Stronger Together for Autism & Neuro Divergence

The Empowerment Project - Stronger Voices for Fairer Futures

Note on Terminology for Equality, Human Rights & Civil Justice Committee

16 February 2026

Key Takeaways

- The term **"reasonable adjustments"** should be used precisely to refer only to the enforceable legal duty under section 20 of the Equality Act 2010.
- Using the term more generally for any beneficial adjustment or service provision risks confusing this specific duty with other duties under other regimes which are subject to different legal tests and enforcement mechanisms.
- We are keen that the Committee is able to establish the full picture - both about what adjustments and services are required, and also what legislative or administrative regime change will be necessary to underpin them.

Contents

Specific meaning of "reasonable adjustment"

Section 20 - the duty to make adjustments

As you will know, the test in section 20 of the 2010 Act goes beyond consideration of what a disabled person needs in order to thrive. For example, it includes:

- identification of *a particular policy, criterion or practice* which is putting a disabled person at a substantial disadvantage in comparison with persons who are not disabled;
- an assessment of whether the disadvantage is *substantial;* and
- an assessment of reasonability which necessitates consideration of factors relating to the *person providing the service,* not just the disabled person.

However, many people use the term "reasonable adjustments" in contexts where there is no guarantee that the test in section 20 will be met. At STAND, we are passionate about raising awareness of rights and empowering people to enforce them, but it is counterproductive to encourage people to attempt to enforce rights where the chances of successfully doing so is low. This results in a loss of confidence and makes it less likely that they will try to do so again.

For example, during the Committee's evidence session on 20 January 2026, Dr Crabb stated as follows:

"...it is about asking what reasonable adjustments are in schools, colleges and universities, and what reasonable adjustments employers can provide in workplaces. If somebody feels that they need those adjustments, they should be provided."

On the face of it this is true - of course "*reasonable adjustments*" should be provided, because they are required by a matter of law. However, some people may misinterpret this statement and assume that the test for whether or not an adjustment should be made is whether or not the disabled person *feels* that they should, rather than whether or not it is *reasonable* within the meaning of section 20 of the 2010 Act. A disabled person may feel that they need an adjustment, but that does not mean that the need for the adjustment stems from a *substantial disadvantage* which is caused by a particular *policy, criterion or practice.* Further, it may be that the service-provider successfully argues that it would not be reasonable for them to make that adjustment in the circumstances.

This is not meant to be a criticism of what Dr Crabb said at all; rather, it's just an example of why it would be extremely helpful if the Committee members could be mindful of terminology when asking questions or facilitating discussion so that they can attempt to clarify what a panel member says.

Section 6 - definition of disability

There have been some conversations about *"reasonable adjustments"* that risk giving the impression that people are entitled to reasonable adjustments under section 20 of the 2010 Act when they have "*traits of neurodivergence*". Of course, some people with traits of

neurodivergence may meet the definition of disability under section 6 of the 2010 Act, but others may not.

In order to exercise your rights under the 2010 Act as a disabled person, you have to be "*disabled*" within the meaning of section 6. This means that you have to have a *"physical or mental impairment*" and "*the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities*".

Dr Crabb made reference to people who may have "*traits of neurodivergence"* but may not be *"neurodivergent"*. For example, he said:

"I would often give the same package of interventions to someone who had autism and someone who had traits, and the tragedy was that a person might have waited four or five years to see me and to be given that advice, yet I often would not have the time to follow them up and see how that advice was going."

It may be that these people would meet the definition of disability under section, but it is by no means certain. We therefore worry that the Committee, or the wider population, get a false sense of reassurance that there is an existing legal framework that can be relied upon here when that is not necessarily the case.

The duty to make reasonable adjustments is difficult to enforce

Inevitably, discussions in a Committee will never be nuanced enough to flesh out the various challenges associated with actually enforcing the duty to make reasonable adjustments. It is entirely understandable for us to assume that if someone has a legal duty to do something, and they don't do it, there will be a way to make them do it. Unfortunately, (as I'm sure you will be all too aware!) this is far from the truth.

The adjustments that neurodivergent children and their families need are so abundant in number, and so frequently denied to them, that we would spend our life raising legal action if we wanted to actually enforce the duty. Even if we were willing and able, to do that, tribunal or court action takes so long that, especially in the context of a child's development, it would be too late by the time the process finished to actually make any difference to that child.

Therefore, I think it's important for the Committee to clarify whether a discussion is about *"what adjustments a panel member thinks a child* ***should*** *be entitled to" or "what adjustments a child may actually be* ***able to insist upon as a matter of law****".*

Conflation with other education rights

Accessibility Strategies

Schools do have to make reasonable adjustments under section 20, with the exception of adjustments relating to physical features. Instead, there are duties under the Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 to prepare and implement accessibility strategies, including access to the physical environment of schools. Therefore, it is again important to clarify, when talking about schools, whether a discussion

mentioning "*reasonable adjustments*" is about the duty to make reasonable adjustments under the 2010 Act, or the duty to prepare and implement an accessibility strategy under the 2002 Act.

Additional support for learning - definition

Schools have duties under the Education (Additional Support for Learning) (Scotland) Act 2004 in relation to children with additional support needs.

A child has additional support needs where, for whatever reason, the child is, or is likely to be, *unable without the provision of additional support to benefit from school education* provided or to be provided for the child.

For these purposes, the meaning "school education" includes such education directed to the *development of the personality, talents and mental and physical abilities of the child to their fullest potential*.

Therefore, as you will already be aware from your work with the Committee, the definition of additional support needs is capable of covering children who would not meet the definition of disability for the purposes of the 2010 Act.

In other words, a child may not be entitled to a *"reasonable adjustment"*, but they may be entitled to "adjustments" within the context of the 2004 Act.

Example duty under 2004 Act

For example, a school has a duty to make adequate and efficient provision for such additional support as is required by a child with additional support needs (section 4).

The test for whether this duty is engaged is not "reasonableness" within the meaning of the 2010 Act. Instead, section 4 states that the duty does not require the education authority to do anything that they do not have the power to do, or would result in unreasonable expenditure being incurred.

Importance of distinction

Therefore, our worry about referring to "*reasonable adjustments*" when the discussion is actually about adjustments generally arises from the potential that the focus is entirely on the rights under the 2010 Act, rather than raising awareness of the duties placed on schools as a result of the 2004 Act which may be wider and more relevant.

Enforcement of education rights

However, it is still important to recognise that *even the education rights* are difficult to enforce. Broadly speaking, if a child does not have a co-ordinated support plan, the option of the tribunal is only open to them in respect of failure to comply with the 2010 Act; not, for example, a failure of school to implement their duty under section 4 of the 2004 Act.

There are mechanisms under the 2004 Act for a child (or his parent/carer) to engage in mediation or dispute resolution (i.e. an independent adjudicator) via application to the Scottish Ministers. However, once again, these processes are not swift enough to be capable of addressing the immediate and time sensitive issues faced by our children on a daily basis.

Barriers to enforcement under the 2004 Act

Further, the dispute resolution processes appear to be underused and there is a severe lack of awareness on the part of parents and carers about the option to use them. More can be read about this in the Education, Children and Young People Committee's report on the Additional Support for Learning Inquiry.

Dr Binnie's Evidence

Particularly concerning is the evidence given during that Inquiry by Dr Binnie (who also gave evidence at your Committee last week). The evidence related to use of the "independent adjudication process" under the Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005.

The ASN Inquiry Report noted at paragraph 350:

"Dr Binnie confirmed that the independent adjudication service is not used in the education system and that parents and carers are directed to the stage 2 complaint process rather than independent adjudication. She confirmed that local authorities would not put up any barriers to access to independent adjudication and said:

*"**However, the onus is on the parent to make that request to the Scottish Government, and on the Scottish Government to contact the independent adjudicator in the local authority.** At that point, the local authority would agree or disagree to going forward with independent adjudication. I would not think there would be any situations in which a local authority would not want that. An independent adjudicator would then be appointed and would look at the evidence on each side and give advice.""*

It is concerning that a statutory process, reflecting the will of the Scottish Parliament, is not being used. It is therefore important to recognise that, even when an adjustment is required by law, there is often no realistic prospect of challenging a decision of a school not to make it.

Enforceability of rights

This example above demonstrates that discussions about "adjustments" in the context of education could be about adjustments that, in reality, will never be provided - either because there is no duty to provide them, parents and carers are not aware of them, parents and carers are directed away from them, or because there is no meaningful route for a person to enforce them in the first place.

This makes it all the more important to ensure that MSPs are clear whether a panel member is talking about ***adjustments that need to be made in order to meet a child's needs*** or

***adjustments that schools can and will be compelled to make as a matter of law in the context of the existing legislative regime*.**

Adjustments versus services

We are worried that conversations which purport to be about "*reasonable adjustments"* are actually conversations about the lack of available services, being services which public bodies already have a duty to provide regardless of the duty to make reasonable adjustments under the 2010 Act or to provide additional support for learning under the 2004 Act.

Other duties

These could be, for example:

- other duties not to discriminate under the 2010 Act, for example the duty not to discriminate, victimise or harass disabled people,
- the public sector equality duty under section 149 of the 2010 Act,
- the provision of education as per the duty in section 1 of the Education (Scotland) Act 1980 as read with section 2 of the Standards in Scotland's Schools Act 2000,
- the duty of the Scottish Ministers to provide or secure health services under section 1 of the National Health Service (Scotland) Act 1978,
- the duty of Scottish Ministers to promote the improvement of physical or mental health in Scotland,
- the duty of a health board to promote health improvement under section 2A of the 1978 Act, or
- the duty of a health board to provide or secure primary medical services under section 2C of that Act,
- duties of the Scottish Ministers and/or Social Security Scotland under the Social Security (Scotland) Act 2018,
- duties of local authorities under the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000.

Examples

The adjustments recommended by panel members so far, or mentioned in the Royal College's 10 Workstreams, include things that may not fall within the definition of "reasonable adjustments" but which a person is entitled to as a result of any of these duties above, and many others.

For example, in the Committee's session on 20 January 2026, Carolyn Scott rightly highlights the barriers faced by people who cannot access ADHD medication. However, her exact words were:

"With ADHD, one of the best reasonable adjustments is having access to medication. It is not for everybody and it is not a cure, but it can mitigate the negative outcomes. Fundamentally, however, the biggest reasonable adjustment that we really need is a culture change."

She is, of course, entirely correct in highlighting that people with ADHD need medication and that we need a culture change. However, it is not necessarily the case that providing ADHD medication will always fall within the remit of a "reasonable adjustment" (although of course, in some cases, it may do). Further, it may be that part of the culture change journey is the enforcement of the duty to make reasonable adjustments on a bigger scale, but it is unlikely to be the case that anyone has a duty to "change a culture" that can be enforceable under section 21.

Clarification necessary during Committee

Therefore, in conversations such as this, I urge the Committee to clarify with panel members whether they are talking about "**what they think needs to happen**" more generally, or whether they are referring to particular rights or regimes, such as that in section 20 of the Equality Act. Both are, of course, important, but they are also different.