



**ANNUAL REPORT 1998-99**

**CIVIL SERVICE APPEAL BOARD**





## **ANNUAL REPORT 1998–99**

Civil Service Appeal Board



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# COMPOSITION OF CIVIL SERVICE APPEAL BOARD

As at 31 March 1999

Chair — post vacant (J H Davies w.e.f 4.5.99)

Deputy Chair — N F Ledsome CB

Deputy Chair — P D Jones

## BOARD MEMBERS

### OFFICIAL SIDE PANEL

Mrs S Brown (DTI)

S R Davie CB (Cabinet Office)

P S Draper CB (PSA)

M E G Fogden CB (ES)

T W Hall (DTp)

R M Hastie-Smith CB (MOD)

P Jefferson Smith CB (HM C&E)

E McGivern CB (IR)

T C Platt CB (HO)

### TRADE UNION SIDE PANEL

#### NON INDUSTRIAL

Mrs A Berney (NUCPS)

Mrs P Braby (CPSA)

Ms L Clare (FDA)

Miss E Findlay (IPMS)

Mrs D Hall Hall (NUCPS)

J Renton MBE (SPOA)

T Thomson (NUCPS)

#### INDUSTRIAL

W J Edmunds BEM (GMBATU)

N Tout BEM (GMB)

### SECRETARIAT

Mrs A Khan (Secretary to the Board)

Miss R Fox

Miss J Outred

Mrs S Rosier

# PEN PORTRAITS OF BOARD MEMBERS

As at 31 March 1999

## CHAIR

Post vacant (J H Davies w.e.f. 4/5/99)

## DEPUTY CHAIRS

### N F LEDSOME CB

Former Grade 3  
Department of Trade & Industry  
Appointed May 1990

### P D JONES

Former Chair  
Council of Civil Service Unions  
Appointed June 1992

## OFFICIAL SIDE BOARD MEMBERS

### MRS S BROWN

Former Grade 3  
Department of Trade & Industry  
Appointed November 1998

### S R DAVIE CB

Former Grade 3  
Cabinet Office  
Appointed September 1995

### P S DRAPER CB

Former Grade 3  
Property Services Agency  
Appointed November 1996

### M E G FOGDEN CB

Former Grade 3+  
Employment Service  
Appointed September 1997

### T W H ALL

Former Grade 3  
Department of Transport  
Appointed October 1987

### R M HASTIE-SMITH CB

Former Grade 2  
Ministry of Defence  
Appointed July 1992

### P JEFFERSON SMITH CB

Former Grade 2  
HM Customs & Excise  
Appointed September 1995

### E MCGIVERN CB

Former Grade 3  
Inland Revenue  
Appointed November 1998

### T C PLATT CB

Former Grade 2  
Home Office  
Appointed November 1996

**TRADE UNION SIDE BOARD MEMBERS:**

**NON-INDUSTRIAL**

**MRS A BERNEY**

NUCPS  
Department of Trade & Industry  
Appointed February 1995

**MRS P BRABY**

CPSA  
Metropolitan Police Service  
Appointed December 1994

**MS L CLARE**

FDA  
Scottish Office  
Appointed August 1998

**MISS E FINDLAY**

IPMS  
Scottish Office  
Appointed February 1993

**MRS D HALL HALL**

NUCPS  
Ministry of Defence  
Appointed February 1993

**J RENTON MBE**

SPOA  
Scottish Prison Service  
Appointed February 1993

**T THOMSON**

NUCPS  
Department of Social Security  
Appointed July 1998

**TRADE UNION SIDE BOARD MEMBERS:**

**INDUSTRIAL**

**W J EDMUNDS BEM**

GMBATU  
Property Services Agency  
Appointed June 1991

**N TOUT BEM**

GMB  
Property Services Agency  
Appointed April 1993

**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 panel or departments and agencies for the official side panel.

Normally members will be appointed for a three-year term with the opportunity of 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 assessed annually.

## MESSAGE FROM THE CHAIR

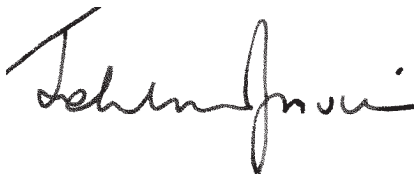
I am delighted to have been appointed Chair of the Civil Service Appeal Board. I join the Board, having spent thirty years in the private sector with Barclays Bank, where for the last twelve years I undertook various appointments in the Human Resources area, culminating in the personnel directorship of its largest business unit, the UK Bank, which employed 60,000 staff.

Employee Relations was a central part of that job and I always regarded it as being crucially important to have in place policies and processes that were transparent and fair, from the viewpoint of management, staff and unions alike.

I come to the Civil Service Appeal Board at an interesting time. Personnel authorities are being delegated to business units, so that decisions are taken closer to business activity, and that is to be applauded. This is coinciding with a time when employment legislation is increasing, both on the national and European fronts, and that presents many challenges to all involved.

It is important that, within the public sector, our professionalism in employee relations matters is of the highest standard. The Civil Service Appeal Board has a key role to play in ensuring consistency, and I am very pleased that the recent Quinquennial Review has supported its continuation. I also recognise the educational role the Board has to play, and as part of this, we shall be embarking upon some new initiatives in this respect, one of which will be to devise and hold seminars for personnel functions in the devolved environment in which we now operate.

I look forward very much to working with you.

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

JOHN DAVIES

## INTRODUCTION

The introduction to the Board's Annual Report is normally written by the Chair. Miss Patricia Downs OBE, who had been Chair for the previous eight years, retired on 31 December 1998 and her successor, Mr J H Davies, was not appointed until 4 May 1999. This introduction has, therefore, been produced jointly by the Deputy Chairs, Mr P D Jones and Mr N F Ledsome.

The statistics in the report show a continuing decline in the number of appeals received during the year. This decline began in 1993 and there has been a steady downward trend since then, reflecting the reducing size of the Civil Service. As a counterbalancing factor, the increasing complexity of employment law during the 1990s has meant that the cases heard by the Board are inevitably more complex and consideration of them is finer grained. Added to this is the continuing effect of the devolution of management responsibility throughout the Civil Service, which has meant that relatively inexperienced representatives, from both management and trade unions, have appeared before the Board at hearings.

Whether or not the decline in the number of cases received will continue is a matter for speculation. There seems little prospect of an increase in the size of the Civil Service, which is the main factor, but there are some impending developments which indicate that the Board's activity may increase in the future. The main change in view is the reduction in qualifying service from two years to one year, effective for all dismissals from 1 June 1999. In 1993/94, the last full year in which previously the one-year provision applied, 64 failed probation cases were dealt with by the Board as compared with one in 1998/99. If this earlier experience is any guide, a sizeable number of appeals can be expected from those dismissed with between one and two years' qualifying service. Similarly, the considerable growth in the use of short-term contract staff in the Civil Service in recent years may well lead to an increase in the number of appeals from those whose contracts are not renewed and which may constitute dismissal under employment law.

The quinquennial review of the Board by the Cabinet Office was completed in the autumn of 1998. The review, which involved widespread consultation with departments, agencies and trade unions, considered the abolition of the Board, its privatisation, its amalgamation with some other body, or the contracting out of its functions to another organisation. Most of those consulted favoured retention of the Board which was seen as a cost-effective, speedy and private mechanism for the handling of appeals. The review also concluded that departments and agencies should not be able to untie from the Board; that there should be no change in the arrangements for financing the Board; and that, specifically, a charging mechanism for the Board's services should not be introduced. On other matters it was decided that more stringent targets should be introduced from 1 January 1999 both to reflect current levels of performance and to challenge the Board to higher levels of service, and that measures should be introduced to enhance the Board's role in the area of sharing best practice, to increase visibility of the Board's work, to ensure that Board members are up-to-date on Civil Service practice and procedures and to improve efficiency.

The review team's report was agreed by the Minister for the Cabinet Office, the Rt Hon Dr Jack Cunningham MP, on 19 November 1998. The Minister agreed specifically:

- that the CSAB should continue as an advisory non-departmental public body to hear appeals from civil servants, primarily against dismissal;
- that the recommendations contained in the report aimed at improving the effectiveness and efficiency of the Board should be implemented as quickly as possible;
- the arrangements for the appointment of the new Chair of the CSAB.

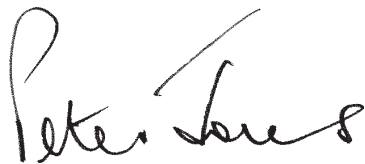
The Board welcomed this endorsement of their position and the general approval of the way in which they go about their business. Steps have been taken to implement the detailed recommendations emerging from the review, one of which was to consult with the recipients of this report regarding its contents. The review's reference to more stringent performance targets has already been implemented (see Appendix 5) and it is pleasing to be able to report that the revised targets are generally being met. The Board hope that this will continue, although this will clearly depend on the demand-led situation referred to above and the provision of adequate resources to meet any increase in the workload.

The number of appeals found to be unfair continues at around one-fifth of the appeals heard. The consistency of this figure over the years is remarkable. More detailed information about the successful appeals in Appendix 4 shows that the main feature in these cases was a procedural fault, often occurring at an early stage in the process leading up to dismissal. This emphasises the point made earlier about the involvement in cases of personnel officers and line managers inexperienced in the handling of these matters. Another common fault was the question of inconsistency of treatment, which is a matter for the deciding officer. Whilst the Board takes a reasonable approach on what constitutes "consistency" (for example, we do not compare one department or agency with another), nevertheless it is essential that consistency of treatment can be perceived as being fairly applied within a containable area of overall management policy.

As noted in previous annual reports, the representation of appellants is an important factor in successful appeals (see paragraph 6 of the report), with trade union representation continuing as by far the most effective form. The non-attendance of appellants continues to be a problem (see paragraph 9 of the report), with a significant increase over the previous year. Not having the appellant present places the Board in the unsatisfactory position of hearing the case on the papers alone, with neither of the parties being present to outline their case and to be questioned. The Board look to all concerned, but primarily to trade union representatives, to encourage appellants' attendance.

The Board's remit to encourage best practice continued to be fulfilled during the year, with the Chair and Deputy Chair contributing to management courses and to seminars for the trade unions. The Board are anxious to extend these activities and will co-operate to the fullest extent possible in meeting any requests by management and trade unions in this respect. In addition, the facility for observers to attend hearings by prior arrangement continues to be available (see paragraph 10 of the report) and this is probably the best way for representatives of both management and trade unions to familiarise themselves with the work of the Board.

Finally, 1998-99 was a year of considerable and significant change in the Board's membership. First, there was the retirement of Patricia Downs after eight years as Chair, during which time she promoted important changes in the organisation, conduct and procedures of the Board and contributed through her leadership and determination to the enhanced status of the Board. Her considerable contribution was recognised by the award of the OBE, a fitting reflection of her work and, also, a passing compliment to the Board. We are pleased to welcome Mr John Davies as her successor and we wish him well for the future. We extend a welcome also to Mrs S E Brown, Ms L Clare, Mr E McGivern and Mr T Thomson who have joined the Board during the year. We would like to thank all Board members, and particularly Mr K Crowley, Mr T Graves, Mrs S Lewis, Mrs S Maunsell, Mr N Moore, Mr P Palmer, Miss E Rees, Mr A Smith and Mr A Stem who retired from the Board during 1998/99, for the important contributions they have made to the work of the CSAB. Finally, and most importantly, we would want to express our appreciation for the efforts and support of Mrs Alison Khan and her colleagues within the secretariat during the year.



PETER JONES



NEVILLE LEDSOME

# THE CIVIL SERVICE APPEAL BOARD

This report covers the financial year ending 31 March 1999. 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 165 new appeals during the year, a 28% decrease on the figure of 231 of the previous year. The contraction in the number of industrial civil servants continued and only 18 appeals were received from this group (this represented 11% of appeals received).

## 2. APPEALS CONSIDERED

The Appeal Board considered 162 appeals during the year (last year 185), a 12% reduction on the number of appeals considered in the previous year.

107 of the appeals were against dismissal on disciplinary grounds. This represents 64% of all appeals considered by the Board and is a slight decrease over the figure for the disciplinary cases considered in the previous year.

One preliminary hearing was held to establish whether the appellant was eligible to appeal to the Board.

In addition five appeals were adjourned; two for the Department or Agency to consider medical retirement, two for the Department or Agency to consider a settlement and one as the appellant had been charged with criminal offences arising from his dismissal.

## 3. SUCCESSFUL APPEALS

Of the total appeals against dismissal which were considered, 29 were found in favour of the appellant. This represents 21% of all the cases considered; this shows no change in the percentage of successful appeals compared with the previous year.

In four of the successful appeals, the Board recommended that the appellant should be reinstated, without qualification. The Department or Agency concerned rejected the Board's recommendation in two cases; two persons were reinstated.

In five cases the Board recommended that the appellant should be reinstated with the imposition of a lesser penalty than dismissal.

The Department or Agency concerned accepted the Board's recommendation in two of these.

In 20, cases having found in the appellants' favour, the Board considered that reinstatement was inappropriate and an award of compensation was made.

In six appeals involving inefficiency, where the Department or Agency had decided not to pay compensation under with the Civil Service Compensation Scheme, the Board concluded that compensation should be paid.

See Appendix 4 for a synopsis of unfair decisions.

#### 4. INELIGIBLE APPEALS

10 appeals were ruled as ineligible for the following reasons:

Appeal had been submitted out of time	4
Appellant was above minimum pensionable age	3
Appellant had insufficient length of service	1
Appellant was medically retired	1
Board had no jurisdiction in matter	1

#### 5. WITHDRAWN APPEALS

23 appeals were withdrawn for the following reasons:

Appellant voluntarily withdrew appeal	7
Appellant failed to complete the appeal within the required timescale	6
Appellant's internal appeal successful	4
Appellant retired on ill-health grounds	3
Appellant allowed to resign	1
Appellant too ill to continue with process	1
Financial settlement reached between appellant and Agency	1

**6. REPRESENTATION OF APPELLANTS IN SUCCESSFUL APPEALS**

Trade Union	24
Legal	1
Others	2
Appellant Not Represented	9

**7. MAJORITY FAIR DECISIONS**

The Board was unable to reach an unanimous decision in one case where the majority view was that the dismissal was fair. Following a further appeal to the Head of Department, the original decision to dismiss was upheld.

**8. COMPENSATION**

The Board made awards of compensation amounting to £123,736 in 23 cases. The average award was £5625 with the highest award being £14,253. This compared with an average and highest award of £7,796 and £16,522 in 1997/98.

The Board considered that the appellants had contributed to their own dismissal in 16 cases and as a result deductions from the overall compensation award were made. In one case the Board concluded that a 100% deduction should be made to reflect the culpability factor.

**9. NON ATTENDANCE OF APPELLANT**

The Board considered 29 cases in the absence of the appellant, a significant increase on last year's figures (20).

**10. OBSERVERS**

A total of 62 people attended Appeal Board hearings as observers in order to familiarise themselves with the Board's procedures prior to attending as a representative. Of this total 37 were representatives from Departments or Agencies with 25 coming from Trade Unions. The Board continues to encourage people to observe a hearing before attending as a representative because this can be of great benefit.

**II. COSTS AND BUDGET**

The total cost of operating the organisation in 1998/99 was £291,301 with the more significant categories detailed as follows:

	<b>1997/8</b>	<b>1998/9</b>
Members fees and expenses	£144,221	£151,164
Tax on members fees	£ 13,200	£ 14,521
Staff costs	£127,911	£118,370
Equipment hire and maintenance	£3,327	
IT Equipment	£150	£172
Miscellaneous	£6,814	£8,848
VAT REFUND		(£1,774)
<b>TOTAL</b>	<b>£295,623</b>	<b>£291,301</b>

The cost per appeal considered was £1,734 compared with £1,540 in 1997/98.

# APPENDIX I

## Summary of Activity

	1997/8	1998/9	Change from previous year
Cases outstanding at the beginning of the year	191	163	-15%
<b>Appeals received</b>			
Non-Industrial	208	147	-29%
Industrial	23	18	-9%
<b>TOTAL</b>	<b>422</b>	<b>328</b>	<b>-22%</b>
Appeals considered	192	168	-12%
Appeals found to be ineligible	19	10	-47%
Appeals withdrawn	48	23	-52%
<b>TOTAL</b>	<b>259</b>	<b>201</b>	<b>-22%</b>
Cases in process at the end of the year	163	127	-22%

## APPENDIX 2

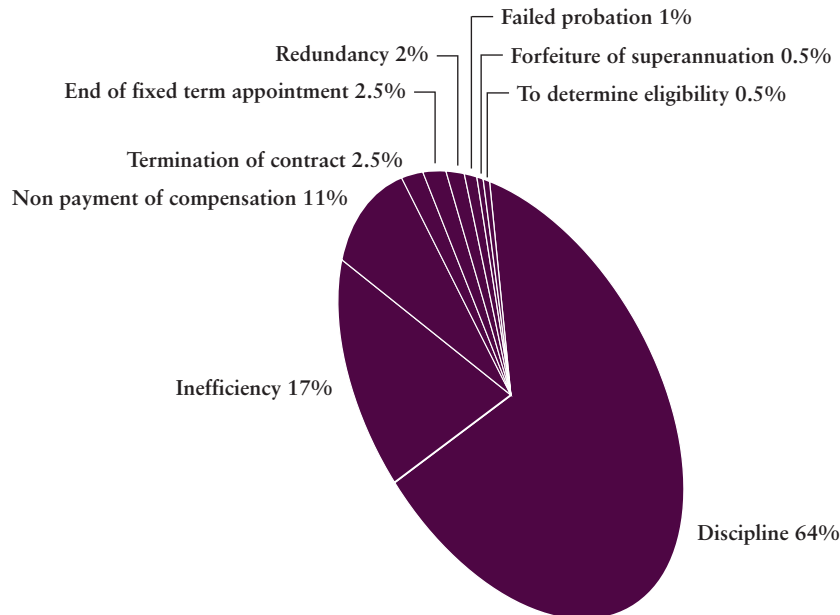
### Appeals Heard Financial Year April 1998 to March 1999

Department	Number of Appeals
Benefits Agency	29 (17%)
CADW: Welsh Ancient Monuments	1
Charity Commission	2
Child Support Agency	2
Contributions Agency	5
Court Service	8
Crown Prosecution Service	2
Department of Education and Employment	1
Department of Health	2
Department of International Development	1
Department of Social Security	1
Driver and Vehicle Licensing Agency	2
Employment Service	5
Employment Tribunal Service	1
Foreign & Commonwealth Office	1
HM Customs & Excise	4
HM Land Registry	5
HM Prison Service	21 (12%)
Home Office	3
Inland Revenue	11 (6%)
Ministry of Defence	32 (19%)
Ministry of Defence Agencies:	(6%)
Army Base Repair Organisation	2
Defence Evaluation and Research Agency	4
Meteorological Office	1
Naval Base & Supply Agency	2
TAVRA	1
UK Hydrographic Office	1
National Library of Scotland	1
Ordnance Survey	1
Public Trust Office	1
Registers of Scotland	1
Royal Mint	1
Scottish Court Service	1
Scottish Fisheries Protection Agency	1
Scottish Prison Service	4
Valuation Office Agency	2
Vehicle Inspectorate Executive Agency	3
War Pensions Agency	2
<b>TOTAL</b>	<b>168</b>

# APPENDIX 3

## Analysis of Appeals Considered

Reason for Appeal	Number	Appeals upheld by the Board
Discipline	107 (64%)	24 (65%)
Inefficiency	28	
Attendance	17 (11%)	1 (3%)
Performance	11 (6%)	1 (3%)
Non payment of compensation	18 (11%)	6 (18%)
Termination of contract	4 (2.5%)	2 (5%)
End of fixed term appointment	4 (2.5%)	
Redundancy	3 (2%)	
Failed Probation	2 (1%)	1 (3%)
Forfeiture of superannuation	1 (0.5%)	
To determine eligibility	1 (0.5%)	1 (3%)
<b>TOTAL</b>	<b>168</b>	<b>36</b>



## APPENDIX 4

### Synopsis of Appeals Upheld by the Board 1998/99

#### 1. BI DISMISSED ON DISCIPLINARY GROUNDS FOR UNAUTHORISED ACCESS TO THE DCI

The Board considered that the decision had not met the criterion in *BHS vs Burchell* that a reasonable investigation had been carried out to establish grounds for a genuine belief in his guilt; this procedural defect was regarded as fatal.

**RESULT :** REINSTATEMENT  
**ACCEPTED :** NO  
**CULPABILITY :** NONE  
**AWARD :** £14,253

#### 2. CIVILIAN GUARD DISMISSED ON DISCIPLINARY GROUNDS FOR SLEEPING WHILE ON DUTY

The Board were concerned at the inadequacy and nature of the investigation of the allegation against the appellant; an interview had been held without the appellant's trade union representative. There had been a failure to clarify one witness's evidence and complete absence of evidence from a second witness. As in the previous case cited, the criterion in *BHS vs Burchell* had not been met.

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

#### 3. AO DISMISSED ON DISCIPLINARY GROUNDS FOR HOUSING BENEFIT FRAUD

The Board found considerable procedural defects: the appellant had not been suspended and charged with gross misconduct as soon as the employer had learned of his arrest; disciplinary matters could have been disposed of prior to any criminal prosecution; the employer had not liaised with the police or with the Benefits Agency; charges put to the appellant contained errors and omissions; the employer had failed to act on the revised, proper charges; there had been a failure to ensure that the dismissal letter had been received and pay stopped; the employer had failed to clear the disciplinary hearing notes.

**RESULT :** COMPENSATION  
**CULPABILITY :** 100%  
**AWARD :** £0

**4. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR PROVIDING INADEQUATE SUPERVISION, RESULTING IN AN INMATE'S ESCAPE**

The Board heard that a senior officer present during a bed watch of an inmate had been awarded a lesser penalty and, on grounds of inconsistency of treatment, found the dismissal to be unfair. Either both officers should have been dismissed, or neither.

**RESULT :**           **COMPENSATION**

**CULPABILITY :**   **50%**

**AWARD :**           **£2,107**

**5. FURNACE OPERATOR, DISMISSED ON DISCIPLINARY GROUNDS FOR CAUSING COLLEAGUES TO BREACH THEIR CONTRACT OF EMPLOYMENT**

The Board considered that the charge had been inaccurately and unfairly framed and also provided no documentary evidence to which the appellant could respond. Further, the employer had failed to demonstrate that the behaviour had amounted to gross misconduct. Two other employees involved in the incident had not been dismissed and the employer could not provide a wholly satisfactory explanation for this.

**RESULT :**           **COMPENSATION**

**CULPABILITY :**   **80%**

**AWARD :**           **£5,424**

**6. LEGAL ADVISER DISMISSED AT THE EXPIRY OF A FIXED-TERM CONTRACT**

The appellant's post had been advertised before his contract had been terminated. Having applied for the post, the appellant had not been selected for interview despite having completed several years' satisfactory service. On this basis the Board considered that the Agency had acted unreasonably and provide no substantial reason for dismissal.

**RESULT :**           **COMPENSATION**

**CULPABILITY :**   **0%**

**AWARD :**           **£13,760**

**7. REVENUE OFFICER, DISMISSED ON DISCIPLINARY GROUNDS  
DUE TO REPUDIATION OF CONTRACT**

The appellant had been absent from work on sick leave, some of which had been covered by medical certificates. A warning letter had been sent by first-class post (but not by recorded delivery) but the appellant had not received this. The Board considered that the employer had not acted with care or reasonableness and should have delivered the letter by hand. On this basis the decision to dismiss was found unfair.

**RESULT :**            **COMPENSATION**  
**CULPABILITY :**    **0%**  
**AWARD :**            **£12,234**

**8. COIN PRESS SETTER DISMISSED ON DISCIPLINARY GROUNDS  
FOR ASSAULTING HIS SUPERIOR**

The Board found that the charge letter had been wrongly worded and that, as a consequence, the main grounds for discipline were not addressed correctly at the appeal stage. Further, there had been inconsistency of treatment; another member of staff involved in physical violence had remained in employment.

**RESULT :**            **COMPENSATION**  
**CULPABILITY :**    **80%**  
**AWARD :**            **£1,785**

**9. ASSISTANT VEHICLE EXAMINER DISMISSED ON DISCIPLINARY  
GROUNDS FOR BREACHES OF HEALTH AND SAFETY REGULATIONS  
AND THE USE OF INSULTING LANGUAGE**

The Board found that the investigation into the incidents had been insufficiently thorough and that witness evidence had not been tested. The drafting of the first charge, although not a procedural breach, had been confusing.

**RESULT :**            **COMPENSATION**  
**CULPABILITY :**    **70%**  
**AWARD :**            **£4,426**

**10. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR HAVING A CRIMINAL CONVICTION**

The Board found that the appellant had not been treated consistently when other staff with convictions had been retained. Inadequate consideration had been given to the appellant's explanation for his conduct and plea of mitigation.

**RESULT :** REINSTATEMENT WITH A LESSER PENALTY  
**ACCEPTED :** NO  
**CULPABILITY :** 50%  
**AWARD :** £7,472

**11. AO DISMISSED ON DISCIPLINARY GROUNDS ARISING FROM ACTIONS IN CONNECTION WITH VOLUNTARY ACTIVITIES THAT IMPINGED ON HER PAID EMPLOYMENT**

The Board found that there had been a fatal procedural defect as there had been an omission of any consideration of the final written warning stage.

**RESULT :** COMPENSATION  
**CULPABILITY :** 50% POLKEY FACTOR  
**AWARD :** £3,122

**12. BI DISMISSED ON DISCIPLINARY GROUNDS FOR SEXUAL HARASSMENT**

The Board considered that, in general, the employer had carried out the investigatory and disciplinary procedures correctly, although there had been minor defects. The Board considered that, in view of the appellant's long, unblemished service, dismissal was a disproportionate penalty.

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

**13. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR SEXUAL HARASSMENT**

The Board considered that the action of a prison governor (deciding officer) in discussing the way in which she proposed to conduct the disciplinary hearing with the investigating officer and the part which the latter should take in the hearing was a serious error of judgement. In not affording the same facility to the appellant there had been a denial of natural justice that rendered the dismissal unfair.

**RESULT :**           **COMPENSATION**

**CULPABILITY :**   **TO BE DECIDED**

**AWARD :**           **TO BE DECIDED**

**14. SGB2 DISMISSED ON DISCIPLINARY GROUNDS FOR PASSING INFORMATION TO A MEMBER OF A JURY**

The Board were concerned that the employer had undertaken an inadequate investigation of the incident, had not questioned other members of the jury and had not, with certainty, established the identity of the employee who had passed on information.

**RESULT :**           **REINSTATEMENT**

**ACCEPTED :**       **NO**

**CULPABILITY :**   **TO BE DECIDED**

**AWARD :**           **TO BE DECIDED**

**15. LOI DISMISSED ON DISCIPLINARY GROUNDS FOR DISCLOSING CONFIDENTIAL INFORMATION, BEHAVING IMPROPERLY DURING OFFICIAL VISITS, FAILING TO DEAL WITH A CUSTOMER IN A FAIR MANNER AND USING OFFICIAL STATIONERY FOR PERSONAL PURPOSES**

On the substantive issue the Board agreed that the investigation had provided reasonable grounds for a belief in guilt. The Board considered, however, that dismissal of an employee with long, meritorious service was a disproportionate penalty.

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

**ACCEPTED :**       **YES**

**16. EO DISMISSED ON DISCIPLINARY GROUNDS FOR FAILING TO REPORT FOR WORK OR PROVIDE A SATISFACTORY REASON FOR ABSENCE**

The Board considered that the Department should have taken greater care to ensure that all reasonable steps had been taken to inform the appellant that his employment was in the severest jeopardy before deciding upon his dismissal.

**RESULT :**           **COMPENSATION**  
**CULPABILITY :**   **75%**  
**AWARD :**           **£4050**

**17. AO DISMISSED ON DISCIPLINARY GROUNDS FOR THE SUPPRESSION OF OFFICIAL DOCUMENTS**

The Board were concerned by the brevity of the disciplinary process, the inconsistent standards of reporting and the temporary promotion of the appellant even though criticism of his ability to prioritise persisted.

**RESULT :**           **COMPENSATION**  
**CULPABILITY :**   **70%**  
**AWARD :**           **£5493**

**18. AO DISMISSED ON DISCIPLINARY GROUNDS DUE TO HIS CONVICTION FOR UNLAWFUL WOUNDING**

The Board considered that the Agency had not had regard for the surrounding circumstances of the offence, particularly the state of mind of the appellant and that the circumstances of a case which the Agency stated was a precedent was sufficiently dissimilar to preclude a fair comparison. Insufficient effort had been made by management to obtain all relevant information and the Agency were unable to say whether alternative penalties had been considered.

**RESULT :**           **REINSTATEMENT WITH A LESSER PENALTY**  
**ACCEPTED :**       **NO**  
**CULPABILITY :**   **70%**  
**AWARD :**           **£8278**

**19. AO DISMISSED ON DISCIPLINARY GROUNDS FOR NOT PURCHASING A BICYCLE WITH THE PERSONAL LOAN PROVIDED UNTIL NINE MONTHS AFTER THE LOAN DATE**

The Board considered that the procedures followed were fatally flawed as the disciplinary minute was defective procedurally in that the offences were not set out precisely and concisely; there was no corroborative evidence attached to the minute; the appellant was not informed of the opportunity to attend an oral hearing, nor was the appellant given any indication of the possible penalties.

**RESULT :**            **COMPENSATION**  
**CULPABILITY :**    **80%**  
**AWARD :**            **£869**

**20. GRAPHIC OFFICER DISMISSED ON DISCIPLINARY GROUNDS DUE TO MISUSE OF GOVERNMENT PROPERTY AND TIME AND SUBMISSION OF FALSE OVERTIME CLAIMS**

The Board considered that when the circumstances of this case were compared with that of a case that did not result in dismissal, the Department had not consistently applied their policy on gross misconduct, as there was insufficient evidence of a clear distinction between the two cases.

**RESULT :**            **COMPENSATION**  
**CULPABILITY :**    **70%**  
**AWARD :**            **£3153**

**21. LOII DISMISSED ON DISCIPLINARY GROUNDS FOR BEHAVING IMPROPERLY ON OFFICIAL DUTY**

The Board considered that the procedures followed had been flawed as the appellant had not been given full written details of the complaint made nor given adequate time to make a response. Not all potential witnesses had been interviewed, particularly those who supported the appellant. The same officer had acted as deciding officer in both the complaints procedure and the disciplinary process and this was considered to be prejudicial to the appellant.

**RESULT :**            **COMPENSATION**  
**CULPABILITY :**    **50%**  
**AWARD :**            **£5090**

**22. SGB2 DISMISSED ON DISCIPLINARY GROUNDS FOR USING ABUSIVE LANGUAGE TO A COLLEAGUE**

The Board did not consider that the Agency had discharged their responsibility in explaining what receiving a verbal or written warning meant nor what the consequences might be. The appellant had not received copies of witness statements nor was his account of events obtained prior to being charged.

**RESULT :**           **COMPENSATION**

**CULPABILITY :**   **80%**

**AWARD :**           **£1658**

**23. AO DISMISSED WITH COMPENSATION ON INEFFICIENCY GROUNDS DUE TO UNSATISFACTORY PERFORMANCE**

The Board main area of concern was the fact that the Agency failed to honour the opportunity for the appellant to undergo a final review period on his return from sick leave.

**RESULT :**           **COMPENSATION**

**CULPABILITY :**   **50% POLKEY FACTOR**

**AWARD :**           **£8058**

**24. AO DISMISSED ON DISCIPLINARY GROUNDS AS A RESULT OF PROLONGED ABSENCE DUE TO ILL HEALTH**

The Board considered that the Agency had acted unreasonably as they had not obtained updated evidence from the OHSa and should have waited for a report on the consultation with the appellant's psychotherapist before reaching a conclusion on the appellant's future.

**RESULT :**           **COMPENSATION**

**CULPABILITY :**   **40%**

**AWARD :**           **£8628**

**25. PRISON OFFICER DISMISSED ON DISCIPLINARY GROUNDS FOR DELIVERING FOOD HE HAD BROUGHT INTO THE PRISON TO PRISONERS AND HAVING DRESSED UP A PRISONER IN AN OFFICER'S UNIFORM**

The Prison Service could produce no evidence to refute the appellant's contention that he had received an oral rebuke for the dressing incident. As such the Board considered it unfair for the appellant to be "retried" for the same offence. They did not believe that the supply of surplus food to prisoners constituted gross misconduct and that as this was his first offence, and in accordance with Prison Service practice, that the appellant should not have been dismissed.

**RESULT :**               **COMPENSATION**  
**CULPABILITY :**       **30%**  
**AWARD :**               **£6512**

**26. SEWAGE PLANT ATTENDANT DISMISSED ON DISCIPLINARY GROUNDS FOR DISHONESTLY CLOCKING ON AT HIS PLACE OF WORK**

Although the Board recognised that custom and practice was not acceptable as grounds for mitigation, in this case the Board considered that there had been an element of condonation and little supervision of the attendance times by management. Also that a proper procedure published to staff for the recording of attendance times at the site should have been the precursor to disciplinary action.

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

**27. AO DISMISSED FOR FAILING HER PROBATION DUE TO UNSATISFACTORY ATTENDANCE**

The Board considered that the appellant's probation could have been terminated, on grounds of unsatisfactory attendance, at any time after the first, second or third year of her service but on each occasion her probation had been extended. The Agency, having tolerated the appellant's unsatisfactory attendance over an extended period, had acted unfairly by terminating her probation short of the five year limit following a period in which her attendance had improved.

**RESULT :**               **COMPENSATION**  
**CULPABILITY :**       **50% POLKEY FACTOR**  
**AWARD :**               **£3069**

**28. REGISTRATION OFFICER DISMISSED ON DISCIPLINARY  
GROUNDS FOR KNOWINGLY THROWING AWAY OR ATTEMPTING TO  
CONCEAL DOCUMENTATION WITHOUT AUTHORISATION**

The action taken prior to dismissal had fallen short of providing sufficient evidence even, on the balance of probabilities, to determine with sufficient certainty that the appellant had acted knowingly.

**RESULT :**           **COMPENSATION**  
**CULPABILITY :**   **50%**  
**AWARD :**           **£4254**

**29. EO DISMISSED ON DISCIPLINARY GROUNDS FOR  
INCORRECTLY RECORDING START AND FINISH TIMES OF OFFICIAL  
DUTIES, KNOWINGLY MAKING FALSE CLAIMS FOR DAY  
SUBSISTENCE ALLOWANCE AND RECEIVING PAYMENTS FOR WHICH  
ENTITLEMENT DID NOT EXIST**

The Board considered that it was unfortunate that the Deciding Officer had relied on the appellant's answers at the fact finding interview when reaching a conclusion as the record was not agreed. On the substantive issue there was insufficient evidence, even on the balance of probabilities, to determine that the appellant acted 'knowingly' and therefore fraudulently.

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

## APPENDIX 5

### Civil Service Appeal Board Performance Against Targets 1998/99

One of the recommendations of the Quinquennial Reviews of the Civil Service Appeal Board held during 1998 was that more stringent should be set. This recommendation was implemented in January 1999.

TARGETS	Targets 1 April 1998 - 31 December 1998	Targets 1 January 1999 - 31 March 1999
Hearing of Appeals	Within 20 weeks of receipt in 85% of cases	Within 15 weeks of receipt in 95% of cases
Issuing of Decision Letters	Within 48 hours of hearing in 85% of cases	Within 24 hours of hearing in 95% of cases
Issuing of Reports of Hearings	Within 30 working days of hearing in 85% of cases	Within 20 working days of hearing in 95% of cases

### PERFORMANCE

#### Hearings

#### Appeals to be heard within 20 weeks of receipt in 85% of cases

	Appeals Heard	Average Number of Weeks to Hearing	Within Target
April	17	16	94%
May	13	16	92%
June	17	15	94%
July	19	16	89%
August	12	14	100%
September	13	13	100%
October	12	14	100%
November	16	14	88%
December	7	13	100%
<b>TOTAL</b>	<b>126</b>	<b>15</b>	<b>96%</b>

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

January	12	14	83%
February	9	11	89%
March	21	13	95%
<b>TOTAL</b>	<b>42</b>	<b>13</b>	<b>89%</b>

**DECISION LETTERS ISSUED**

ALL decision letters were issued within the target period during 1998/99.

**REPORTS ISSUED**

Reports to be issued within 30 working days of hearing in 85% of cases

	<b>Reports Issued</b>	<b>Average Number of Working Days to Issue</b>	<b>Within Target</b>
April	14	16	100%
May	10	12	100%
June	21	15	95%
July	19	12	100%
August	10	15	100%
September	15	11	100%
October	10	10	100%
November	8	15	100%
December	16	14	100%
<b>TOTAL</b>	<b>123</b>	<b>12</b>	<b>99%</b>

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

January	8	11	100%
February	12	10	100%
March	14	9	100%
<b>TOTAL</b>	<b>34</b>	<b>10</b>	<b>100%</b>

## APPENDIX 6

### Appeals Received and Heard 1989-1998/99

	Appeals Received	Appeals Heard	Successful Appeals
1988	213	212	19%
1989	251	212	16%
1990	240	202	16%
1991	281	198	24%
1991/92	327	214	24%
1992/93	362	281	25%
1993/94	344	266	20%
1994/95	326	253	19%
1995/96	306	242	21%
1996/97	269	238	24%
1997/98	231	192	21%
1998/99	165	168	21%

