

# President's Report

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

*2007–2008*

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## *President's Foreword*

The Social Security Act 1998 imposed a duty on the President of Appeal Tribunals to make an annual report, based on the cases coming before tribunals, on the standards of decision-making achieved by the Secretary of State. One of the consequences of the Tribunals, Courts and Enforcement Act 2007, which will wind up Appeal Tribunals and transfer their jurisdiction to a new judicial body called the First-tier Tribunal, is that, from 3 November 2008, there will no longer be a President of Appeal Tribunals. This report, which covers the financial year 2007–2008, will, therefore, be the final annual report under the provisions of the 1998 Act.

The 2007 Act does, however, confer on the Senior President of the new Tribunal a reporting function on cases coming before that Tribunal and it may well be that arrangements continue, in one form or another, for systematic feedback to be provided to the Secretary of State for Work and Pensions on his decisions that are appealed.

Whether future feedback is based on similar methods of sampling and analysis to those that have been in operation since 1999 will be a matter for discussion. The test of successful feedback in this context is the extent to which it enables improvements in administrative decision-making to be formulated and implemented. That requires the information relayed to the Secretary of State by way of feedback to be focussed, practical and instrumental. It also requires, if the expense of diverting judicial resources to generating the data used in feedback is to be justified, a readiness on the part of the Secretary of State to respond positively. As will be seen in this Report, there is little evidence of significant change over time in standards of administrative decision-making, as gauged by the cases coming before tribunals.

I am indebted to all those tribunal chairmen and members who have, in addition to their judicial duties, taken the time to complete the sampling questionnaires, to all those clerks who have ensured the sampling has been completed and, particularly, to all those on the President's Support Team who have diligently maintained a record of the feedback in order to compile this annual report.

A handwritten signature in black ink that reads "R Martin". The letters are cursive and slightly slanted.

Robert Martin  
President of Appeal Tribunals

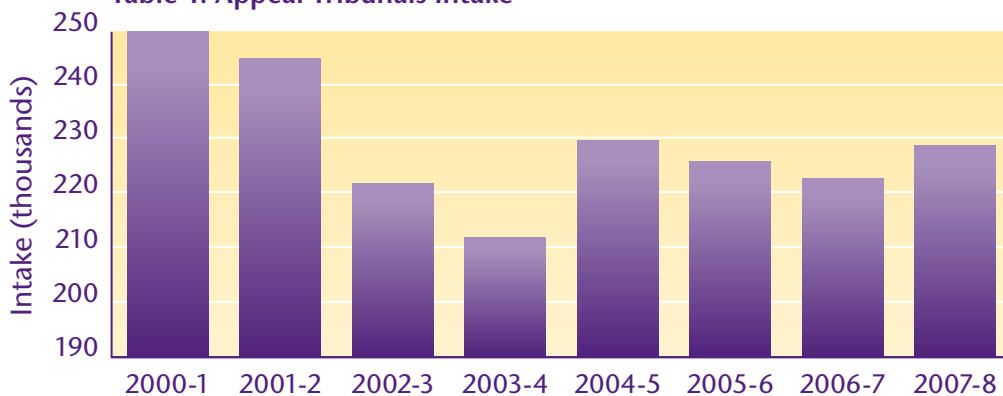
- 1.1 Having established, by a pilot completed in 1999, a schema for the collection of data from appeal cases, this report follows that schema and adopts a similar lay-out to that of the previous reports. The questionnaire used to collect the data is reviewed each year in light of any feedback from colleagues and adjustments made where they might aid ease of presentation.
- 1.2 I am confident that trends identified and conclusions reached in the report are representative of the cases that come before our tribunals on appeal. However, it cannot be claimed that they reflect the entirety of decisions made by the Secretary of State for Work and Pensions. Millions of decisions are made each year by the Secretary of State on entitlement to social security benefits. Only a small portion of those decisions – 229,120 in 2007–2008 – were challenged by way of appeal and referred to the Tribunals Service. It would be rash to extrapolate from that small portion when looking at overall standards of administrative decision-making. While we cannot say definitively that the cases we see are more likely to be cases where the Secretary of State has reached the wrong conclusion, common sense suggests, subject to one proviso, that that is likely to be so. The proviso, of course, is that tribunals tend to see cases where claimants consider an adverse decision has been wrongly made: tribunals are less likely to see cases where a decision that is wrongly advantageous to the claimant has been made.

### *Feedback*

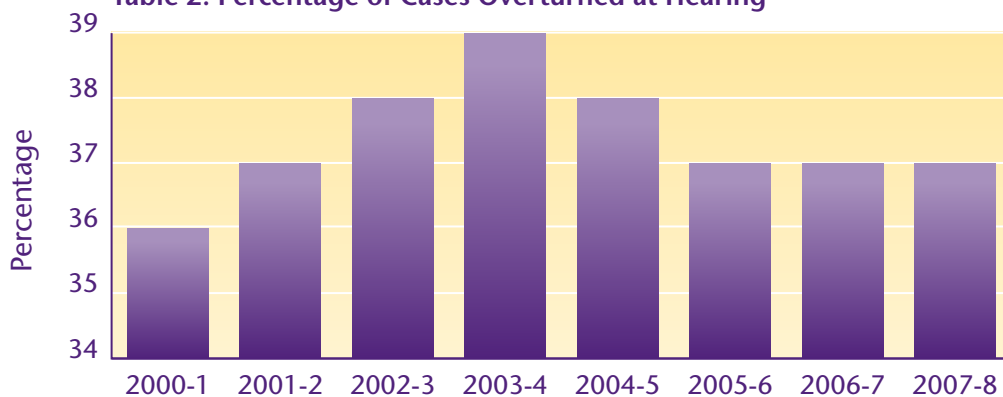
- 1.3 As this is likely to be the last report in this format, I thought it might be useful to look back over the findings on standards of administrative decision-making during the past eight or nine years, against the background of the aims of the new system of adjudication introduced by the Social Security Act 1998.
- 1.4 The changes to decision-making and appeals brought in by the Act were intended as a radical reform of the way the Department for Work and Pensions carried out its business. They aimed to modernise the process of social security decision-making, whilst maintaining the principle that decisions should be made in accordance with findings of fact and the law. This principle remains at the heart of administrative decision-making and forms the focus of our feedback. In evaluating administrative decisions for the purpose of feedback, we examine particularly whether decisions are rooted in evidence of probative value. Of necessity, such evidence should be recorded and available for review.

- 1.5 It seems to me that the overall objectives of the reform were to streamline procedures, by setting out clearer responsibilities for customers to provide evidence to support their claim, and to establish clear responsibility for the standards of decisions and for promoting best practice. Effective reconsideration was to be ensured by taking a second look at decisions, so that only cases involving complex legal issues should proceed to the tribunal. A new decision-making process was designed with the intention of providing simple mechanisms for quickly and easily changing decisions where this was appropriate, so that customers could use the offer of reconsideration to have the decision explained to them, the Department checking the facts and looking again at its decision without the requirement for a formal appeal.
- 1.6 To what extent have those objectives been achieved? When the reforms were being planned, the then Independent Tribunals Service was receiving in the order of 217,000 appeals a year. In 2007–08, the number was 229,120. Table 1 shows the volume of cases received annually by Appeal Tribunals over the period covered by these reports. Table 2 shows the percentage of appeals over the same period that resulted in the Secretary of State’s decision being overturned by the tribunal.

**Table 1. Appeal Tribunals Intake**



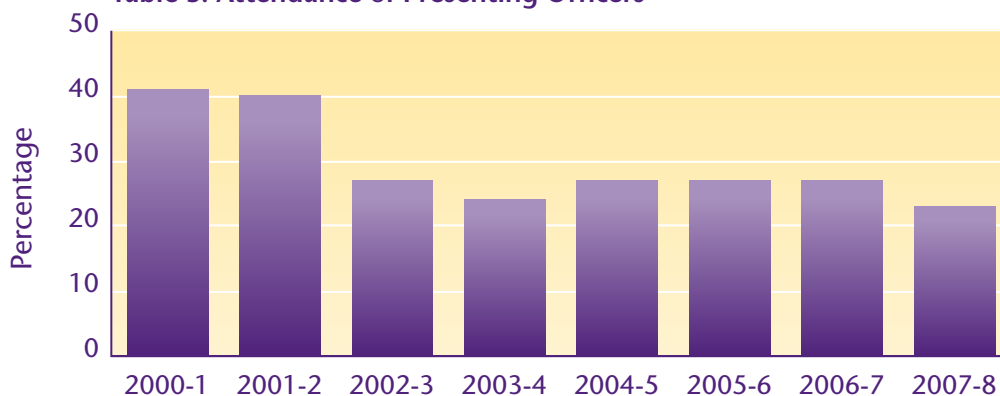
**Table 2. Percentage of Cases Overturned at Hearing**



- 1.7 Clearly, the volume of appeals against administrative decisions is a product of many factors, including the volume of claims, the proportion of claims refused, the accessibility of the appeals system. It would be simplistic to attribute any changes in the volumes of appeals since 1999 exclusively to the effectiveness or otherwise of the modernising reforms. Yet, at first blush, there is little evidence in the figures of a sustained reduction in appeals reaching the tribunal. It would be helpful to have further examination of the effectiveness of reconsideration as a diversion from appealing, though this would lie outside the scope of this report.
- 1.8 The figures in Table 2 are probably the more pertinent. Again other factors are likely to be at play, but one is left with the striking impression that there has been no significant improvement in the quality of administrative decisions coming before Appeal Tribunals. The proportion that is overturned by the tribunal is no less now than when the modernising reforms were introduced.
- 1.9 Ever since our first report, we have made the point that the findings from annual sampling form only one of the sources of feedback from Appeal Tribunals that are available to the Secretary of State. Perhaps the most valuable source of feedback is to be gleaned from attending the hearing. Were the Secretary of State to be represented at the hearing, it would allow a direct flow of utilisable information channelled to the original decision-maker. It is not particularly helpful for a decision-maker merely to read from the decision notice issued by the tribunal that the appeal has been overturned (or, indeed, dismissed, since the tribunal might have dismissed it on completely different grounds from those underpinning the original decision). That bare statement is not sufficient because it does nothing to improve the decision-maker's understanding. Although a formal statement of reasons will be provided by the tribunal on request, that too may not help the decision-maker. The gist of the statement might, for example, simply be that the tribunal found the appellant to be a credible witness and accepted his or her evidence. What, in my view, would be conducive to improved decision-making would be feedback from a Presenting Officer, drawn from observing what actually transpired at the hearing, directed to the original decision-maker and tailored to such modifications to (or affirmations of) the decision-maker's approach as might be appropriate.
- 1.10 The importance of the Secretary of State being represented at the tribunal hearing has been stressed not only repeatedly in these reports, but also by the Social Security Commissioners (see, for example, CIS/1459/2003)

and by the Department's own Standards Committee. Yet, as Table 3 shows, there has been a steady decline in the percentage of appeal hearings attended by a Presenting Officer. In the current year it is down from 27% to 23%. The Child Support Agency should be excepted from this criticism. That this Agency regularly provides Presenting Officers demonstrates that it is not beyond the capacity of the Secretary of State to play a useful and active part in tribunal hearings.

**Table 3. Attendance of Presenting Officers**



1.11 Other channels of feedback from tribunals include links with the Department's Standards Committee, supporting local Tribunal User Groups and an arrangement with ATOS Healthcare, which supplies much of the medical evidence used by the Secretary of State, to refer medical reports which have been the subject of tribunal criticism.

1.12 The President's annual report is supplemented by quarterly interim reports, which give the Agencies that comprise the Department early indication of any significant developments that are likely to be raised in the final report.

### *Findings*

1.13 Since the first report was published in 2001, the following key themes have regularly emerged:

- Decisions are most commonly overturned because the tribunal elicits additional information, usually by talking with the appellant at the hearing. The ready availability of this additional information suggests that there should be more engagement by the Department with the appellant, preferably face to face.
- There is no consistent evidence to show that cases are effectively reconsidered before coming to the tribunal. Often the appeal papers show an unwillingness on the part of the decision-maker to reconsider



the decision in the absence of the appellant supplying fresh medical or other third party evidence.

- Some medical reports underestimate the severity of disability;
- There is confusion on the part of decision-makers about the appropriate evidential weight to be given to medical reports;
- People with particular disabilities, such as sensory impairment or mental health problems, may face additional difficulties in making benefit claims and using the process of appeal.

1.14 These have been fairly consistent findings from the annual reports over the past eight years. They are reinforced by the findings of other bodies, including the Department's own Standards Committee<sup>1</sup>, the National Audit Office (NAO)<sup>2</sup> and the Committee of Public Accounts (PAC)<sup>3</sup>.

1.15 By way of illustration, the PAC identified as areas for improvement:

- Developing training and enhancing feedback to promote sound judgement in weighing evidence;
- Establishing minimum standards for reviewing decisions;
- Increasing pre-checks to establish evidence and reduce appeals;
- Using personal communication to collect and verify evidence;
- Sending Presenting Officers to "complex" cases at appeal hearings.

Taken together, there is a wealth of material to support further reform of administrative decision-making so as to focus on the collection of evidence, the evaluation of evidence and an openness to reconsidering decisions that are challenged by the claimant. That readiness to engage and reflect should not stop when a case goes to appeal: it should continue right up to the tribunal's decision.

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1 Department for Work and Pensions Decision Making Standards Committee Annual Report 2005–2006. DWP Adjudication and Constitutional Issues Branch, Leeds, 2006. Recommendation 11: Appendix A. p 68.

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

3 PAC Sixteenth Report of Session 2003–2004. HC 120 TSO.

## *The Future*

- 1.16 In the midst of what might seem an intransigent problem there are some signs of hope. As a response to the different sources of feedback and as part of the government's wider strategy for civil servants, set out in Professional Skills for Government,<sup>4</sup> the Pension, Disability and Carers Service (PDCS)<sup>5</sup> has developed a scheme called "Professionalism in Decision Making and Appeals", in partnership with the University of Chester, that aims to improve the quality of administrative decision-making. We look forward with interest to an evaluation of this development.
- 1.17 In August 2007 the Tribunal Service began a pilot scheme, in conjunction PDCS, to test whether a form of alternative dispute resolution involving early neutral evaluation might be work in Disability Living Allowance and Attendance Allowance appeals. Under the scheme a Tribunal Chairman reviews the appeal papers, with the appellant's consent, to form a view of the likely outcome at a tribunal hearing. Where the appeal has convincing prospects of success, the Chairman will contact PDCS and invite reconsideration of its decision. Where the Chairman assesses the appeal as lacking prospects of success, that view is communicated to the appellant, who may choose to withdraw or continue to a tribunal hearing. An assessment of the pilot is expected by this autumn.
- 1.18 Although I indicated in my Foreword to this Report that one of the consequences of the implementation of the Tribunals, Courts and Enforcement Act 2007 will be the ending of the responsibility of the President of Appeal Tribunals for providing reports on standards of administrative decision-making, I have begun discussions, initially with members of the Pension, Disability and Carers Service, that I hope will pave the way for providing more effective means of giving feedback, should the reporting function be taken up by the Senior President of Tribunals. One characteristic of any new scheme should, in my view, be a move away from the current high level of aggregation of analysis, which is too generalised to impart utilisable information to individual decision-makers. Instead, the emphasis should be on supplying feedback that is focussed and of practical use.

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4 'Professional Skills for Government' [www.civilservice.gov.uk/skills](http://www.civilservice.gov.uk/skills).

5 From 1 April 2008 the separate DWP Agencies of The Pension Service and The Disability and Carers Service were merged to form The Pension, Disability and Carers Service.

- 2.1 The sample this year has captured a total of 1,886 cases, drawn in a manner which attempts to reflect the overall profile of cases received by the Tribunals Service during the course of the year. Child Support cases are over-represented in the sample at around 6%. The actual intake of Child Support cases is 1% of the total. The remainder of the sample is fairly close to the intake for 2007–08.
- 2.2 The pattern for this report has now become established. Publication follows the circulation of three quarterly interim reports produced during the course of the year. The interim reports are intended to provide the Agencies with a more immediate source of feedback, so that they can monitor their own performance as the year progresses.
- 2.3 Here, as noted elsewhere in the report, it should be remembered that it is often a combination of reasons that leads to a decision being overturned on appeal. While the predominant reasons are drawn out in the report, Chairmen often note that a multiplicity of factors has contributed to the tribunal's decision and tick a number of boxes in the questionnaires.
- 2.4 Since the Tribunals Service joined the Ministry of Justice, we have had difficulty obtaining the necessary statistical and analytical support to maintain and review our sampling model in the way we would have liked. We have therefore struggled to collect a sample which is truly representative of the cases coming before us. While the sample does broadly reflect our intake, the outcome is that DLA/AA cases have been over-sampled and IB cases under-sampled. On the other hand, in Child Support cases we have deliberately skewed the size of the sample in order to collect enough data to draw some meaningful comments. As with any sample, there may be a margin of error, according to its size. A very small sample carries a wide margin of error. Care must be taken when comparing this year's results with previous years'. Where there is only a small difference, this may be due to chance and will not always indicate a significant change.
- 2.5 For Jobcentre Plus and the Pension, Disability and Carers Service, the themes that have emerged follow those in the interim reports, namely:
  - Additional evidence was the reason given in the largest proportion of cases, where the tribunal overturned the decision, and this evidence was often in the form of oral evidence, provided by the appellant at the hearing;

- In some cases the tribunal took a different view of the same evidence that had been before the decision-maker, considering that the decision-maker had been wrong not to accept that evidence or give it appropriate weight;
- In cases requiring medical reports, some decisions were made on the basis of reports which had under-estimated the severity of the disability. In mental health cases the full extent of the problems experienced by the appellant had not been fully taken into account;
- The presence of the appellant at the hearing has a significant impact on the outcome, either by shedding new light on existing evidence or by producing new evidence.

2.6 For the Child Support Agency, the main findings are similar:

- The most common reason for cases being overturned was that additional evidence was presented to the tribunal, largely in the form of the oral evidence of the appellant;
- Care needs to be taken with documentation and calculations. The Agency needs to be rigorous in verifying facts, taking notice of the parties' representations and following up discrepancies before the hearing;
- Care also needs to be taken, when preparing cases for tribunal hearings, that all the documents relevant to the matter under appeal are available and accompany the submission.

2.7 Overall, the main themes from the report remain the gathering of evidence, weighing the evidence, reviewing existing evidence on appeal and obtaining further evidence before the hearing where necessary.

# 3

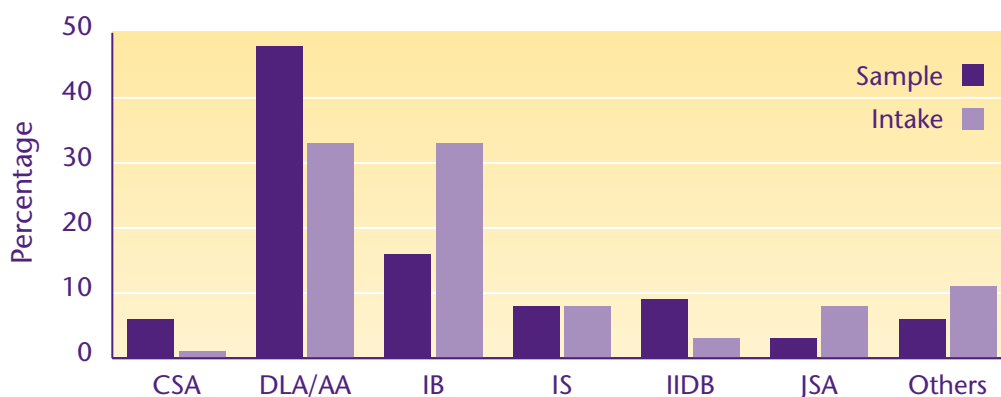
## The sample and results

3.1 The method employed to gather the information for this year's sample and the form of questionnaire used can be found at Annex A. During the course of the year 1,886 questionnaires were completed by the Chairman and (where relevant) the medical member of the tribunal. A breakdown of the sample compared to the national intake can be found at Table 1 below. Comparison between this year's sample and the results from the preceding year can be found at Annex C.

*Table 1 Sample compared to national intake*

Benefit	Sample		Total intake
	No. of Cases	%	%
Child Support Assessments/Departures	104	6	1
Disability Living Allowance/ Attendance Allowance	913	48	33
Incapacity Benefit	297	16	33
Income Support	156	8	8
Industrial Injuries Disablement Benefit	171	9	3
Jobseeker's Allowance	62	3	8
Others	183	10	11
Total	1,886		

National intake for 2007–2008 was 229,120.



3.2 Child Support cases are deliberately over-represented in the sample, with the aim of obtaining sufficient data to be able to draw some meaningful conclusions. This year IB cases were considerably under-represented by 17% and JSA by 5%. DLA cases were over-represented by some 15% in the sample and IIDB were over-represented by 6%.

## Sample results

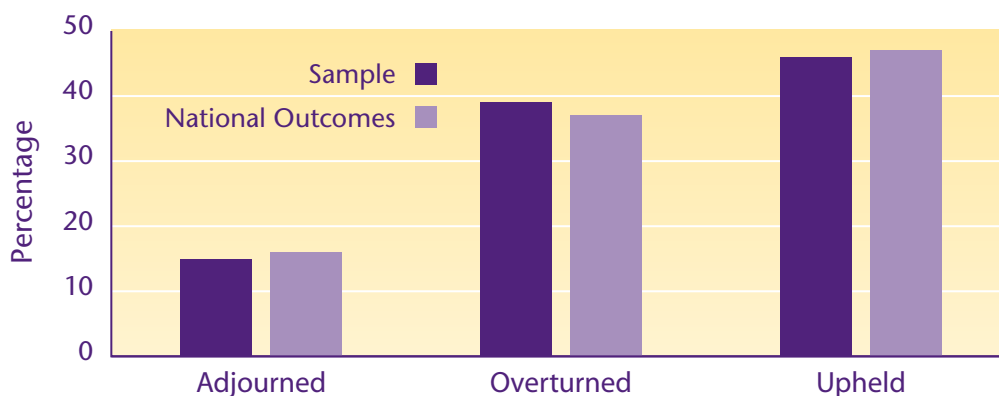
3.3 The questionnaires produced a total of 1886 replies for the period April 2007 to March 2008. The sample was restricted to those appeals which resulted in one of the following three outcomes:

- Adjourned – where there was some reason for the case not being heard, for example, where the appellant was absent through illness, or where further clarification was requested by the Chairmen and the matter referred back to the decision-maker.
- Overturned – where the tribunal disagreed with the decision-maker’s determination and made a decision that was more favourable to the appellant.
- Upheld – where the tribunal agreed with the decision-maker’s determination.

3.3 Table 2 below shows the outcomes in the sample, broken down by type and compared to the national outcomes for 2007–2008. The figures show 39% of decisions being overturned with some 46% upheld. This shows that the breakdown by outcome type in the sample is again broadly representative.

*Table 2 Sample outcomes compared to national outcomes*

	Sample		National
Adjourned	288	15%	16%
Overturned	742	39%	37%
Upheld	856	46%	47%

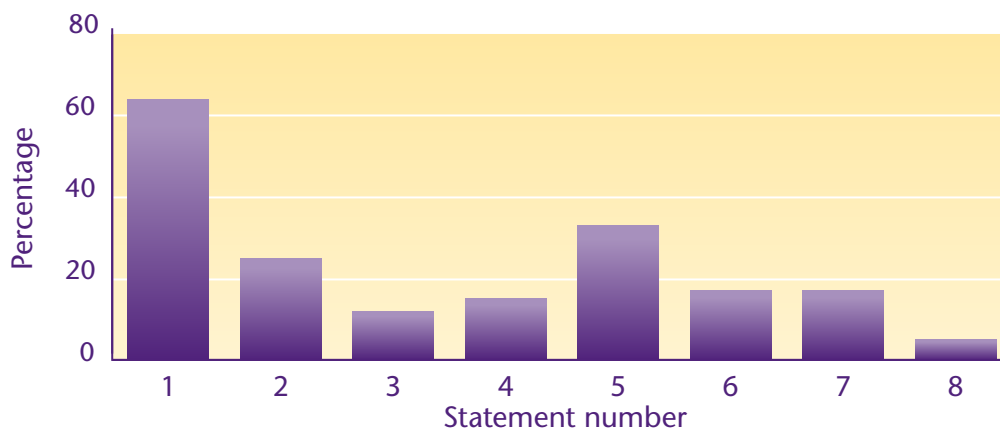


## Overturned cases

3.4 When looking at the overturned cases, it is important to remember that the majority of cases that come before a tribunal are upheld. This is reflected in the sample this year where the upheld cases account for 46% of the decisions. In those cases where the Secretary of State's decision was overturned by the tribunal, the main question we sought to answer was: why was the decision overturned? Chairmen (and medical members) were offered a number of statements on the questionnaire which they could tick to indicate the reasons for the decision being overturned. (They could tick more than one in each case.) The statements which were most commonly agreed with are shown in Table 3 below.

*Table 3 Outcomes – 742 overturned cases*

Statement	Responses
<b>1. Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	477 (64%)
<b>2. Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	185 (25%)
<b>3. Insufficient facts:</b> The decision was based on insufficient facts or evidence due to the inadequate investigation of the claim or reconsideration	87 (12%)
<b>4. Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	108 (15%)
<b>5. Different view:</b> The tribunal formed a different view of the same evidence.	241 (32%)
<b>6. Different view (medical):</b> The tribunal formed a different view based on the same medical evidence.	129 (17%)
<b>7. Under-estimated disability:</b> The medical report under-estimated the severity of the disability.	129 (17%)
<b>8. Avoid the appeal:</b> The Agency could have avoided the appeal.	39 (5%)



- 3.5 The most common response remains that the tribunal was given additional evidence not available to the decision-maker. This reason was given in 477 cases (64%) of those overturned, which is marginally higher than the findings in last year's sample (62%). In upheld cases additional evidence was presented in 95 cases (11%).
- 3.6 In those cases where additional evidence was provided, it took the form of oral evidence in 361 cases (49% of all overturned cases). Of these 361 cases, there were 307 (85%) where the evidence was provided by the appellant. This is not an entirely unexpected figure, since by far the greater proportion of cases in the sample were oral hearings. Out of a total of 1886 cases in this year's sample 1497 were oral hearings, 79%, for the 742 overturned cases in the sample 680 (92%) were oral hearings, the corresponding figures for last year were 78% and 92%.
- 3.7 In 116 cases (24%) additional written evidence was provided to the tribunal, and in 64 cases it was a combination of written and oral evidence that was provided to the tribunal.
- 3.8 The production of additional evidence, in whatever form, remains the predominant reason for cases being overturned, and has done so since we began sampling for the first report published in 2001. At 64% in the 2008 sample, which is slightly higher than last year's 62%, the figure suggests that this important primary source of information is still being overlooked in the decision-making process. There appears to be a tendency on the part of decision-makers to discount additional oral evidence received from the appellant in the process of evidence gathering prior to the decision and then in the preparation of the appeal, and not to seek out new evidence to verify the facts where the decision has been challenged. If decision-makers do not accept evidence, in whatever form, or have other evidence to refute it, they should make this explicit.
- 3.9 The tribunal formed a different view of the same evidence in 241 (32%) of the overturned cases, slightly less than last year when the figure was 36%. In 129 cases (17%) it was specifically the medical evidence that was differently interpreted, a figure rather higher than the 10% of cases last year. Often the reason for taking a different view is that the questioning of the appellant at the hearing and the taking of a full history by the medical member of the tribunal shed new light on the existing evidence.



- 3.10 Problems with evaluating evidence persist, reflected in the 185 cases (25%), where the decision-maker did not accept the evidence that was available. In 108 (15%) cases the decision maker had not given the evidence due weight, a common theme being that sufficient regard had not been given to the evidence of the appellant.
- 3.11 The proportion of medical reports that underestimated the severity of the appellant's disability has increased from 10% last year to 17%, 129 cases, in this year's sample. Medical reports that come before the tribunal originate from a number of sources. In this year's sample ATOS Healthcare had provided medical reports in 91% of cases which were overturned. In those cases where the tribunal felt the medical report underestimated the severity of the disability, the appellant attended the hearing in 109 cases (84%) and so was able to be questioned by the tribunal.
- 3.12 In this year's sample the number of cases where the tribunal took a different view of the same medical evidence that had been before the decision-maker rose to 129 cases (17%), a significant increase over the 61 cases (10%) last year. In 58 (8%) of the overturned cases, the tribunal found that all the medical issues had not been addressed in the medical report used by the decision-maker; in 39 cases (5%) the decision-maker had misinterpreted the medical evidence; in 25 cases (3%) the advice in the medical report was not adequately justified; in 11 cases (2%) it was not considered that the advice in the medical report was consistent; in 34 cases (4%) it was felt that the decision-maker had overlooked evidence which might have affected the decision; in 10 cases (1.5%) it was felt that conflicting medical opinion had not been addressed, and in 6 cases (1%) the evidence was not in keeping with the consensus of medical opinion.
- 3.13 Where a case involves medical evidence, Chairmen continue to comment on the value of oral hearings to shed new light on the existing evidence. They criticised decision-makers for relying on limited medical evidence, for failing to seek up to date medical evidence, particularly in cases of progressive illness, and for not taking into account available medical reports. Some medical reports relied on by decision-makers underestimated disability and there were problems in the way decision-makers interpreted medical reports and weighed this form of evidence against others. Mental health issues remain a problem both in the way claims are dealt with and in assessing the relationship between mental health issues and care needs.

- 3.14 General Comments: Chairmen singled out for praise complex cases where the standard of the decision making was high and the submission well written and accompanied by supporting evidence. They criticised standard form submissions which did not address all the issues or include all the evidence. More generally they cited lack of evidence as a cause for concern and emphasised the value of an oral hearing and the opportunity to engage directly with the appellant, at length if necessary, to establish all the facts and explain the circumstances surrounding the appeal. They continue to value the presence of Presenting Officers, where they attended. A common view was that there was an absence of proper investigation of the circumstances surrounding the appeal before the case was sent to the tribunal for hearing. Overpayment cases were criticised where submissions did not adequately cover all the relevant issues and seek to resolve them before the hearing.
- 3.15 At the same time, chairmen also consistently said that there is little that the Agencies can do to avoid appeals. In a slight improvement from last year, in only 39 (5%) of overturned cases did the tribunal consider that the Agency could have avoided the appeal, compared with 9% last year.
- 3.16 This is the fifth year that we have collected information on the standard of the submissions made by the Secretary of State to the tribunal. The submission sets out the facts of the case, the evidence, and the law used to make the decision under appeal. It should include the details of the claim and the issues raised by the appeal, showing how the decision-maker weighed the evidence to reach the decision and the grounds on which the appeal is opposed. It is of crucial importance that the submission should enable the appellant, and subsequently the tribunal, to ascertain readily why the decision, under challenge, was reached. The Chairmen's assessment of submissions remains favourable. This year there were only 32 (4%) overturned cases where the submission failed to argue the Secretary of State's case fully and effectively, though this was slightly higher than the figure last year where there were 30 such cases. There were 19 cases (3%) where the submission failed to focus on the grounds of appeal; 25 cases (3%) where the submission failed to include all the evidence relating to the decision under appeal; 16 cases (2%) where the submission failed to include or refer to the correct statute or case-law; and 14 cases (2%) where it failed to include all the relevant facts.

### 3.17 Summary of those areas highlighted by Chairmen in their comments:

- There remain problems with gathering evidence, identifying the areas of dispute, investigating discrepancies and, where possible, resolving them before the hearing or addressing them in the submission;
- Standard form submissions need to identify the facts clearly, and present a coherent argument that addresses the particular facts of the case. Some do not address the questions raised by the appeal;
- Where it was clear that issues required further investigation by the decision-maker, Chairmen questioned why the cases had been put before the tribunal prematurely;
- In cases involving medical evidence, Chairmen criticised circumstances where further medical evidence had not been sought, either at an earlier stage or not at all, leaving the tribunal to pursue the matter, in some cases at the cost of an adjournment;
- Chairmen continue to raise concerns about mental health issues in the decision-making process. In some cases they are not being given sufficient weight;
- In some cases medical examinations were not thorough enough to provide a full history.

### *Upheld cases*

3.18 Where the Secretary of State's decision was upheld by the tribunal, the main question which we wanted to ask was: was there anything the Agency could have done to prevent the case from having to come to a tribunal? The answer again seems to have been a resounding "No", with Chairmen indicating in only 4 of the 856 upheld cases that the Agency could have prevented the appeal. In only 6 cases was it felt that the Agency had not adequately explained the decision to the appellant.

## *Adjournments*

3.19 In 288 of the cases (15%) in the sample, the decision of the tribunal on the day was to adjourn. No analysis of these cases has been made in this report.

3.20 The following Sections, from 4-6, deal with individual categories of benefit, focussing mainly on overturned cases, as these are the cases where the more purposive information is obtained. The volumes and percentages in Sections 4-6 relate to overturned cases only, unless otherwise stated.

# 4

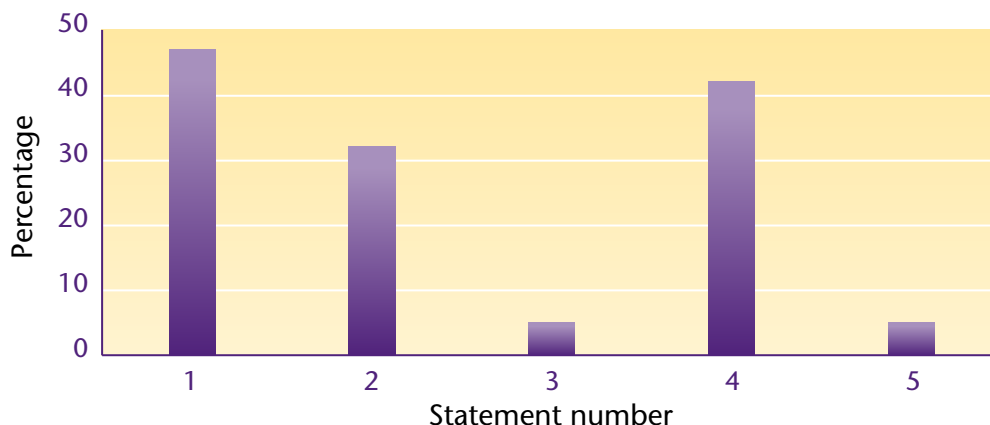
## Non-medical decisions – Jobcentre Plus, Pension Service & Debt Management

4.1 In order to focus better on the key issues for each benefit, we have, where practicable, drawn a distinction between those decisions which are primarily based on non-medical evidence and those primarily based on medical evidence. The main benefits in the first category are Jobseeker’s Allowance and Income Support. Details of the sample size and breakdown of outcomes for each benefit can be found in Annex B, Tables A and B and C. Following the creation in 2001 of a discrete Debt Management unit to recover overpayments across all benefits, it has not proved possible for us to distinguish between Debt Management decisions in non-medical cases and in medical cases. Because, in our experience, the preponderance of overpayment appeals relate to the former category, we have, for the sake of convenience, dealt with Debt Management cases under this Section.

### Jobseeker’s Allowance

Table 4: 19 Overturned cases: Responses

Statement	Responses
1. <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	9 (47%)
2. <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	6 (32%)
3. <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	1 (5%)
4. <b>Different view:</b> The tribunal formed a different view of the same evidence.	8 (42%)
5. <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	1 (5%)

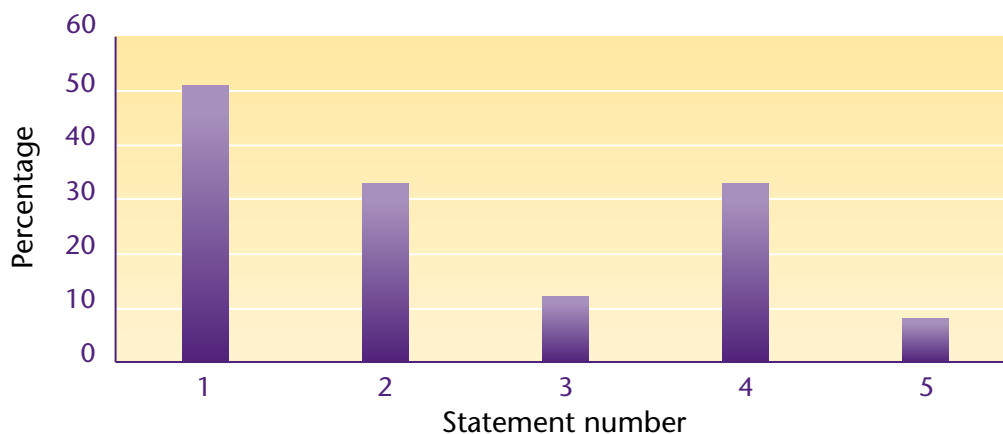


- 4.2 The number of cases upheld by the tribunal in JSA cases has increased this year to 64%, which is a slight increase on the figure of 61% for last year.
- 4.3 Of the overturned cases there were nine cases (47%), where the tribunal was given additional evidence, eight cases (42%) where the tribunal formed a different view of the same evidence and in six cases (32%) the tribunal accepted evidence that the decision-maker had but was not willing to accept. There was one case where the evidence or facts had not been given due weight. In the nine cases where additional evidence was presented to the tribunal, it took the form of oral evidence in five cases, in four of the five coming from the appellant. As last year, there was just one case where it was considered that the Agency could have avoided the appeal.
- 4.4 The standard of the Secretary of State's written submissions was reasonable. There were only two instances of each of the following shortcomings – failure to include all the evidence relating to the decision under appeal, failure to include all the relevant facts, notwithstanding they were in dispute, failure to include or refer to the correct statute or case-law. There was only one instance of each of the following – failure to focus on the grounds of appeal, failure to argue the case fully and effectively. The majority of cases appealed against were late claims 13 cases (20% of the total of 62 cases). The second largest category, at 12 cases (19%), involved conditions of entitlement, followed by 10 cases (16%) against labour market decisions.
- 4.5 Chairmen remain critical of the application of sanctions in some cases and raised concerns about evidence gathering, particularly on new claims. They felt that there was sometimes lack of consistent advice about the process on new claims, registering for work and the production of documentation. They also raised concerns about the delay in receiving submissions.

## Income Support

*Table 5: 51 Overturned cases: Responses*

Statement	Responses
<b>1. Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	26 (51%)
<b>2. Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	17 (33%)
<b>3. Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	6 (12%)
<b>4. Different view:</b> The tribunal formed a different view of the same evidence.	17 (33%)
<b>5. Avoid the appeal:</b> The Agency could have avoided the appeal.	4 (8%)



- 4.6 The distribution by outcome shows a decrease in the proportion of upheld decisions at 46%, down from last year's figure of 55%.
- 4.7 The main issues in this year's sample focus on overpayments which accounted for 18 (35%). (These are dealt with below under Debt Management cases.)
- 4.8 Additional evidence was provided to the tribunal in 26 cases (51%), a slight increase on the 47% in last year's sample. In 20 of these 26 cases this was in the form of oral evidence, in 18 being provided by the appellant. The inference is that the evidence could have been available at an earlier stage, if the Agency had asked for it.

- 4.9 In 17 cases (33%) the tribunal accepted evidence that the decision-maker had had available but was not willing to accept, and also in 17 cases (33%) the tribunal took a different view of the existing evidence, suggesting that in IS cases there remain problems with the decision-maker's assessment of the available evidence and reluctance to accept evidence that supports the claimant's case. The appropriate weight was not given to evidence in 6 cases (12%).
- 4.10 In eight cases the tribunal felt that the submission did not fully and effectively argue the Secretary of State's case. In seven cases it failed to include all the evidence relating to the decision under appeal; in six cases it failed to focus on the grounds of appeal; in five cases it did not include all the relevant facts, including disputed facts; and in four cases it failed to include or refer to the correct statute or case law. Chairmen continue to raise concerns about particular types of decision, for example living together as husband and wife, treatment of capital and claimant's confusion when registering as available for work. Criticism was also made where the law had been incorrectly applied, where evidence was referred to in submissions but not supplied to the tribunal, and where relevant Commissioners decisions were overlooked. Chairmen remain concerned that some standard form submissions do not deal with the issue under appeal.

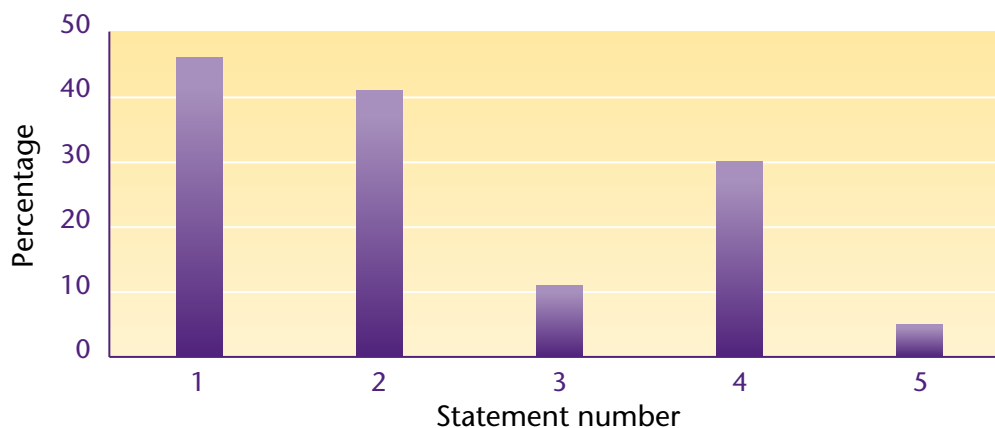


## Debt Management

4.11 Debt Management has taken over the recovery of overpayments across all benefits. We are unable, in this analysis, to break down overpayment cases by individual type of benefit.

*Table 6: 37 Overturned cases: Responses*

Statement	Responses
<b>1. Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	17 (46%)
<b>2. Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	15 (41%)
<b>3. Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	4 (11%)
<b>4. Different view:</b> The tribunal formed a different view of the same evidence.	11 (30%)
<b>5. Avoid the appeal:</b> The Agency could have avoided the appeal.	2 (5%)



4.12 In this year's sample, of the 37 overturned cases there were 17 (46%) where additional evidence was provided to the tribunal. This is almost the same as last year's figure of 15. In 11 cases (30%) this was in the form of additional oral evidence, all provided by the appellant. In 11 cases (30%) the panel formed a different view of the same evidence; in 15 cases (41%) the tribunal accepted evidence that had been available but which the decision-maker did not accept; and in 4 cases (11%) the decision-maker did not give the facts or evidence due weight. In only two cases (5%) the tribunal felt that the Agency could have avoided the appeal.

- 4.13 The standard of submissions was good, with only six instances where the submission failed to include all the evidence relating to the decision under appeal, three where it did not include all the relevant facts, including disputed facts, and two where it did not include or refer to the correct statute or case-law or focus on the grounds of appeal.
- 4.14 Although there was praise from Chairmen of the standard of some submissions, they also raised concerns about others written with no supporting evidence. In one case where the issue was an alleged failure to disclose relevant information, the claim form was missing, while in another, a key review form was not with the appeal papers. Continuing problems include cases involving possession of capital, the absence of Presenting Officers in complex cases, failure to investigate disputed circumstances surrounding overpayments and failure to follow case-law.

# 5

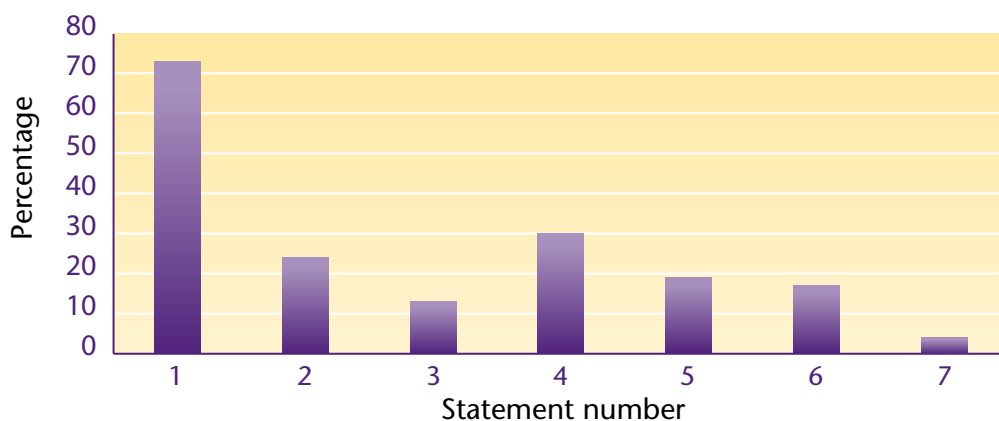
## Decisions involving medical evidence – Disability and Carers Benefits and Incapacity Benefit

5.1 In this category the main benefits are Disability Living Allowance, Attendance Allowance, Industrial Injuries Disablement Benefit and Incapacity Benefit. Sample size and outcomes can be found at Annex B, tables D to F.

### Disability Living Allowance / Attendance Allowance

Table 7: 365 Overturned cases: Responses (combined)

Statement	Responses
1. <b>Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	267 (73%)
2. <b>Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	89 (24%)
3. <b>Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	46 (13%)
4. <b>Different view:</b> The tribunal formed a different view of the same evidence.	111 (30%)
5. <b>Different view (medical):</b> The tribunal formed a different view based on the same medical evidence.	69 (19%)
6. <b>Under-estimated disability:</b> The medical report underestimated the severity of the disability.	61 (17%)
7. <b>Avoid the appeal:</b> The Agency could have avoided the appeal.	14 (4%)



5.2 This year the number of cases in the sample is much higher than the national intake at 48%. The proportion of overturned cases in the sample is 40%, a slight reduction from 42% last year. The more complex care and mobility issues again dominate the overturned cases,

96% of the overturned cases involving both these components. This is, perhaps, unsurprising when it is considered that DLA makes up 94% of the intake of the combined category of DLA and AA cases.

- 5.3 Additional evidence was presented to the tribunal, after the original decision had been made, in 267 of the cases (73%). This was largely in the form of oral evidence – 209 cases (78%). In 179 of these cases (67%), the additional oral evidence was given by the appellant. This year the tribunal formed a different view of the same evidence in 111 cases (30%). In 89 cases (24%) the tribunal accepted evidence that the decision-maker had but was not willing to accept, and in 46 cases (13%) the decision-maker did not give relevant facts or evidence due weight. In 28 cases (8%) the decision was based on insufficient facts or evidence due to inadequate investigation of the claim or reconsideration. In 18 cases (5%) the decision-maker overlooked evidence that would have affected the decision.
- 5.4 At the same time, Chairmen considered that in only 14 (14%) of the overturned cases could the Agency have avoided the appeal.
- 5.5 The standard of the submissions was considered high. There were just eight cases (2%) where the submission failed to present the case effectively. There were five cases where the submission failed to include or refer to the correct statute or case-law, four cases where the submission failed to focus on the grounds of appeal and three cases where it did not include all relevant evidence relating to the decision under appeal. There was just one case where the submission failed to include details of all the facts, including disputed facts.
- 5.6 General comments from the Chairmen focused on obtaining further evidence, the use of evidence, particularly evaluating and weighing the evidence of medical reports, and relating this to the circumstances of the particular individual. The oral evidence of appellants remains a key factor in the deliberations of tribunals when reaching a different conclusion and emphasises the importance of any review involving direct contact with the appellant before the hearing. Decision-makers were criticised where, without explanation, they took a negative view of evidence that was capable of being viewed in a positive light. In consequence, submission writers had difficulties addressing conflicts of evidence. Decision-makers not only need to set out which evidence they are relying on, they also need to justify why they take a particular view of it. Chairmen were particularly critical of situations where a repeat

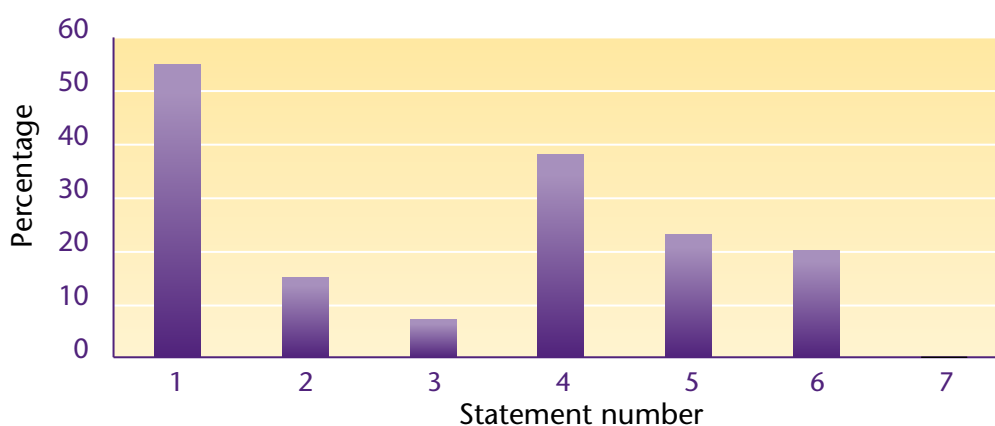
claim was disallowed on the same evidence that had justified an award in an earlier claim. Chairmen continue to argue for the production of relevant evidence from previous claims, a view supported by the Commissioners, and criticised the Agency for failure to comply with requests to produce the earlier evidence. Mental health issues, sensory impairment and dealing with appellants with terminal conditions were highlighted as causing particular problems.

- 5.7 In terms of medical evidence, the original medical report was considered to have underestimated the severity of the disability in 61 (17%) of the overturned cases, the tribunal having considered the subsequent evidence provided, including that from the appellant at the hearing. In 68 cases (19%) the tribunal took a different view of the same medical evidence. In 38 cases (10%) it was considered that the medical report did not fully address all the issues; in 30 cases it was misinterpreted by the decision-maker and in 26 cases incorrectly used. In 17 cases (5%) the decision-maker overlooked medical evidence; in 8 cases (2%) the advice in the medical report was not adequately justified and conflicts in the evidence were not addressed. In just one case, the advice in the medical report was not in keeping with the consensus of medical opinion.
- 5.8 In the sample of overturned cases the medical reports were produced from a variety of sources. In 302 cases it was provided by ATOS alone, in 22 cases by a GP alone and in 14 cases by a consultant alone. There were some cases where more than one report was available, provided from a variety of sources.
- 5.9 With regard to medical evidence, there was criticism where decisions were based on insufficient evidence. Some cases were referred to the tribunal with no medical evidence when there was clearly some dispute about the medical issues. Further criticism was made of decisions based on medical reports which did not coincide with the reality of the individual's experience. The time spent by the tribunal with appellants, exploring their history and questioning them about their care and mobility needs was the key to understanding the implications of their disability and enabling the tribunal to reach a different conclusion.

## Industrial Injuries Disablement Benefit

*Table 8: 60 Overturned cases: Responses*

Statement	Responses
<b>1. Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	33 (55%)
<b>2. Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	9 (15%)
<b>3. Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	4 (7%)
<b>4. Different view:</b> The tribunal formed a different view of the same evidence.	23 (38%)
<b>5. Different view (medical):</b> The tribunal formed a different view based on the same medical evidence.	14 (23%)
<b>6. Under-estimated disability:</b> The medical report underestimated the severity of the disability.	12 (20%)
<b>7. Avoid the appeal:</b> The Agency could have avoided the appeal.	0 (0%)



5.10 Appellants in a high number of IIDB cases also produce additional evidence for the tribunal. This happened in 33 (55%) of the cases. In 22 cases (67%) the additional evidence was in the form of oral evidence. In 20 (91%) of the 22 cases it was provided by the appellant. In 23 cases (38%) the tribunal formed a different view of the same evidence that had been before the decision-maker. In nine cases (15%) the tribunal accepted evidence that the decision-maker had available but was not willing to accept; in four cases the decision-maker did not give relevant facts or evidence due weight and in three cases did not

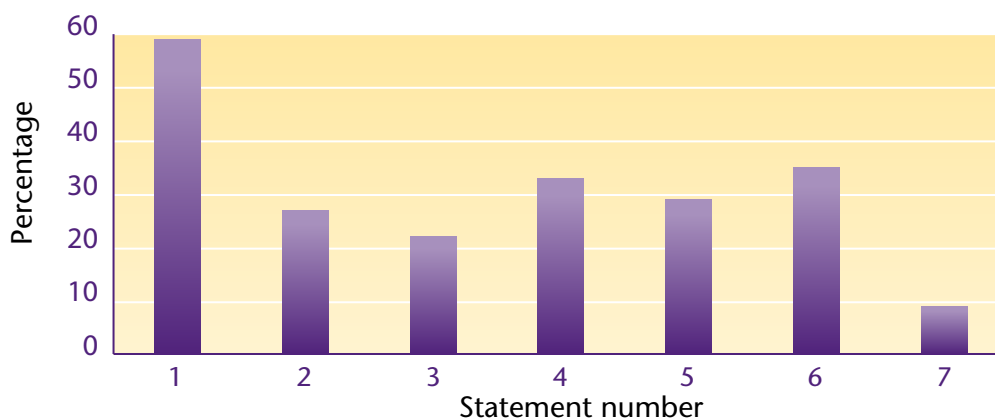
complete an adequate investigation of the claim. However, there were no cases where the tribunal felt that the Agency could have avoided the appeal.

- 5.11 The standard of the submissions was very high. The only adverse comments about the standards of the submission were that in two cases it failed to focus on the grounds of appeal and in a third case it failed to argue the case fully and effectively.
- 5.12 In commenting on the standard of the decision-making Chairmen highlighted the importance of oral evidence and stressed the opportunity the tribunal had to question the appellant, shedding new light on existing evidence or providing supporting additional evidence. A consistent theme was the underestimation of the severity of disability in medical reports. Difficulties were also encountered by decision-makers when interpreting medical evidence and deciding questions of causation of disablement.
- 5.13 There were 14 cases (23%) where the panel formed a different view of the same medical evidence that had been before the decision-maker, the tribunal highlighting the importance of the appellant's oral evidence. There were 12 cases (20%) where the medical report underestimated the severity of the disability, and nine cases (20%) where the medical report did not address all the medical issues. There were seven cases where medical evidence was overlooked, six cases where the advice given in the medical report was not adequately justified and four cases where the evidence was either used incorrectly or misinterpreted by the decision-maker. There was one case in which a conflict in the evidence was not addressed and one where the advice was not consistent.
- 5.14 Decision-making based on inconsistent reports and the failure to resolve discrepancies or address the issue in the submission formed the basis of adverse comments on the medical evidence. Again, it was often felt that evidence was lacking or misinterpreted and a dialogue with the appellant would have helped. Chairmen often felt medical reports were interpreted unfavourably against the appellant and questions raised at appeal had not been properly pursued before the hearing.

## Incapacity Benefit

Table 9: 162 Overturned cases: Responses

Statement	Responses
<b>1. Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	95 (59%)
<b>2. Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	43 (27%)
<b>3. Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	35 (22%)
<b>4. Different view:</b> The tribunal formed a different view of the same evidence.	54 (33%)
<b>5. Different view (medical):</b> The tribunal formed a different view based on the same medical evidence.	46 (29%)
<b>6. Under-estimated disability:</b> The medical report underestimated the severity of the disability.	56 (35%)
<b>7. Avoid the appeal:</b> The Agency could have avoided the appeal.	14 (9%)



5.15 The problems that came to light in IB reflect those in DLA and IIDB. However, the proportion of overturned cases in the sample at 54% is higher than the national profile of cases and may be related to the prominence of personal capability assessments (PCA) in the sample. PCA cases formed 71% of the overall IB sample, and also 71% of the overturned cases.



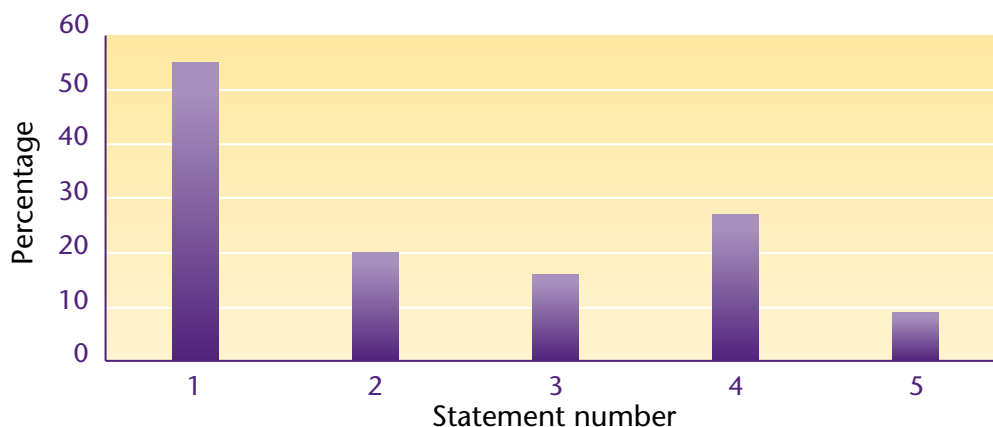
- 5.16 The predominant reason for overturning decisions was that new evidence was brought before the tribunal. This reason was given in 95 (59%) of overturned cases. In 77 of these 95 cases it was in the form of oral evidence, in 62 of the cases being provided by the appellant.
- 5.17 In 54 (33%) of the overturned cases, the tribunal formed a different view of the same evidence that had been before the decision-maker; in 43 cases (27%) the tribunal accepted evidence that the decision-maker had but was not willing to accept; in 3 cases (2%) the decision was based on insufficient facts or evidence due to the inadequate investigation of the claim or reconsideration. In 35 cases (22%) the decision-maker did not give relevant facts due weight. However, in only 14 cases (9%) did the tribunal consider that the Agency could have avoided the appeal.
- 5.18 The standard of submissions remains high, with just five instances where the submission failed to argue the case fully and effectively, three instances where the submission failed to focus on the grounds of appeal, two where the submission failed to include all the relevant facts and include all the evidence, and just one where the submission failed to refer to the correct statute or case law.
- 5.19 Common features of decision-making involving medical evidence were the production of new evidence, under-estimation of the severity of disability, the impact of oral evidence and the inability of the system to deal adequately with mental health issues. In IB, however, more than other areas, there seems a greater propensity to discount the information provided by the appellant, something noted by Chairmen on the part of both decision-makers and examining medical practitioners. As with other benefits, the most common comment was that credible oral evidence from the appellant led the tribunal to a different conclusion. Chairmen criticised standard submissions that did not address the grounds of appeal and the difficulties of consistent scoring. Cases of sensory impairment continue to cause problems.

- 5.20 The comments of medical members of the tribunal on the standard of medical evidence were that in 56 cases (35%) it was felt that the medical report had under-estimated the severity of the disability and in 46 cases (29%) the tribunal formed a different view of the same evidence. In 11 cases (16%) it was felt that the evidence was not adequately justified and in 10 cases (16%) all the issues were not addressed in the medical report. In nine cases medical evidence was overlooked. In six cases the advice was not thought to be consistent. In four cases it was not used correctly by the decision-maker and misinterpreted. In one case advice in the medical report was not in keeping with the consensus of medical opinion.
- 5.21 The comments specifically directed towards medical evidence highlight the plight of people with mental health issues who encountered difficulties in being appropriately dealt with by the benefits system. Criticism was made of ATOS Healthcare medical practitioners who did not appear to pay sufficient attention to the appellant at the medical examination and who produced findings in medical reports based on observations that were inconsistent, or recorded in the medical report findings that were contradictory. Decision-makers were criticised where they preferred the medical report to other evidence and did not explain why. In some cases wrong descriptors were applied.

## Child Support

Table 10: 44 Overturned cases: Responses

Statement	Responses
<b>1. Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	24 (55%)
<b>2. Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	9 (20%)
<b>3. Incorrect weight:</b> The decision-maker did not give relevant facts/evidence due weight.	7 (16%)
<b>4. Different view:</b> The tribunal formed a different view of the same evidence.	12 (27%)
<b>5. Avoid the appeal:</b> The Agency could have avoided the appeal.	4 (9%)



6.1 Appeal Tribunals deal with 3 main categories of Child Support Agency decisions, namely assessments, departures and referrals. Referrals are not included in the sample cases, since the case is referred to the tribunal without a decision having been made by the Secretary of State at the first tier. We continue to skew the sample to generate a higher proportion of Child Support cases, in order to obtain more meaningful results. This year has seen a slight increase in the sample. The outcomes in the sample again show a high percentage of adjournments (23%), reflecting the complex nature of decision-making (and procuring evidence) in this area. In marked contrast to other Agencies, the Child Support Agency sent Presenting Officers in 81% of cases in the sample.

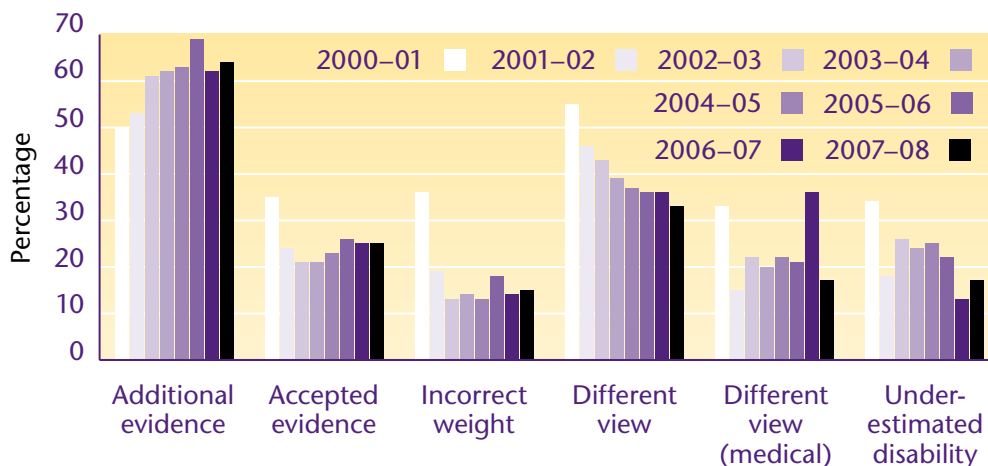
- 6.2 In 24 cases (55%) the tribunal was given additional evidence not available to the decision-maker; in 14 cases (51%) this was in the form of oral evidence; in 12 cases (45%) it was provided by the appellant. In 12 cases (27%) the tribunal formed a different view of the same evidence that had been before the decision-maker; in 9 cases (20%) the tribunal accepted evidence that the decision-maker was unwilling to accept, and in 7 cases (16%) the decision-maker did not give relevant facts or evidence due weight.
- 6.3 There were some concerns over the standard of the submissions with six instances where it did not fully and effectively argue the case, four (5%) where it failed to include all the evidence relating to the decision under appeal, and three where it did not include all the relevant facts, including disputed facts. There were two cases each where the submission failed to refer to the correct statute or case-law and failed to focus on the grounds of appeal
- 6.4 The main points of criticism in the comments on the overall standard of decision-making were that there are problems with decision-makers not routinely pursuing discrepancies in the evidence and resolving issues before the hearing. If a decision-maker prefers a particular piece of evidence when arriving at a decision, they should identify that evidence and explain why it is preferred. Some submissions did not adequately address the issues raised by the appeal and some contained inaccurate calculations, reflecting occasional problems decision-makers had interpreting accounts. Some cases showed difficulties in the application of revision and supersession.

7.1 The main issues from the evidence gathered during the course of last year are as follows:

- Overturned cases – the most common reason for a decision being overturned is still that additional evidence is presented to the tribunal. This is mainly in the form of oral evidence available from the appellant, in medical cases often in the form of additional medical evidence;
- Evidence – availability, interpretation and quality of the evidence are issues, particularly in the case of medical evidence which was criticised where it under-estimated the severity of the appellant's disability. Cases were also criticised where the decision-maker relied upon the ATOS Healthcare report to the exclusion of other evidence, often without any accompanying reasoning;
- Medical evidence – although improved, problems remain with the quality and use of medical evidence;
- Mental health and sensory impairment – medical reports continue to be criticised where they do not explore mental health problems or issues surrounding sensory impairment, chairmen also criticised the way the decision-making process dealt with these customers;
- Further evidence – greater efforts needs to be made to resolve discrepancies and pursue unresolved issues before cases are brought to a tribunal, by actively seeking additional evidence at the reconsideration stage and, where appropriate, contacting the appellant to discuss the grounds of appeal and trying to resolve matters before they come to a tribunal hearing;
- Evidence relating to claims needs to be accessible, where necessary being retained, and made available to the tribunal.

7.2 A synoptic picture drawn from 7 years of sampling can be seen from the Table below.

*Table 11: Common questions from seven years of sampling*



7.3 In the sample this year there is a slight increase in the number of overturned cases where a deciding factor was additional evidence being presented to the tribunal. Generally, that evidence was the oral testimony of the appellant, which reminds us why it is so important to encourage people to attend the hearing. This evidence is central to the work of the tribunal in seeking to address and resolve the disputed questions raised by the appeal, but there is no reason why it should be left to the tribunal to elicit this information when, as the additional comments of the Chairmen make clear, such information which often sheds light on existing evidence, puts it in context and gives a broader picture of the appellants personal circumstances, would be available prior to the hearing if the Agencies only bothered to have more engagement with appellants at an early stage.

7.4 One of the important issues that emerges from examining the interpretation and use of evidence in the decision-making process, whether it is information in the claim form or in a medical report, is the extent to which the exercise of judgement may have given way to an unreflective processing of data<sup>6</sup>. Where, for example, there is a medical report that is inconsistent with the appellant's own account of their circumstances, the report appears to trump the appellant's version without any reasoned attempt to weigh or reconcile what is being variously said. Analysis of the comments made by Chairmen indicates a tendency on the part of (some) decision-makers to seize upon a particular piece of evidence, typically not that supplied by the appellant, as the foundation of the decision, and to present that piece as self-evidently conclusive. Exercising judgement, on the other hand, involves balancing all the relevant factors. A common word used by Chairmen in explaining the reason why the oral evidence of the appellant was accepted was that it was "credible", and in a sense the credibility of administrative decision-making is called into question if the exercise of sound judgement is displaced by a mechanical approach.

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6 Warren, N. 'The Adjudication Gap', *Journal of Social Security Law* 2006 Volume 13 Issue 2. pp 47-128.





### *Questionnaire & sampling*

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

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

With the use of a method of random selection which was previously provided by colleagues in PDCS Operational Research, we have sought to produce a sample that reflects the broad profile of cases considered by Appeal Tribunals but, as stated earlier, we have encountered difficulties in obtaining the necessary statistical and analytical support to review our sampling model in the way we would have liked

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

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

**Judicial Checklist**  
April 2007–March 2008

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

*Please complete the rest of the questionnaire for all cases whether Overturned, Upheld or Adjourned. In all cases we need to know why the panel agreed or disagreed or why cases are Adjourned.*

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

11. The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	<input type="checkbox"/>
12. The panel forms a different view of the same evidence.	<input type="checkbox"/>
13. The facts were not in dispute but the decision-maker had misconstrued their effect in law.	<input type="checkbox"/>
14. The tribunal was given additional evidence that was not available to the decision-maker. (If you have ticked this box please indicate at box 26 what the nature of the additional evidence was ie. reduced earnings). The evidence was in the form of:	<input type="checkbox"/>
a) Expert report handed in	<input type="checkbox"/>
b) Expert report obtained by the tribunal	<input type="checkbox"/>
c) Oral evidence	<input type="checkbox"/>
d) Further written evidence	<input type="checkbox"/>
Who provided the evidence?	
a) The Appellant	<input type="checkbox"/>
b) The Representative	<input type="checkbox"/>
c) Other (please specify)	
14b. Where the tribunal was provided with additional evidence, was there any indication why this was not presented earlier, please provide details. eg. appellant not asked for it after submitting appeal, only became available later:	
15. The decision was based on insufficient facts/evidence due to inadequate investigation of the claim or reconsideration.	<input type="checkbox"/>
16. The decision-maker overlooked evidence that would have affected the decision.	<input type="checkbox"/>
17. The decision-maker did not give relevant facts/evidence due weight.	<input type="checkbox"/>
18. The calculations were not correct.	<input type="checkbox"/>
19. The decision was not properly explained to the claimant	<input type="checkbox"/>

April 2007 – March 2008

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

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

April 2007 – March 2008

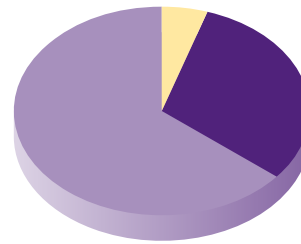
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The following tables show the sample results for each category commented on in the report with the number of cases by outcome with accompanying chart to show the distribution.

*Table A: Jobseeker's Allowance 2007–2008*

*Sample composition by tribunal outcome.*

Outcome	Number	Percentage
Adjourned	3	5%
Overtured	19	31%
Upheld	40	64%
Total	62	

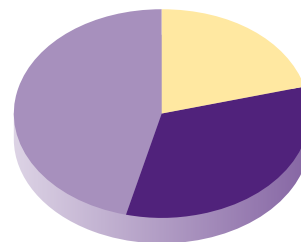


Key  
 Adjourned  
 Overtured  
 Upheld

*Table B: Income Support 2007–2008*

*Sample composition by tribunal outcome.*

Outcome	Number	Percentage
Adjourned	33	21%
Overtured	51	33%
Upheld	72	46%
Total	156	

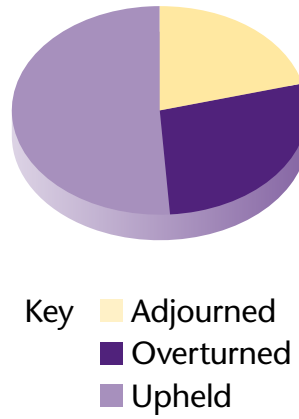


Key  
 Adjourned  
 Overtured  
 Upheld

**Table C: Debt Management 2007–2008**

*Sample composition by tribunal outcome.*

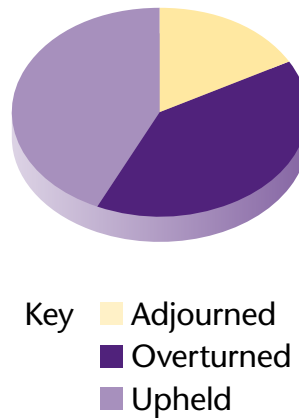
Outcome	Number	Percentage
Adjourned	27	21%
Overturned	37	28%
Upheld	67	51%
Total	131	



**Table D: Disability Living Allowance/Attendance Allowance 2007–2008**

*Sample composition by tribunal outcome.*

Outcome	Number	Percentage
Adjourned	158	17%
Overturned	365	40%
Upheld	390	43%
Total	913	

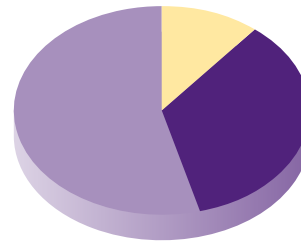




*Table E: Industrial Injuries Disablement Benefit 2007–2008*

*Sample composition by tribunal outcome.*

Outcome	Number	Percentage
Adjourned	19	11%
Overtaken	60	35%
Upheld	92	54%
Total	171	

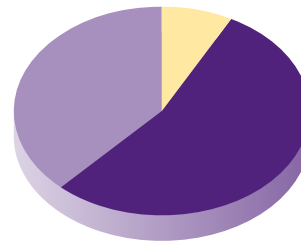


Key    ■ Adjourned  
■ Overtaken  
■ Upheld

*Table F: Incapacity Benefit 2007–2008*

*Sample composition by tribunal outcome.*

Outcome	Number	Percentage
Adjourned	24	8%
Overtaken	162	54%
Upheld	111	38%
Total	297	



Key    ■ Adjourned  
■ Overtaken  
■ Upheld

**Table G: Child Support 2007–2008**

*Sample composition by tribunal outcome.*

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

Outcome	Assessments	Departures	Total
Adjourned	19 (20%)	5 (50%)	24 (23%)
Overtured	40 (43%)	4 (40%)	44 (42%)
Upheld	35 (37%)	1 (10%)	36 (35%)
Total	94	10	104



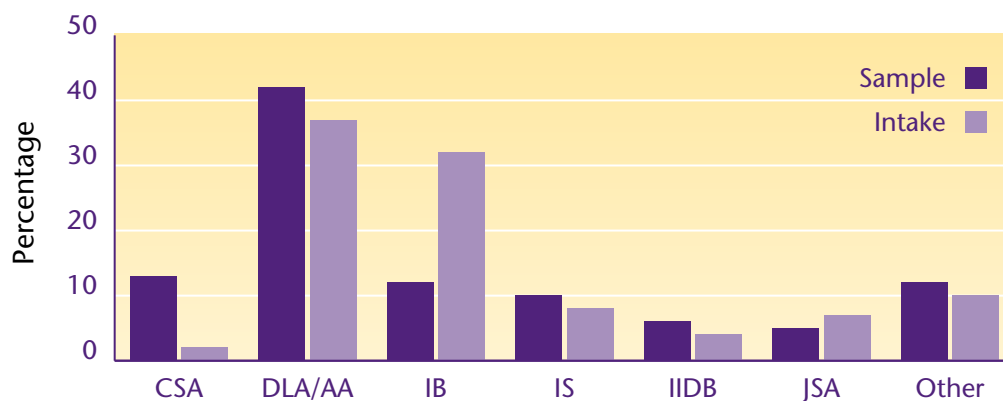
## Results from the 2006-2007 sample

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

*Table 1: Sample compared to national intake – %*

Benefit	Sample		Total intake
	No. of Cases	%	%
Child Support Assessments/Departures	221	13	2
Disability Living Allowance /Attendance Allowance	690	42	37
Incapacity Benefit	196	12	32
Income Support	165	10	8
Industrial Injuries Disablement Benefit/ Industrial Injuries Benefit	109	6	4
Jobseeker's Allowance	76	5	7
Others	183	12	10
<b>Total</b>	<b>1,640</b>		

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



## Sample results

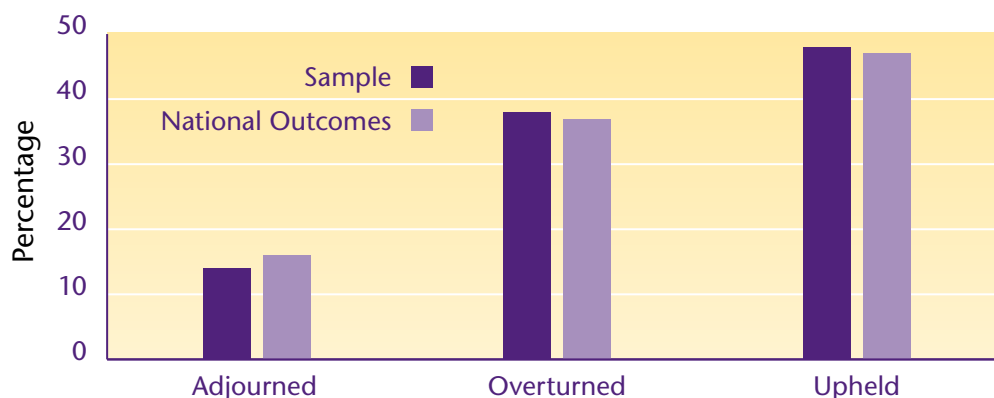
The questionnaires produced a total of 1640 replies for the period April 2006 to March 2007. The sample was restricted to those tribunals which resulted in the following three outcomes:

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

Table 2 below shows the sample outcomes broken down by type compared to the national outcomes for 2006-2007. The figures show 38% of decisions being overturned with some 48% upheld. This shows that the breakdown by outcome type in the sample is again broadly representative.

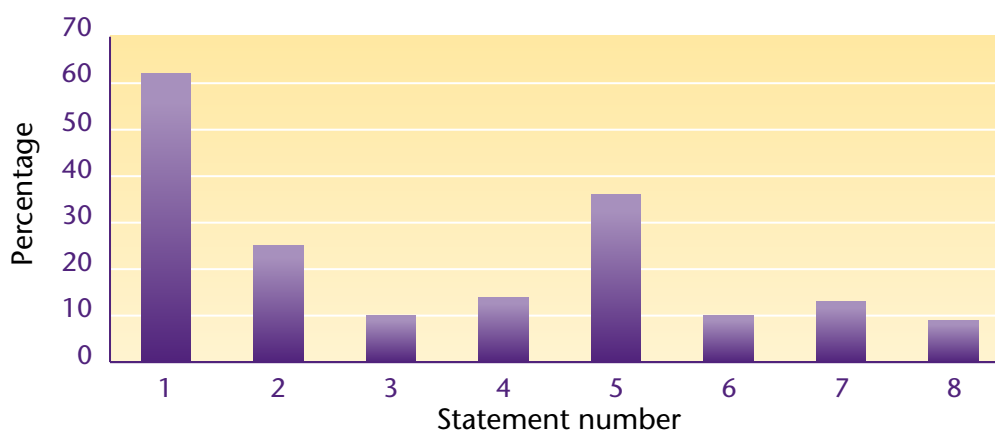
*Table 2: Sample outcomes compared to national outcomes*

	Sample		National
Adjudged	233	14%	16%
Overturned	616	38%	37%
Upheld	791	48%	47%



*Table 3: Outcomes – 616 overturned cases*

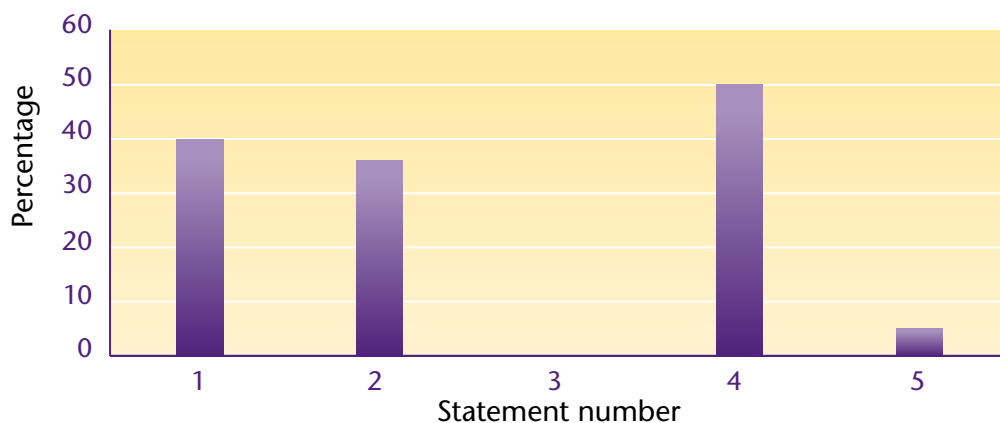
Statement	Responses
<b>1. Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	379 (62%)
<b>2. Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	153 (25%)
<b>3. Insufficient facts: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



## Jobseeker's Allowance

Table 4: 22 Overturned cases: Responses

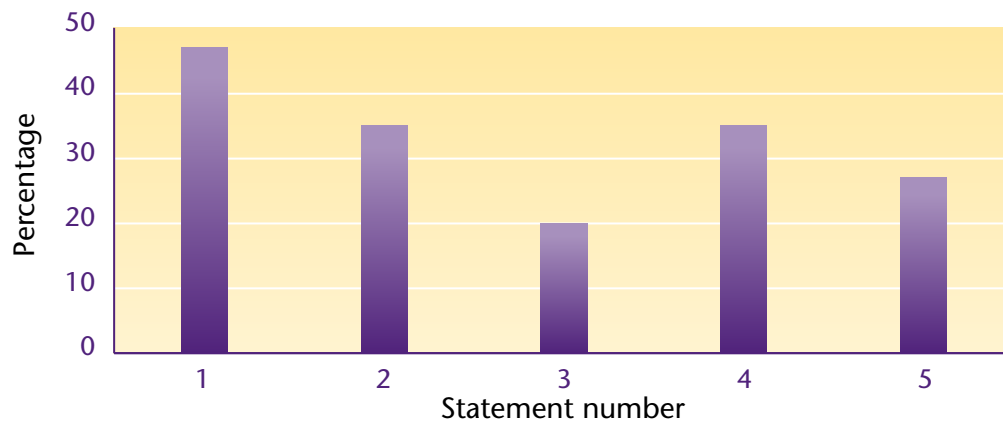
Statement	Responses
<b>1. Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	9 (40%)
<b>2. Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	8 (36%)
<b>3. Incorrect weight:</b>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



## Income Support

*Table 5: 51 Overturned cases: Responses*

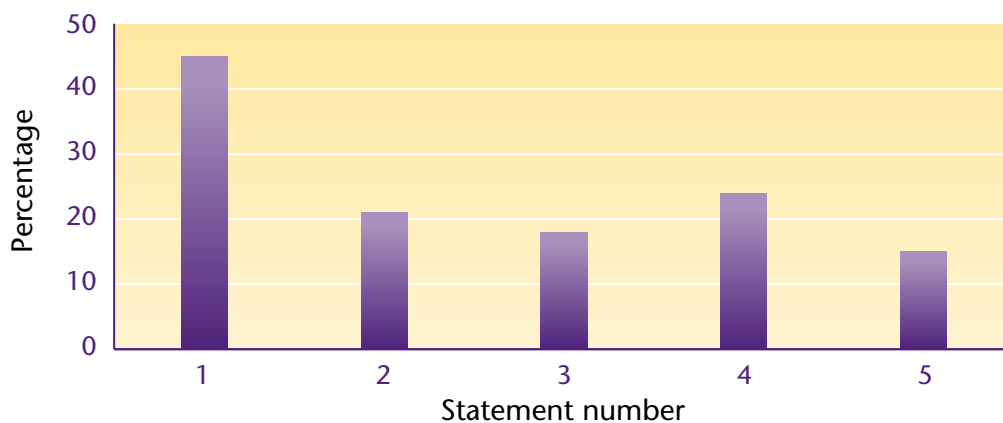
Statement	Responses
<b>1. Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	24 (47%)
<b>2. Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	18 (35%)
<b>3. Incorrect weight: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



## Debt Management

Table 6: 33 Overturned cases: Responses

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

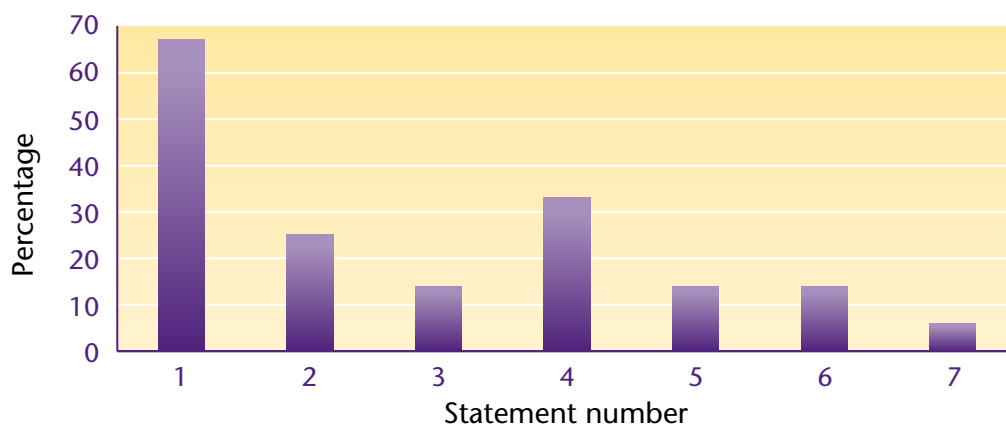




## Disability Living Allowance/Attendance Allowance

Table 7: 298 Overturned cases: Responses (combined)

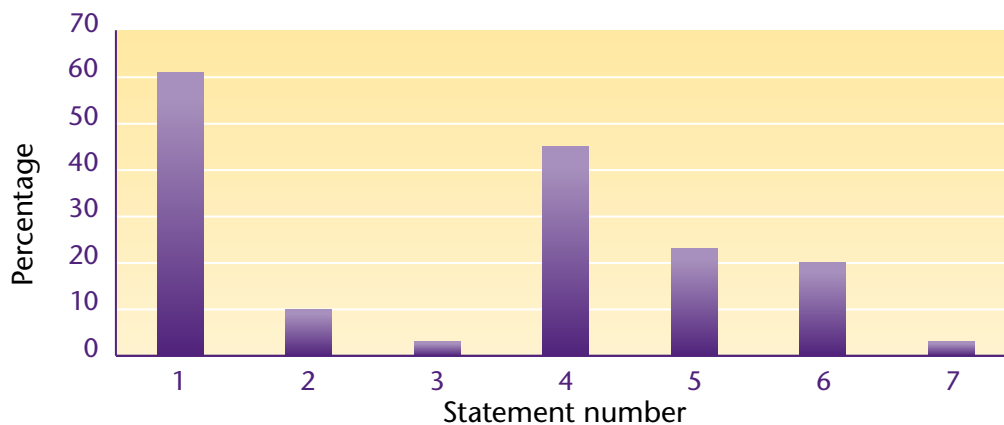
Statement	Responses
<b>1. Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	200 (67%)
<b>2. Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	74 (25%)
<b>3. Incorrect weight: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



## Industrial Injuries Disablement Benefit

Table 8: 31 Overturned cases: Responses

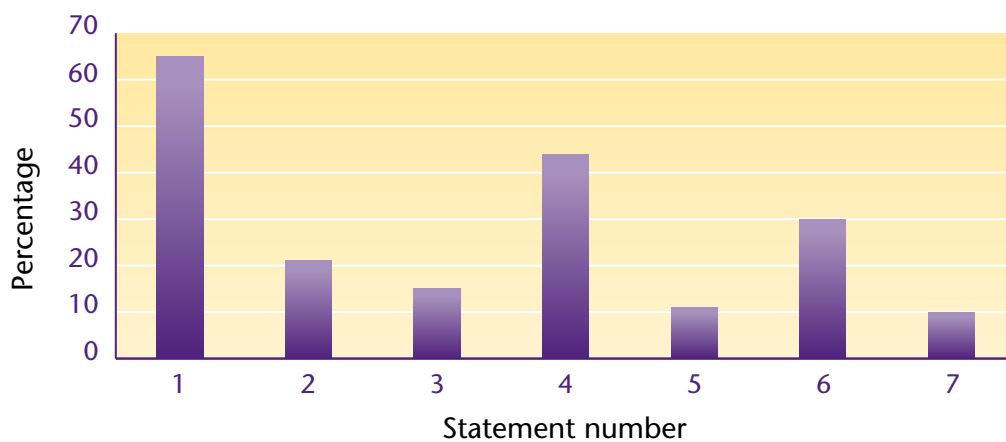
Statement	Responses
<b>1. Additional evidence:</b> The tribunal was given additional evidence not available to the decision-maker.	19 (61%)
<b>2. Accepted evidence:</b> The tribunal accepted evidence that the decision-maker had available but was not willing to accept.	3 (10%)
<b>3. Incorrect weight: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



## Incapacity Benefit

Table 9: 105 Overturned cases: Responses

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

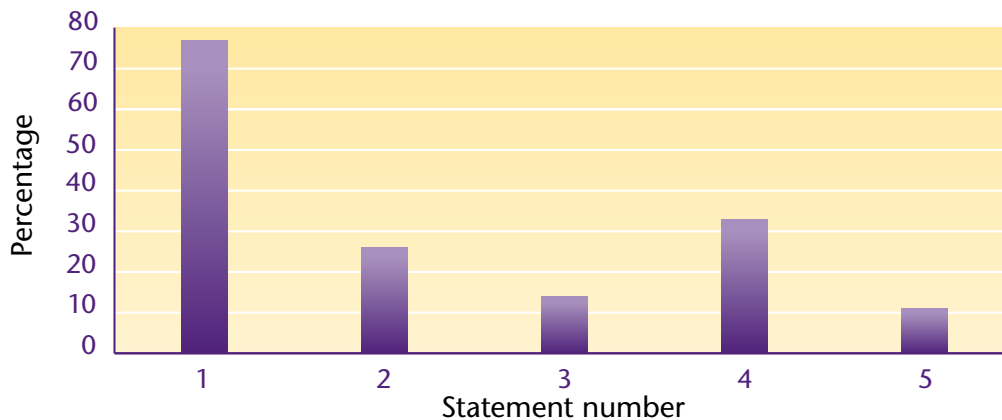


## Child Support Agency Decisions

### Child Support

Table 10: 73 Overturned cases: Responses

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



## *List of abbreviations*

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





