

DISCIPLINARY/DISMISSAL/GRADING APPEALS COMMITTEE

Wednesday, 4th August, 2010 at 9.00 a.m. in Committee Room 3
in the Council House, Dudley

PRESENT

Councillor Ms Nicholls (Vice Chairman) (In the Chair)
Councillors Mrs Cowell, Barlow, Ms Harris, J Martin, Ms Partridge, Mrs Shakespeare, and Vickers together with Mrs K Jesson, Head of Human Resources, (Central Directorates), Ms H Kidd, Senior Solicitor, Ms E Kerrigan, Solicitor and Mrs J Rees, (Directorate of Law, Property and Human Resources).

ALSO IN ATTENDANCE

Assistant Director of Education, Play and Learning (Directorate of Children's Services).

Mr R Kelsey (National Union of Teachers' representative).

Mrs T Reilly, Assistant Director Human Resources and Citizenship, as an observer. No one raised any objections to the observer's attendance at the meeting.

1 **APOLOGIES FOR ABSENCE**

Apologies for absence from the meeting were submitted on behalf of Councillors Banks, Knowles and Mottram.

2 **APPOINTMENT OF SUBSTITUTES FOR THE MEETING OF THE COMMITTEE**

It was reported that Councillors Barlow and Vickers had been appointed as substitute members for Councillors Knowles and Banks respectively, for this meeting of the Committee only.

3 **DECLARATIONS OF INTEREST**

No member declared a personal or prejudicial interest, in accordance with the Members' Code of Conduct, in respect of any matter to be considered at this meeting.

4 **MINUTES**

In response to comments on the minutes, the Head of Human Resources confirmed that the issues raised by Members at that meeting had been conveyed

to the Director of the Urban Environment, and that measures had been established to address those issues. The Head of Human Resources also confirmed that the Chairman of that meeting would be requested to give evidence at an Industrial Tribunal, scheduled for September 2010.

RESOLVED

That the minutes of the meeting of the Committee held on 14th April, 2010 be approved as a correct record and signed.

5 EXCLUSION OF THE PUBLIC

RESOLVED

That the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Part 1 of Schedule 12A to the Local Government Act 1972, as indicated below:-

<u>Description of Item</u>	<u>Relevant Paragraph</u> <u>Part 1 of the Schedule 12A</u>
Appeal by Mr BC	1

6 APPEAL BY MR BC

The Committee considered an appeal by Mr BC against his dismissal from the employment of the Council.

Mr BC was in attendance at the meeting, together with Mr R Kelsey (National Union of Teachers' Representative), who presented the case on behalf of Mr BC. Mr BC indicated that he would be happy to be called as a witness.

Mr Kelsey confirmed that the statement of facts had now been agreed with Mr BC.

Mr Kelsey raised, as a point of order that, in his view, the appeal should be an opportunity to re-examine the decision of the Assistant Director Education, Play and Learning and requested that the Council put their case first to make it a fairer hearing and to allow him and his client to cross examine the case put forward and the decision to dismiss Mr BC. In response to the Senior Solicitor, Mr Kelesy confirmed that he was asking for a re hearing.

The meeting adjourned for thirty minutes for the Committee to decide whether a re hearing would be appropriate.

In making their decision the Committee noted the Council's procedure, which requires requests for re-hearings to be put in writing at the time when the appeal is submitted. They further noted that Mr BC had been represented by his Union at the time when he submitted his grounds of appeal and that the written grounds of appeal did not request or refer to a re-hearing. The Committee also noted that the only grounds for a re-hearing by the Disciplinary/Dismissal/Grading Appeal Committee is where the dismissal hearing had not been used correctly or where new evidence has come to light. Having taken everything into account the Committee concluded that neither ground was satisfied on this occasion and therefore resolved that a re-hearing would not be allowed.

Upon hearing the Committee's decision, that a rehearing would not be allowed, and that the Council's usual procedure would be adhered to, Mr Kelsey requested a further adjournment to seek instructions from Mr BC.

The meeting was adjourned to allow this.

When the meeting reconvened, the Council's procedure was followed.

In presenting the case for Mr BC, Mr. Kelsey suggested that the incidents which had led to Mr BC being arrested, had been due to extenuating circumstances and were out of character. Mr BC also had many issues in his life, including one involving medication. Previously Mr BC had been a model employee.

The Council's representative then presented the Council's opening statement.

Ms Kerrigan, who called one witness Mr D Perrett , Assistant Director of Education, Play and Learning (Directorate of Children's Services), presented the Council's case. Mr Kelsey and the Committee then asked questions on the Council's case.

In response to comments from Mr Kelsey, relating to the grounds of the appeal, the Assistant Director of Play Education and Learning reported that, before coming to his decision to dismiss Mr BC, he had given full consideration to all of the facts of the case, including the mitigating circumstances put forward by Mr BC, but that he had not considered the mitigating circumstances to be exceptional and therefore stood by his decision that the actions of Mr BC had amounted to gross misconduct, thereby resulting in his dismissal.

The Council's representative and Members then asked questions upon the evidence submitted.

There followed an adjournment to enable Mr BC to attend to a domestic situation. The meeting then reconvened to continue its deliberations in respect of the appeal.

Following final submissions, the parties left the meeting, at which point the Committee continued its deliberation. Arising therefrom, it was

RESOLVED

That the Committee determine that the allegation of gross misconduct by Mr BC was proven and that the decision to dismiss him be upheld.

The meeting ended at 12.05 pm

CHAIRMAN