

Tribiwnlys Anghenion
Addysgol Arbennig Cymru

Special Educational
Needs Tribunal for Wales

Annual Report 2008-2009



December 2009

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Tribiwnlys Anghenion
Addysgol Arbennig Cymru



Special Educational
Needs Tribunal for Wales

To: Leighton Andrews AM
Minister for Children, Education, Lifelong Learning & Skills
National Assembly for Wales

December 2009

I am pleased to submit my sixth Annual Report as President of the Special Educational Needs Tribunal for Wales. The report details the Tribunal's activities for the year 1 September 2008 to 31 August 2009.

Rhianon Ellis Walker OBE
President, SENTW

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Contents

President's Foreword	1
Number of SEN Appeals	5
SEN Appeals - Boy:Girl Split	6
Speed of Disposal	7
Number of Appeals per LA	8
Outcome of Appeals by LA	9
Types of Appeal	10
Nature of SEN	12
Outcome of Appeals - General	14
Outcome of Appeals - by School	15
Outcome of Appeals - by Nature of SEN	16
Ethnic Monitoring	16
Disability Discrimination Claims	17
Upper Tribunal Appeals	17
Complaints	17
Secretariat	17
Expenditure	18
Tribunal Membership	19

President's Foreword

Introduction

This is my sixth annual report as President of the SEN Tribunal for Wales (SENTW). The report sets out the number, type and outcomes of SEN appeals and claims of disability discrimination made during the period 1 September 2008 to 31 August 2009.

This has been an exciting and eventful year in terms of progress made with the Welsh Assembly Government's (WAG) agenda to further children's involvement in processes that affect them. The proposed Education (Wales) Measure will give children and young people the unprecedented right to make special educational needs appeals and disability discrimination claims, directly to the Tribunal. I know that I speak on behalf of the Tribunal's members and secretariat when I say how this development is very much welcomed and how much we look forward to meeting the challenge this change will bring with our usual enthusiasm and commitment. The Tribunal is already working closely with the WAG and other organisations to develop procedures in readiness for the pilot study that will precede full implementation.

The new rights underpin the United Nations Convention on the Rights of the Child, which clearly set out that children should be involved in decisions or processes that affect them. I have mentioned in previous Annual Reports my concerns that the child's views are not always evident in the appeals process, a shortcoming which I would like to see rectified in the new regulations.

With this in mind I welcome the Welsh Assembly Government's intention to amend the Tribunal's procedural regulations. Outline proposals for new regulations have been circulated at recent User Group meetings and published on the Tribunal's website (<http://wales.gov.uk/sentwsub/home>), alternatively a copy can also be obtained by contacting the Tribunal's office directly. I urge Tribunal users to take the opportunity to respond to the initial proposals and make their views known. It is very important that the regulations are developed in the light of the experience of those involved with the process. I am particularly keen to ensure the regulations are more user-friendly and that there is more straightforward provision for what are often complex procedures.

I welcome the establishment in June last year of the Welsh Committee of the Administrative Justice and Tribunals Council. I am interested in the work the Committee has so far completed to map and review the administrative justice landscape within Wales. I look forward to receiving the review report in due course. Committee members have also observed some of our Tribunal hearings

and user group meetings. I am pleased to report that we have received positive feedback from Committee members in relation to hearings and user group meetings. I look forward to the continued involvement of the Welsh Committee over this coming year.

SEN Appeals

Following the last two years where numbers of appeals have seen a decrease, this year figures have remained relatively constant with 92 appeals registered in comparison with 94 the year before.

Since the Tribunal's inception in 2003 and up until the end of this reporting year, we have registered a total of nearly 700 appeals. During the first few years of operating we saw a steady increase in appeal numbers with the highest number of appeals, 150, registered in 2005/06. Since then there has been a year on year reduction, until numbers have levelled off this year.

Numbers of appeals by Authority have also remained fairly static: less than 1/3 of LAs have seen an increase and, for those that have, numbers are clearly low. However, I note with some concern the regional variance in appeals that has become apparent over the course of the last few years: Mid and West Wales has for the 2007/08 and 2008/09 years accounted for 32% of all appeals registered, as oppose to 17% in 2006/07.

There has been a significant increase of 17%, in the number of appeals that are about pre-statement matters, refusal to assess and refusal to statement. These types of appeals are now accounting for 47% of all appeals registered as opposed to 30% last year. Appeals about pre statement matters are less likely to proceed to a hearing. Of the 28 appeals heard last year only 7 (25%) were about pre statement matters, 5 being upheld and 2 dismissed. It is not clear why there has been an increase this year, although according to WAG statistics, there has been a slight decline in the total percentage of statements issued across Wales.

50% of all appeals are about the contents of the statement these types of appeals are often more complex and more likely to proceed to a hearing. Of the 28 appeals that proceeded to a hearing 21 (75%) were about the contents of the statement, of those, 19 were upheld and 2 dismissed.

Of the 11 unregistered appeals 7 were withdrawn before registration. We were unable to register 4 because the criteria for registration was not met or the appeals fell outside our jurisdiction.

We discharged a total of 118 appeals over the period of the report, this includes the 26 appeals carried over from the previous Tribunal year. Of those: 28 appeals were decided (of which 25 were upheld and 5 dismissed), 45 withdrawn, 19 conceded and 25 are pending and have been carried over to this Tribunal year.

Appeal Rights

A parental right to appeal against certain decisions made by LAs is clearly established in the Education Act 1996 and reflected in the SEN Code of Practice for Wales. LAs have a clear statutory duty to inform parents of their rights of appeal as set out in the Code. It is of concern to me that there are a small number of instances where parents appear not to have been informed of their appeal rights to the Tribunal. I take very seriously any divergence from the LAs duty and shall be monitoring the situation carefully.

Disability Discrimination Claims

Disability discrimination claims remain a small element of the Tribunal's work. Indeed we have seen fewer numbers this year with just 2 in comparison to 9 last year. We also dealt with 4 Claims over this period which were carried over from the previous year. Claims tend to be very complex and can take longer to hear and decide.

Proposed Education (Wales) Measure

We understand that the proposed Education (Wales) Measure, which will extend to children SEN appeal and DDA claim rights to the Tribunal, has at the time of writing completed its final stage before the National Assembly for Wales. It now passes to the Privy Council.

I was pleased to have been invited to give evidence to a National Assembly Legislation Committee in respect of this important and exciting legislation.

I believe that the implementation of a pilot phase is crucial in allowing all partners in the process to develop and refine appropriate mechanisms and training. My members and secretariat are currently engaged in a Pilot Design and Implementation Group.

Already the Tribunal Secretariat has started to receive enquiries from young people and it will be fascinating to manage these new rights and to see how they are used. We have, of course, been proactive in planning for our new role and have made arrangements for training and looking at our communications processes, with a view to the longer term and the roll-out of the rights across Wales.

Tribunal Procedural Regulations

The Measure also provides a welcome opportunity to look afresh at our regulations. Again, I have been fully engaged with WAG officials on this and we are clear that there is a chance to make clearer and more flexible our ways of working.

I understand that the WAG will consult in the spring of next year but, prior to that, will discuss in detail their intentions with the Tribunal's User Groups. I would urge partners to become involved in these processes to ensure their voices are heard and to ensure the regulations reflect, as far as it is possible, the needs of our users.

Engagement with Tribunal Users

The Tribunal very much welcomes the opportunity to engage with its users and our regular User Group meetings provide a useful forum for us to do this.

Over the course of this year we have held two rounds of regional User Group meetings across Wales discussing, amongst other items, Tribunal policy and proposed legislative changes. Details of the next round of User Group meetings can be found on our website or by contacting the Tribunal directly. We would particularly welcome more involvement from parents who are currently under-represented at meetings.

Tribunals Service

The new arrangements for onward appeals against SENTW decisions to the Upper Tribunal have been in place for just over a year. During this period no appeals have been made to the Upper Tribunal against SENTW decisions. The Office of Appeals Court is however now open in Cardiff and the Tribunal's Service has made a commitment that all onward appeals from SENTW decisions will be heard in Wales. Whilst I am very happy that there has not been cause to appeal any of our decisions, I am also very keen to see that the commitment made by the Tribunals Service is followed through in practice. I would ask that our users let me know in the event of any cases where appeals against our decisions are not heard in Wales.

Closing comments

It has been a busy and productive year, particularly with the exciting developments around establishing rights for children to make an appeal and claim to the Tribunal. The Tribunal is very happy to be at the forefront in establishing greater involvement of children and young people in processes and decisions that affect their lives. I am looking forward to working with the WAG and other stakeholders to take this initiative forward and welcome the pilot phase, which will provide an opportunity for us to refine our processes to ensure that we fully meet the needs of our new Tribunal users.

As ever I am very thankful to the Tribunal members and secretariat for their continued hard work and commitment which ensure we maintain the high standards for which this Tribunal is known. Sian Mills has been acting Secretary to the Tribunal for the last 18 months. I am delighted that she has now been permanently appointed to this position, especially given all her hard work over this period. I am looking forward to the new Tribunal year in the confidence of the continued support and dedication of Tribunal members and secretariat.

As can be seen this has been a busy year, but the secretariat has risen to each and every challenge. It is a pleasure to work with such dedicated, professional and loyal people. With such a team, I am confident that the Tribunal is well placed to meet the challenges that the forthcoming year is certainly going to bring.

Number of SEN Appeals

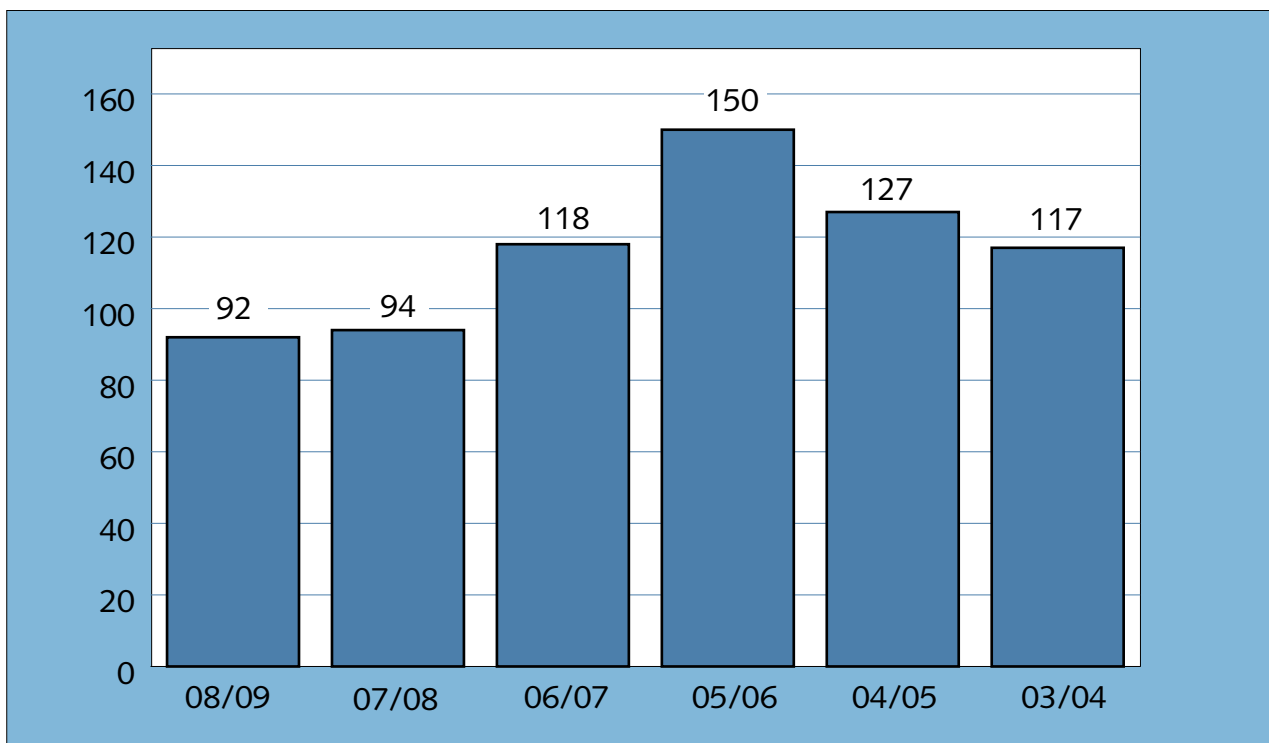
Over the course of the year, running from 1 September 2008 to 31 August 2009, the SEN Tribunal for Wales received 103 appeals about SEN decisions. During the year, 92 were registered, including 1 submitted the previous year, with the balance being dismissed or withdrawn prior to registration.

In addition to the 92 registered appeals, we also dealt with 26 appeals that were unable to be disposed of within the previous Tribunal year.

The number of appeals registered this year at 92 is relatively constant with the 94 registered during the previous Tribunal year. Numbers have levelled out following a decline from 150 registered during 2005/06 to 118 in 2006/07 and 94 last Tribunal year.

Appeals for Tribunal Year 2008/09

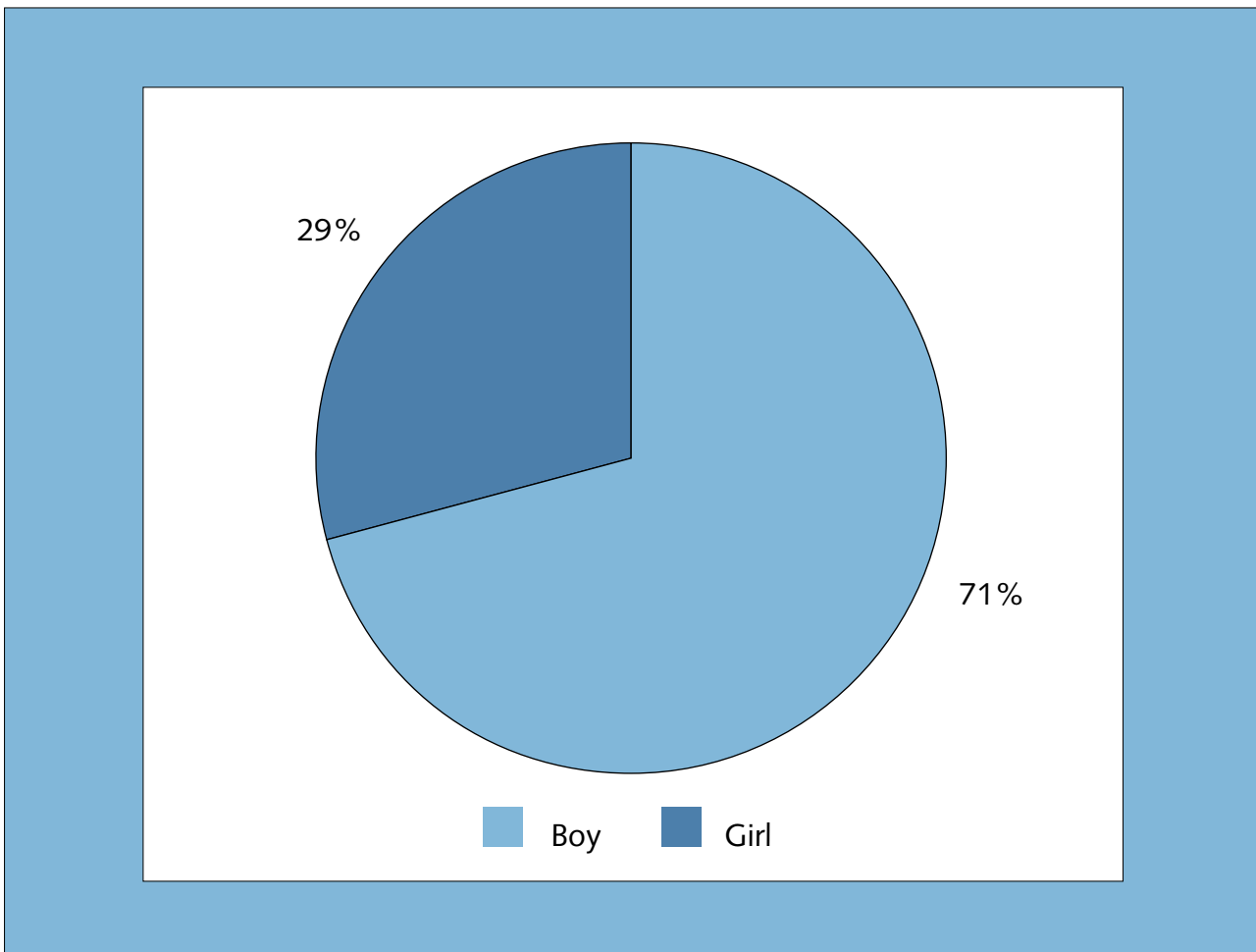
SEN Appeals registered by Tribunal year



SEN Appeals - Boy:Girl split

During the year, 65 (71%) of SEN appeals relating to boys were registered; the corresponding figure for girls was 27 (29%). This year's percentage figure for boys indicates a slight increase on last year, when the figure was 68%. Figures are however similar to previous years; 2003/04 and 2004/05, 73% and 77%, of all appeals received concerned boys' SENs, in 2005/06 and 2006/07 numbers were static at 74%.

Boy:Girl Split



Speed of Disposal by Hearing

This section addresses how long, in terms of working days¹, it took between an appeal being registered and the decision being issued.

The average number of working days taken to dispose of appeals (through hearings) has fallen to 83.1 from an average of 90 in the previous year. Out of the 28 cases heard, 2 had to be adjourned due to the complexity of the case or due to insufficient evidence.

Number of decisions issued	28
Average number of days to issue a decision	7.8

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

The table below sets out the manner in which 118 appeals (92 registered in the 2008/09 tribunal year and 26 carried over from the 2007/08 year) were disposed of, including the number pending, which will be carried forward to the next Tribunal year. The number of decisions has remained static, with 28 decisions being issued both last year and this year. The percentage of registered appeals being either withdrawn by parents or conceded by LAs has also remained relatively consistent with 55% this year in comparison to 54% for 2007/08 (It was; 60% in years 2006/07, and 54% and 50% in 2004/05 and 2003/04 respectively). We are continuing to monitor the number of appeals either withdrawn or conceded late in the process.

The percentage of appeals registered but awaiting a hearing, 21%, is slightly down compared with last year, 22%, but higher than 2006/07 and 2005/06, when the figure was 16%. It also shows a decrease on years 2004/05, 26% and 2003/04, 27%.

08/09	Actual	Percentage	07/08	Actual	Percentage
Decided	28	24	Decided	28	24
Withdrawn	45	39	Withdrawn	46	39
Conceded	19	16	Conceded	18	15
Struck Out	0	0	Struck Out	0	0
Pending	25	21	Pending	26	22
Total	117	100	Total	118	100

¹ In line with Tribunal regulations the following are not included as working days: Saturdays and Sundays, any day in August, any day from 25 December to 1 January inclusive, bank holidays.

Appeals per LA

This table indicates the number of appeals registered on an LA-by-LA basis during the Tribunal year 2008/09.

	08/09	(Per 10,000 of school population)	07/08	06/07	05/06	04/05	03/04
Blaenau Gwent	2	1.82	1	2	4	3	0
Bridgend	0	0.00	1	3	2	2	2
Caerphilly	9	3.03	2	12	3	1	3
Cardiff	19	3.66	19	26	37	33	35
Carmarthenshire	17	6.00	19	5	5	6	5
Ceredigion	2	1.97	1	2	2	2	1
Conwy	4	2.28	8	6	1	4	8
Denbighshire	0	0.00	2	4	2	6	0
Flintshire	4	1.64	1	1	0	2	3
Gwynedd	2	1.10	2	1	2	3	3
Merthyr Tydfil	0	0.00	0	2	1	2	0
Monmouthshire	8	5.73	8	9	11	8	5
Neath Port Talbot	3	1.41	3	2	14	7	6
Newport	8	3.21	2	19	45	30	15
Pembrokeshire	0	0.00	0	2	0	2	0
Powys	1	0.48	3	7	5	3	7
Rhondda Cynon Taf	0	0.00	5	4	3	2	4
Swansea	7	1.95	5	4	7	5	7
Torfaen	5	3.08	9	4	1	4	3
Vale of Glamorgan	0	0.00	2	2	1	0	8
Wrexham	0	0.00	1	0	2	1	2
Ynys Mon	1	1.01	0	1	2	1	0

Appeals per LA by Type

This table indicates the total number of appeals registered on an LA basis by type of appeal during the Tribunal year 2008/09. Pre-statement appeals are appeals about refusal to assess and refusal to statement. Contents of statement appeals are appeals that contain a combination of parts 2, 3 and 4 of the SEN statement.

	Number of pre-statement appeals by LA	% Total of pre-statement appeals by LA	Number of contents of statement appeals by LA	% Total of contents of statement appeals by LA
Blaenau Gwent	1	2	1	2
Bridgend	0	0	0	0
Caerphilly	2	5	6	13
Cardiff	6	14	13	28
Carmarthenshire	8	19	9	20
Ceredigion	2	5	0	0
Conwy	2	5	1	2
Denbighshire	0	0	0	0
Flintshire	4	9	0	0
Gwynedd	2	5	0	0
Merthyr Tydfil	0	0	0	0
Monmouthshire	5	12	3	7
Neath Port Talbot	1	2	2	4
Newport	3	7	5	11
Pembrokeshire	0	0	0	0
Powys	0	0	1	2
Rhondda Cynon Taf	0	0	0	0
Swansea	4	9	3	7
Torfaen	3	7	2	4
Vale of Glamorgan	0	0	0	0
Wrexham	0	0	0	0
Ynys Mon	0	0	0	0
TOTAL	43	100	46	100

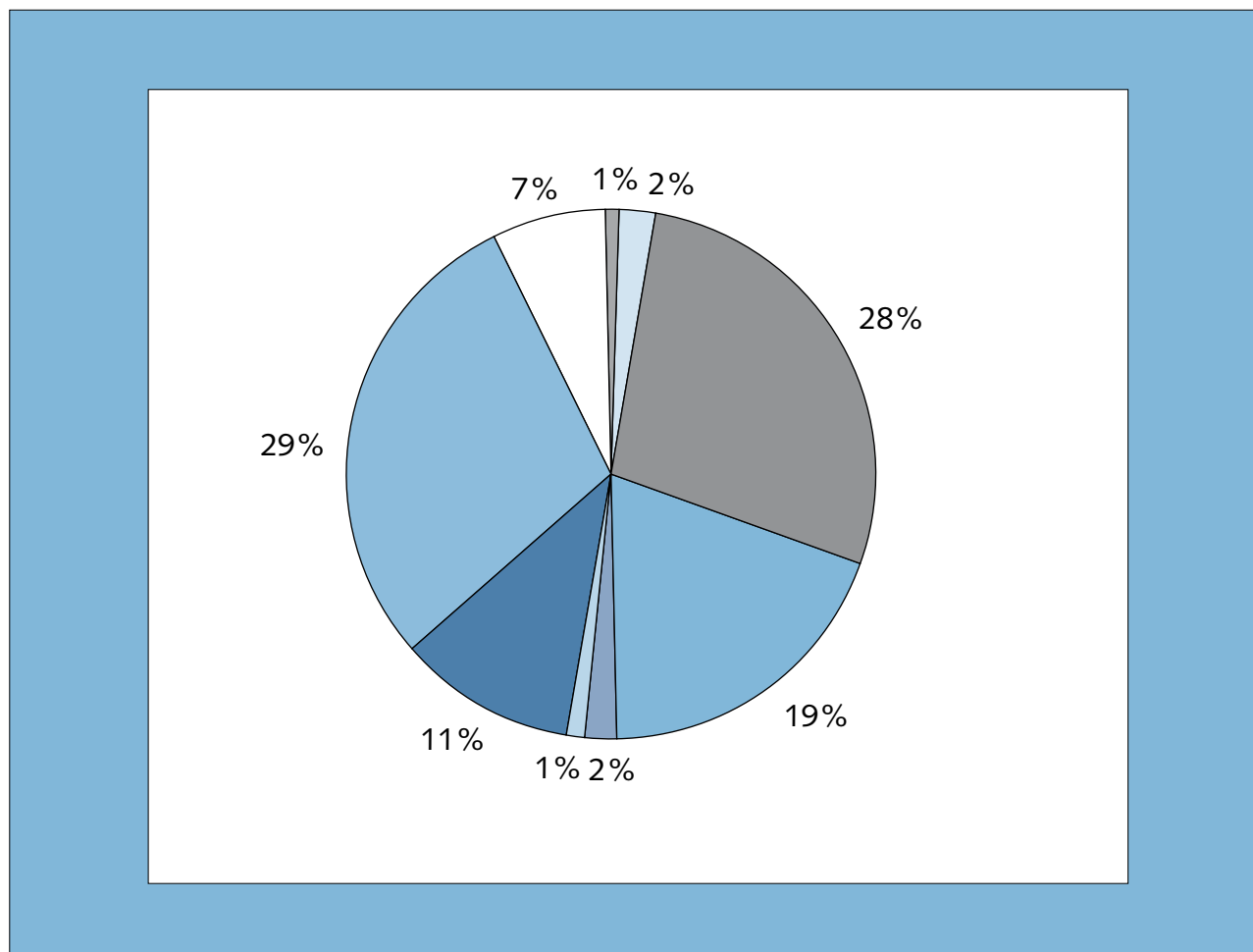
Outcome per LA

This table illustrates the outcomes in 2008/09 on an LA-by-LA basis. The figures include registered appeals carried over from 2007/08 but disposed of during this reporting period. Where an appeal has not been upheld, this has been entered as "dismissed".

LA	Conceded by LA	Withdrawn by parents	Upheld in part or full	Dismissed or struck out at hearing	Pending
Blaenau Gwent		2		1	
Bridgend		1			
Caerphilly	1	5			4
Cardiff	3	9	6	1	6
Carmarthenshire ²	5	10	5		1
Ceredigion	1		1		
Conwy		2	1		2
Denbighshire					
Flintshire		2	2		1
Gwynedd	1	1			
Merthyr Tydfil					
Monmouthshire	3	3	1		1
Neath Port Talbot		1		1	1
Newport		2		1	5
Pembrokeshire					
Powys		1	1		1
Rhondda Cynon Taf			3		
Swansea	2	2	1		2
Torfaen	3	1	3		1
Vale of Glamorgan		2			
Wrexham					
Ynys Mon		1			
TOTAL	19	45	24	4	25

² One appeal was transferred to another jurisdiction.

Types of Appeal



- Against Refusal to Assess
- Against Refusal to Statement
- Against Refusal to Re-assess
- Against decision to Cease Statement
- Against contents of Parts 2 & 3
- Against contents of Parts 2, 3 & 4
- Against contents of Part 3
- Against content of Part 4
- Against content of Parts 3 & 4

Type of Appeal ³	% of Appeals 2008/09	% of Appeals 2007/08	% of Appeals 2006/07	% of Appeals 2005/06	% of Appeals 2004/05	% of Appeals 2003/04
	Total Appeals 92	Total Appeals 94	Total Appeals 118	Total Appeals 150	Total Appeals 127	Total Appeals 117
Refusal to Assess	28	17	25	24	25	39
Refusal to Statement	19	13	16	7	11	12
Refusal to Re-assess	2	2	2	1	2	2
Cease Statement	1	2	3	3	2	2
Contents of Parts 2 & 3	11	21	24	21	16	18
Contents of Parts 2, 3 & 4	29	32	21	23	27	11
Contents of Part 3	7	5	5	10	9	7
Contents of Part 4	1	8	2	5	6	5
Contents of Parts 3 & 4	2	0	2	6	2	4

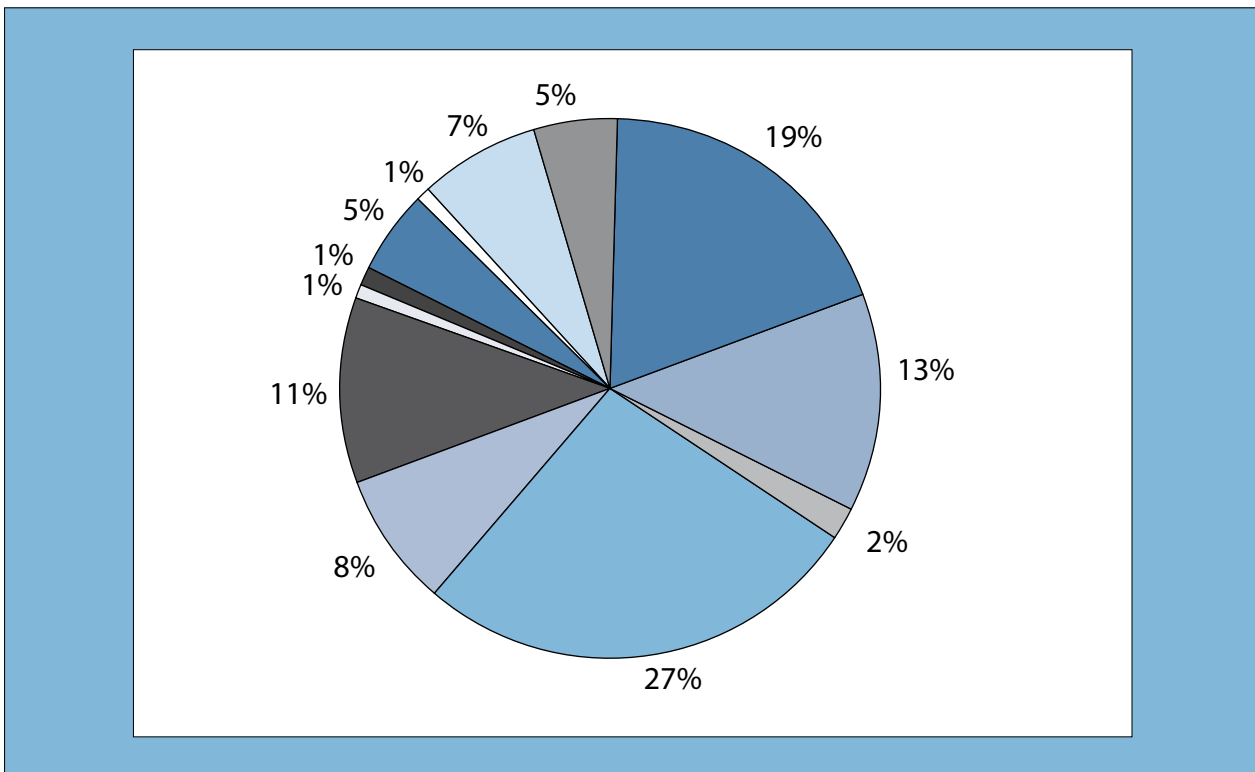
This year we have seen a marked increase (17%) in the number of appeals that are about pre-statement matters, refusal to assess and refusal to statement. These types of appeals are now accounting for 47% of all appeals registered as opposed to 30% last year. Appeals about the contents of the statement make up 50% of all appeals registered this year as oppose to 66% last year.

³ Percentage rounded

Appeal by Nature of Special Educational Need

Information below sets out appeals by nature of SEN. Again we have recorded needs referred to by parents and/or LA at the point of appeal. In line with the usual trend appeals about Autistic Spectrum Disorder and Specific Learning Difficulties account for almost half of all appeals registered. It is interesting to note that there has been an increase in appeals that are about Emotional and Behavioural Difficulties and Moderate Learning Difficulties and a decrease in appeals about Speech and Language Difficulties and Multiple SEN.

Type of SEN



- Autistic Spectrum Disorder
- Emotional and Behavioural Difficulties
- Hearing Impairment
- Specific Learning Difficulties (inc Literacy/Dyspraxia)
- Moderate Learning Difficulties
- Physical/Medical Difficulties
- Profound & Multiple Learning Difficulties
- Severe Learning Difficulties
- Speech and Language Difficulties
- Visual Impairment
- Multiple SEN
- Other/Unknown

Type of SEN ⁴	% of Appeals 2008/09	% of Appeals 2007/08	% of Appeals 2006/07	% of Appeals 2005/06	% of Appeals 2004/05	% of Appeals 2003/04
	Total Appeals 92	Total Appeals 94	Total Appeals 118	Total Appeals 150	Total Appeals 127	Total Appeals 117
Autistic Spectrum Disorder	19	21	24	22	30	22
Emotional and Behavioural Difficulties	13	8	7	11	9	7
Hearing Impairment	2	3	3	5	1	3
Specific Learning Difficulties (inc Literacy/Dyspraxia)	27	21	21	20	22	33
Moderate Learning Difficulties	8	2	10	2	4	1
Physical/Medical Difficulties	11	10	9	9	0	0
Profound & Multiple Learning Difficulties	1	2	5	5	0	0
Severe Learning Difficulties	1	0	1	4	2	4
Speech and Language Difficulties	5	12	8	9	10	5
Visual Impairment	1	0	0	0	0	0
Multiple SEN	7	18	7	13	16	16
Other/Unknown	5	3	5	0	6	2

⁴ Percentage rounded

Outcome of Appeals: General

As was the case in previous reporting periods, over 75%, in this case 82% of all appeals that proceeded to a full hearing were upheld either fully or in part. Of the 28 appeals that proceeded to a hearing 4 were dismissed.

Type of Appeal	Decisions issued 2008/09			Decisions issued 2007/08		
	Upheld	Dismissed	Struck out	Upheld	Dismissed	Struck out
Against refusal to Assess	3			2	1	
Against refusal to Statement	2	2		1	4	
Against refusal to Re-assess						
Against decision to Cease Statement						
Against contents of Parts 2 & 3	9			2		
Against contents of Parts 2, 3 & 4	9			16		
Against contents of Part 3	1			1		
Against content of Part 4		2		1		
Against content of Parts 3 & 4						
TOTALS	24	4	0	23	5	0

Outcomes of Appeals: Schools

11 appeals were heard which sought to overturn decisions relating to the school named in part 4 of a child's statement. Of those 7 were upheld in respect of parts 2, 3 and 4. The corresponding figures for 07/08, 06/07, 05/06, 04/05 and 03/04 were 17, 16, 22, 15 and 8 respectively. Of the 11 appeals, part 4 amendments were not ordered in 2 cases.

	Amend Statement Upheld Part 4	Amend Statement Upheld Parts 3 & 4	Amend Statement Upheld Parts 2, 3 & 4
Mainstream Maintained School			1
Special Approved Independent School			5
Maintained Special School			1
Home Tuition			
Education Other than at School			
Joint School and Home Tuition			

Outcome of Appeals by nature of SEN

Appeals by SEN	Decisions issued 2008/09			Decisions issued 2007/08		
	Upheld	Dismissed	Struck Out	Upheld	Dismissed	Struck Out
Autistic Spectrum Disorder	5	1		9	1	
Emotional and Behavioural Difficulties	3			2	1	
Hearing Impairment	2			2		
Specific Learning Difficulties (inc Literacy/dyspraxia)	6	2		1	3	
Moderate Learning Difficulties		1				
Physical/Medical Difficulties	2			4		
Profound & Multiple Learning Difficulties				1		
Severe Learning Difficulties						
Speech and Language Difficulties				3		
Visual Impairment	1					
Multiple SEN	5			1		
Other/Unknown						
TOTAL	24	4	0	23	5	0

Ethnic Monitoring

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

	2008/09	2007/08	2006/07	2005/06	2004/05	2003/04
Bangladeshi	0	0	0	0	1	1
Black African	0	0	1	4	1	1
Black other	1	0	0	1	0	0
Pakistani	0	1	3	0	0	2
White	81	67	99	135	120	93
Other	2	4	2	7	1	2
N/C	8	22	13	10	24	29

Disability Discrimination Claims

There were 2 claims of disability discrimination made and registered this year, and both are pending. There were 4 claims carried over from last year, all of which proceeded to a hearing with the outcome that 2 of were upheld and 2 dismissed.

Upper Tribunal Appeals

Parents and LEAs can appeal to the Upper Tier of the Tribunals Service in cases where they believe a Tribunal decision is flawed on a point of law. Permission to appeal to the Upper Tribunal must first be sought from SENTW. There were no appeals made to the Upper Tribunal during this reporting year.

Complaints

No formal complaints were made to the President during the course of the year.

Expenditure - 1 April 2008 to 31 March 2009

Expenditure	2008/09
Tribunal President and members' fees and expenses	£100,183.46
Tribunal training	£5,640.50
Hearing and user group accommodation	£62,519.84
Other appeal expenses (witness claims, interpreting etc.)	£7,973.71
Salaries	£125,529.00
Office expenses (inc. deliveries)	£4,476.12
Print and media costs	£2,653.29
Legal fees	£6,468.49
TOTAL	£315,444.41

In addition to the direct expenditure is a proportion of the rent and utilities costs on the Tribunal's shared accommodation, a proportion of £20,000 which is met centrally.

Total expenditure for previous years:

2007/08	Total	£316,960
2006/07	Total	£345,118
2005/06	Total	£363,353
2004/05	Total	£249,732
2003/04	Total	£407,000

Tribunal Membership

The Tribunal; comprises the following members, all of whom either presided over or sat at hearings during the year 1 September 2008 to 31 August 2009:

President Rhiannon Ellis Walker OBE

Chairs Mark Allen
Jacqueline Blackmore
Gwyn Davies
Meleri Tudur

Lay members Sandra Boyle
Norman Donovan
Gwyn Griffiths
Gareth Roberts
Siân Wyn Siencyn
Susan Taylor
Andrew Wilson

Tribunal Secretariat

The Secretariat is responsible for Tribunal administration.

Tribunal Manager/ Secretary	Siân Mills	Tel. 01597 829803
Regional Managers	Pam Hawkes	Tel. 01597 829802
	Leon Mills	Tel. 01597 829805
Team Support	Sarah Smith	Tel. 01597 829809
	Tania Ryland	Tel. 01597 829806

In addition, we operate the following:

Tribunal Website: www.sentw.gov.uk

Tribunal Telephone Helpline: 01597829800

Tribunal Fax: 01597 829801

Tribunal Mailbox: tribunalenquiries@wales.gsi.gov.uk