

Special Educational Needs Tribunal for Wales Annual Report 2015 – 2016

February 2018



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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Foreword



This is my 13th Annual Report as President of the Special Educational Needs Tribunal for Wales and the report covers the period September 2015 to August 2016.

We aim to ensure that the Tribunal serves the interests of the people of Wales having a dispute falling within our jurisdiction, by dealing with any such dispute both efficiently and effectively. Specifically we make every effort to ensure that all those involved in the dispute ultimately feel that the dispute has been fairly resolved within as short a timescale as is reasonable.

As can be seen from the statistics set out in the Report, the number of overall appeals has again increased for this period. This continues the trend of year on year increases averaging approximately 11% each year. Again, this year, we have a high number of refusal to assess appeals and it is disappointing to report that again 79% of these are being conceded by the Local Authority. I believe that this trend may continue with the forthcoming Additional Learning Needs legislative reform, as parents may be anxious to have a Statement, under a system that they are familiar with. Interestingly, we have also seen an increase in our Disability Discrimination claims this year, with a 40% increase from last year.

During the year, we have introduced Consent Orders. We found that when appeals were settled, parties were often withdrawing the appeals and there was not, in many cases, a proper record of what had been agreed between the parties. In all appeals which have been settled, the parties now have to submit their revised statements and a consent order is produced, so all parties are clear as to what has been agreed.

I have during the year, become concerned regarding the size of bundles that are being produced for the hearings. These can be over a 1,000 pages long and very often are repetitive and at times do not contain some relevant information which would be of great assistance to the Tribunal. I have raised the issue at our user group meetings and have asked our users for their input. This is something that I will be looking into further in the coming 12 months, in the hope that a solution can be found that will effect a time and cost saving for all parties.

I am also concerned with the difficulties experienced by parents who allege that the Local Authorities do not comply with Tribunal Orders. The only path available to an aggrieved parent in this situation is to take the matter to the Welsh Government. This can be a lengthy process, with parents having again to produce documentation that they have produced to the Tribunal and explain their case. We have suggested that a more sensible way forward would be for parents to submit the matter to SENTW to consider and if SENTW considers that their Order has not been complied with, SENTW sends the relevant documentation to the Welsh Government, together with a record of their findings, for the Welsh Government to take further action. We are hopeful that this will be adopted.

During this year a more formal process has been put in place to bring together, on a regular basis, the Judicial Leads of Tribunals operating in Wales. Regular meetings are being held and this is becoming a useful forum to discuss any problems or concerns that the Judicial Leads have in relation to their Tribunals.

Following a successful public appointment process, I was very pleased to welcome three new lay members to the Tribunal. The new members are Ms Catherine Pape, Dr Natalie O'Neill and Mr Rhys Wyn Parri. Each member has a very high level of knowledge and expertise in the field of education and I very much look forward to working with them in their new role.

We are facing new challenges in the coming twelve months, with the anticipated Additional Learning Needs reforms. We are still awaiting the Code of Practice consultation, which we hope will give more information about how the Bill will work in practice. We at the Tribunal have responded to the Consultations and made our concerns and views known and will continue to monitor the position carefully. With our dedicated and hardworking Chairs, Members and Secretariat, I am confident that SENTW will meet those challenges and I thank them for their invaluable support over the last twelve months.

Rhiannon Walker

President of the Special Educational Needs Tribunal for Wales

Section 1 – About Us

In this section, our:

- Basis for the SENTW
- The SENTW's Function
- The SENTW Regulations
- The SENTW's Process
- Members of the SENTW
- Appointments
- Training
- Contacting the SENTW
- Accessing the SENTW

Basis for the SENTW

The Special Educational Needs Tribunal for Wales (SENTW) is an independent tribunal established in 2003, by Section 333 (1ZA) of the Education Act 1996. The SENTW, its tribunal members and decisions, are independent of the Welsh Government and local authority's (LAs) and our decisions are legally binding. Funding for the SENTW and its administrative support is provided by the Welsh Government.

Since January 2015 children and young people have been able to make their own appeal or claim to SENTW, a new right which does not affect the existing rights for parents or guardians to make an appeal to SENTW. This new right was introduced by the Education (Wales) Measure 2009 which amended provisions under the Education Act 1996.

The SENTW's Function

The SENTW hears and decides appeals relating to children with special educational needs. Appeals are made by parents and are against certain decisions made by a LA about a child's education. The SENTW also hears claims of alleged disability discrimination in Welsh schools.

The SENTW's Regulations

The SENTW operates in accordance with its procedural regulations and other associated legislation. The regulations ensure that all cases heard by the SENTW are treated fairly, consistently, promptly and justly. They ensure that everyone who comes before the SENTW clearly understands the steps they must take so that the facts of the dispute and the relevant arguments can be presented effectively to the SENTW. They also ensure that every party to a case understands the arguments of the other party and can respond to them.

SENTW's procedures are governed by the following legislation:

- The Special Educational Needs Tribunal for Wales Regulations 2012
- Education Act 1996
- The Equality Act 2010
- The Education (Wales) Measure 2009.

SENTW's Process

Anyone wishing to make an appeal or claim to the SENTW must complete and send the relevant application form to the SENTW.

At a SENTW hearing the panel is composed of a legally qualified Chairperson and two Education Panel Members. Education Panel Members have been appointed for their general expertise and knowledge in the field of education.

SENTW hearings will normally be held in private and take place near to the applicant's home.

Members of the SENTW

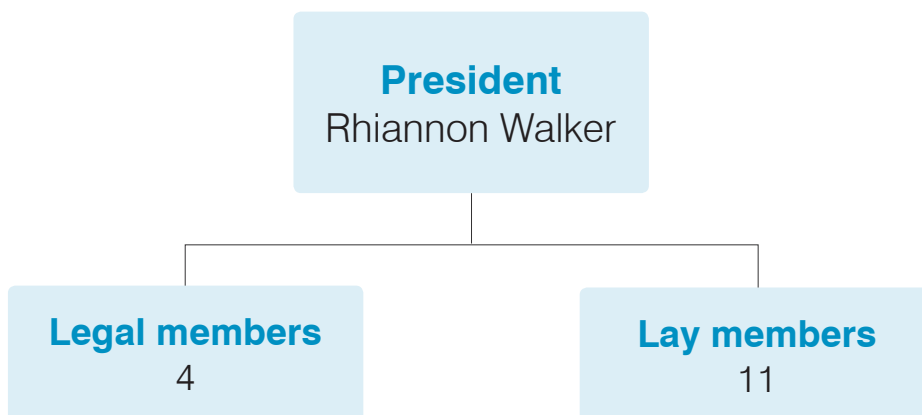
The Lord Chancellor is responsible for the appointment and re appointment of the President and Chairpersons. Education Panel Members are appointed by the Welsh Ministers.

President: The President has responsibility for the overall judicial management of the Tribunal.

Chairpersons: Tribunal hearings are managed by a chairperson, who must have a legal qualification. They will write and sign decisions, advise of adjournments and set directions where necessary.

Education Panel Members: Education Panel Members have a wide range of relevant knowledge and experience which they bring to each Hearing. They sit on Special Educational Needs Appeals and on Disability Discrimination Claims.

Secretariat: The day-to-day administration is delegated to the Secretariat which deals with all the preliminary paperwork and the processing of applications to the Tribunal. The Secretariat consults the President on any legal points arising during appeals or claims processes and passes on the President's Directions in writing to the parties. The Secretariat is a point of contact for the President, Members and parties and a clerk attends hearings in order to ensure that proceedings run smoothly.



Appointments

There were 3 new lay member appointments to the Special Educational Needs Tribunal for Wales during the reporting period.

Training

A full members' training conference was held in November 2015. Legal training was also held in March 2016. 3 new lay members commenced their induction training.

Contacting the SENTW

To contact the SENTW Secretariat:

SENTW Address: Special Educational Needs Tribunal for Wales
Government Buildings
Spa Road East
Llandrindod Wells
Powys
LD1 5HA

SENTW Helpline: 03000 259800

SENTW Fax: 03000 259801

SENTW E-mail: tribunal.enquiries@gov.wales

Accessing the SENTW

The SENTW is happy to communicate with you in Welsh or English. If a Welsh speaker is not immediately available then we will arrange for a Welsh-speaking member of staff to phone you back.

You can choose to have your hearing conducted in Welsh or English. If your first language is not Welsh or English and you wish to speak in your first language during the hearing, we can arrange for an interpreter to be present. If you need a sign language interpreter to attend the hearing we will arrange this.

If you or anyone you are bringing to the hearing has any other access requirements that may affect our arrangements for the hearing, provision will be made.

To enable arrangements for interpreters or to make provision for any additional needs of attendees, sufficient notice must be given to the secretariat.

Section 2 – Performance and Progress

In this section:

- Numbers and statistics
- Hearings Data
- Reviews and onward appeals
- Achievement against key performance indicators
- Complaints

Numbers and statistics

A Tribunal year runs from September to August. The following statistics are collated:

Appeals received and discharged in 2015-16, compared with 2014-15	Chart 2.1	Page 9
Types of appeals registered during 2015-16, compared with 2014-15	Table 2.2	Page 9
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Chart 2.1 Appeals received and discharged in 2015-16, compared with 2014-15

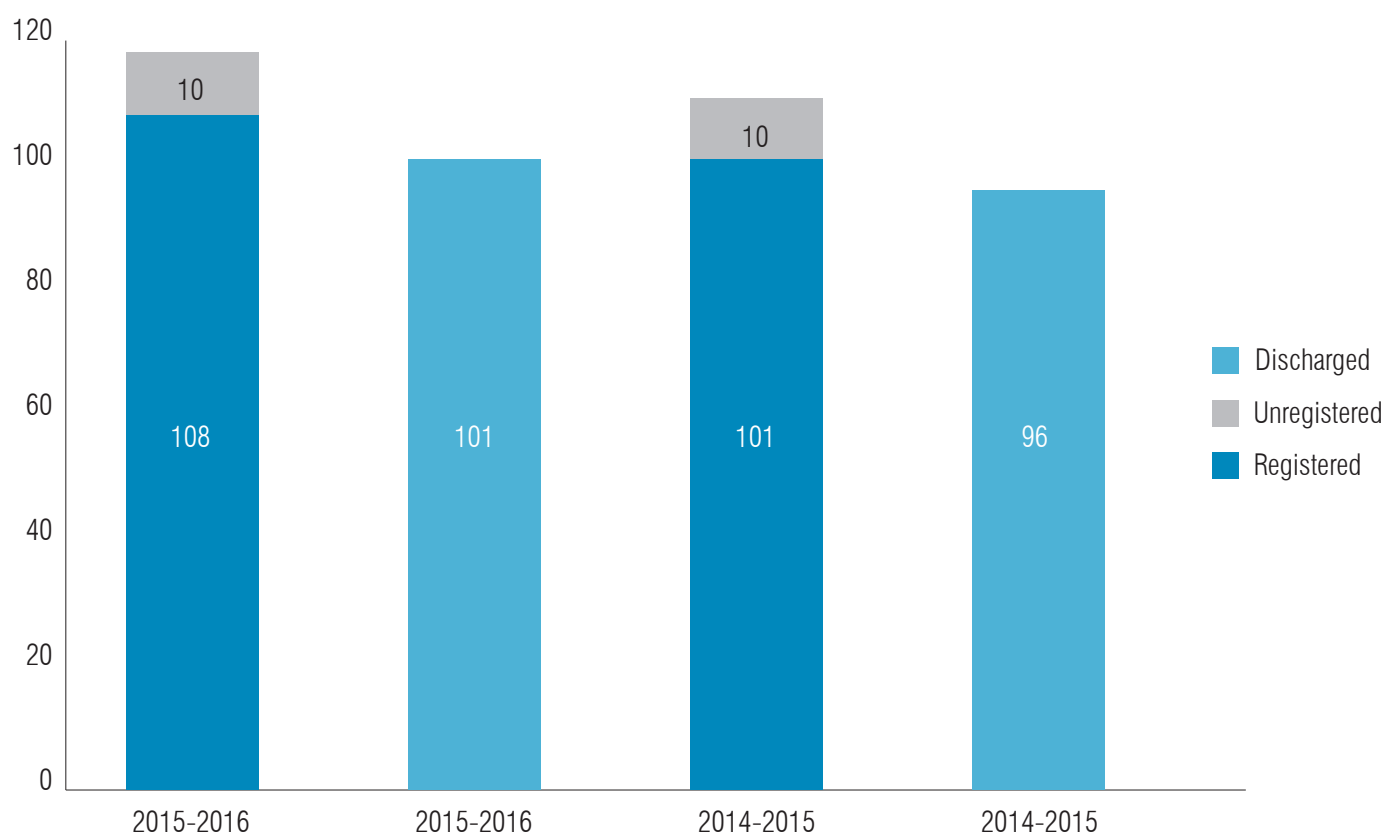


Table 2.2 Types of appeals registered during 2015-16, compared with 2014-15

Type of Appeal	2015-2016		2014-2015	
	Total Appeals 108		Total Appeals 101	
Refusal to Assess	45	41%	40	39%
Refusal to Statement	10	9%	14	14%
Refusal to Re-assess	3	3%	0	0%
Cease Statement	2	2%	0	0%
Contents of Statement Parts 2 & 3	11	10%	11	11%
Contents of Statement Parts 2, 3 & 4	25	23%	18	18%
Contents of Statement Part 3 only	4	4%	8	8%
Contents of Statement Part 4 only	5	5%	8	8%
Contents of Statement Parts 3 & 4	3	3%	2	2%

Table 2.3 Appeals registered during 2015-16 by local authority, compared with 2013-14

	2015-2016		2014-2015	
	Number of Appeals	Percentage of Appeals	Number of Appeals	Percentage of Appeals
Blaenau Gwent	0	0%	0	0%
Bridgend	9	8%	5	5%
Caerphilly	1	1%	6	6%
Cardiff	9	8%	10	10%
Carmarthenshire	3	3%	1	1%
Ceredigion	7	6%	3	3%
Conwy	12	11%	11	11%
Denbighshire	4	4%	3	3%
Flintshire	2	2%	3	3%
Gwynedd	2	2%	1	1%
Merthyr Tydfil	1	1%	2	2%
Monmouthshire	4	4%	4	4%
Neath Port Talbot	0	0%	6	6%
Newport	12	11%	10	10%
Pembrokeshire	3	3%	5	5%
Powys	8	7%	11	11%
Rhondda Cynon Taf	6	6%	2	2%
Swansea	12	11%	10	10%
Torfaen	4	4%	6	6%
Vale of Glamorgan	7	6%	2	2%
Wrexham	2	2%	0	0%
Ynys Mon	0	0%	0	0%

Table 2.4 Appeals registered during 2015-16 by local authority and type (Part 1)

	Refusal to Assess	Refusal to Statement	Refusal to Re-assess	Cease to Maintain
Blaenau Gwent	0	0	0	0
Bridgend	4	1	0	0
Caerphilly	1	0	0	0
Cardiff	2	2	0	0
Carmarthenshire	1	1	0	0
Ceredigion	3	0	0	1
Conwy	5	1	0	0
Denbighshire	1	0	2	0
Flintshire	0	1	0	0
Gwynedd	1	1	0	0
Merthyr Tydfil	0	0	0	0
Monmouthshire	1	1	0	0
Neath Port Talbot	0	0	0	0
Newport	8	0	0	0
Pembrokeshire	0	1	0	0
Powys	3	1	0	0
Rhondda Cynnon Taf	4	0	0	0
Swansea	5	0	1	1
Torfaen	3	0	0	0
Vale of Glamorgan	3	0	0	0
Wrexham	0	0	0	0
Ynys Mon	0	0	0	0

Table 2.4 Appeals registered during 2015-16 by local authority and type (Part 2)

	Contents of Statement Parts 2 & 3	Contents of Statement Parts 2, 3 & 4	Contents of Statement Part 3	Contents of Statement Parts 3 & 4	Contents of Statement Part 4
Blaenau Gwent	0	0	0	0	0
Bridgend	2	2	0	0	0
Caerphilly	0	0	0	0	0
Cardiff	0	5	0	0	0
Carmarthenshire	1	0	0	0	0
Ceredigion	0	2	1	0	0
Conwy	0	5	0	1	0
Denbighshire	0	1	0	0	0
Flintshire	1	0	0	0	0
Gwynedd	0	0	0	0	0
Merthyr Tydfil	1	0	0	0	0
Monmouthshire	0	2	0	0	0
Neath Port Talbot	0	0	0	0	0
Newport	1	2	0	1	0
Pembrokeshire	1	0	1	0	0
Powys	0	3	0	0	0
Rhondda Cynnon Taf	0	1	0	0	1
Swansea	0	0	2	0	3
Torfaen	0	0	0	0	1
Vale of Glamorgan	2	2	0	1	0
Wrexham	2	0	0	0	0
Ynys Mon	0	0	0	0	0

Chart 2.5 Appeals registered during 2015-16 per 10,000 of school population in each local authority, compared with 2014-15

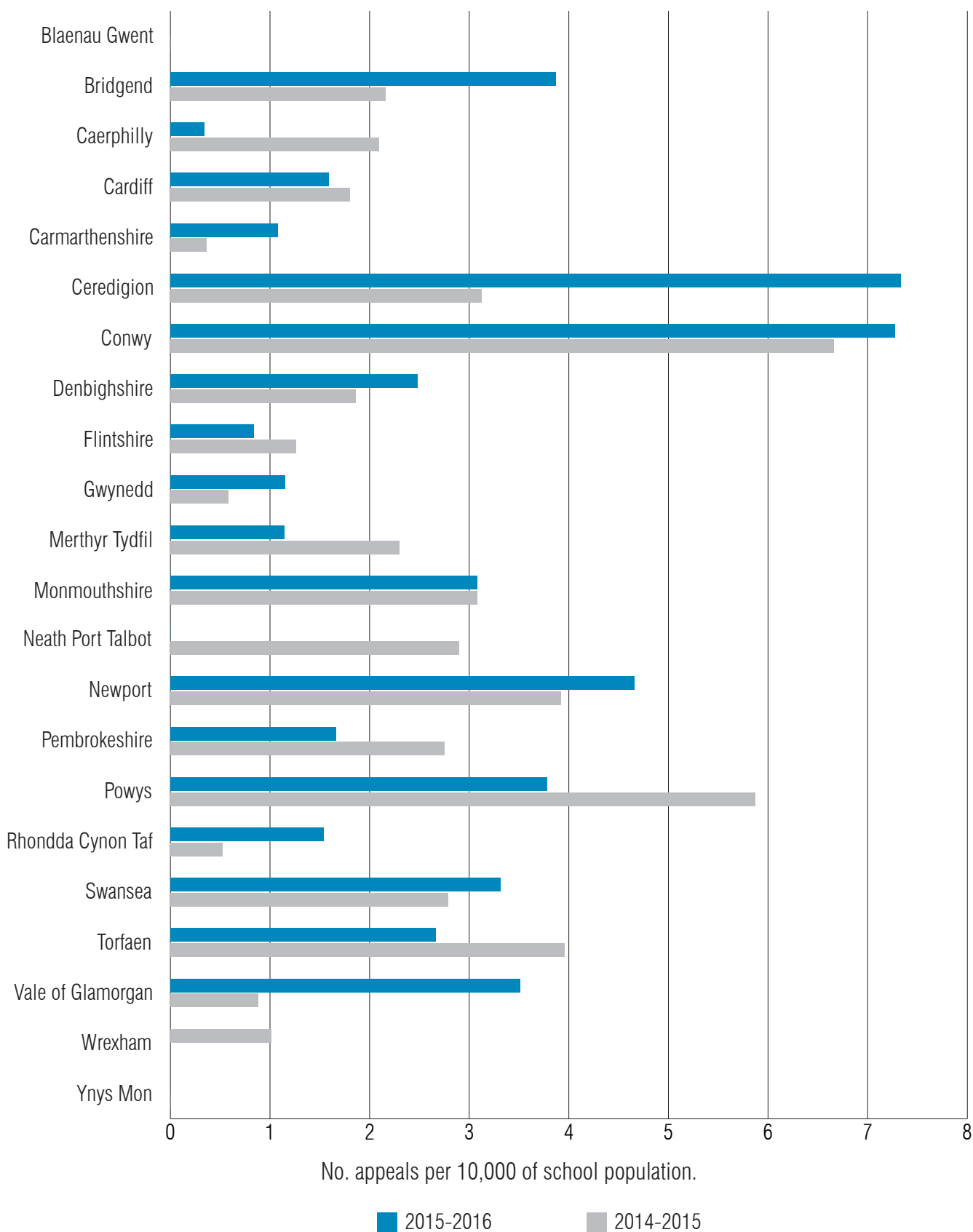


Table 2.6 Appeals registered during 2015-16 by school age and type of appeal

	Number of appeals			
	Nursery	Primary	Primary Transition ¹	Secondary
Refusal to Assess	2	34	4	5
Refusal to Statement	0	9	0	1
Contents of Statement Parts 2 & 3	0	8	0	3
Contents of Statement Parts 2, 3 & 4	0	10	3	12
Contents of Statement Part 3	0	3	0	1
Contents of Statement Parts 3 & 4	0	2	0	1
Contents of Statement Part 4	0	3	2	0
Refusal to Re-assess	0	1	0	2
Cease Statement	0	0	0	2
Total	2	70	9	27

¹ Primary transition – the final year of primary education before starting secondary school.

Table 2.7 Appeals registered during 2015-16 by school age and local authority

	Number of appeals			
	Nursery	Primary	Primary Transition	Secondary
Blaenau Gwent	0	0	0	0
Bridgend	0	7	0	2
Caerphilly	0	1	0	0
Cardiff	0	3	2	4
Carmarthenshire	0	2	0	1
Ceredigion	0	4	0	3
Conwy	0	6	1	5
Denbighshire	0	2	0	2
Flintshire	0	0	0	2
Gwynedd	0	2	0	0
Merthyr Tydfil	0	0	0	1
Monmouthshire	0	3	0	1
Neath Port Talbot	0	0	0	0
Newport	1	10	1	0
Pembrokeshire	0	3	0	0
Powys	0	5	1	2
Rhondda Cynon Taf	0	5	1	0
Swansea	1	5	3	3
Torfaen	0	4	0	0
Vale of Glamorgan	0	6	0	1
Wrexham	0	2	0	0
Ynys Mon	0	0	0	0
Total	2	70	9	27

Chart 2.8 Appeals registered during 2015-16 by special educational need, compared with 2014-15

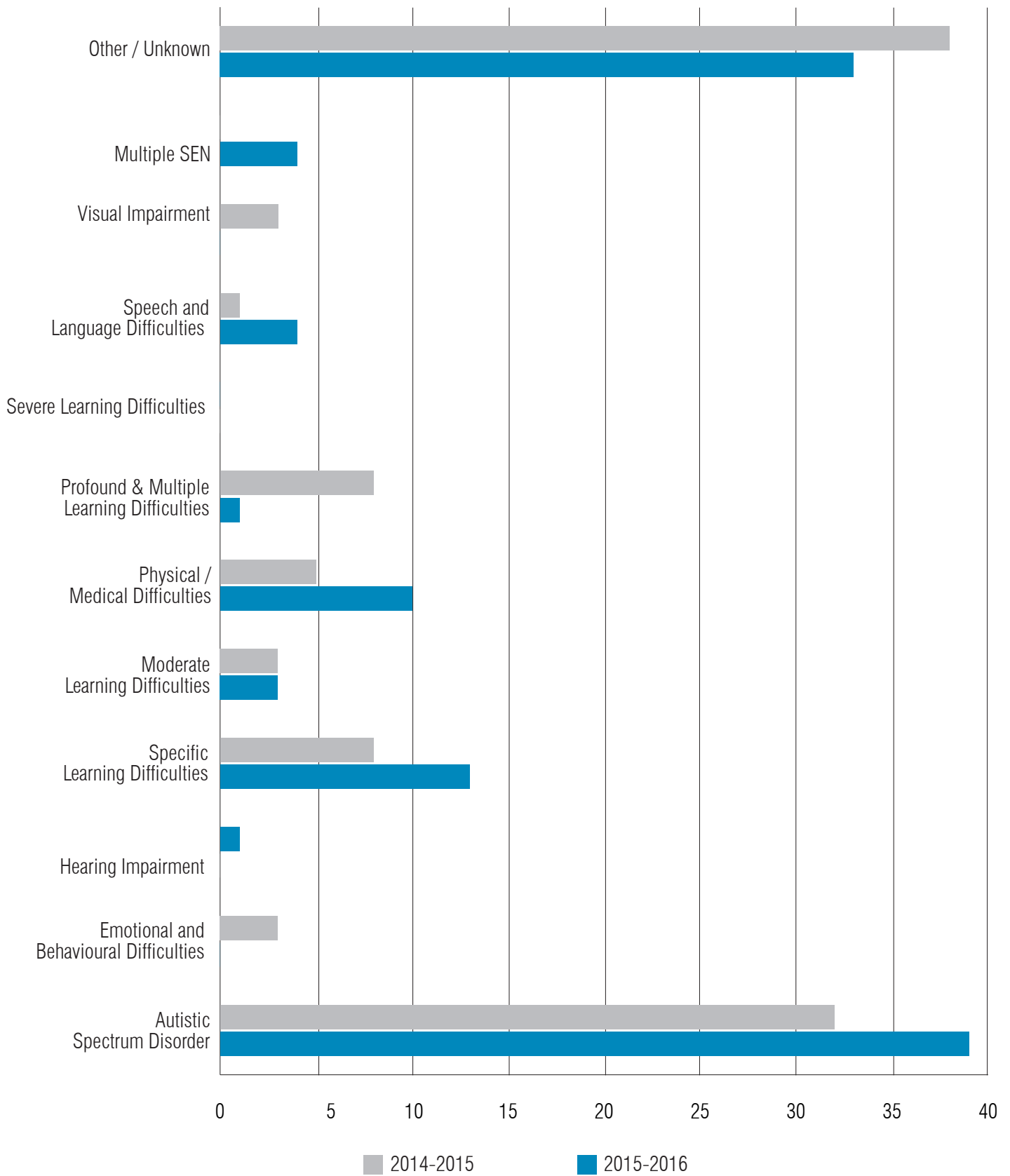


Chart 2.9 Appeals registered during 2015-16 by gender

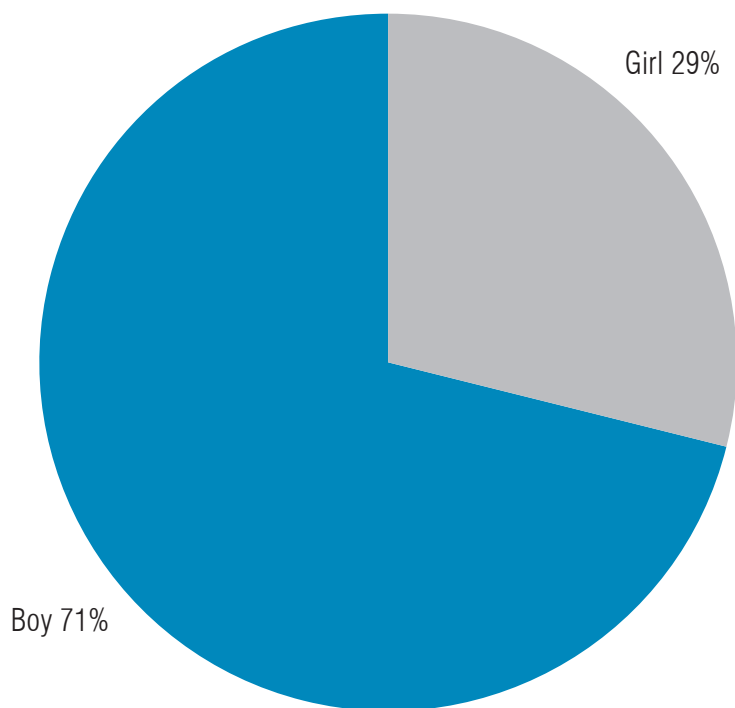


Chart 2.10 Appeals registered during 2015-16 by ethnic origin

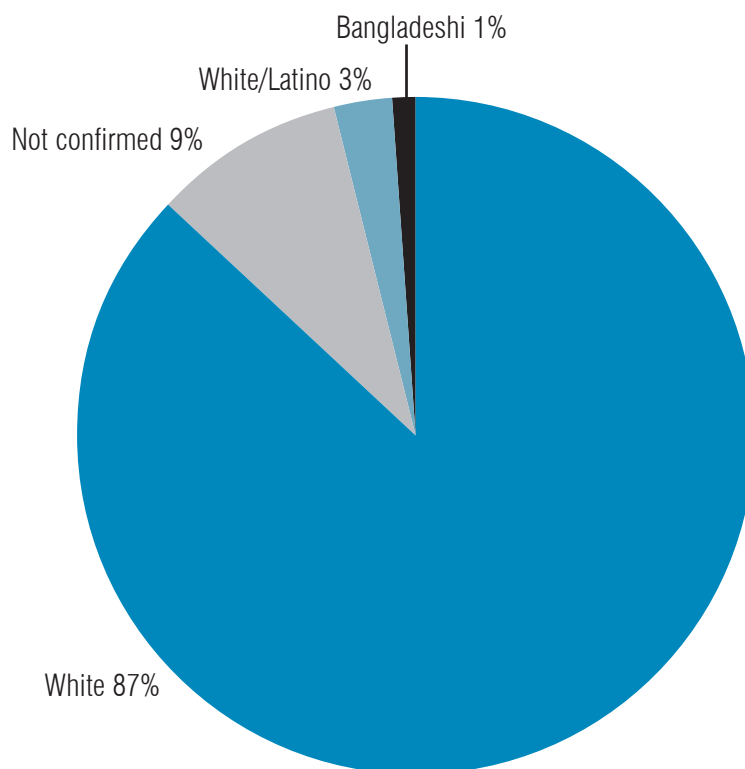


Table 2.11 Appeals by outcome 2015-16, compared with 2014-16

	2015-2016		2014-2015	
	Actual	Percentage	Actual	Percentage
Conceded ²	38	30%	33	29%
Withdrawn ³	20	16%	41	36%
Withdrawn by consent	15	12%	N/A	N/A
Upheld in Full	15	12%	10	9%
Upheld in Part	3	2%	4	4%
Dismissed	9	7%	5	4%
Remitted ⁴	0	0%	0	0%
Struck Out ⁵	1	1%	3	3%
Pending ⁶	26	20%	17	15%
Total	127	100%	113	100%

² Conceded – a case is conceded when a LA notifies the Tribunal that they no longer oppose the appeal and have agreed to do what the appellant requested in their appeal. An Appeal is withdrawn by consent when the parties have reached agreement and the parent agrees to withdraw their appeal on the basis of agreed amendments.

³ Withdrawn – a case is withdrawn when the applicant no longer wishes to continue with their appeal. An appeal is withdrawn by consent when the parties have reached agreement and the parent agrees to withdraw the appeal on the basis of agreed amendment.

⁴ Remitted – the tribunal decides that the appeal should be sent back to the LA for it to reconsider its original decision.

⁵ Struck Out – a case is struck out when it is not/or becomes no longer within the jurisdiction of the tribunal to consider it. This brings the appeal to a close.

⁶ Pending – a case is on going with the tribunal.

Table 2.12 Appeals by outcome and type 2015-16 (Part 1)

	Refusal to Assess	Refusal to Statement	Refusal to Re-assess	Cease to Maintain
Conceded	30	2	0	0
Withdrawn	6	1	2	1
Upheld in Full	0	3	0	0
Upheld in Part	0	0	0	0
Dismissed	2	2	0	0
Remitted	0	0	0	0
Struck Out	0	0	0	1
Pending	6	2	1	0
Total	44	10	3	2

Table 2.12 Appeals by outcome and type 2015-16 (Part 2)

	Contents of Statement Parts 2 & 3	Contents of Statement Parts 2, 3 & 4	Contents of Statement Part 3	Contents of Statement Parts 3 & 4	Contents of Statement Part 4
Conceded	0	0	0	0	2
Withdrawn	4	9	2	2	2
Upheld in Full	1	5	0	1	1
Upheld in Part	0	0	3	0	0
Dismissed	0	0	0	0	0
Remitted	0	0	0	0	0
Struck Out	0	0	0	0	0
Pending	6	8	2	0	0
Total	11	22	7	3	5

Table 2.13 Appeals by outcome and local authority 2015-16

	Conceded	Withdrawn	Withdrawn by consent	Upheld in Full	Upheld in Part	Dismissed	Struck Out	Pending
Blaenau Gwent	0	0	0	0	0	0	0	0
Bridgend	4	2	2	0	0	0	0	3
Caerphilly	0	1	0	0	0	0	0	0
Cardiff	3	1	3	3	0	2	0	0
Carmarthenshire	2	0	0	0	0	0	0	1
Ceredigion	1	0	1	1	1	2	1	1
Conwy	5	2	4	1	0	1	0	3
Denbighshire	0	2	0	2	0	1	0	1
Flintshire	0	0	1	1	0	0	0	0
Gwynedd	0	1	0	0	0	0	0	1
Merthyr Tydfil	0	0	0	0	0	0	0	1
Monmouthshire	2	0	0	1	0	0	0	1
Neath Port Talbot	0	0	0	0	0	0	0	0
Newport	5	2	1	1	1	0	0	2
Pembrokeshire	0	0	2	0	0	1	0	1
Powys	0	2	0	2	1	2	0	2
Rhondda Cynon Taf	4	0	0	0	0	0	0	3
Swansea	6	3	1	2	0	0	0	3
Torfaen	3	1	0	0	0	0	0	0
Vale of Glamorgan	3	1	0	1	0	0	0	3
Wrexham	0	2	0	0	0	0	0	0
Ynys Mon	0	0	0	0	0	0	0	0
Total	38	20	15	15	3	9	1	26

Chart 2.14 Claims of alleged disability discrimination registered and discharged in 2015-16, compared with 2014-15

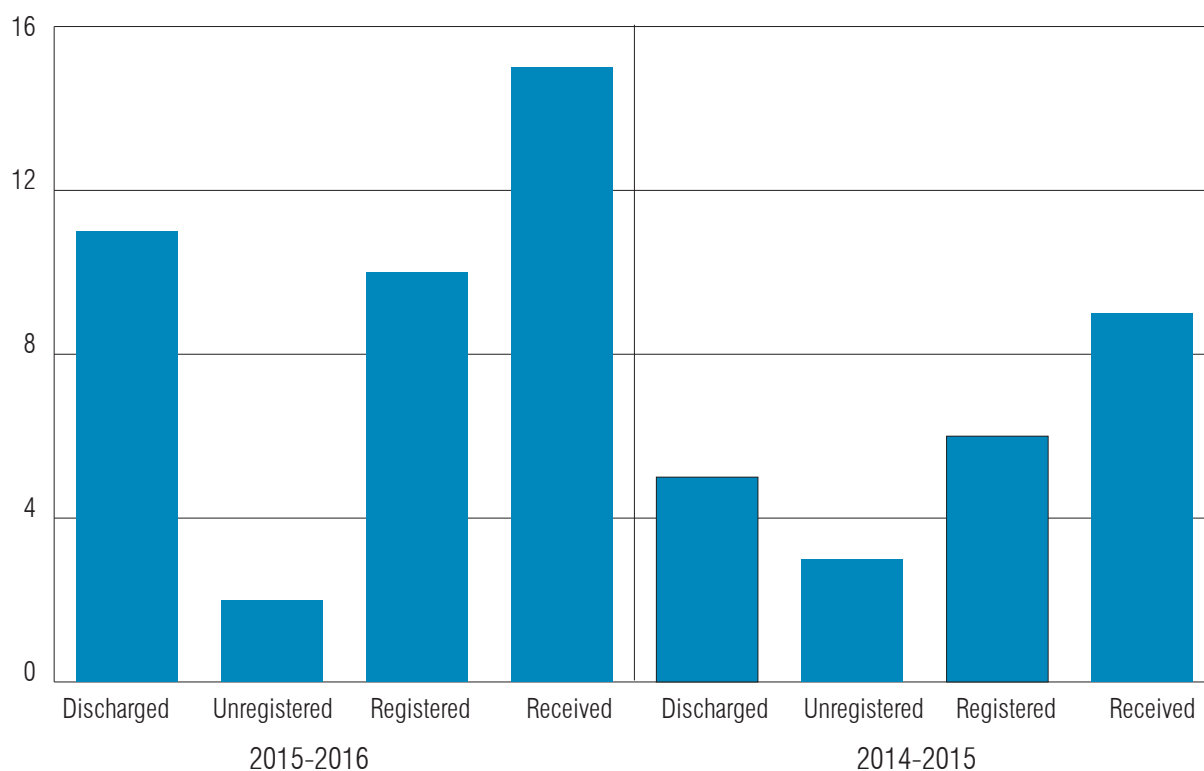


Table 2.15 Types of claims registered during 2015-16, compared with 2014-15

Type of Claim	2015-2016		2014-2015	
	Total Claims 9		Total Claims 6	
Admissions	1	10%	0	0%
Education	2	20%	4	67%
Exclusions	7	70%	2	33%

Chart 2.16 Claims of alleged disability discrimination by outcome 2015-16, compared with 2014-15

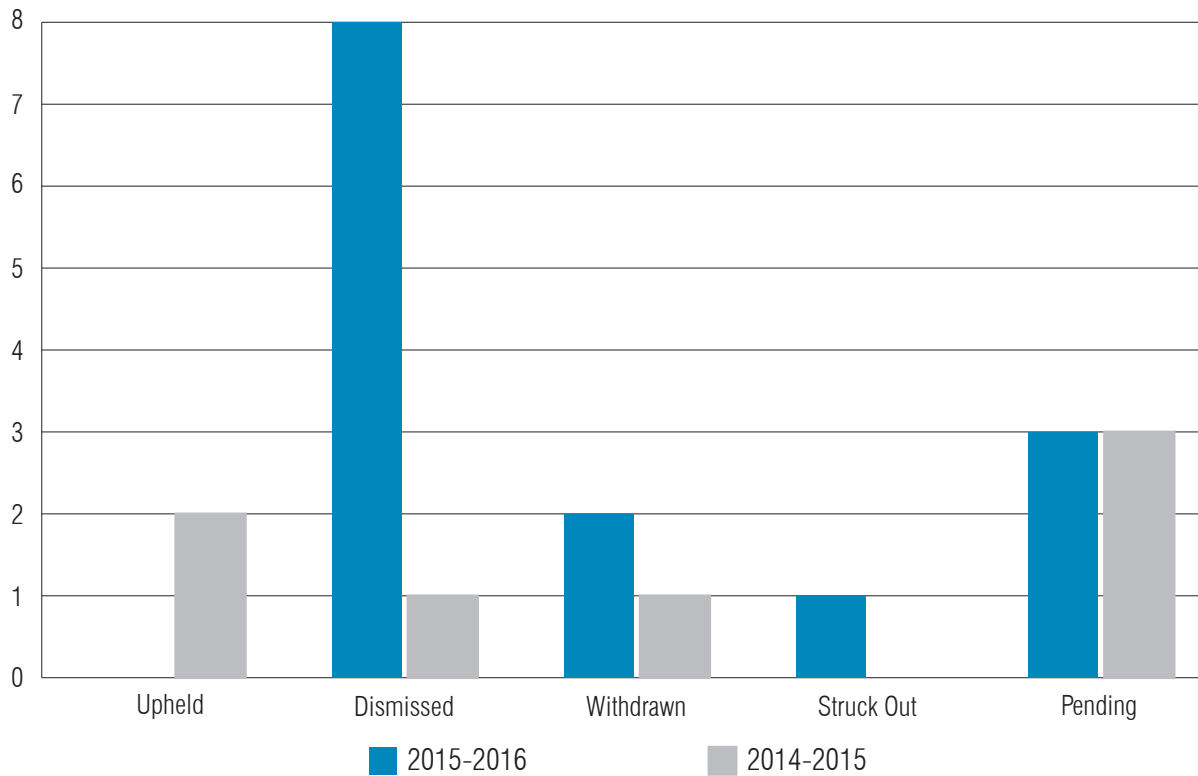
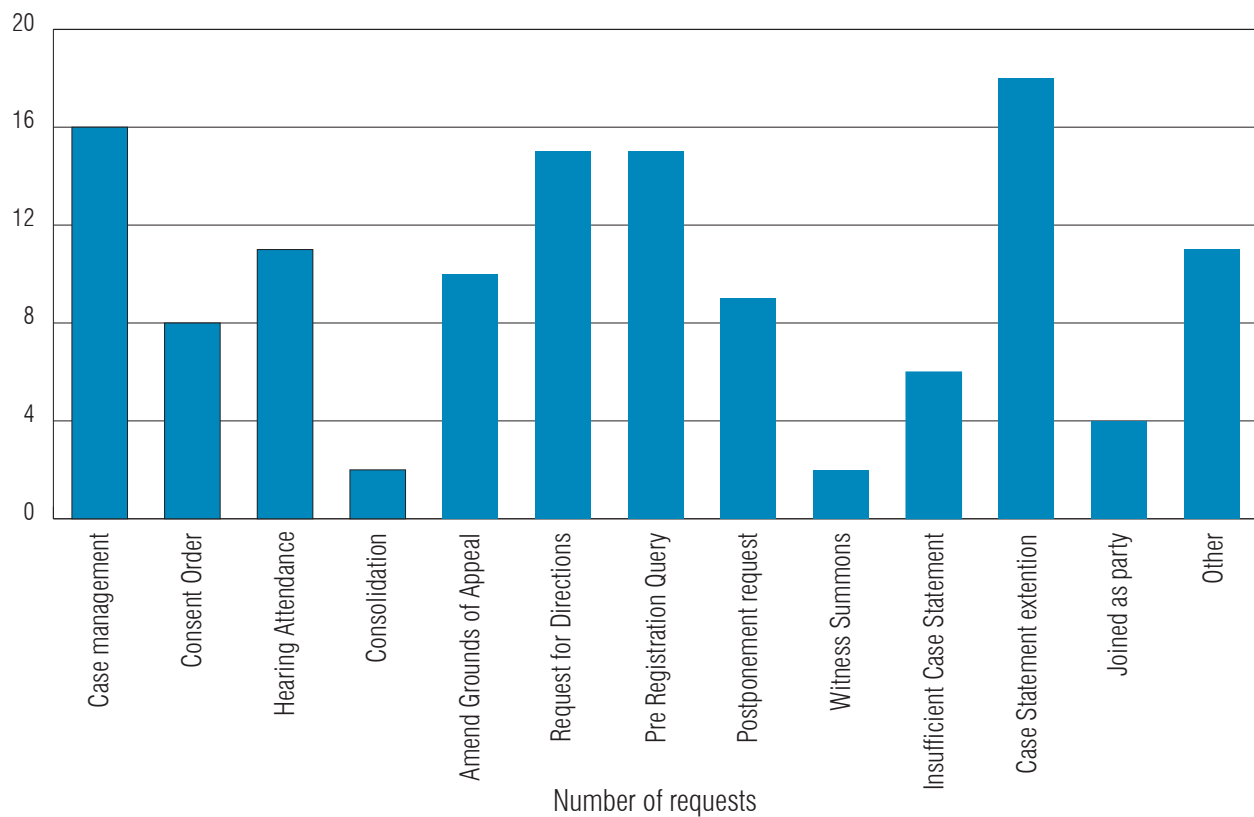


Chart 2.17 Presidential requests⁷ during 2015-16



⁷ Presidential requests – the secretariat sends requests to the President for consideration in relation to various legal aspects of case proceedings.

Hearings Data

During 2015-2016, 41 cases proceeded to hearing, resulting in a total of 51 hearing days:

Type	Length (in days)
Appeal	39 hearing days
Claim	12 hearing days

There were also 10 telephone conferences which took place and 2 hearings were decided on the basis of the papers.

Reviews and onward appeals

Applications for a review of a Tribunal decision can be made by parties on limited grounds. Over the period of this report, one application was made, but later withdrawn.

Parties may request permission of the Tribunal to make an application to the Upper Tribunal if they think that the Tribunal's decision is wrong on a point of law. Over the period of this report, 1 request for permission were made. The Tribunal decided The Tribunal refused permission. The Upper Tribunal subsequently allowed permission to appeal, a final decision is pending.

Achievement against key performance indicators

To monitor how effectively services are delivered, we have key performance indicators aimed at measuring two key aspects of our business; the speed of our service and the quality of service through customer satisfaction.

To measure the speed of our service, we have a series of primary performance indicators based on the time taken to process an application – from receipt to the hearing or disposal (see below). To measure customer satisfaction, we used an indicator that is derived from periodic customer surveys issued at the conclusion of a case (see section 3).

Speed of our service



Complaints

The Tribunal received complaints relating to one case during the course of the year.

Section 3 – Our Customers

In this section:

- Customer satisfaction survey

Customer satisfaction survey

The Tribunal strives to improve customer service delivery and aims to put our customers at the heart of everything we do.

Our customer satisfaction survey is issued at the conclusion of a case. The survey results enable us to gain a better understanding of our customers' needs and give us a valuable insight into what the Tribunal is doing well, as well as highlighting those areas where the Tribunal needs to improve.

We received 13 completed forms during 2015-2016 period. We collate information in respect of the following areas:

Communication

100% said we were prompt to respond. 100% said we were polite and helpful. 85% said the information we provided was accurate and clear, the remaining 15% neither agreed or disagreed.

Service

100% said they were able to understand the process with all saying that they found the guidance leaflets we provided useful. 100% said that we processed their application efficiently.

Hearing

90% said they were satisfied with the location of the hearing venue. 100% said that our staff were polite and helpful at the hearing.

Section 4 – Business Priorities

In this section:

- Business priorities for 2016- 2017

It is important that the SENTW continues to develop in order to deliver the best possible service for our customers. This section is about how the SENTW will build on its achievements through focusing on business priorities and our commitment to our users.

Business Priorities 2016-2017

- Plan and deliver an all-members training event
- Plan and deliver User Group meetings in North and South Wales
- Organise and conduct appraisals for all members
- Continue to monitor and update the Special Educational Needs Tribunal for Wales' website
- Continue to feed into the Welsh Government consultation on additional learning needs and education tribunal bill
- Deliver an effective and efficient service, meeting key performance indicators and responding to feedback on customer satisfaction surveys

Section 5 – Expenditure

In this section, our:

- Expenditure for 2015-2016 financial year

Expenditure for 2015-2016 financial year

Content	Amount
Members Fees and Expenses for tribunal proceedings	£101,000
Tribunal events (inc. hearing costs)	£24,000
Total*	£125,000

* rounded to the nearest £1,000