

President's Report

*Report by the President of Appeal Tribunals
on the standards of decision-making by the
Secretary of State*

2004-2005

President's Report

*Report by the President of Appeal Tribunals on
the standards of decision-making by the
Secretary of State*

2004-2005

Contents

President's Foreword	3
1 Context	4
2 Management Summary	8
3 The Sample	10
4 Sample Results	11
5 Non-medical Decisions.....	17
6 Decisions involving medical evidence.....	22
7 Child Support Agency decisions	29
8 Conclusion	31
 <i>Annex A:</i>	
Questionnaire and Sampling	34
 <i>Annex B:</i>	
Sample intake and results by benefit – Tables A-G	38
 <i>Annex C:</i>	
Sample intake and results from 2003-2004	42
 <i>Annex D:</i>	
List of Abbreviations	51

President's Foreword

I am happy to present my fifth full written report to the Secretary of State on the standards of decision-making in cases which have come before appeal tribunals during the financial year 2004/05. This full report follows interim reports which I have provided to the Chief Executives of the Agencies who make decisions on behalf of the Secretary of State during the course of the year. The full report incorporates the information previously outlined in the quarterly reports.

The methodology used in producing this report has now become established. This fifth report follows the same pattern used in the production of quarterly interim reports that I hope the Secretary of State – and the Agency Chief Executives – find helpful in their efforts to improve standards of decision-making. In last year's report I referred to the higher profile afforded decision-making by two reports by the National Audit Office (NAO) and the subsequent hearings by the House of Commons Public Accounts Committee. In light of these both myself and my administrative colleagues in the Appeals Service have sought to find new and more effective ways of providing feedback and enhancing the flow of information between the tribunal and first tier decision makers, whether at a national or local level. The Appeals Service will continue to work with the Department to improve data collection to ensure that we are providing them with reports that they can utilise to good effect, and to monitor and evaluate what we offer in light of their comments.

I am grateful to Departmental officials – in particular the Information and Analysis Directorate – who have given us invaluable advice in collecting and interpreting the data; to my administrators in the Appeals Service Agency at regional offices and especially the President's Support Team at headquarters who have assisted me in managing the data-collection process and preparing the reports; and, crucially, to the Regional and District Chairmen and medically qualified panel members who have taken time at the end of each sample case to consider the standards of decision-making displayed by that case and to record their views. Without their care and expertise in completing the questionnaires, and the support of my administrative colleagues this report would not have been possible.

Judge Michael Harris
President of Appeal Tribunals

1 Context

- 1.1 This fifth report follows the path laid out in the previous reports, adapting, where necessary, to changing circumstances, but produced on the same principles. Although the questionnaire has changed, in light of the review we undertook last year, the sampling method has remained the same and I am vigilant regarding the need to review the structure and usefulness of the interim and annual reports in the light of feedback from stakeholders, an exercise we undertake at the end of each annual round of sampling.
- 1.2 Having completed my fifth annual report, I am confident that my conclusions represent outcomes at our hearings, but the findings of this report cannot be said to be representative of the standard of decision-making across the range of cases. Of the millions of decisions made in each jurisdiction that refers cases to our tribunals, only a small proportion, some 230,000 in 2004, found their way to the Appeals Service. The cases do highlight, however, where things have gone wrong and perhaps how the Agencies can set about putting things right. Nevertheless, it is often not possible to say definitively whether the cases we see are more likely to be cases where the Department has reached the wrong conclusion, though common sense suggests that that is likely to be so.
- 1.3 The context of the report last year was very much one that followed in the wake of the NAO reports¹ and the subsequent report of the Committee of Public Accounts (PAC)². One of the NAO reports focussed on medical reports and the other looked more broadly at decision-making across the Department. Taken together they served to show that these reports and our findings are on the right track in indicating the areas for improvement.
- 1.4 Specifically they highlighted improving the quality of pre-checks before claims are decided; improving the relevance and reliability of evidence gathered from appellants and medical reports amongst others; and making more use of the reconsideration process, all themes that have been present in my earlier reports.

1 Getting it right, putting it right improving decision-making and appeals in social security benefits. Report by the Comptroller and Auditor General HC 1142 Session 2002-2003: 7 November 2003. TSO; and Progress in improving the medical assessment of incapacity and disability benefit. Report by the Comptroller and Auditor General. HC 1141 Sessions 2002-2003: 17 October 2003. TSO

2 Sixteenth Report of Session 2003-04. HC 120. TSO

- 1.5 It is also significant that one of the points made by the PAC was that although a large factor in the decision-making process is the quality of the evidence, the outcome of the process is dependent upon the exercise of sound judgement.
- 1.6 Too much emphasis is being placed by the Agencies on processes and targets, it is as if they are saying that if they could only get the process right then the outcome decision must be right too. This seems not to be the experience of the tribunal and does not seem to be satisfying many of the people the Agencies now consider to be their customers. It is perhaps one of the main reasons why matters do not seem to be improving.
- 1.7 Yet where the processes are in place there seems to be a lack of coordination across the Agencies regarding application. There is no lack of guidance for decision makers in order to assure the process, but where this is in place the process is often not monitored and the guidance not followed, which seems to happen where the decision-maker does not agree with the possible outcome. It may be time for the Agencies to start looking at benchmarking good practice in decision making before establishing processes and let the good decision making practices determine the process rather than the other way round, as seems to be happening at the moment. In providing guidance to decision makers the Department should be even handed in quoting that case law, I am particularly thinking of Social Security Commissioners Decisions, which balances out their own preferred case law and which might provide a different view of similar situations.
- 1.8 For this to happen the Agencies must accept that decision-making is a complicated process involving complex human situations and personal circumstances superimposed on which is a sophisticated system of law. The exercise of sound judgement in these circumstances is at the heart of what we are trying to achieve because it has such a profound effect upon the life of the individual. In this sense our system of reporting and feedback reflects the wider role that administrative appeal tribunals have in promoting higher standards of administrative decision-making. But it is important to remember that administrative justice is not something that is the sole preserve of tribunals and the higher courts. It involves the millions of decisions that civil servants make each day.
- 1.9 I am often asked what systems are in place to provide feedback to the Agencies on the standard of decision-making, and this year my administrative colleagues and I have worked harder than ever to ensure that the feedback is effective and timely. The primary source of feedback is the tribunal hearing. Our tribunals are uniquely placed to tell the Department what they think about the standard of their decisions and they do so many times a day simply by making their judgements and passing them back to the Department to put into effect. The parties to the proceedings can ask for a full statement of reasons if they so wish and, as I have mentioned before,

if the Department were to routinely send Presenting Officers to oral hearings this would provide a direct line of feedback. The exception to this is the Child Support Agency who maintain a high level of attendance.

- 1.10 The reason I say this is because from my point of view the Presenting Officer plays a vital dual role at the appeal hearing – they represent the Secretary of State in explaining the decision which has been made; and they act as *amicus curiae* in assisting the tribunal to come to a legally correct decision. They are also best placed to listen to and understand the tribunal's line of questioning, reasoning and decision, to consider what wider implications the hearing might have for their colleagues future decision-making and to take back messages to them.
- 1.11 The advantages of this approach are obvious – the feedback from tribunal to decision-maker is direct, it is immediate, and, if Presenting Officer attendance were the rule rather than the exception, this feedback would be on a much larger scale. Unfortunately the sampling from the last five years shows a marked decline in the attendance of Presenting Officers. In the first year's sample, 2000-2001, out of the oral cases in the sample a Presenting Officer attended in 41% of cases. In the second year, 2001-2002, the figure was 40%, in 2002-2003 the attendance dropped to 27% of cases, in 2003-2004 the figure was 24%, for this year the figure is 27%. To me, it is as important for the standard of Agency decision-making as it is for the tribunals themselves that Presenting Officers should be a regular feature of our tribunals, the routine absence of one of the parties to the proceedings at oral hearings changes the dynamic of the tribunal and where evidence is deficient has the added risk of the tribunal appearing to be another tier of the decision-making process rather than the appropriate appellate authority.
- 1.12 In addition to the evidence available directly from the tribunal I have provided the Agencies, both the Chief Executives directly, and their nominated administrative officials with quarterly interim reports and an annual report to the Secretary of State for the last five years. The themes in the interim reports and the annual reports have remained the same and the question for both the Agencies and the Department is: What have you done with the feedback to identify areas for improvement and implement initiatives to improve the situation? The areas for improvement should form part of a strategic plan for improvement informed by the sources of feedback currently provided and implemented and monitored by the Agencies operationally with time limits on improvements. There seems little point in my colleagues and I providing more feedback or the Department commissioning further studies from the Appeals Service or their own Standards Committee when no discernable improvement in decision-making is the result.
- 1.13 The Council on Tribunals has also raised the issue of the delay in bringing cases to hearing and this is a subject which I addressed for the first time in

my last annual report. Delay in bringing cases to tribunal has an inevitable impact upon decision-making. When events are fresh in the mind of both appellants and decision-makers it is much easier to bring together the evidence and rationalise decisions. It also means that documents relevant to the claim in question are to hand. In recent years the Appeals Service has worked to reduce their own waiting times but work remains to be done within the Agencies to address waiting times and make some improvement. The table below sets out the average time taken from cases being received at the Agency until the time the submission reaches the Appeals Service. Clearly such a wide variation and in some cases substantial delay cannot assist the decision-making progress. The attached table shows waiting times across the Agencies.

Table showing the average time in weeks from receipt by the decision-making agency until received by the Appeals Service.³

	Waiting times April 2002 - March 2003	Waiting times April 2003 - March 2004	Waiting times April 2004 - March 2005
DLA	6.5	6.6	6.8
IB	9.9	10	9.9
IIDB	8.8	9	9.9
IS	12.9	12.9	11.8
JSA	9.6	9.7	9.3
AA	5.9	6	5.9
CS	15	14.8	12.9

³ All figures are subject to change as more up to date data becomes available. Figures for the latest months may rise significantly as information feeds through to the Appeals Service. Figures are rounded to one decimal place. Source: 100% download of the Generic Appeals Processing System.

2 *Management summary*

- 2.1 The sample this year has captured a total of 1,814 cases and we have been more successful in trying to reflect the overall profile of cases received by the Appeals Service during the course of a year. Child Support cases are over-represented in the sample at around 9% as compared to 2% in the national figures. The over-representation is deliberate, designed to ensure meaningful feedback for the Child Support Agency. The remainder of the sample is fairly close to the intake for 2004.
- 2.2 The pattern for this report has now become established. It's publication follows the circulation of three quarterly interim reports we produced during the course of the last year. The interim reports were produced in order to provide the Agencies with a valuable source of additional feedback so that they could evaluate their own performance during this period and adjust their actions accordingly.
- 2.3 Here as elsewhere in the report it should be remembered that it is often a combination of reasons that lead to cases being overturned, the prominent reasons are drawn out in the report but Chairmen often cite a combination of factors that contribute to the final decision and can tick a number of boxes in the questionnaires.
- 2.4 In terms of statistical validity the sample is not very representative of appealed-against decisions in general – it remains skewed away from DLA/AA cases – and so distorts the overall picture. This means that the aggregate results from the whole sample should not be assumed to give a definitive view of the general standard of appealed-against decisions. However, the results shown from the individual appeal types (IS, JSA, DLA/AA, IIDB, IB and Child Support) do not suffer from this bias so can be assumed to give a fair, unbiased picture.
- 2.5 For Jobcentre Plus, The Pensions Service and the Disability and Carers Service, the themes that have emerged follow those in the interim reports:
 - The Agencies need to be more proactive in resolving issues and pursuing matters that are contentious at an early stage. Additional evidence was provided in the largest proportion of overturned cases and this evidence was often in the form of oral evidence provided by the appellant at the hearing.
 - The significance of the evidence of the appellant is often understated. The tribunal took a different view of the same evidence in some cases

because they considered that the Agencies had been wrong not to accept evidence before it or had not given evidence enough weight.

- In cases requiring medical reports some decisions were made on the basis of reports which had under-estimated the severity of the disability.
- The presence of the appellant at the hearing has a significant impact on the outcome, either by shedding new light on existing evidence or by producing new evidence, tribunals continue to stress the value of questioning the appellant to resolve contentious issue relating to the matter under appeal.

2.6 In Child Support cases the main findings have reflected those in the other benefits.

- The most common reason for cases being overturned was that additional evidence was presented to the tribunal, largely in the form of the oral evidence of the appellant.
- The Agency needs to be more rigorous in verifying the facts of the claim and taking notice of the parties.
- Care needs to be taken when preparing cases for hearing that all the documents relevant to the matter under appeal are available and accompany the submission.

2.7 It is not surprising that again this year the strongest theme from all types of cases is that additional information brought out by the tribunals decision making process has a considerable impact on the final outcome. It is an issue that has been highlighted in each report over the past five years giving the Agencies ample opportunity to address the issue.

2.8 It is vitally important that before the hearing every opportunity has been taken to investigate the issues raised and address any discrepancies in the evidence. It is particularly important to address the issues raised by the appellant set out in their reasons for the appeal.

3 The sample

3.1 The methodology followed for gathering information for this year's sample and more detailed information including the questionnaire which was used can be found at Annex A. During the course of the year 1,814 questionnaires – filled in by the chairman and (where relevant) the medical member – were returned to us. A breakdown of the sample compared to the national intake can be found at Table 1 below. Comparison between this year's sample and the results from last year can be found at Annex C.

Table 1 Sample compared to national intake – %

Benefit	Sample		Total Intake
	No. of Cases	%	%
Child Support Assessments/Departures	159	9	2
Disability Living Allowance/ Attendance Allowance	608	34	42
Incapacity Benefit	448	25	24
Income Support	130	7	7
Industrial Injuries Disablement Benefit/ Industrial Injuries Benefit	139	8	6
Jobseeker's Allowance	75	4	6
Others	255	14	14
Total	1,814		

* National intake for 2004 was 230,090.

3.2 Child Support cases are deliberately over-represented in the sample, with the aim of obtaining sufficient Child Support Agency cases to be able to draw some meaningful conclusions. The rest of the sample is intended broadly to reflect the Appeals Service intake for other types of appeal.

4 Sample results

4.1 The questionnaires produced a total of 1,814 replies for the period April 2004 to March 2005. The sample was restricted to those tribunals which resulted in the following three outcomes:

- Adjudged – where there was some reason for the case not being heard, for example where the appellant was absent through illness, or where further clarification was requested by the Chairmen and the matter referred back to the decision-maker.
- Overturned – where the tribunal disagrees with the decision-maker's determination and makes its own decision.
- Upheld – where the tribunal agrees with the decision.

4.2 Table 2 below shows the sample outcomes broken down by type compared to the national outcomes for 2004. The figures show 41% of decisions being overturned with some 45% upheld. This shows that the breakdown by outcome type in the sample is again broadly representative.

Table 2 Sample outcomes compared to national outcomes

	Sample		National
Adjudged	251	14%	17%
Overturned	747	41%	38%
Upheld	816	45%	45%

Overturned cases

4.3 When looking at the overturned cases it is important to remember that the majority of cases that come before a tribunal are upheld, in the sample this year the figures are roughly the same for overturned and upheld cases. In those cases where the Secretary of State's decision was overturned by the tribunal the main question we sought to answer was: why was the decision overturned? Chairmen (and medical members) were offered a number of statements on the questionnaire which they could tick to indicate the reasons for the decision being overturned (they could tick more than one in each case). The statements which were most commonly agreed with are in Table 3 over page.

Table 3 Outcomes – 1,814 Overturned cases

Statement	Responses
1 Additional evidence: The tribunal was given additional evidence not available to the decision-maker.	474 (63%)
2 Accepted evidence: The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	170 (23%)
3 Insufficient facts: The decision was based on insufficient facts or evidence due to the inadequate investigation of the claim or reconsideration.	88 (12%)
4 Incorrect weight: The decision-maker did not give relevant facts/evidence due weight.	97 (13%)
5 Different view: The tribunal formed different views of the same evidence.	279 (37%)
6 Different view (medical): The tribunal formed a different view based on the same medical evidence.	168 (22%)
7 Under-estimate disability: The medical report under-estimated the severity of the disability.	189 (25%)
8 Avoid the appeal: The Agency could have avoided the appeal.	49 (7%)

- 4.4 The most common response was that the tribunal was given additional evidence not available to the decision-maker, some 474 cases (63%) of those overturned, which is consistent with the findings in last year's sample (62%). In upheld cases additional evidence was presented in 81 (10%).
- 4.5 The main source of additional evidence remains oral evidence, 356 cases, (47% of all overturned cases) largely provided by the appellant, in 266 cases (36% of all overturned cases). Again this is not entirely unexpected as by far the greater proportion of cases in the sample were oral hearings, 1,466 of the 1814 total, 81%, and 686 of the overturned cases, 92%, which compares with 82% and 91% from the sample last year.

- 4.6 Additional written evidence was provided in 112 cases, 15% of overturned cases. In 59 (8%) cases it was a combination of both the written evidence and the oral evidence that enabled the decision to be overturned.
- 4.7 Additional evidence remains the predominant reason for cases being overturned, it was noted as the reason in 50% of overturned cases in 2001, 53% of cases in 2002, 61% of cases in 2003 and 62% in 2004. The fact that in 63% of overturned cases in this years sample additional evidence is cited as one of the reasons for cases being overturned suggests that this important primary source of information is being overlooked and not all issues are being satisfactorily investigated before the appeal hearing. There seems to be a tendency to disregard evidence received from the appellant in the process of evidence gathering prior to the decision and then in the preparation of the appeal. Some kind of contact should be made with the appellant prior to the case coming to hearing to establish whether all the facts are correct and whether further light can be shed on their circumstances that might have an impact on the final decision. This should form part of any reconsideration process, rather than it being a purely paper exercise.
- 4.8 The tribunal formed a different view of the same evidence in 279 of the overturned cases, (37%) again fairly consistent with last year's figure of 39%. In 168 (22%) cases it was specifically the medical evidence that was differently interpreted, again a figure in keeping with last year's sample. Commonly the reasons for the tribunal taking a different view were that the evidence of the appellant shed new light on the existing evidence, the evidence had not been weighed appropriately, for example there was an over reliance on medical reports as opposed to the evidence of the appellant, and that the law had not been applied to the facts correctly.
- 4.9 This is also reflected by the fact that in 170 cases, 23%, the decision-maker did not accept the evidence that was available, in 97(13%) cases it was considered specifically that the decision-maker had not given available evidence due weight. Again a common point made by chairmen was that not enough weight was given to the evidence of the appellant often in so far as it described their personal circumstances.

- 4.10 This year the number of medical reports that underestimated the severity of the appellant's disability has risen slightly to 25% compared to 24% in last year's sample. Medical reports that come before the tribunal originate from a number of sources, in this year's sample ATOS alone completed medical reports in 86% of cases which were overturned. In 187 (25%) cases the medical report underestimated the severity of the disability. In these cases the appellant attended an oral hearing in 167 (89%) and so was able to be questioned by the tribunal.
- 4.11 In 168 (22%) cases the tribunal took a different view of the same medical evidence and again in the reasons given for reaching their decision chairman highlighted the value of the appellants evidence and the over reliance of decision-makers on the medical reports alone, not taking into account the information available from the appellant. In 69 (9%) overturned cases all the medical issues had not been addressed in the medical report, in 28 (4%) the advice in the medical report was not adequately justified and in 24 (3%) it was not considered that the advice in the medical report was consistent, all these figures are consistent with those in last year's sample.
- 4.12 The chairmen made a number of comments regarding medical evidence. In some cases they noted the difficulty in determining disability issues from the claim pack and the medical evidence alone, although they criticised cases where further medical evidence had not been sought at an earlier stage and the tribunal was left to pursue the matter. Where decision makers prefer to rely on one piece of medical evidence rather than another they should clearly indicate why this is so. Mental health issues again caused some concern and it was felt that mental health issues generally were not given sufficient weight. It was often only by questioning the appellant that the extent of the restrictions placed upon the appellant by their mental health came to light. In some cases it was said that the medical examinations were not thorough enough.
- 4.13 At the same time that tribunals overturn appeals they have also consistently said that there is little that the Agencies can do to avoid appeals. In only 50 (7%) overturned cases did the tribunal consider that the Agency could have avoided the appeal, a slight improvement on last year. However, it should be remembered that, particularly in Child Support cases, the claim may have been reviewed but because the review was not in the appellant's favour the matter was still required to be referred to an appeal tribunal.
- 4.14 This is the second year that we have collected information on the standard of the submissions made to the tribunal. The submission sets out the facts of the case, the evidence, and the law used to make the decision. It should include the details of the appeal and the issues raised showing how the decision-maker weighed the evidence to reach their decision and how the submission writer supports the final outcome. It is of crucial importance to

the tribunal in that it allows the Agency, claimants and subsequently the tribunal to focus on the questions at issue. The overall picture remains favourable, there were 30 (4%) overturned cases where the submission failed to fully and effectively argue the case, slightly higher than last year where there were 11 cases (1%). There were 19 (3%) where the submission failed to focus on the grounds of appeal; 25 (3%) where the submission failed to include all the evidence relating to the decision under appeal; 15 (2%) where the submission failed to include or refer to the correct statute or case law; and 9 (1%) where the submission failed to include all the relevant facts. However, chairmen were concerned where poor decision-making was not questioned and a submission prepared regardless, or where leading case law had been ignored. Overpayment recovery cases continue to cause problems as do cases where submissions are written in the absence of relevant evidence.

4.15 Summary of those areas chairmen highlighted in their comments:

- They noted difficulty in determining disability issues from the claim pack and the medical evidence alone, the input of the appellant is crucial; • They criticised cases where further medical evidence had not been sought at an earlier stage, leaving the tribunal to pursue the matter;
- In some cases the decision makers do not make clear why they are relying on one particular piece of evidence in preference to another;
- Chairmen raise concerns about mental health issues in the decision-making process, in some cases they are not being given sufficient weight, and it was only by questioning the appellant that the extent of the restrictions because of mental health came to light;
- In some cases it was said that the medical examinations were not thorough enough.

Upheld cases

4.16 Where the Secretary of State's decision was upheld by the tribunal, the main question which we wanted to ask was: was there anything the Agency could have done to prevent the case from having to come to a tribunal? The answer again seems to have been a resounding "no", with chairmen indicating in only 14 of the 816 upheld cases that the Agency could have prevented the appeal. However, in 18 of the upheld cases it was felt that the Agency had not adequately explained the decision to the appellant. Again it was often mentioned by chairmen that direct contact with the claimant to explain matters would have helped to avoid an appeal.

Adjournments

- 4.17 Adjournments accounted for a total of 251 (14%) of the sample but as the issues raised are mainly administrative no analysis of these decisions has been made in this report.
- 4.18 The following sections, from 5-7, dealing with individual benefit types, focus mainly on overturned cases, as these are the cases where the most valuable information can be obtained. There are, however, additional observations and numbers, volumes and percentages are also quoted that refer to all cases in the sample. The volumes and percentages in Sections 5-7 relate to overturned cases only, unless otherwise stated.

5 Non-medical decisions – Jobcentre Plus and The Pensions Service and Debt Management

- 5.1 In order to focus on the key issues for each benefit, I have categorised those decisions which are taken based on non-medical evidence and those based on medical evidence. The main benefits in the first category are Jobseeker’s Allowance and Income Support and details of the sample size and breakdown of outcomes for each benefit can be found in Annex B, tables A and B and C. Since the creation of Debt Management last year we have included overpayments from across benefits in this report. There is no way of us excluding these from the overall sample by way of a separate benefit code so there will be some overlap in the comments in this category.⁴

Jobseeker’s Allowance

Table 4 21 Overturned cases: responses

Statement	Responses
1 Additional evidence: The tribunal was given additional evidence not available to the decision-maker.	7 (33%)
2 Accepted evidence: The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	5 (24%)
3 Incorrect weight: The decision-maker did not give relevant facts/evidence due weight.	5 (24%)
4 Different view: The tribunal formed different views of the same evidence.	9 (43%)
5 Avoid the appeal: The Agency could have avoided the appeal.	Nil

4 Pension Credit replaced Minimum Income Guarantee from October 2003. There is currently no provision for us to track and therefore comment upon Pension Credit cases, this restricts the usefulness of the current system of feedback to the agency. When a mechanism has been established for us to sample these cases Pension Credit will be included in this report.

- 5.2 JSA maintains a high standard of decision-making with 67% of cases being upheld, which is consistent with last year's sample.
- 5.3 In the overturned cases chairmen indicated that in 9 (43%) the tribunal formed a different view of the same evidence, in seven the tribunal was given additional information (33%) in five (24%) the tribunal accepted evidence that the decision-maker had but was not willing to accept, and in a further five (24%) the decision-maker did not give relevant facts or evidence due weight. In the seven cases where additional evidence was presented to the tribunal in six this was in the form of oral evidence, in three from the appellant. There were no cases where it was considered that the Agency could have avoided the appeal.
- 5.4 The standard of decision-making was good although there were some adverse comments on the standard of the submission. There was one case where it was considered that the submission failed to fully and effectively argue the case and three where it did not include all the evidence relating to the decision under appeal. There was one particular case where the submission failed to include all the evidence and facts, failed to refer to the correct statute or law, to focus on the grounds of appeal and to fully and effectively argue the case.
- 5.5 It remains the case that the majority of cases appealed against were labour market decisions, 17 (23%) of the total of 75 cases with the second largest conditions of entitlement, 14 (19%) cases.
- 5.6 There were few adverse comments about the decision-making but decision-makers were criticised where evidence had been available but had been dismissed which tended to support the arguments of the appellant without explaining why. In another case it was felt that the decision maker had imposed the maximum sanction without exercising any discretion, and this caused the appeal. In another there was confusion on the facts of the case which caused the appeal and this was not addressed before the case came to tribunal, and in one an earlier tribunal had adjourned and directed that a further submission should be provided as well as the attendance of a Presenting Officer, neither were provided.

Income Support

Table 5 45 Overturned cases: responses

Statement	Responses
1 Additional evidence: The tribunal was given additional evidence not available to the decision-maker.	17 (38%)
2 Accepted evidence: The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	15 (33%)
3 Incorrect weight: The decision-maker did not give relevant facts/evidence due weight.	8 (18%)
4 Different view: The tribunal formed different views of the same evidence.	13 (29%)
5 Avoid the appeal: The Agency could have avoided the appeal.	5 (11%)

- 5.7 The distribution by outcome shows a higher proportion of upheld decisions than the national outcomes but at 48% is in keeping with the results from last year's sample. It indicates that the results by outcome in IS have maintained the improved performance previously noted.
- 5.8 The number of cases relating to overpayments has reduced from 53% last year to just 24% in this year's sample. These cases are now the province of Debt Management. Chairmen remain critical of some overpayment cases. In some cases the Agency were unable to provide evidence to support the decision because documents had been destroyed and this remains a source of frustration for decision makers and appellants alike.
- 5.9 Last year there was a considerable improvement in the way decision-makers balanced the evidence, a drop from 16% the previous year to just 3% last year, this year this has increased again to 8% where the decision-maker did not give relevant facts or evidence due weight. There were four cases (9%) where it was felt that there had been inadequate investigation or reconsideration of the claim.
- 5.10 In 17 (38%) of the overturned decisions the tribunal was provided with additional evidence, in 11 cases oral evidence, in 9 cases provided by the appellant. In 13 (29%) cases the tribunal took a different view of the same

evidence, and in 15 (33%) cases the tribunal accepted evidence that the decision-maker had but was not willing to accept. In six cases (13%) the decision-maker misconstrued the effects of the facts in law, and in four (9%) the decision-maker overlooked evidence.

- 5.11 The standard of submission was high, with only five cases where the tribunal felt that the submission failed to fully and effectively argue the case and two cases each where the submission failed to include all the relevant facts, focus on the grounds of appeal and include all the evidence relating to the decision under appeal. In five cases (11%) the chairman considered that the Agency could have avoided the appeal and in 2 it was felt that the decision had not been explained properly to the appellants.
- 5.12 Overall chairmen had positive things to say about the decision-making and the standard of submissions. In complex cases they often commented that the decision-making was sound and the submission robust but turned on a different interpretation of the facts. They mentioned two cases where there were problems with the application of regulation 19 of the Claims and Payments Regulations in light of case law from the Commissioners. They particularly criticised decision makers where relevant issues had not been addressed and assumptions were made about payments without them being verified, or where evidence had been available but had been ignored.

Debt Management

- 5.13 Debt Management has taken over the recovery of overpayments across benefits. At the moment we cannot track these cases by type of benefit but can identify them by Issue Code. This means we can report on this type of case but there will be some overlap with the other benefits as far as comments and analysis are concerned.

Table 6 28 Overturned cases: responses

Statement	Responses
1 Additional evidence: The tribunal was given additional evidence not available to the decision-maker.	13 (46%)
2 Accepted evidence: The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	12 (43%)
3 Incorrect weight: The decision-maker did not give relevant facts/evidence due weight.	4 (14%)
4 Different view: The tribunal formed different views of the same evidence.	10 (36%)
5 Avoid the appeal: The Agency could have avoided the appeal.	2 (7%)

5.14 Of the 28 overturned cases there were 13 (46%) where additional evidence was provided to the tribunal, in ten in the form of oral evidence, in seven provided by the appellant. In ten (36%) the panel formed a different view of the same evidence; in two (7%) the facts were not in dispute but the decision-maker misconstrued their effect in law: in 12 (43%) the tribunal accepted evidence that the decision-maker had but was not willing to accept; in two (7%) the decision-maker based the decision on insufficient facts or evidence due to inadequate investigation or reconsideration. In two (7%) cases the Agency could have avoided the appeal.

5.15 Submissions were of a high standard. There were three (11%) where the submission did not include all the evidence relating to the decision under appeal and a further three where it failed to fully and effectively argue the case.

5.16 The comments made by chairmen focused on the use of evidence and the failure to address discrepancies in the information provided and address appellant's grounds of appeal in the submission to the tribunal including providing the decision makers' reasoning. Decision makers seem to encounter difficulties in determining the credibility of appellants evidence, where they doubt the credibility of the evidence they should say so and explain why this is the case. There were two cases where the law was incorrectly quoted and concerns were raised where information relied upon by the decision maker was not included in the papers.

6 Decisions involving medical evidence – disability and carers benefits

- 6.1 When we were re-designing the questionnaire following the pilot exercise, a number of stakeholders (including the Social Security Select Committee) were keen that we should give medical members of the tribunal a chance to comment specifically on the quality – and use – of medical evidence. Accordingly, we added a section specifically for comments on medical evidence and in the following year added further guidance on the completion of this section of the questionnaire.
- 6.2 In this category the main benefits are Disability Living Allowance/Attendance Allowance, Industrial Injuries Disablement Benefit and Incapacity Benefit. Sample size and outcomes can be found at Annex B, tables D to F.

Disability Living Allowance/Attendance Allowance

Table 7 289 Overturned cases: responses (combined)

Statement	Responses
1 Additional evidence: The tribunal was given additional evidence not available to the decision-maker.	210 (73%)
2 Accepted evidence: The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	70 (24%)
3 Incorrect weight: The decision-maker did not give relevant facts/evidence due weight.	44 (15%)
4 Different view: The tribunal formed different views of the same evidence.	118 (41%)
5 Different view (medical): The tribunal formed a different view based on the same medical evidence.	92 (32%)
6 Under-estimate disability: The medical report under-estimated the severity of the disability.	61 (21%)
7 Avoid the appeal: The Agency could have avoided the appeal.	21 (7%)

- 6.3 This year we have again tried to obtain a sample of DLA/AA cases, which more accurately reflects the intake for the last year, however, the number of cases in the sample remains under-represented by some 8%. The proportion of overturned cases at tribunal remains high at 48%, however, this reflects the more complex nature of decisions involving medical issues. The more complex care and mobility issues again dominate the overturned cases, combined issues amounting to 66% of the overturned sample.
- 6.4 In overturned cases additional evidence was presented to the tribunal after the original decision had been made in 210 of the cases, 73% – which is in keeping with the findings from last two year’s survey results 72% and 71% respectively. This was largely in the form of the oral evidence, 163 cases (78%) and in 115 of these cases it was provided by the appellant, 71%. In 118 (41%) cases the tribunal formed a different view of the same evidence, in 70 cases (24%) the tribunal accepted evidence that the decision-maker had but was not willing to accept and in 44 (15%) the decision-maker did not give relevant facts or evidence due weight. In 29 (10%) cases the decision was based on insufficient facts or evidence due to the inadequate investigation of the claim or reconsideration. In 21 (7%) the decision-maker overlooked evidence that would have affected the decision.
- 6.5 At the same time, chairmen considered that in only 21 (7%) of the overturned cases could anything have been done to avoid the appeal. In only seven (2%) did they think that the decision had not been properly explained to the appellant.
- 6.6 The standard of the submissions is high with only six (4%) where the submission failed to argue the case effectively and seven (3%) where the submission failed to focus on the grounds of appeal. There were five (2%) where the submission failed to include or refer to the correct statute or case law, four where the submission failed to include all the evidence relating to the decision under appeal and three where it did not include all the relevant facts.
- 6.7 As far as further comments were concerned the chairmen greatly valued the opportunity to question the appellant. In this area it was particularly important to ascertain the impact of the persons disability and for the tribunal to use the opportunity to question the appellant, reconcile what they were saying with the evidence, and resolve any discrepancies. Criticism was made of decision makers where they relied on one set of evidence over another without explaining why, or where the decision maker had misinterpreted the medical evidence. There were also problems with the reasoning applied across claims for the same person, for example where on the same circumstances one decision maker would make an award and on a later claim an award would be refused. In one case the decision maker had not disclosed a long history of entitlement to the benefit claimed. Mental

health issues continue to be an area where particular difficulties arise, decision makers seem to encounter great difficulty in assessing the impact of these issues on disability and relating this to the individual.

- 6.8 In terms of the medical evidence, the medical report was considered to have underestimated the severity of the disability in 61 (21%) of the overturned cases, the panel formed a different view based on the same medical evidence in 92 (32%), and in 31 (11%) all the medical issues were not addressed in the medical report. As far as the use of medical evidence was concerned, the decision-maker used the medical evidence incorrectly in 45 (16%) cases, and overlooked or misinterpreted it in 61 (21%).
- 6.9 In the sample of overturned cases the medical reports were produced from a variety of sources. In 218 cases it was provided by ATOS alone, by a GP alone in 36 cases, by a consultant alone in 18 cases. There were some cases where more than one report was available; in six cases they were from GP and ATOS, one case from a consultant and ATOS and five cases from a consultant and a GP. Reports were also supplied from CPN's, school reports and various therapists. As far as underestimating the severity of the disability is concerned in those cases identified 43 were completed by ATOS alone, 13 by the appellant's GP, one by the appellant's GP and a consultant, one by ATOS and a GP and four by a consultant alone. This shows that it is not ATOS alone who underestimated disability in medical reports.
- 6.10 Where medical members commented on the use and standard of medical evidence they were concerned that in some cases additional evidence was sought and/or presented to the tribunal indicating that further investigation of the circumstances of the appellant is appropriate before cases are presented to tribunals, this was particularly so with medical reports. It was unclear in some cases, why medical evidence was overlooked or not preferred to the evidence that tended to support no award of benefit being made. There was some concern regarding the consistency of medical evidence, in one case two medical reports completed for the same appellant over a period of time were contradictory, the approach of decision makers could also be inconsistent on the same case over a period of time. Appellants with sensory problems were not always dealt with appropriately by the system. Mental health issues were again raised as an issue, particularly in cases where the medical report did not address mental health issues as a physical disability cause, and also where mental health issues themselves were not adequately explored in the medical report or by the decision-maker.

6.11 Overall the higher standard of decision-making noted last year seems to have been sustained, with the exception of where the tribunal formed a different view of the same evidence, slightly down from 35% last year to 32% this year.

Industrial Injuries Disablement Benefit

Table 8 51 Overturned cases: responses

Statement	Responses
1 Additional evidence: The tribunal was given additional evidence not available to the decision-maker.	27 (53%)
2 Accepted evidence: The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	11 (22%)
3 Incorrect weight: The decision-maker did not give relevant facts/evidence due weight.	2 (4%)
4 Different view: The tribunal formed different views of the same evidence.	25 (49%)
5 Different view (medical): The tribunal formed a different view based on the same medical evidence.	21 (41%)
6 Under-estimate disability: The medical report under-estimated the severity of the disability.	14 (27%)
7 Avoid the appeal: The Agency could have avoided the appeal.	1 (2%)

6.12 The greatest proportion of the total IIDB cases were those dealing with industrial disease and industrial accidents both (42%).

6.13 IIDB cases experienced – as DLA/AA – a large proportion of appellants producing additional evidence for the tribunal. This happened in 27 (53%) of the cases and follows the pattern for these type of cases. In 15 (29%) cases this was in the form of oral evidence, in 10 (20%) provided by the appellant. In 25 (49%) the tribunal formed a different view of the same medical evidence. In 11 (22%) the tribunal accepted evidence that the decision-maker had available but was not willing to accept, in two, (4%) the decision-

makers did not give relevant facts or evidence due weight. This broadly follows the pattern of other similar benefits, however, there was just one case (2%) where the tribunal felt that the Agency could have avoided the appeal.

- 6.14 The standard of the submissions remains high although there were two overturned cases where the submission failed to fully and effectively argue the case and focus on the grounds of appeal and one each where it did not include all the relevant facts and refer to the correct statute or law. Chairmen regarded the opportunity to question the appellant at length as crucial to the decision making process, the oral evidence of the appellant clarifying their circumstances and shedding light on the application and medical reports. Again there was some criticism where medical evidence was relied on which did not support an award but where there was other evidence to support an award and the former was used without explaining why this was preferred. In addition the decision maker had paid no attention to conclusive medical evidence or fully considered evidence provided by the appellant.
- 6.15 As far as the medical evidence was concerned there were 14 (27%) cases where the medical report under-estimated the disability and 21 (41%) where the panel took a different view of the same medical evidence; four (8%) where the advice in the medical report was not adequately justified six (12%) where all the medical issues were not addressed in the medical report and evidence had been overlooked and in just one case each (2%) where conflicting evidence was not addressed and the medical evidence was used incorrectly by the decision-maker.
- 6.16 The comments on the medical evidence highlighted problems with the legibility of some medical reports. Problems also arose reconciling the medical reports with the accepted statutory criteria used and with how conflicting medical evidence was dealt with. Again chairmen appreciated the opportunity to question the appellant about the history and nature of their incapacity, often shedding new light on the issues under appeal.
- 6.17 The pattern of results here this year is in keeping with other benefits requiring medical input. Again the predominate reason for overturned decisions is the submission of additional evidence to the tribunal, the treatment of existing evidence has deteriorated, for example, there has been an increase in cases where the tribunal formed a different view up from 33% last year to 49% in this year's sample.

Incapacity Benefit

Table 9 223 Overturned cases: responses

Statement	Responses
1 Additional evidence: The tribunal was given additional evidence not available to the decision-maker.	155 (70%)
2 Accepted evidence: The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	40 (18%)
3 Incorrect weight: The decision-maker did not give relevant facts/evidence due weight.	22 (10%)
4 Different view: The tribunal formed different views of the same evidence.	70 (31%)
5 Different view (medical): The tribunal formed a different view based on the same medical evidence.	50 (22%)
6 Under-estimate disability: The medical report under-estimated the severity of the disability.	112 (50%)
7 Avoid the appeal: The Agency could have avoided the appeal.	9 (4%)

6.18 The problems that come to light in IB are not dissimilar to those in DLA and IIDB. The figure of 50% of overturned cases is considerably higher than the national profile of cases, however, and may be related to the high proportion of cases, 79% of the overturned cases, 75% of the overall IB sample, that were personal capability assessments.

6.19 In keeping with the findings for other benefits there were a significant number of cases where new evidence was brought before the tribunal, 155 (70%) of overturned cases. In 124 (56%) of these cases it was in the form of oral evidence, in 103 (46%) cases provided by the appellant.

6.20 In 70 (31%) overturned cases the panel formed a different view of the same evidence; in 40 cases (18%) the tribunal accepted evidence that the decision-maker had but was not willing to accept; in 28 (13%) the decision was based on insufficient facts or evidence due to the inadequate

investigation of the claim or reconsideration. In 22 (10%) the decision-maker did not give relevant facts due weight. In only nine (4%) cases did the tribunal consider that the Agency could have avoided the appeal.

- 6.21 The standard of submissions as a whole was high. In only four (2%) the submission failed to include all the evidence relating to the decision under appeal; three each (1%) were it failed to refer to the correct statute or law and failed to fully and effectively argue the case; and in two (1%) the submission failed to focus on the grounds of appeal.
- 6.22 Again the most common comment on the decision-making was that the presence of the appellant at the hearing produced either new evidence or shed light on the existing evidence enabling the tribunal to overturn the original decision. Chairmen also commented that they would take the time to record a full history and go into greater depth questioning the appellant and relating the facts directly to the issues under consideration, in some cases they felt this was the only way to obtain an accurate picture of the appellant's incapacity, particularly so in the case of mental health issues. Reflecting the findings in other benefits medical evidence was also found to have failed to give full consideration to the appellant's mental health.
- 6.23 As far as the medical evidence was concerned the most common criticism in overturned cases was that the medical report had underestimated the severity of the disability, in 112 cases, (50%), a significant increase from 37% in last year's sample. In 110 cases it was completed by ATOS; in one by a consultant; in four by a GP; in one by a GP and a consultant and in one by a therapist. In 50 (22%) cases the panel formed a different view of the same medical evidence. In 32 cases (14%) all the medical issues were not addressed in the medical report and in 14 (6%) the advice in the medical report was not adequately justified; in 13 the advice in the medical report was not consistent.
- 6.24 Additional comments on the medical evidence centred on the medical reports. Although there is no set time allowed for medical services to complete a medical examination chairmen were concerned at the length of time actually taken to complete medical examinations and felt that this resulted in incomplete histories being taken and an incomplete picture being presented to the decision maker. In two specific cases the appellant alleged that the medical examinations had only lasted for 13 and 19 minutes respectively. On mental health issues they felt that the use of tick boxes limited the scope for recording full medical details and that the oral evidence of the appellant in many cases provided a clearer picture.

7 Child Support Agency decisions

Table 10 47 Overturned cases: responses

Statement	Responses
1 Additional evidence: The tribunal was given additional evidence not available to the decision-maker.	32 (68%)
2 Accepted evidence: The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	6 (13%)
3 Incorrect weight: The decision-maker did not give relevant facts/evidence due weight.	7 (15%)
4 Different view: The tribunal formed different views of the same evidence.	16 (34%)
5 Avoid the appeal: The Agency could have avoided the appeal.	10 (21%)

- 7.1 The Appeals Service deals with 3 main categories of Child Support Agency decisions – assessments, departures and referrals. Referrals are not included in the sample cases as the tribunal is making the first tier decision. We continue to target Child Support Agency cases to produce a higher proportion and more meaningful results. The numbers continue to be skewed in order to do this. The outcomes in the sample again show a high number of adjournments reflecting the complex nature of decision making in this area.
- 7.2 As far as it is possible to discern any themes from the total of 47 overturned cases, in 32 (68%) the tribunal was given additional evidence not available to the decision-maker, this is a considerable increase in the number from last year which was 38%. In 16 cases it was in the form of additional oral evidence; in nine cases provided by the appellant; in three by the respondent. In 16 (34%) the panel formed a different view of the same evidence; in 18 (38%) the decision was based on insufficient facts or evidence due to the inadequate investigation of the claim or reconsideration; in a further six (13%) the calculations were incorrect. In five (11%) the decision-maker overlooked evidence that would have affected the decision and in 4 (9%) misconstrued the impact of the facts in law. In six (13%) the

tribunal accepted evidence the decision-maker had but was not willing to accept and in 7 (15%) did not give facts or evidence due weight. In 10 cases (21%) it was felt that the Agency could have avoided the appeal this is a significant increase on the 5% from last year.

- 7.3 The standard of the submissions was high with only four (9%) cases where the submission failed to focus on the grounds of appeal; five where the submission failed to include all the evidence relating to the decision under appeal, two where it did not include all the relevant facts; three where the submission failed to include or refer to the correct statute or case law four where it did not focus on the grounds of appeal and six where the case was not and fully and effectively argued.
- 7.4 Where chairmen made additional comments they were critical of cases where not enough evidence was gathered before the decision was made and where this could have avoided the appeal. Some calculations were incorrect and based on insufficient evidence. The oral evidence of both appellants and respondents was important but this was often combined with additional written evidence that could have been obtained at an earlier stage. The importance of Presenting Officers to assist the tribunal was stressed and the contribution they made was welcomed.

8 Conclusion

- 8.1 The first year of sampling provided a baseline against which to compare subsequent samples. We continue to work to achieve a sample that reflects current intake more accurately and it is important to remember that the outcomes are selected in combination, however, it is clear that the issues identified in earlier reports are reflected in this sample.
- 8.2 In this fifth report we can see clear trends emerging year on year. For example the most notable trend is the increase in the submission of additional evidence. It seems that despite these reports the Agencies are finding it increasingly difficult to ascertain all the evidence before cases come to tribunals. At the same time there is an increasing disparity between the decision-makers and the tribunals view of the medical evidence, and the Agencies need to ask themselves why this might be so. They should also ask themselves why medical reports under-estimate the severity of the disability and how this might be remedied.
- 8.3 Having said that, progress does seem to be being made with regard to the weighing of evidence and how to view evidence with these less likely to be the cause for decisions being overturned.
- 8.4 So from the trends identified there are three areas the Agencies should address as a priority, pre-empting the need for additional evidence, weighing and dealing with medical evidence, and ensuring the quality of medical reports to ensure they accurately reflect the severity of disability.

Table 11 Common questions from five years of sampling

	Percentages				
	2000-01	2001-02	2002-03	2003-04	2004-05
Additional evidence	50	53	61	62	63
Accepted evidence	36	24	21	21	23
Incorrect weight	36	19	14	15	14
Different view	55	47	43	40	38
Different view (medical)	33	16	22	20	22
Under-estimated disability	33	18	27	23	25

8.5 Overall the most important points arising from the evidence gathered during the course of last year are as follows:

- Overturned cases – it continues to be the case that the most common reason for a decision being overturned is that the tribunal is given new evidence not available to the decision-maker. Interpretation of the evidence was also an issue as the tribunal often took a different view of the same evidence either because they accepted evidence which the decision-maker had not accepted, or they had given additional weight to supporting evidence, especially that produced by the appellant.
- Medical evidence – problems remain with the quality and use of medical evidence. The standard of medical reports and the weight given to them by decision-makers continues to be a source of contention. Decision-makers continue to experience problems relating individual personal circumstances to medical evidence and issues such as care and mobility.
- Mental Health – these issues were specifically highlighted as a cause for concern. Medical reports were criticised where they did not explore the mental health problems of appellants and where the medical examinations were not thought to be thorough enough. Decision-makers were again criticised where they did not pursue mental health issues, appreciate their impact upon disability questions and try to resolve them before going to tribunals.
- Greater care should be taken when dealing with cases of sensory impairment which do not lend themselves to standard claims processes and assessments. More care needs to be taken to address the problems faced by this category of claimant.
- Evidence – greater effort needs to be made to resolve discrepancies and pursue unresolved issues before cases are brought to a tribunal, by actively seeking additional evidence and verifying the accuracy of existing information. Overpayment cases were again highlighted as a problem, where clear evidence was overlooked, and arguments from appellants not addressed. Evidence relating to claims needs to be accessible and where necessary retained.
- Revision and supersession – there is evidence to show that a process is now in place to review decisions once an appeal is lodged. However, there is also evidence to suggest that although this is the case the process is not having a substantial impact on preventing cases coming to tribunals. The fact that additional new evidence provides grounds for overturning decisions suggests that this evidence may be available to decision-makers if they took steps to pursue these matters early on.

- Reviewing cases before submission to the tribunal is a role best carried out by a person other than the original decision maker, with suitable experience and training.
- Quality – the quality of both the available evidence and the submission is of crucial importance. More attention needs to be given to the quality of evidence before it is placed before the tribunal. Discrepancies should be addressed before the hearing and where there are issues that cannot be resolved they should be highlighted and addressed in the submission. In the decision-making process emphasis should be placed on the quality of the decision making rather than quantity alone.

8.6 The approach taken to decision-making needs to be more flexible and claimants must be confident that when they supply additional information or write in with their grounds of appeal that the issues they raise will be addressed appropriately before the appeal comes to a hearing. They should also be confident that when necessary they have access to the appropriate decision-makers to discuss matters and resolve issues where problems arise. The Agencies need to invest in their decision-makers ensuring they have the right training and access to the right information and guidance. The guidance needs to reflect not just the Departmental view but also current case law, particularly current commissioners decisions which also ought to be readily available.

8.7 The results from the sample suggest that in too many cases that come before tribunals evidence is lacking and the quality of evidence that is available often poor. Proper care needs to be taken before submissions are written to review all the evidence available, address the issues raised by the appellant and where necessary resolve issues, where appropriate obtaining further information and consulting the appellant before the hearing. When cases are referred without all the evidence and this is combined with the absence of a Presenting Officer, the tribunal is in danger of becoming another level of decision-making rather than the appropriate appellate authority. Adequately trained decision-makers must also be confident enough and where necessary empowered to question decisions and put matters right at an early stage.

8.8 The key themes from these reports have become established, they are remarkably similar to those produced by other agencies and coincide with what I and my colleagues learn from much wider consultation that goes on between ourselves and others inside and outside the tribunal. There is nothing new or startling in what we are saying but it is clear that more needs to be done to address the key issues highlighted above.

5 In some Child Support decisions the decision may be amended but a submission to a tribunal is still necessary if the correction is to the detriment of the appellant.

A Annex A

Judicial Checklist	
April 2004-March 2005	
Appeal Number: (See session case list)	
1 Date of Hearing:	
2 Venue:	
3 Composition of Tribunal: (See session case list)	<input type="checkbox"/> 01 Legal member only <input type="checkbox"/> 02 Legal and financial member <input type="checkbox"/> 03 Legal, medical and disability member <input type="checkbox"/> 04 Legal and medical member <input type="checkbox"/> 05 Legal and specialist medical member <input type="checkbox"/> 06 Legal and 2 specialist medical members
4 Type of Hearing:	<input type="checkbox"/> Oral <input type="checkbox"/> Paper
5 Name of Chairman:	
6 Date of decision under appeal:	
7 Codes: (See session case list)	Benefit Code (numbers)
	Issue Code (letters)
8 Attendance	<input type="checkbox"/> PO <input type="checkbox"/> Appellant <input type="checkbox"/> Representative <input type="checkbox"/> Respondent
9 Where there was no Presenting Officer, please tick if one would have been helpful and indicate why below. <input type="checkbox"/> a. To explain the reasoning behind the decision <input type="checkbox"/> b. To explain the submission <input type="checkbox"/> c. To address additional evidence <input type="checkbox"/> d. Other – please specify	
10 Outcome	<input type="checkbox"/> Overturned <input type="checkbox"/> Upheld <input type="checkbox"/> Adjourned

<i>Please complete the rest of the questionnaire for all cases whether Overturned, Upheld or Adjourned. In all cases we need to know why the panel agreed or disagreed or why cases are Adjourned.</i>	
<i>In each case please (including cases upheld) tick if applicable and provide additional information at the end in the space provided.</i>	
11 The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	<input type="checkbox"/>
12 The panel formed a different view of the same evidence.	<input type="checkbox"/>
13 The facts were not in dispute but the decision-maker had misconstrued their effect in law.	<input type="checkbox"/>
14 The tribunal was given additional evidence that was not available to the decision-maker. (If you have ticked this box, please indicate at box 26 what the nature of the additional evidence was i.e. reduced earnings.)	<input type="checkbox"/>
The evidence was in the form of:	<input type="checkbox"/> a) Expert report handed in <input type="checkbox"/> b) Expert report obtained by the tribunal <input type="checkbox"/> c) Oral evidence <input type="checkbox"/> d) Further written evidence
Who provided the evidence?	<input type="checkbox"/> a) The Appellant <input type="checkbox"/> b) The Representative <input type="checkbox"/> c) Other – please specify
15 The decision was based on insufficient facts/evidence due to inadequate investigation of the claim or reconsideration.	<input type="checkbox"/>
16 The decision-maker overlooked evidence that would have affected the decision.	<input type="checkbox"/>
17 The decision-maker did not give relevant facts/evidence due weight.	<input type="checkbox"/>
18 The calculations were not correct.	<input type="checkbox"/>
19 The decision was not properly explained to the claimant.	<input type="checkbox"/>
20 The agency could have avoided the appeal.	<input type="checkbox"/>
21 The submission failed to include all the evidence relating to the decision under appeal.	<input type="checkbox"/>
22 The submission failed to include all the relevant facts including disputed facts.	<input type="checkbox"/>

23 The submission failed to include or refer to the correct statute or case law.	<input type="checkbox"/>
24 The submission failed to focus on the grounds of appeal.	<input type="checkbox"/>
25 The submission failed to fully and effectively argue the case.	<input type="checkbox"/>
<p>26 If you have ticked any of the above please tell us why. (Please use the box at 28 to expand on any issues as necessary).</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	
<p>27 Adjourned cases:</p> <p>The case was adjourned because:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	
<p>28 Further information:</p> <p>Please comment on the overall standard of decision-making, including the reasons why the decision was/was not supported, the standard of evidence and how it was used in the decision-making process. Please include here any positive comments you have. Continue overleaf if necessary.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	

<p><i>Medical Checklist</i></p> <p>Please tick if applicable.</p> <p>NB If any box has been ticked, box 39 must be completed. (To be completed by the medically qualified panel member.)</p>	
29 The medical evidence was used incorrectly by the decision-maker.	<input type="checkbox"/>
30 The decision-maker misinterpreted the medical evidence.	<input type="checkbox"/>
31 Medical evidence has been overlooked that would have affected the decision.	<input type="checkbox"/>
32 The panel forms a different view based on the same medical evidence.	<input type="checkbox"/>
33 The medical report has under-estimated the severity of the disability.	<input type="checkbox"/>
34 All the medical issues were not addressed in the medical report.	<input type="checkbox"/>
35 Advice in the medical report was not in keeping with the consensus of medical opinion.	<input type="checkbox"/>
36 The advice in the medical report was not adequately justified.	<input type="checkbox"/>
37 Conflicting evidence from other sources was not addressed in the medical report.	<input type="checkbox"/>
38 The advice in the medical report was not consistent.	<input type="checkbox"/>
<p>39 If the medical report was not produced by SEMA, please state who provided the report eg. G.P., consultant.</p> <p>.....</p>	
<p>40 If you have ticked any of the above boxes, please tell us why and add any further observations you may have concerning the use of the medical evidence in the decision-making process. Please include any positive comments.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	

B Annex B

The following tables show the sample results for each category commented on in the report with the number of cases by outcome.

Table A Jobseeker's Allowance 2004-2005:

Sample composition by tribunal outcome.

Outcome	Number	Percentage
Adjourned	4	5%
Overtured	21	28%
Upheld	50	67%
Total	75	

Table B Income Support 2004-2005:

Sample composition by tribunal outcome.

Outcome	Number	Percentage
Adjourned	22	17%
Overtured	45	35%
Upheld	63	48%
Total	130	

Table C Debt Management 2004-2005:

Sample composition by tribunal outcome.

Outcome	Number	Percentage
Adjourned	14	15%
Overtured	28	31%
Upheld	50	54%
Total	92	

Table D Disability Living Allowance/Attendance Allowance 2004-2005:

Sample composition by tribunal outcome.

Outcome	Number	Percentage
Adjourned	93	15%
Overtured	289	48%
Upheld	226	37%
Total	608	

Table E Industrial Injuries Disablement Benefit 2004-2005:

Sample composition by tribunal outcome.

Outcome	Number	Percentage
Adjourned	24	17%
Overtured	51	37%
Upheld	64	46%
Total	139	

Table F Incapacity Benefit 2004-2005:

Sample composition by tribunal outcome.

Outcome	Number	Percentage
Adjourned	46	10%
Overtured	223	50%
Upheld	179	40%
Total	448	

Table G Child Support 2004-2005:

Sample composition by tribunal outcome.

The Appeals Service deals with 3 main categories of Child Support Agency decisions – assessments, departure decisions and referrals. On referrals the tribunal is the body making the decision and these decisions have therefore been omitted. The headline statistics, broken down into the two remaining categories are as follows.

Outcome	Assessments	Departures	Total
Adjourned	25 (20%)	6 (18%)	31 (19%)
Overtured	37 (29%)	10 (30%)	47 (30%)
Upheld	64 (51%)	17 (52%)	81 (51%)
Total	126	33	159

C Annex C

Results from the 2003-2004 sample

Both the results by outcome and the questionnaire have changed since the completion of the first report as part of our ongoing monitoring and evaluation of the sampling method and content of the reports. In terms of the questionnaire, additional questions have been added and others with low response rates removed. The headline results and tables from last year's sampling is attached for reference.

Table 1 Sample compared to national intake – %

Benefit	Sample		Total Intake
	No. of Cases	%	%
Child Support Assessments/Departures	123	**7	2
Disability Living Allowance/Attendance Allowance	713	39	44
Incapacity Benefit	432	24	26
Income Support	148	8	7
Industrial Injuries Disablement Benefit/Industrial Injuries Benefit	124	7	8
Jobseeker's Allowance	68	4	4
Others	225	12	9
Total	*1,833		

* National intake for 2003 was 212,655.

** The percentage sample for Child Support is 6.7% rounded to 7% which, because of the rounding error, gives a total of 101.

The questionnaires produced a total of 1,833 replies for the period April 2003 to March 2004. The sample was restricted to those tribunals which resulted in the following three outcomes:

- Adjourned – where there was some reason for the case not being heard, for example where the appellant was absent through illness, or where further clarification was requested by the Chairmen and the matter referred back to the decision-maker.
- Overturned – where the tribunal disagrees with the decision-maker’s determination and makes its own decision.
- Upheld – where the tribunal agrees with the decision.

Table 2 below shows the sample outcomes broken down by type compared to the national outcomes. The figures show a total of 43% of decisions being overturned with 43% also being upheld. There is a breakdown of total appeals decisions for this period included for comparison. This shows that the breakdown by outcome type in the sample is again broadly representative.

Table 2 Sample outcomes compared to national outcomes

	Sample		National
Adjourned	264	14%	16%
Overturned	780	43%	39%
Upheld	789	43%	45%

Table 3 Outcomes – 780 Overturned cases

Statement	Responses
1 Additional evidence: The tribunal was given additional evidence not available to the decision-maker.	480 (62%)
2 Accepted evidence: The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	162 (21%)
3 Incorrect weight: The decision-maker did not give relevant facts/evidence due weight.	111 (14%)
4 Different view: The tribunal formed different views of the same evidence.	304 (39%)
5 Different view (medical): The tribunal formed a different view based on the same medical evidence.	155 (20%)
6 Under-estimate disability: The medical report under-estimated the severity of the disability.	184 (24%)
7 Avoid the appeal: The Agency could have avoided the appeal.	59 (8%)

Results by Benefit

Jobseekers Allowance 2003-2004

Table 4 22 Overturned cases: Responses

Statement	Responses
1 Additional evidence: The tribunal was given additional evidence not available to the decision-maker.	8 (36%)
2 Accepted evidence: The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	7 (32%)
3 Incorrect weight: The decision-maker did not give relevant facts/evidence due weight.	6 (27%)
4 Different view: The tribunal formed different views of the same evidence.	13 (59%)
5 Avoid the appeal: The Agency could have avoided the appeal.	2 (9%)

Income Support 2003-2004

Table 5 40 Overturned cases: Responses

Statement	Responses
1 Additional evidence: The tribunal was given additional evidence not available to the decision-maker.	18 (45%)
2 Accepted evidence: The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	7 (18%)
3 Incorrect weight: The decision-maker did not give relevant facts/evidence due weight.	1 (3%)
4 Different view: The tribunal formed different views of the same evidence.	13 (33%)
5 Avoid the appeal: The Agency could have avoided the appeal.	10 (25%)

Debt Management 2003-2004

Table 6 39 Overturned cases: Responses

Statement	Responses
1 Additional evidence: The tribunal was given additional evidence not available to the decision-maker.	18 (46%)
2 Accepted evidence: The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	6 (15%)
3 Incorrect weight: The decision-maker did not give relevant facts/evidence due weight.	3 (3%)
4 Different view: The tribunal formed different views of the same evidence.	13 (33%)
5 Avoid the appeal: The Agency could have avoided the appeal.	6 (15%)

Disability Living Allowance/Attendance Allowance 2003-2004

Table 7 342 Overturned cases: Responses (combined)

Statement	Responses
1 Additional evidence: The tribunal was given additional evidence not available to the decision-maker.	242 (71%)
2 Accepted evidence: The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	79 (23%)
3 Incorrect weight: The decision-maker did not give relevant facts/evidence due weight.	64 (19%)
4 Different view: The tribunal formed different views of the same evidence.	120 (35%)
5 Different view (medical): The tribunal formed a different view based on the same medical evidence.	73 (21%)
6 Under-estimate disability: The medical report under-estimated the severity of the disability.	81 (24%)
7 Avoid the appeal: The Agency could have avoided the appeal.	26 (8%)

Industrial Injuries Disablement Benefit 2003-2004

Table 8 42 Overturned cases: Responses

Statement	Responses
1 Additional evidence: The tribunal was given additional evidence not available to the decision-maker.	29 (69%)
2 Accepted evidence: The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	13 (31%)
3 Incorrect weight: The decision-maker did not give relevant facts/evidence due weight.	6 (14%)
4 Different view: The tribunal formed different views of the same evidence.	4 (33%)
5 Different view (medical): The tribunal formed a different view based on the same medical evidence.	15 (36%)
6 Under-estimate disability: The medical report under-estimated the severity of the disability.	15 (36%)
7 Avoid the appeal: The Agency could have avoided the appeal.	1 (2%)

Incapacity Benefit 2003-2004

Table 9 227 Overturned cases: Responses

Statement	Responses
1 Additional evidence: The tribunal was given additional evidence not available to the decision-maker.	140 (62%)
2 Accepted evidence: The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	39 (17%)
3 Incorrect weight: The decision-maker did not give relevant facts/evidence due weight.	22 (10%)
4 Different view: The tribunal formed different views of the same evidence.	99 (44%)
5 Different view (medical): The tribunal formed a different view based on the same medical evidence.	53 (23%)
6 Under-estimate disability: The medical report under-estimated the severity of the disability.	84 (37%)
7 Avoid the appeal: The Agency could have avoided the appeal.	6 (3%)

Child Support Agency Decisions 2003-2004

Table 10 42 Overturned cases: Responses

Statement	Responses
1 Additional evidence: The tribunal was given additional evidence not available to the decision-maker.	16 (38%)
2 Accepted evidence: The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	3 (7%)
3 Incorrect weight: The decision-maker did not give relevant facts/evidence due weight.	3 (7%)
4 Different view: The tribunal formed different views of the same evidence.	11 (26%)
5 Avoid the appeal: The Agency could have avoided the appeal.	2 (5%)

D *Annex D*

List of Abbreviations

Term	Abbreviation
Attendance Allowance	AA
Disability Living Allowance	DLA
Incapacity Benefit	IB
Income Support	IS
Industrial Injuries Disablement Benefit	IIDB
Jobseeker's Allowance	JSA

