

# Social Security and Child Support Tribunal hearings: Early analysis of appeals allowed from pilot data

Based on pilot data from July to October 2012

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# Introduction

This publication presents management information on early results from a joint Department for Work and Pensions (DWP) and Her Majesty's Courts and Tribunal Service (HMCTS) pilot exercise within Great Britain.

The pilot data of this document are for appeals that have been cleared at hearing and allowed by the Social Security and Child Support (SSCS) Tribunal between 9 July 2012 and 31 October 2012, where primary reasons for why Judges overturn DWP decisions have been collected for the first time.

**The purpose of this pilot scheme is to provide insight and learning for DWP, with the intention of improving standard of decision making and appeals processes in the future.**

## Statistical measures

This report focuses on high level explanations from Tribunal Judges of why decisions by DWP decision makers have been overturned by the Tribunal, with the intention of feeding back to the Department.

It provides the following statistics relating to Great Britain:

- volumes for cases where the Tribunals clear the case at hearing and allow the appeal (find in favour of the appellant and overturn the DWP decision) overall and across benefit types, and that split by primary reasons for doing so; and
- percentages for cases where the Tribunals allow the appeal overall and across benefits, and that split by primary reasons.

## Data sources

The bulletin is based on data collected by a combination of electronic and manual systems by HMCTS and DWP; it is derived from a census of cases heard between 9 July 2012 and 31 October 2012 where the DWP decisions were overturned by the Tribunal. Therefore findings based on this data are broadly representative of appeals allowed over the said period, but may not be representative of all appeals allowed across the year.

The Ministry of Justice (MoJ) publishes related statistical information on disposals and cases cleared at hearing on an annual and quarterly basis at the following links, which can be referenced for further detail on the underpinning data:

### ***Annual Tribunals statistics***

<<http://www.justice.gov.uk/statistics/tribunals/annual-stats>>

### ***Quarterly statistics for Tribunals***

<<http://www.justice.gov.uk/statistics/tribunals/quarterly>>

# Background

The Secretary of State for Work and Pensions and the President of the Social Entitlement Chambers His Honour Judge Robert Martin agreed to pilot a scheme to provide feedback from Tribunals to help inform DWP decision makers about why decisions were being overturned. The pilot commenced on 9 July 2012, and its response takes the form of standardised reasons chosen by Tribunal Judges from a drop-down list of primary reasons for overturning decisions at the Tribunals. Each individual explanation is incorporated into the Decision Notice issued by the Tribunal, which goes to the claimant and DWP. The department uses this information to learn lessons and improve the standard of decision making and appeals processes.

Tribunal Judges provide the 'primary reason' why they allow appeals and overturn DWP decisions. Although this data collection does, for the first time, enable the identification of the key reason behind the decision, this *might* not give the full story in all cases as there may be subordinate reasons. This means that any findings based purely on the drop-down list data may be incomplete.

## Current appeals process

The right to appeal is a fundamental part of the benefits system, which allows claimants to dispute decisions – for example where a claimant appeals against a DWP decision which has allocated the claimant into the Work Related Activity Group rather than the Support Group following a new claim for Employment and Support Allowance (ESA). A claimant can dispute decisions made by a DWP decision maker in various ways, ranging from simply asking the Department for the decision to be reconsidered internally to an appeal to the SSCS Tribunal.

**Reconsideration** involves a review of the original decision and if appropriate contacting a claimant to check the information behind the decision. If any additional evidence emerges which impacts on the decision, or if the initial decision is found to have been incorrect, then the DWP decision maker can change it, thus ensuring that the claimant receives the benefits to which they are entitled at the earliest opportunity without the need for a formal appeal.

**Formal appeals** must be made in writing, either on the set form (GL24DWP) or in another acceptable format. After this where a claimant appeals but the DWP decision maker decides after reconsideration that the initial decision should stand, the case is referred to the Tribunal.

In the event that an appellant presents further evidence to support their appeal after the appeal response is issued, but before the Tribunal hearing, HMCTS write to DWP to ensure that one of its decision makers has the chance to reconsider the decision in light of the new evidence. In such cases:

- where the decision maker revises the decision in the appellant's favour the appeal lapses and the Tribunal is notified; but
- where the decision maker does not change the decision a further response based on the additional facts is sent to the Tribunal and claimant.

# Results

The summaries below relate to around 28 thousand appeals found in favour of the appellant and against DWP during the period between 9 July 2012 and 31 October 2012.

## Statistical caveats

### ***Comparison to other official statistics***

The appeals relate to claims received on a wide variety of dates over the past months and years, and so those pertaining to challenges against DWP decisions on ESA entitlement can not be compared directly with quarterly Official Statistics published by the Department at the following link:

### **Employment Support Allowance: Outcome of Work Capability Assessment, Great Britain - new claims**

<[http://research.dwp.gov.uk/asd/workingage/index.php?page=esa\\_wca](http://research.dwp.gov.uk/asd/workingage/index.php?page=esa_wca)>

### ***Interpretation of statistics***

Before interpreting the numbers in this release it is important to understand the 'structural difference' between DWP and SSCS Tribunal decision making processes.

DWP decision makers rely on the departmental process for gathering documentary evidence from the claimant beforehand, as laid out in DWP guidance and sometimes in legal statute. Whereas Tribunal Judges are able to question the claimant in person to add context to the existing evidence. These approaches are proportionate to the volume of cases each body administers.

If claimants ask the Department to reconsider the original decisions, the DWP decision makers will review them and where appropriate contact claimants to check information. If at this stage any new evidence comes to light or if it is clear that the initial decisions were incorrect, then the DWP decisions can be changed at this point.

## Headline figures

The table below presents volumes and percentages for primary reasons for why appeals are allowed by First-tier Tribunals over the aforesaid period, and show that overall:

- 35.7 per cent of appeals allowed by the Tribunal did not have reasons ascribed for why the DWP decisions were overturned. A possible explanation for appeals without reasons attributed to them *might* be due to the time needed to raise awareness of the drop-down list amongst the judiciary, or the fact the Decision Notice states that use of the drop-down option is at the discretion of the Judge. However, whatever the cause of this non-response, it means that the findings below are estimates and potentially contain bias; and

- 64.3 per cent of appeals allowed by the Tribunal do have reasons attached. This breaks down as follows –
  - 40.5 per cent were due to cogent oral evidence provided by the appellant. This could suggest the differences between DWP and the Tribunal approaches to decision making,
  - 15.1 per cent were caused by a different conclusion being reached on substantively the same facts. This indicate differences in DWP and the Tribunal approaches,
  - 8.1 per cent were based on new cogent documentary evidence provided by the appellant. This means that there were factors that led to a delay in producing documents ahead of the Tribunal,
  - 0.3 per cent were put down to the DWP decision maker misapplying the law. This signals errors by individuals and/or possibly defects in training or guidance, which will be investigated further in the future, and
  - 0.3 per cent were because medical or functional assessment reports relied on by DWP decision makers contained errors. This also points to errors by individuals and/or defects in training or guidance which will be investigated.

## Social Security and Child Support Tribunal reasons for overturning DWP decisions between 9 July 2012 and 31 October 2012, Great Britain

| Tribunals primary reason for allowing appeals   | Benefit or benefit combinations |              |               |              |              |                    |                |               |
|---|---------------------------------|--------------|---------------|--------------|--------------|--------------------|----------------|---------------|
|   | ESA                             | IBR          | ESA & IBR     | DLA          | AA           | Disability related | Other benefits | All benefits  |
|   | a                               | b            | a+b           | c            | d            | a+b+c+d            | e              | a+b+c+d+e     |
| Volumes   |                                 |              |               |              |              |                    |                |               |
| 1. Cogent oral evidence   | 478                             | 258          | 736           | 183          | 3            | 922                | 315            | 1,237         |
| 2. Cogent oral evidence in relation to physical factors   | 1,832                           | 1,209        | 3,041         | 966          | 32           | 4,039              | 12             | 4,051         |
| 3. Cogent oral evidence in relation to mental factors.  | 2,130                           | 1,792        | 3,922         | 421          | 2            | 4,345              | 6              | 4,351         |
| 4. Cogent oral evidence in relation to both physical & mental factors   | 721                             | 601          | 1,322         | 405          | 1            | 1,728              | 8              | 1,736         |
| <i>Total - Cogent oral evidence (1+2+3+4)</i>   | 5,161                           | 3,860        | 9,021         | 1,975        | 38           | 11,034             | 341            | 11,375        |
| 5. Reached a different conclusion on substantially the same facts.  | 895                             | 474          | 1,369         | 62           | 4            | 1,435              | 200            | 1,635         |
| 6. Reached different conclusion, having a regard to physical factors, on substantially the same facts.          | 488                             | 211          | 699           | 166          | 10           | 875                | 19             | 894           |
| 7. Reached different conclusion, having a regard to mental factors, on substantially the same facts.            | 550                             | 291          | 841           | 96           | 3            | 940                | 13             | 953           |
| 8. Reached different conclusion, having a regard to physical & mental factors, on substantially the same facts. | 423                             | 210          | 633           | 86           | 2            | 721                | 36             | 757           |
| <i>Total - Reached a different conclusion (5+6+7+8)</i>   | 2,356                           | 1,186        | 3,542         | 410          | 19           | 3,971              | 268            | 4,239         |
| 9. New Cogent documentary evidence supplied at the appeal.  | 246                             | 120          | 366           | 105          | 4            | 475                | 96             | 571           |
| 10. New Cogent documentary evidence supplied at the appeal from a Consultant.                                   | 335                             | 190          | 525           | 90           | 0            | 615                | 4              | 619           |
| 11. New Cogent documentary evidence supplied at the appeal from a GP.   | 381                             | 318          | 699           | 69           | 0            | 768                | 2              | 770           |
| 12. New Cogent documentary evidence supplied at the appeal from a Health Care Practitioner.                     | 131                             | 76           | 207           | 103          | 2            | 312                | 1              | 313           |
| <i>Total - New Cogent documentary evidence (9+10+11+12)</i>   | 1,093                           | 704          | 1,797         | 367          | 6            | 2,170              | 103            | 2,273         |
| 13. Decision Maker misapplied the law.  | 25                              | 17           | 42            | 8            | 0            | 50                 | 36             | 86            |
| 14. Medical/ Functional assessment report, relied on by Decision Maker, contained significant error.            | 48                              | 42           | 90            | 7            | 0            | 97                 | 0              | 97            |
| 15. Tribunal did not provide a reason.  | 4,548                           | 2,820        | 7,368         | 1,743        | 39           | 9,150              | 891            | 10,041        |
| <b>All reasons for allowing appeals</b>   | <b>13,231</b>                   | <b>8,629</b> | <b>21,860</b> | <b>4,510</b> | <b>102</b>   | <b>26,472</b>      | <b>1,639</b>   | <b>28,111</b> |
| Percentages   |                                 |              |               |              |              |                    |                |               |
| 1. Cogent oral evidence   | 3.6                             | 3.0          | 3.4           | 4.1          | 2.9          | 3.5                | 19.2           | 4.4           |
| 2. Cogent oral evidence in relation to physical factors   | 13.8                            | 14.0         | 13.9          | 21.4         | 31.4         | 15.3               | 0.7            | 14.4          |
| 3. Cogent oral evidence in relation to mental factors.  | 16.1                            | 20.8         | 17.9          | 9.3          | 2.0          | 16.4               | 0.4            | 15.5          |
| 4. Cogent oral evidence in relation to both physical & mental factors   | 5.4                             | 7.0          | 6.0           | 9.0          | 1.0          | 6.5                | 0.5            | 6.2           |
| <i>Total - Cogent oral evidence (1+2+3+4)</i>   | 39.0                            | 44.7         | 41.3          | 43.8         | 37.3         | 41.7               | 20.8           | 40.5          |
| 5. Reached a different conclusion on substantially the same facts.  | 6.8                             | 5.5          | 6.3           | 1.4          | 3.9          | 5.4                | 12.2           | 5.8           |
| 6. Reached different conclusion, having a regard to physical factors, on substantially the same facts.          | 3.7                             | 2.4          | 3.2           | 3.7          | 9.8          | 3.3                | 1.2            | 3.2           |
| 7. Reached different conclusion, having a regard to mental factors, on substantially the same facts.            | 4.2                             | 3.4          | 3.8           | 2.1          | 2.9          | 3.6                | 0.8            | 3.4           |
| 8. Reached different conclusion, having a regard to physical & mental factors, on substantially the same facts. | 3.2                             | 2.4          | 2.9           | 1.9          | 2.0          | 2.7                | 2.2            | 2.7           |
| <i>Total - Reached a different conclusion (5+6+7+8)</i>   | 17.8                            | 13.7         | 16.2          | 9.1          | 18.6         | 15.0               | 16.4           | 15.1          |
| 9. New Cogent documentary evidence supplied at the appeal.  | 1.9                             | 1.4          | 1.7           | 2.3          | 3.9          | 1.8                | 5.9            | 2.0           |
| 10. New Cogent documentary evidence supplied at the appeal from a Consultant.                                   | 2.5                             | 2.2          | 2.4           | 2.0          | 0.0          | 2.3                | 0.2            | 2.2           |
| 11. New Cogent documentary evidence supplied at the appeal from a GP.   | 2.9                             | 3.7          | 3.2           | 1.5          | 0.0          | 2.9                | 0.1            | 2.7           |
| 12. New Cogent documentary evidence supplied at the appeal from a Health Care Practitioner.                     | 1.0                             | 0.9          | 0.9           | 2.3          | 2.0          | 1.2                | 0.1            | 1.1           |
| <i>Total - New Cogent documentary evidence (9+10+11+12)</i>   | 8.3                             | 8.2          | 8.2           | 8.1          | 5.9          | 8.2                | 6.3            | 8.1           |
| 13. Decision Maker misapplied the law.  | 0.2                             | 0.2          | 0.2           | 0.2          | 0.0          | 0.2                | 2.2            | 0.3           |
| 14. Medical/ Functional assessment report, relied on by Decision Maker, contained significant error.            | 0.4                             | 0.5          | 0.4           | 0.2          | 0.0          | 0.4                | 0.0            | 0.3           |
| 15. Tribunal did not provide a reason.  | 34.4                            | 32.7         | 33.7          | 38.6         | 38.2         | 34.6               | 54.4           | 35.7          |
| <b>All reasons for allowing appeals</b>   | <b>100.0</b>                    | <b>100.0</b> | <b>100.0</b>  | <b>100.0</b> | <b>100.0</b> | <b>100.0</b>       | <b>100.0</b>   | <b>100.0</b>  |

Notes: (1) scope - cases in the 'drop-down list' pilot closing in October 2012 (where the data was cleaned), (2) coverage - data for Great Britain only.

Abbreviations: ESA (Employment Support Allowance), IBR (Incapacity Benefit Reassessment for Employment Support Allowance), DLA (Disability Living Allowance) and AA (Attendance Allowance).

# Annex

**This analysis of the pilot data was produced to provide context to the forthcoming third report of the Harrington Review, to be published on 20 November 2012, and to inform subsequent Judicial Review against the Work Capability Assessment for the Department's alleged failure to make reasonable adjustments in the process for people with impaired mental, cognitive and intellectual function.**

It also follows an adjournment debate on 5 September 2012 on ESA and Appeals (Gordon Marsden, Blackpool South) where Mark Hoban, Minister for Employment, mentioned the following:

**5 Sep 2012 : Column 136WH**

**Mr Mark Hoban:**

“... We are also trying to work closely with Her Majesty’s Courts and Tribunals Service to improve feedback from tribunals to understand better why decisions are overturned, which will help us to make further improvements to decision making.”

Please refer to Hansard for the full transcript at the following link:

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120905/halltext/120905h0002.htm#12090529000124>

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