

Conflicts of Interest Policy

I INTRODUCTION

Conflicts of interest affect all types and size of organisations. In a 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 section 66 of the Charities and Trustee Investment (Scotland) Act 2005 to act in the best interests of the charity at all times.

All members of the Lothian & Borders Presbytery ("the Presbytery") are the charity trustees of the Presbytery.

The Presbytery recognises that its 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 measures can be put in place 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 good decision-making by trustees.

The Presbytery has 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 & PURPOSE

This policy applies to all trustees of the Presbytery and to all bodies, groups and committees meeting under the auspices of the Presbytery. All individuals in the Presbytery who are involved in management of its affairs to a greater or lesser extent but are not members of the Presbytery can be seen as "shadow trustees" and are subject to the same duties as the trustees. Where the word "trustee" is used in this policy it covers both charity trustees and shadow trustees.

The Presbytery is committed to ensuring that all trustees act in its best interests at all times. This policy aims to provide guidance to those involved in management and decision-making and to ensure that all trustees act in accordance with 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 they have 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 their activities or has questions about application, they should contact the Presbytery Clerk or Law Department for advice.

3 CONFLICT OF INTEREST

3.1 What is a Conflict of Interest

A conflict of interest is a situation where a trustee's personal interests or loyalties could, or could be seen to, prevent the trustee 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** – this 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.

A conflict of loyalty may arise where a trustee is also a trustee or member of another body (such as, for example, another Church court or local community group) if that could (or could be seen to) interfere with their ability to make decisions only in the Presbytery's best interests. In such circumstances, a trustee must always act only in the best interests of the Presbytery in carrying out their trustee role, regardless of how decisions made in that role may impact the other body.

A conflict of interest may arise where a trustee is also an employee of the Presbytery or of another body. Employment by the Presbytery does not confer membership of the Presbytery upon any individual. Presbytery will normally appoint employees to be corresponding members of Presbytery. Except where expressly agreed by the Presbytery, no employee of the Presbytery may be a member of any Committee of the Presbytery.

The interests of the Presbytery and such other body will for the most part 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.

3.2 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 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 and the wider Church. 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 Presbytery, of the individuals concerned and the wider Church. 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.

Some conflict of interest scenarios are included as Annex 2.

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 Register of Interests

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. Any potential conflict of interest should be discussed with the Presbytery Clerk prior to taking up the position.

On appointment, trustees will be required to complete a Declaration of Interests form. A Register of Interests will be maintained by the Presbytery Administrator and updated when a material change occurs. Membership of a congregation or Kirk Session within the bounds of the Presbytery will not require disclosure in the Register of Interests. The Register of Interests must be reviewed and updated on an annual basis.

A copy of the policy will be provided to all current trustees, who will also be required to complete a Declaration of Interests form.

4.2 Disclosure

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

There should be 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 they are conflicted they 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, including the wider Church?
- 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 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. This process should be followed, for example, in a situation where Presbytery is considering a matter relating to a specific congregation or charge but without wider implications across the Presbytery; Presbyters who are members of the affected congregation/charge should withdraw from the meeting before discussion of and voting on the item. For the avoidance of doubt, this does not apply to discussion of and voting on the Presbytery Mission Plan unless what is being considered is a minor adjustment of the Plan affecting a small number of congregations/charges.

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

4.5 **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 written record of the decision taken and 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;
- 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 Presbytery, the wider 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 a disciplinary process being engaged.

6 REVIEW

This Policy will be reviewed by the Presbytery after one year and thereafter every three years.

Approved by Presbytery March 2024

REGISTER OF CHARITY TRUSTEES' INTERESTS

CONFLICTS POLICY

The charity trustees of the Presbytery of Lothian & Borders have implemented a conflicts of interest policy under which they have agreed that a register will be kept of all interests declared by the charity trustees.

MAINTENANCE OF REGISTER

This register is maintained by the Presbytery Administrator, who must:

- record all conflicts, gifts and hospitality declared by the trustees in accordance with the policy; and
- circulate amendments or additions to the register (if any) to the trustees at the start of each charity trustee meeting.

REVIEWING THE REGISTER

As agreed in the policy, at least once in every 12-month period, all charity trustees must review the information relating to themselves contained in this register and declare that the information is correct or make a further declaration if necessary.

INSPECTION OF REGISTER

This register is available for inspection by any charity trustee and by any member of the Presbytery on request.

REGISTER OF INTERESTS

Date notified	Charity Name	Trustee	Brief details of interest notified	Brief details of any action taken

ANNEX I

CONFLICTS OF INTEREST – A THEOLOGICAL REFLECTION

I What is a conflict of interest?

All of us, throughout our lives find ourselves in a variety of situations where a conflict of interest may arise. A conflict of interest is a situation in which the concerns or aims of two different parties are incompatible. A conflict of interest arises when a person finds themselves in a position in which they, or those with whom they have a close relationship, are able to derive personal benefit, financial or otherwise from actions or decisions made in their role as a trustee.

Conflict of interest is a problem as a person may find themselves in a situation where two or more competing interests creates the perception of the reality of an increased risk of bias or poor judgement. Such challenging situations arise regularly in both our personal and professional lives, including in the life of the church.

2 Conflict of interest and The Bible

The idea of conflict of interest goes back to Babylonian times when judges were forbidden from accepting bribes from people involved in legal disputes.

Deuteronomy

In the book of Deuteronomy, we have a development of a system of law in Ancient Israel which addresses new questions which had arisen in legal administration. Throughout Deuteronomy, we can see the law being progressively improved and elaborated.

In Deuteronomy 10:17 we hear these words of Moses to the people:

'For the Lord your God is God of gods and Lord of lords, the great God, mighty and awesome, who shows no partiality and accepts no bribes'. (NIV)

The people of Israel's conduct must therefore reflect the same pattern of right dealing as that displayed by the divine nature.

Philippians

In Paul's letter to the church in Philippi, Paul emphasizes humility as being the appropriate attitude of the believer to God. Paul also urges the members of the Christian community in Philippi to regard others as better than themselves, not to foster false modesty or a lack of self-esteem but to encourage a recognition of the rights and achievements of others.

In humility value others above yourselves, not looking to your own interests but each of you to the interests of the others. (Philippians 2: 3b-4 NIV)

Further Paul describes how our **Lord Jesus Christ** did not use his position as God's Son for his own gain but always for the gain of others (Philippians Ch2: 6-8 NIV):

*'Who being in the very nature God,
did not consider equality with God
something to be used to his own advantage,
rather, he made himself nothing
by taking the very nature of a servant,
being made in human likeness,*

*And being found in appearance as a man,
He humbled himself
By becoming obedient to death-
even death on a cross.*

3 Conflict of interest and ourselves

During our lives, including our lives within the church, we all experience situations where conflicts of interest arise. If we are honest, we are all guilty at times of failing to recognise a possible conflict of interest or on other occasions overlooking a conflict of interest. Sometimes we justify it by believing it is in the best interests of others and the church. Yet the God who shows no partiality and takes no bribes calls us to emulate the life of Christ who did not use his own position as God's Son to his own advantage but always for the gain of others. God calls us to show an integrity of word and action and be aware of any situations where conflict of interest may arise.

As mentioned previously as humans we are all guilty of engaging in conflicts of interest and none of us are exempt. From being chosen for a sports team as a child because our parents knew the coach, to gaining a weekend job as a teenager because an older sibling had worked in the same shop. There are times when we have been involved in groups, committees, organisations, and clubs where discussions have taken place where it might have been better if we declared an interest and taken no part in the discussion or decision due to our personal or professional connections to that which was being discussed, but instead we chose to stay. We can all think of times when we have used our position whether as a family member, friend or colleague to sway a decision in favour of what would personally benefit us or those with whom we are related.

4 The privilege of being a Trustee

As **trustees** God has **entrusted** each one of us to guide and lead his beloved church through this unique period of transition and change. This is a high calling and huge responsibility and the wider world watches with interest. God's Word reminds us to be aware of our own particular interests and biases and where conflicts of interest may arise, to act accordingly. Moses knew how costly this was to those who are chosen by God to serve, and Paul had to gently remind his beloved church in Philippi that they were to put the best interests of others first. Christ's example of servanthood and humility inspires us to be alert to possible conflicts of interest and seek always to do the right thing, even if it comes at a cost to us.

Prayer – please feel free to pray this prayer or use the words for reflection

*Sovereign God,
Help us to follow your example,
In relation to conflicts of interest,
In our lives and in the life of your church,
Even when to follow your example,
May come at a cost.
We thank you for the witness of your servants within Holy Scripture,
Who taught the people of your loving and wise nature,
Reminding them of your honesty, fairness, justice and integrity.
We especially thank you for our Lord Jesus,
Who through his example showed us,
The privilege of serving others,
The holiness of being humble,
The sacredness of always seeking others best interests.
Sovereign God,*

*Forgive us when we have failed to emulate Christ's example,
Forgive us when we have not taken time to reflect on our practice,
And through your Holy Spirit,
Become aware of possible conflicts of interest within our own hearts.
Merciful God,
Forgive us.
Help us,
Through our lives,
And in the life of the church,
To live Christ-centred lives,
Nourished by your Word,
Guided by prayer,
And strengthened and sustained,
Through the joy of worship,
And fellowship with the body of Christ,
Your beloved church.....
In Jesus name we pray,
AMEN*

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ANNEX 2

CONFLICT OF INTEREST SCENARIOS

Scenario 1 – Adam and Jake- Disabled Toilet Upgrade

Adam is convenor of the property committee. The disabled toilet in his church requires updating and several groups have been complaining about the poor flush and chipped sink. The hot water tap also runs too hot and there is a worry that someone may get burned. At the Kirk Session it is unanimously agreed that the disabled toilet should be upgraded, and Adam should obtain three quotes from local plumber firms.

Adam's son Jake is a plumber to trade and has not been able to work over the last year due to an injury to his back. Jake's back pain is improving, and Adam mentions to his son about the plumbing job in the church. Jake enthusiastically tells his dad that it would be ideal for him as it would allow him some experience and an opportunity to hone his skills before applying for work again. Jake is also desperately needing the money as he has been struggling to make ends meet since being unable to work.

Adam holds off calling three plumbing firms for quotes and decides to ask at the next Kirk Session meeting if his son Jake could be commissioned to do the work for the church, at a competitive cost, of course. Adam is loved and respected within the church and Jake grew up in the Sunday School and BB's. When Adam tells the Kirk Session of Jake's back problems and how this job would give him a much-needed confidence boost and help encourage him to take the next steps back into full-time employment, the Kirk Session listens sympathetically. Adam is also aware that over the years he has gone the extra mile for the church, always diligent and faithful in his duties and the church and halls are in a pristine state thanks to Adam.

After some awkward and wooden discussion where no one feels able to challenge Adam about not obtaining the three quotes, the Kirk Session decides that Jake can upgrade the disabled toilet. After the Kirk Session meeting a few of the elders congregate in the car park and discuss how uncomfortable they felt about the whole situation and how awkward it was to openly discuss it with Adam remaining present in the room.

Six weeks later Jake is still working on the upgrade. The upgrade is taking much longer due to his back issue and meanwhile there is no access to the disabled toilet which is causing problems. The hall convenor has told the Kirk Session that if they are unable to provide a disabled toilet then ultimately, they won't be able to let out the hall to any of the groups due to health and safety and inclusivity access regulations. No one personally feels able to raise this issue with Adam as they know how much this work means to both Adam and his son Jake.

Two weeks later Jake comes to the conclusion that his back pain is worsening, and he won't be able to complete the upgrade of the disabled toilet. With reluctance and a sense of sadness, Adam obtains three quotes from local plumbing firms and the Kirk Session chooses the middle quote due to the quality of materials and experience of the company. The company completed the upgrade in two days and the Kirk Session and congregation are delighted with the new, ultra-modern disabled toilet. The church halls are once again being used by a variety of community groups and the church is benefitting from the substantial hall let income.

Scenario 2 - Esther- Convenor of the Team Ministry Committee

Presbytery are setting up a new 'team ministry' committee and Esther has been asked by the nominating committee to be the Convenor. Esther is in a charge which is one of the biggest parishes in the Highlands thus she has a team ministry including an Ordained Local Minister and a full-time Ministry Development Worker so is well placed to lead the committee due to her experience of managing a successful team ministry. The team ministry committee is being established in response to the number of charges uniting and the size of parishes subsequently doubling or tripling. The presbytery is concerned for the well-being of ministers inducted to such charges and wants the committee to

look at ways of supporting ministers with the possibility of developing creative team ministries supported by elders and members trained in worship and conducting funerals.

In the new presbytery plan, Esther has been told that she will lose her full-time Ministry Development Worker. Esther and the congregation are devastated about this as Nathan has been doing excellent work and made positive connections with the local schools. Nathan also runs a Friday night Youth Club which is attended by 40 young people. Neither Esther nor her Ordained Local Minister are gifted or particularly comfortable in relation to connecting with teenagers and they are both aware that once Nathan's post goes, the youth work will cease.

Esther has been saddened by the new presbytery plan as other churches appear to have been allowed to keep their Ministry Development Worker posts. Esther feels this is unfair and as a result she has been suffering from migraines much more regularly than usual. When Esther receives the call from the Nominating Committee Convenor asking her to convene this new team ministry committee, Esther jumps at the chance in the hope of gleaning more support for her parish. Esther is aware that this motive is not particularly wholesome, yet she is so angry at what appears to be the injustice of everything, she reassures herself that her motive is indeed justified and for the glory of God.

Esther is aware that within presbytery there is a lethargy and weariness, and it is becoming harder for the nominating committee to fill committee vacancies. Esther calls the nominating committee convenor the following day and asks her if she could suggest a few people to serve on the committee? The nominating committee convenor is also tired and weary and says to Esther that that would be helpful and also a relief. Esther thus nominates her Ordained Local Minister and her Session Clerk who also are aggrieved at the impending loss of their Ministry Development Worker.

Three months later Esther and her committee have worked hard to form teams for what will become especially large charges. Fifteen members and elders have agreed to train as worship leaders and ten elders are embarking upon training to conduct funerals with appropriate training and supervision. The work is energising Esther and she feels proud of what she has accomplished and can see God's hand in it.

Esther, her Ordained Local Minister and her Session Clerk agree to continue to serve on this committee with the view of developing more teams. Their hard work is being recognised and appreciated by others. At the same time Esther has gained presbytery wide sympathy in relation to the loss of her Ministry Development Worker who has been doing such excellent youth work. When the updated presbytery plan comes out the following year, Esther is thrilled to notice that an MDS post for 0.25 hours has been included in her charge's overall staffing allowance. These hours will not be sufficient for Nathan but will allow her church to advertise for another youth worker on a part-time basis.

Esther later hears that her church's new 0.25 post was taken from another church who had been allocated a 1.0 MDS post which has been now reduced in the updated plan to 0.75.