

Tribiwnlys Anghenion
Addysgol Arbennig Cymru



Special Educational
Needs Tribunal for Wales

Annual Report 2007-2008



October 2008

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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

Date September 2008

I am pleased to submit my fifth Annual Report as President of the Special Educational Needs Tribunal for Wales. The report details the Tribunal's activities for the year 1 September 2007 to 31 August 2008.

Rhiannon Ellis Walker OBE
President, SENTW

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President's Foreword

This is my fifth 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 during the period 1 September 2007 to 31 August 2008.

In 2007 we saw the enactment of the Tribunals, Courts and Enforcement Act, which brings into effect significant changes both for those tribunals within the unified 'Tribunals Service' and, also for devolved tribunals that remain outside that organisation. Perhaps the most challenging reforms affect those jurisdictions in the first-tier of the Tribunals Service and which from 3 November 2008 will be operating with new generic Chamber Rules. SENTW, as a devolved tribunal, retains its stand alone status and will continue to operate under the existing regulations and arrangements. There will however be changes in respect of post tribunal decision processes, such as onward appeals, which I shall say more about later in the foreword.

Important developments have also taken place within the parameters of the Government of Wales Act 2006 and the legislative competency of the National Assembly for Wales, which now has the power to make Assembly Measures in the field of Additional Learning Needs. This is an important step and one which I hope will lead to a strengthening of systems and support mechanisms geared to meeting children's special educational needs. The first proposed Measure under this competency was recently announced by the First Minister: a right of appeal to SENTW for children in circumstances where their parents do not appeal.

The programme of change in respect of the administrative justice system and prospective Assembly Measures will continue to evolve over the course of the coming year. Whatever shape future legislation takes, it is in my view essential that a statutory right of appeal is maintained and that the process continues to be both accessible and reflective of the needs of our users. I look forward to the challenges that lie ahead, certain in the knowledge that the Tribunal is well placed to meet them.

SEN Appeals

This year, the decline in the number of appeals registered has continued: during the period we have registered 94 appeals, a substantial decrease of around 20% on last year's figures.

Since the Tribunal's inception in 2003 and up until the end of this reporting year, we have registered a total of 606 appeals. During the first three years of operating

we saw a steady increase in appeal numbers with the highest number of appeals, at 150, being registered in 2005/06. During the last two years we have seen a significant year on year reduction. This is particularly evident in the current reporting year, where the total number of appeals registered is less than the 117 registered during the Tribunal's first year of operating.

There is no clear explanation for the fluctuation in appeal numbers or the current downward trend. I am however encouraged to note that Newport LEA, in particular, has had a considerable drop in the number of appeals registered, these have fallen from 16% of all appeals registered by the Tribunal last year down to just 2% this year. Other Authorities which have also had notably fewer appeals are Cardiff and Caerphilly LEAs. In most other Authorities numbers have remained static or have decreased. A little over one third of all LEAs have seen an increase in appeals registered against them, though in most cases the increase has been marginal.

In last year's report I commented on the upward trend in the number of appeals about refusal to assess and that the Welsh Assembly Government (WAG) had helpfully clarified its position with LEAs on the need to avoid the use of blanket policies. I am pleased to report that this year there has been a marked decrease in the number of appeals about decisions concerning refusal to assess.

The number of appeals that were made but not registered has fallen. Of the 8 unregistered appeals, 3 were withdrawn prior to registration, 2 were unable to be registered as they fell outside our jurisdiction or the appellants were unable to meet the criteria essential for registration, 1 was dismissed and the remaining appeals are currently pending at the pre registration stage. Whilst last year saw a rise in the number of appeals against decisions to refuse to provide a statement, this year I am pleased to report that figures have dropped slightly from 16% of all appeals registered last year to 13% this year, which is more in line with previous years. The bulk of appeals are about the contents of parts 2, 3 and 4 or the contents of parts 2 and 3, refusal to assess and refusal to statement. These make up 32%, 21%, 17% and 13% respectively of all appeals registered.

Disability Claims

This area still remains a relatively minor element of the Tribunal's work. There has been a small increase this year as we have registered 9 claims over the period, 1 which was upheld, 3 dismissed, 2 withdrawn, the remaining are to be carried over into the next reporting year.

The Equalities and Human Rights Commission's (previously the Disability Rights Commission) Conciliation Service, provides a mediation service for disability discrimination disputes in schools. Disability Discrimination Claims need to

be made to SENTW within 6 months of any alleged discrimination, a further 2 months is allowed where the Conciliation Service is used.

It is unclear why we receive so few claims in comparison to the number of SEN appeals registered, although it is fair to say that the disability discrimination law is complex and the remedies the Tribunal can order are limited. The guidance which the WAG produced last year on Promoting Disability Equality in Schools was however encouraging and now that it has had a chance to bed in, all schools should have had the opportunity to put in place a disability equality scheme.

Tribunal Regulations

I reported last year that the WAG intends to review and remake the SEN Tribunal Regulations 2001 (as amended). It was anticipated that WAG would be in a position to consult with users and other interested parties over the proposed new regulations during this tribunal year. I understand that, regrettably, this is now not possible but that new regulations will be made to dovetail with changes required as a result of the proposed Assembly Measure on children's appeals.

On one level, a delay to substantive new regulations is disappointing news, however looking ahead it will at least provide an opportunity to build further on proposed changes and to explore alternative methods of processing appeals through for example case management.

Children's Appeals

I reported last year on proposals made by the late Children's Commissioner for Wales, Peter Clark, that children should have a right of appeal to the Tribunal. The WAG has since published a consultation document, *Voices and Choices*, which makes clear its commitment to increasing the participation of children and young people in processes and decisions that affect them.

The closing date for the consultation was 3 October. The document identified complex issues surrounding the proposal and sought views on how the necessary mechanisms might be developed to enable children to make an appeal. I hope that as many of you as possible took the opportunity to respond to the consultation. It is essential that the policy is developed in the light of the experience and views of those involved.

The Tribunal of course shares a keen interest with other stakeholders in how the proposals are taken forward and shall be engaging with developments closely and with interest.

Tribunals Service

At the start of the foreword I mentioned that even though we are staying outside of the Tribunals Service, the enactment of the Tribunals, Courts and Enforcements Act 2007 will still have an impact on devolved Tribunals such as ourselves.

Most significantly, onward appeals which currently lie to the High Court, will with effect from 3 November 2008 be dealt with by the Upper Tier of the Tribunals Service. We were very pleased that the Ministry of Justice felt able to take on board the numerous comments and strength of feeling about the necessity for a permanent presence of the upper tribunal in Wales. This has resulted in a commitment that an office will be established in Wales and that onward appeals from our Tribunal will be heard in Wales with due regard to the Welsh language. We feel that this is extremely important to ourselves and the people of Wales.

I understand that consequential amendments will be made to the Tribunal's Regulations to make provision for the new procedures. We will be producing guidance to make these changes clear for our users and stakeholders will also have a chance to talk them through at the next round of user group meetings in November.

Closing comments

We have over the period of the report seen changes within the Tribunal's administration team. Huw Maguire, who has managed the secretariat with dedication and enthusiasm since the Tribunal's inauguration has moved to a new area of work. I am sure that I speak for everyone in saying that Huw will be greatly missed but of course has our very best wishes for the future in his new job role. Sian Mills in the meantime has been appointed acting secretary and I am very pleased to welcome her to this role.

As many of you know, I was awarded an OBE in Her Majesty the Queen's Birthday Honours List 2008. I am pleased to see the work of the Tribunal recognised in this way and view the award as a testament and recognition of the continued hard work and invaluable contribution made by the Tribunal's members and secretariat.

As ever the smooth running of the Tribunal's business is only made possible by the commitment, hard work and loyalty of its secretariat. I am fortunate to have such a secretariat and thank them all for their commitment over the last year. It is with their continuing support that I look forward to the challenges over the coming year.

Number of SEN Appeals

Over the course of the year, running from 1 September 2007 to 31 August 2008, the SEN Tribunal for Wales received 98 appeals about SEN decisions.

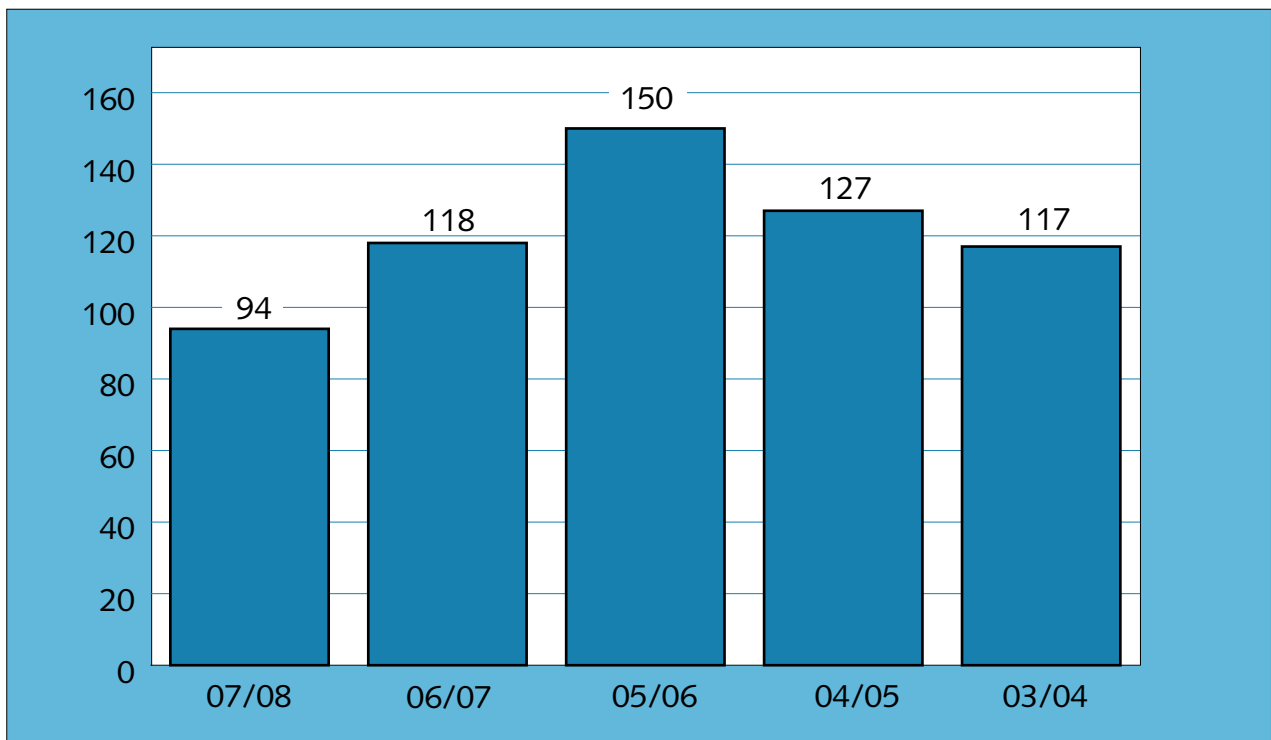
During the year, 94 were registered, including 4 submitted the previous year, with the balance either being carried over to the next reporting period or else dismissed or withdrawn prior to registration.

In addition to the 94 registered appeals, we also dealt with 24 appeals that were unable to be disposed of within the previous Tribunal year.

This reporting period has seen a further reduction in the number of appeals registered, from the previous Tribunal year.

Appeals for Tribunal Year 2007/08

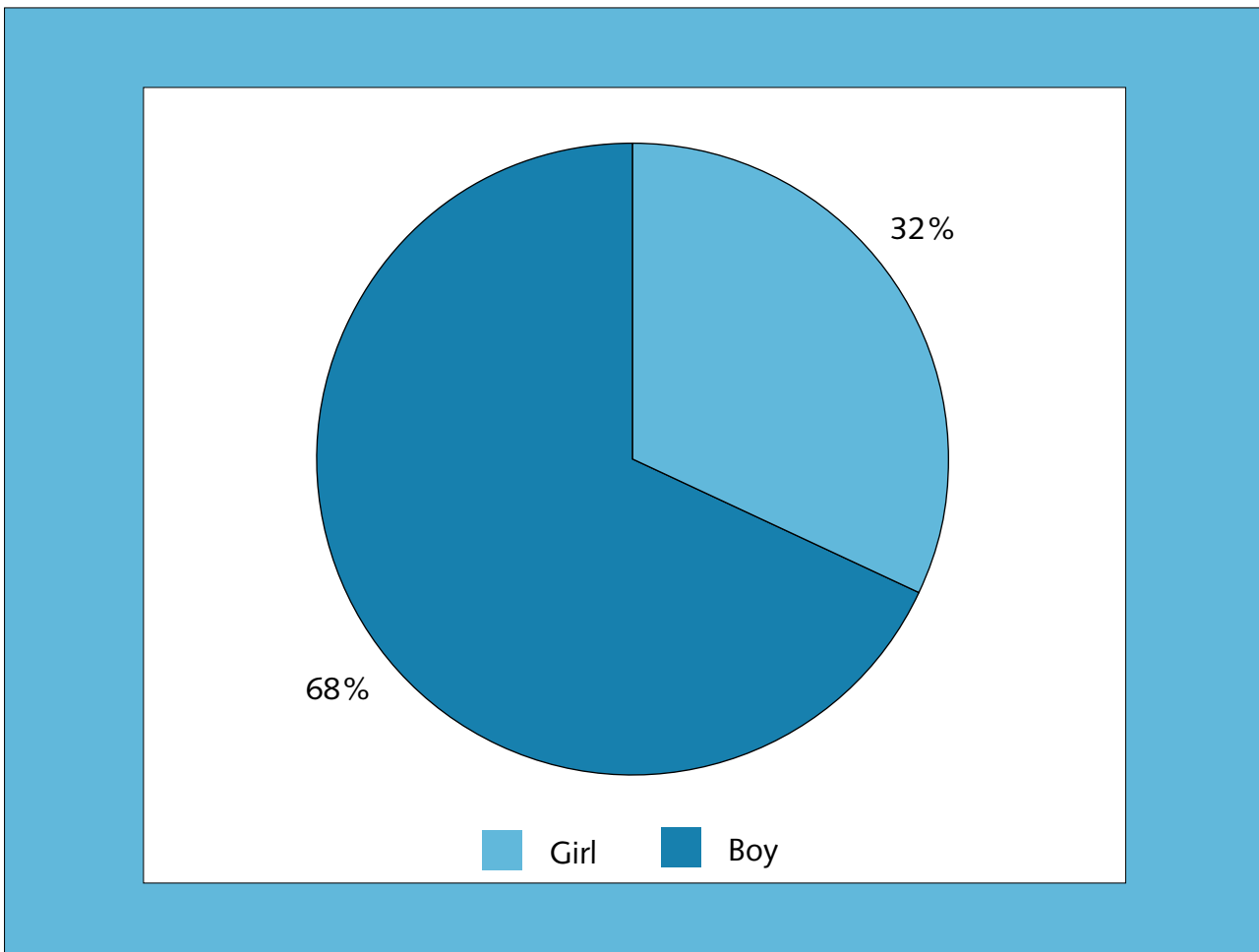
SEN Appeals registered by Tribunal year



SEN Appeals - Boy/Girl split

During the year, 64 SEN appeals relating to boys were registered; the corresponding figure for girls was 30. This equates to 68% of all appeals concerning boys, for the reporting period 2007/08. In the 2003/04 and 2004/05 years 73% and 77% of all appeals received were connected to boys' SENs, while in 2005/06 and 2006/07 they remained static at 74%.

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 (through hearings) has risen to 90 from an average of 82.9 in the previous year. Out of the 28 cases heard, 3 had to be adjourned.

Number of decisions issued	28
Average number of working days	8

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

The table below sets out the manner in which 118 appeals (94 registered in the 2007/08 tribunal year and 24 carried over from the 2006/07 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 issued (from 36 to 28). The percentage of appeals being withdrawn by parents is consistent with previous years, however there is a notable decrease in the number of appeals conceded by LEAs, which is around 54% of the total number of appeals registered this year (compared with 60% for 05/06 and 06/07 and 54% and 50% in 04/05 and 03/04 years respectively). This suggests that only the more complex cases are being brought to the Tribunal. 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, 22% is higher than the previous two years which were 16% respectively, but is a decrease on years 04/05 being 26.54% and 03/04 being 27.4%.

07/08	Actual	Percentage	06/07	Actual	Percentage
Decided	28	23.73	Decided	36	24.16
Withdrawn	46	38.98	Withdrawn	58	38.92
Conceded	18	15.25	Conceded	31	20.80
Struck Out	0	0.00	Struck Out	0	0.00
Pending	26	22.04	Pending	24	16.10
Total	118	100	Total	149	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 2007/08.

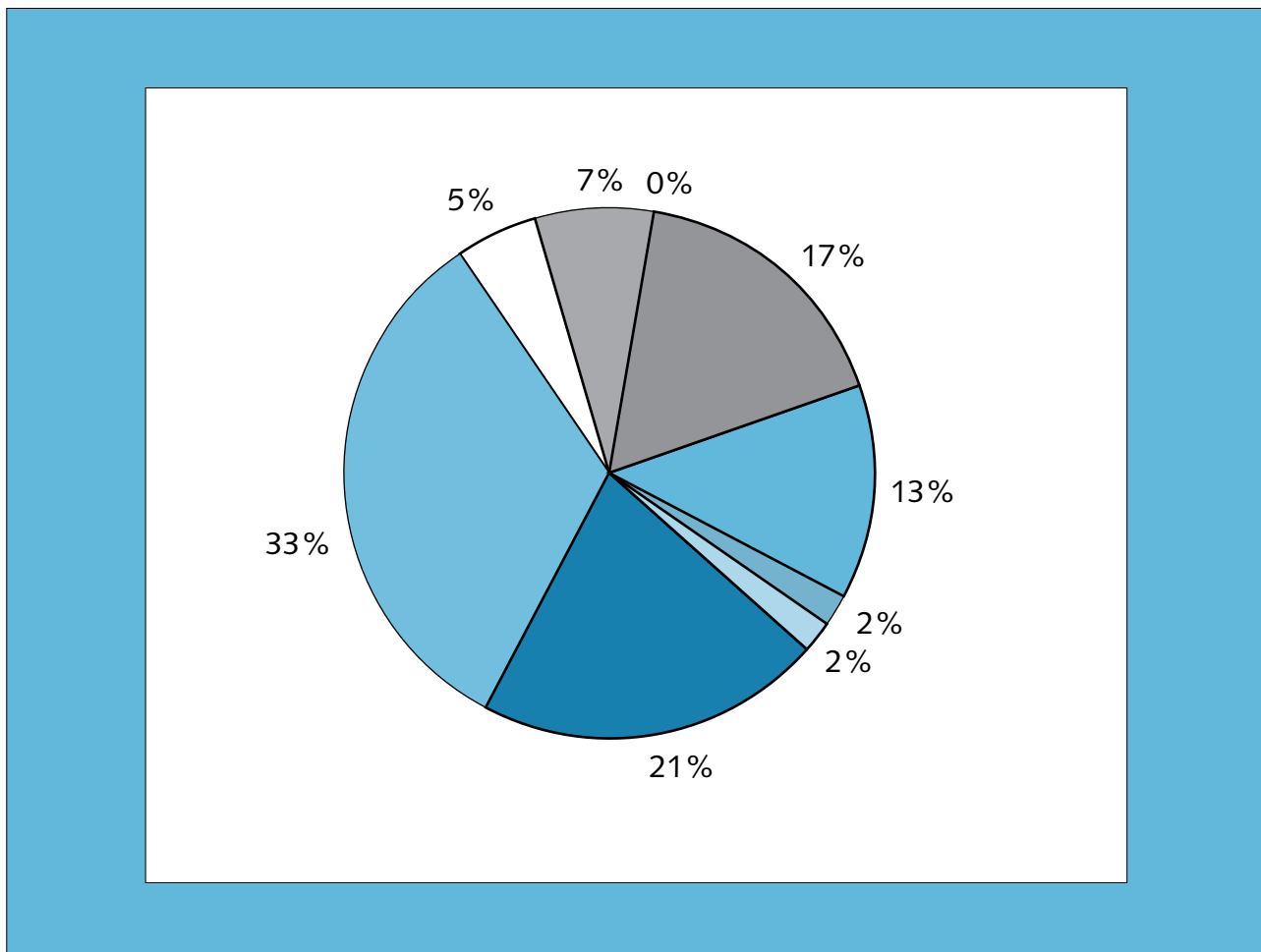
	07/08	(Per 10,000 of school population)	06/07	05/06	04/05	03/04
Blaenau Gwent	1	0.89	2	4	3	0
Bridgend	1	0.43	3	2	2	2
Caerphilly	2	1.12	12	3	1	3
Cardiff	19	3.63	26	37	33	35
Carmarthenshire	19	6.72	5	5	6	5
Ceredigion	1	0.97	2	2	2	1
Conwy	8	4.50	6	1	4	8
Denbighshire	2	1.18	4	2	6	0
Flintshire	1	0.40	1	0	2	3
Gwynedd	2	1.08	1	2	3	3
Merthyr Tydfil	0	0.00	2	1	2	0
Monmouthshire	8	5.65	9	11	8	5
Neath Port Talbot	3	1.39	2	14	7	6
Newport	2	0.79	19	45	30	15
Pembrokeshire	0	0.00	2	0	2	0
Powys	3	1.44	7	5	3	7
Rhondda Cynon Taff	5	1.22	4	3	2	4
Swansea	5	1.38	4	7	5	7
Torfaen	9	5.47	4	1	4	3
Vale of Glamorgan	2	0.90	2	1	0	8
Wrexham	1	0.52	0	2	1	2
Ynys Mon	0	0.00	1	2	1	0

Outcomes per LEA

This table illustrates the outcomes in 2007/08 on an LEA-by-LEA basis. The figures include registered appeals carried over from 2006/07 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			1
Bridgend					1
Caerphilly		2	2		1
Cardiff	2	10	7	2	6
Carmarthenshire	8	6	1		5
Ceredigion			2		
Conwy		8	1		1
Denbighshire			2		
Flintshire					1
Gwynedd	1	1			
Merthyr Tydfil					
Monmouthshire		8	2		
Neath Port Talbot	1	1	1		
Newport		1	1	1	
Pembrokeshire					
Powys	1	1		1	2
Rhondda Cynon Taff	1		2		3
Swansea	1	4			
Torfaen	3	1	2	1	3
Vale of Glamorgan		1			2
Wrexham		1			
Ynys Mon					

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 Appeals 2007/08	% of Appeals 2006/07	% of Appeals 2005/06	% of Appeals 2004/05	% of Appeals 2003/04
	Total Appeals 94	Total Appeals 118	Total Appeals 150	Total Appeals 127	Total Appeals 117
Refusal to Assess	17	25	24	25	39
Refusal to Statement	13	16	7	11	12
Refusal to Re-assess	2	2	1	2	2
Cease Statement	2	3	3	2	2
Contents of Parts 2 & 3	21	24	21	16	18
Contents of Parts 2, 3 & 4	32	21	23	27	11
Contents of Part 3	5	5	10	9	7
Contents of Part 4	8	2	5	6	5
Contents of Parts 3 & 4	0	2	6	2	4

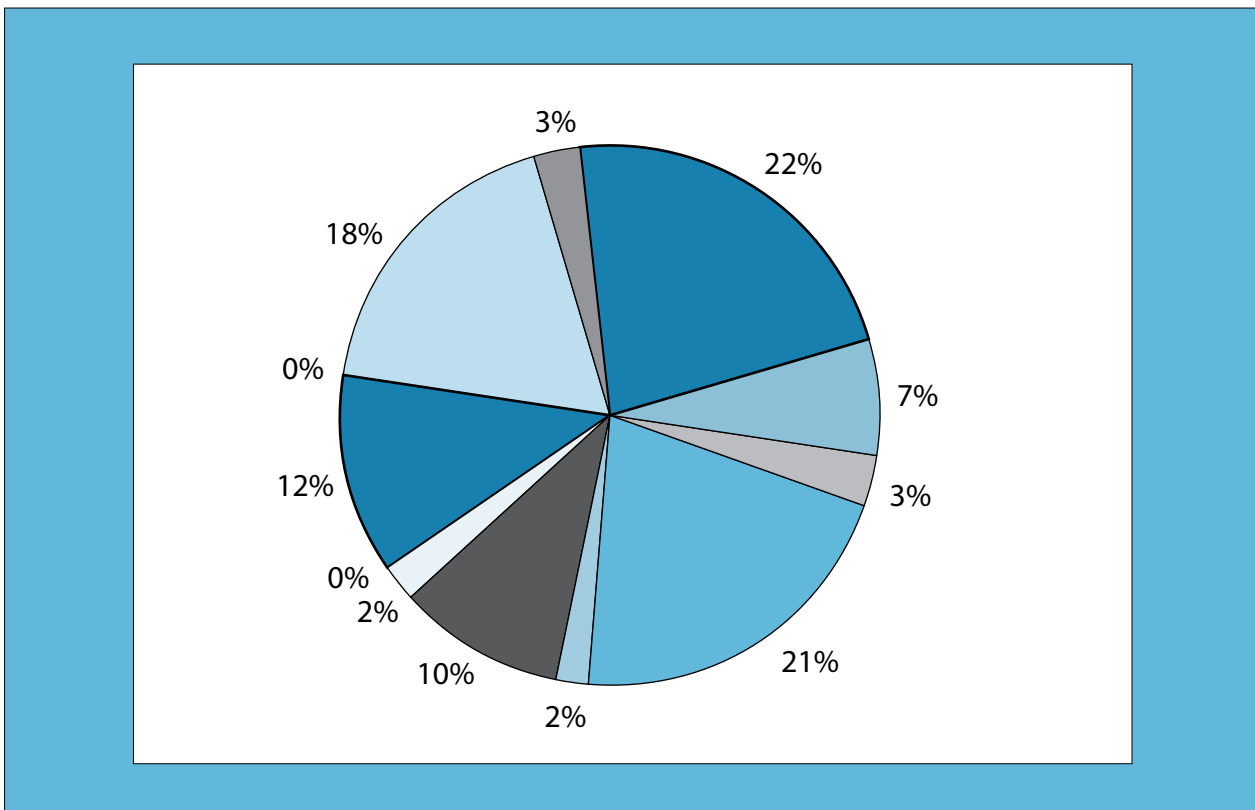
This year we have seen a significant increase in the number of appeals about the contents of parts 2, 3 and 4 of the statement. Overall, appeals concerning the content of statements have increased from 55% of all appeals registered last year to 66% this year. Appeals concerning issues other than the content of the statement have on the other hand decreased from 45% in 2006/07 to 34% this year.

² Percentage rounded

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 almost half of all registered appeals. It is interesting to note that there has also been an increase in appeals where there is multiple SEN.

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 2007/08	% of Appeals 2006/07	% of Appeals 2005/06	% of Appeals 2004/05	% of Appeals 2003/04
Autistic Spectrum Disorder	21	24	22	30	22
Emotional and Behavioural Difficulties	8	7	11	9	7
Hearing Impairment	3	3	5	1	3
Specific Learning Difficulties (inc Literacy/Dyspraxia)	21	21	20	22	33
Moderate Learning Difficulties	2	10	2	4	1
Physical/Medical Difficulties	10	9	9	0	0
Profound & Multiple Learning Difficulties	2	5	5	0	0
Severe Learning Difficulties	0	1	4	2	4
Speech and Language Difficulties	12	8	9	10	5
Visual Impairment	0	0	0	0	0
Multiple SEN	18	7	13	16	16
Other/Unknown	3	5	0	6	2

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 28 appeals which went to a full hearing, 5 were dismissed.

Type of Appeal	Decisions issued 07/08			Decisions issued 06/07		
	Upheld	Dismissed	Struck out	Upheld	Dismissed	Struck out
Against refusal to Assess	2	1		3	2	
Against refusal to Statement	1	4		2	3	
Against refusal to Re-assess				1		
Against decision to Cease Statement				1	2	
Against contents of Parts 2 & 3	2			6		
Against contents of Parts 2, 3 & 4	16			11	1	
Against contents of Part 3	1					
Against content of Part 4	1					
Against content of Parts 3 & 4				4		
Totals	23	5	0	28	8	0

Outcomes of Appeals: Schools

17 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 2006/07, 2005/06, 2004/05 and 2003/04 were 16, 22, 15 and 8 respectively. Of the 17 appeals, part 4 amendments were not ordered in 10 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
Maintained Special School			4
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 2007/08		
	Upheld	Dismissed	Struck Out
Autistic Spectrum Disorder	9	1	
Emotional and Behavioural Difficulties	2	1	
Hearing Impairment	2		
Specific Learning Difficulties (inc Literacy/dyspraxia)	1	3	
Moderate Learning Difficulties			
Physical/Medical Difficulties	4		
Profound & Multiple Learning Difficulties	1		
Severe Learning Difficulties			
Speech and Language Difficulties	3		
Visual Impairment			
Multiple SEN	1		
Other/Unknown			
Total	23	5	0

Ethnic Monitoring

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

	2007/08	2006/07	2005/06	2004/05	2003/04
Bangladeshi	0	0	0	1	1
Black African	0	1	4	1	1
Black other	0	0	1	0	0
Pakistani	1	3	0	0	2
White	67	99	135	120	93
Other	4	2	7	1	2
N/C	22	13	10	24	29

Disability Discrimination Claims

9 claims of disability discrimination were made and registered this year, with 1 being carried over from last year. Out of the 10 claims registered 4 proceeded to hearing of which 1 was upheld and 3 were dismissed. 2 claims have been withdrawn and 4 are pending awaiting a hearing.

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 2 and 3 respectively in 06/07 and 05/06. Below is a summary of the outcomes:

Pending hearing/order: 2

Complaints

No formal complaints were 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 2007 to 31 March 2008

Expenditure	2007/08
Tribunal President and members' fees and expenses	£76,909.64
Tribunal training	£6,092.79
Hearing, training and user group accommodation	£52,110.71
Other appeal expenses (witness claims, interpreting etc.)	£3,075.86
Salaries	£170,525.71
Clerks'/Secretariat travel and subsistence	£7,794.86
Staff training	£1,282.40
Office expenses (inc. deliveries)	£5,082.02
Print and media costs	£2,116.00
Legal fees	£15,323.21
(Less sum received from DfES in respect of disability function):	£23,353.00
TOTAL	£316,960.20

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

Total expenditure for previous years:

2006/07 Total £345,118

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 2007 to 31 August 2008:

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

Tribunal Secretariat

The Secretariat is responsible for Tribunal administration.

Tribunal Manager/ Secretary (Acting)	Siân Mills	Tel: 01597 829804
Appeals Team Manager	Pam Sansom	Tel: 01597 829802
Appeals Team Manager	Leon Mills	Tel: 01597 829805
Team Support	Sarah Jenkins	Tel: 01597 829809
Team Support	Vacant	

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