Autism Discrimination Quick Guide

Discrimination and Student Unions

Disclaimer & use of Language

When we use terms like likely or unlikely in this document we are expressing our opinion as untrained laypersons who are not qualified to practice law. This document is not intended to be treated as a substitute for formal legal advice from a qualified legal professional and we can not take responsibility if you rely upon the information in this document in a court case. We are simply doing our best to be helpful. Please don't sue us.

Why is this Important

More and more autistic people are going to university. However, a fraction of them have struggled to get to that point because behavioural issues at school have significantly disrupted their education. All too often autistic students of normal or above average intelligence will end up spending long periods out of mainstream schooling in special schools designed to manage and to some degree accommodate behaviour that would be considered unacceptable in mainstream schools.

These autistic students are sometimes able to attain good grades and qualifications that enable them to enter university. However they've only achieved this by spending much of their schooling in a school environment specifically designed to deal with behaviour that would be considered objectionable in a mainstream school. Either the school has developed creative strategies to address the worst aspects of that behaviour without expulsion or in some cases has simply tolerated less extreme undesirable behaviour.

In contrast student unions are being asked to police the behaviour of students much more than they historically used to. Accusations of offensive behaviour or harassment that previously would not have come to a student union's attention unless they had justified police involvement are now frequently being brought up.

Student unions are more frequently being asked to police students' social behaviour towards each other. And social interaction is exactly the area where autistic people are at a huge disadvantage.

It's rather unreasonable to expect that autistic students, especially those who've come to university from a special needs school or a pupil referral unit, students who were there in the first place because of problematic behaviour, will be able to make it through university without causing some offence or upset to their peers.

There is a rather large gap between what is illegal and what is merely offensive or upsetting to some people. If student unions choose to police that gap but do so without making special allowances for autistic students, those autistic students who have struggled the most to get to university will also be the most likely to find themselves subject to bans and restrictions that leave them socially excluded when they get there.

Legal Obligations

The 1st and most important point is that if you have been discriminated against by your student union it's not just a moral wrong in the UK it's likely to be illegal. This may still be true even if the student union has followed all their own rules. The rules themselves may amount to unlawful discrimination.

The bad news is if you want a court to set right the discrimination you've experienced there is a good chance you will have to sue the student union. The good news is there are a lot of steps you can take before that to try and resolve the situation and even if you do sue it doesn't necessarily have to be prohibitively expensive. It's also important to note suing isn't just about money, in discrimination cases the courts have powers to force student unions to change things.

The principal law that protects autistic people from discrimination is the equality act (2010). We have a more comprehensive guide on the equality act and legal procedure you may wish to read.

The equality act recognises the following forms of discrimination against disabled people (which of course should include autistic people):

- Direct discrimination
- Discrimination arising from disability
- Indirect discrimination
- Failure to make reasonable adjustments
- Harassment
- Victimisation

Briefly these can be characterised as:

- Direct discrimination:
  - Treating a disabled person worse than a non disabled person in the same situation because they are disabled.
- Discrimination arising from disability:
  - Treating a disabled person badly because of something that was caused by their disability.
- Indirect discrimination:
  - Having a written or unwritten rule that makes things harder for disabled people than non disabled people
- Failure to make reasonable adjustments:
  - Not modifying written and unwritten rules, changing the way things are done or generally offering extra help to disabled people to put them at less of a disadvantage
- Harassment:
  - Doing something related to someone's disability that is unwanted and makes their lives impossibly hard or unpleasant.
- Victimisation:
  - Treating a person badly because they made a complaint about discrimination or they helped someone who did.

The 2 that are likely to be most useful to autistic people are discrimination arising from disability and failure to make reasonable adjustments. We will cover them very briefly below.

Discrimination arising from disability

This law kicks in any time the student union does something ‘unfavourable’ to you because of something that happened because of your autism. It doesn’t matter if they don’t recognise that the situation was caused by your autism but they do need to know or at least could have been expected to know you were autistic. The rule can still apply if they treat you better than they would treat a non disabled person. Say if they give you a lighter punishment in a disciplinary matter.

Once the basic criteria for invoking this law are met the student unions best defence is likely to be that what they did was “a proportionate means of achieving a legitimate aim.” In short it's not enough just for them to say they followed their own rules. They have to have a good reason to justify their rules and show that they only treated you as badly as they had to for the sake of that reason.

The courts have developed a 4 part test as to what counts as “a proportionate means of achieving a legitimate aim.”

1. The aim must be something important enough to justify interfering with a person's basic right not to be discriminated against.
2. The action taken must be logically linked to the aim they’re trying to achieve (they can’t use the aim to justify unconnected actions)
3. The action taken must be as minimal as possible (they can’t use the aim to justify treating you really badly when an approach that was less bad for you would have done the trick)
4. The negative effect on you must be outweighed by the positive effects relating to their aim.

Failure to make reasonable adjustments

The way this law works is it doesn’t kick in based on you individually but on how the student union treats all autistic people as a group. As a member of that group (autistic people) if you have been personally affected by them not making reasonable adjustments for autistic people then you can probably sue. If there is a written or unwritten rule or just something that they normally do that puts autistic people at a disadvantage then they have to take reasonable steps to avoid the disadvantage.

Steps can be almost anything including modifying or ignoring a rule. And being disadvantaged can include the disadvantage caused by following a rule that’s much harder for you to follow than for other people. Even if an autistic person hasn’t broken a rule this law can kick in if trying to follow the rule has made their lives much harder or limited what they can do compared to non disabled people.

Even if the student union hasn’t caused the disadvantage with their own rules, if there is something they could reasonably do to help autistic people they are required to do so. And because they owe this duty to autistic people generally it doesn’t usually matter if they knew you were autistic beforehand.

The key word in all of this is reasonable. There is no legal obligation to make an unreasonable adjustment but it's the court that decides what's reasonable. It doesn’t matter what your student union thinks is reasonable or what other student unions consider best practice, it's up to the courts to define their own independent standards of what’s reasonable.

Agents

Student unions will sometimes claim that even if an autistic person has been discriminated against if it was a student volunteer who did the discrimination they are not responsible. The equality act (2010) says that student unions can be responsible for the actions of their agents. An agent is someone doing something for the student unions who the union has some control over. This usually includes students running events or societies in the student union.

In this case the equality act (2010) says both the student union and their volunteers (agents) are legally responsible for the discrimination. There is a defence open to the student union if they they took the steps they could be reasonably expected to take to stop their student volunteers breaking discrimination law. There is a defence for student volunteers if they were told by the student union that what they were doing was legal and this advice was believable.

It's often very hard for a student union to say they took reasonable steps to stop their volunteers discrimination. Particularly if a discriminatory decision a volunteer made required final approval from a union employee.

Also if a volunteers discriminatory decision is appealed or complained about and the student union chooses not to investigate this it is likely to be both a failure to make reasonable adjustments and may count as not taking reasonable step to ensure volunteers don't discriminate.

There are also other laws in the equality act against knowingly helping someone to commit illegal discrimination or instructing or encouraging someone to.

In practice once the complaint process is exhausted the student union will be the main decision maker and it's difficult to imagine any situation where approving a discriminatory decision wouldn't also be discrimination.

But in theory student volunteers are liable for their discrimination and can usually be sued. But since the student union usually has power to reverse student volunteer decisions. Suing student volunteers may not be particularly productive.

Hypothetical case study 1

An autistic person makes a joke that deeply offends someone. They didn't think it would offend this particular person. They misjudged this person's level of sensitivity because of their autism. The offended person complained.

The student union knows this person is autistic but takes the view that this sort of joke is a breach of their rules and they have a zero tolerance policy that they feel compels them to issue a permanent ban. The autistic person protests that the rules are vaguely worded and that jokes of this kind are not unusual in the group.

This is likely to be a case of discrimination arising from disability. The autistic person's autism can be said to have caused this situation through multiple pathways. First combined with the vagueness of the rules it may have made them unaware that their joke would be in violation of the rule. Secondly, in combination with the fact that jokes like this are told frequently in the group, their autism may have made them believe the student union was choosing not to enforce this rule. Thirdly their autism made them unable to predict that this particular person was unusually sensitive and would be likely to complain about their joke and the student union's disciplinary response is a result of the complaint as much as the violation of the rule.

Since the student union was aware the subject of the complaint was autistic the basic criteria for discrimination arising from disability are likely to be met regardless of whether the student union recognises the causative effect of autism.

The next question is whether the student union can justify their ban as “a proportionate means of achieving a legitimate aim.” Whether or not the aim is legitimate will probably depend on issues of free speech balanced against the interests of people who may find the autistic person's jokes offensive.

The act of issuing a ban is likely to be logically connected to the aim of preventing such jokes in future.

Whether the action taken is minimal is highly questionable. Arguably a rewording of the vague rules, assuming the student union intends to enforce them rigidly and proactively, would prevent similar things happening in future. Lesser punishments, warnings, etc, could have been considered and even if a zero tolerance policy is necessary in general as a deterrence making an exception for autistic people is unlikely to seriously undermine that deterrence.

Lastly, it must be considered whether the negative effect of the ban outweighs the benefit of the exclusion. It’s difficult to imagine how the impact of removing an autistic person from what might be their primary emotional support network could be outweighed by the negative effect of offensive jokes they may tell in the future.

Hypothetical case study 2

An autistic person is involved in a controversial online discussion and makes some comments people find offensive. Multiple complaints are made about these comments. The student union is not aware that the person in question is autistic. The student union considered the comments so offensive in nature that they issued a permanent ban.

The autistic person protests that he is autistic and the case in question is likely to be a misunderstanding caused by people misinterpreting what he said; given autism makes it hard for him to predict the subtext others will read into his written words. He asks to have his case reviewed with weight being given to his autism and how it has caused the situation.

The student union refuses to do this on the grounds that he has been treated in a way equal to the way non disabled persons would be treated in the same situation and in their view it is irrelevant what he meant to communicate. They feel people must be accountable for ensuring what they actually say (or write) does not cause offence.

This is likely to be a failure to make reasonable adjustments. Autism is clearly relevant to the complaint and should be taken into consideration and reconsidering the complaint is unlikely to cause any great hardship for the student union. Were it reconsidered in this context the action the student union has taken may well fall fowl of the discrimination arising from disability law.

Beyond that it is reasonable to take into account the difficulties an autistic person may have in expressing reasonable opinions on controversial subjects without causing unintentional offence. Autistic people are at a disadvantage when it comes to expressing their opinions on controversial issues tactfully and taking this into account when complaints are made is likely to be a reasonable step.

Hypothetical case study 3

An autistic person is permanently banned from a student union club by the club's student volunteers. The ban is discriminatory and illegal. He writes to the student union to complain about the discrimination.

The student union's position is that they prefer to leave disciplinary matters to clubs in general and that for whatever reason the autistic person isn't entitled to a review or appeal within their rules.

The student union believes they are not responsible for their student volunteers discriminatory decisions but that's likely not the case. If they didn't take reasonable steps to prevent student volunteers from discriminating then they will be responsible. This probably includes using their powers to reverse discriminatory decisions when brought to their attention and even if it doesn't it's likely this would be considered a reasonable adjustment.

Unless the student volunteers were given advice from the student union that the thing they did was not discrimination they are also at fault and both the student union and their student volunteers could be sued. Potentially both at the same time.

Responding in the Aftermath of Discrimination

The moment you are discriminated against by your student union a 6 month timer starts. If you don't bring your case to court before that timer runs out you usually can't sue. So ideally you should aim to get all the following steps started well before then. If you're fortunate you'll never need to go to court.

You may be encouraged to try and resolve an issue informally without official appeals or complaints. You have to bear in mind that formal complaints or appeals tend to generate a paper trail that may be useful in court later and that you have a 6 month time limit in which you may want to explore several options outside the student union.

The first thing you should do is complain to your student union through their internal procedure. Try and calmly and clearly point out why you think the way they have treated you is discrimination and illegal. It probably isn't a good idea to threaten to sue at this stage but you should definitely say if you believe any of the unions actions amounts to illegal discrimination.

If they were unaware you were autistic you should consider asking them to reconsider any decisions they've made against you this time taking your autism into account. One reason you might want to do this is even if they say no it's likely to reset that 6 month timer because it runs from the last discriminatory act if multiple acts are considered connected. Also if the discrimination is a failure to act (like refusing to review a decision) the date that matters is when they decide not to act not when they tell you.

When you communicate with student unions you may have to battle some false assumptions about the law. The person who deals with your complaint is probably not familiar with equality law. They often believe, quite wrongly, that not discriminating against you, as an autistic person, just means treating you the same as non autistic people.

Also while student union staff usually have some notion of their obligation to make reasonable adjustments from their dealings with physically disabled people they rarely appreciate that this can extend to adjustments to their own rules. It's very rare that student union staff are aware of discrimination arising from disability.

Pointing out the special nature of discrimination arising from disability is often helpful. Student unions often offer as a justification that they have only applied their rules consistently but the way discrimination arising from disability is structured as a law requires them to justify their actions and the rules that underpin them once the basic conditions for the law kicking in are met.

Section 22 Complaint

If the students union does not reverse their decision, or takes an unreasonably long time to respond to your complaint, you have the option of complaining to your university under section 22 of the Education Act (1994). The law requires that universities (and some colleges) take steps to ensure their student unions operate in a "fair and democratic manner." It also requires them to have a complaints procedure for students who are "dissatisfied in their dealings with the union" run by an independent person and if they find in your favour the law requires the university to actually do something about it.

Generally universities won't accept a complaint of this sort unless the student union has responded to the same complaint through its internal complaints procedure or unless the student union has taken too long to respond. There is normally a written rule about time limits for student unions to respond to complaints and if the student union chooses to ignore your complaint you may need to wait this period out before complaining to the university.

When making your case to the university most of the things you should consider in your complaint to the student union still apply. It's important to emphasise the relevance of your autism as a disability. That you believe the student union has not merely acted unfairly but illegally. Responding to these complaints is a legal duty and universities tend to appoint quite senior retired academics to do it. Also your university is much more likely to employ a full time lawyer of their own. Since you are accusing your student union of breaking the law there is a good chance your complaint will be seen by this lawyer.

Remember that the 6 month clock is still ticking and if this complaints process takes a long time you may need to make a decision about starting your lawsuit before it finishes. You should probably start preparing for a lawsuit before this complaint procedure finishes just in case.

The Equality Advisory and Support Service

If you are not currently a student, perhaps because you are taking a gap year between courses, or if an appeal to the university was unsuccessful you may wish to consider speaking to the equality advisory support service. They do not offer legal advice but they do offer support to people in disputes over discrimination relating to the equality act (2010).

They have a wide range of resources that may be helpful to you in communication with the students union at all stages.

The EASS may be willing to speak to the student union on your behalf and attempt to organise some form of informal mediation. It can help make the student union take matters seriously if they've basically been ignoring you or failing to address the key issues in their responses.

Another important function of the EASS is they can refer matters to the Equality and Human Rights Commission. The EHRC has some real powers to hold student unions accountable through the courts but it's chronically underfunded and so generally won't deal with individuals experiencing discrimination directly.

You can ask the EASS to refer your case to the EHRC and the EHRC may choose to either fund a legal case against your student union or act against your student union directly or do nothing. However you should not be surprised if even after a referral to the EHRC the EHRC never contacts you.

Remember none of this activity stops or extends the 6 month countdown before you lose your opportunity to sue.

Trying to get legal help

You really don't want to take your student union to court without a lawyer if you can avoid it but you might actually be able to get a lawyer or at least some advice from one. One thing to look into is whether you qualify for legal aid from the government. As a general rule to get legal aid for a discrimination case you need to go through the Civil Legal Advice helpline. This process can take rather a long time so it's worth contacting them earlier rather than later.

Your local law centre may be able to offer you legal advice but not all of them cover discrimination cases. A similar thing applies to your local citizens advice bureau although they generally don't offer legal advice at all but more general advice.

If you don't qualify for legal aid you may be able to get what's called pro bono (free) advice from one of a number of legal charities such as Advocate but this generally takes several weeks if you are accepted. Universities sometimes run legal advice clinics where law students offer advice. Your own university might have one.

However there is a good chance you won't be able to get legal help without paying for it, which, we'll assume, you can't afford. Discrimination is something of a cinderella of the legal help world and there appears to be a presumption on the part of the government that discrimination cases against services (which includes student unions) are simple matters which are suitable for small claims track courts.

Whether or not that's the case it's hard to bring a discrimination case against a student union with out representing yourself and the small claims track is more or less designed to make it possible for people to sue without using a lawyer. One source of help you might get is the Support Through Court service. They won't give you legal advice but they can advise you on the ins and outs of court paperwork and procedures.

Letter before action

Before suing someone in court in the UK for many kinds of cases there is a list of rules called a 'pre action protocol' designed to make sure cases don't go to court needlessly. Sometimes a case going to court is the first time opposing parties talk seriously to each other or reveal key pieces of information and the case ends up being settled out of court in the middle of an active court case. Judges don't like it when cases that should have been easy to resolve out of court end up in court and the pre-action protocols are designed to prevent this.

Unfortunately discrimination cases don't have a pre-action protocol but the court will want to see that you've taken some effort to avoid having to go to court before you sue. This usually involves sending what's called a 'letter before action.' Its a letter to your student union saying:

A. what they did,
B. why you think it was illegal,
C. any important facts they may not be aware of that strongly support this,
D. what you expect them to do about it and
E. that if you don't hear from them within a reasonable length of time (usually 14 days) you're probably going to sue them.

If you intend to ask for money you should consider asking for a sum less than 10000£. This is because as a general rule cases involving a sum of money less than 10000£ are handled in the small claims track at court which has several advantages. In all probability though you will want to emphasise that what you want is not money but for the student union to reverse one or more decisions affecting you and possibly change some of its rules that affect you negatively.

A letter before action is effectively your last attempt after everything else has been tried to get the student union to enter a meaningful dialog with you. Remember even if they do start to respond and talk seriously with you at this point they are well aware that the 6 month limit is approaching and may try to keep you talking till that limit is reached.

It's more likely that they won't take you seriously. Student unions tend to assume that if you were serious about suing them you'd have hired a lawyer. In fact the majority of cases against service providers for discrimination are pursued by people without lawyers.

Disclaimer

At this point we need to repeat our previous warning. We are not lawyers. The information in this guide, particularly about how to sue, is not a substitute for legal advice from a qualified professional. Suing your student union does come with real financial risks and although there are ways to reduce those risks we can't guarantee you won't be left out of pocket. If you choose to sue you have our respect because to our minds by pushing this issue before the courts you are doing a public service but we can't and don't accept any responsibility for the risk you take. Please don't sue us if your case goes wrong. Don't think of this documentation as advice but more as information combined with a point of view. We think our interpretation of the law is reasonable but a judge may not and many of these issues have never been tested in court. We can't promise we've got every detail of the way the legal system works right but we have done our best. We repeat we are not lawyers and you should not take this document as amounting to formal legal advice.

Suing your Student Union

An old legal saying goes ‘a man who represents himself in court has a fool for a client.’ Bringing a case to court isn’t something that should be done without a lot of careful thought. Doing it without a lawyer requires even more careful thought. However most people who sue for discrimination do it without a lawyer and end up in the small claims track where usually you don’t have to pay for the other sides lawyer even if you loose.

In some ways this is a good thing because your student union is likely to have a very expensive lawyer. If you are determined, very confident in your case and willing to do a lot of research you may wish to sue your student union as a ‘litigant in person’ which is a fancy way of saying someone who is suing someone without using a lawyer.

If you are serious about this you should consider reading:

- Our A.L.I.E.N. guide on the equality act.
- Doug Paulley’s D.A.R.T. guide on suing for disability discrimination.
- A Handbook for Litigants in Person provided by the government and written by several judges.

You may also find the following legal resources very helpful:

- The text of the equality act (2010)
- Stammeringlaw a website maintained by an ex lawyer with an interest in discrimination law.
- British and Irish Legal Information Institute a free database of UK case law.
- The Civil Procedure Rules, the ‘rule book’ for dealing with and appearing before civil (not criminal) courts in the uk

Before you set off down the road of suing your student union it’s important to ask yourself what you are hoping to achieve. If it’s just money then it's quite possible that by this stage your student union would quite happily pay a few thousand pounds to make the case against them go away quietly.

However the court, even a court on the small claims track, can issue an injunction or declaration. An injunction forces the student union to do something (or not to do something). For example a court might order the student union to unban you from something you’ve been banned from or order the student union to change one of its rules.

A more cautious court might prefer to issue a declaration effectively saying the way the student union has treated you is illegal. A declaration doesn’t force the student union to do anything but it’s on the record. It’s basically a warning to the student union that a particular kind of thing they’ve done or might soon do is illegal without the court exactly having to spell out specific actions the student union must or must not take.

However even when you win it's more common not to get an injunction or declaration. That doesn't make the win a mere matter of money though. If you win and are awarded any amount of money it's a matter of record that your student union has broken the law. The university has a responsibility to ensure student unions act fairly and will want to know why they have broken the law. Also student unions are generally charities and are accountable to the charities commission which is also likely to want an explanation of why the student union has broken discrimination law.

In short if you win even without an injunction or declaration things might change.

How to start

We won't go into great detail here because the other resources we've already referred to explain it much better. However predictably you begin by filling out a form. Form N1 needs to be filled out in triplicate. You may be told you have to make a claim online or at the County Court Money Claims Centre but if you are asking for an injunction and or declaration that's not the case, you need to file your form at the local county court. At the moment the online system is only for cases involving claims for money only, not injunctions or declarations. You can quote civil procedure rules 7A.4 if challenged on this.

At the same time be sure to look into fees remission. Filing paperwork with the court costs money but if you have low income and very little in the way of savings you can have all or part of these fees waived. You'll need to fill out form EX160.

Assuming you are asking for an injunction you may be asked to file an N16A form (in triplicate) with your N1 form. There is a big difference between an interim injunction and a final injunction. An interim injunction is temporary and is generally only issued if there is an urgent need to stop something happening that couldn't be undone later after the trial. You will probably only want to apply for a final injunction which is part of the compensation the court may choose to grant you if you win. Unfortunately if you do fill out an N16A form along with your N1 form there is a risk court staff will misfile it as a request for an interim injunction.

There is also a risk that your case may be misfiled as a part 8 claim. If your objective is to get your case onto the small claims track you will want your claim filed as a part 7 claim (a reference to part 7 of the civil procedure rules). The part 8 process doesn't have a small claims track. Form N1 is for starting the part 7 procedure but county courts aren't used to processing discrimination cases so mistakes are sometimes made.

After you file your claim with the court you are supposed to send a copy of the papers (claim form, particulars of claim, injunction etc) to the equality and human rights commission. You can do this by email using commencementofproceedings@equalityhumanrights.com.

Injunction

A simple form of injunction you might ask for could be something like:

- “The Defendant <name of your student union> Must remove the <name of ban / exclusion / restriction> against me.”
- “The Defendant <name of your student union> be forbidden (whether by himself or by instructing or encouraging or permitting any other person) from reimposing the <name of ban / exclusion / restriction> without fresh cause.”

The second part is important because generally student union procedures don’t have a double jeopardy rule. It’s quite possible that after being unbanned a second complaint is made about essentially the same thing and you get re-banned.

You could add something to the injunction about the student union changing their rules but that begs the question how would the rule be changed. Even if it’s persuaded that the student unions rules are illegal the court might not want to choose what new rule it should be replaced with. It might be easier to get a declaration from the court that a rule is illegal than an injunction that says how it should be changed.

Particulars of claim

When you fill out form N1 you will notice a large box labelled particulars of claim. This is where you lay out your case but you will usually use a separate sheet or sheets you attach to the form instead of this box. You generally put the title of your case at the top, something like “particulars of claim, <your name> v. <student union name>” and then the rest of the document should be short numbered paragraphs.

This is where you lay out your case but it’s not where you prove it. You need to include the relevant facts and the laws you believe were broken but you don’t need to go into deep legal theory here. You will want to mention your autism, your whole case probably hinges on it, But you don’t need to justify or elaborate on every assertion you make about how autism affected the situation. Your statement should list all the relevant events to your case in the order that they happened. This includes, briefly, the things you’ve done to try and resolve the issue out of court.

Be clear to make a distinction between things you know and things you suspect. It should be ok to say something like “because of event X I suspect that Y has happened” if Y is important to your case but don’t just say “I’m sure they’ve done Y.” It’s very important that everything in your particulars of claim should be the truth to the best of your knowledge or you could be held in contempt of court.

You also need to list the laws you believe the student union has or might have broken. It's very important to include everything that's relevant because you will not be allowed to 'depart from your pleadings' later at trial without the judges permission. If you later want to claim they broke a different law you haven't mentioned or they broke a law by doing something you haven't talked about there is a chance you won't be allowed to.

A good rule of thumb on how much to put in your particulars of claim is this. Have you put enough detail in your particulars of claim for the other side to find all the relevant evidence they might have about the situation? Because that's one of the later stages. They will go away using your particulars of claim as a reference and find any documents or witnesses that might be relevant, both the ones that help and hurt their case, and pass you and the court a list of the evidence.

Also you need to include enough information in the particulars of claim to show that you are claiming the student union has broken the law. If you think of the law in question like a recipe in a cookbook have you covered each ingredient that goes into breaking that law? Remember these are claims not proofs at this stage; the detail needed to prove things can come later.

Lastly your particulars of claim should say what you're asking for. Generally the 3 things are:

- Money, called damages in the legal terminology (less than 10000£ if you want to get on the small claim track)
- An injunction (an order from the court forcing the student union to do something or not to do something)
- A declaration (a statement that a particular type of thing the student union has done or might have done or might do is illegal)

The particular of claim ends with a statement of truth. Usually "I believe that the facts stated in these Particulars of Claim are true." Which you will need to sign.

Part 18 requests

There is a narrow window of time between starting the case and being allocated to the small claims track where you can make what's called a part 18 request for information from the student union.

Part 18 requests aren't actually allowed under the small claims track and given you probably want to get on the small claims track you want to think very carefully about using one.

One reason you might want to use a part 18 request is if you believe the student union is trying to avoid revealing information you think is relevant to the case (although obviously they and maybe the judge might disagree).

You can make a part 18 request by sending a letter to your student union asking for more information. In the letter you need to make it clear it's a part 18 request and use the letter only for requesting information. Doug Paulley's D.A.R.T. guide has a good section on writing a part 18 request.

You need to quote a reasonable period for them to get back to you. 14 days usually because if you want a court order before then generally the court will have to hold a hearing. If they don't get back to you or they refuse to tell you what you want you can make a Part 23 application to the court to make them give you the information. You would generally use form N244 for this (it's a generic form for requesting things from courts). Provided it's 14 days after sending the part 18 request you won't need to send a copy of the form to the student union and normally you wouldn't need a hearing for this if it's reasonable for you to have the information you are asking for.

Think very careful before doing this. There is a fee for this and it's a bit technical for a small claims case. Bear in mind that just because some fact or issue is missing from the defence it doesn't mean they'll be able to keep it out of the case. It may turn up in the documentation they'll have to share with you after the case has been allocated to a track.

Allocation

The period between filing your case with the court and it being allocated to a track is a dangerous period. Until your case is allocated to the small claims track the rule stopping the other side from demanding you pay for their lawyer won't kick in. If you have to pull out of your case before then or because it isn't allocated to the small claims track in theory the other side could try to claim the cost of their lawyer from you. Thankfully there is very little work for a lawyer to do in these early stages. (making work up they haven't done would get a lawyer into serious trouble.)

However this is possibly the first time your student union has really taken you seriously. They might suddenly want to negotiate and this is a good thing. Settling out of court is often a much better outcome for all concerned. However you don't want to give their lawyer an excuse to do too much work in this period before allocation.

The student union may ask you to agree to a postponement of the process of them entering a defence so that you can negotiate. They might suggest that they'd be willing to bring in a 3rd party to adjudicate. Be very careful before agreeing to this. Putting back the deadline before case allocation for negotiation potentially creates a lot of work for their lawyer before you are protected by the small claims track rules. Also if they are paying for a 3rd party, even if you are persuaded that the 3rd party is impartial, that party is going to see the student union as its client and will likely be far more willing to communicate directly with the student union while they might be quite hesitant to communicate with you.

If you are provisionally allocated to the small claims track (they give you form N180 to fill out) there is an option to accept a free mediation service from the court and this mediator works for the court and will hold meetings with you and the student union, most likely on the telephone, where everyone is on an equal footing. Assuming you are put on the small claims track there is a box to tick on the form you get to accept this. There is also a rule (civil procedure rule 26.4) that says you can return this form with a written request to have your case postponed for one month for negotiation.

All other things being equal, within 14 days of filing your N1 form (the date the court has stamped on it) you should get an “Acknowledgement of Service,” a written notification that the student union has received your paperwork. 28 days after the filing date (or 14 if they can’t be bothered with the Acknowledgement of Service) you should receive the student unions' defence. If that doesn’t happen you can file more papers with the court that basically means you win by default.

Soon after that you should receive the directions form from the court. If you get form N180 you’ve been provisionally allocated to the small claims track. If you get form N181 you’ve been provisionally allocated to the fast or multi track. If you get form N181 you can use it to ask to be transferred to the small claims track and the court may or may not agree. Doug Paulley’s D.A.R.T. guide has a good section on trying to do this (and filling out all these forms). The key point is you may not want to tick the box for the 1 month postponement for negotiation as technically right now you are not on the small claims track and any work their lawyer does you ‘could’ end up paying for.

Two things you need to think about quite carefully are witnesses and experts. You will obviously be a witness for yourself but would it help to have anyone else speak on your behalf? They’d have to give a written statement but they’d also be expected to show up to court, even if they didn’t end up saying very much that wasn’t in their statement. Ideally you want to give them. If you call too many witnesses the court might think twice about putting you on the small claims track.

The same thing goes for experts. Could you get an autism expert to come in and talk about how your autism affected the situation? You’d probably have to pay for it and it might dissuade the court from putting you on the small claim track. On the other hand autism can be complicated and the realities of a case involving autism can run contrary to a judges 'common sense.’ There is no easy answer here but if you want an expert you ought to ask permission on the form and it would help if you had a name.

Before you decide you should know the court is required by law to appoint an advisor called an assessor to help them with the case. This is usually an employment tribunal judge who has some experience with discrimination cases. But they’re not guaranteed to have experience with disability discrimination cases much less autism cases.

If you can't get your case onto the small claims track you should seriously consider abandoning legal action. You can use form N279 to do this. (filed in triplicate at the county court) If you discontinue without getting onto the small claims track the rules say you are responsible for the money the other side has spent on the case so far and the student union 'may' try and claim the money they've spent on their lawyer but hopefully this won't be very much money since all they've done is some paperwork and written a defence that probably says little more than they think their treatment of you was justifiable.

Disclosure

So assuming you've managed to get on the small claims track next you'll get a notice of when the hearing is along with an invoice for another fee you have to pay for the hearing (you can use another form EX160 to get fees remission if you are eligible).

You may also get orders from the court telling you to do things. Do do them. Ignoring the court's instructions is not a good look when you're trying to make your case and could get you in trouble. If you don't understand the orders or they've asked you to do something impossible don't ignore it. Contact the court, you won't be the first litigant in person who found court instructions difficult to follow.

You might be asked to provide a list of documents to the court and student union. If the order doesn't specify how you should probably use Form N265. You might be told to provide copies of the documents themselves. As a general rule you will have to bring the originals to court and the other side has the right to inspect the originals. Document basically covers any deliberate recording of information. So email's, photos, saved web pages, audio and video recordings are all covered. The list (or copies) needs to cover any evidence you'll rely on in court.

In a fast or multi track case generally you'd also have to search for and include documents that might hurt your case. The student union would also get the chance to view the originals before the hearing on request. The judge might add this sort of thing back into the small claims process in its order.

You may also be asked to provide witness statements ahead of time. Again Doug Paulleys D.A.R.T. guide has a good section on preparing witness statements, it's similar to preparing your statement of case. You want short numbered paragraphs, page numbers, the details of the case and witness at the top and a statement of truth with a signature at the end. You need to write a witness statement for yourself as you are a witness, likely the main witness, in your own case.

If you are having someone else appear as a witness as well they'll need to write a statement too. Don't write it for them. You can help them, especially with formatting etc, but it should be in their own words. Also witnesses are only supposed to talk about facts, things they have first hand knowledge of like what did or didn't happen at a particular incident they witnessed, not opinions unless they are expert witnesses.

The good news is the conditions the court put on you it's also put on your student union. It's quite possible that upto this point your student union has refused to disclose key details. For instance the identities of accusers or details of what you were accused of. Documentation covering this sort of thing will now have to come out.

Assessors

The equality act (2010) says every discrimination case in the county court must have an assessor (unless the judge has a very good reason for it not to). An assessor is a kind of expert adviser that works directly for the court, not for you or the student union.

Assessors are used a lot in courts to determine how much something is worth. After all, how should a judge know how much a painting or antique or rare car is worth. But assessors can be any kind of expert to provide any kind of advice the court needs.

The rules say you don't get to question the assessor because it's the court's advisor not yours. But you do have a right to see any report they've written for the judge before the trial and use it at the trial.

Assessors are not normally used in the small claims track and the small claims track has a rule saying the usual rules about how they are appointed and used don't apply. However there is a second rule in the civil procedures rules practice directions that says for discrimination cases they do apply. Understandably courts sometimes get confused.

The rules say the court must inform you 21 days before appointing an assessor telling you who they are, what their qualifications are and what area they're being asked to advise on. The law says you have the right to object to the assessor chosen (for instance because you don't think they are qualified) and the rules say you have 7 days after being notified to write and object.

It would make sense if the court chose an autism expert for an assessor but in practice this is unlikely to happen. There has been controversy about this in the past. The position of the equality and human rights commission is that assessors in discrimination cases should be experts on the "protected characteristic" in the court case (for example disability). However the court of appeal ruled they only have to be experts in discrimination generally.

Courts have been known to forget to appoint assessors in discrimination cases. They also might ask you and the student union to suggest names for assessors. If you are asked for suggestions and previously considered asking for permission to use an expert witness you might pass some of these names to the court. In theory the court can appoint anyone as assessor if they are qualified, impartial and willing to do it. Alternatively you could write to the local employment tribunal service and ask their advice on assessors.

This is what the court normally does. It asks for a list of employment tribunal judges with experience in discrimination cases from the employment tribunal service. This is in part because the law says the assessors only get paid according to a table of fees and rates the government sets. If you are asked for and do end up suggesting an assessor you may want to warn the suggested assessor about this fee fixing especially if they weren't recommended by the tribunal service.

Also be aware the court has the right to require you to pay your share of the assessors fee upfront.

There is a very real risk that the court will forget to appoint an assessor. Whether or not an assessor is helpful could be quite dependent on luck. Given (we have heard) the lists of assessors kept doesn't indicate whether potential assessors are expert in cases dealing with disability much less in autism. But the law says there must be an assessor (unless there is a good reason not to have one) and if there isn't one it calls the legitimacy of the trial into question.

The equality and human rights commission says this about not having assessors. "It would not be a good reason that the court believes itself capable of hearing the issues in the case without an assessor or that having an assessor would lengthen proceedings."

Preparing for the Hearing

First things first are you sure you want to go ahead. Assuming you're on the small claims track if you drop your case you are unlikely to be made to pay for their lawyer unless you've behaved unreasonably. The other side may have offered you a compromise, called a settlement, to end the case out of court. Rejecting a settlement is not automatically unreasonable but a judge will take it into account when determining if you have been unreasonable.

If a judge decides the student union offered you everything you asked for, or at least everything you had a sensible legal argument for, and you turned it down that might be considered unreasonable. Of course this includes things you want them to do or promise not to do again, things that might be covered by a declaration or injunction, not just money.

If you are worried about the student union going back on their promises after you drop the case there is a very particular way of dropping the case called a Tomlin order. This is a written agreement between you and the student union like a contract saying what you both have to do. If they go back on something in the tomlin order you can go back to the court to get an injunction to make them keep their word.

Documentation

Assuming you do go forward with the full hearing you will want to organise your documents. The rules say you must bring originals of any documents to court to be inspected but these days a lot of documentation is electronic and this probably won't extend to bringing the original device although you might want to copy the original files onto a usb stick just to be super careful.

However for the trial proper you'll want paper copies of all your documentation ordered neatly for speed and convenience. If it wasn't a small claim track hearing you'd be required to make something called a bundle and it won't hurt your case to make one anyway. This is basically a way of joining all the documents in the case together in one 'bundle' (usually a ring binder) for easy reference.

The bundle generally has an index and 3 sections. First copies of all the paperwork you've sent to or received from the court. In chronological order. Second, copies of all your witness statements (and all the other sides if you have them). Third copies of all the documentation used as evidence (yours and theirs) again in chronological order. You should add a second set of page numbers in the bottom right corner so every page in your bundle has a unique number.

If you make 3 copies of your bundle the court can find anything you're referring to by page number really quickly for reference. The other side may also make 3 bundles and if they both contain the same things there is no harm in just using theirs.

Skeleton argument

Sometimes the court will ask you to file something called a skeleton argument but this is rare in small claims cases. However you'll probably find it useful to make one anyway. Autistic people often have difficulty clearly communicating complex concepts that are very clear in their heads to others in a way they can follow. A skeleton argument is a way of writing down the legal arguments of why you think a law has been broken in a very structured, very shortened way. The term skeleton is used because really it just provides the structure to see how all your legal arguments relate to the case and each other. Judges sometimes get super long skeleton arguments that are hard to read from lawyers and they are rarely impressed by this.

Having a good skeleton argument, even if you never show it to the judge and just use it as a reference, will probably help you order your thoughts as you argue at the hearing and make you easier to follow. If you've been told to prepare a bundle use the page numbers of the bundle when referring to things in your argument. For example document X paragraph Y on bundle page Z.

In terms of structure, remember to put on a header stating the case and who's argument it is. Use numbered paragraphs preferably short ones, sub paragraphs (a, b, c etc) and sub sub paragraphs (i, ii, iii etc) are allowed. Indentation may make it more readable. Print on one side only and give the judge a decent margin for notes.

Your skeleton argument needs to summarise the case. What laws do you say were broken by what actions? Then identify the issues. The important things you and the other side are likely to disagree on. Both facts that you disagree on about who said or did what but also legal interpretations you disagree on. You don't need to be neutral here, this is where you can argue your case (based on the other evidence you're presenting in documents and witness statements).

You also want to consider case law as you go through your issues. There is almost no case law on autism and discrimination in the provision of services (which is what a case against a student union would probably be). So unlike most small claims cases your case is likely to be about the interpretation of the law more than facts. You will mostly be relying on caselaw in other areas like employment law or discrimination against other kinds of disabilities. You will want to touch on any important case law that you think supports your arguments about how the laws should be interpreted, you'll also want to mention any case law that hurts your case to argue why it shouldn't apply in this situation.

When referencing case law you'll want to name the numbered paragraphs in the judgement you are referring to. Don't just say case X supports my argument. And try not to quote large chunks of court judgments unless they are really key. Remember to keep it short. Get straight to the core of what your argument on each issue is about, this is not a place for tangents and nitpicking, you do that in court arguing with the other side.

Lastly, don't forget arguing that the other side broke the law is only part of your battle. You also have to argue for the outcome you want. Injunctions and declarations in particular are not guaranteed even if you win so you need to argue that there are certain wrongs in this case that can't be set right with just money.

The document generally ends with a signature and date. If the judge has asked for a skeleton argument you will have instructions on how to submit it. If you haven't been asked you could just keep the argument and use it for reference on the day. Alternatively ask the court desk about how to submit it. But if you are going to submit it try to get it in no later than 24 hours before the hearing.

On the day

First thing you need to decide is who's coming with you and will you ask them to speak for you. In small claims court you can ask to make a friend who isn't a lawyer your lay representative. Someone who'll be allowed to speak for you like a lawyer would. (But you have to be there with them in case you disagree with what they say)

If you are very nervous and prone to miss speaking or getting lost in your words it might help if there is someone articulate you trust who knows the case inside and out to speak for you. On the other hand probably nobody knows your case better than you do and there is some force in speaking for yourself.

If you do want a friend to speak for you you should write and tell the court ahead of time. If you don't you can still take a friend as an advisor and moral support. They'll be able to sit with you in court and quietly offer you advice.

When you go to court wear something smart but comfortable, you're not expected to wear a suit. Remember all your documents (including originals) and get to court early at least half an hour but more is better.

All courts vary but they may not be as noisy as you'd expect. You will need to go through security so don't have anything embarrassing or that would be confiscated in your pockets. There is a metal detector and you may be patted down or have a wand waved over you.

You need to speak to the usher to tell him you're here for your case. You'll want to ask which room you're in and you'll probably be directed to a notice board listing the cases for the day and where they are. You might be in a full court room but you're more likely to be in a judge's office.

Small claims courts are very informal, often held at a table in the judges office but make no mistake this is a court. Turn your phone off. Many of the usual rules of courts apply. You can't record the hearing (although the judge may) and members of the public can come in and watch (unless the judge decides they can't).

If you get a district judge or deputy district judge they are called Sir or Madam not Your Honour like in the movies. If you get a circuit judge it is 'Your Honour.' Remember to follow his or her instructions. You don't want to get on his bad side. However, don't be afraid to ask for help if you are confused by court procedure. The judge is neutral and you can't expect him to help you make your arguments for you but he can and probably will guide you through the court process somewhat.

In small claims cases the judge has wide discretion to depart from the normal protocol for running a hearing. This is because in small claims court sometimes things can get a bit tense, angry or confused. The judge may have the witness speak in a particular order or make you wait till later in the hearing to ask questions of a particular witness.

The judge may want to ask questions himself. It's not like a tv trial where a judge just sits there quietly till the end unless someone objects. Expect him to take an active interest in the case.

At some point you're likely to be asked to present your case. This is where your skeleton argument comes in. Use it as a guide. Reference the key bits of the witness statements (especially yours) and any other documentary evidence as you go. You may be asked to leave your arguments about what you're asking the court for till the summing up. Before then there may be a series of questions between you and the other side, their witnesses and yours.

At the end you're likely to be asked to sum up your case. It's a chance to visit the most contentious points you've just covered in the trial and questioning. In the unlikely event that the other side has come up with some legal arguments you didn't anticipate, this is your chance to think on your feet and try and poke a hole in them. But mostly you are revisiting your case but with reference to the evidence you've just picked apart in court.

Remember at the end after you've made an argument for the student union having broken the law you need to go on to make an argument for why the court should give you the injunction and or declaration. What can they fix that money can't. How would the injunction restore fairness to the situation? What would the situation look like now if the student union hadn't broken the law?

The verdict and aftermath

In all probability the hard part for you is now over. The judge will issue a verdict. If you lose and want to appeal, that's really beyond the scope of this document. If you win and get an injunction it's possible though by no means certain the student union will appeal. If that happens contact the equality and human rights commission. There is a much higher probability they'll get involved and support your case in a higher court.

But if you win and there is no appeal from the student union there are likely to be 3 possibilities. 1: you've won but with no injunction or declaration. If so you might want to talk to the student union. Now that it's on paper they broke the law there may be a lot of pressure on them from the university and charity commission to change their ways. You might be able to negotiate them into reversing their position. You could even consider going to the media at this point. It's hard for the media to make you out to be the bad guy if you've won a case against the student union.

2: You've won with a declaration. A declaration is basically the court saying for future reference these practices we're listing are illegal. It's basically an invitation for you to go back to the court if the issue comes up again. A court might give you a declaration if it expects the student union to be more reasonable and give way but don't want to specify exactly how that should be worked out between you and the student union. If you go back into negotiations with the student union and they just ignore the declaration, going back to the court to ask for an injunction again is something you should probably consider.

3: You've won with an injunction. Unless there is a special condition in the injunction meaning it doesn't kick in until something happens (e.g. after an appeal) the student union really has no choice but to obey it. Another court could change the injunction but they'd need a good reason. If the student union won't comply with the injunction it's very serious. If this happens you can start what's called committal procedures which could lead to prison time for union staff members.

If you lose, the other side may apply for costs. On the small claims track costs are usually capped. They can't ask you to pay more than the capped amount for their expenses so you're not on the hook for 1000s of pounds. The exception is if you've behaved unreasonably which is up to the court to decide but if the student union tries to argue this, say because you refused a settlement, the argument that this case was about more than money and that there was a genuine legal argument, even if the court has rejected those arguments, for things the student union wasn't offering you will be helpful.

Also be aware if the judge is inclined to give you an injunction it's possible the judge may set a second hearing to argue about what should be in it.

Victimisation

If you won, and especially if you lost, you may be worried about some sort of retaliation from the student union. It's worth remembering this would generally be called victimisation, even if you lost it's generally illegal to treat you badly because you complained about discrimination. The exception is if you made something up, lied or otherwise acted in bad faith. This rule about victimisation kicks in well before you take legal action, usually as soon as you start complaining about discrimination to the student union or its representatives. And it doesn't just cover the student union but others like the university who might view your complaint negatively.