

## **Early Neutral Evaluation in Tribunal Appeals (2010)**

This page contains an outline of this research, and a summary of the key findings. Details of how to find the full report can be found at the bottom of the page.

### **“Evaluation of Early Neutral Evaluation ADR in the SSCS Tribunal: Summary to Ministry of Justice Research Series 2/10”**

#### **What is it about?**

The report is an evaluation of a pilot scheme offering early neutral evaluation (ENE) of tribunal appeals. The purpose of the pilot was to identify the success and cost-effectiveness of using ENE to resolve administrative appeals without the need for a full tribunal hearing.

The pilot focused on appeals involving Disability Living Allowance (DLA) and Attendance Allowance (AA). It was conducted between September 2007 and January 2009 in four pilot areas (Sutton, Bristol, Cardiff and Bexleyheath).

#### **Who did it?**

The evaluation was carried out by ECOTEC Research and Consulting in partnership with Professor Trevor Buck of De Montfort University.

The evaluation involved data analysis of appeals as well as 107 interviews.

#### **About the pilot**

The pilot involved an initial opt-in stage, at which appellants in cases identified as suitable for the pilot (such as where one side showed clear weaknesses), were offered the ENE option. At this stage 78% of appellants sent a letter inviting them to opt in did so.

This ENE was carried out in two stages

- At Stage 1, a District Tribunal Judge assessed the appeal papers to determine the likely outcome at hearing. If the judge was able to form a view, the case proceeded to Stage 2. If not, the case proceeded to hearing, and the same judge did not serve on the panel hearing the case.
- At Stage 2, the judge contacted the party identified as the potential ‘loser’ to advise them and invite them to reconsider. (In just over half of these, the calls were to the Pension, Disability and Careers Service (PDCS) (54%) as the ‘losing’ party, and slightly less than half to the appellant (46%) as the ‘losing party’.) These calls resulted in the appeal being withdrawn or lapsing, or proceeding to hearing. In some cases proceeding to hearing the judge issued directions – such as suggesting a medical report is needed or that the appeal should be heard in person rather than on paper.

There were three groups of opt-in cases: those that went through stages 1 and 2; those that went through only stage 1; and those that went through neither.

- One-quarter of the cases that opted in (249) proceeded to stages 1 and 2. Of these: 50% went to hearing; 43% lapsed; and 7% were withdrawn.
- Nearly three-quarters (697 cases) proceeded only to stage 1, because the outcome was unclear or the judge could not identify a ‘losing’ party.

- A very small percentage (32 cases, or 3%) went to neither stage 1 nor stage 2 because of lack of time or resources.

### **Key findings**

About one-quarter of cases that opted in (23%) were resolved without the need for a hearing. This suggests that the use of ENE reduced the number of appeals going to hearing because it is significantly higher than the usual rate of withdrawn or lapsed appeals. (In those cases that did not opt in, the percentage of appeals closed without a hearing was much lower, at 9%.)

Although the majority of all the opt-in cases (77%) proceeded to hearing, there were benefits to stage 1 of the ENE. Of the 249 cases subjected only to this initial assessment, 42% had directions issued, which led to clearer evidence for the tribunal panel to consider. The evaluation found that appellants generally liked the opportunity to talk through their case with a judge, although there was also dissatisfaction with the advice given and with the impersonality of the call.

### **Time and cost savings**

The evaluation found that the use of ENE did not achieve swifter resolution of cases. Cases that went through one or both stages of the process resolved in an average of 46 working days, compared with 42 for those cases that did not opt in.

The use of ENE was found to be less cost effective than the traditional process – the evaluation found that cases subject to one or both stages of ENE had an average unit cost of £222, compared with £202 for the non-opt-in cases.

### **Other benefits**

Less tangible impacts were identified, such as the satisfaction level of appellants who welcomed the chance to talk through their case. The evaluation also identified positive outcomes for staff involved in the pilot in terms of professional development, and a stronger sense of shared responsibility between the PDCS and the Tribunals Service.

Appellant advisers were found to hold positive views of the pilot process and encouraged appellants to opt-in.

### **Concerns**

The evaluation report states that achieving proportionate dispute resolution was identified as a key outcome. How this is defined is not clear. The report suggests that for the tribunal, the fact that 23% of cases were resolved without a hearing, and that adjournment rates were lower for those cases subject to ENE, indicates more proportionate resolution.

However, for appellants the picture is much more mixed. There were examples where the appellant proceeded to hearing despite the judge's advice to withdraw, and subsequently won their appeal and gained a higher settlement. Such examples, in the words of the researchers, 'undermined the achievements of ADR in respect of proportionate dispute resolution'.

In spite of these concerns, the report recommends a limited roll-out of the pilot, accompanied by ongoing testing and monitoring.

**Key website:** [Early neutral evaluation in the SCS Tribunal](#)