

2017/18

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 10,428, of which 392 were monitored

The report reveals that overall levels of incorrectness in the initial decision ranges from 0% to 7.7%. The figures in relation to some of the benefits for which there was 0% incorrectness should be treated with some caution given the small number of cases monitored. The most common reasons for incorrectness were that the decision appealed against was based on a misinterpretation/misunderstanding of the evidence available and/or that relevant evidence was disregarded, both of which were recorded as 28.6%, of the overall reasons.

Whilst I am pleased to note the reduction in the levels of incorrectness for certain benefits I am concerned that the overall percentage of incorrectness has increased to 3.3%. Last year it was 1.3%. It is evident from the figures mentioned at pages 7- 8 that there was a considerable degree of variation in the level of incorrectness of initial decisions across different benefits.

The overall percentage of correctly made decisions altered by the tribunal was 35.2%. It was 24.5% in the previous reporting year.

Most appeals are in respect of Personal Independence Payment (PIP) and Employment and Support Allowance (ESA). The number of appeals registered for those benefits was 7305 and 2323 respectively. 7.1% of the monitored ESA cases and 3.8% of the monitored PIP cases were assessed as having an incorrect initial decision.

The fact that previous reports and this one continue to reveal concern regarding the number of ESA and DLA (and now PIP) 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 (pre decision) stage from a general practitioner. A broadly similar recommendation was made in Walter Rader's excellent and informative report (Personal Independence Payment - An Independent Review of the Assessment Process – June 2018). Although Mr Rader's report was published in June 2018 I believe that much of his evidence gathering was conducted during the period covered by this report. Although the Department partially accepted Mr Rader's recommendation about this issue (see their response dated November 2018) there is still no evidence that they have taken any substantive action. This is most unsatisfactory.

The fact that in many PIP appeals the medical notes and records viewed by the tribunal causes it to alter the Department's decisions may suggest that there continues to be a systemic

problem with the healthcare professional (HCP) assessment process. It may be that HCPs do not have 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. As an example my own view is 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. I mentioned this issue in last year's report. Mr Rader made a related recommendation about this and it is most unfortunate that it has not been accepted by the Department.

I would also be interested to know the current position regarding Mr Rader's recommendation as to the audio/visual recording of HCP assessments. This recommendation was partially accepted by the Department.


It continues to be the case that tribunals reverse many incorrectly made DLA/PIP decisions 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 relevant and focussed extracts from GP notes and records remains fundamentally important for the proper determination of DLA/PIP appeals and will be a cornerstone going forward. I repeat my previous requests 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 those 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. It is most regrettable that the Department continues to repeat its long expressed opposition to this. I would once more urge them to revisit the matter in a positive way. Our ultimate goal must be to do the best we can for claimants and to reduce any unnecessary upset and trauma for them. This is also related to the longstanding request that the Department should secure the attendance of Presenting Officers at hearings on a much more frequent basis. The Department are well aware of my views and those of my predecessor about this issue.

In last year's report I made specific recommendations/comments in relation to Attendance Allowance cases. I urge the Department to take these on board. I repeat once more that 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 their claims.

In my previous 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.

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 the level of appeals for a particular benefit is governed by both the number of persons claiming a particular benefit and the complexity of the benefit. For some benefits a random selection of registered cases was selected by means of random numbers, for other benefits where the expected number of cases was small, a complete census was the preferred methodology. In this respect all cases relating to Child Maintenance, Retirement Pension, Bereavement Benefit, Incapacity Benefit, Maternity Allowance and Compensation Recovery were examined. However it should be noted that in a number of cases across all benefits, monitoring was not carried out due to the cases being withdrawn or a pre-hearing clearance.

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.

Note that the number of appeals available for monitoring in this financial year may have been impacted by two factors. Firstly, the number of appeals that are selected for monitoring for each benefit is based on estimated appeal activity, in some benefit areas this did not realise in practical terms. Secondly, the way in which appeals are now registered has

changed. Previously, the selection of cases was based on appeals notified to TAS by the Department. That number had already excluded those appeals which the Department were aware had been withdrawn or superseded before appeal notification was issued. With appeals now being directly lodged with TAS, all withdrawals and supersessions impact directly on the number of cases available for selection and monitoring.

Chapter 2

The Sample & Sample Analysis

In the year 2017/18 there were 10,428 appeals regarding decisions made by various decision makers from the Department for Communities (the department). This report examines the standard of decision-making from April 2017 to March 2018. The objective of the study was to estimate the level of incorrect initial decisions made by the decision maker in appeal cases by benefit.

The table below (Table 1) shows the total number of cases registered by benefit, the number monitored, the number of decisions incorrectly made in the first instance and the ‘incorrect’ percentage, in the period. As referenced previously, some benefits required a census of cases and such benefits are indicated by bold type in Table 1. Benefits marked with * in Table 1 have a sample size of less than 30 and therefore we cannot make reliable inferences about the expected level of error.

Table 1

Appeals by Category 05 April 2017 – 05 April 2018				
Category	Total registered	No. Monitored (sample size)	Initial decision incorrect	Percentage Incorrectness
Attendance Allowance	83	30	1	3.3
Bereavement Benefit	7	5	0	0.0
Carer’s Allowance*	24	10	0	0.0
Child Maintenance	17	13	1	7.7%
Compensation Recovery	3	2	0	0.0%
Disability Living Allowance	266	81	1	1.2%
Employment Support Allowance	2323	70	5	7.1%
Incapacity Benefit	2	2	0	0.0%
Income Support*	89	23	1	4.3%
Industrial Injuries Disablement Benefit	62	30	0	0.0%
Jobseekers Allowance*	142	14	1	7.1%
Maternity Allowance	2	1	0	0.0%

Pension Credit*	55	10	0	0.0%
Personal Independence Payment	7305	78	3	3.8%
Retirement Pension	2	2	0	0.0%
Social Fund*	46	21	0	0.0%
TOTAL	10428	392	13	3.3%

Note: bold type indicates a complete census and * indicates a sample size of less than 30.

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

Of those benefits where a complete census was recommended, there were no cases assessed as having the initial decision incorrectly made for Bereavement Benefit, Compensation Recovery, Incapacity Benefit, Maternity Allowance, or Retirement Pension. It should be noted that the total numbers of cases able to be monitored for these benefits are small and so the results need to be treated with caution. In cases where a census was used, any incorrect decision would have a significant impact on the percentage of incorrectness again distorting the results.

In the sample of cases monitored, four benefits had no incorrect decisions registered; Carers Allowance, Industrial Injuries Disablement Benefit, Pension Credit and Social Fund.

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

Chart 1

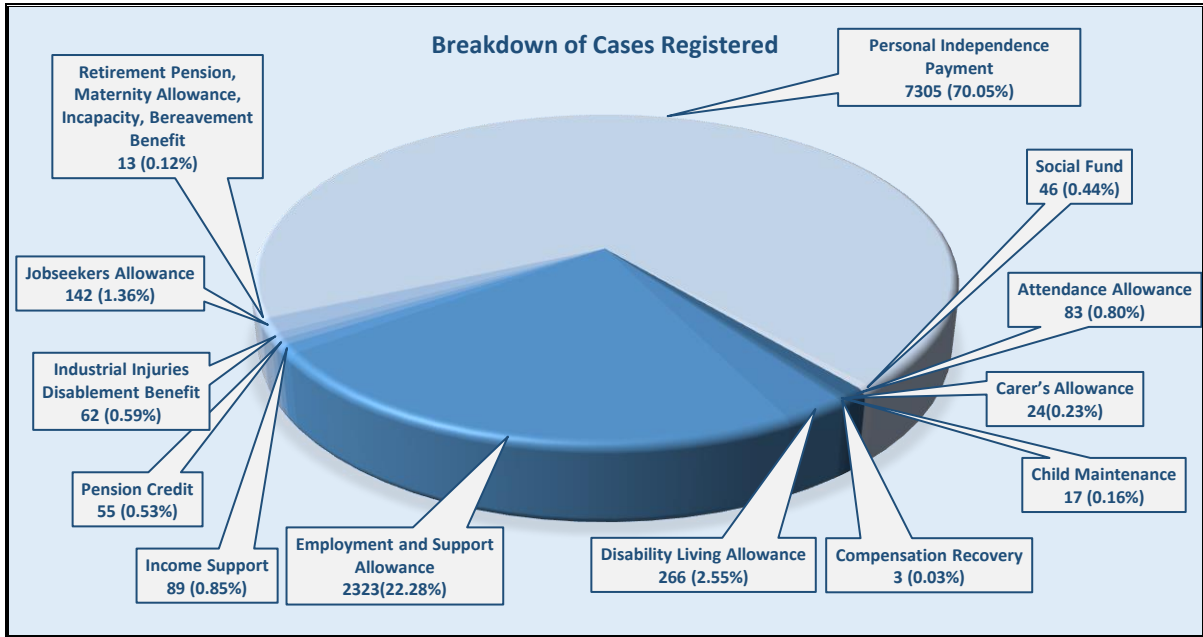
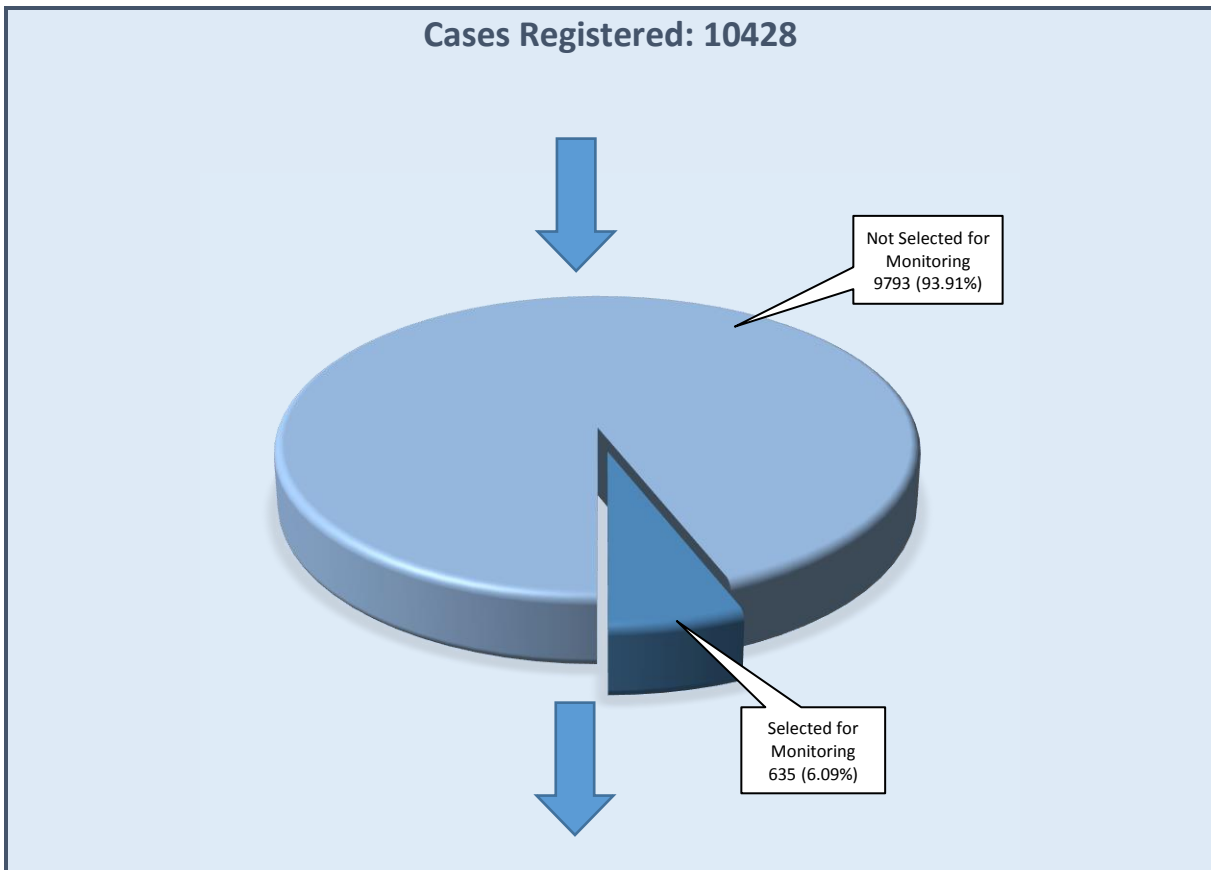
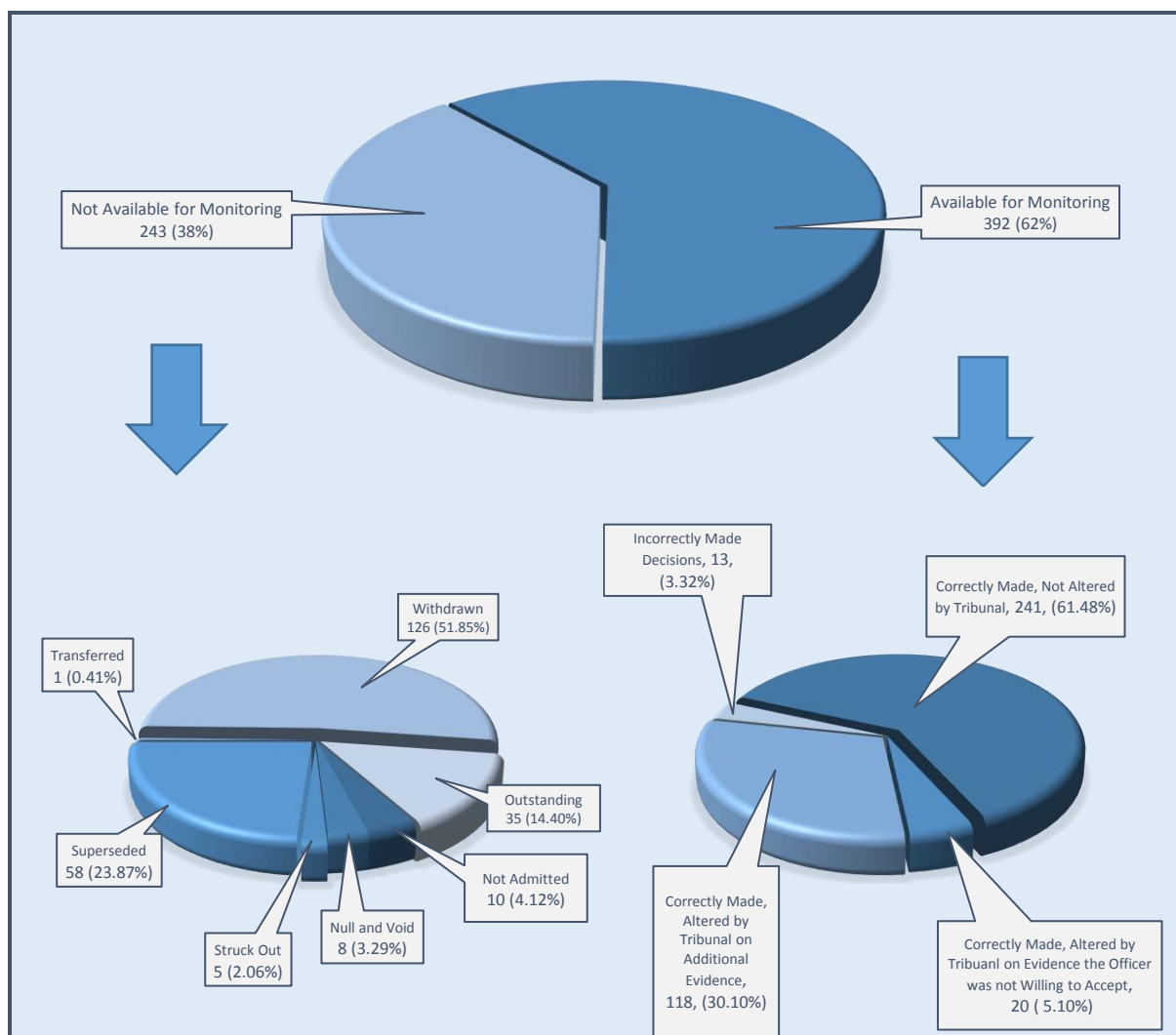


Chart 2 gives a breakdown of the disposal of appeals registered from a monitoring perspective.

Chart 2





Legal Members are asked to identify whether or not the decision 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 3.3% 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.

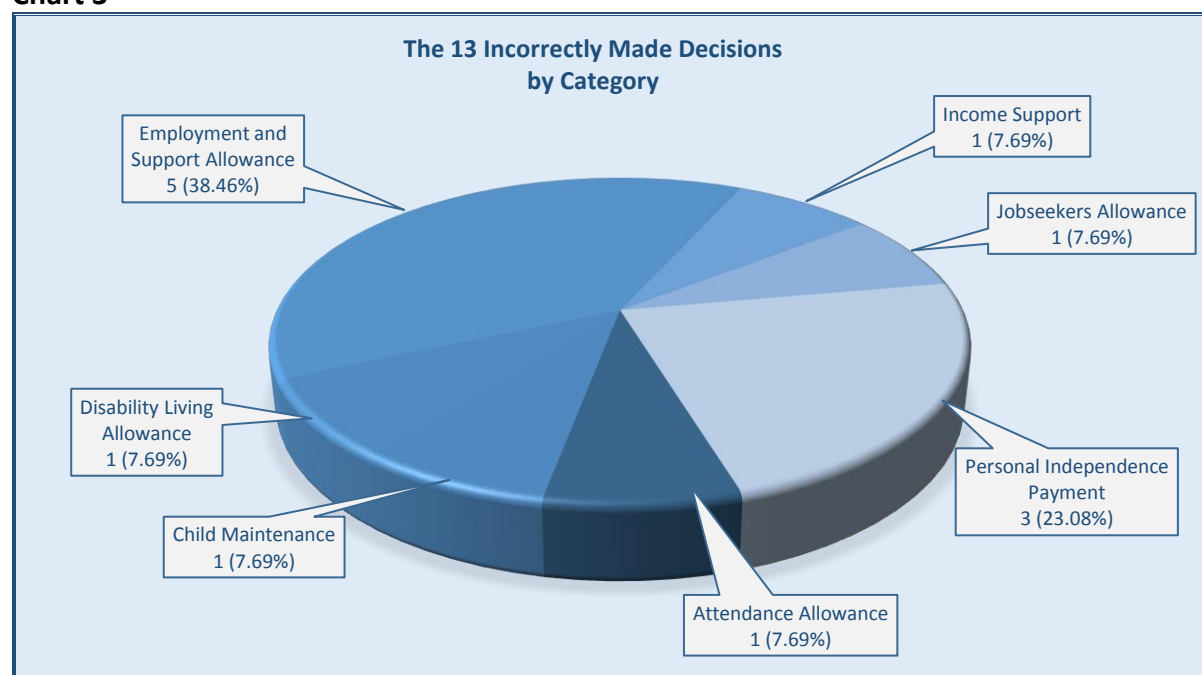
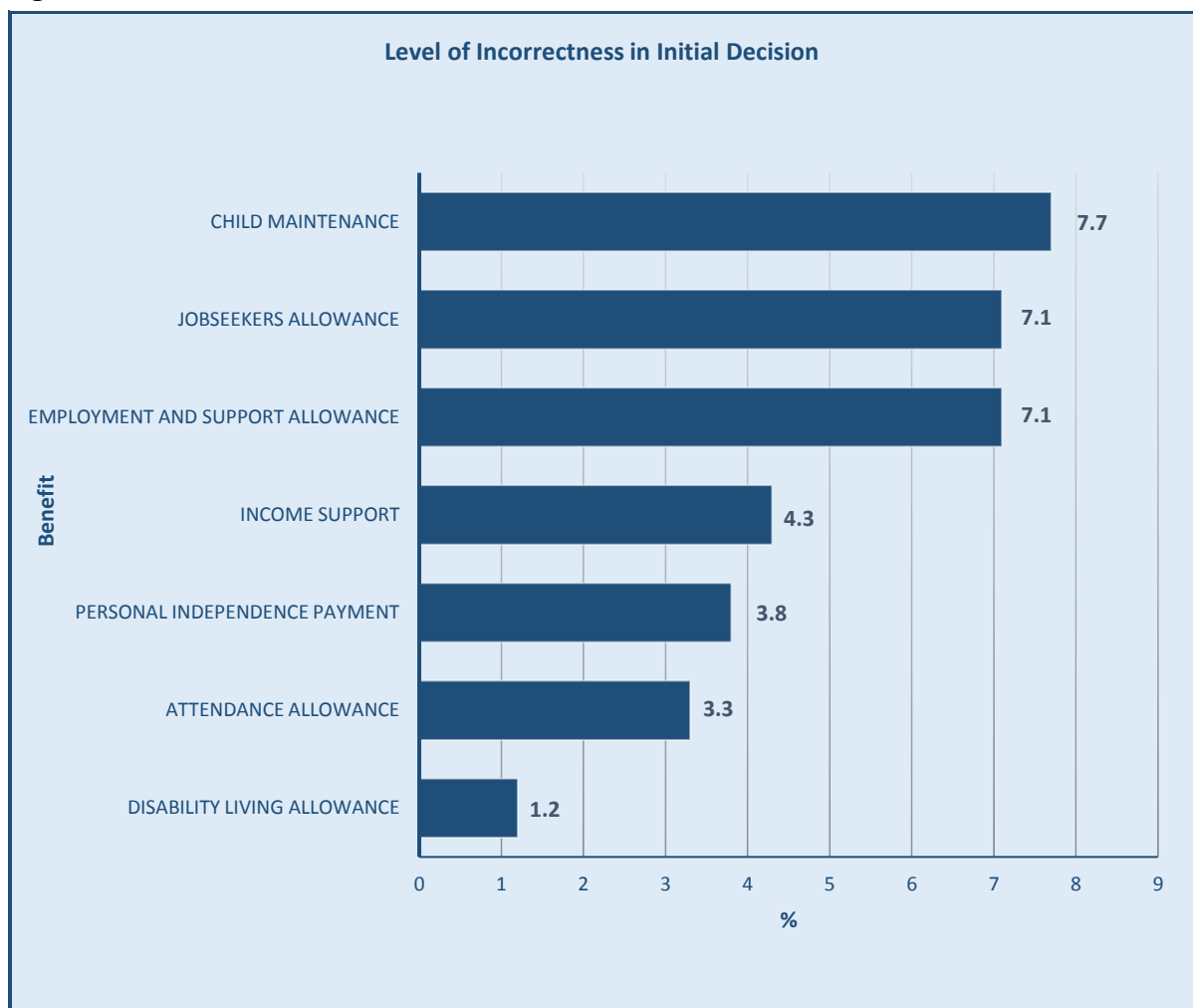
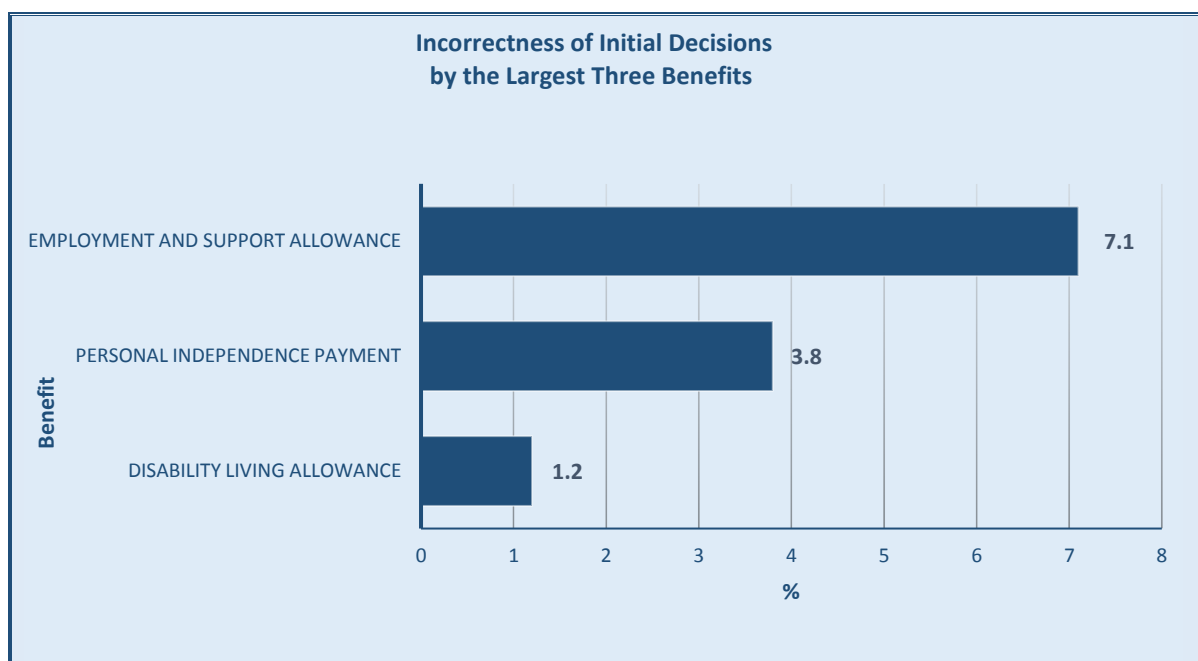
Chart 3

Figure 1 shows graphically the variation across benefits where a random selection of cases were monitored and the remaining census cases. Where present; levels of incorrectness in the initial decision range from approximately 1.2% of Disability Living Allowance cases to 7.7% of Child Maintenance cases (but the small sample size in this category should be noted).

Figure 1



Personal Independence Payment and Employment and Support Allowance accounted for 70% and 22% of all cases registered respectively. This reflects the number of people claiming the benefit. Both benefits are complex in nature as there are multiple point based outcome variations which determines eligibility and this leads to complexity in delivery of the benefit. The level of incorrectness in the initial decisions made in the sample for Personal Independence Payment was 3.8% and for Employment and Support Allowance it was 7.1%.

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 2017 to 05 April 2018 there were 13 cases where the initial decision was judged incorrect. There were in total 14 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 an Employment and Support Allowance case in which two reasons were given.

Chart 4

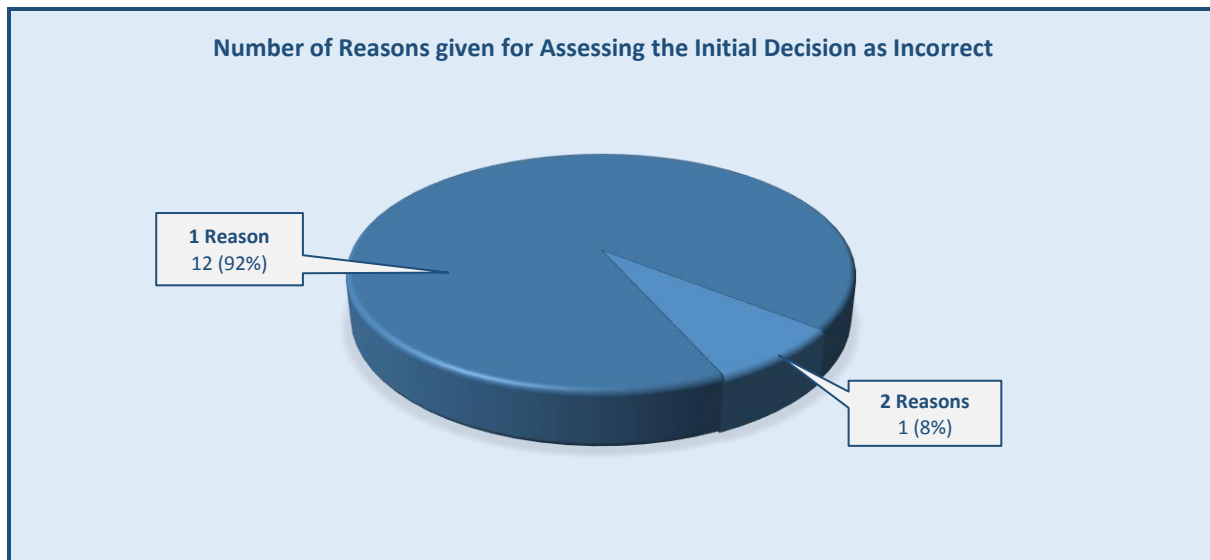


Table 4 shows the reasons and number of occurrences for cases being assessed as having the initial decision incorrectly made.

Table 4

Reason for Incorrectness		Number of Occurrences	% of Total
F1	Insufficient facts/evidence due to inadequate investigation of the claim or revision	1	7.1
F3	Failed to identify finding(s) which need to be made on the basis of the rules of entitlement	2	14.3
F4	Misinterpretation/misunderstanding of the evidence available to the officer	4	28.6
F6	Disregarded relevant evidence	4	28.6
F7	Failed to identify/resolve an obvious conflict in the evidence	2	14.3
L1	Did not identify the correct legal rules relevant to the claim/revision	1	7.1
TOTAL		14	100

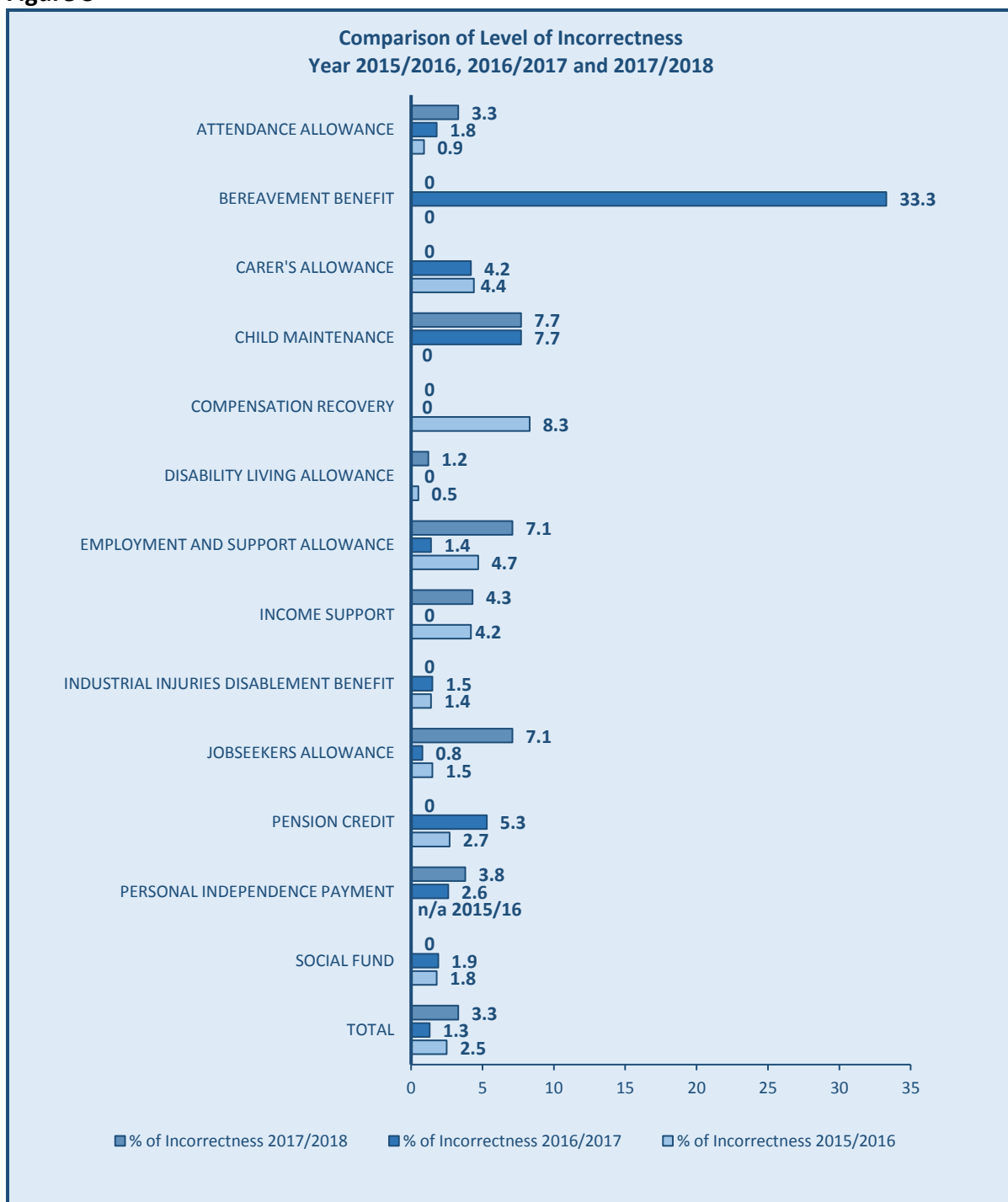
Table 2 on Page 11 sets out in full the reasons for incorrectly made decisions

The most common reasons for incorrectness was ‘the decision of the officer was based on a misinterpretation/misunderstanding of the evidence available to the officer’ (F4) and disregarding relevant evidence’ (F6). Both of these reasons were given 4 times representing a combined 57.2% of all reasons.

Figure 3 compares the level of incorrectness for years 2015/2016, 2016/2017 and 2017/2018. Incapacity Benefit, Maternity Allowance and Retirement Pension are not included as there were no incorrectly made decisions identified in the three year period.

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

Figure 3



*PIP has been included for 2 years only

Over the three year period 2015/16 to 2017/18 the overall level of incorrectness identified has fluctuated, decreasing from 2.5% in 2015/16 to 1.3% in 2016/17 and increasing to 3.3% in the current year.

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

Attendance Allowance

There has been an increase in the level of incorrectness year on year over the three year period ranging from 0.9% in 2015/16 to 3.3% in the current year. 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 remained the same in 2015/16 and 2016/17 with incorrectness recorded at just over 4%. There has been a substantial improvement in the current year as no incorrectly made decisions were recorded. Caution in interpreting the results for 2016/17 and also the current year is required as the number of cases available for monitoring was small.

Child Maintenance

There were no incorrectly made decisions identified in 2015/16 however the standard has decreased significantly in the following two years to 7.7% in both the 2016/17 and 2017/18 years. Caution in interpreting these results is required as the number of cases available for monitoring in all three years 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 in all three years.

Disability Living Allowance

The standard of decision making in this category, continues to be high. Percentage incorrectness over the three year period ranges from 0.5% in 2015/16, to 1.2% in the current year. There were no incorrectly made decisions recorded in the intervening year. 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; 7262 in 2015/16, 3477 in 2016/17 and 2323 in the current year. The standard of decision making has fluctuated over the three year period, increasing from 4.7% incorrect in 2015/16 year to 7.1% in 2017/18. There was an improvement in the intervening year with 1.4% incorrectness recorded. As in DLA, given the appeal activity, we can be confident in the monitoring results.

Income Support

With the exception of year 2016/17 where there were no incorrectly made decisions identified, the level of incorrectness recorded in 2015/16 of over 4% remains the same in the current year. There were sufficient appeals in the 2015/16 and 2016/17 years to be confident in the figures however, the findings in the current year should be interpreted with caution given the small number available for monitoring.

Industrial Injuries Disablement Benefit

The standard of decision making in Industrial Injuries Disablement Benefit is consistently to a high standard, with around 1.5% found to be incorrectly made in years 2015/16 and 2016/17. There were no incorrectly made decisions identified in the current year. There is a steady appeal rate of sufficient numbers and we can therefore be confident in the overall monitoring results.

Jobseekers Allowance

The percentage incorrectness in the current year was recorded as 7.1%. This is a substantial increase on previous years which were recorded at 1.5% and 0.8% respectively. There were sufficient appeals in the 2015/16 and 2016/17 years to be confident in the figures however,

the findings in the current year should be interpreted with caution given the small number available for monitoring.

Pension Credit

The level of incorrectness identified in Pension Credit has fluctuated during the three year period. 2.7% incorrectness was identified in 2015/16, increasing to 5.3% in 2016/17. No incorrectly made decisions were identified in this current year. Caution in interpreting the results for the last two years is required as the number of cases available for monitoring was small.

Social Fund

There were no incorrectly made decisions identified in the current year. In the previous two years the level was 1.8% and 1.9% respectively. The standard in this category remains at a high standard.

Personal Independence Payment

The highest appeal rates are recorded in this category. There are only results available for two years in this category i.e. 2016/17 and 2017/18. The level of incorrectness has increased from 2.6% to 3.8% in the two year period. The appeal rate in both years was very high and we can therefore be confident in the results.

Correctly Made Decisions Overturned by Tribunals

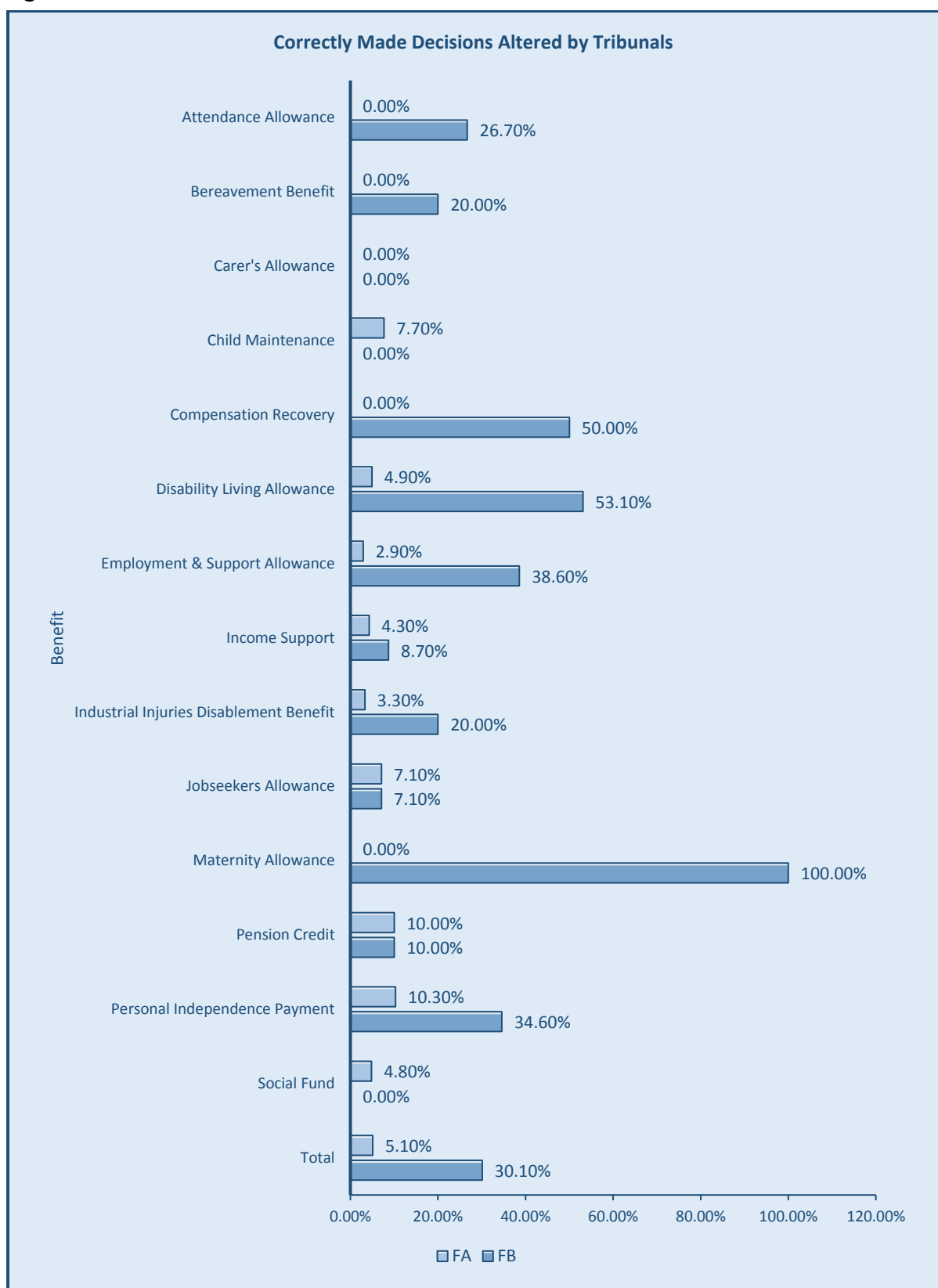
Of the 392 cases monitored, 138, representing 35.2%, were altered by the tribunal because the tribunal accepted evidence that the decision maker was not willing to accept (FA), or the tribunal was given additional evidence which was not available to the decision maker (FB). Neither of these comments 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	30	8	26.7	0	0	8	26.7
Bereavement Benefit	5	1	20	0	0	1	20
Carer's Allowance	10	0	0	0	0	0	0
Child Maintenance	13	1	7.7	1	7.7	0	0
Compensation Recovery	2	1	50	0	0	1	50
Disability Living Allowance	81	47	58	4	4.9	43	53.1
Employment Support Allowance	70	29	41.4	2	2.9	27	38.6
Income Support	23	3	13	1	4.3	2	8.7
Industrial Injuries Disablement Benefit	30	7	23.3	1	3.3	6	20
Jobseekers Allowance	14	2	14.2	1	7.1	1	7.1
Maternity Allowance	1	1	100	0	0	1	100
Pension Credit	10	2	20	1	10	1	10
Personal Independence Payment	78	35	44.9	8	10.3	27	34.6
Retirement Pension	2	0	0	0	0	0	0
Social Fund	21	1	4.8	1	4.8	0	0
TOTAL	392	138	35.2	20	5.1	118	30.1

Figure 4



There were a total of 20 cases representing 5.1% of those monitored where the tribunal took a different view of the evidence that was available to the decision maker (FA) and 118 cases (30.1%) where additional evidence was provided to the tribunal that the decision maker did not have (FB). Of these Personal Independence Payment had the highest percentage of cases (10.3%) overturned in the FA category. In the FB category Disability Living Allowance, Personal Independence Payment and Employment and Support 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 represented an analysis of appeals from April 2017 to March 2018.

In total 10,428 appeals regarding decisions made by the Department for Communities were made between April 2017 and March 2018. Of these, 392 cases, representing 3.8% of all registered appeals, were monitored to assess the level of incorrectness amongst initial case decision.

Across all monitored cases the level of incorrectness among initial decisions was 3.3%. There was a variation in the level of incorrectness of initial decisions across benefits. No incorrect initial decisions were recorded for a range of benefits including; Bereavement Benefit, Compensation Recovery, Incapacity Benefit, Maternity Allowance, Retirement Pension, Carers Allowance, Industrial Injuries Disablement Benefit, Pension Credit and Social Fund. For instances where incorrect decisions were recorded they ranged from 1.2% (Disability Living Allowance) to 7.7% (Child Maintenance) (Note small sample size).

A majority (92.3%) of cases where the initial decision was assessed as incorrect cited one reason for this incorrectness. The most common reasons for incorrectness were 'Misinterpretation/misunderstanding of the evidence available to the officer' (F4) and 'Disregarding relevant evidence' (F6).

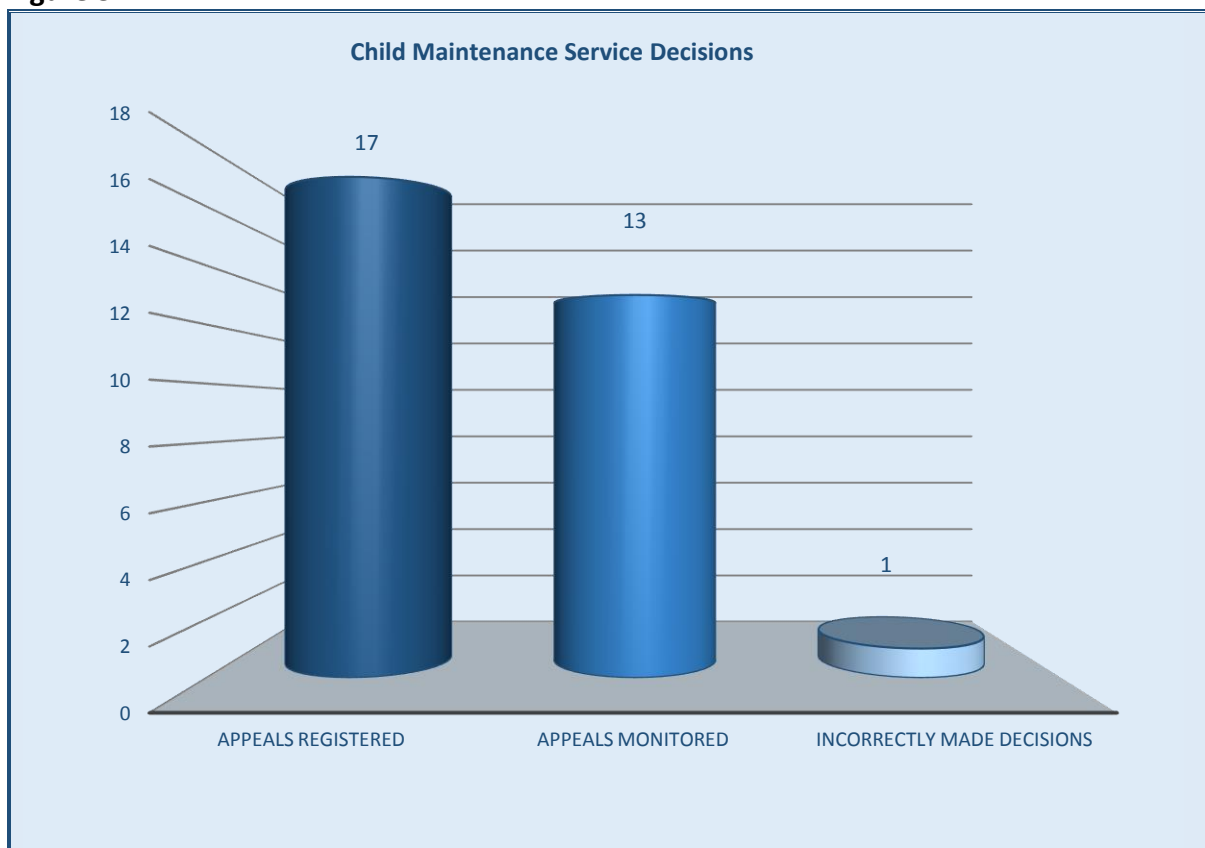
Chapter 3

Child Maintenance Service Decisions

76.5% of all Child Maintenance appeals were monitored. The level of incorrectness was 7.7%. This is the same result as the previous year. However, given the small number of appeals available for monitoring caution in interpreting this result is advised (see paragraphs 2 of both pages 7 and 8 of Chapter 2).

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 one reason recorded for incorrectness; 'the officer disregarded relevant evidence' (F6). The decision maker used the incorrect tax year to calculate the liability of the non-resident parent.

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 as the tribunal accepted evidence that the decision maker was unwilling to accept (FA).

Comments / Recommendations – Child Maintenance Service

None.

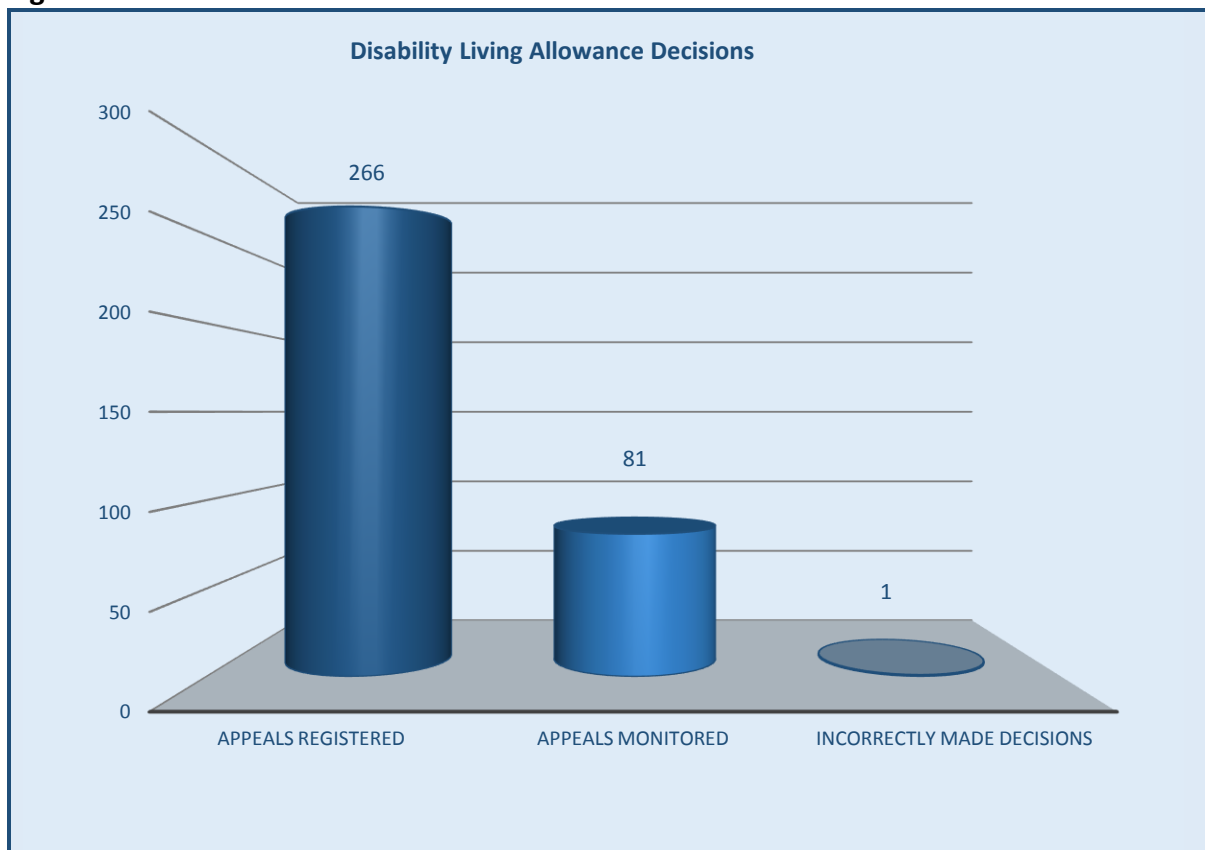
Chapter 4

Disability Living Allowance

30.5% of all appeals received were monitored and there was one incorrectly made decision identified. The level of incorrectness recorded was 1.2%. This is a decrease in standards of 1.2% on the previous year.

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

Figure 6



There was one incorrectly made decision in this category, with one reason recorded for incorrectness; 'insufficient facts/evidence due to inadequate investigation of the claim or revision' (F1). The tribunal found that there were no grounds established by the decision maker to supersede the decision under appeal.

Correctly Made Decisions Overturned by the Tribunal

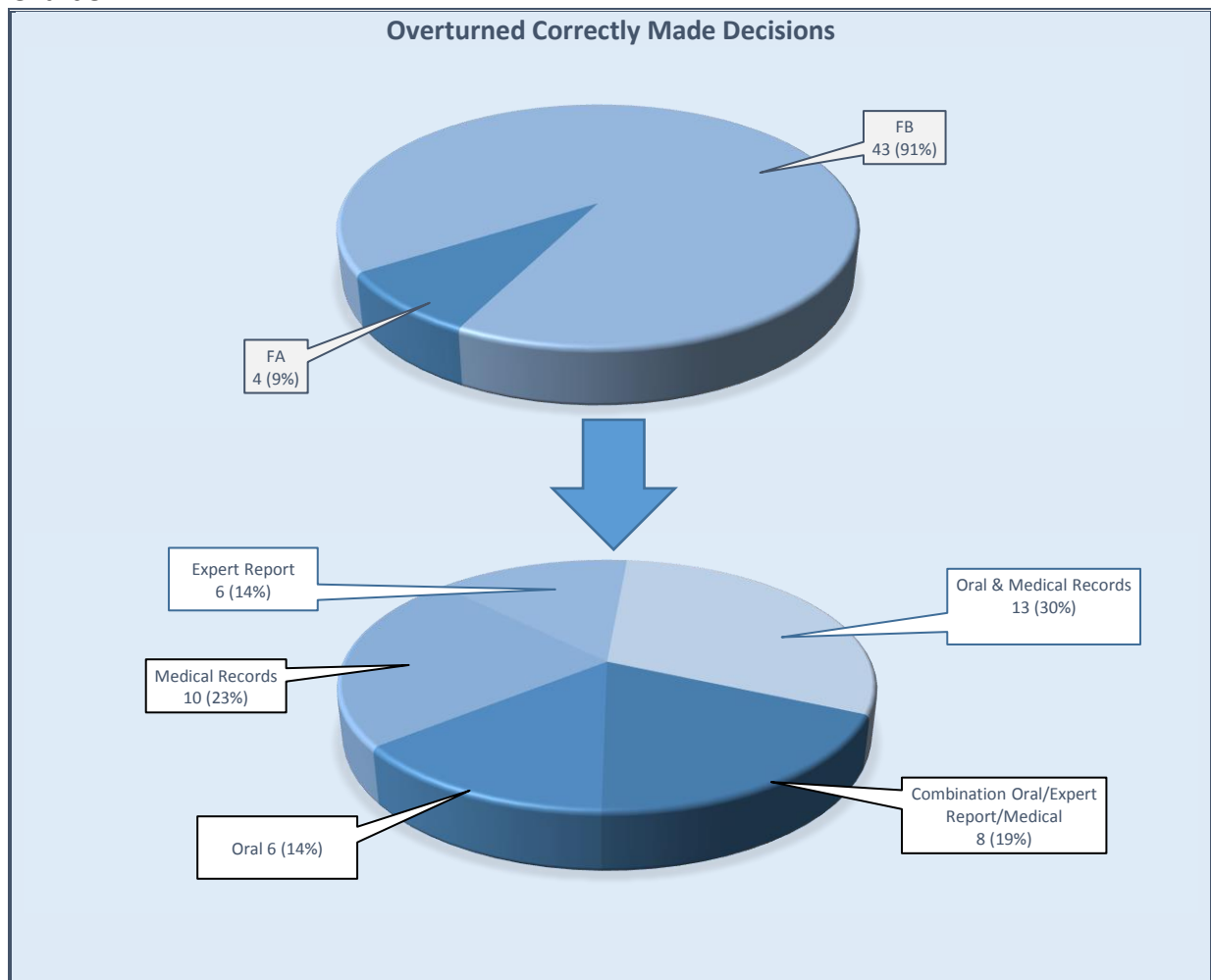
Table 6 illustrates that in 47 cases, representing 58% of those monitored, while correctly made by the decision maker, were overturned by the tribunal because the tribunal accepted evidence which the decision maker was unwilling to accept (4 cases), or the tribunal was given additional evidence that was not available to the decision maker (43 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.	4 (8.5%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	43 (91.5%)

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

Chart 5



In 6 cases the direct evidence of the appellant or a witness was the sole reason for the decision being overturned. In a further 16 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 21 cases the tribunal was influenced by direct oral evidence and additional medical evidence. Overall, the decisions in 37 cases, representing 46% 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

Comments made by the legal member	
1.	Awarded low rate Mobility and low rate Care for 3 years. Satisfied criteria. Additional evidence given by a witness, the appointee and medical records.
2.	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's report. GP records confirmed night time needs
3.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was given by the appellant/appointee. Low rate mobility component increased to high rate mobility component.
4.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was given by the appellant/appointee/ mother/ plus school and medical records.
5.	Awarded middle rate Care (day attention) for 4 years. Satisfied Criteria. Additional evidence given in the form of an expert report handed in and medical records.
6.	Highest rate care component awarded. Additional evidence given by a witness and the appellant.
7.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was given in the form of an expert's report and given by the appointee.
8.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was medical records. High rate mobility awarded in light of evidence of probability of significant and severe behavioural problems.

9.	Department relied on school report only. Appeal allowed - Low Rate Mobility and Standard Care components. Panel accepted appointee's evidence and supporting GP notes and records.
10.	There is entitlement to the middle rate care (night needs) for 2 years. There is no entitlement to the mobility component. Additional evidence given by medical records. The decision maker's decision was reasonable on the evidence available to the decision maker. We had the advantage of his GP notes and reports of investigations into private therapy. The GP provided a helpful summary on a pro forma factual report. Tribunal also had a school report which gave an accurate overview. By their nature these reports were brief and summarised but contained useful information.
11.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was; medical records. Appellant is entitled to High Rate Mobility and Middle Rate Care. Oral evidence and medical evidence available to the tribunal on the day of hearing was supportive of an award of High Rate mobility and Middle Rate Care.
12.	Awarded middle rate (daytime attention). No mobility. Accepted the child had substantial care needs. Mother's evidence supported by GP records.
13.	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. High rate care / low rate mobility. Supportive GP factual report.
14.	The tribunal was given additional evidence which was not available to the officer who made the decision. The evidence was in the form of an expert report handed in and medical records. No grounds to supersede. High Rate Mobility and Low Rate Care award reinstated.
15.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was; medical records and photographs of feet. Appellant's written submission regarding manner of mobilising was significantly supported by medical records, resulting in probability at least of significant mobility difficulty, to a degree that more or less virtually unable to walk.
16.	Award for 3 years. The appellant is entitled to the middle rate care (frequent attention day). Mobility component unchanged. Additional evidence given by a witness. There was a school report which covered the situation at school adequately. There was also paediatric report which explained the condition in detail. The Decision Maker emphasised the school report which indicated adequate coping. We had the benefit of hearing from the appellant's mother about his needs out of school.
17.	Additional evidence - expert report handed in, given by a witness (oral), medical records. Tribunal awarded Lower Rate Care for two years.
18.	Award reduced on appeal from Higher Rate Care and Lower Rate Mobility to Middle Rate Care and Lower Rate Mobility. Additional evidence - medical records.
19.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was; given by the appellant. Appellant entitled to High Rate Mobility.

20.	The tribunal was given additional evidence which was not available to the officer who made the decision. Given by the appellant and medical records. Award increased from the middle rate of the care component to the highest rate. The duration of the award was not changed.
21.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was; medical records, appellant and Law Centre submission. Appeal allowed and decision awarding low rate care, main meal not confirmed. High rate of care component awarded. Deterioration in appellant's mental health (crisis team involvement, Primary Mental Health Team involvement and opioid addiction). Deterioration in colostomy bag management with skin inflammation. Multiple complex pathologies well documented. Given that the department supported the appeal to the Commissioner against the first tribunal decision, might the department have indicated in its current submission that it was not opposed to an increase in the award?
22.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was given by the appellant's appointee and medical records. Middle care and lower mobility awarded until 8th Birthday. The child's GP notes and GP factual report were helpful and the mother's evidence was persuasive.

Comments / Recommendations – Disability Living Allowance

As in previous reports there continues to be concern about the number of decisions which are overturned due to further medical evidence. I repeat my previous request that the Department 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. This could prevent deserving claimants having to endure the stress of the appeals process.

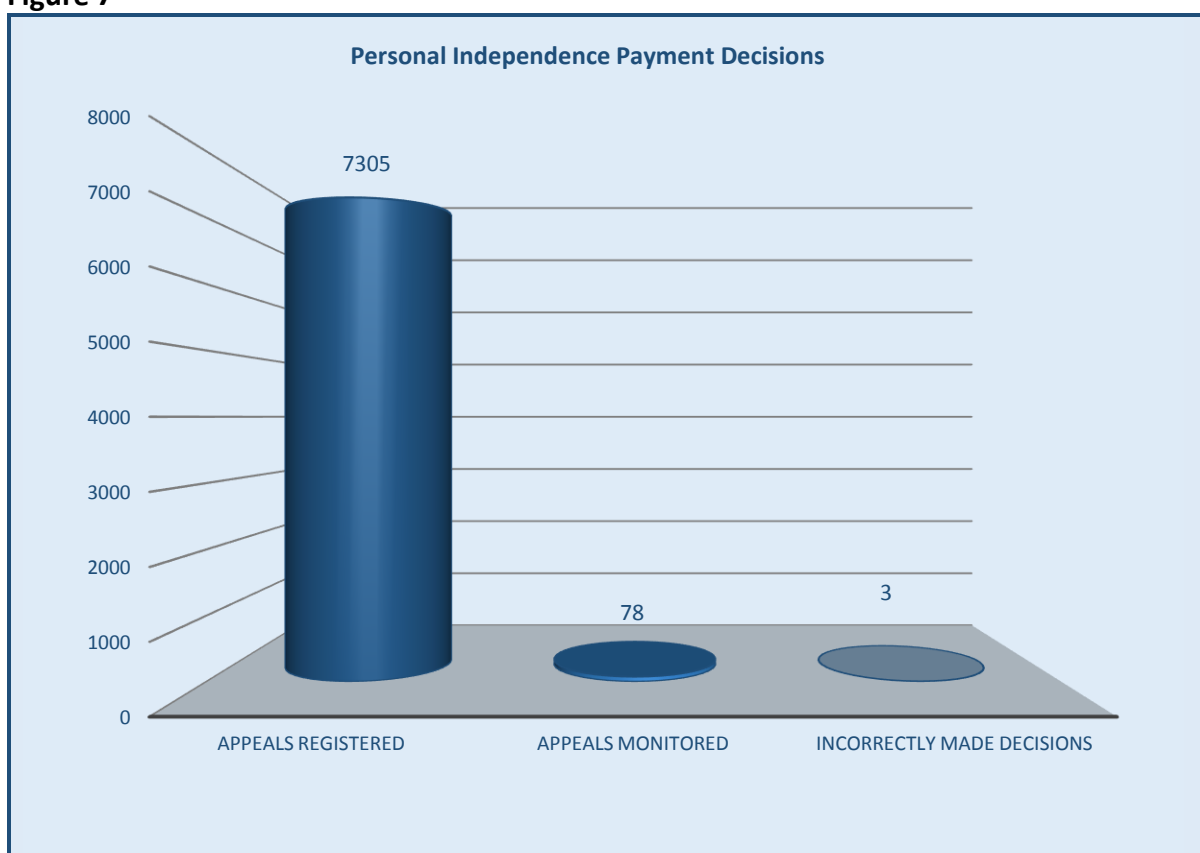
The comments from legally qualified members mentioned at table 7 illustrate the fundamental importance of having GP notes and records available to the tribunal at hearing stage. Relevant and focussed extracts from medical notes and records should always be a cornerstone of our tribunal process.

Personal Independence Payment

Personal Independence Payment (PIP) is the largest appeal area in this reporting year accounting for 70% of all appeals registered. 1.1% of all PIP appeals received were monitored and the level of incorrectness identified was 3.8%. This is a decrease in standards of 1.2% on the previous year.

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

Figure 7



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

In the first case the legal member commented that ‘the officer failed to identify findings which needed to be made regarding entitlement. It was recorded in the claim form that due to arthritis the appellant used an aid to assist with dressing lower body and was assisted by

another person. In addition a dosette box was used for medication. There were no findings recorded on these issues by the decision maker.

In the second and third cases the legal member commented that ‘the officer disregarded relevant evidence’ (F6). In the first of these it was stated in the claim form that assistance was required with washing and with toileting. These were not covered in the Healthcare Professional’s report and the decision maker awarded points only for using an aid. In the remaining case the appellant needed assistance with managing therapy and this was not considered by the decision maker.

Correctly Made Decisions Overturned by the Tribunal

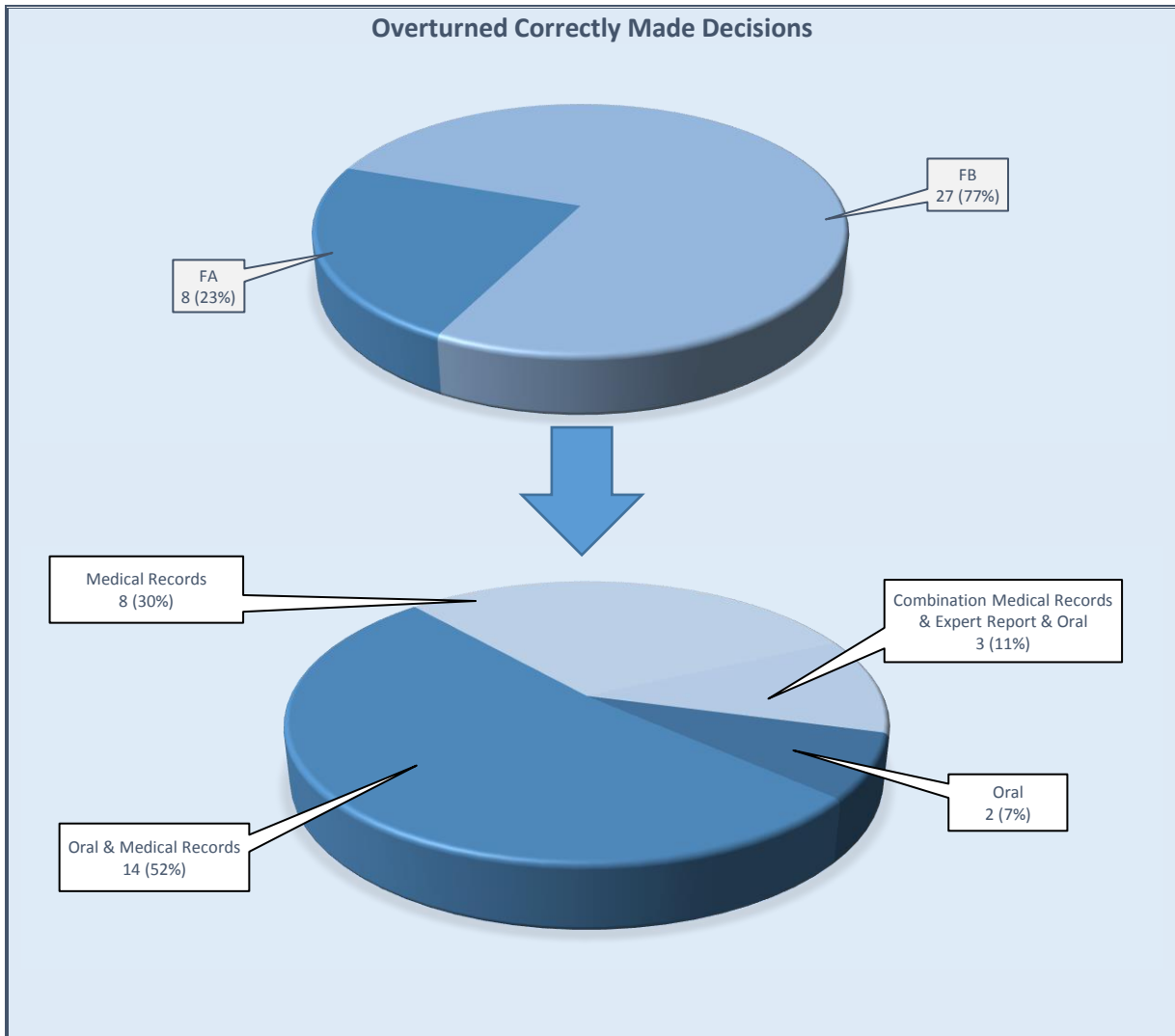
In a further 35 cases, representing 44.9% of those monitored, while correctly made by the decision maker, were overturned by the tribunal because the tribunal accepted evidence which the decision maker was unwilling to accept (8 cases), or the tribunal was given additional evidence that was not available to the decision maker (27 cases).

Table 8

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 (22.9%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	27 (77.1%)

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

Chart 6



In 2 cases the direct oral evidence of the appellant or a witness was the sole reason for the decision being overturned. 8 cases turned on the content of medical records. In a further 17 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 25 cases, representing 32% 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 9 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 9

Comments made by the legal member	
1.	6 points initially Daily Living awarded. 8 points on revision of evidence. Toilet aid in place - 2 points awarded. Additional evidence given by GP Records.
2.	Additional evidence - expert report handed in and medical records (GP and hospital). Significant mental health conditions, the department did not give sufficient weight to these. GP notes provided at tribunal were essential for panel to reach this decision.
3.	Additional evidence - given by the appellant and GP notes. Claimant credible when vouched against GP records.
4.	Additional evidence given by appellant and GP records. Appellant diagnosed with Personality Disorder, Post Traumatic Stress Disorder and Obsessive Compulsive Disorder. Long history of mental health services contact - ongoing. A credible and unguarded witness. Evidence consistent with significant social avoidance and self-harm. Appeal allowed for Standard Rate Daily Living. Appeal disallowed for Mobility Component.
5.	An award was made for the Daily Living component. The GP notes and records and significant psychiatric reports and letters provided consistent substantiation of a number of the Appellant's claimed limitations. The voluminous GP notes and records were not available to Decision Officer.
6.	Appeal allowed and Appellant awarded Enhanced Rate of Mobility component - satisfies criteria. Tribunal given additional evidence (GP and hospital medical records). Appeal for Daily Living disallowed.
7.	Appeal allowed. Tribunal given additional evidence (expert report, medical notes and records, letter from specialists and evidence given by Appellant). Appellant awarded Standard Rates of Daily Living and Mobility components.
8.	Appellant scored 10 points in Daily Living activities. Medical evidence / oral evidence accepted which was supportive of a finding of the appellant having significant limitation. Additional evidence given by the appellant and medical records.
9.	Awarded enhanced mobility instead of standard, and standard rate Daily Living. Additional evidence - given by the appellant and medical records. Compelling oral evidence and consistent evidence.
10.	Awarded standard rate Mobility and Daily Living for 2 yrs. Satisfied criteria. Additional evidence given by a witness, the appellant and GP + Hospital medical records.
11.	Panel increased Standard Rate Daily Living to Enhanced Rate and extended the period by one year. GP notes and records supportive and consistent with Mandatory Reconsideration request.
12.	The tribunal accepted evidence which was not available to the officer who made the decision. Such evidence was given by the appellant and medical records. The departmental officer had awarded 6 points for daily living activities whereas the tribunal awarded 8 points, meaning entitlement to the standard rate of the daily living component. Extra 2 points awarded because of appellants need for assistance with medication, due to mental impact of his cancer diagnosis.

13.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was; given by a witness, by the appellant, medical records and witness statement. Appellant satisfies the conditions of entitlement to the standard rate of the mobility component of PIP.
14.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was given by a witness, the appellant and from medical records. Appeal allowed. Entitled to standard rate of the daily living component and mobility component.
15.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was given by the appellant. Award of standard rate mobility for 3 year award. No daily living. Accept that evidence does exist of a generalised anxiety and some mobility difficulties. Evidence whilst demonstrating some daily living needs but not enough to warrant an award.
16.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was GP notes. The claimant was found to have entitlement to standard daily living for 4 years from date of decision.
17.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was given by a witness. Appellant's condition was more severe than recognised. Evidence from appellant's mother (his appointee) was convincing and credible.
18.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was given by the appellant and medical records. The appellant was deemed to be entitled to the Daily Living Component of PIP at the standard rate. Based upon the evidence of the appellant and the GP notes and records considered, the tribunal deemed that the appellant needed prompting or assistance across a number of activities. FB - GP notes and records provided support to the evidence of the appellant at the hearing. The appellant had lodged a complaint in relation to the Capita report but was satisfied with the response received.
19.	Tribunal given additional evidence (by the appellant and medical records). The Department deemed the Appellant was not entitled to PIP whereas the Tribunal considered the Appellant was entitled to both the Daily Living and Mobility components at the Standard Rate. GP notes and records provided clearly supported evidence in relation to the Mobility component and some activities under the Daily Living component. The presentation of the evidence by the Appellant was straight forward and credible as to the difficulties experienced as a result of his medical conditions. GP notes and records were particularly useful with regard to the Appellant's Chronic Obstructive Pulmonary Disease and the Mobility component.

Comments / Recommendations – Personal Independence Payment

As noted earlier PIP accounted for 70% of appeals registered during the reporting year. Regrettably I must repeat the comments made in last year's report. I repeat my view that the Department need to carry out a more robust investigation prior to initial decision. Once more this reflects my comments above about DLA decision making. It will be readily apparent to the reader that in almost every one of the 19 cases mentioned above, legally qualified members have referenced the benefit of having medical notes and records available at hearing

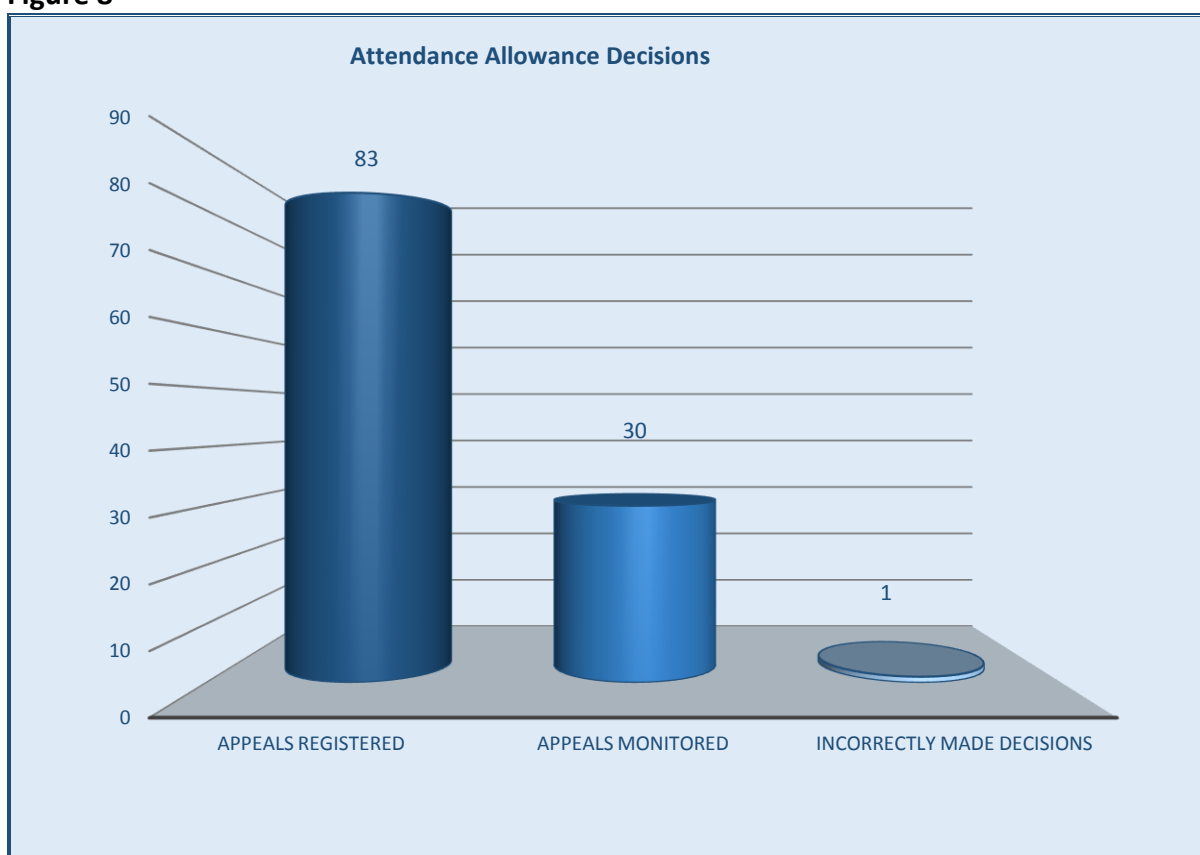
The Department should seriously consider obtaining a detailed report from a general practitioner in all cases prior to initial decision. Such a report could supplement any assessment carried out by a health professional.

Attendance Allowance

As Attendance Allowance is a relatively small benefit in terms of appeal activity, 36.1% of appeals received were monitored. The level of incorrectness identified was 3.3%. This is a decrease in standards of 1.5% on the previous year.

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

Figure 8



There was one incorrectly made decision identified in this category. The legal member commented that all parties agreed that on the papers presented to the tribunal an award of benefit was appropriate and that the original decision to refuse benefit was incorrect and based on a misunderstanding of the evidence available to the decision maker.

Correctly Made Decisions Overturned by the Tribunal

In a further 8 cases, representing 26.7% of those monitored, while correctly made by the decision maker, were overturned because the tribunal was given additional evidence that was not available to the decision maker (FB).

In 6 of the 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 from the appellant and/or a witness. In the remaining 2 cases the appellant provided additional written evidence from his GP by way of a letter and an expert report from a consultant. Overall 20% of those monitored were overturned due to additional medical 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

Comments made by the legal member	
1.	Daytime Attendance Allowance awarded. Additional evidence given by son in law and GP records.
2.	Appellant awarded low rate Attendance Allowance- frequent attention required throughout the day in connection with her body functions. Consistent evidence of breathing difficulties before and after Chronic Obstructive Pulmonary Disease (COPD) diagnosis. A pattern of falls. Appellant brought her own medical records and these tended to confirm her oral evidence. Additional evidence given by daughter and appellant.
3.	Low rate Attendance Allowance awarded. Additional evidence given by medical records.
4.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was; medical records and submission. Low rate Attendance Allowance.
5.	Attendance Allowance at lower rate (day attention). Oral evidence accepted as reflective of daily reality. Appellant was observably dejected and in low spirits. Attributes his physical weakness and pain to "wear and tear". Additional evidence given by a witness (carer), the appellant and GP notes. I could not find the test for higher and lower rates of Attendance Allowance paraphrased or quoted anywhere in the submission.
6.	The appellant is entitled to the low rate of Attendance Allowance Additional evidence in the form of letter handed in by appellant.

Comments / Recommendations – Attendance Allowance

I repeat the comments about Attendance Allowance made in last year's report.

Previous Year's Comments

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:

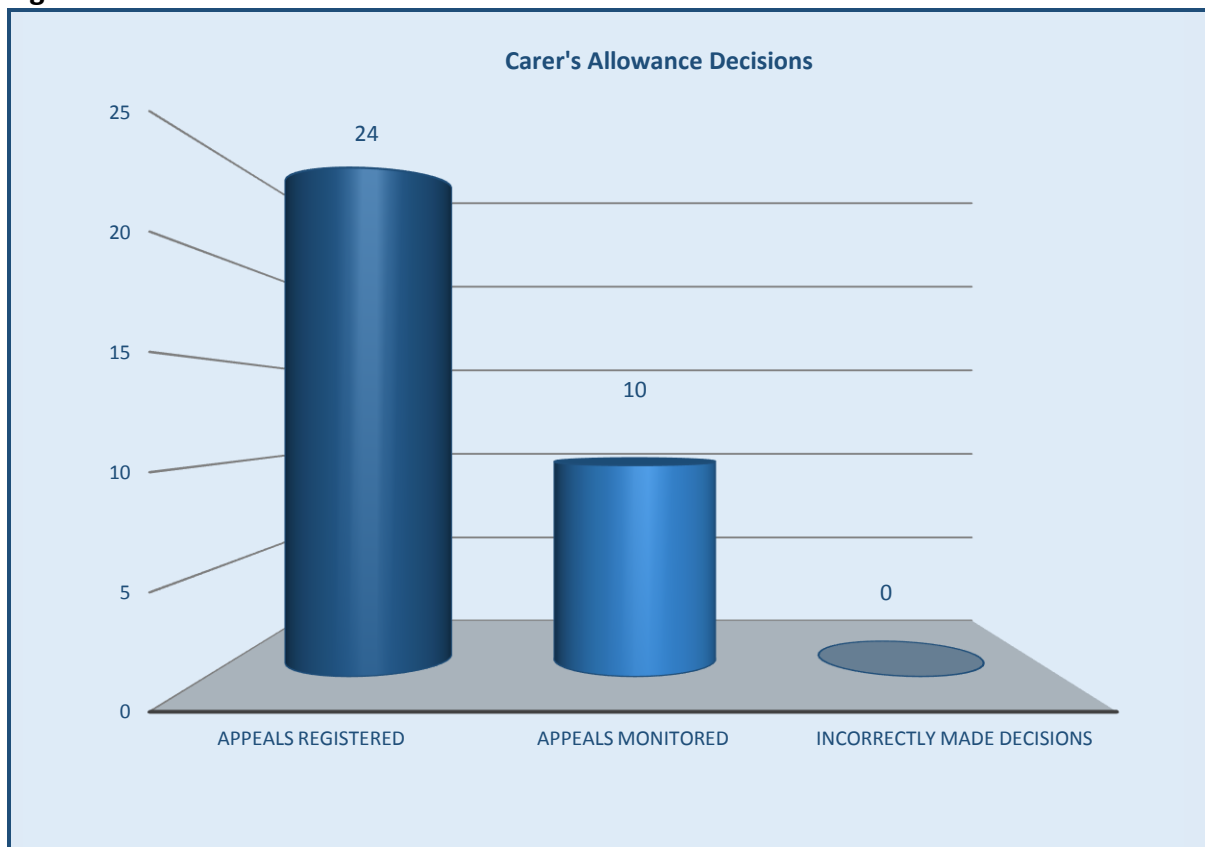
- a. a detailed report in all cases from the claimant's general practitioner
- b. statements from family members and/or carers – with the claimant's consent

Carer's Allowance

The appeal rate in Carer's Allowance (CA) is low. To obtain a meaningful sample, 41.7% of appeals received were monitored. There were no incorrectly made decisions identified. This is an improvement of 4.2% on the previous year.

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

Figure 9



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

While there were no incorrectly made decisions identified in this category, given the small number of appeals available for monitoring, caution in interpreting this result is advised (see paragraphs 2 of both pages 7 and 8 of Chapter 2).

Correctly Made Decisions Overturned by the Tribunal

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

Comments / Recommendations – Carer's Allowance

None

Employment and Support Allowance

Employment and Support Allowance (ESA) is the second largest category of appeal activity in this reporting year. 3% of all appeals received in this category were monitored. The level of incorrectness identified was 7.1%. This is a decrease in standards of 5.7% on the previous year.

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

Figure 10

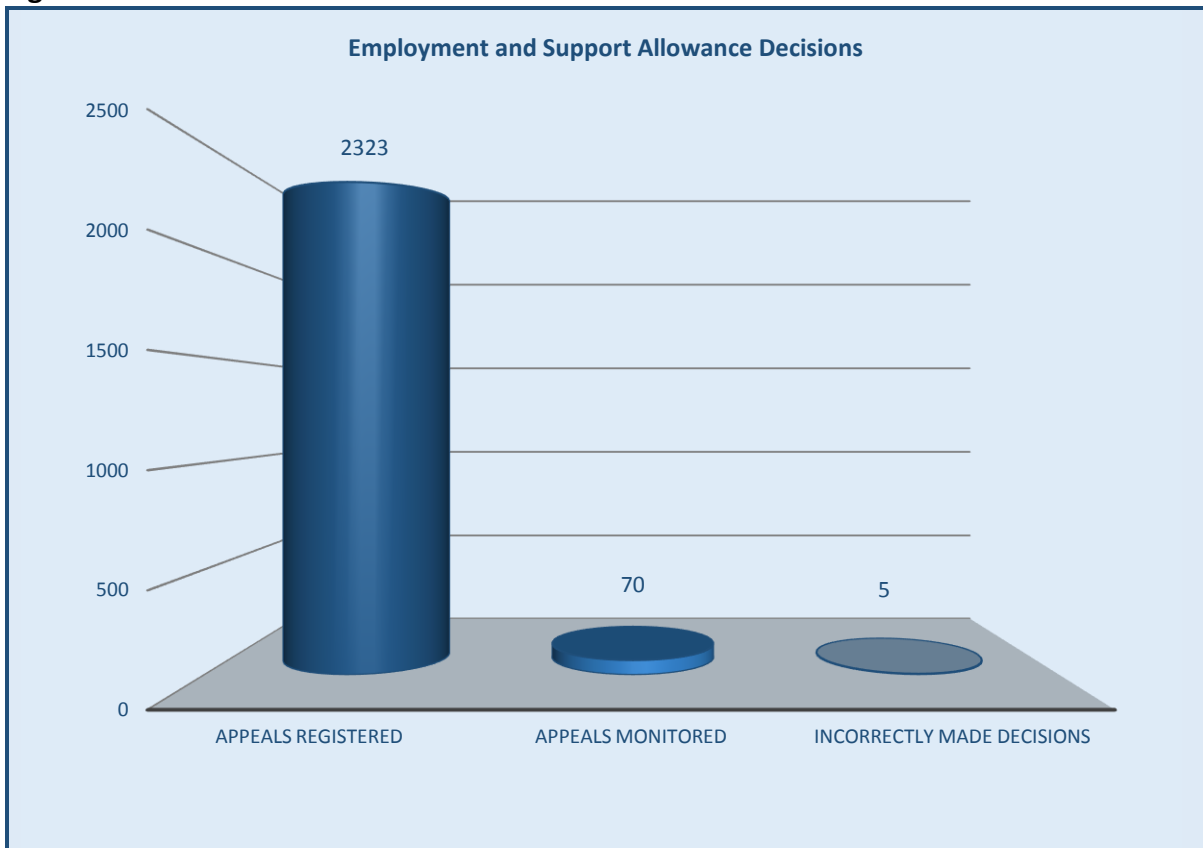
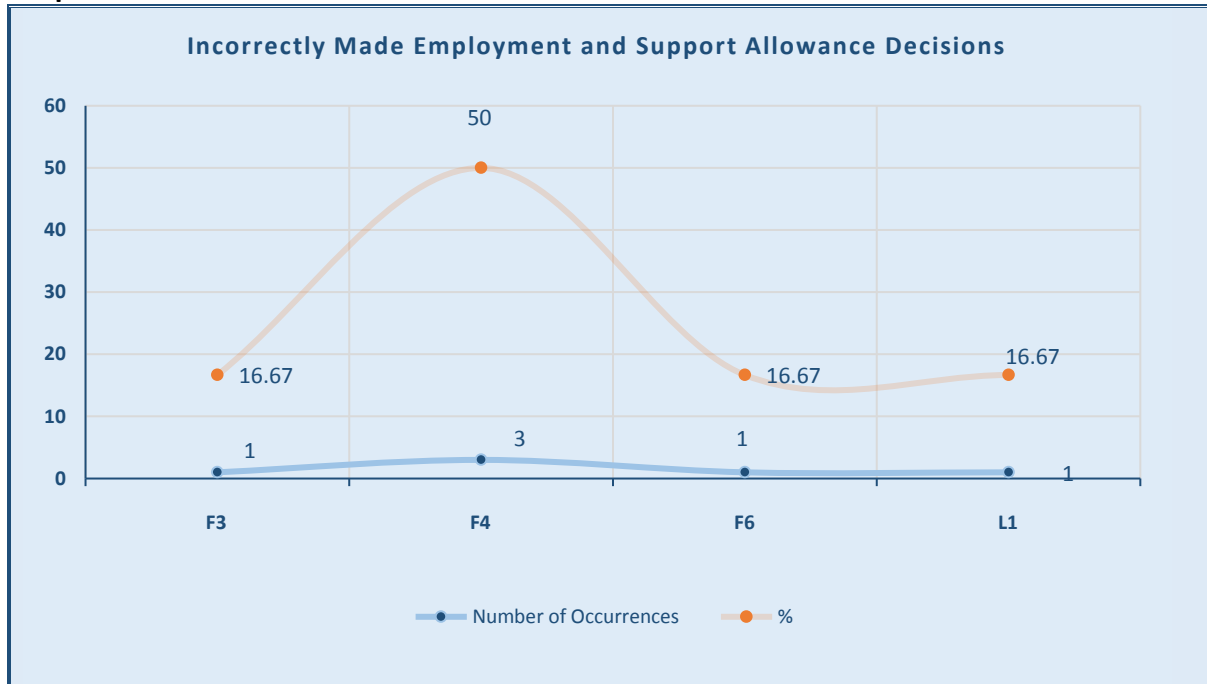


Table 11 and Graph 1 sets out the number of occurrences against the reasons for incorrectness. There were four separate reasons identified for incorrectness. There were five incorrectly made decisions identified in this category. There were overlapping reasons in three cases.

Table 11

Reasons for Incorrectness	F3	F4	F6	L1
Number of Occurrences	1 (16.67%)	3 (50%)	1 (16.67%)	1 (16.67%)

Graph 1



In three of these appeals the main issue was the misrepresentation of evidence by the decision maker. Additionally in one case the decision maker did not identify the correct legal rules relevant to the claim.

Case 1

The appellant had two major health conditions i.e. cardiac and vascular problems. Cardiac was dealt with by angiogram however, the vascular issue could not be resolved until a surgeon was satisfied that it was safe to operate. Neither the decision maker or the Healthcare Professional fully understood this issue nor the difficulties presented by the vascular issue. The tribunal took into consideration the overall effect on appellant’s health and decided that there was an overall risk to this and that Regulation 29(2)(b) of the Social Security (Decisions and Appeals) Regulations (Northern Ireland) 1999 was engaged.

Case 2

The appellant suffered from long term depression and the everyday effects on health were not properly understood by the Healthcare Professional (HCP) or the decision maker. There was evidence within the appellant's claim form and from a consultant, which set out the difficulties and these were not properly taken into account by the decision maker.

Case 3

In this case the appellant wrote to the department requesting a supersession. The decision maker treated the letter as a request for a revision of a decision which implemented an earlier tribunal decision. The evidence provided by the appellant regarding a deterioration was sufficient to make an award of the support group.

Cases 3 and 4

The remaining two appeals were non-medical income based issues. One was in connection with the date of award of a disability premium. This was initially in payment as the appellant satisfied the criteria including living alone. However when the claim was suspended due to an investigation regarding verification of mortgage, the premium was not reinstated from the date the suspension was lifted. The decision maker decided that there was no record of appellant notifying the department that her daughter who had returned to live with her for a short period had moved out of her home. The case records within the submission did however indicate this.

In the final case the issue was an overpayment of benefit. The appellant had previously been in receipt of Incapacity Benefit (INCAP) prior to entitlement to ESA and was until a change in circumstances entitled to DLA. Entitlement to ESA contained an element for the Severe Disability Premium (SDP) on the basis of the DLA award. Entitlement to the SDP was affected by a change in his award of DLA. The change in circumstances was not reported as appellant stated that on contacting DLA he was advised that it would not affect his overall ESA entitlement. The tribunal found that there was no ESA40 form issued advising him of the types of changes in circumstances to report. Instead, a letter setting out his transfer from INCAP to ESA stated the following "Remember, you must tell us if any of your circumstances change. This includes any changes to your partner's circumstances, if you have one". The appeal writer stated within the appeal submission that as the appellant had previously been

in receipt of INCAP he might reasonably be expected to know that the end of his award to DLA would have impacted on his continuing entitlement to the SDP. The tribunal did not accept this argument.

Correctly Made Decisions Overturned by the Tribunal

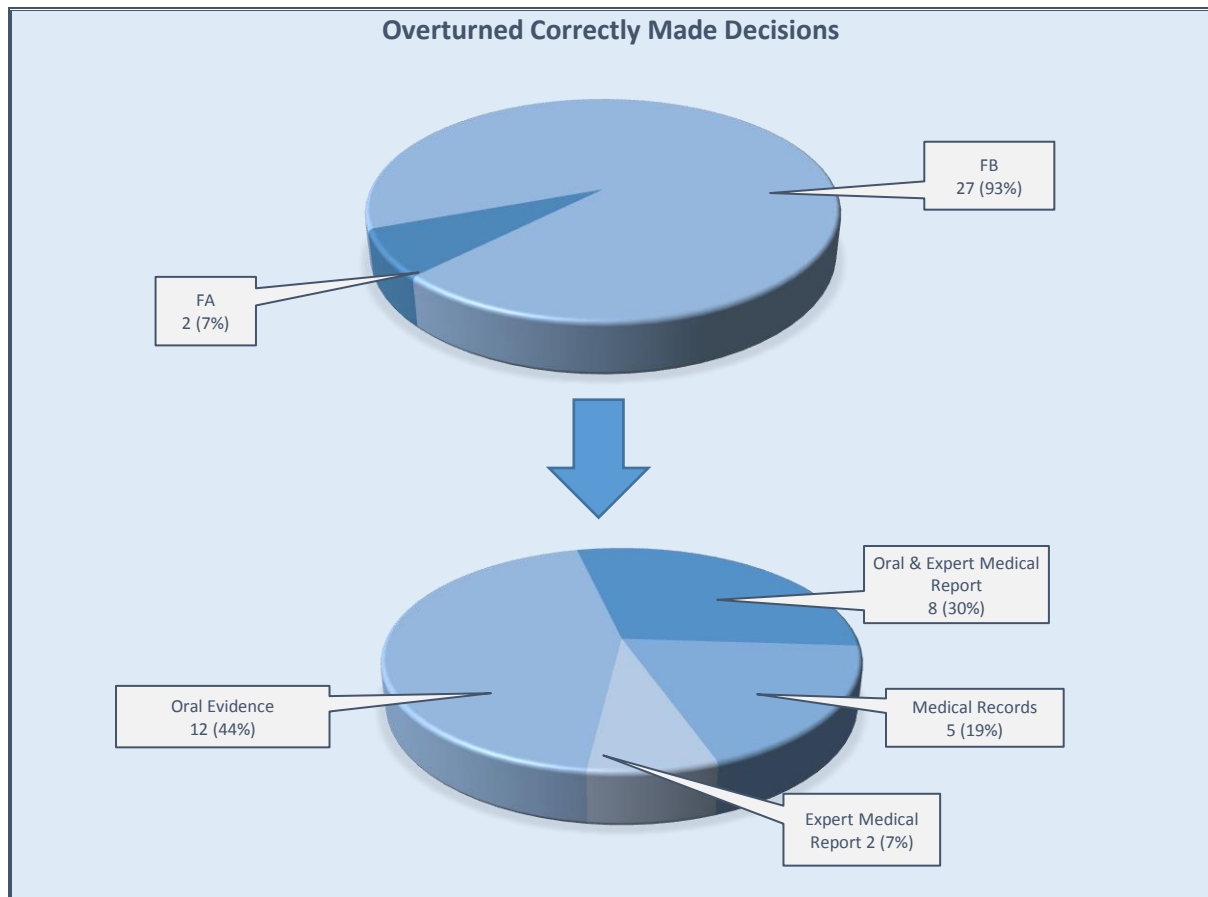
Table 12 illustrates that a further 29 cases, representing 41.4% of those monitored, while correctly made by the decision maker, were overturned because the tribunal either accepted evidence which the decision maker was unwilling to accept (2 cases) or the tribunal was given additional evidence that was not available to the decision maker (27 cases).

Table 12

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 (6.9%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	27 (93.1%)

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

Chart 7



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 12 cases the sole reason for the decision being overturned was the direct oral evidence of the appellant or a witness. A further 5 cases turned on the evidence within GP records. The evidence provided in the remaining 10 cases was a combination of medical evidence and oral evidence. Overall, the decision in 15 cases, representing 21.4% of cases monitored, were influenced by the availability of medical evidence to the tribunal.

Table 13 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 13

Comments made by the legal member	
1.	"Good cause" accepted. Additional evidence given by the appellant and a witness.
2.	Limited Capability for Work Regulation 29(2), Limited Capability for Work Related Activity Regulation 35(2). Satisfies criteria. Additional evidence given by the appellant and an experts report handed in.
3.	Appeal allowed. Appellant has Limited Capability for Work. Tribunal was given additional evidence (GP notes and records) which was not available to the officer who made the decision. Medical evidence indicated mental health had been poor at time of assessment/decision and satisfied some of the mental health descriptors.
4.	Limited Capability for Work Regulation 29(2), Limited Capability for Work Related Activity Regulation 35(2). Satisfies criteria. Commissioner's decision per severe daily alcoholism
5.	The tribunal was given additional evidence which was not available to the officer who made the decision. In the form of an expert's report and given by the appellant. 18 points on physical descriptors (6 each - 1(d)(ii), 2(c)(iii), and 3(c)).
6.	The tribunal was given additional evidence which was not available to the officer who made the decision given by the appellant's medical notes. Although only 9 points awarded, Regulation 29(2)(b) applies. Concern for physical safety of others and mental health of appellant who has entrenched long standing social phobias. Medical notes were necessary to clarify full picture.
7.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was given by the appellant. The decision of the departmental officer was changed due to the oral evidence received in the hearing.
8.	Limited Capability for Work awarded but Limited Capability for Work Related Activity declined. Accepted weekly loss of control of bladder. Would have awarded/allowed appeal under Regulation 35(2)(b), if required. Additional evidence given by the appellant.
9.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was given by a witness - written evidence. Appellant entitled to ESA as he had shown good cause for failure to attend for Work Capability Assessment medical examination.

10.	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. ESA initially disallowed. Appeal panel were requested to consider Regulation 29 and were satisfied conditions for same were met on the evidence.
11.	Appeal allowed. There was good cause shown for failure to attend examination. Tribunal given additional evidence (extract from GP notes for last 2 years). The claimant was so physically and mentally ill as well as vulnerable that she was not capable of processing her direction to attend. I am unsure if the claimant has full capacity but this information would not have been available to the Decision Maker. The family are now seeking Appointeeship. The case is referred back to the Decision Maker to reconsider the existing award which was incorrectly superseded.
12.	ESA – Limited Capability for Work. 9 Points mobilising, 6 points Standing/Sitting. Additional evidence given in the form of an expert report handed in and by the appellant.
13.	Appellant scored 24 points and awarded ESA. Satisfied criteria. Additional evidence given in the form of an expert report handed in and by a witness.
14.	Appellant placed in support group. GP notes and submission from legal representation clarified the extent of the appellant's difficulties. Additional evidence given by the appellant.
15.	The appellant is entitled to ESA. The tribunal having heard oral evidence and considered additional medical evidence found the appellant scored 18 points (6 on mobility and 12 on mental health). Additional evidence given in the form of an expert report handed in and given by a witness and the appellant.
16.	The tribunal was given additional evidence which was not available to the officer who made the decision. Given by the appellant. Panel awarded 15 points under Mental Health activities; activity 15 - 6pts, activity 16 – 9pts. Oral evidence at hearing.
17.	Appeal allowed. Tribunal was given additional evidence (by a witness and the Appellant) which was not available to the officer who made the decision. Appellant has Limited Capability for Work. This is because the Appellant suffers from a bodily disablement and by reasons of such disablement there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have limited capability for work.
18.	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's report handed in by the appellant.
19.	Appeal Allowed in accordance with Regulation 29(2)(b). Additional evidence given by the appellant and GP medical records.
20.	Allow under Regulation 29(2)(b). The tribunal was given additional evidence which was not available to the officer. We were given additional GP medical evidence at the oral hearing.
21.	Appellant is entitled to ESA. Additional evidence given by the appellant.
22.	Appeal allowed and decision not confirmed. Additional evidence given by the appellant. Entitled to ESA under Regulation 25 - overnight hospital stay. Contemporary letter telling Department about an overnight hospital stay after a fall. Overnight stay came within 9 days of the decision date - Linking Rules (12 weeks) applied. The Department's further submission makes no reference to the linking rules under Regulation 145. Appellant is to be treated as having Limited Capability for Work (Regulation 25 of the ESA Regulations (NI)) and she is thus entitled to ESA.
23.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was given by a witness, given by the appellant. Good cause shown for failure to attend medical examination, ESA award to be reinstated.

Comments / Recommendations – Employment and Support Allowance

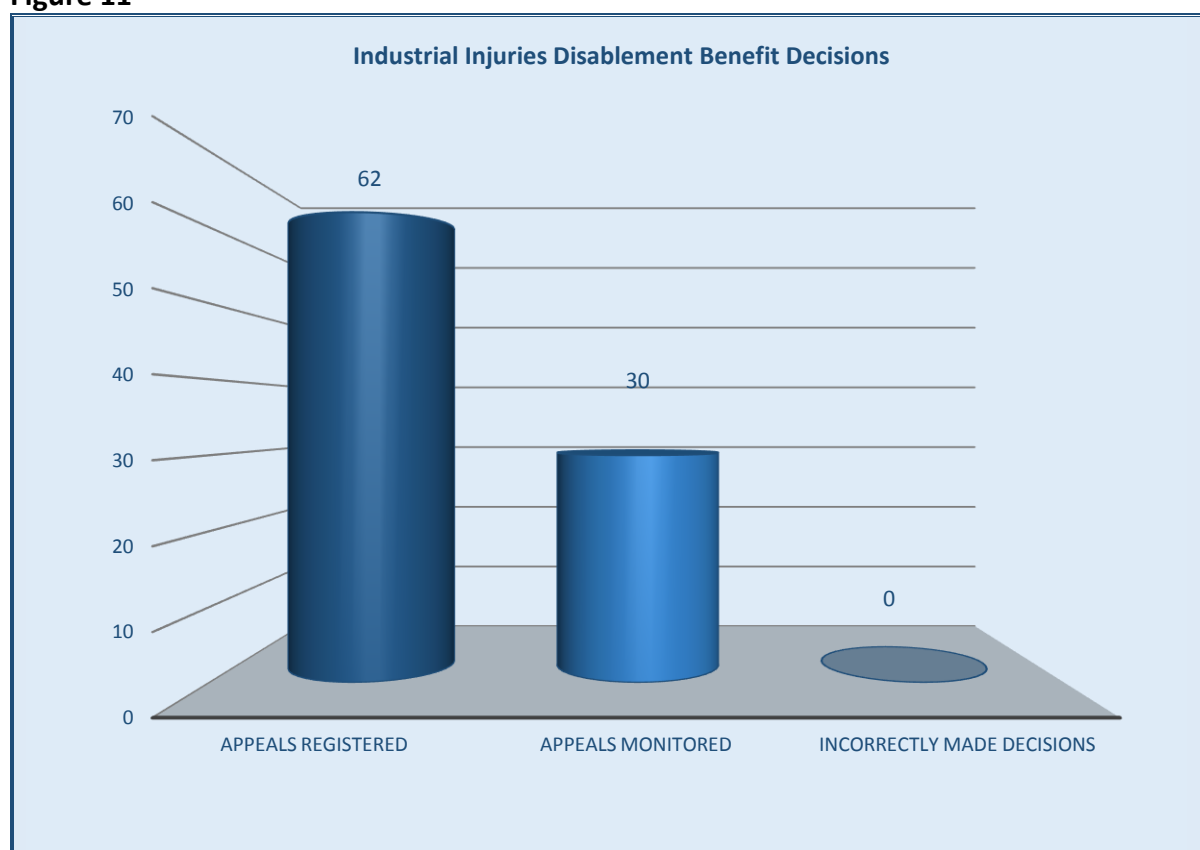
It is unfortunate that there has been a deterioration in the standard of decision making during this monitoring year. The number of cases monitored suggests that our assessment is accurate. As with DLA, PIP and AA greater emphasis should be placed on seeking further medical evidence prior to initial 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. These are largely a repetition of last year's comments.

Industrial Injuries Disablement Benefit

There is a low appeal rate in this benefit. To obtain a meaningful sample, 48.4% of Industrial Injuries Disablement Benefit (IIDB) appeals received were monitored. There were no incorrectly made decisions identified. This is an improvement in standards of 1.5% on the previous year.

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

Figure 11



Correctly Made Decisions Overturned by the Tribunal

Table 14 illustrates that in 7 cases, representing 23.3% 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 (1 cases), or the tribunal was given additional evidence that was not available to the decision maker (6 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.	1 (14.3%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	6 (85.7%)

Table 15 sets out the comments made by the legal member of the tribunal in cases where additional information was made available to the tribunal.

Table 15

Comments made by the legal member	
1.	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 experts report handed in, hospital and GP records.
2.	Award of 15% provisional for 2 years. Additional evidence given in the form of an expert report handed in - GP notes + other evidence from pain clinic including scheduling for facet injections and evidence given by the appellant.
3.	Appeal allowed. The decision of decision maker is not confirmed. The accident of has caused a loss of faculty and suppressed renal function. The degree of disablement remains at 14%. The period of award of disablement is for one year. This is a provisional assessment as he may need further surgery. The question of weekly entitlement to disablement benefit is referred back to the department for determination provided that if there is any dispute the appeal shall be referred back to this panel for reconsideration. Additional evidence given by the appellant and in the form of an expert report handed in.
4.	Appeal allowed. The decision of the decision maker is not confirmed. The relevant industrial accident has resulted in a loss of faculty. The loss of faculty is left shoulder with impaired function. The degree of disablement is assessed at 20%. This is for a three year period. The question of weekly entitlement to disablement benefit is referred back to the department for determination provided that if there is any dispute the appeal shall be referred back to this panel for reconsideration. Additional evidence given by the appellant and in the form of an expert report handed in. We had the GP + Hospital records which the department did not have.
5.	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.
6.	The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was; GP records.

In five of these appeals the appellant handed in a report from a consultant on the day of the hearing. Oral evidence and access to GP and Hospital records also assisted the tribunal in reaching a decision.

Comments / Recommendations – Industrial Injuries Disablement Benefit

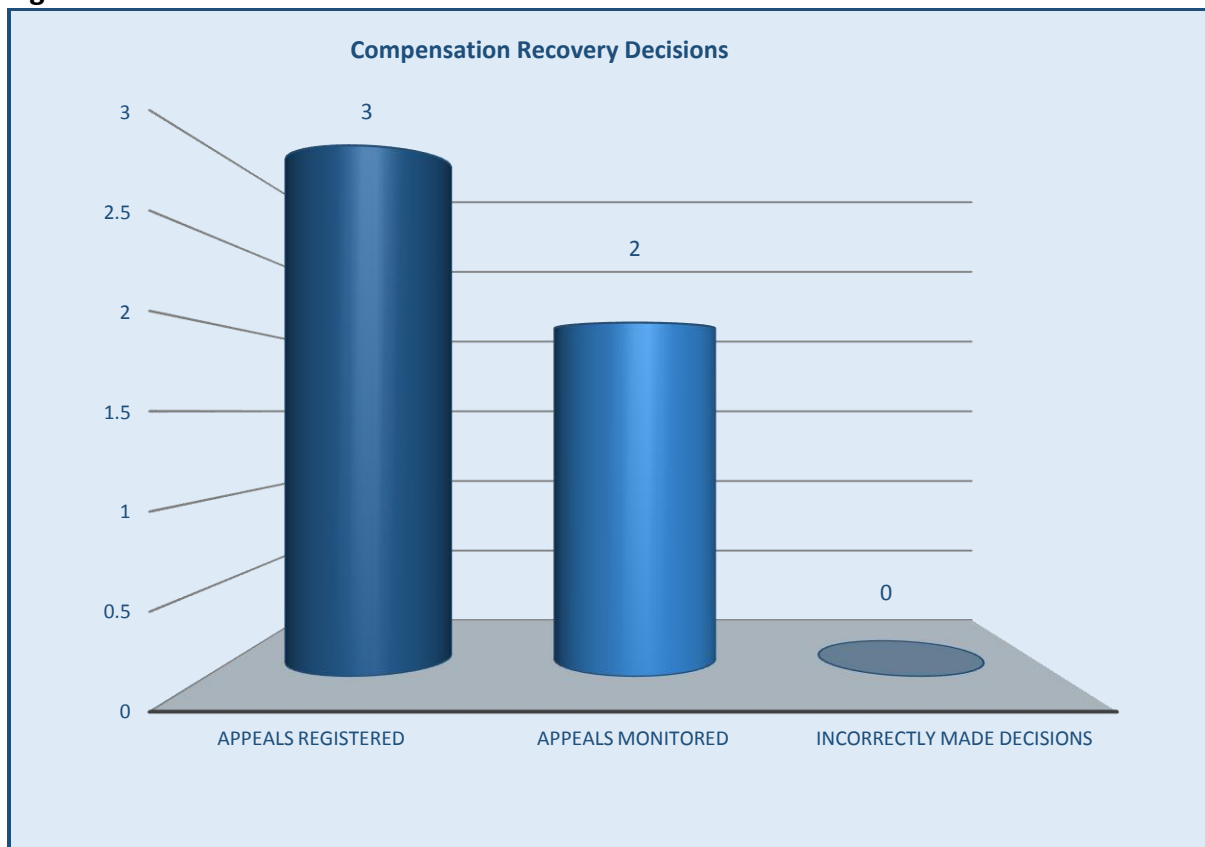
As in the previous year's report the standard of decision making continues to be very good.

Compensation Recovery

There is a relatively low appeal rate in this area. 66.7% of appeals received were available for monitoring. There were no incorrectly made decisions identified. This is on a par with the previous year.

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.

Given that there were only three appeals received with two of these available for monitoring, the statistician recommends caution in interpreting this result (see paragraphs 2 of both pages 7 and 8 of Chapter 2).

Correctly Made Decisions Overturned by the Tribunal

One of the two cases monitored, while correctly made by the decision maker, was overturned by the tribunal because the tribunal was given additional evidence that was not available to the decision maker (FB).

Comments / Recommendations – Compensation Recovery

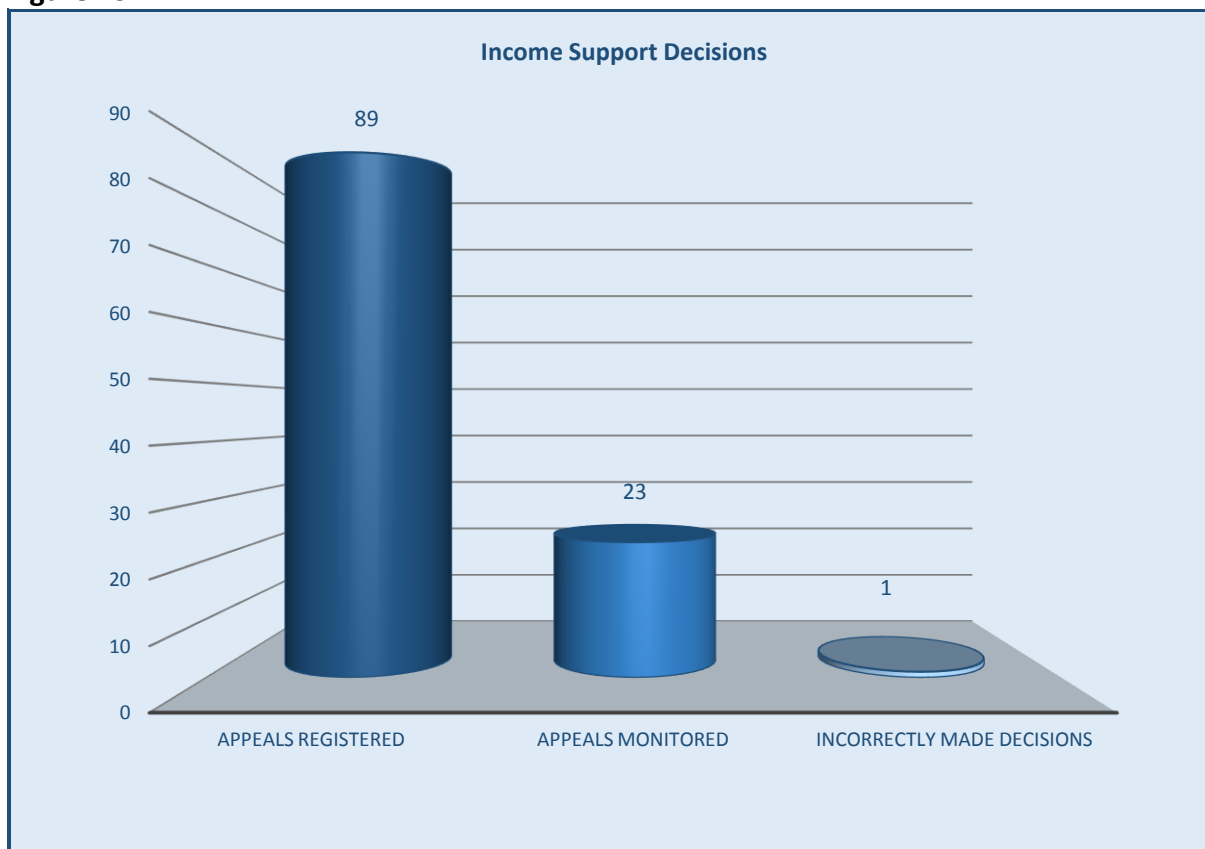
None

Income Support

Income Support appeal activity is relatively steady when compared to other benefits. 25.8% of appeals received in this category were monitored. The level of incorrectness identified was 4.3%. This is a decrease in standards of 4.3% on the previous year. However, given the small number of appeals available for monitoring caution in interpreting this result is advised (see paragraphs 2 of both pages 7 and 8 of Chapter 2).

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

Figure 13



*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 one reason recorded for incorrectness; 'The officer failed to identify/resolve an obvious conflict in the evidence' (F7).

The appeal issue was an overpayment of benefit on the basis of a failure to disclose a change of circumstances, namely that the child in the assessment had attained the age of seven and the claimant was no longer a lone parent. Within the appeal submission was a screen shot from a failure to attend a Jobs and Benefits Office interview where it was recorded “child age seven on Thursday, no longer a lone parent”. In addition a copy letter on submission stated that because of the change in rules for lone parents receiving Income Support, the department will be in contact eight weeks prior to benefit ceasing. The tribunal decided that there was no failure to disclose as the department was already in receipt of the child’s date of birth and in addition were aware of the change to benefit rules and from the screen shot note that it applied to the claimant.

Correctly Made Decisions Overturned by the Tribunal

Table 16 illustrates that in 3 cases, representing 13% 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 (1 case), or the tribunal was given additional evidence that was not available to the decision maker (2 cases).

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.	1 (33.3%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	2 (66.7%)

Case 1

Disallowance of Income Support as appellant was considered to have capital in access of £16,000. The tribunal accepted alternative valuation of property (£150,000) which when deductions were made left capital to appellant of £14,211. Additional evidence given to tribunal was in the form of an expert Valuation report handed in to the tribunal at the hearing.

Case 2

The tribunal was given additional evidence which was not available to the officer who made the decision. The evidence was by way of a complete school, work and benefit history from

appellant's arrival in Northern Ireland in 2009 to date of decision in 2017. Appellant's claim to benefit had been disallowed on the basis that she could not be treated as habitually resident in Northern Ireland and was a person from abroad. The evidence given was by way of direct oral evidence; benefit history documents and school attendance confirmation.

Comments / Recommendations – Income Support

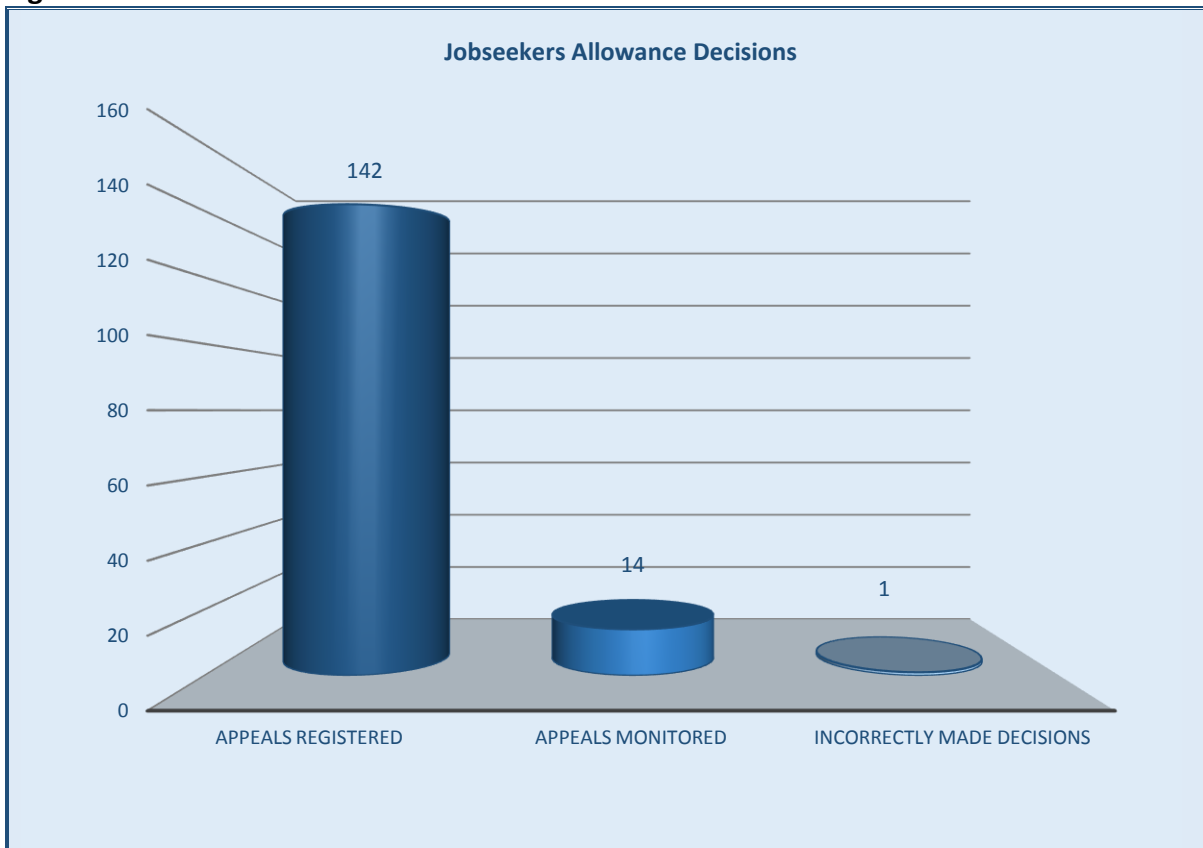
Whilst I have some concerns about the increase in levels of incorrectness I very much hope that instances such as those mentioned in the case summaries above can be addressed by appropriate training. It may be that appropriate evidence could be identified prior to appeal, thus avoiding the stress of the appeals process.

Jobseekers Allowance

9.9% of all Jobseekers Allowance appeals received were monitored. The level of incorrectness identified was 7.1%. This is a decrease in standards on the previous year by 6.3%. However, given the small number of appeals available for monitoring caution in interpreting this result is advised (see paragraphs 2 of both pages 7 and 8 of Chapter 2).

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

Figure 14



*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. There was one reason recorded for incorrectness; ‘The officer failed to identify/resolve an obvious conflict in the evidence’ (F7).

The issue under appeal was an overpayment of benefit on the basis of failure to report part time work. Dates were recorded in appellant's work book and were initialled by an officer of the department. Tribunal accepted that appellant did report that he had worked but had completed the wrong form to notify the department but nevertheless the part time hours were reported. The submission was inadequate as there was a conflict in the evidence which was not dealt with. In addition a copy of the change to entitlement decision was not provided and there was no information provided as to how the different work dates related to the payment of benefit and to the overpayment period.

Correctly Made Decisions Overturned by the Tribunal

In a further 2 cases, representing 14.2% 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 (1 cases) (FA), or the tribunal was given additional evidence that was not available to the decision maker (1 case)(FB).

Comments / Recommendations – Jobseekers Allowance

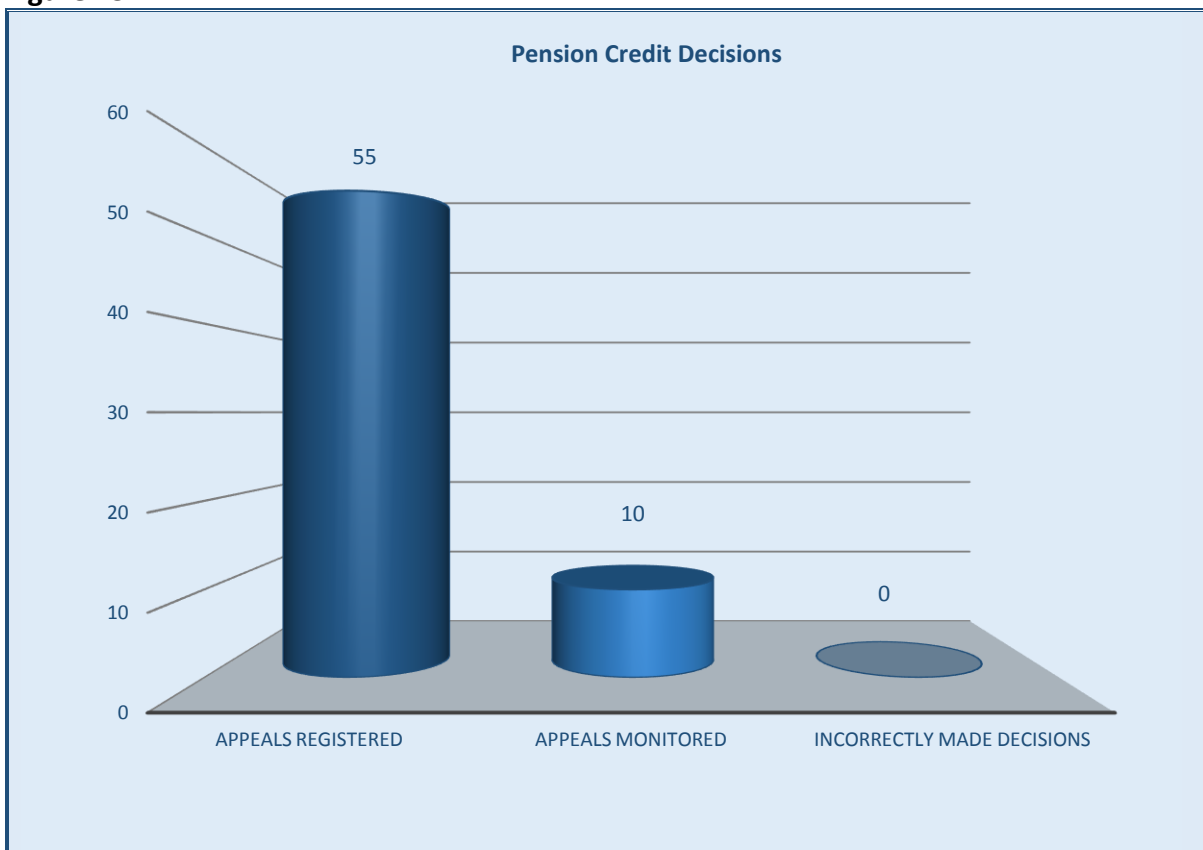
None

Pension Credit

18.2% of all Pension Credit (PC) appeals received were monitored. There were no incorrectly made decisions identified. This is an improvement in standards of 5.3% on the previous year. However, given the small number of appeals available for monitoring caution in interpreting this result is advised (see paragraphs 2 of both pages 7 and 8 of Chapter 2).

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.

Correctly Made Decisions Overturned by the Tribunal

In a further 2 cases, representing 20% 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 (1cases) (FA), or the tribunal was given additional evidence that was not available to the decision maker (1 cases) (FB).

Comments / Recommendations – Pension Credit

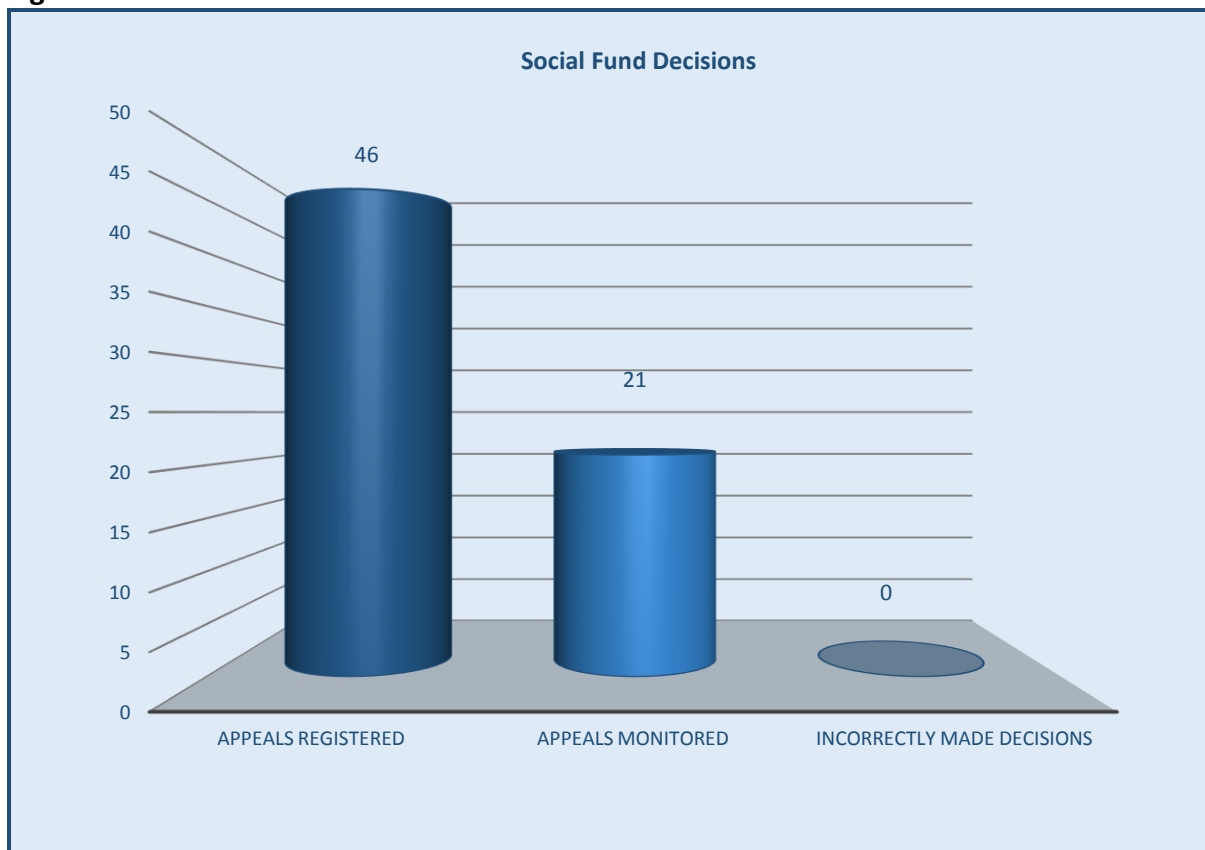
I am pleased to note the improvement in standards compared with last year.

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, 46% of appeals received were monitored. There were no incorrectly made decisions identified. This is an improvement on the previous year by 1.9%. However, given the small number of appeals available for monitoring caution in interpreting this result is advised (see paragraphs 2 of both pages 7 and 8 of Chapter 2).

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

Figure 16



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

Correctly Made Decisions Overturned by the Tribunal

In a further 1 case, representing 4.8% of those monitored, while correctly made by the decision maker, the decision was overturned because the tribunal accepted evidence which the decision maker was not willing to accept (FA).

Comments / Recommendations – Social Fund - None

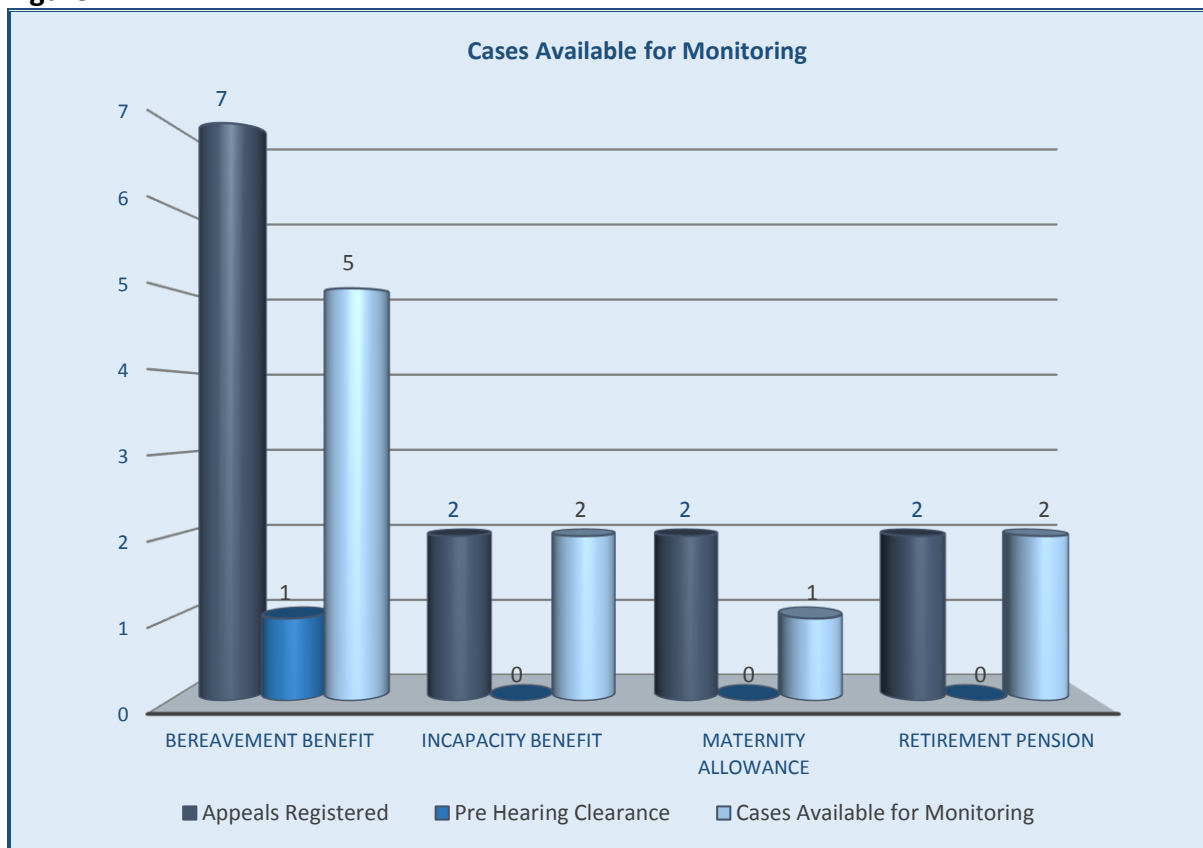
Bereavement Benefit, Incapacity Benefit, Maternity Allowance & Retirement Pension

There were no incorrectly made decisions identified in these categories. However, given the small number of appeals available for monitoring caution in interpreting this result is advised (see paragraphs 2 of both pages 7 and 8 of Chapter 2).

There were 7 Bereavement Benefit, 2 Incapacity Benefit, 2 Maternity Allowance and 2 Retirement Pension cases received during the report period.

Figure 17 shows the number of cases that were received, how many had a pre hearing clearance and the number that were available for monitoring in the reporting period. There was 1 Bereavement Benefit appeal and 1 Maternity Allowance appeals which had not had a final hearing when the report was compiled.

Figure 17



Correctly Made Decisions Overturned by the Tribunal

In Bereavement Benefit 1 case, representing 20% of those monitored, while correctly made by the decision maker, was overturned because the tribunal was given additional oral evidence by the appellant that was not available to the decision maker (FB). This also occurred in 1 Maternity Allowance case. The evidence in this case was provided by appellant's Accountant and from HMRC which both confirmed self employed status. Entitlement to benefit was reassessed on this basis.

Comments / Recommendations

None.

Chapter 5

Summary of Comments and Recommendations

Disability Living Allowance

As in previous reports there continues to be concern about the number of decisions which are overturned due to further medical evidence.

I repeat my previous request that the Department consider what further steps can be taken to obtain additional medical evidence either at source from medical profession or directly from the claimant prior to decision-making. This could prevent deserving claimants having to endure the stress of the appeals process.

Personal Independence Payment

As noted earlier PIP accounted for 70% of appeals registered during the reporting year. Regrettably I must repeat the comments made in last year's report. I repeat my view that the Department need to carry out a more robust investigation prior to initial decision. Once more this reflects my comments above about DLA decision making. It will be readily apparent to the reader that in almost every one of the 19 cases mentioned above, legally qualified members have referenced the benefit of having medical notes and records available at hearing.

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.

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

Employment and Support Allowance

It is unfortunate that there has been a deterioration in the standard of decision making during this monitoring year. The number of cases monitored suggests that our assessment is accurate. 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. These are largely a repetition of last year's comments.

Income Support

Whilst I have some concerns about the increase in levels of incorrectness I very much hope that instances such as those mentioned in the case summaries above can be addressed by appropriate training. It may be that appropriate evidence could be identified prior to appeal, thus avoiding the stress of the appeals process.

Pension Credit

I am pleased to note the improvement in standards compared with last year.

Child Maintenance Service

None.

Carers Allowance

None.

Compensation Recovery

None.

Industrial Injuries Disablement Benefit

None.

Social Fund None.

Incapacity Benefit None.

Jobseekers Allowance 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 (±%)
Attendance Allowance	3.3	5.1
Carers Allowance	0.0	0.0
Disability Living Allowance	1.2	2.0
Employment and Support Allowance	7.1	5.9
Income Support	4.3	7.2
Industrial Injuries Disablement Benefit	0.0	0.0
Jobseekers Allowance	7.1	12.8
Pension Credit	0.0	0.0
Personal Independence Payment	3.8	4.2
Social Fund	0.0	0.0
ALL¹	3.3	1.7

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

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

- we can be 95% certain that the true level of incorrectness among all initial appeal decisions in the period is between 1.6% and 5.0%, i.e. $3.3\% \pm 1.7\%$.

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

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

- we can be 95% certain that the true level of incorrectness among all related appeal decisions in the period is between 0.0% and 3.2%, i.e. $1.2\% \pm 2.0\%$.

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	10,428
Number of cases monitored	392
Percentage monitored	3.76%
Number of incorrect initial decisions	13
Percentage incorrect	3.3%
Confidence interval	±1.7%
Total number of reasons	14
Main reason for incorrect initial decision: 'Misinterpretation/misunderstanding of the evidence available to the officer' (F4 and 'Disregarded relevant evidence' (F6).	

BENEFIT NAME	ATTENDANCE ALLOWANCE
Number of cases registered	83
Number of cases monitored	30
Percentage monitored	37.5%
Number of incorrect initial decisions	1
Percentage incorrect	3.3%
Confidence interval	±5.1%
Total number of reasons	1
<p>Reasons for incorrect initial decision:</p> <p>The decision was based on a misinterpretation/misunderstanding of the evidence available to the officers. (F4)</p>	

BENEFIT NAME	CARER'S ALLOWANCE
Number of cases registered	24
Number of cases monitored	10
Percentage monitored	41.7
Number of incorrect initial decisions	0
Percentage incorrect	0.0%
Confidence interval	±0.0%
Total number of reasons	0
<p>No incorrectly made decisions.</p>	

BENEFIT NAME	DISABILITY LIVING ALLOWANCE
Number of cases registered	266
Number of cases monitored	81
Percentage monitored	30.5%
Number of incorrect initial decisions	1
Percentage incorrect	1.2%
Confidence interval	2.0%
Total number of reasons	1
<p>Reasons for incorrect initial decision:</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	PERSONAL INDEPENDENCE PAYMENT
Number of cases registered	7305
Number of cases monitored	78
Percentage monitored	1.1%
Number of incorrect initial decisions	3
Percentage incorrect	3.8%
Confidence interval	±4.2%
Total number of reasons	2
<p>Reasons for incorrect initial decision:</p> <p>The officer failed to identify a finding(s) which need to be made on the basis of the rules of entitlement (F3). The officer disregarded relevant evidence (F6).</p>	

BENEFIT NAME	EMPLOYMENT AND SUPPORT ALLOWANCE
Number of cases registered	2323
Number of cases monitored	70
Percentage monitored	3.0%
Number of incorrect initial decisions	5
Percentage incorrect	7.1%
Confidence interval	±5.9%
Total number of reasons	4
Main Reasons for incorrect initial decision: `Misinterpretation/misunderstanding of the evidence available to the officer' (F4)	

BENEFIT NAME	INCOME SUPPORT
Number of cases registered	89
Number of cases monitored	23
Percentage monitored	25.8%
Number of incorrect initial decisions	1
Percentage incorrect	4.3%
Confidence interval	7.2%
Total number of reasons	1
Reasons for incorrect initial decision: The officer failed to identify or resolve an obvious conflict in the evidence. (F7)	

BENEFIT NAME	INDUSTRIAL INJURIES DISABLEMENT BENEFIT
Number of cases registered	62
Number of cases monitored	30
Percentage monitored	48.4%
Number of incorrect initial decisions	0
Percentage incorrect	0.0%
Confidence interval	±0.0%
Total number of reasons	0
No incorrectly made decisions.	

BENEFIT NAME	JOBSEEKERS ALLOWANCE
Number of cases registered	142
Number of cases monitored	14
Percentage monitored	9.9%
Number of incorrect initial decisions	1
Percentage incorrect	7.1%
Confidence interval	±12.8%
Total number of reasons	1
Reason for incorrect initial decision: The officer failed to identify or resolve an obvious conflict in the evidence. (F7)	

BENEFIT NAME	PENSION CREDIT
Number of cases registered	55
Number of cases monitored	10
Percentage monitored	18.2
Number of incorrect initial decisions	0
Percentage incorrect	0.0%
Confidence interval	±0.0%
Total number of reasons	0
No incorrectly made decisions.	

BENEFIT NAME	SOCIAL FUND
Number of cases registered	46
Number of cases monitored	21
Percentage monitored	45.7%
Number of incorrect initial decisions	0
Percentage incorrect	0.0%
Confidence interval	±0.0%
Total number of reasons	0
No incorrectly made decisions.	

Appendix 3

APPEAL REPORT FORM

Section 1 Benefit claimed:

Name of appellant:

Address:

NINO:

Appeal reference:

Date of Decision Appealed:

Decision maker/Office:*

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

**To be completed by tribunal Clerk*

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

Section 2 Date Summary Decision Issued:

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

Yes No

If the answer is No, please explain.

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

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

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

- FA the tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable
- FB the tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was;
- in the form of an expert report handed in;
- an expert report obtained by the tribunal;
- given by a witness;
- given by the appellant
- F1 the decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision
- F2 the officer failed to request adequate medical guidance or expert reports relevant to the decision i.e. medical reports from a consultant/details of property interests/ details of business accounts/ adequate valuations (Article 12(2) of the 1998 Order)
- F3 the officer failed to identify a finding/s which needed to be made on the basis of the rules of entitlement relevant to the claim or revision
- F4 the decision was based on a misinterpretation/misunderstanding of the evidence available to the officer
- F5 the officer took into account wholly unreliable evidence
- F6 the officer disregarded relevant evidence
- F7

the officer failed to identify/resolve an obvious conflict in the evidence

F8 the officer did not action additional relevant evidence provided after his decision was made and initiate a revision

F9 The officer made errors of calculation

R1 the appeal was made because the officer did not give adequate reasons for his decision when requested under regulation 28(1) (b) of the Decision and Appeals Regulations 1999

There was a legal error in the decision because:

L1 the officer did not identify the correct legal rules relevant to the claim/revision

L2 the officer misinterpreted the legal rules relevant to the claim

L3 the officer failed to identify a change in legal rules relevant to the claim/revision

L4 the officer overlooked a relevant Commissioners decision/Court decision which was/should have been available to him

L5 the officer failed to obtain additional legal advice necessary to deal with the claim

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

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

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

Legal member
Date:

Time Taken to Complete: