

MINUTES OF A MEETING OF THE APPEALS PANEL HELD IN COMMITTEE ROOM 1, CIVIC OFFICES ANGEL STREET BRIDGEND CF31 4WB ON WEDNESDAY, 3 DECEMBER 2014 AT 10.00 AM

Present

Councillor C Westwood – Mayor and Chairperson

E Dodd CA Green

Officers:

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100. DECLARATIONS OF INTEREST

None.

101. EXCLUSION OF THE PUBLIC

RESOLVED:

That under Section 100A(4) of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007 the following item is not for publication as it contains exempt information as defined in Paragraph 12 of Part 4 of Schedule 12A of the Act:-

Following the application of the Public Interest test it was resolved that in all the circumstances the public interest in maintaining this exemption outweighed the public interest in disclosing the information, because disclosure of the information at this time would be prejudicial to the Appellant's case:-

Minute No.      Summary of Item:

To consider an Appeal against dismissal by an employee of the Wellbeing Directorate.

102. TO CONSIDER AN APPEAL AGAINST DISMISSAL BY A FORMER EMPLOYEE OF THE COMMUNITIES DIRECTORATE

TO CONSIDER AN APPEAL AGAINST DISMISSAL BY AN EMPLOYEE OF THE COMMUNITIES DIRECTORATE

-  
Present in attendance:

For Bridgend County Borough Council:

APPEALS PANEL - WEDNESDAY, 3 DECEMBER 2014

A Thomas - Case for the Management  
S Pryce - Investigating Officer  
H Watts - HR Advisor to Management

For the Appellant:

N Birkin - Trade Union Representative - GMB  
C Martin - Appellant

The Chairperson made the necessary introductions and read out the procedure that would be followed today in accordance with the appropriate protocols and procedures for hearings of this nature.

She then invited Management to present their case.

SP referred to B1 of the file and the letter sent to CM on 21 October 2014 advising of the reasons for him being dismissed which were based on the following allegations and expanded upon in the letter. These were as follows:-

- 1) Maliciously damaged property belonging to the Authority
- 2) Was deemed incapable at work through an excess of alcohol or illegal drugs
- 3) Deliberately and repeatedly failed to adhere to the policies, procedures and codes of conduct of the Authority
- 4) Bringing the Authority into disrepute, and
- 5) Seriously and deliberately violating Health and Safety rules and standards which cause or could cause risk to the individual, other employees or the public

She advised that the majority of the evidence was in the witness statement, though she would explain to the Panel in more detail after AT presented his case on behalf of management, the reasons why she had reached a judgement of gross misconduct that had led to the dismissal of CM.

In view of the fact that as part of the case for management there was DVD evidence, Members and Officers relocated from Committee Room 1 to the Council Chamber to allow for this footage to be shown.

By way of background information, AT explained that CM was a Duty Manager at the Grand Pavilion, Porthcawl. This establishment was a large flagship and customer focused building, that connected with the public at large through the showing of shows and other theatre type organised events.

CM, as part of his role, was responsible for the security of the premises, opening and closing arrangements, safety of staff and the public, the handling of cash and stock, the adequate overall control of the premises and access to there by them and other Contractors etc, that worked there.

AT explained that the issues that had led to today's Disciplinary Hearing had taken place on Friday 18<sup>th</sup> April 2014, Good Friday. On this day, CM was the Senior Manager on site at the premises, and that day he had been ultimately responsible for the building, other employees, Contractors and the general public and customers.

In terms of his role in the investigation into CM that had been initiated and subsequently undertaken, AT confirmed that he was the Group Manager for Sports and Physical Activity for the Wellbeing Directorate. The investigation had been pursued following the review of CCTV footage taken at the Grand Pavilion, after it had been discovered that there had been damage committed within the premises.

This AT stated, had resulted from interviews that had been undertaken with management and staff deemed 'in scope' and statements following this had been collated. These included with CM and 7 other staff, 3 of which had been present at the premises on 18<sup>th</sup> April. Following this process explained AT, further CCTV footage was examined from the date in question. Other information had come to light he added, either by methods such as association or sharing communication through other interviews conducted as part of the investigation.

AT confirmed that as part of the Council's Disciplinary Policy, the following allegations were investigated, and from this, emanated the evidence firstly presented to the Officer Panel and subsequently now here today before Members.

He then referred to each allegation that made up the investigation that had resulted to the dismissal of CM.

In respect of him being deemed incapable at work through an excess of alcohol or illegal drugs and/or maliciously damaging property that belonged to the Authority, he referred Members to the following DVD footage

#### **B01**

AT explained that this clip showed CM arriving late at the Grand Pavilion to open up. He appeared very unsteady on his feet. He was followed into the building by HC Council cleaner and CR, Catering contractor. AT further explained that the DVD showed that CM struggled walking up the steps to the building and when de-activating the building alarm which would normally take seconds to do but took him that day in his condition over 3 minutes to complete. He remained visibly unsteady on his feet using his hands/arms to support him on the wall where device was situate. The other 2 workers had also been late for work due to CM arriving late and the building being locked, and CR was seen assisting CM due to his condition even though it was he who was in charge of the building

#### **BO2**

When CM is the seen entering the main office door, AT points out that in his shadow he is shown as throwing his keys on the floor, following which, he is seen on CCTV physically kicking out at a piece of furniture ie a desk.

In respect of the following clips, AT stated that these were also linked with the allegation of maliciously damaging property that belonged to the Authority.

#### **BO4/4a**

In this clip, AT explained that CM approached the box office counter and is looking for the correct key to open the lower hatch door that is accessed via a bolt. CM takes 30 seconds to locate the key for the upper shutter. As he could not open the lower hatch door, he is then seen kicking this door open causing damage to the door due to it still being bolted.

**BO7**

In this footage AT stated that CM is seen trying to access the Counting Room by key, where he experiences similar difficulties to that when he was trying to get into the main entrance and de-activate the alarm to access the main office. He is seen with 2 bunches of keys, not knowing which key gains access to this room. This should have been a formality to undertake he added.

AT added that this allegation could not be disputed as it clearly was evidenced in the footage.

AT also referred Members at this stage of proceedings to page 55 of the pack and an Investigation Interview with HC when she had said that CM had appeared wobbly on his feet, but she had not smelt alcohol on his breath on this occasion while in work, like she had on other occasions.

AT also referred to page 63 of the file and extracts from facebook.com, where reference was made by both KL and HC where the latter had said that on the 18<sup>th</sup> April whilst in work, CM had been howling (ie very drunk), and that he had gone to the café area for a coffee, but staff had wanted him out of there and the gaze of the public so that he wouldn't get into any trouble.

AT referred to page 66 of the file, C10, and another Investigation interview with DS. In this interview reference was made to CM coming to work drunk often and smelling of alcohol. He was also quoted as seen "bouncing off the walls and being steaming drunk".

In terms of the Notes of the Officer Hearing of the 9<sup>th</sup> October 2014, B2, page 14, reference was made to the fact that discussions at that meeting had revolved around the fact that CM did by his own admission, concede that he had been drinking more alcohol than previous, and this had a lot to do with his father's illness. His father had sadly subsequently passed away. AT added that CM had received previous warnings about him coming to work smelling/under the influence of alcohol

In the Hearing, AT stated that CM had also confirmed that he was drinking alcohol and also taking diazepam due to his family problems, and that this mixture was obviously not compatible particularly in a working environment. This was proven through the CCTV evidence and his visible condition whilst being in work. It had been exacerbated on 18<sup>th</sup> April, as the night before he had consumed alcohol and taken a double dose of diazepam (10mg). This had resulted in him really not being fit for work on the 18th added AT

AT then once more referred to C9 of the file, where in the interview held then, KL had confirmed the damage to the box office door following CM having kicked it, and this had subsequently required repairing. KL added that it was evident that there was damage to the door in question and this was reflected by wood on the floor.

AT also referred to page 60 of that part of the file, where generally speaking, CM was seen as a nice, friendly and happy go lucky person that was popular with most staff.

AT then referred to C14 of the file and an Investigation interview with NPH. On page 91 of this section of the file, NPH had confirmed that the door had to be repaired, and that it had taken around 45 minutes for this work to be completed. There had been no fault with the door as had been alluded to by CM, who had also not reported that it had been damaged after he had kicked it.

AT then referred to the next allegation of CM bringing the Authority into disrepute. He then referred to the following DVD footage

**B08**

AT explained that in this clip, CM was seen talking to CR who because he had arrived late to open up the building, had received a parking ticket. At this time the Catering operation should have been open, but it was still closed due to the premises opening late. In this clip CM is seen talking to CR and another person in the servery area and following some heated discussions, CM threw his keys on the server counter following which he stormed out the building via the café doors. He had therefore by doing this, left the security of the building for which he was responsible, to the Catering Contractors. CM subsequently came back to the building some 3 minutes later and is seen handing cash to CR, presumably to pay his parking fine.

**B10**

AT advised that this showed members of the public coming into the building at the box office entrance. Obviously CM's role included interaction with the public, to give them support and guidance for example, on up and coming events and shows taking place at the Pavilion. The box office was not open at this time, but the footage showed CM walking straight past the family. Due to this, the family subsequently left the building seemingly without having been given advice and assistance. AT felt that it was an appropriate role of the Manager at the building to during the course of the working day, give support and advice to potential customers and members of the public. AT acknowledged however, that the family may possibly not have acknowledged that CM was an employee that was working there

With regard to the allegation of deliberately and repeatedly failing to adhere to the policies, procedures and codes of conduct of the Council, AT referred to the footage shown earlier where CM was caught on camera arriving late for work and the detrimental impact this had on other people both working at and visiting the premises

AT referred then to C1 of the file and page 29, where reference was made to CM having previously been the subject of disciplinary investigations and formal absence meetings where he had been advised of the importance of complying with policies and procedures of the Council, including the Code of Conduct, and C7 pages 51/52 of the file, included the history of previous investigations conducted by the Authority in relation to CM and these issues. He added though that these did not amount to sanctions. These had culminated in February 2014, when CM had been investigated under the Capability at Policy/Procedure due to concerns regarding him undertaking his work properly to a required standard. AT added that avenues of support had previously been offered to CM due to the knock on effect to his health as a result of his family problem.

AT then referred to the final allegation, namely Seriously and Deliberately violating Health and Safety rules and standards which cause or could cause risk to the individual, other employees or the public.

This was reflected in B08 above, when he left the building as the Responsible Officer there unsupervised, whilst he went to get money to pay for CR's parking ticket. This action AT felt, asked serious questions of his capability to adequately manage the premises, including the people that entered there, and the buildings resources.

As a contrast to the condition of CM entering the building on the morning of 18<sup>th</sup> April, the following final DVDs were shown how his condition altered as the day progressed

**B12/13**

The former footage showed that CM was in a much better condition leaving the premises at the end of the day than when he entered the building at the start of the day to open up. He seemed in control of his senses and far steadier on his feet than he had been earlier that morning. He opened the box office shutter and switched off the lights inside there, and in the latter footage, he is seen to enter the pin code of the alarm system far quicker than he did that morning and leave the building walking normally via the front door.

As this concluded the submission of AT, the Chairperson called upon the Investigating Officer to give her presentation.

SP confirmed to Members that in reaching her determination regarding the sanction of dismissal, she took into account the following:-

- 1) The fact that CM had been under some significant stress and strain in light of his father's illness, and whilst she had some sympathy for him due to that, there were many other Officers' working at this time for BCBC who were in all probability dealing with the care of their dependants. The Council had provision for special leave to be taken for this purpose if/when required. She did not think that CM was unusual in this respect. In light of the evidence however contained in both the file and the CCTV footage, she had judged that the behaviour shown by CM in a high profile building such as the Grand Pavilion was not acceptable on 18<sup>th</sup> April 2014 and could not be condoned
- 2) SP had also taken into account that CM did actually turn up for work on 18<sup>th</sup> April 2014, though he was not really in a fit enough condition to work that day. The effort to do that had counted a lot for her. However, she also noted that he had received a number of warnings previously due to absence from work, and if he had incurred a further period of sickness that day, he then would have triggered the Sickness Absence Policy provisions which could have resulted in CM being dismissed for reasons of continued and repeated sickness absence. SP also took the view, that CM she felt, wasn't capable of understanding how he presented himself to others that day, as his condition was too poor for him to reason properly with himself.
- 3) SP confirmed that she had also taken into account that CM knew that he should not mix alcohol with the type of medication he had been prescribed, and that he himself, had made the choices he did to bring about the situation that had taken place. He had been questioned upon this at the Officer Hearing, where it was explained to him that he had that day the option of taking annual leave, special leave, or even reporting his condition to his line Manager.
- 4) SP stated that she had considered that, as the Duty Manager, CM held a position of trust for the safety and welfare of others, as well as the reputation of the Authority.

It was for the above reasons, she had believed that CM's actions had made it impossible for the Authority to safely place such trust in his hands.

The Chairperson asked the Appellant and his union representative if either of them had any questions to put to AT or SP.

NB referred to the B02 footage where CM kicks a desk. He wished to point out to the Panel however that no damage had resulted out of this action.

In terms of B04/4a footage, NB clarified that there was no key access to this door as it was shut by way of being bolted. There had been no evidence of wood on the floor as a result of CM kicking this or any clear identification of damage to the door. The hinges on the door had loosened but the fact was that these were loose before CM kicked it. As he hadn't see no evidence of there being damage to the door, he didn't report it.

In terms of CCTV B10, NB confirmed that CM did not ignore the family that visited the box office that day. He passed them initially and he then spoke to them off camera and this was clearly visible in the footage and confirmed by the cleaner HC. C8 page 56 of the file confirmed this.

The Chairperson asked the Appellant why he had kicked the box office door rather than opening it properly.

CM stated that he took this course of action as there was a fault with the bolt mechanism and it kept on sticking as a result of this.

AT advised that C14 page 91 in the Investigation interview with NPH, he had confirmed that the repair to the door indicated that this came about as a result of someone forcing it open. He then subsequently fixed the door. C0/C01 of the DVD confirmed footage of NPH having to fix the door by way of re-hanging and re-aligning it.

NB still contested that CM did not report the matter as he had not recognised there was any damage to the door

HW pointed out to CM that he had previously confirmed in an interview leading up to his dismissal that he didn't recall much in the way of events on the morning of 18<sup>th</sup> April, so how would he necessarily know whether or not the door was in a state of disrepair or not.

CM reiterated that his failure to report the damaged door was only as a result of him being of the opinion that it was not damaged.

AT added that the door was damaged as reflected in the file, and that it had taken 45 minutes for this to be repaired.

NB reiterated that there had been a conversation between the family that came to the Grand Pavilion and CM, so he had dealt with their query. However, the CCTV footage had been provided as evidence to confirm that the opposite had occurred. This was misleading the Panel he added, and was untrue.

HW confirmed that the footage had been provided, because previous to speaking to this family CM had walked straight past them.

CM confirmed that he initially had walked past them as he thought they had come in to use the toilet.

AT referred to page 86, C13 of the file, and the Investigation interview with CM where he was confirmed as saying that he couldn't recall a number of events that took place on the morning of 18<sup>th</sup> April.

The Legal Officer sought clarification whether or not HC had actually witnessed CM speaking to the members of public ie the family visiting the box office.

NB confirmed that she had, and that these were the women and two children that were on the CCTV, and that HC had said she had seen CM speaking to the family. He felt that footage should have been shown to Members to confirm rather than deny this.

AT confirmed that footage from this angle was not included in the evidence.

SP added that the Grand Pavilion dispenses hospitality and is focused on things such as customers, catering, booking functions and tickets for functions, and therefore staff at the premises needed a front door approach that was very much customer focused. She felt that the Duty Manager that day ie CM, should have more effectively engaged with the visiting public, and in the first instance he had walked past this family, but then engaged with them shortly after.

As this concluded questions to Management, the meeting re-located back to Committee Room 1.

NB then submitted his case on behalf of the Appellant and his response to the contents of the file.

He advised that there were statements provided in the file that referred to previous issues with CM. These issues had been reported previously though and either dealt with through management discussion or under the relevant policies and procedures, by these he meant:-

Sickness Absence  
Capability, and  
Disciplinary

The only sanction that has been given to CM had been in line with the Sickness Absence Policy. No sanction had been issued under the other two above.

It was CM's and his view, that the fact that these had been previously dealt with via investigation or through management discussion, and no action taken, they should not be reference to or considered as part of today's Disciplinary appeal.

The disciplinary was in relation to solely the events of 18<sup>th</sup> April 2014, and he asked the Panel to gratefully give this point due consideration.

In terms of a response to the incidents that day, CM had stated when he was previously interviewed, that his actions on the above date were as a result of an overdose of the prescribed drug diazepam and alcohol. This overdose occurred after CM returned home after a meal out with his wife where he consumed wine (2 glasses) and after visiting his father.

CM had taken his normal dose of diazepam ie 5mg upon going to bed, but he doubled this dose upon waking up in the night restless, confused and in a panic, because he could not sleep before a day's work.

NB stated that this combination had affected CM's ability to function normally, influencing his co-ordination, balance and vision, all of which were clearly captured in the CCTV footage. All this took place however, in the first hour he was in work, and he stayed in work all day. He was also there that day in the capacity of a



painter and decorator, rather than dealing with members of the public or box office enquiries.

Medical factsheets outlined the recognised side effects of diazepam when taken with alcohol, as memory problems, unusual behaviour, drowsiness and problems with co-ordination. Diazepam was also known to enhance the effects of alcohol and this is what CM experienced.

CM had been prescribed the above drug, as he was being treated by his GP for anxiety and depression, some months prior to 18<sup>th</sup> April.

This condition had been caused by his father having been diagnosed with motor neurone disease, and whose health was deteriorating rapidly over a period of months. Unfortunately as confirmed earlier in proceedings, CM's father had sadly passed away as a result of the illness.

Medical advice had been sought from CM's GP, with regards to the events of 18<sup>th</sup> April, and following the initial interview, his GP had presented CM with a letter of explanation of the likely effect of mixing his medication with even a relatively small amount of alcohol.

His GP was offered sight of the CCTV footage upon which to comment, but refused to do so for legal reasons. However, a letter was included in the file from his GP at B3, confirming that the medication he had taken had almost certainly been the problem for the inordinate length of time he had taken to key in the code to gain access to main parts of the building, combined with the alcohol he had also consumed the night before.

NB confirmed CM was also being treated for Roscea, a skin condition with symptoms that included frequent flushes, redness of the face, like sunburn and flaky skin. This condition could be unsightly and distressing, and people with this were often accused as having a drink problem because of these visible symptoms.

With regard to some points of clarification, debate had taken place regarding whether or not CM was fit to attend work on the day in question.

NB stated that there was an issue here though, on whether CM had an alternative, as to their knowledge there was no protocol or procedure in place, for cases of cover to be arranged at short notice or in the case of emergency. There was no intent in CM having purposely consumed excess alcohol that would compromise him turning up for work, and he hadn't anyway. His condition on 18<sup>th</sup> April had been due to the negative effect of the alcohol and the drug having been mixed

When enquiries had been made with the Manager of the Grand Pavilion, this had confirmed that he had not looked at his Mobile phone on 18<sup>th</sup> April until 12.30pm. So even if CM had contacted the Manager to confirm he couldn't come in, there would have been no protocol in place for someone to open the building in CM's absence at the appropriate time, or possibly even later in the day. There was no known contingency for this.

NB said that he was saying this, as statements given in the file had confirmed that the building had been opened late that day, and this had an impact on other staff working in the building that day such as contractors and cleaners. This would have had worse repercussions though if CM had not come in on this date.

He added that there had also been incidents on several occasions where staff who had given statements contained in the file, had themselves opened late previously without any address.

It had been alleged that CM had ignored members of the public, and this had been shown in the CCTV footage. However HC in her statement at C8 page 56 of the file had witnessed CM dealing with members of the public (which they believed were to be the women with the two children) during which nothing untoward had been noticed.

NB added that it had been alleged that CM had failed to report the damage that had occurred to the box office door. However, the CCTV footage showed that when CM was closing up the building, this also showed that he closed this door without any problems, so he was unaware the door had been damaged at this time. There had been no evidence of pieces of wood on the floor either, least not from CCTV images shown.

There were no questions from AT or SP on the submission of NB's case on behalf of the Appellant CM, and the Chairperson then invited CM to present his case.

He opened by saying that he had been very embarrassed upon watching himself on the DVD's played at today's meeting, as he could not recognise that person as himself. He apologised to Members for his condition in work that morning on 18 April.

He confirmed that he had been devastated upon hearing that his father was ill, and of his subsequent death, as his father had been the bed rock of the family in terms of support for his mother, sister and himself.

He had been a very loving family man, who helped anyone at anytime and he had always been there for his family and due to this he had left a great void, and was the figurehead of the family.

He had been as strong as an ox both physically and mentally during the majority of his life, but then he had been struck down by a terrible illness after coming off a cruise.

At this time his father had felt under the weather, and thought it was probably nothing though he decided to seek a medical opinion. He was subsequently admitted into hospital where they run some tests on him, including a CRT and CAT scan, as well as extensive blood tests.

He was then referred to a specialist for respiratory conditions in Morriston hospital, where finally it was tragically revealed that he was diagnosed with the terminal illness Motor Neurone disease, just prior to Xmas.

By March, 3 months after being diagnosed and 6 months after first feeling unwell, CM advised that his father's weight had plummeted to just 6 stone, and he had trouble breathing.

The house had been turned into virtually a hospital setting CM advised, with a special bed being provided for him, as well as a stairlift, nebuliser and all other equipment and medication. His mother had to feed his father at this time through a tube straight into his stomach.

After 5 months of first becoming ill, CM advised that his father could no longer speak, though he was still to a point mobile, this was in May. His condition then though reached critical point and at the end of June he had to be re-admitted into hospital.

CM stated that the last time he seen his father, he was in the critical ward of the POW hospital, Bridgend. The nursing staff's mannerisms were noticeable showing concern regarding his condition, and CM said that he remembers feeling his father's hands and they were very cold. He was fighting to breath and he looked in a pitiful condition. The equipment that he was connected to was helping him breath. The last thing he remembered CM confirmed, was his father shaking his head as he and family left. CM confirmed he was devastated at this time.

He confirmed that he worked right through the period his father had been ill, and at no time did the Council or management at the Grand Pavilion enquire if he was okay. There was no duty of care shown by them he added, other than being offered WGCADA for alcohol dependence.

To conclude his submission, CM advised that it was for the above reasons that he had been under considerable stress for which he had resorted to drinking perhaps more than he should have and taking medication at the same time, which subsequently had resulted in the events of 18 April. He stressed to the Panel, that kicking out at furniture etc, was totally out of character and he obviously apologised for his actions on the morning of the above date.

JB asked CM if he was consuming alcohol on a regular occurrence during the time he was being prescribed medication for stress/depression.

CM replied that he did consume alcohol occasionally but not in large quantities, and the medication he only took as and when required. He had felt poorly on 17 April in the evening and that's when he took a double dose of diazepam

JB asked CM how much alcohol he consumed on the evening of 17 April, bearing in mind that he should not have mixed this with the taking of his medication.

CM replied that he had consumed 2 glasses of wine that evening.

JB sought confirmation from CM that he was the only person working in the Grand Pavilion on 18 April that could have de-activated the alarm to gain access into the building and other various rooms there.

He replied that this was the case. He added though, that de-activating the alarm was trickier than it appeared on CCTV, as it was done by a process of different bleeps, and the footage didn't confirm this as it was visual without no sound attached.

JB asked if anyone could have assisted him in de-activating this alarm system.

CM replied that no one could have assisted him in doing this.

JB asked if anyone could have assisted him in gaining access into the main office.

CM advised that other people could help him with this and they did on the day in question.

The Legal Officer asked if there was a set process in place for him to phone in confirming he would not be attending work for any reason, such as sickness absence.

CM confirmed that he was not aware of any, and that therefore the building would not be opened until the Manager answered his phone to the absence call. If he didn't answer the call the building would open late, ie after he had picked it up from his phone answer machine facility.

NB added that there were 2 Duty Managers one of which was CM, and they covered shifts at the building between them. On the day in question, NB added that someone had phoned the Manager of the Grand Pavilion to confirm that CM would be arriving late into work that day, however, he hadn't picked up the message on his mobile until later that day. NB further added that CM had not phoned his Manager or the other Duty Manager the night before, as he had planned to come into work the next day as normal. NB clarified also, that he came to work on the 18 April to do some painting and decorating and to open up for the Cleaners and Catering contractors, as the box office was not open that day in any event.

JB pointed out that it had been alleged that CM had an unblemished work record, however, this was not in fact the case.

NB replied that though CM may have previously been the subject of a number of investigations, no sanctions had previously been made against him, other than under the Sickness Absence Policy as was referred to earlier in the course of debate.

HW advised those present that this was not in fact the case.

She confirmed that CM had previously been the subject of a disciplinary investigation in 2008, due to a failure by him to secure the Pavilion building, not taking appropriate action during the course of his duties to protect the safety of the public, and for errors associated with the handling of cash. He had received a first written warning as a result of these actions.

In 2009 CM had received then a final written warning, as he failed to advise his Manager that he had received a Police Caution for being in the possession of a Class B drug.

HM finally added that in 2013, CM had failed to adhere to certain policies and procedures in place at the Grand Pavilion. This had resulted in a Chef being locked in the kitchen there, further cash handling errors. These resulted in a further investigation taking place under the Council's Capability at Work Policy, but the investigation did not proceed to a Hearing stage and was subsequently therefore signed off after a period of 3 months from its commencement.

SP advised the Panel, that she had not previously been aware of these previous investigations, and therefore confirmed, that they had not formed part of her investigation and subsequent determination.

The Chairperson at this point in the meeting asked both parties to sum up their cases, beginning with NB/CM

NB advised that CM wished to express disappointment in his actions on 18 April whilst working in the Grand Pavilion, and wished to stress to the Panel that these were not a true reflection of him as a person neither when inside or outside of work.

The incident had occurred when he was at a low in his private life and was having treatment to try and deal with these issues. CM had never at any point used his father's illness as an excuse for under performing in work, and his undoing was just as a result of a mistake of doubling-up on medication and not realising the repercussions of this, when combined with consuming a relatively small amount of alcohol. He had not used his father's illness as an excuse for the way he had been on 18 April.

NB felt it important to point out, that no member of staff present on the day in question, felt it necessary to make a complaint, and no complaints were received against CM from members of the public.

It was evident from statements in the pack, that those who were present that day in the Grand Pavilion, had confirmed that CM was not aggressive to anyone, but rather more frustrated with himself.

NB therefore asked the Panel to consider, based on what had been heard in response to the incident, to consider giving a sanction other than dismissal to CM.

The Chairperson then asked Management/Investigating Officer to sum up their case.

SP referred the Panel to B1 and pages 3 to 6 of the file.

In terms of maliciously damaging property belonging to the Authority, she felt that CCTV footage had confirmed that CM had kicked a desk in the main office as well as the lower door of the box office, the latter having to be subsequently repaired. The incidents here had not been reported even though there had been damage to the box office door as a result of his actions. He also had thrown keys in the main office.

He had subsequently not denied the allegations, but could not recall either kicking down the door or the incident in the office.

These actions had been deemed as gross misconduct.

In terms of allegation two, of CM being deemed incapable at work through an excess of alcohol or illegal drugs, it was evident from the CCTV footage and witness statements in the file, that CM was in an unfit state on 18<sup>th</sup> April to adequately undertake his duties for the reasons expressed earlier in the meeting ie the mixture of alcohol and prescribed drugs the night before. Though the Officer Panel had taken on board that CM was under stress and due to this was receiving medication, he had informed the Panel that he was aware of the requirement to mix this medication with alcohol.

Given the evidence presented, the Panel therefore concluded this to be gross misconduct.

In respect of deliberately and repeatedly failing to adhere to policies, procedures and codes of conduct of the Authority, SP confirmed that CM had been spoken to previously about the importance of opening the building on time, however, CCTV evidence confirmed that he was late opening up on 18 April. The reason for this he had explained, was due to him consuming a combination of alcohol and medication on the evening prior to his shift, with the medication having been prescribed to help CM sleep whilst he was dealing with his family problems. The Panel's view was that his behaviour in respect of this allegation was a repeated failure to comply with policy, and was upheld on the basis that his action was considered as misconduct.

With regard to the next allegation of bringing the Authority into disrepute, the Panel had been satisfied that CM as the Duty Manager for the building, had a responsibility to behave appropriately when dealing with customers and external providers who were present at the Pavilion on the day in question. SP clarified that from the information provided during the hearing that CM's conduct fell short of this requirement, and as a result the Panel accepted that his behaviour on the day could have brought the Authority into disrepute. This allegation was therefore upheld and was considered as gross conduct.

SP the confirmed the Panel's decision on the 6<sup>th</sup> allegation, seriously and deliberately violating Health and Safety rules and standards which cause or could cause risk to the individual, other employees or the public. The CCTV footage showed CM leaving the premises unattended when he was in charge of the building, as well as leaving the keys to the building and rooms located there, with a third party. This was a clear breach of his responsibilities. He also presented himself at work in an unfit state, which was a serious violation of the Health and Safety rules as CM was deemed to be incapable of dealing with any incident, accident or emergency due to his condition. The Panel accepted this allegation as proven, and considered this once more to be an act of gross misconduct.

As this concluded the evidence submitted by all parties, including any questions, the Chairperson confirmed that the Panel would now retire to determine the matter.

Upon their return, it was

**RESOLVED:** The Panel have considered the documentation contained in the Appeal pack, including the CCTV footage. Members had listened to the oral submissions made on behalf of Management and the Appellant. Having taken these into account and reviewed the evidence, the Panel dismissed the appeal and upheld the dismissal. Members felt that there was a reasonable investigation and that the dismissal was a reasonable sanction.

Based on the Appellant's admissions as well as the evidence gathered through the investigation, the Panel found the five allegations made as set out in the letter of 21<sup>st</sup> October 2014. The Appellant had today raised the issue that he did not find that these issues materially affected any of the allegations. To confirm therefore, the Panel made the following findings:-

1. CM maliciously damaged property belonging to the Authority. This was borne out by evidence of the damage to the door caused by the Appellant, regardless of whether the Appellant noticed this damage at the time it was caused.
2. CM was deemed incapable of work through excess alcohol or illegal drugs. The Appellant accepted that the medication he took combined with the alcohol he consumed the previous day caused his condition. This makes out this allegation which was considered as gross misconduct.
3. CM deliberately and repeatedly failed to adhere to policies, procedures, codes or conduct of the Authority. This is made out following the failure to open the building on time and is misconduct.
4. CM brought the office into disrepute. This related to the Appellant's interaction with customers and external contractors, including Just Perfect Catering. This is made out and is gross misconduct.
5. CM seriously and deliberately violated health and safety rules and standards which could cause risk to the individual, other employees or the public. This is made out following the Appellant's decision to leave the building unattended whilst leaving the keys with a third party and the Appellant's condition rendering him unfit to deal with any incident that could have occurred. This was gross misconduct.

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In totality, the above makes out gross misconduct and as such, when considering the sanction the starting point is summary dismissal.

The grounds for the appeal were that this sanction was too severe given the Appellant's particular circumstances. The Panel had considered the mitigation and the points raised in the Appeal.

It accepted that the Appellant's father was unwell during the period in question and Members were very sympathetic to this. However, there was not a particular incident which triggered the events in question. In addition, the Appellant had been offered appropriate support and counselling to deal with any issues and appropriate policies were in place, which the Appellant could have followed. Finally, the Appellant was aware that he should not consume alcohol with the medication. In considering this point, all of the available medical evidence was taken into account.

The Panel did not accept that the Appellant had an exemplary record, and it heard evidence that he had in fact received previous disciplinary sanctions (including a first and final written warning). The Panel accepted that these were spent and it received legal advice regarding the 2008 case of Airbus v Webb.

Regardless of the previous warnings the Panel felt that the facts of the current disciplinary were sufficient in themselves to constitute summary dismissal. It was concerned that the Appellant's assertion in his appeal letter that he had never received a disciplinary sanction was a deliberate false statement and further breached the trust and confidence required in an employee.

Having considered the above, as well as what is considered to be necessary and proportionate, the Panel considered that the appropriate sanction remains summary dismissal.

The meeting closed at 1.00 pm