



**A REFLECTIVE ANALYSIS OF SENAC'S TRIBUNAL
SUPPORT AND REPRESENTATION SERVICE AND
PARENTAL EXPERIENCES OF APPEALING TO
SENDIST**

November 2021

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EXECUTIVE SUMMARY

The Special Educational Needs Advice Centre (SENAC) is a regional charity set up in 2003 to provide independent advice and advocacy, on the application of the statutory Special Educational Needs (SEN) system.

In 2017, in response to the needs of our service users, SENAC secured funding from the Esmée Fairbairn Foundation to support the Charity's development and delivery of a Tribunal Support and Representation Service for parents appealing Education Authority (EA) SEN decisions to the Special Educational Needs and Disability Tribunal (SENDIST). SEN appeals to SENDIST have increased and the challenges of identifying and providing for the diversity of SEN within education continue to prevail. Against this backdrop, SENAC have reflected on the experiences of parents and those accessing and delivering our Appeal Service, to assist and inform the ongoing EA and DE reform of the SEN processes.

The focus of this research has been specifically on the Appeals process. Our findings and analysis are based on the following: SENAC's appeal case records (315), testimonials from parents who received SENAC support, an Online Survey of parental views (July/August/September 2021) (164 respondents), consultation with SENAC Appeals & Advocacy Team (2) and with legal practitioners (2).

The majority view of parents on the overall appeals process was that it was legalistic, confusing, and stressful. A number of parents indicated they felt unable to appeal as they were exhausted by the efforts already undertaken to secure SEN provision for their child. Further anxiety of appealing and potentially attending a Hearing was too challenging and they opted not to appeal. The practitioner view was more positive - an appeal was recognised as a key remedy within the SEN Framework to challenge SEN decisions. Practitioners, however, acknowledged the stress and pressure on parents to appeal and, the importance of the availability of free support and representation to encourage and enable the parental ability to appeal.

A number of common concerns were raised in relation to the overall Appeals process. Parents felt they were not listened to and had limited opportunity to put across their views prior to and after an appeal is lodged. Information received from the Education Authority (EA) was unclear and full of jargon and regarded as misleading and inconsistent. Difficulties in contacting and communicating with EA SEN Officers was a concern expressed by parents and practitioners, compromising the ability to discuss issues or receive updates. Such difficulties mean missed opportunities to progress a case more promptly or even prevent the need for appeal. The need for improved collaboration and support between schools, Health Professionals, the EA, and parents was identified as an important requirement at each stage of the process.

The two most common reasons for an appeal were examined in more depth, i.e., the right to appeal a refusal to carry out a Statutory Assessment and appeals relating to the Final Statement of SEN:

Refusal to Assess: The main issue and concern expressed in relation to the EA's refusal to statutory assess was, the incidence of EA decisions not to Assess reversed on lodgement of the appeal. 68% of 122 appeals supported by SENAC on refusal to assess were conceded by the EA after an appeal was lodged. Significant in this practice was that, in most cases, the Reasons for Appeal contained the same evidence and facts already submitted to the EA. This suggested it was the act of lodging the appeal that was the catalyst for action and caused the EA to reassess their decision. This raised concern in relation to the EA Statutory Assessment Panel's initial consideration of the facts and information submitted, and the criteria used to determine if the legal threshold of 'necessity' to Assess had been evidenced. In cases where no new evidence was submitted on appeal and the EA had not contested the appeal after lodgement and, subsequently, initiated the Assessment, this action confirmed the evidence previously considered by the Panel had been sufficient to meet the threshold for Assessment. This caused frustration for parents, unable to access satisfactory explanation from the EA why evidence already submitted and considered, had triggered a different outcome weeks later, on lodging the appeal and the stress and delay this had caused. This lack of information and transparency in relation to the decision-making of EA Panels, to whom parents have no access, was highlighted as a main factor, in the lack of parental confidence in the equity of the SEN processes.

Inconsistent application of the SEN Code of Practice in determining if the child's needs are being appropriately met in school, was identified as creating inequity in determining the need for Assessment. For example, reference by the EA to the absence of input from external specialists or Educational Psychology, as a reason for refusal, was perceived as unfair, as it was because of EA policy, imposing restrictions on numbers of EP referrals from schools and limited capacity to services, which meant the child could not meet this criterion.

The Final Statement of SEN: A number of issues were raised about the inadequacy of Final Statements, the most common concern being that, despite the legislative requirement to specify SEN provision and draft clear and unambiguous content, provision is routinely neither specified nor quantified. Appeals relating to SEN provision were the most common reason for the appeals on Statements in SENAC cases and similarly in the Online Survey. The lack of inclusion of all needs within Part 2 of the Statement was also a concern, as Part 2 is directly linked to provision in Part 3. Such inadequacies within the Statement often led to redrafting of content thereby causing unnecessary delay in finalising the Statement and progressing an appeal, and delay for the child receiving support in school.

The use of Working Documents as a tool for redrafting Statements following lodgement of the appeal, was viewed positively by practitioners as a useful strategy to avoid a Hearing and improve the Statement. However, the main weakness identified with 'working documents' was the potential for further delay, highlighting the need for the process to be timebound.

There was concern expressed in relation to difficulties and delay in the finalising of Statements and the implementation of SEN provision in schools, secured following a Tribunal ruling. The lack of accountability or sanction on, failure to implement the SEN

provision in schools, was concerning. Such delays and failures eroded the strength of the appeal right and compromised the impact of, and adherence to a Tribunal ruling.

Dissatisfaction was expressed about the EA's practice of making only minor adjustments to Statements at Hearings on the rationale that the Annual Review will be the mechanism for further adjustment, yet no guarantee is given that they will agree to make any required amendments following the Annual Review. It was concluded that, despite the imminent introduction of a new right of appeal for parents to challenge an EA decision not to amend a Statement following an Annual Review, this should not compromise the duty to specify the appropriate SEN provision required at the time of Statement issue. Again, this strategy created potential for delay, compromised the impact of the Statement, and eroded the strength of this appeal right.

The Hearing: Examination of the experience of parents at the Tribunal Hearing indicated the majority considered the Hearing to be a fair and equitable, independent forum. However, the anticipation of, and attendance at, the Hearing, was described as stressful and intimidating, particularly for parents attending without representation, who must counter the legal and tribunal experience of the EA team. However, the efforts of the Tribunal Chairs, to ensure equity for participants and, foster an environment to aid constructive round table discussion, was noted. Despite the Tribunal Panel members' recognition and awareness of the pressure and stress parents may feel and, their efforts to address this, practitioners believed parents attending without representation were disadvantaged. Identifying and addressing possible inequity for appellants at a Hearing, was viewed as a priority, particularly with the imminent introduction of appeal rights for young people over compulsory school age within the new SEND Act 2016.

The research indicated certain cases appear to be more likely to proceed to Hearing. Cases in relation to Final Statement provision and the school named in the Statement, were more likely to be contested at Hearing, particularly if a special school was the parent's preference. As these appeals may involve a number of issues, it was concluded it may be more challenging for the EA to resolve these appeals prior to Hearing. The limited capacity of specialist settings and special schools was also referenced as a factor in the need for a Hearing.

Other issues raised in relation to the Hearing included: parents may have no idea who will be in attendance in advance of the Hearing; the late notice from EA of their intent to concede; concerns relating to adjournment requests and the lack of opportunity for parents to discuss their case prior to Hearing.

Impact of Appeals Support: It is clear parents require independent support to exercise their right of appeal and access to representation at Hearings. 98% of respondents to the Online Survey believed it was either 'extremely important' or 'very important' for parents to have support and advice to appeal. SENAC's appeal service users also positively testified to the difference having support and representation made to their ability and confidence to appeal. The additional insight and knowledge of the SEN statutory processes specialist practitioners have, was identified as a benefit of accessing independent support. Having advice and representation can mean the

difference between a parent deciding to appeal or not appealing. Parents described being 'worn out' by the long 'fight' they have had to reach the point of appeal.

Positive outcomes from appeal mean significant changes for children in school. The outcomes for children and young people can be significant. A successful appeal will secure the assessment and SEN provision that children had been unable to access prior to an appeal, securing a range of additional and specialist resources and interventions and/or an appropriate school placement. Children out of school can return to school and realise their right to education. An appeal offers children the opportunity to learn and progress and mitigate the educational disadvantage and inequity many currently experience.

SEN Reform and Improvement

SENAC welcomes the commitment of the Education Authority and Department of Education to improve the delivery of the SEN system and their recent initiatives, strategies and reviews undertaken to progress positive change. We also welcome their collaboration with the Department of Health and engagement with children and young people, parents, schools, organisations, and other stakeholders. SENAC will continue to engage positively with the EA and other stakeholders to support improvement in the SEN processes.

It is hoped this reflection and comment on the Appeals process will provide additional insight and information on the issues and concerns expressed and experienced by parents and practitioners, to inform the ongoing reforms.

Summary of Recommendations and Key Points for Consideration:

- Communication between parents and the EA needs to be reviewed with a view to providing clear and consistent guidance and direction and implement strategies to promote 'parent partnership' and reduce the 'combative' experience parents describe.
- There should be improved accessibility and capacity of EA Officers to communicate and engage with parents and representatives supporting parents, prior to, and after, an appeal is lodged.
- There is a need for improved collaboration between parents, schools, health professionals and the EA.
- Consideration should be given to enhancing the availability of free appeals advice and representation and providing legal aid for representation at Hearings.

Refusal to Statutory Assess

- Greater transparency is required on the decision making and consideration of evidence by the Statutory Assessment Panel with improved sharing of information to parents on decisions.

- Clear, updated guidance should be provided on the criteria applied by the EA to demonstrate the evaluation and application of the evidence in relation to the threshold for Assessment.
- There should be greater communication between schools and the EA where a decision not to Assess has stated the needs of the child can be met from within school resources.
- Access to the Educational Psychology Service should be made available to assist the EA in determining necessity to assess, in cases where a child has been identified as requiring EP input but restrictions on the number of school referrals has prevented this intervention.
- Priority should be given to reviewing and increasing the capacity of, and access to the external specialists within EA's Pupil Support Services to enable greater equity and evidence to inform the EA's decision on the necessity for statutory assessment.

The Final Statement

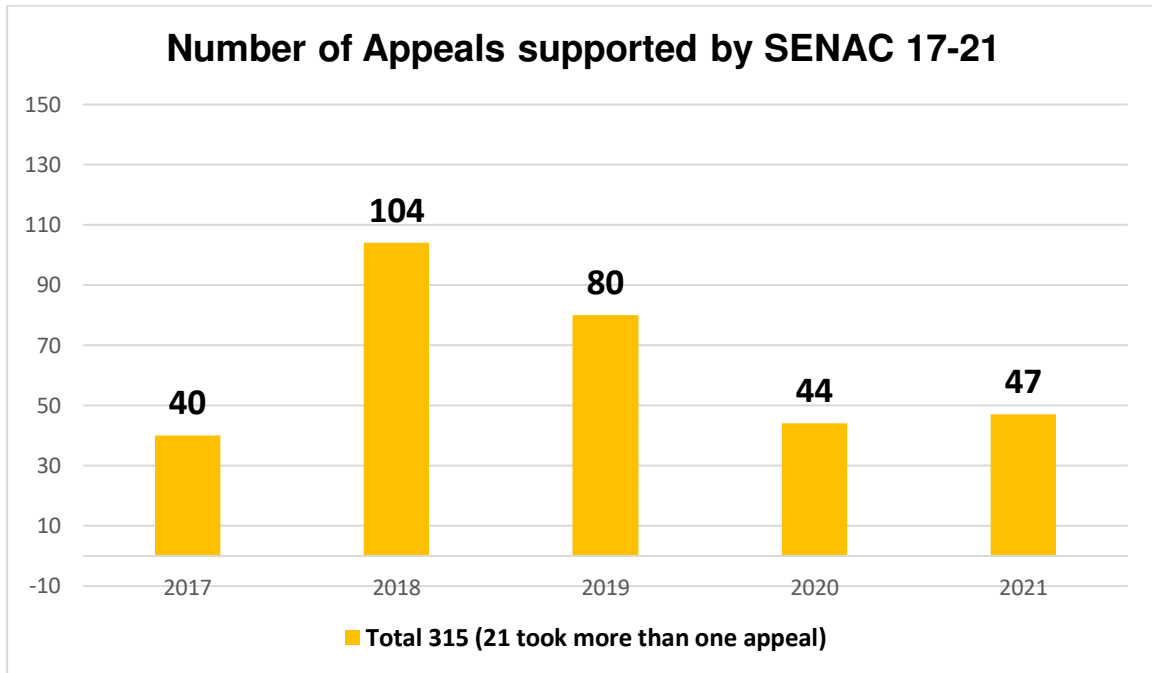
- The practice of issuing Statements of SEN which are unspecified and unquantified must cease.
- There should be a mechanism in place for SENDIST to monitor and address any failure to implement the SEN provision in schools, which has been secured as a result of a Tribunal ruling.
- There should be a statutory timeframe in place for completion of a Working Document to ensure that the process of negotiation and implementation is time limited.

The Hearing

- A Witness List should be provided for all parties, prior to a Hearing, as standard practice.
- A more equitable approach should be adopted to requests for adjournment, extension to timeframes etc.
- Consideration should be given to the extension of Legal Aid to include representation at Hearing.

APPENDIX 1: STATISTICS SENAC TRIBUNAL SUPPORT AND REPRESENTATION SERVICE INTERNAL DATA

TABLE 1.1



The variance in the number of appeals SENAC can support annually is dependent on the level of funding available which determines service capacity. 2017 was the Appeals Service startup year. 2020 was significantly affected by Covid. 2021 is reflective of 9 months service delivery.

TABLE 1.2

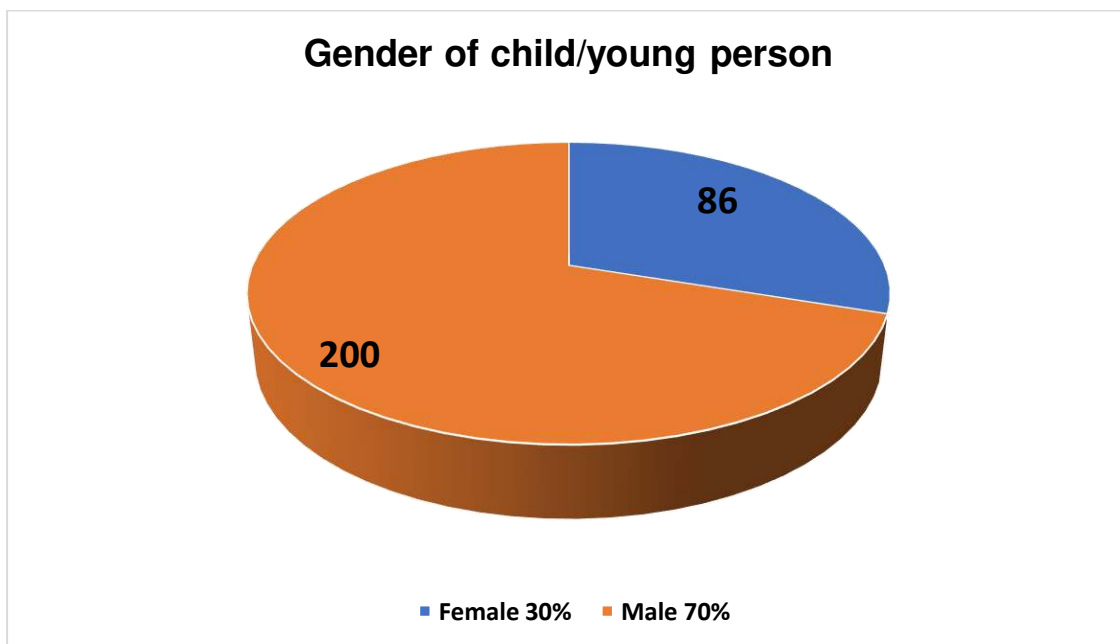
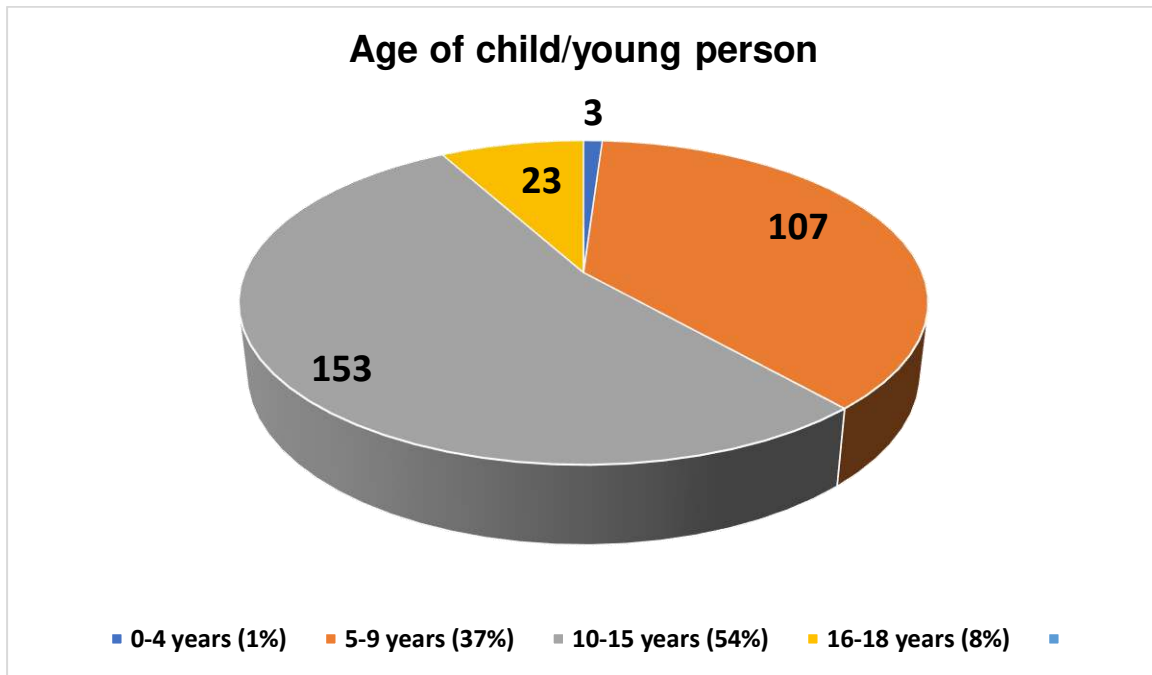
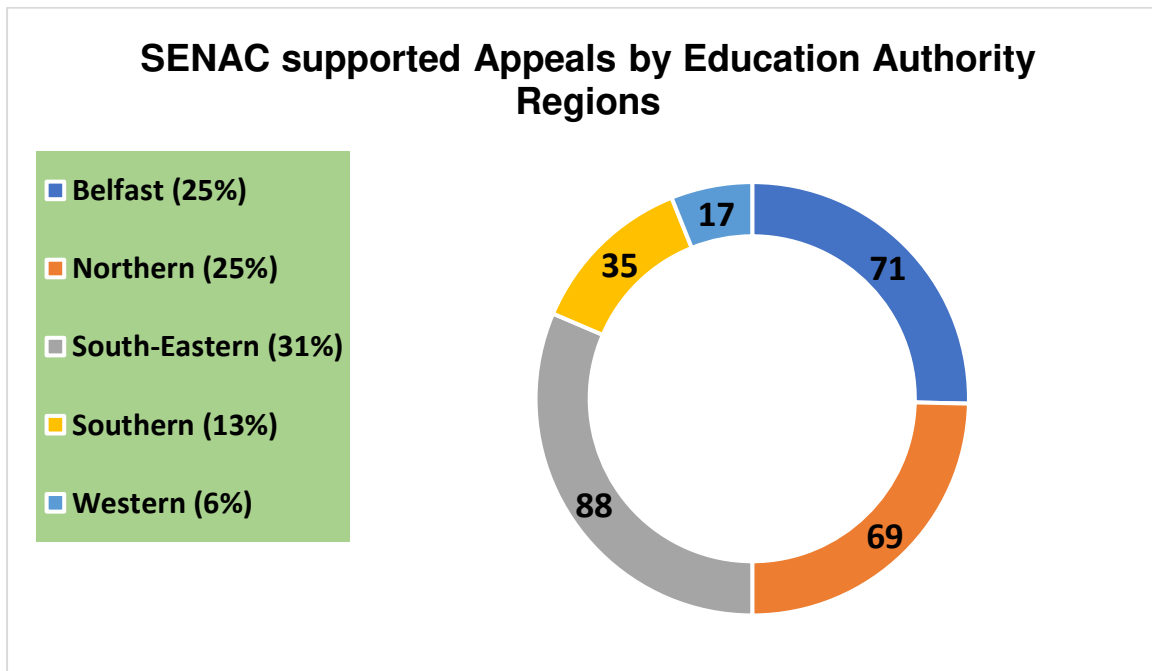


TABLE 1.3



The age and gender distribution of appeal cases mirrors the overall population of our children who have been supported by SENAC’s other services since 2017. This suggests in SENAC’s experience there is no significant relationship between age or gender and appealing to SENDIST.

TABLE 1.4



The EA region distribution of appeals cases mirrors the overall population of our children who have been supported by SENAC’s other services since 2017. This suggests in SENAC’s experience there is no significant relationship between EA regions and appealing to SENDIST.

TABLE 1.5

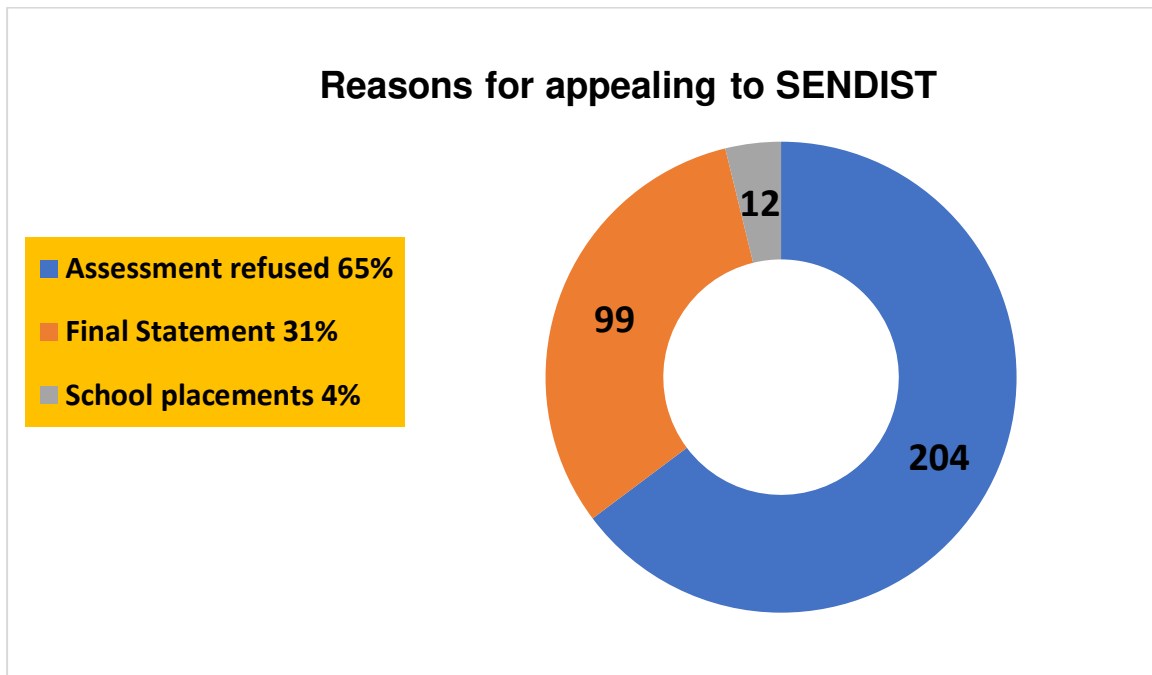
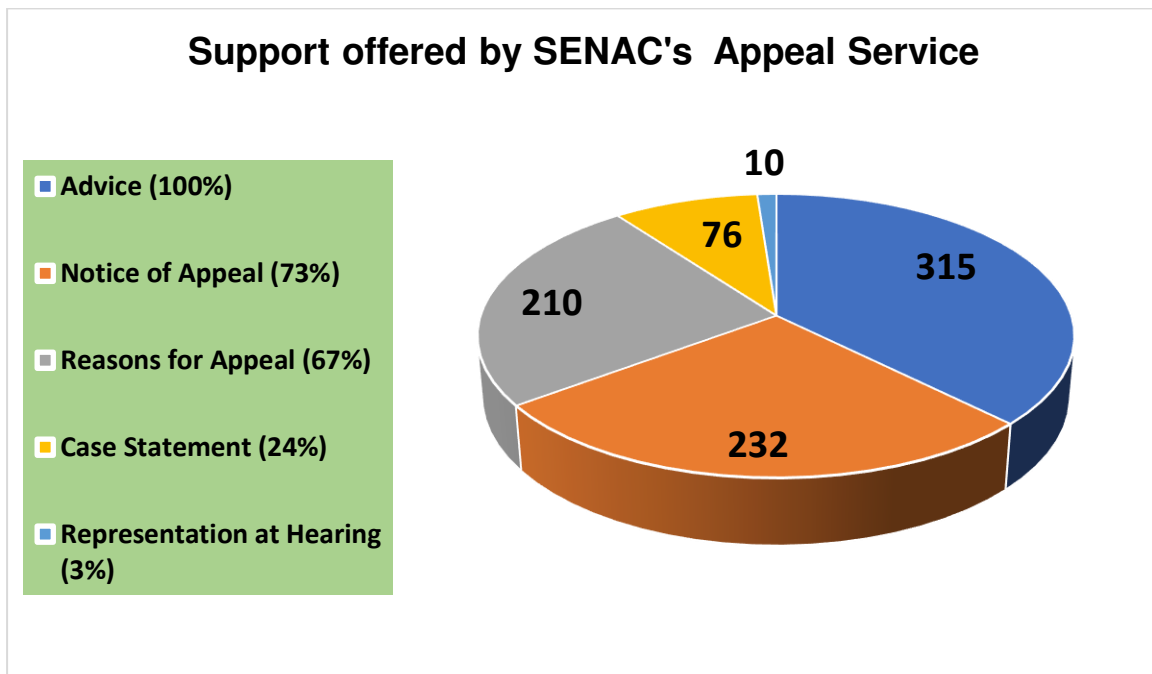
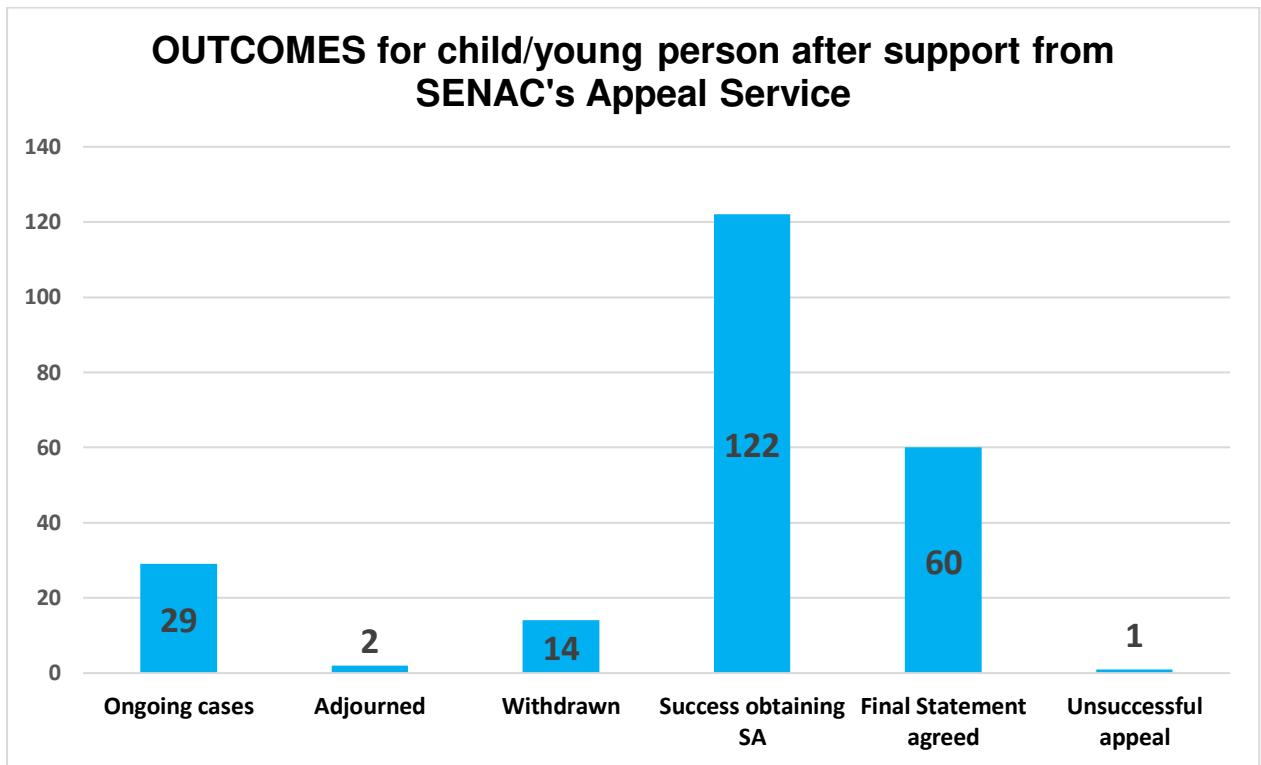


TABLE 1.6



*Of the ten cases (3%) which went to Hearing, eight (80%) were in relation to Final Statements and two (20%) in relation to refusal to Statutory Assessment. SENAC's data indicates appeals in relation to Final Statements are more likely to proceed to a Hearing.

TABLE 1.7



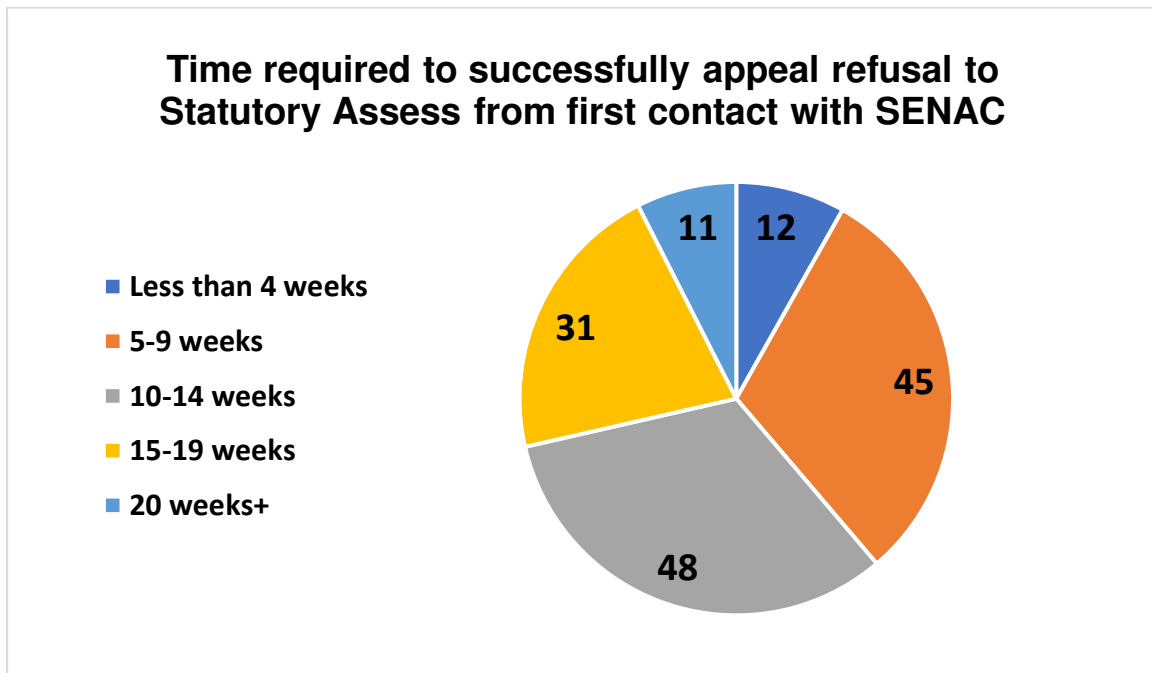
***Appeals in relation to refusal to carry out Statutory Assessment:** 36/122 (30%) of successful appeals required a Case Statement. 68% were conceded by EA after an appeal was lodged. 2% proceeded to Hearing.

***Appeals in relation to Final Statements:** 40/60 (67%) of successful appeals required a Case Statement. The remaining 23% were conceded by the EA after an appeal was lodged.

*SENAC's data indicates appeals relating to Statements are more likely to require a Case Statement than appeals in relation to a refusal to Statutory Assess.

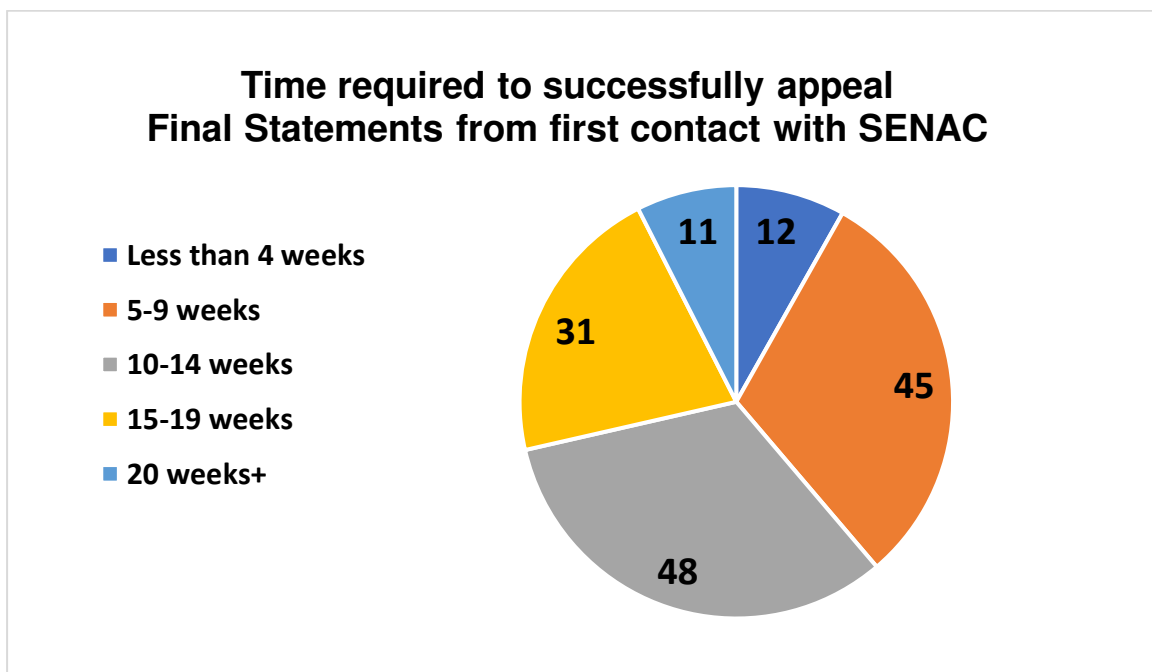
*The remaining cases are where the parent proceeded themselves after initial advice from SENAC or, the case was passed to a solicitor or another organisation due to SENAC capacity issues.

TABLE 1.8



Average length of time to achieve a positive outcome at SENDIST in relation to refusal to statutory assess is 12.6 weeks. This is from initial contact with SENAC until notification from SENDIST that the EA decided to carry out SA. Support in successful appeals in relation to statutory assessment ranged from 2 weeks to 40 weeks.

TABLE 1.9



Average length of time to achieve a positive outcome in relation to a final Statement is 15.8 weeks. This is from initial contact with SENAC in relation to the appeal until the Statement of SEN has been satisfactorily finalised. Support in successful appeals in relation to Final Statements ranged from 2 weeks to 43 weeks.

APPENDIX 2: ONLINE PARENT SURVEY

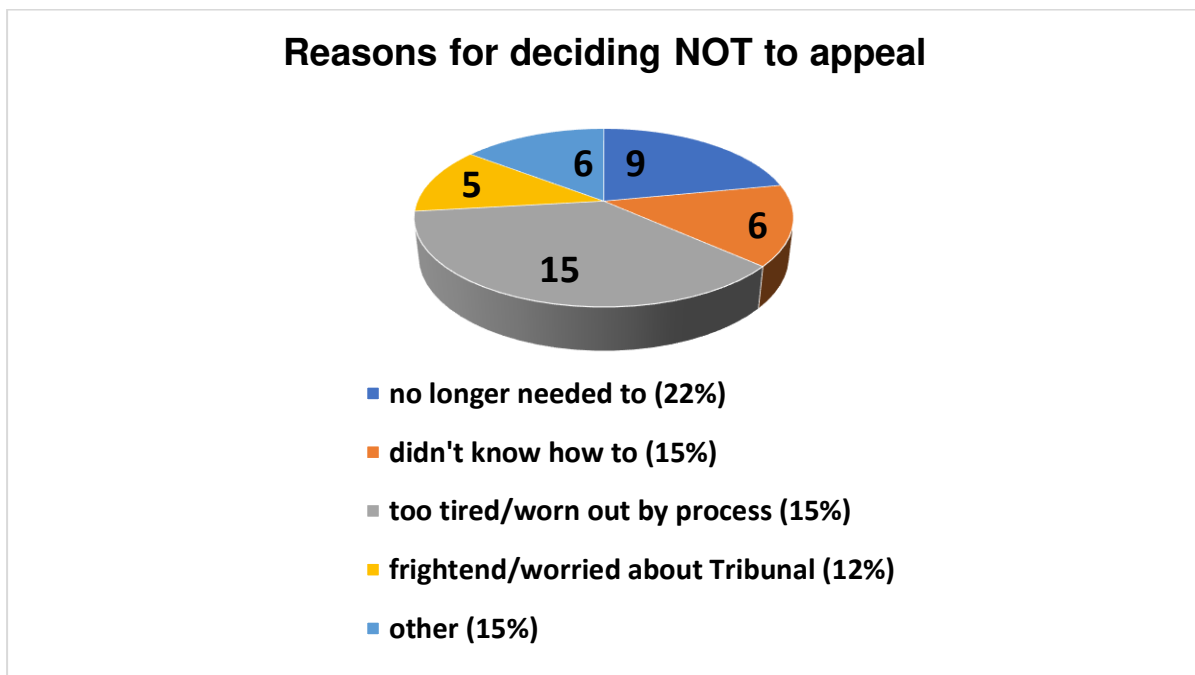
SENAC carried out an Online Survey in July and August 2021 to elicit the views of parents in relation to the appeals process and their experience of either considering an appeal or their experience of having taken an appeal to SENDIST.

The survey was sent to 215 parents who had contacted SENAC in relation to appeals. It was also sent to community representatives and networks with a request to forward to their parent service users and members.

163 responses were received 116 (71%) of whom recorded that they had taken an appeal to SENDIST and 46 (29%) recorded that they had not taken an appeal to SENDIST. One person did not respond to this question. Only three people indicated that they had withdrawn their appeal and, they recorded that they had done so, because *'they were worn out by the process.'*

PARENTS OPTING NOT TO APPEAL AFTER CONSIDERATION

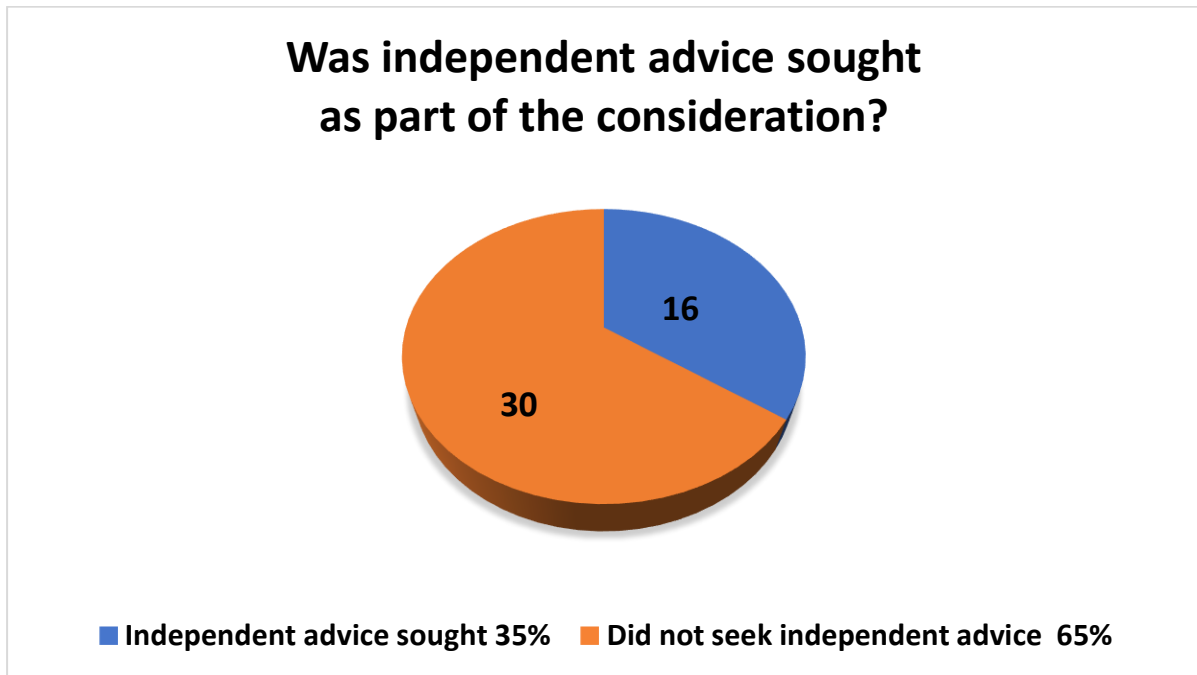
TABLE 2.1



The 'Other' category included:

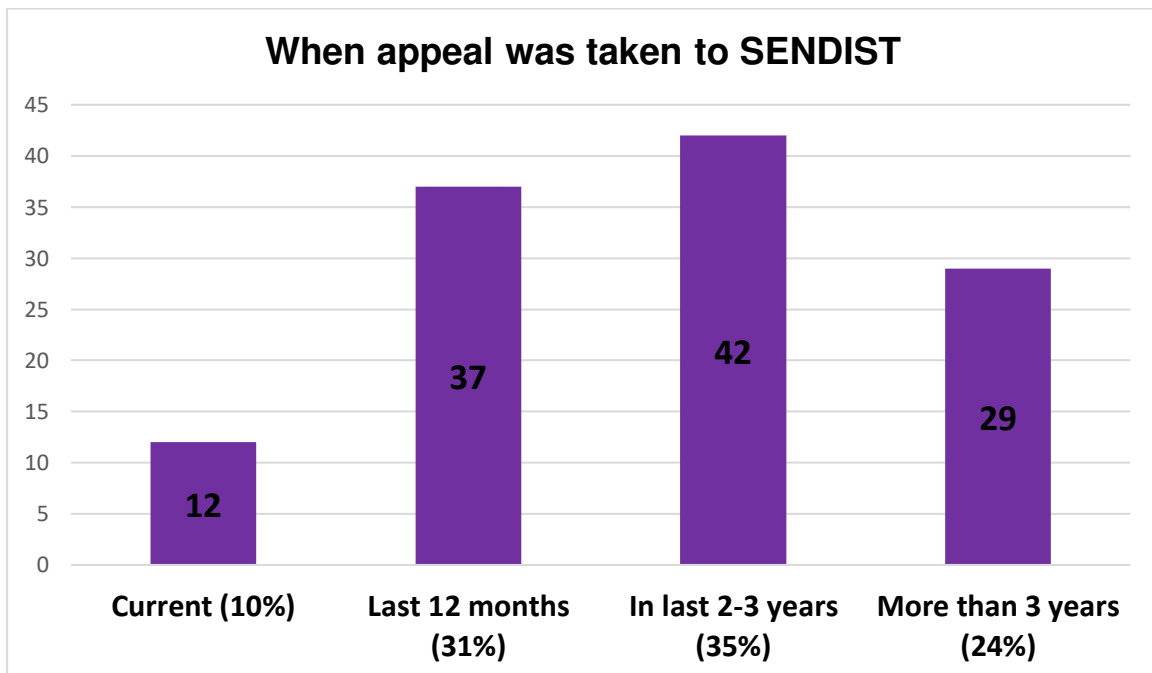
- Parent took legal advice
- Contacted their MLA
- Example of explanations received *'We were a week away from Tribunal and our legal team advised us to withdraw as the school and the EA were bringing an entourage of people and it was going to be too intimidating for us as parents.'* (Parent)
- *'I was given a number of promises of Stage 3 support that turned out to be false.'* (Parent)

TABLE 2.2



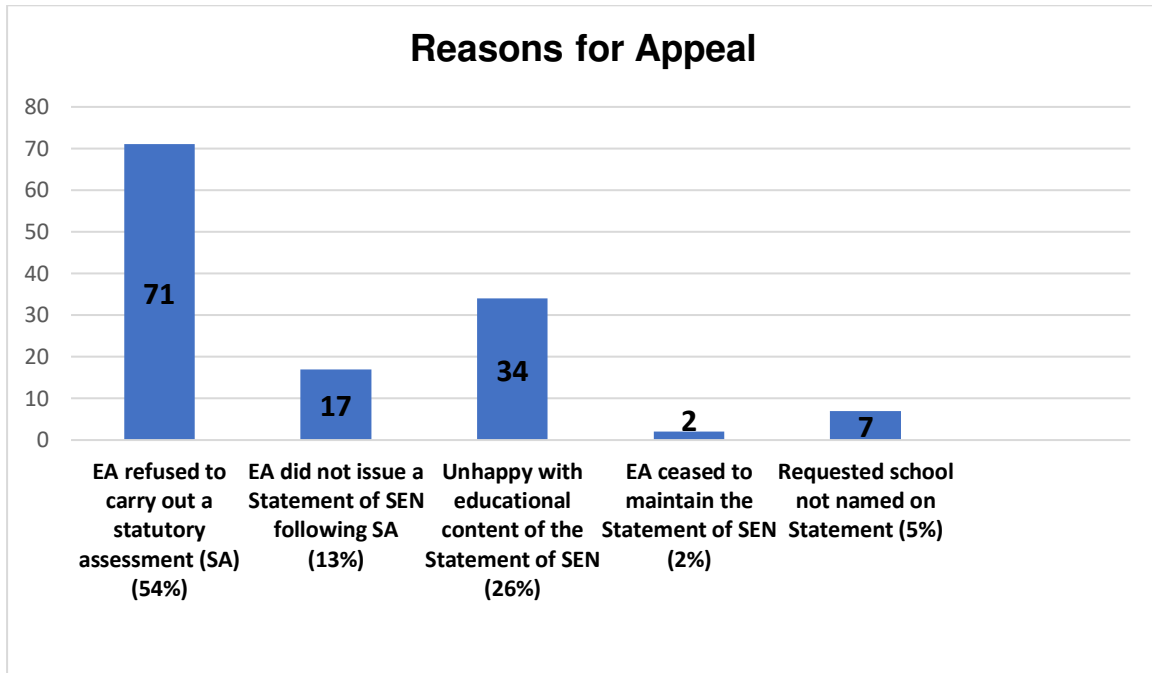
PARENTS WHO APPEALED

TABLE 2.3



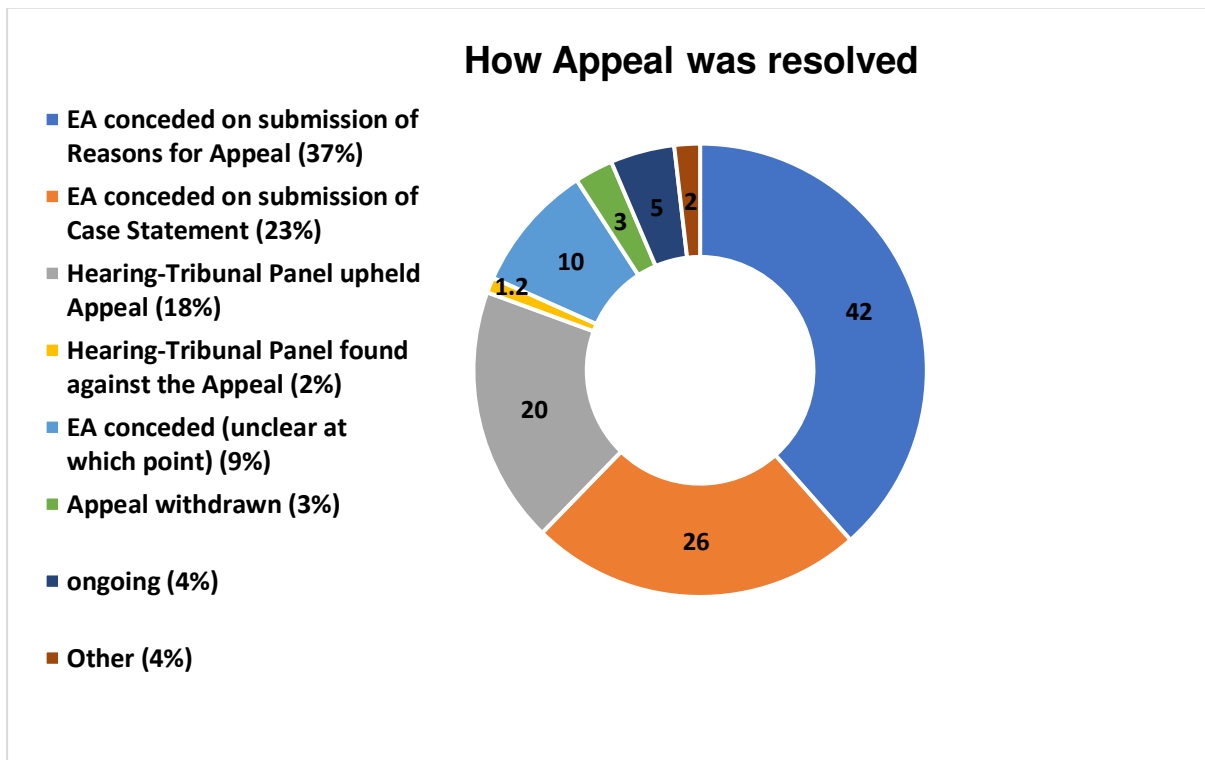
Response rate to this question was 74%.

TABLE 2.4



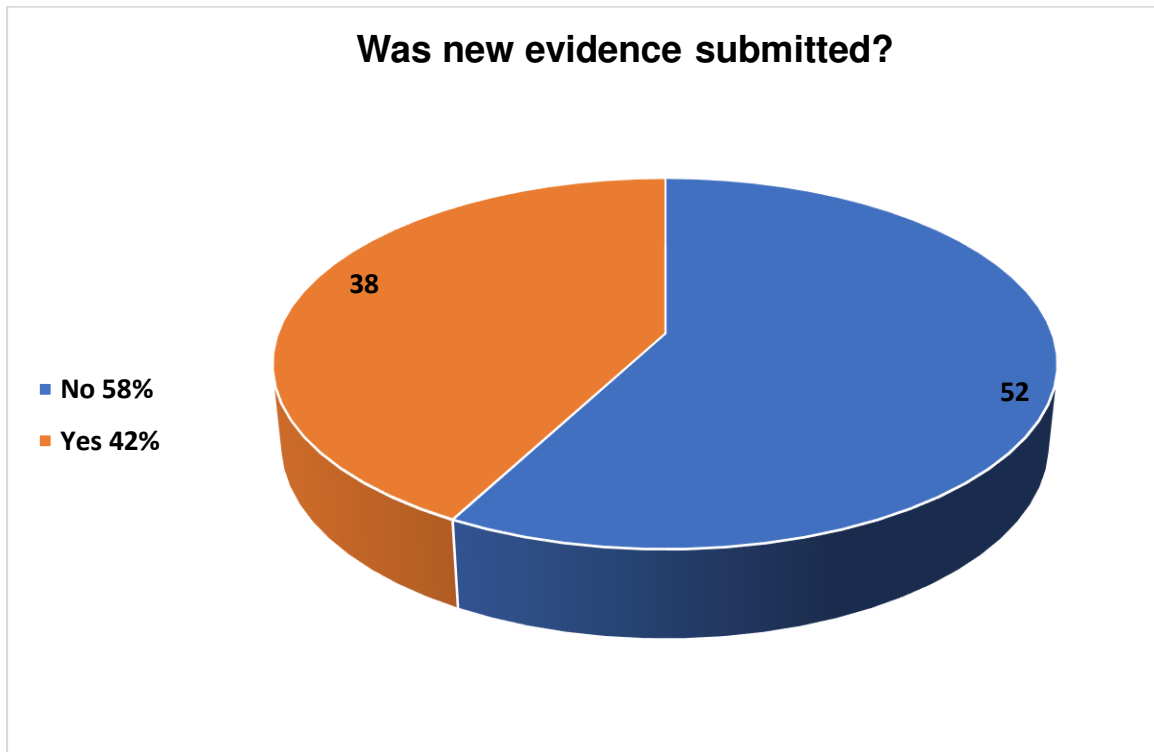
Response rate to this question was 80%.

TABLE 2.5



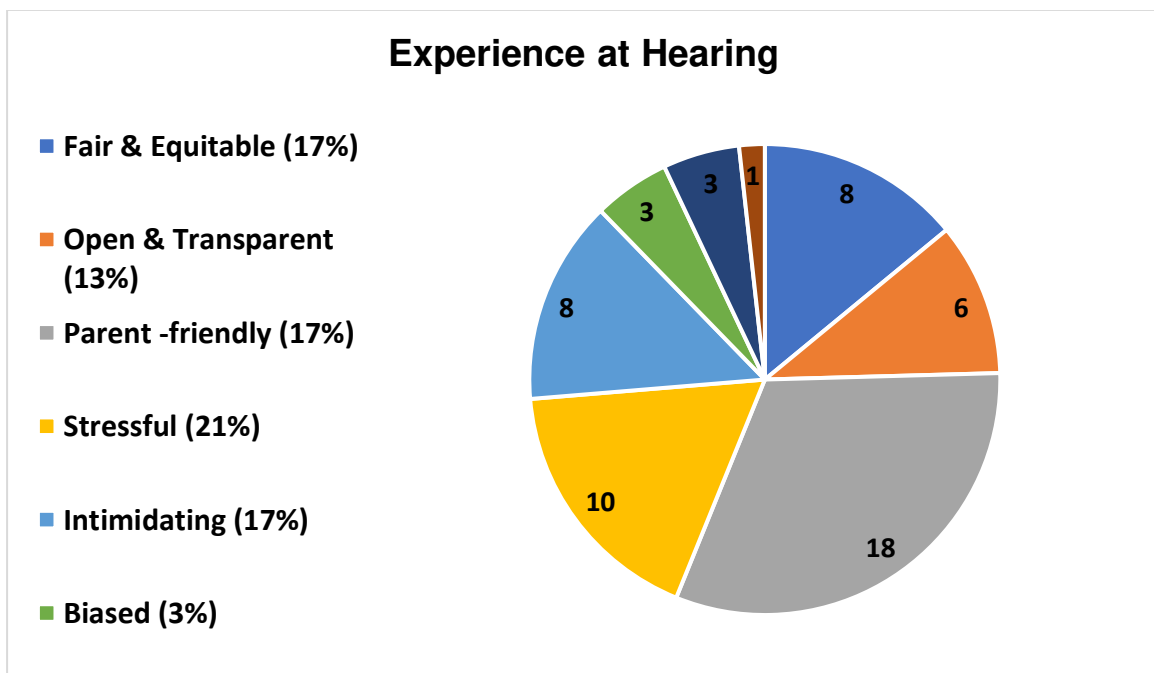
Response rate to this question was 69%.

TABLE 2.6



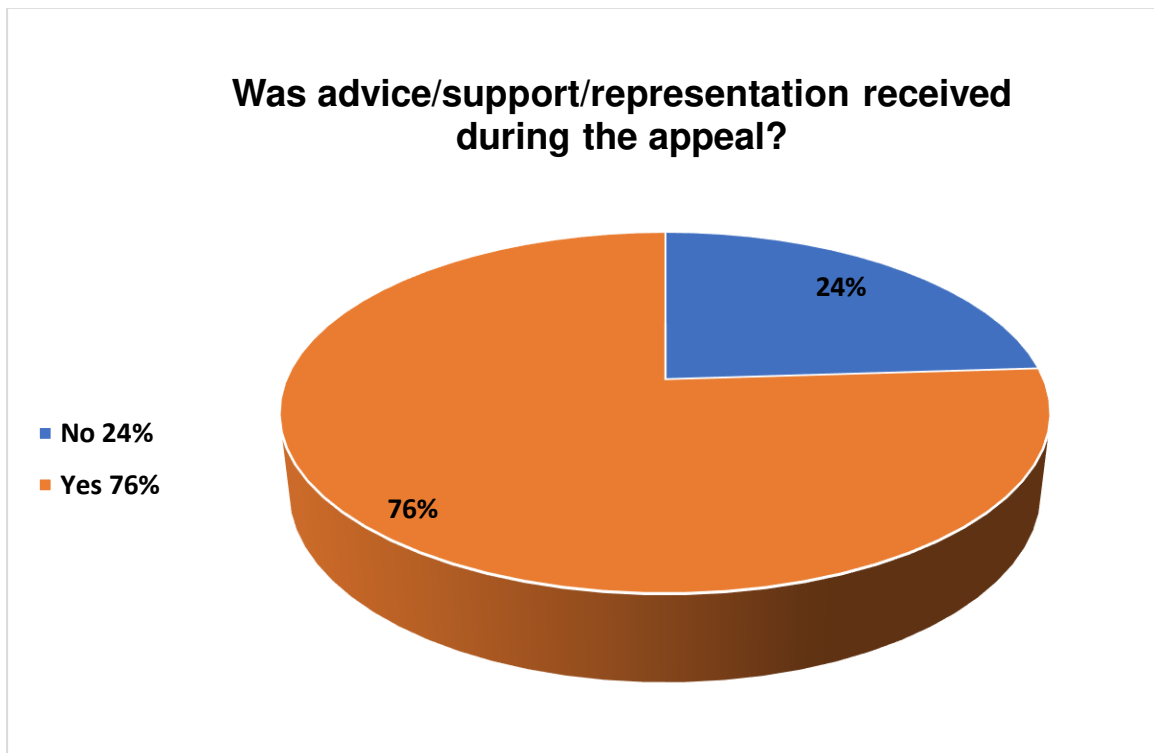
Response rate to this question was 55%

Table 2.7



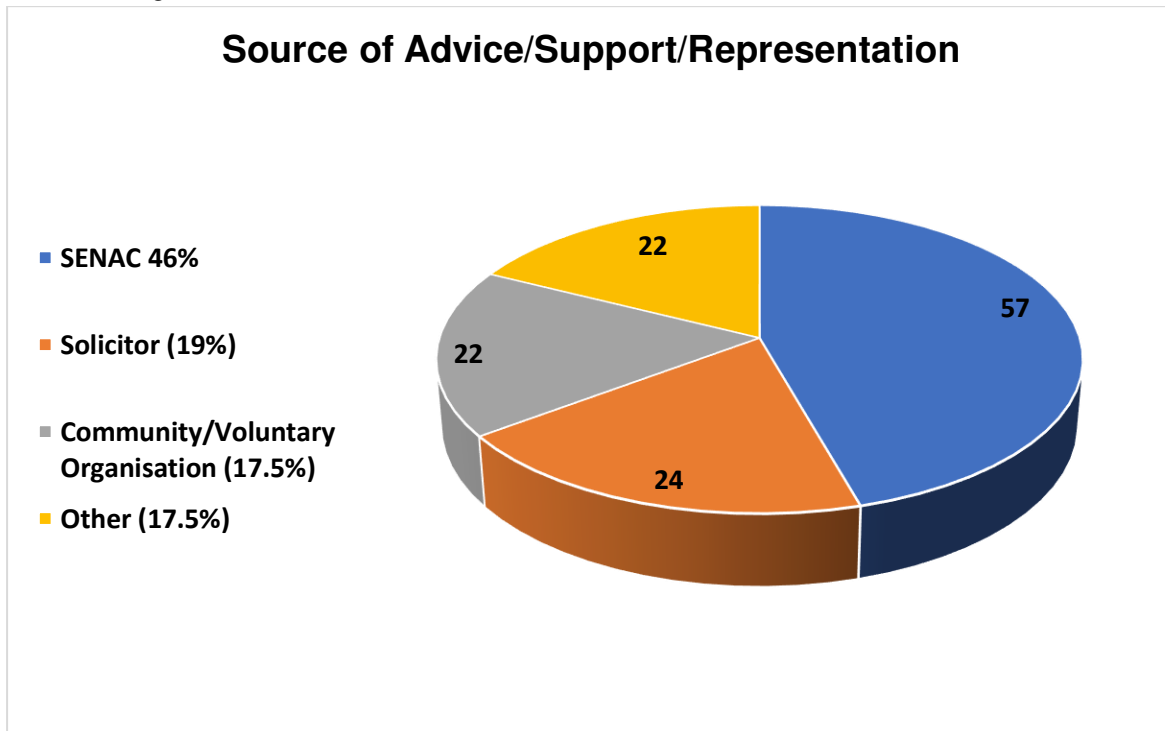
Response rate to this question was 12%

Table 2.8



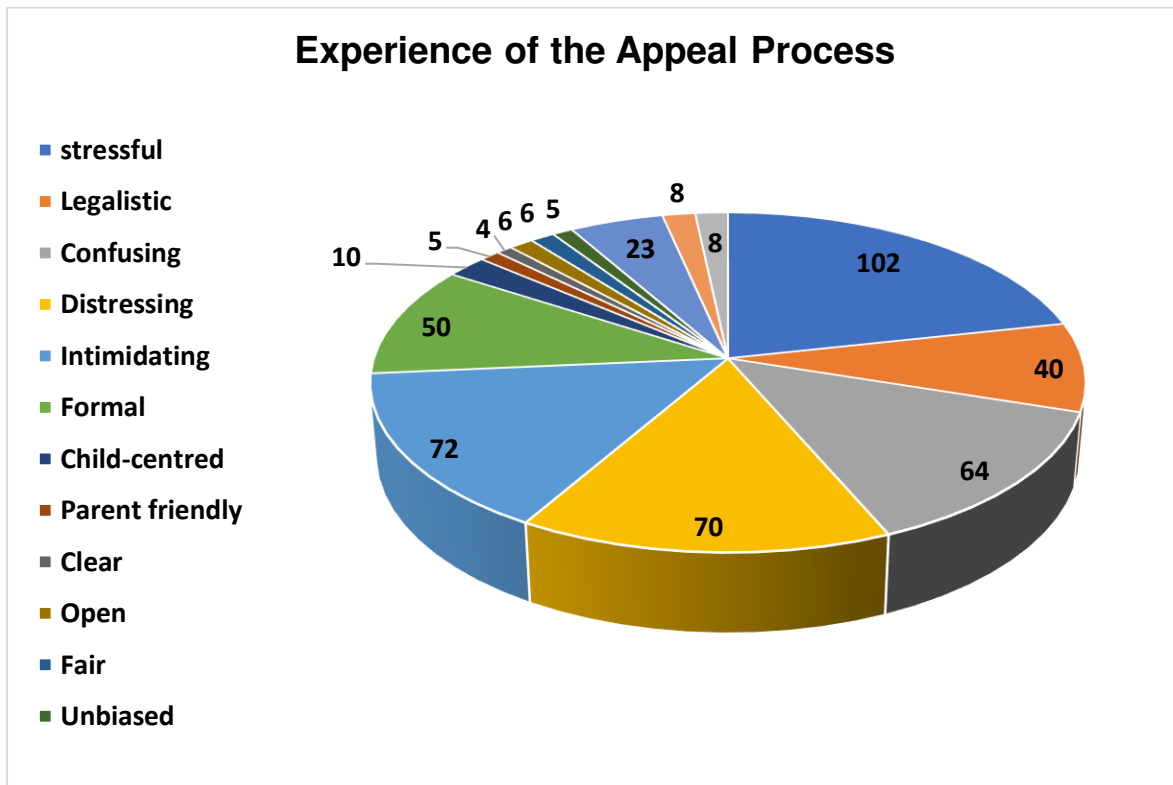
Response rate to this question was 67%

TABLE 2.9



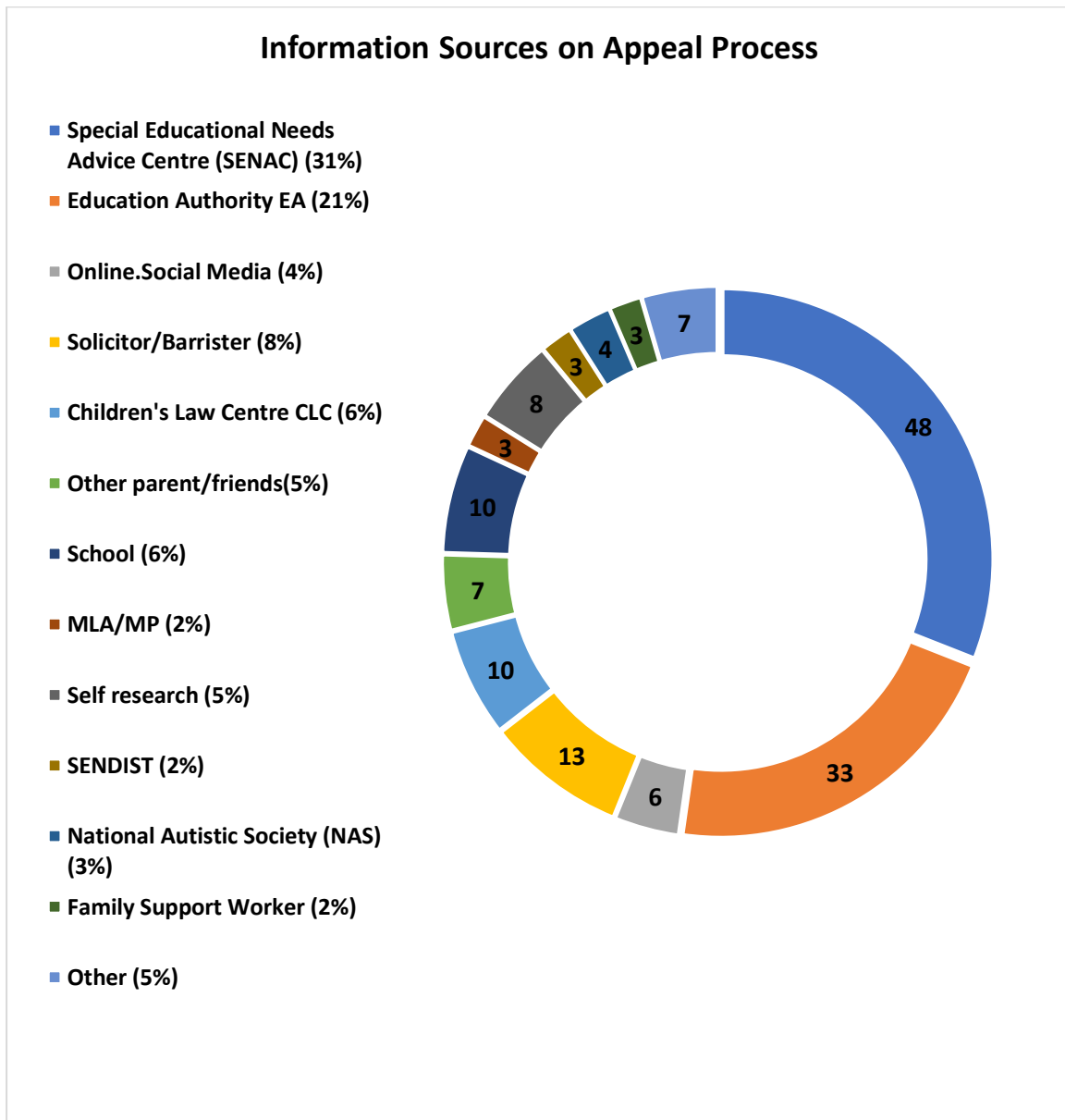
The 'other' category included Psychologist, School Principal, Children's Law Centre, DARS.
Response rate to this question was 52%

TABLE 2.10



Response rate to this question was 67%

TABLE 2.11



Response rate to this question was 95%

The responses in the 'Other' category included the Educational Psychologist, NICCY, Autism NI, RNIB. Average rating on the information received was 3 stars out of a possible five.