

Tribiwnlys Anghenion
Addysgol Arbennig Cymru



Special Educational
Needs Tribunal for Wales

Annual Report 2006-2007



December 2007

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Tribiwnlys Anghenion
Addysgol Arbennig Cymru



Special Educational
Needs Tribunal for Wales

To: Jane Hutt AM
Minister for Children, Education, Lifelong Learning & Skills
National Assembly for Wales

November 2007

I am pleased to submit my fourth Annual Report as President of the Special Educational Needs Tribunal for Wales. The report details the Tribunal's activities for the year 1 September 2006 to 31 August 2007.

Rhiannon Ellis Walker
President, SENTW

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President's Foreword

This is my fourth annual report as President of the SEN Tribunal for Wales (SENTW). The report sets out the number, type and outcomes of SEN appeals and claims of disability discrimination made during the period 1st September 2006 to 31st August 2007.

With the recent enactment of the Tribunals, Courts and Enforcement Act 2007, this has been, and seems set to be an interesting and challenging time for tribunals: both for those which are or will be operating under the aegis of the newly-established Tribunals Service and those, such as devolved tribunals in Wales, which retain their stand-alone status.

As we know, there are new powers for the Welsh Assembly Government, enshrined in the Government of Wales Act 2006. The possibility of Assembly Measure-making capacity in the field of Special Educational Needs is welcome provided that it can establish a system that can more fully meet the needs of all children with a range of such needs.

Whatever shape future legislation takes, it is in my view essential that a statutory right is maintained to appeal and test decisions about Special Educational Needs identification and provision.

I look forward to the challenges that lie ahead and to ensuring that the Tribunal is well-placed to meet them.

SEN Appeals

A reduction in appeals

For the first time since the Tribunal's inception in 2003, I am reporting a year-on-year reduction in the number of registered appeals. During the period we have registered 118 appeals, a decrease of 21% on last year's record number of appeals.

Each year since 2003 has, until now, seen a steady increase in appeals registered. Not only has this year bucked that trend but, during this last period, we have seen only a marginal increase on the 117 appeals registered during our first year.

While it is difficult to explain the underlying reasons for the reduced number of appeals, I am encouraged that numbers in Cardiff and Newport LEAs have fallen, substantially in the case of the latter. In other authorities, too, the number of appeals registered has on the whole remained fairly static or decreased. There are however a couple of exceptions where there has been a marked increase.

The number of appeals that were made but not registered has risen. Of the 20 unregistered appeals, 10 were withdrawn and 1 was conceded prior to registration, 4 others were unable to be registered as they fell outside our jurisdiction or the appellants were unable to meet the criteria essential for registration, the remaining 5 were carried over into the following Tribunal year. I am concerned that the number of appeals against decisions to refuse to provide a statement for children with SEN has risen from 7% of the total number appeals received last year to 16% of the total number appeals received this year. The bulk of appeals are about, refusal to assess, the contents of the statement parts 2 and 3 and the contents of the statement parts 2, 3 and 4 which make up 25%, 24% and 21% respectively of the total number of appeals registered.

The Welsh Assembly Government recently clarified its position on blanket policies, i.e. that LEAs should not operate such policies and the duty is on Local Education Authorities, and not schools, to specify and quantify provision. This was a most helpful move and the Tribunal expects to see in the future that provision is clearly specified and quantified by LEAs. I have included a copy of the Assembly Government's letter at Annex 1. There is evidence that, in a few cases, what seem to be blanket policies for the assessment of children's needs are indeed in place. Again, I would take a dim view of this departure from the legislation.

Disability Claims

This area still remains a minor element of the Tribunal's work. In the last year there have been 7 claims, of which 2 were withdrawn prior to registration, 4 were registered and 1 is pending. Of the 4 claims registered 2 proceeded to hearing of which 1 was struck out and 1 was dismissed.

Although there appears still to be no mediation service operating for disability claims. I am though encouraged that the Assembly Government has in the last year produced guidance on Promoting Disability Equality in Schools.

I understand that in cases where responsible bodies have conceded the claims or where an order has been made in favour of the claimant, that LEAs and schools have seen the remedies (particularly whole-school training) as an opportunity rather than a form of punishment. That is the intention. If the small number of claims can result in a greater understanding of disability duties and their practical application then that is of obvious benefit.

Tribunal Regulations

The Tribunal has thus far operated under the SEN Tribunal Regulations 2001 (as amended). We are pleased that the WAG has agreed to review and remake the regulations so that they are tailored specifically to the SENTW. This should have the added benefit of the regulations being contained in a single statutory instrument.

Over the past four years we have had sufficient experience to identify areas of shortcoming and confusion in the current regulations; we welcome the opportunity for the regulations now to address issues such as the review procedure and to make the rules clearer for all concerned.

I understand that the Assembly Government will consult with Tribunal users and other interested parties during the autumn, with a view to new regulations being made early in 2008. I would encourage a broad and deep engagement in the consultation process.

Once the SEN Tribunal for Wales regulations are made, new Tribunal literature for users will issue, taking full account of the statutory instrument.

Children's Appeals

It was with much sadness that we learned of the passing of Peter Clark, the first Children's Commissioner for Wales. Peter was an energetic, courageous and wise advocate for children and will be greatly missed.

One of his many legacies was the proposal that the right of appeal to the SENTW, currently enjoyed only by parents, should be extended to children. The Assembly Government is now working towards producing a consultation document on this intriguing and complex issue. Although ultimately the outcome will be a policy matter and must rest with the WAG, the Tribunal will work with others during the development of the consultation papers and beyond.

Tribunals Service

The First Minister took the decision that the SENTW and other devolved Welsh Tribunals will retain their current status and hence we have not joined the Tribunals Service. It is, though, a fascinating time for the development of tribunals and I am sure that we will continue to work with and learn from other jurisdictions.

Although we will remain outside the Tribunals Service, the enactment of the Tribunals, Courts and Enforcements Act 2007 will have an impact on devolved tribunals such as ourselves. Appeals against tribunal decisions will no longer be to the High Court, but rather to the Upper Tier of the Tribunals Service. We look forward to working with the Service once the timetable and mechanics of this change are established.

Another effect of the Act will be the establishment of a Welsh Committee of the Administrative Justice and Tribunals Council (formerly the Council on Tribunals). I consider that this will be a hugely positive step, in tandem with the Assembly Government, in moving forward the agenda in Wales.

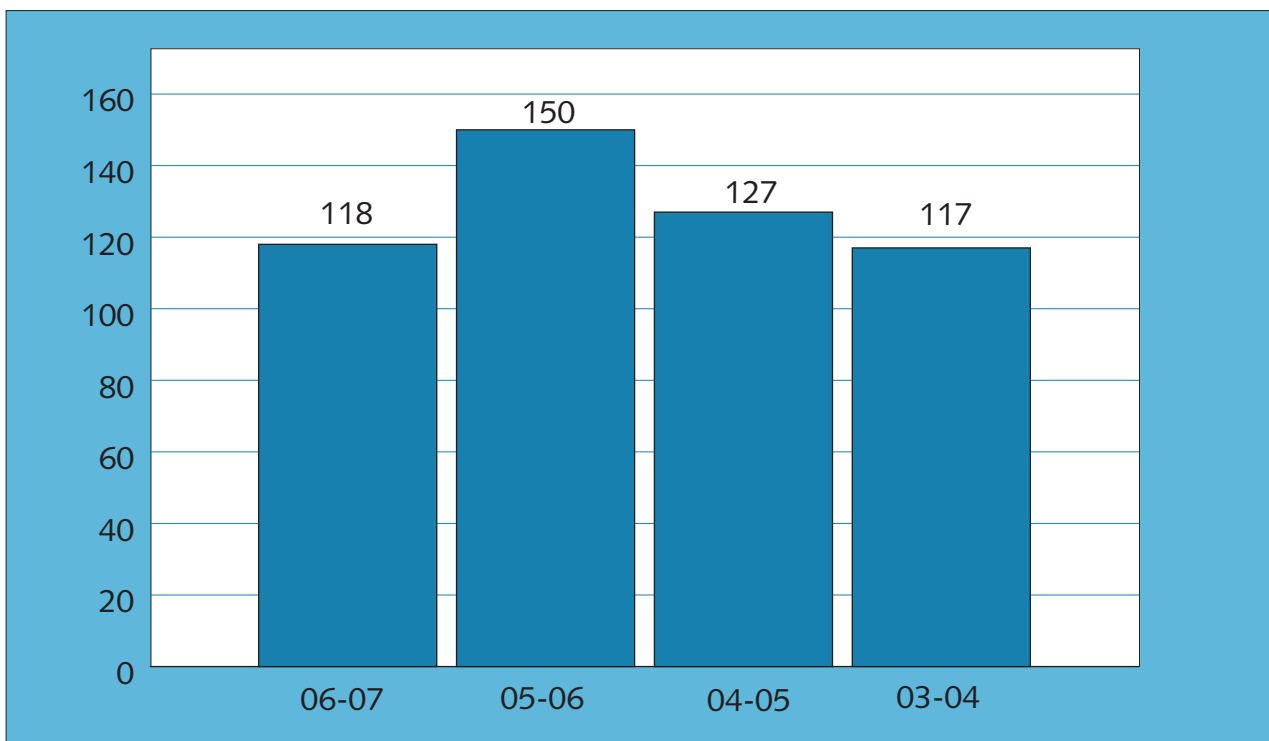
Number of SEN Appeals

Over the course of the year, running from 1 September 2006 to 31 August 2007, the SEN Tribunal for Wales received **138** appeals about SEN decisions. During the year, **118** were registered, with the balance either being carried over to the next reporting period or else dismissed or withdrawn prior to registration.

In addition to the **118** registered appeals, we also dealt with 31 appeals that were unable to be disposed of within the previous Tribunal year.

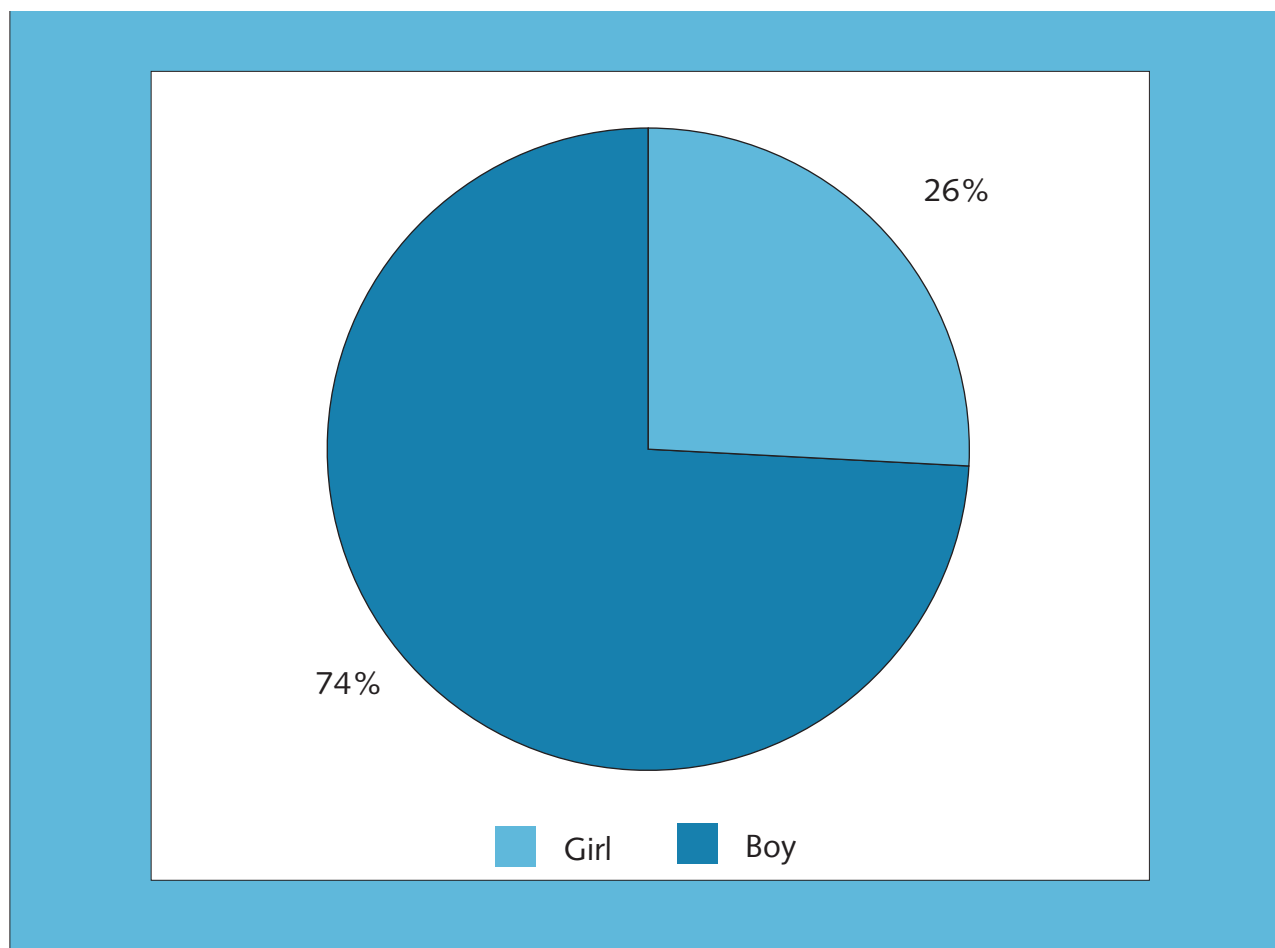
This reporting period has seen a reduction in the number of appeals registered, a notable departure from the upward trend of the previous three Tribunal years.

SEN Appeals registered by Tribunal year



SEN Appeals - Boy/Girl split

During the year, 87 SEN appeals relating to boys were registered; the corresponding figure for girls was 31. The figures for boys have remained static over the 2005-06 and 2006-07 reporting periods with 74% of all appeals concerning boys. In the 2003-04 and 2004-05 years 73% and 77% of all appeals received were connected to boys' SENs.



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 (through hearings) has fallen to 82.9 from an average of 96.7 in the previous year. Out of the 36 cases heard, 12 had to be adjourned due to the complexity of the case or presentation of insufficient evidence.

Number of decisions issued	36
Average number of working days	82.9

The average number of days for a decision to be issued is just under 8.

The table below sets out the manner in which 149 appeals (118 registered in the 2006/07 tribunal year and 31 carried over from the 2005/06 year) were disposed of, including the number pending, which will be carried forward to the next Tribunal year. There has been a decrease in the number of decisions (from 48 to 36), the percentage of appeals being either withdrawn by parents or conceded by LEAs has remained static at 60% of the total number of appeals registered (compared with 54% and 50% in 04/05 and 03/04 years respectively). 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% is consistent with last year and is a decrease on previous years: 26.54% in 04/05 and 27.4% in 03/04.

At the end of this reporting period there was 1 appeal remaining from the 2005/06 Tribunal year. This has been the result of technical changes to the notice of appeal and subsequent developments.

06-07	Actual	Percentage	05-06	Actual	Percentage
Decided	36	24.16	Decided	48	24.87
Withdrawn	58	38.92	Withdrawn	79	40.93
Conceded	31	20.80	Conceded	35	18.13
Struck Out	0	0.00	Struck Out	0	0.00
Pending	24	16.10	Pending	31	16.06
Total	149	100.00	Total	193	100.00

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.

Appeals per LEA

This table indicates the number of appeals registered on an LEA-by-LEA basis during the Tribunal year 06/07.

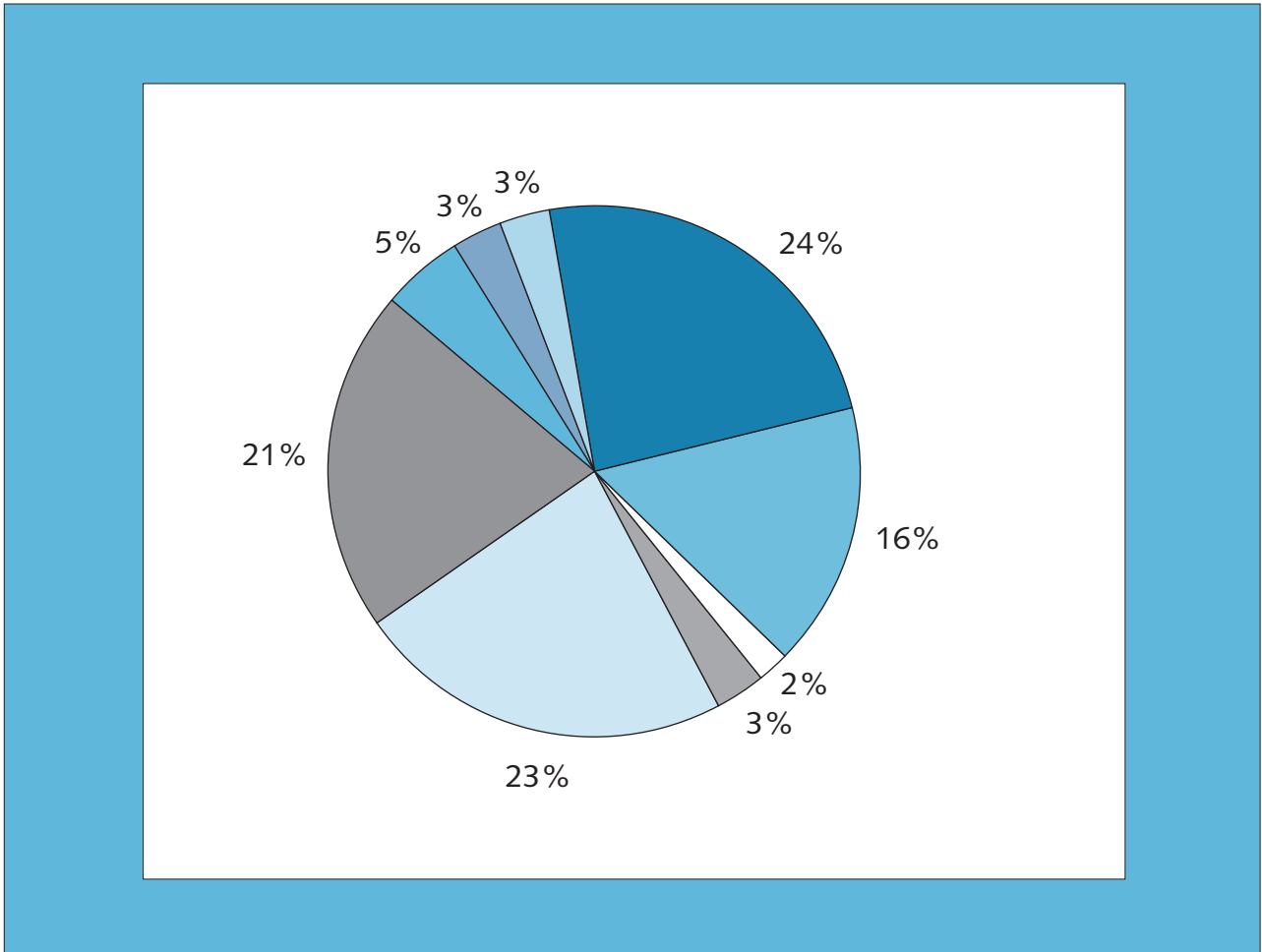
	06/07	(Per 10,000 of school population)	05/06	04/05	03/04
Blaenau Gwent	2	1.79	4	3	0
Bridgend	3	1.30	2	2	2
Caerphilly	12	6.74	3	1	3
Cardiff	26	4.96	37	33	35
Carmarthenshire	5	1.77	5	6	5
Ceredigion	2	1.95	2	2	1
Conwy	6	3.37	1	4	8
Denbighshire	4	2.35	2	6	0
Flintshire	1	0.40	0	2	3
Gwynedd	1	0.54	2	3	3
Merthyr Tydfil	2	2.04	1	2	0
Monmouthshire	9	6.36	11	8	5
Neath Port Talbot	2	0.92	14	7	6
Newport	19	7.51	45	30	15
Pembrokeshire	2	1.03	0	2	0
Powys	7	3.36	5	3	7
Rhondda Cynon Taff	4	0.98	3	2	4
Swansea	4	1.10	7	5	7
Torfaen	4	2.43	1	4	3
Vale of Glamorgan	2	0.90	1	0	8
Wrexham	0	0.00	2	1	2
Ynys Mon	1	0.99	2	1	0

Outcome per LEA

This table illustrates the outcomes in 2006/07 on an LEA-by-LEA basis. The figures include registered appeals carried over from 2005/06 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		1	2		1
Bridgend	2	1			
Caerphilly	6	3	1		3
Cardiff	5	10	13	2	8
Carmarthenshire	1	1	2		1
Ceredigion				1	1
Conwy		3	1	1	2
Denbighshire		4	1		
Flintshire	1				
Gwynedd		1			
Merthyr Tydfil	1	1			
Monmouthshire	1	5	1		2
Neath Port Talbot	1	2	1	1	
Newport	4	16	3	1	1
Pembrokeshire		2			
Powys	4	1	2		2
Rhondda Cynon Taff		2	1		1
Swansea	2	3			
Torfaen	2	1		1	1
Vale of Glamorgan		1			1
Wrexham				1	
Ynys Mon	1				

Types 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 2006/07	% of Appeals 2005/06	% of Appeals 2004/05	% of Appeals 2003/04
	Total Appeals 118	Total Appeals 150	Total Appeals 127	Total Appeals 117
Refusal to Assess	24.6	23.3	25.2	39.3
Refusal to Statement	16.1	7.3	11.0	12.0
Refusal to Re-assess	1.7	1.3	1.6	1.7
Cease Statement	2.5	3.3	2.4	1.7
Contents of Parts 2 & 3	23.7	21.3	15.7	18.0
Contents of Parts 2, 3 & 4	21.2	23.3	26.8	11.1
Contents of Part 3	5.1	10.0	9.4	6.8
Contents of Part 4	2.5	4.7	5.5	5.1
Contents of Parts 3 & 4	2.5	5.3	2.4	4.3

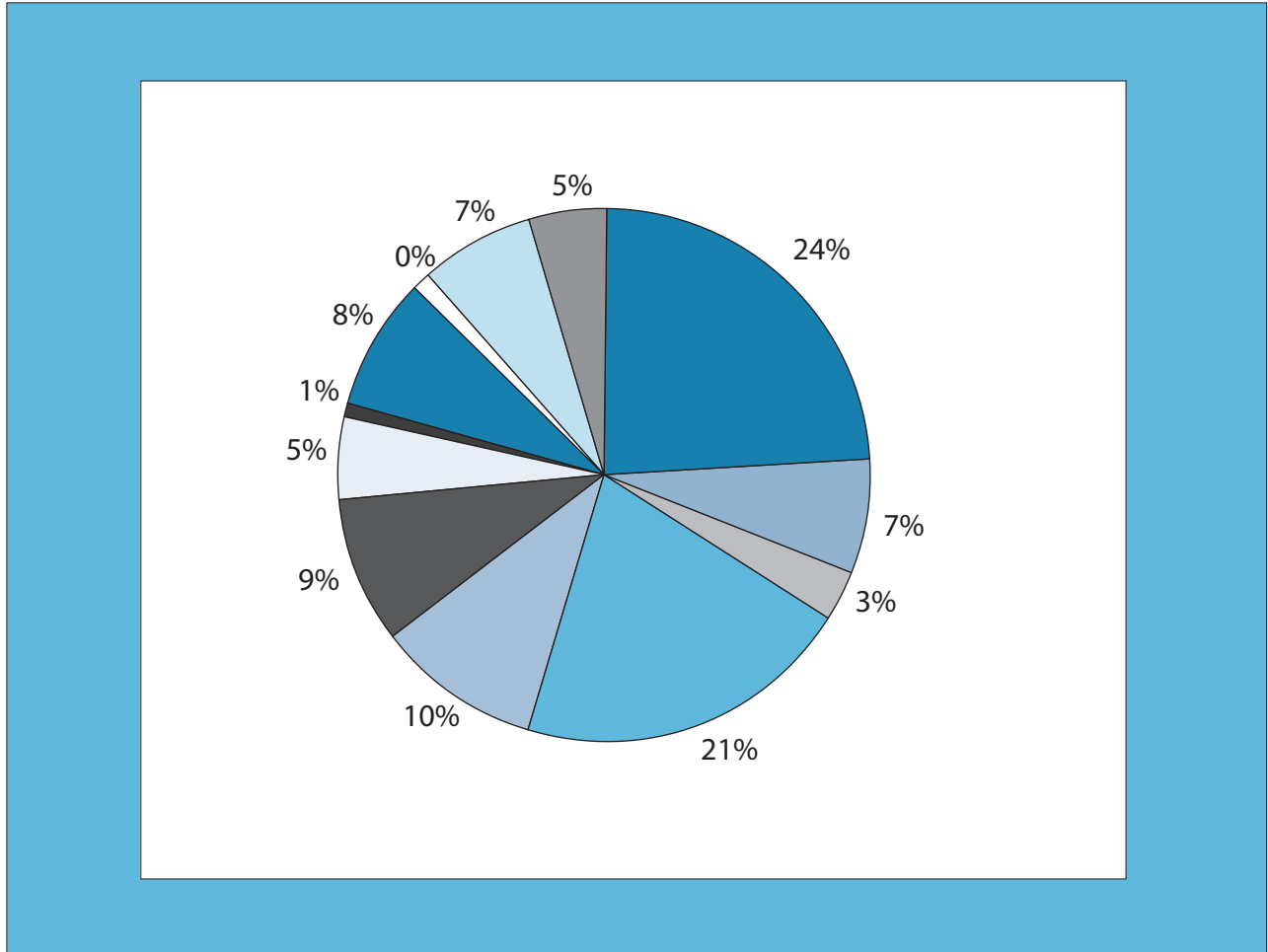
This year we have seen a significant increase in the number of appeals about LEAs' refusal to make statements and a small increase about refusal to assess. Appeals concerning issues other than the contents of statements have increased from constituting 35% of all appeals in 05/06 to 45% in 06/07; in 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, Specific and Moderate 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 2006/07	% of Appeals 2005/06	% of Appeals 2004/05	% of Appeals 2003/04
Autistic Spectrum Disorder	23.7	22.0	29.6	22.2
Emotional and Behavioural Difficulties	6.8	10.7	8.8	6.8
Hearing Impairment	2.5	5.3	0.8	3.4
Specific Learning Difficulties (inc Literacy/Dyspraxia)	21.2	19.3	22.4	33.3
Moderate Learning Difficulties	10.2	2.0	4	0.9
Physical/Medical Difficulties	9.3	9.3	0.0	0.0
Profound & Multiple Learning Difficulties	5.1	5.3	0.0	0.0
Severe Learning Difficulties	0.8	4.0	2.4	4.3
Speech and Language Difficulties	8.5	9.3	9.6	5.1
Visual Impairment	0.0	0.0	0.0	0.0
Multiple SEN	6.8	12.7	16	15.4
Other/Unknown	5.1	0	6.4	1.7

Outcome of Appeals: General

As was the case in previous reporting periods, over 75%, in this case 77% 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 36 appeals which went to a full hearing, 8 were dismissed.

Type of Appeal	Decisions issued 06/07			Decisions issued 05/06		
	Upheld	Dismissed	Struck out	Upheld	Dismissed	Struck out
Against refusal to Assess	3	2		1	3	
Against refusal to Statement	2	3		2	1	
Against refusal to Re-assess	1					
Against decision to Cease Statement	1	2		2		
Against contents of Parts 2 & 3	6			14		
Against contents of Parts 2, 3 & 4	11	1		19	2	
Against contents of Part 3				2	1	
Against content of Part 4						
Against content of Parts 3 & 4	4			1		
Totals	28	8	0	41	7	0

Outcomes of Appeals: Schools

16 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 05/06, 04/05 and 03/04 were 22, 15 and 8 respectively. Of the 16 appeals, 1 was dismissed and part 4 amendments were not ordered in 6 cases.

	Amend Statement Upheld Part 4	Amend Statement Upheld Parts 3 & 4	Amend Statement Upheld Parts 2, 3 & 4
Mainstream Maintained School			1
Special Approved Independent School		1	4
Maintained Special School		1	1
Home Tuition			1
Education Other than at School			
Joint School and Home Tuition			

Outcome of Appeals by nature of SEN

Appeals by Type	Decisions issued 06-07		
	Upheld	Dismissed	Struck Out
Autistic Spectrum Disorder	4	2	
Emotional and Behavioural Difficulties	2	1	
Hearing Impairment	2		
Specific Learning Difficulties (inc Literacy/dyspraxia)	7	3	
Moderate Learning Difficulties	3	1	
Physical/Medical Difficulties	3		
Profound & Multiple Learning Difficulties	3		
Severe Learning Difficulties	1		
Speech and Language Difficulties	2	1	
Visual Impairment			
Multiple SEN	1		
Other/Unknown			
Total	28	8	

Ethnic Monitoring

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

	2006/07	2005/06	2004/05	2003/04
Bangladeshi	0	0	1	1
Black African	1	4	1	1
Black other	0	1	0	0
Pakistani	3	0	0	2
White	99	135	120	93
Other	2	7	1	2
N/C	13	10	24	29

Disability Discrimination Claims

7 claims of disability discrimination were made this year, 2 were withdrawn prior to registration, 4 were registered and 1 is pending. Out of the 4 claims registered 2 proceeded to hearing of which 1 was struck out and 1 was dismissed.

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. 2 High Court appeals were registered against SENTW decisions made during the reporting period compared with 3 in the previous year, 2 in 04/05 and none in 03/04. Below is a summary of the outcomes:

Withdrawn by appellant: 4

Appeal dismissed: 1

Pending hearing: 2

Complaints

4 formal complaints were made to the President during the course of the year of which 3 were from the same party and related to one appeal.

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 2006 to 31 March 2007

Expenditure	2006/07 £(000s)
Tribunal President and members' fees and expenses	105,529
Tribunal training	1,460
Hearing, training and user group accommodation	73,073
Other appeal expenses (witness claims, interpreting etc.)	8,375
Salaries	144,004
Clerks'/Secretariat travel and subsistence	11,068
Staff training	0.097
Office expenses (inc. deliveries)	5,729
Print and media costs	6,246
Legal fees	12,890
	368,471
(Less sum received from DfES in respect of disability function):	(23,353)
	£345,118

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.

(2005/06 Total) 363,353

(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 2006 to 31 August 2007:

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
	Sarah Jenkins	Tel. 01597 829809

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



Rhiannon Ellis Walker
President, SENTW
Unit 32
Ddole Road Enterprise Parc
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LD1 6PF

8 November 2007

Dear Rhiannon

SPECIAL EDUCATIONAL NEEDS (SEN)

1. Subsequent to your Annual Report of the Special Educational Needs Tribunal Wales (SENTW), I have been made aware of concerns over blanket policies in relation to statutory assessments and specifying and quantifying provision in children's statements; naming schools in statements; and amending statements of children transferring between phases of schooling. I thought it would be helpful to clarify the statutory position as we see it. Consequently, a copy of this letter has issued to all Directors of Local Education Authorities in Wales.

Blanket policies

2. Particular areas of concern relate to blanket policies around:

- deciding whether it is necessary to carry out a statutory assessment; and/or
- specifying and quantifying provision in children's statements

Statutory assessments

3. We are aware that Authorities have developed, or are in the process of developing or amending criteria for statutory assessments as a means of securing greater consistency in your decision making. It is, of course, open to you to develop such criteria as guidelines to help you decide when it is necessary to carry out statutory assessments and you have discretion to determine what criteria you will adopt. However, as Authorities you should take care to ensure that the adoption of such criteria does not lead to you failing to discharge your obligation to decide, in the light of the individual circumstances of each case, whether the duty to carry out an assessment under section 323 of the Education Act 1996 has

arisen. In our view, for the avoidance of any doubt, any published criteria should make it clear that, whilst your Authority may have criteria to guide its decision making, it will consider each case on its merits within the terms of the provisions of the Education Act 1996.

4. Although you, as local authorities, should be aware that you must not operate a blanket policy for all children, some appear to believe that blanket policies can be developed for particular groups of children or certain types of need. However, in our view, having a policy that assessments will not be undertaken for particular groups of children or certain types of need constitutes a blanket policy that prevents the consideration of children's needs individually and on their intrinsic merits.

Specifying provision in statements

5. As Authorities, you be aware of the legislative background and the Court of Appeal judgment in the case of *The Queen* (on the application of IPSEA Ltd) and the Secretary of State for Education and Skills (a copy is enclosed for ease of reference). This would seem to suggest that some authorities are operating blanket policies of never quantifying educational provision for particular groups of children, types of need or particular types of placement.

6. In some cases, authorities set out the child's special educational needs in detail in Part 2 of their statement but leave provision open to the school to determine completely or in terms of options. For instance, this may be a particular number of hours support from a support assistant or a pro-rata amount of time from a support teacher or some equipment, without specifying the provision to meet children's individual needs. Other authorities refer solely to a particular band of funding from their local system of calculating funding or a sum of money and do not always specify clearly the provision it is meant to fund.

7. In our view, any local authority policy which prohibits, deters or even discourages its officers from specifying educational provision clearly and in detail and/or from quantifying educational provision for particular groups of children is likely to result in breaches of:-

- section 324(2) and (3) of the Education Act 1996, which provide that the statement must contain such information as may be prescribed and must specify the educational provision to be made for the purpose of meeting the needs identified in the statement;
- regulation 16(b) of the Education (Special Educational Needs) (Wales) Regulations 2002, which provides that the statement must contain the information specified in Schedule 2 to those Regulations, which requires educational provision to be specified in terms of "any appropriate facilities, equipment, staffing arrangements and curriculum..."); and

- section 313(2) of the Education Act 1996, which imposes a duty on LEAs to have regard to the provisions of the Special Educational Needs Code of Practice for Wales (2002), which states that statements should specify the special educational provision necessary to meet the needs of the child, detail appropriate provision to meet each identified need and normally quantify the provision.

Naming a school in a child's statement

8. Other correspondence we have received has highlighted some misunderstandings about the processes to be followed prior to naming a school in Part 4 of a statement. I trust that the following clarifies the position.

9. Where a local authority, having made a first statutory assessment of a child or when amending a statement, sends a copy of a proposed statement or a proposed amended statement or a copy of the existing statement and an amendment notice to the parent, the written notice which accompanies these documents **must** contain the information as specified in Schedule 1 to the Education (Special Educational Needs) (Wales) Regulations 2002, by virtue of regulations 14 and 15 respectively of those Regulations).

10. This information **must** include a list of all primary or secondary schools in the area, as appropriate, to the child's age. You must also provide a list of all non-maintained special school approved by the Secretary of State under section 342 of the Education Act 1996 and a list of independent schools approved by the Secretary of State or the Welsh Ministers (previously, the National Assembly for Wales) under section 347 of the Education Act 1996.

Maintained schools

11. Parents **must** be invited to name the maintained school they would like their child to attend. Where a parent expresses a preference for a particular maintained school (mainstream or special school), the local authority must consult the school concerned, and in the case of a school maintained by another authority that local authority as well. When consulting, the Authority must send a copy of the proposed statement, amended statement, or existing statement and an amendment notice. In all cases the appendices to the statement must be included. As part of the consultation process the Authority should write to the school and other authority to ask them whether, in their opinion:

- the school is unsuitable to the child's age, ability or aptitude or to his special educational needs;
- the child's attendance would be incompatible with the efficient education of the children with whom he would be educated, or
- the child's attendance would be incompatible with the efficient use of resources.

12. These criteria are set out in paragraphs 3 and 3A of Schedule 27 to the Education Act 1996.

13. If the school or local authority opposes the naming of the parent's preferred school on any of the grounds specified above, the "home" authority should consider very carefully their reasons for doing so, before deciding whether or not to name the school, not least because once a local authority names a particular maintained school in a child's statement, that school must admit the child.

If a parent does not express a preference

14. If a parent does not express a preference for a particular maintained school or the local authority decide not to name the parent's preferred school in the statement, the authority **must** nevertheless specify a school or other institution in the statement which the authority consider would be appropriate for the child.

15. When considering possible schools for the child, they **must** bear in mind that the child **must** be educated in a mainstream school, unless this would be incompatible with the parent's wishes or the efficient education of the other children and there are no reasonable steps that could be taken to prevent that incompatibility (section 316 of the Act).

16. The local authority **must** consult the school and, in the case of a school maintained by another authority, that local authority as well. As part of the consultation the Authority should write to the school and the other authority to ask them whether, in their opinion, the child's attendance at the school would be incompatible with the efficient education of the other children and to consider whether there are any reasonable steps that they or another authority could take to prevent any such incompatibility.

17. If the school or local authority opposes the naming of the school on this ground the authority should consider very carefully their reasons for doing so before deciding whether or not to name the school.

Phase transfers

18. We are aware of some cases where children with statements have been out of school at the beginning of term. All statements of children transferring phases, including infant to junior school, primary to secondary, first to middle and middle to upper school **must** be amended to name a school by 15 February of the preceding academic year at the latest. This is to ensure that parents, where they are unhappy with the provision in their child's statement, have time to take an appeal to the Special Educational Needs Tribunal for Wales and to allow any school placement issues to be settled well before the start of the school year, including any complaints to the Welsh Ministers under sections 496 and 497 of the Education Act 1996.

19. It is essential to start the process early to avoid children with statements being without a school place at the start of the school year. It is also important to ensure that schools know that their views have been considered and that, in the case of maintained schools, once they are named in a child's statement they have a statutory duty to admit that child.

20. I should be very grateful if you would bring this letter to the attention of those officials within your Authority who deal with these matters please, so that compliance with the relevant statutory provisions can be assured.

Yours faithfully

A D LANSDOWN

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