

Dispute Resolution and Avoidance in Education: An overview of the statistics on SEN in England and ASN in Scotland

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Working Paper 2

Introduction

The aim of this paper is to provide statistical information on children who have been identified as having special educational needs (SEN) (England) or additional support needs (ASN) (Scotland). The term used in Scotland, 'additional support needs', is defined within the Education (Additional Support for Learning) (Scotland) Act 2004 and covers children who have difficulty in learning for whatever reasons, including adverse social circumstances. More detailed definitions and guidance of interpretation of the act is included in the *Supporting Children's Learning Code of Practice* (Scottish Executive, 2005). In England the term 'special educational needs' is defined by the *Code of Practice on the Identification and Assessment of Special Educational Needs* (DfE, 1994), and has a somewhat narrower ambit, referring specifically to children with learning difficulties and disabilities. The Scottish data are drawn from the statistical bulletin *Pupils in Scotland, 2007* (Scottish Government, 2008b). The English data are derived from the equivalent statistical bulletin for England, entitled *Special Educational Needs in England, January 2007* (DfES, 2007). In addition, data are drawn from the annual reports of the Additional Support Needs Tribunals for Scotland and the Special Educational Needs and Disability Tribunal (England).

The paper is structured thus:

1. An overview of the total number of pupils with additional support needs/special needs in all publicly funded schools;
2. An examination of English region/local authority and Scottish local authorities data on SEN/ASN;
3. An overview the nature of the difficulty of children with ASN/SEN in publicly funded schools in Scotland and England;
4. An examination of the relationship between SEN/ASN and key social variables (gender, ethnicity, poverty and looked after status);
5. An overview the number of pupils in independent schools with additional support needs/special needs
6. An examination of the data from the Special Educational Needs and Disability Tribunal (SENDIST) in England and the Additional Support Needs Tribunals in Scotland.

Definitions

Scottish data

Prior to the passage of the Education (Additional Support for Learning) (Scotland) (ASN) Act 2004, categories of special educational needs were defined within the Education (Scotland) Act 1980. Before this, medical categories of difficulty had been in use (see Riddell, 2006) for full discussion. The ASN Act of 2004 introduced a set of broader categories (for an overview see Working Paper 1).

Under the terms of the 1980 Act, local authorities were required to summarise a child's difficulties, the measures proposed and the nominated school within a Record of Need (RoN). Under the new legislation, the local authority is obliged to assess the needs of any child requiring additional support in order to learn. If the child requires significant, multi-agency support then the local authority has a duty to consider the provision of a Coordinated Support Plan (CSP). If the child's needs are less extensive and/or short

term then a school/local authority can provide an Individualised Educational Programme (IEP) for that child. During a transitional phase, from December 2005 to November 2007, local authorities were obliged to determine whether children who had previously had a RoN required a CSP. Individualised Educational Programmes (IEPs) are written plans setting targets that a child with special educational needs is expected to achieve but do not carry any legal status. The new legislation also accorded new rights to parents and young people.

English data

The Education Act 1993 was intended to ensure that children's special educational needs would be properly identified and met. The *Code of Practice on the Identification of Special Needs* (DfE, 1994) came into force in September 1994. Children identified as having special educational needs were split into two categories, those whose needs were such that they required multi-disciplinary support and regular review, and those whose needs were such that they could be met through additional support within the school. The former group were deemed to qualify for a Statement of Need and/or an Individual Education Plan, whilst the latter would have their needs recorded in an IEP or some other school based document.

The needs of children without statements were to be met from the school's own resources, defined as School Action (exclusively school-based support) or School Action Plus (school-based but with some external specialist support from outside). A statement is made where neither of these is sufficient and extra resources are needed. The law requires a child with SEN but no statement to be educated in a mainstream school, unless the LEA is not responsible for meeting the cost – i.e. the parents or a charity are paying.

Section 1: An overview of the number of pupils with ASN/SEN in publicly funded schools in Scotland and England.

Introduction

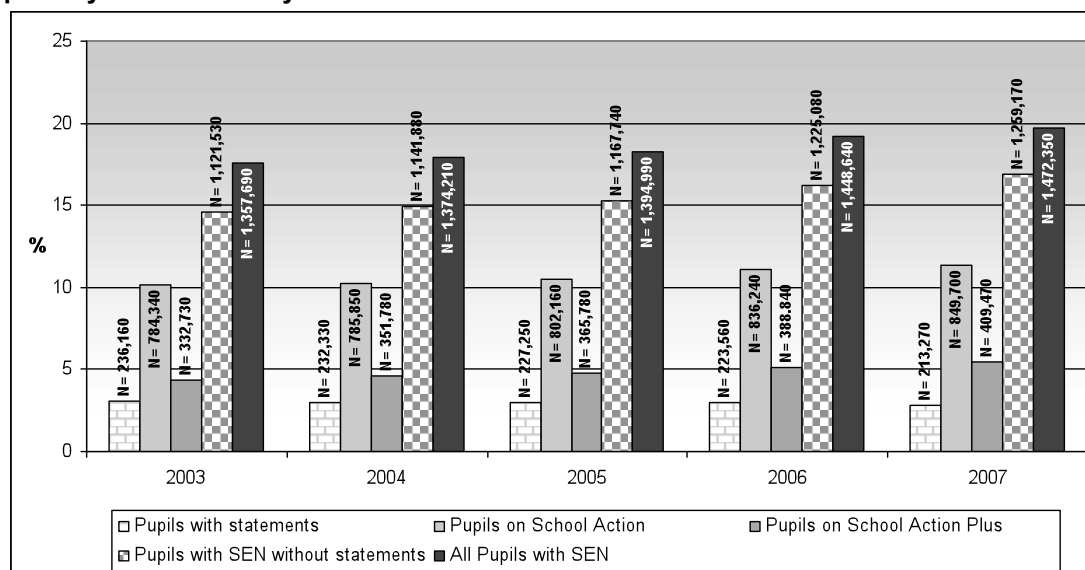
This section examines the proportion of pupils with SEN in England and ASN in Scotland in relation to the pupil population in each country. There is a considerable difference in the total population as England has 8,111,560 pupils between the ages of 4 and 19 and 1,558,220 pupils categorised as having SEN (DfES, 2007). In Scotland there are 692,215 pupils in the same age range and 36,542 pupils identified as having additional support needs (Scottish Government, 2008). In both countries there has been a decrease in overall pupil numbers, especially noticeable in the primary sector, whilst the number of those with SEN/ASN has increased.

England

Figure 1 below shows that from 2003 there has been an increase in pupils with SEN. This is due mainly to an increase in pupils with SEN without a statement. Comparing the years 2003 and 2007 we can see that this number went up from 685,100 to 727,700 for primary schools and from 430,080 to 529,780 in secondary schools.

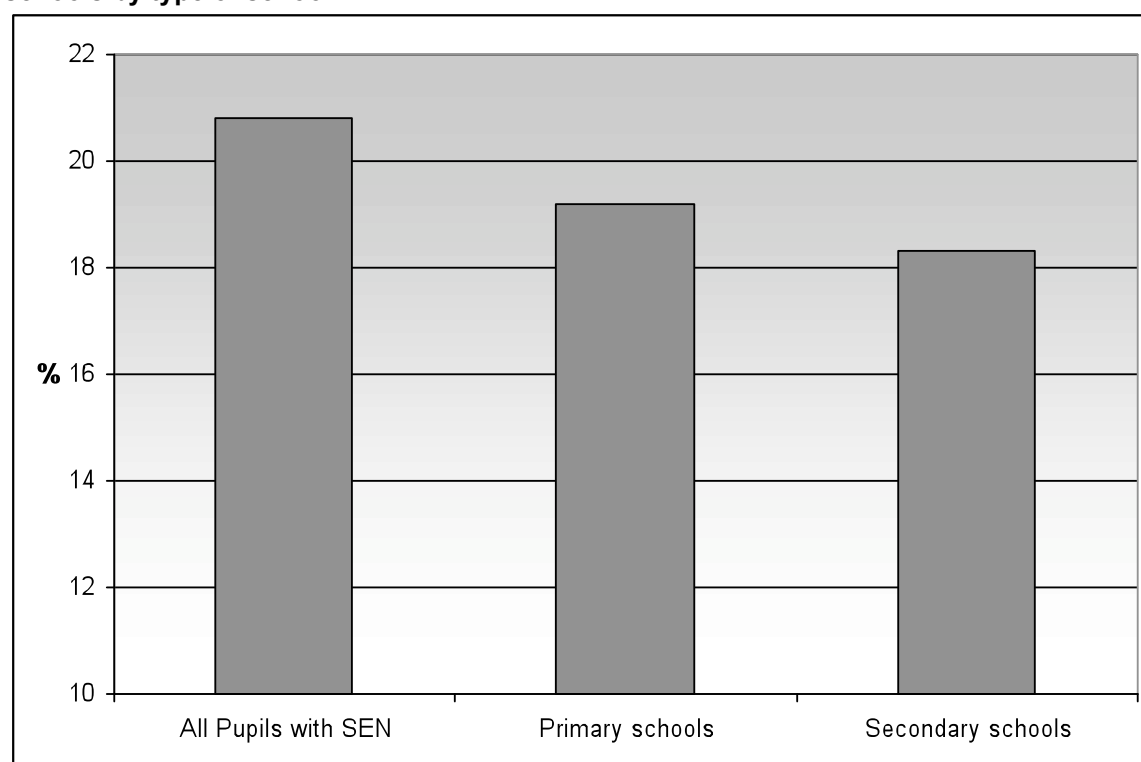
There is no significant variation in the percentage of pupils with SEN between mainstream primary and secondary schools in England (see figure 2). The high percentage of pupils with SEN in pupil referral units (PRUs) is due to the high numbers of pupils with SEN without statements and particularly of pupils with behavioural, emotional and social difficulties. Data from special schools are not included in this figure since all of their pupils have SEN.

Figure 1: England – Pupils with SEN as a percentage of all pupils in publicly maintained primary and secondary schools



Source: DfES, 2007

Figure 2: England – Pupils with SEN as a percentage of all pupils in publicly maintained schools by type of school¹



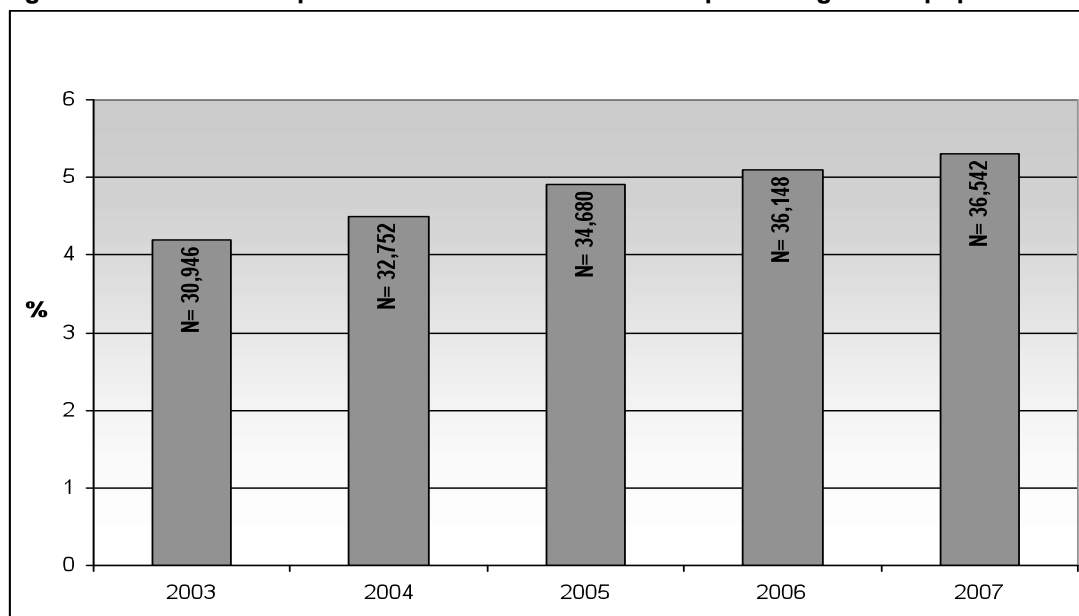
Source: DfES, 2007

1. The total includes pupils in special schools

Scotland

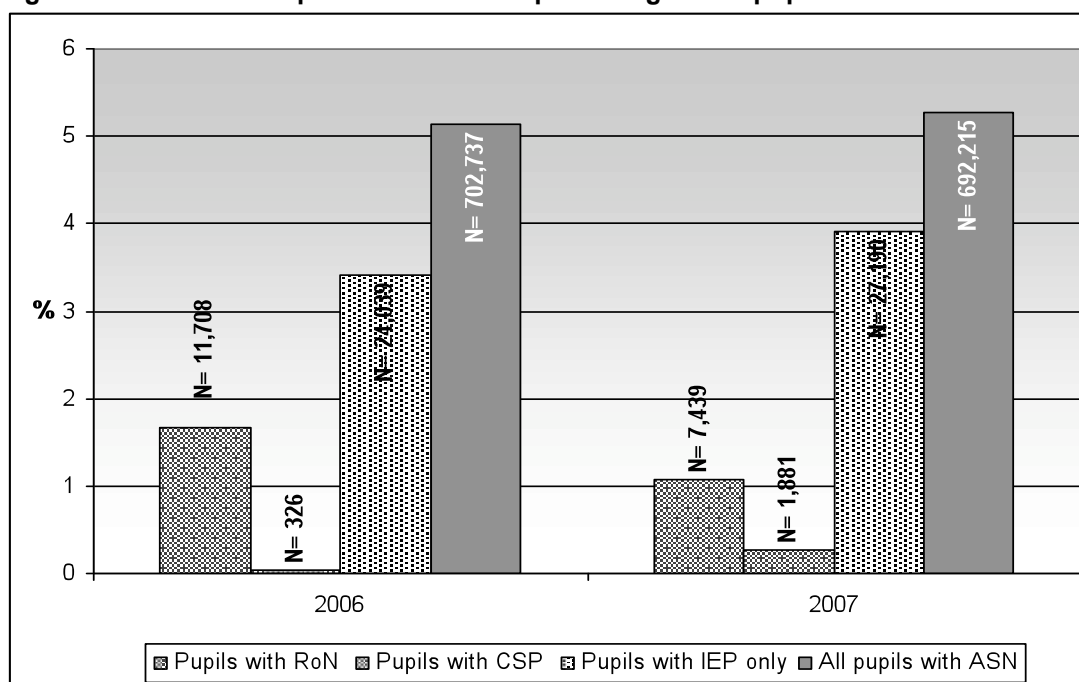
Figure 3 shows that there has been a slight increase in the percentage of pupils with ASN over the last four years. These figures include pupils who have a Record of Need or a Coordinated Support Plan and/or an Individualised Educational Programme (IEP). However, several local authorities have alternative support plans which are not included in the statistics. These figures are therefore unlikely to include the total population of pupils with additional support needs.

Figure 3: Scotland – Pupils in all sectors with ASN as a percentage of all pupils



Source: Scottish Government, 2008b

Figure 4: Scotland – Pupils with ASN as a percentage of all pupils



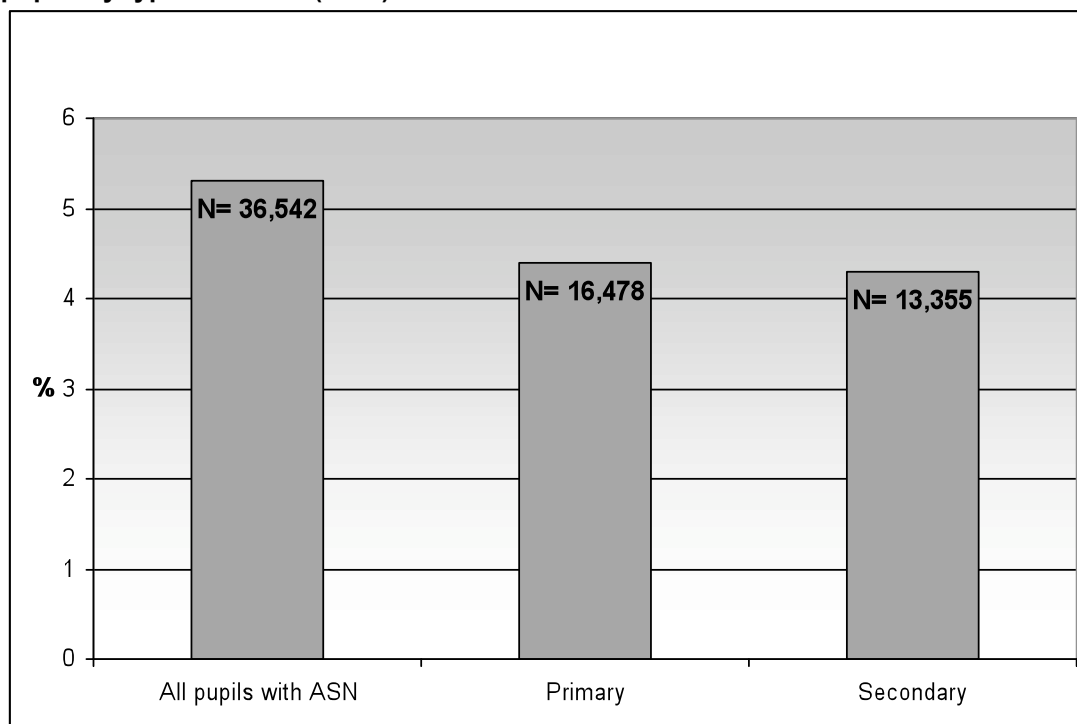
Source: Scottish Government, 2008b

Figure 4 shows that the increase in ASN is mainly due to an increase in pupils with IEPs. According to the new legislation local authorities were charged with reassessing pupils with RoNs to determine whether they required a CSP by November 2007. In line with this requirement, the percentage of those with a RoN has decreased and the percentage of

pupils with a CSP has increased. However, overall the total percentage of pupils with RoN or CSP has decreased indicating that pupils who previously had a RoN are not necessarily seen as requiring a CSP.

As can be seen from figure 5, the proportion of pupils with ASN in primary and secondary school are very similar. All pupils in special schools have additional support needs and this group is only included in the overall total.

Figure 5: Scotland – Pupils in publicly maintained schools with ASN as a percentage of all pupils by type of school (2007)¹



Source: Scottish Government, 2008b

1. The total includes pupils in special schools

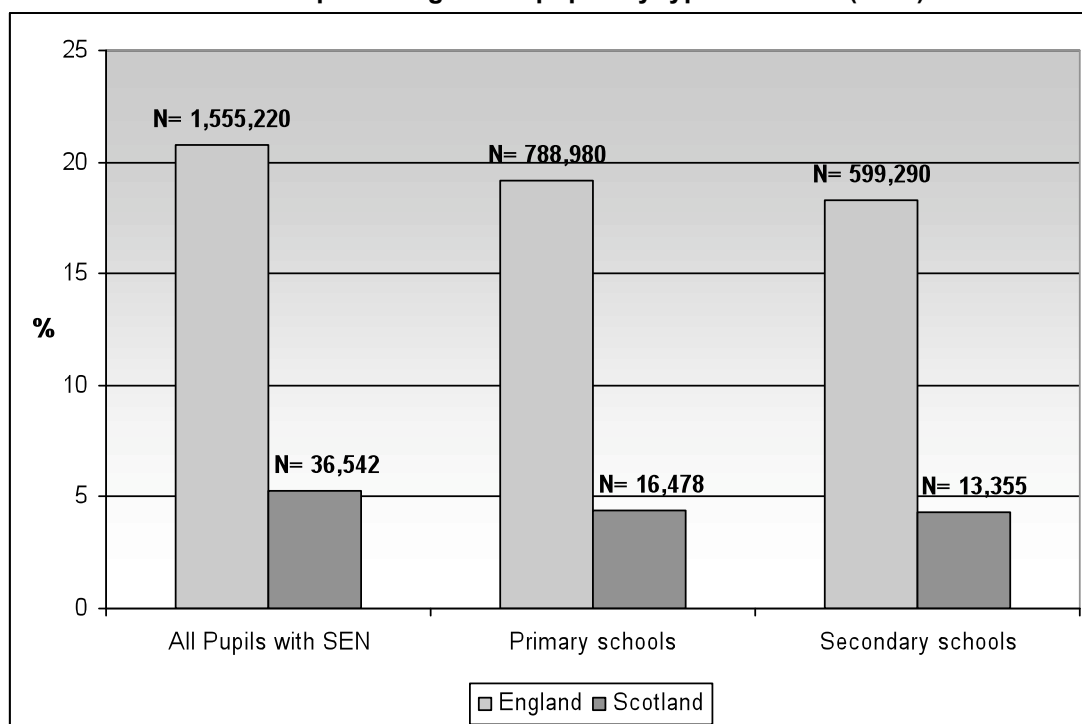
Comparison and summary

The main similarities between the two countries in relation to pupils with SEN/ASN are:

- there has been an increase in the proportion of pupils with SEN/ASN.
- the increase is due to larger number of pupils receiving school based support through School Action Plus, School Action or IEPs.
- there has been a decrease in the number of pupils with a Statement of Need or RoN/CSP.

The most significant difference between the two countries is that the percentage of pupils identified with ASN is considerably lower in Scotland. In England the percentage of the total population is around 19%; in Scotland it is around 5%. As already noted, the figures for Scotland are likely to under-represent the ASN population as local authorities have adopted support plans that do not necessarily feature in the national statistics.

Figure 6: England & Scotland – Pupils with SEN (England) and ASN (Scotland) in publicly maintained schools as a percentage of all pupils by type of school (2007)¹



Sour

ce: DfES, 2007 and Scottish Government, 2008b

1. The total includes all pupils with SEN/ASN including those in special schools

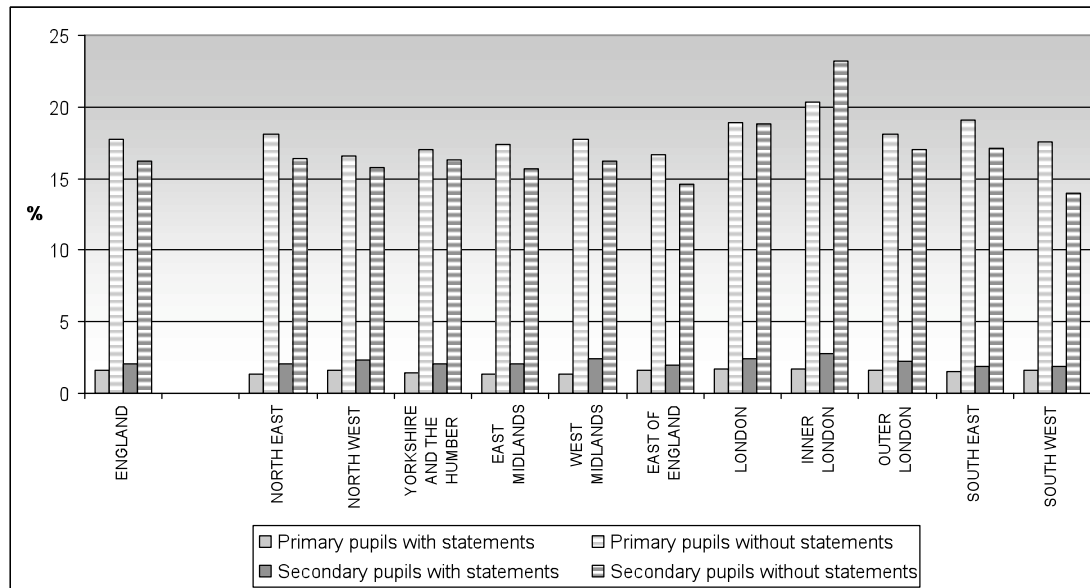
Section 2: An examination of English region/local authority and Scottish local authorities data on SEN/ASN.

England

There are just under 400 local authorities in England. Apart from a small number of single tier authorities (e.g. London Borough), the majority of councils are part of a two tier system and are further organised into regions. Due to the large number of local authorities, the data here show the number of pupils with SEN according to region and three selected local authorities. Figure 7 shows that the percentage of primary pupils with statements of SEN is relatively consistent across the regions (from 1.3% to 1.7%). There is a significantly higher proportion of pupils with SEN, especially those without a statement, in the Inner London Local Authority and unlike the other regions there are more pupils with SEN in the secondary than the primary sector. Apart from Inner London, there is a higher proportion of pupils without statements in the primary sector but, although the percentage is small, there is a higher proportion of pupils with statements in the secondary sector. South West and East of England regions have the lowest number of SEN without statements in the secondary sector.

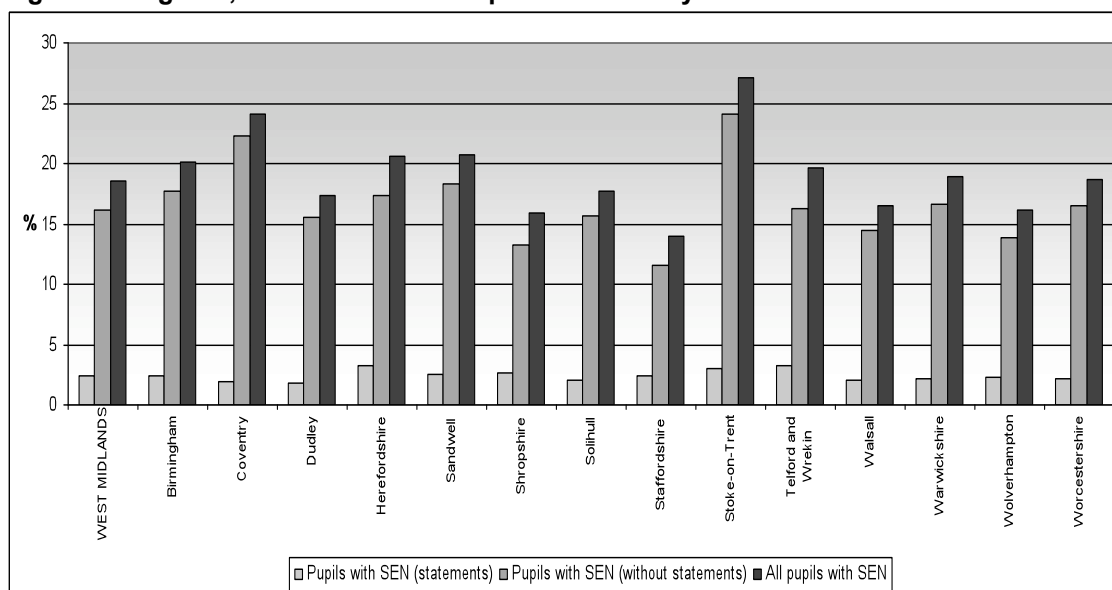
The three selected local authorities show that there is greater intra than inter regional variation. In West Midlands, Staffordshire has the lowest overall percentage of children identified with SEN (14%), whilst Stoke on Trent has around 27% overall with SEN. In Inner London the trends are similar as Kensington and Chelsea has a SEN population of around 16% compared to over 30% in Wandsworth. In Outer London the range is from 12% in Kingston and Havering to 28% in Waltham Forest. (see figures 8 – 10)

Figure 7: England – Pupils in publicly maintained primary and secondary schools with SEN by region



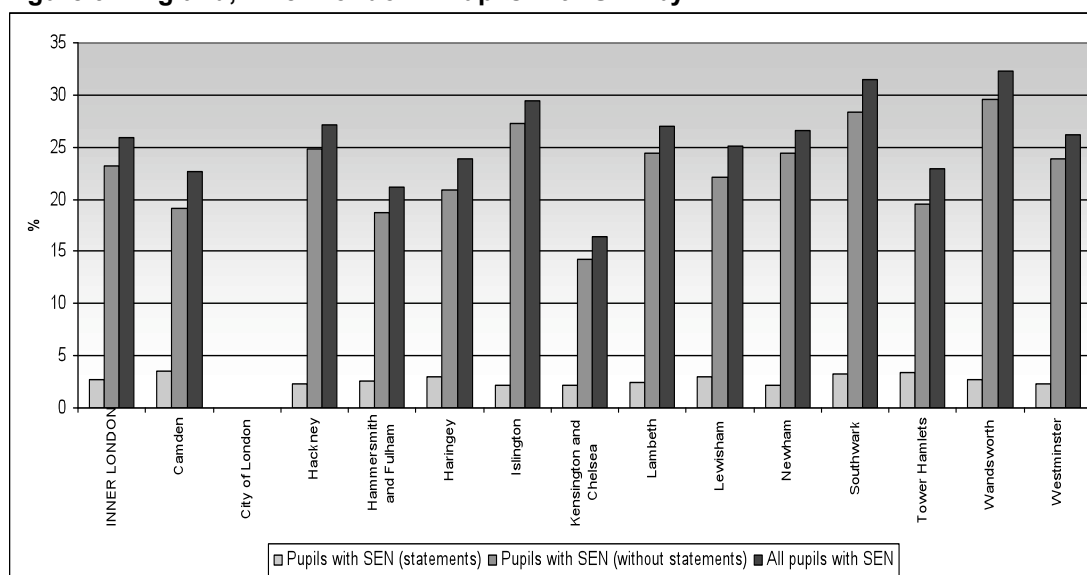
Source: DfES, 2007

Figure 8: England, West Midlands - Pupils with SEN by LA



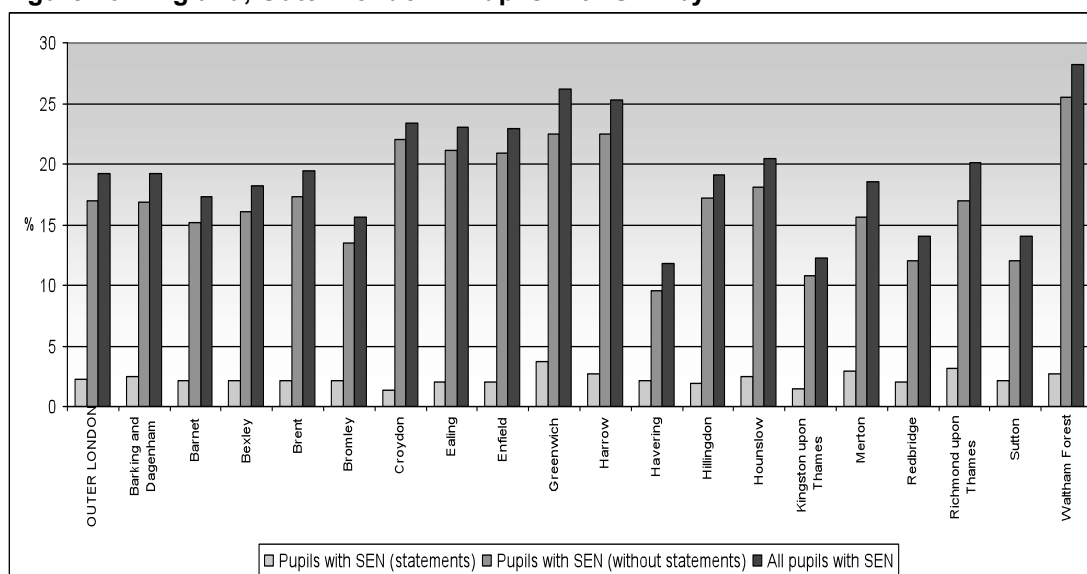
Source: DfES, 2007

Figure 9: England, Inner London – Pupils with SEN by LA



Source: DfES, 2007

Figure 10: England, Outer London – Pupils with SEN by LA

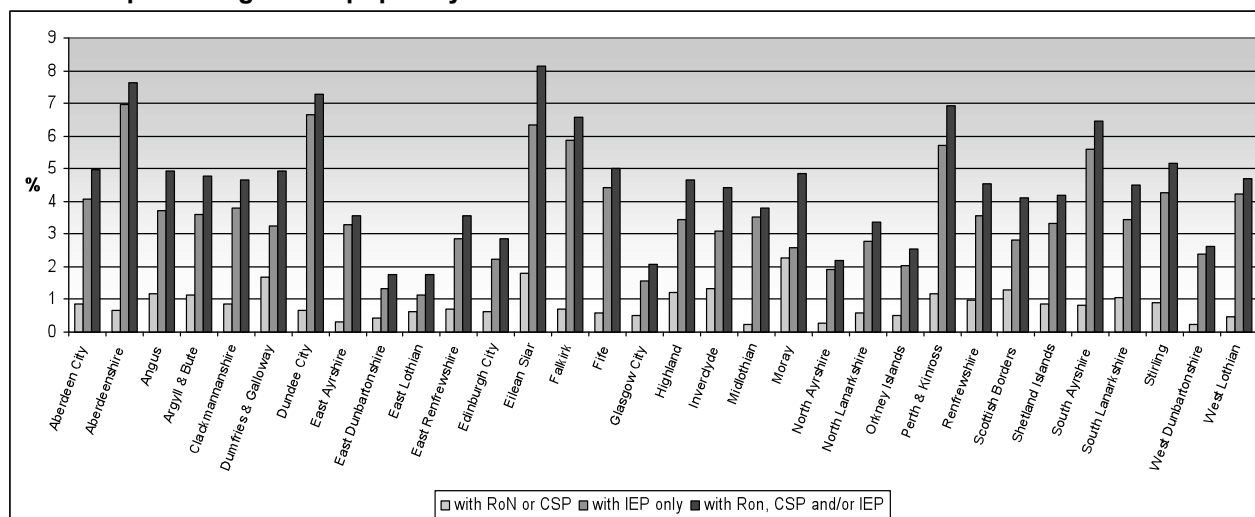


Source: DfES, 2007

Scotland

Scotland has 32 local authorities and data is therefore presented by local authority (LA). In the primary sector the proportion of pupils with IEPs is considerably higher than those with RoN/CSPs. One of the island authorities, Eilean Siar, has the highest overall proportion of with ASN; however, these figures have to be treated with caution due to the low number of pupils in this authority. In Dundee City which has one of the highest percentage of ASN secondary pupils this is almost entirely due to those with an IEP.

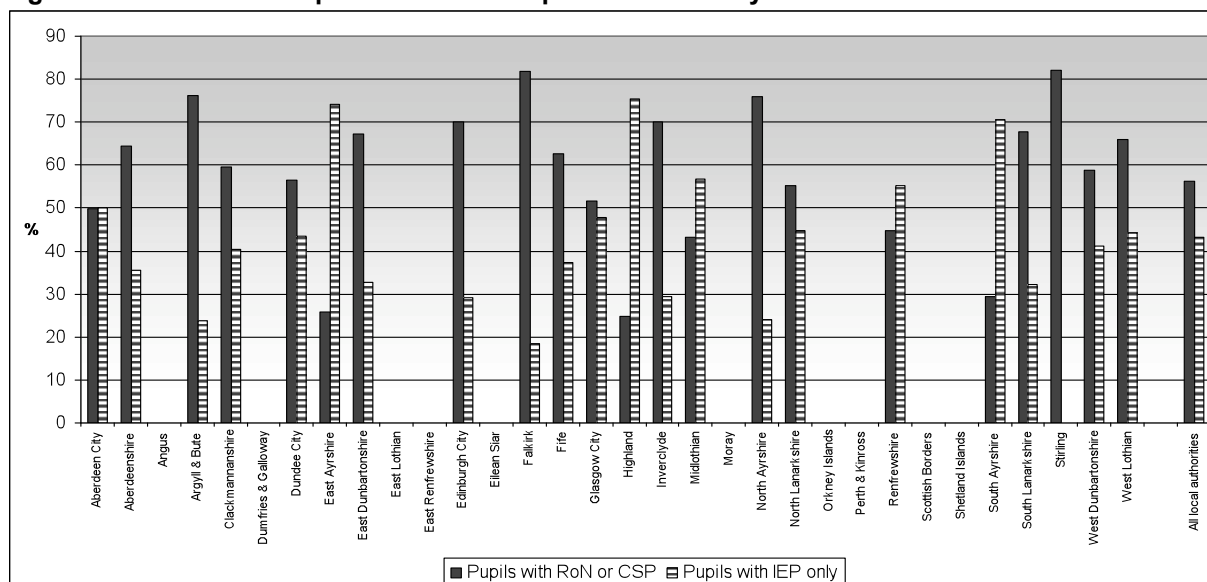
Figure 11: Scotland – Pupils in publicly maintained primary and secondary schools with ASN as a percentage of all pupils by LA



Source: Scottish Government, 2008b

There are 23 local authorities that have special schools. In 17 of these authorities pupils with RoN/CSPs outnumber those with IEPs. These differences are likely to be due to the type of provision offered by the special school. Schools that deal with pupils with multiple impairments will require input from other agencies to support those pupils and the pupils will be entitled to CSPs. Schools dealing mainly with social, emotional and behavioural problems may not require agencies outwith the education services to be involved and the pupils will therefore have an IEP.

Figure 12: Scotland – Pupils with ASN in Special schools by LA



Source: Scottish Government, 2008b

Comparison and Summary

The data show that there is little regional variation in terms of pupils identified with SEN in England; however, the three selected local authorities indicate some intra regional variation. There is therefore some similarity between the local authorities in Scotland and England in terms of variation. However, the variation between the local authorities in Scotland is greater than that for the three selected English regions. In England there

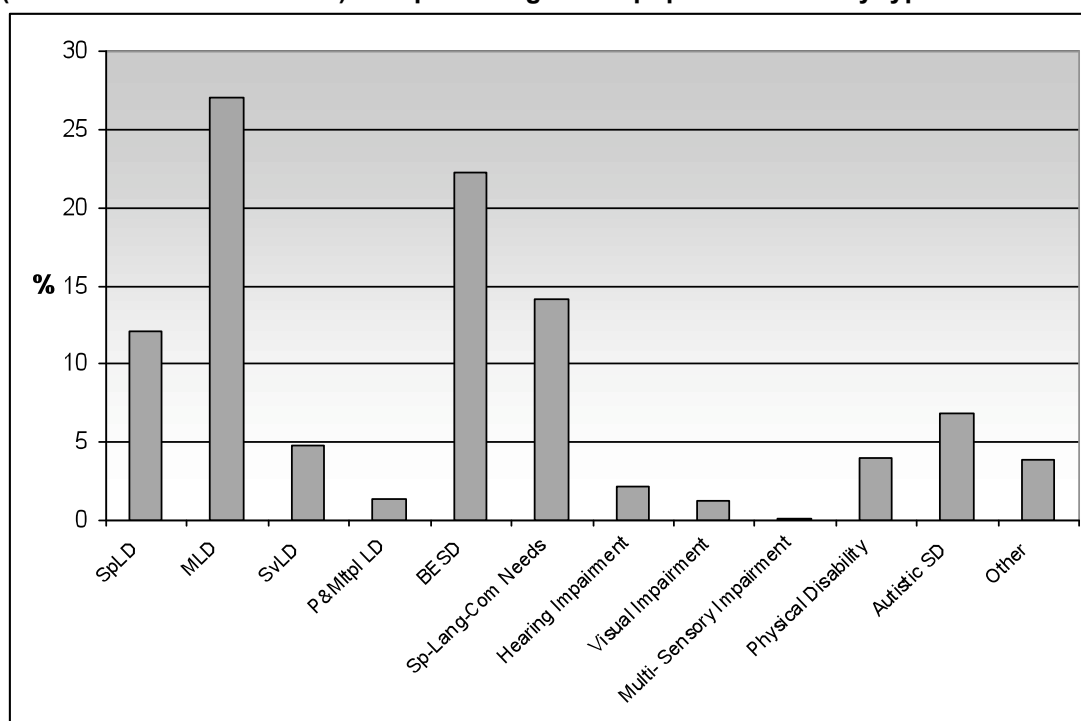
seems also to be a consistency in the percentage of pupils with SEN between primary and secondary schools in the same LA, whilst in Scotland this is not the case.

Section 3: An overview the nature of the difficulty of children with ASN/SEN in publicly funded schools in Scotland and England

England

About three quarter of pupils identified with SEN come from four of the twelve categories included in the classification. The largest of these four categories includes young people with moderate learning difficulties (MLD) and the second largest group is consists of pupils with behavioural, emotional and social Difficulties (BESD). Pupils with speech, language and communication needs (14%) and those with specific learning difficulties (12%) account for just over a quarter of SEN pupils (see figure 13).

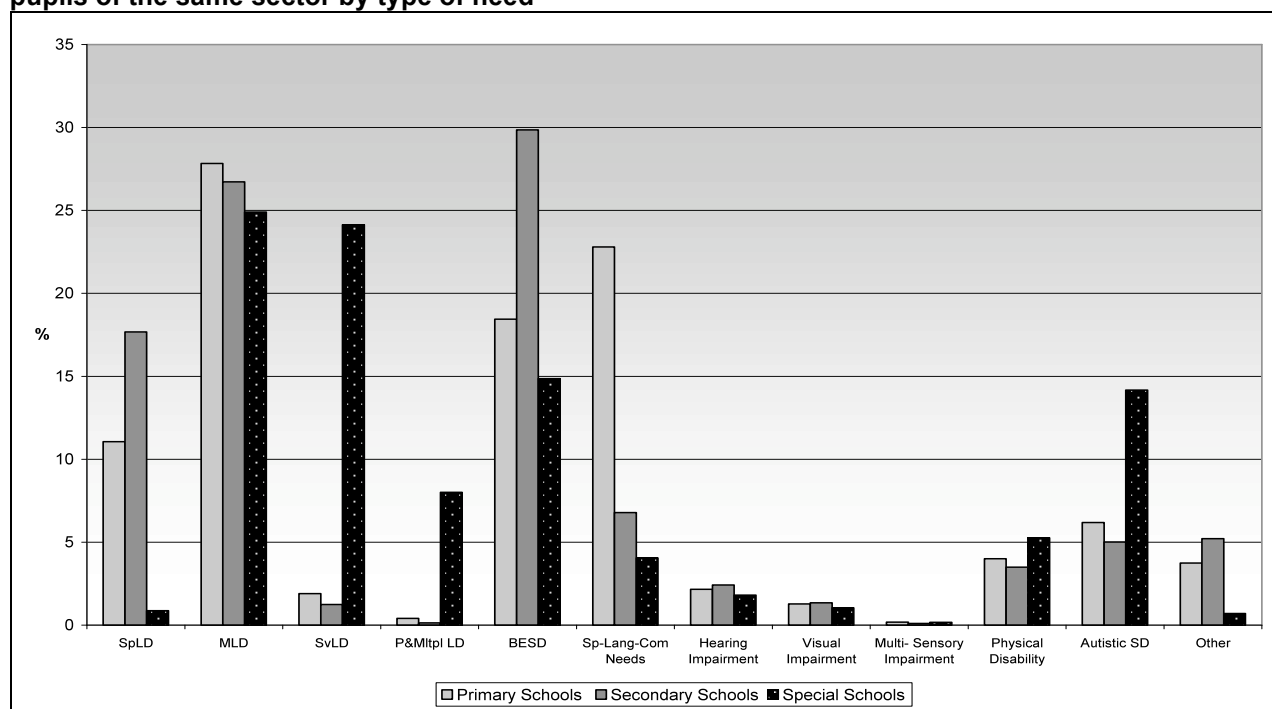
Figure 13: England – Primary, Secondary and Special schools pupils with SEN (statements or Action Plus) as a percentage of all pupils with SEN by type of need



Source: DfES, 2007

Figure 14 shows that the majority of the pupils with severe learning difficulties (SvLD) and profound and multiple learning difficulties (P&M LD) are likely to attend special schools. A large proportion of young people with autistic spectrum disorder are also more likely to be attending special schools though the proportion from this group in mainstream schools is larger than for the other two groups. Pupils in secondary schools are considerably more likely to be identified as having behavioural, emotional and social difficulties or specific learning difficulties (SpLD) than primary pupils. Conversely, primary pupils are considerably more likely to have speech, language and communication needs.

Figure 14: England - Pupils with SEN (statements or Action Plus) as a percentage of all pupils of the same sector by type of need



Source: DfES, 2007

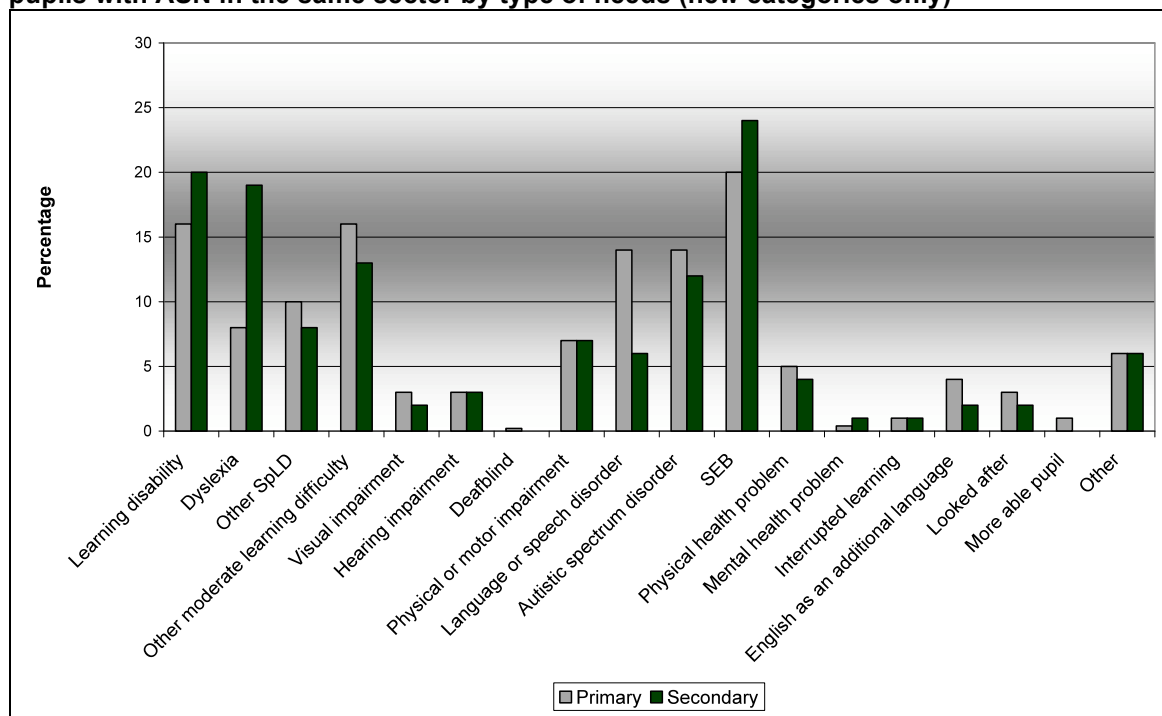
Scotland

As the new Act only came into force in 2000, the statistics gathered on type of additional support need is moving from using the old categories to the new categories reflecting the new definition of additional support needs. The old categories focused on a child's main difficulty of learning, whilst the new categories show the reason for a pupil requiring additional support. This report examines only the new categories and in 2007 just over three quarters of the pupils were included under the new categories. The change in categories means that the old and new categories are not directly comparable as the child would only be recorded in the main category of learning difficulty, whilst the new categories allow for a child to be included in more than one category. For example, a child with interrupted learning may also require support for dyslexia.

A comparison between the primary and secondary sector shows that the proportion of pupils with language or speech disorder is considerably greater in primary schools than in secondary schools. Pupils with other specific learning difficulties, moderate learning difficulties or autistic spectrum disorder are also more common in primary schools; however, those diagnosed with dyslexia are most likely to be found in secondary schools. This may be due to the fact that teachers in primary school consider slow development of reading and spelling as part of the normal spectrum of development or that those that later acquire a label of dyslexia are initially categorised as having language and speech disorders.

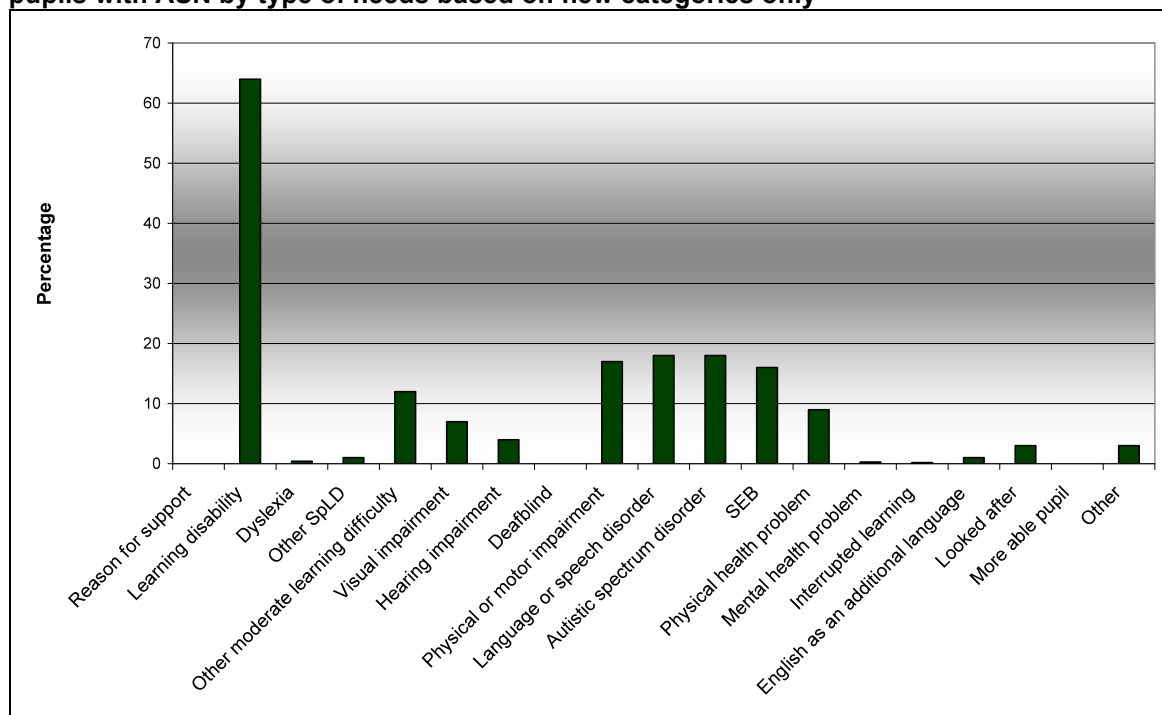
Figure 16 shows that special schools are most likely to cater for children with a learning disability and, to a lesser extent, for those with autistic spectrum disorder, social, emotional and behavioural difficulties, language and speech disorders and physical impairments. Although those with dyslexia form a relatively large proportion of pupils with ASN they are only rarely attending special schools.

Figure 15: Scotland – Primary and secondary school pupils with ASN as a percentage of all pupils with ASN in the same sector by type of needs (new categories only)



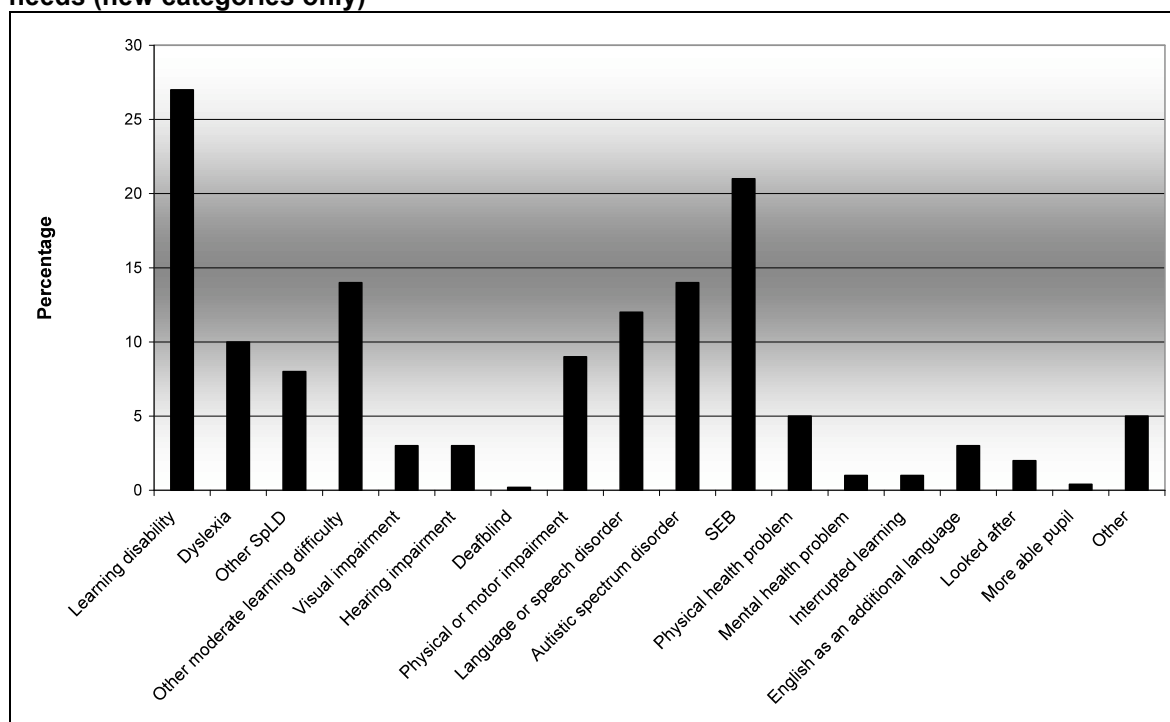
Source: Scottish Government, 2008b

Figure 16: Scotland – Special school pupils with ASN as a percentage of all special school pupils with ASN by type of needs based on new categories only



Source: Scottish Government, 2008b

Figure 17: Scotland – Pupils with ASN as a percentage of all pupils with ASN by type of needs (new categories only)



Source: Scottish Government, 2008b

The largest category of pupils with ASN includes those with a learning disability and the second largest are those with social, emotional and behavioural difficulties. Together, these two account for just over one third of the ASN population. Young people with autistic spectrum disorder, other moderate learning difficulties and language or speech disorder account for nearly another third. Dyslexia, other SpLDs and physical and motor impairments each account for 7 to 9% of the ASN population. The remaining categories each accounts for 4% or lower of the total ASN population.

Comparison and summary

There are differences in the categories used in the two countries and this means that any comparisons should be treated with caution. There do seem to be some similarities though in terms of the most common reasons for a pupil to be identified as having SEN/ASN:

- in England the largest proportion of those with SEN are those with moderate learning difficulties (MLD) and in Scotland those with a learning disability form the largest group,
- behavioural, emotional and social difficulties in England and social, emotional and behavioural difficulties in Scotland form the second largest group. However, in England the largest proportion of this group are in secondary schools, whilst in Scotland they are more likely to be located in primary schools.
- pupils with visual or hearing impairments form a small proportion of the total SEN/ASN population in both countries.
- In England pupils with severe and profound learning difficulties are most likely to attending special schools and pupils with autistic spectrum disorder also have a high likelihood of attending special schools; in Scotland those with learning disabilities are most likely to attend special schools. However, the extent to which those diagnosed with a learning disability are similar to those identified with severe and profound learning difficulties is not clear. Young people with autistic spectrum disorder in Scotland are relatively likely to attend special schools.

A key difference, as already noted, is in the categories used to identify children and young people with SEN/ASN. England has a more restricted set of categories and focus on learning impairment, social, emotional and behavioural difficulties and sensory/physical impairments. The Scottish classification includes these categories but also categories such as: looked after children; more able pupils; those that have suffered from interrupted learning; and/or are non-native English speakers. This suggests a focus on environmental/contextual factors in addition to those that focus more on the individual child. Some of the new categories in Scotland, such as looked after children, are not being used very extensively at the moment.

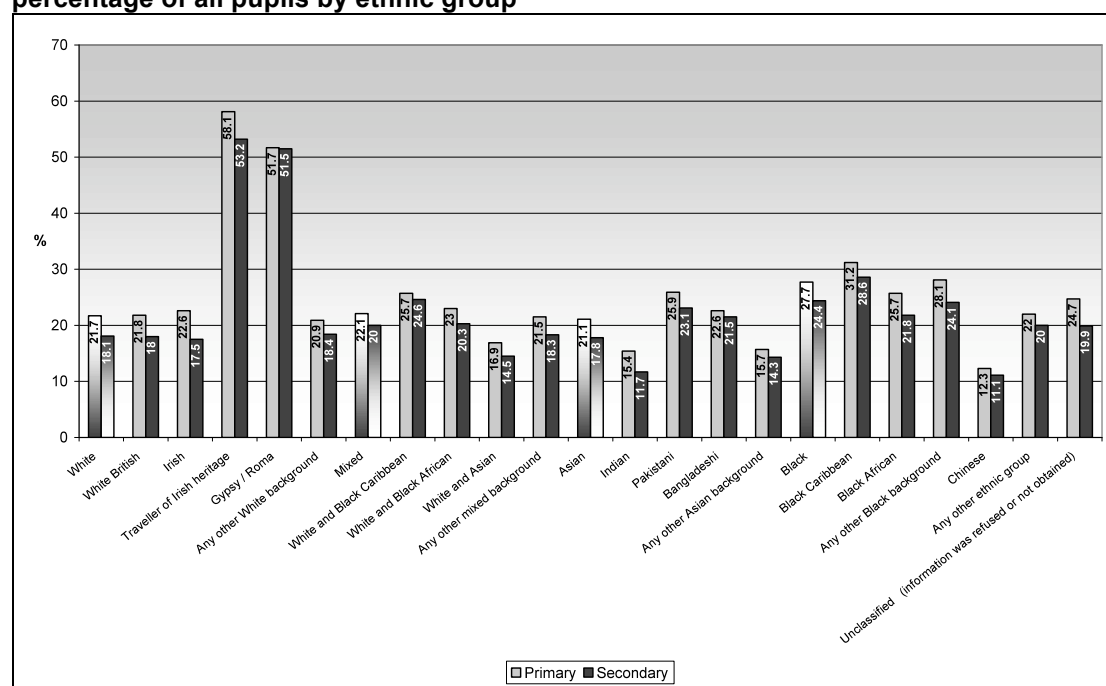
Section 4: An examination of the relationship between SEN/ASN and other key social variables

This section will examine the incidence of SEN/ASN in relation to ethnic group, gender, age and poverty as measured by free school meals

Ethnic Group

Figure 18 shows the data for England which indicates a considerable variation between ethnic groups in relation to incidence of SEN. The proportion of children identified as having SEN is considerably greater amongst Travellers of Irish heritage and Gypsies/Roma. It is likely that these groups of children are more likely to suffer from disrupted schooling than others and the percentage should be interpreted with caution as the actual numbers within these two groups are very low and they form less than 0.002% of the overall school population. The second highest percentage is among Black Caribbean pupils followed by Any Other Black Background; the percentage for these two groups is around 30% in primary schools 25-28% in secondary schools. The lowest rate is to be found in pupils of Chinese origin; however, this group also forms a very small proportion of the overall school population so is not likely to provide a representative sample. The variations in the percentages among the other ethnic groups are less significant.

Figure 18: England – pupils in maintained primary and secondary schools with SEN as a percentage of all pupils by ethnic group

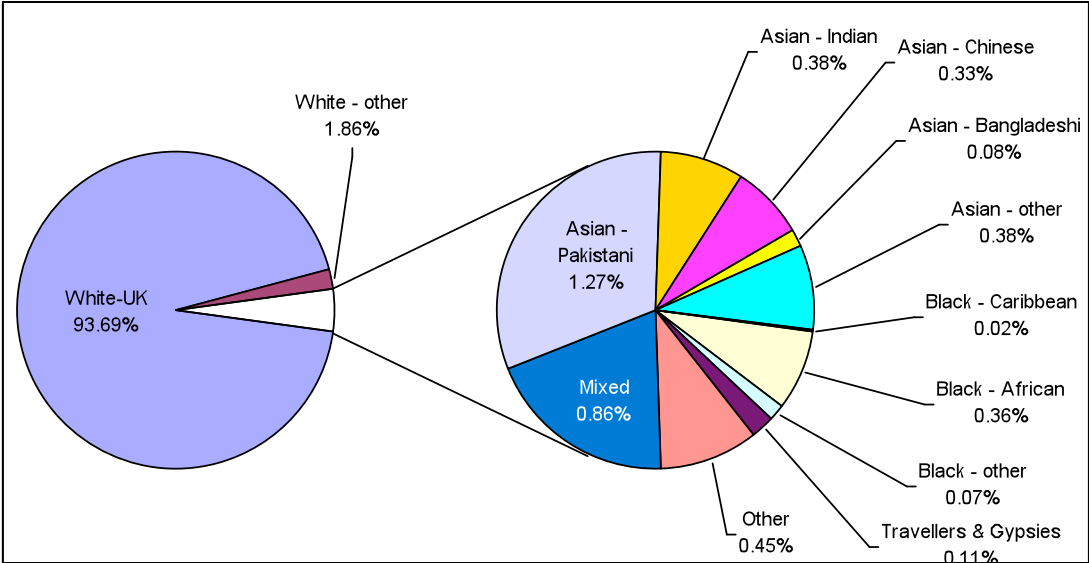


Source: DfES, 2007

The Scottish Government does not provide publicly available data on the ethnic background of pupils with ASN. This is likely to be due to the very small percentage of

pupils of from a non-white ethnic background in the Scottish population. This is demonstrated by figure 19 which shows that 94% of pupils are from a White-UK background and just over 4% come from a non-white ethnic background.

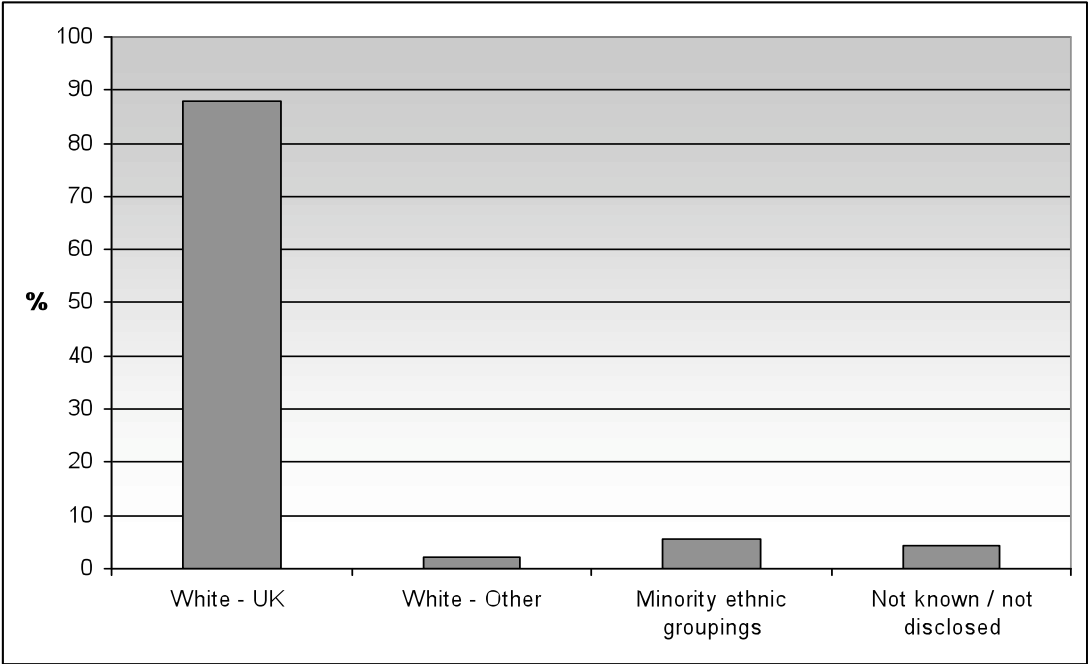
Figure 19: Scotland - Pupil population in Scotland by ethnic background



Source: Scottish Government, 2008b

Data is gathered on ethnicity of pupils in special schools and this shows that just over 5% of pupils in special schools come from a minority ethnic group. It is not clear if this category refers to non-white only or to any minority ethnic group. If it is non-white only then the proportion from this category is slightly higher in special schools than the proportion of non-white in the total school population. However, numbers are very small and caution should therefore be used in relation to this statistic.

Figure 20: Scotland – Pupils based in Special Schools by Ethnicity

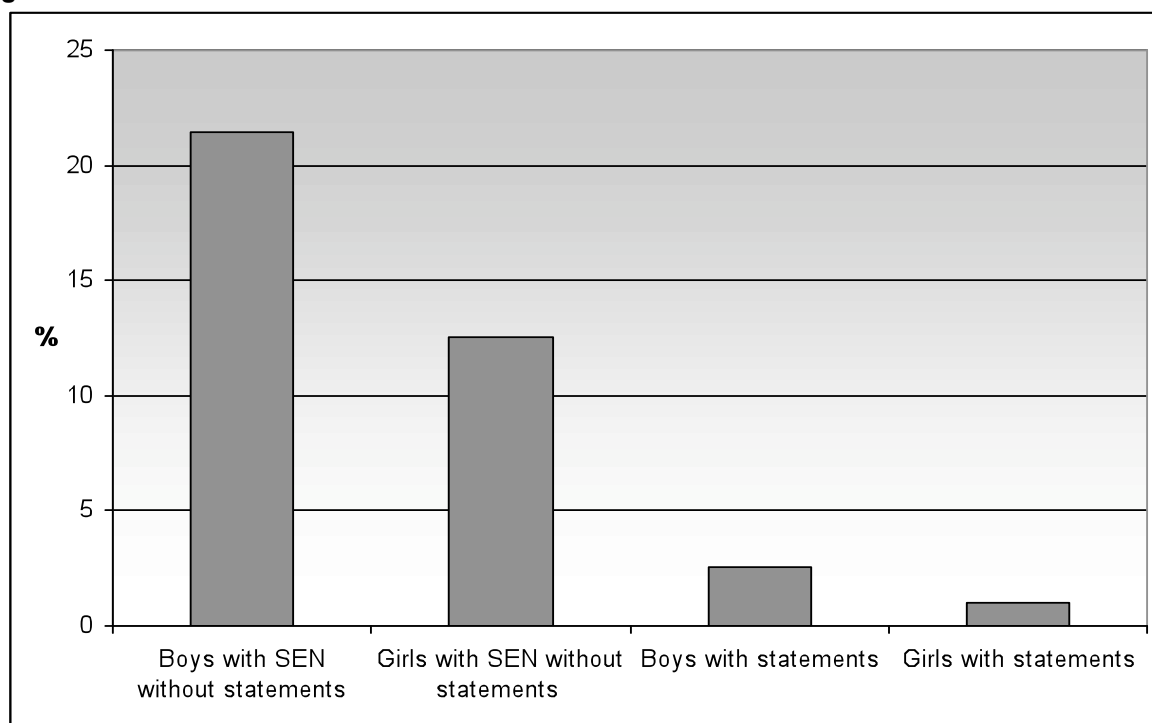


Source: Scottish Government, 2008b

Gender

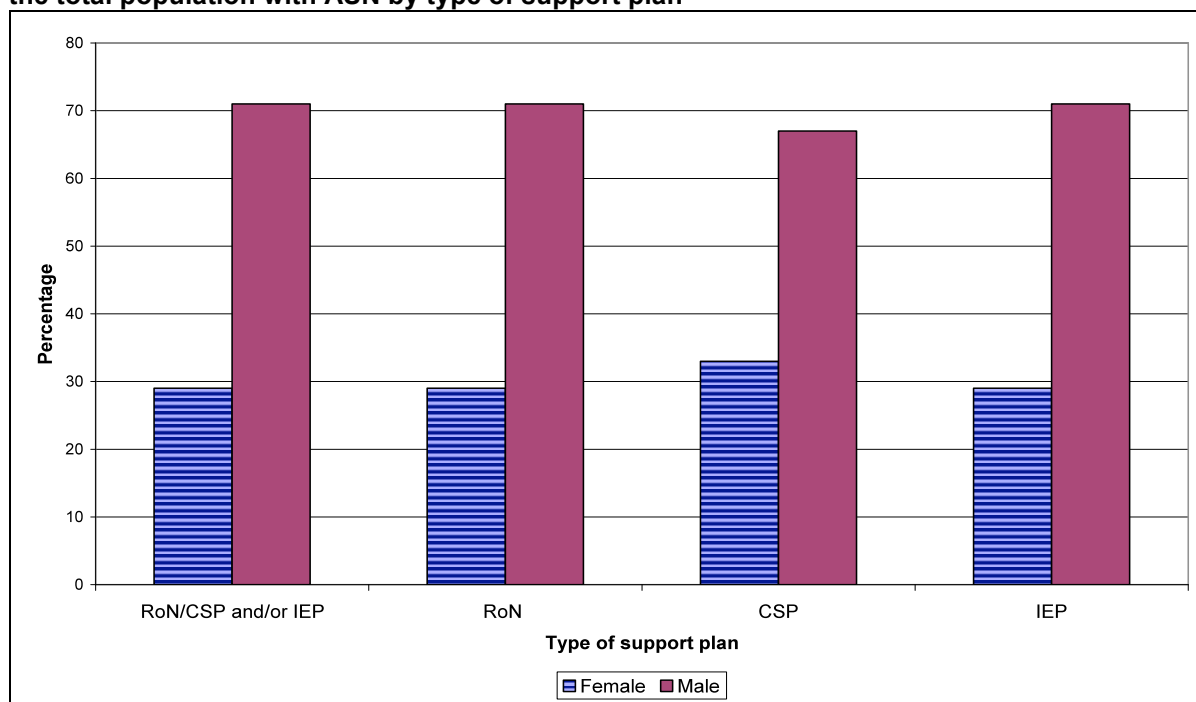
As figures 21 and 22 show there is a considerable difference between boys and girls in incidence of SEN/ASN. This applies to both countries, though in Scotland the difference between boys and girls with CSPs is slightly less than between the other categories.

Figure 21: England - Pupils with SEN by gender as a percentage of all pupils of same gender



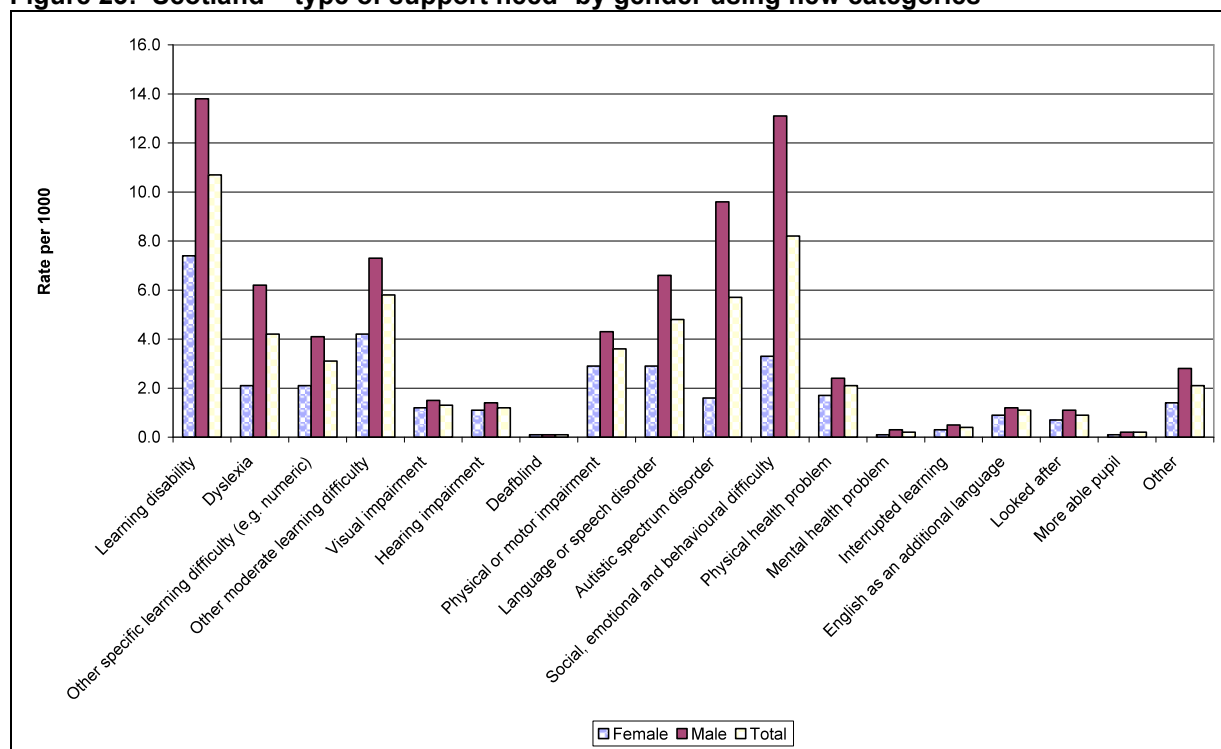
Source: DfES, 2007

Figure 22: Scotland – pupils in mainstream schools with ASN by gender as a percentage of the total population with ASN by type of support plan



Source: Scottish Government, 2008b

Figure 23: Scotland – type of support need¹ by gender using new categories



Source: Scottish Government, 2008b

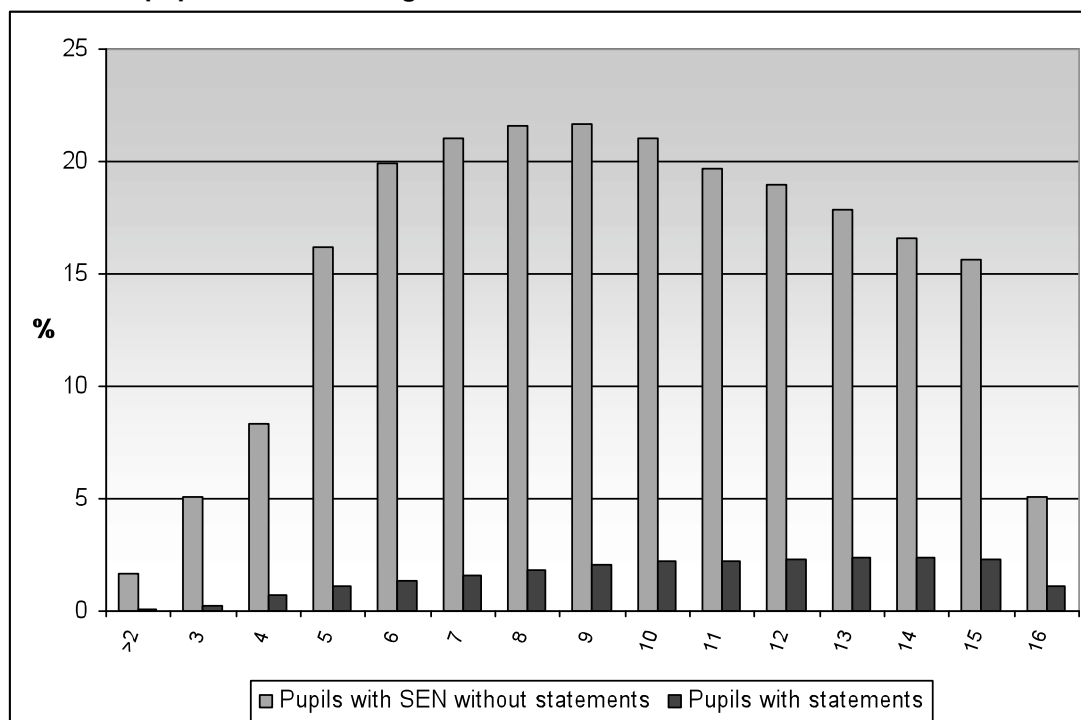
1. Pupils with more than one reason for support will appear in each category

For England, statistics on type of learning difficulty by gender are not available. The Scottish data show that there is a considerable gender difference with a higher proportion of males in most categories, especially in social, emotional and behavioural difficulties. There are very small gender differences for those with visual and hearing impairments, physical health problems and English as an additional language.

Age

In England, the rate of pupils with SEN without statements increases during primary education and reaches its peak at ages 8 and 9 and then decreases throughout secondary school. The pattern differs for pupils with statements as there is a steady but small increase throughout primary school which then levels off during secondary school.

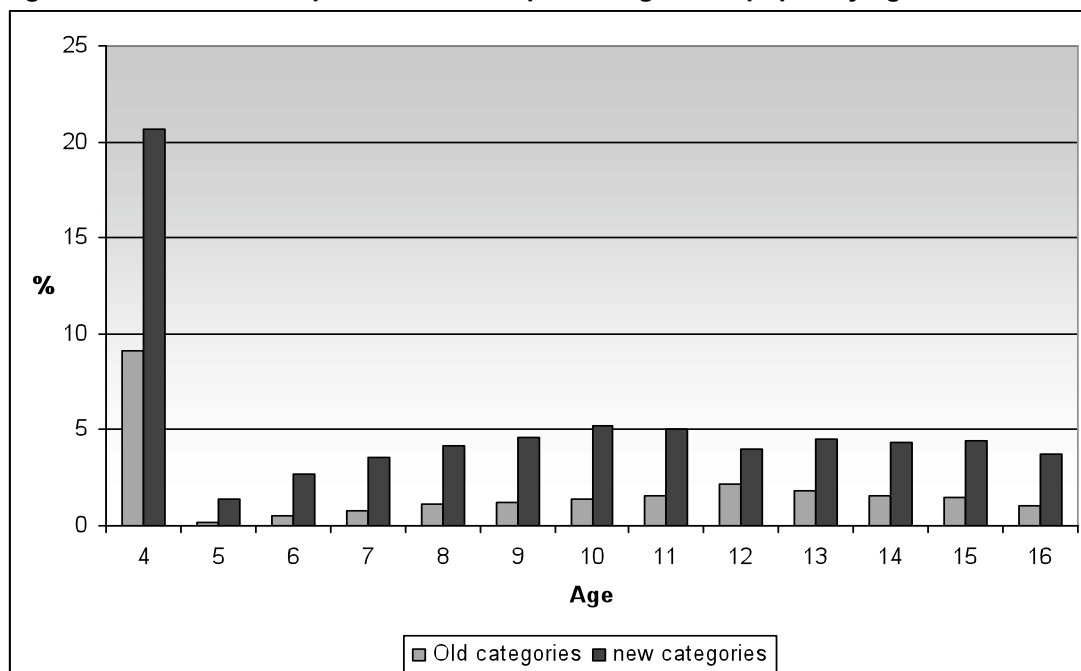
Figure 24: England – primary and secondary pupils with SEN by age as a percentage of all pupils of the same age



Source: DfES, 2007

Scottish Government data shows that there is a steady increase in incidence of ASN up to the ages of 10 and 11

Figure 25: Scotland – Pupils with ASN as percentage of all pupils by age



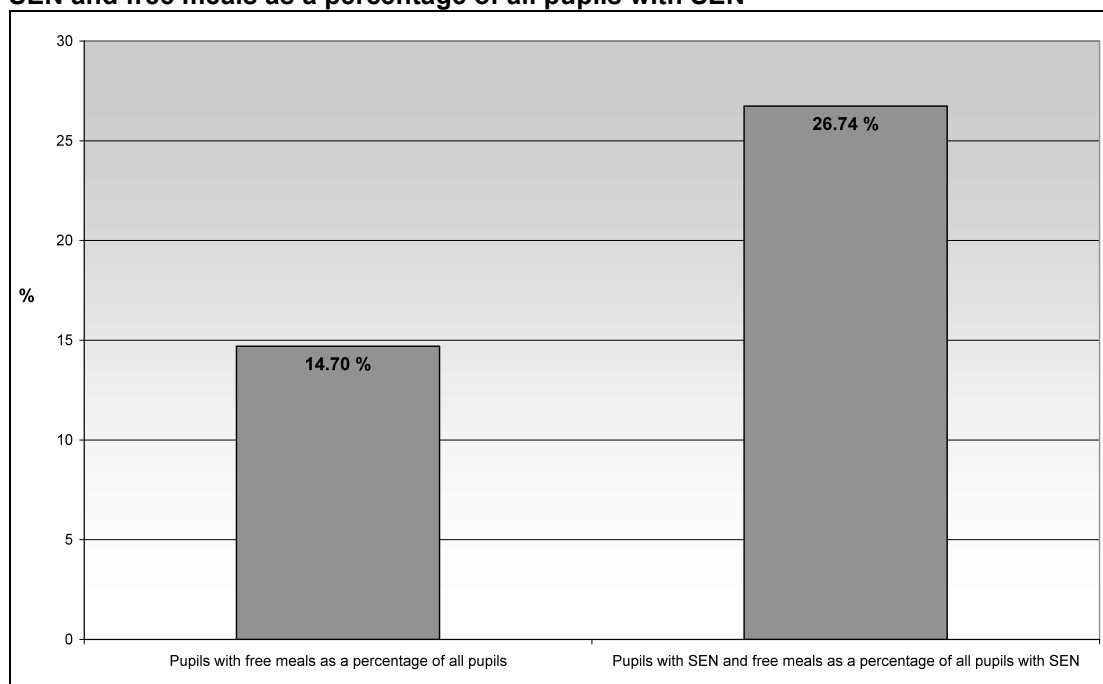
Source: Scottish Government, 2008b

Poverty

The indicator of poverty used in this analysis is entitlement to free school meals, a widely used but contested proxy measure. The Scottish publication notes that the data on free school meals is based on entitlement rather than uptake and that the statistics gathered in 2006 were incomplete. The data should therefore be treated with caution. It is

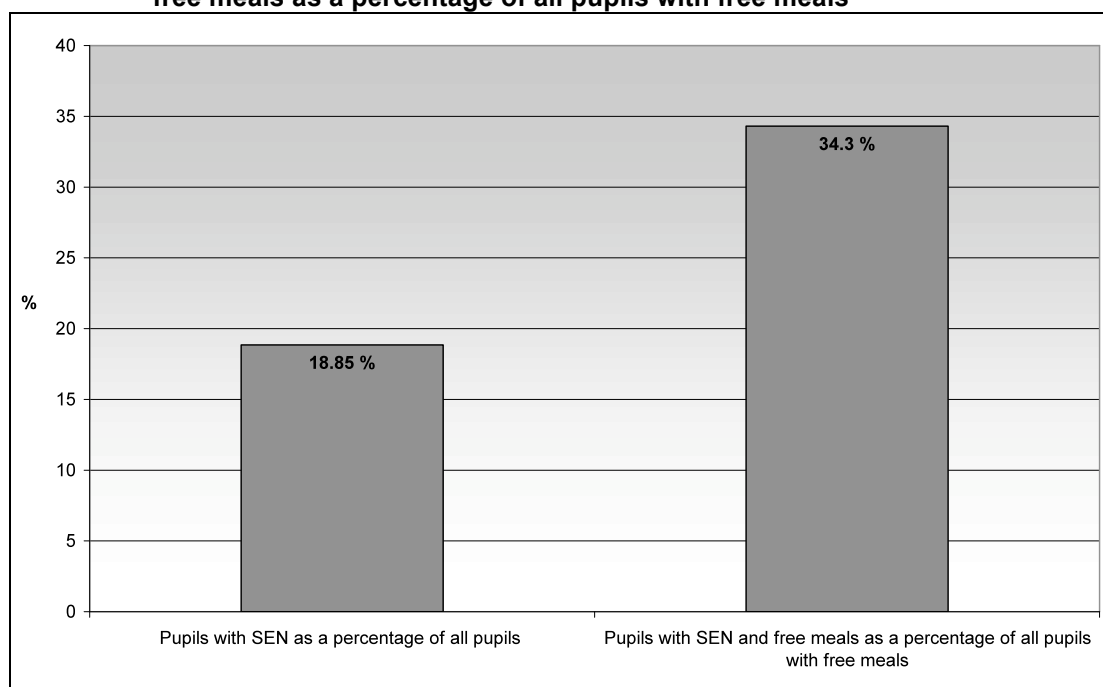
included here as it is the only publicly available data that allows for an examination of the link between SEN/SSN and poverty.

Figure 26: England – Pupils with free meals as a percentage of all pupils and pupils with SEN and free meals as a percentage of all pupils with SEN



Source: DfES, 2007

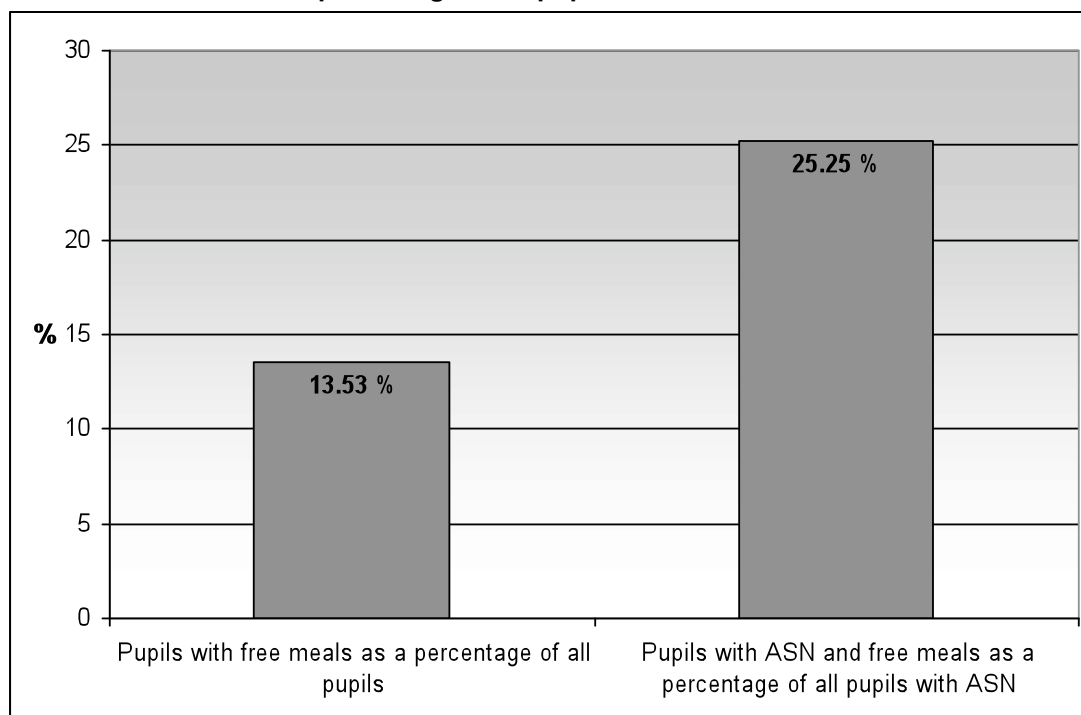
Figure 27: England – pupils with SEN as a percentage of all pupils and pupils with SEN and free meals as a percentage of all pupils with free meals



Source: DfES, 2007

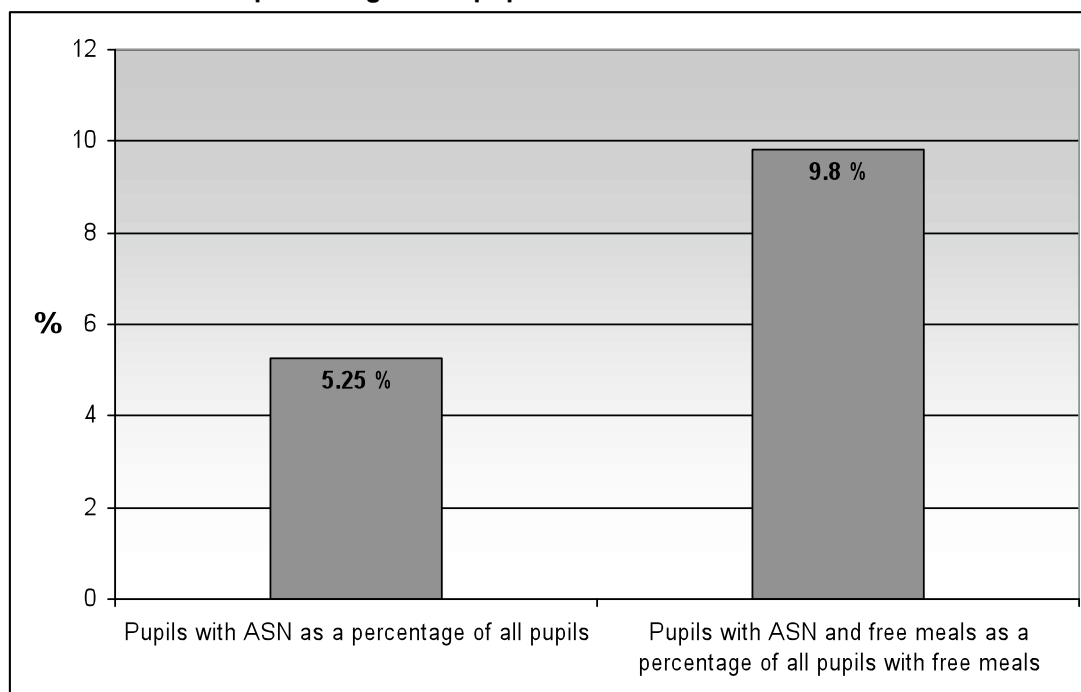
The English data suggests a link between SEN and poverty as measured by free school meals entitlement. Whilst just under 19% of the total school population are recorded as having SEN, 34% of those registered for free school meals are identified as having SEN.

Figure 28: Scotland – Pupils with free meals as a percentage of all pupils and pupils with ASN and free meals as a percentage of all pupils with ASN



Source: Scottish Government, 2008b

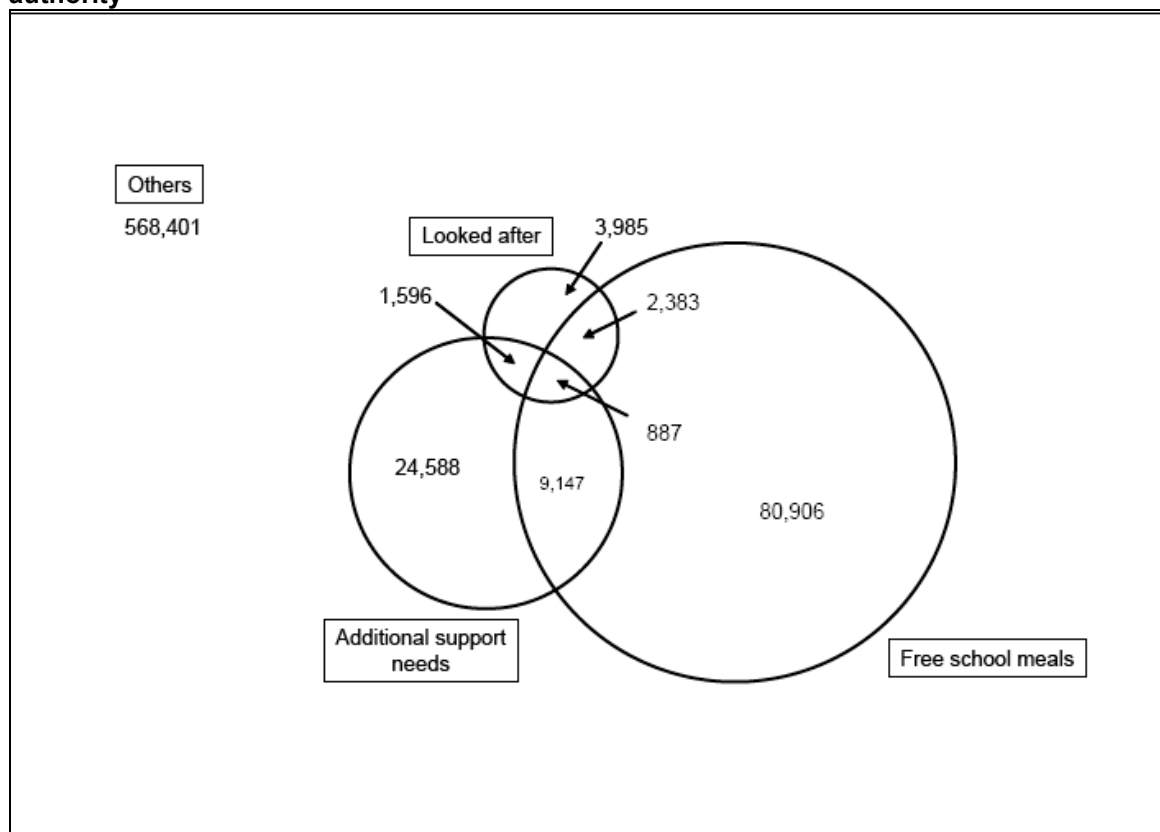
Figure 29: Scotland – Pupils with ASN as a percentage of all pupils and pupils with ASN and free meals as a percentage of all pupils with free meals



Source: Scottish Government, 2008b

The Scottish data, like the data for England, indicate a link between poverty as measured by free school meals entitlement and ASN. Pupils with ASN are more likely than the general school population to also be entitled to free school meals. It should be noted that the data on free school meals suffers from under-reporting in one large local authority.

Figure 30: Scotland – Number of pupils with free meals, ASN and looked after by local authority



Source: Scottish Government, 2008b

An examination of the data linking young people who are looked after with additional support needs shows that this group constitutes 7% of those with ASN whilst only representing 1.2% of the population. It does therefore seem that there is a link between poverty and ASN. However, this would require further examination as the data are drawn from the pupil census on free school meals and looked after status is not as reliable as the rest of the data.

Comparison and summary

The different ways of collating statistics in the different countries impact on the extent to which comparisons can be made. There is also a need for caution in interpretation of data where there are very low numbers in a specific category (e.g. Travellers of Irish origin) or where there are problems with data collection as there is for free school meal and looked after data in the Scottish statistics. With this in mind it is possible to make some tentative comparisons. The main similarities are:

- the proportion of males identified with SEN or ASN is considerably higher than the proportion of females
- disregarding the data for four-year-olds in Scotland, there is a steady increase in children identified as SEN/ASN during the primary years. This increase peaks slightly earlier in England than in Scotland.
- children registered for free school meals are more likely to also be identified as having SEN/ASN than children not eligible for free school meals.

There are differences in relation to data gathering with very limited information about the link between ethnicity and ASN in Scotland; however, this is probably due to the much lower ethnic minority population in Scotland than in England. Reporting on disaggregated data of ethnic minorities group could risk breaching confidentiality due to small numbers. Scotland has data on children of look after status and this group is also more likely to be identified as ASN compared to the overall school population. Once again, data in this

category is problematic due to problems of reporting. In relation to age there is more of a decrease in numbers with SEN during the secondary years in England, whilst in Scotland the numbers tend to stay fairly constant.

Section 5: An overview the number of pupils in independent schools with ASN/SEN

The legislation on special needs/additional support operates differently for pupils in non-maintained schools. In England, independent schools are not covered by the same SEN duties as other schools, but LEAs' responsibilities still apply to children with SEN within them. Independent schools that are approved (under s.347 Ed Act 1996) to take children with statements have to make the required provision, but it is the LEA which has the statutory responsibility for ensuring the provision is made. If the school failed it would be liable to lose its approval status, since it is not meeting the terms of its approval as stipulated within regulations. In both countries these schools are covered by disability legislation but there is a difference in that in Scotland disability discrimination cases are not eligible to be heard and the Additional Support for Learning Tribunal. In England they can be heard (since November 3, 2008) at the First-tier Tribunal (Health, Education and Social Care Chamber) (and prior to that date at the Special Educational Needs and Disability Tribunal). In Scotland the following applies in relation ASN provision:

A Co-ordinated Support Plan is available only where the education authority is responsible for the child's education. Education authorities have discretionary power to make provision for pupils with additional support needs in independent schools, for whose education they are not responsible. The education authority may comply with a request from a parent to establish whether a child in an independent school, for whose education they are not responsible, has additional support needs or would, if the education authority were responsible for the child's education, require a co-ordinated support plan. Such a request can also be made by a manager of an independent or grant-aided school. (Scottish Government: 5, 2008 a)

In England there were 630,830 pupils in independent schools in 2007 which accounts for around 8% of the total school population. The proportion of pupils with SEN statements was 1.4 and those with SEN but no statement stood at 9.9%. This compares to around 1.8% with statements in maintained primary and secondary schools overall and 17% categorised as SEN without statements.

There were another 4,720 pupils in non-maintained special schools which is around 0.06 of the total population. Virtually all pupils (98%) have SEN statements and just under 1% have been identified as SEN but without statements.

In Scotland there were 30,981 pupils in independent schools in 2007 accounting for just over 4% of the total school population.

In these schools, the number of pupils with a CSP or a RoN made up 0.09% of the population; those with an IEP only accounted for 1.8% of the total population. This is below the maintained school levels as over 1% of the population in maintained schools have either a CSP or RoN and just under 4% have an IEP only. There is a further category of pupils identified as having 'non-recorded' additional support needs and this group accounted for 7.4% of the population. It is not clear how this compares to the data gathered for the maintained schools, email communication from the statistics information section in the Scottish Government stated that data on non-recorded pupils in maintained schools was not gathered due to low numbers. The most common support need was in

relation to specific learning difficulties including dyslexia and the second most common was in relation to learning difficulties.

There were 1,144 pupils in independent special schools and virtually all (99%) were funded by local authorities. This group accounts for 0.15% of the total school population in Scotland (local authority and independent schools). The most common categories of difficulty in independent special schools were social, emotional and behavioural difficulties and autistic spectrum disorder.

Summary and comparison

The main similarities between the two countries are that:

- there is lower incidence of both SEN/ASN as measured by statement/SEN but no statement and CSP/RoN and IEP
- independent special schools cater almost entirely for pupils with some form of special needs. In England virtually were covered by a statement. In Scotland almost all were supported by their local authority.

There are no statistics in England on type of need of pupils in independent schools; in Scotland the most common need in mainstream independent schools is specific learning difficulties and in the special schools it is social, emotional and behaviour difficulty and autistic spectrum disorder.

Section 6: An examination of the data from the SENDIST in England and the ASN Tribunal in Scotland.

The Special Educational Needs and Disability Tribunal (SENDIST) came into being as a result of the 1993 Education Act. As noted above, since November 3, 2008 its jurisdiction has been taken over by the new First-tier Tribunal (Health, Education and Social Care Chamber) (FTT), but available statistics still relate to SENDIST. SENDIST/FTT is an independent organisation and its role is to examine appeals from parents when they cannot reach agreement with their local education authority over the support required for their child in relation to special educational needs. Tribunal Judges and other members are appointed by the Lord Chancellor. The Government has no power to intervene in the tribunals' decisions and there is no link between the tribunal and local education authorities.

The Additional Support Needs Tribunals for Scotland (ASNTS) was set up in 2005 in order to provide independent, user friendly support to hear appeals on a range of issues relating to Coordinated Support Plans for children and young people with additional support needs. The aims of the Tribunals are:

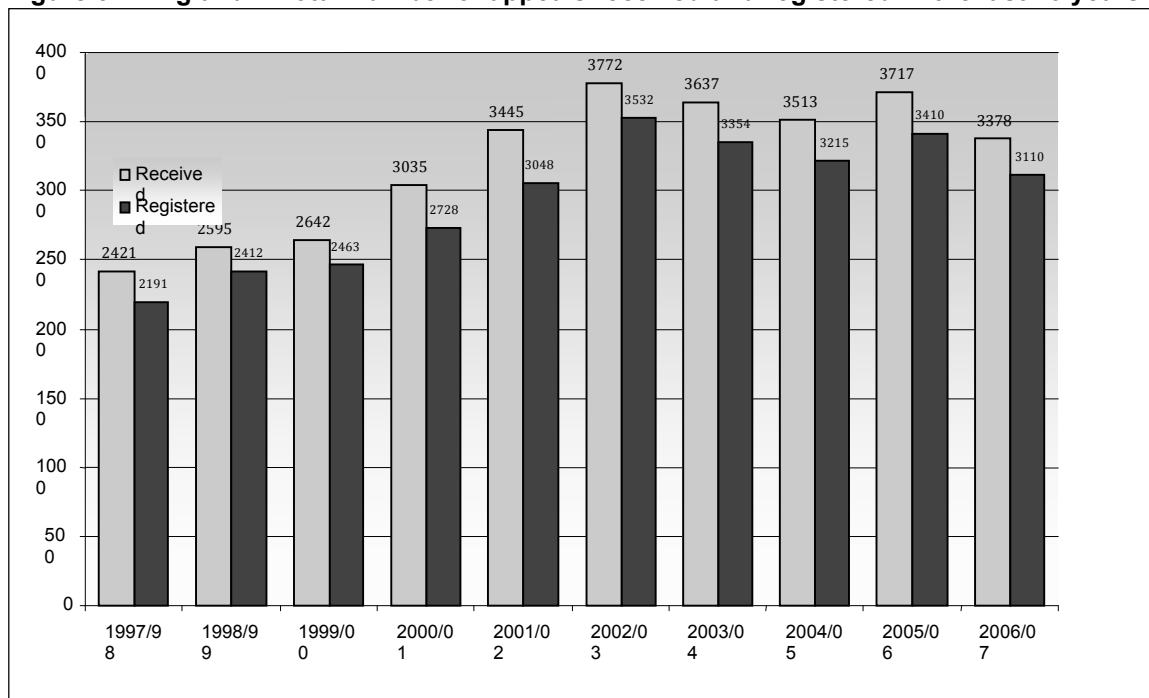
- to provide independent and expert adjudication, operating impartially, efficiently and effectively, in accordance with the Act;
- to be user-friendly through informal and flexible proceedings and being accessible to users;
- to discourage formal, litigious encounters between parents and education authorities by providing a forum for constructive dialogue; and
- to make decisions which reflect best practice in relation to additional support needs. (ASNT website)

England

Data shows that the number of appeals received by the tribunal increased from just over 2000 to around 3700 over the period 1997/98 to 2002/03. They fluctuated around that level until 2005/06 before starting to decrease in 2006/07. The number of cases registered shows the same pattern but the numbers are slightly lower.

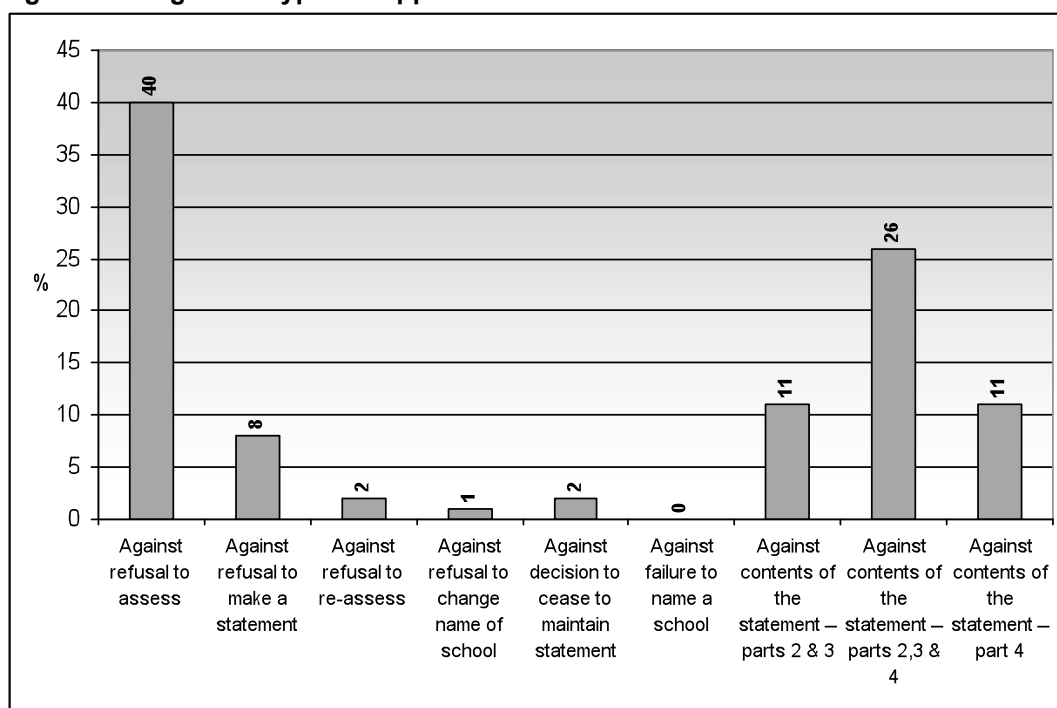
The most common reason for appeal in 2006/07 (40%) relates to a LEA's refusal to assess a pupil; however, if the three categories of appeals relating to content of a statement are examined together they form 48% of the total. These two categories therefore account for 88% of all appeals. Further breakdown of the reason for appeal can be seen in figure 32.

Figure 31: England – Total Number of appeals received and registered in the last 10 years



Source: SENDIST, 2008

Figure 32: England: Types of appeal 2006-07

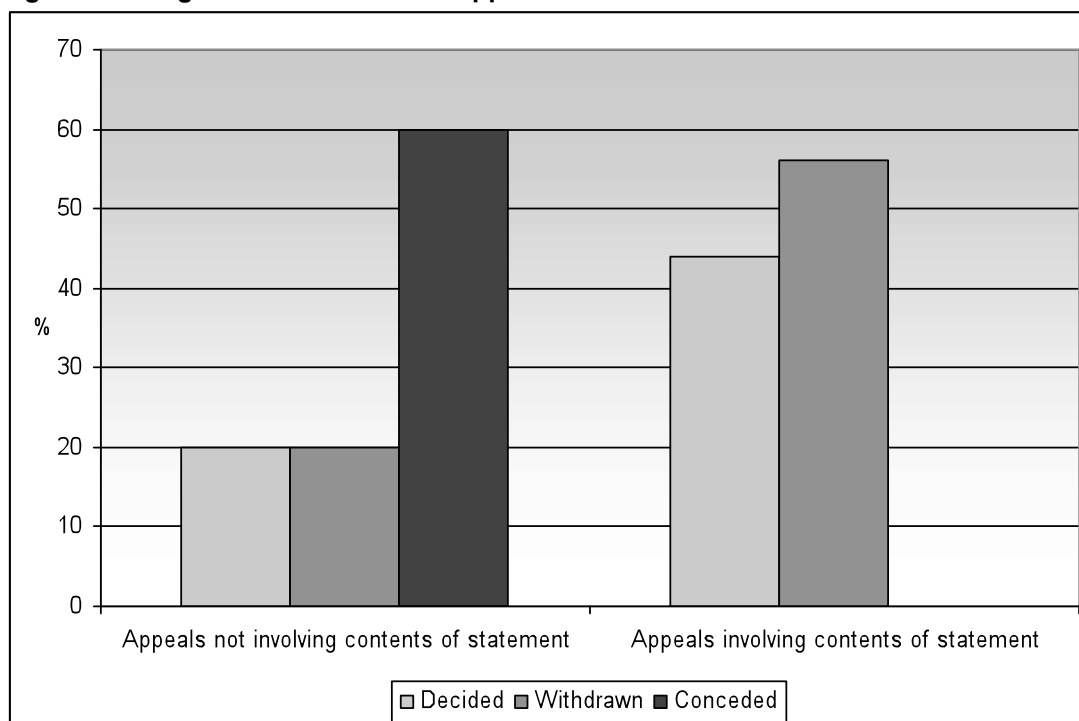


Source: SENDIST, 2008

Around two thirds (68%) of appeals are either conceded or withdrawn and do not go forward to a hearing. However this varies according to the subject matter of the dispute for example 81% of refusal to assess cases and 75% of refusal to statement were either conceded or withdrawn. Also of those not involving contents a statement 80% are either

conceded or withdrawn, whilst 56% of those concerning contents of a statement are withdrawn (see figure 33). Therefore a higher number of appeals in relation to contents of statements go forward to a hearing. These figures indicate that for refusals to assess/ statement the pressure of an appeal can act as an impetus for local authorities to deal with a parents'/carers' concerns and requests for action.

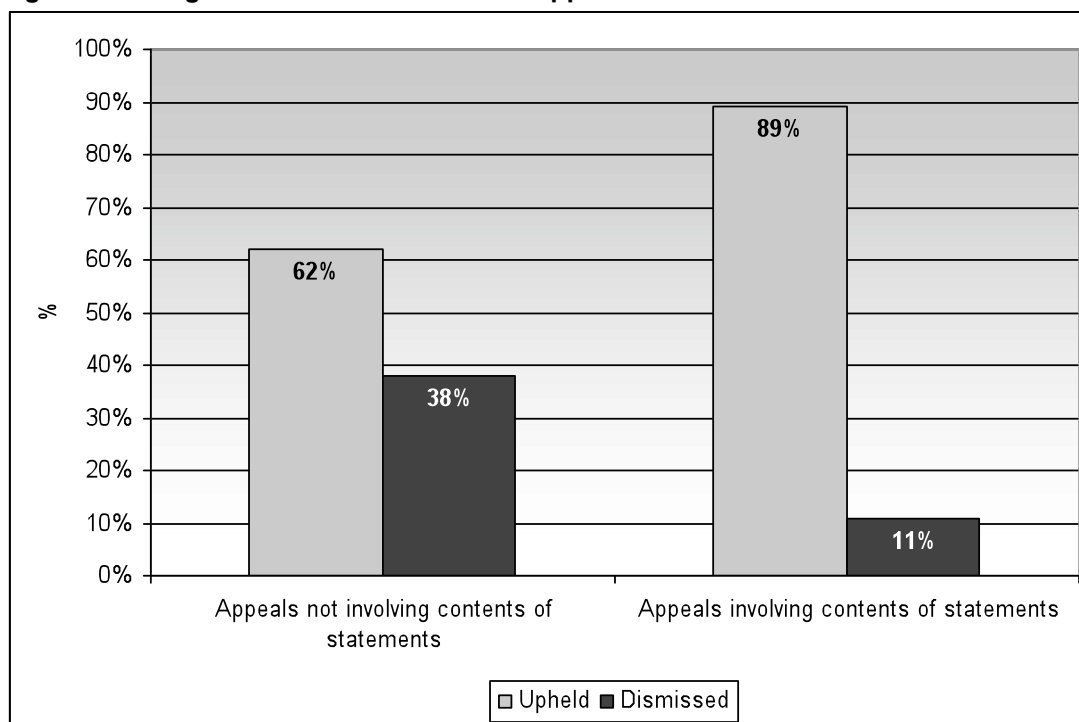
Figure 33: England: Outcome of all appeals



Source: SENDIST, 2008

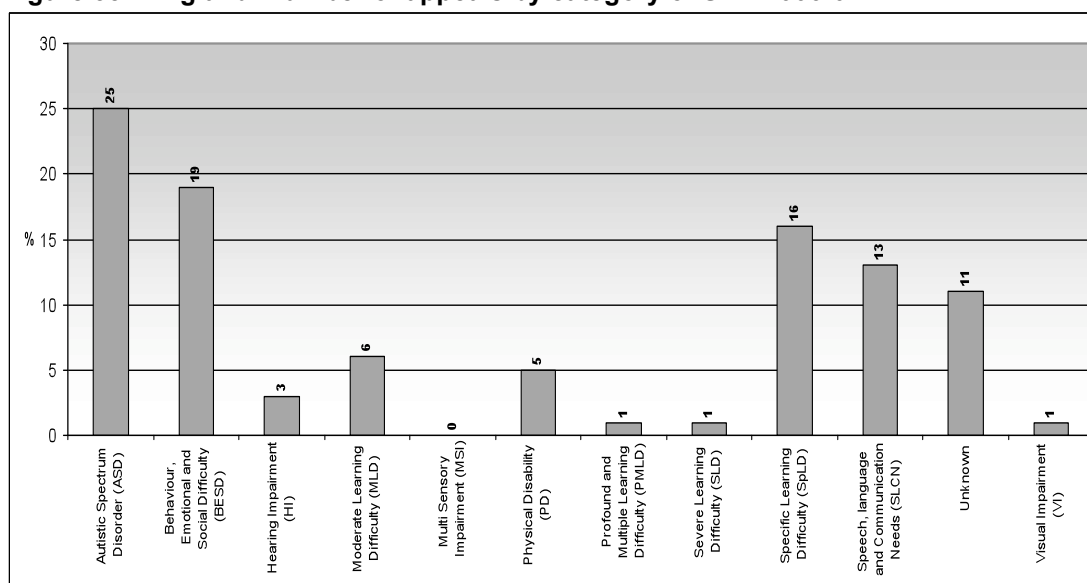
Of the total cases heard and decided on in 2006-07, 80% were upheld in favour of the parents and 20% dismissed. The number of cases upheld was higher for those concerning contents of statements (89%) than those not involving contents of statements (62%); however, it should be noted that a case is considered upheld even when minor amendments are made to a statement.

Figure 34: England: Outcome of decided appeals



Source: SENDIST, 2008

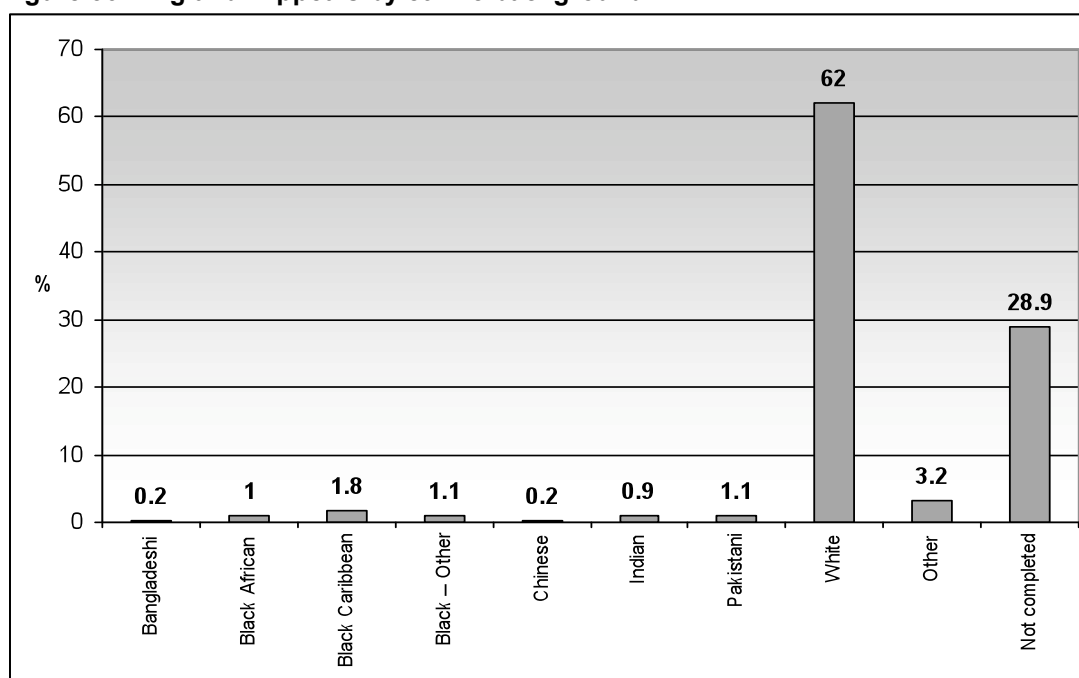
Figure 35: England: number of appeals by category of SEN 2006-07



Source: SENDIST, 2008

Figure 35 shows that in the main, the appeals relate to those categories of SEN that have the highest occurrence; however, there is one exception and this relates to pupils with autistic spectrum disorder. This group accounts for 26% of appeals whilst only representing 6.9% of the pupils with SEN.

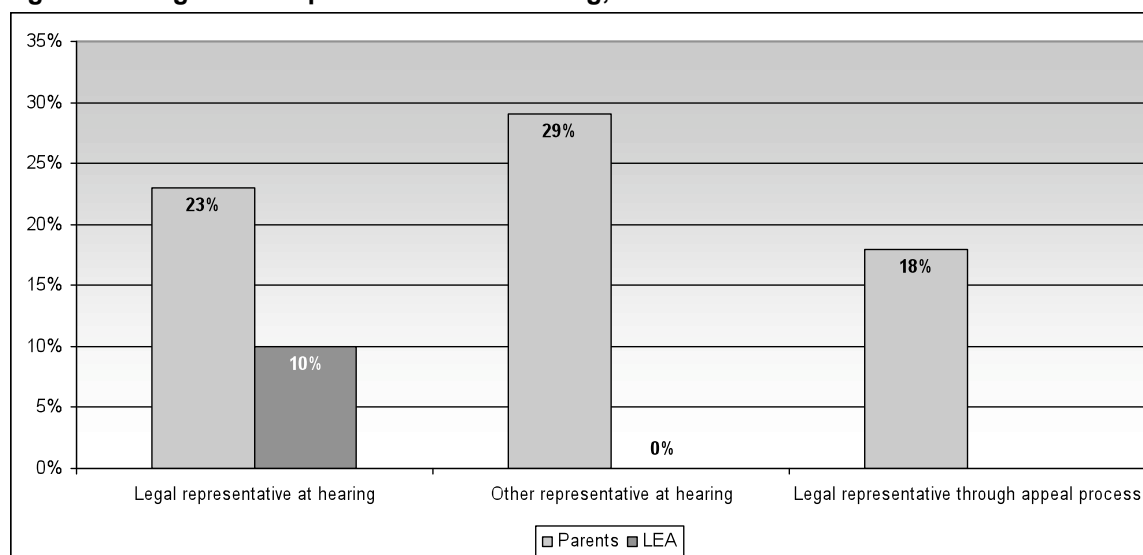
Figure 36: England: Appeals by ethnic background



Source: SENDIST, 2008

The majority (62%) of all appeals to the tribunal come from those who identify as white. Appeals from those of Black Caribbean backgrounds only account for 1.8% and Black Other for 1.1% of the appeals, although these groups of pupils have a higher than average incidence of SEN. It is worth noting though that more than a quarter of statements did not specify ethnic origin and that there were no appeals from those of Traveller or Gypsy Roma background which have a high incidence of SEN but form a very small part of the overall school population.

Figure 37: England – Representation at hearing, 2006-07



Source: SENDIST, 2008

Nearly a quarter of parents have legal representation at a hearing which compares to only 10% for local authorities. A greater proportion of parents (29%) are supported by another representative and this is normally a volunteer group offering advocacy services.

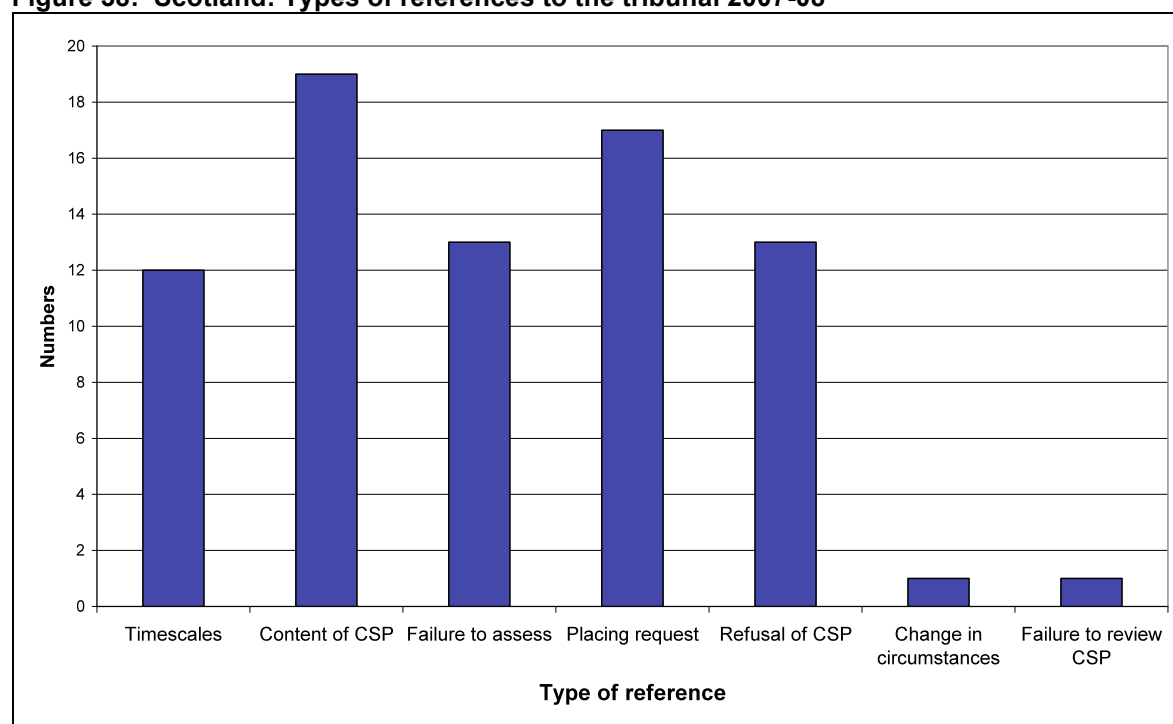
Finally it is worth mentioning that there is a variation between local authorities in relation to the proportion of appeals to the tribunal. The highest number per 10,000 of school

population in the period September 2005 to August 2007 came from Bromley (18.77) followed by Lambeth (14.68), Lewisham (14.55), Croydon (12.15) and Hammersmith & Fulham (12.15). There were no appeals from City of London, Darlington, Halton and Rutland, and very few from Stockton on Tees, Blackpool, Luton, North Lincolnshire, Northumberland, Wigan and Wolverhampton. The average amount for that same period was 3.8 per 10,000 of school population.

Scotland

There was a total of 76 references made to the tribunal during the period April 2007 to March 2008. Seventeen of these were placing requests and 59 related to CSPs. As the tribunal is only able to hear cases relating to CSPs this is not surprising.

Figure 38: Scotland: Types of references to the tribunal 2007-08

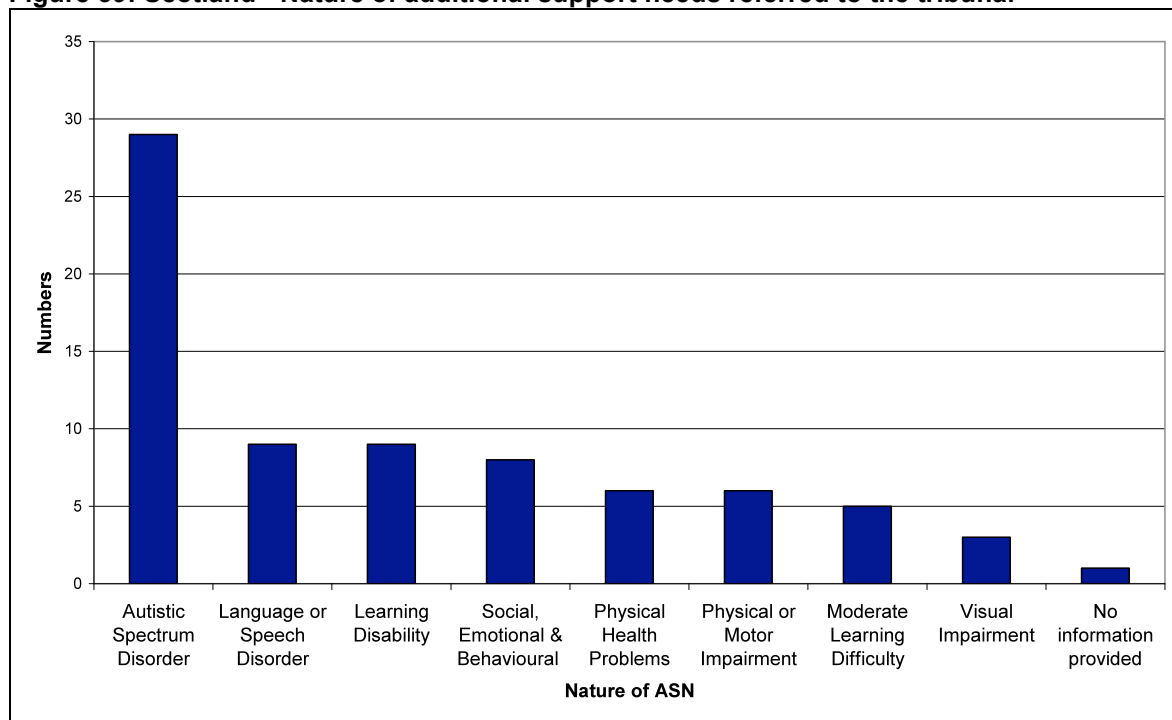


Source: ASNTS, 2008

The majority of referrals related to White Scottish, White Irish or other White British children (75%) with only 7% from non-white or mixed race background. Eight percent did not specify ethnic background.

With regard nature of additional support need, Figure 39 shows that the most common reference to the tribunal was for children and young people with autistic spectrum disorder. This group accounted for 38% of all references. Language and speech disorder, learning disability and social, emotional and behavioural difficulties formed the next three largest groups. There were no references from those with dyslexia, other specific learning difficulties, hearing impairment, mental health problems, interrupted learning, English as an additional language or looked after status. The limited ambit of the tribunal and its focus on those with a CSP means that pupils whose needs do not require significant co-ordination cannot appeal to the tribunal.

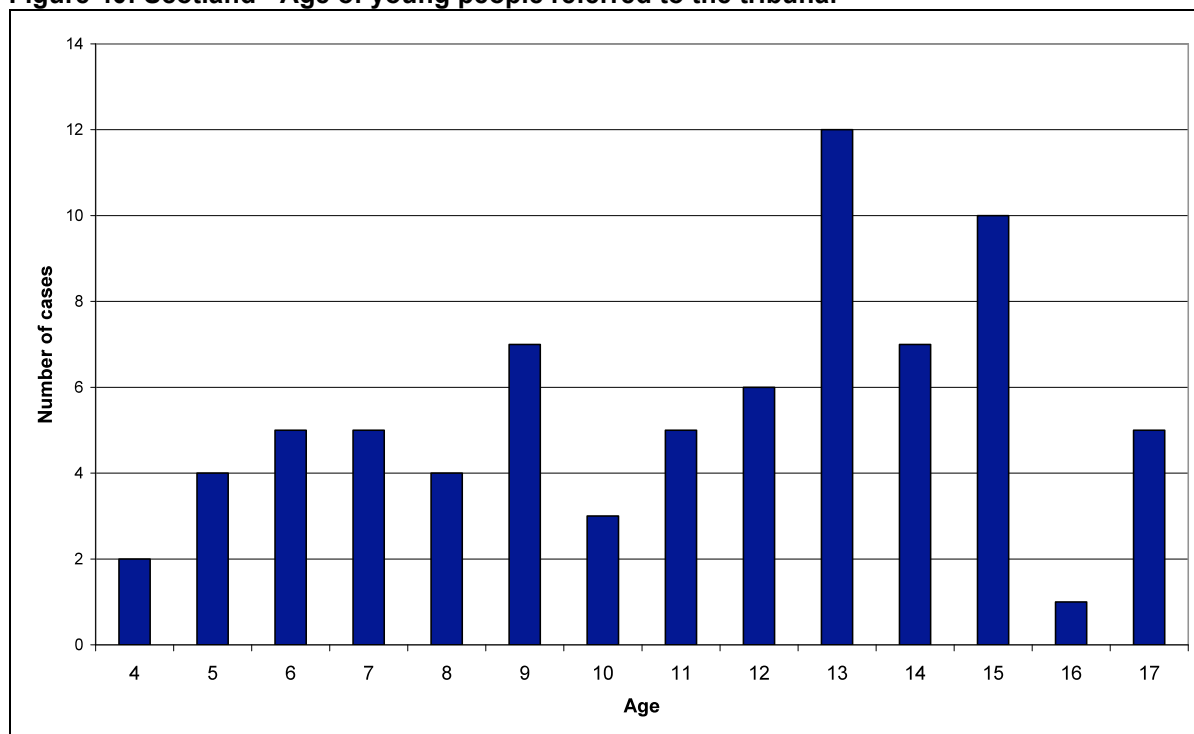
Figure 39: Scotland - Nature of additional support needs referred to the tribunal



Source: ASNTS, 2008

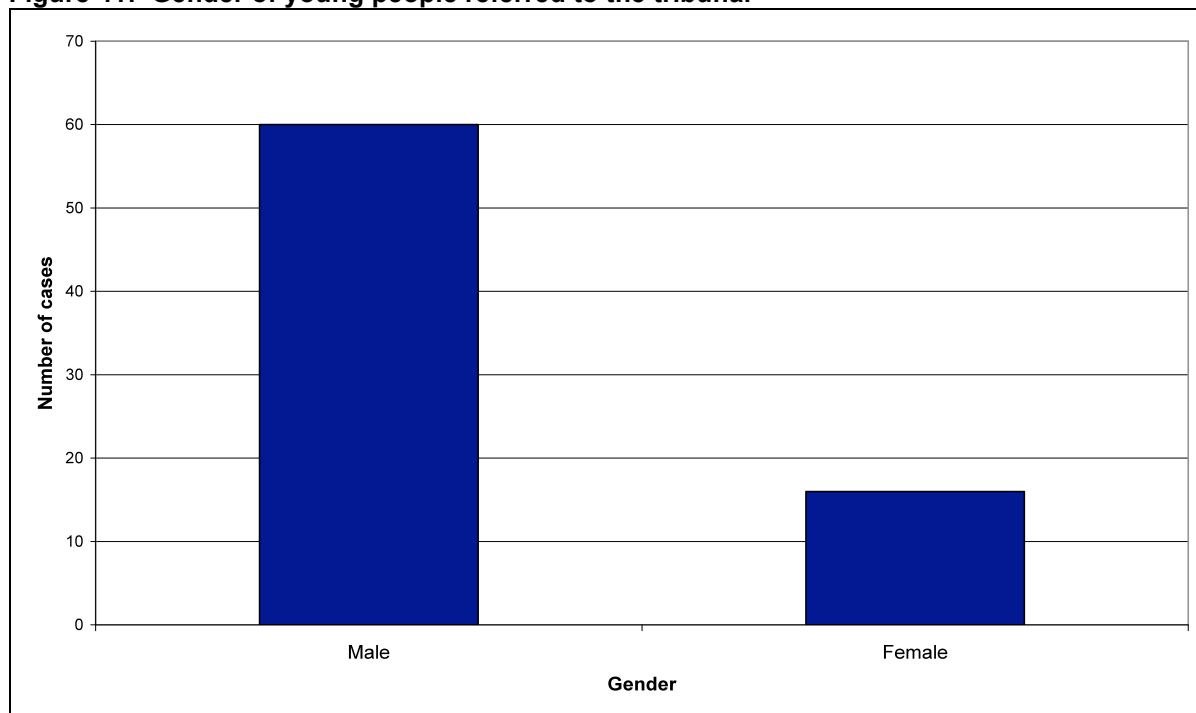
As can be seen from figure 40, the greatest number of references concerned young people aged 15. There were fewer references with regard to children up to the age of 8 and one from a young person aged 17. It is also worth noting that none of the young people contributed to the hearing of their case. The majority of cases concerned boys, with only 16 of the 76 cases relating to girls (figure 41).

Figure 40: Scotland - Age of young people referred to the tribunal



Source: ASNTS, 2008

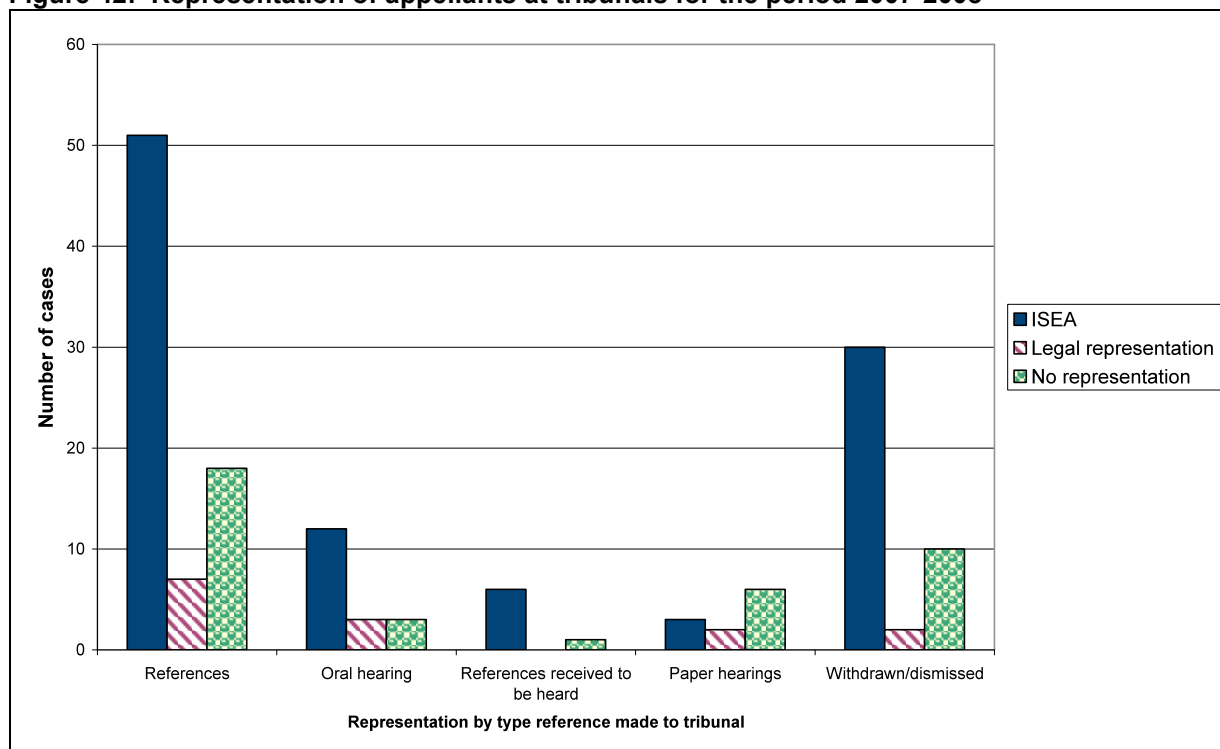
Figure 41: Gender of young people referred to the tribunal



Source: ASNTS, 2008

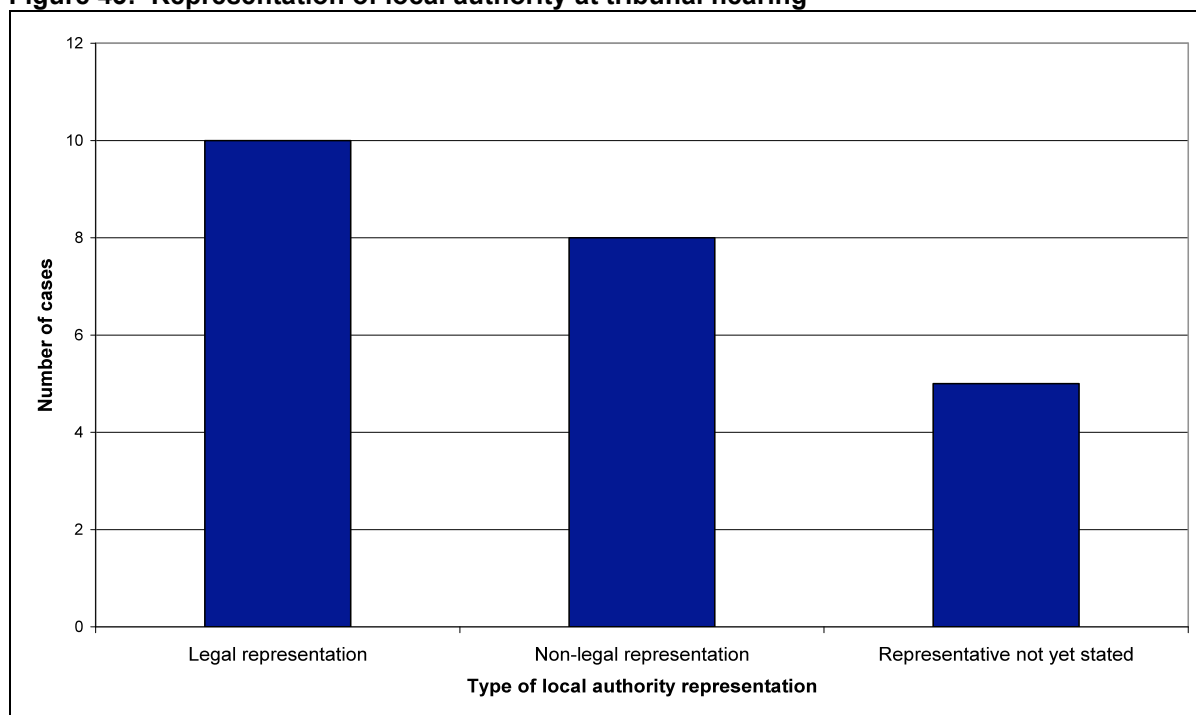
The majority of parents are represented by ISEA at the tribunal with a much smaller proportion having legal representation. Just over half of the cases represented by ISEA at reference were withdrawn, 12 led to a hearing and further 6 are still to be heard. Whilst the number of cases where parents had legal representation was low, a relatively smaller proportion of these were withdrawn. References made by parents without any representation were about as likely to be withdrawn as those represented by ISEA.

Figure 42: Representation of appellants at tribunals for the period 2007-2008



Source: ASNTS, 2008

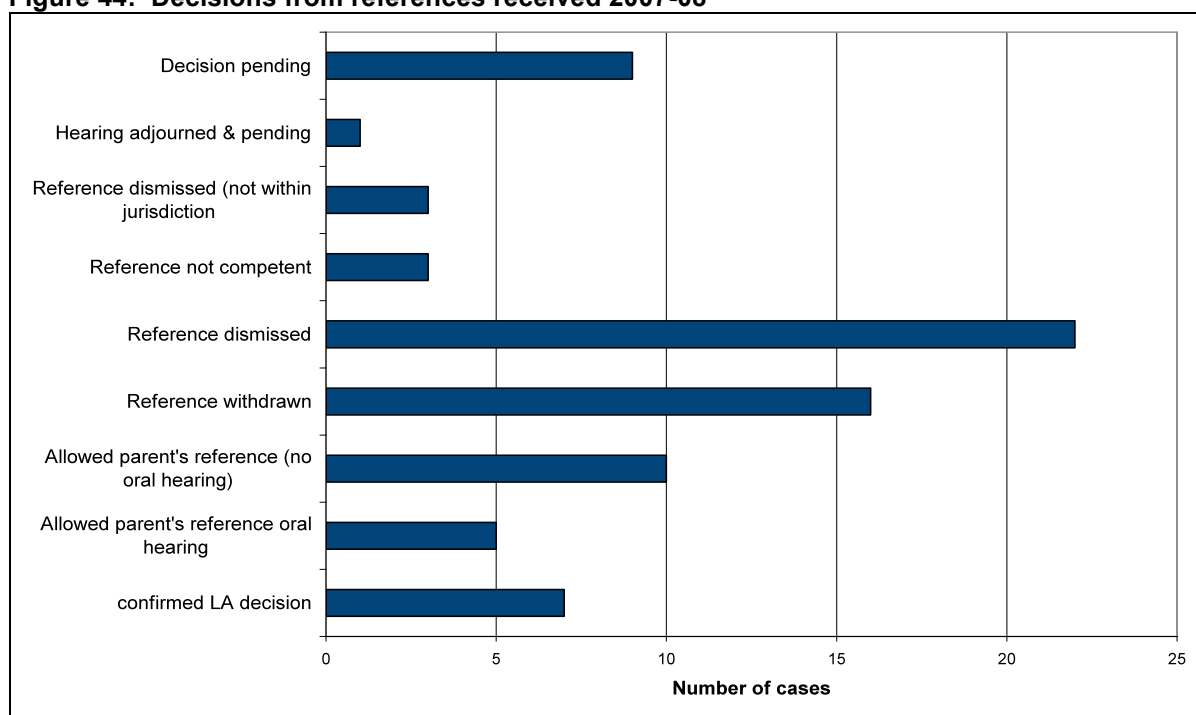
Figure 43: Representation of local authority at tribunal hearing



Source: ASNTS, 2008

As can be seen from figure 43 just over half of the local authorities were legally represented at the hearings; of the ten cases with legal representation, six used in-house legal teams and four used counsel.

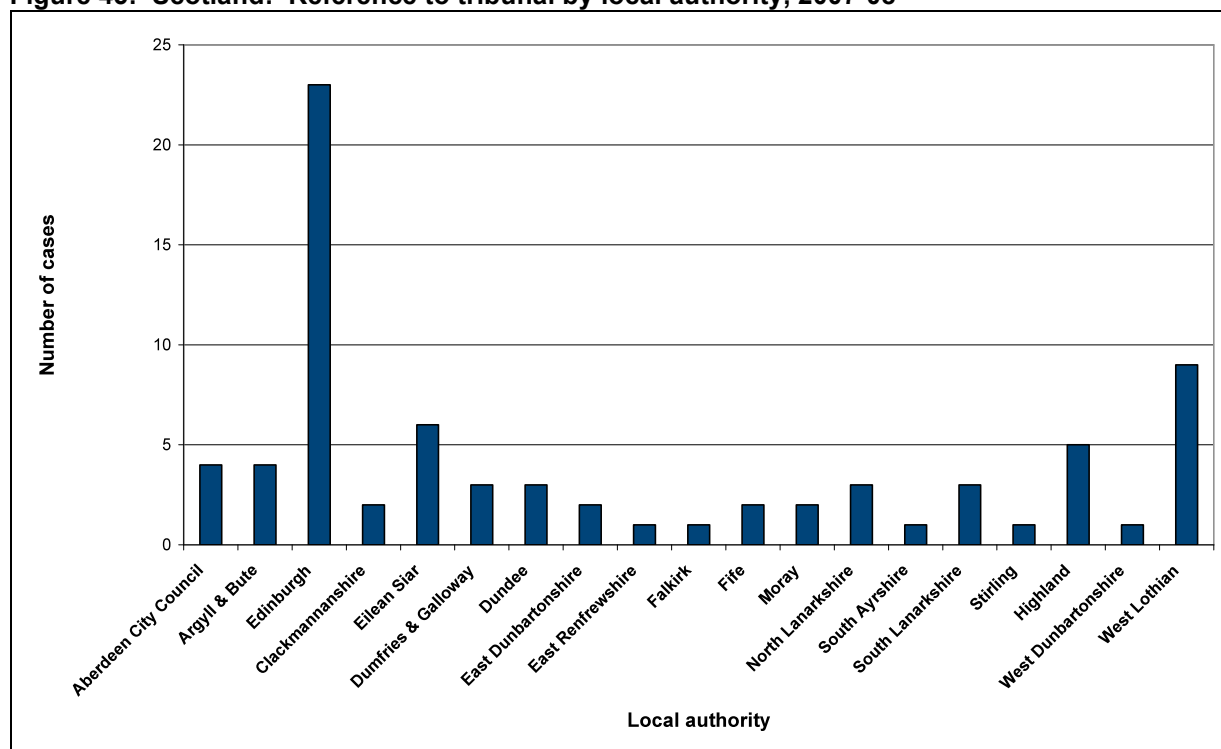
Figure 44: Decisions from references received 2007-08



Source: ASNTS, 2008

Figure 44 shows that the tribunal upheld the parent's reference in 15 cases (ten of these without an oral hearing) and the local authorities cases for 7 of the references. Twenty-two of the cases were dismissed and out of these 21 had been withdrawn by the parents before an oral hearing.

Figure 45: Scotland: Reference to tribunal by local authority, 2007-08



Source: ASNTS, 2008

The largest number of references to the tribunal concerned pupils within the Edinburgh City council area; however, this authority also has a large pupil population. Thirteen authorities have not been subject to a reference and this includes Glasgow City Council in spite of having the largest pupil population. Eilean Siar with one of the smallest pupil populations has a relatively high number of references.

Comparison and summary

It is difficult to compare the tribunal data from the two countries as they have different remits. The following similarities seem to emerge from the data (but these suggestions should be treated with caution):

- the number of cases referred increases in the early stages of the tribunal; however, the numbers in England have peaked and are reducing. It will be interesting to see if this trend continues,
- the most common appeals in England relate to refusal to assess and to statements, in Scotland the issues centre around CSP decisions (but this could be because of the remit of the tribunal),
- a large number of cases are dismissed/withdrawn in both countries,
- there is local authority variation in terms of references with some having high numbers and others none or very low numbers. This seems to be independent of total school population,
- cases relating to children and young people with autistic spectrum disorder are disproportionately high in both countries, and
- parents are more likely to be represented by a non-legal representative than a legal representative.

A key difference between England and Scotland concerns the way in which statistics are reported. In addition, local authorities in England are less likely to have legal representation than their counterparts in Scotland. There is no mention about disputes in relation to timescales in England.

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