

Tribiwnlys Anghenion
Addysgol Arbennig Cymru



Special Educational
Needs Tribunal for Wales

Annual Report
2003-2004



November 2004

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Special Educational
Needs Tribunal for Wales

To: Ms Jane Davidson AM,
Minister for Education and Lifelong Learning,
Welsh Assembly Government

1 November 2004

I am pleased to submit my first Annual Report as President of the Special Educational Needs Tribunal for Wales, for the year 1 September 2003 to 31 August 2004.

Rhiannon Ellis Walker
President, SENTW

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President's Foreword: SENTW: 12 Months On

This is my first Annual Report as President of the Special Educational Needs Tribunal for Wales (SENTW). The report provides information about the Tribunal's first full year of operation, from September 2003 to the end of August 2004. It should be noted, though, that although the report refers to a full year of appeals, figures for *hearings and decisions* cover only a nine-month period following the hearing of the first appeal on 18 November 2003.

SENTW Background and Structure

The Welsh Assembly Minister for Education and Lifelong Learning, Jane Davidson AM, first expressed the intention to develop a devolved special educational needs tribunal for Wales in her paving document "The Learning Country". From 1994 until September 2003 SEN, appeals against Welsh LEAs had been made to the England and Wales SEN Tribunal (latterly reconstituted as SENDIST). However, the publication in 2002 of the first distinct SEN Code of Practice for Wales provided a pathway to the establishment of a Wales-only Special Educational Needs Tribunal.

SENTW was established on the 1st April 2003, following amendment of the 1996 Education Act by the Education Act 2002. The Tribunal's three chairs and I are all legally qualified and were appointed by the Lord Chancellor. Jane Davidson agreed the appointment of our eight lay members, who all have an expertise in the fields of SEN and/or disability. I understand that over one hundred and sixty candidates applied for the eight positions and that the competition was of an extremely high standard – a position reflected in the quality of our membership.

The Tribunal's administrative office has been established in Llandrindod Wells and comprises a team of four staff. The headquarters house a hearing centre for the Tribunal's work, although appeals are heard in venues across Wales.

SEN appeals may be made by parents where they disagree with decisions made by Local Education Authorities in Wales; claims of educational disability discrimination can be made against responsible bodies in Wales (our booklets on how to make a disability claim, and how to make an SEN appeal provide further information on the process).

The Tribunal has the ability to hear appeals in the Welsh language and to select Welsh speaking tribunal panels. We recognise, though, that there are people who speak Welsh in their day-to-day lives, but who use English for much of their written or reading work. Consequently, we now offer parents the opportunity to make their application in English, but give their evidence in Welsh. Already we have staged a bilingual hearing at which evidence was given in both languages.

Developments

We have from inception placed great importance on creating an informal atmosphere for the hearing of the appeals. I appreciate that users of the Tribunal can feel very anxious and it is to all parties' benefit if hearings take place in an atmosphere that is as informal and relaxed as possible. We have therefore ensured that there are separate consulting rooms both for parents and local education authority representatives and witnesses. We have also made available free access to refreshments.

We have been keen to have an open dialogue with our users. To promote the exchange of information and views, SENTW has set up three regional user groups which each meet twice a year. These meetings are open to all users of the Tribunal and we are conscious that they must be representative; we have encouraged the attendance of parental representatives, the voluntary sector, the Disability Rights Commission and, of course, LEAs. We are now looking at ways to encourage direct parental representation at such meetings. The meetings have been well received and we hope will lead to further understanding of the work of the Tribunal and an opportunity for our users to make known their views and concerns.

Statistics

My report gives a breakdown of the number, types and outcomes of appeals and claims over the last year. Please note that for this year only, where a direct comparison allows, we have presented our figures against the relevant SENDIST numbers.

The first appeals were received in Llandrindod Wells in September 2003. During the year, some 128 cases were received and of these 117 were registered. Over the course of the same year we received and registered only two claims of disability discrimination. Although this is entirely consistent with figures from Wales under the SENDIST jurisdiction, one wonders whether the appropriate information is widely available. I note and endorse the former SENDIST President, Trevor Aldridge's, comments in his last report that, "...it would be useful to require schools to tell parents about the scope of the claim procedure each year in their annual reports."

The Future

There has been much discussion recently in relation to the UK government White Paper, Transforming Public Services: Complaints, Redress and Tribunals. The White Paper adopts many of the recommendations contained in Sir Andrew Leggat's report, "Tribunals for Users – One System One Service". The development of a

unified service for tribunals is at an advanced stage; I understand that the Assembly Government is considering the Welsh response. The SEN Tribunal for Wales will look to play a role in those discussions over the coming months.

It has been a very exciting and rewarding twelve months. Having tested and refined our systems, during this time, we will now look further to improve our service to users.

On behalf of SENTW, I must thank Trevor Aldridge QC (President of SENDIST to October 2003), Rosemary, Lady Hughes (the current SENDIST President) and her Secretariat for their generous assistance, advice and support throughout the year. We look forward to continuing our dialogue with our counterparts in the other jurisdictions.

I am certain that the next year will be equally full of challenges, but with the support of SENTW's excellent and dedicated chairs, lay members and secretariat, I am confident that the Tribunal will deal with them in a professional and successful manner.

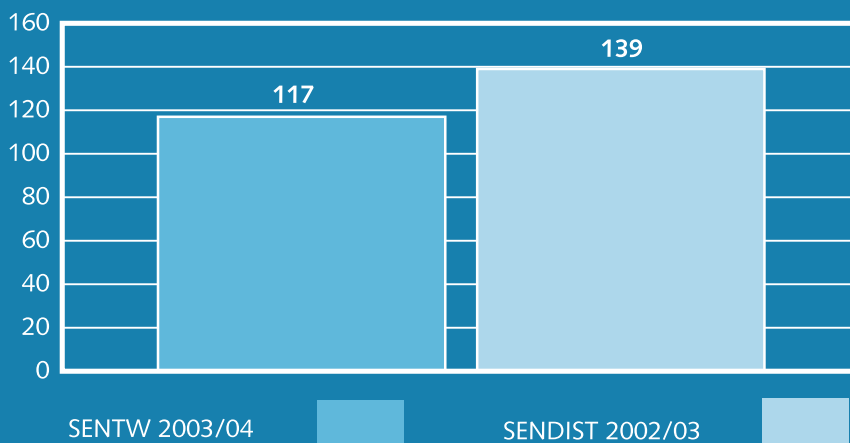
Number of SEN Appeals

During the year 2003/2004, we received **128** SEN appeals about decisions made by LEAs in Wales. Of these, **117** SEN appeals (91.4%) were registered.

Appeals received prior to September 2003 were handled and, where appropriate, heard by the then English/Welsh SEN and Disability Tribunal (SENDIST) jurisdiction. Welsh Appeals received by SENDIST after 1 September were forwarded to the SEN Tribunal for Wales.

Under the SENDIST jurisdiction, 139 Welsh appeals were registered during 2002/2003. The registration figures indicate a 15.2% reduction in the number of appeals year on year. Given that LEAs in Wales are required to inform parents of their right of appeal to SENTW, it is unlikely that the Tribunal's relative novelty would account for this reduction in appeals.

SEN Appeals registered by Tribunal year

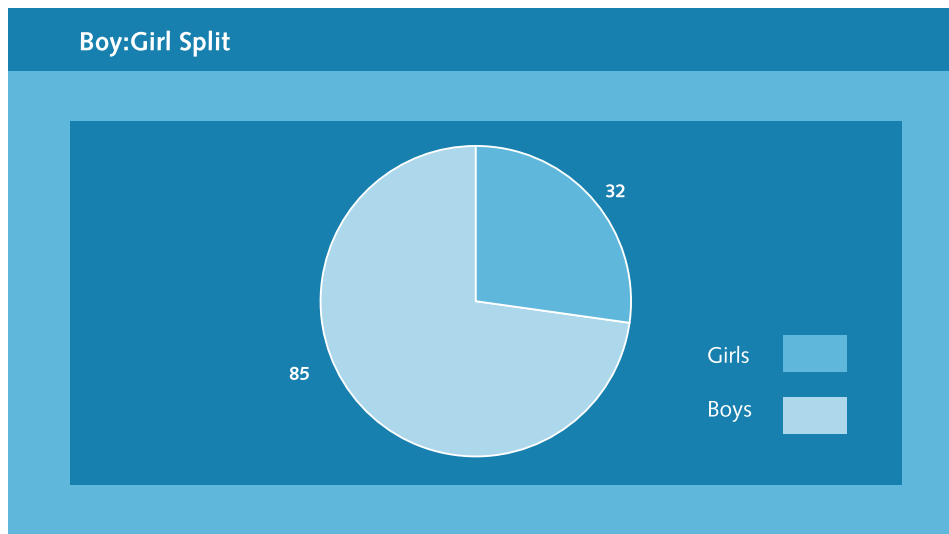


SEN appeals boy:girl split

During the year, the number of registered appeals relating to boys was 85 (72.6%).

Over the same period, the figure for girls was 32 registrations (27.4%).

These figures are largely consistent with SENDIST registrations for the previous year: boys 74.4%; girls 25.6%.



Speed of disposal

In the last year, SENTW disposed of 25 appeals (through hearings, reviews and strike outs) in the timescales set out overleaf. For the purposes of this report, the Tribunal's disposal period runs from date of registration until a written decision is issued to parent/s and LEA.

I have decided to express the periods in terms of number of working days¹ as this seems to offer a more exact measurement of how long the process is taking. For the purposes of comparison, for this year only we have also shown (in brackets) the average speed of disposal in months.

It should be noted that the SENTW's first appeal was heard in mid-November. Appeals received late in the Tribunal year (from June 2004) onwards will be heard, where applicable, in the year 2004-2005.

¹ In line with regulations, the following are not included as working days: Saturdays and Sundays, any day in August, any day from 25 December to 1 January inclusive, bank holidays.

Number of Decisions issued:	25
Average Number of working Days:	82 (4.1 months)

The averages are skewed somewhat by the unusually lengthy disposal of 2 appeals that were subject to adjournments.

The SENDIST England and Wales figures for last year indicate that the average time for disposal had been 4.3 months.

Issue of Decisions:

We aim to issue written decisions within 10 working days. The average number of working days taken to issue a decision in the last year was 9 days.

Post-registration outcomes

Decided	25	21.3%
Withdrawn/conceded ²	59	50.4%
Struck out	1	0.9%
Pending	32	27.4%

² Appeals may be withdrawn by parents at any stage of the process; LEAs may decide no longer to oppose an appeal and, where this decision has been notified to SENTW in writing, the appeal will be classed as conceded.

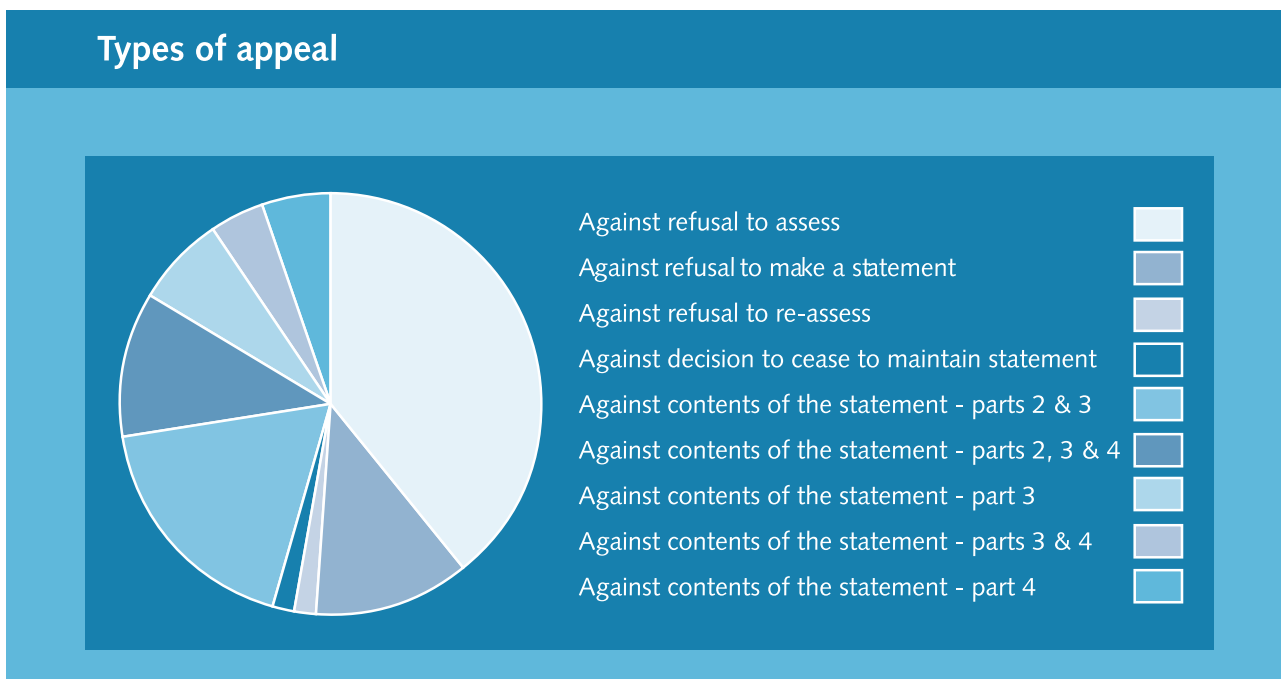
Appeals per local education authority

Over the course of the year, parents have had appeals about LEA decisions registered in the following numbers:

	No of appeals 03/04	Per 10,000 of school population	Appeals 2002/03	Per 10,000 of school population
Blaenau Gwent	0	0.00	2	1.67
Bridgend	2	0.86	7	3.05
Caerphilly	3	0.96	7	2.22
Cardiff	35	6.48	28	5.37
Carmarthenshire	5	1.78	8	2.84
Ceredigion	1	1.00	2	1.87
Conwy	8	4.44	1	0.57
Denbighshire	0	0.00	1	0.59
Flintshire	3	1.20	7	2.71
Gwynedd	3	1.57	3	1.62
Isle of Anglesey	0	0.00	1	0.93
Merthyr Tydfil	0	0.00	2	1.86
Monmouthshire	5	3.57	4	3.01
Neath Port Talbot	6	2.72	5	2.18
Newport	15	6.00	24	9.48
Powys	7	3.33	7	3.37
Pembrokeshire	0	0.00	1	0.51
Rhondda Cynon Taff	4	0.95	3	0.70
Swansea	7	1.89	13	3.52
Torfaen	3	1.76	8	4.56
Vale of Glamorgan	8	3.60	2	0.90
Wrexham	2	1.05	3	1.54

Types of appeal

The information below illustrates the different types of appeal registered by SENTW.



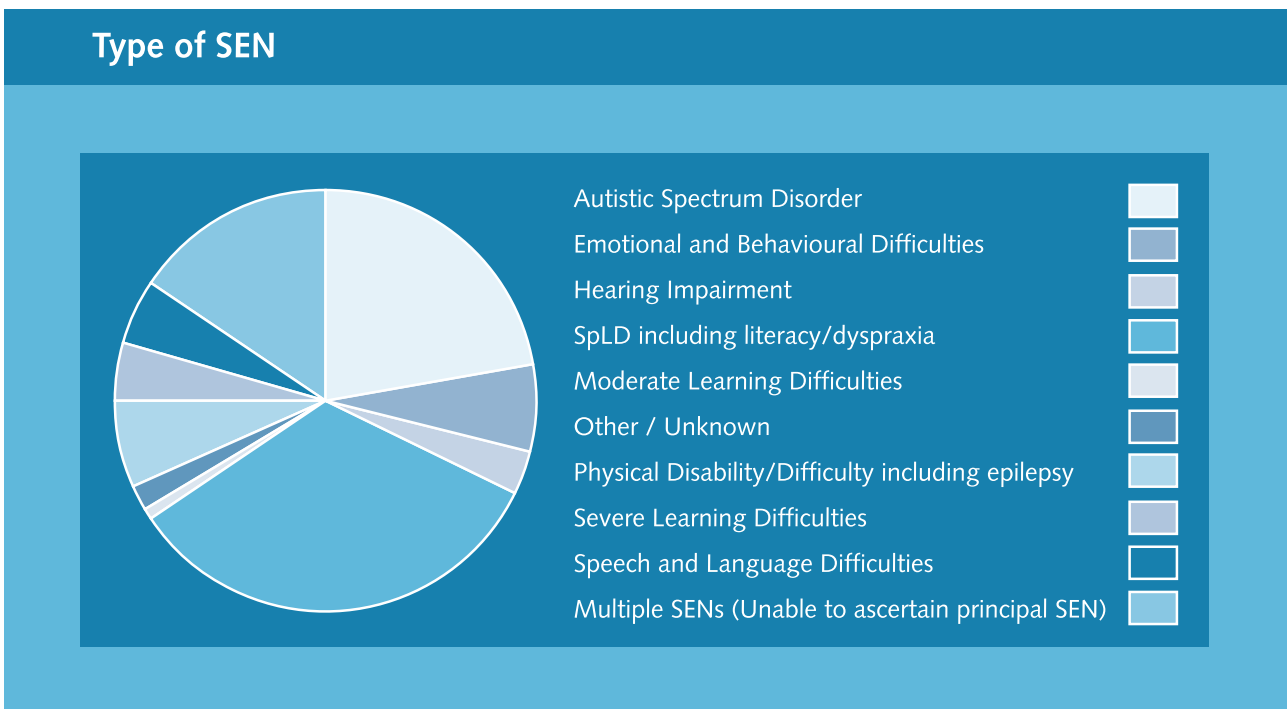
Type of appeal	03/04 Total	% of Total	02/03 Total	% of Total
Against refusal to assess	46	39.3	42	30.2
Against refusal to make a statement	14	12.0	15	10.8
Against refusal to re-assess	2	1.7	0	0.0
Against decision to cease to maintain statement	2	1.7	6	4.3
Against contents of the statement- parts 2 & 3	21	18.0	40	28.8
Against contents of the statement-parts 2,3 & 4	13	11.1	31	22.3
Against contents of the statement-part 3	8	6.8		
Against contents of the statement-part 3 & 4	5	4.3		
Against contents of the statement-part 4	6	5.1	5	3.6
Total appeals registered	117		139	

51.3% of registered appeals were about either a refusal to assess or, after an assessment had been carried out, the decision not to make a statement of SEN. Appeals about these stages are significantly higher than was the case in the previous year (41%) and we will be interested to see whether there is a continuing trend in this direction.

Nature of special educational need

The following information sets out appeals by nature of SEN (using types of SEN used in the PLASC returns)³. We have recorded the primary SEN referred to at the point of appeal. Of course (particularly with appeals requesting assessment) the nature of a child’s SEN is not always clear at early stages and, as not all appeals proceed to the detailed information required in statements of case, this picture often does not become any clearer.

Where parents have indicated that a child has multiple special educational needs, and no further information is available, we have recorded these in the “other/multiple SENs” category.



Autistic Spectrum Disorders	22.2%
Emotional & Behavioural Difficulties	6.8%
Hearing Impairment	3.4%
SpLD including literacy/dyspraxia	33.3%
Moderate Learning Difficulties	0.9%
Other/Unknown	1.7%
Physical Disability/Difficulty including epilepsy	6.8%
Severe Learning Difficulties	4.3%
Speech and Language Difficulties	5.1%
Multiple SENs (unable to ascertain principal SEN)	15.4%

³ Pupil level annual school census

Outcome of appeals: general

The table below shows the number of appeals that were upheld, either fully or in part, and those that were dismissed. The percentages of appeals upheld in full or part and those dismissed were 80% and 16% respectively.

Appeals by types	Decisions issues 2003/2004			Decisions issued 2002/2003		
	Upheld	Dismissed	Struck Out	Upheld	Dismissed	Struck Out
Refusal to assess	3	1	0	2	7	1
Refusal to statement	0	2	0	2	1	0
Refusal to re-assess	0	0	0	0	0	0
Cease to maintain	0	0	0	2	1	0
Parts 2 & 3	6	0	0	15	1	1
Parts 2, 3 & 4	6	0	0	23	0	2
Part 4	1	1	0	3	1	0
Part 3	1	0	1	0	0	0
Part 3 & 4	3	0	0	0	0	0
Total	20	4	1	47	11	4

Outcome of appeals: schools

8 decisions concerned the school named in a child's statement (part 4 appeals). The outcomes are shown below:

	Amend statement upheld part 4	Amend statement upheld parts 3&4	Amend statement upheld parts 2, 3&4
Mainstream Maintained School	0	1	1
Special Approved Independent School	0	0	1
Maintained Special School	1	1	2
Home Tuition	0	0	1
Total	1	2	5

Outcome by nature of SEN

Appeals by type	Decisions issued 2003/2004					
	Upheld		Dismissed		Struck Out	
Autistic Spectrum Disorder	8	32%	1	4%	0	
Emotional and Behavioural Difficulties	1	4%	0		0	
Hearing Impairment	0		0		0	
SpLD including literacy/dyspraxia	4	16%	1	4%	0	
Moderate Learning Difficulties	0		0		0	
Physical Disability/Difficulty including epilepsy	4	16%	0		0	
Severe Learning Difficulties	1	4%	0		0	
Speech and Language Difficulties	0		0		0	
Multiple SENs (Unable to ascertain principal SEN)	2	8%	2	8%	1	4%
Total	20	80%	4	16%	1	4%

Ethnic Monitoring

Parents are invited to complete an ethnic monitoring statement that accompanies the notice of appeal. Completed returns provided the following information:

	2003/ 2004	2002/ 2003
Bangladeshi	1	0
Black African	1	1
Black Other	0	1
Pakistani	2	0
White	93	95
Other	2	2
Not Completed	29	40
	128	139

High Court appeals

There were no appeals to the High Court against SENTW decisions during the year 2003/04.

Disability discrimination claims

It is difficult to draw meaningful inferences about claims of disability discrimination given that, during the period, only 2 claims were received. In light of the very small caseload, I do not propose to offer a detailed analysis other than to provide an outline.

Both disability discrimination claims were registered and proceeded to hearing; both were upheld. In the 2 instances, the remedies ordered were that the responsible body apologise to the pupil concerned and that further training be delivered. The responsible bodies involved were a maintained secondary school and a maintained special school.

In 2002/03, 2 claims were registered by SENDIST in relation to responsible bodies in Wales.

Complaints

Over the course of the last year, we have received 2 complaints. Both were of a judicial nature: one was from a local education authority and one from a parent. After careful consideration, neither was upheld. I understand that a further complaint from the same parent was made both about the administrative and judicial arms of the Tribunal to the National Assembly for Wales and the Lord Chancellor; no further action has been taken.

Naturally, it is disappointing to receive complaints but, that said, they are useful in terms of feedback and the identification of training issues. We shall continue to look to improve our service to our users.

Expenditure - 1 April 2003 to 31 March 2004

Expenditure	2003-04 £ (000s)
Tribunal members' fees and expenses	32
Members training	5
Hire of hearing accommodation	7
Clerks' expenses attending hearings	2
Other appeal expenses (witness claims, interpreting etc)	3
Salaries	55
Office expenses	9
Advertisements	22
Print costs	25
Office establishment and adaptation costs	217
Rent and rates	17
Utilities, maintenance and cleaning	13
Total	407

Total expenditure in the financial year to 31 March reflects start-up costs incurred in furnishing and modifying tribunal premises.

We understand that the National Assembly for Wales will invoice the Department for Education and Skills 5% of SENTW's running costs plus all expenditure incurred in hearing claims of disability discrimination.

Tribunal membership

The Tribunal comprises the following members, all of whom either presided over or sat on tribunals from November 2003 to September 2004.

President	Rhiannon Ellis Walker
Chairs	Mark Allen Jacqueline Blackmore Meleri Tudur
Lay members	Sandra Boyle Norman Donovan Gwyn Griffiths Kerena Marchant Gareth Roberts Siân Wyn Siencyn Susan Taylor Andrew Wilson