



Neutral Citation Number: [2026] UKUT 264 (AAC)
Appeal No. UA-2024-000481-HS

**IN THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

THE UPPER TRIBUNAL HAS ORDERED that, without the permission of the Tribunal, no one shall publish or reveal: the name or address of: (a) BJV and CKW (the Appellants in these proceedings) or (b) DLX (their son); or any information that would be likely to lead to the identification of them or any member of their family in connection with these proceedings. Any breach of this order is liable to be treated and punished as a contempt of court.

Between:

BJV and CKW

Appellant

v

Responsible Body of the Nightingale Primary School

Respondent

Before: Upper Tribunal Judge Jacobs

Decided on 09 July 2026 without a hearing.

Representation:

Appellants: Not represented

Respondent: Browne Jacobson LLP solicitors

Summary: Disability discrimination in schools (89)

Standards of analysis and explanation required of First-tier Tribunal decisions.

DECISION OF UPPER TRIBUNAL

On appeal from the First-tier Tribunal (Health, Education and Social Care Chamber)

Reference: EH317/23/00001

Decision date: 1 November 2023

Panel: Judge S Knapp and Tribunal Members Mr Aziz and Ms Doves

The decision of the First-tier Tribunal did not involve the making of an error on a point of law under section 12 of the Tribunals, Courts and Enforcement Act 2007.

REASONS FOR DECISION

1. This case concerns claims under the Equality Act 2010 MADE by BJV and CKW in respect of their son DLX. I refer to them either by those letters or by their relationship of parents and son.
2. The case was lodged in the Upper Tribunal in April 2024. It was then delayed by a protracted process in the First-tier Tribunal while the tribunal considered whether to give permission for BJV and CKW to obtain a transcript of the hearing. I was finally able to hold an oral hearing of the application in April 2025 and gave limited permission to appeal on 1 August 2025. The parties' submissions were complete in November 2025 and neither party asked for a hearing.
3. I apologise for the time it has taken me to write this decision. The delay is entirely a result of the misleading way I completed my work log.

A. Equality Act 2010

4. These are the relevant sections of the Act:

15 Discrimination arising from disability

- (1) A person (A) discriminates against a disabled person (B) if—
 - (a) A treats B unfavourably because of something arising in consequence of B's disability, and
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

20 Duty to make adjustments

- (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
- (2) The duty comprises the following three requirements.
- (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
- (4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
- (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.
- (6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring

that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

- (a) removing the physical feature in question,
- (b) altering it, or
- (c) providing a reasonable means of avoiding it.

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

- (a) a feature arising from the design or construction of a building,
- (b) a feature of an approach to, exit from or access to a building,
- (c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or
- (d) any other physical element or quality.

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

(12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

- (a) B does a protected act, or

- (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
 - (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

B. The issues for the First-tier Tribunal

5. These were the issues identified by Judge Dow in case management directions. They involved discrimination (section 15), reasonable adjustments (section 20 and 21) and victimisation (section 27). RB stands for Responsible Body.

- (i) Interviewing DLX in relation to an enquiry about bullying in a way which did not take into account his communication difficulties.
- (ii) Using the school's fire alarm to mark the start and end of the school day from September 2022 which was discriminatory to DLX because of his sensory issues meaning that he could not tolerate the noise of the bell.
- (iii) Preventing him from playing with a particular friend, identified as Child 'G' in October 2022.
- (iv) Victimising DLX contrary to Section 85 (5) and Section 27 of the Equality Act 2010 by preventing him from playing with Child G because his parents had raised concerns about the conduct of the RB.
- (v) Failed contrary to the duties under Section 85 (6) and Sections 20 and 21 of the 2010 Act to make reasonable adjustments to its arrangements for interviewing pupils about an allegation of bullying so placing DLX at a substantial disadvantage because he was less able than other pupils to give a meaningful or accurate account of his experiences.
- (vi) Failed contrary to Section 85 (6) and Sections 20 and 21 of the 2010 Act to make reasonable adjustments to its arrangements for marking the start and end of the school day which placed DLX, and other pupils with a similar disability, at a substantial disadvantage because the bell caused distress.
- (vii) Failed contrary to Section 85 (6) and Sections 20 and 21 of the 2010 Act to make reasonable adjustments to the general arrangements for supervision of Year 4 pupils at unstructured times or otherwise failed to provide an auxiliary aid in the form of a suitably trained adult which it is said placed

DLX at a substantial disadvantage because he was unable to engage in constructive social interaction with other pupils and experienced isolation.

6. The tribunal dealt with those issues in its written reasons, but arranged them mostly around factual rather than legal headings. I am going to follow the structure and headings used by the tribunal.

C. General points

7. Before I come to the specific grounds of appeal, I need to say something about the approach BJV and CWK have taken in their submissions.

8. They have referred to the language of the legislation and the caselaw on the Equality Act 2010. They have criticised the tribunal for failing to follow every step in the legislation. By that, I mean they have criticised the tribunal for failing to set out all those steps in its reasoning in its written reasons.

9. There is a difference between the mental process involved in making a decision and the written reasons that must be given by the tribunal. The law sets the standard for reasons: they must be adequate. That is not the same as being perfect. In practice, tribunals may take, and are entitled to take, a more practical approach in their written reasons. In particular, the tribunal will usually concentrate on explaining the points that were decisive in its reasoning. It will not spend as much time on, or may even leave unsaid, matters that are either not in dispute or self-evident. BJV and CKW have set a more demanding standard for the tribunal than the law requires. Just because a tribunal does not give detailed, or any, reasons on a particular issue does not mean that it did not consider it.

10. The parents have also criticised the tribunal for failing to engage with parts of the evidence. Tribunals are required to take account of the evidence as a whole. That means both the oral evidence given at the hearing and the documents put in evidence. That does not mean, though, that the tribunal has to refer to each piece of evidence in its written reasons or explain how it analysed it. It need only state the finding and explain why it was made. Again, the test is adequacy, not perfection.

D. The school bell

11. This involves discrimination (section 15) and reasonable adjustments (sections 20 and 21).

In the First-tier Tribunal

12. The school introduced the use of a bell to signal the start and the end of the day. The bell was located just outside DLX's classroom. He is sensitive to sound and was taken outside just before the bell was rung.

13. The bell was rung in order to ensure consistency across a large site. In practice, DLX was not in the classroom at the start of the day, because he was meeting his learning support assistant. At the end of the day, he was escorted into the playground a minute or so before the bell rang. The school had made a funding bid for a new system, but changes to the existing bell were not financially practicable. After the time of the claim, DLX was offered ear defenders, but his parents said he would not be able to manage them.

14. For section 15, the tribunal decided that the school was not treating DLX unfavourably, because he only lost a minute or so of his education once a day. Alternatively, it was a proportionate way of achieving a legitimate aim of marking the start and end of the day across a large site. There was no reasonable alternative.

15. For section 20, the tribunal decided that removing DLX from the classroom just before the bell rang was a reasonable adjustment to avoid his distress at the noise. There was no substantial disadvantage given the short time he was out of the classroom.

Proportionality

16. BJV and CKW have criticised the tribunal for not making a structured proportionality analysis. I do not accept that. Lord Reed set out the elements of a proportionality assessment in his judgment in the Supreme Court decision of *Bank Mellat v Her Majesty's Treasury (No 2)* [2014] AC 700 at [74]. The tribunal did not follow that structure in its written reasons. Its reasoning nonetheless complied with the elements of that structure, as this analysis shows.

(1) *whether the objective of the measure is sufficiently important to justify the limitation of a protected right*

17. It was important to coordinate activity across the site to ensure that school activities began and ended at the same time for everyone.

(2) *whether the measure is rationally connected to the objective*

18. Ringing the bell marked the beginning and end of the school day to all those present – pupils, teachers, assistants and other staff, and any parents – wherever they were on the site.

(3) *whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective*

19. The school had put in a bid for finance for a different system. In the meantime, changing the existing bell was not financially practicable. There was evidence that when the school suggested providing ear defenders for DLX, his parents had said he could not cope with them. There was no evidence at the hearing of a measure that would be as effective as, but less intrusive than, ringing the bell.

(4) *whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter*

20. This requires a balance. The advantage to the school in coordinating its school day set against a couple of minutes or so of lost teaching time for DLX. The tribunal was entitled to strike the balance as it did; indeed, it was right to do so.

21. This is a convenient point to mention the argument that the tribunal was wrong to find that DLX 'was getting used to the bell'. Those words were used in relation to a period after the claim and therefore, as the tribunal said, were 'not relevant to the claim'. At the time with which the tribunal was concerned, it found that he was experiencing 'distress at the sound of the bell.' And, as the school points out, its

evidence school was that DLX was not tolerating the noise better and found loud sounds very stressful, but rather he was managing his response better.

Reasonable adjustments

22. BJV and CKW have criticised the tribunal for not identifying any provision, criterion or practice. They argue that this was a material legal misdirection. I do not accept that. This refers to the first requirement (section 20(3)). Some cases will require an analysis. This is not one of them. The parents had complained about the use of the school bell. That was not a provision or a criterion. It was a practice and it was the only one for the tribunal to consider. The school's arrangement was identified by Judge Dow as issue (iv) and the parents had not objected. The tribunal was entitled to start at that point.

23. BJV and CKW have also criticised the tribunal for not conducting a structured enquiry into whether DLX experienced a substantial disadvantage (also part of the first requirement), which required an express analysis of what the disadvantage was. I do not accept that. As before, there will be cases in which that is required. This is not one of them. The disadvantage was the limited one identified by the tribunal – a brief loss of teaching time. As DLX was affected for only a couple of minutes or so a day, assuming he was in his classroom morning and afternoon, the tribunal was entitled to find that, with the benefit of the school's arrangements, DLX was not put at a substantial disadvantage.

E. The interview

24. This involves discrimination (section 15) and reasonable adjustments (sections 20 and 21).

In the First-tier Tribunal

25. DLX has Autism Spectrum Disorder. There were reports that he was being bullied by two pupils in his class. He was spoken to about this by an Assistant Head Teacher and the SENCO, both of whom were known to DLX. The interview took place in the SEN room. His parents complained that one of them should have been present along with another named person. As a result, DLX did not give a complete account of what happened and created the impression that he had acted improperly.

26. The tribunal found that the interview with DLX was carried out in the quiet and familiar environment of the SEN room by experienced staff who were known to DLX. They took account of his disability when questioning him. The purpose of the interview was to find out what had happened. The purpose was not to attribute any blame, and no sanction against DLX was ever contemplated. There was no reason for anyone else to be present and inviting them would have led to delay in tackling the bullying. In particular, DLX's parents were not invited, because this was not an investigation into what DLX had done. There was no evidence that he omitted anything relevant during the interview.

How the tribunal made its findings

27. BJV and CKW have criticised the tribunal for not making its findings based on the notes of the interview. This does not undermine the tribunal's findings. It was entitled to rely on the evidence it did. It will have considered all the evidence before it and its assessment of the evidence it relied on will have been reached in the context of the

evidence as a whole. It relied on evidence that was relevant to the time of the interview itself and did not have to explain why it did not rely on any later evidence.

Reasonable adjustment

28. The conduct of the interview, including those invited to attend, could only come within the first requirement (section 20(3)). At best, the way the interview was conducted was a practice. That is the only possible analysis of the nature of the parents' complaint. The tribunal was entitled to find that DLX was not put at a substantial disadvantage, given the reasonable adjustments made, meaning: the people involved, the place where it took place, and the way he was questioned.

F. Victimisation

29. This involves victimisation (section 27).

In the First-tier Tribunal

30. DLX's parents argued that the school prevented him playing with his friend Child G. They allege that the school did so as a response to their complaint about the handling of the bullying allegation (paragraph 44 of the written reasons).

31. The tribunal found that there was no victimisation, but rather confusion or misunderstanding over what steps were to be taken to protect DLX from the bullies. Protecting DLX was complicated by the fact that G was also friends with the pupils who had bullied him. The tribunal accepted the school's evidence that the children could play together if they wanted to. Not only did it come to that conclusion, it went so far as to described the allegation as 'entirely without merit.'

What BJV and CKW say

32. This is what DLX's parents said in their reply to this appeal:

- a. The Respondent simply repeats the FtT's conclusion that there was 'no victimisation'. Nowhere do they identify the protected act or any resulting detriment. Under the Equality Act, complaining about disability discrimination or doing any other thing for the purposes of or in connection with this Act is a protected act.
- b. The Respondent does not say what, if any, adverse treatment occurred after the complaint, or whether that treatment was linked to the complaint. They make no effort to disprove any causal link between the protected act and any subsequent treatment of DLX.
- c. The tribunal found no victimisation without a detailed reasoning while also misidentifying the alleged perpetrator.
- d. These material errors and gap in reasoning suggests the FtT did not properly apply the victimisation test. The Respondent does nothing to correct that oversight and their failure to engage on this is a critical omission.

33. It is right that the tribunal did not identify the protected act, but it is clear what it was. The tribunal identified the basis of the parents' complaint in paragraph 44 of its written reasons. Their complaint was the protected act.

34. The important factor in the tribunal's reasoning was that there had been no causation and that conclusion followed from its assessment of the evidence. Even if

the tribunal did misidentify the alleged perpetrator, it said expressly that its reasoning applied to all the staff of the school. So, to summarise, the decisive factor in the tribunal's reasoning was its finding that the school did not subject DLX to a detriment because of his parents' complaint. Its reasons may not be comprehensive, but they were adequate to explain why it decided on that ground that there was no victimisation.

35. The parent's case was based on an inference from the coincidence of their complaint and what they believed the school had done in response. The tribunal investigated by questioning the witnesses for the school. It believed what the witnesses said. That evidence justified the tribunal's conclusion.

36. It is possible to show that a tribunal has gone wrong in law by making its findings of fact. It is, though, difficult when, as here, there is no direct evidence to counter what school said. Moreover, the tribunal was able to question witnesses and judge their response, with the benefit of the knowledge and experience of the specialist members.

37. In short, the school acted on the complaint by trying to protect DLX; it did not react to the complaint by punishing him.

G. Child G

38. This is related to the previous issue, but involves discrimination (section 15) rather than victimisation.

39. My analysis is the same. The tribunal heard evidence and accepted what it heard. On that evidence, it was entitled to find that the school did not treat DLX unfavourably by preventing him playing with G if they both wanted to.

H. Auxiliary aids

40. This involves reasonable adjustments (sections 20 and 21).

In the First-tier Tribunal

41. This refers to the provision of a suitably trained adult to help DLX engage in constructive social interaction with other pupils, and to avoid isolation, during breaks. The parents attributed the bullying that occurred to the lack of such support.

42. The tribunal framed the issue as the need: (a) to respond to DLX's needs and vulnerability; and (b) to balance independence and support. It noted that the school did not have the level of funding to provide one-to-one support or the level of provision during breaks set out in his Education, Health and Care Plan. It was, though, necessary to support DLX despite the lack of funding. DLX's plan did not require close supervision and the provision

Reasonable adjustments

43. The complaint was about the failure to provide an auxiliary aid, which best fits the third requirement in section 20(5). The tribunal did not say that in terms, but the language it used in its heading shows that it identified the correct requirement.

44. DLX's parents have argued that the tribunal misdirected itself by focusing on the balance between support and independence. I do not accept that. The parents are right that that is not the language of the legal test. It is, though, one of the practical themes that the tribunal considered when it applied the statutory test. Another theme was responding to how DLX's needs and vulnerabilities manifested themselves from

time to time. These were factors relevant to whether the school has made *reasonable* adjustments. I emphasise *reasonable*, because that is what the law requires. To be precise, it required the school to take such steps as it is reasonable to have to take to provide the auxiliary aid.

45. It is not reasonable to provide support when someone does not need it and it is reasonable to focus it at the times when they do. Independence is not so clear cut. There may be a judgment to be made whether to provide support or to allow DLX to develop greater independence. Hence the tribunal's choice of *balance*. Far from misdirecting itself, the tribunal was recognising the nature of the factors that had to be taken into account in applying the law. It was showing that it understood the substance of what the law required, not just the words. That is why it did not base its reasoning around the number of hours or the nature of the auxiliary aid in general terms.

I. Procedure

46. The tribunal dealt with the appeal in a day with written submissions to follow. I see no reason to complain about that. This case involves a small number of factual issues that should have been manageable in the time allowed. That, no doubt, is why it was listed for one day. No time allowance can be perfect and the use of written submissions to follow is a standard technique that the tribunal would have had in mind as the hearing progressed. In the event, this allowed the tribunal to deal with the evidence without adjourning the case part heard on the evidence. Moreover, having now the tribunal's decision, I am able to judge that the tribunal was able to deal properly with the case, albeit not to the satisfaction of BJV and CKW.

**Authorised for issue
on 09 July 2026**

**Edward Jacobs
Upper Tribunal Judge**