

The Equality Act (2010) – School Duties:



Equality: the fact of being equal in rights, status, advantages etc.

[The Equality Act \(2010\)](#) makes it unlawful for the responsible body of a school to discriminate against, harass or victimise a pupil or potential pupil:

- in relation to admissions;
- in the way it provides education;
- in the way it provides pupils access to any benefit, facility, or service;
- by excluding a pupil or subjecting them to any other detriment



The Act deals with the way in which schools **treat** their pupils and prospective pupils: the relationship between one pupil and another is not within its scope.



It does not therefore bear directly on such issues as racist or homophobic bullying by pupils. However, if a school treats bullying which relates to a **protected characteristic** less seriously than other forms of bullying – for example dismissing complaints of homophobic bullying or failing to protect a transgender pupil against bullying by classmates – then it may be guilty of unlawful discrimination.

It is unlawful for a school to discriminate against a pupil or prospective pupil by treating them less favourably because of their:

- sex
- race
- disability
- religion or belief
- sexual orientation
- gender reassignment
- pregnancy or maternity



These are known as **protected characteristics** within the Act.

Association and Perception:

Association: a school must not discriminate by refusing to admit a pupil because his parents have autism or ADHD, or to treat a black pupil less favourably because she has a white boyfriend.

Perception: a school must not discriminate against a pupil for perceived characteristics, for example if a teacher consistently picked-on a pupil for being gay (whether or not that pupil is gay), or if a teacher gave a detention to child because he thought he had ADHD.



Harassment: “unwanted conduct, related to a relevant protected characteristic, which has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person”

Victimisation:

Victimisation occurs **when a person is treated less favourably** than they otherwise would have been because of something they have done (“a protected act”) in connection with the Act. A protected act might involve, for example, making an allegation of discrimination or bringing a case under the Act, or supporting another person’s complaint by giving evidence or information, but it includes anything that is done under or in connection with the Act.

Even if what a person did or said was incorrect or misconceived, for example based on a misunderstanding of the situation or of what the law provides, they are protected against retaliation unless they were acting in bad faith. The reason for this is to ensure that people are not afraid to raise genuine concerns about discrimination because of fear of retaliation.

Special Provisions for Disability:

The law on disability discrimination is different from the rest of the Act in a number of ways. In particular, it works in only one direction – that is to say, it protects disabled people but **not** people who are not disabled.

This means that **schools are allowed to treat disabled pupils more favourably than non-disabled pupils**, and in some cases are required to do so, by making reasonable adjustments to put them on a more level footing with pupils without disabilities. The definition of what constitutes discrimination is more complex. Provision for disabled pupils is closely connected with the regime for children with special educational needs.

General Exceptions:

Single Sex schools are able to refuse to admit a pupil of the opposite sex.

Schools with a religious character (faith schools) may give priority in admissions to members of their own religion, however the Admissions Code states that this may only be done when a school is oversubscribed.



A Catholic school may lawfully give priority to Catholic pupils when choosing between applicants for admission. However, the Admissions Code will not allow it to refuse to accept pupils of another or no religion unless it is oversubscribed.

Schools with a religious character also have exceptions for how they provide education to pupils and in the way they allow access to other aspects of school life:



A Jewish school which provides spiritual instruction or pastoral care from a rabbi is not discriminating unlawfully by not making equivalent provision for pupils from other religious faiths.

Curriculum:

The **content** of the curriculum is not held within discrimination law; this is so that schools are free to cover a full range of issues, ideas and materials in their syllabus, and to expose pupils to thoughts and ideas of all kinds, however challenging or controversial.

But the **way** in which a school provides education (the delivery of the curriculum), is included.

- A boy complains that it is sex discrimination for him to be required to do a module on feminist thought.
- A Jewish pupil complains about the requirement to study *The Merchant of Venice*.
- A fundamentalist Christian objects to the teaching of evolution in Science lessons.

Each of these is a complaint against **content**.

- In teaching *The Merchant of Venice*, the teacher encourages the class to laugh at a Jewish pupil.
- In class discussions, black pupils are never called on and the teacher makes it clear that she is not interested in their views.
- Girls are being prevented from choosing design technology; boys are being discouraged from ding food technology.

Each of these is a complaint against **delivery**.

Acts of Worship:

Schools are also free to celebrate religious festivals and could not be claimed to be discriminating against children of other faiths if, for example, they put on a nativity play at Christmas or hold a celebration to mark other religious festivals such as Diwali or Eid.



Uniforms:

The Equality Act does not deal specifically with school uniform or other aspects of appearance such as hair colour and style, and the wearing of jewellery and make-up, but the general requirement not to discriminate in the treatment of pupils applies here as in relation to other aspects of school policy.

It is for the governing body of a school to decide whether there should be a school uniform and other rules relating to appearance, and if so, what they should be.



Schools must have regard to their obligations under the Human Rights Act 1998, as well as under equality law, and that they need to be careful that blanket uniform policies do not discriminate because of race, religion or belief, gender, disability, gender reassignment or sexual orientation. Consequently, it will be up to the individual school to consider the implications their uniform requirements have on their pupils.



- It may be discrimination because of disability if a child who has a skin condition which means they cannot wear nylon is not allowed to wear cotton trousers as part of the uniform.
- With relation to SEN, it may often be the case that a child with sensory processing difficulties may find school uniform problematic, for example: ties, shoes, textures of clothing; some students may even need weighted clothes or vests.

There are **potential issues** around school uniform policies and religion and belief. Schools should be sensitive to the needs of different cultures, races and religions and act reasonably in accommodating these needs, without compromising important school policies, such as school safety or discipline.

It is well established that it would be race discrimination to refuse to let a Sikh child wear a turban because of a school policy requiring that caps be worn, but legal judgments have not supported the absolute right of people of faith to wear garments or jewellery to indicate that faith.

Protected Characteristics:

Whilst **disability** is the main focus of this factsheet, you can find information on all the protected characteristics at the end of the document.

Disability:

The overriding principle of equality legislation is generally one of equal treatment - i.e. that you must treat a black person no less well than a white person, or a man as favourably as a woman.

However, in matters of disability, **it likely that you may (and often must) treat a disabled person more favourably than a person who is not disabled.**



The Act defines disability as when a person has a **'physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day to day activities.'** Some specified medical conditions, HIV, multiple sclerosis and cancer are all considered as disabilities, regardless of their effect.

Children and young people who have special educational needs do not necessarily have a disability. Some disabled children and young people do not have special educational needs. There is a lot of overlap between the two groups though.

The following may be classed as a disability:

- ADHD
- ASD
- Sensory impairments
- Severe communication disorders
- Social, emotional, and mental health issues

A school must not do something which applies to all pupils but which is more likely to have an adverse effect on disabled pupils only – for example, having a rule that all pupils must demonstrate physical fitness levels before being admitted to the school – unless they can show that it is done for a legitimate reason, and is a proportionate way of achieving that legitimate aim.

A school must not discriminate against a disabled pupil because of something that is a **consequence** of their disability.

Schools must not harass a disabled pupil – for example, a teacher shouting at the pupil because the disability means that he or she is constantly struggling with class-work or is unable to concentrate.

Reasonable Adjustments:

The duty to make reasonable adjustments applies **only** to disabled people:



- Where something a school does places a disabled pupil at a disadvantage compared to other pupils then the school must take reasonable steps to try and avoid that disadvantage.
- Schools will be expected to provide an auxiliary aid or service for a disabled pupil when it would be reasonable to do so and if such an aid would alleviate any substantial disadvantage that the pupil faces in comparison to non-disabled pupils.

For more information on ‘auxiliary aids’, please refer to 4.14 – 4.19 of the [Equality Act Guidance](#).

Schools are **not obliged** to anticipate and make adjustments for every imaginable disability; but they should consider general reasonable adjustments. For example:

- being prepared to produce large font papers for pupils with a visual impairment even though there are no such pupils currently admitted to the school;
- allowing for pupils with sensory difficulties to wear different textures of shirt or jumper
- being mindful when enforcing behaviour policies that a student with ADHD may find it more difficult to remain silent during a written assessment



- If an adjustment is reasonable then it **should be made** and there can be no justification for why it is not made.



It will be for schools to consider the reasonableness of adjustments based on the circumstances of each case.

However, factors a school may consider when assessing the reasonableness of an adjustment may include the financial or other resources required for the adjustment, its effectiveness, its effect on other pupils, health and safety requirements, and whether aids have been made available through the Special Educational Needs route.

Often, effective and practicable adjustments for disabled pupils will involve **little or no cost or disruption** and are therefore very likely to be reasonable for a school to have to make.

Examples of reasonable adjustments:

A disabled pupil with severe manual dexterity difficulties struggles to write large amounts of text by hand and so this takes him considerably longer than other pupils. In some lessons, the pupil would be at a substantial disadvantage. However, in a lesson in which there is no handwriting required, he would not be at a substantial disadvantage in relation to his difficulties with handwriting. A reasonable adjustment would be to allow the pupil access to technology (such as a laptop) in relevant lessons.

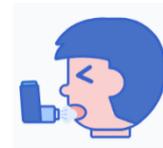


A pupil with chronic fatigue syndrome finds it harder to concentrate in lessons in the afternoon as a result of an increase in her tiredness.

A reasonable adjustment would be to allow her to take brain breaks.



An infant school disabled pupil with attention deficit hyperactivity disorder (ADHD) receives some individual teaching assistant support through the SEN framework. He is diagnosed with severe asthma and needs assistance with his nebuliser. Although this is not a special educational need, his asthma is likely to be a disability for the purpose of the Act and so a failure to provide a reasonable adjustment will place him at a substantial disadvantage. The school trains his teaching assistant and she provides him with the assistance that he needs. This would be a reasonable adjustment for the school to make.



A disabled pupil with cerebral palsy uses a manual wheelchair occasionally, but not every day. The wheelchair that she normally uses is being repaired and so she is having difficulties moving around the school. The school has a wheelchair that it allows her to use in school until hers is repaired. This is a reasonable adjustment for the school to make because the school already has this resource available to it. However, if the school did not have a wheelchair, it would not be expected to purchase one for the pupil as a reasonable adjustment.



A disabled pupil with dyslexia finds it very difficult to read text typed on white paper. The school provides handouts on yellow paper for her. This would be a reasonable adjustment for this pupil.

Another disabled pupil with dyslexia finds it difficult to read text on any colour of paper without a plastic overlay sheet. The school provides the pupil with a plastic overlay sheet to use in all lessons. This would be a reasonable adjustment for this pupil.



Schools' duties around accessibility for disabled pupils:

Schools must implement accessibility plans which are aimed at:

- increasing the extent to which disabled pupils can participate in the curriculum;
- improving the physical environment of schools to enable disabled pupils to take better advantage of education, benefits, facilities and services provided; and
- improving the availability of accessible information to disabled pupils.

If a school is maintained by the LA, then the LA must prepare accessibility strategies.

The Public Sector Equality Duty (PSED):

The Public Sector Equality Duty is a duty on public authorities (such as schools) to consider or think about **how their policies or decisions affect people who are protected under the Equality Act**.

Private organisations and individuals don't have to comply with the duty.

If a public authority hasn't properly considered its public sector equality duty, you can challenge it in the courts.

The PSED has three main elements. In carrying out their functions, public bodies (such as schools) are required to have due regard to the need to:

- **Eliminate discrimination** and other conduct that is prohibited by the Act,
- **Advance equality of opportunity** between people who share a protected characteristic and people who do not share it,
- **Foster good relations** across all characteristics - between people who share a protected characteristic and people who do not share it.

For schools this means:

- Decision makers in schools must be aware of the duty to have **"due regard"** when making a decision or taking an action and must assess whether it may have particular implications for people with particular protected characteristics.
- Schools should consider equality implications before and at the time that they develop policy and take decisions, not as an afterthought, and they need to keep them under review on a continuing basis.
- The PSED has to be integrated into the carrying out of the school's functions, and the analysis necessary to comply with the duty has to be carried out seriously, rigorously and with an open mind – it is not just a question of ticking boxes or following a particular process.
- Schools can't delegate responsibility for carrying out the duty to anyone else.

The duty to have "due regard" to equality considerations means that whenever significant decisions are being made or policies developed, **thought must be given to the equality implications**.

It is good practice for schools to keep a written record to show that they have actively considered their equality duties and asked themselves relevant questions. There is no legal requirement to produce a formal equality impact assessment document, although for key decisions this might be a helpful tool.

For more information on what compliance with the specific duties will mean for schools, please refer to 5.9 – 5.16 of the [Equality Act Guidance](#).

How does the PSED help schools?

The equality duty supports good education and improves pupil outcomes. It helps a school to identify priorities such as underperformance, poor progression, and bullying. It does this by requiring it to collate evidence, take a look at the issues and consider taking action to improve the experience of different groups of pupils.

It then helps it to focus on what can be done to tackle these issues and to improve outcomes by developing measurable equality objectives.

Advancing Equality of Opportunity:

Advancing equality of opportunity involves, in particular:

- (a) removing or minimising disadvantages suffered by people which are connected to a particular characteristic they have (for example disabled pupils, or gay pupils who are being subjected to homophobic bullying);
- (b) taking steps to meet the particular needs of people who have a particular characteristic (for example enabling Muslim pupils to pray at prescribed times) and
- (c) encouraging people who have a particular characteristic to participate fully in any activities (for example encouraging both boys and girls, and pupils from different ethnic backgrounds, to be involved in the full range of school societies).

Engagement:

When deciding what to do to tackle equality issues, schools may want to consult and engage both with people affected by their decisions - parents, pupils, staff, members of the local community – and with people who have special knowledge which can inform the school's approach, such as disability equality groups and other relevant special interest organisations.

Examples of educational settings making adjustments:

Exclusions:

As part of its equality duty, a school reviews its data on exclusions and finds that a disproportionate number of pupils who have been either temporarily or permanently excluded are Black Caribbean boys. The school also looks at data held at the local and national level which supports its own evidence. The school recognises that its exclusion policy needs to be re-written to set out clear exclusion thresholds that are applied consistently for all pupils. It then runs some focus groups with teachers, pupils and parents from Black Caribbean backgrounds to identify other measures that can be taken to reduce the high numbers of exclusions amongst this group of pupils. Following the consultation, the school implements a range of actions including parent/pupil workshops, visits from Black role models, learning mentors and classes on emotional literacy, assertiveness, socialisation and behaviour management skills. Over time, the number of exclusions of Black Caribbean boys declines significantly.

A local authority offers vocational but not academic courses to excluded pupils through its pupil referral unit (PRU). Aware from national statistics that a high proportion of black boys are excluded from school, it recognises the potential for indirect discrimination if academic courses are not offered at the PRUs. As a result, its PRU starts offering academic options to all pupils referred there. The local authority includes this change of policy as part of the information it publishes to demonstrate compliance with the equality duty.

Attendance:

An academy's attendance figures show that pupils with medical needs have disproportionately higher absentee levels than their peers. The academy develops a medical panel to provide specific support for students with medical needs. Bespoke packages are put into place for specific students. The academy introduces a pastoral survey to get an indication of students' mental well-being, allowing the school to identify areas of concern and to put appropriate support in place. The academy adapts timetables to the needs of particular pupils.

Behaviour policies:

A student at a primary school who has been diagnosed with ADHD often calls out in class because of his vocal tics. The school are able to adapt their behaviour policy to create a personalised reward and sanctions system within the classroom. After an incident in which the student swore at a teacher and left the classroom, the school considered the context of the incident, specifically the impact of the child's ADHD and other environmental triggers, and they choose not to exclude the child.

Uniform:

A school identifies that some children may find the school uniform problematic, in particular some students who have sensory processing disorder. They are able to make adjustments by agreeing that some students can wear clothing of a different material to the standard school uniform, so that it conforms to the school colours.

How should schools publish information?

It will be up to schools themselves to decide in what format they publish equality information. For most schools, the simplest approach may be to set up an equalities page on their website where all this information is present or links to it are available.

Equality Objectives:

Schools are free to choose the objectives which best suit their circumstances.

Objectives are not intended to be burdensome or a 'tick box' exercise, but they do need to be specific and measurable. They should be used as a tool to help improve the school experience of a range of different pupils.

It is no longer a requirement for schools to have an equality action plan.

Equality objectives may arise from analysis schools have carried out on their published data or other information, where they have identified an area where there is potential for improvement on equalities, or they may – for example - be set in anticipation of a change in local circumstances.

Some examples might be:

- to increase participation by black pupils in after school activities;
- to narrow the gap in performance of disabled pupils;
- to reduce exclusion rates for black boys;
- to increase understanding between religious groups;
- to reduce the number of homophobic incidents;
- to raise attainment in English for boys;
- to encourage girls to consider non-stereotyped career options;
- to anticipate the needs of incoming pupils from a new group, such as traveller children.

Local Authorities:

Chapter 6 of the Equality Act Guidance outlines functions related to the LA. In particular:

School Transport:

LAs are responsible for the provision of transport to schools for pupils living in their authorities and the discrimination provisions on age and religion or belief do not extend to these transport arrangements.

Reasonable adjustments for disabled pupils:

LAs, in relation to their education functions, are under the same duty as schools: they should have accessibility strategies, provide reasonable adjustments for school pupils, with the aim of avoiding disadvantage, and providing auxiliary aids and services.

How is the Equality Act enforced?

Discrimination claims can be brought to a county court by the pupil (or in the pupil's name).

Proceedings must be brought **within 6 months** of the date of the act to which the claim relates (although the county court has the power to extend this if it considers it just and equitable to do so).

If the court rules that there has been a contravention, then it has the power to award an appropriate remedy including an award of damages.

Tribunals:

Specialist tribunals which have experience and knowledge of disability issues will hear cases of contravention of the education provisions on grounds of disability. In England this will be the First-tier Tribunal.

- Claims will be made to the tribunal by the parent of the pupil
- Claims have to be brought within 6 months of the act to which the claim relates
- The tribunal may rule in favour of a remedy (this will **not** include payment of compensation; it is expected that an education remedy would be most appropriate)

Burden of proof:

If a complainant can establish facts which could lead to the conclusion that an act of discrimination has taken place, then it will be down to the respondent (in this case the school) to show that the reason for what happened was something other than discrimination.

The 'Questions Procedure':

If a pupil believes that he/she has been discriminated against or harassed by their school then, before deciding whether to bring a case, they can ask questions of the school about their treatment.

Other Protected Characteristics:

Gender Reassignment:

It is unlawful for schools to treat pupils less favourably because of their gender reassignment and that schools will have to factor in gender reassignment when considering their obligations under the Equality Duty.



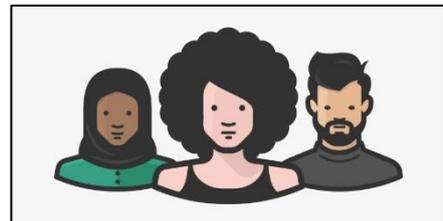
Gender reassignment is defined in the Equality Act as applying to anyone who is undergoing, has undergone or is proposing to undergo a process (or part of a process) of reassigning their sex by changing physiological or other attributes.



- A pupil will not necessarily have to be undertaking a medical procedure (but must be taking necessary steps or proposing to do so).

Race:

The definition of race includes colour, nationality and ethnic or national origins. a



- It is unlawful for a selective school to impose a higher standard for admission to applicants from an ethnic minority background, or for a school to impose stricter disciplinary penalties on African Caribbean boys than they do in similar circumstances to children from other backgrounds.

Segregation of pupils by race is always direct discrimination. It would thus be unlawful for a school to put children into sets, or into different sports in PE classes, according to their ethnicity.

Religion or Belief:

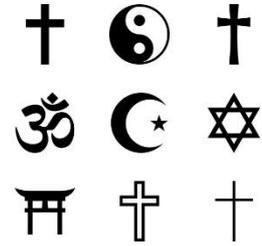
The Act defines “religion” as being any religion, and “belief” as any religious or philosophical belief. A lack of religion or a lack of belief are also protected characteristics.

To benefit from protection under the Act, a religion or belief must have a clear structure and belief system, and should have a certain level of cogency, seriousness and cohesion, and not be incompatible with human dignity.

It is not however intended to include political beliefs such as Communism or support for any particular political party.

The Equality Act makes it clear that unlawful religious discrimination can include discrimination against another person of the same religion or belief as the discriminator.

- Orthodox and Reform Jews
- Shia and Sunni Muslims
- Catholic and Protestant Christians



Sex/Gender:

Schools need to make sure that pupils of one sex are not singled out for different and less favourable treatment from that given to other pupils. They should check that there are no practices which could result in unfair, less favourable treatment of boys or girls. For example, it would be unlawful for a school to require girls to learn needlework while giving boys the choice between needlework and woodwork classes.



- It is not necessarily unlawful to have some single-sex classes in a mixed school, provided that this does not give children in such classes an unfair advantage or disadvantage when compared to children of the other sex in other classes.
- Although the Equality Act forbids discrimination in access to benefits, facilities and services; the Act does contain an exception which permits single-sex sports.

Pregnancy and Maternity:

This means it is unlawful for schools to treat a pupil less favourably because she becomes pregnant or has recently had a baby, or because she is breastfeeding.



Local authorities have a duty under Section 19 of the Education Act 1996 to arrange suitable full-time education for any pupils of compulsory school age who would not otherwise receive such an education. This could include pupils of compulsory school age who become pregnant or who are parents.

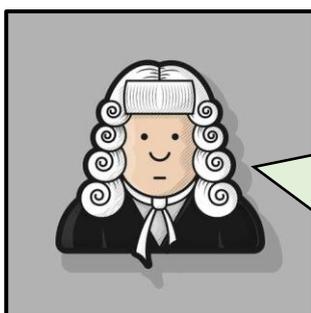
Sexual Orientation:

Schools need to make sure that all gay, lesbian or bi-sexual pupils, or the children of gay, lesbian or bi-sexual parents, are not singled out for different and less favourable treatment from that given to other pupils.

Maintained secondary schools have a legal requirement to teach about the 'nature of marriage' when they are delivering sex education. Many academies (including free schools) also teach about this topic, and when they do so, they must have regard to the Secretary of State's guidance on sex and relationship education. Schools must accurately state the facts about marriage of same sex couples under the law of England and Wales, in a way that is appropriate to the age and level of understanding and awareness of the pupils.



- There is a **potential clash** between the rights of religious freedom and the rights of sexual orientation. Many people's views on sexual orientation/sexual activity are themselves grounded in religious belief. Some schools with a religious character have concerns that they may be prevented from teaching in line with their religious ethos.
- If their beliefs are explained in an appropriate way in an educational context that takes into account existing guidance on the delivery of Sex and Relationships Education (SRE) and Religious Education (RE), then schools should not be acting unlawfully.
- However, if a school conveyed its belief in a way that involved haranguing, harassing or berating a particular pupil or group of pupils then this would be unacceptable in any circumstances and is likely to constitute unlawful discrimination.



Where individual teachers are concerned, having a view about something does not amount to discrimination. So it should not be unlawful for a teacher in any school to express personal views on sexual orientation provided that it is done in an **appropriate manner and context** (for example when responding to questions from pupils, or in an RE or Personal, Social, Health and Economic education (PSHE) lesson).

However, it should be remembered that school teachers are in a very influential position and their actions and responsibilities are bound by much wider duties than this legislation. A teacher's ability to express his or her views should not extend to allowing them to discriminate against others.

Relevant case law:



Equality Act exclusion breaches human rights of autistic children

14th August 2018

The Upper Tribunal has held that regulations under the Equality Act 2010 excluding children who have a ‘tendency to physical abuse’ from the protection of the Act give rise to unlawful discrimination under Article 14 ECHR insofar as they apply to children with impairments which give rise to an enhanced risk of physical aggression.

Judge Rowley held that in accordance with section 3 of the Human Rights Act 1998, regulation 4(1)(c) of the Equality Act 2010 (Disability) Regulations 2010 ‘does not apply to children in education who have a recognised condition that is more likely to result in a tendency to physical abuse’ (para 98).

The appeal concerned L, a child with autism who was excluded from his primary school. L’s parents appealed to the First-tier Tribunal (FtT) alleging disability discrimination by the school. However the FtT held that L’s behaviour had amounted to a ‘tendency to physical abuse’ such that in relation to this behaviour he was not ‘disabled’ for the purposes of the Equality Act 2010. This meant that the school did not have to justify the decision to exclude L.

The Upper Tribunal allowed L’s parents’ appeal on the basis that the FtT erred in applying regulation 4(1)(c) to L and treating him as not ‘disabled’. This was because applying the regulation to children with an impairment which is more likely to result in physical aggression gave rise to unlawful discrimination contrary to Article 14 ECHR, read with the right to education in Article 2 of the First Protocol (A2P1).

The appeal was defended by the Secretary of State, who accepted that the issue was within the ‘scope or ambit’ of A2P1 and that L had a relevant ‘status’. The Secretary of State argued (1) that children such as L were not in an analogous position to other ‘disabled’ children who did not display a ‘tendency to physical abuse’ and (2) that in any event the differential impact of the regulations on children such as L was justified. Both these submissions were rejected by the Upper Tribunal. In particular Judge Rowley found that the application of regulation 4(1)(c) to children such as L did not strike a ‘fair balance’ and was therefore disproportionate. Judge Rowley held that ‘the requirement for the protection of the status group’s fundamental rights comprehensively outweigh the arguments put forward for the protection of the interests of others’ (para 89).

The Upper Tribunal’s decision is available [here](#).