



**CABINET
OFFICE**

ANNUAL REPORT 2001/2002

CIVIL SERVICE APPEAL BOARD





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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 2001/2002

Chair — J H Davies

Deputy Chair — M E G Fogden CB

Deputy Chair — J Sheldon OBE

BOARD MEMBERS

OFFICIAL SIDE BOARD MEMBERS

G Bertram CB (Inland Revenue)**

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)

I Ward CBE (Prison Service)**

TRADE UNION SIDE BOARD MEMBERS

Mrs C Alderson (PCS)

A J Audley (IPMS)

Ms L J Clare (FDA)

Mrs P R Cryer (PCS)

D Evans (POA)

Mrs D Hall Hall (NUCPS)

P J Kelly (PCS)

T Thomson (NUCPS)

F R Winrow (IRSF)

SECRETARIAT

Mrs A Khan (Secretary to the Board)

Miss J Allen**

Ms C Callender*

Miss J Outred

Mrs S Rosier*

* Appointment ended during 2001/2002

** New appointment during 2001/2002

PEN PORTRAITS OF BOARD MEMBERS

As at 31 March 2002

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

J SHELDON OBE

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

OFFICIAL SIDE BOARD MEMBERS

G BERTRAM CB

Formerly Inland Revenue
Appointed September 2001

MRS S BROWN

Formerly Dept of Trade & Industry
Appointed November 1998

J F CARLING

Formerly Inland Revenue
Appointed October 1999

P S DRAPER CB

Formerly Property Services Agency
Appointed December 1996

E MCGIVERN CB

Formerly Inland Revenue
Appointed November 1998

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

I WARD CBE

Formerly HM Prison Service
Appointed September 2001

TRADE UNION SIDE BOARD MEMBERS

MRS C ALDERSON

Formerly PCS
Appointed December 2000

MS L 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 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 by 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

For the third year in succession, the number of appeals received by the Board during the year increased. 255 appeals were received compared with 238 in 2000/2001, representing an increase of 7%. The number of hearings held during the year also increased substantially from 161 to 207.

Appeals relating to inefficiency of attendance dismissals rose again last year to 46, showing that Departments and Agencies are continuing with their efforts to deal particularly with excessive long-term absence. As a result of our experience of dealing with such appeals and on the basis that further guidance to Departments and Agencies might be necessary, the Board recently submitted a paper to the Cabinet Office, outlining some of the issues arising in such cases, notably the failure to maintain adequate contact with absentees and deficiencies in the liaison between those dealing with inefficiency cases, either at line management level or within personnel areas, and the Occupational Health Advisors.

During 2001/ 2002 the Board heard 26 cases relating to failed probation, a marked increase upon the eight cases recorded for the previous year. This was a trend the Board anticipated would occur when the period that had to elapse before an individual had the right to appeal to the Board or to an Employment Tribunal was reduced from two years to one. The cases heard by the Board have revealed in some instances a lax approach to the management of probation and we are pleased that the Cabinet Office has now issued a reminder to Departments and Agencies of the need to establish and adhere to firm procedures for dealing with staff on probation.

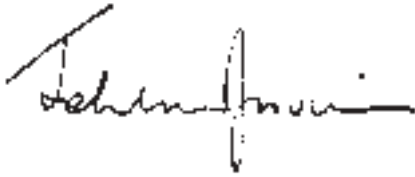
My colleagues and I have continued to attend seminars and workshops to explain the role of the Civil Service Appeal Board to Departments, Agencies and Trade Unions. We welcome such invitations and amongst those to whom we have spoken are the Ministry of Defence, the Valuation Agency, the Benefits Agency, the Scottish Inland Revenue, the Prison Service, the Home Office and the Prisons Officers' Association. The role play on misconduct which was devised in late 2000 was tested successfully with the Scottish Prison Service and another role play on attendance inefficiency has also been developed and already used on a number of occasions. Those attending the seminars where the role plays have been used have found them extremely useful and have said that the experience they gained in participating in them will help considerably when they have to deal with such cases in the future.

During the year we bade farewell to three long-standing colleagues on our official side panel, Rex Davie, Peter Jefferson-Smith and Terry Platt. They were all Board members of great distinction, whose wisdom and guidance was appreciated and we wish them well in the future. In their place we have welcomed George Bertram, whose appointments in the Civil Service included Head of the Contributions Agency, and Ivor Ward, who was Head of Employment Services in the Prison Service. They are already making a significant and enthusiastic contribution to the Board's work and we look forward to working with them in the future.

I am grateful to the Deputy Chairs, Mike Fogden and John Sheldon, for their help and support during the year and to all members of the Board for their commitment and their professionalism.

In what has been a very busy year, the Secretariat has managed the increased workload heroically and I should like to thank Alison Khan and her team for all that they have done. There have been some changes amongst the staff. In March, Sue Rosier retired after several years with the Civil Service Appeal Board. Unfortunately over the last year or so of her career she had been unwell and, before her retirement, she had been away from the office on sick leave for several months. I should like to thank her for all the work she undertook for the Board over many years and to wish her improved health and a happy and well-earned retirement. Corenna Callender also left the Board on a well-deserved promotion and her place was taken, on promotion, by Janet Outred, an existing member of the team.

As always, we look forward to continuing to develop the work of the Board in the year to come.

A handwritten signature in black ink, appearing to read 'John Davies', with a stylized flourish at the end.

JOHN DAVIES

Chair

THE CIVIL SERVICE APPEAL BOARD

This report covers the financial year ending 31 March 2002. 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 255 new appeals during the year, a 7% increase on the figure of 238 of the previous year. Eight appeals were received from industrial civil servants (this represented 3% of appeals received).

2. APPEALS CONSIDERED

The Appeal Board considered 207 appeals during the year (last year 161), a 29% increase on the number of appeals considered in the previous year. An analysis of appeals considered is set out in Appendix 3.

97 of the appeals were against dismissal on disciplinary grounds. This represents 47% of all appeals considered by the Board and a 17% increase on the number of appeals against disciplinary dismissal considered in the previous year in which dismissal on disciplinary grounds accounted for 52% of all appeals.

It has been noticeable during the period of this report that the number of appeals from those dismissed on grounds of failed probation has increased considerably from 5% in 2000/2001 to 13% during 2001/2002.

See Appendix 7 for an analysis of appeals received and considered between 1992/1993 and 2001/2002.

3. SUCCESSFUL APPEALS

Of the total number of appeals which were considered, 54 were found in favour of the appellant. This represents 26% of all the cases considered; this shows a 2% reduction in the number of successful appeals compared with the previous year.

In eight 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 four cases.

In seven 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 one of these.

In 24 cases having found in the appellant’s favour, the Board considered that reinstatement was inappropriate and an award of compensation was made.

In 15 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 the award from 0% to 100%, in four cases the award was uplifted from 0% to 50%, in one case from 0% to 30% and in three cases from 0% to 25%. In four other cases the award was uplifted as follows: 25% to 100%, 34% to 100%, 50% to 75%, and 75% to 100%.

4. INELIGIBLE APPEALS

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

Appellant had no right of appeal to the Board	5
Appellant beyond minimum pensionable age	3
Appeal had been submitted out of time	1

5. WITHDRAWN APPEALS

16 appeals were withdrawn for the following reasons:

Appellant voluntarily withdrew appeal	10
Appellant’s internal appeal successful	3
Appellant reinstated prior to appeal date	3

6. REPRESENTATION OF APPELLANTS

Trade Union	134
Legal	10
Other	23
None	40

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.

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 (98%). However, the Board was marginally unsuccessful in achieving its target for hearing appeals within 15 weeks of receipt (87%). This represented a 7% reduction in 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, 87% of appellants, 100% of appellants' representatives and 100% of Departmental representatives were satisfied with the service that they received.

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

10. COMPENSATION

The Board made awards of compensation amounting to £325,656 in 34 cases. The average award was £9,578 with the highest award being £25,910.

This compares with an average and highest award of £11,935 and £33,356 in 2000/2001.

11. NON-ATTENDANCE OF APPELLANTS

The Board considered 29 cases in the absence of the appellant, a significant increase on last year's figure (7).

12. OBSERVERS

A total of 208 people attended Appeal Board hearings as observers in order to familiarise themselves with the Board's procedures prior to attending a hearing. Of this total, 157 were representatives from Departments or Agencies with 29 coming from Trade Unions, 10 appellants and 12 others. The Board continues to encourage people to observe a hearing before attending, because this can be of great benefit.

13. RAISING AWARENESS OF THE BOARD'S WORK

The Board has been very keen to accept invitations throughout the reporting period to speak at seminars, make presentations during training sessions and hold informal meetings with Personnel Directors from Departments, Agencies and Trade Unions across the Civil Service. During the year the Board has worked with, amongst others, the Ministry of Defence, the Benefits Agency, the Home Office, the Prison Service, the Prison Officers' Association, the Inland Revenue, the Scottish Prison Service and the Valuation Office Agency.

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

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 and of 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 2001/2002 was £374,908, with the more significant categories detailed as follows:

	2000/2001	2001/2002
Members' fees and expenses	£200,870	£246,616
Tax on members' fees	£10,531	£19,670
Staff costs	£92,085	£97,680
IT equipment	£4,207	£2,959
Miscellaneous	£7,012	£7,983
VAT refund	(£2,148)	-
TOTAL	£312,557	£374,908

The increase in expenditure for Board Members' fees and expenses was as a direct result of the increase in the number of appeals heard during 2001/2002.

The cost per appeal considered was £1,811 compared with £1,941 in 2000/2001.

APPENDIX I

Summary of Activity

	2000/01	2001/02	Change from previous year
Cases outstanding at the beginning of the year	78	120	+54%
Appeals received			
Non-industrial	219	247	+13%
Industrial	19	8	-58%
TOTAL	316	375	+19%
Appeals considered	161	207	+29%
Appeals found to be ineligible	19	9	-53%
Appeals withdrawn	16	16	0%
TOTAL	196	232	+18%
Cases in process at the end of the year	120	143	+19%

APPENDIX 2

Appeals Heard, Financial Year April 2001 – March 2002

Department	Number of Appeals Received
Benefits Agency	40 (19%)
Child Support Agency	4
Court Service	2
Crown Office	2
Crown Prosecution Service	2
Department for Education & Skills	2
Department for Environment & Rural Affairs	2
Department of Social Security	2
Department of Trade & Industry	2
Driving Standards Agency	2
Employment Service	16 (8%)
Employment Tribunal Service	1
Foreign & Commonwealth Office	4
Health & Safety Executive	2
HM Customs and Excise	7
HM Land Registry	3
HM Prison Service	29 (14%)
HM Treasury	1
Highways Agency	1
Historic Scotland	1
Inland Revenue	26 (13%)
Meat Hygiene Service	1
Ministry of Defence	23 (11%)
Ministry of Defence Agencies:	
Army Base Repair Organisation	1
Army Training & Recruitment Agency	2
Defence ARA	1
Defence Evaluation & Research Agency	2
Defence Petroleum Centre	1
MOD Police	2
Rent Service	1
Registers of Scotland	2
Scottish Executive	1
Scottish Fisheries Protection Agency	1
Scottish Prison Service	9
Treasury Solicitor's Department	1
United Kingdom Passport Service	2
Valuation Office Agency	4
Vehicle Inspectorate	2
TOTAL	207

APPENDIX 3

Analysis of Appeals Considered

Reason for Appeal	Number	Upheld
Discipline	97 (47%)	24 (25%)
Inefficiency		
Attendance	46 (22%)	7 (15%)
Performance	7 (3%)	1 (14%)
Withholding of Compensation	29 (14%)	15 (52%)
Failed Probation	26 (13%)	7 (27%)
End of Fixed Term Appointment	1 (0.5%)	
Compulsory Early Retirement	1 (0.5%)	
TOTAL	207	54 (26%)

APPENDIX 4

Synopsis of Appeals Upheld by the Board

1. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR THE UNNECESSARY USE OF FORCE AGAINST A PRISONER

In the Board's view, the basis of the charge changed during the course of the disciplinary action. Greater emphasis appeared to have been laid upon the extent of the force used, rather than upon the use of force itself. The Board considered that the requirements of the Burchell test had not been satisfied in that insufficient attention seemed to have been paid to considering why methods other than force were not employed in the situation with which the appellant had been confronted. The letter turning aside the internal appeal referred specifically to the "failure to apply minimum force" with the clear implication that minimum force might have been appropriate in the circumstances, thereby fatally undermining the substantive reason for the dismissal. The appeal was therefore found to have been unfair.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	50%
AWARD:	£11,008

2. PRISON OFFICER DISMISSED FOR GROSS MISCONDUCT FOR DEFACING PAYSLEIPS WITH INAPPROPRIATE LANGUAGE

The Board was not satisfied that there had been an adequate investigation into all the circumstances of the case. In the Board's view it was not reasonable to rely solely on the outcome of the forensic handwriting analysis.

The Board was concerned that only one file was forwarded to the forensic handwriting expert for analysis and considered that it would have been better if all new staff files had been analysed by the expert witness. In addition, more weight should have been given to statements of the expert witness that he could not express a definite opinion of authorship. The Board agreed that in the circumstances the Investigating Officer should have tried to establish a motive and locate some corroborative evidence.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	0%
AWARD:	£21,940

3. ADMINISTRATIVE OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR THREATENING, BULLYING AND USING FOUL LANGUAGE TO A COLLEAGUE

Following careful consideration, the Board concluded that the Department had not complied with its own guidance and that the charges had not been as explicit and detailed as required. The appellant had arguably remained in doubt throughout the process of the details and extent of the case against him and therefore was potentially denied a full opportunity to challenge and refute the allegations against him. At the interview, the appellant was not shown the statements from other witnesses, and no details of the behaviour complained of or the words alleged to have been used were put to him. The Board considered these to be serious failures by the Department and concluded accordingly that the decision to dismiss the appellant was unfair on procedural grounds.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	100%
	100% POLKEY FACTOR
AWARD:	£00.00

4. ADMINISTRATIVE ASSISTANT DISMISSED ON DISCIPLINARY GROUNDS FOR HAVING A CONVICTION

The Board examined the Department's decision that the appellant's behaviour had brought the Department into disrepute. The Guide to working in the Department makes it clear that any officer convicted of a criminal offence calls into question his or her suitability as an employee and may lead to dismissal.

The Board was advised at the oral hearing that if a post had been available the appellant would have been re-employed by the Department. The Board concluded, therefore, that it was the unavailability of a post, and not the conduct of the appellant, which had been the determining factor in the decision to dismiss him.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	50%
AWARD:	£8,627

**5. ADMINISTRATIVE OFFICER DISMISSED ON DISCIPLINARY
GROUNDS FOR ABUSE OF FLEXI-TIME**

The Board was concerned that the appellant had been denied access to the evidence against him which was a requirement under the Agency's Disciplinary Procedures and the Staff Rules. It was clear to the Board that the failure to provide the appellant with the evidence against him was a serious breach of the procedures as well as a fundamental denial of natural justice.

The Board then considered whether there had been substantive as well as procedural deficiencies in the way the Agency had handled this case. Where there had been conflicting witness statements, no attempt appeared to have been made, from the papers before the Board, by the Agency to investigate and attempt to reconcile those conflicting statements with the witnesses concerned. As a consequence, the Board did not consider the Burchell test to have been satisfied or that dismissal was a reasonable response by the Agency on the basis of the evidence available. As such the dismissal was found unfair on both substantive and procedural grounds.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	50%
AWARD:	£1,665

6. CIVILIAN INSTRUCTIONAL OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR FAILING TO TAKE SUFFICIENT ACTION IN DEALING WITH AN INCIDENT IN A WORKSHOP IN WHICH A PRISONER WAS TIED DOWN AND ABUSED WITH THE INTENT OF EMBARRASSING HIM AND A FEMALE OFFICER

The case was found unfair on substantive grounds. The Deciding Officer chose to rely upon one version of events rather than another, and it appeared to the Board that he had, unjustifiably, taken insufficient account of written evidence provided in favour of the latter. The Board was not convinced that the appellant had received any training to deal with such incidents. He had no previous disciplinary history, yet the Deciding Officer had chosen to categorise his offence within the gross misconduct category and the Board considered the offence had none of the characteristics normally associated with gross misconduct.

RESULT: REINSTATEMENT WITH A LESSER PENALTY

ACCEPTED: NO

AWARD: £18,343 (25% CONTRIBUTORY FAULT)

7. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR MISUSING OFFICIAL TELEPHONES BY CALLING PREMIUM CHARGE LINES

The appellant had an addiction to gambling, and in admitting the offence, he advanced his addiction by way of mitigation. The Board considered that when the Governor had been made aware of the addiction, he should have sought some medical advice as to whether or not it could be substantiated, to establish in what ways it might affect his judgement as to the appropriate penalty to be exacted. No such action was taken and the Governor decided to dismiss him. That the Agency did not choose to seek medical advice meant that it was unable to take into account a key factor in reaching its decision, which in the Board's view rendered it unsound.

RESULT: REINSTATEMENT WITH A LESSER PENALTY

ACCEPTED: NO

AWARD: £16,056 (40% CONTRIBUTORY FAULT)

8. DRIVING INSTRUCTOR DISMISSED ON DISCIPLINARY GROUNDS FOR HAVING DEMONSTRATED SERIOUS MISJUDGEMENT, FOR HAVING ACTED IN AN INAPPROPRIATE MANNER IN A RELATIONSHIP WITH A MEMBER OF STAFF, FOR HAVING FAILED TO CARRY OUT MANAGEMENT DUTIES, FOR EXPLOITING HIS POSITION AS A MANAGER WITHIN THE AGENCY AND FOR MISUSING OFFICIAL EQUIPMENT

Major procedural flaws emerged with regard to the way in which the Agency had handled this case. The appellant had been given insufficient prior notice of what was to be discussed at the meeting where his various alleged misdemeanours were to be explored, nor was he advised at the meeting that dismissal could be a possible consequence of his actions. Given that management deficiencies appeared to have been the most serious element of the appellant's misdemeanours, the Board felt that there was a strong case for him to have been pursued through the inefficiency rather than the misconduct procedures. The Board was not convinced that those responsible for the appellant had given him adequate support, nor maintained sufficient contact with him, nor undertaken performance reviews in line with normal requirements.

RESULT: REINSTATEMENT WITH A LESSER PENALTY

ACCEPTED: NO

AWARD: £20,347 (33.3% CONTRIBUTORY FAULT)

9. ADMINISTRATIVE ASSISTANT DISMISSED ON DISCIPLINARY GROUNDS FOR UNAUTHORISED ACCESSES TO THE AGENCY'S COMPUTER SYSTEM

The Board was concerned by the procedural deficiencies that came to light during the case. In particular, the appellant had not been supplied with the necessary documentation to support the charge letter. Secondly, there were serious delays in handling the case, with the process taking 11 months to complete. The Deciding Officer had not been given all the relevant facts when the decision to dismiss was taken and the appellant was not given the right to supplement his written observations with oral evidence and an interview. Finally, the appellant was denied the right of an internal appeal to the Chief Executive of the Agency, even though the rules of the Agency allowed for such an appeal. The Board considered that the shortcomings highlighted above were sufficiently material as to render the dismissal unfair.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	100%
	100% POLKEY FACTOR
AWARD:	£00.00

10. RESIDENTIAL OFFICER DISMISSED FOR A BREACH OF SECURITY AND COLLUSION

The Board considered that the Agency could have provided the appellant with absolute clarity in specifying the allegations made against her. The Board also considered it undesirable for the Investigating Officer to express an opinion as to an individual's guilt during the interview process. The Board was not convinced that the evidence regarding the number of keys as well as tallies in the prisoner's possession was conclusive. Also, there was a lack of robustness about the evidence of the appellant's alleged collusion with other staff. On this analysis the Board found that the Burchell test had not been satisfied. The procedures for reporting the incident lacked clarity and it was reasonable for the appellant to assume she had satisfied the security requirements following the incident.

RESULT:	REINSTATEMENT
ACCEPTED:	NO
AWARD:	£21,010

11. PRISON OFFICER DISMISSED ON GROUNDS OF INEFFICIENCY FOR UNSATISFACTORY ATTENDANCE

The Board considered that there was clear evidence of significant improvements in the appellant's sick record. After the first three-month review period, the Prison Service noted that there had been no absences and formally congratulated the appellant. There was a further evidence of improvement and the Agency restored the facility of self-certification of sick leave to the appellant. In the following three months, the appellant had a total of 19 days' absence after which the Governor recommended dismissal. The Board, however, was satisfied that the period of absence was related to an incident at work and that the Agency had incorrectly interpreted the forms completed by the appellant and his line manager. In the Board's view, it was premature for the Agency to draw the conclusion that the appellant would be an unsatisfactory attendee in the future.

RESULT: REINSTATEMENT FOR A THREE-MONTH TRIAL PERIOD
ACCEPTED: NO
AWARD: £22,698

12. REVENUE OFFICER DISMISSED FOR UNACCEPTABLE BEHAVIOUR AFTER A COMPANY OF WHICH SHE WAS CO-DIRECTOR WENT INTO LIQUIDATION WITH DEBTS TO THE INLAND REVENUE

The Board carefully examined the proportionality of the decision to dismiss and concluded that the penalty of dismissal was too harsh for the offences for which the appellant had been charged. Whilst the appellant's failures were clearly a breach of her terms and conditions of appointment, the Board was of the view that the appellant had not acted wilfully which was normally a condition for gross misconduct leading to the ultimate penalty of dismissal. Furthermore, there was some force in the mitigating circumstances that the appellant had prayed in aid and in the event the reputation of the Department had not been adversely affected. The Board concluded therefore that the Department had acted unreasonably in deciding to dismiss her and that the dismissal was therefore unfair.

RECOMMENDATION: REINSTATEMENT WITH A LESSER PENALTY
ACCEPTED: YES

13. PRISON OFFICER DISMISSED ON GROUNDS OF INEFFICIENCY FOR UNSATISFACTORY ATTENDANCE

Following an injury at work, there was a long period of sick absence during which the appellant refused to return to work and this led to the dismissal. The Board's reservations as to how the Agency had dealt with the implications of fresh medical information, which had been sought specifically by the Prison Service as a result of the appellant's heart attack between the time of the decision to dismiss and the appeal hearing, were so great that they resulted in the decision to dismiss being found unfair. BMI suggested that there would be merit in exploring again the possibility of medical retirement and expressed the view that, on the balance of probabilities, the appellant could be considered as having a medical condition that was permanent and that could prevent her from carrying out the relevant Prison Officer duties. The decision by the Agency not to approach BMI before reaching a decision on the appeal appeared to the Board to have been unreasonable and neglectful of an organisation's duty of care to an employee even though it was still open to the appellant to seek medical retirement.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	0%
AWARD:	NO AWARD WAS MADE AS THE PAYMENT UNDER THE CIVIL SERVICE COMPENSATION SCHEME WAS LARGER THAN THE AWARD FOR UNFAIR DISMISSAL

14. FISHERY OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR BEING INCAPABLE OF PERFORMING HIS DUTIES WHILST UNDER THE INFLUENCE OF ALCOHOL

The Board's reasons for finding the dismissal unfair were centred on the quality and depth of the investigation into the allegation. The Board paid due regard to the established Employment Law test case of *BHS v Burchell* and considered whether the investigation had been sufficiently thorough to justify the Agency's reaching the reasonable and genuine conclusion, on the balance of probabilities, that the appellant was guilty of the offence with which he had been charged. The Board felt that it was particularly regrettable that the Investigating Officer chose to rely largely on written statements instead of interviews, the only interviewee having been the appellant. It was unfortunate, in the Board's view, that no steps were taken to follow up the telephone call which the Senior Fishery Officer had received from the Master of a ship who told him that the appellant had been aboard his boat during the evening in question and had only consumed two cans of Coke. That no attempt was made to interview him or at least to obtain a written statement was a serious deficiency in the investigation in the Board's view.

Furthermore, the appellant was not challenged at the time with being drunk, which was unfortunate as the absence of such a challenge, and a reaction to it, clouded the circumstances of the case still further. Nor at the time was there an alcohol policy in place within the Agency, which might have provided some guidelines in accordance with which those involved could have operated.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	0%
AWARD:	£3,226

15. OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR HAVING MADE FALSE ENTRIES IN AN OFFICIAL DEPARTMENTAL NOTEBOOK

The Board considered that a material flaw occurred when the letter exonerating a second person investigated at the same time as the appellant was included in the papers that were considered at the oral hearing relating to the appellant. That this person had been exonerated was a fact unnecessary for those involved in the oral hearing to know and it was on balance sufficiently prejudicial to the appellant to render the dismissal unfair. The Board considered that it would have been more prudent to have delayed advising the outcome of the investigation until a decision had been reached in respect of the appellant.

RESULT: **COMPENSATION**
CONTRIBUTORY FAULT: **75%**
AWARD: **£5,227**

16. OPERATIONAL SUPPORT GRADE DISMISSED ON GROUNDS OF UNSATISFACTORY ATTENDANCE

The Board identified a number of serious procedural deficiencies in the way in which the Prison Service handled this case. Not only was an unacceptable amount of time taken to move from stage to stage in the procedure, but the Agency also failed, in the Board's view, to make adequate efforts to keep in contact with the appellant once he had moved. These procedural deficiencies were sufficiently serious in themselves to justify the dismissal being found unfair and they were compounded by other substantive shortcomings.

Whilst the Board accepted that it was not the Prison Service's practice to release personal files to staff, it would seem entirely reasonable, and in the interests of natural justice, for the appellant to have been given copies of relevant correspondence, particularly as he claimed he was unable to attend a meeting to discuss his position due to illness. That this did not occur and that the appellant's request was ignored, the Board found reprehensible and considered the Agency had fallen short of the duty of care it should show an employee.

RESULT: **COMPENSATION**
CONTRIBUTORY FAULT: **75% POLKEY FACTOR**
AWARD: **£2,767**

17. ADMINISTRATIVE ASSISTANT DISMISSED FOR FAILING TO SATISFY THE REQUIRED STANDARD OF ATTENDANCE DURING HER PROBATIONARY PERIOD

The Board considered that the Agency had been unclear about whether it was following its procedures for managing short-term absences or those for long-term absences. It prevented the appellant from establishing what was expected of her and what she needed to do to satisfy the requirements of her probation.

In addition to this fundamental flaw in terms of lack of clarity about procedures, the Board was not satisfied that all the aspects of the OHSA report had been taken sympathetically into account. The Board considered that, other than those absences linked to a broken leg from which the appellant would have recovered, there were no other substantial absences sufficient to justify dismissal. Factors which the Board considered to be relevant, including the appellant's performance, had been ignored.

RESULT: REINSTATEMENT FOR A TRIAL PERIOD

ACCEPTED: NO

AWARD: £21,940

18. STONEMASON DISMISSED ON DISCIPLINARY GROUNDS FOR BRINGING THE AGENCY INTO DISREPUTE

The Board considered that the Agency had not followed its procedures regarding the handling of Serious Disciplinary Offences. Moreover, the Board's view was that the appellant had not been treated fairly and reasonably, and that management were aware of staff problems but had failed to address them. On the key issue of gross misconduct, the Board considered that evidence provided by the appellant had not been given sufficient consideration. The Board thus considered that the charges did not fall within a reasonable definition of gross misconduct.

RESULT: REINSTATEMENT WITH A LESSER PENALTY

ACCEPTED: NO

AWARD: £7,140 (50% CONTRIBUTORY FAULT)

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

The major shortcoming identified by the Board was that there was no evidence that the appellant's representations regarding arrangements for a return to work had been followed up. It was admitted by all parties at the hearing that the appellant was regarded as a good Prison Officer who had always received satisfactory reports. In those circumstances, the Board found it extraordinary that not only did the Deciding Officer apparently not follow up the matter but that no reference whatsoever to the subject was made in the response to her letter, which confirmed the decision to dismiss. That action, in the Board's view, was entirely unreasonable.

Equally unreasonable was the lack of any response whatsoever to the appellant's request to be provided with copies of the documentation which the Governor had seen before making his decision to dismiss. This, taken together with the failure to follow up more closely the issue of a phased return to work for the appellant, was sufficiently serious to justify the dismissal being found unfair.

RESULT: **COMPENSATION**
CONTRIBUTORY FAULT: **50%**
AWARD: **£3,817**

20. ADMINISTRATIVE ASSISTANT DISMISSED AS A RESULT OF FAILURE OF PROBATION DUE TO UNSATISFACTORY ATTENDANCE

Whilst the Board accepted that the Department had the right to decide to terminate an appointment before an extended probation period had been fully completed, it considered in this instance that it was premature to do so after only two months of that period, particularly as the available evidence suggested that on average the appellant's performance was not below the Departmental target. In addition, the Board was concerned that the Department had ignored the need to treat the appellant in accordance with the Disability Discrimination Act, in particular failing to carry out a workplace assessment to ascertain whether alternative duties which might have been more suited to her could be made available.

RESULT: **REINSTATEMENT**
ACCEPTED: **YES**

21. ADMINISTRATIVE ASSISTANT DISMISSED AS A RESULT OF FAILURE OF PROBATION DUE TO UNSATISFACTORY ATTENDANCE

The Board had sympathy with the Department because of the demands of the organisation's changes at the time but it appeared that some aspects of the procedures had been totally disregarded, particularly in respect of the need to monitor probation periods and to issue oral warnings rather than proceed directly to written warnings at the end of the period.

RESULT: REINSTATEMENT

ACCEPTED: YES

22. EXECUTIVE OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR MAKING UNAUTHORISED ACCESSES INTO THE AGENCY'S COMPUTER SYSTEM, MISUSING INFORMATION IN WHICH HE HAD A PRIVATE INTEREST BY DISCLOSING IT TO A PERSON NOT AUTHORISED TO SEE IT

The Board was concerned about the inordinate delay that had taken place in the investigation which was quite contrary to the proper emphasis placed in the Agency's procedures for the need to avoid unnecessary or unreasonable delay at any stage. Indeed, some six months elapsed between the appellant being identified as the person suspected of the unauthorised access and his being interviewed. The Board considered this unreasonable in the circumstances. It denied the appellant the opportunity to produce the evidence he claimed he had to substantiate the access, as this would have been destroyed six months after the event. This had adversely prejudiced his position and in terms of natural justice had denied him the opportunity to produce evidence to justify his actions. As a consequence, the Board decided the investigatory aspects of the disciplinary action to be fatally flawed and that the dismissal was therefore unfair.

RESULT: COMPENSATION

CONTRIBUTORY FAULT: 75%

50% POLKEY FACTOR

AWARD £1,238

**23. SENIOR EXECUTIVE OFFICER DISMISSED ON DISCIPLINARY
GROUNDS FOR UNACCEPTABLE BEHAVIOUR**

The Board considered that the Deciding Officer had not placed the same weight on certain key elements as the Hearing Officer had recommended in his report. The Hearing Officer had commented that the appellant's actions were out of character and at the bottom end of the scale. The Board was also concerned that the Deciding Officer had not been able to accept the following further points made by the Hearing Officer. The Hearing Officer did not consider that the appellant's actions had broken the trust necessary between an employer and an employee. It was not apparent that the Deciding Officer had accepted that weight should be given to previous long service and the absence of any previous disciplinary offences. The advice given by the appellant's line manager caused the Board some concerns. In his letter commenting on the hearing report, he wrongly stated that the penalty of dismissal was mandatory if the appellant was guilty as charged. There was also an implied threat in his advice when he suggested that a return to the Agency by the appellant would make his own position untenable. The Board was concerned that this letter might have unduly influenced the decision as to whether to accept the recommendation of the Hearing Officer.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	60%
AWARD:	£25,910

**24. LOCAL OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR
BENEFIT FRAUD**

The Board noted that the Agency in its verbal submissions explained that it might have reached a different conclusion regarding the alleged misconduct and the subsequent breakdown of trust, if the appellant had taken the advice of her manager and set out her problems in writing. However, the Board also noted that the appellant had taken the initiative and sought a meeting with management to explain the problems she was having with her partner and its likely effect on her work. Importantly, the appellant told her managers that her partner was going to claim JSA and use her address to do so. The Board, taking into account the domestic circumstances of the appellant, agreed that she had taken reasonable steps to inform the Agency about her position and the probable action of her ex-partner.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	25%
AWARD:	£1,148

**25. ADMINISTRATIVE ASSISTANT DISMISSED FOR FAILING
PROBATION ON THE GROUNDS OF UNSATISFACTORY
ATTENDANCE**

The Board considered that there were a number of serious procedural flaws in the way in which the Benefits Agency had handled this case. So serious were those flaws that the Board considered that they rendered her dismissal procedurally unfair. Procedures relating to appraisal were not followed correctly. The interim probation report was not completed at the appropriate time, and the appraisal conducted some three months later in June 1997 suggested that she was performing to a satisfactory standard. The final probation report was completed one month later than it should have been, without any consultation with the reporting officer who should have conducted the appraisal. An arbitrary decision that the appellant had not completed her probation period satisfactorily was taken. Probation was extended by three months, but no attempt was made to notify the appellant of the extension or of the fact that her probation had not been completed satisfactorily. The Board considered that these deficiencies represented a serious breach of procedure.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	100% POLKEY
AWARD:	£1,080

26. SECURITY OFFICER DISMISSED ON GROUNDS OF FAILURE OF PROBATION DUE TO UNSATISFACTORY ATTENDANCE

The Board was concerned that the appellant had only been orally advised that his probation period would be extended during an interview with his manager at the five-month stage of his probation. No formal notification was on record and therefore the appellant was not formally aware of what would be required to successfully complete his probation. The Board was unimpressed by the Department's handling of the appeal process which did not deal with key issues raised by the appellant's trade union representative. The Board was also concerned that, as the interview was clearly used for discipline purposes, the Inland Revenue was in breach of its own procedures under the requirements of the Employment Relations Act 1999 in not allowing the appellant to have trade union representation during the meeting.

RESULT: REINSTATEMENT

ACCEPTED: YES

27. CRAFTSMAN (VEHICLE MECHANIC) DISMISSED ON DISCIPLINARY GROUNDS FOR UNAUTHORISED ABSENCE

The Board considered that it had been unreasonable for the Department to have decided to follow the disciplinary rather than the inefficiency procedures without first of all establishing through the BMI whether the appellant's failure to contact the Department during his period of unauthorised absence was a symptom or a consequence of his illness, or whether it was unrelated. The Board also considered that insufficient attention had been paid to the medical advice generally, in that the Department failed to appreciate that the medical evidence referred to a recurring medical problem that made, prima facie, the efficiency procedures a more appropriate route to have followed.

RESULT: COMPENSATION

CONTRIBUTORY FAULT: 0%

AWARD: £12,036

28. ADMINISTRATIVE ASSISTANT DISMISSED FOR FAILURE OF PROBATION DUE TO UNSATISFACTORY ATTENDANCE

The Board was concerned that, when considering the possible extension of the appellant's probation, the Agency stated there was no evidence to suggest that she would reach the required standard of attendance. This statement appeared to have been made in total disregard of the occupational health report which had been sought specifically to establish whether or not her health and attendance were likely to improve in the future. In that report, the occupational health physician stated that the appellant's condition was of short duration and that she should recover soon. The Board was therefore at a total loss to understand how the Agency could draw the conclusion that there was no evidence that the appellant would reach the required standard of attendance at the time they were considering her future and the possible extension of her probation.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	0%
AWARD:	£6,169

29. TRAFFIC EXAMINER DISMISSED ON DISCIPLINARY GROUNDS FOR CARRYING OUT HIS OWN EXTERNAL BUSINESS WHILST CERTIFIED SICK AND RECEIVING SICK PAY

The Board considered that the fact-finding interview was not conducted in accordance with the Agency's procedures. Furthermore, it was stated at the hearing that amendments were made to the meeting note subsequently, and that, contrary to best practice in such circumstances, its contents were not agreed by the appellant. The disciplinary procedures of the Agency state clearly that where the facts of a case are not clear, an investigation will be authorised. In this particular case, no such investigation took place. The failure to mount a proper investigation meant that the dismissal decision was not sufficiently well founded to justify it being regarded as an action a reasonable employer might be expected to take in such circumstances.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	10%
AWARD:	£22,361

30. OFFICE MANAGER DISMISSED ON DISCIPLINARY GROUNDS FOR THE BULLYING AND HARASSMENT OF STAFF, ENGAGING IN OUTSIDE ACTIVITIES WITHOUT AUTHORITY TO THE DETRIMENT OF THE AGENCY AND THE IMPROPER USE OF AGENCY PROCEDURES

In this case, the Board identified a number of serious shortcomings in the investigation process. In view of the fact that the penalty for her offences was calculated on the basis of a number of offences, cumulatively assessed, the Board did not consider that, in respect of all the charges against her, the investigation had been sufficiently thorough to meet the requirements laid down by the Burchell test. That lack of thoroughness, coupled with the fact that the Agency had chosen to regard the offences in their totality, was sufficiently material to render the dismissal unfair, in the Board's view.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	75%
AWARD:	£6,451

31. SENIOR OFFICER DISMISSED ON GROUNDS OF INEFFICIENCY FOR UNSATISFACTORY ATTENDANCE

The Board considered that the Agency, whilst utilising the correct procedures, namely those relating to short-term sickness absence, had applied them sufficiently over-rigidly as to render its treatment of the appellant unfair. The Board noted carefully the definition of short-term sickness absence in the Agency's management guide, namely "a series of unrelated illnesses *with no underlying medical cause*". Having considered the OHS report, it was quite clear that the appellant's absences had an underlying medical cause, namely his depressive illness. The Board was concerned that the Agency had failed to appreciate sufficiently the underlying medical aspect by not, in consequence, introducing an element of flexibility into the operation of its short-term sickness absence procedures in this case. The Board also paid particular attention to the observation that his condition might fall within the Disability Discrimination Act, particularly as there was no evidence whatsoever that the Agency sought clarification on that point, nor that it considered exploring more generally the implications of the OHS report.

RESULT: REINSTATEMENT WITH A LESSER PENALTY
ACCEPTED: NO
COMPENSATION: £19,396 (30% CONTRIBUTORY FAULT)

32. LECTURER DISMISSED ON DISCIPLINARY GROUNDS FOR UNAUTHORISED ABSENCE

The Board was concerned that, in making its decision that the appellant was absent from work without authority, the Department had relied solely on letters sent to a contact address provided previously which the Department was aware was no longer the contact address. During previous sick absences the appellant had always contacted her place of work on a daily basis. The Department did not appear to have considered that failure on this occasion to contact her place of work was not the established behaviour of the appellant and the Board concluded that in the circumstances the Department should have taken more effort to check the whereabouts of the appellant. In this respect it appeared to the Board that the appellant had been treated sufficiently unfairly to render the dismissal unfair.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	30%
AWARD:	£16,726

33. ADMINISTRATION OFFICER DISMISSED FOR FAILURE OF PROBATION DUE TO UNSATISFACTORY ATTENDANCE

The Board considered that the way in which the Agency had followed its procedures in this case was fatally flawed. It considered that the Agency would have been on safer ground to have dismissed the appellant at the 12-month stage at which time her attendance record was sufficiently poor to have justified the termination of her probation. However, the appellant's probation was extended due to her sickness. The Board noted from the Agency's rules that this should only be agreed in exceptional circumstances where there was evidence that the staff member would reach the required standard, and there was a clear implication from the appellant's actions that the Agency assumed that such an improvement could have been effected. There was a clear implication in the confirmatory letter that her attendance record during the review period would have been a critical factor in deciding whether or not she would be given a permanent appointment. There was no mention in that letter of a decision simultaneously being taken about the outcome of her probation. No account whatsoever seemed to have been taken of her improved attendance record since mid-November. The Board was also unable to understand why, at the stage of the oral warning and in the confirmatory letter, reference was made to a possible extension of her probation. It felt it would have been sufficient to advise her that if her absence levels did not improve during the remainder of her probation, the Agency would be unable to confirm her appointment.

RESULT: **REINSTATEMENT WITH A LESSER PENALTY**
ACCEPTED: **NO**
COMPENSATION: **£12,412**

34. OFFICER DISMISSED ON GROUNDS OF INEFFICIENCY FOR UNSATISFACTORY ATTENDANCE

The Board considered that the Department had not treated the appellant reasonably and fairly. On the evidence before it, the Board concluded that the appellant had sought permission for time off to attend physiotherapy sessions and that this request had been refused on operational grounds. In cases similar to the appellant's, the Department's own guidelines urged the use of flexibility if urgent treatment is needed. The Board concluded that the refusal to grant time off to attend the physiotherapy sessions recommended by the hospital was not the action of a reasonable employer. Also, in the Board's view, prudent management, having been made aware that the appellant had been diagnosed with Chronic Fatigue Syndrome, would have sought further advice from the medical advisers as to whether the appellant was covered by the Disability Discrimination Act and whether any reasonable adjustments could be made to assist the appellant.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	0%
AWARD:	£290

35. OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR HAVING A CONVICTION

The Board considered that there were procedural and substantive shortcomings in the way in which the Agency had handled this case. Normal disciplinary procedures were ignored, and the process was deliberately circumvented up to the issue of the letter of dismissal on the day following her conviction. No warning had been given, nor had there been a separate investigation, which was particularly reprehensible bearing in mind the assurance that the appellant had been given that, even if she were found guilty, the Agency would have to look at her case before deciding upon dismissal. She was not charged by the Agency with any offence, nor given a timely opportunity to respond to that charge. The letter of dismissal made no reference to any rights of appeal.

Once the conviction had been quashed, and as the appellant had been dismissed solely because she had been found guilty of a criminal offence, the reason for her dismissal had fallen away. That left the Agency with the clear obligation of re-engaging her and then implementing those of its investigative and disciplinary processes it felt appropriate in the circumstances and this it failed to do.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	50%
AWARD:	£14,145

36. STOREKEEPER DISMISSED ON DISCIPLINARY GROUNDS FOR THE UNAUTHORISED USE OF A VEHICLE, FRAUDULENT RECEIPT OF SICK PAY AND ABUSING THE OFFICIAL TELEPHONE SYSTEM

The Board considered that certain aspects of the use of the vehicle could have been investigated in more detail and the Board decided therefore that there was insufficient evidence to reach a safe conclusion on that matter. Had those aspects been investigated or questioned more fully, the Department would have been on much safer ground when it came to determine the appropriate penalty for the offence. The Board then considered the charge that the appellant had been in fraudulent receipt of sick pay. In that respect it referred to the note produced by the Hearing Officer summarising his conclusions and recommendations, in which he appeared to conclude that, because the appellant should not have used the vehicle whilst signed off sick, he was, therefore, in fraudulent receipt of sick pay. Not only was the Board totally unable to follow his logic in that respect but it also established at the hearing that there was no rule prohibiting someone, who was in receipt of sick pay covering his absence from his normal duties (which were Monday to Friday), from taking part in *weekend* activity, such as that involved in TA duties, and being paid or reimbursed expenses for those duties. The Board concluded that the charge had been wrongly directed and should fall away.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	75%
AWARD:	£483

**37. ADMINISTRATION OFFICER DISMISSED FOR SOME OTHER
SUBSTANTIAL REASON**

The Board had found it difficult to establish which set of procedures the Department had followed in moving to dismiss the appellant. It did not appear to have followed the probation procedures, nor those applicable to unsatisfactory performance, attendance or misconduct. At the hearing, the Departmental representatives confirmed that, following their interpretation of the medical and legal advice received, their priority was to deal with the risk that they perceived the appellant represented to other members of staff, rather than to ensure that a specific set of procedures was followed. The Board was not presented with any convincing evidence to persuade it that the situation with the appellant was sufficiently serious to justify the Department's dispensing with its procedures in dealing with the case. As such its chosen course of action had been fatally flawed in the Board's view.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	33.33%
	100% POLKEY
AWARD:	NO AWARD WAS MADE AS THE PAYMENT UNDER THE CIVIL SERVICE COMPENSATION SCHEME WAS LARGER THAN THE AWARD FOR UNFAIR DISMISSAL

**38. ADMINISTRATIVE OFFICER DISMISSED ON DISCIPLINARY
GROUNDS FOR MISUSING DEPARTMENTAL TELEPHONES FOR HIS
PERSONAL USE**

After careful consideration, the Board concluded that the appellant's offence fell within the definition of gross misconduct as set out in the Department's Personnel Manual and that dismissal was within the range of reasonable penalties available to the Department in response to such an offence. However, the Board noted that the Hearing Officer had recommended to the Deciding Officer that a penalty of ten days' loss of pay and the restitution of the cost of the telephone call was an appropriate response to the appellant's misconduct. While the Deciding Officer emphasised that it was the offence of making personal calls which was important rather than the reason for them, the Board was not persuaded that the Deciding Officer had sufficient firm additional evidence available not to follow the advice of the Hearing Officer, particularly as, in spite of further enquiries made at the request of the Deciding Officer, there was no evidence that the appellant was not ringing his mother to check on her welfare. In reaching its conclusion, the Board also had due regard to a Departmental Personnel Notice which deals with the treatment of mitigating factors when deciding on a disciplinary penalty as a result of gross misconduct. This makes clear that, although the low value of the theft or fraud should not automatically be accepted as justifying a penalty less than dismissal, careful consideration should be given to it. This did not appear to have happened in the appellant's case.

RESULT: REINSTATEMENT WITH A LESSER PENALTY

ACCEPTED: YES

**39. ADMINISTRATIVE OFFICER DISMISSED ON INEFFICIENCY
GROUNDS DUE TO LONG-TERM SICKNESS ABSENCE**

The Board identified a number of severe procedural shortcomings in the way in which the Agency handled this case, which, collectively were sufficiently serious to render the dismissal procedurally unfair. In particular, the Board was concerned that the appellant's appeal against dismissal under the grievance procedures had been considered by the Deciding Officer rather than by an independent senior manager. At the oral hearing, the Agency was unable to persuade the Board that the Human Resources Manager had conducted an appeal against the dismissal as such and the Board was therefore unable to accept the Agency's contention that the appeal process had been properly executed. Other procedural shortcomings included the totally unacceptable amount of time taken to deal with the appellant's absences and the inadequate contact the Agency maintained with him during his absence.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	75%
AWARD:	NO AWARD WAS MADE AS THE PAYMENT UNDER THE CIVIL SERVICE COMPENSATION SCHEME WAS LARGER THAN THE AWARD FOR UNFAIR DISMISSAL

APPENDIX 5

Performance Against Targets 2001/2002

PERFORMANCE

HEARINGS

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

(2000/2001 figures in brackets)

Month	Appeals Heard	Av no of Weeks to Hearing	% Within Target
April	10 (14)	12 (13)	90%
May	22 (21)	13 (13)	86%
June	29 (15)	15 (13)	69%
July	18 (13)	12 (12)	95%
August	13 (6)	13 (12)	77%
September	14 (13)	13 (13)	100%
October	23 (16)	13 (13)	91%
November	19 (14)	12 (12)	100%
December	12 (14)	13 (11)	75%
January	27 (14)	12 (12)	81%
February	11 (12)	13 (15)	82%
March	9 (9)	12 (12)	100%
AVERAGE	207 (161)	13 (13)	87%

DECISION LETTERS ISSUED

Letters to be issued within 24 hours of hearing

All decision letters were issued within the target period during 2001/2002.

REPORTS ISSUED

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

(2000/2001 figures in brackets)

Month	Reports Issued	Av no of W/Days to Issue	% Within Target
April	8 (12)	10 (10)	100%
May	17 (20)	11 (10)	100%
June	29 (18)	11 (10)	93%
July	19 (11)	12 (9)	100%
August	19 (8)	13 (8)	100%
September	9 (14)	13 (8)	100%
October	21 (16)	12 (10)	95%
November	24 (11)	11 (7)	100%
December	12 (19)	8 (8)	92%
January	23 (4)	9 (6)	100%
February	18 (15)	10 (10)	95%
March	11 (14)	9 (8)	100%
AVERAGE	210 (162)	11 (9)	98%

APPENDIX 6

Results of Customer Satisfaction Surveys Issued 2001/2002

Number of forms issued: 606 Number of forms returned: 243

Appellant	44/202
Appellant's Representative	70/202
Department or Agency Representative	129/202

Written information about the CSAB

Were the guidance notes provided easy to understand?

	YES	NO	N/A
Appellant	95%	2%	3%
Appellant's Rep'tive	96%	2%	2%
Department or Agency Rep'tive	100%	0%	0%

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

	YES	NO	N/A
Appellant	84%	14%	2%
Appellant's Rep'tive	96%	4%	0%
Department or Agency Rep'tive	97%	2%	1%

Dealing with the Secretariat

If you telephoned the Secretariat:
were the staff helpful?

	YES	NO	N/A
Appellant	70%	4%	26%
Appellant's Rep'tive	95%	0%	5%
Department or Agency Rep'tive	94%	1%	4%

Was the information given useful?

	YES	NO	N/A
Appellant	69%	7%	24%
Appellant's Rep'tive	91%	0%	9%
Department or Agency Rep'tive	97%	1%	2%

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

	YES	NO	N/A
Appellant	40%	9%	51%
Appellant's Rep'tive	46%	0%	54%
Department or Agency Rep'tive	35%	0%	65%

Were you sent a response within 10 working days?

	YES	NO	N/A
Appellant	66%	23%	11%
Appellant's Rep'tive	79%	10%	11%
Department or Agency Rep'tive	65%	11%	24%

The hearing

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

	CLEAR	UNCLEAR	N/A
Appellant	96%	4%	0%
Appellant's Rep'tive	100%	0%	0%
Department or Agency Rep'tive	96%	1%	3%

Your decision

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

	YES	NO
Appellant	89%	11%
Appellant's Rep'tive	99%	1%
Department or Agency Rep'tive	99%	1%

Did you understand from the Hearing Report why the Board reached the decision it did?

	YES	NO	N/A
Appellant	75%	19%	6%
Appellant's Rep'tive	100%	0%	0%
Department or Agency Rep'tive	100%	0%	0%

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

	SATISFIED	DISSATISFIED
Appellant	87%	13%
Appellant's Rep'tive	100%	0%
Department or Agency Rep'tive	100%	0%

APPENDIX 7

Appeals Received and Heard 1992/1993 – 2001/2002

	Appeals Received	Appeals Heard	Successful Appeals
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%
2001/02	255	207	26%

the \mathbb{R}^n is a linear space over \mathbb{R} with the usual addition and scalar multiplication. The inner product is defined by

$$\langle x, y \rangle = x_1 y_1 + x_2 y_2 + \dots + x_n y_n \quad (1)$$

and the norm is defined by

$$\|x\| = \sqrt{x_1^2 + x_2^2 + \dots + x_n^2} \quad (2)$$

Let $x, y \in \mathbb{R}^n$. Then

$$\langle x, y \rangle = \langle y, x \rangle \quad (3)$$

and

$$\langle \alpha x + \beta y, z \rangle = \alpha \langle x, z \rangle + \beta \langle y, z \rangle \quad (4)$$

for any scalars α, β and any vectors $x, y, z \in \mathbb{R}^n$. The norm satisfies

$$\|x\| \geq 0 \quad (5)$$

and

$$\|\alpha x\| = |\alpha| \|x\| \quad (6)$$

for any scalar α and any vector $x \in \mathbb{R}^n$. The triangle inequality

$$\|x + y\| \leq \|x\| + \|y\| \quad (7)$$

holds for any vectors $x, y \in \mathbb{R}^n$. The Cauchy-Schwarz inequality

$$|\langle x, y \rangle| \leq \|x\| \|y\| \quad (8)$$

holds for any vectors $x, y \in \mathbb{R}^n$. The norm is induced by the inner product

$$\|x\|^2 = \langle x, x \rangle \quad (9)$$

and the inner product is induced by the norm

$$\langle x, y \rangle = \frac{1}{2} (\|x + y\|^2 - \|x - y\|^2) \quad (10)$$

for any vectors $x, y \in \mathbb{R}^n$. The norm is also induced by the inner product

$$\|x\|^2 = \langle x, x \rangle \quad (11)$$

and the inner product is induced by the norm

$$\langle x, y \rangle = \frac{1}{2} (\|x + y\|^2 - \|x - y\|^2) \quad (12)$$

for any vectors $x, y \in \mathbb{R}^n$. The norm is also induced by the inner product

$$\|x\|^2 = \langle x, x \rangle \quad (13)$$

and the inner product is induced by the norm

$$\langle x, y \rangle = \frac{1}{2} (\|x + y\|^2 - \|x - y\|^2) \quad (14)$$

Civil Service Appeal Board

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