

EAST AYRSHIRE COUNCIL**APPEALS PANEL****MINUTES OF MEETING HELD ON TUESDAY 20 OCTOBER 2009 AT 1035 HOURS
IN THE CHAMBERS, COUNCIL OFFICES, LUGAR**

PRESENT: Councillors Alan Brown, Maureen McKay, John Campbell, Stuart Finlayson and Provost Stephanie Young.

ATTENDING: Martin Rose, Head of Human Resources; and Stuart Nelson, Administrative Officer.

CHAIR: Councillor Alan Brown, Chair.

APPOINTMENT OF CHAIR

1. The Administrative Officer invited nominations for the appointment of Chair for this meeting.

It was unanimously agreed that Councillor Alan Brown be appointed as Chair.

EXCLUSION OF PRESS AND PUBLIC

2. The Panel resolved that under Section 50A(4) of the Local Government (Scotland) Act 1973, as amended, the Press and public be excluded from the meeting for the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in Paragraph 1 of Schedule 7A of the Act.

PRELIMINARY MATTERS

3. The Panel heard from the Head of Human Resources who explained that a breach of the terms of the Data Protection Act 1998 by the Council had occurred arising from the circulation of papers to appellants relative to the Stage 4 grievance appeals which were scheduled to be dealt with at the meeting; but that the breach was not considered to be significant and had no bearing on the grievance appeals before the Panel today.

The parties were then admitted and the Panel heard from (a) the Trade Union Representatives on behalf of their members in respect of the Stage 4 grievance appeals nos G15/09, G19/09, G24/09, G25/09, G26/09, G27/09, G28/09, G31/09, G32/09, G33/09, G34/09 and G21/09, who explained that they were of the view that the breach of the Data Protection Act prejudiced and compromised their members with regard to the Stage 4 grievance appeals and requested that these appeals not proceed at this time pending further procedures on this basis their members had been advised not to be present today; and (b) the Depute Chief Executive/Executive Director of Corporate Support, as management representative, who contended that the breach of the Data Protection Act had no significance with regard to, or bearing on, the hearing process and neither would the outcome of any complaint to the Information Commissioner's Office with regard to the breach; and that, furthermore, there was a management need to expedite determination of the appeals before the Panel today to achieve progress in dealing with this series of appeals relating to travel to work issues. The parties then withdrew.

Having heard further from the Head of Human Resources, and taking account of submissions made by the parties, it was unanimously agreed not to proceed meantime with appeals nos G15/09, G19/09, G24/09, G25/09, G26/09, G27/09, G28/09, G31/09, G32/09, G33/09, G34/09 and G21/09, on the basis of the Trade Unions concerns regarding the implications of the breach of the Data Protection Act on their members' appeals and, as a consequence, the appellants concerned had been advised not to be present or represented at this meeting.

ADJOURNMENT/RECONVENTION

4. The Panel adjourned at 1115 hours, in order that appropriate legal advice might be obtained, and reconvened at 1129 hours with the same Members and Officers present and in attendance.

PRELIMINARY MATTERS

5. The Panel heard from the Head of Human Resources in (a) explanation of the particular issues arising from the breach of the terms of the Data Protection Act 1998, with particular reference to appeals nos G20/09, G22/09 and G23/09; and (b) in relating the legal advice which had been provided by the Head of Legal, Procurement and Regulatory Services.

ADJOURNMENT/RECONVENTION

6. The Panel adjourned at 1134 hours and reconvened at 1139 hours with the same Members and Officers present and in attendance.

PRELIMINARY MATTERS

7. The Panel heard from the appellants in respect of the Stage 4 grievance appeals nos G22/09 and G23/09 who each requested that their respective Stage 4 appeals not proceed at this time (a) pending them having the opportunity to take appropriate legal advice; and (b) the Depute Chief Executive/Executive Director of Corporate Support, as management representative, who contended that the breach of the Data Protection Act had no significance with regard to, or bearing on, the hearing process and neither would the outcome of any complaint to the Information Commissioner's Office with regard to the breach.

Having taken account of submissions made by the parties and the legal advice provided, it was unanimously agreed not to proceed meantime with appeals nos G22/09 and G23/09 in order to afford the appellants concerned the opportunity to obtain appropriate legal advice.

CONSIDERATION OF GRIEVANCE APPEAL NO G20/09

8. There was submitted a copy of the Appeals Hearing Procedure (Grievance and Disputes), together with submissions by the appellant and the Depute Chief Executive/Executive Director of Corporate Support (all circulated).

The appellant and his representative confirmed that they were aware of the breach of the terms of the Data Protection Act 1998; and confirmed that this notwithstanding, they wished the appeal to be heard at this meeting.

The Appeals Panel then heard evidence from the appellant, the appellant's representative and from the management representative and her witness, who spoke to all matters raised, all in accordance with the agreed Hearing Procedure.

ADJOURNMENT/RECONVENTION

9. The Panel adjourned at 1302 hours and reconvened at 1307 hours with the same Members and Officers present and in attendance.

OUTCOME OF APPEAL G20/09

10. Having heard both parties, the Panel agreed, by majority, that the appeal had been substantiated and was upheld.

The meeting terminated at 1358 hours.