

## CITY AND COUNTY OF SWANSEA

### NOTICE OF MEETING

You are invited to attend a Meeting of the

### APPEALS & AWARDS COMMITTEE

**At:** Committee Room 2, Civic Centre, Swansea

**On:** Friday, 7 November 2014

**Time:** 9.30 am

### AGENDA

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|----------|---|--------------|
| <b>1</b> | <b>Apologies for Absence.</b>   |              |
| <b>2</b> | <b>To receive Disclosures of Personal and Prejudicial Interests.</b>                              | <b>1</b>     |
| <b>3</b> | <b>Minutes.</b>   | <b>2 - 3</b> |
|          | To receive the Minutes of the Meeting of the Appeals and Awards Committee held on 3 October 2014. |              |
| <b>4</b> | <b>Appeal Hearing Order of Proceedings.</b>   | <b>4</b>     |
| <b>5</b> | <b>Exclusion of the Public.</b>   | <b>5 - 8</b> |
| <b>6</b> | <b>Grievance Appeal by H K.</b>   |              |



**Patrick Arran**  
**Head of Legal, Democratic Services & Procurement**  
**Friday, 31 October 2014.**

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**Contact: Suzanne Collins – 01792 637291**

## APPEALS & AWARDS (7)

### Councillors

#### Labour Councillors: 5

June E Burtonshaw	Hazel M Morris
Jan P Curtice	Des W W Thomas
Joe A Hale	

#### Liberal Democrats Councillor: 1

Richard D Lewis	
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#### Independent Councillor: 1

Keith E Marsh	
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### Officers:

Sharon Heys	Legal
Janet Short	Human Resources
Carolyn Thorne	Human Resources
Debra Yeates	Human Resources
Suzanne Collins	Democratic Services Officer

### Total Copies Needed:

16
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### Disclosures of Personal Interest from Members

To receive **Disclosures of Personal Interest from Members** in accordance with the provisions of the Code of Conduct adopted by the City and County of Swansea. You must disclose orally to the meeting the existence and nature of that interest.

**NOTE:** You are requested to identify the Agenda Item / Minute No. / Planning Application No. and Subject Matter to which that interest relates and to enter all declared interests on the sheet provided for that purpose at the meeting.

1. If you have a **Personal Interest** as set out in **Paragraph 10** of the Code, you **MAY STAY, SPEAK AND VOTE** unless it is also a Prejudicial Interest.
2. If you have a Personal Interest which is also a **Prejudicial Interest** as set out in **Paragraph 12** of the Code, then subject to point 3 below, you **MUST WITHDRAW** from the meeting (unless you have obtained a dispensation from the Authority's Standards Committee)
3. Where you have a Prejudicial Interest you may attend the meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, **provided** that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. In such a case, you **must withdraw from the meeting immediately after the period for making representations, answering questions, or giving evidence relating to the business has ended**, and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration (**Paragraph 14** of the Code).
4. Where you have agreement from the Monitoring Officer that the information relating to your Personal Interest is **sensitive information**, as set out in **Paragraph 16** of the Code of Conduct, your obligation to disclose such information is replaced with an obligation to disclose the existence of a personal interest and to confirm that the Monitoring Officer has agreed that the nature of such personal interest is sensitive information.
5. If you are relying on a **grant of a dispensation** by the Standards Committee, you must, before the matter is under consideration:
  - (i) disclose orally both the interest concerned and the existence of the dispensation; and (ii) before or immediately after the close of the meeting give written notification to the Authority containing -
    - details of the prejudicial interest;
    - details of the business to which the prejudicial interest relates;
    - details of, and the date on which, the dispensation was granted; and
    - your signature

# Agenda Item 3

## CITY AND COUNTY OF SWANSEA

### MINUTES OF THE APPEALS & AWARDS COMMITTEE

HELD AT COMMITTEE ROOM 1 ON FRIDAY, 3 OCTOBER 2014  
AT 9.30 AM

**PRESENT:** Councillor J E Burtonshaw (Vice Chair) Presided

<b>Councillor(s)</b>	<b>Councillor(s)</b>	<b>Councillor(s)</b>
J P Curtice J A Hale	R D Lewis K E Marsh	H M Morris

**Officers:**

S Heys - Principal Lawyer  
C Thorne - Principal HR Officer  
K Miles - Legal Services  
S Collins - Democratic Services

21 **APOLOGIES FOR ABSENCE.**

There were no apologies for absence.

22 **DISCLOSURES OF PERSONAL AND PREJUDICIAL INTERESTS.**

In accordance with the Code of Conduct adopted by the City and County of Swansea, no interests were declared.

23 **MINUTES.**

**RESOLVED** that the Minutes of the meeting of the Appeals and Awards Committee held on 29 August 2014 be approved as a correct record.

24 **APPEAL HEARING ORDER OF PROCEEDINGS.**

The appeal hearing order of proceedings were **NOTED**.

25 **EXCLUSION OF THE PUBLIC.**

The Committee were requested to exclude the public from the meeting during the consideration of the item of business identified in the recommendations to the report

on the grounds that they involve the likely disclosure of exempt information as set out in the exclusion paragraph of 12a of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007 relevant to the items of business as set out in the report.

The Committee considered the public interest test in deciding to exclude the public from the meeting for the items of business where the public interest test was relevant, as set out in the report.

It was **RESOLVED** that the public be excluded for the following item on the Agenda.

**(CLOSED SESSION)**

26 **SICKNESS APPEAL BY K H.**

The Appeals and Awards Committee heard a Sickness Appeal by KH.

**RESOLVED** that the Sickness Appeal be dismissed.

The meeting ended at 9.46 am.

**CHAIR**



## **GRIEVANCE, HARASSMENT & REDUNDANCY APPEALS**

### **THE APPEAL HEARING PROCEDURE**

#### **1. PROCEDURE DURING APPEAL HEARING**

- 1.1 **The Appellant (and/or his/her representative) will present his/her case first,** and witnesses will be called as appropriate.
- 1.2 The Investigating Officer[s] will have the opportunity to ask questions of the Appellant, his/her representative, and witnesses.
- 1.3 The Panel may ask questions of the Appellant, their representative and witnesses.
- 1.4 **The Investigating Officer[s], assisted by a HR Officer, will then present their case** in the presence of the Appellant and his/her representative, and may call witnesses.
- 1.5 The Appellant (and/or representative) will have the opportunity to ask questions of the Investigating Officer[s] on the evidence given, and any witnesses who are called.
- 1.6 The Panel may ask questions of the Investigating Officer[s] and witnesses.
- 1.7 **The Appellant, or representative, will have the opportunity to sum up his/her case.**
- 1.8 **The Investigating Officer[s] will have the opportunity to sum up the case.**
- 1.9 As a matter of course, any witnesses will withdraw immediately after giving their evidence and remain separate from those waiting to give evidence. If, for some exceptional reason, any witnesses remained in the hearing they will withdraw at this point. The management side, the Appellant and his/her representative will also withdraw at this point.

#### **2. DECISION OF THE APPEAL PANEL**

- 2.1 The Panel will make their decision in private.
- 2.2 Before making their decision, the Panel may recall any or all of the previous participants to the hearing, to clear points of any uncertainty, providing the recall takes place in the presence of all parties present at the Appeal before adjournment. It may also be necessary for the Panel to recall any or all of the participants during the adjournment.
- 2.3 The Panel may give their decision orally at the time of the hearing or defer their decision for further consideration. In any case, the decision of the Panel will be transmitted to all parties in writing within 14 working days of the Appeal.
- 2.4 If the Appellant has exhausted the internal procedures, he/she has the right to refer the case to an Employment Tribunal.
- 2.5 If the decision of the Panel is to reinstate an Appellant whom the Responsible Officer has dismissed, the reinstated employee will be entitled to normal pay for the period between the original dismissal and the date of the reinstatement. Such pay will be the pay receivable at the date of dismissal which could be full pay, half-pay or no pay.

## Report of the Head of Legal, Democratic Services & Procurement

### Appeals & Awards Committee – 7 November 2014

#### EXCLUSION OF THE PUBLIC

<b>Purpose:</b>		To consider whether the Public should be excluded from the following items of business.
<b>Policy Framework:</b>		None.
<b>Reason for Decision:</b>		To comply with legislation.
<b>Consultation:</b>		Legal.
<b>Recommendation(s):</b>		It is recommended that:
<b>1)</b>	The public be excluded from the meeting during consideration of the following item(s) of business on the grounds that it / they involve(s) the likely disclosure of exempt information as set out in the Paragraphs listed below of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007 subject to the Public Interest Test (where appropriate) being applied.	
	<b>Item No.</b>	<b>Relevant Paragraphs in Schedule 12A</b>
	6	12, 13.
<b>Report Author:</b>		Democratic Services
<b>Finance Officer:</b>		Not Applicable
<b>Legal Officer:</b>		Patrick Arran – Head of Legal, Democratic Services and Procurement (Monitoring Officer)

#### 1. Introduction

- 1.1 Section 100A (4) of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007, allows a Principal Council to pass a resolution excluding the public from a meeting during an item of business.
- 1.2 Such a resolution is dependant on whether it is likely, in view of the nature of the business to be transacted or the nature of the proceedings that if members of the public were present during that item there would be disclosure to them of exempt information, as defined in section 100I of the Local Government Act 1972.

## **2. Exclusion of the Public / Public Interest Test**

- 2.1 In order to comply with the above mentioned legislation, **Council / Cabinet / Committee** will be requested to exclude the public from the meeting during consideration of the item(s) of business identified in the recommendation(s) to the report on the grounds that it / they involve(s) the likely disclosure of exempt information as set out in the Exclusion Paragraphs of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007.
- 2.2 Information which falls within paragraphs 12 to 15, 17 and 18 of Schedule 12A of the Local Government Act 1972 as amended is exempt information if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 2.3 The specific Exclusion Paragraphs and the Public Interest Tests to be applied are listed in **Appendix A**.
- 2.4 Where paragraph 16 of the Schedule 12A applies there is no public interest test. Councillors are able to consider whether they wish to waive their legal privilege in the information, however, given that this may place the Council in a position of risk, it is not something that should be done as a matter of routine.

## **4. Financial Implications**

- 4.1 There are no financial implications associated with this report.

## **5. Legal Implications**

- 5.1 The legislative provisions are set out in the report.
- 5.2 Councillors must consider with regard to each item of business set out in paragraph 2 of this report the following matters:
  - 5.2.1 Whether in relation to that item of business the information is capable of being exempt information, because it falls into one of the paragraphs set out in Schedule 12A of the Local Government Act 1972 as amended and reproduced in Appendix A to this report.
  - 5.2.2 If the information does fall within one or more of paragraphs 12 to 15, 17 and 18 of Schedule 12A of the Local Government Act 1972 as amended, the public interest test as set out in paragraph 2.2 of this report.
  - 5.2.3 If the information falls within paragraph 16 of Schedule 12A of the Local Government Act 1972 in considering whether to exclude the public members are not required to apply the public interest test but must consider whether they wish to waive their privilege in relation to that item for any reason.

**Background Papers:** None



## Public Interest Test

No.	Relevant Paragraphs in Schedule 12A
<b>12</b>	<p><b>Information relating to a particular individual.</b></p> <p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 12 should apply. His view on the public interest test was that to make this information public would disclose personal data relating to an individual in contravention of the principles of the Data Protection Act. Because of this and since there did not appear to be an overwhelming public interest in requiring the disclosure of personal data he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
<b>13</b>	<p><b>Information which is likely to reveal the identity of an individual.</b></p> <p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 13 should apply. His view on the public interest test was that the individual involved was entitled to privacy and that there was no overriding public interest which required the disclosure of the individual's identity. On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
<b>14</b>	<p><b>Information relating to the financial or business affairs of any particular person (including the authority holding that information).</b></p> <p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 14 should apply. His view on the public interest test was that:</p> <ul style="list-style-type: none"> <li>a) Whilst he was mindful of the need to ensure the transparency and accountability of public authority for decisions taken by them in relation to the spending of public money, the right of a third party to the privacy of their financial / business affairs outweighed the need for that information to be made public; or</li> <li>b) Disclosure of the information would give an unfair advantage to tenderers for commercial contracts.</li> </ul> <p>This information is not affected by any other statutory provision which requires the information to be publicly registered.</p> <p>On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>

No.	Relevant Paragraphs in Schedule 12A
15	<p><b>Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</b></p>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 15 should apply. His view on the public interest test was that whilst he is mindful of the need to ensure that transparency and accountability of public authority for decisions taken by them he was satisfied that in this case disclosure of the information would prejudice the discussion in relation to labour relations to the disadvantage of the authority and inhabitants of its area. On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
16	<p><b>Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</b></p>
	<p>No public interest test.</p>
17	<p><b>Information which reveals that the authority proposes:</b></p> <p><b>(a) To give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</b></p> <p><b>(b) To make an order or direction under any enactment.</b></p>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 17 should apply. His view on the public interest test was that the authority's statutory powers could be rendered ineffective or less effective were there to be advanced knowledge of its intention/the proper exercise of the Council's statutory power could be prejudiced by the public discussion or speculation on the matter to the detriment of the authority and the inhabitants of its area. On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
18	<p><b>Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime</b></p>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 18 should apply. His view on the public interest test was that the authority's statutory powers could be rendered ineffective or less effective were there to be advanced knowledge of its intention/the proper exercise of the Council's statutory power could be prejudiced by public discussion or speculation on the matter to the detriment of the authority and the inhabitants of its area. On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>