

Tribiwnlys Anghenion
Addysgol Arbennig Cymru



Special Educational
Needs Tribunal for Wales

Annual Report 2005-2006



December 2006

Additional copies of this report are available from:

SENTW,

Unit 32,

Ddole Road Enterprise Park,

Llandrindod Wells, Powys, LD1 6PF.

Tel: 01597 829800

Fax: 01597 829801

e-mail: tribunalenquiries@wales.gsi.gov.uk

Tribiwnlys Anghenion
Addysgol Arbennig Cymru



Special Educational
Needs Tribunal for Wales

To: Ms Jane Davidson AM
Minister for Education and Lifelong Learning
National Assembly for Wales

December 2006

I am pleased to submit my third Annual Report as President of the Special Educational Needs Tribunal for Wales. The report details the Tribunal's activities for the year 1 September 2005 to 31 August 2006.

Rhiannon Ellis Walker
President, SENTW

Uned 32, Parc Menter Ddole Road, Llandrindod, Powys, LD1 6PF
Unit 32, Ddole Road Enterprise Park, Llandrindod Wells, Powys, LD1 6PF
Llinell Gymorth | Helpline: 01597 829800
Gweinyddu Cyffredinol | General Administration: 01597 829802
Ffacs | Fax: 01597 829801 • E-bost | E-mail: tribunalenquiries@wales.gsi.gov.uk

Contents

President's Foreword	1
Number of SEN Appeals	5
SEN Appeals Boy : Girl Split	6
Speed of Disposal	7
Number of Appeals per LEA	9
Outcome of Appeals - by LEA	10
Types of Appeal	11
Nature of SEN	12
Outcome of Appeals - General	15
Outcome of Appeals - by School	16
Outcome of Appeals - by Nature of SEN	17
Ethnic Monitoring	17
Disability Discrimination Claims	18
High Court Appeals	18
Complaints	18
Secretariat	18
Expenditure	19
Tribunal Membership	20

President's Foreword

This annual report covers the third year of the Tribunal's existence and provides details of the number, type and outcomes of SEN appeals and claims under the Disability Discrimination Act made during the period 1st September 2005 to 31st August 2006.

In many ways the last reporting period has been the busiest since the Tribunal's inception. In addition to seeing an increase in the number of SEN appeals, we have experienced more complex appeals. This may be due in part to the continued shift away from appeals concerning initial assessments and decisions regarding making statements of SEN or not. In itself this has raised new challenges, but it has also highlighted some interesting and noteworthy developments and trends, upon which I will comment later.

SEN Appeals

Rising Numbers

Once again I am reporting a year-on-year increase in the number of appeals being registered against the decisions of Welsh LEAs. The figures for registered appeals over the last three year, starting from 2003-2004, are: 117, 127 and now 150.

The rises in appeal numbers are, however, hardly consistent across Wales: 2 LEAs had no appeals registered at all and a further 8 saw registrations falling. Another 5 LEAs generated an additional 5 appeals between them: less than a quarter of the national increase. The statistical pattern for Wales as a whole is somewhat skewed by relatively significant and, in some instances, disproportionate increases in a handful of local authorities.

Whatever the reason, and one is conscious of a range of factors that can influence appeal numbers, certain LEAs will wish to examine why more parents feel it necessary to challenge decisions through the Tribunal system. As well as the relationship issues, there must be major resource implications for some of the LEAs concerned. It is, of course, in their own interests to examine why numbers are so high and consider what steps can be taken to arrest rising appeals or, at the very least, to resolve disputes much earlier in the process.

Mediation

I still feel that mediation, or disagreement resolution, can have a very important role to play in the informal and timely reconciliation of differences. Of course, the efficacy of the system is very much dependent upon a genuine commitment to the process. The number of appeals that have been withdrawn by parents or conceded by LEAs totals some 60% of all active appeals. Many of these decisions come late, or very late, in the appeal process and can have expensive consequences for the Tribunal and its users. Perhaps equally damaging can be the notion of “brinksmanship” and the impact on the future relationship between parents and Authorities.

Delegation of Responsibility

I have been concerned to learn of an apparent trend in certain areas to delegate to schools responsibility for specifying and quantifying provision. I am aware of the now common practice of delegating funds to schools. My understanding is that responsibility for *identifying, specifying and quantifying* in statements provision that is deemed necessary to meet children's needs rests with LEAs. We are currently seeing statements where LEAs have indicated that funds have been delegated to schools and that those schools will set out the provision to be made. In those circumstances many parents will appeal the statement on the basis that the provision is not specified and/or quantified.

I would welcome clarification on this point from the Assembly for the LEAs.

Greater Disposal of Live Cases

Despite the higher number of appeals registered, we have seen a reduction in the number of active cases still on the books. Last year we carried over 56 appeals, the number going forward has reduced to 34. In addition to a small increase on the number of withdrawals and conceded appeals, we have increased the number of appeals decided following a hearing from 31 to 48. I am grateful to my members and to the secretariat for making this possible.

Disability Claims

There were 7 claims of disability discrimination during the last year. Of these 5 were withdrawn and 1 was not registered. The remaining claim proceeded to a hearing and was decided in the parents' favour. Disability claims continue to represent a small fraction of our work; in the few claims that do proceed a common feature is an apparent uncertainty by responsible bodies about the duties that rest with them.

I note that the Disability Rights Commission is not offering a mediation service in respect of such claims and would welcome action to fill the apparent vacuum.

Looking Ahead

Children's Appeals

Over the course of the next year, we will continue to work with Tribunal stakeholders and the Assembly Government in finding a way to ensure that children's voices can be heard in the appeal process. We will look forward to the Government's consultation document addressing the Children's Commissioner's proposal that children be entitled to make appeals in their own names and as of right.

I shall also be interested to see the Assembly's guidance on children's advocacy and the development of consistent arrangements across Wales.

Review of Literature

We are currently engaged in an overhaul of our appeals literature for parents. I hope that the result will be a product that is clearer and which better reflects the changes we have made since assuming responsibility for SEN appeals.

We aim to relaunch the guidance in time for the start of the 2007-2008 Tribunal year.

Appeals Tribunal Service

We continue to watch with interest developments in England and the evolution of the Appeals Tribunal Service. There is also much interesting work currently being undertaken in parts of the tribunals community focusing on proportionate dispute resolution and on the early neutral evaluation of appeals. I am proud to be head of a devolved tribunal, but we will continue to consider experiences elsewhere across the United Kingdom (and beyond) to ascertain whether, and to what extent, they may inform and impact on how we develop our own service to the people of Wales.

As is to be expected, the SEN Tribunal for Wales is now a more established and mature body. We have tried to learn from our formative experiences and have refined our processes and operations accordingly. Over the course of the coming year we will continue to work closely with our users and with our sister administrations in other parts of the United Kingdom.

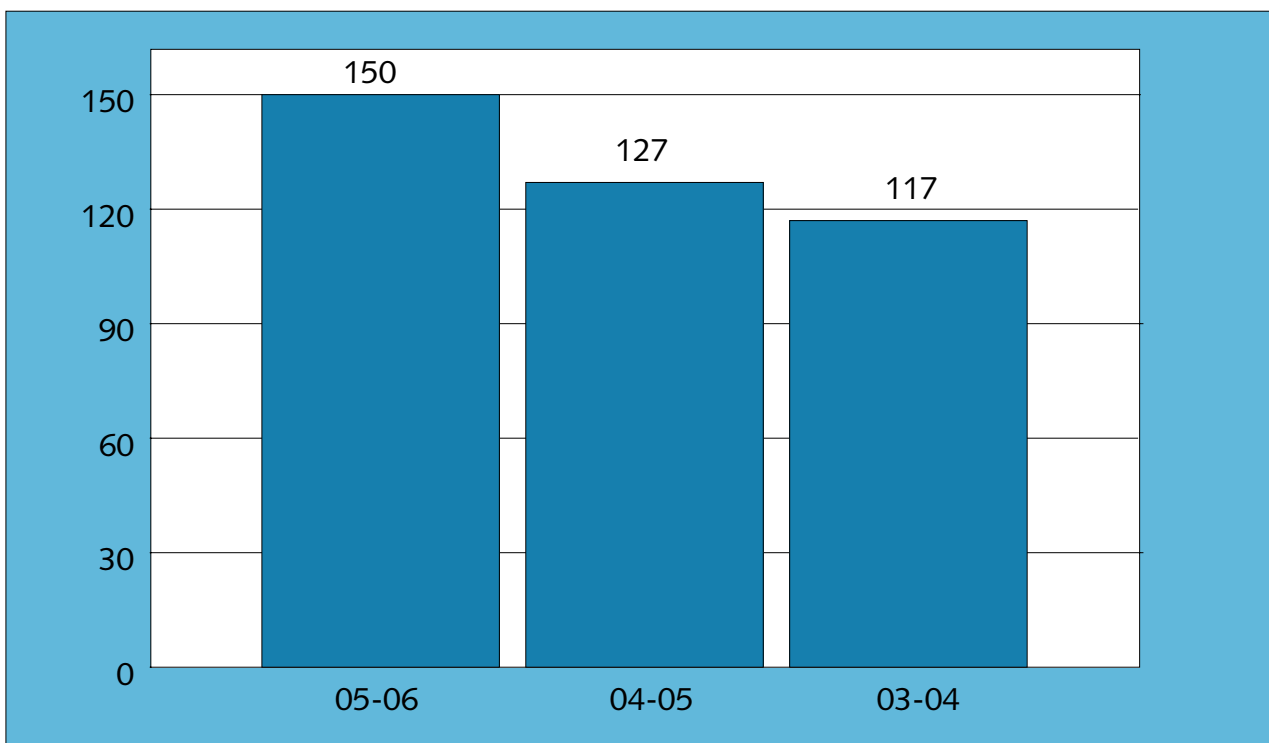
It remains a great privilege to be President of such a hardworking and dedicated membership and secretariat and I would like to record my sincere thanks for their efforts. Together with them, I look forward to meeting the challenges of the coming year.

Number of SEN Appeals

Over the course of the year, running from 1 September 2005 to 31 August 2006, the SEN Tribunal for Wales received **157** appeals about SEN decisions. During the year, **150** were registered, with the balance either being carried over to the next reporting period or else dismissed or withdrawn prior to registration.

There is a clear upward trend in terms of appeals registered over the three years from September 2003.

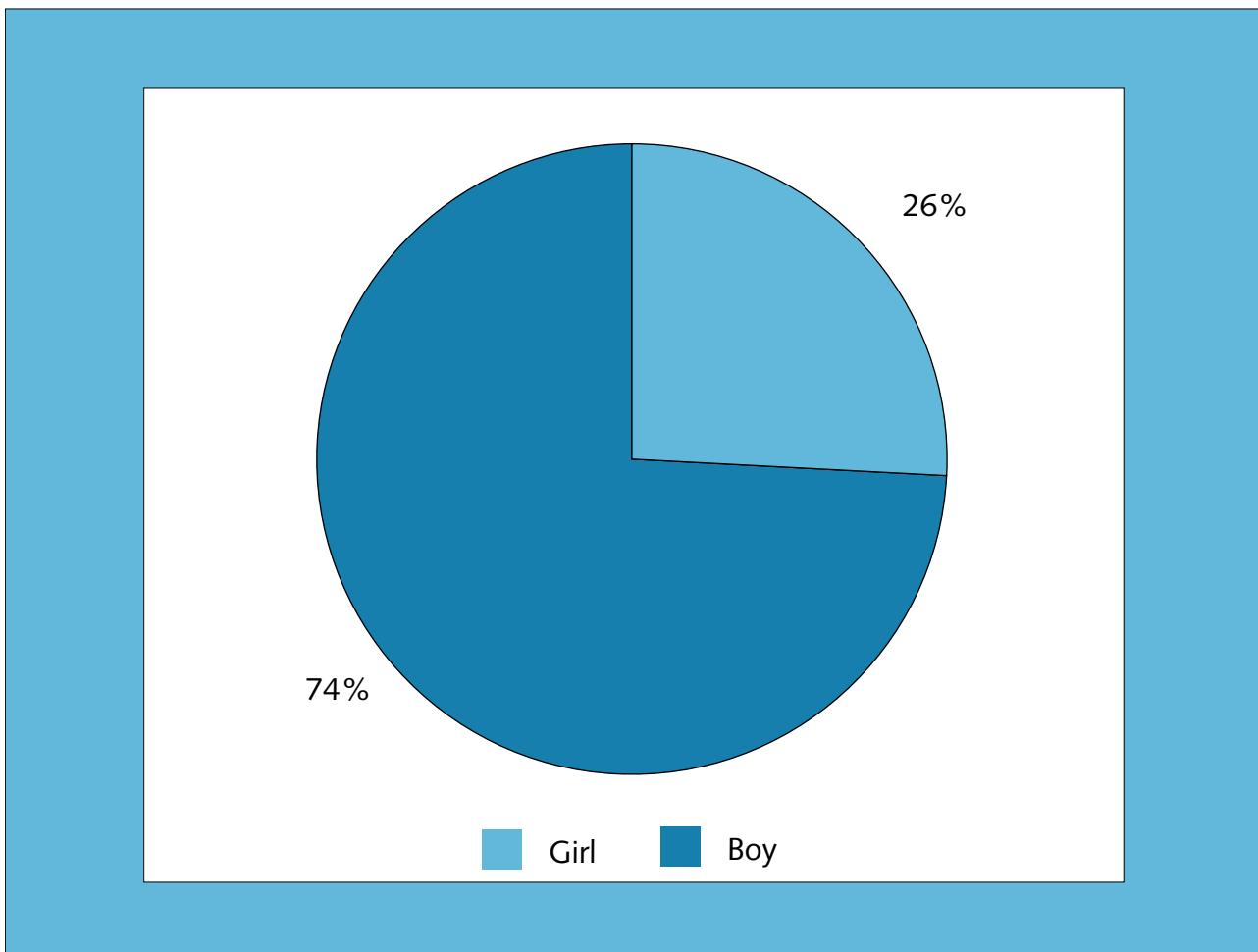
SEN Appeals registered by Tribunal year



SEN Appeals - boy:girl split

During the year, 111 SEN appeals relating to boys were registered; the corresponding figure for girls was 39. The figures for boys have fallen back to 74% of all appeals concerning boys, against 77% in the previous reporting period. In the first year of SENTW's operations, 72.6% of appeals were connected to boys' SENs.

Boy Girl Split



Speed of Disposal by Hearing

This section addresses how long, in terms of working days¹, 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 96.7 from an average of 95 in the previous year. The Tribunal is still having to postpone and adjourn hearings due to unavailability of witnesses and the presentation of insufficient evidence.

Number of decisions issued	48
Average number of working days	96.7

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

The table below sets out the manner in which 193 appeals were disposed of, and the number pending, which will be carried forward to the next Tribunal year. There has been a significant increase in the number of decisions (from 31 to 48), and another rise in the number of appeals being either withdrawn by parents or conceded by LEAs (currently at 59% compared with a little under 54% in the previous year and 50.4% in 03/04). We will continue to monitor the number of appeals either withdrawn or conceded late in the process and the impact that has on expenditure.

The percentage of appeals registered but awaiting a hearing, 16.06%, shows a further decrease against previous years: 26.54% in 04/05 and 27.4% in 2003/04. Despite an increase in the overall number of appeals registered, at each quarter-year point of 2005-06 the Tribunal had disposed of more appeals than had been registered during the quarters.

At the end of this reporting period there was 1 appeal remaining from the 2004/05 Tribunal year. This has been the result of technical changes to the notice of appeal and subsequent developments.

¹ In line with Tribunal 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.

05-06	Actual	Percentage	04-05	Actual	Percentage
Decided	48	24.87	Decided	31	19.14
Withdrawn	79	40.93	Withdrawn	45	27.78
Conceded	35	18.13	Conceded	42	25.93
Struck Out	0	0.00	Struck Out	1	0.62
Pending	31	16.06	Pending	43	26.54
Total	193	100.00	Total	162	100.00

Appeals per LEA

The table overleaf indicates the number of appeals registered on an LEA-by-LEA basis during the Tribunal year 05/06.

	05/06	(Per 10,000 of school population)	04/05	03/04
Blaenau Gwent	4	3.51	3	0
Bridgend	2	0.86	2	2
Caerphilly	3	0.98	1	3
Cardiff	37	7.01	33	35
Carmarthenshire	5	1.76	6	5
Ceredigion	2	1.93	2	1
Conwy	1	0.55	4	8
Denbighshire	2	1.17	6	0
Flintshire	0	0.00	2	3
Gwynedd	2	1.07	3	3
Merthyr Tydfil	1	1.00	2	0
Monmouthshire	11	7.62	8	5
Neath Port Talbot	14	6.32	7	6
Newport	45	17.64	30	15
Pembrokeshire	0	0.00	2	0
Powys	5	2.44	3	7
Rhondda Cynon Taff	3	0.72	2	4
Swansea	7	1.91	5	7
Torfaen	1	0.60	4	3
Vale of Glamorgan	1	0.45	0	8
Wrexham	2	1.05	1	2
Ynys Mon	2	1.95	1	0

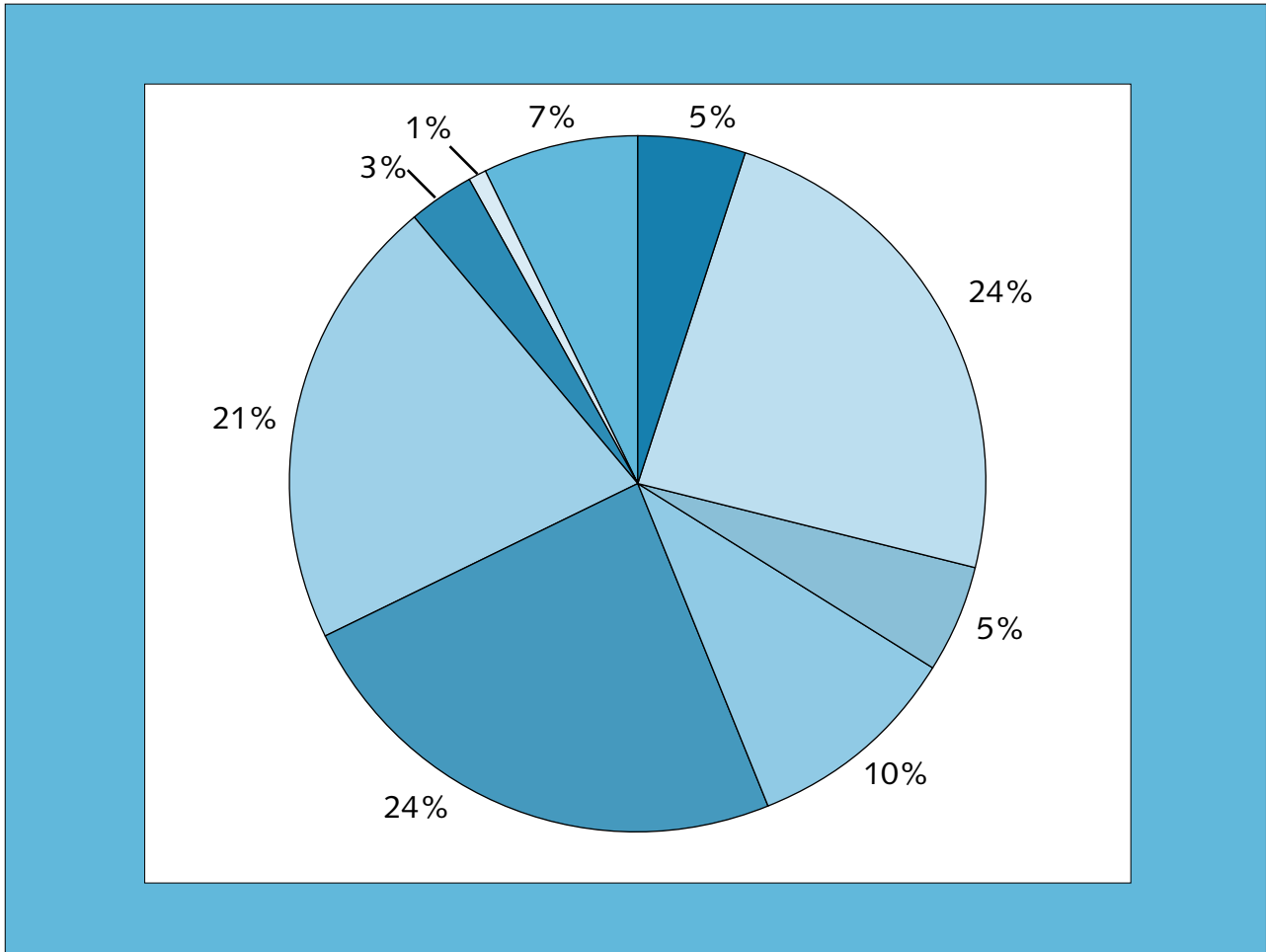
Outcome per LEA

This table illustrates the outcomes in 2005/06 on an LEA-by-LEA basis. The figures include registered appeals carried over from 2004/05 but disposed of during this reporting period. Where an appeal has not been upheld, this has been entered as "dismissed".

LEA	Conceded by LEA	Withdrawn by parents	Upheld in part or full	Dismissed or struck out at hearing	Pending
Blaenau Gwent			2		2
Bridgend		2			
Caerphilly		1	1		1
Cardiff	6	16	12	1	12
Carmarthenshire	3	3	4	1	
Ceredigion	1	2			
Conwy		1	1		1
Denbighshire				2	1
Flintshire				1	
Gwynedd	1	1	1		
Merthyr Tydfil		1	1		
Monmouthshire	4	8	2		
Neath Port Talbot	3	10	1		3
Newport	12	26	9	1	6
Pembrokeshire					
Powys	2	1			2
Rhondda Cynon Taff			4		
Swansea	2	3	3	1	1
Torfaen	1				1
Vale of Glamorgan		1			
Wrexham		1			1
Ynys Mon		2			

Types of Appeal

Type of Appeal



- Against Refusal to Assess
- Against Refusal to Statement
- Against Refusal to Re-assess
- Against decision to Cease Statement
- Against contents of Parts 2 & 3
- Against contents of Parts 2, 3 & 4
- Against contents of Part 3
- Against content of Part 4
- Against content of Parts 3 & 4

Type of Appeal ²	% of Total Appeals 2005/06	% of Appeals 2004/05	% of Appeals 2003/04
	Total Appeals 150	Total Appeals 127	Total Appeals 117
Refusal to Assess	23.3	25.2	39.3
Refusal to Statement	7.3	11.0	12.0
Refusal to Re-assess	1.3	1.6	1.7
Cease Statement	3.3	2.4	1.7
Contents of Parts 2 & 3	21.3	15.7	18.0
Contents of Parts 2, 3 & 4	23.3	26.8	11.1
Contents of Part 3	10.0	9.4	6.8
Contents of Part 4	4.7	5.5	5.1
Contents of Parts 3 & 4	5.3	2.4	4.3

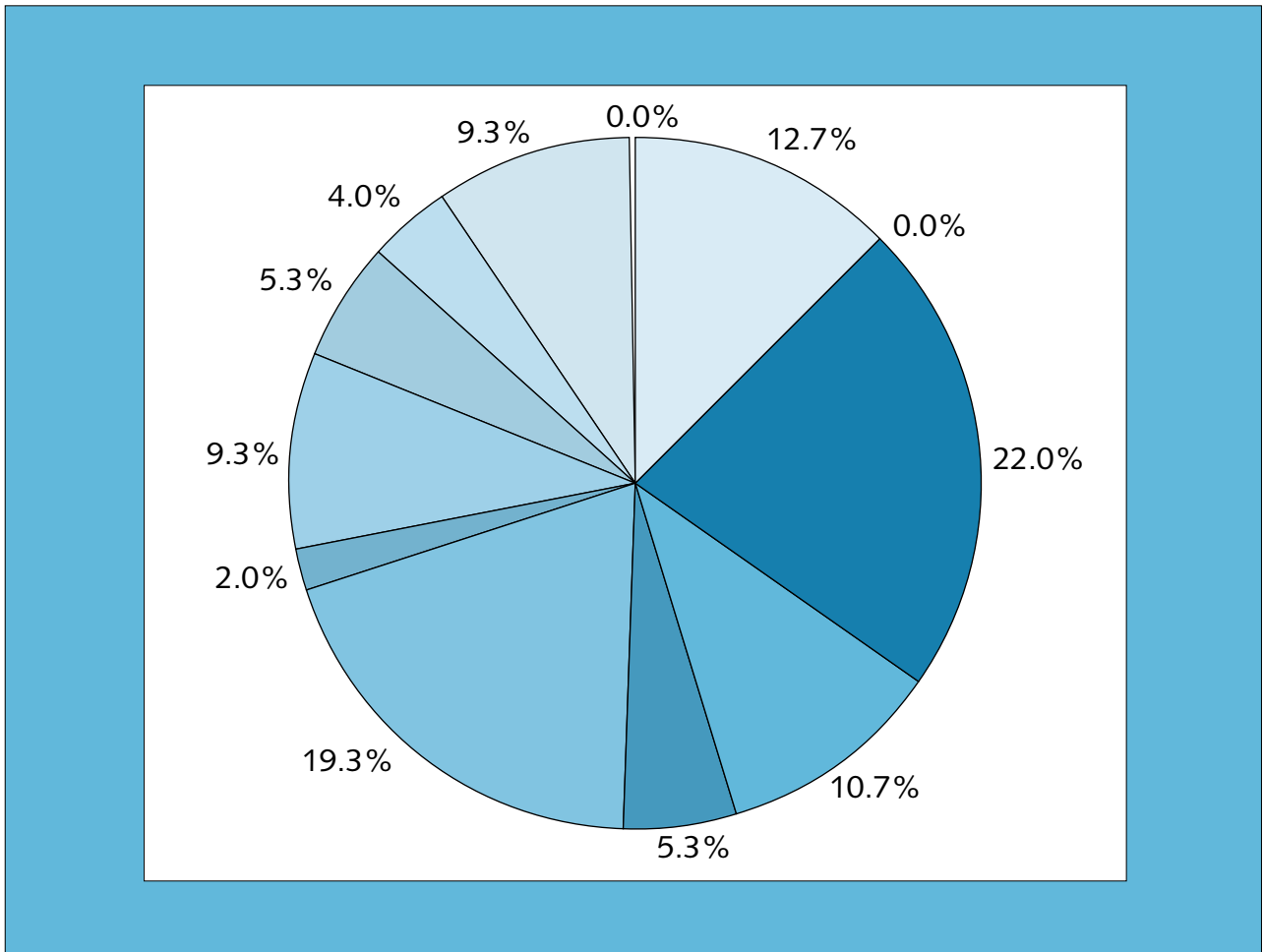
We have seen a continued year on year decrease in the number of appeals about LEAs' refusals to assess children's SEN and the refusal to make statements. Appeals concerning issues other than the contents of statements now constitute 35% of all appeals; in 03/04 the same types of appeal accounted for approaching 55% of our workload.

Appeal by Nature of Special Educational Need

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.

² Percentage to 1 decimal place

Type of SEN



- Autistic Spectrum Disorder
- Emotional and Behavioural Difficulties
- Hearing Impairment
- Specific Learning Difficulties (inc Literacy/Dyspraxia)
- Moderate Learning Difficulties
- Physical/Medical Difficulties
- Profound & Multiple Learning Difficulties
- Severe Learning Difficulties
- Speech and Language Difficulties
- Visual Impairment
- Multiple SEN
- Other/Unknown

Type of SEN	% of Appeals 2005/06	% of Appeals 2004/05	% of Appeals 2003/04
Autistic Spectrum Disorder	22.0	29.6	22.2
Emotional and Behavioural Difficulties	10.7	8.8	6.8
Hearing Impairment	5.3	0.8	3.4
Specific Learning Difficulties (inc Literacy/Dyspraxia)	19.3	22.4	33.3
Moderate Learning Difficulties	2.0	4	0.9
Physical/Medical Difficulties	9.3	0	0
Profound & Multiple Learning Difficulties	5.3	0	0
Severe Learning Difficulties	4.0	2.4	4.3
Speech and Language Difficulties	9.3	9.6	9.65.1
Visual Impairment	0.0	0	0
Multiple SEN	12.7	16	15.4
Other/Unknown	0.0	6.4	1.7

Outcome of Appeals: General

As was the case in previous reporting periods, over 80%, in this case 83% 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 48 appeals which went to a full hearing, 7 were dismissed.

Type of Appeal	Decisions issued 05/06			Decisions issued 04/05		
	Upheld	Dismissed	Struck out	Upheld	Dismissed	Struck out
Against refusal to Assess	1	3			1	
Against refusal to Statement	2	1		1		
Against refusal to Re-assess						
Against decision to Cease Statement	2				1	
Against contents of Parts 2 & 3	14			11		
Against contents of Parts 2, 3 & 4	19	2		10		1
Against contents of Part 3	2	1		1	2	
Against content of Part 4				2	1	
Against content of Parts 3 & 4	1			1		
Totals	41	7	0	26	5	1

Outcomes of Appeals: Schools

22 appeals were heard which sought to overturn decisions relating to the school named in part 4 of a child's statement. The corresponding figures for 04/05 and 03/04 were 15 and 8 respectively. Of the 22 appeals, 2 were dismissed and part 4 amendments were not ordered in 5 cases.

	Amend Statement Upheld Part 4	Amend Statement Upheld Parts 3 & 4	Amend Statement Upheld Parts 2, 3 & 4
Mainstream Maintained School			5
Special Approved Independent School			5
Maintained Special School			4
Home Tuition			0
Joint School and Home Tuition			1

Outcome of Appeals by nature of SEN

Appeals by Type	Decisions issued 05-06		
	Upheld	Dismissed	Struck Out
Autistic Spectrum Disorder	15		
Emotional and Behavioural Difficulties	1		
Hearing Impairment	1		
Specific Learning Difficulties (inc Literacy/dyspraxia)	6	3	
Moderate Learning Difficulties		1	
Physical/Medical Difficulties	3	1	
Profound & Multiple Learning Difficulties	3		
Severe Learning Difficulties	3		
Speech and Language Difficulties	1	2	
Visual Impairment			
Multiple SEN	8		
Other/Unknown			
Total	41	7	0

Ethnic Monitoring

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

	2005/06	2004/05	2003/04
Bangladeshi	0	1	1
Black African	4	1	1
Black other	1	0	0
Pakistani	0	0	2
White	135	120	93
Other	7	1	2
N/C	10	24	29

Disability Discrimination Claims

7 claims of disability discrimination were made this year. 6 were registered, 5 were withdrawn by the claimants, and 1 proceeded to a hearing. The claim was upheld.

Appeals to the High Court

At present parents may appeal to the High Court where they believe a Tribunal decision is flawed on a point of law. 3 High Court appeals were registered against SENTW decisions made during the reporting period, in addition to the 2 appeals made in the previous year. Below is a summary of the outcomes:

Withdrawn by appellant: 2

Appeal dismissed: 1

Pending hearing: 2

Complaints

1 formal complaint was made to the President during the course of the year.

Secretariat

As always, I applaud the hard work of the Tribunal's secretariat in providing excellent, timely and efficient support to the Tribunal.

Expenditure - 1 April 2005 to 31 March 2006

Expenditure	2005/06 £(000s)
Tribunal President and members' fees and expenses	131,811
Tribunal training	2,269
Hearing, training and user group accommodation	68,127
Other appeal expenses (witness claims, interpreting etc.)	9,577
Salaries	146,283
Clerks'/Secretariat travel and subsistence	10,077
Staff training	0.830
Office expenses (inc. deliveries)	8,627
Print and media costs	15,362
Legal fees	9,390
	402,353
(Less sum received from DfES in respect of disability function):	(39)
	£363,353

In addition to the direct expenditure is a proportion of the rent and utilities costs on the Tribunal's shared accommodation, a proportion of c£20k, which is met centrally.

(2004/05 Total) 249,732

(2003/04 Total) 407,000

Tribunal Membership

The Tribunal; comprises the following members, all of whom either presided over or sat at hearings during the year 1 September 2005 to 31 August 2006:

President Rhiannon Ellis Walker

Chairs Mark Allen
Jacqueline Blackmore
Gwyn Davies
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

Team Support Manager Pam Sansom Tel. 01597 829802

Clerks Vikki Slaven Tel. 01597 829806
Leon Mills Tel. 01597 829805
Rhiannon Mills Tel. 01597 829809

We also operate a Tribunal Helpline (01597 829800) and mailbox:
tribunalenquiries@wales.gsi.gov.uk