



Additional Support Needs
Tribunals for Scotland

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

2008/2009



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June 2009

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

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

Jessica M Burns

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President's Foreword

I have pleasure in presenting my fourth Annual Report reflecting the third full year of the Tribunals' work. Caseload activity has been much more modest this year and yet, conversely, due to the amending legislation there has been more focus on the Tribunal and this in turn has highlighted the nature and ethos of its work.

As in the past years, I count the Tribunals fortunate to be supported by committed and skilled conveners and members.

My legal obligation is to present an Annual Report to Scottish Ministers but as in the past two years, it is also an opportunity for me to comment on the implementation of the Education (Additional Support for Learning) (Scotland) Act 2004 from the perspective of the Tribunal and I hope that the way in which I am able to provide on this information will assist further discussions on how the jurisdiction can best serve those whom it seeks to support.

By the time this report is published it is likely that the Education (Additional Support for Learning) (Scotland) Bill 2009 will have completed its legislative passage and the Tribunal will be anticipating some further changes.

As I noted in last year's report, any reference to "child" or "children" should be read as including young persons also. We have yet to receive any reference in the name of a young person and those submitted on behalf of young people have concerned those who have lacked sufficient capacity to bring their own reference.

Tribunal Performance

I and the Secretary meet quarterly with the Support for Learning Division of the Education Directorate of the Scottish Government to report on the work of the Tribunals. As indicated in the statistical appendices to this Report, there has been a marked decline in the number of references received this year falling from last year's figure of 75 to just 35. This year has seen nine references proceed to an oral hearing, one on a preliminary issue, in contrast to last year when there were 18. The conversion rate from references to oral hearing is still about one in four.

When the Tribunals were established it was thought that a timescale of 4 months would be sufficient to conclude all but the most complex of cases. The ongoing nature of assessment and the wish to try and resolve disputes without proceeding to a hearing where this can be avoided has meant that this timescale is not always met. The failure to meet the target does not reflect on the ability of the Tribunal to arrange early hearing dates but to the nature of the dispute.

Of the 35 references received, 16 were concluded within the 4-month timescales, including eight of the nine which went to a hearing. A further five references were concluded slightly outwith the 4 month timescale.

It continues to be the case that many of the references received raise complex issues and if they proceed to hearing it is highly likely that the hearing is arranged sufficiently far ahead to enable matters to be settled by agreement where possible. Indeed, of the 14 references currently outstanding, eight are outwith the timescales.

The conveners are now adept at dealing with preliminary matters by way of a conference call. This practice avoids the need for adjournments which would prove costly and inconvenient for parties and their witnesses. Settling preliminary matters by conference call ensures that where hearings are necessary, they are focussed and efficient. Feedback on the extensive use of conference calls has been very positive and I remain convinced that this practice is enabling and consistent with the overriding objective.

The target of issuing decisions within 10 working days of the conclusion of a hearing has been met in respect of five of the nine oral hearings held this year; the remaining four decisions were issued within 17 days. In view of the substantial evidence heard in a number of these references I have no concerns about the timescales in which decisions have been issued. I am satisfied that they all demonstrate a high standard of decision writing where complex issues are explained clearly to parties without the use of legal jargon. Decisions are published on the website database in an anonymised format only where there has been a hearing. This allows a degree of transparency in a process where hearings are held in private.

Last year I noted that there were some concerns over the quality of the digital recording taken at hearings. The Secretariat has now obtained additional discrete microphones with stands to address this issue.

The Legislation

As noted above, the consultation on the Education (Additional Support for Learning) (Scotland) Bill and the legislative progress have served to highlight the Tribunal performance to date. I made a written submission to the consultation which ended in June 2008 and both I and the Secretary of the Tribunals submitted written evidence to the Education, Lifelong Learning and Culture Committee of the Scottish Parliament. We were then invited to give evidence to the Committee on 10 December. Some of the amendments which we proposed have been accepted by the Government and others received some support from MSPs on the Committee by way of suggested amendments. Whilst the Tribunals, quite rightly, continue to occupy a very modest space in the additional support needs landscape, its existence can serve to test difficult aspects of this legislation which impact far more widely than its limited case load and it can contribute to the knowledge of how the system as a whole is functioning. The Tribunals have the capacity to absorb any modest increase in the number of hearings as a result of statutory changes without requiring any additional resources.

One aspect which did cause me some concern was the characterisation of the Tribunal, particularly in the evidence before the ELLCC, of a system which is essentially adversarial, unduly legalistic and dominated by lawyers to the extent that it is not able to meet parental expectation. I tried to address this misperception by submitting an article to *Holyrood* which I reproduce in this report.

The Additional Support Needs Tribunals for Scotland – An Inside View

The consultation on the amending Education (Additional Support for Learning) (Scotland) Bill and the evidence presented to the Education, Lifelong Learning and Culture Committee have included a number of comments on the work of the Tribunal and its role in resolving disputes between local authorities and parents. It may be helpful to provide some data relevant to issues currently under discussion.

The Tribunals were set up on 3 November 2005. Each Tribunal consists of a legally-qualified convener and two members who have experience of and expertise in additional support needs. As President I produce an Annual Report to Scottish Ministers and these are accessible on the Tribunals' website, www.asntscotland.gov.uk. My report for the year 2008/09 will appear in June 2009.

As at 15 December 2008 the Tribunals had received 149 "references" (applications for hearings), of which only 50 have proceeded to a hearing during a three years period. The other references have either been conceded by the authority or withdrawn by the parent, normally due to agreement being reached. The figures therefore indicate that in two thirds of the references there is an outcome which does not require an oral hearing.

These figures present a very different picture from the fear, expressed by some, that the Tribunal might foster an undesirable conflict approach to settling disputes. Most references, in fact, disclose that there has already been a protracted period of correspondence between the authority and the parent relating to the issue in dispute; and sometimes there has already been recourse to internal or independent mediation. The Tribunals' procedures often serve to bring parties together to discuss the issue afresh in a conference call with the convener before the hearing, and a number of cases have settled as a result of this intervention. Thus the Tribunal can be viewed as contributing to the proportionate dispute resolution process rather than undermining it.

The experience across the 32 Education Authorities in handling references to the Tribunal is very variable. 6 have had no references whatsoever; 19 have had two or fewer and the majority have not proceeded to a hearing. Only 4 have dealt with 10 or more references. One authority accounts for 37 references.

Tribunals seek to develop an enabling ethos and to explore issues inquisitorially. Nevertheless, the 2004 Act sets out a detailed framework of legal issues which Tribunals have to consider when reaching decisions on references. It is perhaps not surprising that many parents and authorities have chosen to have the support of legal or other representation. Parents have been legally represented in 24% of the references that have so far proceeded to a hearing, and local authorities have been represented by in-house solicitors in 42%. One authority with a high volume of references has employed counsel on 4 occasions. Interestingly, however, there is no

correlation whatsoever between legal representation (on either side) and the outcome of the hearing.

A further fear which has been expressed is that the Tribunal hearing might be conducted in such a way that it is highly adversarial and that the presence of lawyers directly contributes to this contest approach. Other than in one or two hearings shortly after the Tribunal began to hear cases, I am satisfied that the guidance I have issued on conducting hearings has been consistently followed. Parents, authorities and witnesses also receive information designed to give them a clear understanding in advance of how the hearing is likely to be conducted, and why.

Although I would not argue for the widespread involvement of lawyers in the hearings, this is because I believe that the representation must be proportionate to the matter in dispute, not because lawyers are unable to respond to the need for a non-confrontational approach. Many cases can be decided purely on the facts of the case and normally the Tribunal can (and does) exercise an enabling role by engaging in questioning of the parties, even where they are represented.

Attending at a Tribunal is often emotionally challenging not only for the parent but also for witnesses who are not used to a process where their evidence may not be readily accepted. The experience of Tribunals is that where there is likely to be hostility between parties, the presence of lawyers can actually assist by reducing feelings of animosity, since they have usually not been involved at the earlier stages of the dispute when feelings may have run high in a less structured environment. The suggestion that the conduct of legally-qualified representatives has been inappropriately hostile or aggressively adversarial is not borne out by the experience of the Tribunals.

The Tribunal has to proceed in a respectful and fair manner in order to arrive at its decision. It must have a clear understanding of all the key issues, and be able to assess how far the evidence heard can be relied upon. To do so it must question witnesses and parties, and allow parties to exercise their right under the Tribunal rules to call and to question witnesses.

The Additional Support Needs Tribunal has all the characteristics of a judicial body, and the well recognised requirements of a fair hearing are almost certain to apply. This does not inhibit the Tribunal from being flexible, user-friendly and enabling. Those sitting on Tribunals are all conscious of the need to preserve, or even mend relationships, so that parties and witnesses can leave the hearing able to continue communicating in a constructive way for the good of the child. As President, I am committed to ensuring that Tribunals continue to deliver user-friendly hearings where parties are treated with the utmost respect but where they also receive a fair hearing consistent with judicial requirements.

Co-ordinated Support Plans

I commented extensively on co-ordinated support plans and the criteria for opening plans in my last report. The low caseload this year and the limited number of authorities concerned do not permit me to greatly expand on this but it is apparent that the definition of the word “significant” remains an unresolved issue in framing these documents. It appears that, in general, the authority relies heavily on the view of the other agency in subjectively indicating whether they regard their input as significant rather than consistently applying an objective test. References relating to the content of the co-ordinated support plan are very likely to settle in advance of the hearing as there is the potential for parties to reach agreement about almost all aspects so the issue is not normally subject to Tribunal scrutiny.

Of the 35 references received 20 included copies of co-ordinated support plans. Fifteen of these were specifically relating to the content of the plan.

Fourteen different authorities were represented in this sample. All but two authorities used the template provided in the Code of Practice. In the two others, minor amendments had been made but the same subject headings appeared consistent with the Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005.

In general the information provided in the *Profile* section was more detailed than the plans previously reviewed although several *Parental Comments* suggest that the information was not always accurate.

Factors Giving Rise to Additional Support Needs had the greatest degree of variation which might be expected given the range of conditions which might give rise to those needs. Some contained only a brief labelling of the condition whereas others had detailed specification covering all social, physical and educational factors.

Educational Objectives also showed a range of approach with most giving very clear objectives. The minority gave very little detail but almost all continued to be characterised by an absence of any quantification or timescales.

The *Parental Comment* facility had been completed in all but three cases where this was left blank. Parents often suggested amendments to the plan in this section. As these plans were submitted as final, it was never explained why the parents’ comments had not be implemented. Some pointed out errors in the other sections of the plan which had not been amended. One plan had provision for both parents to make individual comments and this may reflect good practice especially if the views may differ. One plan bore to be a reviewed plan but it was identical to the plan issued the previous year.

Child’s/Young Person’s Comments continued to be poorly completed with only three plans quoting the child directly. One noted observations of the child’s behaviours and another used photographic evidence which personalised the plan. One

included a PowerPoint report. Many plans state that they were unable or it would be inappropriate to record the child's views but gave no reason. Two inserted "n/a" and in two cases it was simply left blank. In one case it was explained that the child did not have the capacity to state their views but that they would continue to make sure the child was made aware of any changes.

It is suggested that where the parental or child comments could not be obtained then there should be a brief explanation as to why this was the case. In one case the authority indicated that they considered they could not complete a review of the plan because the parent had not responded to requests for comments. It is clear that even where the parent does not respond, the authority is still under an obligation to complete the plan within the timescales set down.

From the plans reviewed it is apparent that almost all the plans did evidence the very careful attention which authorities are giving to ensure that they are meaningful and user-friendly. The continuing absence of timescales and quantification undoubtedly reflects the uncertainty which exists where the input is from an agency other than education and it is understood that continuing work on the relationships between health, social work and education will seek to resolve these issues.

In the past year there were two hearings where the contents of a co-ordinated support plan were considered in the absence of witnesses from other agencies whose input was essential to the co-ordinated support plan. The Tribunal has no power to call its own witnesses and proceeded on the understanding that the agencies involved would be aware of the hearing and had been able to make their views known to the authority. Unfortunately this turned out not to be correct and in both cases the health-care professionals subsequently expressed concern to the Tribunal that they had not been involved in the process. This issue may be addressed through rule changes in the coming year and serves to highlight the need for the education authority to keep all those involved in delivering a plan informed where there is any appeal relating to its content.

Standards of Decision Making

I addressed the issue of how the authorities communicate their decisions in my Annual Report for the year 2006/2007 and have revisited this topic in view of concerns expressed about information available to parents if they are dissatisfied with the decision. It is encouraging to note improvements in this regard and no evidence in the current year that the authorities were not informing parents that they had rights of appeal. Of the decision letters available almost all provided clear reasons to the parent why the decision had been taken and most correctly signposted the contact points for mediation and appeal. Only one wrongly indicated that any appeal should be sent to the authority's Director of Law and Administration since it related to a placing request. There was no mention of the significance of the CSP in respect of this decision or any mention of access to mediation. Some authorities helpfully indicated they would be happy to discuss

the decision further if that would assist. Of the decisions from twelve authorities reviewed, none of the signatories shared the same job title. One was issued by the principal educational psychologist but all the others were issued by those holding management posts within the education authority.

In the course of the year one reference indicated that the general information issued to the parent by the authority wrongly set out the matters which could be appealed to the Tribunal. Since many of the decision letters link to associated literature such omissions may be misleading.

Appeals to the Court of Session

In the reporting year there were three decisions issued by the Court of Session relating to decisions of the Tribunal; a further appeal was heard on 17 and 18 March and another hearing was awaiting a hearing date. Two were decisions of the Outer House and one by the Inner House. It is not clear why some appeals (four in total to date) have been heard by a bench of three judges whereas the majority were heard by a judge sitting alone in the Outer House. There does not seem to be any correlation with legal complexity. To date all but two appeals have been lodged by the appellant against a Tribunal decision confirming the decision of the authority.

DG as Legal Guardian of JF v Argyll and Bute Council [2008] CSOH 61

An opinion of Lord Matthews upheld the Tribunal decision dated 3 October 2007 to refuse a placing request. The issue was whether the Tribunal had dealt adequately in its decision with all the evidence. It was held that in a hearing which anticipates two witnesses for each party as the norm, hearsay evidence is almost inevitable and that the details to which the Tribunal must have regard in its decision will depend on the issue in dispute. This decision was helpful in recognising the summary nature of the Tribunal hearing and enabling the Tribunal to deal proportionately with the issues before it.

SC v City of Edinburgh Council [2008] CSOH 60

In his opinion, Lord Wheatley confirmed the decision of the Tribunal dated 28 August 2007. The main issue in this placing request appeal was whether the Tribunal had misdirected itself by applying an overly narrow and restrictive test of the of the child's needs, "to benefit from education". The Court rejected this argument on the basis that "the whole burden of the test of what constitutes additional support needs clearly refers to educational support and further to educational support offered in a teaching environment. This in turn must relate to the educational needs of the child and not anything else."

This statement went beyond the approach of the original Tribunal and did not appear to be consistent with the original policy intention. The Bill currently before the Scottish Parliament is about to reverse the effect of this decision.

WA's legal representative v The Highland Council [2008] CSIH 51

The opinion of the Inner House in this appeal was issued by Lord Carloway, upholding the decision of the Tribunal. The legal issue was whether the Tribunal had sufficient information necessary to ascertain the level of the child's needs.

The Court held that the Tribunal was entitled to re-assess the merits of a particular issue and reach their own conclusion and in so doing they were not obliged to re-commence the assessment process if they were satisfied that they had sufficient evidence.

East Renfrewshire District Council v Glasgow City Council [2008] CSOH 175.

Although not an appeal from the Tribunal, mention should also be made of the above case since it highlights the anomaly in the existing statutory provisions relating to the funding arrangements between authorities where a child with additional support needs is placed, as the result of a parental placing request and without the agreement of the home authority in a school managed by a host authority.

The host authority was seeking to establish that the authority to which the child belonged, the home authority, should be responsible for the cost of any additional support. It was conceded that where the placement is as a result of a request by the home authority then they would be liable for the additional support costs. It was axiomatic that regardless of how the child came to be placed, the authority in whose area the child attended school was also responsible for their additional support needs. Lord Penrose held that the host authority was entitled to recover from the home authority appropriate sums reflecting the cost of additional support services regardless of the parental choice issue.

Training and Appraisal

Only one day's training on 19 September 2008 was held for all members and conveners in the reporting year. The topics covered were appeals relating to the content of co-ordinated support plans, an interactive session on exercising the enabling role through questioning and placing requests. Two training days are planned for the year 2009/2010. Where the volume of appeal is modest a balance has to be achieved by ensuring that members retain a sufficient skill and knowledge base but that this is not disproportionate to sitting levels. Attendance at training continues to be excellent.

In addition two evening meetings have been held for conveners to specifically address pre-hearing directions, the use of conference calls and decision recording. A bi-monthly e-bulletin continues to be issued to all members and conveners to update them on Tribunal issues and additional support needs matters in general.

The low level of hearings and high cancellation rates have meant that there continue to be difficulties in appraising members and conveners and this remains ongoing. It is now a more realistic objective to try and complete the appraisal cycle by the end of the first five years of appointment. Appraisals of members and conveners are continuing with five more appraised sessions completed during the reporting year.

Presidential Guidance and Directions

One of my duties as President is to issue Directions and Guidance where appropriate. The following additional Guidance and Directions have been issued during the course of the reporting year:

- Presidential Guidance 2: Guidance for Parties, Witnesses and Representatives
- Practice Direction 9: Witness Citations
- Practice Direction 13: Citations for the Recovery of Documents
- Practice Direction 18: Data Protection and the Handling of Tribunal Papers

Of these, the most important is the revised Presidential Guidance 2. In its original form issued in 2006, it was addressed to witnesses only but now covers parties, witnesses and representatives. It has since been developed in consultation with the conveners to ensure consistent delivery of an inquisitorial Tribunal through active questioning by the conveners and members. This establishes and develops the enabling ethos of the Tribunal and can be accessed at www.asntscotland.gov.uk.

Representation

I have met informally with representatives during the course of the year from both appellant and respondent organisations. I am satisfied that representatives would feel able to approach me about any issues which might cause them concern. Since the inception of the Tribunals I have received only two complaints, one in 2006 and one in 2007. On occasion I have received informal feedback on performance issues and have been able to deal with these without the need for any formal inquiry. The involvement of representatives ensures that the legislation is appropriately tested. It is possible that parents can be supported through the process and that one of the reasons for the reduction in references during the past year was linked to the uncertainty of funding for Independent Special Education Advice (ISEA), who had previously been more active. This funding is now secure until December 2009 and I am aware that the Scottish Government is giving detailed consideration to the arrangements which should be made for the future.

Tribunal User Group

The Tribunal User Group took place on 10 November 2008 in Perth Concert Hall and was attended by 31 delegates. It was no surprise that delegates' interest focussed on issues arising from the proposed amendments to the ASL Act.

The topics covered by way of presentation were:

- Court of Session decisions
- Publication of decisions
- Hearing from children
- Legislative review
- Tribunal activity over the past year
- Level and type of references
- Representation and outcome

The event was also an opportunity to encourage delegates to engage in the legislative consultation process.

Delegates took part in a lively question and answer session which confirmed the need for this event. I look forward to the 2009 event which will take place in Europa Building, Glasgow on 13 November 2009.

Outreach

As in past years, I have regarded contacts with others involved in additional support needs as an important part of the work of the Tribunal.

The proposed legislative changes have generated a high degree of interest in the work of ASNTS and consequently I have been asked to speak at several events and conferences. Apart from the annual Tribunal User Group meeting, I have given presentations about the work of ASNTS at:

- Govan Law Centre – Advocacy Training Seminar
- College of Occupational Therapists – Impact for Therapists Conference
- The Additional Support for Learning Conference
- Govan Law Centre – Education Authority training on evidence for the Tribunal

In addition I have attended several events and seminars where the issues under consideration have a direct bearing on the work of ASNTS. These have included:

- Children in Scotland Event - Routes to Resolution
- Scottish Government consultation event on the proposed amendment to the ASL Act

- Enquire Annual Conference
- Tribunal Training Seminar
- A meeting of the Short-Term Working Group on Co-ordinated Support Plans

Throughout the year there have been a number of events focussing on the proposed reform of the administrative justice system. I have represented the interests of ASNTS at:

- Administrative Justice Seminar
- Tribunal Options Seminar
- Lecture on New Approach to Tribunal Justice in the UK
- A meeting of the Scottish Committee of the Administrative Justice and Tribunals Committee (AJTC)
- AJTC Annual Conference

Members of the Secretariat have also been actively engaging with our stakeholders. They have represented ASNTS at a number of events including:

- Observing a Disability Discrimination hearing before the Welsh Tribunal
- Education Law for Schools Conference
- AJTC Reception
- Launch of HMle Dyslexia Report
- HMle 'Going Boldly' Conference for Special Schools
- Focus group for an Equality and Human Rights Commission research project on systematic disability discrimination
- Transforming the Public Sector Conference
- Education Law Update Conference
- Looked After Children Conference

The Secretariat also met with colleagues from Mental Health Tribunal for Scotland and from the Private Rented Housing Panel to discuss areas of mutual interest. Additionally, the Secretary met an officer from the National Autistic Society to discuss advocacy services.

Research

Professor Michael Adler's research on The Potential and Limits of Self-Representation at Tribunals reported in December 2008. This is available at www.esrc.ac.uk. Only six ASNTS hearings were observed and at all these the appellant was represented. The sampling was too small to permit any conclusions to be drawn in relation to this jurisdiction but the overall conclusion was that the enabling role of tribunals generally had developed to the extent that it largely neutralises the advantage gained from having representation.

There was research commissioned and published on 30 January 2009 as the Report on Evaluation of Tribunal Training in Scotland by Margaret Ross, Lynda Reid and Sarah Bleichner, School of Law, University of Aberdeen by the Scottish Government, Courts and Constitution Analytical Team, Justice Analytical Services available at www.scotland.gov.uk/publications/2009/. The report includes some information on the training delivered to ASNTS. Factual errors have been identified in this report and it is due to be amended.

There is also current ongoing comparative research into the Scottish and the English equivalent jurisdictions to understand the factors which contribute to accessing alternative dispute resolution and I sit on the Advisory Board for this research which is being jointly undertaken by the Universities of Manchester and Edinburgh.

Venues

The commitment to source a suitable venue for a hearing as near as possible to the appellant's home remains the prime objective but during the course of this year the high costs incurrent in cancelling bookings due to settled cases was escalating and this resulted in an approach to authorities to see whether, with the parent's consent, local authority premises could be used if they were fit for purpose. This option ensures that accommodation costs and any charges for cancelled hearings can be kept to a minimum. In seeking low cost accommodation options, we have also held a limited number of hearings in Scottish Government buildings and these have proven to be both accessible, convenient and acceptable to all parties. This is an option we will continue to explore in the coming reporting year.

Website

During 2008/2009 the ASNTS website has been revised and restyled. It now has a more modern appearance making it brighter and more user-friendly. The main innovation is the introduction of an interactive reference form which permits parents to complete the form in an electronic format and even submit this on line.

The decisions database has also been changed in order to provide a more effective search facility. Decisions are loaded in an anonymised version with copies being forwarded to parties four weeks after the issue of the original decision, allowing a further four weeks for representations. If no representations are received the anonymised decision is published three months after the date of the original decision. In order to ensure compliance with the requirement to preserve anonymity of parties whilst ensuring that decisions remain meaningful to the reader, the opinion of counsel was sought during the course of the year

and this has resulted in some minor amendments. For instance formerly decisions under appeal were not published but now where a decision has been appealed to the Court of Session and that appeal is pending, a note is placed on the decision indicating its status. When an opinion of the Court of Session has been issued a note will be placed on the decision stating whether the appeal was allowed or refused.

The Tribunals and Administrative Justice

In common with all Tribunals in Scotland, we receive periodic visits from the Scottish Committee of the Administrative Justice and Tribunals Council and were pleased to receive their positive and helpful reports following two visits during the reporting year. In addition, on 26 March 2009, I was invited to attend a meeting of the Committee to explain how the Tribunal had functioned since its inception and report on the progress of the amending legislation.

On 24 July 2008 I and the ASNTS Secretary met in Glasgow with our counterparts from England, Wales and Northern Ireland. This was a very constructive meeting to share good practice and discuss parallel developments. The law in Scotland is quite different from the other three jurisdictions but it is possible that we will soon share the Disability Discrimination jurisdiction by virtue of the Equality Bill currently before the Westminster Parliament. The Secretary has visited Wales to observe a hearing as part of the preparation for this development. A similar meeting is due to be held in Wales later this year.

The legislation and practices applying in the English jurisdiction is currently being considered by the Lamb Inquiry and I was invited to meet with Brian Lamb on 9 March to inform him about issues relating to the Tribunals' jurisdiction in Scotland. His Report on aspects of information was presented to the Secretary of State for Education on 29 April 2009. See www.dcsf.gov.uk/lambinquiry/.

The jurisdiction formerly referred to as SENDIST (Special Educational Needs and Disability Tribunal) has, from 3 November 2008, become part of the new two-tier tribunal structure applying to almost all reserved tribunals. It is now part of the First-tier Tribunal in the HESC Chamber (Health Education and Social Care) and a Deputy Chamber President with special responsibility for the work previously undertaken by SENDIST will be appointed shortly.

The structural changes introduced by the Tribunals Courts and Enforcement Act 2007 to the reserved tribunals have led to discussions about the future organisation of those tribunals which function in Scotland as well as the devolved jurisdictions. As President I attend the Scottish Tribunals Forum which meets quarterly under the chairmanship of Lord Philip, a retired Senator of the College of Justice. In his capacity as the chairman of the Administrative Justice Steering Group he was responsible for the publication on 6 October 2008 of a paper known as the Philip's Report setting out the options for the future organisation of tribunals in Scotland. The Administrative Justice Steering Group (AJSG) was

established in 2006. Its purpose is to commission research and act in an advisory capacity in the preparation of a final report to the Scottish Government on the administrative justice framework in Scotland taking account, among other things, of the likely impact of the Tribunals, Courts and Enforcement Act 2007. It is the first stage of the group's remit to (i) outline the current arrangements for tribunals operating in Scotland (ii) explore a range of options for future administration arrangements and (iii) consider the future role of the AJTC and its Scottish Committee in relation to the options identified. The report was published by the Scottish Consumer Council (now Consumer Focus Scotland) which provided policy support for the AJSG. The Report can be accessed on www.ajtc.gov.uk/docs/Tribunals_in_Scotland.pdf.

During the year I have also met with the Presidents of devolved tribunals in Scotland to discuss matters of mutual interest and it now seems likely that some organisational changes will proceed on an incremental basis during the coming years.

The Secretariat

The past year has once again seen changes in the composition of the Secretariat. Lesley Maguire continues in post as Secretary but the Office Manager, Lyndsey Talbot, has moved to Mental Health Tribunals for Scotland on promotion and we wish her every success there. Hazel McLeod has taken on all the duties of the Office Manager and she continues to provide some support to the case officer. Hugh Delaney provides excellent continuity of support in this role having served as a case officer since the inception of the Tribunals. I am pleased to confirm the appointment of Lynda Gray as my Personal Assistant and as in all small teams, Lynda will also provide support to the Office Manager and to the Case Officer. I am grateful to them all for ensuring the smooth running of the Tribunals.

Appendices

Appendix One

Additional Support Needs Tribunals for Scotland: Expenditure

Expenditure from 1 April 2008 to 31 March 2009

Expenditure	Amount
Tribunal Member Fees (Training)*	£5,855.00
Tribunal Member Fees (Hearings) (including Presidents' Fees)**	£97,284.16
Tribunal Member Expenses	£4,648.49
Tribunal Member Training Costs	£3,323.33
Tribunal Secretariat Headquarters Costs	£71,432.00
Tribunal Secretariat Staff Salaries	£139,079.00
Tribunal Secretariat Staff Expenses	£4,473.80
Tribunal Secretariat Staff Training Costs	£5,087.38
Tribunal Secretariat Office Costs***	£15,473.18
Tribunal Secretariat Specialist Project Costs****	£35,493.09

* This figure does not reflect the 2008/2009 uprating as this was not approved until late March 2009.

** Again this figure does not reflect the 2008/2009 uprating as this was not approved until late March 2009.

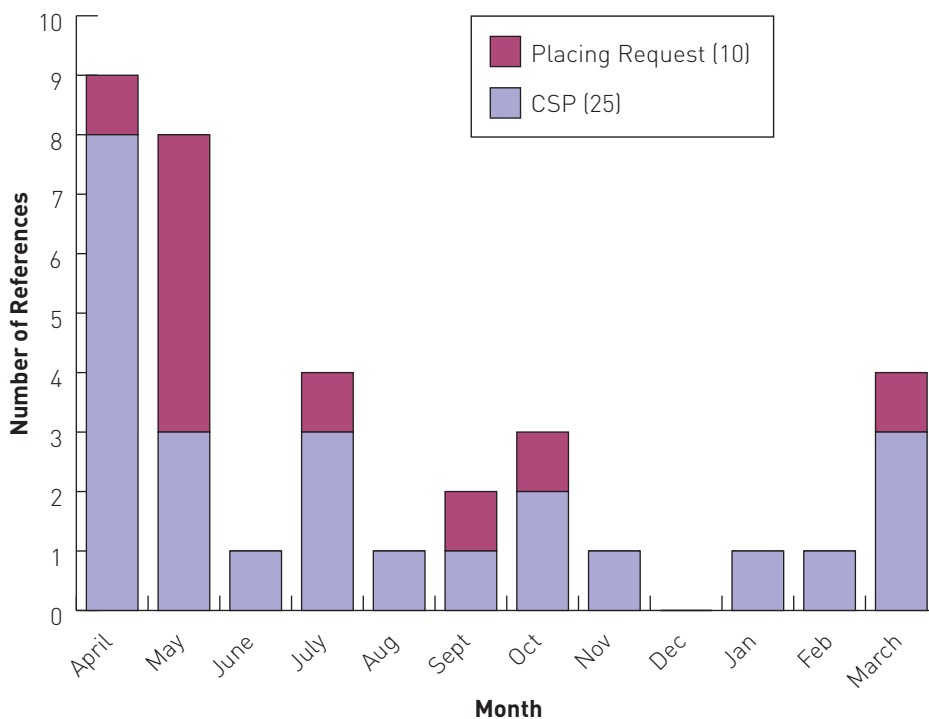
*** This expenditure includes cost for meetings such as the Tribunal User Group, stationery, postage, minor purchases, office machinery and ICT.

**** This expenditure includes cost involved in the redesign of ASNTS website and decisions database. It also includes the cost involved in the production of the revised guide and easy-read version of the guide and the revised reference form.

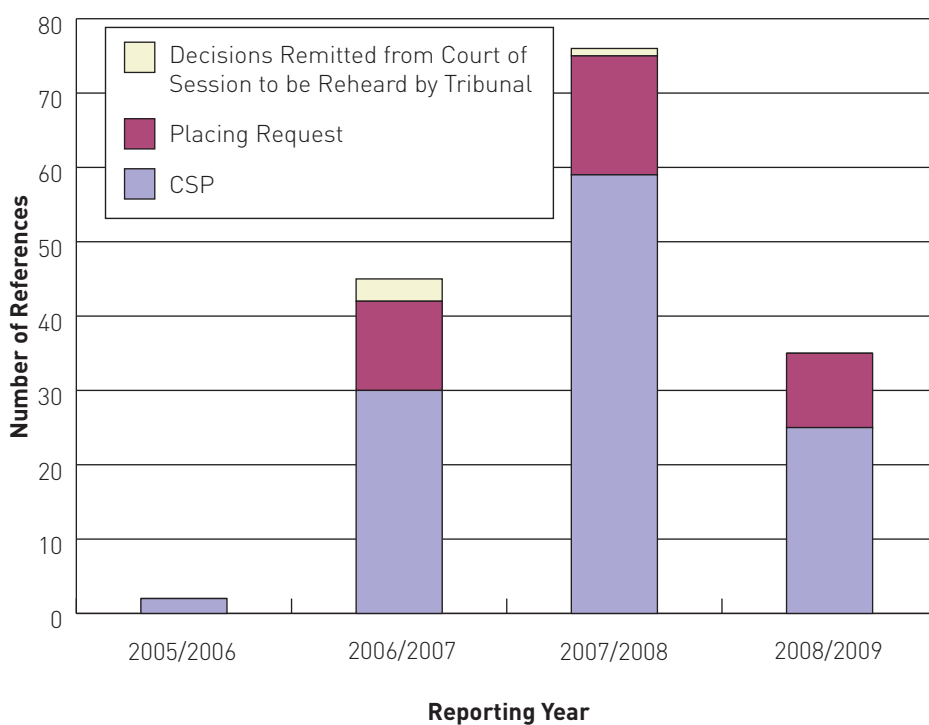
Appendix Two

Caseload Statistics – Reporting Year 2008/2009

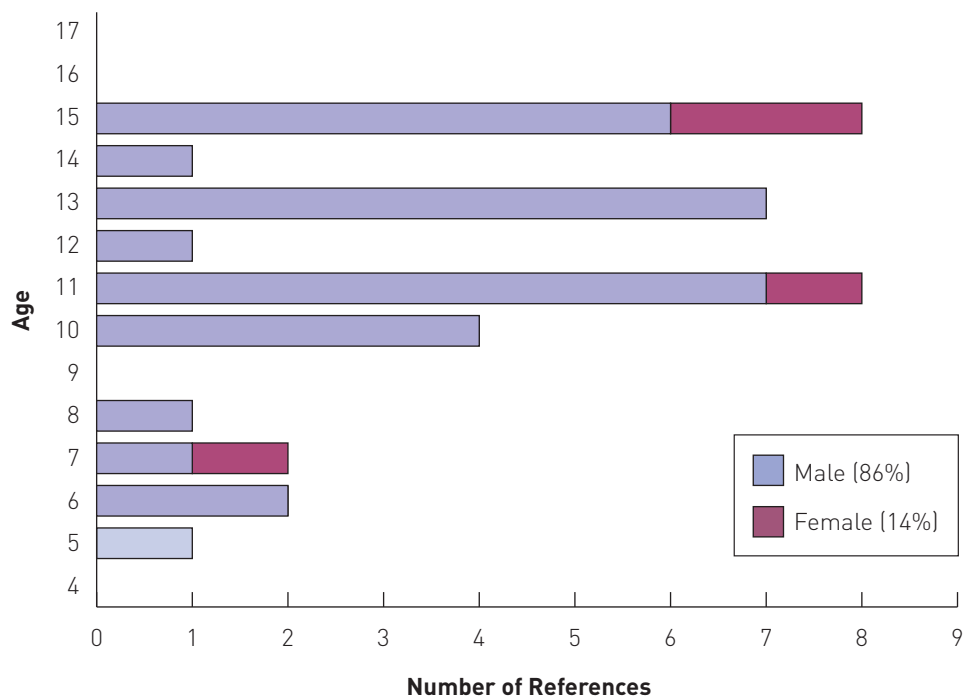
1. References Received per Month 1 April 2008 – 31 March 2009



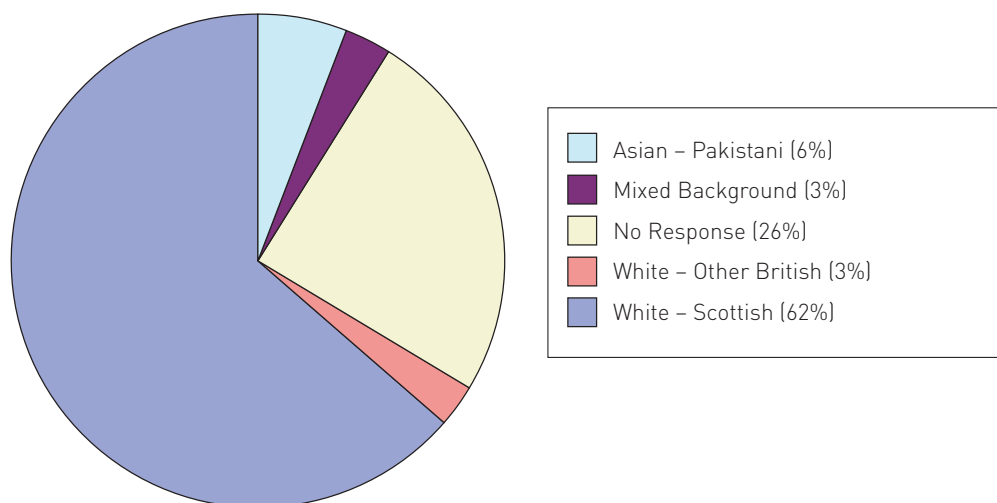
2. References Received by Reporting Year



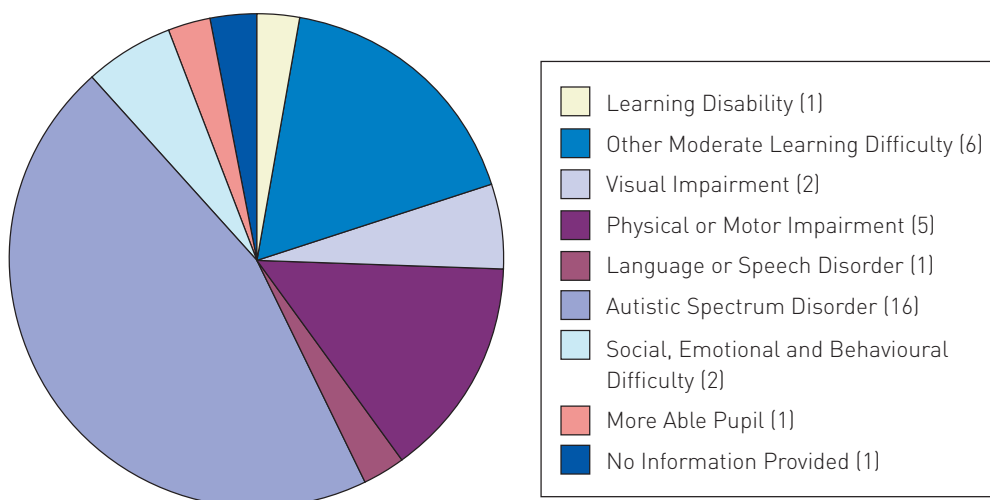
3. References Received by Age and Gender 1 April 2008 – 31 March 2009



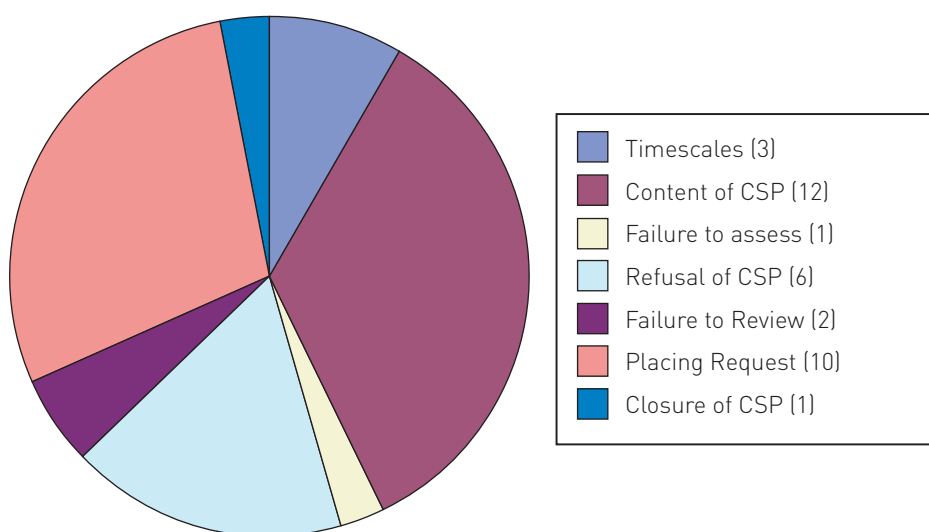
4. Summary of References by Ethnic Background 1 April 2008 – 31 March 2009



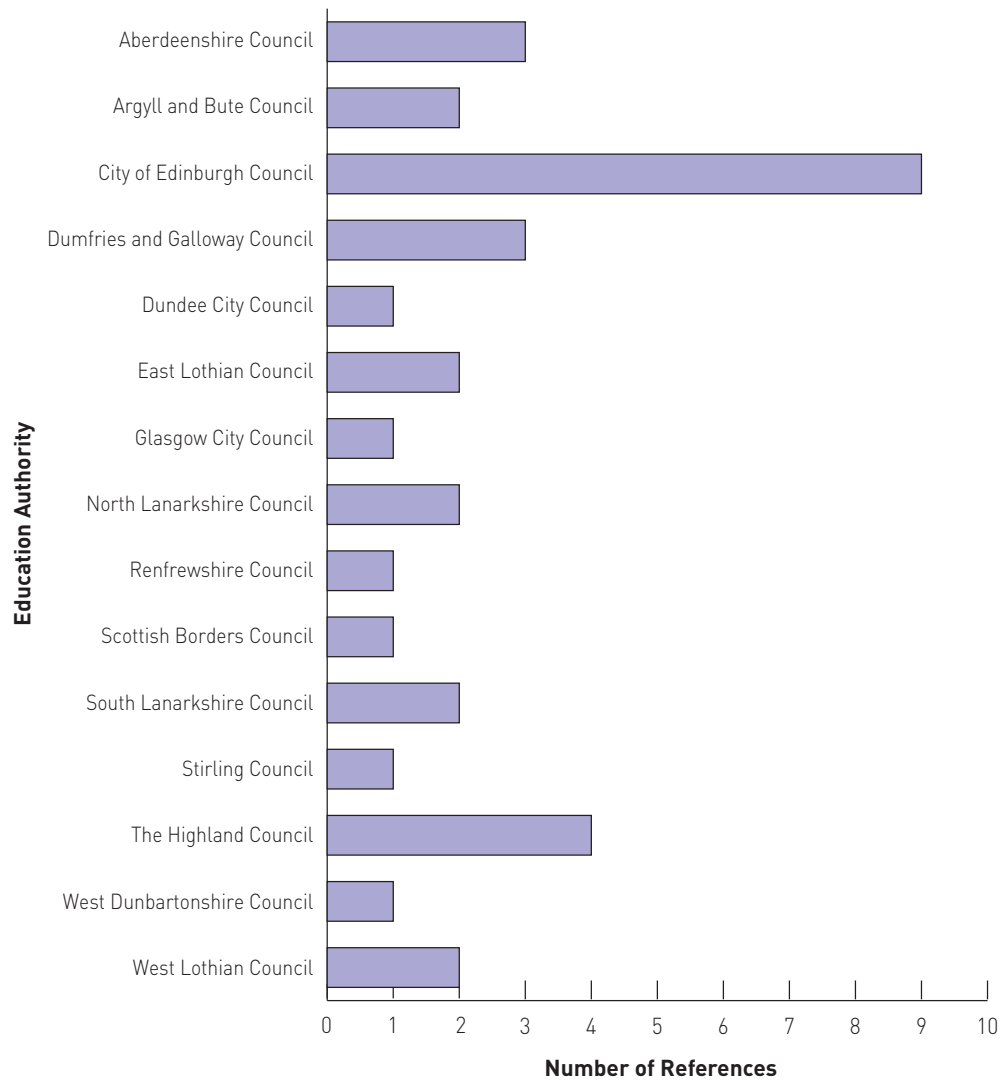
5. Nature of Additional Support Needs for References Received 1 April 2008 – 31 March 2009



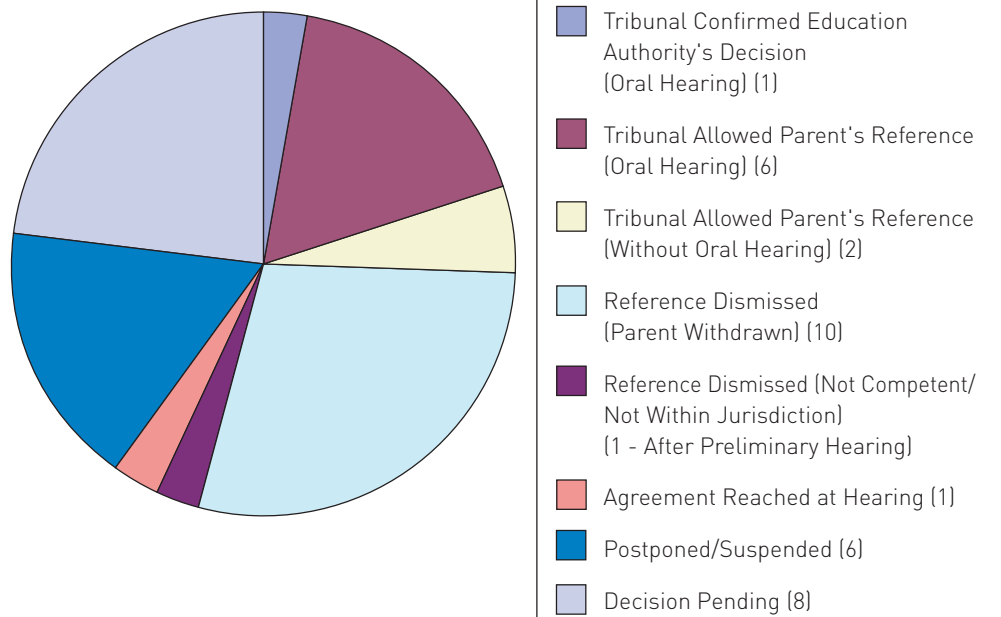
6. References Received by Type 1 April 2008 – 31 March 2009



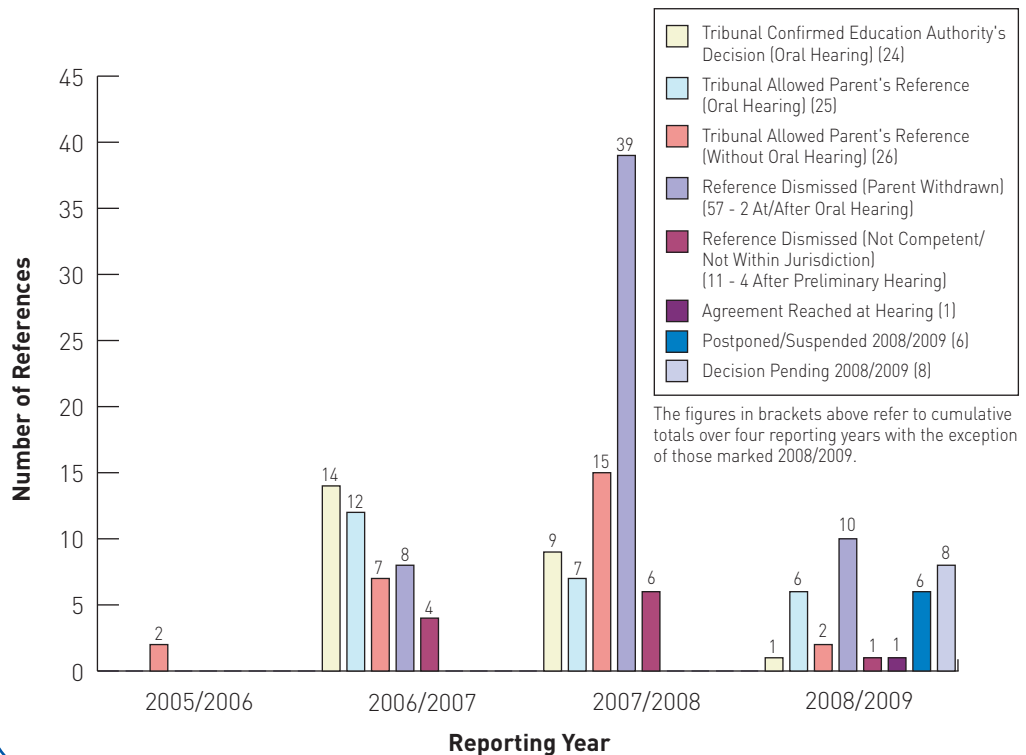
7. References Received by Education Authority 1 April 2008 – 31 March 2009



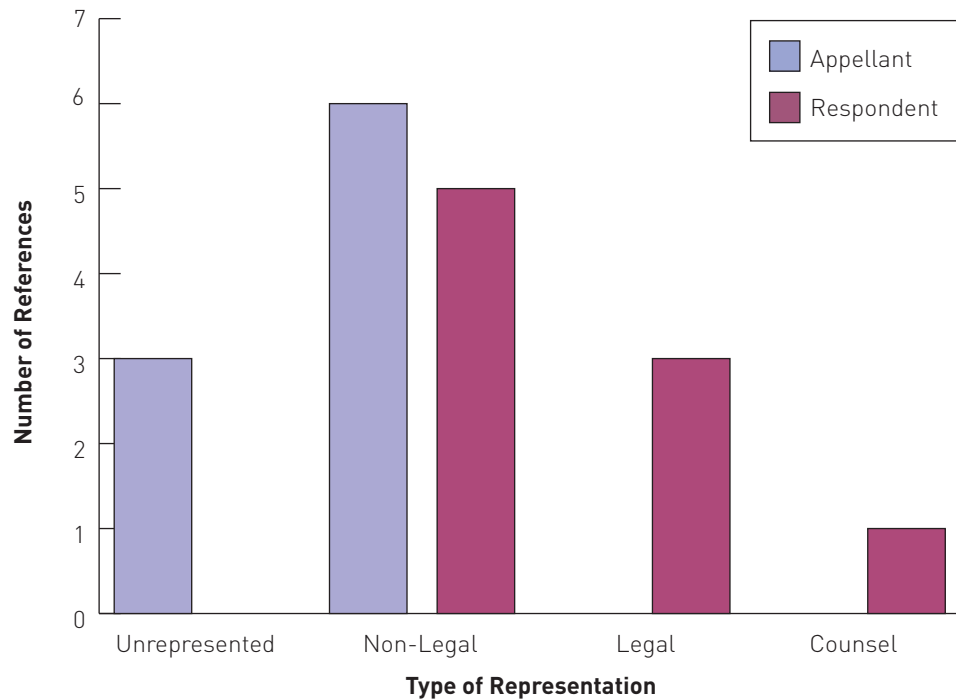
8. Outcomes from References Received 1 April 2008 – 31 March 2009



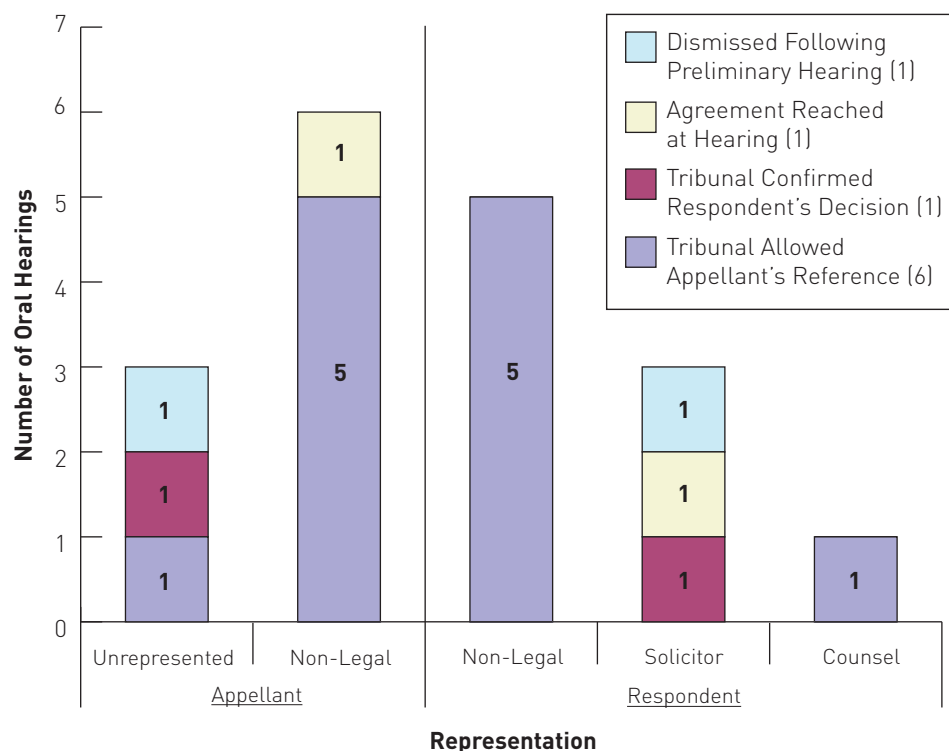
9. Outcomes from References Received by Reporting Year



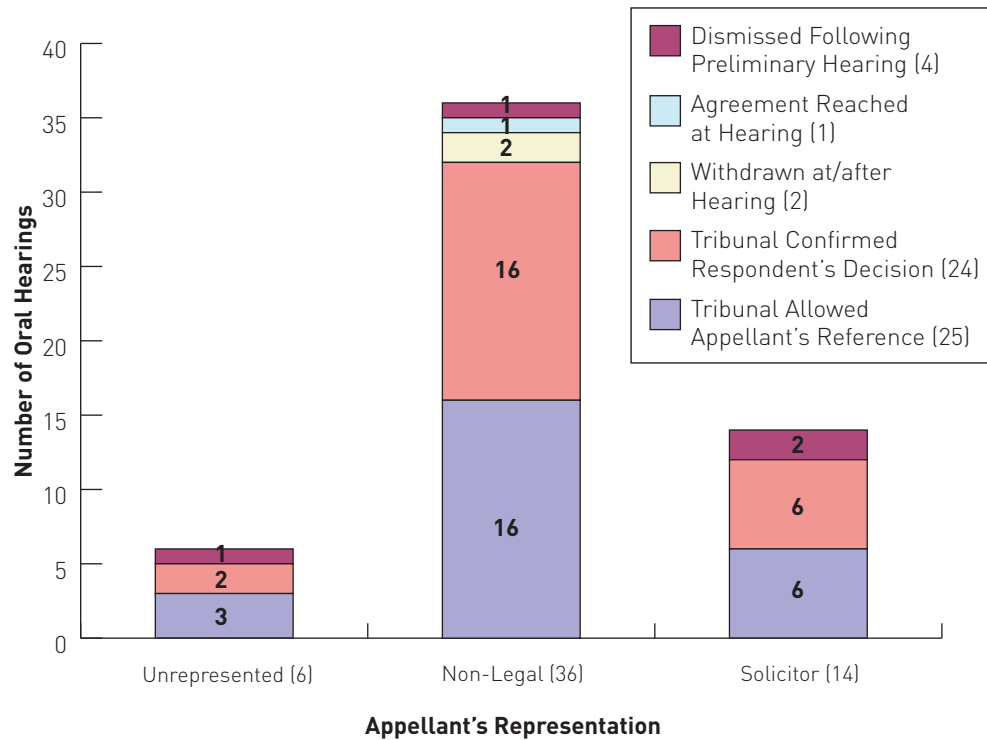
10. Representation at Oral Hearings for References Received 1 April 2008 – 31 March 2009



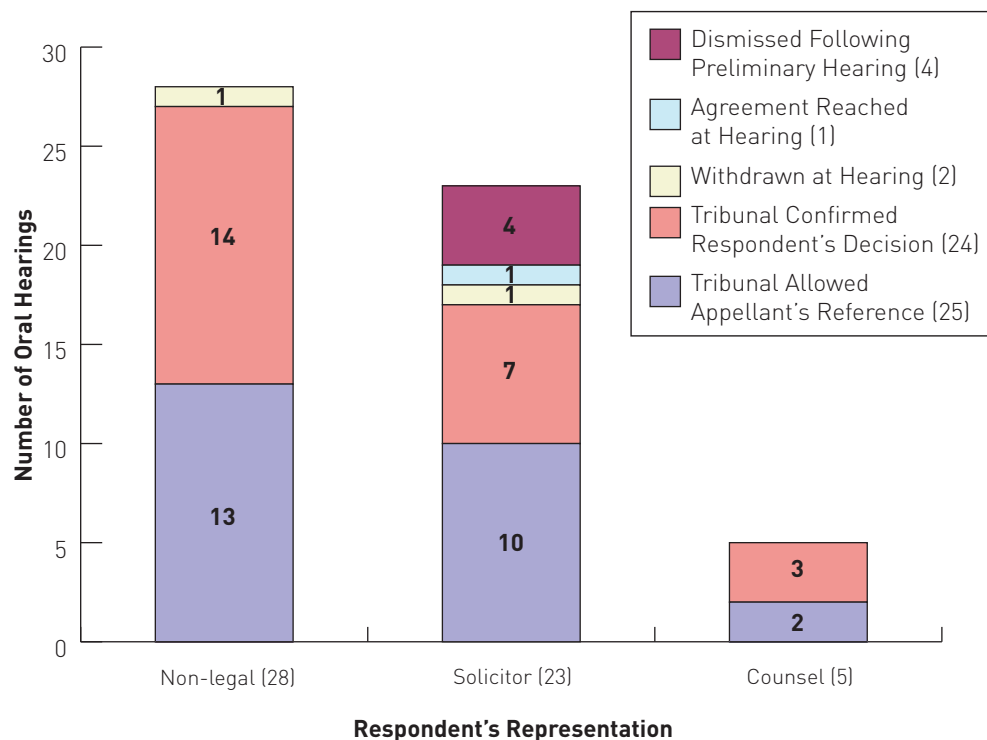
11. Outcome of Oral Hearings with Regard to Representation of Appellant and Respondent 1 April 2008 – 31 March 2009



12. Outcome of Oral Hearings with Regard to Representation of Appellant 14 November 2005 - 31 March 2009



13. Outcome of Oral Hearings with Regard to Representation of Respondent 14 November 2005 - 31 March 2009



Appendix Three

Tribunal Membership

Conveners

Lynda Brabender
Jessica Burns (President)
Joseph Hughes
David Logan
Sara Matheson
Richard Mill
Alan Miller
Richard Scott
Isobel Wylie

Members

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

