2018-2019

President of the Appeal Tribunals Northern Ireland

Annual Report

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

The total number of appeals registered during the year to which this report relates was 10,877 of which 832 were monitored.

Unfortunately there has been a slight increase in the overall level of incorrectness. Last year it was 3.3% compared with 3.5% this year. Across all cases monitored the decision maker was judged to have made an incorrect decision in 29 cases. The figures illustrated reveal that there was a considerable degree of variation in the level of incorrectness of initial decisions across different benefits. The largest number (16) of initial incorrect decisions were in respect of Personal Independence Payment (PIP).

The overall percentage of correctly made decisions altered by the tribunal was 42.36% compared with 30.1% in the previous reporting year. It will be apparent that these decisions were altered because the Tribunal accepted evidence which the Decision Maker was unwilling to accept or the Tribunal was given additional evidence which was not available to the Decision Maker.

The most common categories of appeals registered during the year were in respect of PIP (8574) and Employment and Support Allowance (1455). 4.0% of the monitored PIP cases and 2.5% of the monitored ESA cases were assessed as having an incorrect initial decision. Once more this report reveals concern about the number of ESA, PIP and DLA decisions being overturned as a result of the provision of further medical evidence. I earnestly repeat my request that the Department consider what further steps can be taken *prior to* hearing in order to source additional medical information from or on behalf of appellants. In my last report I suggested that as a matter of standard practice in all such cases a report should be obtained at an early (pre decision) stage from a general practitioner. This accorded broadly with the recommendation made in Walter Rader's report (Personal Independence Payment - An Independent Review of the Assessment Process – June 2018). Despite the Department's partial acceptance of 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. That is deeply disappointing and is most unfair to claimants.

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 is a systemic problem with the Health Care Professional (HCP) assessment process. It may be that HCPs do not have sufficient training to assess the medical conditions of some individual claimants. I repeat the fundamental importance of ensuring 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 given that a medical practitioner will, in general, have many years of experience in dealing with such patients. I do not accept that the comparatively brief and generic training provided to HCPs offers anything approaching that expertise. 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 my last two reports.

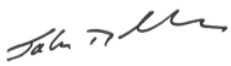
It remains the case that tribunals reverse many DLA/PIP decisions due to further medical evidence being made available at hearing. This will generally be in the form of the tribunal's assessment of medical notes and records at hearing or the provision of medical reports by or on behalf of appellants. I repeat my comment in last year's report that 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, subject to an appellant's consent. 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.

President's Foreword

I repeat my longstanding request that the Department should secure the attendance of Presenting Officers at hearings on a much more frequent basis. Appellants, representatives and tribunal members should all be given the opportunity to directly scrutinise the Department's decisions at hearing. This matter has often been raised in the past and it is most unfortunate that the Department have not addressed it constructively.

In my previous reports I mentioned that I have written to senior officials 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 acknowledge the constructive engagement of senior officials with this process.

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

Contents

Methodology

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

In benefits where the expected number of cases was large cases were randomly selected using a random numbers database. The benefits in this respect were Attendance Allowance, Disability Living Allowance, Employment Support Allowance, Jobseekers Allowance and Personal Independence Payment.

For a number of benefits, where the expected number of cases was small, a complete census was the preferred methodology. In this respect all cases relating to Bereavement Benefit, Carer's Allowance, Compensation Recovery, Child Maintenance, Income Support, Industrial Injuries Disablement Benefit, Maternity Allowance, Pension Credit, Retirement Pension, Social Fund and Universal Credit were examined.

Cases were identified for monitoring on a daily basis from a list of cases registered by the Appeals Service on the previous day. The actual monitoring was carried out by the Legal Member of the Tribunal at final hearing, a number of weeks or months later. Given the time lapse between these stages, some cases across all benefit areas were cleared before hearing due to withdrawal of the appeal or revision of the decision under appeal or the appeal had not finally been determined when the data collection was closed. The figures in the following tables for cases monitored therefore represents the number selected for monitoring less pre hearing clearances.

A questionnaire was completed by the Legal Member on each case selected for monitoring. The questionnaire can be found at Appendix 3.

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

Chapter 1 - Methodology

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

Sample and Sample Analysis

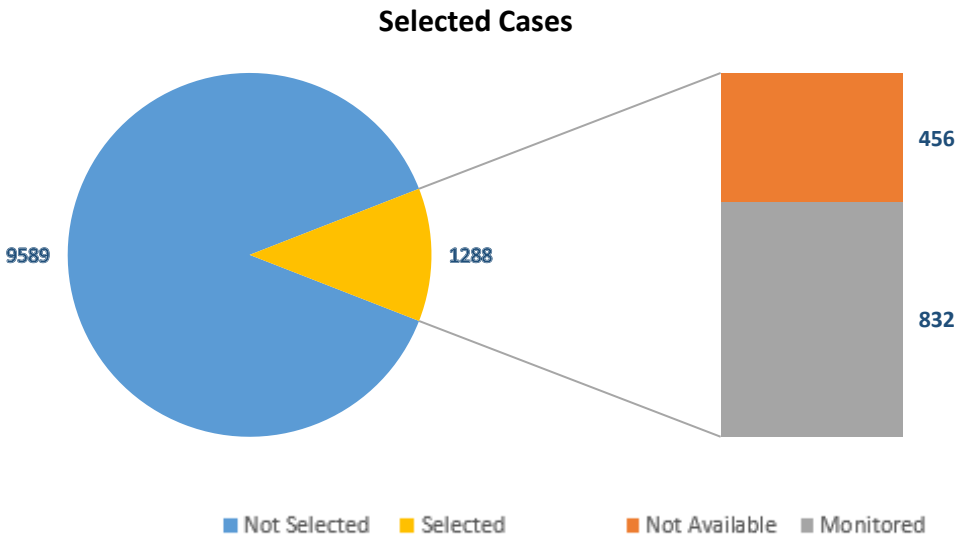
In the year 2018/19 there were 10,877 appeals regarding decisions made by various decision makers from the Department for Communities (the department). This report examines the standard of decision-making from April 2018 to March 2019. The objective of the study was to estimate the level of incorrect initial decisions made by the decision maker in appeal cases by benefit.

The table below 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. Benefits marked with * in the Table have a sample size of less than 30 and therefore we cannot make reliable inferences about the expected level of error.

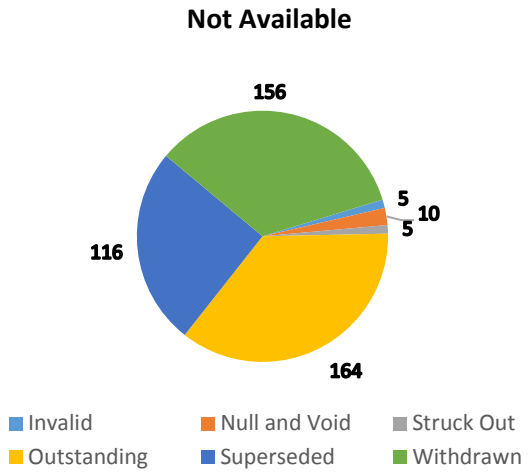
Category	Total registered	No. Monitored (sample size)	Initial decision incorrect	Percentage Incorrectness
Attendance Allowance	**100**	**42**	**0**	**0.0%**
Bereavement Benefit	3	3	0	0.0%
Carer's Allowance	18	7	0	0.0%
Child Maintenance Service	23	16	0	0.0%
Compensation Recovery	2	0	0	0.0%
Disability Living Allowance	331	57	4	7.0%
Employment Support Allowance	1455	120	3	2.5%
Income Support	58	21	2	9.5%
Industrial Injuries Disablement Benefit	32	22	0	0.0%
Jobseekers Allowance*	75	17	1	5.9%
Maternity Allowance	1	1	0	0.0%
Pension Credit	40	28	0	0.0%
Personal Independence Payment	8574	402	16	4.0%
Retirement Pension	1	1	1	100.0%
Social Fund	27	15	0	0.0%
Universal Credit	137	80	2	2.5%
TOTAL	**10877**	**832**	**29**	**3.5%**

Bold type indicates a selection by random sample and * indicates a sample size of less than 30

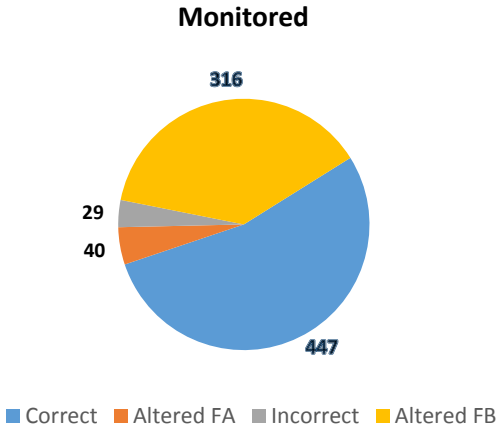
Of the 10,877 cases registered 1288 were selected for monitoring.



832 were available for monitoring. 292 were cleared before hearing and in a further 164 appeals the report form was not completed before the data closing date.



Of the 456 unavailable cases 292 were cleared before hearing. Of these 156 were withdrawn and 116 received a more favourable decision prior to the tribunal hearing.



Of the 832 monitored cases 29 were incorrect and a further 356 were altered due to 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).

Chapter 2 - The Sample and Sample Analysis

At final hearing the 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) correctly made by the decision maker, but the decision overturned, or

(b) incorrectly made by the decision maker

The table below sets out the reasons for incorrectly made decisions.

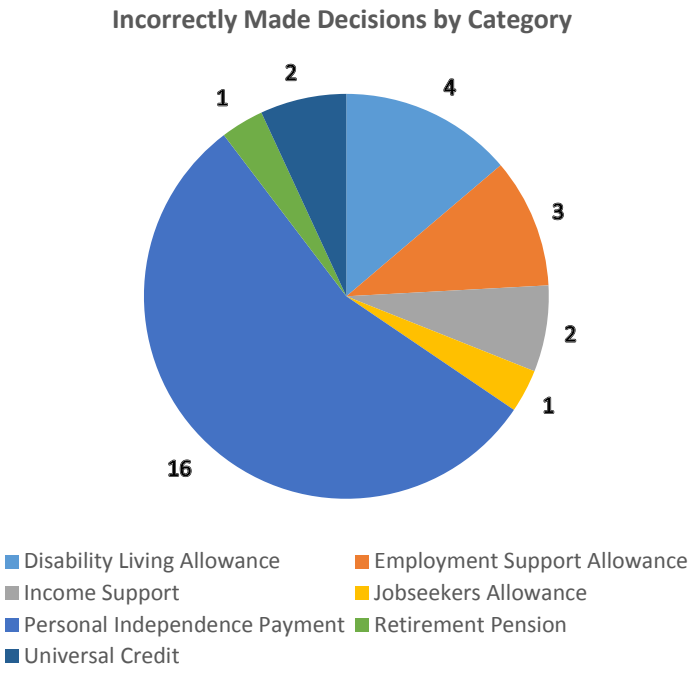
Reason for Incorrectly Made Decisions	
F1.	The decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision
F2.	The officer failed to request adequate medical guidance or expert reports relevant to the decision i.e. medical reports from a consultant/details 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

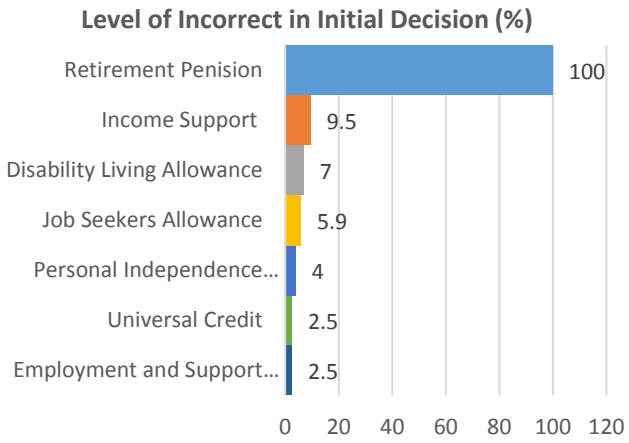
The Table below explains why correctly made decisions were overturned by tribunals.

Correctly Made Decisions Overturned by the Tribunals	
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.

Analysis of Decisions

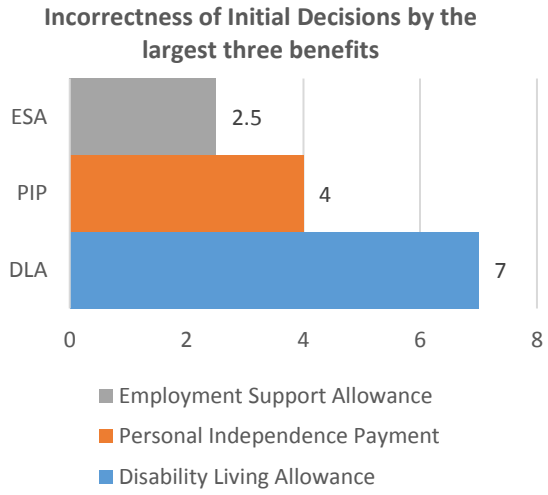
Across all cases monitored, the decision maker was judged to have made an incorrect decision in 29 cases, representing 3.5% of all cases monitored. The Chart gives a breakdown of the number of incorrectly made decisions per category.





Where present; levels of incorrectness in the initial decision range from 100% of Retirement Pension cases to 2.5% of Employment and Support Allowance and Universal Credit cases (**Note very small numbers of cases for some benefits**).

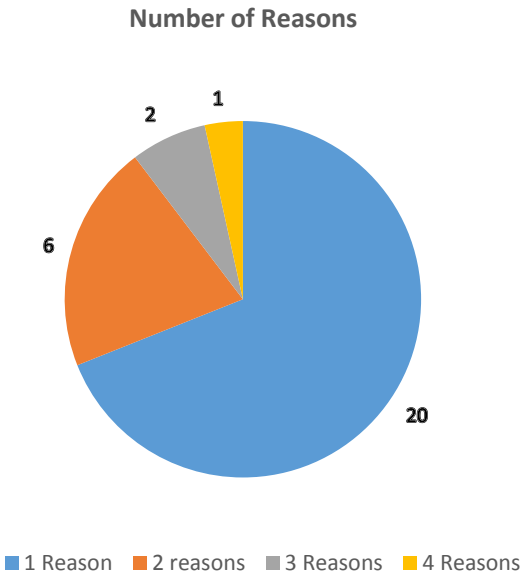
Personal Independence Payment and Employment and Support Allowance accounted for 78.8% and 13.4% of all cases registered respectively, reflecting both the number of people claiming the benefit and also the complexity in delivery of the benefit.



The level of incorrectness in the initial decisions made in the sample for Personal Independence Payment was 4.0% and for Employment Support Allowance it was 2.5%.

Reasons for the Initial Decision being Incorrectly Made

When an initial decision is deemed incorrect the reason or reasons for this are recorded. In the period April 2018 to March 2019 there were 29 cases where the initial decision was deemed incorrect. There were 42 reasons recorded for these 29 cases.



In the majority of cases (69.0%) where the initial decision was incorrect, a single reason was given for incorrectness. However there were 6 cases (20.7%) were two reasons were given for incorrectness, 2 cases (6.9%) were 3 reasons were given and 1 case (3.4%) were 4 reasons were given.

This Table sets out the reasons for incorrectness and the number of occurrences within incorrectly made decisions.

Reason for Incorrectness		Number of Occurrences	% of Total
F1	Insufficient facts/evidence due to inadequate investigation of the claim or revision	12	28.6
F2	Failed to request adequate medical guidance or expert reports relevant to the decision	2	4.8
F4	Misinterpretation/misunderstanding of the evidence available to the officer	8	19.0
F6	Disregarded relevant evidence	9	21.4
F7	Failed to identify/resolve an obvious conflict in the evidence	5	11.9
F8	Did not action additional relevant evidence provided after his decision was made and initiate a revision.	1	2.4
L1	Did not identify the correct legal rules relevant to the claim/revision.	2	4.8
L2	Misinterpreted the legal rules relevant to the claim.	1	2.4
L3	Failed to identify a change in legal rules relevant to the claim/revision	1	2.4
L4	Overlooked a relevant Commissioners decision/Court decision which was/should have been available.	1	2.4
TOTAL		**42**	**100**

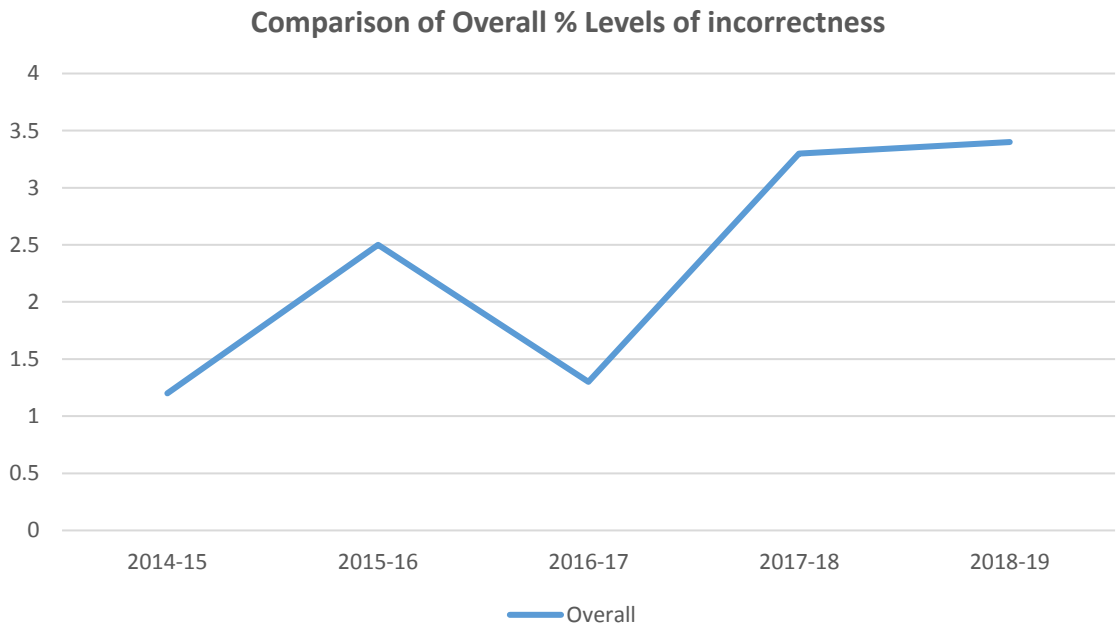
The most common reason for incorrectness was 'Insufficient facts or evidence due to inadequate investigation of the claim or revision' (F1), given 12 times, representing 28.6% of all reason given.

The second most common reason for incorrectness was 'Disregarded relevant evidence' (F6). This was given 9 times representing 21.4% of all reasons.

Of those benefits where a complete census was recommended, there were no cases assessed as having the initial decision incorrectly made for Bereavement Benefit, Carer's Allowance, Compensation Recovery, Child Maintenance Service, Industrial Injuries Disablement Benefit, Maternity Allowance, Pension Credit and Social Fund. It should be noted that the total

numbers of cases available to be monitored for these benefits are small and therefore the results need to be treated with caution. Although they are a complete census of cases, any incorrect decision may also have a significant impact on the percentage of incorrectness again distorting the results. We cannot make reliable inferences about the expected level of error in benefits with a sample size of less than 30.

The graph below compares the overall level of incorrectness over the five year 2014/15 to the current report.



The graph compares the fluctuation in level of incorrectness for years 2014/2015 to 2018/2019.

The overall level of incorrectness identified has increased from 1.2% in 2014/15 to 2.5% in 2015/16 then decreased to 1.3% in 2016/17 before increasing again to 3.3% in 2017/18 and increasing again to 3.5% in the current year.

An analysis of the individual benefits over the five year period is set out in the individual sections.

Correctly Made Decisions Overturned by the Tribunal

Of the 832 cases monitored, 352, representing 42.36%, 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.

The table below sets 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.

Category	Monitored (sample size)	Total Altered	Percentage Altered	FA	Percentage FA	FB	Percentage FB
Attendance Allowance	42	12	28.6%	1	2.4%	11	26.2%
Bereavement Benefit	3	3	0.0%	0	0.0%	0	0.0%
Carer's Allowance	7	0	0.0%	0	0.0%	0	0.0%
Child Maintenance	16	1	6.3%	1	6.3%	0	0.0%
Compensation Recovery	0	0	0.0%	0	0.0%	0	0.0%
Disability Living Allowance	57	30	52.6%	2	3.5%	28	49.1%
Employment Support Allowance	120	60	50.0%	12	10.0%	48	40.0%
Income Support	21	2	9.5%	1	4.8%	1	4.8%%
Industrial Injuries Disablement Benefit	22	5	22.7%	0	0.0%	5	22.7%%
Jobseekers Allowance*	17	3	17.6%	2	11.8%	1	5.9%
Maternity Allowance	1	0	0.0%	0	0.0%	0	0.0%
Pension Credit	28	2	7.1%	1	3.6%	1	3.6%
Personal Independence Payment	402	215	53.0%	17	4.2%	198	49.3%
Retirement Pension	1	0	0.0%	0	0.0%	0	0.0%
Social Fund	15	0	0.0%	0	0.0%	0	0.0%
Universal Credit	80	26	32.5%	3	3.8%	23	28.8%
TOTAL	**832**	**356**	**42.79%**	**40**	**4.81%**	**316**	**37.98%**

Bold type indicates a selection by random sample and * indicates a sample size of less than 30

Jobseekers Allowance had the highest percentage of cases (11.8%) overturned in the FA category.

Disability Living Allowance, Employment and Support Allowance and Personal Independence Payment all had a significant percentage of appeals overturned in the FB category with each having 40% or more of decisions altered due to the availability of additional evidence provided at hearing stage.

Summary and Conclusion

This report analyses Departmental decision making standards in appeals received in The Appeals Service between April 2018 and March 2019. There were 10877 appeals registered and 832 (7.6%) of the total, were monitored to assess the level of incorrectness of initial decisions made by officials of the Department for Communities.

Across all monitored cases, the level of incorrectness among initial decisions was 3.5%. There was a variation in the level of incorrectness of initial decisions across benefits. No incorrect decisions were recorded for a range of benefits including; Attendance Allowance, Bereavement Benefit, Carers Allowance, Compensation Recovery, Child Maintenance, Industrial Injuries Disablement Benefit, Maternity Allowance, Pension Credit and Social Fund. For instances were incorrect decision were recorded they ranged from 100% Retirement Pension to 2.5% (Employment and Support Allowance / Universal Credit) **(Note very small case numbers)**.

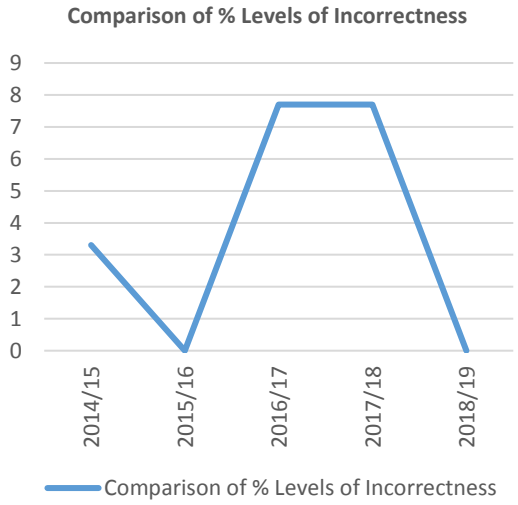
A majority (69%) of cases where the initial decision was assessed as incorrect cited one reason for this incorrectness. The main reason recorded for the incorrectness in initial decisions was 'the decision was based on insufficient facts/evidence due to inadequate investigation of the claim or revision' (F1).

Child Maintenance

Incorrectly Made Decisions

69.6% of all Child Maintenance Service appeals were monitored. The level of incorrectness was 0%. This is an increase in standards on the previous year which recorded 1 incorrectly made decision representing 7.7% of those monitored.

The small sample size should be noted.



The level of incorrectness identified has decreased from 3.3% in 2014/15 to 0% in 2015/16 then increased again to 7.7% in 2016/17 and again in 2017/18 before decreasing to 0% again in the current year. Caution in interpreting these figures is recommended as in all years the number available were very small.

Correctly Made Decisions Overturned by Tribunal

In 1 case, representing 6.3% of those monitored, while correctly made by the decision maker, the decision was overturned because the tribunal accepted evidence which the decision maker was unwilling to accept.

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
FB	The tribunal was given additional evidence which was not available to the officer who made the decision.	0

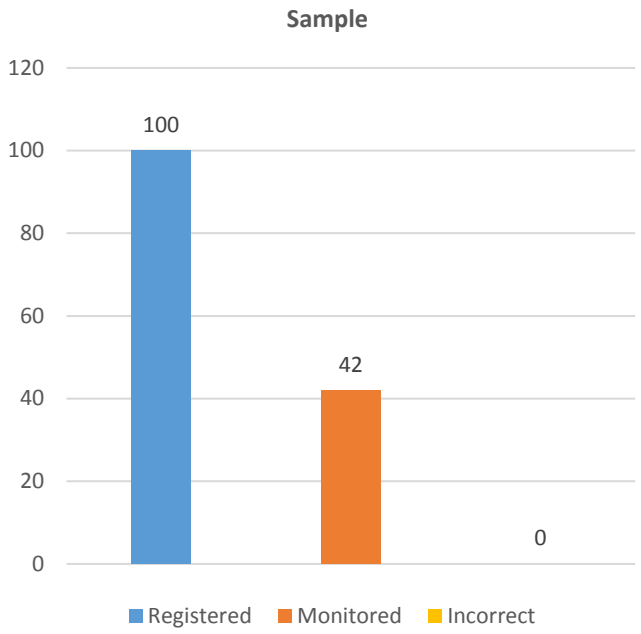
Comments / Recommendations

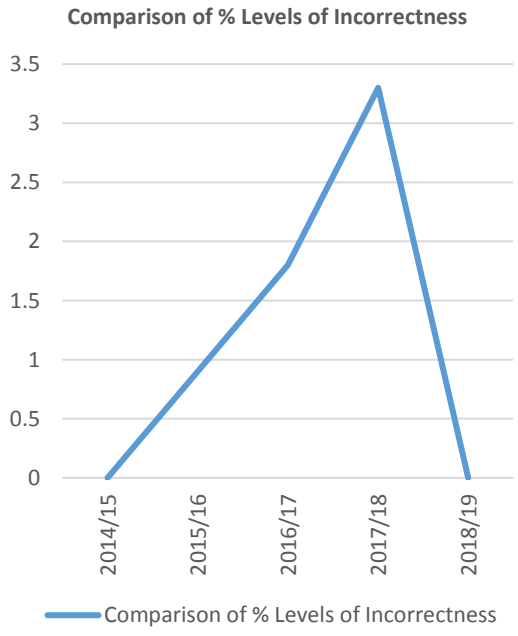
None.

Attendance Allowance

Incorrectly Made Decisions

As Attendance Allowance is a relatively small benefit in terms of appeal activity, 42.0% of appeals received were monitored. There were no incorrectly made decisions identified. This is an increase in standards of 3.3% on the previous year.



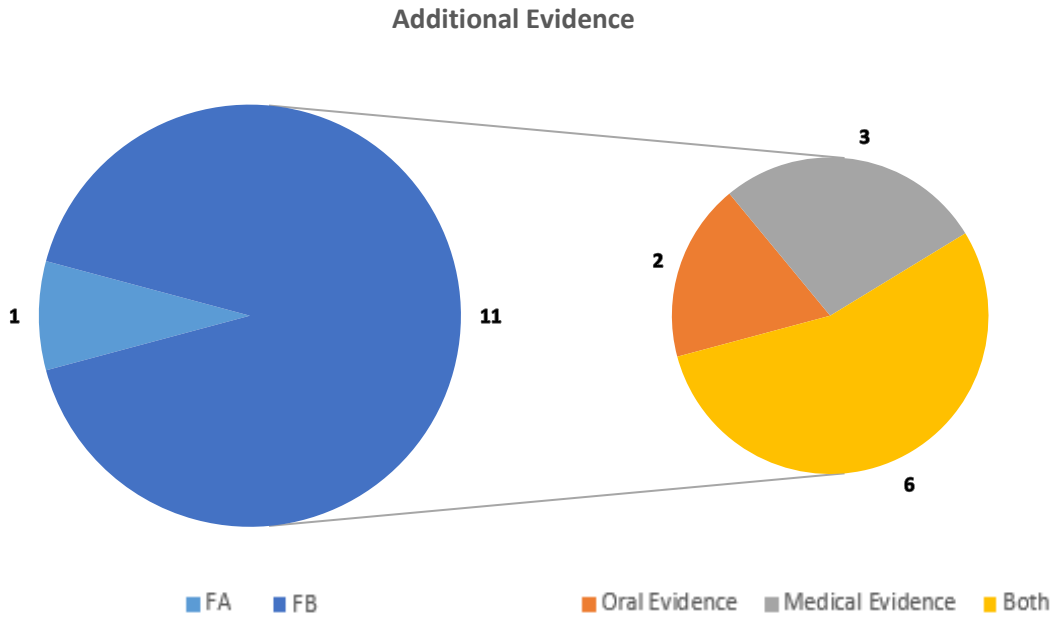


The level of incorrectness identified has increased from 0% in 2014/15 to 0.9% in 2015/16 then increased again to 1.8% in 2016/17 and further increasing again to 3.3% in 2017/18 before decreasing to 0% again in the current year.

Correctly Made Decisions Overturned by the Tribunal

In 12 cases, representing 28.6% 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 (11 cases).

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 (8.3%)
FB	The tribunal was given additional evidence which was not available to the officer who made the decision.	11 (91.7%)



In 2 of the cases the tribunal relied upon the direct oral evidence of the appellant and/or witnesses. 6 cases turned on the content of medical evidence by way of GP or hospital records, or a medical report from the GP or a consultant. In a further 3 cases a combination of direct oral evidence and medical evidence, resulted in the tribunal reaching a different decision than the decision maker.

Overall, the decisions in 9 cases, representing 21.43% of cases monitored were influenced by the availability of medical evidence to the tribunal.

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

Comments Made by Legal Members of the Tribunal
The Tribunal was given additional evidence by appellant and also GP records which were not available to the officer who made the decision. Lower rate awarded.
The Appellant satisfies the conditions of the lower rate of benefit for an indefinite period. Additional evidence given by a witness and medical records.
Entitled to lower rate of attendance allowance as appellant satisfies the day attention condition. Further evidence from the appellant, a witness and from GP records.
Low rate awarded for 5 years until 29/06/2022. There was further evidence provided by a witness and from medical records to support the finding.
Accepted his wife's evidence on his underestimating problems as truthful and accurate. GP had indicated this on the factual report.
Lower rate awarded. Additional evidence in the form of an expert medical report.
Appeal allowed for higher rate attendance allowance. The tribunal had access to further medical evidence provided by the appellant in the form of GP notes and records.
Awarded standard rate for four years. Hospital records supplied and evidence of appellant.

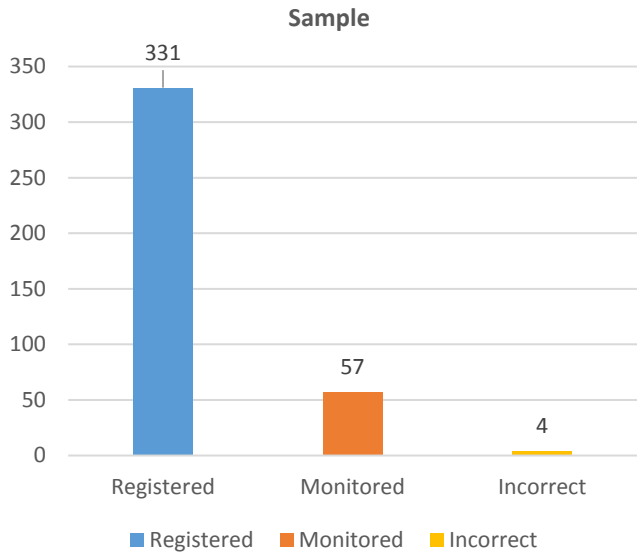
Comments / Recommendations

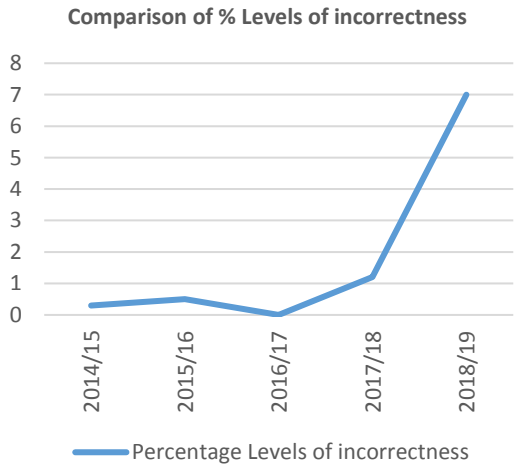
The issues identified in this report remain similar to those mentioned in previous reports. In last year's report I pointed out that there continues to be concern about the number of decisions which are overturned due to further medical evidence. The Department is once more asked to consider what further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

Disability Living Allowance

Incorrectly Made Decisions

17.2% of all appeals received were monitored and there was 4 incorrectly made decisions identified. The level of incorrectness recorded was 7.0%. This is a decrease in standards of the previous year for which the level of incorrectness recorded was 1.2%

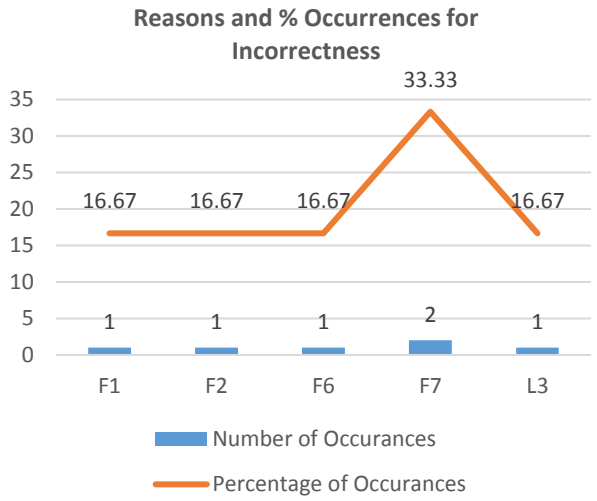




The level of incorrectness identified has increased from 0.3% in 2014/15 to 0.5% in 2015/16 before decreasing again to 0% in 2016/17 and then increasing again to 1.2% in 2017/18 and further increasing to 7% in the current year.

There were four incorrectly made decisions identified in this category, with six reasons recorded for incorrectness.

The main reason Identified in 2 of the 4 incorrect cases was "The officer failed to identify/resolve an obvious conflict in the evidence" (F7). This accounts for 33.3% of all reasons.



In the first case the tribunal awarded low rate mobility and middle rate care stating that the decision maker relied too heavily on a year 7 school report which conflicted with a year 6 report. The inconsistencies were not investigated. Two specialist reports which were provided at reconsideration stage were also disregarded.

In the second case the decision maker relied heavily on a school report. There was also a relevant report from the National Deaf Children's Society. There was a conflict between both reports which was not investigated. An award of low rate mobility was made due to the child's difficulties in hearing traffic.

In the third case the appellant had autism. The decision maker relied upon a report from the child's teacher. No further evidence was sought. The evidence in the claim form provided by the mother was disregarded. The tribunal awarded low rate mobility and high rate care and commented that the claim was not adequately investigated by the decision maker. Further evidence should have been sought from the appellant's General Practitioner.

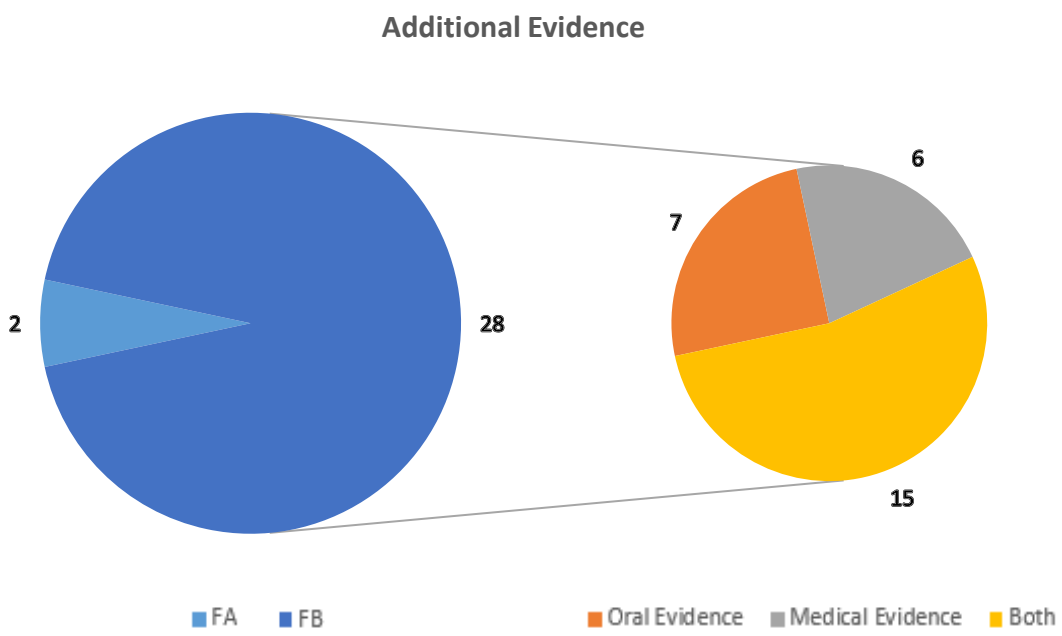
In the fourth case the decision maker decided that there was an overpayment of benefit as the appellant's condition had improved and that he had failed to report this material fact to the department.

The tribunal agreed that there was an overpayment of benefit however, decided that there was no failure to disclose a material fact to the department. There was a functional improvement over time as the appellant had a knee replacement operation. The improvement was in the tribunal's view at best a slow continuum and not a specific event. The appellant did not consider the improvement to be from a specific date and genuinely believed that in some regards he was physically and mentally worse. The legal member commented that the material fact the decision maker relied upon, was not sufficiently specific to be a material fact at all. The tribunal also considered that the information leaflet DLA95 which sets out the changes to be reported, was too vague to amount to an unambiguous direction to report.

Correctly Made Decisions Overturned by the Tribunal

In 30 cases, representing 52.6% of those monitored, while correctly made by the decision maker, were overturned by the tribunal because the tribunal accepted evidence which the decision maker was unwilling to accept (2 cases), or the tribunal was given additional evidence that was not available to the decision maker (28 cases).

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 (6.7%)
FB	The tribunal was given additional evidence which was not available to the officer who made the decision.	28 (93.3%)



In 7 cases the direct evidence of the appellant or a witness was the sole reason for the decision being overturned. In a further 6 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 15 cases the tribunal was influenced by direct oral evidence and additional medical evidence. Overall, the decisions in 21 cases, representing 36.8% 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.

The table below sets out a selection of comments made by legal members of the tribunal.

Comments made by Legal Members of the Tribunal
Appellant entitled to the middle rate of the care component of Disability Living Allowance for a four year period. Qualifying periods satisfied. We had further medical evidence with GP records, written evidence and a letter from the appointee.
Low rate mobility and middle rate care allowed for 2 years (day time needs). We accept evidence of mother and father and have some supportive evidence in GP notes.
Appellant was awarded lower rate mobility and higher rate care. Accepted oral and written evidence of appellant.
To award high rate of both DLA components. We accepted the mother's evidence as being an accurate account of the child's needs. She was also supported by the child care worker who was giving evidence on the day.
Allowed lower rate mobility and middle rate care. Supportive medical evidence. The appointee also gave credible and consistent evidence. Additional evidence from the appellant and in the form of a report from the appellant's specialist.
Middle rate care for 2 years. Evidence of claimant's mother. Additional evidence submitted by a witness and the appellant.
The Appellant satisfies the conditions of entitlement to the middle rate of the care component of DLA for a period of 5 years. The Appellant is below the age limit for consideration of the mobility component so is not entitled to this.
Appeal allowed. Low rate mobility and middle rate care (daytime needs) allowed for 2 years. We had evidence of mother. There was access to the GP notes.
Lower rate mobility awarded. Report from paediatric psychologist.
Awarded lower rate care for 2 years. Satisfied criteria. Additional evidence given by GP notes and hospital records.
Existing entitlement to middle rate care. Oral evidence and medical evidence available on the day supported an award of higher rate care component.

Comments / Recommendations

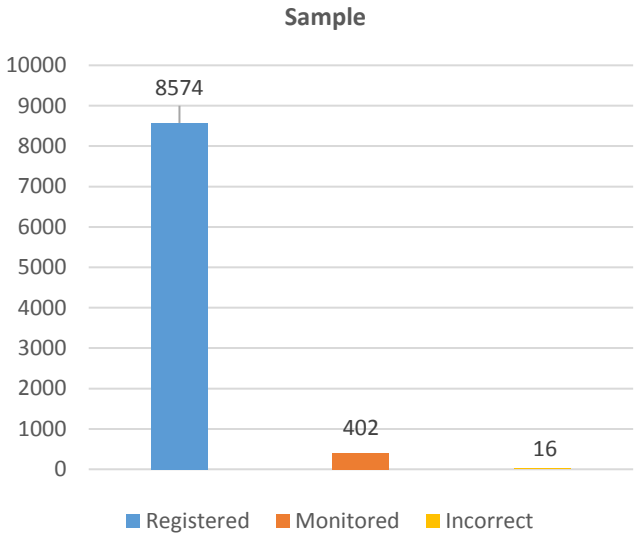
The issues identified in this report remain similar to those mentioned in previous reports. In last year's report I pointed out that there continues to be concern about the number of decisions which are overturned due to further medical evidence. The Department is once more asked to consider what further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

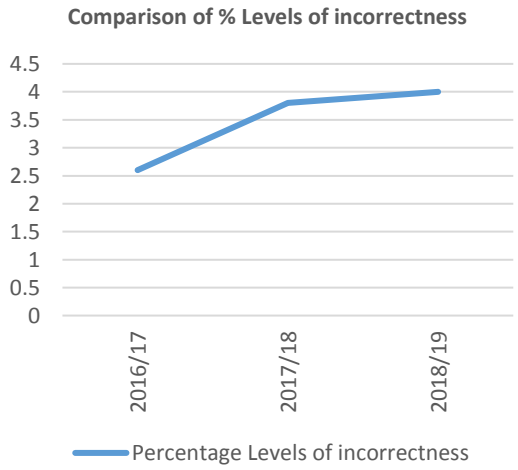
The comments from legally qualified members illustrate the fundamental importance of having focussed and relevant medical evidence, usually in the form of GP notes and records, available to the tribunal at hearing stage.

Personal Independence Payment

Incorrectly Made Decisions

Personal Independence Payment (PIP) is the largest appeal area in this reporting year, accounting for 78.8% of all appeals registered. 4.7% of all appeals received were monitored and the level of incorrectness identified was 4%.

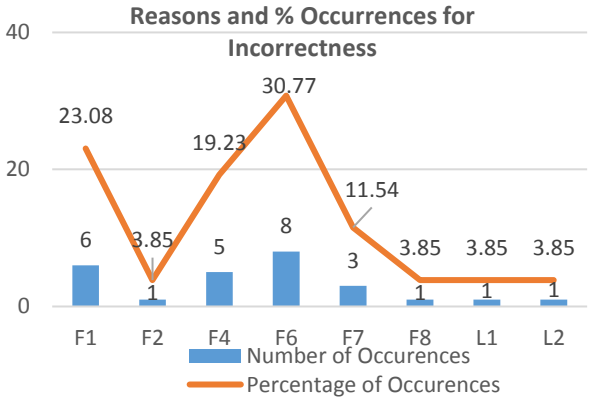




Personal Independence Payment was a new benefit introduced in 2016-17.

The level of incorrectness was identified for the 2016/17 period as 2.6% then increasing to 3.8% in 2017/18 and increasing again to 4% in the current year.

There were sixteen incorrectly made decisions in this category, with twenty six reasons recorded for incorrectness. The main reason Identified in 8 of the 16 incorrect cases was “The officer disregarded relevant evidence” (F6). This accounts for 30.77% of all reasons.



Comments made by legal members of the tribunal in those cases identified as incorrectly made are set out in the table below.

Comments made by the Legal Members of the Tribunal
Good reason for failure to attend. Good cause found. Appellant has bipolar mental condition - with A's explanation suffice to find good reason for missing appointment (and arguable department's letter re appointment not sufficient given). Failed to credibly interpret good reason provision.
Standard rate daily living. Original points restored together with points for engaging (activity a). Ambiguous reference in a medical encounter was given insufficient consideration.
Appeal allowed for Standard Rate Daily Living and Mobility components for 5 years, increased from Standard Rate Mobility only. The Department failed to give points for Managing Toilet Needs when the appellant has been given a raised toilet seat and rail. The Department failed to give adequate weight to the evidence that the appellant needs assistance, supervision and prompting with her medication.
Appeal allowed. The appellant had a good reason for not attending the assessment. An assessment in her own house should be arranged at the earliest opportunity.
The Officer failed to request adequate medical guidance or expert reports relevant to the decision. Awarded enhanced rate of both PIP components for 10 years (Daily Living - 27 points, Mobility - 14 points). Records clearly demonstrate a deteriorating situation with Huntingdon's Disease. It is appalling that someone with Huntingdon's Disease could be treated as uncaringly and awarded no benefit after several years on benefit. Even the Presenting Officer was aware it was a degenerative disease and terminal. It appears it had not been considered by either the Disability Assessor (a physiotherapist) or the decision-maker.
Tribunal awarded 37 points daily Living and 12 points mobility. Oral evidence from appellant's mother and representative clearly demonstrate that findings from health assessor report were inaccurate. The department only considered inaccurate health assessor report and did not consider medical evidence or written representatives of the appellant. This claim caused huge stress to appellant when it was clear from medical and written submission of appellant the level of difficulty appellant endured on a daily basis with tremendous support from family.
The panel did not consider that the points awarded for communicating verbally were justified. The Department relied on the information provided by the appellant rather than the surrounding evidence as to the level of impact of her condition in relation to this activity. Officer disregarded relevant evidence.

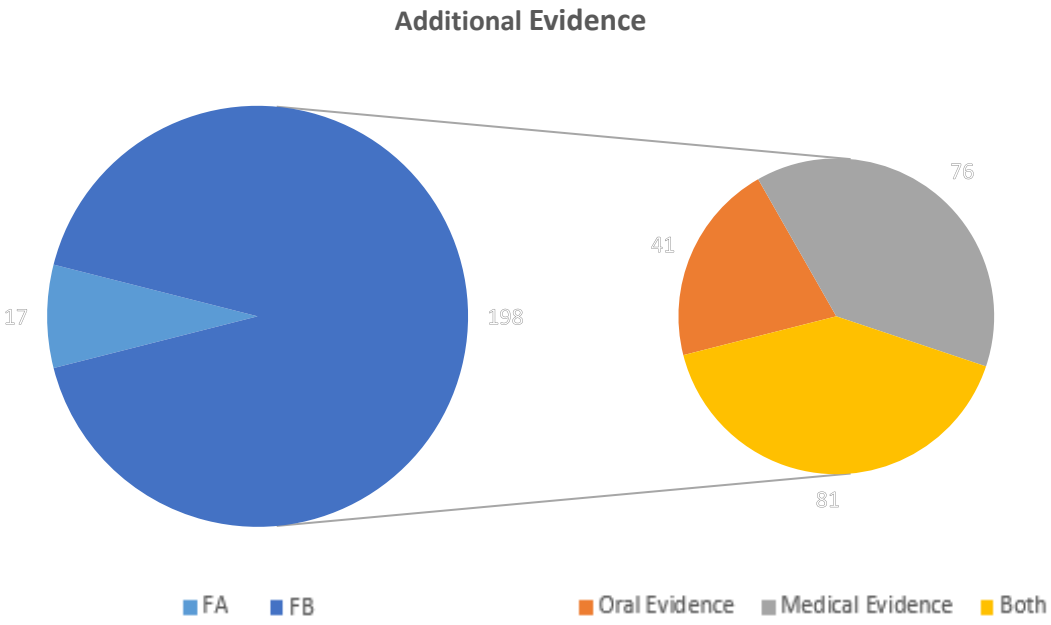
Enhanced award of both Daily Living and Mobility components on an ongoing basis. Decision maker did not take proper account of GPs evidence that appellant not independently mobile and also how her health issues affected other areas of daily living including the ones at points already awarded her.
Enhanced daily living and enhanced mobility. Despite the Healthcare Professional identifying that the appellant was displaying anxiety at the assessment and made descriptions such as 'wrung his hands and jiggles his legs throughout assessment' this has not been reflected in the reasoning. Insufficient reasoning to justify the department's decision in circumstance where the appellant has a long history of mental health problems and displaying anxiety at the assessment.
The decision of the decision maker at Tab 6 appears to have developed from a computer input error. The reconsideration does not refer to any specific evidence submitted by the appellant. The decision maker does not appear to have considered the full extent of the underlying condition and the GP's comments. Consequently we increased the scores that she was awarded. The appellant is entitled to enhanced rate of both components.
Nature of conditions / psychologists reports not properly analysed by department. Healthcare Professional in face to face report whilst identifying appellants conditions / reported problems, did not arrive at correct conclusion re function. Enhanced daily living and mobility awarded for a 5 year period.
Decision maker awarded zero points mobility and two points daily living. This appeal awarded 14 points in both categories. There was sufficient medical evidence on the submission papers to justify this award - even in the absence of GP notes. The officer disregarded relevant evidence. They should have taken into account the relevant medical evidence they had in their possession.
The appellant had standard rate daily living and mobility component. Both components were increased to enhanced rate. The evidence of the appellant justified enhanced awards of both components. The capita assessment report did not reflect accurately the appellant's condition.
Additional points for the 'taking nutrition' descriptor were awarded on the basis that the appellant's Carpel Tunnel Syndrome requires her to use adapted cutlery. The officer disregarded relevant evidence. The appellant's Carpel Tunnel Syndrome which has been unsuccessfully treated was well documented and it is accepted by the Tribunal that appellant requires adapted cutlery to take nutrition. Appeal allowed for Daily Living Component but refused for mobility.
Decision of the officer was based on insufficient facts/evidence. The officer disregarded relevant evidence. Panel noted the claimed evidence and awarded extra 5 points. Those could/should have been awarded. Claimed evidence already supplied, fully supported the award of extra points. Claimant's evidence available to department and to the decision maker. On paper clear restrictions demonstrated and points should have been awarded.

Tribunal scored 8 points for requiring aids or appliances for four of the daily living activities. Evidence included in appeal submission details an ESA award made a few months before. Assessor had recommended two points for requiring aids or appliances for each of three of the same daily living activities, which tribunal agreed with, but had awarded only four points. Tribunal considered two points should be awarded also on same basis for a fourth daily living activity.

Correctly Made Decisions Overturned by the Tribunal

In 215 cases, representing 53% 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 (17 cases), or the tribunal was given additional evidence that was not available to the decision maker (198 cases).

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.	17 (7.9%)
FB	The tribunal was given additional evidence which was not available to the officer who made the decision.	198 (92.1%)



In 41 cases the direct oral evidence of the appellant or a witness was the sole reason for the decision being overturned. 76 cases turned on the content of medical evidence by way of GP or hospital records, or a medical report from the GP or a consultant. In a further 81 cases a combination of direct oral evidence and medical evidence, resulted in the tribunal reaching a different decision than the decision maker. Overall, the decisions in 157 cases, representing 39% of cases monitored were influenced by the availability of medical evidence to the tribunal.

The table below sets out a selection of comments made by legal members of the tribunal in cases where additional evidence was provided to the tribunal.

Comments Made by the Legal Members of the Tribunal
Daily living awarded at standard rate for 4 years. Mobility - no descriptor points awarded. Daily Living - appellant is learning disabled. He is overconfident about his abilities and there are safety issues. His disability makes him frustrated and aggressive. 1(e) 9(c) and 10(b) awarded. Additional evidence given by a witness.
Increased standard rate allowed of daily living component to enhanced rate for fixed term of 3 years. Tribunal disagreed with some assessments of the individual descriptors although most were unchanged. Appellant's Obsessive Compulsive Disorder (OCD) condition and its impact upon activities and things he can physically do does not "fit" easily with the PIP descriptors.
The eating disorder consultant prepared a focused report on the appellant's needs. More weight should have been given to his report. GP notes and records contained particulars of hospital admissions just after the date of decision. The Departmental Officer would not have been aware of those.
The mobility component enhanced rate was reinstated - no relevant change of circumstances. No grounds to supersede / relevant change of circumstances between 2017/2018. This was established by copious GP and specialist materials received prior to hearing. The department had been asked for an earlier hearing to indicate more clearly what the relevant change of circumstances was. By response the department pointed to appellant's oral statement made in 2018 assessment that he could walk 50 meters. Medical evidence showed no change in underlying chronic conditions.
Enhanced Daily living, Standard mobility. The evidence of the appellant was corroborated by GP notes. There were discrepancies in the Capita consultation report regarding the 1st appeal this afternoon. These were accepted by the department PO. The evidence of the appellant accepted by the panel was at odds with that recorded by the Disability Assessor in the report on this appeal.
Additional evidence given by a witness, the appellant and medical records. The department had the previous papers of the appellants DLA award. The appellant is registered blind. No

account appears to have been taken of this fact. The tribunal heard extensive oral evidence.
Awarded 2 points for engaging with others, other points remained the same as decision. Appellant had mental health issues pre-dating date of decision. Getting psychiatric help and on anti-depressant medication. Additional evidence given in the form of medical notes.
On presentation and in her evidence appellant demonstrated her difficulties with the descriptors.
Insufficient examination or challenge around what assessors report stated, especially regarding mobility and failure to appreciate limitations imposed by appellant's conditions. The panel read and heard evidence about the impact of the appellant's conditions and how they impact on his daily living activities and his mobility and concluded that they did so significantly to award enhanced rate. The appellant's conditions and his levels of pain and depression as indicated from his medication, medical notes within submissions and his evidence impacted on his daily living and mobility as found. The decision appeared merely to reflect the assessment points. However the assessment points did not accurately reflect the impact of appellant's conditions.
Points were awarded under the activities of engaging with others and planning and following a journey. Appellant entitled to standard rate in relation to the mobility component. Upon consideration of the medical evidence furnished and on hearing oral evidence from the appellant the tribunal were satisfied that the appellant's mental health restricted her ability to carry out the above activities. No issues as to the decision being defective on the basis of the information available to the departmental officer. Decision has only been altered due to additional evidence.
We provided two additional parts to the Appellant in respect of daily living activity 9 - 9c rather than 9b. The Tribunal observed at first-hand the difficulty the Appellant has in engaging and was impressed with his oral evidence. Additional evidence submitted by the appellant. This was a narrow decision in favour of the Appellant and took the Tribunal some time with the Appellant to appreciate the level of anxiety suffered by the Appellant.
Appeal allowed and the decision of Department was not confirmed as to daily living - 9 Points. Mobility component disallowed - 0 points. Appellant (20 years) had long standing behavioural difficulties made more acute after 5% removed of (L) lower jaw (sarcoma) in 2016. After hearing evidence, tribunal accepted that help described by his mother was consistent and reasonable required.
The appellant is entitled to the care component - standard. Additional evidence given by the appellant. The Examining Medical Practitioner's report covered the relevant area but did not comment on extract from GP notes regarding depression. The decision maker should have engaged more with the evidence from his GP notes rather than focusing on the Examining Medical Practitioner's report.
Medical records submitted from the hospital. The hospital records shows significant MS and mental health issues. Examining Medical Practitioner was provided with old representation from claimant and Comprehensive list of records and observations made which were appropriate. The decision maker did not have the benefit of the hospital records which showed their severity of her condition. The GP letter indicates better function but appears to adapt an old report. The appeal with a documented condition like MS shows the advantage of hospital letter.

Enhanced rate daily living awarded on basis of standard rate mobility - ongoing learning difficulties / disabilities. Tribunal took into account appellant's learning disabilities and noted and reflected the impact on his daily living and mobility (regarding planning journeys). Cannot read, write or count. Evidence in submissions described his level of vulnerability. No assessment was made - good reason found. Tribunal was given additional evidence which was not available and in the form of an expert report handed in from Community Advice. There was no consideration given to the evidence of the appellant's learning disabilities and Department Officer erred in finding there had been no good reason for appellant's failure to wait for late assessor.
Appellant appeared with her father and brother and gave evidence to the tribunal. The appellant was a very credible witness who didn't exaggerate the impact of her condition or her ability to carry out duties. The tribunal did not consider the Health Care Professional had sufficient weight to the impact of the appellant's learning difficulties and vulnerability. Health Care Professional perhaps lacked expertise in this case.
The appellant has shown good reason under regulation 9(2) of the PIP regulations (NI) 2016 that he did not attend the consultation by reason of the state of his health at the relevant rate. Medical evidence continued within submission papers and oral evidence confirms a history of depression and missed appointments associated with same. Panel are satisfied that non-attendance at appointment is connected with his depression.
The appellant's mental health was severely disturbed and this was supported by medical evidence. His mental state also impacted on his motivation/physical abilities. Medical evidence as provided. There was a marked absence in the 2019 assessment report to details of appellant's mental health. Opening remarks implied mental health had required no specialist input. Contradicted 2016 PIP report and 2017 ESA. No reference to improvement from either date.
Appeal allowed and decision of Department not confirmed. Daily living at standard rate and mobility at enhanced rate (12 pts) – ongoing period. Epileptic. Attending neurology clinic. Highest dose anti-convulsions. Monthly tonic clonic seizures and many frequent collapses. History of many falls and injuries. Incontinence with seizures and nausea. Credible witnesses. Additional evidence given by witness, the appellant and medical records.
The claimant was entitled to an uplift of his award of standard daily living to bilateral enhanced. He has cognitive impairment due to alcohol abuse with left sided stroke. Disabilities not fully considered by the assessment / Decision Maker.
The Appeal Tribunal allowed the appeal. The panel had opportunity to view medical notes to see validity and extent of appellant's condition and the impact of these on the descriptors. Tribunal agreed with submission from Community Advice as assessed this was founded on the evidence reported.

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.

Comments / Recommendations

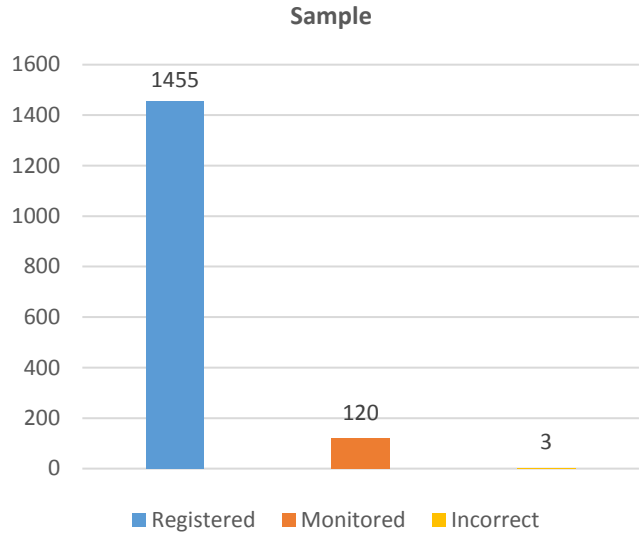
The issues identified in this report remain similar to those mentioned in previous reports. In last year's report I pointed out that there continues to be concern about the number of decisions which are overturned due to further medical evidence. The Department is once more asked to consider what further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

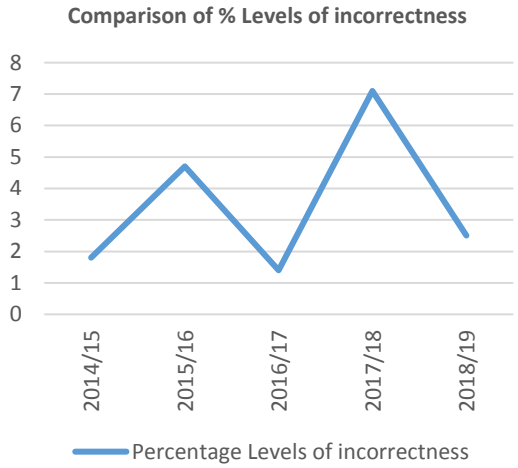
The comments from legally qualified members illustrate the fundamental importance of having focussed and relevant medical evidence, usually in the form of GP notes and records, available to the tribunal at hearing stage.

Employment and Support Allowance

Incorrectly Made Decisions

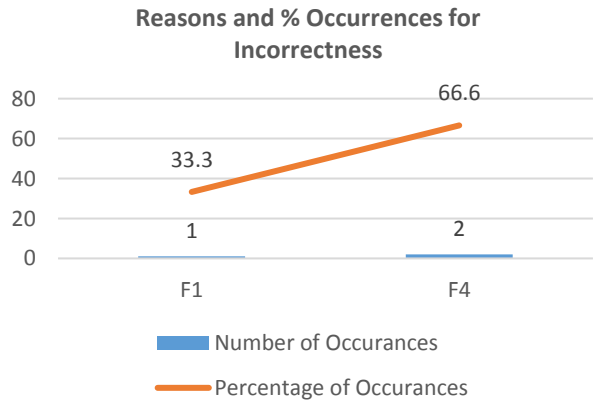
Employment and Support Allowance (ESA) is the second largest category of appeal activity in this reporting year. 8.2% of all appeals received in this category were monitored. The level of incorrectness was 2.5%. This is an improvement in standards of 4.6% on the previous year.





The level of incorrectness identified has increased from 1.8% in 2014/15 to 4.7% in 2015/16 then decreased again to 1.4% in 2016/17 and then increasing to 7.1% in 2017/18 before decreasing to 2.5% in the current year.

There were three incorrectly made decisions identified in this category, with three reasons recorded for incorrectness. The main reason identified in 2 of the 3 incorrect cases was "The decision was based on a misinterpretation/ misunderstanding of the evidence available to the officer" (F1). This accounts for 66.6% of all reasons.



In the first case the tribunal found that the decision under appeal was based on insufficient facts/evidence due to inadequate investigation of the claim (F1). There insufficient assessment of incontinence problems. These were significant. Limited capability for work related activity was awarded by tribunal. The legal member stated that the decision was defective as the decision maker did not notice that the Healthcare Professional's (HCP) report while recording significant details of incontinence from appellant, noted in comments box that there were no issues or significant problems. There was no explanation within the assessment of why the stated problems were not in the HCP's view, worthy of any note. Tribunal reached the conclusion that incontinence issues were significantly restrictive.

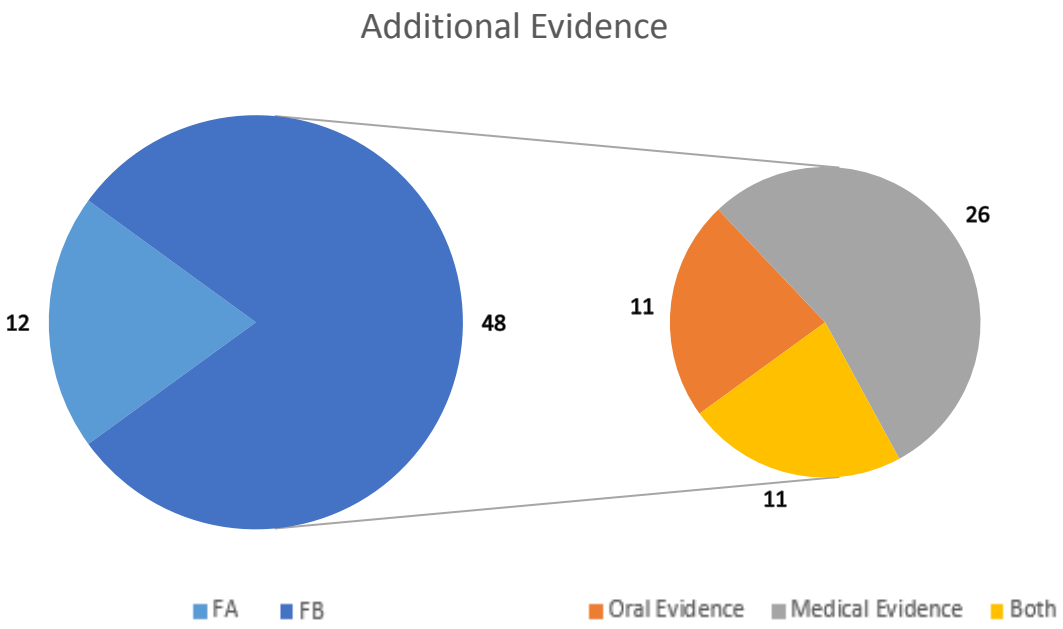
In the second case the issue was an overpayment of benefit as the appellant had undeclared capital. The tribunal found that there was no evidence of an ESA40 being issued when the claim was converted from Income Support (IS) to ESA. This leaflet advises claimants of the changes they are required to report. A letter only was issued stating that changes in circumstances should be reported. The decision maker argued in the appeal submission that as the appellant was previously in receipt of IS/INCAP they would have known what changes to report. Due to rules re destruction of documents precise notification re previous benefits was not available to the tribunal. The legal member commented that the department could not demonstrate that the appellant at the time of conversion to ESA from IS was issued with an ESA40 which would advise him of the type of changes to report.

In the third case the appellant was in receipt of ESA as he had limited capability for work. The tribunal awarded limited capability for work related activity on the basis that the appellant cannot repeatedly mobilise 50 meters within a reasonable timescale because of significant discomfort or exhaustion. The appellant suffered from arthritis and anxiety. The legal member commented that the decision was based on a misinterpretation/misunderstanding of the evidence available to the decision maker (F4) as the extent of the appellant's disability was not fully understood.

Correctly Made Decisions Overturned by the Tribunal

In 60 cases, representing 50% 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 (12 cases) or the tribunal was given additional evidence that was not available to the decision maker (48 cases).

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.	12 (20%)
FB	The tribunal was given additional evidence which was not available to the officer who made the decision.	48 (80%)



In 11 cases the sole reason for the decision being overturned was the direct oral evidence of the appellant or a witness. 11 cases turned on the content of medical evidence by way of GP or hospital records, or a medical report from the GP or a consultant. In a further 26 cases a combination of direct oral evidence and medical evidence, resulted in the tribunal reaching a different decision than the decision maker. Overall, the decisions in 37 cases, representing 30.8% of cases monitored were influenced by the availability of medical evidence to the tribunal.

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

The table below sets out a selection of comments made by legal members of the tribunal in appeals where additional evidence was received.

Comments Made by Legal Members of the Tribunal
Appeal allowed. Appellant received Limited Capability for Work in accordance with the Work Capability Assessment and is entitled to ESA at the appropriate weekly rate. We had appellant's oral evidence and Further medical evidence from Musgrave Park Hospital. Also the Departmental Presenting Office indicated awarding points for the Mobilising descriptor and Standing and sitting descriptor.
Regulation 29 applied. Appellant provided further medical evidence which showed in more detail his obvious problems.
Appellant has limited capability for work and work related activity. Urology letter and an additional expert report handed in. The evidence presented in the appeal papers did not properly address the frequency and severity of incontinence.
Summary decision is that appellant is entitled by virtue of Regulation 35(2)b to be treated as having limited capability for work related activity. Reason is that appellant's mental state at relevant time was such as to suggest she could be of risk to self or others. This risk element was supported by the further medical evidence provided and the fact that the appellant's husband had been made her appointee.
Entitled to ESA as he has limited capability. The tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was medical records. The report covered all relevant areas in adequate detail. The appellant has a well-documented lifelong prostate continence and leukaemia. The decision maker did not have the benefit of all his medical records on this. We had sight of report from a consultant which helped. There was a report from his continence service relevant to the descriptor.
The department did not properly consider the level of supervision required by appellant re hazards as such being for the majority of the time. Also not sufficient consideration of appellant's poor memory which prevents her learning a new task.

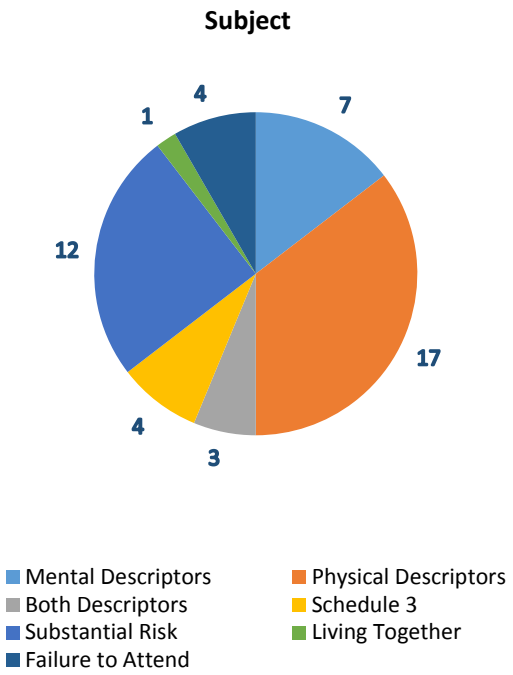
Tribunal decided to award appellant ESA. Overturned department decision by reference to regulation 29(2)(b). On consideration of the oral evidence provided a hearing we decided the department likely to have underestimated mental health difficulties. Additional evidence given by the appellant. The panel came to view that it is likely that the appellant is underreporting her mental health issues to her GP. This was a difficult case because it may well be that this appellant under reports her difficulties.
Appeal allowed - the claimant does not have limited capability for work but is to be treated as having limited capability for work under Regulation 29(2)(b). Evidence given by appellant - ongoing groin pain and investigating following hernia operation.
Appeal allowed. We awarded 6 points for mobility, 6 for incontinence and 6 for coping with social engagement and on balance found the appellant had LCW. We heard from the appellant over the course of one hour and fifteen minutes hearing and she brought her GP records. She is on higher rate mobility for PIP at same time as the decision date. She records that she underreports the incontinence issue due to embarrassment and a very isolated life style. Perhaps the department ought to consider aspects of PIP awards to ensure a consistent approach as found at PIP assessment to be in 20-50 meter band in respect of mobility - higher rate award. The incontinence issue was under reported to Healthcare professional due to embarrassment and in course of our enquiries we accepted that the appellant has difficulties mixing. We used an interpreter and found that the appellant had to be encouraged to share information with us.
Appeal allowed. Regulation 29(b)(2) applied. Appellant scored 0 points on the Work Capability Assessment however, considered a vulnerable person on the evidence before Tribunal. Self-harm issues - corroborated by new additional medical evidence in the form of an expert report. Decision of Departmental Officer was not defective. The correct decision was made on the evidence available to the decision-maker.

Subject of Appeal

The breakdown of cases for those overturned due to additional evidence is set out in the Pie Chart to the right. In 17 cases representing 35.4% of these, the issue under appeal was the physical descriptors.

In 12 cases, representing 25%, the appeal was successful as the tribunal identified a substantial risk to the health of the appellant. In 7 appeals representing 14.6%, the appellants qualified as they satisfied the mental health descriptors.

The following issues were also identified: Limited capability for work related activities and failure to attend a medical examination without good reason, both represented 8.3% of these appeals. Appeals identifying both physical and mental descriptors represented 6.3%. Claiming as a single person while living in a partnership represented 2%.



Comments / Recommendations

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

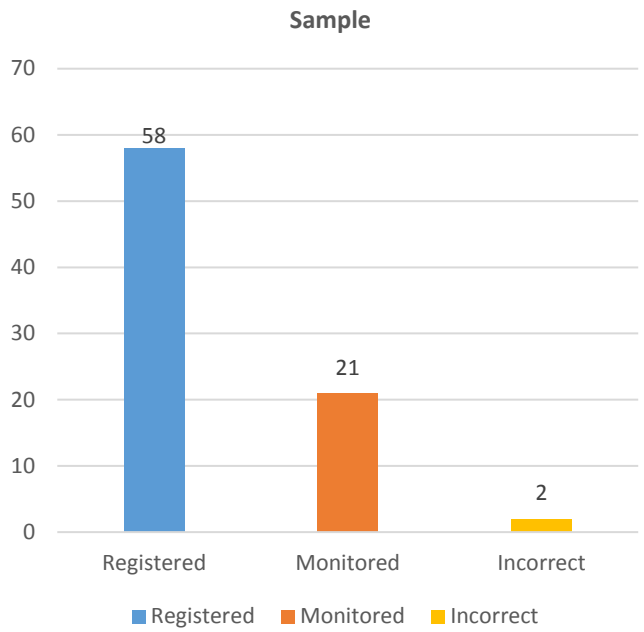
The comments from legally qualified members demonstrate that further medical evidence produced at hearing often greatly assists the tribunal in reaching a decision.

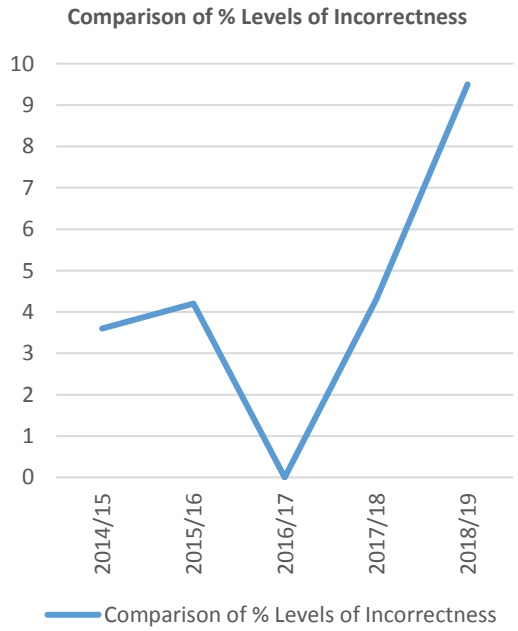
Income Support

Incorrectly Made Decisions

36.2% of appeals received in this category were monitored. The level of incorrectness identified was 9.5%. This is a decrease in standards of 5.2% on the previous year which recorded that 4.3% of decisions were incorrectly made.

However, given the small number of appeals available for monitoring in both years, caution in interpreting this result is advised.





The level of incorrectness identified has increased from 3.6% in 2014/15 to 4.2% in 2015/16 before decreasing to 0% in 2016/17 then increasing again to 4.3% in 2017/18 and increasing again to 9.5% in the current year.

There were two incorrectly made decision in this category, with two reasons recorded for incorrectness; 'insufficient facts/evidence due to inadequate investigation of the claim or

revision' (F1) and 'the officer overlooked a relevant Commissioners decision/Court decision which was/should have been available to him' (L4).

In both appeals the issue was that the claims to benefit were made on the basis that the applicants were single. The decision maker decided that both claimants were living as a member of a couple and therefore not entitled to benefit.

In the first case the legal member of the tribunal commented that there was inadequate investigation of the claim. While the circumstantial evidence such as the use of a joint address on official documents may have pointed in the direction of living as one of a couple, the arguments put forward by the appellant were not investigated. An interview with the alleged partner may have assisted in resolving the issues. The tribunal accepted that the appellant was not living as one of a couple.

In the second case the decision maker raised a substantial overpayment of benefit on the basis that the claimant had misrepresented the material fact that she did not have a partner when she claimed Income Support. The Presenting Officer for the department stated that there were no direct observations of the alleged living together and no criminal investigations. The decision was based on the balance of probabilities that the claimant was living with another person as a couple as they had two children. The appeal submission did not deal with any of the issues set out in Commissioner's decision R(SB) 17/81 which sets out the issues to be considered in such cases.

Correctly Made Decisions Overturned by the Tribunal

In 2 cases, representing 9.5% of those monitored, while correctly made by the decision maker, were overturned by the tribunal because the tribunal either accepted evidence which the decision maker was unwilling to accept (1 cases), or the tribunal was given additional evidence that was not available to the decision maker (1 cases).

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 (50%)
FB	The tribunal was given additional evidence which was not available to the officer who made the decision.	1 (50%)

In the appeal where the tribunal was given additional evidence, the appellant attended the hearing and presented the oral evidence which formed the basis of the tribunal's decision.

Comments / Recommendations

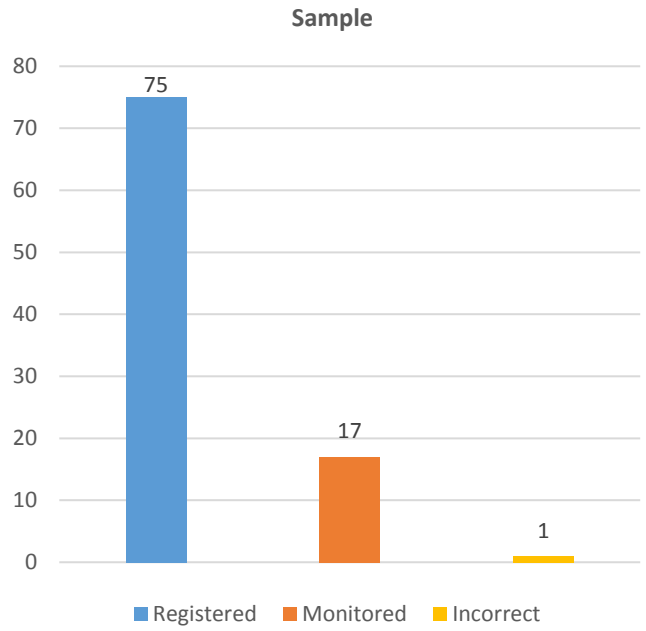
Although there has been a decrease in standards the figures should be treated with some caution given the small numbers involved. The issues mentioned above may be capable of resolution with appropriate training.

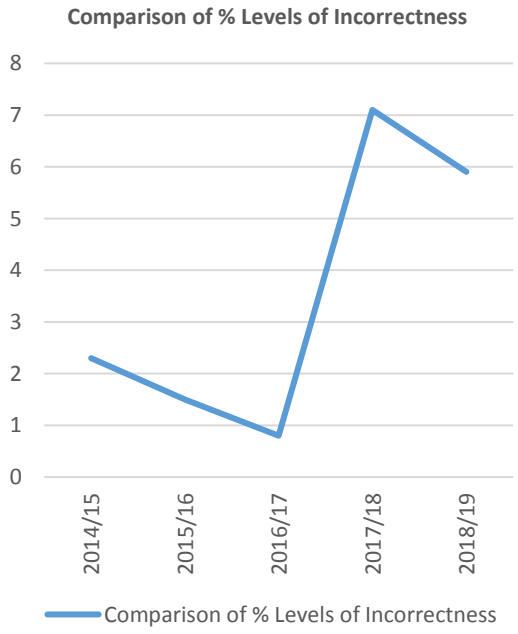
Jobseekers Allowance

Incorrectly Made Decisions

22.7% of all Jobseekers Allowance appeals received were monitored. The level of incorrectness identified was 5.9%. This is an improvement in standards on the previous year of 1.2% which recorded that 7.1% of decisions were incorrectly made.

However, given the small number of appeals available for monitoring in both years, caution in interpreting this result is advised.





The level of incorrectness identified has decreased from 2.3% in 2014/15 to 1.5% in 2015/16 then decreasing further to 0.8% in 2016/17 before increasing to 7.1% in 2017/18 then decreasing again to 5.9% in the current year.

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).

In this case the decision maker disallowed Jobseekers Allowance on the basis that the appellant did not return postal coupons and did not show good reason for doing so. The appellant stated that the coupons were returned by first class post to the office concerned. The tribunal allowed the appeal stating that there was inadequate investigation of the claim by the decision maker. In addition the appeal submission was of poor quality. The submission advised that no return date was included with the coupons issued to the appellant; A further letter referred to by the appellant in his letter of appeal as being received from the department, was not referred to by the appeal writer and the conflict in the evidence was not documented.

Correctly Made Decisions Overturned by the Tribunal

In 3 cases, representing 17.6% 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
(1 case).

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 (67.7%)
FB	The tribunal was given additional evidence which was not available to the officer who made the decision.	1 (33.3%)

In all three of these appeals, the appellants attended the hearings and presented the oral evidence which formed the basis of the tribunal decisions.

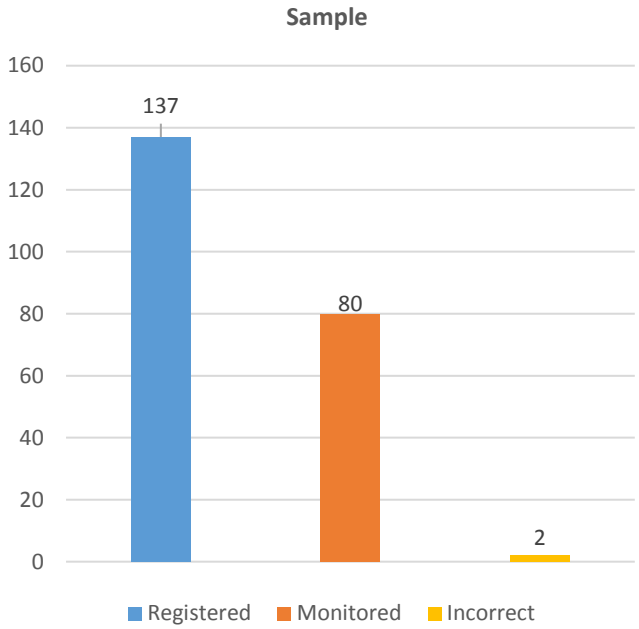
Comments / Recommendations

Although I am pleased to note the slight improvement the figures should be treated with caution given the small numbers involved. It is hoped that the issues identified in the incorrect case (including the poor quality of the submission) can be addressed with appropriate training.

Universal Credit

Incorrectly Made Decisions

Universal Credit (UC) is a new benefit which replaces Income Support, Income based Jobseekers Allowance and Employment Support Allowance. 58.4% of all appeals received were monitored and the level of incorrectness identified was 2.5%.



There is a steady appeal rate of sufficient number and we can therefore be confident in the overall monitoring results.

There were two incorrectly made decisions in this category, each with one reason recorded for incorrectness.

In the first case 'the officer did not identify the correct legal rules relevant to the claim/revision' (L1). The issue was whether the appellant had the right to reside in NI and from that entitlement to UC.

The tribunal decided that the appellant had a derivative right to reside under regulation 16 (1) and (5) of The Immigration (European Economic Area) Regulations 2016. This paragraph states that "A person has a derivative right to reside during any period in which the person (a) is not an exempt person; and (b) satisfies each of the criteria in one or more of paragraphs (2) to (6)". The derivation right to reside applies in this case because the appellant is the mother and principal carer for a British Citizen who is her 2 year old daughter. She therefore satisfied paragraph (5) of this regulation. The decision maker was

aware of this information and the appeal submission contained a copy of the appellant's child's British passport. However, from the appeal submission it was also clear that the decision maker did not consider paragraph (5) and instead concentrated on paragraphs (3) and (4) of this regulation which the tribunal agreed the appellant did not satisfy.

In the second case the issue was entitlement based on satisfying the conditions for limited capability for work. In particular the appellant who suffers from rheumatism cannot repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion. The appellant was previously in receipt of limited capability for work and there were no grounds established by the decision maker for superseding the award under appeal. The Tribunal made an award of limited capability for work and work related activity.

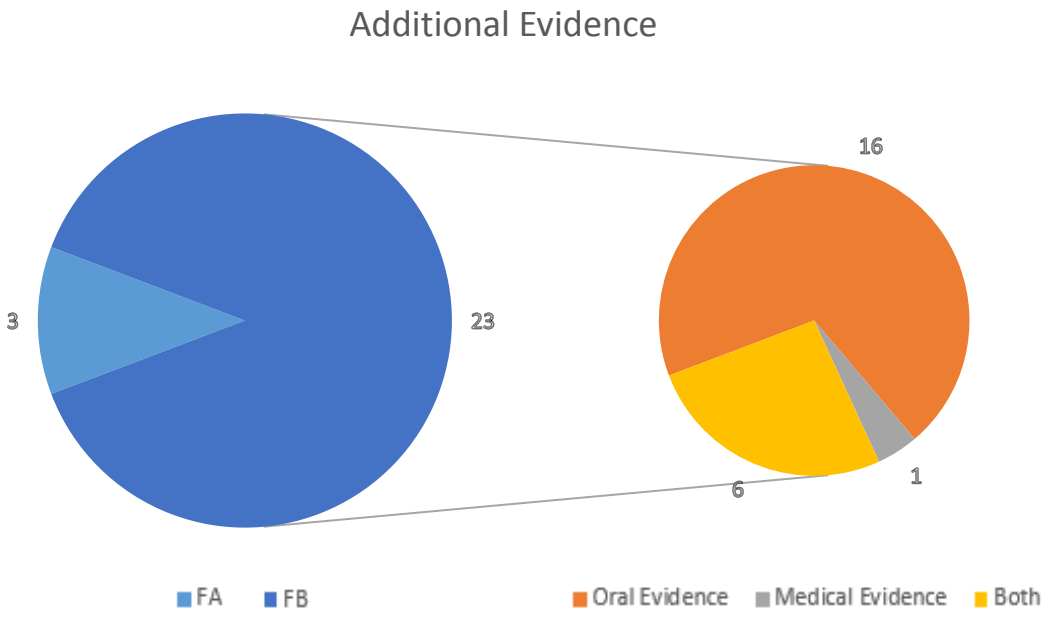
The Appellant was also in receipt of Personal Independence Payment and had a complex medical history. Advice was sought by the decision maker and a Health Care Professional on examination of the case advised that the assessment in this case should be referred to a doctor or a Health Care Professional who has undergone relevant neurological training. This final assessment was undertaken by a Registered Nurse.

In addition the submission did not provide information regarding the previous award and there was not a full copy of the Health Care Professional's Report on which the decision was based.

Correctly Made Decisions Overturned by the Tribunal

In 26 cases, representing 32.5% of those monitored, while correctly made by the decision maker, were overturned because the tribunal either accepted evidence which the decision maker was unwilling to accept (3 cases) or the tribunal was given additional evidence that was not available to the decision maker (23 cases).

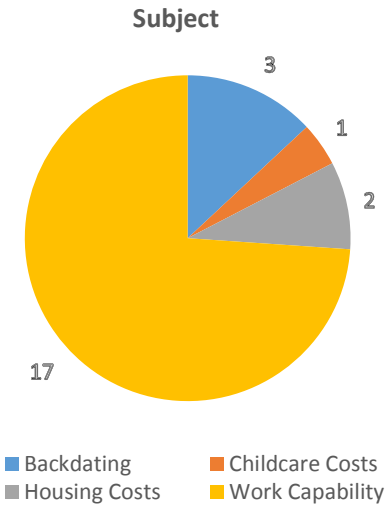
Reasons for Overturning Correctly Made Decision		Number of Cases
FA	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	3 (11.5%)
FB	The tribunal was given additional evidence which was not available to the officer who made the decision.	23 (88.5%)



In 16 cases the sole reason for the decision being overturned was the direct oral evidence of the appellant or a witness. 1 case turned on the content of medical evidence. In a further 6 cases a combination of direct oral evidence and medical evidence, resulted in the tribunal reaching a different decision than the decision maker.

Subject of Appeal

The issues under appeal in those cases overturned because the tribunal was given additional evidence which was not available to the officer who made the decision, were varied. The work capability element was by far the largest category at almost 74%. Backdating was next at 13% followed by Housing costs and childcare costs at 9% and 4% respectively.



A selection of comments by legal members of the tribunal are set out in the table below.

Comments Made by Legal Members of the Tribunal
Appeal allowed. Under the UC regulations 2016 the appellant had limited capability for work and limited capability for work related activity. Entitled to UC at appropriate rate. As set in the findings of fact. Essentially there were several detailed psychiatry reports before and subsequent to the date of decision under appeal.
Appellant entitled to UC from an earlier date as the tribunal was satisfied that appellant made a valid claim before the date accepted by the decision maker. Backdating of claim allowed.
Appellant has long standing back pain. Also social withdrawal. Sitting/standing descriptor already awarded by decision maker. Mobility descriptor allowed as consistent with oral and written evidence. Credible evidence of social withdrawal.
Appellant scores 15 points and has limited capability for work. Oral evidence from appellant accepted by tribunal established that appellant had significant limitations in two physical activities scoring 9 and 6 points respectively.
Entitled to housing element of UC. Additional evidence in the form of a written submission by a representative.
Appellant scores 15 points and has limited capability for work. Tribunal accepted evidence that appellant had significant mobility problems and mental impairment in his capacity to complete personal action. GP evidence 10 pages provided and submission by a representative.

Appeal allowed. Credible appellant in clear discomfort. Medical records made available and oral evidence consistent with that.
Regulation 40 award. Impaired memory from head injury with depression and recall difficulties.
Appeal allowed. Appellant has LCW. Seven pages of GP evidence / notes handed in.

Comments / Recommendations

The comments made by legally qualified members relating to Universal Credit appeals involving a work capability element demonstrate that the provision of focussed and relevant medical evidence at hearing can greatly assist the tribunal in reaching a decision. As with PIP, DLA and AA appeals the Department should consider obtaining more detailed medical evidence **prior to** decision.

The issues identified in the derivative right to reside incorrectly made decision can be addressed with appropriate training.

Others

Bereavement Benefit, Carers Allowance, Compensation Recovery, Industrial Injuries Disablement Benefit, Maternity Allowance, Pension Credit, Social Fund & Retirement Pension

Category	Total Registered	Total Monitored	Total Incorrect	FA	FB
Bereavement Benefit	3	3	0	0	0
Carer's Allowance	18	7	0	0	0
Compensation Recovery	2	0	0	0	0
Industrial Injuries Disablement Benefit	32	22	0	0	5
Maternity Allowance	1	1	0	0	0
Pension Credit	40	28	0	1	1
Social Fund	27	15	0	0	0
Retirement Pension	1	1	1	0	0

In all of the benefits listed above a complete census was undertaken of appeals received taking into account that some appeals were cleared before hearing due to the withdrawal of the case or because the department reconsidered the decision and made a more advantageous decision prior to hearing.

Given the small numbers of appeals available to be monitored for these benefits the results need to treat with caution.

With the exception of State Retirement Pension there were no incorrectly made decisions identified. In this category only one appeal was received. The results therefore impact on the percentage of incorrectness, distorting the results.

Industrial Injuries Disablement Benefit

In Industrial Injuries Disablement Benefit there were 5 cases (23%) where correctly made decisions were overturned by the tribunal due to additional evidence. Legal members of the tribunal made the following comments:

Comments by Legal Members of the Tribunal
Appeal allowed. The decision of the Department is not confirmed. The industrial accident still results in a loss of faculty, impaired function of the right shoulder. The degree of disablement assessed body at 5% for two year period and 25% now continuing for life. This is a final assessment, the question of weekly entitlement to IIDB is hereby referred to the Department for determination. This was a medical appeal tribunal. We did our own medical examination and all findings were worse than that of the Department's medical advice and resulted in an increase in the percentage disablement from 20% to 25% which means appellant will be paid at the 30% rate rather than the 20% rate.
Appeal allowed. The decision of the Department is not confirmed. The appellant has the prescribed disease known as A12. This has caused loss of faculty i.e. Impaired Manual Dexterity. The degree of disablement is assessed at 14% from and including 2010 to life. This is a final assessment. We had GP records and did our own medical exam.
Appeal allowed. The decision of the Department as revised is not confirmed. The relevant industrial accident still results in a loss of faculty. The loss of faculty is painful and restricted movements of the right elbow. The degree of disablement is assessed at 35% not (i.e. 40%-5% offset for pre-existing condition of the elbow). The period of assessment is for five years. This is a provisional assessment. The question of his weekly entitlement to disablement benefit is hereby referred to the Department for determination, with the proviso that if there is any dispute the case will be returned to this panel for resolution.

Comments / Recommendations

The small sample makes it difficult to make an objective judgment in these cases.

Summary of Comments/Recommendation

Disability Living Allowance	The issues identified in this report remain similar to those mentioned in previous reports. In last year's report I pointed out that there continues to be concern about the number of decisions which are overturned due to further medical evidence. The Department is once more asked to consider what further steps can be taken to obtain additional medical evidence either at source from the medical profession or directly from the claimant prior to decision-making. The comments from legally qualified members illustrate the fundamental importance of having focussed and relevant medical evidence, usually in the form of GP notes and records, available to the tribunal at hearing stage.
Personal Independence Payment	The issues identified in this report remain similar to those mentioned in previous reports. In last year's report I pointed out that there continues to be concern about the number of decisions which are overturned due to further medical evidence. The Department is once more asked to consider what further steps can be taken to obtain additional medical evidence either at source from the medical profession or directly from the claimant prior to decision-making. The comments from legally qualified members illustrate the fundamental importance of having focussed and relevant medical evidence, usually in the form of GP notes and records, available to the tribunal at hearing stage.
Attendance Allowance	The issues identified in this report remain similar to those mentioned in previous reports. In last year's report I pointed out that there continues to be concern about the number of decisions which are overturned due to further medical evidence. The Department is once more asked to consider what further steps can be taken to obtain additional medical evidence either at source from the medical profession or directly from the claimant prior to decision-making.
Employment and Support Allowance	The issues identified in this report remain similar to those mentioned in previous reports. In last year's report I pointed out that there continues to be concern about the number of decisions which are overturned due to further medical evidence. The Department is once more asked to consider what further steps can be taken to obtain additional medical evidence either

	at source from the medical profession or directly from the claimant prior to decision-making. The comments from legally qualified members demonstrate that further medical evidence produced at hearing often greatly assists the tribunal in reaching a decision.
Income Support	Although there has been a decrease in standards the figures should be treated with some caution given the small numbers involved. The issues mentioned may be capable of resolution with appropriate training.
Job Seekers Allowance	Although I am pleased to note the slight improvement the figures should be treated with caution given the small numbers involved. It is hoped that the issues identified in the incorrect case (including the poor quality of the submission) can be addressed with appropriate training.
Universal Credit	The comments made by legally qualified members relating to Universal Credit appeals involving a work capability element demonstrate that the provision of focussed and relevant medical evidence at hearing can greatly assist the tribunal in reaching a decision. As with PIP, DLA and AA appeals the Department should consider obtaining more detailed medical evidence **prior** *to* decision. The issues identified in the derivative right to reside incorrectly made decision can be addressed with appropriate training.
Other	The small sample makes it difficult to make an objective judgement in these cases.

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 the 'ALL' category refers to benefits where a complete census was taken and those sampled. The minimum sample size for reliable inferences to be made with regard to sampled benefits has been taken as 30.

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

Benefit	Percentage Incorrectness in the Initial Decision	Confidence Interval (±%)
Attendance Allowance	0.0	0.0
Disability Living Allowance	7.0	6.0
Employment and Support Allowance	2.5	2.7
Jobseekers Allowance	5.9	9.9
Personal Independence Payment	4.0	1.9
ALL[1]	3.5	1.2

[1] Note ALL refers to both benefits that were sampled and those that had a complete census taken
*Less than 30 Sampled/ Monitored

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 this period is between 2.3% and 4.7%, i.e. 3.5% ± 1.2%.

Appendix 1 - Inferences and Sampling Error

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 1.0% and 13.0%, i.e. 7.0% ± 6.0%.

The remaining benefits can be analysed in the same manner.

Appendix 2 - Benefit Appeal Profiles

This appendix draws together the information in the body of the report to produce a pro forma for each of the main benefits. Benefits with less than 30 cases monitored will be marked with *.

All Benefits	
Number of Cases Registered	**10877**
Number of Cases monitored	**832**
Number of Initial Incorrect Decisions	**29**
Percentage Incorrect	**3.5%**
Confidence Interval	**1.2%**
Total Number of Reasons	**42**
Main reason for incorrect initial decision: The decision of the office was based on insufficient facts or evidence due to inadequate investigation of the claim or revision (F1) – 27.7% of all reasons.	

Attendance Allowance	
Number of Cases Registered	**100**
Number of Cases monitored	**42**
Number of Initial Incorrect Decisions	**0**
Percentage Incorrect	**0.0%**
Confidence Interval	**0.0%**
Total Number of Reasons	**0**
Main reason for incorrect initial decision: No Incorrect Decisions Recorded	

Disability Living Allowance	
Number of Cases Registered	**331**
Number of Cases monitored	**57**
Number of Initial Incorrect Decisions	**4**
Percentage Incorrect	**7.0%**
Confidence Interval	**6.0%**
Total Number of Reasons	**6**
Main reason for incorrect initial decision: The officer failed to identify/resolve an obvious conflict in the evidence (F7). Identified in 2 of the 4 incorrect cases and accounts for 33.3% of all reasons.	

Personal Independence Payment	
Number of Cases Registered	**8574**
Number of Cases monitored	**402**
Number of Initial Incorrect Decisions	**16**
Percentage Incorrect	**4.0%**
Confidence Interval	**1.9%**
Total Number of Reasons	**26**
Main reason for incorrect initial decision: The officer disregarded relevant evidence (F6). Identified in 8 of the 16 incorrect cases and accounts for 30.8% of all reasons.	

Employment and Support Allowance	
Number of Cases Registered	**1455**
Number of Cases monitored	**120**
Number of Initial Incorrect Decisions	**3**
Percentage Incorrect	**2.5%**
Confidence Interval	**2.7%**
Total Number of Reasons	**3**
Main reason for incorrect initial decision: The decision was based on a misinterpretation or misunderstanding of the evidence available to the officer (F4). Identified in 2 of the 3 incorrect cases and accounts for 66.7% of all reasons.	

Jobseekers Allowance	
Number of Cases Registered	**75**
Number of Cases monitored	**17**
Number of Initial Incorrect Decisions	**1**
Percentage Incorrect	**5.9%**
Confidence Interval	**9.9%**
Total Number of Reasons	**1**
Main reason for incorrect initial decision: Insufficient facts/evidence due to inadequate investigation of the claim or revision (F1). This was the sole reason identified in the incorrect case.	

Appendix 3 - Questionnaire

APPEAL REPORT FORM **YEAR XX**

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 <u>not</u> altered by the Appeal Tribunal, please indicate if that decision was made correctly.

Yes ☐ No ☐

If the answer is No, please explain.

Mon 1	
Section 3	If the decision of the Departmental Officer was altered by the Appeal Tribunal, please provide details of the summary decision.

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

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

FA ☐ the tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable

FB ☐ the tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was;

- ☐ in the form of an expert report handed in;
- ☐ an expert report obtained by the tribunal;
- ☐ given by a witness;
- ☐ given by the appellant

F1 ☐ the decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision

F2 ☐ the officer failed to request adequate medical guidance or expert reports relevant to the decision i.e. medical reports from a consultant/details of property interests/ details of business accounts/ adequate valuations (Article 12(2) of the 1998 Order)

F3 ☐ the officer failed to identify a finding/s which needed to be made on the basis of the rules of entitlement relevant to the claim or revision

F4 ☐ the decision was based on a misinterpretation/misunderstanding of the evidence available to the officer

F5 ☐ the officer took into account wholly unreliable evidence

F6 ☐ the officer disregarded relevant evidence

F7 ☐ the officer failed to identify/resolve an obvious conflict in the evidence

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

F9 ☐ The officer made errors of calculation

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

There was a legal error in the decision because:

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

L2 ☐ the officer misinterpreted the legal rules relevant to the claim

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

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

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

Appendix 3 - Questionnaire

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.

---------- Time Taken to Complete:

Legal member
Date: