

# **COUNCIL OF THE ISLES OF SCILLY**



## **Report of the STANDARDS COMMITTEE on the complaint against Cllr J D May by Cllr G Bilborough**

August 2008

A Meeting of the Council of the Isles of Scilly Standards Committee to hear the complaint was held on Wednesday 27 August 2008.

Chairman	Mr E Smith
Present	Cllr Mrs K M Bennett; Cllr B M Lowen; Cllr D Pearson; Cllr C R Thomas and Cllr J F Ticehurst.
Monitoring Officer:	Mr G Davey (Devon & Cornwall Police Authority)
Clerk	Mrs S Pritchard (Administration Officer)
Complaint reference	X/08/01
Investigation Report written by	Mr R Newman, dated 1 August 2008

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## The Complaint:

At the Annual Meeting of the Council of the Isles of Scilly held on 13 May 2008, Councillor J D May contributed to a debate on the proposed New School Build on St. Mary's (Agenda Item 17).

He spoke three times on the public consultation processes. He also spoke twice seeking clarification on the site map boundaries of the submission bid, after indicating he would support the project. The site had been approved by the Planning & Development Committee on 18 March 2008 for consultation.

I believe he breached the Members' Code of Conduct by:

- a) Failing to declare a personal interest insofar that his brother, Andrew May is a tenant of the site on which it is proposed to build the new school.
- b) Failing to declare a prejudicial interest insofar that members of the public who know the relevant facts, would reasonably think his personal interest was so significant that it could be likely to influence his judgement.
- c) Failing to leave the room while that item was being discussed.

Note: The Chairman of the Council called for declarations of interest soon after the commencement of the meeting. Cllr May did not respond.

Cllr May's contributions to the debate are recorded on the public webcast of that meeting which can be viewed on [scilly.gov.uk](http://scilly.gov.uk)

Some 15 Council Members were present at that meeting who should be able to recall that Cllr May contributed to the New School Build debate. The meeting was open to the media and the public.

Gordon Bilsborough (Cllr)  
17 May 08

## Relevant Sections of the Code of Conduct Paragraphs 8, 9 10 and 12

### 8

- (1) You have a personal interest in any business of your authority where either—
- (a) it relates to or is likely to affect—
    - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
    - (ii) any body—
      - (aa) exercising functions of a public nature;
      - (bb) directed to charitable purposes; or
      - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
    - (iii) any employment or business carried on by you;
    - (iv) any person or body who employs or has appointed you;
    - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
    - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
    - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
    - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
    - (ix) any land in your authority's area in which you have a beneficial interest;
    - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
    - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
  - (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—
    - (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

- (ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
  - (iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.
- (2) In sub-paragraph (1)(b), a relevant person is—
  - (a) a member of your family or any person with whom you have a close association; or
  - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
  - (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

## 9

- (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- (6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000

## 10

- (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- (2) You do not have a prejudicial interest in any business of the authority where that business—
- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
  - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
  - (c) relates to the functions of your authority in respect of—
    - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
    - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
    - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
    - (iv) an allowance, payment or indemnity given to members;
    - (v) any ceremonial honour given to members; and
    - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

## 12

Subject to sub-paragraph (2) where you have a prejudicial interest in any business of your authority—

- (a) you must withdraw from the room or chamber where a meeting considering the business is being held—
  - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
  - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting; unless you have obtained a dispensation from your authority's standards committee;
- (b) you must not exercise executive functions in relation to that business; and
- (c) you must not seek improperly to influence a decision about that business.

(Sub paragraph 2 deals with instances where the public are permitted to make representations, answer questions etc. This Authority does not permit this).

## Summary of the Evidence considered and Representations made:

Members held the meeting in private under Section 100(A)(4) of the Local Government Act 1972 (as amended), paragraph 7C of Part 1 of schedule 12A of that Act.

The Members considered the report of the Investigating Officer and written representations from Councillor J D May.

Councillor J D May also expanded verbally on his written representation.

## Findings of the Committee

Councillor J D May's commitment to the work of the Authority is unquestioned, together with the fact that he did not set out to deceive either its elected Members or the public.

However, whatever Councillor J D May's intentions might have been and they are stated as:

- a) To keep open all options, including that of using the existing school area and
- b) seeking to promote the use of brown field rather than green field sites.

The Committee are satisfied that Councillor May had a personal interest as set out in Section 8 (1)(b) and (2)(a) of the Code of Conduct, thereby breaching the Code because of his brother's tenancy of agricultural land discussed as part of the school site.

The Committee are satisfied that a breach of section 9 (1) of the Code of Conduct occurred when Councillor J D May did not disclose his personal interest either at the start of the meeting or when the matter became the subject of the debate.

The Committee are satisfied that a breach of section 10.1 of the Code of Conduct occurred when Councillor J D May did not take account of fact that where the business of the Authority is one in which a member of the public with knowledge of the relevant fact would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest, thereby ignoring a prejudicial interest.

The Committee are satisfied that Councillor J D May breached the Code of Conduct by not withdrawing from the meeting when he had a prejudicial interest as set out in Section 12 of the Code of Conduct.

## The Sanction:

The Standards Committee determined that training on the Standards issues generally and those issues outlined in the findings, namely the declaration of interests would benefit both Councillor J D May and the Authority as a whole. This training must be undertaken within 6 months of today's date.

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## Appeals:

You may apply in writing to the President of the Adjudication Panel for England for permission to appeal against the Standards Committee's findings and outlined below are details of how you may appeal.

I

- 1 You must write to the President within 21 days of receiving notice of the Standards Committee's decision. This application must outline your reasons for the proposed appeal and whether or not you want the appeal carried out in writing or in person.  
The current contact details for the President are:  
The Adjudication Panel for England:  
23 Victoria Avenue, Harrogate HG1 5RD or  
Telephone: 01423 538 783 FAX: 01423 525 164  
E-mail: [enquiries@adjudicationpanel.co.uk](mailto:enquiries@adjudicationpanel.co.uk)  
Website: [www.adjudicationpanel.co.uk](http://www.adjudicationpanel.co.uk)
- 2 The President on receipt of your application will consider whether or not there is a reasonable chance of the appeal being successful either in whole or in part.
- 3 The President will respond to you within 21 days of receiving your application and will also give his or her written decision to:
  - a. The Monitoring Officer;
  - b. The Standards Committee; and
  - c. The person who made the allegation.
- 4 In the event the President decides to refuse your application the response will include reasons for that decision.
- 5 In the event permission is granted, the President of the Adjudication Panel for England will arrange for a tribunal to deal with your appeal.
- 6 The tribunal will be made up of at least three members appointed by the President and may include the President. If any of the members appointed to the Panel have an interest in the case they will not be allowed to participate and another person may be appointed.
- 7 If you have not agreed to have the appeal carried out in writing, the appeal tribunal will hold a hearing. You will be given at least 21 days notice of the date of the hearing.
- 8 You may be represented at the appeal hearing by counsel, a solicitor or any other person you may choose. If the person you have selected is a non legal

representative, you must get permission from the tribunal before hand as they may not agree to this, particularly if the person acting for you is directly involved in the case.

- 9 The appeal tribunal decides its own procedures but it is likely that both the Ethical Standards Officer and the members of the Standards Committee concerned will be given the opportunity to make representations in relation to your appeal and, in appropriate cases, to go to or be represented at the appeal hearing.
- 10 If you have agreed to have the appeal hearing carried out in writing, the tribunal may still decide to hold a hearing at which you can attend or be represented as outlined above or the tribunal may decide to carry out the appeal entirely through written representations.
- 11 If after being given reasonable notice, you fail to go to or be represented at the hearing, the tribunal may determine the matter in your absence. However, if the tribunal is satisfied that there is a good reason for your absence, it should postpone the hearing to another date.
- 12 The appeal tribunal will consider whether or not to uphold or dismiss the findings or part of the findings made by the Standards Committee.
- 13 If the tribunal upholds the decision of the Standards Committee in whole or in part it may:
  - a. Approve the penalty set by the Standards Committee;
  - b. Require the Standards Committee to set a penalty if it has not already done so; or
  - c. Require the Standards Committee to set a different penalty to that already set.
- 14 If the tribunal dismisses the findings of the Standards Committee, the decision and any resulting penalty will no longer apply.
- 15 The Standards Committee must act on any directions given by the appeal tribunal.

## NOTICE OF DECISION

- 16 The appeal tribunal will give written notice of its decision to:
  - a. You;
  - b. The Monitoring Officer;
  - c. The Standards Committee; and
  - d. The person who made the original allegation.

- 17 The tribunal will also publish a summary of its decision in one or more local newspapers circulating in the Islands
- 18 You will be responsible for meeting the cost of any representation made at appeal tribunal.

August 2008