



# Special Educational Needs Tribunal for Wales Annual Report 2016 – 2017

August 2018



# Contents

<b>Foreword</b>		3
<b>Section 1</b>	About Us	5
<b>Section 2</b>	Performance and Progress	8
<b>Section 3</b>	Our Customers	24
<b>Section 4</b>	Business Priorities	25
<b>Section 5</b>	Expenditure	26

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

# Foreword



This is my 14th Annual Report as President of the Special Educational Needs Tribunal for Wales. The report covers the period from September 2016 to August 2017. You will no doubt appreciate that this has been an extremely busy year for the Tribunal with our contribution to and scrutiny of the Additional Learning Needs and Education Tribunal (Wales) Bill. Consequently during the year I was called to the select committee to answer questions from Assembly members in relation to the proposed new bill. I expressed the Tribunals concern with the position of health in the New Bill.

As you are aware the Tribunal cannot order the Health authorities to provide the therapies required for the special educational needs of the child. This is extremely frustrating and strong representations were made with the committee in relation to this point.

During the year we had 144 appeals and 10 claims. This is an increase of 34% from the previous year. I can give no explanation as to why the numbers have increased, but if we look at the break down of the appeals, it can be noted that the majority of the appeals relate to refusal to assess and refusal to statement. It is quite obvious from my user group meetings that parents are naturally worried about the new act and its implications for their children. Consequently, it may well be that parents are keener to have a statement where all the regulations appertaining to the statement are clear, rather than testing the provisions under the new act. With the new act, our jurisdiction will be extended to children and young people up to the age of 25 years. Our concern regarding this is that we could see a substantial increase in our numbers which will have an impact on our resources. When the age range was increased in the English Tribunal, they saw an increase in appeals of 20%, Scotland saw a similar increase. The expansion of the age range will also necessitate further training to ensure we have the required skills to deal with challenges that we may face in dealing with young people. We are already considering what further training is required and we will be putting the same in place over the next 12 months.

In January 2017, I had my Annual Meeting with the Minister of Education, Alun Davies AM, Minister for Lifelong Learning and Welsh Language as in the past this proved a useful opportunity to discuss the needs of the Tribunal and future problems. I took the opportunity of again addressing the tensions between the Health Authority and Local Authority in relation to providing therapies to children with special educational needs. The Minister asked for my views in writing and he did take this up with the Health Authorities.

We have, during the year discussed the introduction of a pilot in relation to paper hearings, where parties do not attend, for refusal to assess appeals. Following a positive response a pilot has commenced which will finish in June 2018. All refusal to assess hearings will be conducted as paper hearings unless any of the parties object. We will be monitoring this pilot carefully and will also be discussing it further in our user group meeting. It is hoped that if it is successful, this change can be made permanent.

Towards the latter part of the reporting period, we started a recruitment process with the Judicial Appointments Commission to appoint two further chairs to the Tribunal. I hope to be able to report on this further in my next Annual Report.

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 resources 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.

**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.

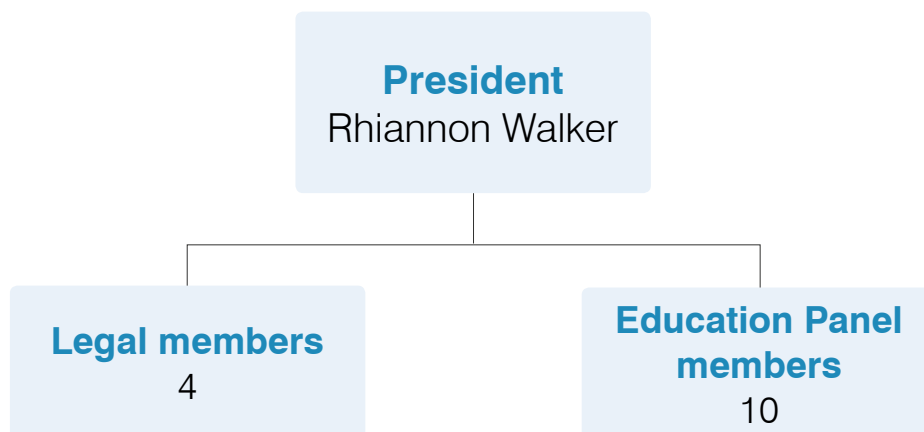
At a SENTW hearing the panel is composed of a legally qualified Chairperson and two Education Panel Members. Education Panel Members have been appointed for their general expertise and knowledge in the field of education.

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 no new appointments to the Special Educational Needs Tribunal for Wales during the reporting period. A recruitment event for Legal Members was launched towards the end of the year.

## Training

A full members' training conference was held in November 2016. Legal training was also held in March 2016 and Members attended Disability Discrimination training. 3 new education panel members completed their induction training.

## 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](mailto:tribunal.enquiries@gov.wales)

## Accessing the SENTW

The SENTW is happy to communicate with you in Welsh or English. If a Welsh speaker is not immediately available then we will arrange for a Welsh-speaking member of staff to phone you back.

You can choose to have your hearing conducted in Welsh or English. If your first language is not Welsh or English and you wish to speak in your first language during the hearing, we can arrange for an interpreter to be present. If you need a sign language interpreter to attend the hearing we will arrange this.

If you or anyone you are bringing to the hearing has any other access requirements that may affect our arrangements for the hearing, provision will be made.

To enable arrangements for interpreters or to make provision for any additional needs of attendees, sufficient notice must be given to the secretariat.

## Section 2 – Performance and Progress

### In this section:

- Numbers and statistics
- Hearings Data
- Reviews and onward appeals
- Achievement against key performance indicators
- Complaints

### Numbers and statistics

A Tribunal year runs from September to August. The following statistics are collated:

Appeals received and discharged in 2016-17, compared with 2015-16	Chart 2.1	Page 9
Types of appeals registered during 2016-17, compared with 2015-16	Table 2.2	Page 9
Appeals registered during 2016-17 by local authority, compared with 2015-16	Table 2.3	Page 10
Appeals registered during 2016-17 by local authority and type (Part 1)	Table 2.4	Page 11
Appeals registered during 2016-17 by local authority and type (Part 2)	Table 2.4	Page 12
Appeals registered during 2016-17 per 10,000 of school population in each local authority, compared with 2015-16	Chart 2.5	Page 13
Appeals registered during 2016-17 by school age and type of appeal	Table 2.6	Page 14
Appeals registered during 2016-17 by school age and local authority	Table 2.7	Page 15
Appeals registered during 2016-17 by special educational need, compared with 2015-16	Chart 2.8	Page 16
Appeals registered during 2016-17 by gender	Chart 2.9	Page 17
Appeals registered during 2016-17 by ethnic origin	Chart 2.10	Page 17
Appeals by outcome 2016-17, compared with 2015-16	Table 2.11	Page 18
Appeals by outcome and type 2016-17 (Part 1)	Table 2.12	Page 19
Appeals by outcome and type 2016-17 (Part 2)	Table 2.12	Page 19
Appeals by outcome and local authority 2016-17	Table 2.13	Page 20
Claims of alleged disability discrimination registered and discharged in 2016-17, compared with 2015-16	Chart 2.14	Page 21
Types of claims registered during 2016-17, compared with 2015-16	Table 2.15	Page 21
Claims of alleged disability discrimination by outcome 2016-17, compared with 2015-16	Chart 2.16	Page 22



Chart 2.1 Appeals received and discharged in 2016-17, compared with 2015-16

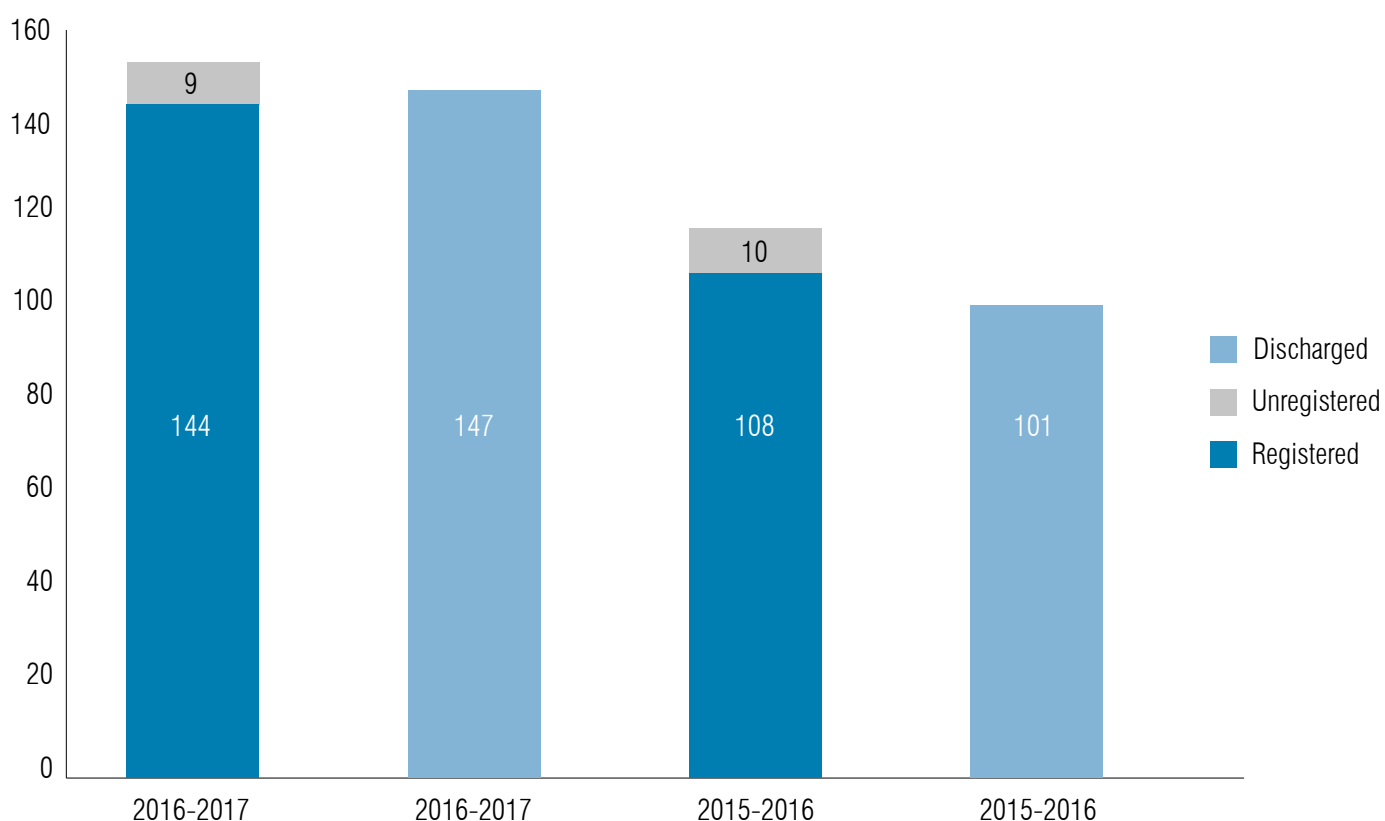


Table 2.2 Types of appeals registered during 2016-17, compared with 2015-16

Type of Appeal	2016-2017		2015-2016	
	Total Appeals 144		Total Appeals 108	
Refusal to Assess	65	45%	45	41%
Refusal to Statement	18	13%	10	9%
Refusal to Re-assess	1	1%	3	3%
Cease Statement	2	1%	2	2%
Contents of Statement Parts 2 & 3	14	10%	11	10%
Contents of Statement Parts 2, 3 & 4	25	17%	25	23%
Contents of Statement Part 3 only	6	4%	4	4%
Contents of Statement Part 4 only	12	8%	5	5%
Contents of Statement Parts 3 & 4	1	1%	3	3%

Table 2.3 Appeals registered during 2016-17 by local authority, compared with 2015-16

	2016-2017		2015-2016	
	Number of Appeals	Percentage of Appeals	Number of Appeals	Percentage of Appeals
Blaenau Gwent	1	1%	0	0%
Bridgend	10	7%	9	8%
Caerphilly	3	2%	1	1%
Cardiff	9	6%	9	8%
Carmarthenshire	8	6%	3	3%
Ceredigion	4	3%	7	6%
Conwy	14	10%	12	11%
Denbighshire	3	2%	4	4%
Flintshire	2	1%	2	2%
Gwynedd	2	1%	2	2%
Merthyr Tydfil	0	0%	1	1%
Monmouthshire	2	1%	4	4%
Neath Port Talbot	4	3%	0	0%
Newport	10	7%	12	11%
Pembrokeshire	5	3%	3	3%
Powys	4	3%	8	7%
Rhondda Cynon Taf	21	15%	6	6%
Swansea	29	20%	12	11%
Torfaen	3	2%	4	4%
Vale of Glamorgan	6	4%	7	6%
Wrexham	3	2%	2	2%
Ynys Mon	1	1%	0	0%

Table 2.4 Appeals registered during 2016-17 by local authority and type (Part 1)

	Refusal to Assess	Refusal to Statement	Refusal to Re-assess	Cease to Maintain
Blaenau Gwent	0	0	0	0
Bridgend	4	1	0	0
Caerphilly	0	0	0	0
Cardiff	3	2	0	0
Carmarthenshire	4	2	0	0
Ceredigion	0	1	0	2
Conwy	6	4	0	0
Denbighshire	1	1	1	0
Flintshire	2	0	0	0
Gwynedd	1	0	0	0
Merthyr Tydfil	0	0	0	0
Monmouthshire	0	2	0	0
Neath Port Talbot	1	0	0	0
Newport	5	0	0	0
Pembrokeshire	3	0	0	0
Powys	3	0	0	0
Rhondda Cynon Taf	14	2	0	0
Swansea	13	2	0	0
Torfaen	1	1	0	0
Vale of Glamorgan	3	0	0	0
Wrexham	2	0	0	0
Ynys Mon	0	0	0	0

Table 2.4 Appeals registered during 2016-17 by local authority and type (Part 2)

	Contents of Statement Parts 2 & 3	Contents of Statement Parts 2, 3 & 4	Contents of Statement Part 3	Contents of Statement Parts 3 & 4	Contents of Statement Part 4
Blaenau Gwent	0	0	0	0	1
Bridgend	0	5	0	0	0
Caerphilly	1	2	0	0	0
Cardiff	2	1	0	0	1
Carmarthenshire	0	1	1	0	0
Ceredigion	1	0	0	0	0
Conwy	0	3	1	0	0
Denbighshire	0	0	0	0	0
Flintshire	0	0	0	0	0
Gwynedd	0	0	1	0	0
Merthyr Tydfil	0	0	0	0	0
Monmouthshire	0	0	0	0	0
Neath Port Talbot	1	2	0	0	0
Newport	3	1	0	0	1
Pembrokeshire	1	1	0	0	0
Powys	0	0	0	0	1
Rhondda Cynon Taf	1	3	0	0	1
Swansea	2	4	1	0	7
Torfaen	0	0	0	0	1
Vale of Glamorgan	1	1	0	1	0
Wrexham	0	0	0	0	1
Ynys Mon	0	0	1	0	0

Chart 2.5 Appeals registered during 2016-17 per 10,000 of school population in each local authority, compared with 2015-16

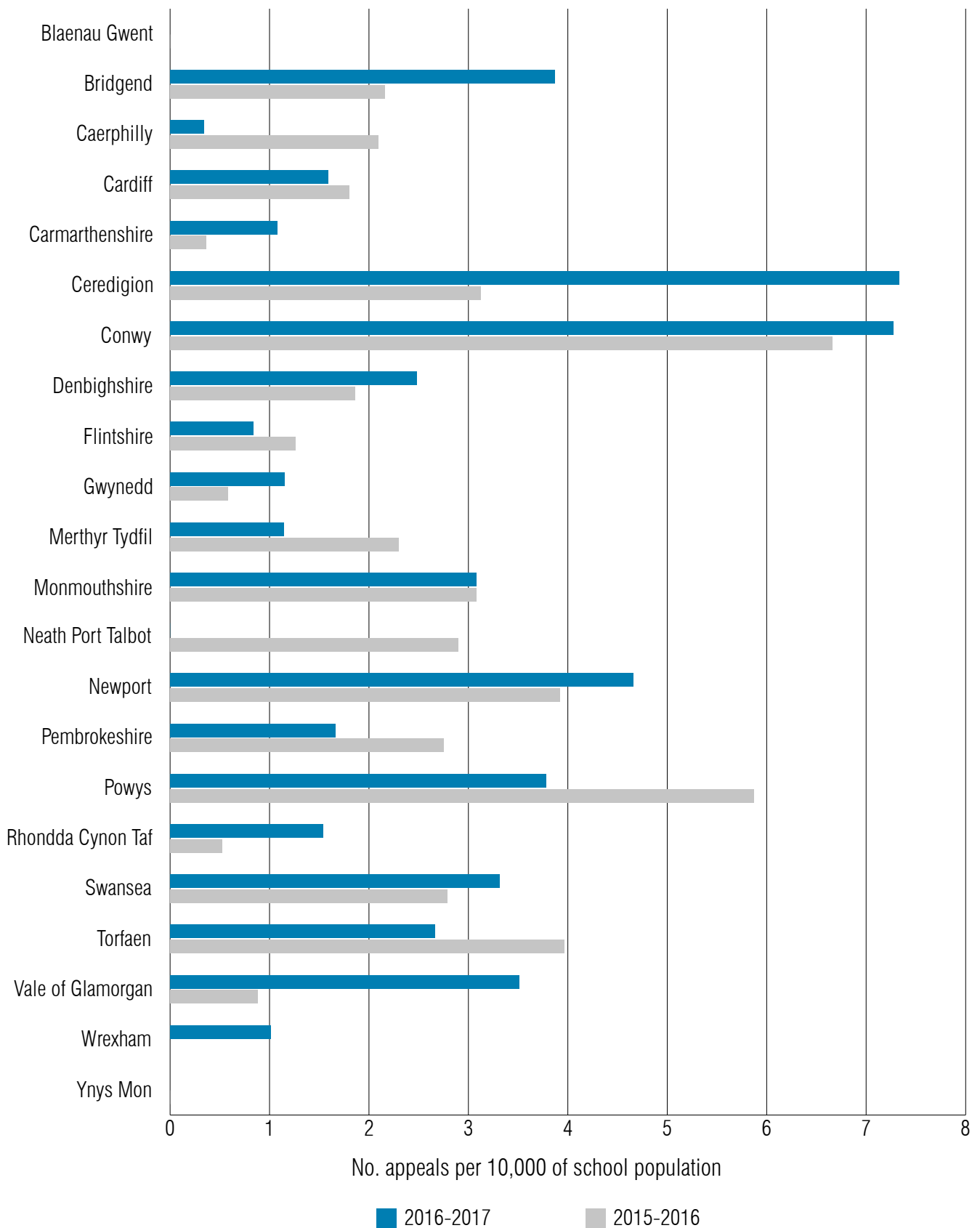


Table 2.6 Appeals registered during 2016-17 by school age and type of appeal

	Number of appeals			
	Nursery	Primary	Primary Transition <sup>1</sup>	Secondary
Refusal to Assess	3	42	5	15
Refusal to Statement	0	10	1	7
Contents of Statement Parts 2 & 3	0	10	1	3
Contents of Statement Parts 2, 3 & 4	0	17	3	5
Contents of Statement Part 3	0	5	1	0
Contents of Statement Parts 3 & 4	0	1	0	0
Contents of Statement Part 4	0	5	5	2
Refusal to Re-assess	0	0	0	1
Cease Statement	0	0	0	2
<b>Total</b>	<b>3</b>	<b>90</b>	<b>16</b>	<b>35</b>

<sup>1</sup> Primary transition – the final year of primary education before starting secondary school

Table 2.7 Appeals registered during 2016-17 by school age and local authority

	Number of appeals			
	Nursery	Primary	Primary Transition	Secondary
Blaenau Gwent	0	1	0	0
Bridgend	0	9	0	1
Caerphilly	0	3	0	0
Cardiff	0	6	0	3
Carmarthenshire	0	7	1	0
Ceredigion	0	1	0	3
Conwy	0	9	1	4
Denbighshire	0	0	0	3
Flintshire	0	2	0	0
Gwynedd	0	2	0	0
Merthyr Tydfil	0	0	0	0
Monmouthshire	0	1	0	1
Neath Port Talbot	0	3	1	0
Newport	0	6	3	1
Pembrokeshire	0	2	1	2
Powys	0	1	0	3
Rhondda Cynon Taf	1	14	1	5
Swansea	2	17	6	4
Torfaen	0	3	0	0
Vale of Glamorgan	0	1	1	4
Wrexham	0	1	1	1
Ynys Mon	0	1	0	0
<b>Total</b>	<b>3</b>	<b>90</b>	<b>16</b>	<b>35</b>

Chart 2.8 Appeals registered during 2016-17 by special educational need, compared with 2015-16

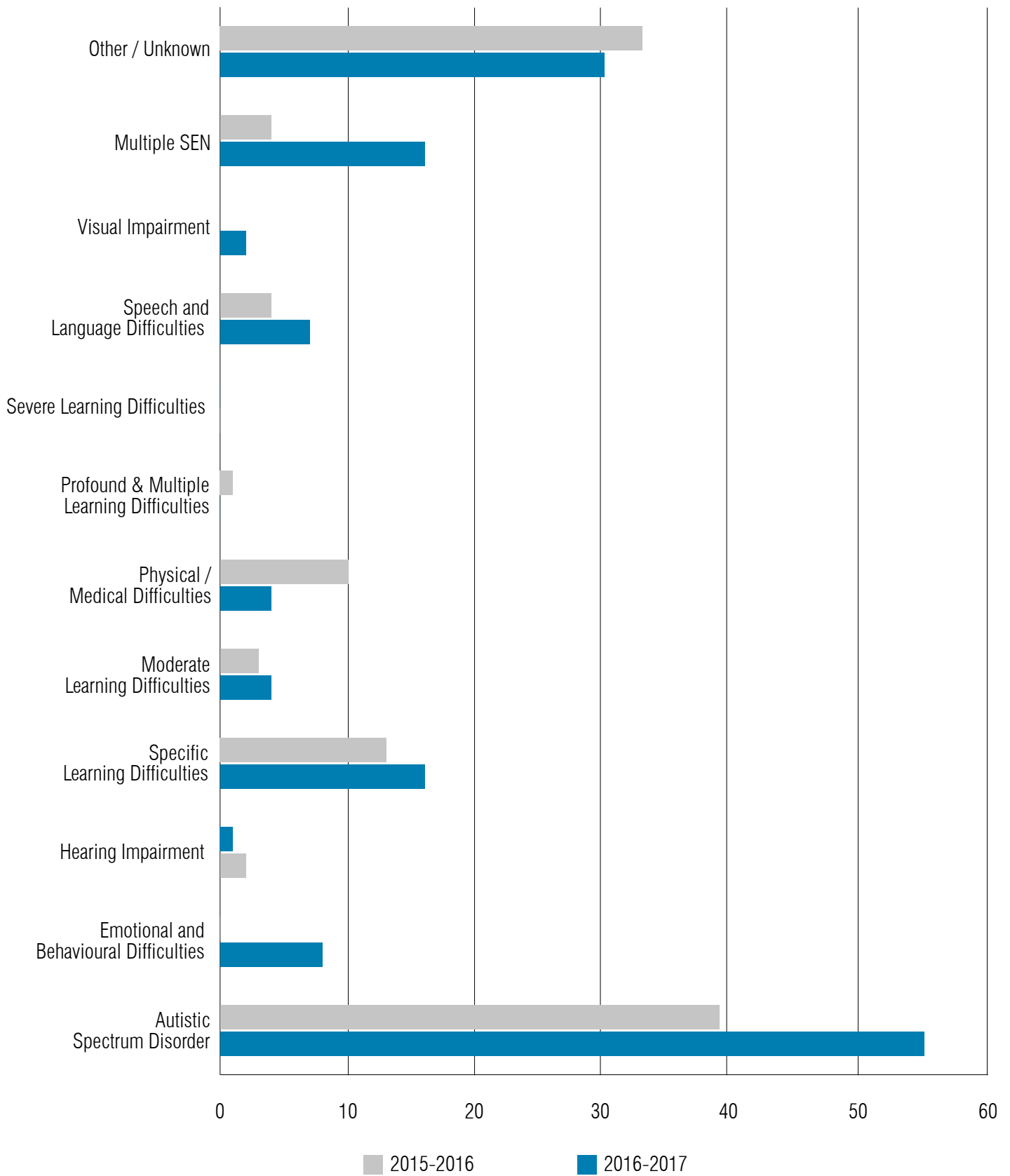




Chart 2.9 Appeals registered during 2016-17 by gender

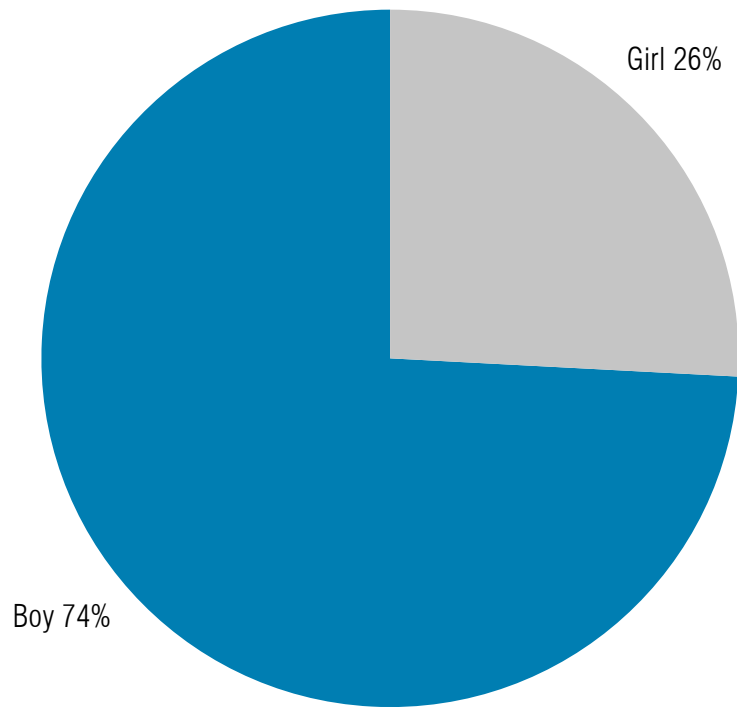


Chart 2.10 Appeals registered during 2016-17 by ethnic origin

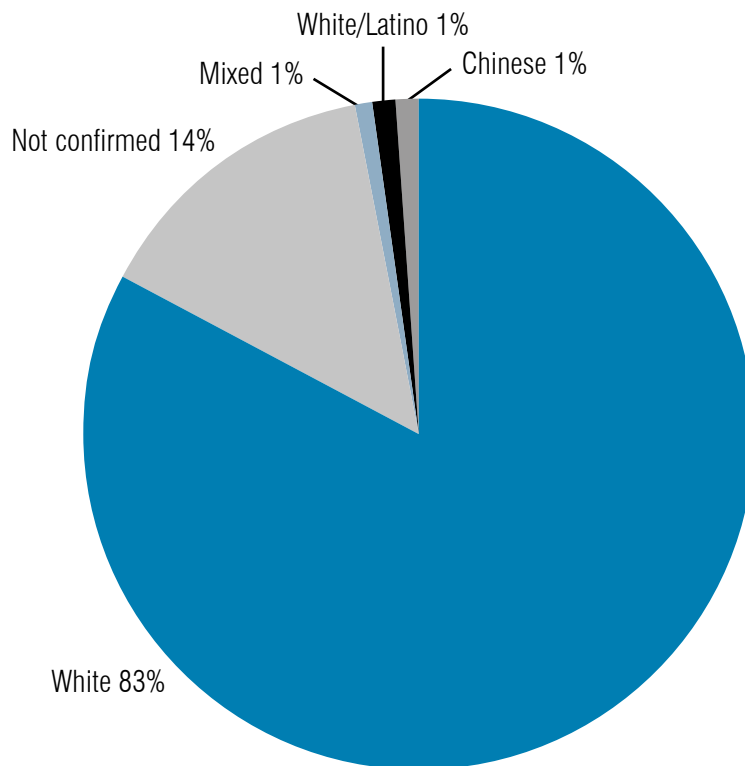


Table 2.11 Appeals by outcome 2016-17 (inc carried over appeals), compared with 2015-16

	2016-2017		2015-2016	
	Actual	Percentage	Actual	Percentage
Conceded <sup>2</sup>	67	39%	38	30%
Withdrawn <sup>3</sup>	29	17%	20	16%
Withdrawn by consent	18	10%	15	12%
Upheld in Full	15	9%	15	12%
Upheld in Part	6	4%	3	2%
Dismissed	8	5%	9	7%
Remitted <sup>4</sup>	0	0%	0	0%
Struck Out <sup>5</sup>	4	2%	1	1%
Pending <sup>6</sup>	23	14%	16	20%
<b>Total</b>	<b>170</b>	<b>100%</b>	<b>127</b>	<b>100%</b>

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> Remitted – the tribunal decides that the appeal should be sent back to the LA for it to reconsider its original decision.

<sup>5</sup> Struck Out – a case is struck out when it is not/or becomes no longer within the jurisdiction of the tribunal to consider it. This brings the appeal to a close.

<sup>6</sup> Pending – a case is on going with the tribunal.

Table 2.12 Appeals by outcome and type 2016-17 (Part 1)

	Refusal to Assess	Refusal to Statement	Refusal to Re-assess	Cease to Maintain
Conceded	49	10	0	0
Withdrawn	4	2	0	0
Upheld in Full	3	1	0	0
Upheld in Part	0	0	0	0
Dismissed	3	2	0	1
Remitted	0	0	0	0
Struck Out	0	0	1	1
Pending	7	3	0	0
<b>Total</b>	<b>66</b>	<b>18</b>	<b>1</b>	<b>2</b>

Table 2.12 Appeals by outcome and type 2016-17 (Part 2)

	Contents of Statement Parts 2 & 3	Contents of Statement Parts 2, 3 & 4	Contents of Statement Part 3	Contents of Statement Parts 3 & 4	Contents of Statement Part 4
Conceded	0	0	1	0	5
Withdrawn	8	8	4	0	7
Upheld in Full	2	3	1	0	0
Upheld in Part	0	4	0	0	0
Dismissed	1	1	0	0	0
Remitted	0	0	0	0	0
Struck Out	2	0	0	0	0
Pending	3	10	0	0	1
<b>Total</b>	<b>16</b>	<b>26</b>	<b>6</b>	<b>0</b>	<b>13</b>

Table 2.13 Appeals by outcome and local authority 2016-17

	Conceded	Withdrawn	Withdrawn by consent	Upheld in Full	Upheld in Part	Dismissed	Struck Out	Pending
Blaenau Gwent	1	0	0	0	0	0	0	0
Bridgend	5	3	0	0	1	0	0	3
Caerphilly	0	0	2	0	0	0	0	1
Cardiff	5	0	0	0	0	1	1	2
Carmarthenshire	3	0	2	1	0	0	0	1
Ceredigion	1	1	0	0	0	1	2	0
Conwy	7	1	1	3	0	2	0	2
Denbighshire	2	0	0	0	0	0	1	1
Flintshire	1	0	0	0	0	0	0	1
Gwynedd	1	0	1	0	0	0	0	1
Merthyr Tydfil	0	1	0	0	0	0	0	0
Monmouthshire	1	1	0	1	0	0	0	0
Neath Port Talbot	1	3	0	0	0	0	0	0
Newport	4	5	3	0	1	0	0	0
Pembrokeshire	1	0	1	2	0	0	0	3
Powys	2	1	0	1	0	0	0	1
Rhondda Cynon Taf	14	3	0	2	0	1	0	4
Swansea	14	7	4	3	1	2	0	2
Torfaen	1	0	0	0	1	0	0	1
Vale of Glamorgan	3	1	4	1	2	0	0	0
Wrexham	0	1	0	1	0	1	0	0
Ynys Mon	0	1	0	0	0	0	0	0
<b>Total</b>	<b>67</b>	<b>29</b>	<b>18</b>	<b>15</b>	<b>6</b>	<b>8</b>	<b>4</b>	<b>23</b>

Chart 2.14 Claims of alleged disability discrimination registered and discharged in 2016-17, compared with 2015-16

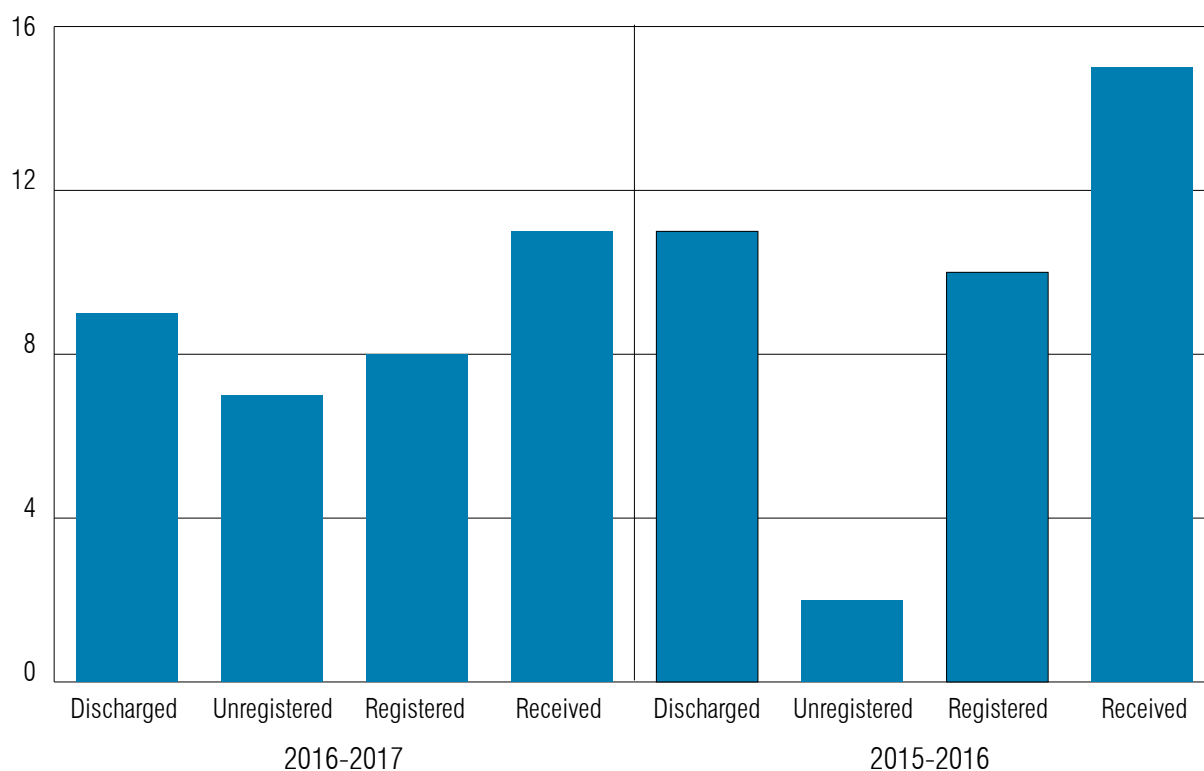
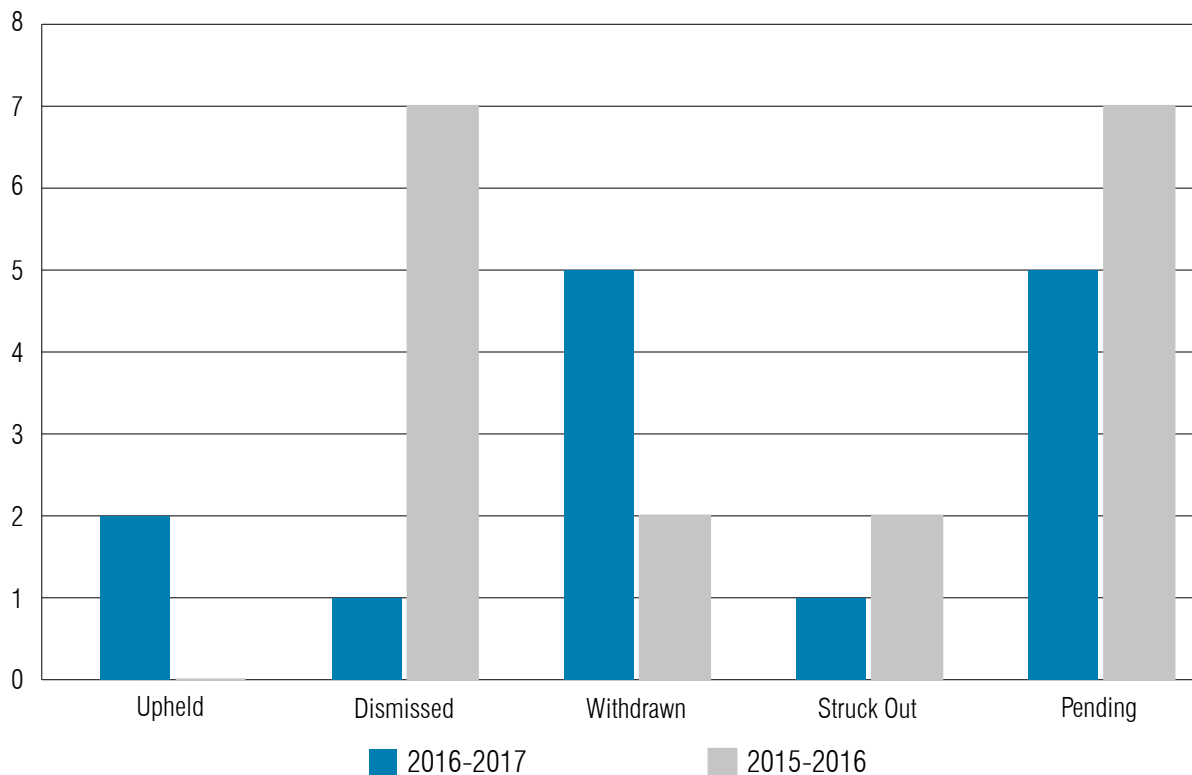


Table 2.15 Types of claims registered during 2016-17, compared with 2015-16

Type of Claim	2016-2017		2015-2016	
	Total Claims 8		Total Claims 10	
Admissions	0	0%	1	1%
Education	4	50%	2	20%
Exclusions	4	50%	7	70%

Chart 2.16 Claims of alleged disability discrimination by outcome 2016-17, compared with 2015-16



## Hearings Data

During 2016-2017, 38 cases proceeded to hearing, resulting in a total of 50 hearing days:

Type	Length (in days)
Appeal	45 hearing days
Claim	5 hearing days

## Reviews and onward appeals

Applications for a review of a Tribunal decision can be made by parties on limited grounds. Over the period of this report, three applications were made, 2 were allowed and one refused.

Parties may request permission of the Tribunal to make an application to the Upper Tribunal if they think that the Tribunal's decision is wrong on a point of law. Over the period of this report, 2 requests for permission were made. The Tribunal refused permission in one case and allowed a review in the second. The Tribunal are also dealing with one case remitted back by the Upper Tribunal.

## Achievement against key performance indicators

To monitor how effectively services are delivered, we have key performance indicators aimed at measuring two key aspects of our business; the speed of our service and the quality of service through customer satisfaction.

To measure the speed of our service, we have a series of primary performance indicators based on the time taken to process an application – from receipt to the hearing or disposal (see below). To measure customer satisfaction, we used an indicator that is derived from periodic customer surveys issued at the conclusion of a case (see section 3).

### Speed of our service



### Complaints

The Tribunal received complaints relating to one case during the course of the year.

## Section 3 – Our Customers

### In this section:

- Customer satisfaction survey

### Customer satisfaction survey

The Tribunal strives to improve customer service delivery and aims to put our customers at the heart of everything we do.

Our customer satisfaction survey is issued at the conclusion of a case. The survey results enable us to gain a better understanding of our customers' needs and give us a valuable insight into what the Tribunal is doing well, as well as highlighting those areas where the Tribunal needs to improve.

We received 12 completed forms during 2016-2017 period. We collate information in respect of the following areas:

#### Communication

100% said we were prompt to respond. 91% said we were polite and helpful, the remaining 15% neither agreed or disagreed. 91% said the information we provided was accurate and clear.

#### Service

82% said they were able to understand the process, with 1 parent and 1 Local Authority representative saying they could not.

67% said they found the guidance booklets helpful, with a further 17% expressing no opinion. 92% said that we processed their application efficiently.

#### Hearing

100% said they were satisfied with the location of the hearing venue and that our staff were polite and helpful at the hearing.

#### Website

All responses who confirmed they used the website, confirmed that they found it helpful.



## Section 4 – Business Priorities

### **In this section:**

- Business priorities for 2017- 2018

It is important that the SENTW continues to develop in order to deliver the best possible service for our customers. This section is about how the SENTW will build on its achievements through focusing on business priorities and our commitment to our users.

- Plan and deliver an all-members training event
- Plan and deliver User Group meetings in North and South Wales
- Organise and conduct appraisals for all members
- Continue to monitor and update the Special Educational Needs Tribunal for Wales' website
- Continue to feed into the Welsh Government consultation on Additional Learning Needs and Education Tribunal (Wales) 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 2016-2017 financial year

### Expenditure for 2016-2017 financial year

Content	Amount
Members Fees and Expenses for tribunal proceedings	£101,000
Tribunal events inc hearing costs	£24,000
Total*	£125,000

\* rounded to the nearest £1,000