




Additional Support Needs  
Tribunals for Scotland

# 13th Annual Report 2018

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Aithisg Bhliadhnail nan Tribiùnanan Feuman Taice a Bharrachd airson Alba



Are you in the  
right place?

needs to learn  
[www.needstolearn.scot](http://www.needstolearn.scot)

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

I have pleasure in submitting this 13th Annual  
Report of the Additional Support Needs  
Tribunals for Scotland to the Scottish Ministers.



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

Glasgow Tribunals Centre  
20 York Street  
GLASGOW  
G2 8GT



**May Dunsmuir**  
*President*

**This is my last report as President of the Additional Support Needs Tribunals for Scotland (ASNTS) before the ASNTS transfers into the Health and Education Chamber of the First-tier Tribunal for Scotland on 12 January 2018.**

It has been an enormous pleasure to see the work of the ASNTS develop and grow over the past 3 years and 8 months since taking up my appointment as President. The work of the ASNTS has accelerated in this reporting period, not only in case volume and hearings but also in our process refinements and our hearing innovations as we strive to deliver the best judicial service we can.

We have come quite a way since the ASNTS was first established in 2005. We have discovered new ways to hear the voice of the child; we have encountered challenges and worked hard to overcome as many of these as we can; we are re-defining how hearings should be conducted, so that they are as inclusive an experience for children as possible, rather than a barrier to participation. We are listening to those who have engaged in tribunal processes: children, young people, parents, schools and education authorities, and we are developing our practices to deliver improvements.

The theme of this final report is 'listening, learning and leading' – which captures the focus of our work in this reporting period. You will read how we have listened to children, individually and as part of a group experience. You will hear from some of the young consultants for our new children's website and you will learn of our experiences with the Young Ambassadors for Inclusion.

**Listening** means showing we are listening, and taking what we hear seriously.

**Learning** means using what we hear to improve what we do.

**Leading** is keeping the child at the centre of our proceedings.

We have introduced a number of innovations to support children, some of whom themselves may be a party, to voice their views, give their evidence and participate in their hearings. You will be introduced to our new 'needs to learn' website for children aged 12 to 15 years, created to coincide with the extension of rights being granted to this age range from 11 January 2018, when the provisions of the Education (Scotland) Act 2016 were commenced. With this come new child friendly forms and guidance.

You will read about our aspirations for new hearings facilities in the Glasgow Tribunals Centre – designed by children, for children. Some interesting points arose from my consultations with children on how a hearing room should look. Firstly, they wanted to attend their hearing; secondly, they wanted parity with the adults. They wanted tables to remain, but these should be round, with the same chairs for everyone and at the same height. Children wanted access to fresh drinking water and snacks (particularly important for those children with autism). They wanted drinking straws.

Our membership will shortly grow, with 7 new legal members and 5 ordinary members recommended for appointment following a Judicial Appointments Board for Scotland recruitment and a First-tier Tribunal for Scotland assignment exercise. I am confident that the new members will help us to meet our current and potential growth in cases. We have seen a significant rise in placing requests in this reporting period and a corresponding, although smaller rise in co-ordinated support plan and transition references and in disability discrimination claims. The majority of cases continue to be for boys and for children with autistic spectrum disorder. We have also seen a small rise in the number of cases for pre-school children (those under primary school age).

One of the primary strengths of the ASNTS is its membership. We have expert, experienced and committed members, who at times go to

extraordinary lengths to ensure that their cases progress without unnecessary delay. They are with me on this journey as we build on our knowledge and endeavour to keep the child at the centre of all we do. I have been impressed with their focus and their passion for our jurisdiction and I am delighted that they are continuing their journey with me as we transfer into the Health and Education Chamber. Many of our members were involved in project work this year, some of which included the drafting of content for the new children's website and design ideas for our new hearing suites in Glasgow. I am extremely grateful to them. It would not otherwise have been possible to achieve what we have achieved within this time frame.

As always, I cannot conclude my report without acknowledging and commending our casework and tribunal operations team, and other staff of the Scottish Courts and Tribunals Service (SCTS), Judicial Office and Scottish Government, for their support and assistance as we conclude what has been a most challenging 9 months – with preparations for the commencement of new legislation, the development of the Health and Education Chamber and the preparation of a brand new website for children. It has been an extremely busy but most rewarding time – and I hope that those who have shared in it now feel the fruits of their labour.

# Listening

means showing we are listening,  
and taking what we hear seriously.

## “Involve me right from the start”

“Remember that I should be able to say what I think about things in my day to day life, as well as bigger things in my school, community and country. Show me that you are listening to me, and are taking me seriously. If I take part, please use what I tell you to help you make decisions.

Make sure that you use the things I have said to make my life better and change the things that need to be changed. If you do not use the things that I have said to make changes, please explain to me why not. Tell me how important my voice is. Don't ignore me because it is too hard for you to hear what I have to say.”

7 Golden Rules for Participation:  
Golden rule 4: Value me



“Hearing is through  
the ears, but listening  
is through the mind.”  
(Anon)

# needs to learn

**Following the extension of children's rights in Scotland, the President set out a clear vision to create an enabling online resource that would feel like a helping hand to children. It had to be a welcoming, relaxed, informative resource which could be easily understood and would provide an accessible format to enable children to bring an application to the Tribunal.**

The team of people working on the project included the President, SCTS staff, members of the Tribunal and an experienced design company, StudioLR. I was privileged to be part of this team.

The team and I worked together to:

- create an original name for the service
- create a series of visual aids that could be used online and in print
- design an accessible website aimed at 12-15 year old children with additional support needs
- build a prototype and provide user testing

I learned a lot during the entire process but, for me, the most valuable part was working with children directly and gaining insight from their feedback.

On two occasions, I accompanied the President to meet with a group called the Young Ambassadors for Inclusion. The President held a discussion with the children and young people to get their views on what we had created.

I got to listen to their feedback on everything from colours to content. This really helped influence the final design.

Earlier discussions also gave us ideas on how the children's hearing rooms will be designed in the new Glasgow Tribunals Centre. The process really made me see how empowered children are when given the opportunity to share their own views and to shape a process that is in essence theirs. Sometimes adults don't know what is best after all!

I also had the opportunity to take part in individual user testing with children. I got to accompany the designer and the President when children tested the website prototype for the first time. The feedback from this testing again influenced the final design. The President asked the children to remember the Tribunal as they complete their education – and to think about whether they would like to be Tribunal members in the future.

**Hazel McKay**  
*Senior Operations  
Manager,  
Scottish Courts and  
Tribunals Service*



Find out more at:  
**[www.needstolearn.scot](http://www.needstolearn.scot)**

Here are some thoughts from the children who took part.



**Devlin Connelly,**  
age 12

"I liked having an input into the design of the needs to learn website and giving my ideas, as I know this will benefit the children who will

use the website. I also enjoyed visiting the Tribunal and meeting the President. This gave me an understanding of the work carried out by the Tribunal. I would like to be a Tribunal member in the future"



**Harris Stevenson Little,**  
age 12

"I really enjoyed testing the new website. I think it will help children access the Tribunal when they need to.

I really enjoyed meeting the other children and the President. I would like to do it again sometime. I wish I could be a Tribunal member one day. Their job is really important to children who need their help."



**Kerrie McLeod,**  
age 15

"Thank you for asking me to be involved in the testing of the children's website. It was very interesting to meet the President

of the Tribunal and other staff. It can be scary meeting with adults sometimes, but Mrs Dunsmuir was lovely and listened to what I had to say. I also enjoyed working with Kimberly, the designer, who asked me lots of questions about what I thought of the website. I would like to take part again!"

### The Young Ambassadors for Inclusion



Young Ambassadors were given the opportunity to see the prototype and to comment. They liked the unique images and they liked the fact that they can access the website on their smartphones.



# Learning

means using what we hear  
to improve what we do.

When asked whose job it was to make  
sure he was safe, a child answered:

“It’s everyone’s  
job to make  
sure I’m alright”.

(Report of the Child Protection Audit and Review, Scottish Executive, 2002)

"All children and young people need  
support to help them learn...

Some children and young people will  
require support that is additional to, or  
different from, that received by children  
or young people of the same age to ensure  
they benefit from education, whether  
early learning, school or preparation for  
life after school. There are many reasons  
why children and young people may need  
support to help them learn.

Additional support needs can be both  
long and short-term, or can simply refer  
to the help a child or young person needs  
in getting through a difficult period."

(Education Scotland, Parentzone)





# StudioLR on creating needs to learn

**As designers we're ambitious to tackle society's big challenges – that's what gets us out of bed in the morning. So, when we were tasked last summer with the design of an accessible website aimed at 12-15 year old children with additional support needs, we were motivated to create something that would have a really effective outcome.**

We understand that living with additional support needs can mean that school can be a real struggle for children without the proper support. These children and their parents or carers may be feeling worried, frustrated or confused about ensuring their education needs are being met. They're looking for help, and there's a chance that they have felt let down before and have come to the Tribunal as a last resort.

"Unsurprisingly children with additional support needs need additional support. That includes the way we communicate with them, not just visually but also understanding that their cognitive functions work differently. The design thinking and execution had to take all this into account when creating something of real value to them."

**Mark Wheeler**

Our aim was to develop a communication channel that would instil a sense of empowerment for its audience and feel like a helping hand.

Something that is welcoming, informally informative, and is easily understood. And something that helps in getting all children the education they are entitled to.

"The design of the site was led by the people that would be using the site. The colours, fonts and layout were all chosen based on research and knowledge of accessibility for web, for people with support needs, and in particular children with autism. The site was then user tested and assessed for ease of use and general understanding."

**Kimberly Carpenter**



**Mark Wheeler**  
*Design Director at StudioLR*

**Kimberly Carpenter**  
*Senior Designer at StudioLR*

We started off by considering a new, original name for the service to replace Additional Support Needs as part of the Health and Education Chamber of the First-tier Tribunal for Scotland – which we didn't feel was accessible!

So, we developed the name **needs to learn** to capture both ASN [needs] and education [to learn].

The name works well when we talk about putting children at the heart of the Tribunal process:

All children in Scotland should benefit from a school education. When this isn't happening we look at each child's individual circumstances and their unique **needs to learn**.

And also when we talk about the child:

We look at 'Jamie's' unique and individual **needs to learn** to make sure that he benefits from school education.

To build on the power of needs to learn, we developed a new visual language to be used online to help with signposting the user to navigate through the information provided. This consisted of a carefully considered colour palette, soft shapes, an engaging illustration style that would appeal to the age group, accessible language and a font that was highly legible on screen. The content was edited down to short blocks of text and bullet points so that information could be easily read

and digested by the user. There's also a section on the site titled 'word meanings' to explain the meanings of tricky words, especially legal terms that are hard for all of us to make sense of.

As we developed the website design we wanted to ensure the navigation was simple and clear, and it provided plenty of reassurance. The landing page asks:

Are you in the right place?

If you're **12 to 15**, have **additional support needs** and want to make a change to your school education, then **yes** you are.

Once the design had been signed off we created an Invision prototype and conducted user testing with a group of 12-15 year olds with additional support needs. This enabled us to observe their interaction with the site, including ease of use, and to ask them what they generally thought of the site.

The site will launch in February.

All children are entitled to, and deserve an education, and if **needs to learn** helps their education needs to be met then we're proud to have played a small part to achieve that.

**Lucy Richards**

*Founder and Creative Director, StudioLR*  
[www.StudioLR.com](http://www.StudioLR.com)

# Learning from our membership

Having already worked on the overall review of the website in 2016, I wanted to ensure that in creating a section for children none of the meaning was lost in using more child friendly wording and that all content remained legally accurate. I also was concerned to ensure that the content was in no way patronising and, while we considered it important to use appropriate wording for children to participate in the reference process, I was conscious that they would still need to understand some of the terms that a tribunal will use and accordingly we created a glossary, which is called 'word meanings'. I was really impressed, firstly with what Hazel did with the content I provided, and thereafter with the work of the designers in creating the pages.

## **Peter Hessett**

When Peter sent me the draft of the children's section of the website, it was already less formal than many other Tribunals' publications. I wanted to work with the content to make it as easy as possible for children to understand and use. I tried to think as a child would, by asking questions such as 'What do I need to do?' and 'Who can help me?'

Strategies I used included simplifying words, making sentences and paragraphs shorter and breaking lengthy sections of script into smaller chunks.

I added headings and colours to emphasise changes in topic and to identify legal jargon, much of which we defined in more basic language in the word meanings section.

It was also helpful to identify where symbols could help to draw the child's attention and reduce the language processing load. We had several drafts that went back and forth between Peter and me until we got the content ready for the designers. I was amazed by what the designers then produced and it's great to know that the final result has been influenced by and test-driven by children.

## **Hazel McKellar**



**Peter Hessett**

*Convener – needs to learn website*

**Hazel McKellar**

*Member – needs to learn website*



**Hope Craig**  
*Member – forms  
and guidance for  
children; hearing  
rooms for children*

Following the extension of rights to children aged 12-15 years in January 2018, it is more important than ever before that the Tribunal is accessible to children and young people.

In preparation for the legislative changes, the President invited me to prepare the new children's claim and reference forms and accompanying guidance. The intention was to explain the judicial process using straightforward language and short sentences, together with images which were commissioned by the President for the new children's section of the website. I also obtained informal feedback from children and young people with disabilities. Their views helped to determine the layout and length of the documents, thus making them easier to navigate and read.

The plan is for the Chamber's new home in the Glasgow Tribunals Centre to have designated hearing rooms tailored to the needs of children with additional support needs. Based on my experiences,

I provided a number of suggestions as to the design of the room, including:

- dimmable lights
- window blinds
- thick carpets
- bubble tubes
- a sensory basket containing stress balls, scents, different fabric/texture swatches, etc
- a sensory wall which a child can control the appearance of (e.g. a child with autism may prefer low arousal colours, while another may prefer brighter colours due to a visual impairment)
- comfort items e.g. toys and also cool packs/heat packs which can provide pain relief
- flexible furniture arrangements and different types of seating e.g. bean bags, chairs with arms, comfy chairs and cushions, etc
- rest cards to be used during proceedings by a child who doesn't wish to verbalise their request or is unable to
- alternative communication tools e.g. writing responses on a tablet device or using images to express what they mean

Although every child will have their own individual needs, it is hoped that the plans for new hearing rooms will offer a reassuring space for those who attend hearings and increase the accessibility of the tribunal proceedings.

**Deirdre Hanlon**  
*Convener – Education  
(Scotland) Act 2016  
training event 13 and  
14 September 2017*



For me, ASNTS training has always provided a welcome opportunity to meet my fellow members. It allows us the time to share our experiences and thoughts on some of the more complex issues that arise and reflect on our practice and decision making together.

This event ran over 2 days and commenced with a helpful introduction to the 2016 Act, followed by thoughtful and detailed case studies which gave the changes some context when we broke for our group discussions. We also applied our minds to the concept of capacity with its inherent complexities, including consideration of international legal doctrine. The UN Convention on the Rights of Persons with Disabilities in particular generated much interesting debate.

On the second day, the conveners alone explored further the two key concepts of 'capacity' and 'wellbeing', followed by a discussion of some of the process issues in determining matters when there is a dispute. Having the casework team in attendance throughout the training gave Tribunal members an invaluable perspective on some of the practical implications of the new changes.

Ultimately, I think the training highlighted the critical role which the Tribunal will play in allowing children to exercise their new rights under the 2016 Act.

As decision makers we are charged with applying the relevant terms of the 2016 Act to what is often a complex set of disputed facts. Throughout the training we were gently reminded that we must keep the child at the centre of this and everything else that we do at ASNTS. This theme has been repeated at almost all of the events that I have attended at ASNTS, and rightly so. With this in mind, the training certainly focussed my mind on how I might approach any cases involving a child or young person exercising a right under the 2016 Act.



# Learning from children

The Young Ambassadors for Inclusion had a clear vision for a hearing room which would look more accessible and help them to feel included. They also had strong thoughts about how we could

hear their views. Here is what they had to say when the President asked, "What works well / doesn't work when seeking the views of young people with additional support needs?"

## What works?/Good

Friendly speaking, less formal and comfortable sitting, colourful
Ask for views/receive information before meetings
Options: giving of views before the meeting
Prefer talking to people they know
Photos, videos or visiting the room beforehand
Good advice-easy to follow
Do not have to attend the whole time - can I attend as much as I want to
Choice
It is important we are able to attend
If our views are written down or captured, if we don't want to be there at the meeting
Time out space
Feel like we are treated like an age appropriate person
When kids get to get their own point across
Knowing what is going to happen - preparation for questions
1 to 1 interview
When confidence is built up
Understanding views
Knowing who is going to be there
Someone who can help explain the questions
If someone could come with you to meetings
Tranquillity
Staff try and support us

## What doesn't work?/Bad

Don't like to talk to people unknown
People patronising
Formal speaking, boring colour
Timing
Too much talk
Fair settings
Not really being included - adults can take over the meeting
Do not always understand why we are meeting
Only attend the last 10 minutes
Feel pressurised to attend
Mixed experience of views gathered before the meeting
The rooms we meet in are not always good - not child centred or friendly
When there is a lot of talking
Too many people there
Adults don't always listen
Misunderstanding

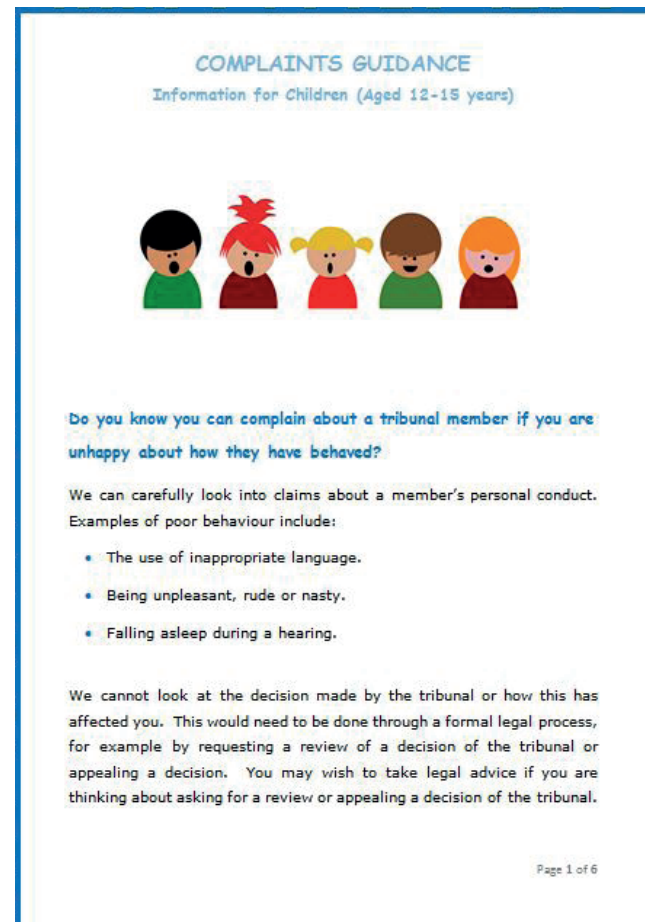
# The Judicial Office for Scotland

## Complaints Guidance for Children

When participating in the Implementation Group meetings for the new Health and Education Chamber, the Judicial Office for Scotland were keen to understand the needs of stakeholders to ensure they were provided for. One clear theme that emerged was the need for there to be straightforward, jargon free guidance to assist young tribunal users in making a complaint when they were unhappy about the behaviour of a tribunal member.

In conjunction with Scottish Government Education team, Children in Scotland and the Tribunal, the Judicial Office set about compiling a guidance leaflet which provided information in a clear cut way. The new guidance is not only written in plain English but in an accessible font and colour, along with the use of relevant pictures to aid understanding and allow 'at a glance' direction to the sections they are looking for.

Having received positive feedback on the new guidance, consideration is now being given by the Judicial Office to improving the accessibility of their standard complaints guidance to aid the court or other tribunal users.





# Scottish Courts and Tribunals Service



**Paul Stewart**  
*Operations  
Manager – Scottish  
Courts and  
Tribunals Service*

I have had the pleasure of working with the ASNTS as Operations Manager since November 2017. This was both an exciting and challenging time for the administrative team within ASNTS and I was eager to be involved as the jurisdiction was experiencing a period of considerable change. Having worked in tribunal operations in other jurisdictions for the past 5 years, I was looking forward to being able to further develop my own knowledge and share the experience I have gathered from working within other tribunals.

I was immediately struck by the uniqueness of the ASNTS jurisdiction in that it is focused on making judicial decisions which achieve the best results for the children and young people who are at the centre of applications. In doing so, the processes and procedures within this jurisdiction are geared towards trying to obtain the views of the child, as well as encouraging early resolution of cases.

I was inspired by the specialist knowledge that each member of the administrative staff has developed during their time in ASNTS, and this has encouraged me to develop my own knowledge of the jurisdiction.

Since I started working with ASNTS, I have job shadowed the case officers to learn the end to end casework process. I have also joined the team at their Legal Case Management meetings and attended a number of meetings with the President, which has helped to build my understanding of ASNTS. I have also had the opportunity to attend a number of internal and external training events with the team, including induction training for new tribunal members. In the near future I also hope to be able to observe a suitable tribunal hearing.

In addition to my own learning and development over the past year, there has also been considerable work carried out to encourage the learning and development of all our administrative staff and to ensure that the casework team retain the specialist knowledge they have developed. Elaine Forbes joined the ASNTS team as our Improvement and Learning Officer in 2017 and this has allowed for the development of technical training modules in line with key processes and standard operating procedures, as well as the creation of individual learning plans for any new staff to the jurisdiction.

There has also been extensive training developed and delivered to staff in advance of imminent changes within the jurisdiction, such as the new capacity and wellbeing legislation, the transfer into the Health and Education Chamber of the First-tier Tribunal for Scotland and the new needs to learn website.

A bespoke training module outlining the new legislation was provided to the casework team, and staff took part in a mapping exercise session with a Tribunal convener to review and develop processes.

As the new legislation allows for children aged between 12 and 15 years to bring applications to the Tribunal, the administrative team have also attended external training delivered by the NSPCC on communicating with children, as we consider it vital that the team have the necessary skills and training to support them to effectively engage with children and young people who contact the Administration. Going forward, the existing technical training modules will also be reviewed and updated to include test cases for applications made by children aged between 12 and 15 years.

Looking ahead, I am eager to continue working with the President and the staff within the new Health and Education Chamber, and to continue to develop our staff to ensure they remain specialist case officers and maintain their customary high level of service to all our stakeholders.



**Julius Komorowski**  
*Convener – Case  
management  
system*

On 10 November 2017, I took part in a day-long session with the Scottish Courts and Tribunals Service IT Contractor (Dane Stewart) together with members of the Tribunal staff, Hugh, Megan and Julie, to discuss the Tribunal's case management system.

The Tribunal was adopting a highly structured case-flow system, integrated with IT, which would cater for every step that might be encountered in a reference or claim to the Tribunal.

It was clear from this that the variety and number of procedures potentially required for cases before the Tribunal posed a challenge, and also that the contractor and staff had been exhaustive in their efforts to capture these complexities in a comprehensive manner. Essentially, the life of a tribunal case had been broken down into discrete steps, set out in elaborate flow charts, identifying the different tasks required for each step. From my day I gained a deeper understanding of the necessary administration which a tribunal case entails, and I was able to offer my insights as a convener.

# Leading

is keeping the child at the centre of our proceedings.



## “We all need to do better”.

“Leading is not about a destination, it’s about a journey. Sometimes it’s about courage – courage to challenge how we think; what we do. We all need to do better. It’s very humbling to be entrusted with children’s views. We need to use what they tell us to improve what we do and how we do it – and if we get it wrong or we don’t quite get it right, it’s about moving on from that and using what we have learned, to do it better.” (President, ASNTS)

# Glasgow Tribunals Centre

During 2017 the SCTS Property and Services Unit (PSU) has been liaising with ASNTS to determine the Tribunal's requirements within the new Glasgow Tribunals Centre which opened in Spring 2018, working closely with the ASNTS President, May Dunsmuir, both staff within the PSU and the space designers.

Space Solutions took the opportunity to draw extensively on the President's knowledge beyond that required for the future ASNTS needs. This allowed development of a business plan for ASNTS, vulnerable witness and evidence by commissioner specialist accommodation for floor 6 at the Glasgow Tribunals Centre.



Scottish Courts and  
Tribunals Service  
and Space Solutions

# The hearing room

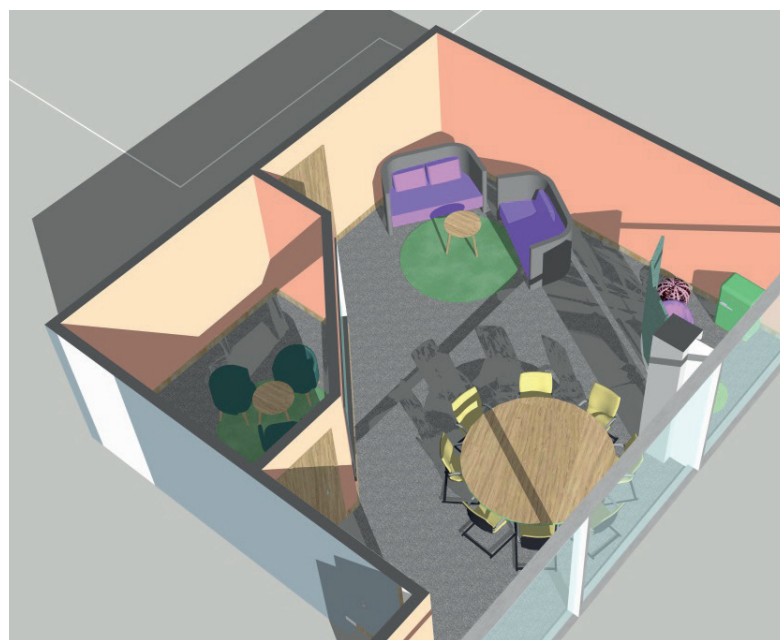
Children have shared their experiences of what works and what doesn't in terms of feeling included in their hearings process. They wanted choices about how they can participate in the hearings process. Their model of an inclusive hearing room has three distinct areas:

- An area with a round table with equal height chairs which look the same, where the tribunal members, parties and their representatives, the child and the witness will sit while evidence is being heard.
- An area with two small sofas, a rug and a small coffee table, where the child and the tribunal members and any appropriate others can sit, if the child would prefer to give their views or evidence there.
- A break out area, with a screen, a beanbag and small fridge, where the child can take a break from the hearing, whilst still remaining in the room.

In addition to the hearing rooms, they would like a separate sensory room, where a child could go to de-stress, and they welcomed the idea of a 1:1 evidence room where a child could give their evidence to one questioner, who would have an agreed list of questions. During this experience the questioner and the convener of the hearing (the legal member) would have a live hearing link.

The tribunal members and the parties would be able to see the child and the questioner. The child would be aware that others are observing but would not see or hear them. The 1:1 evidence room would be softy furnished with two armchairs and tactile features, including rugs.

Their model tribunal hearing room (with 1:1 evidence room attached) would look something like this:





# A young innovator's vision for a hearings suite



Care experienced  
child, aged 11 years.

# In-house convener

Most lawyers have little or no interest in judicial process as a subject in itself. Most are attracted to an area of the substantive law, whether it is criminal law, property law, family law or whichever branch of the law they find interesting. While I have practised in a range of civil and criminal areas as a lawyer, when I moved into academia in 2002, I did so because I found that there is not much law in being a lawyer. Most of the time lawyers (even litigation lawyers) deal with client meetings, billing, taking statements, writing letters and hanging around in court waiting. There is plenty of law in academia. However, having been a practising lawyer I couldn't quite shake off my interest in process. So I taught subjects such as the law of evidence and arbitration (a form of private litigation for commercial cases), both process driven subjects. I then found myself writing about them, in books and articles. I moved onto teaching about other methods of resolution such as mediation and negotiation. More recently, I have acted as mediator and arbitrator.

During over 13 years of Tribunal work, I have taken an interest in the procedural side of things, for example, responding to consultations and writing articles for newsletters. What I am getting to is this. I have an interest in process. In the mechanics of how a dispute is resolved. In some ways, resolution process is more important than any single area of substantive law. Process affects every dispute, while cases which turn on a nice point of law are uncommon, and of limited application. So, when dispute processes are improved, this can have a much broader and deeper impact than when the law in a particular area is reformed.

The Tribunal's first In-house convener was appointed on 11 January 2018.

**Derek Auchie,**  
*legal member*



When I saw the post of In-House Convener (IHC) advertised, I was attracted immediately. I could see that the role would involve dealing with day to day process issues as well as policy discussions and reform. The breadth of work is not a disappointment. I will be dealing with permission to appeal and review applications; advising on competency issues; drafting process documents; organising training (induction and all-member); revising reference forms and various other administrative matters. All in the company of the very supportive members of the Chamber staff team.

As far as the future is concerned, it seems to me that as the Chamber expands, there will be more of both types of work – case work and policy. The ground will need to be prepared for the new jurisdictions to be constructed. Recruitment and training of additional members will be required. Rules of procedure, new forms and guidance will be drafted. Then there is the additional peer discussion with members which will come with the additional cases.

All music to the ears of the oddity that is a judicial process enthusiast! I am confident I will enjoy the sheer variety and novelty of the role, and I look forward to developing and deepening my work in the Chamber in future.



# Health and Education Chamber

The ASNTS will transfer into the Health and Education Chamber of the First-tier Tribunal for Scotland on 12 January 2018 by virtue of the provisions of the Tribunals (Scotland) Act 2014.

The President and staff of the ASNTS have worked closely with the Judicial Office, the SCTS and the Scottish Government for the commencement of the Health and Education Chamber and the smooth transfer of the ASNTS, which is planned for 12 January 2018.

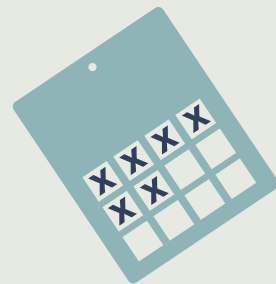
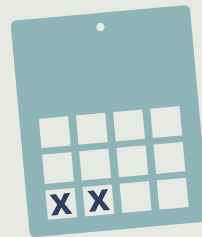
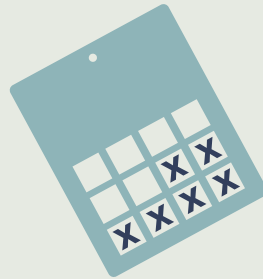
The wealth of work undertaken during this period has been impressive, ranging from website development, re-drafting of all tribunal literature, re-drafting of all tribunal communications for parties, re-branding, drafting of rules of procedure, the transfer and assignment of all members, members undertaking the judicial oaths, a new appeal and review process, drafting of regulations, updating the electronic case management system, drafting a judicial complaints process for children – and developing a new children’s area on the tribunal’s website, to name but a few!

None of this would have been possible without those committed staff, conveners and members who have participated and assisted in the many and varied projects. There was a strong atmosphere of collaboration throughout the reporting period, and this will undoubtedly lead to a successful new Health and Education Chamber.

It is intended that the NHS Tribunal for Scotland, the National Appeal Panel for Entry to the Pharmaceutical Lists and the 32 Education Appeals Committees (currently delivered by the 32 local authorities in Scotland) will transfer into the Health and Education Chamber by April 2021. Work in preparation for the NHS transfers will commence later in 2018.



# Tribunal Activity



# 1 April 2017 to 11 January 2018

## Placing Requests

During this reporting period **67** placing request references were made, an increase of **14** compared to the previous reporting year (**53** placing request references between 1st April 2016 and 31st March 2017). **17** education authorities were the subject of these references. Of these:

- 1 reference was allowed by the tribunal following an oral hearing.
- 1 reference was refused by the tribunal following an oral hearing.
- 1 reference was dismissed for want of prosecution under rule 18.
- 2 references were dismissed as they fell out-with the jurisdiction of the tribunal.
- 2 references were dismissed as they were deemed not competent.
- 7 references were withdrawn following an agreement between the parties.
- 1 reference was withdrawn following a change of mind by the appellant.
- 41 references were withdrawn for other reasons.
- 11 references received during this reporting period have yet to be concluded.
- 18 were for independent special schools.
- 49 were for education authority special schools or bases/units within mainstream schools.
- 41 involved children or young people with a diagnosis of autism.
- 1 involved a looked after child or young person.

## Co-ordinated Support Plans (CSP)

During this reporting period **12** CSP references were made, an increase of **1** compared to the previous year (**11** CSP references between 1st April 2016 and 31st March 2017). **8** education authorities were the subject of these references. Of these:

- 1 reference related to the contents of the CSP.
- 6 references related to a decision that a CSP was not required.
- 2 references related to a deemed refusal of a CSP.
- 2 references related to timescale in issuing the CSP.
- 1 reference related to a failure to review the CSP.

### Of these:

- 2 references were decided at a paper hearing, where the decision of the education authority was overturned.
- 6 references were withdrawn.
- 1 reference was dismissed under rule 18.
- 3 references remain outstanding.
- 8 involved children or young people with a diagnosis of autism.
- None were known to have involved a looked after child or young person.

## Disability Discrimination Claims

During this reporting period **11** claims were made, representing an increase of **2** compared to the previous year (**9** claims between 1st April 2016 and 31st March 2017). The local authority was named as the responsible body in all **11** claims.

- 1 claim was made on exclusion.
- 1 claim was made on exclusion and another issue to do with education.
- 1 claim was made on admission, exclusion and another issue to do with education.
- 8 claims were made on the matter of another issue to do with education.

### Of these:

- 1 claim was withdrawn following a change of mind by the appellant.
- 1 claim was withdrawn for another reason.
- 1 claim was dismissed under rule 18.
- 8 claims remain outstanding.
- 3 involved children or young people with a diagnosis of autism.
- 1 involved children or young people with a diagnosis of a hearing impairment.
- 1 involved a child or young person with a diagnosis of a physical health problem.
- 1 involved a child or young person with a diagnosis of a physical or motor impairment.
- 5 involved children or young people with another specific learning difficulty.
- None were known to have involved a looked after child or young person.

## Transitions

During this reporting period **1** transition reference was made, this is an increase of **1** compared to the previous reporting year (**0** transition references between 1st April 2016 and 31st March 2017). This reference was dismissed under rule 18.

## Previously Outstanding References and Claims

During the 2016/2017 reporting year, 4 references and 3 claims were outstanding at the time the annual report for 2016/2017 was published. The outcomes of these are reported below:

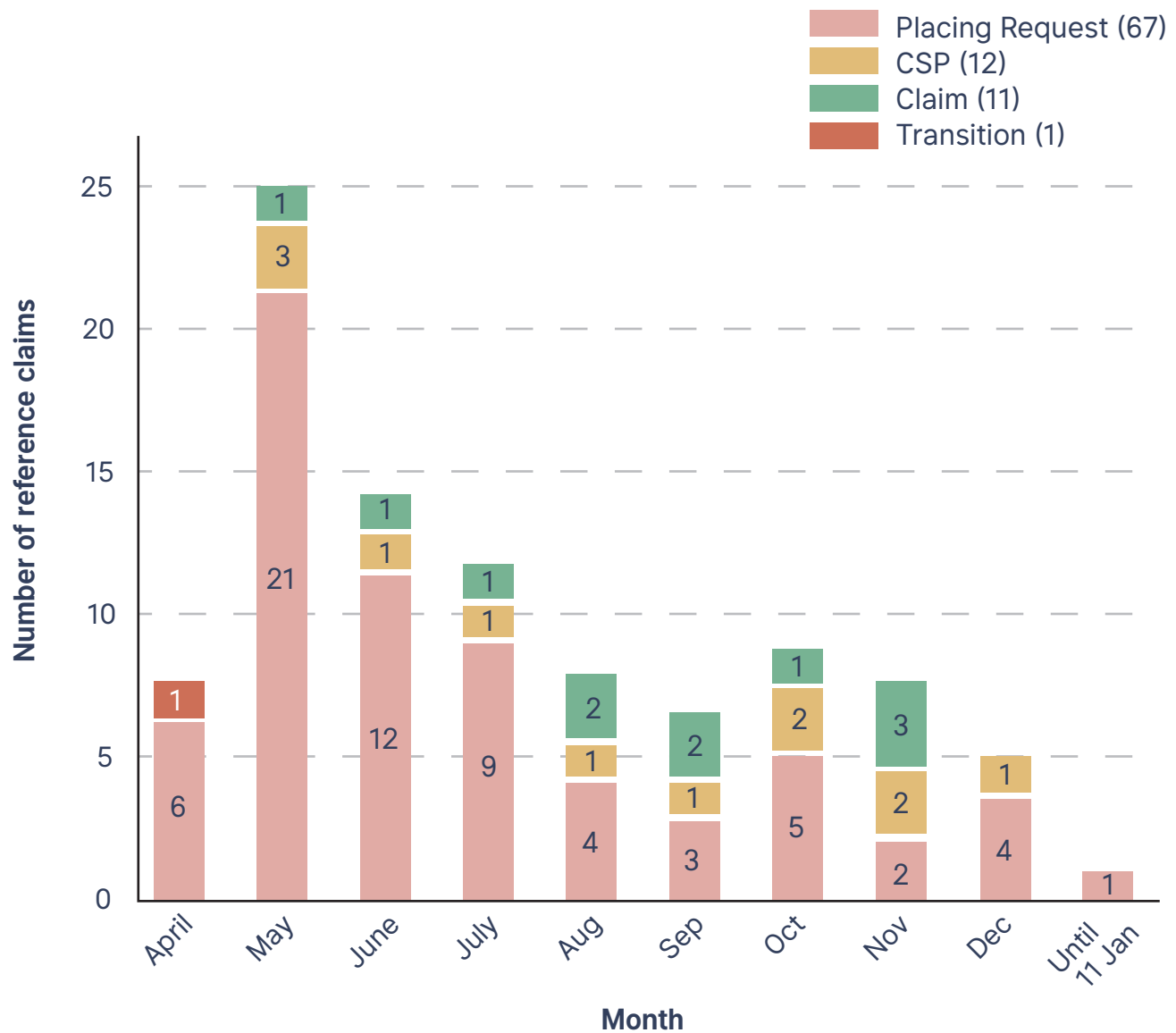
- 1 placing request reference was allowed by the tribunal following an oral hearing.
- 1 placing request reference was refused by the tribunal following an oral hearing.
- 1 placing request reference was withdrawn following an agreement between the parties.
- 1 reference related to the contents of a CSP was withdrawn following a change of mind by the appellant.
- 1 claim was made on another issue to do with education and was allowed by the tribunal following an oral hearing. This decision was subject to an appeal to the Court of Session. This appeal was refused by the Court of Session.
- 1 claim was made on another issue to do with education and was refused by the tribunal following an oral hearing. This decision was subject to a review application. The review application was refused by the tribunal.
- 1 claim was made on exclusion and another issue to do with education and was allowed by the tribunal following an oral hearing. This decision is currently subject to a review application.

# Tribunal Patterns and Statistics



# 1. References and claims received per month

May and June are traditionally busy months, following decisions by education authorities on placing requests which take place in April.





## 2. References and claims received in reporting period

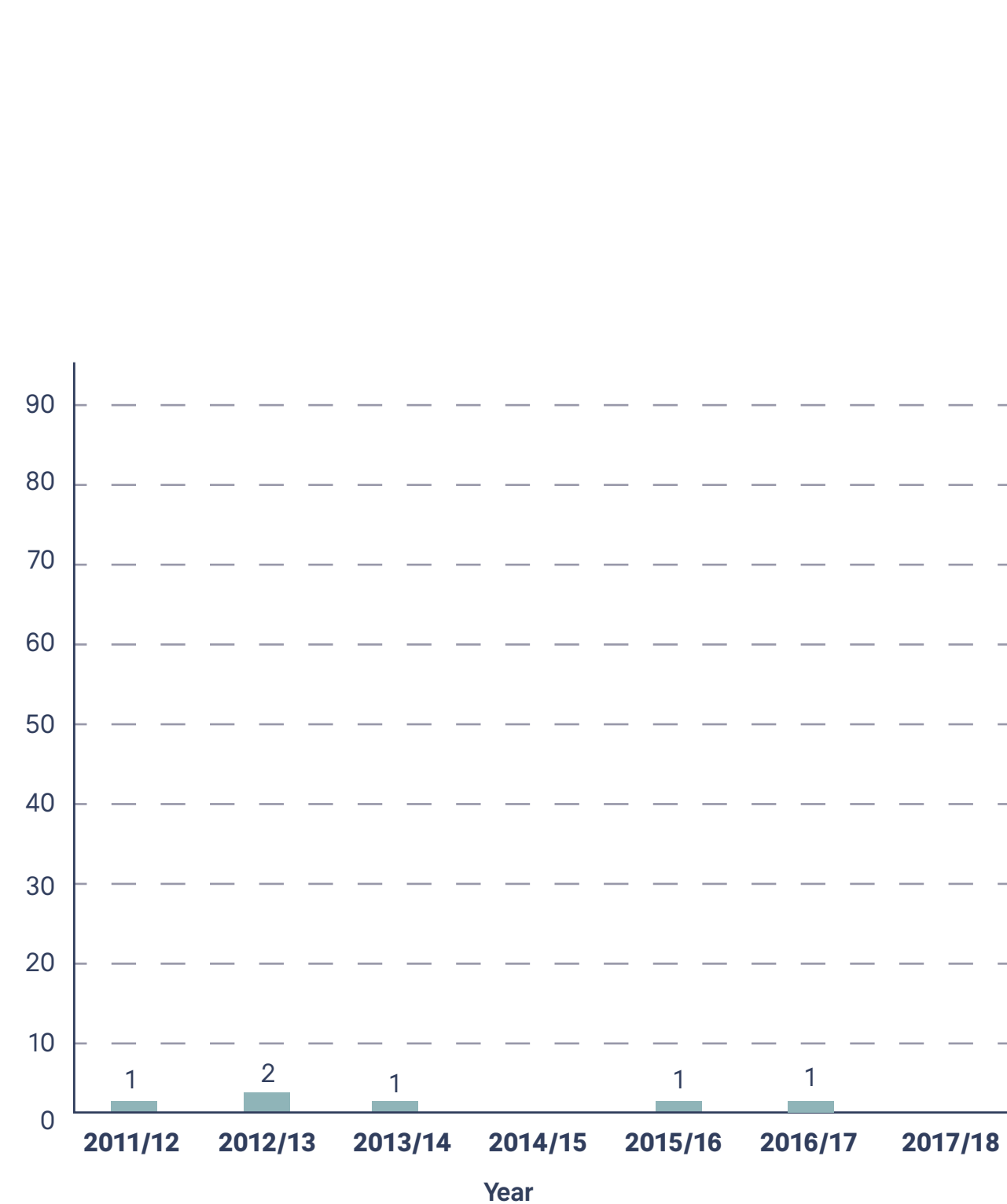
Placing requests continue to be the main type of tribunal application, although there has been an increase in the number of all types of tribunal application.



\*Reporting Period for 2017/18 is from 1st April 2017 - 11th January 2018

### 3. Review Applications

Request for review of tribunal Decision

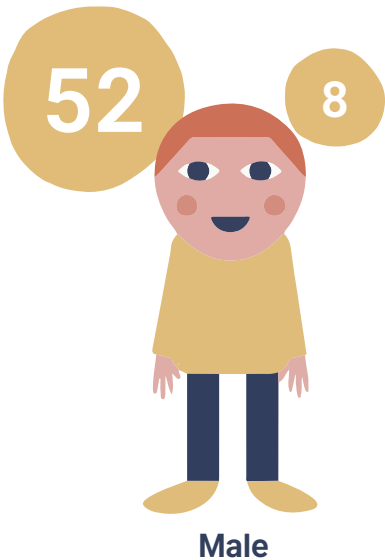


## 4. References and claims received by age/gender in reporting period

We continue to see the same year on year pattern of more male than female children who are the subject of tribunal applications. There has been a small rise in the number of tribunal applications for early years children (aged 4 and under).

Age	Reference	Claim	Reference	Claim
19	0	1	0	0
18	1	0	0	0
17	1	1	2	1
16	2	0	1	1
15	2	0	1	0
14	0	0	2	0
13	4	0	3	1
12	4	0	9	0
11	1	0	2	1
10	2	1	4	3
9	0	0	9	1
8	1	0	3	0
7	1	0	3	0
6	0	0	3	0
5	6	0	8	0
4	3	0	2	0

Total



## 5. Nature of additional support needs for references in reporting period

- The same year on year pattern is repeated here, with children who have autistic spectrum disorder forming the majority of applications to the Tribunal.
- Very few tribunal applications are made in respect of looked after children.
- Very few tribunal applications are made in respect of children with social and emotional and behavioural difficulties.

**“Children with social emotional and behavioural difficulties (SEBD) make up the largest category of children with additional support needs in Scotland. The proportion of children identified with SEBD has more than doubled since 2010, increasing from 22 per thousand in 2010 to 57 per thousand in 2017. 30% of children with SEBD live in the most deprived Scottish neighbourhoods (SIMD1), while 11% live in the least deprived. By way of contrast, children with dyslexia are evenly spread across neighbourhood deprivation quintiles. Despite the fact that children with SEBD are likely to receive support from a range of services such as social work and the voluntary sector, and may be care experienced, only 1.3% of children with SEBD has a CSP, compared with 13.7% of children with physical or motor impairment.”**

Further analysis of statistics is available in the following Working Paper produced by researchers at the University of Edinburgh: [http://www.docs.hss.ed.ac.uk/education/creid/Projects/39\\_ii\\_ESRC\\_SENChildren\\_WP\\_1.pdf](http://www.docs.hss.ed.ac.uk/education/creid/Projects/39_ii_ESRC_SENChildren_WP_1.pdf)



52

Children with ASD  
2017/18



36

Children with ASD  
2016/17

Nature of Additional Support Needs	2017/18*	2016/17	2015/16	2014/15	2013/14
Autistic spectrum disorder	52	36	40	49	30
Other specific learning difficulty	22	11	7	6	4
Dyslexia	0	6	2	0	0
Not enough information supplied	0	5	0	0	0
Other moderate learning difficulty	0	4	0	0	0
Visual impairment	2	3	2	3	0
Learning disability	3	2	0	0	0
Physical health problem	3	2	0	0	0
Hearing impairment	2	1	0	0	0
Language or speech disorder	0	1	3	6	3
Physical or motor impairment	2	1	4	7	6
Social, emotional & behavioural difficulty	5	1	3	1	3
Looked After	1**	2	1	0	0

Figures from 2016/2017 onwards are for references and claims, although previous years are references only

\*Figures for 2017/18 are for the period 1 April 2017 to 11 January 2018.

\*\* In this case, "Looked After" was not recorded as the child's Additional Support Needs. However, it was recorded separately on Case Management System that this child is looked after. As a result, the new total for this table is 92 when there were only 91 references and claims received during this reporting period.

40

Children with ASD  
2015/16

49

Children with ASD  
2014/15

30

Children with ASD  
2013/14

## 6. References received by type in reporting period

67

Placing Request

6

CSP Not Required

2

Deemed Refusal

2

Timescales (Issue CSP)

1

Contents of CSP

1

Failure to review

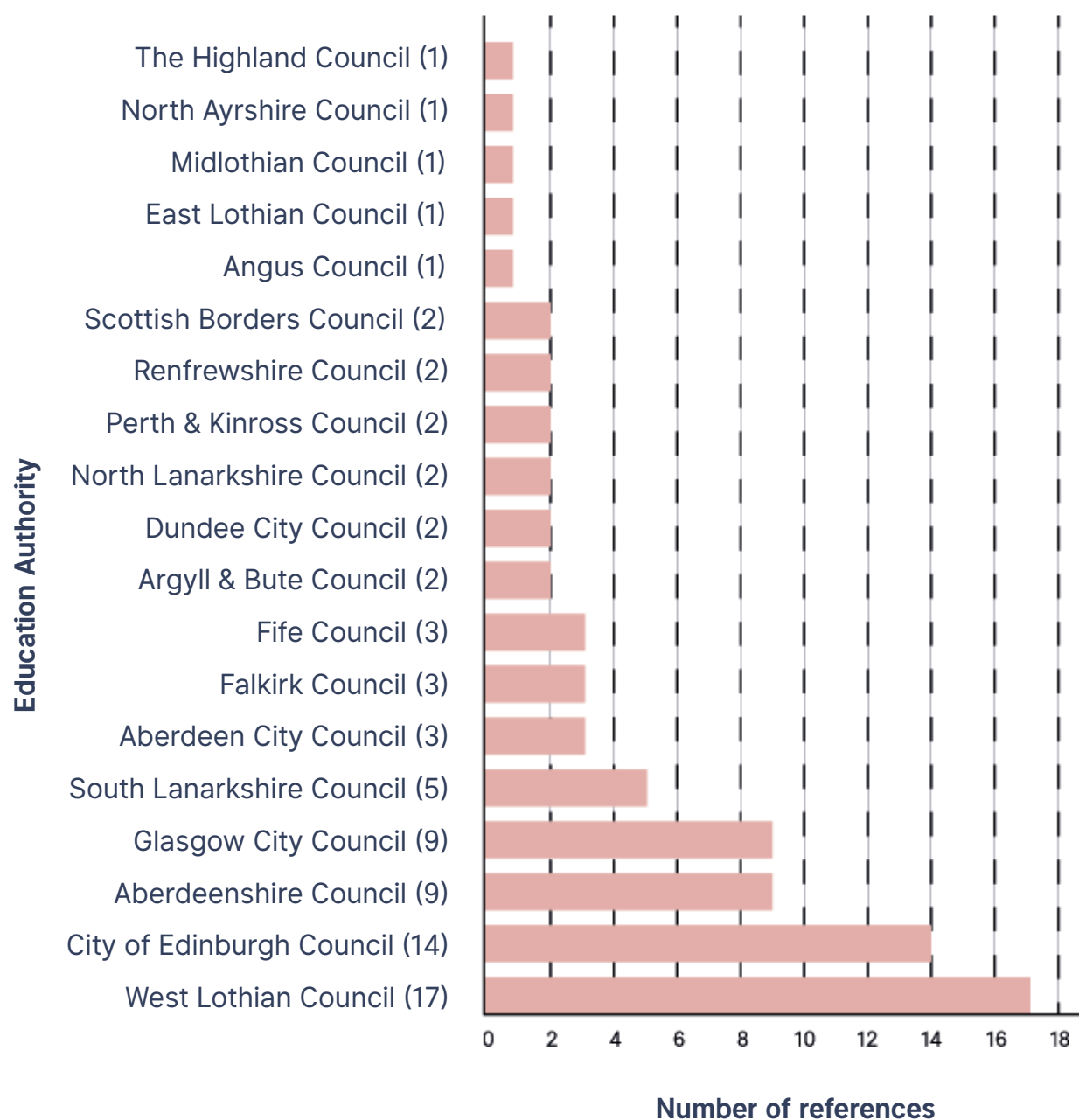
1

Transitions



## 7. References received by Education Authority in reporting period

There are 32 education authorities in Scotland. Only those who have been the subject of a tribunal application within the reporting period are represented here.

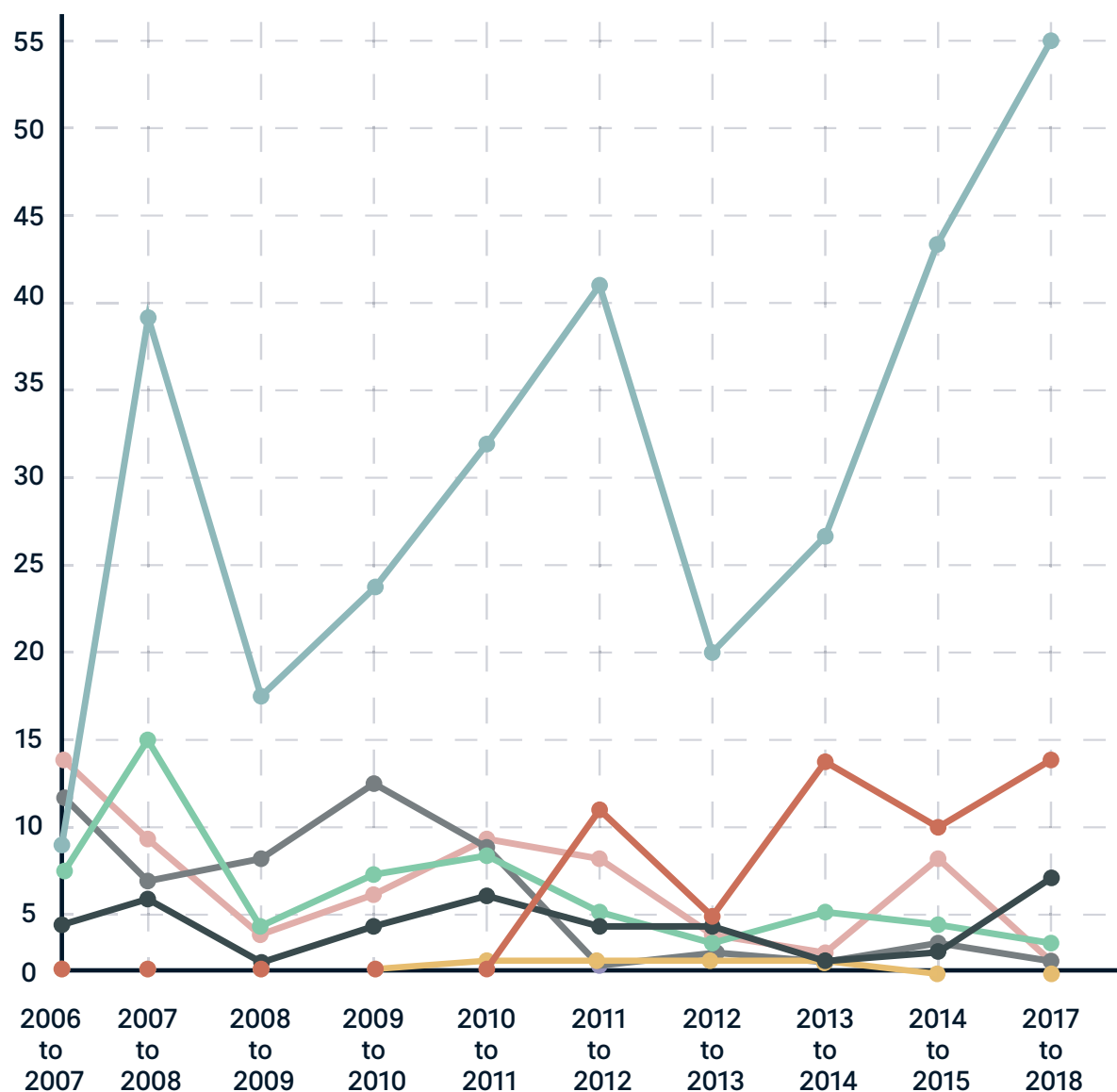
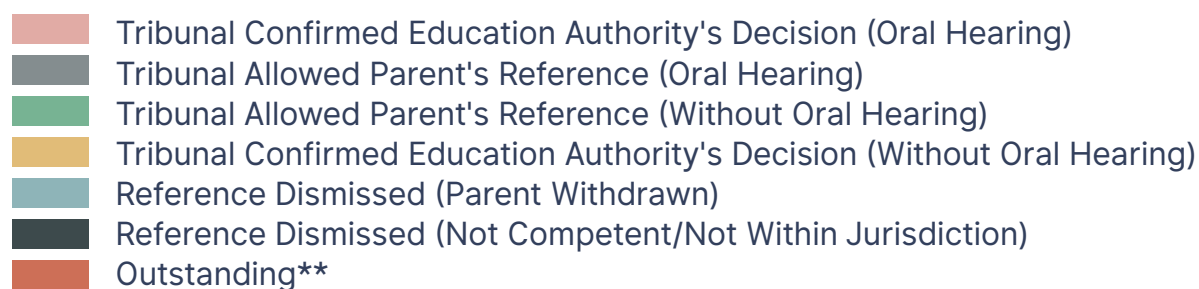




## 8. Outcome of references in reporting period



## 9. Outcome of references by reporting year

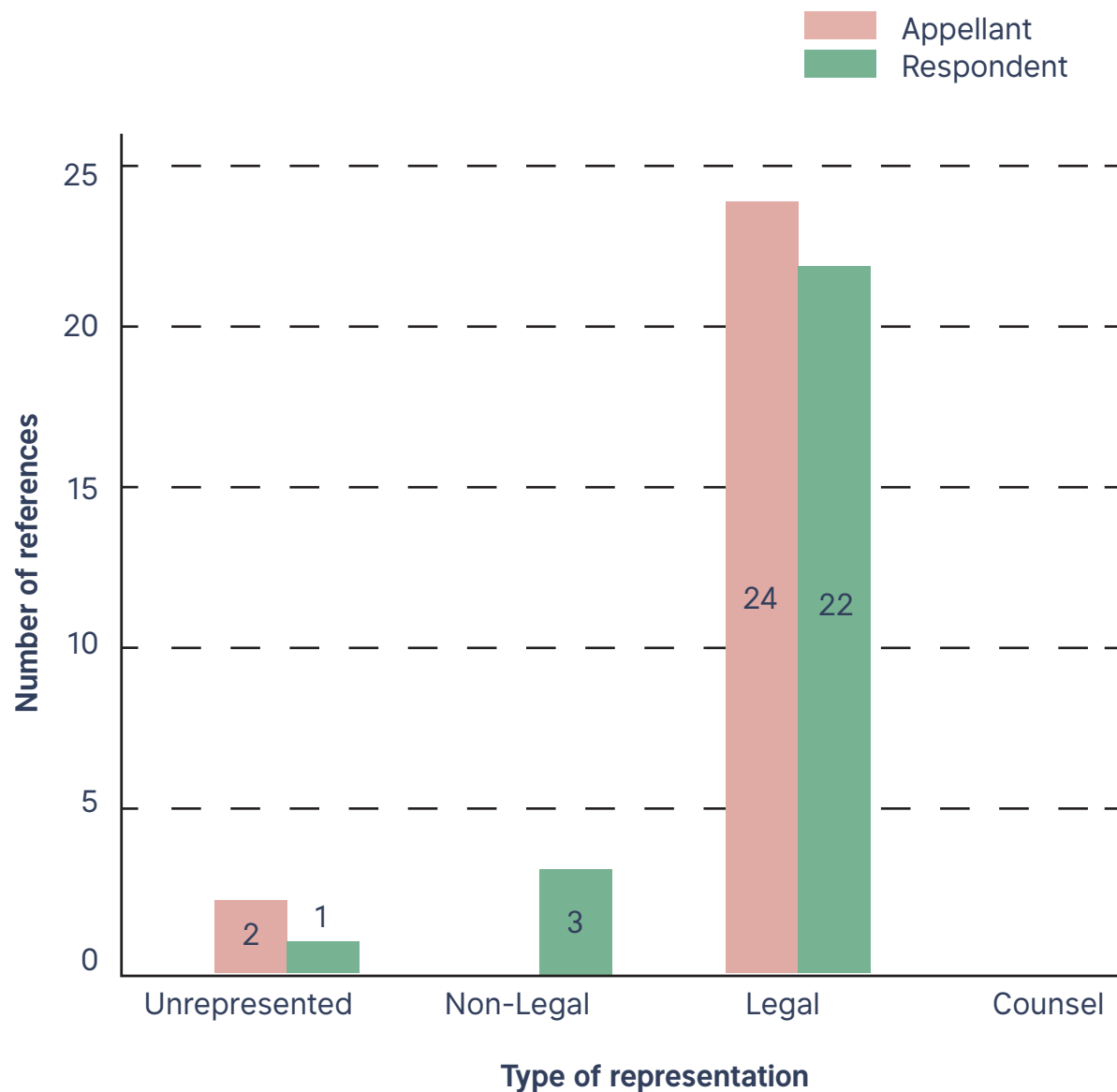


\*Reporting Period for 2017/18 is from 1st April 2017 - 11th January 2018

\*\*The number of applications outstanding in a reporting year has only been recorded from 2010 onwards

## 10. Representation at oral hearings in reporting period

Although we have seen a small increase in the number of hearings where a party is unrepresented, the majority still instruct solicitors to represent them. We have seen an increase in the number of cases proceeding to an oral hearing, which looks set to continue in 2018. This corresponds with the increase in volume of applications.

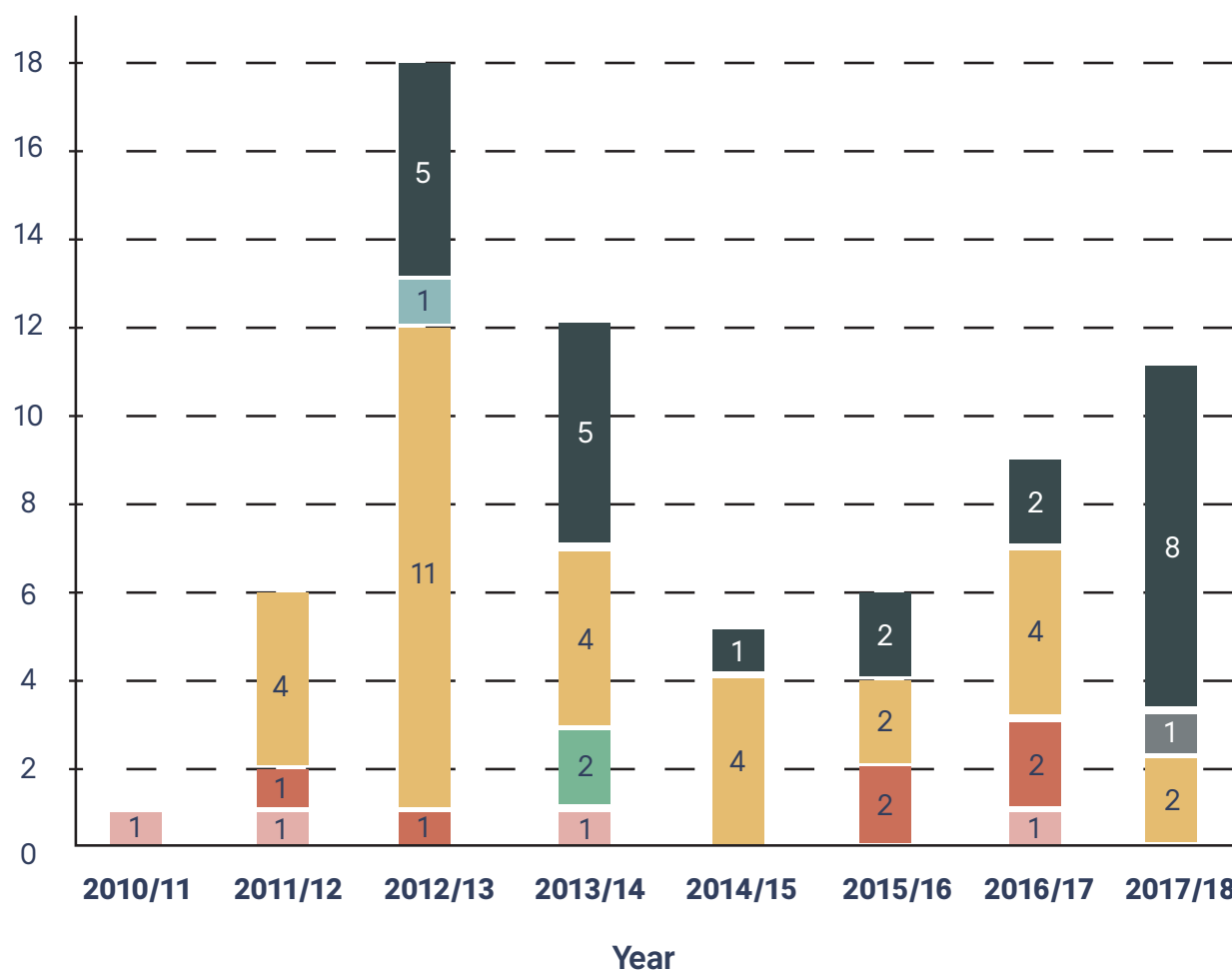
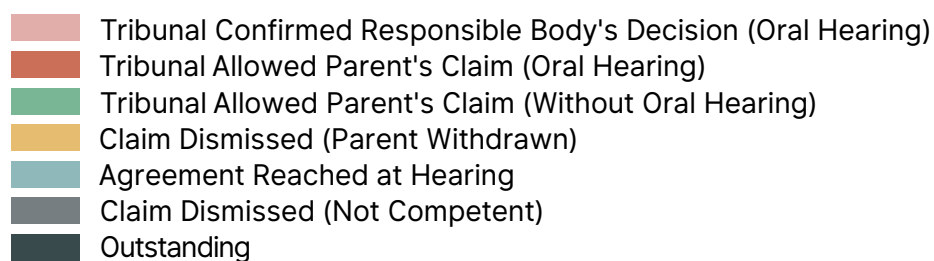


# 11. Claims received by reporting year



\*Reporting Period for 2017/18 is from 1st April 2017 - 11th January 2018

## 12. Outcomes of claims in reporting years



\*Reporting Period for 2017/18 is from 1st April 2017 - 11th January 2018

## 13. Claims received by type in reporting period

1

Exclusion, Other

1

Exclusion

1

Admission, Exclusion, Other

8

Other



## 14. Claims received by responsible body

Responsible bodies may be an education authority or an independent school. Only those who have been the subject of a tribunal application within the reporting period are represented here.

Number of claims

1

The Highland Council  
South Lanarkshire Council  
Scottish Borders Council  
Perth & Kinross Council  
North Lanarkshire Council  
Midlothian Council  
Comhairle nan Eilean Siar

City of Edinburgh Council  
Aberdeenshire Council

Number of claims

2



# Financial



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 2018 was £340,261 and the actual spend for that period was £451,000. Expenditure is detailed below.

Expenditure Item	Actual 2016/2017 (£000's)	Actual 2017 /2018 (£000's)
Tribunal members' fees and expenses (including President fees, expenses and member training costs)*	121	253
Tribunal Secretariat hearing costs**	12	29
Tribunal Secretariat staff salaries	107	109
Tribunal Secretariat staff expenses	1	3
Tribunal Secretariat office costs***	15	12
Tribunal one-off costs****	0	46
Total	257	451

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

\*\*\* This expenditure includes costs relating to general purchases such as postage, stationery and publications.

\*\*\*\* This expenditure relates to website development and the cost of members recruitment.

\*\* Expenditure includes costs for venue hire and fees for expert reports. The cost of venue hire has increased due to increased hearing days.

### 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 2017 to 31 March 2018.

# Tribunal Members

## President

May Dunsmuir

## Conveners

Derek Auchie  
Lesley Dowdalls  
Deirdre Hanlon  
Peter Hessest  
Joseph Hughes

Russell Hunter  
Julius Komorowski  
Frances Konopka  
Richard Mill  
Muriel Robison

## Members

Polly Cowan  
Hope Craig  
James Hawthorn  
Maureen Howie  
Jane Laverick  
Christina Leitch  
Kate MacKinnon  
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 2017/2018

The President extends her thanks to the undernoted convener and member who left the Tribunal in this reporting period. She thanks them for their service to the Tribunal.

Margaret Cooper (member) – resigned

Isobel Wylie (convener) – resigned

The President and members were saddened to have lost such a valuable, experienced and committed member, John McDonald, who passed away during this period.



Laid before the Scottish Parliament  
by the Scottish Ministers under the  
terms of Paragraph 15(1) of Schedule  
1 of the **Education (Additional Support  
for Learning) (Scotland) Act 2004.**