

PRESIDENT'S REPORT

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

PERIOD 01 APRIL 2000 TO 01 APRIL 2001

PRESIDENT'S REPORT ON THE STANDARDS OF DECISION MAKING BY THE DEPARTMENT

Period 01 April 2000 to 01 April 2001

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PRESIDENT'S FOREWORD

Social Security (Northern Ireland) Order 1998: Schedule 1: Paragraph 10

This is my report on the standards achieved by the Department in the making of decisions against which an appeal lies to an Appeal Tribunal in the year April 2000 to April 2001. The delay in the report reflects the delay in processing appeals by the Department since the outcome of all monitored appeals is taken into account. A small number of appeals taken on appeal to the higher Courts has been disregarded.

In the period under consideration 19286 appeals were registered against decisions made by the officers of the Social Security and Child Support Agencies.

Decision making in sixteen different areas was considered. The rules of entitlement are very complex demanding high adjudication standards.

The recommendations in the report are in bold lettering. In those benefits where it was only possible to monitor very small numbers of appeals, no recommendations have been made. It was not possible to make any inferences.

Details of the monitoring results are set out in chapters three and four.

I am concerned about the legal ambiguity of decision making rules as the result of the changes brought about by the Social Security (Northern Ireland Order) 1998. Officers are unclear about which decisions are appealable. The difficulties are highlighted in R(DLA)6/02, a decision of a tribunal of Commissioners in Great Britain. Based on the procedures of the Department prior to that decision, a number of claimants have not been advised of appeal rights. Consequently, the figures in this report must be qualified to some degree since not all those entitled to appeal have been able to do so.

I am very grateful to Nuala Burns, Liz Kinder, Philip Hanna and Caroline Rich for their work in the production of the report. I am also grateful for the invaluable assistance I have received from Mr Michael Woods of Statistics Branch of the Department for Social Development.

C G MacLynn
President of Appeal Tribunals

CHAPTER 1

METHODOLOGY

The methodology used in the survey reflects the fact that both the number of persons claiming a benefit 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. The following benefits fell into this category; Widows Benefit, Reduced Earnings Allowance and Child Maintenance Bonus. The latter two are now obsolete.

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 figure 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 benefit are in Appendix 1 & 2.

In benefits identified in tables with an asterisk*, all the cases selected for monitoring have not been monitored as explained above. The results for these benefits should therefore be read with caution.

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 1st April 2000–1st April 2001

Benefit	Total registered	No. monitored (sample size)	Initial decision incorrect	Percentage Incorrectness
Child Benefit	87	34	1	2.94
Child Maintenance Bonus	2	2	0	0
Child Support *	180	85	13	15.29
Compensation Recovery *	109	54	16	29.63
Disability Living Allowance/ Attendance Allowance *	10317	771	28	3.63
Incapacity Benefit *	6732	241	6	2.49
Income Support *	749	100	2	2.00
Industrial Injuries Disablement Benefit/ Severe Disablement Allowance *	256	109	6	5.50
Invalid Care Allowance	104	46	3	6.52
Jobseekers Allowance *	561	68	1	1.47
Reduced Earnings Allowance *	3	2	0	0
Retirement Pension *	48	17	1	5.88
Social Fund	110	49	4	8.16
Widows Benefit *	28	12	0	0
TOTAL	19286	1590	81	5.10

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: Reasons for Incorrectly Made Decisions

Reason for Incorrectness
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
Clerical 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 81 cases, representing approximately 5% of all cases monitored.

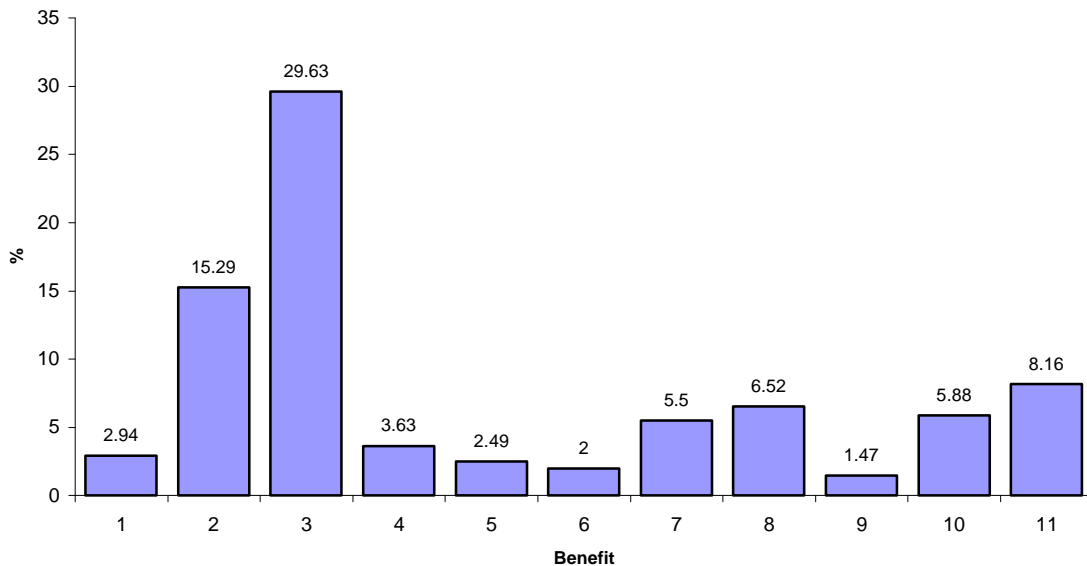
From Table 1 it is evident that there was a considerable degree of variation in the level of incorrectness of initial decisions across benefits.

In the benefits where a complete census was recommended, no cases were assessed as having the initial decision incorrectly made.

Retirement Pensions where a sample was taken did not provide the expected number of cases to enable any statistically valid assumptions to be made. Caution should be used in interpreting the results in this category.

Figure 1 shows the variation of the level of incorrectness across the benefits. Levels of incorrectness in the initial decisions range from approximately 30% of Compensation Recovery cases to under 2% of Jobseekers Allowance cases.

Figure 1: Level of Incorrectness Amongst Initial Decisions



<i>Key to Figure 1</i>	
1. Child Benefit	7. Industrial Injuries Disablement Benefit/Severe Disablement Allowance
2. Child Support	8. Invalid Care Allowance
3. Compensation Recovery	9. Jobseekers Allowance
4. Disability Living Allowance/Attendance Allowance	10. Retirement Pension
5. Incapacity Benefit	11. Social Fund
6. Income Support	

Incapacity Benefit and Disability Living Allowance/Attendance Allowance account for 88% of all cases registered reflecting both the number of people claiming these benefits and, also, the complexity in delivery of the benefits. The level of incorrectness in the initial decisions was low in both instances. In this respect approximately 4% of both monitored Disability Living Allowance/Attendance Allowances cases and less than 3% of Incapacity Benefit cases were assessed as having an incorrect decision.

No incorrect initial decisions were recorded for Reduced Earnings Allowance, Child Maintenance Bonus and Widows Benefit. However, it should be noted that the number of cases monitored across these benefits was small. At the other end of the spectrum, approximately 30% of monitored Compensation Recovery cases were assessed as having the initial decision incorrectly made.

REASON FOR THE INITIAL DECISION BEING INCORRECTLY MADE

When an initial decision was deemed incorrect the reason for this incorrectness was recorded. In the period 1st April 2000 to 1st April 2001 there were 81 cases where the initial decision was judged incorrect. There were in total 148 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

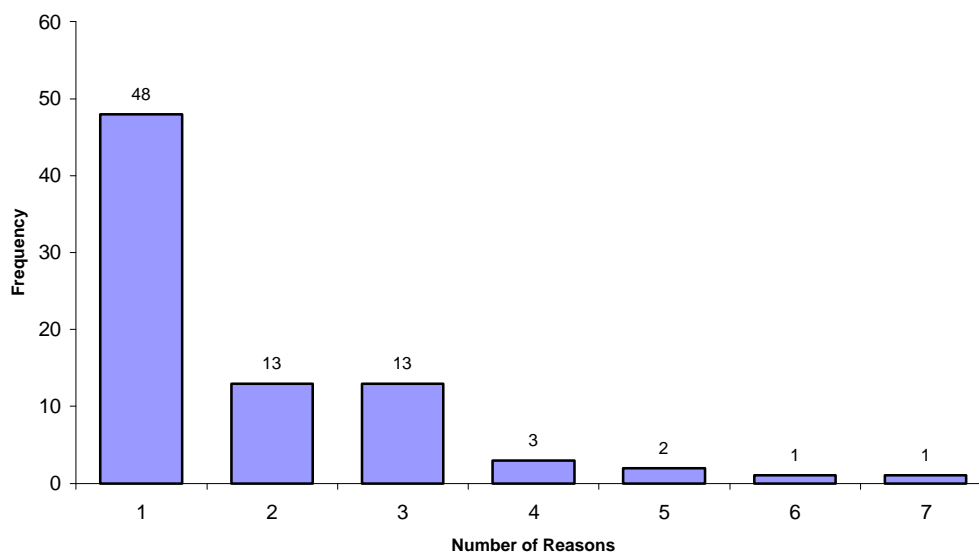


Figure 2 shows that in the majority of cases where the initial decision was incorrect a single reason was given for the incorrectness, 48 cases representing 59%. At the opposite end of the spectrum, there was a Compensation Recovery case in which seven errors were identified.

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

Table 4: Reasons for Incorrectness

Reason for Incorrectness	Number of Occurrences
F1	24
F2	15
F3	9
F4	20
F5	6
F6	23
F7	15
F8	6
F9	6
L1	12
L2	8
L4	2
Clerical errors	2
TOTAL	148

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 24 times, representing 16% of all reasons. The next 2 most common reasons given were that ‘the officer disregarded relevant evidence’ and ‘the decision was based on a misinterpretation or misunderstanding of the evidence available to the officer’.

CORRECTLY MADE DECISIONS OVERTURNED BY TRIBUNALS

Out of 1590 cases selected for monitoring, 343 representing 21% 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).

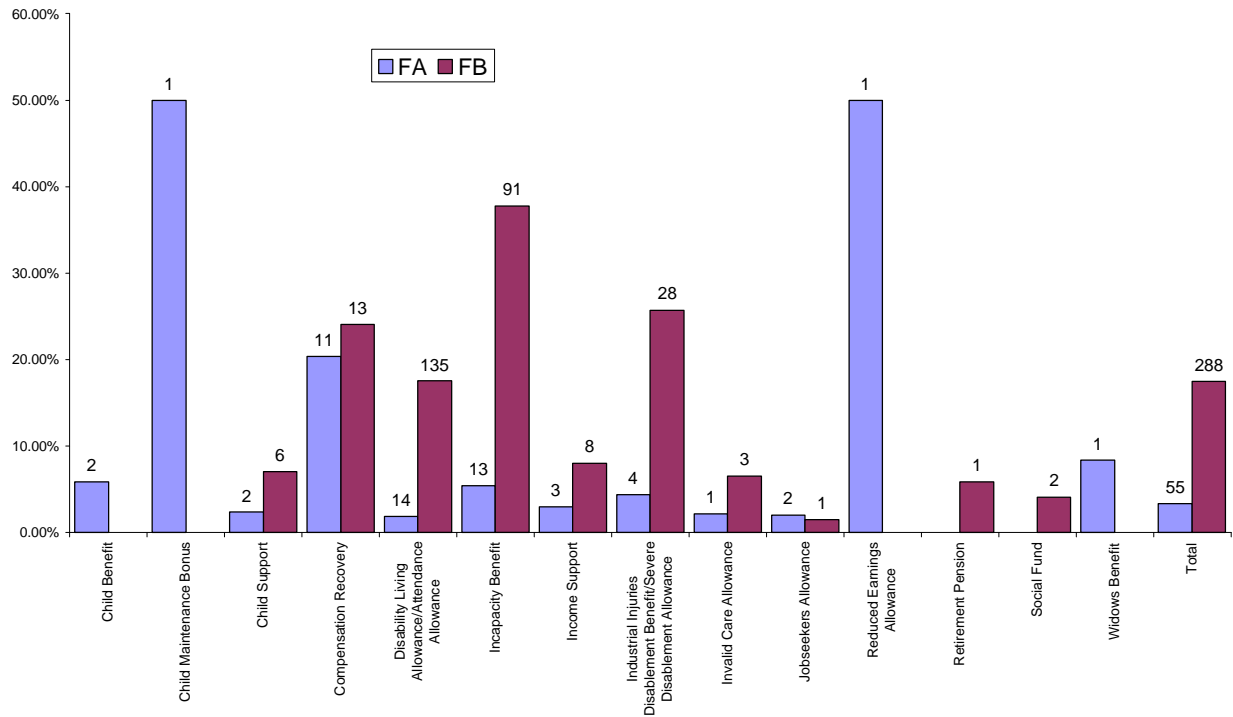
Table 5 and Figure 3 sets out on a by benefit basis the number and percentage of cases where the decision was judged to be correctly made but altered by the tribunal.

Table 5: Correctly Made Decisions Altered By Tribunals

Benefit	Number Monitored	Total Altered	Percentage Altered	FA		FB	
					%		%
Child Benefit	34	2	5.88	2	5.88	0	0
Child Maintenance Bonus	2	1	50.00	1	50.00	0	0
Child Support	85	8	9.41	2	2.35	6	7.06
Compensation Recovery	54	24	44.44	11	20.37	13	24.07
Disability Living Allowance/Attendance Allowance	771	149	19.33	14	1.82	135	17.51
Incapacity Benefit	241	104	43.15	13	5.39	91	37.76
Income Support	100	11	11.00	3	3.00	8	8.00
Industrial Injuries Disablement Benefit/Severe Disablement Allowance	109	32	29.36	4	3.67	28	25.69
Invalid Care Allowance	46	4	8.69	1	2.17	3	6.52
Jobseekers Allowance	68	3	4.41	2	2.94	1	1.47
Reduced Earnings Allowance	2	1	50.00	1	50.00	0	0
Retirement Pension	17	1	5.88	0	0	1	5.88
Social Fund	49	2	4.10	0	0	2	4.10
Widows Benefit	12	1	8.33	1	8.33	0	0
TOTAL	1590	343	21.57	55	3.46	288	18.11

Note: Bold denotes full census

Figure 3



Discounting Child Maintenance Bonus and REA where the sample size was too small to reach any conclusions, Compensation Recovery had on average the highest percentage of cases in both the FA and FB categories.

Disability Living Allowance and Incapacity Benefit had 14 and 13 cases respectively in the FA category and 135 and 91 cases in the FB category. By far the main reason recorded in both these benefits for additional evidence received was the production of a medical report by the claimant before, or at, the hearing.

SUMMARY AND CONCLUSION

This report represented an analysis of appeals from April 2000 to April 2001.

In total 19286 appeals regarding decisions made by the Social Security Agency and the Child Support Agency were received by the Appeals Service between April 2000 and April 2001. Of these 1590, representing just over 8% of all cases registered, were monitored to assess the level of incorrectness amongst initial decisions.

Across all monitored cases the level of incorrectness among initial decisions was approximately 5%. There was a considerable variation in the level of incorrectness of initial decisions across benefits. No incorrect initial decisions were recorded for, Widow's Benefit, Child Maintenance Bonus and Reduced Earnings Allowance. However it should be noted that the number of cases across these benefits was small. At the other end of the spectrum approximately 30% of monitored Compensation Recovery cases were assessed as having the initial decision incorrectly made.

Fifty-nine per cent of cases where the initial decision was assessed as incorrect had a single reason 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 24 times representing 16% of all reasons.

CHAPTER 3

CHILD SUPPORT AGENCY DECISIONS

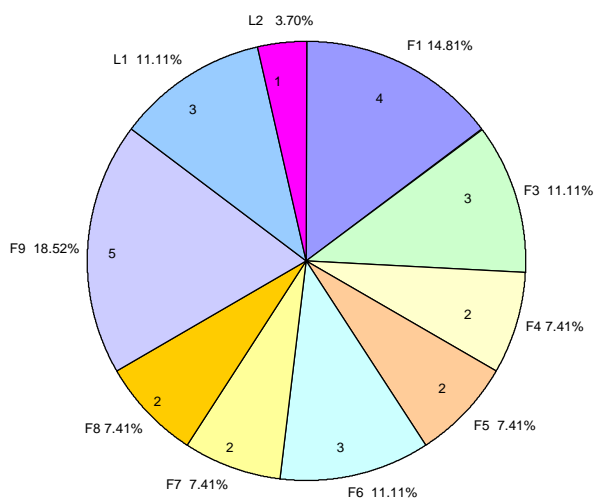
As the appeal rate in Child Support is relatively low, it was necessary to select a higher proportion of cases for monitoring than in some other appeal areas so that meaningful information on decision making could be obtained. During the period 180 appeals were registered. Almost half of these (85) were monitored. Thirteen decisions (15%) were incorrectly made, with a total of 10 separate reasons identified for incorrectness. There were a number of overlapping reasons for incorrectness in most cases.

Table 6 and Pie Chart 1 below sets out the number of occurrences against the reasons for incorrectness. No particular trend was identified.

Table 6

Reasons for Incorrectly Made Decisions	Number of Occurrences
F1. The Decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision	4 (14.81%)
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	3 (11.11%)
F4. The decision was based on a misinterpretation/misunderstanding of evidence available to the officer	2 (7.41%)
F5. The officer took into account wholly unreliable evidence	2 (7.41%)
F6. The officer disregarded relevant evidence	3 (11.11%)
F7. The officer failed to identify/resolve an obvious conflict in the evidence	2 (7.41%)
F8. The officer did not action additional relevant evidence provided after his decision was made and initiate a revision.	2 (7.41%)
F9. The officer made errors of calculation	5 (18.52%)
L1. The officer did not identify the correct legal rules relevant to the claim/revision	3 (11.11%)
L2. The officer misinterpreted the legal rules relevant to the claim	1 (3.70%)

Pie 1



In general, Legal Members commented that in most cases there was a combination of reasons for decision being incorrectly made. They concluded that evidential issues were not properly dealt with, that there was inadequate investigation of all the facts, and that formula calculations were incorrect.

Evidence of earnings appears to be accepted where it would not be for benefit purposes. For example, in Working Families Tax Credit cases, the Board of the Inland Revenue demands much higher standards of proof of earnings. There appears to be inadequate consideration of proof of earnings where there are grounds for suspicion of collusion between employers and the absent parent. It was also found that supporting documentation for self employed accounts was at times unsatisfactory. **Decision makers should consider referring cases for expert advice to accountants, or use inspectors, to ascertain accurate earnings information where evidence produced requires further investigation.**

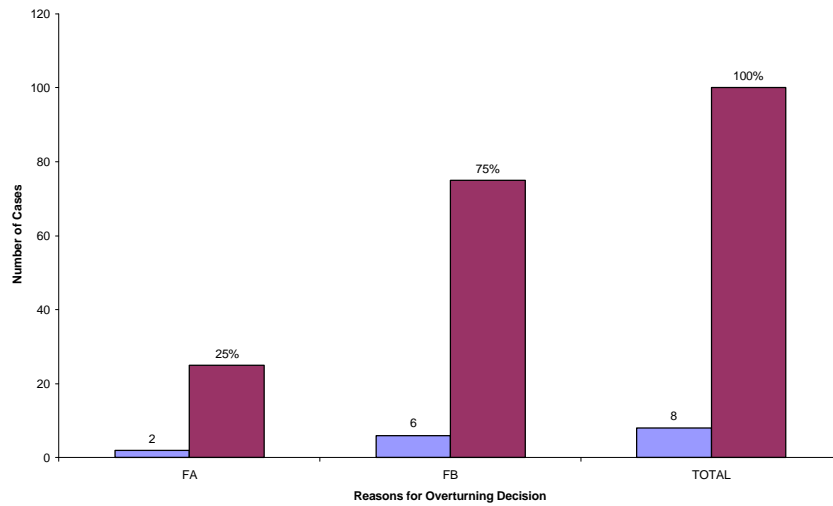
Basic case calculation errors were found in 5 cases. These could have been rectified by careful checking of the case at review stage, or in preparing the submission for the tribunal.

Table 7 and Figure 4 illustrates that a further 8 (9.4%) of the cases monitored were overturned because in 2 cases the tribunal accepted evidence which the decision maker was not willing to accept, and in the remaining cases the tribunal was given additional evidence which was not available to the decision maker.

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.	2(25%)
FB. The tribunal was given additional evidence which was not available to the officer who made the decision.	6(75%)

Figure 4



In those cases which were considered correctly made, but were overturned by the tribunal, all the appellants attended and in four of the cases both the appellant and the other party attended. The evidence provided i.e. details of earnings, bank account and property details, could have been obtained by the decision maker had the cases been investigated more thoroughly.

CHAPTER 4

SOCIAL SECURITY AGENCY DECISIONS

DISABILITY LIVING ALLOWANCE/ATTENDANCE ALLOWANCE

In this category Disability Living Allowance (DLA) and Attendance Allowance (AA) have been amalgamated for reporting purposes as the rules for receipt are similar. During the period 10,317 appeals were registered. 771 cases were monitored, representing over 7% of all appeals registered. The majority of cases were DLA appeals. Almost 4% of the decisions monitored (28 cases) were found to be incorrectly made by decision makers. In all, 10 different reasons were identified for incorrectness. There were overlapping reasons in most cases.

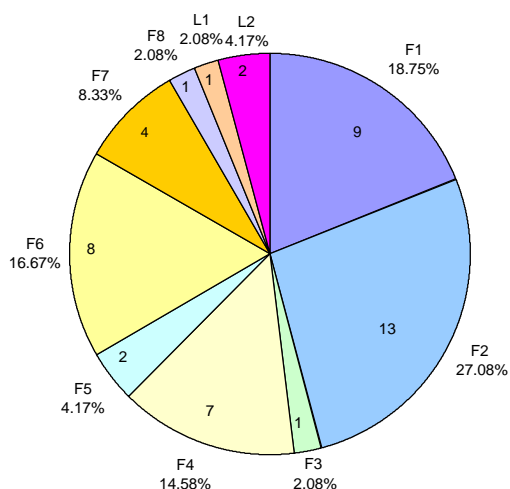
Table 8 and Pie Chart 2 sets out the number of occurrences against the reasons for incorrectness. Three main reasons for incorrectness were identified:

- (1) decision was made without adequate investigation of all the facts,
- (2) inadequate medical guidance or expert reports obtained, and
- (3) relevant evidence was disregarded.

Table 8

Reasons for Overturning Incorrectly Made Decisions	Number of Occurrences
F1. The Decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision	9 (19%)
F2. The officer failed to request adequate medical guidance or expert reports relevant to the decision ie medical reports from a consultant	13 (27%)
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	1 (2%)
F4. The decision was based on a misinterpretation/misunderstanding of the evidence available to the officer	7 (15%)
F5. The officer took into account wholly unreliable evidence	2 (4%)
F6. The officer disregarded relevant evidence	8 (17%)
F7. The officer failed to identify/resolve an obvious conflict in the evidence	4 (8%)
F8. The officer did not action additional relevant evidence provided after his decision was made and initiate a revision	1 (2%)
L1. The officer did not identify the correct legal rules relevant to the claim/revision	1 (2%)
L2. The officer misinterpreted the legal rules relevant to the claim	2 (4%)

Pie 2



The problems identified in DLA decision-making were mainly in relation to medical evidence. Legal Members commented that incorrectly made decisions occurred because the decision maker did not investigate the case adequately. It was clear in a number of cases that a medical report could have been obtained to clarify the evidence in relation to specific medical conditions, for example epilepsy and psychiatric conditions. **It is recommended that decision makers use the statutory provisions available to them to obtain such reports.**

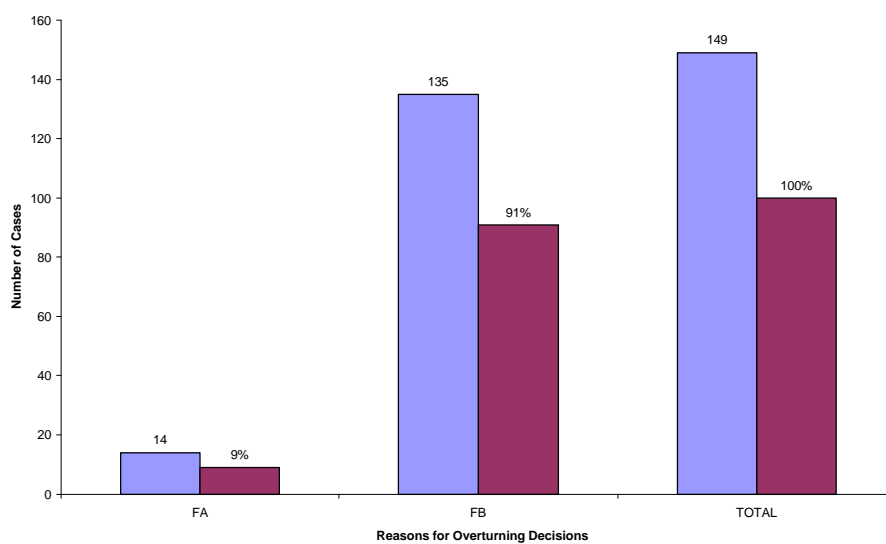
A problem was also identified in the interpretation of evidence by decision makers. In a number of incorrectly made decisions, evidence was either misinterpreted by the decision maker or totally disregarded.

Table 9 and Figure 5 illustrates that in a further 149 cases, representing 19% of those monitored, 14 decisions were overturned because the tribunal accepted evidence which the decision maker was unwilling to accept, and in 135 cases, additional evidence was available to the tribunal that was not available to the decision maker.

Table 9

Reasons for Overturning Correctly Made Decision	Number of Cases
FA. The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	14 (9%)
FB. The tribunal was given additional evidence which was not available to the officer who made the decision.	135 (91%)

Figure 5



General Practitioner (GP) records are an important source of evidence that is routinely available to tribunals and which the decision maker does not have when making the decision on a claim. In 135 cases, where additional evidence was provided, the Legal Member commented in 59 cases, 44%, that the information in these records played a crucial part in overturning the decision. While it is accepted that it would not be practical for the Department to directly access GP records when making decisions, the indications are that the information held by GPs is relevant and is available. **It is recommended that the information currently obtained from GPs be re-examined with a view to improving the input from this source.**

In 81 cases the direct evidence presented by either the appellant, or a carer, at the hearing was a factor in the decision being overturned. Legal members have commented that the direct questioning of the appellant, and what a commissioner has described as ocular observations, has enabled the tribunal to reach a different decision than the decision maker. In many of these cases it has also been commented that this evidence has been supported by the GP records. **These findings indicate that decision makers could make more use of information directly available from the appellant, or a carer.**

INCAPACITY BENEFIT

Incapacity Benefit (INCAP) is one of the largest areas of appeal activity. During this period 6,732 appeals were registered. 241 cases were monitored, representing 4% of appeals received. Of the cases monitored, 6 cases (2%), were found to be incorrectly made by decision makers. In all, 5 reasons for incorrectness were identified. There were overlapping reasons for incorrectness in most cases.

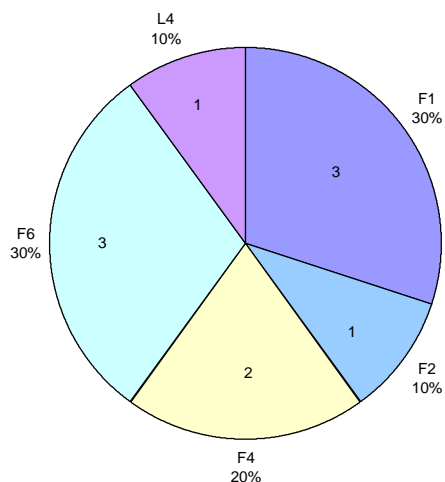
Table 10 and Pie Chart 3 sets out the number of occurrences against the reasons for incorrectness. Two main reasons for incorrectness were identified:

- (1) decisions were made without adequate investigation of all the facts; and
- (2) relevant evidence was disregarded.

Table 10

Reasons for Incorrectly Made Decisions	Number of Occurrences
F1. The Decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision	3(30%)
F2. The officer failed to request adequate medical guidance or expert reports relevant to the decision ie medical reports from a consultant	1(10%)
F4. The decision was based on a misinterpretation/misunderstanding of evidence available to the officer	2(20%)
F6. The officer disregarded relevant evidence	3(30%)
L4. Officer overlooked a relevant Commissioners decision/Court decision which was/should have been available to him	1(10%)

Pie 3



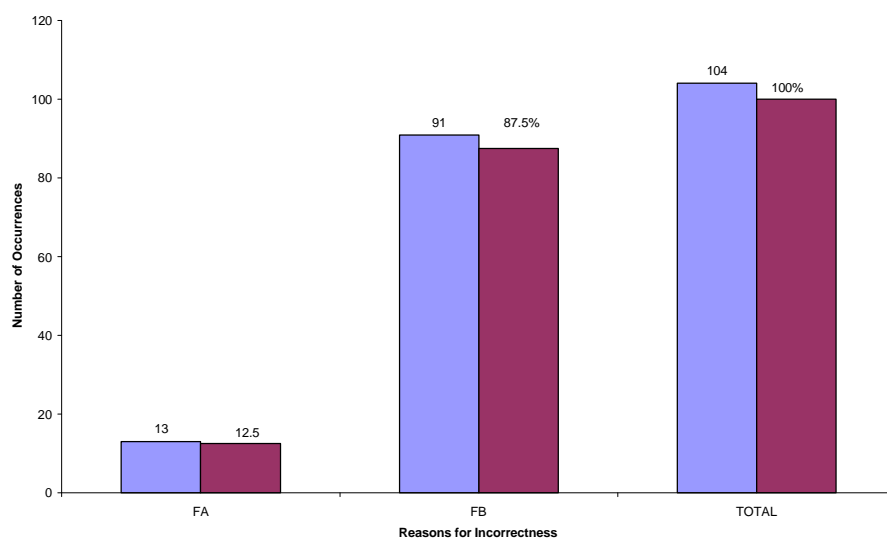
It was commented by Legal Members in 4 cases, 67% of incorrect decisions, that clinical findings by the Department’s Examining Medical Practitioner were either disregarded or ignored. No reason or explanation was given for this. It was also noted that up to date medical evidence was not always available and that GPs should have been consulted in a number of cases.

In addition Table 11 and Figure 6 illustrates that of a further 104 cases (43%) monitored, 13 decisions were overturned because the tribunal accepted evidence that the decision maker was unwilling to accept and in 91 cases, additional evidence was available to the tribunal that was not available to the decision maker.

Table 11

Reasons for Overturning Correctly Made Decision	Number of Cases
FA. The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	13(12.5%)
FB. The tribunal was given additional evidence which was not available to the officer who made the decision.	91(87.5%)

Figure 6



Legal Members commented that a significant number of correctly made decisions were overturned as a result of further medical evidence produced by the claimant either before or at the hearing. In 91 cases where additional information was provided, Legal Members commented in 97% of these that the decision was changed as a result of a combination of further medical evidence, the oral evidence and ocular observations of the claimant. The main source of additional medical evidence was by way of a GP letter or report. It is clear from

these results that relevant information is available from both the claimant and his doctor prior to making the decision on a claim. **It is recommended that this area be investigated with the aim of improving the evidence obtained from the claimant and his GP in the decision making process.**

COMPENSATION RECOVERY

Compensation Recovery has a relatively low appeal rate and, consequently, to obtain a meaningful sample, a higher proportion of cases were monitored. During the period 109 cases were registered and 54 cases (50%) were monitored. 16 decisions were identified as being incorrectly made, 30%. A total of 10 separate reasons were recorded for incorrectness. There were overlapping reasons for incorrectness.

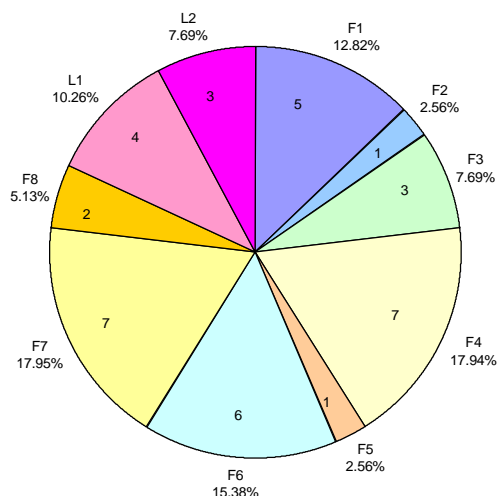
Table 12 and Pie Chart 4 sets out the number of occurrences against the reasons for incorrectness. Five main reasons for incorrectness were identified:

- (1) the decision was based on a misinterpretation/misunderstanding of the evidence available to the decision maker
- (2) the officer disregarded relevant evidence
- (3) the officer failed to identify/resolve an obvious conflict in the evidence
- (4) decisions were made without adequate investigation of all the facts
- (5) the officer failed to identify relevant legal rules

Table 12

Reasons for Incorrectness	Number of Occurrences
F1. The Decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision	5 (12.82%)
F2. The officer failed to request adequate medical guidance or expert reports relevant to the decision ie medical reports from a consultant	1 (2.56%)
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	3 (7.69%)
F4. The decision was based on a misinterpretation/misunderstanding of evidence available to the officer	7 (17.95%)
F5. The officer took into account wholly unreliable evidence	1 (2.56%)
F6. The officer disregarded relevant evidence	6 (15.38%)
F7. The officer failed to identify/resolve an obvious conflict in the evidence	7 (17.95%)
F8. The officer did not action additional relevant evidence provided after his decision was made and initiate a revision	2 (5.13%)
L1. The officer did not identify the legal rules relevant to the claim	4 (10.26%)
L2. The officer misinterpreted the legal rules relevant to the claim	3 (7.69%)

Pie 4



Of all the decisions monitored, Compensation Recovery had the highest rate of both incorrectly made decisions and decisions overturned. This is due in part to the complexity of the issues arising and the complexity of the law. The appeals are mainly lodged by Insurance Companies, and all but a few are represented by firms of Solicitors specialising in personal injury litigation. Conflicting medical opinion is common and the comments recorded by Legal Members reflect the problems decision makers had with evidential issues. There was evidence that compensators had difficulty understanding the rules of benefit entitlement and the decision making process. Departmental officers had difficulty understanding the civil damages system and court procedures. **It is recommended that the training of decision makers should include a visit to the courts to observe the hearing in a claim for personal injuries. Input from a legal practitioner specialising in civil damages claims would also be valuable.** Decision makers would then have a better understanding of the relationship between benefit payments and compensation claims.

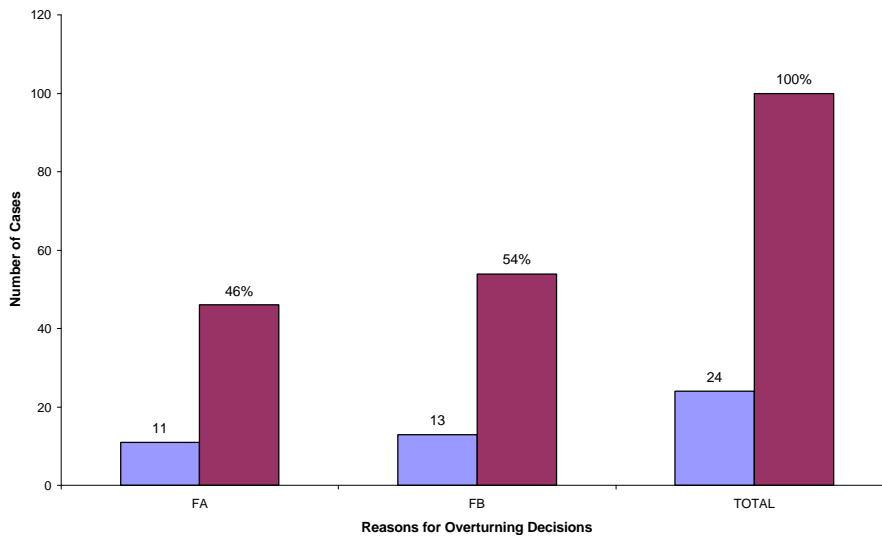
Evidence available to the decision maker was either misinterpreted, misunderstood or disregarded. Where there are conflicts in the evidence, the evidence must be investigated more fully. It is not acceptable for decision makers to accept evidence uncritically that favours the Department. In a number of cases the decision maker failed to investigate the claims adequately or failed to identify findings. Legal Members commented that this resulted in particular in insufficient links being made between relevant injuries and payment of benefit.

In addition Table 13 and Figure 7 illustrates that a further 24 decisions, 44% of those selected for monitoring, were overturned. In 11 cases the tribunal accepted evidence that the decision maker was unwilling to accept. In 13 cases additional evidence was available to the tribunal that was not available to the decision maker.

Table 13

Reasons for Overturning Correctly Made Decision	Number of Cases
FA. The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	11 (46%)
FB. The tribunal was given additional evidence which was not available to the officer who made the decision.	13 (54%)

Figure 7



In 11 cases, 20% of those monitored, the tribunal took a different view of the evidence of the decision maker. In 7 of these cases, the decision maker relied upon a Commissioners decision which was overturned by the Court of Appeal. The decision of the Court of Appeal had a significant impact on the decision of the decision maker.

In a number of cases in the FB category, the decision was overturned because additional evidence was provided by the Social Security Agency, for example Jobseekers Allowance had initially been recovered. Additional medical evidence was available to the tribunal in 9 cases.

INDUSTRIAL INJURIES DISABLEMENT BENEFIT & SEVERE DISABLEMENT ALLOWANCE

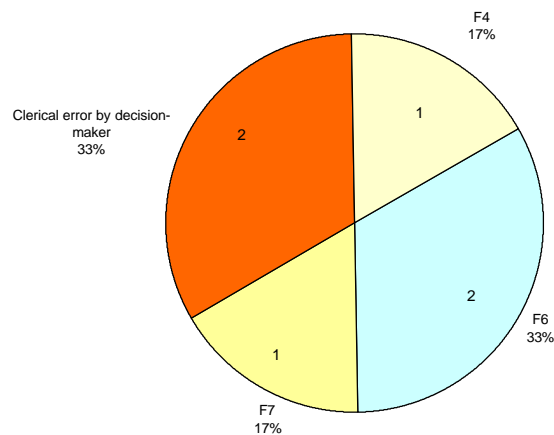
During the period 256 appeals were received. To obtain a meaningful sample it was necessary to monitor a high proportion of cases. In total 109 (43%) cases were actually monitored. Of these, 6 decisions (5%) were incorrectly made.

Table 14 and Pie Chart 5 sets out the reasons for incorrectness.

Table 14

Reasons for Incorrectness	Number of Occurrences
F4. The decision was based on a misinterpretation/misunderstanding of the evidence available to the officer	1(17%)
F6. The officer disregarded relevant evidence	2(33%)
F7. The officer failed to identify/resolve an obvious conflict in the evidence	1(17%)
Clerical error by decision maker	2(33%)

Pie 5



In 2 cases it was commented that there was a clerical error in the initial decision. The tribunal was asked to substitute a new decision in one case. In the other case, while the claimant had been correctly diagnosed by the Department's Examining Medical Practitioner, the decision maker proceeded to disallow the claim by reference to an incorrect prescribed disease.

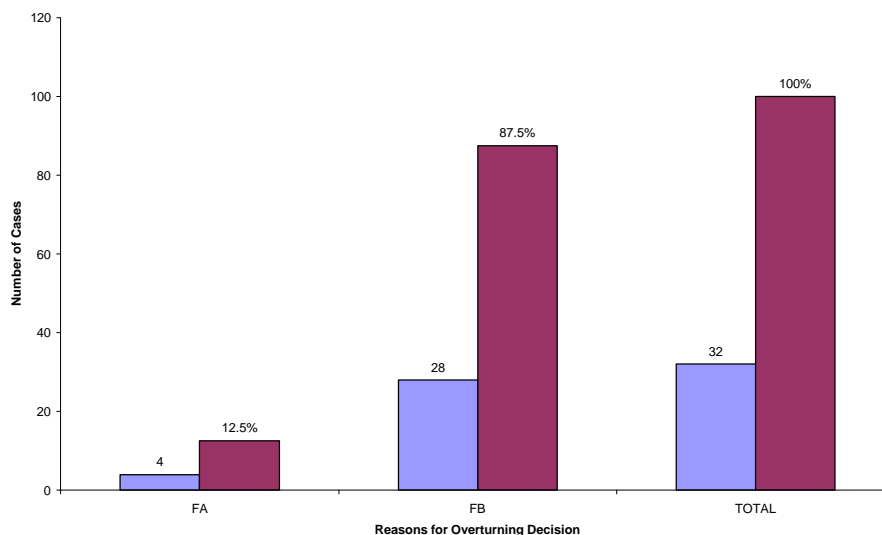
It was also commented that the decision maker disregarded relevant evidence, or failed to investigate the claim thoroughly, and failed to resolve conflicting medical evidence. In 2 cases there was a psychological or mental health issue which was not taken into account. These issues should have been investigated further by the decision maker.

Table 15 and Figure 8 illustrates that of a further 32 cases (29%), 4 were overturned because the tribunal accepted evidence that 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 15

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(12.5%)
FB. The tribunal was given additional evidence which was not available to the officer who made the decision.	28(87.5%)

Figure 8



As in other incapacity benefits, a high proportion of decisions were overturned due to the claimant producing further evidence which was not made available to the decision maker. Legal Members commented that this evidence came to light through medical examination of the claimant, direct oral evidence, medical reports and hospital records.

INVALID CARE ALLOWANCE

104 appeals were received during this report period and 46 cases (44%) were monitored.

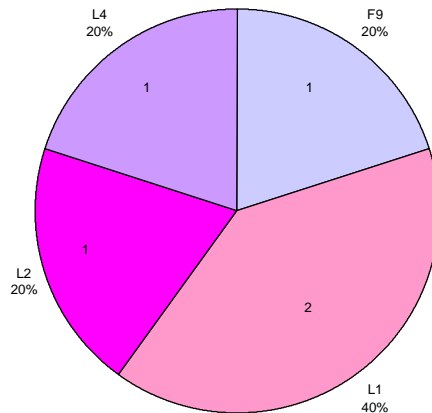
3 cases (7%) were found to be incorrect. 4 separate reasons were identified for incorrectness. There were overlapping reasons for incorrectness.

Table 16 and Pie Chart 6 below sets out the number of occurrences against the reasons for incorrectness.

Table 16

Reasons for Incorrectness	Number of Occurrences
F9. The officer made errors of calculation	1 (20%)
L1. The officer did not identify the correct legal rules to the claim/revision	2 (40%)
L2. The officer misinterpreted the legal rules relevant to the claim	1 (20%)
L4. Officer overlooked a relevant Commissioners decision/Court decision which was/should have been available to him	1 (20%)

Pie 6



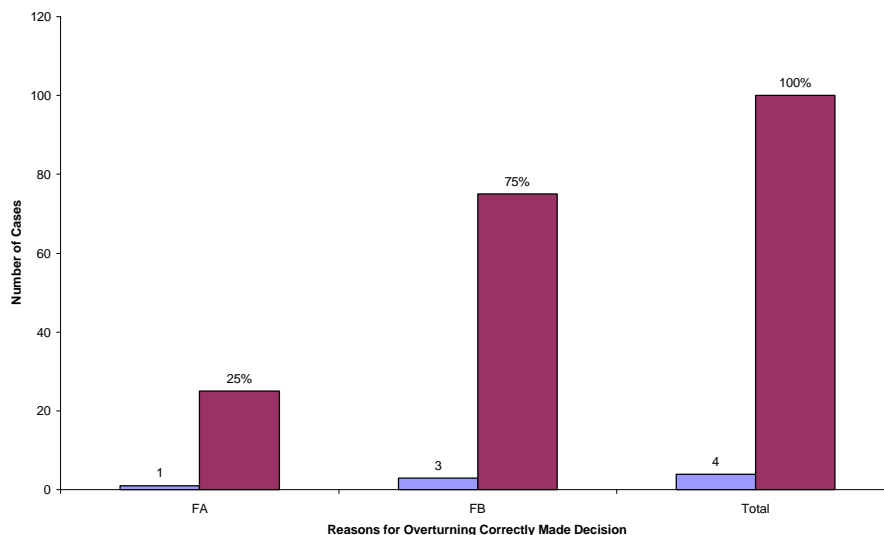
In two of the cases the decision maker did not identify the correct legal rules relevant to the claim. He/she also failed to apply a relevant Commissioner's Decision or misinterpreted legal rules relevant to the claim. In the third case the Department requested that the original decision be altered as there were computation errors.

In a further 4 cases (8%) the tribunal overturned the decision of the decision maker because it either took a different view on the evidence available (1 case) or was given additional evidence on the day.

Table 17

Reasons for Overturning Correctly Made Decision	Number of Cases
FA. The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	1 (25%)
FB. The tribunal was given additional evidence which was not available to the officer who made the decision.	3 (75%)

Figure 9



In the remaining cases the legal member commented that the decision was changed as a result of oral and ocular observation of the claimant, or additional documentary evidence or evidence from a witness.

SOCIAL FUND

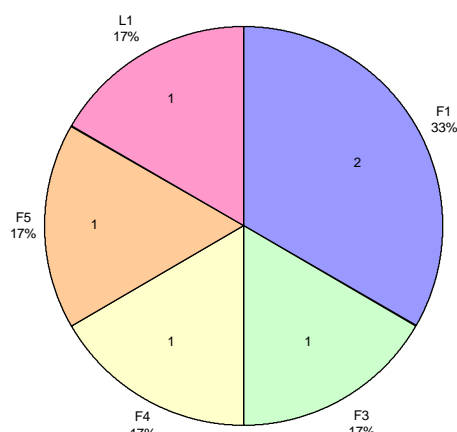
There are limited rights of appeal to a tribunal in Social Fund cases. The appeal rate is low. During the period 110 Social Fund appeals were registered. 49 cases (44%) were monitored. 8% (4 cases) of decisions were found to be incorrectly made by decision makers. There were 5 separate reasons for incorrectness identified. There were overlapping reasons for incorrectness.

Table 18 and Pie Chart 7 sets out the number of occurrences against the reasons for incorrectness.

Table 18

Reasons for Incorrectness	Number of Occurrences
F1. The Decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision	2(33%)
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	1(17%)
F4. The decision was based on a misinterpretation/misunderstanding of evidence available to the officer	1(17%)
F5. The officer took into account wholly unreliable evidence	1(17%)
L1. The officer did not identify the correct legal rules relevant to the claim	1(17%)

Pie 7



Legal Members commented that decisions were based on inadequate investigation of the case and evidential issues were either misinterpreted or unreliable (67%).

In some cases receipt and entitlement to relevant benefits was not taken into account. Out of date computer records were relied upon in another case.

A further 2 cases representing 4% of those monitored were overturned as the claimant provided additional information to the tribunal by way of oral evidence.

INCOME SUPPORT

There were 749 Income Support appeals registered during this period. 100 cases (13%), were monitored. Two cases, representing 2% of cases overall, were found to be incorrect. There were 4 separate reasons identified for the decision being incorrectly made. In all but one case the reason for incorrectness can be summed up as an evidential issue. The legal member commented that the evidence was conflicting, additional evidence was not actioned, or relevant evidence was ignored.

Table 19 and Pie Chart 8 sets out the reasons for incorrectness.

Table 19

Reasons for Incorrectness	Number of Occurrences
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	1(25%)
F6. The officer disregarded relevant evidence	1(25%)
F7. The officer failed to identify/resolve an obvious conflict in the evidence	1(25%)
F8. The officer did not action additional relevant evidence provided after his decision was made and initiate a revision	1(25%)

Pie 8

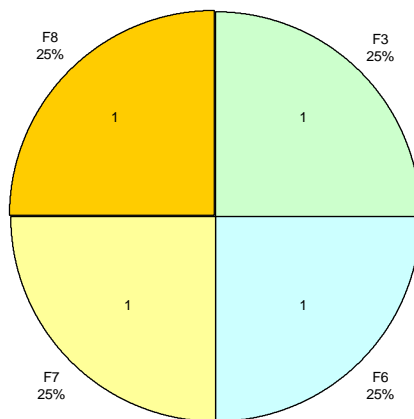
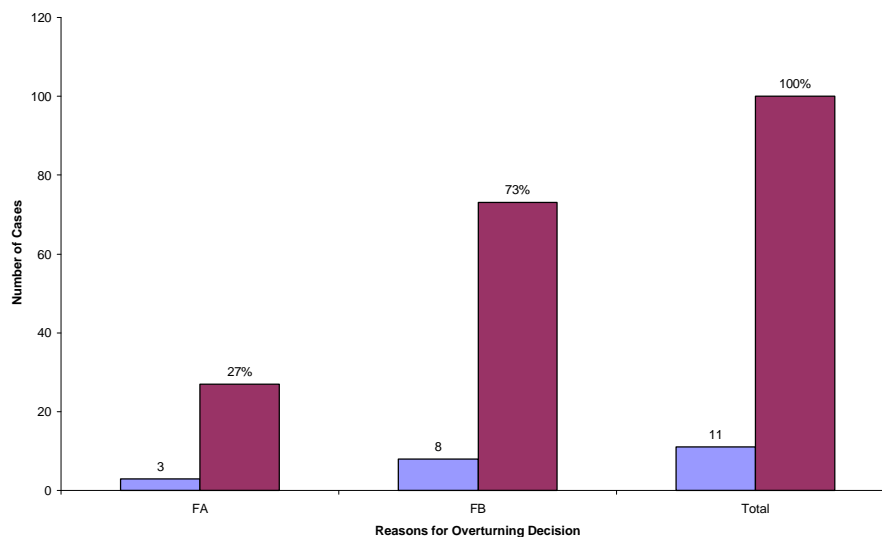


Table 20 and Figure 10 illustrate that in a further 11 cases representing 11% of those monitored, decisions were overturned because the tribunal accepted evidence that the decision maker was unwilling to accept (3 cases), or the claimant produced additional evidence to the tribunal that was not available to the decision maker (8 cases). In the latter category, the Legal Members commented that they had the benefit of questioning the claimant and found the evidence presented to be reasonable.

Table 20

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(27%)
FB. The tribunal was given additional evidence which was not available to the officer who made the decision.	8(73%)

Figure 10



JOBSEEKERS ALLOWANCE

561 Jobseekers Allowance appeals were registered during this period. 68 cases (12%) were monitored. One case representing 1% of those monitored was found to be incorrectly made. This was the smallest percentage of incorrectness recorded throughout all the benefits monitored. The Legal Member commented that the decision was incorrectly made as the decision maker did not identify the correct legal rules relevant to the claim.

A further 3 cases (4%) were overturned as the tribunal took a different view of the written evidence provided by the claimant (2 cases) or the claimant presented further oral evidence to the tribunal that was not available to the decision maker (1 case).

In the two cases where the tribunal took a different view of the evidence Jobseekers Allowance continued to be disallowed, however, the period of suspension of benefit was reduced by the tribunal.

These results should however be read with caution as only a small number of the selected cases were actually monitored as the outcome of a House of Lords decision was pivotal to many of those in the system.

CHILD MAINTENANCE BONUS

Only 2 appeals were received in this category. Both decisions were correctly made by the decision maker. One case was however overturned as the tribunal accepted the claimant's oral evidence.

REA

Only 3 appeals were received in this category. All decisions were correctly made by the decision maker. One case was however overturned as the tribunal accepted evidence which the officer was not willing to accept.

CHILD BENEFIT

87 appeals were received during this report period and 34 cases (39%) were monitored. 1 case representing 3% of those monitored was found to be incorrect. The Legal Member commented that the decision was incorrectly made because the decision maker did not adequately investigate the case.

A further 2 cases (6%) were overturned as the tribunal accepted the oral evidence of the claimant at the hearing which the decision maker was not prepared to accept.

RETIREMENT PENSION/WIDOWS PENSION

48 Retirement Pension and 28 Widows Benefit appeals were received during the report period. 17 Retirement Pension and 12 Widows Benefit cases were monitored. Of these 1 Retirement Pension case was overturned on the day because the officer misinterpreted the legal rules relevant to the claim. Although correctly made, a further Retirement Pension case was overturned because the tribunal accepted additional oral evidence on the day and in a Widows Benefit case the tribunal accepted evidence that the decision maker was unwilling to accept. In all three cases the appellants attended the hearing.

Table 21

	Incorrectly Made	FA	FB
Retirement Pension	1	0	1
Widows Benefit	0	1	0

As previously stated the information relating to Retirement Pension should be read with caution as there were insufficient cases to enable any statistically valid assumptions to be made.

CHAPTER 5

SUMMARY OF RECOMMENDATIONS

Child Support Agency Decision Decision makers should consider referring cases for expert advice to accountants, or use inspectors, to ascertain accurate earnings information where evidence produced requires further investigation.

Disability Living Allowance/Attendance Allowance Decision makers should use the statutory provisions available to them to obtain medical reports where necessary, for example, to clarify evidence in relation to specific medical conditions.

That the information currently obtained from GPs be re-examined with a view to improving the input from this source.

That current procedures for obtaining information directly from the claimant or their carer are examined with a view to improving the information obtained.

Incapacity Benefit That the information currently obtained from GPs and claimants be re-examined with a view to improving the input from these sources.

Compensation Recovery That the training of decision makers should include a visit to the courts to observe the hearing in a claim for personal injuries. Input from a legal practitioner specialising in civil damages claims would also be valuable.

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. All sampled benefits have sample size greater than 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.

Benefit	Percentage Incorrectness in the Initial Decision	Confidence Interval (±%)
Child Benefit	2.94	4.4
Child Support	15.29	5.6
Compensation Recovery	29.63	8.7
Disability Living Allowance/ Attendance Allowance	3.63	1.3
Incapacity Benefit	2.49	2.0
Income Support	2.00	2.6
Industrial Injuries Disablement Benefit / Severe Disablement Allowance	5.50	3.1
Invalid Care Allowance	6.52	5.3
Jobseekers Allowance	1.47	2.7
Social Fund	8.16	7.1
ALL ¹	5.1	1.3

¹ Note ALL refers to both benefits that were sampled and those that had a complete census taken, with the exception of Retirement Pension

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 3.8% and 6.4%, i.e. $5.1\% \pm 1.3\%$

Similarly if we consider Disability Living Allowance / Attendance Allowance appeals we can state that

- we can be 95% certain that the true level of incorrectness among all Disability Living Allowance / Attendance Allowance initial appeal decisions in the period is between 1.59% and 7.59%, i.e. $4.59\% \pm 3.0\%$.

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	19286
Number of cases monitored	1590
Percentage monitored	8.2%
Number of incorrect initial decisions	81
Percentage incorrect	5.1%
Confidence interval	±1.3%
Total number of reasons	148
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 – 16% of all reasons

Benefit Name	DISABILITY LIVING ALLOWANCE/ ATTENDANCE ALLOWANCE
Number of cases registered	10317
Number of cases monitored	771
Percentage monitored	7.5%
Number of incorrect initial decisions	28
Percentage incorrect	3.63%
Confidence interval	±1.3%
Total number of reasons	48
Main reason for incorrect initial decision	The officer failed to request adequate medical guidance or expert reports relevant to the decision i.e. medical reports from a consultant (Articles 12(2) of the 1998 Order)- 27% of reasons

Benefit Name	INCAPACITY BENEFIT
Number of cases registered	6732
Number of cases monitored	241
Percentage monitored	3.6%
Number of incorrect initial decisions	6
Percentage incorrect	2.49%
Confidence interval	±2.0%
Total number of reasons	10
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 – 30% of all reasons and the officer disregarded relevant evidence – 30% of all reasons

Benefit Name	JOBSEEKERS ALLOWANCE
Number of cases registered	561
Number of cases monitored	68
Percentage monitored	12.1%
Number of incorrect initial decisions	1
Percentage incorrect	1.47%
Confidence interval	±2.7%
Total number of reasons	1
Main reason for incorrect initial decision	The officer did not identify the correct legal rules relevant to the claim/revision.

Benefit Name	CHILD SUPPORT
Number of cases registered	180
Number of cases monitored	85
Percentage monitored	47.2%
Number of incorrect initial decisions	13
Percentage incorrect	15.29%
Confidence interval	±5.6%
Total number of reasons	27
Main reason for incorrect initial decision	no main reason apparent

Benefit Name	SOCIAL FUND
Number of cases registered	110
Number of cases monitored	49
Percentage monitored	44.5%
Number of incorrect initial decisions	4
Percentage incorrect	8.16%
Confidence interval	±7.1%
Total number of reasons	6
Main reason for incorrect initial decision	no significant pattern

Benefit Name	INCOME SUPPORT
Number of cases registered	749
Number of cases monitored	100
Percentage monitored	13.4%
Number of incorrect initial decisions	2
Percentage incorrect	2.00%
Confidence interval	±2.6%
Total number of reasons	4
Main reason for incorrect initial decision	no significant pattern

Benefit Name	COMPENSATION RECOVERY
Number of cases registered	109
Number of cases monitored	54
Percentage monitored	49.5%
Number of incorrect initial decisions	16
Percentage incorrect	29.63%
Confidence interval	±8.7%
Total number of reasons	39
Main reason for incorrect initial decision	The decision was based on a misinterpretation/ misunderstanding of the evidence available to the officer - 18% of all reasons and the officer failed to identify or resolve a conflict in the evidence - 18% of all reasons.

Benefit Name	INDUSTRIAL INJURIES DISABLEMENT BENEFIT/SEVERE DISABLEMENT ALLOWANCE
Number of cases registered	256
Number of cases monitored	109
Percentage monitored	42.6%
Number of incorrect initial decisions	6
Percentage incorrect	5.5%
Confidence interval	±3.1%
Total number of reasons	6
Main reason for incorrect initial decision	no significant pattern

Benefit Name	INVALID CARE ALLOWANCE
Number of cases registered	104
Number of cases monitored	46
Percentage monitored	44.2%
Number of incorrect initial decisions	3
Percentage incorrect	6.52%
Confidence interval	±5.3%
Total number of reasons	5
Main reason for incorrect initial decision	no significant pattern

Benefit Name	CHILD BENEFIT
Number of cases registered	87
Number of cases monitored	34
Percentage monitored	39.1%
Number of incorrect initial decisions	1
Percentage incorrect	2.94%
Confidence interval	±4.4%
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.

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.

Mon 1

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

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

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

- 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: