



@DoughtyStreet

www.doughtystreet.co.uk

Past & Present: Education Law Webinar

25th June 2025



Speakers:

- Simon Bennett, Doughty Street Chambers
- Louise Price, Doughty Street Chambers
- Sarah Woosey, Education Law Experts





@DoughtyStreet

www.doughtystreet.co.uk

Education and the Equality Act 2010 – past successes...?



Simon Bennett
Doughty Street Chambers



To what extent can recent progress towards empowering children in education law be attributed to the EqA?

What was the EqA's purpose?

Per the Explanatory Notes to the EqA, it had two main purposes:



'To harmonise discrimination law'



'To strengthen the law to support progress on equality'

Previous legislative landscape

- Equal Pay Act 1970
- Sex Discrimination Act 1975
- Race Relations Act 1976
- Disability Discrimination Act 1995
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- Employment Equality (Age) Regulations 2006
- Equality Act 2006, Part 2
- Equality Act (Sexual Orientation) Regulations 2007

What protections were already in place?

Existing legislation already prohibited:

- Direct discrimination
- Indirect discrimination
- Failure to make reasonable adjustments
- Harassment
- Victimisation

There were significant gaps (e.g., protections missing for specific protected characteristics).

However, the central pillars of modern discrimination law were already in place.

What was new to the EqA?

Gaps plugged, e.g.:

- Indirect disability discrimination

Existing protections strengthened, e.g.:

- Associative and perceptive discrimination
- Harassment '*related to*' PC rather than direct causative link

Public sector equality duty

Discrimination arising from disability ('DAFD')

Assessing the impact that the EqA has had

There are therefore two distinct questions:

- To what extent has discrimination law empowered children in the last 15-20 years? and
- To what extent have new protections in the EqA had that effect?

Some important areas in which discrimination law been used to empower children in recent years are:

- Admissions
- Uniform/hairstyles, and
- Enhanced protections for disabled children

Much of this owes nothing to the new protections in the EqA.

Empowering children - admissions

R (on the application of E) (Respondent) v The Governing Body of JFS and the Admissions Appeal Panel of JFS and others (Appellants) [2009] UKSC 15 ('JFS')



JFS

- C, Jewish by birth, wished to send his son to an oversubscribed voluntary aided Jewish school ('the School').
- The School's oversubscription policy was to give priority to children recognised as Jewish by the Office of the Chief Rabbi ('the OCR').
- The OCR recognised as Jewish any child descended from:
 - i. A mother who is Jewish by matrilineal descent; or
 - ii. A mother who converted to Judaism before the child's birth in a manner recognised by the OCR.
- The School refused C's son a place because his mother (Italian by nationality and ethnic origin) converted to Judaism in a manner not recognised by the OCR.
- C sought JR, claiming that the School's refusal to admit him was either direct or indirect race discrimination contrary to ss.1(1)(a) or 1(1A) Race Relations Act 1976.

JFS

- The High Court at first instance held that the School's grounds for refusing admission was religious rather than racial and so within the lawful exception for religious schools under s.50 Equality Act 2006.
- The Court of Appeal allowed C's appeal, holding that it was either direct or, alternatively, indirect race discrimination. The School appealed to the Supreme Court.
- The Supreme Court dismissed the School's appeal, holding by a majority that the School's oversubscription policy was directly discriminatory on grounds of race.
- The School's argument that the matrilineal test derived from Jewish religious law was invalid; the absence of a motive to discriminate was irrelevant.
- The test was based on descent, which traced racial or ethnic origin. Indeed, the School was notably indifferent to the child's own religious beliefs and practices.

JFS

- The case showed the courts' willingness to use discrimination law protections to ensure that children are not unjustly denied admission to the school of their (or more commonly their parents') choosing, even where this requires grappling with issues with which they might naturally feel some discomfort (in this case, Jewish religious law).
- See also *OV (A Child)'s Application for Judicial Review, Re* [2021] NIQB 78, a Northern Irish case. A criterion which favoured applicants whose fathers had attended the school was held to amount to indirect race discrimination.
- However, these cases do not owe anything to the EqA.

Empowering children – uniform/hair cases



School uniforms and indirect discrimination

- In *R (Watkins-Singh) v Aberdare Girls' High School Governors* [2008] EWHC 1865 (Admin), a claim that a uniform policy which prohibited C, a Sikh, from wearing a Kara bangle, was indirectly discriminatory on grounds of religion and race succeeded.
- The Court held that where a pupil was forbidden from wearing an item that was a matter of exceptional importance to their racial identity or religious belief and wearing that item could be shown objectively to be of exceptional importance to their religion or race, there would be particular disadvantage.
- There was no need to show that the item was a strict requirement of their religion; that would set the bar too high.

Hairstyles and indirect race discrimination

- In *G v Head Teacher and Governors of St Gregory's Catholic Science College* [2011] EWHC 1452 (Admin), a child of Afro-Caribbean ethnicity was refused a place at a school because he was unwilling to comply with a uniform policy which did not permit cornrows. A claim that the policy was indirectly discriminatory on grounds of race succeeded.
- The Court in *Watkins-Singh* had put the threshold too high; there was no need to show exceptional importance to prove particular disadvantage.
- Cases widely reported in the media in recent years:
 - Chikayzea Flanders – told to cut off dreadlocks or be suspended – settled.
 - Ruby Williams – '*afro style hair must be of reasonable size and length*' – settled.
 - Siham Hamud – sent home for wearing an overly long skirt – school apologised.
- 2022 EHRC guidance – Preventing hair discrimination in schools.

Intersection with Article 9

- In *R (SB) v Governors of Denbigh High School* [2006] UKHL 15 (*'Begum'*), the House of Lords found that a policy that forbade a Muslim pupil from wearing a jilbab did not interfere with her Article 9(1) or A1P2 rights because there was no evidence that she could not simply attend a different school. But Lord Nicholls and Baroness Hale partly dissented, disputing the analogy drawn to workplace cases.
- Following *Eweida v United Kingdom* [2013] ECHR 57, it seemed reasonable to suggest that courts faced with analogous issues would likely be more inclined to find interference with Article 9(1).
- However, *(TTT) v Michaela Community Schools Trust* [2024] EWHC 843 (Admin) appears to cast this into doubt.
- In any event, this is another area in which progress made towards empowering children owes no debt to new protections in the EqA.

Empowering children – disability protections

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.

Discrimination arising from disability

- The Disability Discrimination Act 1995 previously provided protection from disability-related discrimination (s.24(1)).
- However, in *London Borough of Lewisham v Malcolm* [2008] UKHL 43, the House of Lords held that disability-related discrimination required a comparison with a non-disabled person in similar circumstances. This made claims under this heading much harder to prove.
- s.15 EqA 2010 sought to rectify this wrong turn. The Explanatory Notes specifically referred to *Malcolm* as having gone away from the level of protection that Parliament intended.

Discrimination arising from disability

- In removing the need for any comparator (requiring '*unfavourable*' rather than '*less favourable*' treatment), s.15 has increased the level of protection afforded to disabled children significantly.
- Although DAFD is of broad application, it has been particularly helpful in protecting neurodivergent pupils from sanction for behaviour that arises from their disability.
- It is therefore an especially useful tool in resisting school exclusions, not only where a child has a diagnosed condition, but where there is evidence that can be used to argue that the school had constructive knowledge when taking the impugned decision.
- Highlighting passages of the SEND Code of Practice 2015 that deal with the types of behaviour that should lead to an assessment to determine if there are undiagnosed learning difficulties can combine well with constructive knowledge/DAFD arguments before Independent Review Panels, particularly if the SEN expert is supportive.

Discrimination arising from disability

- Reg. 4 Equality Act 2010 (Disability) Regulations 2010 provides that, inter alia, a tendency to physically or sexually abuse others is not to be treated as amounting to a disability.
- But see *C & C v Governing Body* [2018] UKUT 269 (AAC), in which the Upper Tribunal held that this breached children's rights under A2P1 and Article 14 and so reg. 4 should be read down such that this is disapplied to children in an education context.
- DAFD is also a powerful protection in various other contexts (see, e.g., *F-T Hampton Dene Primary School Governors* [2016] UKUT 468 (AAC) – failure to provide full-time education).
- DAFD is therefore an extremely useful tool and undoubtedly the primary way in which the EqA has empowered children in education in the past 15 years.

Summarising the EqA's impact thus far

The EqA primarily consolidated existing discrimination legislation, only strengthening protections in limited/specific ways.

As such, most of the main ways in which discrimination law has been used to empower children in recent years owe nothing to the new protections in the EqA.

DAFD has significantly improved protections for disabled children, not least in protecting neurodivergent children from sanction/exclusion for behaviour arising from their disability.

But query whether the EqA has gone far enough in empowering children?



@DoughtyStreet

www.doughtystreet.co.uk

Education and the Equality Act 2010 the present day



Louise Price
Doughty Street Chambers



HOW CAN IT BE USED TODAY IN EDUCATION LAW?- WHAT PROTECTION DOES IT AFFORD?

- Challenging rules concerning the delivery of education and promoting inclusivity.
- **(TTT) v Michaela Community Schools Trust, [2024] EWHC 843 (Admin).**
- Claim for judicial review.



TTT V MICHAELA COMMUNITY SCHOOLS TRUST

- The principal challenge in this claim was to the decision of the governing body of the School to prohibit its pupils from performing prayer rituals on its premises (“the prayer ritual policy”, or “PRP”).
- That decision was taken on 23 May 2023, after the Headteacher had introduced the PRP as an interim measure on 27 March 2023.
- Whilst the PRP applies to all prayer rituals, regardless of religion, there was no evidence that pupils at the School of any religion other than Islam wish to perform prayer rituals during the school day.



TTT V MICHAELA COMMUNITY SCHOOLS TRUST

Claim: (i) Article 9 of the European Convention on Human Rights (“ECHR”)

(ii) that it indirectly discriminates against Muslim pupils, in breach of the Equality Act 2010 sections 85(2)(d) and/or (f) of the Equality Act 2010 (“the 2010 Act”), read with section 19.

(iii) that the school had failed to have “due regard” to the need to eliminate discrimination, advance equality of opportunity and to foster good relations between Muslims and non-Muslims, contrary to the public sector equality duty (“PSED”) under section 149 of the 2010 Act.



JUSTIFIED DISADVANTAGE

- Prayer ritual ban was a provision, criterion or practice that put Muslim pupils, including the claimant, at a disadvantage compared to non-Muslim pupils.
- However, held to be justified.
- Legit aims relied upon were:
 - (i) preserving the ethos, policies and practices of the school
 - (ii) promoting pupils' compliance with the school's behaviour policy
 - (iii) protecting the school from threats and abuse
 - (iv) avoiding the logistical disruption and detriments to other school activities which would be caused by accommodating prayer rituals within the school building and
 - (v) avoiding detriment to pupils' education and to social cohesion within the school which would occur if they were permitted to opt out of the important period of socialising during the lunch break.
- The Judge agreed, stating "*The disadvantage to Muslim pupils at the school caused by the [prayer ritual ban] is in my view outweighed by the aims which it seeks to promote in the interests of the school community as a whole, including Muslim pupils.*"



PUBLIC SECTOR EQUALITY DUTY

- Section 149 not breached.
- The court held, the School had had due regard to the required equality issues in relation to the PRP and therefore had complied with the PSED.
- Even if it had considered these issues more thoroughly, as the Claimant argued it should have, it would have come to the same conclusion.



WHAT DOES THE EQA PROVIDE US WITH?

- Breadth of EqA – both private and public law. This was a JR claim.
- Interaction with HRA 1998.
- How it can be used to challenge structural issues, not just individual concerns. Indirect discrimination and PSED will likely be examining structural impact as they were in this case.
- Equally a provides ‘shields’ to such challenges.
- Careful balancing act it requires to be performed between rights of one group and those of another.



EQA IN ADDITION TO SEN DUTIES

- Also provides us with a duty that is separate from SEN.
- **A Multi Academy Trust v RR [2024]** the RA duty applies to special schools as it does to mainstream schools.
- As no non-disabled pupils at such schools with whom an actual comparison can be made for the purpose of establishing substantial disadvantage, comparison in such cases must be with hypothetical non-disabled pupils.
- **SS v Proprietor of an Independent School [2024]** No exception from the responsible body's duty to make reasonable adjustments for a pupil with an EHCP.
- The duty to make reasonable adjustments applies to all schools. The framework of provision under the CFA 2014 is relevant to considering what is reasonable by way of adjustments under the EA 2010, but it is merely one factor to consider, it carries no special weight.
- **KTS v Governing Body of a Community Primary School [2024]** Clarity of issues in a RA claim must be achieved through active case management. Including a clear understanding of the PCP, the nature and extent of the specific disadvantage suffered (or claimed to be suffered), and the specific reasonable adjustments sought needed to be identified, together with the date (or dates) when it was said that those adjustments should have been made.



SPECIFIC GUIDANCE- SS

- The relevant circumstances to take into account will include the cost of the adjustments, how effective they will be, the independent school's resources, the reasons why the child is at the school and the nature and availability of support from a local authority through an EHCP.
- The Tribunal is likely to find it helpful to consider the Equality and Human Rights Commission Guidance on Reasonable Adjustments for Disabled Pupils (2019) which identifies other factors that may be relevant in the particular case [77].
- In considering costs and resources arguments, it is for the Tribunal to assess objectively what is reasonable: see *G4S (Cash Solutions) UK Ltd v Carroll* [2016] IRLR 820 at [43]-[61] in deciding whether it is reasonable to make the particular adjustment, the Tribunal will need to give careful consideration to the school's evidence about its budget and how it has decided to allocate its resources, but the question of what is reasonable in the particular case is for the Tribunal to determine: see *Griffiths*, at [73].



GAPS AND CASE LAW

- Understanding of EqA evolves through case law.
- There have been clear gaps in the protection it affords, challenged through the courts.
- Regulation 4(1)(c) of the Equality Act 2010 (Disability) Regulations 2010 provides a tendency to physically or sexually abuse others is to be treated as not amounting to an impairment.
- However, **C & C v Governing Body** [2018], found to breach the child's convention rights under A2P1 and article 14, read down in accordance with art 3 and disapplied to the extent it applies to children in education.
- Lack of damages for disability discrimination in the FtT, challenged on the basis of being discriminatory under article 14, found to be lawful, **R (AA and CC) v Secretary of State for Education** [2022] EWHC 1613 (Admin).

GAPS LEFT BY THE PROTECTION AFFORDED BY THE EQA?

- What are the current issues being considered in respect of gaps in its protection?
 - Intersectionality/dual discrimination. Govt currently consulting.
 - Trans-rights issues. EHRC currently consulting on its guidance on this and impact of recent **Women for Scotland v The Scottish Ministers** case. Some analysts will say that case exposed a gap in the legislation that isn't there. Some argue that it was there all along.
- The debate around these issues, demonstrates the continued relevance of the EqA.
- It is a mechanism for protecting the rights of minority groups and those who suffer systemic disadvantage, but also as a way of balancing conflicting rights in society.
- Clear that it assists in facilitating debate around and resolution of some of the most challenging issues facing society about how we all want to be treated.

EqA and education law



What does this look like for families?

The practicalities of enforcing
rights



2010-2018

Equality and Human Rights Commission reported to Parliament in 2018 which included observations:

As enforcement of equality rights is based on civil litigation, its efficacy depends largely on the accessibility of the justice system. Accessibility is undermined by:

The complexity and expense of litigation and inadequate remedies;

Cuts and changes to legal aid in LASPO;

Lack of reasonable adjustments in the court system;

Lack of information-sharing and data collection.

A number of recommendations for improvement were suggested.



Progress/Current Position?

There remains different routes of enforcement alongside different legal procedures.

Availability of remedies remains inconsistent across different types of discrimination claim.

Limitations on legal aid remain but note that *R(CWJ) v Director of Legal Aid Casework (2025)* means that advice/representation can be made available for IRPs in exclusion cases

Lack of reliable reporting/stats remains



Complex routes of enforcement

Race, Religion, Sex, Age, discrimination claims are County Court claims if 'standalone.' No legal aid.

Key cases demonstrating enforcement/attempts:

- Religion TTT V Michaela Community Schools Trust 2024
- Race G v The Head Teacher & Governors of St Gregory's Catholic Science College [2011]
- Disability C & C v Governing Body (2018)
- SS v Proprietor of an Independent School 2024 KTS v Governing Body of a Primary School 2024



SEND Tribunal

Disability C & C v Governing Body (2018)

- Under Regulation 4(1)(c) of the Equality Act 2010 (Disability) Regulations 2010 (the Regulations), a tendency to physically or sexually abuse others is to be treated as not amounting to an impairment coming under the definition of disability with the Equality Act. Case established that the Regulations were unlawful when applied to children. Schools can still justify exclusion on the basis of aggressive/violent behaviour in circumstances where the exclusion was a proportionate means of achieving a legitimate aim.
- SS v Proprietor of an Independent School: [2024]/KTS –Established the ‘Stout principles’
 - Duty to make reasonable adjustments applies to all pupils and all schools
 - Thorough assessment of reasonableness required



Judicial Review

G v The Head Teacher & Governors of St Gregory's Catholic Science College [2011]

- The claimant succeeded in establishing indirect race discrimination on the basis that the ban on cornrows would affect boys of African-Caribbean origin more than other groups.

TTT V Michaela Community Schools Trust 2024

- This claim was unsuccessful but the judgment was complex and confirmed that schools cannot freely restrict pupils' rights to manifest religious belief. However, they can impose policies and rules which restrict the right to manifest a religious belief and/or put those with protected characteristics at a disadvantage where these can be shown to be a proportionate means of achieving a legitimate aim.



Limits around costs and damages

The First-tier Tribunal (Special Educational Needs and Disability) has jurisdiction to consider whether a child has been discriminated against due to disability in the context of school admissions, exclusions, and the provision of education and associated services.

The Tribunal cannot award financial compensation or damages for discrimination. Schedule 17, paragraph 9(2) of the Equality Act 2010, states that the Tribunal may make “any such order as it thinks fit,” **except** an award of damages.

Limits on cost jurisdiction also impacts on risks of defending/pursuing cases: Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008. Under Rule 10(1)(b), the Tribunal may make a costs order only: “if a person has acted unreasonably in bringing, defending or conducting the proceedings.”

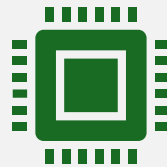


Remedies



*Ashdown House
School v JKL &
MNP HS/1322/2019*

Legally binding orders
for reinstatement can
be made
Apologies with a view to
avoiding future
discrimination



*R (AA and CC) v
Secretary of State for
Education [2022]
EWHC 1613 (Admin).*

The Court found that
the prohibition in the
Equality Act 2010 on the
First-tier Tribunal
awarding damages in
disability discrimination
claims against schools
did not breach Article
14 of the ECHR.



Legal Aid

Means and merits tested

LASPO 2012-reduced scope of legal aid and initially required (2012-2020) all initial advice to be accessed through the Telephone Gateway (CLA). There is no legal aid for civil discrimination claims.

Judicial Review-can be available in the name of the child

SEND Tribunal-often based on means of parents and excludes advocacy unless funded otherwise granted as 'exceptional'

R(CWJ) v Director of Legal Aid Casework (2025)-Article 6 could be engaged in relation to an IRP hearing



Data

- No data on civil claims
- Judicial Review-no official data kept on how many claims involve alleged breaches of the Equality Act
- SEND Discrimination claims
 - 2021-2022 (190)
 - 2023-2024 (360)

