

“But that’s not right!”
Challenges, complaints
and the autistic sense
of justice

Presentation and interactive workshop

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Who am I?

- Yo
- Been around a long time in the autistic community
- Adult Social Care Legal Trainer for councils (local government) in England
- Have experience of challenging decisions in a range of ways including going to court



Is there an autistic sense of justice?

- Autism justice sensitivity refers to a heightened sense of fairness, equity, and inclusion, coupled with a strong need to address and correct injustices. In essence, it means being extremely attuned to when something is not fair or right.
- Research and anecdotal evidence suggest that autistic (and other neurodivergent) people tend to have higher levels of justice sensitivity compared to neurotypicals, though of course, it varies by person.

<https://www.simplypsychology.org/autism-justice-sensitivity.html>

AUTISM AND STRONG SENSE OF JUSTICE



SimplyPsychology.org

- I recognise all of these!
- Do you?

Can trigger hopelessness and frustration

Justice-sensitive dysphoria

When an autistic person is repeatedly confronted with unfairness we feel powerless to change, it may lead to “justice-sensitive dysphoria,” a term for the hopelessness and anger that come from living in an unjust world while being highly sensitive to that injustice



Being keenly aware of unfairness often drives us to take action against it



- One way to channel/cope with these feelings can be to take action to challenge injustice
- Some people do that by campaigning for political or social changes
- But it can also be an option to challenge specific injustices on an individual level when they happen to you or someone close to you

Examples of taking action

3 examples:

1. Fighting for a friend's job
2. (Almost accidentally)
becoming an expert in adult
social care law
3. Taking a Judicial Review to the
High Court and almost all the
way to a final hearing



Fighting for a friend's job



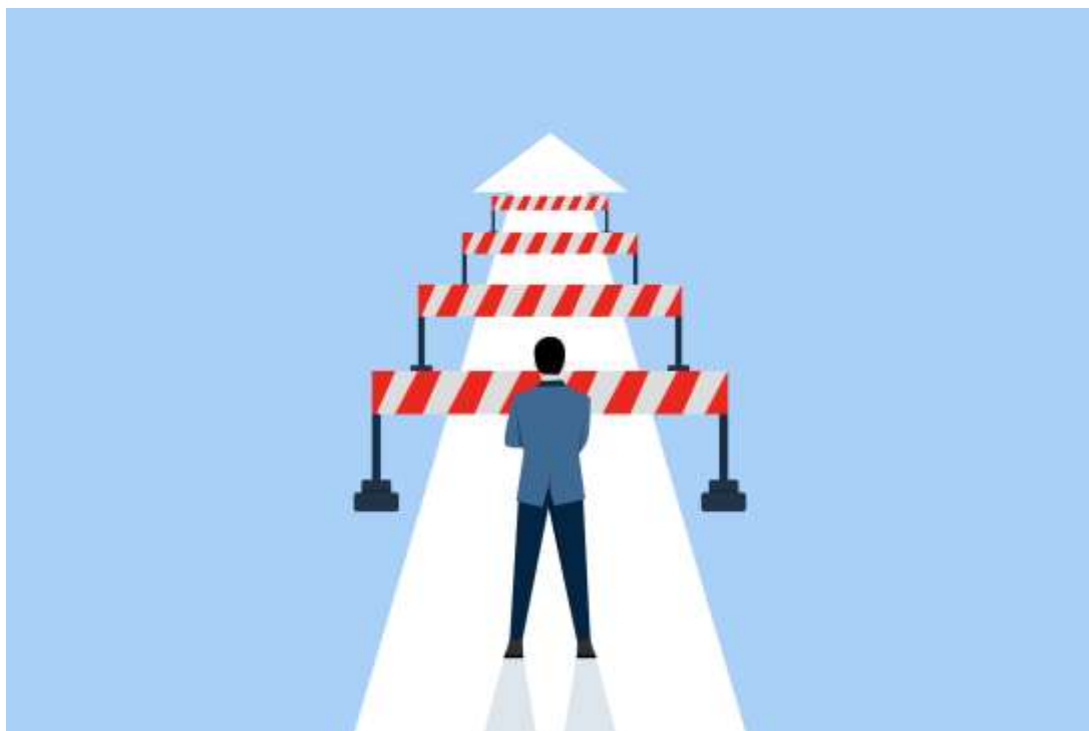
- A friend was employed by a supermarket as a delivery driver
- He had two accidents within a year
- Neither was his fault – one was another driver's fault; the second happened due to his unusually short stature
- The company took disciplinary action against him and he was on the verge of being fired when I found out

Fighting for a friend's job

- I obtained a copy of the company's disciplinary policy and looked up bits of employment law online
- Drafted a letter for him challenging the decision making so far
- That led to an appeal hearing
- At the hearing, we successfully used complaints of unfairness and evidence of good work he had done to ...
- ...negotiate a compromise which resulted in him being transferred to a non-driving role at the same level on similar pay
- He has remained in that role for the 15 years since (and recently been diagnosed as autistic)



As well as the disputes everyone encounters in everyday life, if you need support and/or services this can increase the number of potential injustices we encounter



- Benefits
- Housing
- Healthcare
- Social Care/Support Workers
- Additional support in education
- Additional support in work
- Requesting adjustments/adaptations to services

Reflective question 1

- A situation where I felt something was “not right” was...



First step: identifying a decision and a decision-maker

- Most situations that feel “not right” are the result of a decision
- Someone **decided** that you/someone you care about can't have something or has to do something they don't want to

Alan applied for a disability benefit because he is autistic but was turned down

Decision: That Alan doesn't meet the qualifying criteria for the benefit

Decision Maker: Department of Work and Pensions

Emigdia parked her car while she went to the bank but was given a parking ticket and told to pay a fine

Decision: That she had parked illegally

Decision Maker: Company or Council that issued the ticket

Reflective question 2

- Was there a decision that I disagreed with?
- Try to say what the decision was and who made it (an organisation or role)



Learning about the “rule book” that applies to these services can help and be empowering



- Over time and many, many individual issues I began to:
 - Seek out the procedure and policies around complaints/challenges
 - Identify what form the “rules” took and how to find them – laws, guidance, policies
 - Figure out ways to challenge decisions more effectively – partly from learning from mistakes!
- Eventually, via some formal education and an on-the-job learning opportunity, I ended up becoming a legal expert and teaching adult social care law to council staff who make those decisions (learning a lot more in the process)!

Effective Complaints and Challenges can achieve change – both for you and for others

- For example, Judicial Review proceedings against a local authority went to the High Court in England.
- The case ultimately settled the day before the final hearing was scheduled
- One of the issues in the case was a standard letter which essentially instructed people directly employing their support workers to cut their pay to minimum wage
- One of the things ultimately agreed was to re-write that letter to say instead that they would need to consider how much money people needed to pay their support workers individually on the basis of their needs
- The case has led to several webinars and leaflets and has been successfully used to challenge similar policies in other parts of England [Link to the final consent order](#)
[Plain English Guide to Direct Payments](#)

Distinguishing between different types of “not right” is essential

- To deciding **whether** to challenge a decision
- To deciding **how** to challenge a decision



Thinking about different types of “not right”

Different types of “not right” - “You are not eligible for the service/benefit” because ...	What is wrong with the decision
They have applied different eligibility criteria than the ones the rules set out	The decision-maker broke at least one rule
They’ve decided you don’t have difficulty doing things ignoring strong evidence that you do	The decision-maker followed the rules but didn't fairly consider the evidence
They’ve made a mistake or misunderstood something	The decision-maker made a mistake or misunderstood something
The rules are wrong or unfair (e.g. autism doesn’t qualify)	The decision-maker followed the rules and did fairly consider the evidence but came to a decision I disagree with. I think the rules need to change.
Their expert says you don’t have serious enough difficulties and you couldn’t afford to pay an independent expert/couldn’t get a letter/report	The decision-maker followed the rules and fairly considered the evidence they had. I wasn't able to get all the evidence that would have supported my position.
They’ve decided to believe their expert/evidence instead of your expert/evidence	The decision-maker followed the rules and did fairly consider the evidence but came to a decision I disagree with. I think the rules are right. But my opinion is different from theirs.

Reflective question 3

- What type of “not right” do I think it might be?
 - Do I feel the rules are wrong?
 - Do I think a rule was broken?
 - Do I think they made a mistake or misunderstood something?
 - Do I think the evidence was considered fairly?
 - Do I think I need more evidence?
 - Or do I just disagree with their opinion?



How to move forward with different types of “not right”

What is wrong with the decision	How to move forward
The decision-maker broke at least one rule	Complaint or appeal (if available) or legal challenge
The decision-maker followed the rules but didn't fairly consider the evidence	Complaint or appeal (if available) or legal challenge
The decision-maker made a mistake or misunderstood something	Complaint or appeal (if available) or legal challenge
The decision-maker followed the rules and did fairly consider the evidence but came to a decision I disagree with. I think the rules need to change.	Political issue – you can campaign for a change in the law/policy
The decision-maker followed the rules and fairly considered the evidence they had. I wasn't able to get all the evidence that would have supported my position.	Practical (and often financial) issue. Options: get better evidence somehow and then reapply or give up and get support to cope with your feelings.
The decision-maker followed the rules and did fairly consider the evidence but came to a decision I disagree with. I think the rules are right. But my opinion is different from theirs.	Appeal (if available). Otherwise, nothing you can do. Get support to cope with your feelings.

Choosing the right route – the issue

Complaint

Organisation hasn't done its job well enough

Individual hasn't followed the organisation's own policy

Can sometimes be enough to resolve not following the rules if the organisation will accept they are wrong!

Appeal (if available)

The decision maker got the facts wrong

The decision maker applied the rules incorrectly to your case

The evidence was weighed reasonably fairly but you disagree (lower chance of success)

Legal challenge (e.g. Judicial Review, discrimination or human rights claim)

Rules broken and organisation won't accept it

Evidence not weighed fairly

Choosing the right route – the outcome you want

Complaint

Apology

For them to learn from
it and do better in
future

Token
compensation/goodwill
gesture

Appeal (If available)

Get the decision
changed

Legal challenge (e.g. Judicial Review, discrimination or human rights claim)

To get a fresh decision
made

To establish what the
rules are and get them
enforced

(Sometimes)
compensation (still not
much)

Reflective question 4

- What are my options for moving forward with this type of “not right”?



Can you challenge the decision?

If the decision-maker broke at least one rule or the decision-maker followed the rules but didn't fairly consider the evidence then the answer is yes

If you disagree and an appeal is available then the answer is yes

But before we look at **how** to challenge effectively, there is one more question to consider ...

Should you challenge the decision?



What outcome can you realistically achieve by challenging it?

How likely is your challenge to succeed?

What help can you access to challenge it?

What stress and/or distress will you experience from the process of challenging the decision?

What demands will challenging it make on your resources?

It's important to **keep reconsidering** this issue throughout any challenge. The balance can shift as things develop.

How to challenge effectively – be informed

- Check whether the organisation has published any policies which are relevant to your issue
- Check whether there is any national guidance relevant to your issue
- If you find guidance, check whether it is **statutory (legally enforceable)** guidance. To do this:
 - Is it published by the government or by someone else? (if someone else it is not statutory guidance, but may still be useful to quote)
 - If it is published by the government, does it say **statutory** (or the equivalent word in your country)
- See if you can find out anything about the law about the issue
 - Try major charities/other voluntary sector organisations/user groups and/or googling for guides
 - Make sure the source you are looking at is a reliable source (not just something someone said on social media!)

As well as the specific “rule book”, there are also Equality/Discrimination laws in many countries

- These are likely to cover government/state organisations
- They often cover businesses and other organisations as well
- They rarely cover individuals speaking/acting in their private life unless they break criminal laws
- These can help to protect minority groups – which can often include people with disabilities (which may well include autism)
- You do not always need a formal diagnosis in order to be protected
- How strong these laws are and how easy they are to enforce varies between countries and between different areas of life

E.g. in the UK it is much easier to enforce discrimination law in Employment cases than in other areas of life

There are also more fundamental rules that apply to decisions made by government/state organisations

1. Human Rights
2. Public Law principles – apply in common law jurisdictions around the world

These include fundamental issues of:

- Being fair
- Being reasonable
- Not being biased

[Quite often the sorts of issues that trigger that autistic sense of justice!]

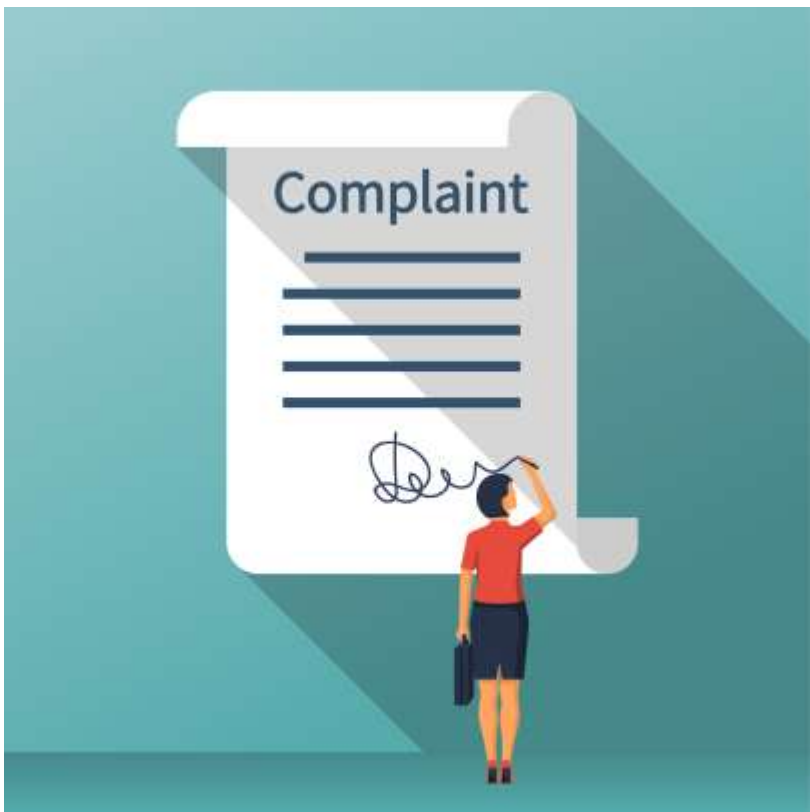
3. Constitutions – vary between countries but are mostly written and have specific courts that protect those rights (except in the UK!)

How to challenge effectively – admin

- Don't delay – check the time limits
- Ensure you are complaining to or about the right organisation – check who is responsible and the correct address to send any letter/message
- Do it in writing – use post, email or an online form (resist doing it by phone or any other format where there is not a record in your possession!)
- Make sure that it is logged. Get a receipt or some form of acknowledgement (e.g. proof of posting, recorded delivery)
- Keep a record – keep copies of everything you send, note the date and time of everything you do



How to challenge effectively – writing the complaint/challenge – 7 golden rules



1. Make sure they know it's a complaint or challenge to their decision - clearly state you are making a complaint
2. Focus on the most important issue(s) and state exactly what the decision is that you disagree with – a maximum of 3
3. Start from scratch – don't assume they have read anything or know anything about what has happened

How to challenge effectively – writing the complaint/challenge – 7 golden rules



4. Explain clearly what you think they got wrong and quote the best thing that supports your position (e.g. a sentence from an assessment report, a paragraph of statutory guidance, the section of law they have broken – say where it is from)
5. Tell them specifically what you want them to do to put it right (e.g. apology, change the decision)
6. Set a time limit (follow their policy/any rule book, otherwise 28 days is usually reasonable)
7. Keep it brief!

Tips for helping yourself cope if you do fight

- Set boundaries and figure out ways to protect them e.g. not taking on fights for people beyond immediate family; using intermediaries or separate email addresses; time limited sessions working on your challenge (if you can manage that!)
- Increase your support e.g. plan additional down/recovery time, extra emotional support etc.



Tips for helping yourself cope if you do fight

- Recruit a sounding board – a friend who can be objective and:
 - Help you focus on the most important issue(s)
 - Tell you when what you want isn't realistic
 - Tell you if you are overestimating your chances of success
 - Warn you if they think the fight is really getting too much for you
- Remind yourself that you are not responsible for fixing everything that is wrong in the world!



Reflective question 5

- What are some ways I can respond that protect both my values and my well-being?



Resources - general

- [UN Convention on the Rights of Persons with Disabilities \(UNCPRD\)](#) – note that this limited in its enforceability unless your country **incorporates it** into its own law – just ratifying and signing has more limited effects
- [Universal Declaration of Human Rights](#)
- [European Convention on Human Rights](#) ([UK Human Rights Act](#))
- [Charter of Fundamental Rights \(European Union\)](#)
- [Human Rights Town App](#)

Resources – mostly UK (and some England) specific

- [British Institute of Human Rights](#)
- [Guides to Public Law and making complaints to public bodies \(government departments/councils etc.\) – UK](#) (with some applicability to other common law jurisdictions)
- [Grounds for a public law challenge](#)
- [NHS Complaints Self-Help Pack](#) – including template complaint letter (UK and sometimes England specific)
- [Healthwatch](#) - Information about Health and Social Care Complaints in England
- [Local Government and Social Care Ombudsman](#)
- [Parliamentary and Health Services Ombudsman](#)
- [Access AVA](#) (information about adult social care in England)
- [CASCAIDr](#) (Adult Social Care Law CIC – England)
- [Care Act Information](#) (particularly about Direct Payments (Adult Social Care England))

More resources – Mostly England & Wales specific

- [The Judicial Review Guide](#) – sets out the rules and procedures to follow all the way through a Judicial Review
- [The Civil Procedure Rules \(CPR\)](#) – the technical rules that govern all court procedures (don't bother to try to read them all, but sometimes useful to look something up!)
- [The Pre Action Protocol](#) – the rules to follow and how to set out a legal letter threatening a judicial review
- [The Court Fees](#) – see section D on p.5 for judicial review fees
- [PLP Guide to Judicial review](#)
- [A basic guide to public law](#)
- [Quick guide to legal literacy](#)