

---

President of the Appeal  
Tribunals Northern Ireland  
Annual Report  
2019-2020 & 2020-2021

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

## President's Foreword

---

The reader will be aware that my previous reports have been in respect of a discrete twelve-month period. On this occasion I have prepared a single report in respect of the reporting years from 2019 -2020 and 2020 -2021. The primary reason for this is that the second of those periods coincided with the onset of the Covid 19 pandemic, as a result of which the number of appeals dealt with by the tribunal was greatly reduced. In order to provide meaningful feedback, I agreed with the Department that it would be prudent to amalgamate both years' reports into one.

When the pandemic arrived, we had to consider how justice could best be administered for appellants whilst at the same time complying with the strictures of a national lockdown. In order to ensure that the appeals process could continue and bearing in mind that the entire benefits system is intended to serve many of the most disadvantaged members of our society, it became necessary to adapt our processes whilst, at the same time, attempting to secure the safety and well-being of all service users and staff. Many officials had to work from home, assessments by healthcare professionals were conducted remotely and I arranged with officials from the Appeals Service that various new methods of remote appeal hearings (including by video link and telephone) would be authorised. My own staff and those within the Appeals Service worked tirelessly to ensure, in so far as possible, that appeal hearings took place throughout Northern Ireland. I wish to place on record my immense gratitude to everyone concerned, including staff and tribunal panel members, for their valiant efforts throughout this very challenging period. It has been greatly appreciated.

An inevitable and understandable consequence of pandemic was that the number of registered appeals reduced considerably by comparison with previous years. The reduced number of cases monitored during the period from 2020 - 2021 means that the results in respect of that period should be interpreted with a degree of caution. Despite this I am satisfied that there has been a continuation of some of the trends revealed in previous reports.

## President's Foreword

---

As with previous reports this one continues to reveal considerable concerns about the number of Employment and Support Allowance, Personal Independence Payment, Disability Living Allowance and Attendance Allowance decisions which are overturned by the tribunal following the receipt of further (especially medical) evidence. Those concerns also apply to Universal Credit decisions involving a work capability element. I can only repeat the comments made in my last report. I genuinely believe that many incorrect initial decisions could be avoided if there was a more structured gathering of relevant and focussed medical evidence from claimants' treating medical professionals prior to initial decision-making.

This is also linked to my ongoing concerns about the Health Care Professional (HCP) assessment process. Those concerns were mentioned in my last report and continue to be an issue. Whilst I wholly appreciate that face to face assessments by healthcare professionals had to be suspended during the pandemic I do not believe that a proper and thorough functional assessment of claimants can be made by telephone. It may be appropriate in exceptional cases only however the propriety for carrying out telephone assessments should be made on a case-by-case basis, taking account of a claimant's individual medical problems and needs.

I repeat my longstanding request that the Department should secure the attendance of Presenting Officers at hearings on a much more frequent basis. Appellants, representatives, and tribunal members should all be given the opportunity to directly scrutinise the Department's decisions at hearing. This matter has often been raised in the past and it is most unfortunate that the Department have still not addressed it constructively.

I continue to engage with senior officials within the various branches of the Department with a view to improving decision-making in individual cases and in order to raise issues of general concern. The Department remains receptive to the practice. I believe that it enhances decision-making generally and assists both the tribunal and the Department. I acknowledge the constructive engagement of senior officials with this process.

## President's Foreword

---

I am extremely grateful to my staff, led by Nuala Burns, for their excellent work in compiling the information on the basis of which this report was created. I also acknowledge the efforts of our legally qualified members in completing the monitoring forms which formed the statistical base for the report.



John Duffy

## Contents

---

<b>Chapter 1</b>	<b>Methodology.....</b>	<b>05</b>
<b>Chapter 2</b>	<b>The Sample and The Sample Analysis.....</b>	<b>07</b>
<b>Chapter 3</b>	<b>Social Security Benefit Decisions.....</b>	
	Attendance Allowance.....	18
	Disability Living Allowance.....	22
	Personal Independence Payment.....	31
	Employment and Support Allowance .....	42
	Income Support .....	48
	Jobseekers Allowance.....	51
	Universal Credit.....	53
	Other Benefits.....	64
<b>Chapter 4</b>	<b>Summary of Recommendations.....</b>	<b>66</b>
<b>Appendix 1</b>	<b>Inferences and Sampling Error.....</b>	<b>68</b>
<b>Appendix 2</b>	<b>Individual Benefit Appeal Profiles.....</b>	<b>71</b>
<b>Appendix 3</b>	<b>Sample Size for 5 Year Analysis Tables.....</b>	<b>75</b>
<b>Appendix 4</b>	<b>Questionnaire.....</b>	<b>76</b>

### Introduction

Given the disruption to services due to the Covid19 Pandemic it was difficult to obtain the required data for analysis as tribunals ceased to operate altogether for several months and when tribunal sessions recommenced, they did so in limited numbers. This all resulted in delays in the listing of appeals and appeals selected for monitoring progressing through the system. For these reasons it was agreed with the President of Tribunals and the Department for Communities, to produce two years data in the one report. The analysis does not seek to compare one year's data with another.

### Methodology

In the years 2019/20 and 2020/21 there were 7,741 and 3,765 appeals registered in each year respectively regarding decisions made by the Department for Communities. This chapter examines the standard of decision-making in relation to both years. The objective of the study was to estimate the level of incorrect initial decisions made by the decision maker in appeals by benefit.

The methodology for undertaking this exercise reflects the fact that the level of appeals for a particular benefit is governed by both the number of persons claiming a particular benefit and the complexity of the benefit. For some benefits a random selection of registered cases by means of random numbers was used, for other benefits where the expected number of cases was small, a complete census was the preferred methodology. In this respect all cases relating to Bereavement Benefit, Carer's Allowance, Compensation Recovery, Child Support, Industrial Injuries Disablement Benefit, Maternity Allowance, Pension Credit, State Pension and Social Fund were examined across both years. In addition, as Universal Credit was a newly introduced benefit a complete census was carried out in year 2019/20 and all Income Support and Jobseekers Allowance cases were also monitored in year 2020/21.

However, it should be noted that in a number of cases across all benefits (except Bereavement Benefit in 2019/20), monitoring was not carried out due to the cases being withdrawn by the appellant prior to hearing, or a pre-hearing clearance by way of a more advantageous decision being implemented by the decision maker. In 2019/20 no cases were

## Chapter 1 - Methodology

---

monitored in relation to Compensation Recovery or State Pension for these reasons. In 2020/21 there were no registered cases in relation to Maternity Allowance and the one registered Compensation Recovery case was still outstanding.

The sample was designed to enable reporting for the whole year, by benefit. Inferences with regard to all appeals by sampled benefits are in Appendix 1 and 2.

The number of registered appeals available for monitoring in these financial years has as previously explained, been impacted by Covid, as tribunals ceased operating altogether for a number of months in 2020 and then recommenced later in the year in a limited and restricted manner for an extended period. Appeals registered could therefore not be listed for hearing in the normal expected timeframe due to the disruption to services. In addition, a number of appeals were as usual withdrawn by appellants prior to hearing and more advantageous decisions were made by the department, negating the need for a tribunal hearing. These issues impacted directly on the number of cases available for selection and monitoring.

Note that in some cases there may be a time lag between an appeal being received and subsequently registered by TAS due to a variety of clerical reasons. This chapter relates to appeals registered between April 2019 and March 2020, and April 2020 and March 2021 only.

## Chapter 2 - The Sample and Sample Analysis

### The Sample

The table below (Table 1) shows the total number of cases registered by benefit, the number monitored, the number of decisions incorrectly made in the first instance and the ‘incorrect’ percentage, in the period. As referenced previously, some benefits required a census of cases and the figures for such benefits when this occurs are indicated by bold type in Table 1. Benefits marked with a \* throughout this chapter of the report have a sample size of less than 30 and therefore we cannot make reliable inferences about the expected level of error.

**Table 1: Registered Appeals by Benefit April 2019 – March 2020 & April 2020 – March 2021**

Benefit Type	Total Registered		No. Monitored (Sample Size)		Incorrect			
	2019/20	2020/21	2019/20	2020/21	Initial Decision		%	
					2019/20	2020/21	2019/20	2020/21
Attendance Allowance	121	67	67	42	4	1	6.0%	2.4%
Bereavement Benefit	<b>2</b>	<b>4</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0.0%</b>	<b>0.0%</b>
Carer’s Allowance	<b>30</b>	<b>13</b>	<b>8</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0.0%</b>	<b>0.0%</b>
Compensation Recovery	<b>6</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0.0%</b>	<b>0.0%</b>
Child Maintenance	<b>39</b>	<b>27</b>	<b>18</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>0.0%</b>	<b>0.0%</b>
Disability Living Allowance	585	413	211	153	6	8	2.8%	5.2%
Employment & Support Allowance	849	201	59	20*	3	1	5.1%	5.0%
Income Support	68	<b>18</b>	22*	<b>13</b>	2	<b>2</b>	9.1%	<b>15.4%</b>
Industrial Injuries Disablement Benefit	<b>41</b>	<b>15</b>	<b>14</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>0.0%</b>	<b>0.0%</b>
Jobseekers Allowance	52	<b>21</b>	16*	<b>11</b>	0	<b>1</b>	0.0%	<b>9.1%</b>
Maternity Allowance	<b>3</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0.0%</b>	<b>0.0%</b>
Pension Credit	<b>11</b>	<b>4</b>	<b>4</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>25.0%</b>	<b>0.0%</b>
Personal Independence Payment	5349	2554	227	99	21	9	9.3%	9.1%
State Pension	<b>1</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0.0%</b>	<b>0.0%</b>
Social Fund	<b>13</b>	<b>15</b>	<b>7</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>0.0%</b>	<b>0.0%</b>
Universal Credit	<b>571</b>	410	<b>328</b>	25*	<b>13</b>	1	<b>4.0%</b>	4%
<b>Total</b>	<b>7741</b>	<b>3765</b>	<b>985</b>	<b>400</b>	<b>50</b>	<b>23</b>	<b>5.1%</b>	<b>5.8%</b>

*Figures in bold denotes complete census of the benefit*

*Note small sample size of some benefits*

*\*denotes sample size of less than 30 monitored*

## Chapter 2 - The Sample and Sample Analysis

---

Across all cases monitored in year 2019/20 the initial decision maker was judged to have made an incorrect decision in 50 cases representing 5.1% of all cases monitored in that year, and in 2020/2021, 23 cases representing 5.8% of all cases monitored.

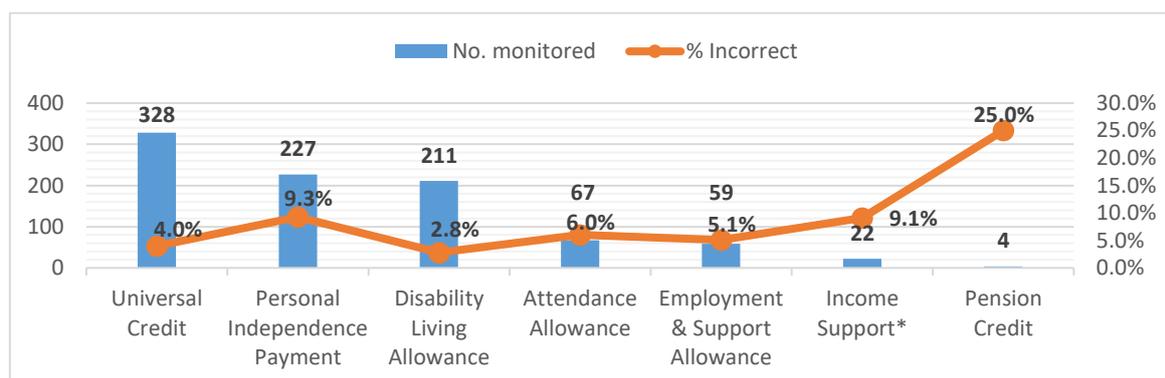
It is evident from this table that there is a considerable degree of variation in the level of incorrect initial decisions across benefits.

Of those benefits where a complete census was recommended, there were no cases assessed as having the initial decision incorrectly made for Bereavement Benefit, Carer's Allowance, Child Maintenance, Industrial Injuries Disablement Benefit and Social Fund across both years. Additionally in 2019/20 Maternity Allowance was also assessed as not having an initial incorrect decision and in 2020/21 no incorrect decisions were recorded in Pension Credit and State Pension. It should be noted that the total numbers of cases able to be monitored for these benefits are small and so the results need to be treated with caution. In cases where a census was used, any incorrect decision may have a significant impact on the percentage of incorrectness again distorting the results.

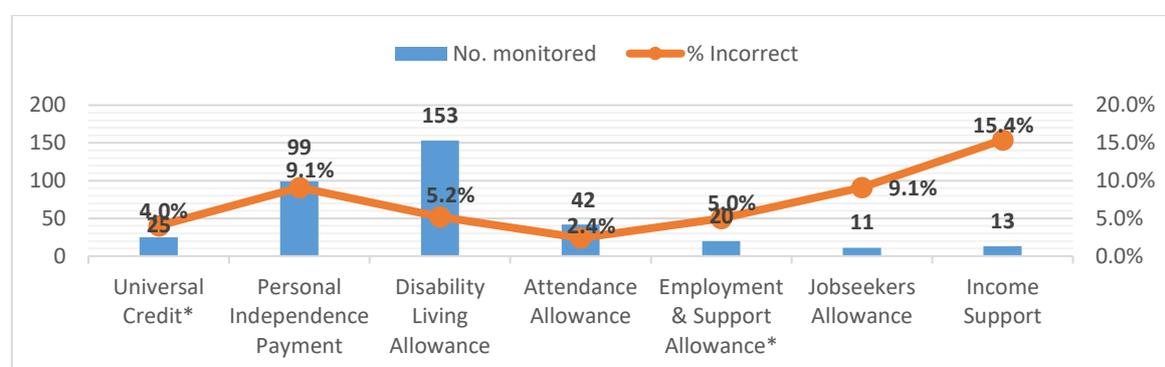
In the sample of cases monitored in 2019/20, one benefit, Jobseekers Allowance, had no incorrect decisions registered. Of those sampled in year 2020/21 all benefits had one or more initial incorrect decision.

Figures 1 and 2 shows graphically the variation across the remaining benefits for both years. Where present; levels of incorrectness in the initial decision range from approximately 25.0% of 4 Pension Credit cases monitored to 2.8% of 211 Disability Living Allowance cases monitored in year 2019/20. In year 2020/21 the variation ranged from approximately 15.4% of 13 Income Support cases monitored to 2.4% of 42 Attendance Allowance cases monitored.

**Figure 1: Incorrectness of Initial Decisions by Benefit Type (%) Year 2019/20**



**Figure 2: Incorrectness of Initial Decisions by Benefit Type (%) Year 2020/21**



### 2019/2020

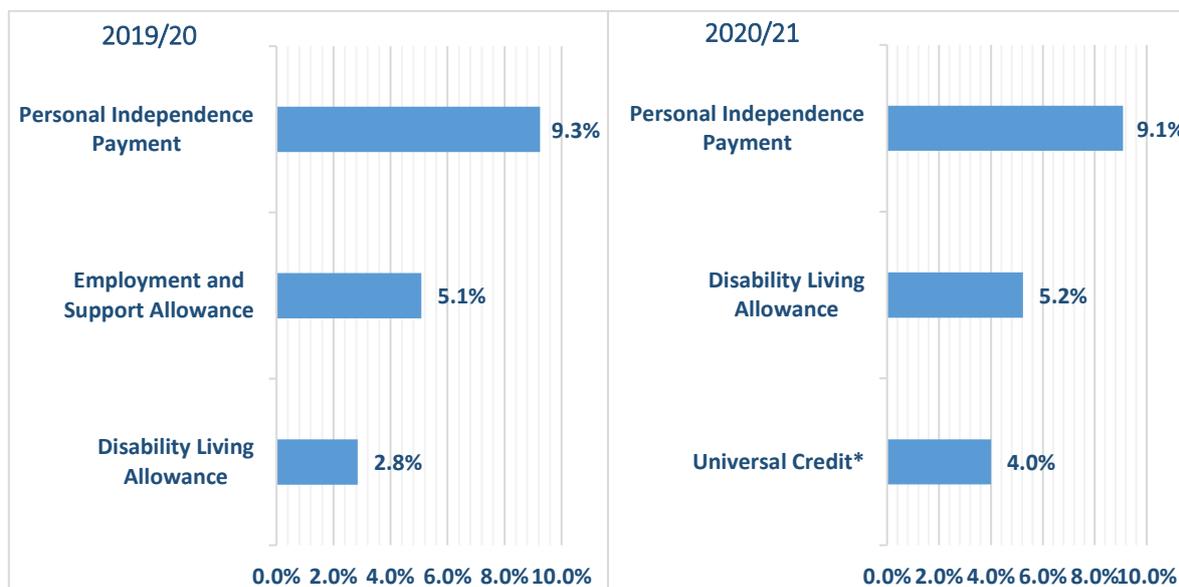
Personal Independence Payment and Employment and Support Allowance accounted for 69.1% and 11.0% of all cases registered respectively. The level of incorrectness in the initial decisions in the sample for Personal Independence Payment was 9.3% and for Employment and Support Allowance it was 5.1%.

### 2020/2021

Personal Independence Payment and Disability Living Allowance accounted for 67.8% and 11.0% of all cases registered respectively. The level of incorrectness in the initial decisions in the sample for Personal Independence Payment was 9.1% and for Disability Living Allowance it was 5.2%.

In both years this reflected both the number of people claiming the benefit and the complexity in delivery of the benefit.

**Figure 3: Incorrectness of Initial Decisions by the three Benefits with the Largest Number of Cases Registered (%) Year 2019/20 and 2020/21**



### Reason(s) for the Initial Decision Being Incorrectly Made.

When an initial decision is deemed incorrect the reason or reasons for this are recorded.

In the period April 2019 to March 2020 there were 50 monitored cases where the initial decision was deemed incorrect. There were 68 reasons recorded for these 50 cases. In the period April 2020 to March 2021, there were 23 monitored cases where the initial decision was incorrect, with 42 reasons in total.

Figure 4 illustrates the number of reasons given for cases where the initial decision was made incorrectly.

**Figure 4: Number of Cases and Reason(s) for Assessing Initial Decision Incorrectly**



## Chapter 2 - The Sample and Sample Analysis

Figure 4 also indicates that in the majority of cases across both years (78.0% and 60.9% respectively) where the initial decision was incorrect a single reason was given. Additionally, in 2019/20 there were 5 cases (10.0%) where two reasons were given for incorrectness, 5 cases where three reasons were given and 1 case (2%) where four reasons were given. In 2020/21 there were 3 cases (13.0%) where two reasons were given for incorrectness, 4 cases where three reasons were given (17.4%) and 2 cases (8.7%) where five reasons were given.

Table 2 below sets out the reasons for cases being assessed as having the initial decision incorrectly made.

**Table 2: Reasons for Incorrectness in year 2019/20 and 2020/21**

Reasons for Incorrectness		Number of Occurrences		% of Total	
		2019/20	2020/21	2019/20	2020/21
F1	Insufficient facts/evidence due to inadequate investigation of the claim or revision	18	12	26.5	28.6
F2	Failed to request adequate medical guidance or expert reports relevant to the decision	2	1	2.9	2.4
F3	Failed to identify a finding(s) which needed to be made on the basis of the rules of entitlement relevant to the claim or revision	5	3	7.4	7.1
F4	Misinterpretation/misunderstanding of the evidence available to the officer	15	7	22.1	16.7
F5	Wholly unreliable evidence taken into account	3	0	4.4	0
F6	Disregarded relevant evidence	15	6	22.1	14.3
F7	Failed to identify/resolve an obvious conflict in the evidence	3	2	4.4	4.8
L1	Did not identify the correct legal rules relevant to the claim/revision	4	4	5.9	9.5
L2	Misinterpreted the legal rules relevant to the claim	1	3	1.5	7.1
L3	Failed to identify a change in legal rules relevant to the claim/revision	0	1	0	2.4
L4	Overlooked a relevant Commissioners decision/Court decision which was/should have been available	2	3	2.9	7.1
<b>Total</b>		<b>68</b>	<b>42</b>	<b>100</b>	<b>100</b>

The most common reason for incorrectness across both years was 'The decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision' (F1), given 18 times in 2019/20 and 12 times in 2020/21, representing 26.5% and 28.6% of all reasons given in each year respectively.

### Correctly Made Decisions Overturned by the Tribunal

Of the 985 cases monitored in 2019/20 and 400 cases monitored in 2020/21, 418 (42.4%) and 187 (46.8%) respectively, were altered by the tribunal. These cases were correctly made by the decision maker in the first instance.

Table 3 explains why correctly made decisions were overturned by tribunals.

**Table 3: Definition of Correctly Made Altered Decisions**

Correctly Made Decisions Overturned by the Tribunals	
<b>FA.</b>	The tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable.
<b>FB.</b>	The tribunal was given additional evidence which was not available to the officer who made the decision.

Table 4 sets out for both years the total number and percentage of correctly made decisions that were overturned by the tribunal due to the way in which existing evidence and additional evidence was considered by the tribunal.

**Table 4: Overall Totals for Correctly Made Altered Decisions**

Year	Total Registered	Monitored (sample size)	Total Altered	Percentage Altered	Total FA	Percentage FA	Total FB	Percentage FB
2019/20	7741	985	418	42.44%	118	11.98%	300	30.46%
2020/21	3765	400	187	46.75%	62	15.50%	125	31.25%

Tables 5 - 8 on the following pages provide details on an individual benefit basis.

## Chapter 2 - The Sample and Sample Analysis

Tables 5 and 6 represent those benefits with a high level of appeal activity. All of these benefits have a high percentage of appeals overturned due to the provision of additional evidence at or before the date of the final tribunal hearing (FB). In all of these appeals, the additional evidence was either oral evidence by the appellant or a witness at the hearing or by way of medical records or medical reports from medical or other professionals. The percentage of cases with additional evidence range from 20% to 45 % / 47% in both years.

The percentage of cases where the decision was altered because the tribunal took a different view of the original evidence before the decision maker (FA), ranged from 7.9% and 20.3% in 2019/2020 to 4.8% and 23.2% in 2020/2021.

Overall, for these high appeal activity benefits, the percentage of appeals where the decision was altered was 30.46% in 2019/200 and 31.5% in 2020/2021. When measured against all appeals monitored these percentages reduce slightly to 30.46% and 31.25% respectively.

With the exception of Employment and Support Allowance and Universal Credit in 2020/21, these results are based on a reliable sample of cases.

**Table 5: Correctly Made Altered Decisions for Main Appeal Activity Benefits 2019/20**

Category	2019/20							
	Total Registered	Monitored (sample size)	Total Altered	Percentage Altered	Total FA	Percentage FA	Total FB	Percentage FB
Attendance Allowance	121	67	23	34.3%	9	13.4%	14	20.9%
Disability Living Allowance	585	211	133	63.0%	38	18.0%	95	45.0%
Employment Support Allowance	849	59	28	47.5%	12	20.3%	16	27.1%
Personal Independence Payment	5349	227	123	54.2%	29	12.8%	94	41.4%
Universal Credit	<b>571</b>	<b>328</b>	<b>100</b>	<b>30.5%</b>	<b>26</b>	<b>7.9%</b>	<b>74</b>	<b>22.6%</b>
<b>TOTAL of these benefits</b>	<b>7475</b>	<b>892</b>	<b>407</b>	<b>45.63%</b>	<b>114</b>	<b>12.78%</b>	<b>293</b>	<b>32.85%</b>
<b>OVERALL TOTAL of all benefits</b>	<b>7741</b>	<b>985</b>	<b>418</b>	<b>42.44%</b>	<b>118</b>	<b>11.98%</b>	<b>300</b>	<b>30.46%</b>

*Figures in bold denotes complete census of the benefit*

## Chapter 2 - The Sample and Sample Analysis

**Table 6: Correctly Made Altered Decisions for Main Appeal Activity Benefits year 2020/21**

2020/21								
Category	Total Registered	Monitored (sample size)	Total Altered	Percentage Altered	Total FA	Percentage FA	Total FB	Percentage FB
Attendance Allowance	67	42	12	28.6%	2	4.8%	10	23.8%
Disability Living Allowance	413	153	105	68.6%	32	20.9%	73	47.7%
Employment Support Allowance	201	20*	8	40.0%	4	20.0%	4	20.0%
Personal Independence Payment	2554	99	53	53.5%	23	23.2%	30	30.3%
Universal Credit	410	25*	7	28.0%	0	0.0%	7	28.0%
<b>TOTAL of these benefits</b>	<b>3645</b>	<b>339</b>	<b>185</b>	<b>54.57%</b>	<b>61</b>	<b>17.99%</b>	<b>124</b>	<b>36.58%</b>
<b>OVERALL TOTAL of all benefits</b>	<b>3765</b>	<b>400</b>	<b>187</b>	<b>46.75%</b>	<b>62</b>	<b>15.50%</b>	<b>125</b>	<b>31.25%</b>

*Note small sample size of some benefits*

*\*denotes sample size of less than 30 monitored*

Tables 7 and 8 illustrate the position for those benefits with a low appeal activity. Except for Income Support in 2019/20 and Child Maintenance in 2020/21 where 4 and 1 cases respectively were altered under the FA category, no other benefits were overturned for this reason. Additionally, apart from Child Maintenance in 2020/21 all other benefits in tables 7 and 8 had one or more decision(s) overturned due to additional evidence being received by the tribunal.

Given the low appeal activity in the benefits set out in tables 7 and 8 and consequently the number of appeals available for monitoring, the individual benefit results are not reliable. In addition a number of benefits in each year did not have any decisions overturned in either category. These were Maternity Allowance, Pension Credit and Social Fund in year 2019/2020 and Bereavement Benefit, Carer's Allowance, Income Support, Jobseekers Allowance, Pension Credit, Social Fund and State Pension in 2020/2021.

## Chapter 2 - The Sample and Sample Analysis

**Table 7: Correctly Made Altered Decisions - Low Appeal Activity Benefits in year 2019/20**

2019/20								
Category	Total Registered	Monitored (sample size)	Total Altered	Percentage Altered	Total FA	Percentage FA	Total FB	Percentage FB
Carer's Allowance	30	8	1	12.5%	0	0.0%	1	12.5%
Child Maintenance	39	18	1	5.6%	0	0.0%	1	5.6%
Bereavement Benefit	2	2	1	50.0%	0	0.0%	1	50.0%
Income Support	68	22*	5	22.7%	4	18.2%	1	4.5%
Industrial Injuries Disablement Benefit	41	14	1	7.1%	0	0.0%	1	7.1%
Jobseekers Allowance	52	16*	2	12.5%	0	0.0%	2	12.5%
<b>TOTAL of these benefits</b>	<b>232</b>	<b>80</b>	<b>11</b>	<b>13.75%</b>	<b>4</b>	<b>5.0%</b>	<b>7</b>	<b>8.75%</b>
<b>OVERALL TOTAL of all benefits</b>	<b>7741</b>	<b>985</b>	<b>418</b>	<b>42.44%</b>	<b>118</b>	<b>11.98%</b>	<b>300</b>	<b>30.46%</b>

*Figures in bold denotes complete census of the benefit*

*Note small sample size of some benefits*

*\*denotes sample size of less than 30 monitored*

**Table 8: Correctly Made Altered Decisions - Low Appeal Activity Benefits Year 2020/2021**

2020/21								
Category	Total Registered	Monitored (sample size)	Total Altered	Percentage Altered	Total FA	Percentage FA	Total FB	Percentage FB
Child Maintenance	27	13	1	7.7%	1	7.7%	0	0.0%
Income Support	18	13	1	7.7%	0	0.0%	1	7.7%
<b>TOTAL of these benefits</b>	<b>45</b>	<b>26</b>	<b>2</b>	<b>7.7%</b>	<b>1</b>	<b>3.8%</b>	<b>1</b>	<b>3.8%</b>
<b>OVERALL TOTAL of all benefits</b>	<b>3765</b>	<b>400</b>	<b>187</b>	<b>46.75%</b>	<b>62</b>	<b>15.50%</b>	<b>125</b>	<b>31.25%</b>

*Figures in bold denotes complete census of the benefit*

*Note small sample size of some benefits*

*\*denotes sample size of less than 30 monitored*

### Summary and Conclusion

#### 2019/20

This section represents an analysis of appeals registered between April 2019 and March 2020.

In total 7,741 appeals regarding decisions made by the Department for Communities were registered between April 2019 and March 2020. Of these, 985 cases, representing 12.7% of all registered, were monitored to assess the level of incorrectness amongst initial cases decision.

Across all monitored cases the level of incorrectness among initial decisions was 5.1%. There was a variation in the level of incorrectness of initial decisions across benefits. No incorrect initial decisions were recorded for a range of benefits including Bereavement Benefit, Carer's Allowance, Child Support, Industrial Injuries Disablement Benefit, Jobseekers Allowance, Maternity Allowance and Social Fund. For instances where incorrect decisions were recorded, they ranged from 25.0% (Pension Credit) to 2.8% (Disability Living Allowance) (Note very small cases numbers, for example in relation to Pension Credit, that may distort results).

A majority (78.0%) of cases where the initial decision was assessed as incorrect cited one reason for this incorrectness. The most common reason for incorrectness was 'The decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision' (F1).

#### 2020/21

This section represented an analysis of appeals registered between April 2020 and March 2021.

In total 3,765 appeals regarding decisions made by the Department for Communities were registered between April 2020 and March 2021. Of these, 400 cases, representing 10.6% of all registered, were monitored to assess the level of incorrectness amongst initial cases decision.

## Chapter 2 - The Sample and Sample Analysis

---

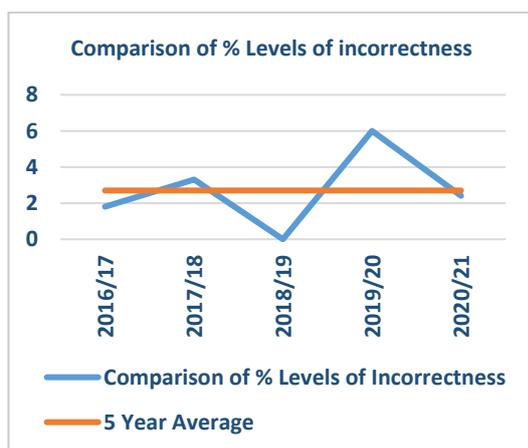
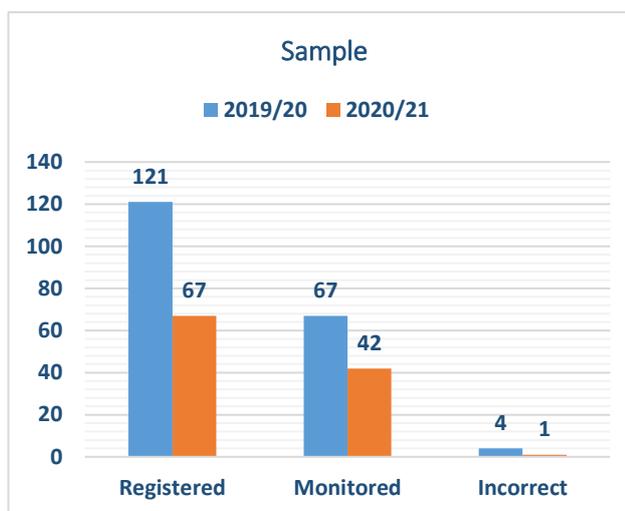
Across all monitored cases the level of incorrectness among initial decisions was 5.8%. There was a variation in the level of incorrectness of initial decisions across benefits. No incorrect initial decisions were recorded for a range of benefits including Bereavement Benefit, Carer's Allowance, Child Maintenance, Industrial Injuries Disablement Benefit, Pension Credit, State Pension and Social Fund. For instances where incorrect decisions were recorded, they ranged from 15.4% (Income Support) to 2.4% (Attendance Allowance) (Note very small cases numbers, for example in relation to, Employment and Support Allowance and Jobseekers Allowance in 2020/21 that may distort results).

A majority (60.9%) of cases where the initial decision was assessed as incorrect cited one reason for this incorrectness. The most common reason for incorrectness was 'The decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision' (F1).

### Attendance Allowance

#### Incorrectly Made Decisions

As Attendance Allowance is a relatively small benefit in terms of appeal activity, 55.4% and 62.7% respectively of appeals received in this category were monitored in years 2019/20 and 2020/21. There were 4 incorrectly made decisions identified in 2019/20 and 1 in 2020/21. The level of incorrectness recorded for 2019/20 was 6% and for 2020/21 it was 2.4%.

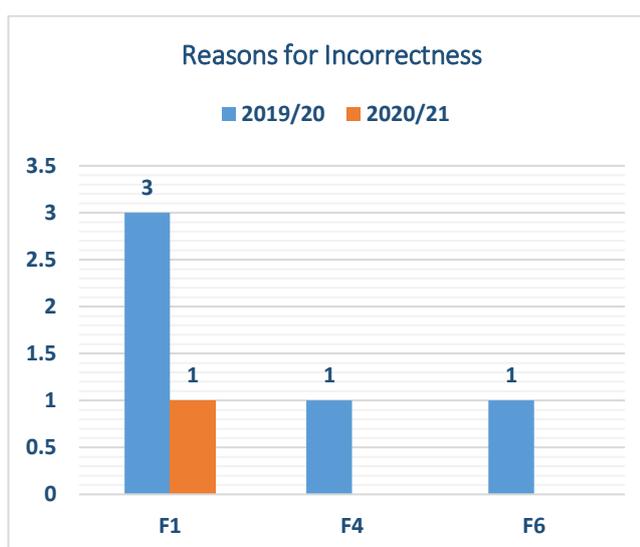


#### 5-Year Analysis

The level of incorrectness identified has fluctuated over the last 5 years. It increased from 1.8% in 2016/17 to 3.3% in 2017/18. It decreased to 0% in 2018/19 then increased again to a high of 6% in 2019/20, decreasing again to 2.4% in 2020/21.

When averaged over the 5 years the level of incorrectness is 2.7%.

There were 4 incorrectly made decisions identified in 2019/20 and 1 in 2020/21 in this category, with 3 separate reasons in the former and 1 in the latter recorded for incorrectness. \*F1, "The decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision", represented the most occurring reason for incorrectness across both years.



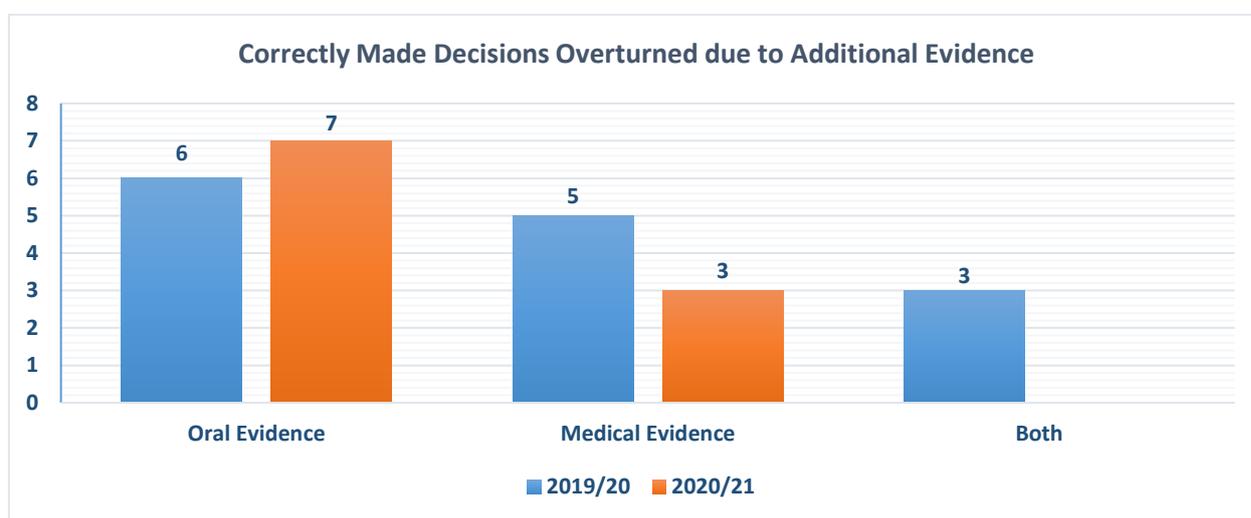
\*See table on page 11 for explanation of all reasons

### Correctly Made Decisions Overturned by the Tribunal

23 cases in 2019/20 and 12 cases in 2020/21, representing 34.3% and 28.6% respectively of those monitored, were correctly made by the decision maker but were overturned because the tribunal either accepted evidence which the decision maker was unwilling to accept (9 and 2 cases) (FA), or the tribunal was given additional evidence that was not available to the decision maker (14 and 10 cases)(FB).

Reasons for Overturning Correctly Made Decision	Number of Cases 2019/20	Number of Cases 2020/21
FA	9 (39.1%)	2 (16.7%)
FB	14 (60.9%)	10 (83.3%)

\*See table on page 12 for explanation of reasons



In 2019/20 and 2020/21 there were 6 and 7 cases respectively where the tribunal relied upon the direct oral evidence of the appellant and /or witnesses. This represents 9% and 16.7% of cases monitored. 5 cases in 2019/20 and 3 cases in 2020/21 turned on the content of medical evidence by way of GP or hospital records, or a medical report from the GP or a consultant.

Overall, the decisions in 8 cases in 2019/20 and 3 cases in 2020/21, representing 11.9% and 7.1% of cases monitored, were influenced by the availability of medical evidence to the tribunal.

As highlighted in all previous reports, these results continue to demonstrate that relevant information is available from appellants and medical professionals prior to making the decision on a claim.

## Chapter 3 - Social Security Benefit Decisions - Attendance Allowance

The table below sets out a selection of comments made by legal members of the tribunal in those appeals which were found to be correctly made.

Correctly Made Decisions - Comments made by Legal Members of the Tribunal
Year 2019/20
Witness evidence supported probability of higher rate Attendance Allowance needs.
There was sufficient evidence, in particular further medical evidence, which had been submitted to justify the award.
As accepted by Presenting Officer, the level of complaint / disability was consistent with documented diagnosis. Credible account from Appellant and his adult daughter of a typical day. The appeal submission was entirely adequate but too much reliance was placed on the brief replies in GP Factual Report.
The medical evidence was limited. There was no Expert Medical Professional report. There was a medical care plan from the GP as well as a short extract from his GP records and a diabetes summary letter. We also had the benefit of the outcomes of a physiotherapist's report following referral to Integrated Clinical Assessment and Treatment Services. Whilst the evidence was not in depth it did help to corroborate the Appellant's claims. The Decision Maker did refer to the relevant evidence and the legislation. We had the benefit of hearing directly from the Appellant and comparing that with the medical evidence provided.
Medical evidence provided by Appellant was consistent with written submission provided on behalf of Appellant.
No medical evidence was available to Decision Maker. At hearing the tribunal had GP notes/records and also heard oral evidence from Appellant and daughter. Evidence at hearing was supportive of an award.

### Year 2020/21

The decision made was reasonable but based on limited evidence. The Appellant had recently moved and was not with the GP who supplied the report for very long. For the appeal we had the Appellant's complete medical records which showed a multitude of conditions.

The evidence here was primarily from the GP. This provided a succinct account of the various health issues and helped indicate the main conditions. The Decision Maker did correctly have regard to the legislation and evidence. The Tribunal had the benefit of additional evidence as well as a submission from his representative.

The Tribunal accepted oral evidence from Appellant and written evidence from two witnesses which were supportive of the claim.

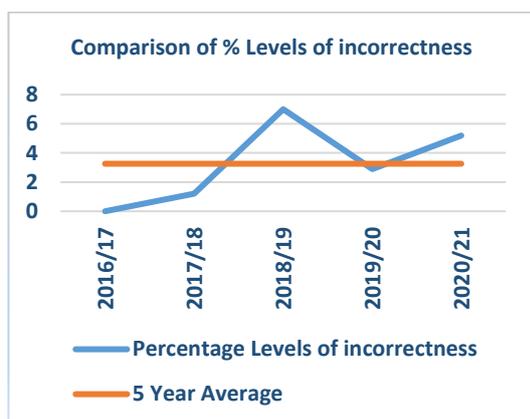
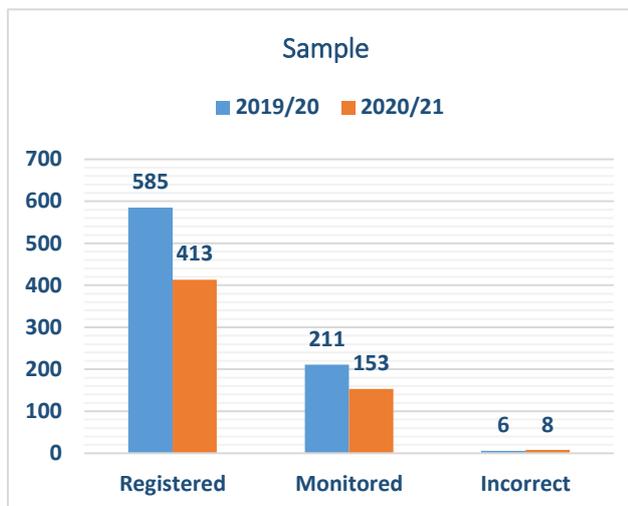
### Comments/Recommendations

The issues arising were in the main connected with the availability of medical evidence. As in all of my previous reports I would encourage the Department to consider how this can be obtained prior to decision making or during the mandatory reconsideration process.

## Disability Living Allowance

### Incorrectly Made Decisions

Disability Living Allowance is one of the top 3 categories of appeal activity in both reporting years. 36.1% and 37% respectively of appeals received in this category in years 2019/20 and 2020/21 were monitored. There were 6 incorrectly made decisions identified in year 2019/20 and 8 in 2020/21. The level of incorrectness recorded for 2019/20 was 2.8% and in 2020/21 it was 5.2%.

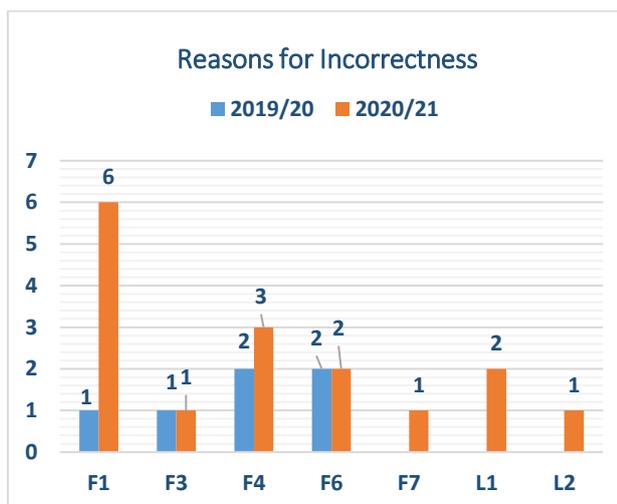


### 5 Year Analysis

The level of incorrectness identified increased from 0% in 2016/17 to 1.2% in 2017/18 and then to a high of 7% in 2018/19. In the current 2 year reporting periods, it decreased to 2.8% in 2019/20 before increasing again to 5.2% in 2020/21.

When averaged over the 5-year period, the level of incorrectness is 3.24%.

There were 6 incorrectly made decisions identified in 2019/20 and 8 in 2020/21. There were 4 separate reasons for incorrectness recorded in 2019/20 and 7 in 2020/21 and these reasons occurred 6 and 16 times respectively. F4\* and F6\* represented the most occurring reasons for incorrectness in 2019/20, with F1\* representing the most occurring reason in year 2020/21.



\*See table on page 11 for explanation of all reasons

## Chapter 3 - Social Security Benefit Decisions – Disability Living Allowance

The table below sets out a selection of comments made by legal members of the tribunal in those cases identified as incorrectly Made.

Incorrectly Made Decisions - Comments made by Legal Members of the Tribunal
Year 2019/20
<p>The Appellant's mother and appointee gave extensive oral evidence to the tribunal as to the effects of the Appellants ADHD at the relevant date. By a finely balanced decision the tribunal was satisfied of the credibility and reliability of this oral evidence, which corroborated why the Appellant is on medication for ADHD.</p>
<p>The Appellant is entitled to the High Rate of the Mobility component and to the Middle Rate of the Care Component (Day Attention).</p> <p>The supplementary submission from the department acknowledges he has a diagnosed physical disability; Autism. the Decision Maker focused on the mental aspect and the question of choice rather than inability. We have the benefit of hearing from his mother and her evidence was that he had regressed and could not effectively walk. Furthermore, the medical evidence submitted indicated physical issues with walking and referred to 'bum shuffling' and poor balance which went beyond choice.</p> <p>Report relating to the diagnoses of autism had been submitted. These were professional detailed reports. The same could be said about reports from the Education Authority. There was no Expert Medical Professional's report and original decision was made relying upon a GP report which contained limited information in summary form. The decision maker did give careful consideration to the evidence in an addendum report.</p> <p>This came about following the late submission of a diagnostic report into autism. The further submission focuses on this report and takes the view that mobility is affected by an apparent refusal to walk rather than an inability.</p> <p>However, the Decision Maker did not comment on references to physical issues in the reports such as poor balance et cetera. This appeal was an example of how there can be different start dates within an award by virtue of when the child's third birthday occurred. It also illustrates the physical restriction required for high-rate mobility as opposed to mental restrictions.</p>

## Chapter 3 - Social Security Benefit Decisions – Disability Living Allowance

The Decision Maker misinterpreted the Consultant Paediatric Neurosurgeon's report submitted with the claim.

Further investigation needed by department. (Autism case - young person aged 4).

The reports provided in respect of this child indicated that he had severe developmental delay as well as Autism Spectrum Disorder. No award at all was made when the child clearly had substantial care needs (significantly more than a child of the same age) There was independent evidence of severe mental impairment as well. To give no award at all flew in the face of the independent evidence.

Autism case. The medical evidence clearly indicated substantial needs. This case highlights an issue seen in other appeals dealing with autism. Departmental officers are not properly investigating the issues and are misinterpreting or ignoring relevant medical / expert reports.

### Year 2020/21

This was a case where a young child had a serious medical condition seriously affecting her balance and causing multiple fractures in the past. There was detailed medical evidence in the papers confirming this. The department misinterpreted this evidence.

Insufficient investigation. Autism Spectrum Disorder case (15 year old girl). Department did not properly investigate claim.

Higher rate mobility and higher rate care disability living allowance until child's 11th birthday.

Tribunal awarded low rate mobility and middle rate care for a closed period of 4 months. The further medical evidence of both a Specialist Speech and Language Therapist and also the Vice Principle and Special Educational Needs Coordinator of her primary school, were considered highly reliable and probative of the awards made.

Expert evidence not fully / properly considered by department (Autism case).

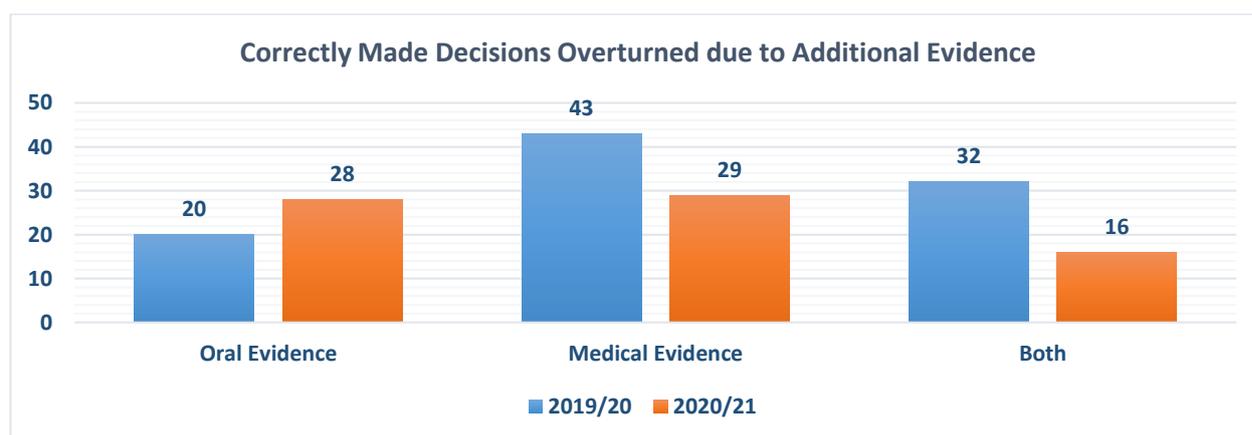
The department had incorporated two separate decisions and two separate appeals in the one submission instead of preparing two separate submissions. The standard of the submissions was totally inadequate.

### Correctly Made Decisions Overturned by the Tribunal

133 cases in year 2019/20 and 105 cases in year 2020/21, representing 63% and 68.6% respectively of those monitored, were correctly made by the decision maker but were overturned because the tribunal either accepted evidence which the decision maker was unwilling to accept (38 and 32 cases respectively)(FA), or the tribunal was given additional evidence that was not available to the decision maker (95 and 73 cases respectively)(FB).

Reasons for Overturning Correctly Made Decision	Number of Cases 2019/20	Number of Cases 2020/21
FA	38 (28.6%)	32 (30.5%)
FB	95 (71.4%)	73 (69.5%)

\*See table on page 12 for explanation of reasons



In 2019/20 and 2020/21 there were 20 and 28 cases respectively where the direct oral evidence of the appellant or a witness was the sole reason for the decision being overturned. This represents 9.5% and 18.3% of cases monitored. 43 cases in 2019/20 and 29 cases in 2020/21 turned on the content of medical evidence by way of GP or hospital records, or a medical report from the GP or a consultant.

Overall, the decisions in 75 cases in 2019/20 and 45 cases in 2020/21, representing 35.5% and 29.4% of cases monitored, were influenced by the availability of medical evidence to the tribunal.

As highlighted in all previous reports, these results continue to demonstrate that relevant information is available from claimants and medical professionals prior to making the decision on a claim.

## Chapter 3 - Social Security Benefit Decisions – Disability Living Allowance

The table below sets out a selection of comments made by legal members of the tribunal in those appeals that were found to be correctly made.

Correctly Made Decisions - Comments made by Legal Members of the Tribunal
Year 2019/20
Witness evidence gave a clearer picture of the difficulty faced by the claimant.
Additional clinical evidence obtained by the Tribunal showed the full extent of the Appellant's mobility and care issues.
The Decision Maker did refer to the evidence submitted at the time and gave reasons behind the decisions. We do have the benefit of subsequent evidence including a specialist assessment and medical records which was consistent with the mother's account in the papers and given at hearing.
There was no Expert Medical Professional's report but GP records and some hospital letters provided. These gave clear evidence as to medical issues. The Decision Maker did not refer to the relevant evidence. The further submission clearly states it is how things were at time of the decision. However, the fact a diagnosis was made first does not mean symptoms were not there.
Credible evidence from Appellant supported by objective medical evidence, school reports and the opinion of the Educational Psychologist in the Education Authority report.
The decision on record says Appellant can only be considered for lower rate mobility until his 5th birthday. This presumably should mean until after his 5th birthday. There was no factual report however, we had orthopaedic letters which helped in the assessment of his condition. The Decision Maker appears to have a fairly superficial report concluding the child was not affected much of the time, however he had been pushed in the wheelchair plus similar indication of his needs.
Specialist diagnosis of Attention Deficit Hyperactivity Disorder and continuing contact with specialists. Symptoms alleviated by medication, regularly adjusted. Appellant still young at 12yrs. Mainstream school - no intellectual impairments.
Provisions satisfied re extreme behavioural problems etc. Consideration of oral and medical evidence supported an award of middle rate care (day attention).

## Chapter 3 - Social Security Benefit Decisions – Disability Living Allowance

The Decision Maker's decision was based on the evidence at that time. We had the benefit of further medical evidence and of hearing from the mother. We had various school and medical assessments which covered matters in detail. The Decision Maker correctly applied the relevant legislation to the claim and gave adequate reasons. We had the benefit of further evidence from the appointee and various assessments.

The Decision Maker had a plethora of assessment evidence giving comprehensive details. The Decision Maker considered the law and had adequate evidence. We were influenced by the mother's evidence and the supporting report.

Objective medical and school reports supported Appointee's account. Mental health and physical health conditions, treatment, and medical management together with support in school environment, in keeping with evidence from appointee.

We had the Understanding the Needs of Children in Northern Ireland report and personal education plan which the Decision Maker did not see prior to the decision.

The Decision Maker gave a clear account for the award. Regarding the care time comments, the Decision Maker counted on generalities rather than by specific reference to the evidence. There were detailed reports available regarding a diagnosis of autism. The Decision Maker referred to the available evidence but did not make specific comment on aspects of the evidence. The conclusion was based on generalities.

The decision was given by the department on the evidence provided. There was a detailed report on the underlying condition. This was a clear insight into how the child was affected. The Decision Maker referred to relevant period and commented on the legislation.

Medical evidence and oral evidence from parents supportive of an award for daytime attention for child (aged 4) with significant disabilities. Additional evidence given by a witness and medical report from consultant paediatrician.

There were detailed reports regarding Special Education Needs. These gave insight and input for the appeal. We had additional school evidence. The decision maker did consider the report and had regard to the relevant legislation. We had the benefit of hearing from the mother and additional report.

## Chapter 3 - Social Security Benefit Decisions – Disability Living Allowance

Further evidence supported the credibility of the needs stated by the appointee. Credible and genuine witness (appointee - mum). Further supportive medical evidence and school report provided.

### Year 2020/21

The Decision Maker made affirmative comments on the evidence. We were given additional evidence from a Private Clinic and GP notes plus heard from his wife. The Department did not arrange an Expert Medical Professional report. The Appellant was a 10-year-old diagnosed with Autism. Decision Maker correctly applied the legislation we had the benefit of additional evidence.

No report from the Expert Medical Professional. Some comments covering the area in question. The Decision Maker correctly applied the law. We had the benefit of hearing from the child's father.

The Appeal is related to a 14-year-old boy with respiratory issues and Autism Spectrum Disorder traits. The Decision Maker had regard to the claim pack and various appointment letters and letters from the mother. The school report covered essential issues. We also had the benefit at the appeal stage of his GP notes and records which contain further detailed specialist reports. The Decision Maker did have regard to the relevant legislation and applied this to the evidence then available. We had the benefit of additional evidence and of hearing from the child's mother.

The decision was not defective. We had the benefit of hearing from the Appellant's father and heard of his care needs on a day-to-day basis. There was no Expert Medical Professional report commissioned. We did have reports from cardiac and paediatric consultants plus by an individual with expertise in the Appellant's chronic fatigue. The Decision Maker did consider the evidence and made comments that were sustainable. We had the benefit of hearing from the Appellant's father about how he was affected.

Appointee provided further detailed evidence and was credible. The Tribunal accepted the Appointee's oral evidence in relation to the Appellant's need for guidance and supervision. The information provided in the submission papers indicated that a referral for counselling had been made. Oral evidence confirmed that counselling had commenced and was ongoing.

This appeal concerned a claim for Disability Living Allowance by a child. There was no Expert Medical Professional report. We did have the benefit of various specialist reports and his mother's views. The original decision made by the Decision Maker on the available evidence was reasonable. We had the benefit however of hearing directly from the Appellant's Appointee about how the issues presented. We also had the benefit of various reports which helped us in our assessment.

The medical notes indicated that the child had a genetic condition which was severe and requires a high level of care which will be lifelong.

Objective medical and educational reports corroborated the evidence of the Appellant. Appellant diagnosed with Attention Deficit Hyperactivity Disorder and displayed significant behavioural disturbance. Appointee's evidence was credible and in keeping with the medical management and treatment of the Appellant, the input from paediatricians, his presentation in the school environment, the involvement of inter alia education authority behavioural support intervention and the views of the Special Educational Needs Coordinator. The medical reports within the GP notes and records and the education reports were of a high standard. These facilitated the tribunal in the adjudication and in reaching the decision to allow the appeal. Extensive, relevant evidence was provided in the documents available to the Tribunal.

The Decision Maker did refer to the relevant evidence submitted and gave reasons behind the decision, namely that the Appellant attended mainstream school and there was no evidence of extra support in place. We received further additional evidence from his mother about how he was affected, and his school report was consistent with the mother's account.

The Appellant has proven very marked symptoms of Autism Spectrum Disorder with Obsessive Compulsive Disorder and displays extreme anxiety. The decision of the Department disallowed both the Mobility and Care components of DLA. However, the Department's submission only set out a narrative for the Department's reasons on the care component.

The suite of addendum medical evidence documents submitted satisfied the Tribunal that the Appellant continues to have ongoing issues with his Attention Deficit Hyperactivity Disorder which requires significant medication and that the middle rate of the Care component of DLA and the low rate of the Mobility component of DLA remain appropriate for the period.

Oral account credible and consistent with report. The decision made by the Decision Maker was reasonable. We had evidence from the mother. Special Educational Needs Coordinator's report refers to impulsive and development issues. There was limited medical evidence available to the Decision Maker that gave an insight into the Appellant's level of need.

We had a report from the Paediatric Clinic which established that the Appellant had not responded to medication, plus oral evidence from the Appointee outlining the relevant care needs. The Tribunal awarded the middle rate of the care component accepting in part the evidence of the Appointee.

Child claimant attended the hearing. Evidence including observations of the child supported and substantiated the new award made. Appeal allowed in relation to both components. Higher rate care and mobility (deeming conditions satisfied). Submission itself did not adequately address the grounds to supersede aspect of this appeal.

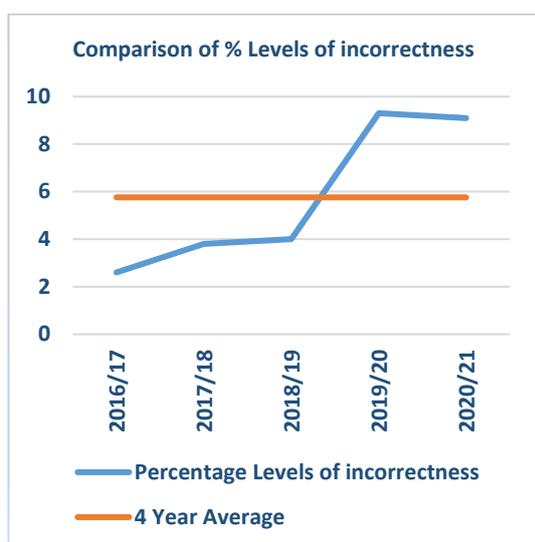
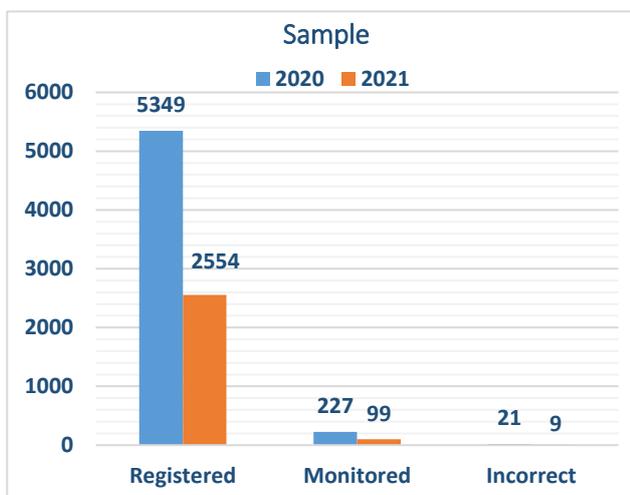
### Comments/Recommendations

The comments made by the members in all sections of this specific benefit area should be considered carefully. They clearly indicate that further investigation of claims prior to decision making and in addition before an appeal is heard is required. Autism Spectrum Disorders have been highlighted by members in both comment categories. These are clearly causing difficulties and have been specifically mentioned by members in a number of comments throughout. I would recommend training be provided in this area and consideration should be given to how claims are assessed taking into account the issues raised in *Galo –v- Bombardier Aerospace UK* [2016] NICA 25.

### Personal Independence Payment

#### Incorrectly Made Decisions

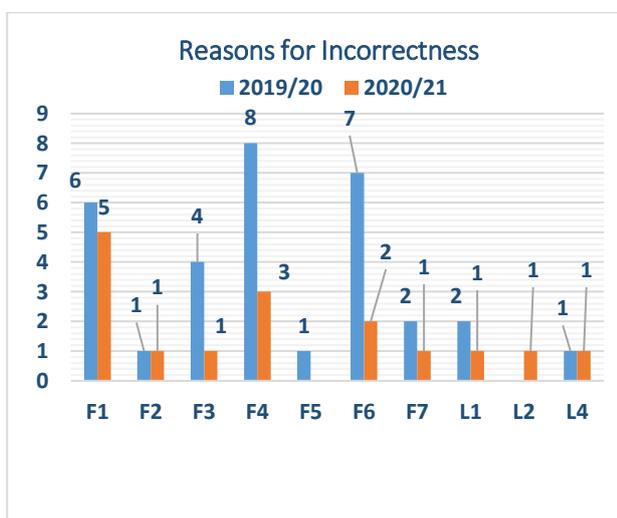
Personal Independence Payment (PIP) is the largest appeal area across both years, accounting for 69.1% and 67.8% of all appeals registered in years 2019/20 and 2020/21. 4.2% and 3.9% of all appeals received were monitored in each year respectively and the level of incorrectness identified was 9.3% in 2019/20 and 9.1% in 2020/21.



#### 5-Year Analysis

Personal Independence Payment was a new benefit introduced in 2016-17. In that first year the level of incorrectness was identified as 2.6%. In the following two years it increased to around 4% (3.8% in 2017/18 and 4% in 2018/19). A substantial increase to just above 9% has been recorded for the current reporting years of 2019/20 and 2020/21. When averaged over the 5 years the level of incorrectness is 5.76%.

There were 21 incorrectly made decisions in year 2019/20 and 9 in 2020/21. There were 9 separate reasons for incorrectness recorded in each year and these reasons occurred 32 and 16 times respectively. F4\* represented the most occurring reason in 8 of the 21 cases in 2019/20, with F1\* representing the most occurring reason in 2020/21 in 5 of the 9 cases.



\*See table on page 11 for explanation of all reasons

## Chapter 3 - Social Security Benefit Decisions – Personal Independence Payment

Comments made by legal members of the tribunal in those cases identified as incorrectly made are set out in the table below.

Incorrectly Made Decisions - Comments made by Legal Members of the Tribunal
Year 2019/20
<p>The Panel did agree that the assessment of the Appellant did not accurately reflect what the Appellant had said about his conditions and that insufficient weight had been given by the Assessor to the high levels of anti-depressants that the Appellant was taking. Appellant's mobility compromised by the ongoing chronic obstructive pulmonary disease so no improvement in this condition and also compromised by his knee difficulties. Assessors report did not properly reflect Appellant's conditions or give thought to there having been a deterioration in Appellant's condition- especially Chronic Obstructive Pulmonary Disease. The officer relied on Assessor's report without challenging the findings properly.</p>
<p>Enhanced Daily Living (18 points) Enhanced Mobility (14 points) on an ongoing basis. Significant chronic mental illness, series of falls requiring hospital admission. Electrolyte disturbance, hallucinations, alcohol excess. Refusing support/monitoring, Social Workers, Community Psychiatric Nurses, Community Mental Health Teams, Daughter.</p>
<p>An ongoing award of Standard Daily Living. Appeal disallowed on Mobility - no points. Despite the supplemental report within the submission the decision does not adequately address ESA assessment which indicated "significant issues" coping with everyday life which took place 3 weeks prior to Healthcare Professional's assessment which awarded zero points. Bizarre presentation was confirmed in Healthcare Professional's assessment (and in oral evidence) but still zero points. As above Healthcare Professional report rationale is failed.</p>
<p>The Tribunal awarded Daily Living at the standard rate. The evidence within the papers satisfied the above award, which was in line with the award made by the Department at the end of a further period. The position did not appear to be any different during the period the tribunal was covering. The Decision Maker disregarded relevant evidence and the decision should have been re-considered in light of the Department's subsequent decision.</p>
<p>Appellant awarded standard rate of both mobility and daily living component. Appellant has limitations in terms of social engagement and going out. Department never estimated extent of Appellant's inability to engage with others and go out. Report from GP short.</p>

## Chapter 3 - Social Security Benefit Decisions – Personal Independence Payment

The original decision awarded daily living points owing to a hip problem that undoubtedly created an impact on mobility but then awarded zero points for mobility. A letter of offer was later sent by the Department to the Appellant offering mobility award but the Appellant did not respond to the letter of offer. The Department issued a letter of offer to the Appellant subsequent to the decision and prior to the appeal. A new claim was made prior to the Tribunal hearing but the department did not communicate this to the Tribunal. The Tribunal therefore considered a closed period award.

Inconsistent reasoning - if activities 1b, 4b and 6b applied, no cogent reason why 5b did not apply for someone with a long history of back pain with referral for back surgery.

The Appellant was awarded the standard rate of PIP Daily Living and Mobility for a 5-year period. The Decision Maker failed to appropriately consider and score the functional restriction claimed by the Appellant. His evidence was consistent and persuasive

The award was increased from standard rate Daily Living to enhanced. There was clear evidence re the Appellants reduced pinch grip - which impacted upon ability to eat by using utensils or taking medicine out of bottles/ blister packs. The Department failed to attach weight to the Appellants pinch grip and failed to translate how the condition would impact upon her daily living.

The original decision was correct. Standard Rate Daily Living, Standard Rate Mobility. Having considered the evidence the Tribunal was satisfied that the original award made by the Decision Maker was an appropriate award and that the Department did not have grounds to supersede that decision.

There is no entitlement to the care component but there is entitlement to standard mobility. The Appellant has Special Educational Needs. The questionnaire referred to her self-esteem. There was reference to difficulties following instructions and consequent problems getting to unfamiliar places. Her father takes her to school. The Decision Maker did not address these when commenting on mobility. The Expert Medical Professional's report was adequate and contains sufficient detail and comments.

Decision Maker had not taken proper account of the specialist diagnostic report prepared by Adult Autism Service which clearly outlined how the Appellant's Autism has significantly affected both her daily living and mobility

The Appellant was awarded the enhanced rate of daily living and the standard rate of the mobility component. The tribunal awarded points to reflect the mental health difficulties which impacted upon the Appellant's daily living activities and his mobility. The papers contained evidence illustrating the extent of the Appellant's mental health difficulties. In the tribunal's opinion this evidence was incorrectly interpreted by the original decision maker. The obvious conflict between ESA and PIP healthcare professional reports was not adequately resolved by the original decision maker.

It was decided that Appellant's physical condition would not have changed since previous award and that her mental condition had deteriorated to such an extent that an award under daily living component was appropriate. It considered that the type of physical condition that the Appellant had could improve and did not sufficiently take into account the evidence that indicated a deterioration in mental health.

The panel awarded 15 points and awarded Enhanced Rate Daily Living. The Tribunal accepted the Appellant's evidence to be credible and consistent with his diagnosis. The Capita Assessor did not recommend points when the evidence was there to show essentially the same restrictions applied when the Appellant was previously awarded 13 points. Evidence was credible and consistent. Decision Maker appears to have accepted Capita Report without question despite the functional history section suggesting limitations existed.

### Year 2020/21

The EMP report was detailed. A history of recorded observations and clinical findings. The comments made were appropriate. The decision makers correctly applied the legislation to the facts based on the evidence submitted. We had the benefit of part of the GP notes.

The written evidence is indicative of a marked personality disorder. The Tribunal had the benefit of the Appellant's attendance. This tribunal felt the Community Psychiatric Nurse's letter was probative of anxiety in social situations of agitation. The ESA85 noted cognitive impairment of mental disorder owing to severe mental disorder and cannot cope with any change. The Tribunal felt mobility 1(d) = 10 points was still appropriate. The Appellant is on a maximum dosage of Sertraline.

The Decision Maker failed to properly consider existing medical evidence.

The descriptor for journeys was altered as the explanation given by the Departmental Officer who misinterpreted the legislation. They did not award the descriptor as the Appellant did not go out that many days - but this is not the test - question is can they allow the rate on the majority of days and the answer is no. "Repeatedly" in the legislation - defined as often as reasonably required - further remarks centred in notes as to appropriate ruling.

The Tribunal considered that the evidence was incorrectly determined to award standard rate of both components whereas the Tribunal considered that the Appellant was entitled to the enhanced rate of both. The Department failed to give appropriate consideration or failed to appropriately evaluate the Appellants physical difficulties. As a result points weren't awarded for physical difficulties with activities 4 and 6 of daily living. Similarly the Appellant's mental health difficulties were acknowledged in respect of the mobility component but not appropriately acknowledged in respect of his physical difficulties with mobility descriptor 2.

The panel felt strongly that the Examining Medical Practitioner's (EMP) report could not be relied upon as it conflicted strongly with the GP notes and records in submission papers. This evidence was preferred. The evidence before us did not demonstrate a change as claimed by the Department. The Appellant's condition is chronic and unlikely to improve in the immediate term. They still have the same restrictions. Inadequate investigation by EMP and Decision Maker. There was nothing to reconcile the disparity in evidence held by GP and EMP report.

Commissioner's decisions CPIP/3062/2016 and CPIP/2559/2015 not considered. The Decision Maker had awarded points under descriptors 7(d) to Appellant with profound Prelingual Bilateral Deafness but had not fully considered the impact of this condition in relation to other descriptors. Tribunal considered that descriptors 4(c), 8(c) and 9(b) applied.

Appellant is entitled to PIP in respect of both the Mobility and Daily Living components at the enhanced rate. The Department have disregarded a Capita assessment report from a Healthcare Professional who met the Appellant face to face. The panel considered that further weight should have been given to this report.

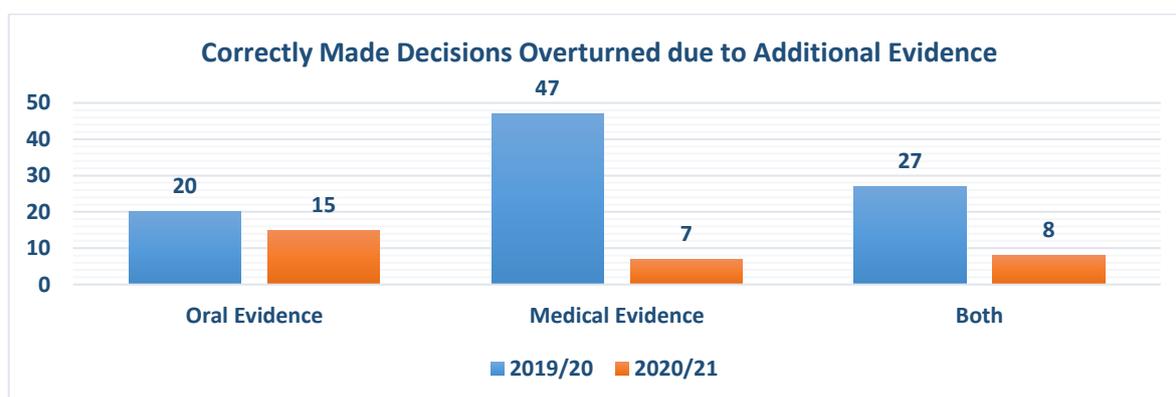
An additional 2 points were awarded by the Tribunal for the dressing and undressing descriptor, thereby, bringing the Appellant's total points to 8. This was consistent within the papers and with the Department's award of points in other respects.

### Correctly Made Decisions Overturned by the Tribunal

123 cases in year 2019/20 and 53 cases in 2020/21, representing 54.2% and 53.5% respectively of those monitored, were correctly made by the decision maker but were overturned by the tribunal because the tribunal accepted evidence which the decision maker was unwilling to accept (29 and 23 cases)(FA), or the tribunal was given additional evidence that was not available to the decision maker (94 and 30 cases)(FB).

Reasons for Overturning Correctly Made Decision	Number of Cases 2019/20	Number of Cases 2020/21
FA	29 (23.6%)	23 (43.4%)
FB	94 (76.4%)	30 (56.6%)

\*See table on page 12 for explanation of reasons



In 2019/20 and 2020/21 there were 20 and 15 cases respectively where the direct oral evidence of the appellant or a witness was the sole reason for the decision being overturned. This represents 8.8% and 15.2% of cases monitored. 47 cases in 2019/20 and 7 cases in 2020/21 turned on the content of medical evidence by way of GP or hospital records, or a medical report from the GP or a consultant.

Overall, the decisions in 74 cases in 2019/20 and 15 cases in 2020/21, representing 32.6% and 15.2% of cases monitored, were influenced by the availability of medical evidence to the tribunal.

As highlighted in all previous reports, these results continue to demonstrate that relevant information is available from claimants and medical professionals prior to making the decision on a claim.

## Chapter 3 - Social Security Benefit Decisions – Personal Independence Payment

The table below sets out a selection of comments made by legal members of the tribunal in those appeals which were found to be correctly made.

Correctly Made Decisions - Comments Made by the Legal Members of the Tribunal
Year 2019/20
Oral evidence allowed for good reason not to attend medical assessment to be accepted.
10 points mobility, 12 points daily living. Open award. The clinical evidence vouches the claimant's oral evidence and was persuasive.
Specialist evidence in GP notes specifically states the Appellant has severe Emphysema, rapid weight loss and suspected lung malignancy. This evidence also states specifically the Appellant has severely impaired Daily Living function and severely impaired Mobility function. The Appellant's weight has reduced to 5 stone, hence indefinite award.
No material medical evidence before Healthcare Professional/Decision Maker. Medical notes and Mother of Appellant's evidence today. Clear deterioration in life due to hearing difficulty. Panel felt that Healthcare Professional and Decision Maker should have made further enquiry with GP on Appellant, to seek clarification of conflict in evidence.
Medical evidence was made available to the panel which was not available at the time of the original decision. The medical reports available to the department were substantially out of date.
Extensive GP notes, records and reports indicating limitations in relation to daily living activities. Medical evidence indicates restrictions in relation to neuropathy of the hands and feet, issues in relation to fine motor skills and a report from a Consultant Psychologist details issues in relation to social interaction.
Tribunal found the Appellant to have good reason for failing to attend for assessment. Medical evidence supported Appellant's case. Tribunal considered further evidence which brought the Appellant within the criteria for good reason.
The Tribunal changed the decision in relation to Daily Living. After hearing oral evidence and considering the totality of the Disability Assessor's evidence, the Tribunal concluded that criteria was not met.

Significant health problems referred to in the further medical evidence contained in the case papers. The extent of her health problems and functional impairment were clear in the oral evidence given by the Appellant and her daughter at hearing today.

Medical records useful regarding functional ability. Evidence sufficient to award an additional 2 points as aid required for preparing food.

The Appellant's mother submitted evidence from when he was a child and provided a detailed written account. The Expert Medical Professional was a Physiotherapist whereas the Appellant has Aspergers and Attention Deficit Hyperactivity Disorder. A home visit was arranged but the Appellant did not participate. The reasons for the decision do not engage with the supplementary advice and did not communicate his underlying conditions.

Additional evidence in the form of a letter from the Appellant's wife. Consideration to a certain extent some of the matters raised by the Appellant. Chronic mental health condition including PTSD. The Appellant's attendance/oral evidence would have been of assistance, but he was unwilling to attend. His complaints were consistent and corroborated by GP evidence, albeit some of it historical. Some inconsistencies in the evidence. Decision made on the balance of probabilities.

Additional medical evidence not available to the department, including a diagnosis of Multiple Sclerosis and Malignant Melanoma. Reports were excellent including new GP report and legal factual report, neurology assessment etc.

The Expert Medical Professional's report was detailed and contained appropriate comments and relevant findings were made. We had the benefit of additional medical evidence and hearing from the Appellant. The Decision Maker did make relevant observations and the original decision was correct based on evidence available.

We were impressed by oral evidence of Appellant and his wife. Very significant difficulties following a stroke. Memory loss and cognitive shortfall well documented in medical evidence. We did not think the Health Care Professional made sufficient allowance for the Appellant's difficulties. He tended to be positive but inquisition with him and his wife indicated significant functional restriction in several areas.

The tribunal had access to voluminous GP notes and hospital letters plus occupational health reports which were only made available at the appeal stage.

## Chapter 3 - Social Security Benefit Decisions – Personal Independence Payment

Points added to reach the minimum threshold for award based on medical evidence supplied. Medical evidence was preferred as it was considered more compelling and supportive than Disability Assessor's opinion. The Appellant had provided medical evidence in sufficient measure to persuade the panel that her condition, restrictions and complains were long standing and had material impact upon her life.

Panel has considered the significant evidence provided with the GP notes and records and in particular the psychiatric interventions and reports. Departmental officer did not have sight of medical records supplied to the tribunal.

Very credible evidence from Appellant and father alongside medical evidence.

Appellant had scored 0 points. Panel awarded 9 points Daily Living and 4 points Mobility for 5 year award of Standard Rate Daily Living because the Appellant provided voluminous relevant, significant and timely medical evidence from GP and mental health specialist.

### Year 2020/21

Having heard evidence of Appellant and Appointee we felt the Healthcare Professional did not take full account of mental health difficulties as a result of condition.

The Tribunal heard the Appellant's appeal via Webex and was able to form an impression of functional difficulties particularly relating to toileting issues and the stress and anxiety created by the same. These difficulties were not reflected in the Disability Assessor's report or Department's decision. The Disability Assessor's report was compiled over the phone and this may have disadvantaged the Assessor.

The most significant medical condition suffered by the Appellant is Osteoarthritis in both hips. He received a right hip replacement and is on the waiting list for a left hip replacement. There is medical evidence to support the condition and the tribunal found the Appellant to be a credible witness as to the impact of his condition on his Daily Living and Mobility activities. The Appellant has a significant medical condition which was well documented on the papers. Upon receipt of additional medical evidence from the Appellant the department did revise their decision, however, they did not in the view of the Tribunal apply this medical evidence appropriately across all activities.

The further medical evidence and the existing medical evidence amply evidenced the serious, chronic, and ongoing liver failure disease of the Appellant.

This was a telephone assessment. The Assessor had been provided with information from the GP and a detailed letter from the Appellant's husband. There are also extracts from the Appellant's medical records. The report did give adequate detail and recorded a history and medication and made comment. The principal issue related to the Appellant's anxiety. Appropriate history was recorded in relation to mobility but the chosen descriptor did not correspond. Overall, the report gave a fair insight with an evidential basis. The Decision Maker said the evidence did not indicate evidence of overwhelming psychological distress. Emphasis was placed upon the fact that the Appellant had been in employment. The Appellant explained however that she had been moved to facilitate needs and currently she is off work. The Decision Maker correctly applied the law however we had additional evidence from the Appellant and her husband.

The Tribunal received a considerable body of medical notes and records. These revealed, inter alia: the Appellant had 2 operations and extensive surgery. The Appellant's scaphoid wrist fracture may never properly or completely heal. The Appellant had established likely PTSD with reduced self-confidence and deleterious impact upon his mental health and functioning. The Appellant is unable to partake of further surgery now. The Appellant is prescribed strong analgesia (strong Paracetamol 500mg x 8 times per day and Ibuprofen 400mg per day) to help moderate pain. The tribunal also had the benefit of a detailed persuasive witness statement from the Appellant which corroborated the above and detailed a functional effect of limitation.

Award is supported by medical evidence. The Appellant was previously in receipt of an award however the Capita assessment in this case was conducted over the telephone due to COVID-19. The Appellant had previously been in receipt of an award which was superseded by this decision. This decision was made following a telephone assessment by Capita due to COVID-19. From the supporting medical evidence received the panel consider that the Appellant was disadvantaged by the telephone assessment and the appeal has been allowed following consideration of additional medical evidence.

The Appellant suffers variable conditions, and we placed considerable weight on the oral evidence provided at hearing. The Department relied heavily on the Disability Assessor's report, but we were of the view that points should have been awarded in some of the activities given what we heard from both the Appellant and her husband. Our decisions to score points were very much on balance, however. We accepted many aspects of the Disability Assessor's report but on balance and on hearing the oral evidence found that sufficient weight was not attached to the variability of the conditions and their impact on completing some of the activities.

### Comments/Recommendations

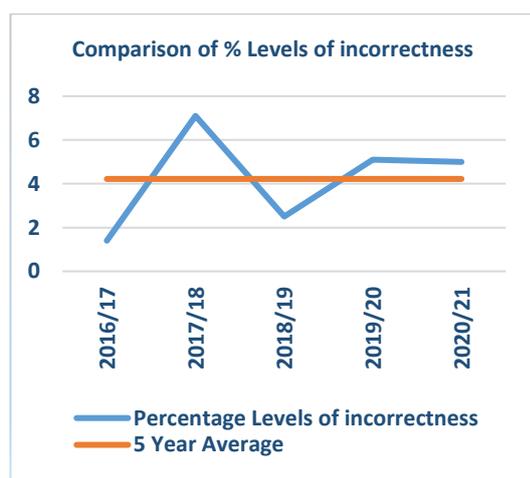
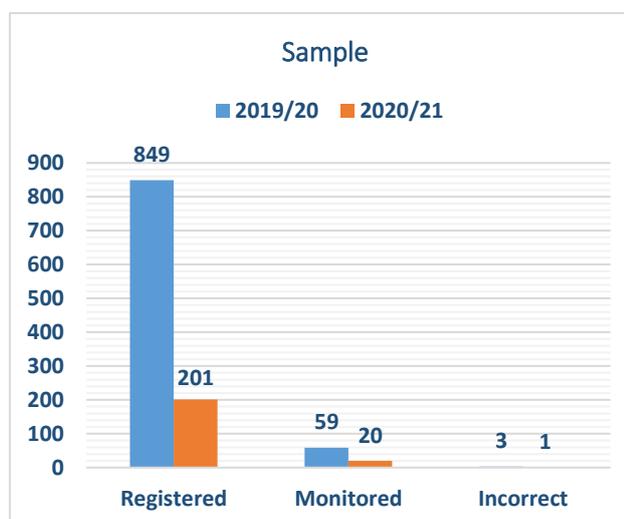
A high percentage of appeals were allowed on the basis of additional medical and oral evidence from appellants and witnesses. As highlighted in the DLA category and in previous reports, these statistics demonstrate that information is available from claimants and medical professionals prior to making the decision on a claim. Additionally, like DLA adult Autism Spectrum Disorder causes difficulties for decision makers in this area. Specific training in this area is recommended.

### Employment and Support Allowance

#### Incorrectly Made Decisions

6.9% in year 2019/20 and 10.0% in 2020/21 of all appeals received in this category were monitored. The level of incorrectness was 5.1% and 5.0% respectively.

However, given the small number of appeals available for monitoring in 2020/21, caution in interpreting the result for that year is advised.

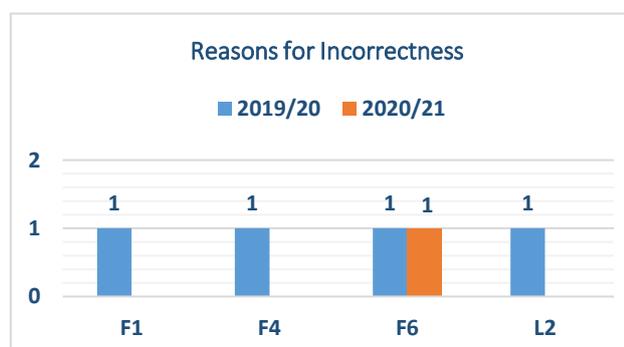


#### 5-Year Analysis

The level of incorrectness identified increased substantially from 1.4% in 2016/17 to 7.1% in 2017/18. It decreased to 2.5% in 2018/19 before increasing again to around 5.0% in 2019/20 and 2020/21. The latter year should however be interpreted with caution due to the small sample number. When averaged over the 5 years the level of incorrectness is 4.22%

There were 3 incorrectly made decisions identified in 2019/20 and 1 in 2020/21. \*4 reasons were recorded for incorrectness in 2019/20 and \*1 in 2020/21

\*See table on page 11 for explanation of all reasons



## Chapter 3 - Social Security Benefit Decisions - Employment and Support Allowance

The table below sets out a selection of comments made by legal members of the tribunal in those cases identified as incorrectly made.

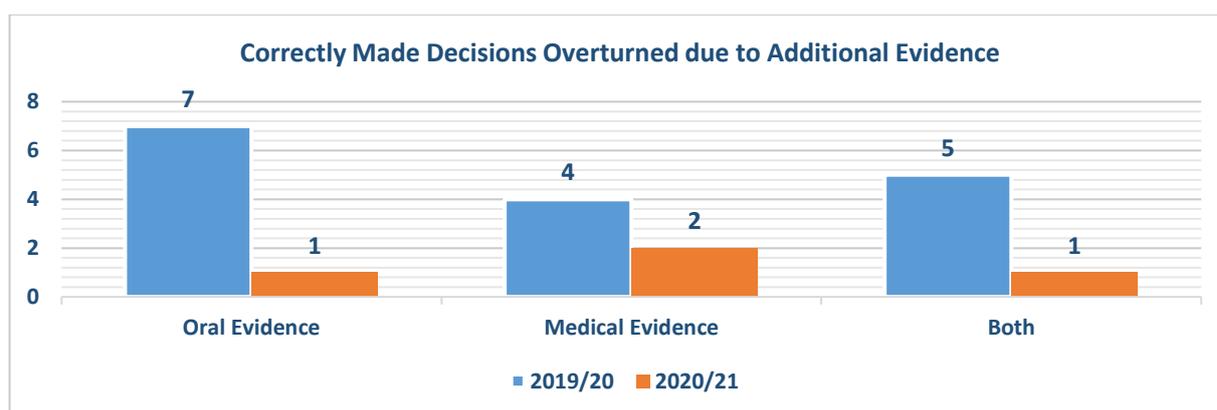
<b>Incorrectly Made Decisions - Comments made by Legal Members of the Tribunal</b>
<b>Year 2019/20</b>
Appellant not only had limited capability for work but also limited capacity for work related activity and entitled to support group. Regulation 35 of the ESA Regs satisfied. Appellant suffers Tonic-Clonic Seizures typically 5/6 times a month and has suffered injuries after many falls. High medication - temporal lobe surgery unsuccessful. Tribunal thought that for the Appellant to attend e.g. new skills courses or condition management, would likely increase the already substantial risk she has from falls. Regulation 35 was satisfied in our opinion.
Regulation 35 support group criteria satisfied. Significant impact upon the Appellant due to multiplicity of health conditions with mental health condition having a particularly significant impact.
<b>Year 2020/21</b>
Appellant is entitled to Employment Support Allowance on the basis that she has Limited Capability for Work Related Activity. Appellant satisfies the criteria of activity 12 of schedule 3. The Departmental Officer failed to give appropriate weight to relevant medical evidence and made assumptions as to the full extent of the Appellant's medical conditions.

### Correctly Made Decisions Overturned by the Tribunal

28 cases in 2019/20 and 8 cases in 2020/21, representing 47.5% and 40.0% of those monitored respectively, were correctly made by the decision maker but were overturned because the tribunal either accepted evidence which the decision maker was unwilling to accept (12 and 4 cases respectively)(FA) or the tribunal was given additional evidence that was not available to the decision maker (16 and 4 cases respectively)(FB).

Reasons for Overturning Correctly Made Decision	Number of Cases 2019/20	Number of Cases 2020/21
<b>FA</b>	12 (42.9%)	4 (50.0%)
<b>FB</b>	16 (57.1%)	4 (50.0%)

\*See table on page 12 for explanation of reasons



In 2019/20 and 2020/21 there were 7 and 1 cases respectively where the direct oral evidence of the appellant or a witness was the sole reason for the decision being overturned. This represents 11.9% and 5% of cases monitored. 4 cases in 2019/20 and 2 cases in 2020/21 turned on the content of medical evidence by way of GP or hospital records, or a medical report from the GP or a consultant.

Overall, the decisions in 9 cases in 2019/20 and 3 cases in 2020/21, representing 15.3% and 15% of cases monitored, were influenced by the availability of medical evidence to the tribunal.

As highlighted in all previous reports, these results continue to demonstrate that relevant information is available from claimants and medical professionals prior to making the decision on a claim.

## Chapter 3 - Social Security Benefit Decisions - Employment and Support Allowance

The table below sets out a selection of comments made by legal members of the tribunal in those appeals which were found to be correctly made.

Correctly Made Decisions - Comments Made by the Legal Members of the Tribunal
Year 2019/20
Appellant found to have Limited Capability for Work (LCW) but not Limited Capability for Work Related Activity (LCWRA). We found the Appellant to have significant back problems and to be very limited mobility wise.
MRI scan done after decision confirmed significant issues with right knee making mobilising difficult. Tribunal view was that this problem with right knee was present at the time of decision. MRI and other medical evidence captured significant difficulties with right knee, making mobility and standing difficult.
The Department failed to prove reasons for the supersession decision and the evidence of the claimant was candid and persuasive. Lack of vouching evidence in respect of the supersession decision before raising the overpayment decision.
Limited Capability for Work and Limited Capability for Work-Related Activity. We read the GP record and also had oral evidence.
Tribunal considered GP records which had not been available to the decision maker.
Appellant placed into support group ESA. Additional medical evidence provided and oral evidence.
Appellant presented as very physically restricted but with little explanatory pathology. The major feature was withdrawal. Current PIP award, both components of enhanced rate but we thought no LCWRA.
Appellant to be treated as LCW and LCWRA. Combinations of mental health and mobility issues.
Year 2020/21
The Appellant has Limited Capability for Work (LCW) and Work-Related Activity (LCWRA). Paragraph 13 schedule 3. Coping with social engagement is always precluded due to difficulty relating to others or significant distress experienced by the individual.

## Chapter 3 - Social Security Benefit Decisions - Employment and Support Allowance

The Appellant was awarded the standard rate of Employment and Support Allowance pursuant to a successful appeal hearing. The Tribunal concluded that he had mental health difficulties that satisfies sufficient criteria to justify an award.

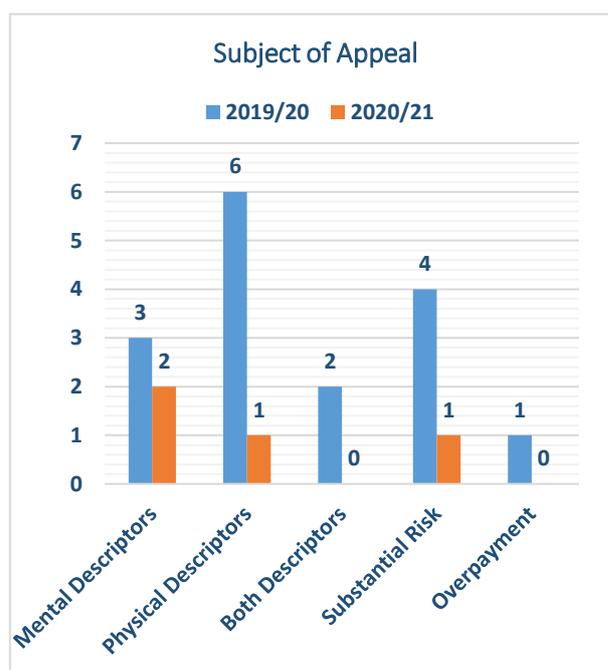
The Appellant is entitled to the support component of ESA and she can be treated as having LCWRA because of Regulation 35(2). There was an Expert Medical Professional report which recorded a history of underlying conditions and clinical findings were made. The report was detailed, and the summary contained comments that were open to interpretation. The Decision Maker made detailed comment in respect of the various activities and referred to the evidence which supported the evidence. We had the advantage of medical records, a detailed report and hearing from the Appellant.

### Subject of Appeal

The breakdown of cases for those overturned due to additional evidence across both years is set out in the Chart to the right.

With the exception of 1 appeal in 2020/21, all others over both years were in connection with the limited capability for work tests. Of these, 7 cases were for the physical descriptors, 5 for mental health descriptors and in 2 appeals both the physical and mental health descriptors were satisfied.

In 5 cases the appeal was successful as the tribunal identified a substantial risk to the health of the Appellant. The remaining case dealt with the issue of overpayment of benefit.



### Comments / Recommendations

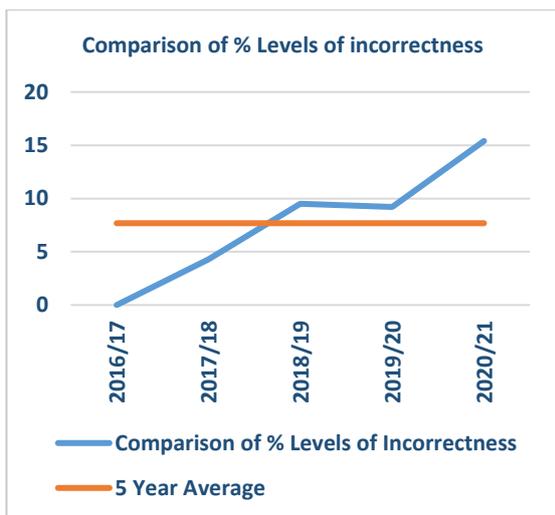
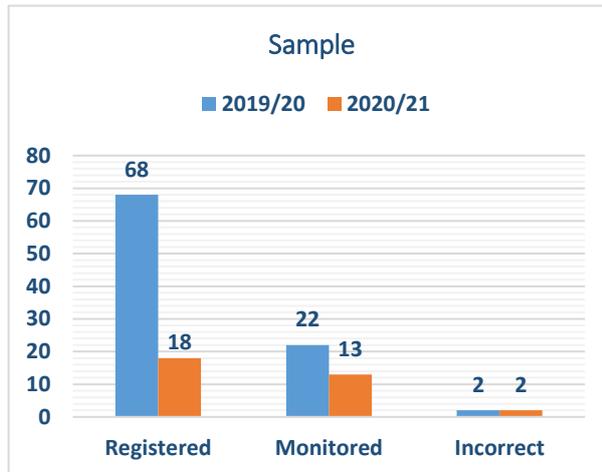
It is clear from the comments of tribunal members that further medical evidence produced at hearing often greatly assists the tribunal in reaching a decision. My recommendations are therefore similar to those in previous reports i.e. the department should consider ways to encourage claimants to share additional medical evidence such as medical reports from consultants and their general medical records prior to initial decision making. It is also noted that a number of appeals were successful due to the application of Regulation 35 (danger to health). Decision makers should consider this with care for all appeals.

### Income Support

#### Incorrectly Made Decisions

In year 2019/20, 32.4% of appeals received in this category were monitored while 72.2% of appeals were monitored in year 2020/21. The level of incorrectness identified was 9.1% and 15.4% respectively.

Caution in interpreting these results is advised given the small case numbers available.



#### 5-Year Analysis

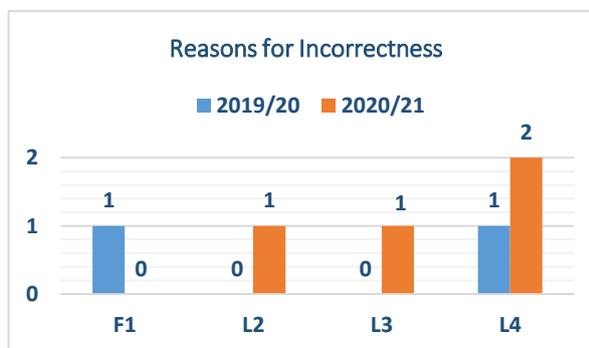
The level of incorrectness identified increased from 0% in 2016/17 to 4.3% in 2017/18. In years 2018/19 and 2019/20 this increased to over 9% (9.5% and 9.1% respectively). A further increase to 15.4% in 2020/21 was recorded. This represents a 5-year average of 7.66% level of incorrectness.

\* See Appendix 3 on page 76 for 5 year monitoring figures.

There were 2 incorrectly made decisions identified in both 2019/20 and 2020/21.

\*2 reasons were recorded for incorrectness in 2019/20 and \*3 in 2020/21.

\*See table on page 11 for explanation of all reasons



With the exception of year 2016/17 which had a viable sample, the results should again be read with caution given the small numbers available for monitoring.

## Chapter 3 - Social Security Benefit Decisions - Income Support

The table below sets out comments made by legal members of the tribunal in those cases identified as incorrectly made.

Comments Made by the Legal Members of the Tribunal
<b>Year 2019/20</b>
Overpayment of Income Support not recoverable. Tribunal noted various inconsistencies in the Departments submissions and accepted representative's argument that Appellant was on the wrong benefit. Tribunal decided that any overpayment was not recoverable as it resulted from an official error by the department.
Recent decisions of Commissioners regarding overpayments and information of computer systems of the department. SK V DFC 2020 NICom 73 - C9/20-21 (ESA). The submission of the department made no reference to any recent commissioner decisions.
<b>Year 2020/21</b>
Overpayment not recoverable. Full implications of SK V DFC not applied to this case.
The overpayment of income support is not recoverable.

### Correctly Made Decisions Overturned by the Tribunal

5 cases in 2019/20 and 1 case in 2020/21, representing 22.7% and 7.7% respectively of those monitored, were correctly made by the decision maker but were overturned by the tribunal because the tribunal either accepted evidence which the decision maker was unwilling to accept (4 cases in year 2019/20) (FA) or the tribunal was given additional evidence that was not available to the decision maker (1 case in each year) (FB).

Reasons for Overturning Correctly Made Decision	Number of Cases 2019/20	Number of Cases 2020/21
FA	4	0
FB	1	1

\*See table on page 12 for explanation of reasons

In both FB examples, the Appellants attended the hearing and their oral evidence formed the basis of the tribunal's decisions.

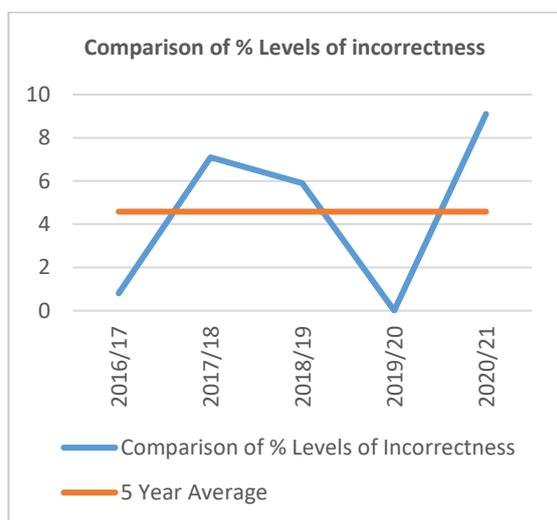
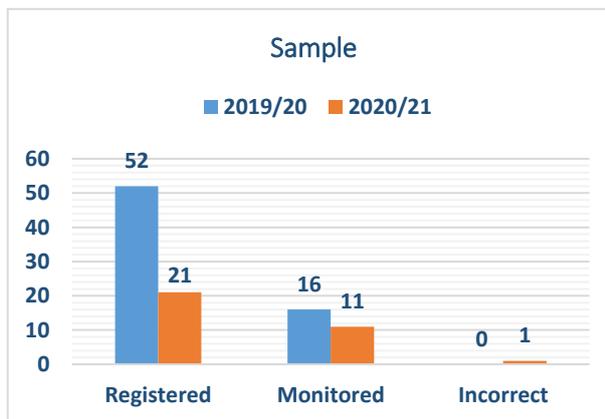
### Comments/Recommendations

In all of the incorrectly made decisions the issue was the recovery of overpayment of benefit. This is a reoccurring issue and may be resolved with additional training.

### Jobseekers Allowance

#### Incorrectly Made Decisions

30.8% and 52.4% respectively of all Jobseekers Allowance appeals received were monitored in years 2019/20 and 2020/21. No incorrectly made decisions were identified in 2019/20. The level of incorrectness identified in year 2020/21 was 9.1%. Caution in interpreting these results is advised given the small sample numbers available.



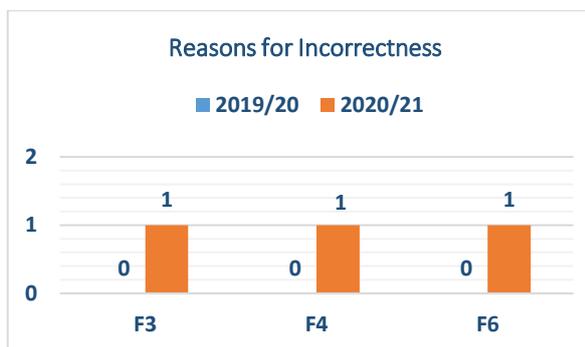
#### 5-Year Analysis

The level of incorrectness identified increased from 0.8% in 2016/17 to 7.1% in 2017/18. It decreased to 5.9% in 2018/19 and decreased further to 0% in 2019/20. It increased to 9.1% in 2020/21\*. When averaged over the 5 years the level of incorrectness is 4.58%.

\* See Appendix 3 on page 76 for 5 year monitoring figures.

There were no incorrectly made decisions identified in 2019/20 and 1 in 2020/21. \*3 reasons were recorded for incorrectness in that year.

\* See table on page 11 for explanation of all reasons



With the exception of year 2016/17 which had a viable sample, the results should again be read with caution given the small numbers available for monitoring.

### Correctly Made Decisions Overturned by the Tribunal

2 cases in year 2019/20, representing 12.5% of those monitored, while correctly made by the decision maker, were overturned by the tribunal because the tribunal was given additional evidence that was not available to the decision maker (FB).

Reasons for Overturning Correctly Made Decision	Number of Cases 2019/20	Number of Cases 2020/21
<b>FA</b>	0	0
<b>FB</b>	2	0

\*See table on page 12 for explanation of reasons

In both FB examples, the Appellants attended the hearing and their oral evidence formed the basis of the tribunal's decision.

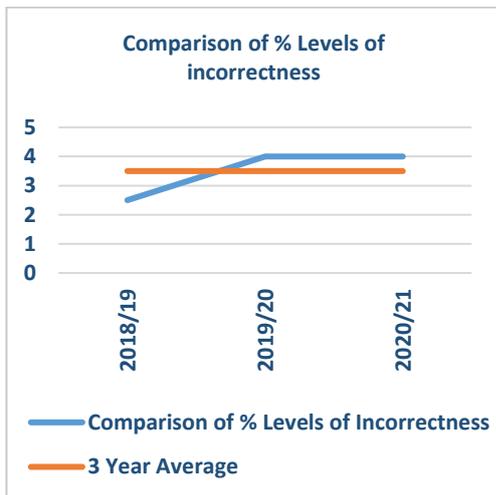
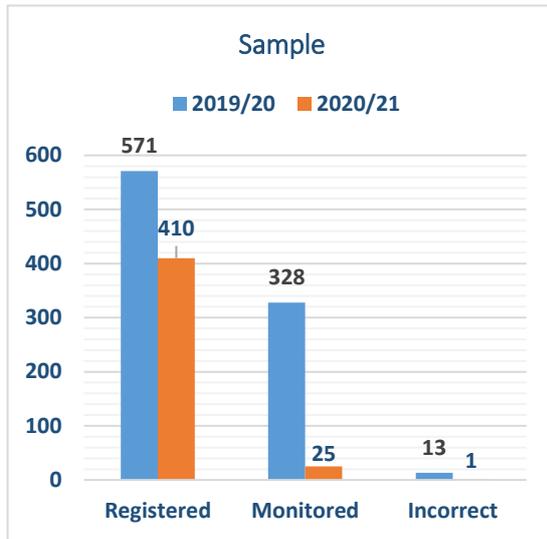
### Comments/Recommendations

None

### Universal Credit

#### Incorrectly Made Decisions

Universal Credit (UC) is a new benefit introduced in 2018/-19. 57.4% and 6.1% of all appeals received were monitored in years 2019/20 and 2020/21. The level of incorrectness identified was 4.0% in each year. However, given the small number of appeals available for monitoring in year 2020/21, caution in interpreting that year’s result is advised.

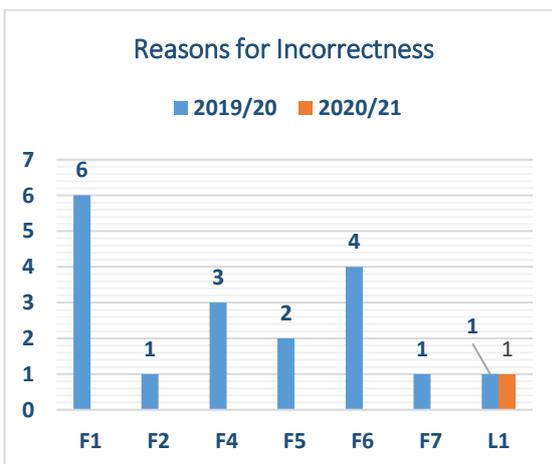


#### 3-Year Analysis

The level of incorrectness identified increased from 2.5% in 2018/19 to 4.0% in both 2019/20 and 2020/21. When averaged over the 3 years the level of incorrectness is 3.5%. Year 2020/21 should be interpreted with caution due to the small sample size number.

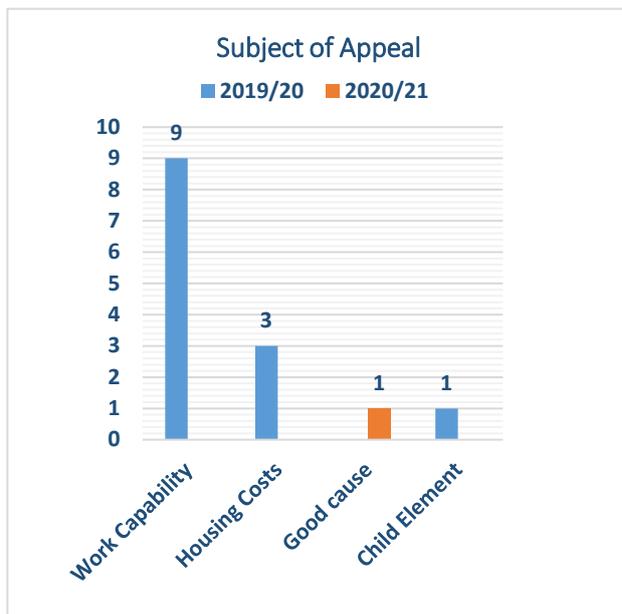
\* See Appendix 3 on page 76 for 5 year monitoring figures.

There were 13 incorrectly made decisions in year 2019/20, with \*7 separate reasons for incorrectness recorded and these reasons occurred 18 times. F1\* representing the most occurring reason for incorrectness. In year 2020/21 L1, “The officer did not identify the correct legal rules relevant to the claim/revision”, was the only reason given for incorrectness.



\* See table on page 11 for explanation of all reasons

### Subject of Appeal



The breakdown of cases for those overturned due to an incorrectly made decision by the Department is set out in the chart to the left.

Of the 13 cases in 2019/20, the subject of appeal in 9 of these was the work capability component of Universal Credit (UC). 3 were for housing costs and in 1 case the child element of UC was the subject of appeal.

In the only incorrectly made decision in 2020/21, the tribunal found that the Appellant had good reason for failing to attend an assessment to assess his capability for work.

## Chapter 3 - Social Security Benefit Decisions - Universal Credit

The table below sets out a selection of comments made by legal members of the Tribunal in those cases identified as incorrectly made.

Incorrectly Made Decisions – Comments made by Legal Members of the Tribunal
Year 2019/20
<p>The Appellant was entitled to Housing Costs in her Universal Credit award for the relevant period. The departmental officer failed to take into account a relevant document regarding housing costs. In the Tribunal’s view, the Appellant was not ‘treated’ in a very fair manner by the Department.</p>
<p>“Substantial risk” appeal. Insufficient investigation of the Appellant’s condition by the Department.</p>
<p>Appellant found to have Limited Capability for Work and found not to have Limited Capability for Work Related Activity. Appellant had a Personal Independence Payment (PIP) assessment within relevant time period and assessed by Healthcare Professional (HCP) as qualifying for standard rate of daily living and mobility component of PIP. It appeared to the panel the Appellant had sustained a significant injuries particularly to his back as a result of a road traffic accident from which it would take time to recover. This was recognised by the HCP in PIP assessment. The Universal Credit Decision Maker did not properly take this into account.</p>
<p>Appellant was entitled to have extra bedrooms included in his joint Universal Credit claim from 02/04/18.</p>
<p>Appellant had serious learning difficulties and the Department failed to take this into account when making its decision. Schedule 8 and 9 applied.</p>
<p>Six points added on basis of oral evidence referred by the Appellant. Clear evidence in the clinical evidence that the Appellant had problems where points allocated. Poor investigation by department.</p>
<p>The Tribunal found the Appellant to have Limited Capability for Work-Related Activity (or to be treated as such) under Schedule 9. Extreme mental health vulnerability and ongoing suicidal thoughts and attempts. Inadequate reasons by Department for reaching the decision that the Appellant did not have Limited Capability for Work-Related Activity.</p>

The Appellant is entitled to the Housing Cost element of Universal Credit (UC) as she does satisfy the liability condition. In this appeal the Appellant was claiming housing costs as part of her UC. The property was owned by her mother. The Appellant had been in receipt of Housing Benefit but encountered difficulties when this was transitioned to UC. It was suggested that this was a contrived agreement. However, there was no dispute that the Appellant and her mother lived in separate houses and that she had openly declared a relationship. There was no suggestion that any other party was living in the property. It was accepted the Appellant lived at this address. She had two young children also living there. There were medical records to support this. The Decision Maker did not demonstrate in what way this was a contrived agreement. There was a tenancy agreement which was submitted. There was a letter suggesting the Appellant was being evicted. I found this letter to be a contrived letter. However, my finding was that this had been obtained in order to address the appeal but did not undermine the genuineness of the agreement.

The Decision Maker did not have regard to the fact that liability for a tenancy can still arise even if not in writing. The rent is capped in any event by the number of rooms to people and the local benefit rate. It was not suggested that the Appellant's mother was in fact renting the property to another person. The Appellant had to be accommodated somewhere. She stated she had been homeless when she took over the property. Whether or not her mother chose to enforce the agreement is not determinative. The rent was a commercial rate. It had been declared. There was nothing to suggest the Appellant was living elsewhere or that there was any fraud. Appeals in relation to housing costs have in general been limited. They can give rise to legal issues and template submissions are not appropriate.

Panel took oral evidence from the Appellant at hearing with the assistance of an interpreter and found Appellant to have Limited Capability for Work, but not Work-Related Activity. Healthcare Professional's assessment was conducted alone with Appellant, in absence of her husband who generally provides support, and an interpreter. The Healthcare Professional's assessment provided was not carried out properly, in the Tribunal's opinion and contributed to an incorrect decision by the Decision Maker.

The Appellant had a history of mental health problems. The Department failed to properly investigate the history.

The Tribunal found as a fact that the Healthcare Professional's report was undermined by the reference to the Appellant getting a train from a destination not served by Translink and that this mistaken fact was used to underpin the Appellant's ability to carry out activities and undermined the extent of his incontinence issues. Both his limited mobility and his incontinence issues were well documented in the medical evidence which may not have been understood by the Decision Maker. Further, the evidence of the Appellant in the mandatory reconsideration appears not to have been properly taken into account. The standard of this medical assessment was factually incorrect and the attempt to explain or circumvent the problem was insufficient.

Insufficient gathering of the facts of this case. There were a number of mistakes made regarding who the individual members of this family are, their relationships to each other and the circumstances pertaining to how one of the children came to reside with the Appellant. It was noted that the Appellant was initially spoken to via a telephone interpretation service, which seems to have contributed to the confusion. There are remarks attributed to him which he strenuously denies.

### Year 2020/21

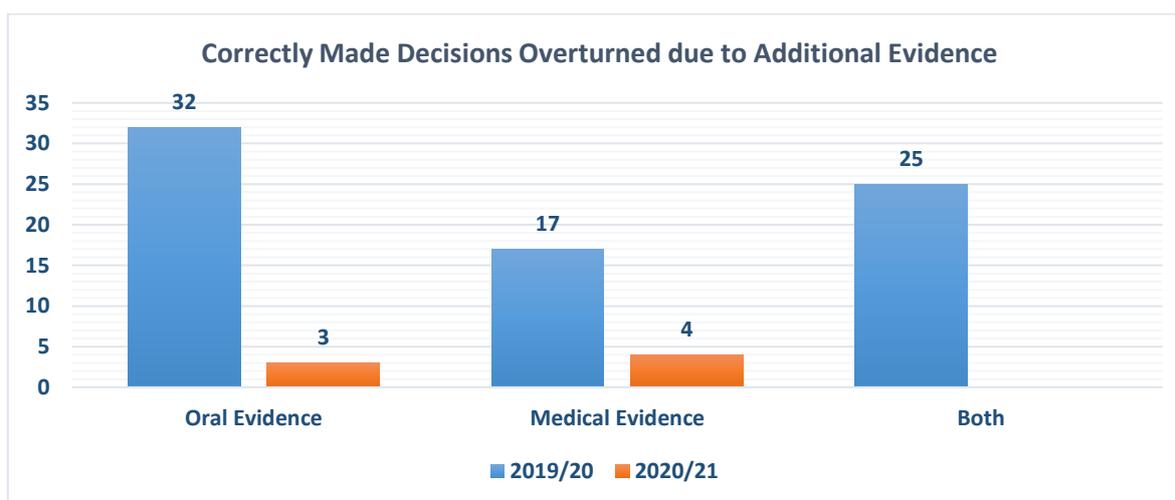
Failure to attend medical assessment appeal. The Department failed to identify where the Appellant was notified of the medical assessment. When the letter was sent/telephone call was made. The Tribunal ended up guessing when the notification might have been sent.

### Correctly Made Decisions Overturned by the Tribunal

100 cases in year 2019/20 and 7 cases in 2020/21, representing 30.5% and 28% respectively of those monitored, were correctly made by the decision maker but were overturned because the tribunal either accepted evidence which the decision maker was unwilling to accept (26 cases in 2019/20) (FA), or the tribunal was given additional evidence that was not available to the decision maker (74 and 7 cases in each year respectively) (FB).

Reasons for Overturning Correctly Made Decision	Number of Cases 2019/20	Number of Cases 2020/21
<b>FA</b>	26	0
<b>FB</b>	74	7

\*See table on page 12 for explanation of reasons



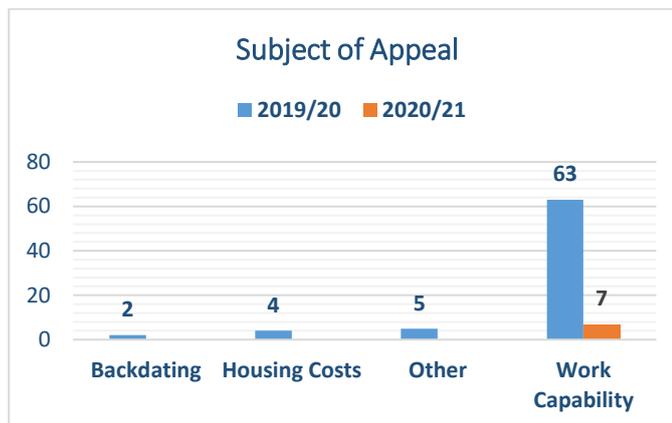
In 2019/20 and 2020/21 there were 32 and 3 cases respectively where the tribunal relied upon the direct oral evidence of the appellant and/or witnesses. This represents 9.8% and 12% of cases monitored. 17 cases in 2019/20 and 4 cases in 2020/21 turned on the content of medical evidence by way of GP records or reports from medical professionals..

Overall, the decision in 42 cases in 2019/20 and 4 in 2020/21, representing 12.8% and 16% of cases monitored in each year respectively, were influenced by the availability of additional medical evidence to the tribunal.

### Subject of Appeal

In year 2019/20 the issues under appeal in those cases overturned because the tribunal was given additional evidence which was not available to the officer who made the decision were similar to the issues in the incorrectly made appeals section.

Again, the work capability element was by far the largest category at 85.14%. Housing costs was next at 5.41%, with backdating at 2.7%.



The Other category includes Childcare Costs, Earnings, Genuine Prospect of Work, Habitual Residence and Overpayments. Each of these issues only received a single appeal and make up a total of 6.76% of those received.

In 2020/21, the only issue under appeal was the work capability assessment.

## Chapter 3 - Social Security Benefit Decisions - Universal Credit

The table below sets out a selection of comments made by legal members of the tribunal in those appeals which were found to be correctly made.

Correctly Made Decisions - Comments Made by the Legal Members of the Tribunal
Year 2019/20
Tribunal of opinion Appellant under reported her mental health difficulties. She elaborated on these difficulties at the hearing and presented as very anxious throughout.
GP notes enabled the Tribunal to better understand the Appellant's mental health difficulties. The Appellant had genuine mental health difficulties as evidenced by the available medical records.
Tribunal found that the Appellant was not gainfully self-employed at the time of the decision. Minimum income floor should not have been applied in this case. No overpayment occurred. Appellant had declared in initial contact with UC that she was previously self employed. Indicated that she did not know if business was viable. Advised that she thought it would be better for her to be employed, rather than self employed and was open to obtaining work. Had stopped being gainfully self employed at time of declaration.
The Expert Medical Professional (EMP) covered all relevant areas in adequate detail. The decision maker made appropriate observations and set out his history. However, the reasons behind the decision were unclear.
Appellant found to have Limited Capability for Work (LCW). Appellant has been awarded 9 points on difficulty standing. MRI report found probability of mobility difficulty particularly in terms of repetition over 200 meters.
The department chose not to be represented at today's hearing. The tribunal heard oral evidence from the Appellant for 90 minutes before it decided this appeal.
Found to have Limited Capability for Work (LCW) and Limited Capability for Work-Related Activity (LCWRA). Evidence of restricted mobility and GP notes and records confirming increase in pain and medical intervention.
New evidence regarding PIP award relevant. The additional evidence was an award of PIP with various descriptors also attributed to this claim.
Appellant entitled to back payments of UC of one month. Oral evidence from Appellant and daughter confirms that Appellant had a disability at relevant date.

Appellant treated as having LCW but not LCWRA under Regulation 40 Schedule 8 (4) of the Universal Credit Regulations (NI) 2016. At the date of decision, the Appellant had been diagnosed as having congenital polycystic kidney disease but the extent of reduction in his kidney function and the effects of secondary hyperthyroidism later became apparent in two letters from Consultant Nephrologists and from his kidney transplant surgeon.

The medical and other evidence was supportive of the Appellant's complaints and the panel was satisfied on the papers that there would be a substantial risk to her mental health if she were to be required to engage in work related activity.

The Expert Medical Professional recorded an accurate finding and made appropriate comment. The report covered all the issues. We had the advantage of hearing and seeing the Appellant. Her situation was set out by her sister. The Decision Maker did not have the advantage of having this account.

The Appellant is suffering from heightened anxiety and stress arising from traumatic events that cause her not to be able to cope with the descriptors scores. The reasons for the decisions are that the evidence of the Appellant was plausible that she suffers from heightened anxiety in social circumstances and events as described in the descriptors. Please note the following: at TAB five it was stated that the Appellant's conditions were epilepsy and musculoskeletal, they were not. There was no mention at TAB five of Appellant's mental health issues. Also note, Appellant's request for mandatory reconsideration was not in the submissions and at TAB 7, Paragraph one and three (1) were incomplete. Panel addressed these with Appellant in her evidence.

The Tribunal finds that the Appellant at least once a week experiences loss of control leading to extensive evacuation of the bowel. Documents considered were submission papers, medical records, correspondence from Appellant, submission from Representative, addendum from Department and evidence relating to PIP award.

Fifteen pages handed in today from GP after clear confirmation of restriction and pain surgery for some time. Surgery delayed by pandemic. Panel accept evidence as corroborated by GP / Clinical evidence as preferred to Healthcare Professional (HCP). Decision maker could have requested more clinical evidence to clarify findings of HCP when clear discrepancy in evidence.

There was excellent medical evidence to contradict the Medical Assessor's assessment and the department's scoring. It is the view of the Tribunal that the UC Decision Makers do not have a very good understanding of medical conditions and their effects and that training should target this. There was evidence of a serious orthopaedic condition.

Findings of the authority of Court of Appeal GB. See Secretary of State for Work and Pensions v R (Johnston & Others). The departmental approach to their decision was illogical. GB court of appeal decision held the legislation relevant to the decision to be illogical.

There is insufficient evidence that the Appellant received earnings in the assessment period for employment. There is no evidence the Appellant was employed in this assessment period. The 'Advice for Decision Makers' cited in the submission refers to 'employed earnings for each assessment period'. There is no evidence of employment for or during the assessment period in question.

Appellant has suicidal tendencies and alcohol addiction issues - requires a high degree of support and supervision from family for the majority of time. A departmental presenting officer was requested to attend at the tribunal hearing however no officer attended.

### Year 2020/21

Appellant was found to have Limited Capability for Work (LCW). This was consistent with medical evidence provided and Appellant's oral evidence at appeal hearing.

The Tribunal felt that the Appellant could not satisfy the descriptors in Schedule 7. However, the clinical evidence in the GP notes and records clearly indicated that were she not on the support group activities and contact with others, each weeks quickly worsen her condition such that she could be at risk to herself and others. It appears that if a decision on GP notes and records was carried out by the Department, it was not done so objectively as there was clear evidence of the Appellant's health worsening, if not in the support group.

GP notes and records provided and these support claims by Appellant. Significant life events in Appellant's history. These all lead to troubled childhood into adulthood. Appellant still receives treatment and support from enhanced mental health team of specialists and psychologists. Decision Maker did not have sufficient medical evidence before him to make a fair and informed decision.

Evidence of significant mental health issues.

The report gave an adequate history and made relevant clinical findings. Relevant comments were made however the report could not be completed and was by telephone.

### Comments/Recommendations

While other issues do arise in this appeal category the overwhelming majority are in connection with the LCW/LCWRA tests. In that regard the issues arising are the same as those arising in ESA and the comments made in that section equally apply. The comments made by members continue to indicate that relevant and focused medical evidence prior to decision making would be of assistance.

### Other Miscellaneous Benefits

Bereavement Benefit, Carers Allowance, Child Maintenance, Compensation Recovery, Industrial Injuries Disablement Benefit, Maternity Allowance, Pension Credit, Social Fund & State Pension

2019/20					
Category	Total Registered	Total Monitored	Total Incorrect	FA	FB
Bereavement Benefit	2	2	0	0	1
Carer's Allowance	30	8	0	0	1
Child Maintenance	39	18	0	0	1
Compensation Recovery	6	0	0	0	0
Industrial Injuries Disablement Benefit	41	14	0	0	1
Maternity Allowance	3	2	0	0	0
Pension Credit	11	4	1	0	0
State Pension	1	0	0	0	0
Social Fund	13	7	0	0	0

2020/21					
Category	Total Registered	Total Monitored	Total Incorrect	FA	FB
Bereavement Benefit	4	1	0	0	0
Carer's Allowance	13	3	0	0	0
Child Maintenance	27	13	0	1	0
Compensation Recovery	1	0	0	0	0
Industrial Injuries Disablement Benefit	15	8	0	0	0
Maternity Allowance	0	0	0	0	0
Pension Credit	4	2	0	0	0
State Pension	2	1	0	0	0
Social Fund	15	9	0	0	0

A complete census was undertaken of all cases in these benefit categories, taking into account that some appeals were cleared before hearing due to the withdrawal of the case or because the department reconsidered the decision and made a more advantageous decision prior to hearing.

With the exception of Pension Credit where 1 incorrectly made decision was identified in year 2019/20. No incorrectly made decisions were identified in any other benefits for either year. The legal member commented that the reason for incorrectness was that 'The officer did not identify the correct legal rules relevant to the claim/revision.' (L1).

In 2019/20 Bereavement Benefit, Carers Allowance, Child Maintenance, and Industrial Injuries Disablement Benefit each had one case where additional evidence was provided directly to the tribunal.

In Child Maintenance in 2020/21 the tribunal took a different view of the evidence that was before the decision maker when the claim was decided.

Given the small number of appeals available for monitoring in both years for all of these benefits, caution in interpreting these results is advised.

### Comments / Recommendations

The small number of appeals available makes it difficult to make an objective judgment in these cases.

### Summary of Comments/Recommendation

<b>Attendance Allowance</b>	The issues arising were in the main connected with the availability of medical evidence. As in all of my previous reports I would encourage the Department to consider how this can be obtained prior to decision making or during the mandatory reconsideration process.
<b>Disability Living Allowance</b>	The comments made by the members in all sections of this specific benefit area should be considered carefully. They clearly indicate that further investigation of claims prior to decision making and in addition before an appeal is heard is required. Autism Spectrum Disorders have been highlighted by members in both comment categories. These are clearly causing difficulties and have been specifically mentioned by members in a number of comments throughout. I would recommend training be provided in this area and consideration should be given to how claims are assessed taking into account the issues raised in Galo –v- Bombardier Aerospace UK [2016] NICA 25.
<b>Personal Independence Payment</b>	A high percentage of appeals were allowed on the basis of additional medical and oral evidence from appellants and witnesses. As highlighted in the DLA category and in previous reports, these statistics demonstrate that information is available from claimants and medical professionals prior to making the decision on a claim. Additionally, like DLA adult Autism Spectrum Disorder cause difficulties for decision makers in this area. Specific training in this area is recommended.

## Chapter 4 - Summary of Comments/Recommendations

---

### **Employment and Support Allowance**

It is clear from the comments of tribunal members that further medical evidence produced at hearing often greatly assists the tribunal in reaching a decision. My recommendations are therefore similar to those in previous reports i.e. the department should consider ways to encourage claimants to share additional medical evidence such as medical reports from consultants and their general medical records prior to initial decision making. It is also noted that a number of appeals were successful due to the application of Regulation 35 (danger to health). Decision makers should consider this with care for all appeals.

### **Income Support**

In all of the incorrectly made decisions the issue was the recovery of overpayment of benefit. This is a recurring issue and may be resolved with additional training.

### **Universal Credit**

While other issues do arise in this appeal category the overwhelming majority are in connection with the LCW/LCWRA tests. In that regard the issues arising are the same as those arising in ESA and the comments made in that section equally apply. The comments made by members continue to indicate that relevant and focused medical evidence prior to decision making would be of assistance.

### **Other**

The small sample makes it difficult to make an objective judgement in these cases.

### **Job Seekers Allowance**

None

## Appendix 1 - Inferences and Sampling Error

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

The analysis that follows relates only to benefits where a sample was selected. The benefits where a complete census was taken do not affect the confidence interval hence in table the 'ALL' category refers to benefits where a complete census was taken and those sampled. The minimum sample size for reliable inferences to be made with regard to sampled benefits has been taken as 30.

In making inferences regarding all appeals from a sample of appeals a degree of uncertainty is introduced to the process. This uncertainty means that the actual level of incorrectness in the initial decision is represented by a range with the sample result being the mid-point of the range. The range has been constructed so that we can be 95% certain that the actual level of incorrectness in the initial decision lies within the range. 95% is known as the confidence level. Tables A1 and A2 shows the relevant benefits, the sample result, and the associated range.

**Appendix Table 1**

2019/20		
Benefit	Percentage Incorrectness in the Initial Decision	Confidence Interval ( $\pm$ %)
Attendance Allowance	6.0%	3.8%
Disability Living Allowance	2.9%	1.8%
Employment and Support Allowance	4.9%	5.4%
Income Support*	9.1%	10.0%
Jobseekers Allowance*	0.0%	0.0%
Personal Independence Payment	9.3%	3.7%
<b>ALL<sup>1</sup></b>	5.1%	1.3%

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

\*Less than 30 Sampled/ Monitored

**Appendix Table 2**

Benefit	2020/21	
	Percentage Incorrectness in the Initial Decision	Confidence Interval ( $\pm$ %)
Attendance Allowance	2.4%	2.8%
Disability Living Allowance	5.2%	2.8%
Employment and Support* Allowance	5.0%	9.1%
Income Support*	15.4%	10.6%
Jobseekers Allowance*	9.1%	12.0%
Personal Independence Payment	9.1%	5.6%
Universal Credit*	4.0%	7.5%
<b>ALL<sup>1</sup></b>	<b>5.8%</b>	<b>2.2%</b>

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

\*Less than 30 Sampled/ Monitored

Considering all monitored cases in the time period we can state the following;

### 2019/2020

We can be 95% certain that the true level of incorrectness among all initial appeal decisions in year 2019/20 is between 3.8% and 6.4%, i.e.  $5.1\% \pm 1.3\%$

### 2020/2021

We can be 95% certain that the true level of incorrectness among all initial appeal decisions is between 3.6% and 8.0%, i.e.  $5.8\% \pm 2.2\%$  in 2020/21.

N.B. Each benefit generates its own workload of appeals. This is dependent both on the volume of initial claims processed and on the complexity of the benefit. The benefit may be complex in terms of the process to be followed, of the facts to be gathered and interpreted or of the underlying legal principles to be applied. More complex benefits are more likely to generate a greater proportion of disputes. It is also likely that decisions relating to the more complex benefits will be found to be incorrect. The aggregated total of appeals and outcomes

## Appendix 1 - Inferences and Sampling Error

---

thus covers such a wide range of different circumstances that the meaning of the information is uncertain.

Therefore, if we consider Attendance Allowance appeals in year 2019/20 we can state that we can be 95% certain that the true level of incorrectness among all related appeal decisions in the period is between 2.2% and 9.8%, i.e.  $6.0\% \pm 3.8\%$ .

Similarly, if we consider Personal Independence Payments registered appeals in year 2020/21, we can state that we can be 95% certain that the true level of incorrectness among all related appeal decisions in the period is between 3.5% and 14.7%, i.e.  $9.1\% \pm 5.6\%$ .

The remaining benefits for each year can be analysed in the same manner.

## Appendix 2 - Benefit Appeal Profiles

This appendix draws together the information in the body of the report to produce a pro forma for each of the main benefits. Benefits with less than 30 cases monitored will be marked with \*.

All Benefits	2019/20	2020/21
Number of Cases Registered	7741	3765
Number of Cases monitored	985	400
Number of Initial Incorrect Decisions	50	23
Percentage Incorrect	5.1%	5.8%
Confidence Interval	1.3%	2.2%
Total Number of Reasons	68	42

### Main reason for incorrect initial decision:

The decision was based on insufficient facts or evidence due to inadequate investigation of the claim or revision (F1) – 26.5 % and 28.6% of all reasons in each year respectively.

Attendance Allowance	2019/20	2020/21
Number of Cases Registered	121	67
Number of Cases monitored	67	42
Number of Initial Incorrect Decisions	4	1
Percentage Incorrect	6%	2.4%
Confidence Interval	3.8%	2.8%
Total Number of Reasons	5	1

### Main reason for incorrect initial decision across both years:

The decision was based on insufficient facts or evidence due to inadequate investigation of the claim or revision (F1).

Identified in 4 of the 5 incorrect cases and accounts for 66.67% of all reasons.

## Appendix 2 - Benefit Appeal Profiles

Disability Living Allowance	2019/20	2020/21
Number of Cases Registered	585	413
Number of Cases monitored	211	153
Number of Initial Incorrect Decisions	6	8
Percentage Incorrect	2.8%	5.2%
Confidence Interval	1.8%	2.8%
Total Number of Reasons	6	16

### Main reason for incorrect initial decision across both years:

The decision was based on insufficient facts/evidence due to inadequate investigation of the claim or revision (F1).

Identified in 7 of the 14 incorrect cases and accounts for 31.8% of all reasons.

Personal Independence Payment	2019/20	2020/21
Number of Cases Registered	5349	2554
Number of Cases monitored	227	99
Number of Initial Incorrect Decisions	21	9
Percentage Incorrect	9.3%	9.1%
Confidence Interval	3.7%	5.6%
Total Number of Reasons	32	16

### Main reason for incorrect initial decision across both years:

The decision was based on insufficient facts/evidence due to inadequate investigation of the claim or revision (F1) and The decision was based on a misinterpretation or misunderstanding of the evidence available to the officer (F4).

## Appendix 2 - Benefit Appeal Profiles

Employment and Support Allowance	2019/20	2020/21
Number of Cases Registered	849	201
Number of Cases monitored	59	20
Number of Initial Incorrect Decisions	3	1
Percentage Incorrect	5.1%	5%
Confidence Interval	5.4%	9.1%
Total Number of Reasons	4	1

### Main reason for incorrect initial decision across both years:

The officer disregarded relevant evidence (F6).

Identified in 2 of the 4 incorrect cases and accounts for 33.33% of all reasons.

Income Support	2019/20
Number of Cases Registered	68
Number of Cases monitored	22
Number of Initial Incorrect Decisions	2
Percentage Incorrect	9.1%
Confidence Interval	10%
Total Number of Reasons	2

### Main reason for incorrect initial decision across both years:

“Insufficient facts/evidence due to inadequate investigation of the claim or revision” (F1) and “The officer overlooked a relevant Commissioners decision/Court decision which was/should have been available to him” (L4) were identified in the 2 incorrect cases and each account for 50.0% of all reasons in year 2019/20.

## Appendix 2 - Benefit Appeal Profiles

---

<b>Jobseekers Allowance</b>	<b>2019/20</b>
<b>Number of Cases Registered</b>	<b>52</b>
<b>Number of Cases monitored</b>	<b>16</b>
<b>Number of Initial Incorrect Decisions</b>	<b>0</b>
<b>Percentage Incorrect</b>	<b>N/A</b>
<b>Confidence Interval</b>	<b>N/A</b>
<b>Total Number of Reasons</b>	<b>N/A</b>

### **Main reason for incorrect initial decision:**

There was no main reason identified in the one case in 2020.

<b>Universal Credit</b>	<b>2020/21</b>
<b>Number of Cases Registered</b>	<b>410</b>
<b>Number of Cases monitored</b>	<b>25</b>
<b>Number of Initial Incorrect Decisions</b>	<b>1</b>
<b>Percentage Incorrect</b>	<b>4%</b>
<b>Confidence Interval</b>	<b>7.5%</b>
<b>Total Number of Reasons</b>	<b>1</b>

### **Main reason for incorrect initial decision:**

The officer did not identify the correct legal rules relevant to the claim/revision (L1).

## Appendix 3 – Level of Incorrectness of small samples

### Sample Size for 5 Year Analysis Tables

Income Support		
Year	Sample Size	Level of Incorrectness %
2016/17	57	0
2017/18	23	4.3
2018/19	21	9.5
2019/20	22	9.1
2020/21	13	15.4

Jobseekers Allowance		
Year	Sample Size	Level of Incorrectness %
2016/17	122	0.8
2017/18	14	7.1
2018/19	17	5.9
2019/20	16	0
2020/21	11	9.1

Universal Credit		
Year	Sample Size	Level of Incorrectness %
2016/17	N/A	N/A
2017/18	N/A	N/A
2018/19	80	2.5
2019/20	328	4
2020/21	25	4

APPEAL REPORT FORM

YEAR XX

---

**Section 1**    Benefit claimed:

Name of appellant:

Address:

NINO:

Appeal reference:

Date of Decision Appealed:

Decision maker/Office:\*

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

*\*To be completed by tribunal Clerk*

---

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

---

**Section 2**    Date Summary Decision Issued:

If the decision of the Departmental Officer was not altered by the Appeal Tribunal, please indicate if that decision was made correctly.

Yes

No

If the answer is No, please explain.

---

Mon 1

## Appendix 4 - Questionnaire

---

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

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

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

- FA  the tribunal accepted evidence which the officer was not willing to accept. Neither conclusion was unreasonable
- FB  the tribunal was given additional evidence which was not available to the officer who made the decision. Such evidence was;
- in the form of an expert report handed in;
- an expert report obtained by the tribunal;
- given by a witness;
- given by the appellant
- F1  the decision of the officer was based on insufficient facts/evidence due to inadequate investigation of the claim or revision
- F2  the officer failed to request adequate medical guidance or expert reports relevant to the decision i.e. medical reports from a consultant/details of property interests/ details of business accounts/ adequate valuations (Article 12(2) of the 1998 Order)

## Appendix 4 - Questionnaire

---

- F3  the officer failed to identify a finding/s which needed to be made on the basis of the rules of entitlement relevant to the claim or revision
- F4  the decision was based on a misinterpretation/misunderstanding of the evidence available to the officer
- F5  the officer took into account wholly unreliable evidence
- F6  the officer disregarded relevant evidence
- F7  the officer failed to identify/resolve an obvious conflict in the evidence
- F8  the officer did not action additional relevant evidence provided after his decision was made and initiate a revision
- F9  The officer made errors of calculation
- R1  the appeal was made because the officer did not give adequate reasons for his decision when requested under regulation 28(1) (b) of the Decision and Appeals Regulations 1999

There was a legal error in the decision because:

- L1  the officer did not identify the correct legal rules relevant to the claim/revision
- L2  the officer misinterpreted the legal rules relevant to the claim
- L3  the officer failed to identify a change in legal rules relevant to the claim/revision
- L4  the officer overlooked a relevant Commissioners decision/Court decision which was/should have been available to him
- L5  the officer failed to obtain additional legal advice necessary to deal with the claim

## Appendix 4 - Questionnaire

---

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

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

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

-----

Legal member

Date:

Time Taken to Complete: