

Equality Act scenarios

We have created some scenarios to show how the Equality Act might be relevant in a range of different circumstances.

Although the Equality Act only applies in England, Scotland and Wales, these scenarios may still be helpful to parents in Northern Ireland as there are some similarities between the Equality Act and Northern Ireland's Disability Discrimination Act 2005.

Scenario 1: Refused a place in a private crèche

Parents want their three year old deaf daughter to attend a private crèche. She has significant developmental delay and needs to wear nappies. The crèche refuses a place because they say that all children who go there must be toilet trained.

Has the child been put at a substantial disadvantage?	Yes.
What is the disadvantage?	Not being allowed to attend the nursery.
Does the less favourable treatment arise from her disability?	Yes. The reason she still wears nappies is because of her significant developmental delay.
Can the crèche justify the behaviour?	It may argue that it does not have the staff required to change nappies.
Could the crèche have made reasonable adjustments?	Probably, by employing another member of staff to cover the extra work involved, depending on whether the cost would be reasonable in the circumstances.

The parents could challenge the crèche's decision in the county court (or Sheriff Court in Scotland), arguing that the crèche has discriminated against their daughter for reasons **arising from her disability**. It would be up to the court to decide if discrimination has taken place.

The decision not to admit the child would not be unlawful discrimination if the crèche could demonstrate that it didn't know that she was disabled.

If the court decides their daughter has been discriminated against then the crèche could be asked to pay compensation to the family, allow the child to attend the crèche and order extra training for staff.

Scenario 2: Not allowed to go on a school trip

A deaf child isn't included on a trip because the school say his deafness means that he doesn't follow instructions and this wouldn't be safe.

Has the child been put at a substantial disadvantage/treated unfavourably?	Yes, because he is going to miss out on a trip.
Is the substantial disadvantage related to the child's deafness?	Yes.
Can the school justify the behaviour?	Possibly, as they say it's a safety issue.
Could the school have made reasonable adjustments to include him?	Yes, for example, (depending on age and level of deafness and cognitive ability) by: <ul style="list-style-type: none"> • making sure that he had a named adult with responsibility for him at all times • pairing him with a hearing child who could help him with instructions • talking through the trip in advance to prepare for any potential difficulties.

In this case, there may have been discrimination arising from a disability. The school isn't saying that he can't go on the trip because he's deaf, but because he won't hear the instructions. As this is a question of **discrimination arising from disability**, you need to consider whether the school can justify its behaviour, as well as whether reasonable adjustments could have been made.

If it had been **direct discrimination** (e.g. if they had said that deaf children aren't allowed on trips), then the school could not use the justification defence.

It would be up to a Tribunal to decide if the school has discriminated against the child. If the Tribunal decides it has, it can't ask the school to pay compensation. However, it can ask the school to do other things like let the child go on the trip or ask the school to undertake deaf awareness training.

Scenario 3: Exclusion for drug-taking

A deaf teenager is excluded from secondary school for taking drugs on school premises.

Has the child been put at a substantial disadvantage?	Yes.
What is the substantial disadvantage/unfavourable	Exclusion/missing out on education.
Is the disadvantage/unfavourable treatment related to her deafness?	No.

No need to ask about reasonable adjustments here, because the problem didn't arise from the child's deafness.

In this case, there hasn't been any discrimination, because the exclusion was nothing to do with deafness.

The overall question here is would a child have been excluded in the same circumstances who was not deaf. If, as in this situation, the answer is yes, then there will be no discrimination.

Scenario 4: Detention for not doing homework

A deaf child is given detention for not doing his homework. However, the reason he didn't do the homework was because the teacher was wandering around the room as she talked to the class, just as the bell went. This meant that the child was unable to understand the task properly and didn't have time to ask questions because of the need to get to the next lesson on time.

Is the child at a substantial disadvantage or being treated	Yes.
What is the substantial disadvantage?	Detention.
Was the disadvantage related to deafness?	Yes, because the failure to do homework is connected to the child's deafness.
Can the school's behaviour be justified?	Probably not.
Could the school have made reasonable adjustments to prevent this problem?	Yes, the teacher should have ensured that the child understood what the task was by standing still as she spoke, and giving out the homework in plenty of time with a written explanation so that the deaf child wasn't compromised by an inability to listen to someone moving around and write at the same time.

In this case, it could be argued that two types of discrimination have occurred. Firstly, the school has discriminated against the child for **reasons relating to his disability** and this behaviour can't be justified by the school. Secondly, the school has failed to make **reasonable adjustments**.

Scenario 5: Permanent exclusion

A deaf child with additional needs, including autism, has been excluded for throwing a computer across the classroom, narrowly missing another child.

This happened in spite of the school having an excellent behaviour management plan in place for the child, incorporating strategies suggested by an educational psychologist, and a record of dealing successfully with outbursts of difficult behaviour.

The school had made every effort to keep him calm and were alert to possible triggers for such an outburst.

Has the deaf child been put at a substantial disadvantage?	Yes.
What is the substantial disadvantage?	Exclusion.
Was the disadvantage related to his disability?	Yes (his autism).
Can the school’s behaviour be justified?	Yes, to keep the staff and other children at the school safe.
Could/had the school made reasonable adjustments to prevent the incident?	Yes, the school had an excellent behaviour management plan in place for the child, including clear guidelines to all staff about what could trigger a violent outburst, how to calm the child down if he became agitated and how to respond if an incident occurred. The members of staff involved were all used to working with the child and had followed the guidelines completely.

In this case, there was no discrimination because, although the substantial disadvantage was related to the child’s disability, the school had done everything it possibly could to avoid the situation.

However, if the incident had taken place in a different school, where no behaviour management plan was in place, the exclusion could have been considered as discrimination. This is because under these circumstances there was **discrimination arising from a disability** and a failure to make **reasonable adjustments**.

There will, of course, always be a need to take health and safety considerations into account and therefore the issue might not be clear-cut, given the fact that the behaviour was dangerous.

Scenario 6: Lunchtime exclusion

A six-year old deaf girl with additional needs, including autism, attends a mainstream primary school. The school frequently calls her parents to come to the school to collect her because of her behaviour.

The school eventually asks the child’s parents to take her out of school every lunchtime because she is too challenging for the lunchtime staff, with the clear implication that they will otherwise have to exclude her permanently. These out-of-school periods are not recorded as formal exclusions.

The school has not made any special arrangements for the child over and above those already in place for other children at lunchtimes.

Has the child been treated less favourably?	Yes.
What was the less favourable treatment?	Forcing her parents to take her out of school during the school day.
Was the less favourable treatment related to her disability?	Yes – her challenging behaviour arises from her autism.
Can the school’s behaviour be justified?	The school may try to argue that it was done to keep the staff and other children at the school safe.
Had the school made reasonable adjustments to avoid the less favourable treatment?	No.

In this case, not only has the school discriminated against the child for a reason **related to her disability**, it has acted unlawfully by not formally excluding her, which means that parents have no chance to appeal against the exclusions in the normal way.

A lunchtime exclusion should be recorded as a half day and there are limits to how many exclusions a school can give. What the school has done is known as an unlawful exclusion. For more information about exclusion legislation, visit:

- www.gov.uk/government/publications/school-exclusion (England)
- <http://gov.wales/topics/educationandskills/schoolshome/pupilsupport/exclusion/?lang=en> (Wales)
- www.scotland.gov.uk/Publications/2011/03/17095258/0 (Scotland).

Scenario 7: A deaf student is struggling to keep up with his degree course

A deaf student decides to leave university part-way through his degree, because he is finding it too stressful to keep up with the work. He is an extremely able student, but he has struggled with note-taking and keeping up in lectures and with following video material without subtitles. He has spoken to university staff about the problem, but no additional support has been provided.

Has he been placed at a substantial disadvantage?	Yes.
What is the substantial disadvantage?	He was unable to keep up with the work and felt obliged to leave before finishing his degree.
Is the disadvantage related to his deafness?	Yes. He lip-reads because he is deaf, but can't lip-read and make notes at the same time.
Could the university have made reasonable adjustments to prevent this disadvantage from occurring?	Yes. They were aware of his deafness and could have provided support to help him access the degree course at a level appropriate to his ability. For example, video material should have been captioned or a transcript given, and a palantypist or note-taker could have been provided.

In this case there has been a failure to make **reasonable adjustments** to prevent him from being at a substantial disadvantage because of his disability.

If he hadn't informed the university of his deafness, they couldn't have been expected to make reasonable adjustments for something of which they were unaware and so there would have been no unlawful discrimination.

Funding is also available through [Disabled Students Allowances](#) for support which cannot be met as reasonable adjustments.