



Additional Support Needs Tribunals for Scotland

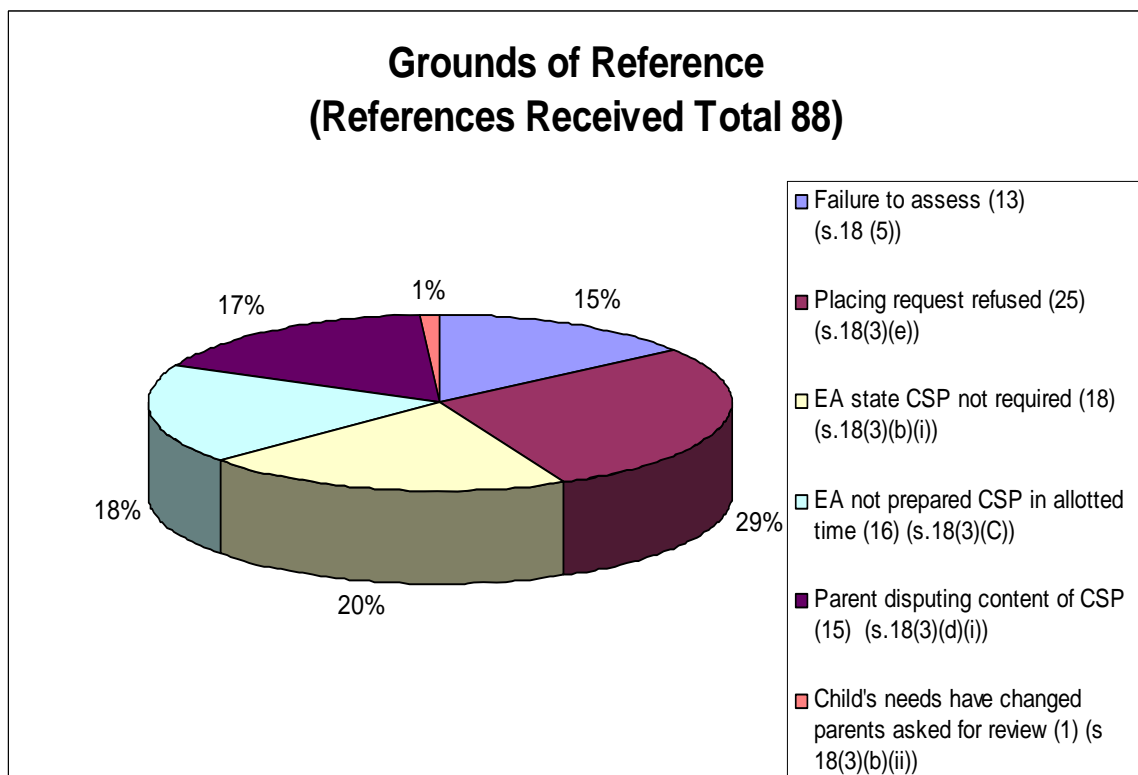
Tribunal User Group Meeting – Friday 9 November 2007 The Trades Hall, Glasgow

ASNTS hold regular Tribunal User Group (TUG) events to provide a forum for put questions in relation to any aspect of the Additional Support Needs Tribunals to the President and Secretary.

The latest TUG event took place in the Trades Hall, Glasgow, on Friday 9 November and was attended by 45 delegates including 3 staff from the ASNTS Secretariat, 2 Tribunal members and 1 convener.

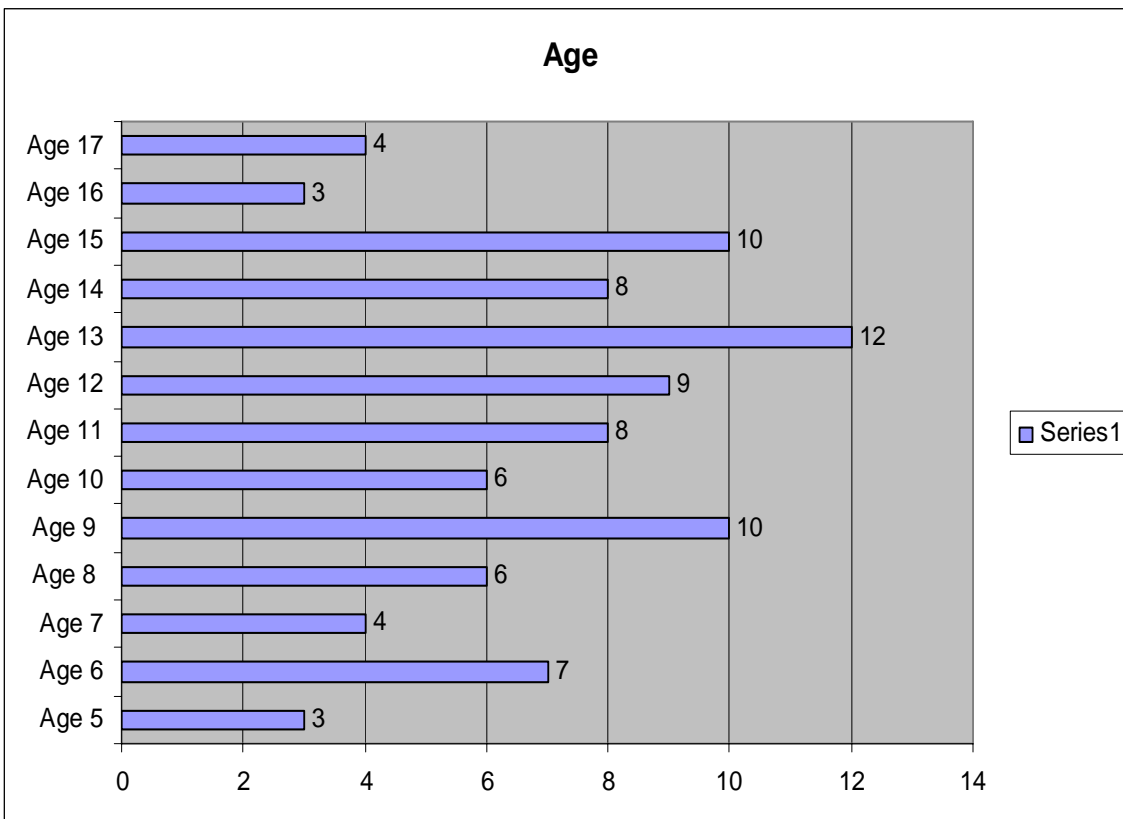
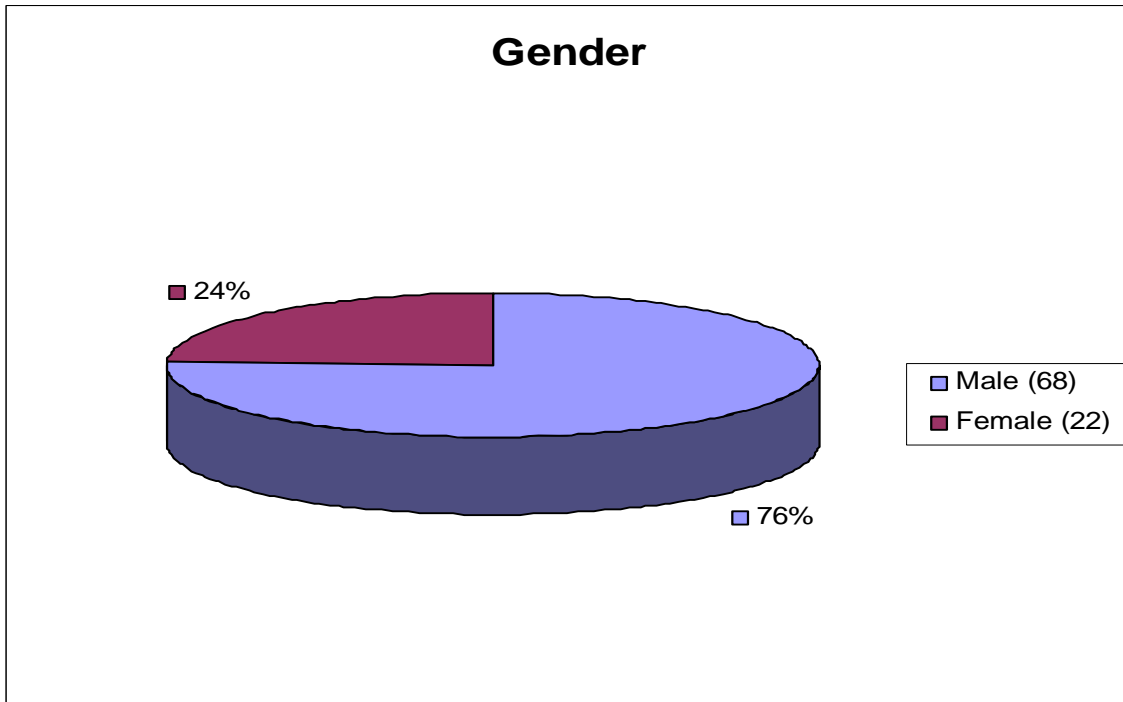
The President, Ms Jessica Burns, opened the TUG meeting stating that this was the 3rd meeting of the Tribunal User Group. Since the last meeting there had been a number of changes to the Secretariat. Mrs Lesley Maguire was introduced as the new Secretary of the tribunal and Mr Joseph Hughes will assist the President in a 'resident' convener role.

The Secretary made a presentation on the statistical activity since implementation.



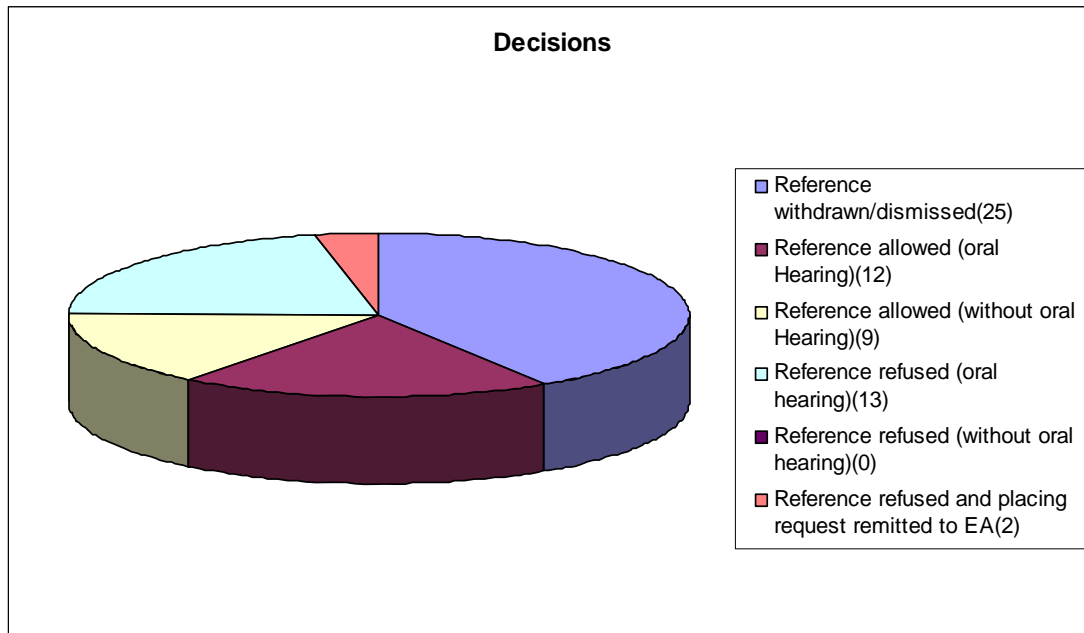


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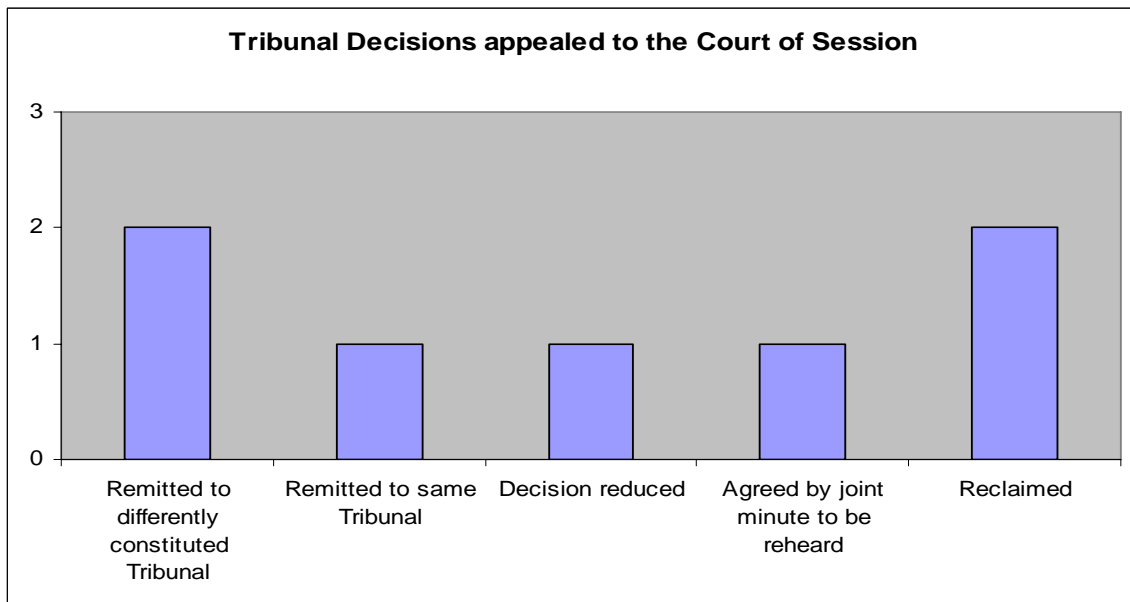




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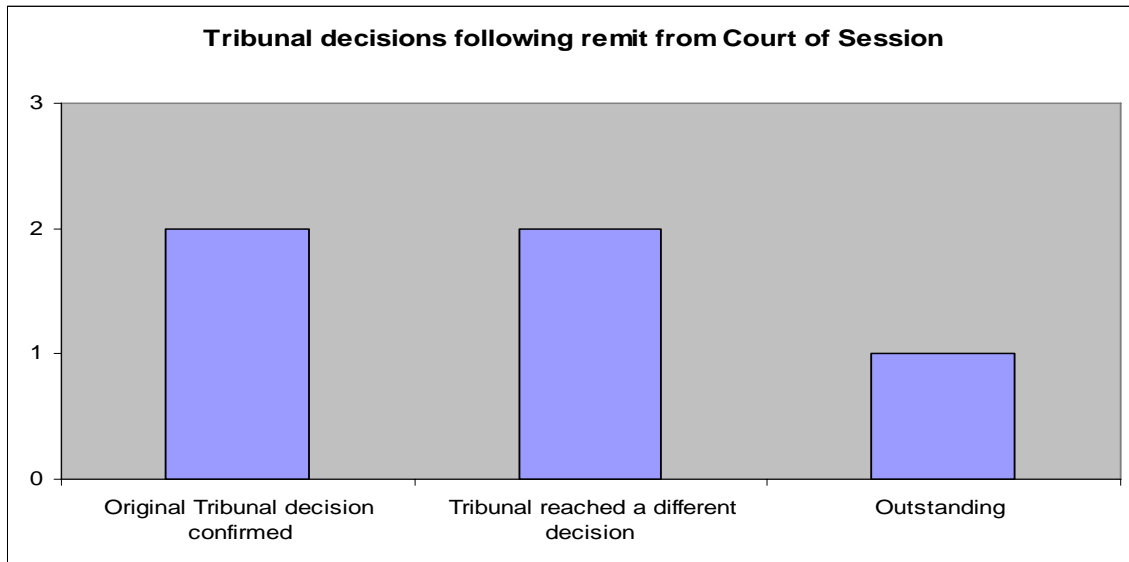
Total number of Decisions issued (61)



2 Court of Session Opinions were subject to reclaiming motions to the Inner House



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Of the 2 Reclaimed Opinions

- The first concerned a decision of the Tribunal to uphold the EA decision. A subsequent appeal to Court of Session (Outer House) was allowed and the Outer House remitted the reference to be reheard. The EA lodged a reclaiming motion to the Inner House which was successful. This restores the original Tribunal decision.
- The second concerned a reference where the Tribunal decided it did not have jurisdiction, this decision was appealed to the Court of Session. The appeal was not granted but a reclaiming motion was lodged to the Inner House. Inner House rejected motion and the Lord Ordinary's opinion stands.



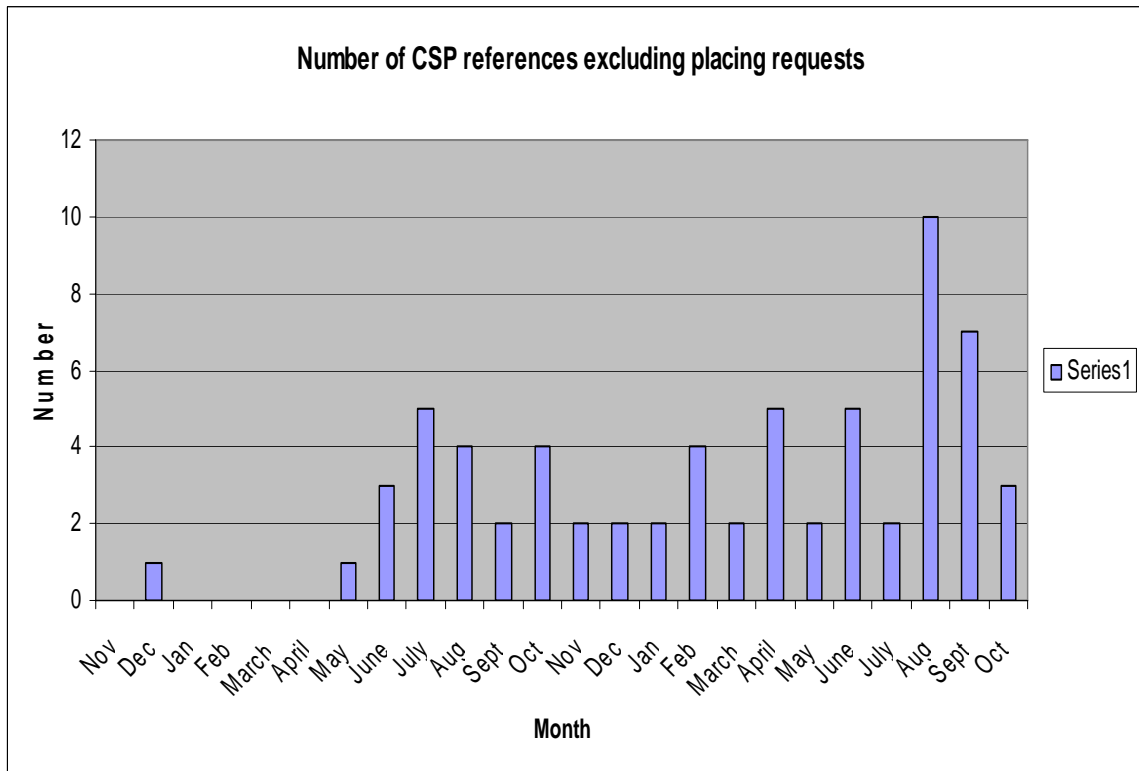
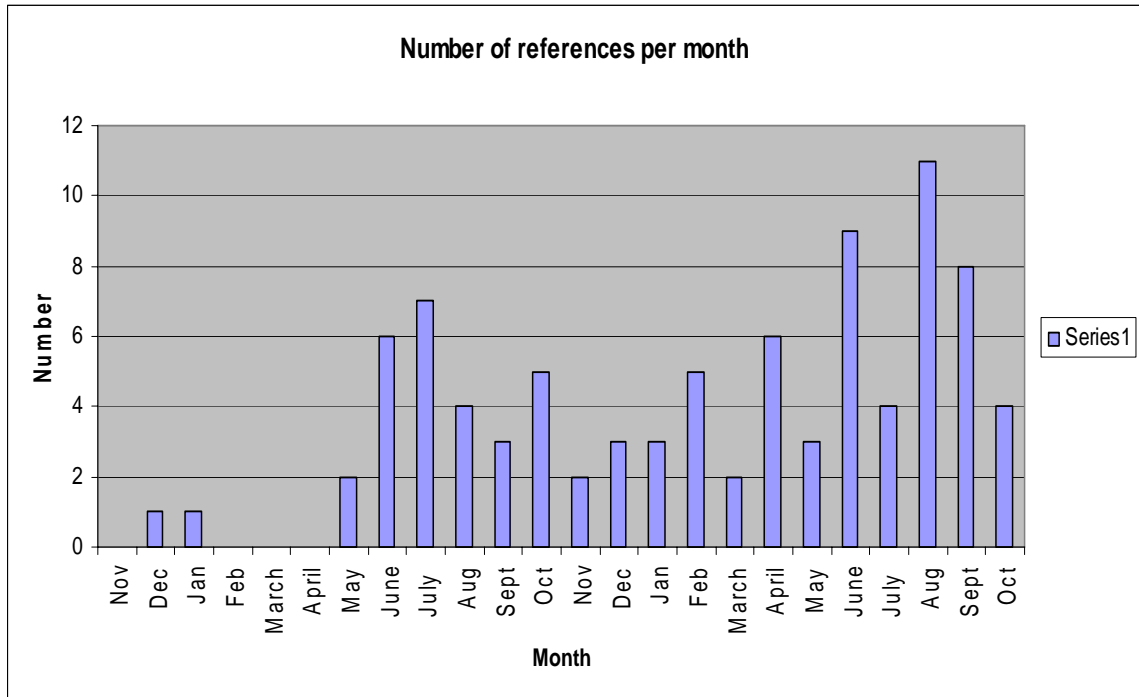
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Tribunals for Scotland

Tribunal decisions by Local Authority area

Local Authority	References Submitted	References still to be heard
Aberdeen City Council	2	1
Aberdeenshire Council	1	0
Angus	0	0
Argyll and Bute Council	10	2
Clackmannanshire	2	2
Comhairle Nan Eilean Siar	6	1
Dumfries and Galloway Council	3	1
Dundee	0	0
East Ayrshire Council	2	0
East Dunbartonshire Council	4	0
East Lothian Council	1	0
East Renfrewshire	1	1
Edinburgh City Council	20	9
Falkirk Council	2	0
Fife Council	4	1
Glasgow City Council	2	0
Inverclyde	0	0
Midlothian	0	0
Moray	2	0
North Ayrshire	0	0
North Lanarkshire	0	0
Orkney Island Council	3	2
Perth & Kinross	1	0
Renfrewshire Council	0	0
Scottish Borders Council	1	0
Shetland	0	0
South Ayrshire	0	0
South Lanarkshire Council	5	0
Stirling Council	4	0
The Highland Council	5	2
West Dunbartonshire Council	2	2
West Lothian	6	2



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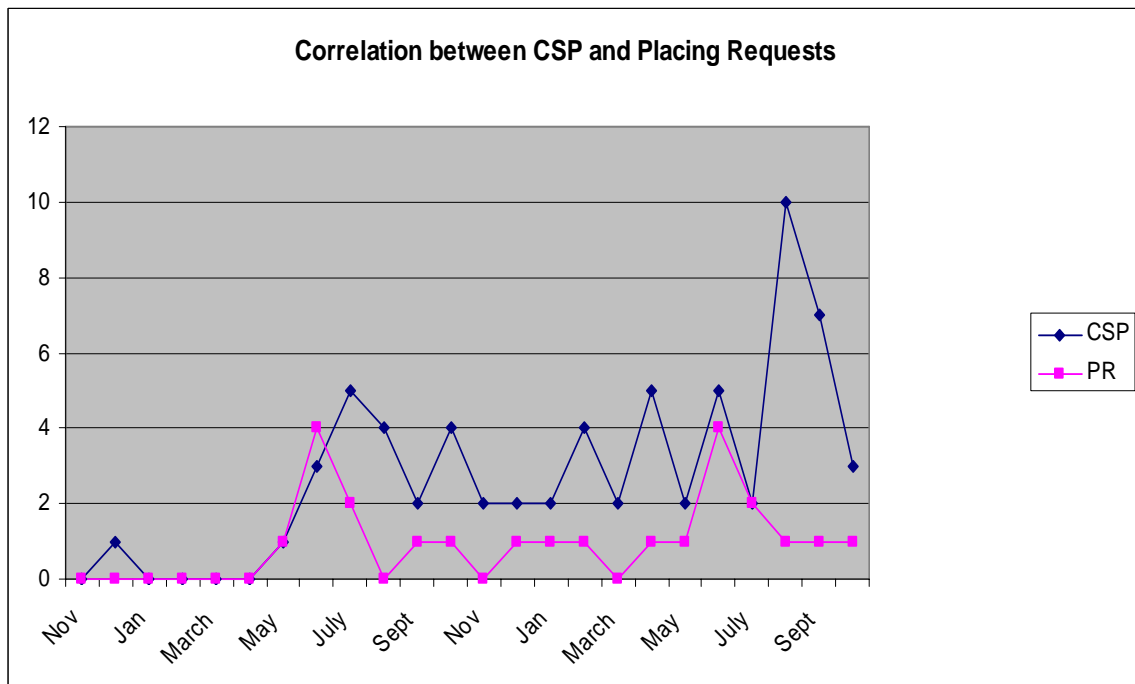
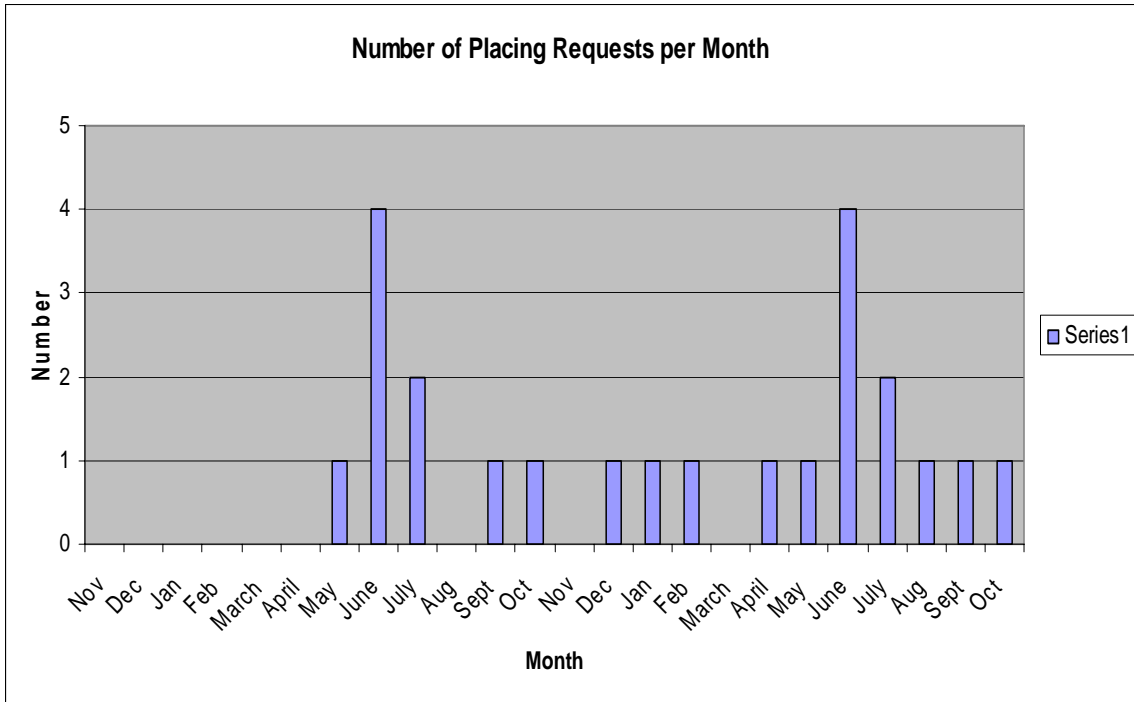
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Tribunal User Group

Friday 9th November – Trades Hall, Glasgow



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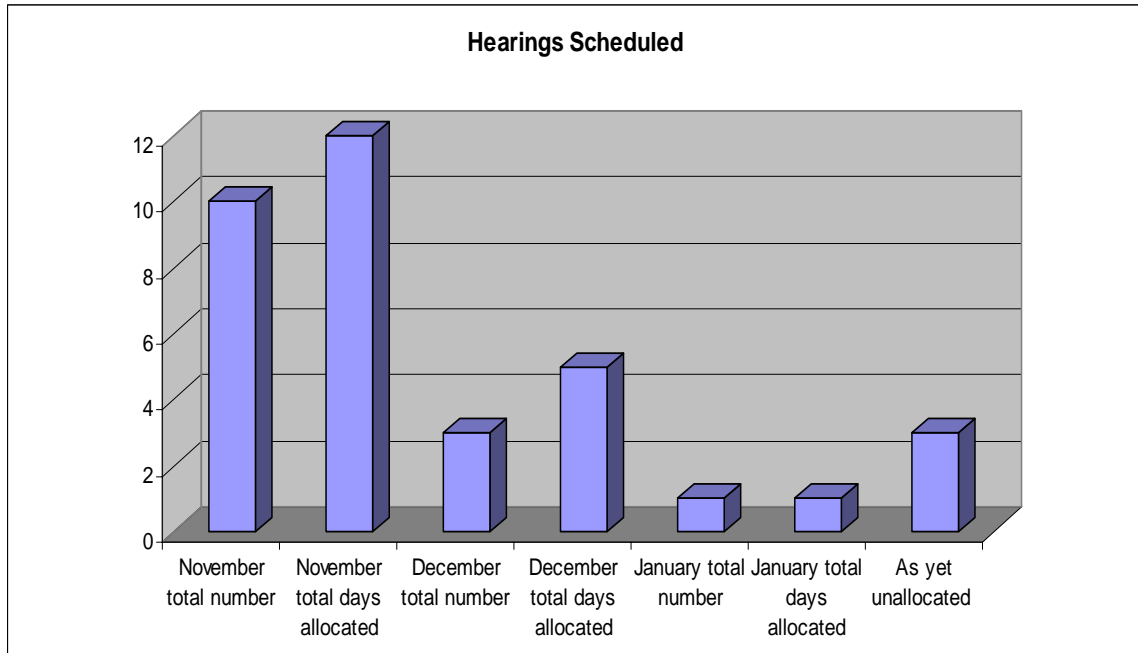
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The President reviewed the significant changes since February 2007.

- **The publication of her Second Annual report in June 2007**
- **The loading of edited decisions on the tribunals website**
- **The recent appointment of three additional conveners and 7 members**
- **The impact of Court of Session decisions from the Tribunal**
- **The importance of the awaited HMIE report on the implementation of the Act due on 14 November**
- **The consolidation of more consistent Tribunal procedures where the members take a more active role in questioning**



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Question and Answer Session

The following is a selection of issues submitted before and at the TUG events:

Q1. General feedback from the Tribunals that have taken place. (Catherine Mullen, Aberdeenshire)

A1. The Tribunal is conscious of information exchange between our stakeholders on both the implementation of the Act and Tribunal performance. As is often the case, the negative experiences are more highlighted than the positive but the Tribunal is always keen to learn from users.

Independent research by Mike Adler at Edinburgh University attempted to get feedback from parents who had attended Tribunals. In this project the information is gathered by telephone interview asking parents (particularly those who were unrepresented) to reflect on the experience of attending a Tribunal. As most parents have been represented and the uptake of the research has been poor, this opportunity for feedback could be lost. To redress this it has been agreed to undertake a final mop-up exercise and approach all parents who have attended an oral hearing over the past 12 months to encourage them to take part in Professor Adler's project in an attempt to collate this feedback.

More pro-active management of references such as telephone case conferences and questioning by the Tribunal has served to make the process more accessible.

Q2. Guidance regarding papers and information to be produced. (Catherine Mullen, Aberdeenshire)

A2. The President stated that the Secretary had covered this in her presentation but confirmed that work will commence shortly to revise all the guides and reference forms.

It was acknowledged that the Tribunal Rules did not make it easy to facilitate the production of a shared set of papers but rule changes may be sought to enable this.

Currently it was impossible for the Secretariat to look through case statements and remove any duplication. The date for both sides submitting the case statement and response falls on the same day. It is therefore difficult for parties to meet and discuss what papers are being included.



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One solution would be to place an onus on the parent to provide more information hence the change to the reference form is required. Education Authorities would be assisted if they had more information on the reference from the outset but this requires a change in the Rules.

Q3. Issues arising from placing requests received up to 10 months in advance of the required placement (Elspeth Walker, Dundee)

A3. The President stated that this is not really an issue for the Tribunal more a matter of practice for the authorities and there are already statutory time scales for dealing with placing requests. It is not possible to make an early request with a view to allowing more time to challenge the decision if it is adverse. One possible remedy may be for all placing requests where the child has additional support needs to have the appeal route to the Tribunal. The Education Appeal Committees would still have jurisdiction for all other placing requests.

The Tribunal cannot advise authorities on how to prioritise placing requests as they can only deal with appeals on a reference by reference basis.

A parent stated that the difficulty is with the timing of the decision process. There normally is not enough time to resolve issues before the start of the new school year. The President stated that this was a legitimate issue but it relates to Education Authority systems. Even with a shortened case statement period the timing for a hearing was very tight and the matter would not be resolved before the new school year if there was any further appeal.

Q4. Training for School staff who prepare CSPs (Diane Lowrie, Spina Bifida Association)

A4. This is an internal issue for the authority and about the resources given to the implementation of the Act.

Decision letters to parents differ from each local authority. The President referred to her Annual Report which includes a model decision letter.

Q5. Involvement of parents in CSP process (Diane Lowrie, Spina Bifida Association)

A5. The President stated that she could not comment as the Tribunal only sees a very small sample of the total number of Co-ordinated Support Plans. Sometimes there is no parental comment as the parents have decided not to



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take part in the process but no firm conclusions can be drawn from such a limited sample.

Q6. Tribunal Rules – general query about possible changes (Cameron Munro)

Mr Munro highlighted the difficulty of the role of the Education Appeals Committee as a specialist school provision would be more appropriately considered by a Tribunal rather than the EAC.

A6. The President stated that it was not appropriate for her to seek to extend the jurisdiction of the Tribunal but she did respond to a consultation document of the role of the EAC. There was not a high level of response to this and as yet it is unclear as to what action, if any, will be taken.

Q7. Looking forward to feedback from SEED to questions asked in January 2007 ASNT meeting regarding grant-aided schools/CSPs (Stuart Aitken, Sense Scotland)

Mr Aitken elaborated on this question asking if CSPs were needed for grant-aided schools. In grant-aided schools there are certain therapies in-house controlled through service level agreements, therefore is there the need for CSPs?

A7. The President stated that if a reference is ever received on such an issue it would be a matter for the Tribunal. It would be helpful to clarify this issue in any event.

No Court of Session opinion specifically addresses this issue.

It was suggested that if a child has additional support needs and is in a grant-aided school it is difficult for Education Authorities to take a firm line. It is difficult to see why an Education Authority would open a plan that it was not actually responsible for delivering.

Local Authorities have a duty to open a CSP if the criteria are met, but whether these are met may simply depend on how the service is delivered and paid for and may not be directly related to the extent of the child's needs. This will inevitably produce variations between authorities.

More clarity would come from amendments to the legislation.



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Q8. Mediation update? (Sandra Mitchell, Resolve)

Sandra Mitchell gave a brief overview of the cases RESOLVE has been involved with since the implementation of the Act. There have been 90 cases using mediation services.

Some parents come to mediation with speech and language issues that may have otherwise been Tribunal references but it is difficult to quantify.

In relation to the Tribunal expectations of 300 annual referrals RESOLVE are not at their expected projections but it may indicate that disagreements are being dealt with well at a local level.

RESOLVE does not hold follow-up appointments and therefore can only assume that parties have reached a successful conclusion.

The President stated that the tribunal administration is not formally notified of mediation taking place between parties, but was told anecdotally in one case.

Sandra Mitchell stated that it depends on situations. RESOLVE have worked on some cases following Tribunals where the reference was not upheld and where parents consider that a Tribunal decision is not being properly implemented.

Q9. Publicity about Tribunals and information on remedies presented to parents/pupils (Ruth Leith, Partners in Advocacy).

A9. The President stated that this was a matter for each Education Authority as it is their decision letter that triggers access to the Tribunal process.

Q10. Running costs – effective use of money? (Ruth Leith, Partners in Advocacy)

A10. The President stated that her Annual Report refers to the cost of the tribunal administration and the Tribunals and this is a matter of public record.

Q11. Role of Parent representatives at Tribunals (Sheila Ainslie, East Lothian)

A member of the National Autistic Society stated that they receive pro bono work from a firm of solicitors but the take-up has been very limited. The problem is that parents see it as a battle which is not likely to be won and therefore do not see the point of going to a Tribunal. The analysis of decisions



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loaded on the website indicates that decision almost always go with the Education Authority.

A11. The President acknowledged that the range of advocacy support to parents was limited and stated that it would promote choice for parents if there were more bodies providing representation. The existing providers may find that their resources are inadequate to meet the demand.

Q 12. Legal representation at Tribunals (Sheila Ainslie, East Lothian)

A 12. The President stated that there are slightly more instances of legal representation from the authorities than lay representatives. It is a matter for the Education Authority who they instruct but the President stressed the point that the Education Authority Officers may know more about the issues than their legal representatives. It is to be hoped that with experience, the perceived need for legal representation will diminish.

Q 13. Has the tribunal system been approached by families whose children have interrupted learning needs e.g. gypsy/traveller children? (Pauline Padfield, Edinburgh University)

Pauline Padfield stated that a lot of work has been done to provide support mechanisms leading to an inclusive approach for diverse travelling communities with different identities. Families are mobile and are targeted by racism as this follows the negative stereotypes of gypsy travellers. There are uninterrupted levels of learning but these children can be in and out of school and sometimes not in school for a period of time. Pauline Padfield stated that she was here today to put the issue of gypsy/traveller children on the agenda as they are finding that the ASL Act has had no impact on the delivery of services to gypsy/traveller children. Learning needs have to be addressed and ought to be provided with different levels of service.

A 13. The President stated that she is not aware of any references to the ASNTS for children whose parents are or have been gypsy/travellers.

Pauline Padfield stated that the broad legislation of the ASL Act will be lost if the needs of traveller children have yet to be taken into account. She has put this point into the public domain and is getting little response. It is difficult to realise the broader concept of the ASL if this group is not included.

Open questions were then taken from the floor.

Louise Melia from Govan Law Centre stated that they work on pro bono and receive no funding for ASL references. Parents often come to Govan Law



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Centre for assistance after they have submitted the reference to the tribunal which can sometimes make representation more difficult than being involved at the beginning of the process.

If the tribunal did take on disability discrimination cases and the issue of legal aid is not resolved by then, parents will not be adequately represented as such cases raise more complicated issues and legal aid would be available if the matter is taken in the sheriff court.

The President stated that the number of DDA references would be small but the Tribunal would be a much speedier route than the present remedy. It may raise more complex legal issues but conveners would have the experience to resolve issues more speedily and the Tribunal would always endeavour to ensure that a fair hearing would take place regardless of who was representing parties. The President stated that representatives, lay or legal, are welcomed as they empower parents to bring references and they assist in the development of the Act.

Pauline Padfield asked about the views of children who have attended Tribunals.

The President stated that children have never been advised not to attend and this is a matter between representative and parents. More children attending Tribunals it to be encouraged.

The President concluded with current projections. There have been in excess of 80 references in the first 2 years and one would expect to see a similar or slightly smaller figure again next year. The Secretariat has been slimmed down to reflect the volume but the number of members and conveners has been extended to allow flexibility for fixing hearing dates. The existence of an electronic case management system leave us well placed to deal with variations in volume of tribunal business.

November 2007