



## **Conflict of Interest Policy**

**Nov 2024**

**The Presbytery of Cleir Eilean I (SC001424) CONFLICT OF INTEREST POLICY**

## **Conflict of Interest Policy**

### **1 Introduction**

Conflicts of interest affect all types and size of organisations. In the charity context, a conflict of interest can inhibit free discussion, and can lead to decisions which are not in the best interests of the charity and which are invalid or open to challenge. Conflicts of interest can also be damaging to a charity's reputation and to the public's confidence and trust in charities in general.

Charity trustees have a primary duty in terms of S.66 of the Charities and Trustee Investment (Scotland) Act 2005 to act in the best interests of the charity at all times.

Those who are recognised ministers and deacons within the bounds, commissioned elders, and appointed additional elders are also charity trustees for the Presbytery of Cleir Eilean I, Scottish Charity No SC01424, ("the Presbytery").

The Presbytery recognises that on occasion, trustees can find themselves in a situation that may give rise to conflicts of interest, whether potential or actual, perceived or alleged. Where trustees can identify a conflict and the Congregation can put in place measures to prevent the conflict affecting decision-making then the harmful effects of a conflict of interest can be prevented. The proper handling of conflicts of interest is an essential part of proper decision-making by trustees.

The Presbytery has accordingly developed this policy to provide guidance to all trustees regarding conflicts of interest in order to avoid any actual or potential conflicts of interest, perception of bias or misuse of authority, and to ensure and evidence that all decisions by individual trustees on behalf of the Presbytery are taken only in the best interests of the Presbytery at all times.

### **2 Scope and Purpose**

The Presbytery is committed to ensuring that all of its trustees act in the best interests of the Presbytery at all times.

This policy aims to provide guidance to those involved in management and decision-making and seeks to ensure that the Presbytery can be seen to be acting in accordance with well recognised rules of good governance.

It is inevitable that conflicts of interest will arise. This policy aims to ensure that any conflict is identified and managed appropriately.

It is the responsibility of each individual to recognise situations in which he or she has a conflict of interest, or might reasonably be seen by others to have a conflict, to disclose that conflict to the appropriate person and to take such further steps as may be appropriate as set out in more detail under the procedure below.

If an individual is uncertain about how this policy might affect his or her activities or has any questions about its application, he or she should contact the Presbytery Clerk.

### **3 Conflict of Interest**

#### **3.1 What is a Conflict of Interest?**

A conflict of interest is any situation in which a trustee's personal interests or loyalties could, or could be seen to, prevent the trustee from making a decision only in the best interests of the Presbytery.

A conflict of interest arises when the interests of a trustee (or a person closely connected to them, whether by family or business) are incompatible or in competition with the interests of the Presbytery. Such situations present a risk that trustees will make a decision based on external influences and that such a decision will not be in the best interests of the Presbytery.

The most common types of conflict include:

- **direct financial interest** – where there is, or appears to be, an opportunity for personal financial gain
- **indirect financial interest** – the financial gain of a close relative or close friend or business associate

The level of financial interest should not be a determining factor in deciding whether a conflict should be disclosed. The Presbytery expects disclosure of any financial interest, however small.

- **non-financial or personal conflicts** – a non-financial interest can take many forms and is generally one where there is, or appears to be, an opportunity for personal benefit, advantage or enhancement to prospects for the individual (direct), or similar gains to someone in their immediate family or a person with whom the individual has a close personal relationship (indirect)
- **conflicts of loyalties** – a particular type of conflict of interest in which a trustee's loyalty or duty to another person or organisation could prevent the trustee from making a decision only in the best interests of the Presbytery.

#### **3.2 Conflicts of Loyalties**

A conflict of loyalty may arise where a trustee is also a charity trustee or member of another body (for example a community association) if that could (or could be seen to) interfere with their ability to make decisions only in the best interests of the Presbytery. In such circumstances, a trustee must act at all times only in the best interests of the Presbytery in carrying out their trustee role, regardless of how decisions made in that role may impact on the other body.

The interests of the Presbytery and such other body will often be consistent, or complementary, but it is inevitable that on occasion a conflict will arise. Whether a conflict of loyalty is of such low risk that the affected trustee can participate in the

decision is a judgement for the trustees and will depend on the particular decision and circumstances of the case. It will often be the case that the potential damage that could be caused by any conflict is so minimal that it can be managed without any difficulty. The trustees must take all relevant factors into account and be ready to explain their approach if asked to do so.

The trustees must consider the issue of the conflict of interest so that any potential effect on decision making is eliminated. This may mean deciding that the conflict of interest is so serious that it can only effectively be prevented by removal, which is likely to mean the resignation of the trustee. This will only be necessary if the conflict of interest is likely to recur frequently or otherwise poses high risks to effective decision making.

If the trustees decide that the conflict is not so serious as to require removal, they must prevent the competing interest/duty from affecting their decision. This is likely to mean that the affected trustee should withdraw from the meeting and from all aspects of the discussion, decision making and voting. The conflicted trustee should be given the opportunity before withdrawing from the meeting to provide any information necessary to help the remaining trustees make a decision in the best interests of the Presbytery.

Deciding that a conflict of interest is low risk, and that the affected trustee can participate in the decision, is a judgement for the trustees. It will depend on the particular decision and relevant circumstances. The trustees should take all relevant factors into account and be ready to explain their approach if asked. They should keep a proper record of their discussions and decision. The trustees should be satisfied that their handling of the matter is an appropriate way of demonstrating that their decision was made only in the best interests of the Presbytery.

### **3.3 Recognising and Disclosing Conflicts of Interest**

All trustees are required to recognise and disclose activities that might give rise to conflicts of interest, or the perception of conflicts of interest, at the earliest opportunity. This allows the other trustees to consider the issue of the conflict of interest to ensure that any potential effect on decision-making is eliminated and to demonstrate that their decision was made only in the best interests of the Presbytery. If properly managed, activities can proceed as normal whilst at the same time upholding the trustees' obligations to the Presbytery, meeting regulatory and other external requirements and protecting the integrity and reputation of the Presbytery. By contrast, conflicts which are not managed effectively may jeopardise the Presbytery's public standing and may cause serious damage to the reputation of the Church and of the individuals concerned.

It is therefore the Presbytery's policy to ensure that when conflicts or perceived conflicts of interest arise they are acknowledged and disclosed.

There can be situations in which the appearance of conflict of interest is present even when no conflict actually exists. It is important for all trustees when evaluating a potential conflict of interest to consider how it might be perceived by others. The duty

to declare a possible conflict applies to the perception of the situation as much as to the actual existence of a conflict. When deciding whether such an interest is present, trustees should ask themselves whether a reasonable member of the public, with knowledge of all of the relevant facts of the situation, would think that their judgement might be prejudiced or influenced by their private or personal interest. This is an objective test. Trustees must not decide whether they would take a decision without prejudice, but whether they could be seen as doing so.

There may, exceptionally, be circumstances in which a conflict cannot be satisfactorily managed. In such circumstances the trustees should remove the conflict by not proceeding with a proposed course of action; by proceeding in a different way so that the conflict does not arise; or by not appointing a particular trustee or requiring the resignation of a trustee.

## **4 Procedure**

It is the duty of every trustee to disclose any conflict of interest or any circumstances that might reasonably give rise to the perception of conflict of interest.

The following procedure should be followed to ensure that conflicts of interest are identified at as early a stage as possible and that, once identified, action is taken to ensure that the conflict of interest does not give rise to a situation where decisions are taken by trustees which are, or could be perceived as being, not in the best interests of the Presbytery.

### **4.1 Copy of Policy to be Provided**

Potential and new trustees will be informed before they are appointed that they will be expected to adhere to this conflict of interest policy and a copy of the policy will be provided to them.

### **4.2 Disclosure**

Any trustee who fails to disclose a potential, actual or perceived conflict of interest will have failed to comply with their statutory duty. Any failure to disclose a potential, actual or perceived conflict of interest is a serious issue and could result in the removal of the trustee.

- There is a standard agenda item at the beginning of each Presbytery meeting to declare any potential, actual or perceived conflicts of interest.
- A trustee should declare any interest which he or she has in an item to be discussed, at the earliest possible opportunity and before any discussion of the item itself. If a trustee is uncertain whether he or she is conflicted he or she should err on the side of openness, declaring the issue and discussing it with the other trustees.
- If a trustee is aware of an undeclared conflict of interest affecting another trustee they should notify the other trustees or the Moderator. All trustees have a collective responsibility to manage conflicts and to act clearly in the Presbytery's best interests.

### **4.3 Managing Conflicts of Interest**

If a potential, actual or perceived conflict of interest is identified the trustees must act only in the best interests of the Presbytery. This means the trustees must consider the issue of the conflict of interest so that any effect this may have on good decision-making is eliminated.

In deciding whether a conflict of interest exists trustees must consider the following:

- Has the decision been taken in the best interests of the Presbytery?
- Does the decision protect the reputation of the Presbytery?
- What impression does the decision have on those outside the Presbytery?
- Can the trustees demonstrate that they have made the decision in the best interests of the Presbytery and independently of any competing interests?
- Does the presence of a conflicted trustee inhibit free discussion and influence the decision-making process in any way?

Where the trustees decide that there is a potential, actual or perceived conflict of interest the conflicted trustee should not participate in the decision-making process.

The conflicted trustee should withdraw from the meeting prior to discussion of the item, unless given permission by the Convener or Moderator to remain.

The conflicted trustee should be given the opportunity before withdrawing from the meeting to provide any information necessary to help the remaining trustees make a decision in the best interests of the Presbytery.

A conflicted trustee should not take part in any vote on the item which is the subject of the conflict.

### **4.4 Recording**

In all instances where a potential, actual or perceived conflict of interest is disclosed at a trustees' meeting, the minutes of the meeting should record the trustees' discussion and the decision taken. Interests should be declared at the start of a meeting if a trustee knows in advance that a relevant item will appear in the agenda.

If there is a discussion, the written record of the decision should include:

- the nature of the conflict;
- which trustees were affected;
- whether any conflicts of interest were declared in advance;
  - an outline of the discussion;
  - whether anyone withdrew from the discussion; and
  - how the decision was taken in the best interests of the Presbytery.

## **5 Consequences of Breach**

Where conflicts of interest are not identified or properly managed there can be serious consequences for both the affected trustee and the Presbytery. Decisions taken may not be valid and could be challenged, and can damage the reputation of the Church and the trust of the public.

If the circumstances are sufficiently serious, a failure to disclose a conflict of interest could therefore result in the removal of the conflicted trustee from the relevant Committee or Presbytery.

## **6 Review**

This Policy will be reviewed by the Presbytery every three years.