

information as defined in the paragraphs of Part 1 of Schedule 12(A) of the Act indicated and the exemption is considered to outweigh the potential public interest in disclosing the information:

<u>Agenda Item No</u>	<u>Subject</u>	<u>Exempt Information Paragraph Number</u>
7	Staff Appeal No 03 – 2006/07	1 and 2

12. STAFF APPEAL NO. 03 - 2006/07

The Panel considered an appeal by an employee of Housing Services against a decision by the Head of Housing Services acting under delegated authority to dismiss him.

The appellant was in attendance and presented his own case. The Council's case was presented by C O'Boyle, Head of Legal, Administration and Estates and Solicitor to the Council, who called N Taylor (Area Housing Manager (North)), J Akerman (Chief Internal Auditor), A Hall (Head of Housing Services) and P Maginnis (Human Resources Manager) as witnesses. T Tidey (Head of Human Resources and Performance Management) advised the Panel as required, on details of employment law and policies relevant to the appeal.

Following consideration of submissions from both parties and appropriate cross-examination, the Panel determined the appeal in private session.

RESOLVED:

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 service without notice or payment in lieu of notice be not upheld for the following reasons:

- (a) the allegations of fact that the appellant:
 - (i) misused Council time by not being at work during some of his contracted hours on 3, 4, 5, 6 and 9 October 2006;
 - (ii) did not provide a truthful explanation when asked to account for his whereabouts by officers of the Council concerning the above dates; and
 - (iii) did not agree the above absences from work with his Manager either prior to or after the above dates as required by the Council's managing absence policy;
- (b) as a consequence of the appellant's action described in (a) (i – iii) above, the Panel have found that these constitute a fundamental breach of trust between the appellant and the Council, and that his actions brought the Council into disrepute;
- (c) in reaching this decision, consideration was given to the mitigating factors that the appellant presented, which were:
 - (i) that the appellant was concerned about his previous high level of sickness absence, and that the absences described above would reflect badly on his sickness record. However, the Panel noted that there was no record

that the appellant's sickness level had ever been raised by management as a concern; and

(ii) that the appellant had stated in mitigation that at the investigative interview with officers of the Council, he had experienced panic and therefore lied about his whereabouts on the above dates. Notwithstanding this, it was not considered acceptable for the appellant to lie because of panic and that it would have been better to tell the truth;

(d) consideration was also given to the comments of P Maginnis, A Hall and N Taylor that in the light of the appellant's actions, they could no longer trust the appellant as an employee; and

(e) finally, consideration was given to the allegations made by the appellant about alleged racial or religious discrimination on the part of J Akerman, Chief Internal Auditor, in his conduct with the appellant. These allegations were not found proven by the Panel and it was noted that the appellant presented no evidence at the Appeal Hearing to substantiate them. The Panel also noted that the appellant had not raised these matters at the Disciplinary Hearing when his Solicitor had been present.

CHAIRMAN