

# **EARLY YEARS AND DIABETES ADVOCACY PACK**

## **YOUR RIGHTS IN EARLY YEARS SETTINGS**

Unfortunately, people with diabetes sometimes face discrimination when using early years services such as nursery schools, early years centres and childminder services.

Under the Equality Act 2010 it is illegal for providers of early years care and education to discriminate against children because of their disability.

This information tells you about how early years providers should treat people with diabetes, the rules on discrimination in early years services, and what you can do if you think your child has been discriminated against.

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## Contents

Introduction	3
How to use this pack	3
<b>1 General principles</b>	<b>3</b>
What is the Equality Act 2010?	3
What is a disability under the Equality Act?	3
Is diabetes considered a disability under the Act?	3
What types of discrimination are unlawful under the Equality Act?	4
Direct discrimination	
Indirect discrimination	
Discrimination arising from disability	
Failure to make reasonable adjustments	
Harassment	
Victimisation	
What is a proportionate means of achieving a legitimate aim?	5
What is the duty to make reasonable adjustments?	5
What kind of adjustments should early years providers make?	6
Does the Equality Act apply to all types of settings in the same way?	7
Can early years providers use health and safety as a reason for discrimination?	7
Do early years providers need to promote equality for people with disabilities?	8
What is Diabetes UK's position statement on caring for children with Type 1 diabetes in nurseries?	8
How should I tell my early years provider about my child's diabetes?	8
What is a healthcare plan?	8
Does the Act cover extracurricular activities and trips?	9
<b>2 Challenging discrimination across the UK</b>	<b>10</b>
England	10
Scotland	11
Wales	12
Northern Ireland	13
Sources of support and information	14

## Introduction

Some education providers are very successful at working with people with diabetes. Unfortunately, some are not. If you feel an early years provider is not working with you or your child in the way you think it should, there are options available to you to try and improve the situation. You may or may not be able to get what you want through a court or tribunal, but this process will take time and is often expensive, so it will usually be worth negotiating before you start legal proceedings. The main purpose of this pack is to give you the information you need when you negotiate with your education provider. The pack also explains what you can do if this doesn't work.

## How to use this pack

This pack covers early years settings that provide care and/or education to children below school age. For any queries that relate to children who are of school age please refer to the resources at:

[www.diabetes.org.uk/schools](http://www.diabetes.org.uk/schools)

The information in this pack introduces the Equality Act 2010, which is the main piece of discrimination legislation in England, Scotland and Wales. The rest of the pack will often refer back to the Equality Act.

The first part of the pack discusses the general concepts of discrimination and rights. The second part goes on to explain how early years education is set up and monitored in England, Scotland, Wales and Northern Ireland, how to raise a concern and which court or tribunal to use as a final step.

## 1 General principles

### What is the Equality Act 2010?

The Equality Act 2010 says what types of discrimination are illegal. The Act contains the principles that education providers should follow in their treatment of people with diabetes. You may need to refer to these principles in discussions with your education provider.

The Equality Act 2010 brings together all previous UK discrimination law and adds some new protections. The Act came into effect on 1 October 2010 and replaced previous discrimination legislation, such as the Disability Discrimination Act 1995.

The Equality Act applies in England, Scotland, and Wales, but not in Northern Ireland, where the Disability Discrimination Act still applies. **Most of the information in this pack is not applicable to Northern Ireland**, although there is a section

signposting to documents and organisations in Part 2. For further information on disability equality in Northern Ireland contact the Equality Commission for Northern Ireland (see 'Sources of Support and Information' at the end of this pack for details). Alternatively please contact our Helpline to discuss – contact details are located at the end of the pack.

### What is a disability under the Equality Act?

The Equality Act 2010 defines a disability as a physical or mental impairment that has a substantial long-term negative effect on a person's ability to carry out normal day-to-day activities.

Substantial disadvantage is defined in the Act as any disadvantage that is more than minor or trivial. An impairment is long-term if it has lasted for twelve months or is expected to last for twelve months or longer.

Each part of this definition must be satisfied in order for someone to be disabled within the meaning of the Act. What matters is that the impairment or health condition has an effect, rather than what the condition or diagnosis is.

If a person is taking medication to treat an impairment, the decision on whether they have a disability is based on how the impairment would affect that person if they were not taking that medication. So, when asking whether diabetes fits the definition it is the effect of untreated diabetes that should be considered.

### Is diabetes considered a disability under the Equality Act?

The definition of disability in the Equality Act treats each person as an individual, so ultimately only a court or tribunal can decide if a person is covered by the definition. Many people with diabetes do not think of themselves as having a disability, but in many cases people with diabetes will be covered by this definition of disability. This is because diabetes is a life-long condition, and it can seriously affect a person's ability to do normal day-to-day things. When you are considering whether your child is covered by the definition you must think about the effect of their diabetes on day-to-day life and the potential impact should s/he not receive appropriate treatment.

## What types of discrimination are unlawful under the Equality Act?

There are several types of discrimination under the Equality Act. All early years providers must avoid discriminating in their admissions procedures, in the ways they provide education, and in the ways they provide other benefits, services, and facilities.

### Direct discrimination

Direct discrimination happens when a person with a disability is treated less favourably, because of his or her disability, than a person who does not have a disability. Direct discrimination can never be legally justified. In order to show that your child has been directly discriminated against, you must show that the way he or she was treated was less favourable compared with the way that a child without diabetes would have been treated in the same situation.

#### Example

A nursery rejects a child's admissions application because the child has diabetes. The child with diabetes fulfilled the same admissions criteria as other children who did not have diabetes and who were admitted. This is probably direct discrimination.

Direct discrimination can also happen when someone without a disability is treated less favourably because that person is associated with a person with a disability or because that person is perceived to have a disability or is perceived to be associated with a person with a disability. This is known as direct discrimination because of association or perception.

To prove this kind of discrimination you must show that your treatment was less favourable compared with the treatment of a person who was not associated with a person with a disability. It also applies if you are treated worse because of being associated with someone who is perceived to have a disability, or you are perceived to be associated with someone who has a disability.

#### Example

During a nursery tour, a parent explains she has to leave early to attend a diabetes clinic. The nursery staff mistakenly believe the appointment is for the child, whereas it is actually for the parent. The child is then not offered a place, while others on the tour are offered a place. This is likely to be direct discrimination because of perception.

### Indirect discrimination

Indirect discrimination happens when an education provider applies a provision, criterion or practice that applies to everyone, but which puts people with diabetes at a substantial disadvantage compared to those without diabetes.

Provision, criterion or practice is a deliberately broad term. It includes written and unwritten policies and the way a particular education provider generally gets things done.

Substantial disadvantage is defined in the Equality Act as any disadvantage that is more than minor or trivial. Ultimately it is up to a court or tribunal to decide if a disadvantage is substantial.

To prove that your child has been indirectly discriminated against you must show that because the early years provider applied a provision, criterion, or practice your child has suffered a substantial disadvantage compared with others who don't have diabetes. You must also show that other children with diabetes would suffer the same disadvantage as your child.

#### Example

A nursery has a healthy snacks policy. This means that a child with diabetes is not allowed to eat a high calorie snack when they have low blood glucose levels. The aim of the rule is to promote healthy eating, and this is a legitimate aim, but applying the rule to the child with diabetes puts him at a disadvantage. The policy would also put other pupils with diabetes at the same disadvantage. This policy is probably an example of indirect discrimination.

A policy that has not been applied yet could still be an example of indirect discrimination. The policy is still discriminatory if it would put your child and other children with diabetes at a disadvantage if it were applied, **and** your child has been prevented from doing something because of this.

#### Example

A nursery has a policy that prohibits members of staff from volunteering to administer medicines to children. The parents of a child with diabetes think that this policy would put their child at a substantial disadvantage. They are put off from applying for a place for their child at the nursery because of the policy. This policy is likely to be an example of indirect discrimination.

A policy that puts people with diabetes at a disadvantage is not indirect discrimination if the education provider can show that the policy or practice is a proportionate means of achieving a legitimate aim. For an explanation of what this means see the section further on this page.

### **Discrimination arising from disability**

Discrimination arising from disability happens when a person with a disability is treated unfavourably because of something caused by their disability. Discrimination arising from disability was not included in previous discrimination law, but was included in the Equality Act to strengthen protections for people with disabilities.

To prove discrimination arising from disability you must show that your child has been treated unfavourably and that this unfavourable treatment was because of something that was a consequence of diabetes. You do not have to compare your child's treatment to the treatment of someone who does not have diabetes.

Discrimination arising from disability does not happen if the unfavourable treatment is a 'proportionate means of achieving a legitimate aim' (see the section further on this page).

#### **Example**

A child with newly diagnosed diabetes has some episodes of absence while his treatment is stabilised. The nursery has a rule that if children are frequently absent their place is offered to another child. If he loses his place on this basis, it is likely to be discrimination arising from disability because the child is being treated unfavourably for absence that was a consequence of his diabetes.

### **Failure to make reasonable adjustments**

Education providers have a duty to make reasonable adjustments for people with disabilities. Failure to make reasonable adjustments is a form of discrimination. See page 6 for more details.

### **Harassment**

Harassment happens when the behaviour of a person or organisation in relation to a disability creates an intimidating, hostile, degrading, humiliating, or offensive environment for someone with diabetes. Harassment is illegal.

### **Victimisation**

Victimisation happens if an education provider treats a person less favourably because they have complained about previous discrimination by the provider or have helped someone else to complain (for example by giving evidence to a tribunal). Settings must not victimise children for the actions of their parents or siblings. Victimisation is unlawful.

### **What is a proportionate means of achieving a legitimate aim?**

Ultimately only a court or tribunal can decide whether the aim of the early years provider's policy or practice is legitimate and whether it is a proportionate means of achieving the aim. In general a legitimate aim is one that is directly relevant to a provider's ability to carry out its functions. For an early years provider a legitimate aim might be ensuring the health and safety of children and staff.

A policy or practice is proportionate if it is necessary for achieving the legitimate aim, and if a court or tribunal thinks that it is appropriate. A court or tribunal is unlikely to think that a discriminatory policy or practice is proportionate if an early years provider has not tried to make reasonable adjustments to the policy.

### **What is the duty to make reasonable adjustments?**

The duty to make reasonable adjustments means that an education provider must take steps to ensure that all children can fully participate and benefit in the same way as others in the school. The duty is divided into three parts. Each of these parts applies to the way an early years provider decides how to offer admission, the way it provides education, and the way it provides any other benefits, facilities or services. Benefits, facilities and services are a deliberately wide term not only relating to the core service offer but also to trips, extra activities, food, break times etc.

- If any early years provider has a provision, criteria, or practice that puts a child with a disability at a substantial disadvantage the provider has a duty to make reasonable adjustments in order to avoid causing the disadvantage.
- Providers have a duty to make adjustments to the physical features of the buildings they use if these put people with disabilities at a substantial disadvantage compared to those without (there are some exceptions to this – please see the section entitled 'Does the Equality Act apply to all settings in the same way?').

- Early years education providers have a duty to provide auxiliary aids (extra equipment) and services to children with disabilities if those children would suffer a substantial disadvantage by not having that equipment or those services. This is a new element of the duty for education providers. (Please see nation specific guidance to check this applies).

The Equality Act does not define 'reasonable'. When a court or tribunal decides whether an adjustment is reasonable it will take a number of factors into account. These factors will usually include:

- the need to maintain academic standards
- the financial resources available to the education provider
- the cost of making an adjustment
- the practicality of making the adjustment
- the need to ensure the health and safety of children and members of staff
- the disruption likely to be caused to other children and members of staff.

Current guidance from the Equality and Human Rights Commission (EHRC) suggests that the financial cost of making an adjustment will usually only be considered as a reason for not making the adjustment if there are other good reasons for not making the adjustment. Early years providers only have to make adjustments that remove disadvantages specifically caused by a disability. They don't have to remove other types of disadvantage.

Before the Equality Act 2010 education providers could argue that in some circumstances it was justified for them to refuse to make adjustments, even if those adjustments were reasonable. This is no longer the case. If an adjustment is reasonable the law says there is no justification for not making that adjustment.

### **What kinds of adjustments should early years providers make?**

Some adjustments are simple to make, but others might require more organisation or planning, so you should give your provider as much notice as possible if you think that your child will need adjustments. When asking for an adjustment you should emphasise why you think it is reasonable. Here are some examples of common adjustments that early years providers would normally need to make in order to fulfil their duty to make reasonable adjustments:

### **Meals and access to food**

Children with diabetes may need to eat meals or snacks at particular times during the day, so early years providers should make adjustments to usual routines as necessary to make sure this is possible. These adjustments might include allowing a child with diabetes to go to the front of the queue, or making sure that he or she is able to eat at the same sitting each day or allowing the child to eat/drink at times when food/drink is not usually eaten/drunk.

Children with diabetes should always be able to have a snack if they feel they need one. Early years providers should make an exception to rules against snacking in classrooms, activity areas and other areas.

Many children with diabetes use carbohydrate counting to help them manage their blood glucose. These children need nutritional information for the food they are provided with. The catering arrangements for education providers vary considerably. Some providers will do their own catering, others will pay a catering company to provide meals. Depending on the catering arrangements, either the early years provider or the catering company has a duty to supply the nutritional information that parents of children with diabetes need, if it is reasonable to do so. In some cases because of the amount of work involved in calculating the nutritional values of the menus the caterer may argue that it is not reasonable for them to have to provide the information. On the other hand, many caterers will already hold the information or will have software that allows the nutritional values to be quickly calculated.

### **Providing an appropriate place to administer medication and test blood glucose**

Early years providers should provide an appropriate place where children can inject insulin or test their blood glucose. Some children/parents will feel that it is appropriate to do these things somewhere private, others will feel it is appropriate to do these things in an activity area or in the lunch room. Early years providers should support these choices.

All maintained schools in England, Scotland and Wales are legally required to have a room available for medical treatment. This is a requirement of the Education (School Premises) Regulations 1999. Independent schools in England must also have a room for medical treatment under the Education (Independent Schools Standards) (England) Regulations 2003. Children with diabetes should be able to use the medical room if they want to for administering medication and testing their blood glucose, or if their parents request this. If for some

reason there is not a medical room at the school an appropriate alternative, such as an office, should be found.

Some children may prefer to remain in the classroom, activity area or in the lunch room whilst their insulin is injected or blood glucose taken. This may especially be true if going to a private room would be inconvenient, or result in them missing an activity or being late for a meal. Having to miss part of an activity or be late for a meal might put a child at a substantial disadvantage, particularly if this happens regularly. It might be a reasonable adjustment for an early years provider to let a child have their insulin or blood glucose test in the activity area or in the lunch hall if the child/parent wishes.

**If there is a cost involved, would I be charged for a reasonable adjustment?**

No, whatever reasonable adjustments are made it is unlawful to charge for making the adjustment.

**Does the Equality Act apply to all types of settings in the same way?**

No. The two parts of the Equality Act 2010 which can be applied to pre-school provision are Part 3 and Part 6. This is because early years care is either provided as education or as a service and these two areas are covered by different parts of the Act.

Part 3 applies to any type of service including early years settings. Services must not discriminate against service users by either refusing to offer a service because of diabetes or by offering a service that which isn't as good as someone without diabetes might have received. Part 3 of the Act puts a duty on service providers to make reasonable adjustments to provisions, criteria or practices; physical structures (eg ramps, high visibility entrances) or by providing equipment that may overcome an obstacle faced by a disabled child.

Part 6 applies specifically to schools, so this would apply to any early years setting that is considered a school. In this case, reasonable adjustments should be made to provisions, criteria and practices and also by providing equipment, but not by changing physical structures. However, there is an enhanced anticipatory duty to make reasonable adjustments. In other words, they should put things in place before they become a problem where reasonably possible.

**Example**

A child with diabetes at nursery school is due to go on a zoo trip with her class. The lunch time on the trip is going to be later than usual because of travel time to the zoo. The nursery school should have already planned how to cater for the child with diabetes to eat at her normal time as part of the general planning for the trip. It would be unacceptable for a situation to arise where she either has to risk eating late or miss the trip.

**Are early years providers allowed to use health and safety as a reason for discrimination?**

All early years providers have a duty to take reasonable steps to make sure that children and members of staff are safe. Preventing unacceptable risks is a legitimate aim, so early years providers can legitimately treat people with disabilities less favourably if this is the only reasonable way of preventing unacceptable risk. However, they must make sure that their actions are proportionate. A court or tribunal is unlikely to consider the actions of the early years education provider to be proportionate unless the provider has tried to make reasonable adjustments to reduce the risk in ways that allow children with disabilities to participate.

Current guidance from the EHRC says that the emphasis of a risk assessment should be on finding ways to include children with disabilities. In order to make sure that they are acting proportionately, early years education providers must ensure that any risk assessments they carry out are based on good information. People writing risk assessments should:

- focus on the individual, not people with the disability in general
- consider the facts
- avoid making assumptions
- get individual specific medical advice
- talk to the person about how reasonable adjustments can be made.

Current advice from the Department for Education on health and safety for local authorities and schools says schools should always take a common sense and proportionate approach and remember that children should be able to experience a wide range of activities and health and safety measures should help them, not stop them.

## Do early years education providers have a duty to promote equality for people with disabilities?

The Equality Act imposes a duty on public bodies, including schools and local authority early years provision, known as the public sector equality duty. Public bodies have a legal responsibility to show that they are taking steps to eliminate discrimination, advance equality of opportunity, and foster good relations between different people. This means that public bodies should take into account disabled people's impairments when they develop policies and make decisions. This might mean making reasonable adjustments or treating disabled children more favourably in order to meet their needs.

## What is Diabetes UK's position statement on caring for children with Type 1 diabetes in nurseries?

If you would like to see the full statement please follow this link:

[www.diabetes.org.uk/Professionals/Position-statements-reports/Specialist-care-for-children-and-adults-and-complications/Caring-for-children-with-Type-1-diabetes-in-nurseries](http://www.diabetes.org.uk/Professionals/Position-statements-reports/Specialist-care-for-children-and-adults-and-complications/Caring-for-children-with-Type-1-diabetes-in-nurseries)

### Key points

- All nurseries should look after and support children with Type 1 diabetes so they remain safe, healthy and able to participate in all nursery activities.
- Children with Type 1 diabetes should have access to a nursery place of their parent's choice and be looked after by suitably trained staff to make sure they can participate in all nursery activities.
- All nursery staff caring for children with Type 1 diabetes should receive suitable specialist training, be signed off as competent and receive additional training as appropriate to meet a child's changing needs.
- No parent should be required to go into nursery to meet their child's needs which relate to their Type 1 diabetes, or be made to feel obliged to support their child during their time at nursery. Each child needs 1:1 support, but how this manifests itself will vary from child to child.

## How should I tell my child's early years setting that my child has diabetes?

You should tell the provider that your child has diabetes as soon as possible, so that arrangements can be put in place.

Some providers may have little or no experience of accommodating children with diabetes, and members of staff may not understand the condition. In order to make sure that all relevant members of staff understand the condition, your child's Paediatric Diabetes Specialist Nurse (PDSN) will usually visit the setting to explain what diabetes is. Alternatively they may arrange for staff to attend the hospital for training. The PDSN will also explain to staff how diabetes might affect your child and how your child's diabetes will be managed.

The provider should meet with you to draw up an individual healthcare plan for your child. This should be done with input from your child's PDSN. The meeting will provide the opportunity to discuss your child's individual needs and the care that is required.

The provider should ensure that there are enough members of staff available at all times to care for your child. We would suggest that 1:1 support is provided due to the high support needs of children of this age group. Exactly what this 1:1 support would look like would be dependent on the needs of your child. How the 1:1 support is delivered should be agreed between yourselves, the nursery and the PDSN.

Where it is felt that the provider cannot accommodate this within existing staff and budgets you may decide, with the provider, to apply for additional funding to supply what is needed. The process for this is different depending on where you live. Please see Part 2 for further information.

## What is a healthcare plan?

This is a document that sets out what support your child will need at the early years setting, and explains who will provide this support. A healthcare plan is important because it clarifies the individual support agreed. The following people should be involved in drawing up the plan:

- you
- member of your child's paediatric diabetes team
- relevant staff from the early years setting
- key worker and/or Special Educational Needs Co-ordinator (SENCO).

Your paediatric diabetes team will be able to tell you what should be included in the plan. Some of the things that you should make sure are included in your child's healthcare plan are:

- Details of the insulin your child needs. The plan should include the dose to be given, and the procedure for injecting it or using the insulin pump.
- Details of who will help your child with insulin injections/pump management and blood glucose testing (for more details see below).
- Descriptions of your child's symptoms of hypoglycaemia and hyperglycaemia (and possible triggers) and what staff will do if either of these occurs. The plan should also make clear when you or another parent or carer should be contacted, and under what circumstances an ambulance should be called.
- A description of the training that will be given to relevant members of staff.
- Details of when your child needs to eat meals and snacks. If your child will need to eat at a specific time or have other arrangements at lunchtime these should be noted.
- The things that should be done before, during, and after activity. This might include the need for blood glucose testing or a snack.
- Details of where any medication and equipment will be stored and who will have access to it.

The healthcare plan should be reviewed annually and more frequently if the child's needs change. Healthcare plans should be live documents and to avoid confusion it can be helpful if there is an agreement about who can alter the plan. Once you are happy with the plan you should sign it. Then, with your permission, the plan should be circulated to all relevant members of staff.

Some settings will already have forms for healthcare plans, but if your setting does not, you can download a template via the following link:

[www.diabetes.org.uk/Guide-to-diabetes/Schools/IHP-a-childs-individual-healthcare-plan](http://www.diabetes.org.uk/Guide-to-diabetes/Schools/IHP-a-childs-individual-healthcare-plan)

### **Does the Act cover extra-curricular activities, trips and visits?**

Providers considered services must offer the same benefits to all children unless they can show proportional justification for not doing so.

Providers considered schools must not discriminate against children with disabilities in any of the services or benefits that they offer. This includes the ways they provide access to activities, leisure facilities and the provision of meals. They must make reasonable adjustments to the ways in which they provide these services and the duty is anticipatory.

The obligation not to discriminate also covers trips and visits, even if they are not strictly educational. Early years education providers must make reasonable adjustments to allow children with disabilities to participate as fully as possible. Reasonable adjustments regarding the planning of trips and visits can include:

- Making sure that the member of staff who usually helps a child with his or her diabetes is able to go on the trip, or that members of staff on the trip are trained to help instead.
- Making sure that children with diabetes will have access to food at the times they are used to.
- Talking to staff at the place that the children will be visiting to make sure that necessary adjustments can be made. This might include making sure that children with diabetes will have time to eat snacks or check their blood glucose between activities if they need to.

Early years education providers will need to carry out a risk assessment before a trip or visit, but a risk assessment should never be used as an excuse to exclude a child with diabetes. The provider should ensure the assessment is carried out in good time prior to the trip to ensure there is sufficient time for any adjustments to be made. For further information about trips and risk assessments please refer to the following resources:

[www.diabetes.org.uk/Guide-to-diabetes/Your-child-and-diabetes/Schools/School-trip-and-exam-resources](http://www.diabetes.org.uk/Guide-to-diabetes/Your-child-and-diabetes/Schools/School-trip-and-exam-resources)

#### **Example**

A playgroup leaves a child with diabetes behind while the rest of the group goes to an activity centre. The staff had concerns that physical activity may affect her blood glucose levels. In this instance it is because of the child's disability that the staff decide not to include her in an activity and she has therefore been treated less favourably because of her disability. Under the Equality Act this is likely to be direct discrimination. There is no justification for direct discrimination.

## 2 Challenging discrimination

### What should I do if I think that my child has been discriminated against?

#### England

In addition to the duties outlined in the Equality Act 2010, in England for most early years provision The Statutory Framework for the Early Years Foundation Stage (2014) applies. This is a framework that sets the mandatory standards that all early years providers must meet in order to ensure that children learn and develop well and are kept healthy and safe. It aims to promote equality of opportunity and anti-discriminatory practice, ensuring that every child is included and supported.

The statutory framework explains that providers must have arrangements in place to support children with SEN or disabilities. This includes a policy for administering medicines. This policy needs to include:

- information about a child's use of medicine
- how information will be kept up-to-date
- training needs to be provided for staff administering the medicine when medical or technical knowledge is required
- documenting and communicating use of medication to parents
- readily available information around how the provider supports children with disabilities.

For a link to the Statutory Framework, please see the list of sources of support at the end of this document.

#### What types of early years setting are covered by the Statutory Framework for the Early Years Foundation Stage?

The framework covers maintained schools; non-maintained schools; independent schools; all providers on the Early Years Register; and all providers registered with an early years childminder agency providing care and education for children aged 0–5 in England.

#### The statutory framework covers all children attending an early years setting, but what if a setting refuses to accept a child with Type 1 diabetes?

In this case, the Equality Act would apply as it would be direct discrimination – refusal to provide a service because of a disability.

#### Early years setting considered a school

Please refer to the earlier section on how the Equality Act is applied differently depending on whether the setting is a school (Part 6) or a service (Part 3).

If you think that your child has been discriminated against by their early years provider considered a school you should raise the issue with the provider as soon as possible. Sometimes members of staff might act in a discriminatory way simply because they have not considered the consequences of their actions. In these circumstances you might be able to resolve the problem by discussing your concerns with the provider in an informal way. If discussions with the provider do not solve the problem you should ask about its formal complaints procedure. All providers should have a complaints procedure.

If you complete the complaints procedure of the school and the problem has still not been solved you can seek mediation or take your case to the relevant tribunal.

Mediation services may be able to provide you with a less expensive alternative to the tribunals. Some local authorities offer mediation services for disability discrimination disputes. You may want to ask your local authority if it does this.

#### Which tribunal should I use in England?

In England, you should use the First-Tier Tribunal of the Tribunals Service (Health, education, and social care chamber).

#### How do tribunals work in England?

In England your claim must reach the tribunal no later than six months after the act of discrimination. If the discrimination has been ongoing you must claim within six months of the last act of discrimination.

The tribunal will usually hold one hearing where both sides will make their cases. You do not have to have legal representation at the hearing, although you may wish to be represented by a lawyer with experience in disability or education cases.

If the tribunal decides that the school has discriminated it will order the school to provide an apology and to change the way it does things in future. For example, the tribunal might order that staff at the school receive extra training about disabilities. The tribunal cannot order the school to pay financial compensation. Claims in the tribunal must normally be made by the pupil's parents.

## **Early years setting not considered to be a school in England**

If the early years setting your child attends is not considered to be a school you can make a discrimination claim to the County Court. If you wish to bring a claim in a County Court you should seek legal advice. There is a time limit of six months to make the claim. If the Court finds that unlawful discrimination has occurred then it can order financial compensation.

## **Is my child eligible for an Education, Health and Care Plan?**

A child or young person is considered to have special educational needs if they have a learning difficulty or disability which calls for special education provision to be made for him or her.<sup>1</sup> The purpose of an Education, Health and Care Plan (EHC) in England is to meet the special educational needs of the child when the provider is unable to do so despite relevant and purposeful action. The kinds of physical disabilities that are usually treated as meaning a child has special educational needs are those that cause sensory difficulties or difficulties with movement or speech. On its own, diabetes may not be considered a special educational need or as a reason for your local authority to make a statutory assessment for an EHC Plan as EHC Plans do not apply where there are only health and/or care needs, no matter how severe those needs might be. Of course, a child with diabetes might have other needs that mean he or she needs an EHC Plan.

Before a local authority writes an EHC Plan it will make a statutory assessment of the needs of the child. You can ask your local authority to conduct an EHC needs assessment. The local authority will then consider whether to make the assessment within six weeks of the request and you will be informed of the outcome of your request. A local authority will not usually complete the assessment unless the child needs more help than his or her provider can ordinarily provide.

## **Scotland**

In Scotland children with additional needs are prioritised for pre-school education and you need to get in touch with your local authority to inform them that you want a pre-school place for your child.

The Children and Young People (Scotland) Act 2014, Early Learning and Childcare Statutory Guidance, relates to early years education centres and applies alongside section 6 of the Equality Act 2010. Children aged 3–4 years old and in certain cases aged 2 are eligible for free pre-school education and the Act will

apply when they are attending an early years setting on this basis.

The Children and Young People (Scotland) Act 2014 imposes a duty on centres providing pre-school education to:

- identify, provide for and monitor additional support needs
- establish co-ordinated care plans where needed
- consider placement requests (where a centre outside the child's catchment area could better provide for the additional needs)
- help the child plan for transitions.

The 2014 Act also imposes a duty on NHS Boards and other local authorities to help an education authority to deliver its duties for additional support for learning. There is an important recognition of joint partnership planning and delivery of support.

Early years centres which are not defined as pre-school education would not fall under the Children and Young People (Scotland) Act 2014 nor section 6 of the Equality Act 2010.

## **How can I complain about a nursery school provider in Scotland?**

If you think that your child has been discriminated against by an early years provider considered a school you should raise the issue with the provider as soon as possible. Sometimes members of staff might act in a discriminatory way simply because they have not considered the consequences of their actions. In these circumstances you might be able to resolve the problem by discussing your concerns with the provider in an informal way. If discussions with the provider do not solve the problem you should ask about its formal complaints procedure. All providers should have a complaints procedure.

If you are unhappy with the outcome of the complaint, the complaint should be raised at the next highest level depending on who runs the early years setting. For instance it could be the management committee or the local authority. You can also complain to the Care Inspectorate (details are at the end of this pack).

## **What if complaining to the provider doesn't resolve the issue at my child's pre-school?**

If you complete the complaints procedure of the school and the problem has still not been solved you can seek mediation or take your case to the relevant tribunal.

Mediation services may be able to provide you with a less expensive alternative to the tribunals. Some local authorities offer mediation services for disability discrimination disputes. You may want to ask your local authority if it does this.

### **Which tribunal should I use in Scotland?**

You need to use the Additional Support Needs Tribunal for Scotland (ASNTS).

### **How do tribunals work?**

In Scotland your claim must reach the tribunal no later than two months after the act of discrimination.

The tribunal will usually hold one hearing where both sides will make their cases. You do not have to have legal representation at the hearing, although you may wish to be represented by a lawyer with experience in disability or education cases.

If the tribunal decides that the school has discriminated it will order the school to provide an apology and to change the way it does things in future. For example, the tribunal might order that staff at the school receive extra training about disabilities. The tribunal cannot order the school to pay financial compensation. Claims in the tribunal must normally be made by the pupil's parents.

### **Early years setting not considered to be a school in Scotland**

If the early years setting your child attends is not considered to be a school you can make a discrimination claim to the Sheriff Court. If you wish to bring a claim in a Sheriff Court you should seek legal advice. There is a time limit of 6 months to make the claim. If the Court finds that unlawful discrimination has occurred then it can order financial compensation.

## **Wales**

In Wales the legislation that applies to discrimination in early years settings is the Equality Act 2010, sections 3 and 6.

### **How to complain in Wales**

If you think that your child has been discriminated against by an early years provider you should raise the issue with the provider as soon as possible. Sometimes members of staff might act in a discriminatory way simply because they have not considered the consequences of their actions. In these circumstances you might be able to resolve the problem by discussing your concerns with the provider in an informal way. If discussions with the provider do not solve the problem you should ask

about its formal complaints procedure. All providers should have a complaints procedure.

### **Providers that are considered schools in Wales**

If you complete the complaints procedure of the school and the problem has still not been solved you can seek mediation or take your case to the relevant tribunal.

Mediation services may be able to provide you with a less expensive alternative to the tribunals. Some local authorities offer mediation services for disability discrimination disputes. You may want to ask your local authority if it does this.

### **Which tribunal should I use in Wales?**

You should use the Special Educational Needs Tribunal for Wales (SENTW).

### **How do tribunals work in Wales?**

In Wales your claim must reach the tribunal no later than six months after the act of discrimination. If the discrimination has been ongoing you must claim within six months of the last act of discrimination.

The tribunal will usually hold one hearing where both sides will make their cases. You do not have to have legal representation at the hearing, although you may wish to be represented by a lawyer with experience in disability or education cases.

If the tribunal decides that the school has discriminated it will order the school to provide an apology and to change the way it does things in future. For example, the tribunal might order that staff at the school receive extra training about disabilities. The tribunal cannot order the school to pay financial compensation. Claims in the tribunal must normally be made by the pupil's parents.

### **Early years setting not considered to be a school**

If the early years setting your child attends is not considered to be a school you can make a discrimination claim to the County Court Wales. If you wish to bring a claim in a County Court you should seek legal advice. There is a time limit of six months to make the claim. If the Court finds that unlawful discrimination has occurred then it can order financial compensation.

### **What if my child has complex needs in Wales?**

In Wales, a child who has needs which can't be provided for by a school is entitled to a statutory assessment by the local authority. This is a first step to getting a statement of special educational needs. The statement is a legal document outlining your child's special educational needs and what s/he will get. It is reviewed annually. If you disagree with what is written in a statement, there is an appeals process.

## Northern Ireland

In Northern Ireland the Equality Act 2010 doesn't apply. The main piece of legislation is the Disability Discrimination Act 1995.

Many of the concepts that exist in the Equality Act 2010 also exist in the Disability Discrimination Act 1995. The definition of a disability is very similar and diabetes is mentioned in the Disability Discrimination Code of Practice for Schools as an example of a possible physical impairment.

SENDO (Special Educational Needs and Disability (Northern Ireland) Order 2005) is designed to ensure inclusion and is applicable to nursery schools. Where an early setting is not a school eg family centres, nursery day-care then Part 3 of the DDA (access to goods, facilities and services will apply).

SENDO requires that early years education providers make reasonable adjustments to facilitate disabled children accessing all aspects of education at their school, including extra activities and trips. This duty is anticipatory, meaning that schools should not wait for obstacles to prevent themselves where they could have reasonably planned for them. They should do everything reasonably possible to prevent a situation where children with diabetes are put at a substantial disadvantage because of their disability compared with other children who do not have diabetes.

It is unlawful to discriminate by not admitting a child with diabetes into a nursery school or by offering terms which are less beneficial as a condition for admission. (Please see the sources of information for a link to the Disability Discrimination Code of Practice in Schools which explains SENDO in depth).

### **How should I make a complaint if I think my child's nursery school has discriminated against my child?**

If your child attends or has applied to attend a nursery school you should follow the route outlined in the Disability Discrimination Code of Practice for Schools.

Firstly, you need to bring the issues to the attention of the nursery school through their own internal complaints procedure. It may be that senior staff are unaware of the problem and if they respond quickly to resolve the matter, the school is likely to have a defence against a discrimination claim.

If this is not successful, you can try independent conciliation under SENDO through the Equality Commission. However, this can only happen if both you and the school consent to it. If you choose to do this you can still continue to make a claim with SENDIST (Special Educational Needs and Disability Tribunal).

The final option is legal action. You could make a

claim of unlawful disability discrimination with the SENDIST which needs to be taken within six months of the event occurring. If it is ongoing discrimination the last incident needs to be within six months. There can be an extension of up to two further months if conciliation is still taking place. Contact details for the SENDIST can be found at the end of the pack.

The tribunal cannot award financial compensation but it can order compensatory action for the child concerned where they have missed out because of disability discrimination.

### **How should I complain if my child's early years setting is not a nursery school?**

Part 3 of the Disability Discrimination Act 1995 (relating to goods, facilities and services) will apply to these settings.

As a first step you need to follow the setting's internal complaints procedure.

If this is unsuccessful you can take the matter to the County Court as long as it is within six months of the event you are complaining of. If you want to pursue this, we would strongly advise contacting the Northern Ireland Equality Commission for guidance. Their details are at the back of this pack.

**This information should not be considered a complete guide to the law, which also changes from time to time. It is provided for informative purposes and is not a substitute for professional advice. Legal advice should always be taken if in doubt. Diabetes UK is unable to give legal advice.**

## Sources of support and information

### Diabetes UK Helpline

The Helpline supports people to take action by providing information on rights and discussing possible action that can be taken.

**Telephone:** 0345 123 2399\*

**Email:** [helpline@diabetes.org.uk](mailto:helpline@diabetes.org.uk)

**Web:** [www.diabetes.org.uk/How\\_we\\_help/Helpline/Your-rights](http://www.diabetes.org.uk/How_we_help/Helpline/Your-rights)

### Equality and Human Rights Commission (EHRC)

The EHRC is the independent statutory body established to help eliminate discrimination, reduce inequality and protect human rights. It provides information and guidance on discrimination and human rights issues, and has produced a series of guides on your rights to equality. The EHRC does not take on case work unless it is a test case. The Government has replaced the EHRC Helpline with the Equality Advisory Support Service (EASS).

**Web:** [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

### Equality Advisory Support Service (EASS)

The EASS provides information, advice and support on discrimination and human rights issues to individuals in England, Scotland and Wales, recognising the constitutional, legal, social and policy differences.

**Freepost address:** FREEPOST EQUALITY ADVISORY SUPPORT SERVICE FPN4431.

**Advice Line:**

**Telephone:** 0808 800 0082

**Textphone:** 0808 800 0084

**Opening Hours:** Monday – Friday 9am–8pm and Saturday 10am–2pm

**Email:** Using online enquiry form at [www.equalityadvisoryservice.com/app/ask](http://www.equalityadvisoryservice.com/app/ask)

**Web:** [www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

### Equality Commission for Northern Ireland

The Equality Commission for Northern Ireland is an independent public body established to promote equality of opportunity and challenge discrimination. They provide free, confidential advice and assistance on discrimination and human rights issues.

**Address:** Equality House, 7–9 Shaftesbury Square, Belfast BT2 7DP.

**Enquiry line:** 028 90 500 600

**Email:** [information@equalityni.org](mailto:information@equalityni.org)

**Web:** [www.equalityni.org](http://www.equalityni.org)

### The Special Educational Needs and Disability Tribunal

The tribunal service for SENDO in Northern Ireland can be contacted at:

**Address:** 2nd Floor Albany House, 73–75 Great Victoria Street, Belfast BT2 7AF.

**Telephone:** 028 9032 2894

**Fax:** 028 9032 2924

**Email:** [enquiries@sentrribunal.co.uk](mailto:enquiries@sentrribunal.co.uk)

### Citizens Advice Bureau (CAB)

The Citizens Advice Bureau offers free, confidential, impartial and independent advice. Advisers can help fill out forms, write letters and negotiate with third parties. Some bureaux are able to represent clients at tribunal. The number of your local CAB will be in the phone book or you can also find your local CAB on their website.

**Web:** [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

### Civil Legal Advice (CLA)

In England and Wales the CLA can provide legal advice if you are eligible for legal aid. You can find out more about legal aid and whether you might be entitled to financial help with your case.

**Telephone:** 0345 345 4345

**Web:** [www.gov.uk/civil-legal-advice](http://www.gov.uk/civil-legal-advice)

### Law Centres Federation

The Law Centres Federation is the national co-ordinating organisation for a network of community-based law centres covering England, Wales and Northern Ireland. Law centres provide free and independent specialist legal advice and representation to people who live or work in their catchment areas. They are unable to give advice directly to the public but their site will help you find law centres near you for free advice and representation.

**Telephone:** 020 3637 1330

**Web:** [www.lawcentres.org.uk](http://www.lawcentres.org.uk)

**Email:** Using online enquiry form at [www.lawcentres.org.uk/contact-us](http://www.lawcentres.org.uk/contact-us)

## Scottish Association of Law Centres

The Scottish Association of Law Centres is the national body for a network of community based law centres covering Scotland only. They are unable to give advice directly to the public but their site will help you find law centres near you for free advice and representation.

**Web:** <http://www.govanlc.com/salc>

## The Law Society

To find a solicitor who specialises in certain areas of law you can look up the 'Find a Solicitor' section on the Law Society's website.

**England and Wales:** [www.lawsociety.org.uk](http://www.lawsociety.org.uk)

**Scotland:** [www.lawscot.org.uk](http://www.lawscot.org.uk)

**Northern Ireland:** [www.lawsoc-ni.org](http://www.lawsoc-ni.org)

## The Care Inspectorate

The Care Inspectorate is an independent body in Scotland that is responsible for regulating care services, including childcare services.

**Address:** Compass House, 11 Riverside Drive, Dundee DD1 4NY.

**Telephone:** 0345 600 9527

**Web:** [www.careinspectorate.com](http://www.careinspectorate.com)

**Email:** [enquiries@careinspectorate.com](mailto:enquiries@careinspectorate.com)

## Disability Law Service (DLS)

The Disability Law Service provides specialist legal advice and information to disabled people, their family and carers. It offers advice and information on cases involving further and higher education.

**Address:** Disability Law Service, The Foundry, 17 Oval Way, London SE11 5RR.

**Telephone:** 020 7791 9800 Monday – Friday, 10am–1pm and 2pm–5pm

**Web:** [www.dls.org.uk](http://www.dls.org.uk)

## Scope Disability Advice

Scope provides disability advice and can provide details of local offices which can give help and advice. Some local offices can provide representation or help to prepare a case but this will depend on the local office's situation.

**Telephone:** 0808 800 3333

**Web:** [www.scope.org.uk](http://www.scope.org.uk)

## The Government Equalities Office

The Government Equalities Office (GEO) publishes information about current government equalities policy, including current equalities regulations. GEO does not provide advice.

**Telephone:** 0370 000 2288

**Email:** [form.education.gov.uk/fform.php?self=1&form\\_id=cCCNJ1xSfBE&noLoginPrompt=1](http://form.education.gov.uk/fform.php?self=1&form_id=cCCNJ1xSfBE&noLoginPrompt=1)

## Independent Parental Special Education Advice (Ipsea)

Ipsea is a charity that provides free advice and information for parents in England and Wales whose children have, or may have, special educational needs. The Ipsea website contains information on how to get a statement of special educational needs for your child, and how to challenge a refusal to assess.

**Telephone Advice Line:** 0800 018 4016

Monday: 1pm–4pm and 7pm–9pm

Tuesday: 10am–4pm and 7pm–9pm

Wednesday: 10am–1pm and 7pm–9pm

Thursday: 10am–1pm and 7pm–9pm

Friday: 10am–4pm

**Tribunal Advice Line:** 0845 602 9579 (Please check the website for opening times or to book a call back).

**Web:** [www.ipsea.org.uk](http://www.ipsea.org.uk)

## Advisory Centre for Education (ACE)

The Advisory Centre for Education provides advice on all aspects of state-funded education.

**Telephone:** 0300 0115 142 (Monday – Wednesday from 10am–1pm during term time only).

**Web:** [www.ace-ed.org.uk](http://www.ace-ed.org.uk)

## Coram Children's Legal Centre

Is a national charity which provides free legal information, advice and representation to children, their families and carers. The advice line runs a web chat service to answer legal queries Monday to Friday from 9am–6pm.

**Telephone:** 0300 330 5485 (Monday to Friday 8am–6pm)

**Web:** [www.childlawadvice.org.uk](http://www.childlawadvice.org.uk)

## **Useful documents referred to in this pack**

### **The Equality Act 2010**

The full text is available to view and download from [www.legislation.gov.uk](http://www.legislation.gov.uk)

### **The Children and Young People (Scotland) Act 2014, Early Learning and Childcare Statutory Guidance**

[www.gov.scot/Resource/0045/00457025.pdf](http://www.gov.scot/Resource/0045/00457025.pdf)

### **Disability Discrimination Code of Practice for Schools (Northern Ireland)**

[www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/SENDCoPforSchools2006.pdf](http://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/SENDCoPforSchools2006.pdf)

### **EHRC guidance for further and higher education providers**

The EHRC guidance document referred to in this pack are What equality law means for you as a student in further or higherIs available at [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

### **Department of Education guidance on medicines in schools**

The guidance document Supporting pupils at school with medical conditions is available at [www.education.gov.uk](http://www.education.gov.uk)

## **References**

<sup>1</sup> Special educational needs and disability code of practice. [www.gov.uk/government/publications/send-code-of-practice-0-to-25](http://www.gov.uk/government/publications/send-code-of-practice-0-to-25)

**Please note the inclusion of named agencies does not constitute a recommendation or endorsement by Diabetes UK. Whilst every effort is made to ensure accuracy, Diabetes UK cannot be held responsible for errors or omissions.**