



**CABINET
OFFICE**

ANNUAL REPORT 2000/2001

CIVIL SERVICE APPEAL BOARD





ANNUAL REPORT 2000/2001

Civil Service Appeal Board



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THE REMIT AND ROLE OF THE CIVIL SERVICE APPEAL BOARD

The Civil Service Appeal Board is an advisory non-departmental public body sponsored by the Cabinet Office. It was established in 1971 on the basis of an agreement between the two sides of the National Whitley Council to hear appeals by civil servants against dismissal and premature retirement.

Over time the role of the Board has developed. Its present remit is to hear appeals from civil servants and staff bodies which offer analogous terms and conditions of service against:

- dismissal and early retirement;
- the withholding of compensation under the Civil Service Compensation Scheme to civil servants dismissed on inefficiency grounds;
- refusal to allow participation in political activities; and
- forfeiture of superannuation.

If the Board concludes that a department or agency's decision has been unfair it has the power as appropriate:

- to recommend reinstatement or reinstatement with a lesser penalty;
- to order the payment of compensation in line either with Employment Tribunal guidelines (in dismissal appeals) or under the inefficiency terms of the Civil Service Compensation Scheme;
- to recommend the granting of permission to take part in political activities; or
- to order the payment of superannuation.

THE CIVIL SERVICE APPEAL BOARD

During 2000/2001

Chair — J H Davies

Deputy Chair — M E G Fogden CB

Deputy Chair — P D Jones, J Sheldon from 1 February 2001

BOARD MEMBERS

OFFICIAL SIDE PANEL MEMBERS

Mrs S Brown (DTI)

J F Carling (Inland Revenue)

S R Davie CB (Cabinet Office)

P S Draper CB (PSA)

P Jefferson-Smith CB (HM C & E)

E McGivern CB (Inland Revenue)

T C Platt CB (Home Office)

D W Rayson (HM Treasury)

G L Reid CB (DfEE)

A Turner CBE (Ministry of Defence)

J Turner CB (Employment Service)

TRADE UNION SIDE PANEL MEMBERS

NON INDUSTRIAL

Mrs C Alderson (PCS)**

A J Audley (IPMS)**

Mrs A Berney (NUCPS)*

Mrs P Braby (CPSA)*

Ms L J Clare (FDA)

Mrs P Cryer (PCS)

Mr D Evans (POA)**

Mrs D Hall Hall (NUCPS)

P J Kelly (PCS)

J Renton MBE (SPOA)*

T Thomson (NUCPS)

F R Winrow (IRSF)

INDUSTRIAL

N Tout BEM (GMB)*

SECRETARIAT

Mrs A Khan (Secretary to the Board)

Ms C Callender

Miss J Outred

Mrs S Rosier

* Appointment ended during 2000/2001

** New appointment during 2000/2001

PEN PORTRAITS OF BOARD MEMBERS

As at 31 March 2001

CHAIR

J H DAVIES

Former Director Personnel
Barclays Bank UK Banking Services
Appointed May 1999

DEPUTY CHAIRS

M E G FOGDEN CB

Former Chief Executive
Employment Service Agency
Appointed November 1999

P D JONES

Former Secretary
Council of Civil Service Unions
Appointed June 1992

J SHELDON OBE

Former Joint General Secretary
Public and Commercial Services Union
Appointed 1 February 2001

OFFICIAL SIDE BOARD MEMBERS

MRS S BROWN

Formerly Dept of Trade & Industry
Appointed November 1998

J F CARLING

Formerly Inland Revenue
Appointed October 1999

S R DAVIE CB

Formerly Cabinet Office
Appointed September 1995

P S DRAPER CB

Formerly Property Services Agency
Appointed December 1996

P JEFFERSON SMITH CB

Formerly HM Customs & Excise
Appointed September 1995

E MCGIVERN CB

Formerly Inland Revenue
Appointed November 1998

T C PLATT CB

Formerly Home Office
Appointed November 1996

D W RAYSON

Formerly HM Treasury
Appointed September 1999

G L REID CB

Formerly Dept of Education &
Employment
Appointed September 1999

A TURNER CBE

Formerly Ministry of Defence
Appointed November 1999

J TURNER CB

Formerly Employment Service Agency
Appointed January 2000

TRADE UNION SIDE

NON INDUSTRIAL

MRS C CALDERSON

Formerly PCS
Appointed December 2000

MS L J CLARE

Formerly FDA
Appointed August 1998

D EVANS

Formerly POA
Appointed October 2000

P J KELLY

Formerly PCS
Appointed September 1999

F R WINROW

Formerly IRSF
Appointed September 1999

A J AUDLEY

Formerly IPMS
Appointed February 2001

MRS P R CRYER

Formerly PCS
Appointed September 1999

MRS D HALL HALL

Formerly NUCPS
Appointed September 1996

T THOMSON

Former PCS
Appointed July 1998

APPOINTMENTS

All appointments to the Civil Service Appeal Board are made in line with the guidance on public appointments to advisory non-departmental public bodies issued by the Office of the Commissioner for Public Appointments.

Prospective Board Members are selected for interview from those nominated either by the Council of Civil Service Unions for the trade union side or departments and agencies for the official side.

Normally members will be appointed for a three-year term with the opportunity for reappointment for a second three-year term to a maximum of six years. The contribution of all members is assessed annually by the Chairs and similarly the contribution of the Chairs is also assessed.

INTRODUCTION

The year 2000/2001 was another busy year for the Board with the number of appeals having risen from 216 to 233. The number of appeals heard which related to dismissal for inefficiency of attendance rose again during the year. In 1999/2000, 27 such appeals were heard, representing 17% of the total, whilst in 2000/2001, there were 40 in this category, representing 25% of the total. This indicates that Departments and Agencies are making determined efforts to tackle the sometimes difficult issue of sickness absence, especially long term absence.

Another feature of the appeals heard during 2000/2001 was the growth in the percentage of cases found unfair from 22% to just over 27%, the steepest increase for many years. Some of those appeals in this category succeeded because departmental and agency procedures had not been followed – partly a symptom of increased delegation of authorities in handling such matters. Other dismissals were found unfair on substantive grounds. In cases of alleged misconduct, investigations were not always carried out thoroughly enough; in cases of inefficiency performance dismissals, it was not always made clear to the individual where the shortcomings were and what had to be done to rectify them and within what timescale; in cases of inefficiency attendance dismissals for long term sickness absence, insufficient contact was maintained with employees and dismissal, when it occurred, sometimes happened as a “bolt from the blue” with no prior warning.

My colleagues and I have spent a lot of time this year explaining the role and activities of the Board to Departments and Agencies. We have taken part in the Employment Law Course at the Civil Service College and have spoken at courses of this nature held within the Home Office and at DfID. I have spoken at a number of departmental and agency seminars held by amongst others, the Ministry of Defence, MAFF, the Prison Service and the Benefits Agency. Peter Jones, Deputy Chair, visited Scotland towards the end of last year to speak to the Prison Officers’ Association, Scotland. We have now developed a role play in which attendees at departmental, agency or trade union seminars can take part, and we look forward to testing this at a forthcoming seminar with the Scottish Prison Service in Edinburgh, and to using it more widely at seminars in future. We welcome invitations to address such seminars, so that we can explain the role of the Civil Service Appeal Board and describe the areas upon which the Board concentrates in arriving at its decisions. During the year we have also published our Principles of Good Practice, and I am grateful to the help we received from trade unions and from various contacts within Departments and Agencies in finalising them. They appear to have been very well received, and I hope that they will be helpful to all those who deal with dismissals within the Civil Service.

I am, as always, grateful to the help and support of the Deputy Chairs, Mike Fogden and Peter Jones. Peter retired at the end of March and he was replaced by John Sheldon. Peter has been a tower of strength to the CSAB for many years. His great interest in employment law, his concern

for justice and fairness, his friendliness and support to Board members, particularly new ones, were amongst his many qualities and we shall all miss him. We extend to him our very best wishes for his retirement and welcome John Sheldon, former Joint General Secretary of the PCS in his place.

During the year several new Board members on the trade union side joined us – Christine Alderson, Alec Audley and David Evans. They have all settled in well, and are already making a strong contribution to the work of the Board. Once again they were selected under the Nolan principles, and we had an excellent field of candidates from which to make our choice.

As always, it has been necessary to bid farewell to retiring Board members who have come to the end of their terms of office. This year, Anne Berney, Pat Braby, John Renton and Norman Tout left the Board. Each brought very different and extremely valuable qualities to the Board, and we wish them well for the future.

Finally, I should like to pay tribute to the work of the Secretariat who have coped admirably with an increasing workload and also with all the activity which is now taking place with regard to our activities relating to publicising the role of the Board and giving it a higher profile. Ably led by Alison Khan, I should like to thank Sue Rosier, Correna Callender and Janet Outred for their help over the last twelve months.

We have a strong, committed and enthusiastic Board, and we all look forward to continuing to develop its work in the year to come.

A handwritten signature in black ink, appearing to read 'John Davies', written in a cursive style.

JOHN DAVIES

Chair

THE CIVIL SERVICE APPEAL BOARD

This report covers the financial year ending 31 March 2001. A statistical summary of the Board's work during the year is contained in Appendices 1 and 2.

1. APPEALS RECEIVED

The Appeal Board received 238 new appeals during the year, a 9% increase on the figure of 216 of the previous year. 19 appeals were received from industrial civil servants (this represented 8% of appeals received).

2. APPEALS CONSIDERED

The Appeal Board considered 161 appeals during the year (last year 158) a 2% increase on the number of appeals considered in the previous year. An analysis of appeals considered is set out in Appendix 3.

83 of the appeals were against dismissal on disciplinary grounds. This represents 52% of all appeals considered by the Board and a 9% decrease on the number of appeals against disciplinary dismissal considered in the previous year.

The renewed vigour in which Departments are dealing with sickness absence has translated into an 8% increase in the number of appeals heard against dismissal on inefficiency grounds for unsatisfactory attendance compared with the number heard during 1999/2000. It is interesting to note that the number of appeals against dismissal on inefficiency grounds for unsatisfactory performance has not risen during the same period and indeed shows a 4% reduction.

See Appendix 6 for an analysis of appeals received and considered between 1991 and 2000/2001.

3. SUCCESSFUL APPEALS

Of the total number of appeals which were considered 45 were found in favour of the appellant. This represents 27% of all the cases considered; this shows a 5% increase in the number of successful appeals compared with the previous year.

In 12 of the successful appeals, the Board recommended that the appellant should be reinstated without qualification. The Department or Agency concerned accepted the Board's recommendation in five cases.

In eight cases the Board recommended that the appellant should be reinstated with the imposition of a lesser penalty than dismissal. The Department or Agency concerned accepted the Board's recommendation in three of these.

In 17 cases having found in the appellant’s favour, the Board considered that reinstatement was inappropriate and an award of compensation was made.

In eight appeals involving inefficiency where the Department or Agency had decided not to pay compensation in full under the Civil Service Compensation Scheme, the Board concluded that compensation in part or full should be paid. In three cases the Board uplifted payment from 0% to 100% and in each of the other cases uplifted payment from: 0% to 25%, 0% to 33.3%, 0% to 50%, 0% to 75% and finally, 90% to 100%.

4. INELIGIBLE APPEALS

19 appeals were found to be ineligible for the following reasons:

Appeal had been submitted out of time	7
Appellant had no right of appeal to the Board	5
Appellant had insufficient length of service	3
Appellant failed to meet Board’s deadlines	3
Appellant beyond minimum pensionable age	1

5. WITHDRAWN APPEALS

16 appeals were withdrawn for the following reasons:

Appellant voluntarily withdrew appeal	11
Appellant’s internal appeal successful	2
Appellant’s medical appeal successful	2
Appellant reinstated prior to appeal date	1

6. REPRESENTATION OF APPELLANTS

Trade Union	116
Legal	16
Other	12
None	17

7. MAJORITY FAIR DECISIONS

If the Board comes to a majority rather than a unanimous conclusion that the Department's or Agency's decision was fair, the appellant has the right to make representations to the Head of Department before a final decision is made.

One majority fair decision was made during the year and the appellant decided not to use his right to make representations to the Head of Department.

8. PERFORMANCE

The Board's targets are:

- appeals to be heard within 15 weeks of receipt in 95% of cases;
- decision letters to be sent out within 24 hours of hearings being held in 95% of cases; and
- hearing reports to be issued within 20 working days in 95% of cases.

The Board was successful in achieving its targets for sending out decision letters (100%) and issuing hearing reports (100%). However, the Board was marginally unsuccessful in achieving its target for hearing appeals within 15 weeks of receipt (94%). This does however show a 4% improvement on the Board's performance compared with the period covered by the last Annual Report. Failure to meet the target was due in the main to the non-availability of both departmental and appellant representatives during the specified four week period.

The analysis of the achievement of the targets is set out in Appendix 5.

9. CUSTOMER SATISFACTION

To further improve the performance of the Board and its Secretariat a Complaints Procedure and a Customer Satisfaction Survey were both initiated during 1999/2000.

Overall, 93% of Appellants, 98% of Appellants' representatives and 99% of departmental representatives were satisfied with the service that they received from the Secretariat.

Analysis of the Survey responses is set out in Appendix 6.

10. COMPENSATION

The Board made awards of compensation amounting to £298,357 in 25 cases. The average award was £11,935 with the highest award being £33,356.

This compares with an average and highest award of £6,574 and £16,945 in 1999/2000. These increases should be viewed in light of the general increase in compensation awards arising from the implementation of the Employment Relations Act 1999.

11. NON ATTENDANCE OF APPELLANT

The Board considered 7 cases in the absence of the appellant; a significant decrease on last year's figure (25).

12. OBSERVERS

A total of 154 people attended Appeal Board hearings as observers in order to familiarise themselves with the Board's procedures prior to attending a hearing. Of the total, 115 were representatives from Departments or Agencies with 28 coming from Trade Unions, ten appellants and one other. The Board continues to encourage people to observe a hearing before attending, because this can be of great benefit.

13. RAISING AWARENESS OF THE WORK OF THE BOARD

The Board has been very keen to accept invitations throughout the reporting period to speak at seminars and make presentations during training sessions and hold informal meetings with Personnel Directors from Departments, Agencies and Trade Unions across the Civil Service.

The Board also continues to take part in appropriate courses run by the Civil Service College.

In October 2000, the Board issued “Dismissals in the Civil Service: Good Practice Principles Applied by the Civil Service Appeal Board”. This paper was intended for all those involved in disciplinary proceedings in the Civil Service and highlights some of the key aspects to which the Civil Service Appeal Board has regard when considering appeals against dismissal.

During the year the Board also improved its presence on the Internet and our website can be found at www.civilserviceappealboard.gov.uk. The site includes details of how an appeal is processed, who hears appeals as well as on line copies of Annual Reports, Guidance Notes and the Good Practice Principles.

14. COSTS AND BUDGETS

The total cost of operating the organisation in 2000/2001 was £312,557 with the more significant categories detailed as follows:

	1999/00	2000/01
Members fees and expenses	£179,602	£200,870
Tax on members fees	£14,521	£ 10,531
Staff costs	£92,717	£ 92,085
IT Equipment	–	£ 4,207
Miscellaneous	£11,941	£ 7,012
VAT Refund	(£711)	£ 2,148
TOTAL	£298,070	£312,557

The cost per appeal considered was £1,941 compared to £1,886 in 1999/2000.

The appointment of new Board Members living outside the immediate vicinity of London and the increased cost of travel expenses has contributed to the increase in the amount spent on members’ fees and expenses.

APPENDIX I

Summary of Activity

	1999/00	2000/01	Change from previous year
Cases outstanding at the beginning of the year	61	78	+28%
Appeals received			
Non industrial	183	219	+20%
Industrial	20	19	-5%
TOTAL	264	316	+20%
Appeals considered			
Appeals considered	158	161	+2%
Appeals found to be ineligible	9	19	-111%
Appeals withdrawn	19	16	-16%
TOTAL	186	196	+5%
Cases in process at the end of the year	78	120	+54%

APPENDIX 2

Appeals Heard Financial Year April 2000 to March 2001

Benefits Agency	20	(12%)
Cabinet Office	3	
Companies House	1	
Crown Prosecution Service	1	
Department for Education and Employment	1	
Department of Social Security	4	
Driver and Vehicle Licensing Agency	1	
Employment Service	8	
Fire Service College	2	
Foreign and Commonwealth Office	2	
Forestry Commission	1	
Government Car and Despatch Agency	1	
HM Customs & Excise	2	
Immigration and Nationality Directorate	1	
Information Technology Services Agency	1	
Inland Revenue	11	
Intervention Board	1	
Ministry of Agriculture, Fisheries and Food	1	
Ministry of Defence	26	(16%)
Ministry of Defence Agencies:		(8%)
Army Base Repair Organisation	4	
Defence Aviation Repair Agency	4	
Defence Evaluation & Research Agency	1	
Defence Storage & Distribution Agency	2	
Defence Munition Organisation	2	
National Engineering Research Council	1	
Nautical and Marine Agency	1	
Ordnance Survey	1	
Passport Agency	1	
Prison Service	41	(25%)
Public Records Office	2	
Public Trust Office	1	
Registers of Scotland	3	
Scottish Executive	1	
Scottish Prison Service	4	
Treasury Solicitor's Department	1	
Valuation Office Agency	1	
Vehicle Inspectorate	2	
TOTAL	161	

APPENDIX 3

Analysis of Appeals Considered

Reason for Appeal	Number	Upheld
Discipline	83 (52%)	24
Inefficiency		
Attendance	40 (25%)	7
Performance	4 (2%)	1
Part/Non Payment of Compensation	17 (11%)	8
Redundancy	4 (2%)	
End of FTA	2 (1%)	2
Failed Probation	8 (5%)	2
Termination of Contract	2 (1%)	1
Compulsory Early Retirement	1	
TOTAL	161	45

APPENDIX 4

Synopsis of Appeals Upheld by the Board

I. SEO DISMISSED ON DISCIPLINARY GROUNDS FOR MAKING FRAUDULENT ENTRIES ON TIME SHEETS AND FAILING TO ADHERE TO STANDING INSTRUCTIONS ON THE CERTIFICATION AND AUTHORISATION OF EXPENSES.

The Board considered the question of whether the offence justified the penalty imposed. The Board believed that the appellant was an honest man but the Department's rules stated clearly that falsification or irregular practice in relation to claims for allowances constituted gross misconduct. The Department argued that this applied to the countersigning officer as well as the individual. The Board considered that on balance this was too rigid an interpretation given that there had been no pecuniary advantage to the appellant. On balance the Board considered the penalty of dismissal to be unreasonable. However, they believed that the appellant's actions were such that he had to shoulder a degree of contributory fault for the situation that had arisen.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	50%
AWARD:	£8,105

2. GRADE 5 DISMISSED ON DISCIPLINARY GROUNDS FOR GROSS MISCONDUCT, HAVING BEEN INCAPACITATED THROUGH ALCOHOL WHILST AT WORK.

The Board were particular concerned about the procedures which had been followed in this case. Procedural irregularities included confusion about the status of earlier warnings, failure to set out by letter the charges against the appellant in sufficient detail before the disciplinary hearing and undue haste in reaching a decision to dismiss before the appellant had had the opportunity to comment on the hearing minute, in respect of which he had several points of disagreement. For the above reasons, the dismissal was found to be unfair albeit that some contributory fault was believed to be attached to the appellant.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	66.66%
AWARD:	£6,954

3. PRISON AUXILIARY DISMISSED ON THE GROUNDS THAT HE WAS UNABLE TO PERFORM THE DUTIES OF THE OPERATIONAL SUPPORT GRADE.

The Board considered that the appellant's dismissal had been carried out with a complete lack of due process. The Agency's representatives admitted that they had expected the appellant to be granted medical retirement and it appeared to the Board that they were nonplussed when this failed to be accepted by BMI. At that stage, the Board considered that they should have addressed the problem by using the inefficiency procedures, with the attendant warnings, support and trial periods prior to any eventual decision to dismiss. The Board also considered that in view of the medical opinion regarding the appellant's disability, the Agency should have carried out a work place assessment and a discussion with the appellant regarding the reasonable accommodation of his disabilities.

RESULT: **REINSTATEMENT SUBJECT TO TRIAL
PERIOD AFTER WORK PLACE
ASSESSMENT**

ACCEPTED: **YES**

4. AO DISMISSED ON DISCIPLINARY GROUNDS FOR REPEATED SERIOUS MISCONDUCT AMOUNTING TO GROSS MISCONDUCT.

The Board discerned a major procedural deficiency in the handling of this case. The Deciding Officer told the Board that he regarded each of the absences as repeated offences which could be regarded as gross misconduct justifying dismissal. The Board could not accept this as being reasonable as the absences had been taken together in the charge letter and thus treated as a single offence. To be regarded as repeat offences it would be necessary to specify this in the charge letter. As a single offence under the serious misconduct procedure, dismissal was not an available option. Furthermore, the rules provided that dismissal would not be imposed for a first offence “except in the case of gross misconduct, which relates to a single incident”. As gross misconduct could not be properly ascribed, the Board agreed that this provision was found to be procedurally unfair.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	50%
AWARD:	£2,432

5. EO DISMISSED ON DISCIPLINARY GROUNDS AFTER A CONVICTION FOR MISUSING THE AGENCY'S CASH SYSTEM

The Board concluded that it would have been more reasonable for the Agency to have waited to see if the appeal against the conviction was to be made and awaited the outcome. The Board took this view because the Agency had justified its decision on the guilty verdict of the Crown Court to dismiss the appellant. When subsequently that conviction was quashed by the Court of Appeal, the Agency appeared to change its position and to maintain that it was relying on a different standard of proof. This did not strike the Board as reasonable or fair.

RESULT:	REINSTATEMENT WITH A LESSER PENALTY
ACCEPTED:	NO
CONTRIBUTORY FAULT:	30%
AWARD:	£17,500

6. CHARGE HAND DISMISSED ON DISCIPLINARY GROUNDS FOR ASSAULTING A COLLEAGUE.

The basis upon which the case was found to be unfair was procedural. It was clear that procedural instructions had not been adhered to and the decision to dismiss had been reached without due process. There had been no investigation of the incident to establish the facts and the line manager had not interviewed the appellant nor informed him of his right to be accompanied to interview.

RESULT: REINSTATEMENT WITH A LESSER PENALTY

ACCEPTED: YES

7,8,& 9. THREE EOS DISMISSED ON DISCIPLINARY GROUNDS FOR HAVING ENTERED UNAUTHORISED SOFTWARE ON THE DEPARTMENT'S COMPUTERS.

The basis upon which the cases were found to be unfair was on grounds of proportionality. Other changes had been added to the main charge which the Board regarded as being totally peripheral. No warning had been given to the appellants about the way they were misusing the computer system, in a regime where some latitude had been permitted. IT rules regarding misuse of systems were insufficiently specific.

RESULT: REINSTATEMENT WITH A LESSER PENALTY

ACCEPTED: NO

CONTRIBUTORY FAULT: 50%

AWARDS: 7. £14,531 8. £18,437 9. £13,908

10. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR SUBMITTING A WRITTEN DOCUMENT, THE CONTENTS OF WHICH HE KNEW TO BE FALSE.

The basis upon which the case was found to be unfair was procedural, in that a single individual had not only invited the appellant to resign before the investigation had taken place, but had also acted in the capacity of Hearing and Deciding Officer. The Board considered that the Governor had prejudged the outcome of the case beforehand, and that his subsequent involvement had been so great as to prejudice the appellant's case being fairly heard, resulting in a lack of objectivity so severe as to contravene the rules of natural justice.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	80%
AWARD:	£525

11. AO DISMISSED ON GROUNDS OF INEFFICIENCY DUE TO UNSATISFACTORY ATTENDANCE.

The basis upon which the case was found to be unfair was procedural. Rules regarding absence following the birth of a child were ambiguous and the appellant had relied upon one version, whereas the Agency had relied upon another, more comprehensive version. The Board considered that it was unreasonable to have expected the appellant to have been aware that such conflict and ambiguity existed, and that to have such a situation existing was both unsound and unacceptable.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	0%
AWARD:	£2,185

12. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR USING OFFENSIVE AND SEXIST LANGUAGE TOWARDS A MEMBER OF THE PUBLIC.

The Board concluded that the investigation in this case could not be regarded as reasonable, nor that it had provided reasonable grounds for a genuine belief in the appellant's alleged guilt. The Deciding Officer had proceeded on the uncorroborated evidence put forward (under prompting by the investigators) of the two women concerned because he found them to be credible witnesses. This evidence had not been fully tested either in relation to other evidence available or by interviewing other potential witnesses. As such the Board concluded that the decision to dismiss was substantively unfair.

RESULT: REINSTATEMENT
ACCEPTED: NO
AWARD: TO BE AWARDED

13. AO DISMISSED ON DISCIPLINARY GROUNDS FOR FAILING TO NOTIFY CHANGES TO THE DETAILS ON HIS APPLICATION FOR AN ANNUAL SEASON TICKET.

Considering the wording of the Personnel Instruction which was current at the time of the appellant's dismissal, the Board concluded that the case turned on whether the appellant had acted deliberately or not. On the evidence before them, the Board did not consider it safe even on the balance of probabilities for the Deciding Officer to conclude that the appellant had acted deliberately.

RESULT: REINSTATEMENT WITH A LESSER PENALTY
ACCEPTED: YES

14. PRISON OFFICER DISMISSED ON INEFFICIENCY GROUNDS DUE TO UNSATISFACTORY ATTENDANCE.

The Board found the decision to dismiss to be unfair on the substantive grounds that there were reasons to believe that the appellant had been harassed and intimidated at work and that such treatment had been a major cause of this absence. In spite of the fact that the Agency had been made aware from various sources of the possibility of such treatment, they took no action to investigate the matter, nor was it taken into account in mitigation.

RESULT: REINSTATEMENT

ACCEPTED: YES

15. AO DISMISSED AFTER THE TERMINATION OF A CASUAL APPOINTMENT BECAUSE OF UNSATISFACTORY WORK PERFORMANCE.

There was ample evidence from the papers produced for the Board to suggest that the appellant was an inadequate and incompetent worker, yet the employer failed to grasp the nettle in a timely fashion. The employer failed to put in place sufficiently transparent monitoring processes to deal with the appellant's shortcomings and the dismissal, when it occurred, was handled in a clumsy and abrupt fashion. The Board had some sympathy with the Agency; however, they did not have formal procedures in place for dealing with inadequacies as far as casual employees were concerned. The case was also unusual in that the appellant had reverted to casual from fixed term appointment status.

RESULT: COMPENSATION

CONTRIBUTORY FAULT: 50%

AWARD: £1,587

16. AO DISMISSED ON DISCIPLINARY GROUNDS FOR CONTINUED UNAUTHORISED ABSENCE.

This was an unusual case in that the Agency had upheld the internal appeal on procedural grounds. In view of the length of time since the appellant's termination and her decision to return to live in Ireland, the Agency wished to approach ACAS to negotiate a settlement. This course of action was not followed and the appellant continued with an appeal to the CSAB, which considered the question of remedy.

RESULT:	REINSTATEMENT WITH A LESSER PENALTY
ACCEPTED:	NO
CONTRIBUTORY FAULT:	25%
AWARD:	£17,982

17. AO DISMISSED ON INEFFICIENCY GROUNDS DUE TO UNSATISFACTORY ATTENDANCE.

The Board examined carefully the procedures followed by the Agency in this case and believed that an absence due to a suspected contagious condition should have reasonably been discounted. Similarly a one-day absence should have been the subject of a retrospective grant of special leave. With the deletion of these two periods the appellant would not have exceeded the 12 day limit for the 12 month period used to determine her dismissal.

RESULT:	REINSTATEMENT
ACCEPTED:	NO
CONTRIBUTORY FAULT:	0%
AWARD:	£4,960

18. AO DISMISSED ON DISCIPLINARY GROUNDS FOR HAVING TWO CRIMINAL CONVICTIONS FOR THEFT.

The Board found this case unfair on procedural grounds; it was clear from the papers before the Board that the appellant had not been offered an oral hearing as stated in the Agency's procedures. In addition, the Agency had not sought medical advice on the appellant's condition.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	100% AND 100% POLKEY FACTOR
AWARD:	0%

19. SENIOR VEHICLE INSPECTOR DISMISSED ON DISCIPLINARY GROUNDS FOR THE UNAUTHORISED DISCLOSURE OF OFFICIAL BUSINESS INFORMATION.

The Board considered that the appellant's involvement with the director of one of a number of private sector consultancies, involving as it did a large number of telephone calls between them both within and outside working hours, was sufficiently unusual to justify the Agency mounting an investigation. The Board also considered that the appellant had undoubtedly displayed a lack of prudence in the extent of his involvement with this individual. However, the investigation was insufficiently thorough, and in particular the Board was concerned that the investigator did not consider it necessary to interview the director of the consultancy. The investigation did not meet the standards required to meet the Burchell test, and because of that the Board judged the dismissal to have been unfair.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	75%
AWARD:	£6,020

**20. PRISON OFFICER DISMISSED ON GROUNDS OF INEFFICIENCY
DUE TO UNSATISFACTORY ATTENDANCE.**

The appellant became ill, after having been involved in an incident where an attempt was made to effect the release of a prisoner attending hospital. She was instrumental in foiling the attempt, and in consequence was recommended for a commendation. The reason for her illness, i.e. its linkage with the escape attempt, was not confirmed until well into her absence period, by which time she was running up against the time limits imposed by the Agency. The Board considered that the procedures were followed mechanistically rather than sensitively, and that she had not been treated fairly and reasonably, particularly bearing in mind that her conduct at the time of the incident which had led to her illness had been judged worthy of a commendation. There were aspects relating to the information given to the officer to whom the appeal had been made and the extent to which an unchallenged conversation had been taken into account in that respect which caused the Board concern. In the Board's view the Agency had acted sufficiently unreasonably to justify the dismissal being found unfair.

RESULT: REINSTATEMENT

ACCEPTED: NO

AWARD: £27,916

21&22 PHOTOGRAPHERS DISMISSED ON DISCIPLINARY GROUNDS FOR USING DEPARTMENTAL FACILITIES FOR PRIVATE PURPOSES.

In both cases, the Board considered that the investigation had been insufficiently thorough and that the cases against the appellants were based virtually entirely upon hearsay evidence. It felt that the inadequacies of the investigation should have been picked up at later stages of the disciplinary process, particularly bearing in mind that the Deciding Officer had been involved in a management capacity at the outset and that, therefore, he should have been particularly careful in ensuring that each stage of the procedure had been undertaken with sufficient care, before reaching his decision. Both dismissals were therefore regarded as unfair.

RESULT: REINSTATEMENT WITH A LESSER PENALTY

ACCEPTED: NO

AWARD: 21. £24,755 22. £33,356

23. AIRCRAFT SURFACE FINISHER DISMISSED ON DISCIPLINARY GROUNDS FOR HAVING ASSAULTED A COLLEAGUE.

The Board considered that the way in which the investigation was carried out had been insufficiently thorough, and, with inadequate attention having been paid to mitigating circumstances, it felt that the process had been sufficiently flawed to justify the dismissal being regarded as unfair. The appellant's behaviour on the evening of the incident had been unacceptable and a disciplinary penalty would have been appropriate. However, given his previous satisfactory record and the mitigating circumstances advanced, a penalty less severe than dismissal would have been more appropriate.

RESULT: REINSTATEMENT WITH A LESSER PENALTY

ACCEPTED: YES

24. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR HAVING A DRINK DRIVE CONVICTION.

The Board was not convinced that it had been right to deal with this case under the disciplinary procedure, given the background of the appellant's known alcoholism. The facts of the matter indicated that the appellant's behavioural problems as perceived by the Governor, were appropriate to action under the inefficiency procedures, i.e. as a "capacity" matter under Section 98 of the Employment Rights Act, 1996. The totality of these procedural deficiencies had seriously prejudiced the appellant's position, which had not been remedied at the internal appeal. On this analysis, the Board concluded that the dismissal was procedurally unfair.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	25% POLKEY REDUCTION
AWARD:	£7,102

25. PRISON OFFICER DISMISSED ON INEFFICIENCY GROUNDS DUE TO UNSATISFACTORY ATTENDANCE

The Board was not satisfied that there had been adequate contact with the appellant during the final period of sickness to keep abreast of developments and facilitate a return to work. Much of her sickness had been caused by the chronic illness of her daughter. There was also no evidence of contact being made by welfare with the appellant or that the Prison Service had checked that contact had been made. The Board was also concerned that a full and contemporaneous medical assessment had not been undertaken as soon as the changed circumstances relating to the appellant's daughter had been known.

RESULT:	REINSTATEMENT
ACCEPTED:	NO
AWARD	£28,270

26. AA DISMISSED FOR FAILURE OF PROBATION DUE TO UNSATISFACTORY CONDUCT.

The Board was concerned by the way in which the Department had handled the dismissal, in particular their failure to hold a hearing with the appellant. That no such formal interview took place in accordance with the “Termination of Appointment” section of the departmental probationary procedures was sufficiently serious to render the dismissal unfair. While the internal appeal process was robust and reasonably thorough, the Board was not satisfied that it properly addressed the management failures on procedures.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	100% & 100% Polkey
AWARD:	0%

27. ADMIRALTY PILOT DISMISSED ON DISCIPLINARY GROUNDS FOR UNACCEPTABLE CONDUCT AND BEHAVIOUR.

The Board was concerned with the lack of an acceptable procedure before the investigation and disciplinary action had been initiated. There was a clear indication that the appellant had not been given any prior warnings of a sufficiently formal nature that he could be facing the possibility of dismissal. The fact that he had been given no opportunity to change his attitude before the disciplinary process had been initiated was unfair and removed any possibility of this fatal prejudice being remedied in the subsequent process.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	0%
AWARD:	£23,774

28. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR DISCRIMINATING AGAINST A COLLEAGUE AND LYING TO THE INVESTIGATORY OFFICER

The Board considered that the investigation had not examined in sufficient depth the circumstances which had led to the two charges of gross misconduct being laid against the appellant. The concerns of the Board were compounded by the fact that the Governor did not consider it appropriate to question this apparent lack of depth on behalf of the investigator, and also that she did not consider it prudent to have interviewed the appellant to discuss the specific charges in more detail. Nor was this redressed at subsequent opportunities, namely the disciplinary interview and the IDAB hearing.

RESULT:	REINSTATEMENT WITH A LESSER PENALTY
ACCEPTED:	NO
CONTRIBUTORY FAULT:	25%
AWARD:	£31,156

29. AA DISMISSED FOR FAILURE OF PROBATION DUE TO UNSATISFACTORY ATTENDANCE

The Board was concerned by the procedures followed by the Agency in this case in that the Agency had failed to apply the rules relating to sickness absence for probationers in respect of the trigger points. The Agency had also not written to the appellant, advising her of the fact that her probation had been extended, the nature of the improvements expected of her, and how she would be supported and monitored, if she were successfully to complete the period of extended probation. On the substantive issue, in her final six months, the appellant had incurred an absence level below the appropriate trigger point, and the Board regarded it as highly regrettable that the Agency felt unable to conclude that such an improvement, coupled with her promising performance and improved conduct did not justify confirmation of her probation.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	0%
AWARD:	£2,154

30. PRISON OFFICER DISMISSED ON INEFFICIENCY GROUNDS DUE TO UNSATISFACTORY ATTENDANCE

The Board considered that the application of the Prison Service's sickness procedures in this case showed a degree of rigidity which placed its actions outside the range of reasonable responses by a reasonable employer, particularly considering the overall improvement in the appellant's attendance record and the fact that the condition which took him over the trigger was such that it would have been rectified by a straightforward operation and a short recovery period.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	50%
AWARD:	£9,069

31. SENIOR LECTURER DISMISSED ON INEFFICIENCY GROUNDS DUE TO BEING UNABLE TO FULFIL THE TERMS OF CONTRACT

The Board considered that there had been a complete lack of proper procedure in the process leading up to the dismissal. The lack of a proper procedure had denied the appellant the opportunity to be informed of what was going on, to be consulted about possible remedial action and, finally, the right to an internal appeal. In all the circumstances, the procedural inadequacies inherent in this case were beyond remedy, and the dismissal was found to be unfair on these grounds.

RESULT:	REINSTATEMENT
ACCEPTED:	YES

32. EO DISMISSED ON DISCIPLINARY GROUNDS FOR USING OFFICIAL EQUIPMENT FOR PERSONAL PURPOSES

The Board was fully aware of the seriousness with which the Agency rightly regarded the misuse of official property. However, in their Discipline Handbook misuse of official phones is categorised as minor misconduct, although serious misuse of official phones is defined as serious misconduct. The Board felt that on balance, and given the nature of the calls and the appellant’s voluntary offer to meet the cost, his misuse constituted minor misconduct. As to the misuse of an official vehicle, the Handbook does not refer to this as an example. The Board considered that there could be circumstances where misuse could constitute serious misconduct, particularly given the issue of insurance cover, but again the Board noted that the appellant had met the cost of the petrol for his private trips. Overall the Board was of the view that, given the background to the offences, it was hard to sustain a position that they constituted gross misconduct warranting the ultimate penalty of dismissal.

RESULT: REINSTATEMENT WITH A LESSER PENALTY
ACCEPTED: YES

33. PRISONER OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR DEALING WITH A PRISONER FOR GAIN.

The Board was concerned that the Governor’s action in invoking the summary dismissal procedures had been wrong. These procedures were reserved for the situation in which there had been a criminal conviction for certain specified offences; this was not the position in the appellant’s case. The Agency had sought to remedy this breach by constituting the appeal to their headquarters as a disciplinary hearing, with a full examination of all the evidence, and giving the appellant the opportunity so far denied to him of putting his side of the matter. This had not been done as the appellant did not attend and the Board considered that the appeal hearing, in going ahead without any up-to-date input from the appellant, had not remedied the earlier procedural defect.

RESULT: COMPENSATION
CONTRIBUTORY FAULT: £75%
AWARD: £974

34. SENIOR FRAUD INVESTIGATOR DISMISSED ON DISCIPLINARY GROUNDS FOR ACTING IMPROPERLY ON OFFICIAL DUTY AND FAILING TO MEET THE STANDARDS OF CONDUCT EXPECTED OF A CIVIL SERVANT

The Board was unable to accept that a reasonable investigation had taken place. In particular, failure to interview those witnesses who were providing evidence on behalf of the appellant or who might have been able to corroborate statements he had made, was considered to be a particularly serious flaw. In addition, there was also a lack of thoroughness in following up matters in a number of other areas where the Board considered the investigation to have been inadequate and insufficiently thorough. The deficiencies in the investigation were sufficient, in the view of the Board, to render the decision to dismiss unfair.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	0%
AWARD:	£6,320

35. PRISON OFFICER DISMISSED ON INEFFICIENCY GROUNDS DUE TO UNSATISFACTORY ATTENDANCE

The Board was concerned to find that the Agency's Management of Long Term Sick Absences did not appear to have been followed, specifically the issue of warning letters and interviews advising the officer that dismissal was being considered because of unsatisfactory attendance and that this would be proceeded with unless attendance improved. Procedural fairness normally requires, amongst other things, that an individual is warned that dismissal is being contemplated. There was no evidence that this had occurred in this case and the Board concluded that this deficiency placed the appellant at a disadvantage and rendered the dismissal unfair.

RESULT:	REINSTATEMENT
ACCEPTED:	YES

36. GRADE 7 DISMISSED ON DISCIPLINARY GROUNDS FOR UNPROFESSIONAL CONDUCT OF CASES AND A WILFUL NEGLECT OF BUSINESS

The Board considered the dismissal to be procedurally unfair. The investigatory officer had concluded that the appellant had not acted wilfully and as such the Board was not convinced that the Agency had been right in following the disciplinary route and that recourse to the inefficiency procedures would therefore have been the correct course to take.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	50%
AWARD:	£17,112

37. AA DISMISSED ON THE TERMINATION OF A FIXED TERM CONTRACT

The Board had regard to the circumstances which an employer can put forward to justify dismissal under Section 98(2) of the Employment Rights Act 1996. In the Board's view none of the provisions related to the appellant's dismissal which the failure to renew a fixed term contract constituted in employment law terms. The appellant's dismissal was therefore deemed to be unfair.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	0%
AWARD:	£3,628

APPENDIX 5

Civil Service Appeal Board Performance Against Targets 2000/2001

PERFORMANCE

HEARINGS

Appeals to be heard within 15 weeks of receipt in 95% in cases

(1999/2000 figures in brackets)

Month	Appeals Heard	Av no of Weeks to Hearing	% Within Target
April	14 (8)	13 (14)	100%
May	21 (8)	13 (15)	90%
June	15 (16)	13 (14)	94%
July	13 (14)	12 (13)	100%
August	6 (19)	12 (12)	100%
September	13 (17)	13 (12)	92%
October	16 (13)	13 (13)	75%
November	14 (15)	12 (12)	100%
December	14 (8)	11 (12)	100%
January	14 (20)	12 (13)	100%
February	12 (13)	15 (11)	75%
March	9 (7)	12 (14)	100%
AVERAGE	161 (158)	13 (14)	94%

DECISION LETTERS ISSUED

Letters to be issued within 24 hours of hearing

All decision letters were issued within the target period during 2000/2001.

REPORTS ISSUED

Reports to be issued within 20 working days of hearing in 95% of cases

(1999/2000 figures in Brackets)

Month	Reports Issued	Av no of W/Days to Issue	% Within Target
April	12 (10)	10 (10)	100%
May	20 (11)	10 (10)	100%
June	18 (9)	10 (9)	100%
July	11 (15)	9 (11)	100%
August	8 (14)	8 (12)	100%
September	14 (20)	8 (14)	100%
October	16 (15)	10 (11)	100%
November	11 (13)	7 (13)	100%
December	19 (15)	8 (11)	100%
January	4 (11)	6 (10)	100%
February	15 (17)	10 (9)	100%
March	14 8)	8 (6)	100%
AVERAGE	162 (158)	9 (11)	100%

APPENDIX 6

Results of Customer Satisfaction Surveys Issued 2000/2001

Number of forms issued: 489 Number of forms received: 186

Appellant	30/163
Appellant's Representative	48/163
Department or Agency Representative	108/163

Written Information About The CSAB

Were the guidance notes provided easy to understand?

	YES	NO	N/A
Appellant	90%	0	10%
Appellant's Rep'tive	100%	0	0
Department or Agency Rep'tive	98%	0	2%

Did you get enough guidance about the Board's procedures to help you to prepare your case?

	YES	NO	N/A
Appellant	87%	6%	7%
Appellant's Rep'tive	96%	2%	2%
Department or Agency Rep'tive	94%	1%	5%

Dealing with the Secretariat

If you telephoned the Secretariat:
were the staff helpful?

	YES	NO	N/A
Appellant	71%	0	29%
Appellant's Rep'tive	90%	0	10%
Department or Agency Rep'tive	89%	0	11%

Was the information given useful?

	YES	NO	N/A
Appellant	68%	0	32%
Appellant's Rep'tive	90%	0	10%
Department or Agency Rep'tive	87%	0	13%

If you wrote to the Secretariat, was the query answered to your satisfaction?

	YES	NO	N/A
Appellant	55%	3%	42%
Appellant's Rep'tive	71%	0	29%
Department or Agency Rep'tive	35%	0	65%

Were you sent a response within 10 working days?

	YES	NO	N/A
Appellant	74%	3%	23%
Appellant's Rep'tive	84%	2%	14%
Department or Agency Rep'tive	60%	2%	38%

The Hearing

When the format of the hearing was explained to you, how clear was this information?

	CLEAR	UNCLEAR	N/A
Appellant	100%	0	0
Appellant's Rep'tive	100%	0	0
Department or Agency Rep'tive	98%	0	2%

Your Decision

When you received the result of the hearing, were you clear about the decision of the Board?

	YES	NO
Appellant	94%	6%
Appellant's Rep'tive	94%	6%
Department or Agency Rep'tive	99%	1%

Did you understand from the Hearing Report, why the Board reached its decision?

	YES	NO	N/A
Appellant	97%	3%	0
Appellant's Rep'tive	96%	4%	0
Department or Agency Rep'tive	97%	2%	1%

Overall, how satisfied were you with the service you received from the Secretariat?

	SATISFIED	DISSATISFIED
Appellant	93%	7%
Appellant's Rep'tive	98%	2%
Department or Agency Rep'tive	99%	1%

APPENDIX 7

Appeals Received and Heard 1991/92 – 2000/01

	Appeals Received	Appeals Heard	Successful Appeals
1991/92	327	214	24%
1992/93	362	281	25%
1993/94	344	266	20%
1994/95	326	253	19%
1995/96	306	242	21%
1996/97	269	238	24%
1997/98	231	192	21%
1998/99	165	168	21%
1999/00	216	158	22%
2000/01	238	161	27%

Civil Service Appeal Board

Alison Khan

Room 5/21

11 Belgrave Road

London SW1V 1RB

Tel: 020 7273 6500

Fax: 020 7273 6506

Email: akhan@cabinet-office.x.gsi.gov.uk

Website: www.cabinet-office.gov.uk

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