



Additional Support Needs  
Tribunals for Scotland

**Third Annual Report of the President of the  
Additional Support Needs Tribunals for Scotland**

**2007/2008**



Additional Support Needs  
Tribunals for Scotland

**Third Annual Report of the President of the  
Additional Support Needs Tribunals for Scotland**

**2007/2008**





Additional Support Needs  
Tribunals for Scotland



Fiona Hyslop MSP  
Cabinet Secretary for Education and Lifelong Learning  
Victoria Quay  
Edinburgh  
EH6 6QQ

**May 2008**

**To Fiona Hyslop MSP, Cabinet Secretary for Education and Lifelong Learning**

I have pleasure in submitting this, my third Annual Report, to Ministers of the Scottish Parliament.

Jessica M Burns

**Jessica Burns**  
**President of the Additional Support Needs Tribunals for Scotland**

Europa Building  
450 Argyle Street  
Glasgow G2 8LG

Tel: 0141-242 0368  
Fax: 0141-242 0360  
jessica.burns@asntscotland.gov.uk  
www.asntscotland.gov.uk



# Contents

President's Foreword	2
Tribunal Performance	2
The Legislation	3
Co-ordinated Support Plans	3
Standards of Decision Making	7
Appeals to the Court of Session	8
Appointments	8
Training and Appraisal	9
Presidential Guidance and Directions	10
Representation	10
Tribunal User Group	11
Outreach	11
Objective Case Management System	12
Research	13
The Secretariat	13
The Tribunals and Administrative Justice	14
<b>Appendices</b>	
Appendix One: ASNTS Expenditure	15
Appendix Two: Caseload Statistics	16
Appendix Three: Presidential Guidance and Directions	22
Appendix Four: Tribunals' Membership	23
Appendix Five: ASNTS – Organisation Chart	24

# President's Foreword

I am presenting this, my third Annual Report, under the terms of Paragraph 15(1) of Schedule 1 to the **Education (Additional Support for Learning) (Scotland) Act 2004** which provides that "The President must, in respect of each reporting year, prepare a written report as to the exercise of the Tribunal functions during that year."

The Act itself came into force on 14 November 2005 shortly after I took up post. Schedule 1 provides for a reporting year to be the period from 1 April ending with 31 March next. This Report therefore concerns the second full year of the Tribunals' existence which has seen a steady growth in the caseload of the Tribunal rising from 42 to 76 references. My report sets out the activity of the Tribunals over the past year and tries to place them in the wider context of the provision for additional support needs in Scotland.

In my report any reference to "child" or "children" should be read as including references to young people also. To date no reference has been submitted by a young person in their own name. Those submitted on behalf of young persons aged 16 or over have concerned persons who lacked sufficient capacity to bring their own reference.

## Tribunal Performance

It is proper that each Tribunal should aim to achieve a hearing consistent with user expectations and that this is demonstrable and measurable.

In contrast to last year when we were able to meet our targets in respect of concluding references within the four-month timescale and issuing decisions within 10 days in almost all cases, we have struggled to meet these timescales in the current year for a number of reasons largely out of Secretariat or judicial control. Although the number of oral hearings is modest, just 18 last year, many of these have been complex and have taken several days to hear. When the hearing is not completed in its allocated time, then continuations will inevitably extend the clearance times and it may be appropriate to revise the target time to reflect the date of first hearing rather than final clearance. Difficulties in arranging further hearing dates have been due to restricted availability of representatives, parties, witnesses and Tribunal members and conveners; but the illness of a representative and a convener added to these delays.

In all but the most complex cases the target for clearing the 10 working day issue of the decision has been met. This is an exacting target to be met and it is to the credit of conveners that delays in this regard have been minimal.

As with all tribunals in Scotland, we have received visits from members of the Scottish Committee of the Administrative Justice and Tribunals Council and their reports have been helpful and positive about the arrangements for the hearing and tribunal performance in almost all respects.

Appraisal has commenced and the recording of all Tribunal hearings ensures that there is a record of the Tribunal's questioning and the oral evidence given in the event of any complaint or appeal. It has recently been noted in the context of an appeal to the Court of Session where a transcript of the recording was obtained that the digital recording system used may not offer high enough quality recordings from which to produce a CD for issue to parties and an upgrading of this system is being explored. In a jurisdiction where hearings are held in private, the availability of a recording of the proceedings is one way in which an appropriate degree of transparency can be demonstrated.

## The Legislation

Undoubtedly one of the most important tasks of any new tribunal system is to understand and interpret the legislation correctly. As I reported last year, I was invited in my capacity as President, to contribute in a working group on the legislation set up in December 2006 under the auspices of the Support for Learning Advisory Group. The then Secretary was invited to join the Communication sub-group but neither the President nor the Secretary was a member of the Advisory Group. The work of the Communications Group has resulted in some ongoing initiatives to better inform potential users of the legislation. The outcome of the results of the working group on the legislation is still awaited and I will contribute fully to any consultation. The issues which I previously highlighted remain a concern and it is in the interests of all concerned that the legislation be amended to ensure that the policy intention is properly met.

## Co-ordinated Support Plans

The jurisdiction of the Tribunal is a very limited one in relation to the widespread changes introduced by the Education (Additional Support for Learning) (Scotland) Act 2004 but it does focus on those children whose needs are so great that they meet, or arguably meet, the criteria for a co-ordinated support plan (CSP). This is the statutory tool which captures the needs of the child and provides the mechanism whereby these can be met through education supported by input from other agencies. Although the Code of Practice provides a template and indicates the broad content of the CSP, it has been a challenge for the education authorities applying the new legislation to try and ensure that all those children who meet the criteria are correctly issued with a plan. More than two years after the implementation of the Act, there are still a number of unresolved issues concerning the conditions for opening a plan.

The HMIE Report on the *Implementation of the Education (Additional Support for Learning) (Scotland) Act 2004* published in October 2007 drew attention to some of the deficiencies which had been noted in inspections. Since the

appropriateness and content of these CSPs is a major part of the jurisdiction of the Tribunal there is an understandable interest in the quality and content of these plans. A number of references received this year have specifically challenged the content of the CSP but few have proceeded to hearing due to the potential to reach an agreement with the parents on amending the content and thus avoiding a hearing which might scrutinise the plan. The expectation that decisions of the Tribunals might provide more detailed direction on content has thus not been realised. In one observed hearing in the reporting year an authority resisted a reference where the parent argued that the co-ordinated support plan failed to provide the specification which he was entitled to receive concerning his child's education. The authority in that case argued that the IEP (Individualised Education Plan) was the correct place to indicate times and targets and that it was inappropriate that these be recorded in any document which has a statutory status. If this is correct interpretation of the legislation then it leaves the CSP as a rather blunt tool for clarifying the support which the child, and parents, is entitled to expect.

In trying to provide some Tribunal overview of this aspect I have reviewed the content of the 24 CSPs which have been produced in relation to a reference in the reporting year. Whilst it is appreciated that this is only a modest sample of CSPs, it is also the case that a parent has not been satisfied with the content of the plan. The sample contained CSPs from 13 authorities. Of these almost all used or adapted the plan contained in the Code of Practice. One authority used their own template which did not allow any space specifically for the views of the parent or child but included a much longer narrative section on the child giving far more detail than that found in the standard template.

Since the Code of Practice provides guidance on the issues which should be contained in a co-ordinated support plan, a starting point was to analyse the extent to which those plans contained in reference bundles were compliant with this guidance. The Code states in the "Educational Objectives" column "The objectives should be specific and should be set for a minimum of 12 months but this could be longer depending on the individual circumstances". In the "Additional support required" column it states "This will include teaching and other staffing arrangements, appropriate facilities and resources."

The HMle Report referred to above, highlights at page 15 inconsistencies noted, particularly the failure to ensure that the plans are SMART (Specific, Measurable, Achievable, Relevant and Time-related). This feature is also noted in the 24 CSPs which I reviewed in the current reporting year. This is too small a sample to be statistically reliable on its own but findings are largely consistent with the HMle observations. For instance, while plans were good at identifying the nature of the additional support required, only two included any quantification of this input from other agencies and one other plan set out the timescales of how the provision would change or be reviewed over the year of the plan where it was anticipated that the child would be re-integrated into mainstream education. One further plan indicated that the amount of input and timescales were set out in the IEP which was not produced. This is consistent with the guidance in paragraph 45 of the code which states "Short-term objectives should continue to be contained within the personal learning plan or an individualised educational programme or other plan." Whilst it is accepted that the IEP is subject to more frequent review and

shorter target setting, most CSPs do not make it clear how the IEP and the CSP are expected to sit together. When it is considered that some of these CSPs relate to children about to undertake a transition year between primary and secondary education, it is remarkable that none should contain specific reference to this contemplated change in the child's education and the proposed ways of managing this.

Almost all CSPs read as statements of what provision was then in place and not what was planned over the current year. This may reflect apprehension from providers that the plan will be read as a contract by the parent who may take action against the authority if the plan is not delivered to the letter. It may also reflect the likelihood that the child's circumstances will change to an extent which is not predictable over the year and that it is not possible to be more explicit. If this is the case it was not stated. The very vague and general nature of the content of almost all plans was striking. In only two, or possibly three, did the plan read as if the nature of the content from other agencies had been written by the person who would deliver that provision. Many were extremely brief and five did not complete the section on the review date.

Another aspect was the completion of sections for the views of the parent and child to be recorded. In a third of those reviewed this part was not completed or was very cursory. Where this is not completed then it would be helpful for the plan to state why this could not be completed. Other examples of bad practice were where in the parental comment box was typed, "Parent did not volunteer comment on the draft." In another where the views of the child were supposed to be recorded "none received to date" was entered.

There were also examples of good practice. For instance, where the child was not able to express their views, photos of the child at school were included; or in another the views of both the parent and child were expressed in first person terms indicating a real engagement with both to ensure that their views were properly and authentically recorded. A further example was where comments from a letter from the parent were copied into the report rather than just summarised.

The challenge for the Tribunal is that where the CSP appears to be lacking in specificity, although the preferred decision might be to revise the plan to ensure its content is sufficiently explicit, if the authority declines to lead the necessary evidence to enable this to be done effectively as an incorporation into the decision, the Tribunal is left to make a direction in its decision setting out the necessary changes without any assurance that this will, in fact be implemented. The very label given to the plan, "Co-ordinated Support Plan", indicates that it is designed to achieve the necessary co-ordination for the child to benefit from education with the support of other agencies. None of the plans reviewed gave any indication as to how this provision might be co-ordinated. Any dissatisfaction with the terms of the CSP is most likely to be due to the failure to be clear about the precise nature of the contribution from other agencies, dates of meetings, duration and frequency of input, review of the provision and identification of the provider.

Where the Tribunal directs something to be done, or something to be done within a specific timescale, it would assist if the Tribunal had a liberty to apply provision whereby any failure to take the required action could be referred back to the Tribunal at the expiry of that timescale. Currently there is no way to monitor the effectiveness of the implementation of Tribunal decisions. The remedy indicated in the Code of Practice is to make an application for Independent Adjudication but I have confirmed that to date only 1 application has been received on failure to implement a co-ordinated support plan or Tribunal decision. Since the power of the Independent Adjudicator is restricted to a recommendation to the authority through a process which may take two months, it is not clear how this could provide a useful remedy. Feedback on the failure of any authority to implement a CSP or a decision of a Tribunal on this point is therefore anecdotal.

From the limited numbers of CSPs produced in the bundles for Tribunals, they appear to poorly demonstrate the content anticipated by the Code of Practice. As the Act is still in the early stages of implementation and all plans considered were the initial CSP, it may be that at the annual review stage there will be greater confidence about being more precise about the content of the plans.

*The Statistical Bulletin* (Education Series EDN/B1/2008/1) issued on 26 February 2008 summarised information from the annual pupil census of September 2007. The figures captured are just prior to the end of the two-year transition for pupils who formerly had a record of needs and required to be considered for a CSP by 15 November 2007. The expectation that there would be less variance in the numbers of CSPs than record of needs is not supported by the available statistics which shows striking disparities between regions. These may be, in part, explained by one interpretation of the legislation which suggests that a CSP is only required where the additional support services from other agencies are externally negotiated and if they are provided in-house as no co-ordination is required then no CSP is necessary. If this is the correct interpretation of the legislation then the numbers of CSPs will not reflect the numbers of children requiring multi-agency support to enable them to access education but will reflect the way in which the arrangements for delivery of such support differ from authority to authority. The figures were commented on with caution in the Bulletin. However, this reading of the provisions may account for the low numbers of children in special schools who have CSPs. The total number of CSPs reported in Scotland as at September 2007 was only 1856 and although this figure does not reconcile with some other data produced on any reading it does not exceed 2000 in contrast to the numbers of children with reported needs which totals 27,334. This represents no more than 7% of those children with additional support needs and illustrates the limited jurisdiction of the Tribunal.

# Standards of Decision Making

In my previous *Annual Report* I drew attention to the quality of decision making by the authorities and included as an annex to that report, a style of decision letter which might assist authorities to ensure that all the relevant information was provided to the parent on being issued with a decision arising from the legislation and giving rise to appeal rights.

I have again reviewed the standard of decision making so far as it related to references being submitted to the Tribunal. Of the 75 references considered, in 42 there was no decision letter as the reference was based on a “deemed” decision or failure to meet prescribed timescales. The issue of timescales and clarity on this aspect, for parents and authorities alike, is a recurring theme and it appears that authorities are interpreting the provisions as if there is no applicable timescale until it has been decided to open a CSP. This is, at least, inconsistent with the policy intention, arguably wrong in law and a factor which apparently results in considerable uncertainty for many parents.

In the remaining 33 references the standard of decision letter was variable but only two contained all the relevant information. Six wrongly advised the parent that the Education Appeal Committee was the appropriate body for any onward right of appeal; of the remaining 25, all were deficient in one or more respects. One, advising of the refusal of a placing request, extended to five lines of text only and did not advise of any appeal rights. More than half of the letters did, however, explicitly advise of appeal rights to the Tribunal but failed to do so in a helpful way. Some did not indicate any time limit for making an appeal, some misdirected the parent in respect of information, for instance, “If you would like to appeal to a Tribunal, or if you would like information about how to appeal contact your school, your Area Education Manager or the Additional Support for Learning Co-ordinator.” In this instance, no names or contact points were given. Another two referred to information “previously sent”. Many did not make any reference to the possibility of mediation. One strategy for ensuring parents are aware of their rights to challenge decisions relating to the content of CSPs is to attach a page to every CSP advising parents of routes of redress should they be dissatisfied with the CSP.

However, as noted above, the most likely scenario is the absence of any explicit decision and a sense of drift around many of the references where the parent has been engaged in a protracted dialogue with the authority without being advised of any timescale for the assessment period or the decision making process being set. The evidence is of very different working practices within authorities, some processes being driven by the Education Department and others by the schools themselves. Given the low numbers of CSPs referred to above, the expertise is spread very thinly and it would not be surprising if the lack of volume of CSPs actually made it more difficult for authorities to adhere to robust procedures. Despite these observations it is clear that there is a great deal of very good work which is being done to implement the legislation, particularly by many Support for Learning Officers and in relation to communication between education and other agencies. Indications of the quality of decision making are equivocal and the

modest volume of appeals may also reflect good levels of satisfaction with existing provision.

The chart in Figure 3 of Appendix 2 illustrates the very low numbers of children with Social Emotional and Behavioural problems where a reference has been brought. To date there have been no references for looked after children or any with a history of involvement with the Children's Hearing system. The presence or absence of a parent prepared to advocate for the child's education may be the most important single factor in bringing a reference.

## Appeals to the Court of Session

Where a party wishes to challenge the decision of the Tribunal, the sole appeal route is to the Court of Session where appeals have invariably been remitted to a single Outer House judge for hearing. As at the end of the reporting year three appeals were pending before the Court of Session.

A statistical overview is provided in Appendix 2 (Item 10).

Clarification of the interpretation of the legislation and some procedural aspects is to be welcomed where new statutory provisions are introduced. It may be argued that the existing appeal mechanisms are disproportionate to the issues raised by some appeals and not consistent with the ethos of additional support needs but the guidance already provided by the opinions of the court is helpful in signposting the way in which the legislation should be approached. It may also be that the weight of a decision from the Court of Session and the profile of such appeals are helpful in interpreting the legislation at this developmental stage. The possibility of an internal review procedure, particularly if both parties are agreed there has been an error of law, would provide an accelerated no-cost procedure which would permit a re-hearing.

## Appointments

During the year, two of our conveners resigned on taking up other appointments. A modest recruitment exercise in August 2007 resulted in three new conveners being appointed to the panel together with seven additional members. Recruitment of a number of new members was considered necessary to ensure that the range of relevant disciplines represented on the Tribunal remained current and properly reflective of the expertise of those involved in health and social work. It was further necessitated by the relatively high number of references from City of Edinburgh and the need to avoid any conflicts together with a number of lengthy appeals where there was some difficulty in finding members able to give the time commitment required. The number and quality of the applicants was high and demonstrated that there is a ready pool of suitably qualified persons to serve on the Tribunal.

# Training and Appraisal

The importance of ensuring that conveners and members are appropriately trained to carry out their functions to the highest possible standard is fully recognised and the induction training of the new members and the refresher training for existing members was held back to back to enable the established members to meet the new members at the earliest opportunity. New members and conveners will sit, at least for the first year, only with two experienced colleagues. The attendance at training reflects the continued high level of commitment shown by members. The actual sitting levels of members and conveners remain modest due to the high numbers of references which are listed but do not proceed to a hearing, often at very short notice, either because opposition to the reference is withdrawn, as in almost all the references relating to failure to meet specified timescales, or because the authority and the parent are able to reach agreement prior to the hearing. The hearings most likely to proceed are those relating to the refusal of a placing request. Since there must be an offer of a place for the child if the school is independent then requests and appeals are dependent on the availability of places in independent schools which are relatively scarce. Refresher training this year has focussed on meeting the users' needs and expectations. Presentations from an Education Authority Support for Learning Officer and from a voluntary sector organisation have been included in the sessions.

In addition to formal training members continue to receive an e-bulletin (now bi-monthly) to keep them informed of developments and conveners have met separately to specifically address aspects of decision writing and issuing directions.

In my last Report I highlighted the fact that appraisal of Tribunals was to be implemented during the current year and this has now commenced. Although I personally undertake some appraisals, owing to my limited appointment (50 days per year) the task is being shared with another convener who has received training in appraisal matters and has himself broad tribunal experience. The high cancellation rate of hearings continues to make appraisal difficult to manage but it is still anticipated that all conveners and members will be appraised within three years of the Tribunals becoming operational. Apart from being helpful in developing the skills of the individual conveners and members and ensuring a degree of consistency in a challenging jurisdiction, these observations allow an opportunity for members to give informal feedback on their own experience and can also assist me to identify areas where training, Presidential Directions or Guidance would be useful.

# Presidential Guidance and Directions

I have continued to issue, where appropriate, guidance for the assistance of Tribunals and parties. I have also issued directions for Tribunals where I have identified a means by which the overriding objective of the Tribunal may be met more consistently. These are listed in Appendix 3.

Of particular note is the importance of the case conference call prior to the hearing to ensure that the hearing can proceed with the minimum of preliminary matters to resolve. Recently these have also involved unrepresented parties who can ask questions about the hearing to allay any anxieties about the process and can attend better prepared. Additionally, the opportunity to give witnesses an accurate indication of when they will be heard helps to minimise the time they might be absent from their normal duties. Conference calls are universally welcomed by all parties and the Tribunal in ensuring that the hearing process is not unduly diverted into procedural issues. Undoubtedly this has ensured that to date, no Tribunal has required to be adjourned on the day of the hearing due to the absence of either documents or witnesses.

Tribunals have heard from the child in three hearings to date and have been encouraged to now actively seek the voice of the child so far as possible even if the child does not attend in person. Experience indicates that the approach taken must be appropriate to each child and cannot be encapsulated in any rigid form or direction.

## Representation

In the reporting year about one third of references were brought by unrepresented parents. The need to ensure that there is a skilled Secretariat available in such cases is particularly important. Figures 8 and 9 of Appendix 2 set out the incidence of representation for appellants and respondents. ISEA continues to be the main representative organisation, but given its limited resources and uncertain funding model, although it has played a very significant role in the first two years of the Tribunal, it remains to be seen whether it can continue to offer support and representation for so many parents in the longer term. To date ISEA has undoubtedly ably contributed to the development of the law by assisting parents to challenge decisions of authorities where these do not appear to be compliant with the legislation. The Scottish Government has recently provided funding for a training initiative organised by Govan Law Centre and this may, in time, provide a more diverse source of representatives. There will still remain the issue as to how such representatives are remunerated in what can be a lengthy hearing process often involving substantial preparation. I have also included in the statistical annex the number of cases in the past year involving counsel representation for the authority since the disparity between the advocacy skills available to the parent and those available to the authority have been remarked on.

It would be regrettable if the hearings were to become overly legalistic as this would inhibit the accessibility of the hearing, particularly for the unrepresented party. Almost all cases depend on their own facts and circumstances which are disputed, rather than a specific point of law and the Tribunal must try to ensure equality of arms by taking an active role in questioning but it is understandable why parents may perceive themselves to be at a disadvantage in the hearing if they were not legally represented.

## Tribunal User Group

“Listening to Users” was the theme of one of the training days and it remains a priority for the Tribunal.

The latest Tribunal User Group event for this reporting year took place on 9 November 2007 at the Trades Hall in Glasgow. It was attended by 45 delegates representing various local authorities, parents and advocacy groups. There was lively discussion on various aspects of the Tribunals’ role as well as additional support needs in general. The TUGs are notified on the website and are open to all users and potential users and not just to organisations although specific cases cannot be commented upon. These events will continue to be held annually unless Tribunal volumes increase to such an extent that more frequent meetings are indicated. The Secretariat are happy to answer any queries from users at any time or refer matters to me for a response.

## Outreach

Apart from holding the TUG meeting described above, during the year I have continued to actively engage with others concerned with meeting the delivery of additional support needs together with those involved with the tribunal system in Scotland and I have also responded to three government consultations on related issues. In this task I have been ably assisted by the Secretariat, as well as by members and conveners. Some of the events and meetings at which the Tribunal has been represented include:

- Routes to Resolution for ASN
- Govan Law Centre Training for ASNT Representatives
- Central Law Training Conferences on Education Law
- HMle/LTS-Count Us In Conference – Excellence for All
- Launch of the Administrative Justice and Tribunals Council
- Scottish Tribunals Forum
- Making Integration Work Seminar
- Four Nations Meeting – ASNTS, SENDIST, SENTW & SENT NI
- Disability Discrimination Law Review

- Care Co-ordination Network UK, Scotland Seminar
- Disabled Children: A New Priority?
- Scottish Committee of AJTC on Tribunals in Scotland Conference
- ASL Act Implementation Officers Meetings
- Meetings with the Support for Learning Division of the Scottish Government
- Meeting with Education Minister, Adam Ingram
- Meeting with Children's Commissioner for Scotland, Kathleen Marshall
- Meeting with mediation groups

One initiative which was developed during the past year was the production of an introductory DVD on the Tribunal which has now been sent to all users on our database and can be accessed through the website. I want to thank the enthusiastic participation of children from the following schools in this initiative, without whom the DVD would not be so relevant and informative:

- Braidburn School, Edinburgh
- Sciennes Primary School, Edinburgh
- St. Modans High School, Stirling

There is currently ongoing work to refresh the website to make it more informative and attractive. The planned revision of the Guides and forms was not completed as planned last year due to changes in the Secretariat but this work is ongoing and is due to be completed by the summer.

## Objective Case Management System

In the Annual Report for 2006/2007, I outlined how a new electronic case management system built by the Objective Corporation Limited (OCL) had been installed to provide a flexible system. This comprises two elements; data management, known as electronic Records and Data Management (eRDM) and the case management system, known as Workflow.

This package was introduced from March 2007 and it was therefore too early to give meaningful feedback when last year's *Annual Report* was published.

A number of events reported in the media over this past year have caused government and other bodies to review how they securely store and manage the data entrusted to them and the ASNTS have been involved in this process. The introduction of the OCL eRDM and Workflow system has delivered a higher level of assurance on this front than would have been possible operating a clerical system. Secure electronic storage of key documents allows early destruction of the clerical papers.

Electronic storage of case and operational data enhances the level of service we can provide in terms of shared access within ASNTS and ease of retrieval.

The case management system issues reminders to the Secretariat ensuring that key actions are undertaken timeously and parties are kept informed.

Readily available operational data and electronic access to case files means that I can be well informed on the progress of cases and this assists me in the discharge of my statutory functions.

The system offers the capacity for easy expansion should the jurisdiction of the Tribunal be amended at any time and its functionality is kept under review.

## Research

Publication of Professor Adler's research on representation at a range of tribunals, including ASNTS, mentioned in my last report is awaited. Unfortunately the low number of hearings coupled with a low response rate have meant that the statistical data for the ASNTS will be too small to allow any firm conclusions to be drawn.

A second research project also involving the Tribunals is a comparative study of dispute resolution in the education field of additional support needs and special needs, north and south of the border. The broadly equivalent tribunal, SENDIST (Special Education Needs and Disability Tribunal for England), is also participating. The results of this research are not likely to be published until mid-2009.

## The Secretariat

The past year has seen changes in the composition of the Secretariat. The Secretary who ably oversaw the implementation of the Tribunal, Gareth Allen, moved to other responsibilities within the Scottish Government in August 2007 and was succeeded by the experienced Deputy Secretary, Lesley Maguire. Two other members, Yvonne Gavan and John Russell moved into posts in other divisions of the Scottish Government. We wish them well for the future. They have been replaced by Lyndsey Talbot, Office Manager and Hazel McLeod, acting Case Officer. I am indebted to the commitment and ability of the Secretariat to manage a complex and demanding process with initiative and good humour.

# The Tribunals and Administrative Justice

The wider tribunal world continues to undergo considerable changes. As a devolved tribunal, the Additional Support Needs Tribunal sits within the sponsoring Division within the Scottish Government as part of the Department for Education. The past year has seen significant changes south of the border also affecting reserved tribunals which may have an impact on the management of devolved tribunals. It is notable that tribunals in Scotland continue to be regarded as public appointments and not as judicial appointments and their position does not appear to be compliant with the Human Rights Act 1998 or with the publication of the *Leggatt Report on Tribunals* in 2000. Furthermore, indications of the present Scottish Government looking to implement a less fragmented system of administration may also lead to change in the medium term. I am satisfied that after just over two years of active operation, the ASNTS is now sufficiently well established in the general tribunal landscape in Scotland to be able to adapt to changes in its jurisdiction or organisation. The fact that the ASNTS has managed to establish itself as a credible and effective jurisdiction in a relatively short time is in no small part due to the commitment and ability of the individual conveners and members and it is appropriate that I acknowledge their important contribution.

# Appendices

## Appendix One

### Additional Support Needs Tribunals for Scotland: Expenditure

Expenditure from 1 April 2007 to 31 March 2008

<b>Expenditure</b>	<b>Amount</b>
Tribunals' members fees (training)	£4,892.47
Tribunals' members fees (hearings) (including Presidents' fees)*	£83,000.00
Tribunals' members expenses**	£10,765.21
Tribunals' members training costs	£2,644.47
Tribunals' Secretariat headquarter costs	£60,286.89
Tribunals' Secretariat staff salaries***	£174,064.30
Tribunals' Secretariat staff expenses	£5,767.05
Tribunals' Secretariat staff training costs	£598.32
Tribunals' Secretariat office costs****	£20,809.93
Tribunals' Secretariat specialist project costs*****	£38,780.49

\* This figure remains provisional as at the time of print, we had not received the financial report confirming what payments had been processed during the last month of the financial year.

\*\* Again this figure remains provisional as at the time of print, we had not received the financial report confirming what payments had been processed during the last month of the financial year.

\*\*\* This figure also includes costs for a temporary member of staff.

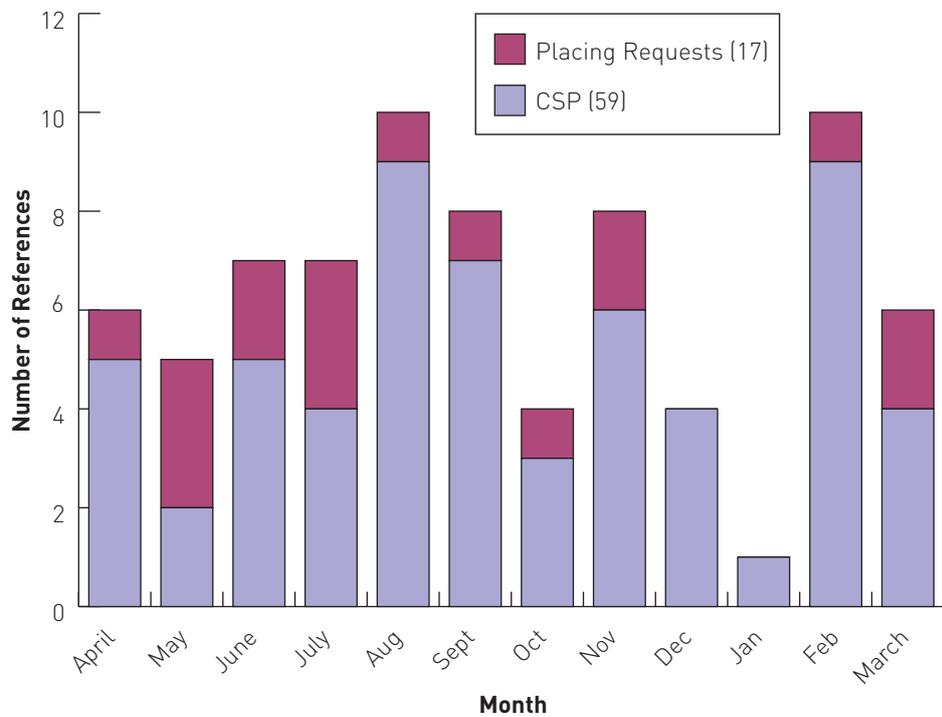
\*\*\*\* This expenditure area includes costs for hospitality (including our TUG event), stationery, postage, minor purchases, office machinery and ICT.

\*\*\*\*\* This expenditure area includes costs involved in producing a DVD of the Tribunal for our stakeholders and the costs involved with the operation of the ASNTS website. It also includes costs involved with the operation of our Case Management System.

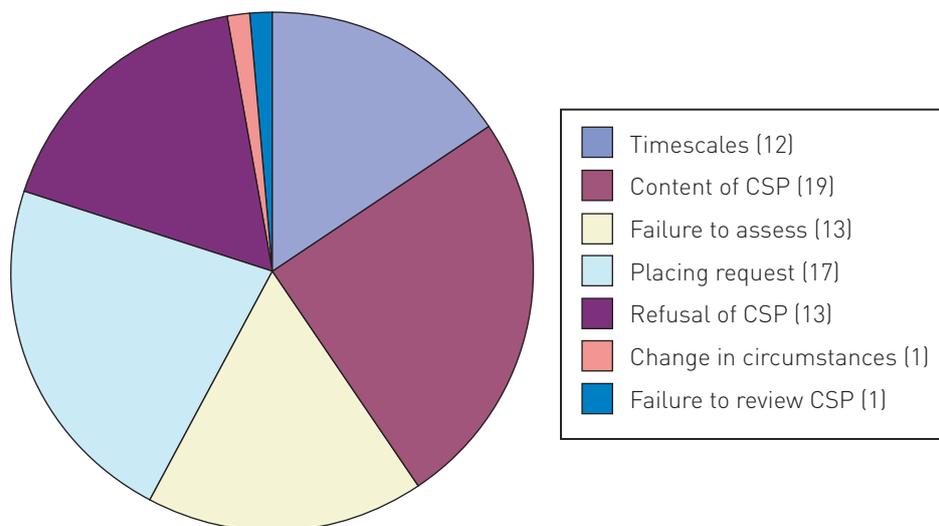
# Appendix Two

## Caseload Statistics – Reporting Year 2007/2008

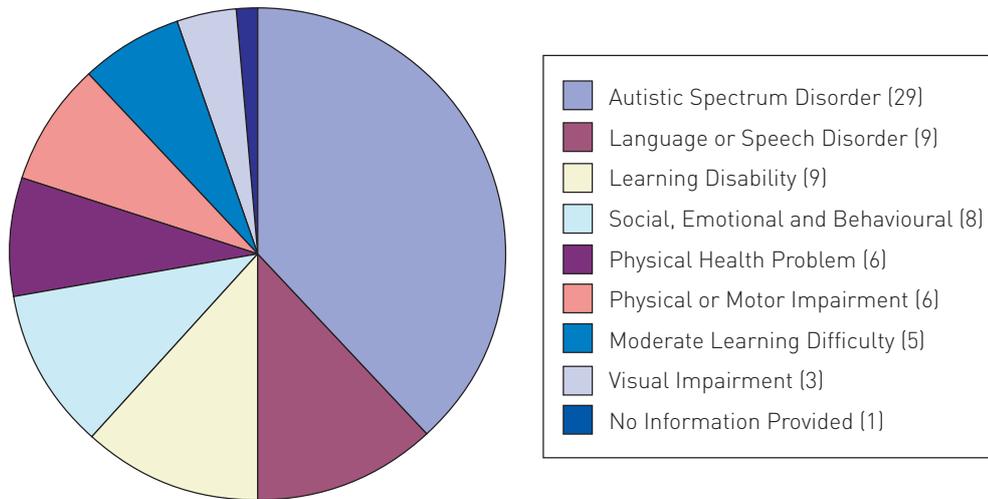
### 1. References Received per Month 1 April 2007 – 31 March 2008



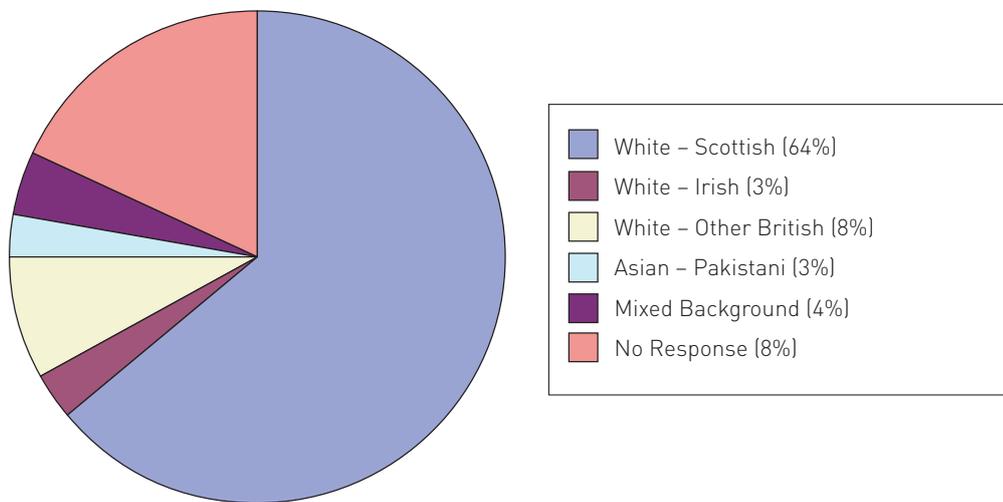
### 2. References by Type 1 April 2007 – 31 March 2008



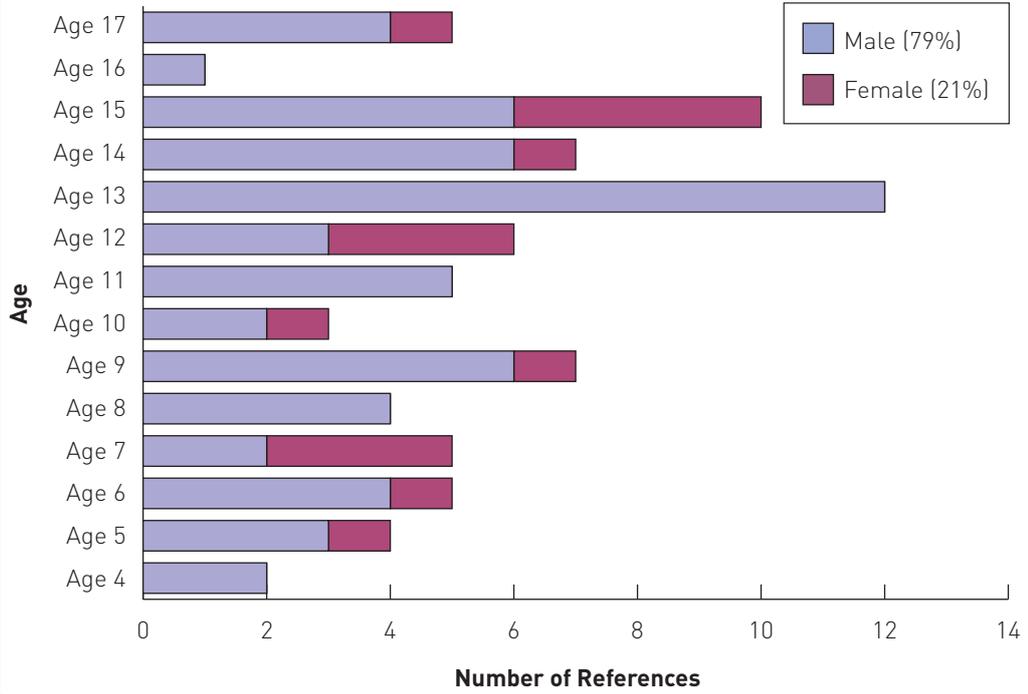
### 3. Nature of Additional Support Needs for References Received 1 April 2007 – 31 March 2008



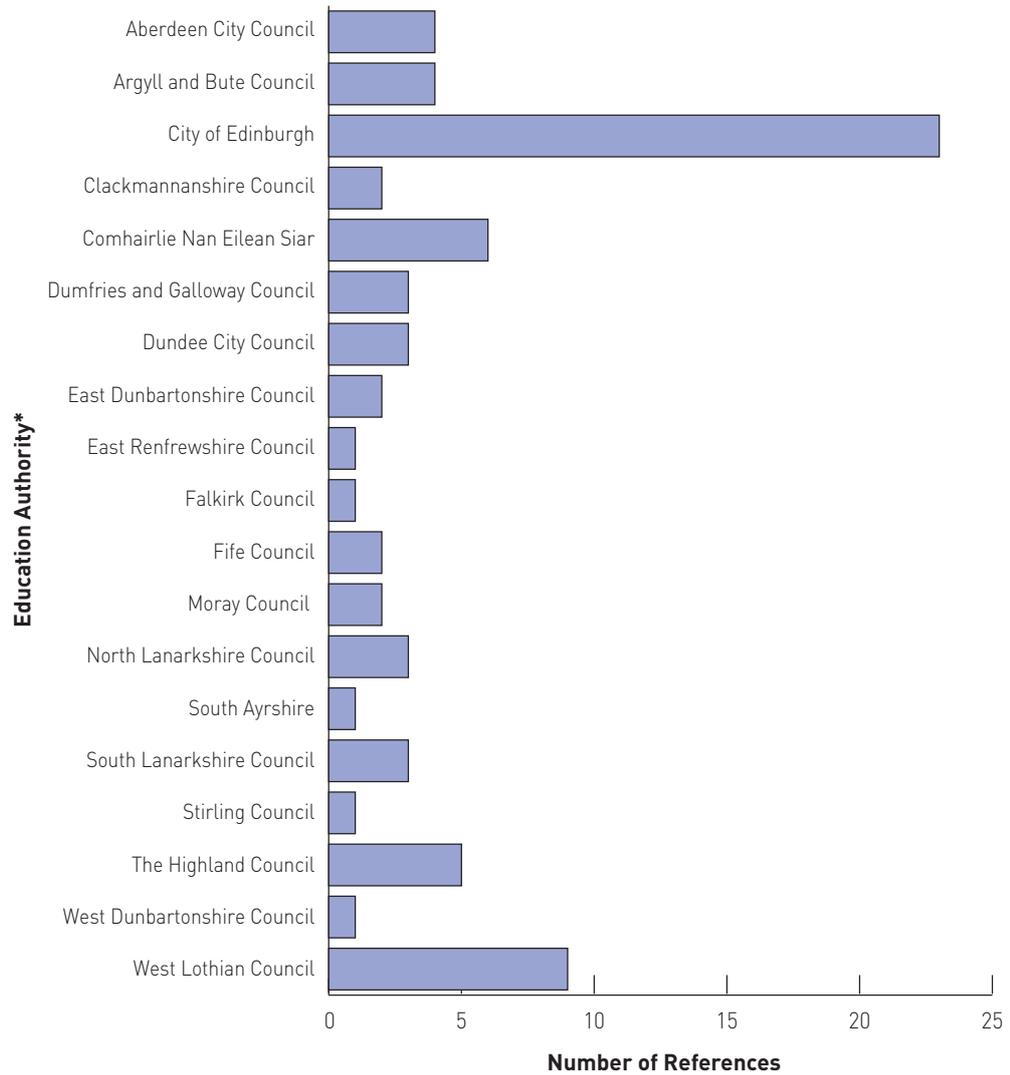
### 4. Summary of References by Ethnic Background 1 April 2007 – 31 March 2008



### 5. References Received 1 April 2007 – 31 March 2008 by Age and Gender

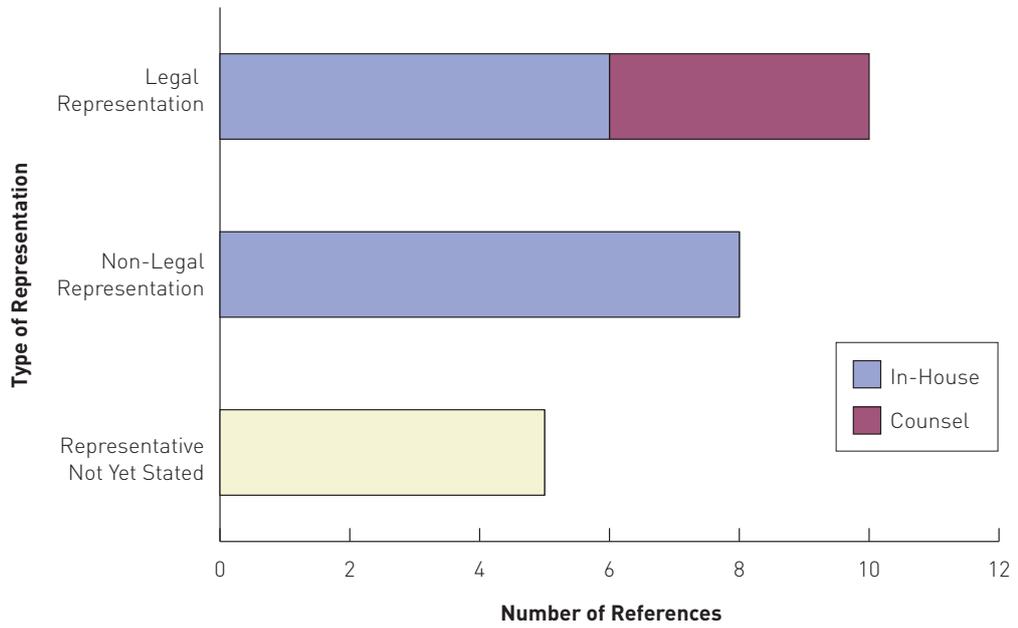


## 6. Breakdown of References by Local Authority 1 April 2007 – 31 March 2008

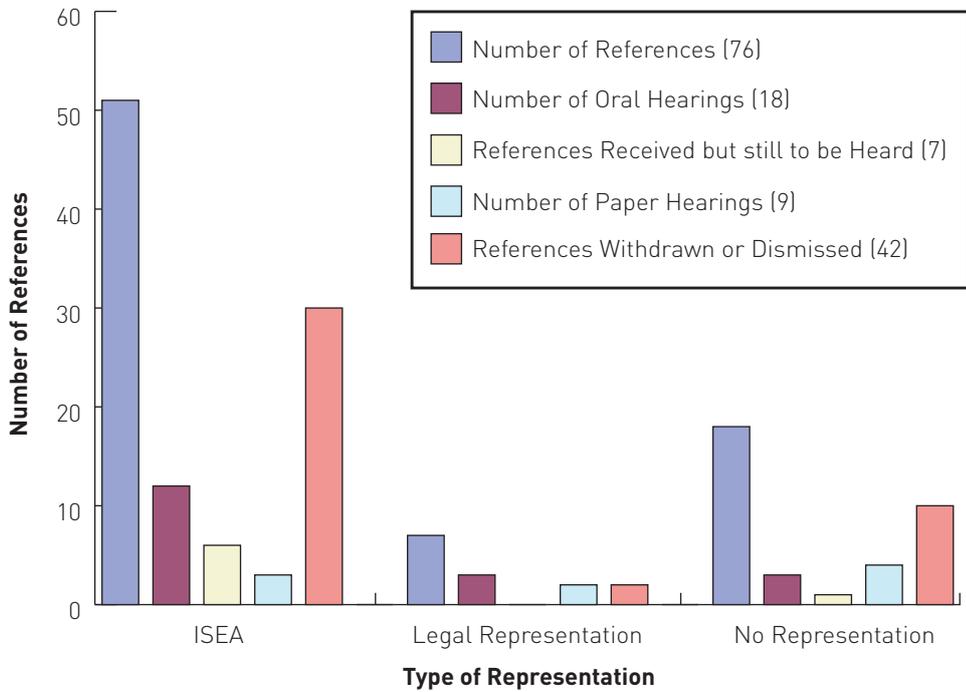


\* Of the 32 Local Authorities, 13 have not been the subject of a reference to the Tribunals during the last year.

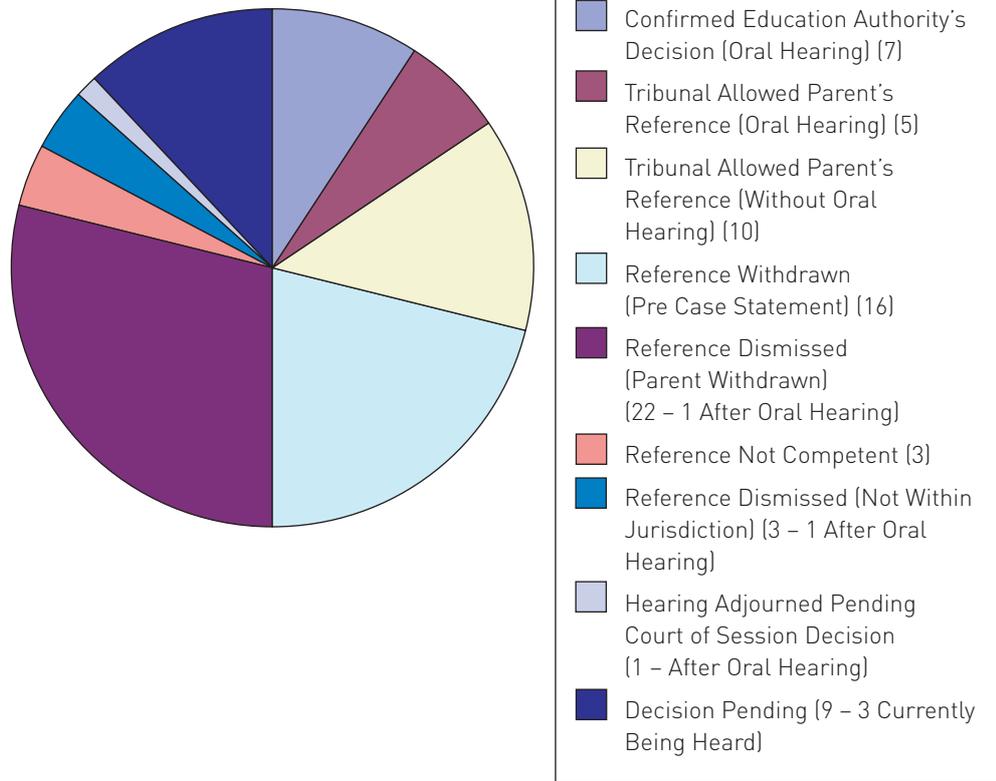
### 7. Representation of Education Authorities at Tribunals 1 April 2007 – 31 March 2008



### 8. Representation of Appellants at Tribunals 1 April 2007 – 31 March 2008



### 9. Decisions from References Received 1 April 2007 – 31 March 2008



### 10. Court of Session

In 2007/2008 a total of 6 Tribunal decisions were appealed to the Court of Session. Four opinions were issued and 3 are pending (1 carried forward from the previous reporting year). As a consequence of the 4 opinions:

- 2 appeals were remitted back to the Tribunal.
- 1 appeal upheld by the Outer House.
- 1 appeal reclaimed to the Inner House and the Tribunal decision upheld.

# Appendix Three

## **Presidential Guidance and Directions**

The following list details Guidance issued by the President during the reporting year 2007/2008:

- Role of the Education Authority Party and Supporter
- Confidentiality of Tribunal Decisions
- The Good Advocate – Guidance for Representatives
- Suspensions
- Postponements and Setting the Hearing Date
- Preliminary Procedure and Introductions

The following list details Directions issued by the President during the reporting year 2007/2008:

- Mentoring and Appraisal (revised)
- Consolidation of References
- Confidentiality of Tribunal Decisions
- Judicial Complaints (amended)

# Appendix Four

## Tribunals' Membership

### Conveners

Lynda Brabender  
Jessica Burns (President)  
Joseph Hughes  
Morag Jack\*  
George Jamieson\*\*  
David Logan▲  
Sara Matheson▲  
Richard Mill▲  
Alan Miller  
Richard Scott  
Isobel Wylie

### Members

Stuart Beck  
Alison Closs  
Janice Duguid  
Jill Gorzkowska▲  
James Hawthorn  
Hilda Henderson  
Richard Hendry  
Carol Hewitt  
Barbara Hookey  
Morag Jenkinson  
Linda Jones  
Jane Laverick▲  
Susan McCool▲  
Dorothy McDonald  
Gillian McKelvie▲  
Kate MacKinnon▲  
Sharon McWilliam▲  
Elizabeth Murray  
Nicola Robinson  
Eleanor Spalding  
Irene Stevens▲  
John Young

\* Resigned 31 March 2008

\*\* Resigned 30 October 2007

▲ New Members and Conveners

## Average number of days sat during financial year 2007/2008

### Conveners:

- The average number of days sat by conveners during financial year 2007/2008 was 5.5 days.

### Members:

- The average number of days sat by members during financial year 2007/2008 was 6.0 days.

# Appendix Five

## Additional Support Needs Tribunals for Scotland: Organisation Chart

