

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 02 - 2006/07	1 and 2

6. STAFF APPEAL NO. 02 - 2006/07

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

The appellant's father was in attendance at the meeting to present his son's case. The Council's case was presented by James Burton, Counsel who called D Macnab (Head of Leisure Services), T Tidey (Head of Human Resources and Performance Management) and A Hall (Head of Housing Services) as witnesses. Ms C O'Boyle (Head of Legal, Administration and Estates and Solicitor to the Council) 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 by Counsel 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) defaced personal photographs of the son and dog of one of his supervisors, which were displayed on her computer;
 - (ii) wrote offensive comments about one of his supervisors on the Staff Duty Sheet in his own blood;
 - (iii) deliberately caused damage to the Therapy Room at Waltham Abbey Sports Centre by hitting a door and breaking glass fittings;were proven and admitted by the appellant;
- (b) as a consequence of the appellant's actions described in (a)(iii) above, the appellant endangered any or all of the following: other staff, members of the public, himself, contrary to his responsibilities under the Health and Safety at Work etc Act 1974;
- (c) as a consequence of the appellant's actions described in (a)(i)-(iii) above, he caused a fundamental breach in the relationship of mutual trust and confidence between himself as an employee and the Council as an employer;

(d) the proven allegations amounted to Gross Misconduct under the Council's Disciplinary/Capability Procedure;

(e) consideration has been given to the relevant provisions of the Disability Discrimination Act 1995 and the DDA Code of Good Practice and whether the Council had complied with its duty to make reasonable adjustments in relation to the appellant; it is considered that the Council took steps in excess of what is required as it made adjustments both before and after it knew or could reasonably be expected to have known about the appellant's disability; accordingly, it is considered there has been no discrimination for a reason related to disability that is not justified; in particular:

(i) the Council moved the appellant's place of employment twice and with the latter move, it made considerable adjustments to help the appellant by requiring him to undertake less demanding duties;

(ii) the Council arranged for the appellant to receive counselling, referred him to Harlow Occupational Health Service Ltd and arranged for him to see a consultant clinical psychologist and adult psychotherapist;

(iii) the Council expended significant resources in attempting to assist the appellant;

(iv) the Council attempted to organise the appellant's shifts so that he was not directly responsible to the supervisor with whom he had problems;

(v) the Council considered possible redeployment including undertaking risk assessment of alternative posts;

(f) consideration has been given as to whether the appellant's actions were justified or mitigated by reason of bullying by the supervisor against whom his actions were directed; the Council undertook a very thorough investigation into this allegation by the appellant and found no support for the allegation; no evidence was submitted to cast doubt on the outcome of this investigation;

(g) consideration has also been given as to whether the appellant's actions were justified or mitigated by reason of bullying by other supervisors; the appellant has not raised these matters under the Council's Harassment and Bullying Policies as he did with the allegation made under (f) above; the appellant has not provided sufficient details of these allegations for the Council to undertake a meaningful investigation; it is considered that these matters are of no relevance to the actions of the appellant aimed at the supervisor with whom he had problems.

CHAIRMAN