



Question 7: Do you consider the current remedies available to the SEND Tribunal for disabled children who have been discriminated against by schools effective in putting children and young people’s education back on track? Please give a reason for your answer with examples, if possible.

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SNJ’s response to Question 7

1. As you will know, this question is the subject of a Letter Before Action ahead of a potential Judicial Review as the DfE did not explain the issue correctly, thus not enabling parents properly to answer the question.
2. The First-tier (SEND) Tribunal doesn't have the power to award financial damages as a remedy to successful claimants, therefore it clearly does not have the correct powers. It may ‘*make such order as it thinks fit*’ such as to remove or reduce the adverse effect of the action that led to the discrimination claim. However, when a child has suffered discrimination because of who they are, a reinstatement and an apology cannot make up for that.
3. For example, regarding the [2019 landmark case](#) where a child with ADHD won a discrimination case after being excluded because of actions related to his disability and the school was ordered to reinstate him. The child still ended up in a different school, so even though the judgement went in their favour, ultimately, the school still got what it

wanted – to be rid of the child. A vulnerable (and adopted) child was still emotionally scarred by the rejection. An apology may be satisfying to an adult, but to a child, it's just words. A financial payment would have penalised the school and given them something positive to take away from it. This money could have been used for further therapy, or even a special treat or holiday so that a happier memory could have been made. This puts the child back at the centre.

4. Further remedies could include ordering the school to publish the judgement on their website in a prominent position, or to have it recorded in their prospectus. Something, at least, that serves as a deterrent to it and other schools.

Responses from parents/SNJ readers

NB: These views are those of parents for whom we have acted as a conduit for their response to the Green Paper. The views expressed from here are not necessarily those held by Special Needs Jungle.



1. In my experience, SEND tribunals can come up with a mandatory list of obligations involving interventions and levels of support that the school is often unable or unwilling to meet. The follow-through is therefore only partially effective. If those obligations are necessary for the young person then it is equally important that correlating funding and expertise should be made available for their proper and effective implementation. If they are considered to be unnecessary, then it would be essential to reconsider the quality of the jurisdiction. If the government expects the law to work effectively it will have to support its mandates rather than be seen to be undermining them. The lack of effective provision is not only the fault of the school, LA or MAT leaders but those who set the expectations in law, the oversight of those laws to ensure leaders are fully accountable, as well as by way of realistic funding and purposeful training.



1. Unqualified SENCOs have no place in schools. It should not be possible for anyone to become a SENCO unless they are fully qualified, and can show that they are participating in annual CPD - much in the same way that GPs must do to retain their registration and insurance.
2. I spend a lot of time each week supporting and advising SENCOs and I am continually shocked by some of the ignorance and attitudes I come across towards children with SEND, especially those communicating their distress via behaviour, and that's even from those who have been qualified for some time and have, on paper, solid experience.
3. SENCO training is imperative, and perhaps a new route through teacher training is required? I would also suggest an overhaul of teacher training so that ALL teachers start out as SEND teachers and then work back towards mainstream later on in their degrees/training pathways. Having a solid understanding of neuroscience, child development and SEND improves pedagogy and teaching quality for ALL children - everyone wins here. Current teacher training sets staff up to fail our children: if you want more children with SEND to have their needs met in mainstream, you are going to need to invest in vast amounts of training for their teachers. Where is this in the Green Paper? NOWHERE!



1. No, I don't because the SEND Tribunal should have the power to award financial compensation. It seems bizarre to me that a finding of unlawful discrimination in an FTT should have a different financial remedy than that available for the same finding in court. Financial compensation would act as an additional incentive for schools/LAs to comply with the law and/or avoid tribunal for cases of dubious merit. One must also keep in mind again the imbalance of power between the less informed parent of limited means and the better-experienced school/LA of considerable means when it comes to Tribunal cases. A financial penalty for discrimination would assist in addressing this imbalance of means.



1. If families are currently having to pay out for High Court fees, then the FTT should be able to award compensation. We have many instances within the county where schools have tried to exclude children unlawfully and it seems with no redress. This means that 'good' schools become oversubscribed. Ofsted inspections should give higher weighting to this sort of evidence and schools should face appropriate consequences for behaving in this way.