

APPEALS PANEL 2

THURSDAY 15 DECEMBER 2016 AT 2.00PM

PRESENT: Councillors Bloxham (Chairman), MacDonald and Tinnion (as substitute for Councillor Paton).

OFFICERS: Neighbourhood Services Manager
Neighbourhood Team leader
HR Advisor
HR Advisory Services Team Leader

ALSO

PRESENT: Appellant
Appellant's Representative (GMB)

AP2.5/16 APOLOGIES FOR ABSENCE

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

AP2.6/16 DECLARATIONS OF INTEREST

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

AP2.7/16 MINUTES OF PREVIOUS MEETING

RESOLVED - That the minutes of the meetings held on 4 July 2016 and 9 September 2016 be agreed as a correct record of the meeting and signed by the Chairman.

AP2.8/16 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.

AP2.9/16 CORPORATE COMPLAINT - APPEAL

The Chairman introduced the Panel and outlined the purpose of the hearing, together with the procedure to be followed. 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.

It was noted that all those present had seen the relevant documentation, copies of which had been circulated and understood the procedure for the meeting. The Chairman clarified that the Panel were there to ensure that the Council's procedures had been followed correctly and that the Appellant had been treated fairly.

The Chairman invited the Council's representative to present the management case.

The Council's representative read out the management case which detailed the Appellant's employment history. He reported that, following periods of non-attendance, arrangements had been made to redeploy the Appellant rather than terminate his contract under assurance from the Appellant that he would be able to fulfil the role. After a period of five months the Appellant was absent again for a significant period. Prior to his dismissal the Appellant was on a fixed term contract that was scheduled to end 31 March 2017 when the funding for the role ended.

In October 2016 a case review had been held in accordance with the Carlisle City Council Attendance Management Policy concerning the Appellant's history and pattern of attendance at work. Evidence provided at the case review was referred to, copies of which were included in the report. The Manager concluded by stating that the decision was not taken lightly and medical advice was sought with regard to ill health retirement options.

After fully considering all of the evidence presented at the case review the decision had been reached to dismiss the Appellant.

The Council's representative summed up by reporting that the Appellant, by his own admission, and supported by medical evidence, was not able to return to his current role. Allowing the Appellant to return to work would expose both the Appellant and the Council, as his employer, to significant risk and would be a failure of the Council's statutory duty of care. The Council did not have any alternative roles and could not create a role for the Appellant. The Appellant was not eligible for ill health retirement and his pattern of non-attendance was not sustainable and contributed to significant extra and avoidable costs which was collectively impacting on services for residents. He finished by explaining that the Appellant's track record did not provide any confidence that the Council would see any improvement going forward.

The Appellant's representative reported that the Appellant was absent from work due to an accident at work caused by faulty equipment at work.

The Council's representative confirmed that the alleged accident was one reason for the absence but there was further evidence supporting the management's case.

The Council's representative answered questions from the Panel and the Appellant's representative. He was asked to clarify the reason the Appellant was not eligible for ill health retirement and some of the information set out in the occupational health physician's report.

The Chairman asked the Appellant to summarise the reason for his appeal. The Appellant confirmed that his representative would speak on his behalf.

The Appellant's representative reiterated that the Appellant's absence had been due to an injury at work. The Appellant was on the redeployment list until the date his employment ceased but had he not been considered for a suitable job in the Civic Centre which had been advertised. He suggested that the Appellant should be able to try the position on a trial basis. He claimed that the manager of the service wanted the Appellant out of the service and questioned the use of a Council appointed physician. The Council appointed physician had reported that the Appellant was not fit to return to work and if that was the case then the Appellant should be retired on medical grounds.

The report showed that other physicians had reported that the Appellant was not fit for work and the representative questioned the Council's compassion when they would not retire the Appellant on medical grounds. He asked the Panel to consider retiring the Appellant on ill health grounds.

The HR Advisory Services Team Leader clarified the role of the position which had been advertised and explained that the Appellant had been considered for the job but the job was largely manual and it was felt, based on the occupational health reports, that the Appellant would not be able to carry out the majority of the duties and that reasonable adjustments could not be made due to the nature of the job.

The Appellant's representative appreciated the clarity provided regarding the role and appreciated the position of the Council. He further claimed that time was running out for the Appellant as he was due to leave the Council in early January.

The HR Advisor reminded the Panel of the period of time that the matter had covered and of the steps taken to support and redeploy the Appellant. She added that the Appellant received the occupational health reports before management and had an opportunity to discuss, and amend if necessary, the information in the reports with occupational health.

A Member asked the Appellant if he had received occupational health reports and if he had the opportunity to comment on them or amend them. The Appellant confirmed that he had the opportunity but had not changed any of the reports.

The Appellant's representative summed up by reminding the Panel of the Council's statutory duty of care to employees and asked the Panel to treat the Appellant fairly with respect and compassion.

The Chairman reminded the Panel that they did not have the power to retire the Appellant on medical grounds and could only ensure that the decision to dismiss had been reached fairly and by correctly following the Council's procedures.

The parties left the room at 2.50pm whilst the Panel considered their decision.

After considering all of the evidence presented at length the Panel invited the parties back into the meeting room at 3.25pm to be informed of the decision.

On their return the Chairman advised that the Panel had:

RESOLVED – That, the Panel had considered all of the evidence set out in the report and the presentations from the Appellant, the Appellant's representative and the management representatives.

Having regard to the facts, the Panel dismissed the appeal.

The Panel found that the City Council's management had followed the correct Council procedures, and in light of the information provided regarding attendance issues and occupational health reports, the Panel felt that management had come to the correct decision.

The Panel noted that the Appellant would remain on the redeployment register until the dismissal took effect .

The Panel have asked the HR Advisory Services Team Leader to enquire further regarding current eligibility for the Appellant to retire on ill health.

A letter confirming this decision and the reasons will be sent to the Appellant.

(the meeting ended at 15:30pm)