

Tribiwnlys Anghenion  
Addysgol Arbennig Cymru



Special Educational  
Needs Tribunal for Wales

## Annual Report 2004-2005



October 2005

**Additional copies of this report are available from:**

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Special Educational  
Needs Tribunal for Wales

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

October 2005

I am pleased to submit my second Annual Report as President of the Special Educational Needs Tribunal for Wales. The report details the Tribunal's activities for the year 1 September 2004 to 31 August 2005.

Rhiannon Ellis Walker  
President, SENTW

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## President's Foreword

This annual report covers the second year of SENTW's existence and details our activities from September 2004 to the end of August 2005.

The second year of an organisation's development is very often an interesting period, and that has certainly been the case with SENTW. We have now had an opportunity to look back on our initial experiences, view what have proved to be recurrent themes and we now look forward to the challenges and changing landscape that lie ahead.

It seems that our Tribunal users have become more familiar with the ways in which we operate and, hopefully, they see a consistency of approach that is enhanced by SENTW's relatively small scale. However, the emergence of our distinct culture has been influenced by the feedback and input of our users. I am most grateful to them for engaging in that process.

## Developments

### Mock Hearing

The statutory nature of the decisions which we reach and our role in deciding appeals and claims, inevitably ensures a certain formality. This formality, quite properly, attaches to the work we undertake.

SENTW members, the secretariat and I have tried to effect a reduction of unnecessary formality. To do this we have over the year tried to work in partnership with our users to understand the issues from their perspective and to set out what they can expect when they make an appeal to us.

One of the ways in which we have been able to do this was by staging a mock hearing at our offices in Llandrindod Wells. I hope that that exercise proved as useful for those attending from LEAs, the voluntary and legal sectors, as it was for us in getting across what we need from participant bodies. Certainly, the responses received suggested that we met our aims and that the mock hearing was very well received.

The next stage will see a DVD/video of the mock hearing being made available to LEAs and parents as a reference point for what might happen at a hearing. The production will include footage of the panel's pre- and post-hearing discussions, something to which Tribunal users are not normally privy. We hope that, in this way, all users will be able to gain some prior knowledge of what to expect at a hearing.

## **Involvement of the Child**

It is arguable that one group of users has been less well catered for in the past: children themselves. Peter Clarke, the Children's Commissioner for Wales, in his last annual report called for children to have the right to make appeals in their own name. This is a very complex issue for a variety of emotional and technical reasons, but one which we are embracing with the Commissioner's office and with the Welsh Assembly Government. Any proposals that are put forward would require thorough consultation with those affected. Naturally, what is of paramount importance is that the issue is explored with an overriding sensitivity to children's needs and to ensure that they are not exposed to harmful pressure, manipulation or are disadvantaged as a result of developments in this area.

Chapter 3 of the SEN Code of Practice for Wales is dedicated to Pupil Participation in the decisions that affect them. I have been interested by work in England that aims to find creative ways to advocate for children and, in sometimes difficult circumstances, ascertain and put forward their views on the decisions that impact on them. The law requires that LEAs, as part of their case statements, advise SENTW of the child's views or record that such views have not been accessible. I appreciate that gaining an insight into what the child feels is far from simple, and sometimes seemingly impossible, but would enjoin them to consider afresh ways to ensure that the rights of the child are given due consideration.

## **Disagreement Resolution Services**

It is encouraging that 20 of the Welsh LEAs have opted to work together to provide a unified approach to disagreement resolution services (DRS). This seems to me a sensible, committed and coherent development. Often as a Tribunal we are asked to decide appeals that may have been perhaps more properly and speedily resolved at a lower level. It is essential to maintain for parents a right of appeal, and our involvement even prior to a hearing can focus minds. I would, however, take this opportunity to urge LEAs and the Assembly Government to take further steps to advise parents of DRS and the important role that such services can play when there is genuine commitment to the process from all parties.

## **A Role for Estyn?**

The Tribunal Secretary and I attended a meeting of the Assembly's Education and Lifelong Learning Committee in June. Jane Davidson, in response to figures highlighting the number of appeals registered on an LEA-by-LEA basis, sought the Tribunal's views on extending Estyn's remit to cover investigation of appeal numbers. As can be seen from even a cursory reading of this report, some local



authorities have a disproportionately high number of appeals relative to their pupil numbers. It would be improper for me to suggest the reasons underpinning this but, clearly, high appeal numbers can be vexatious both for parents and for LEA staff, whose resources one presumes to be stretched. Irrespective of whether an appeal proceeds to a full hearing, or is withdrawn or conceded, LEAs, parents and the Tribunal are engaged in varying degrees of information gathering and presentation. Again, irrespective of eventual outcome, significant levels of parental discontent concerning LEA decisions is worthy of further consideration. Examination of the reasons behind high appeal numbers could, I feel, be usefully undertaken by a body such as Estyn, which may be also able to offer practical suggestions to the bodies concerned.

## Disability Claims

Again this year the number of disability claims is very low. The work continues to comprise a fraction of our involvement in SEN appeals. The feedback from my Chairs remains that there appear to be issues for schools in working to understand and meet their duties under the Act. The low number of claims may suggest either that parents and their children are satisfied with provision, or that there is an ignorance about the right to make a claim of disability discrimination.

I am pleased that the Assembly Government has constituted a group to consider ways in which to raise awareness of the disability claims avenue; I understand that the group is awaiting a formal proposal to take this work forward.

## The Road Ahead

Readers may be aware of the proposals set out in the White Paper **Transforming Public Services: Complaint's Redress and Tribunals**. These include the creation of a new executive agency as part of the Department for Constitutional Affairs to administer tribunals. While responsibility for administering devolved tribunals such as SENTW will remain with the Assembly Government, any proposed changes to the legislation that governs tribunals more widely will inevitably impact on tribunals that sit in Wales. This includes the possibility that onward appeals from a tribunal like SENTW will not in future lie to the High Court but rather to a new appellate tribunal.

SENTW welcomed the hosting by the Council on Tribunals of a first Conference of Welsh Tribunals. It is always good to meet colleagues from tribunals in other jurisdictions and to learn from alternative practices. We have also enjoyed working with colleagues from the newly-established Additional Support Needs Tribunal for Scotland, and wish them every success in their endeavours.

It is a privilege to be President of the SEN Tribunal for Wales, particularly so when the SEN and tribunals agendas are moving forward at a pace. I look forward to overseeing SENTW's development over the coming year in conjunction with the Tribunal's hugely dedicated chairs, members and secretariat.

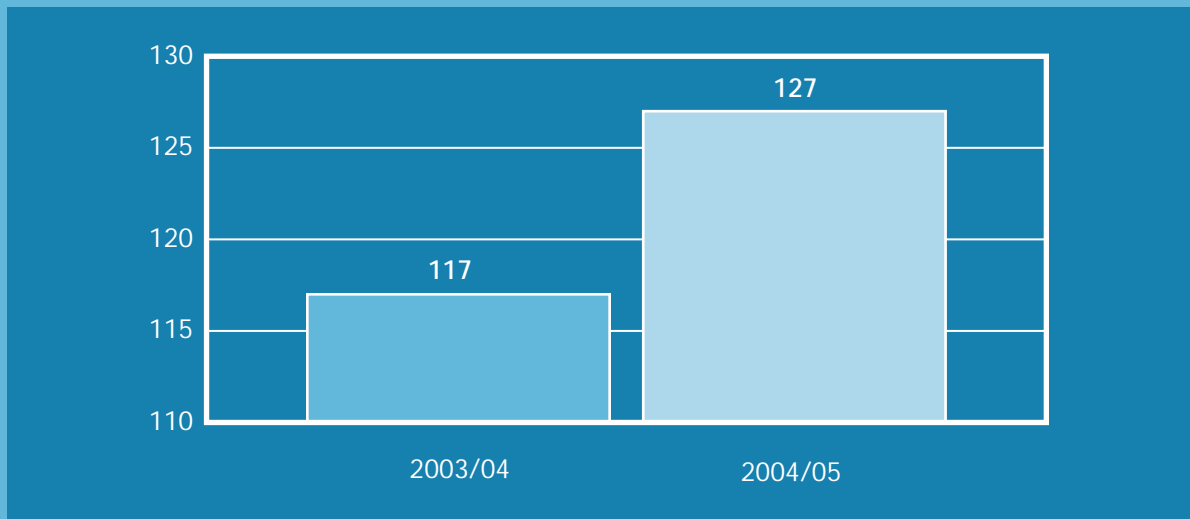
## Number of SEN Appeals

Over the course of the year, running from 1 September 2004 to 31 August 2005, the SEN Tribunal for Wales received **147** appeals about SEN decisions. Of these, **127** (83.69%) were registered. We were unable to register 3 appeals as they did not meet statutory requirements; four were withdrawn by the parents prior to the appeal being registered; a further 13 remain at pre-registration stage, which is to say that we are awaiting further information before these appeals can proceed to full registration.

In addition to the 127 registered appeals, we also carried forward 35 appeals that were unable to be disposed of within the previous Tribunal year.

There is a degree of consistency with last year's returns, when we received 128 appeals, of which 117 were registered.

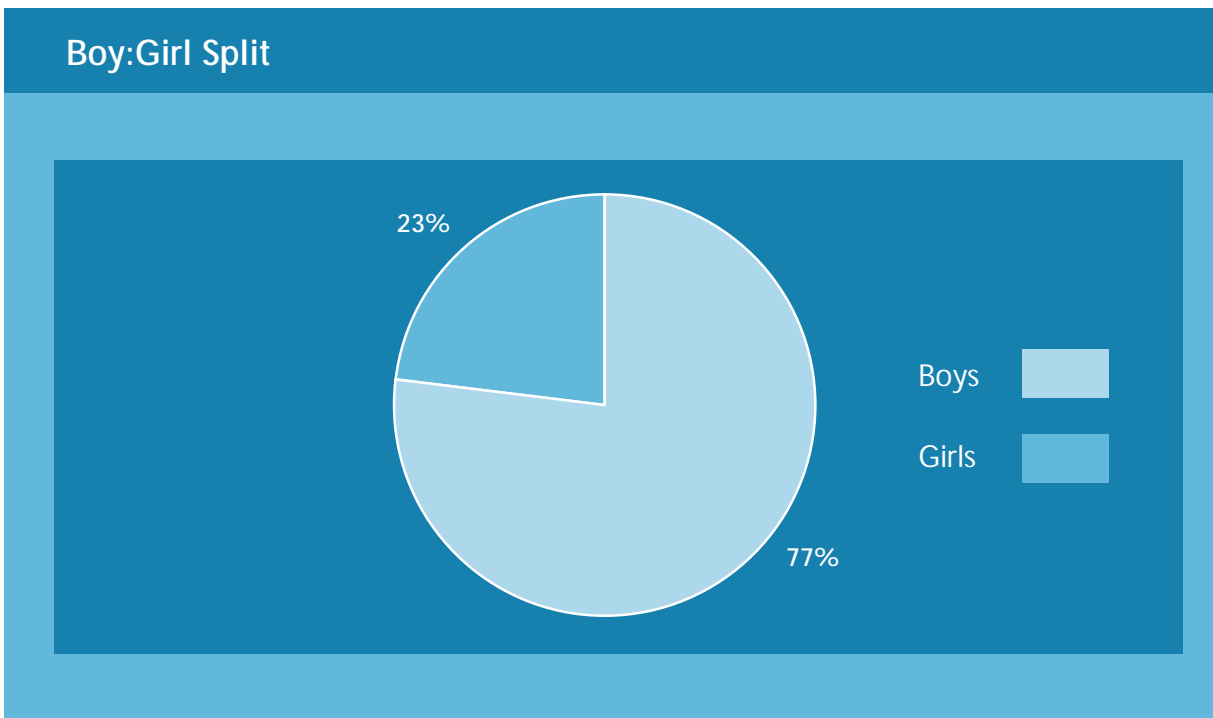
### SEN Appeals registered by Tribunal year



### SEN Appeals - boy : girl split

During the year, 98 SEN appeals relating to boys were registered; the corresponding figure for girls/young women was 29.

This shows a year on year increase in the percentage of appeals concerning boys: the figures for 2003/04 were 72.6% (boys) and 27.4% (girls).



### Speed of Disposals

This section addresses how long, in terms of working days<sup>1</sup>, it took between an appeal being registered and the decision being issued.

The average number of working days taken to dispose of appeals has risen to 95 from an average of 82 in the previous year. One reason for this increase was the rise in the number of hearings adjourned. 7 hearings were adjourned with directions for one or both parties to provide further written information in support or opposition to the appeal.

Number of decisions issued	31	Plus 1 Strike out
Average number of working days	95	

<sup>1</sup> 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.

The average number of days for a decision to be issued remained at 9.

The table below sets out the manner in which 119 appeals were disposed of, and the number pending, which will be carried forward to the next Tribunal year. While there has been an increase in the number of decisions (from 25 to 31), this figure accounts for a slightly smaller percentage of appeal disposals (last year's corresponding figure was 21.3%).

We have seen a small increase in the number of withdrawals/conceded appeals – from 50.4% to the current combined total of 53.7%.

The percentage of appeals registered but awaiting a hearing is largely consistent with last year's return (26.54% as against 27.4% in 2003/04).

At the end of this reporting period there are no live appeals remaining from the 2003/04 Tribunal year.

Decided	31	19.14%
Withdrawn	45	27.78%
Conceded	42	25.93%
Struck Out	1	0.62%
Pending	43	26.54%

### Number of Appeals per LEA

The table, overleaf indicates the number of appeals registered on an LEA-by-LEA basis during the Tribunal year 04/05. As can be seen, all LEAs have had at least one appeal registered against their decisions during the course of the last two years.

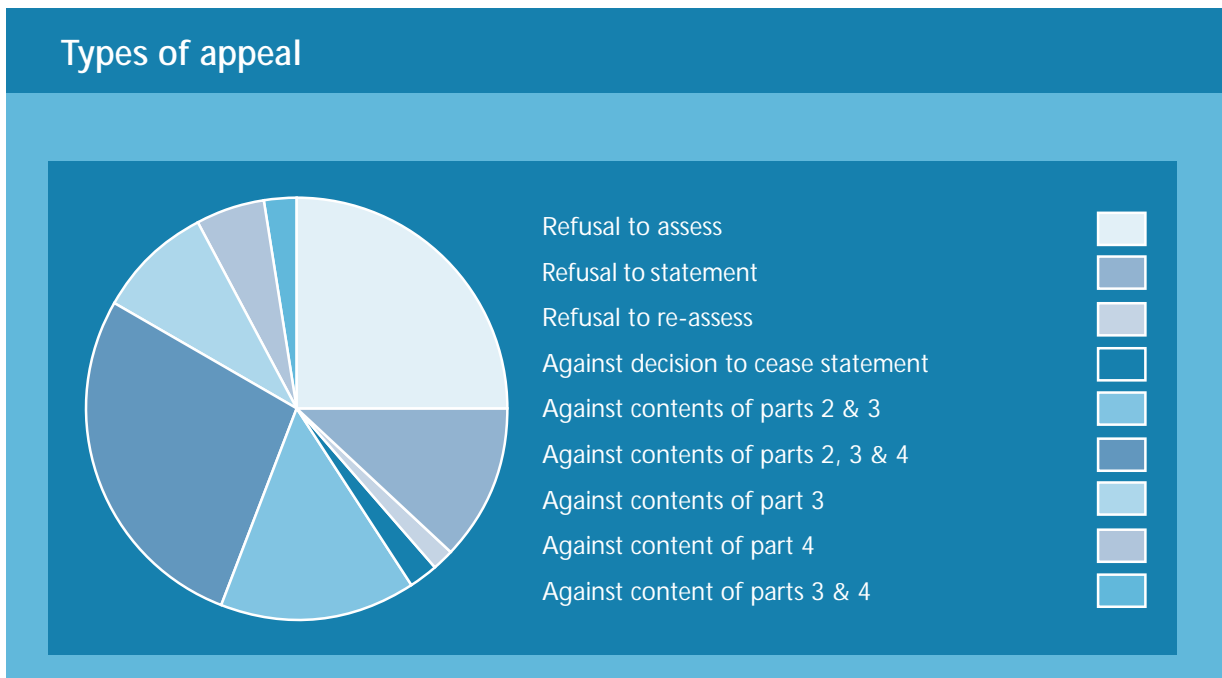
	2004/05	Per 10,000 of school population	2003/04	Per 10,000 of school population
Blaenau Gwent	3	2.97	0	0.00
Bridgend	2	0.99	2	0.86
Caerphilly	1	0.37	3	0.96
Cardiff	33	7.37	35	6.48
Carmarthenshire	6	2.44	5	1.78
Ceredigion	2	2.09	1	1.00
Conwy	4	2.58	8	4.44
Denbighshire	6	4.04	0	0.00
Flintshire	2	0.90	3	1.20
Gwynedd	3	1.85	3	1.57
Merthyr Tydfil	2	2.22	0	0.00
Monmouthshire	8	6.76	5	3.57
Neath Port Talbot	7	3.60	6	2.27
Newport	30	13.62	15	6.00
Pembrokeshire	2	1.17	0	3.33
Powys	3	1.61	7	0.00
Rhondda CynonTaff	2	0.55	4	0.95
Swansea	5	1.59	7	1.89
Torfaen	4	2.60	3	1.76
Vale of Glamorgan	0	0.00	8	3.60
Wrexham	1	0.61	2	1.05
Ynys Mon	1	1.06	0	0.00

## Outcome of Appeals: per LEA

This table illustrates the outcomes in 2004/05 on an LEA-by-LEA basis. The figures include registered appeals carried over from 2003/04 but disposed of during this reporting period. Where an appeal has not been upheld, this has been entered as "dismissed". The one appeal that was struck out at a hearing was in respect of a decision made by Wrexham LEA.

LEA	Conceded by LEA	Withdrawn by parents	Upheld in part or full	Dismissed or struck out at Hearing	Pending
Blaenau Gwent			2		1
Bridgend		2			
Caerphilly	1	1			
Cardiff	16	11	4		10
Carmarthenshire	3		1		5
Ceredigion		1			1
Conwy	1	2	1		2
Denbighshire	1		3	1	1
Flintshire		1			1
Gwynedd	1	1			1
Merthyr Tydfil		1		1	1
Monmouthshire	3	4			4
Neath Port Talbot	1	4	2	1	3
Newport	11	7	7	1	8
Pembrokeshire			2		
Powys		4	2		
Rhondda CynonTaff		1			1
Swansea	2	2			3
Torfaen	2	1			1
Vale of Glamorgan		1	2		
Wrexham		1		1	
Ynys Mon				1	

## Types of Appeal



Type of Appeal	2004/05 Total	% of Total	2003/04 Total	% of Total
Against Refusal to Assess	32	25.20%	46	39.30%
Against Refusal to Statement	14	11.00%	14	12.00%
Against Refusal to re-assess	2	1.60%	2	1.70%
Against decision to Cease Statement	3	2.40%	2	1.70%
Against contents of Parts 2 & 3	20	15.70%	21	18.00%
Against contents of Parts 2, 3 & 4	34	26.80%	13	11.10%
Against contents of Part 3	12	9.40%	8	6.80%
Against content of part 4	7	5.50%	6	5.10%
Against content of part 3 & 4	3	2.40%	5	4.30%
<b>Total of Appeals registered</b>	<b>127</b>		<b>117</b>	

We have seen a significant year on year decrease in the number of appeals about LEAs' refusals to assess children's SEN, while, over the same period, the number of appeals concerning decisions not to make a statement have been static.

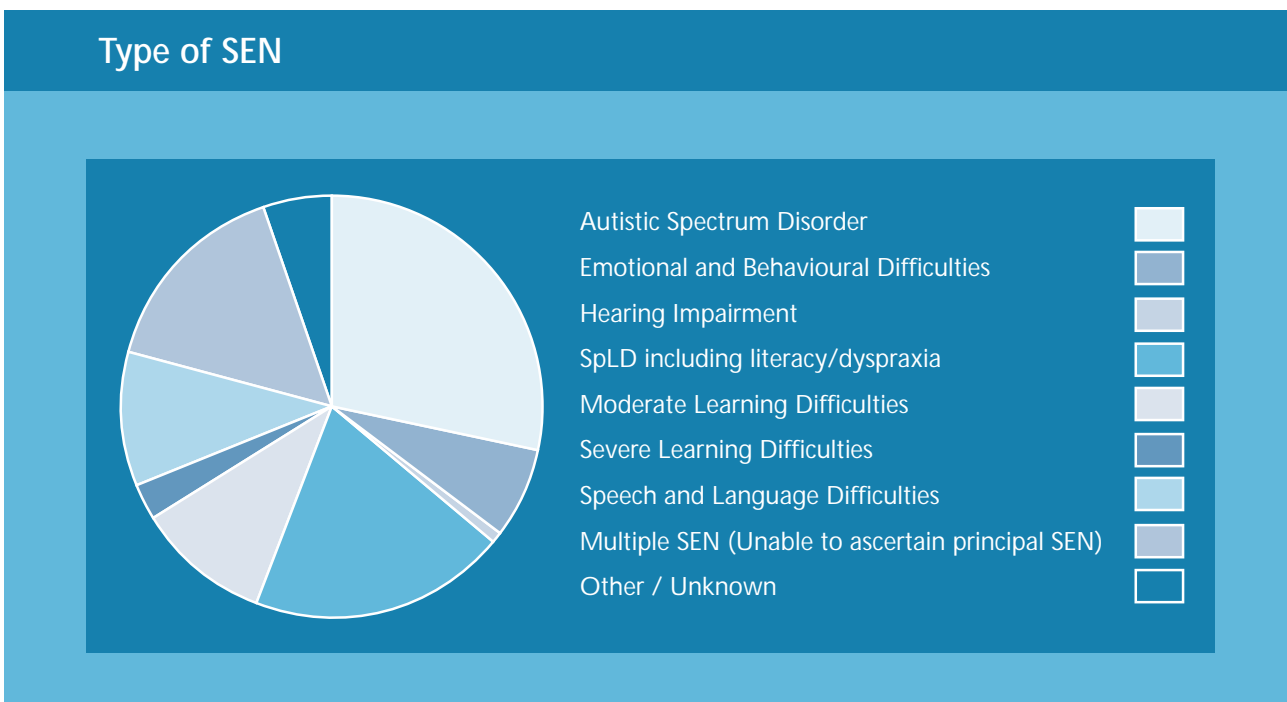
Last year 51.3% of all registered appeals concerned children for whom a statement had not been made. That high percentage now appears to be against trend: in 04/05 the corresponding figure fell to 36.2% (as against 41% in



2002/03). A far larger percentage (63.8%) of appeals made during the reporting period sought to challenge decisions about either re-assessment of children's needs, the contents of their statements, or else the maintenance of statements.

## Appeal by Nature of SEN

Information below sets out appeals by nature of SEN. Again we have recorded needs referred to by parents and/or LEA at the point of appeal. As might be expected, appeals concerning Autistic Spectrum Disorder and Specific Learning Difficulties account for more than half of all registered appeals.



Type of SEN	% of Appeals 2004/05	% of Appeal 2003/04
Autistic Spectrum Disorder	29.6	22.2
Emotional and Behavioural Difficulties	8.8	6.8
Hearing Impairment	0.8	3.4
Specific Learning Difficulties (inc Literacy/dyspraxia)	22.4	33.3
Moderate Learning Difficulties	4.0	0.9
Severe Learning Difficulties	2.4	4.3
Speech and Language Difficulties	9.6	5.1
Multiple SEN	16.0	15.4
Other/Unknown	6.4	1.7

## Outcome of Appeals: General

As was the case in the previous reporting period, a little over 80% of all appeals that proceeded to a full hearing (i.e. were not the subject of an order to strike out) were upheld either fully or in part. Of 31 appeals which went to a full hearing, 6 were dismissed.

Type of Appeal	Decisions issued 2004/05			Decision issued 2003/04		
	Upheld	Dismissed	Struck out	Upheld	Dismissed	Struck out
Against refusal to Assess		1		3	1	
Against refusal to Statement	1				2	
Against refusal to re-assess						
Against decision to Cease Statement		1				
Against contents of Parts 2 & 3	11			6		
Against contents of Parts 2, 3 & 4	10		1	6		
Against contents of Part 3	1	2		1		
Against content of Part 4	2	1		1	1	
Against content of Part 3 & 4	1			3		
<b>Totals</b>	<b>26</b>	<b>5</b>	<b>1</b>	<b>20</b>	<b>4</b>	<b>0</b>

## Outcome of Appeals: by Schools

15 appeals were heard which sought to overturn decisions relating to the school named in part 4 of a child's statement. The corresponding figure for 2003/04 was 8. Of the 15 appeals, part 4 amendments were not ordered in 4 cases.

Outcomes for the remaining 11 appeals 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	9
Maintained Special School	0	0	0
Home Tuition	0	0	0

## Outcome of Appeals: by Nature of SEN

Appeals by Type	Decisions issued 2004-05		
	Upheld	Dismissed	Struck Out
Autistic Spectrum Disorder	6	2	
Emotional and Behavioural Difficulties			
Hearing Impairment			
Specific Learning Difficulties (inc Literacy/ dyspraxia)	11	1	1
Moderate Learning Difficulties	2	1	
Severe Learning Difficulties			
Speech and Language Difficulties	3		
Multiple SEN	4	1	
Other/Unknown			
<b>Total</b>	<b>26</b>	<b>5</b>	<b>1</b>

## Ethnic Monitoring

Parents are invited to complete an ethnic monitoring statement that accompanies the notice of appeal.

	2004/05	2003/04
Bangladeshi	1	1
Black African	1	1
Black other	0	0
Pakistani	0	2
White	120	93
Other	1	2
Not completed	24	29

## Disability Discrimination Claims

1 claim of disability discrimination was registered and heard during 2004/05. The claim was upheld. A further claim was lodged, but as at the end of the Tribunal year was at pre-registration stage (awaiting further information).

This rather small number is entirely consistent with returns from 2002/03 and 2003/04.

## High Court Appeals

At present parents may appeal to the High Court where they believe a Tribunal decision is flawed on a point of law. 2 High Court appeals were registered against SENTW decisions made during the reporting period. These are the first High Court challenges to SENTW decisions and we shall await the outcomes with interest.

## Complaints

No formal complaints were made about the Tribunal during the course of 2004/05.

## Secretariat

I should like to pay tribute to the hard work of the Tribunal Secretariat, and particularly to Mrs Jill Mouncer, Appeals Team Leader from the Tribunal's inception until her retirement in September 2005.

### Expenditure – 1 April 2004 to 31 March 2005

Expenditure	2004/05 £(000s)
Tribunal members' fees and expenses	74,236
Members' training	6,493
Mock hearing exercise*	17,079
Hire of hearing accommodation	26,232
Clerks' expenses	2,346
Other appeal expenses (witness claims, interpreting etc.)	4,669
Salaries	111,310
Staff travel and subsistence	2,692
Office expenses	5,841
Print costs	2,461
Rent and rates	17,652
Utilities, maintenance and cleaning	2,280
Less re-charge to DfES for disability work in 2003/04	(23,559)
<b>Total</b>	<b>249,732</b>
(2003/04 Total)	(407,000)

Unlike last year's figures, expenditure in 2004/05 relates to a full year's operation; naturally this impacts on members, accommodation and staff costs.

\*Mock hearing expenses incorporating translation, technical support and hire, members' and professional fees, accommodation and catering.

## Tribunal Membership

The Tribunal; comprises the following members, all of whom either presided over or sat at hearings during the year 1 September 2004 to 31 August 2005:

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

## Tribunal Secretariat

The Secretariat is responsible for Tribunal administration.

Secretary	Huw Maguire	Tel. 01597 829803
Appeals Team Manager	Siân Mills	Tel. 01597 829804
Information Officer	Pamela Sansom	Tel. 01597 829805
Clerks	Vikki Slaven	Tel. 01597 829806
	Vacancy	Tel. 01597 829802

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