

Special Educational Needs Tribunal for Wales Annual Report 2020 – 2021



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

Foreword



This is my 18th Annual Report as President of the Special Educational Needs Tribunal for Wales. The report covers the period from September 2020 to August 2021.

As with everyone else, this has been a year of adjusting to our new normal. Part of this has been continuing with our virtual hearings. We have held forty eight virtual hearing during the September 2020 to August 2021 period. We have been unable to return to any face to face to hearings, due in part to the difficulties of ensuring social distancing and the safety of our Chairs, members and Secretariat, who would have to travel over different regions in Wales for

hearings. We are keeping a careful eye on the situation and will be looking to bringing back face to face hearings for our complex cases in the future. In relation to less complex cases, we will continue to hear these matters virtually in the future. Our feedback indicates that the virtual hearings are working well and that in general, parties find it more convenient not to have to travel to a venue and our litigants in person find partaking in a virtual hearing from their own environment to be less stressful.

One of the challenges that we have faced during this period has been the continued provision of quality training to our Chairs and members. The only way that any training could be done was virtually. I was very conscious that training a very large group virtually would be difficult where a workshop was part of the training, as the participation of all the parties could not be achieved satisfactorily. Consequently, we decided that where there was workshop participation element to the training, that we would have two separate sessions of training for those topics. We therefore had two separate training events on Disability Discrimination Law in December 2020. Two further training events were held in April 2021 on cognitive biases in judging and in July 2021 on adverse childhood experiences and Applied Behaviour Analysis (ABA).

We have started to record cases where ABA is requested by appellants as provision they wish to be included in statements. However, as the figures are low, I do not propose at this stage to report on them. I will continue to monitor the situation, with a view to publishing them if and when they become statistically significant.

I have also been very conscious of the need to keep an open dialogue with our users. Again, given the numbers, to achieve this successfully, we decided to have two user groups. This worked successfully and one of the advantages that we found was that we had a mixture of attendees from North and South Wales in the meeting and it was interesting to hear their different perspectives and differing views.

As I mentioned last year, we have had new members joining the Tribunal. We have again used the virtual meeting rooms to train these members. The members completed their induction training in December 2020 and completed their observations of hearings during this last year. It is envisaged that all their training will be completed and that they will be sitting in our next reporting period.

During the year, we also asked for expressions of interest from our existing Chairs for the post of Deputy President. It had been felt for some time that the Tribunal should have a Deputy President in place and this had been recognised in the Additional Needs legislation. I am delighted to report that Mr Allen was appointed. I know that many of our users will know

Mr Allen from their dealings with the Tribunal. He was appointed as a Chair to the Tribunal in October 2003 and is a very knowledgeable and experienced Chair of the Tribunal. I am sure that you will join me in congratulating him and wishing him every success in his new role.

During this period the Practice Direction relating to bundles of documents for hearings was reviewed. Following representations from the Local Authorities amendments were made to the Practice direction which effectively shared responsibility for the preparation between the Local Authorities and represented parents. The Practice Direction was formally approved by the First Minister and came in to force on the 27 December 2020 for a further 6 months and was further reviewed and approved by the First Minister to be in place until further notice from 27 June 2021.

The year has also been busy with the implications to the Tribunal of the implementation of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (the Act). You will no doubt be aware, that the implementation of the Act is to commence from the 1 September 2021, but those children and young people with existing statement and post 16 will not move to the new system in the 2021 to 2022 academic year. During the year, the commencement date for those children and young people in the mandated years on School Action and School Action plus was changed in July from September 2021 to January 2022. The new Code of Practice and the Tribunal's Regulations were published in March this year and are due to come to force on the 1 September 2021. We have been using this time to become acquainted with the new Code and Regulations.

Finally, this has been a very difficult year for most people, with big changes having to be made to their working practices. Our Secretariat staff, Chairs and panel members have risen and indeed taken on these challenges with enthusiasm, good humour and adaptability. I am extremely grateful for this and their unstinting support and assistance during this time. I must also thank our users for their assistance and patience in assisting the Tribunal to continue with its business during the year. With this continued support, I feel confident that the Tribunal will overcome the inevitable 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 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.
Deputy President	The Deputy President supports the President and fulfils the duties of President if the President is unable to carry out her duties, either temporarily or permanently.
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

One of the tribunal's current chairs was appointed to Deputy President of the Tribunal and three specialist members were re-appointed to the Special Educational Needs Tribunal for Wales during the reporting period. One legal chair resigned and 1 specialist member retired during the period.

Training

The tribunal held virtual training sessions for its members during December 2020, April and July 2021.

Contacting the SENTW

To contact the SENTW Secretariat:

SENTW Address: Special Educational Needs Tribunal for Wales
PO Box 100
Llandrindod Wells
LD1 9BW

SENTW Helpline: 03000 259800

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 2020-21, compared with 2019-20	Chart 2.1	Page 10
Appeals received and discharged in 2020-21, compared with 2019-20	Table 2.2	Page 10
Appeals by local authority 2020-21, compared with 2019-20	Table 2.3	Page 11
Appeals by local authority and type 2020-21	Table 2.4	Page 12
Appeals per 10,000 of school population in each local authority 2020-21, compared with 2019-20	Chart 2.5	Page 14
Appeals by school age and type of appeal 2020-21	Table 2.6	Page 15
Appeals by school age and local authority 2020-21	Table 2.7	Page 16
Appeals by special educational need 2020-21, compared with 2019-20	Chart 2.8	Page 17
Appeals by gender 2020-21	Chart 2.9	Page 17
Appeals by ethnic origin 2020-21	Chart 2.10	Page 18
Appeals by outcome 2020-21, compared with 2019-20	Table 2.11	Page 18
Appeals by outcome and type 2020-21	Table 2.12	Page 19
Appeals by outcome and local authority 2020-21	Table 2.13	Page 20
Claims of alleged disability discrimination received and discharged in 2020-21, compared with 2019-20	Chart 2.14	Page 21
Types of claims 2020-21, compared with 2019-20	Table 2.15	Page 21
Claims of alleged disability discrimination by outcome 2020-21, compared with 2019-20	Chart 2.16	Page 21

Table 2.1 – Types of appeals 2020-21, compared with 2019-20

Type of Appeal	2020-2021	2019-2020
Refusal to Assess	63	44
Refusal to Statement	20	20
Refusal to Re-assess	0	1
Contents of Statement Parts 2 & 3	7	23
Contents of Statement Parts 2, 3 & 4	28	24
Contents of Statement Part 3 only	5	6
Contents of Statement Parts 3 & 4	6	3
Contents of Statement Part 4 only	9	17
Cease to Maintain	1	1
Not recorded	0	1
Total	139	140

Chart 2.1 – Appeals received and discharged in 2020-21, compared with 2019-20 including carried forward

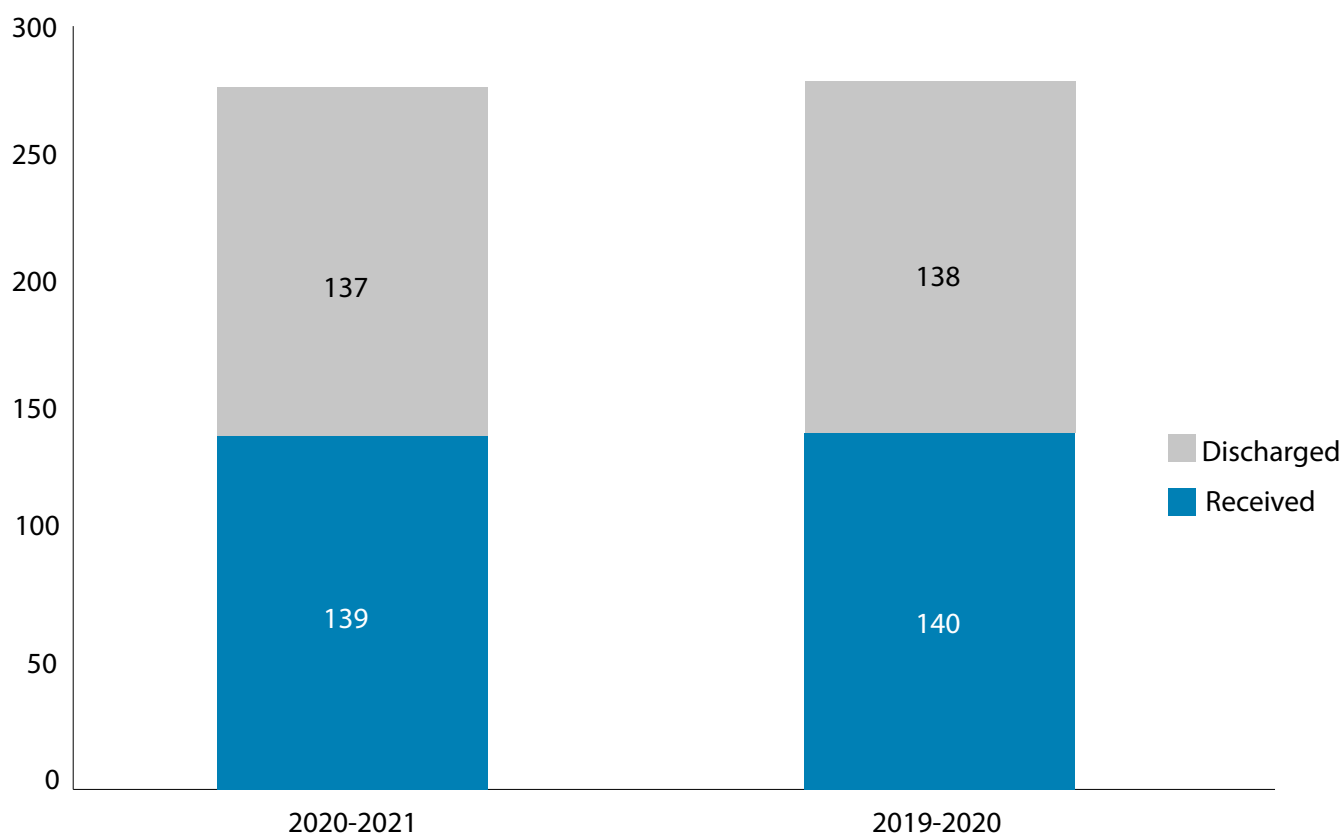


Table 2.2 – Appeals by local authority 2020-21, compared with 2019-20

	2020-2021		2019-2020	
	Number of Appeals	Percentage of Appeals	Number of Appeals	Percentage of Appeals
Blaenau Gwent	1	1%	3	2%
Bridgend	3	2%	7	5%
Caerphilly	3	2%	3	2%
Cardiff	18	13%	17	12%
Carmarthenshire	7	5%	14	10 %
Ceredigion	2	1%	1	1%
Conwy	7	5%	5	4%
Denbighshire	6	4%	4	3%
Flintshire	2	1%	4	3%
Gwynedd	2	1%	5	4%
Merthyr Tydfil	1	1%	1	1%
Monmouthshire	3	2%	2	1%
Neath Port Talbot	0	0%	5	4%
Newport	16	12%	15	11%
Pembrokeshire	4	3%	8	6%
Powys	16	12%	16	11%
Rhondda Cynon Taf	16	12%	9	6%
Swansea	10	7%	10	7%
Torfaen	4	3%	1	1%
Vale of Glamorgan	15	11%	8	6%
Wrexham	3	2%	1	1%
Ynys Mon	0	0%	1	1%
Total	139	100%	140	100%

Table 2.3(i) – Appeals by local authority and type (Part 1) 2020-2021

	Refusal to Assess	Refusal to Statement	Refusal to Re-assess	Cease to Maintain
Blaenau Gwent	0	0	0	0
Bridgend	2	0	0	0
Caerphilly	1	0	0	0
Cardiff	4	2	0	0
Carmarthenshire	4	1	0	0
Ceredigion	1	1	0	0
Conwy	1	5	0	0
Denbighshire	3	0	0	0
Flintshire	1	0	0	0
Gwynedd	0	1	0	0
Merthyr Tydfil	1	0	0	0
Monmouthshire	0	0	0	0
Neath Port Talbot	0	0	0	0
Newport	11	0	0	0
Pembrokeshire	2	0	0	0
Powys	6	7	0	0
Rhondda Cynon Taf	5	1	0	0
Swansea	5	1	0	1
Torfaen	4	0	0	0
Vale of Glamorgan	12	0	0	0
Wrexham	0	1	0	0
Ynys Mon	0	0	0	0
Total	63	20	0	1

Table 2.3(ii) – Appeals by local authority and type (Part 2) 2020-2021

	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	1	0	0	0	0	0
Bridgend	0	1	0	0	0	0
Caerphilly	2	0	0	0	0	0
Cardiff	2	7	0	1	2	0
Carmarthenshire	0	2	0	0	0	0
Ceredigion	0	1	0	0	0	0
Conwy	0	0	0	0	0	0
Denbighshire	0	2	0	0	1	0
Flintshire	0	0	0	0	1	0
Gwynedd	0	1	0	0	0	0
Merthyr Tydfil	0	0	0	0	0	0
Monmouthshire	0	2	0	0	1	0
Neath Port Talbot	0	0	0	0	0	0
Newport	1	1	1	0	2	0
Pembrokeshire	1	1	0	0	0	0
Powys	0	2	0	2	0	0
Rhondda Cynon Taf	0	2	3	3	1	0
Swansea	0	2	1	0	0	0
Torfaen	0	0	0	0	0	0
Vale of Glamorgan	0	2	0	0	1	0
Wrexham	0	2	0	0	0	0
Ynys Mon	0	0	0	0	0	0
Total	7	28	5	6	9	0

Chart 2.2 – Appeals per 10,000 of school population in each local authority 2020-21, compared with 2019-20

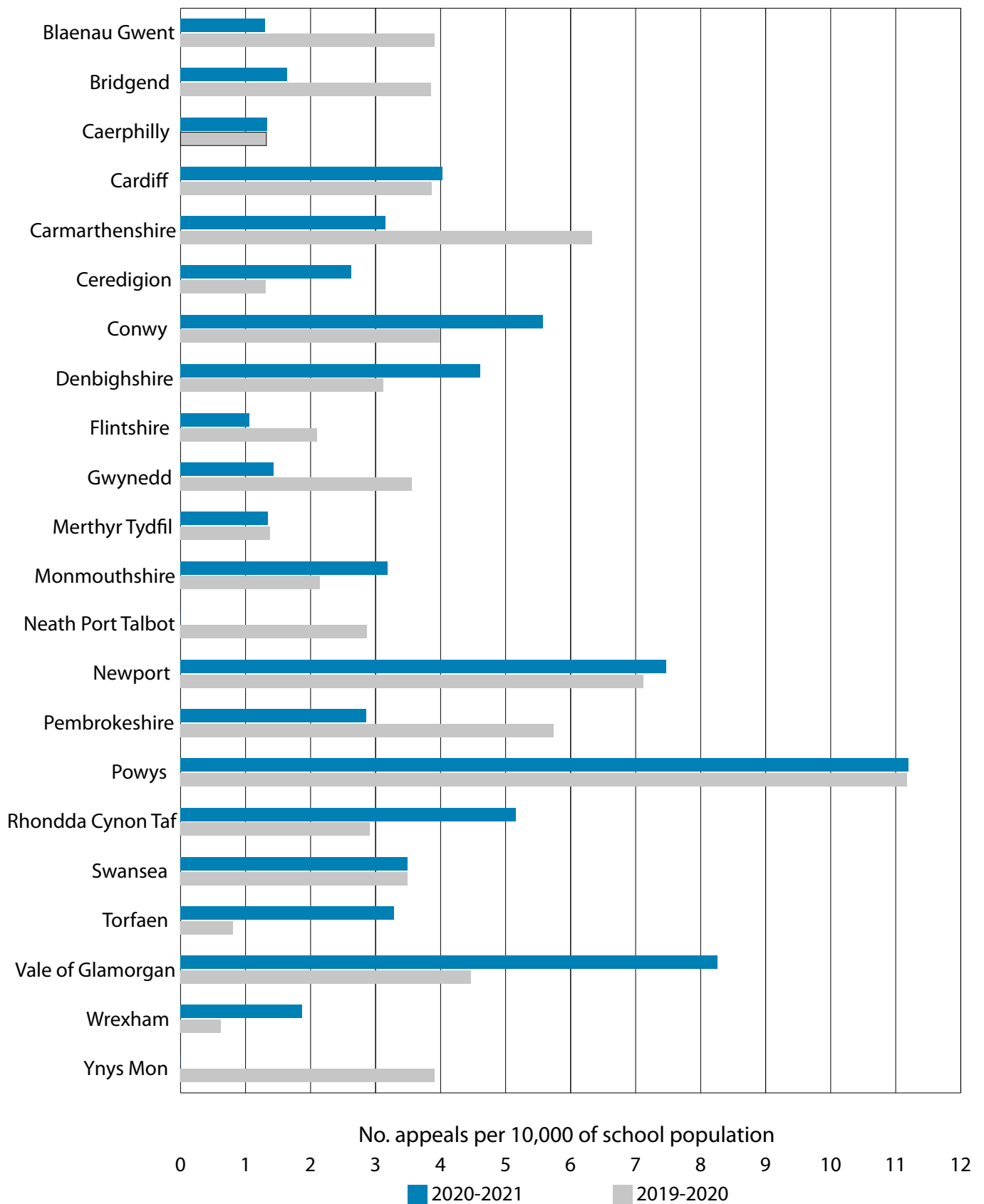


Table 2.4 – Appeals by school age and type of appeal 2020-2021

	Number of appeals				
	Nursery	Primary	Primary Transition ¹	Secondary	Secondary Transition
Refusal to Assess	2	43	6	10	0
Refusal to Statement	1	12	2	6	0
Contents of Statement Parts 2 & 3	0	6	0	1	0
Contents of Statement Parts 2, 3 & 4	0	10	8	10	0
Contents of Statement Part 3	0	3	2	0	0
Contents of Statement Parts 3 & 4	0	3	0	3	0
Contents of Statement Part 4	0	0	3	6	0
Refusal to Re-assess	0	0	0	0	0
Cease to Maintain	0	1	0	0	0
Not recorded	0	0	0	1	0
Total	3	78	21	37	0

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

Table 2.5 – Appeals by school age and local authority 2020-2021

	Number of appeals				
	Nursery	Primary	Primary Transition	Secondary	Secondary Transition
Blaenau Gwent	0	1	0	0	0
Bridgend	1	1	1	0	0
Caerphilly	0	2	0	0	0
Cardiff	0	9	6	4	0
Carmarthenshire	0	3	1	2	0
Ceredigion	0	2	0	0	0
Conwy	0	3	2	2	0
Denbighshire	0	0	1	5	0
Flintshire	0	1	1	0	0
Gwynedd	0	1	0	1	0
Merthyr Tydfil	0	1	0	0	0
Monmouthshire	0	2	0	1	0
Neath Port Talbot	0	0	0	0	0
Newport	0	10	2	3	0
Pembrokeshire	0	3	1	0	0
Powys	0	10	0	7	0
Rhondda Cynon Taf	1	7	2	5	0
Swansea	1	6	1	3	0
Torfaen	0	3	1	0	0
Vale of Glamorgan	0	11	1	3	0
Wrexham	0	2	1	0	0
Ynys Mon	0	0	0	0	0
Total	3	78	21	37	0

Chart 2.3 – Appeals by special educational need 2020-21, compared with 2019-20

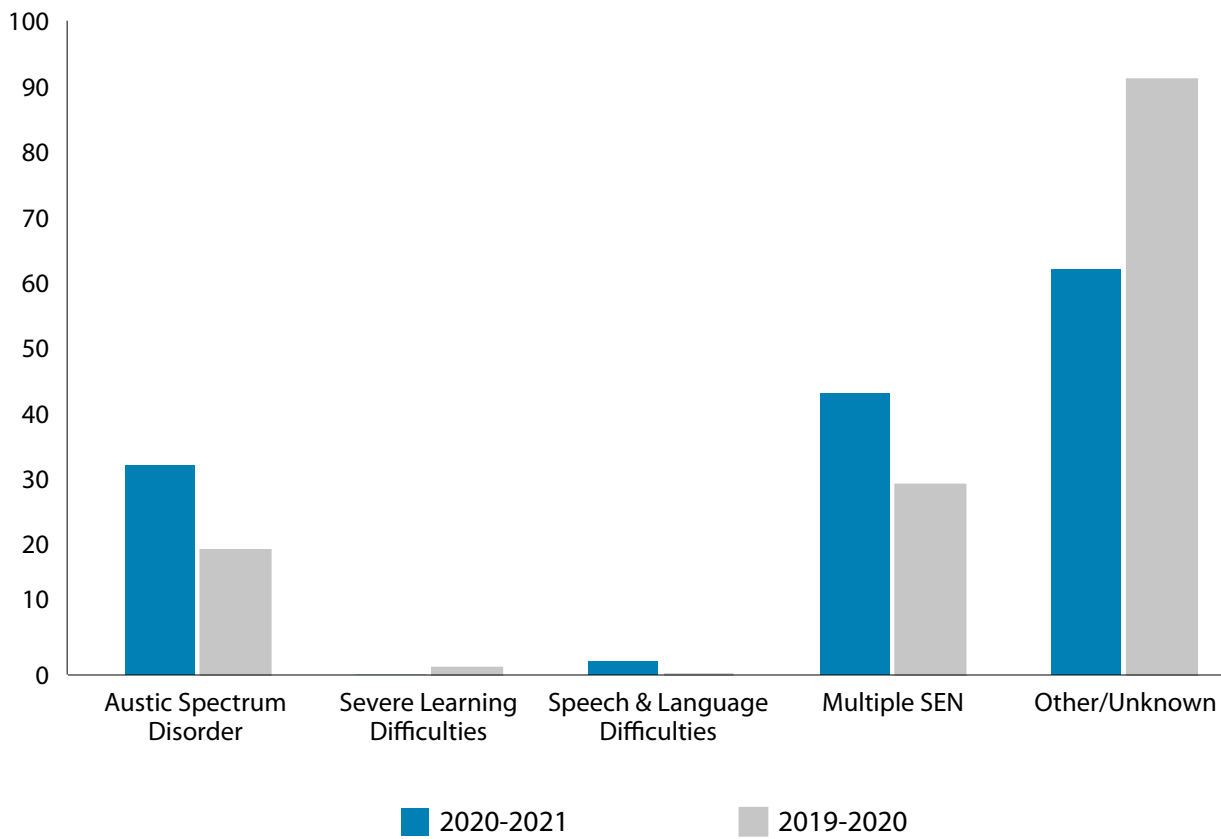


Chart 2.4 – Appeals by gender 2020-21

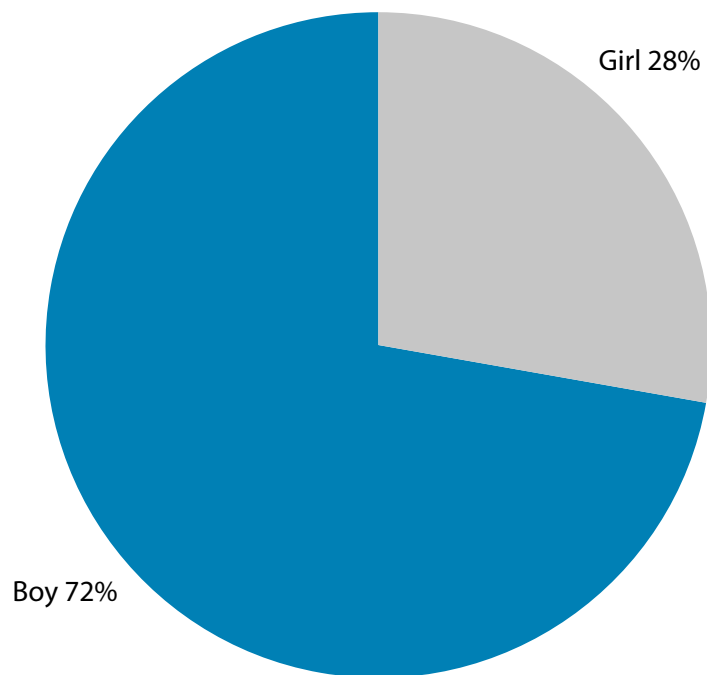


Chart 2.5 – Appeals registered during 2020-21 by ethnic origin

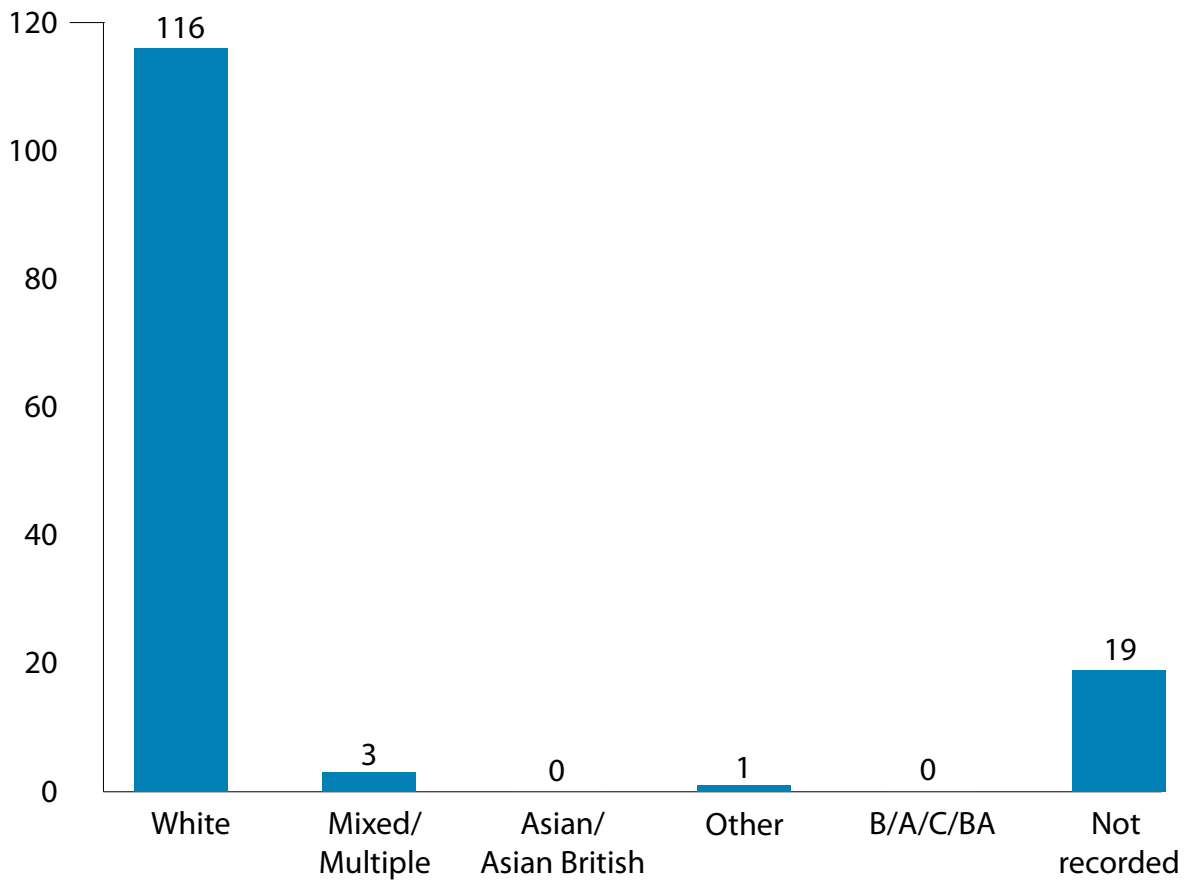


Table 2.6 – Applications by outcome 2020-21 (including carried over appeals), compared with 2019-20

	2020-2021		2019-2020	
	Actual	Percentage	Actual	Percentage
Conceded ²	49	26%	45	25%
Withdrawn ³	47	25%	52	29%
Upheld in Full	8	4%	17	9%
Upheld in Part	10	5%	14	8%
Dismissed/struck out	23	12%	21	12%
Pending ⁴	49	26%	31	17%
Total	186	100%	180	100%

Table 2.7 – Appeals by outcome and type 2020-21

	Conceded	Withdrawn	Upheld in Full	Upheld in Part	Dismissed/struck out	Pending
Refusal to Assess	30	10	2	0	2	19
Refusal to Statement	6	2	1	0	6	5
Refusal to Re-assess	0	0	0	0	0	0
Cease to Maintain	1	0	0	0	0	0
Contents of Statement Parts 2 & 3	1	1	1	1	0	3
Contents of Statement Parts 2, 3 & 4	0	8	2	3	1	13
Contents of Statement Part 3	1	4	0	0	0	0
Contents of Statement Parts 3 & 4	0	2	0	0	0	4
Contents of Statement Part 4	0	4	0	0	3	3
Total	39	31	6	4	12	47

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 type 2020-21

	Conceded	Withdrawn	Upheld in Full	Upheld in Part	Dismissed/ struck out	Pending
Blaenau Gwent	0	0	0	0	0	1
Bridgend	2	0	0	0	0	1
Caerphilly	0	0	1	1	0	1
Cardiff	4	2	0	1	0	11
Carmarthenshire	3	0	0	1	0	3
Ceredigion	1	0	0	0	0	1
Conwy	0	3	1	0	1	2
Denbighshire	1	0	0	0	2	3
Flintshire	1	1	0	0	0	0
Gwynedd	1	1	0	0	0	0
Merthyr Tydfil	0	1	0	0	0	0
Monmouthshire	0	0	0	0	1	2
Neath Port Talbot	0	0	0	0	0	0
Newport	6	6	0	0	0	4
Pembrokeshire	2	0	0	0	0	2
Powys	3	2	2	0	4	5
Rhondda Cynon Taf	2	5	2	0	2	5
Swansea	6	4	0	0	0	0
Torfaen	1	0	0	0	0	3
Vale of Glamorgan	6	6	0	0	1	2
Wrexham	0	0	0	1	1	1
Ynys Mon	0	0	0	0	0	0
Total	39	31	6	4	12	47

Chart 2.6 – Claims of alleged disability discrimination received and discharged including carried forward in 2020-21, compared with 2019-20

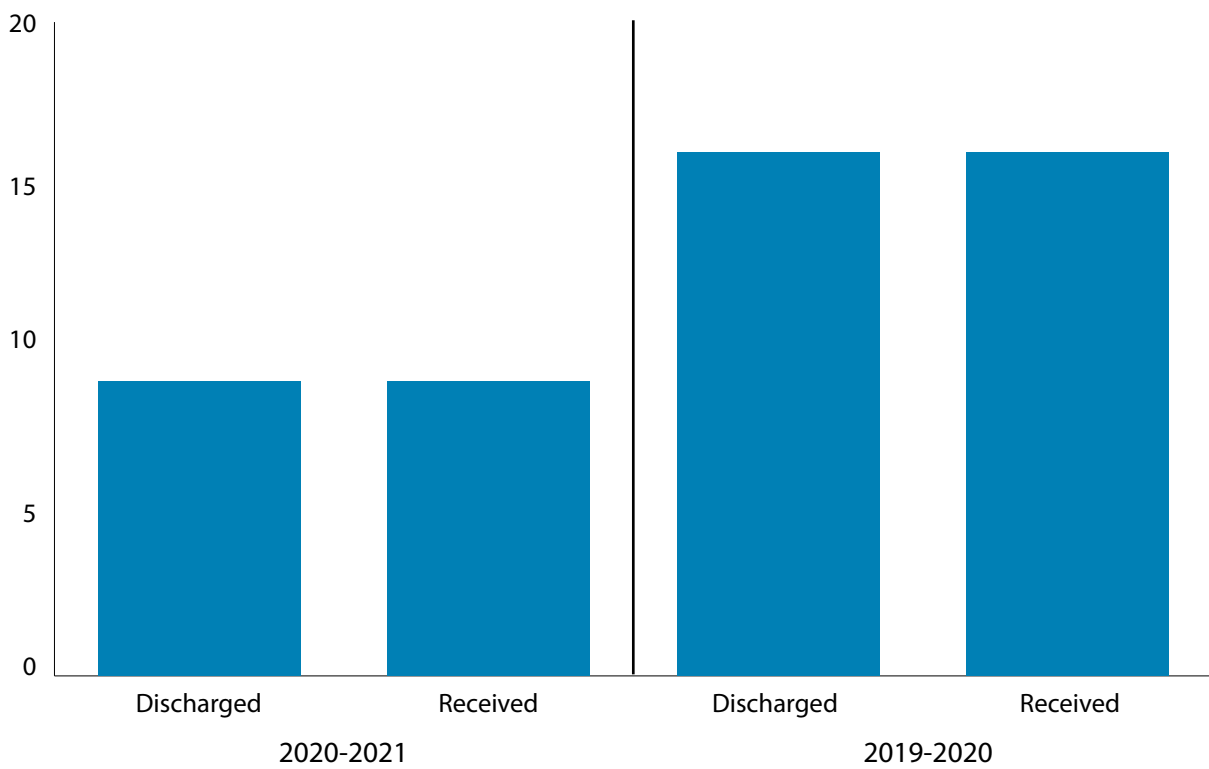
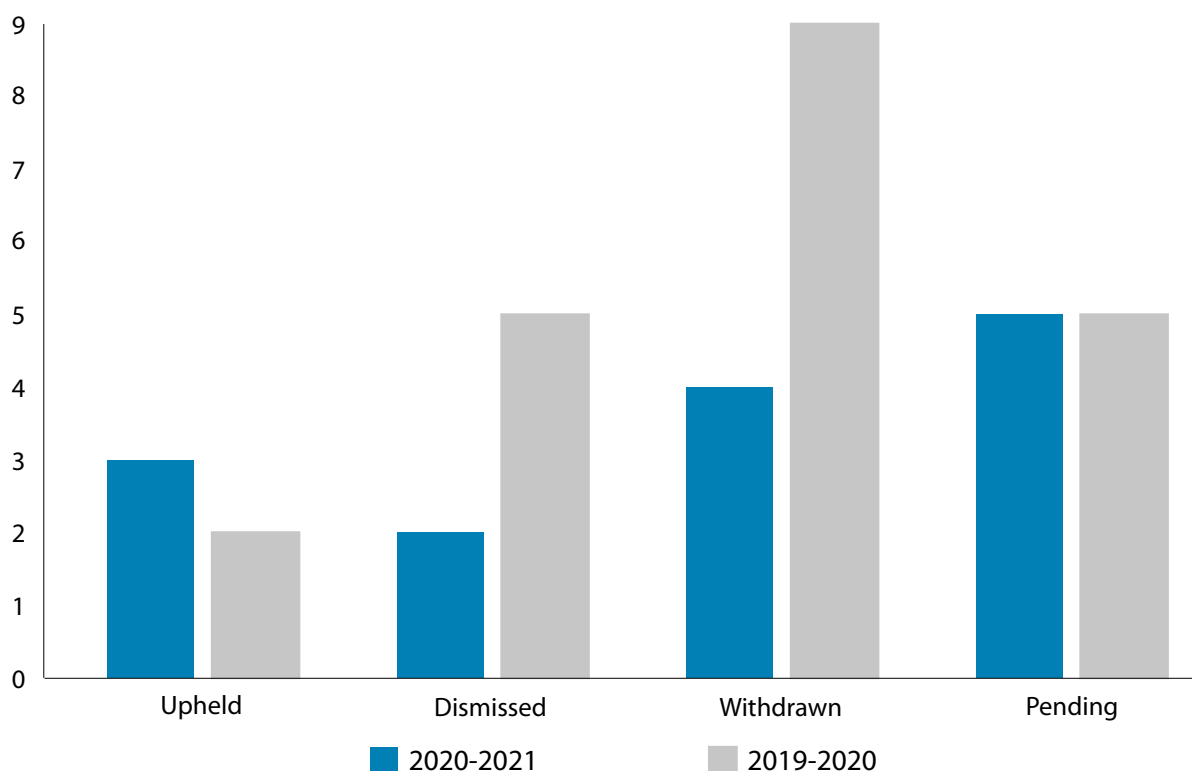


Table 2.9 – Types of claims received during 2020-21, compared with 2019-20

Type of Claim	2020-2021		2019-2020	
	Count	Percentage	Count	Percentage
Admissions	0	0%	2	13%
Education	7	78%	11	69%
Exclusions	1	11%	3	13%
Not recorded	1	11%	0	0%

Chart 2.7 – Claims of alleged disability discrimination by outcome 2020-21 including carried forward, compared with 2019-20



Hearings Data

During 2020-2021, 56 cases proceeded to hearing, 4 cases concluded as a paper only hearing and 48 as virtual hearings, resulting in 66 hearing days:

Type	Length (in days)
Appeal	54
Claim	8
Paper	4 (Appeals)

Reviews and onward appeals

Applications for a review of a Tribunal decision can be made by parties on limited grounds and parties may also 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.

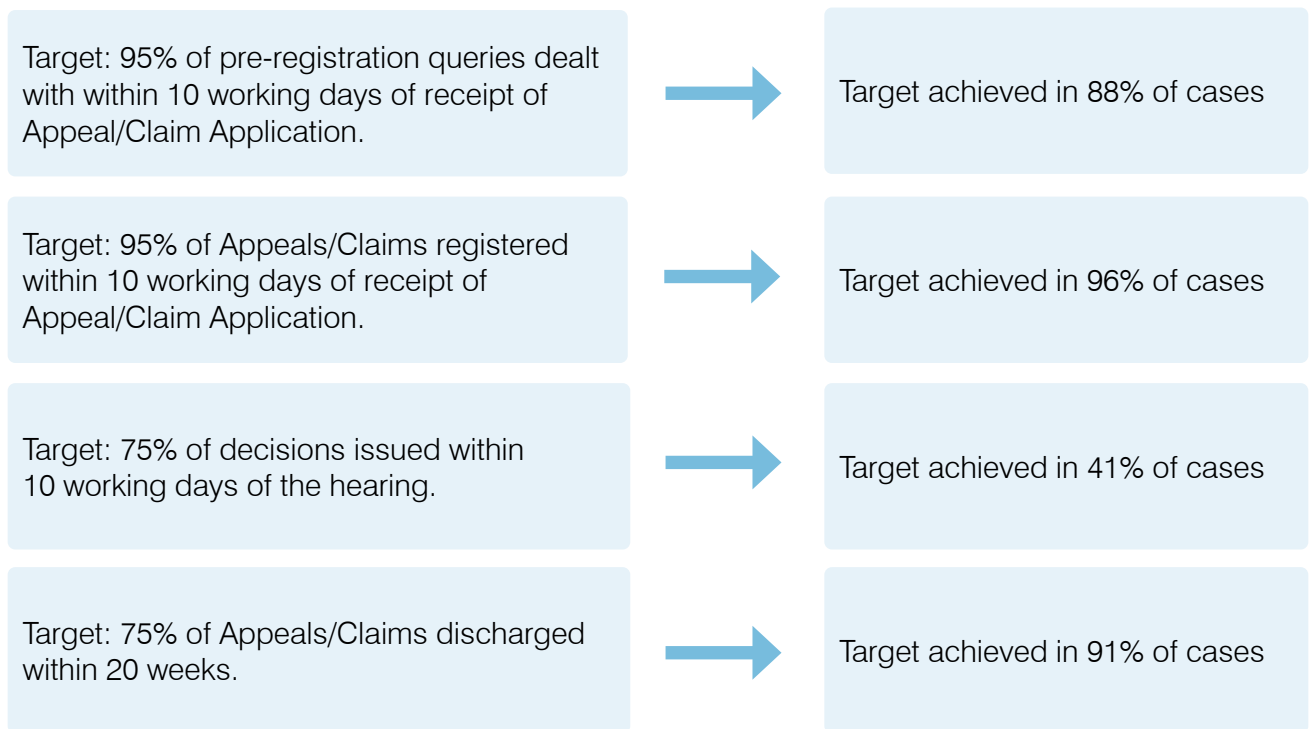
Over the period of this report, 7 applications for Permission to Appeal to the Upper Tribunal were received and 2 combined applications for Permission to Appeal and to Review were received. 8 applications for Permission were refused including refusal to Review them. 2 applications for Permission to Appeal to the Upper Tribunal were granted.

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 3 complaints during the course of the year which were 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 2020-2021

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 Education Tribunal for Wales and Special Educational Need Tribunal for Wales' websites.
- Implement changes to the tribunal and its processes following the change to the Education Tribunal for Wales.
- 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 2020 to March 2021

Expenditure for financial year 2020-2021

Content	Amount
Members Fees and Expenses for tribunal proceedings	£180,884
Tribunal events & hearing venue costs	£6,068
Total*	£186,952

* rounded to the nearest £1