



**CABINET  
OFFICE**

**ANNUAL REPORT 2002/2003**

**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 non-payment of compensation or the amount of compensation paid 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 2002/2003

Chair – J H Davies

Deputy Chair – M E G Fogden CB

Deputy Chair – J Sheldon OBE

## BOARD MEMBERS

### MANAGEMENT SIDE BOARD MEMBERS

G Bertram CB (Inland Revenue)

D W Rayson (HM Treasury)

Mrs S Brown (DTI)

G L Reid CB (DfEE)

J Carling (Inland Revenue)

A Turner CBE (Ministry of Defence)

P S Draper CB (PSA)\*

J Turner CB (Employment Service)

E McGivern CB (Inland Revenue)

I Ward CBE (Prison Service)

### TRADE UNION SIDE BOARD MEMBERS

Mrs C Alderson (Public and Commercial Services Union)

A Audley (Institution of Professionals, Managers and Specialists)

Ms L Clare (Association of First Division Civil Servants)

Mrs P R Cryer (Public and Commercial Services Union)

D Evans (Prison Officers' Association)

Mrs D Hall Hall (National Union for Civil and Public Servants)

P J Kelly (Public and Commercial Services Union)

T Thomson (Public and Commercial Services Union)

F R Winrow (Inland Revenue Staff Federation)

## SECRETARIAT

Mr K Wright (Secretary to the Board)\*\*

Mrs A Khan\*

Miss J Allen

Miss J Outred

\* Appointment ended during 2002/2003

\*\* New appointment during 2002/2003

# PEN PORTRAITS OF BOARD MEMBERS

As at 31 March 2003

## 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

## MANAGEMENT SIDE BOARD MEMBERS

### G BERTRAM CB

Formerly Inland Revenue  
Appointed September 2001

### MRS S BROWN

Formerly Dept of Trade & Industry  
Appointed November 1998

### J CARLING

Formerly Inland Revenue  
Appointed October 1999

### E MCGIVERN CB

Formerly Inland Revenue  
Appointed November 1998

### D W RAYSON

Formerly HM Treasury  
Appointed September 1999

### G L REID CB

Formerly Dept for 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 Public and Commercial Services Union  
Appointed December 2000

**MS L CLARE**

Formerly Association of First Division Civil Servants  
Appointed August 1998

**D EVANS**

Formerly Prison Officers' Association  
Appointed October 2000

**P J KELLY**

Formerly Public and Commercial Services Union  
Appointed September 1999

**F R WINROW**

Formerly Inland Revenue Staff Federation  
Appointed September 1999

**A AUDLEY**

Formerly Institution of Professionals, Managers and Specialists  
Appointed February 2001

**MRS P R CRYER**

Formerly Public and Commercial Services Union  
Appointed September 1999

**MRS D HALL HALL**

Formerly National Union for Civil and Public Servants  
Appointed October 1996

**T THOMSON**

Formerly Public and Commercial Services Union  
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 management side.

Normally members will be appointed for a three-year term with the opportunity for reappointment for a second three-year term making 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

It gives me great pleasure to introduce the Board's Annual Report for the financial year 2002/2003.

For the first time since the mid-nineties, the number of appeals received by the Board exceeded 300. 321 were received, an increase of over 25% when compared with the previous year's figure. A significant element of this increase – almost 40% – related to appeals against dismissal on inefficiency grounds for unsatisfactory attendance. Government Departments and Agencies are now clearly regarding it as a priority to deal with what they consider to be the serious problem of sickness absence.

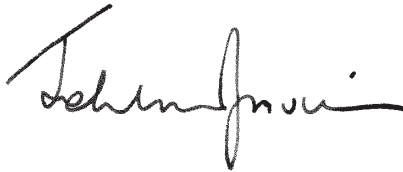
The percentage of appeals upheld by the Board fell slightly this year from 26% to 24%. There are two points worthy of note in this respect, however, the first of which concerns those appeals received by the Board relating to the payment of compensation under the Civil Service Compensation Scheme for those dismissed for inefficiency reasons. The basis of those appeals was that no compensation or only part compensation had been paid upon dismissal and that this was considered unfair. In over two-thirds of the cases heard in this category, the decisions were found to have been unfair. It is clear that Departments and Agencies are often confusing the criteria to be taken into account when considering the dismissal decision on the one hand and the compensation decision on the other. Secondly, with regard to those appeals received against dismissal on the grounds of failure of probation, the Board concluded that the decisions had been unfair in 40% of the cases, largely because Departments and Agencies had failed to follow their rules relating to the management of probationers.

We have had a very busy year as far as raising awareness of the Board is concerned. We have attended a number of workshops and seminars organised by Departments and Agencies to explain the role of the Board and to discuss issues and areas that arise in relation to the appeals we hear. The role-play which we have developed in relation to inefficiency of attendance has been used on a number of occasions over the past year and it has been very well received by several Departments and Agencies. Of particular note has been the series of seminars which we have run in conjunction with the Civil Service College for the Prison Service. These have taken place in a number of locations around the country and have concentrated upon inefficiency of attendance. The feedback has been excellent. I and my colleagues consider this to be an important part of our work and we welcome invitations from Departments and Agencies to run such sessions. I commend them to you.

I should like to thank the Deputy Chairs and all the Board Members for their hard work and commitment over the past year. One of our Management Side Board Members, Peter Draper, retired during the course of the year. He always made a good contribution to our hearings and his wise and considered counsel was extremely valuable. We extend to him our thanks and best wishes for the future.

As always, the Secretariat has been invaluable and they have coped heroically with a substantial increase in workload. Last July, Alison Khan, the Board Secretary, left us after five years to take up a post in the Cabinet Office. She made an enormous contribution to the work of the Board and we wish her well. In her place, we welcomed Keith Wright, who settled into the role very quickly and who is proving to be a highly competent leader of our small and dedicated team.

I hope you enjoy reading this report. In particular, may I commend to you Appendix 4 – the Synopsis of Appeals Upheld by the Board. This explains the reasons in each case, why the Board found a particular dismissal to have been unfair and it provides useful and interesting reading, particularly for those preparing to appear before the Board in any capacity.

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 2003. 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 321 new appeals during the year, a 26% increase on the figure of 255 of the previous year.

## 2. APPEALS CONSIDERED

The Appeal Board considered 210 appeals during the year (last year 207) a 1% increase on the number of appeals considered in the previous year. An analysis of appeals considered is set out in Appendix 3.

92 of the appeals were against dismissal on disciplinary grounds. This represents 44% of all appeals considered by the Board and a 5% decrease on the number of appeals against disciplinary dismissal considered in the previous year in which dismissal on disciplinary grounds accounted for 47% of all appeals.

The renewed vigour with which Departments and Agencies are dealing with sickness absence has translated into a 39% increase in the number of appeals heard against dismissal on grounds of unsatisfactory attendance compared with the number heard during 2001/2002. It is interesting to note that the number of appeals against dismissal on grounds of unsatisfactory performance has not risen during the same period.

See Appendix 7 for an analysis of appeals received and considered between 1993/1994 and 2002/2003.

## 3. SUCCESSFUL APPEALS

Of the total number of appeals which were considered 51 were found in favour of the appellant. This represents 24% of all the cases considered; this shows a 6% reduction in the number of successful appeals compared with the previous year.

In 14 of the successful appeals, the Board recommended that the appellant should be reinstated without qualification. The Departments and Agencies concerned accepted the Board's recommendation in one case.

In four cases the Board recommended that the appellant should be reinstated with the imposition of a lesser penalty than dismissal. The Departments and Agencies concerned did not accept the Board's recommendation in any of these cases.

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 16 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 three cases the award was uplifted from 0% to 75%, in three cases from 0% to 50%, in one case from 0% to 30% and in a further case from 0% to 25%. In three other cases the award was uplifted from 50% to 100% and in two further cases from 50% to 75% and 35% to 50% respectively.

**4. INELIGIBLE APPEALS**

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

Appellant had no right of appeal to the Board	9
Appellant beyond minimum pensionable age	3
Appeal had been submitted out of time	6

**5. WITHDRAWN APPEALS**

Thirty-two appeals were withdrawn for the following reasons:

Appellant voluntarily withdrew appeal	24
Appellant subsequently retired on medical grounds	4
Appellant’s internal appeal successful	3
Appellant reinstated prior to appeal date	1

**6. STRUCK OUT APPEALS**

Eight appeals were struck out because appellants or their representatives failed to submit written main statements of case to the Board within prescribed time limits as to the reasons they believed the decisions by Departments and Agencies to dismiss were unfair.

**7. REPRESENTATION OF APPELLANTS**

Trade Union	125
Legal	14
Other	21
None	19

**8. 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 the Department or Agency before a final decision is made.

No majority fair decision was made during the year.

**9. PERFORMANCE**

The Board's targets are for:

- 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 unsuccessful in achieving its target for hearing appeals within 15 weeks of receipt (69%). This shows a 18% 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, the pressure which built up on the diary given the substantial increase in the number of new appeals, and the fact that the Board is constrained by lack of accommodation which prevents it from hearing more than two appeals a day.

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

#### **10. 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, 96% of appellant's 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.

#### **11. COMPENSATION**

The Board made awards of compensation amounting to £251,008 in 32 cases. The average award was £7,844 with the highest award being £24,199. This compares with an average and highest award of £9,578 and £25,910 in 2001/2002.

The Board has been unable to make an award of compensation in one further case because the appellant refused to provide details to the Board of any income following dismissal. This information is necessary to finalise the award. In one other case a financial settlement was reached between the department and the appellant in lieu of compensation by the Board for unfair dismissal and on condition that the appellant's further appeal to the Board against the part-payment of compensation under the Civil Service Compensation Scheme was withdrawn.

#### **12. NON-ATTENDANCE OF APPELLANTS**

The Board considered 31 cases in the absence of the appellant – a slight increase on last year's figure (29).

#### **13. OBSERVERS**

A total of 243 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 171 were representatives from Departments or Agencies with 41 coming from Trade Unions, 25 appellants and 6 others. The Board continues to encourage people to observe a hearing before attending, because this can be of great benefit.

**14. 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, 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 Department for Work and Pensions, the Home Office, the Immigration and Nationality Directorate, the Inland Revenue, the Prison Service and the Public and Commercial Services Union.

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](http://www.civilserviceappealboard.gov.uk). The site includes details of how an appeal is processed and of who hears appeals, as well as online copies of Annual Reports, Guidance Notes and the Good Practice Principles.

**15. COSTS AND BUDGETS**

The total cost of operating the organisation in 2002/2003 was £393,377, with the more significant categories detailed as follows:

	<b>2001/2002</b>	<b>2002/2003</b>
Members' fees and expenses	£246,616	£266,267
Tax on members' fees	£19,670	£17,933
Staff costs	£97,680	£96,123
IT equipment	£2,959	£2,938
Miscellaneous	£7,983	£10,116
<b>TOTAL</b>	<b>£374,908</b>	<b>£393,377</b>

The cost per appeal considered was £1,873 compared with £1,811 in 2001/2002.

# APPENDIX I

## Summary of Activity

	2001/2002	2002/2003	Change from previous year
Cases outstanding at the beginning of the year	68	79	+16%
Appeals received	255	321	+26%
<b>TOTAL</b>	<b>323</b>	<b>400</b>	<b>+24%</b>
Appeals considered	207	210	+1%
Appeals found to be ineligible	8	18	+125%
Appeals withdrawn	26	32	+23%
Appeals struck out	3	8	+167%
<b>TOTAL</b>	<b>244</b>	<b>268</b>	<b>+9%</b>
Cases in process at the end of the year	79	132	+67%

## APPENDIX 2

### Appeals Heard, Financial Year April 2002 – March 2003

Department	Number of Appeals Received	
Appeal Service	1	
Companies House	1	
Council for the Central Laboratory of the Research Councils	1	
Court Service	6	
Crown Prosecution Service	4	
Department for Education and Skills	3	
Department of Health	1	
Department for International Development	1	
Department for Work and Pensions (including Child Support Agency and Jobcentre Plus)	49	(23%)
Driving Standards Agency	3	
Foreign and Commonwealth Office	1	
HM Customs and Excise	10	(5%)
HM Land Registry	6	
HM Prison Service	44	(21%)
Highways Agency	3	
Home Office	1	
House of Commons	1	
Immigration and Nationality Directorate	6	
Inland Revenue	20	(10%)
Insolvency Service	1	
Medical Supplies Agency	1	
Ministry of Defence	10	(5%)
Ministry of Defence Agencies:		
Army Training and Recruitment Agency	1	
Defence Aviation and Repair Agency	5	
Defence Estates	2	
Defence Housing Executive	1	
Defence Munitions	2	
Defence Secondary Care Agency	2	
Defence Storage and Distribution Agency	2	
National Assembly for Wales	1	
NHS Purchasing and Supply Agency	1	
Office of Gas and Electricity Markets	2	
Office for National Statistics	1	
Ordnance Survey	1	
Registers of Scotland	1	
Scottish Prison Service	7	
Treasury Solicitor's Department	1	
United Kingdom Passport Service	4	
Vehicle Inspectorate	2	
<b>TOTAL</b>	<b>210</b>	

## APPENDIX 3

### Analysis of Appeals Considered

<b>Reason for appeal</b>	<b>Number</b>	<b>Upheld</b>
Discipline	92 (44%)	12 (13%)
Inefficiency		
Attendance	64 (30%)	12 (19%)
Performance	5 (2%)	1 (20%)
Withholding of compensation	24 (11.5%)	16 (67%)
Failed probation	20 (10%)	8 (40%)
End of fixed-term appointment	2 (1%)	2 (100%)
Compulsory early retirement	2 (1%)	
Eligibility hearing	1 (0.5%)	
<b>TOTAL</b>	<b>210</b>	<b>51 (24%)</b>

## APPENDIX 4

### Synopsis of Appeals Upheld by the Board

#### 1. HIGHER EXECUTIVE OFFICER DISMISSED AS A RESULT OF FAILING TO ACHIEVE THE NECESSARY STANDARDS OF PERFORMANCE DURING HIS PROBATIONARY PERIOD

The procedures relating to probationers were not followed correctly in this case, and the Board considered the flaws to be sufficiently serious to render the dismissal unfair. The line manager did not issue a verbal warning; the required improvements and timescale to achieve them were not set out; no final report was compiled prior to dismissal; and the dismissal letter set out the reasons for dismissal as unacceptable performance and conduct although the appellant's interim report had stated that his conduct was satisfactory in all respects.

<b>RESULT:</b>	<b>COMPENSATION</b>
<b>CONTRIBUTORY FAULT:</b>	<b>50%</b>
	<b>100% POLKEY FACTOR</b>
<b>AWARD:</b>	<b>£120</b>

#### 2. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR ABUSING THE PROVISION RELATING TO SICK ABSENCE

The Board determined that the decision to dismiss was unfair on proportionality grounds as the Agency failed to substantiate its claim that the offence, exaggerating symptoms and fraudulently claiming sick pay, was serious misconduct given that the appellant had taken advice from his GP and hospital regarding his illness and was covered by the appropriate medical certification. The Board also concluded that the nature of the offence did not appear to have been considered nor that it was the appellant's first offence on an otherwise clean disciplinary record.

<b>RESULT:</b>	<b>COMPENSATION</b>
<b>CONTRIBUTORY FAULT:</b>	<b>75%</b>
<b>AWARD:</b>	<b>£4,661</b>

**3. BRICKLAYER DISMISSED ON DISCIPLINARY GROUNDS FOR MAKING A THREATENING AND RACIST REMARK**

The Board considered that the appellant had not been treated fairly or reasonably. His guilt had been judged, on the balance of probabilities, on the strength of the evidence against him contained in an investigation report and the testimony of the disciplinary hearing. In the Board’s view, the weight of testimony seemed to be in the favour of the appellant, particularly as his guilt had been found in the absence of a time or a date when the racist remark was alleged to have been made.

**RESULT:** **REINSTATEMENT WITH A LESSER PENALTY**

**ACCEPTED:** **NO**

**AWARD:** **NOT YET AWARDED – APPELLANT HAS REFUSED TO PROVIDE ANY DETAILS OF INCOME FOLLOWING DISMISSAL FOR AWARD TO BE CALCULATED**

**4. SENIOR NURSE DISMISSED ON GROUNDS OF INEFFICIENCY FOR UNSATISFACTORY ATTENDANCE**

The Board found a number of procedural shortcomings in the way in which the Agency had handled the case. The Agency had failed to issue an intention to dismiss letter or to provide the necessary time for representations to be made, and had mishandled the sickness absence. The appellant had provided consent for a referral to the Agency’s health advisers but this was not actioned until some considerable time had elapsed and when a second consent was given. This was particularly remiss of the Agency given that the reason for absence was stress and that the Agency’s procedures made it quite clear that cases of stress referral to the health advisers should be made within 10 days. Finally, the Board accepted that the Agency could have been more proactive in keeping in contact with the appellant, although the Board also felt that she herself bore some responsibility, having been in contact with the Agency regarding professional matters whilst not responding to letters regarding her absence. The Board also noted that she declined the services of Welfare which the Agency had offered.

**RESULT:** **COMPENSATION**

**CONTRIBUTORY FAULT:** **25%**

**AWARD:** **100% POLKEY FACTOR**  
**£281**

**5. EXECUTIVE OFFICER DISMISSED ON INEFFICIENCY GROUNDS FOR UNSATISFACTORY ATTENDANCE**

Whilst the Board was content that it was appropriate for the Agency to commence dismissal proceedings, it found a number of procedural shortcomings in how this case had been handled. During the period of absence there appeared to be no evidence of serious attempts having been made to maintain contact with the appellant. She was not formally advised that her absence was causing concern and could lead to dismissal, making it impossible to discuss a possible return to work. Nor was a further referral to the BMI made at the appropriate time. The dismissal letter was not on headed paper and it did not advise the appellant of her rights. When, subsequently, representations were made the dismissal was withdrawn via e-mail and reference made about referring the case to the health advisers. Although the Agency subsequently claimed that the withdrawal was not official and that the dismissal remained effective, the Board determined that the appellant was justified in accepting that the dismissal action had been stopped, particularly as she continued to be paid.

<b>RESULT:</b>	<b>REINSTATEMENT</b>
<b>ACCEPTED:</b>	<b>NO</b>
<b>CONTRIBUTORY FAULT:</b>	<b>60%</b>
	<b>80% POLKEY FACTOR</b>
<b>AWARD:</b>	<b>£4,318</b>

**6. B2 DISMISSED ON GROUNDS OF INEFFICIENCY DUE TO UNSATISFACTORY PERFORMANCE**

The Board determined that the appellant had not been treated fairly and reasonably as the employer had not investigated his medical condition further when, at the internal appeal stage of the process, the occupational health adviser produced a report stating there was a mental health issue that was likely to have affected his work performance. Furthermore the employer had turned down a request for a postponement in the proceedings, a decision that was likely to have worsened the appellant's condition, and the Board also felt it was unfair to expect the appellant to make a decision regarding regrading within seven days before the deadline for lodging the internal appeal.

**RESULT:**

**REINSTATEMENT, BUT FINANCIAL SETTLEMENT AGREED BETWEEN APPELLANT AND DEPARTMENT (IN LIEU OF COMPENSATION AWARDED BY THE BOARD FOR UNFAIR DISMISSAL AND ON CONDITION THAT THE APPELLANT'S FURTHER APPEAL TO THE BOARD AGAINST THE PART-PAYMENT OF COMPENSATION UNDER THE CIVIL SERVICE COMPENSATION SCHEME WAS WITHDRAWN)**

**7. BI (PROGRAMMER) DISMISSED FOR GROSS MISCONDUCT  
HAVING BEEN SERIOUSLY INCAPABLE OF WORK THROUGH  
ALCOHOL AND FAILING TO MAINTAIN TREATMENT FOR  
ALCOHOLISM**

The Board determined that there were two major procedural flaws that rendered the case unfair. The appellant, having been found a place on a rehabilitation course, was subsequently expelled but had not been told of the consequences of not completing the course, even though the need to inform of the consequences of such an occurrence was laid out in the Agency's procedures. Coupled with this an oral warning was given, which was in breach of the procedures. The Board also determined that the appellant had not been treated fairly or reasonably in that having disputed and not signed the notes of the disciplinary hearing he had been denied a full response to the charges, particularly as there appeared to have been no attempt to resolve the dispute.

<b>RESULT:</b>	<b>REINSTATEMENT WITH THE SUGGESTION THAT A COURSE OF TREATMENT BE AGREED ON AND THE APPELLANT ACKNOWLEDGE CONSEQUENCES OF DEFAULTING</b>
<b>ACCEPTED:</b>	<b>NO</b>
<b>CONTRIBUTORY FAULT:</b>	<b>75% 75% POLKEY FACTOR</b>
<b>AWARD:</b>	<b>£8,830</b>

**8. IPI UPPER DISMISSED ON INEFFICIENCY GROUNDS FOR POOR PERFORMANCE**

The Board determined that the appellant had not been treated fairly or reasonably by the Department as having failed to perform at the necessary standard after promotion, the Department having disregarded the possibility of regrading and moved to dismissal. The Board disagreed that there was sufficient evidence to suggest that the appellant would not be able to perform satisfactorily at the lower level. The Board also considered that the evidence of failure of performance was flawed; that the monitoring and effort to be successful had undoubtedly added to the appellant’s stress and increased her mistakes; that reports for her previous years of service at the lower grade showed that she was a satisfactory performer in that grade; and that since the appellant recognised she was struggling it was unfair of the Department not to give her the opportunity to re-establish herself in the lower grade.

<b>RESULT:</b>	<b>REINSTATEMENT (WITH A CONSIDERATION TO REINSTATE AT THE LOWER GRADE)</b>
<b>ACCEPTED:</b>	<b>NO</b>
<b>CONTRIBUTORY FAULT:</b>	<b>0%</b>
<b>AWARD:</b>	<b>£18,716</b>

**9. ADMINISTRATIVE OFFICER DISMISSED ON INEFFICIENCY GROUNDS FOR UNSATISFACTORY ATTENDANCE**

Prior to beginning her sick leave, the appellant was moved from one section in the Department to another and claimed it was this move and its consequences that caused her absence. The Board concluded that she had been treated neither fairly nor reasonably and that the Department had been negligent in its duty in three main areas. Firstly, the Department did not investigate her concerns that the move would exacerbate her medical condition; secondly, the Department did not consider an alternative solution such as making the move temporary; and thirdly, no alternative candidate was sought at the outset – a situation which led directly to the appellant taking sick leave, by which stage the situation was irretrievable.

<b>RESULT:</b>	<b>COMPENSATION</b>
<b>CONTRIBUTORY FAULT:</b>	<b>0%</b>
<b>AWARD:</b>	<b>£11,613</b>

**10. BAND D (EXECUTIVE OFFICER) DISMISSED ON DISCIPLINARY GROUNDS FOR FAILING TO MAINTAIN PROPER STANDARDS OF CONDUCT**

The Board found two serious procedural shortcomings in the way in which the Department had handled the case. The appellant was not offered the opportunity to make oral representations as laid out in the Departmental guidance, nor was it consistent with the guidance to make available to the Equal Opportunities Complaint Investigator and the Decision Maker the appellant's personal file which contained details of his previous conduct and spent disciplinary offences.

The Board also determined he had not been treated fairly and reasonably, as divulging his personal file prejudiced not only the disciplinary process but also the equal opportunities investigation which, crucially, was the catalyst for the disciplinary proceedings to begin. The Board was also concerned that the Department had failed to consider the completeness of the Equal Opportunities report and whether a wider range of people should have been interviewed. It appeared also that the disciplinary meeting had been used to revisit the equal opportunities investigation.

<b>RESULT:</b>	<b>REINSTATEMENT</b>
<b>ACCEPTED:</b>	<b>NO</b>
<b>CONTRIBUTORY FAULT:</b>	<b>50%</b>
	<b>50% POLKEY FACTOR</b>
<b>AWARD:</b>	<b>£13,124</b>

**11. EXECUTIVE OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR FAILING TO FOLLOW CORRECT PROCEDURES BY IMPROPERLY TRANSFERRING FUNDS WHILST WORKING IN THE PRISON SHOP**

The Board was concerned that the enquiry undertaken by the Agency did not given sufficient weight to mitigating arguments forwarded by the appellant, namely that she had acted in good faith, that her actions were designed to keep the shop open and that she had not been motivated by personal gain. On this last point the Board agreed that there was no evidence to suggest otherwise. Furthermore, the Board acknowledged that it was the appellant who had been instrumental in bringing to the Agency’s attention the possibility of theft from the shop; that the appellant, who had had a long and successful career to that point, had also recently secured promotion; and that the Agency recognised that her post carried a heavy workload.

The Board also concluded that the Agency’s decision to dismiss did not appear consistent. No action had been taken against a more senior member of staff when he admitted that he had knowingly broken the Finance Manual rules, while in a separate case a manager had been given a more lenient penalty having also failed to adhere to the procedures.

<b>RESULT:</b>	<b>REINSTATEMENT WITH A LESSER PENALTY</b>
<b>ACCEPTED:</b>	<b>NO</b>
<b>CONTRIBUTORY FAULT:</b>	<b>50%</b>
<b>AWARD:</b>	<b>£18,198</b>

**12. EXECUTIVE OFFICER APPEALED AGAINST TERMINATION OF CONTRACT ON GROUNDS OF REPUDIATION DUE TO UNAUTHORISED ABSENCE**

It was the Board’s view that as soon as the Department became aware of the difference of opinion between the BMI and the appellant’s GP on the ability to return to work they should have investigated it properly by seeking further clarification from the BMI. By not having done so, the Department failed in its duty of care to an employee who it acknowledged had given exemplary service with a good attendance record prior to the absences leading to the termination letter.

<b>RESULT:</b>	<b>REINSTATEMENT</b>
<b>ACCEPTED:</b>	<b>YES</b>

**13. SECURITY GUARD DISMISSED ON GROUNDS OF FAILED PROBATION DUE TO UNSATISFACTORY PERFORMANCE**

The Board concluded that the Department had not complied with its own guidance and found that the dismissal had been unfair on procedural grounds.

The Department had failed to set out objectives early in the appellant's career and, when objectives were set, had also failed to monitor and review them in accordance with the guidelines. In addition, the Department did not discuss the failings in performance and no agreed minutes had been produced to set out what actions were required to reach a satisfactory standard that would allow a successful probation period. The Board considered that without clear guidance the appellant could not be expected to know exactly what was required of him.

<b>RESULT:</b>	<b>COMPENSATION</b>
<b>CONTRIBUTORY FAULT:</b>	<b>80%</b>
	<b>80% POLKEY FACTOR</b>
<b>AWARD:</b>	<b>£381</b>

**14. D+ RESIDENTIAL OFFICER DISMISSED ON INEFFICIENCY GROUNDS DUE TO UNSATISFACTORY ATTENDANCE**

The Board considered that the Agency had not fulfilled its duty of care to the appellant and that as a result he had not been treated reasonably and fairly. The Agency failed to record and agree with the appellant the discussion and outcome of a capability meeting leading to considerable and serious disagreement regarding the issues discussed. In addition, the Civil Service Management Code advises Departments and Agencies how sick absences should be treated under their own sick absence schemes. However, the Agency interpretation related solely to the question of how the pay of individuals assaulted in the course of duty should be treated. The Board agreed that in the light of the sick absences being directly attributed to an assault whilst on duty, it was the responsibility of the employer to examine further the feasibility of finding suitable alternative employment.

<b>RESULT:</b>	<b>REINSTATEMENT</b>
<b>ACCEPTED:</b>	<b>NO</b>
<b>AWARD:</b>	<b>NO AWARD WAS MADE AS THE PAYMENT UNDER THE CIVIL SERVICE COMPENSATION SCHEME WAS LARGER THAN THE AWARD FOR UNFAIR DISMISSAL</b>

**15. OPERATIONAL SUPPORT DISMISSED ON INEFFICIENCY  
GROUNDS DUE TO UNSATISFACTORY ATTENDANCE**

The Board identified a number of procedural deficiencies in the way the Department handled this case, which collectively were sufficiently serious to render the dismissal procedurally unfair. In particular the Board was concerned about the decision to proceed with the internal appeal without allowing the appellant to exercise his right to a hearing. In addition there had been little or no contact by local management with the appellant during absence, which again was contrary to the procedures. This was in fact part of the duty of care as well as a process that enabled the validity of the absence from work to be confirmed. It would have also enabled alternative work scenarios to have been explored with the appellant, as had been suggested by the BMI as a way of achieving a return to work.

<b>RESULT:</b>	<b>COMPENSATION</b>
<b>CONTRIBUTORY FAULT:</b>	<b>50%</b>
	<b>100% POLKEY FACTOR</b>
<b>AWARD:</b>	<b>NO AWARD WAS MADE AS THE PAYMENT UNDER THE CIVIL SERVICE COMPENSATION SCHEME WAS LARGER THAN THE AWARD FOR UNFAIR DISMISSAL</b>

**16. ADMINISTRATIVE OFFICER DISMISSED AS A RESULT OF  
FAILURE OF PROBATION DUE TO UNSATISFACTORY ATTENDANCE**

The Board determined that the Agency had fallen short in its obligation to the appellant, as in disregarding its own general rules concerning the management of absence it had not given the appellant adequate time to demonstrate an improvement in attendance.

<b>RESULT:</b>	<b>COMPENSATION</b>
<b>CONTRIBUTORY FAULT:</b>	<b>66.6%</b>
<b>AWARD:</b>	<b>£1,052</b>

**17. BAND C2 DISMISSED ON DISCIPLINARY GROUNDS FOR GROSS MISCONDUCT**

The Board concluded that the investigation had been insufficiently thorough to justify a reasonable conclusion. The Agency's Code of Practice recommends that where an individual has a grievance against the Chief Executive or Managing Director an external stage using some form of alternative dispute resolution might be helpful. In the Board's view the Deciding Officer's failure to consider it appropriate to seek guidance in that respect was highly regrettable.

There was no indication that any account had been taken of many years of apparently good service prior to the incident that led to dismissal and the Board considered that in failing to do this the Agency had neglected its duty to treat the appellant in a sufficiently fair and reasonable way. The Board concluded that this case represented a clear example of the deployment of double standards, whereby an employer expected an employee to follow to the letter every procedure, whilst itself being free to disregard them on disciplinary and grievance processes.

<b>RESULT:</b>	<b>COMPENSATION</b>
<b>CONTRIBUTORY FAULT:</b>	<b>25%</b>
<b>AWARD:</b>	<b>£8,635</b>

**18. ADMINISTRATIVE ASSISTANT DISMISSED AS A RESULT OF FAILURE OF PROBATION DUE TO UNSATISFACTORY ATTENDANCE AND PERFORMANCE**

The Board concluded that the process followed by the Department had been seriously flawed, particularly with regard to the reference to unsatisfactory performance in the dismissal letter, as there had been no indication that the appellant had failed to meet the required standards of work performance. The Board also considered flawed the fact that the Department had failed to isolate a period of casual employment from time on probation as a permanent employee, as the procedures clearly state that such a distinction should be made. During the periods of sickness absence the Board was concerned that the Department had failed to treat the appellant fairly, given the unsympathetic and inflexible approach that had been adopted.

<b>RESULT:</b>	<b>COMPENSATION</b>
<b>CONTRIBUTORY FAULT:</b>	<b>25%</b>
<b>AWARD:</b>	<b>£1,884</b>

**19. ADMINISTRATIVE ASSISTANT DISMISSED ON INEFFICIENCY  
 GROUNDS DUE TO UNSATISFACTORY PERFORMANCE**

In the Board's view the appellant was disadvantaged as he had not been given clear objectives for a period of monitoring, no specific time had been set within which improvements should be made, nor had it been specified how they should be monitored or achieved. The fact that the Agency failed to complete the procedures relating to the appellant's Agreed Performance Plan also redounded to his detriment because he was thereby deprived of a structure within which appropriate monitoring procedures might have been set. The Board felt that the appellant was then further disadvantaged by, apparently, not having been advised of his rights.

**RESULT:** REINSTATEMENT  
**ACCEPTED:** NO  
**CONTRIBUTORY FAULT:** 75%  
 50% POLKEY FACTOR  
**AWARD:** £1,200

**20. TESTER (LEVEL 2/BAND 1) DISMISSED ON INEFFICIENCY  
 GROUNDS DUE TO UNSATISFACTORY ATTENDANCE**

In strictly procedural terms, the Board was broadly content that the Agency had acted correctly. However, the Board had one major concern and was not persuaded that the Agency had disregarded sufficiently the issue of attendance inefficiency from those regarding conduct which were disciplinary matters. These should either have been disregarded, deferred or dealt with through other channels.

The Board felt that undue emphasis had been placed upon periods of absence incurred prior to the trial period. It also considered that the Agency's decision to dismiss had been distorted by issues of attitude and conduct which were not relevant to the matter under consideration and that the Agency had failed to place sufficient emphasis on attendance records during the trial period.

**RESULT:** COMPENSATION  
**CONTRIBUTORY FAULT:** 75%  
**AWARD:** £3,124

**21. OPERATIONAL SUPPORT GRADE DISMISSED AS A RESULT OF FAILURE OF PROBATION DUE TO UNSATISFACTORY ATTENDANCE**

The Board concluded that there were a number of serious irregularities in the way in which this case had been handled. There was no written evidence to demonstrate at any time during probation that absences were causing concern. Even though relevant trigger points had been exceeded no oral or written warning was given. In this respect management failed to adhere to the rules relating to probationers and, had the correct procedures been followed, they would have afforded ample opportunity for the sickness record to be raised and discussed. The Board considered that the appellant was therefore entitled to assume that the sickness absences were not causing management a serious problem. Furthermore, the lack of effective contact meant that when the letter of intended dismissal was received it came as a “bolt from the blue” as far as the individual was concerned. The Board also found it unacceptable that the internal appeal was not heard until some nine months after the appeal had been lodged.

<b>RESULT:</b>	<b>COMPENSATION</b>
<b>CONTRIBUTORY FAULT:</b>	<b>0%</b>
<b>AWARD:</b>	<b>£1,166</b>

**22. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR TAKING ADVANTAGE OF SICK LEAVE PROCEDURES IN AN ATTEMPT TO REGULARISE HIS UNAUTHORISED ABSENCE**

The appellant was unable to return to the UK after a period of leave due to ill health and problems securing transport. The Board was satisfied that the appellant had endeavoured to secure a flight but that problems with the travel agency had been beyond his control and that there was no doubt that he had been unwell as this had been witnessed by other members of the party he was travelling with. The Board was concerned that the Agency had not investigated properly, given that relevant witnesses were not interviewed, and could not see how a charge of being absent from duty could be substantiated when the period of absence was covered by a legitimate medical certificate.

<b>RESULT:</b>	<b>COMPENSATION</b>
<b>CONTRIBUTORY FAULT:</b>	<b>20%</b>
<b>AWARD:</b>	<b>£11,957</b>

**23. ADMINISTRATIVE ASSISTANT DISMISSED ON DISCIPLINARY GROUNDS FOR STEALING FOOD FROM A WORKS RESTAURANT AND FOR VISITING THE RESTAURANT WITHOUT KEYING OUT OF THE FLEXI-TIME SYSTEM**

The Board paid due regard to the Employment Law test case of *BHS vs Burchell* and considered whether the investigation had been sufficiently thorough to justify the Department's reaching the reasonable and genuine conclusion, on the balance of probabilities, that the appellant was guilty of the offence. It is written in the Departmental guidance that all witnesses should be interviewed, so the Board found it regrettable that the evidence of two witnesses was not sought, particularly as the reasons given for not doing so were a lack of resources and the fact that there was little point given that the witnesses were likely to support the appellant. Nor did the Board accept the Department's view that the appellant had shown he was capable of behaving dishonestly having regularly abused the flexi-time system, as it was clear from the guidance that keying out of the flexi-time system was not necessary when visiting the restaurant.

The Board further felt that the Deciding Officer had been inappropriately influenced by matters that were not under consideration, particularly in assuming that the appellant's probation period would not be confirmed and thus improperly anticipating a separate decision-making process.

<b>RESULT:</b>	<b>REINSTATEMENT</b>
<b>ACCEPTED:</b>	<b>NO</b>
<b>CONTRIBUTORY FAULT:</b>	<b>0%</b>
<b>AWARD:</b>	<b>£10,334</b>

**24. OPERATIONAL SUPPORT GRADE DISMISSED ON INEFFICIENCY  
GROUNDS DUE TO UNSATISFACTORY ATTENDANCE**

The Board felt that the Agency had interpreted its procedures in a restricted manner, nor were they sympathetically or fully explored; it was also concerned that the Agency did not accept its responsibilities under the Disability Discrimination Act nor accept that the injury, occurring in the workplace, was industrial – even in the light of a report from the occupational health adviser which stated that it was an industrial injury and qualified under the Disability Discrimination Act.

The Board further concluded that the Agency had not sufficiently investigated the case particularly as the appellant was dismissed while she awaited an MRI scan to diagnose the extent of injury which independent reports indicated was not permanent. The Governor had not made enquiries about the nature of the accident during the appellant's absence, nor were enquiries made after the occupational health advisers gave their report; while the Hearing Officer, in the Board's view, failed in his responsibilities to satisfy himself that a proper investigation had taken place.

<b>RESULT:</b>	<b>REINSTATEMENT</b>
<b>ACCEPTED:</b>	<b>NO</b>
<b>CONTRIBUTORY FAULT:</b>	<b>0%</b>
<b>AWARD:</b>	<b>£13,677</b>

**25. WAREHOUSE OPERATIVE DISMISSED ON DISCIPLINARY  
GROUNDS FOR ASSAULTING A COLLEAGUE**

Following an assault on a colleague the appellant was given an oral warning by his line manager, in order to try to address the matter quickly. When Personnel became aware of this they made further enquiries and concluded that the assault constituted gross misconduct. The Agency then rescinded the verbal warning, reopened the case and initiated disciplinary proceedings which resulted in dismissal. The Board considered that the Agency was not entitled, procedurally, to reopen the case, that the implementation of a further penalty had been invalid in its entirety and that the appellant having been tried twice for the same offence had been the victim of double jeopardy and, as a consequence, had been treated unfairly and unreasonably. The Board felt that, although the Agency argued that if the original penalty had been allowed to rest then others who had been dismissed for assault would have considered themselves to have been treated unfairly and inconsistently, this did not override the principles of natural justice to the appellant.

<b>RESULT:</b>	<b>REINSTATEMENT</b>
<b>ACCEPTED:</b>	<b>NO</b>
<b>CONTRIBUTORY FAULT:</b>	<b>0%</b>
<b>AWARD:</b>	<b>£5,767</b>

**26. SUPPORT GRADE BAND 2 DISMISSED FOR FAILURE OF PROBATION DUE TO UNSATISFACTORY ATTENDANCE**

The Board had concerns about the Department's failure to advise the appellant of the extension of her probation which was due to expire in December 2000. The fact that from December 2001 she was under notice that her attendance was subject to review on account of her sickness absences did not exonerate the Department from following the appropriate procedures with regard to probationers. The appellant could have been excused, in the Board's view, for holding the genuine belief that she had passed her probation. The Board found it unsatisfactory that the probation procedures were reinvoked only in November 2001 when she was advised that the Department did not consider her as suitable for a permanent appointment. The Board also considered it a major flaw that the Deciding Officer had chosen to ignore a note asking him to consider using the post-probation procedures because of the flaws in the way in which the appellant's probation had been managed and following receipt of a report from the occupational health advisers.

<b>RESULT:</b>	<b>COMPENSATION</b>
<b>CONTRIBUTORY FAULT:</b>	<b>50%</b>
<b>AWARD:</b>	<b>£689</b>

**27. BAND 7 (NON-CRAFT SUPPORT OPERATIVE) DISMISSED ON DISCIPLINARY GROUNDS FOR THEFT FROM A SECURE AREA**

The Board paid particular attention to the established Employment Law test case of *BHS vs Burchell*, as to whether a sufficiently thorough investigation had taken place to enable the Agency to establish a genuine belief, on balance of probabilities, in the appellant's guilt. The Board considered the nature of the allegation and the reasons given for dismissal and decided it was clear that, had the appellant been found guilty of removing the goods from anywhere other than a secure area, a penalty less severe than dismissal might have been considered. In the Board's view it was the entering of the secure area which caused the Agency to take such a serious view of the offence and impose the most extreme penalty, but the Board was not convinced that sufficient evidence was available to demonstrate that the appellant had entered a secure area. Furthermore, a key witness was not particularly forthcoming when interviewed nor when providing answers by questionnaire, and the fact that his responses had not been exhaustive rendered unsafe the Agency's conclusions.

<b>RESULT:</b>	<b>REINSTATEMENT WITH LESSER PENALTY</b>
<b>ACCEPTED:</b>	<b>NO</b>
<b>CONTRIBUTORY FAULT:</b>	<b>75%</b>
<b>AWARD:</b>	<b>£9,953</b>

**28. ADMINISTRATIVE OFFICER DISMISSED ON INEFFICIENCY  
GROUNDS DUE TO UNSATISFACTORY ATTENDANCE**

The Agency's procedures stated that when an absence could no longer be tolerated an interview should be held and written representations of further evidence invited within 10 days of the interview. The Agency did not seek to arrange such an interview but instead issued a letter mentioning the possibility of dismissal if the appellant did not return to work within 10 days. The letter also invited the appellant to submit any further evidence. The Board found reprehensible the Agency's failure to follow its procedures, particularly given the length of time it had taken for the investigation to be undertaken and concluded and for the subsequent appeal to be completed, and the Agency's knowledge of the appellant's concerns. The Board concluded that this constituted a lack of duty of care to the appellant and did not accept the Agency's contention that it had failed to follow its procedures to the letter because of difficulties they had experienced in making contact with the appellant.

<b>RESULT:</b>	<b>COMPENSATION</b>
<b>CONTRIBUTORY FAULT:</b>	<b>50%</b>
<b>AWARD:</b>	<b>£4,142</b>

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

The Board was concerned regarding the actions of the Agency in refusing to accept that the appellant's sickness absence was attributable to an incident in which she was hurt by a prisoner, although it had received advice from the Benefits Agency stating that this was an industrial injury. This advice complemented reports from the occupational health advisers and the appellant's GP and physiotherapist. The Agency refused to accept this, sought to influence the occupational health adviser to consider the appellant's previous sickness record, and made it clear that it was not prepared to attribute the appellant's latest sickness absence to the incident in which the injury occurred, insisting on an opinion to take account of her sickness record over the whole period of her employment and her refusal to sign referral letters. In response the occupational health advisers stated quite clearly that they continued to accept that her symptoms could have been caused by the incident. The Board concluded that there were not sufficient grounds, on the balance of probabilities, to suggest that the appellant's absence was the result of a non-work-related cause.

<b>RESULT:</b>	<b>REINSTATEMENT</b>
<b>ACCEPTED:</b>	<b>NO</b>
<b>CONTRIBUTORY FAULT:</b>	<b>50%</b>
<b>AWARD:</b>	<b>£20,475</b>

**30. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR ASSAULTING A PRISONER**

Whilst the Board agreed that it was reasonable for the Agency to conclude, on balance of probabilities, that the appellant had assaulted the prisoner, it concluded that the Agency failed to take into account the appellant's mitigating circumstances. Having told the Agency that due to personal problems he was finding confrontation with prisoners difficult to deal with and was receiving counselling and welfare guidance, it appeared to the Board that it might have been prudent at this stage to suggest a BMI examination, which would have enabled the Agency to assess whether the appellant should remain in a post where he was in regular contact with prisoners whilst his condition persisted – particularly as there was existing medical evidence which suggested that the appellant's psychological state and his medication could have caused him to react in a way which was out of character.

<b>RESULT:</b>	<b>REINSTATEMENT</b>
<b>ACCEPTED:</b>	<b>NO</b>
<b>CONTRIBUTORY FAULT:</b>	<b>25%</b>
<b>AWARD:</b>	<b>£13,425</b>

**31. ADMINISTRATIVE OFFICER DISMISSED ON DISCIPLINARY GROUNDS ON THE “LAST STRAW PRINCIPLE” FOR FAILING TO HEED CLEAR WARNINGS AND MAINTAIN THE CONDUCT AND INTEGRITY EXPECTED OF A CIVIL SERVANT**

The Board concluded that dismissal was unfair on the issue of fairness and reasonableness. Firstly, the charge letter related to one incident only and, whilst the incident could possibly have been described as a lapse in conduct, it could not, in the Board’s view, be seen as equating to “serious or recurring incidents of misconduct”, and the Board was therefore at a loss to understand how it could have led to the Department questioning the appellant’s integrity and honesty.

Secondly, as the appellant claimed that his failure to contact the office or attend at the appropriate time was due to epileptic fits, the Board considered that the Department, having been informed of his susceptibility to epileptic fits, had been somewhat cavalier and negligent of its duty of care in not ensuring that arrangements were in place, as contained in its guidance, to contact him promptly in the event of his failure to turn up for duty. Nor did the Department explore sufficiently the impact which the appellant’s medical condition had upon his timekeeping and his failure to telephone the office at the appropriate time when he was going to be absent from work, and it should have sought an opinion in this respect bearing in mind its obligations under the Disability Discrimination Act. Had it done so it might have been able to consider appropriate adjustments rather than dismissal, particularly as a referral was made to the occupational health adviser. However, the internal appeal took place before the outcome of the referral was known.

<b>RESULT:</b>	<b>REINSTATEMENT</b>
<b>ACCEPTED:</b>	<b>NO</b>
<b>CONTRIBUTORY FAULT:</b>	<b>25%</b>
<b>AWARD:</b>	<b>£11,611</b>

**32. ADMINISTRATIVE ASSISTANT'S FIXED-TERM APPOINTMENT  
TERMINATED DUE TO HIGH LEVELS OF SICKNESS**

The Board concluded that the Agency had failed to follow its procedures and that in failing to do so it had fallen short of the appellant's expectations that he would be treated fairly. Laid out in the procedures was a four-stage process of which only stages one and two were completed, and the Board was concerned that neither of these stages had been fulfilled adequately. The Agency agreed that the use of the term "significant improvement" was less than helpful in providing a specific target for improvement particularly as the guidance required that a reasonable and proportionate target is set. A second-stage warning letter recorded that a further interview to review progress would take place three months later although there was no record of it taking place.

Furthermore, the Board was not clear on what authority the appellant had been dismissed, since stages three and four of the procedures had not been invoked. Although the Agency had made efforts to arrange a third-stage interview, the Board concluded that the failure to organise such an interview had deprived the appellant of the opportunity to show the necessary improvement. There was evidence that the Agency had not properly exercised its duty of care in that referrals to the OHS had not been made promptly, and there was little evidence that the Agency had seriously explored with the appellant the underlying causes of his absences.

<b>REMEDY:</b>	<b>COMPENSATION</b>
<b>CONTRIBUTORY FAULT:</b>	<b>0%</b>
<b>AMOUNT:</b>	<b>£6,458</b>

**33. ADMINISTRATIVE ASSISTANT DISMISSED ON GROUNDS OF FAILURE OF PROBATION DUE TO UNSATISFACTORY ATTENDANCE**

The Board concluded that the Department had failed in its duty of care to the appellant as the lack of clarity in the implementing of the procedures had resulted in confusion.

The Board found it unacceptable that the appellant had not been interviewed as laid out in the procedures when problems with inefficiency were identified, and that he had not been advised for some four months after his initial period of probation had expired that the period had actually been extended for four months. The Board also deemed unacceptable, delays in the completion of the occupational health adviser's report, which was not completed until some four months after referral, and the fact that despite the knowledge that the appellant's sickness absences were being caused by back pain it took nine months to provide a chair recommended after a risk assessment. The Board also concluded that it would have been reasonable for the Department to explain to the appellant, who had stated on a self certificate that an injury had occurred, how the details of the injury should be recorded and the consequences of not doing so.

<b>RESULT:</b>	<b>REINSTATEMENT</b>
<b>ACCEPTED:</b>	<b>NO</b>
<b>CONTRIBUTORY FAULT:</b>	<b>0%</b>
<b>AWARD:</b>	<b>£24,199</b>

**34. BAND E1 DISMISSED ON INEFFICIENCY GROUNDS DUE TO UNSATISFACTORY ATTENDANCE**

The Board found dismissal to be unreasonable in that, firstly, it considered that the process leading up to dismissal was subject to unacceptable delays which could have been avoided and which had a detrimental effect on the appellant, in that his mental health had been affected given that he was on medication to control his mood swings. Secondly, the appellant was suffering from Ptosis and could not work with VDUs. The Board considered that, in spite of all genuine efforts to ascertain the problems regarding the appellant's condition, the Department had not offered him a suitable post without VDU clerical duties, as required by the Disability Discrimination Act. The Board considered that these flaws made the situation very difficult for the appellant and that as a result the Department had failed in its duty of care.

<b>RESULT:</b>	<b>COMPENSATION</b>
<b>CONTRIBUTORY FAULT:</b>	<b>50%</b>
<b>AWARD:</b>	<b>£2,365</b>

**35. BAND D LEGAL ADVISER (G7 EQUIVALENT) DISMISSED ON THE GROUNDS OF FAILURE OF PROBATION DUE TO UNSATISFACTORY CONDUCT AND BEHAVIOUR**

The Board considered that there were major procedural flaws that rendered the case unfair: no specific oral or written warnings were given and thus there was no indication of what was expected or of the timeframe to achieve it; there was a lack of formal communication recording when the appellant had been spoken to about her conduct; the decision to dismiss had been made at the wrong level; and formal notice was not given of the meeting to discuss termination, nor written observations sought. In particular the Board considered this last point against natural justice and a failure to fulfil the minimum requirements of accepted codes of employment practice.

The Board also determined that the appellant had not been treated fairly and reasonably as no investigation was carried out before dismissal into the issues of behaviour and conduct, while the enquiries carried out at the appeal stage were not satisfactory, in the Board's view, as they were carried out by the same person who carried out the appeal hearing.

<b>RESULT:</b>	<b>COMPENSATION</b>
<b>AWARD:</b>	<b>£18,653</b>
<b>CONTRIBUTORY FAULT:</b>	<b>0%</b>
	<b>0% POLKEY FACTOR</b>
<b>AWARD:</b>	<b>£18,653</b>

## APPENDIX 5

### Performance Against Targets 2002/2003

#### HEARINGS

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

*(2001/2002 figures in brackets)*

Month	Appeals Heard	Average Number of Weeks to Hearing	% Within Target
April	15 (10)	13 (12)	93%
May	14 (22)	12 (13)	86%
June	14 (29)	14 (15)	71%
July	25 (18)	16 (12)	46%
August	13 (13)	19 (13)	54%
September	18 (14)	15 (13)	78%
October	19 (23)	13 (13)	74%
November	23 (19)	16 (12)	70%
December	15 (12)	15 (13)	60%
January	20 (27)	15 (12)	65%
February	18 (11)	15 (13)	50%
March	16 (9)	14 (12)	81%
<b>AVERAGE</b>	<b>210 (207)</b>	<b>15 (13)</b>	<b>69%</b>

**DECISION LETTERS ISSUED**

Letters to be issued within 24 hours of hearing

All decision letters were issued within the target period during 2002/2003.

**REPORTS ISSUED**

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

*(2001/2002 figures in brackets)*

<b>Month</b>	<b>Reports Issued</b>	<b>Average Number of Working Days to Issue</b>	<b>% Within Target</b>
April	6 (8)	12 (10)	100%
May	18 (17)	9 (11)	100%
June	9 (29)	14 (11)	100%
July	25 (19)	11 (12)	92%
August	19 (19)	11 (12)	100%
September	11 (9)	9 (13)	100%
October	22 (21)	7 (12)	95%
November	15 (24)	10 (11)	100%
December	22 (12)	14 (8)	95%
January	21 (23)	10 (9)	95%
February	23 (18)	8 (10)	100%
March	16 (11)	8 (8)	100%
<b>AVERAGE</b>	<b>207 (210)</b>	<b>10 (10)</b>	<b>98%</b>

## APPENDIX 6

### Results of Customer Satisfaction Surveys Issued 2002/2003

**Number of forms issued: 579    Number of forms returned: 245**

Appellant	34/193
Appellant's Representative	63/193
Department or Agency Representative	148/193

#### Written information about the CSAB

Were the guidance notes provided easy to understand?

	YES	NO	N/A
Appellant	94%	3%	3%
Appellant's Rep'tive	100%	0%	0%
Department or Agency Rep'tive	99%	1%	0%

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

	YES	NO	N/A
Appellant	91%	9%	0%
Appellant's Rep'tive	95%	5%	0%
Department or Agency Rep'tive	97%	3%	0%

#### Dealing with the Secretariat

If you telephoned the Secretariat:  
were the staff helpful?

	YES	NO	N/A
Appellant	59%	4%	37%
Appellant's Rep'tive	91%	0%	9%
Department or Agency Rep'tive	97%	3%	0%

Was the information given useful?

	YES	NO	N/A
Appellant	56%	3%	41%
Appellant's Rep'tive	91%	0%	9%
Department or Agency Rep'tive	91%	0%	9%

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

	<b>YES</b>	<b>NO</b>	<b>N/A</b>
Appellant	36%	2%	62%
Appellant's Rep'tive	66%	0%	34%
Department or Agency Rep'tive	45%	4%	51%

Were you sent a response within 10 working days?

	<b>YES</b>	<b>NO</b>	<b>N/A</b>
Appellant	44%	5%	51%
Appellant's Rep'tive	64%	10%	26%
Department or Agency Rep'tive	46%	1%	53%

**The hearing**

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

	<b>CLEAR</b>	<b>UNCLEAR</b>	<b>N/A</b>
Appellant	96%	4%	0%
Appellant's Rep'tive	100%	0%	0%
Department or Agency Rep'tive	98%	1%	1%

**Your decision**

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

	<b>YES</b>	<b>NO</b>
Appellant	96%	4%
Appellant's Rep'tive	100%	0%
Department or Agency Rep'tive	98%	2%

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

	<b>YES</b>	<b>NO</b>	<b>N/A</b>
Appellant	84%	16%	0%
Appellant's Rep'tive	99%	1%	0%
Department or Agency Rep'tive	99%	1%	0%

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

	<b>SATISFIED</b>	<b>DISSATISFIED</b>
Appellant	87%	13%
Appellant's Rep'tive	96%	4%
Department or Agency Rep'tive	100%	0%

## **APPENDIX 7**

### Appeals Received and Heard 1993/1994 – 2002/2003

	<b>Appeals Received</b>	<b>Appeals Heard</b>	<b>Successful Appeals</b>
1993/1994	344	266	20%
1994/1995	326	253	19%
1995/1996	306	242	21%
1996/1997	269	238	24%
1997/1998	231	192	21%
1998/1999	165	168	21%
1999/2000	216	158	22%
2000/2001	238	161	27%
2001/2002	255	207	26%
2002/2003	321	210	24%

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