

2016/17

# President's Report

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

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## President's Foreword

The total number of appeals registered during the year to which this report relates was 9197, of which 1021 were monitored.

The report reveals that overall levels of incorrectness in the initial decision ranges from 0% in appeals relating to Retirement Pension, Compensation Recovery, Income Support, Disability Living Allowance, Incapacity Benefit and Maternity Allowance to 33% in Bereavement Benefit appeals. The most common reason for incorrectness was that the decision appealed against was based on insufficient facts/evidence due to inadequate investigation of the claim or revision.

I am pleased to note that there has been an overall reduction in the overall levels of incorrectness. In the previous year it was 2.5% whereas this year it is 1.3%. Across all cases monitored the decision maker was judged to have made an incorrect decision in 13 cases. It will be apparent from the figures mentioned at page 6 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 24.5%. It was 14.2% 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 3477 and 2855 respectively. 1.4% of the monitored ESA cases were assessed as having an incorrect initial decision. I am pleased to note that no monitored DLA cases were incorrectly made at initial decision stage.

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.

As in previous years it continues to be the case that many correctly 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 remain unconvinced 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 am aware that following receipt of last year's report the Department repeated its long expressed views on this issue. I would once more urge them to revisit the matter in a positive way.

I have made specific recommendations/comments in relation to Attendance Allowance cases. I urge the Department to take these on-board. Elderly claimants with chronic medical problems may be inclined to understate the effect of those problems on their day-to-day functioning. This should be acknowledged by the Department when considering how best to deal with such claimants.

The tribunal started to deal with appeals in respect of Personal Independence Payment (PIP) during the period covered by this report. I embarked on a comprehensive scheme of training for tribunal members in order that they might be equipped to deal with such appeals.

PIP will eventually replace a large proportion of DLA and accounted for 1382 of the appeals registered during this report year. It is immediately apparent that many of the

abovementioned problems encountered in decision-making affecting DLA, ESA and AA have transferred to PIP decision-making. Furthermore it has been widely reported in the media and elsewhere that there is considerable disquiet about the CAPITA healthcare professional assessment process. I urge the Department to seriously consider an overall review of that process in order to allay public disquiet and to improve overall decision-making, including concerns relating to the audit process affecting health professional reports. The widely expressed disquiet makes the provision of medical notes and records at hearing stage even more important than ever.

I 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 previous two reports 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.

It is apparent from my report that some training is required in respect of individual areas of concern in particular jurisdictions. I very much hope that this will be addressed by the Department going forward.

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

## 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, Child Maintenance, Compensation Recovery, Incapacity Benefit, Maternity Allowance and Retirement 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 can be found at Appendix 3.

The sample size was designed to enable reporting for the whole year, by benefit. Inferences with regard to all appeals by sampled benefits are in Appendix 1.

## 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 2016 – 05 April 2017				
Category	Total registered	No. Monitored (sample size)	Initial decision incorrect	Percentage Incorrectness
Attendance Allowance*	236	110	2	1.8%
<b>Bereavement Benefit*</b>	7	3	1	33.3%
Carer's Allowance*	66	24	1	4.2%
<b>Child Maintenance*</b>	27	13	1	7.7%
<b>Compensation Recovery*</b>	12	7	0	0.0%
Disability Living Allowance*	2855	316	0	0.0%
Employment Support Allowance*	3477	147	2	1.4%
<b>Incapacity Benefit*</b>	1	0	0	0.0%
Income Support*	177	57	0	0.0%
Industrial Injuries Disablement Benefit*	146	67	1	1.5%
Jobseekers Allowance*	637	122	1	0.8%
<b>Maternity Allowance</b>	4	4	0	0.0%
Pension Credit*	80	19	1	5.3%
Personal Independence Payment*	1382	76	2	2.6%
<b>Retirement Pension*</b>	5	2	0	0.0%
Social Fund*	85	54	1	1.9%
<b>TOTAL</b>	<b>9197</b>	<b>1021</b>	<b>13</b>	<b>1.3%</b>

**Note:** bold type indicates a complete census and \* indicates that all cases selected were not available for monitoring.

The small sample size of some benefits should also be noted.

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 Compensation Recovery, Maternity Allowance or Retirement Pension. The Incapacity Benefit case was withdrawn prior to hearing and was not available for monitoring. 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.

In the sample of cases monitored only two benefits had no incorrect decisions registered; Disability Living Allowance and Income Support. Both had sufficient numbers of cases, making the sample statistically valid.

Chart 1 shows the appeals received per category as a percentage of the overall number of appeals registered.

**Chart 1**

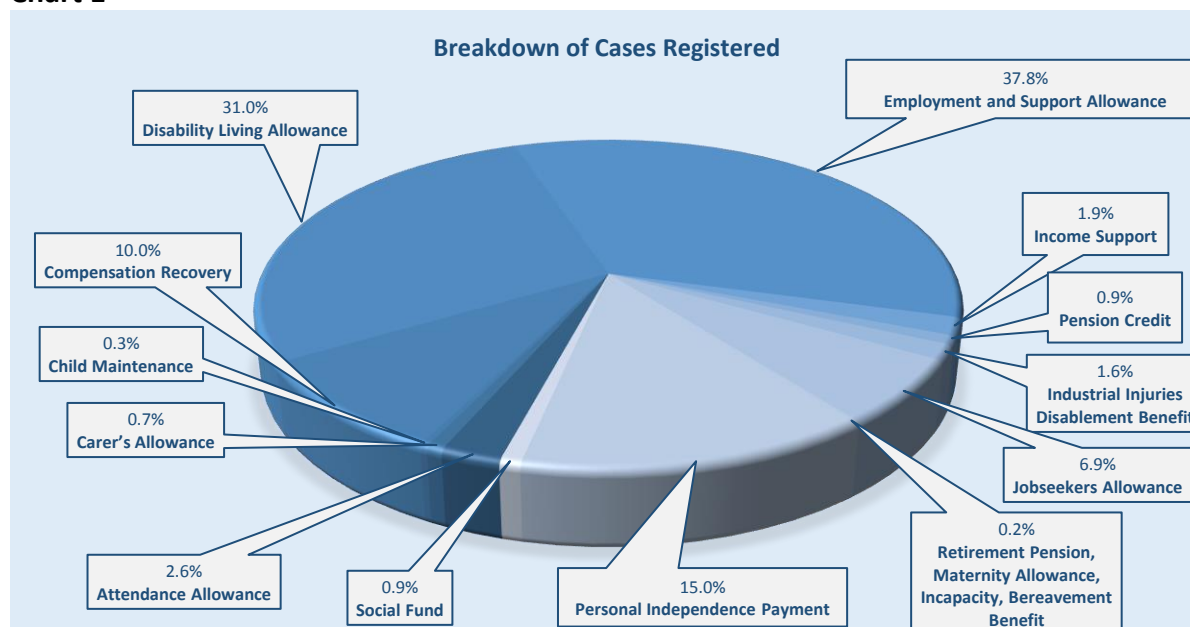
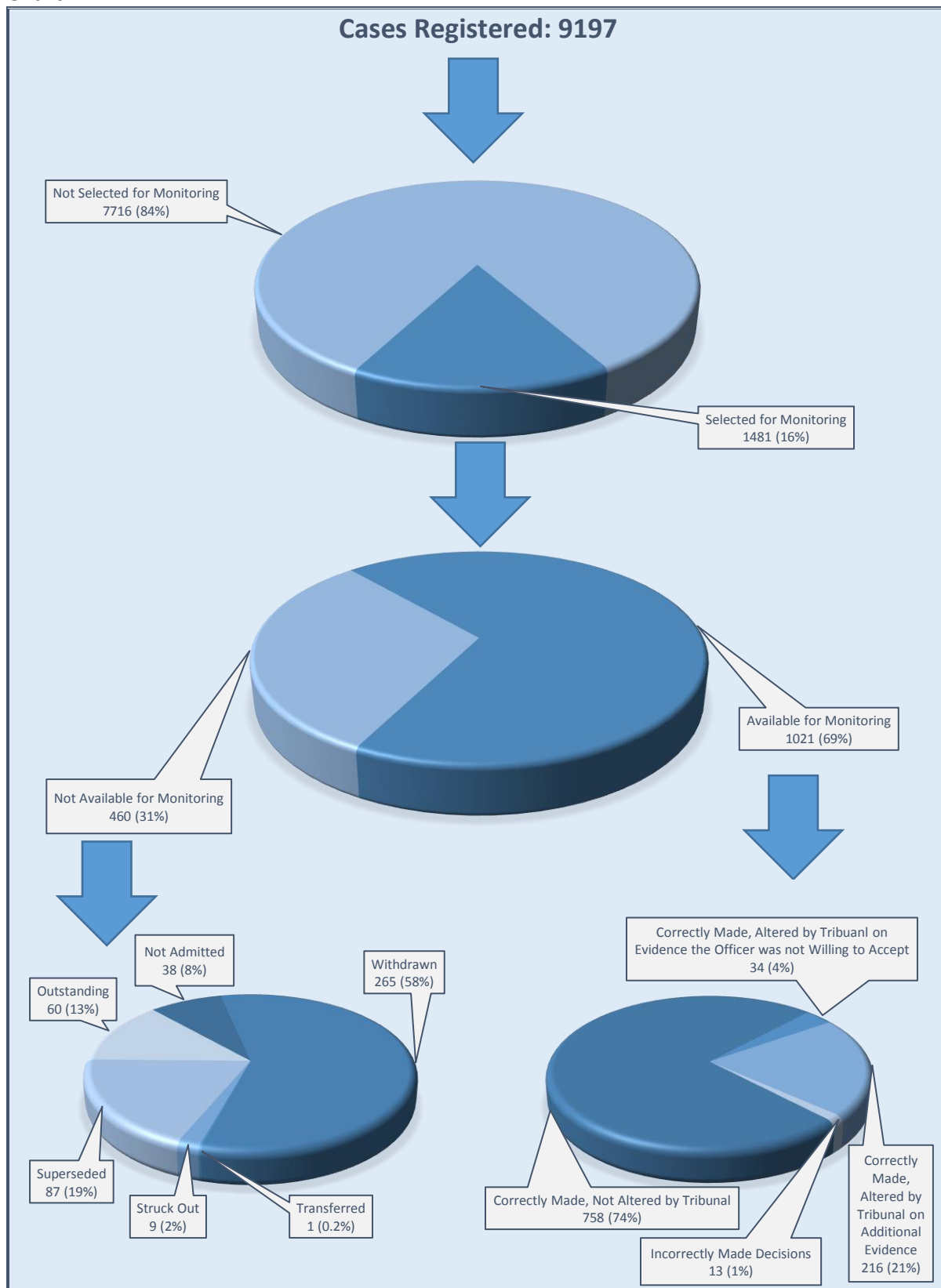




Chart 2 gives a breakdown of the disposal of appeals registered from a monitoring perspective.

**Chart 2**



Legal Members are asked to identify whether or not the decision was 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.

### Incorrectly Made Decisions

Across all cases monitored, the decision maker was judged to have made an incorrect decision in 13 cases, representing 1.3% of all cases monitored. Chart 3 gives a breakdown of the number of incorrectly made decisions per category and as a percentage of the overall number incorrectly made.

**Chart 3**

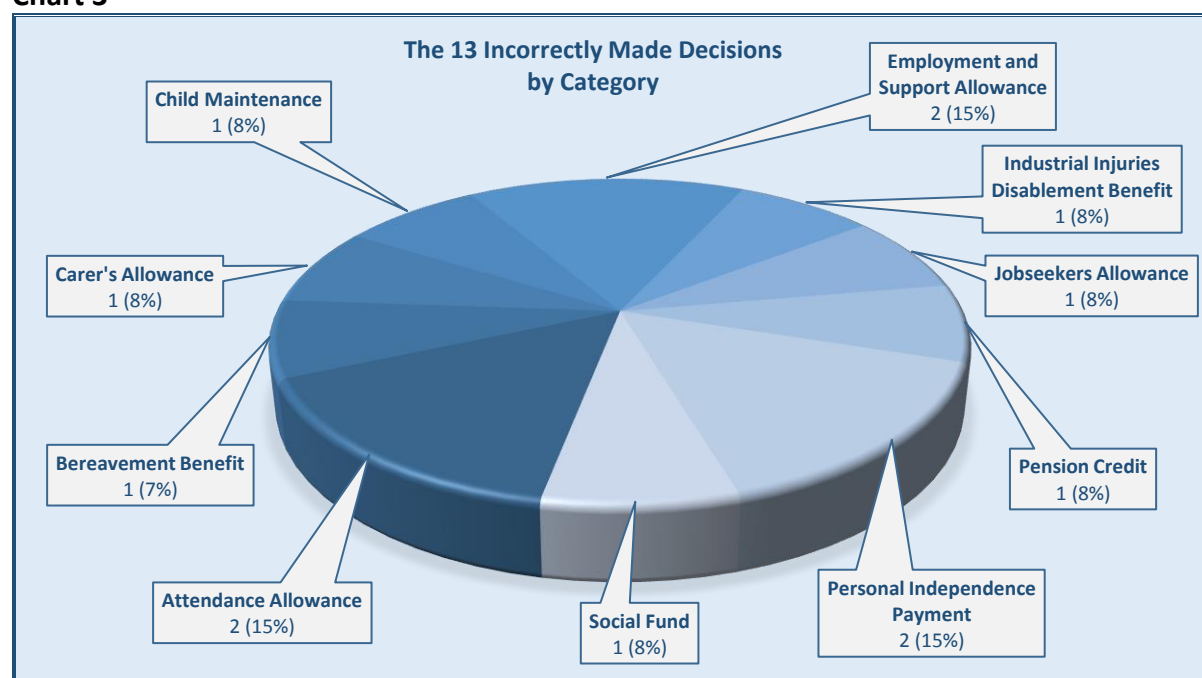
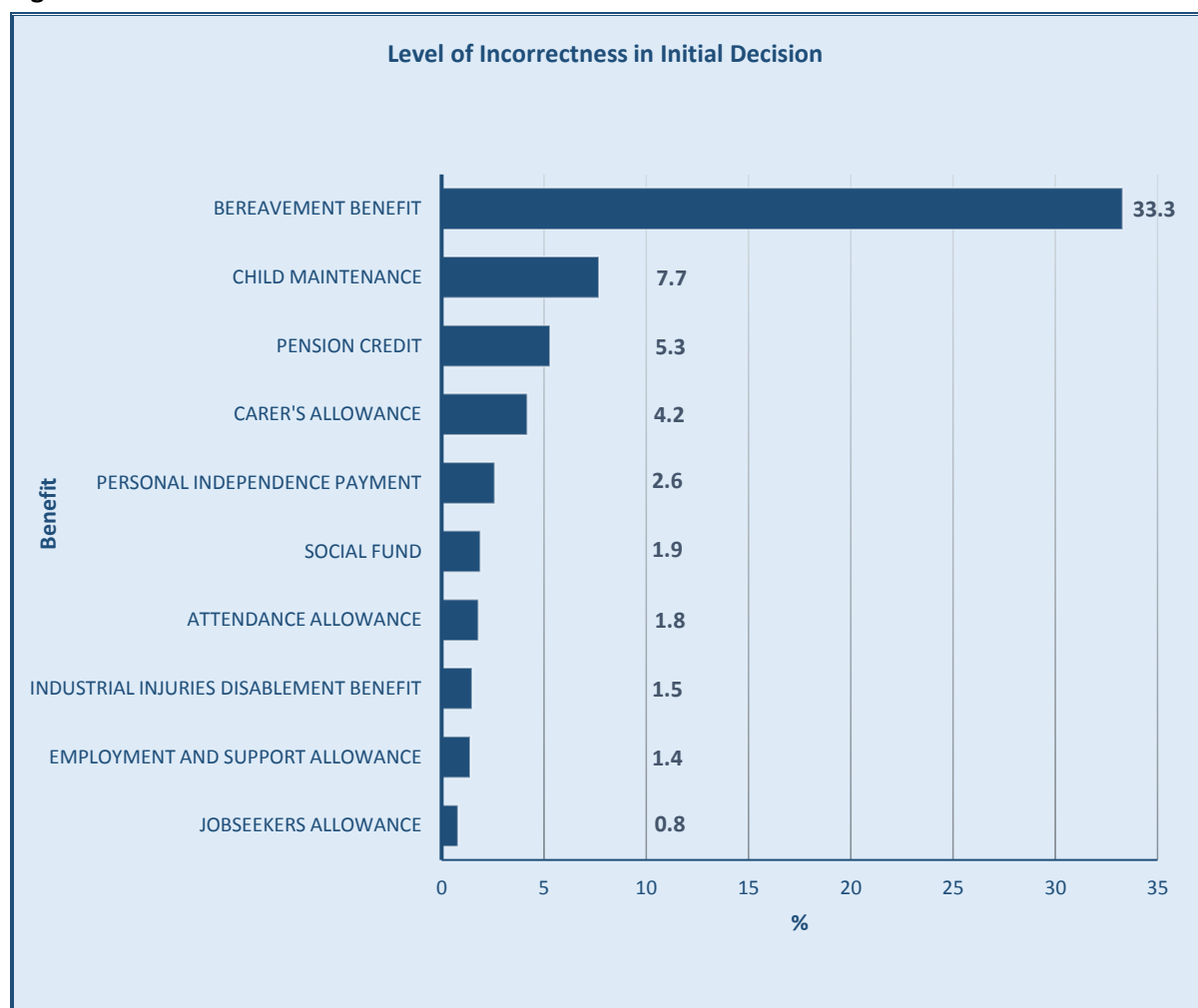
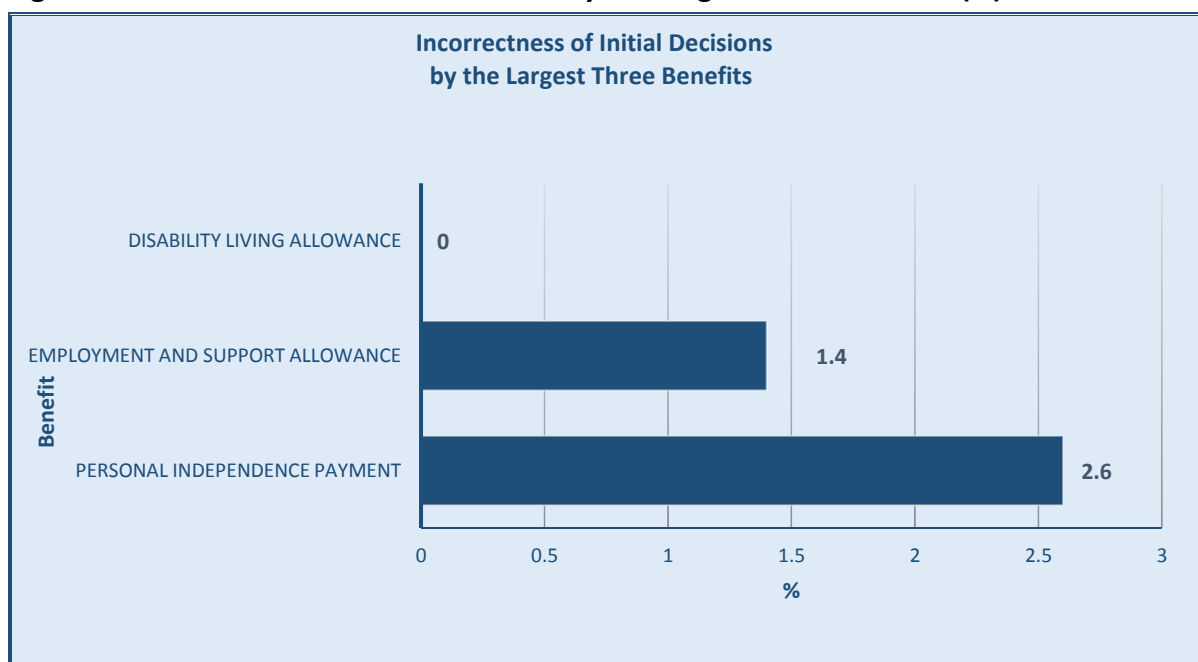


Figure 1 shows graphically the variation cross benefits where a sample of cases were monitored and the remaining census cases. Where present; levels of incorrectness in the initial decision range from 0.8% of Jobseekers Allowance cases to 33.3% of Bereavement Benefit cases (but the small sample size in this category should be noted).

**Figure 1**



Disability Living Allowance and Employment and Support Allowance accounted for around 31% and 38% of all cases registered respectively, reflecting both the number of people claiming the benefit and also the complexity in delivery of the benefit. Personal Independence Payment cases were available for selection this year, they accounted for 15% of all cases registered. The level of incorrectness in the initial decisions made in the sample for Disability Living Allowance was 0.0%, for Employment and Support Allowance it was 1.4% and for Personal Independence Payment it was 2.6%.

**Figure 2: Incorrectness of Initial Decisions by the Largest Three Benefits (%)**

### Reasons for the Initial Decision being Incorrectly made

When an initial decision was deemed incorrect the reason(s) for this incorrectness was recorded. In the period 06 April 2016 to 05 April 2017 there were 13 cases where the initial decision was judged incorrect. There were in total 14 given reasons for incorrectness.

Chart 4 illustrates the number of reasons given for cases where the initial decision was made incorrectly.

In the majority of cases where the initial decision was incorrect, a single reason was given for incorrectness, 12 cases, representing 92.3% of all cases where the initial decision was assessed as incorrect. In only one case was there more than one reason given for an initially incorrect decision. This occurred in a Child Maintenance case in which two reasons were given.

Chart 4

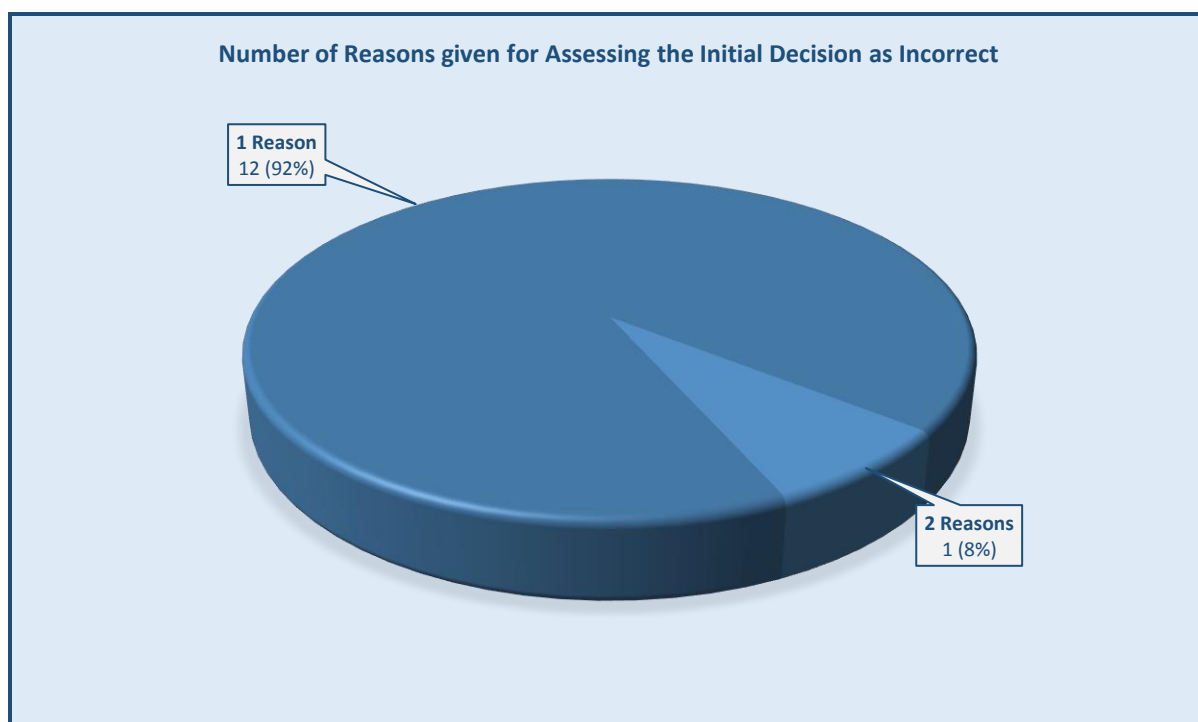


Table 4 shows the reasons and number of occurrences for cases being assessed as having the initial decision incorrectly made.

Table 4

Reason for Incorrectness		Number of Occurrences	% of Total
<b>F1</b>	Insufficient facts/evidence due to inadequate investigation of the claim or revision	5	35.7
<b>F4</b>	Misinterpretation/misunderstanding of the evidence available to the officer	3	21.4
<b>F6</b>	Disregarded relevant evidence	2	14.3
<b>F9</b>	Made errors of calculation	1	7.1
<b>R1</b>	Did not give adequate reasons for his decision when requested under Regulation 28(1)(b) of the Decision and Appeals Regulations 1999	1	7.1
<b>L1</b>	Did not identify the correct legal rules relevant to the claim/revision	1	7.1
<b>L2</b>	Misinterpreted the legal rules relevant to the claim	1	7.1
<b>TOTAL</b>		<b>14</b>	<b>100</b>

*Table 2 on Page 6 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 insufficient facts/evidence due to inadequate investigation of the claim or revision’ (F1). This reason was given 5 times representing 35.7% of all reasons.

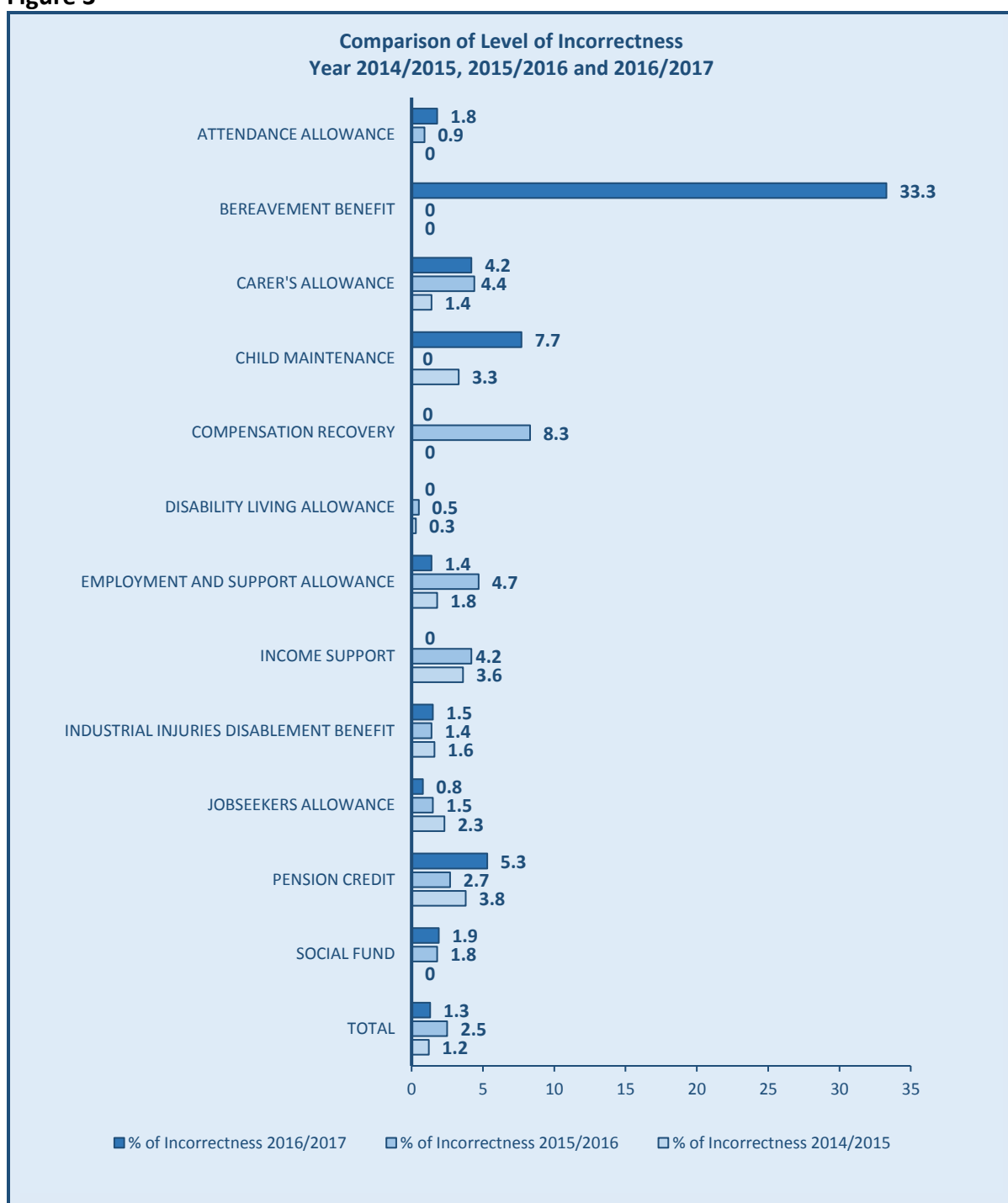
The second most common reason for incorrectness was ‘the decision of the officer was based on a misinterpretation/misunderstanding of the evidence available to the officer’ (F4). This was given 3 times representing 21.4% of all reasons.

Figure 3 compares the level of incorrectness for years 2014/2015, 2015/2016 and 2016/2017.

Incapacity Benefit, Maternity Allowance and Retirement Pension are not included as there were no incorrectly made decisions identified in the three year period. Personal Independence Payment also recorded a level of incorrectness of 2.6%, but as this is the first year of appeals, no comparison is yet available.

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

Figure 3



Over the three year period 2014/15 to 2016/17 the overall level of incorrectness identified has fluctuated, rising from 1.2% in 2014/15 to 2.5% in 2015/16 and decreasing again to 1.3% in the current year.



Jobseekers Allowance (JSA) is the only benefit which shows a year on year improvement in the standard of decision making over the three year period.

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

### **Attendance Allowance**

No incorrectly made decisions were recorded in 2014/15 with only 0.9% being identified as incorrect in 2015/16. Although the current year again recorded an increase in the level of incorrectness (1.8%), the overall standard of decision making in this category continues to be to a satisfactory level.

### **Carer's Allowance**

The standard of decision making in this category has decreased over the three year period. A level of incorrectness of 1.4% was recorded in 2014/15, rising by 3% to 4.4% in 2015/16, with negligible decrease to 4.2% in the current year.

### **Child Maintenance**

The level of incorrectness identified in this area has fluctuated during the three year period. It was identified as 3.3% in 2014/15 with standards greatly improving in 2015/16 as no incorrectly made decisions were identified. However standards have decreased significantly in 2016/17 to 7.7%. Caution in interpreting these results is required as the number of cases available for monitoring was small.

### **Compensation Recovery**

There has been an overall improvement in the standard of decision making over the three year period. Although the level of incorrectness identified in 2015/16 was unacceptably high at 8.3%, there were no incorrectly made decisions identified in the last two years. While this indicates a sustained improvement caution is required in interpreting these results given the small number of cases available for monitoring.

### **Disability Living Allowance**

While there was a very slight decrease in the standard of decision making in this category, from 0.3% in 2014/15 to 0.5% in 2015/16, there were no incorrectly made decisions recorded in the current year. 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. Over the three years there continued to be a very high appeal rate and we can therefore be confident in the overall monitoring results.

### **Employment and Support Allowance**

The appeal activity in this category continues to be very high with volumes over the three years as follows; 4689 in 2014/15, 7262 in 2015/16 and 3477 in the current year. The standard of decision making has fluctuated over the three year period, increasing from 1.8% incorrect in 2014/15 year to 4.7% in 2015/16. Standards improved in this current year to 1.4% incorrectly made (a three year low). As in DLA, given the appeal activity we can be confident in the monitoring results.

### **Income Support**

Although there was a slight decrease in standards from 3.6% in 2014/15 to 4.2% in 2015/16, there has been a significant improvement in standards in this current year, with no incorrectly made decisions being recorded in 2016/17.

### **Industrial Injuries Disablement Benefit**

The standard of decision making in Industrial Injuries Disablement Benefit is consistently to a high standard, with 1.6% or less found to be incorrectly made year on year. There is a steady appeal rate of sufficient number and we can therefore be confident in the overall monitoring results.

### **Jobseekers Allowance**

There has been a steady improvement recorded in the standard of decision making in the three year period in this category. In 2014/15 the level of incorrectness identified was 2.3%, this fell to 1.5% in 2015/16 and again to 0.8% in the current year. There were sufficient appeals in all three years to be confident in the findings.

**Pension Credit**

The level of incorrectness identified in Pension Credit has fluctuated during the three year period. It was identified as 3.8% in 2014/15 with standards improving by 1% in 2015/16. However standards have decreased significantly in 2016/17 to 5.7%.

**Social Fund**

While the standard of decision making in this category remains satisfactory, there has been an increase in the level of incorrectness identified in the three year period. In 2014/15 there were no incorrectly made decisions recorded, this rose to 1.8% in 2015/16 with another slight rise to 1.9% in the current year.

## Correctly Made Decisions Overturned by Tribunals

Of the 1021 cases monitored, 250, representing 24.5%, 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.

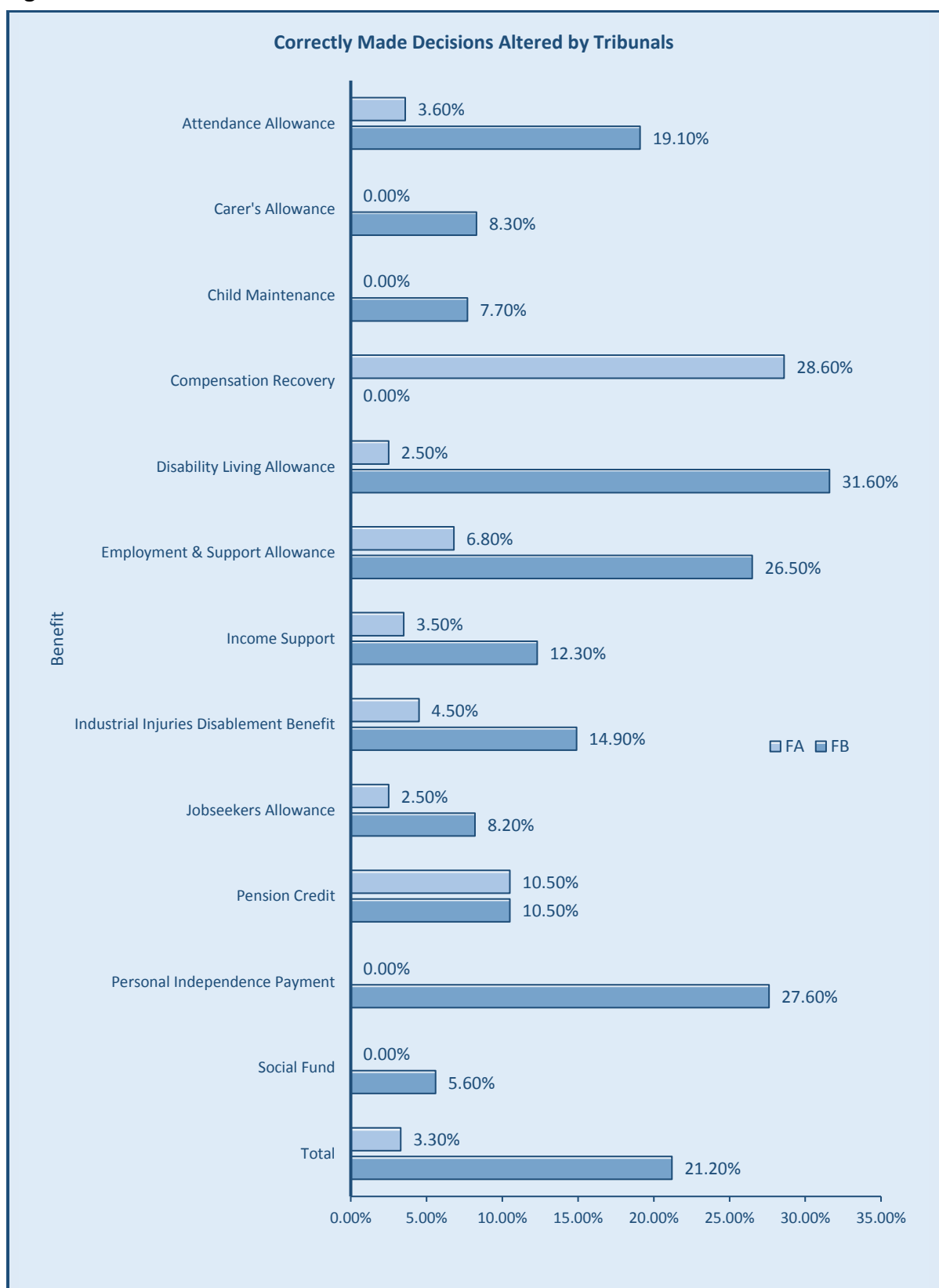
Table 5 and Figure 4 set out on a 'by benefit' basis the number and percentage of cases where the decision was judged to be correctly made, but altered by the tribunal.

**Table 5**

Correctly Made Decisions Altered by Tribunals							
Benefit	Number Monitored	Total Altered	% Altered	FA	%	FB	%
Attendance Allowance	110	25	22.7	4	3.6	21	19.1
Bereavement Benefit	3	0	0	0	0	0	0
Carer's Allowance	24	2	8.3	0	0	2	8.3
Child Maintenance	13	1	7.7	0	0	1	7.7
Compensation Recovery	7	2	28.6	2	28.6	0	0
Disability Living Allowance	316	108	34.2	8	2.5	100	31.6
Employment Support Allowance	147	49	33.3	10	6.8	39	26.5
Income Support	57	9	15.8	2	3.5	7	12.3
Industrial Injuries Disablement Benefit	67	13	19.4	3	4.5	10	14.9
Jobseekers Allowance	122	13	10.7	3	2.5	10	8.2
Maternity Allowance	4	0	0	0	0	0	0
Pension Credit	19	4	21.1	2	10.5	2	10.5
Personal Independence Payment	76	21	27.6	0	0	21	27.6
Retirement Pension	2	0	0	0	0	0	0
Social Fund	54	3	5.6	0	0	3	5.6
<b>TOTAL</b>	<b>1021</b>	<b>250</b>	<b>24.5</b>	<b>34</b>	<b>3.3</b>	<b>216</b>	<b>21.2</b>

\*Bold indicates a complete census

Figure 4



There were a total of 34 cases representing 3.3% of those monitored where the tribunal took a different view of the evidence that was available to the decision maker (FA) and 216 cases (21.2%) where additional evidence was provided to the tribunal that the decision maker did not have (FB). Of these Compensation Recovery had the highest percentage of cases (28.6%) overturned in the FA category. In the FB category Disability Living Allowance, Personal Independence Payment, 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 2016 and 5 April 2017. There were 9197 appeals registered and 1021 (11.1%) of the total, were monitored to assess the level of incorrectness of initial decisions made by officials of the Department for Communities.

Across all monitored cases, the level of incorrectness among initial decisions was 1.3%. There was a variation in the level of incorrectness of initial decisions across benefits. No incorrect decisions were recorded for Compensation Recovery, Disability Living Allowance, Income Support, Maternity Allowance and Retirement Pension. Where incorrect decisions were recorded, they ranged from 0.8% (Jobseekers Allowance) to 33.3% (Bereavement Benefit).

A majority (92.3%) 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 insufficient facts/evidence due to inadequate investigation of the claim or revision' (F1).

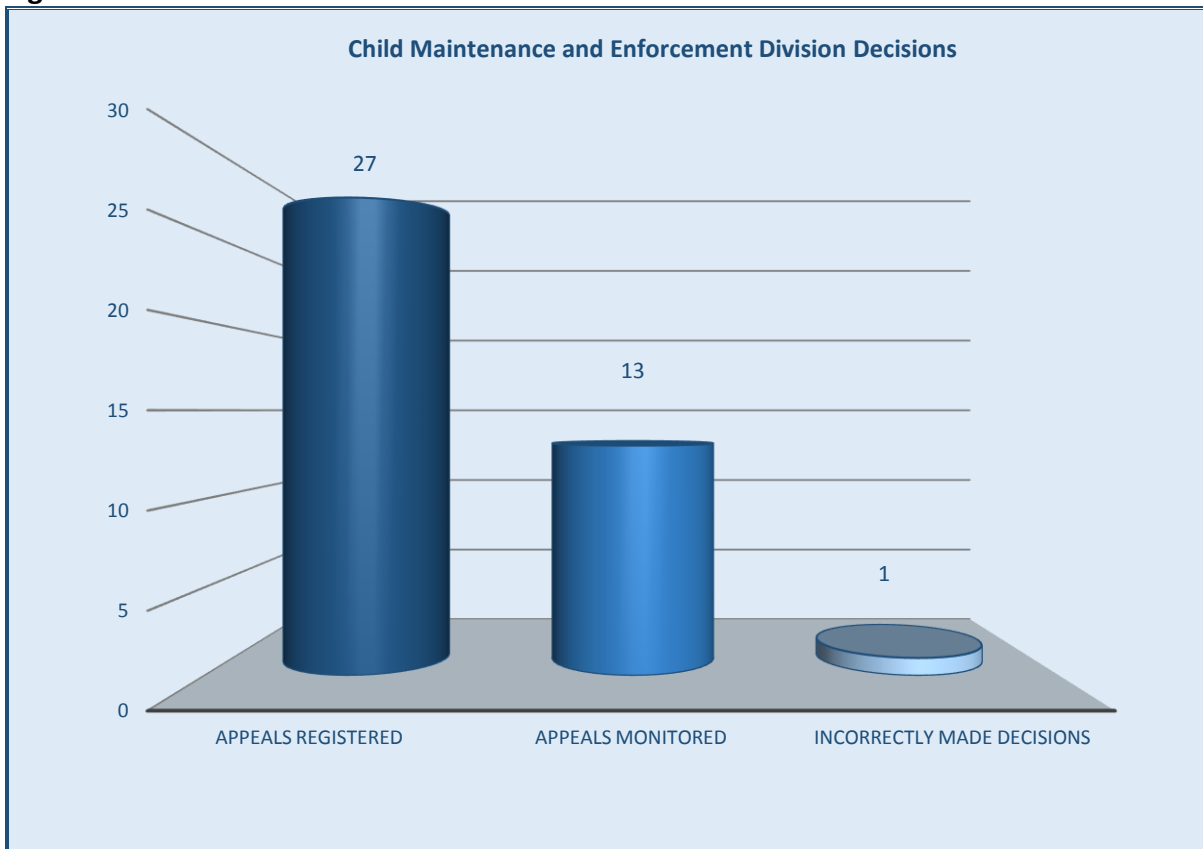
### Chapter 3

#### Child Maintenance and Enforcement Service Decisions

48.1% of all Child Maintenance appeals were monitored. The level of incorrectness was 7.7%. This is a decrease in standards on the previous year which recorded no incorrectly made decisions.

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

**Figure 5**



\*Caution in interpreting this result is advised given the small number of appeals available for monitoring.

There was one incorrectly made decision in this category, with two separate reasons recorded for incorrectness; ‘the decision was based on a misinterpretation/misunderstanding of the evidence available to the officer’ (F4) and ‘the officer made errors of calculation’ (F9). The

issue before the tribunal was the shared care of children. The decision maker had revised an earlier decision on the basis that there was an increase in the number of occasions that the children stayed overnight with the non-resident parent. The tribunal found that the decision maker had miscalculated the number of overnight stays with the non-resident parent, possibly due to double counting on occasions.

#### **Correctly Made Decisions Overturned by the Tribunal**

In a further case, representing 7.7% of those monitored, while correctly made by the decision maker, the decision was overturned by the tribunal due to the provision of additional evidence which was not available to the decision maker. In this case the evidence was additional information in relation to income which was more reflective of the appellant's earnings than that originally provided and used in the initial calculation.

#### **Comments / Recommendations – Child Maintenance**

None.



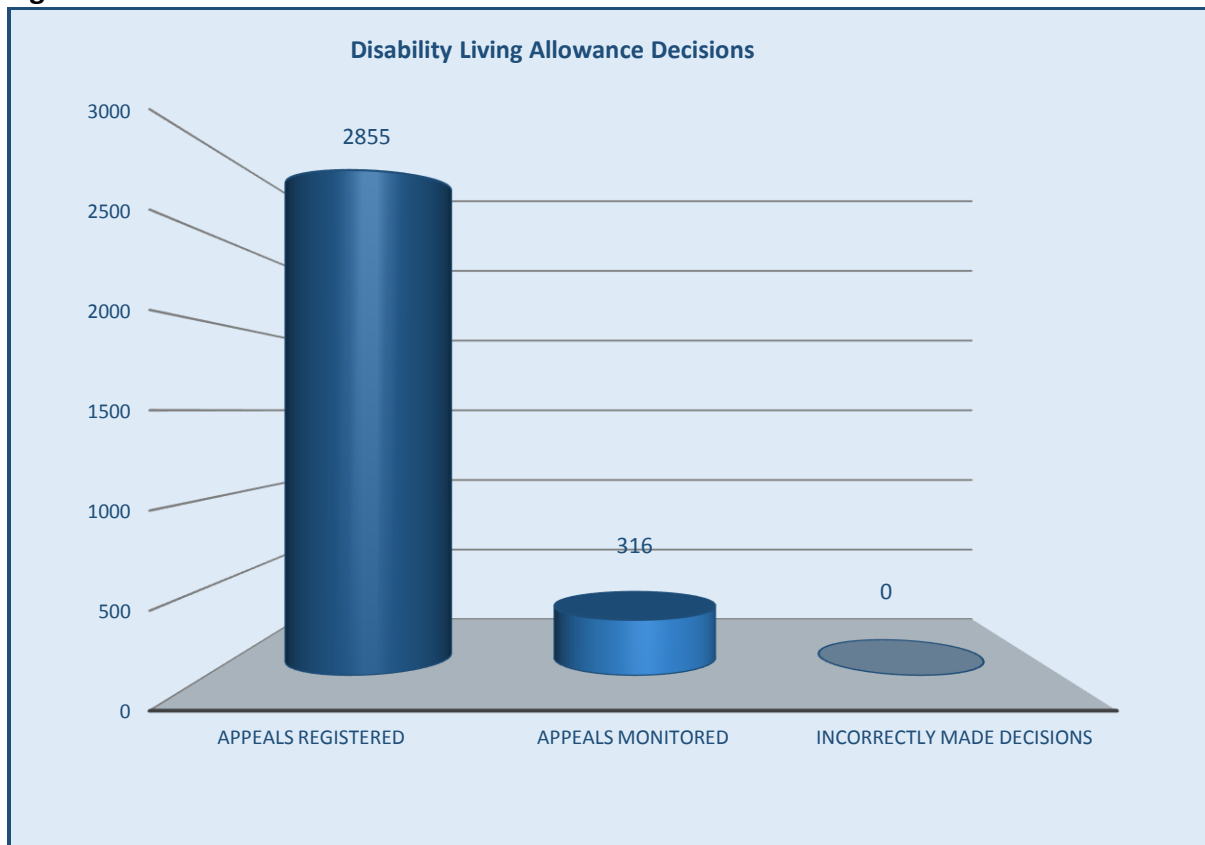
## Chapter 4

### Disability Living Allowance

This category is one of the largest areas of appeal activity in this reporting year. 11.1% of all appeals received were monitored and there were no incorrectly made decisions identified. This is an improvement on the previous year for which the level of incorrectness recorded was 0.5%.

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

**Figure 6**



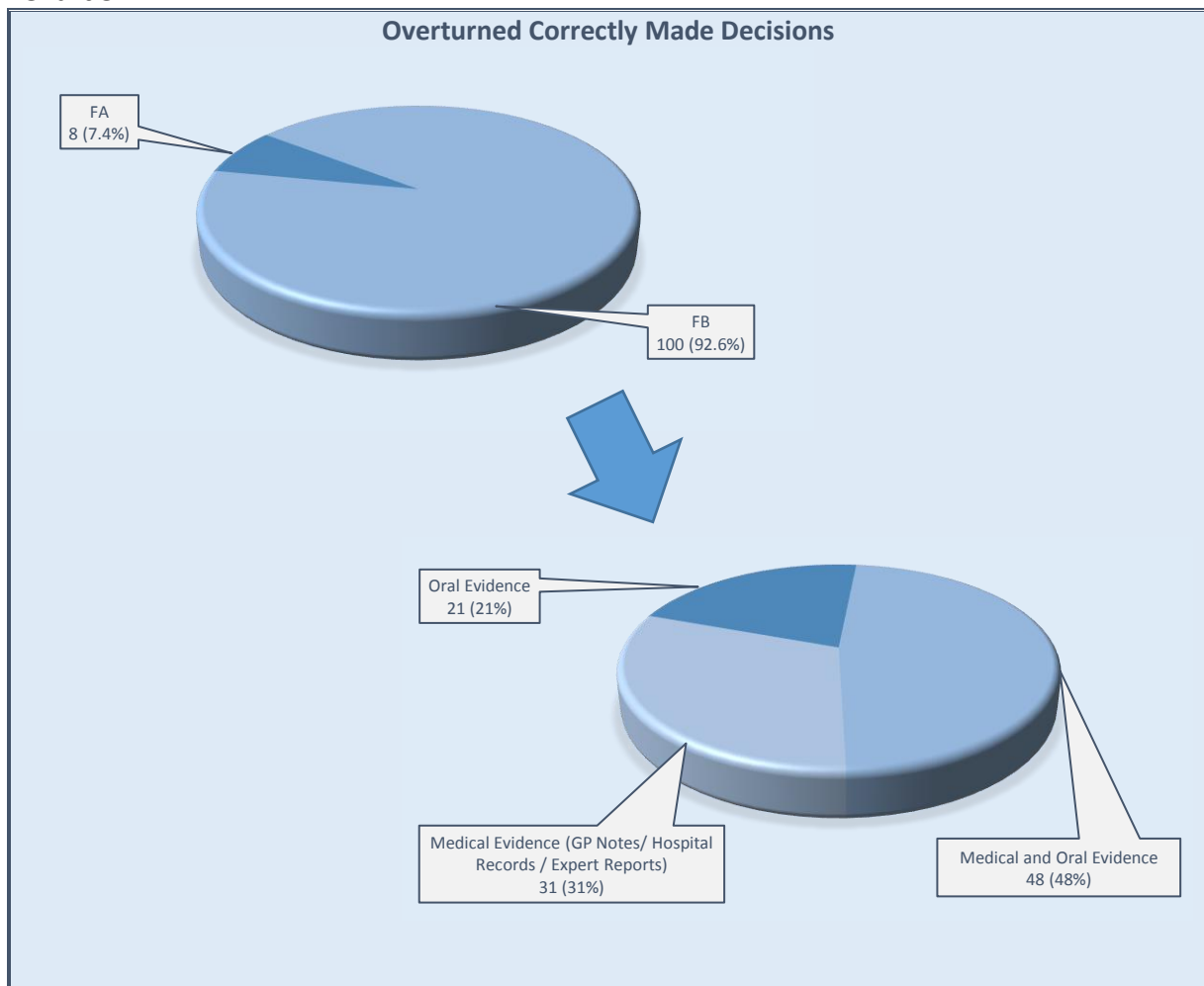
**Correctly Made Decisions Overturned by the Tribunal** Table 6 illustrates that in 108 cases, representing 34.2% of those monitored, while correctly made by the decision maker, were overturned by the tribunal because the tribunal accepted evidence which the decision maker was unwilling to accept (8 cases), or the tribunal was given additional evidence that was not available to the decision maker (100 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.	8 (7.4%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	100 (92.6%)

Chart 5 gives a breakdown of additional evidence available to tribunals.

**Chart 5**



In 21 cases the direct evidence of the appellant or a witness was the sole reason for the decision being overturned. In a further 31 cases a combination of 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. In the remaining 48 cases the tribunal was influenced by direct oral evidence and additional medical evidence. Overall, the decisions in 79 cases, representing 25% of cases monitored were influenced by the availability of additional 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**

<b>Comments made by the legal member</b>	
1.	Lowest rate of the care component awarded. Additional evidence given by the appellant and medical records. The claimant's evidence was persuasive.
2.	Appeal allowed. Low mobility and middle rate care allowed from claim date to day before start date of new claim award. Addendum submission made clear that on new claim an award of low mobility and middle care had been made largely because of appellant's depression and low motivation. Medical records showed long term trouble and motivation consistent with Department's award for the later period.
3.	There was a detailed form completed by the appellant's GP that set out in detail the medical investigations and possible causes. A genuine condition was referred to with ongoing investigations in Examining Medical Practitioner (EMP) report, however, the functional limitation was not investigated. We had the benefit of hearing additional evidence from the appellant.
4.	Existing award of low rate care was confirmed and low rate mobility was allowed. The GP report referred to "needs accompanied outdoors for support and reassurance". Some evidence of trauma / past assaults. EMP report had acknowledged low mood, a mental health history and prescribing of paroxetine. Additional evidence given by a witness (cousin), the appellant and GP records.
5.	Appeal allowed in relation to the mobility component (low rate). The tribunal was satisfied on medical evidence and appellant's oral evidence that guidance/supervision was required in relation to unfamiliar routes.
6.	The appellant satisfies the conditions of entitlement to the lower rate of the care component and the lower rate of the mobility component of DLA for two years. Additional evidence was given by a witness, the appellant and through medical records (GP notes).
7.	Low rate care and mobility awarded for two years. Additional evidence was given by medical records. Clearly the Department did not accept appellant's needs as detailed in DLA1. Indeed a quick look at DLA1 would/could lead to the conclusion that appellant was somewhat exaggerating. For example needs/help required - there are not enough hours in the day to accommodate claimed needs. The tribunal's opinion was that credibility was an issue but it did accept part of the claim resulting in award of low rate care and mobility. The submission papers contained some supportive medical evidence of medical complaints. In light of above the decision was not unreasonable. Tribunal had a medical member on the panel who could elaborate on medical conditions and symptoms and it also had medical records. These also supported part of appellant's claim. It also had appellant's direct evidence which panel was able to assess.
9.	Low rate mobility had already been allowed and this was confirmed by the tribunal. No Care component had been allowed - middle rate care allowed by tribunal. Supportive medical reports from mental health professionals. Additional evidence given by the appellant, medical records and from trauma therapist.
10.	Tribunal awarded low rate of both components. The evidence given by the parties was truthful and not overstated. GP records confirmed a memory problem. Additional evidence given by a witness.
11.	Tribunal awarded low rate care – daytime attention for avoidance or mitigation of harmful self-neglect. Mobility component was disallowed. There has been long term drug use though appellant is now apparently clean. Examined by addiction specialist and psychiatry. Referred to WAVE Trauma centre. Quetiapine prescribed and Diazepam. Referred to Adult ADHD services. Now living with father. Long term anxiety and distractibility. Independent evidence of self-neglect. Additional evidence given by GP records – very detailed. Appellant did not attend. Noted (by GP and by his family) to be manipulative. Very comprehensive specialist correspondence persuaded us to proceed. Tribunal information was much greater than that available to Department.
12.	Tribunal allowed low rate care and low rate mobility. Additional evidence was given in the form of an expert report handed in, oral evidence of the appellant and the availability of GP records. The Decision Maker had not seen the additional medical evidence.
13.	Grounds to supersede were established by the Department which reduced the award from middle rate care to low rate care. Grounds to supersede were not established in relation to the mobility component and so the appellant remained entitled to low rate mobility. The appellant (59 years old) had a decades long history of bi-polar disorder. Mild frontal wide atrophy on CT scan. Multiple hospital

	admissions over the years and continued under psychiatric review. However medication compliance had improved along with key management. Attentive wider family and fragile mental health. Additional evidence given by the appellant and medical records.
14.	Low rate mobility and low rate care (attention) were awarded until the appellant's 18 <sup>th</sup> birthday. The evidence in person of the mother (appointee) and appellant was persuasive and the demeanour of the appellant was persuasive.
15.	Additional evidence given by medical records. The tribunal did find grounds for supersession due to a worsening condition causing impairment in self-care ability which was sufficient to ground an award of lowest rate care (attention) for a limited period.
16.	Additional evidence given by medical records. Middle rate care was re-instated. Medical notes made clear conditions were such that care was required (substantially in excess of a child of comparable age).
17.	Low rate care and mobility awarded. The decision maker relied on a report which provided limited information as to functional ability and instead focused on his disability. Additional evidence given by medical records. The GP gave further details of all the conditions. Functional effect was quite detailed.
18.	Existing award of low rate mobility was increased to high rate mobility for the same period. Middle rate care award was not altered by tribunal. Autistic child born with global developmental delay. Muscular dystrophy phenotype diagnosed. "Gowers positive" (muscle weakness). Gross motor skills and balance affected. Major Buggy supplied by Occupational Therapist. Behaviour issues taken into account. Additional evidence given by paediatric consultant's records. This could have been a complicated case but we were greatly helped by the Presenting Officer's presence and conciliatory approach and by a sensible mother with a good understanding of the issues.
19.	Middle rate of care component allowed - daytime attention frequently required in excess of the normal requirements of a person of that age in normal physical health. The child has bronchiectasis, rare in a child. Mother is required twice daily to remove phlegm via a mask and apply physio/massage. Child has frequent lung infections/exacerbations. Specialists frequently attended. Additional evidence given by the appellant and hospital records.

### Comments / Recommendations – Disability Living Allowance

The issues identified in this report remain similar to those mentioned in previous reports. In last year's report I pointed out that there continues to be concern about the number of decisions which are overturned due to further medical evidence. The Department is once more asked to consider what further steps can be taken to obtain additional medical evidence either at source from the medical profession or directly from the claimant prior to decision-making.

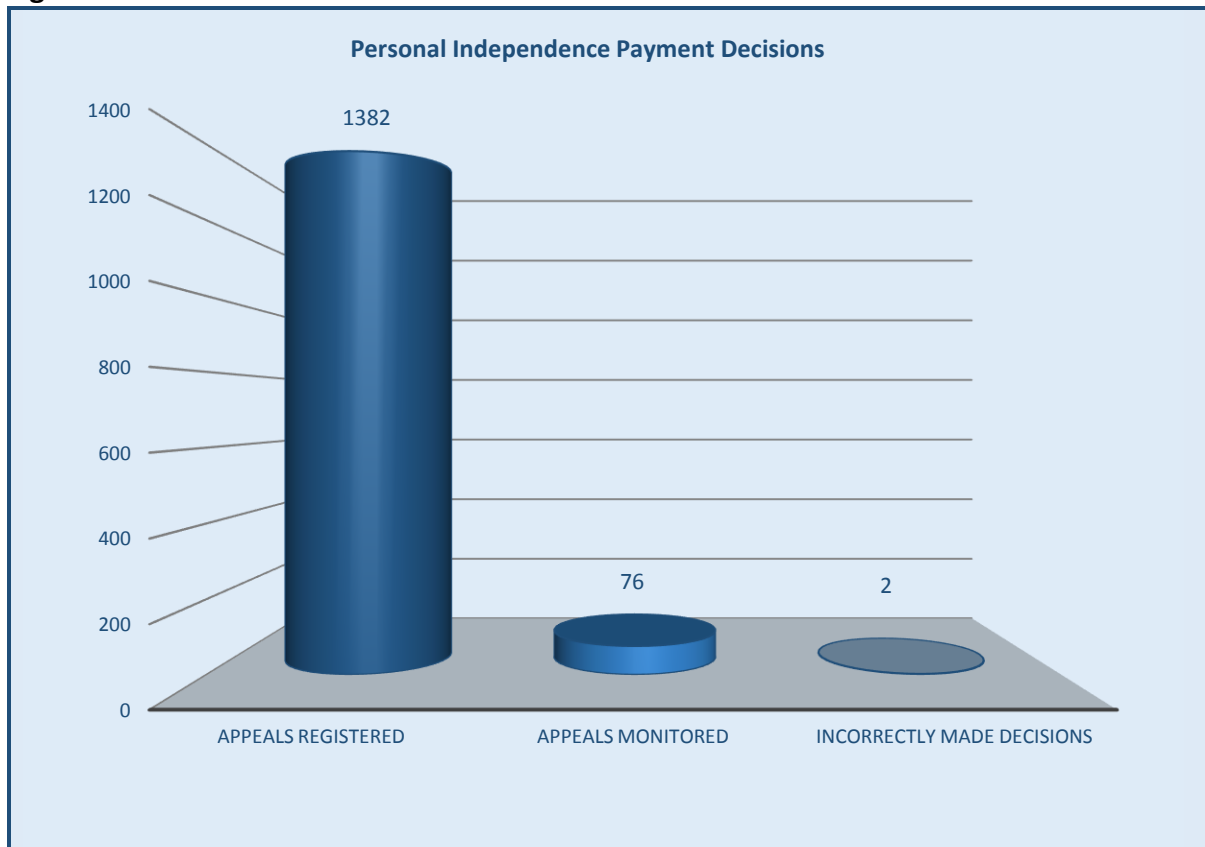
The comments from legally qualified members mentioned at table 7 illustrate the fundamental importance of having GP notes and records available to the tribunal at hearing stage.

## Personal Independence Payment

Personal Independence Payment (PIP) is a new benefit which is similar to Disability Living Allowance. In its first year it is already the third largest appeal area, accounting for 15% of all appeals registered. 5.5% of all appeals received were monitored and the level of incorrectness identified was 2.6%.

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

**Figure 7**



There were two incorrectly made decisions in this category and two separate reasons recorded for incorrectness.

In the first case the legal member commented that ‘the decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision’ (F1). Also that the Health Care Professional’s (HCP) investigation was inadequate and inappropriate as the appellant was telephoned while in hospital having been admitted due to heart failure. The decision maker based the decision solely on this evidence which was inadequate.

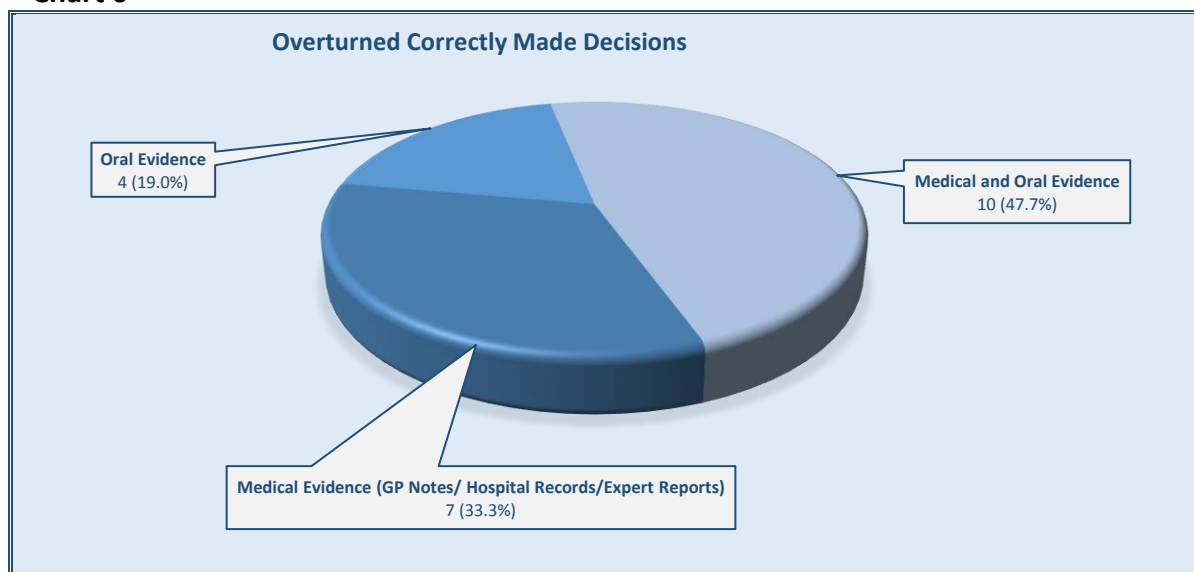
In the second case the legal member commented that ‘the officer disregarded relevant evidence’ (F6). This evidence was overwhelming medical evidence included in the appeal submission which referred to uncontrolled epilepsy, with over 100 (minor) seizures per day on some occasions. The Department failed to take account of clear medical and hospital letters in the submission and although it accepted that supervision was required and awarded enhanced mobility, no award was made for daily living. The tribunal awarded daily living at the enhanced rate and commented that the appeal should not have proceeded to tribunal stage.

### **Correctly Made Decisions Overturned by the Tribunal**

In a further 21 cases, representing 27.6% of those monitored, while correctly made by the decision maker, the decisions were overturned because the tribunal was given additional evidence that was not available to the decision maker.

Chart 6 gives a breakdown of additional evidence available to tribunals.

Chart 6



In 4 cases the direct oral evidence of the appellant or a witness was the sole reason for the decision being overturned. In a further 10 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 17 cases, representing 22.4% of cases monitored were influenced by the availability of medical evidence to the tribunal.

As highlighted in the DLA category, these statistics demonstrate that information is available from claimants and medical professionals prior to making the decision on a claim.

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.	Panel accepted evidence from appellant as to restrictions as it was fully supported by evidence in GP notes and records. Further investigation required in relation to claimed restriction as this would have a skewed effect on the appellant's claim.
2.	Appellant's evidence accepted as it was fully supported by GP notes and records. Appellant was a credible witness and GP notes and records corroborated the evidence. Further enquiry could have been made by the decision maker into appellant's care.



3.	Additional evidence given by the appellant, a witness, medical records and an expert report obtained by the tribunal. Having seen and heard from the appellant we agree there are problems.
4.	Standard daily living and standard mobility awarded. Additional evidence given by the appellant and medical records. The decision maker's reasoning was based on observation of mobilising by the Health Care Professional (HCP) who deduced that the appellant could walk 200 meters repeatedly. The appellant raised the issue that the consultation should have been recorded and alleged that answers were not properly recorded by the HCP.
5.	Enhanced rate of mobility component awarded. Credible evidence given of "abseizes" (absence seizures). Additional evidence given by the appellant and medical records.
6.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was medical records. The tribunal removed both the daily living component and mobility component. The evidence of the appellant was contradictory and not supported by medical evidence.

### Comments / Recommendations – Personal Independence Payment

Personal Independence Payment (PIP) is a new benefit and will ultimately replace Disability Living Allowance for those of working age. Although this is the first year in which PIP has fallen for consideration within my report it has become immediately apparent that the Department need to carry out a more robust investigation prior to initial decision. In many respects this mirrors concerns about DLA decision-making, namely that a number of decisions are overturned at appeal stage due to the availability of further medical evidence.

The Department should seriously consider obtaining a detailed report from a general practitioner in all cases prior to initial decision. Such a report could supplement any assessment carried out by a health professional.

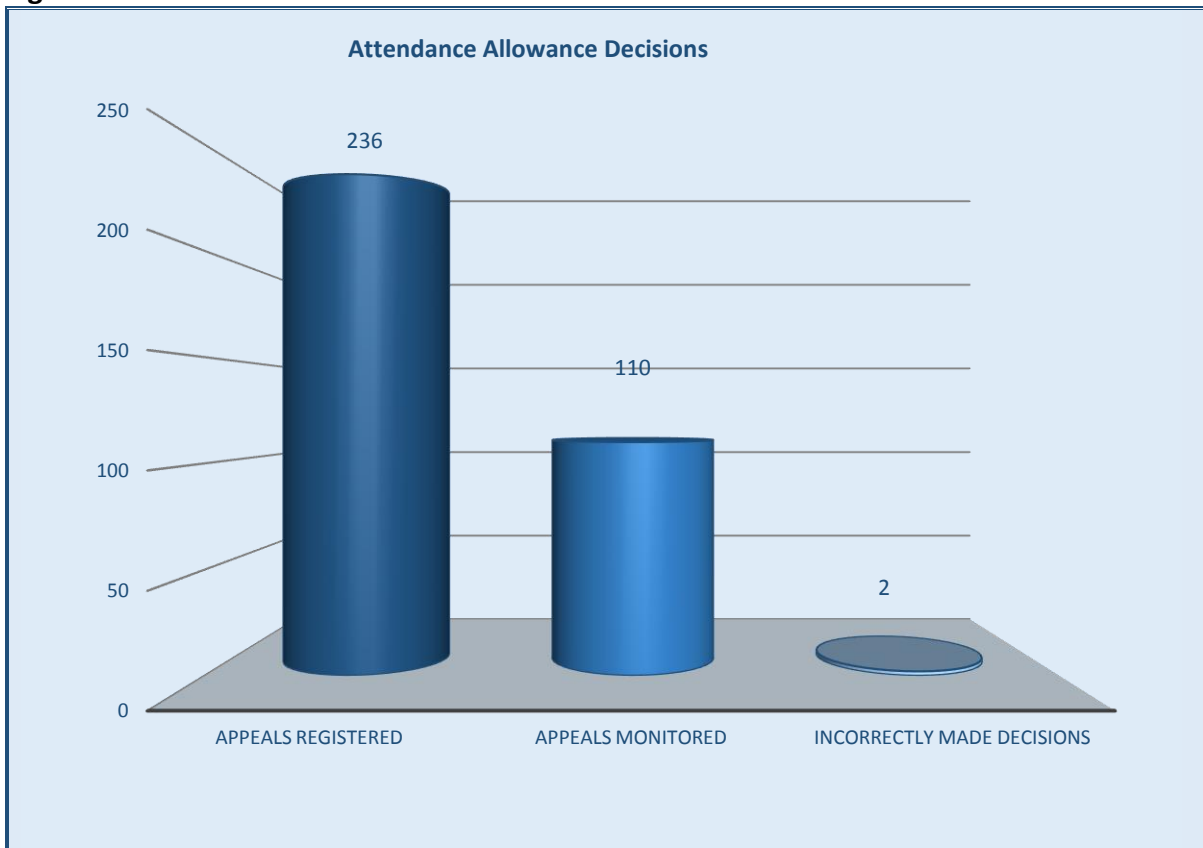
The comments from legally qualified members mentioned at table 8 once more illustrate the fundamental importance of having GP notes and records available to the tribunal at hearing stage.

**Attendance Allowance**

As Attendance Allowance is a relatively small benefit in terms of appeal activity, 46.6% of appeals received were monitored. The level of incorrectness identified was 1.8%. This is a decrease in standards of almost 1% on the previous year.

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

**Figure 8**



There were two incorrectly made decisions identified in this category. In the first case the legal member stated that the decision was based on a misinterpretation/misunderstanding of the evidence available to the officer (F4). The appellant was admitted to a nursing home for respite care and transferred from there to a hospital two weeks later. The department was informed by telephone of both dates. The admittance to hospital date was used as the

trigger for calculating the date for reducing entitlement and an overpayment of benefit occurred. The presenting officer for the department agreed that the decision maker misunderstood the information. The tribunal decided that there was no failure to disclose information.

In the second case the legal member commented that the decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision' (F1). The appellant had a number of significant medical conditions including Chronic Obstructive Pulmonary Disease (COPD) and blood pressure and had suffered a stroke. In the claim it stated problems relating to all three and at reconsideration stage the appellant advised that bowel cancer had recently been diagnosed. The decision maker relied entirely on a report from a consultant who dealt with the stroke recovery. It was stated in that report that from the stroke perspective the appellant had made a good recovery. The effect of the other medical conditions were not considered by the decision maker. These clearly impacted on care needs.

### Correctly Made Decisions Overturned by the Tribunal

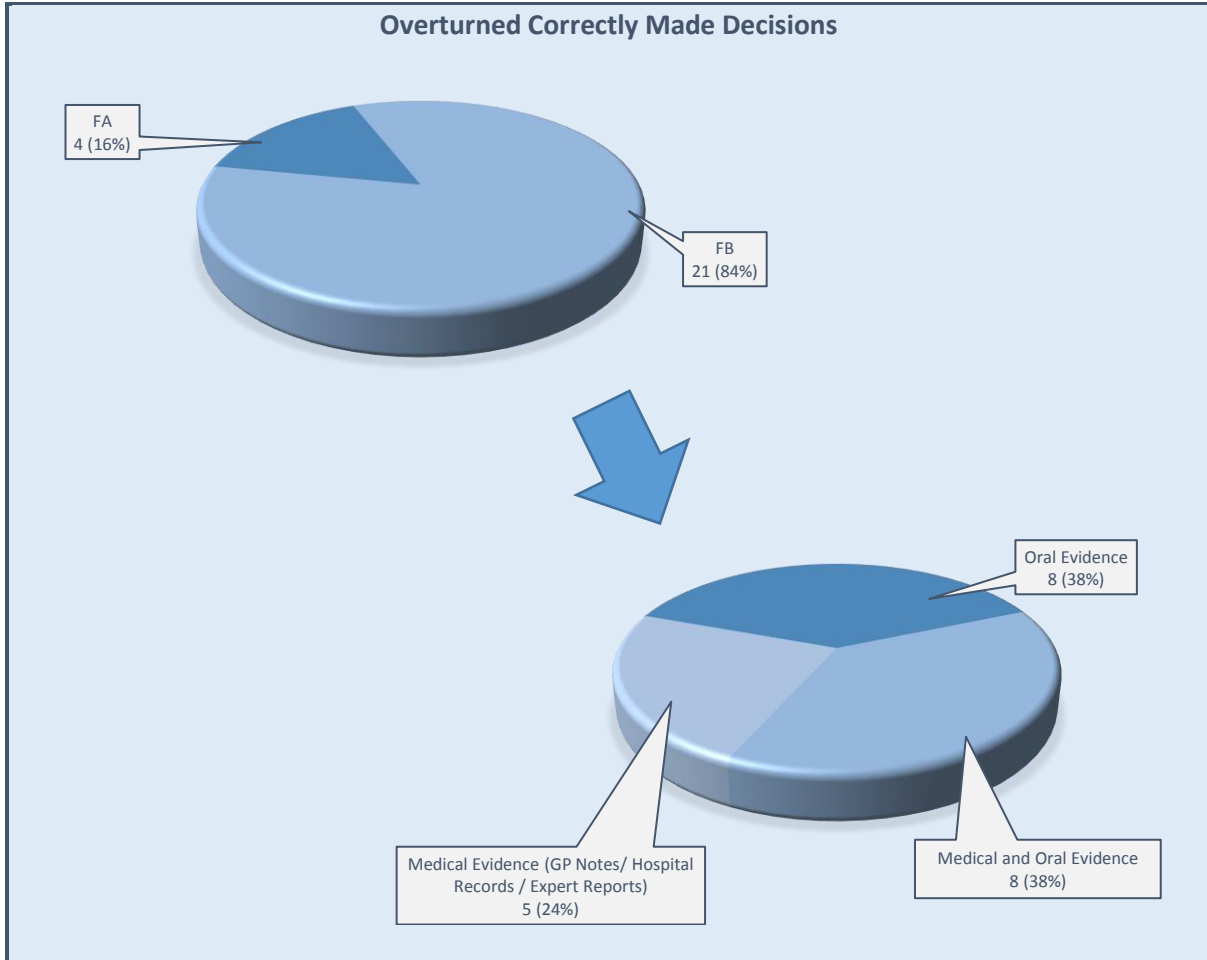
Table 9 illustrates that a further 25 cases, representing 22.7% of those monitored, while correctly made by the decision maker, were overturned because the tribunal either accepted evidence which the decision maker was unwilling to accept (4 cases), or the tribunal was given additional evidence that was not available to the decision maker (21 cases).

**Table 9**

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.	4 (16%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	21 (84%)

Chart 7 sets out the spread of additional evidence available to tribunals.

**Chart 7**



In 8 of the cases the tribunal relied upon the direct oral evidence of the appellant and/or witnesses. In the remaining 13 cases the additional evidence presented was by way of GP records, or a combination of information from the GP records, expert medical reports and oral evidence. Overall 19.1% of those monitored were overturned due to additional information.

Table 10 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 10**

<b>Comments made by the legal member</b>	
1.	Additional evidence was given by the appellant as well as GP notes and records. Conditions were satisfied and attendance allowance was awarded at the low rate for day attention. The appellant requires frequent personal care daily.
2.	The tribunal awarded the night-time element of attendance allowance. Additional evidence was given in the form of an expert report handed in. The decision of the department was not defective in itself, there was just no access to medical records and no Examining Medical Practitioner (EMP) report.
3.	Low rate of attendance allowance awarded - frequent daytime attention required - from six months following date of needs first arising after a stroke. The stroke has reduced her visual field in below her eyes and she has evidently become very dependent on her husband. She has developed steroid induced diabetes which she has difficulty managing. Additional evidence given by the appellant was consistent and credible, the witness (her husband, who was plainly supportive), medical records including an ophthalmology report.
4.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was: an expert report obtained by the tribunal, by a witness and given by the appellant.
5.	Summary decision was to disallow an award of attendance allowance. Appeal decision was to allow attendance allowance at the lower rate. Additional evidence given by a witness, the appellant and GP records. In the form of direct evidence. The tribunal accepted the evidence because it was consistent and credible from both witnesses and appellant. Also medical notes confirmed degenerative change at multiple levels in back with severe mid cervical spine change.
6.	Tribunal awarded low rate of attendance allowance for daytime attention, the qualifying period was satisfied. Additional evidence given in the form of an expert report handed in. Decision maker did not have oral evidence and did not see appellant's GP notes and records.
7.	Additional evidence given by GP records and evidence of an ongoing care package from South Eastern Health and Social Care Trust.
8.	Tribunal awarded the high rate of attendance allowance. GP evidence provided together with the evidence of the family at hearing clearly show the appellant had a terminal illness and was as limited as was found in the application form. The witnesses were, in the tribunal's opinion, very credible.

### **Comments / Recommendations – Attendance Allowance**

The issues remain the same as in previous years and are repeated.

As with Disability Living Allowance many decisions are overturned due to the availability of additional medical evidence at hearing. Anecdotally it is sometimes suggested in relation to the elderly that they may be inclined to understate the serious nature of their problems and the effect of those problems on their ability to function on a day-to-day basis. It is also the case that family members/carers are sometimes well-placed to supplement comments made by elderly claimants.

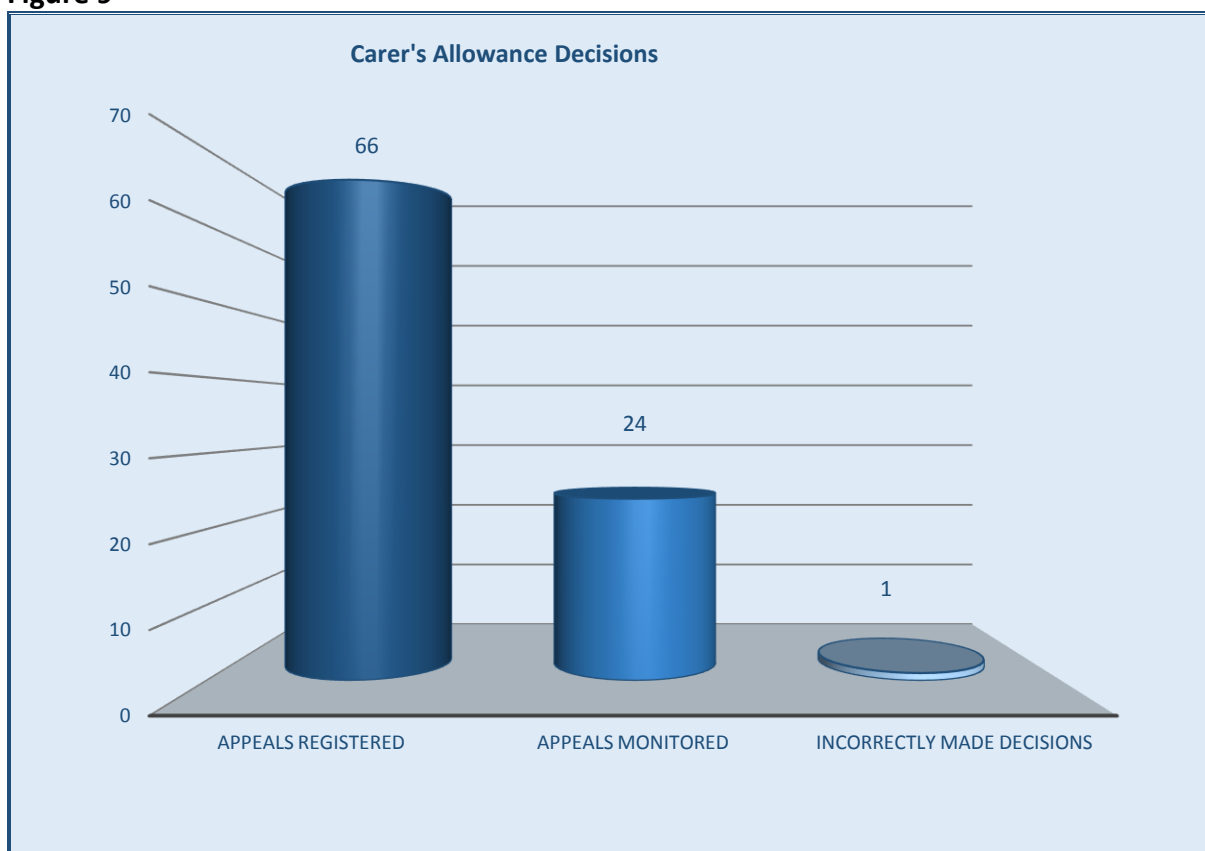
The Department may wish to consider obtaining the following evidence prior to initial decision:

- a. a detailed report in all cases from the claimant's general practitioner
- b. statements from family members and/or carers – with the claimant's consent

## Carer's Allowance

The appeal rate in Carer's Allowance (CA) is low. To obtain a meaningful sample, 36.4% of appeals received were monitored. The level of incorrectness identified was 4.2%. This is on a par with the previous year.

**Figure 9**



\*Caution in interpreting this result is advised given the small number of appeals available for monitoring.

There was one incorrectly made decision identified in this category; 'the officer disregarded relevant evidence' (F6). The appellant was able to provide the tribunal with sufficient evidence that the Department had been given notice of his change of circumstances. He had submitted a letter which had been acknowledged by the Department but not acted upon and subsequently lost.

### **Correctly Made Decisions Overturned by the Tribunal**

In a further 2 cases, representing 8.3% of those monitored, while correctly made by the decision maker, were overturned because the tribunal was provided with evidence that was not available to the decision maker.

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

### **Comments / Recommendations – Carer's Allowance**

The level of incorrectness this year (4.2%) is somewhat similar to that for the previous year (4.4%). It continues to cause me some concern that the errors identified once more remain fairly case specific. These should be capable of resolution.

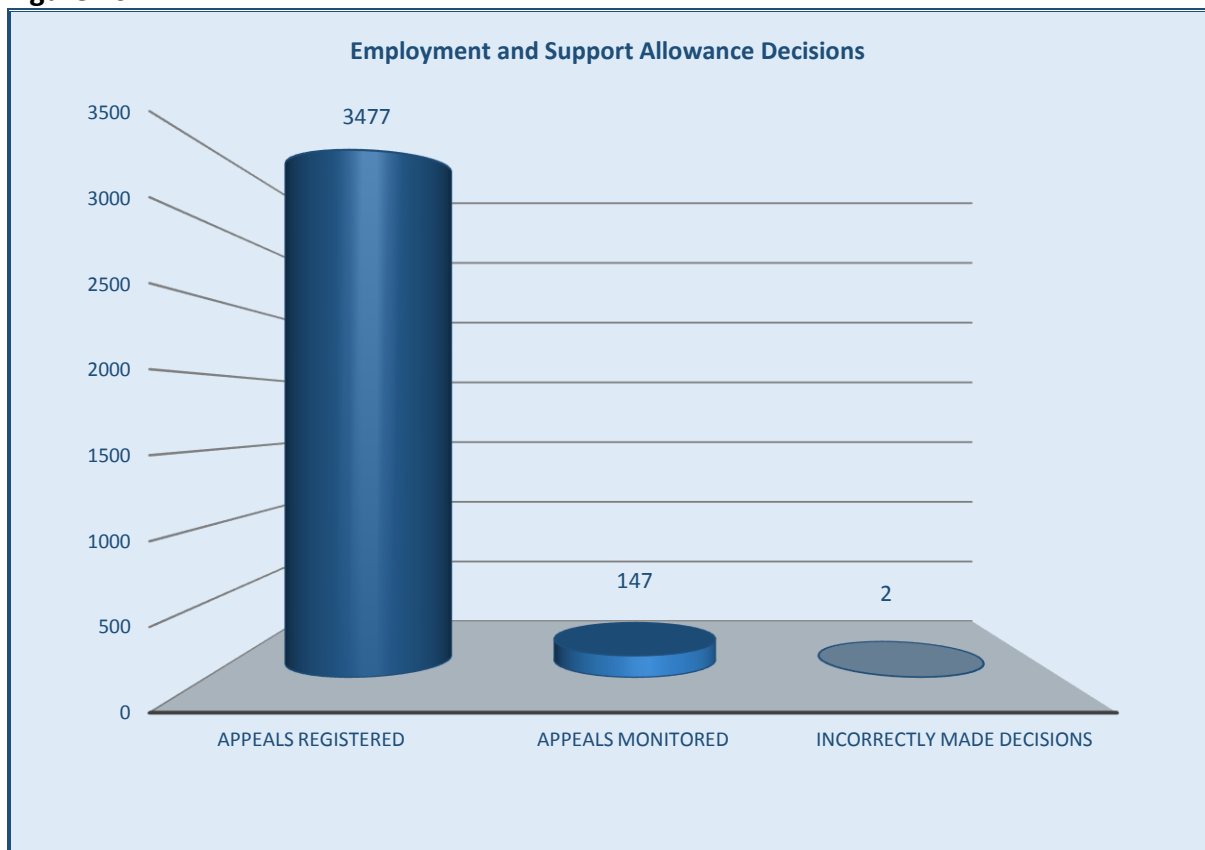


## Employment and Support Allowance

Employment and Support Allowance (ESA) is by far the largest category of appeal activity in this reporting year. 4.2% of all appeals received in this category were monitored. The level of incorrectness was 1.4%. This is an improvement in standards of 3.3% on the previous year.

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

**Figure 10**



There were two incorrectly made decisions 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 appeal was allowed under Section 29(2)(b) of the Limited Capability for Work Regulations 2013. The claimant had a diagnosis of Kienböck's Disease in both wrists and was awaiting surgery. The healthcare professional accepted this but found that although there was reduced power and grip in both wrists, items could be lifted with forearms and elbows. The decision maker relied upon this evidence and did not award any points. In the submission to the tribunal the decision maker quotes in the categories of *Picking up* and *Manual dexterity* that "there is no requirement to have two hands to achieve tasks outlined and that a person could reasonably manage by using one hand and supporting a box against another part of the body" and that "those with effective function of one hand have very little restriction of function in the work place". There was no account taken that in this case both hands were affected by the condition. Additionally although regulation 29 was noted in the actual decision made by the departmental officer there was no explanation of how that translated in practice to this claimant. How would he/she not be a "substantial risk to the mental or physical health of any person if .....were found not to have limited capability for work". The tribunal considered that the claimant was unable to be placed in a work environment as not only would it be a struggle to work but that there was a risk that the claimant would be a risk to others and that his condition would deteriorate.

In the second case, the tribunal was satisfied that the claimant suffered from a debilitating mental health condition. The legal member commented that the evidence provided by the claimant was not properly understood by the decision maker. Points were awarded in the areas of initiating and completing personal actions; coping with change and coping with social engagements.

### **Correctly Made Decisions Overturned by the Tribunal**

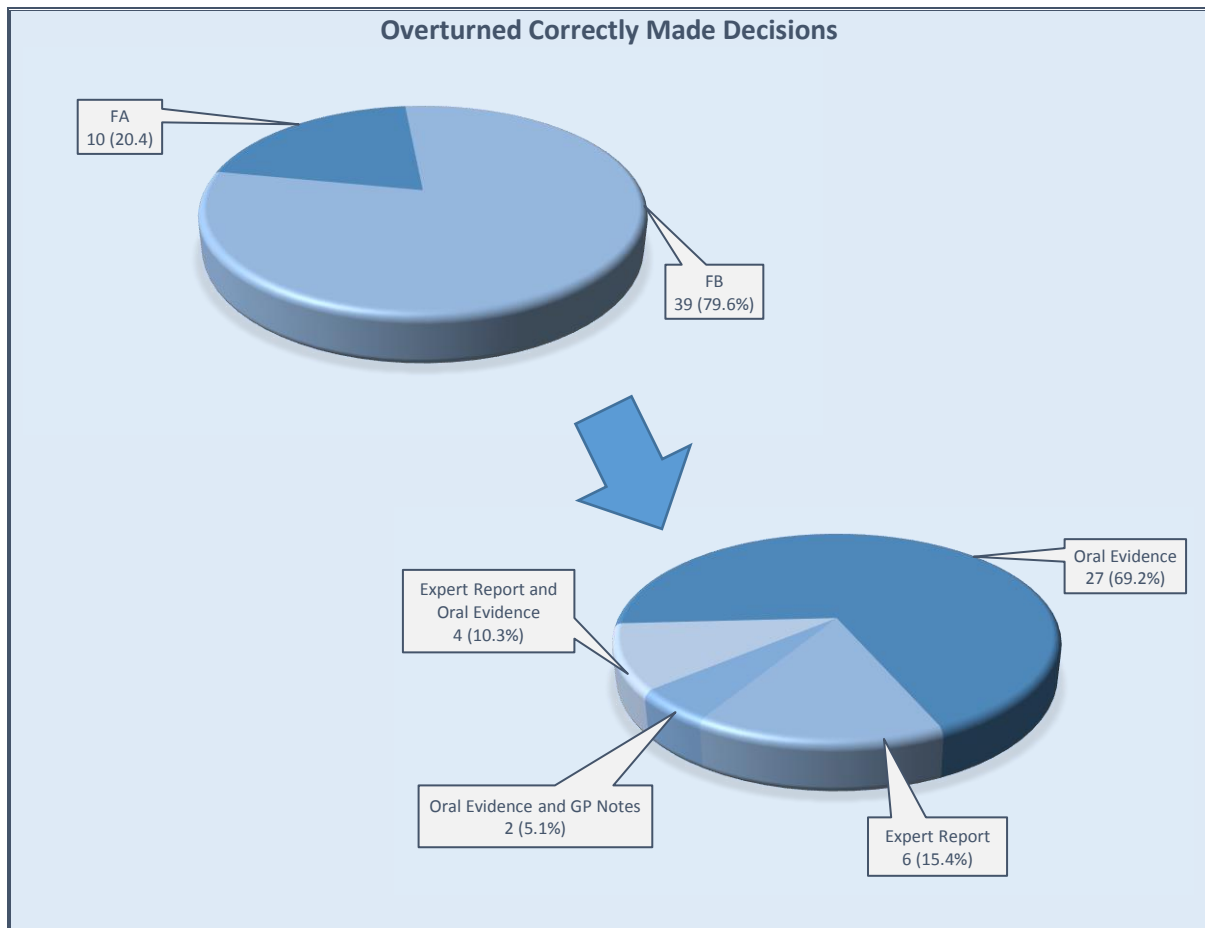
Table 11 illustrates that a further 49 cases, representing 33.3% of those monitored, while correctly made by the decision maker, were overturned because the tribunal either accepted evidence which the decision maker was unwilling to accept (10 cases) or the tribunal was given additional evidence that was not available to the decision maker (39 cases).

**Table 11**

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.	10 (20.4%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	39 (79.6%)

Chart 8 sets out the spread of additional evidence available to tribunals.

**Chart 8**



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

In 27 cases the sole reason for the decision being overturned was the direct oral evidence of the appellant or a witness. A further 6 cases turned on the evidence of an expert report. The

evidence provided in the remaining 6 cases was a combination of various medical evidence and oral evidence. Overall, the decision in 12 cases, representing 8.2% of cases monitored, were influenced by the availability of medical evidence to the tribunal.

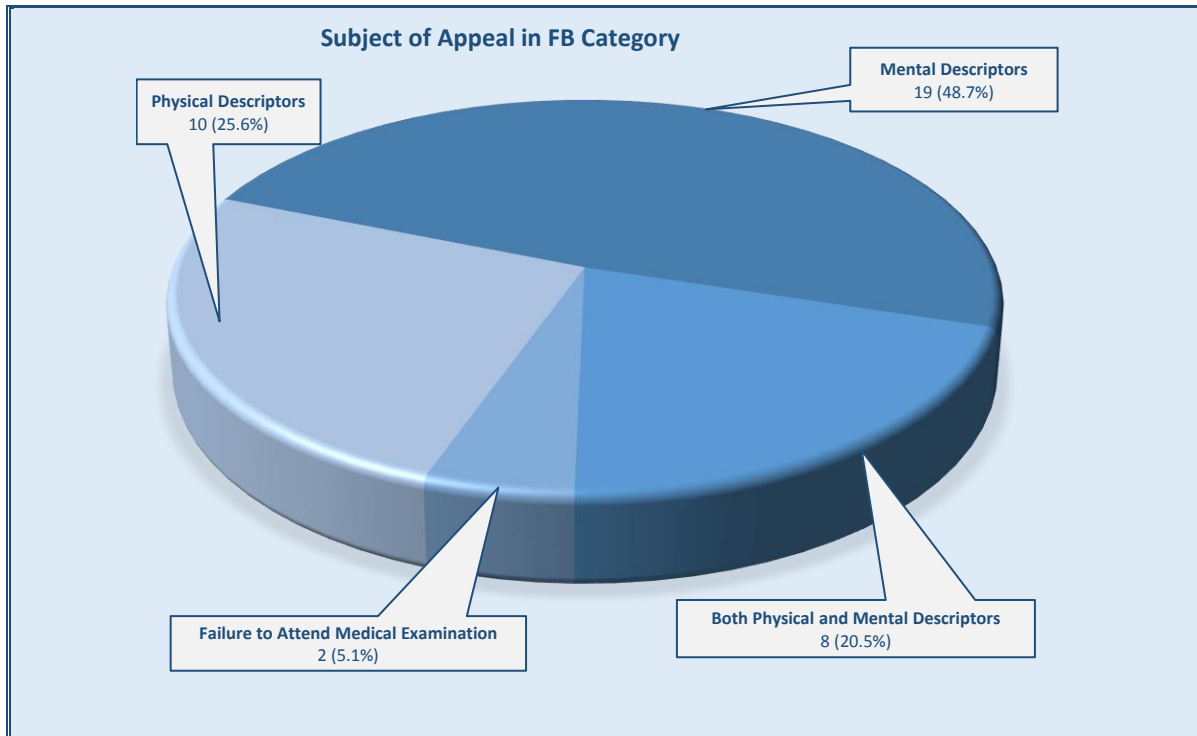
Table 12 sets out a selection of comments made by the legal member of the tribunal in cases where additional information was made available to the tribunal.

**Table 12**

Comments made by the legal member	
1.	Existing award under mental health was increased by tribunal based on oral evidence of the appellant which was extremely credible.
3.	Additional evidence - expert report handed in and oral evidence given by a witness. 15 points were awarded and the appeal allowed. The department conceded that the decision was disallowed on the appellant's evidence. There was a GP letter to explain the clinical procedures and there did not appear to be any change in complaints/condition between the previous award and the current. There was a significant increase in medication since the previous award and still the appellant was refused. The decision maker should have sought more information.
5.	The appellant established good cause for her failure to attend an ESA medical. Additional evidence was provided by the appellant who was a credible witness. The department's submission was unreliable in that it stated the appellant telephoned when in fact it was her son in law.
6.	Panel awarded points under 4 descriptors based on appellant's persuasive oral evidence. The tribunal questions the ability of a physiotherapist to assess learning difficulties.
7.	Decision was to award points for mental health descriptors based on evidence in submissions and at hearing. Mental health issues precluded appellant sitting up and dressing, cooking or even making tea for a greater part of appellant's life. Changes make life very distressing and social interaction with unfamiliar people causes distress. No real engagement with panel. Suicidal thoughts combined with a feeling of not wanting to be here. Additional evidence given by the appellant. Appellant's evidence at the hearing was presented very poorly - no eye contact, low mood. No real engagement. Short stabbing sentences, aggressive demeanour and hostile. The medically qualified panel member identified possible suicidal nature. This was not the same profile at the Health Care Professional (HCP) assessment, however the panel concluded that it was genuine.
8.	Additional evidence provided by the appellant and in the GP records. This satisfied the tribunal that the conditions for an award were met and ESA was re-instated under Regulation 29 (exceptional circumstances).
9.	Additional evidence was given in the form of an expert report handed in and the appeal was allowed under Regulation 29.
10.	Additional evidence given by the appellant showed that insufficient account was taken of the appellant's inability to read or write. In spite of being able to drive the appellant is unable to follow written signs (diversion, etc.) or hazard notices. Gets lost in unfamiliar places and needs oral directions.
11.	Additional evidence given by the appellant explained the state of the land in question (a co-ownership situation). The tribunal decided that there was no amass of capital in the sum of £33,000 and therefore the appellant was not over the capital limit for ESA.
12.	The tribunal found on the basis of additional medical evidence, in the form of an expert report handed in on the morning of the appeal, that the appellant had significant hypoglycaemic episodes and met descriptor 10 for ESA. The tribunal also found on the basis of oral evidence and a telling account of the new medical evidence that the appellant met the criteria for the support group ESA within Regulation 35(2)(b).
13.	Appeal was allowed under Regulation 29(2)(b) of the ESA Regulations 2008. Additional evidence given by a witness and the appellant, who submitted further evidence of alcohol addiction.

Chart 9 shows the subject of appeal in those cases overturned because the tribunal was given additional evidence which was not available to the officer who made the decision.

**Chart 9**



In the FB category 25.6% of those overturned were appeals in respect of the physical descriptors of the limited capability for work test (LCW), while 48.7% were in respect of the mental descriptors. A further 20.5% were a mixture of both physical and mental. The remaining two cases were in respect of failure to attend medical examinations.

**Comments / Recommendations – Employment and Support Allowance**

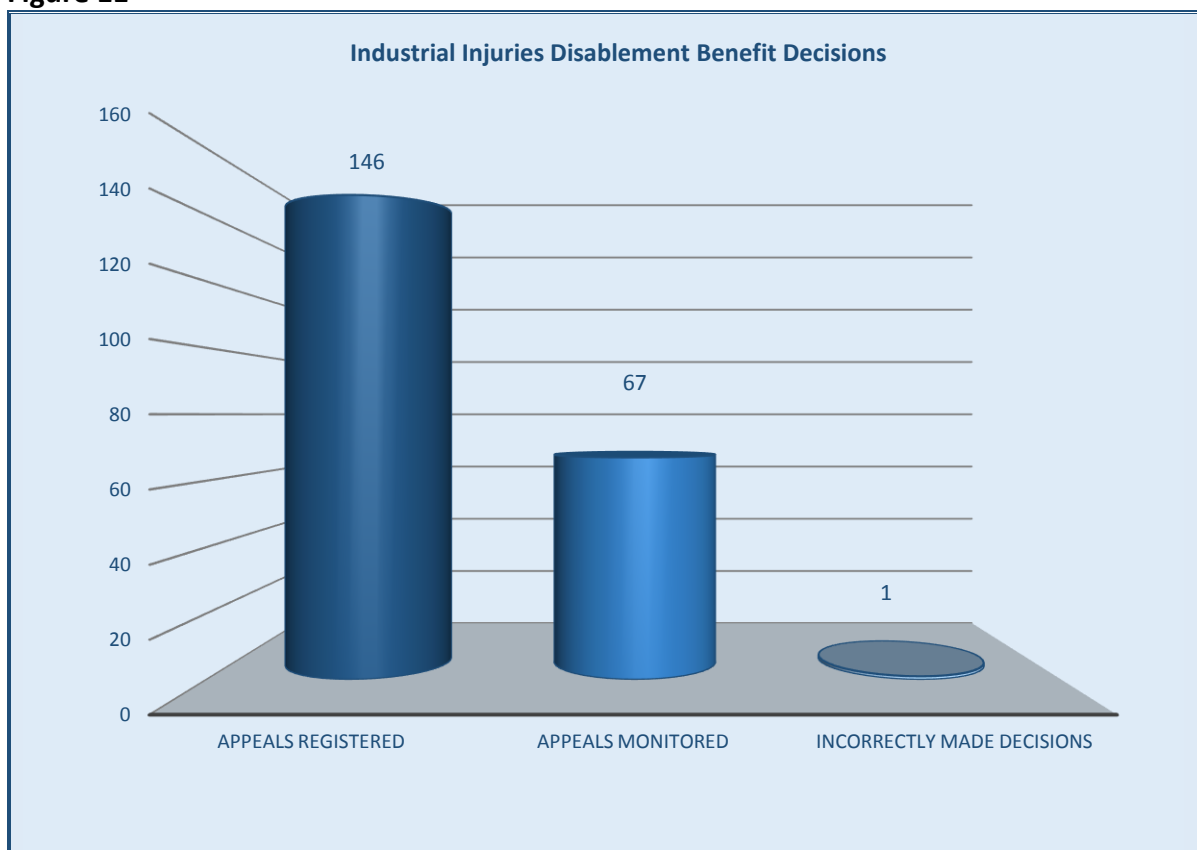
Whilst I am pleased to note that the level of incorrectness from the previous year (4.7%) has decreased considerably to 1.4% it remains the case that there are ongoing problems with the interpretation of medical evidence already available to decision-makers. As with DLA, PIP and AA greater emphasis should be placed on seeking further medical evidence prior to initial decision. This could in all cases be by way of a detailed report from the claimant’s general practitioner. I also refer to the comments about healthcare professionals and the general 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, 45.9% of Industrial Injuries Disablement Benefit (IIDB) appeals received were monitored. The level of incorrectness identified was 1.5%. This is on a par with the previous year.

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

**Figure 11**



There was one incorrectly made decision identified in this category; 'the decision of the officer was based on insufficient/inadequate investigation of the claim' (F1).

The claimant had a serious wrist injury with resultant secondary depression (which was not considered by the examining doctor for the Department). There was a history of depression

noted to the examining doctor for which the claimant was medicated up to some 5-6 months after the accident. The examining doctor did not investigate this, other than to record that the claimant was off medication at the date of the examination – and that it was pre-existing. The tribunal found there was a psychological impact to the injury which was not investigated.

### Correctly Made Decisions Overturned by the Tribunal

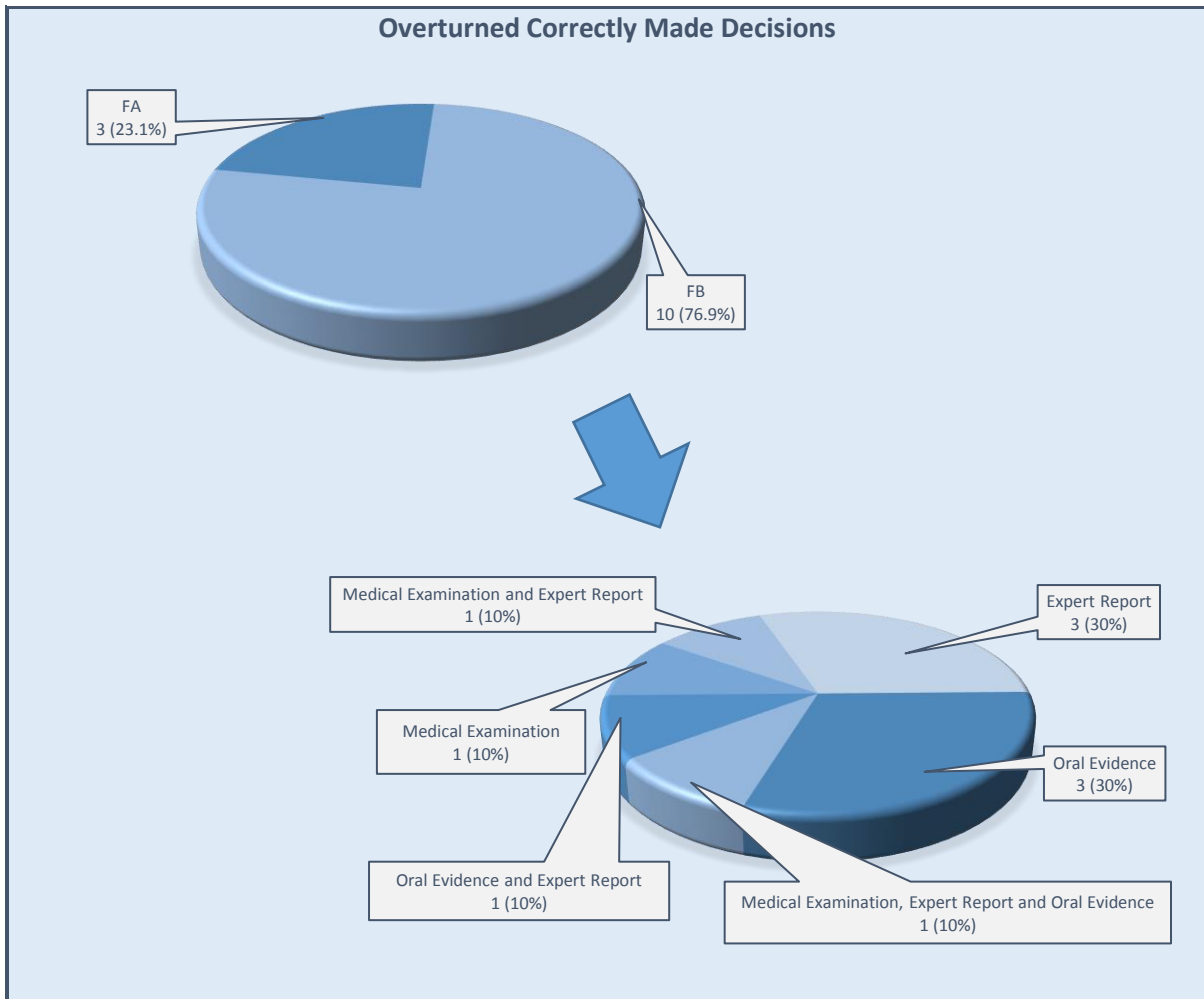
Table 13 illustrates that a further 13 cases, representing 19.4% of those monitored, while correctly made by the decision maker, were overturned because the tribunal either accepted evidence which the decision maker was unwilling to accept (3 cases), or the tribunal was given additional evidence that was not available to the decision maker (10 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.	3 (23.1%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	10 (76.9%)

Chart 10 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 10



### Comments / Recommendations – Industrial Injuries Disablement Benefit

The standard of decision making continues to be good. Any issues identified in this report appear to be case specific and could be addressed by training.

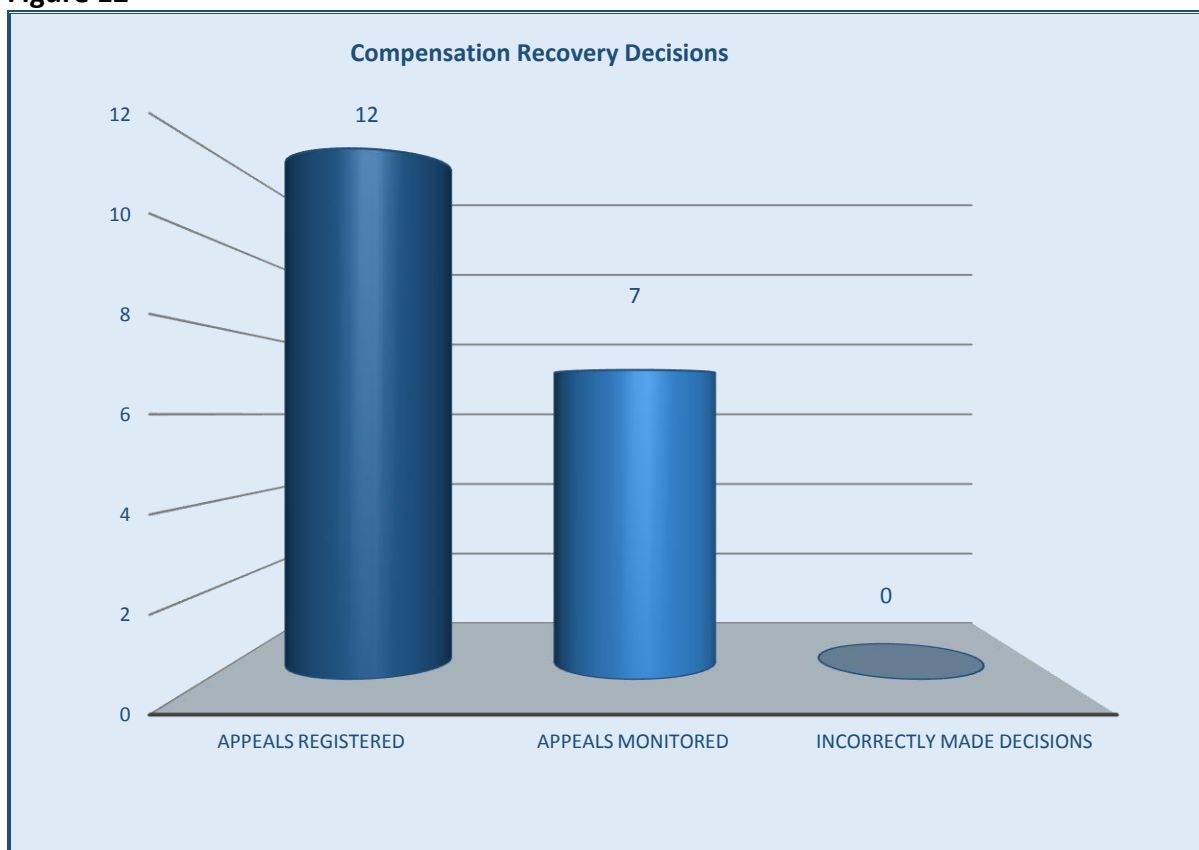


## Compensation Recovery

There is a relatively low appeal rate in this area. 58.3% of appeals received were monitored in an attempt to obtain a meaningful sample. There were no incorrectly made decisions identified. This is an improvement on the previous year which was 8.3%.

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

**Figure 12**



\*Caution in interpreting this result is advised given the small number of appeals available for monitoring.

### Correctly Made Decisions Overturned by the Tribunal

In 2 cases, representing 28.6% 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 (EMP

reports, etc), hospital notes and records as well as multiple medical reports provided by consultants. In the first case, the tribunal relied mostly on clinical and surveillance evidence while in the second case the tribunal accepted arguments on causation made by the representative. The case raised recurrent issues where subjective effectiveness of the accident are not borne out by objective medical evidence.

### **Comments / Recommendations – Compensation Recovery**

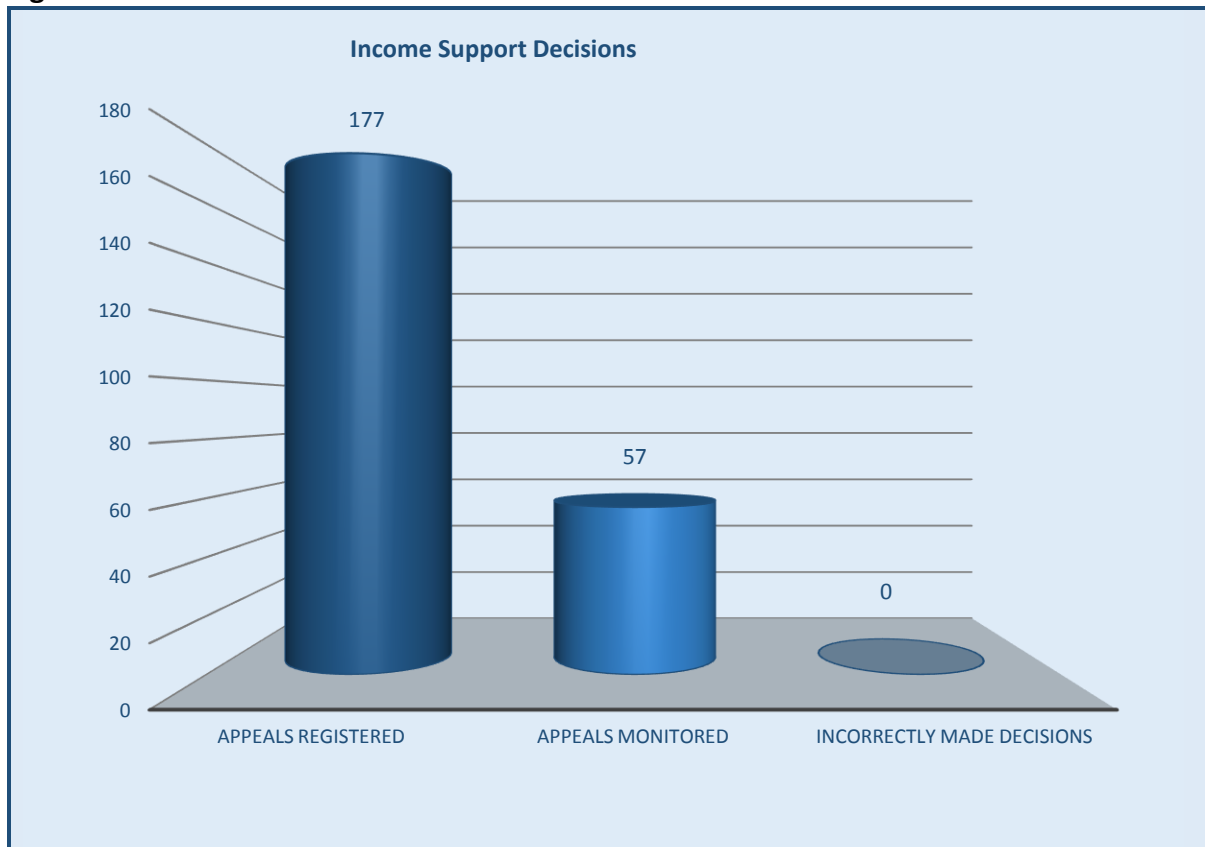
Whilst I am conscious of the comments of my predecessor in previous reports and accept that the appeal rate is relatively low I am very pleased to note that there were no incorrectly made decisions identified in this category. This is an improvement on the previous year when the level of incorrectness was 8.3%.

## Income Support

Income Support appeal activity is relatively steady when compared to other benefits. 32.2% of appeals received in this category were monitored. There were no incorrectly made decisions identified. This is an improvement on the previous year which recorded that 4.2% of decisions were incorrectly made.

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

**Figure 13**



### Correctly Made Decisions Overturned by the Tribunal

Table 14 illustrates that in 9 cases, representing 15.8% of those monitored, while correctly made by the decision maker, were overturned by the tribunal because the tribunal either

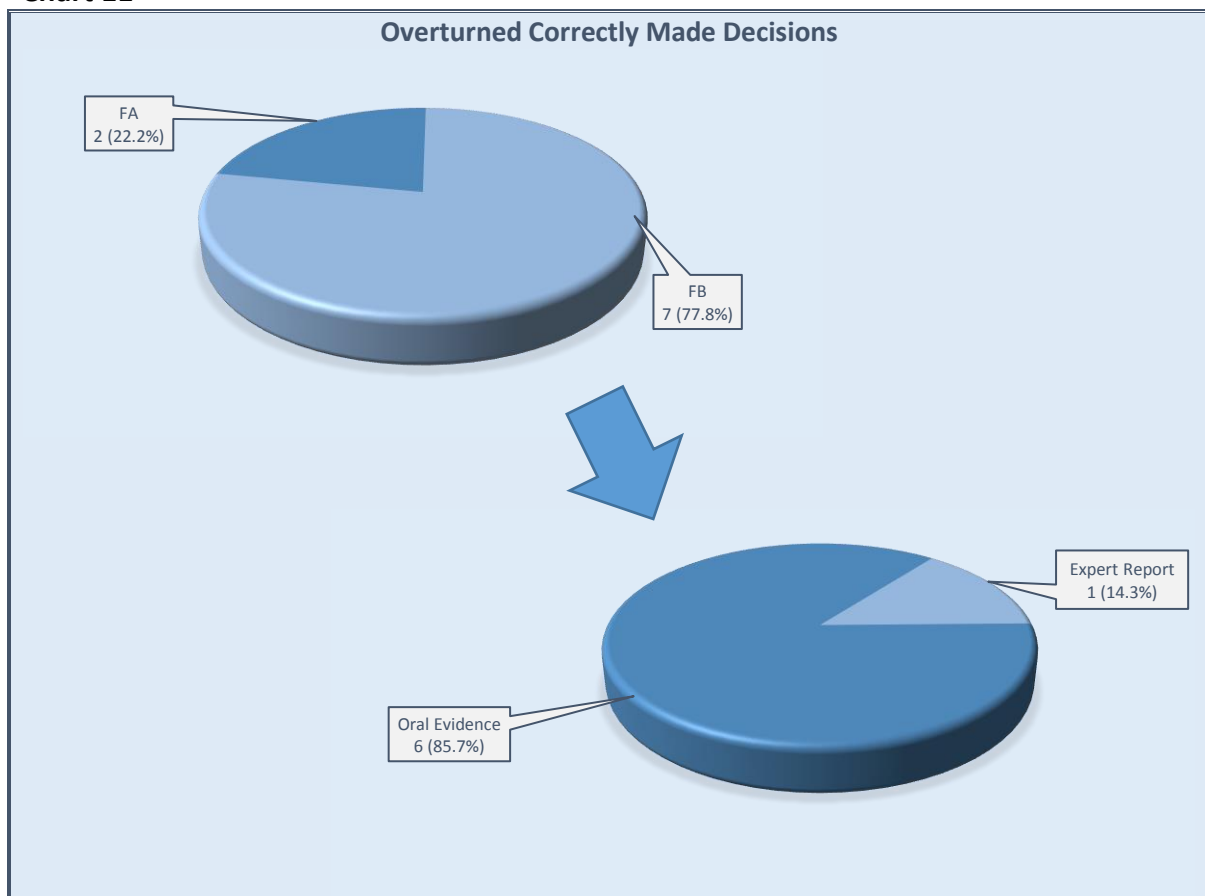
accepted evidence which the decision maker was unwilling to accept (2 cases), or the tribunal was given additional evidence that was not available to the decision maker (7 cases).

**Table 14**

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%)

Chart 11 shows that in 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. In the remaining case, an expert report was presented in the form of a letter from a family support worker.

**Chart 11**



**Comments / Recommendations – Income Support**

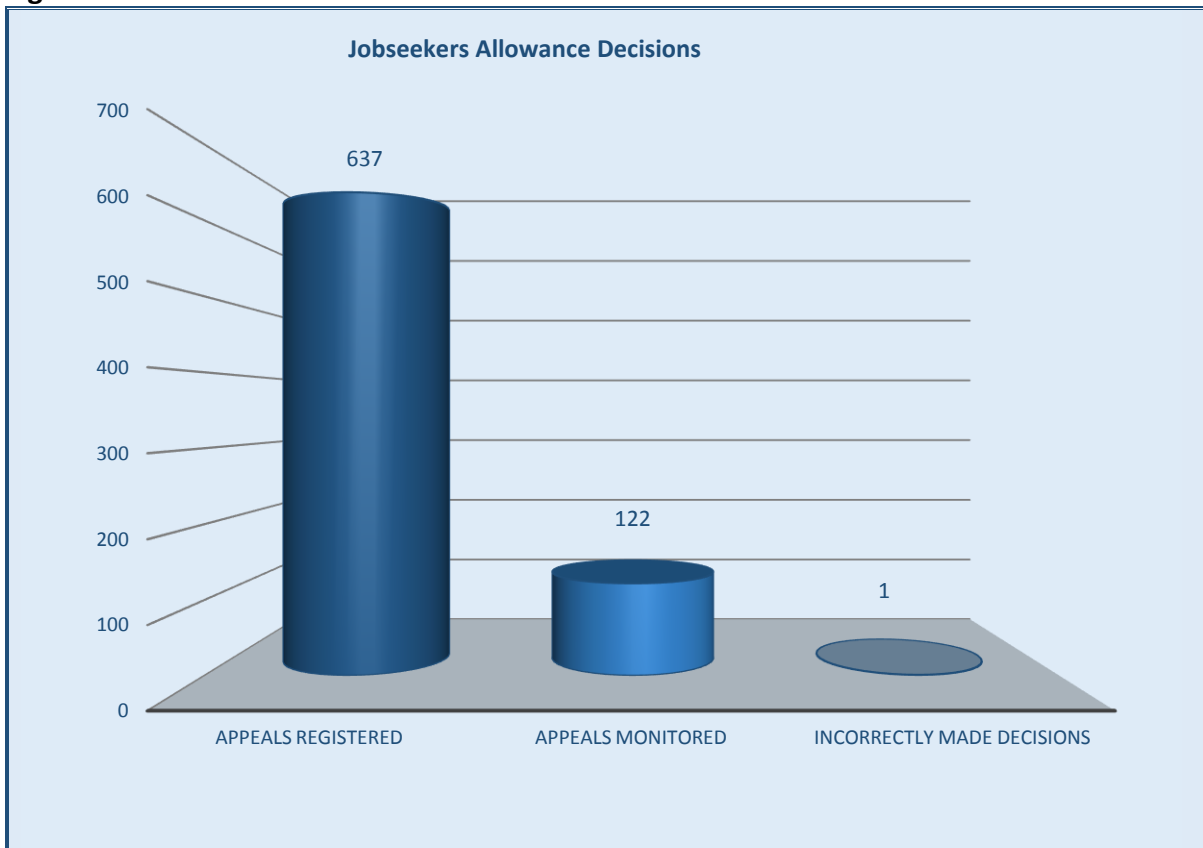
Income support is a complex benefit with many different issues arising. It remains particularly important when dealing with vulnerable people who cannot manage their affairs, including their financial affairs, to ensure that all proper protections are in place to ensure that they can access the correct entitlement to benefit. It continues to be the case that in many of the monitored appeals additional evidence was provided to the tribunal. This may mean that there should be a much more robust and detailed gathering of evidence by the Department at a much earlier stage.

### Jobseekers Allowance

19.2% of all Jobseekers Allowance appeals received were monitored. The level of incorrectness identified was 0.8%. This is an improvement in standards on the previous year by 0.7%.

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

**Figure 14**



There was one incorrectly made decision in this category. 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. The claimant failed to attend a Steps to Success interview. The appeal response by the department relies on information received from a third party Contractor, that the claimant was advised at a face to face interview of the

relevant appointment date. The claimant did not attend but contacted the office within the prescribed period of five days explaining that his elderly mother had been released from hospital after a fall and could not be left alone and he could not attend. He also advised that he only became aware of the interview when notified about failing to attend. The legal member commented that the department did not provide reasons for the decision not to accept good cause when requested. In addition there was no explanation within the appeal submission. To state only that good cause was not accepted was insufficient. Also the copy of the interview from the third party Contactor upon which the department relied, was not supplied to the tribunal.

### Correctly Made Decisions Overturned by the Tribunal

Table 15 illustrates that in a further 13 cases, representing 10.7% 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 (10 cases).

**Table 15**

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 (23.1%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	10 (76.9%)

In all ten of the appeals where the tribunal was given additional evidence, the appellants attended the hearings and presented the oral evidence which formed the basis of the tribunal decisions.

### Comments / Recommendations – Jobseekers Allowance

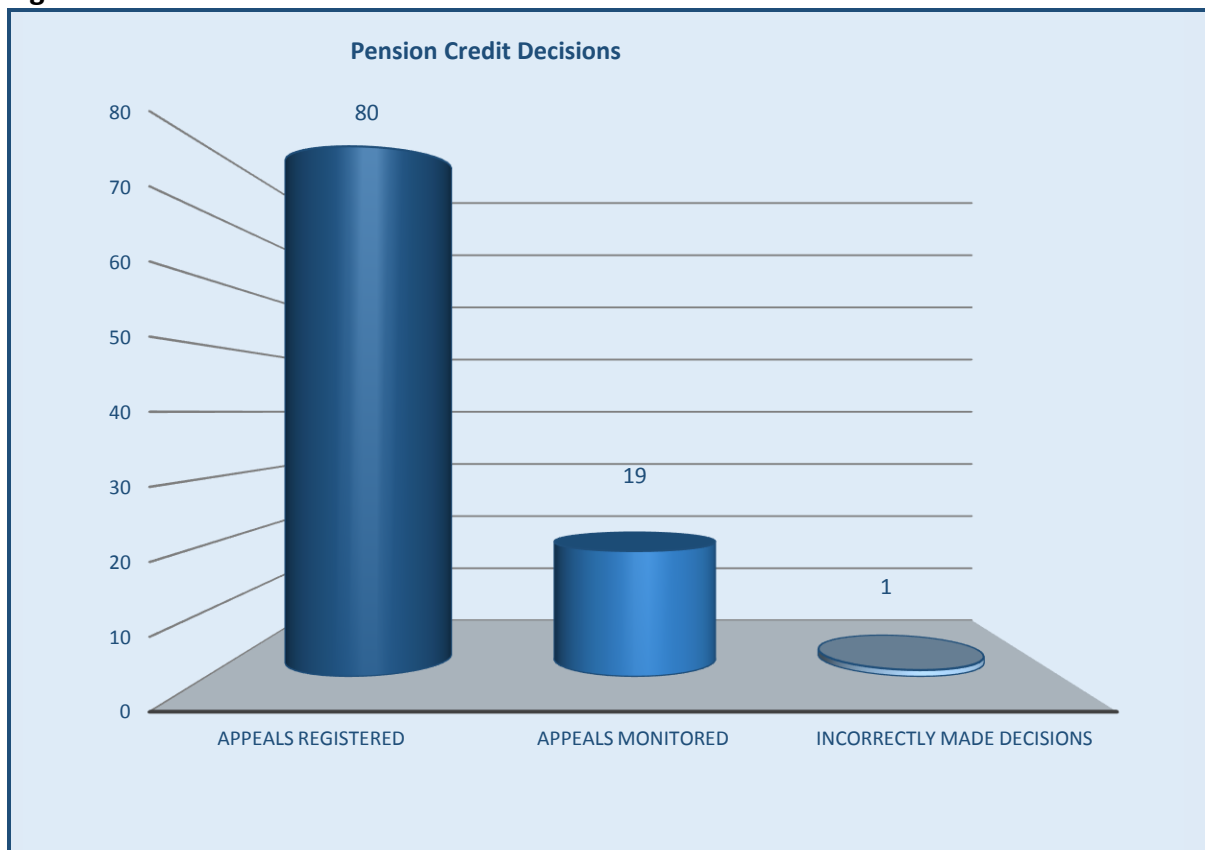
I am pleased to note that the level of incorrectness has decreased. Despite this I continue to have concerns that at least some decision-makers may have an unsatisfactory grasp of the 'good cause' principles applicable in sanction cases. This was also mentioned in the previous year's report. It should be addressed by way of training.

## Pension Credit

23.8% of all Pension Credit (PC) appeals received were monitored. The level of incorrectness identified was 5.3%. This is a decrease in standards on the previous year by 2.6%.

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

**Figure 15**



\*Caution in interpreting this result is advised given the small number of appeals available for monitoring.

There was one incorrectly made decision identified in this category. The officer did not identify the correct legal rules relevant to the claim. It was agreed that there was an overpayment of benefit, however, the period of the overpayment was reduced by the tribunal as it was clear that the department were aware of the change to the claimant's income for a number of weeks before acting on the information.



### Correctly Made Decisions Overturned by the Tribunal

Table 16 illustrates that in a further 4 cases, representing 21.1% 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 (2 cases). For one case the direct oral evidence of the appellant was the sole reason for the tribunal overturning the decision, and in the second case the tribunal relied on the appellant’s oral evidence as well as an expert report which was handed in at the hearing.

**Table 16**

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 (50%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	2 (50%)

### Comments / Recommendations – Pension Credit

It is somewhat concerning that there has been a decrease in standards from the previous year by some 2.6%.

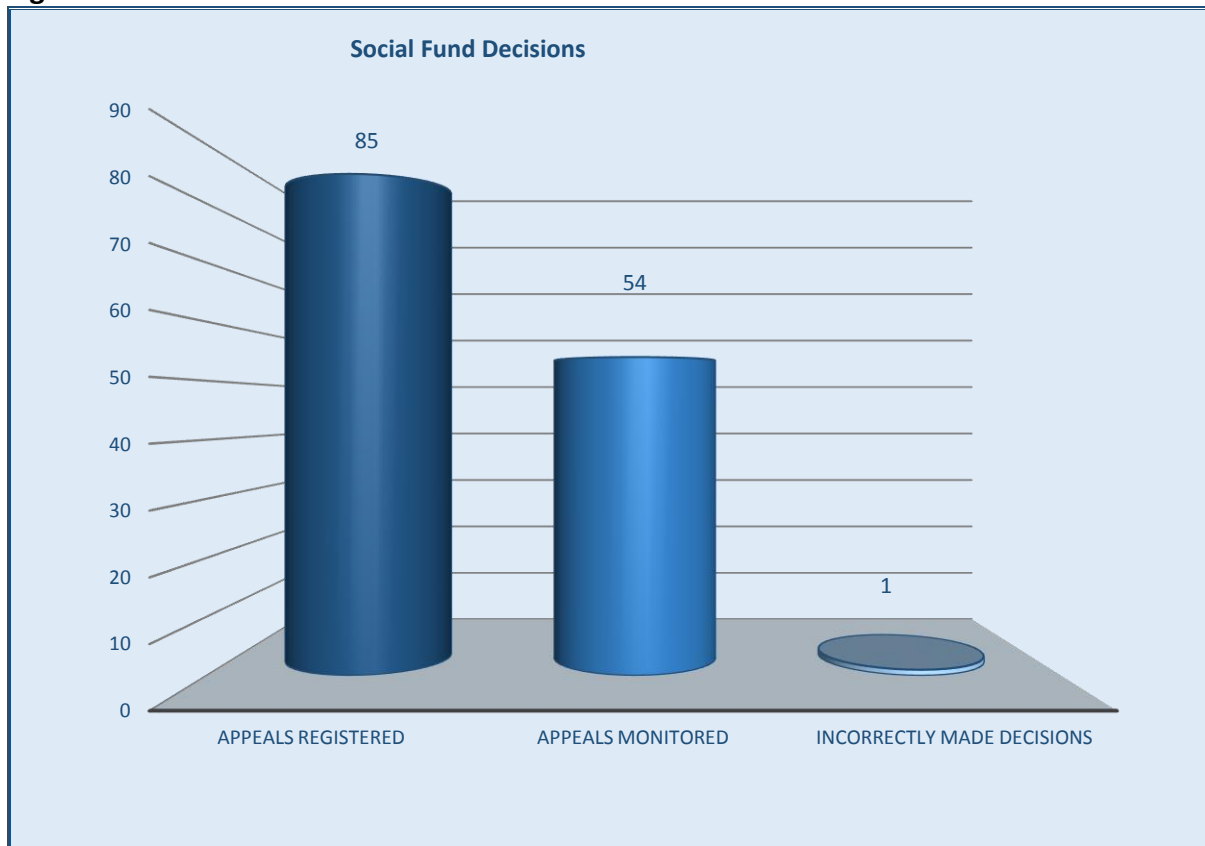
Regrettably it is necessary to repeat the comments from previous reports, namely that overpayments continue to be a problem in this benefit area. The issues identified in the incorrectly made decision are fundamental to correct decision-making. It is unfortunate that, in the particular case identified, the Department were aware of the change to the claimant’s income for a number of weeks before acting on the information. Further training in this area continues to remain 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, 63.5% of appeals received were monitored. The level of incorrectness identified was 1.9%. This is on a par with previous year.

Figure 16 sets out the number received, the number monitored and the number of incorrectly made decisions.

**Figure 16**

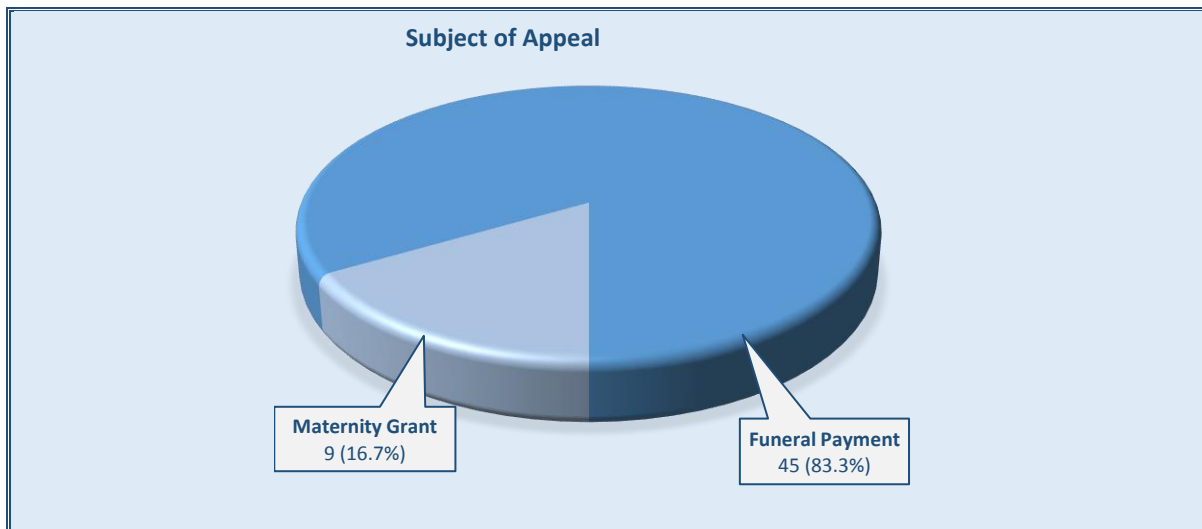


There was one incorrectly made decision identified in this category. The legal member commented that the officer misinterpreted the legal rules relevant to the claim. The decision maker disallowed the sum of £429 from the payment of a funeral grant on the grounds that it was a deductible payment in accordance with Regulation 10(c) of the Social Fund Maternity and Funeral Expenses (General) Regulations (NI) 2005. However such an amount can only be

deductible if received from a charity or relatives. This amount was received from friends and a collection and therefore should not have been deducted.

Chart 12 shows the subject of appeal for all monitored Social Fund decisions.

**Chart 12**



**Correctly Made Decisions Overturned by the Tribunal**

In a further 3 cases, representing 5.6% of those monitored, while correctly made by the decision maker, the decisions were overturned because the tribunal accepted evidence which the decision maker was not willing to accept.

**Comments / Recommendations – Social Fund**

None.

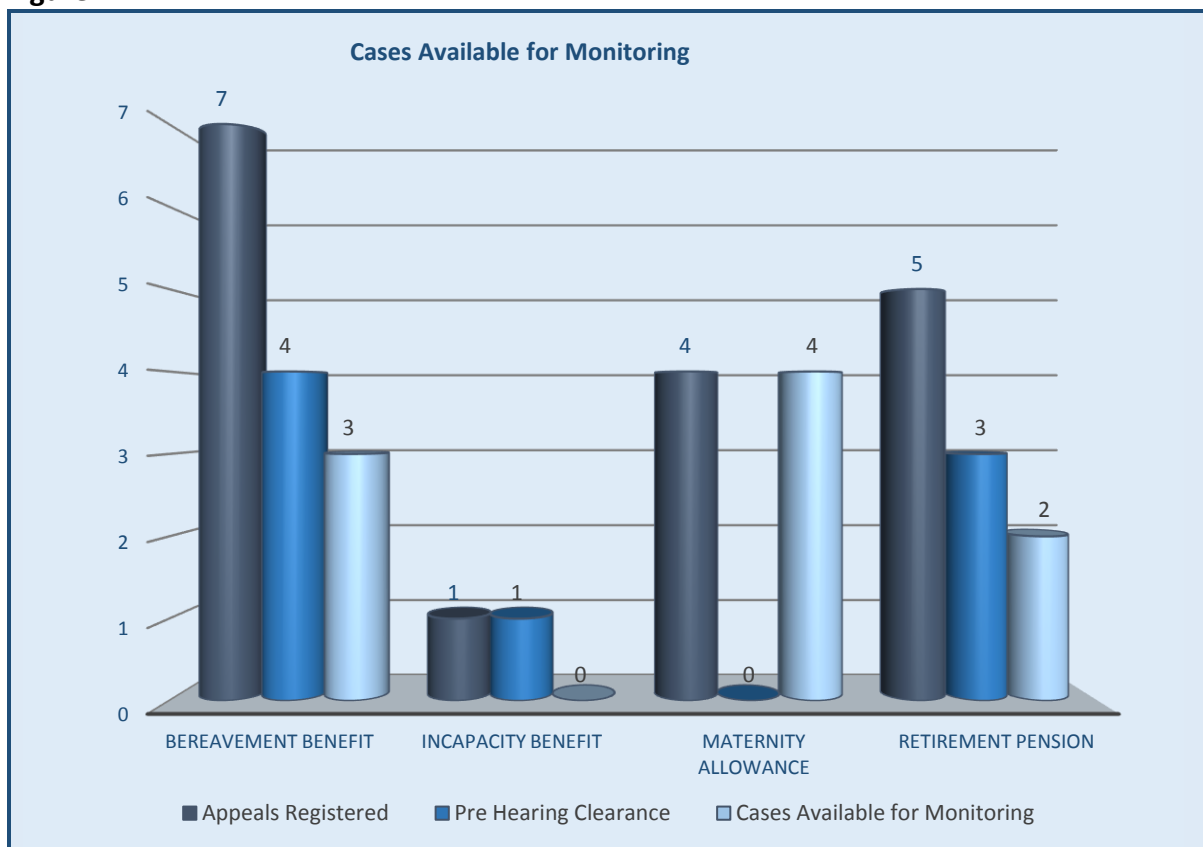
### Bereavement Benefit, Incapacity Benefit, Maternity Allowance & Retirement Pension

There were 7 Bereavement Benefit, 1 Incapacity Benefit, 4 Maternity Allowance and 5 Retirement Pension cases received during the report period.

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.

Figure 17 shows the number of cases that were received, how many had a pre hearing clearance the number that were available for monitoring in the reporting period.

**Figure 17**



Of the 3 Bereavement Benefit cases available for monitoring, 1 of these was found to be incorrectly made. The legal member commented that ‘the decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision’ (F1).

In this case the appellant failed to disclose the material fact that Child Benefit had ceased after her children were taken into care, resulting in an overpayment of Bereavement Benefit amounting to £2023. Although the overpayment was established, failure to disclose was not established and the tribunal found that no part of the overpayment was recoverable. There was no documentary evidence at all of a benefits leaflet being dispatched or the material fact being communicated to the claimant. The fact that this missing crucial paperwork could not be retrieved from the Department (a Child Benefit HMRC officer from Newcastle-upon-Tyne), meant that there was no proof that notification of reporting obligations were ever issued to the appellant.

The 1 Incapacity Benefit case received was withdrawn, meaning there were no available cases for monitoring. Of the 4 available Maternity Allowance cases and 2 available Retirement Pension cases, there were no incorrectly made decisions identified.

### **Comments / Recommendations**

None.

## Chapter 5

### Summary of Comments and Recommendations

<b>Child Maintenance</b>	None.
<b>Disability Living Allowance</b>	The Department is once more asked to consider what further steps can be taken to obtain additional medical evidence either at source from the medical profession or directly from the claimant prior to decision-making.
<b>Personal Independence Payment</b>	<p>The Department need to carry out a more robust investigation prior to initial decision.</p> <p>The Department should seriously consider obtaining a detailed report from a general practitioner in all cases prior to initial decision. Such a report could supplement any assessment carried out by a health professional.</p>
<b>Attendance Allowance</b>	<p>The issues remain the same as in previous years and are repeated.</p> <p>As with Disability Living Allowance many decisions are overturned due to the availability of additional medical evidence at hearing. Anecdotally it is sometimes suggested in relation to the elderly that they may be inclined to understate the serious nature of their problems and the effect of those problems on their ability to function on a day-to-day basis. It is also the case that family members/carers are sometimes well-placed to supplement comments made by elderly claimants.</p> <p>The Department may wish to consider obtaining the following evidence prior to initial decision:</p> <ol style="list-style-type: none"> <li>a. a detailed report in all cases from the claimant's general practitioner</li> <li>b. statements from family members and/or carers – with the claimant's consent</li> </ol>

<b>Carer's Allowance</b>	The level of incorrectness this year (4.2%) is somewhat similar to that for the previous year (4.4%). It continues to cause me some concern that the errors identified once more remain fairly case specific. These should be capable of resolution.
<b>Employment and Support Allowance</b>	Whilst I am pleased to note that the level of incorrectness from the previous year (4.7%) has decreased considerably to 1.4% it remains the case that there are ongoing problems with the interpretation of medical evidence already available to decision-makers. As with DLA, PIP and AA greater emphasis should be placed on seeking further medical evidence prior to initial decision. This could in all cases be by way of a detailed report from the claimant's general practitioner. I also refer to the comments about healthcare professionals and the general recommendations about medical evidence mentioned in the Foreword to this report.
<b>Industrial Injuries Disablement Benefit</b>	The standard of decision making continues to be good. Any issues identified in this report appear to be case specific and could be addressed by training.
<b>Compensation Recovery</b>	Whilst I am conscious of the comments of my predecessor in previous reports and accept that the appeal rate is relatively low I am very pleased to note that there were no incorrectly made decisions identified in this category. This is an improvement on the previous year when the level of incorrectness was 8.3%.
<b>Income Support</b>	Income support is a complex benefit with many different issues arising. It remains 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. It continues to be the case that in many of the monitored appeals additional evidence was provided to the tribunal. This may mean that there should be a much more robust and detailed gathering of evidence by the Department at a much earlier stage.
<b>Jobseekers Allowance</b>	I am pleased to note that the level of incorrectness has decreased. Despite this I continue to have concerns that at least some decision-makers may have an unsatisfactory grasp of the 'good cause' principles applicable in sanction cases. This was also mentioned in the previous year's report. It should be addressed by way of training.

**Pension Credit** It is somewhat concerning that there has been a decrease in standards from the previous year by some 2.6%.

Regrettably it is necessary to repeat the comments from previous reports, namely that overpayments continue to be a problem in this benefit area. The issues identified in the incorrectly made decision are fundamental to correct decision-making. It is unfortunate that, in the particular case identified, the Department were aware of the change to the claimant's income for a number of weeks before acting on the information. Further training in this area continues to remain a priority.

**Social Fund** None.

**Incapacity Benefit** None.

**Maternity Allowance** None.

**Retirement Pension** None.

**Bereavement Benefit** None.



## Appendix 1

### Inferences and Sampling Error

As mentioned in the body of the report it is possible for some of the sampled benefits results 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 interval. Table A1 below shows the relevant benefits, the sample result and the associated range.

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	1.8	1.8
Carers Allowance	4.2	6.5
Disability Living Allowance	0.0	
Employment and Support Allowance	1.4	1.9
Income Support	0.0	3.4
Industrial Injuries Disablement Benefit	1.5	2.2
Jobseekers Allowance	0.8	1.4

<b>Pension Credit</b>	5.3	8.9
<b>Personal Independence Payment</b>	2.6	3.5
<b>Social Fund</b>	1.9	2.2
<b>ALL<sup>1</sup></b>	<b>1.3</b>	<b>0.7</b>

<sup>1</sup>Note 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 0.6% and 2.0%, i.e.  $1.3\% \pm 0.7\%$ .

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 Employment and Support Allowance appeals we can state that

- we can be 95% certain that the true level of incorrectness among all Employment and Support Allowance initial appeal decisions in the period is between  $1.4\% \pm 1.9\%$ .

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	9197
Number of cases monitored	1021
Percentage monitored	11.1%
Number of incorrect initial decisions	13
Percentage incorrect	1.3%
Confidence interval	±0.7%
Total number of reasons	14
<p><b>Main reason for incorrect initial decision:</b> The decision of the office was based on insufficient facts/evidence due to inadequate investigation of the claim or revision (F1) – 35.7% of all reasons.</p>	

BENEFIT NAME	ATTENDANCE ALLOWANCE
Number of cases registered	236
Number of cases monitored	110
Percentage monitored	46.6%
Number of incorrect initial decisions	2
Percentage incorrect	1.8%
Confidence interval	±1.8%
Total number of reasons	2
<b>Reasons for incorrect initial decision:</b> <ol style="list-style-type: none"> <li>1. The decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision (F1).</li> <li>2. The decision was based on a misinterpretation/misunderstanding of the evidence available to the officer (F4).</li> </ol>	

BENEFIT NAME	CARER'S ALLOWANCE
Number of cases registered	66
Number of cases monitored	24
Percentage monitored	36.4
Number of incorrect initial decisions	1
Percentage incorrect	4.2%
Confidence interval	±6.5%
Total number of reasons	1
<b>Reasons for incorrect initial decision:</b> <ol style="list-style-type: none"> <li>1. Disregarded relevant evidence (F6)</li> </ol>	

BENEFIT NAME	DISABILITY LIVING ALLOWANCE
Number of cases registered	2855
Number of cases monitored	316
Percentage monitored	11.1%
Number of incorrect initial decisions	0
Percentage incorrect	0%
Confidence interval	Not applicable
Total number of reasons	Not applicable
No incorrectly made decisions.	

BENEFIT NAME	PERSONAL INDEPENDENCE PAYMENT
Number of cases registered	1382
Number of cases monitored	76
Percentage monitored	5.5%
Number of incorrect initial decisions	2
Percentage incorrect	2.6%
Confidence interval	±3.5%
Total number of reasons	2
<p><b>Reasons for incorrect initial decision:</b></p> <ol style="list-style-type: none"> <li>1. The decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision (F1).</li> <li>2. The officer disregarded relevant evidence (F6).</li> </ol>	

BENEFIT NAME	EMPLOYMENT AND SUPPORT ALLOWANCE
Number of cases registered	3477
Number of cases monitored	147
Percentage monitored	4.2%
Number of incorrect initial decisions	2
Percentage incorrect	1.4%
Confidence interval	±1.9%
Total number of reasons	2
<p><b>Reasons for incorrect initial decision:</b></p> <ol style="list-style-type: none"> <li>2. The decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision (F1).</li> <li>3. The decision was based on a misinterpretation/misunderstanding of the evidence available to the officer (F4).</li> </ol>	

BENEFIT NAME	INCOME SUPPORT
Number of cases registered	177
Number of cases monitored	57
Percentage monitored	32.2%
Number of incorrect initial decisions	0
Percentage incorrect	0%
Confidence interval	Not applicable
Total number of reasons	Not applicable
<p><b>No incorrectly made decisions.</b></p>	

BENEFIT NAME	INDUSTRIAL INJURIES DISABLEMENT BENEFIT
Number of cases registered	146
Number of cases monitored	67
Percentage monitored	45.9%
Number of incorrect initial decisions	1
Percentage incorrect	1.5%
Confidence interval	±2.2%
Total number of reasons	1
<p><b>Reason for incorrect initial decision:</b></p> <p>The decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision (F1).</p>	

BENEFIT NAME	JOBSEEKERS ALLOWANCE
Number of cases registered	637
Number of cases monitored	122
Percentage monitored	19.2%
Number of incorrect initial decisions	1
Percentage incorrect	0.8%
Confidence interval	±1.4%
Total number of reasons	1
<p><b>Reason for incorrect initial decision:</b></p> <p>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 (R1).</p>	

BENEFIT NAME	PENSION CREDIT
Number of cases registered	80
Number of cases monitored	19
Percentage monitored	23.8
Number of incorrect initial decisions	1
Percentage incorrect	5.3%
Confidence interval	±8.9%
Total number of reasons	1
<b>Reasons for incorrect initial decision:</b> Did not identify the correct legal rules relevant to the claim (L1)	

BENEFIT NAME	SOCIAL FUND
Number of cases registered	85
Number of cases monitored	54
Percentage monitored	63.5%
Number of incorrect initial decisions	1
Percentage incorrect	1.9%
Confidence interval	±2.2%
Total number of reasons	1
<b>Reason for incorrect initial decision:</b> The officer misinterpreted the legal rules relevant to the claim/revision (L2).	



## Appendix 3

### APPEAL REPORT FORM

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**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*

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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);

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**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?

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**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: