



GREAT YARMOUTH
BOROUGH COUNCIL

Appeal Committee

Minutes

Monday, 16 August 2021 at 10:00

PRESENT:-

Councillor Bensly (in the Chair); Councillor Lawn, D Hammond, Hanton, Robinson-Payne & Thompson.

Councillor Wainwright attended as a substitute for Councillor Waters-Bunn.

Mrs S Tate (Head of Organisational Development), Mrs N Turner (Housing Director), Mrs S Wintle (Corporate Services Manager), Mr A Brett (Solicitor, nplaw) & Mrs C Webb (Executive Services Officer).

Mr J Dunning (Unison) & Mr D Kinney (Applicant).

1 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Waters-Bunn.

2 DECLARATIONS OF INTEREST

There were no declarations of interest declared at the meeting.

3 APPEAL AGAINST DISMISSAL

The Chairman opened the meeting and welcomed those present. The Chairman

reported that the meeting would be closed to the public and be held in private. The Chairman requested that a round robin of introductions be undertaken prior to the commencement of the meeting.

The Chairman asked Darren Kinney to confirm that he had received all the required documents prior to the meeting. Darren Kinney confirmed that he had received all the documents.

The Chairman reported that Darren Kinney had been employed as an Estates Caretaker at Great Yarmouth Borough Council from December 2016 to the 25 June 2021 when he was dismissed from employment following a disciplinary hearing. On the 8 July 2021, Darren Kinney had sent an email stating that he wished to appeal against his dismissal. Darren Kinney had not submitted any supporting information or provided any new evidence as part of his appeal.

The following allegations had been reviewed at the disciplinary hearings of the 8 & 25 June 2021:-

Allegation 1 - Falsification of a GP fit note. Darren Kinney had admitted to this fraudulent action.

Allegation 2 - Falsifications of timesheets.

Allegation 3 - Falsification of worksheets, this related to starting work had been completed which was not the case as work was never undertaken.

Allegation 4 - Lone worker device being used incorrectly.

Allegation 5 - failure to follow management instructions, including non-engagement and not adhering to Council's values and Behaviours as per the Constitution.

Jonathan Dunning reported that Darren Kinney had not involved Unison in his case until today as he had been off sick with mental health issues but was now feeling better and with a clearer head had asked for Unison assistance. However, it should be considered as a mitigating factor that Darren Kinney was not in a good place mentally to attend the previous hearings by himself.

Darren Kinney informed the Committee that he held his hands up and admitted falsifying the GP fit notes as he had felt under pressure from his line manager to submit them to the Council when his Doctor was on holiday. He was afraid that he would not get paid Statutory Sick Pay (SSP) if he did not submit a fit note and he was worried that he had bills to pay.

Darren Kinney reported that he got confused when filling in his timesheets as they were only detailed as Monday to Friday without a specific date against each line. He informed the Committee that his line manager had got him help but as the help had not being sustained, it had not benefitted him in the long term.

Darren Kinney reported that in regard to the gritting issue, that he would usually receive a message the day before or on the day that gritting was required but that it was the usual practice not to put grit over grit which was already present on the stairs as this would pose a slip hazard.

Darren Kinney reported that he had an issue with his Skyguard device in that it would not hold charge for very long and therefore, he could not have it turned on all of the

time he was working. He was afraid that if he did not have it turned on all the time, that he would get into trouble with his line manager so he used to leave it plugged in at the hallway at his home, as he lived in the immediate area to where he worked. The faulty Skyguard was replaced with a new device.

Jonathan Dunning referred to the Management Statement of Case and highlighted that the issues with Darren Kinney's performance, which he had ultimately been dismissed for, had been allowed to go on for a sustained period of time by management. In his view, this should not have been allowed to happen and Darren Kinney should have been managed much better. The discrepancies with his timesheets and worksheets should have been investigated and correlated far earlier than had happened and if this had taken place, the charge of gross misconduct against him might have been avoided.

Jonathan Dunning highlighted the concerns raised by Carley Dawson-Jones, Darren Kinney's line manager, regarding Darren Kinney's ability to follow procedure and his standard of work. In particular, the incident which had occurred on 18 December 2020 when Carley Dawson-Jones was in the store waiting for Darren Kinney to arrive when Darren Kinney had recorded on his worksheet that he was already at the store at that time. This should have alerted Carley Dawson-Jones that something was amiss and she should have had a quiet word with Darren Kinney immediately after this episode to find out what was going on. As a result of this lack-lustre management style, Darren Kinney was of the belief that he had a level of autonomy as to how and when he did his job.

Jonathan Dunning reported that Darren Kinney was seeking re-employment and that if he had been managed correctly, he would not be sitting in front of the Committee today.

Councillor D Hammond noted that if a resident had been injured as a result of non-gritting of the stairs that the Council might have been held liable. She was also concerned that the location of his work patch was so close to his home. Darren Kinney reported that he only ever popped into his house whilst on duty to use the toilet.

Councillor Wainwright asked for clarification regarding the falsification of the GP fit notes and the issue of obtaining a PDF copy via his phone. He asked if Darren Kinney had ever received an original GP fit note to submit to the Council when his GP returned from leave. Darren Kinney informed the Committee that as soon as he had received an original GP fit note, that he had given it to his line manager and apologised to her for his previous wrong-doing.

Darren Kinney reiterated that he had not intended to defraud the Council, he had submitted the falsified fit notes to ensure that he was able to claim SSP as he had bills to pay.

Councillor Hanton asked for confirmation that Darren Kinney had received regular 1-1's with his line manager and that after he had raised his concerns at these meetings that he had been offered help to complete his timesheets. He also asked whether concerns had been raised with Darren Kinney's standard of work in general.

Darren Kinney reported that he cleaned his block to a good standard. However, after a recent inspection where he had been scored a 2, by a different inspector, when he usually scored a 3 or 4, he had asked for a re-inspection by his line manager, who

scored him a 4.

Councillor Robinson-Payne asked Darren Kinney how long had he worked at the Council and how long had he had issues filling in his timesheets. Darren Kinney answered that he had worked for the Council for 4-5 years and had experienced difficulties filling in both the electronic and paper forms of the timesheets.

The Housing Director addressed the Committee and reported that Members had received the Management Statement of Case which had been produced in response to Darren Kinney's appeal of the sanction to dismiss him, in relation to the falsification of timesheets. I

The Housing Director reported that she would not go into the full detail of the five allegations, the outcome of the disciplinary investigation and hearings, as the statement of case provided a comprehensive record of this, but instead would focus on her response to Darren Kinney's appeal and, in doing so, she would refer to the information and evidence within the Management Statement of Case.

The Housing Director referred the Committee to page 3 of her report, which sets out Darren Kinney's appeal against the sanction of dismissal in relation to the falsification of his timesheets. Darren Kinney alleged that he was never warned of the disciplinary consequences of this and that to go straight to dismissal, was in his view, inconsistent and unfair. In his appeal statement, Darren Kinney also referred to the allegations made in relation to his use of the lone working device, Skyguard.

The Housing Director reported that in relation to the allegation of falsification of timesheets, there were two main sources of evidence. Firstly, the Skyguard data and secondly, the log-in record for Darren Kinney's laptop. In relation to the Skyguard data, Appendix B, of the statement of case evidenced times when Darren Kinney's Skyguard reflected different working times to those recorded by him when he logged into work and showed him off-patch at home, when he should have been working, as well as evidencing times when Darren Kinney recorded a start time before he arrived at his store which was not permitted.

The Housing Director reported that Darren Kinney's timesheet for the period 14 December 2020 to 8 January 2021, as detailed at page 48, evidenced the following examples of the falsification of his timesheet:-

18 December 2020, a start time of 8.28 am was shown, but this was when Darren Kinney was walking to the store, as evidenced by his line manager.

21 December 2020, a start time of 7.30 am was shown, but as detailed at page 36, Skyguard data showed that Darren Kinney arrived at his store at 7.48 am .

23 December 2020, a start time again of 7.30 am but Darren Kinney logged into work on his way to his store at 7.33 am and Skyguard showed his arrival at his store at 7.49 am and then at home at 11.23 am before his approved lunch time, then at 12.20 pm on site. He returned to his store at 2.14 pm remaining there until he finished at 3.30 pm.

The Housing Director reported that at the start of January 2021, Darren Kinney was working from home and asked to complete his eLearning modules. As detailed at page 39, Appendix B, highlighted the discrepancy in the times that Darren Kinney

logged onto his laptop and the times he recorded on his timesheet for the same period as detailed at page 48.

The Housing Director reported that examples of these discrepancies were:-

6 January 2021, Darren Kinney logged on to his PC at 2.44 pm and logged off at 4.59 pm. Timesheet showed that Darren Kinney started work at 7.30 am, having lunch between 12 and 12.30 pm and finishing at 3.30pm.

Darren Kinney recorded these same times again on his timesheet for 7 January 2021 but the log for his laptop showed he logged in at 8.20 am and logged off at 11.08 am.

8 January 2021, Darren Kinney did not log into his laptop, but he signed into and out of work and his timesheet showed he started work at 7.30 am, lunch 12-12.30 pm and finished at 3pm.

The Housing Director reported that based on the examples where the evidence of the times Darren Kinney was working and how they conflicted with the times that he recorded on his timesheet, which had been highlighted today, together with the other evidence presented to her, that she concluded that the allegation of deliberate falsification of timesheets was proven. The evidence showed that the fraudulent completion of timesheets was not a one-off or occasional occurrence. The Housing Director noted that Darren Kinney had not appealed her finding in this matter.

The Housing Director reported that in his appeal, Darren Kinney had stated that he had brought to the attention of his line manager, Carley Dawson-Jones's attention on several occasions that he was unsure of how to fill in his timesheets. Darren Kinney had on several occasions, over a sustained period of time, been advised and supported to ensure he was aware of how to complete his timesheets, as shown at page 24, and by the comment in Darren Kinney's 1-1 with his line manager on 29 January 2021, as detailed on page 57, that he had had 1-1 training on how to complete his timesheet. Darren Kinney was employed as an Estate Caretaker for over four years and the requirements to complete a timesheet had not changed over that period. Based on all the evidence before her, the Housing Director considered that Darren Kinney understood what was required to accurately complete his timesheet and there was no reason as to why he was unable to do so.

The Housing Director reported that Darren Kinney was advised of the implications of not completing his timesheet correctly and the notes of his 1-1 on 28th February 2020 stated that not booking out the time he had not worked could be treated as Gross Misconduct, as detailed on page 51 and point 7 of 1-1 action points brought forward from previous 1-1. Darren Kinney had used both paper and electronic timesheets to record the time worked; the paper timesheet used by Darren Kinney clearly stated that "Falsification of timesheets will be treated as gross misconduct", whilst the electronic timesheet stated that "Remember - deliberate falsification of timesheets is gross misconduct". Darren Kinney was employed for over four years by the Council and over that time, the requirements for the completion of timesheets had not changed. Based on all the evidence before her, the Housing Director was clear that Darren Kinney was warned of the disciplinary consequences of falsification of his timesheets.

The Housing Director reported that whilst Darren Kinney had stated in his appeal that his Skyguard had not worked properly, page 35 of the investigation showed that he was issued with a brand-new device on the 16 December 2020 which was checked and found to be working. As detailed on page 40, Darren Kinney's line manager had asked him on 27 January 2021, if he had any issues with his Skyguard and he had reported that there were no issues. His line manager did another check that day of the tracking and his Skyguard device was working correctly. On this basis, it was clear that the Skyguard was providing accurate data of Darren Kinney's location when there were discrepancies between Darren Kinney's Skyguard and timesheet.

The Housing Director reported that Darren Kinney's line manager had confirmed that she had undertaken many discussions with him regarding his conduct and use of the loan working device, and as part of that, Darren Kinney had been made aware of the implications of not using his Skyguard device correctly, as evidenced at page 35 of the investigation report. On page 59, the notes of Darren Kinney's 1-1 meeting on 29 January 2021 showed that Darren Kinney was clearly advised, that if things did not improve or there were further breaches of the lone working device requirements, or in relation to his conduct, that this could result in disciplinary investigation and/or a capability investigation. Based on all the evidence before her, the Housing Director was clear that Darren Kinney was warned of the disciplinary consequences of not using his Skyguard device appropriately.

The Housing Director reported that she had considered whether there were any mitigating or exceptional circumstances which should be taken into account in making her decisions on Darren Kinney's actions and the sanction which should be applied. The decision to dismiss Darren Kinney on the grounds of fraudulently completing timesheets reflected the seriousness of the offence and the fact that the evidence clearly showed it was not a one-off or occasional occurrence, but an ongoing pattern of behaviour. It also reflected the fact that Darren Kinney had had sufficient warning of the implications of not completing his timesheet accurately. Whilst Darren Kinney had been supported to complete his timesheet accurately, ultimately, it was his responsibility to accurately record his work times as to when he was and was not working.

In conclusion, the Housing Director reported that Darren Kinney was aware of the consequences of his actions yet did not pay any regard to them. He was supported to be able to complete his timesheets accurately and he was issued with a number of replacement Skyguard devices after reporting that they did not work correctly and on 16 December 2020 he was issued with a brand new device. This device was checked twice and shown to be working correctly. The discrepancies between Darren Kinney's timesheets and the Skyguard device was not the result of a faulty device.

The Housing Director reported that Darren Kinney had not appealed the sanction of dismissal in relation to the other two allegations where she found his actions to be gross misconduct but it would be remiss of her not to note today that Darren Kinney had apologised for his falsification of the GP fit notes.

Councillor Hanton asked for clarification as to what documents had been referred to the Police. The Housing Director reported that the falsification of the GP fit notes by Darren Kinney had been referred to the Police as fraud but, as yet, she had no

update from the Police.

Councillor Wainwright asked if any residents had complained about the standard of work carried out by Darren Kinney on his patch. The Housing Director referred to an incident on 08/06/2021 when it had been witnessed that Darren Kinney had left his barrow unattended which contained chemicals and equipment which was against regulations and deemed dangerous.

Councillor D Hammond asked whether the pandemic had added to the length of time it had taken management to undertake the disciplinary hearings for Darren Kinney which might be considered a mitigating circumstance considering his poor mental health. The Housing Director reported that Darren Kinney had been signed off sick during much of the pandemic but she agreed that the pandemic had slowed the disciplinary process.

Councillor Robinson-Payne asked the Housing Director if she had had any concerns when Carley Dawson-Jones took over as Darren Kinney's line manager from Lisa Lewis. The Housing Director reported that they might have different management styles.

Jonathan Dunning referred the Committee to page 6 of the Management Statement which detailed advice from the Medical Defence Union in bold type which management had used as part of their case when dealing with the falsification of the GP fit notes submitted by Darren Kinney and passed to the Police to investigate as fraud. Jonathan Dunning questioned whether the Medical Defence Union were deemed to be experts in this field.

Jonathan Dunning highlighted the number of concerns on a number of timesheets and why the issue had been unchallenged by management for such a long period of time as surely, there must have been enough doubt to warrant an earlier investigation before matters escalated out of hand completely. The Housing Director reported that the incident which had occurred on the 18 December 2020 had been a red flag for Carley Dawson-Jones and she had taken a more detailed look at Darren Kinney's timesheets and worksheets as a result. Skyguard data also clearly showed that no gritting of the stairs had been undertaken by Darren Kinney when he should have gritted them and that he had been in the vicinity of the stairs.

Jonathan Dunning asked if the Housing Director had taken Darren Kinney's mental health issues into consideration during the investigation. The Housing Director confirmed that she had taken this into account during her investigation.

Jonathan Dunning made his final statement to the Committee. It was clear to him that the management of Great Yarmouth Borough Council had failed as an employer to nip this problem in the bud which had led to Darren Kinney being allowed to operate as a maverick. Darren Kinney required strong management and regular help to fill out his timesheets and supervision to ensure that he was able to carry out his role of Estate Caretaker effectively. Darren Kinney had admitted to the falsification of the GP fit notes but this was not for financial gain but to ensure he received SSP whilst he was off sick with mental health issues. He requested that Darren Kinney be re-instated and allowed to resume his post at the Council. Jonathan Dunning reported that it was his assessment that allegation number 5 was a catch-all dealt with by the earlier allegations and should be withdrawn.

The Chairman asked Darren Kinney what he would do if he was re-instated. Darren Kinney responded that he would ask to be moved to a different patch away from his

home and for further help to get to grips with completing his timesheets.

The Housing Director reported that the evidence presented to the Committee today and contained in the management statement of case clearly demonstrated that Darren Kinney had deliberately falsified his timesheets to record times he was working, when he was not, in fact working. This was not a one-off or an occasional error in his timesheet or reflective of carelessness in completion of his timesheets and my decision to dismiss him on the basis of gross misconduct for falsification of timesheets reflected this. On this basis, I respectfully request that the Appeals Committee uphold my decision to dismiss Darren Kinney for fraudulently completing his timesheets.

The Housing Director, Darren Kinney and Jonathan Dunning left the meeting to allow the Committee to deliberate in private.

The Housing Director, Darren Kinney and Jonathan Dunning hereby returned to the meeting to hear the Committee decision in public.

The Chairman reported that in reaching their findings the Committee had noted the following:-

(i) The Committee noted the mental health issues but felt that they did not excuse these serious conduct issues.

(ii) The Committee felt that you were unconvincing in claiming not knowing how to fill in a time sheet correctly.

(iii) The Committee noted on the work sheets one example where the gritting had not been completed and was very concerned about the failure to grit when it had not been done and the danger this could cause to our residents.

(iv) The Committee were satisfied with the evidence of the lone worker device and how it had not been used correctly.

The Chairman reported that the first three charges are gross misconduct each of which would have been worthy of dismissal on their own.

The lone working charge was worthy of a final written warning in itself.

Overall the Committee accept the decision to uphold the Housing Director's decision to dismiss and the appeal is therefore dismissed.

The findings of the Committee are final and are in line with the Council's Disciplinary procedure. Mr Darren Kinney will receive written confirmation of this outcome within five working days.

RESOLVED:-

That the Committee finds as following:-

Allegation 1: The falsification of a GP Fit Note, this was admitted and in itself was worthy of dismissal for gross misconduct. The Committee feels that, and by your own admissions, you clearly knew this was wrong.

Allegations 2 and 3: Falsification of timesheets and worksheets. The Committee

agrees with the findings of the Housing Director and that these were worthy of gross misconduct.

Allegation 4: Use of lone worker device, the Committee agrees with the findings that it was not used correctly and that a final written warning, was appropriate.

Allegation 5, The Committee agreed with Jonathan Dunning,'s assessment that it was a catch all dealt with by the earlier allegations.

5 ANY OTHER BUSINESS

The Chairman reported that there was no other business being of sufficient urgency to warrant consideration at the meeting.

The meeting ended at: 14:00