Discussion Paper

TRIBUNAL DECISION-MAKING: AN EMPIRICAL STUDY

by Professor Dame Hazel Genn and Professor Cheryl Thomas

SUMMARY

This is the first empirical study of judicial decision-making by the professional judiciary in the United Kingdom using case simulation. Using a real Disability Living Allowance appeal, a large number of tribunal panels around the country decided the same case in the course of their normal working day. Some panels decided the case based only on a written submission, while others also saw a film of the oral hearing in the case. This study examines the effect of the form of tribunal hearing (paper or oral) on case outcomes, the degree of consistency in tribunal decisions, the contribution of legally and non-legally qualified members and the impact of panel member background on tribunal decision-making.

Policy context to the study

Tribunals play a vital role in the administrative justice system in the United Kingdom, resolving over one million disputes a year, largely between individuals and the state. Yet little is known about what influences tribunal decision-making.

Tribunals deal with a vast range of activities, rights and entitlements and cover a wide diversity of jurisdictions. But most tribunals have common features that are distinct from court processes: relatively simple processes for initiating appeals, adjudication by a mixed panel of legal and specialist lay decision-makers, relaxed rules of evidence, an inquisitorial style and often a low level of legal representation at hearings.

Sir Andrew Leggatt's 2001 Review of Tribunals eventually led in 2006 to the creation of the Tribunals Service, a new executive agency which combined a large number of existing and new tribunals. Shortly afterwards, the Tribunals Courts and Enforcement Act 2007 established a new judicial structure for tribunals consisting of First-Tier and Upper Tribunals. Then in April 2011 a new management authority for civil justice was established when the Tribunals Service merged with HM Courts Service (HMCS) to form a single agency, HM Courts and Tribunals Service (HMCTS), within the Ministry of Justice.

In 2007 the Nuffield Foundation established a Research Initiative in Administrative Justice to address the key issues raised by the large-scale reforms taking place in the tribunal system. One of the main areas this research initiative was concerned with was "Pathways and Quality of Decision-Making".

This project was commissioned to contribute to our understanding of these aspects of administrative justice in the tribunals system.

Nuffield Foundation

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Oral hearings versus paper cases

A crucial issue of concern in administrative justice in recent years has been the value of oral hearings in tribunals. Most tribunals offer both oral hearings and paper cases, and in most instances it is open to the user to choose which option they prefer. Statistics show that those who opt for an oral hearing have a higher likelihood of having their appeal allowed. However, because each individual tribunal case is different with its own unique set of facts and participants, these results may simply indicate that appellants with stronger cases tend to choose oral hearings and those with weaker cases tend to opt for their appeal to be dealt with as a paper case. This research provides the first empirical research on the actual causal effect of oral hearings versus paper cases on tribunal decision-making.

Consistency in tribunal decision-making

A presumed key benefit of the reorganisation of tribunals was its potential to deliver greater consistency in tribunal decision-making. The Leggatt Review argued that bringing together varied tribunals into a single unified service with common rules would enhance coherence and consistency of decision-making. The Review also argued that tribunal panels comprising both lawyers and non-legal experts have the advantage of bringing a broad range of skills to bear on tribunal decision-making. To date, there has been no empirical research in this country on the consistency of tribunal decisions or research to indicate whether the different professional backgrounds of tribunal panel members affect their decision-making. Empirical research on judicial decision-making in other jurisdictions has shown that consistency in judgements can be influenced by a variety of factors such as institutional, personal and group factors and that the composition of judicial panels can affect the quality of judicial decision-making. This project is the first study of tribunal decision-making to examine these issues systematically in this country.

Disability Living Allowance appeals

This research has been conducted with tribunal panels hearing appeals against decisions by the Department for Work and Pensions (DWP) on claims for Disability Living Allowance (DLA). Such appeals are to part of the First Tier Tribunal, specifically the Social Security and Child Support (SSCS) jurisdiction within the Social Entitlement Chamber (SEC). DLA appeals are particularly well-suited to examining the impact of the form of the hearing, the consistency of decision-making and the role of multi-member panels in tribunal decision-making. The SEC has the largest volume of tribunal cases in HMCTS, and DLA cases have historically made up the single largest group of SEC appeals. DLA cases are decided by three-member panels, comprising a legally-qualified member who chairs the panel (Tribunal Judge) and two non-legally qualified members (a Medical Member and a Disability Qualified Panel Member). These panels review the decision of DWP as to whether the claimant is entitled to any allowance, which can require assessing the claimant's level of disability and determining a level of entitlement according to a statutory scale. There is a clear difference in success rates between paper cases and oral hearings in DLA cases. Claimants are 2.7 times more likely to be successful after an oral hearing, with 46% of DLA appeals allowed by tribunals following an oral hearing and only 17% allowed when the appeal is decided on the papers alone.

Impact of PIP

From April 2013 Disability Living Allowance for people aged 16-64 will begin to be replaced by the Personal Independence Payment (PIP). The government's position is that there is confusion about the purpose of DLA, it is complex to claim and there is no systematic way of checking that awards remain correct. The phased replacement of DLA with PIP does not affect the relevance of the findings of this study. There are no plans to alter the tribunal appeals process under PIP, and the findings of this study may therefore provide important evidence that may assist in ensuring that the process of claims decision-making and appeals under PIP are as fair as possible.

Research questions

This study is designed to examine several specific questions:

1. **Hearing form**: Is the main benefit of an oral hearing the ability to obtain more evidence? Or does an oral hearing affect outcomes even when a written submission contains identical evidence?

2. **Consistency**: To what extent does the form of the hearing contribute to the consistency of tribunal decision-making? Are other factors more determinative of consistency: such as institutional factors (decision options, legal rules), personal factors (panel member background, attitudes), or peer effects (composition of panels and process of deliberation)?

3. **Panel discussions**: Are panel members' initial assessments (from a first reading of the written submission) highly predictive of case outcomes? Or do panel discussions significantly affect case outcomes?

4. **Decision-maker's background**: Do different types of tribunal panel members perceive evidence or judge cases differently?

By providing clear evidence on these questions, the research also addresses wider policy issues in administrative justice:

- How to devise fair principles of case management to guide the choice of tribunal hearing procedures?
- How to assess the contribution of legally and non-legally qualified tribunal members?
- How best to train tribunal panel members in decision-making skills?
- How to devise claim procedures to elicit the best quality information on which to base decisions

The results of the research will indicate whether specific procedural changes could be introduced in tribunal proceedings without affecting the outcomes of cases: for instance, limiting the use of oral hearings. This would have both resource and case management implications. Results concerning the consistency of tribunal decisions in relation to tribunal panel composition will provide insights into the role of non-legally qualified members in tribunal decision-making and contribute to the debate about the need for such panel members to provide added value. Finally, findings on the factors affecting the consistency of tribunal decision-making may have implications for the design of future tribunal training.

Methodology

This research employed the case simulation method and involved asking a large number of actual DLA panels to decide the same case. All DLA tribunal panels in the study adjudicated the case in the normal course of their working day, and the one case was decided by 66 different DLA panels (comprising 198 different panel members) across three different regions: the South East (Greater London), Wales and the South West, and Scotland.

The case selected for the study was an actual DLA appeal involving a new claim for DLA for a 10 year-old boy with ADHD. DWP had rejected the claim in full. The appeal to the tribunal was filed by the child's mother (the Appointee) on behalf of her son (the Claimant), following a further rejection by DWP after the mother had requested a reconsideration by DWP. The case simulation method requires that the case selected for the study not be an atypical case, but be one where the evidence is finely balanced and is very likely to produce differences of view among panel members about the correct decision. This case was carefully chosen because such appeals are not uncommon in DLA, there was evidence to support both allowing and rejecting the appeal and the appeal had produced differences of view within the original tribunal panel that decided the actual appeal.

Using both the original case submission and a filmed reconstruction of the oral hearing, three different variations of the case were created. Table 1 shows the three versions of the case that were created for the study and the specific case materials used in each version.

Some tribunal panels adjudicated the appeal as a paper case after examining only the original written submission (Version 1). Other panels adjudicated the appeal after examining the same original written submission and viewing a film of the oral hearing (Version 2). A third group of panels dealt with the appeal as a paper case in which the original written submission was supplemented with any additional information that emerged at the oral hearing (Version 3).

TABLE 1: Variations in Each Case Simulation		
HEARING FORM	**CASE MATERIALS for TRIBUNAL PANELS**	
	Written materials	***Audio-visual materials***
Version 1: Paper Case	Original written submission	(none)
Version 2: Oral Hearing	Original written submission	Film of oral hearing
Version 3: Supplemented Paper Case	Original written submission supplemented with any additional information that emerged at oral hearing	(none)

The additional information from the oral hearing included:

- Diagnosis of ADHD and treatment
- More detail on child's behaviour indoors and outdoors
- Child's behaviour at school
- School and SAT results
- Medication
- Violence towards mother and two siblings
- Child's night-time activity
- Child's eating habits and personal hygiene

Because all other elements of the case were identical except for either the form of the hearing or level of information provided to the panel, any differences in case outcome or tribunal members' perception of the case can therefore validly be attributed to the differences in the form of the hearing or the information available to the panel. Anecdotal claims have traditionally suggested that the main benefit of oral hearings is that they provide tribunals with additional evidence on which to base decisions. By including two different versions of the written submission in the case simulation - the original written submission (Version 1) and a submission that included any additional evidence that emerged from the oral hearing (Version 3) - the study is able to assess whether this is in fact true.

Members of the tribunal panels were asked to complete a Decision Questionnaire at each stage of the tribunal panel decision-making process, recording their individual view of the following:

- Assessment of appeal (reject or allow)
- Level of award if appeal allowed
- Individual panel member's confidence in the decision
- Whether to adjourn the case (and reasons)

Table 2 below shows the different stages of the decision-process depending on the form of the hearing. Because each member of the panel completed a Decision Questionnaire at each stage of the decision-making process, it was also possible to determine the level of agreement among panel members in the decision at each stage of the process.

The case was decided by 66 completely different DLA panels, which were made up of 198 different panel members. The numbers are split relatively evenly between those who decided the case based on the papers alone and those who decided the case after viewing the oral hearing, as well as those sitting in the Greater London area and those outside London (Table 3).

Table 2: Tribunal Decision-Making Stages by Form of Hearing				
Hearing Form	**Prior to Tribunal**	**At Tribunal**		
	First Impression	**Interim Assessments**		**Final Decision**
	First reading of papers on own	**Pre-hearing review with panel**	**Immediately after oral hearing**	**After final panel discussion**
Paper case	Decision stage 1			Decision stage 2
Oral hearing	Decision stage 1	Decision stage 2	Decision Stage 3	Decision Stage 4

Table 3: Number of DLA panels (and panel members) by location and form of hearing			
Location	**Form of hearing**		
	Paper cases	**Oral hearing**	**Totals**
Greater London (South East)	12 (36)	20 (60)	32 (96)
Other regions (Wales & South West and Scotland)	18 (54)	16 (48)	34 (106)
Totals	30 (90)	36 (108)	66 (198)

Running the same case simulations with a large number of DLA panels (and panel members) was designed to make it possible to examine the impact of different panel compositions on the decision-making process. The study sample was closely representative of SEC tribunal members as well as First Tier tribunal members in general in terms of gender, ethnicity and age.

FINDINGS

Panel decisions in the case

Looking at all 66 panels combined, 52% of the 66 panels that adjudicated this specific DLA case rejected the appeal and 48% allowed the appeal. It is important to emphasise that this result does not indicate any general inconsistency in tribunal panel decision-making. In order to study the impact of certain factors on judicial decision-making, it is necessary that the case chosen for a case simulation has a strong capacity to divide the opinions of decision-makers. The fact there was an almost even split between those panels that rejected and those that allowed the appeal simply illustrates that the case presented a difficult decision, and this is exactly what should be seen with the case selected for this and any other effective case simulation. Having divided the 66 panels almost evenly, the main findings of the study relate to what factors account for these differences in case outcomes.

What factors account for differences in case outcomes?

The design of the study meant that all of the following factors could be analysed to determine whether they could account for why some DLA panels rejected and some allowed the appeal:

- Form of the appeal (paper versus oral)
- Information available to the panel
- Interpretation of evidence
- Panel member attitudes towards the claimant and appointee
- General attitudes of panel members
- Personal background characteristics of panel members
- Interactions between panel members in the decision-making process

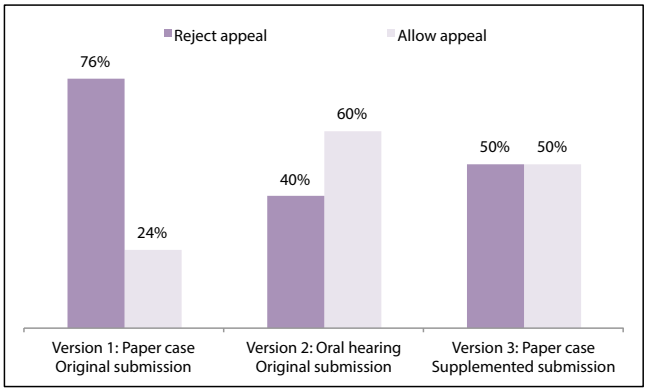
What difference does an oral hearing make?

It is clear that the form of the appeal coupled with the information contained in the submission affected tribunal decision-making. Figure 1 below shows that where the information in the written submission is identical (Versions 1 and 2) the outcome was affected by the form of the hearing, with claimants two and half (2.5) times more likely to have their appeal allowed with an oral hearing (60%) compared with a paper case (24%). It is interesting to note that this is almost the same difference in success rate by the form of the hearing as found in actual DLA cases (where claimants are 2.7 times more likely to succeed with an oral hearing than a paper case).

However, where the information presented to the panel was the same regardless of whether it was presented in an oral hearing or in a paper submission only (Version 2 and 3), the outcomes were much more similar: 60% of panels allowed the appeal when there was an oral hearing

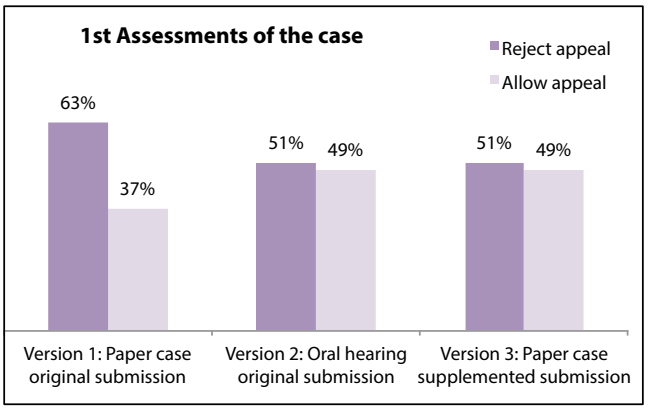
compared with 50% allowing the appeal in the paper case supplemented with the new information that emerged at the oral hearing.

Figure 1: All DLA Panel Final decisions (n=66)



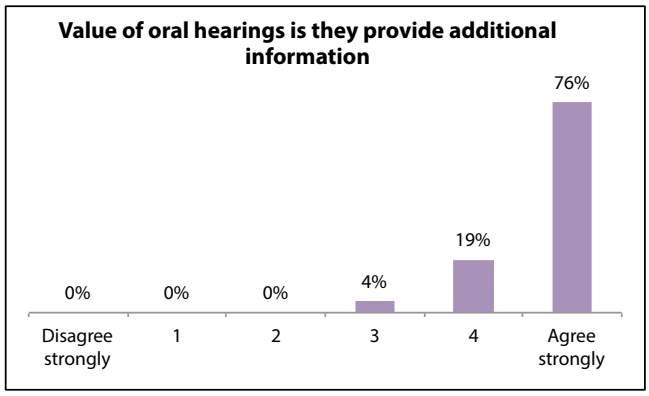
Interestingly, the study also found that panel members' initial assessments of the appeal based only on reading the case papers before they attended the tribunal were affected by knowing whether the appeal would be a paper case or an oral hearing (Figure 2). Panel members who knew there was going to be an oral hearing in the case were less inclined to reject on an initial assessment (51% for Version 2) than those deciding the case on exactly the same original submission (63% for Version 1). This was despite the fact that the information in the written submission that both groups read was identical.

Figure 2: Panel members' first assessment of the case (n=198)



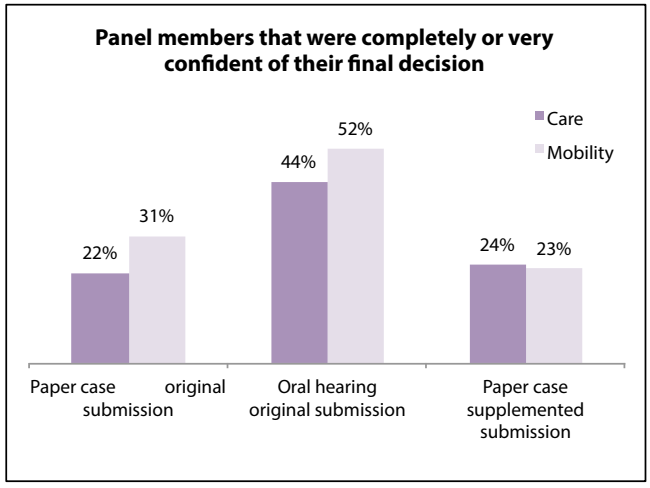
As Figure 3 shows, tribunal members clearly believe that the value of an oral hearing lies in the additional information they provide to the panel in an appeal.

Figure 3: Panel members' views of the value of oral hearings (n=198)



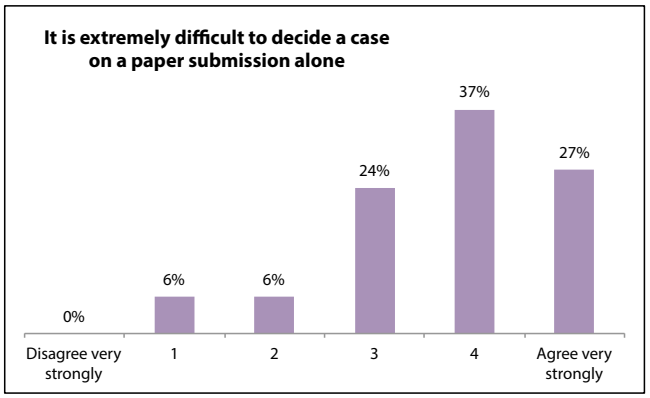
While it is no doubt the case that oral hearings currently do provide additional information to tribunal panels when reaching decisions in appeals, this study has shown that this does not need to be the case. Paper cases could be improved in terms of the information available to the panel in the case submission, and this research has shown that where this is done there is little difference in panel decisions between oral hearings and paper cases. However, this study also found that even when there is identical information in an oral hearing and a paper case (Version 2 and Version 3) panel members' confidence in their decisions is still higher when it follows an oral hearing (Figure 4).

Figure 4: Panel members' confidence in their final decision (n=198)



The problematic nature of paper cases for tribunal panels is reflected in Figure 5, which shows that most DLA tribunal members feel it is difficult to decide paper cases.

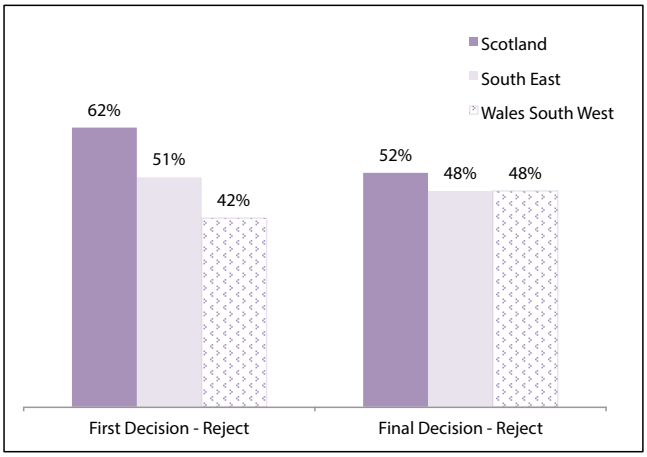
Figure 5: Panel members' view on deciding paper cases (n=198)



Do decisions differ by region?

An important aspect of consistency in tribunal decision-making is consistency between tribunal panels in different regions. The research was designed to incorporate the issue of regional consistency in DLA decision-making by undertaking these case simulations in the South East, Scotland and Wales and the South West. Analysis of initial assessments and final panel members' decisions (Figure 6) shows that individual panel members in Scotland were more inclined towards rejecting the appeal on a first reading of the case submission than panel members in the South East and even more so than panel members in Wales and the South West. However, Figure 6 also clearly illustrates that in their final decisions, the proportion of panel members who rejected the appeal was very similar in all regions. This finding illustrates two things. First, there is good consistency in DLA tribunal decision-making between the three regions. Second, tribunal panel discussions contribute to this consistency, since the final decisions followed panel discussions in both paper and oral hearings of the case.

Figure 6: Panel members' first assessments and final decisions by region (n=198)

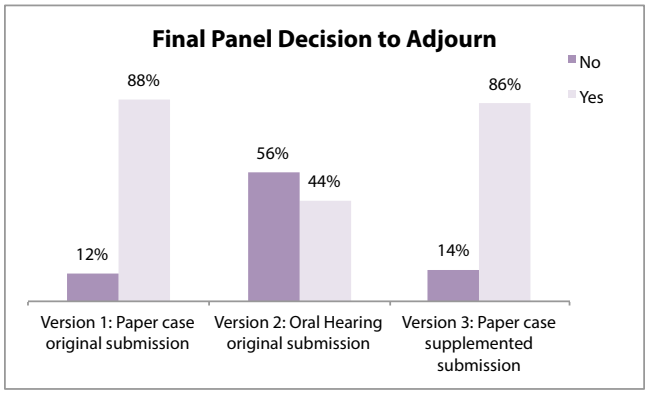


Does the form of hearing affect adjournments?

Tribunal panels in DLA cases also have the option to adjourn a case if the panel feels it cannot reach a fair decision on the balance of probabilities in the absence of further evidence which can reasonably be obtained following an adjournment. Tribunal panels are encouraged to try and reach a decision on the hearing date if they can reasonably do so. In 2011-12 the overall adjournment rate in DLA cases was 18%.

In the study all panels (and individual panel members) were also given the separate option of adjourning the case. As Figure 7 shows, both paper versions of the case (Versions 1 and 3) were significantly more likely to be adjourned than the oral hearing. It is particularly interesting to note that the adjournment rate with Version 3 (paper case with supplemented information) was almost double that of Version 2 (oral hearing) even though the panels presented with these two versions of the case had exactly the same information about the appeal. The only difference was that in Version 2 (oral hearing) the panel received the information in person from the mother while in Version 3 the same information came in a letter from the mother in the written submission.

Figure 7: Final panel decisions to adjourn the case (n=198)

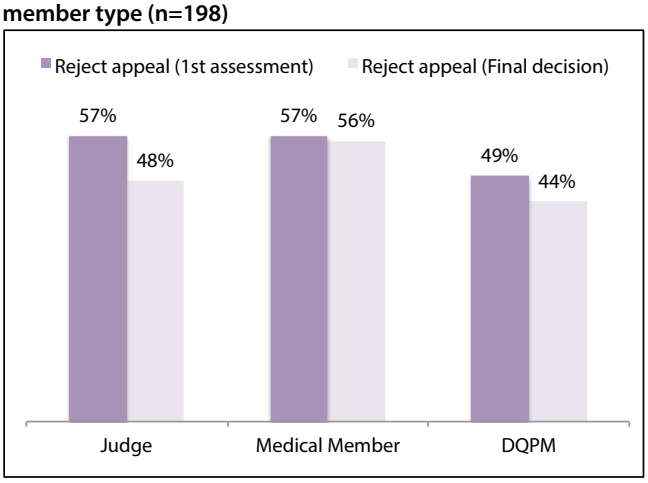


The adjournment rates for all versions of the case are substantially higher than the average adjournment rate in DLA cases, and this can be attributed to the particular facts of this case. There was no official medical evidence in the submission, and almost all panel members who indicated they would have adjourned the case given the option to do so said they would have adjourned to get official medical evidence of the child's ADHD diagnosis and treatment.

Does panel member type affect decision making?

The study examined both the initial impressions and final decisions of each panel member based on whether they were the legally-qualified Tribunal Judge (Chair) or either the non-legally qualified Medical Member or Disability Qualified Panel Member. As Figure 8 shows, there were no significant differences in either first impressions or final decisions according to the member's position on the tribunal panel. In addition, no significant correlation was found between the number of years' experience sitting on DLA cases and panel members' decisions in this case.

Figure 8: First impressions and final decisions by panel member type (n=198)



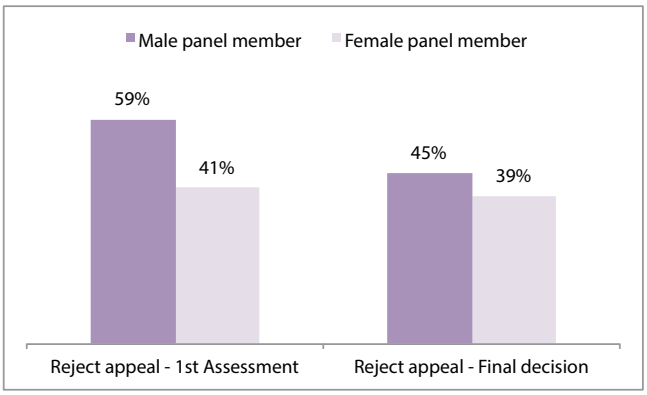
Do the background characteristics of panel members affect decision-making?

This is the first empirical study of judicial decision-making in the UK that is able to reliably assess the relationship between tribunal panel members' personal characteristics and decisions in the case. The key research question here was whether personal background is a predictor of decision-making, and the panel member characteristics examined included: gender, age, household income, ethnicity and religion. There were no significant correlations between individual panel member decisions on the case and any of those individual panel member characteristics.

Analysis of outcome by gender of panel members found that although male panel members were somewhat more inclined than female panel members to reject the appeal on a first assessment and at the final decision stage, there was no significant difference between final decisions of male and female panel members (Figure 9). This finding is particularly notable.

Some theories about the effect of gender on judicial decision-making suggest that male and female judges are most likely to assess cases differently when gender-based issues, such as childcare, are raised. This appeal involved a single mother trying to manage a challenging child in difficult circumstances. Yet there was no significant difference in decision-making by male and female panel members.

Figure 9: Individual 1st and Final decisions by gender of panel member (n-198)



How did panels apply the legal criteria?

Each panel member was asked to indicate the extent to which they felt the specific legal criteria for DLA were met by the case presented to them. There are baseline criteria for a DLA award for a child, as well as specific criteria for the two specific components of DLA: Care and Mobilty.

The figures below highlight the legal criteria where the greatest difference was found between those panel members who allowed the appeal and those who rejected the appeal. As Figure 10 below shows, panel members who allowed the appeal were strongly convinced that the 10 year old child in the case had needs substantially in excess of another 10 year old without a disability. On the question of the child's need for supervision in order to avoid substantial danger to himself or others (Care award criteria), Figure 11 shows there is a clear relationship between the extent to which panel members were satisfied that the criteria had been met and the decision to allow or reject the appeal. The results were also similar in relation to the child needing supervision to avoid substantial danger to himself. Figure 12 also shows that those who allowed the appeal were convinced that the boy could not go outdoors in an unfamiliar place without supervision (Mobility award criteria), but those who rejected the appeal were not convinced.

Figure 10: Panel members' view of child's needs (n=198)

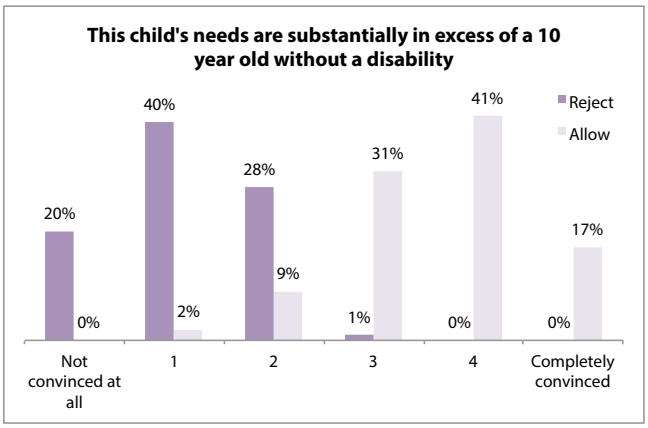


Figure 11: Panel members' view of why child needs supervision (n=198)

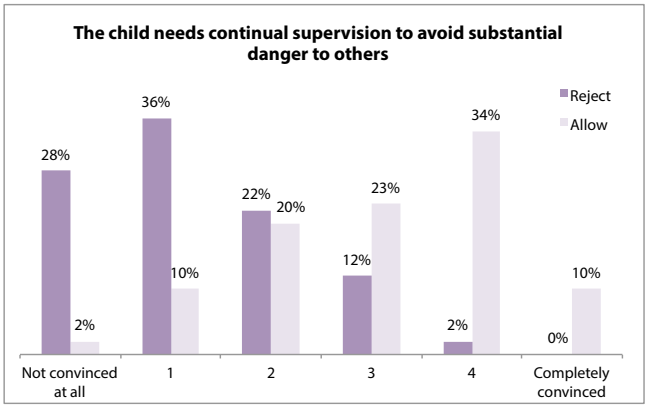
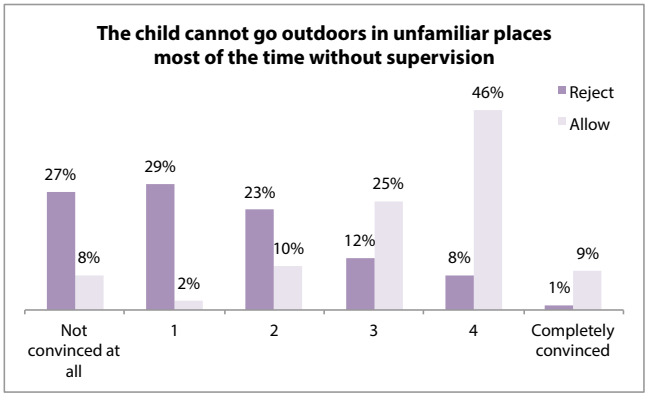


Figure 12: Panel members' view of when and where child needs supervision (n=197)



All of these results suggest that tribunal panels are basing their decisions in DLA appeals on the application of the legal criteria for DLA to the specific facts of the case.

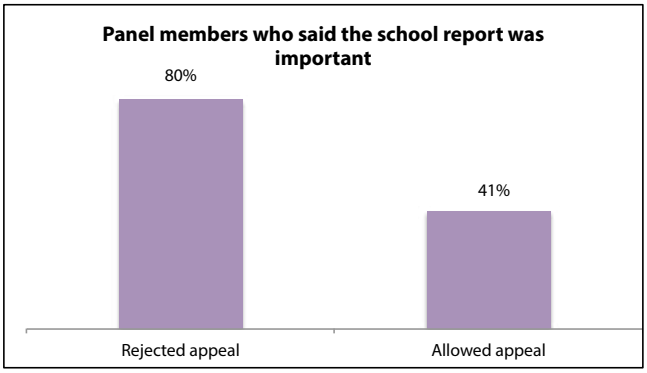
Which evidence was most influential?

In order to assess how panel members viewed the evidence presented in the case and how this related to their final decisions, all panel members were asked to rate the importance of the following pieces of evidence in reaching their decision:

- Information on claim form
- DWP decision
- Mother's letter with appeal
- Statement of social worker
- School report
- Mother's oral evidence [only for those who saw the oral hearing]

With one exception, no correlations were found between how panel members rated the importance of any of these pieces of evidence and whether the panel members rejected or allowed the appeal. The exception was the report from the school on the child's behaviour and performance, which in this case said that he had no problems at school. Among those panel members who rejected the appeal, 80% said that the school report was important to their decision, compared with 41% of those who allowed the appeal (Figure 13). Thus it is clear that those who rejected the appeal were more influenced by the school report than those who allowed the appeal

Figure 13: Relationship between decisions and importance of school report (n=196)

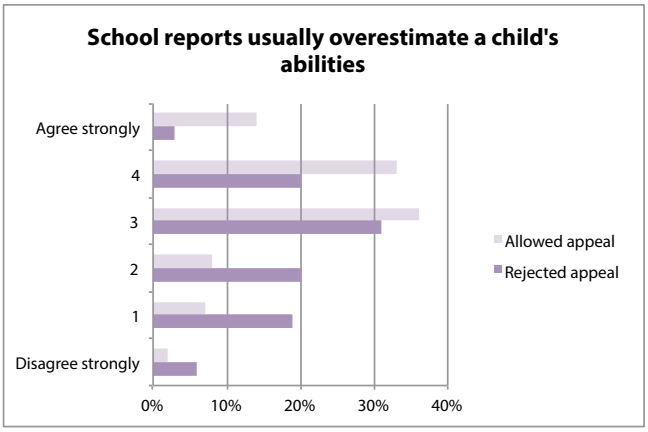


How important are panel member attitudes?

This finding relating to the importance of the school report is reinforced by responses in the 'General Attitude' section of the final post-decision questionnaire, which examined panel members' general attitudes to a range of issues including DWP decision-making, oral hearings and paper cases, parenting and school reports. The only general attitude that showed a correlation with panel members' decisions to reject or allow the appeal in this case was their attitude to school reports in DLA claims. As Figure 14 below shows, those who allowed the appeal felt most strongly that school reports often overestimate what a child claimant can do. In this case, the school report indicated

that the child had no problems at school. The views of those who rejected the appeal tended to be more divided, with a larger proportion disagreeing that school reports overestimated a child's abilities.

Figure 14: Panel members' attitudes to school reports (n=193)

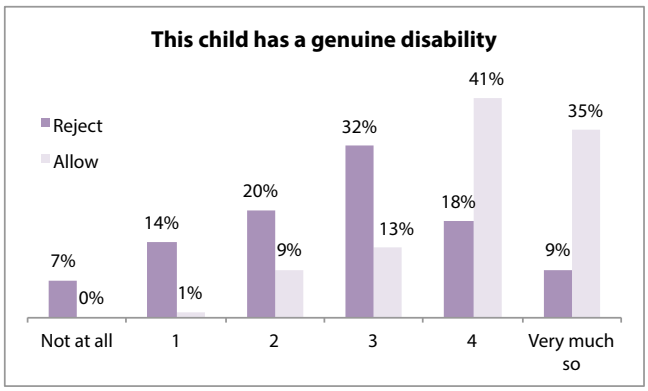


How important are Impressions of the Claimant and Appointee?

The final post-decision questionnaire also examined panel members' impressions of the child (claimant) and the mother (appointee) by asking the panel members to respond to a series of statements and questions about the child and the mother. These were designed to elicit both value judgments (eg, "Do you think the Appointee is a good mother?") and views that related more specifically to whether DLA criteria were met in this case (eg, "Do you think the Appointee is someone who can handle a difficult child?")

From Figure 15, it is clear that panel members who allowed the appeal felt very strongly that the child (claimant) had a genuine disability and were much more likely to believe this than those who rejected the appeal.

Figure 15: Panel members' view of child's disability (n=195)



The two other impressions of the child that were strongly correlated to panel member decisions in the case were whether panel members believed the child was a danger to himself and to others. Most panel members who allowed the appeal felt that he was both a danger to himself and to others and most who rejected the appeal felt he was not (Figures 16 and 17)

Figure 16: Panel members' view of child and danger to self (n=195)

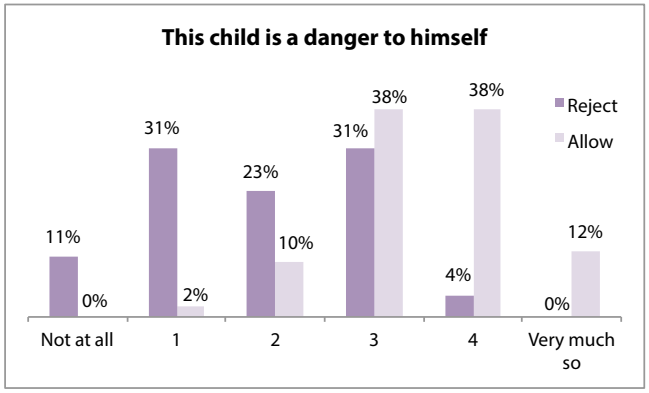
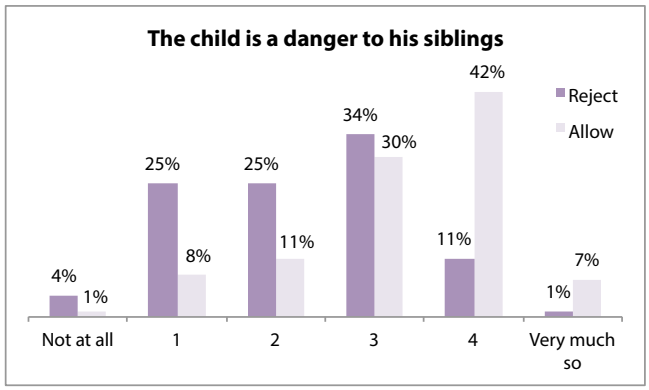
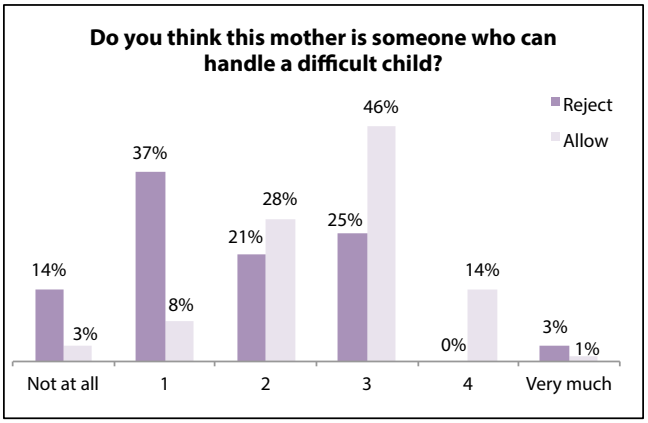


Figure 17: Panel members' view of child and danger to others (n=195)



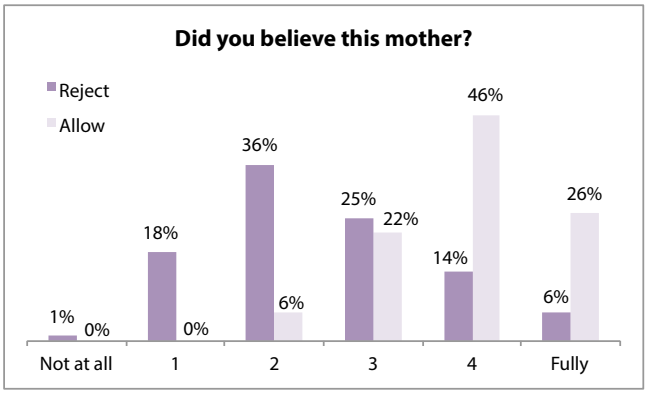
Of the panel members' impressions of the mother (the appointee), two impressions showed correlations with panel members' decisions to either reject or allow the appeal. As Figure 18 shows, most panel members who rejected the appeal did not believe the mother could handle a difficult child, while those that allowed the appeal were more uncertain about this.

Figure 18: Panel members' view of mother's ability to handle child (n=195)



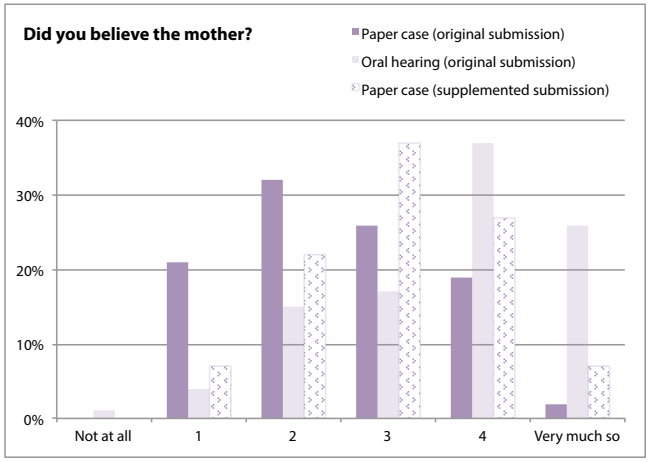
The other clear difference in panel members' impressions of the mother related to her believability. As Figure 19 shows, 72% of panel members who allowed the appeal strongly believed the mother while those who rejected the appeal were more likely to say they did not believe her.

Figure 19: Panel members' view of believability of mother (n=194)



Looking further at panel members' impression of the mother's believability, it is clear that the form of the hearing had an impact on the extent to which panel members believed the mother. As Figure 20 shows, in comparing the two paper cases, the mother was more believable when the panel had more information about the case (paper case – supplemented submission). But the mother was most believable when the panel had more information and was able to actually see and hear from the mother herself (oral hearing).

Figure 20: Believability of mother by form of hearing and level of information (n=198)



What is the value of multi-member panels?

This part of the study examined the relevance of the following to panel members' decisions:

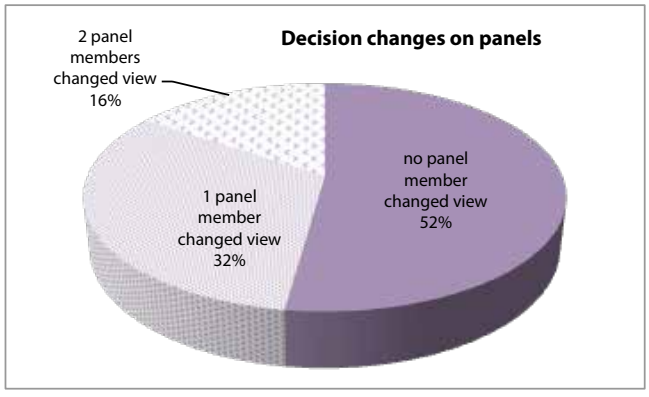
- panel deliberations
- familiarity among panel members
- experience of sitting on DLA cases
- professional expertise of panel members

Impact of panel discussion

In all, 22% of all panel members changed their view of whether to reject or allow the appeal between their initial assessment of the case and their final decision. Of those panel members that changed their view, almost two-thirds (64%) moved from rejecting to allowing the appeal and just over a third (36%) moved from allowing to rejecting the appeal.

At the panel level, in almost half of the 66 panels (47%) no panel members changed their decision at any stage of the decision-making process; in almost a third (29%) one panel member changed their decision; in 14% two panel members changed their decisions; and there were no panels where all panel members changed their decisions (Figure 21).

Figure 21: Members on panels who changed their view (n=198)



It would appear that panel's final decisions typically reinforced the majority's initial view of the case and rarely altered it. In cases where all panel members were in agreement in their initial assessments of the case, there was only one instance where the panel's final decision changed. In instances where the panel's initial assessment was either 'majority reject' or 'majority allow', 31% of the panels' final decisions remained unchanged, 50% turned unanimous and only 19% moved to the alternative decision.

Medical Members changed their view of the case least often, with 18% changing their assessment at any stage in the decision-making process, compared with Disability Qualified Members (23%) and Tribunal Judges (26%).

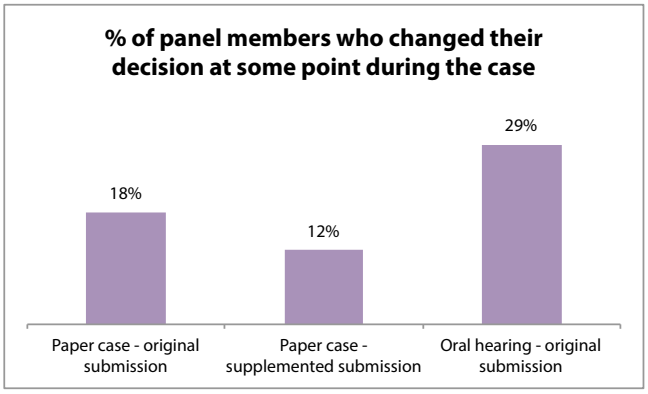
There was no real difference between male and female panel members, with male members changing their assessment of the case 20% of the time and female members 25% of the time. None of the other personal background factors (age, ethnicity, income, religion) accounted for significant differences among those panel members who changed their assessment of the case and those that did not.

The only other variable that came close to significance was experience. There was an increased tendency for panel members to change their mind where both of the other members had a greater number of years of experience (35%) compared to 20% when only one member had more experience sitting on DLA panels.

Form of hearing

There was a significant association between case version and the likelihood that panel members would change their view of the case during the decision-making process. Panel members were significantly less likely to change their view of the case when it was a paper case (12% and 18%) compared to an oral hearing (29%) (Figure 22). Of course in oral hearings there was more opportunity for panel members to change their view of the appeal (after pre-hearing review, after oral hearing and after final panel deliberations).

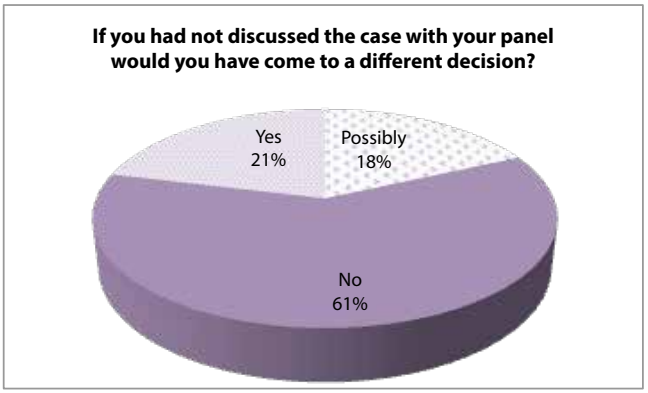
Figure 22: Form of appeal and decision changes (n=198)



How do panel members perceive the group decision-making process?

The value of group decision-making is reflected in part in the fact that 39% of all the panel members who took part in the study felt that their decision in the case would or may have been different if they had not had the benefit of deciding the case as a panel (Figure 23).

Figure 23: Effect of multi-member panels on decision-making (n=198)



Reliance on expertise of others

This is also reinforced by what panel members said about the extent to which they relied on the expertise of their two other colleagues on the tribunal panel. For each type of panel member, at least 80% of their colleagues said they relied very heavily to a moderate amount on that panel member's expertise in reaching a final decision in the case (Figure 24).

Figure 24: Reliance on expertise of other panel members (n=198)

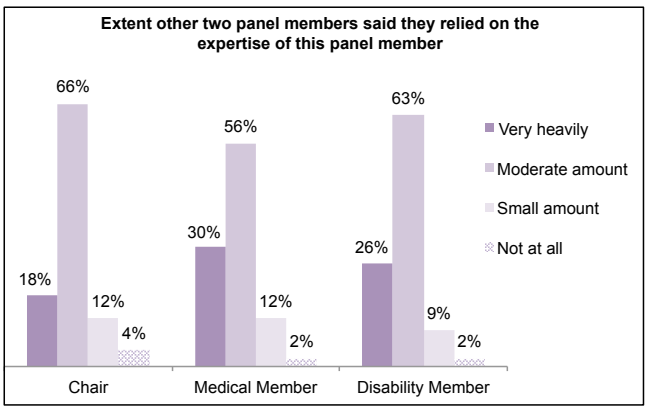
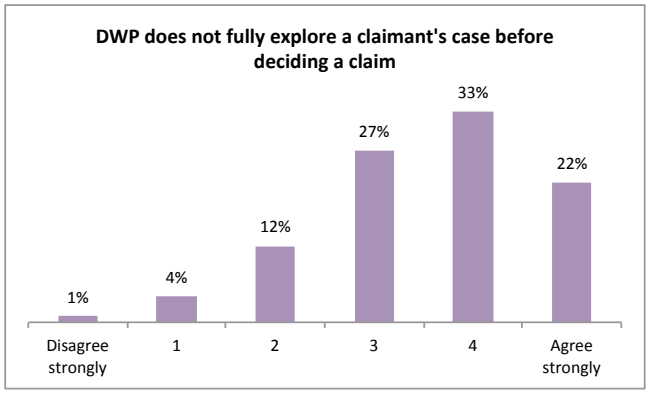


Figure 25: Panel members' view of DWP decision-making (n=196)



ISSUES RAISED BY THESE FINDINGS

Form of appeals

At present it is true that cases dealt with by tribunals at oral hearings are more likely to be allowed than paper cases and this is principally due to the difference in information between paper cases and oral hearings. But the findings of this study also clearly indicate that paper cases and oral hearings can result in similar outcomes if the Case Submission contains the same information that could be extracted from an oral hearing. This strongly suggests that the current methods of eliciting information from claimants (Claim Form) is inadequate for providing fair and sound decision-making at the first tier decision-making level at DWP. It also suggests that tribunal panels deciding appeals on the papers alone which include little more than the claim form information are also at a disadvantage.

This study also found that tribunal panel members in DLA cases do not have confidence that DWP decision-making is based on an adequate exploration of the claimant's case (Figure 25). This is supported by a recent pilot project between DWP and the SEC, which showed that in 71% of DLA appeals where tribunals overturned a DWP decision the tribunal panel reported that this was due to cogent evidence obtained during the oral hearing.

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Adjournments

Tribunal panels are encouraged not to adjourn cases. This is because when an adjournment occurs it may be months before the appeal is reheard, it is not likely to be heard by the same panel and in the case of oral hearings it will inconvenience and possibly create added stress to claimants by requiring them to attend the tribunal for a second time. The results of this study show clearly that adjournments are far more likely to occur with paper cases than oral hearings.

PIP

The planned phased replacement of DLA with PIP for new claims and renewals starting in April 2013 will entail the reassessment of an estimated 1.7 million recipients over a five-year period. To improve DWP first tier decision-making and tribunal decision-making on paper cases, steps need to be taken to improve the quality of the information that is collected from claimants at the initial claim stage.

The evidence of this study indicates that oral hearings ought to remain an option for all DWP decisions for PIP. In this tribunal jurisdiction, not all claimants are equally able to express themselves in writing, access to representation is now severely restricted, the Claim Form is ineffective at eliciting important information,

and tribunals are assisted in their decision-making by being able to see and hear from claimants directly in order to base their decision-making on the best possible evidence.

Information gathering and review procedures

Providing additional information to the tribunal from that found in the original submission was highly relevant to the final outcome of the appeal in both the (supplemented) paper case and oral hearing. It also resulted in a very similar success rate in the appeal for both the (supplemented) paper case and oral hearing. This raises questions about whether early case assessment and case management procedures in first-tier tribunals could be adapted or introduced to avoid the need for an oral hearing or to ensure that the tribunal has as much relevant information as possible when making its decision.

But it also raises questions about the need for better procedures for gathering additional information by DWP for internal decision-making purposes. It would be interesting and helpful to know how DWP first-tier decision makers would have decided this study case if they had the same additional information, and how this compares with the final decisions of the tribunals that also had this additional information.

Multi-member panels

In the 2007 White Paper, *Transforming Tribunals*, the future role of non-legally qualified members (NLMs) on tribunals was questioned, saying that in future it would be necessary to show that NLMs added "real value for money". This study has shown that the use of a mixed multi-member panel in DLA appeals (one legally-qualified and two non-legally qualified panel members) influenced the decision-making process, with almost a quarter of panel members changing their view of the case as a result of panel discussions.

There was little difference between NLMs and LMs in the extent to which they changed their view of the case as a result of panel discussion, and there also appears to be an equal distribution of "value" among the three different panel members. The study showed that the expertise of each type of panel member was relied upon substantially in the appeal. This poses difficult issues for those who might advocate that DLA/PIP appeals be decided in future by a smaller panel.

Training Issues

The study raises issues about two aspects of tribunal training: evaluating evidence and assessing credibility.

Evaluating evidence: Fact-finding is often given a lower priority in judicial training than legal and procedural issues, despite its critical contribution to accurate and fair judicial decisions. This study has indicated clear differences among panel members in their approach to a key piece of evidence - the school report. This is a matter that could be discussed during training for DLA panel members in order to understand differences in approach among different panel members, but it also raises wider training issues for all tribunals about consistency of approach to different types of evidence.

Assessing credibility: Panel members in this study were most likely to believe the mother (appointee) when they had seen a film of her in the oral hearing, even though all the information she provided in the oral hearing was also available to the panels who decided the case based on a supplemented paper submission alone. This indicates that physically seeing and hearing the mother's account increased the likelihood that the evidence would be viewed favourably by panel members. In this case, the mother was able to present her evidence reasonably well at the oral hearing. But these findings raise the question whether someone who was not able to present their evidence very well would have been as believable – or alternatively whether all claimants who appear before a tribunal increase their credibility.

This Discussion Paper covers some but not all of the main findings of the Tribunals Research Project. A Final Report will be published in Summer 2013, and will be available from the Nuffield Foundation and the UCL Judicial Institute. Any comments on the Discussion Paper should be directed to the UCL Judicial Institute.

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