

Special Educational Needs Tribunal for Wales Annual Report 2017 – 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 15th Annual Report as President of the Special Educational Needs Tribunal for Wales. The report covers the period from September 2017 to August 2018.

During the year we received 125 appeal applications and 17 claim applications. This is an increase of 8% for claims and a decrease of 13% for appeals from the previous year. I do not find this surprising as there is some nervousness surrounding the new legislation for Additional Learning Needs which received royal assent on the 24th January 2018.

On the 24th April 2018, I had my Annual Meeting with the Minister of Education, Kirsty Williams AM. As in the past, this proved a useful opportunity to discuss the needs of the Tribunal and any future concerns. The Minister questioned why concessions were so high and asked what could be done help address this trend. I suggested a designated focussed training day for local authorities to attend by way of a nominated person. The Minister felt that this could work better on a regional basis. This would be difficult for the Tribunal to arrange and would have cost implications. I am however, giving this matter further thought and will consider whether or not we can discuss the matter further at our user groups. I explained to the Minister that we had been piloting paper hearings for refusal to assess and refusal to statement hearings, where all parties were agreeable to a paper hearing; our approach on this was welcomed by the Minister. As many of you will know, we finished our pilot on paper hearings in June 2018. I am delighted to report that the pilot was a success and we have now made all refusal to assess and refusal to statement appeals paper hearings, unless parties object. As a result of this initiative, the vast majority of these hearings were conceded by local authorities prior to the need for them to go ahead, resulting in only 2 actual paper hearing being held.

With the introduction of the Additional Learning Needs Tribunal (Wales) Bill there was concern that this would result in an increase in the number of hearings for the Tribunal.

With this in mind the tribunal undertook a recruitment exercise through the Judicial Appointments Commission (JAC) which resulted in the successful appointment of 2 legal chairs in March 2018. The Tribunal also took part in a cross ticketing exercise with other Welsh tribunals which resulted in the appointment of a further 2 legal chairs in July 2018. All new appointments have successfully participated in our induction course, and a period of observation of hearings. All the new appointments are now able to chair Tribunal hearings.

This year has been exceptionally busy for Tribunal members and especially for the Administration. Due to various illnesses and promotions, the Secretariat was left understaffed for a period of time. It has only been through the hard work and dedication of the staff that the Tribunal continued to manage its workload. We were very saddened to say goodbye to a long standing member of the Secretariat towards the end of the year, who has recently been promoted. We wish them every success in their promotion. The Welsh Tribunal Unit recruited two new members of staff who have joined the Secretariat who have complemented the existing team.

I am conscious that with the changes to the Code of Practice and new Regulations to consider in the next twelve months that a strong and dedicated Tribunal Chairs, members and Administration will be of the utmost importance. I am extremely fortunate in having such a dedicated team who are so supportive to meet the new challenges that the next twelve months will bring.

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

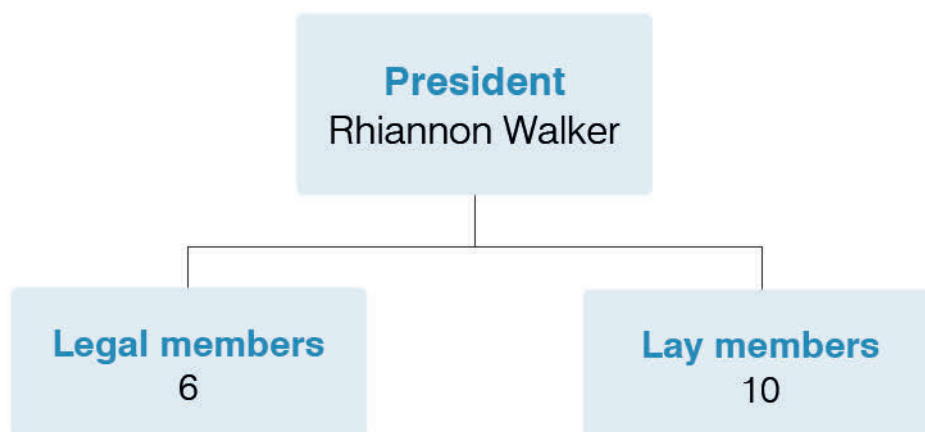
The Lord Chancellor is responsible for the appointment and re appointment of the President and Chairpersons. Education Panel Members are appointed by the Welsh Ministers.

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 2 new legal member appointments to the Special Educational Needs Tribunal for Wales during the reporting period. 2 further legal members were cross ticketed from the wider Welsh Tribunal's to the Special Educational Needs Tribunal for Wales.

Training

A full members' training conference was held in November 2017. Legal training was also held in March 2018. 2 new legal members completed their induction training in July 2018.

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 English or Welsh. 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 2017-18, compared with 2016-17	Chart 2.1	Page 10
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Chart 2.1 Appeals received and discharged in 2017-18, compared with 2016-17

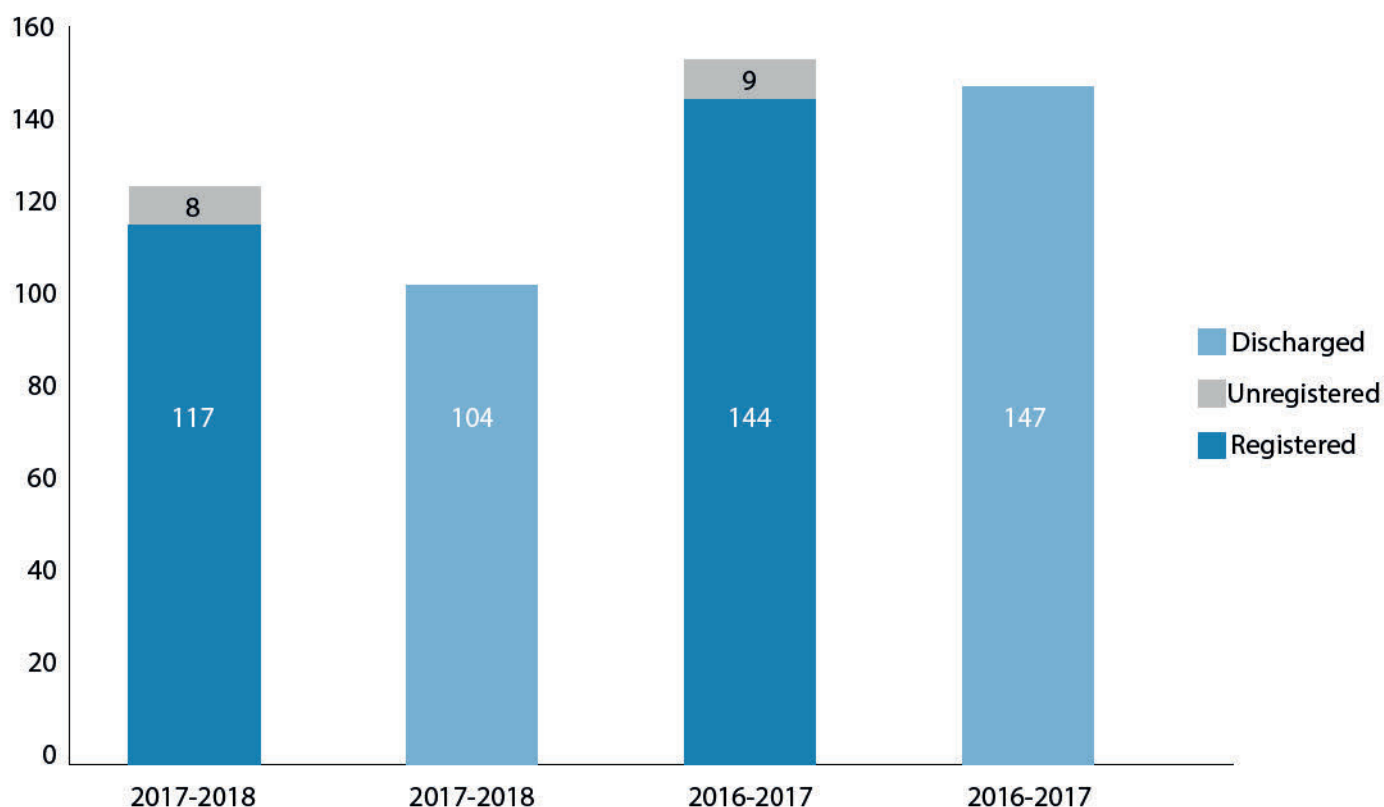


Table 2.2 Types of appeals registered during 2017-18, compared with 2016-17

Type of Appeal	2017-2018		2016-2017	
	Total Appeals 117		Total Appeals 144	
Refusal to Assess	44	37%	65	45%
Refusal to Statement	19	16%	18	13%
Refusal to Re-assess	2	2%	1	1%
Cease Statement	1	1%	2	1%
Contents of Statement Parts 2 & 3	11	9%	14	10%
Contents of Statement Parts 2, 3 & 4	16	14%	25	17%
Contents of Statement Part 3 only	12	10%	6	4%
Contents of Statement Part 4 only	9	8%	12	8%
Contents of Statement Parts 3 & 4	3	3%	1	1%

Table 2.3 Appeals registered during 2017-18 by local authority, compared with 2016-17

	2017-2018		2016-2017	
	Number of Appeals	Percentage of Appeals	Number of Appeals	Percentage of Appeals
Blaenau Gwent	6	5%	1	1%
Bridgend	6	5%	10	7%
Caerphilly	3	3%	3	2%
Cardiff	9	8%	9	6%
Carmarthenshire	3	3%	8	6%
Ceredigion	2	2%	4	3%
Conwy	10	9%	14	10%
Denbighshire	5	4%	3	2%
Flintshire	2	2%	2	1%
Gwynedd	2	2%	2	1%
Merthyr Tydfil	4	3%	0	0%
Monmouthshire	1	1%	2	1%
Neath Port Talbot	2	2%	4	3%
Newport	10	9%	10	7%
Pembrokeshire	7	6%	5	3%
Powys	4	3%	4	3%
Rhondda Cynon Taf	15	13%	21	15%
Swansea	17	15%	29	20%
Torfaen	2	2%	3	2%
Vale of Glamorgan	6	5%	6	4%
Wrexham	0	0%	3	2%
Ynys Mon	1	1%	1	1%

Table 2.4 Appeals registered during 2017-18 by local authority and type (Part 1)

	Refusal to Assess	Refusal to Statement	Refusal to Re-assess	Cease to Maintain
Blaenau Gwent	3	1	0	1
Bridgend	1	2	0	0
Caerphilly	0	1	0	0
Cardiff	4	1	0	0
Carmarthenshire	2	0	0	0
Ceredigion	1	0	0	0
Conwy	3	4	1	0
Denbighshire	1	2	0	0
Flintshire	0	0	0	0
Gwynedd	0	2	0	0
Merthyr Tydfil	0	1	0	0
Monmouthshire	0	0	0	0
Neath Port Talbot	0	1	0	0
Newport	5	0	0	0
Pembrokeshire	2	0	0	0
Powys	2	1	0	0
Rhondda Cynon Taf	10	0	0	0
Swansea	17	1	0	0
Torfaen	1	1	0	0
Vale of Glamorgan	2	1	0	0
Wrexham	0	0	0	0
Ynys Mon	0	1	0	0

Table 2.4 Appeals registered during 2017-18 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	1	0	0	0	0
Bridgend	0	1	2	0	0
Caerphilly	1	0	1	0	0
Cardiff	0	2	0	1	1
Carmarthenshire	0	0	0	0	1
Ceredigion	0	0	0	0	1
Conwy	0	1	1	0	0
Denbighshire	1	1	0	0	0
Flintshire	0	0	2	0	0
Gwynedd	0	0	0	0	0
Merthyr Tydfil	1	0	0	0	2
Monmouthshire	0	1	0	0	0
Neath Port Talbot	1	0	0	0	0
Newport	1	0	2	0	2
Pembrokeshire	2	2	0	1	0
Powys	0	0	1	0	0
Rhondda Cynon Taf	1	1	3	0	0
Swansea	1	5	0	1	2
Torfaen	0	0	0	0	0
Vale of Glamorgan	1	2	0	0	0
Wrexham	0	0	0	0	0
Ynys Mon	0	0	0	0	0

Chart 2.5 Appeals registered during 2017-18 per 10,000 of school population in each local authority, compared with 2016-17

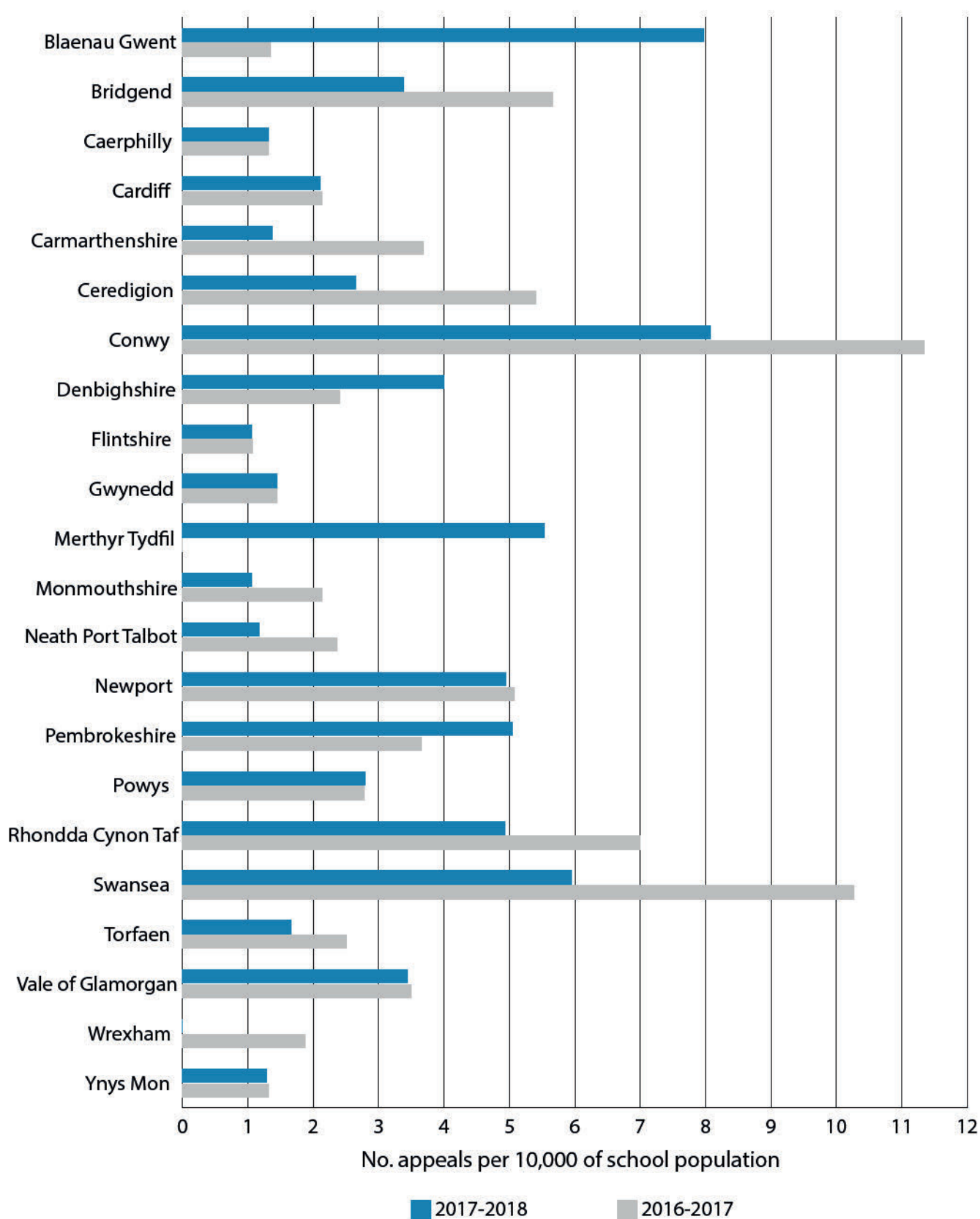


Table 2.6 Appeals registered during 2017-18 by school age and type of appeal

	Number of appeals			
	Nursery	Primary	Primary Transition ¹	Secondary
Refusal to Assess	3	30	0	11
Refusal to Statement	0	12	1	6
Contents of Statement Parts 2 & 3	0	5	1	5
Contents of Statement Parts 2, 3 & 4	1	9	1	5
Contents of Statement Part 3	0	6	2	4
Contents of Statement Parts 3 & 4	0	0	0	3
Contents of Statement Part 4	0	4	1	4
Refusal to Re-assess	0	1	0	1
Cease Statement	0	0	0	1
Total	4	67	6	40

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

Table 2.7 Appeals registered during 2017-18 by school age and local authority

	Number of appeals			
	Nursery	Primary	Primary Transition	Secondary
Blaenau Gwent	0	4	0	2
Bridgend	0	3	1	2
Caerphilly	0	3	0	0
Cardiff	0	3	1	5
Carmarthenshire	0	2	0	1
Ceredigion	0	2	0	0
Conwy	0	6	0	4
Denbighshire	0	1	0	4
Flintshire	0	2	0	0
Gwynedd	0	1	0	1
Merthyr Tydfil	0	2	1	1
Monmouthshire	0	1	0	0
Neath Port Talbot	0	1	1	0
Newport	1	8	1	0
Pembrokeshire	0	3	0	4
Powys	0	2	0	2
Rhondda Cynon Taf	1	10	1	3
Swansea	2	10	0	5
Torfaen	0	0	0	2
Vale of Glamorgan	0	2	0	4
Wrexham	0	0	0	0
Ynys Mon	0	1	0	0
Total	4	67	6	40

Chart 2.8 Appeals registered during 2017-18 by special educational need, compared with 2016-17

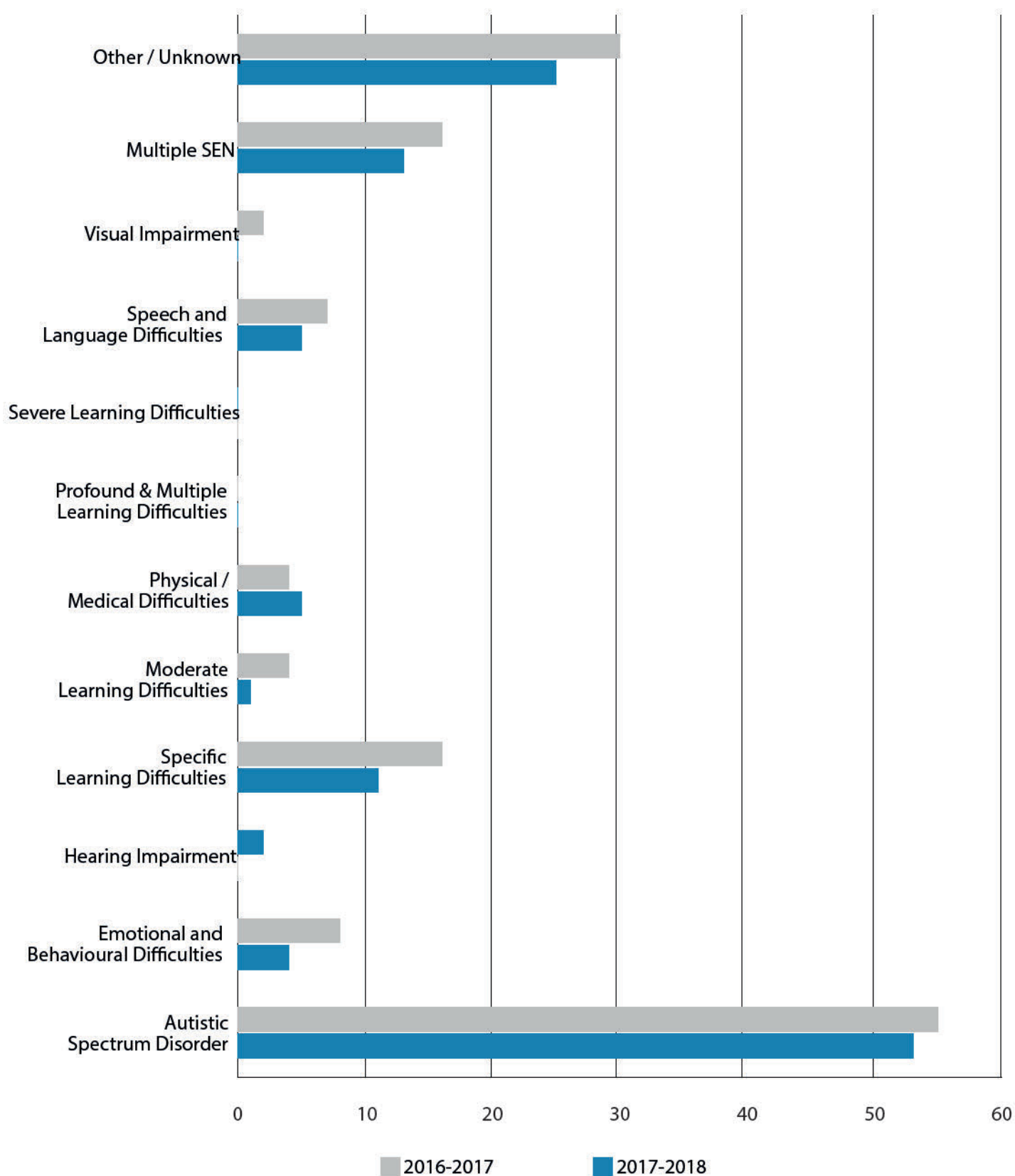


Chart 2.9 Appeals registered during 2017-18 by gender

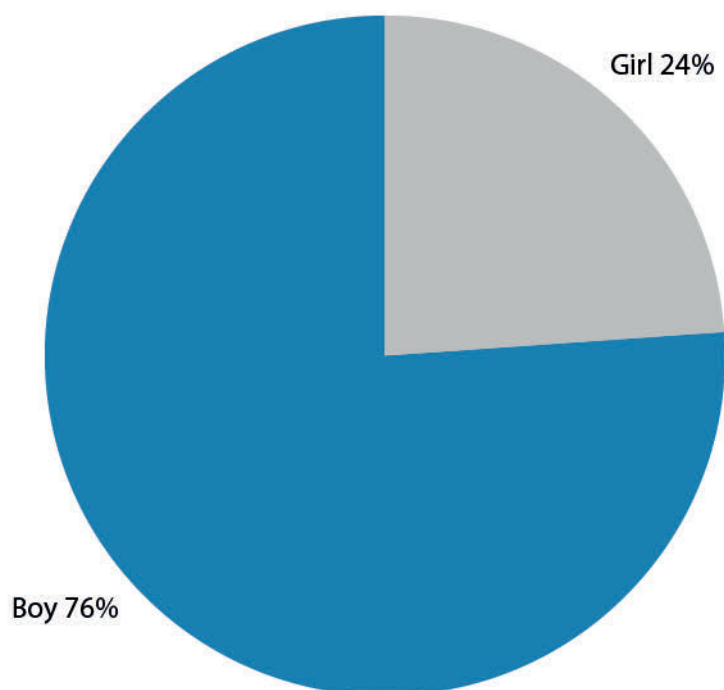


Chart 2.10 Appeals registered during 2017-18 by ethnic origin

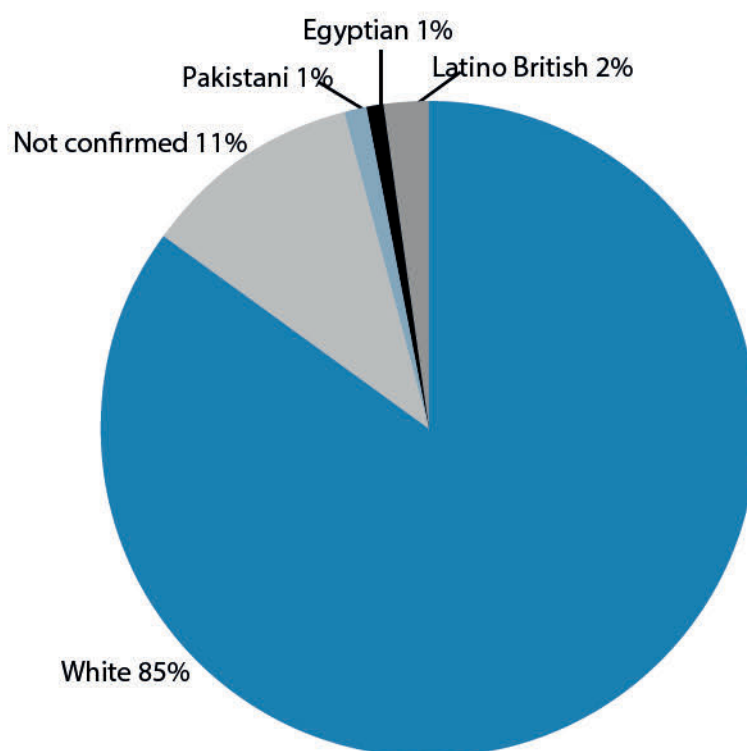


Table 2.11 Appeals by outcome 2017-18 (inc carried over appeals), compared with 2016-17

	2017-2018		2016-2017	
	Actual	Percentage	Actual	Percentage
Conceded ²	43	30%	67	39%
Withdrawn ³	24	17%	29	17%
Withdrawn by consent	8	6%	18	10%
Upheld in Full	15	11%	15	9%
Upheld in Part	4	3%	6	4%
Dismissed	10	7%	8	5%
Remitted ⁴	1	1%	0	0%
Struck Out ⁵	0	0%	4	2%
Pending ⁶	35	25%	23	14%
Total	140	100%	170	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.

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 their appeal on the basis of agreed amendments.

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 2017-18 (Part 1)

	Refusal to Assess	Refusal to Statement	Refusal to Re-assess	Cease to Maintain
Conceded	31	9	1	0
Withdrawn	4	3	0	1
Upheld in Full	1	3	0	0
Upheld in Part	0	0	0	0
Dismissed	4	5	0	0
Remitted	0	1	0	0
Struck Out	0	0	0	0
Pending	10	3	1	0
Total	50	24	2	1

Table 2.12 Appeals by outcome and type 2017-18 (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	2	6	3	2	3
Withdrawn by consent	2	5	0	0	1
Upheld in Full	3	6	1	0	1
Upheld in Part	1	2	0	0	1
Dismissed	0	0	0	0	1
Remitted	0	0	0	0	0
Struck Out	0	0	0	0	0
Pending	4	7	8	1	1
Total	2	5	0	0	1

Table 2.13 Appeals by outcome and local authority 2017-18

	Conceded	Withdrawn	Withdrawn by consent	Upheld in Full	Upheld in Part	Dismissed	Struck Out	Pending
Blaenau Gwent	4	1	0	1	0	0	0	0
Bridgend	2	0	1	3	0	0	0	3
Caerphilly	0	2	1	0	1	0	0	0
Cardiff	2	2	0	2	1	1	0	3
Carmarthenshire	2	1	0	0	0	1	0	0
Ceredigion	1	1	0	0	0	0	0	0
Conwy	5	1	0	0	1	2	0	2
Denbighshire	1	0	0	2	0	1	0	0
Flintshire	0	1	0	1	0	1	0	0
Gwynedd	1	0	0	0	0	2	0	0
Merthyr Tydfil	0	2	2	0	0	0	0	0
Monmouthshire	0	1	0	0	0	0	0	0
Neath Port Talbot	1	1	0	0	0	0	0	0
Newport	0	2	0	1	0	1	0	6
Pembrokeshire	3	1	1	0	0	0	0	5
Powys	1	1	0	1	0	0	0	2
Rhondda Cynon Taf	7	2	2	0	0	1	0	7
Swansea	8	4	1	4	1	0	0	1
Torfaen	3	0	0	0	0	0	0	0
Vale of Glamorgan	2	1	0	0	0	0	0	3
Wrexham	0	0	0	0	0	0	0	0
Ynys Mon	0	0	0	0	0	0	0	1
Total	43	24	8	15	4	9	0	35

Chart 2.14 Claims of alleged disability discrimination registered and discharged in 2017-18, compared with 2016-17 TBC

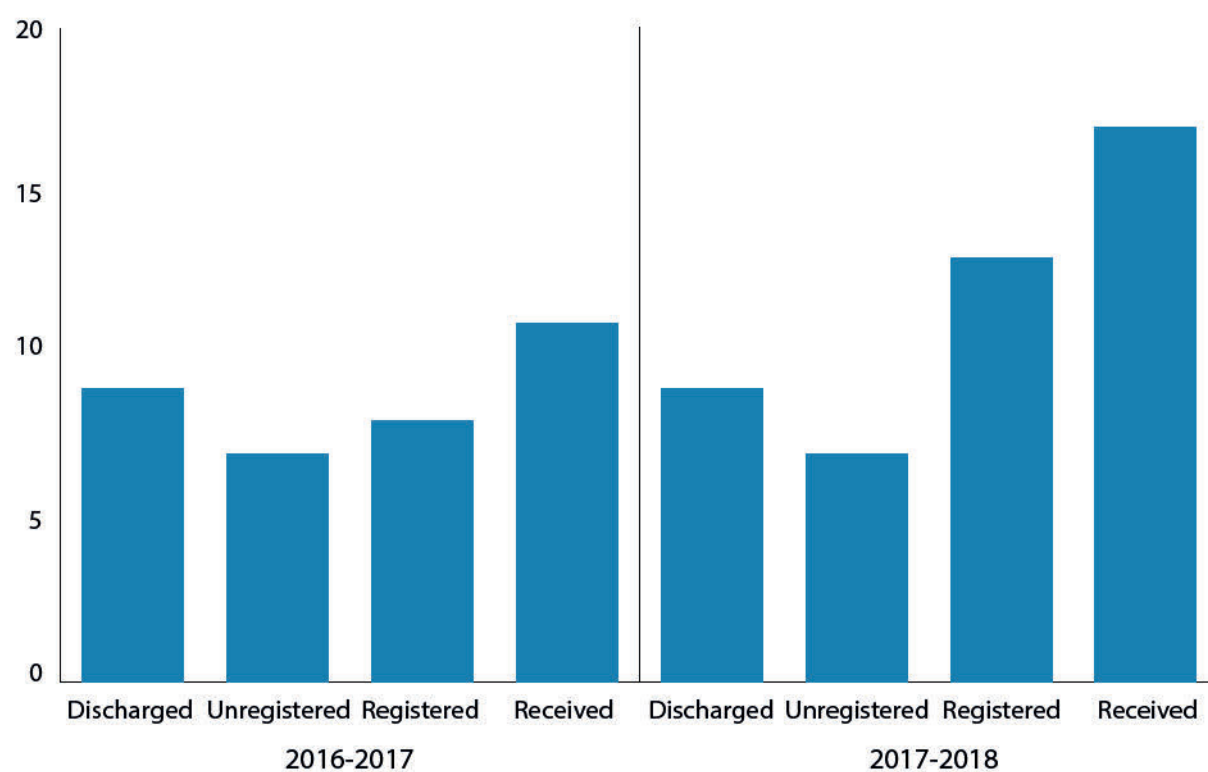
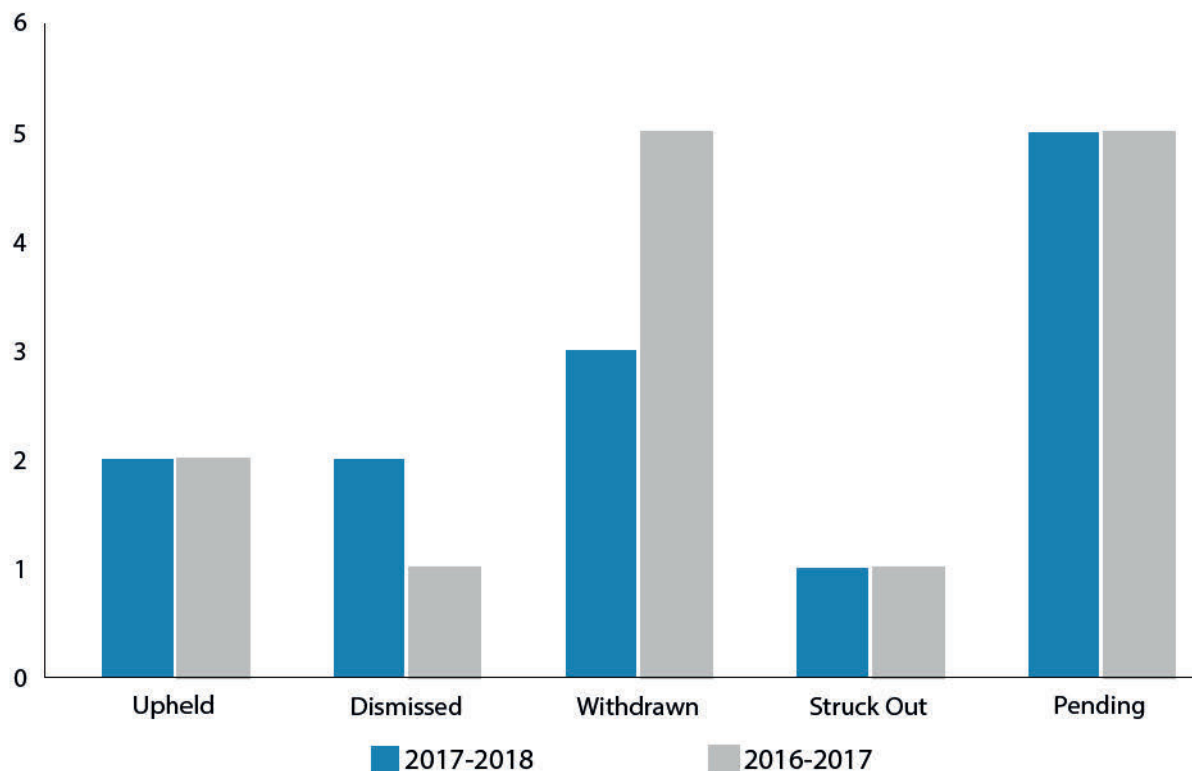


Table 2.15 Types of claims registered during 2017-18, compared with 2016-17

Type of Claim	2017-2018		2016-2017	
	Total Claims 13		Total Claims 8	
Admissions	0	0%	0	0%
Education	11	85%	4	50%
Exclusions	2	15%	4	50%

Chart 2.16 Claims of alleged disability discrimination by outcome 2017-18, compared with 2016-17



Hearings Data

During 2017-2018, 37 cases proceeded to hearing, resulting in a total of 42 hearing days:

Check the figures

Type	Length (in days)
Appeal	37 hearing days
Claim	5 hearing days

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, three applications were made, 2 were allowed and one refused.

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, 2 requests for permission were made. The Tribunal refused permission in one case and allowed a review in the second. The Tribunal are also dealing with one case remitted back by the Upper Tribunal.

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

Target: 95% of pre-registration queries dealt with within 10 working days of receipt of Appeal/Claim Application.	→	Target achieved in 98% of cases
Target: 95% of Appeals/Claims registered within 10 working days of receipt of Appeal/Claim Application.	→	Target achieved in 95% of cases
Target: 75% of decisions issued within 10 working days of the hearing	→	Target achieved in 72% of cases
Target: 75% of Appeals/Claims discharged within 20 weeks	→	Target achieved in 99% of cases

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 3 completed forms during 2017-2018 period. The overall comments were positive on the tribunal's communication, service and website.

Section 4 – Business Priorities

In this section:

- Business priorities for 2017-2018

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.

- 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 need 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 the financial year April 2017 to March 2018

Expenditure for financial year 2017-2018

Content	Amount
Members Fees and Expenses for tribunal proceedings	£162,070
Tribunal events (includes hearing venue costs)	£29,036
Total*	£191,106

* rounded to the nearest £1,000