

# **PRESIDENT'S REPORT**

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

**PERIOD 06 APRIL 2005 TO 04 APRIL 2006**

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## **PRESIDENT'S FOREWORD**

The overall assessment this year is that standards have fallen, mainly due to the increased activity on overpayments where the legal rules are not fully understood by decision makers. As there is no senior official with sole responsibility for decision making, the problems identified by my office are responded to on a piecemeal basis, making real improvements difficult to achieve. There is a pressing need for central co-ordination of decision making at a senior level. It is a core activity of the Department as independent decision making replaces ministerial responsibility.

There were improvements in Disability Living Allowance which were disappointingly offset by deterioration in Attendance Allowance. The standards in Incapacity Benefit are high and are broadly unchanged. There was a very substantial deterioration in Income Support, due mainly to poor decision making at local office level and inadequate records of notification of decisions.

The continued decline in Child Support decision making would indicate that there is a pressing need for improved training of Child Support decision makers.

The poor performance in Carers Allowance is linked to overpayments.

The use of computers for decision making may be one of the reasons for the current fall in standards. It is of the utmost importance that computer programmes are designed to fit the legal framework of decision making. It would appear that reliance on computers has led to a reduction in understanding of adjudication.

There is no doubt that the great majority of decision makers are highly motivated and professional. However, there is a pressing need to address the current fall in standards through improved training and supervisory oversight.

**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 Bereavement Benefit, Carer's Allowance, Child Support, Industrial Injuries Disablement Benefit, Pension Credit, Retirement Pension and Severe Disablement Allowance were examined.

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

A questionnaire was completed by the Legal Member on each case selected for monitoring. The questionnaire identified the case details so that the case could be tracked through the system and any queries addressed. The President prepared the questionnaire following consultation with the 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 2005 – 4 April 2006**

<b>Benefit</b>	<b>Total registered</b>	<b>No. Monitored (sample size)</b>	<b>Initial decision incorrect</b>	<b>Percentage Incorrectness</b>
Attendance Allowance	219	56	3	5.4%
<b>Child Support**</b>	89	40	9	22.5%
Compensation Recovery	114	55	7	12.7%
Disability Living Allowance	5442	122	2	1.6%
Incapacity Benefit	4004	127	4	3.1%
Income Support	803	99	48	48.5%
Industrial Injuries Disablement Benefit	109	72	0	0.0%
<b>Severe Disablement Allowance</b>	11	7	0	0.0%
<b>Carer's Allowance</b>	90	74	15	20.3%
Jobseekers Allowance	425	98	11	11.2%
<b>Retirement Pension*</b>	21	12	0	0.0%
Social Fund	124	75	1	1.3%
<b>Bereavement Benefit*</b>	12	9	0	0.0%
<b>Reduced Earnings Allowance*</b>	4	4	0	0.0%
<b>Pension Credit*</b>	19	8	4	50.0%
<b>TOTAL</b>	<b>11486</b>	<b>858</b>	<b>104</b>	<b>12.1%</b>

*Note bold type indicates a complete census*

\* *less than 30 sample size*

\*\* *of 41 child support cases selected 1 departure case was a referral to the tribunal. CSA did not make a decision in this case. This resulted in a sample of 40 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

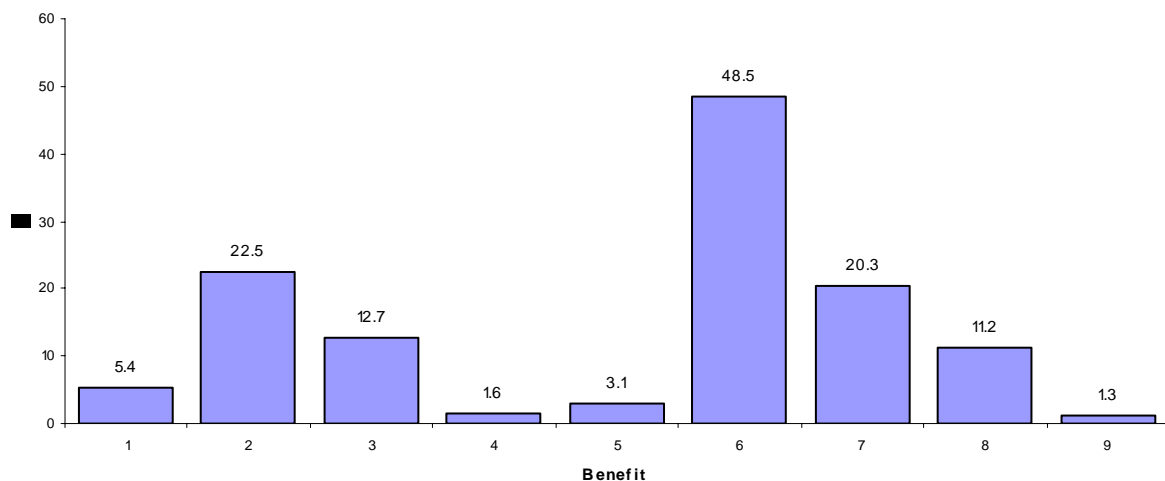
Across all cases monitored, the decision maker was judged to have made an incorrect decision in 104 cases, representing 12.1% of all cases monitored.

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

In a number of benefits where a complete census was recommended the number of cases available for monitoring was less than the number required for a valid sample. This occurred in Bereavement Benefit, Pension Credit, Reduced Earnings Allowance, Retirement Pension and Severe Disablement Allowance. With the exception of Pension Credit which recorded a 50% error rate, there were no cases in this category found to be incorrectly made. However, given the small numbers no statistically valid assumptions can be made in relation to these benefits and caution should be used in interpreting the results.

Figure 1 shows the variation of the level of incorrectness across the remaining benefits. Levels of incorrectness in the initial decisions range from approximately 48.5% of Income Support to just over 1% of Social Fund.

**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 | 9. Social Fund          |
| 5. Incapacity Benefit          |                         |

Disability Living Allowance accounted for 47% of all cases registered reflecting both the number of people claiming the benefit and, also, the complexity in delivery of the benefit. Almost 35% of all appeals were in relation to Incapacity Benefit. 1.6% of monitored Disability Living Allowance cases, and 3.1% 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 5.4%. Income Support which recorded the highest rate of incorrectness at 48.5%, accounts for 7% of all cases registered, while Carer's Allowance which also records a high percentage of error at 20%, represents less than 1% of those registered.

## 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 2005 to 4 April 2006 there were 104 cases where the initial decision was judged incorrect. There were in total 155 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***

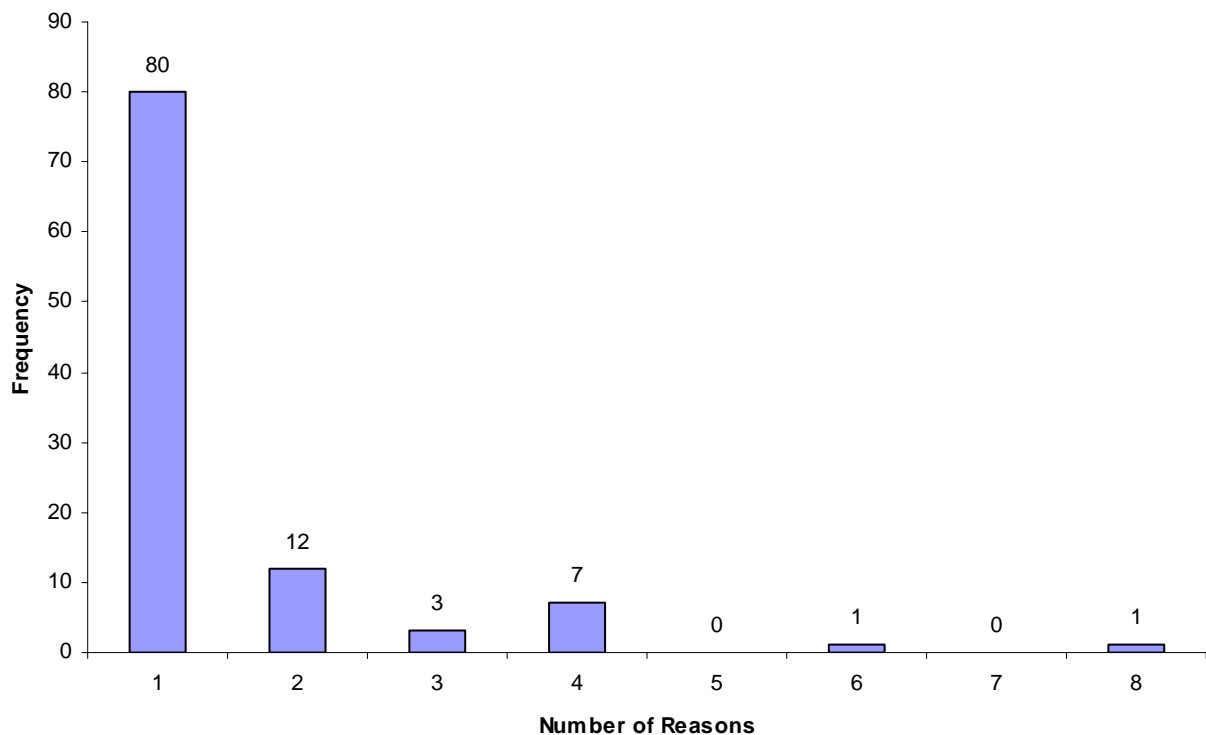


Figure 2 shows that in the vast majority of cases where the initial decision was incorrect, a single reason was given for incorrectness, 80 cases representing approximately 77% of cases where the initial decision was assessed as incorrect. At the opposite end of the spectrum, the largest number of reasons per case was 8. This occurred in a Compensation Recovery case where the initial decision was assessed as incorrect.

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

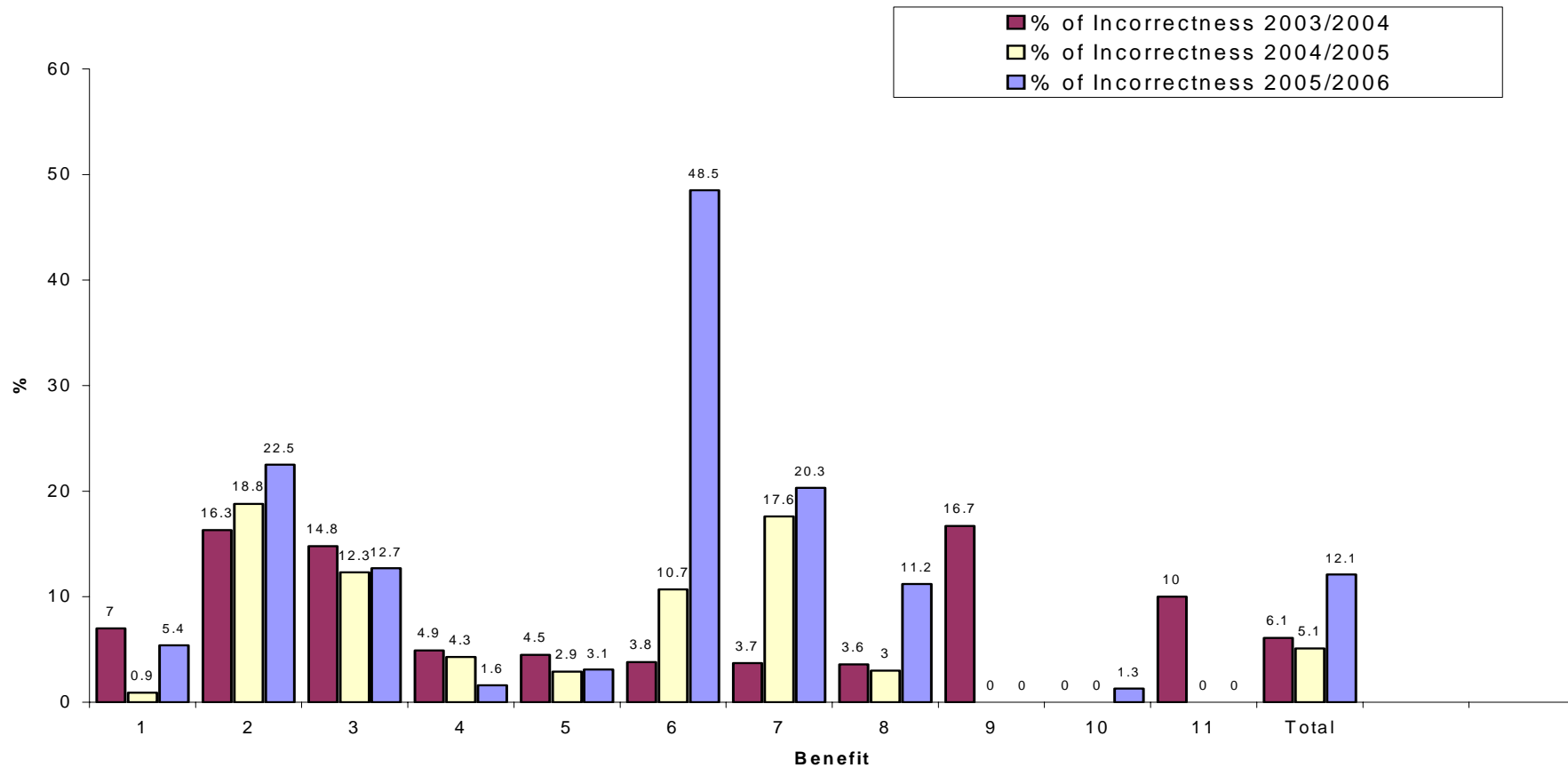
**Table 4: Reasons for Incorrectness**

<b>Reason for Incorrectness</b>	<b>Number of Occurrences</b>	<b>% of Total</b>
<b>F1</b>	13	8.4%
<b>F2</b>	8	5.2%
<b>F3</b>	6	3.9%
<b>F4</b>	9	5.8%
<b>F5</b>	3	1.9%
<b>F6</b>	16	10.3%
<b>F7</b>	5	3.2%
<b>F8</b>	2	1.3%
<b>F9</b>	12	7.7%
<b>L1</b>	66	42.6%
<b>L2</b>	10	6.5%
<b>L3</b>	0	-
<b>L4</b>	3	1.9%
<b>L5</b>	2	1.3%
<b>TOTAL</b>	<b>155</b>	<b>100%</b>

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

By far the most common reason for incorrectness was ‘the officer did not identify the correct legal rules relevant to the claim or revision’. This reason was given 66 times, representing approximately 43% of all reasons. The next two most common reasons given were ‘the officer disregarded relevant evidence’ and ‘the decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision’. These reasons represented approximately 10% and 8% respectively of all reasons.

**Figure 3: Comparison of Level of Incorrectness Year 2003/2004, 2004/2005, 2005/2006**



**Key to Figure**

- |                                |                          |
|--------------------------------|--------------------------|
| 1. Attendance Allowance        | 6. Income Support        |
| 2. Child Support               | 7. Carer's Allowance     |
| 3. Compensation Recovery       | 8. Jobseekers Allowance  |
| 4. Disability Living Allowance | 9. Retirement Pension    |
| 5. Incapacity Benefit          | 10. Social Fund          |
|                                | 11. Bereavement Benefits |

Industrial Injuries Disablement Benefit & Reduced Earnings Allowance are not included as there have been no incorrectly made decisions identified in the 3 year period.  
 Pension Credit is not included as this is the first year monitored and there are no figures available for comparison.  
 The overall total figures include all benefits monitored in the three year period.

Figure 3 sets out the level of incorrectness for the years 2003/04, 2004/05 and 2005/06.

The overall level of incorrectness in this current year (12.1%) has increased significantly in comparison with the previous two years, which had remained constant at around 6%. A detailed individual benefit analysis can be found in Chapter 3. This analysis sets out the main problems identified and gives some indication as to why the overall level of incorrectness has increased. An analysis of the figures for the three year period is set out below.

In those areas where a valid sample was taken there has been an increase in the level of incorrectness on the previous year's results in all benefits except for Disability Living Allowance. However, the increase in Compensation Recovery (0.4%), and Incapacity Benefit (0.2%), is minimal and of no consequence. There is a 1% increase in Social Fund. This is also slight and represents only one case in a sample of 75.

The level of incorrectness in Attendance Allowance has fluctuated in the three year period from a high of 7% in 2003/04 to a low of 1% in 2004/05 and back to 5% in this current year.

The standard of decision making in Industrial Injuries Disablement Benefit remains high and for the last three years no incorrectly made decisions were recorded from the cases sampled.

No errors were discovered in Bereavement Benefits, Retirement Pension, Reduced Earnings Allowance and Severe Disablement Allowance. 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 standard of decision making in Incapacity Benefit is high and has remained around the 3% for the past two years.

A very high level of incorrectness was detected in Income Support at 48.5% compared with the previous years of 3% and 10% respectively. Improvement in this area is urgently required. The reason for this unusual increase can be found in Chapter 3.

Compensation Recovery figures continue to demonstrate a high level of incorrectness at 12%. This in line with the previous year and a 2% improvement on the figure recorded for 2003/04. The need for improvement remains.

Disability Living Allowance continues to show improvement and the overall rate of incorrectness has decreased from 4% in the previous two years to just over 1% in this current report year.

The level of incorrectness for Jobseekers Allowance has increased to 11% from a constant of 3% in previous years. The reason for this serious drop in standards can be found in Chapter 3.

The figures for Child Support continue to cause concern. They have increased steadily by 2% for years 2003/04 and 2004/05 and by a further 3% in this current year to 22%.

In Carer's Allowance it is not possible to make statistically sound comparisons between years, as the number of cases required for a valid sample in years 2003/04 and 2004/05 were not available. Caution should therefore be used in interpreting the results for those years. However, there was a valid sample available for the current year and the level of incorrectness was unacceptably high at 20%. The reason for the high level of incorrectness can be found in Chapter 3.

## CORRECTLY MADE DECISIONS OVERTURNED BY TRIBUNALS

Out of 858 cases monitored, 188, representing 22%, were altered by the tribunal because the tribunal accepted evidence that the decision maker was not willing to accept (FA), or the tribunal was given additional evidence which was not available to the decision maker (FB).

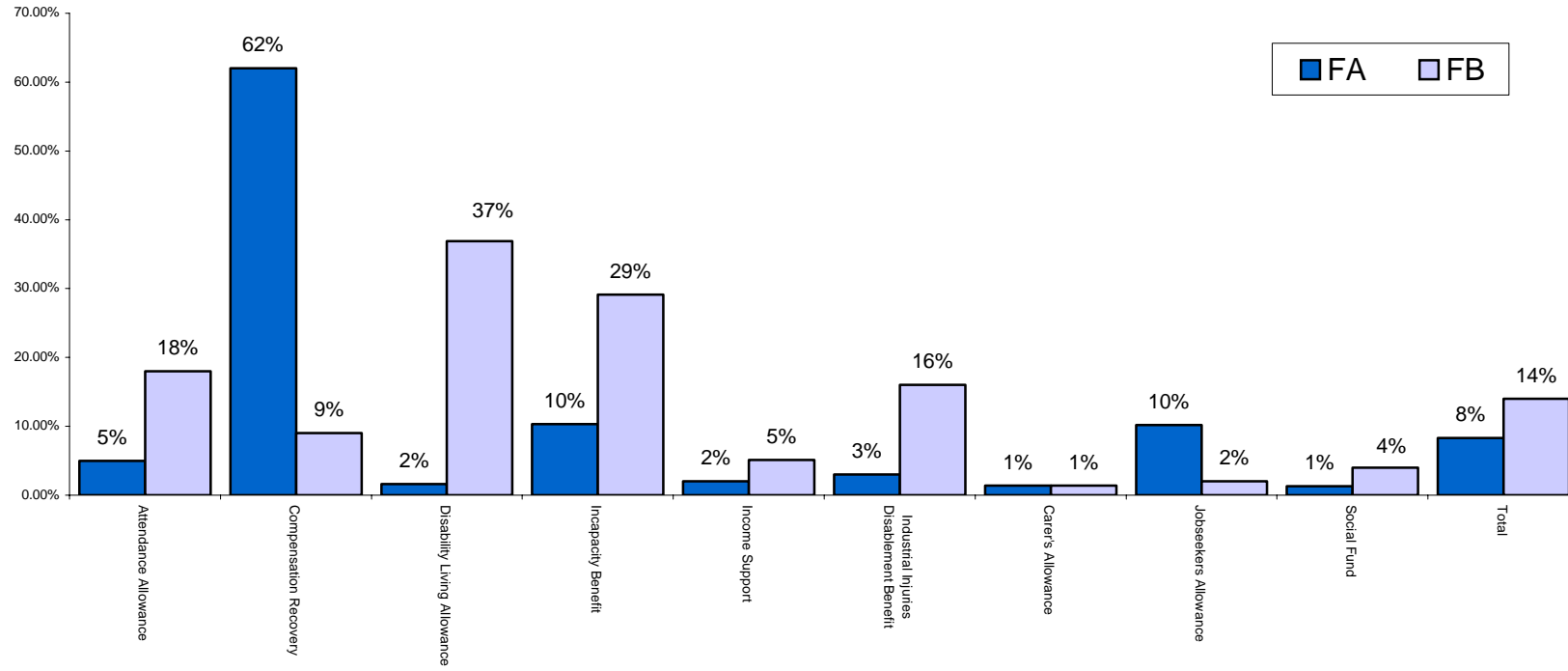
Table 5 and Figure 4 set out on a 'by benefit' basis the number and percentage of cases where the decision was judged to be correctly made, but altered by the tribunal.

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

Benefit	Number Monitored	Total Altered	Percentage Altered	FA	%	FB	%
Attendance Allowance	56	13	23%	3	5%	10	18%
Compensation Recovery	55	39	71%	34	62%	5	9%
Disability Living Allowance	122	47	39%	2	2%	45	37%
Incapacity Benefit	127	50	39%	13	10%	37	29%
Income Support	99	7	7%	2	2%	5	5%
Industrial Injuries Disablement Benefit	72	14	19%	2	3%	12	16%
<b>Carer's Allowance</b>	74	2	3%	1	1%	1	1%
Jobseekers Allowance	98	12	12%	10	10%	2	2%
Social Fund	75	4	5%	1	1%	3	4%
<b>Severe Disablement Allowance</b>	7	0	0%	0	0%	0	0%
<b>Child Support</b>	40	0	0%	0	0%	0	0%
<b>Bereavement Benefit</b>	9	0	0%	0	0%	0	0%
<b>Reduced Earnings Allowance</b>	4	0	0%	0	0%	0	0%
<b>Pension Credit</b>	8	0	0%	0	0%	0	0%
<b>Retirement Pension</b>	12	0	0%	0	0%	0	0%
<b>TOTAL</b>	<b>858</b>	<b>188</b>	<b>22%</b>	<b>68</b>	<b>8%</b>	<b>120</b>	<b>14%</b>

*Note: Bold denotes full census*

Figure 4:



Compensation Recovery had by far the highest percentage of both FA and FB together as 39 cases, representing just over 71% 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 Industrial Injuries Disablement Benefit and Severe Disablement 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 2005 and April 2006. There were 11,486 appeals and 858, 7.5% 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 12%. There was a considerable variation in the level of incorrectness of initial decisions across benefits. No incorrect decisions were recorded for Industrial Injuries Disablement Benefit, Severe Disablement Allowance, Retirement Pension, Bereavement Benefit and Reduced Earnings Allowance. At the other end of the spectrum, 48.5% of Income Support and 22.5% of Child Support cases were assessed as having the initial decision incorrectly made.

88.5% 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 did not identify the correct legal rules relevant to the claim or revision". This reason was given 66 times, representing 42.6% of all reasons.

## CHAPTER 3

### CHILD SUPPORT AGENCY DECISIONS

45% of all Child Support appeals were monitored. 22.5% were found to be incorrectly made by decision makers. There is an increase in the rate of incorrectness of over 2% in the previous year.

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

**Figure 5:**

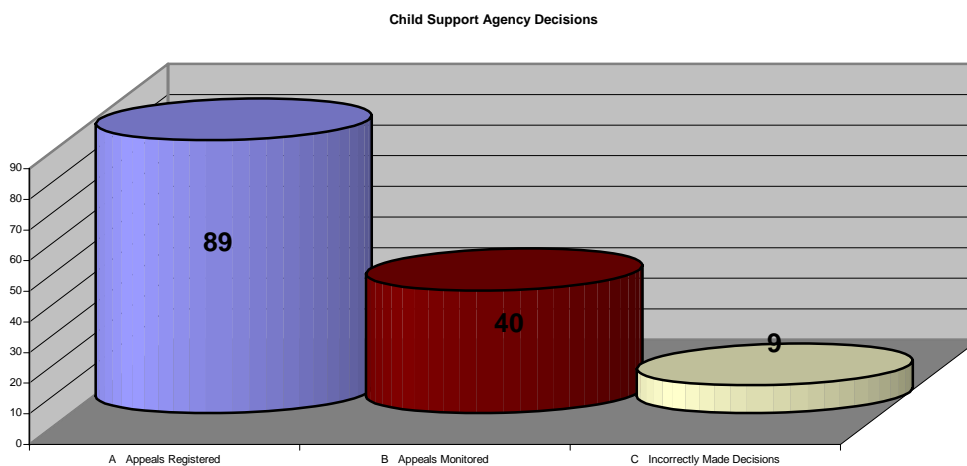


Table 6 and Graph 1 sets out the number of occurrences against the reasons for incorrectness. There were 7 separate reasons identified for the decisions being incorrectly made. There were overlapping reasons in 3 cases.

**Table 6:**

Reasons for incorrectness	Number of Occurrences
F1.	1 (7.1%)
F4.	1 (7.1%)
F5.	1 (7.1%)
F6.	2 (14.3%)
F7.	1 (7.1%)
F9.	7 (50.0%)
L2.	1 (7.1%)

**Graph 1:**



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

In 8 of the 9 cases (89%), 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. However the decisions were not revised to take this into account. In 3 of these cases the amount of maintenance payable changed, although not significantly. In the main the errors identified can be attributed to simple arithmetical miscalculations or carelessness by the decision maker when inputting information. Others were more serious. The errors identified are set out below in table 7. In a further case the effective date of the change to the maintenance assessment was incorrectly calculated.

The legal member commented in the remaining case that the decision in this case did not appear to have been properly taken, recorded or notified. The submission to the tribunal was inadequate, as the supersession decision the decision under appeal sought to replace, was not identified. Also, although there was an issue of shared care raised by the non resident parent, details were not provided and it was unclear if this had been investigated or communicated to the parents.

There was 1 case referred to the tribunal to make the initial decision. The case was an application for a variation by the parent with care on the basis of lifestyle inconsistent with income. The non resident parent was self employed. The application was forwarded to the non resident parent for comment and he was asked to provide further information. No reply was received and no follow up action was taken by the Agency. The case was then referred to the tribunal for a decision. While the number of referrals sent to the tribunal has reduced considerably, this case continues to demonstrate that applications should be more rigorously investigated before a decision to refer to the tribunal is made.

**Table 7:**

<b>Examples of Calculation Errors Identified</b>	
1.	Contribution to retirement annuity not taken into account
2.	Mortgage interest and capital repayment figures incorrectly input on assessment
3.	Child Tax Credit incorrectly omitted from assessment
4.	Housing costs incorrectly input on assessment
5.	Incorrect recording of exempt income figure
6.	Pension details input incorrectly
7.	Incorrect amount of tax paid input onto assessment
8.	Bonus payment incorrectly calculated

**Recommendations:**

The improvements in processing and procedures made by the Department noted in my last report were introduced after some of the appeals in this sample were made. It has been indicated that better standards will be achieved. Sadly this is still not the case. It is to be hoped that there will be a marked improvement in the next year.

Judging by the current presentation of appeals and submissions, there is a pressing need for improved training in decision making processes and the analysis of evidence.

The number of appeals overall is low and the Department should ensure that all decisions are notified to appellants together with details of appeal rights.

## CHAPTER 4

### SOCIAL SECURITY AGENCY DECISIONS

#### DISABILITY LIVING ALLOWANCE

This category has by far the highest appeal rate. 2% of all appeals received were monitored. Almost 2% of those monitored were found to be incorrect. This is an improvement of almost 3% on the previous year and demonstrates a high standard of decision making.

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

**Figure 6:**

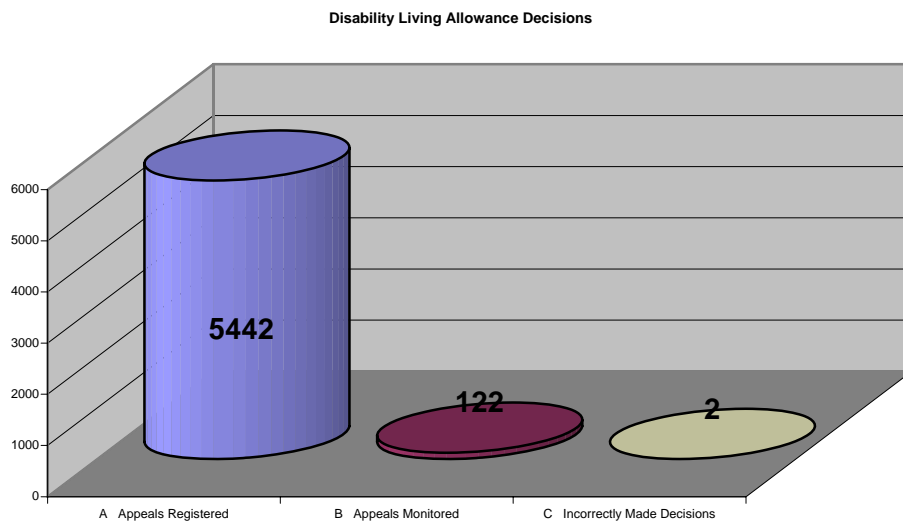


Table 8 sets out the number of occurrences against the reasons for incorrectness. There were 3 separate reasons identified for the decisions being incorrectly made. There were overlapping reasons in 1 case.

**Table 8:**

Reasons for Incorrectness	Number of Occurrences
F1	1 (33.3%)
F2	1 (33.3%)
F6	1 (33.3%)

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

In 1 of the 2 cases identified the legal member commented that insufficient weight was given to the evidence. This was a child case with a diagnosis of Aspergers Syndrome. The substantial educational reports on the child were ignored in favour of a scant response by the child's general practitioner (GP), to the standard request for a report. It was also clear from the claim form and the GP report that the child was under the care of a consultant paediatrician. This source of evidence was not investigated.

Again in the second case the GP report was poorly completed. The legal member stated that the decision maker should have commissioned a report from the department's examining medical practitioner (EMP), or a specialist report, to obtain adequate information on daily living, as the appellant had significant eyesight problems.

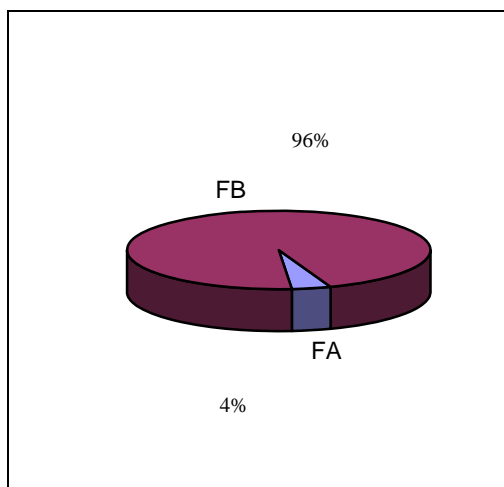
Table 9 illustrates that in a further 47 cases, representing 38% of those monitored, 2 decisions were overturned because the tribunal accepted evidence which the decision maker was unwilling to accept, and in 45 cases, additional evidence was available to the tribunal that was not available to the decision maker.

**Table 9:**

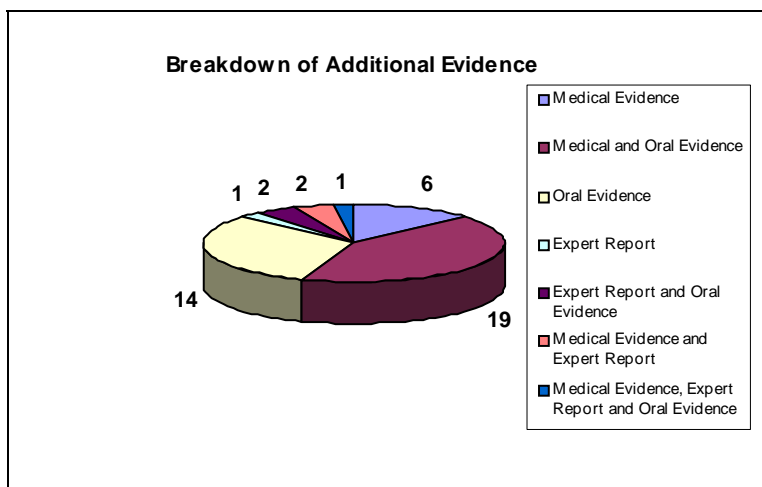
Reasons for Overturning Correctly Made Decision		Number of Cases
<b>FA.</b>	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	2 (4%)
<b>FB.</b>	The tribunal was given additional evidence which was not available to the officer who made the decision.	45 (96%)

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 14 cases the direct evidence of the appellant or a witness was instrumental in the decision being overturned. In a further 31 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 all previous reports, these results continue to demonstrate that relevant information is available from both the claimant and his doctor prior to making the decision on a claim.

### **Recommendations**

I am pleased to note that the standard of decision making has improved slightly. I am also aware of the initiative to improve application forms and supporting evidence. I have encouraged appellant's advisors to have closer liaison with decision makers after an appeal is made in an effort to agree an outcome, thus avoiding a hearing which many appellants find stressful.

There remain a high percentage of appeals where the tribunal changes the decision as more evidence is available at the hearing. As recommended in earlier reports, greater use of medical records by the Decision Makers may reduce the number of appeals. There is no reason why information held in the medical records which is relevant to the claim cannot be requested. As the records are computerised in almost all medical practices, an extract can be obtained.

## ATTENDANCE ALLOWANCE

As Attendance Allowance is a relatively small benefit in terms of appeal activity, 26% of appeals received were monitored. The level of incorrectness identified was 5%. This is a deterioration of 4% on the previous year's results.

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

**Figure 7:**

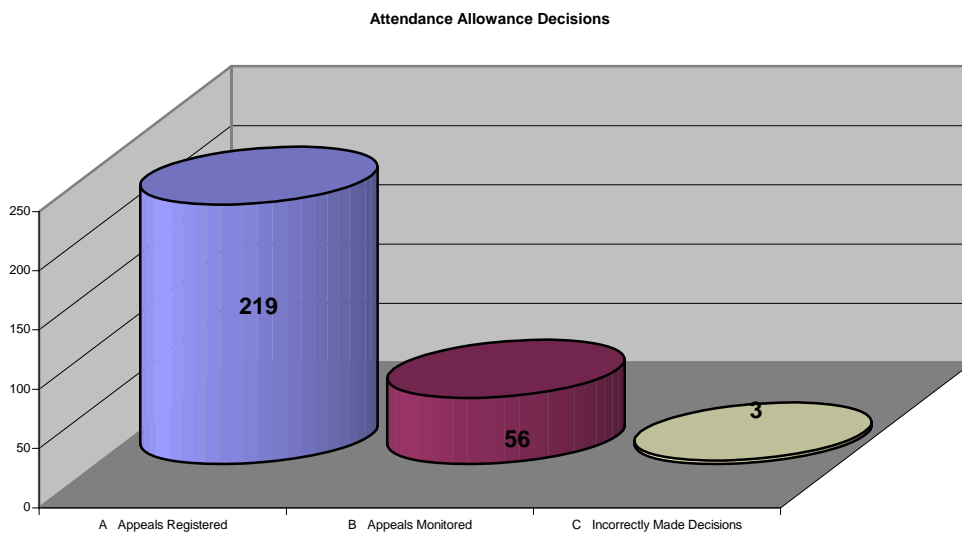
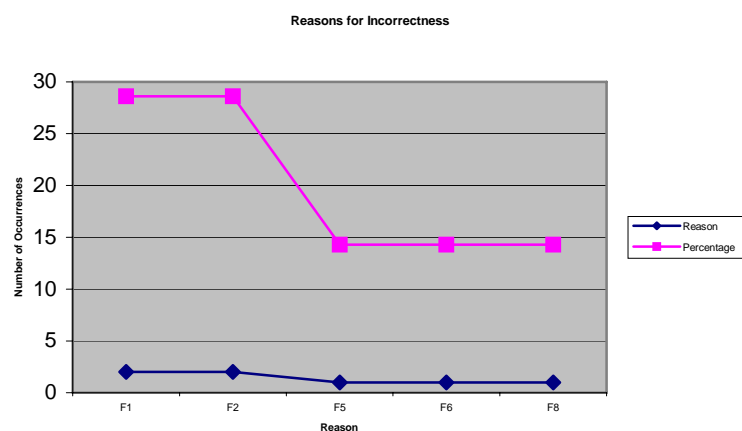


Table 11 sets out the number of occurrences against the reasons for incorrectness. There were 5 separate reasons identified for the decision being incorrectly made. There were overlapping reasons in 2 cases.

**Table 11:**

Reasons for Incorrectness	Number of Occurrences
F1	2 (28.6%)
F2	2 (28.6%)
F5	1 (14.3%)
F6	1 (14.3%)
F8	1 (14.3%)

**Graph 2:**



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

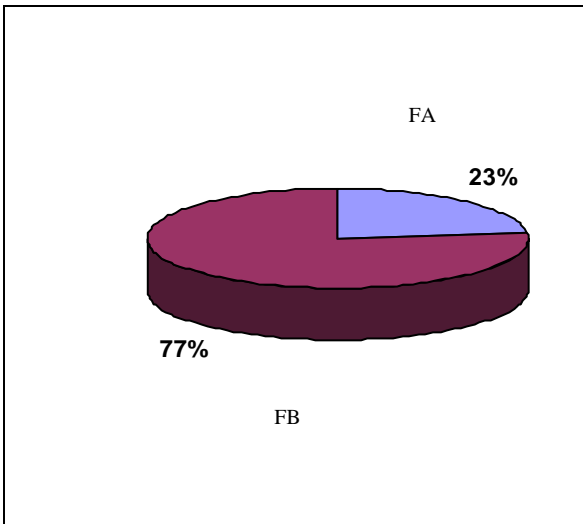
In 2 of the cases identified there was insufficient investigation of the claims. Despite the fact that both claimants had significant health problems, the decision maker did not consider it necessary to commission a report from the claimants' general practitioners (GP), or an examining medical practitioner (EMP). In 1 of the cases in particular the claimant was an eighty three year old lady with severe expressive dysphasia due to a stroke. Follow up investigation was by way of a direct telephone call to her although it was clear she had communication difficulties. The legal member commented that this was not appropriate.

Table 11 illustrates that a further 13 cases, representing 23% 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 (3 cases), or the tribunal was given additional evidence which was not available to the decision maker (10 cases). In 6 of these cases the tribunal relied upon the direct oral evidence of the appellant and in the remaining 4 cases the general practitioners records were useful. In 4 of these claims the only information before the decision maker was the self assessment claim form, and a follow up telephone investigation. In the remaining cases there was a factual report from the claimant's general practitioner or from an examining medical practitioner, or both.

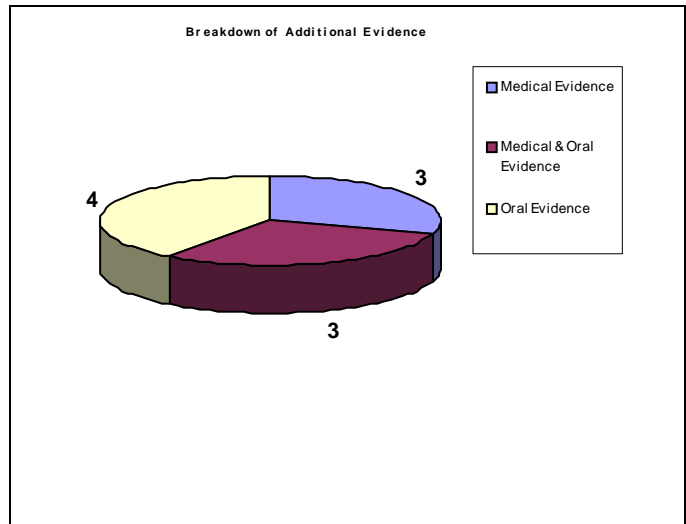
**Table 11:**

<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.	3 (23%)
<b>FB.</b>	The tribunal was given additional evidence which was not available to the officer who made the decision.	10 (77%)

**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 4 of these cases that the decision was overturned due to the direct evidence of the appellant or a witness. In a further 6 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:**

The reduction in standards in Attendance Allowance decision making is disappointing. Overall, and taking note of those cases where the tribunal obtained additional evidence, it is essential that more evidence is obtained before a decision is made and that appropriate reports are obtained. The client group is a particularly vulnerable one and reliance on telephone calls following a claim is not appropriate.

## CARER'S ALLOWANCE

The appeal rate in Carer's Allowance is low. To obtain a meaningful sample, 82% of appeals received were monitored. The level of incorrectness identified was 20%. This is an increase of almost 3% on the previous year's figure. This is unacceptably high.

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

**Figure 8:**

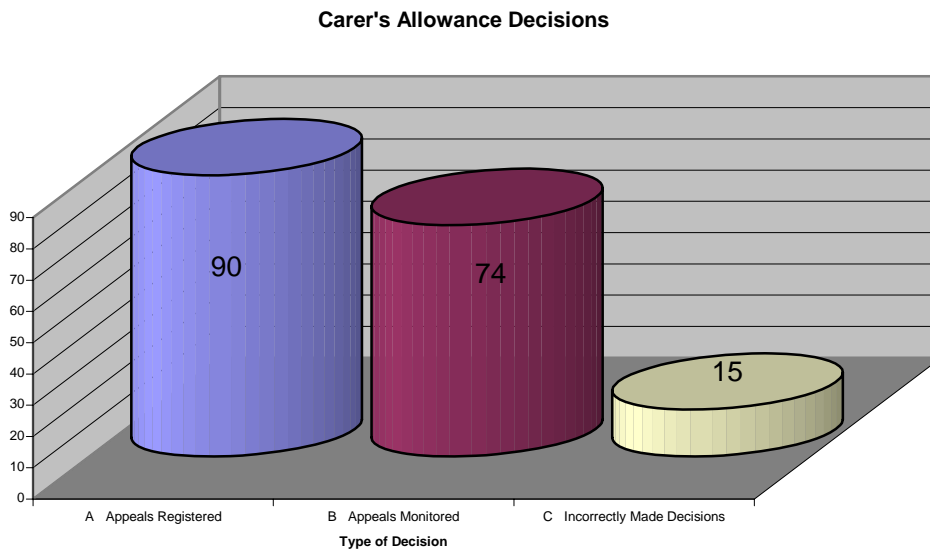
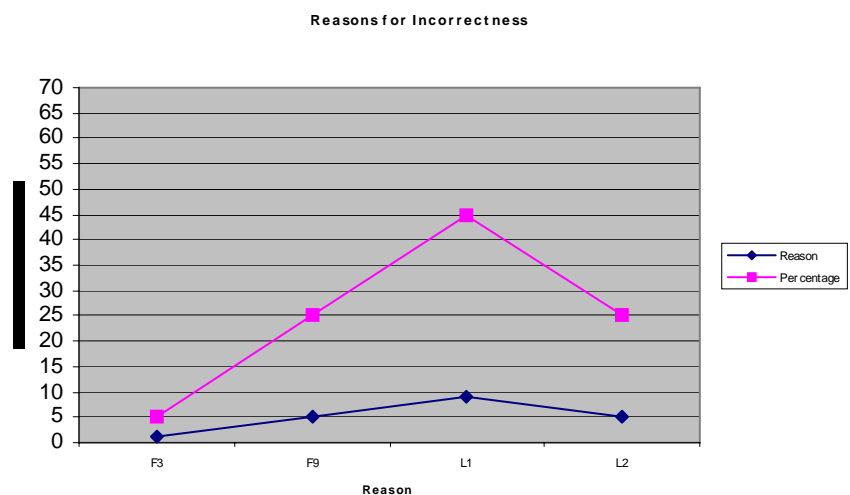


Table 12 sets out the number of occurrences against the reasons for incorrectness. A total of 4 separate reasons were recorded for incorrectness. There were overlapping reasons in 5 cases.

**Table 12**

Reasons for Incorrectness	Number of Occurrences
<b>F3</b>	1 (5%)
<b>F9</b>	5 (25%)
<b>L1</b>	9 (45%)
<b>L2</b>	5 (25%)

**Graph 3**



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

The main issue that arose in Carer's Allowance was the overpayment and recovery of benefit. 11 cases, representing 73% of the total number of incorrectly made decisions identified, fell into this category. As similar problems have been identified within other benefit areas this issue has been dealt with separately at pages 46-48 of this report.

The remaining 4 cases were all requests for backdating beyond the statutory 3 months time limit. While the tribunal agreed that the time limit applied, a technical issue arose relating to the dates the decision maker attributed to the period outside the backdating period and the dates of non entitlement due to the legal rule that entitlement could only commence from the relevant pay day.

Table 13 illustrates that in a further case, representing just over 1% of those monitored, while correctly made by the decision maker, was overturned because the tribunal was given additional evidence which was not available to the decision maker. In another case the tribunal accepted evidence the officer was not willing to accept.

**Table 13:**

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

**Recommendations:**

Overpayments remain problematic. I recommend that training is provided to decision makers on the legal rules that apply to supersession and revision leading to overpayments and the recovery of benefit.

## INCAPACITY BENEFIT

Incapacity Benefit continues to be the second largest area of appeal activity. 3% of all appeals received in this category were monitored. The level of incorrectness is 3%. The standard of decision making in this category continues to be high. This is in line with the previous year's results.

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

**Figure 9:**

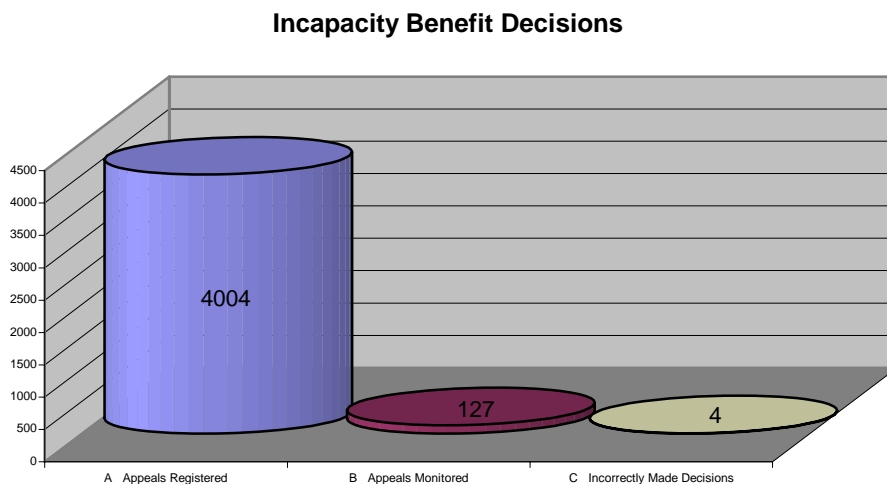
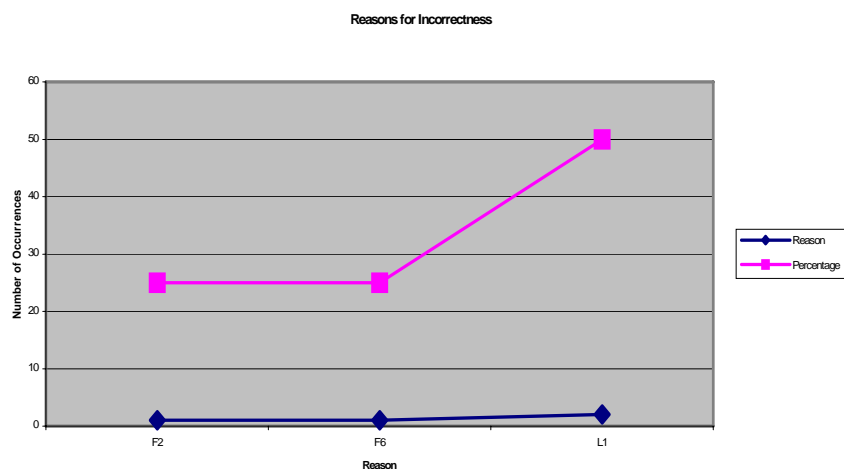


Table 13 and Graph 4 sets out the number of occurrences against the reasons for incorrectness. There were 3 separate reasons identified for the decisions being incorrectly made.

**Table 13:**

Reasons for Incorrectness	Number of Occurrences
<b>F2</b>	1 (25%)
<b>F6</b>	1 (25%)
<b>L1</b>	2 (50%)

**Graph 4:**



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

In 2 of the cases identified the issue under appeal was the recovery of overpaid benefit. As similar problems have been identified within other benefit areas this issue has been dealt with separately at pages 46-48 of this report.

In the remaining 2 cases the legal member commented that evidence was disregarded or further medical guidance should have been sought.

A further 50 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 (13 cases), or the tribunal was given additional evidence that was not available to the decision maker (37 cases).

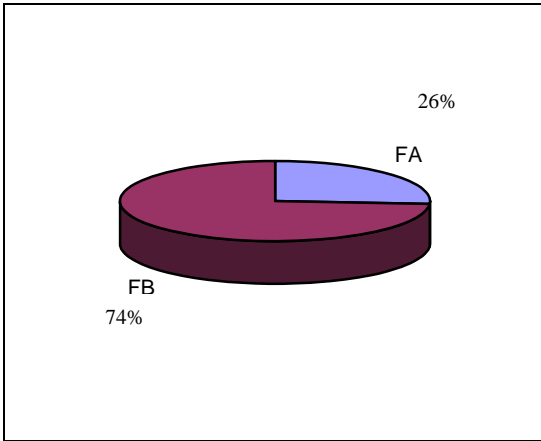
In the FB category 30% of those overturned were appeals in respect of the physical descriptors of the personal capability assessment (PCA), while 38% were in respect of the mental descriptors. A further 21% were a mixture of physical and mental. The remainder were not appealing the PCA. It is noted that decisions in this category were changed due to a combination of further medical evidence and oral and ocular evidence of the appellant, or a witness.

Table 14 and Charts 5 and 6 illustrate why correctly made decisions were overturned and the spread of additional evidence available to tribunals.

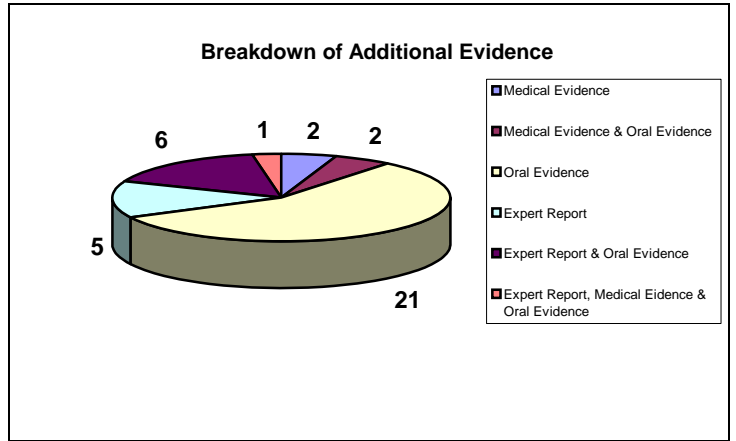
**Table 14**

<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.	13 (26%)
<b>FB.</b>	The tribunal was given additional evidence which was not available to the officer who made the decision.	37 (74%)

**Chart 5**



**Chart 6**



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

**Recommendations:**

The decision making standards are high, but there remains a need to obtain adequate evidence in mental health cases.

## INDUSTRIAL INJURIES DISABLEMENT BENEFIT & SEVERE DISABLEMENT ALLOWANCE

There is a low appeal rate in both of these benefits. To obtain a meaningful sample, 66% of Industrial Injuries Disablement Benefit (IIDB) appeals received were monitored. Given the very small number of Severe Disablement Allowance (SDA) 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**

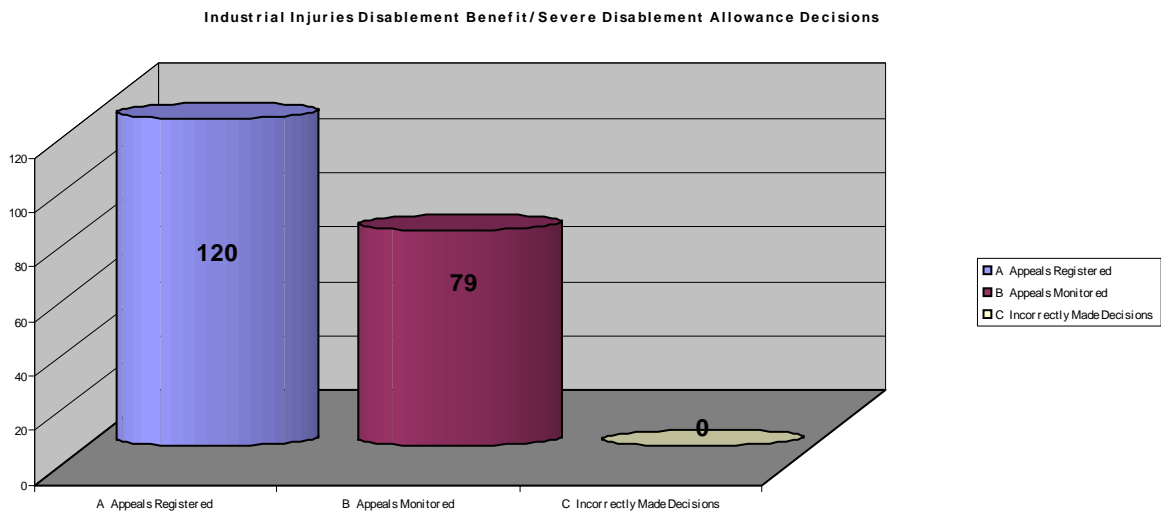


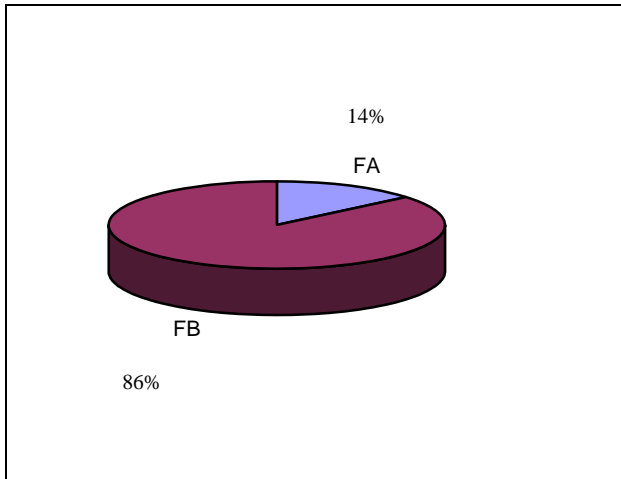
Table 15 and Chart 7 illustrate that in IIDB, 14 cases, representing 19% of those monitored, while correctly made by the decision maker, were overturned because the tribunal either accepted evidence which the decision maker was unwilling to accept (2 cases), or the tribunal was given additional evidence that was not available to the decision maker (12 cases). As in other incapacity benefits, the additional evidence available to tribunals was by way of direct oral evidence by appellants in 9 cases and by way of an additional medical report in the remaining 3 cases. The tribunal also had additional first hand evidence which was obtained during medical examination of appellants by consultants at the tribunal. There were no cases overturned in SDA.

Chart 8 gives a breakdown of the evidence available.

**Table 15:**

Reasons for Overturning Correctly Made Decision		Number of Occurrences
<b>FA.</b>	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.	2(14%)
<b>FB.</b>	The tribunal was given additional evidence which was not available to the officer who made the decision.	12 (86%)

**Chart 7**



**Chart 8**

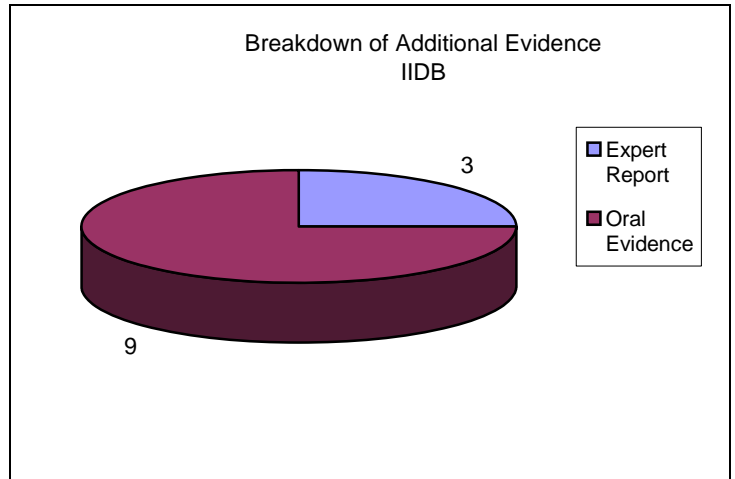


Table 16 gives a breakdown of the results by benefits

**Table 16**

Breakdown of Appeals Monitored		FA	FB
IIDB	72	2	12
SDA	7	0	0

**Recommendations:**

None

## COMPENSATION RECOVERY

There is a relatively low appeal rate in this area. 48% of appeals received were monitored to obtain a meaningful sample. The level of incorrectness identified is 13%. This is in line with the previous year's results and continues to be unacceptable.

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

**Figure 11**

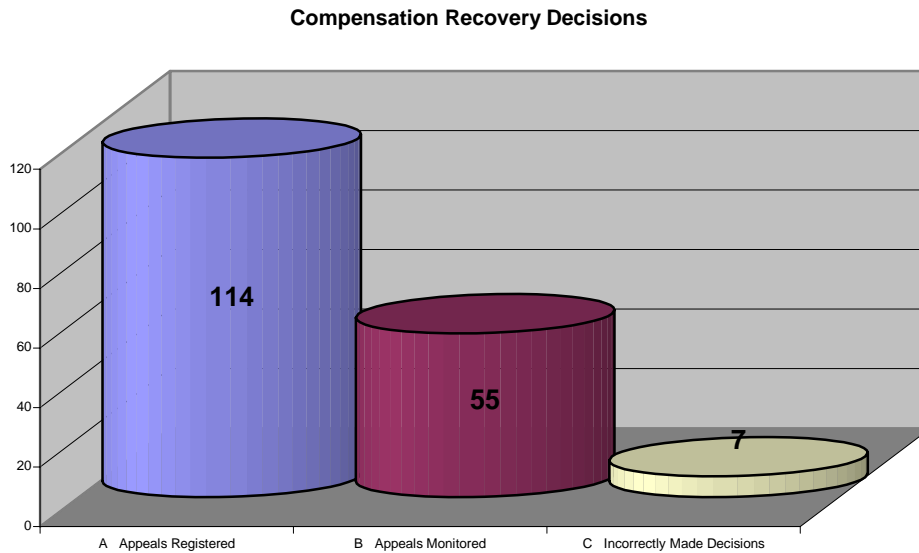


Table 17 and Graph 5 set out the number of occurrences against the reasons for incorrectness. There were 9 separate reasons identified for the decisions being incorrectly made. There were overlapping reasons in 6 cases.

**Table 17**

Reasons for Incorrectness	Number of Occurrences
F1	3(12.5%)
F2	3(12.5%)
F3	3(12.5%)
F4	3(12.5%)
F6	5(20.8%)
F7	3(12.5%)
L1	1(4.2%)
L2	2(8.3%)
L5	1(4.2%)

**Graph 5**



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

The issues arising in this area continue to remain unchanged from report to report. Legal members continue to comment that decision makers fail to resolve problems with conflicting medical evidence and expert guidance is not sought when this occurs. Also, while submissions to the tribunal set out the rules for recovery of benefit, decision makers do not appear to take on board medical opinions which contradict the personal statements of claimants in their benefit claim forms. In one case in particular there was clear evidence of a recovery within six months of the accident. This was substantiated by reports from two separate consultants who suggested the claimant had exaggerated his condition. Despite this, the decision maker preferred to rely upon the benefit claimant's own evidence, for the entire period of the claim. In another case it was clear from the evidence provided by the compensator that the benefit claimant had little or no mobility problems yet Disability Living Allowance was in payment at the higher rate. This evidence was disregarded in favour of the claimant's self assessment claim form.

Other comments routinely made by legal members were that relevant medical evidence was disregarded and there was inadequate investigation of the facts and evidence by decision makers as to whether or not the benefit paid was due to the effects of the accident. Also in relation to Disablement Benefit decision makers appear to accept without question the opinion of the Adjudicating Medical Authority, and do not apportion the percentage of disablement relevant to the accident.

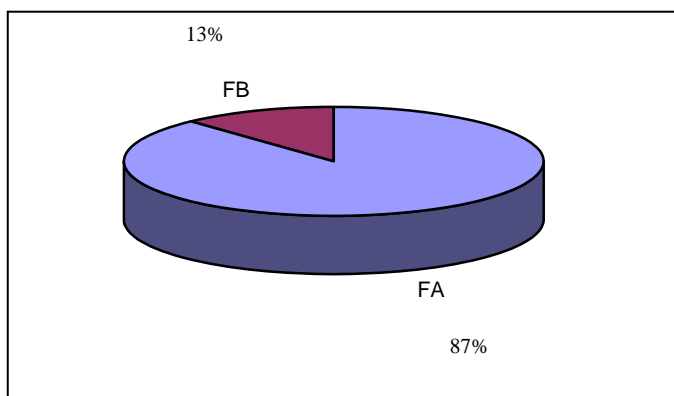
The errors identified continue to reinforce that decision makers either misunderstood, or misinterpreted, relevant evidence, or misinterpreted, or did not correctly identify, the legal rules that applied.

In addition, Table 18 and Chart 9 illustrates that a further 39 decisions, 71% of those monitored, were overturned. In 87% 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 a expert report in 2 of these cases, a solicitors letter in 1 case, a video surveillance in 1 case and in a further case, evidence from the Department.

**Table 18**

<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.	34(87%)
<b>FB.</b>	The tribunal was given additional evidence which was not available to the officer who made the decision.	5(13%)

**Chart 9**



**Recommendations:**

The decision making standards remain unsatisfactory. In order to understand what benefits have been paid in respect of an injury for which compensation is paid, it is essential to understand the court claim. The claim is specified in the Court pleadings and associated documents. The injury is described together with a prognosis, the likely period of loss of income resulting from incapacity and other financial costs such as the cost of care. There is also a claim for pain and suffering.

In most compensation recovery appeals, the supporting expert medical reports are provided to the Department together with argument as to the extent of the injuries for which compensation was eventually paid. There is often a dispute between the parties as to the extent and duration of the injuries sustained. The value of the settlement will reflect how this dispute was resolved.

It is for the reasons explained in the preceding paragraphs that basic training is required in Court procedures and injury claims. I am confident that if such training was provided, standards would improve.

## INCOME SUPPORT

Income Support appeal activity is relatively steady when compared to other benefits. 12% of appeals received in this category were monitored. 48% of decisions overall were found to be incorrect. This is an increase of 37% on the previous year. The rate of incorrectness is unacceptably high.

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

**Figure 12**

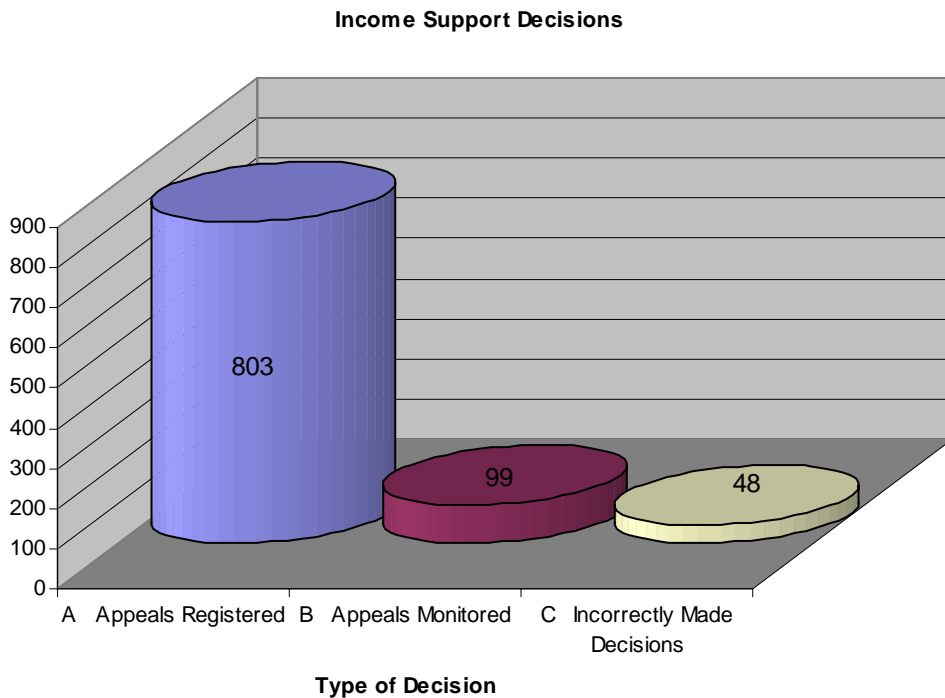
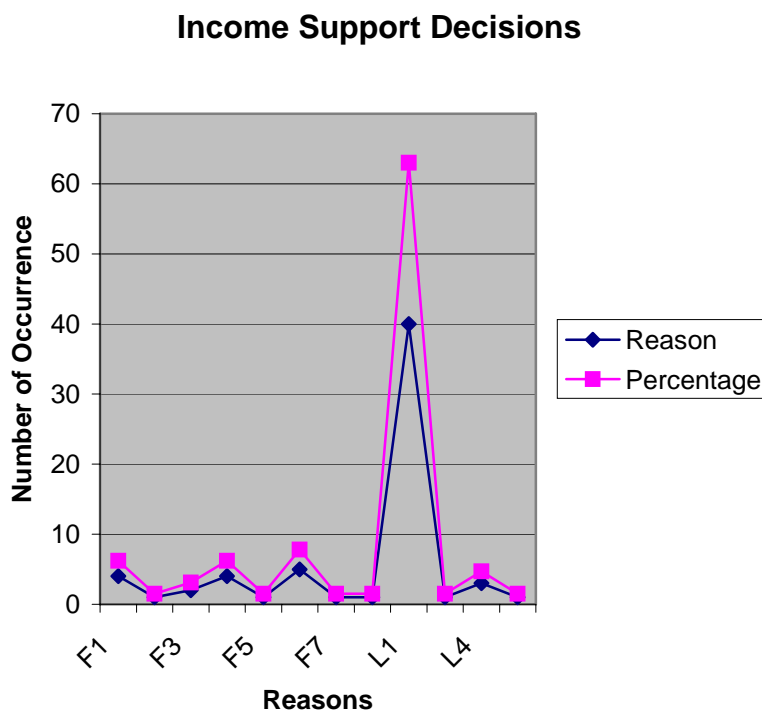


Table 19 and Graph 6 set out the number of occurrences against the reasons for incorrectness. There were 12 separate reasons identified for the decisions being incorrectly made. There were overlapping reasons in 5 cases.

**Table 19**

Reasons for Incorrectness	Number of Occurrences
F1	4 (6.2%)
F2	1 (1.5%)
F3	2 (3.1%)
F4	4 (6.2%)
F5	1 (1.5%)
F6	5 (7.8%)
F7	1 (1.5%)
F8	1 (1.5%)
L1	40 (62.5%)
L2	1 (1.5%)
L4	3 (4.7%)
L5	1 (1.5%)

**Graph 6**



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

There was a high level of incorrectness identified in this category. It is clear from Chart 10 that the main problem occurred with decisions relating to the recovery of overpaid benefit. 42 cases, representing 88% of the total number of incorrectly made decisions identified, fell into this category. As similar problems have been identified within other benefit areas this issue has been dealt with separately at pages 46-48 of this report.

The other main issue arising in this category is the standard of decision making in appeals where a person is claiming benefit on the basis that they are single and the decision maker decides they are one of a married or unmarried couple. In 4 cases of this type, identified as incorrectly made, the members commented that there was no actual benefit outcome decision. Decision makers simply stated that the appellant and another person were living together as husband and wife. The issue of conditions of entitlement to Income Support was not dealt with.

It was also commented that decision makers based their decisions on this issue on insufficient evidence or misinterpreted the evidence. In one instance in particular the decision maker based his reasoning solely on a joint tenancy agreement, disregarding all the other contradictory evidence in favour of this. Also, while established case law in relation to this type of case is quoted by the appeal writers in all of the submissions to the

tribunal, no attempt is made to argue how the case law applied to the individual appellant's circumstances.

**Chart 10**

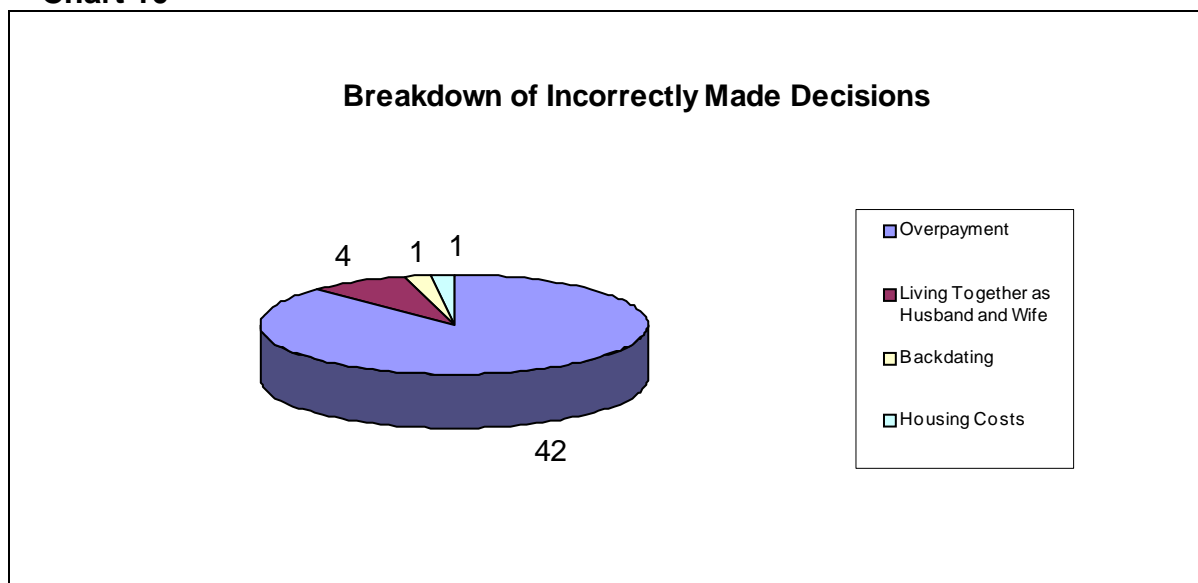
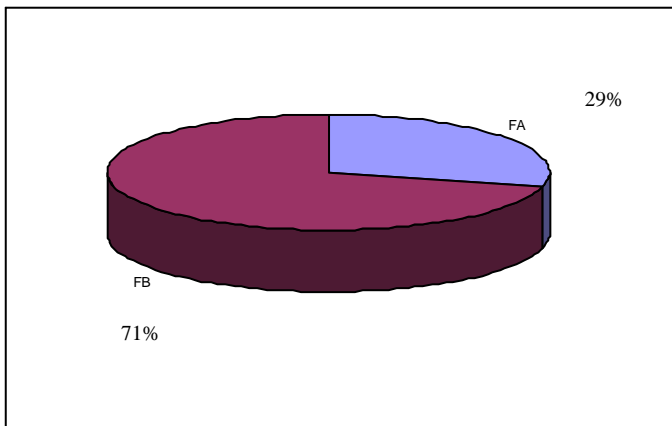


Table 20 and Chart 11 illustrate that in a further 7 cases, representing 7% of those monitored, decisions were overturned because the tribunal accepted evidence that the decision maker was unwilling to accept (2 cases), or the claimant produced additional evidence to the tribunal that was not available to the decision maker (5 cases). In the latter category all the appellants attended the hearings and presented oral evidence, and in 1 case additional written evidence was also provided. As a result of the oral and written evidence provided the decisions were changed by the tribunal.

**Table 20**

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(29%)
<b>FB.</b>	The tribunal was given additional evidence which was not available to the officer who made the decision.	5(71%)

**Chart 11**



**Recommendations:**

That training is provided to decision makers in the following areas:

The legal rules that apply in the area of supersession and revision decisions leading to overpayments and the recovery of benefit.

Generally on the issue of outcome decisions.

The interpretation and application of case law on a case by case basis in relation to what should be taken into account in determining whether a person is living as one of a married or unmarried couple.

I also continue to 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

23% of all Jobseekers Allowance appeals received were monitored. The level of incorrectness identified is 11%. This is an increase of 8% on the previous year and is unsatisfactory.

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

**Figure 13**

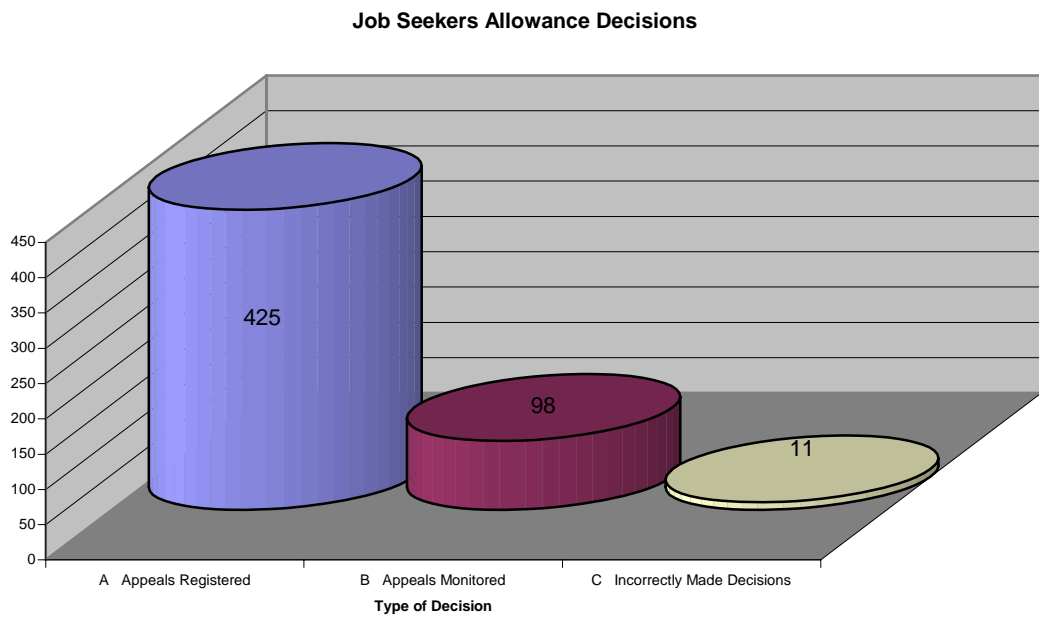
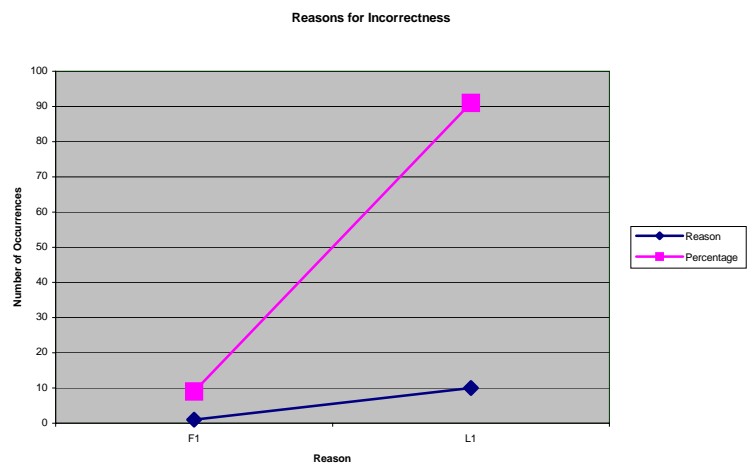


Table 21 and Graph 7 set out the number of occurrences against the reasons for incorrectness. There were 2 separate reasons identified for the decisions being incorrectly made.

**Table 21**

Reasons for Incorrectness	Number of Occurrences
F1	1 (9%)
L1	10 (91%)

**Graph 7**



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

The main issue that arose in Jobseekers Allowance was the overpayment and recovery of benefit. 9 cases, representing 82% of the total number of incorrectly made decisions identified, fell into this category. As similar problems have been identified within other benefit areas this issue has been dealt with separately at pages 46-48 of this report.

The issue in the remaining 2 cases was the refusal to backdate claims. In 1 case the legal member commented that the claim was inadequately investigated. The backdating period before the tribunal was 1 week and the reason supplied by the appellant was the time taken to receive notice that he was no longer entitled to Incapacity Benefit. In the other case the backdating period was 5 months. The legal member commented that the decision maker in this decision did not distinguish between the 3 month absolute limit on backdating and the earlier period. In that respect the officer did not identify the correct legal rules relevant to the claim.

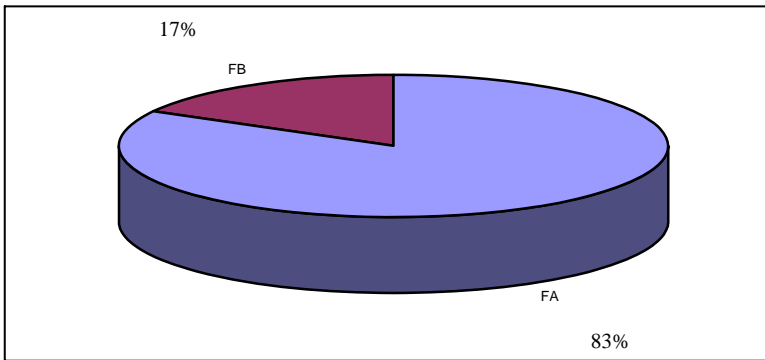
Table 22 and Chart 12 illustrate that in a further 12 cases, 12% of those monitored, decisions were overturned because the tribunal accepted evidence that the decision maker was unwilling to accept (10 cases), or the claimant produced additional evidence to the tribunal that was not available to the decision maker (2 cases).

In 5 of those in the FA category and in both FB cases, a sanction had been imposed by the decision maker as the claimant had either left employment voluntarily, failed to attend a job interview or to apply for a job, or had lost employment through misconduct. In 5 of these the sanction imposed ranged from 20 weeks to the maximum 26 weeks. In all cases the sanction was reduced significantly by the tribunal. The decision maker does have discretion in relation to the period of the sanction imposed and each case must be judged on its particular circumstances. However, legal members have commented that decision makers must exercise this discretion judicially, taking into consideration the issues involved and considering the wide range of sanctions that can be imposed.

**Table 22**

<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.	10(83%)
<b>FB.</b>	The tribunal was given additional evidence which was not available to the officer who made the decision.	2(17%)

**Chart 12**



**Recommendations:**

The standard of decision making has deteriorated mainly due to the problems associated with overpayments. I therefore recommend that training is provided to decision makers on the legal rules of entitlement leading to overpayments and the recovery of benefit.

## PENSION CREDIT

42% of all Pension Credit appeals received were monitored. The level of incorrectness identified is 50%. These results should however be read with caution as the sample number was insufficient to enable any statistically valid assumptions to be made.

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

**Figure 14**

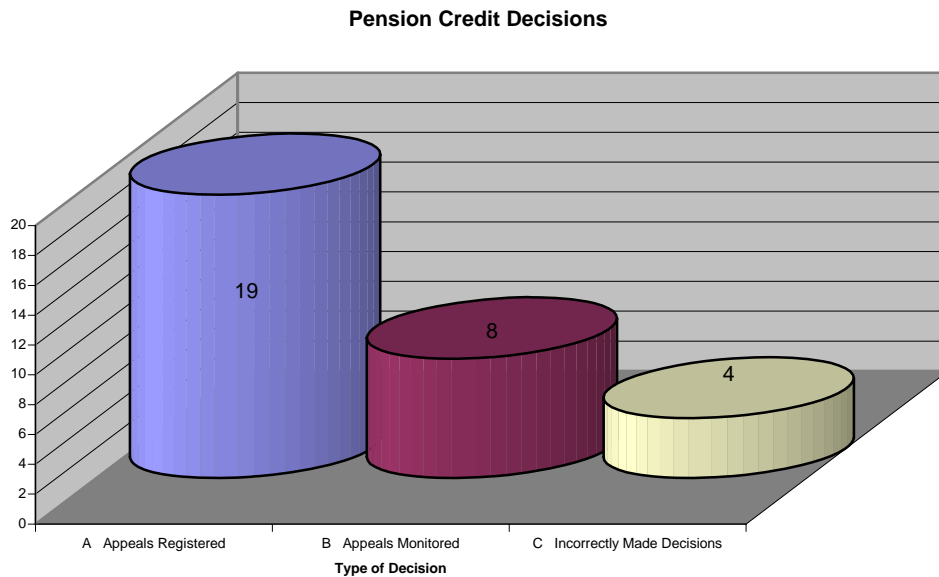
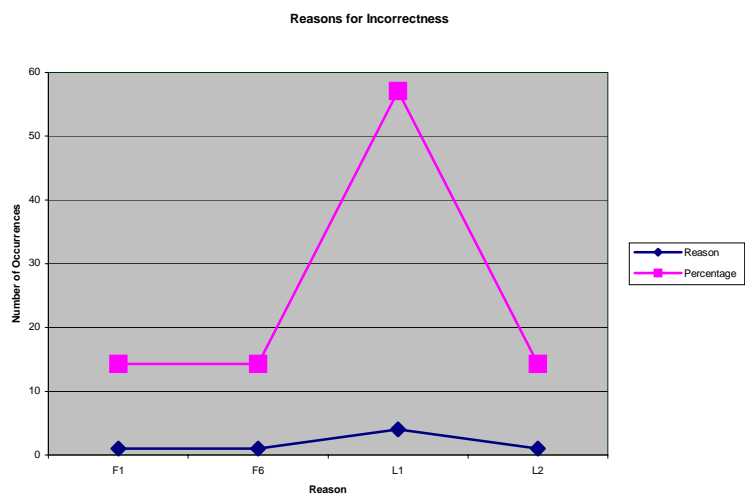


Table 23 and Graph 8 set out the number of occurrences against the reasons for incorrectness. There were 4 separate reasons identified for the decisions being incorrectly made. There were overlapping reasons in 2 cases.

**Table 23:**

Reasons for Incorrectness	Number of Occurrences
F1	1 (14.3%)
F6	1 (14.3%)
L1	4 (57.1%)
L2	1 (14.3%)

**Graph 8:**



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

The main issue that arose in Pension Credit was the overpayment and recovery of benefit. 3 cases, representing 75% of the total number of incorrectly made decisions identified, fell into this category. As similar problems have been identified within other benefit areas this issue has been dealt with separately at pages 46-48 of this report.

The remaining case dealt with a claim to backdate entitlement due to a change of circumstances. The decision maker did not correctly interpret the legal rules in relation to the date the supersession decision should take effect. Also the decision maker did not take into account the maximum period within which a claim for backdating can be considered.

Additionally a further 2 cases were identified as decisions which did not carry a right of appeal. The issue in both of these was that a lost or stolen giro cheque/order book resulted in a replacement giro cheque being issued. This resulted in overpayments of benefit as the claimants subsequently cashed both the original lost giros and the replacements. Decisions of this nature are not benefit entitlement decisions.

### **Recommendations:**

There are relatively few appeals available for monitoring in this benefit area, therefore it is difficult to reach any statistically sound conclusions in relation to the overall standard of decision making. I would however recommend that training is provided to decision makers on the legal rules that apply to supersession and revision leading to overpayments and the recovery of benefit, as 3 of the 7 cases examined were in relation to the overpayment of benefit and a further 2 were presented as such when no appeal right existed.

## OVERPAYMENT APPEALS

Appeals which involve an overpayment of Social Security Benefit can occur in most benefit areas. However, by far the majority that come before tribunals are found in Carer's Allowance, Income Support and Jobseeker's Allowance. A number also arise in Pension Credit and occasionally in Incapacity Benefit. In relation to the monitoring of decisions these were the benefit areas identified where the cases selected contained overpayment appeals

The level of incorrectness identified in this area of decision making was very high. Table 24 below sets out the number and percentage of overpayment decisions incorrectly made, set against the total number of incorrectly made decisions in the relevant category identified through selection.

**Table 24:**

<b>Benefit Type</b>	<b>Total Number Monitored</b>	<b>Total Incorrectly made</b>	<b>Number of Incorrectly made Identified as Overpayment Appeals</b>	<b>Overpayments as a % of Incorrectly made</b>
Carer's Allowance	74	15	11	73%
Income Support	99	48	42	88%
Jobseekers Allowance	98	11	9	82%
Pension Credit	19	4	3	75%
Incapacity Benefit	127	4	2	50%

The issues identified were similar for all benefit areas. In a substantial number, legal members commented that the decision maker did not identify the correct legal rules relevant to the claim. The main issue was that decision makers did not provide evidence of the revision/supersession decision required on entitlement, before an overpayment decision can be made. Additionally, in cases where it had been carried out, there was no proof that the decision was communicated to the claimant. In a number of these cases the document provided to the tribunal as the revision of entitlement decision was a narrative of the change in circumstances and was presented on a form headed "off line decision". In many cases these were not signed by a decision maker and without exception did not include any information relating to the issue of the document to the claimant.

Another issue that arose in overpayment appeals was the proof required when benefit is paid by automated payments to a bank account. In these circumstances claimants must

be notified of the consequences of this method of payment before a decision on recovery of benefit can be made. This was not apparent in cases before the tribunal. Also, although recovery of benefit is mandatory in such cases, arguments are put before tribunals of misrepresentation by the claimant. This is not necessary.

In 1 Income Support case and 2 Pension Credit cases the claimant received a replacement for a lost/stolen giro/order book. It was later discovered that both the original and the replacement payment had been cashed, resulting in an overpayment of benefit. There is no right of appeal in these circumstances, as the issue is not one of entitlement or the rate of benefit payable. Submissions to the tribunal incorrectly dealt with the issue as an appealable misrepresentation decision. Decision makers should not issue appeal rights with this type of decision.

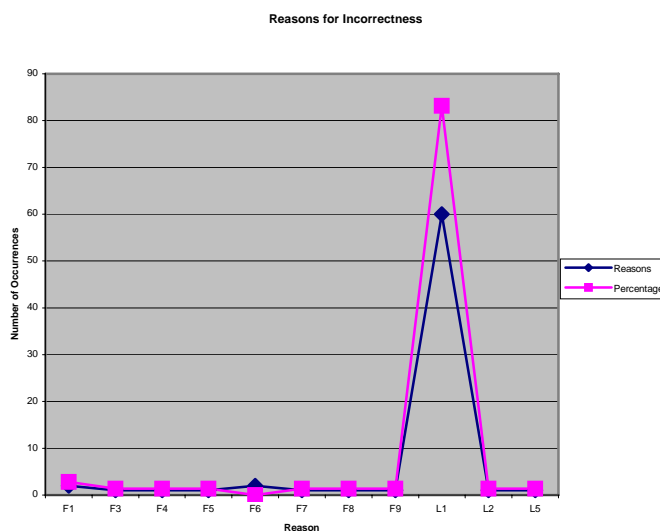
In a number of appeals, mainly Income Support, the legal members commented that the revision/supersession decisions on entitlement, relied upon by the decision maker responsible for the overpayment decision, were not proper outcome decisions. The overpayment decisions were therefore flawed.

Table 25 and graph 9 set out the reasons for incorrectness. By far the main reason was that the officer did not identify the correct legal rules relevant to the claim or revision.

**Table 25:**

Reasons for Incorrectness	Number of Occurrences
F1	2 (2.8%)
F3	1 (1.4%)
F4	1 (1.4%)
F5	1 (1.4%)
F6	2 (2.8%)
F7	1 (1.4%)
F8	1 (1.4%)
F9	1 (1.4)
L1	60 (83.2%)
L2	1(1.4%)
L5	1 (1.4%)

**Graph 9:**



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

*(the figures in table 25 are a composite of the relevant information extracted from the tables presented for each of the individual benefits)*

**Recommendations:**

It is clear that the legal rules which apply to overpayments and recovery of benefit are poorly understood. This is particularly so in relation to the issue of revision/supersession of entitlement, and notification of entitlement to the claimant, prior to the overpayment decision process. I therefore recommend that training is provided to decision makers on the legal rules that apply to supersession and revision leading to overpayments and the recovery of benefit.

In relation to the overpayment decision process, it is crucial that the decision maker raising the overpayment is satisfied that a proper outcome entitlement decision has been made and issued to the claimant.

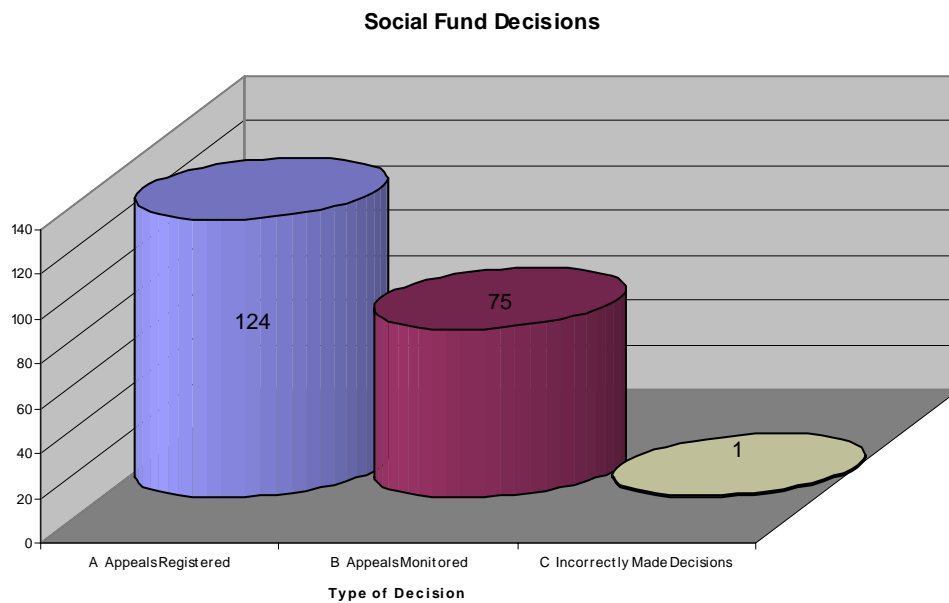
I recommend that comprehensive training is provided in the above areas to all decision makers involved.

## 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, 60% of appeals received were monitored. 1% of those monitored were found to be incorrect. The standard of decision making in this category is high.

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

**Figure 15**



There was 1 incorrectly made decision identified in this appeal category. The reason for incorrectness was that the decision was based on a misinterpretation or misunderstanding of the evidence available to the officer (F4).

Table 26 illustrates that in a further 4 cases, 5% of those monitored, decisions were overturned because the tribunal accepted evidence which the officer was unwilling to accept (1 case) or the claimant produced additional evidence to the tribunal that was not available to the decision maker (3 cases).

**Table 26:**

<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.	1 (25%)
<b>FB.</b>	The tribunal was given additional evidence which was not available to the officer who made the decision.	3 (75%)

**Recommendations:**

None.

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

21 Retirement Pension, 12 Bereavement Benefits and 4 Reduced Earnings Allowance appeals were received during the report period. 12 Retirement Pension, 9 Bereavement Benefits and 4 Reduced Earnings Allowance cases were monitored.

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

The standard of decision making continues to be high.

### **Recommendations:**

None.

## CHAPTER 5

### SUMMARY OF RECOMMENDATIONS

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

There is a pressing need for improved training in decision making processes and the analysis of evidence.

The number of appeals overall is low and the Department should ensure that all decisions are notified to appellants together with details of appeal rights.

#### **Disability Living Allowance/Attendance Allowance**

As recommended in earlier reports, greater use of medical records by the Decision Makers may reduce the number of appeals. There is no reason why information held in the medical records which is relevant to the claim cannot be requested. As the records are computerised in almost all medical practices, an extract can be obtained.

Additionally, in Attendance Allowance, it is essential that more evidence is obtained before a decision is made and that appropriate reports are obtained. The client group is a particularly vulnerable one and reliance on telephone calls following a claim is not appropriate.

#### **Incapacity Benefit**

There continues to be difficulties in obtaining, assessing and interpreting evidence in some mental health cases. There remains a need to obtain adequate evidence in mental health cases.

## **Compensation Recovery**

The decision making standards remain unsatisfactory. In order to understand what benefits have been paid in respect of an injury for which compensation is paid, it is essential to understand the court claim. I continue to recommend basic training in Court procedures and injury claims. I am confident that if such training was provided, standards would improve.

## **Carer's Allowance**

Overpayments remain problematic I recommend that training is provided to decision makers on the legal rules that apply to supersession and revision leading to overpayments and the recovery of benefit.

## **Income Support**

That training is provided to decision makers in the following areas:

The legal rules that apply in the area of supersession and revision of decisions leading to overpayments and the recovery of benefit.

Generally on the issue of outcome decisions.

The interpretation and application of case law on a case by case basis in relation to what should be taken into account in determining whether a person is living as one of a married or unmarried couple.

I also continue to 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**

I recommend that training is provided to decision makers on the legal rules that apply in the area of supersession and revision of decisions leading to overpayments and the recovery of benefit.

**Pension Credit**

I recommend that training is provided to decision makers on the legal rules that apply to supersession and revision leading to overpayments and the recovery of benefit

## 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.

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. 95% is known as the confidence level.

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

**Table A1:**

<b>Benefit</b>	<b>Percentage Incorrectness in the Initial Decision</b>	<b>Confidence Interval (±%)</b>
Attendance Allowance	5.4%	5.1
Child Support	22.5%	9.7
Compensation Recovery	12.7%	6.4
Disability Living Allowance	1.6%	2.2
Incapacity Benefit	3.1%	3.0
Income Support	48.5%	9.2
Industrial Injuries Disablement Benefit	0.0%	0.0
Carer's Allowance	20.3%	3.9
Jobseekers Allowance	11.2%	5.5
Social Fund	1.3%	1.6
ALL	12.1%	2.1

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 10% and 14.2%, i.e.  $12.1\% \pm 2.1\%$

N.B. Each benefit generates its own workload of appeals. This is dependent both on the volume of initial or renewal claims processed and on the complexity of the benefit. The benefit may be complex in terms of the process to be followed, of the facts to be gathered and interpreted and the legal principles to be applied. It is likely that decisions relating to the more complex benefits will be found to be incorrect. The aggregated total of appeals and outcomes in relation to the level of incorrectness thus covers a wide range of different circumstances that the meaning of this figure is uncertain.

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

- we can be 95% certain that the true level of incorrectness among all Disability Living Allowance appeal decisions in the period is between 0.1% and 6.1%, i.e.  $3.1\% \pm 3.0\%$ .

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	11,486
Number of cases monitored	858
Percentage monitored	7.5%
Number of incorrect initial decisions	104
Percentage incorrect	12.1%
Confidence interval	±2.1%
Total number of reasons	155
<b>Main reason for incorrect initial decision:</b> The officer did not identify the correct legal rules relevant to the claim or revision – 42.6% of all reasons	

BENEFIT NAME	DISABILITY LIVING ALLOWANCE
Number of cases registered	5,442
Number of cases monitored	122
Percentage monitored	2.2%
Number of incorrect initial decisions	2
Percentage incorrect	1.6%
Confidence interval	±2.2%
Total number of reasons	3
<b>Main reason for incorrect initial decision:</b> There was no main reason	

BENEFIT NAME	ATTENDANCE ALLOWANCE
Number of cases registered	219
Number of cases monitored	56
Percentage monitored	25.6%
Number of incorrect initial decisions	3
Percentage incorrect	5.4%
Confidence interval	±5.1%
Total number of reasons	7
<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 and the officer failed to request adequate medical guidance or expert reports relevant to the decision – both 28.6% of all reasons	

BENEFIT NAME	INCAPACITY BENEFIT
Number of cases registered	4,004
Number of cases monitored	127
Percentage monitored	3.2%
Number of incorrect initial decisions	4
Percentage incorrect	3.1%
Confidence interval	±3.0%
Total number of reasons	4
<b>Main reason for incorrect initial decision:</b> There was no main reason	

BENEFIT NAME	JOBSEEKERS ALLOWANCE
Number of cases registered	425
Number of cases monitored	98
Percentage monitored	23.1%
Number of incorrect initial decisions	11
Percentage incorrect	11.2%
Confidence interval	±5.5%
Total number of reasons	11
<b>Main reason for incorrect initial decision:</b> The officer did not identify the correct legal rules relevant to the claim/revision (L1) – 91% of all reasons.	

BENEFIT NAME	CHILD SUPPORT
Number of cases registered	89
Number of cases monitored	40
Percentage monitored	44.9%
Number of incorrect initial decisions	9
Percentage incorrect	22.5%
Confidence interval	±9.7%
Total number of reasons	14
<b>Main reason for incorrect initial decision:</b> The officer made errors of calculation – 50% of all reasons	

BENEFIT NAME	SOCIAL FUND
Number of cases registered	124
Number of cases monitored	75
Percentage monitored	60.5%
Number of incorrect initial decisions	1
Percentage incorrect	1.3%
Confidence interval	±1.6%
Total number of reasons	1
<b>Main reason for incorrect initial decision:</b> The decision was based on a misinterpretation / misunderstanding of the evidence available to the officer.	

BENEFIT NAME	INCOME SUPPORT
Number of cases registered	803
Number of cases monitored	99
Percentage monitored	12.3%
Number of incorrect initial decisions	48
Percentage incorrect	48.5%
Confidence interval	±9.2%
Total number of reasons	65
<b>Main reason for incorrect initial decision:</b> The officer did not identify the correct legal rules relevant to the claim or revision – 62% of all reasons.	

BENEFIT NAME	COMPENSATION RECOVERY
Number of cases registered	114
Number of cases monitored	55
Percentage monitored	48.2%
Number of incorrect initial decisions	7
Percentage incorrect	12.7%
Confidence interval	±6.4%
Total number of reasons	16
<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 19% of all reasons	

BENEFIT NAME	INDUSTRIAL INJURIES DISABLEMENT BENEFIT
Number of cases registered	109
Number of cases monitored	72
Percentage monitored	66%
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	

BENEFIT NAME	CARER'S ALLOWANCE
Number of cases registered	90
Number of cases monitored	74
Percentage monitored	82.2%
Number of incorrect initial decisions	15
Percentage incorrect	20.3%
Confidence interval	±3.9%
Total number of reasons	20
<p><b>Main reason for incorrect initial decision:</b>  The officer did not identify the correct legal rules relevant to the claim or revision – 45% of all reasons</p>	

## 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.

---

**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: