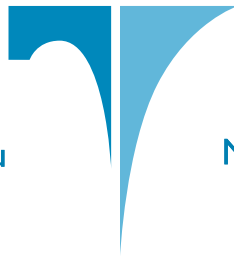


Tribiwnlys Anghenion
Addysgol Arbennig Cymru



Special Educational
Needs Tribunal for Wales

Annual Report 2009-2010



February 2011

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SENTW

Unit 32

Ddole Road Enterprise Park

Llandrindod Wells

Powys LD1 6DF

Tel: 01597 829800

Fax: 01597 829801

E-mail: tribunalenquiries@wales.gsi.gov.uk



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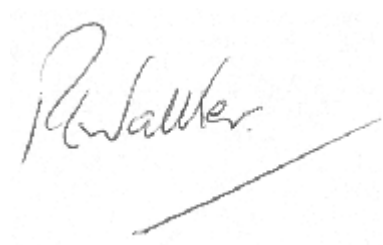
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Special Educational Needs Tribunal for Wales Annual Report 2009 - 2010

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

January 2011

I am pleased to submit my seventh Annual Report as President of the Special Educational Needs Tribunal for Wales. The report details the Tribunal's activities for the year 1 September 2009 to 31 August 2010.

A handwritten signature in black ink, appearing to read 'R. Walker', with a long horizontal stroke extending to the right below the name.

Rhiannon Ellis Walker OBE
President, SENTW

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An electronic version of this report is available on the Tribunal's website
www.sentw.gov.uk

1. The year in review

This is my seventh annual report as President of the SEN Tribunal for Wales (SENTW). This year we have changed the format and content of the report and you will see that it has a new look. I hope you find that it is user-friendly. Questions or comments about the report are most welcome and can be made by getting in touch with the Tribunal secretariat.

SEN Appeals

SEN appeals continue to make up the bulk of the Tribunal's workload. The total number of appeals registered over this period was 106, an increase on previous years where we registered 92 in 2008/09 and 94 in 2007/08. We also received a further 10 appeals that could not be registered and dealt with 25 appeals that were carried over from the previous year.

The increase that we reported on last year in the number of appeals that are about pre-statement decisions (refusal to assess and refusal to statement) has continued. These types of appeals accounted for 57% of all appeals registered. It was 47% in 2008/09 and 30% in 2007/08. This may well be reflective of the situation across Wales in that the latest Welsh Assembly Government (WAG) statistics¹ show a national decrease in the number of assessments completed and in the number of pupils with statements.

It may be helpful to highlight that only 33% of appeals that proceeded to a hearing were about pre-statement decisions. So whilst these types of appeals account for over half of all the appeals registered, they are in fact much more likely to be either withdrawn or conceded before the hearing. We have indeed seen a substantial increase in the number of appeals conceded by Local Authorities (LAs), from 16% of all appeals registered last year, to 27% this year. I feel that a proactive and early use of disagreement resolution services may be of benefit to all parties, particularly so where the LA decision is about a refusal to assess or statement.

Appeals have been more widely dispersed across Wales with just over half of all LA's seeing an increase. In most cases, the numbers registered continue to be low, any increase is however more noticeable where it concerns LAs that historically had very few or no appeals. I am however pleased to note that both Cardiff and Carmarthenshire LA's are bucking the trend with a significant decrease in appeal numbers.

In terms of outcomes, we discharged a total of 93 appeals. Of those 26 appeals were decided (19 upheld and 6 dismissed and 1 struck out) 36 were not opposed and 36 were withdrawn. Overall 20% of the appeals registered proceeded to a hearing.

We always aim to issue our decision within 10 working days of the hearing. In all cases it is of utmost importance to the Tribunal that the right decision is made. This

¹ Statistical Directorate, Welsh Assembly Government SDR 91/2010 16 June 2010

means that in some of the more complex cases it may take longer to reach a decision. This year we have seen an increase in the average time taken to issue a decision from 8 to 11 days. I review every case where we do not meet the target and shall continue to monitor the situation closely.

At the end of the year we have, at 33 appeals, carried over 8 more cases in comparison to previous years. This is in part due to a higher number of appeals received during the final quarter of the year.

Education (Wales) Measure 2009

In my last report I mentioned that I welcomed the above Assembly Measure. The Measure makes provision for children themselves to be able to make their own SEN appeal and disability discrimination claim. It is an important step towards increasing the participation of children in processes and matters that affect them. At the moment only parents have the right to make an appeal and claim.

Further work is needed to take into account the wider grounds on which a disability discrimination claim can be made under the newly commenced Equality Act 2010. We have been working closely with the WAG in taking this forward. We hope to have a representative from the WAG to provide an update on progress at the next round of Tribunal User Group meetings.

In the meantime, the Tribunal has started to prepare for the change by reviewing its processes, publications and website content. We have consulted with children and their families on how to make our information accessible. We have also delivered additional training for members and the secretariat. We will continue to closely involve tribunal users and stakeholders as this work progresses.

Procedural Regulations

Over the course of the last few years we have been working closely with WAG officials to update and amend the Tribunal's procedural regulations. It has to be recognised that this work has been quite complex and taken longer than expected to progress. I am however confident that the end result will be a clearer and more flexible legislative framework within which the Tribunal will operate.

Meeting with Huw Lewis, Welsh Deputy Minister for Children

Earlier in the year I met with the Huw Lewis, Welsh Deputy Minister for Education. The meeting provided a useful opportunity to discuss the work of the Tribunal.

I was pleased to report that the number of appeals has remained relatively low over the last few years. The Minister was however concerned to hear about the small number of cases where it has been brought to our attention that parents have not been informed of their appeal rights. A letter from the Minister has since issued to all Directors of Education reminding them of the statutory duty to do so, a copy is at Annex A.

We also talked about the more global picture of meeting special educational needs within the current economic difficulties and the concerns that parents had voiced at user groups meetings about maintaining funding for special schools.

Hearing venues

Increasing budget constraints have led to us looking very carefully at ways of making savings without reducing the quality of our core service. Hearings tend to account for a large proportion of the Tribunal's budget and we have taken steps to reduce costs. Whilst we are no longer able to provide waiting rooms and lunch for parties, we do ensure that all venues have comfortable waiting areas and that food is available to purchase.

We wrote to Tribunal users earlier in the year about the new arrangements. I am pleased to report that transition has gone smoothly and would like to thank all of our users and members for their continued support during this period of change.

Administrative Justice and Tribunals Council – Welsh Committee

It is with interest that I have been following the work completed by the AJTC Welsh Committee in its 'Review of Tribunal's Operating in Wales', published in January 2010. I welcome the recommendations contained in the review report for the modernisation and development of administrative justice in Wales and look forward to seeing the Assembly Government's response in due course.

Members and Secretariat

Following a successful public appointment process I was very pleased to welcome three new lay members to the Tribunal. Their appointment was made by Leighton Andrews, Education Minister for Wales. The new members are Mr Richard Ellis Owen, Ms Catrin Mair Lewis and Dr Hilary Hayward. Each member has a very high level of knowledge and expertise in the field of education and I very much look forward to working with them in their new role.

Finally

This year has been exceptionally busy for Tribunal members and its secretariat. We have seen an increase in appeals and we have taken forward a substantial block of work to prepare for important legislative changes outlined above. The Tribunal has not had any additional resource to complete this extra work and it is due to the enthusiasm, commitment and hard work of the secretariat and members that progress has been made and the quality of our core service maintained. I am extremely fortunate in having such a dedicated secretariat and members and I know that with their continued support that the challenges that undoubtedly lie ahead will be achieved by the Tribunal.

2. Overview of the Tribunal

Role and jurisdiction

The role of the Tribunal is to provide an independent process to hear and decide special educational needs appeals and disability discrimination claims.

Executive responsibility for the Special Educational Needs Tribunal was devolved to Wales at the time of the Government of Wales Act 1998. This means that power to make procedural regulations governing the Tribunal falls to the National Assembly for Wales. SENTW was established by the Education Act 2002 and started operating from 1 September 2003.

The statutory right to make a special educational needs appeal against certain decisions made by Local Authorities is provided for in the Education Act 1996 Chapter 56, Sections 323-336. At the moment only a parent can make an appeal.

Appeals can be made about the following Local Authority decisions:

- **Refusal to make a Statutory Assessment**, but only if one has not been completed in the previous 6 months. The school or a parent can ask for an assessment to be made;
- **Refusal to make a special educational needs Statement;**
- **Contents of the Statement**, all or some of parts 2, 3 and 4, but only if the LA has made or amended a statement;
- **Refusal to change the school named in Part 4 of the Statement**, but only if the statement is at least one year old and only in the case of an LA maintained school;
- **Refusal to make a Statutory Re-assessment**, but only where one has not been completed in the previous 6 months;
- **Refusal to amend the statement following a Statutory Re-assessment;**
- **Ceasing to maintain the Statement.**

Our People

The Tribunal has a president and 14 members. All members have sat on tribunal hearings during the period of this report. The exception to this is newly appointed members who are undergoing induction training.

| | |
|--|---|
| <p>Tribunal Members</p> <p>It is the role of members to hear and decide appeals and claims</p> | <p>Tribunal Secretariat</p> <p>It is the role of the secretariat to administer appeals and claims, provide a telephone helpline service for tribunal users and support services for Tribunal members</p> |
| <p>Rhiannon Walker, President</p> | <p>Sian Mills, Secretary</p> |
| <p>Legal Members Meleri Tudur Mark Allen Jacqueline Blackmore Gwyn Davies</p> <p>Lay Members Sandy Boyle Norman Donovan Gwyn Griffiths Gareth Roberts Sian Wyn Siencyn Susan Taylor Andrew Wilson Richard Ellis Owen Hilary Hayward Catrin Lewis</p> | <p>Secretariat Pam Hawkes Leon Mills Sarah Smith Tania Ryland</p> |

3. Numbers and statistics

Table 3.1 Headline numbers and statistics

A total of 116 appeals were received during 2009-10. Of those, 106 were registered. We also dealt with a further 25 appeals carried over from 2008-09.

| 2009-2010 | Actual | Percentage | 2008-2009 | Actual | Percentage |
|--------------|------------|-------------|--------------|------------|-------------|
| Decided | 25 | 20% | Decided | 28 | 24% |
| Withdrawn | 36 | 27% | Withdrawn | 45 | 39% |
| Conceded | 36 | 27% | Conceded | 19 | 16% |
| Struck Out | 1 | 1% | Struck Out | 0 | 0% |
| Pending | 33 | 25% | Pending | 25 | 21% |
| Total | 131 | 100% | Total | 117 | 100% |

| Type of Appeal | Appeals 2009-2010 | | Appeals 2008-2009 | |
|----------------------------|-------------------|-----|-------------------|-----|
| | Total Appeals 106 | | Total Appeals 92 | |
| Refusal to Assess | 37 | 34% | 26 | 28% |
| Refusal to Statement | 23 | 22% | 17 | 19% |
| Refusal to Re-assess | 0 | 0% | 2 | 2% |
| Cease Statement | 1 | 1% | 1 | 1% |
| Contents of Parts 2 & 3 | 15 | 14% | 10 | 11% |
| Contents of Parts 2, 3 & 4 | 14 | 13% | 27 | 29% |
| Contents of Part 3 | 7 | 7% | 6 | 7% |
| Contents of Part 4 | 7 | 7% | 1 | 1% |
| Contents of Parts 3 & 4 | 2 | 2% | 2 | 2% |

Table 3.2 Number of appeals received and discharged by Tribunal year

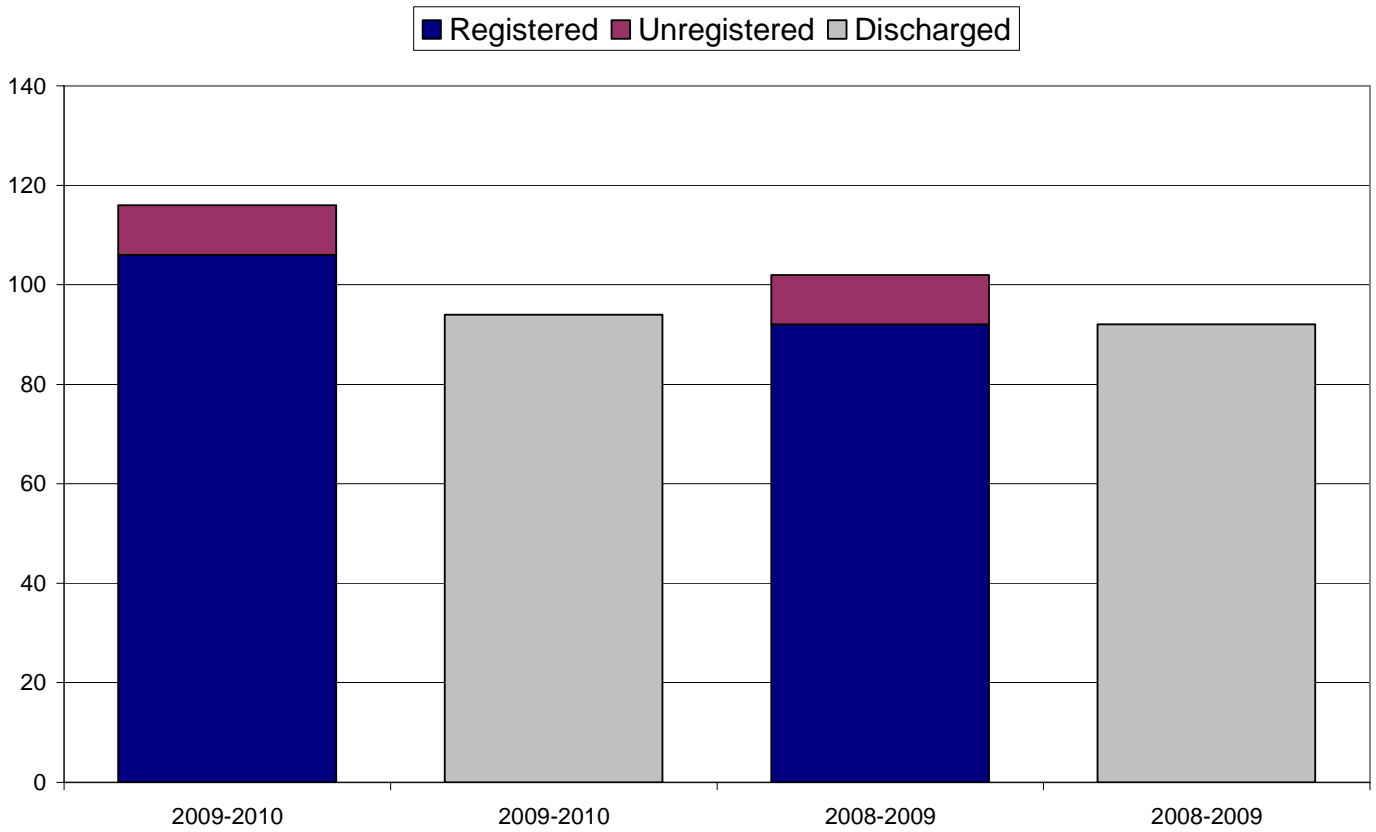


Table 3.3 Number of appeals received by quarter 2009 - 2010

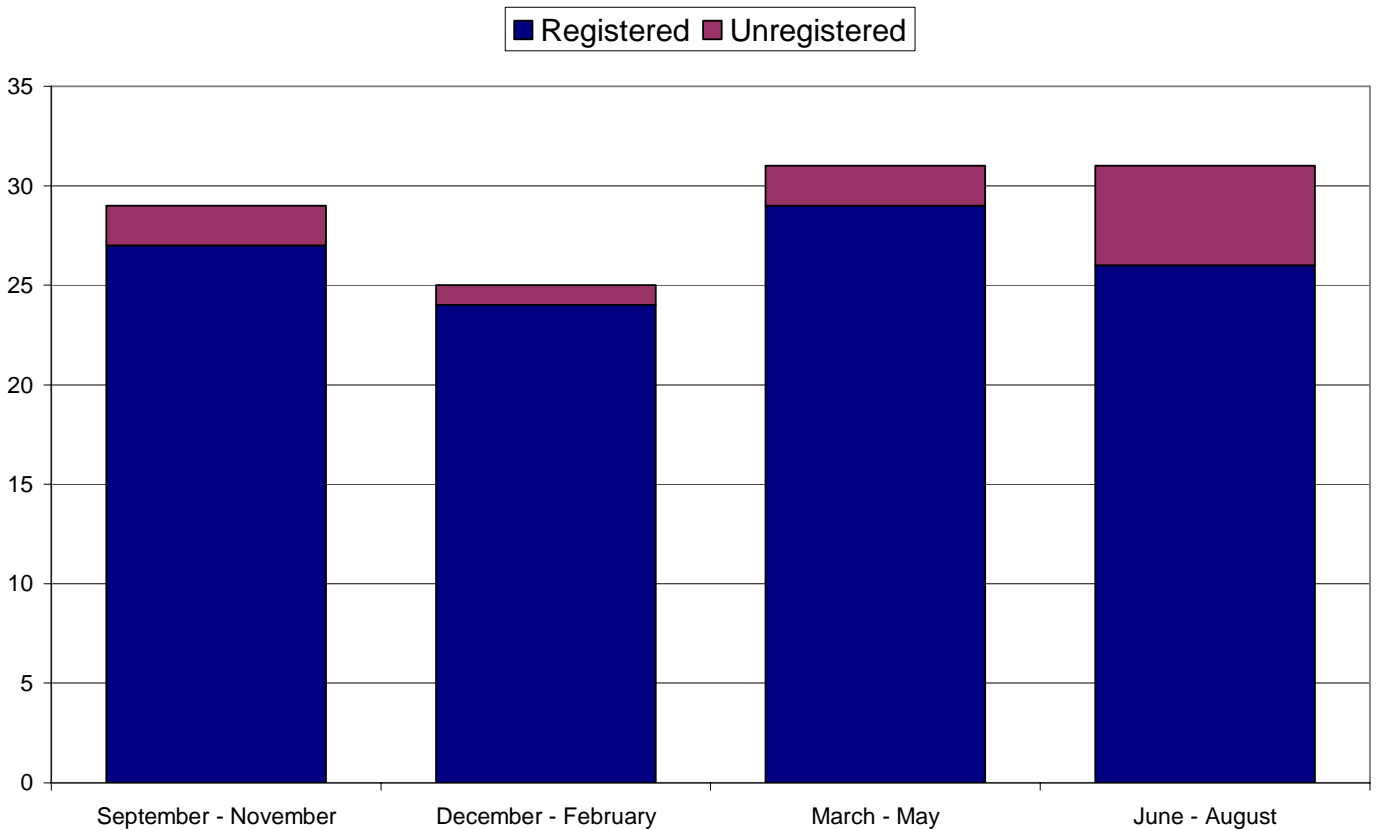


Table 3.4 Registered appeals by local authority

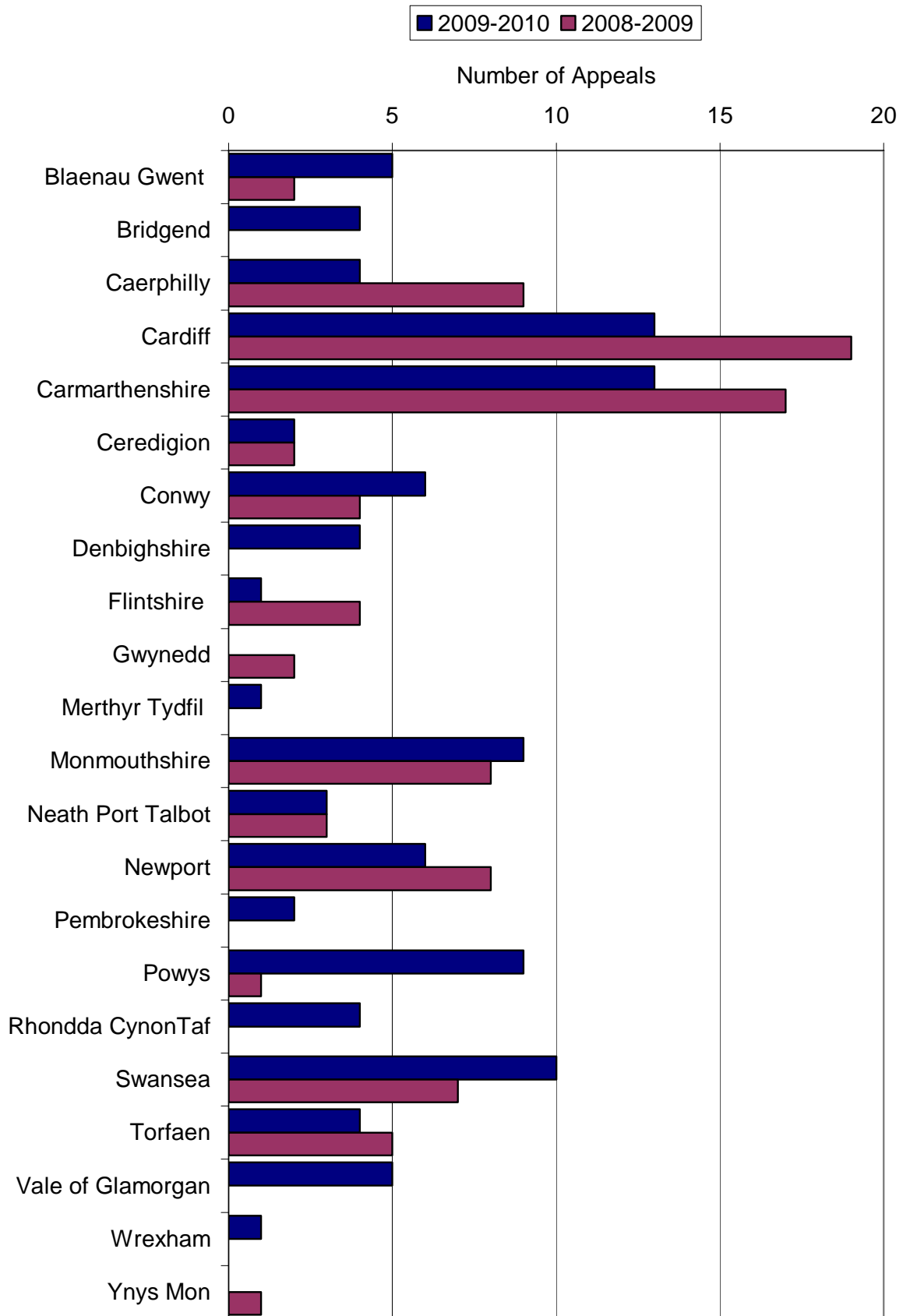


Table 3.5 Registered appeals by local authority and school population

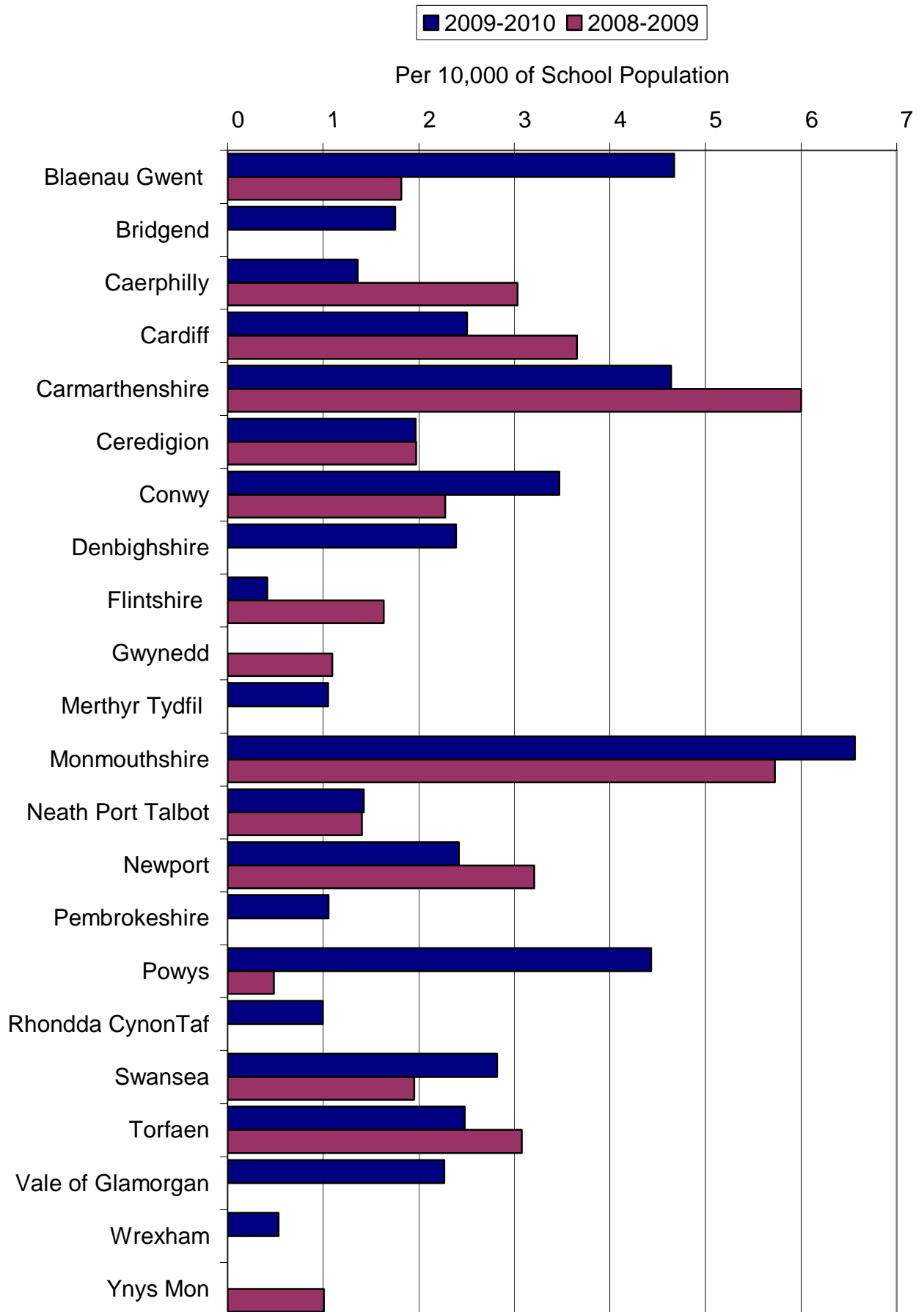


Table 3.6 Registered appeals by type of appeal

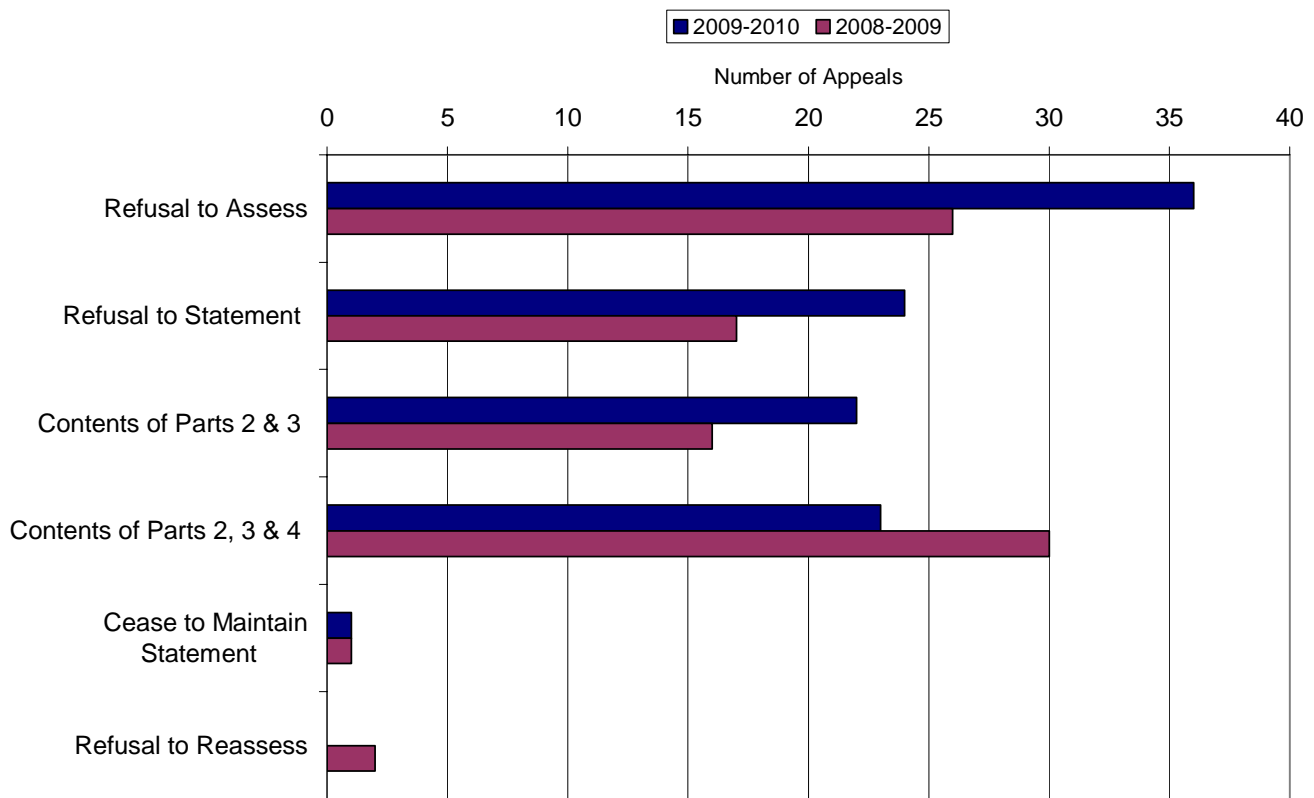


Table 3.7 Registered appeals by school age and type of appeal 2009 – 2010

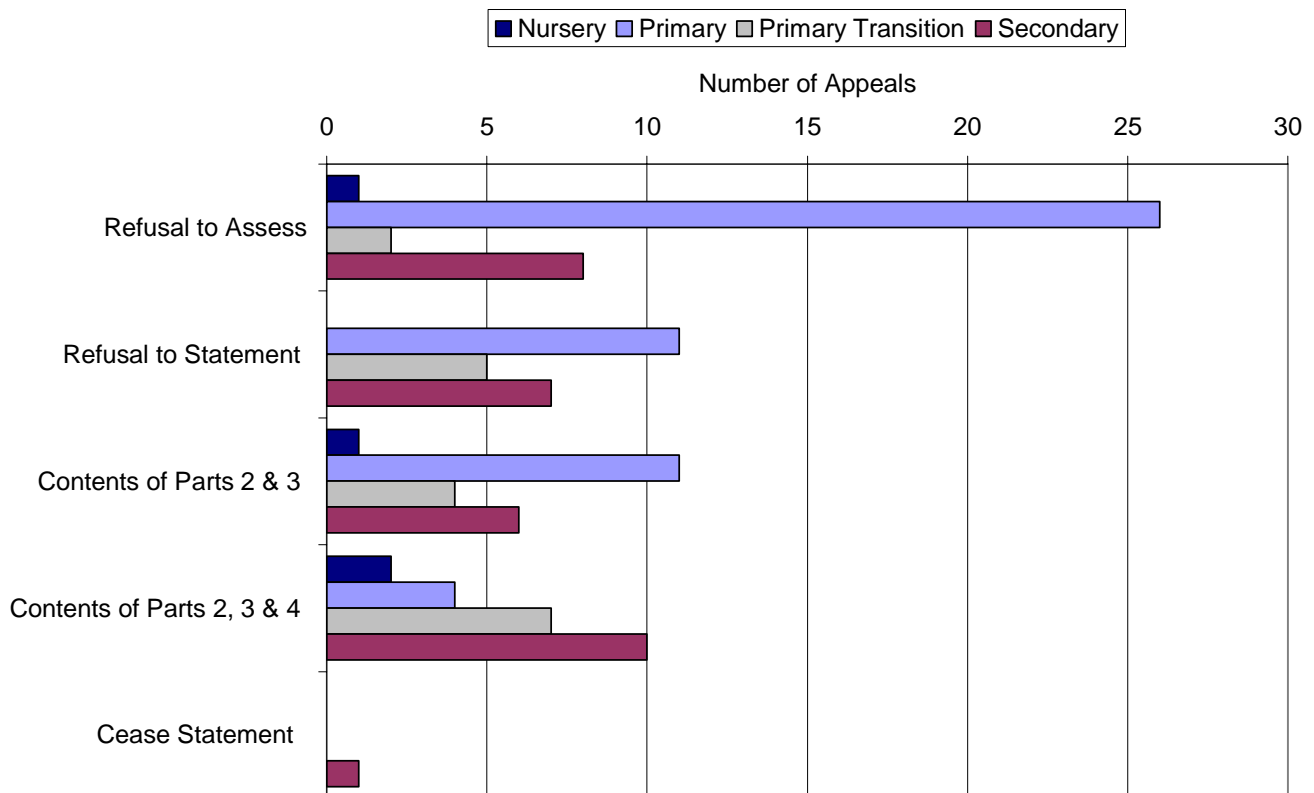


Table 3.8 Registered appeals by school age and local authority 2009 - 2010

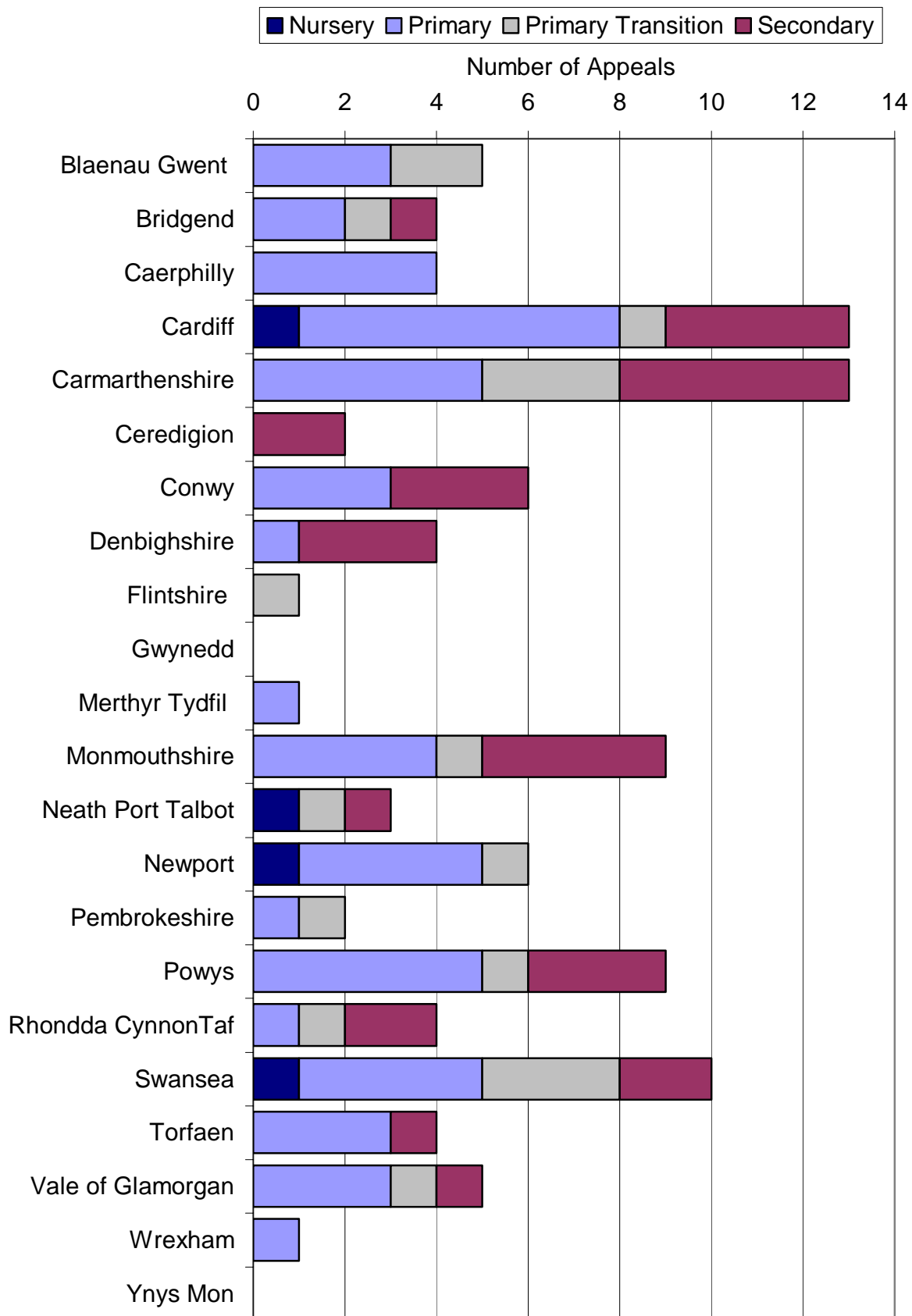


Table 3.9 Outcome of appeals

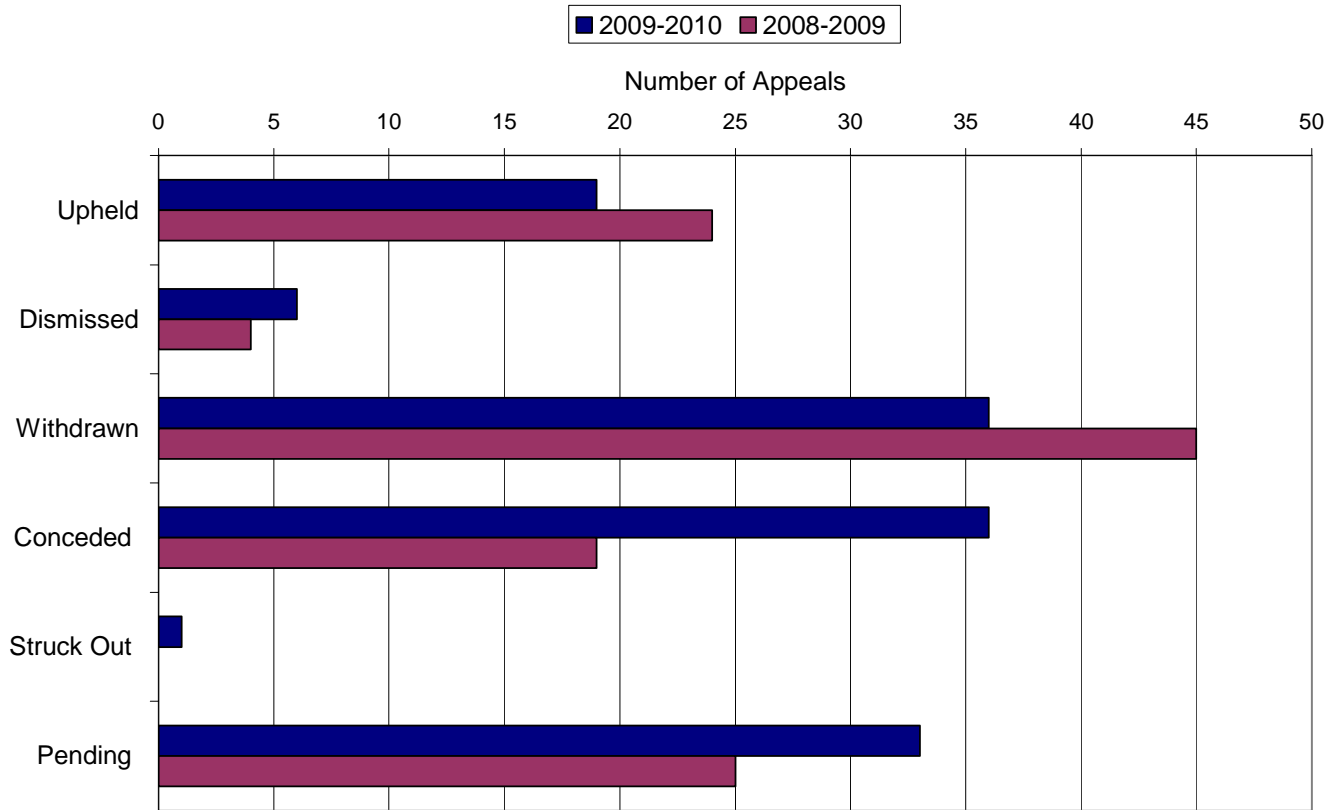


Table 3.10 Outcome of appeals registered in 2009 – 2010 by type

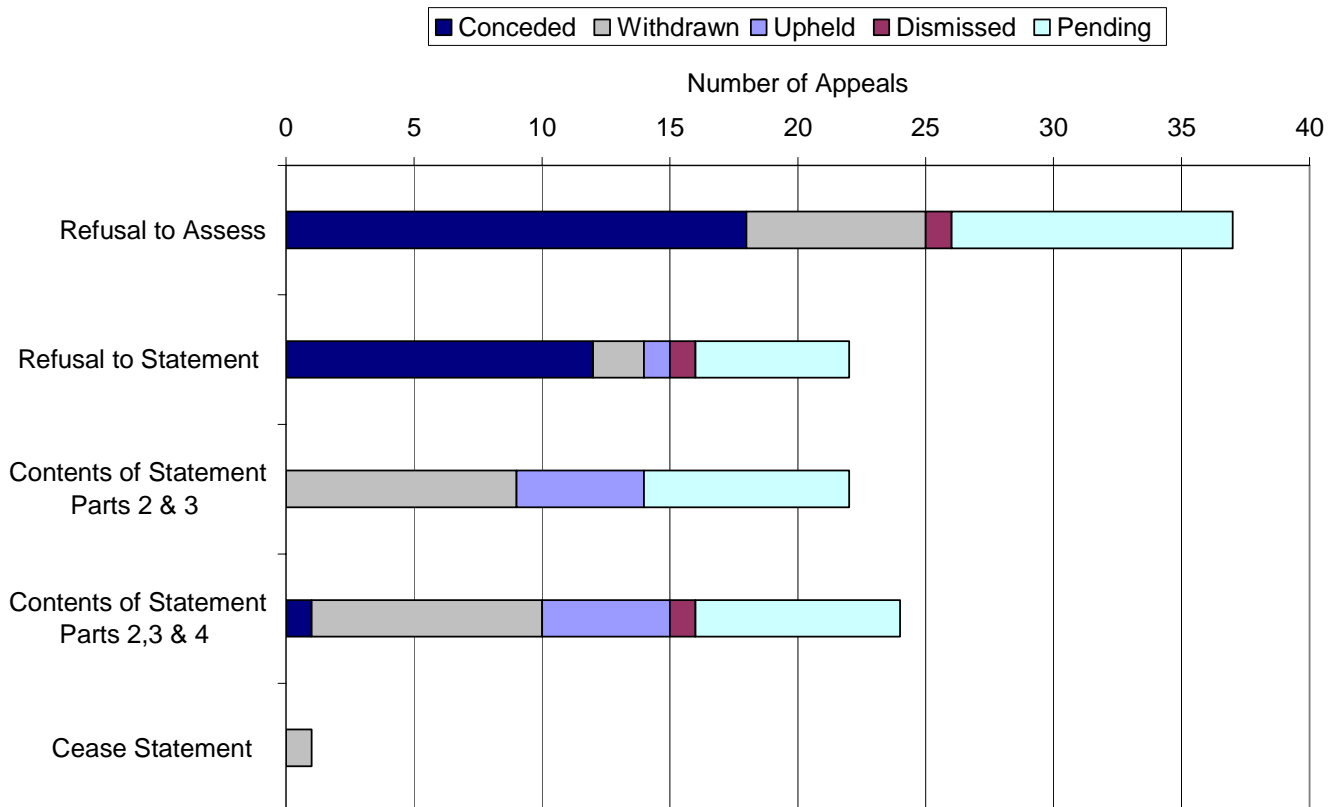


Table 3.11 Outcome of appeals by local authority 2009 - 2010

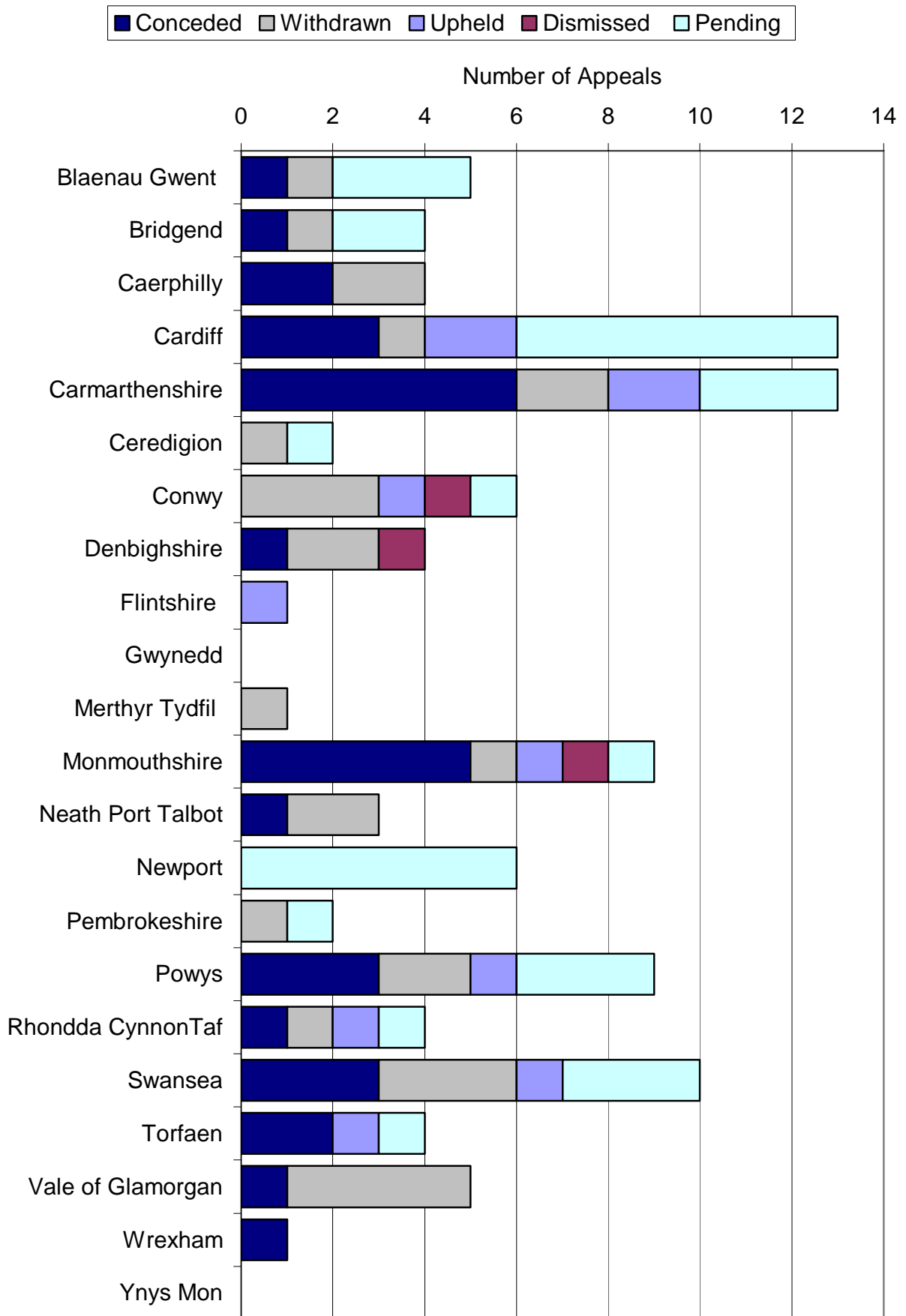


Table 3.12 Registered appeals by special educational need

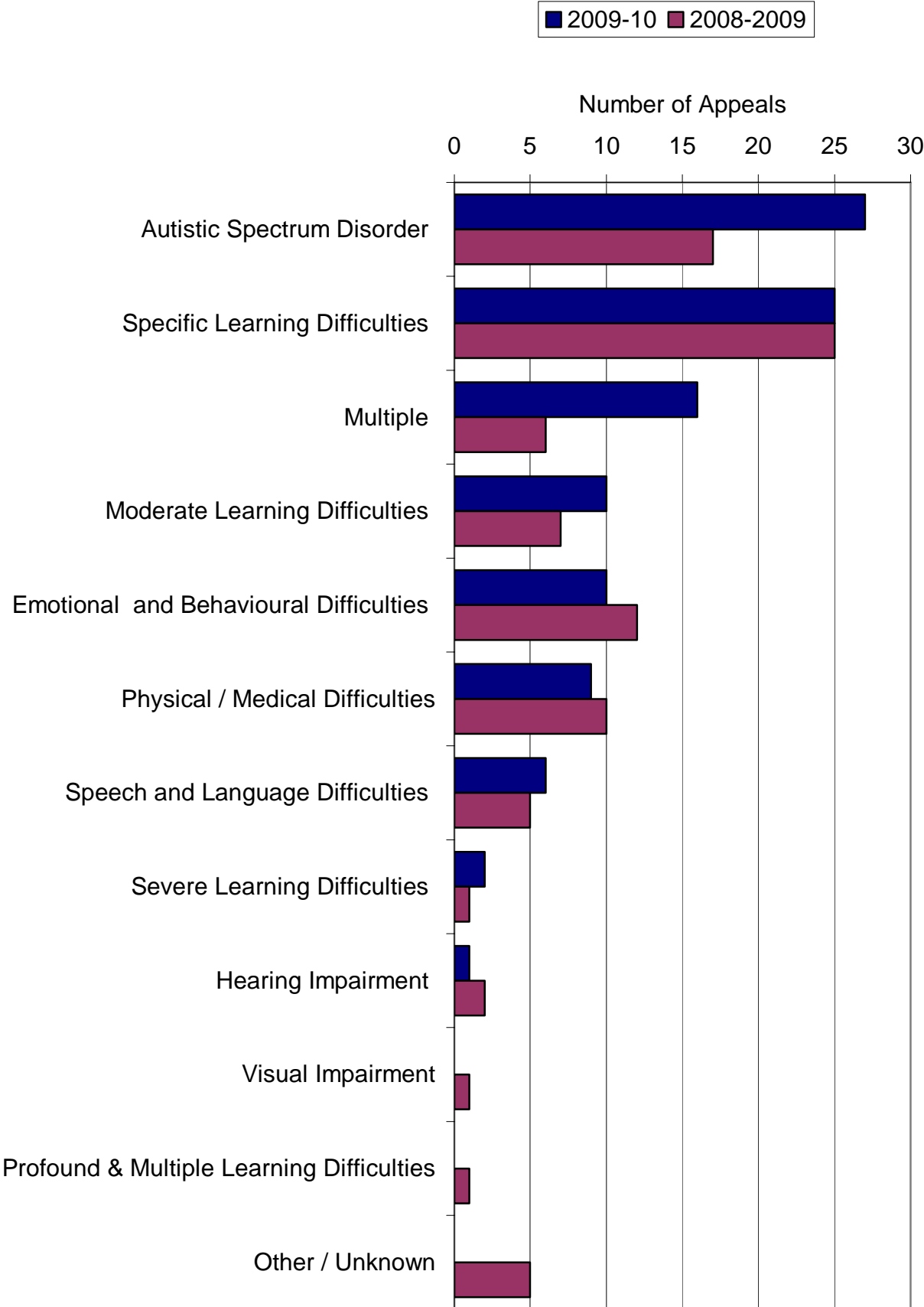


Table 3.13 Registered appeals by gender 2009 – 2010

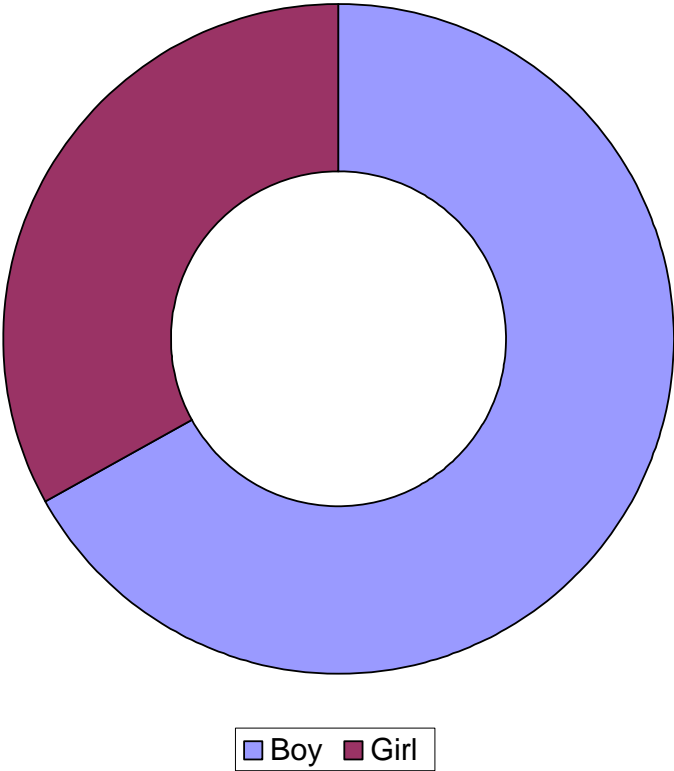


Table 3.14 Registered appeals by ethnicity 2009 – 2010

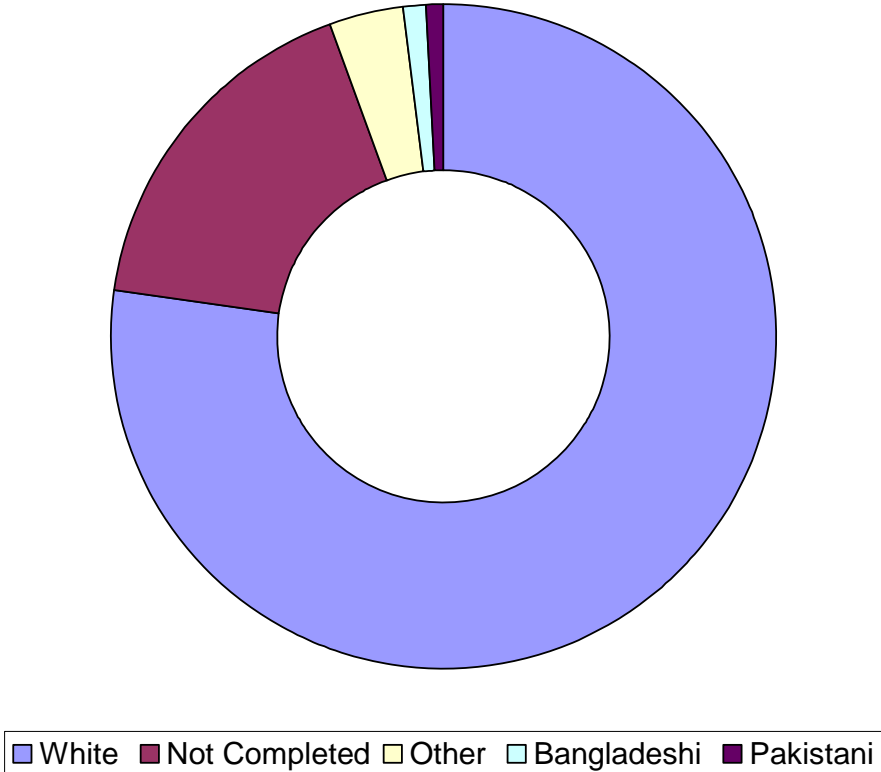


Table 3.15 Disability discrimination claims registered and discharged by Tribunal year

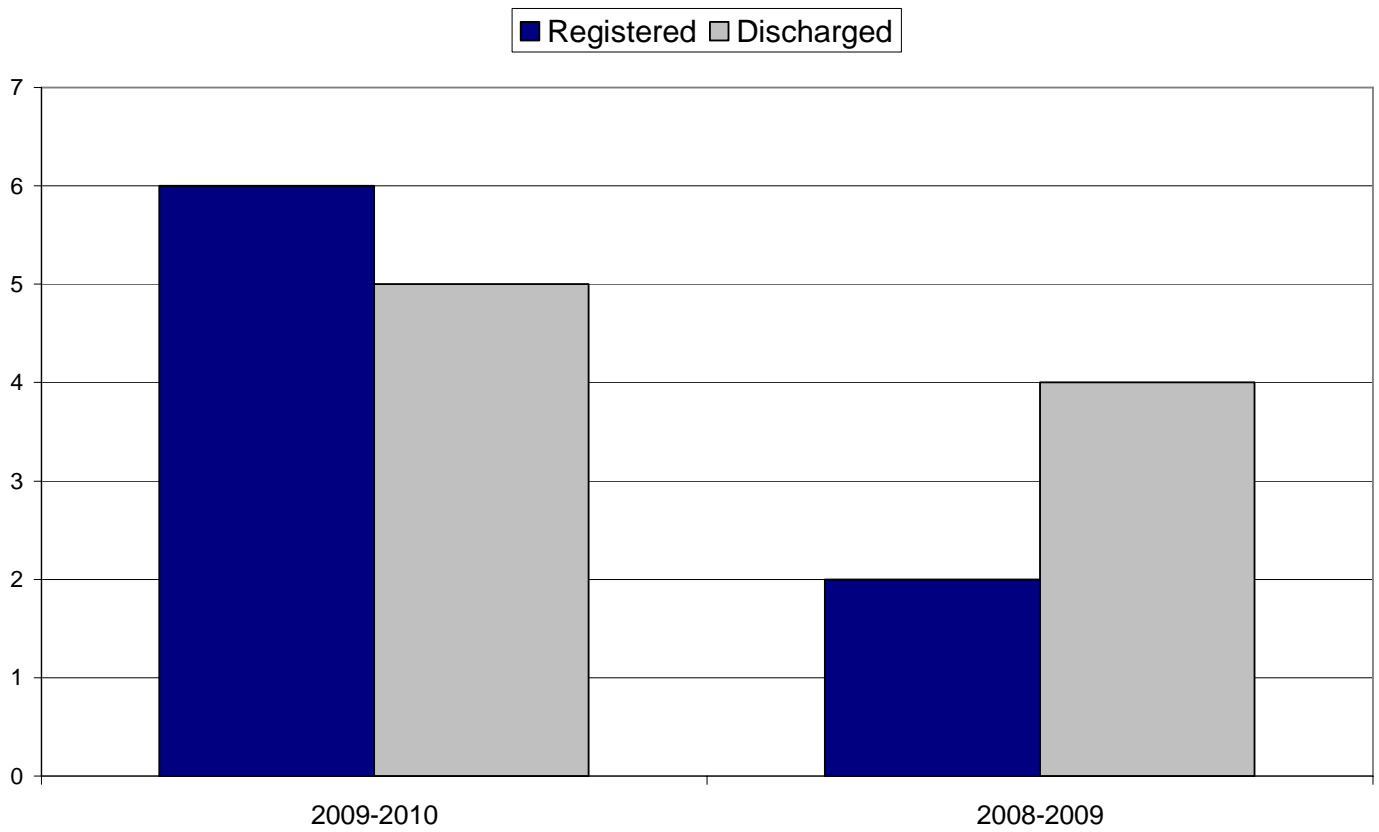


Table 3.16 Outcome of claims

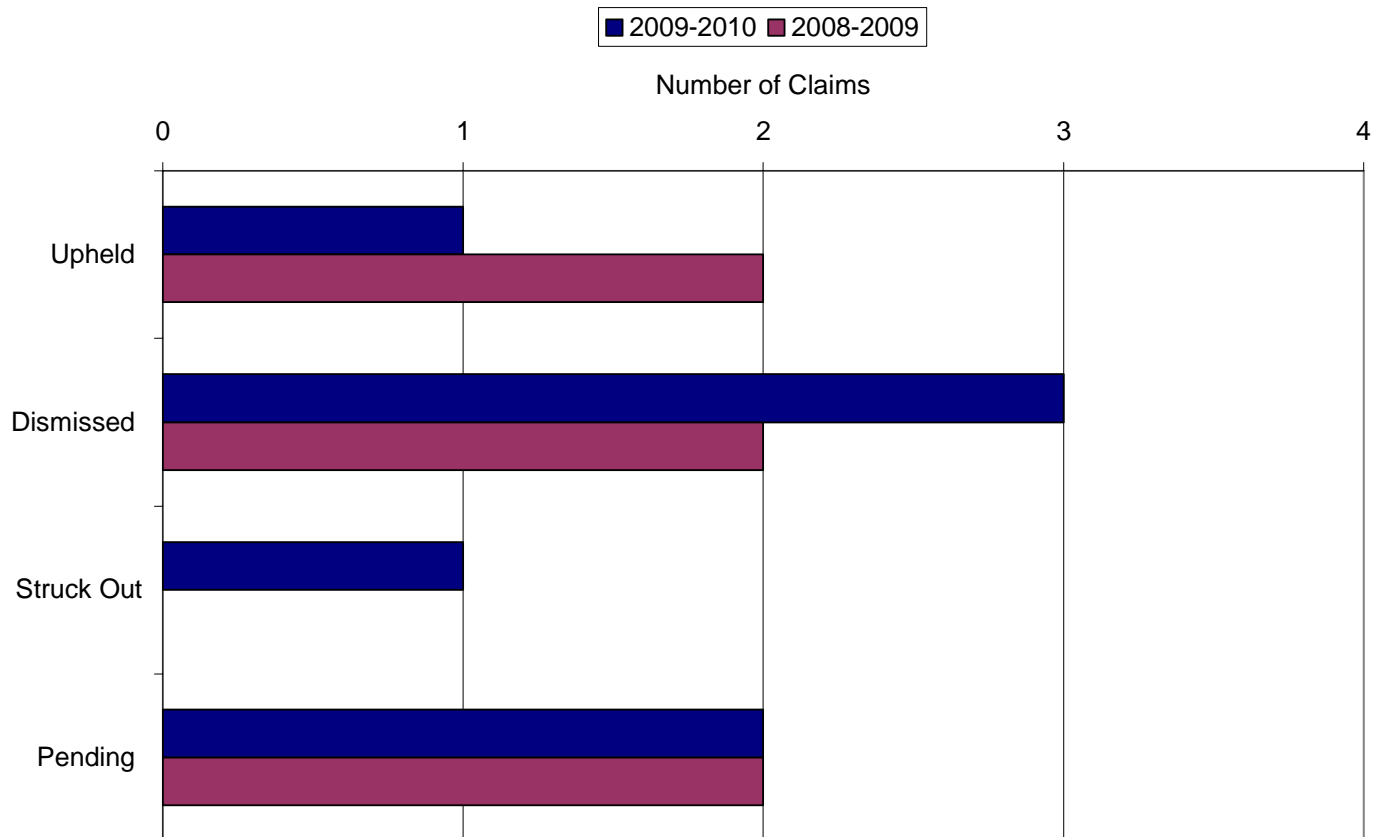
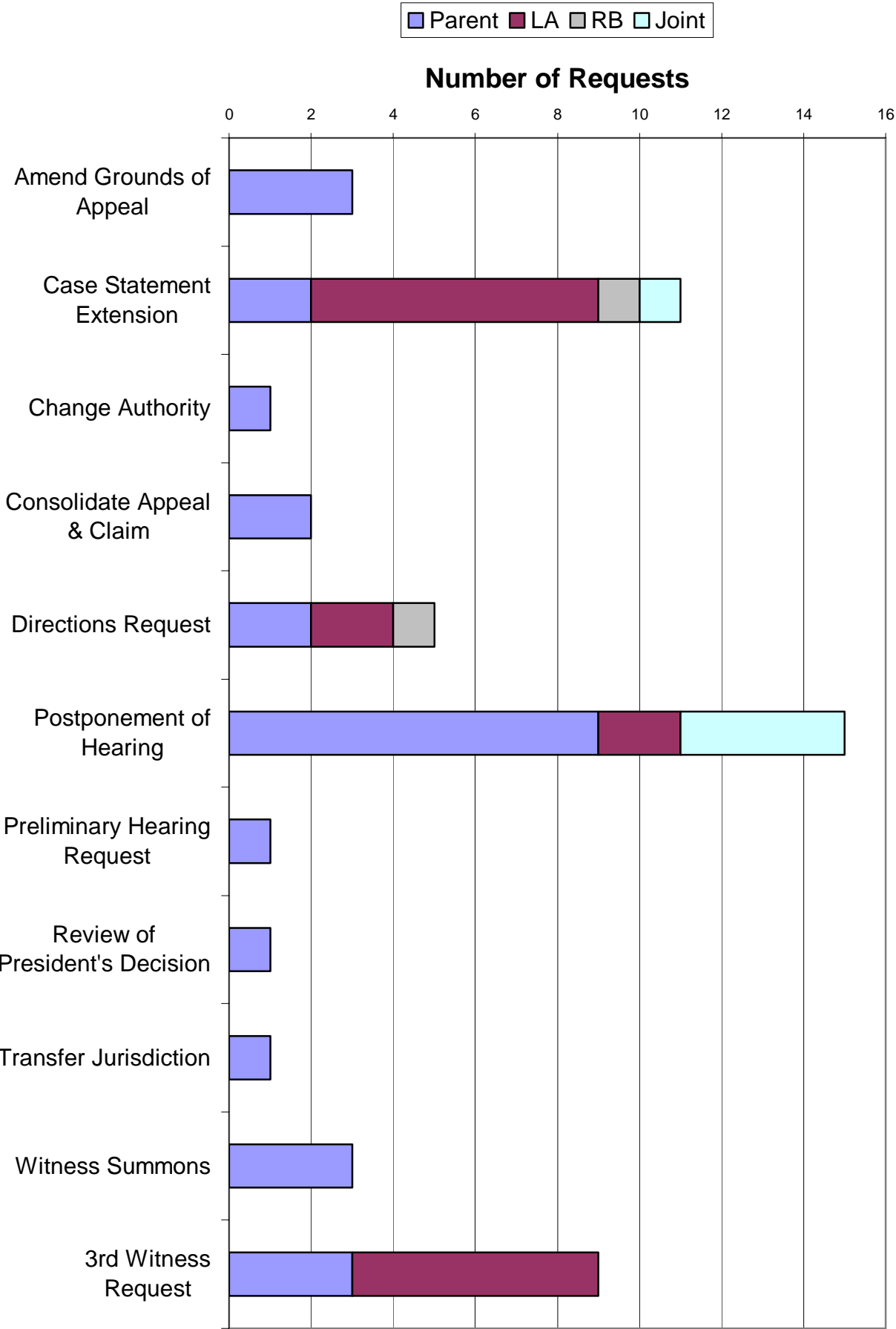


Table 3.17 Presidential Requests



4. Reviews and onward appeals

Applications for a review of a Tribunal decision can be made by parents and LAs on limited grounds. Over the period of this report, 4 applications were made. Of those, 2 were refused and 2 were found to contain obvious errors which were amended by certificate.

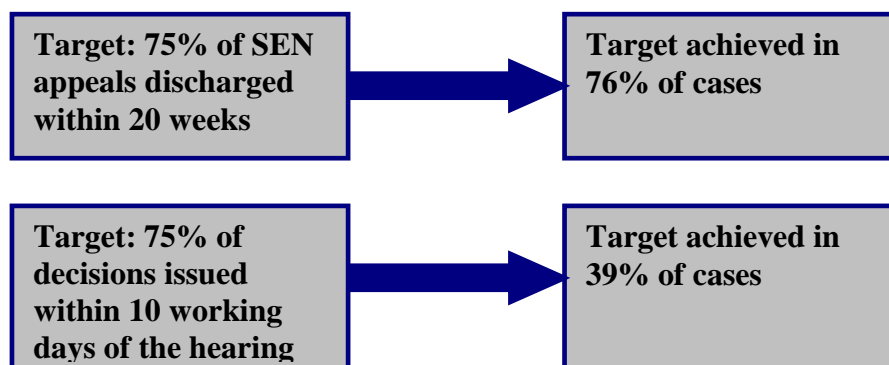
Appeals to the Upper Tier of the Tribunal's Service can be made by parents and LAs against Tribunal decisions where it is thought that the decision is wrong on a point of law. Permission to appeal to the Upper Tribunal must first be sought from SENTW. Over the period of this report 4 applications for permission to appeal were made to SENTW, all of which were refused. 2 applications were renewed to the Upper Tribunal, of those 1 appeal was withdrawn and 1 appeal was upheld and remitted back to SENTW for re-hearing.

5. Our performance

This has been a busy year for the Tribunal. We have seen a 15% increase in the number of SEN appeals registered. We have however increased our output discharging 5% more appeals over the course of the report.

We measure our performance through key performance targets and customer satisfaction checks. This helps us to monitor the speed and quality of our service.

Key performance targets



Customer satisfaction checks

We received 27 completed forms over the period of the report, of those:

- **Over 90% of customers** said we were helpful when handling telephone enquiries, that we responded quickly and that they were satisfied with the information received;
- **Over 95% of customers** agreed that we processed their case efficiently

Complaints

We received 2 formal complaints during the course of the year.

6. Engagement with stakeholders and users

User Group Meetings

User group meetings provide an important opportunity for the Tribunal to hold open forum meetings with its users and stakeholders. Meetings at regional locations across Wales were held in October 2009 and March 2010. Information about User Group meetings, including past papers and notes, can be downloaded from the Tribunal's website.

7. Welsh language

The Tribunal has a Welsh language policy which has been approved by the Welsh Language Board. We are committed to providing an equally high quality equivalent service for both Welsh and English speakers who appeal or make a claim to the Tribunal. All of our publications and forms are bi-lingual and hearings for appeals and claims can be conducted in both languages.

Where Welsh or English is not the first language we will arrange for an interpreter to attend the hearing and do our best to meet all language needs.

No appeals or claims were made through the medium of Welsh during 2009-10.

8. Expenditure

Expenditure: 1 April 2009 – 31 March 2010

| Expenditure | 2009 - 2010 |
|--|-----------------|
| Tribunal President and Members' Fees and Expenses | £130,000 |
| Hearings, Cancellations and User Groups | £45,000 |
| Office Expenses | £20,000 |
| Other Appeal Expenses (Witness Claims, Interpreting) | £10,000 |
| Tribunal Training | £5,000 |
| Legal Fees | £1,000 |
| Total | £211,000 |

Additional costs such as staff salaries for the secretariat and the Tribunal's shared accommodation are met centrally. These costs are:

| | |
|---------------|----------|
| Salaries | £230,000 |
| Accommodation | £20,000 |

* rounded to nearest £1,000

9. Contacting the Tribunal

Tribunal Address: Unit 32 Ddole Road Enterprise Park
Llandrindod Wells
Powys
LD1 6DF

Tribunal Helpline: 01597 829800

Tribunal Fax: 01597 829801

Tribunal E-mail: tribunalenquiries@wales.gsi.gov.uk

Tribunal Website: www.sentw.gov.uk

Huw Lewis AC/AM
Y Dirprwy Weinidog dros Blant
Deputy Minister for Children



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Eich cyf / Your ref:
Ein cyf / Our ref: DC/HL/0071/10

Directors of Education of Local
Authorities

4 August 2010

Dear Colleague,

I met the President of the Special Educational Needs Tribunal for Wales (SENTW) and was most concerned to learn of a small number of instances where it would seem that parents had not been advised of their rights of appeal against Local Authority (LA) decisions.

While I accept that these may have been isolated incidents, I am anxious to ensure that parents are in all cases made aware of their statutory rights of appeal. It may be helpful to remind you of the decisions form which an appeal may be made. Rights of appeal to the SENTW arise where:

The LA will not carry out a formal assessment of a child's special educational needs;
The LA refuses to issue a statement of a child's special education needs.

Where a statement has been issued or changed then an appeal can be made against the following:

1. The needs identified within a statement and the special help designed to meet those needs (parts 2 and 3 of the statement);
2. The name of the school where the child will be placed (part 4 of the statement);
3. The LA not naming a school;
4. An LA refusal to change the school named within a statement, where that statement is at least one year old;
5. A refusal by an LA to reassess needs where a new assessment has not taken place within the preceding six months;
6. An LA decision to cancel a statement; and
7. An LA decision not to amend a statement following reassessment.

When such a decision has been made, LAs are **required** to advise the parent of:

- their right of appeal to the Special Educational Needs Tribunal for Wales;
- the time limit for making an appeal;
- the availability of parent partnerships services and dispute resolution services (DRS) and that entering into DRS arrangements does not affect the parent's right of appeal.

This advice must also be provided if a Local Authority decides to issue a proposed statement or issue an amended statement.

I am aware of good practice in some Authorities where LA decisions are routinely explained to parents face-to-face. LAs are, though, in those circumstances still required to set out the parents' appeal rights in writing.

I very much hope that the incidents brought to my attention represent a "blip"; I would be grateful, nevertheless, were you to forward the information in this letter to your officers. I will ask the SENTW President for an update when next we meet.

A handwritten signature in black ink, appearing to read 'Huw Lewis', written in a cursive style.

Huw Lewis AM/AC
Y Dirprwy Weinidog dros Blant
Deputy Minister for Children