

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Staff Appeals Panel **Date:** Friday, 7 August 2009

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 1.00 - 4.00 pm

Members Present: J M Whitehouse (Chairman), K Chana (Vice-Chairman), P Gode, B Sandler and J Wyatt

Other Councillors:

Apologies:

Officers Present: P Maginnis (Assistant Director (Human Resources)) and G Lunnun (Assistant Director (Democratic Services))

1. SUBSTITUTE MEMBERS

There were no substitute members present at the meeting.

It was reported that since the agenda for this meeting had been prepared the Council had appointed Councillor K Chana as a member of this Panel in place of Councillor B Rolfe.

2. DECLARATIONS OF INTEREST

There were no declarations of interest made pursuant to the Council's Code of Member Conduct.

3. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 2 November 2007 be taken as read and signed by the Chairman as a correct record.

4. STAFF APPEALS PANEL PROCEDURE

The Panel noted the agreed procedure for its conduct in determination of Staff Appeals.

5. EXCLUSION OF PUBLIC AND PRESS**RESOLVED:**

That, in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the item of business set out below as it would involve the likely disclosure of exempt information as defined in the paragraph of Part 1 of Schedule 12A of the Act indicated and the exemption is considered to outweigh the potential public interest in disclosing the information:

Agenda Item No	Subject	Exempt Information Paragraph Number
7	Staff Appeal No 1-2009/10	1

6. STAFF APPEAL NUMBER 1 - 2009/10

The Panel considered an appeal by an employee of the Housing Directorate against a decision to dismiss her made by the Director of Finance and ICT acting under delegated authority.

The appellant was in attendance accompanied by her husband. The appellant's husband advised that he would be presenting his wife's case. Ms C O'Boyle, Director of Corporate Support Services and Solicitor to the Council, attended the meeting to present the Council's case. Ms P Maginnis, Assistant Director – Corporate Support Services (HR), attended the meeting to advise the Panel as required on details of employment law and policies relevant to the appeal. Mr G Lunnun, Assistant Director Democratic Services, attended the meeting as secretary to the Panel.

The Chairman welcomed the appellant and her husband to the meeting and introduced the Panel and officers present.

The appellant's husband requested confirmation in writing that Ms P Maginnis had no input whatsoever in referring this case to the Panel. The Chairman pointed out that at this stage of the meeting he was simply outlining the procedure to be adopted and that there would be an opportunity for the appellant and her husband to ask questions at a later stage. However, he allowed Ms Maginnis to answer the question. Ms Maginnis advised that her only previous involvement in this case had been to advise the Director of Finance and ICT in relation to the Sickness Absence Hearing held on 2 July 2009. She added that she had not been involved in compiling the Council's case for this meeting.

The Chairman advised that it was not clear from the appellant's written statement the extent to which she contested or accepted the findings of the Sickness Absence Hearing. It had been assumed, therefore, that she wished to challenge the findings and as a result this meeting would take the form of a complete rehearing of the evidence heard at the Sickness Absence Hearing together with some additional evidence arising from the earlier Hearing. The Chairman sought clarification from the appellant that she was seeking reinstatement to her former position with the Council. The appellant's husband confirmed that this was the appellant's wish.

The Chairman sought confirmation from the appellant that she had received the agenda and the file of documents for this meeting comprising the written statement of

the Council's case, 23 appendices to that statement and the appellant's letter of appeal to the Panel. The appellant's husband confirmed that he was in receipt of all of the papers. The Chairman advised that Ms O'Boyle had given notice that she intended to call two witnesses, Mrs S Lindsay, Housing Resources Manager, and Mr R Palmer, Director of Finance and ICT. He asked the appellant to confirm that she did not wish to call any witnesses. The appellant's husband confirmed that no witnesses were to be called in support of the appellant's case.

Ms C O'Boyle advised that since the papers for this meeting had been dispatched a further letter had been received from the Council's Occupational Health provider dated 6 August 2009. She stated that the letter was relevant to ground of appeal (1) and sought approval for the letter to be admitted to the meeting. She pointed out that as the letter had only been received on 6 August 2009 it had not been available to the Director of Finance and ICT at the Sickness Absence Hearing. The Chairman agreed to the admission of the letter and copies were handed to the appellant and members of the Panel. The Chairman allowed the appellant an opportunity to read the letter before continuing with the proceedings.

The appellant's husband stated that he had expected Ms L Austin, H R Operations Manager to be present at this meeting. The Chairman pointed out that neither the Council nor the appellant had requested the presence of Ms Austin as a witness. The appellant's husband stated that he had expected Ms Austin to be present so that he could question her on the minutes of the Sickness Absence Hearing. The Chairman advised that the Panel had not seen the minutes of that Hearing and would not be taking them into account. He reiterated that this meeting would comprise a complete re-hearing of the evidence heard at the Sickness Absence Hearing together with some additional evidence arising from the earlier Hearing.

The Chairman invited the appellant to present her case.

The appellant's husband stated that he was not challenging the legality of the Council's actions but was questioning its moral justification for the steps taken. He submitted that Council officers had shown his wife no compassion or support during the period of her sickness absence. As an example he cited the failure to commence the Sickness Absence Hearing on time for which no apology had been made. He also referred to references in the Council's papers to a Disciplinary Hearing instead of a Sickness Absence Hearing.

The appellant's husband advised that whilst his wife was still not fit for work her health was much improved since the Sickness Absence Hearing and that she would be attending hospital as a day patient on 21 August 2009 for an injection following which he hoped that she would be able to return to work shortly thereafter.

He stated that the Council had referred to the strain on other officers covering the work in his wife's absence but submitted this should not be an issue because he had been told there was a freeze on employing staff and as a result those officers would have to continue to cover the duties. He submitted that if his wife's post was not filled she should be entitled to a redundancy payment. He suggested that in view of his wife's age she would find it very difficult to obtain other employment.

The appellant's husband claimed that his wife's condition had been made worse by the medical treatment she had received and he claimed that the Council had to accept some responsibility for his wife's length of absence from work.

In answer to questions from Ms O'Boyle, the appellant's husband confirmed that he was not medically qualified and that he was not in a position to present evidence of

the forthcoming hospital appointment or from a qualified medical practitioner about the likely effects of the injection. He stated that his comments regarding a freeze on employment was based on what had been said at the Sickness Absence Hearing. He replied that his submissions about his wife's medical treatment were based on discussions with numerous doctors who had spoken to him informally but were not prepared to submit formal evidence. The appellant's husband confirmed that his wife would not be giving evidence herself. The appellant confirmed that she endorsed all of the evidence being given on her behalf.

The appellant's husband answered questions of members of the Panel. He stated that the improvement in his wife's health since the Sickness Absence Hearing could be seen from the way she walked and the way she stood. In support of his claim that Management had shown no compassion or support for his wife he referred to several comments made in the submitted papers. He stated that his wife was now able to drive an automatic vehicle again and that he thought his wife might be able to return to work whether or not the injection on 21 August was successful

Ms C O'Boyle presented the Council's case. She stated that she did not intend to read the submitted written statement in full but would draw out some of the main considerations. She apologised for the references in some of the papers to a Disciplinary Hearing which had been an error. She gave an assurance that the Council was not implying in any way that the appellant had done anything wrong and that despite the references to a Disciplinary Hearing the matter had been dealt with as a Sickness Absence issue throughout and this was supported by the submitted evidence. She stated that the chief difference between this Appeal Hearing and the Sickness Absence Hearing was that the burden was with the appellant to persuade the Panel that the original decision was unreasonable or incorrect. She advised that the Panel must have regard to the earlier Hearing but they were entitled to come to a different decision.

Ms O'Boyle submitted that there was not an enormous dispute about the facts of this case but it was mainly a question of how those facts were interpreted. She pointed out that the Panel had to come to its decision on the balance of probabilities.

Ms O'Boyle stated that the Council's case was that the appellant had been absent on sick leave for 37 weeks when the Sickness Absence Hearing had taken place and that at that time there had been no realistic prospect of a return to work. She submitted that no evidence from a medically qualified practitioner had yet been presented to this Panel which suggested a realistic prospect of a return to work.

Ms O'Boyle set out the background to the Appeal. She advised that she would call Mrs S Lindsay, Housing Resources Manager, to give evidence about the nature of the work carried out by the appellant and the team within which the appellant had been employed. Mrs Lindsay would also give evidence about how the Council's Managing Absence Policy had been applied including a detailed account of doctors' certificates, referrals to the Council's Occupational Health provider and their advice, and home visits.

Ms O'Boyle advised that she would ask Mrs Lindsay who had been present at the Sickness Absence Hearing to comment on the demeanour of the appellant at that time and now. She would also ask Mrs Lindsay to give evidence about the filling of the appellant's post and why that post had not yet been advertised.

Ms O'Boyle stated that she would also call Mr R Palmer, Director of Finance and ICT and Chairman of the Sickness Absence Hearing. She advised that Mr Palmer would give evidence about the evidence he had received at that Hearing.

Ms O'Boyle submitted that the appellant's third ground of appeal that the Council had contributed to the appellant's length of absence due to treatment she had received from the Council's Occupational Health providers was not a valid ground of appeal. She stated that the Panel was not a forum for taking decisions on medical competency.

Mrs Lindsay attended the meeting, read her statement and enlarged on some aspects at the request of Ms O'Boyle. Mrs Lindsay stated that the pressure on other staff in the team in which the appellant had worked had become greater since the Sickness Absence Hearing as the Council had changed a gas supplier and as a result 500 invoices needed to be processed each month whereas previously 500 invoices had needed to be processed quarterly. Mrs Lindsay stated that she had followed the Council's Managing Absence Policy and had visited the appellant at home in order to keep in touch with the appellant as she had been concerned about the appellant's wellbeing. She stated that she had not intended any of her letters or notes to imply the appellant's condition was not as bad as it appeared.

Mrs Lindsay was shown the Council's Occupational Health provider's letter dated 6 August 2009 and asked if she would have followed any different procedures had she been in possession of that letter earlier. Mrs Lindsay stated she would have followed the same procedures.

Mrs Lindsay agreed that the appellant looked better than she had at the Sickness Absence Hearing when she had appeared to be in a great deal of pain.

Mrs Lindsay answered questions from the appellant's husband. She said she could not comment on whether the appellant was popular with other staff. She stated that she considered all of the comments included within her documents were relevant to the consideration of the appellant's sickness absence. She denied that her attitude towards the appellant had changed when it had become apparent that the appellant required an operation. Mrs Lindsay stated that she did not manage the contract with the Council's Occupational Health provider. Mrs Lindsay described the Council's current process for filling vacant positions and stated that it would have prejudiced the outcome of this meeting if the position had already been advertised and someone else employed. She stated that the employment of additional staff to cope with an increase in workload was not acceptable in the current financial climate and that other work would have to be streamlined to ensure that the additional invoices were processed in time.

Mrs Lindsay answered questions from members of the Panel. She stated that regular workplace assessments were undertaken. She advised that there were six members of staff in the team in which the appellant had worked but that not all of those undertook the same duties as the appellant. Invoices had been dealt with by one full-time member of staff, one other part-time member of staff and the appellant. Ms Lindsay confirmed that she had decided to seek dismissal of the appellant when she had received advice from the Council's Occupational Health provider that the appellant remained totally unfit for work after having been absent for over 30 weeks.

Mrs Lindsay left the meeting. Ms O'Boyle called Mr R Palmer to the meeting.

Mr Palmer confirmed that his letter dated 6 July 2009 had been his decision letter in relation to the Sickness Absence Hearing and that the three issues specified in that letter had been the matters on which he had heard evidence. His attention was drawn to the reference in his letter that the appellant's recovery was expected to take a further 12 to 18 months and asked to compare that with the appellant's first ground

of appeal suggesting that period related to a full recovery and that a return to work could be achieved much sooner. Mr Palmer drew attention to the Council's Occupational Health provider's letter dated 1 July 2009. Mr Palmer was shown a copy of the Council's Occupational Health provider's letter dated 6 August 2009 and asked if he would have come to a different decision had he been in receipt of that letter at the Sickness Absence Hearing. Mr Palmer stated that he would have made the same decision.

Mr Palmer, as a Service Director, explained the Council's current procedures for filling vacant posts and the reason why no steps had been taken to fill the appellant's post in advance of this meeting.

Mr Palmer confirmed that during the Sickness Absence Hearing the appellant had been unable to sit or to stand still and had appeared to be in great pain. He confirmed that at no time had he considered the appellant to have been the subject of disciplinary action. The Hearing he had chaired had been solely concerned with sickness absence.

Mr Palmer answered questions of the appellant's husband. Asked whether his decision would have been different if he had considered the appellant would have returned to work within six weeks rather than 12-18 months, he stated that he would needed compelling evidence of a return to work within that timescale and such evidence had not been submitted. He acknowledged the Sickness Hearing had started a little late as he had been discussing procedural matters and said that he had apologised at the time. He explained the role of Ms Maginnis at the Sickness Absence Hearing had been to advise him but as Chairman of the Hearing the decision had been his alone. Mr Palmer stated that the reference to a further 12 to 18 months absence had been made by the appellant herself. He confirmed that the appellant appeared to be in better health now than she had been at the Sickness Absence Hearing.

Mr Palmer answered questions of the Panel. He stated that the letter dated 6 August 2009 from the Council's Occupational Health provider was broadly in line with the advice he had received at the Sickness Absence Hearing. He confirmed there was no specific period of absence in the Council's Policy which automatically triggered dismissal but felt that a period of some 37 weeks absence with no realistic return date justified the action he had taken.

R Palmer left the meeting.

The Chairman asked the parties to sum up their cases and advised that no new evidence could be presented at this time.

Ms O'Boyle reminded the Panel of the three issues as set out in Mr Palmer's letter dated 6 July 2009.

She submitted that in relation to the first issue the evidence submitted at the Sickness Absence Hearing and at this meeting including the tabled letter from the Council's Occupational Health provider proved that the appellant had taken a high level of sickness absence since 15 October 2008 and there was no clear indication of a return date.

In relation to the second issue she submitted it was not sufficient for the appellant to simply return to work but there was a need for sustained regular service. She stated that the submitted evidence did not suggest this would be possible.

In relation to the third issue she drew attention to the evidence given by Mrs S Lindsay about the significant impact of the appellant's absence on the rest of the team and submitted that this strain could not be sustained.

Ms O'Boyle pointed out that no new evidence had been presented at this meeting on behalf of the appellant. She submitted that the Council's Monitoring Absence Policy had been applied correctly and that all the actions of the officers had been for the right reasons, showing compassion for the appellant.

She drew attention to the fact that the appellant's period of sickness absence had commenced on 15 October 2008 and at that the time of dismissal had amounted to 37 weeks during which time the appellant had not returned to work at all.

Ms O'Boyle asked the Panel to conclude that the decision of Mr Palmer had been correct at the time of the Sickness Absence Hearing and remained correct today.

The Chairman asked Ms O'Boyle if she could provide the date of the report of the Registrar referred to in the Council's Occupational Health provider's letter dated 6 August 2009. Ms O'Boyle said she did not have a copy of that report. The appellant's husband advised that it would have been sometime after the referral on 23 June 2009.

The appellant's husband submitted that everything the Council had done at the Sickness Absence Hearing had been correct legally but he had attempted to draw the attention of the Panel of the moral implications of the decision taken. He claimed that the Council should treat its staff better and that his wife if dismissed would be unlikely to obtain further employment in view of her age. He submitted that his wife's health was now significantly better than it had been at the time of the Sickness Absence Hearing.

The Chairman indicated that the Panel would consider the matter in the absence of the parties. He asked the appellant and her husband if they wished to wait to be notified of the decision. The appellant's husband stated that they would prefer to return home and be notified of the decision in writing. Ms O'Boyle also advised that she would await the decision in writing. The appellant, her husband and Ms O'Boyle then left the meeting.

The Panel discussed all of the evidence which had been submitted.

RESOLVED:

(1) That it is the unanimous decision of the Panel that, on the basis of the evidence presented on behalf of the appellant and on behalf of the Council, in writing and orally, the appeal against dismissal from the service be not upheld for the following reasons:

(a) the contention that the appellant would be fit to return to work in the new future has not been evidenced by medical opinion from either the Council's Occupational Health provider or the appellant's own G.P. or consultant; reliance has been placed on the medical evidence produced at the original Hearing from the Council's Occupational Health provider and in a subsequent letter dated 6 August 2009 which was tabled at the meeting; both letters indicate that there is no clear prognosis of the appellant's condition or likely return date and therefore the appeal on this point is rejected;

(b) the appellant's claim that her post would probably not be filled and as a result she had been made redundant is not agreed; evidence from Mrs S Lindsay indicated that it would be her intention to request that the post be filled although this could not be guaranteed as there was currently a recruitment freeze; it is not considered that it would have been appropriate to advertise the position until this appeal procedure had been concluded; it is clear that there is no intention that the post would be deleted from the Establishment therefore resulting in a redundancy situation; it is clear that the appellant was dismissed on grounds of capability due to ill health and the appeal on this ground is rejected;

(c) the appellant's contention that the length of her absence is the responsibility of the Council as the Council's Occupational Health provider prescribed treatment is not a relevant ground of appeal and the appeal on this point is rejected;

(2) That for future cases the Council's template letter following a Sickness Absence Hearing includes suitable thanks for the work undertaken by the postholder, where appropriate; and

(3) That the officers review the arrangements for the instruction of and the monitoring of invoices from the Council's Occupational Health provider.

CHAIRMAN