

2015/2016

PRESIDENT'S REPORT

REPORT BY
THE PRESIDENT OF APPEAL
TRIBUNALS ON THE STANDARDS
OF DECISION MAKING BY THE
DEPARTMENT FOR COMMUNITIES

Period 6 April 2015 to 5 April 2016

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President's Foreword

The total number of appeals registered during the year to which this report relates was 14,247. This represents an increase of over 2,600 from the period covered by my previous report.

The report reveals that overall levels of incorrectness in the initial decision ranges from 0% in Bereavement Benefit, Child Maintenance, Incapacity Benefit, Maternity Allowance and State Pension to 8.3% in Compensation Recovery appeals. The most common reason for incorrectness was that the decision appealed against was based on a misinterpretation/misunderstanding of the evidence available to the officer.

Whilst I am pleased to note that there has been a reduction in the levels of incorrectness within a number of individual benefit areas I have some concerns that the overall level this year (2.5%), is slightly greater than it was last year (1.2%). Across all cases monitored the decision maker was judged to have made an incorrect decision in 39 cases. It will be apparent from the figures mentioned at page 8 that there was a considerable degree of variation in the level of incorrectness of initial decisions across different benefits.

The overall percentage of correctly made decisions altered by the tribunal was 14.2%. It was 17.4% in the previous reporting year.

It will be readily apparent that most appeals continue to be in respect of ESA and DLA. The number of appeals registered for those benefits was 51% and 32.4% respectively. The levels of incorrectness in the initial decisions recorded for both benefits was low. 0.5% of the monitored DLA cases and 4.7% of the monitored ESA cases were assessed as having an incorrect initial decision.

The fact that previous reports and this one continue to reveal concern regarding the number of ESA and DLA decisions being overturned as a result of the provision of further medical evidence suggests that the Department really must consider what further steps can be taken prior to hearing in order to source additional medical

information from or on behalf of appellants. It may be that, as a matter of standard practice in all cases, a report should be obtained at an early stage from a general practitioner.

It will also be apparent that some concern has been expressed in monitored cases about the adequacy of healthcare professional reports. It may be the case that individual healthcare professionals do not have any/sufficient training to assess the medical conditions of some individual claimants. It is fundamentally important that claimants with complicated and/or chronic conditions are examined by a professional who has sufficient expertise to carry out an appropriate examination/assessment e.g. it is arguable that appellants with long-standing mental health problems should always be assessed by a medical doctor. In general it should be possible to match the expertise of the individual healthcare professional to the individual claimant's medical conditions.

It continues to be the position that many incorrectly made DLA decisions are overturned due to further medical evidence being made available at hearing. This will generally be in the form of the tribunal's assessment of medical notes and records at hearing or the provision of medical reports by or on behalf of appellants. The provision of GP notes and records remains fundamentally important for the proper determination of DLA appeals and will be a cornerstone going forward. I repeat my previous request that departmental presenting officers should recommence the practice of viewing those documents prior to hearing. I am not convinced by the Department's arguments for failing to authorise presenting officers to view the documents. The practice will enable the Department to obtain feedback from presenting officers in relation to their decisions and I have no doubt that it will facilitate concessions in deserving cases, thus avoiding the trauma experienced by appellants in having to provide unnecessary oral evidence.

I also repeat my request that the Department should secure the attendance of presenting officers on a more regular basis. I repeat my assertion that the presence of presenting officers enhances the independence of the tribunal, enables the tribunal/appellants/representatives to question presenting officers about matters

arising, prevents adjournments and secures feedback to the Department in individual cases. They could also make concessions in deserving cases.

In my last report I mentioned that I have written to senior officers within the various branches of the Department with a view to improving decision-making in individual cases and in order to raise issues of general concern. This practice has continued and I am pleased to note that the Department remains receptive to the practice. I continue to believe that it enhances decision-making generally and assists both the tribunal and the Department.

Although I have mentioned it specifically only in relation to Income Support cases (see page 50) the Department is reminded that in all cases where an overpayment decision is being contemplated the provisions of Section 69 (5A) of the Social Security Administration (Northern Ireland) Act 1992 must be complied with. Anecdotally and based on my own assessment of appeal files which are referred to me from time to time I can confirm that this is a problem affecting decision making within many branches of the Department. All decision makers should be provided with appropriate training about Section 69.

I am extremely grateful to my staff, led by Nuala Burns, for their excellent work in compiling the information on the basis of which this report was created. I also acknowledge the efforts of our legally qualified members in completing the monitoring forms which formed the statistical base for the report

John Duffy

President Appeal Tribunals

Chapter 1

Methodology

The methodology used in the survey reflects the fact that both the number of persons claiming and complexity of entitlement rules govern the level of appeal activity for a particular benefit.

For the majority of benefits, cases were randomly selected using a random numbers database. For a number of benefits, where the expected number of cases was small, a complete census was the preferred methodology. In this respect all cases relating to Bereavement Benefit, Carer's Allowance, Child Maintenance, Compensation Recovery, Incapacity Benefit, Maternity Allowance, Pension Credit and State Pension were examined.

Cases were identified for monitoring on a daily basis from a list of cases registered by the Appeals Service on the previous day. The actual monitoring was carried out by the Legal Member of the Tribunal at final hearing, a number of weeks or months later. Given the time lapse between these stages, some cases across all benefit areas were cleared before hearing due to withdrawal of the appeal or revision of the decision under appeal. The figures in the following tables for cases monitored therefore represents the number selected for monitoring less pre hearing clearances.

A questionnaire was completed by the Legal Member on each case selected for monitoring. The questionnaire identified the case details so that the case could be tracked through the system and any queries addressed. A copy of the complete questionnaire can be found at Appendix 3.

The sample size was designed to enable reporting for the whole year, by benefit.

Chapter 2

The Sample & Sample Analysis

Table 1 shows the total number of cases registered by benefit, the number actually monitored, the number of decisions incorrectly made in the first instance, and the percentage error, in the period. As explained previously some benefits required a complete census of cases. Such benefits are indicated by bold type.

Table 1:

Appeals by Category 06 April 2015 – 05 April 2016				
Category	Total registered	No. Monitored (sample size)	Initial decision incorrect	Percentage Incorrectness
Attendance Allowance*	248	108	1	0.9%
Bereavement Benefit*	5	3	0	0.0%
Carer's Allowance*	161	90	4	4.4%
Child Maintenance*	60	24	0	0.0%
Compensation Recovery*	17	12	1	8.3%
Disability Living Allowance*	4623	377	2	0.5%
Employment Support Allowance*	7262	429	20	4.7%
Incapacity Benefit*	5	1	0	0.0%
Income Support*	313	96	4	4.2%
Industrial Injuries Disablement Benefit*	129	73	1	1.4%
Jobseekers Allowance*	1157	203	3	1.5%
Maternity Allowance	3	3	0	0.0%
Pension Credit*	135	75	2	2.7%
State Pension*	3	2	0	0.0%
Social Fund*	126	56	1	1.8%
TOTAL	14247	1552	39	2.5%

Note: bold type indicates a complete census

* Indicates that all cases selected were not available for monitoring

Incorrectly made Decisions

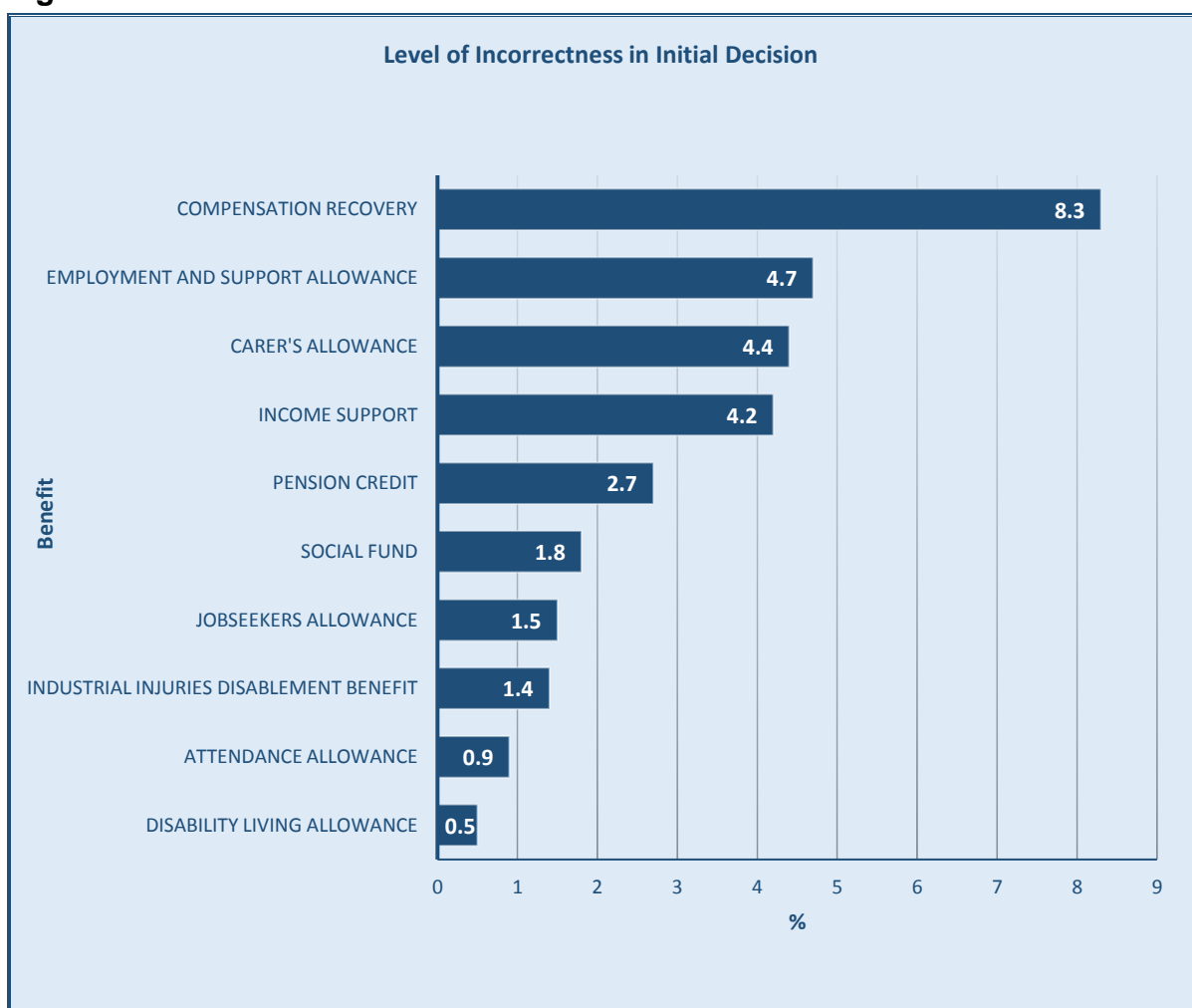
Across all cases monitored, the decision maker was judged to have made an incorrect decision in 39 cases, representing 2.5% of all cases monitored.

From Table 1 it is evident that there was a considerable degree of variation in the level of incorrectness of initial decisions across benefits.

Of those benefits where a complete census was recommended, there were no cases assessed as having the initial decision incorrectly made for Bereavement Benefit, Child Maintenance, Incapacity Benefit, Maternity Allowance or State Pension. The total numbers of cases available to be monitored for these benefits are small and therefore the results need to be treated with caution. Although they are a complete census of cases, any incorrect decision would also have a significant impact on the percentage of incorrectness again distorting the results.

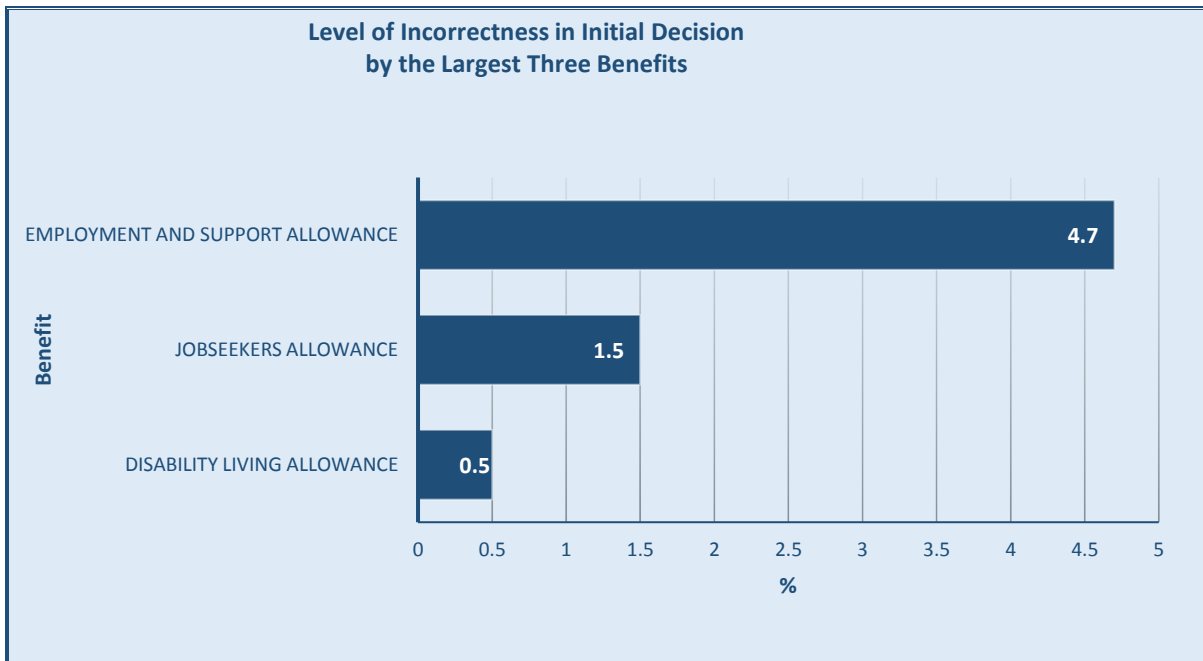
Figure 1 below shows graphically the variation across benefits where a sample of cases were monitored and the remaining complete census cases. Where present; levels of incorrectness in the initial decision range from 0.5% of Disability Living Allowance cases to 8.3% of Compensation Recovery cases.

Figure 1:



Disability Living Allowance as well as Employment and Support Allowance accounted for around 32% and 51% of all cases registered respectively, reflecting both the number of people claiming the benefit and also the complexity in delivery of the benefit. The level of incorrectness in the initial decisions made in the sample for Disability Living Allowance was 0.5% and for Employment and Support Allowance it was 4.7%.

Figure 2:



Reasons for the Initial Decision being incorrectly made

When an initial decision was deemed incorrect the reason(s) for this incorrectness were recorded. In the period 06 April 2015 to 05 April 2016 there were 39 cases where the initial decision was judged incorrect. There were in total 55 reasons for incorrectness.

Chart 1 below illustrates the number of reasons given for cases where the initial decision was made incorrectly.

Chart 1:

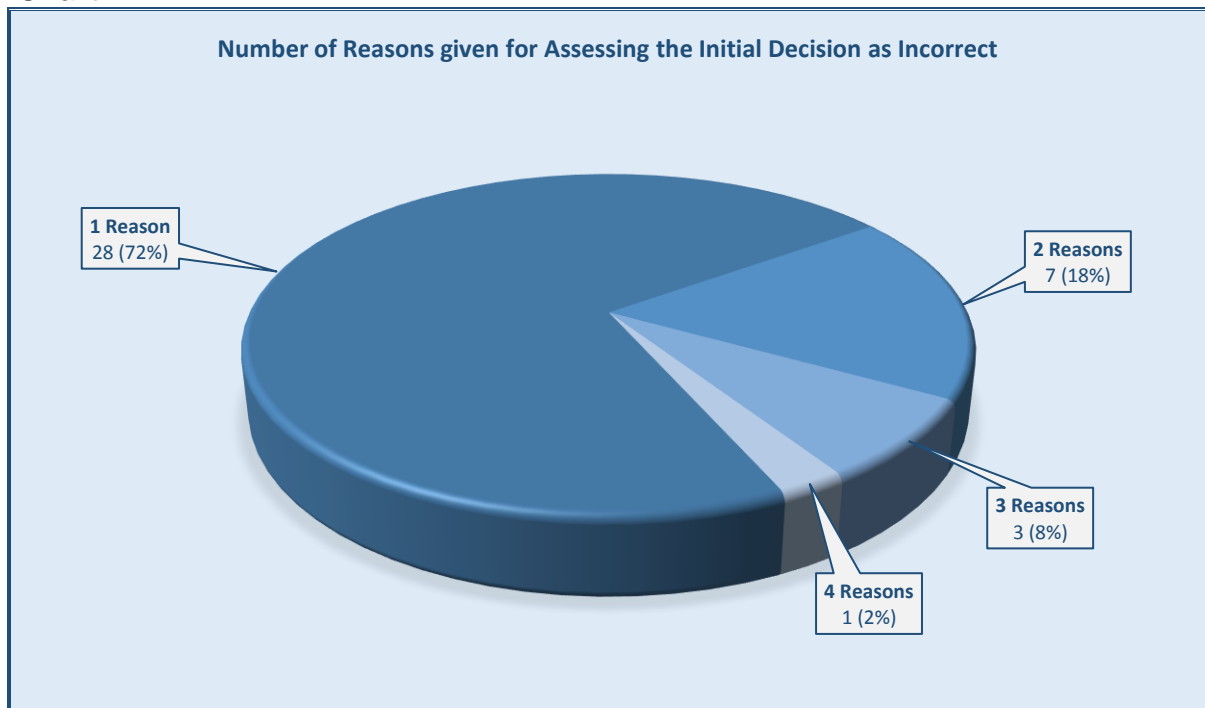


Chart 1 shows that in the majority of cases where the initial decision was incorrect, a single reason was given for incorrectness, 28 cases representing 71.8% of all cases where the initial decision was assessed as incorrect. The largest number of reasons cited per case was four. This occurred in an Employment and Support Allowance case.

Legal Members are asked to identify whether or not the decision made by the decision maker is altered. If the decision is altered, it is categorised as follows:

- (a) incorrectly made by the decision maker, or
- (b) correctly made by the decision maker, but the decision overturned.

Table 2 sets out the reasons for incorrectly made decisions.

Table 2:

Reason for Incorrectly Made Decisions	
F1.	The decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision
F2.	The officer failed to request adequate medical guidance or expert reports relevant to the decision i.e. medical reports from a consultant/details of property interests/details of business accounts/adequate valuations (Articles 12(2) of the 1998 Order)
F3.	The officer failed to identify a finding(s) which needed to be made on the basis of the rules of entitlement relevant to the claim or revision
F4.	The decision was based on a misinterpretation/misunderstanding of the evidence available to the officer
F5.	The officer took into account wholly unreliable evidence
F6.	The officer disregarded relevant evidence
F7.	The officer failed to identify/resolve an obvious conflict in the evidence
F8.	The officer did not action additional relevant evidence provided after his decision was made and initiate a revision
F9.	The officer made errors of calculation
R1.	The appeal was made because the officer did not give adequate reasons for his decision when requested under regulation 28 (1) (b) of the Decisions and Appeals regulations 1999
L1.	The officer did not identify the correct legal rules relevant to the claim/revision
L2.	The officer misinterpreted the legal rules relevant to the claim
L3.	The officer failed to identify a change in legal rules relevant to the claim/revision
L4.	The officer overlooked a relevant Commissioners decision/Court decision which was/should have been available to him
L5.	The officer failed to obtain additional legal advice necessary to deal with the claim
O.	Other error discovered

Table 3 explains why correctly made decisions were overturned by tribunals.

Table 3:

Correctly made Decisions Overturned by Tribunals	
Reason Decision was overturned	
FA.	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.

Table 4 shows the number of occurrences against the reasons for incorrectness.

Table 4: Reasons for Incorrectness

Reason for Incorrectness		Number of Occurrences	% of Total
F1	Insufficient facts/evidence due to inadequate investigation of the claim or revision	10	18.2
F2	Failed to request adequate medical guidance or expert reports	1	1.8
F3	Failed to identify a finding(s) which needed to be made on the basis of the rules of entitlement	2	3.6
F4	Misinterpretation/misunderstanding of the evidence available to the officer	16	29.1
F5	Took into account wholly unreliable evidence	1	1.8
F6	Disregarded relevant evidence	9	16.4
F7	Failed to identify/resolve an obvious conflict in the evidence	5	9.1
L1	Did not identify the correct legal rules relevant to the claim/revision	8	14.5
L2	Misinterpreted the legal rules relevant to the claim	2	3.6
L4	Overlooked a relevant Commissioners decision/Court decision which was/should have been available to him	1	1.8
TOTAL		55	100

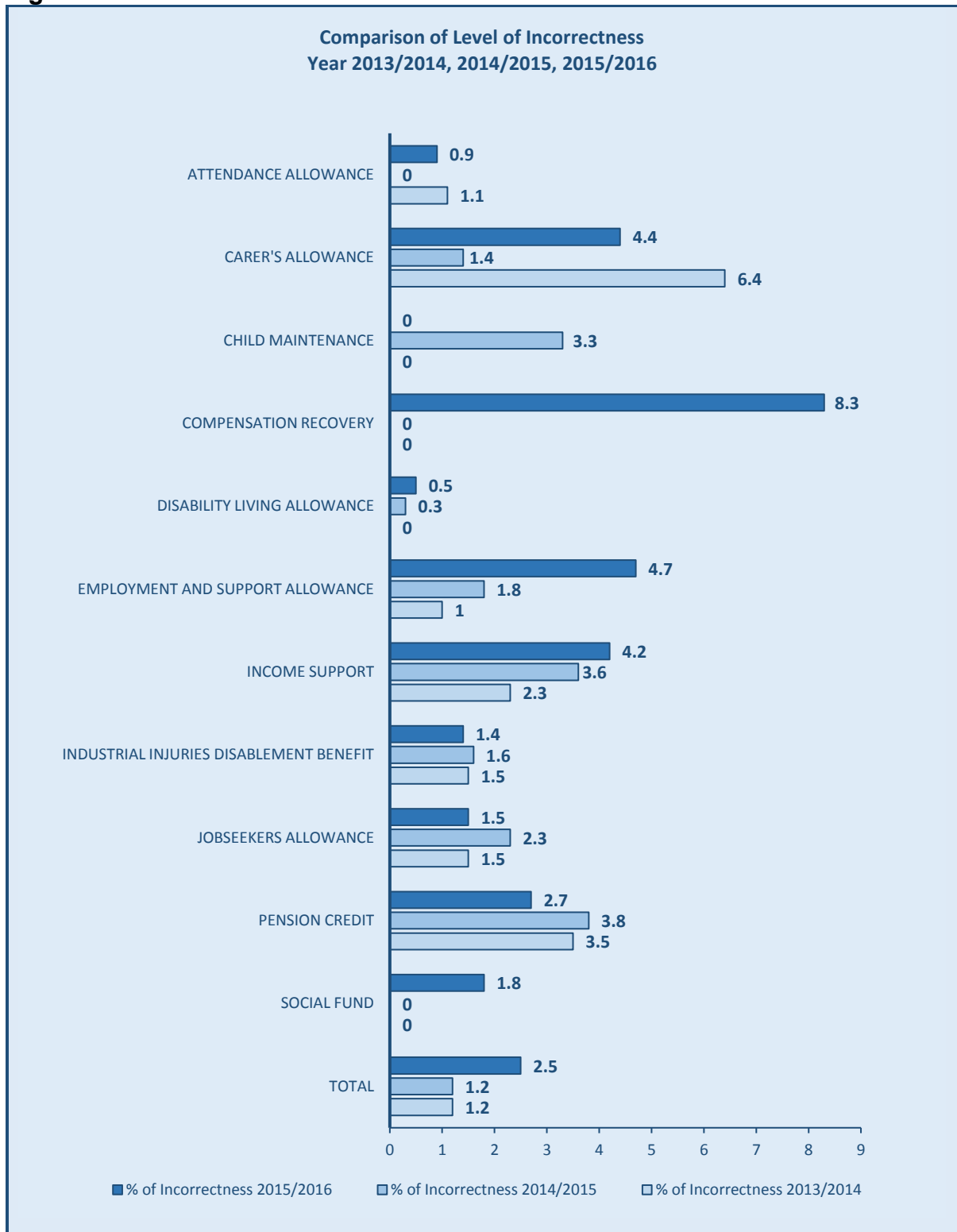
Table 2 on Page 11 sets out in full the reasons for incorrectly made decisions

The most common reason for incorrectness was ‘the decision of the officer was based on a misinterpretation/misunderstanding of the evidence available to the officer’ (F4). This reason was given 16 times representing 29.1% of all reasons.

The second most common reason for incorrectness was ‘the decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision’ (F1). This was given 10 times representing 18.2% of all reasons.

Figure 3 compares the level of incorrectness for years 2013/2014, 2014/2015 and 2015/2016.

Figure 3:



Bereavement Benefit, Incapacity Benefit, Maternity Allowance and State Pension are not included as there were no incorrectly made decisions identified in the three year period.

The overall total figures include all benefits monitored in the three year period.

Over the three year period 2013/14 to 2015/16 the overall level of incorrectness identified has increased from 1.2% in the previous two years to 2.5% in the current year.

Over the three year period Child Maintenance, Industrial Injuries Disablement Benefit, Jobseekers Allowance and Pension Credit have maintained or improved their overall standard of decision making. In the remaining benefits the standard has either decreased markedly year on year or in the current year.

An analysis of the individual benefits over the three year period is set out below.

Attendance Allowance

The overall standard of decision making in this category continues to be high with only 0.9% of all decisions monitored being identified as incorrectly made in the current year. This is, however, a slight decrease in standards on the previous year in which there were no incorrectly made decisions identified.

Carer's Allowance

The standard of decision making in this category has fluctuated over the three year period. While the level of incorrectness fell from 6.4% in 2013/14 to 1.4% in 2014/15, it rose again by 3% in the current year, with a level of incorrectness of 4.4% being identified.

Compensation Recovery

While the number of cases available to be monitored in this category is small and there was not a valid sample size in the current year, the level of incorrectness rose from 0% in the previous two years to an unacceptably high 8.3%.

Disability Living Allowance (DLA)

There was a very slight decrease in the standard of decision making in this category with the level of incorrectness rising from 0.3% in the previous year to 0.5% in the current year. There were no incorrectly made decisions recorded in 2013/14. Despite the slight rise in the level of incorrectness, the standard of decision making in this benefit area continues to be high with the percentage rate of incorrectness at or below 0.5% over the three year period. There is a very high appeal rate and we can be confident in the overall monitoring results.

Employment and Support Allowance (ESA)

This benefit area has by far the highest appeal rate overall with volumes over the three years as follows; 11,402 in 2013/14, 4,689 in 2014/15 and 7,262 in the current year. The standard of decision making has decreased over the three year period, from 1% in 2013/14 to 1.8% in 2014/15 and further in the current year to 4.7%. As in DLA, given the appeal activity we can be confident in the monitoring results.

Income Support

There has been a steady decrease in the standard of decision making in the three year period in this category. In 2013/14 the level of incorrectness identified was 2.3%, this rose to 3.6% in 2014/15 and again to 4.2% in the current year.

Industrial Injuries Disablement Benefit

The standard of decision making in Industrial Injuries Disablement Benefit has remained steady over the three year period, averaging at 1.5%.

Jobseekers Allowance

The overall standard of decision making in this category is satisfactory. In both year 2013/14 and the current year, the level of incorrectness identified was 1.5%. In the intervening year there was a slight increase of less than 1%.

Pension Credit

The level of incorrectness identified in Pension Credit has improved during the three year period. While there was a negligible rise from 3.5% in 2013/14 to 3.8% in 2014/15, it has decreased to 2.7% in the current year.

Social Fund

Despite a rise in the level of incorrectness in the current year to 1.8%, the standard of decision making in this category is acceptable with no incorrectly made decisions being identified in years 2013/14 and 2014/15.

Correctly Made Decisions Overturned by Tribunals

Of the 1552 cases monitored, 274, representing 17.7%, were altered by the tribunal because the tribunal accepted evidence that the decision maker was not willing to accept (FA), or the tribunal was given additional evidence which was not available to the decision maker (FB). Neither of these comments are deemed to constitute an incorrectly made decision by the decision maker.

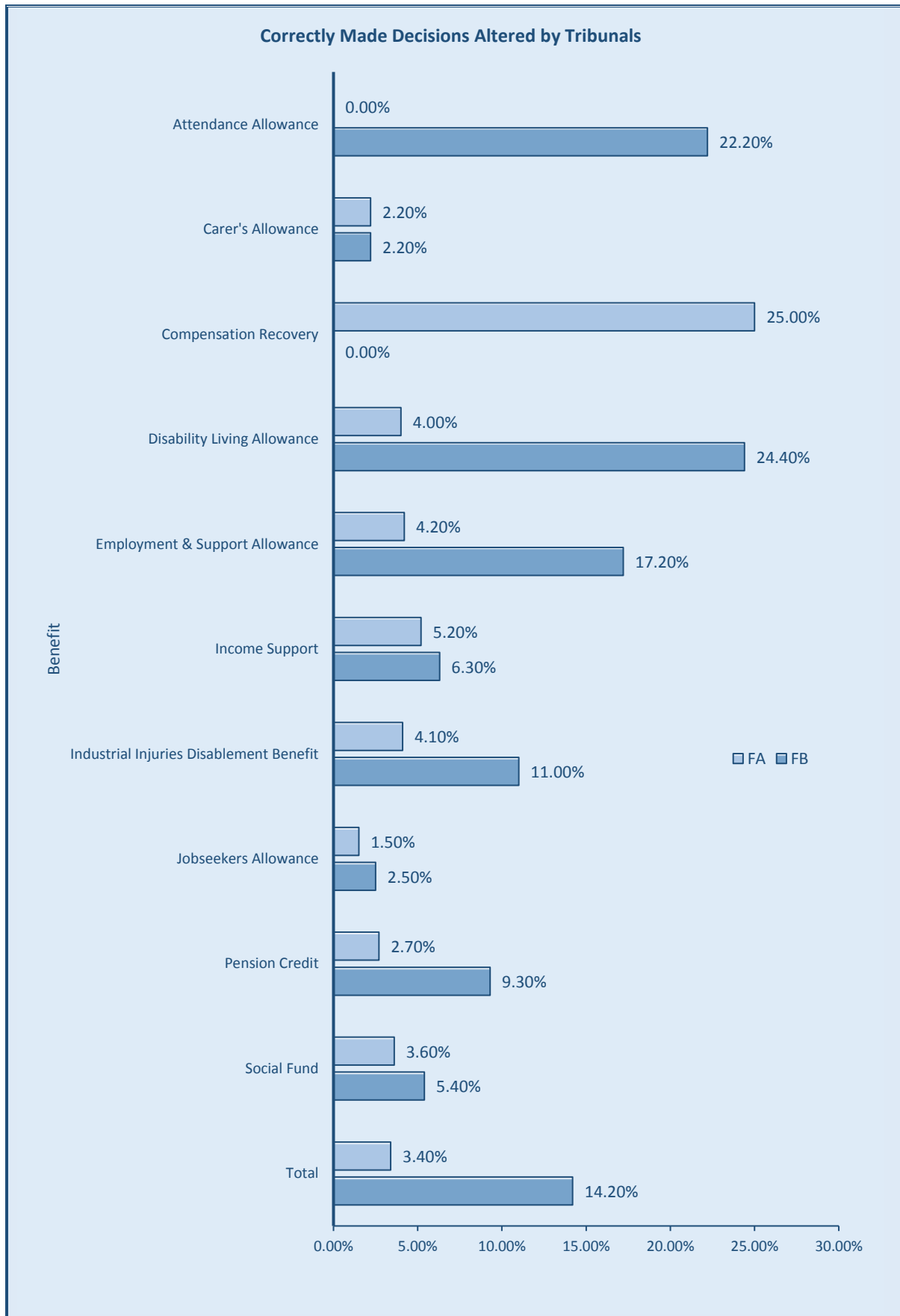
Table 5 and Figure 4 set out on a 'by benefit' basis the number and percentage of cases where the decision was judged to be correctly made, but altered by the tribunal.

Table 5:

Correctly Made Decisions Altered by Tribunals							
Benefit	Number Monitored	Total Altered	% Altered	FA	%	FB	%
Attendance Allowance	108	24	22.2	0	0.0	24	22.2
Bereavement Benefit	3	0	0.0	0	0.0	0	0.0
Carer's Allowance	90	4	4.4	2	2.2	2	2.2
Child Maintenance	24	0	0.0	0	0.0	0	0.0
Compensation Recovery	12	3	25.0	3	25.0	0	0.0
Disability Living Allowance	377	107	28.4	15	4.0	92	24.4
Employment Support Allowance	429	92	21.4	18	4.2	74	17.2
Incapacity Benefit	1	0	0.0	0	0.0	0	0.0
Income Support	96	11	11.5	5	5.2	6	6.3
Industrial Injuries Disablement Benefit	73	11	15.1	3	4.1	8	11.0
Jobseekers Allowance	203	8	3.9	3	1.5	5	2.5
Maternity Allowance	3	0	0.0	0	0.0	0	0.0
Pension Credit	75	9	12.0	2	2.7	7	9.3
State Pension	2	0	0.0	0	0.0	0	0.0
Social Fund	56	5	8.9	2	3.6	3	5.4
TOTAL	1552	274	17.7	53	3.4	221	14.2

*Bold indicates a complete census

Figure 4:



There were a total of 53 cases representing 3.4% of those monitored where the tribunal took a different view of the evidence that was available to the decision maker (FA) and 221 cases (14.2%) where additional evidence was provided to the tribunal that the decision maker did not have (FB). Of those cases with a valid sample size, Income Support had the highest percentage of cases (5.2%) overturned in the FA category. In the FB category Disability Living Allowance, Employment and Support Allowance and Attendance Allowance all had a significant percentage of appeals overturned due to the availability of additional evidence provided at hearing stage.

Summary and Conclusion

This report analyses Departmental decision making standards in appeals received in The Appeals Service between 6 April 2015 and 5 April 2016. There were 14,247 appeals registered and 1,552 (10.9%) of the total, were monitored to assess the level of incorrectness of initial decisions made by officials of the Social Security Agency and the Child Maintenance Service.

Across all monitored cases, the level of incorrectness among initial decisions was 2.5%. There was a variation in the level of incorrectness of initial decisions across benefits. No incorrect decisions were recorded for Bereavement Benefit, Child Maintenance, Incapacity Benefit, Maternity Allowance and State Pension. Where incorrect decisions were recorded, they ranged from 0.5% (Disability Living Allowance) to 8.3% (Compensation Recovery).

A majority (71.8%) of cases where the initial decision was assessed as incorrect cited one reason for this incorrectness. The main reason recorded for the incorrectness in initial decisions was 'the decision was based on a misinterpretation/misunderstanding of the evidence available to the officer' (F4).

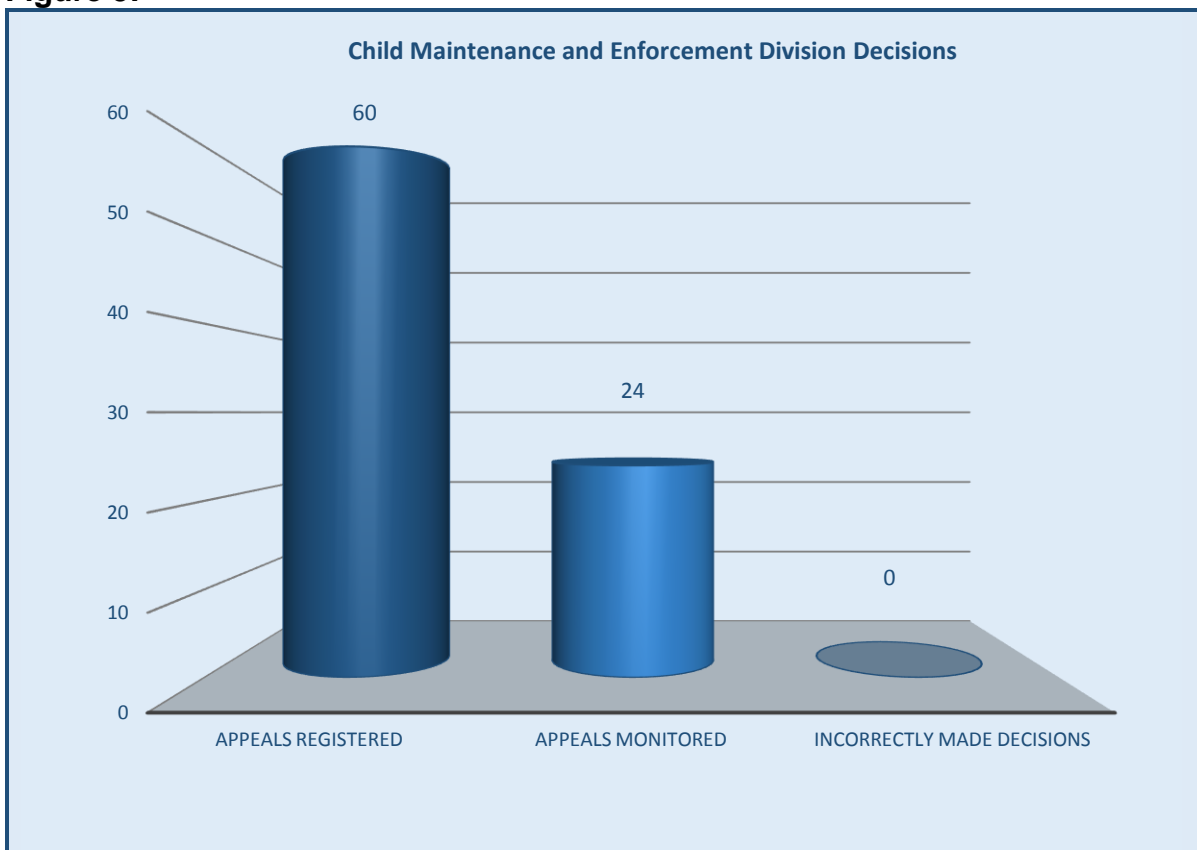
Chapter 3

Child Maintenance and Enforcement Division Decisions

40% of all Child Maintenance appeals were monitored. There were no incorrectly made decisions identified. This is an improvement on the previous year which was 3%.

Figure 5 sets out the number received, the number monitored and the number of incorrectly made decisions.

Figure 5:



In addition there were no correctly made decisions overturned by the tribunal because the tribunal accepted evidence which the decision maker was unwilling to accept, or the tribunal was given additional evidence that was not available to the decision maker.

*Caution in interpreting this result is advised given the small number of appeals available for monitoring (*Page 7, paragraph 3 of Chapter 2*).

Comment – Child Maintenance

None.

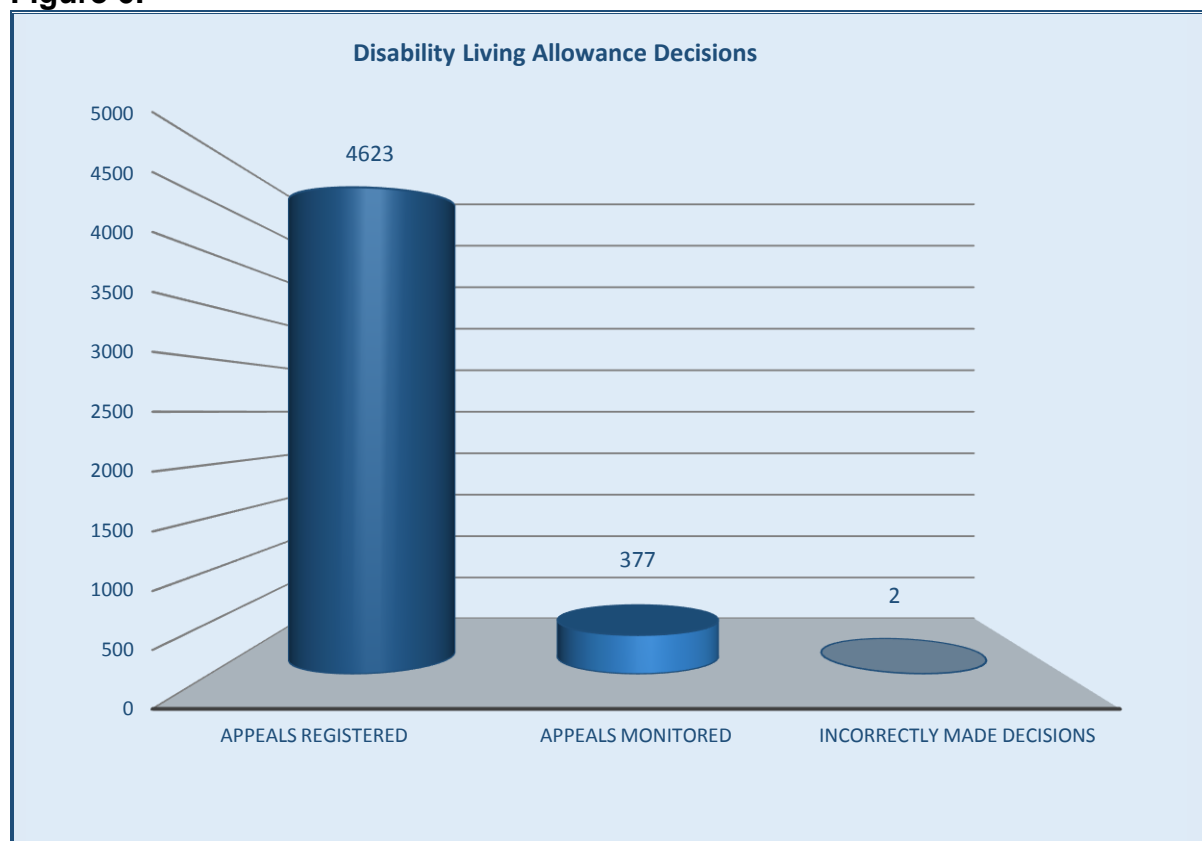
Chapter 4

Disability Living Allowance Decisions

This category is one of the largest areas of appeal activity in this reporting year. 8.2% of all appeals received were monitored. The level of incorrectness identified was 0.5%. This is on a par with the previous reporting year.

Figure 6 sets out the number received, the number monitored and the number of incorrectly made decisions.

Figure 6:



There were two incorrectly made decision identified in this category; ‘the decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision’ (F1) and ‘the decision was based on a misinterpretation/ misunderstanding of the evidence available to the officer’ (F4).

In the first case the claimant had low rate care on the basis of requiring assistance with bodily functions and was appealing for middle rate care. While the tribunal accepted that the claimant had arthritis and alcohol problems and required help at times to put on his trousers, the GP factual report was clear that self-management of care was not an issue. The tribunal removed entitlement to the care component.

In the second case the claimant had previously had an award of high rate care and mobility which was removed in its entirety by the decision maker. The claimant had cancer and now lymphedema right hand and arm, which restricted movement and as a result required assistance with personal care. The tribunal awarded low rate care.

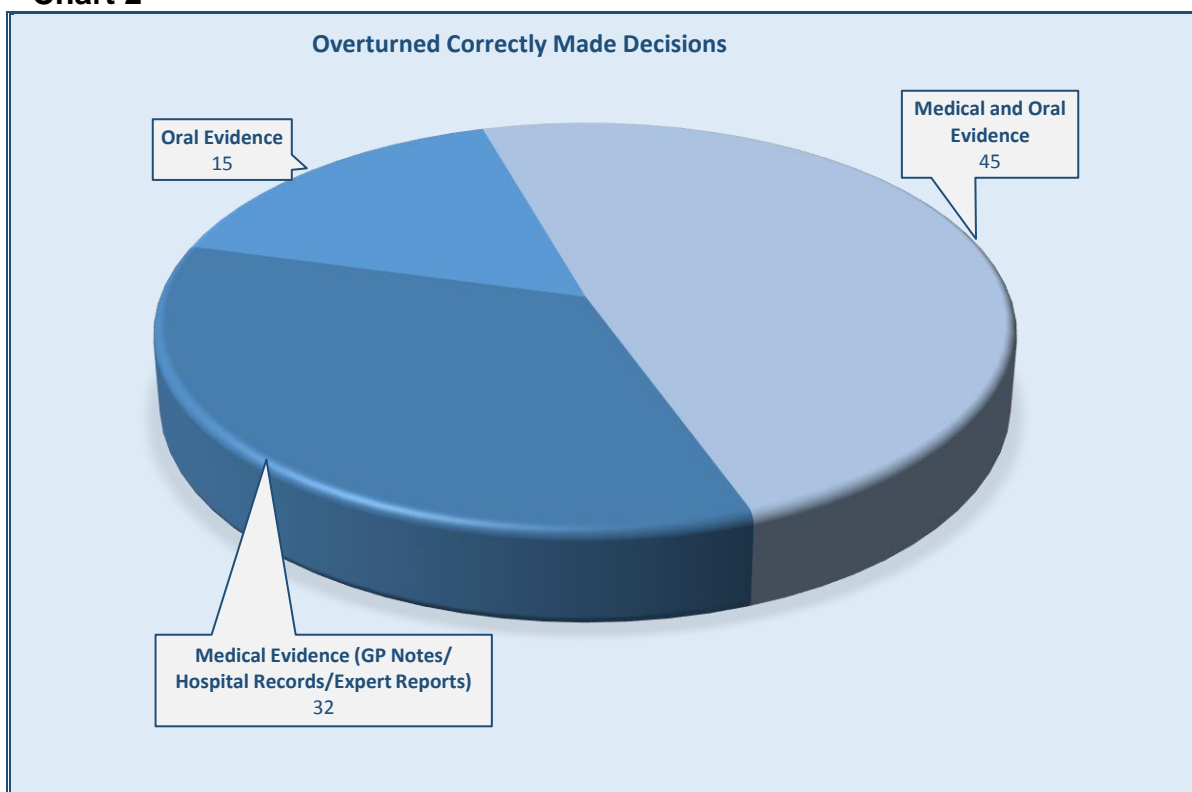
Table 6 illustrates that in 107 cases, representing 28% of those monitored, while correctly made by the decision maker, were overturned by the tribunal because the tribunal accepted evidence which the decision maker was unwilling to accept (15 cases), or the tribunal was given additional evidence that was not available to the decision maker (92 cases).

Table 6

Reasons for Overturning Correctly Made Decision		Number of Cases
FA.	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	15 (14%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	92 (86%)

Chart 2 gives a breakdown of additional evidence available to tribunals.

Chart 2



In 15 cases the direct evidence of the appellant or a witness was the sole reason for the decision being overturned. In a further 45 cases a combination of direct oral evidence and medical evidence by way of GP or hospital records, or a medical report from the GP or a consultant, resulted in the tribunal reaching a different decision than the decision maker. Overall, the decisions in 77 cases, representing 20.4% of cases monitored were influenced by the availability of medical evidence to the tribunal.

As highlighted in all previous reports, these results continue to demonstrate that relevant information is available from claimants and medical professionals prior to making the decision on a claim.

Table 7 sets out a selection of comments made by the legal member of the tribunal in cases where additional information was made available to the tribunal.

Table 7

Comments made by the legal member	
1.	Additional evidence given by a witness, the appellant and by medical records. Appellant satisfies the conditions of entitlement to the higher rate of the care component of DLA and there are grounds to supersede the decision. Appellant was previously entitled to the middle rate of the care component.
2.	Additional evidence given in the form of GP notes and records. From the GP notes and records, it was decided that previous award should have been retained for a further period and it was reinstated.
3.	Additional evidence given by a witness, the appellant and medical records. Appeal allowed. Appellant is entitled to high rate mobility and high rate care. The decision maker had not seen the GP records or heard oral evidence from appellant and his wife.
4.	Additional evidence given by the appellant and medical records. Low rate mobility and low rate care day time attention (open ended award). Significant condition - congestive heart failure, low ejection fraction (29%), Ventricular Tachycardia, Implantable Cardioverter Defibrillator implanted. Also psychological effect. Credible witness.
5.	Additional evidence given by the appellant. The appellant is entitled to low rate care. No mobility. A consultant report indicated good progress. GP factual report gave same overall view. The decision maker correctly applied the law and the decision was reasonable - we had the advantage of hearing from the appellant and full notes. This meant we were able to take an overall view.
6.	Additional evidence given by medical records. Mobility decision not altered, conditions not satisfied. Award made for low rate care, main meal test. GP records revealed the severity of a shoulder injury - significant problems - permanent damage.
7.	Additional evidence given by medical records. Award of high rate mobility and middle rate care. Appellant has kidney failure and is on dialysis. Consideration of GP records confirmed the extreme seriousness of his medical condition and significant symptoms/restrictions.
8.	Additional evidence given by the appellant, a witness, in the form of an expert report and medical records. High rate of mobility component and low rate of care component (main meal test satisfied) awarded. Credible oral evidence from appellant and her adult son consistent with symptoms of several significant medical conditions. Employment and Support Allowance (ESA) report prepared three months post decision supportive in ESA support group (mobility).
9.	Additional evidence given by the appellant and medical records. Low rate mobility was granted - care was not. The appellant would not be able to go anywhere unfamiliar on his own.
10.	Additional evidence given by medical records. Award extended by one further year. Middle rate of care component - daytime attention for prompting/encouragement. Appellant has a diagnosed personality disorder. With encouragement he has engaged with therapies. Long term disability justified a larger award.
11.	Additional evidence given by a witness (appointee) and medical records. Child appellant. Middle rate of care component awarded. Tetralogy of Fallot - congenital heart condition - necessitated some increase in attention to feeding and physical development and much involvement with specialists. Corrective surgery – good recovery and good progress, hence short award.
12.	Additional evidence given by the appellant. Grounds to supersede established. No entitlement to care (as per decision maker) however now entitled to low rate mobility. The decision maker could have reached the decision made but the tribunal was influenced by the appellant's evidence. There were a number of medical reports which covered the relevant area in varying degrees of detail. The decision maker refers to an improvement since a previous award. Reference to the old and current award would have been helpful, for example to show any improvement, but this was not the case. However the decision maker did appreciate the new evidence.
13.	Additional evidence given by a witness, the appellant, medical records and in the form of an expert report handed in. Low rate care and low rate mobility allowed. We had a medico - legal report e.g. for psychological, oral evidence from appellant and witness (his wife) and GP records including hospital letter. In the light of these the departmental presenting officer indicated he was sympathetic and left it to the tribunal.

14.	Additional evidence given by Examining Medical Practitioner (EMP) report. To award high rate mobility, low rate care (main meal test) for a limited period. We accepted the EMP report that noted there are contradictions in GP records re the cause - evidently the clinical finding on previous MRI do not explain the alleged severity of symptoms. There has been a new MRI recently but no results. We feel therefore limited award is appropriate.
15.	Additional evidence given by medical records. High rate mobility and low rate care awarded. The decision maker only had the GP factual report that contained adequate details but did not quantify. The decision maker did have limited evidence and should have considered getting letters from the hospital or an EMP.
16.	Additional evidence given by the appellant, medical records and in the form of an expert report handed in. Awarded low rate care component for one year. Evidence of aid and stair lift. Mobility impaired but not 'virtually unable to walk'. Deterioration since date of decision, therefore short award.
17.	Additional evidence in the form of a letter from GP post decision of palliative lung carcinoma and notice of subsequent death. Treated under special rules by Tribunal. Entitled to high rate care and high rate mobility, under special rules, from date of claim to date of death. A GP factual report contained adequate details which indicated reduced exercise tolerance but did not suggest significant functional problems. This formed the basis of the decision maker's refusal. Subsequent medical reference to palliative cancer. This was an unusual appeal as at the time of application there was no reference to lung cancer. This appears to have been mentioned post decision.
18.	Additional evidence given by the appellant, a witness (Mother), GP records and an expert report (ESA 85). Low rate mobility component and low rate of care component (daytime attention required to avoid/ mitigate harmful self-neglect) allowed. Evidence of very disturbed and traumatic childhood. Ambulance called after panic attack in shop previously. Ongoing and lengthy contact with mental health services. ESA report, GP medical records and appellant's presentation today are all consistent with awards. Decision based on GP factual report was not unreasonable.

Recommendations – Disability Living Allowance

The issues identify remain the same as those in previous reports and consequently I repeat my comments from the last report.

Previous Year

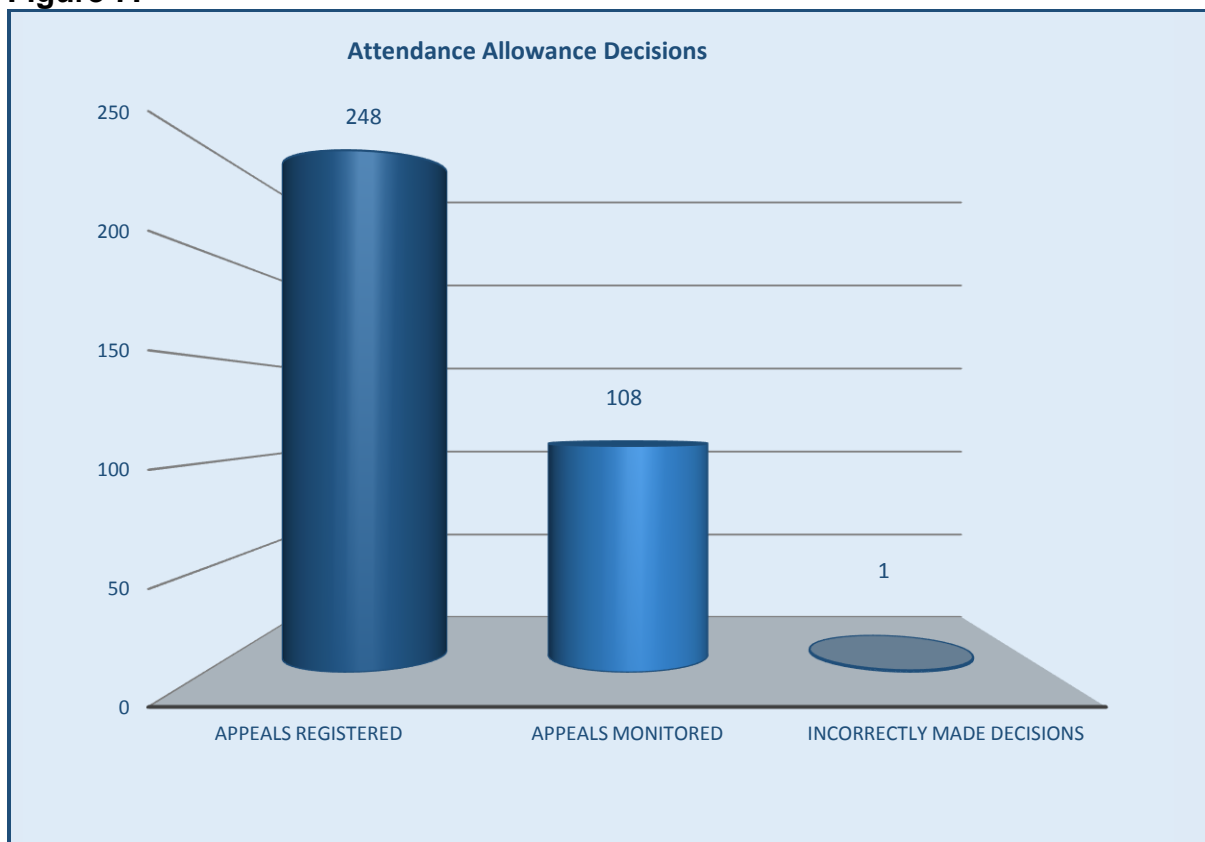
As in all previous reports there continues to be concern regarding the number of decisions that are overturned due to further medical evidence. The department is asked to consider what further steps can be taken to obtain additional medical information either at source from the medical profession or directly from the claimant prior to decision making.

Attendance Allowance

As Attendance Allowance is a relatively small benefit in terms of appeal activity, 43.5% of appeals received were monitored. The level of incorrectness identified was 0.9% a slight increase on the previous year.

Figure 7 sets out the number received, the number monitored and the number of incorrectly made decisions.

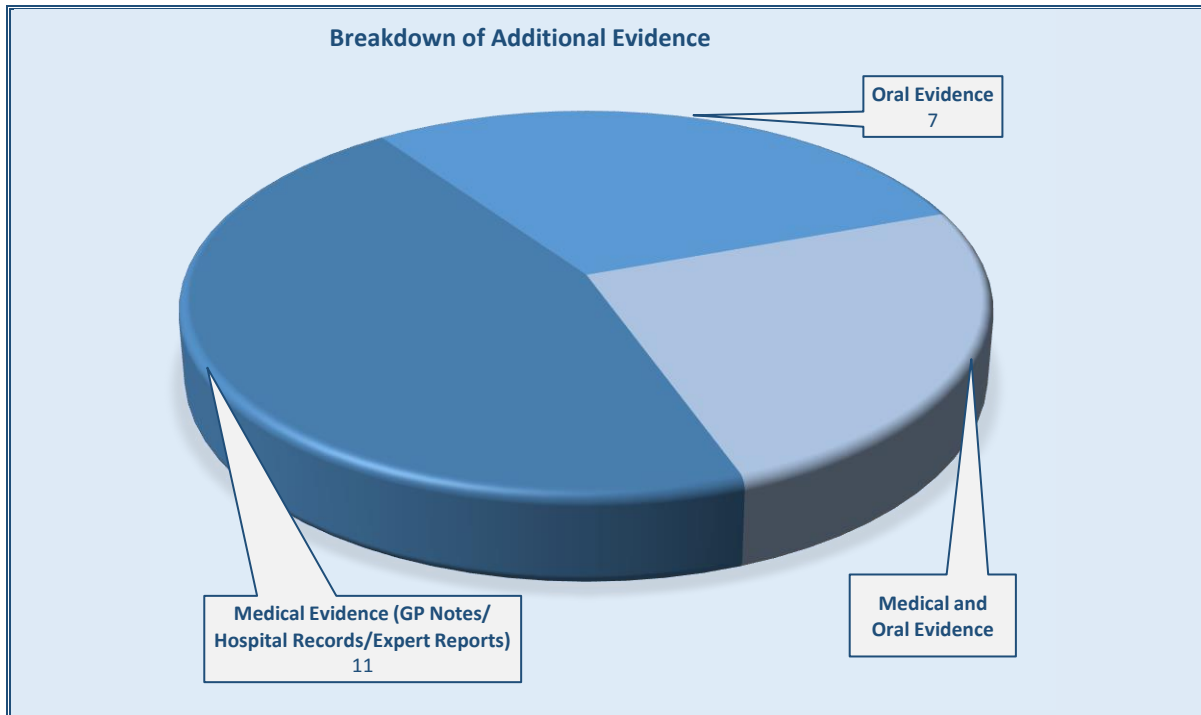
Figure 7:



There was one incorrectly made decision identified in this category. The legal member commented that the officer misinterpreted the legal rules relevant to the claim (L2). The issue before the tribunal was an overpayment of benefit. The date of the entitlement decision inserted in the overpayment decision, upon which the overpayment decision relied, was incorrect. The tribunal was asked to correct this error when making a decision.

In a further 24 cases, representing 22% of those monitored, while correctly made by the decision maker, were overturned by the tribunal because the tribunal was given additional evidence which was not available to the decision maker. Chart 3 gives a breakdown of additional evidence available to tribunals.

Chart 3



In 13 of the cases where additional evidence was available, the tribunal relied upon the direct oral evidence of the appellant and/or witnesses. In the remaining cases the additional evidence presented was by way of GP records, an expert report or a combination of these. Overall 22.2% of those monitored were overturned due to additional information.

Table 8 sets out a selection of comments made by the legal member of the tribunal in cases where additional information was made available to the tribunal.

Table 8

Comments made by the legal member	
1.	Additional evidence given by the appellant. Appellant is entitled to the high rate of Attendance Allowance, qualifying period satisfied. We had the GP records and medical report indicating that appellant probably has terminal cancer of the calcium, liver, lungs and arterial nodes. At the date of decision the diagnosis was Gravis disease.
2.	Additional evidence given by a witness and the appellant. Low rate of Attendance Allowance (daytime attention frequently required). Examining Medical Practitioner (EMP) accepted he had care needs by reason of obesity (BMI of 61) and joint pain. Difficulty walking, standing and bending. Attended hearing with his sister who cares for him. Credible witnesses. EMP may have understated extent of attention required.
3.	Additional evidence given by the appellant. Low rate of Attendance Allowance (daytime attention) awarded. Credible appellant. Significant and consistent support from several family members. Evident physical and mental loss of independence. Well prepared submission. On this occasion appellant's evidence was preferred.
4.	Award Attendance Allowance - lower rate - day. Most weight placed on evidence given by the appellant in relation to overturning the decision. However tribunal accepted evidence contained in the claim form and the GP factual report as being supportive of the decision to award benefit (which the officer was not willing to accept).
5.	Additional evidence given by medical notes. Notes confirm deteriorating hearing condition and worsening arthritis. Appellant is 80 years of age with evidence of deteriorating health problems.
6.	Additional evidence given by medical records (GP notes and records) which included hospital letters. Notes and hospital letters confirm deteriorating condition regarding arthritis (especially hands) and sight.
7.	Additional evidence in the form of an expert report handed in. Lower rate Attendance Allowance award made for 2 year period. Documentary evidence. Reworking and auditing of EMP reports provide a less than satisfactory basis for decision making.

Recommendations – Attendance Allowance

The issues identify remain the same as those in previous reports and consequently I repeat my comments from the last report.

Previous Year

Decision making in this area continues to be very good. However like DLA there is a high percentage of decisions overturned due to additional medical and other evidence. The recommendations made in DLA therefore also apply to this benefit.

Carer's Allowance

The appeal rate in Carer's Allowance (CA) is low. To obtain a meaningful sample, 55.9% of appeals received were monitored. The level of incorrectness identified was 4.4%. This is a decrease in standards of 3.0% on the previous year.

Figure 8 sets out the number received, the number monitored and the number of incorrectly made decisions.

Figure 8:

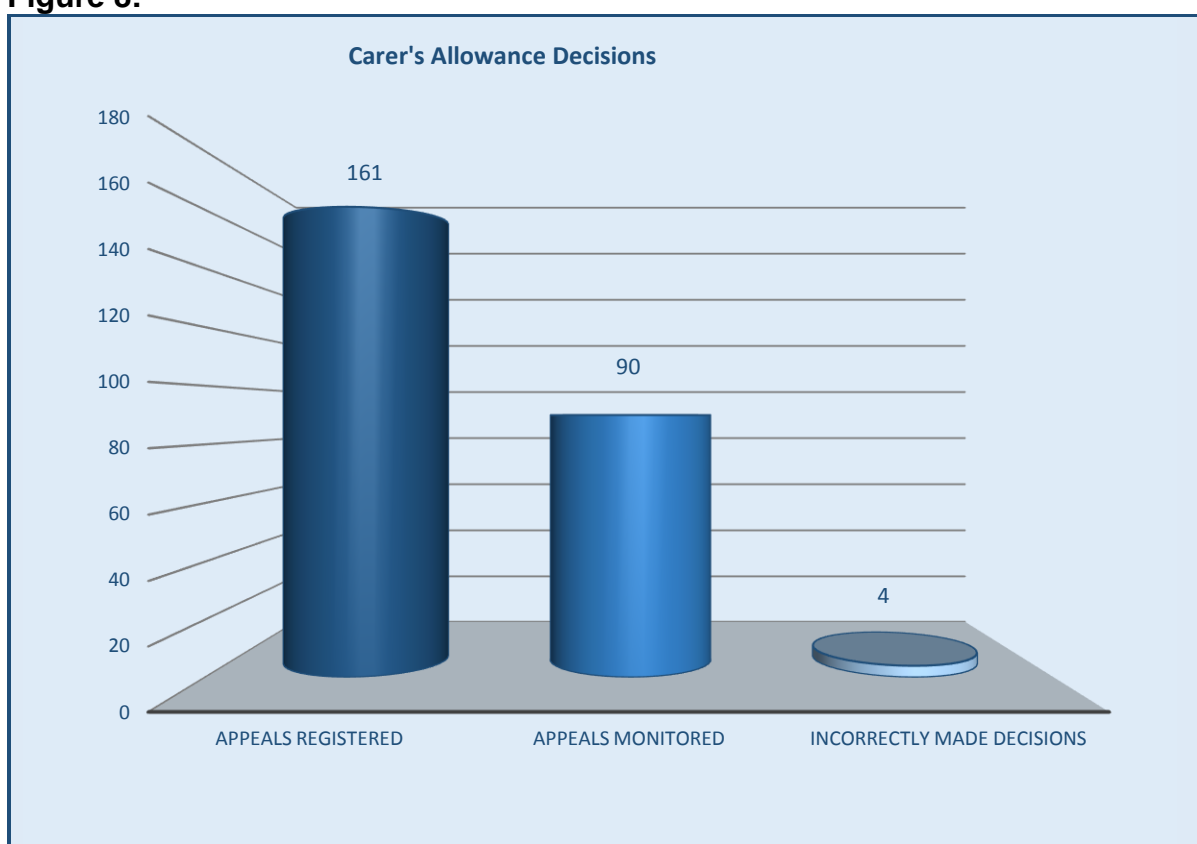
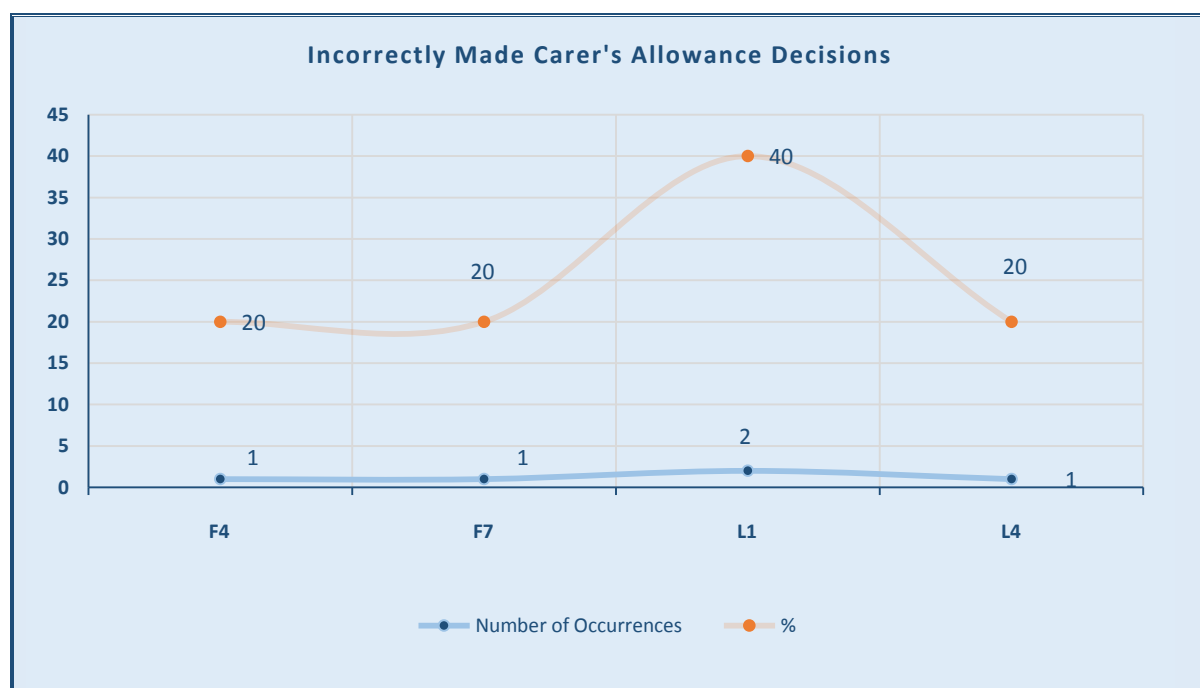


Table 9 and Graph 1 set out the number of occurrences against the reasons for incorrectness. There were four reasons identified for decisions being incorrectly made and there were overlapping reasons in one case.

Table 9

Reasons for Incorrectness	F4	F7	L1	L4
Number of Occurrences	1 (20%)	1 (20%)	2 (40%)	1 (20%)

Graph 1



In three of the four appeals the issue before the tribunal was the overpayment of benefit. In two of these, the way in which earnings had been calculated was found by the tribunal to be incorrect. In the first case the legal member stated that the claimant's earnings could and should have been calculated by reference to average net pay across a 52 week period (where earnings were below income threshold for CA) rather than over 4 week periods, where pay exceeded threshold in some periods. The legal member commented that earnings were not fairly or accurately reflected by the decision maker's method of calculation.

In another similar case the Officer overlooked a relevant commissioner's decision / court decision, which should have been available to him. Appeal was allowed and the revised O/P decision before the tribunal was not confirmed. The tribunal found that

there was no overpayment of Carers Allowance and no recovery due. The method by which the department calculated the earnings threshold in 4 week periods was flawed. Some weeks the monthly pay, multiplied by 12 and divided by 52, exceeded the threshold and some weeks were below. But on a yearly basis, after allowances, appellant was within the limit divided by 52 weeks. The department has discretion. Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1996 - Regulation 8 applied. Also Commissioner's decision CG/4941/2003. The decision maker followed departmental guidance.

In another case the legal member commented that there was no failure to disclose a material fact. The claimant continually reported changes to her employment and to her wages. The department's representative agreed that a letter advising the claimant of the weekly allowable net earnings after deductions for expenses was ambiguous and would have required complicated arithmetic each time a wage was received. Also there was no clear figure for the claimant to work from. It was not clear to the tribunal what material fact the claimant had failed to report.

Table 10 illustrates that a further 4 cases, representing 4.4% of those monitored, while correctly made by the decision maker, were overturned because the tribunal accepted evidence that the decision maker was not willing to accept (2 cases) or the tribunal was given additional evidence that was not available to the decision maker (2 cases).

Table 10

Reasons for Overturning Correctly Made Decision		Number of cases
FA.	The tribunal accepted evidence which the officer was not willing to accept.	2 (50.0%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	2 (50.0%)

The oral evidence of the appellant was the additional evidence in both cases.

Comment – Carer's Allowance

I have some concerns that there has been an increase in the level of incorrectness to 4.4%. It was 1.4% last year. Despite this I believe that the errors identified this year remain quite case specific and could be easily addressed.

Employment and Support Allowance

Employment and Support Allowance (ESA) is by far the largest category of appeal activity in this reporting year. 5.9% of all appeals received in this category were monitored. The level of incorrectness was 4.7%. This is a decrease in standards of 2.9% on the previous year.

Figure 9 sets out the number received, the number monitored and the number of incorrectly made decisions.

Figure 9

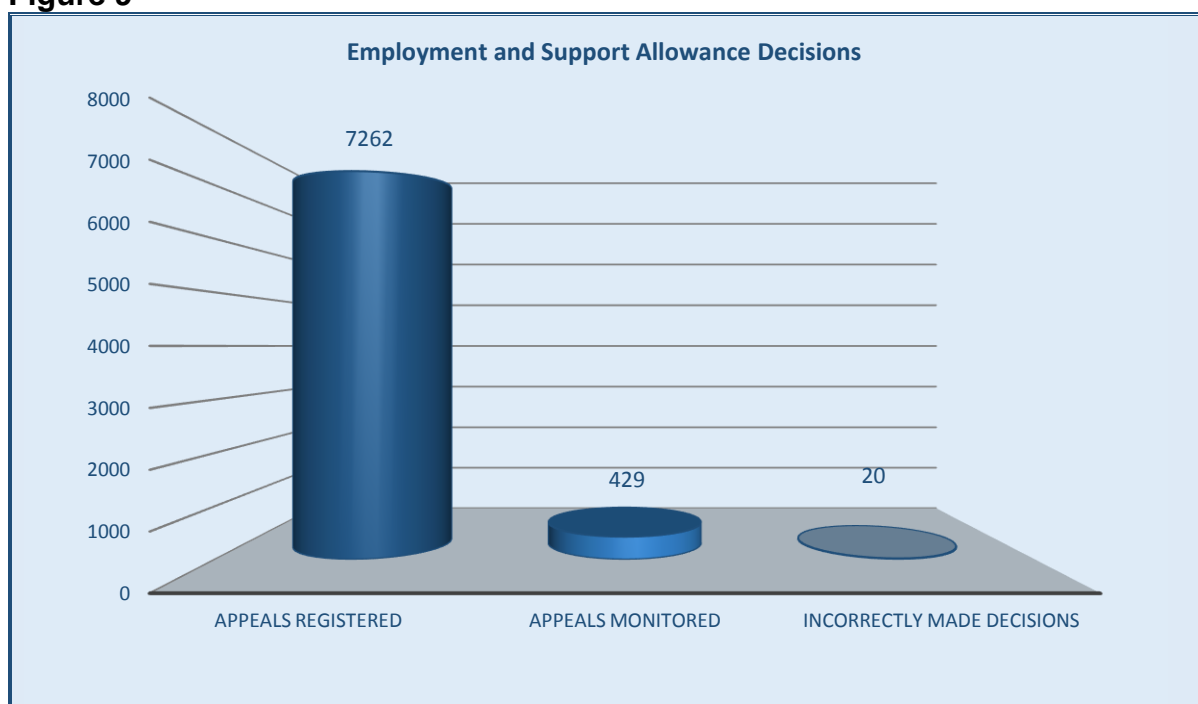
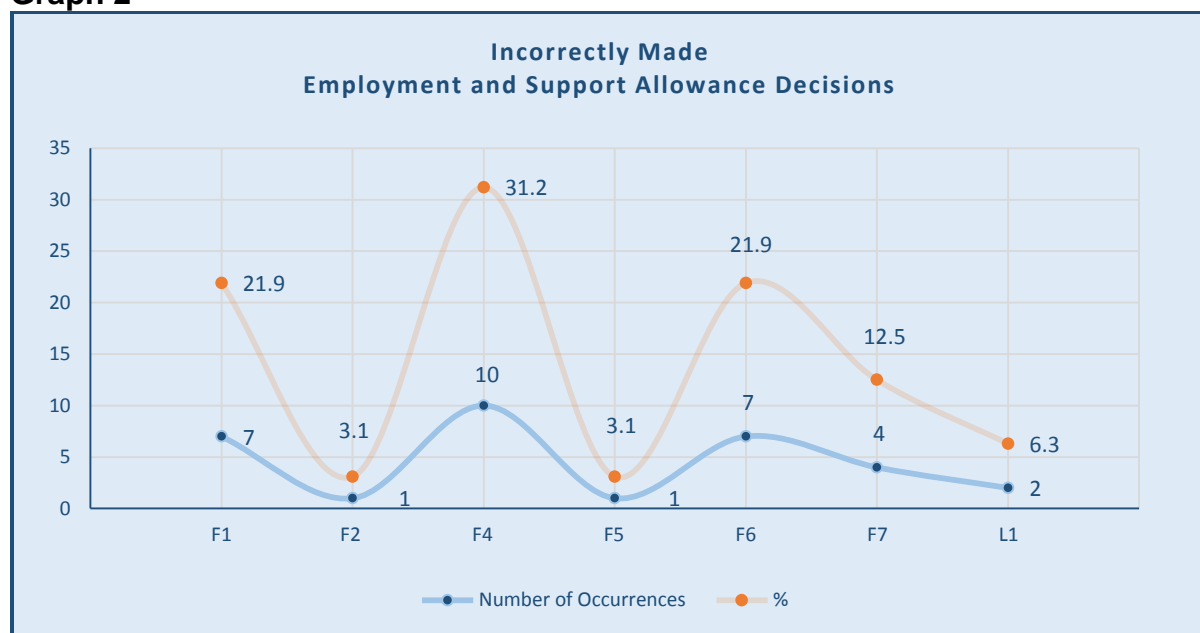


Table 11 and Graph 2 set out the number of occurrences against the reasons for incorrectness. There were seven separate reasons identified for decisions being incorrectly made and overlapping reasons in all seven cases.

Table 11

Reasons for Incorrectness	F1	F2	F4	F5	F6	F7	L1
Number of Occurrences	7 (21.9%)	1 (3.1%)	10 (31.2%)	1 (3.1%)	7 (21.9%)	4 (12.5%)	2 (6.3%)

Graph 2



There were twenty cases identified as incorrectly made. A synopsis of the issues that arose are set out below in the table of comments received from the legal member of the tribunal on the day of the final hearing.

Table 12

Comments made by the legal member	
1.	The decision of the officer was based on insufficient facts due to inadequate investigation of the claim. Department awarded 6 points for the standing and sitting descriptor. Having heard from the appellant we find that he ought to have been awarded 9 points for standing and sitting and 6 points for the mobility descriptor. Decision was defective because it failed to properly explore issues the appellant had with walking and the issue of appellant being able to stand was not properly investigated.
2.	The decision of the officer was based on insufficient facts due to inadequate investigation of the claim. Regulation 29(2)(b) satisfied. PIP awarded on basis of oral evidence of appellant supported by solicitor's letter. The Health Care Professional (HCP) took little note/regard of how domestic circumstances impede on appellant's life and daily activity. HCP failed to take adequate account of how appellant's day was spent, and how this impacts appellant's quality of daily living.
3.	The decision of the officer was based on insufficient facts due to inadequate investigation of the claim. ESA - mobilising - 6 points awarded. Clear evidence of mobilising difficulties. Inadequate consideration given to mobilising given evidence on papers re knee pain.
4.	The decision of the officer was based on insufficient facts due to inadequate investigation of the claim and the officer failed to request adequate medical guidance or expert reports relevant to the decision. Schedule 3 activity 1(a). Credible evidence given by appellant supported by medical evidence.
5.	The decision of the officer was based on insufficient facts due to inadequate investigation of the claim, officer took into account wholly unreliable evidence, disregarded relevant evidence and failed to identify an obvious conflict in the evidence. 18 points added to 0 points on clarification of standing and sitting problems. Had been awarded ESA twice in past by decision maker. No change in appellant's circumstances - clear and significant. Department held records of 2 previous awards of ESA.

6.	The decision was based on a misinterpretation of the evidence available to the officer. Appeal allowed under Regulation 29(2)(b). Requirement of Regulation 29(2)(b) satisfied.
7.	The decision was based on a misinterpretation of the evidence available to the officer. Appellant achieved 18 points within descriptors standing and sitting, getting about and coping with social engagement.
8.	The decision was based on a misinterpretation of the evidence available to the officer. Decision maker had awarded points for standing and sitting only. Tribunal considered points should be awarded for mobilising. The appellant's evidence was consistent and credible.
9.	The officer disregarded relevant evidence or rather failed to give adequate weight to available relevant evidence. F6 is the main reason as described above but it is not strictly correct to say the evidence was entirely "disregarded", as it was referenced in the decision making process. The decision maker should have given further weight to the report of the orthopaedic surgeon. The recommendation of a total hip replacement for a woman aged only 52 based upon her "significant problems and increasing pains" provided strong support for the appellant's case. The findings of the HCP regarding functional restriction should have been treated with caution when they already described a limit to how often the appellant could overcome problems standing and sitting. Appeal allowed. Appellant has limited capability for work. The tribunal clearly attached more weight to the evidence available from the appellant's consultant.
10.	The decision was based on a misinterpretation/misunderstanding of the evidence available and the officer disregarded relevant evidence. The EMP medical evidence from 2012, 2013 and 2015 was consistent in detailing the appellant has a persistent mental health illness that makes him very reclusive.
11.	The decision was based on a misinterpretation/misunderstanding of the evidence available and the officer disregarded relevant evidence. ESA payable to the appellant. The decision maker adopted the same (erroneous) approach as the HCP – physiotherapist; in ignoring the fact that the appellants inability to cope socially and get about was a result of anxiety ie. a mental health condition.
12.	The decision of the officer was based on a misinterpretation of the evidence. The officer disregarded relevant evidence and failed to identify an obvious conflict in the evidence. Tribunal satisfied that appellant suffered from unstable angina during one relevant period. Tribunal accepted (a) oral evidence of appellant and (b) medical evidence included in HCP assessment that was disregarded or overlooked by HCP at assessment. Tribunal satisfied that Regulation 29(2)(b) applicable. Tribunal found that during the HCP assessment the appellant was describing symptoms of unstable angina - for which he was subsequently admitted to hospital. Sufficient weight was not attached to this complaint/concern by the HCP.
13.	The officer disregarded relevant evidence, failed to identify an obvious conflict in the evidence and did not identify the correct legal rules relevant to the claim. Over view of evidence – on an overview of the evidence regulation 29 applied. Department, guidance not followed re regulation 29.
14.	The officer disregarded relevant evidence, failed to identify an obvious conflict in the evidence and did not identify the correct legal rules relevant to the claim. Descriptors 13(c), 15(c), 16(c) were satisfied. This was a supersession case, the burden of proof lies with the department. The HCP failed to assess the diverticulitis mentioned in previous ESA85 and current ESA50. The appellant stated at hearing that she informed the HCP that her brother had committed suicide the morning of the medical but she wanted to continue.

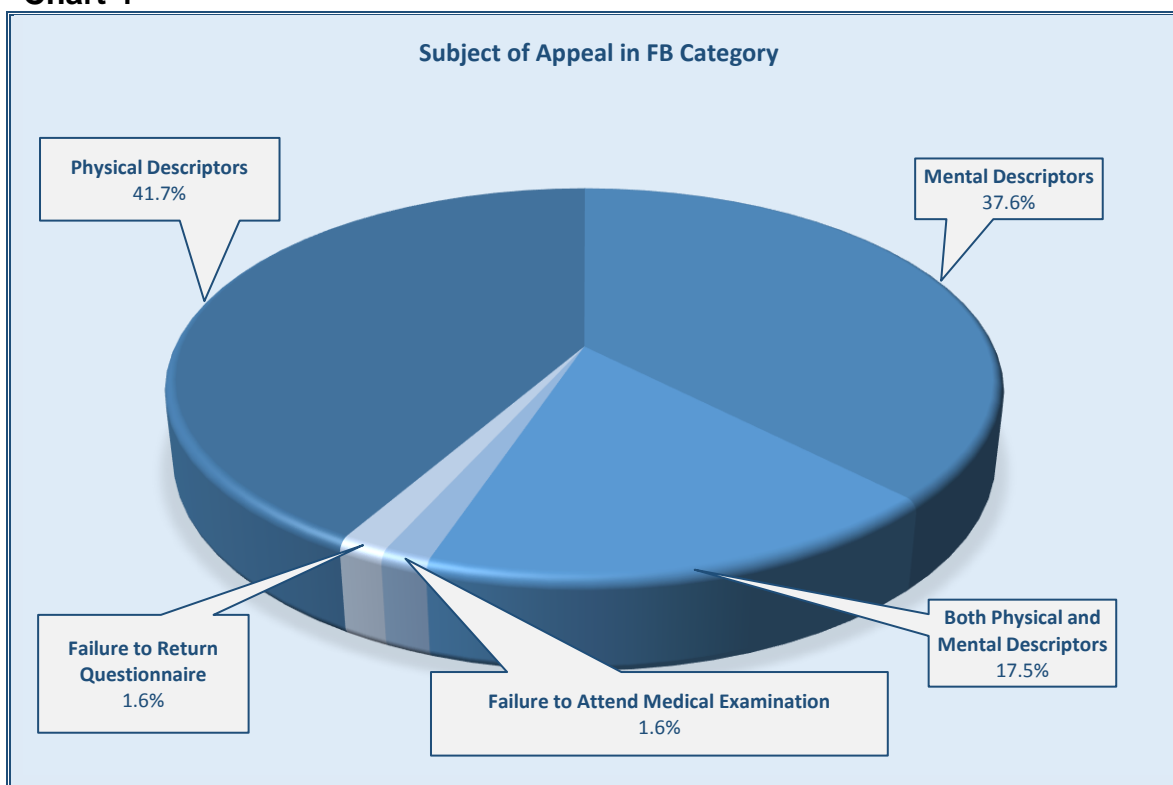
Table 13 illustrates that a further 92 cases, representing 21.4% of those monitored, while correctly made by the decision maker, were overturned because the tribunal either accepted evidence which the decision maker was unwilling to accept (18 cases), or the tribunal was given additional evidence that was not available to the decision maker (74 cases).

Table 13

Reasons for Overturning Correctly Made Decision		Number of Cases
FA.	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	18 (19.6%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	74 (80.4%)

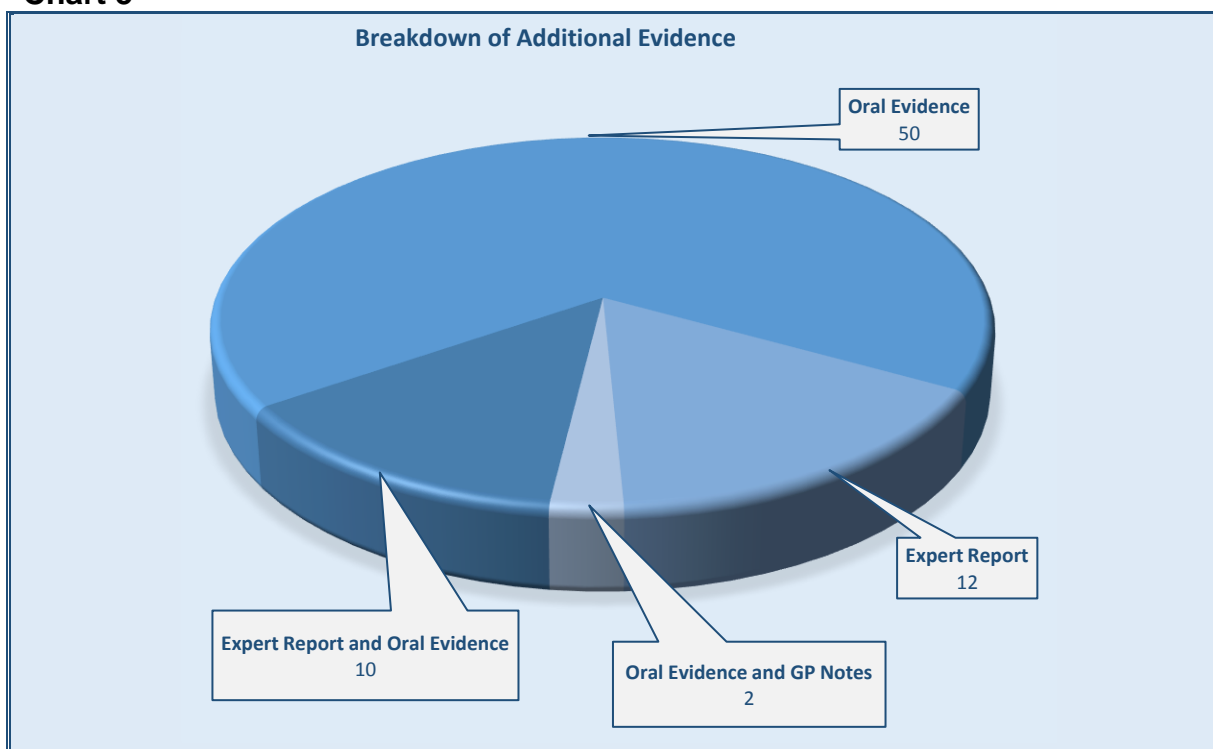
Charts 4 and 5 set out a breakdown of the issues before the tribunal and the spread of additional evidence available to tribunals.

Chart 4



In the FB category 41.9% of those overturned were appeals in respect of the physical descriptors of the limited capability for work test (LCW), while 37.8% were in respect of the mental descriptors. A further 17.6% were a mixture of both physical and mental. The remaining two cases were in respect of failure to attend a medical examination and failure to return a questionnaire.

Chart 5



Overall, decisions in this category were changed due to a combination of further medical evidence and oral and ocular evidence of the appellant, or a witness.

In 50 cases the direct evidence of the appellant or a witness was the sole reason for the decision being overturned. The provision of additional medical evidence, by way of General Practitioner (GP) notes and consultant reports, accounted for 12 cases. In a further 12 cases a combination of direct oral evidence and medical evidence by way of GP or hospital records, or a medical report from the GP or a consultant, resulted in the tribunal reaching a different decision than the decision maker. Overall, the decision in 24 cases, representing 5.6% of cases monitored, were influenced by the availability of medical evidence to the tribunal.

Table 14 sets out a selection of comments made by the legal member of the tribunal in cases where additional information was made available to the tribunal.

Table 14

Comments made by the legal member	
1.	Additional evidence given by a witness and the appellant. 14(c), 15(b) & 16(c) - regulation 35. The appellant clearly meets the support group. The tribunal noted that Health Care Professional (HCP) contacted the GP as a precaution which we felt was appropriate and to be commended.
2.	Additional evidence given by a witness and the appellant. Appellant has limited capability for work as result of mobility issues. Evidence from the appellant and her husband as to capabilities of appellant at date of decisions. Also contradictions with what was recorded by HCP.
3.	Additional evidence given by the appellant. The tribunal found that the appellant scored 18 points from the ESA descriptors and at the date of decision had limited capability for work. This followed cogent and credible oral evidence from the appellant. It should be noted that the appellant indicated in his ESA50 that he had bowel problems, had a colonoscopy last year and was being referred for another colonoscopy this year. Page 3 of ESA85 mentions this problem, the wording of descriptor 9(b) refers to "At risk".
4.	Additional evidence given by the appellant. The appeal heard evidence from the appellant as to her limitations and found same credible and awarded points accordingly.
5.	Additional evidence given by a witness and the appellant. 18 points awarded. 6 physical (chronic obstructive pulmonary disease) and 12 mental. Accepted evidence of daughter of appellant. Evidence of appellant and daughter found to be highly credible and decisive.
6.	Additional evidence given by a witness, the appellant and in the form of an expert report handed in. Appeal allowed. Tribunal found appellant scored 15 points under descriptor 8(b), the department had not awarded any points. Submission/report handed in by Welfare Support Officer from RNIB, giving more detail regarding condition suffered and impact on daily activities. The report by the HCP contained inconsistencies regarding the appellant's visual acuity, which were not resolved by the decision maker.
7.	Additional evidence given by a witness. The appeal was allowed. The appellant has limited capability for work. Oral evidence showed appellant has limited capability for work. It would have been helpful to have an updated psychology report.
8.	Additional evidence given by the appellant and in the form of a GP report handed in. Appeal allowed. Limited capability for work related activity - descriptor 1(a)(ii) (i.e. repeatedly mobilising more than 50 meters caused severe discomfort). Appellant had ruptured Achilles Tendon and the reconstruction had not really worked. Very limited analgesia after ulcer ruptured (advised caused by naproxen).
9.	Additional evidence - given by the appellant. Mental health problems significant. Engagement with mental health team at time of HCP assessment significant. Struggles to cope with social engagement. Limited capability for work. Needs accompanied by sister to shop. Avoids social contact engagement as it causes significant distress.

Recommendations – Employment and Support Allowance

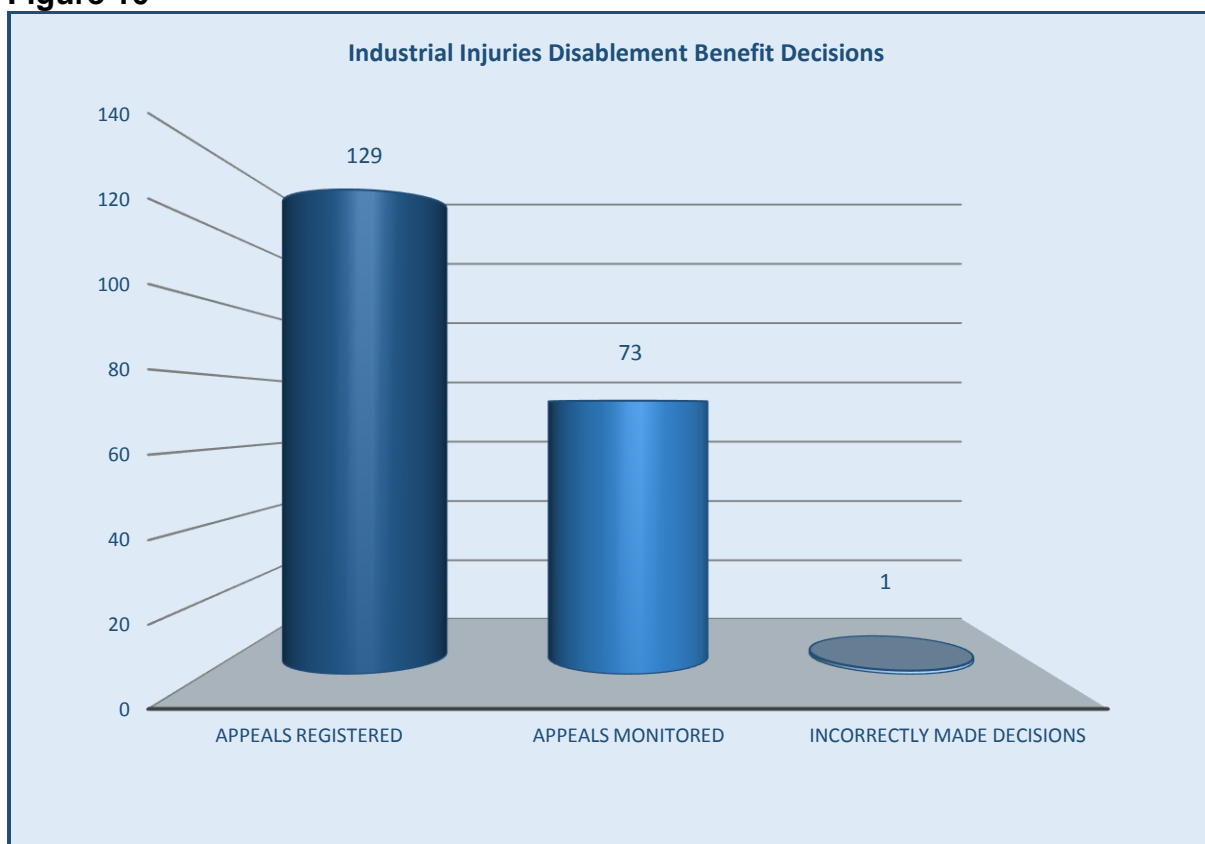
Again this reporting year whilst acknowledging the large number of appeals I note that the level of incorrectness has increased from 1.8% in the previous year's report to 4.7% this year. There remain problems with the interpretation of medical evidence already available to decision makers. As with DLA and AA, greater emphasis could be placed on seeking further medical evidence prior to decision. I refer to the comments about healthcare professionals and recommendations about medical evidence mentioned in the foreword to this report.

Industrial Injuries Disablement Benefit

There is a low appeal rate in this benefit. To obtain a meaningful sample, 56.6% of Industrial Injuries Disablement Benefit (IIDB) appeals received were monitored. The level of incorrectness identified was 1.4%.

Figure 10 sets out the number received, the number monitored and the number of incorrectly made decisions.

Figure 10



There was one incorrectly made decision identified.

The claimant had vibration white finger and the legal member commented that the officer misinterpreted the evidence available as the decision maker misunderstood the degree of the severity of the condition. The decision maker awarded 10% for life as a final assessment. This was changed by the tribunal to an award of 15% for life as a final assessment.

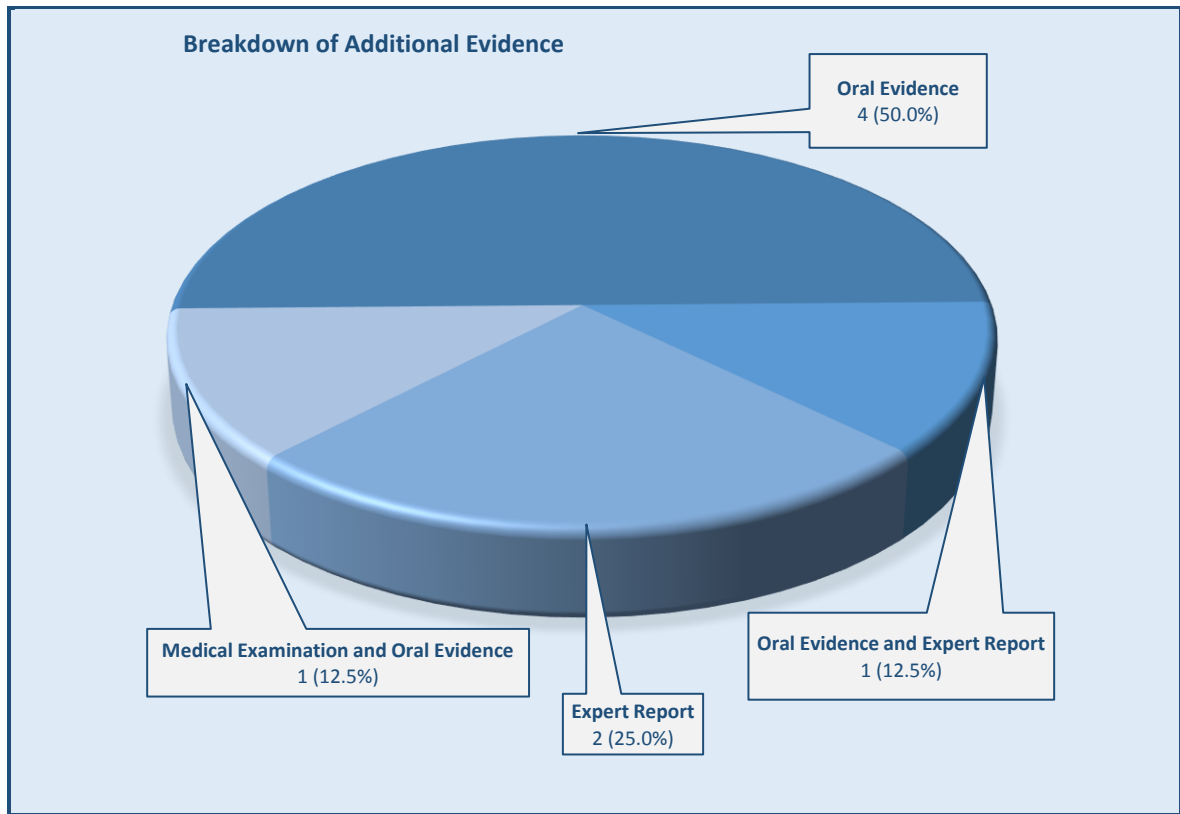
Table 15 illustrates that a further 11 cases, representing 15% of those monitored, while correctly made by the decision maker, were overturned because the tribunal either accepted evidence which the decision maker was unwilling to accept (3 cases), or the tribunal was given additional evidence that was not available to the decision maker (8 cases).

Table 15

Reasons for Overturning Correctly Made Decision		Number of Occurrences
FA.	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	3 (27.3%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	8 (72.7%)

Chart 6 illustrates why correctly made decisions were overturned, and the spread of additional evidence available to tribunals. As in other incapacity benefits, the additional evidence available to tribunals was by way of direct oral evidence by the appellant, additional medical reports, a combination of both and medical examination by the tribunal.

Chart 6



Recommendations – Industrial Injuries Disablement Benefit

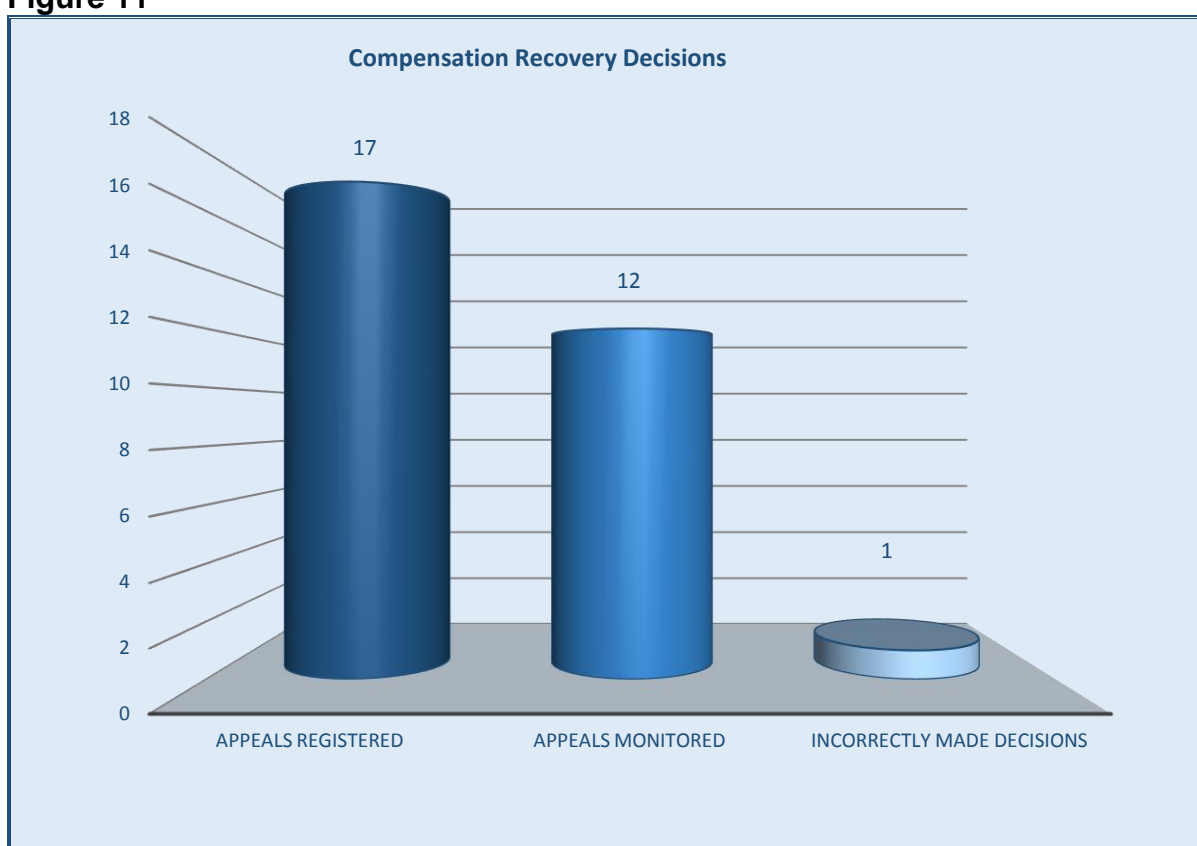
The standard continues to be very good. Any issues identified in this report may be case specific and could be resolved by training.

Compensation Recovery

There is a relatively low appeal rate in this area. 70.6% of appeals received were monitored to obtain a meaningful sample. The level of incorrectness identified was 8.3%.

Figure 11 sets out the number received, the number monitored and the number of incorrectly made decisions.

Figure 11



*Caution in interpreting this result is advised given the small number of appeals available for monitoring (*Page 7, paragraph 3 of Chapter 2*).

There was one incorrectly made decision identified in this category and one reason for incorrectness; the officer failed to identify findings based on the rules of entitlement relevant to the claim or revision. The legal member commented that the decision should have been revised prior to appeal hearing.

The claimant was in receipt of Employment and Support Allowance (ESA) from November 2011 and the care and mobility components of Disability Living Allowance (DLA) from December 2012. The claimant's accident was in August 2010. The department advised that the ESA papers were not available. The tribunal found on the facts before it that there was no causal link between the accident and the payment of either benefit. This was supported by the timing of benefit claims, the content of the DLA claim and a report from a consultant. The claimant worked full time between the date of the accident and the date of the claim for ESA.

In a further 3 cases, representing 25% of those monitored, while correctly made by the decision maker, were overturned by the tribunal because the tribunal accepted evidence which the decision maker was unwilling to accept. This was evidence available in the submission papers and included DLA claim forms, DLA factual reports, ESA claim forms and medical reports, hospital notes and records as well as multiple medical reports provided by consultants.

Comment – Compensation Recovery

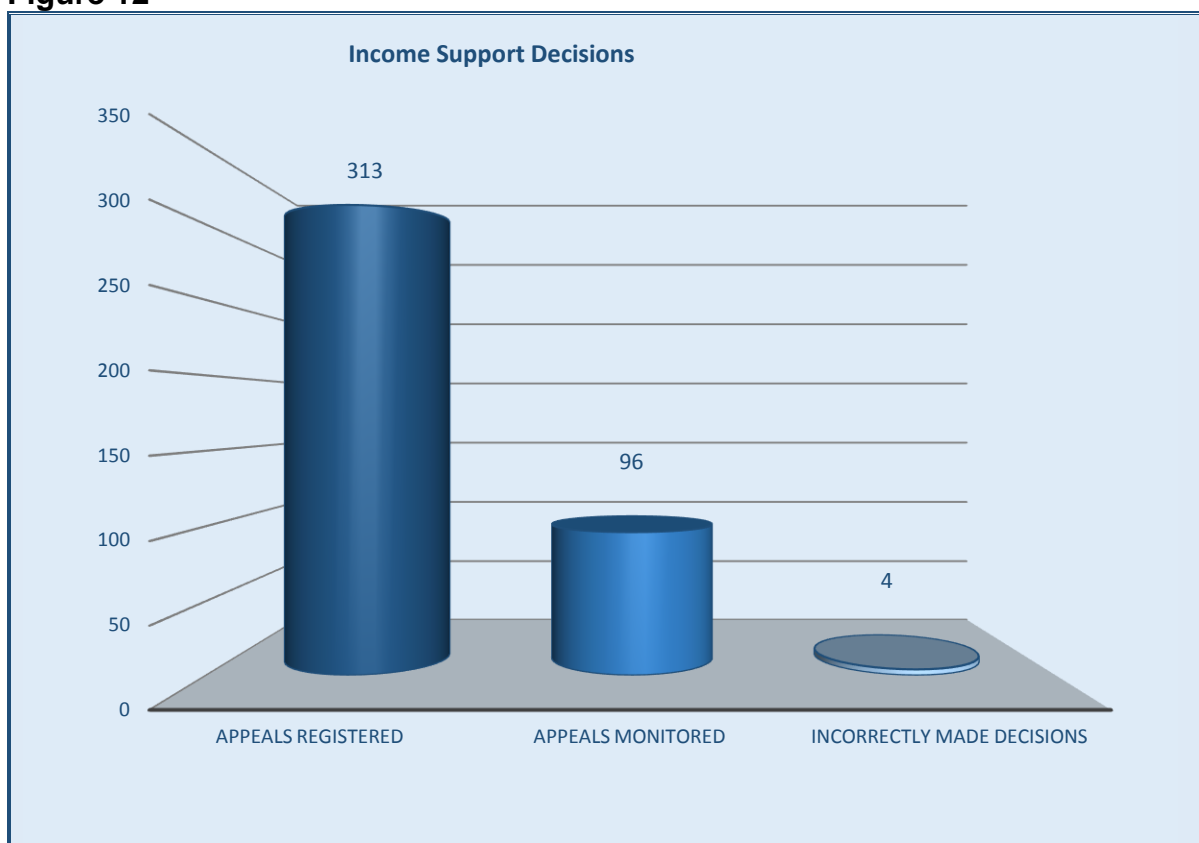
Last year there were no incorrectly made decisions. It is disappointing to note that the level of incorrectness for this year was 8.3%. Whilst it is acknowledged that the number of appeals is relatively low it is expected that decision-making could be improved. This may be a training issue and I am conscious of the comments and recommendations made by my predecessor in previous reports.

Income Support

Income Support appeal activity is relatively steady when compared to other benefits. 30.7% of appeals received in this category were monitored. 4.2% of decisions overall were found to be incorrect. This is a decrease in standards of 0.6% on the previous year.

Figure 12 sets out the number received, the number monitored and the number of incorrectly made decisions.

Figure 12

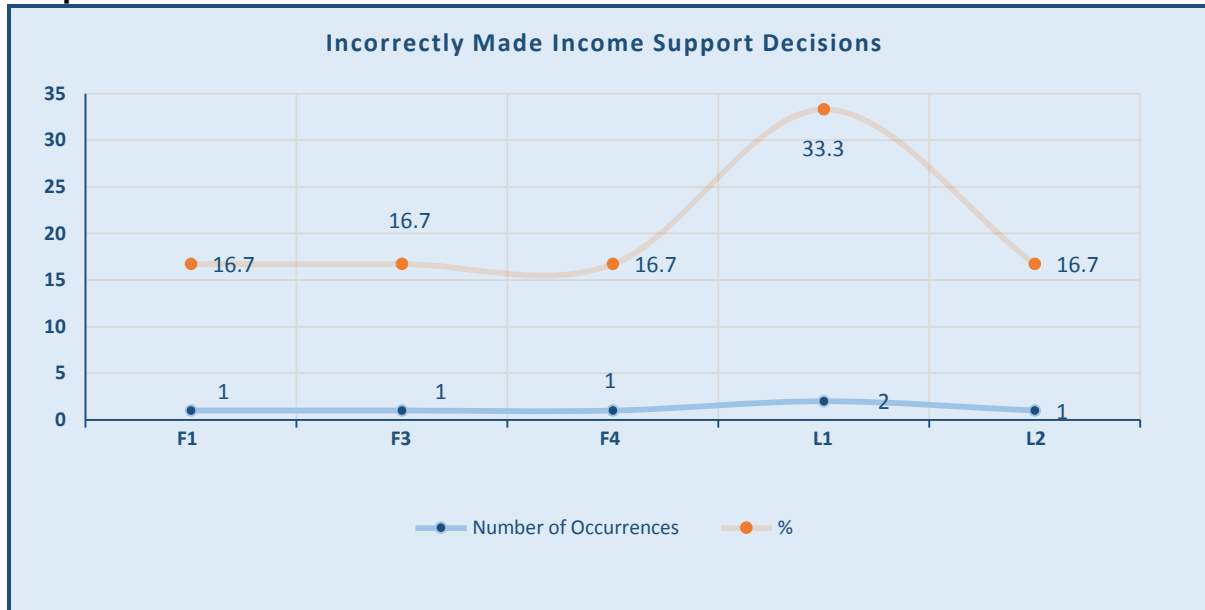


There were four incorrectly made decisions identified in this reporting year. Table 16 and Graph 3 set out the number of occurrences against the reasons for incorrectness. There were five separate reasons identified for decisions being incorrectly made and there were overlapping reasons in two cases.

Table 16

Reasons for Incorrectness	F1	F3	F4	L1	L2
Number of Occurrences	1 (16.7%)	1 (16.7%)	1 (16.7%)	2 (33.3%)	1 (16.7%)

Graph 3



The issues that arose were the overpayment of benefit, treatment of capital from a trust fund and calculation of entitlement when in receipt of a student grant.

Overpayment

There were two overpayment appeals. In the first case the supersession of entitlement to benefit decision upon which the overpayment decision relied, was completed off line. There was no proof provided to the tribunal that the supersession decision had been issued to the claimant. The overpayment of benefit decision was incorrectly made as a result. In the other case the decision maker revised a decision to pay a severe disability premium as the department had become aware that a non-dependant was residing as a member of the claimant's household. The claimant disputed this stating that they lived alone and had always done so. There was a clear conflict in the evidence which was not investigated thoroughly.

Capital from Trust Fund

The legal member commented that the officer failed to identify a finding which needed to be made on the basis of the rules of entitlement relevant to the claim. The decision was based on a misinterpretation/misunderstanding of the evidence available to the officer in respect of the particular trust fund.

Weekly Entitlement – Student Grant

Appeal on the basis that the amount of IS was insufficient to live on.

Claimant was in receipt of a grant from an Education Board for a course of education. Although a lone parent it appears to be the standard grant for the claimant only, no details of the breakdown of the grant provided. The decision maker allowed a disregard for books and travel and also applied an additional disregard of £10, describing this as a 'lone parent' disregard. There is no general disregard as described by the decision maker. There is a general disregard of £10 to all claimants who have income by way of a student loan. The appeal writer while describing the income as a grant and providing evidence from the Education Board, refers to the legislation pertaining to a student loan. The legal member commented that the decision maker misinterpreted the legal rules relevant to the claim and did not identify the correct legal rules.

Table 17 illustrates that in a further 11 cases, representing 11.5% of those monitored, while correctly made by the decision maker, were overturned by the tribunal because the tribunal either accepted evidence which the decision maker was unwilling to accept (5 cases), or the tribunal was given additional evidence that was not available to the decision maker (6 cases). In all six of the appeals where the tribunal was given additional evidence, the appellants attended the hearings and presented oral evidence. As a result of the oral evidence provided, either by the appellant or by a witness, the decisions were changed by the tribunal.

Table 17

Reasons for Overturning Correctly Made Decision		Number of Cases
FA.	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	5 (45.5%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	6 (54.5%)

Comment – Income Support

Income support is a complex benefit with many different issues arising. It is particularly important when dealing with vulnerable people who cannot manage their affairs, including their financial affairs, to ensure that all proper protections are in place to ensure that they can access the correct entitlement to benefit. The fact that in many of the cases monitored additional evidence was provided to the tribunal may mean that there should be a much more robust and detailed gathering of evidence by the Department at an initial stage. It is also concerning that in overpayment cases issues surrounding Section 69(5A) of the Social Security Administration (NI) Act 1992 are still arising. This provision must be addressed in all cases where an overpayment is being contemplated.

Jobseekers Allowance

17.5% of all Jobseekers Allowance appeals received were monitored. The level of incorrectness identified was 1.5%. This is an improvement in standards on the previous year by 0.8%.

Figure 13 sets out the number received, the number monitored and the number of incorrectly made decisions.

Figure 13

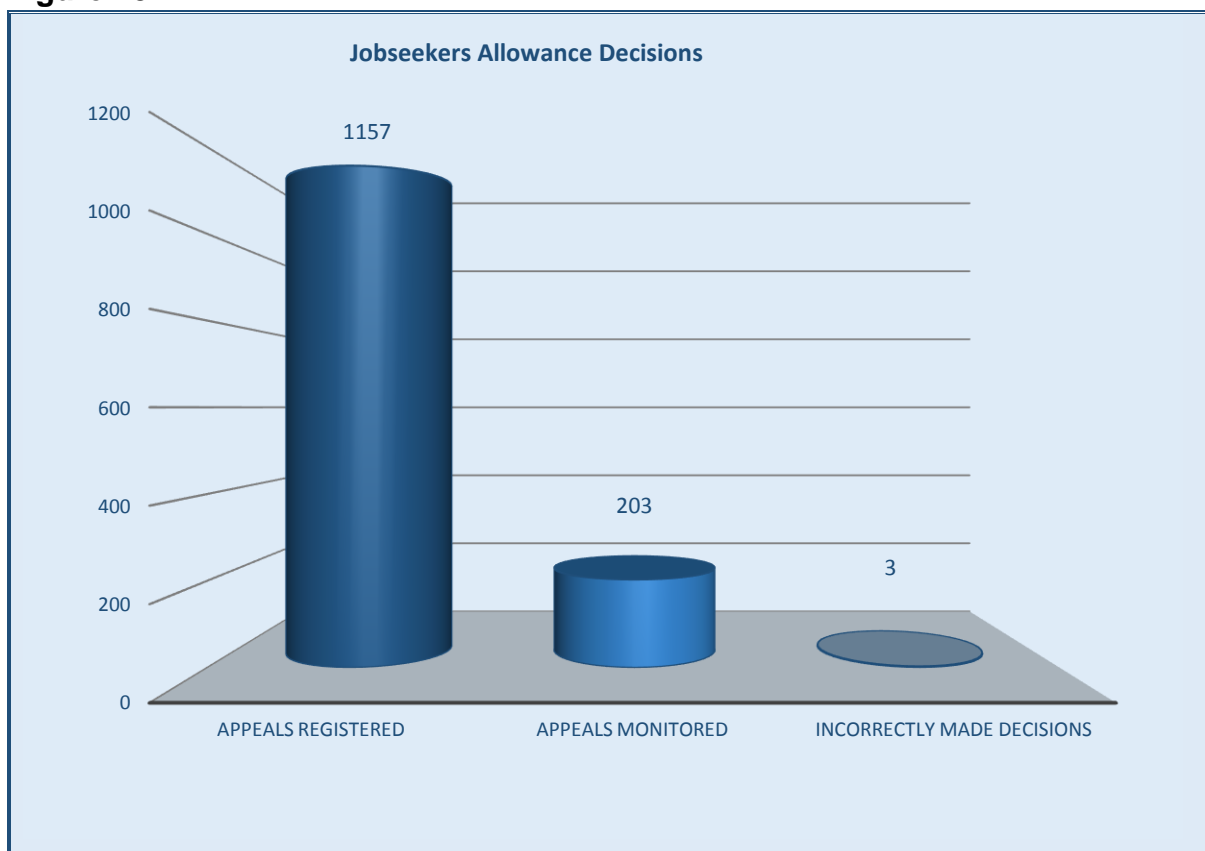


Table 18 sets out the number of occurrences against the reasons for incorrectness. There were 2 separate reasons identified for the decisions being incorrectly made.

Table 18

Reasons for Incorrectness	F6	L1
Number of Occurrences	2 (66.7%)	1 (33.3%)

There were three incorrectly made decisions identified in this category. The issues that arose are set out below.

Right to Reside

The issue here was the interpretation of ‘genuine prospect of work’. The test is that the appellant has a genuine chance of being engaged, not that he has a genuine offer of employment. In this case the claimant did demonstrate that he was working towards finding work and he did find work. The legal member commented that the officer did not identify the correct legal rules relevant to claim. The appeal was allowed. The claimant had demonstrated a genuine prospect of work and therefore remains a qualified person with a right to reside as a jobseeker.

Failure to Sign

Claimant contacted his Jobs and Benefits Office the day before he was due to sign and advised that he would be working on his signing day. A record of a telephone call and advice given was provided i.e. *“will be working tomorrow and unsure how long. Info given on part time working and will either call and advise of hours or return a completed JS40.”* Claimant did not contact the office on his signing day but attended the day after. He stated that he waited all day on contact from the Employment Agency who were supplying work, as he was given the impression that they would do so. Good cause for not signing on the appropriate day was not accepted and a sanction of one week was imposed. The decision maker stated that the claimant *would* have been provided with information about needing to attend on his signing day when he initially telephoned the office.

The legal member commented that the decision of the officer was incorrect as he relied on an assumption that the claimant *would* have been advised to attend on his signing day when he contacted the office in advance regarding the possibility of work. There was no evidence provided to the tribunal to support this. The legal member also commented that the regulations covering good cause were not prescriptive and simply state “the matters which are to be taken into account *shall include* the following

Sanction for Non-Participation in Steps to Success Scheme

The claimant attended ten minutes late for an appointment with a Steps 2 Success Advisor with a third party training supplier. The claimant states he was told that there was a strict time limit for attending an interview and as he was late he could not be dealt with. A decision maker decided that the claimant had not shown good cause for being late for his appointment and disallowed Jobseekers Allowance by imposing a sanction of four weeks. The decision explained that four rather than one week sanction was applicable as there had been a previous sanction imposed within a twelve month period. The claimant appealed stating he was late for his appointment due to extremely severe weather conditions.

The legal member commented that there was not a proper evaluation of the evidence by the decision maker and the information provided on appeal was not considered carefully. The decision maker simply stated that the decision was not revised as the reference to bad weather conditions was not mentioned in the original statement and is not accepted now as a factor that was in existence at the time.

In addition the legal member commented that the submission prepared for the tribunal was of a very poor standard. The appeal writer did not provide any evidence of the notification to participate in the Scheme, wherein details of what is expected from the claimant must be set out (Regulation 5 of The Jobseekers Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations (Northern Ireland) 2014). The appeal writer failed to provide any documentation or details in connection with the earlier sanction to justify a four week suspension. Although the correct regulation headings were referred to within the submission, the legislation supplied with the submission did not correspond with these.

Table 19 illustrates that in a further 8 cases, representing 3.9% of those monitored, while correctly made by the decision maker, were overturned because the tribunal either accepted evidence which the decision maker was unwilling to accept (3 cases), or the tribunal was given additional evidence that was not available to the decision maker (5 cases).

Table 19

Reasons for Overturning Correctly Made Decision		Number of Cases
FA.	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	3 (37.5%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	5 (62.5%)

Comment – Jobseekers Allowance

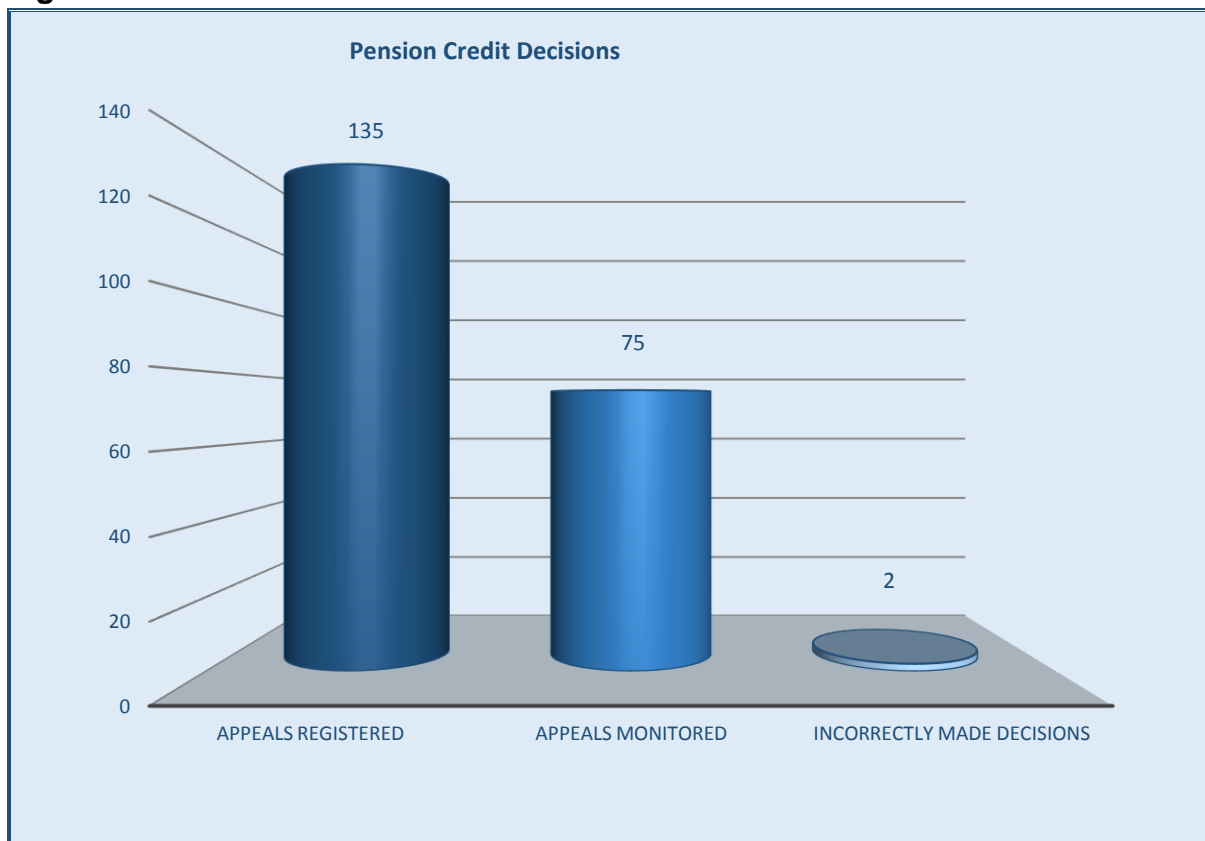
It is pleasing to note that there has been an improvement in the level of incorrectness. Despite this it is apparent from some of the cases monitored that there may be a lack of uniform approach by officials in relation to the imposition of sanctions and that some submissions prepared for the tribunal may be of a poor standard. These issues may be capable of attention by training.

Pension Credit

55.6% of all Pension Credit (PC) appeals received were monitored. The level of incorrectness identified was 2.7%. This is an improvement on the previous year by 1.1%.

Figure 14 sets out the number received, the number monitored and the number of incorrectly made decisions.

Figure 14



There were two incorrectly made decisions identified in this category. In both cases, the legal member commented that the decision of the officer was based on a misinterpretation of the evidence available. In addition, it was also commented in one case that the officer did not identify the correct legal rules relevant to the claim.

Both appeals were in connection with the overpayment of benefit.

In the first appeal the legal member commented that there was no failure to disclose that the claimant became entitled to State Pension (SP) as the department were aware of this information. There was a document provided within the appeal submission which set out a handwritten record of the telephone calls made to the department by the claimant. This may be a reconstructed document as it records two calls made to SP Branch and one call to PC Branch. It is clear from this written record that in the first call to make his claim to SP the claimant advised SP that he was receiving PC as he was reassured that SP could get his bank details from PC. In the second call he told SP that his entitlement to PC had not changed and in the third call which was made to PC Branch, it is recorded that a Processor told him that he did not need to report this change as they can see it on the system.

In the second appeal, the department in an addendum to the original appeal submission, advised the tribunal that there was an error in their original decision and that the tribunal in reaching its decision should take this into account. Due to a delay on the department’s behalf in acting upon information that the claimant was in receipt of an occupational pension, four weeks of the original overpayment was due to a departmental error. The tribunal took this into account in reaching their final decision.

Table 20 illustrates that in a further 9 cases, representing 12% of those monitored, while correctly made by the decision maker, were overturned because the tribunal either accepted evidence which the decision maker was not willing to accept (2 cases), or the tribunal was given additional evidence that was not available to the decision maker (7 cases).

Table 20

Reasons for Overturning Correctly Made Decision		Number of Cases
FA.	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	2 (22.2%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	7 (77.8%)

Recommendations – Pension Credit

The issues identify remain the same as those in previous reports and consequently I repeat my comments from the last report.

Previous Year

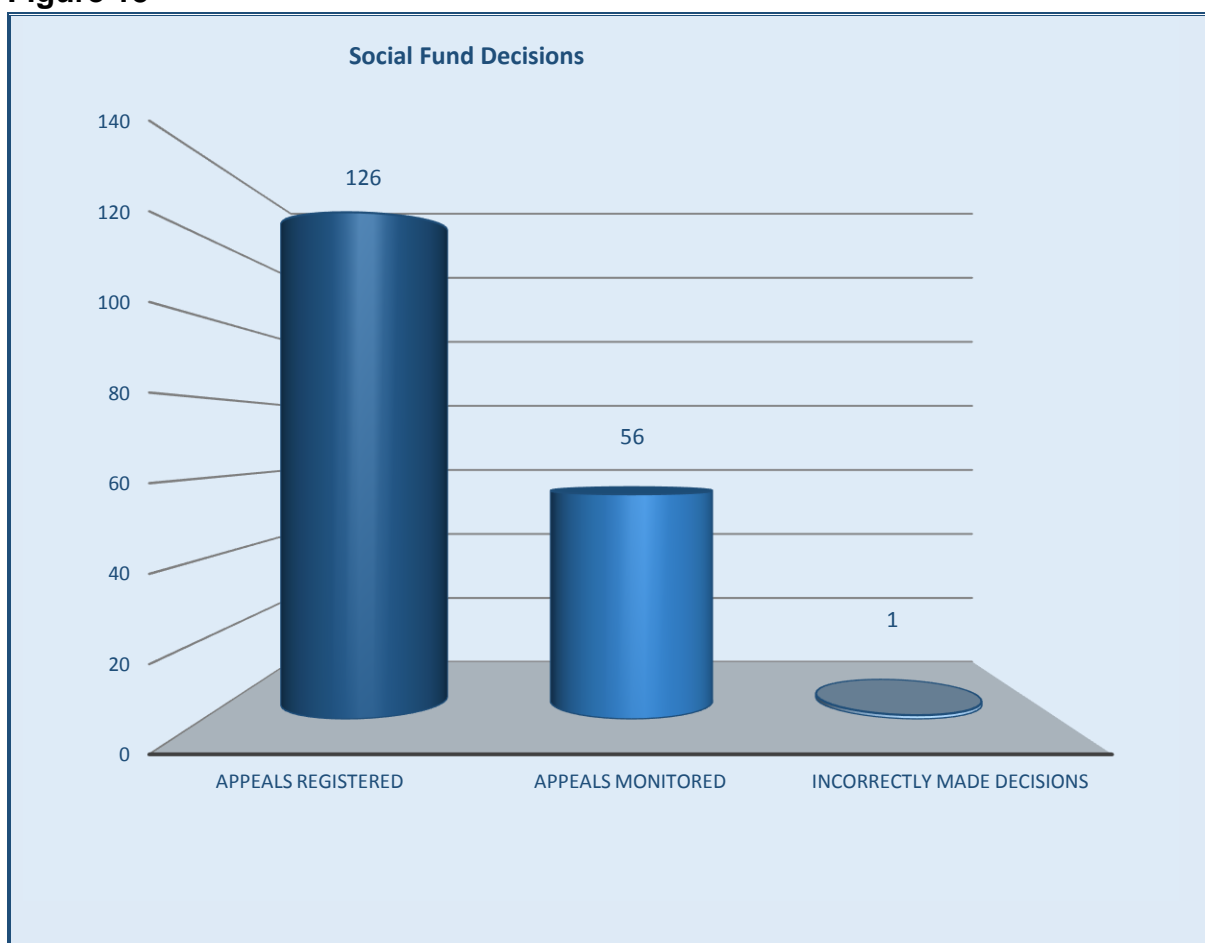
Unfortunately overpayments continue to be a problem in this benefit area. The issues identified in the incorrectly made decisions are fundamental to correct decision making. These issues are not new and have been reported on extensively in many previous reports. It is therefore disappointing that they continue to arise. Further training in this area remains a priority.

Social Fund

There are limited rights of appeal to a tribunal in Social Fund cases. The appeal rate is therefore low. To obtain a meaningful sample, 44.4% of appeals received were monitored. The level of incorrectness identified was 1.8%.

Figure 15 sets out the number received, the number monitored and the number of incorrectly made decisions.

Figure 15



There was one incorrectly made decision identified in this category. The legal member commented that the decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim.

Claimant and her husband lived apart due to his disability and addiction problems and because she had been advised by Social Services that her husband could not be left on his own with the children. They had two children, one of whom was eighteen years old at the date of his death and who worked only on a part time basis. While he had lived with his daughter, the claimant's step daughter, for a period, he was living in his own house for over a year at the time of his death. The claimant was his next of kin and was not legally separated from her husband and she continued to provide care by way of household tasks, cooking, cleaning etc. and accompanying him to hospital. The claimant also waked her husband and arranged the funeral. The decision maker decided that the claimant did not satisfy the conditions of entitlement for a funeral payment as she did not satisfy the definition of a couple under the regulations as she was not living with the claimant in the same household. The decision maker also considered that there were one or more family members of the deceased who were not estranged from the deceased at the date of death and who were not in receipt of a qualifying benefit.

In her letter of appeal the claimant advised that her son who was working part time was now unemployed and he had been estranged from this father for over three years due to his addiction problems. A written statement to this effect was provided from her son. She was unaware of her step daughter's financial situation but thought she may be in receipt of Child Tax Credits.

The legal member commented that the decision maker did not investigate the issues fully. Also that the claimant should have been considered under the definition of a close friend and that there was no indication within the papers that this was done.

Table 21 illustrates that in 5 cases, representing 8.9% of those monitored, while correctly made by the decision maker, were overturned because the tribunal accepted evidence which the decision maker was not willing to accept (2 cases), or the tribunal was given additional evidence that was not available to the decision maker (3 cases).

Table 21

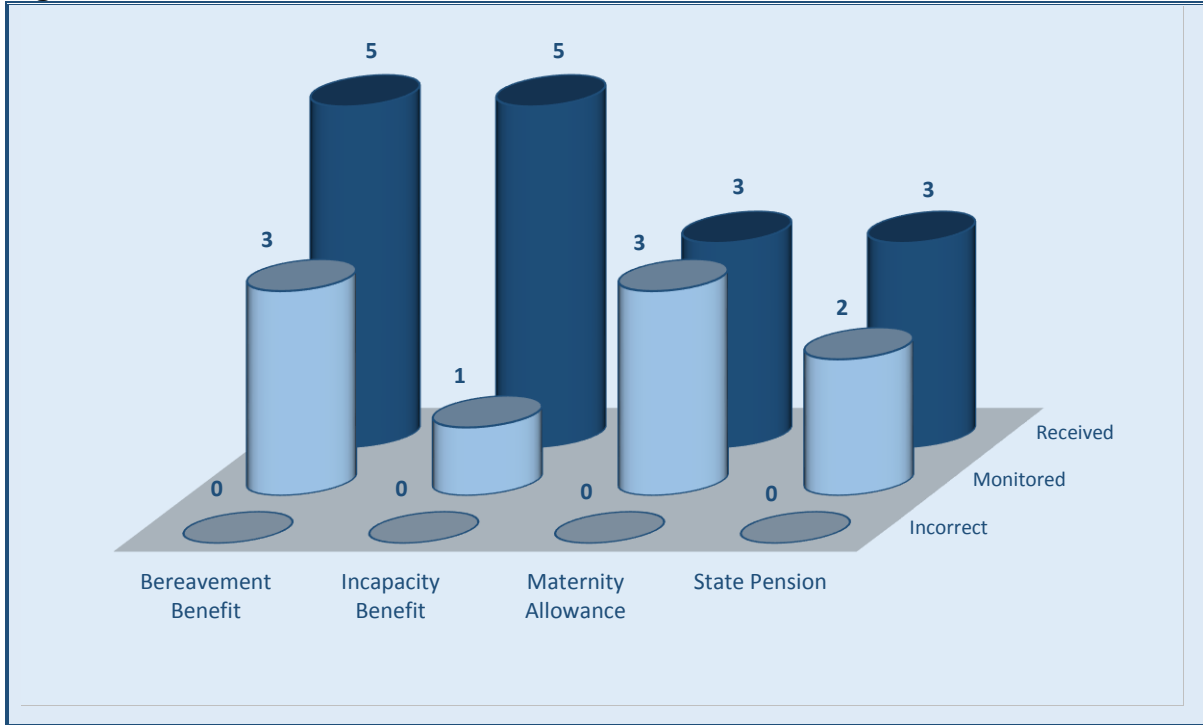
Reasons for Overturning Correctly Made Decision		Number of Cases
FA.	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	2 (40%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	3 (60%)

Recommendations – Social Fund

None.

Bereavement Benefit, Incapacity Benefit, Maternity Allowance & State Pension

Figure 16



There were 5 Bereavement Benefit, 5 Incapacity Benefit, 3 Maternity Allowance and 3 State Pension cases received during the report period. There were no incorrectly made decisions identified in any of these categories.

Given the small number of appeals available for monitoring and that Incapacity Benefit has been replaced by ESA there were no comments to make. *However it should be noted that due to the small number of appeals in these categories the results should be interpreted with caution, as there were insufficient cases to provide statistically reliable data (*Page 7, paragraph 3 of Chapter 2*).

Recommendations

None.

Chapter 5

Summary of Comments and Recommendations

Disability Living Allowance

The issues identify remain the same as those in previous reports and consequently I repeat my comments from the last report.

Previous Year

As in all previous reports there continues to be concern regarding the number of decisions that are overturned due to further medical evidence. The department is asked to consider what further steps can be taken to obtain additional medical information either at source from the medical profession or directly from the claimant prior to decision making.

Attendance Allowance

The issues identify remain the same as those in previous reports and consequently I repeat my comments from the last report.

Previous Year

Decision making in this area continues to be very good. However like DLA there is a high percentage of decisions overturned due to additional medical and other evidence. The recommendations made in DLA therefore also apply to this benefit.

Carer's Allowance

I have some concerns that there has been an increase in the level of incorrectness to 4.4%. It was 1.4% last year. Despite this I believe that the errors identified this year remain quite case specific and could be easily addressed.

**Compensation
Recovery**

Last year there were no incorrectly made decisions. It is disappointing to note that the level of incorrectness for this year was 8.3%. Whilst it is acknowledged that the number of appeals is relatively low it is expected that decision-making could be improved. This may be a training issue and I am conscious of the comments and recommendations made by my predecessor in previous reports.

**Employment and
Support Allowance**

Again this reporting year whilst acknowledging the large number of appeals I note that the level of incorrectness has increased from 1.8% in the previous year's report to 4.7% this year. There remain problems with the interpretation of medical evidence already available to decision makers. As with DLA and AA, greater emphasis could be placed on seeking further medical evidence prior to decision. I refer to the comments about healthcare professionals and recommendations about medical evidence mentioned in the foreword to this report.

Income Support

Income support is a complex benefit with many different issues arising. It is particularly important when dealing with vulnerable people who cannot manage their affairs, including their financial affairs, to ensure that all proper protections are in place to ensure that they can access the correct entitlement to benefit. The fact that in many of the cases monitored additional evidence was provided to the tribunal may mean that there should be a much more robust and detailed gathering of evidence by the Department at an initial stage. It is also concerning that in overpayment cases issues surrounding Section 69(5A) of the Social Security Administration (NI) Act 1992 are still arising. This provision must be addressed in all cases where an overpayment is being contemplated.

**Industrial Injuries
Disablement Benefit** The standard continues to be very good. Any issues identified in this report may be case specific and could be resolved by training.

**Jobseekers
Allowance** It is pleasing to note that there has been an improvement in the level of incorrectness. Despite this it is apparent from some of the cases monitored that there may be a lack of uniform approach by officials in relation to the imposition of sanctions and that some submissions prepared for the tribunal may be of a poor standard. These issues may be capable of attention by training.

Pension Credit The issues identify remain the same as those in previous reports and consequently I repeat my comments from the last report.

Previous Year

Unfortunately overpayments continue to be a problem in this area. The issues identified in the incorrectly made decisions are fundamental to correct decision-making. These issues are not new and have been reported on extensively in many previous reports. It is therefore disappointing that they continue to arise. Further training remains a priority.

Appendix 1

Inferences and Sampling Error

As mentioned in the body of the report it is possible from the results of some of the sampled benefits to make inferences with regard to all appeals for the relevant benefit in the time period.

The analysis that follows relates only to benefits where a sample was selected. The benefits where a complete census was taken do not affect the confidence interval hence in table A1 the 'ALL' category refers to benefits where a complete census was taken and those sampled. The minimum sample size for inferences to be made with regard to sampled benefits has been taken as 30.

In making inferences regarding all appeals from a sample of appeals a degree of uncertainty is introduced to the process. This uncertainty means that the actual level of incorrectness in the initial decision is represented by a range with the sample result being the mid-point of the range. The range has been constructed so that we can be 95% certain that the actual level of incorrectness in the initial decision lies within the range. Ninety-five percent is known as the confidence level.

Table A1 below shows the relevant benefits, the sample result and the associated range.

Table A1:

Benefit	Percentage Incorrectness in the Initial Decision	Confidence Interval ($\pm\%$)
Attendance Allowance	0.9	1.3
Disability Living Allowance	0.5	0.7
Employment and Support Allowance	4.7	1.9
Income Support	4.2	3.4
Industrial Injuries Disablement Benefit	1.4	1.8
Jobseekers Allowance	1.5	1.5
Social Fund	1.8	2.6
ALL ¹	2.5	0.7

¹Note ALL refers to both benefits that were sampled and those that had a complete census taken.

Considering all monitored cases in the time period we can state that;

- we can be 95% certain that the true level of incorrectness among all initial appeal decisions in the period is between 1.8% and 3.2%, i.e. $2.5\% \pm 0.7\%$.

N.B. Each benefit generates its own workload of appeals. This is dependent both on the volume of initial claims processed and on the complexity of the benefit. The benefit may be complex in terms of the process to be followed, of the facts to be gathered and interpreted or of the underlying legal principles to be applied. More complex benefits are more likely to generate a greater proportion of disputes. It is also likely that decisions relating to the more complex benefits will be found to be incorrect. The aggregated total of appeals and outcomes thus covers such a wide range of different circumstances that the meaning of the information is uncertain.

Similarly, if we consider Disability Living Allowance appeals we can state that

- we can be 95% certain that the true level of incorrectness among all Disability Living Allowance initial appeal decisions in the period is between $0.5\% \pm 0.7\%$.

The remaining benefits can be analysed in the same manner.

Appendix 2

Benefit Appeals Profiles

This appendix draws together the information in the body of the report to produce a pro forma for each of the main benefits.

BENEFIT NAME	ALL BENEFITS
Number of cases registered	14247
Number of cases monitored	1552
Percentage monitored	10.9%
Number of incorrect initial decisions	39
Percentage incorrect	2.5%
Confidence interval	±0.7%
Total number of reasons	55
Main reason for incorrect initial decision: The decision was based on a misinterpretation/misunderstanding of the evidence available to the officer (F4) – 29.1% of all reasons.	

BENEFIT NAME	ATTENDANCE ALLOWANCE
Number of cases registered	248
Number of cases monitored	108
Percentage monitored	43.5%
Number of incorrect initial decisions	1
Percentage incorrect	0.9%
Confidence interval	±1.3%
Total number of reasons	1
Reason for incorrect initial decision:	
The officer misinterpreted the legal rules relevant to the claim (L2) – 100% of all reasons.	

BENEFIT NAME	DISABILITY LIVING ALLOWANCE
Number of cases registered	4623
Number of cases monitored	377
Percentage monitored	8.2%
Number of incorrect initial decisions	2
Percentage incorrect	0.5%
Confidence interval	±0.7%
Total number of reasons	2
Reasons for incorrect initial decisions were evenly split:	
The decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision (F1) – 50%. The decision was based on a misinterpretation/misunderstanding of the evidence available to the officer (F4) – 50%.	

BENEFIT NAME	EMPLOYMENT AND SUPPORT ALLOWANCE
Number of cases registered	7262
Number of cases monitored	429
Percentage monitored	51%
Number of incorrect initial decisions	20
Percentage incorrect	4.7%
Confidence interval	±1.9%
Total number of reasons	32
Main reason for incorrect initial decision: The decision was based on a misinterpretation/misunderstanding of the evidence available to the officer (F4) – 31.2% of all reasons.	

BENEFIT NAME	INCOME SUPPORT
Number of cases registered	313
Number of cases monitored	96
Percentage monitored	30.7%
Number of incorrect initial decisions	4
Percentage incorrect	4.2%
Confidence interval	±3.4%
Total number of reasons	6
Main reason for incorrect initial decision: The officer did not identify the correct legal rules relevant to the claim/revision (L1) – 33.3% of all reasons.	

BENEFIT NAME	INDUSTRIAL INJURIES DISABLEMENT BENEFIT
Number of cases registered	129
Number of cases monitored	73
Percentage monitored	56.6%
Number of incorrect initial decisions	1
Percentage incorrect	1.4%
Confidence interval	±1.8%
Total number of reasons	1
Reason for incorrect initial decision: The decision was based on a misinterpretation/misunderstanding of the evidence available to the officer (F4) – 100% of all reasons.	

BENEFIT NAME	JOBSEEKERS ALLOWANCE
Number of cases registered	1157
Number of cases monitored	203
Percentage monitored	17.5%
Number of incorrect initial decisions	3
Percentage incorrect	1.5%
Confidence interval	±1.5%
Total number of reasons	3
Main reason for incorrect initial decision: The officer disregarded relevant evidence (F6) – 66.7% of all reasons.	

BENEFIT NAME	SOCIAL FUND
Number of cases registered	126
Number of cases monitored	56
Percentage monitored	44.4%
Number of incorrect initial decisions	1
Percentage incorrect	1.8%
Confidence interval	±2.6%
Total number of reasons	1
Reason for incorrect initial decision: The decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision (F1) – 100% of all reasons.	

Appendix 3

APPEAL REPORT FORM

Section 1 Benefit claimed:

Name of appellant:

Address:

NINO:

Appeal reference:

Date of Decision Appealed:

Decision maker/Office:*

Date and venue of **Final** Hearing of Appeal:*

**To be completed by tribunal Clerk*

If the appeal is adjourned, report should be forwarded to next tribunal and President's Secretariat informed.

Section 2 Date Summary Decision Issued:

If the decision of the Departmental Officer was not altered by the Appeal Tribunal, please indicate if that decision was made correctly.

Yes No

If the answer is No, please explain.

Mon 1

Section 3 If the decision of the Departmental Officer was altered by the Appeal Tribunal, please provide details of the summary decision.

What are the reasons, if provided, for the decision of the tribunal

The decision of the Department was altered because (tick the boxes where appropriate)

- FA the tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable
- FB the tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was;
- in the form of an expert report handed in;
- an expert report obtained by the tribunal;
- given by a witness;
- given by the appellant
- F1 the decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision
- F2 the officer failed to request adequate medical guidance or expert reports relevant to the decision i.e. medical reports from a consultant/details of property interests/ details of business accounts/ adequate valuations (Article 12(2) of the 1998 Order)

- F3 the officer failed to identify a finding/s which needed to be made on the basis of the rules of entitlement relevant to the claim or revision
- F4 the decision was based on a misinterpretation/misunderstanding of the evidence available to the officer
- F5 the officer took into account wholly unreliable evidence
- F6 the officer disregarded relevant evidence
- F7 the officer failed to identify/resolve an obvious conflict in the evidence
- F8 the officer did not action additional relevant evidence provided after his decision was made and initiate a revision
- F9 The officer made errors of calculation
- R1 the appeal was made because the officer did not give adequate reasons for his decision when requested under regulation 28(1) (b) of the Decision and Appeals Regulations 1999

There was a legal error in the decision because:

- L1 the officer did not identify the correct legal rules relevant to the claim/revision
- L2 the officer misinterpreted the legal rules relevant to the claim
- L3 the officer failed to identify a change in legal rules relevant to the claim/revision
- L4 the officer overlooked a relevant Commissioners decision/Court decision which was/should have been available to him
- L5 the officer failed to obtain additional legal advice necessary to deal with the claim

Section 4 The decision of the Departmental Officer was defective because: (please indicate the relevant category/ies and, where there is more than one defect, an explanation should be given of each);

Section 5 In cases where medical or other expert reports were considered by the Departmental Officer, have you any comments to make on the standard of the reports?

Section 6 Please make any other comments you wish about (a) the manner in which the claim was dealt with by the decision maker; and (b) issues raised by the appeal which you wish to draw to the attention of the president.

Legal member
Date:

Time Taken to Complete: