less favourably than other people (for a reason related to his disability) and cannot justify the treatment. (See section 2.4 for further details of justification.)

The DDA says that less favourable treatment may be unlawful in the following areas:

- the arrangements for determining admission to a school
- the terms on which admission is offered
- the refusal of or deliberate omission to accept an application for admission
- the education or associated services provided for, or offered to, pupils at the school
- exclusion
- LEA residual duties.

To show that your child has been treated less favourably for a reason related to his disability you need to show:

- what the treatment is
- what the reason for the treatment is
- that the reason is related to his disability
- that someone to whom the reason does not apply was not/would not be treated that way (you do not need to find an actual person with whom to compare the treatment of your child. It is enough to compare it with the treatment of a hypothetical person. The person who you compare your child's treatment with – whether real or hypothetical – is called a 'comparator').

### **For example**

Joshua is a primary school pupil with a hearing impairment. He is not allowed to play outside at break time as the school are worried he will not hear instructions to return to school. All other pupils play outside at break time.

- What is the treatment?  
– **not being allowed to play outside**
- What is the reason for the treatment?  
– **not being able to hear instructions**
- Is the reason related to Joshua's disability?  
– **yes**
- Would someone to whom the reason does not apply treated that way?  
– **no**

This is less favourable treatment for a reason relating to Joshua's disability. Unless justified, this will be unlawful.

### **Failure to take reasonable steps**

A school/LEA also discriminate if they fail to take reasonable steps to prevent a disabled person from being placed at a substantial disadvantage. This is commonly known as the duty to make 'reasonable adjustments'. This duty applies in the following areas:

- the arrangements for determining admission to a school
- the education or associated services provided for, or offered to, pupils at the school
- LEA residual duties.

### **For example**

Sarah is a visually impaired pupil who needs to sit close to the front of the class so that she can see the board. A reasonable adjustment would be to rearrange the seating plan so that she can sit at the front of the class.

The duty to make reasonable adjustments does NOT include a duty to provide auxiliary aids and services or a duty to remove or alter a physical feature.

### **Auxiliary aids and services**

Part 4 of the DDA does not define 'auxiliary aids and services'. However examples given elsewhere in the DDA are the provision of information on audio tape and the provision of a sign language interpreter.

### **What is substantial disadvantage?**

Substantial disadvantage depends on the time, inconvenience, effort or discomfort experienced by the disabled person in comparison with that experienced by non-disabled people. Substantial means more than minor or trivial.

### **What is reasonable?**

In determining whether an adjustment is reasonable, school/LEAs may take into account:

- the need to maintain academic, musical, sporting and other standards

- the financial resources available to the responsible body
- the cost of taking a particular step
- the extent to which it is practical to take a particular step
- the extent to which aids and services will be provided to disabled pupils at the school under the special educational needs provisions of the Education Act 1996
- health and safety requirements
- the interests of other pupils and persons who may be admitted to the school as pupils.

## 2.4 Can the school/LEA justify the discrimination?

Your claim will not succeed if the school/LEA shows that the act complained of is justified.

However, less favourable treatment cannot be justified if there were reasonable adjustments that should have been made and were not (unless those adjustments would have made no difference).

**Less favourable treatment** may be justified on the grounds of either:

- that it is the result of a 'permitted form of selection' or
- that there is a 'material and substantial' reason for it. This means the school/LEA must have a good reason which is relevant to the individual circumstances (after taking into account any reasonable adjustments that may be required).

## **Permitted form of selection**

Certain types of schools are allowed to operate selective criteria. Where applying the selective criteria results in a disabled child being treated less favourably this can be justified. The following are permitted forms of selection:

- grammar schools can select their intake
- specialist schools may give priority in their admissions criteria to a proportion of pupils who show a particular aptitude for the subject in which the school specialises
- independent schools can select on the grounds of ability and aptitude.

However there is still a duty to make reasonable adjustments to the process of taking an entrance exam and other admissions arrangements.

**Failure to make reasonable adjustments** may only be justified if there is a 'material and substantial' reason for it. This means the school/LEA must have a good reason which is relevant to the individual circumstances.

## **Lack of knowledge**

Lack of knowledge as to a person's disability is a defence to a claim of discrimination. If you have not told the school/LEA that your child is disabled, your claim is unlikely to succeed.

## **2.5 Has my child been victimised?**

You can make a claim of victimisation if you or your child has been treated less favourably because of something you or they have done in connection with the DDA. For example:

- giving evidence or information in connection with proceedings under the DDA

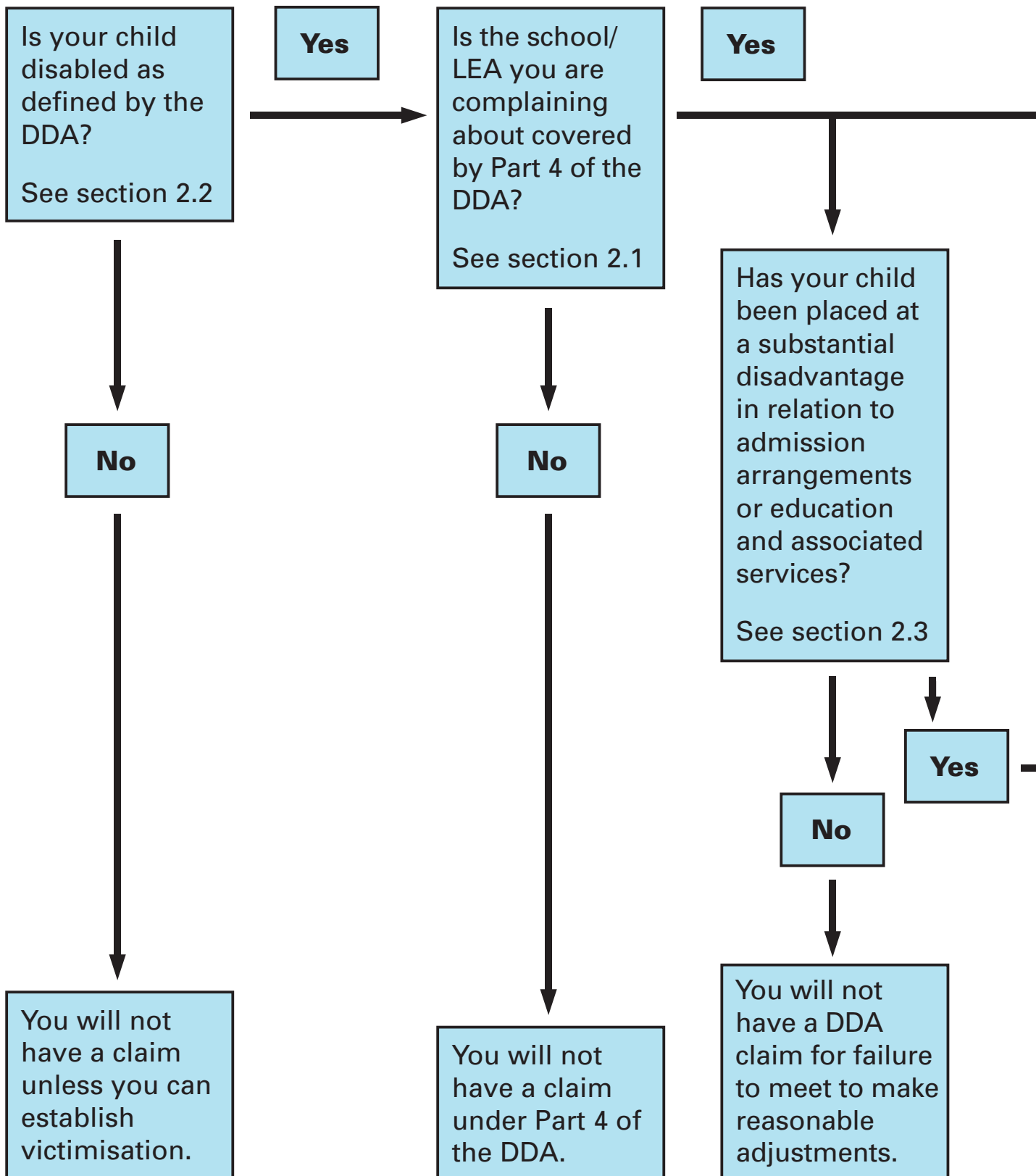
- alleging that a school/LEA has discriminated against a disabled person.

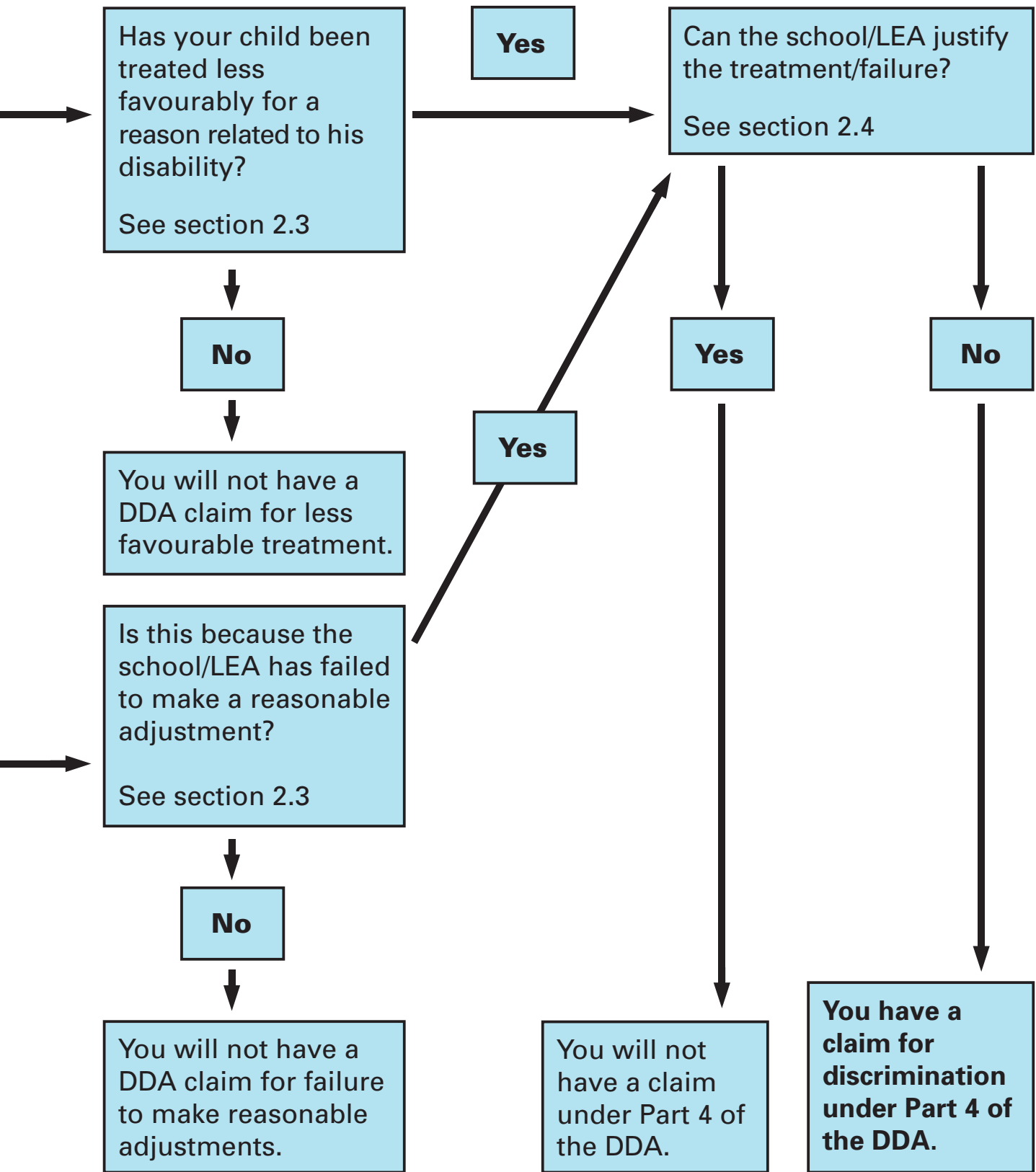
It is possible for anyone, whether disabled or not, to make a claim of victimisation under the DDA.

### **For example**

A non-disabled pupil acts as a witness in a disability discrimination claim on behalf of a disabled pupil. Later, in retaliation, the non-disabled pupil is not allowed to go on a school trip. This is likely to be victimisation and therefore unlawful.

## Who can make a claim under Part 4 of the DDA?





# 3. Where do I make my claim?

## Admissions

If your child does not have a statement of special educational needs and your claim is that the school/LEA discriminated against your child by **refusing him a place at a school** you should make your claim to an admission appeal panel (see section 4).

If your claim is that the school/LEA discriminated against your child **in the arrangements it made for admitting pupils to the school** (for example by not making reasonable adjustments during the entrance exam) you should make your claim to SENDIST/SENTW (see section 6).

If your claim is that the school/LEA discriminated against your child by **placing terms on his admission to a school** you should make your claim to SENDIST/SENTW (see section 6).

If your claim is in respect of a child with a statement and you disagree with the choice of school named on the statement you may have a right of appeal to SENDIST/SENTW under the SEN framework (Education Act 1996). This is not a DDA claim and is not covered in this booklet. Further information about making a SEN appeal is available from SENDIST/SENTW. You can also seek advice from one of the organisations listed in section 7 – Useful contacts.

## Exclusions

If your claim is that an **independent school has discriminated against your child by excluding him** you should make your claim to SENDIST/SENTW (see section 6).

If your claim is that a **maintained school has discriminated against your child by excluding him on a fixed-term exclusion** you should make your claim to SENDIST/SENTW (see section 6).

If your claim is that a **maintained school has discriminated against your child by permanently excluding him** you should make your claim to an independent appeal panel (see section 5).

### **Education and associated services**

If your claim is that a school has discriminated against your child in the provision of education and associated services (any part of the school life that is not admissions or exclusions) you should make your claim to SENDIST/SENTW (see section 6).

### **LEA residual duties**

If your claim is that a LEA has discriminated against your child whilst carrying out its 'residual duties' you should make your claim to SENDIST/SENTW (see section 6).

### **Appeals against the contents of your child's statement**

If you do not agree with the contents of your child's statement of special educational needs you may have a right of appeal to SENDIST/SENTW under the SEN framework (Education Act 1996). This is not a DDA claim and is not covered in this booklet. Further information about making an SEN appeal is available from SENDIST/SENTW. You can also seek advice from one of the organisations listed in section 7 – Useful contacts.

### **Complaints about your child's statement**

If your child is not receiving the special educational provision set out in his statement you may have a legal remedy outside of the DDA. This is not a DDA claim and is not covered in this booklet. You should seek advice from a law centre, Citizens'

Advice Bureau, voluntary organisation or law firm. (See section 7 – Useful contacts.)

### Where do I make my claim?

<b>Issue</b>	<b>Independent (private) and non-maintained schools</b>	<b>Maintained (LEA) schools, including voluntary schools</b>
Arrangements for admitting pupils	SENDIST/SENTW	SENDIST/SENTW
Placing terms on admission to a school	SENDIST/SENTW	SENDIST/SENTW
Refusal to admit a pupil to a school	SENDIST/SENTW	Admissions appeals panel
Education and associated services	SENDIST/SENTW	SENDIST/SENTW
Fixed-term exclusions	SENDIST/SENTW	SENDIST/SENTW
Permanent exclusions	SENDIST/SENTW	Independent appeal panel
LEA residual duties	SENDIST/SENTW	SENDIST/SENTW

# 4. How do I make a claim to an admission appeal panel?

If your child does not have a statement of special educational needs and has been refused a place at a maintained school (not an independent school), you can appeal against the decision to an admission appeal panel. If you think the refusal is for a reason related to his disability, you should also make your DDA claim to an admission appeal panel. Your claim should be made as part of your appeal against the decision.

If your claim is about the arrangements for admissions or the terms on which your child has been offered admission you should make your claim to SENDIST/SENTW (see section 6).

If your child has a statement of special educational needs and the school you wanted has not been named on his statement this is not the correct procedure to follow. You may have a right of appeal to SENDIST/SENTW under the SEN framework (Education Act 1996). This is not a DDA claim and is not covered in this booklet. Further information about making a SEN appeal is available from SENDIST/SENTW. You can also seek advice from one of the organisations listed in section 7 – Useful contacts.

## **What is an admission appeal panel?**

An admission appeal panel is set up by the admissions authority for the school to hear appeals against admission decisions. The panel will have three or five members with at least one lay member and at least one person with

experience in education. The admissions authority for a school is either the LEA (for community and voluntary controlled schools) or the governing body (for all other schools).

### **What is the time limit for making a claim?**

The letter you receive telling you that your child has been refused a place will include details of when to appeal against the decision. This is also the deadline for making a DDA claim. There is no set time limit but it will usually be a few weeks after the date of the letter. If you haven't got time to set out your case in detail before the time limit you just need to return the form or a letter saying that you want to appeal and make a DDA claim. You can provide further details at a later date. If you miss the deadline you may still be able to appeal but you should not rely on this.

### **How much will it cost?**

There is no fee for making an appeal and/or a DDA claim to an admission appeal panel.

### **Legal advice and representation**

You do not necessarily need legal advice or representation to make an appeal to an admission appeal panel. It is intended that parents will be able to make an appeal/bring a claim without legal representation.

If you have a low income and your claim has a reasonable prospect of success, you may be able to get 'public funding' (previously known as legal aid) from the Community Legal Service (CLS) – to pay for a lawyer to help you to prepare your case. Public funding will not cover representation at the hearing. You can get advice on whether you may be eligible for public funding from a law firm. A law firm displaying the CLS logo will be able to tell you whether or not you qualify for public funding.

If you are not eligible for public funding, some lawyers may be willing to represent you at a charge and some may agree a fixed-fee arrangement. Alternatively, you may be able to get free legal advice from a law centre, Citizens' Advice Bureau or voluntary organisation. If you have a household insurance policy it is worth checking whether this gives you help with legal costs.

### **What can I ask for?**

You can ask for your child to be given a place at the school. You cannot ask for any other remedies.

### **How do I make a claim?**

You should make your DDA claim in writing at the same time as you make your appeal against the decision. You should make it very clear that you are making a claim under the DDA as well as setting out any other reasons for challenging the decision to refuse your child a place. There is a sample letter at Appendix 1 which may assist you.

### **What happens next?**

You will receive a letter telling you the hearing date. You will be given at least 10 working days notice of the hearing. It is possible to agree a shorter notice period if you want the hearing to take place more quickly. If you cannot make the hearing date you should ask the person who sent the letter if it can be re-arranged. You should submit in advance any documents that you wish to rely on. The hearing will usually take place within 30 school days of the appeal being made.

### **How do I prepare for the hearing?**

The clerk to the panel will send you papers before the appeal hearing. These papers will include:

- a written statement of how the admissions arrangements were applied

- the reason that your child was not offered a place
- any other documents that the admissions authority intends to rely on.

You need to read these papers carefully. You will have to show that the reason given for not offering your child a place is related to your child's disability as well as any other reasons for challenging the decision. If you have not already done so, you need to set out your case in detail. Think about evidence that will support your case. As well as medical evidence in relation to your child's disability you may have other evidence that supports your claim that the refusal was for a reason related to your child's disability. Send full details of your case and supporting evidence in advance or take copies with you to the hearing. Remember to take enough copies for the panel, the clerk and the admission authority representative.

### **What should I include in my claim?**

In addition to evidence to establish any other grounds of appeal that you may bring, you should include the following details:

- that your child is disabled – give as much detail as possible about your child's impairment and set out how it meets the definition of disability in the DDA (see section 2.2). It might be helpful to set out the information in the checklist on page 11
- that the refusal to admit was less favourable treatment for a reason related to your child's disability – set out clearly how the reason is related to your child's disability (see section 2.3).

### **What happens at the hearing?**

You can go to the hearing to make your case in person and you can be accompanied by a friend or take someone with

you to represent you. This person can be a lawyer. The panel may ask you to provide medical evidence so it is a good idea to send in or take with you copies of any medical evidence that shows your child has a disability. You can take witnesses with you if necessary. You can take documents to the hearing that you have not sent in beforehand but avoid doing this if possible.

The panel will hear the appeal and there will also be a representative there from the admissions authority (LEA or governing body) and a clerk to take notes. Usually the admissions authority will say why they did not offer your child a place. You should take careful notes of what is said. You will then be given an opportunity to make your case. If you have not sent in details of your case you can read it out and then hand it to the panel. The panel or the admissions authority representative may ask you questions. You can also ask questions of the admissions authority. At the end of the hearing you should be given the opportunity to sum up your case and add anything that you have forgotten.

### **The decision**

You may be notified of the decision at the hearing but in any case you should be sent a decision letter within seven days of the hearing. This letter will also include the reasons for the decision.

If your appeal/claim is successful your child will be offered a place at the school.

### **What if I am unsuccessful?**

You cannot appeal further against the decision of an admission appeal panel. However, if the panel has not properly applied the law, including the DDA, you can apply to the High Court for judicial review. You must have proper grounds to merit a judicial review. It is not enough simply to say that you think the panel made the wrong decision. You

need to show that there has been a serious irregularity in the proceedings or that the panel got the law wrong.

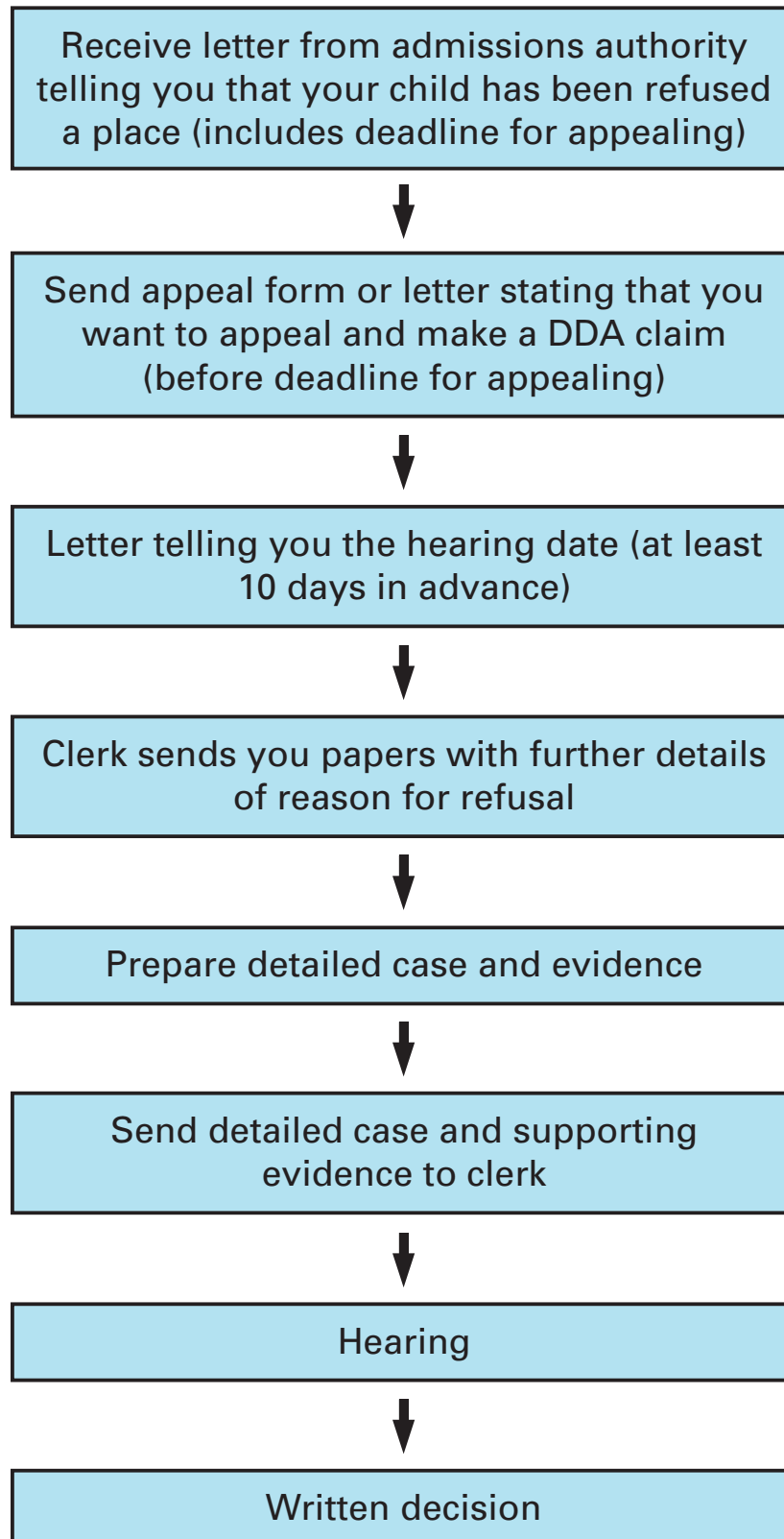
Applications for judicial review must be made as soon as possible and in any event within three months of the panel decision so you must act quickly. If you are unsuccessful with a judicial review you may have to pay the other side's costs. If you are considering an application for judicial review you should seek legal advice as soon as possible.

You can also make a complaint to the Local Government Ombudsman (England) or the Local Ombudsman for Wales. Contact details are in section 7. The Ombudsman cannot deal with DDA claims but can deal with complaints about the way the appeal was conducted or the way the school/LEA behaved.

### **Further information**

There is a Code of Practice for School Admission Appeals issued by DfES for schools in England and by the National Assembly for schools in Wales. These can be ordered from DfES publications and the National Assembly (see section 7 – Useful contacts which also includes contact details for ACE who can provide further information and advice).

## Making a claim to an admission appeal panel



## 5. How do I make a claim to an independent appeal panel (for exclusions)?

If your child has been permanently excluded from a maintained school (not an independent school), you can appeal against the decision to an independent appeal panel. If you think the exclusion is for a reason related to his disability, you should make your DDA claim to an independent appeal panel. Your claim should be made as part of your appeal against the exclusion.

If your claim is about a fixed-term exclusion from a maintained school or an exclusion (of any type) from an independent school you should make your claim to SENDIST/SENTW (see section 6).

### **What happens when my child is permanently excluded?**

The head teacher will write to you telling you that your child has been permanently excluded. The letter will also include the following information:

- the reasons for the exclusion
- that you have a right of appeal to the governing body (or in the case of an exclusion from a pupil referral unit to the management committee)
- the timescale for making your appeal.

## **How do I appeal to the governing body?**

You should write to the governing body immediately saying that you would like the exclusion overturned and your child reinstated. You should give reasons which will include that you consider the exclusion to be disability discrimination and explain why. The appropriate sample letter in Appendix 1 may assist you.

You will then be given the opportunity to present your case to the governing body in person. The meeting with the governors should take place within 15 school days of the exclusion. You do not have to attend the meeting but it is often better if you can go and put your case in person. You can also answer any questions the governors may have. The meeting will often be with the 'disciplinary committee' of the governing body but sometimes it will be with the whole governing body. The disciplinary committee is made up of three or five governors. There will also be a clerk to take notes and advise the governors on procedure. The head teacher will attend to put the school's case and an LEA representative will be invited to give comments.

At the hearing you will be given the opportunity to put your case and explain why you think the exclusion is disability discrimination as well as other grounds which you have set out in your appeal. You can take witnesses with you and your child can attend as well.

## **What can the governing body do?**

The governing body can:

- uphold the permanent exclusion
- change it to a fixed-term exclusion
- reinstate your child.

## **How do I appeal against the decision of the governing body?**

If the governing body upholds the permanent exclusion you will receive a letter from it containing the following information:

- reasons for its decision
- your right of appeal to an independent appeal panel
- who you should contact to say that you want to appeal
- the deadline for making the appeal.

## **What is an independent appeal panel?**

An independent appeal panel is set up by the LEA to hear appeals against permanent exclusions. The panel will have three or five members including some past or present head teachers and governors. Before you can put your case to an independent appeal panel you need to have first appealed to the governing body as described above.

## **What is the time limit for making a claim?**

You have 15 school days from the decision of the governing body to appeal to the independent appeal panel. This is also the deadline for making your DDA claim. If you miss this deadline you cannot appeal against the decision or make a DDA claim.

## **How much will it cost?**

There is no fee for making an appeal and/or a DDA claim to an independent appeal panel.

## **Legal advice and representation**

You do not necessarily need legal advice or representation to make an appeal to an independent appeal panel. It is intended that parents will be able to make an appeal/bring a claim without legal representation.

If you have a low income and your claim has a reasonable prospect of success, you may be able to get 'public funding' (previously known as legal aid) from the Community Legal Service (CLS) – to pay for a lawyer to help you to prepare your case. Public funding will not cover representation at the hearing. You can get advice on whether you may be eligible for public funding from a law firm. A law firm displaying the CLS logo will be able to tell you whether or not you qualify for public funding.

If you are not eligible for public funding, some lawyers may be willing to represent you at a charge and some may agree a fixed-fee arrangement. Alternatively, you may be able to get free legal advice from a law centre, Citizens' Advice Bureau or voluntary organisation. If you have a household insurance policy it is worth checking whether this gives you help with legal costs.

### **What can I ask for?**

You can ask for your child to be reinstated. You cannot ask for any other remedies.

### **How do I make a claim?**

You should make your DDA claim in writing at the same time as you make your appeal against the decision. You should make it very clear that you are making a claim under the DDA as well as any other reasons for challenging the exclusion. You should set out clearly the grounds for your claim and include any documents that support your case. It is important that you include all the details of your appeal and claim as you will not be able to add further details at a later stage. Think about evidence that will support your case. As well as medical evidence in relation to your child's disability you may have other evidence that supports your claim that the exclusion was for a reason related to your child's disability.

## **What happens next?**

The LEA will arrange an independent appeal panel hearing and you will be notified of the date. The hearing will take place within 15 school days of your letter of appeal/claim being received.

## **How do I prepare for the hearing?**

The panel clerk will give you a deadline for submitting any further documents and you must stick to this deadline. The clerk to the panel will send you papers before the appeal hearing. These papers will include:

- all documents to be considered by the panel
- all written representations made by other parties
- details of any witnesses who will appear.

You need to read these papers carefully and think about how you can show that the reason given for excluding your child is related to your child's disability as well as any other grounds for appeal that you may have set out.

## **What should I include in my claim?**

In addition to evidence to establish any other grounds of appeal that you may bring, you should include the following details:

- that your child is disabled – give as much detail as possible about your child's impairment and set out how it meets the definition of disability in the DDA (see section 2.2). It might be helpful to set out the information in the checklist on page 11
- that the exclusion was less favourable treatment for a reason related to your child's disability – set out clearly how the reason is related to your child's disability (see section 2.3)

- that there were reasonable adjustments that the school could have made to prevent the exclusion – the school cannot justify the less favourable treatment if there are reasonable adjustments, which would have avoided the exclusion, that it should have made but didn't (see section 2.3).

### **What happens at the hearing?**

You can go to the hearing to make your case in person and you can be accompanied by a friend or take someone with you to represent you. This person can be a lawyer. You can take witnesses with you if necessary but you must let the clerk know in advance. The panel hearing should be informal and should not be overly legalistic. You need to think about whether or not you want your child to attend the hearing. If not you may wish to submit written representations from your child to explain his side of the story.

The panel will hear the appeal and there will also be a representative there from the school and a clerk to take notes. Usually the school will say why they excluded your child. You should take careful notes of what is said. You will then be given an opportunity to make your case. The panel or the school representative may ask you questions. You can also ask questions of the school. At the end of the hearing you should be given the opportunity to sum up your case and add anything that you have forgotten.

### **The decision**

You will be notified of the decision and the reasons for it in writing by the end of the second day after the end of the hearing. The letter should explain why your appeal was or was not upheld. The panel can:

- uphold the decision to exclude
- overturn the decision and reinstate your child

- overturn the decision but not reinstate your child (this is quite unusual and is only used in circumstances where the panel think the relationship between the school and child has broken down so badly that it cannot be repaired).

### **Unsuccessful appeals**

You cannot appeal further against the decision of an independent appeal panel. However, if the panel has not properly applied the law, including the DDA or exclusion procedures, you can apply to the High Court for judicial review. You must have proper grounds to merit a judicial review. It is not enough simply to say that you think the panel made the wrong decision. You need to show that there has been a serious irregularity in the proceedings or that the panel got the law wrong.

Applications for judicial review must be made as soon as possible and in any event within three months of the panel decision so you must act quickly. In one case, the court held that a Judicial Review of an independent appeal panel concerning a permanent exclusion should have been brought much more quickly than that, so it is important to act as soon as possible. If you are unsuccessful with a judicial review you may have to pay the other side's costs. If you are considering an application for judicial review you should seek legal advice as soon as possible.

You can also make a complaint to the Local Government Ombudsman (England) or the Local Ombudsman for Wales. Contact details are in section 7 – Useful contacts. The Ombudsman cannot deal with DDA claims but can deal with complaints about the way the appeal was conducted or the way the school/LEA behaved.

## **Further information**

The DfES has produced the following guidance in relation to schools in England:

### **Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units (354/04).**

This explains the law and provides guidance to LEAs, governing bodies, schools and independent appeal panels on exclusions. This should be followed unless there is good reason not to.

### **Circular 10/99 The Secretary of State's Guidance on Pupil Behaviour and Attendance.**

This circular was updated and re-issued in June 2004. The circular should not be ignored by LEAs, governing bodies, schools or independent appeal panels.

These documents can be obtained from the DfES website [www.dcsf.gov.uk](http://www.dcsf.gov.uk) or the DfES Publications Centre, telephone: 0870 000 2288.

The National Assembly for Wales has produced the following guidance in relation to schools in Wales:

### **Circular 01/2004 'Exclusion From Schools and Pupil Referral Units' and Circular 1(A) 2004.**

These explain the law and provide guidance to LEAs, governing bodies, schools and independent appeal panels on exclusions. These should be followed unless there is good reason not to.

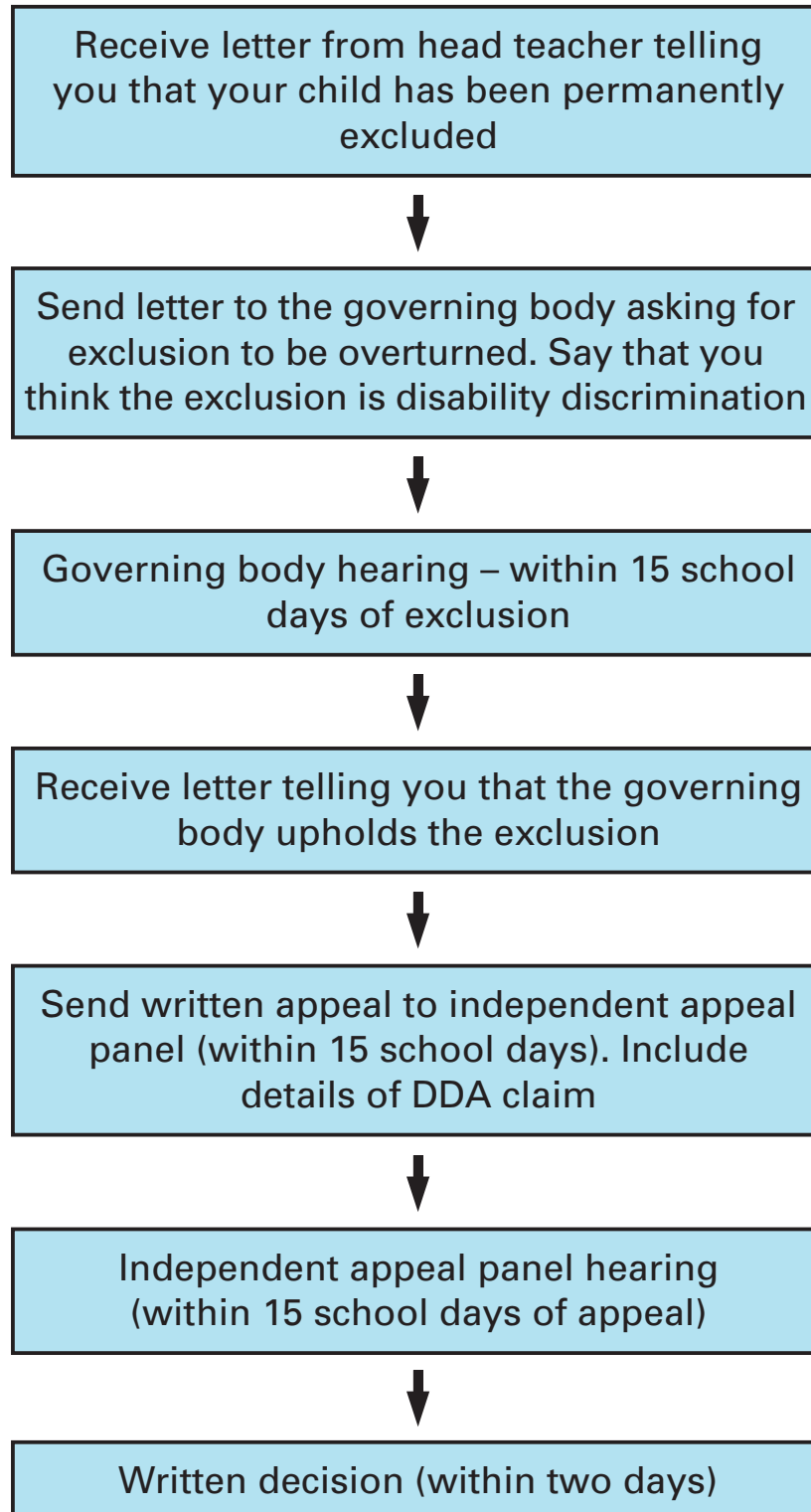
### **Circular 3/99 'Pupil Support and Social Inclusion'**

This covers behavioural issues. The 2004 circulars replace chapter 6 and annex E of Circular 3/99; all other chapters are in force.

These documents can be obtained from the National Assembly for Wales. English Helpline: 0845 010 3300, Welsh Helpline: 0845 010 4400

Further information is also available from ACE, see entry in section 7 – Useful contacts – for contact details.

## Making a claim to an independent appeal panel (for exclusion)



# 6. How do I make a claim to SENDIST/SENTW?

All claims except for those relating to permanent exclusions from maintained schools and refusals to admit to maintained schools are made to SENDIST/SENTW. SENDIST is the Special Educational Needs and Disability Tribunal for England and deals with all claims against schools and LEAs in England. SENTW is the Special Educational Needs Tribunal for Wales and deals with all claims against schools and LEAs in Wales.

SENDIST and SENTW are independent Tribunals set up to hear most DDA claims and Special Educational Needs appeals. Each panel has three members. The chair is a legally qualified person and the other two members are people with experience of education and/or disabled children.

In claims to SENDIST/SENTW the school/LEA you are making the claim against is referred to as the 'responsible body'. Throughout this section SENDIST/SENTW will be referred to as 'the Tribunal'.

## 6.1 What should I do before I start a claim to the Tribunal?

### How can I resolve a complaint without making a claim to the Tribunal?

If a difficulty arises with your child's school or during the admissions process, it is a good idea to contact a member of the school's staff to try to get things resolved quickly and informally. Useful people to contact may be:

- your child's head of year

- the Special Educational Needs Co-ordinator (SENCO)
- the head teacher.

If the matter cannot be resolved by speaking to school staff you may wish to speak to a governor or make a formal complaint.

### **Making a complaint to the school/LEA**

Your child's school and LEA should have a complaints procedure and it should say how you can make a complaint. You should ask for a copy before making your complaint. When writing a letter of complaint, you should try to stick to the facts and make the letter as objective as possible rather than emotional. We strongly advise parents to use the complaints procedure to raise disability-related complaints as a first step because in many cases things can be resolved this way.

In some cases it may be possible to negotiate with the school/LEA with a view to resolving the dispute. For example, the school/LEA may agree to change the way your child is being treated or to apologise to your child. This can save you time and spare you the uncertainty and stress of bringing a Tribunal claim. If your case concerns a failure to make a reasonable adjustment, you may be able to get the school/LEA to agree to the adjustment or, for example, to undertake and to act upon a disability access audit. Sample letters which may assist you are available at Appendix 1.

### **Conciliation**

If relationships have broken down between you and your child's school/LEA, conciliation can be a good way of resolving problems and getting the relationship back on track. Conciliation is also known as mediation or arbitration. It involves both parties attending a meeting organised by a conciliator, who is independent and unbiased. The conciliator helps the parties see things from each other's point of view

and tries to help everyone find a mutually satisfactory solution to the problem.

The EHRC may be able to refer your case to the Disability Conciliation Service (DCS), if your complaint is within the scope of the DDA and the responsible body agrees to conciliation. If we are not able to offer this service, you and the responsible body might want to use a different conciliation service. The national umbrella organisation for conciliation services is called Mediation UK (see section 7 – Useful contacts).

Ultimately, if your complaint is still unresolved, you can make a claim to the Tribunal as long as you do so within the time limit (see below).

### **Letter before claim**

Before you send your claim to the Tribunal, you should send a letter of complaint to the responsible body (see section 2.1). Setting out the issues in a letter can help you to reach a settlement with the school/LEA – and even if you do end up making a claim to the Tribunal, the reply to your letter may give you information that helps your case. The Tribunal will expect you to try to resolve the dispute and avoid the need for the case to go to a hearing. The Tribunal will expect you to act reasonably.

**The time limit for applying to the Tribunal is six months minus one day from the date when your child was discriminated against.** You should send your complaint letter well within this deadline so that you have time to consider any response, negotiate with the school/LEA if appropriate, and decide whether or not you still wish to bring a claim.

Your letter should say what your child's disability is and describe the discrimination that you believe took place and the effect that it had on your child. You may want to ask why your child was treated in that way and what arrangements

the school/LEA makes for pupils with a similar disability. You should send copies of any relevant documents with your letter.

If your claim is one relating to a failure to make reasonable adjustments, you will need to explain how your child has been placed at a substantial disadvantage and what reasonable adjustments the school/LEA could have made to prevent the substantial disadvantage.

You should ask the school/LEA to acknowledge receipt promptly and to give a full written reply by a specified date. One month from the date of your letter will normally be a reasonable period for a full response. You should say in your letter that you will submit a claim to the Tribunal if the school/LEA does not reply by the date that you have given. (See sample letters at Appendix 1.)

### **What is the time limit for making a claim?**

Claims must be started within six months minus one day from the date when your child was discriminated against. This means that the last possible date for your claim to reach the Tribunal in time is **six months minus one day** from the date of the act you are complaining about. (For example, if the discriminatory act happened on 18th January, your claim form must reach the Tribunal by 17th July.) If you make an internal complaint before bringing a claim the time limit is NOT extended. The fact that an internal complaint or conciliation is still ongoing at the time of the deadline for submitting the claim is not a reason to delay submitting your claim. Where a claim relates to an act which continues over a period, the act is treated as done at the end of that period. However if you are unsure of the date of discrimination you should always calculate the time limit from the earliest possible date to prevent your claim from being time-barred. If you make a claim which is out of time the Tribunal will probably not consider it and you will be unable to make your

claim. The Tribunal may consider a claim out of time if it is just and equitable (fair) to do so. However this is extremely unusual and should not be relied upon.

## **6.2 Making a claim**

### **How much will it cost to bring a claim?**

Before you start a claim, you need to think about the cost of any legal advice or representation. If you have witnesses to support your case, the Tribunal will pay their travel expenses and a fixed amount for loss of earnings. The Tribunal will also pay your travel expenses.

You will NOT be able to recover any of your legal costs from the school/LEA if you win your case. It is extremely rare for the Tribunal to order the losing party to pay the other side's costs and this would only happen in a case where the Tribunal decided that either side had been very unreasonable or deliberately wasted the Tribunal's time.

The Tribunal does not charge a fee for making a claim.

### **Legal advice and representation**

You do not necessarily need legal advice or representation to bring a Tribunal claim. The Tribunal is a relatively informal setting and the Tribunal clerks will help you with any questions you have throughout the process. It is not necessary to be legally represented. However if your case involves complex legal issues you may wish to seek legal advice. There are also a number of voluntary organisations who may be able to assist and even represent you (see section 7 – Useful contacts).

If you have a low income and your claim has a reasonable prospect of success, you may be able to get 'public funding' (previously known as legal aid) from the Community Legal Service (CLS) – to pay for a lawyer to draft your claim form,

write letters and prepare your case. Public funding is very limited and will not cover representation at the hearing. You can get advice on whether you may be eligible for public funding from a law firm. A law firm displaying the CLS logo will be able to tell you whether or not you qualify for public funding.

If you are not eligible for public funding, some lawyers may be willing to represent you at a charge and some may agree a fixed-fee arrangement. Alternatively, you may be able to get free legal advice from a law centre, Citizens' Advice Bureau or voluntary organisation. If you have a household insurance policy it is worth checking whether this gives you help with legal costs.

### **What can I ask for?**

You can ask the Tribunal to order the responsible body to do anything reasonable to put right the discrimination, short of paying financial compensation. Remedies you might ask for are:

- a declaration that your child has been discriminated against
- a written apology to your child
- training for school staff
- drawing up new guidance for staff
- changes to school or LEA policies
- extra tuition, to make up for lost learning
- relocating facilities (but not changing physical features of premises)
- admission of your child to an independent school if the school had previously refused this
- school trips or other opportunities to make up for activities that your child may have missed

- re-instatement of an excluded child to an independent school
- the correction of your child's school/LEA record.

You will need to think about what you want to achieve from your claim. The Tribunal will ask you what remedies you are seeking.

### **Compensation**

The Tribunal does not have the power to award financial compensation.

### **Where and how do I make a claim?**

SENDIST and SENTW produce their own forms for you to fill in and return. They both also produce booklets with advice on how to make a claim. These can be obtained by telephoning the Discrimination Helpline: 0870 606 5750 for England and 01597 829 800 for Wales. The 'Notice of a disability discrimination claim' form to be completed will be sent to you with the booklet.

### **How should I fill in the claim form?**

Most of the form is self-explanatory.

Section 1 asks for your child's details and asks if your child is disabled. As the DDA only covers disabled children there is no point in completing the form or lodging a claim if your child is not disabled (unless you are making a claim of victimisation).

Section 2 asks for your contact details and those of your representative (if you have one) and asks you to indicate who they should write to. The Tribunal will only write to one person and will send any relevant papers including the Tribunal bundle to that same person. The Tribunal bundle

may be quite lengthy so think about who is in the best position to photocopy it. Discuss this with your representative.

Section 5 asks for details of your claim. If you are not sure whether the LEA or the school is the responsible body for your claim just provide details of both and the Tribunal will decide. You are also asked to fill in the dates of the alleged discrimination – try to be as accurate as you can. If the discriminatory act has been continuing for some time you should put the date it started and the date it ended, or if it is still continuing, say so.

### **Reasons for claim**

Section 6 asks you for the detailed reasons for your claim. You can complete this on the form or write/type it separately. You should include the following details:

- Your child's disability and how it meets the definition of disability as set out in the DDA (see section 2.2). It might be helpful to set out the information in the checklist on page 11.
- The details of your case – explain step-by-step what has happened to your child and include any key dates. If there are a number of incidents it might be helpful to include a chronology of events. Remember that although you are very familiar with what has happened and who all the people involved are, the Tribunal will not be so you need to be very clear.
- If your case concerns more than one issue, set each one out separately and explain why you think it is disability discrimination.
- Whether you are claiming that the responsible body has treated your child less favourably or has failed to make reasonable adjustments or both. If you are claiming both it may be helpful to set them out separately.

- If your claim is for less favourable treatment, set out clearly why the less favourable treatment is for a reason related to your child's disability (see section 2.3).
- If your claim is for less favourable treatment, that there were reasonable adjustments that the school/LEA could have made to prevent the less favourable treatment. The school/LEA cannot justify the less favourable treatment if there were reasonable adjustments that they should have made but did not. For example, if your child has been excluded the school would not be able to justify the less favourable treatment if there were reasonable adjustments the school could have made to prevent the exclusion (see section 2.4).
- If your case is about reasonable adjustments, describe how your child has been placed at a substantial disadvantage and what you say the school/LEA should have done to avoid it (see section 2.3).
- Details of any complaints made by you and how the school/LEA responded.
- Details of how the school/LEA's behaviour affected your child.

It is important to be as clear as possible and to try to stick to facts rather than becoming emotional.

Section 7 of the form asks you what you would like the Tribunal to tell the school/LEA to do if your claim succeeds. You need to be realistic about what you ask for. An apology, staff training and changes to policies, practices and procedures are common remedies. Remember the Tribunal cannot award financial compensation.

You should send the completed form to the address in section 9 of the form.

You should send any supporting evidence with the Notice of Claim form. Useful evidence might include:

- medical evidence about your child's disability
- correspondence with the school/LEA
- if your claim is about an exclusion a copy of the letter telling you that your child has been excluded.

### **What happens after I have sent my claim to the Tribunal?**

The Tribunal will have a look at your claim form and decide if they have enough information. If they think they need more from you they will write to you and ask you to provide it within 10 working days. When the Tribunal has enough information they will then register your claim and give it a claim number. The Tribunal will write to you explaining that your claim has been registered, giving you your claim number (which you should quote whenever you contact the Tribunal) and setting out the timetable for your case.

The letter will give you a deadline for sending in your 'case statement'. This will be six weeks from the date of the letter. The letter will also tell you the fortnight during which the Tribunal is intending to hear your claim and will ask you for your availability for that fortnight. You will have a deadline to reply with your availability. You will also need to check the availability of your representative (if you have one) and any witnesses. At the same time the Tribunal will write to the responsible body with the same information and will send it a copy of your claim form.

### **Case statement**

It is not essential to send in a case statement, but it can be a useful opportunity to update the Tribunal and to provide further details of your case. This is also your opportunity to provide further evidence. You can only submit evidence after the end of the case statement period in very limited circumstances. If you have any up-to-date medical evidence about your child's disability you should send it with your case

statement. See above for details of what you should include in your reasons of claim/case statement.

SENDIST and SENTW produce their own leaflets to assist you in preparing your case statement and this will be sent to you with the registration letter.

### **Who can attend the hearing?**

You as the disabled child's parent(s) can attend the hearing together with:

- your child (with the Tribunal's permission)
- your representative
- up to five witnesses
- up to two observers (who cannot take part in the hearing).

A representative from the responsible body can attend with a legal representative and up to five witnesses of its own.

You should give some thought to whether or not there is anyone who would be a useful witness for you, for example, someone who can give a first hand account of what has happened to your child.

You also need to think carefully about whether or not your child should attend. Your decision may depend on his age and disability and how upset you think he may be by the Tribunal hearing. If you think he may have something important to say to the Tribunal panel but do not want him to attend for the whole hearing he can just attend for a short while. In fact, the Tribunal panel may decide that he cannot attend the whole hearing. It is important that you make arrangements, if necessary, for someone to look after your child for the time that he is not in the hearing.

The Tribunal will send you an attendance form to complete and return by a specified date. You must return this within the

time given or the Tribunal may not allow your witnesses or representative to attend. If, after you have sent in the attendance form, your representative or witnesses change you should let the Tribunal know as soon as possible. The attendance form also gives you an opportunity to let the Tribunal know of any particular access requirements that you have, for example, an interpreter or a wheelchair accessible hearing room.

### **The Tribunal bundle**

After the end of the case statement period the Tribunal will prepare a paginated bundle and send you one copy and one to the responsible body. You will need this bundle for the hearing. If you have witnesses coming with you it is a good idea to photocopy the bundle for them. The Tribunal will only send you one copy.

The Tribunal will also tell you the hearing date and where it will be held.

### **What happens at the hearing?**

Hearings are usually listed for half a day although some may be listed for longer. The hearing will start at either 10am or 2pm. It is very difficult to predict how long hearings will last so do not assume it will be finished within a couple of hours.

Hearings take place all over England and Wales and are often held in hotels. The Tribunal tries to make sure that you do not have to travel too far to the hearing. Hearings in London are usually heard at the SENDIST offices.

Hearings are intended to be informal. There is a video available from the Tribunal which shows a mock Tribunal hearing. The hearing is a special educational needs appeal but it does give you an idea of the formality of the hearing and what you might expect. Each Tribunal hearing is different and the chair will start the hearing by explaining the procedure. If

you are unsure about anything you should ask the chairman. You will be given an opportunity to put your case and to ask questions of the responsible body. Your witnesses will also be given the opportunity to speak. You and your witnesses may be questioned by the panel or the responsible body. If your child is not attending the hearing it is a good idea to take a photograph of your child to the hearing so the panel can put a face to the name. The panel may ask you for some background information about your child. You should set your case out clearly and answer any questions. You should be clear about what you are asking the Tribunal to do. During the hearing you should call the chairman 'chairman' or 'Mr/Mrs \_\_\_\_\_'.

If there is a dispute about whether or not your child is disabled the Tribunal will normally deal with this first and may adjourn the hearing to make a decision before continuing with the rest of your claim. If they decide your child is not disabled the hearing will not continue.

### **The decision**

You will not normally receive a decision on the day. The panel will consider the case after you and the responsible body have left and will produce a written decision with reasons. The decision will normally be posted to you within 14 days of the hearing.

### **What if I am successful?**

The Tribunal decision will set out what the responsible body must do and may set out a deadline for action. The responsible body must comply with the Tribunal decision.

### **What can I do if I lose and disagree with the decision?**

The covering letter that you receive with the decision will tell you that you can ask for a review of the decision or make an appeal to the High Court.

If you ask for a review you must do so within 10 working days of the date the decision was issued. You can only ask for a review if you think there has been an administrative or technical error. Your request for a review will be considered by the Tribunal panel which heard your claim. The panel may either accept or reject your request. If they accept your request both you and the responsible body will be given the opportunity to make comments either in writing or at a hearing.

You can appeal to the High Court against the decision only in very limited circumstances. You must have proper grounds for appeal. It is not enough simply to say that you think the Tribunal made the wrong decision. You will need to show that there has been a serious irregularity in the proceedings or that the Tribunal got the law wrong.

The time limit for appealing is 28 days from the date of the decision so you must act quickly. If you are unsuccessful in your appeal, you may have to pay the responsible body's costs. If you are considering an appeal you should seek legal advice as soon as possible.

### **What if I win and the responsible body does not do as the Tribunal ordered?**

The Tribunal will not automatically make sure that the responsible body does what it has ordered. If the responsible body does not do what the Tribunal has ordered within a reasonable time you should seek legal advice about enforcing the Tribunal order.

### **How do I withdraw my claim?**

If you reach agreement with the responsible body at any time before the hearing you can let the Tribunal know and withdraw your claim. Make sure you have a document that both you and the responsible body sign that sets out what you have agreed to before you withdraw your claim. Once

you have withdrawn your claim you cannot then change your mind and ask the Tribunal to hear your claim.

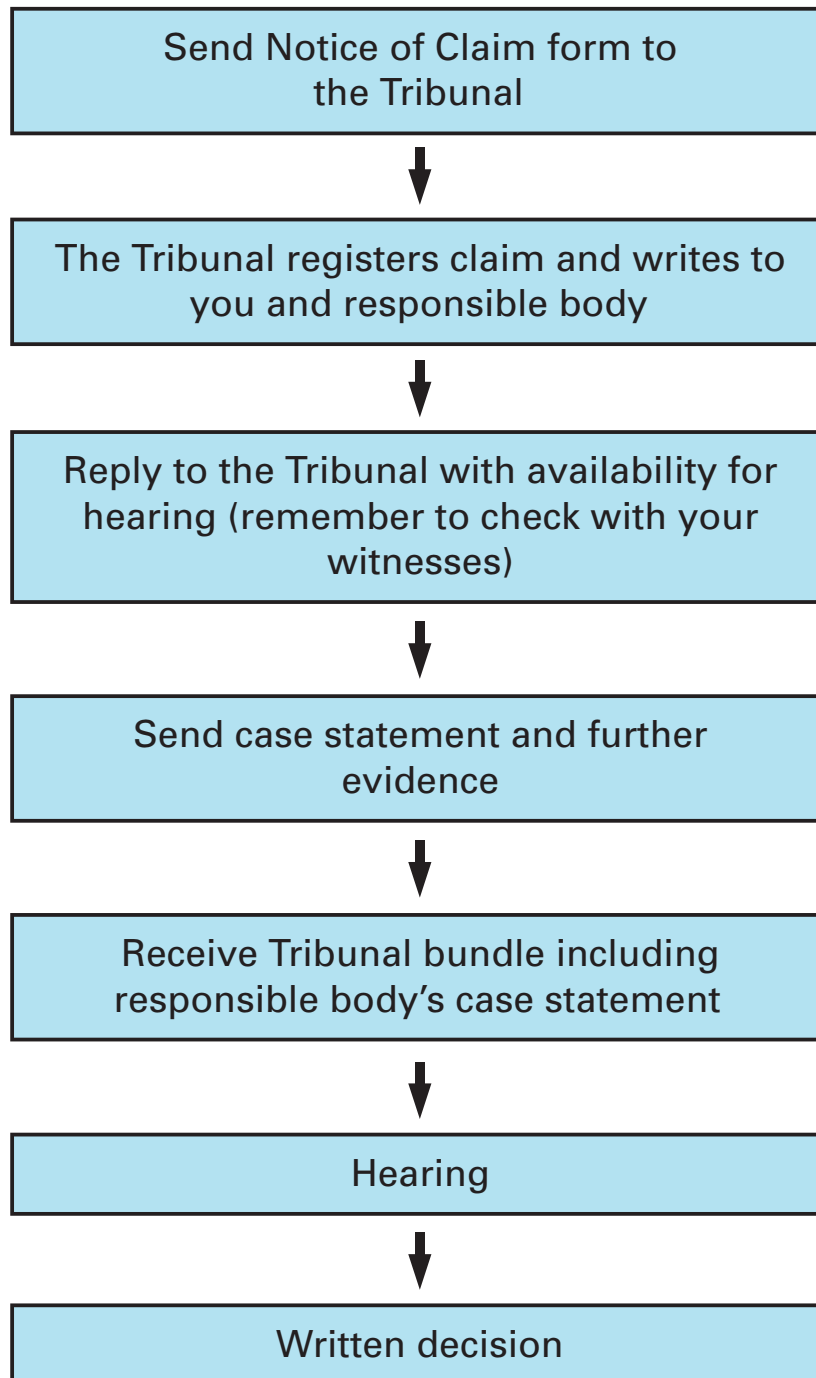
### **Strike-out**

The Tribunal may strike-out a claim (bring it to an end) if it thinks that the claim does not fall within its powers or has been sent in too late. The responsible body can apply to the Tribunal for the claim to be struck-out for the same reasons. If the Tribunal is considering striking-out your claim you and the responsible body will be given the opportunity to make representations in writing or in person.

### **Further information**

SENDIST and SENTW both produce guidance on making a DDA claim and the Tribunal clerks are very helpful and will answer any queries you have about the Tribunal procedure. The contact details are in section 7 – Useful contacts. Some of the organisations listed in section 7 may be able to assist you in preparing your claim to the Tribunal and a few also provide representation for Tribunal hearings.

## Making a claim to SENDIST/SENTW



# 7. Useful contacts

There are many voluntary organisations that help children with disabilities or learning difficulties, and their parents. Others offer more general advice.

Some of the main organisations are listed here or you can get more details from your LEA, your local library, the Citizens' Advice Bureau or the local Council of Voluntary Service.

## **Advisory Centre for Education (ACE)**

[www.ace-ed.org.uk](http://www.ace-ed.org.uk)

The Advisory Centre for Education (ACE) is an independent advice centre for parents, offering information about education in England and Wales for 5-16 year olds. They offer free telephone advice on many subjects like exclusion from school, bullying, special educational needs and school admission appeals.

Telephone: 0808 800 5793 (General advice line: Freephone)  
Advice Lines are open Monday to Friday, 2-5pm

Telephone: 020 7704 9822 (Exclusion information line)

Fax: 020 7354 9069

Email: [enquiries@ace-ed.org.uk](mailto:enquiries@ace-ed.org.uk)

## **British Dyslexia Association**

[www.bda-dyslexia.org.uk](http://www.bda-dyslexia.org.uk)

The British Dyslexia Association provides advice to parents of children with dyslexia. The website has details of local dyslexia association helplines.

Telephone: 0118 966 8271 (Helpline)

Email: [helpline@bdadyslexia.org.uk](mailto:helpline@bdadyslexia.org.uk)

## **Community Legal Service**

[www.clsdirect.org.uk](http://www.clsdirect.org.uk)

The Community Legal Service is run by the Legal Services Commission. It operates a scheme for funding civil cases (formerly known as legal aid) and can help you to find a solicitor or advice centre in your area.

Telephone: 0845 608 1122 (Directory service)

Telephone: 0845 345 4345 (CLS direct telephone, advice scheme for education)

Minicom: 0845 609 6677

### **Children's Legal Centre**

[www.childrenslegalcentre.com](http://www.childrenslegalcentre.com)

Provides parents and carers with comprehensive legal advice for those in conflict with schools and/or LEAs.

Telephone: 0845 345 4345

Opening hours: Monday to Friday, 9am-5pm

Email: [clc@essex.ac.uk](mailto:clc@essex.ac.uk)

### **Contact a Family**

[www.cafamily.org.uk](http://www.cafamily.org.uk)

Provides information, advice and support for families of disabled children.

Telephone: 0808 808 3555 (Helpline)

Opening hours: Monday to Friday, 10am-4pm

Textphone: 0808 808 3556

### **Council for Disabled Children**

[www.ncb.org.uk/cdc](http://www.ncb.org.uk/cdc)

A national forum for the discussion, development and dissemination of policy and practice issues for disabled children and young people and those with special educational needs

Telephone: 020 7843 1900

Fax: 020 7843 6313

### **Department for Children, Schools and Families**

[www.dcsf.gov.uk](http://www.dcsf.gov.uk)

Telephone: 0870 000 2288

Telephone: 0845 602 2260 (Publications)

### **DIAL UK Disabled Information and Advice Line**

[www.dialuk.info](http://www.dialuk.info)

DIAL UK is the national organisation for the DIAL network, giving services to disability information and advice providers. You can find your local DIAL by calling the national office.

Telephone: 01302 310123

Textphone: 01302 310123 (please use voice announcer)

**Disability Law Service**

[www.dls.org.uk](http://www.dls.org.uk)

The Disability Law Service offers free legal advice to people with disabilities.

Telephone: 020 7791 9800

Minicom: 020 7791 9801

Fax: 020 7791 9802

Email: [advice@dls.org.uk](mailto:advice@dls.org.uk)

**Disability Wales/Anabledd Cymru**

[www.disabilitywales.org](http://www.disabilitywales.org)

The umbrella organisation for disability groups in Wales.

Telephone: 029 2088 7325

Fax: 029 2088 8702

Email: [info@disabilitywales.org](mailto:info@disabilitywales.org)

**Education Law Association (ELAS)**

Can provide details of solicitors specialising in education law in your area.

Telephone: 0118 966 9866

**Independent Panel for Special Educational Advice (IPSEA)**

[www.ipsea.org.uk](http://www.ipsea.org.uk)

IPSEA provides free independent advice on Special Educational Needs and DDA matters including representation at SENDIST/SENTW when needed. During school holidays times are reduced. Please ring for availability.

Telephone: 0800 018 4016 (Helpline) Opening hours: Monday to Thursday, 10am-4pm and 7-9pm; Friday 10am-1pm and 7-9pm

**Law centres**

Law centres give free advice and assistance on employment law and other areas of law. You can find out where your nearest law centre is by calling the Law Centres Federation.

Telephone: 020 7428 4400

**Law Society**

[www.lawsociety.org.uk](http://www.lawsociety.org.uk)

The Law Society can provide details of specialist solicitors in your area.

Telephone: 0207 242 1222

Minicom: 0870 600 1560

Email: [info.services@lawsociety.org.uk](mailto:info.services@lawsociety.org.uk)

### **Local Government Ombudsman**

[www.lgo.org.uk](http://www.lgo.org.uk)

The Local Government Ombudsmen investigate complaints of injustice arising from maladministration by local authorities and certain other bodies in England. They investigate complaints about most council matters including housing, planning, education, social services, consumer protection, drainage and council tax.

Telephone: 0845 602 1983 (Adviceline)

### **Local Ombudsman Wales**

[www.ombudsman-wales.org](http://www.ombudsman-wales.org)

The Local Commissioner investigates complaints of injustice arising from maladministration by local authorities and certain other bodies in Wales. They investigate complaints about most council matters including housing, planning, education, social services, consumer protection, drainage and council tax.

Telephone: 01656 641 150

Fax: 01656 641 199

Email: [ask@ombudsman-wales.org](mailto:ask@ombudsman-wales.org)

### **Mediation UK**

The national umbrella organisation for conciliation services.

Telephone: 0117 904 6661

Fax: 0117 904 3331

Email: [enquiry@mediationuk.org.uk](mailto:enquiry@mediationuk.org.uk)

### **National Assembly for Wales**

[www.wales.gov.uk](http://www.wales.gov.uk)

Telephone: 0845 010 5500

### **National Association of Citizens' Advice Bureaux (NACAB)**

[www.nacab.org.uk](http://www.nacab.org.uk)

The Citizens Advice Bureau can give advice and assistance on DDA cases. You can contact the Citizens Advice Bureau head office for details of your nearest bureau (CAB).

Telephone: 020 7833 2181

### **National Autistic Society**

[www.nas.org.uk](http://www.nas.org.uk)

Provides information and advice for parents of children with autism.

Telephone: 020 7833 2299

Telephone: 0854 070 4004 (Helpline)

Opening hours: Monday to Friday 10am-4pm

Fax: 020 7833 9666

Email: [nas@nas.org.uk](mailto:nas@nas.org.uk)

### **National Children's Bureau**

[www.ncb.org.uk](http://www.ncb.org.uk)

Identifies and promotes the interests of children. NCB is an umbrella organisation for a range of organisations including those focusing on children with disabilities and SEN.

Telephone: 020 7843 6000

Fax: 020 7278 9512

### **National Deaf Children's Society**

[www.ndcs.org.uk](http://www.ndcs.org.uk)

Provides advice, information and support to parents of Deaf children.

Telephone/Minicom: 0808 800 8880

Email: [helpline@ndcs.org.uk](mailto:helpline@ndcs.org.uk)

### **Royal National Institute of the Blind (RNIB)**

[www.rnib.org.uk](http://www.rnib.org.uk)

Telephone: 02920 45 0440 Telephone: 02920 45 0440 (Wales)

Telephone: 0845 766 9999 (Helpline)

Opening hours: Monday to Friday, 9am-5pm

Fax: 0207 388 2034

Typetalk: 0800 515152

Email: [helpline@rnib.org.uk](mailto:helpline@rnib.org.uk)

### **Royal National Institute for the Deaf (RNID)**

[www.rnid.org.uk](http://www.rnid.org.uk)

Telephone: 0808 808 0123

Textphone: 0808 808 9000

Email: [informationline@rnid.org.uk](mailto:informationline@rnid.org.uk)

**SENDIST**

[www.sendist.gov.uk](http://www.sendist.gov.uk)

Telephone: 0870 606 5750 (Discrimination Helpline)

Opening hours: Monday to Friday, 9am-5pm

**SENTW**

[www.sentw.gov.uk](http://www.sentw.gov.uk)

Telephone: 01597 829800

Email: [tribunalenquiries@wales.gsi.gov.uk](mailto:tribunalenquiries@wales.gsi.gov.uk)

**Special Needs Advisory Project – Wales**

[www.snapcymru.org.uk](http://www.snapcymru.org.uk)

SNAP Cymru Parent Partnership Service offers free information and advice to parents, carers and young people.

Telephone: 0845 120 3730

**The Stationery Office**

[www.opsi.gov.uk](http://www.opsi.gov.uk)

The Stationery Office provides copies of the Disability Discrimination Act, the Guidance, and the Civil Procedure Rules (CPR), which govern county court procedure. Copies of the CPR and most court forms are also available from the website above.

Telephone: 01603 621 000

**The Children's Commissioner for Wales**

[www.childcom.org.uk](http://www.childcom.org.uk)

The Children's Commissioner for Wales ensures that children's rights are respected.

Telephone: 01792 765600 or 01492 523333

Fax: 01792 765601 or 01492 523336

Email: [post@childcomwales.org.uk](mailto:post@childcomwales.org.uk)

**United Kingdom's Disabled People's Council (UKSDPC)**

[www.bcodp.org.uk](http://www.bcodp.org.uk)

UKSDPC is a national umbrella organisation with 130 full member organisations of disabled people.

Telephone: 01332 295551

Minicom: 01332 295581

Fax: 01332 295580

Email: [general@UKSDPC.org](mailto:general@UKSDPC.org)

# 8. Glossary

**Admission appeal panel:** A group of three or five people who decide whether a child who has already been turned down for a school by the admissions authority should be given a place. The appeal panel is set up by the admissions authority. There are strict legal rules about who should be on the panel. No member of the panel can be a governor of the school or a local councillor.

**Admissions authority:** The official body which decides on the rules on how children will get a place at the school and also who is offered a place. For community and voluntary controlled schools the admissions authority is the LEA; for all others it is the governing body.

**Code of Practice:** The Disability Discrimination Act Code of Practice for Schools explains the effect of the DDA. It also tells schools and LEAs how they should approach their duties under the Act. Although it isn't 'the law', the Code has to be taken into account by courts in DDA cases where relevant. The Code was produced by the DRC and can be ordered from the EHRC Helpline or downloaded from the EHRC's website.

**Community Legal Service Assistance – England and Wales:** State assistance for people on low incomes that pays for lawyers to advise on legal issues and to provide representation in court.

**DDA:** The Disability Discrimination Act 1995.

**Fixed-term exclusion:** A short-term exclusion from a maintained school of up to 45 days in one school year.

**Governing body:** This body, with the head teacher, has overall responsibility for the school. The governors work for the school unpaid.

**Independent appeal panel:** A group of three or five people who decide whether a child who has been permanently

excluded from a maintained school should have been excluded. The appeal panel is set up by the LEA.

**Independent school:** A school that is not funded by an LEA or the Government, which normally charges fees.

**LEA:** Local education authority – the part of the local council that is responsible for providing education.

**Maintained school:** A school that is funded by an LEA.

**Permanent exclusion:** Permanent removal of a child from a maintained school for disciplinary reasons.

**Responsible body:** The body responsible for a school, see chart at section 2.1.

**School Action:** Additional support in school for children with special educational needs.

**School Action Plus:** Additional support in school including input from outside specialists for children with special educational needs.

**SEN:** Special Educational Needs.

**SENDIST:** Special Educational Needs and Disability Tribunal.

**SENTW:** Special Educational Needs Tribunal for Wales.

**Special educational needs:** A child has special educational needs if he has a learning difficulty including a disability that requires special educational provision.

**Statement of special educational needs:** A document that sets out a child's needs and the extra help he should get.

**Tribunal:** SENDIST/SENTW.

**Tribunal hearing:** The meeting at which a claim to SENDIST/SENTW is considered.

**Tribunal order:** SENDIST/SENTW decision on a claim.

# Appendix 1 – sample letters

- 1 Letter to admission appeal panel
- 2 Letter to governing body about a permanent exclusion
- 3 Letter requesting reasonable adjustments
- 4 Letter requesting justification for failure to make reasonable adjustments
- 5 Letter of complaint about failure to make reasonable adjustments
- 6 Letter requesting justification for less favourable treatment in relation to education and associated services
- 7 Letter of complaint about less favourable treatment
- 8 Letter before making a claim to SENDIST/SENTW

## 1 Letter to admission appeal panel

To The Admission Appeal Panel

Dear Sir/Madam

I wish to appeal against the decision not to give my child (name) a place at (name of school). I would also like to make a claim under Part 4 of the Disability Discrimination Act 1995.

My grounds for appeal are:

- 
- 

My reason for making a disability discrimination claim is that I consider that the decision not to give my child a place was less favourable treatment of my child for a reason related to his disability.

My child's disability is \_\_\_\_\_. This has a substantial and long term adverse effect on his ability to carry out normal day-to-day activities. The day-to-day activities it has an effect on are \_\_\_\_\_.

The reason my child was refused a place was \_\_\_\_\_.

This reason is related to his disability in this way \_\_\_\_\_.

Other children to whom this reason did not apply were not refused a place at the school.

I do not think the admissions authority can justify the less favourable treatment of my child.

Yours faithfully

## 2 Letter to governing body about a permanent exclusion

To The Governing Body

Dear Sir/Madam

I wish to appeal against the decision to permanently exclude my child (name). I would also like to make a claim under Part 4 of the Disability Discrimination Act 1995.

My grounds for appeal are:

- 
- 

My reason for making a disability discrimination claim is that I consider that the decision to permanently exclude my child was less favourable treatment of my child for a reason related to his disability.

My child's disability is \_\_\_\_\_. This has a substantial and long term adverse effect on his ability to carry out normal day-to-day activities. The day-to-day activities it has an effect on are \_\_\_\_\_.

The reason my child was permanently excluded was \_\_\_\_\_.

This reason is related to his disability because \_\_\_\_\_.

Other children to whom this reason does not apply were not permanently excluded.

I do not think the school can justify the less favourable treatment of my child. There were reasonable adjustments that the school could have made to prevent the exclusion that they did not make.

Yours faithfully

### 3 Letter requesting reasonable adjustments

Dear Head teacher

#### **Child's name**

I am writing as the parent of a pupil at your school who has \_\_\_\_\_ (disability). This affects him in the following ways:

- 
- 
- 

Part 4 of the Disability Discrimination Act 1995 says that the responsible body of a school must make reasonable adjustments to ensure that disabled people are not placed at a substantial disadvantage in comparison with people who are not disabled.

My child is at a substantial disadvantage in the following ways:

- 
- 

I think it is reasonable for the responsible body to make the following adjustment(s) to ensure that my child is not placed at a substantial disadvantage:

- 
- 

To avoid a potential disability discrimination claim I would like the school to make these reasonable adjustments immediately.

Yours faithfully

#### **4 Letter requesting justification for failure to make reasonable adjustments**

Dear Sir/Madam

##### **Child's name**

I am writing as the parent of a pupil at your school who has \_\_\_\_\_ (disability). This affects him in the following ways:

- 
- 
- 

Part 4 of the Disability Discrimination Act 1995 says that the responsible body of a school must make reasonable adjustments to ensure that disabled people are not placed at a substantial disadvantage in comparison with people who are not disabled.

I wrote to you on (insert date) asking you to make reasonable adjustments to prevent my child from being placed at a substantial disadvantage. I enclose a copy of that letter. (Also provide details of any reply or conversations you have had with staff about reasonable adjustments.)

These reasonable adjustments have not been made and my child continues to be placed at a substantial disadvantage.

Please could you tell me why the school has not made the reasonable adjustments that I have asked for?

Please could you reply within 14 days of the date of this letter.

Yours faithfully

## **5 Letter of complaint about failure to make reasonable adjustments**

Dear Sir/Madam

**Child's name**

**Complaint of disability discrimination**

I am the parent of a disabled pupil.

I wrote to you on (insert date) requesting that the school make reasonable adjustments to prevent my child being placed at a substantial disadvantage. I wrote again on (insert date) asking why the reasonable adjustments had not been made. I have attached a copy of those letters.

This matter has not been resolved and I think the school is discriminating against my child as a disabled person.

My complaint is that the school has failed to make a reasonable adjustment to prevent my child being placed at a substantial disadvantage in relation to children who are not disabled. I do not think that the school can justify this failure.

I would be grateful if my complaint could be investigated and I could receive a response within 28 days.

Yours faithfully

## **6 Letter requesting justification for less favourable treatment in relation to education and associated services**

Dear Sir/Madam

### **Child's name**

I am writing as the parent of a pupil at your school who has \_\_\_\_\_ (disability). This affects him in the following ways:

- 
- 
- 

Part 4 of the Disability Discrimination Act 1995 says the responsible body for a school discriminates against a disabled person if, for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply, and it cannot show that the treatment is justified.

I believe that you may have treated my child less favourably on \_\_\_\_\_ (date), by \_\_\_\_\_ .

I believe the reason for this treatment is \_\_\_\_\_. This reason relates to my child's disability. I think this may be disability discrimination.

Please could you tell me why the school has treated my child in this way? Please could you reply within 14 days of the date of this letter.

Yours faithfully

## **7 Letter of complaint about less favourable treatment**

Dear Sir/Madam

**Child's name**

**Complaint of disability discrimination**

I am the parent of a disabled pupil.

I wrote to you on (insert date) requesting that the school/LEA provide an explanation for the less favourable treatment which my child has received for a reason related to his disability. I have attached a copy of that letter.

This matter has not been resolved and I think the school/LEA is discriminating against my child as a disabled person.

My complaint is that the school/LEA is treating my child less favourably for a reason related to his disability. The treatment I am complaining of is \_\_\_\_\_. The reason for this treatment is \_\_\_\_\_. This reason relates to my child's disability. I do not think the school can justify this less favourable treatment.

I would be grateful if my complaint could be investigated and I could receive a response within 28 days.

Yours faithfully

## 8 Letter before making a claim to SENDIST/SENTW

Dear Sir/Madam

**Child's name**

**My complaint of disability discrimination**

I wrote to you on (insert date) about my complaint of disability discrimination. I have attached a copy of that letter.

I am writing to tell you that I intend make a claim of disability discrimination to SENDIST/SENTW within the next 14 days.

I would still like to resolve my complaint without the need for a Tribunal hearing. My complaint could be resolved if the school/LEA:

- provides my child with the reasonable adjustments I requested in my letter of (insert date)
- agrees not to treat my child less favourably in the future
- agrees with me a way forward to prevent these problems happening again
- provides my child with an apology
- agrees to change the following policies and procedures
  - 
  -

I would like to talk to you so that we can try to reach a satisfactory resolution.

Please contact me so that we can discuss my complaint.

Yours faithfully

# Appendix 2

## **Key education (schools) provisions of the Disability Discrimination Act 1995 (as amended by the Special Educational Needs and Disability Act 2001)**

Part 4, sections 28A to 28L of the DDA relate to schools education. These sections are reproduced here. The full (unamended) text of the DDA 1995 and SENDA 2001 can be found at [www.opsi.gov.uk](http://www.opsi.gov.uk)

### SCHOOLS

Duties of responsible bodies

#### **28A Discrimination against disabled pupils and prospective pupils**

- (1) It is unlawful for the body responsible for a school to discriminate against a disabled person –
  - (a) in the arrangements it makes for determining admission to the school as a pupil;
  - (b) in the terms on which it offers to admit him to the school as a pupil; or
  - (c) by refusing or deliberately omitting to accept an application for his admission to the school as a pupil.
- (2) It is unlawful for the body responsible for a school to discriminate against a disabled pupil in the education or associated services provided for, or offered to, pupils at the school by that body.
- (3) The Secretary of State may by regulations prescribe services which are, or services which are not, to be regarded for the purposes of subsection (2) as being –
  - (a) education; or
  - (b) an associated service.

- (4) It is unlawful for the body responsible for a school to discriminate against a disabled pupil by excluding him from the school, whether permanently or temporarily.
- (5) The body responsible for a school is to be determined in accordance with Schedule 4A, and in the remaining provisions of this Chapter is referred to as the 'responsible body'.
- (6) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.

### **28B Meaning of 'discrimination'**

- (1) For the purposes of section 28A, a responsible body discriminates against a disabled person if –
  - (a) for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
  - (b) it cannot show that the treatment in question is justified.
- (2) For the purposes of section 28A, a responsible body also discriminates against a disabled person if –
  - (a) it fails, to his detriment, to comply with section 28C; and
  - (b) it cannot show that its failure to comply is justified.
- (3) In relation to a failure to take a particular step, a responsible body does not discriminate against a person if it shows –
  - (a) that, at the time in question, it did not know and could not reasonably have been expected to know, that he was disabled; and
  - (b) that its failure to take the step was attributable to that lack of knowledge.

- (4) The taking of a particular step by a responsible body in relation to a person does not amount to less favourable treatment if it shows that at the time in question it did not know, and could not reasonably have been expected to know, that he was disabled.
- (5) Subsections (6) to (8) apply in determining whether, for the purposes of this section –
  - (a) less favourable treatment of a person, or
  - (b) failure to comply with section 28C, is justified.
- (6) Less favourable treatment of a person is justified if it is the result of a permitted form of selection.
- (7) Otherwise, less favourable treatment, or a failure to comply with section 28C, is justified only if the reason for it is both material to the circumstances of the particular case and substantial.
- (8) If, in a case falling within subsection (1) –
  - (a) the responsible body is under a duty imposed by section 28C in relation to the disabled person, but
  - (b) it fails without justification to comply with that duty,its treatment of that person cannot be justified under subsection (7) unless that treatment would have been justified even if it had complied with that duty.

### **28C Disabled pupils not to be substantially disadvantaged**

- (1) The responsible body for a school must take such steps as it is reasonable for it to have to take to ensure that –
  - (a) in relation to the arrangements it makes for determining the admission of pupils to the school, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and

- (b) in relation to education and associated services provided for, or offered to, pupils at the school by it, disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled.
- (2) That does not require the responsible body to –
- (a) remove or alter a physical feature (for example, one arising from the design or construction of the school premises or the location of resources); or
  - (b) provide auxiliary aids or services.
- (3) Regulations may make provision, for the purposes of this section –
- (a) as to circumstances in which it is reasonable for a responsible body to have to take steps of a prescribed description;
  - (b) as to steps which it is always reasonable for a responsible body to have to take;
  - (c) as to circumstances in which it is not reasonable for a responsible body to have to take steps of a prescribed description;
  - (d) as to steps which it is never reasonable for a responsible body to have to take.
- (4) In considering whether it is reasonable for it to have to take a particular step in order to comply with its duty under subsection (1), a responsible body must have regard to any relevant provisions of a code of practice issued under section 53A.
- (5) Subsection (6) applies if, in relation to a person, a confidentiality request has been made of which a responsible body is aware.
- (6) In determining whether it is reasonable for the responsible body to have to take a particular step in relation to that person in order to comply with its duty

under subsection (1), regard shall be had to the extent to which taking the step in question is consistent with compliance with that request.

- (7) 'Confidentiality request' means a request which asks for the nature, or asks for the existence, of a disabled person's disability to be treated as confidential and which satisfies either of the following conditions –
- (a) it is made by that person's parent; or
  - (b) it is made by that person himself and the responsible body reasonably believes that he has sufficient understanding of the nature of the request and of its effect.
- (8) This section imposes duties only for the purpose of determining whether a responsible body has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

Residual duty of education authorities

### **28F Duty of education authorities not to discriminate**

- (1) This section applies to –
- (a) the functions of a local education authority under the Education Acts; and
  - (b) the functions of an education authority under –
    - (i) the Education (Scotland) Act 1980;
    - (ii) the Education (Scotland) Act 1996; and
    - (iii) the Standards in Scotland's Schools etc. Act 2000.
- (2) But it does not apply to any prescribed function.
- (3) In discharging a function to which this section applies, it is unlawful for the authority to discriminate against –
- (a) a disabled pupil; or
  - (b) a disabled person who may be admitted to a school as a pupil.

- (4) But an act done in the discharge of a function to which this section applies is unlawful as a result of subsection (3) only if no other provision of this Chapter makes that act unlawful.
- (5) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.
- (6) In this section and section 28G, 'local education authority' has the meaning given in section 12 of the Education Act 1996.
- (7) 'The Education Acts' has the meaning given in section 578 of the Education Act 1996.
- (8) In this section and section 28G, 'education authority' has the meaning given in section 135(1) of the Education (Scotland) Act 1980.

### **28G Residual duty: supplementary provisions**

- (1) Section 28B applies for the purposes of section 28F as it applies for the purposes of section 28A with the following modifications –
  - (a) references to a responsible body are to be read as references to an authority; and
  - (b) references to section 28C are to be read as references to subsections (2) to (4).
- (2) Each authority must take such steps as it is reasonable for it to have to take to ensure that, in discharging any function to which section 28F applies –
  - (a) disabled persons who may be admitted to a school as pupils are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
  - (b) disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled.

- (3) That does not require the authority to –
  - (a) remove or alter a physical feature; or
  - (b) provide auxiliary aids or services.
- (4) This section imposes duties only for the purpose of determining whether an authority has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.
- (5) A reference in sections 28I, 28K(1), 28M(6) and 28P to a responsible body is to be read as including a reference to a local education authority in relation to a function to which section 28F applies.
- (6) A reference in section 28N and 28P to a responsible body is to be read as including a reference to an education authority in relation to a function to which section 28F applies.
- (7) ‘Authority’ means –
  - (a) in relation to England and Wales, a local education authority; and
  - (b) in relation to Scotland, an education authority.

Enforcement: England and Wales

### **28H Special Educational Needs and Disability Tribunal**

- (1) The Special Educational Needs Tribunal –
  - (a) is to continue to exist; but
  - (b) after the commencement date is to be known as the Special Educational Needs and Disability Tribunal.
- (2) It is referred to in this Chapter as ‘the Tribunal’.
- (3) In addition to its jurisdiction under Part 4 of the Education Act 1996, the Tribunal is to exercise the jurisdiction conferred on it by this Chapter.

- (4) 'Commencement date' means the day on which section 17 of the Special Educational Needs and Disability Act 2001 comes into force.

## **28I Jurisdiction and powers of the Tribunal**

- (1) A claim that a responsible body –
- (a) has discriminated against a person ('A') in a way which is made unlawful under this Chapter, or
  - (b) is by virtue of section 58 to be treated as having discriminated against a person ('A') in such a way, may be made to the Tribunal by A's parent.
- (2) But this section does not apply to a claim to which section 28K or 28L applies.
- (3) If the Tribunal considers that a claim under subsection (1) is well founded –
- (a) it may declare that A has been unlawfully discriminated against; and
  - (b) if it does so, it may make such order as it considers reasonable in all the circumstances of the case.
- (4) The power conferred by subsection (3)(b) –
- (a) may, in particular, be exercised with a view to obviating or reducing the adverse effect on the person concerned of any matter to which the claim relates; but
  - (b) does not include power to order the payment of any sum by way of compensation.

## **28K Admissions**

- (1) If the condition mentioned in subsection (2) is satisfied, this section applies to a claim in relation to an admissions decision that a responsible body –
- (a) has discriminated against a person ('A') in a way

which is made unlawful under this Chapter; or  
(b) is by virtue of section 58 to be treated as having discriminated against a person ('A') in such a way.

- (2) The condition is that arrangements ('appeal arrangements') have been made –
  - (a) under section 94 of the School Standards and Framework Act 1998, or
  - (b) under an agreement entered into between the responsible body for a city academy and the Secretary of State under section 482 of the Education Act 1996, enabling an appeal to be made against the decision by A's parent.
- (3) The claim must be made under the appeal arrangements.
- (4) The body hearing the claim has the powers which it has in relation to an appeal under the appeal arrangements.
- (5) 'Admissions decision' means –
  - (a) a decision of a kind mentioned in section 94(1) or (2) of the School Standards and Framework Act 1998;
  - (b) a decision as to the admission of a person to a city academy taken by the responsible body or on its behalf.

## **28L Exclusions**

- (1) If the condition mentioned in subsection (2) is satisfied, this section applies to a claim in relation to an exclusion decision that a responsible body –
  - (a) has discriminated against a person ('A') in a way which is made unlawful under this Chapter; or
  - (b) is by virtue of section 58 to be treated as having discriminated against a person ('A') in such a way.
- (2) The condition is that arrangements ('appeal arrangements') have been made –

- (a) under section 67(1) of the School Standards and Framework Act 1998, or
  - (b) under an agreement entered into between the responsible body for a city academy and the Secretary of State under section 482 of the Education Act 1996, enabling an appeal to be made against the decision by A or by his parent.
- (3) The claim must be made under the appeal arrangements.
- (4) The body hearing the claim has the powers which it has in relation to an appeal under the appeal arrangements.
- (5) 'Exclusion decision' means –
- (a) a decision of a kind mentioned in section 67(1) of the School Standards and Framework Act 1998;
  - (b) a decision not to reinstate a pupil who has been permanently excluded from a city academy by its head teacher, taken by the responsible body or on its behalf.
- (6) 'Responsible body', in relation to a maintained school, includes the discipline committee of the governing body if that committee is required to be established as a result of regulations made under paragraph 4 of Schedule 11 to the School Standards and Framework Act 1998.
- (7) 'Maintained school' has the meaning given in section 28Q(5).

**Disclaimer**



Every effort has been made to make sure that the information in this booklet is correct. However, it is not intended to be an authoritative statement of the law. Neither its authors nor the Equality and Human Rights Commission, which has inherited this publication from the Disability Rights Commission, can accept any legal liability or responsibility.

## Contact us

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You can find out more or get in touch with us via our website at [www.equalityhumanrights.com](http://www.equalityhumanrights.com) or by contacting one of our helplines below.

### Equality and Human Rights Commission helpline – England

 Telephone: 08456 046 610  
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9am–5pm, Monday to Friday, except Wednesday 9am–8pm

### Equality and Human Rights Commission helpline – Wales

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