



## Knowledge Exchange Seminar Series (KESS)

*...is a forum that encourages debate on a wide range of research findings, with the overall aim of promoting evidence-based policy and law-making within Northern Ireland*



# Access to justice through better decision making

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# Increased disputes: 2012-13

- Overall increase of 43% in tribunal cases 2012-13, for DOJ supported tribunals
- 127% increase in appeals received by Valuation Tribunal
- 51% increase in appeals received by the Appeals Service
- 26% increase in appeals received by the Special Educational Needs and Disability Tribunal
- 3% *decrease* in claims registered with OITFET – reduction of claims to FET but increase in claims to IT

# Barriers to dispute resolution

- Tribunal statistics not representative of all disputes – not all cases end up at tribunal.
- Disputes begin with initial decision and can continue to tribunal
- Individuals can face barriers in resolving disputes at each stage
- Intellectual, practical and emotional barriers

# Intellectual barriers

- Difficulties understanding how dispute resolution process works, what is required and how to progress disputes
- Difficulties in understanding what information decision makers require
- Difficulties understanding the decisions
- Lack of awareness of legal issue under dispute
- Individualised support can help; utility of written information is variable

# Practical barriers

- Difficulties in knowing where to get help and advice
- Difficulties in securing independent evidence
- Difficulties in accessing legal/specialist support – inequality of arms

# Emotional barriers

- Critical issue at stake
- Disputes generate significant (negative) emotions
- Support can alleviate anxieties and instill confidence

# Challenge for decision makers

- Make decisions & deal with disputes in a way that reduces the barriers
- Secure greater participation in decision making
- Secure better information to make better decisions



# Initial claim forms

- Good decisions need good evidence
- Genn & Thomas: information obtained through DLA claim forms was inadequate, preventing “fair and sound decision making” by initial decision makers and tribunals hearing cases on the papers alone.
- *AR v SSWP (ESA)*: ESA claim forms not eliciting the information needed by tribunals to make an assessment



# Recommendation 1:

Identify the gaps in initial information gathering by mapping the new information that is received through the dispute resolution process against the reasons for overturning initial decisions.

# Focused evidence gathering

- Identify evidential gaps that exist, including those arising from inadequate claim forms
- Advise claimants of the specific evidence required
- Take account of claimant difficulties and make reasonable adjustments to evidence gathering processes, as per *MM & DM v SSWP (ESA)*

# Recommendation 2:

Train decision makers to identify the evidence gaps and to seek specific evidence from claimants to fill this gap.



# Quality of evidence

- Heavy reliance by decision makers on certain evidence, even where quality of evidence is poor
- Higher quality evidence will be of higher probative value
- Difficulties for claimants in securing corroborative evidence – financial barriers and principled objections by medical practitioners

# Recommendation 3:

Ensure that decision makers have access to high quality subject-specific evidence, and support claimant access to additional corroborative evidence where this is required.



# Explaining the decision

- Claimants are unaware of assessment criteria for decision making
- Claimants dispute decisions they do not understand – includes meritorious and hopeless cases
- Lack of understanding apparent at tribunal at which point explanation may be provided - inefficient process and distorts access to justice

# Recommendation 4:

Develop improved models of communication to help claimants understand departmental decisions, including providing claimants with the full criteria to be used to assess their claims as part of the explanation of the decision.

# Tribunal feedback

- Decision makers need to understand why initial decisions are overturned
- Individually – departmental officers can attend the hearing and receive the tribunal's oral/written reasons for the decision
- Systematically – conducting an analysis of different reasons for decisions being overturned to identify common 'failings' in initial decision making



# Recommendation 5:

Identify the best means for decision makers to understand the reasons for tribunal decisions and ensure these reasons are fed back into the initial decision making process.



# Oversight of the system

- Administrative decision making is part of a system of administrative justice
- Independent and impartial perspective
- Systemic problems and solutions



# Recommendation 6:

Establish an independent oversight mechanism for administrative justice in Northern Ireland.



# Conclusions

- Significant challenges faced by those disputing decisions – many unable to challenge decisions
- Poor decision making can necessitate challenges while blocking progress in resolving disputes
- New legislative schemes generate increased pressures on decision makers, but no area of administrative justice is problem free

# Conclusions

Possible to improve:

- Evidence on which initial decisions are based
- Communications with claimants
- Understanding of why decisions are overturned
- Oversight of systemic problems

Better decision making can improve access to justice.





Northern Ireland  
Assembly



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