

APPEALS PANEL 1

FRIDAY 9 SEPTEMBER 2016 AT 2.30PM

PRESENT: Councillors Betton, Bell (as substitute for Councillor Harid) and Earp.

OFFICERS: Deputy Chief Executive
Green Spaces and Bereavement Services Manager
HR Advisor x2

ALSO

PRESENT: Appellant
Mr D Gow (GMB representing the Appellant)

AP1.1/16 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor Earp be appointed as Chairman of the Appeals Panel 1 for the Municipal Year 2016/17.

Councillor Earp thereupon took the Chair.

AP1.2/16 APOLOGIES FOR ABSENCE

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

AP1.3/16 DECLARATIONS OF INTEREST

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

AP1.4/16 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.

AP1.5/16 APPEAL AGAINST DISMISSAL

Consideration was given to an appeal against dismissal.

The Chairman introduced the Panel and officers 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.

The Chairman asked the Appellant to summarise the reason for his appeal.

The Appellant indicated that he felt that his dismissal was too severe in relation to the nature of the incident. He detailed his length of service, additional activities he had been involved in and the qualifications which he had been grateful to achieve through the City Council. He understood the seriousness of the incident but felt that he had not been given enough credit for his service. The Appellant stated that the incident had been an error of judgement on his behalf.

The Appellant's representative reiterated that the Appellant's willingness to return to work was genuine and he was grateful for the opportunities afforded to him through the Council. The Appellant's representative asked if the Council could prove that the employment relationship could not continue and added that he felt the dismissal had been too harsh. He suggested that a final written warning would be a more appropriate sanction.

The Appellant responded to Member's questions regarding the details of the incident and the reasons for the Appellant's actions.

The Appellant and the Appellant's representative confirmed that they had nothing further to add at that stage.

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

The Council's representatives referred to the Management case as set out in section 7 of the report. The case showed that there had been an element of predetermination and set out the implications of the Appellants actions. They detailed some issues that had occurred in terms of team work and the timeline for the Appellant coming forward with regard to the incident.

The Council's representatives stated that the incident had clearly resulted in a breakdown of trust and set out the reasons why they had determined that the incident was gross misconduct and the involvement of the Appellant. The representatives took the Panel through the investigation process and the reasons for the outcome.

The Council's representatives responded to questions from the Panel.

The Appellant's representative summed up on behalf of the Appellant and asked that the Panel considered a different sanction.

The Chairman asked whether anyone present had any further questions to raise. None were forthcoming.

The Chairman thanked the Appellant, his representative and management representatives for their input and asked that they leave the hearing while the Panel considered their decision.

The parties left the room (at 3.16pm) 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 3.58pm) 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, Mr Gow and the management representatives.

Having regard to the facts of the incident, the Panel was of the view that the Appellant's behaviour amounts to gross misconduct and was of the view that dismissal was a reasonable, and the right, sanction and, accordingly, the Panel decided not to uphold the appeal.

The facts of the matter were largely agreed and the Panel, therefore, had to balance the aggravating features of the case against the points the Appellant put in mitigation and determine the appropriate sanction for the Appellant's behaviour.

The Panel considered the aggravating features to be as follows:

- The incident was a breach of the trust placed in the Appellant by the Council;
- It was a misuse of the Appellant's official position for personal gain;
- It involved unauthorised entry to a City Council depot with a third party which would be a high and uninsured risk for the Council;
- It involved unauthorised disposal of waste which would carry a financial cost for the Council (and therefore the taxpayer).

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The Panel considered the following mitigating circumstances:

- The Appellant's length of service with the Council;
- The Appellant's previous good character as an employee;
- The remorse the Appellant had shown.

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

(The meeting ended at 4.02pm)