

PRESIDENT'S REPORT

**REPORT BY THE PRESIDENT OF APPEAL
TRIBUNALS ON THE STANDARDS OF
DECISION MAKING BY THE
DEPARTMENT FOR SOCIAL
DEVELOPMENT**

**PERIOD 6 APRIL 2012 TO
5 APRIL 2013**

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President's Foreword

This is my thirteenth and final report on the standard of decision making by the department. There have been many benefit changes during this period and appeal intake has fluctuated from around 19,000 appeals received in 2000/01, decreasing gradually to an average of 12,000 appeals yearly up until this year when due to the introduction of Employment and Support Allowance the appeal intake rose to almost 22,000 appeals.

The standard of decision making has also fluctuated substantially during this time. In the first five reporting years the standard was acceptable at around 5%. Overpayment appeals were specifically targeted in the next three reports as an area where improvement was necessary. Due in part to this, the standard of decision making detected deteriorated to an average of 13%. I have continued to monitor and make recommendations for improvement in this area and I am pleased to note that, while there remain difficulties in both Pension Credits and Carer's Allowance, in the main my recommendations appear to have been acted upon as there have been noted improvements in both the Income Support and Jobseekers categories. In addition the overall standard of decision making has improved considerably to a very acceptable 2.6% this year. However, as the overpayment of benefit can run into many thousands of pounds and can often cover a period of years with a series of decisions occurring, the attendance of presenting officers in this complex decision area would be of great assistance to both the tribunal and the appellant.

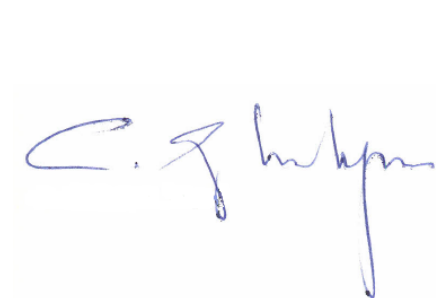
Child Maintenance is another complex decision making area and one in which a substantial improvement in decision making has been noted. In the last three years there have been no incorrectly made decisions detected.

In many of my reports I have recommended in particular that decision makers with the power to settle appeals should be in attendance at hearings and that in some DLA cases medical records or additional medical reports should be obtained by the department prior to making the decision. This could substantially reduce the need for a hearing in the first instance and at hearing it would be less stressful for appellants if

the department's officer can make a new decision where appropriate. This has not been accepted by the department despite the statistical evidence year on year that some 30% of appeals are overturned by tribunals due to additional medical evidence and the availability of medical records.

The appeal activity in Employment and Support Allowance increased significantly in this report period as the department's programme of migrating all claimants receiving Incapacity Benefit onto this new benefit, got underway. Over five hundred of these appeals were selected for monitoring and although the standard of decision making was acceptable, there was a high success rate in this area also. Again the main factor was the production of additional medical evidence at the hearing. I understand that the department has introduced a policy of contacting all appellants in this benefit area to discuss their appeal and to seek additional evidence before carrying out a complete review of the decision. It is hoped that this will improve decision making and will sift out those cases where an award of benefit can be made, thus reducing the numbers having to attend an appeal hearing for resolution of their claim.

Compensation Recovery continues to be an area of concern and one in which I have made recommendations year on year. There is little improvement and the same issues around the interpretation of evidence continue to arise.

A handwritten signature in blue ink, appearing to read 'C. G. MacLynn', is positioned above the printed name.

C G MacLynn
President Appeal Tribunals

Chapter 1

Methodology

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

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

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

A questionnaire was completed by the Legal Member on each case selected for monitoring. The questionnaire identified the case details so that the case could be tracked through the system and any queries addressed. The President prepared the questionnaire following consultation with the then Full-Time Legal Member of the Appeal Tribunal, Dr. Kenneth Mullan and a number of experienced part-time legal members. It was discussed in detail at a special meeting of tribunal members. Comments were also sought from departmental officials. A copy of the complete questionnaire can be found in Appendix 3.

The sample size required for each benefit was based on the assumption that reporting would be over a complete year.

In a number of instances, where the sample size is too small for specific benefit reporting, benefits have been grouped to enable inferences to be made with regard to all cases covered by the respective benefits. Inferences with regard to all appeals by sampled benefits are in Appendices 1 & 2.

Chapter 2

The Sample & Sample Analysis

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

Table 1:

Appeals by Category 06 April 2012 – 05 April 2013				
Category	Total registered	No. Monitored (sample size)	Initial decision incorrect	Percentage Incorrectness
Attendance Allowance*	235	97	2	2.1%
Bereavement Benefit*	11	9	0	0.0%
Carer's Allowance*	143	93	7	7.5%
Child Maintenance*	65	27	0	0.0%
Compensation Recovery*	38	32	3	9.4%
Disability Living Allowance*	5112	317	2	0.6%
Employment Support Allowance*	14314	506	16	3.2%
Incapacity Benefit*	150	56	2	3.6%
Income Support*	423	111	2	1.8%
Industrial Injuries Disablement Benefit*	175	83	1	1.2%
Jobseekers Allowance*	974	255	4	1.6%
Maternity Allowance*	1	1	0	0.0%
Pension Credit*	89	56	5	8.9%
Retirement Pension*	10	4	0	0.0%
Social Fund*	185	87	1	1.1%
TOTAL	21925	1734	45	2.6%

Note: *bold type indicates a complete census*

** Indicates that all cases selected were not available for monitoring*

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

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

Table 2 sets out the reasons for incorrectly made decisions and Table 3 explains why correctly made decisions were overturned by tribunals.

Table 2:

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

Table 3:

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

Incorrectly made Decisions

Across all cases monitored, the decision maker was judged to have made an incorrect decision in 45 cases, representing 2.6% of all cases monitored.

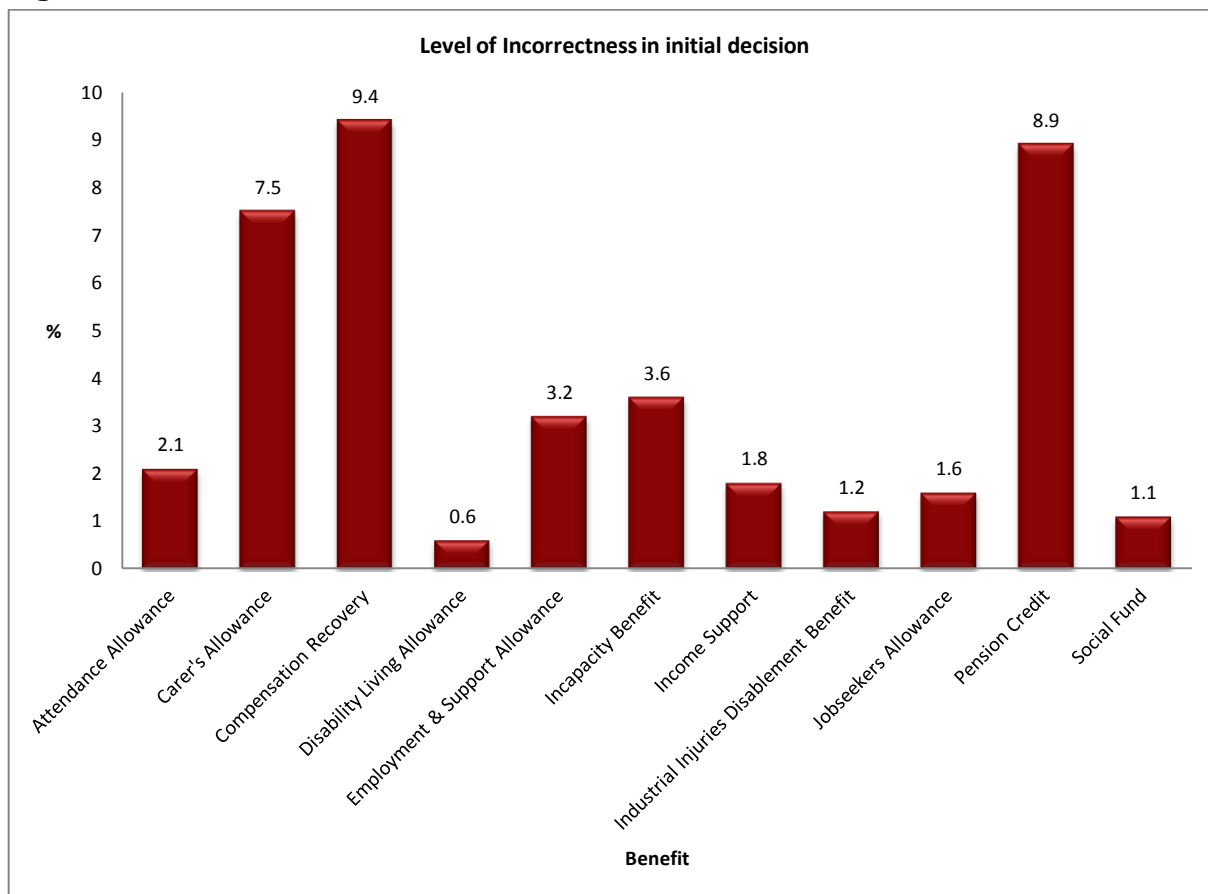
From Table 1 it is evident that there was a considerable degree of variation in the level of incorrectness of initial decisions across benefits.

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

In the sample of cases monitored for Attendance Allowance, two cases were found to be incorrectly made. In Employment and Support Allowance an error rate of 3.2% was detected. Sufficient cases were monitored from each benefit to make the sample statistically valid. We can therefore be confident in the findings.

Figure 1 shows the variation in the level of incorrectness across those benefits where a statistically valid sample was available.

Figure 1:



Employment Support Allowance accounted for 65.3% of all cases registered reflecting both the number of people claiming the benefit and also the complexity in delivery of the benefit. A further 23.3% of all appeal cases registered were for Disability Living Allowance. The level of incorrectness in the initial decisions made for these benefits was low for Disability Living Allowance but substantially higher for Employment Support Allowance. In this respect 0.6% of monitored Disability Living Allowance cases and 3.2% of Employment Support Allowance cases were assessed as having an incorrect initial decision.

Reasons for the Initial Decision being incorrectly made

When an initial decision was deemed incorrect the reason(s) for this incorrectness was recorded. In the period 06 April 2012 to 05 April 2013 there were 45 cases where the initial decision was judged incorrect. There were in total 67 reasons for incorrectness.

Figure 2 below illustrates the number of reasons given for cases where the initial decision was made incorrectly.

Figure 2:

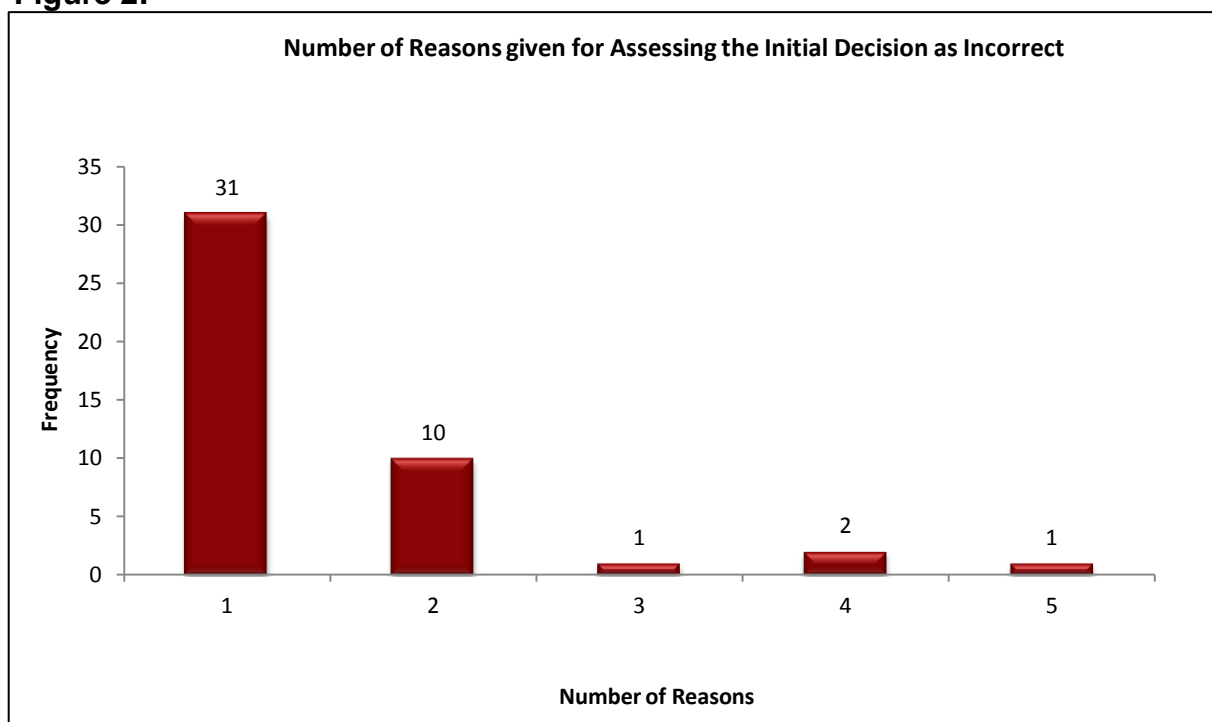


Figure 2 shows that in the vast majority of cases where the initial decision was incorrect, a single reason was given for incorrectness, 31 cases representing approximately 69% of cases where the initial decision was assessed as incorrect. There were 10 cases with two reasons for incorrectness, 1 case with three reasons, 2 cases with four reasons and 1 case identified with five reasons. This was found in Employment and Support Allowance.

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

Table 4:

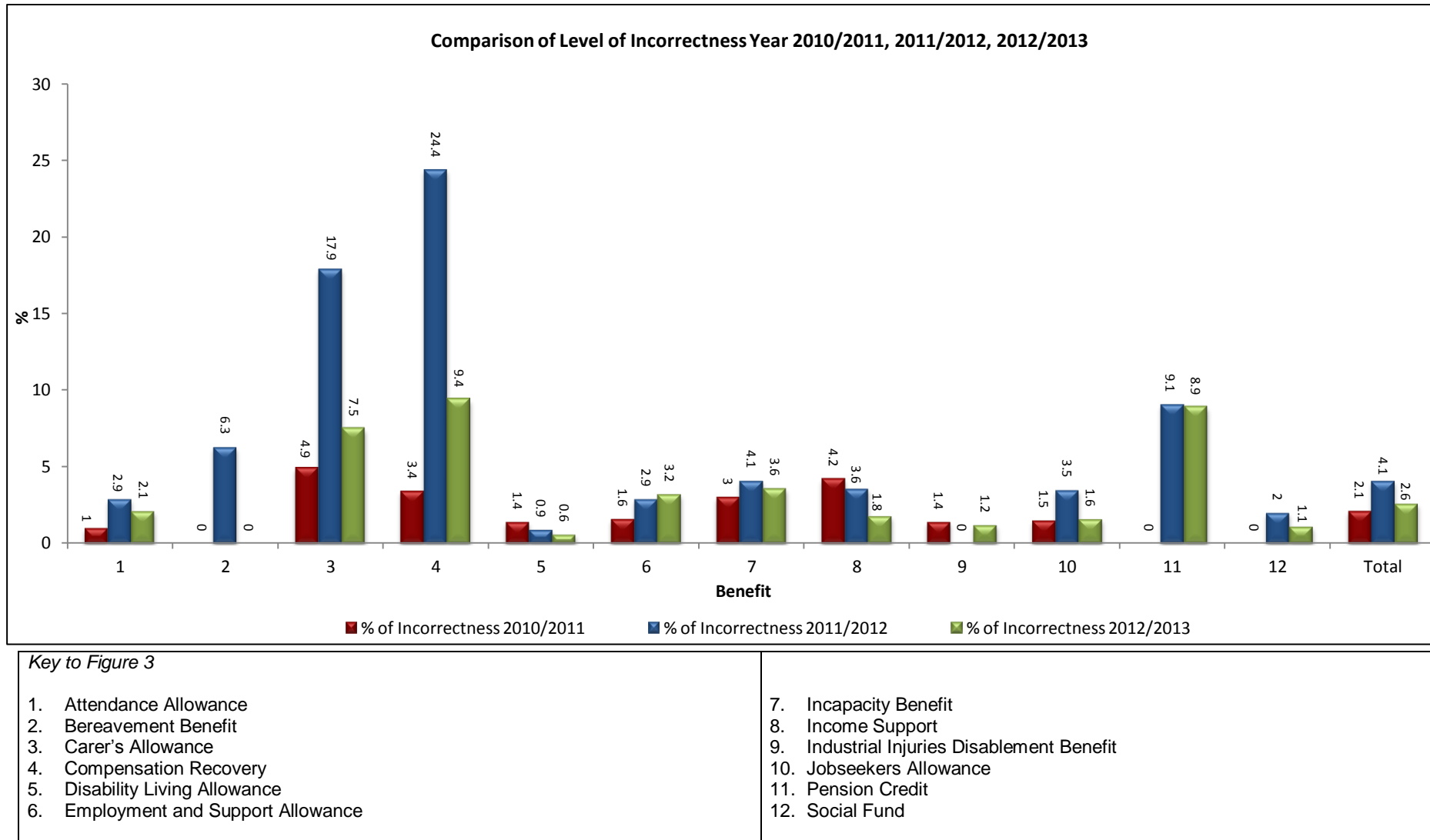
Reason for Incorrectness	Number of Occurrences	% of Total
F1	22	32.8
F2	3	4.5
F3	5	7.5
F4	7	10.4
F5	2	3.0
F6	13	19.4
F7	7	10.4
F9	2	3.0
L1	5	7.5
L2	1	1.5
TOTAL	67	100

Table 2 on Page 7 sets out in full the reasons for incorrectly made decisions

By far the most common reason for incorrectness was 'the decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision'. This reason was given 22 times, representing 32.8% of all reasons. The next most common reason given was 'the officer disregarded relevant evidence'. This reason was given 13 times representing 19.4% of all reasons.

Figure 3 compares the level of incorrectness for years 2010/2011, 2011/2012 and 2012/2013.

Figure 3:



Child Maintenance, Maternity Allowance and Retirement Pension are not included as there were no incorrectly made decisions identified in the three year period.
 The overall total figures include all benefits monitored in the three year period.

Over the three year period 2010/11, 2011/12 and the current reporting year 2012/13 the level of incorrectness identified has fluctuated from 2.1% in year one, increasing to a high of 4.1% in year two, before decreasing again to 2.6% in the current year.

In both Disability Living Allowance (DLA) and Income Support (IS) there has been a steady improvement in the standard of decision making over the three year period. DLA reduced from 1.4% in 2010/11 to 0.9% in 2011/12 and again to 0.6% in 2012/13. Income Support reduced from 4.2% in 2010/11 to 3.6% in 2011/12 and then to 1.8% in year 2012/13.

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

Attendance Allowance

The average level of incorrectness over the three year period in this category was 2% with the overall standard of decision making found to be high. In year 2010/11 the percentage of incorrectly made decisions found was 1.0%, increasing to 2.9% in 2011/12 and decreasing again to 2.1% in the current year.

Carer's Allowance

The rate recorded in 2010/11 was 4.9%, increasing to 17.9% in 2011/12 and decreasing again to 7.5% in the current year. The standard of decision making continues to be unsatisfactory.

Compensation Recovery

There is a wide fluctuation in the data over the three year period. In 2010/11 the percentage of incorrectly made decisions found was 3.4%, increasing significantly to 24.4% in 2011/12 and decreasing to 9.4% in the current year. The level of incorrectly made decisions found in 2011/12 and 2012/13 was unacceptable.

Employment and Support Allowance (ESA)

ESA is a relatively new benefit and the largest appeal volumes were recorded in this benefit area in the last two reporting years, 7,541 and 14,314 respectively. The level

of incorrectness identified has also increased over the three year period. Ranging from 1.6% in 2010/11 to 3.2% in the current year.

Incapacity Benefit

The standard of decision making in Incapacity Benefit has been steady over the three year period. In 2010/11 the level of incorrectness recorded was 3.0%, rising to 4.1% in 2011/12 and decreasing slightly to 3.6% in the current year.

Industrial Injuries Disablement Benefit

The standard of decision making in Industrial Injuries Disablement Benefit is consistently to a high standard with less than 1.5% found to be incorrectly made in years 2010/11 and 2012/13 and with no incorrectly made decisions in year 2011/12.

Jobseekers Allowance

There is a fluctuation in the standard of decision making over the three year period. In 2010/11 an error rate of 1.5% was detected. This rose to 3.5% in 2011/12, but decreased again to 1.6% in the current year. Overall the standard is satisfactory.

Pension Credit

The level of incorrectness identified in Pension Credit ranges from no incorrectly made decisions in 2010/11 to 9.1% in 2011/12, decreasing slightly to 8.9% in the current year. The standard of decision making in the last two reporting years is unsatisfactory.

Social Fund

The standard of decision making in this category continues to be high. There were no incorrectly made decisions found in 2010/11, with the level of incorrectness in 2011/12 found to be 2%, decreasing to just over 1% in 2012/13.

Correctly Made Decisions Overturned by Tribunals

Of the 1734 cases monitored, 395, representing 22.8%, 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).

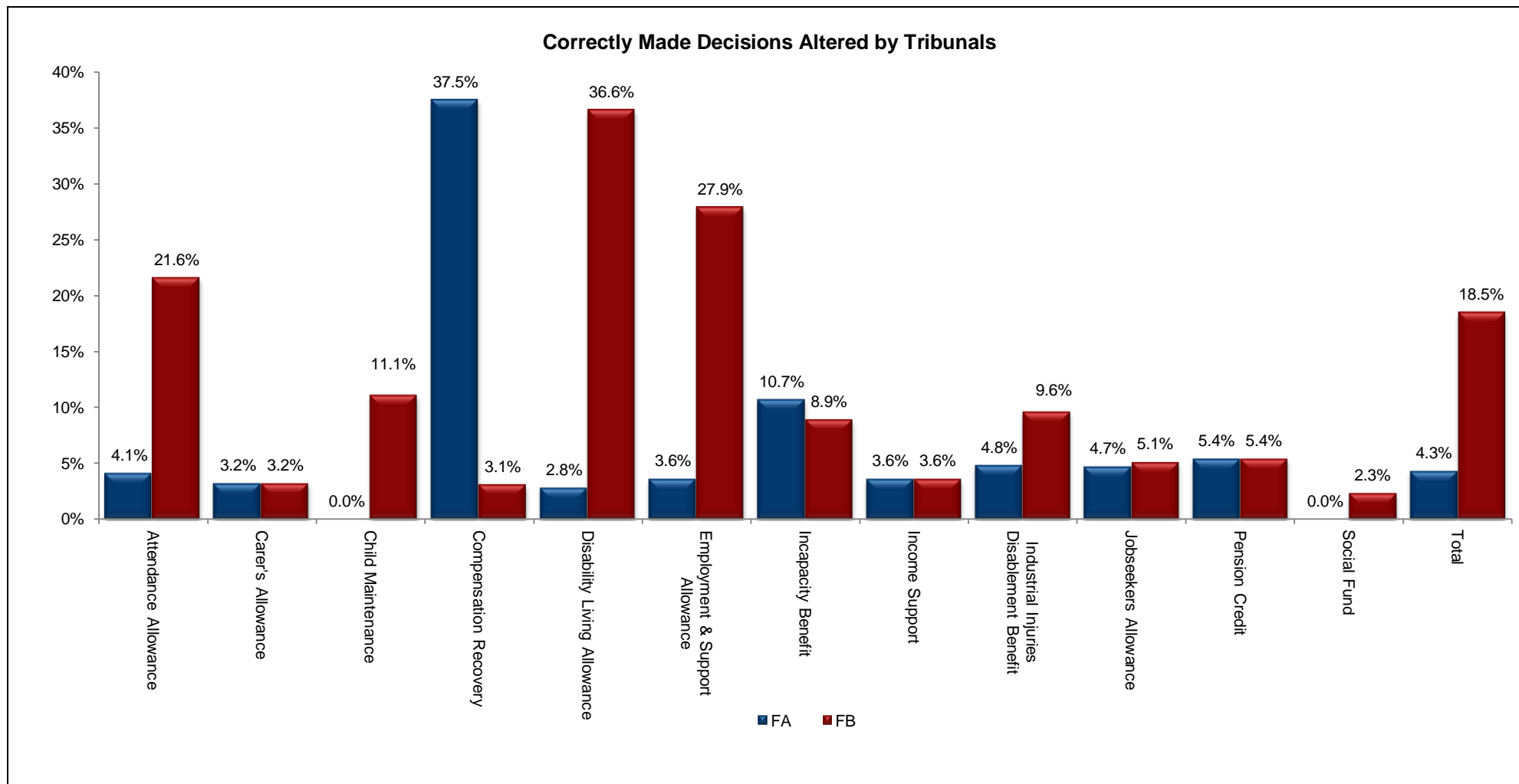
Table 5 and Figure 4 set out on a 'by benefit' basis the number and percentage of cases where the decision was judged to be correctly made, but altered by the tribunal.

Table 5:

Correctly Made Decisions Altered by Tribunals							
Benefit	Number Monitored	Total Altered	% Altered	FA	%	FB	%
Attendance Allowance	97	25	25.8	4	4.1	21	21.6
Bereavement Benefit	9	0	0.0	0	0.0	0	0.0
Carer's Allowance	93	6	6.5	3	3.2	3	3.2
Child Maintenance	27	3	11.1	0	0.0	3	11.1
Compensation Recovery	32	13	40.6	12	37.5	1	3.1
Disability Living Allowance	317	125	39.4	9	2.8	116	36.6
Employment Support Allowance	506	159	31.4	18	3.6	141	27.9
Incapacity Benefit	56	11	19.6	6	10.7	5	8.9
Income Support	111	8	7.2	4	3.6	4	3.6
Industrial Injuries Disablement Benefit	83	12	14.5	4	4.8	8	9.6
Jobseekers Allowance	255	25	9.8	12	4.7	13	5.1
Maternity Allowance	1	0	0.0	0	0.0	0	0.0
Pension Credit	56	6	10.7	3	5.4	3	5.4
Retirement Pension	4	0	0.0	0	0.0	0	0.0
Social Fund	87	2	2.3	0	0.0	2	2.3
TOTAL	1734	395	22.8	75	4.3	320	18.5

*Bold indicates a complete census

Figure 4:



Compensation Recovery had the highest percentage of cases (37.5%) overturned because the tribunal accepted evidence which the decision maker was unwilling to accept (FA). Employment and Support Allowance has by far the largest number of appeals overturned due to the availability of additional evidence at the hearing which was not available to the decision maker. This was closely followed by Disability living Allowance. (FB).

Summary and Conclusion

This report analyses Departmental decision making standards in appeals received in the Appeals Service between 6 April 2012 and 5 April 2013. There were 21,925 appeals registered and 1,734 (7.9%) of the total, were monitored to assess the level of incorrectness of initial decisions made by officials of the Social Security Agency and the Child Maintenance Service.

Across all monitored cases, the level of incorrectness among initial decisions was 2.6%. There was a considerable variation in the level of incorrectness of initial decisions across benefits. No incorrect decisions were recorded for Bereavement Benefit, Child Maintenance, Maternity Allowance and Retirement Pension. At the other end of the spectrum, 9.4% of Compensation Recovery and 8.9% of Pension Credit monitored decisions were assessed as having the initial decision incorrectly made.

91% of cases where the initial decision was assessed as incorrect had either one or two reasons given for this incorrectness. The main reason recorded for the incorrectness in initial decisions was “the decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision”. This reason was given 22 times, representing 32.8% of all reasons.

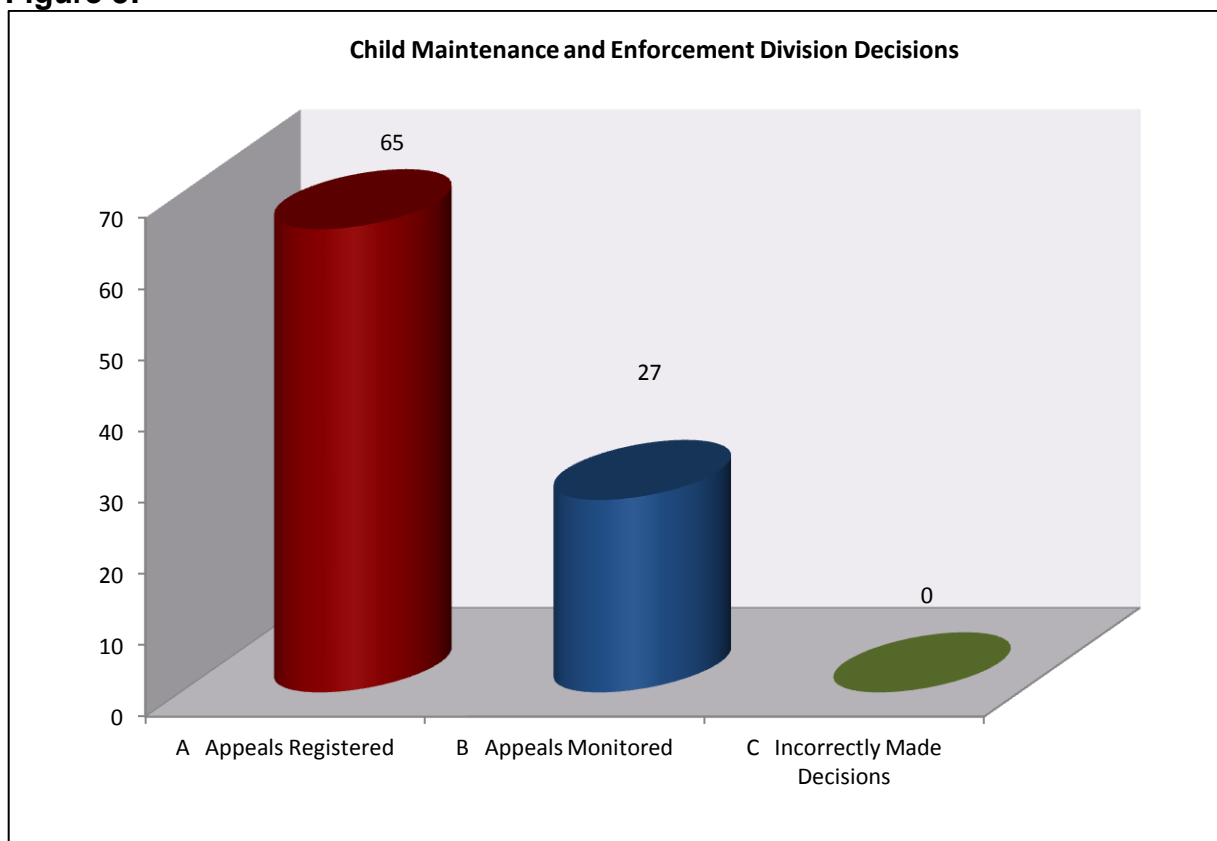
Chapter 3

Child Maintenance and Enforcement Division Decisions

41.5% of all Child Maintenance appeals were monitored. There were no incorrectly made decisions identified.

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

Figure 5:



The standard of decision making in this reporting year continues to be very good as no incorrectly made decisions were identified.

Table 6 illustrates that in three cases, representing 11.1% of those monitored, while correctly made by the decision maker, the decisions were overturned because the tribunal was given additional evidence which was not available to the officer who made the decision.

Table 6

Reasons for Overturning Correctly Made Decision		Number of Cases
FA.	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	NIL
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	3 (100%)

Comment – Child Maintenance

The overall continued improvement in standards is welcome. In the last three reporting years there have been no incorrectly made decisions identified.

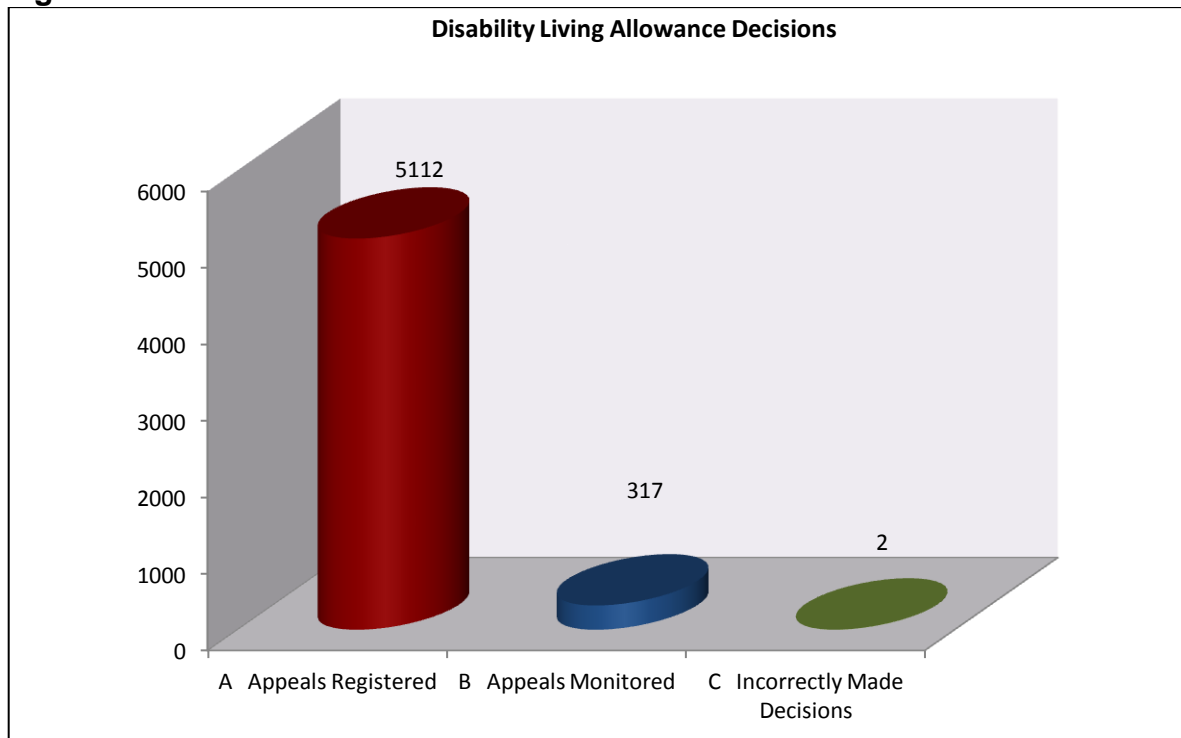
Chapter 4

Disability Living Allowance Decisions

This category is the second largest area of appeal activity in this reporting year. 6.2% of all appeals received were monitored. The level of incorrectness identified was 0.6%. The standard of decision making continues to be high.

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

Figure 6:



There were two incorrectly made decisions identified in this category. In both cases the reason for incorrectness was that the decision maker disregarded relevant information.

In the first case the appellant's claim for both the care and mobility components was disallowed; the tribunal awarded low rate mobility. The legal member commented

that the decision maker did not take into account supporting evidence from the appellant's General Practitioner (GP) which stated the extent of the illness and that the appellant needs help and encouragement with all aspects of daily living.

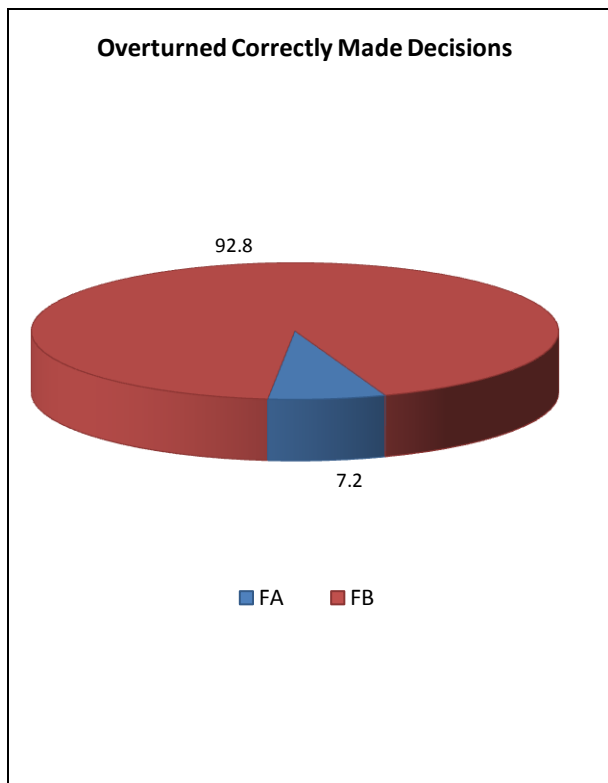
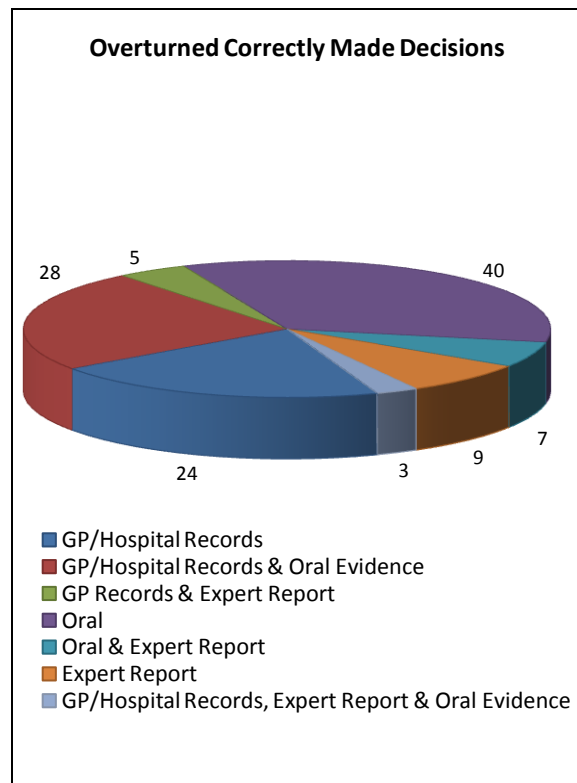
In the remaining case it was accepted by the decision maker that the appellant had significant problems as he had two broken wrists. The claim was disallowed as the decision maker decided that the appellant's condition would not continue for a period of six months from the date of claim. The tribunal found that the decision maker disregarded a report from the appellant's GP which stated that while the left wrist is likely to be a significant issue for the next six months to a year, the right wrist would take up to two years to completely settle.

Table 7 and Chart 1 illustrates that in a further 125 cases, representing 39.4% 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 (9 cases), or the tribunal was given additional evidence that was not available to the decision maker (116 cases).

Table 7

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.	9 (7.2%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	116 (92.8%)

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

Chart 1**Chart 2**

In 40 cases the direct evidence of the appellant or a witness was the sole reason for the decision being overturned. In a further 76 cases a combination of direct oral evidence and medical evidence by way of GP or hospital records, or a medical report from the GP or a consultant, resulted in the tribunal reaching a different decision than the decision maker. Overall, the decisions in 60 cases, representing 18.9% of cases monitored were influenced by the availability of GP records to the tribunal.

As highlighted in all previous reports, these results continue to demonstrate that relevant information is available from both the claimant and his doctor prior to making the decision on a claim.

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

Table 8

Comments made by the legal member	
1.	Additional evidence was given by the appellant and GP notes which resulted in an award of high rate mobility component. No change to existing award of lowest rate of care component which was not in contest.
2.	Additional evidence was given by the appellant in the form of a Consultant's report. The appellant was awarded high rate mobility and middle rate care for a period of 18 months. The appellant provided additional medical evidence to indicate that further surgery was necessary.
3.	Additional evidence was given by the appellant. His own evidence was supported by GP records. Accepted that due to a combination of physical and mental health problems he did have care needs.
4.	Additional evidence was given by the appellant. The decision maker correctly applied the relevant law. We had benefit of hearing from the appellant and had sight of her GP records.
5.	Additional evidence was given by the witness (mother). Mechanical but very troublesome bladder problem for 13 year old girl. Mother's evidence consistent and credible. Decision maker overlooked supportive letters from paediatrician and used online guidance to impute much greater independence to child than was the reality.
6.	Additional evidence was given by the witness in the form of medical records. High rate mobility and middle rate care awarded. GP notes and evidence of appellant's son.
7.	Additional evidence was given by the appellant. Tribunal accepted the oral evidence as to lack of confidence/ motivation regarding cooking a main meal. They accepted that it would be unreasonable to expect him to do so.
8.	Additional evidence was given in the form of a Consultant's report and medical records. Awarded high rate mobility. Based on GP records and Consultant's report and the need for a heart transplant we believe mobility is reasonable on the basis that the exertion required to walk would lead to a deterioration.
9.	Additional evidence was given in the form of a Consultant's report and medical records. The tribunal awarded high rate mobility. However, the care component was removed. The tribunal had access to GP notes and records and a report from an Examining Medical Practitioner.
10.	Additional evidence was given in the form of a Consultant's report handed in and the medical records. Appellant awarded high rate mobility for 2 years. On basis of appellant's oral evidence and additional medical evidence.
11.	Additional evidence was given in the form of a Consultant's report. Grounds to supersede accepted. Evidence showed improvement in ability to self care.
12.	Additional evidence was given in the form of GP notes and records. Tribunal accepted improvement but not to degree suggested by the decision maker. Grounds to supersede and outcome change – middle rate care awarded.
13.	Additional evidence was given by the appellant. The tribunal made an award of the lower rate of the mobility component and lowest rate of the care component. The tribunal accepted that the appellant's care and mobility needs were impacted by his dementia.

Recommendations – Disability Living Allowance

The standard of decision making continues to remain high. While there was a small percentage of decisions identified as incorrectly made, the decisions being overturned due to further medical evidence made available at hearing either by appellants or through the availability of GP records, continue to be very high. As previously recommended this issue needs to be addressed.

Attendance Allowance

As Attendance Allowance is a relatively small benefit in terms of appeal activity, 41.3% of appeals received were monitored. The level of incorrectness identified was 2.1%.

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

Figure 7:

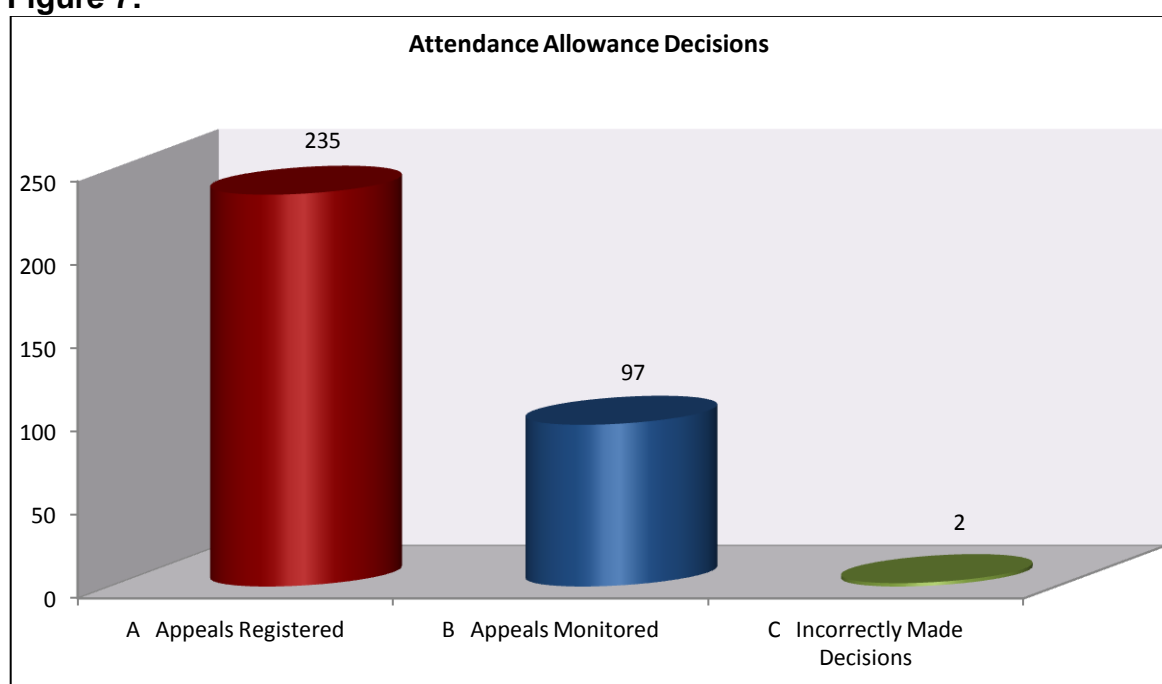


Table 9 sets out the number of occurrences against the reasons for incorrectness. Two separate reasons were recorded for incorrectness.

Table 9

Reasons for Incorrectness	F1	F6
Number of Occurrences	1 (50%)	1 (50%)

Both reasons for incorrectness revolved around how evidence was dealt with by the decision maker. Relevant evidence was disregarded or there was insufficient evidence due to inadequate investigation of the case.

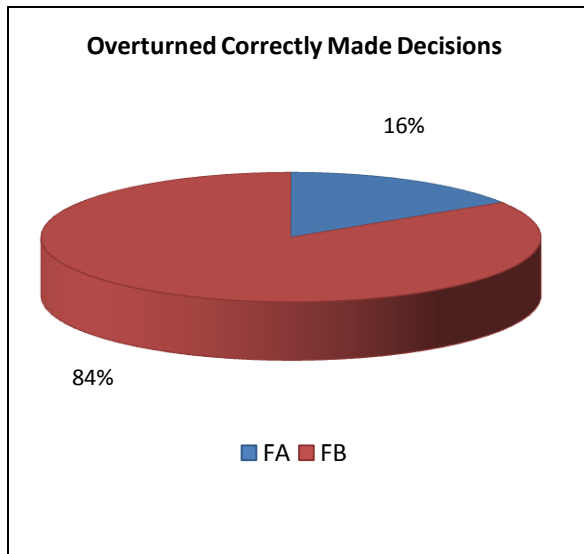
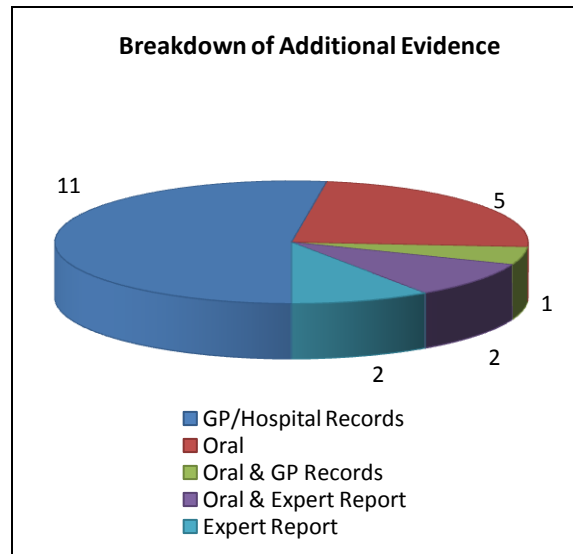
In the first case the GP report indicated the appellant would require “some help with washing, dressing and feeding” and that mobility was “limited due to general tiredness”. This arose from months of chemotherapy. The tribunal made an award and commented that the decision maker was selective about the information accepted in the GP report and had disregarded relevant evidence.

In the second case the tribunal reinstated the original award as they found that the decision maker did not have grounds to supersede the original decision awarding benefit. The tribunal found that there was no evidence of a change in the appellant’s angina and blackouts.

Table 10 and Chart 3 illustrate that a further 25 cases, representing 25.8% of those monitored, while correctly made by the decision maker, were overturned by tribunals because the tribunal either accepted evidence which the decision maker was unwilling to accept (4 cases), or the tribunal was given additional evidence which was not available to the decision maker (21 cases). Chart 4 gives a breakdown of additional evidence available to tribunals.

Table 10

Reasons for Overturning Correctly Made Decision		Number of Cases
FA.	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	4 (16%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	21 (84%)

Chart 3**Chart 4**

In 5 of the cases where additional evidence was available, the tribunal relied upon the direct oral evidence of the appellant and/or witnesses. In the remaining cases the additional evidence presented was by way of General Practitioner records, an expert report or a combination of these. In 5 of these cases the only information before the decision maker was the self assessment claim form and a follow up telephone investigation. Overall 21.6% of those monitored were overturned due to additional information.

Recommendations – Attendance Allowance

I have repeated my comments from the previous year's report as the position remains the same in this reporting year.

Reporting Year 2011-2012

Standards remain high in this benefit area. Again there were a high number of appeals overturned due to additional evidence. The comments previously made in this category and in the DLA category in connection with obtaining additional evidence apply here.

Carer's Allowance

The appeal rate in Carer's Allowance is low. To obtain a meaningful sample, 65.0% of appeals received were monitored. The level of incorrectness identified was 7.5%. This is an increase in standards of 10.4% on the previous year.

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

Figure 8:

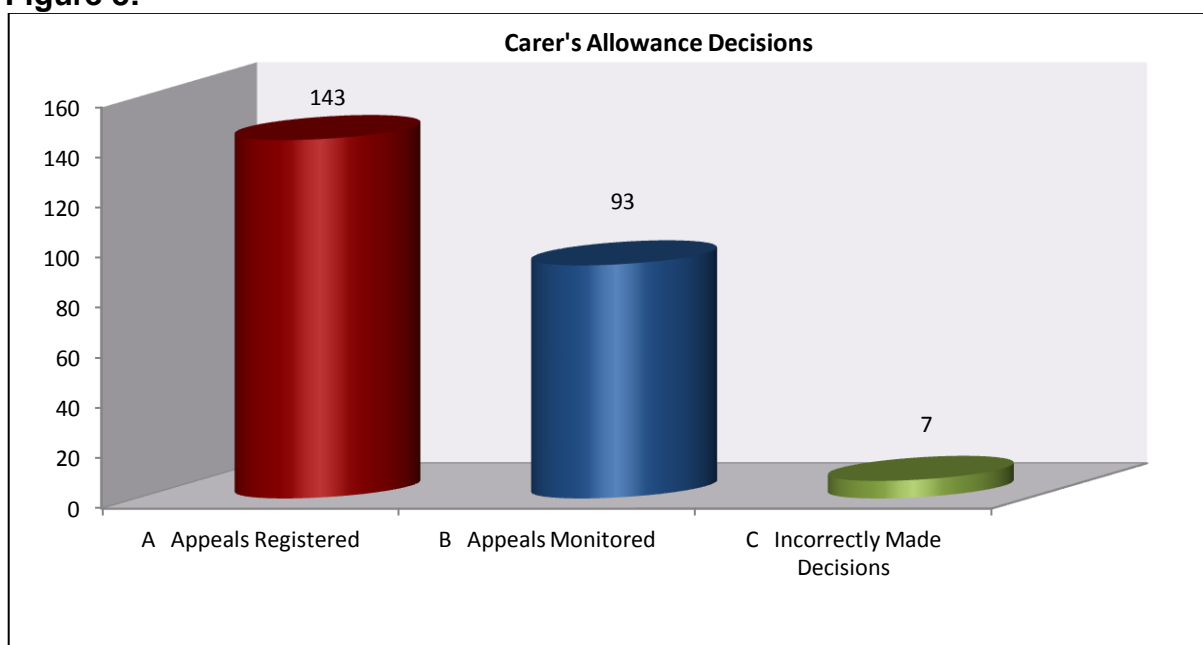


Table 11 and Graph 1 set out the number of occurrences against the reasons for incorrectness. A total of 5 separate reasons were recorded for incorrectness. There were overlapping reasons in 4 cases.

Table 11

Reasons for Incorrectness	F1	F3	F4	F6	F7
Number of Occurrences	4 (33.3%)	3 (25.0%)	2 (16.7%)	1 (8.3%)	2 (16.7)%

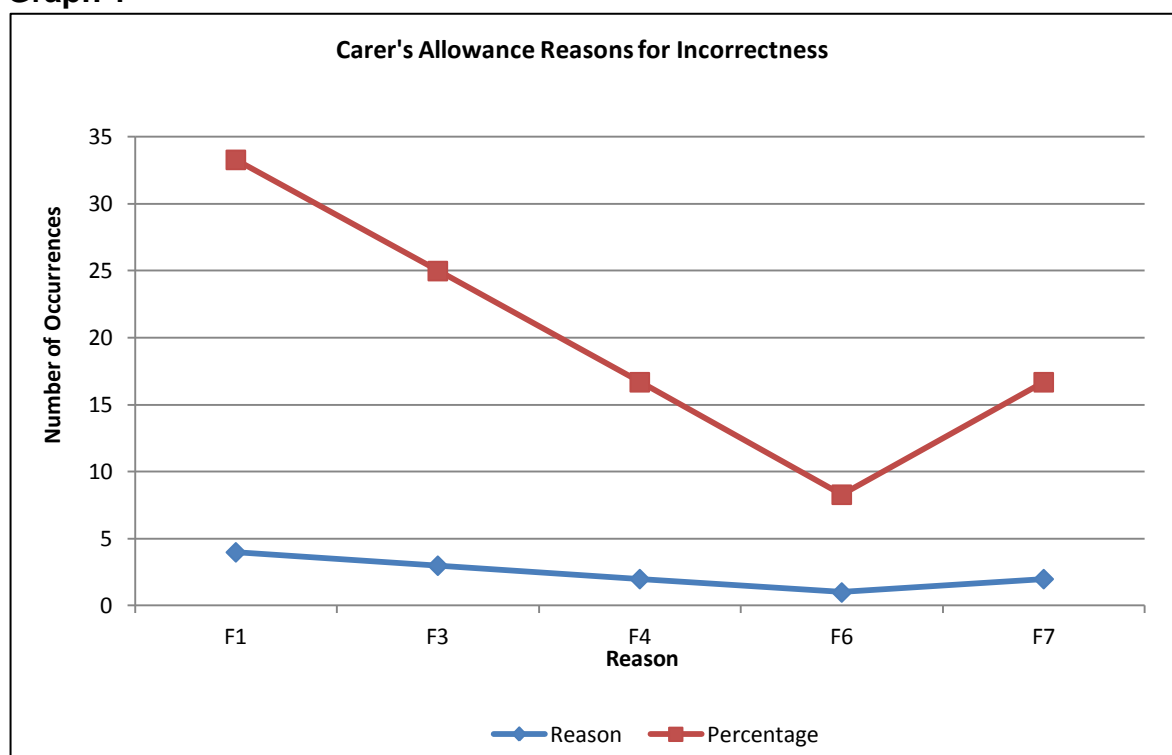
Graph 1

Table 2 on page 7 sets out in full the reasons for incorrectly made decisions

The issue that arose in all seven of the decisions identified as incorrectly made was the overpayment and recovery of benefit.

The individual cases and the issues that arose are set out below:

Case 1

The overpayment occurred on the basis that the claimant did not declare part-time earnings from a second employment. On considering the case when the appeal was received the decision maker in Carer's Allowance came across a letter from the claimant which clearly declared the additional work, the name of the employer, expected hours of work and the rate of pay. The information was not acted upon.

The decision maker in Carer's Allowance notified the decision maker in the department's Debt Centre, responsible for making the overpayment decision, of the information on file and requested the decision maker to reconsider the overpayment decision. The officer in the Debt Centre reduced the overpayment period but decided that there was still a recoverable overpayment period. The department's Presenting

Officer who attended the hearing agreed with the tribunal that there was full disclosure and that he could not support the overpayment.

Case 2

Overpayment arose on the basis that the claimant did not notify the department as soon as possible that she had taken up employment. This resulted in benefit being overpaid for 3 weeks. The legal member commented that the claim was based on insufficient investigation as full disclosure was made within days of commencing employment. The legal member also commented upon the fact that despite the claimant lodging an appeal, the department had transferred the debt to a private debt collecting company, from whom the claimant was receiving requests for repayment.

Case 3

In this case the claimant's name appeared on a departmental data match for an employer. The department requested the tax returns from the employer to check the exact details. While the claimant did work for that employer during the period under investigation, the earnings and hours worked were within the permitted limits. The decision maker used the earnings details for an entirely differently named individual and attributed these to the claimant. The tax records supplied by the department to the tribunal in support of the overpayment decision were clearly not those of the claimant. The Presenting Officer for the department confirmed that an error had been made. The tribunal decided that no overpayment had occurred. The legal member commented that the claim had been inadequately investigated and was based on a misunderstanding of the evidence. Also that the mistake by the decision maker had been carried through to the appeal writing stage without the documents relied upon being checked.

Case 4

The department became aware that the claimant had commenced full-time employment over one year ago. As a result an overpayment of benefit occurred. The claimant argued that full disclosure of commencing employment was made. In the department's submission there was a record of a telephone call from the claimant stating "ceased to care" from a specific date. An enquiry letter was issued and the

claimant again declared that for a period of one month the person being cared for was now being cared for by someone else.

However, in another section of the form there was conflicting information regarding the restart date of caring and whether the break from caring was permanent. The legal member commented that the information provided by the claimant was unclear and the department should have clarified the issue with the claimant before reinstating benefit. The claim was not investigated properly.

Case 5

In this case the tribunal agreed that there was an overpayment of benefit, however the start date of the overpayment was incorrect. The claimant's part time work was within permitted limits but the earnings exceeded the weekly limit. The overpayment start date was stated as the first day of the week when the earnings limit was exceeded rather than the date that payment was received for this employment. The tribunal reduced the amount of the overpayment. The legal member commented that the decision maker misinterpreted the evidence.

Case 6

In the initial claim to Carer's Allowance in March 2003 the claimant declared she was in receipt of Retirement Pension at the weekly rate of £46.35 and that this was due to increase from July 2003. In addition she declared that her husband for whom care was being provided was in receipt of Incapacity Benefit but was due to receive Retirement Pension from July 2003. In the claimant's evidence to the tribunal she supplied a copy of internal correspondence between Carer's Allowance and Incapacity Benefit branches where they had corresponded over the possibility of offsetting Incapacity Benefit already paid against Carer's Allowance due to be paid, as these were overlapping benefits. A response from Incapacity Benefit branch advised that the benefit claim was closed due to entitlement to Retirement Pension. The tribunal decided that there was full disclosure of all benefits in payment and that the overpayment of benefit was not recoverable. The legal member commented that the decision maker had disregarded relevant evidence from the claimant and also from another office within the department.

Case 7

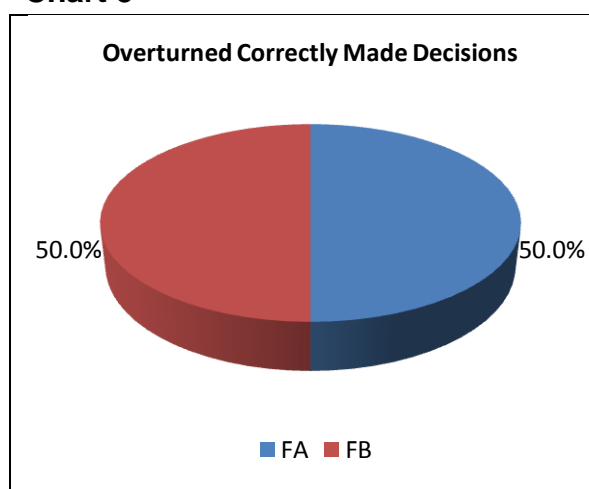
In the final case the tribunal found that while there appeared to be an overpayment of benefit, there was no evidence of a supersession of the original entitlement to benefit decision. This decision is required to be made before an overpayment of benefit decision. As the correct decision making procedure had not been followed the overpayment decision was not correctly made.

Table 12 and Chart 5 illustrate that 6 further cases, representing 6.5% of those monitored, while correctly made by the decision maker, were overturned because the tribunal accepted evidence that the decision maker was not willing to accept (3 cases) or the tribunal was given additional evidence that was not available to the decision maker (3 cases).

Table 12

Reasons for Overturning Correctly Made Decision		Number of cases
FA.	The tribunal accepted evidence which the officer was not willing to accept.	3 (50.0%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	3 (50.0%)

Chart 5



The oral evidence of the appellant was the additional evidence in all three cases.

Table 13 sets out the comments made by the legal member of the tribunal in cases where additional information was made available to the tribunal.

Table 13

Comments made by the legal member	
1.	Additional evidence was given by the appellant. No presenting officer attended. In this case, we accepted the appellant's credible account rather than adjourn for the Department to attend.
2.	Additional evidence was given by the appellant. On his evidence, it became clear that his course at College involved less than 21 hours per week. Decision was based on incorrect information given by course tutor, probably referring to anticipated syllabus demands rather than reality.

Recommendations – Carer's Allowance

I continue to have concerns around the standard of decision making in this category as the decision making in overpayments continues to be problematic. Again I strongly recommend that the Department sends a Presenting Officer in all overpayment appeals.

Incapacity Benefit

37.3% of all appeals received in this category were monitored. The level of incorrectness identified was 3.6%.

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

Figure 9

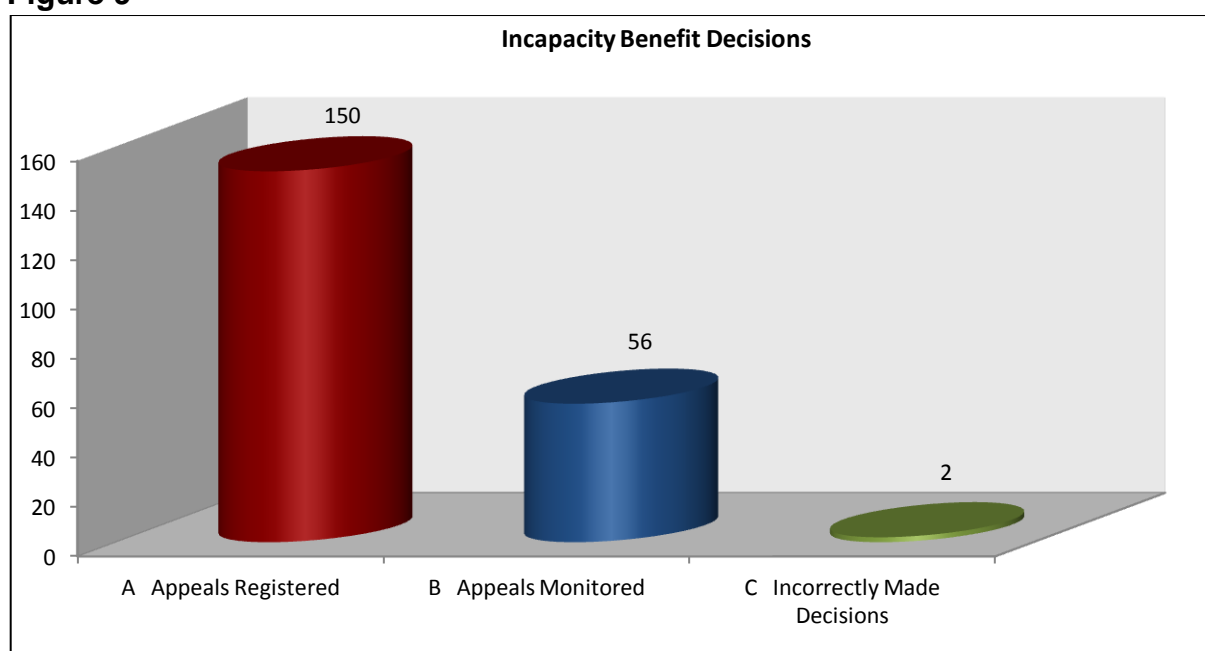


Table 14 sets out the number of occurrences against the reasons for incorrectness. Two separate reasons were recorded for incorrectness.

Table 14

Reasons for Incorrectness	F4	F6
Number of Occurrences	1 (50%)	1 (50%)

There were two incorrectly made decisions identified. The legal member commented in one case that the decision was based on a misinterpretation/ misunderstanding of the evidence available to the officer. In the second case the officer disregarded relevant evidence.

The issues that arose in both cases was the overpayment of benefit.

The legal members' commented that in both cases the department was notified by either the appellant or the employer that permitted work had progressed to full time employment and that the department did not act promptly on the information. In one case the legal member also found that the appellant was not notified of appeal rights when the change to entitlement decision was issued.

Table 15 and Chart 6 illustrate that in a further 11 cases, representing 19.6% 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 (6 cases), or the tribunal was given additional evidence that was not available to the decision maker (5 cases). Chart 8 gives a breakdown of the additional evidence available to tribunals.

Table 15

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

Chart 6

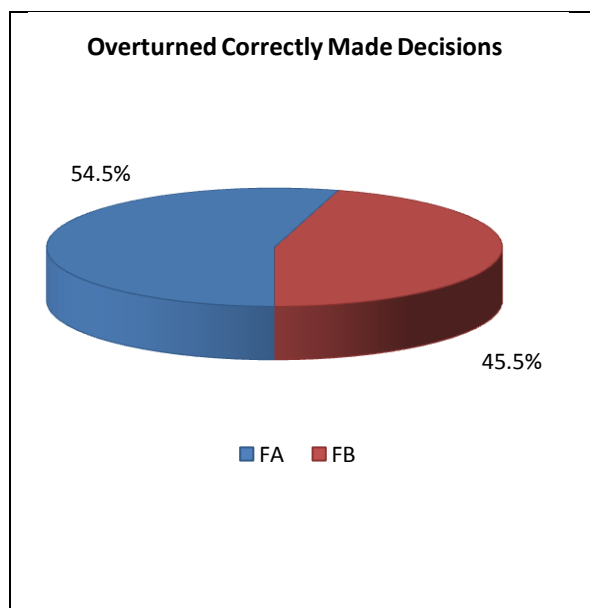
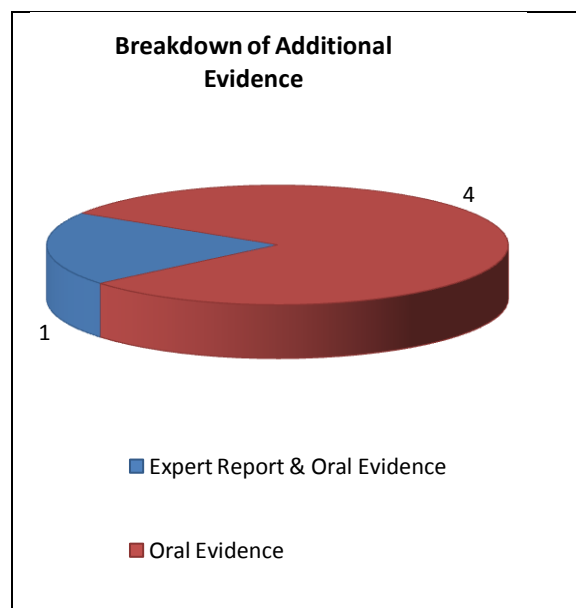


Chart 7



In the FB category 80.0% of those overturned were appeals in respect of the physical descriptors of the personal capability assessment (PCA), while 20.0% were in respect of the mental descriptors. Overall, decisions in this category were changed due to a combination of further medical evidence and oral and ocular evidence of the appellant, or a witness.

As highlighted in the previous reports, these results continue to demonstrate that relevant information is available from both the claimant and his doctor prior to making the decision on a claim.

Comment – Incapacity Benefit

Decision making in this area continues to be to a satisfactory level. This benefit has now been replaced by Employment and Support Allowance.

Employment and Support Allowance

Employment Support Allowance (ESA) is the largest area of appeal activity in this reporting year. 3.5% of all appeals received in this category were monitored. The level of incorrectness was 3.2%.

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

Figure 10

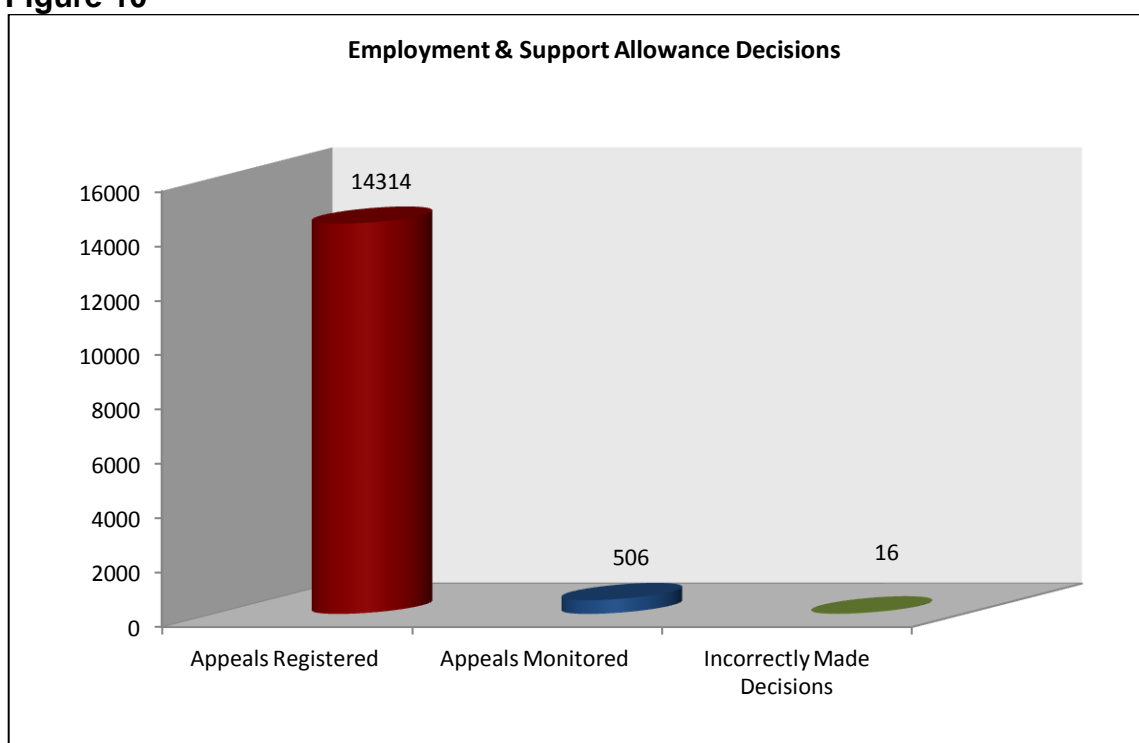
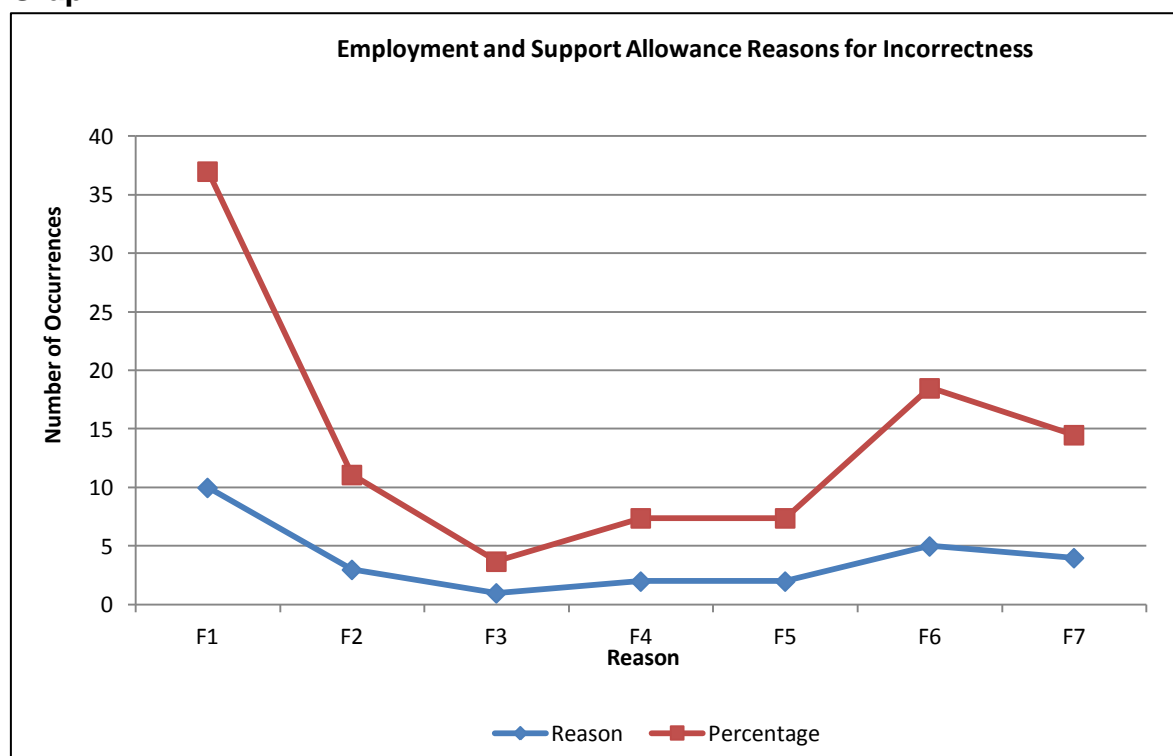


Table 16 and Graph 2 set out the number of occurrences against the reasons for incorrectness. There were seven separate reasons identified for decisions being incorrectly made and there were overlapping reasons in six cases.

Table 16

Reasons for Incorrectness	F1	F2	F3	F4	F5	F6	F7
Number of Occurrences	10 (37.0%)	3 (11.1%)	1 (3.7%)	2 (7.4%)	2 (7.4%)	5 (18.5%)	4 (14.8%)

Graph 2

Sixteen appeals were found to be incorrectly made in this category. The main issue identified in ten of the sixteen appeals was the inadequate investigation of the claim by the decision maker. Examples of these were the failure of the decision maker in obtaining additional medical evidence or guidance where there was a conflict in the evidence provided and not taking into consideration letters and medical evidence from consultants. In these cases the legal members commented that the decision maker relied almost entirely upon the Examining Healthcare Professional's report ignoring conflicting information in the ESA 50 form completed by the claimant, which detailed how their daily life was affected by their condition.

In the remaining cases issues arose around the application of Regulation 29(2)(b) of the ESA Regulations which states 'the claimant suffers from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have limited capability for work'. In one of these cases the claimant's medication indicated that there was a serious health issue and in another there was a serious heart condition that was not considered properly.

Table 17 sets out a selection of comments made by the legal member of the tribunal in the case where the decision was found to be incorrectly made.

Table 17

Comments made by the legal member	
1.	The department's Healthcare Professional (HCP) and the decision maker did not take into consideration the level of medication prescribed and the nature of the medication as well as the level of support from Clinical and Health Care Professionals. Tribunal concluded that the level of medication and psychiatric support was very significant. Appeal was allowed under Regulation 29(2)(b).
2.	Severity, intensity and the impact on function of the appellant's mental health condition was not adequately addressed.
3.	Decision maker based the decision on evidence from the HCP, who in the tribunal's view did not properly investigate appellant's condition and complaint. There were sufficient indications of a profound condition and impact on activities of daily living from information provided by appellant.
4.	The severe history here was not given adequate weight by the decision maker; two previous hip replacements by the age of 60. The decision was based on an assessment which does not take this into account.
5.	The decision maker had evidence at the work capability assessment (WCA) of bladder incontinence and frequency. Appellant is attending a Continence Clinic and is on a waiting list for surgery, we do not understand the award of 6 points.
6.	A report in the papers from the surgeon confirmed that the appellant had genuine and very restrictive mobility issues, the officer ignored this report without good excuse.
7.	Healthcare Professional's findings supported the claims made by the appellant. Her assertions were in direct conflict of the findings and complaints, HCP nor decision maker did not reconcile the obvious contradictions.
8.	The decision maker relied on the Healthcare Professional's report without reconciling it with the ESA 50 and didn't deal with the conflict in the evidence.
9.	Decision maker did not consider Regulation 29(2)(b) exceptional circumstances in making their decision, Tribunal allowed appeal.
10.	Regulation 29(2)(b) exceptional circumstances satisfied. Officer failed to identify findings which needed to be made on the basis of the rules of entitlement relevant to the claim or revision
11.	Ample evidence from GP and appellant all of which was supported by clinical findings of HCP. The Officer disregarded relevant evidence.
12.	The officer failed to identify/resolve obvious conflict in evidence between the report by the HCP and the claimant's own evidence.
13.	An appropriate investigation was not carried out by HCP nor by decision maker. It was clear from the appellant's evidence that she had a serious heart condition. The proper questions were not asked. Regulation 29(2)(b) exceptional circumstances satisfied.

14.	It was quite clear from ESA50 and appellant's history that his problems were likely to be significant. The HCP and the decision maker failed to make adequate enquiry into the appellant's problems.
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Table 18 and Chart 8 illustrate that in a further 159 cases, representing 31.4% of those monitored, while correctly made by the decision maker, were overturned because the tribunal either accepted evidence which the decision maker was unwilling to accept (18 cases), or the tribunal was given additional evidence that was not available to the decision maker (141 cases).

Chart 9 sets out the spread of additional evidence available to tribunals.

Table 18

Reasons for Overturning Correctly Made Decision		Number of Cases
FA.	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	18 (11.3%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	141 (88.7%)

Chart 8

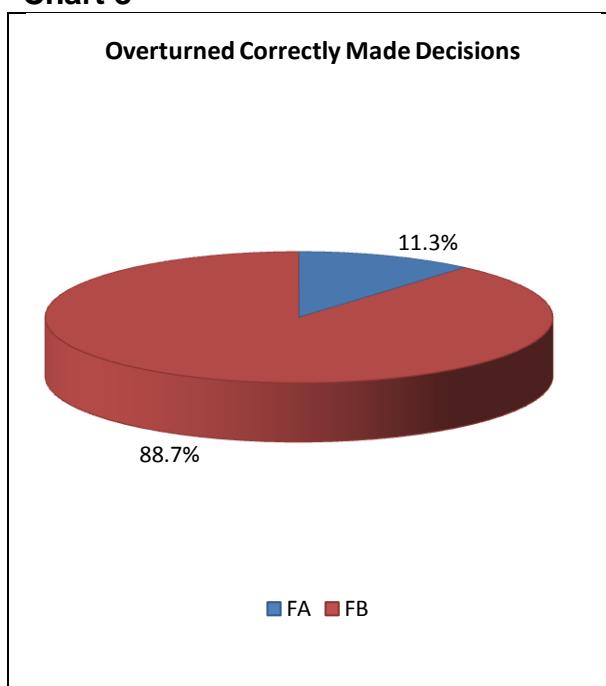
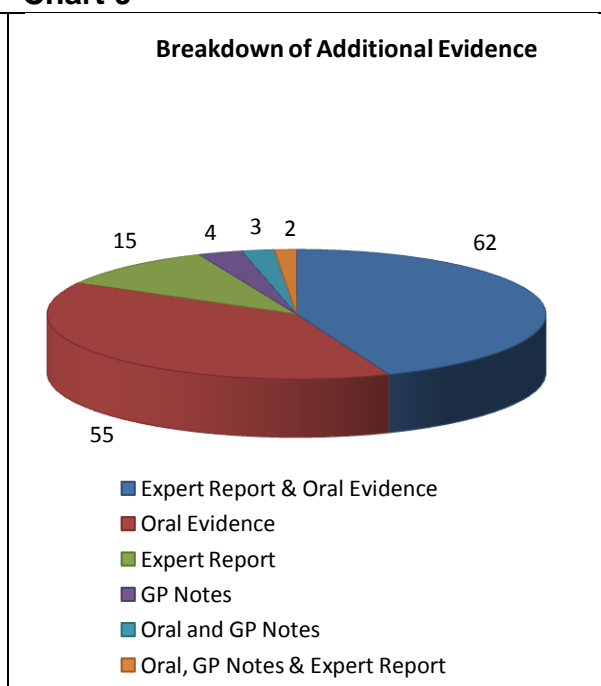


Chart 9



In the FB category 44% of those overturned were appeals in respect of the physical descriptors of the limited capability for work test (LCW), while 47% were in respect of the mental descriptors. A further 9% were a mixture of both physical and mental. Overall, decisions in this category were changed due to a combination of further medical evidence and oral and ocular evidence of the appellant, or a witness.

In 55 cases the direct evidence of the appellant or a witness was the sole reason for the decision being overturned. The provision of additional medical evidence, by way of General Practitioner (GP) notes and consultant reports, accounted for 19 cases. In a further 67 cases a combination of direct oral evidence and medical evidence by way of GP or hospital records, or a medical report from the GP or a consultant, resulted in the tribunal reaching a different decision than the decision maker. Overall, the decision in 86 cases, representing 17% of cases monitored, were influenced by the availability of medical evidence to the tribunal.

Table 19 sets out a selection of comments made by the legal member of the tribunal in cases where additional information was made available to the tribunal.

Table 19

Comments made by the legal member	
1.	Additional evidence - appellant's evidence and Consultant's report (copy specialist reports at tribunal's request) brought by appellant. Appellant drew our attention to what he perceived to be shortcomings in Healthcare Professional's examination.
2.	Additional evidence was given by the appellant and witness in the form of a consultant's report. ESA payable to the appellant. Appellant achieved sufficient points on assessment by the tribunal.
3.	Additional evidence was given by the appellant and witness. Appellant was a credible witness. Reliable evidence given re functional impairment. Supported by medical evidence, GP evidence/ neurologist report - and tribunal observations.
4.	Additional evidence was given by the appellant. Appeal allowed. Qualifies for conversion from existing award to ESA. Established medical reason for back pain. Appellant credible. Medication and history consistent with level of pain and impairment described.
5.	Additional evidence was given by the appellant. Limited capability for work, Incapacity Benefit qualifies for conversion to ESA. Continence descriptor 9(a)(i) - 15 points. Credible detailed evidence from the appellant who came alone.
6.	Additional oral evidence was given by the appellant. The appellant was found to have limited capability for work. The tribunal accepted the appellant's evidence and had access to the GP notes and records.

7.	Additional evidence was given by the witness and appellant. GP Report (ESA113) and extract from surgery records; credible evidence from appellant and his mother.
8.	Additional evidence was given in the form of a Consultant's report provided by the appellant. Appeal allowed. Regulation 29(2)(b) of the regulations - exceptional circumstances by reason of substantial risk to himself or others if found fit to work. Limited capability for work and entitled to ESA. Appellant has a long history of auditory hallucinations. He has been prescribed Quetiopine 25mg x 3 daily. He attends psychiatrist.
9.	Additional evidence was given in the form of a Consultant's report provided by the appellant. The appeal succeeded with an award of 15 points. The evidence of the claimant, the demeanour of the claimant and the evidence of the GP is persuasive.
10.	Additional evidence was given in the form of a Consultant's report, given by the appellant. An award of 9 points was made in relation to appropriateness of behaviour, which together with 6 points for completing action, results in a finding of limited capability for work. The tribunal accepted the oral evidence.
11.	Additional evidence was given in the form of a Consultant's report. Inadequate history at medical did not reflect the nature of depression. Medical examination lasted 16 minutes.

Recommendations – Employment and Support Allowance

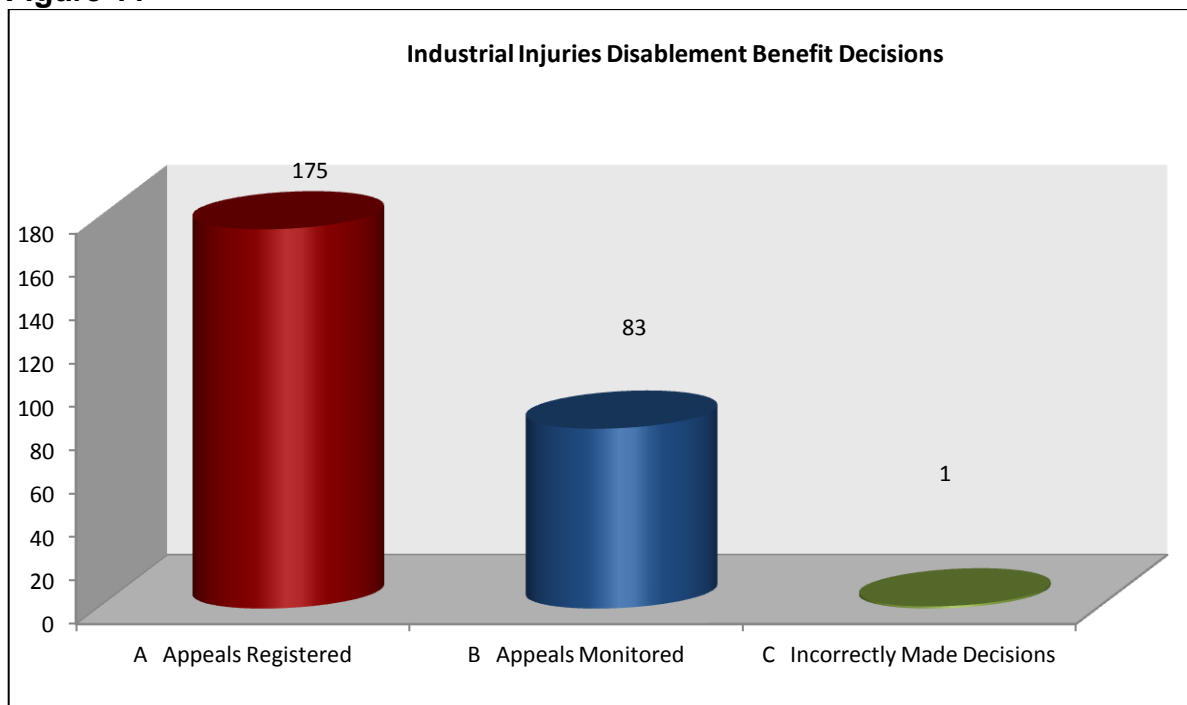
The comments made by legal members indicates that there are issues with some Healthcare Professional assessments. In addition decision makers are not routinely considering Regulation 29(2)(b) and there are issues with interpreting and dealing with evidence, in particular conflicting evidence. Training in all of these areas is recommended.

Industrial Injuries Disablement Benefit

There is a low appeal rate in this benefit. To obtain a meaningful sample, 47.4% of Industrial Injuries Disablement Benefit (IIDB) appeals received were monitored. The level of incorrectness identified was 1.2%. This is a slight decrease in standards on the previous year, where there were no incorrectly made decisions identified.

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

Figure 11



There was one incorrectly made decision identified. The circumstances of the case involved a claim for Disablement Benefit on the basis that the claimant had prescribed disease A11, known as Vibration White Finger (VWF). This disease presents with both vascular and sensorineural symptoms. The department arranged for a medical opinion. The medical advice obtained indicated that while the claimant gave a clear history suggestive of VWF affecting both index fingers, the distribution of symptoms did not fulfil the criteria of A11 based on vascular symptoms, neither were the symptoms supportive of sensorineural symptoms. The medical members of the tribunal commented that there were no clinical examination findings included in

the report by the department's medical practitioner. The medical members of the tribunal carried out their own examination, including tests on the sensorial symptoms. The members found clear evidence of A11.

The legal member commented that there was insufficient investigation of the claim and that the medical examination carried out on behalf of the department did not clearly explain the extent of the examination.

Table 20 illustrates that a further 12 cases, representing 14.5% 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 (4 cases), or the tribunal was given additional evidence that was not available to the decision maker (8 cases).

Table 20

Reasons for Overturning Correctly Made Decision		Number of Occurrences
FA.	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	4 (33.3%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	8 (66.7%)

Charts 10 and 11 illustrate why correctly made decisions were overturned, and the spread of additional evidence available to tribunals. As in other incapacity benefits, the additional evidence available to tribunals was by way of direct oral evidence by the appellant in 4 cases, additional medical reports in 1 case and a medical examination by the tribunal in 1 case. In the remaining 2 cases the tribunal was aided by a mixture of medical records and direct oral evidence by the appellants.

Chart 10

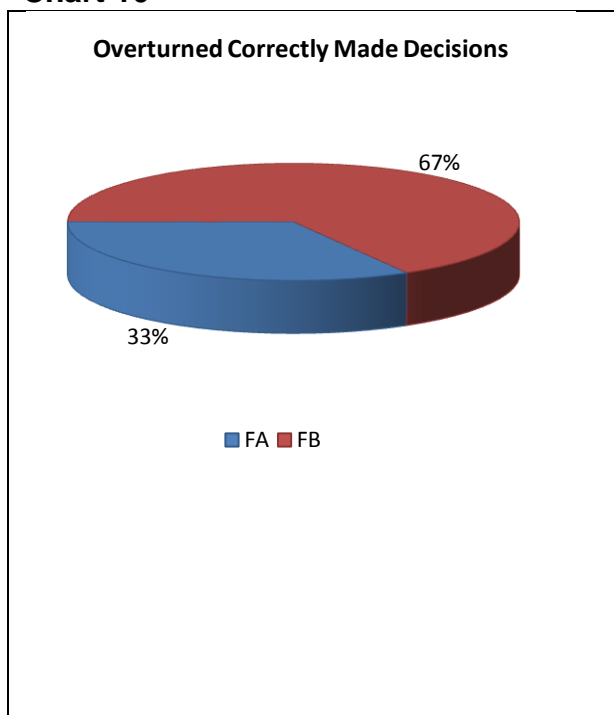


Chart 11

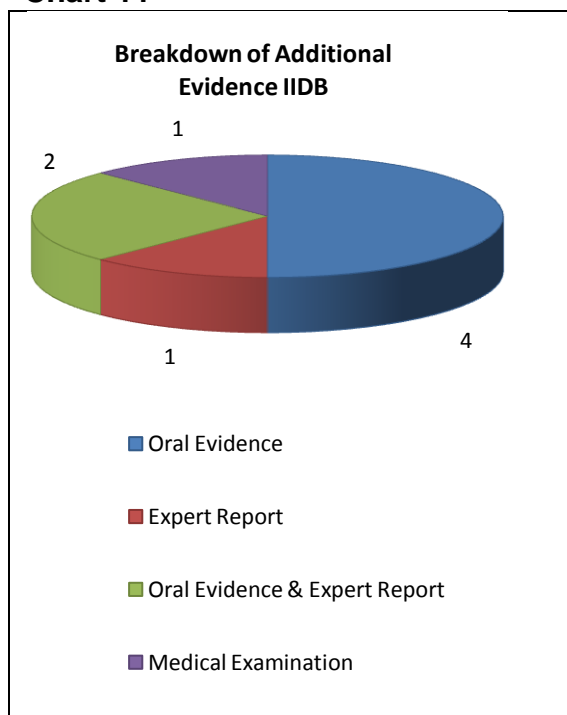


Table 21 sets out a selection of comments made by the legal members of the tribunal in cases where additional information was made available to the tribunal.

Table 21

Comments made by the legal member	
1.	Additional evidence was given by the witness and appellant in the form of a Consultant's report. Appeal allowed. Appellant is suffering from a loss of faculty as a result of prescribed disease (Acute Asthma). The decision maker did not have access to appellant's Thoracic Clinic records or direct oral evidence.
2.	Additional evidence which was not available to the officer who made the decision. We had extra evidence not seen by the decision maker. Our medical members did their own medical examination.
3.	Additional evidence was given in the form of a Consultant's report, handed in by the appellant. Award increased to 45%.
4.	Additional evidence was given by the appellant. The department failed to also consider Prescribed Disease 12 properly. Although it would not have allowed the claim it should have been considered.
5.	Assessment of disablement raised to 35% based on the additional oral evidence given by the appellant.
6.	Additional evidence was given by the appellant. Appeal allowed. The relevant industrial accident caused a loss of faculty. The loss of faculty is impaired cerebral, psychological, left upper limb, locomotion & cosmetic function. The degree of disablement is 55%.

Comment – Industrial Injuries Disablement Benefit

The standard of decision making in this area continues to be to a high standard.

Compensation Recovery

There is a relatively low appeal rate in this area. 84.2% of appeals received were monitored to obtain a meaningful sample. The level of incorrectness identified was 9.4%. This is an improvement in standards of 15.0% on the previous year's results.

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

Figure 12

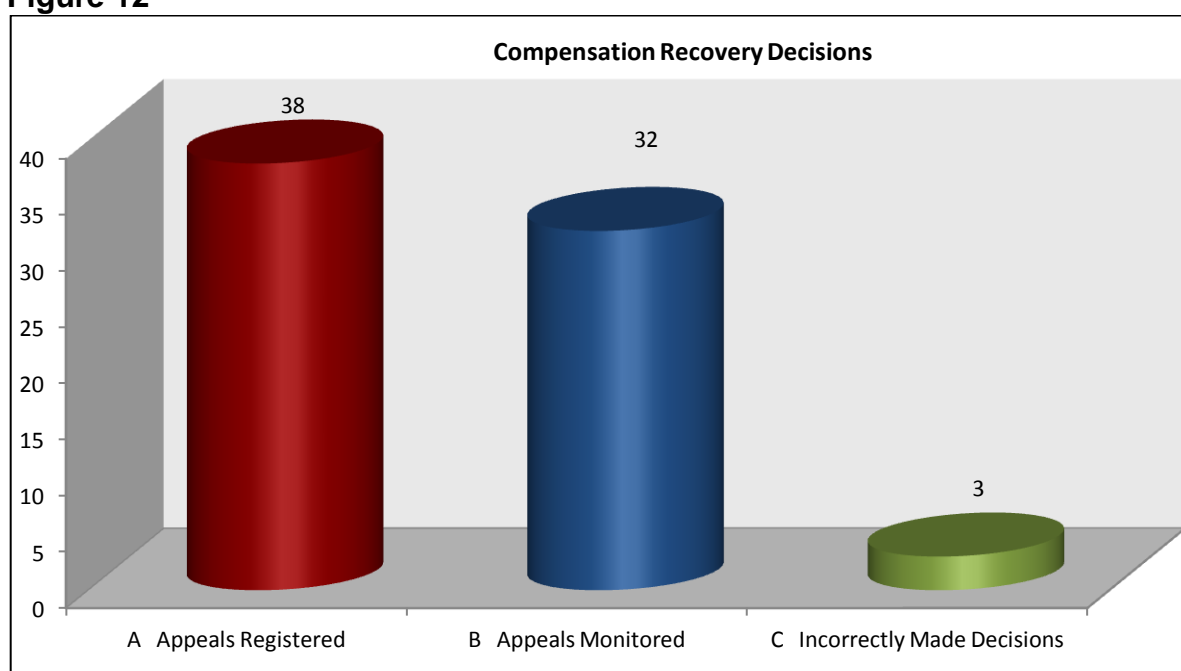


Table 22 and Graph 3 set out the number of occurrences against the reasons for incorrectness. There were 5 separate reasons identified for the decisions being incorrectly made and there were overlapping reasons in one case.

Table 22

Reasons for Incorrectness	F1	F3	F4	F6	L2
Number of Occurrences	1 (16.7%)	1 (16.7%)	2 (33.3%)	1 (16.7%)	1 (16.7%)

Graph 3

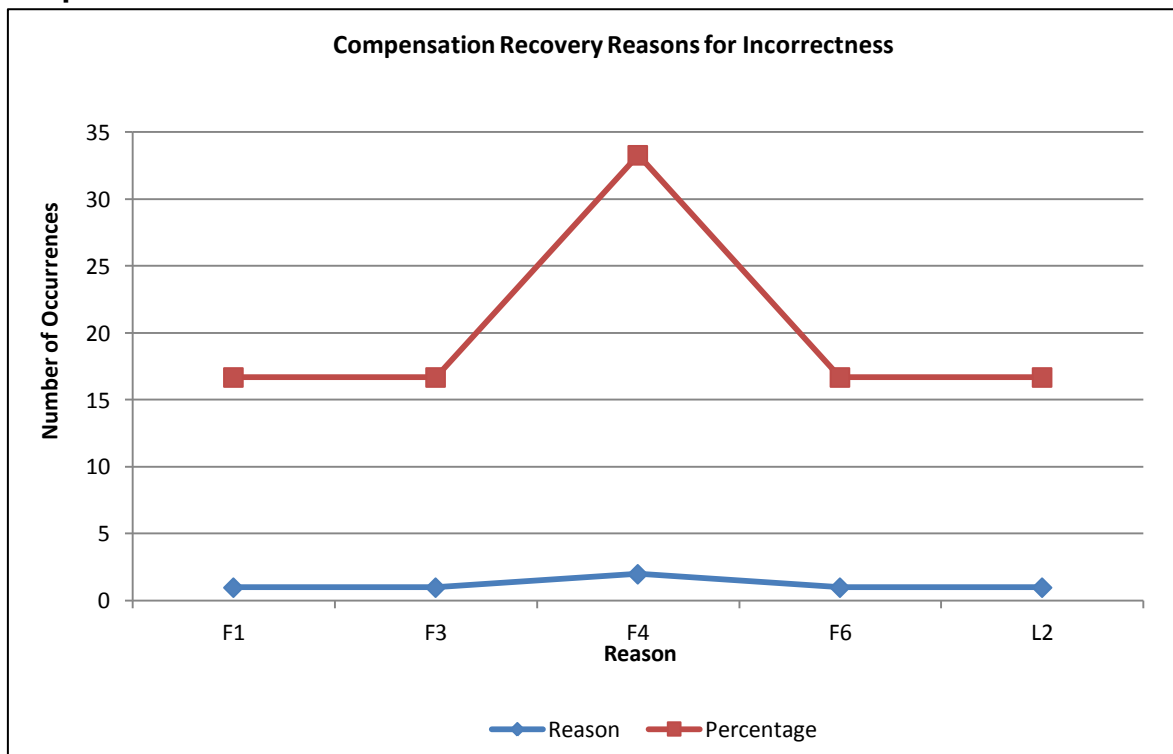


Table 23 sets out the comments made by legal members in two of the cases that were found to be incorrectly made.

Table 23

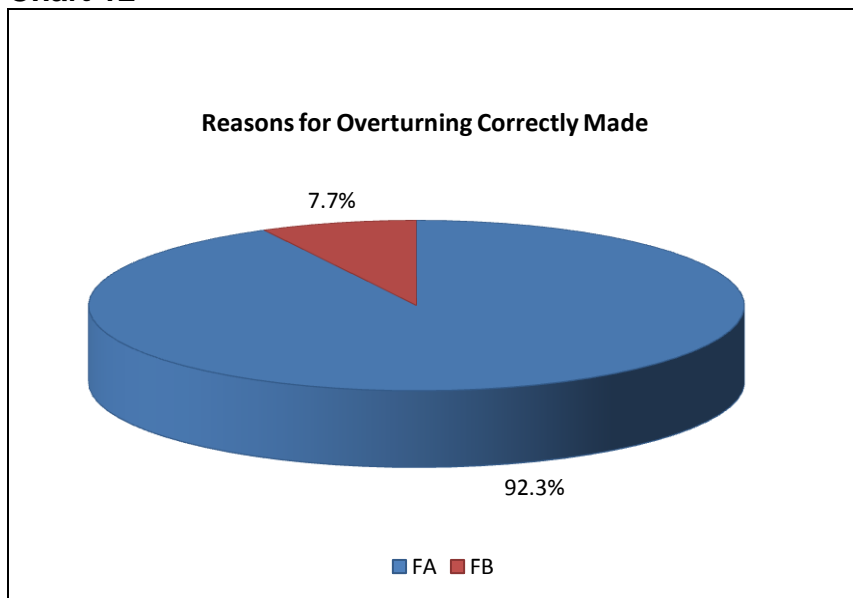
Comments made by the legal member	
1.	The decision of the officer was based on insufficient facts due to inadequate investigation of whether the benefit was paid due to effects of accident. The officer failed to identify a finding which needed to be made relevant to recoverability. The decision was based on a misinterpretation of the evidence available to the officer. The certificate of recoverable benefits is not confirmed. All JSA and ESA listed thereon was paid otherwise than in respect of the relevant accident and is not recoverable. The certificate included JSA paid to the claimant after his entitlement to ESA expired. The submission made by the department to explain this was factually erroneous and it would have been appropriate for further information to have been sought, particularly in light of the fact that benefit papers were not available. The department did not properly identify the basis on which JSA was paid to the claimant and did not properly explain why the relevant accident/ injury was an effective cause of the payment of JSA. It is not actually apparent from the papers why JSA was claimed. The department's submission appears to assume that all benefits paid following an injury are recoverable, so long as the claimant continues to complain of or be found to be suffering from a disability, regardless of the extent of actual disability. The requirement of 'effect cause' of payment of benefit appears to have been disregarded or not considered.
2.	The officer disregarded relevant evidence. Certificate of recoverable benefits not confirmed. Benefit listed and paid from the date of the medical report supplied by a consultant was paid otherwise than in respect of the relevant accident/injury and is

	not recoverable. This medical evidence indicated no further benefit entitlement from date of this examination. The claim was not closed by claimant for a further two weeks. This does not however give the department the automatic right to recover for this period.
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In addition, Table 24 and Chart 12 illustrate that in a further 13 cases, representing 40.6% of those monitored, while correctly made by the decision maker, were overturned because the tribunal accepted evidence that was available 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 (1 case).

Table 24

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 (92.3%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	1 (7.7%)

Chart 12

Recommendations – Compensation Recovery

The standard of decision making continues to cause concern. The recommendations that I have made in previous reports remain current.

Income Support

Income Support appeal activity is relatively steady when compared to other benefits. 26.2% of appeals received in this category were monitored. 1.8% of decisions overall were found to be incorrect.

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

Figure 13

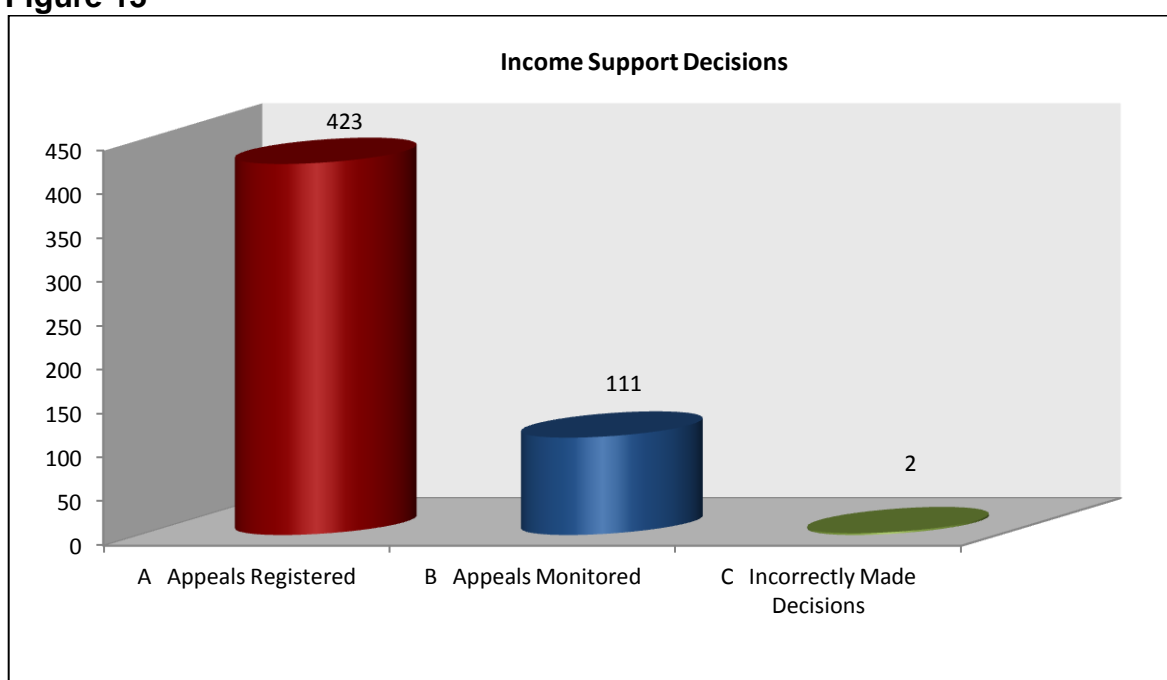


Table 25 sets out the number of occurrences against the reasons for incorrectness. There were 4 separate reasons identified for the decisions being incorrectly made. There were overlapping reasons in both cases.

Table 25

Reasons for Incorrectness	F1	F6	F7	F9
Number of Occurrences	1 (25.0%)	1 (25.0%)	1 (25.0%)	1 (25.0%)

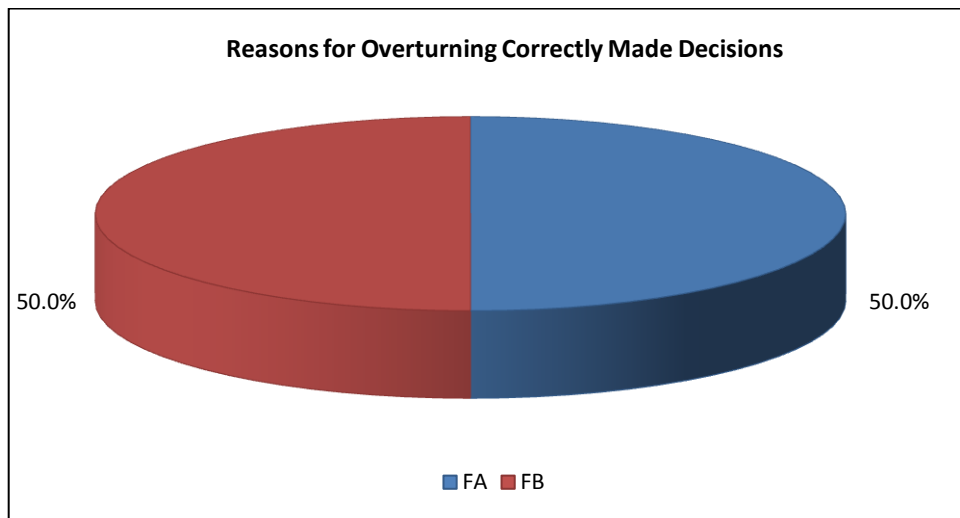
The issue that arose in both of the incorrectly made decisions identified in this category was the overpayment of benefit. In one case the legal member commented that the decision maker had not proven that the requirement by the department to notify a claimant of the changes to circumstances that a claimant must report to the department, had been issued. As a consequence the period of the overpayment was reduced significantly.

In the other case the tribunal found that the appellant did notify the department of a change of circumstances, namely the commencement of part time work. A copy of an interview record was provided in the appeal papers by the department. The legal member commented that the onus was on the department to stop or suspend the payment of benefit until details of the part time employment were clear. There was no reference within the interview record to show that the interviewer had asked the appellant any questions in connection with the hours of work the appellant would be undertaking. The tribunal decided that there was no failure to disclose.

Table 26 and Chart 13 illustrate that in a further 8 cases, representing 7.2% of those monitored, while correctly made by the decision maker, were overturned because the tribunal either accepted evidence that the decision maker was unwilling to accept (4 cases), or the claimant produced additional evidence to the tribunal that was not available to the decision maker (4 cases). In three of the appeals in these two categories the appellants attended the hearings and presented oral evidence. As a result of the oral evidence provided, the decisions were changed by the tribunal.

Table 26

Reasons for Overturning Correctly Made Decision		Number of Cases
FA.	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	4 (50.0%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	4 (50.0%)

Chart 13**Comment – Income Support**

Decision making in this category continues to be acceptable.

Jobseekers Allowance

26.2% of all Jobseekers Allowance appeals received were monitored. The level of incorrectness identified was 1.6%. This is an improvement in standards of 1.9% on the previous year.

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

Figure 14

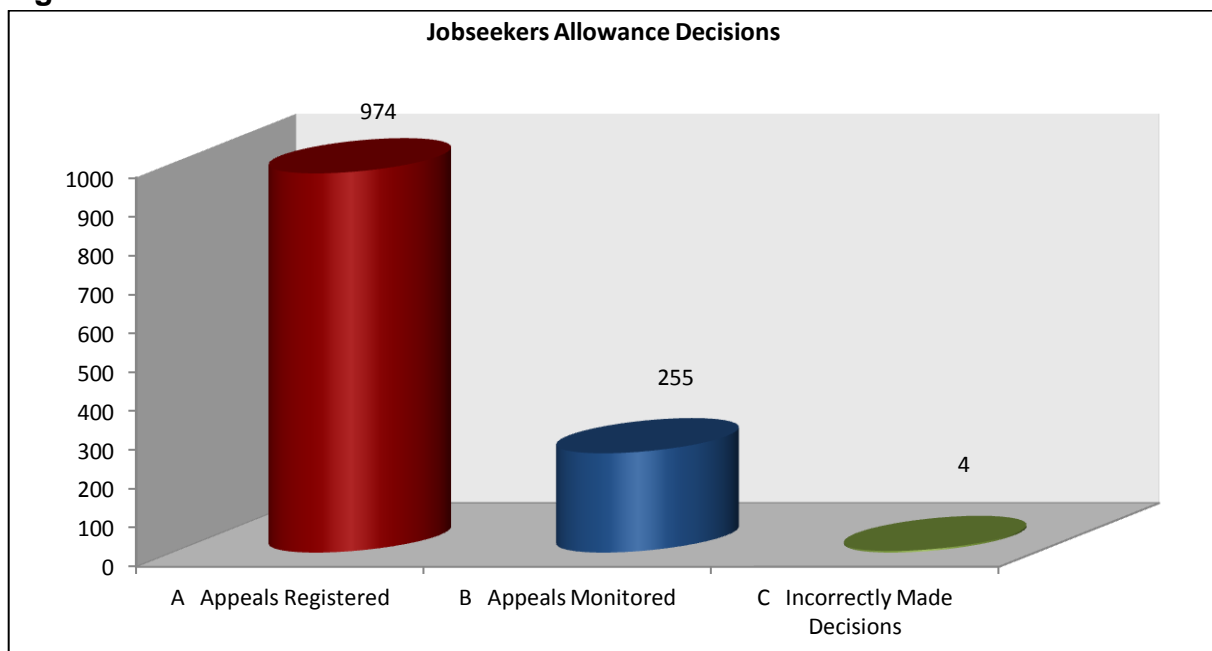


Table 27 and Graph 4 set out the number of occurrences against the reasons for incorrectness. There were 3 separate reasons identified for the decisions being incorrectly made. There were no overlapping reasons.

Table 27

Reasons for Incorrectness	F1	F6	L1
Number of Occurrences	2 (50.0%)	1 (25.0%)	1 (25.0%)

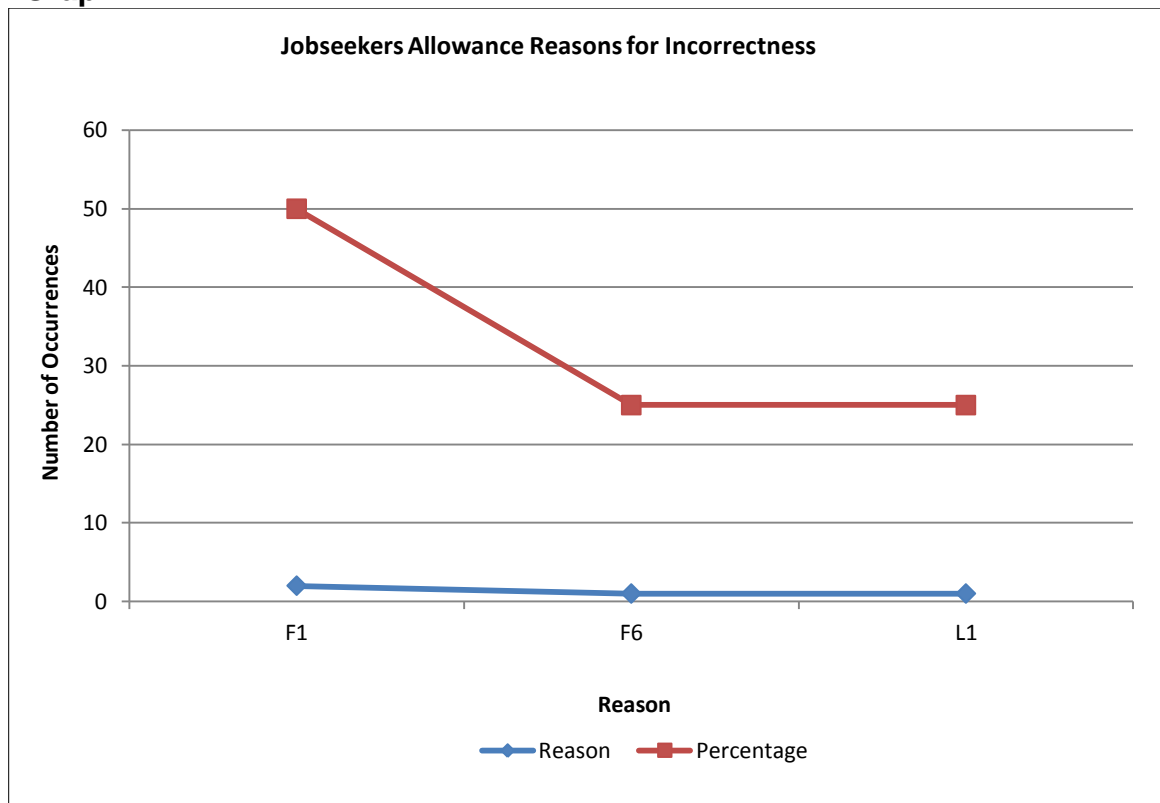
Graph 4

Table 2 on page 7 sets out in full the reasons for incorrectly made decisions

There were four incorrectly made decisions identified in this category. Three of these dealt with the issue of whether or not there was good cause for failing to sign the jobseekers register or to attend a steps to work interview. The remaining appeal was on the issue of backdating of benefit.

Good Cause

In all three of these appeals the legal member commented that there was insufficient investigation of the issues. In one case the claimant's explanation for non attendance was not rebutted either in the decision by the decision maker or in the appeal submission before the tribunal. In another case the decision maker did not consider the facts carefully. The claimant's reason for non attendance was that the bus route to the office, a distance of five miles from his home, was disrupted for a period of one week. In investigating this the decision maker obtained details in connection with a bus route that did not apply to the claimant's journey.

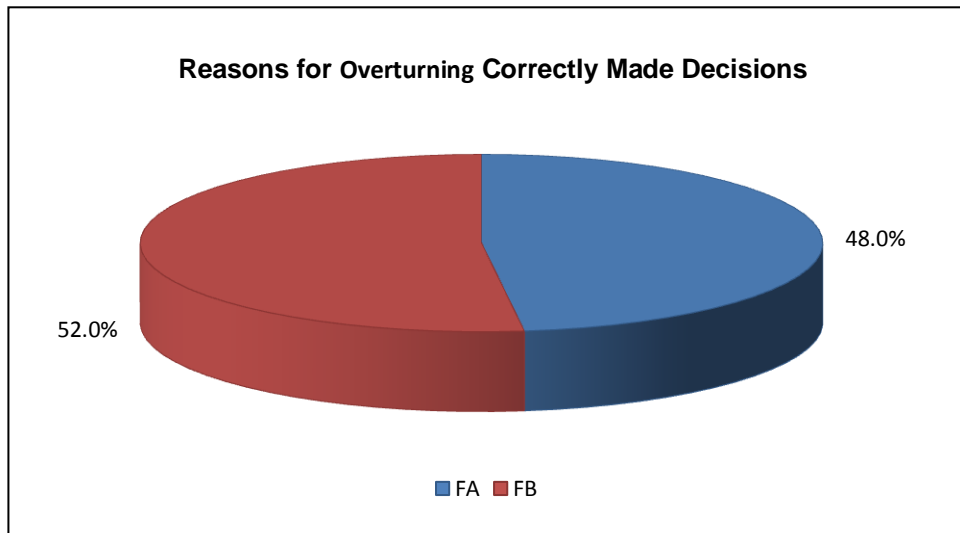
Backdating

In the appeal in this category the claimant was in receipt of Employment and Support Allowance (ESA) prior to making a claim for Jobseekers Allowance (JSA). On the face of it, it appeared that there was a gap of one month between the date the claimant was notified that entitlement to ESA was ceasing and the date the claim to JSA was made. The decision maker considered it was unreasonable to wait this long before making a claim to JSA. The claimant's grounds for backdating were that he was awaiting notification from ESA in connection with his claim before claiming JSA. He forwarded a copy of the decision from ESA to support his appeal. This letter was considered by the decision maker but the decision was not reviewed in the claimant's favour. The legal member commented that the decision maker did not investigate the issue properly. Within the body of the letter from ESA it was clear that when the original decision to disallow ESA was notified four weeks earlier, the claimant had immediately reclaimed ESA. It then took four weeks for this new claim to ESA to be decided and this was also a disallowance. The date on the letter provided was within days of the claim for JSA being made. The legal member further commented that the decision maker did not correctly apply the law as he did not consider regulations 19(6) and (7)(a–d) of the Claims and Payments regulations, which allow for backdating in this type of circumstance.

Table 28 and Chart 14 illustrates that in a further 25 cases, representing 9.8% of those monitored, while correctly made by the decision maker, were overturned because the tribunal accepted evidence that the decision maker was unwilling to accept (12 cases), or the claimant produced additional evidence to the tribunal that was not available to the decision maker (13 cases).

Table 28

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 (48.0%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	13 (52.0%)

Chart 14**Comment – Jobseekers Allowance**

Decision making in this category continues to be acceptable.

Pension Credit

62.9% of all Pension Credit appeals received were monitored. The level of incorrectness identified was 8.9%.

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

Figure 15

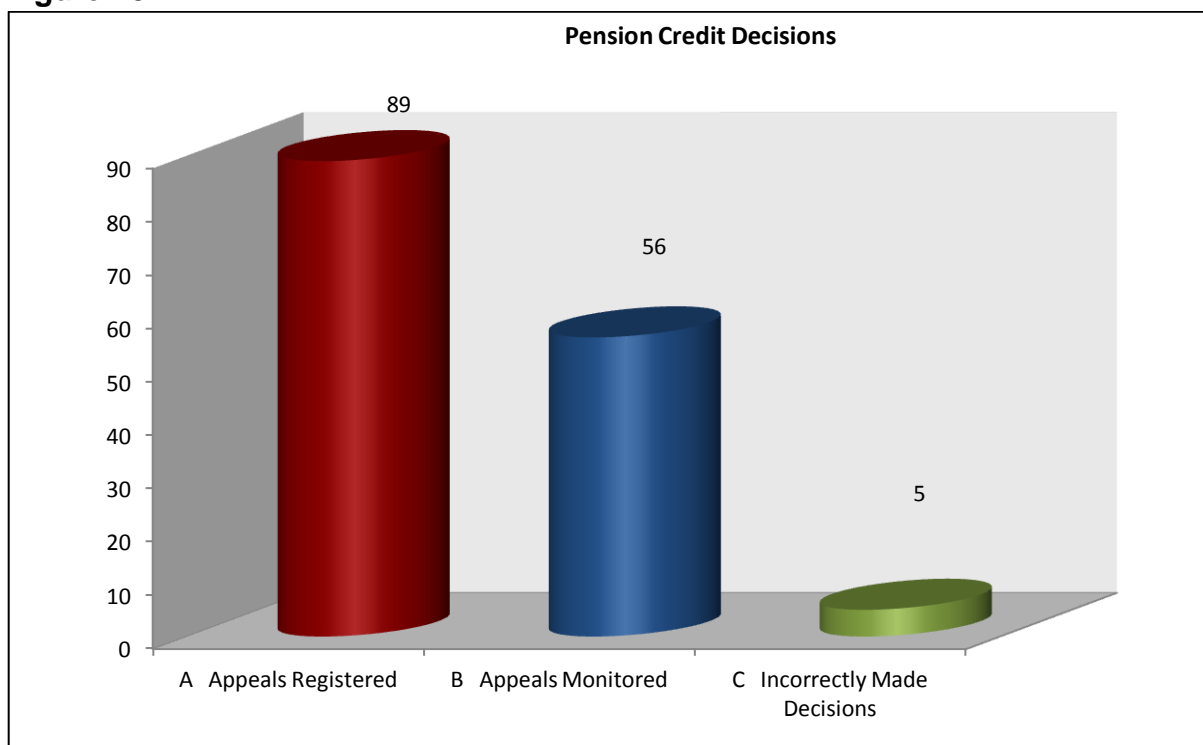


Table 29 and Graph 5 set out the number of occurrences against the reasons for incorrectness. There were 3 separate reasons identified for the decisions being incorrectly made. There were no overlapping reasons.

Table 29

Reasons for Incorrectness	F1	F9	L1
Number of Occurrences	1 (20.0%)	1 (20.0%)	3 (60.0%)

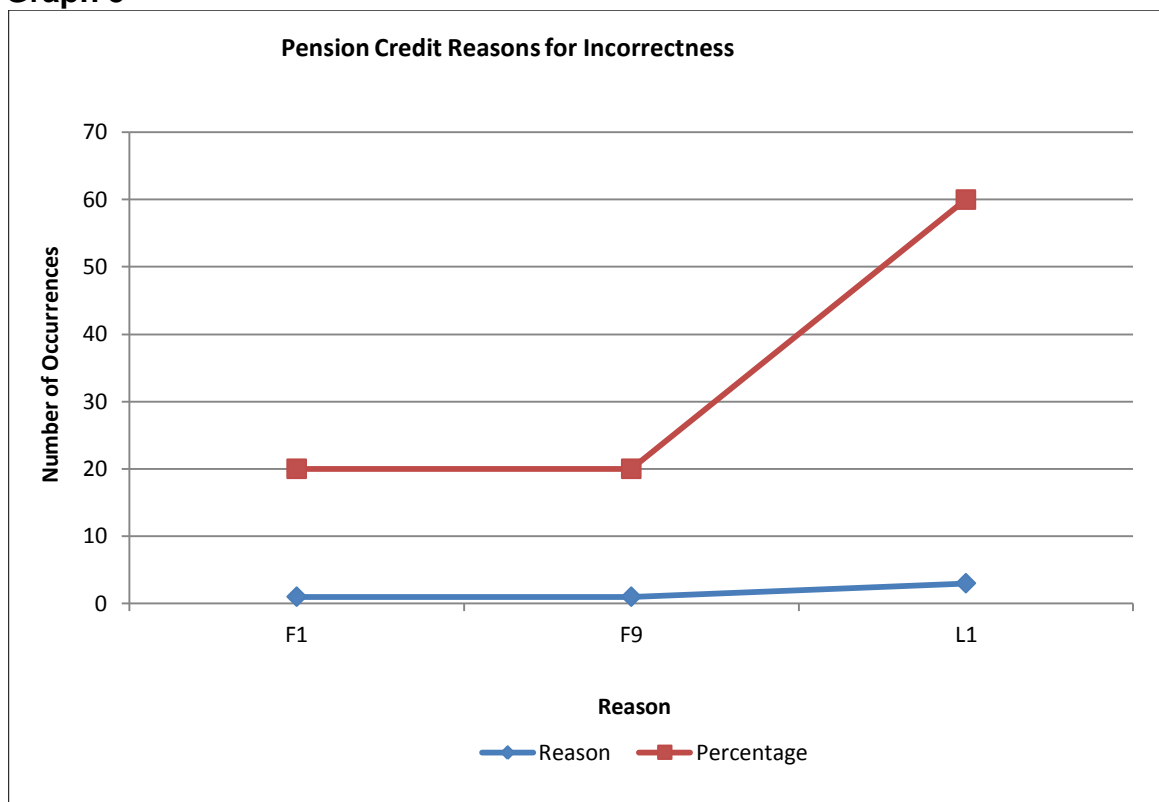
Graph 5

Table 2 on page 7 sets out in full the reasons for incorrectly made decisions

There were five incorrectly made decisions identified in this category. The main issue that arose was the overpayment of benefit. Three of the five appeals were linked, one being a change to entitlement decision as a consequence of self employed earnings of the claimant's wife and two separate overpayment decisions as a result of this change in circumstances. There were a number of changes to the entitlement decision as the decision maker did not apply the law correctly in taking the self employed earnings into account. The legal member commented that the decision maker had not established grounds to supersede the original entitlement decision. The decision maker had incorrectly applied the law and the tribunal were not satisfied that a valid entitlement decision had been made. As a consequence the overpayment decisions, which depended upon the entitlement decision, were found to have no effect. The appeal was complex and neither party requested an oral hearing despite a substantial overpayment.

In a separate case there was a valid supersession of the entitlement decision on the basis that the claimant had become entitled to Retirement Pension (RP) which had to

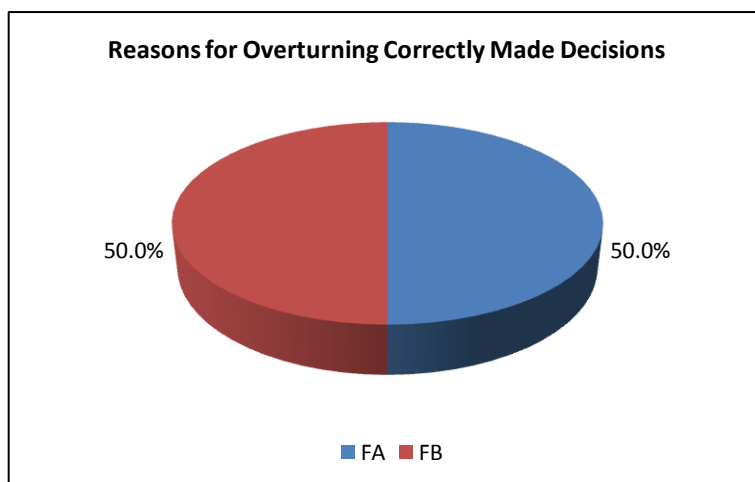
be taken into account in the calculation of entitlement to Pension Credit. As a result an overpayment of benefit occurred. On receipt of the appeal the decision maker reconsidered both decisions and decided that both were incorrect as the period for taking RP into account was incorrect. The decision maker reviewed the entitlement decision. The overpayment decision was recalculated but the decision was not revised as the underlying issue raised by the claimant, that he should not have to make any repayment of benefit, was not resolved. The tribunal decided that there was an overpayment but that the overpayment decision was incorrectly made as the period of the overpayment was wrong due to a miscalculation by the decision maker.

Table 30 and Chart 15 illustrate that in a further 6 cases, representing 10.7% of those monitored, while correctly made by the decision maker, were overturned because the tribunal accepted evidence which the officer was not willing to accept (3 cases), or the claimant produced additional evidence to the tribunal which was not available to the decision maker (3 cases).

Table 30

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 (50.0%)
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	3 (50.0%)

Chart 15



Recommendations – Pension Credit

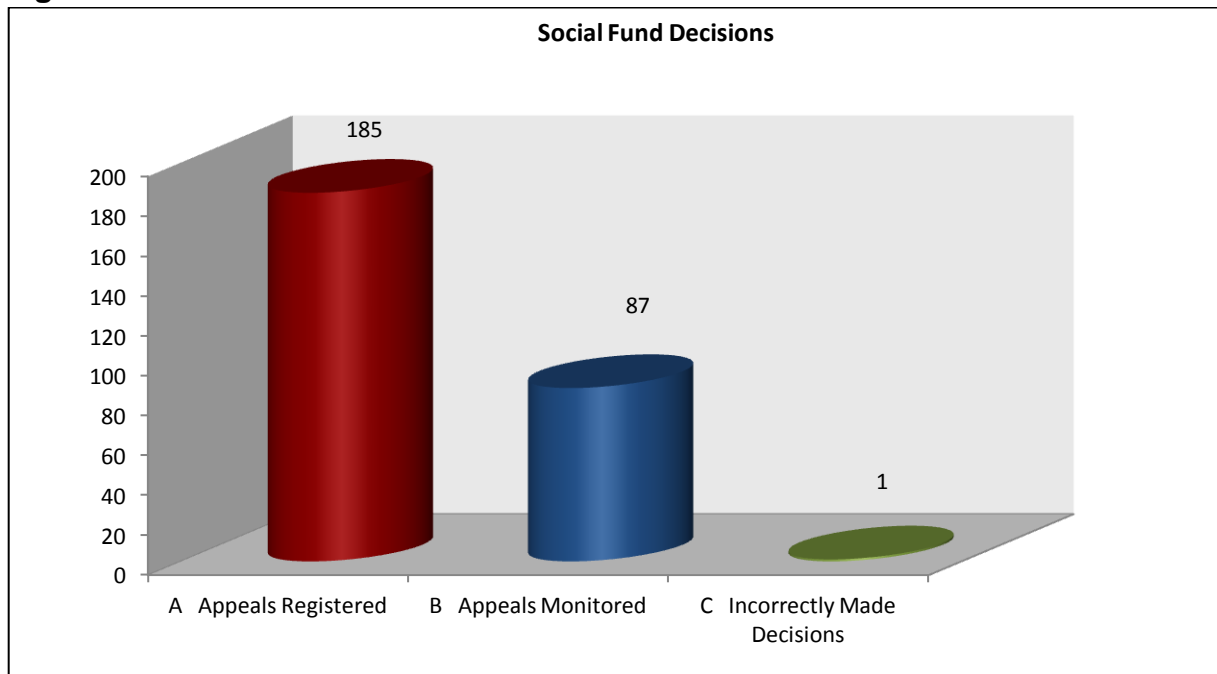
I continue to have concerns about the standard of decision making where there is an overpayment of benefit. The department routinely opt for a paper hearing in almost every case. This policy should be reconsidered especially where there is a substantial overpayment of benefit or where there are a series of review and supersession decisions. In all overpayment appeals I recommend that the Department sends a Presenting Officer to assist the appellant and the tribunal in resolving the issue.

Social Fund

There are limited rights of appeal to a tribunal in Social Fund cases. The appeal rate is therefore low. To obtain a meaningful sample, 47.0% of appeals received were monitored. The level of incorrectness identified was 1.1%. This is an improvement in standards of 0.9% on the previous year's results.

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

Figure 16



There was one incorrectly made decision identified in this category and the reason for incorrectness was that the decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision.

The issue under dispute was the amount payable by way of a Social Fund grant for funeral costs, namely the amount awarded by the decision maker for the cost of a grave. The claimant had through her undertaker, purchased a Type A grave from Belfast City Council. The decision maker checked the cost of a grave with Belfast City Council and was quoted for a Type A grave which can accommodate up to four burials and a Type B grave which can accommodate two burials. Regulation

9(3)(a)(i) of the Social Fund Maternity and Funeral Expenses (General) Regulations (NI) 2005 provides for a payment to be made to cover “the necessary costs of purchasing a new burial plot for the deceased, together with an exclusive right of burial in that plot”. The decision maker decided that only the cost of the Type B grave could be considered “necessary” as it was substantially less expensive than the Type A grave. This was disputed by the claimant on the basis that this was the only type of plot available at the time. The tribunal decided that the claim was not investigated properly as it became clear on enquiries made by the Tribunal to the City Council, that Type B plots were rarely available and then only in specific circumstances. The legal member commented that the decision maker should have made enquiries with the Council about the availability of graves at the original decision making stage.

Table 31 illustrates that in a further 2 cases, representing 2.3% of those monitored, while correctly made by the decision maker, were overturned by the tribunal because the claimant produced additional evidence to the tribunal, that was not available to the decision maker.

Table 31

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.	Nil
FB.	The tribunal was given additional evidence which was not available to the officer who made the decision.	2 (100.0%)

Recommendations – Social Fund

None.

Bereavement Benefit, Maternity Allowance & Retirement Pension

11 Bereavement Benefit, 1 Maternity Allowance and 10 Retirement Pension cases were also received during the report period.

Of the 11 Bereavement Benefit cases, 9 were available for monitoring and all were correctly made. The Maternity Allowance case received was monitored and found to be correctly made.

Of the 10 Retirement Pension cases, 4 were available for monitoring and all were correctly made.

Due to the small number of appeals in these categories the results should be read with caution, as there were insufficient cases to provide statistically reliable data.

Recommendations

None.

Chapter 5

Summary of Recommendations

Disability Living Allowance

The standard of decision making continues to remain high. While there was a small percentage of decisions identified as incorrectly made, the decisions being overturned due to further medical evidence made available at hearing either by appellants or through the availability of GP records, continue to be very high. As previously recommended this issue needs to be addressed.

Attendance Allowance

I have repeated my comments from the previous year's report as the position remains the same in this reporting year.

Reporting Year 2011-2012

Standards remain high in this benefit area. Again there were a high number of appeals overturned due to additional evidence. The comments previously made in this category and in the DLA category in connection with obtaining additional evidence apply here.

Carer's Allowance

I continue to have substantial concerns around the standard of decision making in this category as the decision making in overpayments continues to be problematic. Again I strongly recommend that the Department sends a Presenting Officer in all overpayment appeals.

Employment Support Allowance	<p>The comments made by legal members indicates that there are issues with some Healthcare Professional assessments. In addition decision makers are not routinely considering Regulation 29(2)(b) and there are issues with interpreting and dealing with evidence, in particular conflicting evidence.</p> <p>Training in all of these areas is recommended.</p>
Compensation Recovery	<p>The standard of decision making continues to cause concern. The recommendations that I have made in previous reports remain current.</p>
Pension Credit	<p>I continue to have concerns about the standard of decision making where there is an overpayment of benefit. The department routinely opt for a paper hearing in almost every case. This policy should be reconsidered especially where there is a substantial overpayment of benefit or where there are a series of review and supersession decisions. In all overpayment appeals I recommend that the Department sends a Presenting Officer to assist the appellant and the tribunal in resolving the issue.</p>

APPENDIX 1

INFERENCES AND SAMPLING ERROR

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

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

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

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

Table A1:

Benefit	Percentage Incorrectness in the Initial Decision	Confidence Interval (±%)
Attendance Allowance	2.1	2.2
Disability Living Allowance	0.6	0.8
Employment and Support Allowance	3.2	1.5
Incapacity Benefit	3.6	3.9
Income Support	1.8	2.1
Industrial Injuries Disablement Benefit	1.2	1.7
Job Seekers Allowance	1.6	1.3
Social Fund	1.1	1.6
ALL ¹	2.6	0.7

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

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

- we can be 95% certain that the true level of incorrectness among all initial appeal decisions in the period is between 1.9% and 3.3%, i.e. $2.6\% \pm 0.7\%$.

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

Similarly, if we consider Jobseekers Allowance appeals we can state that

- we can be 95% certain that the true level of incorrectness among all Jobseekers Allowance initial appeal decisions in the period is between 0.3% and 2.9%, i.e. $1.6\% \pm 1.3\%$.

The remaining benefits can be analysed in the same manner.

APPENDIX 2

BENEFIT APPEALS PROFILE

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

BENEFIT NAME	ALL BENEFITS
Number of cases registered	21925
Number of cases monitored	1734
Percentage monitored	7.9%
Number of incorrect initial decisions	45
Percentage incorrect	2.6%
Confidence interval	±0.7%
Total number of reasons	67
Main reason for incorrect initial decision: The decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision (F1) – 32.8% of all reasons.	

BENEFIT NAME	ATTENDANCE ALLOWANCE
Number of cases registered	235
Number of cases monitored	97
Percentage monitored	41.3%
Number of incorrect initial decisions	2
Percentage incorrect	2.1%
Confidence interval	±2.2%
Total number of reasons	2
Main reason for incorrect initial decision: No main reason identified.	

BENEFIT NAME	DISABILITY LIVING ALLOWANCE
Number of cases registered	5112
Number of cases monitored	317
Percentage monitored	6.2%
Number of incorrect initial decisions	2
Percentage incorrect	0.6%
Confidence interval	±0.8%
Total number of reasons	2
Main reason for incorrect initial decision: The officer disregarded relevant evidence (F6) – 100% of all reasons for this benefit.	

BENEFIT NAME	EMPLOYMENT & SUPPORT ALLOWANCE
Number of cases registered	14314
Number of cases monitored	506
Percentage monitored	3.5%
Number of incorrect initial decisions	16
Percentage incorrect	3.2%
Confidence interval	±1.5%
Total number of reasons	27
Main reason for incorrect initial decision: The decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision (F1) – 37.0% of all reasons for this benefit.	

BENEFIT NAME	INCAPACITY BENEFIT
Number of cases registered	150
Number of cases monitored	56
Percentage monitored	37.3%
Number of incorrect initial decisions	2
Percentage incorrect	3.6%
Confidence interval	±3.9%
Total number of reasons	2
Main reason for incorrect initial decision: No main reason identified.	

BENEFIT NAME	INCOME SUPPORT
Number of cases registered	423
Number of cases monitored	111
Percentage monitored	26.2%
Number of incorrect initial decisions	2
Percentage incorrect	1.8%
Confidence interval	±2.1%
Total number of reasons	4
Main reason for incorrect initial decision: No main reason identified.	

BENEFIT NAME	JOBSEEKERS ALLOWANCE
Number of cases registered	974
Number of cases monitored	255
Percentage monitored	26.2%
Number of incorrect initial decisions	4
Percentage incorrect	1.6%
Confidence interval	±1.3%
Total number of reasons	4
Main reason for incorrect initial decision: The decision of the officer was based on insufficient facts/ evidence due to inadequate investigation of the claim or revision (F1) – 50% of all reasons for this benefit.	

BENEFIT NAME	SOCIAL FUND
Number of cases registered	185
Number of cases monitored	87
Percentage monitored	47%
Number of incorrect initial decisions	1
Percentage incorrect	1.1%
Confidence interval	±1.6%
Total number of reasons	1
Main reason for incorrect initial decision: The decision of the officer was based on insufficient facts/ evidence due to inadequate investigation of the claim or revision (F1) – 100% of all reasons for this benefit.	

BENEFIT NAME	INDUSTRIAL INJURIES DISABLEMENT BENEFIT
Number of cases registered	175
Number of cases monitored	83
Percentage monitored	47.4%
Number of incorrect initial decisions	1
Percentage incorrect	1.2%
Confidence interval	±1.7%
Total number of reasons	2
Main reason for incorrect initial decision: No main reason identified.	

APPENDIX 3

APPEAL REPORT FORM

Section 1 Benefit claimed:

Name of appellant:

Address:

NINO:

Appeal reference:

Date of Decision Appealed:

Decision maker/Office:*

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

**To be completed by tribunal Clerk*

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

Section 2 Date Summary Decision Issued:

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

Yes ☐ No ☐

If the answer is No, please explain.

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

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

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

- F.A ☐ the tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable
- F.B ☐ 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 ☐ Officer overlooked a relevant Commissioners decision/Court decision which was/should have been available to him
- L5 ☐ The officer failed to obtain additional legal advice necessary to deal with the claim.

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

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

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

Legal member

Date:

Time Taken to Complete: