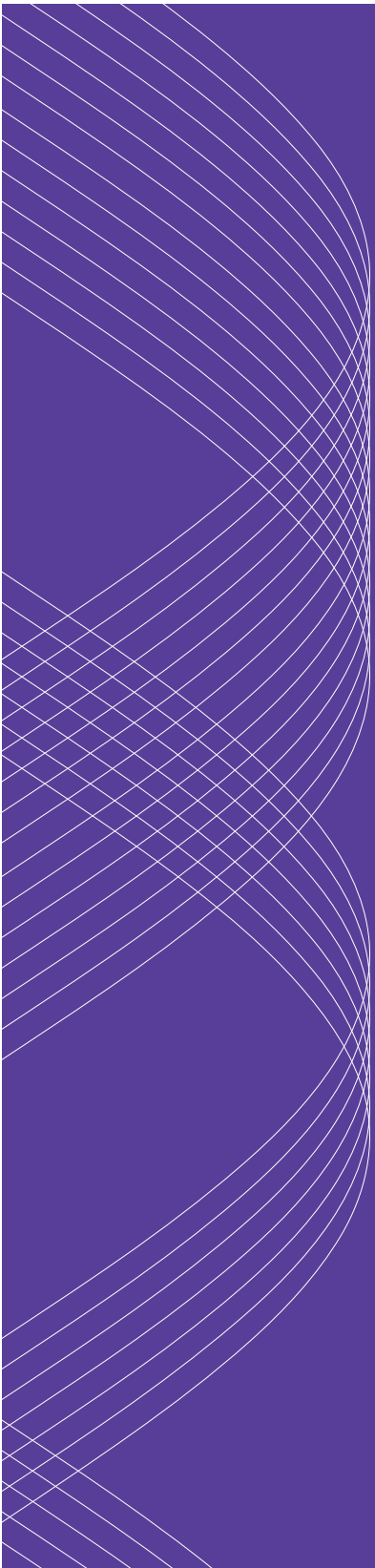




Annual Report 2003/2004



Contents

	Page no
The Remit and Role of the Civil Service Appeal Board	2
The Civil Service Appeal Board	3
Pen Portraits of Board Members	4
Introduction	6
1. Appeals Received	8
2. Appeals Considered	8
3. Successful Appeals	8
4. Ineligible Appeals	9
5. Withdrawn Appeals	9
6. Struck Out Appeals	9
7. Representation of Appellants	9
8. Majority Fair Decisions	9
9. Performance	9
10. Customer Satisfaction	10
11. Compensation	10
12. Non-Attendance of Appellants	10
13. Observers	10
14. Raising Awareness of the Work of the Board	10
15. Costs and Budgets	11
Appendix 1. Summary of Activity	12
Appendix 2. Appeals Heard Financial Year April 2003 to March 2004	13
Appendix 3. Analysis of Appeals Considered	14
Appendix 4. Synopsis of Appeals Upheld by the Board	15
Appendix 5. Performance Against Targets 2003/2004	26
Appendix 6. Results of Customer Satisfaction Surveys Issued 2003/2004	28
Appendix 7. Appeals Received and Heard 1994/1995 – 2003/2004	30

The Role and Remit 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 2003/2004

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)	G L Reid CB (DfEE)
Mrs S Brown (DTI)	A Turner CBE (Ministry of Defence)
J Carling (Inland Revenue)	J Turner CB (Employment Service)
E McGivern CB (Inland Revenue)	I Ward CBE (Prison Service)
D W Rayson (HM Treasury)	

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)
 Miss J Allen
 Mr C Bentley*
 Miss J Outred

* New appointment during 2003/2004

Pen Portraits of Board Members

As at 31 March 2004

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 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 2003/2004.

The statistics in this report reflect an extremely busy and active year for the Board, during which 357 appeals were received and 257 appeal hearings held – the highest number for ten years.

Particular features of note over the last year have been, first, the increase in the number of appeals against dismissal for failing to satisfy the standards of probation – 75% up on the figure for the previous year. Of those, 26% were found to have been unfair. This considerable increase is of interest, not because major flaws have been identified in the policies and procedures in place to manage probation within Departments and Agencies but largely because those procedures are not being followed, particularly in terms of respecting guidelines laid down with regard to, for example, the timing of interim and final probation reports. The fact that individuals are now entitled to appeal against dismissal after one year in employment rather than after two has exposed the shortcomings of Departments and Agencies in failing to respect their own procedures with regard to the management of probation.

Secondly, some 12% of the appeals heard by the Board during the year related to the failure of Departments and Agencies to pay either full or part-payment of compensation under the terms of the Civil Service Compensation Scheme in respect of dismissals for inefficiency of attendance and performance. The principles set out in the Cabinet Office guidelines for the payment of compensation – Personnel Information Note (PIN) 40 – form the basis of the Board's decisions in such cases and, in general, those guidelines have been incorporated into Departmental and Agency procedures. However, I recommend that Departments and Agencies review their procedures to ensure that this is the case and, in particular, to note that, in cases of long-term absence, full compensation is normally payable when medical evidence is available to demonstrate that the inability to attend is beyond the individual's control. Care should also be taken to ensure that the criteria for the payment of compensation are not confused with those relating to the dismissal itself. For example, the fact that an employee has been absent from work for a length of time, whilst being material in reaching a decision to dismiss, has no relevance in the decision on whether or not to make a payment of compensation upon dismissal.

Another area which has caused the Board some concerns over the past year is the excessive amount of time taken to complete the disciplinary or attendance procedures and that has potentially very serious consequences, particularly for Departments and Agencies, whose procedures specify timescales within which actions should be completed. If it can be demonstrated that the delays have been the cause of detriment to the individual concerned, that will be a material and important factor for the Board to take into account, when deciding whether or not a decision to dismiss has been fair or unfair.

During the past twelve months, we have been involved in a number of seminars and workshops, designed to raise the awareness of the Board as far as Departments and Agencies are concerned. We have focused largely on attendance inefficiency cases and the issues that tend to arise at hearings in this category, bearing in mind that reducing absence levels remains a very important objective within Departments and Agencies. Our seminars

include a role-play, which attendees have found extremely helpful. We believe this activity remains an important part of the work of the Board and we would welcome invitations from Departments and Agencies to participate in such seminars and workshops in the year to come.

I should like to thank the Deputy Chairs and all the Board Members for their hard work and commitment over the past year. The Secretariat has continued to provide sterling and valuable support under the leadership of Keith Wright. In the past year, we welcomed Colin Bentley who has joined us as Hearings Officer. Under Keith's management the cost per appeal has reduced from £1,873 to £1,228 and, in spite of the substantial increase in the number of hearings from 210 in 2002/03 to 257 in 2003/2004, the costs of running the Board has reduced from £393,377 to £315,722 – a very creditable achievement.

I hope you enjoy reading this report. In particular, 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 instructive reading, particularly for those preparing to appear before the Board in any capacity.

John Davies

Chair

The Civil Service Appeal Board

This report covers the financial year ending 31 March 2004. 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 357 new appeals during the year, an 11% increase on the figure of 321 of the previous year.

2. APPEALS CONSIDERED

The Appeal Board considered 257 appeals during the year (last year 210), a 22% increase on the number of appeals considered in the previous year. An analysis of appeals considered is set out in Appendix 3.

119 of the appeals were against dismissal on disciplinary grounds. This represents 47% of all appeals considered by the Board and a 29% increase on the number of appeals against disciplinary dismissal considered in the previous year in which dismissal on disciplinary grounds accounted for 44% of all appeals.

The renewed vigour in which Departments and Agencies are dealing with probation has translated into a 75% increase in the number of appeals heard against dismissal for failing to satisfy the standards of probation compared with the number heard during 2002/2003. It is interesting to note that the number of appeals against dismissal on grounds of unsatisfactory attendance has not risen during the same period unlike previous years.

See Appendix 7 for an analysis of appeals received and considered between 1994/1995 and 2003/2004.

3. SUCCESSFUL APPEALS

Of the total number of appeals which were considered 54 were found in favour of the appellant. This represents 21% of all the cases considered; this shows a 6% increase in the number of successful appeals compared with the previous year.

In 13 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 two cases.

In one case the Board recommended that the appellant should be reinstated with the imposition of a lesser penalty than dismissal. The Agency concerned did not accept this recommendation.

In 21 cases having found in the appellant's favour, the Board considered that reinstatement was inappropriate and an award of compensation was made.

In 19 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 one case from 0% to 50%, in one case from 0% to 33½% and in two further cases from 0% to 25%. In three other cases the award was uplifted from 75% to 100%, in one case from 70% to 100%, in three cases from 50% to 100% and in two further cases from 60% to 100% and 50% to 100% respectively.

4. INELIGIBLE APPEALS

Twenty-one appeals were found to be ineligible for the following reasons:

Appellant had no right of appeal to the Board	10
Appellant beyond minimum pensionable age	2
Appeal had been submitted out of time	9

5. WITHDRAWN APPEALS

Fifty-seven appeals were withdrawn for the following reasons:

Appellant voluntarily withdrew appeal	39
Appellant subsequently retired on medical grounds	11
Appellant's internal appeal successful	7

6. STRUCK OUT APPEALS

Twenty-four 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 decision by Departments and Agencies to dismiss was unfair.

7. REPRESENTATION OF APPELLANTS

Trade Union	144
Legal	16
Other	26
None	47

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 Department before a final decision is made.

No majority fair decision was made during the year.

9. PERFORMANCE

The Board's targets are:

- appeals to be heard within 18 weeks of receipt in 90% of cases;
- decision letters to be sent out within 24 hours of hearings being held in 95% of cases;
- hearing reports to be issued within 20 working days in 95% of cases; and
- compensation awards to be issued within 15 working days in 100% of cases following receipt of representations on contributory fault.

The Board was successful in achieving its targets for hearing appeals within 18 weeks of receipt in 90% of cases (98%), for sending out decision letters (100%) and issuing hearing reports (99%). However, the Board was unsuccessful in achieving its target for issuing compensation awards within 15 working days in 100% of cases following receipt of representations on contributory fault. Of the 32 awards issued, 28 (88%) were issued on time.

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 89% of appellants, 100% of appellant's representatives and 99% 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 £273,987 in 32 cases. The average award was £8,562 with the highest award being £39,789. This compares with an average and highest award of £7,844 and £24,199 in 2002/2003.

12. NON-ATTENDANCE OF APPELLANTS

The Board considered 24 cases in the absence of the appellant – a significant decrease on last year's figure (29).

13. OBSERVERS

A total of 239 people attended Appeal Board hearings as observers in order to familiarise themselves with the Board's procedures prior to attending a hearing. 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 and 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, Jobcentre Plus, the Prison Service, the Scottish Executive 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. The site includes details of how an appeal is processed, who hears appeals as well as online copies of Annual Reports, Guidance Notes and the Good Practice Principles.

Section 19(1) of the Freedom of Information Act 2000 required all public authorities to produce and adopt a publication scheme for approval by the Information Commissioner. The implementation timetable required the Board to submit a scheme to the Commissioner for approval by 31 December 2003 and for it to be in place by 29 February 2004. The Information Commissioner approved the Board's scheme on 23 December 2003 covering the period from 29 February 2004 to 28 February 2008. The Board's website sets out the types of information which the Board has undertaken to make available to the public as a matter of routine.

15. COSTS AND BUDGETS

The total cost of operating the organisation in 2003/2004 was £315,722, with the more significant categories detailed as follows:

	<i>2002/2003</i>	<i>2003/2004</i>
Members fees and expenses	£266,267	£183,271
Tax on members fees	£ 17,933	£ 13,465
Staff costs	£ 96,123	£107,705
IT equipment	£ 2,938	£ 2,933
Miscellaneous	£ 10,116	£ 8,348
TOTAL	£393,377	£315,722

The cost per appeal considered was £1,228 compared with £1,873 in 2002/2003.



APPENDIX 1

Summary of Activity

	2002/03	2003/04	Change from previous year
Case outstanding at the beginning of the year	79	132	+16%
Appeals received	321	357	+11%
TOTAL	400	489	+22%
Appeals considered	210	257	+22%
Appeals found to be ineligible	18	21	+14%
Appeals withdrawn	32	57	+78%
Appeals struck out	8	24	+200%
TOTAL	268	359	+34%
Cases in process at the end of the year	132	130	-1.5%

APPENDIX 2

Appeals Heard Financial Year April 2003–March 2004

Department	Number of Appeals Received
Arbitration and Conciliation Advisory Service	1
British Library	2
British Museum	2
Central Office of Information	1
Crown Prosecution Service	1
Department for Constitutional Affairs	2
Department for Education and Skills	2
Department for International Development	2
Department of Trade and Industry	3
Department for Work and Pensions (including Child Support Agency and Jobcentre Plus)	43 (17%)
Driver and Vehicle Licensing Agency	2
Driving Standards Agency	1
Employment Tribunal Service	1
Food Standards Agency	2
Government Car Despatch Agency	1
Government Communications Headquarters	1
Health and Safety Executive	1
HM Customs and Excise	15 (6%)
HM Land Registry	2
HM Prison Service	75 (29%)
HM Treasury	1
House of Commons	2
Immigration and Nationality Directorate	18 (7%)
Inland Revenue	24 (12%)
Meat Hygiene Service	1
Ministry of Defence	16 (6%)
Ministry of Defence Agencies:	
ABRO	1
Defence Aviation and Repair Agency	2
Defence Communications Services Agency	1
Defence Housing Executive	1
Defence Logistics Organisation	1
Defence Procurement Agency	1
Defence Science and Technology Laboratory	1
Naval Training and Repair Organisation	1
Warship Support Agency	3
National Archives	1
National Museum of Photography and Television	2
Office for Standards in Education	3
OGC Buying Solutions	1
Registers of Scotland	4
Rent Service	1
Royal Mint	4
Rural Payments Agency	1
Scottish Fisheries Protection Agency	1
Scottish Prison Service	2
United Kingdom Passport Service	3
TOTAL	257

APPENDIX 3

Analysis of Appeals Considered

Reason for Appeal	Number	Upheld
Discipline	119 (47%)	13 (11%)
Inefficiency		
Attendance	63 (24%)	11 (17%)
Performance	8 (3%)	2 (25%)
Withholding of Compensation	31 (12%)	19 (61%)
Failed Probation	35 (14%)	9 (26%)
Frustration of Contract	1	
TOTAL	257	54 (21%)

APPENDIX 4

Synopsis of Appeals Upheld by the Board

1. IMMIGRATION OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR VERBALLY ABUSING A CUSTOMER

The flaws in the way in which the investigation had been handled led the Board to conclude that the appellant had not been treated fairly or reasonably. He had not been informed of the complaint made against him prior to being interviewed or advised of his right to bring a representative to that interview. Particularly damaging was the investigator's claim that the complaints procedure was a guide and discretion could be employed when choosing which parts to follow. The appellant had not been provided with a note of the meeting following the interview thus denying him the opportunity to comment before the final report was compiled.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	75%
AWARD:	£6,990.83

2. SECURITY OFFICER DISMISSED ON INEFFICIENCY GROUNDS FOR UNSATISFACTORY ATTENDANCE

Although periods of sickness had been discounted some years previously the recent periods of absence, with the same ailment, had been included in the appellant's sick record. The Board found it difficult to recognise any standard or consistency of application and noted that had the absences been discounted the level of absence would have fallen within the limit covered by the monitoring period. The advice provided to the Decision Maker was flawed and the appellant chose not to make representations on the decision to dismiss concluding it would not be worthwhile having been given misleading advice. There were also a number of procedural flaws. A memo which outlined the case was missing some critical aspects; a medical report was only made available to the appellant on the day of a meeting rather than in advance; and an assumption was relied on that a warning had been given although no documentary evidence was available to confirm this.

RESULT:	REINSTATEMENT
ACCEPTED:	YES

3. DRIVING EXAMINER DISMISSED ON DISCIPLINARY GROUNDS FOR UNAUTHORISED ABSENCE

Whilst the Board noted that disciplinary action should have been taken much sooner, it concluded that the appellant had not been treated fairly and reasonably in the latter stages of the case. A medical report was received but the contents were not communicated nor discussed with the appellant which led the Board to conclude that insufficient account of his ill health had been taken before proceeding with the disciplinary procedures. Furthermore, by failing to consider the report and discuss the contents with the appellant the Board felt that no attempt had been made to facilitate a return to work by offering reasonable adjustments under the Disability Discrimination Act.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	75%
AWARD:	£7,528.06

4. EXECUTIVE OFFICER DISMISSED ON INEFFICIENCY GROUNDS FOR UNSATISFACTORY PERFORMANCE

Although acknowledging that positive efforts had been made by the Agency the Board was concerned that the effects of underlying medical conditions, the possible application of the Disability Discrimination Act and advice from the occupational health adviser had been ignored. The effects of the medical conditions suggested that timekeeping was a problem for the appellant but as this was not investigated the removal of flexible working hours, coupled with a demanding trial period, seemed to exacerbate the situation. The Board concluded that the terms of the trial period were unfair and unsuitable for an appellant with his particular medical problems and history.

RESULT:	REINSTATEMENT
ACCEPTED:	NO
CONTRIBUTORY FAULT:	25%
AWARD:	£5,990.65

5. PRISON OFFICER DISMISSED ON INEFFICIENCY GROUNDS FOR UNSATISFACTORY ATTENDANCE

The Board recognised a number of procedural deficiencies in the way in which the Agency handled matters. There were unacceptable delays in the time taken to make a referral to the occupational health adviser. Moreover, there were shortcomings in the amount and quality of the contact maintained by the Agency which, the Board felt, heightened the appellant's feeling of isolation and stress. It was deemed inappropriate that the individual who heard the internal appeal had been involved with the case prior to administrative action being taken. An independent party should have heard the appeal. The Board also considered that the Agency should have been more pro-active in providing the appellant with key documents and it had not fulfilled its duty of care as there was no documentary evidence to suggest that discussions had taken place following what the Board felt were reasonable reasons for the officer declining a transfer to another establishment.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	25%
AWARD:	£5,969.86

6. INDUSTRIAL GRADE 3 DISMISSED ON DISCIPLINARY GROUNDS FOR HAVING AN ILLICIT RELATIONSHIP WITH A PRISONER

The Agency failed to allow a witness to attend the disciplinary hearing who would have given a written statement which would have supported the appellant. The Board concluded that their refusal to call the appellant's witness was procedurally unsound and a denial of natural justice. Furthermore, as the appellant denied the charge the Agency should have pursued the matter of his whereabouts on the day in question but did not.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	50%
	50% POLKEY FACTOR
AWARD:	£5,897.56

7. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR FAILING TO OBEY A LAWFUL ORDER AND TWO CHARGES OF USING OFFENSIVE LANGUAGE AND BEHAVIOUR TOWARDS A COLLEAGUE

The Board found this case unfair, by a majority decision, on grounds of proportionality. The Agency had imposed a single award for multiple offences. Whilst the Board determined that taking this action did not fatally flaw the case, the majority concluded that, as none of the offences taken individually constituted gross misconduct, the penalty of dismissal was too harsh taking them together.

RESULT:	REINSTATEMENT
ACCEPTED:	NO
CONTRIBUTORY FAULT:	25%
AWARD:	£16,557.65

8. PSYCHOLOGIST DISMISSED ON GROUNDS OF FAILED PROBATION DUE TO UNSATISFACTORY ATTENDANCE

Whilst the appellant's performance and attendance records were legitimate areas of concern the Board was unable to satisfy itself that the appellant had been treated fairly and reasonably particularly as her medical condition meant that she was likely to be covered by the Disability Discrimination Act. Meaningful efforts were not made to allow the appellant to discuss her concerns and fears despite reminders to do so from the occupational health adviser. Minutes of meetings, which appeared to focus on performance and criticism, did not give the impression of a caring employer. No pro-active efforts had been made, even at a preliminary stage, to place her in another prison establishment and the investigation into a grievance brought by the appellant was extremely superficial. The Board concluded that the employer had fallen short in its duty of care to the appellant.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	NIL
AWARD:	£14,499.01

9. ADMINISTRATIVE OFFICER DISMISSED ON GROUNDS OF FAILED PROBATION DUE TO UNSATISFACTORY CONDUCT

The Board concluded that the major reason why this case was procedurally unfair was the juxtaposition of a letter confirming a written warning regarding timekeeping and flexi-time abuse and the dismissal. Despite previously being spoken to on numerous occasions about timekeeping and flexi-time abuse the letter was the first time the appellant had been advised of the implications of his actions including dismissal. Although advised that the warning would remain live for 12 months he was not told of the effect any further irregularities could have on his period of probation. Furthermore, despite there not being any irregularities after the issue of the letter the Agency moved to dismissal, which was contrary to the advice provided in the letter. Whilst there were indications that the Agency had sought to treat him fairly and were commended for doing so there were areas which undermined this. In a period of relatively short service he had had numerous line managers and had been moved to a new area of work. Given this was unsettling the Board felt a more sensitive approach could have been adopted with a transfer back to his original area of work.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	75%
	100% POLKEY FACTOR
AWARD:	£48.23

10. ADMINISTRATIVE ASSISTANT DISMISSED ON GROUNDS OF FAILED PROBATION DUE TO UNSATISFACTORY PERFORMANCE

Whilst the Board were in no doubt that the Department had given the appellant every support and encouragement to succeed over the course of a three-year probationary period, which had been extended five times, following advice and guidance from the occupational health adviser, the dismissal was found procedurally unfair as the appellant had not been advised that she was in danger of failing probation despite many meetings to discuss her performance. The Board concluded that it was impossible for the appellant to achieve the standards expected of her in terms of performance if they had not been explained to her.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	ONE THIRD
	100% POLKEY FACTOR
AWARD:	£195.02

11. ADMINISTRATIVE OFFICER DISMISSED ON GROUNDS OF FAILED PROBATION DUE TO UNSATISFACTORY ATTENDANCE

The Board concluded that the dismissal was procedurally unfair as the Department's procedures set out seven steps that had to be followed. Of these only two had been completed.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	NIL
	100% POLKEY FACTOR
AWARD:	£361.16

12. GRADE 7 DISMISSED ON DISCIPLINARY GROUNDS AS RESULT OF BEHAVIOUR LEADING TO TRUST AND CONFIDENCE BREAKING DOWN

The Board found this case both procedurally and substantively unfair as it was inappropriate to use the disciplinary procedures when the issues of behaviour resulted from performance issues. Had the inefficiency procedures been followed the appellant would have been provided with an opportunity to improve his performance but this opportunity had been denied by the adoption of the disciplinary procedures.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	50%
	NIL POLKEY FACTOR
AWARD:	£13,850.22

13. PASSPORT OFFICER DISMISSED ON GROUNDS OF FAILED PROBATION DUE TO UNSATISFACTORY ATTENDANCE

Although dealing with a probationer the Agency used the inefficiency procedures which the Board concluded prejudiced her. She did not appear to have been advised with sufficient clarity that her probationary period might be brought to an end and that dismissal could result. In extending the probation period despite high levels of absence the Board felt that the appellant's hopes for successful completion had been raised. Furthermore, it was unfair to move to dismissal when two days' absence had occurred in a monitoring period where a maximum of five had been agreed based on the assumption that the appellant would have exceeded the limit had the monitoring period continued to its conclusion.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	70%
	100% POLKEY FACTOR
AWARD:	£75.00

14. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS RESULTING FROM THREE CHARGES OF FAILING TO CARRY OUT DUTIES

Having found two of the three charges unsafe the appeals officer found the third proven and it was this charge upon which the dismissal was based. The Board concluded that this was unsound as the reasons given for finding it proven did not reflect the substance of the charge thus concluding that the charge was found proven on a false premise.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	75%
AWARD:	£2,061.09

15. EXECUTIVE OFFICER DISMISSED FOR INEFFICIENCY DUE TO UNSATISFACTORY ATTENDANCE

The Board concluded that the appellant had been unfairly treated as the Agency had failed to be pro-active in arranging meetings or contacting her; had not acted on advice from personnel or the occupational health adviser and had, overall, acted in a manner that lacked both imagination and sensitivity particularly as the officer had provided long and effective service prior to the absence which led to dismissal.

RESULT:	REINSTATEMENT
ACCEPTED:	NO
CONTRIBUTORY FAULT:	NIL
AWARD:	£16,917.75

16. CHEF DE PARTIE (CATERING GRADE D1) DISMISSED ON DISCIPLINARY GROUNDS FOR UNAUTHORISED ABSENCE

Whilst commending the Department for its sympathetic approach in dealing with what was a difficult situation involving numerous incidents of absence, the Board concluded that the case was unfair on procedural grounds. There were two days of unauthorised absence taken closely together. For the first offence the appellant was given a final written warning which would remain live for 24 months. Due to the closeness of the absences the warning had been issued after the second offence had occurred. The Board concluded that it was unfair to imply in the dismissal letter that the warning had not been taken into account given this would have been impossible, it being issued after the second offence had occurred.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT	75%
	100% POLKEY FACTOR
AWARD:	£130.00

17. INDUSTRIAL CATERER DISMISSED ON THE GROUNDS OF FAILED PROBATION FOR FAILING TO MEET THE REQUIRED STANDARDS OF PERFORMANCE AND CONDUCT

The Board concluded that the guidance and support provided to the appellant was woefully inadequate. Concerns regarding performance and conduct were not discussed nor remedial action taken and, due to a period of suspension followed by a period of sickness immediately before dismissal, the appellant was not given the opportunity to show improvement. This was particularly remiss as he had been advised that he would be provided with a further three months to improve his performance following his return to work. This was compounded by the decision to dismiss being taken with the knowledge that he intended to return to work the month after the date of termination.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	NIL
	NIL POLKEY FACTOR
AWARD:	£6,439.85

18. ADMINISTRATIVE ASSISTANT DISMISSED ON INEFFICIENCY GROUNDS DUE TO UNSATISFACTORY ATTENDANCE

Whilst the Board felt the appellant should have declared his medical condition on recruitment, the Department adopted a mechanistic approach when dealing with his sick absence record and moved quickly to dismissal without adequately investigating the medical conditions. The first referral to the occupational health adviser was not made until some five months after a first warning had been given regarding his level of sick absence. Further clarification was not sought when the medical conditions came to light and, in the Board's view, another referral should have been made to the occupational health adviser when the appellant raised formal objections regarding the content of the earlier report.

RESULT:	REINSTATEMENT
ACCEPTED:	NO
CONTRIBUTORY FAULT:	50%
AWARD:	£10,970.41

19. BAND 10 SECURITY WARDEN DISMISSED ON INEFFICIENCY GROUNDS FOR UNSATISFACTORY ATTENDANCE

The Board determined that the dismissal was procedurally unfair because the Department failed to monitor sickness absences, agree a review period, hold return to work interviews or instigate a formal trial period. These flaws denied the appellant the opportunity to discuss any health or work issues, to know what was expected of him and to show improvement. The Board also felt the appellant had been treated unfairly as it was considered unreasonable to move to dismissal when there had been no contact or monitoring for a six-month period. That the dismissal letter was issued without the appellant having been given the opportunity to make representations leaving him to rely on his internal appeal to put his case against dismissal was deemed improper.

RESULT:	REINSTATEMENT
ACCEPTED:	NO
CONTRIBUTORY FAULT:	25%
	NIL POLKEY FACTOR
AWARD:	£14,588.49

20. ADMINISTRATIVE OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR THREE CHARGES OF MISCONDUCT

There were numerous and lengthy delays throughout the handling of the case which, the Board concluded, were serious enough to render the case procedurally unfair as they materially prejudiced the fairness of the process and its outcome. In particular the delaying of one investigation so that two offences could be looked at simultaneously was deemed to be a breach of natural justice. Little or no consideration appeared to have been given to the mitigating factors when the penalty was decided and those which were considered were not based on the specific wording of the alleged offences in the disciplinary charge. This in itself was unfair, in the Board's view, as the appellant had been invited to comment specifically on these issues surrounding the offences.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	75%
	50% POLKEY FACTOR
AWARD:	£768.12

21. HIGHER EXECUTIVE OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR BEING ABSENT WITHOUT LEAVE

Whilst the Board was no in doubt that the Agency had been sympathetic toward the appellant and the absences were not in doubt the way in which the procedures had been handled were sufficiently flawed for the case to be procedurally unfair. As medical certificates were eventually submitted and the absences no longer unauthorised the Board was not satisfied that the Agency had acted correctly in suspending the procedures and re-activating them rather than initiating them from scratch on each occasion. It concluded that each further absence should not have been treated as a continuation of earlier ones but as a new episode.

RESULT: **REINSTATEMENT IN ANOTHER POST OUTSIDE THE AGENCY WHERE THE OFFICER WAS ORIGINALLY EMPLOYED**

ACCEPTED: **YES**

22. MUSEUM GRADE 2 DISMISSED ON INEFFICIENCY GROUNDS FOR UNSATISFACTORY ATTENDANCE

Given the appellant was suffering from stress and the Department had received medical advice confirming that her absence was attributable to perceived stress at work the Board concluded it was unfair to move to dismissal when she could have benefited from an extended period of sick absence on full pay as allowed for in the Civil Service Management Code, Injury at Work provisions. Had they been utilised it would have provided the appellant a similarly extended period for recovery and return to work. By not adopting the provision prior to invoking the inefficiency procedures the Department had denied the appellant the opportunity of later medical input which may have confirmed her progressive recovery and provided an indication of when she would be fit enough to return to work. This in turn denied the Decision Maker significant information which was relevant and could have affected the outcome.

RESULT: **COMPENSATION**

CONTRIBUTORY FAULT: **NIL**

AWARD: **£39,789.45**

23. ADMINISTRATIVE OFFICER DISMISSED ON GROUNDS OF FAILED PROBATION DUE TO UNSATISFACTORY ATTENDANCE

The Board found the case unfair on procedural grounds. At no stage during the probationary period did it appear that the appellant had been warned that her attendance record was causing sufficient concern that she might fail probation. Having received a letter at the 10-month stage stating that her attendance would be monitored for a period of six months from that date it was unfair to forgo the procedures and time-scale laid out in that letter to dismiss at the 12-month point.

RESULT: **COMPENSATION**

CONTRIBUTORY FAULT: **60%**

AWARD: **100% POLKEY FACTOR**

£100

24. PRISON OFFICER DISMISSED ON INEFFICIENCY GROUNDS FOR UNSATISFACTORY ATTENDANCE

Whilst the Agency both responsibly and actively discussed the case with the occupational health adviser the Board found it unfair to accept the advice without criticism when it should have been reasonably known that the advice was ill-founded. The Board concluded that rather than accepting out of date medical advice the Agency should have been sufficiently familiar with the facts of the case to challenge the advice received given that it did not reflect that the appellant had had an operation since a previous medical report, a situation that the Agency had knowledge of.

RESULT: **COMPENSATION**

CONTRIBUTORY FAULT: **75%**

AWARD **£248.63**

25. ADMINISTRATIVE ASSISTANT DISMISSED ON THE GROUNDS OF FAILED PROBATION DUE TO UNSATISFACTORY ATTENDANCE

There were numerous procedural flaws in this case which cumulatively led the Board to conclude that the decision to dismiss was unfair. Most notably there was no written record of objectives being set or agreed; no warnings that there was a risk of dismissal if the appellant's attendance did not improve; no letter notifying him that the probation period had been extended; and mismanagement of leave over the extended period. Having extended the probationary period the Department then had a duty to enable the opportunity to be realistically seized but the procedural deficiencies prevented this occurring. This was compounded by communication problems, no explicit incorporation of the occupational health adviser's advice and the Department's failure to inform the appellant of, or to follow up, the possibility of a transfer to another unit.

RESULT:	REINSTATEMENT
ACCEPTED:	NO
CONTRIBUTORY FAULT:	NIL
AWARD:	£19,348.03

26. PRISON OFFICER DISMISSED ON INEFFICIENCY GROUNDS FOR UNSATISFACTORY ATTENDANCE

A final written warning letter that set out guidelines that the appellant was expected to adhere to in order to improve her attendance record included details of the expected improvement and the sustaining of that improvement. In the initial six months no sickness absence was taken but in the seventh month one period of three days was taken. Following this three-day period of absence the employer instigated dismissal proceedings which the Board determined was unfair as the action was not consistent with the conditions set out in the warning letter.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	NIL
AWARD:	£7,459.65

27. EXECUTIVE OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR REFUSING TO FOLLOW A REASONABLE INSTRUCTION

Whilst the Board commended the Agency for the patience and care in dealing with a difficult situation it concluded the dismissal was unfair because it was unreasonable to continue to use the disciplinary procedures once it had become clear that the appellant's health was a factor in his refusing to attend meetings with management. The Board felt that the Agency should have abandoned the disciplinary procedures at that point and instead adopted the inefficiency procedures particularly in the light of medical advice which stated that the use of the disciplinary procedures were exacerbating the problem.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	90%
	90% POLKEY FACTOR
AWARD:	£394.13

28. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR AN INCIDENT LEADING TO AN ALLEGATION OF ABUSE OF POWER

The appellant was dismissed because his actions during a search constituted an abuse of power. He was not suspended during the investigation and continued to work on the same unit with the same prisoners. The Board found that the Agency's decision that they could not rely on the officer was not supported by their actions and was unreasonable given some 18 months had passed since the alleged incident and dismissal. Given that this was the first disciplinary offence in a 10-year career and the officer had continued in employment in the same area with the same inmates throughout the period of the investigation the Board determined that the penalty was disproportionate.

RESULT: REINSTATEMENT WITH A LESSER PENALTY
ACCEPTED: YES

29. IMMIGRATION OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR SUSPECTED INVOLVEMENT IN CRIMINAL ACTIVITIES

The Board found the dismissal unfair on procedural grounds. The Agency failed to lay charges following receipt of the investigation report; failed to provide any opportunity for her to make written observations; and failed to make arrangements for her to make oral representations to the Decision Maker. Furthermore, the Agency's view that nothing new would have been revealed had representations been made was deemed unreasonable and contrary to employment law practice where, when considering the balance of probabilities, the appellant is entitled to put their side of the case.

RESULT: COMPENSATION
CONTRIBUTORY FAULT: 100%
 100% POLKEY FACTOR
AWARD: NIL

30. GRADE E1 DISMISSED ON GROUNDS OF FAILED PROBATION DUE TO UNSATISFACTORY ATTENDANCE

In the Board's view the appellant had been treated unfairly as she had not been given the guidance relating to probationers until she had been employed for six months. By this stage she had incurred a sick record which the Department deemed to be unsatisfactory but had, until that point, been in ignorance of what was expected by way of satisfactory attendance until after she had effectively failed the requirement. The Board also considered that the conditions set for a three-month monitoring period were unreasonable. The Department warned her that she would fail the monitoring period if a single absence was taken. Dismissal occurred following half a day's sickness despite the fact that she had left the office with permission to gain hospital treatment for a medical condition. In the circumstances, the use of the half day as the trigger was, in the Board's view, unfair.

RESULT: REINSTATEMENT
ACCEPTED: NO
CONTRIBUTORY FAULT: 25%
 25% POLKEY FACTOR
AWARD: £9,134.51

31. PRISON OFFICER DISMISSED ON GROUNDS OF LIMITED EFFICIENCY

Following two separate incidents of finding inmates who had hanged themselves the appellant was placed on limited duties whilst he recovered. Whilst the Board acknowledged that the Agency had endeavoured to treat the appellant fairly the case was found procedurally unfair. The Agency's guidance made it clear that placement on limited duties should be on a time-bound basis from the outset but in this case there was no evidence available regarding how the limited duties arrangements were set up or whether the appellant had been seen regularly and extensions agreed on a structured basis. As this had not been done the notification of dismissal had come without warning. The Board also concluded that the assistance, as laid out in the Agency's procedures, which should be given to officers who are involved in, or may be affected by, deaths had been inadequate.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	NIL
AWARD:	£9,130.53

32. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR ASSAULTING A PRISONER

The Board paid due regard to the Employment Law test, *BHS vs Burchell*, i.e. the employer must genuinely believe, on the balance of probabilities, that the appellant is guilty; must have reasonable grounds for that belief; and must have carried out a full investigation into the matter as was reasonable in the circumstances. Because the Decision Maker relied on the evidence of a main witness whose evidence changed throughout the course of the investigation the Board concluded, by a majority, that the balance of probabilities test had not been satisfied.

RESULT:	REINSTATEMENT
ACCEPTED:	NO
CONTRIBUTORY FAULT:	NIL
AWARD:	£30,177.49

33. PRISON OFFICER DISMISSED ON INEFFICIENCY GROUNDS FOR UNSATISFACTORY ATTENDANCE

The Board considered that the amount and quality of contact that the Agency made with the appellant throughout his absence was lacking and severely criticised the length of time it took for referrals to be made to the occupational health adviser. In the Board's view the Agency should have been more pro-active in asking the appellant to consider a transfer to an alternative establishment and this was of particular concern as a letter sent regarding another posting had a distinctly disciplinary undertone despite it being an inefficiency case. This concern was reinforced by the Agency's apparent disregard of the occupational health adviser's advice.

RESULT:	COMPENSATION
CONTRIBUTORY FAULT:	50%
AWARD:	NO AWARD WAS MADE AS THE PAYMENT UNDER THE CIVIL SERVICE COMPENSATION SCHEME WAS LARGER THAN THE AWARD FOR UNFAIR DISMISSAL

34. ADMINISTRATIVE ASSISTANT DISMISSED ON THE GROUNDS OF FAILED PROBATION DUE TO UNSATISFACTORY ATTENDANCE

The Board found this case unfair on procedural grounds. Warnings were not given at the appropriate times and it was deemed unreasonable to move between the procedures for unsatisfactory attendance and the procedures relating to probationers. The guidance relating to probationers made it clear that dismissal should not be considered until the occupational health adviser's advice had been received. The appellant had been seen by the occupational health adviser but had then had her operation. Following this operation the Agency moved to dismiss despite their procedures making it clear that medical advice should have been asked for again especially as the operation was the result of a previously undiagnosed illness.

RESULT:	REINSTATEMENT
ACCEPTED:	NO
CONTRIBUTORY FAULT:	50%
	50% POLKEY FACTOR
AWARD:	£8,002.87

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

Numerous causes for concern were found in the way in which the appellant had been treated by the Agency. In making the decision to dismiss, the Agency disregarded medical evidence from the appellant's GP which stated that her condition was improving. The Board felt it was unreasonable not to re-refer the case to the occupational health adviser given that her sick absence was, in part, due to work-related factors. It further concluded that the Agency had acted without sensitivity and had failed in its duty of care. There should have been greater pro-active involvement of the welfare services and leave arrangements should have been discussed with greater sensitivity and in a more timely fashion. A home visit which had been planned as a welfare visit was undertaken without a representative of the welfare services being present and rather than discussing that issue it instead focused on management issues. Following this meeting the minutes were not seen by the appellant which, whilst not a procedural requirement, was criticised as it was this note upon which the decision to dismiss was based. In such circumstances failing to have given her the opportunity to comment was remiss.

RESULT:	REINSTATEMENT
ACCEPTED:	NO
CONTRIBUTORY FAULT:	NIL
AWARD:	£21,280.53

APPENDIX 5

Performance Against Targets 2003/2004

Hearings

Hearings to be heard within 18 weeks of receipt in 90% of cases

Month (2002/2003 figures in brackets)	Appeals Heard	Average No of Weeks to Hearing	% Within Target
April	21 (15)	16 (13)	100%
May	24 (14)	15 (12)	88%
June	21 (14)	15 (14)	90%
July	15 (25)	15 (16)	100%
August	12 (13)	15 (19)	100%
September	22 (18)	14 (15)	100%
October	19 (19)	15 (13)	95%
November	24 (23)	15 (16)	100%
December	20 (15)	14 (15)	100%
January	28 (20)	16 (15)	100%
February	21 (18)	16 (15)	100%
March	30 (16)	15 (14)	100%
Average	257 (210)	15 (15)	98%

Decision Letters Issued

Letters to be issued within 24 hours of hearing

All decision letters were issued within the target period during 2003/2004.

Reports Issued

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

Month (2002/2003 figures in brackets)	Reports Issued	Average No of W/Days to Issue	% Within Target
April	13 (6)	11 (12)	100%
May	19 (18)	11 (9)	100%
June	29 (9)	12 (14)	100%
July	14 (25)	10 (11)	93%
August	17 (19)	7 (11)	100%
September	19 (11)	9 (9)	100%
October	17 (22)	10 (7)	100%
November	24 (15)	8 (10)	100%
December	19 (22)	9 (14)	95%
January	25 (21)	10 (10)	95%
February	25 (23)	11 (8)	100%
March	26 (16)	10 (8)	100%
Average	247 (207)	10 (10)	99%

Compensation Awards

Awards to be issued within 15 working days in 100% of cases

Month	Awards Issued	Average No of W/Days to Issue	% Within Target
April	0	–	–
May	0	–	–
June	1	14	100%
July	4	15	50%
August	4	8	100%
September	3	16	67%
October	4	8	100%
November	4	13	75%
December	1	11	100%
January	0	–	–
February	4	11	100%
March	7*	11	100%
Average	32	12	88%

* Includes 5 awards made in 2004/2005 in respect of unfair decisions taken by the Board in the previous financial year.

This target was introduced for 2003/2004. No comparable figures are therefore available for 2002/2003.

APPENDIX 6

Results of Customer Satisfaction Surveys Issued 2003/2004

Number of forms issued: 723 Number of forms returned: 268

Appellant	56/241
Appellant's representative	65/241
Department or Agency representative	147/241

Written information about the CSAB

Were the guidance notes provided easy to understand?

	YES	NO	N/A
Appellant	99%	0%	1%
Appellant's representative	98%	2%	0%
Department or Agency representative	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	93%	6%	1%
Appellant's representative	96%	2%	2%
Department or Agency representative	95%	4%	1%

Dealing with the Secretariat

If you telephoned the Secretariat:

were the staff helpful?

	YES	NO	N/A
Appellant	65%	4%	31%
Appellant's representative	90%	0%	10%
Department or Agency representative	85%	0%	15%

was the information given useful?

	YES	NO	N/A
Appellant	65%	4%	31%
Appellant's representative	90%	0%	10%
Department or Agency representative	85%	0%	15%

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

	YES	NO	N/A
Appellant	50%	8%	42%
Appellant's representative	48%	0%	52%
Department or Agency representative	31%	0%	60%

Were you sent a response within 10 working days?

	YES	NO	N/A
Appellant	54%	4%	42%
Appellant's representative	43%	5%	52%
Department or Agency representative	31%	0%	69%

The hearing

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

	CLEAR	UNCLEAR	N/A
Appellant	99%	0%	1%
Appellant's representative	96%	0%	4%
Department or Agency representative	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	97%	3%
Appellant's representative	98%	2%
Department or Agency representative	99%	1%

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

	YES	No
Appellant	84%	16%
Appellant's representative	94%	6%
Department or Agency representative	99%	1%

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

	SATISFIED	DISSATISFIED
Appellant	89%	11%
Appellant's representative	100%	0%
Department or Agency representative	99%	1%

APPENDIX 7

Appeals Received and Heard 1994/1995 – 2003/2004

	Appeals Received	Appeals Heard	Successful Appeals
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%
2003/2004	357	257	21%

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