



## Mamie Martin Fund

### Constitution

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### General

#### **Type of organisation**

- 1 The organisation is a Scottish Charitable Incorporated Organisation (SCIO).

#### **Scottish principal office**

- 2 The principal office of the organisation will be in Scotland (and must remain in Scotland).

#### **Name**

- 3 The name of the organisation is "Mamie Martin Fund"

#### **Purpose and Activities**

- 4 The organisation's purpose is to advance the education of young women and girls in North Malawi in schools and other educational institutions operated by, among others, the Synod of Livingstonia, Church of Central Africa Presbyterian, herein referred to as CCAP. The trustees will maintain a partnership agreement with the Synod and any other organisations or schools which MMF supports.
- 5 The organisation has power to do anything which is calculated to further its purpose or is conducive or incidental to doing so.
- 6 No part of the income or property of the organisation may be paid or transferred (directly or indirectly) to the member-supporters - either in the course of the organisation's existence or on dissolution - except where this is done in direct furtherance of the organisation's charitable purpose.

### **Liability of member-supporters**

- 7 The member-supporters of the organisation have no liability to pay any sums to help to meet the debts (or other liabilities) of the organisation if it is wound up; accordingly, if the organisation is unable to meet its debts, the member-supporters will not be held responsible.
- 8 The member-supporters and Charity Trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 7 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

### **General structure**

- 9 The structure of the organisation consists of:
- 9.1 the MEMBERS-SUPPORTERS - who have the right to attend member-supporters' meetings (including any annual general meeting) and have important powers under the Constitution; in particular, the member-supporters appoint people to serve on the Board and take decisions on changes to the Constitution itself;
  - 9.2 MEMBER-SUPPORTERS are defined as those who have given permission for their details to be held on the membership database of the Mamie Martin Fund and whose application for membership has not been refused by the Board under Clause 13 below
  - 9.3 the BOARD - who hold regular meetings, and generally control the activities of the organisation; for example, the Board is responsible for monitoring and controlling the financial position of the organisation.
- 10 The people serving on the Board are referred to in this Constitution as CHARITY TRUSTEES.

## **Member-supporters**

### **Qualifications for membership**

- 11 Membership is open to any individual aged 16 or over who has an interest in the education of girls in Malawi.
- 12 Employees of the organisation are not eligible for membership.

### **Application for membership**

- 13 Any person who wishes to become a member-supporter must sign a written application for membership or send an e-mail from an e-mail address recognised by the BOARD as being operated by that member-supporter: the application will then be considered and approved or rejected by the Board. All member-supporters must actively consent ('opt-in') to allow the MMF to hold their personal data for communication purposes. This is to comply with the General Data Protection Regulation which came into force on 25<sup>th</sup> May 2018.
- 14 The Board may, at its discretion, refuse to admit any person to membership.

- 15 The Board or its employee must notify each applicant promptly (in writing or by e-mail) of its decision on whether or not to admit them to membership.

### **Membership subscription**

- 16 No membership subscription will be payable.

### **Register of member-supporters**

- 17 The Board must keep a register of member-supporters, setting out

- 17.1 for each current member-supporter:

17.1.1 their full name and postal or email address; and

17.1.2 the date on which they were registered as a member-supporter of the organisation;

- 17.2 for each former member-supporter - for at least six years from the date on they ceased to be a member-supporter:

17.2.1 their name; and

17.2.2 the date on which they ceased to be a member-supporter.

- 18 The Board must ensure that the register of member-supporters is updated within 28 days of any change:

- 18.1 which arises from a resolution of the Board or a resolution passed by the member-supporters of the organisation; or

- 18.2 which is notified to the organisation.

### **Withdrawal from membership**

- 19 Any person who wants to withdraw from membership must give a written notice of withdrawal to the organisation, signed by them; they will cease to be a member-supporter as from the time when the notice is received by the organisation.

### **Transfer of membership**

- 20 Membership of the organisation may not be transferred by a member-supporter.

### **Re-registration of member-supporters**

- 21 The Board may, at any time, issue notices to the member-supporters requiring them to confirm that they wish to remain as member-supporters of the organisation and allowing them a period of 28 days (running from the date of issue of the notice) to provide that confirmation to the Board.

- 22 If a member-supporter fails to opt-in to agreeing that the MMF may keep their personal contact data for communication purposes then the trustees have no option other than to remove their data from the member-supporter database.

- 23 A notice under clause 21 will not be valid unless it refers specifically to the consequences (under clause 22) of failing to provide confirmation within the 28-day period.

### **Expulsion from membership**

- 24 Any person may be expelled from membership by way of a resolution passed by not less than two thirds of those present and voting at a member-supporters' meeting, providing the following procedures have been observed:-

- 24.1 at least 21 days' notice of the intention to propose the resolution must be given to the member-supporter concerned, specifying the grounds for the proposed expulsion;

- 24.2 the member-supporter concerned will be entitled to be heard on the resolution at the member-supporters' meeting at which the resolution is proposed.

## **Decision-making by the member-supporters**

### **Member-supporters' meetings**

- 25 The Board must arrange a meeting of member-supporters (an annual general meeting or "AGM") in each calendar year.
- 26 The gap between one AGM and the next must not be longer than 15 months.
- 27 The business of each AGM must include:-
- 27.1 a report by the Convenor on the activities of the organisation;
  - 27.2 consideration of the annual accounts of the organisation;
  - 27.3 the election/re-election of charity trustees, as referred to in clauses 51 to 61.
- 28 The Board may arrange a special member-supporters' meeting at any time.

### **Power to request the Board to arrange a special member-supporters' meeting**

- 29 The Board must arrange a special member-supporters' meeting if they are requested to do so by a notice (which may take the form of two or more documents in the same terms, each signed by one or more member-supporters) by member-supporters who amount to 5% or more of the total membership of the organisation at the time, providing:
- 29.1 the notice states the purposes for which the meeting is to be held; and
  - 29.2 those purposes are not inconsistent with the terms of this Constitution, the Charities and Trustee (Investment) Scotland Act 2005 or any other statutory provision.
- 30 If the Board receive a notice under clause 29, the date for the meeting which they arrange in accordance with the notice must not be later than 28 days from the date on which they received the notice.

### **Notice of member-supporters' meetings**

- 31 At least 14 clear days' notice must be given of any AGM or any special member-supporters' meeting.
- 32 The notice calling a member-supporters' meeting must specify in general terms what business is to be dealt with at the meeting; and
- 32.1 in the case of a resolution to alter the Constitution, must set out the exact terms of the proposed alteration(s); or
  - 32.2 in the case of any other resolution falling within clause 44 (requirement for two-thirds majority) must set out the exact terms of the resolution.
- 33 The reference to "clear days" in clause 32 shall be taken to mean that, in calculating the period of notice,
- 33.1 the day after the notices are posted (or sent by e-mail) should be excluded; and
  - 33.2 the day of the meeting itself should also be excluded.
- 34 Notice of every member-supporters' meeting must be given to all the member-supporters of the organisation, and to all the charity trustees; but the accidental omission to give notice to one or more member-supporters will not invalidate the proceedings at the meeting.
- 35 Any notice which requires to be given to a member-supporter under this Constitution must be: -

- 35.1 sent by post to the member-supporter, at the address last notified by them to the organisation; or
- 35.2 sent by e-mail to the member-supporter, at the e-mail address last notified by them to the organisation.

#### **Procedure at member-supporters' meetings**

- 36 No valid decisions can be taken at any member-supporters' meeting unless a quorum is present.
- 37 The quorum for a member-supporters' meeting is will be four member-supporters in addition to four members of the Committee, at least two of whom shall be office bearers/members. These member-supporters must be present in person.
- 38 If a quorum is not present within 15 minutes after the time at which a member-supporters' meeting was due to start - or if a quorum ceases to be present during a member-supporters' meeting - the meeting cannot proceed; and fresh notices of meeting will require to be sent out, to deal with the business (or remaining business) which was intended to be conducted.
- 39 The Convenor of the organisation (or, in their absence, the Vice Convenor) should act as chairperson of each member-supporters' meeting.
- 40 If the Convenor or Vice Convenor of the organisation is not present within 15 minutes after the time at which the meeting was due to start (or neither is willing to act as chairperson), the Charity Trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.

#### **Voting at member-supporters' meetings**

- 41 Every member-supporter has one vote, which must be given personally.
- 42 All decisions at member-supporters' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 43.
- 43 The following resolutions will be valid only if passed by not less than two thirds of those voting on the resolution at a member-supporters' meeting (or if passed by way of a written resolution under clause 47):
- 43.1 a resolution amending the Constitution;
- 43.2 a resolution expelling a person from membership under article 24;
- 43.3 a resolution directing the Board to take any particular step (or directing the Board not to take any particular step);
- 43.4 a resolution approving the amalgamation of the organisation with another SCIO (or approving the Constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);
- 43.5 a resolution to the effect that all of the organisation's property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities);
- 43.6 a resolution for the winding up or dissolution of the organisation.
- 44 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
- 45 A resolution put to the vote at a member-supporters' meeting will be decided on a show of hands - unless the chairperson (or at least two other member-supporters present at the meeting) asks for a secret ballot.
- 46 The chairperson will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting.

#### **Written resolutions by member-supporters**

47 A resolution agreed to in writing (or by e-mail) by all the member-supporters will be as valid as if it had been passed at a member-supporters' meeting; the date of the resolution will be taken to be the date on which the last member-supporter agreed to it.

### **Minutes**

48 The Board must ensure that proper minutes are kept in relation to all member-supporters' meetings.

49 Minutes of member-supporters' meetings must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.

50 The Board shall make available copies of the minutes referred to in clause 48 to any member of the public requesting them; but on the basis that the Board may exclude confidential material to the extent permitted under clause 94.

## **Board**

### **Number of Charity Trustees**

51 The maximum number of Charity Trustees is twenty. The Board may appoint an appropriate Patron/s. The Patron/s will have the right to attend any meetings, but will not have the powers, duties or responsibilities of a trustee and will not be recorded on the register of trustees.

52 The minimum number of Charity Trustees is five. At least two trustees must be members of the family, by blood or marriage, of Mamie Martin.

### **Eligibility**

53 A person will not be eligible for election or appointment to the Board unless they are a member-supporter of the organisation.

54 A person will not be eligible for election or appointment to the Board if they are: -

54.1 disqualified from being a Charity Trustee under the Charities and Trustee Investment (Scotland) Act 2005; or

54.2 an employee of the organisation.

### **Initial charity trustees**

55 The individuals who signed the Charity Trustee declaration forms which accompanied the application for incorporation of the organisation shall be deemed to have been appointed by the member-supporters as Charity Trustees with effect from the date of incorporation of the organisation.

### **Election, retiral, re-election**

56 At each AGM, the member-supporters may elect any member-supporter (unless they are debarred from membership under clause 53) to be a Charity Trustee.

57 The Board may at any time appoint any member-supporter (unless they are debarred from membership under clause 53) to be a Charity Trustee.

58 At each AGM, all of the Charity Trustees must retire from office - but may then be re-elected

59 A Charity Trustee retiring at an AGM will be deemed to have been re-elected unless: -

59.1 they advise the Board prior to the conclusion of the AGM that they do not wish to be re-appointed as a Charity Trustee; or

59.2 an election process was held at the AGM and they were not among those elected/re-elected through that process; or

59.3 a resolution for the re-election of that Charity Trustee was put to the AGM and was not carried.

### **Termination of office**

60 A Charity Trustee will automatically cease to hold office if: -

- 60.1 they become disqualified from being a Charity Trustee under the Charities and Trustee Investment (Scotland) Act 2005;
- 60.2 they become incapable for medical reasons of carrying out their duties as a Charity Trustee - but only if that has continued (or is expected to continue) for a period of more than six months;
- 60.3 they cease to be a member-supporter of the organisation;
- 60.4 they become an employee of the organisation;
- 60.5 they give the organisation a notice of resignation, signed by them;
- 60.6 they are absent (without good reason, in the opinion of the Board) from more than three consecutive meetings of the Board - but only if the Board resolves to remove them from office;
- 60.7 they are removed from office by resolution of the Board on the grounds that they are considered to have committed a material breach of the code of conduct for charity trustees (as referred to in clause 8);
- 60.8 they are removed from office by resolution of the Board on the grounds that they are considered to have been in serious or persistent breach of his/her duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
- 60.9 they are removed from office by a resolution of the member-supporters passed at a member-supporters' meeting.

61 A resolution under paragraph 60.7, 60.8 or 60.9 shall be valid only if: -

- 61.1 the Charity Trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for their removal is to be proposed;
- 61.2 the Charity Trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
- 61.3 (in the case of a resolution under paragraph 60.7 or 60.8) at least two thirds (to the nearest round number) of the Charity Trustees then in office vote in favour of the resolution.

### **Register of charity trustees**

62 The Board must keep a register of Charity Trustees, setting out

62.1 for each current Charity Trustee:

- 62.1.1 their full name and address;
- 62.1.2 the date on which they were appointed as a Charity Trustee; and
- 62.1.3 any office held by them in the organisation;

62.2 for each former Charity Trustee - for at least 6 years from the date on which they ceased to be a charity trustee:

- 62.2.1 the name of the Charity Trustee;
- 62.2.2 any office held by them in the organisation; and
- 62.2.3 the date on which they ceased to be a Charity Trustee.

- 63 The Board must ensure that its register of Charity Trustees is updated within 28 days of any change:
- 63.1 which arises from a resolution of the Board or a resolution passed by the member-supporters of the organisation; or
  - 63.2 which is notified to the organisation.
- 64 If any person requests a copy of the register of trustees the Board must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is from someone who is not a trustee of the organisation, the Board may provide a copy which has all personal data blanked out.

#### **Office-bearers**

- 65 The Charity Trustees must elect (from among themselves) two Co-convenors, a Vice-convenor, a Secretary and a Treasurer.
- 66 In addition to the office-bearers required under clause 65, the Charity Trustees may elect (from among themselves) further office-bearers if they consider that appropriate.
- 67 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 65 or 66.
- 68 A person elected to any office will automatically cease to hold that office: -
- 68.1 if they cease to be a Charity Trustee; or
  - 68.2 if they give to the organisation a notice of resignation from that office, signed by them.

#### **Powers of Board**

- 69 Except where this Constitution states otherwise, the organisation (and its assets and operations) will be managed by the Board; and the Board may exercise all the powers of the organisation.
- 70 A meeting of the Board at which a quorum is present may exercise all powers exercisable by the Board.
- 71 The member-supporters may, by way of a resolution passed in compliance with clause 43 (requirement for two-thirds majority), direct the Board to take any particular step or direct the Board not to take any particular step; and the Board shall give effect to any such direction accordingly.

#### **Charity trustees - general duties**

- 72 Each of the Charity Trustees has a duty, in exercising functions as a Charity Trustee, to act in the interests of the organisation; and, in particular, must:-
- 72.1 seek, in good faith, to ensure that the organisation acts in a manner which is in accordance with its purposes;
  - 72.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
  - 72.3 in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party:
    - 72.3.1 put the interests of the organisation before that of the other party;
    - 72.3.2 where any other duty prevents them from doing so, disclose the conflicting interest to the organisation and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question;
  - 72.4 ensure that the organisation complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.



- 73 In addition to the duties outlined in clause 72, all of the Charity Trustees must take such steps as are reasonably practicable for the purpose of ensuring: -
- 73.1 that any breach of any of those duties by a Charity Trustee is corrected by the Charity Trustee concerned and not repeated; and
- 73.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.
- 74 Provided they have declared their interest - and have not voted on the question of whether or not the organisation should enter into the arrangement - a Charity Trustee will not be debarred from entering into an arrangement with the organisation in which they have a personal interest; and (subject to clause 75 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005), they may retain any personal benefit which arises from that arrangement.
- 75 No Charity Trustee may serve as an employee (full time or part time) of the organisation; and no Charity Trustee may be given any remuneration by the organisation for carrying out their duties as a charity trustee.
- 76 The Charity Trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings.

### **Code of conduct for charity trustees**

- 77 Each of the Charity Trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the Board from time to time.
- 78 The code of conduct referred to in clause 77 shall be supplemental to the provisions relating to the conduct of Charity Trustees contained in this Constitution and the duties imposed on Charity Trustees under the Charities and Trustee Investment (Scotland) Act 2005; and all relevant provisions of this Constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.

## **Decision-making by the Charity Trustees**

### **Notice of Board meetings**

- 79 Any Charity Trustee may call a meeting of the Board or ask the Secretary to call a meeting of the Board.
- 80 At least 7 days' notice must be given of each Board meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.

### **Procedure at Board meetings**

- 81 No valid decisions can be taken at a Board meeting unless a quorum is present; the quorum for Board meetings is four trustees. The same quorum applies to governance decisions made by discussion between Board meetings.
- 82 If at any time the number of Charity Trustees in office falls below the number stated as the quorum in clause 81, the remaining Charity Trustee(s) will have power to fill the vacancies or call a member-supporters' meeting - but will not be able to take any other valid decisions.
- 83 One of the Co-convenors or the Vice-convenor should act as chairperson at meetings.
- 84 If the Co-convenors or Vice-convenor of the organisation are not present within 15 minutes after the time at which the meeting was due to start (or neither is willing to act as chairperson), the Charity Trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.
- 85 Every Charity Trustee has one vote, which must be given personally.
- 86 All decisions at Board meetings will be made by majority vote.

- 87 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
- 88 The Board may, at its discretion, allow any person to attend and speak at a Board meeting notwithstanding that they are not a Charity Trustee - but on the basis that they must not participate in decision-making.
- 89 A Charity Trustee must not vote at a Board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which they have a personal interest or duty which conflicts (or may conflict) with the interests of the organisation; they must withdraw from the meeting while an item of that nature is being dealt with.
- 90 For the purposes of clause 89: -
- 90.1 an interest held by an individual who is “connected” with the Charity Trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that Charity Trustee;
- 90.2 a Charity Trustee will be deemed to have a personal interest in relation to a particular matter if a body in relation to which they are an employee, director, member of the management committee, officer or elected representative has an interest in that matter.
- 91 A resolution agreed to in writing (or by e-mail) by all the trustees will be as valid as if it had been passed at a trustees’ meeting; the date of the resolution will be taken to be the date on which the last member-supporter agreed to it.

## **Minutes**

- 92 The Board must ensure that proper minutes are kept in relation to all Board meetings and meetings of sub-committees. The minutes to be kept under clause 92 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.
- 93 The Board shall (subject to clause 94) make available copies of the minutes referred to in clause 92 to any member of the public requesting them.
- 94 The Board may exclude from any copy minutes made available to a member of the public under clause 93 any material which the Board considers ought properly to be kept confidential - on the grounds that allowing access to such material could cause significant prejudice to the interests of the organisation or on the basis that the material contains reference to employee or other matters which it would be inappropriate to divulge.

## **Administration**

### **Delegation to sub-committees**

- 95 The Board may delegate any of their powers to sub-committees; a sub-committee must include at least one Charity Trustee, but other members of a sub-committee need not be Charity Trustees.
- 96 The Board may also delegate to a Co-convenor of the organisation (or the holder of any other post) such of their powers as they may consider appropriate.
- 97 When delegating powers under clause 95 or 96, the Board must set out appropriate conditions (which must include an obligation to report regularly to the Board).
- 98 Any delegation of powers under clause 95 or 96 may be revoked or altered by the Board at any time.
- 99 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the Board.

### **Operation of accounts**

- 100 Subject to clause 101, the signature/s of one or more of the bank signatories appointed by the Board will be required in relation to all operations (other than the lodging of funds) on the bank and building society accounts held by the organisation; at least one of the signatories must be a Charity Trustee.
- 101 Where the organisation uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the approach reflected in clause 100.

### **Accounting records and annual accounts**

- 102 The Board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 103 The Board must prepare annual accounts, complying with all relevant statutory requirements, prior to their presentation at the AGM; if an audit is required under any statutory provisions (or if the Board consider that an audit would be appropriate for some other reason), the Board should ensure that an audit of the accounts is carried out by a qualified auditor.

## **Miscellaneous**

### **Winding-up**

- 104 If the organisation is to be wound up or dissolved, the winding-up or dissolution process will be carried out in accordance with the procedures set out under the Charities and Trustee Investment (Scotland) Act 2005.
- 105 Any surplus assets available to the organisation immediately preceding its winding up or dissolution must be used for purposes which are the same as - or which closely resemble - the purposes of the organisation as set out in this Constitution.

### **Alterations to the Constitution**

- 106 This Constitution may (subject to clause 107) be altered by resolution of the member-supporters passed at a member-supporters' meeting (subject to achieving the two thirds majority referred to in clause 43) or by way of a written resolution of the member-supporters.
- 107 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (e.g. change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

### **Interpretation**

- 108 References in this Constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: -
- 108.1 any statutory provision which adds to, modifies or replaces that Act; and
- 108.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 108.1 above.
- 109 In this Constitution: -
- 109.1 "charity" means a body which is either a "Scottish charity" within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a "charity" within the meaning of section 1 of the Charities Act 2006, providing (in either case) that its objects are limited to charitable purposes;

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