



Information Rights

The appeal process in England & Wales



Background

- Information Tribunal came into operation on 1 January 2005
- Transferred to the First-tier Tribunal (Information Rights) in the General Regulatory Chamber on 18 January 2010
- Workload has steadily increased – projected appeals in 2011/12 is 250-300 (roughly 25% of IC's Decision Notices)



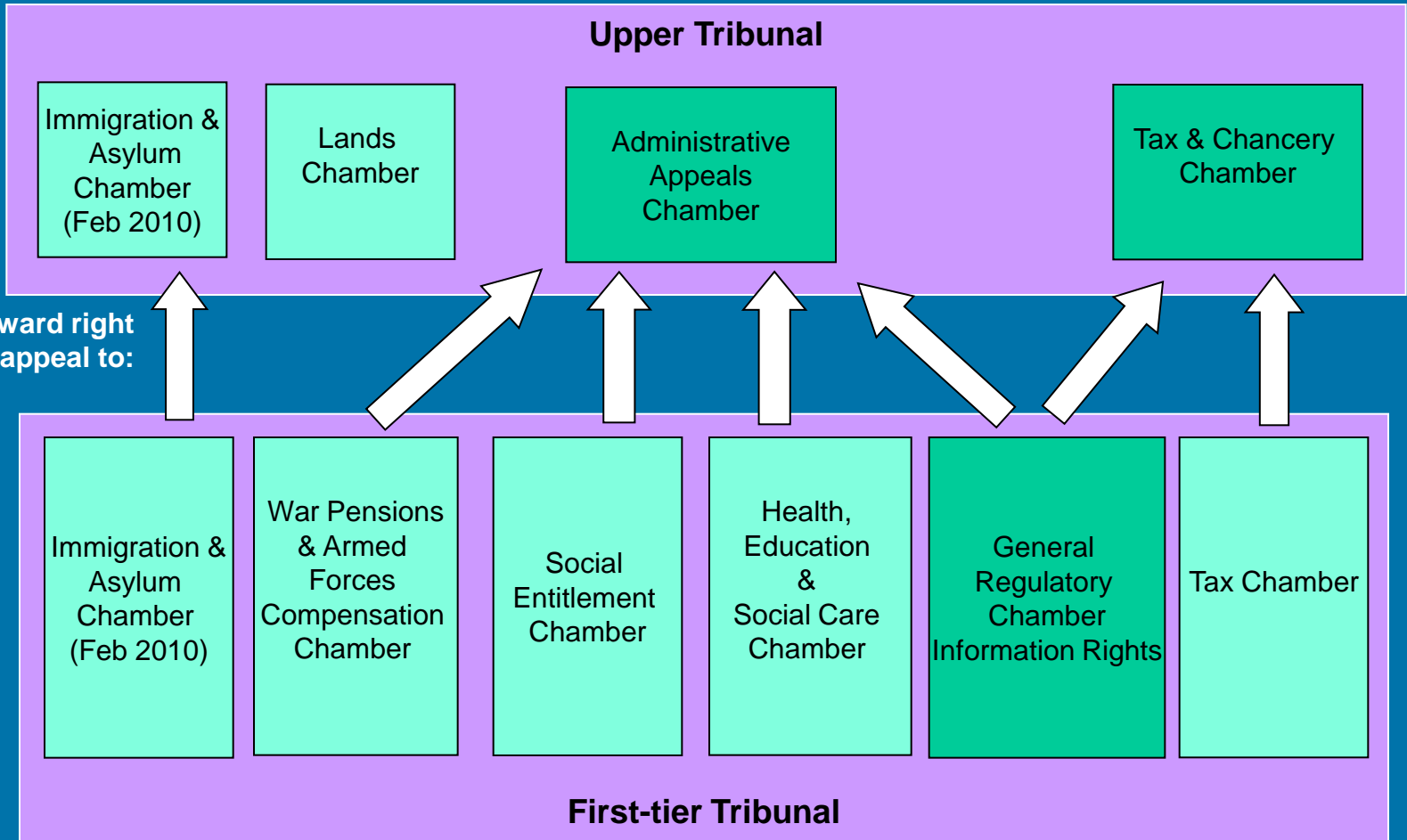
**First-tier Tribunal and Upper Tribunal structure
(as created by the TCE Act 2007)**

Outside
Unified
Tribunal
structure

Employment
Appeals
Tribunal

Employment
Tribunal

Onward right
of appeal to:



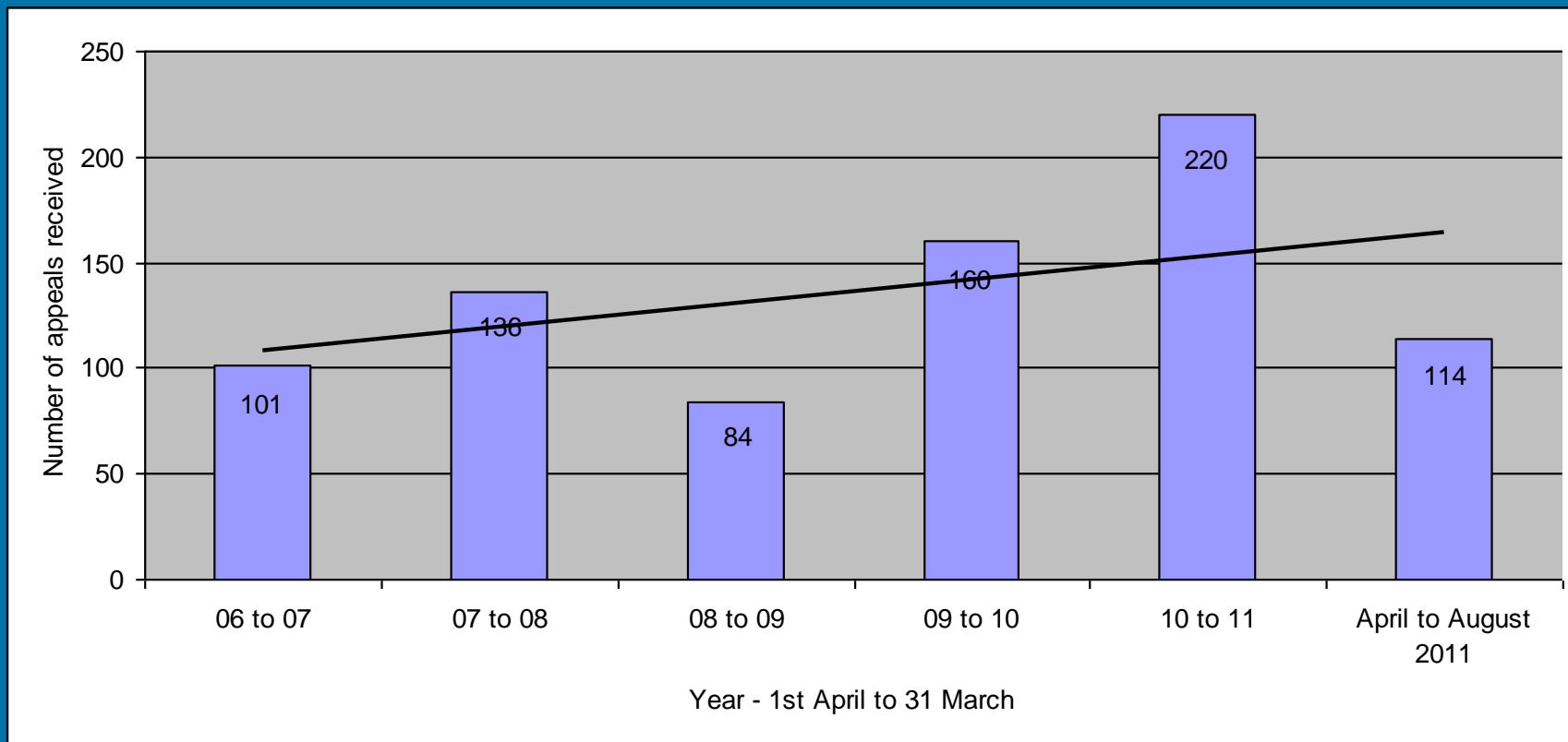


IR Jurisdiction

- Freedom of Information Act 2000
- Environmental Information Regulations 2004
- INSPIRE Regulations 2009
- Data Protection Act 1998 (DPA)
- Privacy and Electronic Communications Regulation 2003
- Data Protection Monetary Penalty Regulations 2010

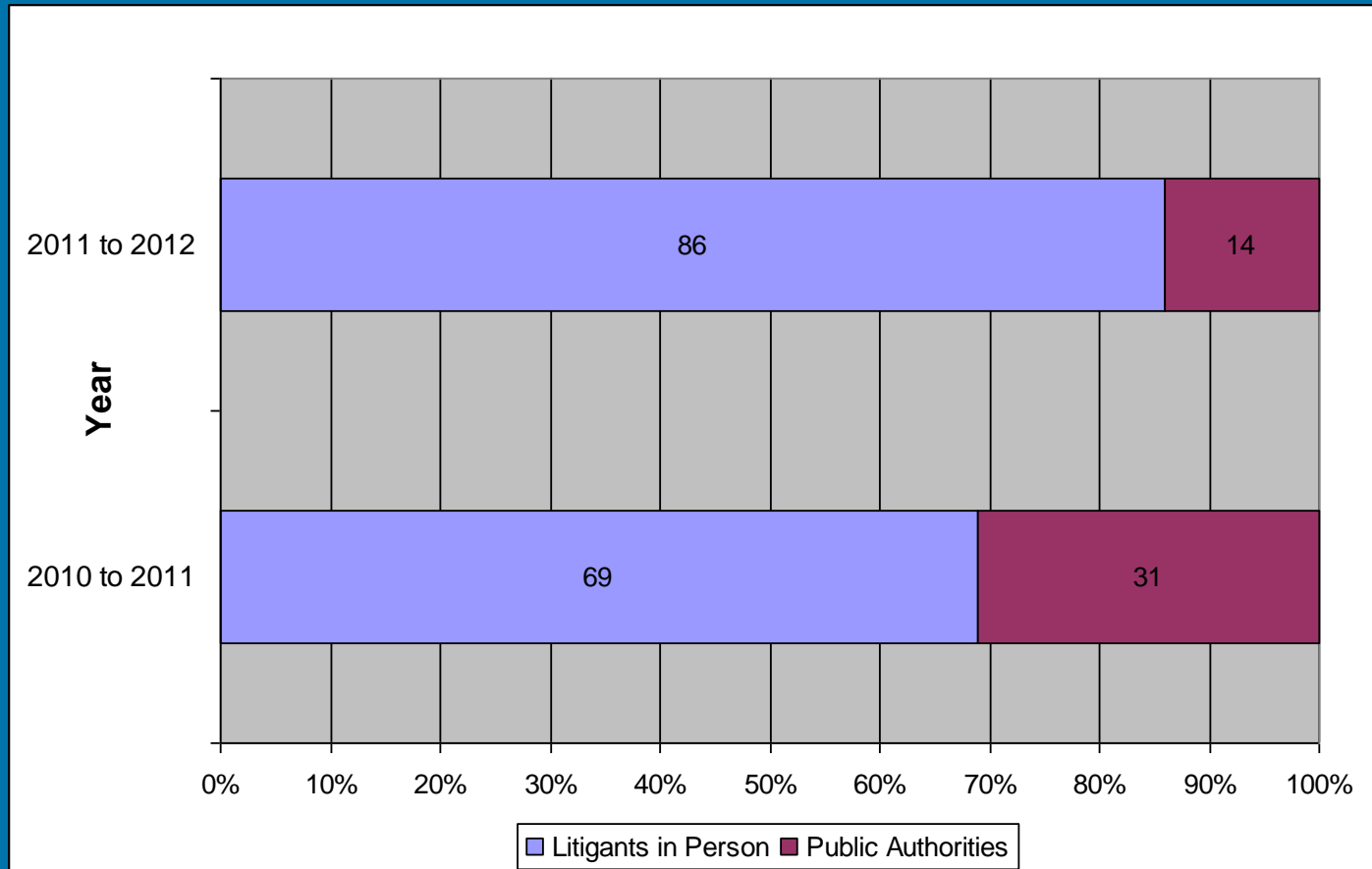


Receipts of Appeals



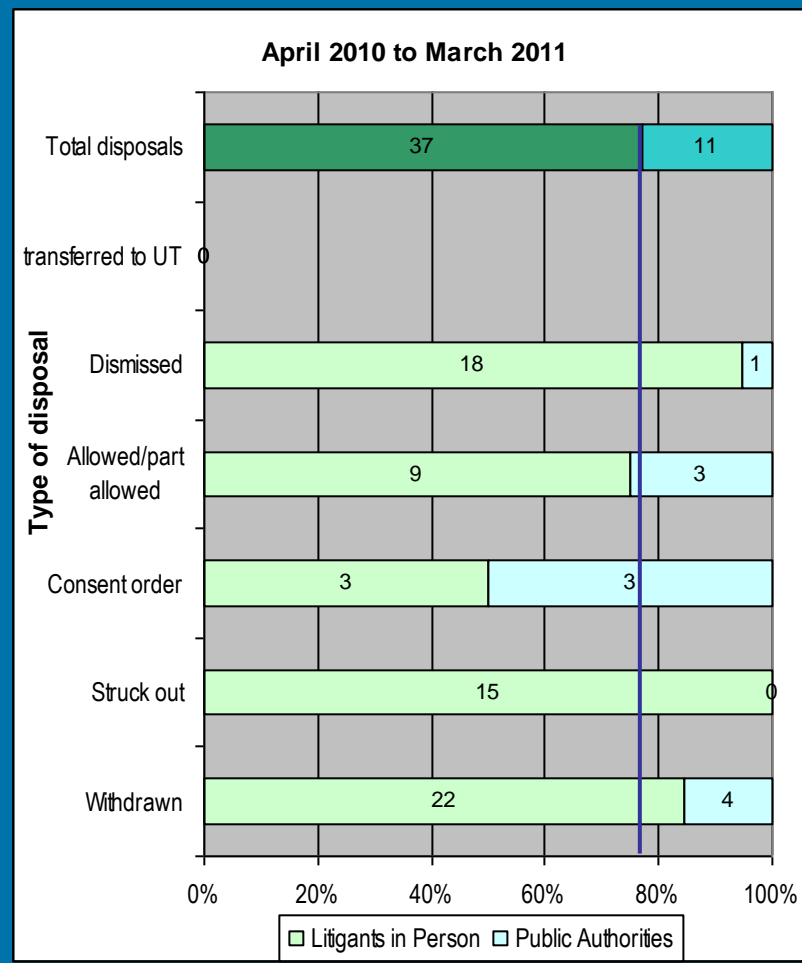
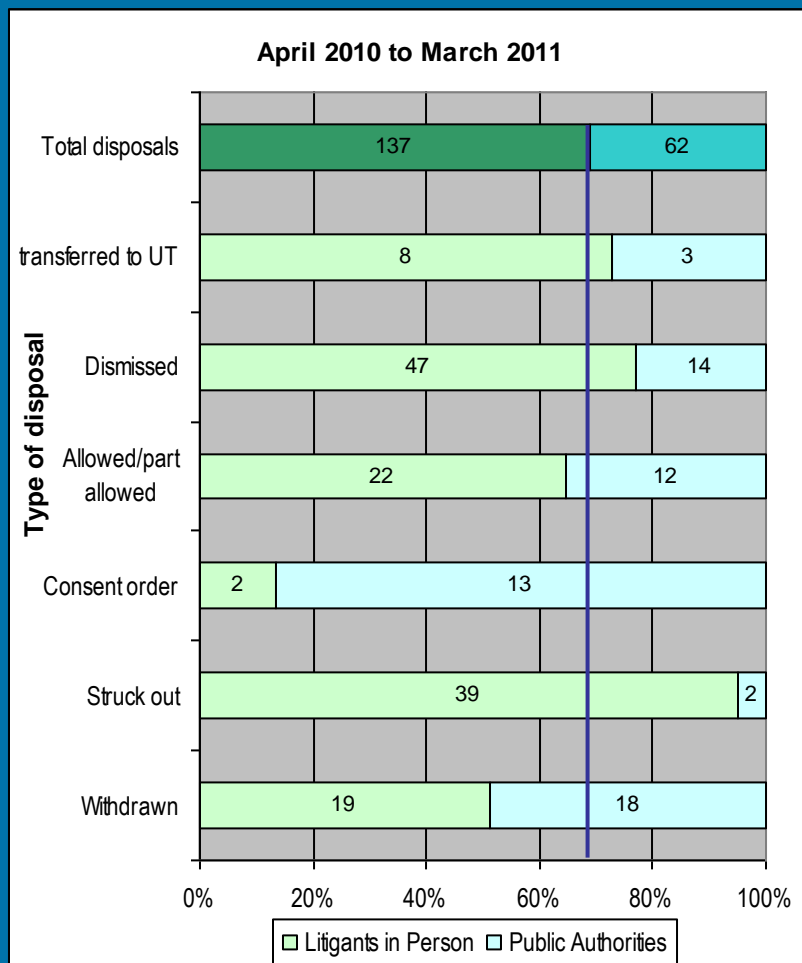


Who are the appellants?





Who are the appellants? (2)

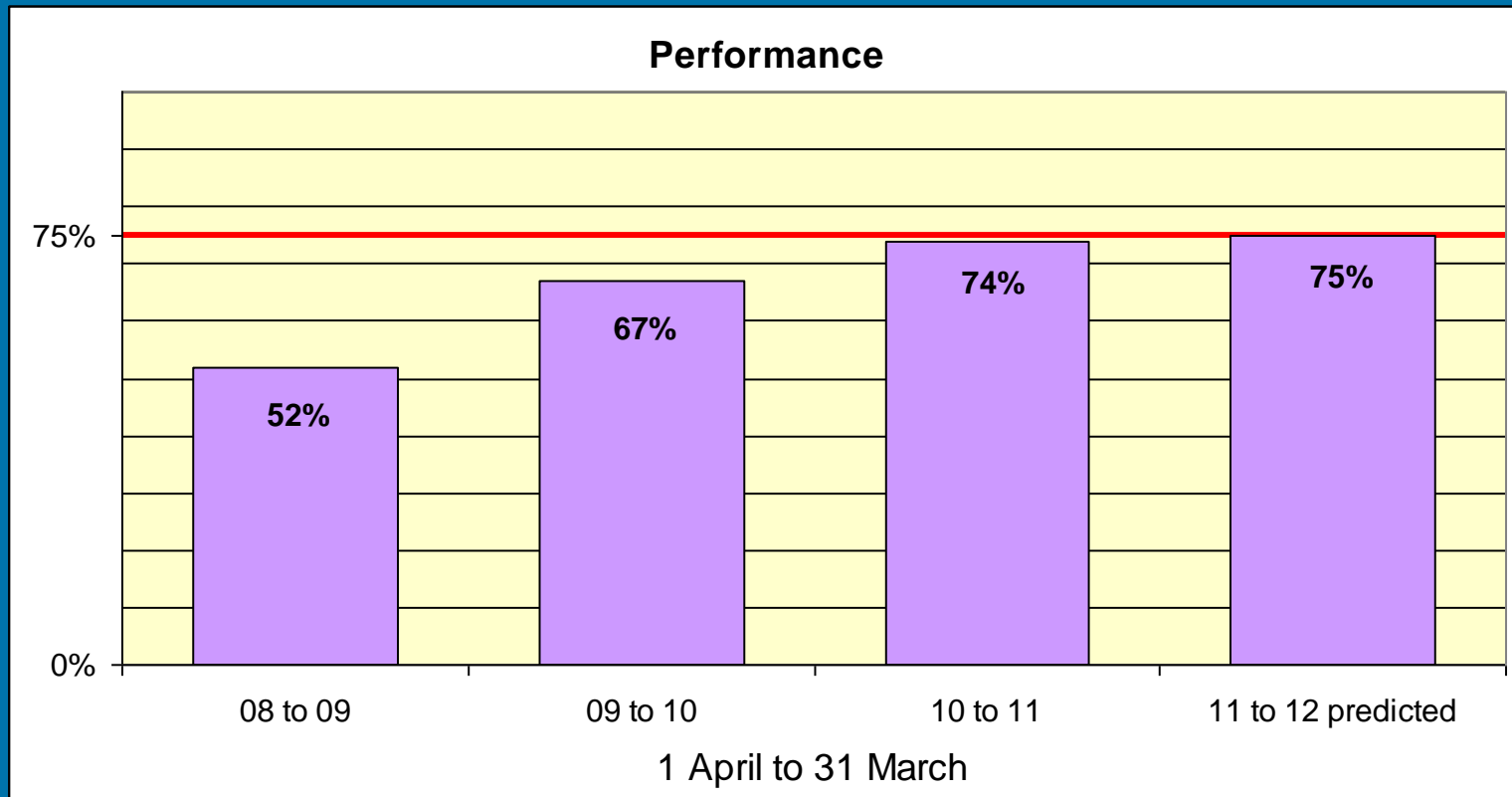




Key Performance Indicator

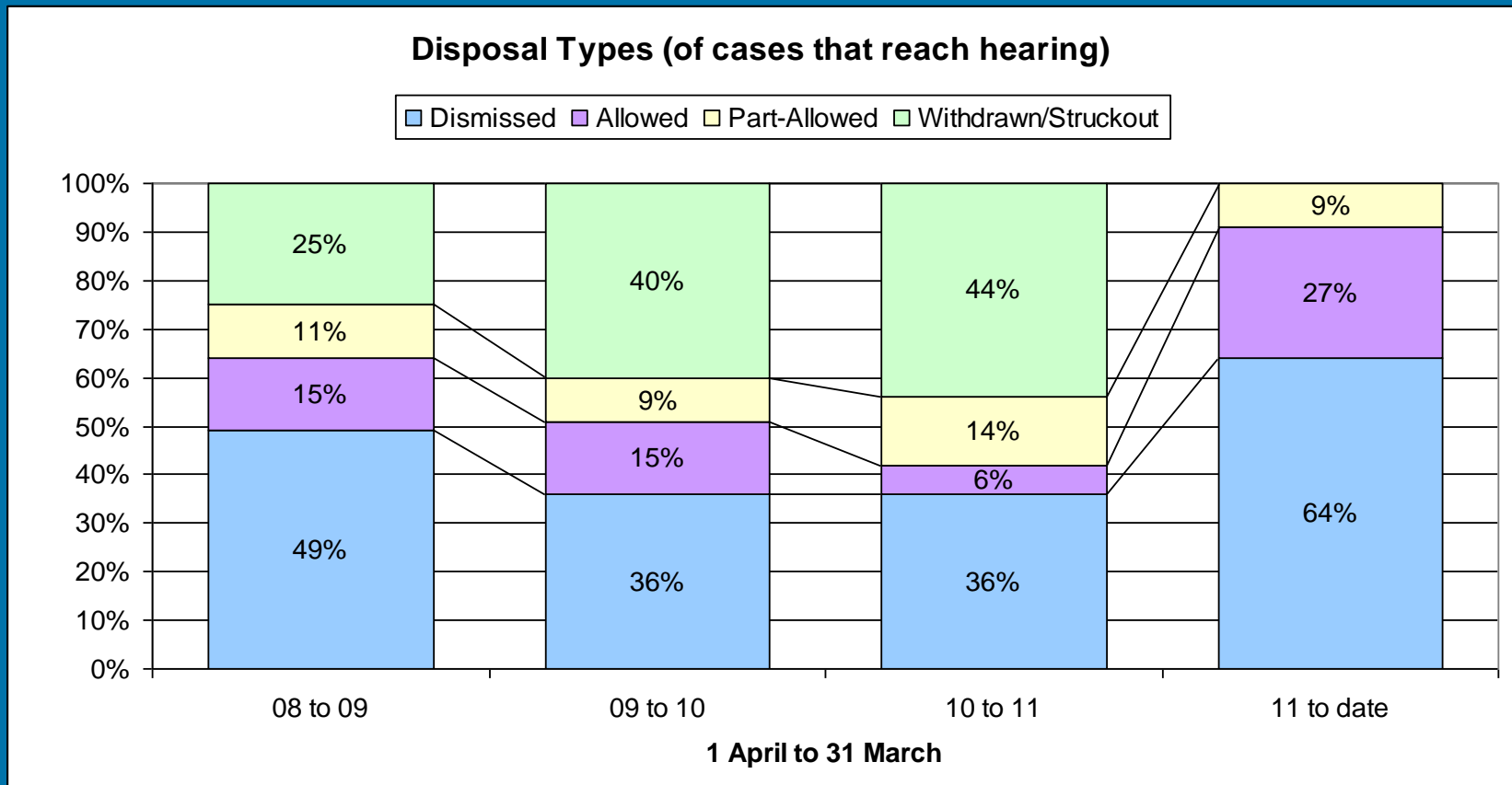
30 weeks from receipt of appeal to disposal

75%





Disposal Breakdown



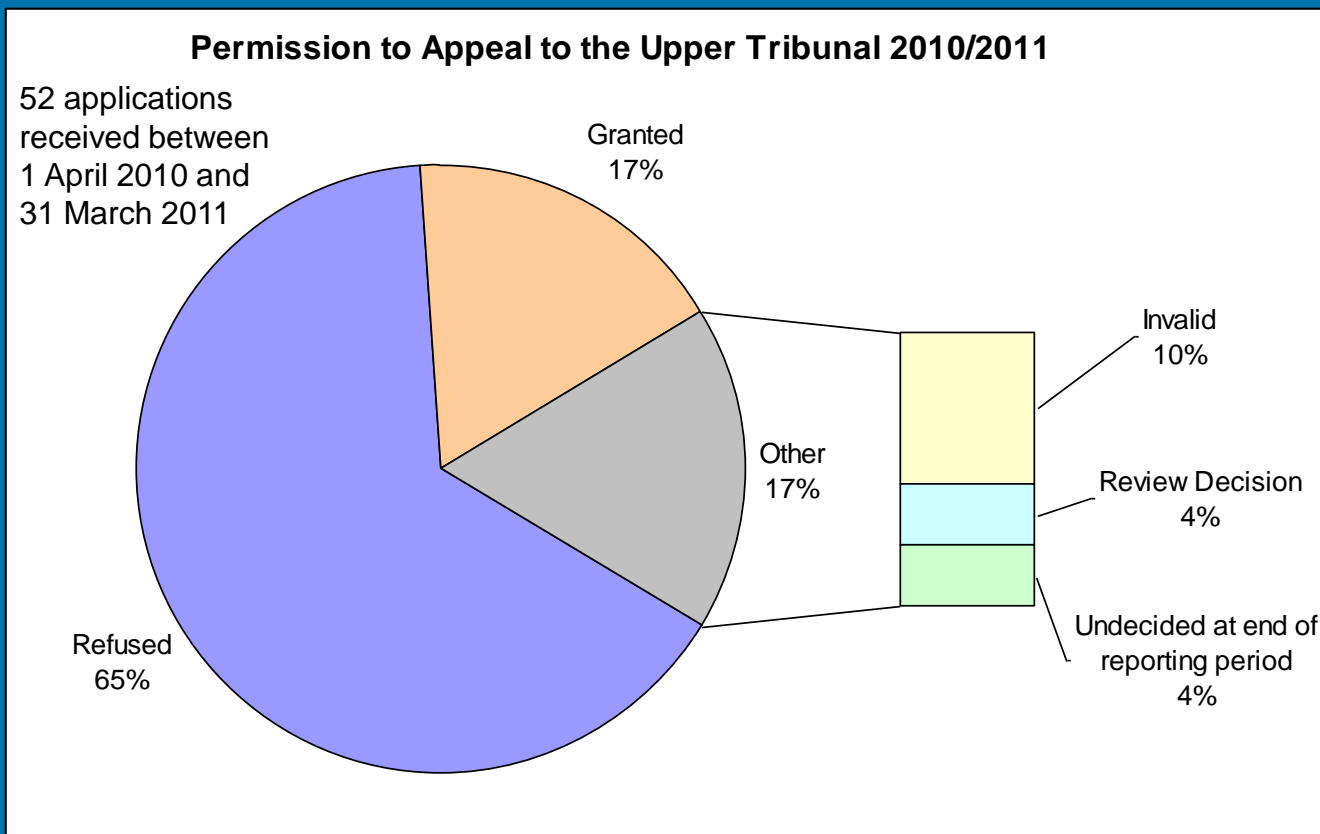


Permission to Appeal to the Upper Tribunal

- 50% of First Tier Tribunal decisions in the year 1 April 2010 to 31 March 2011 received a request for permission to appeal to the Upper Tribunal.
 - 4.8% of the FTT decisions were set aside by the UT.
- 67% of First Tier Tribunal decisions so far this year (since 1 April 2011) have received a request for permission to appeal to the Upper Tribunal

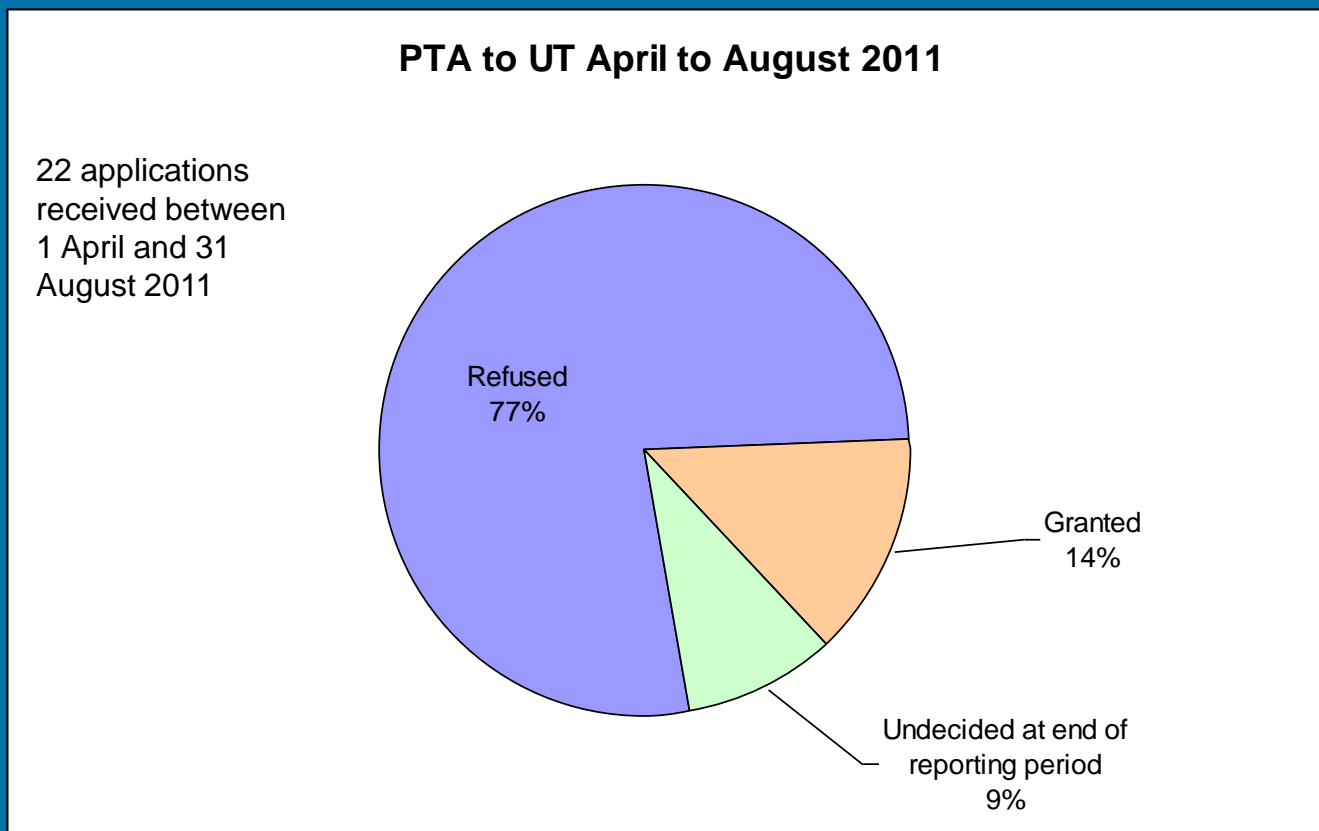


What decisions did the FTT make on these requests last year?





What is happening this year?





Appeals from Information Commissioner's

- Decision Notices
- Enforcement Notices
- Information Notices
- Special Notices
- Monetary Penalty Notices



Rules of procedure

- Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 as amended
- Cover case management plus process for appeals from FTT decisions
- See web site
<http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm>



Key procedural matters

- Notice of appeal
- Response
- Initial directions
- Joinder
- Reply
- Full directions
- Hearing
- Decision
- Costs



Administrative Appeals Chamber UT

- Mandatory transfers to UT
- Discretionary transfers to UT
- Application for permission to appeal on point of law only
 - Review
 - Grant or refuse
 - If refuse can apply for permission from UT



Significant decisions (1)

- ***Ofcom v Information Commissioner*** [2011] EUECJ C-71/10 (28 July 2011) where the ECJ has decided that where a number of exceptions under the Environmental Information Regulations 2004 (EIR) are claimed the public authority may evaluate cumulatively the public interests in favour of maintaining the exemptions.
- ***Department of Health v Information Commissioner*** [2011] EWHC 1430 (Admin) where the High Court found that the abortion statistics requested in this case were not personal data and should be disclosed.
- ***Chief Constable of South Yorkshire v Information Commissioner*** [2011] EWHC 44 (Admin) where the High Court decided that when calculating the cost of dealing with a request so as to determine whether the upper cost limit was exceeded (s.12 FOIA), the public authority could not take into account the costs of redacting the information.



Significant decisions (2)

- ***Information Commissioner v HM Revenue & Customs & Gaskell*** GIA/3016/2010, 20 July 2011 where the UT found that the IC does have a discretion to decline to order disclosure, even where information was incorrectly withheld at the time, due to subsequent developments such as legislative changes, inquiries or court proceedings and so on.
- ***DEFRA v IC & Birkett*** [2011] UKUT 39 (AAC) and ***Home Office v IC*** [2011] UKUT 17 (AAC) where the UT decided against a long line of consistent decisions of the Information Tribunal and more lately the FTT that the IC and Tribunal had to accept the late claiming of exceptions by public authorities in environmental information appeals and the late claiming of exemptions in other freedom of information appeals. Leave to appeal to the Court of Appeal has been granted in the *DEFRA* case.



Significant decisions (3)

- ***All Party Parliamentary Group on Extraordinary Rendition v Information Commissioner & MoD*** [2011] UKUT 153 (AAC) where the UT, sitting for the first time as a first instance tribunal under the discretionary power to transfer cases from FTT to UT, decided that the s.12 FOIA cost exception could not be claimed late in contrast to exemptions. Although not deciding the point the UT (consisting of a panel of two judges and one member) criticised the UT (one judge sitting alone) decisions in *DEFRA* and *Home Office* and considered *obiter* that the IC and FTT had a discretion whether to accept the late claiming of exceptions/exemptions
- ***Smartsources Drainage & Water Reports Ltd v Information Commissioner & Others*** [2010] UKUT 415 (AAC) 23 November 2010 where the Upper Tribunal found that the 19 water and water and sewerage companies in England and Wales were not public authorities for the purposes of the EIR. This issue is under appeal in another case.



Significant decisions (4)

- ***Kirklees Council v Information Commissioner & PALI Ltd*** [2011] UKUT 104 (AAC) 10 March 2011 where it was found that a local authority was obliged under the EIR to allow an applicant to inspect property search information free of charge. This was another first instance case heard in the UT because of its broader implications for local authorities generally.
- ***Ofcom v Morrisey & IC*** [2011] UKUT 116 (AAC) where the UT found the FTT does not have judicial review like powers to consider whether a public authority acted reasonably when exercising its power under another statute which had the result of absolutely exempting the request under FOIA.
- ***University of Newcastle v IC & BUVA*** [2011] UKUT 185 (AAC) where the UT upheld the FTT decision that if information is held to any extent on behalf of the public authority itself, the authority ‘holds’ it within the meaning of the Act even where physically someone else holds the information.



Significant decisions (5)

- ***Age UK v SS for Business*** [2009] EWHC 2336 where Mr J Blake casts doubt on Mr J Burnton's judgment in *OCG v IC* as to whether the FTT can take into account Parliamentary Privileged materials.
- ***Kennedy v Information Commissioner & Charity Commission*** [2011] EWCA Civ 367 where the Court of Appeal remitted the case back to the FTT to decide questions of interpretation of an exemption relating to inquiry records to be made in accordance with the Human Rights Act 1998.



Significant decisions (6)

- **PWC**
- **Gaskell v IC** GIA 3016 2010 the requirement under section 50(4) that the decision notice should specify the steps which must be taken by the public authority does not amount to a mandatory obligation on the Commissioner to require steps to be taken to comply with the requirements of sections 1(1), 11 or 17 in every case, although that consequence will usually follow, save for exceptional cases such as the present one



Any Questions

<http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm>