

Member Code of Conduct Complaint

Decision Note

| | |
|-----------------------|--|
| Subject Member | Parish Councillor Carl Bierer |
| Parish Council | Fretherne with Saul Parish Council |
| Complaint date | 2 February 2021 |
| Decision Date: | 27 September 2022 |
| Decision: | That Councillor Bierer had breached the Parish Council's then Code of Conduct. |
| Sanction: | That Councillor Bierer be asked to take all necessary steps to ensure he is fully conversant with whatever Code is in force at the time and that the Parish Clerk be asked to organise any necessary training. |

SUMMARY OF COMPLAINT

In summary, the complaint alleges that Councillor Bierer failed to declare an interest at various meetings of the Parish Council when it was debating issues affecting the local Parochial Church Council (PCC), despite him assisting the PCC in a rights of way issue relating to the church of St James in the village of Saul.

BRIEF STATEMENT OF FACTS

Cllr Bierer was at the time of the matter complained of, and remains, a member of the Fretherne with Saul Parish Council. The village of Saul is within the Parish and the church of St James is in the village. The Church is a body directed to charitable purposes.

A dispute arose concerning a vehicular right of way to the church over land belonging to another. The Incumbent and the Parochial Church Council claimed the benefit of that right of way and applied to register the easement. The PCC had conduct of the dispute on behalf of the Church. The Parish Council supported the Church in its action and "tasked" Councillor Bierer to assist the PCC in that dispute. When the Parish Council debated issues relating to

the dispute, including the funding of the dispute, Councillor Bierer did not declare an interest and remained in the meeting.

THE PROVISIONS OF THE CODE ENGAGED BY THE ALLEGATIONS

Paragraphs 12 and 13, and Appendix B(ii), of the Parish Council's Code of Conduct which was adopted January 2016.

Paragraph 12 states as follows:

"Where a matter arises at a meeting which relates to an interest in Appendix B, the member shall not vote on the matter. He/she may speak on the matter only if members of the public are also allowed to speak at the meeting."

The relevant part of Paragraph 13 states as follows:

"A member only has to declare his/her interest in Appendix B if it is not already entered in his/her register of interests or he/she has not notified the Monitoring Officer of it or if he/she speaks on the matter."

The relevant part of Appendix B(ii) states as follows:

"An interest which relates to or is likely to affect:

(ii) any body –

- a. Exercising functions of a public nature;*
- b. Directed to charitable purposes;"*

VIEW OF THE INDEPENDENT PERSON ON WHETHER THE CODE HAD BEEN BREACHED

The Independent Person was of the view that there was a long and confused history in this case. The Parish Council's Code of Conduct changed in January 2016 and it was against the 2016 Code that the Panel considered the allegation. It was not the most explicit Code and the minutes of Parish Council meetings were not the most explicit or complete.

The Independent Person considered that the question before the Panel was on what basis did Cllr Bierer help the Parochial Church Council (PCC). Cllr Bierer never declared an interest relevant to the PCC at a succession of Parish Council meetings. This suggested to the Independent Person that Councillor Bierer thought he was acting for the Parish Council throughout.

The PCC had approached the Parish Council for support. On page three of his submission on the morning of the hearing, Cllr Bierer referred to being instructed by the Parish Council.

Although Cllr Bierer supported the PCC, the Independent Person did not find that Cllr Bierer had any interest other than that the Parish Council had asked him to help the PCC, and concluded that he was not convinced that Cllr Bierer breached the Code of Conduct.

THE REASONING OF THE DECISION-MAKER

Having had regard to the view of the Independent Person, the Standards Sub-Committee (the Panel) considered that the PCC did have an interest in the outcome of the consideration by the Parish Council as to what support and funding was to be given to the PCC in its dispute over the right of way, in that the PCC would benefit from the support of the Parish Council.

Accordingly, as Cllr Bierer was assisting the PCC in that dispute and thereby wished them to succeed in their dispute, he also had an interest in the outcome of the debate. On that basis, and notwithstanding that the Parish Council had tasked him to assist the PCC in that dispute, the Panel considered that Cllr Bierer should have declared an interest just as he would have had to do so should he have been appointed to the PCC by the Parish Council.

DECISION

The decision of the Panel was that Cllr Bierer had breached the Parish Council's then Code of Conduct.

THE VIEW OF THE INDEPENDENT PERSON ON SANCTIONS

Following the Panel's decision that Cllr Bierer had breached the Code, the Independent Person stated that he did not see the need for a sanction, but considered that the Panel could beneficially remind Cllr Bierer to comply fully with the current Code of Conduct.

THE REASONING OF THE DECISION-MAKER WITH REGARD TO THE SANCTION

Having had regard to the views of the Independent Person, the Panel concluded that the breach of the Code was not due to any intention to violate the Code of Conduct and, on that basis, did not consider that it was appropriate to censure Cllr Bierer.

SANCTION

The Panel considered that Cllr Bierer should be asked to take all necessary steps to ensure he is fully conversant with whatever Code is in force at the time and that the Parish Clerk should be asked to organise any necessary training.

Stephen P Taylor
Interim Monitoring Officer
Stroud District Council

6 October 2022