

APPEALS PANEL 3

MONDAY 19 FEBRUARY 2018 AT 2.00PM

PRESENT: Councillors Harid (Chairman) and Collier.

OFFICERS: Corporate Director of Governance and Regulatory Services
Regulatory Services Manager
Principal Health and Housing Officer
Principal Auditor
HR Advisory Services Manager
HR Officer

ALSO

PRESENT: Appellant
Appellant's Representative

AP3.01/18 APOLOGIES FOR ABSENCE

An apology for absence was submitted on behalf of Councillor Birks.

AP3.02/18 DECLARATIONS OF INTEREST

There were no declarations of interest in respect of the complaint.

AP3.03/18 PUBLIC AND PRESS

RESOLVED - That in accordance with Section 100A(4) of the Local Government Act 1972, the Public and Press were excluded from the meeting during consideration of the following item of business on the grounds that it involved the likely disclosure of exempt information, as defined in Paragraph Number 1 of Part 1 of Schedule 12A of the 1972 Local Government Act.

AP3.04/18 APPEAL AGAINST DISMISSAL

Consideration was given to an appeal against dismissal.

The Chairman introduced the Panel and confirmed that all those present had seen the relevant documentation, copies of which had been circulated. He gave an assurance that the hearing would be conducted fairly and that all parties would be afforded the time necessary to put their case, following which the Panel would reach a decision.

The Chairman outlined the process for the meeting and invited the Appellant to summarise, as succinctly and clearly as possible, the reason for the appeal.

The Appellant's Representative questioned the appropriateness of a number of the Management Representatives being in attendance at the meeting, he noted that they had already presented their case through the disciplinary case, which had been decided.

The Chairman reminded the Appellant and his representative that the purpose of the meeting and its procedure had been set out clearly in the agenda document pack which had been circulated to all parties.

The Corporate Director of Governance and Regulatory Services (Corporate Director) stated that the Management Case had been set out during the disciplinary process where the facts of the case had been established and as such were not being challenged by the Appellant. He understood the reason for the Appeal was the manner in which the investigation had been

conducted was, in the Appellant's view, flawed. On that basis it was important that all the Management Representative Officers were in attendance to address the points raised by the Appellant in order that the Panel were able to come to a balanced view of the issues in their determination of the Appeal.

The Appellant's Representative responded that the purpose of the meeting was to hear the Appellant's Appeal, not to discuss the previous investigation and disciplinary proceedings.

The Corporate Director noted that the Management Representatives had a right of response to the issues raised by the Appellant.

The Appellant commented that the letter advising him of his appeal rights had not indicated that the Officers involved in the disciplinary actions would be in attendance at the meeting.

With reference to the letter from the Appellant indicating his intention to exercise his appeal right, the Chairman advised the Appellant to focus his address to the Panel on the issues contained therein, he also indicated that, where necessary, a degree of cross-referencing to the appendices to the report was acceptable. The Chairman invited the Appellant to put forward his case.

The Appellant's Representative drew Member's attention to a number documents contained in the appended investigation report.

The HR Advisory Services Manager noted that the Appellant had been advised that details of any documentation required to support the appeal should have been notified to the HR Advisory Service by 29 January, however, no return had been received.

The Appellant's Representative responded that all of the documents which had been referred to were contained in the document pack which had been circulated to all parties present, prior to the meeting.

The Corporate Director reiterated that he understood that the purpose of the Appeal Panel was for the Appellant to set out the ways in which the investigation had been flawed in order that the Panel could come to a view.

The Appellant's Representative replied that the Appellant considered the investigation had not been fair and as a result the disciplinary hearing had reached the wrong conclusion with respect to his case.

The HR Advisory Services Manager noted that the issue of the investigation not being fair had not been detailed in the Appellant's letter, and that the documents referred to previously should have been submitted to HR Services by 29 January, as per her letter to the Appellant of 12 January 2019.

The Appellant commented that he had felt bombarded with letters and had not been clear on what was required of him, he felt the investigation had been flawed and that the evidence he sought to present would prove that point.

The HR Advisory Services Manager responded that had any further information regarding the process been required, assistance had been available from the Council's HR Advisory Services.

The Appellant's Representative stated that the Appellant had no previous experience of disciplinary hearings, therefore it was possible that the terminology used in the appeal

notification letter may not have been worded correctly. He commented that the Appellant had been exasperated by what he considered to be the unfairness of the investigative process.

The Chairman requested an adjournment.

The Appellant, the Appellant's Representative and the Management Representatives left the room.

The Panel adjourned at 2:34pm and reconvened at 2:40pm

The Appellant, the Appellant's Representative and the Management Representatives returned to the room.

The Chairman stated that the Panel would hear an Appeal based on the content of the Appellant's appeal notification letter, he advised that the Members had looked at and considered all of the paperwork contained in the document pack and that it was not necessary for the investigation documentation to be reconsidered.

The Corporate Director proposed that, in order for the Appellant to be facilitated in raising the points he wished in relation to the investigation, the Investigating Officer present his statement in order to allow the questions to be put.

The Appellant's Representative requested an adjournment.

The Appellant, the Appellant's Representative and the Management Representatives left the room.

The Panel adjourned at 2:42pm and reconvened at 2:45pm

The Appellant, the Appellant's Representative and the Management Representatives returned to the room.

The Appellant commented that he did not understand what had happened or why he was not allowed to state how he felt that the investigation had not been properly conducted.

The Chairman invited the Appellant to present the appeal case.

The Appellant asked whether it was possible to read out a previously prepared statement, he noted that it did not contain any information which was not comprised in the document pack. He was concerned that aspects of the document pack did not corroborate and that exemplified the unfairness of the investigation.

The HR Advisory Services Manager repeated that the Appellant had been advised that documentation in support of the Appeal was required to be submitted prior to 29 January 2018.

The Appellant apologised.

The Appellant's Representative felt that it was challenging to continue with the meeting, he repeated that the Appellant's inexperience may have produced an appeal notification letter which had not used the correct terminology. He advised that his instruction had been to go through the document pack cross-referencing emails to the investigation to illustrate that the Appellant had not been responsible for a number of activities that the disciplinary hearing had determined he had undertaken.

The Chairman asked the Appellant's Representative when the Appellant had contacted him to advise him of his intention to put forward an appeal.

The Appellant's Representative indicated that he had been present at the disciplinary hearing on 19 December 2017, but that he had not been advised of the Appellant's intention to progress an appeal until the new year.

The HR Advisory Services Manager outlined the options available to the Panel for the continued consideration of the case.

The Chairman stated that the Appellant had been advised of the process both by letter from HR Advisory Services and from the meeting procedure which was contained in the agenda document pack. It was his view that if an Appellant submitted an Appeal they should be able to demonstrate sufficient evidence as grounds upon which to base the Appeal, and that evidence ought to have been made available to all parties prior to the meeting. He felt it was not fair to submit evidence at the meeting which the Management Representative and the Panel Members had not had time to consider.

The Appellant asserted that all the documents he wished to refer to were contained in the document pack.

The Corporate Director felt it was important that the Appellant felt that he had been given a fair hearing, however, he noted that a decision on the Appeal was important as the Council was still required to deliver the service for which the Appellant had been employed, and it was not able to do so effectively until the Appeal had been decided.

The Corporate Director considered the Appellant's appeal notification letter to be very detailed, he stated that he was happy to go through the issues identified therein. He accepted that the emails contained in the document pack were present, however, they amounted to a very small part of the investigation. He noted that the Appellant had verbally indicated to the Panel that the investigation had been flawed, and suggested that the Appellant put forward evidence in support of that view, after which the Management Representatives be permitted to put their case regarding the investigation and disciplinary reports.

The Chairman invited the Appellant's Representative to continue with the presentation of the Appeal.

The Appellant stated that the meeting should conclude.

The Corporate Director suggested that the Appellant read out the prepared statement, which the Appellant declined to do.

The Appellant's Representative requested a further adjournment, which the Chairman agreed. The Chairman noted that upon its recommencement, the meeting would move into the next stage of the process: the presentation of the management case.

The Appellant, the Appellant's Representative and the Management Representatives left the room.

The Panel adjourned at 2:54pm and reconvened at 2:55pm

The Appellant, the Appellant's Representative and the Management Representatives returned to the room.

The Appellant's Representative advised that the Appellant had withdrawn the appeal.

The Panel:

RESOLVED – That the Appellant's withdrawal of the Appeal be noted.

(The meeting ended at 2:55pm)