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# **Evaluation of Early Neutral Evaluation Alternative Dispute Resolution in the Social Security and Child Support Tribunal**

**Carolyn Hay, Katharine McKenna and Trevor Buck**

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## Authors

**Carolyn Hay** is an Associate Director within ECOTEC's Social Policy Division. Carolyn leads on ECOTEC's work across the equalities, employment and social inclusion fields.

**Katharine McKenna** is a Senior Research Manager within ECOTEC's Social Policy Division. Katharine specialises in the fields of criminal justice, legal affairs, employment and labour market research.

**Professor Trevor Buck** is Professor of Socio-Legal Studies at De Montfort University, Leicester. Trevor's research and teaching interests include administrative justice, international child law and social security.

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# 1. Introduction

In October 2007, the Ministry of Justice (MoJ) commissioned ECOTEC Research and Consulting Ltd, in partnership with Professor Trevor Buck, of Leicester De Montfort Law School, De Montfort University, to evaluate the use of Early Neutral Evaluation (ENE) (a type of Alternative Dispute Resolution) in the Social Security and Child Support (SSCS) Tribunal. This report represents the final findings of this evaluation.

## Context

Alternative Dispute Resolution (ADR) is the collective term for the ways that parties can settle civil disputes, with the help of an independent third party and without the need for a formal court or tribunal hearing. Some work had been undertaken in civil courts to test ADR approaches. The Department for Constitutional Affairs (DCA) White Paper of 2004 'Transforming Public Services: Complaints Redress and Tribunals' set out an intention to assess whether a range of dispute resolution approaches could provide alternatives to hearings in the Tribunals Service context. That intention was carried forward to the Tribunals Service business plan and fits with MoJ<sup>1</sup> Departmental Strategic Objective 2: 'Delivering fair and simple routes to civil and family justice' (MoJ, 2009) which seeks to achieve the three outcomes:

- increased efficiency and effectiveness of the civil, administrative and family justice systems;
- provision of early advice and support to enable disputes to be resolved out of court or tribunal wherever possible; and
- accessible justice system that provides support where it is needed.

This ADR project was a direct result of this policy, which aimed to operate and evaluate pilot ADR services. The ADR technique trialled in this pilot was Early Neutral Evaluation which involved a preliminary assessment by a Tribunal Judge of the facts, evidence or legal merits of appeal cases. The focus of this pilot was appeals in the Social Security and Child Support Tribunal<sup>2</sup> against decisions related to entitlement to, and level of, Disability Living Allowance (DLA) and Attendance Allowance (AA). The decision-making body for these benefits was the Pension, Disability and Carers Service (PDCS), part of the Department for Work and Pensions (DWP).<sup>3</sup> DLA and AA represented around 33% of the total volume of 229,123 appeals through the SSCS Tribunal from April 2007 to March 2008.<sup>4</sup>

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1 The MoJ was created from the DCA and parts of the Home Office in 2007.

2 This Tribunal and others were transferred into the new 'First-tier Tribunal' with effect from 8 November 2008 under the Tribunals, Courts and Enforcement Act 2007. The Social Security and Child Support Commissioners, who take appeals from SSCS Tribunal decisions, now form the core of the new 'Upper Tribunal'. The SSCS Tribunal has been placed within the 'Social Entitlement Chamber' of the First-tier Tribunal, while the Commissioners are now styled 'Upper Tribunal Judges' and will hear cases within the new 'Administrative Appeals' Chamber of the Upper Tribunal.

3 The Pension Service and Disability Carers Service were previously separate executive agencies of the Department for Work and Pensions, brought together to form a single agency from April 2008.

4 Other appeals include Incapacity Benefit (33%), Jobseeker's Allowance (8%), Income Support (8%), Industrial Injuries Disablement Benefit (3%), Child Support Assessments/Departures (1%) and others (11%) as detailed in Tribunals Service (2008) *President's Report, 2007-08*.



The pilot initially began operating in two areas: Sutton (outer London Borough) and Bristol in September 2007 and January 2008 respectively. It was originally intended that the pilot would operate for six months. However, in order to ensure a sufficient number of cases going through the pilot to allow for robust analysis, a decision was taken by MoJ and the Tribunals Service to extend the pilot to the end of January 2009.<sup>5</sup> The geographies of these initial pilot areas were also widened from August 2008, specifically to include Cardiff and Bexleyheath, with the intention to increase the flow of cases through the pilot.

## Pilot aims and objectives

The primary objective of the ADR pilot was to identify, test and propose successful and cost-effective alternative mechanisms for resolving administrative appeals without the need for a full tribunal hearing. It aimed to:

- provide a less formal and more convenient means of resolving the matter for the parties;
- provide a more tailored solution for the dispute, a proportionate approach and faster resolution for users;
- increase efficiency for tribunals administrators by speeding up case resolution, reducing the number of hearings and adjournments, releasing resources to improve service to cases requiring a hearing; and
- determine what factors contribute to the success of alternative dispute resolution and, therefore, to understand where else (in the Tribunals Service) they may be applied.

## Pilot operation

Participation in the ADR pilot was voluntary. A letter explaining the ADR process and inviting appellants to opt-in, plus an ADR opt-in form was sent to the appellants alongside the Tribunals Service pre-hearing enquiry form, the TAS1. Where appellants had opted in, it was intended that the pilot operated as follows, although the evaluation found some slight deviation from this.

- Within four weeks of the appeal submission being received by the Tribunals Service, ENE was conducted where the papers were read by one of the nominated District Tribunal Judges (DTJ). This formed stage one of the ADR process. The DTJ assessed the likely outcome of the appeal based on the information in the submission. The approach taken by the pilot was to have two DTJs in each of the four pilot areas who had one dedicated day per week for ENE work.
- The DTJ then contacted the party who in his or her opinion was likely to lose the appeal. This formed stage two of the ADR process. If the losing party was the PDCS, the DTJ explained what decision they thought the tribunal would make and why and invited the PDCS<sup>6</sup> to reconsider their decision. If the DTJ believed that the appeal was likely to fail, he

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<sup>5</sup> Only pilot cases concluded by the end of January 2009 were included in the analysis of this report.

<sup>6</sup> It was agreed at the start of the pilot that the DTJ would speak to Higher Executive Officers (HEOs) rather than the specific Executive Officer (EO) Decision Makers who made the decision on the case.

or she contacted the appellant or their appointed representative<sup>7</sup> to explain their view. The DTJ discussed with the appellant the merits of their case and suggested that the appellant send in further evidence or that they seek advice or focus on the specific issues the tribunal would need to consider. Following this, the appellant could choose to withdraw their appeal or proceed to a hearing. The DTJ could also issue directions about the case such as a request for a Medical Examination Report or to convert the hearing from paper to an oral hearing.

- Alternatively, having read the papers, the DTJ might have concluded that he or she was unable to form a view of the likely tribunal outcome for that case. This could be because the issues were complex or the evidence was finely balanced. Under these circumstances, there was no contact with either party and the case went forward for hearing in the normal way, although the DTJ could issue directions about the case if he or she thought that necessary to avoid an adjournment. Where cases proceeded to a hearing, the DTJ who conducted ADR did not chair the tribunal panel and the panel was not aware that cases were part of the ADR pilot.

There were seven measurable outcomes<sup>8</sup> from the pilot process as summarised in Table 1.1 and in the flow chart below. These potential outcomes of the process reflected the advice and potential decisions of the parties following the phone call.

**Table 1.1: Pilot outcomes**

Outcome number	Process	Outcome
1	ADR not carried out: opt-in form not returned or insufficient resources to carry out ENE	Hearing as normal
2	ENE carried out but not suitable for subsequent ADR. Directions may have been issued by DTJ	Hearing as normal
3	ENE carried out, appellant likely to win. DTJ telephoned PDCS- PDCS invited to reconsider. Decision either not reconsidered or reconsidered but decision unaltered	Case proceeded to hearing
4	ENE carried out, appellant likely to win. DTJ telephoned PDCS, PDCS reconsidered, decision revised in appellants favour, appeal lapsed*	Revised decision-no hearing and may have started new appeal
5	ENE carried out, appellant likely to lose. DTJ telephoned appellant and suggested action. Appellant withdrew appeal**	Case ends
6	ENE carried out, appellant likely to lose. DTJ telephoned appellant and suggested action. Appellant provided extra evidence or sought advice	Case proceeded to hearing
7	ENE carried out, appellant likely to lose. DTJ telephoned appellant and suggested action. Appellant did nothing	Hearing as normal

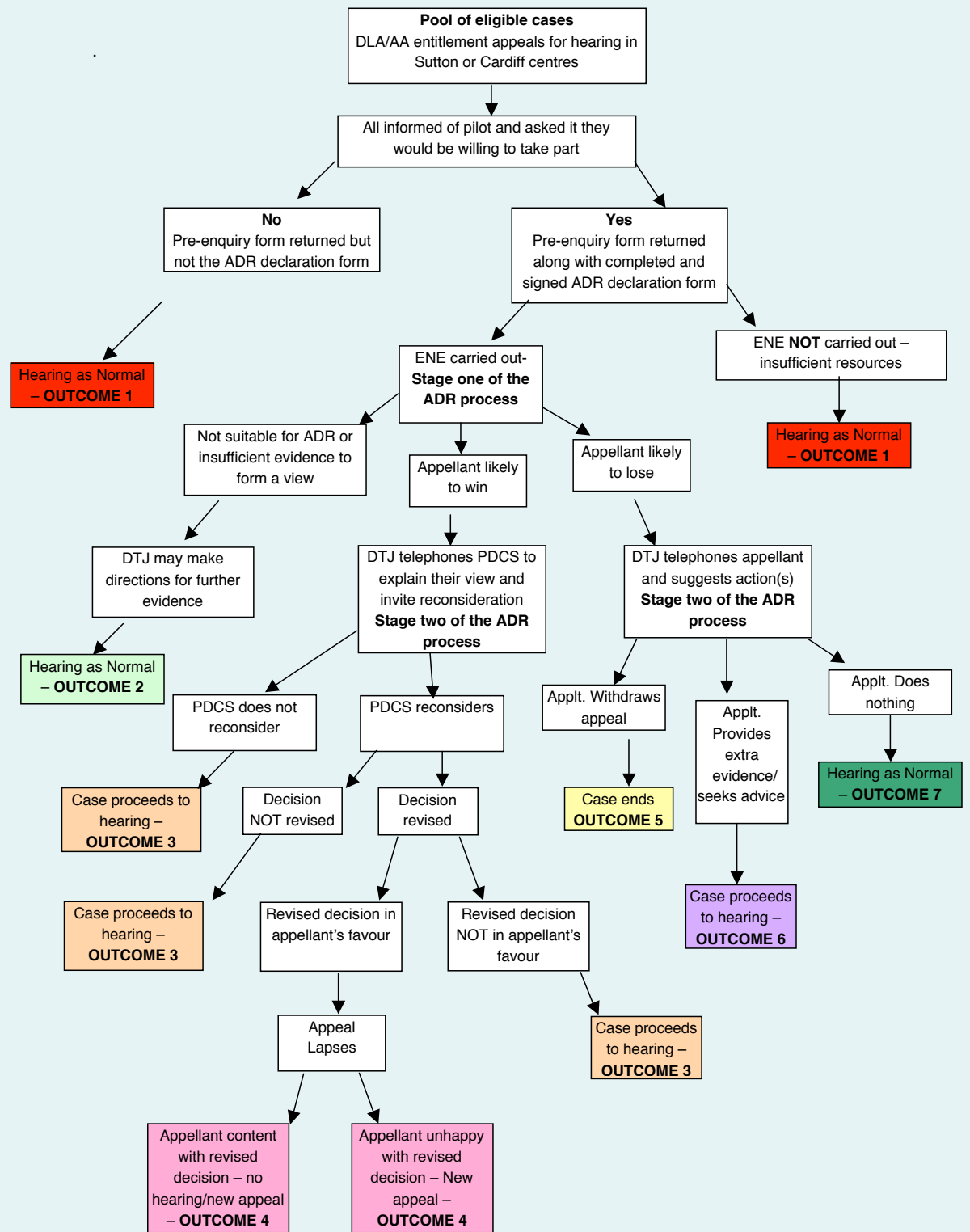
\* An appeal lapsed when a decision was revised by PDCS in the appellant's favour before the appeal was heard.

\*\* If an appellant wished to stop their appeal at any point, they could ask for the appeal to be withdrawn.

7 Appellants are able to nominate a representative to act on their behalf during the appeal process.

8 The Tribunals Service's original design for the pilot identified ten outcomes but the data collected did not include sufficient information to differentiate between some outcomes.

**Figure 1.1 Pilot process potential outcomes**



## Evaluation aims and objectives

The evaluation was commissioned to provide evidence of the extent to which the pilot exercise met its specific objectives. The overall aim of this evaluation was to determine the extent to which the ADR arrangements of the pilot exercise, namely the ENE technique, resulted in any benefits or efficiencies for the tribunal and for the appellants. More specifically, the evaluation sought to answer the following key research questions.

- Does ADR (as deployed in this context) result in swifter and more proportionate resolution of appeal cases? Proportionate resolution in this context is defined as resolving disputes earlier and more effectively through strongly evidenced cases and opportunities to settle appeals outside of a tribunal.
- Is ADR cost-effective?
- Were appellants satisfied with the process?
- Were there any other impacts of ADR?
- What other benefits or drawbacks were there of ADR?
- What impact did ADR have on the Pension, Disability and Carers Service (PDCCS)?
- What do others (non-parties) think of ADR?
- Why do some appellants not opt into the ADR process?

The sub-questions in relation to these key questions are detailed in Appendix A.

## Evaluation methodology

The approach to evaluating the ADR pilot comprised a number of strands.

### Quantitative analysis

Spreadsheets were designed and maintained by Tribunals Service administrative staff at each pilot site for the purpose of evaluating the pilots. These spreadsheets gathered information on key stages in the progress of a case through the appeal process. Separate spreadsheets were completed for opt-in and non-opt-in cases to allow a comparison element. It should be noted, however, that the original design of the pilot did not allow a genuine experimental evaluation. Specifically, the control group (non-opt-ins) was drawn from the same broad population (the pilot areas) rather than a separate area. Likewise, the voluntary nature of the opt-in process prevented random allocation of cases to the opt-in or non-opt-in group. As such, therefore, it was possible that certain characteristics of the opt-in and opt-out cases might underlie their differing progress and outcomes from the pilot. Manipulation and analysis of these spreadsheets was undertaken as part of the quantitative strand of the evaluation to provide some indications of the potential differences between the two groups of cases. This report presents the findings of these comparisons in respect of cost and time taken for case resolution for opt-in versus opt-out cases. The underlying assumption of these comparisons was that apart from the decision to opt-in or not, these cases had similar characteristics and, therefore, were directly comparable. While there was no evidence to

suggest that this assumption was not valid, the study design did not allow for a thorough investigation of whether the groups were indeed comparable. Therefore, it is important to interpret these findings with caution. Any apparent differences in cost and time of case resolution for opt-in and opt-out cases might be due to differences in case characteristics (e.g. appellant's certainty of appeal outcome etc.) between opt-in and opt-out cases rather than as a result of the alternative dispute resolution intervention.

Further details of the quantitative analysis approach are provided in Appendix B. The completed spreadsheets were provided to the evaluation team at regular intervals during the pilots' operation. Ongoing analysis was undertaken to provide regular overviews of the pilots' progress as well as in-depth analysis to coincide with the interim report in June 2008, an update on the performance of the pilot in October 2008 and to inform the final report.

### Unit cost analysis

The approach to assessing the cost effectiveness of the pilot was the development of average unit costs for different elements or key staff in the pilot. These were based on fixed costs provided by the Tribunals Service or calculations based on time inputs. The time inputs were calculated from average times recorded on the pilot spreadsheets or separate timesheets. These were then used to produce average costs for opt-in and non-opt-in cases from the ADR pilot. This allowed analysis of any cost savings, or additional cost associated with the ADR process, compared to the traditional appeals process. The Tribunals, Courts and Enforcement Act 2007 (TCE), which came into force in November 2008, changed some aspects of the appeals process around how cases are managed. These changes reduced the differences between the ADR pilot process and traditional process and potentially reduced the additional costs associated with ADR. However, given the timing of the change, it was too late in the evaluation pilot to robustly examine the potential implications of these changes to include them in the cost analysis.

### Qualitative interviews

A key strand of data collection for the evaluation was qualitative interviews with staff, participants and stakeholders involved in the ADR process. These interviews sought to gather their views and perceptions of the process and impact of the pilot from different perspectives. Interviews were undertaken with the following.

- **Administrative and management staff from the Tribunals Service** engaged in delivering the pilot in each area. A total of seven face-to-face interviews were undertaken in April 2008 and November 2008.
- Four **DTJs**, two from each initial pilot region, responsible for conducting ADR. Six interviews were conducted in total in April 2008 and November 2008. This included two additional short telephone interviews with two DTJs in one area in January 2009 to explore any impact following the widening of the pilot boundaries as the earlier

interviews were conducted prior to this occurring in this pilot area. These later interviews also aimed to explore any potential effects on the ADR opt-in process of the operational reforms introduced under the Tribunals, Courts and Enforcement Act 2007 which came into force in November 2008.

- Four **PDCS staff**, conducted in May 2008 and December 2008.
- Eighty **appellants or representatives**, including 60 interviews with those who had opted-in for the ADR process and 20 interviews with those who had not opted-in. The sample included 50 interviews in the Sutton and Bexleyheath pilot area and 30 in the Bristol and Cardiff area. The majority of these appellants (80%) were making claims against DLA. These interviews took place after conclusion of an appellant's appeal to allow the interview to capture information on the appeal process and outcome.
- Representatives from eight professional **welfare rights groups or support organisations** who represented or worked with appellants through the appeal process, conducted in December 2008 and January 2009.

All the qualitative interviews were transcribed and subject to primary and secondary content analysis using an analytical framework to examine the data against the key research questions and themes.

Full details of the methodology for the evaluation are provided in Appendix B.

## Content of the report

The remainder of this report details the process and impact evaluation findings as follows.

### Chapter 2: Process evaluation

- The first section of this chapter reports qualitative findings in terms of pilot opt-in.
- The second section examines qualitative findings concerning the two stages of the ADR process, namely ENE and telephone calls to appellants.
- The third section examines quantitative findings concerning the pilot's delivery.
- The fourth section explores the administrative processes associated with the pilot.

### Chapter 3: Pilot impact and outcome evaluation

- The first section examines the quantitative outputs and outcomes emerging from the pilot.
- The second section reports on the qualitative outcomes from the pilot.
- The third section explores the cost effectiveness of the pilot.

### Chapter 4: Conclusions and recommendations

- Summarises key findings from the implementation of the pilot and examines key recommendations should the ADR process be continued.

## 2. Process evaluation

### Pilot process: appellant opt-in

This section presents the evaluation findings on the operation of the appellant opt-in aspect of the ADR process. It provides evidence in response to the following key research questions.

- Why do some appellants not opt into the ADR process?
- Were appellants satisfied with the process?
- What do others (non-parties) think of ADR?

The findings reported in this chapter were principally drawn from qualitative interviews conducted with Tribunals Service staff, DTJs, appellants and representatives from welfare rights groups.

#### Key findings

- Overall the respondents reported that the opt-in process worked reasonably well, and there was clear evidence of appellants making informed and active decisions to opt-in, focusing on specific potential benefits of the process. For others, the decision to opt-in was for more practical reasons, to avoid travelling to, or appearing at, a hearing. Others actively chose not to follow the non-ADR route based on advice or personal experience of the tribunal system.
- Some appellants sought support and advice from relatives or support organisations to help them understand the ADR process and were able to make an informed decision about opt-in as a result.
- There were other appellants who generally had a more limited understanding of what they were opting into, or had automatically signed the papers without any understanding of the process they were entering. As such, they appeared to be making passive decisions to opt-in. This could be because they had little experience of similar systems, or had limited mental capacity through disability or ill-health. There were also examples of appellants with limited literacy levels, and many more who felt uncomfortable or confused by complex paperwork and forms.
- Those who actively opted in generally understood they were not being disadvantaged by utilising ADR, and knew they could revert to the full tribunal if they were dissatisfied with the ADR process or if the ADR process did not resolve their appeal.
- An underlying problem in determining and analysing appellants' reasons for whether to opt-in or not to the pilot exercise was that appellants were generally unfamiliar with the 'new product' of ADR, compared to an iconic tribunal hearing model. To an extent, the pilot exercise had to 'sell' the value of the new product as compared with the more familiar old product.

## Operation of the opt-in process

Participation in the ADR pilot was voluntary. A letter explaining the ADR process and inviting appellants to opt-in, plus an ADR opt-in form was sent to the appellants. Initially, this information was sent out by the PDCS within the appeal submission pack, alongside the Tribunals Service pre-hearing enquiry form, the TAS1. From November 2008, however, responsibility for sending out the pre-hearing enquiry form transferred to the Tribunals Service following reforms introduced under the Tribunals, Courts and Enforcement Act 2007. From this point onwards, the pre-enquiry form was sent separately from the submission pack. An administrative decision was taken to keep the ADR opt-in form and explanation letter together with the pre-enquiry form so these were also sent out by the Tribunals Service in the last three months of the project.

The ADR explanation letter was drafted in conjunction with communication experts from DWP in order to ensure the accessibility of the letter for appellants who may have potential literacy issues. The Tribunals Service sought to increase the visibility of the ADR explanation letter and opt-in form by printing them on yellow paper.

To support the opt-in process, the Tribunals Service contacted representative groups, advocacy and support agencies for people with disabilities and their carers in the geographical areas of the pilot. They were informed about the pilot and the process to enable them to explain ADR to appellants should they be approached for advice.

## Reasons for opt-in

Appellants, who had opted into the ADR process by signing and returning the ADR opt-in form, demonstrated varying levels of understanding of the process underlying this decision. Some focused on specific positive benefits of the process, backed by a genuine understanding of the process. There were other appellants, however, who had clearly signed the opt-in form, as their case was going through the ADR process. However, they were not clear that they had done this or why. Evidence from the interviews suggested that others were prepared to try something new or 'alternative' to the existing system:

- to speed the process up;
- to have someone to discuss the case with;
- to get an independent eye over the case; or
- because they felt desperate.

In addition, there were many appellants who stated that they wanted to use ADR to avoid travelling to, or appearing at, a hearing. This analysis therefore allowed the classification of the extent to which people 'actively' or 'passively' opted in to the ADR process. The researchers consider some of the appellant reasons for opting into the pilot in more detail, below.



## Actively opting-in

There were several cases where appellants had actively taken a decision to opt-in as a result of reading the 'yellow' ADR letter. When asked to explain why they had opted into ADR, a group of appellants gave clear and rational explanations of their decision to opt-in, suggesting they made an active choice to opt-in. The letter describing ADR was, for them, generally clear and explained the purpose of the ADR process reasonably well. These appellants and representatives typically described their impression of the purpose and process of the ADR pilot very much in terms of the pilot's objectives. For example, one representative stated that their first impression of the ADR process was that it was positive and fair, and, therefore, felt that it was definitely worthwhile opting in:

*"I wanted to opt for it right from day one, to be honest when I got the letter I was more than happy"*

(Sutton opt-in representative)

Similarly, another appellant explained their initial understanding of ADR from the letter, which reflected the pilot nature of the process:

*"I thought it was a new scheme that the government was bringing in that would help individual cases"*

(Sutton opt-in appellant)

Clearly the ADR process, being new, and for most appellants something different from anything they had experienced before, was not always immediately understood. Some appellants had to read the letter several times to understand it:

*"I had to read the letter on a few occasions, because as I say it takes me a long time for it to actually sink in. So I had to read it a good few times, but then I started to read it and I thought oh yes well they say that they might be able to sort it out for me and if that's the case then I'll try it. So I thought yes I'll go for it"*

(Sutton opt-in appellant)

Overall, these appellants typically said ADR was a means to give them the best chance they could get for their appeal or that it was an opportunity to explore every avenue. This was often founded on a general sense that whatever ADR was offering it could not harm or hinder their case and could be beneficial.

For other appellants, the reasons given for actively opting into the ADR process were that the process would improve their chances of getting a speedy, more efficient service, with the potential to generally improve their experience of the appeal process. As one appellant commented:

*"I actually thought it would work better and you would be processed a lot quicker"*  
(Sutton opt-in representative)

Another appellant described their understanding of ADR as:

*"it wouldn't affect the appeal as such; it might just assist it, smooth it and streamline it"*  
(Bristol opt-in appellant)

There were also appellants who thought the process was more likely to result in an outcome they wanted to achieve from the appeal:

*"I just kind of got the impression this was maybe a bit different and it would be better for me if I agreed to it"*  
(Sutton opt-in appellant)

In a small number of examples, appellants were simply transposing their wishes for the outcome from the appeal onto the ADR process. For example, one appellant described their view that if someone independent were to look at the case then they would see what the appellant perceived in terms of their care and mobility needs, and agree to award DLA because they felt that the case was so strong. Appellants felt that the DTJ who would conduct the review was someone who would listen to their case. This appellant felt:

*"[I opted in] because I was desperate, I was desperate for someone to listen, yes desperate"*  
(Sutton opt-in appellant)

This desire for someone to speak to and listen to their story was commonly reflected in appellant interviews.

Similarly, in many other cases where appellants made an active choice to opt-in, the DTJ acting as an independent reviewer of the case was mentioned as their reason for opting in. These appellants clearly understood that the Tribunals Service and the DTJ were independent of the PDCS. This attracted appellants to opt-in to the ADR process as they perceived that PDCS had made an incorrect decision in respect of their claim:

*"I thought to myself it was a very good idea because it was somebody else independent and the fact that twice they'd thrown out my claim it's better to be dealt with by somebody independently, so you have a lot more confidence in that"*  
(Sutton opt-in appellant)

There was an isolated group of appellants who felt very negative about the appeal process, and the extent to which the tribunal panel would give them a fair hearing. Opting into ADR

was, therefore, seen as a way of getting a fair and unbiased appeal through the independent DTJ review, whereas they did not believe this was the case with the tribunal panel:

*"I could just picture myself sitting there in this little chair with all this row of people sitting up at a big table, banquet sort of table thinking, oh well no we won't bother with that one, you know what I mean, they sort of looked at your paper and made a decision already and that is it"*

(Sutton opt-in appellant)

In other cases where appellants made an active, informed choice to opt-in, the reasons for opting in were less about the positive benefits of ADR and rather reflected a level of desperation to resolve the appeal by any means, or a strong desire to avoid a hearing. One appellant summed this up as:

*"the advantage is you haven't got to wait for the date of the hearing, you haven't got to take someone's time up going to the hearing and all that"*

(Sutton opt-in representative)

ADR was perceived as a means to circumvent a drawn-out experience:

*"The actual hearing, yes, I thought it would sort of stop it getting to that stage. I thought if there is another process to go through that would be handy"*

(Bristol opt-in appellant)

Appellants who wanted to avoid a hearing fell into a number of groupings. Some appellants had been through the appeal and tribunal process before and had found an oral hearing unpleasant. For example, one appellant described how she chose to opt into ADR because she did not want to attend a hearing, as she had been to a hearing previously.

*"it's like being in court, you're going in there like a nervous wreck wondering what the hell is going to happen to you because this is your livelihood"*

(Sutton opt-in appellant)

Appellants with no previous experience of the appeal process were commonly apprehensive and daunted by the prospect of an appeal hearing. It seemed that these feelings were exacerbated where people had mental health conditions, anxiety or fear of judicial processes and formality:

*"I thought it was like a court, and it sort of made me nervous because I've never been into one before"*

(Sutton opt-in appellant)

There was a final group of appellants where the level or nature of their disability meant they wanted to avoid a hearing for more practical reasons, as this appellant stated:

*“If you’re on DLA, it means disability living allowance doesn’t it, which means you’re disabled doesn’t it, basically, now how are you going to get to Sutton?”*

(Sutton opt-in appellant)

Frustration about the location of hearing venues was widespread, and coupled with the subject matter of DLA or AA appeals being personal to appellants, added up to them wanting to try another method of resolving their case without having a hearing, as illustrated by this appellant:

*“I mean there must be thousands of me around the country that cannot get to these places that they just pinpoint and say this is us, and especially when it’s over such a delicate thing”*

(Sutton opt-in appellant)

This was echoed by a number of appellants who found it distressing to talk about their condition in front of a panel, and ADR offered an easier option. In these situations, opting into ADR was an expedient choice. This was further reinforced by some non-opt-in appellants who reported that, with hindsight, they would have opted into ADR to avoid the hearing which they found an unpleasant and stressful experience.

There were also cases, primarily in the early stages of the pilot, where appellants had opted into ADR on the basis that they would be able to avoid a hearing. However, they were not processed through ADR because of insufficient resources or lack of time. In fact, the appellants then felt ill-prepared to be called for a hearing without any preparatory call from the DTJ. This might have led to cases being more likely to be adjourned as evidence may not be prepared as appellants awaited a call and representatives were not being lined up for support and attendance of an oral hearing. As this appellant illustrated:

*“I thought I wouldn’t have to go there, so I didn’t go to speak to them [representative organisation]”*

(Sutton opt-in appellant)

### **Passively opting-in**

Amongst other appellants, there was evidence of more limited understanding of the ADR process. Therefore, there was clear evidence that a proportion of the appellants who opted-in to the ADR process had done so simply by signing the ADR opt-in form along with the pre-hearing enquiry form. They appeared not to really know what they had opted for. Some appellants who struggled to understand the letter had the support of a relative, carer or representative who could help them, and some had rung into the Tribunals Service for more information. Others did not seek assistance despite not understanding the letter. Reasons given for not seeking assistance included the cost of the call, dislike of telephones, not knowing what to ask and not knowing whom to call. These appellants were generally unclear about what ADR was. For example, there was an appellant who had interpreted that ADR

was a way for the Tribunals Service to assess whether the claim was genuine and detect fraudulent cases so that the latter would not go forward to a hearing and waste time and resources. There was also a case where an appellant with English for Speakers of Other Languages (ESOL) needs had concluded that the ADR offered a second chance of being successful in the appeal after a hearing had taken place.

Despite the misinterpretations of what ADR was for amongst some appellants, or what ADR might provide, there were no clear cases of appellants who thought that the ADR process would remove their right to an appeal hearing. In this sense, the ADR pilot and appellants' understanding did not undermine their belief that they could access an independent judicial system. In fact, a number of appellants clearly understood ADR as another means to resolve their appeal but if the suggestion was they might be the losing party they would simply revert to the original system and attend the appeal hearing:

*"I said I'll do it, I knew it wasn't prohibiting me from going to a tribunal, so I knew that"*

(Cardiff opt-in appellant)

For other appellants, even if they did not recall the specific steps of the process, with some due consideration, they understood that ADR was an additional avenue they could take to resolve their case:

*"I didn't really know at first, it wasn't until I'd read through it, really it was just another way around it, so I filled that out and sent that in as well, it was just a case of try everything because the doctor had advised me"*

(Sutton opt-in appellant)

The differing levels of understanding and varied interpretations of the ADR process suggested that there was a level of passive opt-in by appellants rather than a clear-cut informed choice.

Where appellants reported being unaware that they had opted in, they often concluded that they must have just signed the ADR opt-in form along with the other forms received in the submission pack that required a signature:

*"I mean you get all these papers and you think well this is important this is the first one, this is the map how to get there and then the one to sign to say yes to say whether you're coming or maybe a piece at the bottom of that"*

(Sutton opt-in appellant)

This supported the reasoning behind the change in process that resulted from the Tribunals, Courts and Enforcement Act 2007 reforms. This led to the pre-enquiry form being sent by the Tribunal Service separately from the appeal submission materials from the PDCS to increase

its visibility. It was assumed that the ADR letter and opt-in form being sent separately would also increase the likelihood that appellants would take note of the process.

Another reason for appellants' passive opt-in to the ADR process was that the decision to opt-in was taken by a support worker, carer or welfare rights group representative, so the appellant had no direct knowledge of opting-in. For example, in one case, an appellant did not recall having opted into the ADR pilot but when his wife joined the interview it emerged that she took care of the paperwork. She had opted into the pilot, although she did not recall much about the process and her reasons for doing so. There was evidence from welfare rights group representatives to support this, with decisions to opt-in taken on behalf of appellants in an isolated number of cases (see section 'Welfare rights groups views on opt-in'). While support workers, carers and representatives were working to support appellants and were assumed to act in the best interest of the individuals they were supporting, this potentially undermined the extent to which appellants were able to exercise their choice to opt-in to the ADR process.

In more isolated cases, appellants felt that generally there was not enough information provided about the appeals process to allow an informed decision about whether to proceed with the appeal process or opt-in to the ADR process.<sup>9</sup> The role of support organisations was key here but, there was an issue for some appellants in knowing where to go for this information and accessing this information at the appropriate time during the appeal process. Some appellants required additional support to understand the ADR letter. Informed consent in the matter of choosing between an ADR process or the regular tribunal appeal process would ideally be best served by specialist representative organisations providing independent advice to serve their customers' best interests. However, the regional variations of the levels of service provided by such organisations and the fact that appellants often approach relatives, who were not legal experts to act as representatives, will often result in appellants relying on the Tribunals Service and/or PDCS for advice and information.

### **Reasons for non-opt-in**

As in the case of the appellants who opted into the ADR process, there was evidence that appellants also made both passive and active decisions to opt-out of the ADR process.

### **Passive decisions to not opt-in**

During the early stages of the pilot, statistics recorded by the ADR project team showed that the ADR letter and opt-in form were not being sent by PDCS with all submission packs. This inconsistent distribution of the opt-in letter appeared to be a significant factor in the levels of appellants not opting into the ADR pilot as many appellants who did not opt-in had no

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<sup>9</sup> Following the Tribunals, Courts and Enforcement Act introduced in November 2007, the Tribunals Service have revised the Welcome pack sent to appellants in order to improve the information provided about the process.

recollection of the ADR letter. Even when prompted by researchers about the 'yellow letter' they were adamant that they had not received it, as this appellant was:

*"I never got anything like that [a yellow letter], I didn't have any options like that whatsoever"*

(Sutton non-opt-in appellant)

For other appellants, the limited recall of the ADR letter and the subsequent opportunity to opt into the ADR process was due to the amount of paperwork received as part of the appeal process. This seemed to have meant that the ADR letter was often missed, even if it was printed on yellow paper. This was illustrated by researchers' requests to look, with the appellants' permission, at the file of communication about the case. In a small number of cases the ADR letter was found. This receipt of a large amount of paperwork was often compounded by other concerns at the time of starting an appeal. This led to limited consideration of the opportunities presented by the ADR pilot if the letter was in fact noted:

*"I don't recall that... It doesn't come to mind at all ...with everything else going on in life as well, you know, think oh god this is one thing which we can really do without"*

(Sutton non-opt-in appellant)

There were cases of appellants who found the wording on the ADR letter difficult to understand. As such, they had not initially taken in the content of the letter, as one appellant explained:

*"it's the wording they put, sometimes you don't always understand what the words are that they're saying on there, because I didn't have anywhere to go for help or I didn't know there was anywhere I could go for help... If I'd have had the back up from other people there might have been able to say well we'll take this"*

(Sutton non-opt-in appellant)

There was evidence in all pilot areas that the lack of understanding of the ADR process extended to welfare rights group agencies. One opt-in appellant explained that she took the ADR letter to an advice agency, who advised her to refuse it as they did not understand the process as it was new.

*"Yes they said not to go with it because they said they didn't fully understand what it was, so I didn't. They were confused because that piece of paper said... what they were offering was not on... it would not be a final decision on what the DLA appeal would be, but they weren't too sure about it"*

(Sutton non-opt-in appellant)

Similar cases were found in Bristol.

### Active decisions not to opt-in

Non-opt-in cases did, however, clearly illustrate that there were also cases where ADR was seen as a less attractive option compared to an oral hearing. This suggested some degree of active and informed choices being made by appellants not to opt-in to the process. This group of appellants had no desire for the case to be resolved without a hearing which they would attend. There were a number of appellants who explained that though ADR may be a good idea, they would not use it as they wanted to attend the hearing in person:

*“Probably I wouldn’t because I was determined to go through with the original process, because I wanted to know, I wanted to understand, so doing that I would think I’m bypassing the situation. I wanted to go and put my point forward, so probably I wouldn’t have opted in”*

(Bristol non-opt-in appellant)

Other non-opt-in appellants seemed to have a representative or support of some kind, perhaps making the hearing less daunting. They were often advised by professional representatives that they should attend the hearing as this would enhance their chances of success. For example, a benefits adviser told one appellant that they stood a better chance of success if they attended the hearing.

*“After speaking to [representative’s name] he said no, don’t consider that [ADR]. I didn’t particularly want to go because I knew I was going to be cacking myself, but he said its best you go because you stand a far better chance of getting your side across”*

(Sutton non-opt-in appellant)

Another appellant explained that she was quite willing to try ADR, and thought that it could have been beneficial but she was advised not to by the support organisation she consulted:

*“I was quite willing to do that but because the [welfare rights group] just didn’t know anything about it they advised me not to do it and just go straight to the appeal”*

(Sutton non-opt-in appellant)

The role of representative organisations was key here. There were a clear number of cases where they had been central in advising appellants not to use ADR as they believed it reduced the chances of a positive outcome. This is explored further below when the views of welfare rights groups are explicitly examined.

### Welfare rights group views on opt-in

Overall the representatives interviewed from welfare rights groups demonstrated good understanding of the ADR process. There were only isolated examples of misunderstanding of elements of the process, for example, that both parties would be contacted after ENE or that the losing party would be sent a letter rather than receive a telephone call. Typically,



welfare rights group representatives were satisfied with the level of information they had received about ADR. This was either an introductory letter or attending the external briefings delivered by the Tribunals Service. Both of these were viewed positively as they provided an opportunity to ask additional questions to clarify aspects of the process. As this representative recognised:

*“It was very helpful to actually go along and be able to ask questions. While the written briefing was good, there are just different shades of colour that you get when you go along and able to ask questions”*

(Welfare rights group representative)

There was evidence of internal dissemination within some welfare rights organisations, such as presentations or sharing of the introductory letter to ensure staff had the knowledge and awareness to support the opt-in process. The evidence suggested, however, that this did not take place in every welfare rights group as appellants reported contact with representatives who were not aware of, or did not understand the ADR process.

Among the welfare rights group representatives, there was mixed evidence as to the extent to which they were able to directly influence the process of opt-in, as sometimes the decision had already been taken by the time appellants sought advice from them. Often appellants had support workers, such as social workers or carers, who made the decision to opt-in or opt-out with appellants. Subsequently advice was sought from welfare rights groups with appellants or their support workers seeking either advice on providing additional evidence or professional representation at the hearing.

In other cases, however, welfare rights group representatives had a more active role in the opt-in process. Overall, there was recognition that the advice given to appellants about whether to opt-in or not was largely dependent on the outcome that the appellant wanted to achieve from the appeal process and the representatives' perception of the capability of the appellant to understand the ADR process. There was also recognition by some welfare rights groups that ultimately it was an appellants' decision whether to opt-in. However, there were examples, outlined below, where appellants were not being given the opportunity to properly exercise this choice to opt-in, effectively undermining this principle of appellant choice. In some cases, welfare rights group representatives acknowledged that they would make the decision to opt-in as a matter of course, often without discussing this explicitly with appellants. There was a perception from welfare rights group representatives that some appellants would not understand the process, given their health conditions, and to them it was just another form. As this representative suggested:

*“I have signed the form for a couple of other clients, one of them suffered from mental health problems and learning difficulties, a type of autism, so the process would mean very little to him”*

(Welfare rights group representative)

Related to this, representatives highlighted that the ADR letter and opt-in form were quite wordy and that appellants would struggle with understanding them without a support worker or representative. This reinforced the need for accessible information to be provided to appellants to ensure they make an informed choice but also that welfare rights group representatives uphold the ethos of the voluntary opt-in process.

There were some examples where representatives advised appellants to opt-in, following a brief discussion with the appellant, as this representative summarised:

*“Some of our clients are very vulnerable especially those with mental health problems and they get very, very stressed about having to sit in front of the tribunal, having to go through their problems, how their problems affect their living and all that, so now there’s a scheme that will look at it, look at the decision before having to go to the tribunal which is a big relief for them so I would recommend it to them”*

(Welfare rights group representative)

Alternatively, there was also evidence that welfare rights group representatives would, in some circumstances, actively advise against appellants opting into the ADR pilot. Representatives acknowledged that they would potentially advise appellants against opting in. For example, if they thought appellants would have to go to a hearing anyway as their case was more ‘borderline’, or where going to a hearing and presenting oral evidence was considered a better chance to get the level of DLA wanted. Representatives recognised that opting into ADR may be negative for appellants who were trying to avoid the hearing and had misunderstood the ADR process. In isolated examples, appellants thought that by opting into ADR it meant they would not attend a hearing at all, but if their case then went to a hearing they had greater anxiety about attending. Representatives recognised that if they had not opted in to ADR at all, the appellant could have prepared themselves from the beginning to attend a hearing. This provided some indication that the way in which the ADR process was explained to users in the pilot exercise may have raised expectations too high, at least with some individuals. The implication of this is that the initial information introducing the new process needed to be very carefully described and calibrated in the pilot exercise. This should specifically flag up that it might actually lengthen the process and still result in a full tribunal hearing. Although if the delay was due to a request for further evidence then this could potentially improve the appellants’ chances of success.

This section presented the evaluation findings on the operation of the appellant opt-in aspect of the ADR process. The next section explores the stages involved in the process in more details.

## Pilot process: ADR activities

This section covers the evaluation of the main processes involved in delivery of the pilot, focusing specifically on conducting the ENE review and telephone calls to the potential losing party. The research questions addressed in this section are as follows.

- What impact did ADR have on the PDCS?
- What do others (non-parties) think of ADR?
- Were appellants satisfied with the process?

### Key findings

- The purpose of the ENE review was interpreted by DTJs as having a dual function, with potentially conflicting objectives: (1) to identify opportunities for early resolution without a hearing and (2) to quality check the evidence to achieve a fairer and more informed hearing.
- Overall, telephone calls to PDCS and appellants were largely positively received. PDCS staff members were pleased with the opportunity to speak to a DTJ and recognised benefits in terms of improved decision consistency, and improving the quality assurance of decision-making.
- For appellants, the confidential nature of the call, the sympathetic tone and manner adopted by the DTJs and the opportunity to simply have someone to talk the case through with were areas identified as contributing to their satisfaction.

### The ENE process

The first stage of the ADR process was the ENE review, which involved the appeal papers being read by one of the nominated DTJs in each pilot area, to assess the likely outcome of the appeal based on the information in the submission.

Interviews revealed that DTJs interpreted the purpose of the ENE element of the ADR pilot as having a dual function, foremost of which was to identify opportunities for early resolution without a hearing. The secondary purpose of ENE was outlined by DTJs as a quality check of the evidence, both of the PDCS processes and the preparedness of the appellant to best represent their case to achieve a fairer and more informed hearing. In pursuit of these functions, there was some evidence from interviews to suggest DTJs were using their discretion and expanding the purpose of the ENE beyond the narrow purpose of identifying a losing party to be contacted. This is explored in more detail below.

The ENE was used to identify whether intervention, either in the form of issuing directions (internally or to appellants or through a telephone call) even in a case where a clear losing party was not identified, would advance the case. This was often in the knowledge that the case would still likely go to a hearing. As one DTJ described:

*"I think I would say that probably there are a lot of examples where I have probably minimised or diminished the chance of an adjournment very considerably, but still said it should go to a tribunal"*

(District Tribunal Judge)

Findings from the quantitative analysis revealed that not all opt-in cases were subject to ENE. There were three per cent of opt-in cases that were subject to no parts of the ADR process because of a lack of time or resources. It became clear from interviews with DTJs that, in practice, there was an initial stage to the ENE review process which played a key role in identifying cases which were viewed as 'suitable' for the subsequent part of the ADR process. This was typically done through an initial skim read of the case papers by DTJs to gather an overview of the case to form a view of the opportunities for the ADR process to enhance the case. There was evidence from the Tribunals Service staff interviews that this filtering of cases had become a more important element of the ENE process as the DTJ workload had increased. During the summer months of 2008, the capacity of DTJs was particularly stretched due to staff absence and a peak in the number of opt-in cases. This led to identification of certain types of priority cases which were subject to the initial suitability check:

*"Because of the substantial backlog that's arisen we have found that we're having to do a certain amount of filtering and what we're doing at the present moment is that where we have cases where an appellant has opted for a paper hearing we will speed read those as a priority. If no opportunities for the ADR process leap out at us we will put it to one side"*

(District Tribunal Judge)

There was some evidence from Tribunals Service staff that during this particularly busy period, where a backlog of cases was building, a small proportion of non-priority opt-in cases i.e. cases which had opted for a paper hearing and were not due to go to an oral hearing, were not even assessed for initial suitability. Although these cases were typically referred back to DTJs for ENE in subsequent weeks, there was insufficient DTJ capacity to deal with the backlog. A decision was taken to allow the cases to progress to a hearing without being subject to ENE. As such, they were effectively treated as non-opt-in cases. There was a risk that this could act to undermine an appellants' view of the appeal process, if they were expecting ADR to have impacted on their case. This outcome, however, was not communicated to appellants. As a result, it was not possible to explore the impact on appellants as they were unaware that this had occurred.

Those cases identified as suitable for ENE following the initial review were typically those that displayed clear and outright weaknesses on the part of either the PDCS or appellant to determine the likely losing party. As one DTJ summarised:

*"I use the balance of probabilities, where one or other will win because of the evidence stated, or the combination of evidence, that is then suitable, otherwise they are not suitable for ADR"*

(District Tribunal Judge)

In contrast, those cases deemed unsuitable, either after the initial review or following a more in-depth ENE, were those where there was room for ambiguity or borderline in terms of which side was weaker. DTJs recognised that for those cases considered borderline, it was often more fitting to issue directions to recommend the gathering of specific evidence to enable clearer evaluation of the case at a hearing, which might potentially help avoid the need for adjournment.

The following extracts from the judicial reports produced by DTJs at the end of each ADR day, provides examples of cases which were considered suitable or unsuitable.

### Examples of suitable cases

- A ten-year-old appellant with autism and learning difficulties. This was an application by the appellant to supersede a previous award of Higher Rate Care and Lower Rate Mobility which had been refused. There was no evidence of severe behavioural problems in the papers. I, therefore, telephoned the appellant's representative to indicate that the appeal was unlikely to succeed. The representative agreed but said there was further evidence which would be obtained and faxed. Asked that the case be referred back for ADR next week and I agreed.
- This was a new claim from a 56-year-old woman who has recently developed diabetes which was not well controlled. She also has a back problem. The medical evidence indicates that she has had at least three hypoglycaemic attacks when she has lost consciousness with no warning and been taken into hospital. She is never left alone because she could lose consciousness without warning. I rang PDCS and said that in my view a Tribunal would award Middle Rate Care for a short award. They will consider this and let us know if they will revise the award.

### Examples of unsuitable cases

- A 29-year-old with depression and back pain. New claim, no award. GP report largely unresponsive of an award. Outcome unclear on the papers. Unsuitable for ADR and should proceed to oral hearing as requested.
- A 52-year-old with chronic obstructive pulmonary disease. New claim, no award. Conflict of evidence and outcome in papers unclear. Oral hearing requested. Unsuitable for ADR.
- This was a new claim by a 57-year-old female who suffered from diabetes and obesity. She described limitations in walking, using the toilet, bathing, dressing, and had problems cooking. A medical examination report did not support an award. In her letter of appeal she disagreed with the assessment. There was a conflict of evidence so unsuitable for ADR; the matter was to proceed to an oral hearing.

Once identified as suitable, the DTJs' overall approach to conducting the ENE review was consistent, focusing on a more in-depth review of the evidence as summarised by one DTJ:

*"I look at the major key points in the evidence, I look at the decision, I look at whether or not there is a conflict of evidence, whether or not there has been evidence that has come to light since the decision-maker, the first person who made the decision, and I look at all the various factors that might lead me to conclude that one or other party is likely to lose if the matter went to a tribunal to end up unsuccessful"*

(District Tribunal Judge)

However, there was some potential variation in the amount of time that DTJs allocated to conducting ENE, particularly as a result of the pressure to deal with a sufficient number of cases on each ADR day. One DTJ reported that DTJs would read the case papers as they would if they were going to be sitting on a tribunal. Another DTJ acknowledged that it was only possible for a skim read given the pressure to get through cases. DTJs also reported that cases became quicker to deal with as they became more experienced with the ADR process. One DTJ stated that they learned that, if they immediately went to the section of the file covering the PDCS's position on the case, to review the reasoning for their decision, they could quickly determine if there were clear inconsistencies.

Overall, the time spent on ENE was dependent on the complexity and issues of the case and the amount of evidence available for review. DTJs acknowledged that first claims tended to be quicker as there was less evidence or history and it tended to be a single-issue case. A renewal case or a case that had perhaps been subject to supersession<sup>10</sup> and had more history typically took longer to conduct ENE as

*"it's not simply a person seeking to show that they are disabled, there are more legal tests to be applied when a person has been awarded a benefit and it's been removed"*

(District Tribunal Judge)

DTJs also recognised that cases might take longer where they required more thinking about the medical conditions involved, sometimes involving reference to medical reference books.

Each DTJ had one day set aside each week to review, process and act upon the ADR cases. This included undertaking the ENE review and contacting the losing party where appropriate. Seven cases per week were considered by DTJs to be a manageable caseload, with an average case taking 40-45 minutes to appraise. DTJs were clear that more complicated cases could take as long as two hours to review but the most straightforward and clear-cut cases could be processed in as little as 25 minutes.

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<sup>10</sup> Supersession is where a benefit decision is changed because of a change in appellant circumstances.

DTJs reported that there had been instances where workflow or availability of a DTJ had meant that the single day set aside for ENE had been inadequate and not all cases could be reviewed within the week received. Generally, in the following weeks, the outstanding cases were dealt with. As mentioned earlier, in an isolated three per cent of cases, appeals may have been put back into the 'normal' appeal process. This was an important point to emerge from the evaluation and potentially had implications if the ADR process were rolled out more widely. If there was more pressure to deal with a greater number of cases, DTJs may not be able to devote sufficient time to identifying suitable cases. This would lead to fewer opportunities to achieve the benefits of ADR by avoiding a hearing or preventing an adjournment. Alternatively, if the process was implemented as part of the normal procedures then more resources might be available to address any backlog. But, the ENE process would need to result in sufficiently fewer hearings to offset the additional costs.

### **Contacting the potential losing party**

Following the ENE review, the second stage of the ADR process involved the DTJ contacting the party who, in their opinion, was either likely to lose the appeal or where there was no clear losing party but they wanted to discuss the case. The following sections explore the purpose and process for this telephone call from the perspectives of DTJs, PDCS, appellants and welfare rights groups.

### **Purpose of the call**

Emerging from the interviews with the four DTJs involved in the ADR pilot was a consistent view that the purpose of the telephone call differed dependent on whether the recipient of the call was the PDCS, appellants or their representatives. When the telephone call was made to the PDCS, there was an acknowledgement by DTJs that the purpose of the call was to highlight to the PDCS why the DTJ thought the tribunal was likely to revise the decision made and to invite the PDCS to reconsider their decision.

When the DTJ believed that the appeal was likely to fail, he or she contacted the appellant, the purpose being to explain their view and suggest actions that the appellant could take, either to withdraw the case or how to strengthen the case for the hearing. For example, the DTJ might suggest that the appellant send in any further evidence or that they seek advice or focus on the specific issues the tribunal would need to consider. There was, however, a wider view taken by DTJs and effectively a secondary purpose of the call to appellants or their representatives. DTJs acknowledged that, in some circumstances, they utilised the telephone call to appellants to discuss with appellants the benefits of attending an oral hearing, where they had opted for a paper hearing. The telephone call also provided an opportunity to clarify any misunderstandings that appellants had about the tribunal hearing, such as the option to bring friends or family, the specific locations of hearing venues or access to support such as interpreters. Although not the primary purpose of the call, DTJs also recognised the benefit in terms of the personal contact with appellants. As this DTJ described:

*“A peripheral benefit is that appellants appreciate the kind of human face of the whole system, which is very bureaucratic and very difficult for some people to handle”*

(District Tribunal Judge)

However, there was some concern from DTJs about whether these wider purposes of the telephone call were cost-effective, particularly where telephone calls were made when it was clear that the hearing would not be avoided. As this DTJ summarised:

*“whether that is a benefit which really justifies the time and cost is another matter, but I think they are spin offs which are useful”*

(District Tribunal Judge)

There is an argument that these functions could as easily and more cost-effectively be dealt with by representative and advocacy agencies.

### **Process DTJs go through to make call**

Whether calls were made to the PDCS or appellants, the process followed entailed the Tribunals Service administrative clerk making initial contact with the recipient to inform them that the DTJ wanted to speak with them about the case. This ensured that the DTJ's time was used most effectively.

### **Calls to PDCS**

In preparation for the call to the PDCS, DTJs ensured they had notes from the ENE review. These included listing specific reasons, questions, inconsistencies and missing data which caused their opinion that the PDCS was the likely losing party. This was often necessary to refer the PDCS to specific pages or sections of the case file during the discussion.

Overall, DTJs appeared to take a subtle approach to opening the conversations with PDCS representatives as it was felt inappropriate to explicitly criticise the original decision. Typically, the PDCS representative who received the telephone calls was a Decision-Maker Manager to facilitate more open and productive discussions. DTJs acknowledged that they would have expected a more hostile reaction from the PDCS if they were speaking directly to the decision-maker who made the original decision.

DTJs thought it likely that the PDCS, during preparation for the call with the DTJ, would have identified similar issues with the original decision and thus anticipate or readily take on board the DTJs views. Overall, DTJs reported that the PDCS reaction was good and they were open to reviewing the information provided and reconsidering their judgement. In the most part, on reviewing the cases prior to taking calls from the DTJ, the PDCS reported that the review had highlighted errors in the processing or alerted them to the same weakness with the original decision. The result of this call was, therefore, expected by DTJs to be a swift resolution and overturn of the decision in favour of the appellant.



### PDCS views of the call

Generally PDCS staff members were positive about the opportunity to speak to a DTJ. This element of the ADR process was recognised by PDCS as offering a liaison opportunity to build relationships with DTJs. Specifically, it was recognised as having benefits in terms of quality assurance, allowing PDCS to collect an independent view and insight into the way they looked at cases. One PDCS staff member thought that given the low number of phone calls received by PDCS, it was too small-scale to collect information that could be used to improve the way they operate.

For the majority of PDCS staff, when a call was received from the DTJ, an open dialogue followed. Generally PDCS acknowledged that they had reached the same conclusion as DTJs when they reviewed these cases. This might have resulted in this easier conversation. PDCS staff, however, reported an isolated example where the PDCS and DTJ were in disagreement during the call. The PDCS member of staff felt that the DTJ's view took precedence over their own and somewhat put into question their expertise. The final decision as to whether the case was reconsidered and revised or not, however, lay with the PDCS staff member.

On a practical level, PDCS staff reported some issues with the process for preparing and receiving the call from the DTJ. The Tribunals Service administrator provided notice of all cases which were part of the ENE process before it was clear whether the DTJ was going to follow this up with a call to PDCS. Some PDCS staff, particularly at the beginning of the pilot, expressed some frustration that they had reviewed a case on notification from the DTJ that it was being considered but had not received a call about the case. Other PDCS staff, however, were more pragmatic, and did not prepare the case until they were notified by the Tribunals Service administrative staff that they would be receiving a call from the DTJ. Typically 30 minutes notice was given which was felt to be sufficient time to review the case. This notice and the fact that calls were relatively short meant most PDCS staff did not feel that the call interrupted their normal duties.

Overall, PDCS had expected larger volumes of calls as a result of ADR. This was partly because of the way the process was marketed but also because of the number of cases they were advised the DTJ was considering. PDCS staff were not aware whether this low volume was due to a greater number of calls to appellants, or a high number of cases where a clear losing party could not be identified at the ENE review stage. The low volume of calls to the PDCS and the lack of knowledge about the outcome of ENE led to some questions about the effectiveness of ADR on the part of PDCS. While there was some surprise and frustration by PDCS staff about the relative lack of calls, this was also viewed positively by one PDCS staff member:

*“In one way I’m glad, because I’m hoping we are progressing, we are getting things right. And I’m hoping that things will improve even more, so I haven’t had as many as I thought, which I think is a good sign”*

(PDCS staff member)

Other PDCS staff reported that they would welcome greater communication about the outcome of cases, particularly for cases they were not contacted about, to support their confidence in the ADR process.

### **Calls to appellants**

DTJs reported having to take a more open approach to the calls with appellants. This involved a greater degree of listening to gauge appellants’ understanding or otherwise of the nature of the case and the process, and to point out matters relevant to their case.

Initially, the DTJs focused on explaining the purpose and context of the call to the appellant so that they were clear about what could and could not happen as a result of it. The DTJs thought this opening was important in putting the appellant at ease and allowing them to ‘acclimatise’ to the idea of talking about their case over the phone to a stranger. The DTJs then outlined the reasons for viewing the case as weak. While in some cases it may have been appropriate for the appellant to withdraw the case, DTJs alternatively might have suggested that the appellant send in any further evidence or that they seek advice or focus on the specific issues the tribunal would need to consider. DTJs recognised this benefit of the telephone call in playing a proactive part in strengthening the body of evidence submitted and the presentation of evidence in a hearing. As this DTJ summarised:

*“I should think about 50% of the time you can move it on in some way like they’ll bring someone with them or they’ll come when it was going to be a paper case, they’ll come and make it an oral case, or they’ll get their doctor to give something, a letter or something?”*

(District Tribunal Judge)

The DTJs’ experience of making the call to appellants, whatever the opinion given, was positive. DTJs reported that difficulties, in terms of the appellant not accepting what the DTJ was saying, most typically arose when the crux of the case was a point of law that the appellant could not comprehend. Appellants, however, were focused on a range of difficulties that they perceived entitled them to support for care or mobility. An example of this given by a DTJ was a mother claiming on behalf of a child who had a range of care needs. The DTJ had to explain during the telephone call that to claim DLA she had to prove intelligence deficiency. The mother did not accept this as she was more focused on other difficulties which she perceived proved her case.

There were 32 instances where it was not possible for the DTJ to make phone contact with the appellant, despite up to three attempts to do so. Where possible a message was left and

the appellant had the opportunity to schedule an appointment through the administrator. The case was then be re-referred so the DTJ could attempt recontact at the following session. If not, or there was still no response, at this point the DTJ either sent a letter, or the case went on to hearing without intervention.

### Appellant views of call

Of the appellants or representatives who had received a telephone call from the DTJ, the overall view of the call was positive even where the DTJ's opinion was that the appellant's case was weak.

The tone of the calls was generally well received, and various appellants had noted the sympathetic tone and manner adopted by the DTJs. For example:

*"He was helpful, his tone was... it wasn't a biased one, it wasn't like for me or it wasn't for the DLA, it was yes just quite helpful"*

(Sutton opt-in appellant)

There was only one isolated case where the tone of the call was considered by the appellant to be 'brash'. However, the recommendation for this appellant was for them to drop the case. This potentially overshadowed the appellant's view of the call, particularly as the case was subsequently successful at a hearing. The confidential nature of the call was also clear to appellants:

*"He said to me everything I've said will not go any further, you know, it's all confidential so I knew that, I could talk to him about anything. And when I came off the phone I actually did feel a bit more, you know, this has helped me a bit and maybe there could be a chance that it might be okay"*

(Sutton opt-in appellant)

Other appellants considered it was helpful to simply have someone to talk the case through with, who would consider their experience and listen to their perspective. Where an appellant had no representative or active support in preparing his/her case, the opportunity to discuss the case with the DTJ also reassured some appellants that all the information required for the appeal was provided. Related to this, calls were particularly valued and increased levels of satisfaction where they provided directions:

*"The DTJ just explained what I had to go and get anything else I could use to back up what I was saying, to gather all the information ...so yes it was very, very helpful, otherwise I would have probably been sat there and thought what now?"*

(Sutton opt-in appellant)

Where dissatisfaction was expressed with the DTJ's telephone call it tended to be because appellants did not like the advice being given or where they felt something had gone wrong

in the whole appeal process in terms of taking too long, or administrative issues with PDCS's paperwork. For example, one appellant stated that he was not very happy about the phone call in these terms,

*"I got a phone call off the chairman basically advising me not to go onto the appeal because I was weak within my evidence and I thought that was a bit outrageous you know"*

(Sutton opt-in appellant)

Other appellants, however, disliked the impersonality of process, and the fact that contact was a one-off. For some people, the impersonality of a phone call exacerbated a feeling of the claim and appeal process generally being too impersonal. One appellant felt that contact should also be face to face as his appeal was 'a sensitive issue'. They stated that:

*"I would have like somebody like you rang me up this morning and say you're going to be here, somebody to ring me up and say is it possible for me to come round and discuss your DLA. Yes, by all means. Instead of talking to somebody over a telephone, complete stranger that you don't even know"*

(Sutton opt-in appellant)

Whereas some appellants felt a phone call was impersonal, others preferred a telephone conversation because they had difficulties in reading and writing. The ADR process was designed with reference to the inclusion of those with literacy or language needs. One Bexleyheath appellant felt the phone call suited his needs very well because he was not literate, and could not read the papers he received. He was given advice about the medical evidence he needed by the DTJ – something that he could not determine from the papers he had received – and something which he appreciated.

There were isolated examples of appellants who had missed the calls from the DTJ or who were not able to take a telephone call on the day that they were called, as they wanted to involve their representative. For these appellants, this made them feel that they lacked the opportunity to actively participate in ADR and they were not in control of their situation. To illustrate, one appellant missed the DTJ call and the case then proceeded to a paper hearing, without apparently being re-referred to the DTJ the following week for a subsequent attempt to contact the appellant. This appellant had wanted to use ADR but also wanted their representative to be actively involved in the case and the hearing. Nevertheless, this appellant was still supportive of the process but it had made him lose some confidence in it. The representative, who was also a family friend and present during the research interview with the appellant, had used ADR in the past and, despite this experience, probably would still advise people to use the process.

*“This has rather shaken my confidence, as I say I hope this is an isolated case and somebody has just got it very wrong. I think in the main I would still advise people to go down that route because of its independence, because of its speed and because of its informality”*

(Sutton opt-in, words of appellant’s representative)

### **Calls to representatives**

There was agreement amongst DTJs that when telephone calls were made to representatives the approach to the call differed again. Specifically, where appellants had nominated a professional representative these calls were handled differently to those directly with appellants. Specifically, DTJs reported that they were more open in the conversation and said more explicitly that the appellant’s case would be likely to fail at a tribunal. Overcoming the difficulty reported above, DTJs could make greater reference to legislation during calls to professional representatives, as they were typically more knowledgeable in this area.

### **Welfare rights group views of telephone calls to the losing party**

Amongst the welfare rights group representatives interviewed for the evaluation, there were no examples of individuals who had received a call from the DTJ as a professional representative for an appellant. This might be because welfare rights groups did not act as formal representatives or because appellants did not seek advice until after the call was received. There was a view expressed that a welfare rights group representative would be ‘embarrassed’ if they received a call from the DTJ to say a case was not strong enough as it was the representative’s job to know how to present a strong case.

As such, welfare rights group representatives’ views focused on the general process of calls being made to appellants as the potential losing party of the appeal. There was recognition from welfare rights group representatives that for appellants the call from the DTJ could come ‘out of the blue’. Therefore, it was important that appellants did not make a hasty decision to withdraw as they might still benefit from attending an oral hearing. Representatives felt that it was important that in all cases the DTJ advised the appellant to get some advice before making this decision. Welfare rights group representatives also advocated that DTJs should recommend, or at least name, a number of agencies in the appellant call when advising appellants to seek further advice:

*“I think they would really need to stress to people that they should go and get advice on this and not make a hasty decision. It would be helpful if they had sources of advice they could suggest to them”*

(Sutton welfare rights group representative)

An alternative suggestion, to ensure appellants were effectively supported to make appropriate decisions, was that the outcome of ENE be put in a letter with an option to call to discuss further at a convenient time for the appellant.

This section covered the evaluation of the main processes involved in delivery of the pilot, and focused specifically on conducting the ENE review and telephone calls to the potential losing party. The next section provides quantitative information about the scale of the pilot and key indicators.

## **Pilot process: quantitative delivery findings**

This section covers the evaluation of the main processes involved in delivery of the pilot, focusing specifically on conducting the ENE review and telephone calls to the potential losing party. Specifically it considers the evaluation evidence to contribute to answering the following key research question:

- Does ADR result in swifter and/or more proportionate resolution of cases?

Figures in some tables and charts presented throughout this chapter may not sum to 100% due to multiple responses or rounding (figures are rounded to the nearest whole per cent). Sample tolerance tests<sup>11</sup> were applied to the percentage results of the quantitative data. Findings are typically presented in respect of the pilot overall. They are only broken down into subgroups of the two broad pilot areas or by the different route-ways that cases could take through the ADR process only where the differences are large enough to be robust. The statistical significance tests that have been applied to these results are given in the tables in Appendix C, along with the full results for each pilot area.

### **Key findings**

- Just over three-quarters (78%) of all appellants who received the ADR letter and opt-in form opted into the ADR process between September 2007 and the end of January 2009.
- Only 25% of all opt-in cases were identified as having been subject to both stages of the ADR process.
- Seventy-one per cent of all opt-in cases were subject to only the first stage of the ADR process, i.e. they had an ENE review but were considered 'unsuitable' for further ADR activities, although some had subsequent beneficial interventions in the form of directions issued.
- There were only three per cent of opt-in cases that were subject to no parts of the ADR process because of a lack of time or resources.

### **Identifying a sample for analysis**

The first task towards analysing the spreadsheets produced by the ADR pilot was to identify a suitable sample of cases for analysis. Cases were entered onto the spreadsheet on receipt of the pre-enquiry form, with additional information added as the case progressed. The

<sup>11</sup> These tests show the possible variation that might be anticipated because a sample, rather than the entire population, was examined. Sampling tolerances vary with the size of the sample and the size of the percentage results.

sample for analysis was drawn from both non-opt-in and opt-in cases but only cases with a clear outcome or evidence that the case had concluded (for example, a decision from the hearing or dates when the case was withdrawn or lapse were included). A number of cases from the spreadsheets were consequently excluded from the sample. While they had opted in to the ADR process, they had not been concluded by the end of January 2009, the point the spreadsheets were provided. Table 2.1 provides a summary of the total number of cases in each pilot area contained on the spreadsheets at the end of the pilot and the proportion which were suitable for analysis.

**Table 2.1: Total cases and sample sizes available for analysis per pilot area**

	Opt-in cases		Non-opt in cases	
Sutton and Bexleyheath	Total flow of cases:	721	Total flow of cases:	843
	Sample for analysis:	521	Sample for analysis:	729
Bristol and Cardiff	Total flow of cases:	806	Total flow of cases:	628
	Sample for analysis:	457	Sample for analysis:	374

Overall, therefore, 1,527 cases opted into the ADR pilot across the four pilot areas between September 2007 and the end of January 2009. Of these, 978 (64%) of these cases were suitable for analysis as they had concluded. There were 1,471 non-opt-in cases in total, with 1,103 (74%) suitable for analysis.

**Profile of opt-in and non-opt-in cases**

At the point of receiving the spreadsheets for analysis, the evaluation team was not able to distinguish which eligible cases had made an active choice not to opt-in and which were assigned to be a non-opt-in case. Some people did not have the opportunity to opt-in as they were not sent the opt-in form initially, as a result of early difficulties in the administration of information on ADR. A more accurate way to calculate the opt-in rate to the pilot was, therefore, pursued using data supplied by the Tribunals Service, which recorded the number of letters issued in each area and the number of appellants opting in. Using this data the opt-in rate was calculated as 78%. It could be expected that the opt-in rate would rise when only examining data from the point (November 2008) the administration of the letter transferred to be the responsibility of the Tribunals Service. At this point, staff perceived this would help with the consistency of the letter being sent out. However, the opt-in rate for this period was only 52% suggesting other factors influenced the rate of opt-in to the pilot.

This overall sample of cases for analysis had the following characteristics.

- The majority of the opt-in cases (95% or 931 cases) were related to appeals against DLA claims. Only five per cent (47 cases) related to AA claims. Non-opt-in cases had the same profile, again with 95% (1,046 cases) being appeals against DLA claims and five per cent (58 cases) AA claims.

- Based on the information recorded on the spreadsheets on the nature of appellants' primary disability, the majority of appellants (66%, 649 cases) who opted into ADR had physical health impairments. The remaining 34% (329 cases) had mental health impairments. Non-opt-in cases demonstrated a higher proportion of appellants with a physical impairment (80%, 878 cases) with the remaining 20% (225 cases) having a mental health impairment. For the purpose of this analysis, the nature of the first key disability was used to establish the main health impairment. However, it should be noted that typically a second key disability was recorded for a large proportion of appellants. So in practice appellants faced multiple types of health impairment, in some cases both physical and mental health impairments.
- At the time of returning the pre-hearing enquiry form, appellants were asked whether they wanted to opt for a paper or oral hearing. Using this information it was possible to calculate that of the opt-in cases 74% (723 cases) of appellants had opted for an oral hearing and the remaining 26% (254 cases) for a paper hearing. The proportions for non-opt-in cases were similar, with 77% (849 cases) opting for an oral hearing and 23% (254 cases) for a paper hearing. These characteristics were subject to change, however, as DTJs could issue a direction to an appellant asking them to reconsider their election of a paper hearing particularly if they felt an oral hearing would allow an appellant to provide better evidence to support their appeal.

Within the opt-in samples for analysis, there were only a small proportion of cases which were subject to both stages of the ADR process, namely the ENE review and the telephone call to the potential losing party. There was a relatively high proportion of cases (71%) which were subject only to the first stage of the ADR process, the ENE review. This could still have positive outcomes in terms of the issuing of directions. There was also a small proportion (3%) where no elements of the ADR process were carried out, due to a lack of time or insufficient resources. The sample of opt-in cases, therefore, could be broken down to the following three types of cases.

- **Stage one ADR process:** cases where an ENE review only was conducted as the case was identified as not suitable for the second stage of the ADR process as no losing party could be identified. Some of these cases had further intervention in the form of additional directions.
- **Stage one and two ADR process:** cases which went through ENE, had a losing party identified and a DTJ made a telephone call to the losing party.
- **No ADR process:** opt-in cases where ENE was not carried out as there were insufficient resources or lack of time.



Table 2.2 details the proportion of these three types of opt-in cases evident across the pilot as a whole. The following sections then explore these types of cases in more detail and examine the ADR activities undertaken for the different types of cases. It should be noted that differentiation between stage one and both stage ADR process cases was only determined at the point of the ENE review, rather than randomly assigned at the opt-in stage. For this reason, it is not possible to use these subsets of opt-in cases for direct comparison with non-opt-in cases in any subsequent reporting of analysis. It is possible that the different types of opt-in cases may demonstrate some core differentiating characteristics which could undermine a direct comparison with non-opt-in cases.

**Table 2.2: Profile of opt-in cases**

	Stage one and two ADR process (ENE & telephone call to losing party)		Stage one ADR process (ENE only)		No ADR process (Insufficient resources/lack of time)		Total opt-in cases	
Total all areas	249	(25%)	697	(71%)	32	(3%)	978	(100%)

**ADR activities**

**Stage one and two ADR process**

As summarised in Table 2.2, there were 249 opt-in cases overall which were subject to ENE, had a losing party identified and a telephone call made by the DTJ. This suggested that both stages of the ADR process happened in only a quarter of all opt-in cases.

Table 2.3 shows the profile of the losing parties following ENE identified by the recipient of the telephone call from the DTJ. There was a slightly higher proportion of calls being made to the PDCS as the losing party rather than appellants or their representatives.

**Table 2.3: Profile of telephone calls made by DTJs to appellants and PDCS**

	Appellant contacted by DTJ (Proportion of stage one and two ADR cases where contact made)		Representative contacted by DTJ (Proportion of stage one and two ADR cases where contact made)		PDCS contacted by DTJ (Proportion of cases where contact made)		Total stage one and two ADR cases	
Total all areas	76	(31%)	38	(15%)	135	(54%)	249	(100%)

**Stage one ADR process**

It is evident from Table 2.2 that the highest proportion of cases in total (71%) were subject to only stage one of the ADR process. As such they had an ENE review (and in some cases also directions) but were considered ‘unsuitable’ for further ADR activities. The following table examines the reasons recorded on the spreadsheets as to why these cases were considered ‘unsuitable’.

**Table 2.4: Reasons that ADR opt-in cases were ‘unsuitable’ to progress to stage 2**

Reason for unsuitability	Number of cases	
Outcome unclear	537	(84%)
Complex appeal	51	(8%)
Other	37	(6%)
Lack of time to conduct ENE	10	(2%)
Disability issues/language issues	7	(1%)
<b>Total</b>	<b>642*</b>	<b>(100%)</b>

\* Figure is lower than total stage one ADR cases as not all cases had a reason recorded.

It was clear that the principal reason cases were considered unsuitable for stage 2 was because the outcome from the case was unclear, effectively that a losing party could not be identified with a reasonable degree of confidence. This was the reason recorded in 84% of all stage one ADR opt-in cases. Typically, these cases related to appellants who had a physical impairment and were due to have an oral hearing. This fitted with the suggestion from DTJs during the qualitative interviews that they would often identify cases where the complexity of the points of the cases meant it was best that they were resolved at an oral hearing rather than be subject to further intervention from the ADR process. There was, however, clear evidence from the spreadsheet analysis that despite these cases being identified as not suitable for stage 2, the ENE exercise led to intervention in the form of directions.

Overall, analysis of the dates when cases were referred for ENE suggests that DTJs were largely efficient in conducting ENE. The majority of cases (85%) overall were reviewed on their first referral to the DTJ, with only 14% being looked at on the second referral. The spreadsheets did not include a field for recording the date of a third referral so it was not possible to assess the proportion of cases where this happened. Tribunals Service administrative clerks suggested in their interviews that this happened in isolated cases.

If DTJs ran out of time on the specific ADR day, they sought to prevent cases becoming no-ADR process cases by having them re-referred in subsequent weeks. The majority of cases which were re-referred to DTJs appear to have been dealt with the following week, as the average time between the first and second referral was calculated as six working days. There were isolated examples of cases, however, which had a longer period before re-referral, in one case 42 working days. Interviews with Tribunal Service administrative clerks suggested that this was due to directions having been given by the DTJ and the need to wait for receipt of further evidence, such as a medical examination report, before re-referring the case to the DTJ for ENE. This is explored further below, in the context of the overall speed of case resolution. There was no evidence of prioritising particular types of cases for re-referral. The cases which were referred for a second time were largely representative of the overall breakdown of oral and paper hearings and appellants with physical and mental health impairments.

## No ADR process

Across the pilot as a whole, there were only a small number of opt-in cases (32 cases or three per cent of the total opt-in sample, see Table 2.2) that were subject to no parts of the ADR process because of a lack of time or resources. Given the small sample size, it was not possible to robustly break down this group of cases to examine specific patterns in terms of their characteristics. However, this group included both cases due to be resolved by paper and oral hearings and also included appellants with both physical and mental health impairment. This suggested that this potential filtering of cases because of a lack of time or resources was done randomly and not based on specific characteristics of cases or appellants.

The analysis examined whether there was an increase in the proportion of opt-in cases not being subject to the ADR process because of a lack of resources or time when the geographies of the pilot areas were widened. Evidence from the qualitative interviews with Tribunals Service staff and DTJs suggested that there was a period where DTJ capacity was an issue. However, analysis of the data did not show that this manifested itself in any noticeable increase in the number of no-ADR process cases. The time periods when these cases were not looked at (due to a lack of time) did not correspond specifically to when the extended pilot areas came on stream, or the months during summer 2008 when interviews suggested that DTJ capacity was stretched. The fact that opt-in cases were typically re-referred to DTJs the following week if they ran out of time to look at any cases in a given week, could also explain the relatively low number of cases here.

Where opt-in cases did not experience any ADR process activities as a result of a lack of resources or time, they were effectively treated as non-opt-in cases and were listed for a hearing as normal. Although only a small number of cases, this could present a potential issue of undermining appellants' confidence, particularly where they had made an active choice and were expecting their case to be affected by ADR. There were only limited instances (6 cases) where these cases were subject to directions that may have assisted in progressing the cases. Typically these directions were to confirm with appellants whether they would prefer a paper or oral hearing as the pre-enquiry form had not been returned.

This section covered the evaluation of the main processes involved in delivery of the pilot. The next section examines the administrative processes associated with the ADR pilot.

## Pilot process: ADR administrative processes

This section examines the administrative processes associated with the ADR pilot, specifically reporting on the additional administrative activities associated with the process, some operational issues identified through the pilot and examination of any evidence that the choice of pilot area was impacting explicitly on the delivery of the pilot. It provides evidence in response to the following key research question:

- Were there any other impacts of ADR?

### Key findings

- The implementation and operation of the different elements of the ADR process required the Tribunals Service to adopt a number of specific administrative practices or tasks undertaken by administrative clerks that were additional to the traditional process.
- The most onerous of these extra tasks were principally related to the pilot evaluation exercise. If the process is continued more widely, these can be removed allowing a more manageable administrative process.
- Operational issues concerning administrating the opt-in letter were resolved following the reforms introduced under the Tribunals, Courts and Enforcement Act 2007.
- The interviews with Tribunals Service staff, DTJs, PDCS staff and appellants did not reveal any substantial evidence that the choice of pilot area was impacting explicitly on the delivery of the pilot.

### Staffing the ADR pilot

A small dedicated team of administrative clerks was used in both pilot sites to process and manage ADR appeals. The rationale for this approach was that ADR was a new process so it was felt a small team would deal with it better. There was an acknowledgement from senior Tribunals Service staff, however, that the administrative clerks chosen to support the ADR pilot were the 'best people' and the most open to new practices. An issue for any wider roll out of the process will be to ensure that the administrative staff allocated to conduct these processes are as effective.

### Differences between ADR administrative process and traditional process

The implementation and operation of the different elements of the ADR process required the Tribunals Service to adopt a number of specific administrative practices or tasks undertaken by administrative clerks that were additional to the traditional process. These additional tasks included the following.

- Contacting, by telephone, appellants who did not return the opt-in form. Tribunals Service staff in Bristol did this from the beginning of the pilot while it was tried in Sutton for only a short period. This process was stopped once the flow of cases increased and judicial capacity to deal with them was reached.

- Attaching an additional folder to ADR cases for the purpose of collecting information relating to the ADR processes. This folder was removed once the case proceeded to a hearing, to ensure there was no way in which the tribunal panel could identify that the case had been subject to ADR.
- Sorting and arranging the case files to be sent up to DTJs on the ADR day.
- Sending an email to PDCS to alert them to the cases to be looked at by a DTJ that week.
- Entering the case and ADR details on the spreadsheet created for the purpose of the pilot evaluation. This task was repeated at key stages of the cases' progression through the appeal, such as at the start of the appeal, after ENE, and/or when extra evidence came in.
- Collating statistics on the number of cases, ENEs and telephone calls for a weekly report to the pilot steering group.
- Being available on the ADR day to set up DTJ telephone calls with PDCS or appellants.
- Responding to directions recommended by the DTJ after ENE. There was an acknowledgement from administrative clerks, however, that this task may happen in the traditional process after the hearing. With ADR this task typically happened earlier and there was an increase in the total number of directions issued under ADR than in the traditional process.

There was a perception from administrative clerks involved with the ADR pilot that there was effectively a double handling of ADR cases as a result of the administrative systems adopted, particularly in terms of the logging and recording of case details. In the traditional process, when a case came in it was logged and listed, with a hearing date sent out to the appellant. For ADR cases, this initial logging also happened but it was then replicated with the details recorded both on the evaluation spreadsheet and additional red case file folder to distinguish an ADR case. There were strong feelings amongst some administrative clerks about this repetitive work:

*"I hate ADR, I can't stand it. It's just so time-consuming doing the ADR tasks. You're rewriting it [details on spreadsheet and files] three, four, five times, so you know once you've done all of that it's a good few hours"*

(Tribunals Service staff member)

More positively, however, the most onerous of these extra tasks were principally related to the pilot evaluation exercise and as such would be removed allowing a more manageable administrative process should the process be continued more widely. As this clerk perceived:

*"There's a lot more work involved because of the spreadsheet and because of the weekly report. Getting rid of those two there's still more work involved for ADR but it's fairly manageable"*

(Tribunals Service staff member)

## Operational issues associated with ADR

Interviews with Tribunals Service staff revealed a number of operational issues associated with the ADR pilot.

### Appellant opt-in

A key concern for Tribunals Service staff and DTJs was the consistency with which the ADR opt-in letter was included in submission packs sent to appellants during the initial stages of the pilot. Tribunals Service staff were able to see this inconsistency as weekly statistics were recorded by the Tribunals Service of the number of appeals received for a particular venue and the number of ADR letters sent out as a requirement of the pilot. Tribunals Service staff reported that they had met with PDCS teams, both those in Blackpool and the local processing sites in Bristol and Cardiff dealing with new claims, initially and subsequently. This sought to ensure that they were familiar with the instructions and process for issuing letters, specifically that letters need to be included in submission packs sent to appellants living in the eligible postcodes. Despite PDCS efforts to follow these procedures, a solution was not found to the inconsistent distribution of the ADR letters during the early part of the pilot.

The reforms under the Tribunals, Courts and Enforcement Act 2007, however, meant responsibility for sending out the TAS1 (which was renamed the pre-enquiry form under the Act) was transferred to the Tribunals Service. A subsequent decision to keep the ADR form together with this form helped reduce the discrepancy of ADR letters not being sent with all submission packs. This change was perceived positively by Tribunals Service staff as a mechanism to increase confidence that appellants were receiving the ADR letter and had the opportunity to actively opt-in to the pilot:

*“What will help now is that we’re sending it out, so we know that it will go out and we will then know they’ve definitely had it but they’re not opting in for some reason, whereas when it was at the beginning of the project and even now, we still do not know if they’ve got the ADR form”*

(Tribunals Service staff member)

Tribunals Service staff also highlighted that the separation of the pre-enquiry form and ADR opt-in letter from the larger submission pack could help with visibility of the letter. This emerged as a potential reason for appellants not opting into the pilot. The timing of the appellant fieldwork meant it was not possible to examine this from an appellant perspective. Welfare rights group representatives, however, felt that their role to support appellants might be made more difficult if the pre-enquiry form came separately. Given the mental health conditions of some appellants, there was concern from welfare rights group representatives that appellants might not see the form if it arrived in a separate envelope and might attend advice appointments without this key piece of paperwork. It was felt that it might increase the propensity for appeals to be struck out because the pre-enquiry form was not returned in time.

## Managing session capacity

Interviews indicated that from the start of the pilot, in the Sutton area (September 2007), all cases were listed as normal as soon as the appeal came in. This was before the case file went up for ADR. After a period of time it became clear that this process was undermining the management of listings and session capacity. Cases often had to be subsequently lifted out of the system when the ADR process resulted in directions being issued, or where the case was lapsed or withdrawn.

From January 2008, at the start of the operation in Bristol, (the second pilot area to come on- stream), cases were only listed after ADR activities, in terms of ENE or a telephone call, were completed. This meant more effective management of lists and session capacity. There was some initial concern, however, from some administrative clerks that this practice of delaying listing dates would impact negatively on achievement of performance targets for waiting times. However, other administrative clerks did not consider delaying the listing until after ADR had a significant impact. They felt there was still sufficient time to hit the target if cases were subsequently dealt with efficiently. An issue arose, however, if cases were re-referred for ADR for a second or even third week if there was insufficient DTJ capacity to clear the cases in a particular week. Administrative clerks highlighted particular concern during summer 2008 where there was annual leave and sickness amongst DTJs which they perceived to have created a significant backlog of cases to be reviewed. In these circumstances, there was a negative impact on the efficient listing of cases to meet the target. If a direction was issued by a DTJ following ADR to request a medical examination report, this was also likely to further delay the listing of a case, with greater propensity to have a negative impact on the listing targets. In these circumstances, the case was re-referred to the DTJ as a priority case once this further information was received. But often the waiting time for receipt of this information was such that it could cause a significant delay in the progress of a case through the ADR process. Administrative clerks recognised that this delay to a case might well have occurred in the traditional process. An external contractor provided the medical examination reports, so some delays were caused by this organisation not complying with the required timescales. But ADR had typically moved the task of requesting such reports to a stage where it was more likely to impact negatively on the achievement of listing targets. As this administrative clerk suggested:

*“If you think if an appeal came in say last week [in November], and the chairman had said to me today write out for an EMP, that case would not be listed until at least February, March next year, so it would have taken about three and a half months for it to get to the first tribunal”*

(Tribunals Service staff member)

### **The 'geographies' of the pilot**

The interviews with Tribunals Service staff, DTJs, PDCS staff and appellants did not reveal any substantial evidence that the choice of pilot area impacted explicitly on the delivery of the pilot. The only differentiated issue in terms of delivery, as a result of geography, was the existence of a local processing site for new claims made in Bristol and Cardiff. Tribunals Service staff recognised that this had facilitated a better working relationship with PDCS staff, particularly in facilitating the distribution of the initial ADR letter and opt-in form as the local site was smaller and had more stable staffing.

### **Evidence of different operation in the pilot areas**

The timing of the launch of the pilot in the different geographies of the pilot areas meant that overall there was strong evidence of knowledge sharing and learning between the two broad pilot areas. For example, when the pilot was launched in Bristol, the administrative clerk from Sutton provided a training manual and opportunities for shadowing to the clerk conducting the role in Bristol. So while there were some examples of differing operation of the ADR pilot across the pilot areas initially, typically, common practices were in time adopted by the pilot areas.

There seemed to be some evidence of less well-briefed representative agencies in Bristol and Cardiff. This had implications for providing support to appellants in making decisions to opt-in. For Cardiff, this might be due to the timing of the dissemination of information on the ADR pilot, which happened in late 2007. This was with the expectation that Cardiff was to be one of the two initial pilot areas.

Other differences in the operation of the pilot were identified but the reasons for these differing practices could not be attributed to delivery practices. For example, there was an acknowledgement by DTJs operating in the second pilot area (Bristol), that they had found that they were more likely to contact the PDCS for cases from the Cardiff area than they were for Bristol. DTJs felt this may be a consequence of differing decision-making across the PDCS teams dealing with cases from these geographies. This was not substantiated, however, by any evidence of a higher rate of decisions being overturned at the hearing stage for cases from this area.

Having explored in some detail the processes of the pilot, the following sections explore the impact of the pilot for users and the Tribunal Service.



### 3. Pilot evaluation

#### Pilot impact: quantitative output and outcomes

This section examines the quantitative outputs and outcomes from the ADR pilot using quantitative data produced from an analysis of the pilot spreadsheets. It provides evidence in response to the following key research questions.

- Does ADR result in swifter, more proportionate resolution of cases?
- Were there any other impacts of ADR?
- What impact did ADR have on the PDCS?

As noted earlier, the findings in this report were based on the assumption that opt-out and opt-in cases had similar characteristics. There remained a risk that this was not the case, and therefore findings related to the differences between the two groups should be treated with caution.

#### Key findings

- Analysis of the outputs of the opt-in cases compared to non-opt-in cases overall suggested that benefits were achieved by the ADR process in terms of:
  - reducing the number of cases proceeding to a hearing - 23% of all opt-in cases avoided a hearing compared to only nine per cent of non-opt-in cases, i.e. a 14 percentage point lower rate of hearings; and,
  - a nine percentage point lower rate of adjournments amongst ADR opt-in cases compared to non-opt-in cases.
- Cases that were subject to the ADR process were overall resolved more slowly than non-opt-in cases - an average of 46 working days for all opt-in cases compared to 42 days for non-opt-in cases. Where cases were subject to both stages of the ADR process, they were resolved in 34 working days on average.
- There was little evidence to suggest that the ADR process as a whole impacted significantly on the benefit decisions achieved by appellants. The majority of opt-in and non-opt-in appellants (around two-thirds) were most likely to achieve the same level of benefit at the end of their appeal compared to the original claim decision. Around a third of cases achieved an increase in their benefit. The evidence suggested that DTJ views of the expected tribunal decision identified at the ENE stage were largely correct.
- Interviews with Tribunals Service administrative clerks suggested that the issuing of directions at the ENE stage could be perceived to have a negative effect on achieving the performance target for listing cases. This was because this target was based on the period to first hearing and not the period to resolution of case.

## Review of pilot outputs

### Profile of opt-in cases per the seven outcomes

As noted in the introduction, seven measurable outcomes had been identified as possible from the ADR opt-in process. In places, the spreadsheet did not include sufficient information to differentiate between some route-ways in achieving these outcomes. For example, information was not recorded on the spreadsheet to distinguish between the activities of PDCS after they were identified as the losing party and invited to reconsider their decision after or during a telephone call by the DTJ but ultimately did not revise their decision. Likewise, although the spreadsheet identified where PDCS lapsed cases, it was not possible to distinguish between the two routes the PDCS could take to reach this outcome, namely where the appellant was content with the outcome so the case lapsed or where they were not and the case lapsed as a new appeal was started. Table 3.1 summarises the profile of outcomes in the pilot in total.

**Table 3.1: Opt-in cases by outcome**

Outcome	Total opt-in cases-all areas	
1 ENE not carried out insufficient resources - hearing as normal	32	(3%)
2 Not suitable for ADR or insufficient evidence to identify losing party, hearing as normal	558	(57%)
3 PDCS losing party but decision not revised	31	(3%)
4 PDCS losing party and appeal lapses	191	(19%)
5 Appellant losing party and appellant withdraws	42	(4%)
6 Appellant losing party, further evidence received but hearing as normal	55	(6%)
7 Appellant losing party but no action taken, hearing as normal	69	(7%)
<b>Total cases per area</b>	<b>978</b>	<b>(100%)</b>

It should be noted, however, that the profile of opt-in cases identified by specific outcome differed somewhat from the earlier identification of cases by the broad categories of stage one or stage one and two ADR process cases. This was because outcomes five to seven included all cases where the appellant was identified as the losing party, even where an actual telephone call was not made as the appellant could not be contacted. Stage one and two ADR cases, however, only include cases where an actual telephone call had been made to more clearly identify where additional intervention had taken place. The subsequent sections examine some of these broad outcomes, in terms of cases being withdrawn, lapsed or proceeding to a hearing as normal in more detail.

## Outcomes from opt-in and non-opt-in cases

### Withdrawals, lapses and hearings

Table 3.2 summarises the outcomes/route-ways identified above in terms of withdrawals, lapses and hearings to examine the outcomes associated with opt-in and non-opt-in cases.

**Table 3.2: Summary of opt-in and non-opt in case outcomes**

	Non-opt in cases		Stage one and two ADR cases		Stage one ADR cases		All ADR opt-in cases*	
Withdrawals (Outcome 5)	47	(4%)	17	(7%)	22	(3%)	39	(4%)
Lapses (Outcome 4)	50	(5%)	107	(43%)	75	(11%)	182	(19%)
Cases proceeding to a hearing & resolved (Outcomes 2, 3, 6 and 7)	1,006	(91%)	125	(50%)	600	(86%)	725	(77%)
<b>Total resolved cases</b>	<b>1,103</b>	<b>(100%)</b>	<b>249</b>	<b>(100%)</b>	<b>697</b>	<b>(100%)</b>	<b>946*</b>	<b>(100%)</b>

\* This figure excludes the 32 no ADR process cases (outcome 1b).

Analysis of the outcomes of the opt-in cases compared to non-opt-in cases overall suggested that benefits were achieved by the ADR process in reducing the number of cases proceeding to a hearing.

The majority of all non-opt-in cases (91%) proceeded and were resolved at a hearing with only a minority of non-opt-in cases withdrawn or lapsed, four per cent and five per cent respectively. This was in contrast to all opt-in cases where four per cent (39 cases) were withdrawn and some 19% (182 cases) were lapsed. Looking at the proportion of withdrawals and lapses together,<sup>12</sup> there were a total of 23% or 221 of all opt-in cases where a hearing was avoided, compared to only nine per cent or 97 cases of non-opt-in cases. Tests of statistical significance showed the differences between these figures were robust but given the small sample sizes involved these figures must still be treated with some caution. Some 77% of all opt-in cases were still resolved at a hearing, which although still relatively high, represented a rate 14 percentage points lower of hearings amongst all opt-in cases compared to non-opt-in cases.

Looking at the figures for cases which were subject to both stages of the ADR process only, 50% or 125 cases still proceeded to a hearing but 43% (107 cases) were lapsed and seven per cent (17 cases) withdrawn. The total sample of cases was relatively small so the findings were not statistically significant.

It was interesting to note that there were small numbers of lapses (11%) and withdrawals (3%) amongst stage one ADR cases. This supported the findings from the qualitative

<sup>12</sup> These two outcomes did not overlap and represent distinct outcomes - there were no cases which lapsed and were also withdrawn.

interviews which suggested that PDCS were lapsing cases independently of speaking to a DTJ, either through a review of all cases in preparation for a call or as part of a wider quality assurance process instigated by the ADR process. In the stage one ADR cases which were withdrawn, appellants had not spoken to a DTJ so other factors or influences must account for this, for example, appellants could have simply changed their mind about proceeding with the appeal.

**Adjournments and postponements**

The analysis around adjournments also illustrated some potential benefits from the ADR process. In the non-opt-in sample overall, 18% of the total number of cases (195 from a total of 1,103 cases) were adjourned at the first hearing, compared to nine per cent (85 of a total of 946 cases) amongst the opt-in sample.<sup>13</sup> As Table 3.3 shows, this suggested a nine percentage point lower rate of adjournments amongst ADR opt-in cases compared to non-opt-in cases.<sup>14</sup>

**Table 3.3: Proportion of cases adjourned at the first hearing**

	Stage one and two ADR opt-in cases (Outcome 3-10) (N=249 cases)		Stage one ADR opt-in cases (Outcome 2) (N=697 cases)		All ADR opt-in cases (N=946 cases)		Non-opt in cases (N=1103 cases)	
Total for all areas	22	(9%)	63	(9%)	85	(9%)	195	(18%)

When the opt-in figures were broken down into those which were subjected to ENE only (stage one ADR cases) and those which also had a telephone call made by a DTJ (stage one and two ADR process) the same rate of adjournments was seen. This fitted with the findings from the DTJ interviews which suggested that even if they did not make a phone call to a potential losing party DTJs sought to use ENE to intervene to progress the case. This was typically, through the issuing of directions, to avoid the case being adjourned when it reached a hearing.

There were two main factors recorded on the spreadsheet as the reason for adjournment. Little difference was found between non-opt-in cases and all opt-in cases in the reasons cases were adjourned. In the majority of both opt-in and non-opt-in cases, 68% and 74% respectively, the hearing was adjourned so that directions could be issued. In a smaller proportion of cases, hearings were adjourned because of a lack of time. This was a reason in 20% of opt-in cases and 12% of non-opt-in cases that were adjourned. It was interesting to note that in 31 cases or 54% of the opt-in cases where the reason for adjournment was for directions to be issued, directions had already been issued as a result of ENE. In some of these cases, the original direction was to ask appellants about changing from a paper to an oral hearing or to seek advice. In other cases, however, it was not possible to reliably

13 This excludes opt-in cases identified as no-ADR process cases which would skew the examination of the affect of the ADR process.

14 Tests show that this difference is significant.

determine from the spreadsheet why subsequent directions were issued and whether there was any repetition or relation between the directions issued. However, potential reasons identified through the interviews were that the additional evidence requested in the original direction did not arrive in time for the hearing or that additional issues emerged during the hearing which required further evidence before a decision was reached by the tribunal panel. The issuing of directions is explored further below.

Related to adjournments was the rate of postponements where an appellant asked for the hearing to be rescheduled prior to the day of the hearing. In total, there were 35 requests for opt-in cases to be postponed, with 26 or 74% of requests being granted. This represents only four per cent of the total sample of opt-in cases where postponements were requested and three per cent of the total opt-in cases where they were granted. Non-opt-in cases had a similar level of postponement requests and those being granted. Only three per cent of the total sample of non-opt-in cases had requested a postponement which was granted in 29 cases or 85% of these cases. Given the small number of postponement requests which had a reason identified apart from 'other', it was not possible to confidently analyse the reasons requests were made.

**Issuing directions**

A highly important finding from the analysis was the high proportion of opt-in cases where directions were issued before the hearing when compared to non-opt-in cases. It is clear from the figures in Table 3.4, that it was extremely rare for directions to be issued for non-opt-in cases before a hearing, whereas directions were issued in 42% of all opt-in cases. Looking only at stage one ADR process cases, directions were issued in 46% of cases. This fitted with the qualitative interview findings which suggested that a DTJ was most likely to intervene in these cases by issuing directions as there was no further intervention in the form of a telephone call. Although these cases typically would then still proceed to a hearing, the intervention of the DTJ was intended to enhance the evidence available to the tribunal panel, potentially increasing the chances of avoiding an adjournment.

**Table 3.4: Proportion of cases where directions were issued**

	Stage one and two ADR opt-in cases (Outcome 3-10) (N=249 cases)		Stage one ADR opt-in cases (Outcome 2) (N=697 cases)		All ADR opt-in cases (N=946 cases)		Non-opt in cases (N=1103 cases)	
Total for all areas	81	(33%)	319	(46%)	400	(42%)	2	(0.2%)

Looking at the nature of the directions issued, in the isolated examples of non-opt-in cases where directions were issued, exclusively the direction was to request a medical examination report. There was more diversity in the nature of directions associated with opt-in cases as shown in Table 3.5. The most common direction issued in opt-in cases was also to request a

medical examination report (a direction in 44% of all opt-in cases). In addition, there was also a relatively high proportion (28%) of cases where the direction was to convert the hearing from paper to oral and ‘other’ directions (19%), which included, for example, to obtain a supplementary submission.

**Table 3.5: Nature of directions issued in all opt-in cases at ENE stage**

	Medical examination/ GP Report		Convert from paper to oral hearing		Obtain further evidence		Other		Total cases where directions issued	
Total all areas	176	(44%)	112	(28%)	36	(9%)	76	(20%)	400	(100%)

Multiple directions were issued in 16% of all opt-in cases. Typically, this included one or more different types of direction. Examples could include an operational direction issued to Tribunals Service Operations to convert the hearing from paper to oral and a direction to the appellant to obtain further evidence or seek advice.

As noted above, interviews with Tribunals Service administrative clerks suggested that the issuing of directions at the ENE stage might have a negative effect on achieving the performance target for listing cases, as this target was based on the period from receipt of the pre-enquiry form to first hearing and not the period to resolution of case. Analysis on the average time between key milestones suggested that this might be true. For all opt-in cases, irrespective of whether directions were issued, the average time between the pre-enquiry form being received<sup>15</sup> and the appeal listing date was 19 working days. For cases which had directions of any kind issued, this increased to an average of 29 working days and to 41 working days for cases where the direction was to request a medical examination report. For non-opt-in cases overall the average time between receipt of the pre-enquiry form and listing was just six working days. Tribunals Service staff suggested that the issuing of directions might increase the period between starting the appeal and listing for a hearing. However, they believed that the overall clearance time of the case should not have been negatively affected, as the direction was typically just moved to an earlier point in the process. In non-opt-in cases, the direction may simply have been issued following an adjournment to the hearing. This was evidenced somewhat by the average clearance time for all opt-in cases being 46 working days and 54 working days where directions were issued, compared to the average for non-opt-in of 42 working days. The speed of resolving cases is examined further below.

<sup>15</sup> The Tribunals Service pre-hearing enquiry form, the TAS1 form, must be returned by all appellants within 14 days of receipt to proceed with their appeal.

Looking at whether directions issued at an earlier point in a case’s progress prevent a later hearing adjournment, Table 3.6 details the outcomes associated with the cases where directions were issued. It can be seen that in 55 cases where directions were issued, the case was still adjourned at the hearing. This represents 64% of the total number of opt-in cases (85 cases) which were adjourned at the first hearing, as shown in Table 3.3. Analysis of the nature of the directions issued in respect of the cases that were adjourned at the first hearing included a relatively high proportion of directions to convert the hearing from paper to oral. It was clear, therefore, that while directions were effective in serving to support better evidenced cases, in themselves they did not serve to prevent adjournments at the hearing. It was likely that other issues emerged during the hearing which contributed to the reasons for adjournment.

**Table 3.6: Profile of outcomes from opt-in cases where directions issued and all non-opt in cases**

	Withdrawal		Lapse		Hearing		Adjournment at first hearing	
Total opt-in cases where directions issued (n=400)	13	(3%)	72	(18%)	260	(65%)	55	(14%)
All non-opt in cases (n=1003)	47	(45%)	50	(5%)	1,006	(91%)	195	(18%)

It was interesting to note the proportion of all opt-in cases where directions were issued (21%) that were then subsequently withdrawn or lapsed. These cases did include a number where the direction was to request a medical examination report, which has a cost implication for the Tribunals Service. Specifically, there was a concern raised by DTJs and Tribunals Service staff that there were a small number of opt-in cases where a medical examination report was requested following the ENE but that it was a wasted cost because a parallel decision was made by either the PDCS to lapse the case or the appellant themselves to withdraw the case. It was not possible to do more robust analysis to identify the specific cost implications of this for the Tribunals Service so this was not included in the subsequent cost analysis. The spreadsheet did not provide information on the specific type of further information received so preventing specific examination of where medical examination reports had been received unnecessarily or where the order had been cancelled in time following a decision to withdraw or lapse the case.

**The provision of further information**

The spreadsheet recorded further information being received for 45% (442 cases) of all opt-in cases but only 25% (278 cases) of non-opt-in cases. Logically, this difference could be accounted for by the significantly higher level of directions issued for opt-in cases, many of which were related to obtaining further information. This was also supported by the analysis which showed that 63% of the cases where further information was received had directions issued. In just under half of these cases, the direction was focused on obtaining additional evidence. However, there

was insufficient detail on the spreadsheet on the type of further evidence received to further explore its impact on a case's progression through the appeal process.

**Speed of resolution**

The pilot spreadsheet recorded dates when key milestones concerning a case's progress through the appeal were achieved. As such, it was possible to analyse the speed with which ADR opt-in and non-opt-in cases proceeded overall and the time implications of the additional tasks associated with the ADR process.

Calculations of the overall average time for cases to be resolved used the date the pre-enquiry form was received as the start of an appeal.<sup>16</sup> Case resolution was defined by a date associated with the end of the appeal; i.e. either a withdrawal, lapse or hearing where there was an associated tribunal decision. Table 3.7 details the overall average time for opt-in and non-opt-in cases to be resolved.

**Table 3.7: Overall average time taken to resolve opt-in cases-working days**

	<b>ADR cases (all) (N=946)</b>	<b>Stage one and two ADR process (Outcome 3-10) (N=249)</b>	<b>Stage one ADR process (Outcome 2) (N=697)</b>	<b>Non-ADR cases (N=1103)</b>
Average for all areas	46 working days	34 working days	49 working days	42 working days

The average time for case resolution was 46 working days for opt-in cases, compared to 42 working days for non-opt-in cases. This suggested that the ADR process slowed down the speed of case resolution when looking at ADR cases as a whole. Cases that were subject to both stages of the ADR process were resolved in an average of 34 working days. The removal of the hearing appeared to be the key achievement of the ADR process which impacted on speed of resolution.

**Time between key ADR activities**

Analysis of the average time between cases being referred to DTJs for evaluation, whether the first or second referral, and the evaluation being undertaken was the same across each area. This suggested that any variation between different pilot areas in the overall time for opt-in cases to be resolved was not related to the ADR process. There was very little variation in the figure at the times when interview findings suggested there were issues with the capacity of DTJs to undertake ADR activities. The analysis did not identify any significant findings related to the efficiency of DTJs in undertaking ENE or telephone calls in a timely manner at the time of the widening of the pilot geographies.

<sup>16</sup> To achieve consistency, the date the pre-enquiry form was received was used as the marker of the start of the appeal for all cases including those which began after the transfer of responsibility to the Tribunals Service for sending out the pre-enquiry form.



### Time to achieve outcomes

The average time to achieve outcomes was similar in respect of non-opt-in and opt-in cases as shown in Table 3.8. The exception was the time between the pre-enquiry form being received to mark the start of an appeal and the case resolution at first hearing. As reported above, the delay in listing opt-in cases until after ADR activities had been conducted was likely to account for this difference.

**Table 3.8: Average time for achieving outcomes-working days**

	TAS1 received and the date withdrawn	TAS1 received and the date appeal lapsed	TAS1 received and case resolution at 1st hearing	Case resolution at 2nd hearing	Case resolution at 3rd hearing
All opt-in (N=1103)	37 working days	27 working days	47 working days	77 working days	86 working days
Non-opt in (N=946)	37 working days	36 working days	36 working days	75 working days	83 working days

### ADR influence on benefit decision outcomes

#### Overall decision outcomes

Analysis was undertaken to explore change in the benefit outcomes of the appeal at different stages of the appeal process to assess any potential impact of the ADR process. This was done by identifying ‘change’ between key points where outcomes were identified. For example, change between the original PDCS decision and the outcome DTJs estimated a tribunal panel would award after undertaking the ENE and between the original decision and the final case outcome. Each element of the DLA or AA benefit was allocated an ‘up’, ‘down’ or ‘same’ code to represent change in the level of benefit.

The change in benefit decisions, between the original decision and suggested decision of the DTJ after ENE, was examined to assess any potential impact of the ADR process, as shown in Table 3.9. The number of AA cases that were subject to ENE was too small to conduct any robust analysis in this regard.

**Table 3.9: Change in DLA decisions between original PDCS decision and suggested decision at ENE review stage-all opt-in cases**

	Mobility Component		Care Component	
	All Opt-in cases			
Up	61	(30%)	85	(42%)
Same	138	(69%)	113	(56%)
Down	2	(1%)	4	(2%)
<b>Total</b>	<b>201</b>	<b>(100%)</b>	<b>202</b>	<b>(100%)</b>

Across both the mobility and care elements of the DLA benefit, the majority of cases represented no change between the original PDCS decision and the probable outcome

identified by the DTJ at the ENE stage. However, there was a proportion of cases where the benefit rate was expected to have gone up. This was slightly higher in respect of the care component (42%), compared to 30% of mobility component cases.

The following tables detail the proportion of DLA cases where changes occurred between the original PDCS decision and the final case outcome to assess the potential impact of the ADR process. The number of AA cases in the sample was too small to do comparable analysis for this benefit.

**Table 3.10: Change in DLA decisions between original decision and final outcome - all areas**

	Mobility Component				Care Component			
	Non-opt in cases		All Opt-in cases		Non-opt in cases		All Opt-in cases	
Up	340	(38%)	201	(30%)	427	(47%)	280	(40%)
Same	553	(61%)	456	(69%)	463	(51%)	402	(58%)
Down	9	(1%)	3	(1%)	13	(1%)	9	(1%)
<b>Total</b>	<b>902</b>	<b>(100%)</b>	<b>660</b>	<b>(100%)</b>	<b>903</b>	<b>(100%)</b>	<b>691</b>	<b>(100%)</b>

\* Cases were excluded from the analysis where one or more parts of information needed for the calculation was missing. The base number of cases, therefore, does not always match the total overall sample sizes

The change in outcomes for DLA benefits between the original PDCS decision and the final outcome for opt-in cases broadly represented the same pattern of change as identified between the original decision and that of the DTJ at the ENE review. This suggested that DTJ views of the expected tribunal decision were largely correct. In respect of the mobility element, the majority of appellants (around two-thirds) were most likely to achieve the same level of benefit at the end of their appeal, compared to the original claim decision. Around a third achieved an increase in their benefit. For the care component, just under half of appellants achieved an increase in benefit with just over half staying the same. Only in isolated cases, across both benefit components, around 1% of cases, did appellants achieve a lower decision.

There was a slight difference between non-opt-in cases and all opt-in cases in the overall change in decision. This suggested that the ADR process as a whole did not impact significantly on the outcomes achieved by appellants. For example, in respect of the mobility element, 30% of opt-in cases achieved an increase in their benefit compared to 38% of non-opt-in cases. Similarly, in respect of the care component, 40% of opt-in cases achieved an increase compared to 47% of non-opt-in cases. When looking at wider statistics on the success of appeals made in the SCS Tribunal, however, it appeared that ADR appellants potentially achieved poorer outcomes. In 2007/08, statistics suggest that 44% of hearings were cleared in favour of appellants, effectively the decision went up, while 56% of appeals were upheld,<sup>17</sup> essentially the decision stayed the same. While these figures were not

17 Figures provided by the Tribunals Service in December 2008.

directly comparable (as the national statistics deal with DLA appeals in general rather than differentiating between the two elements of DLA), these figures were higher than the 30% of appellants who achieved an increase in their mobility component and 40% who achieved an increase in their care component.

It could be inferred that the probable outcomes identified by DTJs at the ENE stage had the potential to influence the final outcomes. However, it was not possible to draw robust conclusions in this respect. The outcome identified by the DTJ after the ENE was for illustrative purposes in conducting the ENE and was in no way able to influence the final decision an appellant might achieve if they proceeded to a hearing. The tribunal panel was not aware that cases were part of the ADR pilot and had no information on the outcome identified by DTJs at the ENE stage. The advice given to the potential losing party was also not compulsory, so the recommended actions did not have to be taken. This is further examined below by looking at the decision outcomes associated with individual route-ways.

Analysis of the characteristics of cases against the different outcomes did not reveal any significant findings that deviated from this overall pattern of outcomes achieved at the end of an appeal. Both cases that went to a paper or oral hearing were just as likely (in around a third of cases) to achieve a higher outcome, while the majority stayed the same. Only in isolated cases did the outcome go down.

### **Outcome decisions by route-way**

As reported above, the advice given by the DTJ to the losing party was a recommendation and it was optional whether the PDCS or appellant followed it. This section explores the outcomes in cases where the advice was not followed.

In terms of the seven measurable outcomes/route-ways associated with ADR, there were three outcomes which related to cases where DTJs telephoned the losing party but subsequently the advice was not followed and the case proceeded to a hearing. These were specifically outcomes three, six and seven. As shown in Table 3.11, in various cases appellants or the PDCS had ignored the advice of the DTJ and the case proceeded to a hearing, and appellants in some cases won their appeal or gained a higher settlement than the DTJ had thought would be agreed. This table is based on a relatively small number of cases so caution is needed in interpreting results.

**Table 3.11: Outcome decisions where DTJ advice was not followed**

		Up		Same		Down		Total	
Outcome 3 (PDCS did not follow advice)	DLA Mobility component	14	(58%)	12	(42%)	0		<b>24</b>	<b>(100%)</b>
	DLA Care component	18	(69%)	7	(27%)	1	(4%)	<b>26</b>	<b>(100%)</b>
Outcome 6 (Appellant did not follow advice and provided extra evidence)	DLA Mobility component	11	(25%)	33	(75%)	0		<b>44</b>	<b>(100%)</b>
	DLA Care component	15	(35%)	28	(65%)	0		<b>43</b>	<b>(100%)</b>
Outcome 7 (Appellant did not follow advice)	DLA Mobility component	14	(26%)	39	(74%)	0		<b>53</b>	<b>(100%)</b>
	DLA Care component	17	(31%)	37	(68%)	0		<b>54</b>	<b>(100%)</b>

The analysis of outcomes six and seven appeared to show that DTJs were not always correct in their opinion that the appellant would be the losing party, with a quarter to a third of appellants achieving a higher outcome at the hearing. The DTJ call content was unknown, but it was likely to mean that the decision of the appeal tribunal was contrary to the opinion of the DTJ. It was possible that additional evidence received under outcome six or the oral evidence available at the hearing also increased the likelihood of a successful appeal for the appellant. It was also possible that additional information was supplied by appellants which affected the outcome, evidence which was not available to the DTJ at the time of the ENE.

In a smaller proportion of cases where the appellant was contacted by the DTJ, the appellants were strongly influenced by the opinion of the DTJ and withdrew their appeal. Whilst this amounts to only four per cent of the opt-in cases reviewed, it was not possible to say what proportion of these might have gone ahead and won their case if the DTJ had not made the call to the appellant as part of ADR, and stated that their opinion was that they would be the losing party.

This section examined the quantitative outputs and outcomes from the ADR pilot using quantitative data produced from an analysis of the pilot spreadsheets. The following section provides the qualitative outcomes data.

## Pilot impact: qualitative outcomes from ADR

This section examines the qualitative outcomes from the ADR pilot. It provides evidence in response to the following key research questions.

- Were there any other impacts of ADR?
- What impact did ADR have on the PDCS?
- What do others (non-parties) think of ADR?
- Were appellants satisfied with the process?

Appellants' satisfaction was examined throughout this section as it was typically closely related to the outcomes identified by appellants. Evidence is drawn for this chapter from the qualitative interviews.

### Key findings

- Tribunals Service staff, DTJs and the PDCS recognised that the ADR process had helped to establish a level of liaison and effective working relations between the different stakeholder organisations which would not otherwise have existed as contact between agencies outside of the ADR pilot was limited. ADR was contributing to a stronger sense of shared responsibility between PDCS and the Tribunals Service for the efficient and proportionate conclusion of appeals.
- Professional development opportunities were another outcome identified by Tribunals Service staff which emerged from the ADR pilot. Administrative clerks' involvement in the ADR process, in particular, had positive benefits for the development and job satisfaction of some of the administrative staff involved.
- Reducing the stress which appellants often reported to feel as a result of participating in the appeal process was an outcome identified by many appellants as a benefit of the ADR process. This was achieved by either avoiding the hearing or giving appellants greater confidence in their case by offering a discussion with an independent and knowledgeable person.
- There was some level of dissatisfaction amongst appellants around access to justice offered by the ADR process, where they were advised to withdraw their appeal or when the case did not reach a hearing when they wanted it to. It was known, however, that satisfaction was lower with the judicial/tribunal process where the outcome was not favorable to the appellant (the 'outcome effect') and this was reflected here by dissatisfaction with the outcomes almost directly mirroring lost appeals, both amongst opt-in and non-opt-in appellants.

### Building relationships between key parties

Tribunals Service staff, DTJs and the PDCS recognised that the ADR process had helped to establish a level of liaison and effective working relations between the different stakeholder organisations. This would not otherwise have existed, as contact between agencies outside

of the ADR pilot was limited. From this liaison, interviewees acknowledged there had been knowledge transfer and sharing between the Tribunals Service and PDCS, and to a lesser extent, external advice agencies, welfare rights groups and advocacy organisations. This had served to increase understanding on all sides of the processes, priorities and activities of the different stakeholders. Although some of this was specific to the ADR process, there had been a knock-on increase in understanding across agencies and identification of some specific learning in respect of the traditional appeal process. Staff interviews also suggested that decision-making processes and particularly the evidential requirements for appeals had been more widely shared and understood as a result of contact between PDCS and DTJs.

The close liaison required to enable the pilot to take place was felt to be particularly helpful for the PDCS. As this representative suggested:

*“It’s the rapport I think that we’ve got between us. I’ve got a better understanding of what they’re looking at”*

(PDCS staff member)

This suggested not only that ADR was contributing to the quality assurance of original claim decisions but also a stronger sense of shared responsibility for the efficient and proportionate conclusion of appeals.

The direct feedback from the DTJ during telephone calls to the PDCS or alternatively by PDCS staff themselves through the review of cases in preparation for this call was referred to as both a support and an incentive for general performance improvement. As this PDCS staff member summarised:

*“It’s made me realise, it’s made me concentrate on why we are doing appeals, why have we got these appeals, from the department’s point of view I think more than anything else”*

(PDCS staff member)

This was further linked to the pursuit of good customer service for PDCS through making robust decisions on original claims, as this PDCS staff member reported:

*“It costs to go to an appeal, so eventually if we can ... reduce the appeals; get it right first time, its good customer service”*

(PDCS staff member)

Additionally, the feedback from the DTJs had been used to inform the coaching and training of staff members, as this PDCS representative suggested:

*“It’s helped me because that is my role, is to improve performance as a whole, that’s how I see my role, so it’s been one useful little piece of a very big jigsaw. So it’s been useful because I can use it to coach people”*

(PDCS staff member)

### **Professional development opportunities and job satisfaction**

Professional development opportunities were another outcome identified by Tribunals Service staff which emerged from the ADR pilot. Some of the administrative clerks involved in the ADR process felt that it had positive benefits for some of the administrative staff involved, allowing them to gain experience of Excel spreadsheets. The contact with DTJs and PDCS had allowed them to develop good relationships with this first tier agency that they would not otherwise have been involved with. As a result, administrative clerks in particular, reported greater job satisfaction as they were able to see the project and cases from beginning to end. Their positive contribution to the ADR process was also clear.

### **Reducing stress for appellants**

The interviews with appellants who opted into ADR revealed a number of less tangible or soft outcomes from the process. Reducing the stress which appellants often reported to feel as a result of participating in the appeal process was an outcome identified by many appellants as a benefit of the ADR process. This manifested itself in a number of ways. ADR encouraged appellants to weigh up the extent to which the stress of attendance at a hearing would affect them mentally, physically and financially against the loss of opportunity to present their case in person. Appellants typically identified that not having to attend a hearing where their case was already thought to be weak by a DTJ, was a key aspect of their decision to withdraw:

*“Where somebody’s got a hopeless case that would just take a lot of energy and emotion from their point of view to attend a hearing, so they’re saved the trauma of having to come to a hearing and then not succeeding”*

(Sutton opt-in appellant)

ADR was, however, also identified by opt-in appellants as reducing the stress associated with the appeal process in general, specifically by giving them greater confidence in their case regardless of whether they went to a paper or oral hearing. The ADR process achieved this by offering a discussion with an independent and knowledgeable person:

*“I think if somebody else looks at it first that’s not on their (PDCS) side and not on your side, you know, they are in between. They are looking at everything that you have given them, I think it gives you a different look on things I suppose”*

(Bristol opt-in appellant)

A further outcome of the ADR process, related specifically to the telephone call from the DTJ to the appellant, had been the value of the discussion with the DTJ for the appellant. Appellants reported reduced feelings of stress because ADR provided this opportunity to be reassured or to check practical details about the oral hearing which meant they were more prepared for the experience:

*“Oh yes he was very helpful and he was talking through things with me which made me feel much better about going”*

(Bexleyheath opt-in appellant)

The DTJ calls had both supported appellants’ understanding of the appeal process and also helped them to make decisions regarding appearing at the hearing or opting for a paper hearing. One appellant said that, although they did not win the appeal, the DTJ had suggested that the appellant could attend the hearing in person, which they did. They thought that this helped them even though in the end, attending was, “a waste of time”. They commented that the call had helped them know more about the process and their options:

*“I thought that [the call] was alright, its better than not, not getting to know anything, when you’re getting to know something at least you know where you are standing”*

(Bexleyheath opt-in appellant)

Another soft outcome for appellants was, especially, but not exclusively, where they did not have a representative or advocate, simply being able to talk to someone about their case. This was an aspect of the ADR process that appellants related to their satisfaction. One appellant described how she had struggled to discuss her case with anyone, and the call from the DTJ was an opportunity to talk about things she had found difficult:

*“It’s hard to discuss things, I mean I don’t even speak to family members”*

(Sutton opt-in appellant)

A further group of appellants who received directions formally or informally from the DTJ during their call identified this as a very helpful aspect of the process. Appellants reported improving their cases with additional medical evidence, concentrating on the correct legal area as a result of the DTJ’s opinion, or increasing their success over a paper hearing by appearing in person. Even where the DTJ made the call to the appellants to suggest they may be the losing party, there were appellants who decided not to withdraw, and utilised the call to help discuss and build their case before they proceeded to a hearing. Where directions were given by the DTJ, satisfaction was higher than where the call led to a simple withdrawal. Appellants considered it gave them a better chance of a fair and speedy outcome. DTJs also pointed out the strongest aspects of the case to appellants, and clarified points of law, and encouraged appellants to attend the appeal hearing in person. For example, one appellant reported his call in this way:

*“He said, because I actually put down that I didn’t want to be there because in places I don’t know people and people I’m around, I’m very nervous, but he did say it would be best if I did attend if I could, but any information I could get would help”*

(Sutton opt-in appellant)

There were also higher levels of satisfaction where appellants had wanted to avoid a stressful hearing or the cost and time of travel to a hearing, or were more comfortable



with telephone calls from their own home than going to an external venue. ADR offered the opportunity to do this. This extended to appellants who had opted for a paper hearing, because, by speaking to the DTJ by telephone, the process was less impersonal than a paper hearing. High levels of satisfaction were achieved where the appeal process was dealt with quickly and efficiently (noted above), though in some cases the appellants would have preferred a slightly longer lead-in time to assemble evidence.

### Communication following opt-in

A negative outcome identified for some appellants was a feeling of disempowerment where their case was not considered suitable for both stages of the ADR process or where a call was made to the PDCS, and as such no further contact was made with the appellant. This led to appellants thinking their opt-in had been ignored, or feeling disempowered because the case was resolved without their involvement. Appellants commonly reported being unaware if ADR had affected their case or not, or really understanding what had happened as a result:

*“From the time I filled that yellow form out I never heard another thing, so really I wouldn’t have known if they were doing anything or not. So as far as I know they didn’t do anything”*

(Bristol opt-in appellant)

Appellants commonly stated, when asked how the ADR process might be improved, that they would have liked more support through the whole process, but especially in being talked through what ADR stage they were at and what would happen next. For example, one appellant said that:

*“I think just if you could speak to somebody on the phone and they could explain things in detail with you about what’s going to happen and how it’s going to happen, that would be a lot easier”*

(Bristol opt-in appellant)

Appellants and their representatives widely suggested that the communication process needed to be improved so that they were in touch with what was happening during the ADR process, and so that they could track progress on their case. Where this experience led to appellants feeling disempowered, this posed a risk that appellants would not opt for any future opportunity to use ADR again. Written communication would be the most logical approach but alternatives such as telephone contact could be explored. This would also serve to achieve the additional benefits demonstrated through the DTJ calls to appellants of better evidence at hearings or increased appellant attendance at oral hearings.

### Proportionate resolution of cases

A very important research question was the extent to which ADR increased the potential for an enhanced judicial function through more proportionate<sup>18</sup> resolution of cases. The principal

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<sup>18</sup> Proportionate resolution in the context of the ADR pilot is defined as resolving disputes earlier and more effectively through strongly evidenced cases and opportunities to settle appeals outside of a tribunal.

impression of the impact of ADR had been to minimise the need for hearings and reduce the number of adjournments. There had also been clear cost benefits associated with this as outlined in the next chapter. There were also a range of other soft benefits arising from the reduction of hearings and adjournments for appellants, including reduction in levels of stress and speedier resolution of cases. However, it was important to consider the extent to which these factors interact with potentially improved or reduced levels of access to justice and fair outcomes for appellants. The researchers examine this from the points of view of the various parties below.

A key 'added value' element of ADR had been the greater than anticipated impact of the ENE review, plus subsequent directions. This meant that even where a case did not go through both stages of the ADR process, a significant proportion of cases were receiving further and clearer evidence more quickly as a result of the issuing of directions. This approach pre-empted the change in rules that the first-tier Tribunals operated under following the operational reforms of the Tribunals, Courts and Enforcement Act 2007. This came into force in November 2008 and allowed for greater use of directions and wider case management powers for DTJs and Tribunal Judges more widely.

In addition, adjustments to the scope and purpose of the DTJ telephone calls to progress cases through the issuing of directions and often recommending appellants identified as the potential losing party attend an oral hearing, appeared to have clearly led to improvements to the quality of evidence made available to tribunal panels with subsequent benefits in terms of costs, time, reduced stress and speedier resolution of cases. In short, the 'added value' of the pilot exercise had been to strengthen and more finely tune a proactive case management approach to this appeal work.

DTJs clearly recognised proportionate justice to be a key outcome from ADR. A strong evidence base available to a tribunal panel, achieved through ADR, was recognised by DTJs as a key to ensuring that the judicial decision was right, effective and fair. As this DTJ summarised:

*"Cases would have been heard anyway but we provided better evidence through our directions which means there is hopefully a better chance of fairer outcomes"*

(District Tribunal Judge)

The achievement of proportionate resolution of cases in terms of minimising unnecessary time lost, presenting a full and properly evidenced case and achieving resolution of appeals in a timely manner, was identified by the Tribunals Service as an outcome from ADR. As described by this Tribunals Service staff member:

*"We will have progressed a case by identifying and giving directions to fill the gaps in the evidence, now as a result of our intervention they won't have to adjourn and the cases will be disposed of more quickly"*

(Tribunals Service staff member)

Researchers also asked appellants (both opt-in and non-opt-in) if the ADR process was perceived to increase or decrease the appellants' chances of getting a fair appeal. Many thought that it would increase their chances of getting a fair outcome. For example, one appellant described how difficult the forms and the appeal system was, but that speaking with a judge who fully understood the system was helpful and increased their ability to understand the process and their options:

*"I think it [ADR] would increase it [chance of a fair hearing], because you would be working with the people who actually work with the documentation in the first place"*

(Bexleyheath opt-in appellant)

Another appellant's view was that ADR was,

*"almost like having a secretary for yourself really, it's like having a secretary saying to me you could really put a bit more effort into this, you could write more things about your case"*

(Bristol non opt-in appellant)

However, there was dissatisfaction amongst some appellants around access to justice offered by the ADR process in relation to their own case, as opposed to more general questions regarding ADR in principle. Dissatisfaction occurred generally where the appellants did not achieve the appeal settlement they had hoped for, and also where the appellant did not attend a hearing. Some of these appellants felt they did themselves an injustice by not representing themselves in person at a hearing.

*"I just think I did myself an injustice, I think the case would have been looked into more thoroughly had I gone in person, I really do, I think I should have"*

(Sutton opt-in appellant)

However, there were also some appellants who took a principled stand against ADR, with one appellant stating that they would not use ADR because,

*"I would not be there to defend myself"*

(Sutton non-opt-in appellant)

These appellants clearly felt that their access to the judicial system was best served by attending an oral hearing.

It was also clear that, having received the DTJ call, a small number of appellants who withdrew also felt that they had not had a fair hearing or proportionate access to justice. Appellants often took a resigned approach to withdrawing the appeal following the DTJ's advice, but reported feeling worn down and despondent rather than feeling they had been subject to a fair system:

*“Just accept what you’re given and that’s it, you know. If I was to appeal again it would be procedures, letters again, more paperwork, doctor’s reports”*

(Sutton opt-in appellant)

Fear drove some appellants’ decisions to withdraw the appeal following the DTJ’s call. One appellant reported feeling “*confused and scared*” of losing her DLA altogether following the DTJ’s call and so withdrew her appeal (Sutton opt-in appellant). It was also known from the research literature on social security and other tribunal appeals that satisfaction was lower with the judicial/tribunal process where the outcome was not favourable to the appellant: this is sometimes referred to as the ‘outcome effect’ (Sainsbury et al., 1995). This was reflected in the qualitative interviews with appellants, with dissatisfaction with the outcomes almost directly mirroring lost appeals, both amongst opt-in and non-opt-in appellants. This was certainly a factor in the levels of dissatisfaction expressed when the DTJs have stated that in their opinion the case may not succeed. However, it was important that the call to the appellants did not diminish their access to a fair hearing, or be perceived to do so by appellants, because this would bring ADR into disrepute. There was some evidence from staff interviews that adjustments made in the later stages of the pilot had already begun to address this issue. Specifically, DTJs tended to make calls that primarily concentrated on giving directions and encouraging attendance at a hearing in person.

### **Recommending ADR to others**

Appellants were also asked if they would recommend others to use ADR in future. This yielded examples of positive comments, which was a further outcome from ADR, though there were other examples of appellants who clearly spoke against it (see above). One appellant stated they would always encourage people to take up the help offered (in this case, ADR):

*“I would encourage anybody to use help within the system, because they’ve got to know the system more than you...they didn’t help us any further than that [case lost] but yes I would advise anybody to take it up”*

(Bexleyheath opt-in representative)

Another appellant stated that it should always be clear that ADR was not an alternative to attending a hearing before they would consider recommending the process to others.

Yet others said that everyone should make up their own mind about the value of ADR:

*“weigh it up and its up to you....its your personal choice, everyone is an individual”*

(Sutton opt-in appellant)

Having examined the qualitative and quantitative outcomes from the ADR pilot, the following section draws this evidence together to assess overall cost effectiveness.

## Pilot impact: cost-effectiveness

This section examines the cost effectiveness of the ADR pilot, reporting on the additional costs and savings generated from the ADR process. It provides evidence in response to the following key research question:

- is ADR cost-effective?

As noted earlier, the findings in this report were based on the assumption that opt-out and opt-in cases had similar characteristics. There remained a risk that this was not the case, and therefore findings related to the differences between the two groups should be treated with caution.

### Key findings

- In total, the estimated cost to the Tribunals Service of delivering the ADR process during the pilot period to 946 cases was £210,076 compared to £222,867 for dealing with 1,006 non-opt-in cases across the same period. This equates to unit costs of £222 for opt-in cases compared to £202 for non-opt-in cases. Overall, the opt-in ADR process as a whole was less cost-effective during the pilot period than non-opt-in cases.
- Although opt-in cases incurred higher costs to deliver the process, it generated higher savings, particularly in respect of avoiding first hearings and subsequent hearings as a result of an adjournment. This was clearly seen for cases which were subject to both stages of the ADR process. After the reduction in costs from avoided hearings the unit cost for those going through both stages was calculated as £188 per case.
- Should the ADR process be used more widely in the future, reduced administrative costs would be incurred. Removing these costs, it would cost £219 to deliver opt-in cases and £202 for non-opt-in cases in the post-pilot period. Other savings in respect of the additional costs associated with delivering ADR could potentially also be saved as a result of the process being delivered in a changed operating context following the reforms introduced under the Tribunal, Courts and Enforcement Act 2007. Further analysis is required to explore whether this assumption is valid.

### Comparative time and costs for ADR

One of the key objectives for the evaluation was to assess whether ADR was cost-effective. The approach to answering this question involved the examination of financial costs only through the development of average unit costs for different elements of the process or key staff involved in the pilot. Specifically unit costs were developed for the following:

- DTJ time inputs for the ENE review, making telephone calls to the likely losing party and issuing directions;
- administrative clerks' time on tasks associated with ADR and for non-ADR cases;
- hearings, including the costs associated with attendance by the DTJ, Disability Member, Medical Member, expenses incurred by all parties and venue costs.

DTJs' and administrative staff's unit costs were calculated using time information provided by staff themselves, representing the real rather than estimated time inputs for the process as it operated during the pilot. DTJs recorded the time they spent on each case, including conducting the ENE, contacting the potential losing party and issuing directions on the summary form for each case reviewed. This was then transferred onto the pilot spreadsheet which allowed an average time to be generated. The unit cost was then calculated using salary costs supplied by the Tribunals Service finance team.

Likewise, administrative staff time inputs were collected through a timesheet system. Each opt-in and non-opt-in case file had a time sheet attached which was marked with a unit of time on each occasion administrative clerks undertook administrative work associated with that case. Salary costs for administrative clerks were then used to calculate unit costs for their input into the ADR process. Unit costs for the hearing were based on fixed costs supplied by the finance team of the Tribunals Service.

The following sections provide analysis of the cost-effectiveness of the ADR process as it operated during the pilot period using these unit costs. Later sections examine the potential costs of the process in the future, taking account of a different operating context as a result of the Tribunals, Courts and Enforcement Act 2007.

**Costs for providing ADR**

Using the unit costs for different staff and elements of the process, calculations were made in terms of the costs associated with providing specific ADR activities as summarised in Table 3.12.

**Table 3.12: Costs for ADR task**

<b>ADR Activity</b>	<b>Unit Cost</b>
ADR stage one - DTJ conducting ENE and issuing directions- on average 33 minutes*	£54.45
ADR Stage two - DTJ contacting the losing party- on average 12 minutes**	£19.80
<b>Total DTJ time for ADR tasks per case - on average 45 minutes</b>	<b>£74.25</b>
<b>Total administrative time for ADR tasks*** - on average 29 minutes</b>	<b>£5.80</b>

\* Calculated using time information provided for 1046 ENE reviews and an hourly rate of £99.  
 \*\* Calculated on time information for 249 cases with a telephone call and an hourly rate of £99.  
 \*\*\* Calculated using administrative time sheet information for 253 opt-in cases and an hourly rate of £12. Average time per opt-in case was 29 minutes, which was six minutes more (£1.20) than non-opt-in cases which took 23 minutes on average.

This suggested that the additional total cost per case during the pilot for all ADR related tasks conducted by DTJs and administrative staff was **£75.45**.<sup>19</sup> Finance information supplied by the Tribunals Service suggests that the average financial cost of a hearing was **£182.90**. This breaks down as follows:

**Table 3.13: Hearing costs**

<b>Costs</b>	<b>Per session</b>	<b>Per case*</b>
Legally qualified panel member fee and expenses	£214.69	£75.86
Medical member fee and expenses	£163.98	£57.94
Disability member fee and expenses	£102.08	£36.07
Appellant expenses	£8.90	£3.14
Venue costs	£28	£9.89
<b>Total</b>	<b>£517.65</b>	<b>£182.90</b>

\* Cost per case was calculated using an average of 2.83 cases completed per session, the average supplied by the Tribunals Service.

It should be noted that these costs focused on the financial costs of a hearing; they did not take into account other potential costs concerning appellants’ time or psychological costs for attending a hearing. This analysis was beyond the scope of this evaluation. There was also an assumption that all hearing costs were the same regardless of the characteristics of the case.

**Additional/cost savings associated with the ADR pilot**

**Additional costs associated with the ADR pilot**

Conducting ENE and telephoning the potential losing party were additional tasks undertaken as part of the ADR process during the pilot period, therefore potentially adding a cost of £74.25 to each appeal case that opted into ADR. However, earlier analysis revealed that not all cases were subject to both stages of the ADR process. Table 3.14 provides a breakdown of the additional costs for the different types of opt-in cases and used the total number of cases in each category to calculate the overall additional costs of the ADR pilot.

**Cost savings associated with the ADR pilot**

It can be estimated that £182.90 net was saved per case where the ADR process assisted in a case not proceeding to a hearing. Using the data on the total number of opt-in cases which were lapsed or withdrawn and as such a hearing was avoided, it is possible to calculate the cost savings made by ADR during the pilot period, as shown in Table 3.15.

The total saving of £54,687 for opt-in cases where a hearing was avoided compared favourably to the costs saved for non-opt-in cases. There were 97 non-opt-in cases which were withdrawn or lapsed, thus saving only £17,741.

19 See Table 7.3 for a further explanation of the breakdown of the costs.

**Table 3.14: Additional costs associated with ADR per case and pilot overall**

	<b>Additional costs incurred</b>	<b>Cost per case</b>	<b>No. of cases overall</b>	<b>Total additional cost for the pilot</b>
Stage one and two ADR process cases	DTJ time to conduct ENE, issue directions and telephone losing party- <b>£74.25</b>	£75.45	249	£18,787
	Additional administrative time for opt-in cases <b>£1.20*</b>			
Stage one ADR cases	DTJ time to conduct ENE and issue directions- <b>£54.45</b>	£55.65	697	£38,788
	Administrative time for opt-in cases <b>£1.20</b>			
No ADR process cases	Effectively non-opt-in case: administrative time for non-opt-in case - <b>£4.60</b>	£4.60	32	£147
<b>Total additional pilot costs</b>				<b>£57,722</b>

\* Average time per opt-in case was 29 minutes and for non-opt-in cases was 23 minutes. There was six minutes more (£1.20) of administrative time associated with opt-in cases on average.

**Table 3.15: Cost savings achieved by the ADR pilot**

	<b>Costs saved per case</b>	<b>No. of cases overall</b>	<b>Total savings for the pilot</b>
Cases which were withdrawn	First hearing costs - £182.90	39	£7,133
Cases which were lapsed	First hearing costs - £182.90	182	£33,288
Cases which avoided an adjournment	Second hearing costs - £182.90	78	£14,266
<b>Total saved costs</b>			<b>£54,687</b>

### **PDCS time inputs and costs**

PDCS provided data on the time inputs of different staff members involved in the ADR process. From this, it was possible to identify the additional and saved costs from PDCS's participation in the ADR pilot. Table 3.16 summarises this for each outcome. It should be noted that at the start of the pilot process, PDCS staff reviewed all cases that a DTJ was due to consider on a given ADR day. However, given the relatively small number of cases where the DTJ contacted the PDCS as the losing party, this process changed after the initial months of the pilot so that PDCS only previewed cases they knew the DTJ wanted to discuss. The previewing costs presented below refer to the latter process of reviewing only those cases where the PDCS were to be contacted.



**Table 3.16: PDCS cost per outcome**

	<b>PDCS activity</b>	<b>PDCS costs per case associated with route way</b>	<b>Total additional costs</b>	<b>Cost savings per case</b>
1b	Case not suitable due to lack of resources/time: No action by PDCS, business as usual	None	None	None
2	ENE carried out but not suitable for subsequent ADR	None	None	None
3	ENE carried out, appellant likely to win. PDCS previews case in preparation of call from DTJ and takes call from DTJ. PDCS reconsiders case but decision NOT revised or NOT revised in appellants favour	30 mins spent by Decision- Maker Manager previewing case = £5.80 20 mins on call to DTJ and discussing case with Decision-Maker = £3.87 10 mins spent by Decision- Maker discussing case with Decision-Maker Manager = £1.60	£11.27 £349 in total (31 cases)	None
4	ENE carried out, appellant likely to win. PDCS previews case in preparation of call DTJ telephones PDCS, PDCS reconsiders, decision revised in appellants favour, appeal lapses	30 mins spent by Decision- Maker Manager previewing case = £5.80 20 mins on call to DTJ and discussing case with Decision-Maker = £3.87 10 mins spent by Decision- Maker discussing case with Decision-Maker Manager = £1.60 15 min spent by Decision- Maker reconsidering the case and lapsing the case = £2.40	£13.67 £2611 in total (191 cases)	Presenting Officer not attending hearing = £67.24 PO attends 7% of hearings = Saving of £874 (13 cases)
5	ENE carried out, appellant likely to lose. DTJ telephones appellant and suggests action. Appellant withdraws appeal. No action by PDCS, business as usual	None	None	Presenting Officer not attending hearing= £67.24 PO attends 7% of hearings = Saving of £135 (2 cases)
6	ENE carried out, appellant likely to lose. DTJ telephones appellant and suggests action. Appellant provides extra evidence or seeks advice	30 mins by Decision-Maker reconsidering additional evidence = £4.80	£4.80 £264 in total (55 cases)	None
7	ENE carried out, appellant likely to lose. DTJ telephones appellant and suggests action. Appellant does nothing	None	None	None
<b>Totals</b>			<b>£3,224</b>	<b>£2,215</b>

It can be calculated that the additional cost of the ADR pilot to the PDCS had been £3,224. This equated to an average cost of £3.41 per opt-in case. The only element of cost savings identified for the PDCS was the saving associated with the Presenting Officer attending the hearing. However, data provided by PDCS showed that a Presenting Officer only attended seven per cent of complex appeals. Using the figures on the number of opt-in cases where a hearing had been avoided (221), it could be calculated that Presenting Officers attended 15 fewer hearings during the ADR pilot, thus saving £1,009.

### Hidden additional costs

The evaluation identified a number of potential additional costs associated with ADR. Typically these costs were identified through interviews with DTJs or Tribunals Service staff or indicated in the quantitative analysis. Generally, there was insufficient information on the extent and actual costs involved to include them specifically in the cost-effectiveness analysis.

For example, costs would arise where the removal of the need for a hearing was undermined by the cost savings made where the case hearing would address payment of an over generous level of benefit, as in this example:

*“There has been one case where by phoning somebody up and saying your appeal is not going to succeed, and they then saying, well I will withdraw, has actually left in place a decision which I considered was over generous. If the person withdrew their appeal the person would still be left with an award of benefit which in my view no tribunal would ever have given. But it’s very rare that that happens”*

(District Tribunal Judge)

As mentioned above, there were instances where a DTJ issued a direction following ENE to obtain a medical examination report, and subsequently the PDCS or appellant made a decision to withdraw or lapse the case. This had potential cost implications given that the cost to the Tribunals Service was £117.60 on average for each report. Further examination is needed to identify the communication mechanisms between agencies involved in these actions to explore whether any costs could be saved by early notification of withdrawal or lapse to allow the order for medical examination reports to be cancelled. More widely, the costs associated with medical evidence were not included in the cost analysis presented here. Under the changed operating context introduced as a result of the Tribunals and Court Enforcement Act, DTJs and TJs have greater case management powers and more previewing of cases occurs. There were likely to continue to be instances of requests for medical evidence before the hearing as happens through ENE. This pre-hearing cost could not, therefore, be related to ENE alone so it was not included in the cost analysis.

One of the common directions issued following ENE was to convert the hearing from a paper to an oral hearing. This had benefits for enhancing the quality of the evidence presented and an

appellant's chance of achieving a positive outcome. There is a need to note, however, the potential additional costs of the increased number of oral hearings, which potentially could undermine the savings being made by ADR by removing the need for a hearing in other cases. Using the number of cases where a direction was issued to convert the hearing from paper to oral, it can be calculated that 112 additional oral hearings took place, equating to additional costs of £20,485.

ADR was also perceived by one DTJ to impact on the Tribunals Service budget through having to backfill the time when DTJs were involved in ADR activities. Given that DTJs are salaried positions there was an expectation that they would sit on a given number of hearings per week and do a certain amount of interlocutory work. Therefore, there was a recognised need for part-time Tribunal Judges to be brought in to pick up this work that was not completed as DTJs were undertaking ADR. However, this was perceived to be an issue for only one of the pilot areas and as such it might be a cost for some regions if the process was rolled out. Given the absence of robust data on backfilling costs and the potential regional variation, this was not included in the cost assessment of the pilot.

### **Cost-effectiveness of the ADR pilot**

Using the unit costs calculated for different elements of the ADR process and the aspects that could be avoided as an outcome of the ADR process, it was possible to calculate overall costs associated with the different types of cases. When this was multiplied by the number of cases, it provided some information on the overall cost-effectiveness of the operation of the ADR process during the pilot process, as shown in Table 3.17. The table also includes the costs for dealing with the cases had the pilot not been in place, effectively if all cases were dealt with as non-opt-ins and were subject to the traditional appeals process.

In total, the estimated cost to the Tribunals Service of dealing with opt-in cases was £210,076 between September 2007 and January 2009 when the pilot came to an end. This compared to £222,867 for dealing with non-opt-in cases across the same period. This was more robustly examined, however, using unit costs given the different number of opt-in and non-opt-in cases and the different costs incurred. Opt-in cases incurred higher costs to deliver the process than for non-opt-in cases but it generated lower costs as a result of avoiding hearings and adjournments. Taking these savings, together with the overall costs to deliver the process for different types of cases, it was possible to calculate unit costs of £222 per opt-in case and £202 per non-opt-in case. Overall, therefore, the ADR process was less cost-effective than non-opt-in cases. Looking specifically at the different types of opt-in cases, however, it was calculated that cases that were subject to only stage one of the ADR process cost on average £234 per case while those which went through both stages of the ADR process cost on average £188 per case. However, please note that there was no way to identify opt-in cases suitable for stage one and two of the ADR process, without going through stage one of the ADR process.

**Table 3.17: All costs incurred by the ADR pilot**

	Stage one and two ADR process (n=249)	Stage one ADR cases (n=697)	All opt-in cases (n=946)	Non-opt-in cases (n=1103)	Overall pilot scheme costs (n=2081)*	Counterfactual costs (N=2081)
Providing ADR activities	249 cases @ £80.05** = £19,932	697 cases @ £60.25*** = £41,994	Costs for stage one and stage one and two ADR cases = £61,926	Administrative costs: 1,103 cases @ £2.90 = £3,199	£65,125	Administrative costs: 2,081 cases @ £2.90**** = £6,035
First hearing costs (excluding cases which lapsed/were withdrawn)	125 cases @ £182.90 = £22,863	600 cases @ £182.90 = £109,740	Costs for stage one and stage one and two ADR cases = £132,603	1,006 cases @ £182.90 = £183,997	£316,600	1,898 cases @ £182.90 = £347,144
Second hearing costs after adjournment	22 cases @ £182.90 = £4,024	63 cases @ £182.90 = £11,523	85 cases @ £182.90 = £15,547	195 cases @ £182.90 = £35,666	£51,213	368 cases @ £182.90 = £67,307
<b>Total costs incurred</b>	<b>£46,819</b>	<b>£163,257</b>	<b>£210,076</b>	<b>£222,867</b>	<b>£432,938</b>	<b>£420,486</b>
<b>Unit cost per case</b>	<b>£188 per case</b>	<b>£234 per case</b>	<b>£222 per case</b>	<b>£202 per case</b>	<b>£208 per case</b>	<b>£202 per case</b>

\* The total number of cases includes all stage one and both stage opt-in cases, no ADR process cases and non-opt-in cases.

\*\* Includes DJT time to conduct both stages of the ADR process (£74.25) and administrative time (£5.80).

\*\*\* Includes DJT time to conduct stage one of the ADR process-ENE only (£54.45) and administrative time (£5.80).

\*\*\*\* This is calculated using the average administrative costs for dealing with non-opt-in cases (£5.80) minus the time associated with dealing with tasks relating to the pilot exercise, estimated to be around half the total costs (£2.90).

## Post-pilot and future costs

The Tribunals, Courts and Enforcement Act 2007 which came into force in November 2008, introduced a number of operational reforms which had the potential to reduce some of the additional costs incurred in delivering the ADR process during the pilot period. Specifically, changes introduced under the Tribunals, Courts and Enforcement Act had increased the time DTJs spend reviewing cases. As such, the £54.45 cost for the time DTJs spent conducting the ENE, potentially, would not be incurred as an additional cost through the ADR process in the future operation of the process. However, this change in operating context occurred too late in the evaluation of the pilot to allow collection of data to ascertain whether this was a robust assumption. Further analysis will be needed to ascertain the true impact of the TCE Act on DTJ time to provide evidence as to whether this assumption is true. Similarly, this additional time for case review would apply to non-opt-in cases so further analysis will also be required to explore the impact of this preparation time on the issuing of directions for non-opt-in cases and the relative cost of hearings. For the purpose of calculating future costs at this stage, this additional cost for conducting ENE was still included and no adjustments were made to the costs relating to non-opt-in cases.

The fact that the process was being piloted introduced administrative costs which would not be incurred should the process be used more widely. Administrative staff who supported the ADR process also undertook a number of tasks during the pilot period, which were principally related to the pilot evaluation exercise. Specifically, administrative staff collated weekly statistics for the pilot steering group and entered case details onto a spreadsheet, two tasks which would not be undertaken if the ADR process was used more widely. Consultations with ADR administrative clerks revealed a consensus that these two tasks took around half of the total average time they spent supporting the ADR process. Thus the administrative time for supporting the ADR process would be reduced by £2.90 in a post-pilot operating context.

The following sections explore the costs of the ADR process outside of the pilot period and uses them to calculate the potential future costs of the ADR process.

**Table 3.18: Potential costs incurred by the ADR process post pilot**

	<b>Stage one and two ADR process (n=249)</b>	<b>Stage one ADR cases (n=697)</b>	<b>All opt-in cases (n=946)</b>	<b>Non-opt-in cases (n=1103)</b>
Providing ADR activities	249 cases @ £77.15* = £19,210	697 cases @ £57.35** = £39,973	Costs for stage one and stage one and two ADR cases = £59,183	Administrative costs: 1,103 cases @ £2.90 = £3,199
First hearing costs (excluding cases which lapsed/were withdrawn)	125 cases @ £182.90 = £22,863	600 cases @ £182.90 = £109,740	Costs for all opt-in cases = £132,603	1,006 cases @ £182.90 = £183,997
Second hearing costs after adjournment	22 cases @ £182.90 = £4,024	63 cases @ £182.90 = £11,523	85 cases @ £182.90 = £15,547	195 cases @ £182.90 = £35,666
<b>Total costs incurred</b>	<b>£46,097</b>	<b>£161,236</b>	<b>£207,333</b>	<b>£222,862</b>
<b>Unit cost per case</b>	<b>£185 per case</b>	<b>£231 per case</b>	<b>£219 per case</b>	<b>£202 per case</b>

\* Includes DJT time to conduct both stages of the ADR process-ENE review (£54.45) and telephone call (£19.80) and administrative time (£2.90).

\*\* Includes DJT time to conduct the ENE review (£54.45) and administrative time (£2.90).

Using these unit costs in Table 3.18 it was possible to present some findings in terms of the potential future costs of the ADR process should it be rolled out more widely. Appendix D provides the full calculations used to generate the findings. It should be noted that the following findings were based on an assumption that the opt-in rate and profile of outputs for opt-in cases, as found in the pilot, would be replicated in any roll out. However, this is not guaranteed. It is possible that operation of the process in other geographical locations and by different staff may generate alternative outputs. The tendency seen in the pilot for DTJs to place an increasing emphasis through the ENE reviews on strengthening the case evidence and using the telephone call for this wider purpose, if continued would also probably generate a different profile of outputs and thus costs. The costs also did not include the potential hidden costs associated with the ADR process, in particular the costs of backfilling DTJ time when they were undertaking ADR activities, which would obviously increase if the process was used more widely. The following findings are, therefore, for illustration purposes only.

Figures provided by the Tribunals Service suggested that 73,480 DLA appeal cases had been dealt with in the 12-month period between April 2008 and the end of March 2009. Assuming that the opt-in rate to the ADR process found in the pilot exercise (78%) would be similar in any roll out, this equated to 57,314 cases which would be subject to the ADR process. Using the unit costs in Table 3.17, it can be calculated that the total cost for these opt-in cases would be £12.4 million (£12,397,955). This assumed that 25% (14,329 cases) would be subject to the stage one and two of the ADR process costing £2,650,865. In addition, 71% (40,692 cases) would be stage one ADR cases costing £9,399,852 and 3% (1,719 cases) would be no-ADR process cases costing (£347,238). The remaining 22% (16,166 cases) that did not opt-in

would cost £3,265,532. In total, therefore, the cost to resolve appeals for these cases would be £15,660,000. This represented a higher cost than would be incurred if all cases were treated as non-opt-in cases, which would cost £14,840,000. This was principally due to the additional costs incurred in delivering the ADR process.

As above, further analysis is required to explore the assumption that the current operating context as a result of the TCE Act 2007, would reduce the additional costs incurred by removing the ENE review as an additional cost. If this was found to be valid, the overall costs incurred in delivering the ADR process would be significantly reduced. Combined with the costs saved through avoidance of first hearings where cases were lapsed or withdrawn and the avoidance of second hearings where hearings were adjourned, this would probably lead to an overall cost saving where ADR was used when compared to use of the traditional process only. If these assumptions were true, the removal of the £54.45 per case for conducting ENE, would lead to an estimated saving for the calculated 55,021 cases in Appendix four of a potential saving of up to £2 million pounds, compared to the current process.

## 4. Conclusions and recommendations

The following sections consider the findings of the evaluation in respect of the key research questions. As noted earlier, the findings in this report were based on the assumption that opt-out and opt-in cases had similar characteristics. There remained a risk that this was not the case, and therefore findings related to the differences between the two groups should be treated with caution.

### Does ADR result in swifter, more proportionate resolution of cases?

There was some evidence to suggest that ADR resulted in more proportionate resolution of cases in terms of facilitating a fair and appropriate appeal system taking into account the interests of the different parties and the complexity of issues involved. However, the findings were less positive in respect of achieving swifter resolution of cases.

Some 23% of all opt-in cases were resolved without the need for a tribunal hearing. Although 77% of opt-in cases still proceeded to a full hearing in spite of opting into ADR, there was a nine percentage point lower rate of adjournment for cases subject to ENE compared to non-opt-in cases. If this were extrapolated to the current workload of the Tribunals Service, this would equate to 13,182 extra cases which would avoid a hearing and 5,158 extra cases which would avoid an adjournment at first hearing when compared to non-ADR cases.<sup>20</sup>

Achievement of proportionate resolution of cases in terms of presenting a full and properly evidenced case was identified as a key outcome from ADR which supported the prevention of adjournments. In particular, a key 'added value' element of ADR had been the greater than anticipated impact of stage one of the ADR process - the ENE review, plus subsequent directions - which assisted in facilitating a more proactive case management approach. It meant that even when a case did not go through both stages of the ADR process, a significant proportion of cases received further and clearer evidence more quickly as a result of the issuing of directions.

There was mixed evidence from appellants directly about whether ADR had achieved more proportionate resolution of cases. Even in cases where appellants did not achieve the outcome they wanted, there was acceptance by a number of appellants that their case had been dealt with fairly. The DTJ acting as an independent reviewer of the case at the ENE stage was commonly seen as a way of getting a fair and unbiased appeal. For appellants who then spoke to a DTJ, it was perceived to be helpful to have someone to talk the case through with, who provided what appellants typically perceived as useful advice to strengthen their case to help achieve a fair outcome. There was, however, some evidence of appellants who withdrew their case felt that they had not had a fair hearing or proportionate access to

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<sup>20</sup> Based on base of 73,480 cases dealt with by the Tribunals Service between April 2008 and March 2009 (figure supplied by the Tribunals Service in April 2009) and the 78% opt-in rate which was found in the pilot exercise.



justice. They felt resigned to withdrawing the appeal following the DTJ's advice rather than feeling they had been subject to a fair system. Similarly, the examples of cases where the potential losing party, either appellants or the PDCS, had ignored the advice of the DTJ and had subsequently won their appeal or gained a higher settlement, further undermined the achievements of ADR in respect of proportionate resolution of cases.

The findings suggested that the ADR process as a whole did not achieve swifter resolution of cases. Cases that were subject to the ADR process were, overall, resolved more slowly than non-opt-in cases, in an average of 46 working days for all opt-in cases compared to 42 days for non-opt-in cases. The delay in listing opt-in cases until after the ENE had been conducted was likely to account for this being a higher average than that for non-opt-in cases. The removal of the hearing appeared to be the key achievement of the ADR process which impacted on speed of resolution. Those opt-in cases subject to both stages of the ADR process, which in turn generated the highest level of withdrawn and lapsed cases, were resolved in an average of 34 working days. Therefore, faster resolution for all ADR would require a higher proportion of all ADR cases not going to a hearing and/or changes to the listing process for hearings to make it faster.

Overall, therefore, there was evidence to conclude that ADR had achieved more proportionate resolution of cases to an extent but that it had impacted negatively on the speed of resolution of cases across the pilot as a whole. Essentially there was a potential conflict between the two elements of this objective. The benefits generated from stage one ADR cases, in relation to stronger evidenced cases but which still proceeded to a hearing, potentially undermined the achievements of the stage one and two ADR process cases in respect of cost savings and speed, where the need for a hearing was typically avoided.

### **Is ADR cost-effective?**

Overall, the evaluation findings found that the ADR process was less cost-effective than the traditional process when looking at opt-in cases as a whole. In total, the estimated cost to the Tribunals Service of delivering the ADR process to 946 cases during the pilot period was £210,076 between September 2007 and January 2009 when the pilot came to an end, compared to £222,867 for dealing with 1,103 non-opt-in cases across the same period. This equated to an average of £222 per case for all ADR and £202 for non-opt-in cases. This calculation was based on unit costs of £80.05 to deal with cases that were subject to both stages of the ADR process cases, £60.25 for stage one ADR process cases and an additional £182.90 cost per hearing.

Although opt-in cases as a whole incurred higher costs to deliver the process than for non-opt-in cases there was evidence that it generated lower hearing costs overall as a result of withdrawn and lapsed cases and avoiding adjournments. Looking specifically at the types of opt-in cases, it was calculated that cases that were subject to both stages of the ADR

process cost on average £188 per case. The unit cost for this type of case was lower as it was more likely to avoid subsequent hearing and adjournment costs, given the rate of withdrawn and lapsed cases amongst this group.

The Tribunals, Courts and Enforcement Act 2007, which came into force in November 2008, introduced a number of operational reforms which had the potential to reduce some of the additional costs incurred in delivering the ADR process during the pilot period. If this was found to reduce additional DTJ time inputs, the overall costs incurred in delivering the ADR process would be significantly reduced. This, combined with the costs saved through avoidance of first hearings where cases were lapsed or withdrawn, and the avoidance of second hearings where hearings were adjourned would have the potential to lead to an overall cost saving where ADR is used when compared to use of the traditional process only. However, further analysis is required to explore the assumption that the current operating costs would result in a reduction in cost of delivering the ADR process.

The different profile of opt-in cases that was evident through the pilot must be considered in respect of future costs. As the ADR pilot progressed there was an increasing emphasis through the ENE reviews on strengthening the case evidence and ensuring that appellants' cases were presented as strongly as possible, including encouraging appellants to attend an oral hearing where they had previously opted for a paper hearing. This was reflected in the higher proportion of opt-in cases that were identified as stage one ADR process cases. Dealing with these type of cases was less costly than stage one and two ADR process cases as, although they incurred the additional costs of the DTJ conducting ENE, they did not include the costs of the telephone call. The high level of directions issued also served to prevent adjournments at the hearing, thus saving the costs of a second hearing. However, these cases, in turn, did not generate the same level of avoided hearings and consequential costs savings as stage one and two ADR cases. This posed a risk to the cost-effectiveness of the future roll out of the process should this emphasis continue. There would be merit in exploring whether the benefits of the ENE review can be achieved at a lower cost to minimise the impact it has on the overall cost-effectiveness of the process. Further study also needs to be conducted, alongside testing the impact of the TCE Act, of the potential hidden costs associated with ADR, such as the costs incurred in backfilling the normal duties of the salaried DTJs to allow a more rounded picture of the cost-effectiveness of the ADR process to be developed.

### **Were appellants satisfied with the process?**

Appellants' satisfaction with the appeal process was generally linked to the outcome they achieved. Despite this, a number of areas of satisfaction and dissatisfaction with the ADR process as part of the appeal were evident. Overall, appellants who had a telephone call were satisfied with the process for the call, even if they did not agree with what the DTJ was saying. The confidential nature of the call, the sympathetic tone, the independence and manner adopted by the DTJs and the opportunity to simply have someone to talk the

case through with were areas identified by appellants as factors that contributed to their satisfaction. Where dissatisfaction was expressed with the DTJ's telephone call, it tended to be because appellants did not like the advice being given or disliked the impersonality of the process. There were also higher levels of satisfaction with the ADR process as a whole where appellants had wanted to avoid a stressful hearing or the cost and time of travel to a hearing and ADR offered the opportunity to do this.

There were a number of areas for improvement identified that would enhance appellant satisfaction with the ADR process, should it continue. There were instances (32 cases) where it had not been possible for the DTJ to make phone contact with the appellant. For appellants, this made them feel that they had not had the opportunity to actively participate in ADR and they were not in control of their situation. Appellants, likewise, were dissatisfied when they received little further communication following opting into ADR. Where this experience led to appellants feeling disempowered, this posed a risk that appellants would not opt for any future opportunity to use ADR again.

### **Were there any other impacts of ADR?**

A number of more qualitative impacts, which were less tangible than the quantitative outputs, were identified from the ADR pilot. These related to the appellants' experience of the appeal process as well as outcomes generated for staff involved in pilot delivery. For example, impacts were generated in terms of reducing the stress which appellants often reported to feel as a result of participating in the appeal process. This outcome was identified by many appellants as a benefit of the ADR process. This was achieved, in one sense, by giving appellants greater confidence in their case by offering a discussion with an independent and knowledgeable person. This would ultimately benefit the appeals process by encouraging appellants to attend the oral hearing and provide a better quality of evidence.

Tribunals Service staff, DTJs and the PDCS recognised that the ADR process had helped to establish a level of liaison and effective working relations between the different stakeholder organisations which would not otherwise exist as contact between agencies outside of the ADR pilot was limited. Professional development opportunities, particularly for Tribunals Service administrative clerks also emerged from the ADR pilot as the introduction of the ADR pilot created additional administrative tasks. It was clear, however, that the Tribunals Service administrative staff involved in the pilot were carefully selected to ensure effective delivery of the process. The success of any subsequent roll out of the process will be dependent on the provision of a suitable staff training programme to ensure the wider pool of staff are fully prepared to assist the smooth running of the process.

The impact of the ADR pilot on the operation of listings and management of session capacity was a concern that emerged. There was a risk to meeting the performance target for listing times where cases were re-referred for ENE following the request for additional information.

There would be merit in exploring the specific impact of ADR on these performance targets to assess the extent of the impact to inform any necessary strategies or processes to ensure continued performance in this regard and that administrative personnel are not penalised for any delays in listing cases which are being processed via ADR. This may involve exploring the fit between external contractors' timescales for delivering medical examination reports and the listing targets.

### **What impact did ADR have on the PDCS?**

There was a cost implication for PDCS participation in the ADR pilot, estimated to be £3,224, incurred mainly through Decision-Maker Manager time in reviewing the cases in preparation for the call from the DTJ. The only element of cost savings identified for the PDCS was the saving associated with the Presenting Officer attending the hearing; however, this saving was relatively small (£1,009) given that Presenting Officers only attend seven per cent of complex appeals.

There was evidence to suggest that ADR impacted on PDCS in terms of contributing to a stronger sense of shared responsibility between PDCS and the Tribunals Service for the efficient and proportionate conclusion of appeals. This was principally being achieved through the opportunity for PDCS to speak to DTJs through the telephone call, which provided a greater insight into the decision-making process of the judiciary in the appeals process. The direct feedback from the DTJ during telephone calls to the PDCS or alternatively by PDCS staff themselves through the review of cases in preparation for this call was referred to as a both a support and an incentive for general performance improvement and a tool for coaching staff. However, overall, PDCS received fewer calls than expected as a result of ADR, so while useful insights into quality assurance have resulted it was unlikely that ADR has impacted on quality assurance across the wider PDCS operation.

The relatively low number of phone calls made to PDCS could potentially affect their views on ADR should the option to roll out nationally be taken. There could be an issue in ensuring PDCS's continued engagement in the process if the number of cases leading to a phone call to the PDCS continues to be low and the perception persists that the input from PDCS in reviewing cases was not justified given the number of calls. Communication by letter on cases where the call has been made to the appellant or reverted to the non-ADR route could be helpful to maintain PDCS confidence in the process, although this was not a direct suggestion from the PDCS.

### **What do others (non-parties) think of ADR?**

Welfare rights groups overall held positive views on the ADR process, and typically focused on the benefits that the process could yield for appellants, which was reflected in the advice they would give to appellants to encourage opt-in. There was some evidence, however, of some welfare rights groups not being as familiar with the process as others. There was limited evidence that this was impacting negatively on appellant opt-in as the agencies did not have sufficient knowledge to support appellants to make decisions to opt-in. There would

be merit in refreshing welfare rights groups' knowledge should the process continue and ongoing communication provides an opportunity to further raise awareness of the positive outcomes achieved by ADR as a mechanism to enhance continued opt-in. Disseminating information about ADR to the wider agencies involved in advocacy and representation of appellants also has the scope to build a clearer, more appropriate evidence base for appeals to move through the appeals process more quickly and more efficiently. While welfare rights group representatives welcomed the DTJ telephone call as a useful element of the ADR process, there was recognition that for appellants the call from the DTJ could come 'out of the blue'. It was suggested that it was important that in all cases the DTJ suggested that the appellant get some advice before making any decision.

### **Why do some appellants not opt into the ADR process?**

There was evidence that appellants made both active and passive decisions not to opt into the ADR process. The inconsistency of the ADR letter being sent out throughout a substantial period of the pilot's operation was a key reason appellants did not opt-in, as they were simply not given the opportunity. This was subsequently resolved with the responsibility for sending out the letters being transferred to the Tribunals Service. Among appellants who did receive the opt-in letter, the level of understanding of the ADR process and the implications and opportunities it presented for appellants during the appeal process was mixed. This was a key reason why appellants did not opt-in. Although the letter complied with DWP accessibility requirements there was an acknowledgement by some Tribunals Service staff and welfare rights group representatives of a need to improve the explanation of the process articulated through the ADR letter to aid understanding. Rather than a full rewrite, an 'easy read' version of the letter would be helpful, combined with additional information on the options and routes for getting further information to aid active and informed choices to opt-in. Other appellants were identified as making more active and informed choices not to opt-in to the process, specifically as ADR was seen as a less attractive option compared to an oral hearing.

Alternatively, looking at the reasons appellants chose to opt-in, some appellants made active decisions, focused on specific positive benefits of the process, backed by a genuine understanding of the process. Other appellants were prepared to try something new or 'alternative' to the existing system, to speed the process up, to have someone to discuss the case with, to get an independent eye over the case, or, because they felt desperate. In contrast, there were other appellants who had obviously made a passive decision and signed the opt-in form, as their case was going through the ADR process. However, they were not clear that this was what they had done or why. For other appellants the decision was taken by a support worker, carer or welfare rights group representative, potentially undermining the extent to which appellants were able to exercise their choice to opt-in to the ADR process.

Cases where opt-in letters had been signed but where ADR did not take place need some attention should the process continue in order to ensure appellants' confidence in ADR and

the wider appeal process is not undermined. Where no contact was made and no action taken by appellants, these cases could be ill-prepared as a result and possibly more likely to lead to adjournment or negative outcomes for the appellant. An opportunity for good news was also potentially being missed by not providing appellants with any subsequent information about how their case had progressed through the ADR process. There was no direct evidence from appellants about how they would prefer to receive this information but it could be in written form or over the telephone. However, this could be a potentially resource intensive process against which the benefits need to be weighed.

### **Pilot recommendations**

Given the mixed findings concerning the operation and outputs achieved by certain elements of the ADR process, the overall conclusion was that there is a recommendation for a limited roll out into a wider and geographically diverse set of areas. This would need, however, to be accompanied by continuous testing and monitoring before stronger conclusions could be made about potential complete national roll out. This approach would also allow changes to the existing model based on a number of variants and the capacity to deliver ADR on a larger scale, over a longer period to be tested and in the context of the revised operating context following the TCE Act 2007.

There are two parts to the specific recommendations. Firstly, recommendations for improvements or changes to the process as it stands are made, before considering recommendations for developing alternative models for ADR utilising the most effective elements of the process.

If the ADR process were to continue with the model as it was tested in the pilot, the following changes are recommended.

- Changes under the Tribunals and Courts and Enforcement Act 2007, which changed responsibility for sending the pre-hearing enquiry form to the Tribunals Service, appeared to have gone some way to resolve the issue of the inconsistency of the ADR letter being sent out. This is a fundamental point affecting the underlying need for voluntary participation to obtain one of the established advantages of ADR processes generally. Continued monitoring would be needed to ensure this continued to work effectively to provide an opportunity for appellants to make an active and informed choice to participate in the process.
- The evidence from appellants and some staff points to a need to improve the explanation of the process articulated through the ADR letter. There would be merit in further examination of how the letter could be altered to be 'easy read', but still including a simplified description of the initiative and what appellants could expect from the process. There is also a need to make the options and routes for getting further information, other than contacting the Tribunals Service, clearer in the letter to aid active and informed choices to opt-in.

- Dissemination of information about the pilot to local support groups would also serve to provide additional sources of support and information for appellants who may struggle to understand the opt-in letter. The feasibility of a Tribunals Service clerk being available to explain ADR to appellants or welfare rights groups should also be explored.
- The introduction of the ADR pilot has created additional administrative tasks, but removal of the key and most onerous tasks associated with data collection for the pilot exercise leads to more manageable responsibilities for administrative clerks. However, consideration must be given to the selection of staff to support the process if it is continued in any form to ensure the efficient administrative work of the administrative clerks for the pilot is continued.
- The impact of the ADR pilot on the operation of listings and management of session capacity was clear from the pilot exercise. There was a risk to meeting the performance target for listing times where cases are re-referred for ADR following the request for additional information. A strategy would need to be put in place to manage this, particularly if the impact increases due to an increase in number of cases. The filtering of 'suitable' cases will become increasingly important as the flow of cases increases so there would be merit in setting some broad criteria for the filtering of cases to ensure consistency across areas.
- There was evidence from the pilot that at times the DTJs' capacity to manage the flow of ADR opt-in cases had been reached. Careful planning of capacity and workloads will be necessary in any future use of the ADR process to ensure effective delivery.
- Appellants and their representatives widely suggested that the communication process needed to be improved so that they were in touch with what was happening during the ADR process, and so they could track progress on their case. Consideration should be given to suitable communication mechanisms with appellants, particularly those whose cases do not proceed through ADR following opt-in and PDCS to maintain confidence in the process. The feasibility of a closure letter sent to appellants at the end of their cases involvement with the ADR process to explain the progress of their case should be explored, although potentially this would increase costs.
- The positive views of appellants on the opportunity to speak to the DTJ and the impact it has on their cases was undermined by the disempowerment felt by appellants who have missed their opportunity to speak to a DTJ. There would be merit in establishing procedures for cases where appellants are not contacted during the three attempts to ensure that sufficient opportunities are provided for appellants to be actively involved in the ADR process where appropriate.
- Further consideration should be given to route-ways six and seven, where an appellant is contacted as the losing party but does not withdraw. In a proportion of these cases the DTJs were incorrect in their opinion that the appellant would be the losing party as the appellant subsequently went on to achieve a better outcome. Although they were small samples, only four per cent of the total opt-in sample, they need some further study to ensure they do not undermine an appellant's access to justice through a tribunal panel. There was also a risk to the reputation of ADR given the potential for appellants' dissatisfaction if they were contacted to withdraw their case but then win their appeal at a hearing.

If a further testing of the ADR process was pursued, it would also provide the opportunity to test alternative models of ADR that could achieve the benefits of the process while addressing some of the areas for improvement or less effective parts of the process. These alternatives may include the following.

- The evidence from DTJs suggests that conducting ENE for first claims tends to be quicker as there was less evidence or history and it tends to be a single-issue case. There would be merit in focusing any roll out of the ADR process on these cases. This would minimise the time required by DTJs in previewing cases. Procedures could also be drawn up to give DTJs guidance on how long to engage with a file.
- One option could be to roll out the initial light touch review of cases, which was used as a mechanism in the pilot to identify cases which were suitable for ENE and subsequent ADR activities. This light touch review would serve to quickly identify cases which are suitable for stage one and two of the ADR process. It could efficiently identify where directions could usefully be issued to enhance the case preparedness as it proceeds to a hearing, thus retaining the benefits of the ENE element of the process in terms of strengthening the case evidence. Applying this only to new claims would serve to ensure efficient completion of this review, given the shorter time typically required to review these cases. If broad criteria could be set for the identification of suitability of cases and circumstances where directions could be issued, consideration could be given to this task being undertaken by staff other than members of the judiciary which would reduce the costs associated with task.
- The contacting of the losing party element of the process, should this be retained, leads to cases being withdrawn or lapsed which has clearly been shown to generate the greatest cost savings from the ADR process. Alternative models, such as using written communication or facilitating contact through a representative organisation could be utilised for contacting the losing party. The use of written communication would overcome the issues identified in the pilot with contacting appellants 'out of the blue'. However it would not be appropriate for those with literacy needs, hence the need for involvement by representatives. It would also address the concerns on the part of the PDCS about the low number of calls received in the pilot and their relative input in terms of reviewing cases. Receiving the outcome of the review in a written form means that their review of cases could take place at a time convenient to them. There would, however, be a need to explore the potential impact this approach would have on staff time in producing and sending out the written communication which would need to be weighed against the costs of the DTJ time used in conducting this task.
- There were also clear benefits through the contact with appellants in terms of clarifying points of law, and encouraging appellants to attend the appeal hearing in person which alternatively achieves better-evidenced hearings. This could, however, be done by someone other than DTJ to minimise the costs associated with this task.



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# Appendix A: Evaluation research key and sub-questions

## Key Research Questions

<b>Does ADR result in swifter, more proportionate resolution of cases?</b>
How many cases were resolved without the need for a tribunal hearing?
How many cases proceeded to a full hearing in spite of the application of ADR?
What is the impact of the pilot on appeal clearance time/case duration? Are cases where an ADR has been applied resolved faster overall compared to cases going through normal SSCSA processes?
Where cases went to a full hearing after the ADR, were there fewer adjournments (e.g. resulting from better preparation)?
How did this vary according to the different types of appellants (e.g. disabling condition, demographics)?
How accurate was the DC's advice (how well did the DC's opinion match the outcomes of appeals that went to full hearing)? Where the DC's opinion was different to that of the panel at a subsequent hearing, why was that the case (e.g. new evidence etc)?
<b>Is ADR cost effective?</b>
How much did it cost to provide ADR services (e.g. in judicial and administrative time)?
How much (tribunal) money was saved through ADR (i.e. through the reduction in tribunal hearings/adjournments and associated costs)?
What was the additional cost of conducting ENEs where the DCs advice was not acted upon?
Did ADR provide an overall cost benefit for SSCSA?
<b>Were appellants satisfied with the process?</b>
What did appellants think of Early Neutral Evaluation? Were they content with it as a means of resolving their appeal?
Did the appellant know why they were contacted by the DC (i.e. did they know what they had entered into and what this would mean for them)?
How does their satisfaction with the various elements of the process (including with the information they received) compare to appellants going through normal SSCSA processes?
How did appellants feel about the change/opportunity to discuss the case with a DC?
What did they think of the documents/information they were given on ADR?
<b>Were there any other impacts of ADR?</b>
Did ADR encourage appellants to seek advice/provide better evidence which resulted in a successful appeal?
What impact did the letter offering ADR have on the timely return of the TAS 1 form (i.e. on the proportion of strike outs and subsequent reinstatements, and the resulting impact on the customer and the SSCSA of this)?
What effect did ADR have on listing and management of session capacity as a result of any reductions in hearings?
What other benefits or drawbacks were there of ADR?
<b>What impact did ADR have on the DCS?</b>
How much time did DCS additional time did decision-makers spend on cases as a result of ADR?
Was there any time/cost saving to the DCS?
What did DCS decision-makers think of the process?
<b>What do others (non-parties) think of ADR?</b>
What do representatives and user-groups (who have contact with the pilot) think of ADR?
What do TS staff (District Chairmen, administrative staff involved in the pilot) think of the process?
<b>Why do some appellants not opt into the ADR process?</b>

## Appendix B: Methodological Annex

### Methodology

The following sections detail the methodology for the evaluation of the Alternative Dispute Resolution pilot.

#### Inception, development and familiarisation

##### Familiarisation

At the outset of the study, ECOTEC staff undertook a familiarisation visit to the Sutton pilot. This involved meeting key staff and exploring the processes involved including looking at files and observing a Tribunal in practice.

##### Engaging an expert advisor

ECOTEC proposed to engage an expert advisor throughout the evaluation. This role involved briefings and peer review of research tools, analysis and all report outputs. Professor Trevor Buck from De Montfort University was approached and ECOTEC attended an initial meeting with Professor Buck in November 2007 where he agreed to act as an expert advisor for the evaluation.

##### Briefing meeting

During the inception stage, ECOTEC organised a briefing meeting involving presentations by Professor Buck and the Tribunals Service Regional Chairman, Jeremy Bennett. This briefing focused on the background and context of ADR and specifically ENE approaches. The briefing was attended by all evaluation staff, key contacts from MoJ and the Tribunals Service and Professor Buck. The meeting ensured all staff were sufficiently briefed to facilitate interviews and undertake data analysis.

##### Design of data collection tools

Customised topic guides for use in the interviews were designed for:

- opt-in appellants and representatives;
- non-opt-in appellants and representatives;
- PDCS staff;
- members of the Judiciary;
- Tribunals Service administrative staff;
- user/representative groups.

##### Pilot appellant interviews

As part of the inception stage, nine pilot appellant interviews (five opt-in and four non-opted-in appellants) were conducted in Sutton during December 2007 and January 2008. These interviews allowed piloting of the recruitment and interview tools. Following these interviews there was a need to revise the topic guides to enhance the interview flow in certain parts.

## Quantitative data analysis

The principal task to answer the key research question of whether ADR results in swifter, more proportionate resolution of cases involved manipulation and analysis of spreadsheets, which were designed and completed for the purpose of the pilot. These spreadsheets were maintained by Tribunals Service administration staff at each pilot site. The spreadsheet included fields to gather information on key stages in the progress of a case through the appeal process. Separate spreadsheets were completed for opt-in and non-opt-in cases to allow a comparison element.

## Sample size

To ensure the sample of cases on the spreadsheets was of sufficient size, MoJ and the Tribunals Service agreed to extend the pilot and evaluation to January 2009. From August 2008, the pilot was also rolled out in two additional areas – Cardiff and Bexleyheath – within the existing pilot regions.

Copies of the spreadsheets were supplied at key points of the evaluation to inform the production of report outputs. Given the ongoing nature of the cases, not every case within the spreadsheets had sufficient information to undergo intensive analysis at the time the spreadsheets were provided. A system was devised to select a sample for analysis, essentially identifying and labelling cases that had concluded. Those which were not concluded at the time of the analysis were excluded.

## Analysis approach

Analysis of the data focused around the seven measurable outcomes from the pilot and process involved. The analysis process involved labelling each case with an outcome type by identifying a number of key milestones and activities within each case.

There was a need to combine some route-ways as the information contained on the spreadsheet did not allow for their differentiation. For example, the spreadsheet did not record any information to distinguish whether the PDCS reconsidered their decision and if so whether it was not in an appellant's favour. Additional data were also needed to distinguish whether an appellant was happy or not with a revised decision following the case lapsing and whether they decided to appeal again. The other outcomes where the ADR process potentially could have influenced the speed or quality of the process were examined separately.

Once an outcome label had been attached to a case, detailed analysis was then undertaken using Microsoft Excel to interrogate the data using formulas and sorting mechanisms. A detailed approach to the quantitative analysis was agreed between MoJ, the Tribunals Service and ECOTEC. Broadly, the first part of the analysis focused on counts of cases with different milestones and activities associated with the opt-in ADR and non-opt-in process, with cross tabulations calculated for different characteristics of cases. The second strand

of analysis focused on whether ADR resulted in swifter progress of a case. Specifically, formulas were generated to calculate the average working days between key milestones/activities. The final strand of the analysis was establishing a way in which to measure the extent of change in decisions and where within the ADR process the largest change in decisions were made. Two approaches were taken to establishing this.

- **Identifying 'change' in each appeal** – this was done by looking at each appeal and allocating an up/down or same code to each for the mobility and care component to represent change between the PDCS decision, DTJ decision and to the decision of the Tribunal.
- **Establishing the extent and nature of change** – a system was devised whereby the difference between each decision was allocated a number from minus three to three. A score of zero would indicate no change in decision (for example, between the PDCS decision and the evaluation decision), a one would indicate that the decision had gone up one level (e.g. zero to lower rate) etc., with negative figures denoting a decrease. An average was then calculated, the closer the average score between decisions was to zero, the more similar the decision between the different points.

This analysis took place at three points: in June 2008 to coincide with the interim report; in October 2008 to provide an update on the performance of the pilot; and in January 2009 to coincide with providing data for the final report.

### Qualitative interviews

A key strand of data collection for the evaluation was qualitative research with staff, participants and stakeholders involved in the ADR process. These interviews sought to gather their views and perceptions of the process and impact of the pilot from different perspectives.

### Interviews with Tribunals Service staff and members of the Judiciary

Interviews were undertaken with administration and management staff from the Tribunals Service who were engaged in delivering the pilot in each area, including the new areas – Cardiff and Bexleyheath – where the pilot was rolled out to in August 2008. A total of seven face-to-face interviews were undertaken. The same management staff were responsible for overseeing the operation of ADR in the additional areas once the pilot was rolled out, as they typically had operational responsibility for wider Tribunals Service regions. Additional interviews were undertaken to include the administration clerks responsible for the new areas when they came on stream.

Face-to-face interviews were also conducted with four District Tribunal Judges in total, two from each pilot region, who were responsible for conducting ENEs. Interviews were conducted initially with DTJs working in the Sutton area in April 2008, and additional telephone interviews were conducted in January 2009 to capture additional information about

the impact of the Bexleyheath area coming on stream. The timing of the interviews with DTJs responsible for Bristol and Cardiff, in November 2008, meant information about both areas could be captured.

### **Interviews with Pension, Disability and Carers Service representatives**

The evaluation involved four interviews with PDCS staff. These interviews were predominantly conducted on a face-to-face basis, but telephone interviewing was used for one interview as it proved more cost-effective given the geographical base of PDCS staff.

### **Interviews with appellants**

A key strand of the evaluation was conducting interviews with appellants to gather information on their satisfaction with the process and the impacts of ADR. The researchers were aware, however, of the potential vulnerability of these individuals and used suitable approaches in undertaking these interviews.

Introductory letters played a key role in encouraging and securing informed participation in the research, something that is particularly important when researching vulnerable groups. For the purpose of this project, the researchers developed an 'easy read' introductory letter for the project, outlining its aims and objectives, what help they needed from appellants, explaining that the interviews would be confidential and spelling out what this meant in terms of the storage and use of data. The researchers also encouraged participation by offering interpretation and support services where required, for example, making appellants aware that they could have an advocate present at the interview with them, for example a social worker, carer or other representative. Financial incentives were offered to appellants to thank them for their time and involvement.

The original sample profile focused on conducting 40 interviews with appellants in each pilot area to include both those who had opted in for the ADR process and a smaller sample of those who had not opted in. Over the course of the evaluation this sample profile evolved to include a small number of appellants from Cardiff and Bexleyheath. Some targeted recruitment within the opt-in sample also became necessary as it became clear that there was a smaller than expected sample of appellants who experienced both stages of the ADR process and were contacted by DTJs. Within this sample the researchers sought to include different types of appellant, for example by disabling condition or demographics, although no set quotas were set and given the qualitative nature of the interviews, findings were not stratified by appellant type.

### **Interviews with welfare rights groups**

This element of the qualitative fieldwork focused on gathering the views from welfare rights groups or support organisations that represent or work with appellants through the appeal process. The researchers conducted eight interviews in total.

## Unit cost analysis

A key objective of the evaluation was focused on assessing the cost-effectiveness of the pilot. The researchers' approach to this was the development of average unit costs for different elements or key staff in the pilot, based on fixed costs or calculations based on time inputs. These were then used to produce average costs associated with each route to the seven outcomes of the process based on a sample of cases to allow analysis of any cost savings or additional cost associated with the ADR process compare to the traditional appeals process.

Average unit costs were developed for the following aspects of the ADR process.

Costs	Availability for analysis
Costs of hearing (venue/medical and disability member fees)	Available from Tribunals Service Finance Team. Average unit costs developed to allow average cost for opt-in/ opt out route ways, taking into account increase or reduction in adjournments.
Costs of administrative time inputs	A time sheet was used to gather information on administrative time inputs to develop an average cost for administrative associated with opt-in, opt out route ways.
Costs of DTJ time inputs (doing ENE, making calls to PDCS/appellants, attending the hearing)	Time inputs recorded on pilot spreadsheet to develop an average cost for opt-in, opt out route ways.
Costs to the appellant (attending the hearing etc)	Information on average appellant reimbursable costs for attending a hearing, available from Tribunals Service Finance Team.
PDCS costs	Provided by PDCS

# Appendix C: Full quantitative results

## Quantitative results

### Statistical reliability

The sample tolerances that apply to the percentage results in this report are given in the table below. This table shows the possible variation that might be anticipated because a sample, rather than the entire population, was examined. As indicated, sampling tolerances vary with the size of the sample and the size of the percentage results.

**Table C.1: Approximate sampling tolerances applicable to percentages at or near these levels**

Size of sample on which results are based	10% or 90% ±	30% or 70% ±	50% ±
100 interviews	6	9	10
200 interviews	4	6	7
300 interviews	3	5	6
400 interviews	3	5	5
500 interviews	3	4	4
600 interviews	2	4	4
700 interviews	2	3	4
800 interviews	2	3	4
900 interviews	2	3	3
1,000 interviews	2	3	3

For example, where 50% of the population in a sample of 500 respond with a particular result, the chances are 95 in 100 that this result would not vary by more than four percentage points, plus or minus, from a complete coverage of the entire population using the same procedures.

Tolerances are also involved in the comparison of results from different parts of the sample. A difference, in other words, must be of at least a certain size to be considered statistically significant. The following table is a guide to the sampling tolerances applicable to comparisons.



**Table C.2: Differences required for significance at or near these percentages**

Size of sample on which results are based	10% or 90% ±	30% or 70% ±	50% ±
100 and 100	8	13	14
100 and 200	7	11	12
100 and 300	7	10	11
100 and 400	7	10	11
100 and 500	7	10	11
200 and 200	7	10	11
200 and 300	5	8	9
200 and 400	5	8	9
200 and 500	5	8	8
300 and 300	5	7	8
300 and 400	5	7	8
300 and 500	4	7	7
400 and 400	4	6	7
400 and 500	4	6	7
500 and 500	4	6	6
1,000 and 1,000	3	4	4

### Results by pilot area

The following tables complement the overall findings presented in the main body and refer to the findings for the different pilot areas.

**Table C.3: Total cases and sample sizes available for analysis per pilot area**

	Opt-in cases		Non-opt-in cases	
	Total flow of cases:		Total flow of cases:	
Sutton	Total flow of cases:	541	Total flow of cases:	643
	Sample for analysis:	432	Sample for analysis:	593
Bristol	Total flow of cases:	488	Total flow of cases:	345
	Sample for analysis:	321	Sample for analysis:	226
Cardiff	Total flow of cases:	318	Total flow of cases:	283
	Sample for analysis:	136	Sample for analysis:	148
Bexley Heath	Total flow of cases:	180	Total flow of cases:	200
	Sample for analysis:	89	Sample for analysis:	136

**Table C.4: Profile of opt-in cases**

	Stage one and two ADR Process (ENE & telephone call to losing party)		Stage one ADR Process (ENE only)		No ADR process (Insufficient resources/lack of time)		Total opt-in cases	
Sutton	168	(39%)	248	(57%)	16	(4%)	432	(100%)
Bristol	47	(15%)	265	(83%)	9	(3%)	321	(100%)
Cardiff	10	(7%)	123	(90%)	3	(2%)	136	(100%)
Bexleyheath	24	(27%)	61	(69%)	4	(4%)	89	(100%)
<b>Total All Areas</b>	<b>249</b>		<b>697</b>		<b>32</b>		<b>978</b>	

**Table C.5: Profile of telephone calls made by DTJs to appellants and PDCS**

	Total stage one and two ADR cases		Appellant contacted by DTJ (Proportion of stage one and two ADR cases where contact made)		Representative contacted by DTJ (Proportion of stage one and two ADR cases where contact made)		PDCS contacted by DTJ (Proportion of cases where contact made)	
Sutton	168	(100%)	49	(29%)	23	(14%)	96	(57%)
Bristol	47	(100%)	18	(38%)	12	(26%)	17	(36%)
Cardiff	10	(100%)	3	(30%)	0	(0%)	7	(70%)
Bexleyheath	24	(100%)	6	(25%)	3	(13%)	15	(63%)
<b>Total all areas</b>	<b>249</b>		<b>76</b>		<b>38</b>		<b>135</b>	

**Table C.6: Opt-in cases by outcome**

Outcome	Sutton		Bristol		Cardiff		Bexley-heath		Total opt-in cases all areas	
	Number of cases/Proportion of total opt-in cases in area									
1 ENE not carried out insufficient resources - hearing as normal	16	(4%)	9	(3%)	3	(2%)	4	(4%)	32	(3%)
2 Not suitable for ADR or insufficient evidence to identify losing party, hearing as normal	204	(47%)	201	(63%)	109	(80%)	44	(49%)	558	(57%)
3 PDCS losing party but decision not revised	20	(5%)	8	(3%)	2	(1%)	1	(1%)	31	(3%)
4 PDCS losing party and appeal lapses	110	(25%)	44	(14%)	15	(11%)	22	(25%)	191	(19%)
5 Appellant losing party and appellant withdraws	16	(4%)	18	(6%)	3	(2%)	5	(6%)	42	(4%)
6 Appellant losing party, further evidence received but hearing as normal	24	(6%)	30	(9%)	0	(0%)	1	(1%)	55	(6%)
7 Appellant losing party but no action taken, hearing as normal	42	(10%)	11	(3%)	4	(3%)	12	(13%)	69	(7%)
<b>Total cases per area</b>	<b>432</b>	<b>(100%)</b>	<b>321</b>	<b>(100%)</b>	<b>136</b>	<b>(100%)</b>	<b>89</b>	<b>(100%)</b>	<b>978</b>	<b>(100%)</b>

**Table C.7: Opt-in and non-opt in outcomes by area**

	Sutton		Bristol		Cardiff		Bexleyheath	
	Non-opt-in	Opt-in*	Non-opt-in	Opt-in*	Non-opt-in	Opt-in*	Non-opt-in	Opt-in*
Withdrawals	22 (4%)	15 (4%)	13 (6%)	17 (6%)	10 (7%)	2 (2%)	2 (1%)	5 (6%)
Lapses	34 (6%)	110 (26%)	11 (5%)	38 (12%)	3 (2%)	15 (11%)	2 (1%)	19 (22%)
Cases proceeding to a hearing & resolved	537 (90%)	291 (70%)	202 (89%)	257 (82%)	135 (91%)	116 (87%)	132 (98%)	61 (72%)
<b>Total resolved cases</b>	<b>593 (100%)</b>	<b>416 (100%)</b>	<b>226 (100%)</b>	<b>312 (100%)</b>	<b>148 (100%)</b>	<b>133 (100%)</b>	<b>136 (100%)</b>	<b>85 (100%)</b>

\* Based on stage one and stage one and two ADR cases, excludes no-ADR process cases.

**Table C.8: Proportion of cases adjourned at the first hearing**

	Stage one and two ADR Opt-in cases (Outcome 3-10 (N=249 cases)		Stage one ADR Opt-in cases (Outcome 2 (N=697 cases)		All ADR Opt-in cases (N=946 cases)		Non-opt in cases (N=1103 cases)	
Sutton	15	(9%)	19	(8%)	34	(8%)	120	(20%)
Bristol	7	(15%)	38	(14%)	45	(15%)	41	(18%)
Cardiff	0	(0%)	6	(5%)	6	(5%)	19	(13%)
Bexleyheath	0	(0%)	6	(10%)	6	(7%)	15	(11%)
<b>Total for All Areas</b>	<b>22</b>	<b>(9%)</b>	<b>63</b>	<b>(9%)</b>	<b>85</b>	<b>(9%)</b>	<b>195</b>	<b>(18%)</b>

**Table C.9: Nature of directions issued in all opt-in cases at ENE stage**

	Medical examination /GP Report		Convert from paper to oral hearing		Obtain further evidence		Seek advice		Other		Total cases where directions issued	
Sutton	76	(52%)	32	(22%)	19	(13%)	2	(1%)	17	(12%)	146	(100%)
Bristol	64	(36%)	55	(31%)	13	(7%)	0	(0%)	47	(26%)	179	(100%)
Cardiff	24	(44%)	18	(33%)	3	(5%)	0	(0%)	10	(18%)	55	(100%)
Bexleyheath	12	(60%)	7	(35%)	1	(5%)	0	(0%)	0	(0%)	20	(100%)
<b>Total All Areas</b>	<b>176</b>	<b>(44%)</b>	<b>112</b>	<b>(28%)</b>	<b>36</b>	<b>(9%)</b>	<b>2</b>	<b>(1%)</b>	<b>74</b>	<b>(19%)</b>	<b>400</b>	<b>(100%)</b>

**Table C.10: Profile of opt-in cases where directions issued and their outcomes per area**

	Withdrawal		Lapse		Hearing		Adjournment at first hearing		Total cases where directions issued	
Sutton	0	(0%)	32	(21%)	93	(64%)	21	(%)	146	(100%)
Bristol	11	(6%)	24	(13%)	112	(63%)	32	(18%)	179	(100%)
Cardiff	1	(2%)	7	(13%)	45	(82%)	2	(4%)	55	(100%)
Bexleyheath	1	(5%)	9	(45%)	10	(50%)	0	(0%)	20	(100%)
<b>Total All Areas</b>	<b>13</b>	<b>(3%)</b>	<b>72</b>	<b>(18%)</b>	<b>260</b>	<b>(65%)</b>	<b>55</b>	<b>(14%)</b>	<b>400</b>	<b>(100%)</b>

**Table C.11: Overall average time taken to resolve opt-in cases-working days**

	ADR cases (all)	Stage one and two ADR process (Outcome 3-10)	Stage one ADR process (Outcome 2)	Non-ADR cases
Sutton	36	30	39	33
Bristol	56	50	59	55
Cardiff	51	28	53	46
Bexleyheath	39	29	44	33
<b>Average for all areas</b>	<b>46</b>	<b>34</b>	<b>49</b>	<b>42</b>

**Table C.12: Average time for opt-in cases between start of appeal, listing and case resolution-directions and no directions**

	Average time between start of appeal and appeal listing (All cases)	Average time between start of appeal and appeal listing (Cases with directions issued)	Average time between start of appeal and case resolution (All cases)	Average time between start of appeal and case resolution (Cases with directions issued)
Sutton	13	20	36	48
Bristol	20	25	56	61
Cardiff	29	39	50	60
Bexleyheath	15	30	39	49
<b>Average for all areas</b>	<b>19</b>	<b>29</b>	<b>45</b>	<b>55</b>

**Table C13: Average time for achieving outcomes - working days**

		Pre-enquiry form received and the date withdrawn	Pre-enquiry form received and the date appeal lapsed	Pre-enquiry form received and case resolution at 1st hearing	Case resolution at 2nd hearing	Case resolution at 3rd hearing
Sutton	All Opt-in	35	22	37	65	75
	Non-opt- in	35	42	25	62	99
Bristol	All Opt-in	52	32	56	95	98
	Non-opt-in	63	49	47	103	81
Cardiff	All Opt-in	27	29	54	92	N/A
	Non-opt-in	31	22	44	71	69
Bexleyheath	All Opt-in	36	26	42	56	N/A
	Non-opt-in	19	32	30	64	N/A
<b>Average all areas</b>	<b>All Opt-in</b>	<b>37</b>	<b>27</b>	<b>47</b>	<b>77</b>	<b>86</b>
	<b>Non-opt- in</b>	<b>37</b>	<b>36</b>	<b>36</b>	<b>75</b>	<b>83</b>

## Appendix D: Future cost calculations

### Future cost calculations

The calculations associated with potential future costs of the ADR process if it were rolled out more widely are shown below. The calculations are based on the following assumptions and data.

- Some 73,480 DLA appeal cases are dealt with in a 12-month period.
- The rate of cases opting into the pilot would be 78% (as in the pilot).
- The profile of opt-in cases would be the same as in the pilot (25% stage one and two ADR cases, 71% stage one ADR cases, 3% no ADR process cases).
- Net unit costs for dealing with the different types of cases are: stage one and two ADR cases – £185, stage one ADR cases – £231 and, non-opt-in and no ADR process cases – £202.

**Table D1: Future cost calculations**

Calculation	Assumptions	Calculation results
Number of opt-in and non-opt-in cases	Total number of DLA cases: <b>73,480</b>	$73,480/100*78 = 57,314$ cases would be subject to the ADR process
	Proportion of opt-in cases: <b>78%</b>	$73,480/100*22 = 16,166$ cases would be non-opt-in cases and subject to the 'normal' process
	Proportion of non-opt-in cases: <b>22%</b>	
Number of different type of ADR opt-in cases	Stage one and two ADR process: <b>25%</b> of total no. of opt-in cases	$57,314/100*25 = 14,329$ <b>Stage one and two ADR cases</b>
	Stage one ADR process: <b>71%</b> of total no. of opt-in cases	$57,314/100*71 = 40,692$ <b>Stage one ADR cases</b>
	No-ADR process: <b>3%</b> of total no. of opt-in cases	$57,314/100*3 = 1,719$ <b>No ADR process cases</b>
Cost of different type of ADR opt-in and non-opt-in cases	Stage one and two ADR process: <b>14,329 cases, net unit cost of £185</b>	Stage one and two ADR: $14,329*£185 = £2,650,865$
	Stage one ADR process: <b>40,692 cases, net unit cost of £231</b>	Stage one ADR: $40,692*£231 = £9,399,852$
	No-ADR process: <b>1,719 cases, net unit cost of £202</b>	No-ADR: $1,719*£202 = £347,238$
	Non-opt-in cases: <b>16,166 net unit cost of £202</b>	Non-opt-in: $16,166*£202 = £3,265,532$
Total costs - with and without the ADR process		Total all case types = <b>£15,663,487</b>
	If all cases dealt with using the 'normal' process: <b>73,480 DLA cases, unit cost £202</b>	Total cost assuming use of ADR process = <b>£15,663,487</b> Total costs assuming all cases dealt with in 'normal' process = <b>£14,842,960</b>

## **Ministry of Justice Research Series 02/10**

### **Evaluation of Early Neutral Evaluation Alternative Dispute Resolution in the Social Security and Child Support Tribunal**

This study was commissioned to evaluate an Early Neutral Evaluation (ENE) pilot in the Social Security and Child Support Tribunal during September 2007 to January 2009. The evaluation sought to establish the cost effectiveness of ENE and whether it resulted in swifter, more proportionate resolution of cases, appellant satisfaction and the impact on and views of stakeholders. The pilot dealt with 2,081 cases to conclusion, of which 978 opted in. The other 1,103 cases involved cases where the claimant chose not to opt into ENE (non opt-in cases). For those who opted in there were two stages of the ENE process:

Stage one - where cases were read by a District Tribunal Judges (DTJ) who assessed the likely outcome of the appeal based on the paperwork (697 cases)

Stage two - where the DTJ then contacted the likely losing party to discuss the case, what decision they thought the tribunal was likely to make and why (249 cases). If there was no clear losing party the cases went forward for hearing in the normal way.

The report presents the findings of analysis of administrative data, development of unit costs for different elements of the pilot, and interviews with the parties involved. The pilot found that opt-in cases overall had a lower rate of hearings and adjournments than non-opt-in cases. However, when comparing all opt-in to non-opt-in cases the ENE process was not more cost effective and cases took longer to resolve.

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E-mail: [research@justice.gsi.gov.uk](mailto:research@justice.gsi.gov.uk)

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