

# **PRESIDENT'S REPORT**

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

**PERIOD 06 APRIL 2004 TO 05 APRIL 2005**

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## **PRESIDENT'S FOREWORD**

This report has been brought forward by altering the period over which decisions are considered. It is recognised that it is important to make the report as contemporaneous as possible. However, given the delays in the appeal system, and the requirement to obtain a statistically reliable analysis, some delay is inevitable.

There were a number of benefits where the number of appeals was very small and there were no incorrectly made decisions identified. Whilst statistically, some of the results are not reliable due to the small number of cases, it is noteworthy that the results in Social Fund and Industrial Disablement cases are reliable, and the standard of decision making in those benefit categories were therefore very high.

There were also improvements in Disability Living Allowance and Incapacity Benefit. These cases make up the bulk of appeals. However, during the period, a number of Disability Living Allowance appeals were returned to the Department as there was very little medical evidence to support the decisions under appeal. The outcome may have been rather different had this action not been taken by my office.

There was a marked improvement in Attendance Allowance decision making. However, in the category of decisions correctly made, but overturned, had officers obtained additional evidence, many appeals could have been avoided.

There has been a marked improvement in Recovery of Benefit from Compensation cases. The cases are difficult and the decision making processes are different to those in benefit claims. The error rate is still high and there is a need for officers to have a better understanding of the legal rules applicable.

The deterioration in Income Support and Child Support is disappointing.

Child Support is a difficult area as it is often necessary for decision makers to resolve conflicting evidence. This is reflected in the reasons for incorrectness recorded. There are associated calculation errors. There are also problems arising from the fact that decision making processes are not fully understood.

In Income Support there were a number of evidential problems identified which should be addressed in training.

It is hoped that with the increased attendance of presenting officers, there will be a greater appreciation of adjudication issues in the various benefit offices.

I am grateful to my staff, particularly Mrs Nuala Burns, for their continued assistance in the preparation of this report.

**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 governs 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 small 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 Retirement Pension, Severe Disablement Allowance and Bereavement Benefits 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 supersession 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 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 Appendix 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 Benefit 6 April 2004 – 5 April 2005**

<b>Benefit</b>	<b>Total registered</b>	<b>No. Monitored (sample size)</b>	<b>Initial decision incorrect</b>	<b>Percentage Incorrectness</b>
Attendance Allowance	199	107	1	0.9%
Child Support**	103	32	6	18.8%
Compensation Recovery	130	65	8	12.3%
Disability Living Allowance	6594	93	4	4.3%
Incapacity Benefit	3709	102	3	2.9%
Income Support	536	56	6	10.7%
Industrial Injuries Disablement Benefit/ <b>Severe Disablement Allowance</b>	152	52	0	0.0%
Carer's Allowance*	46	17	3	17.6%
Jobseekers Allowance	326	66	2	3.0%
<b>Retirement Pension</b>	23	10	0	0.0%
Social Fund	124	37	0	0.0%
<b>Bereavement Benefits</b>	16	6	0	0.0%
<b>Reduced Earnings Allowance</b>	1	1	0	0.0%
<b>TOTAL</b>	<b>11959</b>	<b>644</b>	<b>33</b>	<b>5.1%</b>

Note bold type indicates a complete census

\* less than 30 sample size

\*\* of 34 child support cases selected 2 departure cases were referrals to tribunal. CSA did not make a decision in these cases. This resulted in a sample of 32 cases.

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: Reasons for incorrectly made decisions**

<b>Reason for Incorrectness</b>
<b>F1.</b> The decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision
<b>F2.</b> 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)
<b>F3.</b> 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
<b>F4.</b> The decision was based on a misinterpretation/misunderstanding of the evidence available to the officer
<b>F5.</b> The officer took into account wholly unreliable evidence
<b>F6.</b> The officer disregarded relevant evidence
<b>F7.</b> The officer failed to identify/resolve an obvious conflict in the evidence
<b>F8.</b> The officer did not action additional relevant evidence provided after his decision was made and initiate a revision
<b>F9.</b> The officer made errors of calculation
<b>R1.</b> 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
<b>L1.</b> The officer did not identify the correct legal rules relevant to the claim/revision
<b>L2.</b> The officer misinterpreted the legal rules relevant to the claim
<b>L3.</b> The officer failed to identify a change in legal rules relevant to the claim/revision
<b>L4.</b> The officer overlooked a relevant Commissioners decision/Court decision which was/should have been available to him
<b>L5.</b> The officer failed to obtain additional legal advice necessary to deal with the claim
<b>O.</b> Other error discovered

**Table 3: Correctly Made Decisions Overturned By Tribunals**

<b>Reason Decision was overturned</b>
<b>FA.</b> The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable
<b>FB.</b> 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 33 cases, representing approximately 5.1% of all cases monitored.

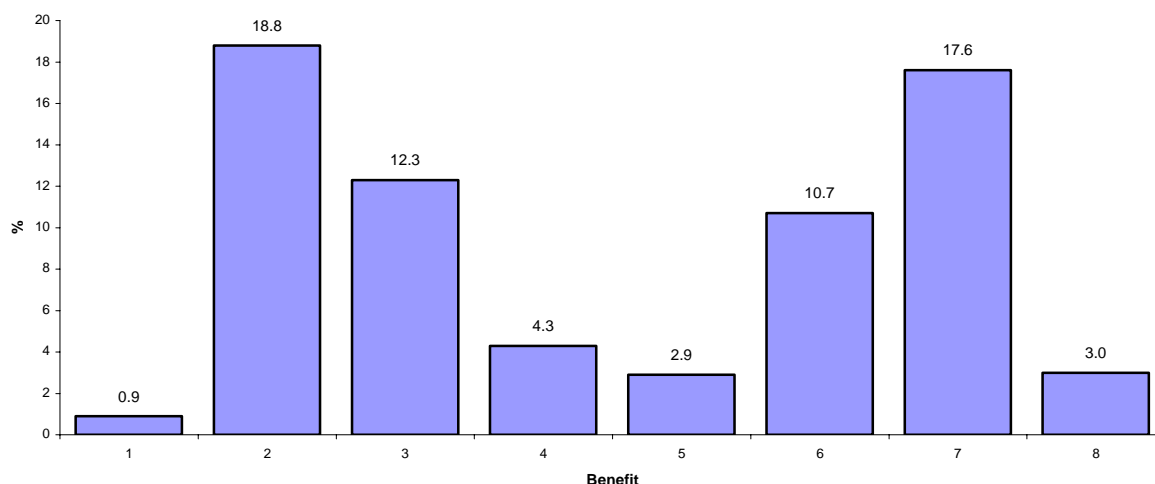
From Table 1 it is evident that there was a considerable degree of variation in the level of incorrectness of initial decisions across benefits.

Across all benefits where a complete census was recommended, namely Retirement Pension, Bereavement Benefits and Severe Disablement Allowance, there were no cases assessed as having the initial decision incorrectly made,. The total number of cases available for monitoring for these benefits is small and the results need to be treated with caution. Although they are a complete census of cases, given the small numbers involved, any incorrect decision would have a significant impact on the percentage of incorrectness, distorting the results.

In the sample of cases monitored for Social Fund and Industrial Injuries Disablement Benefit there were no cases recorded as incorrectly made. As sufficient cases were monitored for each benefit to make the sample statistically valid we can be confident in the findings. In Carer's Allowance, the number of cases available for monitoring was less than the number required for a valid sample. Therefore no statistically valid assumptions can be made, and caution should be used in interpreting the results in this category.

Figure 1 shows the variation of the level of incorrectness across the remaining benefits. Levels of incorrectness in the initial decisions range from approximately 19% of Child Support to less than 1% of Attendance Allowance cases.

**Figure 1: Level of Incorrectness in Initial Decision**



*Key to Figure 1*

- |                                |                         |
|--------------------------------|-------------------------|
| 1. Attendance Allowance        | 6. Income Support       |
| 2. Child Support               | 7. Carer's Allowance    |
| 3. Compensation Recovery       | 8. Jobseekers Allowance |
| 4. Disability Living Allowance |                         |
| 5. Incapacity Benefit          |                         |

Disability Living Allowance accounted for 55% of all cases registered reflecting both the number of people claiming the benefit and, also, the complexity in delivery of the benefit. 31% of all appeals were in relation to Incapacity Benefit. 4.3% of monitored Disability Living Allowance cases, and 2.9% of Incapacity Benefit cases, were assessed as having an incorrect decision. Attendance Allowance a similarly assessed benefit to Disability Living Allowance had a level of incorrectness of 0.9%.

### ***REASON 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 6 April 2004 to 5 April 2005 there were 33 cases where the initial decision was judged incorrect. There were in total 68 reasons for incorrectness.

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

**Figure 2: Number of Reasons Given for Assessing the Initial Decision as Incorrect**

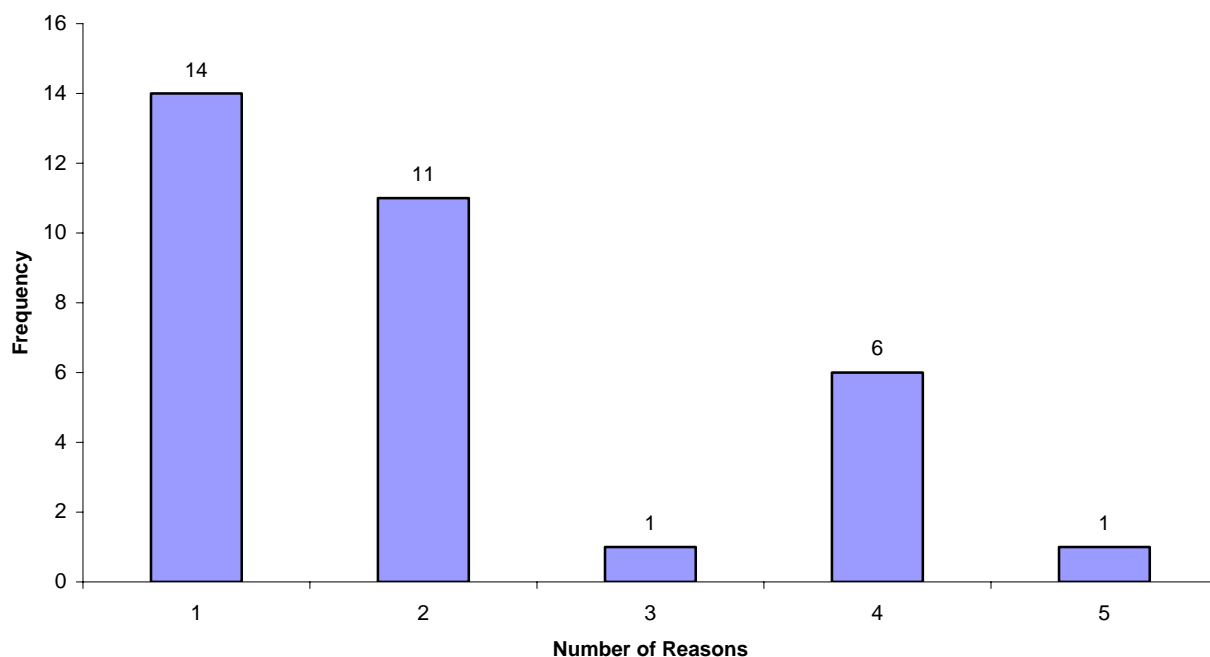


Figure 2 shows that in the majority of cases where the initial decision was incorrect, a single reason or two reasons were given for incorrectness, 14 and 11 cases respectively, representing approximately 76% of cases where the initial decision was assessed as incorrect. At the opposite end of the spectrum, the largest number of reasons per case was five. This occurred in a Disability Living Allowance case where the initial decision was assessed as incorrect.

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

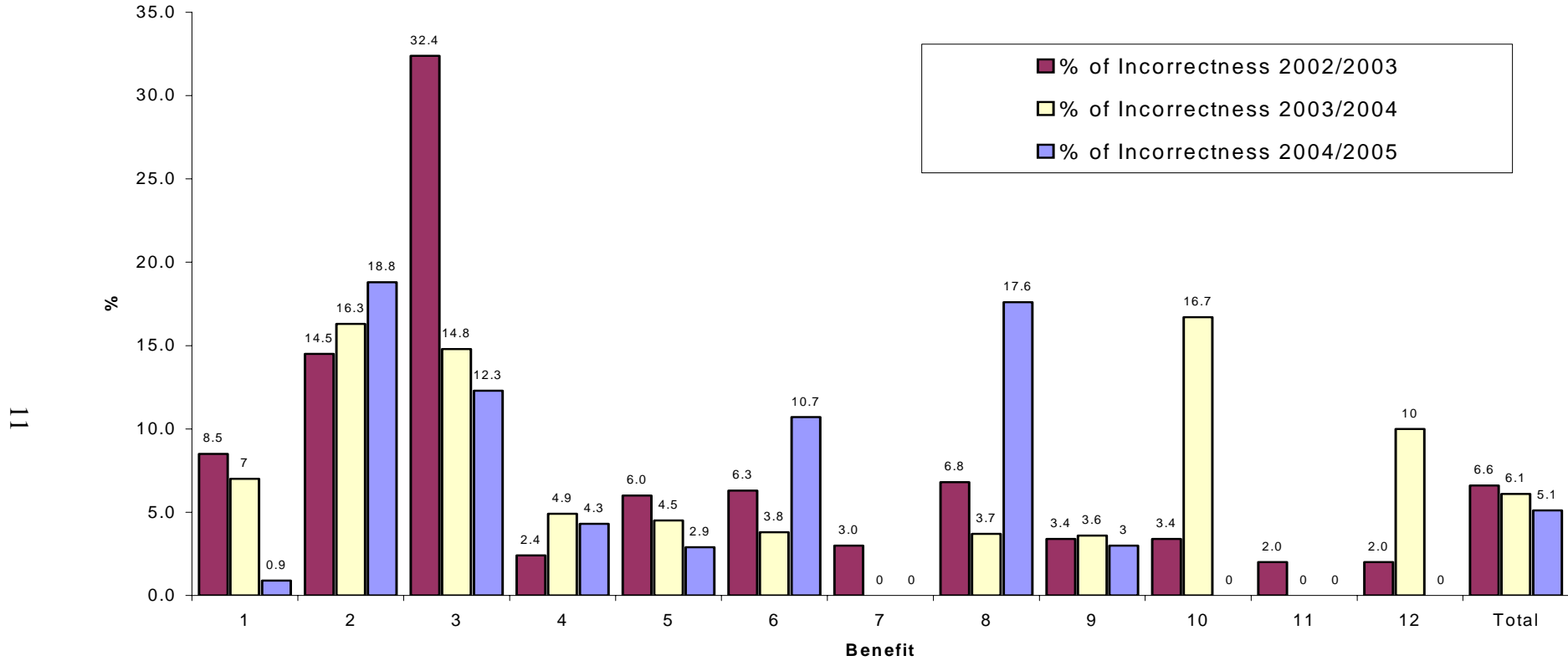
**Table 4: Reasons for Incorrectness**

<b>Reason for Incorrectness</b>	<b>Number of Occurrences</b>	<b>% of Total</b>
<b>F1</b>	11	16.2%
<b>F2</b>	3	4.4%
<b>F3</b>	5	7.4%
<b>F4</b>	10	14.7%
<b>F5</b>	3	4.4%
<b>F6</b>	13	19.1%
<b>F7</b>	7	10.3%
<b>F8</b>	2	2.9%
<b>F9</b>	5	7.4%
<b>L1</b>	3	4.4%
<b>L2</b>	4	5.9%
<b>L4</b>	1	1.5%
<b>L5</b>	1	1.5%
<b>TOTAL</b>	68	100%

**Table 2 on page 5 sets out the reasons in full.**

The most common reason for incorrectness was ‘the officer disregarded relevant evidence’. This reason was given 13 times, representing approximately 19% of all reasons. The next two most common reasons given were ‘the decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision’ and ‘the decision was based on a misinterpretation/misunderstanding of the evidence available to the officer’. These reasons represented approximately 16% and 15% respectively of all reasons.

**Figure 3: Comparison of Level of Incorrectness Year 2002/2003, 2003/2004, 2004/2005**



*Key to Figure*

- 1. Attendance Allowance
- 2. Child Support
- 3. Compensation Recovery
- 4. Disability Living Allowance
- 5. Incapacity Benefit
- 6. Income Support

- 7. Industrial Injuries Disablement Benefit/Severe Disablement Allowance
- 8. Carer's Allowance
- 9. Jobseekers Allowance
- 10. Retirement Pension
- 11. Social Fund
- 12. Bereavement Benefits

Figure 3 sets out the level of incorrectness for the years 2002/03, 2003/04 and 2004/05.

In previous years the overall level of incorrectness has remained constant at around 6%. In this current year 2004/05 the level of incorrectness has decreased overall by 1% to 5%. An analysis of the figures for the three year period is set out below.

In those areas where a valid sample was taken there was a decrease in the level of incorrectness on the previous years results in the following areas, Attendance Allowance, Disability Living Allowance, Incapacity Benefit, Jobseekers Allowance, Industrial Injuries Disablement Benefit and Compensation Recovery. With the exception of Disability Living Allowance the improvement in the standard of decision making has been maintained over the three year period.

Most significantly of all is the decrease in the level of incorrectness in Attendance Allowance to a figure similar to that of 2001/02. In year 2002/03 the error rate rose steeply to 8.5%, reducing slightly to 7% in 2003/03 and again reducing to just under 1% in year 2004/05.

The standard of decision making in Industrial Injuries Disablement Benefit remains high and for the last two years no incorrectly made decisions were recorded from the cases sampled. This is also the case for appealable decisions made by Social Fund officers.

No errors were discovered in Severe Disablement Allowance, Bereavement Benefits and Retirement Pension. However, this is not a clear indication of the level of decision making as although a complete census of all appeals received was carried out, the figures in each category are small and the results need to be treated with caution.

The level of incorrectness detected in Income Support at 10.7% is the highest for three years.

The error rate in Incapacity Benefit has decreased by 1½% each year for the last three years with year 2004/05 recorded as just under 3%.

While Compensation Recovery figures also show a year on year decrease for the last three years, the error rate of 12% is still very high and is 2% above the figure detected in the year 2001/02. The need for improvement remains.

Disability Living Allowance records a negligible decrease in the current year. The overall average for the last three years remains constant at around 4%.

The level of incorrectness for Jobseekers Allowance has remained constant at around 3% for the last three reports.

The figures for Child Support continue to cause concern. They have increased steadily by 2% year on year for the last three years. The level of incorrectness detected in this current year is almost 19%.

In Carer's Allowance a sample of appeals received were monitored, however in years 2003/04 and the current year the number of cases available for monitoring was less than the number required for a valid sample. Therefore no statistically valid assumptions can be made for that period, and caution should be used in interpreting those results. The figures for year 2002/03 were a valid sample and can be relied upon.

## CORRECTLY MADE DECISIONS OVERTURNED BY TRIBUNALS

Out of 644 cases monitored, 170, representing 26%, were altered by the tribunal because the tribunal accepted evidence which 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).

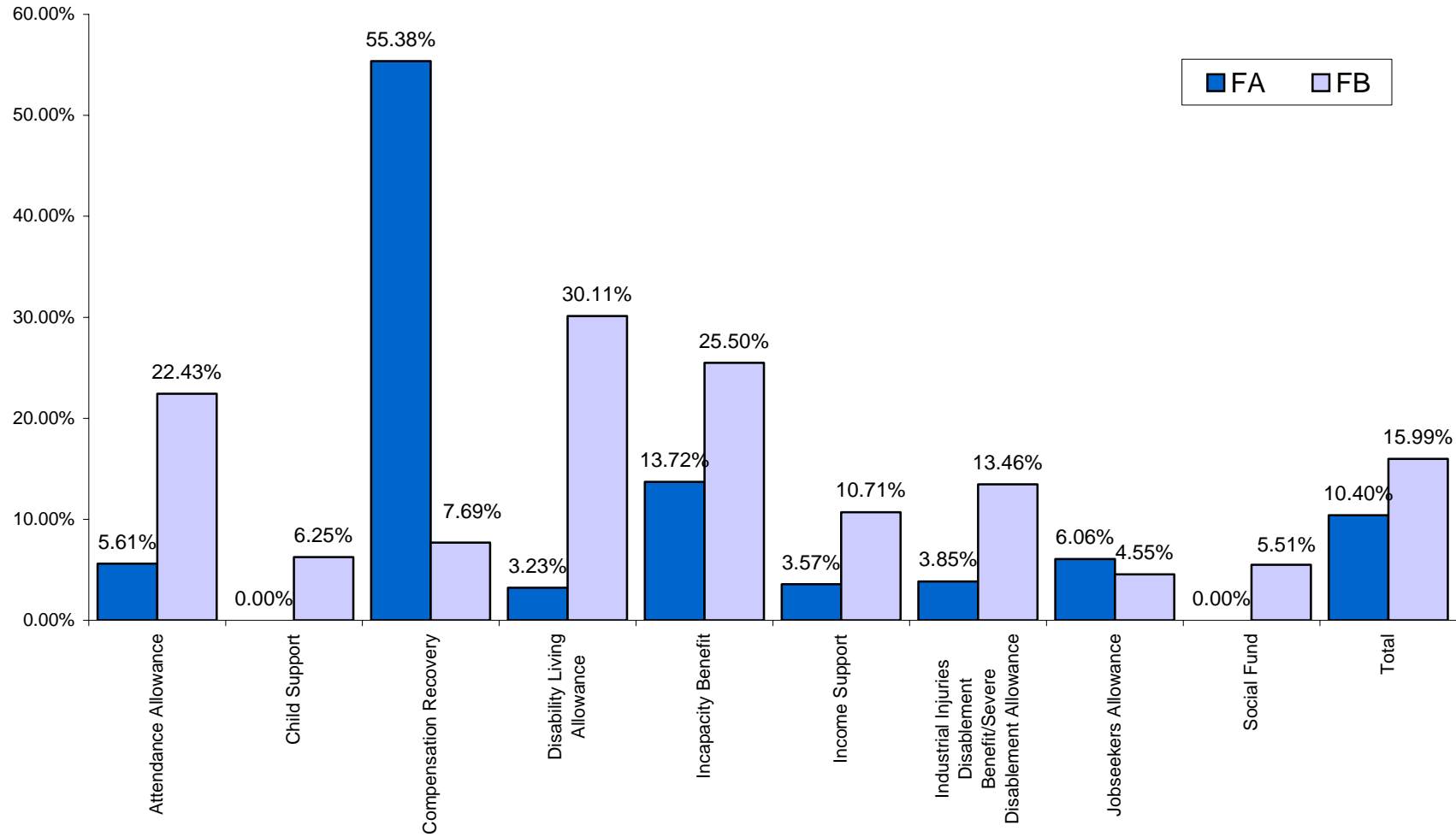
Table 5 and Figure 4 sets out on a by benefit basis the number and percentage of cases where the decision was judged to be correctly made, but altered by the tribunal.

**Table 5: Correctly Made Decisions Altered by Tribunals**

<b>Benefit</b>	<b>Number Monitored</b>	<b>Total Altered</b>	<b>Percentage Altered</b>	<b>FA</b>	<b>%</b>	<b>FB</b>	<b>%</b>
Attendance Allowance	107	30	28.04%	6	5.61%	24	22.43%
Child Support	32	2	6.25%	0	0.00%	2	6.25%
Compensation Recovery	65	41	63.08%	36	55.38%	5	7.69%
Disability Living Allowance	93	31	33.33%	3	3.23%	28	30.11%
Incapacity Benefit	102	40	42.22%	14	13.72%	29	25.50%
Income Support	56	8	14.29%	2	3.57%	6	10.71%
Industrial Injuries Disablement Benefit/ <b>Severe Disablement Allowance</b>	52	9	17.31%	2	3.85%	7	13.46%
Carer's Allowance	17	0	0.00%	0	0.00%	0	0.00%
Jobseekers Allowance	66	7	10.61%	4	6.06%	3	4.55%
<b>Retirement Pension</b>	10	0	0.00%	0	0.00%	0	0.00%
Social Fund	37	2	5.41%	0	0.00%	2	5.41%
<b>Bereavement Benefits</b>	6	0	0.00%	0	0.00%	0	0.00%
<b>Reduced Earnings Allowance</b>	1	0	0.00%	0	0.00%	0	0.00%
<b>TOTAL</b>	<b>644</b>	<b>170</b>	<b>26.39%</b>	<b>67</b>	<b>10.40%</b>	<b>103</b>	<b>15.99%</b>

*Note: Bold denotes full census*

**Figure 4**



Compensation Recovery had by far the highest percentage of both FA and FB together as 41 cases representing just over 63% of cases monitored in this category, were overturned by the tribunal.

Disability Living Allowance had the highest percentage rate of cases in the FB category. Incapacity Benefit and Attendance Allowance had the next highest percentage.

## **SUMMARY AND CONCLUSION**

This report analyses Departmental decision making standards in appeals received in the Appeals Service between April 2004 and April 2005. There were 11,959 appeals and 644, 5.4% 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 Support Agency.

Across all monitored cases, the level of incorrectness among initial decisions was approximately 5.1%. There was a considerable variation in the level of incorrectness of initial decisions across benefits. No incorrect decisions were recorded for Bereavement Benefits, Industrial Injuries Disablement Benefit, Retirement Pension, Severe Disablement Allowance and Social Fund. At the other end of the spectrum, 18.8% of Child Support and 17.6% of Carer's Allowance cases were assessed as having the initial decision incorrectly made.

Seventy six per cent 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 officer disregarded relevant evidence'. This reason was given 13 times, representing 19.1% of all reasons.

In addition to the 18.8% of Child Support cases where the decision was incorrectly made, a further 5.9% of all Child Support cases received in the Appeals Service were referred by the decision maker for the tribunal to make the initial decision.

# CHAPTER 3

## CHILD SUPPORT AGENCY DECISIONS

31% of all Child Support appeals were monitored. Almost 19% were found to be incorrectly made by decision makers. There is an increase in the rate of incorrectness of over 2% on the previous year. The standard of decision making remains unacceptable.

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

**Figure 5**

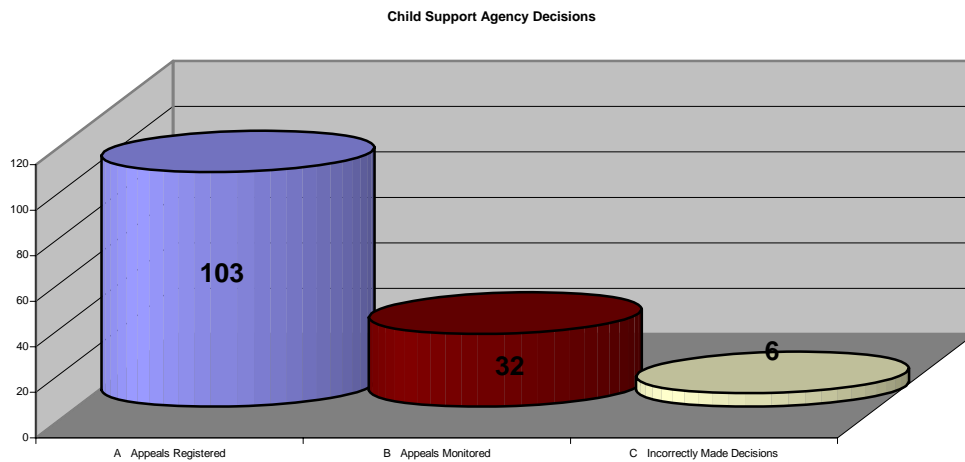


Table 6 and Graph 1 sets out the number of occurrences against the reasons for incorrectness. There were 6 separate reasons identified for the decisions being incorrectly made. There were overlapping reasons in 3 cases.

**Table 6**

Reasons for incorrectness	Number of Occurrences
F1.	2 (18.2%)
F3.	1 (9.1%)
F4.	2 (18.2%)
F5.	1 (9.1%)
F8.	1 (9.1%)
F9.	4 (36.4%)

**Graph 1**

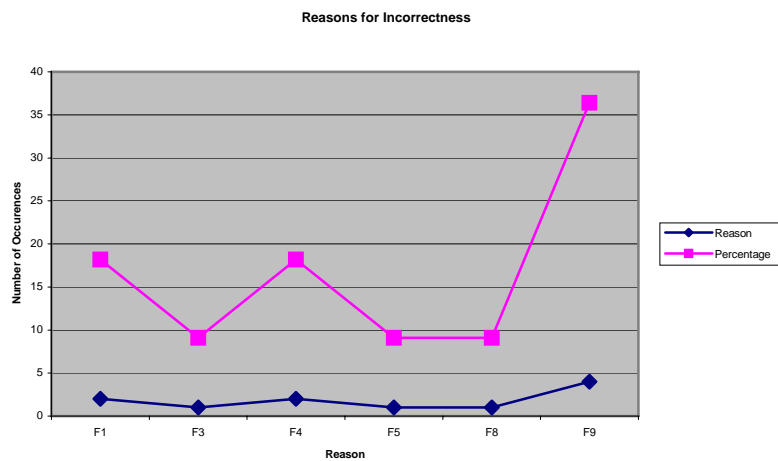


Table 2 on Page 5 sets out in full the reasons for incorrectly made decisions

In 5 of the 6 cases (83%), identified as incorrectly made there were calculation errors by the decision maker. These errors were recognised and identified by the appeal writer in the submission to the tribunal. While some errors can be attributed to simple arithmetical miscalculations or carelessness by the decision maker, others were more serious. The errors identified are set out below in table 7. In addition, in one of these cases the legal member commented that the decision maker did not take into account a number of significant changes to the non resident parent's (NRP) circumstances, mainly that during the assessment period the NRP was in receipt of a social security benefit, and that he no longer had a partner. This resulted in a change to the maintenance assessment as the NRP was not liable to pay any maintenance for a period.

In a further case, a departure application, the legal member commented that the decision maker did not fully investigate the facts of the case. Evidence which appeared to be unrealistic was accepted without any corroboration, and the decision maker failed to make any findings.

Table 8 illustrates that a further 2 cases were overturned because additional evidence was available to the tribunal that was not available to the decision maker.

**Table 7**

<b>Examples of Calculation Errors Identified</b>
Occupational pension incorrectly included in assessment
Monthly amount of Child Benefit recorded in assessment
Child Tax Credit incorrectly omitted from assessment
Council Tax miscalculated
Allowance for pension contribution incorrectly included
Bank interest not included
Incorrect calculation of income tax
Incorrect amount of national insurance contribution included
Tolerance rule was not applied to the case on review

**Table 8**

<b>Reasons for Overturning Correctly Made Decision</b>	<b>Number of Cases</b>
<b>FA.</b> The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	0
<b>FB.</b> The tribunal was given additional evidence which was not available to the officer who made the decision.	2

### **Referrals to Tribunal**

Legislation makes provision for decision makers to refer cases to the appeal tribunal for a decision to be made. This provision should only be adopted when a case is considered to be complex and, after investigation, the decision maker is unable to reach a decision.

Of the 34 cases initially selected for monitoring in Child Support, 2 cases representing 5.9% were cases where the decision maker did not make a decision. One case was an application by the

parent with care for a departure from the maintenance assessment formula on the grounds of lifestyle inconsistent, debts from the former relationship, travel to work costs and diversion of income. In the other case the parent with care appealed a nil maintenance assessment on the basis that her former partner had not declared his complete income. She was advised to apply for a variation, and to withdraw her appeal. In fact the appeal was not withdrawn as required by the Decisions and Appeals Regulations. It is of doubtful propriety for the agency to give such advice. The facts of this case highlight the problems addressed in recommendation 1 of the 2003/04 report.

## **Recommendations**

In response to the Report on Standards of Decision-Making by the Department for 2003-2004, details were given of improvements to the decision-making process undertaken by the Department's Agencies. In relation to Child Support decisions, these were:

- (i) A focus on improving all aspects of accuracy and decision-making;
- (ii) The establishment of an internal forum to identify emerging issues, to spread best practice, and to maintain the focus on high quality decision making;
- (iii) The implementation of an 'Investigation Team'; and
- (iv) The use of interim assessment assessments.

The adoption of new procedures, and implementation of new practices, with the aspiration towards improved decision-making is to be welcomed. It is clear, however, that the statistical analysis confirms that the standard of decision-making in Child Support cases continues to be unacceptable. Rather than demonstrating an improvement in decision accuracy, there is an increase in the rate of incorrectness of over 2% on the previous year, to a high of 19%.

As noted previously, the Child Support Agency has extensive legislative powers to appoint inspectors to undertake investigations in appropriate cases, with the aim of the production of additional evidence for adjudicating authorities, including appeal tribunals. The exercise of this power is particularly appropriate in cases where one of the parties to the appeal is self-employed, and fails to produce adequate accounts. The newly-implemented 'Investigation Team' appears to have the role of increased production of relevant evidence. That team will have little impact if it does not fully utilise the range of investigatory powers which are available to the Agency, and comprehend the significance of the effective use of such powers, at the initial decision-making stage.

It is equally apparent that decision-makers continue to discourage appeals against original maintenance assessments. Evidence would suggest that the reasons for such a policy remains a failure to adequately investigate income, and undertake additional enquiries. As a corollary, decision-makers encourage the making of applications for Departure Orders. It is clear from the evidence that issues arising from Child Support cases can often be resolved through the thorough investigation of maintenance assessment, rather than the routine resort to Departure Orders. The latter have their place but only after the assessment issues have been resolved.

It is recommended, therefore, that a sequential or integrated approach to applications and departures is adopted. The first task is to undertake a thorough assessment of income, for the purposes of a maintenance assessment, and particularly where the information provided is clearly insufficient or unreliable. The Agency should not advocate a policy where Departure applications is the first rather than the last resort. The placing of Departure applications in their proper context should include the abandonment of the policy of giving ambiguous advice to parties, or recommending Departure applications as an alternative to rigorous maintenance assessments.

As noted previously, the legislative powers available to decision-makers and appeal tribunals are wide, and have been extended by implication by the Child Support Commissioners. The Agency has responded to an earlier suggestion for the adoption of a discretionary income assessment power, by indicating that decision-makers already have the legislative power to impose interim maintenance assessments. It is to be hoped that there is a greater utilisation of this, and other assessment powers, particularly in the situation where it proves impossible to obtain full disclosure of the income of any of the parties, and where there is evidence of conscious attempts to withhold, or conceal details of income.

The social security decision-making rules have been adopted for Child Support decision-making and appeals. There is evidence that decision-makers have a substandard understanding of the detail of the decision-making rules. This deficiency could be addressed in additional learning and development for decision-makers, an approach which is thoroughly recommended. In this regard, the proposal to introduce an internal forum, with the aim of spreading best practice is to be welcomed.

# CHAPTER 4

## SOCIAL SECURITY AGENCY DECISIONS

### DISABILITY LIVING ALLOWANCE

This category has by far the highest appeal rate. 1.4% of all appeals received were monitored. 4.3% of those monitored were found to be incorrect. The standard of decision making is consistent with the previous year.

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

**Figure 6**

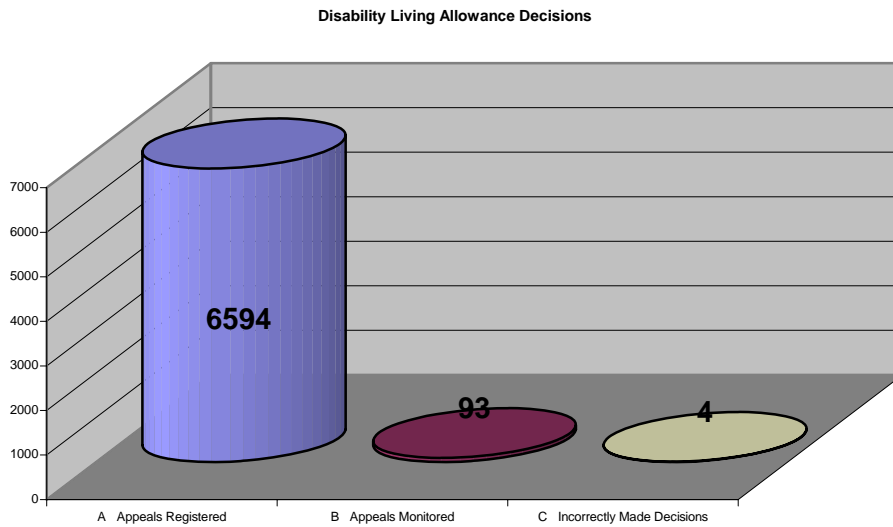


Table 9 and Graph 2 sets out the number of occurrences against the reasons for incorrectness. There were 7 separate reasons identified for the decisions being incorrectly made. There were overlapping reasons in three cases.

**Table 9**

Reasons for Incorrectness	Number of Occurrences
F1	2 (18.2%)
F2	1 (9.1%)
F3	1 (9.1%)
F4	2 (18.2%)
F6	3 (27.3%)
F7	1 (9.1%)
L2	1 (9.1%)

**Graph 2**

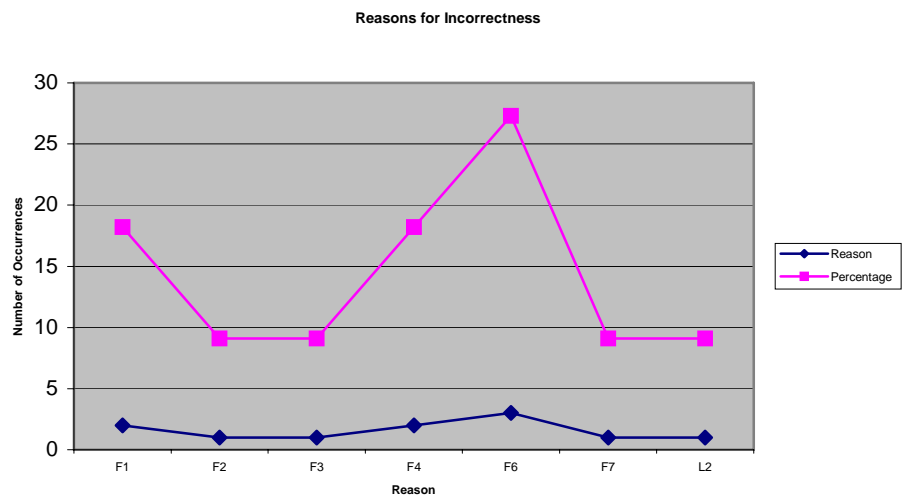


Table 2 on Page 5 sets out in full the reasons for incorrectly made decisions

In all of these appeals the comments made by the legal members relate to issues of evidence. The decision maker had insufficient evidence, misinterpreted the evidence or disregarded relevant evidence. In particular the legal member commented in one case that the award of low rate care was not supported by the evidence, the award was removed by the tribunal.

In a further case the legal member commented that the decision maker misinterpreted the findings of the examining medical practitioner (EMP) in relation to night care attention. The decision maker did not apply the legislative provision of whether or not the attention was required in connection with “bodily functions”. The award of middle rate care was reduced to low rate care by the tribunal.

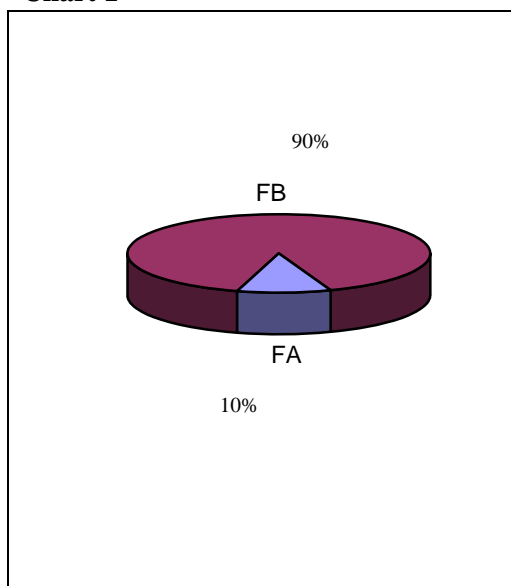
Table 10 illustrates that in a further 31 cases, representing 33% of those monitored, 3 decisions were overturned because the tribunal accepted evidence which the decision maker was unwilling to accept, and in 28 cases, additional evidence was available to the tribunal that was not available to the decision maker.

**Table 10**

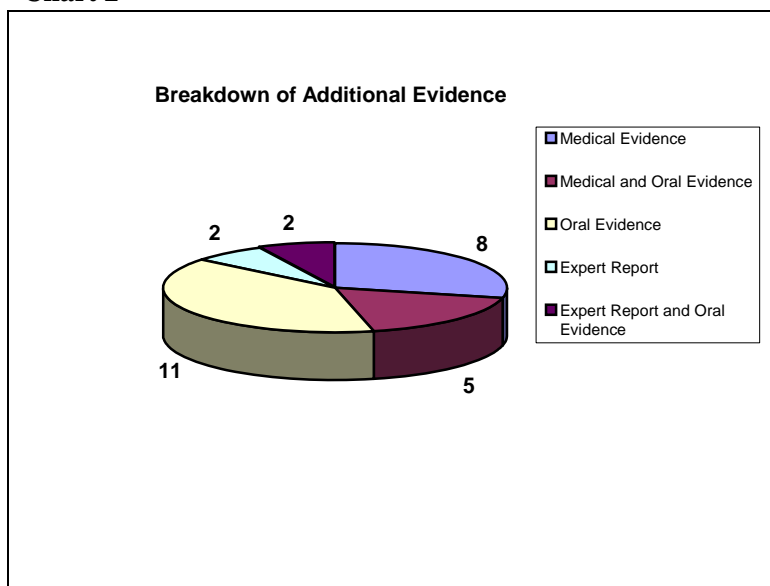
Reasons for Overturning Correctly Made Decision		Number of Cases
<b>FA.</b>	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	3 (10%)
<b>FB.</b>	The tribunal was given additional evidence which was not available to the officer who made the decision.	28 (90%)

Charts 1 and 2 illustrate why correctly made decisions were overturned, and the spread of additional evidence available to tribunals.

**Chart 1**



**Chart 2**



In 11 cases the direct evidence of the appellant or a witness was instrumental in the decision being overturned. In a further 17 cases a combination of direct oral evidence and medical evidence by way of GP records, or a medical report from the GP or a consultant or an expert report, resulted in the tribunal reaching a different decision than the decision maker.

As highlighted in 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.

## **Recommendations**

In response to the Report on Standards of Decision-Making by the Department for 2003-2004, as it applied to Disability Living Allowance decisions, the Social Security Agency indicated that it was content to accept the majority of the recommendations.

In the period under consideration the standard of decision-making with respect to Disability Living Allowance remains high, which may be reflective of the adoption of previous recommendations, as noted above. Nonetheless, the volume of appeal activity remains high which is conclusive of there continuing to be certain problems at first-tier level. The analysis conducted above suggests that the primary difficulty might continue to lie in the assimilation of relevant evidence, and the proper interpretation of that evidence.

Claimants with ongoing or chronic disabilities are usually the subject of medical treatment by a number of health care professionals, including specialist consultants. Accordingly the routine application to General Practitioner for factual reports concerning the nature and extent of the claimant's disabilities may not always be appropriate. While General Practitioners remain the focus of primary care for disabled claimants, here may be other health care professionals who are better placed to provide more detailed and relevant evidence to decision-makers. Accordingly, a more focused approach to the assimilation of medical evidence is recommended.

Clearly, however, a factual report from the claimant's General Practitioner might be the most appropriate form of evidence in certain cases e.g. in first claim cases. The format of the Departmental factual report remains inappropriate for certain types of case, and the policy of routinely forwarding the report to General Practitioners, in all types of cases, should be reviewed.

Decision makers have not, to date, been requesting General Practitioner records for the purposes of making decisions concerning claims to Disability Living Allowance. The Agency's response to the report for 2003-2004 indicates that a proposal to introduce a policy to routinely request GP, and other records remains under active consideration. Appeal tribunals do routinely have access to these records and find them to be invaluable to the decision-making function. Significant information technology changes are being applied to medical records with the effect that they are more easily transferable and interpretable. Accordingly, it is recommended that the Department should introduce the recommended policy of obtaining such records on a more extensive basis than has been the case until now.

## ATTENDANCE ALLOWANCE

As Attendance Allowance is a relatively small benefit in terms of appeal activity, 54% of appeals received were monitored. A decrease of 6% in the level of incorrectness on the previous years monitoring results was noted, and the level of incorrectness identified is just under 1%.

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

**Figure 7**

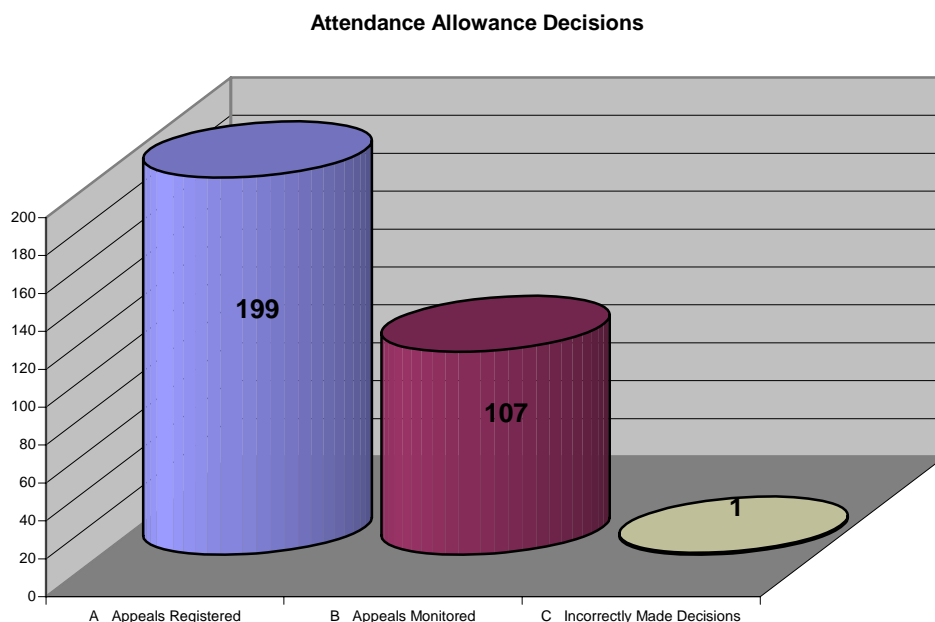


Table 11 sets out the number of occurrences against the reasons for incorrectness. There were 4 separate reasons identified for the decision being incorrectly made.

**Table 11**

Reasons for Incorrectness	Number of Occurrences
<b>F1</b>	1 (25%)
<b>F2</b>	1 (25%)
<b>F6</b>	1 (25%)
<b>F8</b>	1 (25%)

**Table 2 on Page 5 sets out in full the reasons for incorrectly made decisions.**

Only one case was found to be incorrectly made. The legal member commented that the claim had not been properly investigated. The appellant, was an 83 year old lady with dementia. A GP factual report was requested, however, the doctor’s reply to the questions asked was either “not known” or “not recorded”. Further relevant information supplied by a family member was not investigated. The decision maker asked the Tribunal to investigate the position, and make a decision.

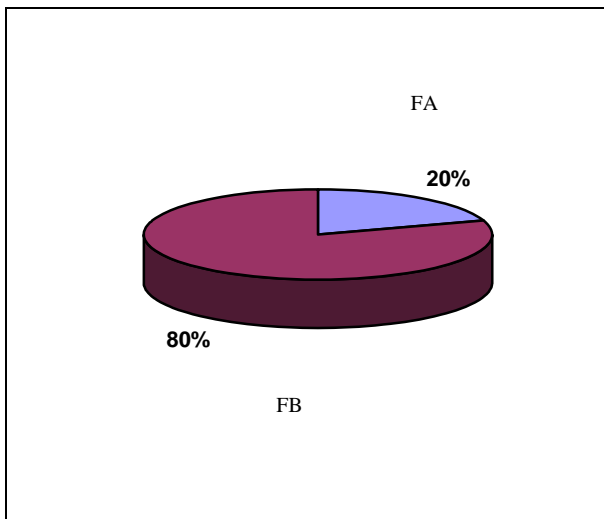
Table 12 illustrates that a further 30 cases, representing 28% of those monitored, while correctly made by the decision maker, were overturned by tribunals because the tribunal either accepted evidence which the decision maker was unwilling to accept (6 cases), or the tribunal was given additional evidence which was not available to the decision maker (24 cases).

It is noted that in 34% of cases in the FB category the only information before the decision maker was the self assessment claim form, and in a small percentage a follow up telephone investigation. On further examination of the appeals in question it was found that in five of the cases (21%) an appeal hearing may have been avoided if the decision maker had exercised his legislative powers to obtain further medical information. In one appeal submission before the tribunal, the writer states that there is no medical evidence to support or refute the information provided by the claimant in the claim form, and asks the tribunal to investigate. In a further case the writer states that the information in the letter of appeal conflicts with the self assessment form. No attempt is made by the decision maker to investigate the issues raised and again the tribunal is asked to decide upon the issues. It is accepted that it is not compulsory for the decision maker to request further medical information by way of a factual report from the claimant’s general practitioner or other medical expert, or a report from the department’s examining medical practitioner, nor is it always necessary to do so. However, it is clear that in some cases the issue of further medical evidence should be considered more carefully. Had the additional evidence been obtained, a number of appeals from those in this vulnerable group may have been unnecessary.

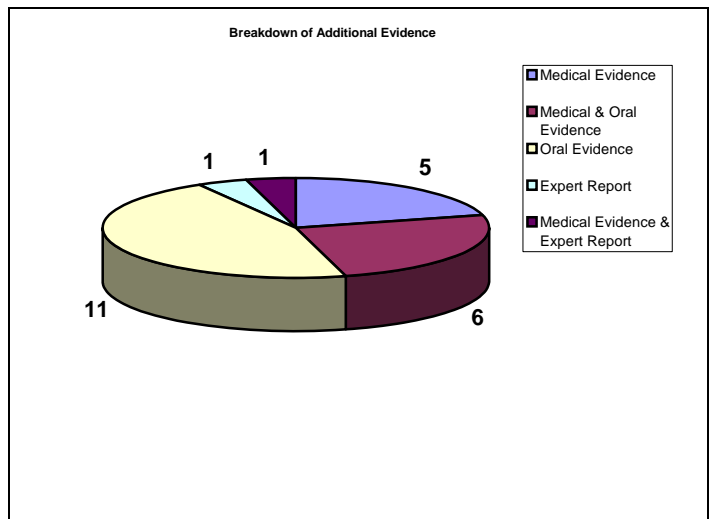
**Table 12**

<b>Reasons for Overturning Correctly Made Decision</b>	<b>Number of Cases</b>
<b>FA.</b> The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	6 (20%)
<b>FB.</b> The tribunal was given additional evidence which was not available to the officer who made the decision.	24 (80%)

**Chart 3**



**Chart 4**



Charts 3 and 4 illustrate why correctly made decisions were overturned and the spread of additional evidence available to tribunals.

Legal members commented in 11 of these cases that the decision was overturned due to the direct evidence of the appellant or a witness. In a further 13 cases, the tribunal had the benefit of direct evidence and the GP records, or a medical report from a GP or a consultant, or an expert report.

### **Recommendations**

Attendance Allowance has many features in common with Disability Living Allowance. Accordingly, the recommendations which were noted above, in relation to Disability Living Allowance, remain equally appropriate to Attendance Allowance.

Additionally, however, careful attention should be paid to the nature and format of the medical reports which are sought from health care professionals, in relation to claims to Attendance Allowance. Although there are shared characteristics with Disability Living Allowance, there is no requirement to assess most aspects of the claimant's mobility. Accordingly the routine forwarding of common factual reports solely to General Practitioners might not always be appropriate.

## CARER'S ALLOWANCE

The appeal rate in Carer's Allowance is low. To obtain a meaningful sample, 37% of appeals received were monitored. The level of incorrectness is 17.6%. This is an increase of almost 14% on the previous year. These results should however be read with caution as the sample number was insufficient to enable any statistically valid assumptions to be made.

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

**Figure 8**

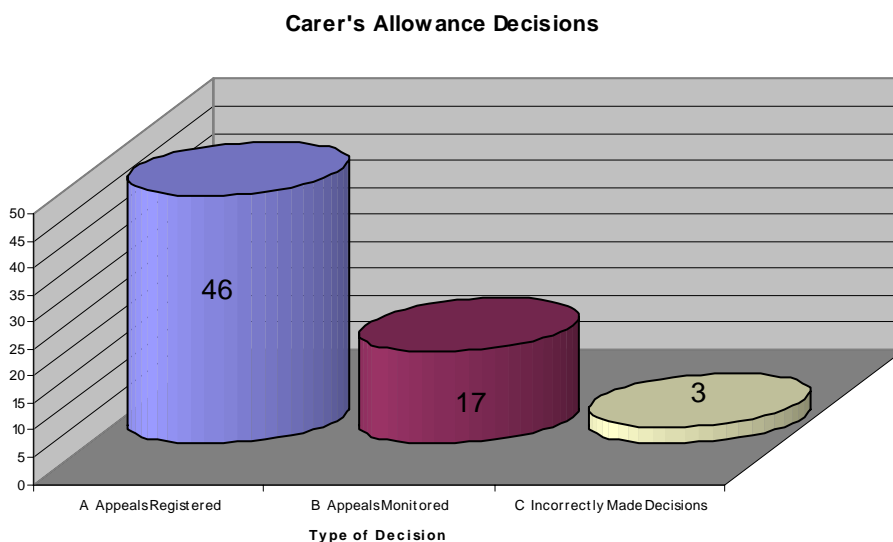


Table 13 sets out the number of occurrences against the reasons for incorrectness. A total of 5 separate reasons were recorded for incorrectness. There were overlapping reasons in 2 cases.

**Table 13**

Reasons for Incorrectness	Number of Occurrences
<b>F3</b>	1 (20%)
<b>F6</b>	1 (20%)
<b>F9</b>	1 (20%)
<b>L1</b>	1 (20%)
<b>L2</b>	1 (20%)

**Table 2 on page 5 sets out in full the reasons for incorrectly made decisions**

All three appeals relate to the overpayment of benefit. The legal member commented that the issues that arose were, the decision maker failed to identify findings, apply the correct legal rules or misinterpreted the legal rules. In one case the period and the amount of the overpayment was miscalculated. In another case the annual bonus of a claimant was included in the calculation of earnings for a four week period. In the remaining case the overpayment period included a two month period after the claimant had notified the Department of her change in circumstance, during which time the Department investigated her earnings.

## **Recommendations**

There are few appeals. Most appeal activity is in the area of overpayments. Overpayments remain problematic in respect of all social security benefits. The relevant legislative provisions are complex, and have been the subject of interpretation by Social Security Commissioners and the other appellate bodies. The increasing intricacy of the relevant rules requires close monitoring by decision-makers in order to ensure accuracy in decision-making. There is a clear learning and development outcome from the recent developments.

In response to the Report on Standards of Decision-Making by the Department for 2003-2004, as it applied to Carer's Allowance decisions, the Social Security Agency indicated that specialist overpayment training had been provided to a dedicated team which now had sole responsibility for overpayment decision making. This development is to be approved of. The extent and detail of the recent changes in this area of the law means that further training, learning and development is an imperative.

## INCAPACITY BENEFIT

Incapacity Benefit continues to be the second largest area of appeal activity. Almost 3% of all appeals received in this category were monitored. The level of incorrectness is nearly 3%. This is an improvement of 1.5% on the previous year.

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

**Figure 9**

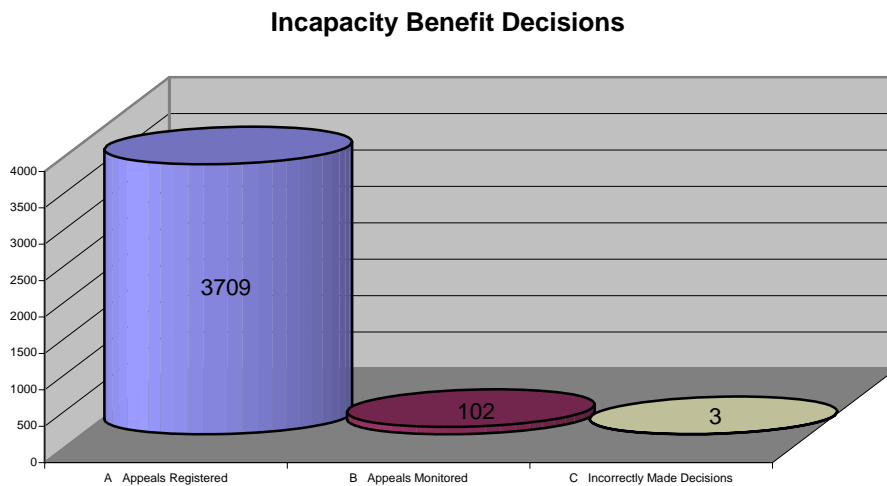
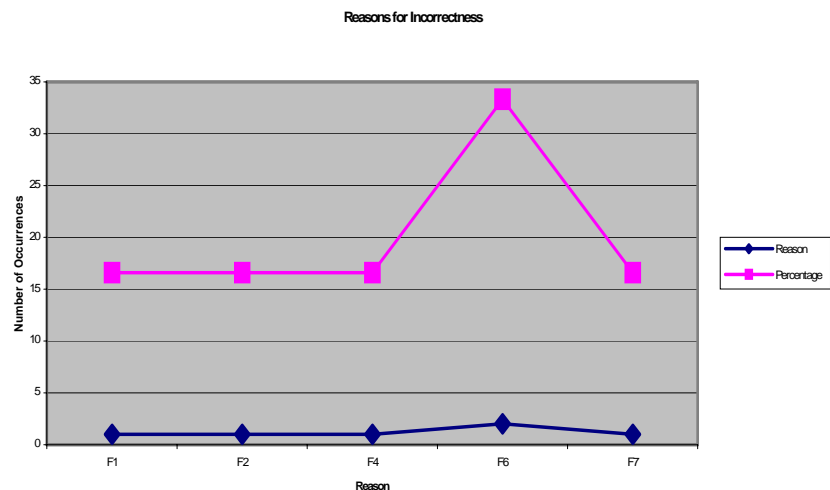


Table 14 and Graph 3 sets out the number of occurrences against the reasons for incorrectness. There were 5 separate reasons identified for the decisions being incorrectly made. There were overlapping reasons in 1 case.

**Table 14**

Reasons for Incorrectness	Number of Occurrences
F1	1 (16.6%)
F2	1 (16.6%)
F4	1 (16.6%)
F6	2 (33.3%)
F7	1 (16.6%)

**Graph 3**



**Table 2 on Page 5 sets out in full the reasons for incorrectly made decisions**

In 1 of the 3 incorrectly made decisions the legal member commented that the decision maker had misinterpreted the evidence available. In the remaining 2 cases the officer either disregarded relevant evidence or failed to properly investigate the claim or failed to resolve a conflict in the evidence. In one of these cases, the appellant clearly explained in her appeal form that due to hospitalization she was unable to attend a medical examination. This information was not acted upon in a reasonable manner by the decision maker. In two cases the mental health descriptors were under appeal and the tribunal increased the points awarded by the decision maker from 8 to 10, and from 1 to 10 respectively.

A further 40 cases, representing 39% 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 (14 cases), or the tribunal was given additional evidence that was not available to the decision maker (26 cases).

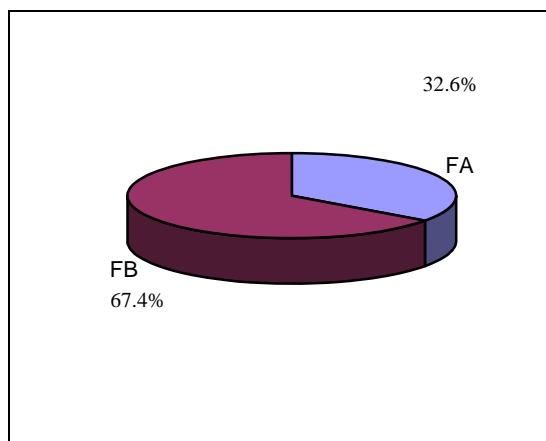
In the FB category 42% of those that were overturned were appealing the physical descriptors of the personal capability assessment (PCA), while 35% were based on the mental descriptors. A further 12% were a mixture of physical and mental. The remainder were not appealing the PCA. It is noted that decisions in this category were changed due to a combination of further medical evidence and oral and ocular evidence of the appellant, a carer or a witness.

Table 15 and Charts 5 and 6 illustrate why correctly made decisions were overturned and the spread of additional evidence available to tribunals.

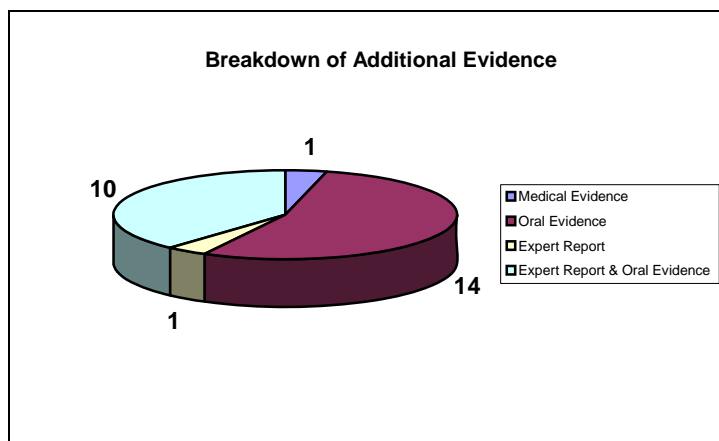
**Table 15**

Reasons for Overturning Correctly Made Decision		Number of Cases
<b>FA.</b>	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	14 (35%)
<b>FB.</b>	The tribunal was given additional evidence which was not available to the officer who made the decision.	26 (65%)

**Chart 5**



**Chart 6**



As highlighted in the last two 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.

### **Recommendation**

In response to the Report on Standards of Decision-Making by the Department for 2003-2004, as it applied to Incapacity Benefit decisions, the Social Security Agency indicated that decision-makers are constantly reminded, through meetings and training of the importance of relevant evidence gathering and interpretation. Once again, this development is to be welcomed

The assimilation and interpretation of evidence in certain types of Incapacity Benefit case remains problematic. The questionnaires which are routinely forwarded to claimants by the Department, are deficient in failing to adequately address the mental health aspects of a claimant's medical condition. This failure is bound to lead to problems in the assessment of evidence in cases, where the mental health of the claimant is a significant issue.

As was noted above, there has been a recommendation that a variety of health care sources is utilised for obtaining medical evidence, in Disability Living Allowance cases. This recommendation remains appropriate in Incapacity Benefit. The fact that there is a report of a medical examination in most Incapacity Benefit cases should not negate the possibility that additional, relevant medical evidence might be obtained from alternative sources.

## INDUSTRIAL INJURIES DISABLEMENT BENEFIT & SEVERE DISABLEMENT ALLOWANCE

There is a low appeal rate in both of these benefits. To obtain a meaningful sample, 28% of Industrial Injuries Disablement Benefit appeals received were monitored. Given the very small number of Severe Disablement Allowance appeals received it was necessary to monitor them all. The accuracy level in these benefits is excellent as none of those monitored were found to be incorrect.

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

**Figure 10**

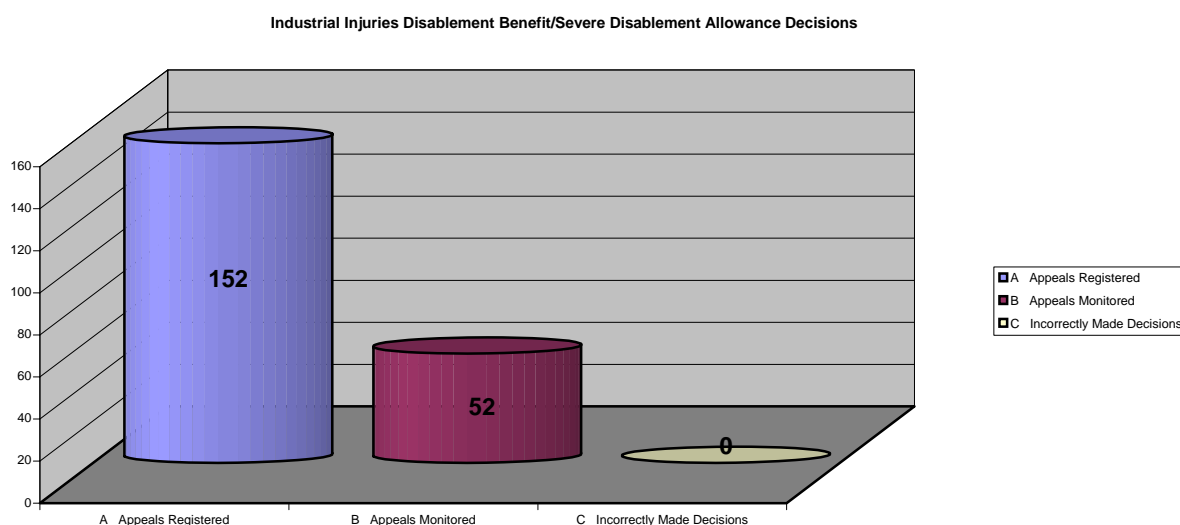


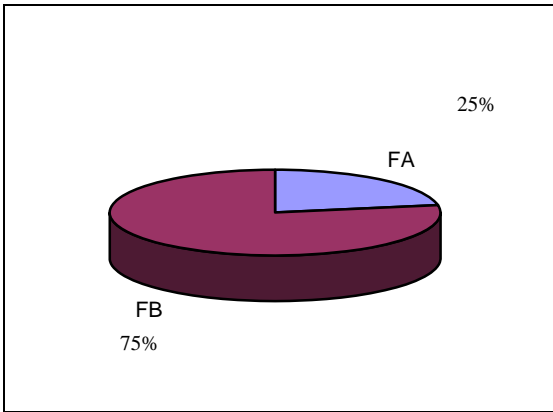
Table 16 and Chart 7 illustrate that in 8 cases, representing 16% of those monitored, 2 decisions were overturned because the tribunal accepted evidence that the decision maker was unwilling to accept and, in 6 cases, additional evidence was available to the tribunal that was not available to the decision maker. As in other incapacity benefits, the additional evidence available to tribunals was by way of direct oral evidence by appellants and witnesses at tribunal, medical reports, or a combination of these. The tribunal also had additional first hand evidence which was obtained during medical examination of appellants by consultants at the tribunal.

Chart 8 gives a breakdown of the evidence available.

**Table 16**

<b>Reasons for Overturning Correctly Made Decision</b>		<b>Number of Occurrences</b>
<b>FA.</b>	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	2 (25%)
<b>FB.</b>	The tribunal was given additional evidence which was not available to the officer who made the decision.	6 (75%)

**Chart 7**



**Chart 8**

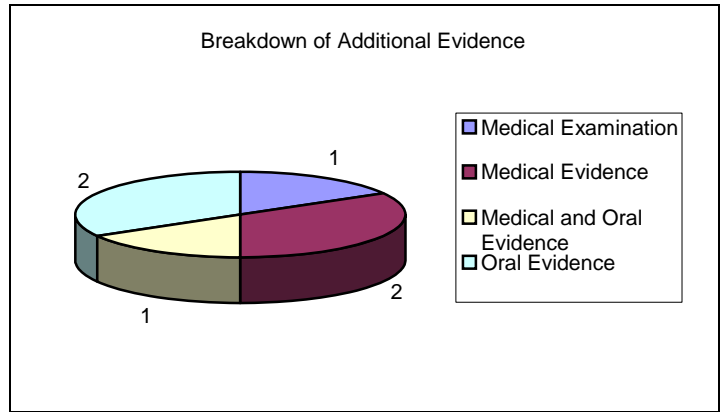


Table 17 gives a breakdown of the results by benefits

**Table 17**

<b>Breakdown of Appeals Monitored</b>		<b>FA</b>	<b>FB</b>
IIDB	40	2	5
SDA	9	-	1

**Recommendations**

Industrial Injuries Disablement Benefit remains a complex benefit, requiring close analysis of relevant medical evidence. The statistical analysis has shown that in 9.6% of all appeals monitored in this category, additional medical evidence was available from sources such as hospital records or medical reports. In response to the Report on Standards of Decision-Making by the Department for 2003-2004, as it applied to Industrial Injuries Disablement Benefit and Severe Disablement Allowance decisions, it was noted by the Agency that strenuous efforts are made to obtain all of the necessary evidence. Clearly, there is no reason why additional information cannot be made available to the decision maker at the time when a decision on entitlement, or on other questions, is being made. It is recommended that more careful consideration is given to the assimilation of additional evidence from appropriate sources.

## COMPENSATION RECOVERY

There is a relatively low appeal rate in this area. 50% of appeals received were monitored to obtain a meaningful sample. While the standard of decision making in this area has improved by 3% on the previous year, the level of incorrectness remains unacceptably high at just over 12%.

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

**Figure 11**

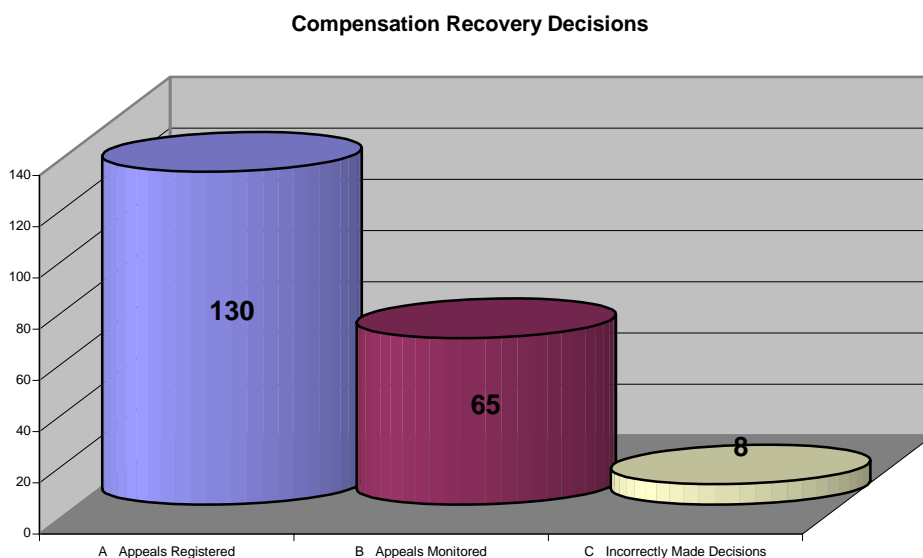
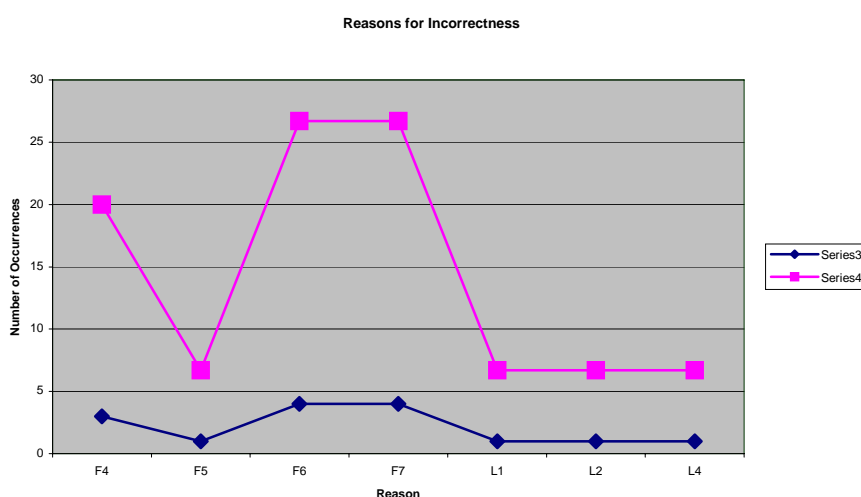


Table 18 and Graph 4 sets out the number of occurrences against the reasons for incorrectness. There were 7 separate reasons identified for the decisions being incorrectly made. There were overlapping reasons in 5 cases.

**Table 18**

Reasons for Incorrectness	Number of Occurrences
<b>F4</b>	3 (20%)
<b>F5</b>	1 (6.7%)
<b>F6</b>	4 (26.7%)
<b>F7</b>	4 (26.7%)
<b>L1</b>	1 (6.7%)
<b>L2</b>	1 (6.7%)
<b>L4</b>	1 (6.7%)

**Graph 4**



**Table 2 on Page 5 sets out in full the reasons for incorrectly made decisions**

As explained in previous reports, appeals are mainly lodged by Insurance Companies, and all but a few are represented by firms of Solicitors specialising in personal injury litigation. Again as in previous reports conflicting medical opinion is common and the comments recorded by Legal Members continue to reflect problems decision makers had with evidential issues. In particular in 50% of those found to be incorrectly made there was conflicting medical opinion between the Senior Medical Officer (SMO) of the department and expert medical opinion obtained by the compensator. Legal members commented in one case that the report by the SMO did not address relevant issues, and in another case that the SMO appeared to misunderstand the rules relating to compensation recovery.

In 3 cases, representing 37%, the decision maker failed to take into account Commissioner's decision R(CR) 1/02 which established that it was open to the decision maker or the tribunal, to conclude that part, or all, of an award of Disablement Benefit is not recoverable. The Commissioner's decision was reported in May 2001 and yet the department failed to apply the principle in decisions under appeal in the 2004-5 year. It is essential that the correct legal rules, as interpreted by the Commissioners, are applied by decision makers.

In 4 of the cases where decisions were incorrectly made, the legal member also recorded that relevant evidence was disregarded. Again, the information collected, points to a lack of understanding by decision makers of the rules of entitlement to recoverable benefits. Decision makers in Compensation Recovery should be able to assess whether benefit is correctly paid, and whether it is attributable, in part or in full, to the relevant compensation payment.

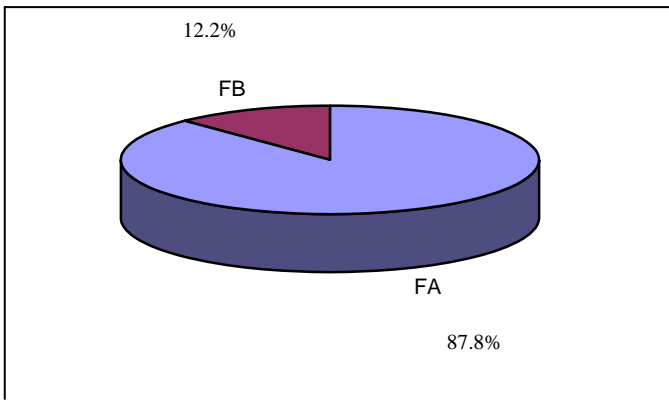
The errors identified continue to reinforce this issue, as decision makers either misunderstood, or misinterpreted, relevant evidence, or misinterpreted, or did not correctly identify, the legal rules that applied.

In addition, Table 19 and Chart 9 illustrates that a further 41 decisions, 63% of those monitored, were overturned. In 87.8% of these, the tribunal accepted medical evidence that was available to the decision maker, but which the decision maker was unwilling to accept. In the remainder, additional evidence was available to the tribunal that was not available to the decision maker. This evidence was by way of witness evidence in 2 of these cases, additional medical evidence in one case and both medical evidence and video surveillance in a further 2 cases.

**Table 19**

<b>Reasons for Overturning Correctly Made Decision</b>		<b>Number of Cases</b>
<b>FA.</b>	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	36 (87.8%)
<b>FB.</b>	The tribunal was given additional evidence which was not available to the officer who made the decision.	5 (12.2%)

**Chart 9**



**Recommendations**

The response of the Department to the 2003-04 report recommendations is noted. I am pleased to note the emphasis on training. There continues to be a need to understand how claims for civil damages for personal injuries are dealt with by the Courts and I note that there is no such training at present.

Recovery of benefit is based on the certificate issued by the Department. The certificate may be reviewed following an application by a party or by the Department on its own initiative. In most cases, the certificate must be reviewed when the court case is decided or settled. Such reviews are based on the evidence provided by insurers. A review may also be carried out where there is an appeal. There is no reason why fresh reviews should not be issued up to the time of an appeal hearing based on fresh evidence, or the acceptance of arguments about the application of the evidence already provided in discussions with appellant insurers. The approach suggested in the response is too rigid. In addition, it is inappropriate where the appellant is a public corporation and is legally represented.

## INCOME SUPPORT

Income Support appeal activity is relatively steady when compared to other benefits. 10% of appeals received in this category were monitored. Almost 11% of decisions overall were found to be incorrect. This is an increase of 7% on the previous year.

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

**Figure 12**

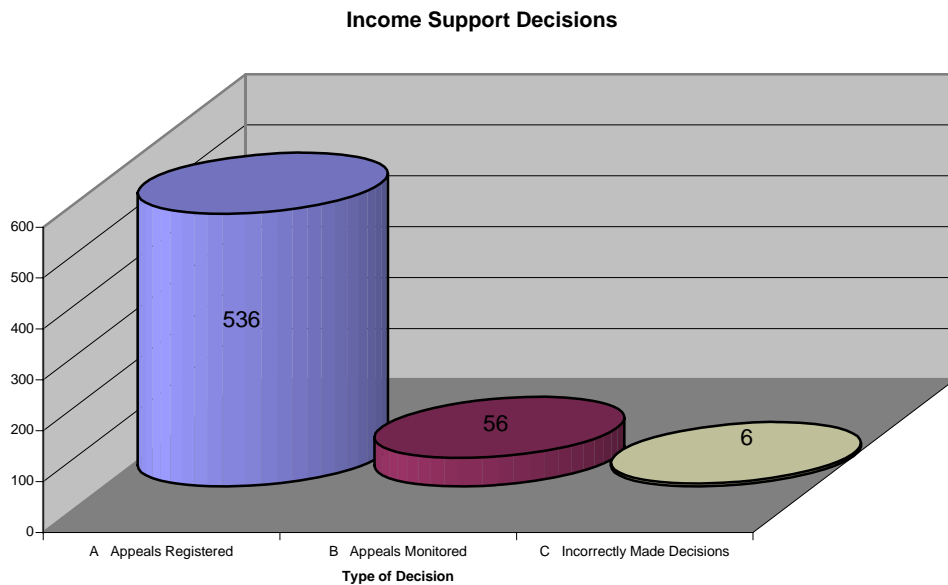
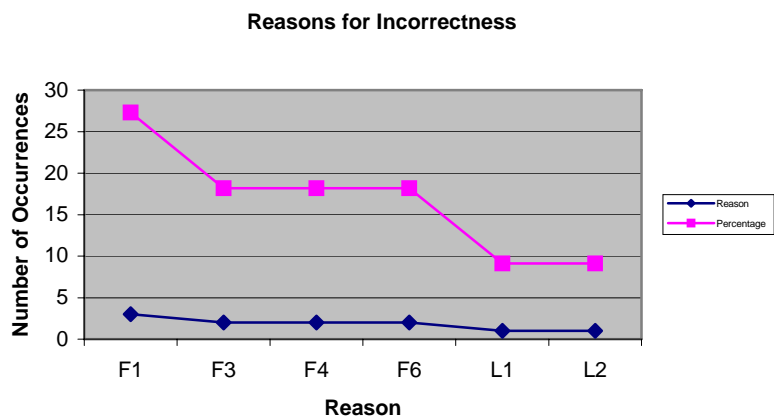


Table 20 and Graph 5 sets out the number of occurrences against the reasons for incorrectness. There were 6 separate reasons identified for the decisions being incorrectly made. There were overlapping reasons in 3 cases.

**Table 20**

Reasons for Incorrectness	Number of Occurrences
F1	3 (27.3%)
F3	2 (18.2%)
F4	2 (18.2%)
F6	2 (18.2%)
L1	1 (9.1%)
L2	1 (9.1%)

**Graph 5**



**Table 2 on Page 5 sets out in full the reasons for incorrectly made decisions**

The issues that arise in Income Support are varied and there are extensive legal rules to apply. Chart 10 gives a breakdown of the issues under appeal. In 3 of the 6 cases identified as incorrectly made the legal member commented that the decisions were based on insufficient evidence due to inadequate investigation of the claim. In a further case where the issue under appeal was living together as husband and wife, the decision maker failed to identify findings based on the rules of entitlement. The department was not represented at the hearing and no witnesses were in attendance. In two further cases the issue under appeal was the backdating of benefit. The rules were applied too rigidly. The decision makers do not appear to take into consideration the difficulties faced by individuals trying to navigate the benefit system when Job Seekers Allowance or Incapacity benefit are initially claimed. In both cases the backdating period was less than a month.

The decision maker in one case reviewed entitlement to Income Support and raised an overpayment on the basis that a single parent claimant's partner was working. No investigation of her partner's hours of employment or earnings was undertaken. The correct decision was that the conditions of entitlement were not satisfied.

**Chart 10**

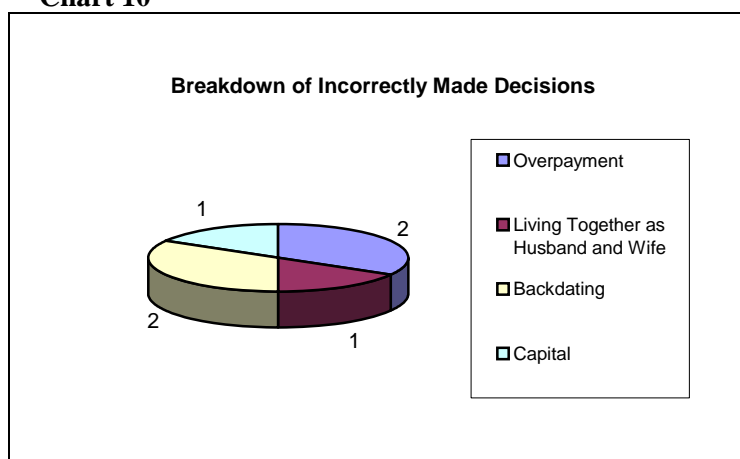
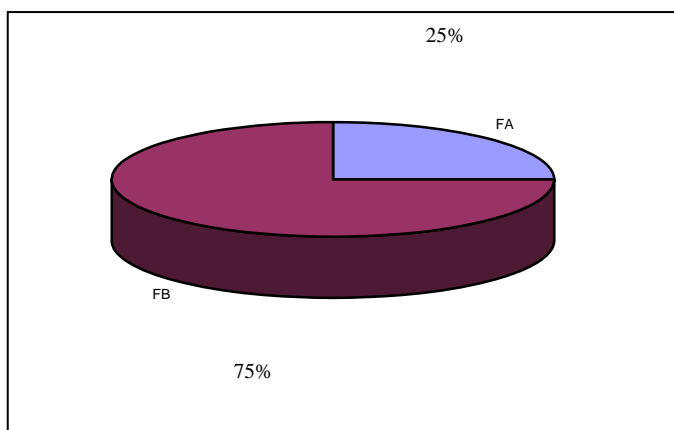


Table 21 and Chart 11 illustrate that in a further 8 cases, representing 14% of those monitored, decisions were overturned because the tribunal accepted evidence that the decision maker was unwilling to accept (2 cases), or the claimant produced additional evidence to the tribunal that was not available to the decision maker (6 cases). In the latter category, 2 cases, representing 33.3% of FBs, the issue under appeal was again the overpayment of benefit. In all cases either the appellant, or a witness, attended the hearing and presented oral evidence, or a report, that the decision maker did not have the benefit of.

**Table 21**

Reasons for Overturning Correctly Made Decision		Number of Cases
<b>FA.</b>	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	2 (25%)
<b>FB.</b>	The tribunal was given additional evidence which was not available to the officer who made the decision.	6 (75%)

**Chart 11**



### **Recommendations**

Despite the initiatives mentioned in the response to last years report, the standard of decision making has deteriorated in the period under consideration. This is disappointing and it is to be hoped that the next period will reflect the planned improvements.

The legal rules are generally understood.

As stated in the section on Carer's Allowance, overpayment cases continue to be problematic for all social security benefits. The relevant legislation has been the subject of interpretation by the Commissioners and other appellate bodies. Decision makers need to take account of the changes and apply the relevant rules. Submissions to the tribunal also need to address the relevant issues and the interpretation of the legislation. I continue to recommend training in the area of overpayments. I also recommend that the current standard submission prepared for the tribunal be re-examined and updated to cover the appropriate legislation and relevant issues.

It is important that high standards are achieved in this benefit as it represents the income base for those unfit to work and for single parents.

## JOBSEEKERS ALLOWANCE

20% of all Jobseekers Allowance appeals received were monitored. The level of incorrectness identified is 3%. The standard of decision making is consistent with the previous year.

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

**Figure 13**

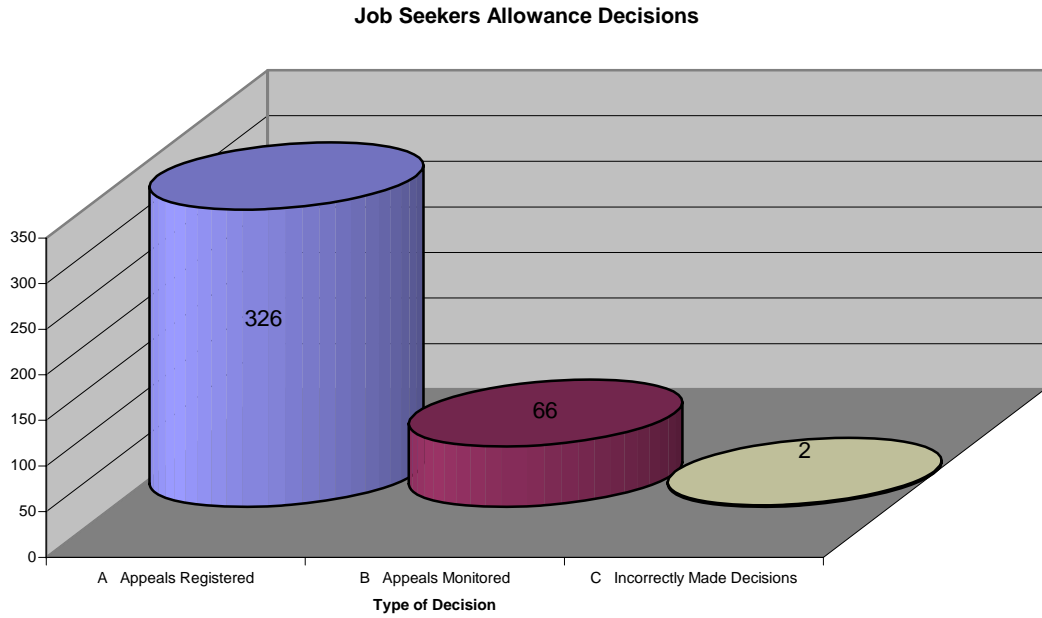


Table 22 and Graph 6 sets out the number of occurrences against the reasons for incorrectness. There were 4 separate reasons identified for the decisions being incorrectly made. There were overlapping reasons in 1 case.

**Table 22**

Reasons for Incorrectness	Number of Occurrences
<b>F1</b>	2 (40%)
<b>F5</b>	1 (20%)
<b>F7</b>	1 (20%)
<b>L5</b>	1 (20%)

**Graph 6**

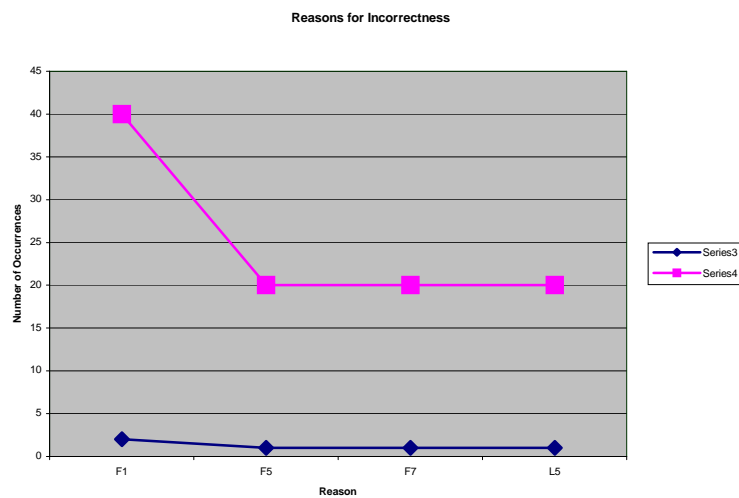


Table 2 on pages 5 sets out in full the reasons for incorrectly made decisions

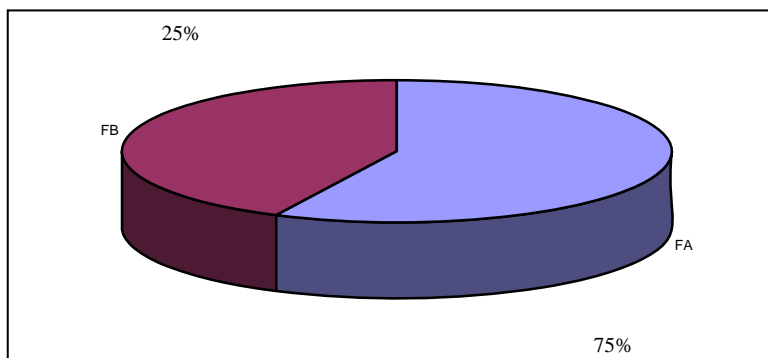
The legal member commented in one case that the decision maker did not show how the claimant lost his employment through misconduct. In the other case there was no evidence that the claimant failed to avail of a reasonable opportunity of employment. In both cases the decision maker's decision was based on inadequate investigation of the claim.

Table 23 and Chart 12 illustrates that in a further 7 cases, 10.6% of those monitored, decisions were overturned because the tribunal 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 (3 cases).

**Table 23**

Reasons for Overturning Correctly Made Decision	Number of Cases
<b>FA.</b> The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	4 (57.1%)
<b>FB.</b> The tribunal was given additional evidence which was not available to the officer who made the decision.	3 (42.9%)

**Chart 12**



**Recommendation**

The level of incorrectness in this category is low, although the reasons identified for the errors remain of concern. It is clear that the previously identified problems of incomplete investigation, and failure to assimilate and interpret relevant evidence remain.

It is noted that improvement plans are in place.

## 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, almost 30% of appeals received were monitored. The accuracy level in this benefit is excellent as none of those monitored were found to be incorrectly made by decision makers. This is in line with the previous years results.

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

**Figure 14**

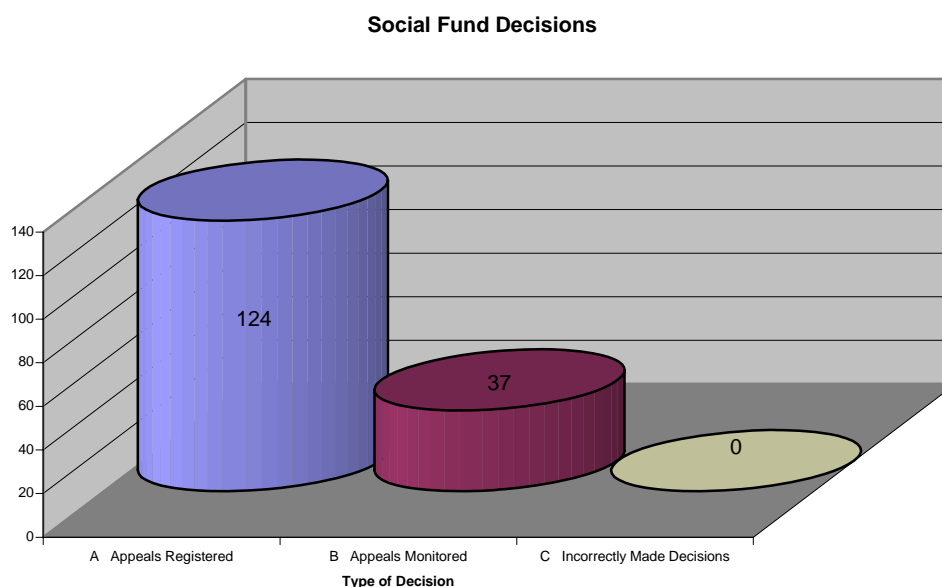


Table 24 illustrates that in 2 cases, the tribunal overturned the decision of the decision maker because of additional evidence provided by the appellant at the tribunal.

**Table 24**

<b>Reasons for Overturning Correctly Made Decision</b>		<b>Number of Cases</b>
<b>FA.</b>	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	0 (0%)
<b>FB.</b>	The tribunal was given additional evidence which was not available to the officer who made the decision.	2 (100%)

**RETIREMENT PENSION / BEREAVEMENT BENEFITS / REDUCED EARNINGS ALLOWANCE**

23 Retirement Pension, 16 Bereavement Benefits and 1 Reduced Earnings Allowance appeal were received during the report period. 10 Retirement Pension, 6 Bereavement Benefits and 1 Reduced Earnings Allowance case were monitored.

There were no incorrectly made decisions and no correctly made altered decisions in any of these benefit areas.

## CHAPTER 5

### SUMMARY OF RECOMMENDATIONS

#### **Child Support Agency Decision**

I would continue to recommend, that additional training is provided to decision-makers on obtaining and evaluating evidence. Additionally, the newly-implemented Investigation Team should be encouraged to utilise the range of investigatory powers available to the agency, and comprehend the significance of the effective use of such powers in appropriate circumstances.

It is recommended, that a sequential or integrated approach to applications and departures is adopted. The first task is to undertake a thorough assessment of income, for the purposes of a maintenance assessment, and particularly where the information provided is clearly insufficient or unreliable. The Agency should not advocate a policy where Departure applications is the first rather than the last resort. The placing of Departure applications in their proper context should include the abandonment of the policy of giving ambiguous advice to parties, or recommending Departure applications as an alternative to rigorous maintenance assessments.

I would continue to recommend that it is appropriate for a discretionary income assessment power to be added to the legislative armoury. Such a power would be particularly beneficial in the situation where it proves impossible to obtain full disclosure of the income of any of the parties, and where there is evidence of conscious attempts to withhold, or conceal details of income.

The social security decision-making rules have been adopted for Child Support decision-making and appeals. There is clear evidence that decision-makers have a substandard understanding of the detail of the decision-making rules. This deficiency could be addressed in additional learning and development for decision-makers, an approach which is thoroughly recommended.

**Disability Living Allowance/Attendance Allowance**

As obtaining the most appropriate medical evidence, and the interpretation of evidence received, remain a problem, I would continue to recommend the following:

The type of medical report and from whom it should be obtained should be carefully considered in each case. Consideration should be given to whether or not it is an initial claim, whether there is a diagnosis of a particular illness and if the claimant is attending a specialist, a consultant, or other health team member. Accordingly, a more focused approach to the assimilation of evidence is recommended.

The format of the department's factual report remains inappropriate for certain types of case. This should be examined together with the policy of routinely forwarding the report to GPs in all cases.

Given the significant information technology changes taking place in relation to medical records, making them more easily transferable and interpretable, it is once more recommended that the Department consider developing a policy in relation to obtaining records where appropriate.

Additionally, in Attendance Allowance, careful attention should be paid to the nature and format of the medical reports which are sought from health care professionals, in relation to claims to Attendance Allowance. Although there are shared characteristics with Disability Living Allowance, there is no requirement to assess most aspects of the claimant's mobility. This policy should be examined and reviewed.

**Incapacity Benefit**

As was noted above, there has been a recommendation that a variety of health care sources is utilised for obtaining medical evidence, in Disability Living Allowance cases. This recommendation also remains appropriate in Incapacity Benefit. The fact that there is a report of a medical examination in most Incapacity Benefit cases should not negate the possibility that additional, relevant medical evidence might be obtained from alternative sources.

There continues to be difficulties in obtaining, assessing and interpreting evidence in some mental health cases. It

is recommended that the routine questionnaires forwarded to claimants by the Department are re-examined and redesigned to adequately address the mental health aspects of a claimant's medical condition.

### **Compensation Recovery**

That decision makers should continue to use their powers of review up to the time of the tribunal hearing, taking into consideration any fresh evidence or arguments presented.

There continues to be a need to understand how claims for civil damages for personal injuries are dealt with by the Courts. Training in this area is again recommended.

### **Carer's Allowance**

Overpayments remain problematic in respect of all social security benefits. The relevant legislative provisions are complex, and have been the subject of interpretation by Social Security Commissioners and the other appellate bodies. The increasing intricacy of the relevant rules requires close monitoring by decision-makers in order to ensure accuracy in decision-making. There is a clear learning and development outcome from the recent developments, and it is recommended that this is addressed.

### **Income Support**

There is a clear indication that the evidence base for decision making needs to be given greater emphasis. When the evidence is obtained, it is essential that it is carefully weighed. Training is recommended in this area.

There appears to be a continuing problem with overpayments. Decision makers need to take account of the most recent interpretation by the Commissioners and other appellate bodies. As with Carer's Allowance I continue to recommend training in the area of overpayments.

I also recommend that the current standard submissions to the tribunal need to be reviewed and updated to address the relevant issues and interpretation of the legislation.

**Jobseekers Allowance**

It is clear that the previously identified problems of incomplete investigation, and failure to assimilate and interpret relevant evidence remain. I would again recommend training in this area.

**Industrial Injuries Disablement  
Benefit and Severe Disablement  
Allowance**

In 9.6% of all appeals monitored in this category, additional medical evidence was available from sources such as hospital records or medical reports. I would again continue to recommend that additional information is obtained by the decision maker at the time when a decision on entitlement, or on other questions is being made.

It is also recommended that more careful consideration is given to the assimilation of additional evidence before a decision is made.

## APPENDIX 1

### INFERENCES AND SAMPLING ERROR

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

The analysis that follows relates only to benefits where a sample was selected. The benefits where a complete census was taken do not affect the confidence interval. Hence in table A1, the 'ALL' category refers both to benefits where a complete census was taken and to those where only a sample was taken. The minimum sample size for inferences to be made with regard to sampled benefits has been taken as 30. Only Carer's Allowance, has a sample under this level, therefore results in this category may be read with caution.

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.

<b>Benefit</b>	<b>Percentage Incorrectness in the Initial Decision</b>	<b>Confidence Interval (<math>\pm\%</math>)</b>
Attendance Allowance	0.9%	1.2
Child Support	18.8%	11.3
Compensation Recovery	12.3%	5.7
Disability Living Allowance	4.3%	4.1
Incapacity Benefit	2.9%	3.2
Income Support	10.7%	7.8
Industrial Injuries Disablement Benefit / Severe Disablement Allowance	0.0%	0.0
Carer's Allowance	17.6%	14.5
Jobseekers Allowance	3.0%	3.7
Social Fund	0.0%	0.0
ALL <sup>1</sup>	5.1%	1.7

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<sup>1</sup> Note ALL refers to both benefits that were sampled and those that had a complete census.

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 3.4% and 6.8%, i.e.  $5.1\% \pm 1.7\%$

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

- we can be 95% certain that the true level of incorrectness among all Disability Living Allowance appeal decisions in the period is between 0.2% and 8.4%, i.e.  $4.3\% \pm 4.1\%$ .

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	11959
Number of cases monitored	644
Percentage monitored	5.4%
Number of incorrect initial decisions	33
Percentage incorrect	5.1%
Confidence interval	±1.7
Total number of reasons	68
<b>Main reason for incorrect initial decision:</b> The officer disregarded relevant evidence – 19% of all reasons	

BENEFIT NAME	DISABILITY LIVING ALLOWANCE
Number of cases registered	6594
Number of cases monitored	93
Percentage monitored	1.4%
Number of incorrect initial decisions	4
Percentage incorrect	4.3%
Confidence interval	±4.1%
Total number of reasons	11
<b>Main reason for incorrect initial decision:</b> The officer disregarded relevant evidence – 27% of all reasons	

<b>BENEFIT NAME</b>	<b>ATTENDANCE ALLOWANCE</b>
Number of cases registered	199
Number of cases monitored	107
Percentage monitored	53.8%
Number of incorrect initial decisions	1
Percentage incorrect	0.9%
Confidence interval	±1.2%
Total number of reasons	4
<b>Main reason for incorrect initial decision:</b> There was no main reason	

<b>BENEFIT NAME</b>	<b>INCAPACITY BENEFIT</b>
Number of cases registered	3709
Number of cases monitored	102
Percentage monitored	2.8%
Number of incorrect initial decisions	3
Percentage incorrect	2.9%
Confidence interval	±3.2%
Total number of reasons	6
<b>Main reason for incorrect initial decision:</b> The officer disregarded relevant evidence – 33% of all reason.	

<b>BENEFIT NAME</b>	<b>JOBSEEKERS ALLOWANCE</b>
Number of cases registered	326
Number of cases monitored	66
Percentage monitored	20.2%
Number of incorrect initial decisions	2
Percentage incorrect	3.0%
Confidence interval	±3.7%
Total number of reasons	5
<b>Main reason for incorrect initial decision:</b> The decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision – 40% of all reasons.	

<b>BENEFIT NAME</b>	<b>CHILD SUPPORT</b>
Number of cases registered	103
Number of cases monitored	32
Percentage monitored	31.1%
Number of incorrect initial decisions	6
Percentage incorrect	18.8%
Confidence interval	±11.3%
Total number of reasons	11
<b>Main reason for incorrect initial decision:</b> The officer made errors of calculation – 36% of all reasons	

<b>BENEFIT NAME</b>	<b>SOCIAL FUND</b>
Number of cases registered	124
Number of cases monitored	37
Percentage monitored	29.8%
Number of incorrect initial decisions	0
Percentage incorrect	
Confidence interval	
Total number of reasons	
<b>Main reason for incorrect initial decision:</b> No incorrectly made decisions	

<b>BENEFIT NAME</b>	<b>INCOME SUPPORT</b>
Number of cases registered	536
Number of cases monitored	56
Percentage monitored	10.4%
Number of incorrect initial decisions	6
Percentage incorrect	10.7%
Confidence interval	±7.8%
Total number of reasons	11
<b>Main reason for incorrect initial decision:</b> The decision of the officer was based on insufficient facts /evidence due to inadequate investigation of the claim or revision – 27% of all reasons	

<b>BENEFIT NAME</b>	<b>COMPENSATION RECOVERY</b>
Number of cases registered	130
Number of cases monitored	65
Percentage monitored	50%
Number of incorrect initial decisions	8
Percentage incorrect	12.3%
Confidence interval	±5.7%
Total number of reasons	15
<b>Main reason for incorrect initial decision:</b> The officer disregarded relevant evidence and the officer failed to identify/resolve an obvious conflict in the evidence – both 27% of all reasons.	

<b>BENEFIT NAME</b>	<b>DISABLEMENT BENEFIT/SEVERE DISABLEMENT ALLOWANCE</b>
Number of cases registered	152
Number of cases monitored	52
Percentage monitored	34.2%
Number of incorrect initial decisions	0
Percentage incorrect	
Confidence interval	
Total number of reasons	
<b>Main reason for incorrect initial decision:</b> No incorrectly made decisions	

<b>BENEFIT NAME</b>	<b>CARER'S ALLOWANCE</b>
Number of cases registered	46
Number of cases monitored	17
Percentage monitored	40%
Number of incorrect initial decisions	3
Percentage incorrect	17.6%
Confidence interval	±14.5%
Total number of reasons	5
<b>Main reason for incorrect initial decision:</b> There was no main reason.	

## APPENDIX 3

### APPEAL REPORT FORM

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**Section 1** Benefit claimed:

Name of appellant:

Address:

NINO:

Appeal reference:

Date of Decision Appealed:

Decision maker/Office:\*

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

*\*To be completed by tribunal Clerk*

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

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**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.

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**Mon 1**

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**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.

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

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

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

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Legal member

Date:

Time Taken to Complete: