EAST CALDER, KIRKNEWTON AND RATHO CHURCH OF SCOTLAND

Scottish Charity No SC006973

CONFLICT OF INTEREST POLICY

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1. Introduction

1.1 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.

1.2 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.

1.3 Members of the Kirk Session [*insert "and members of the Congregational Board/Deacons' Court" if there is one]* are the charity trustees of the congregation.

1.4 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 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.

1.5 This policy has been developed 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 congregation are taken only in the best interests of the congregation at all times.

2. Scope and purpose

2.1 This policy applies to all trustees of the congregation and to all bodies, groups and committees meeting under the auspices of the congregation. All individuals in the congregation who are involved in management of its affairs to a greater or lesser extent but are not members of the Session [*or Board/Deacons' Court*] 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.

2.2 The congregation 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 seeks to ensure that all trustees are seen to be acting in accordance with well recognised rules of good governance.

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

2.4 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.

2.5 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 Law Department.

3. Conflict of Interest

3.1 What is a conflict of interest?

3.1.1 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 congregation.

3.1.2 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 congregation. 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 congregation.

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 congregation 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 congregation.

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

3.1.4 The interests of the congregation 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

3.2.1 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 congregation. If properly managed, activities can proceed as normal whilst at the same time upholding the trustees' obligations to the congregation, meeting regulatory and other external requirements and protecting the integrity and reputation of the congregation. By contrast, conflicts which are not managed effectively may jeopardise the congregation's public standing and may cause serious damage to the reputation of the congregation and of the individuals concerned. It is therefore the congregation's policy to ensure that when conflicts or perceived conflicts of interest arise they are acknowledged and disclosed.

3.2.2 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.

3.2.3 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. <u>Procedure</u>

4.1 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 congregation.

4.2 **Register of interests**

4.2.1 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 Session Clerk prior to taking up the position.

4.2.2 On appointment, trustees will be required to complete a Declaration of Interests form (Appendix 1). A Register of Interests in terms of Appendix 2 will be maintained by the Session Clerk and updated when a material change occurs. The Register of Interests must be reviewed and updated on an annual basis.

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

4.3 **Disclosure**

4.3.1 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.

4.3.2 There should be a standard agenda item at the beginning of each Kirk Session [*and Congregational Board/Deacons' Court*] meeting to declare any potential, actual or perceived conflicts of interest.

4.3.3 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.

4.3.4 If a trustee is aware of an undeclared conflict of interest affecting another trustee they should notify the other trustees or the Chair. All trustees have a collective responsibility to manage conflicts and to act clearly in the congregation's best interests.

4.4 **Managing conflicts of interest**

4.4.1 If a potential, actual or perceived conflict of interest is identified the trustees must act only in the best interests of the congregation. 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.

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

- Has the decision been taken in the best interests of the congregation?
- Does the decision protect the reputation of the congregation?
- What impression does the decision have on those outside the congregation?
- Can the trustees demonstrate that they have made the decision in the best interests of the congregation 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?

4.4.3 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.

4.4.4 The conflicted trustee should withdraw from the meeting prior to discussion of the item.

4.4.5 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 congregation.

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

4.5 Recording

4.5.1 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.

4.5.2 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
- how the decision was taken in the best interests of the congregation

5. <u>Consequences of breach</u>

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

5.2 If the circumstances are sufficiently serious, a failure to disclose a conflict of interest could therefore result in a disciplinary process being engaged.

6. <u>Review</u>

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

Session Clerk: Elizabeth Pennykid

Date: 25th February 2025

APPENDIX 1

Register of Interests

I declare that I (and my spouse/partner) have/do not have***** competing interests in relation to my position with East Calder, Kirknewton and Ratho Church. All competing interests are noted below. I undertake to review the accuracy of the information provided on an annual basis.

I understand that the information provided will be processed in accordance with the data protection principles as set out in the Data Protection Act 2018. Data will be processed only to ensure that trustees act in the best interests of the congregation. I give my consent for it to be used for the purposes described in the congregation's Conflict of Interest policy and for no other purpose.

I understand that this declaration will be retained by the Session Clerk and made available for inspection on request.

*delete as appropriate

Name / Signature:	
Date:	

Personal Interests

This section relates to interests of the person concerned and their partners. Interests are restricted to employment or appointments within related organisations, or business and /or contractual relationships and property interests connected to the congregation.

Specific interests are those which relate to properties and funds of the congregation.

Non-specific interests are those which are otherwise relevant to the work and interests of the congregation.

Employment

	Name of Employer & Post held	Nature of Business	Self or partner	Specific?
Details of employment held which may be significant to, or relevant to, or bear upon the interests of the congregation				

Self-employment (including details of contracts)

	Name of Business	Nature of Business	Self or partner	Specific?
Details of self- employment held which may be significant to, or relevant to, or				

bear upon the interests of the congregation				

Holder of paid office

	Nature of Office held	Organisation	Self or partner	Specific?
Details of office held which may be significant to, or relevant to, or bear upon the interests of the congregation				

Director of an Undertaking

	Name of Undertaking	Nature of Business	Self or partner	Specific?
Details of directorship held which may be significant to, or relevant to, or bear upon the interests of the congregation				

Remuneration as a Partner in a Firm

	Name of Partnership	Nature of Business	Self or partner	Specific?
Details of Partnership held which may be significant to, or relevant to, or bear upon the interests of the congregation				

Consultancy or other fee paid work commissioned by, or gifts from organisations and undertakings

	Nature of work	For whom undertaken & frequency	Self or partner	Specific?
Details of consultancy or other fee paid work which may be significant to, or relevant to, or bear upon the interests of the congregation Details of gifts which may be significant to, or relevant to, or bear upon the interests of the congregation Details of support to attend meetings / conferences which may be significant to, or relevant to, or bear upon the interests of the congregation				

Non-Financial Interests, including interest in property, e.g. property rented, bought, sold

	Description of interest	Self or partner	Specific?
Details of non-financial interests, including property interests, which may be significant to, or relevant to, or bear upon the interests of the congregation			

Membership of congregation/Presbytery/other Church of Scotland body

	Nature of membership	Organisation	Self or partner	Specific?
Details of membership which may be significant to, or relevant to, or bear upon the interests of the congregation				

Trustee of another Trust or charity

	Name of Organisation	Nature of Activities	Self or partner	Specific?
Details of trusteeship held which may be significant to, or relevant to, or bear upon the interests of the conregation				

Date received	

Note - *if further details need to be given please use a separate sheet of paper and attach to Declaration.*

APPENDIX 2

REGISTER OF CHARITY TRUSTEES' INTERESTS

1. CONFLICTS POLICY

The charity trustees of East Calder, Kirknewton and Ratho Church of Scotland 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.

2. MAINTENANCE OF REGISTER

This register is maintained by the Session Clerk, who must:

(a) record all conflicts, gifts and hospitality declared by the trustees in accordance with the policy; and

(b) circulate amendments or additions to the register (if any) to the trustees at the start of each charity trustee meeting.

3. 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.

4. INSPECTION OF REGISTER

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

REGISTER OF INTERESTS

Date notified	Name of charity trustee	Brief details of interest notified	Brief details of any action taken