

# **SOUTH HAMS DISTRICT COUNCIL**

**REPORT OF AN INVESTIGATION UNDER SECTIONS 59 AND 66 OF THE  
LOCAL GOVERNMENT ACT 2000 INTO AN ALLEGATION CONCERNING  
COUNCILLOR PAMELA MELVILLE, A MEMBER OF HOLNE PARISH  
COUNCIL, DEVON**

**SBE13623.05**

**By**

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## **Executive Summary**

1. This report deals with an allegation by Mr. Paul Arrowsmith against (former) Councillor Mrs. Pamela Melville
2. Allegation: That Councillor Pamela Melville failed to declare a personal interest and a prejudicial interest
3. Finding: That Councillor Pamela Melville did fail to declare a personal interest and a prejudicial interest

## **Details of the Allegation**

4. Mr. Paul Arrowsmith attended a meeting of the Holne Parish Council on 2<sup>nd</sup> November 2005. Item 8 on the agenda was scheduled as *“To discuss the Council’s view on whether holiday cottages should be converted, where wished by their owners, to permanent use (and see correspondence, this is an opportunity to put a view on this if Council has one) “*. The minutes of the meeting show, under the heading of *“Holiday Accommodation Conversions to Full Residential Use”* that a discussion on the subject began after Cllr Melville at the request of Cllr Copus, confirmed that the permission for full residential use of the barn conversion she lived in was current only for her and her husband’s ownership of it, and that it would revert to holiday permission on sale or their departure, so she felt she did not have a personal or prejudicial interest in this agenda item. After discussion, the following proposal was put to the meeting; *“That holiday cottages/ accommodation should be converted, where wished by their owners, to permanent residential use”*. This proposal was unanimously approved.
5. Cllr Melville proposed an amendment to include the words *“....including farm diversifications..”*. The vote went against this proposal by 3 to 1. There were 5 members present at the meeting.
6. Mr. Arrowsmith alleges in his complaint that on commencing to speak on item 8, Cllr Melville was advised by Cllr Copus that she had an interest. Cllr Melville is reported by Mr. Arrowsmith to have replied *“It does not concern me, and if it does it does not bother me and I do not care”*. Mr. Arrowsmith in his complaint believes that Cllr Melville resides in a holiday barn under special licence/certificate of lawfulness given by the Dartmoor National Park Authority (DNPA). Mr. Arrowsmith further believes that should any restriction that may apply to the property in question, be lifted by the DNPA, that Cllr Melville will benefit financially if she were to sell. At present, Mr. Arrowsmith’s understanding is that should the property be sold without the *“restriction”* being lifted; the permission will revert to holiday status only, thus reducing its value on the open market.

## The Code of Conduct and Relevant Sections

7. The Parish Council adopted the Model Code of Conduct (SI 2001 No.3576) in its entirety and unamended pursuant to sections 51(2) and (5) of the Local Government Act 2000.
8. The relevant paragraphs are 7, 8, 9, and 10 and are to be found in part 2 of SI 2001 No.3576.
9. Paragraph 7(1) states *A member must regard himself (herself) as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 12 and 13 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers, or inhabitants of the authority's area, the well-being or financial position of himself, a relative or a friend or*
  - (a) *any employment or business carried on by such persons;*
  - (b) *any person who employs or has appointed such person, any firm in which they are a partner, or any company of which they are directors;*
  - (c) *any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal vale of £5,000; or*
  - (d) *any body listed in sub-paragraphs (a) to (e) of paragraph 13 below in which such persons hold a position of general control or management*
10. Paragraph 8 states *A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.*
11. Paragraph 9 (1) *...a member with a personal interest in a matter also has a prejudicial interest in that matter if 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 the member's judgment of the public interest.*
12. Paragraph 10 states *A member with a prejudicial interest in any matter must –*
  - (a) *withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at the meeting, unless he has obtained a dispensation from the Standards Committee of the responsible authority; and*
  - (b) *not seek improperly to influence a decision about that matter.*

## **The Parties Involved**

13. Mr. Paul Arrowsmith, Councillor Pamela Melville, and Mrs. Joanna Radford, Clerk to the Parish Council.

## **The Evidence Obtained**

14. Mrs. Pamela Melville was a co-opted member of Holne Parish Council and took office in October 2005 having completed and signed the General Notice of Registrable Interests 26<sup>th</sup> October 2005.
15. The Dartmoor National Park Authority (DNPA) is the planning authority for the geographic area in question. They inform me that certain properties are listed for holiday use only and not for permanent residential use. In order to convert a property designated for holiday use, the applicant will need to apply for planning permission by making a full planning application for change of use to the DNPA. Where a property has a condition attached to it as above, the applicant will need to make an application for a variation or to have the condition set aside, to the DNPA. Where a breach of condition has continued without enforcement action continuously for ten years, the owner/applicant can apply for a certificate of lawfulness to occupy. The DNPA must grant and it will be treated as having immunity from enforcement action.
16. On 24<sup>th</sup> February 2006 I conducted a telephone interview with the Complainant, Mr. Paul Arrowsmith, in which he reiterated his complaint and stated that he did not wish to withdraw the allegations in whole or in part. He further stated that there had been a history of proposed applications for change of use relating to Mrs. Melville's property, to the DNPA dating back as far as 1996. On all occasions the then Parish Council rejected any notion to convert the restriction on occupancy. Mr. Arrowsmith believes that the restriction has now been lifted by the DNPA for the duration of Mrs. Melville's occupancy/ownership. He also believes this was due to the intervention of Anthony Steen MP, and County Councillor Trevor Pennington.
17. Mr. Arrowsmith states that Mrs. Melville has sold the main body of her farm and if she were able to remove the occupancy restriction, this would enhance the value of the barn on the open market.
18. On the 27<sup>th</sup> February 2006, I interviewed Mrs. Joanna Radford, the Clerk for Holne Parish Council. Mrs. Radford is responsible for preparing the agendas and minutes and was at the meeting in November. Mrs. Melville was co-opted onto the Parish Council by being successful in a vote. She was appointed in the October 2005 meeting and was given the Standards Board of England information sheets and leaflets on declaring personal interests and prejudicial

interests. She was also given the Holne Parish Council's booklet on Standing Orders which allude to conflict of interests and declarations. She has not undertaken such training which is normally arranged by the District Council. At the October meeting Mrs. Melville requested that as an agenda item, the restriction of ownership of certain properties in the parish be discussed. This was agreed. The Parish Council does not have any power to alter the restrictions of ownership; this is a matter for the DNPA alone. The Parish Council can only make recommendations to the DNPA.

19. At the October meeting Mrs. Melville wished to speak about item 8 on the agenda. It was suggested by the Chairman, Mr. Richard Copus, that she may have an interest to declare. It was at this stage that she made her statement that Mr. Paul Arrowsmith has included in his complaint. Mrs. Radford does not recall the exact words used but can confirm that the "flavour" is right. The discussion continued and it was decided that there should be no recommendation until the council has had an opportunity to view and discuss the Local Area Development Framework Consultation document, however the proposal was unanimously approved.
20. Mrs. Radford is aware of some history in the parish concerning Mrs. Melville and her neighbours, one of them being the Complainant, relating to restrictions on the ownership of certain properties.
21. I interviewed Mrs. Pamela Melville On 27<sup>th</sup> February 2006. Mrs. Melville confirms that she has received certain publications relating to interests and declaring such interests, she also confirms that she has not received any face to face training or attended any courses. She states that she believes that she has breached the code but by way of a "technicality". She says the "technicality" is:
  - a) that she has no intention of applying for the restriction to be lifted and has no intention of selling the property in the foreseeable future; and
  - b) financially on a monthly basis she is better off as her council tax payments are less with the restriction in place. Also, on death of either herself or her husband, the inheritance tax liability is likely to be less as the restriction effects the value of the property.
22. Mrs. Melville and her husband hold the property jointly with the restriction that the property cannot be used solely as residential but as a holiday or second home, however, they have a dispensation from this restriction granted by the DNPA which means that for the duration of their ownership or life, they are able to use the property for residential purposes. This condition has been in place since about 1993 or 1994 and was achieved with the assistance of Anthony Steen MP and County Councillor Trevor Pennington. If the property were to

be sold today, the restriction will revert to holiday or second home status.

23. Mrs. Melville believes that she has passed the “selflessness” test which is *“could any and every possible decision the member made in connection with the matter be regarded as selfless?”*.
24. Mrs. Melville refutes the allegations made by the Complainant about what she is reported to have said. She believes she said something along the lines of “If it does not go through, it does not bother me”. She also says that the words used in the complaint are not words she would generally use as she is able to express herself differently.
25. Mrs. Melville recently sold a farmhouse which used to form part of the parcel of land on which the barn where she now lives is situated. There were no restrictions on this property. Also, the barn conversion next to hers has recently had a change of use and the restrictions that used to apply have been partially lifted. She believes that in the light of this, if she were to apply to the DNPA for the restriction to be lifted permanently, that she would be successful.
26. Mrs. Melville resigned from the Parish Council in February 2006.

### **The Issues**

27. The definition of personal interest under paragraph 7(1) of the Code of Conduct is drafted broadly and covers interests of not only the member but the member’s relatives and friends. A personal interest alone may not preclude a member from participating in the debate. If that member is unaware of an interest, it cannot be relied upon as non-breach if from the point of view of a reasonable and objective observer, they should have been aware.
28. No personal interest will arise where a matter affects the member to the same extent as other council tax payers, ratepayers or inhabitants of the area. A personal interest will arise wherever a matter relates to one of the interests registered under Part 3 of the Code, as listed in the member’s register of interests. The property is listed in the register.
29. Paragraph 8 states that a member should declare an interest at the outset of the discussion or consideration of the matter in question, or as soon as that interest becomes apparent.
30. Paragraph 9 states that a member with a personal interest also has a prejudicial interest if 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 the member’s judgment of the public interest.

31. A personal interest is not always a prejudicial interest, however, a prejudicial interest must also be accompanied by a personal interest.
32. A member needs to take an account of how would a reasonable and objective observer with the knowledge of all the relevant facts would view the situation and in particular, how the circumstances are likely to impact on the member's judgment of the public interest. The judgment must be a reasonable one and an interest will only be prejudicial if it can reasonably be regarded as significant. Almost any degree of personal involvement or knowledge of the circumstances is likely to affect a member's judgment. For an interest to "likely to prejudice", there must be some factor that will positively harm the member's ability to judge in the public interest objectively. Members should clearly act in the public interest and not in their own or of a family member's or that of a friend's.
33. In considering whether a member of the public with knowledge of the relevant facts would reasonably regard an interest as so significant that it would likely prejudice the member's judgment of the public interest, it may help to apply the SOAP test:
- SELFLESSNESS** – Could any and every possible decisions the member made in connection with the matter be regarded as selfless?
- OBJECTIVITY** – Could the member be regarded as being as objective in the matter as his or her fellow member's?
- ACCOUNTABILITY** – Could the member's involvement in the matter stand up to public scrutiny?
- PUBLIC INTEREST** – Would the public interest be harmed by the member's involvement?
34. Where a prejudicial interest is found to exist, the member must leave the room or chamber where the debate is taking place and have no further involvement with the consideration of that matter, which includes not attempting to improperly seek to influence a decision about that matter.

### **Conclusions**

35. A member would have failed to comply with the provisions of paragraph 7(1) of the Code of Conduct if they failed to declare a personal interest where a decision might reasonably be regarded as affecting them to a greater extent than other council tax payers, ratepayers, or inhabitants of the authority's area, the well being or financial position of him/herself, a relative or friend.

36. It is my opinion that Mrs. Melville failed to unambiguously declare a personal interest in the matter to be discussed under item 8 of the agenda, as she and her husband would both be affected financially by any change in position adopted by the Dartmoor National Park Authority (DNPA), whether or not they chose to realise any capital advantage now or at some time in the future. The Code does not make a distinction between financial gain or loss, whether imminent or not but merely states "...well-being or financial position...".
37. It is my opinion that Mrs. Melville also failed to comply, and therefore is in breach of paragraph 10 of the code, by continuing to be party to the debate and not leaving the room, as I am of the opinion there also existed a prejudicial interest.
38. In reaching this finding, I take into account what would a member of the public think if party to all the relevant facts, when considering if the interest is so significant that it is likely to prejudice the member's judgment of the public interest. Also, I refer to the so called "SOAP" test. I am of the opinion that Mrs. Melville failed the Objectivity part as it is questionable whether she could be regarded as being objective, in the matter under discussion. Also, I do not believe that her involvement would stand up to public scrutiny, under the Accountability part of the SOAP test. With regards to the other two parts, Selflessness and Public Interest, on the balance of probabilities, I am of the opinion she would also fail.
39. It is worth noting that Mrs. Melville has resigned from the Parish Council, and that the Parish Council has no authority to amend or alter the restrictions of ownership placed on certain properties by the DNPA but merely makes recommendations. Finally, at the meeting in November 2005, no recommendation was actually made.
40. Censure is the only sanction available.

Colin Miles  
Investigating Officer  
09 March 2006

## **ADDENDUM**

Comments and observations made by Mrs Melville to draft report