

Special Educational Needs Tribunal for Wales Annual Report 2019 – 2020



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

Foreword



This is my 17th Annual Report as President of the Special Educational Needs Tribunal for Wales. The report covers the period from September 2019 to August 2020.

During the year, relevant training continued for the Additional Needs legislation, but this took a back seat after the announcement on the 17 September 2019 by Kirsty Williams, the Minister for Education. The announcement stated that while the statutory roles created by the Additional Learning Needs Act are to commence in January 2021, the new Additional Learning Needs system will not commence until September 2021 and then only on a phased basis.

The Minister helpfully stressed in her Statement and indeed wrote to local authorities, that local authorities, health boards and schools should ensure that they are meeting the needs of children and young people with special educational needs in line with their existing statutory obligations. With the delay of the implementation of the new Additional Needs legislation, it is positive that parents are still exercising their rights under the existing system and bringing matters before the Tribunal.

While it is regretful that the legislation is taking so long to commence, I hope that this additional time will be used constructively by all parties to achieve a smooth and successful implementation of the legislation which will be of benefit to children.

We note that the Minister, in her September Statement also stated that she intended to lay the Special Educational Needs Code of Practice and the Tribunal's new Regulations for National Assembly approval in 2020. We are grateful that we have been invited to attend meetings with the team working on the Code and our Regulations, as we have been able to clarify various matters and have developed a good working relationship with the team. We are obviously very keen that the Regulations are comprehensive and give a degree of flexibility that the last few months have shown that we need.

We have appointed five new educational experts and are in the process of organising their induction training. I reported last year that we had also appointed more Chairs through a cross ticketing exercise. I am pleased to report that following some induction training that these Chairs are now sitting for the Tribunal on a regular basis.

One of the main challenges in the year was to continue to hear appeals and claims with the onset of the pandemic and the lockdowns. Early in March 2020, we trialled the use of virtual rooms and decided that the use of this technology was the best way forward for us. After some training of our Chairs and members, we were able to roll out the system, with the first hearings taking place in May 2020. We knew that we had to find a way to proceed with our workload and it is a credit to our Secretariat and our Chairs and members that this has worked so well. We also realised that it was even more important in these difficult times to also keep in touch with our users. We believed that we could use our virtual rooms to hold our user group meetings. However, for the meetings to be effective, we realized that we would need to limit the numbers of participants. We therefore decided to divide the meetings into smaller groups and this was achieved in August 2020. Whilst I cannot say that the meetings were as spontaneous as our usual meetings, they were effective in keeping in touch with our users and exchanging views. One of the positive outcomes from these meetings was the fact that we were able to have participants from the North and South of Wales in the same meeting.

Unfortunately, we had to cancel our Annual Conference this year, but we are considering ways in which we can proceed, albeit in a different format. I am very keen that we do not fall behind with our training needs, as with the increase of the age range to 25 years in the new Additional Learning Needs Act, I am conscious that we need to provide training to cover the further education years.

In all, this year has had many challenges for everyone. It seems that these challenges will continue for some months. However, I must pay tribute to the way that the Secretariat, Chairs, Members and all our users have risen to the difficulties, changes and challenges that we have all faced during the last few months. I thank you all for your support, good humour in difficult times and your hard work in ensuring that the Tribunal has been able to continue with its work. I am confident that with this continued support that the Tribunal is well placed to face the inevitable challenges of the next 12 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.

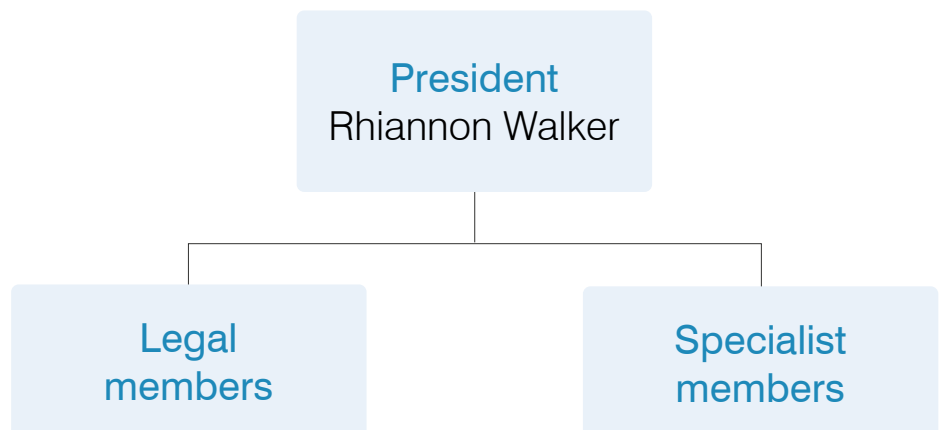
At a SENTW hearing the panel is composed of a legally qualified Chairperson and two Education Panel Members. Education Panel Members have been appointed for their general expertise and knowledge in the field of education.

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 5 new specialist member appointments to the Special Educational Needs Tribunal for Wales during the reporting period.

Training

Due to the COVID-19 pandemic the tribunal postponed its annual training which will now be completed in the next reporting period.

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 on an academic year from September to August. The Tribunal collects the following data for statistics:

Types of appeals 2019-20, compared with 2018-19	Table 2.1	Page 9
Appeals received and discharged in 2019-20, compared with 2018-19 including carried forward	Chart 2.1	Page 9
Appeals by local authority 2019-20, compared with 2018-19	Table 2.2	Page 10
Appeals by local authority and type (Part 1) 2019-20	Table 2.3(i)	Page 11
Appeals by local authority and type (Part 2) 2019-20	Table 2.3(ii)	Page 12
Appeals per 10,000 of school population in each local authority 2019-20, compared with 2018-19	Chart 2.2	Page 13
Appeals by school age and type of appeal 2019-20	Table 2.4	Page 14
Appeals by school age and local authority 2019-20	Table 2.5	Page 15
Appeals by special educational need 2019-20, compared with 2018-19	Chart 2.3	Page 16
Appeals by gender 2019-20	Chart 2.4	Page 16
Appeals registered during 2019-20 by ethnic origin	Chart 2.5	Page 17
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Claims of alleged disability discrimination received and discharged in 2019-20, compared with 2018-19	Chart 2.6	Page 20
Types of claims received during 2019-20, compared with 2018-19	Table 2.9	Page 20
Claims of alleged disability discrimination by outcome 2019-20 including carried forward, compared with 2018-19	Chart 2.7	Page 21

Table 2.1 – Types of appeals 2019-20, compared with 2018-19

Type of Appeal	2019-2020	2018-2019
Refusal to Assess	44	58
Refusal to Statement	20	25
Refusal to Re-assess	1	0
Contents of Statement Parts 2 & 3	23	9
Contents of Statement Parts 2, 3 & 4	24	22
Contents of Statement Part 3 only	6	5
Contents of Statement Parts 3 & 4	3	3
Contents of Statement Part 4 only	17	12
Cease to Maintain	1	1
Not recorded	1	0
Total	140	135

Chart 2.1 – Appeals received and discharged in 2019-20, compared with 2018-19 including carried forward

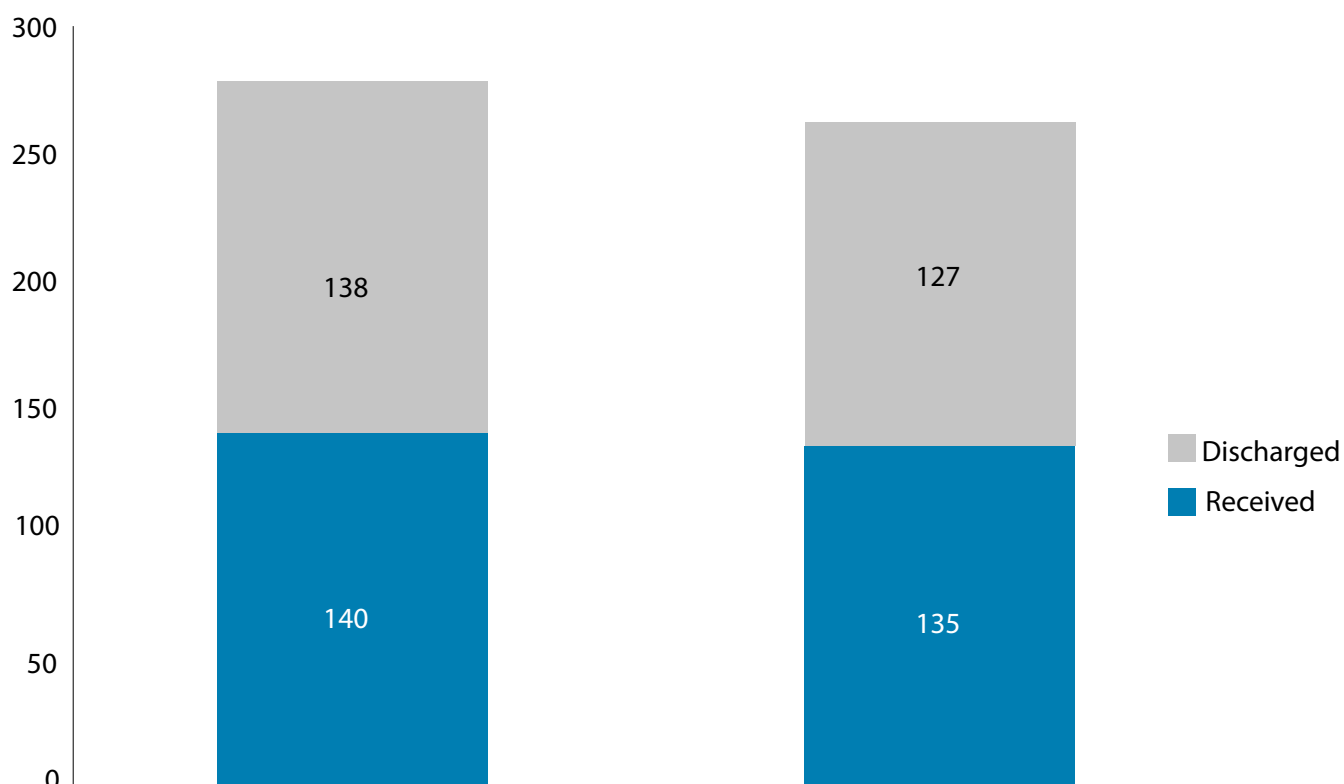


Table 2.2 – Appeals by local authority 2019-20, compared with 2018-19

	2019-2020		2018-2019	
	Number of Appeals	Percentage of Appeals	Number of Appeals	Percentage of Appeals
Blaenau Gwent	3	2%	2	1%
Bridgend	7	5%	5	4%
Caerphilly	3	2%	0	0%
Cardiff	17	12%	19	14%
Carmarthenshire	14	10%	6	4%
Ceredigion	1	1%	0	0%
Conwy	5	4%	12	9%
Denbighshire	4	3%	2	1%
Flintshire	4	3%	2	1%
Gwynedd	5	4%	2	1%
Merthyr Tydfil	1	1%	1	1%
Monmouthshire	2	1%	2	1%
Neath Port Talbot	5	4%	3	2%
Newport	15	11%	18	13%
Pembrokeshire	8	6%	6	4%
Powys	16	11%	12	9%
Rhondda Cynon Taf	9	6%	18	13%
Swansea	10	7%	12	9%
Torfaen	1	1%	4	2%
Vale of Glamorgan	8	6%	7	5%
Wrexham	1	1%	0	0%
Ynys Mon	1	1%	2	1%
Total	140	100%	135	100%

Table 2.3(i) – Appeals by local authority and type (Part 1) 2019-20

	Refusal to Assess	Refusal to Statement	Refusal to Re-assess	Cease to Maintain
Blaenau Gwent	1	0	0	0
Bridgend	3	0	0	0
Caerphilly	1	0	0	0
Cardiff	3	4	0	1
Carmarthenshire	5	2	1	0
Ceredigion	0	0	0	0
Conwy	2	1	0	0
Denbighshire	2	0	0	0
Flintshire	1	0	0	0
Gwynedd	1	2	0	0
Merthyr Tydfil	1	0	0	0
Monmouthshire	0	0	0	0
Neath Port Talbot	1	1	0	0
Newport	5	2	0	0
Pembrokeshire	2	1	0	0
Powys	5	4	0	0
Rhondda Cynon Taf	2	2	0	0
Swansea	4	0	0	0
Torfaen	0	0	0	0
Vale of Glamorgan	2	1	0	0
Wrexham	1	0	0	0
Ynys Mon	1	0	0	0
Total	43	20	1	1

Table 2.3(ii) – Appeals by local authority and type (Part 2) 2019-20

	Contents of Parts 2 & 3	Contents of Parts 2, 3 & 4	Contents of Part 3	Contents of Parts 3 & 4	Contents of Part 4	Not recorded
Blaenau Gwent	0	1	0	0	1	0
Bridgend	2	2	1	0	0	0
Caerphilly	0	0	1	0	0	0
Cardiff	3	3	0	1	1	0
Carmarthenshire	1	4	0	0	3	0
Ceredigion	1	0	0	0	0	0
Conwy	0	2	0	0	0	0
Denbighshire	0	2	0	0	0	0
Flintshire	0	0	0	0	3	0
Gwynedd	1	0	1	0	0	0
Merthyr Tydfil	0	0	0	0	0	0
Monmouthshire	0	1	0	0	1	0
Neath Port Talbot	1	1	1	0	0	0
Newport	2	2	1	1	1	1
Pembrokeshire	2	3	0	0	0	0
Powys	4	0	0	0	2	0
Rhondda Cynon Taf	3	0	0	0	1	0
Swansea	1	3	1	0	1	0
Torfaen	0	1	0	0	0	0
Vale of Glamorgan	1	0	0	1	3	0
Wrexham	0	0	0	0	0	0
Ynys Mon	0	0	0	0	0	0
Total	23	25	6	3	17	1

Chart 2.2 – Appeals per 10,000 of school population in each local authority 2019-20, compared with 2018-19

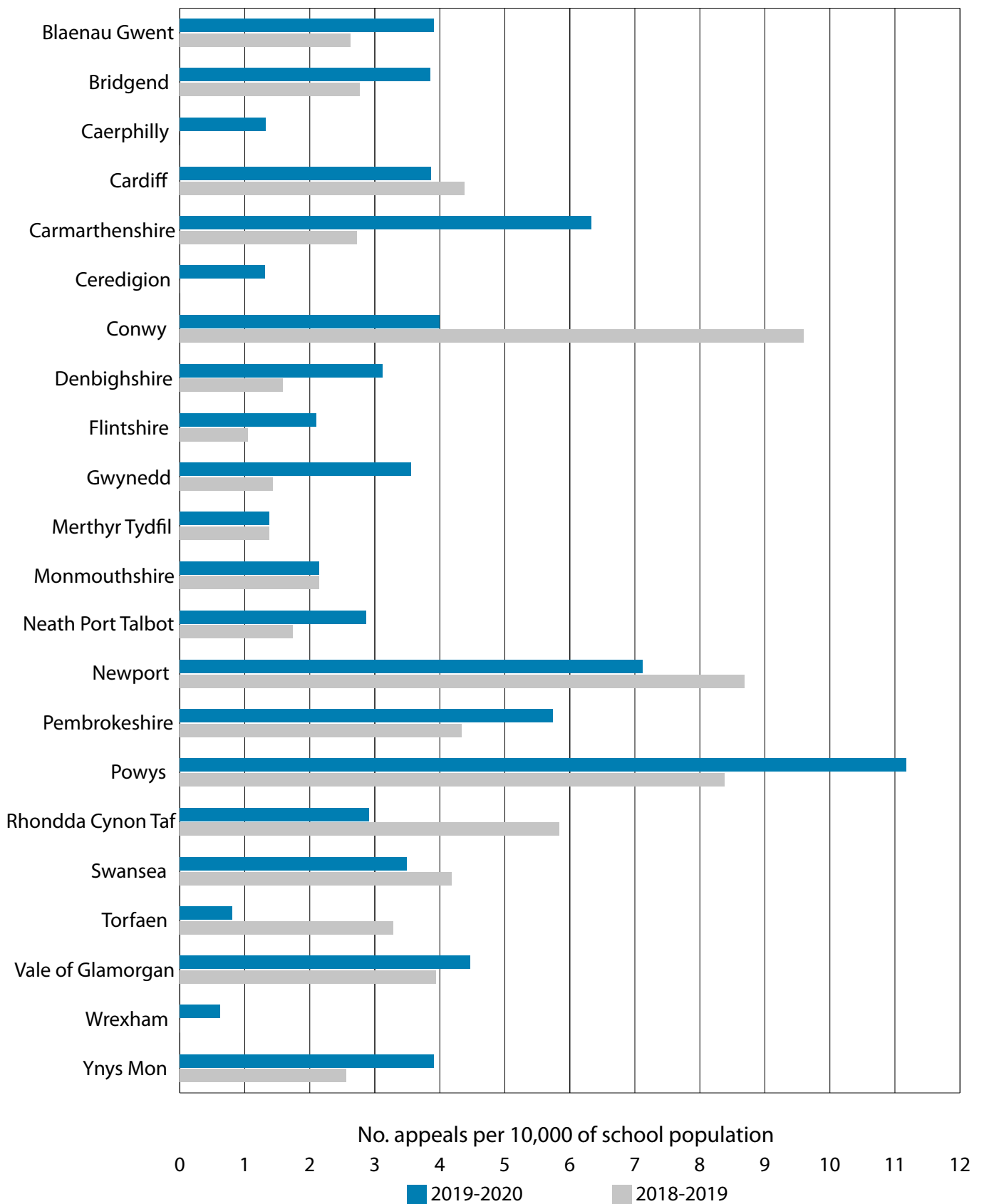


Table 2.4 – Appeals by school age and type of appeal 2019-20

	Number of appeals				
	Nursery	Primary	Primary Transition ¹	Secondary	Secondary Transition
Refusal to Assess	0	29	1	13	0
Refusal to Statement	1	11	1	7	0
Contents of Statement Parts 2 & 3	0	14	5	4	0
Contents of Statement Parts 2, 3 & 4	0	10	4	11	0
Contents of Statement Part 3	0	2	1	3	0
Contents of Statement Parts 3 & 4	0	2	1	0	0
Contents of Statement Part 4	2	5	4	4	1
Refusal to Re-assess	0	1	0	0	0
Cease to Maintain	0	0	0	1	0
Not recorded	0	0	0	1	0
Total	3	74	17	44	1

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

Table 2.5 – Appeals by school age and local authority 2019-20

	Number of appeals				
	Nursery	Primary	Primary Transition	Secondary	Secondary Transition
Blaenau Gwent	0	0	0	3	0
Bridgend	0	4	1	2	0
Caerphilly	0	2	0	1	0
Cardiff	0	10	2	5	0
Carmarthenshire	1	7	1	5	0
Ceredigion	0	1	0	0	0
Conwy	0	3	1	1	0
Denbighshire	0	2	0	2	0
Flintshire	0	3	1	0	0
Gwynedd	0	2	1	2	0
Merthyr Tydfil	0	1	0	0	0
Monmouthshire	0	1	0	1	1
Neath Port Talbot	0	3	1	0	0
Newport	0	7	3	5	0
Pembrokeshire	0	4	0	4	0
Powys	0	8	0	8	0
Rhondda Cynon Taf	1	5	2	1	0
Swansea	0	6	2	2	0
Torfaen	0	1	0	0	0
Vale of Glamorgan	1	3	2	2	0
Wrexham	0	1	0	0	0
Ynys Mon	0	0	0	1	0
Total	3	74	17	45	1

Chart 2.3 – Appeals by special educational need 2019-20, compared with 2018-19

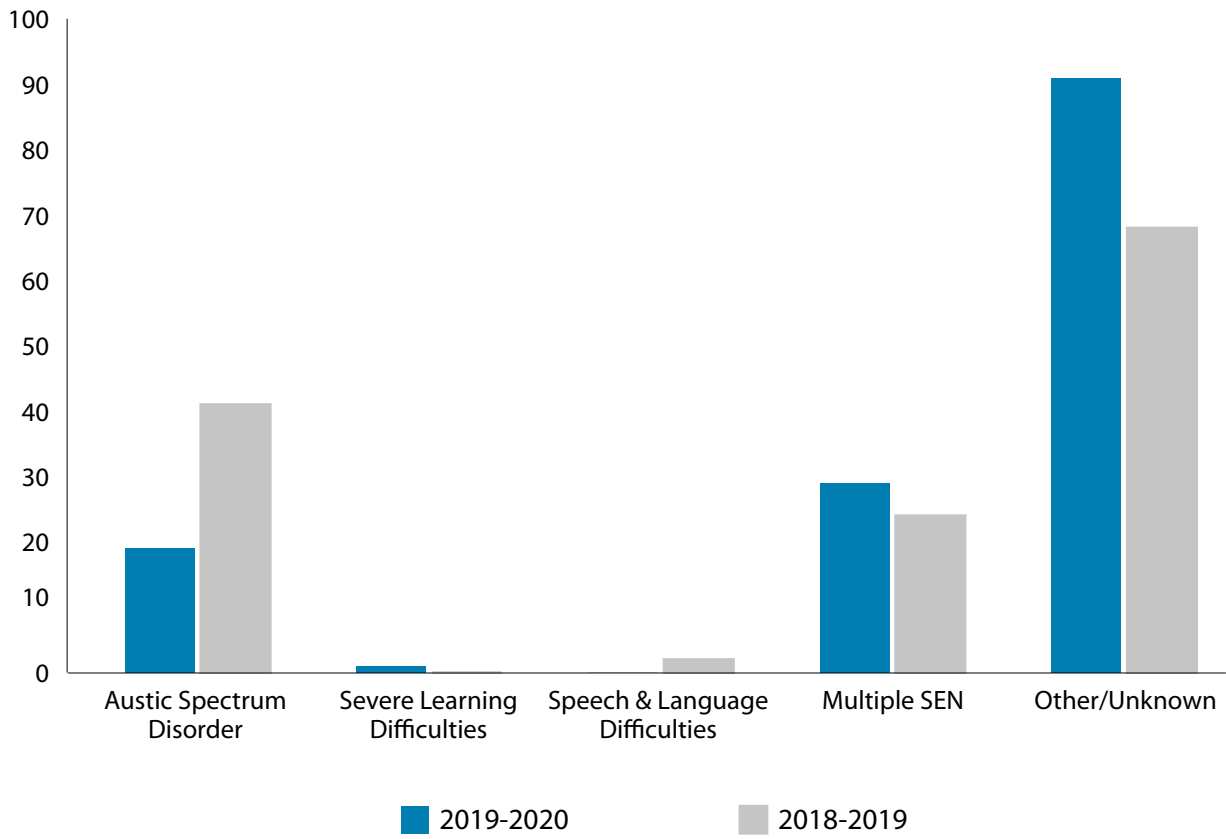


Chart 2.4 – Appeals by gender 2019-20

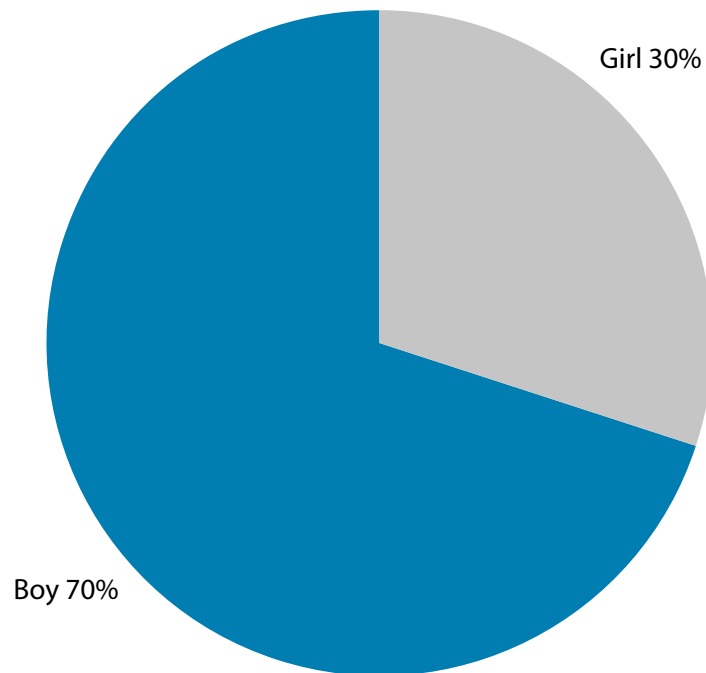


Chart 2.5 – Appeals registered during 2019-20 by ethnic origin

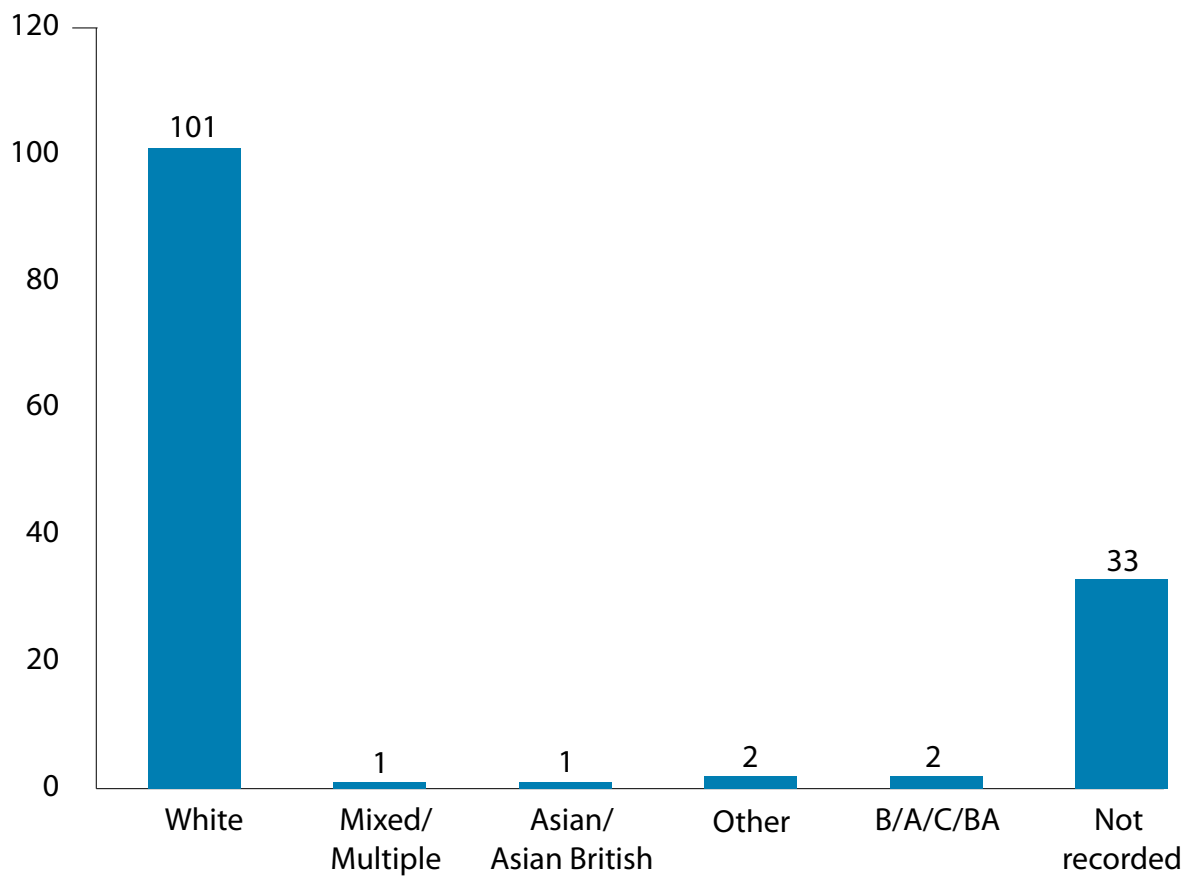


Table 2.6 – Applications by outcome 2019-20 (including carried over appeals), compared with 2018-19

	2019-2020		2018-2019	
	Actual	Percentage	Actual	Percentage
Conceded ²	45	25	44	26
Withdrawn ³	52	29	49	26
Upheld in Full	17	9	15	6
Upheld in Part	14	8	6	3
Dismissed/struck out	21	12	13	6
Pending ⁴	31	17	47	33
Total	180	100	174	100

Table 2.7 – Appeals by outcome and type 2019-20

	Conceded	Withdrawn	Upheld in Full	Upheld in Part	Dismissed/struck out	Pending
Refusal to Assess	45	10	3	0	4	5
Refusal to Statement	12	4	1	0	1	2
Refusal to Re-assess	0	0	1	0	0	0
Cease to statement	1	0	0	0	0	0
Contents of Statement Parts 2 & 3	0	12	0	5	1	5
Contents of Statement Parts 2, 3 & 4	0	8	2	3	4	7
Contents of Statement Part 3	1	3	0	0	0	2
Contents of Statement Parts 3 & 4	0	2	0	0	0	1
Contents of Statement Part 4	4	2	2	0	2	6
Not recorded	0	0	0	0	0	1

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 Pending – a case is on going with the tribunal.

Table 2.8 – Appeals by outcome and local authority 2019-20

	Conceded	Withdrawn	Upheld in Full	Upheld in Part	Dismissed/ struck out	Pending
Blaenau Gwent	1	0	0	0	0	2
Bridgend	1	3	1	1	0	1
Caerphilly	1	0	0	0	1	1
Cardiff	8	4	2	2	0	1
Carmarthenshire	4	4	1	0	2	1
Ceredigion	0	0	0	0	0	1
Conwy	2	2	1	0	0	0
Denbighshire	1	1	0	1	1	0
Flintshire	1	1	0	0	0	2
Gwynedd	2	3	0	0	0	0
Merthyr Tydfil	1	0	0	0	0	0
Monmouthshire	0	0	0	0	1	1
Neath Port Talbot	1	3	0	0	0	1
Newport	3	4	0	2	4	2
Pembrokeshire	3	0	0	0	1	0
Powys	3	0	2	0	0	8
Rhondda Cynon Taf	3	0	0	2	0	1
Swansea	1	5	0	0	1	3
Torfaen	0	1	0	0	0	0
Vale of Glamorgan	3	1	1	0	1	2
Wrexham	0	0	1	0	0	0
Ynys Mon	0	0	0	0	0	0
Total	39	41	9	8	12	28

Chart 2.6 – Claims of alleged disability discrimination received and discharged in 2019-20, compared with 2018-19

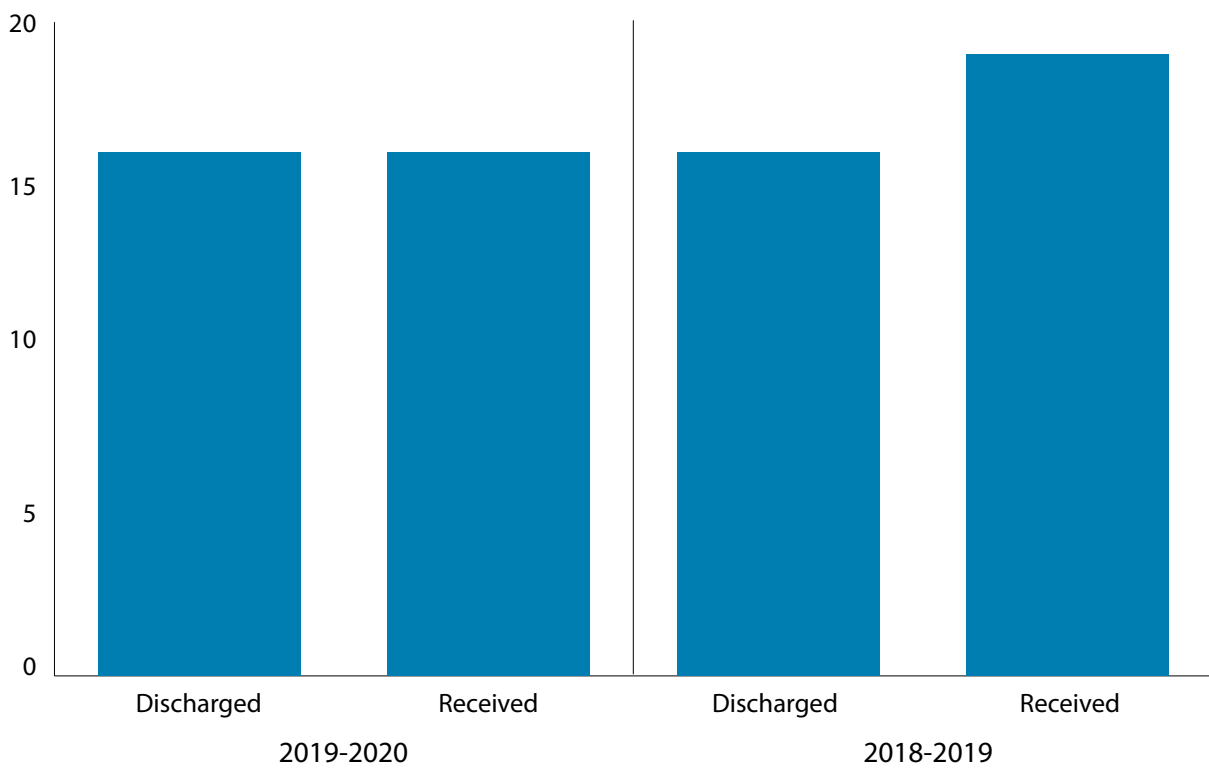
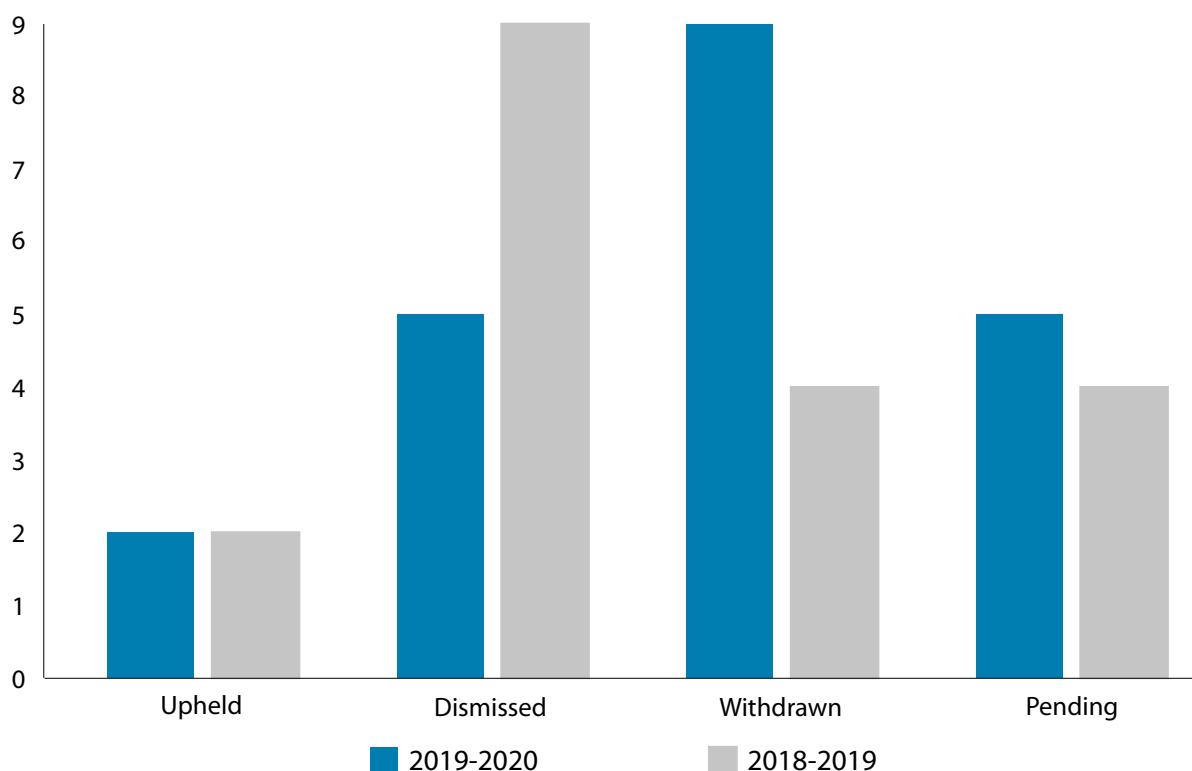


Table 2.9 – Types of claims received during 2019-20, compared with 2018-19

Type of Claim	2019-2020		2018-2019	
	Count	Percentage	Count	Percentage
Admissions	2	13%	1	5%
Education	11	69%	12	63%
Exclusions	3	13%	3	16%
Not recorded	0	0%	3	16%

Chart 2.7 – Claims of alleged disability discrimination by outcome 2019-20 including carried forward, compared with 2018-19



During 2019-2020, 64 cases proceeded to hearing, 14 cases concluded as a paper only hearing and 50 as oral hearings, of those oral hearings, 26 were conducted virtually resulting in 83 hearing days:

Type	Length (in days)
Appeal	62
Claim	7
Paper	14 (1 Claim & 13 Appeals)

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, 4 applications were made, 1 was allowed and 3 were 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, 4 requests for permission were made, of these 1 was allowed and 3 were refused, the tribunal also considered a further 5 applications from the previous reporting period and these were all refused.

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 1 complaint during the course of the year which was not upheld.

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.

Customer satisfaction surveys are 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 collate information in respect of communication and service, satisfaction with the hearing venue, staff assistance and the tribunal's website.

Section 4 – Business Priorities

In this section:

- Business priorities for 2019-2020

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 2019 to March 2020

Expenditure for financial year 2019-2020

Content	Amount
Members Fees and Expenses for tribunal proceedings	£269,042
Tribunal events & hearing venue costs	£48,456
Total*	£317,498

* rounded to the nearest £1,000