

# President's Report

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

**2006-2007**

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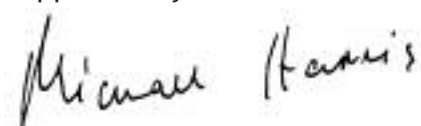
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## President's Foreword

I am glad to be able to present my seventh 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 2006-2007. This is my last full report presented as President of the Appeal Tribunals covering Social Security and Child Support appeals, although my first as part of the Ministry of Justice. I am also glad to say in this new department we have been able to produce the same kind of report in a similar way. I like to think that over the years it has proved an effective form of feedback, even if the recommendations have not been implemented in the way I would have liked or to the extent that they would have provided a clear departure from previous year's methods of decision-making.

The Tribunals Service is finding its feet and I hope by the time the next report is due to be written the changes advocated in the Leggatt Report<sup>1</sup> will have come to transform the way we do our business to benefit all those who use our services. I am glad to say that this year again some progress seems to have been made in the standard of decision-making although in some places progress is slow. As I mentioned last year I am particularly glad that the calls for action to avoid cases coming to tribunals have been heeded, and, although the decision-making process in terms of implementation has been protracted, the efforts of both judicial and administrative colleagues have borne fruit and in cooperation with the Disability and Carers Service, part of the Department for Work and Pensions (DWP), and the Tribunals Service I am hopeful that a pilot scheme to explore Alternate Dispute Resolution as a means of intervening in the decision-making process before cases are referred to the tribunal will be given the necessary clearance to begin during the summer. I and my colleagues in the Tribunals Service welcome it and will do our best to support its aims.<sup>2</sup>

This report is only made possible as a result of the close collaboration between judicial and administrative colleagues. I am particularly grateful to my administrators in 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.



Michael Harris  
President of Appeal Tribunals

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- 1 Leggatt, Sir Andrew. "Tribunals for Users: One System, One Service". March 2001. The Stationery Office, London.
  - 2 In collaboration with DCS and other Agencies there are a number of initiatives that take place over the course of each year which are too numerous to mention here, but which indicate the constructive approach taken towards improving the standards of decision-making across the Department for Work and Pensions.

- 1.1 This report follows the path laid out in the previous reports, and although each year we review the questionnaire in light of any feedback from colleagues, the sampling method has remained substantially the same as that laid down in previous years.
- 1.2 Having completed my seventh annual report, I remain confident that my conclusions and the trends identified represent outcomes at our hearings, although the findings of this report cannot be said to be representative of the standard of decision-making across the range of cases. Millions of decisions are made each year in those jurisdictions that refer cases to our tribunals, only a small proportion, some 223,302 in 2006-2007, found their way to the Tribunals Service. Although these cases indicate where things have gone wrong and perhaps how the Agencies can set about putting things right, it is 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 In addition to this report there is a wealth of information regarding the standards of decision-making from both internal and external sources to the Department. There is some considerable overlap between what I have been saying over the past seven years and what these other sources say.
- 1.4 In December 2006 the Departments own Decision Making Standards Committee produced its third Annual Report 2005-2006<sup>3</sup>. The report seeks to comment on progress made against its recommendations from previous years and recommend areas for improvement. They make comments specific to the Agencies decision-making as well as cross cutting comments about the standards of decision-making generally. As they mention in their report the development of different Agencies to deliver DWP business means that different processes and systems within each Agency can be adopted for the same or similar tasks and this can make for different mechanisms for decision-making and varying standards.
- 1.5 This year a number of their recommendations overlap with what I have been saying in this report over the past seven years. Under the generic recommendations there is a call for advanced segmentation

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3 Department for Work and Pensions Decision Making Standards Committee Annual Report 2005-2006. DWP Adjudication and Constitutional Issues Branch, Leeds, 2006.

techniques to tailor the claims process to those groups that have particular difficulty claiming. Whilst one may have misgivings about the application of marketing techniques to entitlement to benefit this is one aspect where perhaps it does apply. The report says: "The Department has not monitored the needs of different customer groups adequately and therefore has not been in a position to design their processes to meet their diverse needs. This is despite considerable anecdotal evidence that some groups of people such as those with mental illness and those with sensory impairments receive a poorer service."<sup>4</sup> As anyone who has read these reports will know the issue of how people with mental health issues are dealt with by the decision-making process is something I have highlighted since my 2002-2003 report, and the problems for people with sensory impairment something I specifically mentioned last year. I would support the Standards Committee in suggesting that both mental health issues and sensory impairment should be part of a high level strategy to meet the needs of diverse users.

- 1.6 The Committee also highlights access to decision-makers and the information gathering process as an issue.<sup>5</sup> The question I asked last year was whether, by changing the means by which claimants interface with the Department, we improve decision-making. There seems to be evidence that for some groups it does not and the adoption of the use of call centres as a standard operating model reduces access for those in the most vulnerable groups like those with mental health problems or sensory impairment. The committee suggests that insufficient capacity means that there are delays and at the same time duplication in the new claims process with some information being requested more than once and, as we know from the additional evidence being provided to tribunals, some crucial evidence is not asked for at all.

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4 Ibid p.3.

5 Section 2.9 and 10. Pp. 10 et seq.

- 1.7 In terms of claims and evidence, although clerical claim forms remain legally an accepted method of making a claim they are being refused by some offices because the standard method is to claim by telephone. When things do go wrong claimants are having difficulty obtaining access to decision-makers to put things right, something which undermines the appeals process and reinforces the reluctance of appellants to produce any evidence they may have directly to the Department rather than presenting it when they come to a hearing.
- 1.8 A secondary issue, but one that has been highlighted in each of these annual reports is the way medical evidence is managed by decision-makers. Decision-makers feel bound to follow the medical services reports often to the exclusion of other evidence, including evidence from the appellant, which is available but fail to say why they rely on one view rather than another. If appellants are to have confidence in the decision-making process they need to be assured that the evidence they provide will be taken seriously and given due weight. There is evidence in the sampling for this report and from the Standards Committee that this is currently not the case.
- 1.9 In reading the Standards Committee report I have been struck this year by how operational changes can impact on the decision-making and appeals process. It was brought home to me by the issue of the remote storage of documents. Over the course of my reports I have often alluded to the difficulties that arise when cases come before tribunals without all the evidence. From the information in the Standards Committee report they seem to be suggesting that the poor storage and retrieval systems may contribute to appeals. At 3.1 in the context of the Pension Service remote storage system the Committee says: "The Committee has found that problems with missing evidence and files persist, slowing and frustrating the processing system. In addition customers have reported that missing evidence and files can mean that they experience difficulties in progressing issues and have difficulty ensuring that they receive their correct entitlement. This may result in an increase in the number of cases that go to appeal."

- 1.10 Administrative decision-making takes place in a much broader context. Tribunals are part of the wider process of accountability for decision-makers and those who use the services provided by the Department have to have confidence in the system to ensure that where things go wrong they have the opportunity to put them right and that is why I value this opportunity to feedback some of the findings from our decisions.
- 1.11 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. 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.<sup>6</sup>
- 1.12 As I have pointed out in all my previous reports 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.
- 1.13 The sampling from the last seven years shows a decline in the attendance of Presenting Officers. In the sample this year the figure remains the same as last year, at 27%. As I have said before the absence of a Presenting Officer at oral hearings changes the dynamic of the proceedings and can give the appearance that the tribunal is another tier of decision-making rather than the appropriate appellate authority.

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<sup>6</sup> The presentation rate for the period April 2006-March 2007 in the sample was 81%. From the CSAs own figures for the same period they attended 90% of oral hearings partly through attendance by video link which is now available at the main CSA appeal venues.

- 1.14 In previous years the Council on Tribunals in their annual report<sup>7</sup> 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 2003-2004 annual report. Delay in bringing cases to tribunal has an inevitable impact upon decision-making. When events are fresh in the minds of both appellants and decision-makers it is much easier to bring together the evidence and rationalise decisions, as we have seen from the recommendations of the Standards Committee, the Department also has problems with the filing and storing of documents. It impossible to review a decision without those documents and also makes it impossible to validate any decision at tribunal.
- 1.15 The Tribunals Service continues to reduce waiting times from receipt of the appeal to first hearing, with the current figure at 9.6 weeks. However, work remains to be done within the Agencies to make considerable reductions in the end-to-end waiting time. Wide variations in the time it takes to get appeals to the Tribunals Service adds to the problems already mentioned above regarding access and retention of documents and more importantly leaving those in vulnerable groups without much needed support.

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<sup>7</sup> Council On Tribunals. Annual Report 2005/2006. The Stationery Office, London.

- 2.1 The sample this year has captured a total of 1,640 cases and we have been quite successful in trying to reflect the overall profile of cases received by the Tribunals Service during the course of a year. Child Support cases are over-represented in the sample at around 13% as compared 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 2005.
- 2.2 The pattern for this report has now become established. 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 predominant 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 Following the adjustment of the sampling schedule this year we have managed to produce a broadly representative sample of appealed against decisions, with the exception of CSA cases mentioned above and IB cases. As the results come from samples, they should be treated with caution as they are subject to margins of error. The margin of error will depend on the sample size; thus for results where there is only a very small sample there will be a wide margin of error. Care must be taken when comparing this year's results with previous years; where there is only a small difference this may have occurred by chance and will not necessarily indicate any significant change.
- 2.5 In comparing figures, for example for the rate of overturned decisions, it is important to remember that the sample outcomes will not match those of the statistics from the Agencies. The sample is based only on those cases coming before tribunals and the overall statistics used in calculating Agency figures will be based on all those cases referred to the Tribunals Service including a number that do not reach a tribunal hearing.

2.6 For Jobcentre Plus, The Pension Service and the Disability and Carers Service, the themes that have emerged follow those in the interim reports:

- 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 Agencies need a mechanism for drawing out this information prior to the hearing;
- 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. A balanced view should be taken of all the evidence not simply the evidence that supports the decision-makers view, where evidence is discounted the submission to the tribunal should refer to it and explain why;
- In cases requiring medical reports some decisions were made on the basis of reports which had under-estimated the severity of the disability. In mental health cases the full extent of the problems encountered were not fully taken into account;
- 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.

2.7 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;
- Greater care needs to be taken with documentation and calculations, the Agency needs to be more rigorous in verifying the facts of the claim and taking notice of the parties and following up discrepancies before the hearing;
- 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.

- 2.8 The main theme from all types of cases is that additional information brought out at the hearing has a considerable impact on the final outcome. It is an issue that has been highlighted in each report over the past seven years giving the Agencies ample opportunity to address the issue.
- 2.9 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.

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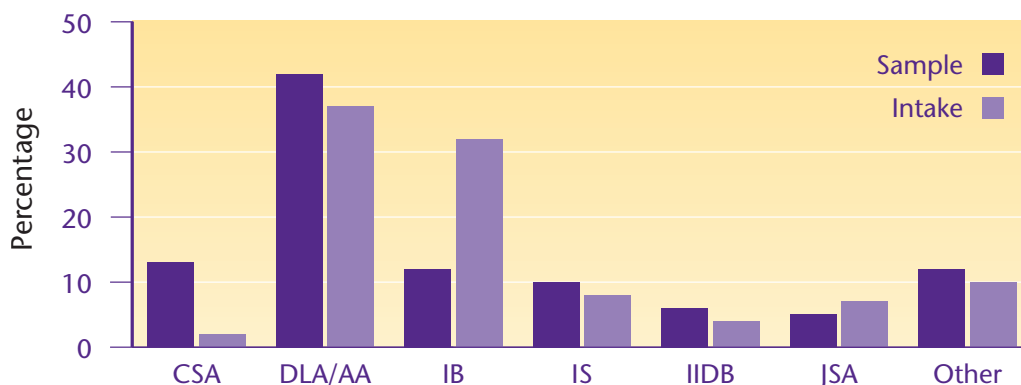
## The sample and results

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 1,640 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	221	13	2
Disability Living Allowance/ Attendance Allowance	690	42	37
Incapacity Benefit	196	12	32
Income Support	165	10	8
Industrial Injuries Disablement Benefit/ Industrial Injuries Benefit	109	6	4
Jobseeker's Allowance	76	5	7
Others	183	12	10
Total	1,640		

\* National intake for 2006-2007 was 223,302.



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. This year IB cases were considerably under represented in the sample, the remaining cases broadly reflect the Tribunals Service intake for other types of appeal.

### Sample Results

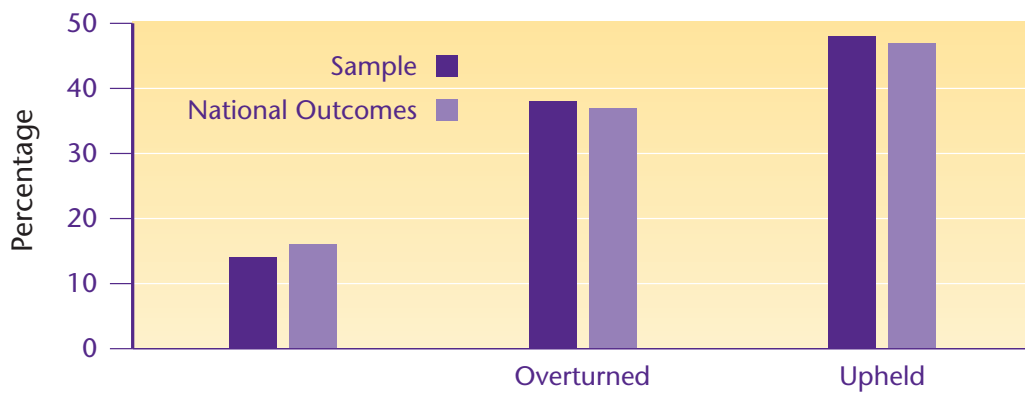
The questionnaires produced a total of 1640 replies for the period April 2006 to March 2007. The sample was restricted to those tribunals which resulted in the following three outcomes:

- 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.

3.3 Table 2 below shows the sample outcomes broken down by type compared to the national outcomes for 2006-2007. The figures show 38% of decisions being overturned with some 48% 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
Adjourned	233	14%	16%
Overturned	616	38%	37%
Upheld	791	48%	47%

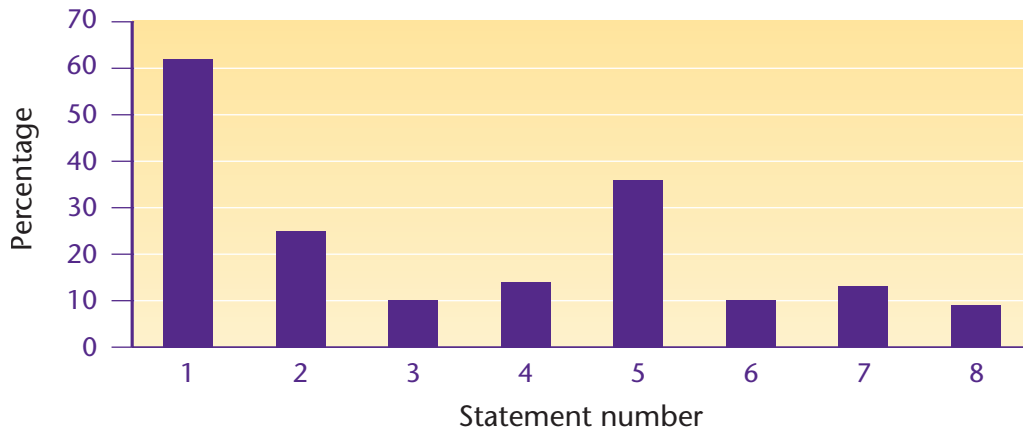


## Overtured cases

3.4 When looking at the overturned cases it is important to remember that the majority of cases that come before a tribunal are upheld, reflected in the sample this year where the upheld cases account for 48% of the decisions. 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 below.

*Table 3 Outcomes – 616 Overtured Cases*

Statement	Responses
1 <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	379 (62%)
2 <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	153 (25%)
3 <b>Insufficient facts:</b> The decision was based on insufficient facts or evidence due to the inadequate investigation of the claim or reconsideration.	64 (10%)
4 <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	85 (14%)
5 <b>Different view:</b> The tribunal formed a different view of the same evidence.	224 (36%)
6 <b>Different view (medical):</b> The tribunal formed a different view based on the same medical evidence.	61 (10%)
7 <b>Under-estimate disability:</b> The medical report under-estimated the severity of the disability.	81 (13%)
8 <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	54 (9%)



- 3.5 The most common response remains that the tribunal was given additional evidence not available to the decision-maker, some 379 cases (62%) of those overturned, which is slightly down on the findings in last year's sample (69%). In upheld cases additional evidence was presented in 68 cases (9%).
- 3.6 In those cases where additional evidence was provided it was in the form of oral evidence in 275 cases, (45% of all overturned cases). Of these 275 there were 220 (80%) where the evidence was provided by the appellant. A figure not entirely unexpected as by far the greater proportion of cases in the sample were oral hearings, 1,260 of the 1,640 total, 78%, and 546 of the overturned cases, 89%, which compares with 80% and 91% from the sample last year.
- 3.7 In 135 cases, 18%, additional written evidence was provided to the tribunal, and in 50 cases it was a combination of written and oral evidence that was provided to the tribunal.
- 3.8 The production of additional evidence, in whatever form, remains the predominant reason for cases being overturned, and has done so since we began sampling for the first report published in 2001. At 62% for the 2007 sample, although slightly down on last year's figure of 69%, the figure still suggests that this important primary source of information is being overlooked in the decision-making process. There continues to be a tendency on the part of decision-makers 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. 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 decision under appeal. This should form part of a robust review process prior to the hearing.

- 3.9 The tribunal formed a different view of the same evidence in 224 of the overturned cases, (36%), the same percentage as last year. In 61 (10%) cases it was specifically the medical evidence that was differently interpreted, a figure significantly lower than the 21% of cases last year, and a welcome improvement. Chairmen often comment that the reason for taking a different view is that the questioning of the appellant at the hearing and the taking of a full history sheds new light on the existing evidence, and that the available evidence is not weighed properly.
- 3.10 Problems with accepting evidence continue, however, reflected in the 153 cases, (25%), where the decision-maker did not accept the evidence that was available, and in the 85 (14%) cases where it was considered that the decision-maker had not given the available evidence due weight, the common theme being that the evidence of the appellant was not given sufficient regard when reaching a conclusion.
- 3.11 This year the number of medical reports that underestimated the severity of the appellant's disability has reduced significantly again from 22% last year to 81 cases, 13%, in this year's sample, something which is to be welcomed and which demonstrates the determination on the part of Health and Benefits Division to improve the standard of this vital source of evidence. Medical reports that come before the tribunal originate from a number of sources, in this year's sample ATOS alone completed medical reports in 90% of cases which were overturned, the same proportion as last year. In those cases where the tribunal felt the medical report underestimated the severity of the disability the appellant attended the hearing in 54 cases (54%) and so was able to be questioned by the tribunal.
- 3.12 In this year's sample the number of cases where the tribunal took a different of the same medical evidence was also reduced to 61 cases, (10%) which is a significant reduction from the 166, (21%) last year. In 51 (8%) overturned cases all the medical issues had not been addressed in the medical report, in 20 (3%) the decision maker had misinterpreted the medical evidence, in 25 (4%) the advice in the medical report was not adequately justified, in 10 (2%) it was not considered that the advice in the medical report was consistent and in 25 (4%) it was felt that the decision maker had overlooked evidence which may have affected the decision. Again these figures show a slight overall improvement in the general standard of medical evidence.

- 3.13 The chairmen made a number of comments regarding medical evidence. They stressed the value of oral hearings informing the information in medical reports, they criticised reports which included incomplete histories taken at very short examinations by the Department and noted that some appellants had communication problems which could lead to incomplete or inaccurate assessments of disability. Again they also criticised cases where further medical evidence had not been sought at an earlier stage or where further investigations had not been carried out when there were clearly outstanding issues to be resolved and this was not addressed in the submission. Mental health issues were generally not thought to be given sufficient weight and it was often only by questioning the appellant regarding the extent of the restrictions placed upon them by these issues that the full facts came to light.
- 3.14 However, chairmen also consistently said that there is little that the Agencies can do to avoid appeals. In only 54 (9%) overturned cases did the tribunal consider that the Agency could have avoided the appeal, the same percentage as last year. In Child Support cases it should be remembered that the claim may have been reviewed but because there are two parties to the proceedings if the review was not in the appellant's favour the matter was still referred to an appeal tribunal.
- 3.15 This is the fourth 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, appellants and subsequently the tribunal to focus on the questions at issue. The picture remains favourable, and this year there were 30 (5%) overturned cases where the submission failed to fully and effectively argue the case, lower than the figure last year where there were 51 cases (6%). There were 23 (4%) where the submission failed to focus on the grounds of appeal; 18 (3%) where the submission failed to include all the evidence relating to the decision under appeal; and 14 (2%) where the submission failed to include or refer to the correct statute or case law and where it failed to include all the relevant facts.

### 3.16 Summary of those areas chairmen highlighted in their comments:

- Criticism was made of cases that came before tribunals without all the issues being addressed in the submission or where evidence was discounted without the decision-maker explaining why, this was particularly the case where the issue in dispute was a fairly narrow question;
- Where it was clear that issues required further investigation chairmen questioned why the cases had been put before the tribunal;
- 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 to adjourn the case to obtain the additional evidence;
- Chairmen raised 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 problems came to light;
- In some cases it was said that the medical examinations were not thorough enough in producing a full history.

### *Upheld cases*

3.17 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 four of the 791 upheld cases that the Agency could have prevented the appeal. In only four was it felt that the Agency had not adequately explained the decision to the appellant.

### *Adjournments*

3.18 Adjournments accounted for a total of 233 (14%) of the sample but as the issues raised are mainly administrative no analysis of these decisions has been made in this report.

3.19 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.

# 4

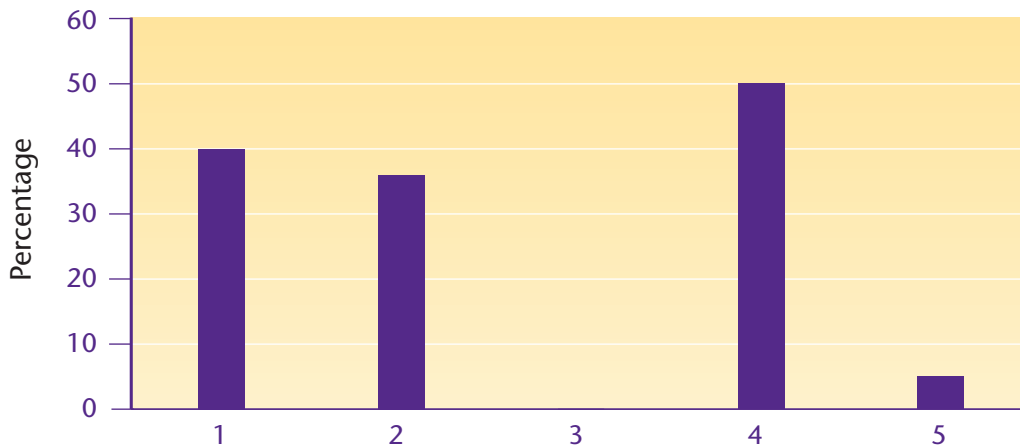
## Non-medical decisions – Jobcentre Plus, The Pension Service & Debt Management

4.1 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. We have included information separately regarding overpayments from across benefits in this report since 2003-2004 following the creation of Debt Management in 2001. 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. Pension Credit replaced Minimum Income Guarantee from October 2003. Although we had hoped to be in a position to include Pension Credit cases in the sample this year we have been unable to track these cases separately and therefore unable to produce a high enough number in the sample to draw firm conclusions.

### *Jobseeker's Allowance*

*Table 4 22 Overturned cases: responses*

Statement	Responses
1 <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	9 (40%)
2 <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	8 (36%)
3 <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	0
4 <b>Different view:</b> The tribunal formed a different view of the same evidence.	11 (50%)
5 <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	1 (5%)



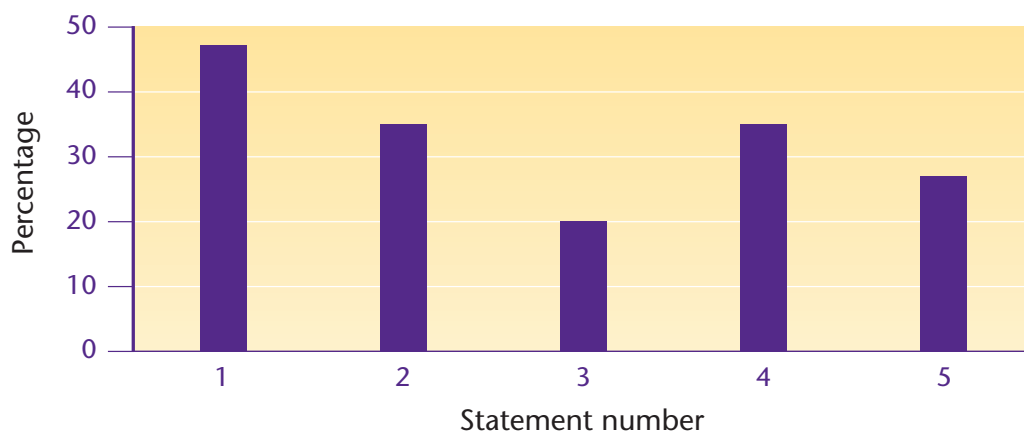
- 4.2 The number of cases upheld by the tribunal in JSA cases has increased this year to 61% which is a considerable increase on the figure of 49% for last year.
- 4.3 In the overturned cases there were 11 (50%), where the tribunal formed a different view of the same evidence and in a further nine the tribunal was given additional information (40%), in eight (36%) the tribunal accepted evidence that the decision-maker had but was not willing to accept. There were no cases where the evidence or facts had not been given due weight. In the nine 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 was just one case where it was considered that the Agency could have avoided the appeal.
- 4.4 The standard of the written submissions was high but in one case it was considered that the submission failed to fully and effectively argue the case, did not include all the evidence relating to the decision under appeal, failed to include all the evidence and facts, focus on the grounds of appeal or refer to the correct statute or law.
- 4.5 It remains the case that the majority of cases appealed against were labour market decisions, 17 (22%) of the total of 76 cases with the second largest conditions of entitlement, 11 (14%) cases, with seven overpayment cases, (9%).

4.6 Chairman broadly commended the standard of decision-making in JSA but remain critical of harsh sanctions and misinformation given to appellants regarding backdating claims. In one case there was concern that available evidence in the papers could have avoided the appeal if it had been addressed properly by the decision-maker. They particularly praised the overall standard of submissions.

*Income Support*

*Table 5 51 Overturned cases: responses*

Statement	Responses
1 <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	24 (47%)
2 <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	18 (35%)
3 <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	10 (20%)
4 <b>Different view:</b> The tribunal formed a different view of the same evidence.	18 (35%)
5 <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	14 (27%)



4.7 The distribution by outcome shows an increase in the proportion of upheld decisions at 55% up from the figure last year of 44%. It indicates that the results by outcome in IS have maintained the improved performance previously experienced.

- 4.8 The main issues in this year's sample focus on conditions of entitlement 18% and overpayment cases 14%, a reduction on the cases last year which accounted for 29% of cases. These cases are now the province of Debt Management.
- 4.9 Additional evidence was provided to the tribunal in 24 cases, (47%), a considerable reduction on the 65% in last year's sample which is to be welcomed. In 18 (35%) cases this was in the form of oral evidence provided by the appellant, suggesting that the evidence would have been available at an earlier stage if the Agency had asked for it.
- 4.10 In 18 (35%) cases the tribunal both accepted evidence that the decision-maker had available but was not willing to accept and took a different view of that evidence which was used to make the decision suggesting that in IS cases there remain problems with assessing the available evidence and accepting what is placed before the decision-maker. Incorrect weight was given to evidence in ten cases, (20%).
- 4.11 In ten cases, (20%) the tribunal felt that the submission did not fully and effectively argue the case for the decision-maker. In a further seven cases the submission did not include all the facts including the disputed facts and in six cases the submission failed to focus on the grounds of appeal and include all the evidence.
- 4.12 Chairmen raised concerns over particular types of decision-making, for example living together as husband and wife decisions where in one case there was clearly insufficient evidence but the case was presented to the tribunal. In capital cases decision-makers continue to be confused over possession of actual capital and the attribution of notional capital where expenditure cannot be explained. Some cases came before tribunal which took no notice of the Department's own guidance and others were presented without a proper investigation of the facts. Chairmen were also concerned that some standard form submissions did not deal with the issue under appeal.

### *Debt Management*

- 4.13 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 33 Overturned cases: responses*

Statement	Responses
1 <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	15 (45%)
2 <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	7 (21%)
3 <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	6 (18%)
4 <b>Different view:</b> The tribunal formed a different view of the same evidence.	8 (24%)
5 <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	5 (15%)



4.14 In this year's sample of the 33 overturned cases there were 15 (45%) where additional evidence was provided to the tribunal, this compares favourably with last year's sample where the figure was 69%. In 13 (39%) cases this was in the form of additional oral evidence, in 11 cases, (33%) provided by the appellant. In eight cases (24%) the panel formed a different view of the same evidence, in seven (21%) the tribunal accepted evidence that was available but which the decision-maker did not accept and in six cases, (18%) the decision-maker did not give the facts or evidence due weight. In only five cases the tribunal felt that the Agency could have avoided the appeal, (15%).

- 4.15 The standard of submissions was good with eight (24%) where the submission failed to include all the evidence, seven (21%) where it failed to fully argue the case, four cases, (12%) where it failed to include all relevant facts and cite the correct statute or case law and three, (9%) where it failed to focus on the grounds of appeal. There were four where the calculations were not correct (12%) and where the decision had not been properly explained to the appellant.
- 4.16 Where additional comments were made chairmen expressed concerns where documentary evidence had been destroyed by the Departments contractors during the currency of the appeal. In capital cases calculations were incorrect and chairmen were irritated where cases were adjourned to give the Department the opportunity to produce evidence or provide a Presenting Officer and their request had not been complied with. They were particularly concerned where a case proceeded without the decision-maker addressing the evidence of the appellant or making appropriate investigations.

# 5

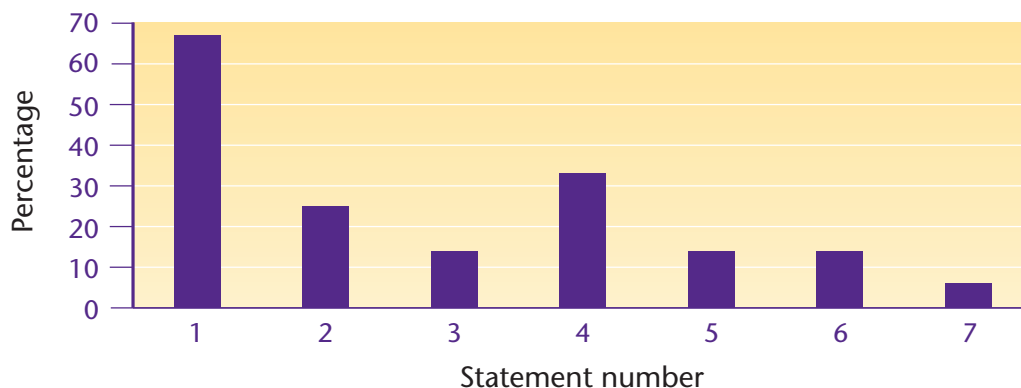
## Decisions involving medical evidence – Disability and Carers Benefits and Incapacity Benefit

5.1 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 7 298 Overturned cases: responses (combined)

Statement	Responses
1 <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	200 (67%)
2 <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	74 (25%)
3 <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	41 (14%)
4 <b>Different view:</b> The tribunal formed a different view of the same evidence.	97 (33%)
5 <b>Different view (medical):</b> The tribunal formed a different view based on the same medical evidence.	42 (14%)
6 <b>Under-estimate disability:</b> The medical report under-estimated the severity of the disability.	43 (14%)
7 <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	17 (6%)



- 5.2 This year the sample is nearer the national intake at 42%. The proportion of overturned cases in the sample is 43%, slightly lower than the figure last year of 47%. The more complex care and mobility issues again dominate the overturned cases, combined issues amounting to 64% of the overturned sample, almost the same as the last year, 62%.
- 5.3 Additional evidence was presented to the tribunal after the original decision had been made in 200 of the cases, (67%). This was largely in the form of the oral evidence, 140 cases (47%) and in 117 of these cases it was provided by the appellant, (39%). This year the tribunal formed a different view of the same evidence in 97, (33%) cases. In 74 cases (25%) the tribunal accepted evidence that the decision-maker had but was not willing to accept and in 41 (14%) the decision-maker did not give relevant facts or evidence due weight. In 24 (8%) cases the decision was based on insufficient facts or evidence due to the inadequate investigation of the claim or reconsideration. In 21 (6%) the decision-maker overlooked evidence that would have affected the decision.
- 5.4 At the same time, chairmen considered that in 17 (6%) of the overturned cases the Agency could have avoided the appeal and in two cases that the decision had not been properly explained to the appellant.
- 5.5 The standard of the submissions was high there were just five cases (2%) where the submission failed to argue the case effectively and four where the submission failed to focus on the grounds of appeal or include all relevant evidence. There were three where the submission failed to include or refer to the correct statute or case law and two where the submission failed to include details of all the facts.
- 5.6 The comments of the chairmen indicated that in many cases the oral evidence was persuasive and often crucial in enabling the tribunal to overturn the decision. There was some evidence of a reluctance on the part of the appellants and representatives to produce new evidence ahead of hearing because they were not convinced that decision-makers would use it to review the decision. Chairmen were also critical where the decision-maker failed to follow up all the issues raised by a claim before the hearing, or where they tended to rely on shorter ATOS reports rather than fuller medical reports provided by the appellant and did not say why. They also highlighted mental health issues which were not adequately dealt with at the stage the claim was made and poor quality medical reports based on an inadequate history taken in short medical assessments.

- 5.7 In terms of medical evidence, the original medical report was considered to have underestimated the severity of the disability in 43 (14%) of the overturned cases, the tribunal having considered the subsequent evidence provided, including that from the appellant at the hearing.<sup>8</sup> In 42 cases (14%) the tribunal took a different view of the same medical evidence. In 28 cases, (9%) it was considered that the medical report did not fully address all the issues; in 20 (7%) that the decision-maker overlooked medical evidence, in 11 (4%) that the advice in the medical report was not adequately justified and in just one case that the advice in the medical report was not in keeping with the consensus of medical opinion.
- 5.8 In the sample of overturned cases the medical reports were produced from a variety of sources. In 257 cases it was provided by ATOS alone, by a GP alone in 17 cases, by a consultant alone in 6 cases. There were some cases where more than one report was available provided from a combination of sources.
- 5.9 In cases where medical members had commented on the standard of the medical evidence a common theme was that mental health issues had not be adequately dealt with. In many cases oral evidence combined with further medical evidence were crucial. Time spent with appellants exploring their history and questioning them about care and mobility needs was the key to understanding the implications of their disability and enabling the tribunal to reach a different conclusion. Although improved, medical reports were criticised for being too short not addressing the key issues or producing a poor assessment of disability. In some cases issues that were outstanding at the point of claiming were not resolved until the hearing when they could have been reviewed much earlier.
- 5.10 This year there does appear to be some improvement in that the level of new evidence being produced at the hearing has reduced and according to the figures from DCS colleagues overall there has been progress in reducing the number of cases coming to tribunal with a drop of some 7,000 in the year to March 2007. I should also perhaps point out here that DCS has been more than willing to engage with myself and my administrative colleagues to take forward the recommendations I have made to improve the standards of decision-making and explore new ways of increasing the experience and understanding of decision-makers. This is to be welcomed.

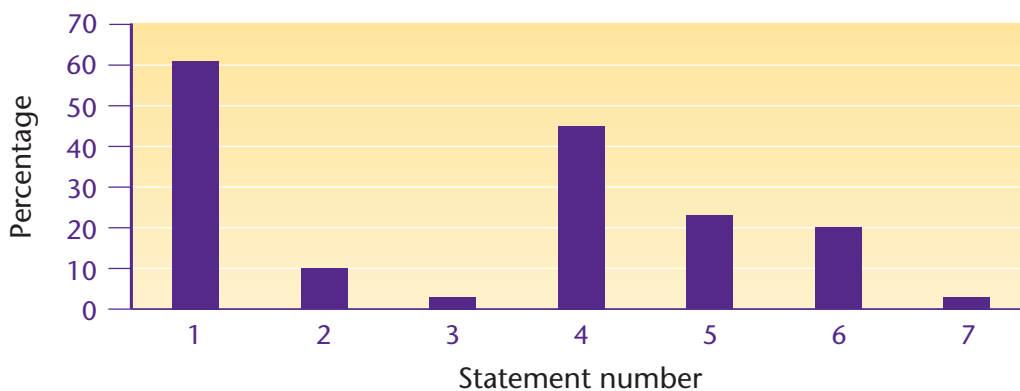
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8 In these cases the medical member of the tribunal has listened to the evidence, had the opportunity to question the appellant and look at the medical reports and recorded their views on the questionnaire.

## Industrial Injuries Disablement Benefit

Table 8 31 Overturned cases: responses

Statement	Responses
1 <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	19 (61%)
2 <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	3 (10%)
3 <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	1 (3%)
4 <b>Different view:</b> The tribunal formed a different view of the same evidence.	14 (45%)
5 <b>Different view (medical):</b> The tribunal formed a different view based on the same medical evidence.	7 (23%)
6 <b>Under-estimate disability:</b> The medical report under-estimated the severity of the disability.	6 (20%)
7 <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	1 (3%)



5.11 Appellants in a high number of IIDB cases also produce additional evidence for the tribunal. This happened in 19 (61%) of the cases and follows the pattern for these cases. In 18 (58%) cases this was in the form of oral evidence, in 13 (42%) provided by the appellant. In 14 (45%) the tribunal formed a different view of the same evidence. In three (10%) the tribunal accepted evidence that the decision-maker had available but was not willing to accept, in one, the

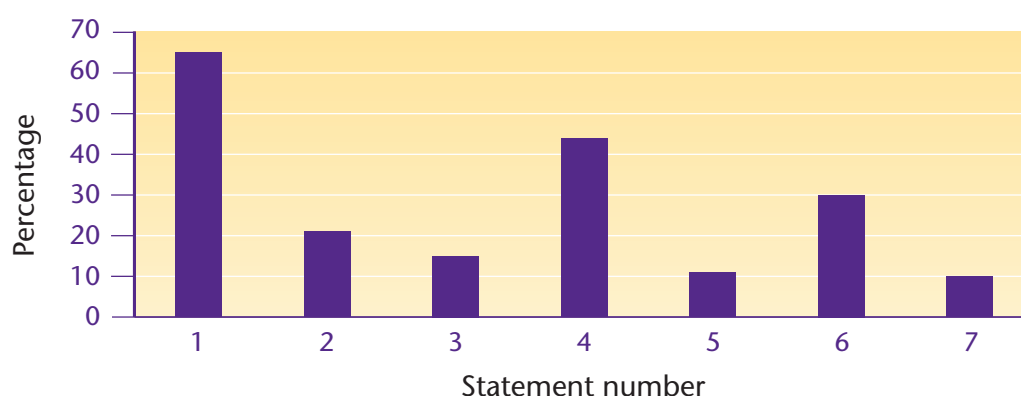
decision-makers did not give relevant facts or evidence due weight and did not complete an adequate investigation of the claim. However, there was just one case (3%) where the tribunal felt that the Agency could have avoided the appeal.

- 5.12 The standard of the submissions was very high, there were no adverse comments about the standards of the submission.
- 5.13 Where chairmen commented on the standard of the decision-making they highlighted the importance of oral evidence and the opportunity they had to question the appellant in the face of the evidence shedding new light on existing evidence or supporting their own additional evidence. They often commented that talking to the appellant gives them a clearer picture of the disability. Chairmen also highlighted the importance of balancing the evidence on the part of decision-makers and not just presenting a case that is unfavourable to the appellant. They were critical where cases came to the tribunal and there was existing evidence on which to make a decision to supersede.
- 5.14 For the medical evidence there were seven cases (23%) where the panel formed a different view of the same medical evidence, the tribunal highlighting the importance of the oral evidence. There were six cases, (20%) where the medical report under-estimated the severity of the disability, and six (20%) where the medical report did not address all the medical issues. There were two cases where the advice given in the medical report was not adequately justified and one case where medical evidence was overlooked.
- 5.15 In the comments on the medical evidence the tribunal criticised decision-makers where they did not pursue issues and resolve matters before coming to the hearing. They stressed the importance of additional medical reports from consultants and the importance of being able to see hospital case notes. They highlighted problems estimating the impact of intervening accidents upon disability and the difficulty of reaching firm conclusions in fluctuating conditions.
- 5.16 The predominate reason for overturned decisions is the submission of additional evidence to the tribunal, although there is a slight shift towards an increase in a difference of interpretation of the evidence and an impression that decision-makers and the evidence they present under-estimates the severity of the appellant's disability.

## Incapacity Benefit

Table 9 105 Overturned cases: responses

Statement	Responses
1 <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	68 (65%)
2 <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	22 (21%)
3 <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	16 (15%)
4 <b>Different view:</b> The tribunal formed a different view of the same evidence.	46 (44%)
5 <b>Different view (medical):</b> The tribunal formed a different view based on the same medical evidence.	12 (11%)
6 <b>Under-estimated disability:</b> The medical report under-estimated the severity of the disability.	32 (30%)
7 <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	10 (10%)



5.17 The problems that come to light in IB are not dissimilar to those in DLA and IIDB. The figure of 54% of overturned cases in the sample is higher than the national profile of cases, however, and may be related to the high proportion of cases, 70% of the overturned cases, 67% of the overall IB sample, that were personal capability assessments.

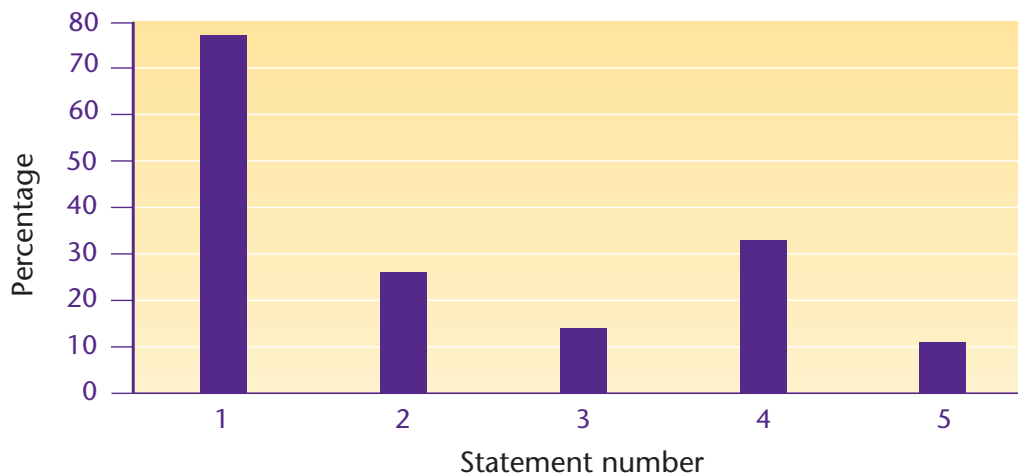
- 5.18 In the general pattern of cases this year there were a significant number of cases where new evidence was brought before the tribunal, 68, (65%) of overturned cases. In 52 (50%) of these cases it was in the form of oral evidence, in 38 (36%) cases provided by the appellant.
- 5.19 In 46 (44%) overturned cases the panel formed a different view of the same evidence; in 22 cases (21%) the tribunal accepted evidence that the decision-maker had but was not willing to accept; in six (6%) the decision was based on insufficient facts or evidence due to the inadequate investigation of the claim or reconsideration. In 16 (15%) the decision-maker did not give relevant facts due weight. However, in only ten (10%) cases did the tribunal consider that the Agency could have avoided the appeal.
- 5.20 The standard of submissions remains high, with just eight where the submission failed to fully and effectively argue the case, five (5%) where the submission failed to focus on the grounds of appeal; two where the submission failed to include all the relevant facts and include all the evidence and one where the submission failed to refer to the correct statute or case law.
- 5.21 As in other cases the most common comment was that oral evidence from the appellant led the tribunal to a different conclusion. Chairmen criticised submissions that did not address the grounds of appeal and simply stated the basis on which the decision was made. They continue to raise concerns that in some cases the medical examinations were inadequate and overlooked facts relating to the appellant's medical condition or underestimated the extent of the appellant's problems, this was particularly so with regard to mental health issues. In several cases mental health issues had not been fully appreciated by the decision maker. They were particularly concerned with cases where the issues set out in the letter of appeal were not addressed despite adjournments and directions for further submissions to be produced. Cases of sensory impairment continue to cause problems.
- 5.22 Where medical members commented on the standard of medical evidence in 32, (30%) cases it was felt that the medical report had underestimated the severity of the disability. In 17 (16%) all the issues were not addressed in the medical report; in 12 (11%) cases the panel formed a different view of the same evidence and the advice in the medical report was not in keeping with the consensus of medical

opinion; in four cases medical evidence was overlooked and conflicting evidence from other sources was not addressed in the medical report. In three cases the medical evidence was not used correctly by the decision-maker.

5.23 In the comments tribunals were critical of medical reports that were not complete or accurate and which tended to under-estimate the severity of the disability, they had particular difficulty in adequately assessing mental health issues. Decision-makers were criticised where they preferred the medical report to other evidence and did not explain why, and examinations which were short and did not record a full medical history were also a cause of concern.

Table 10 73 Overturned cases: responses

Statement	Responses
1 <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	56 (77%)
2 <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	19 (26%)
3 <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	10 (14%)
4 <b>Different view:</b> The tribunal formed a different view of the same evidence.	24 (33%)
5 <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	8 (11%)



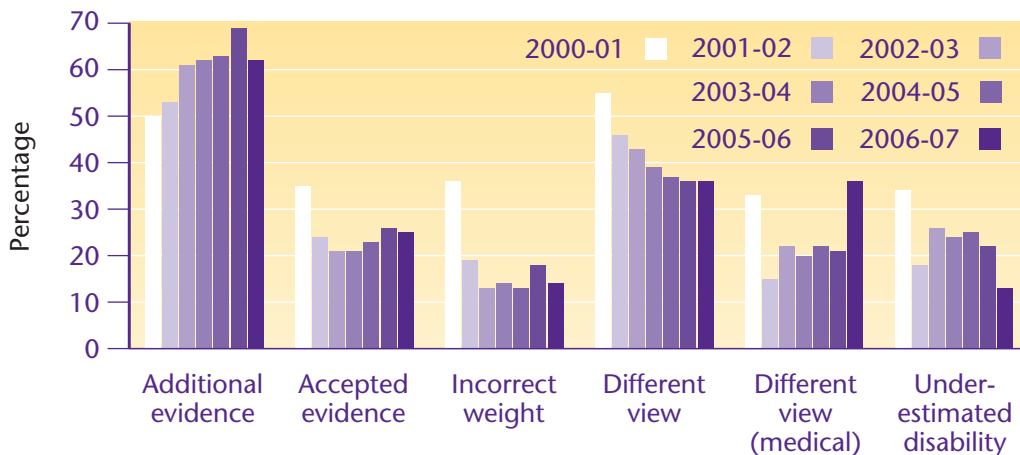
- 6.1 The Tribunals Service deals with 3 main categories of Child Support Agency decisions - assessments, departures and referrals. Referrals are not included in the sample cases as the tribunal is making the first tier decision. We continue to target Child Support Agency cases to produce a higher proportion and more meaningful results and this year has seen a slight increase in the sample. The numbers continue to be skewed in order to do this. The outcomes in the sample again show a high number of adjournments (24%) reflecting the complex nature of decision making in this area. Unlike other Agencies the Child Support Agency sent Presenting Officers 81% of sample cases.

- 6.2 In 56 (77%) cases the tribunal was given additional evidence not available to the decision-maker, a common criticism being that the CSA did not ask for further evidence. In 37 (51%) this was in the form of oral evidence, in 33 (45%) cases provided by the appellant. In 24 (33%) the tribunal formed a different view of the same evidence; in 19 (26%) the tribunal accepted evidence that the decision-maker was unwilling to accept, and in ten (14%) the decision-maker did not give relevant facts or evidence due weight.
- 6.3 The standard of the submissions was high with just four (5%) cases where the submission failed to include all the evidence relating to the decision and fully and effectively argue the case; and one case where the submission failed to include all the facts and refer to the correct statute or case law.
- 6.4 Chairmen criticised decision-makers where they did not pursue matters and resolve questions before cases came to the tribunal. Calculations were often incorrect and cases were undermined by the Agency being unable to provide all the relevant papers. In some cases the tribunal felt that difficult decisions were referred to the tribunal when the decision-maker could have made a decision.

7.1 Many of the trends already reported in previous reports continue. This year the number of cases where additional evidence was produced is down on last year's figure, but it remains the most common reason for cases being overturned, and it remains the case that it is often the oral evidence of the appellant that enables the tribunal to shed more light on the case. The questioning of the appellant is often seen by Chairmen as the most useful means of determining whether the decision-maker made the right decision. There continues to be a considerable disparity between the way the tribunal and the decision-maker views the evidence, although there was some reduction in the number of cases where medical reports under-estimated the severity of the disability. But, as we have seen, Chairmen remain critical where the medical report is followed at the expense of other credible evidence without explanation. It also seems to be the case that further evidence is not requested at the reconsideration stage and that appellants are not routinely contacted in person to explore the appeal, the grounds and the evidence before going to tribunal.

7.2 The overall picture, however, appears to show a reduction in differences between the panel and to decision-maker with the exception of the interpretation of the medical evidence.

*Table 11 Common questions from seven years of sampling*



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

- Overturned cases – the most common reason for a decision being overturned is still that additional evidence is presented to the tribunal.

This is mainly in the form of oral evidence available from the appellant, in medical cases available from further medical reports;

- Interpretation of the evidence also remains an issue, particularly in the case of medical evidence which was criticised where it underestimated the severity of the appellant's disability and cases were also criticised where the decision-maker relied upon the ATOS report to the exclusion of other evidence, often without any accompanying reasoning;
- Medical evidence – although improved problems remain with the quality and use of medical evidence;
- Mental Health – medical reports continue to be criticised where they did not explore the mental health problems or issues surrounding sensory impairment;
- Evidence – greater efforts need to be made to resolve discrepancies and pursue unresolved issues before cases are brought to a tribunal, by actively seeking additional evidence at the reconsideration stage and if necessary contacting the appellant to discuss the grounds of appeal and trying to resolve matters before they come to a tribunal hearing;
- Evidence relating to claims needs to be accessible, where necessary retained, and made available to the tribunal, some Chairmen suggested that documents were being destroyed during the currency of an appeal;
- Quality – the quality of both the available evidence and the submission is of crucial importance. 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.

7.4 Although there may be a slight change in emphasis the key themes from my annual reports have become established, and are similar to the range of information produced from other sources each year. The feedback my colleagues and I produce is a clear indication of where the Agencies should begin in terms of addressing the problems in decision-making. The Agencies are doing many things to improve but the work they are doing needs to be more focused and improvements more rapid.

### *Questionnaire and sampling*

The questionnaire itself identified the case, the date, the venue and the chairmen so that individual appeals could be tracked where there were queries. It was substantially restructured following discussions with stakeholders and in the light of the results from the pilot exercise run during October 1999, in the light of new undertakings to attempt to capture more information regarding the medical evidence available to the tribunal, and following the results of the first full year of data collection.

In each case the completion of the questionnaire was undertaken by salaried Regional or District chairmen hearing cases at venues throughout the country. In addition we also asked medically qualified members of the panel to comment on the medical evidence where this was appropriate.

With the use of a method of random selection provided by colleagues in DCS Operational Research we have sought to produce a sample that reflects the broad profile of cases considered by the Appeals Service and avoid the problems encountered in the pilot scheme when the figures were biased towards particular benefits. For the fourth report the model was amended again in order to produce a sample that reflects more closely the current intake.

The sampling method was weighted towards Child Support cases in order to gather enough information on the cases that came before the tribunal to provide meaningful results.

The responses were collected and the details from the questionnaires entered on a database to produce the results in a format that could be used to analyse the data.

*Judicial Checklist*  
April 2006 – March 2007

<b>Appeal Number:</b> (See session case list)	
<b>1 Date of Hearing:</b>	
<b>2 Venue:</b>	
<b>3 Composition of Tribunal:</b> (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
<b>4 Type of Hearing:</b>	<input type="checkbox"/> Oral <input type="checkbox"/> Paper
<b>5 Name of Chairman:</b>	
<b>6 Date of decision under appeal:</b>	
<b>7 Codes:</b> (See session case list)	Benefit Code (numbers)
	Issue Code (letters)
<b>8 Attendance</b>	<input type="checkbox"/> PO <input type="checkbox"/> Appellant <input type="checkbox"/> Representative <input type="checkbox"/> Respondent
<b>9</b> Where there was <b>no</b> 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 .....	
<b>10 Outcome</b>	<input type="checkbox"/> Overturned <input type="checkbox"/> Upheld <input type="checkbox"/> Adjourned

*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.*

**In each case please (including cases upheld) tick if applicable and provide additional information at the end in the space provided.**

11 The tribunal accepted evidence that the decision-maker had available but was not willing to accept.

12 The panel forms a different view of the same evidence.

13 The facts were not in dispute but the decision-maker had misconstrued their effect in law.

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 ie. reduced earnings)

The evidence was in the form of:

- a) Expert report handed in
- b) Expert report obtained by the tribunal
- c) Oral evidence
- d) Further written evidence

Who provided the evidence?

- a) The Appellant
- b) The Representative
- c) Other – please specify

.....

14b Where the tribunal was provided with additional evidence, was there any indication why this was not presented earlier, please provide details. eg. appellant not asked for it after submitting appeal, only became available later

.....

15 The decision was based on insufficient facts/evidence due to inadequate investigation of the claim or reconsideration.

16 The decision-maker overlooked evidence that would have affected the decision.

17 The decision-maker did not give relevant facts/evidence due weight.

18 The calculations were **not** correct.

19 The decision was not properly explained to the claimant

20 The agency could have avoided the appeal.

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 <b>why</b>. (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>27 <b>Adjourned cases:</b> The case was adjourned because:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	
<p>28 <b>Further information:</b> 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>	

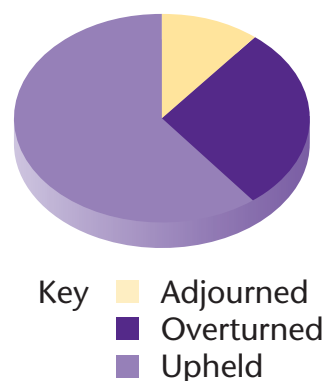


The following tables show the sample results for each category commented on in the report with the number of cases by outcome with accompanying chart to show the distribution.

*Table A Jobseeker's Allowance 2006-2007:*

*Sample composition by tribunal outcome.*

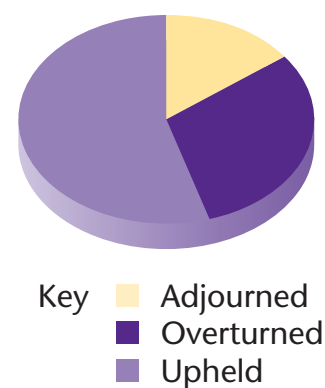
Outcome	Number	Percentage
Adjourned	8	11%
Overtured	22	29%
Upheld	46	61%
Total	78	



*Table B Income Support 2006-2007:*

*Sample composition by tribunal outcome.*

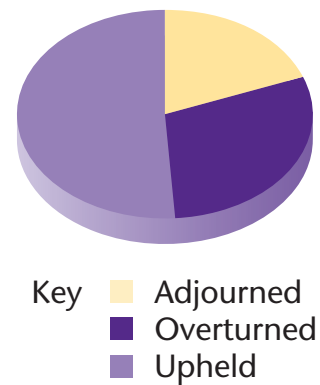
Outcome	Number	Percentage
Adjourned	24	15%
Overtured	51	31%
Upheld	90	55%
Total	165	



*Table C Debt Management 2006-2007:*

*Sample composition by tribunal outcome.*

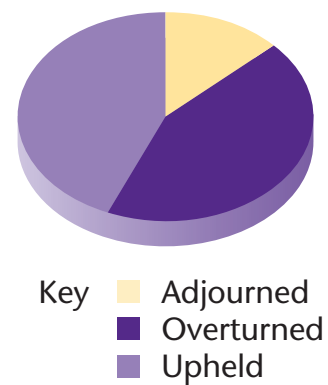
Outcome	Number	Percentage
Adjourned	24	19%
Overturned	33	29%
Upheld	56	50%
Total	113	



*Table D Disability Living Allowance/Attendance Allowance 2006-2007:*

*Sample composition by tribunal outcome.*

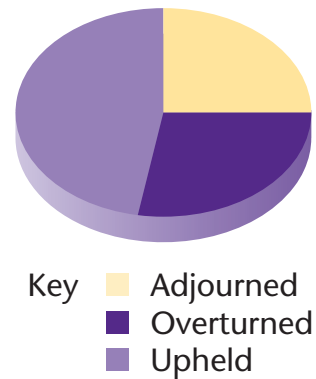
Outcome	Number	Percentage
Adjourned	92	13%
Overturned	298	43%
Upheld	300	43%
Total	690	



*Table E Industrial Injuries Disablement Benefit 2006-2007:*

*Sample composition by tribunal outcome.*

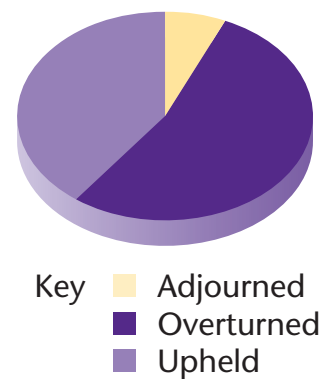
Outcome	Number	Percentage
Adjourned	27	25%
Overtured	31	28%
Upheld	51	47%
Total	109	



*Table F Incapacity Benefit 2006-2007:*

*Sample composition by tribunal outcome.*

Outcome	Number	Percentage
Adjourned	13	7%
Overtured	105	54%
Upheld	78	40%
Total	196	

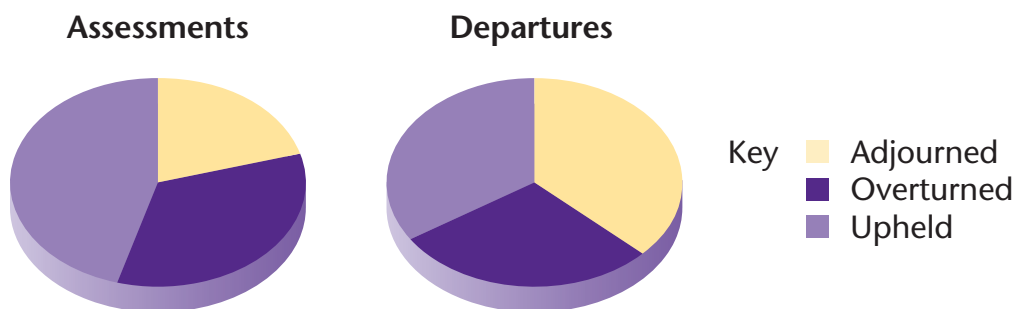


*Table G Child Support 2006-2007:*

*Sample composition by tribunal outcome.*

The Appeals Service deals with 3 main categories of Child Support Agency decisions – assessments, departure decisions (now including Reform Appeals and Variations) 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	37 (21%)	15 (37%)	54 (24%)
Overtured	61 (34%)	12 (29%)	73 (33%)
Upheld	82 (46%)	14 (34%)	96 (43%)
Total	180	41	221



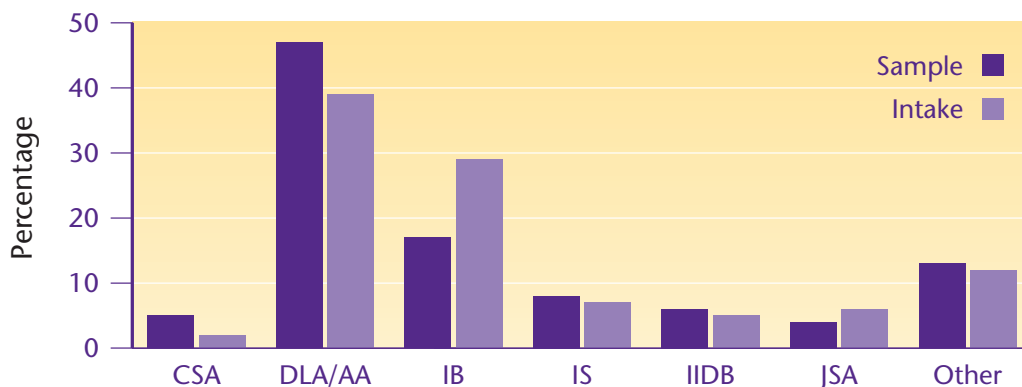
## Results from the 2005-2006 sample

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	95	5	2
Disability Living Allowance/ Attendance Allowance	898	47	39
Incapacity Benefit	325	17	29
Income Support	145	8	7
Industrial Injuries Disablement Benefit/ Industrial Injuries Benefit	120	6	5
Jobseeker's Allowance	78	4	6
Others	244	13	12
<b>Total</b>	<b>1,905</b>		

\* National intake for 2005 was 226,000.



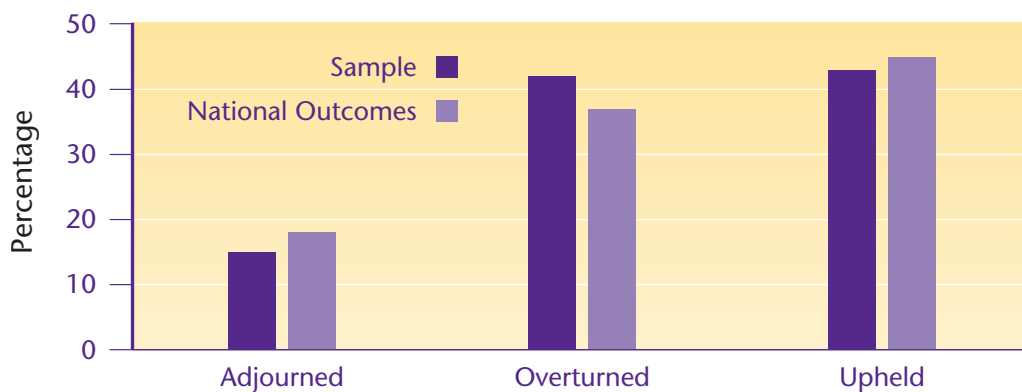
## Sample results

The questionnaires produced a total of 1,905 replies for the period April 2005 to March 2006. 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.

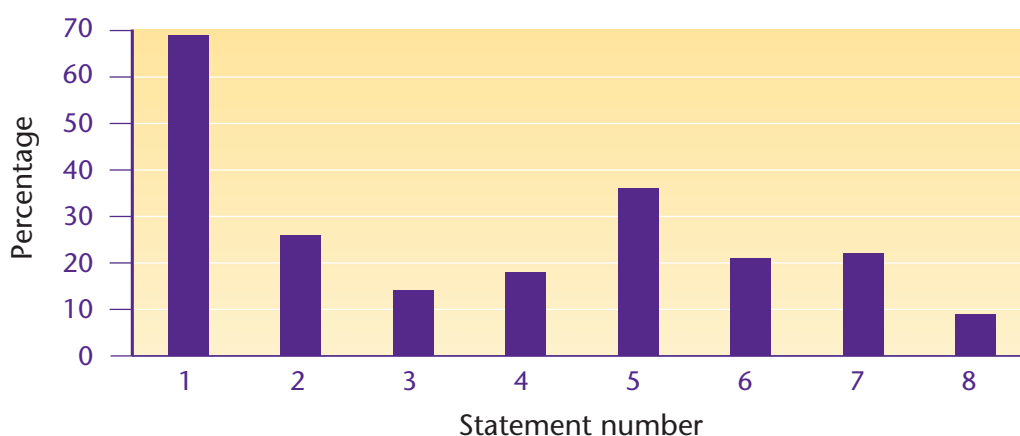
*Table 2 Sample outcomes compared to national outcomes*

	Sample		National
Adjourned	277	15%	18%
Overturned	801	42%	37%
Upheld	827	43%	45%



*Table 3 Outcomes – 801 Overturned cases*

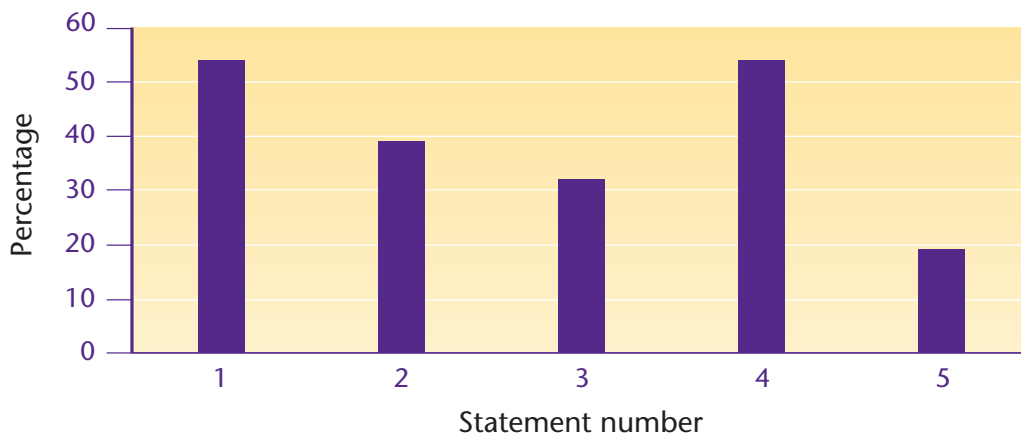
Statement	Responses
1 <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	554 (69%)
2 <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	205 (26%)
3 <b>Insufficient facts:</b> The decision was based on insufficient facts or evidence due to the inadequate investigation of the claim or reconsideration	111 (14%)
4 <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	146 (18%)
5 <b>Different view:</b> The tribunal formed a different view of the same evidence.	291 (36%)
6 <b>Different view (medical):</b> The tribunal formed a different view based on the same medical evidence.	166 (21%)
7 <b>Under-estimate disability:</b> The medical report under-estimated the severity of the disability.	173 (22%)
8 <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	76 (9%)



*Jobseekers Allowance 2005-2006*

*Table 4 28 Overturned cases: Responses*

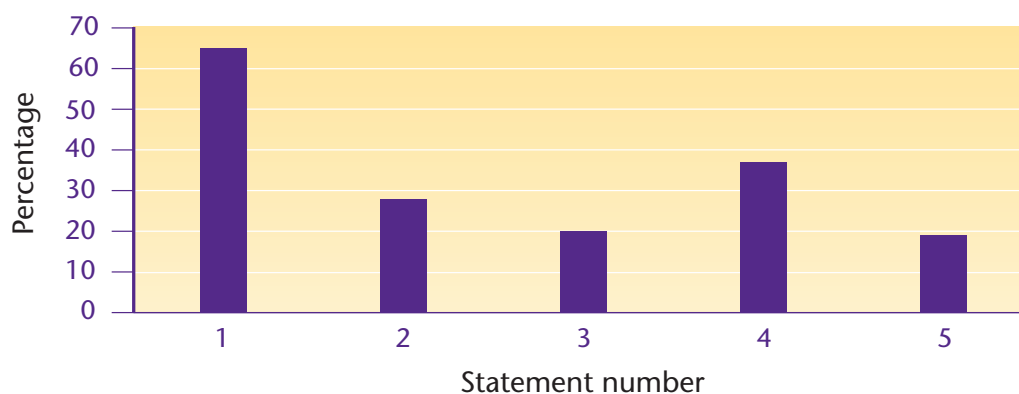
Statement	Responses
1 <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	15 (54%)
2 <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	11 (39%)
3 <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	9 (32%)
4 <b>Different view:</b> The tribunal formed a different view of the same evidence.	15 (54%)
5 <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	5 (19%)



## Income Support 2005-2006

Table 5 54 Overturned cases: Responses

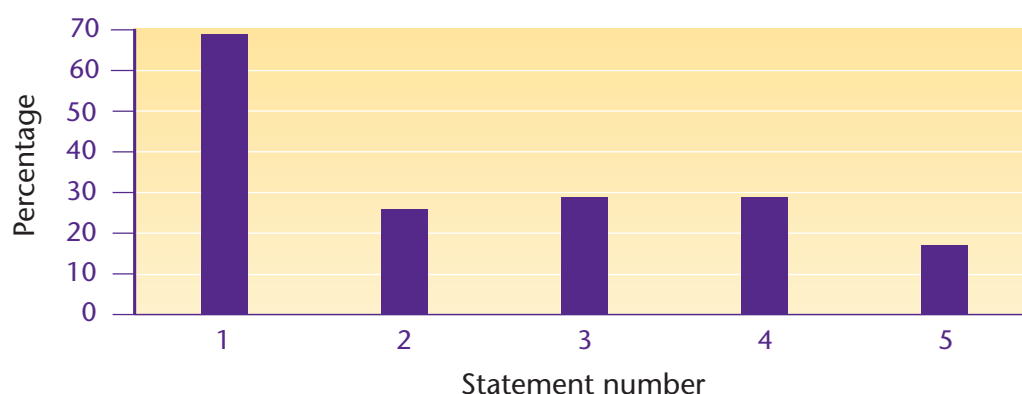
Statement	Responses
1 <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	35 (65%)
2 <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	15 (28%)
3 <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	11 (20%)
4 <b>Different view:</b> The tribunal formed a different view of the same evidence.	20 (37%)
5 <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	10 (19%)



## Debt Management 2005-2006

Table 6 35 Overturned cases: Responses

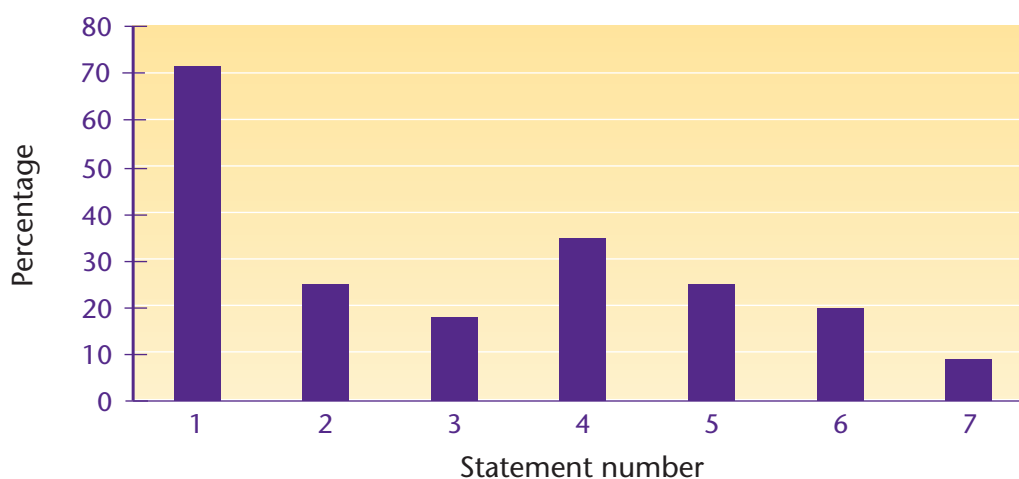
Statement	Responses
1 <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	24 (69%)
2 <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	9 (26%)
3 <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	10 (29%)
4 <b>Different view:</b> The tribunal formed a different view of the same evidence.	10 (29%)
5 <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	6 (17%)



## Disability Living Allowance/Attendance Allowance 2005-2006

Table 7 420 Overturned cases: Responses (combined)

Statement	Responses
1 <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	304 (72%)
2 <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	106 (25%)
3 <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	77 (18%)
4 <b>Different view:</b> The tribunal formed a different view of the same evidence.	146 (35%)
5 <b>Different view (medical):</b> The tribunal formed a different view based on the same medical evidence.	103 (25%)
6 <b>Under-estimated disability:</b> The medical report under-estimated the severity of the disability.	82 (20%)
7 <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	38 (9%)



## Industrial Injuries Disablement Benefit 2005-2006

Table 8 43 Overturned cases: Responses

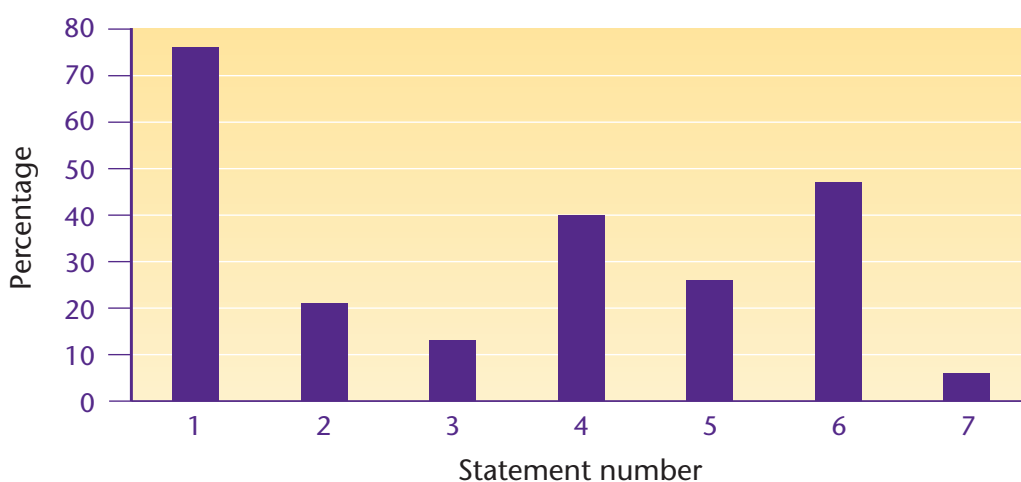
Statement	Responses
1 <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	30 (70%)
2 <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	14 (33%)
3 <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	7 (16%)
4 <b>Different view:</b> The tribunal formed a different view of the same evidence.	13 (30%)
5 <b>Different view (medical):</b> The tribunal formed a different view based on the same medical evidence.	13 (30%)
6 <b>Under-estimated disability:</b> The medical report under-estimated the severity of the disability.	15 (35%)
7 <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	1 (2%)



## Incapacity Benefit 2005-2006

Table 9 159 Overturned cases: Responses

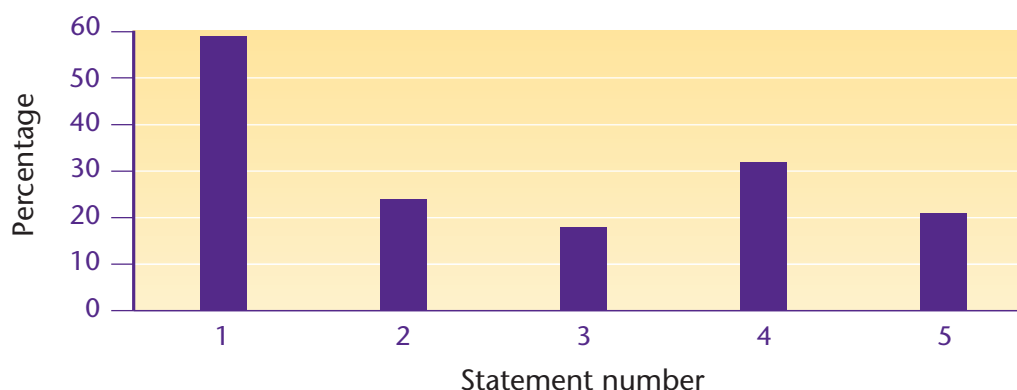
Statement	Responses
1 <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	121 (76%)
2 <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	33 (21%)
3 <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	21 (13%)
4 <b>Different view:</b> The tribunal formed a different view of the same evidence.	64 (40%)
5 <b>Different view (medical):</b> The tribunal formed a different view based on the same medical evidence.	42 (26%)
6 <b>Under-estimated disability:</b> The medical report under-estimated the severity of the disability.	74 (47%)
7 <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	9 (6%)



## Child Support Agency Decisions 2005-2006

Table 10 34 Overturned cases: Responses

Statement	Responses
1 <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	20 (59%)
2 <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	8 (24%)
3 <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	6 (18%)
4 <b>Different view:</b> The tribunal formed a different view of the same evidence.	11 (32%)
5 <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	7 (21%)



## 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