

Health and Education Chamber  
First-tier Tribunal for Scotland

---



Additional Support Needs



# **Tribunal (Additional Support Needs) Forum**

Virtual Platform

Wednesday 28 September 2022

Health and Education Chamber  
First-tier Tribunal for Scotland

---



Additional Support Needs

**Mrs May Dunsmuir**  
**Chamber President**

**FtT Health and Education Chamber**

# President's Update

- Hearings – remote and in person
- Updates on guidance issued since last Forum
- Case Volume in this reporting year

# Hearings

**Phase 1 – May to end September 2022**

**Phase 2 – 1 October 2022**

## **Future HEC Hearing Model**

- In-person
- Remote
- Hybrid

# Updates on guidance

**PGN: 01 2021: The Child, Young Person and the Tribunal**

**Information Note 01 2021: Parties, Representatives, Witnesses and Supporters**

# Case Volume (2022)

- Placing requests
- Suspensions
- Extension/shortening of case statements

Health and Education Chamber  
First-tier Tribunal for Scotland

---



Additional Support Needs

**Mr Jerry O'Connell**

**Team Leader - School Organisation Team**

**Scottish Government**

**Education Appeal Committee**

Health and Education Chamber  
First-tier Tribunal for Scotland

---



Additional Support Needs

**Miss Elaine Forbes**  
**Operations Manager**

**Casework Update 2021/2022**



# Casework Overview

Total Applications received:

	References	Claims	Total
2016/17	64	9	73
2017/18	89	11	100
2018/19	96	17	113
2019/20	122	24	146
2020/21	71	12	83
<b>2021/22</b>	<b>117</b>	<b>16</b>	<b>133</b>
<b>2022/2023</b> <b>(year to date)</b>	<b>121</b>	<b>9</b>	<b>130</b>

## References received by type

Type	16/17	17/18	18/19	19/20	2020/21	2021/22
Placing Requests	53	74	71	96	59	98
Contents of CSP	4	1	8	5	1	5
CSP Not Required	1	7	7	8	4	3
Implementation of CSP	2	0	0	4	2	3
Deemed Refusal of CSP	3	2	5	4	4	0
Timescales (Issue CSP)	1	2	2	1	0	3
Failure to Review CSP	0	1	2	3	1	2
Transitions	0	2	1	1		3
Totals	64	89	96	122	71	117

# Claims received

Type	16/17	17/18	18/19	19/20	2020/21	2021/22
Admission	0	0	0	3	0	0
Other	6	8	9	13	7	9
Admission, Exclusion	0	0	0	0	2	1
Exclusion	2	1	0	4	2	2
Admission, other	0	0	0	0	1	1
Exclusion, other	1	1	7	4	0	3
Admission, Exclusion, other	0	1	1	0	0	0
Totals	9	11	17	24	12	16 (-8)

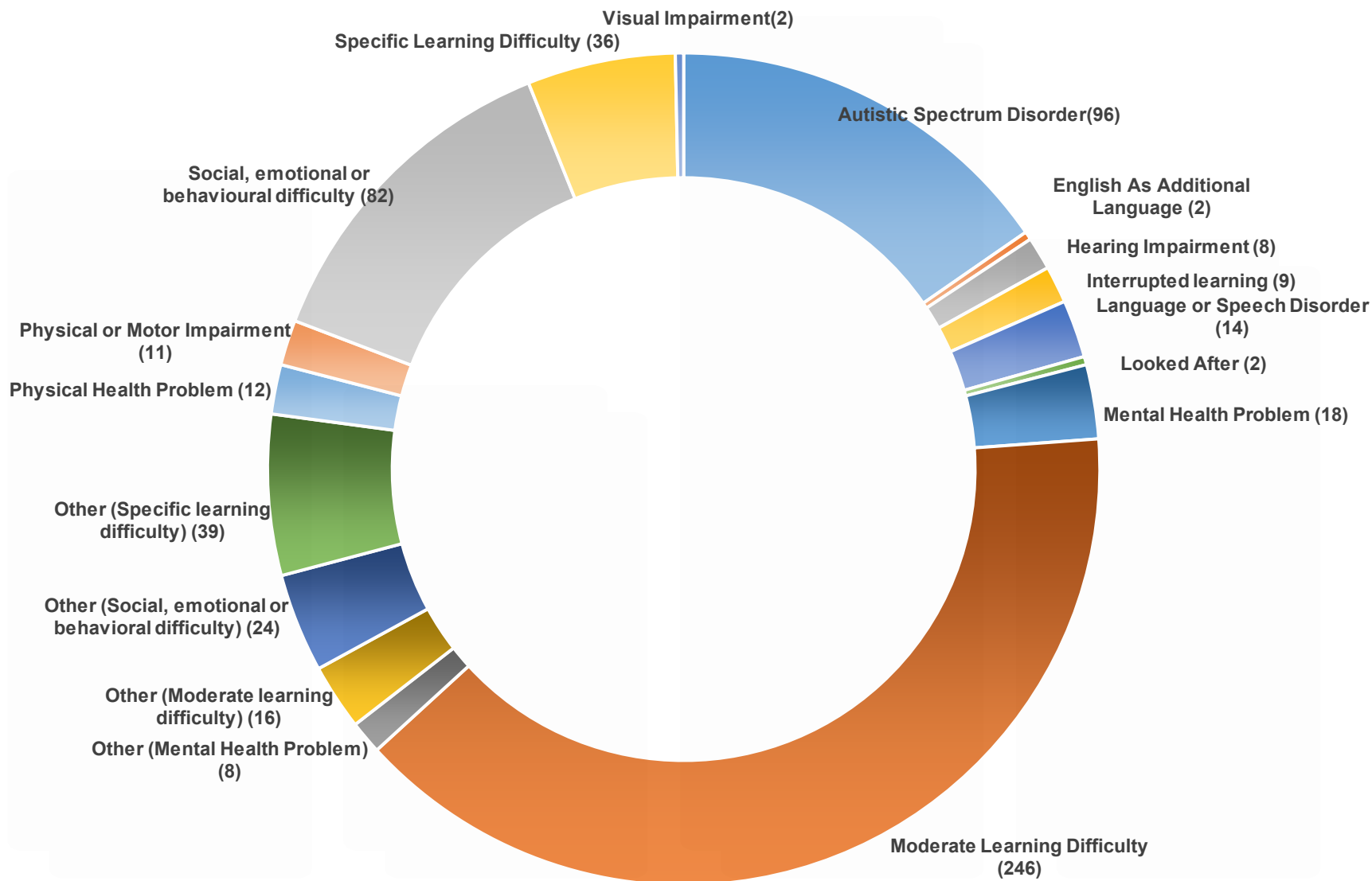
## Highest volume references and claims 2020/2021

Education Authority	Claim	Reference	Total
City of Edinburgh Council	3	34	37
West Lothian Council	1	28	29
North Lanarkshire Council	0	16	16
Aberdeenshire Council	0	5	5
South Lanarkshire	0	5	5
Stirling Council	0	4	4
Highland Council	2	2	4
Glasgow City Council	1	2	3
East Dunbartonshire Council	0	3	3
Renfrewshire Council	0	3	3
Others	9	15	24
<b>Total cases</b>	<b>16</b>	<b>117</b>	<b>133</b>

## Nature of Additional Support Needs 2020/2021

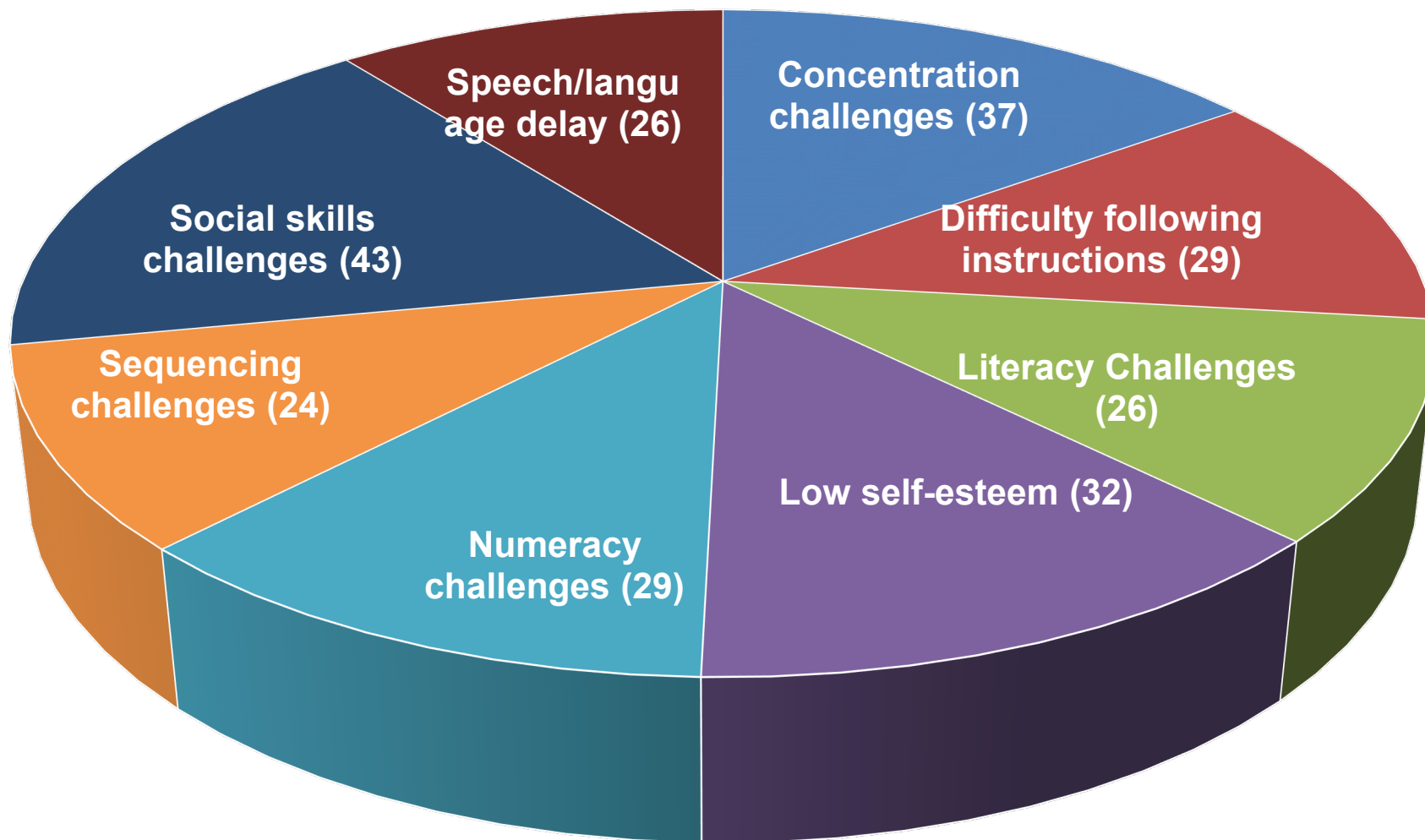
Additional Support Need	Claim	Reference	Total
Visual Impairment	0	2	2
Autistic Spectrum Disorder (ASD)	9	87	96
Hearing Impairment	1	7	8
English As Additional Language	0	2	2
Looked After	0	2	2
Physical or Motor Impairment	1	10	11
Interrupted learning	1	8	9
Physical Health Problem	2	10	12
More Able Pupil	0	0	0
Language or Speech Disorder	1	13	14
Mental Health Problem	2	16	18
Other (Mental Health Problem)	2	6	8
Specific Learning Difficulty	4	32	36
Other (Specific learning difficulty)	7	32	39
Moderate Learning Difficulty	8	238	246
Other (Moderate learning difficulty)	1	15	16
Social, emotional or behavioural difficulty	7	75	82
Other (Social, emotional or behavioral difficulty)	3	21	24
<b>Totals</b>	<b>49</b>	<b>576</b>	<b>625</b>

# Nature of Additional Support Needs 2021/2022



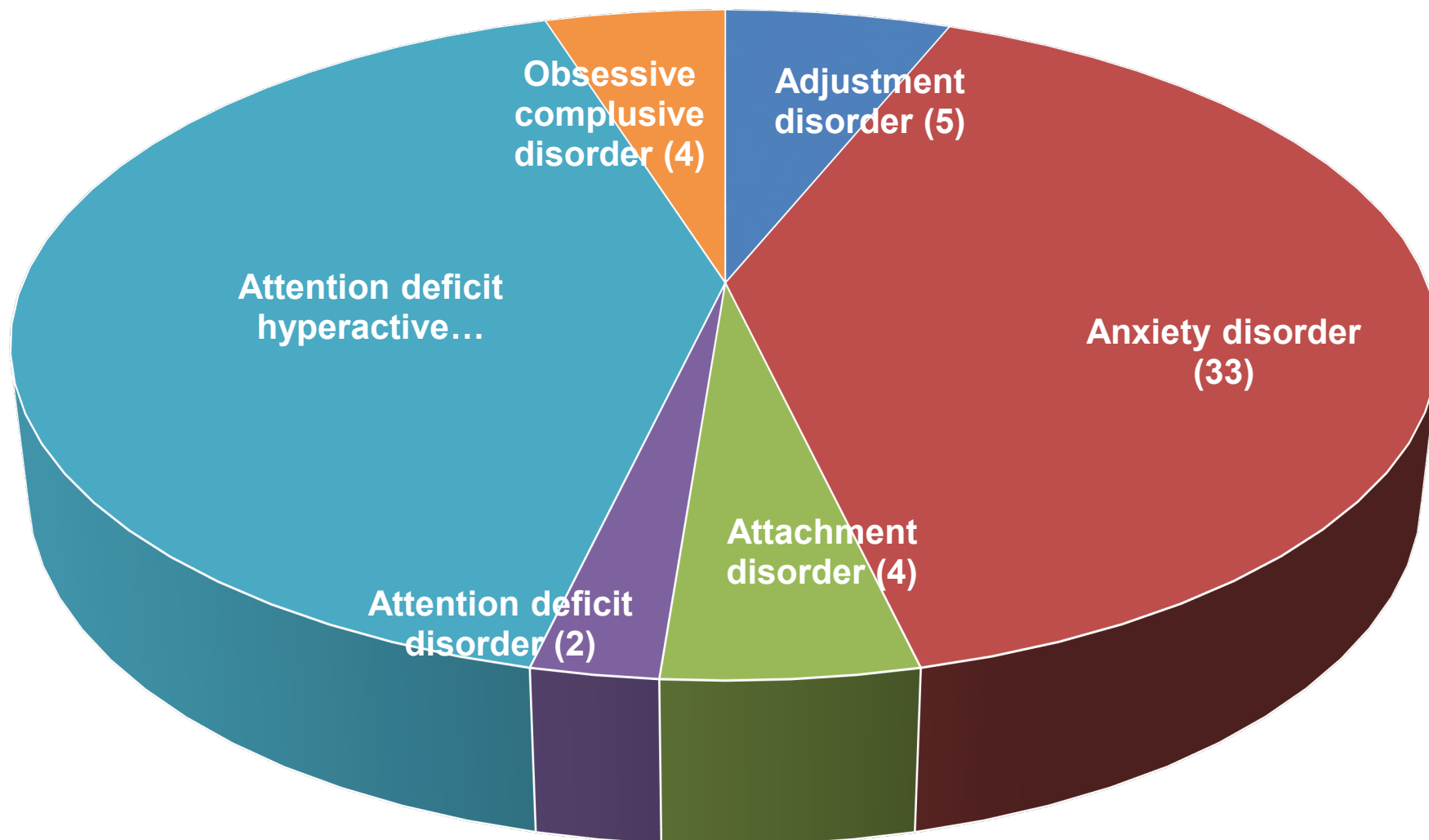
# Nature of Additional Support Needs 2021/2022

## Moderate Learning Difficulty



# Nature of Additional Support Needs 2021/2022

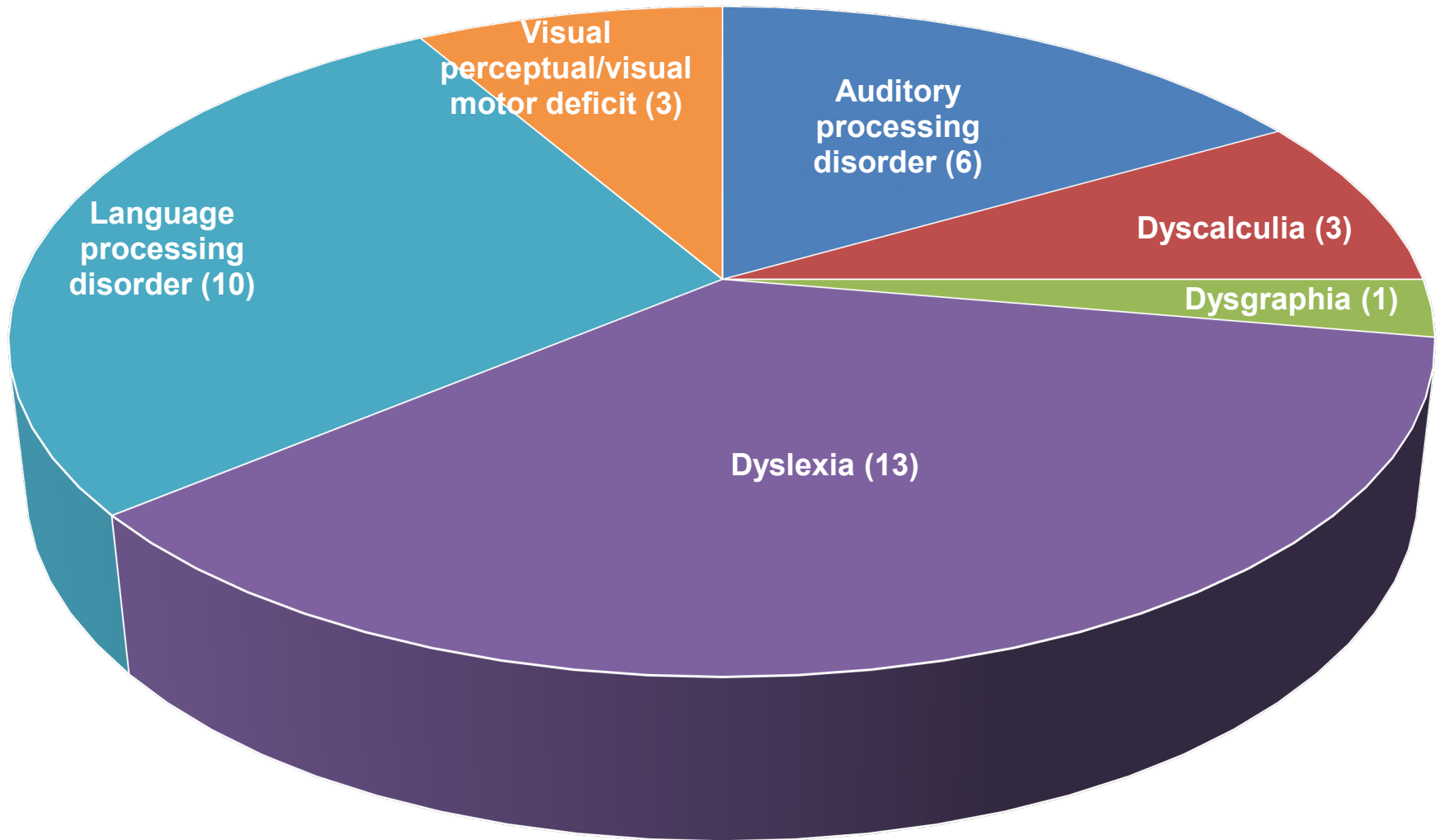
## Social, Emotional or Behavioural Difficulty



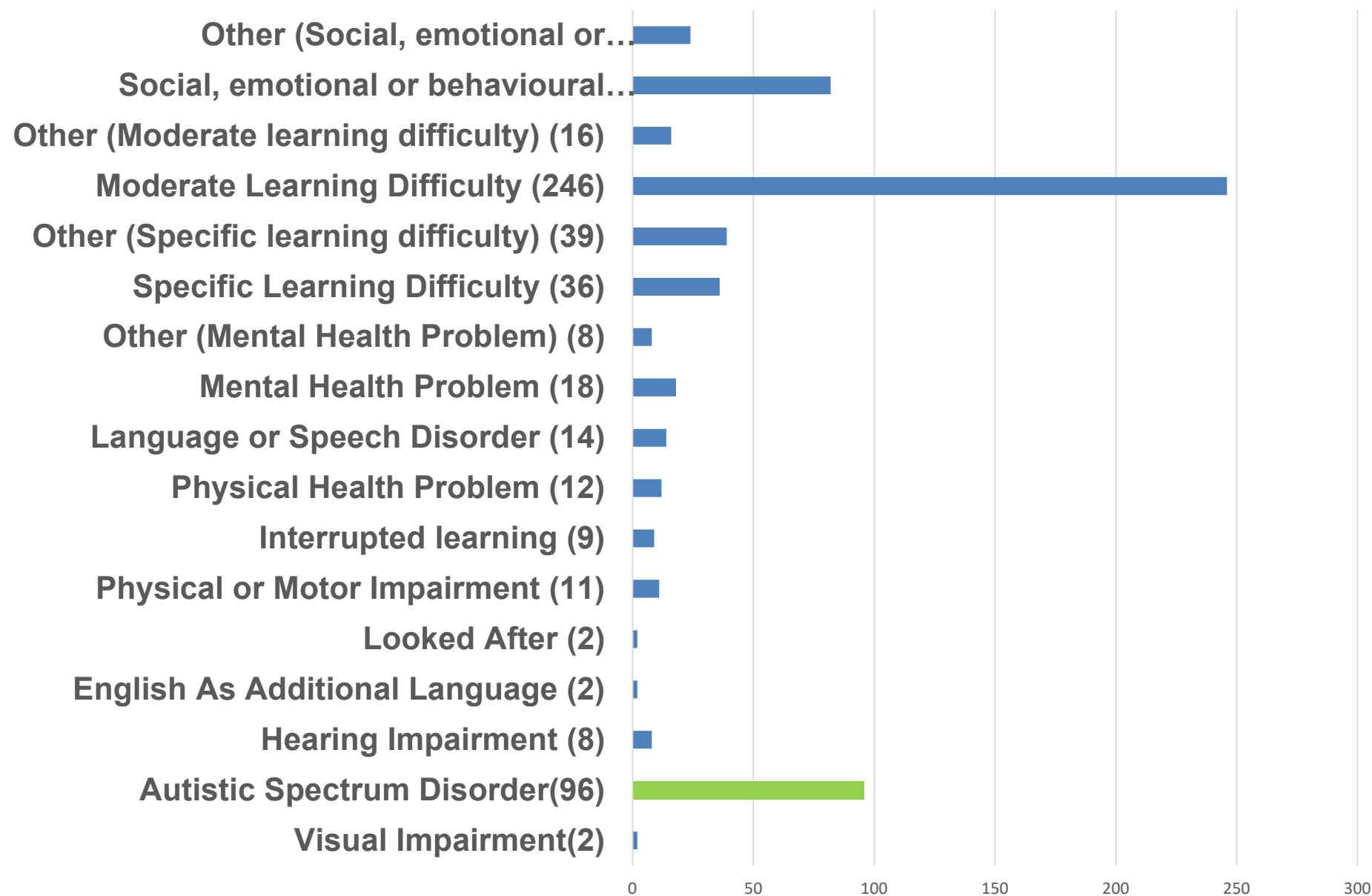


# Nature of Additional Support Needs 2021/2022

## Specific Learning Difficulty



# Nature of Additional Support Needs 2021/2022



Health and Education Chamber  
First-tier Tribunal for Scotland

---



Additional Support Needs

**Miss Sarah-Anne Tracey**  
**Casework Team Leader**

**Expansion of Sensory Resources**

# Casework Overview – The Highlights

- **Decision Database improvements**
- **Video Animations**
- **Team reflections**



# Decision Database Improvements

[Home](#) [Decisions](#) [News](#) [Publications](#)

HOME / DECISIONS

**Category**  

All Categories

**Keyword search**  

search for a term here

**Jurisdiction**  

- Any -

Apply

Jurisdictions

Additional Support Needs

- What have we improved?
- How will we help you understand the improvement?
- Overview of database



# Video Animations

- Who are the videos designed for?



- Video Categories:

Video 1 – Who are we?

Video 2 – Coming to a video hearing

Video 3 – Coming to an in-person hearing

Video 4 – Talking at a tribunal



# A Year In The Life Of.....2021/2022

"As we transition to a new normal post lockdown, the team have overcome all hurdles and worked together to improve our processes"

"Working within the Chamber as the Improvement & Learning Officer and now as a part-time case officer I am excited to be part of such a dedicated team"

"It's been a very busy year in the HEC, and I wouldn't want it any other way. Team work makes the dream work."

"This year has not only been a great deal busier but also many cases are much more complex and varied"



**Health and Education Chamber**  
First-tier Tribunal for Scotland

---



**Additional Support Needs**

**Professor Derek Auchie**  
**In-house Legal Member**

**Judicial Update**



# Judicial Update

- Current HEC case law
- Flexible use of case types
- Transition references

# Current HEC Case Law

**Equality Act 2010 claims:** broad scope and remedy powers demonstrated in six decisions since July 2021:

- [FTS/HEC/AC/21/0058](#): access to a school project involving a walk: claim dismissed.
- [FTS/HEC/AC/21/0018](#): maths tuition during the pandemic; maths grade calculation; consultation with private tutor for estimated grade: claim dismissed.
- [ASN D 20 09 2021](#): transition process to secondary school; process on application for deferral of a year's education; online teaching during the pandemic; nature of in-class learning support: claim dismissed.

# Current HEC Case Law

## Equality Act 2010 claims, cont'd

- [ASN D 25 06 2021](#): use of private tutors; evidence externally produced work; predicted grades: claim dismissed.
- [FTS/HEC/AC/21/0072-MERITS](#): exclusion of child and use of physical interventions: claim upheld, remedies on statement of discrimination, apology, training and policy review.
- FTS/HEC/AC/20/0088: early recognition of learning difficulties; diagnosis of dyslexia; differentiated support provision; standard of Gaelic reading and writing tuition; consideration of parental views on education; support during COVID 19 school closures.

# Current HEC Case Law

## Equality Act 2010 claims, cont'd

- Use of multiple forms of discrimination is common: reasonable adjustment duty, indirect discrimination, discrimination arising from disability.

## Time-bar cases

- For references, the point has to be taken: rule 14(5)-(7) and rule 56 – is it fair and just that the reference is permitted late? Similar to ‘just and equitable’.
- For claims, the legal member or tribunal must take it: wording of rule 61(4) – ‘shall not consider a claim’.

# Current HEC Case Law

## Time-bar cases, cont'd

Three possible situations for time bar of claims:

1. The claim is lodged later than 6 months after 'the act complained of was done' **where there is a single act/omission** – it is time barred unless it is just and equitable that the claim is considered although out of time.
2. The claim is lodged later than 6 months after the latest 'act complained of was done' **where there is more than one act/omission** representing 'conduct extending over a period'. Here, the 6 month period for lodging a claim starts from the date of the last act/omission. The just and equitable test applies to such a claim.
3. **Where there is more than one act/omission** but there was not 'conduct extending over a period', the just and equitable test applies to each act/omission which occurred more than 6 months before the claim was lodged.

# Current HEC Case Law

## Time-bar cases, cont'd

- Test used for 'just and equitable' is wide:
  - the discretion is wide and unfettered;
  - the absence (and presumably cogency) of an explanation for the lateness is relevant but not determinative;
  - key issues to be considered (alongside any others deemed relevant) are: the length of the delay, reasons for it and any prejudice suffered as a result ('forensic prejudice' is sometimes referred to);
  - procedural equal footing (overriding objective, rule 2(2)(c)) may be a relevant factor; and
  - the general rationales for having time-limit provisions should be considered.

# Current HEC Case Law

## Time-bar cases, cont'd

- Some recent examples:
  - [HEC/AC/22/0002/PRELIMINARY](#)
  - [ASN D 25 06 2021](#)
  - [ASN D 14 01 2021](#)
  - [FTS/HEC/AC/21/0018/PRELIMINARY](#)
  - [FTS/HEC/AC/21/0072/PRELIMINARY](#)

# Flexible Use of Case Types

- There continues to be claims under the Equality Act 2010 to seek remedies available under the Education (Additional Support for Learning)(Scotland) Act 2004 (2004 Act), including remedies in relation to co-ordinated support plans (CSPs) and placing request refusals.
- Indicator of the broad powers under the 2010 Act.
- Cases can run in tandem and hearings can be consolidated under the Tribunal rules.



# Transition References

- Transition references are the least common of the four main case types, but they have been increasing in number: since the move into the First-tier Tribunal in January 2018, there have been 8 transition references, five have been lodged since April 2021.
- Relevant provisions: s.18(3)(g), s.12(5)-(6), s.13 and s.19(3) of the 2004 Act.
- The remedy in a transition reference is to require the respondent to take action to rectify any failure to comply with the transition planning duties: broad power, but must relate to the transition duties.
- 2004 Act Code of Practice contains practical guidance on the transition duties and regulations are in place: The Additional Support for Learning (Changes in School Education)(Scotland) Regulations 2005, SSI 2005/265.



**Mr Iain Nisbet**

**Solicitor**

**My Rights, My Say (Cairn Legal)**

**Equality for Child Parties**

Health and Education Chamber  
First-tier Tribunal for Scotland

---



Additional Support Needs



# Enquires and Questions

# Cairn Legal

Q. I would be grateful for an update on when the jurisdiction of the education appeal committee is due to transfer to the Health & Education Chamber, and what (if any) arrangements for legal aid / advocacy / representation are likely to be made for such cases.

# Children in Scotland

Q. I am interested to hear how decisions are made about placing requests for children and young people with Additional Support Needs, what criteria are applied and if these are consistent across Local Authorities.

# **Children and Young Peoples Commissioner Scotland**

**Q. How number of CSPs and how to ensure children have a right to remedy?**

**Q. How to ensure that ASN legislation and its implementation are compatible with public authorities' duties under UNCRC Incorporation Bill.**

# **South Ayrshire Council**

**Q. When specialist provisions are full and there is no physical space for any more children/ young people. What are the expectations of local authorities?**

## **Govan Law Centre**

Q. Timescale for placing request responses and schools closing for summer often leaves witnesses and documentation unavailable for hearings and children and young people not having a decision on their placement in advance of the new school year in August.



# Dumfries and Galloway Council

Q. To receive an update on current activities for the Tribunal.

1. Hear of latest trends.
2. Receive updates on Tribunal processes.

Health and Education Chamber  
First-tier Tribunal for Scotland

---



Additional Support Needs



# Question and Answer Session

# Contact Us

[HEChamberPresident@scotcourtsribunals.gov.uk](mailto:HEChamberPresident@scotcourtsribunals.gov.uk)

0141 302 5863

[www.healthandeducationchamber.scot](http://www.healthandeducationchamber.scot)

## Additional Support Needs

We consider two types of appeals – references, regarding the provision of educational support under the 2004 Act; and claims, in respect of disability discrimination in school education, under the 2010 Act.

Additional Support Needs

## Needs to Learn

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

Needs to Learn

[www.needstolearn.scot](http://www.needstolearn.scot)

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**.

