



Additional Support Needs
Tribunals for Scotland

11th Annual Report

Aithisg Bhliadhna nan Tribùnanan Feuman Taice a Bharrachd airson Alba

This drawing was completed by Saskia, aged 11 years, for the President of the Tribunal.

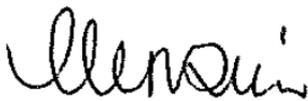


Saskia wanted to express how scary it can be to be a child when grown-ups have meetings and are making important decisions. With her drawing, she wanted to show that being in a meeting with adults can make you feel very small and it can be so confusing to understand what everybody is saying. The big shoes represent adults who sometimes forget to listen to children because they are so much bigger and have so many things to say.

**This report covers the period
1 April 2015 to 31 March 2016**

**To Mr John Swinney, Deputy First Minister and Cabinet Secretary
for Education**

I have pleasure in submitting this eleventh Annual Report of the
Additional Support Needs Tribunals for Scotland to the Scottish
Ministers.



**Mrs May Dunsmuir
President**

**Mrs May Dunsmuir
President of the Additional Support Needs Tribunals for Scotland**
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President's Foreword



In my second Annual Report as President of the Additional Support Needs Tribunals for Scotland (“the Tribunal”), I have the pleasure of reviewing and reporting on the progress of the jurisdiction within the reporting year, 2015/2016.

When I was appointed as President in May 2014, I set out my commitment to expanding our understanding of ways in which the voice of the child could be heard in our Tribunal proceedings. In this reporting year, I explored how the rights of ‘looked after’¹ children were being addressed within the context of our primary legislation². In order to examine this further, I have met with the Children and Young People's Commissioner for Scotland, Govan Law Centre (GLC), Who Cares? Scotland and the Mental Welfare Commission for Scotland.

Research indicates that looked after children are at risk of poorer mental health and lower educational attainment. During 2015, GLC repeated an earlier freedom of information request (the original being in 2013) to the 32 local authorities in Scotland. This was to quantify the extent to which local authorities were identifying and assessing the educational needs of looked after children. The conclusion from this research was that there is still some considerable way to go before the rights of looked after children under the 2004 Act are fully implemented.

Following on from this, I have been keen to identify why so few references or claims are made by, or for, looked after children³, in the context of the statutory presumption that looked after children have additional support needs, unless the local authority assesses as otherwise⁴. Taking into account the findings of the GLC research and my own engagement with education authorities, schools, voluntary and statutory agencies, it seems to me that a potential reason for this may be a lack of awareness of our Tribunal and a common misconception that the Tribunal’s jurisdiction is restricted to those children and young people who have a physical or learning disability. The 2004 Act makes no such distinction. A child or young person has additional support needs for the purposes of the Act where, *for whatever reason*, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education. I will continue to emphasise this when promoting an understanding of our jurisdiction.

¹ As defined in section 17(6), Children (Scotland) Act 1995.

² Education (Additional Support for Learning) Scotland Act 2004 (“the 2004 Act”) and Equality Act 2010.

³ The term “looked after children”, includes looked after young people.

⁴ See section 1B, 2004 Act.

I remain committed to identifying and overcoming communication barriers

to ensure that a child or young person who wishes to convey their views in a tribunal is not prevented from doing so. This includes providing children with a choice of communication. In this regard, I introduced a new Guidance Note in January 2016 on independent advocacy, which clarifies the role of the independent advocate in the hearing. I am grateful to *Partners in Advocacy* with whom I consulted in the development of this guidance and to our Member Training Committee and their Chair, Derek Auchie, who reviewed this.

The Children's Commissioner shared with us the updated "*Seven Golden Rules for Participation*", which enhances our understanding of how the views of children and young people can be heard. The symbols you will see throughout this report are from the "*Seven Golden Rules*" and are replicated with the kind permission of the Children's Commissioner. A key to their meaning is provided in Appendix 4.



It is essential that children and their parents can access justice without having to overcome unnecessary hurdles. In this regard, it is important that our Tribunal *looks* accessible. In support of this, my Annual Report in 2015 was illustrated by the children of Seamab, and the sea changer "Hug" has become quite renowned as



I have travelled around Scotland and across the border to England and Wales. This year's Annual Report has been illustrated by a child who is supported by *Partners in Advocacy*. I think the message conveyed by her art work is loud and clear.

I cannot conclude my report without acknowledging and thanking

our members and conveners for their continuing commitment to the work of our important jurisdiction. This has included an ability to adapt to change and a willingness to share from their own wealth of expertise. I am also grateful to our two Member Committees, who have continued to work hard to ensure our membership are well equipped and supported. The Tribunal's first Judicial Handbook was issued in this reporting year and includes a range of tools, not least of which our first case digest written by Derek Auchie, our Training Committee Chair.

I have commented before on the hard work that goes on in the background to ensure that our jurisdiction continues to deliver an excellent service, and I am grateful for the commitment, energy and enthusiasm of our administrative staff. After a period of staffing turmoil in 2015 we entered 2016 with an almost entirely new team: Hazel McKay, Hugh Delaney, Lynsey Brown and Megan Wilkinson. They have worked tirelessly to ensure that the standards which Tribunal users are entitled to expect of us are being delivered. Finally, my thanks to the staff of the Scottish Courts and Tribunals Service and the Scottish Government for their continuing support during this reporting year.

*May Dunsmuir
President
March 2016*



In this reporting period, all appellants or claimants had legal representation at oral hearings. All education authorities were represented, one by a non-legal representative, 10 by legal representatives and two by counsel.



Tribunal Activity

2015/2016



Placing Requests

During this reporting year **45 placing request references** were made, a reduction of 5 compared to the previous reporting year (50). 11 education authorities were the subject of these references.

- ☀ **5** references were considered at an oral hearing before a tribunal. Of these:
 - 2 references confirmed the decision of the education authority to refuse the placing request
 - 2 references overturned the decision of the education authority
 - 1 reference was withdrawn during the oral hearing following a change of mind by the appellant.
- ☀ **2** references were dismissed for want of prosecution under rule 18 (power to dismiss) of the *The Additional Support Needs (Practice and Procedure) Rules 2006*.
- ☀ **25** references were withdrawn during the case statement period or prior to an oral hearing, following parties reaching agreement.
- ☀ **12** references were withdrawn following a change of mind by the appellant.
- ☀ **1** reference received during this reporting period has yet to be concluded.

- ✂ **14** were for independent special schools
- ✂ **31** were for education authority special schools or bases/units within mainstream schools
- ✂ **30** involved children or young people with a diagnosis of autism
- ✂ **None** were known to have involved a looked after child or young person

Co-ordinated Support Plans (CSP)

During this reporting year **17 CSP references** were made, a reduction of 5 compared to the previous year (22). 7 education authorities were the subject of these references.

- ☀ **4** references related to the **contents** of the CSP. Of these:
 - 2 references were withdrawn following agreement between parties
 - 1 reference was dismissed under rule 18 (power to dismiss) on the basis that it was made otherwise than in accordance with the Tribunal's Rules
 - 1 reference remains outstanding.

- ☀️ **6** references related to the **implementation of the CSP**. Of these:
 - 2 references were considered at an oral hearing
 - 3 references were withdrawn following an agreement between parties
 - 1 reference remains outstanding.
- ☀️ **4** references related to a decision that **a CSP was not required**. Of these:
 - 3 references were withdrawn following agreement between parties
 - 1 reference was dismissed under rule 18.
- ☀️ **1** reference related to a **deemed refusal of a CSP**. This was dismissed under rule 18 on the basis that the reference was not within the jurisdiction of the Tribunal.
- ☀️ **2** references related to **timescales in issuing the CSP**. Of these:
 - 1 reference was decided by a convener without an oral hearing, under rule 26 (power to decide reference without hearing) of the 2006 Rules
 - 1 reference was withdrawn following an agreement between parties.

📌 *10 involved children or young people with a diagnosis of autism*

📌 *1 involved a looked after child or young person*

Transitions

- ☀️ No references were made in the reporting year in relation to **transitions**.

Disability Discrimination Claims

During this reporting year **6 claims** were made, representing an increase of 1 compared to the previous year (5). In 4 claims the responsible body was named as the local authority, and in 2 claims independent schools were named as the responsible body. 4 local authorities were the subject of these claims.

4 claims were made on the matters of **another issue** (4), and 2 claims were made on **exclusion and another issue** (2).

- ☀️ **2** claims were considered at an oral hearing before a tribunal, and both ruled that disability discrimination had occurred.
- ☀️ **1** claim was withdrawn following agreement between parties.
- ☀️ **1** claim was withdrawn following a change of mind by the claimant.
- ☀️ **2** claims remain outstanding.

📌 *None were known to have involved a looked after child or young person*

📌 *An appeal was made to the Court of Session, which remains outstanding*

Tribunal developments

☀️ Member training committee



Training for Tribunal members is critical, given the complexity of the law and the sensitivities of issues and processes faced in every reference or claim. The Member Training Committee, consisting of Derek Auchie (Committee chair and convener), Irene Stevens (member) and Ian Morrison (member), has aimed to design training such that participants leave with a bank of knowledge and understanding which may be directly applied in future cases. A further aim is to do so in an enjoyable and therefore memorable way. The opportunity to share experiences and to discuss our roles in a relaxed but structured environment is an added benefit. These aims are not easy to achieve, but the Committee has been helped by extensive feedback and suggestions of topics from the Tribunal membership. Encouragement, support and guidance from the President, as well as excellent administrative input, in particular from Hugh Delaney (outgoing committee member) and Lynsey Brown, have made the task possible. Through all of this, we have had the support of the President of Scottish Tribunals, Lady Smith, who addressed and participated in last year's all member conference and who has shown a keen interest in the training arm of the Tribunal.

Since March 2015, we have delivered evening training for members and conveners, two days of Induction Training for our new conveners and members, and all of our members and conveners then came together in our March 2016 all member conference. We have addressed issues such as the conduct of pre-hearing meetings (via a demonstration), taking the views of the child, expert evidence, data handling, confidentiality, deliberations, behaving judicially, and assessing evidence, to name just a few areas. We have heard, among others, from a sheriff, a speech and language therapist, an educational psychologist, the Children's Commissioner, education officers, a parent, advocacy, legal representatives and a musical performer. Some members and conveners have themselves contributed to events. We have considered scenarios abound!

The coming year will see new changes and challenges, and the Committee is working on a training agenda designed to meet these. As ever, the Committee appreciates the support, feedback and suggestions from Tribunal colleagues, and we look forward to the coming year's events.



Derek Auchie
Chair of MTC

Member Development Committee



The Member Development Committee was introduced by the President in 2014. It comprises Joseph C Hughes (convener/Committee Chair), Lesley Sergeant (member), Rick Mill (convener) and Ian Morrison (member). The Committee come together once a year. This is an excellent opportunity to reflect on the work of the Committee, to consider what worked well and what we can improve on and to plan for the future year's business. Committee members communicate with one another at various times during the year by email. The Committee will share with the Member Training Committee any general training needs we identify. Both Committees are fortunate to strategically share Ian Morrison as a valued member. The Committee will meet in April 2016, shortly after the March 2016 Annual Training Conference, to consider how member review might be implemented across tribunals. The Committee will seek to incorporate, where possible, an element of hearing observations. The 12 month pilot of the new Member Development Scheme ended in December 2015 and the President is currently revising the Scheme to ensure it aligns with the transfer of the Tribunal to the Scottish Tribunals in 2017.

The Committee is tasked with carrying out all Tribunal member reviews. It is hoped that observation at a hearing, where possible and appropriate, will feature in future reviews. The President will have discretion as to whether it would be necessary to observe a hearing as part of the review process. The President seeks to provide reviews to the membership twice during their five year period of appointment or re-appointment. The Committee will continue to reflect on the individual experiences of the member interviews and the feedback received from those being reviewed. Notwithstanding the infrequent level of hearings some members may have experienced, the Committee have been encouraged by how positive the members are in building their own professional development, either by opportunities within their own specialisms, or by seeking out relevant additional training elsewhere

It may be helpful to summarise the training delivery and expectations of the membership. The membership is expected to attend the members' Annual Training Conference which is part of their mandatory training. Conveners will be provided with an evening training event every year, which they have the option to attend. Members will be provided with an evening training event every two years, which again they have the option to attend. In carrying out any future reviews, reviewers will be provided with the training record and any previous appraisals/reviews of the reviewee.

The Committee wish to acknowledge the hard work and dedication of our membership. They are highly committed to the work and the reputation of the Tribunal. As we look to the future, we look forward to the continued support of all our fellow Tribunal members. The Committee would like to record their appreciation for the support and guidance provided by the President not only to the work of our Committees but to the membership at large.



Joseph C Hughes
Chair of MDC

☀ Membership recruitment

The recruitment of 6 conveners and 5 members was completed in 2015. All 11 have completed a two day induction course and each has been allocated a mentor from the pool of experienced members and conveners. The President is confident that the Tribunal is now equipped to address current and growing business need. This will also assist in succession planning to address falling membership due to retirement.

☀ The Tribunal's Administration

Having been part of the Scottish Courts and Tribunals Service operational management team for the past 8 years, I have worked within the ASNTS team since September 2015. I had the pleasure of being appointed as the Tribunal Secretary in February 2016. 2015/2016 has been a challenging time for the administrative team within the jurisdiction. There have been a number of staff changes, but the team have managed to maintain the usual high level of service to our stakeholders. The President now has a permanent PA/Members Liaison Officer, Lynsey Brown. The Senior Case Officer is Hugh Delaney and Megan Wilkinson has newly been appointed as the Case Officer for the team.

The Scottish Tribunals Service merged with the Scottish Courts Service to form the Scottish Courts and Tribunals Service (SCTS) on 1 April 2015. The merger was successfully completed with no effect to front-line operational delivery. Our IT systems merged in November 2015. As a result of this, the contact details for ASNTS have been changed and can be found on our website at: www.asntsscotland.gov.uk/content/contact-us.

The SCTS continues to operate within a culture of continuous improvement and all staff are encouraged to identify efficiencies and improvements in our procedures. The team are currently working with the President on improving a number of areas, including how we record case statistics when the reference concerns a looked after child and updating the Tribunal reference and claims forms. The Administration will also be supporting the update of the Tribunal's website in the next reporting year. The Administration have supported the President in delivering a number of successful events during the year, which included the two day induction training for new members and conveners in November 2015. Feedback from the events has positively reflected the work of all involved.

Hazel McKay
Secretary to the Tribunal



Reflections



Independent Children's Advocacy in Additional Support Needs Tribunals

"Big meetings are scary. Loads of people wanting to ask questions and they don't know me. And I don't know them."

(young person, aged 13 years)

It can be difficult as a young person with additional support needs to express your views. You might worry about whether you will be understood, and worry that someone will be upset if you disagree with them.

Over the past years the Additional Support Needs Tribunals for Scotland has shown a strong commitment to support children and young people to make their views known during tribunal proceedings. This can be facilitated via interviews, statements or more creative approaches.

An independent children's advocate takes no instruction from school, family or other parties but focuses solely on supporting the young person to put his or her views across in a way that is relaxed and appropriate. Partners in Advocacy offers services in Dundee, Edinburgh and the Lothians and the Greater Glasgow and Clyde Health Board area, and has a wealth of experience in supporting young people before, during and after a tribunal. We have supported children and young people to submit statements and drawings, attend interviews, or in other ways put their views across to ensure that their voice is heard. We know how important the support from someone independent can be, both in the preparation before a tribunal but also after a tribunal, to answer questions and to explain what will happen next.

An 11 year old girl was referred to Partners in Advocacy from the Tribunal to try and ascertain her views with regard to a placing request.

The young person on this occasion was not expected to attend the tribunal; however the panel felt it appropriate to find out her views to assist with their decision making and gave the advocate specific questions to ask the young person.

Before meeting with the young person the advocate learned about the young person's interests and what she enjoys doing in her free time. The rationale behind this was to help the advocate engage more effectively with the young person and to try and ease any concerns of her meeting someone new.

The young person and the advocate met in a neutral place which was comfortable for the young person, to speak about school, and they met on 4 occasions. During this time the advocate supported the young person to put her views forward, in a way that was engaging and encompassed her interests.

As one young person said after an interview with the panel members,

"it was less scary because I knew you [the advocacy worker] already. So even though I didn't know the panel I wasn't alone".

Independent advocacy ensures that children's views can be put across during a tribunal, without the concern of whether those views are indeed the child's own.



Partners in Advocacy is delighted with the strong commitment demonstrated over the past year by the Additional Support Needs Tribunals for Scotland to hear the views of children. We look forward to continuing to support vulnerable children and young people in the future.

*Marie Harrison
Children and Young People's ASN
Advocate*





The road to tribunal is a long and arduous one....

- a parent and child's story

- it affects each and every member of the family. By the time we reached the tribunal I wasn't sure if our family could or would survive.



Our younger son was placed with us for adoption 12 and a half years ago, aged 19 months. He suffered from developmental trauma which had major consequences for him, and us. Early primary years were a nightmare. When tried and tested practices didn't work, the local authority criticised our parenting. This seems to be a fairly common practice in education, borne, I think, out of frustration, lack of resources and appropriate solutions. Our son was a square peg in a round hole – but he looked so normal!

We fought for a change of primary school and this placement went well. Transition to secondary was fairly well managed but the environment in a busy secondary was just too much for him to cope with. Most days he managed to keep it together at school but the fall-out at home was horrendous. Bullying had a major impact and, four months into S1, December 2013, the placement collapsed. We continued to engage with the school and the placement limped along for the next few months. We realised, however, that the situation was reaching a critical stage and so we started looking at alternative provision. We found an independent special school which we thought would be able to meet our son's needs. This was the only real option available to us as it provided appropriate provision: mainstream curriculum delivered in an autism specific learning environment and, crucially, within reasonable daily travelling distance from home. After all the work we had done with regard to attachment, it was vitally important that our son could remain at home with us. Our application was rejected as, although the school could provide for his needs, they felt that we did not have enough evidence to win at a tribunal. This was a massive blow. We continued to engage with the education authority and he completed S1 although he was attending only a few classes.

The summer of 2014 was a nightmare – 7 weeks of stress, at the end of which our son had a breakdown and was unable to return to his school placement. A move was arranged by the education authority to a nearby, larger, mainstream school. This placement lasted 6 weeks. A few months out of school followed then by a move to another mainstream school – again it lasted about 6 weeks – then nothing – no education and a child who was becoming more and more anxious and, at times, suicidal. Throughout this period my parenting was questioned repeatedly. This was extremely frustrating.

By the end of September 2014, we had managed to secure an offer of a day placement at our preferred school. We submitted our placing request in December 2014 and it was rejected by the local authority in February 2015. We tried mediation but it was not effective.

We then started the formal Tribunal process. We finally reached an oral hearing in June 2015 (18 months after the school placement had, effectively, broken down).

The support I received from staff at GLC Education Law Unit and Kindred was excellent. Without them, I doubt if I would have seen the process through to its conclusion. They were all very realistic and honest about the process. It's a scary process as so much is riding on it.

I was not overly anxious about the actual Tribunal proceedings. By this stage I had been to so many meetings that I was ready for it. I knew that my solicitor from GLC would be by my side and I was confident that she had my son's best interests at heart. The start of the day, however, was stressful as our son was due to give evidence and, as expected, he was extremely anxious. But, with support from an advocacy worker from Enable, he was able to read his prepared statement and answer questions. The Tribunal members sat in a semi-circle and introduced themselves to him using their first names. Our son was pleased that he was able to present his evidence and he felt that his views were valued. Although he managed to present his evidence in person it would have been preferable to have done this prior to the Tribunal in a less formal setting.

At the start of the formal proceedings, introductions were made. I would have liked to have been given some background information on the panel members either before or at the start of proceedings. It was important for me to know that there was someone there who truly understood the needs of looked after and adopted children. Next, we were given a résumé of our son's evidence. I felt reassured that members had taken his views on board.

During the morning session, the education authority presented their witnesses. I was seated next to the witnesses. This caused me significant discomfort, as these were professionals with whom I had had good working relationships up until this point. Owing to the nature of the Tribunal process, it was now very much a "them and us" scenario. These were people who wanted to place our child at the centre of proceedings but were constrained by budgets and resources and the requirement to toe the education authority line. It was stressful for all involved. After a short lunch break we reconvened. Our first witness gave evidence via a telephone link. Our second witness appeared in person. Both were health care professionals.

I was aware during the afternoon session of just how pressed for time we were. My chance to give evidence was at the end. I regret not having prepared a written statement which I could have simply read out. I had thought that I would have liked to have responded to the evidence I had heard during proceedings but, by the time it came for me to give evidence I was mentally exhausted. I was also distressed by the fact that it was becoming clear that no decision would be reached that day and that we would have no option but to agree to an adjournment. I felt like my whole world was collapsing. I don't even remember whether I was asked any questions by the Tribunal members. After our son going through the stress of giving evidence, how could I go home and tell him that no decision had been reached? It was at this point that it all got too much and I had a panic attack.

Summer 2015 was extremely difficult as there was so much uncertainty. In August 2015, our son still had no school to go to and he was extremely depressed. Fortunately, a decision was reached early in the term and our son became a day pupil at our school of choice. Life has been transformed for all of us. There was the inevitable mourning process for him and us about the fact that he wasn't able to cope in mainstream when his friends were, but there's also been a huge amount of pride as we've seen him blossoming.

He is a remarkable young man.



Drawing by Saskia, aged 11 years

Reflections from an education authority

As Quality Improvement Manager for ASN with Aberdeenshire Council Office, a core element of my role is around the implementation of the 2004 Act and ASL dispute resolution mechanisms, including ASNTS processes. I have participated in a number of Tribunal processes as both instructing officer and witness.

Pre-Hearing

The authority would see the Tribunal process as part of wider and ongoing dispute resolution and indeed, right up until the hearing itself, will continue to explore mutually acceptable and positive solutions that promote the best interests of the child or young person. This could be through mediation, ongoing casework and communication and indeed the case conferences themselves. We will continue to review our decision or position in light of changing circumstances of the child or young person.

Voice of the Child

Aberdeenshire Council consider it a key priority to ensure the voice of the child is heard both in decision-making processes and then in any resultant Tribunal process. The views of the child or young person are routinely gathered to inform our options appraisal process in determining placing requests, using different approaches to overcome barriers to communication and participation, including Talking Mats, our Child Rights Officer, or through Third Sector/commissioned partners. Aberdeenshire Council is collaborating with partners to develop an app-based solution to gather the views of children and young people with an autism spectrum disorder, which could in turn strengthen their voice and participation in Tribunal processes.



It is not unusual for parents and professionals alike to suggest that the child is unable to either form or express a view, but this needs to be explored and challenged by both the authority and in turn the Tribunal. In all but the most exceptional of circumstances, the child or young person should at least contribute to and, ideally, participate meaningfully in the Tribunal process. It is often suggested that the experience would be too challenging for the child/young person, but the challenge should be for us all to find a way to ensure their right to be involved in decisions that affect their lives. Indeed, the Education (Scotland) Act 2016 focuses this challenge for authorities and agencies by giving children a voice in matters that affect them and extending the rights of children with additional support needs.

We would also recognise the wider challenge of ensuring accessibility to ASN dispute resolution for the most vulnerable and marginalised children and young people, including looked after children and those with mental health issues. We need to find ways to ensure access for such children/young people and to overcome the barriers to their participation and self-advocacy.

The Hearing

Although parties can find the experience of the hearing intimidating, from my perspective the format of the hearing strikes the right balance. Although the nature of proceedings should not be overly legalistic and adversarial, it *is* a formal process resulting in important decisions about the lives of children/young people. It needs to be a real process where the formality and structure ensure a real sharing and challenge of information, views and opinions.

However, the structure and approach can reinforce a “them-and-us” perception. It is important to remember that the authority is not just a monolith but also an entity comprising of individual professionals, each with their own values, strengths and energies. Of course the authority and its officers hold statutory duties, but these duties are fulfilled by people as much as by policies and processes. The witnesses who appear before the tribunal open themselves up to a level of scrutiny which they may not have experienced since they left teacher training college. My experience has been that witnesses are treated with sensitivity, respect and recognition for their public service by tribunal members and indeed parental/legal representatives.

Post-Hearing Phase

In many respects, the post-hearing phase is as, if not more, important as the earlier stages. Following the hearing, we recognise the importance of ensuring all authority witnesses have an opportunity to talk with the instructing officer and/or line manager. We have found that witnesses can have a strong reaction to the experience, which can often catch up with them at a later point.

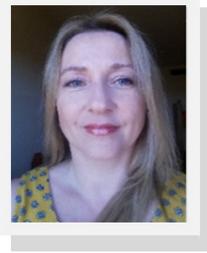
In due course, relevant officers meet to reflect on the experience but more importantly, to allow for response at the individual, school and authority levels. We also share key learning with other services and agencies, as appropriate. It is particularly important to identify key lessons and consider key actions, to ensure tribunal findings can go on to inform ongoing planning processes for the individual child/young person and also wider self-evaluation and improvement planning at the school, team, service and authority levels.

Most significantly, the post-tribunal phase necessitates the exploration of restorative approaches. If the tribunal decides to uphold the authority’s position, the focus of energy and activity has to be on restoring partnership working between parents and professionals, and to rebuild trust and respect, which can be significantly eroded through the process. If the tribunal does not uphold the authority’s decision, the instinct is for both ‘sides’ to disengage, but this can be problematic in terms of how we then come back together to plan for later stages in the child/young person’s education career and life, for example post-school transitions.

*Anne-Marie Davies
Quality Improvement Manager (Additional Support Needs)
Aberdeenshire Council*

A convener – 6 years on...

Frances Konopka



The Additional Support Needs Tribunals for Scotland (ASNTS) is a relatively new branch of the judiciary, having been established in November 2005. I was not one of those who were appointed at the very start of the ASNTS. However, I have now been a Convener for more than 5 years and have had the benefit of speaking and sharing experiences with some of those who have.

As this was a new forum for dispute resolution it was up to those pioneers to interpret the ASNTS practice rules and to create a template for hearings. Their role was novel in Scots law in that they were very much encouraged to take control of the process and take on an inquisitorial role, in contrast to the role of a sheriff in an adversarial system whose role is more of an impartial referee between the prosecution and the defence. Often there was an imbalance between an unrepresented appellant and the local authority respondents, which the conveners tried to address by leading the examination of the evidence and witnesses. As time has gone on, the number of appellants who are unrepresented has decreased and those representing them have increasingly become an important part of the process of reaching an outcome, either by agreement between the parties or by representation, providing focus on the issues in dispute and the points of law at a hearing.

In the 10 years that the ASNTS has been in existence there have been three Presidents, each bringing their own unique touch and vision for the ASNTS. There have also been some changes in the secretariat, with few from the original staff remaining. However the positive support and encouragement received by myself and other conveners and members has remained unchanged. As a convener I have been involved in making a number of difficult decisions that can have a lasting impact on the life of a child, their family and their school. At times the decision has been more about interpreting a fine point of law. In all of these the input of the members sitting with me has been invaluable and I have greatly enjoyed their support and the opportunity to learn more about their areas of expertise.

I have also enjoyed the collegiate spirit of the ASNTS. While dealing with individual references as a convener it is easy to feel the weight of responsibility, as many of the initial stages involve working alone – hosting a conference call and making preliminary decisions. However, I have always felt that support and advice is only a phone call away. Additionally, the training events bring everyone together and give opportunities for members and conveners to meet and to share and exchange experiences, and this has allowed for reflection on different styles.

During my time as a Convener I feel that the ASNTS has grown and matured into an important resource for families with children with additional support needs. The introduction of mentoring of new conveners and members will add to that sense of being a larger group and I look forward to being able to pass on my experience to others and to assist in building a body of knowledge and experience upon which we can all draw. If I had to make a suggestion for an improvement it would be to

consider a mechanism for following up on those who use our service to try to measure the benefits achieved from the decisions that we make. Often I feel that I have come, even in some small part, to know the child and it would be good to know how they have got on.

A new member – 6 months on...

Christine Pacitti



It has been at least 5 years since I have been considered a “new” anything, but I am now in the position of being a new member of the Additional Support Needs Tribunal Scotland. I have recently sat on my first tribunal and I am fortunate to be on a panel with an experienced convener and member who have gone out of their way to be reassuring and welcoming. I think they may have picked up on my novice nerves.

If I am truly honest, the prospect of my first tribunal was more daunting than the application and interview process to become a member of ASNTS. I had the opportunity to draft and complete my application and prepare and practise a presentation and review the relevant legislation prior to the interview. Going into my first tribunal has been very much an unknown quantity, despite my in depth reading of the bundle. I am very conscious of the responsibility to perform this task in such a way that both the appellant and the respondent are given a fair and equal opportunity to present their views. I am also very conscious that I have limited experience of being involved in such a significant legal process.

The training I attended in November 2015 seemed quite a distance from my first tribunal but it was actually very relevant and I surprised myself with how much I had actually retained. My background is in health care, I am a pharmacist with twenty years experience, with the last twelve years focused on mental health and learning disability. I am also the parent of a 17 year old son with profound learning disabilities and autism who is about to finish his final year of schooling within an additional support needs establishment. It would be fair to say I had underestimated how much my professional and personal experience would benefit my understanding of this particular tribunal and after the first witness my confidence has increased. At the first break I raised areas of evidence from this witness that I wished to explore and I was grateful to have the opportunity to discuss this with the convener, who was keen for me to ask the relevant questions.

It may have been the case that I was actually over focused on the process involved in a legal hearing. This has been unnecessary because the convener has this responsibility, although it is very clear that the convener and members have an equal say and responsibility to come to the final decision about the case. This particular tribunal could probably be considered a baptism of fire for a new member. It has become clear during the early evidence that more time is required to glean more information in some areas and it is by no means a clear cut case. There has been a lot of consideration around the weight of evidence from different witnesses. Now that I have this first tribunal under my belt I am much more confident in my abilities within this jurisdiction and I have an interest in any possible opportunities that may arise within other jurisdictions. I will be more than ready to participate in the next hearing and I hope it is as a rewarding and positive experience as this one



The year ahead (2016/17)

Unmet legal need

The President will explore the extent to which looked after children, children with mental health problems and children without a diagnosis are aware of their statutory rights to access the Tribunal.



Publication of Tribunal decisions

The President authorised the publication of certain disability discrimination decisions in this reporting year. She will continue to publish suitably anonymised reference and claim decisions in the next reporting year.

Scottish Tribunal Reform

It is planned that the Tribunal will transfer into the new Health and Education Chamber in October 2017. The President has been engaging with Lady Smith, President of Scottish Tribunals, with other judicial heads and with senior staff of the Scottish Courts and Tribunals Service and Scottish Government in preparation for the transfer of jurisdictions, which will continue into the next reporting year.

Education (Scotland) Act 2016

The 2016 Act was given Royal Assent on 08 March 2016 and will expand the Tribunal's jurisdiction by giving rights to 12 to 15 year olds who are assessed as having capacity, in relation to the 2004 Act. It will also prevent complaints going to the Scottish Ministers under section 70 of the *Education (Scotland) Act 1980* if these might also be taken to the Tribunal. Commencement of the provisions of the 2016 Act is expected to take place as a whole in November 2017.

Before a child aged between 12 and 15 years can exercise a particular right under the 2004 Act, they will have to be assessed by the education authority as having the capacity to do so and that there is likely to be no adverse impact on the child's wellbeing from the exercise of the right. The Tribunal will have jurisdiction to hear appeals on the outcome of this assessment (by a convener sitting alone). Before the child can exercise a right to make a reference, a tribunal will have to be satisfied on the two stage tests. The Tribunal plans to develop a children's area on its website during 2017 in anticipation of the new legislative provisions; and a "having your say" style form is being developed for use by children.



Children and Young People (Scotland) Act 2014

The 2014 Act introduced "corporate parent" provisions, and those listed in this category, which includes local authorities, will have corporate parenting responsibilities towards children who are looked after by a local authority and young people under 26 years who have previously been looked after. The corporate

parenting provisions came into force on 1 April 2015. Responsibilities include assessing the needs of children and young people for services and support the corporate parent provides and taking action to help those children and young people to access opportunities.

The President has shared with local authority solicitors, heads of education and the Children's Commissioner her concern to ensure that additional support needs are recognised as part of such services, support and opportunities. This will continue to be emphasised in the next reporting year.

Property relocation

The Tribunal's office is currently housed in the Europa building in Glasgow. The lease on this will expire in December 2016 and the Tribunal will relocate to suitable premises before the end of 2016. The President is being consulted on the relocation proposals.



Appendix 1

EXPENDITURE/FINANCE

The financial year for the Tribunal runs from 1 April until 31 March. The Tribunal is a demand led service which responds to the number of references/claims received. The budget for the financial year to 31 March 2016 was £250,000 and the actual spend for that period was £258,000. Expenditure is detailed below.

Expenditure Item	Actual 2014/2015 (£000's)	Actual 2015/2016 (£000's)
Tribunal members' fees and expenses (including President fees, expenses and member training costs)*	116	153
Tribunal Secretariat hearing costs**	15	10
Tribunal Secretariat staff salaries	73	71
Tribunal Secretariat staff expenses	2	1
Tribunal Secretariat office costs***	31	23

* This expenditure includes fees and expenses for the President and members, as well as member training costs. This cost has risen due to the recruitment and induction of new members and conveners.

** This expenditure includes costs for venue hire and hospitality, appellants' expenses and translation expenses.

*** This expenditure includes costs relating to general purchases such as postage, stationery and publications. The expenditure in this category also includes IT costs for system support, software renewal and maintenance, depreciation, telephony and printing costs.

Public Services Reform (Scotland) Act 2010

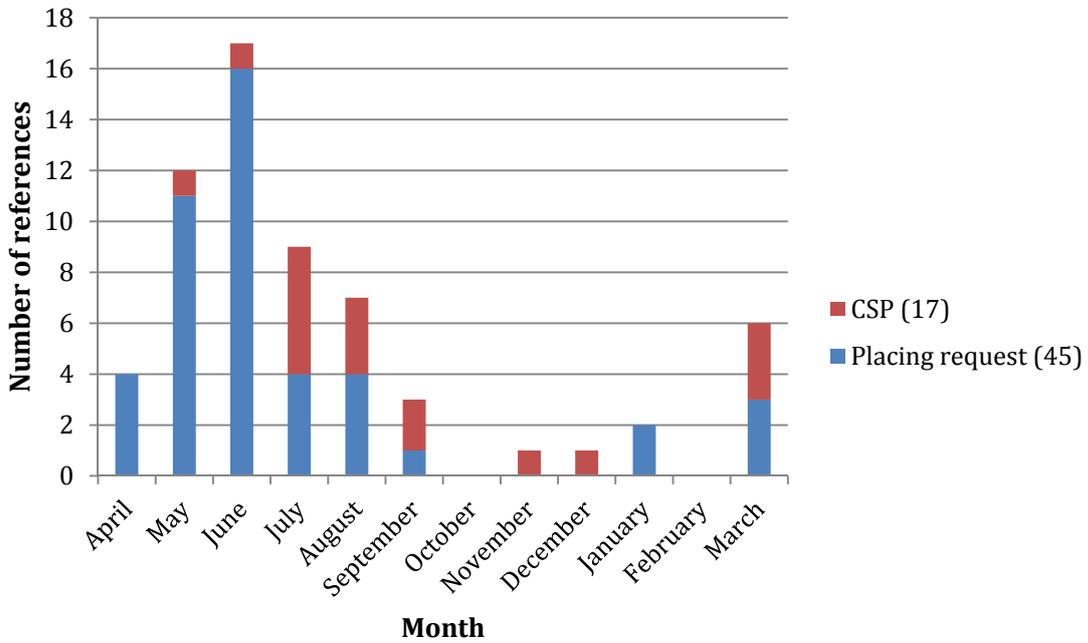
To promote openness and transparency across the public sector in Scotland, section 31(1) and (2) of the Public Services Reform (Scotland) Act 2010 imposes new duties on public bodies to publish, as soon as practicable after the end of the financial year, a statement of any expenditure incurred on certain matters including:

- public relations and external consultancy;
- overseas travel;
- hospitality and entertainment;
- payments with a value in excess of £25,000 and the number of members and staff who received remuneration in excess of £150,000.

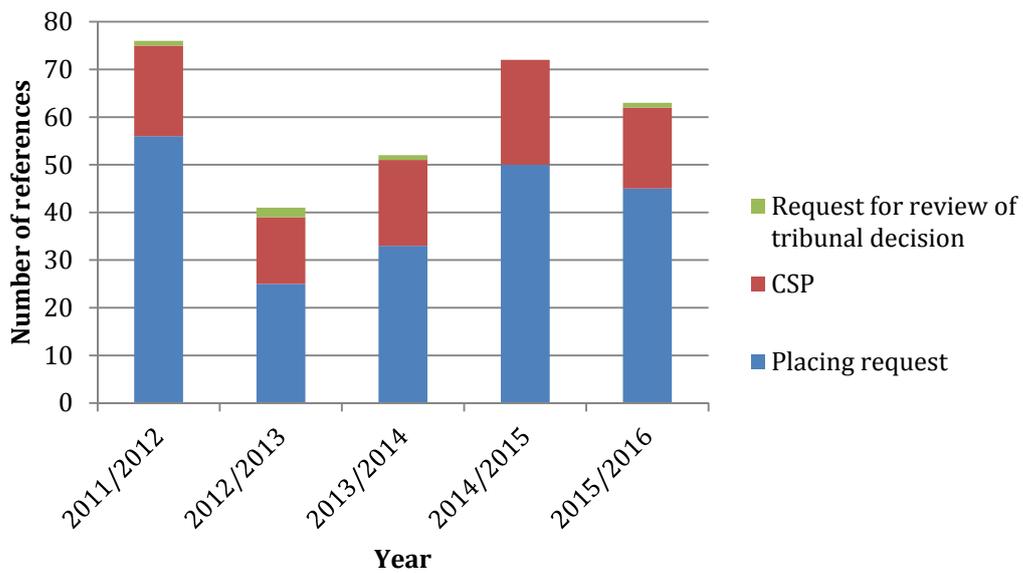
The Tribunal has made no payments in the above categories for the period from 1 April 2015 to 31 March 2016.

TRIBUNAL PATTERNS AND STATISTICS

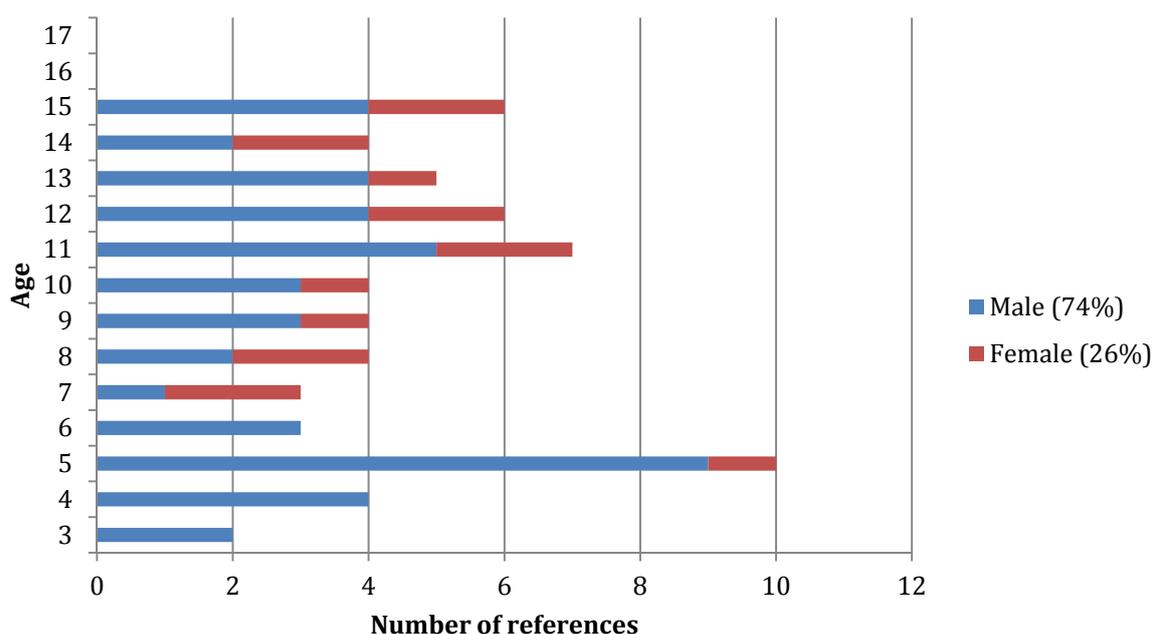
References received per month 1 April 2015 – 31 March 2016



References received by reporting year



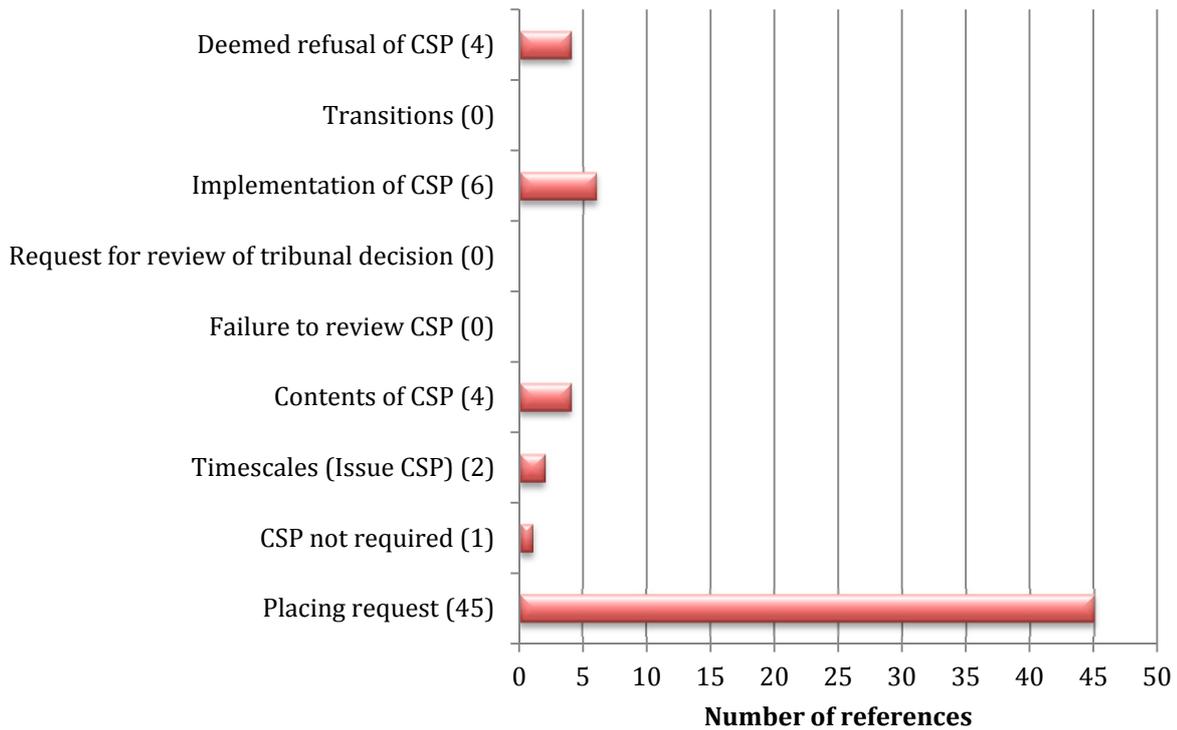
References received by age and gender 1 April 2015 – 31 March 2016



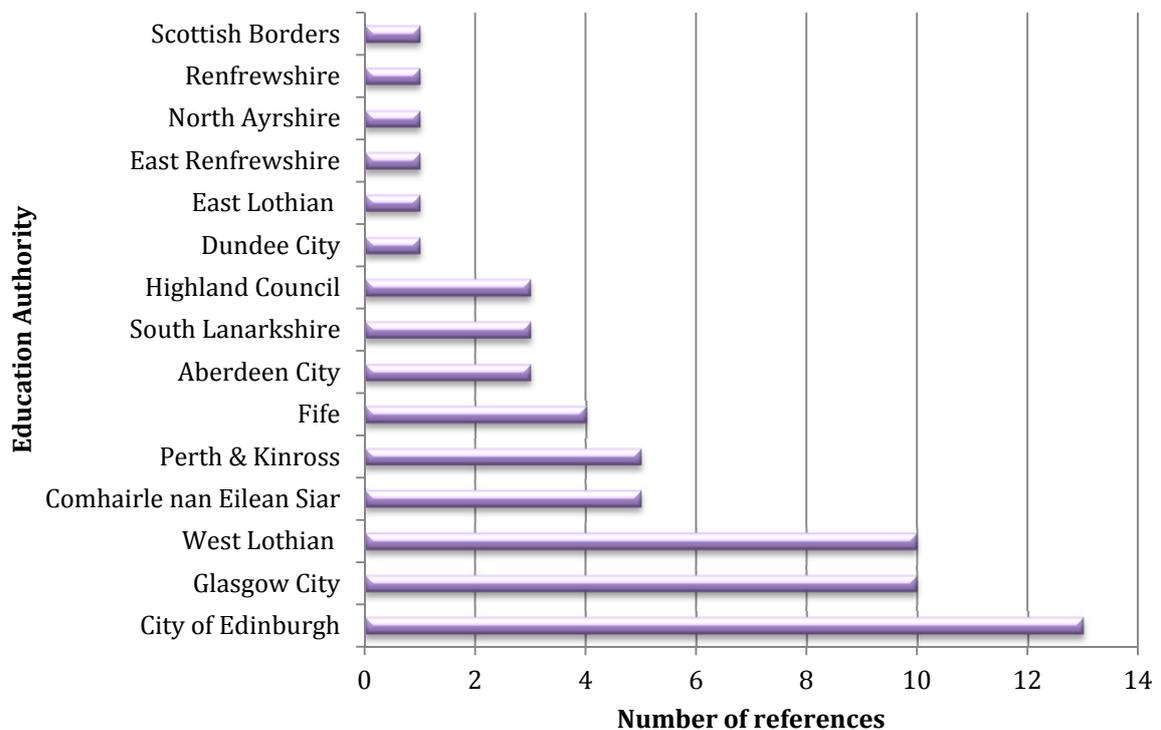
Nature of additional support needs for references received 1 April 2015 – 31 March 2016

Nature of Additional Support Needs	2015/2016	2014/2015	2013/2014
Autistic Spectrum Disorder	40	49	30
Language or speech disorder	3	6	3
Physical or motor impairment	4	7	6
Social, emotional and behavioural difficulty	3	1	3
Physical health problem	0	0	0
Visual impairment	2	3	0
Other specific learning difficulty	7	6	4
Dyslexia	2	0	0
Other moderate learning difficulty	0	0	0
Hearing impairment	0	0	0
Looked After	1	0	0

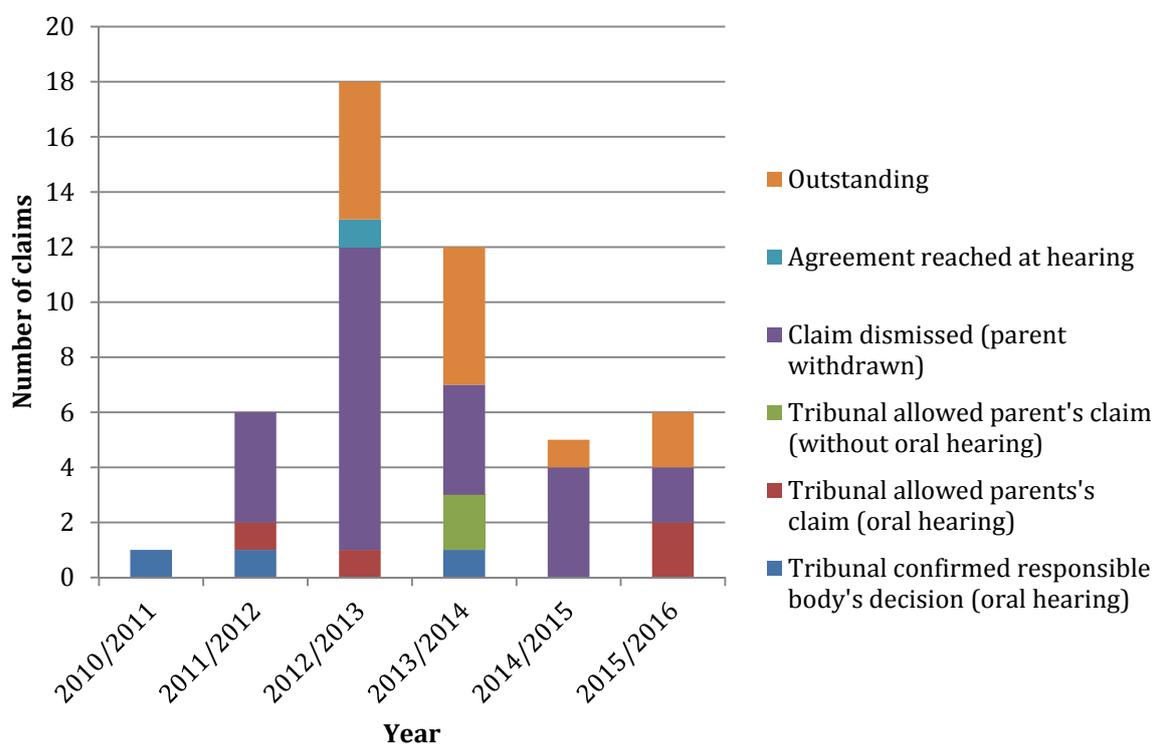
References received by type 1 April 2015 – 31 March 2016



References received by Education Authority 1 April 2015 – 31 March 2016



Outcome from claims received 1 April 2015 – 31 March 2016



Outcome from references received 1 April 2015 – 31 March 2016

Outcome	Number of References
Tribunal confirmed education authority decision (oral hearing)	4
Tribunal overturned education authority decision (oral hearing)	2
Tribunal overturned education authority decision (without oral hearing)	2
Tribunal confirmed education authority decision (without oral hearing)	1
Reference/claim dismissed (parent withdrawn)	43
Reference dismissed (not competent/not within Jurisdiction)	6
Outstanding	14



Seven Golden Rules for Participation

1



Understand my rights

2



A chance to be involved

3



Remember – it's my choice

4



Value me

5



Support me

6



Work together

7



Keep in touch

TRIBUNAL MEMBERS AND CONVENERS

President

May Dunsmuir

Conveners

Derek Auchie
Lesley Dowdalls
Deirdre Hanlon
Michael Hanlon
Peter Hessett
Joseph Hughes
Russell Hunter
Julius Komorowski
Frances Konopka
Richard Mill
Muriel Robison
Isobel Wylie

Members

Terry Carr
Margaret Cooper
Polly Cowan
Hope Craig
James Hawthorn
Maureen Howie
Jane Laverick
Christina Leitch
Barbara Marks
Kate MacKinnon
John McDonald
Hazel McKellar
Gillian McKelvie
Ian Morrison
Lio Moscardini
Elizabeth Munro
Christine Pacitti
Pradeep Pasupuleti
Barbara Peardon
Lesley Sargent
Irene Stevens

Departing conveners and members in 2015/2016

The President extends her thanks to the undernoted conveners and members who have resigned from their judicial appointment in this reporting period. She thanks them for their service to the Tribunal and wishes them good health and every success in the future.

Stuart Beck (member)
Janice Duguid (member)
Sara Matheson (convener)
John McKendrick (convener)
Nicola Whitfield (member)

