Under the Equality Act 2010, a person has a disability 'if they have a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities'.

'Substantial' is defined by the Act as 'more than minor or trivial'.

An impairment is considered to have a long-term effect if:

* it has lasted for at least 12 months
* it is likely to last for at least 12 months, or
* it is likely to last for the rest of the life of the person

Whether a person is disabled is generally determined by the effect the physical or mental impairment has on their ability to carry out normal day-to-day activities (the exception to this is people with severe disfigurement). Normal day-to-day activities are not defined in the Act, but in general they are things people do on a regular or daily basis, for example eating, washing, walking, reading, writing or having a conversation.

People who have had a disability in the past are also protected against discrimination, harassment and victimisation. This may be particularly relevant for people with fluctuating and/or reoccurring impairments.

**#1 The situation**



On 24 February 2012 wheelchair user Doug Paulley tried to board a FirstGroup bus from Wetherby to Leeds.

The driver asked him to wait, as the wheelchair space was currently taken by a mother with her sleeping child in a pushchair.

When the driver asked the woman to leave the space she refused, meaning Mr Paulley was unable to board the bus and missed a vital rail connection.

**What does the law tell us to help decide on this case?**

Under the [Equality Act](https://www.equalityhumanrights.com/en/group/276) there is a responsibility to make reasonable adjustments where a disabled person is put at a disadvantage in comparison to a non-disabled person as a result of a rule or policy.

This duty requires a service provider, in this case a bus company, to take reasonable positive steps to ensure that disabled people can access its services.

The service provider must anticipate use of its services by disabled people and take steps to avoid disadvantage. They should not wait until a disabled person wants to use the service before considering the responsibility to make reasonable adjustments.

**The outcome**

Mr Paulley [successfully sued FirstGroup](http://www.disabilityrightsuk.org/sites/default/files/pdf/firstbusjudgment.pdf) at Leeds County Court for unlawful discrimination against him due to his disability. However, First Group appealed and the case was finally heard by the Supreme Court.

On 18 January 2017 it [made a landmark ruling](https://www.supremecourt.uk/cases/uksc-2015-0025.html) that bus companies must end ‘first come, first served’ policies and do more to cater for wheelchair users.

Lord Neuberger, the President of the Supreme Court said, “Where the driver concludes that the non-wheelchair user’s refusal is unreasonable, it seems to me that it would be unjustifiable for a bus-operating company to have a policy which does not require some further step of the bus driver in any circumstances."

This will mean that the driver should take further steps to pressurise a non-wheelchair user into making space for wheelchair users rather than just accepting that a non-wheelchair user cannot move. Bus companies should have clear policies in place and give training to drivers to help them to remove any barriers which wheelchair users face.

The court has suggested that the law should be reconsidered in order to provide much needed clarity for bus companies and their customers, and the Commission will be pressing the Government to commit to these changes in the Bus Services Bill.

**Practical Recommendations**

The Supreme Court found that bus companies must do more to cater for the needs of wheelchair users.

* This will mean that the driver should take further steps to pressurise a non-wheelchair user into making space for wheelchair users rather than just accepting that a non-wheelchair user cannot move.
* Bus companies should have clear policies in place and give training to drivers to help them to remove any barriers which wheelchair users face.

**#2 The situation**



It is not uncommon for schools and local authorities to place children with Education, Health and Care (EHC) Plans on part-time timetables. Sometimes this is done to support a transition period or alternatively, to avoid a child being excluded. The question which must be considered though is whether this type of arrangement is discriminatory?

S had a Statement of Special Educational Needs and her parents had expressed a preference for her to attend Hampton Dene Primary School. The school advised the Local Authority that they were not suitable because of S’s aggression and severity of needs. Following pressure from the Local Authority, the school relented and admitted S, initially on a part-time basis. No provision was made for S to receive education when she was not attending school.

This is a real case Legal action was initiated by the parents;

**F-T v The Governors of Hampton Dene Primary School (SEN) (Disability discrimination in schools: All) [2016] UKUT 468 (AAC) (18 October 2016)**

The court was asked to consider whether a child subject to a part-time timetable was subject to discriminatory treatment under the Equality Act 2010.

**What does the law tell us to help decide on this case?**

The law is relatively straightforward and can be summarised as follows:

* Section 85(1) Equality Act requires the responsible body (in this case, the Governing Body) of a school “not to discriminate against a person…(b) as to the terms on which it offers to admit the person as a pupil”;
* Section 85(2) requires the responsible body not to “discriminate against a pupil—
  + (i) in the way it provides education for the pupil;
  + (ii)in the way it affords the pupil access to a benefit, facility or service [section 212(4) provides that affording access to a benefit, facility or service includes a reference to facilitating access to the benefit, facility or service];
  + (iii) by not providing education for the pupil;
  + (iv) by not affording the pupil access to a benefit, facility or service;
  + (v)  by excluding the pupil from the school [not an issue on this appeal];
  + (vi) by subjecting the pupil to any other detriment.
* Section 85(6) of the 2010 Act provides that “a duty to make reasonable adjustments applies to the responsible body” of a school.
* Direct discrimination occurs where person A, because of person B’s disability, treats person B less favourably than person A treats or would treat others (section 14(1)).
* Under section 15(1) of the 2010 Act, another type of disability discrimination occurs where:
  + (a) person A treats person B “unfavourably because of something arising in consequence of” person B’s disability; and
  + (b) person A cannot show that the treatment of person B is a proportionate means of achieving a legitimate aim”.

The School needed to show that S’s treatment was a “proportionate means of achieving a legitimate aim”.

**The outcome**

* + The Upper Tier found that S was treated unfavourably because of something arising in consequence of her disability. So the School needed to show that S’s treatment – denial of full-time schooling and thereby full-time education – was a proportionate means of achieving a legitimate aim.
  + The School were not able to justify their actions. However, had the School’s treatment been associated with a home-education plan for S, the judge indicated that a finding of discrimination would have been unlikely. In this instance, S was denied a full-time education for some seven months. For any child, but especially a relatively young child, that is a significant educational deficit.
  + Since S had a statement of special educational needs, the School was required to admit her. Once S became a registered pupil, the School was required by section 317(1)(a) of the 1996 Act to “use their best endeavours, in exercising their functions in relation to the school, to secure that… the special educational provision which [her] learning difficulty calls for is made”.  S’s learning difficulty called for the full-time education specified in Part 3 of her statement of SEN.

**Practical Recommendations**

Children and Young People have a right to receive suitable full time education. If for some reason a child or young person cannot access school, then Governing Bodies and Headteachers must ensure that arrangements are in place to protect their fulltime entitlement. This may require them to provide alternatives. Where the child has a Statement or EHC Plan, the school should insist that education is provided otherwise than at school by the Local Authority to address any deficit in provision.