

**FILE NOTE:**

<b>DATE:</b>	17 November 2011
<b>AUTHOR:</b>	OSCR
<b>SUBJECT:</b>	REPORT UNDER SECTION 33 OF THE CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005 ON INQUIRY:  ST LEONARDS SCHOOL (SC010904)

**Background**

As part of the Rolling Review of charities the Office of the Scottish Charity Regulator (OSCR) undertook an inquiry into the charitable status of St. Leonards School under section 28 of the Charities and Trustee Investment (Scotland) Act 2005 ('the 2005 Act').

This involved a desk-based review of written materials in order to determine whether public benefit was provided by the charity. A face to face meeting was also held with the School to help gather this information.

**Consideration**

To have charitable status, bodies have to pass the 'charity test' as laid out in sections 7 - 8 of the 2005 Act. The charity test requires bodies to have exclusively charitable purposes, to provide public benefit in Scotland or elsewhere, and to meet certain other conditions.

Section 7 (1) (b) of the 2005 Act, provides that a body meets the charity test if -

- *'it provides (or in the case of an applicant, provides or intends to provide) public benefit in Scotland or elsewhere'*

Section 8 (2) (b) of the 2005 Act requires that in determining whether a body provides or intends to provide public benefit in Scotland or elsewhere, regard must be had to –

a) *how any –*

- (i) *benefit gained or likely to be gained by members of the body or any other persons (other than as members of the public), and*
- (ii) *disbenefit incurred or likely to be incurred by the public,*  
*in consequence of the body exercising its functions compares with the benefit gained or likely to be gained by the public in that consequence, and*

- b) where benefit is, or is likely to be, provided to a section of the public only, whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive.*

On balance, and having had regard to possible unduly restrictive conditions and access to the benefit (education) that is provided, OSCR considered that public benefit was not provided by St. Leonards School due to the fees that were in place, the absence of sufficient mitigation of the impact of these fees and the lack of other benefit for which it made no fee or charge being provided in furtherance of its charitable purposes. St. Leonards School therefore failed to comply with section 7 (1) (b) of the 2005 Act and so did **not** meet the charity test.

The key information and considerations in relation to public benefit, and in particular to possibly unduly restrictive conditions were as follows:

1. St. Leonards School is a medium sized school located in St Andrews. The School operates a Junior and a Senior School. It also has boarding facilities. In the 2007-08 session there were 458 pupils on the school roll, of whom 15 were in the Nursery, 181 were in the Junior School and 262 in the Senior School. During the 2007-08 session there were 130 pupils boarding at the school. Of these, 106 were overseas students.
2. The fees charged by the school ranged from £6,771 per annum for the Junior school to £9,339 per annum in the Senior School. The fee for boarding was an additional £12,894 per annum.
3. The day fees charged were substantial. They were 'average' compared to the fees charged by other schools in the independent sector, but appeared high when compared to the cost of providing education in the state sector. The boarding fee was high and appeared 'average' to 'high' compared to the fees charged by other boarding schools in the independent sector.
4. Information on fees is available from the school upon request and is also available from the school's website. The information that was provided was appropriate, and advised that means tested support for the payment of fees was available.
5. There was some evidence of the charity providing other benefits in furtherance of its charitable purposes, for which it made no fee or charge. This partly extended to the wider educational curriculum. Examples included the provision of teaching practice placements for students, for probationer teachers during their induction and working as examiners for IBO and English Examining Boards.
6. The school's 'Assisted Places Scheme' provided means-tested awards of up to 100 per cent of the school fee. It was primarily designed to support day pupils of secondary school age. In the 2007-08 academic session, three beneficiaries were awarded means tested bursaries to

the value of £17,690. A dedicated fund was in the process of being built up to accommodate the continued growth of this means tested programme.

7. A fee remission was offered by the school to boarders that had one or more parents in the armed forces. This was not means tested. Eleven pupils benefited from this scheme, to the value of £54,471.
8. We assumed, although the school was not able to confirm this, that all of the pupils in receipt of this support were also supported by the Continuity of Education Allowance from the MOD. We estimated the value of this support to be approximately £165,000.
9. The school was not aware of any pupils being in receipt of grant funding from external sources (such as charitable trusts or foundations).
10. In 2007-08, the total number of pupils in receipt of awards of all types was therefore 14 with the total value of the support amounting (at most) to £237,161 (this did not include the non-means tested sibling discount).
11. Therefore, 3 per cent of pupils were in receipt of some form of facilitated access. The total value of support was £237,161 representing 5.5 per cent of the annual income of the charity for the year 2005-06.
12. Means tested support was available to less than 1 per cent of the beneficiaries, and the value of the means tested support arrangements represented 0.5 per cent of the annual income for the 2005-06 financial year.
13. The cost of providing the benefit to children and young people was more than was charged directly to beneficiaries. The school attracted additional resources from its (separate) trading company, which lets accommodation outside of term time. The full cost of the benefit provided was therefore not directly passed on to beneficiaries.
14. On balance, having had regard to possible unduly restrictive conditions and access, we concluded that public benefit was not provided by St Leonard's School due to the fees and charges that were in place, the absence of sufficient mitigation of the impact of these fees and little other benefit being provided in furtherance of its charitable purposes, for which it made no fee or charge.
15. At that time, there were very limited arrangements aimed at facilitating access for those unable to pay the fees from their own resources. This was partly due to the fact that the school's means-tested 'Assisted Places Scheme' was still in its infancy.

16. We recognised the (relatively significant) contribution made by the trading subsidiary to covering the costs of running the school.
17. The impact of financial support from external sources on opening up access to the school for those that may not be able to pay was limited, as this extended to a small number of pupils, and because this support was not aimed at those not able to pay.

For the reasons outlined above, the charity test was **not** met.

### **Further Action**

We issued a Direction to St. Leonards School on 27 October 2008 under section 30 (1) (a) of the 2005 Act:

- a) **To notify OSCR in writing by 28 January 2009 (three months from the date of the Direction) that the charity intended to comply with the Direction in full.**
- b) **To develop and submit a plan to OSCR by 28 October 2009 (12 months from the date of the Direction) that showed how the charity would increase the ‘facilitated access’ arrangements for the benefit it provides, or sets out some other strategy that would ensure that the charity would be able to meet the public benefit requirement of the charity test.**
- c) **To meet the objectives of the above plan or strategy by 28 October 2011 (three years from the date of the Direction).**

to ensure that it complies with section 7 (1) (b) of the 2005 Act.

St Leonards School indicated its intention to comply with the direction on 15 January 2009, and submitted a plan by 28 October 2009 which in OSCR’s view complied with section (b) of the direction.

### **The plan**

The plan which was approved had three main elements:

1. Increase accessibility by maintaining day fees in real terms at a level at least 25% lower than the comparable 2004/5 St Leonards day fee
2. Increasing accessibility as a result of means-tested remissions (including means-testing of sibling discounts and staff remissions) so that by 2011-2012 the school would provide means-tested assistance:
  - within a range of 4-6% of gross income, on the basis that a figure of 6% would be likely to ensure a margin of safety for passing the charity test.
  - to around 16% of pupils on the roll
  - with 29 pupils (5.9% of the roll) having high levels of remissions (40-100%)
  -

(The planned levels of assistance were illustrative and results would be influenced by unpredictability of economic situation and response of parents to means-testing)

3. Provide accessibility through activities for public benefit for which no charge is made:
  - Use of the school's experience in the International Baccalaureate Diploma to support provision of IB in Motherwell College and other institutions, and support for the proposed Scottish Baccalaureate in local secondary school
  - Hosting Associated Board music exams and 'Music for All' scheme
  - Foreign language workshops and conversational classes in local secondary and primary schools
  - Science and creative writing conferences and workshops with participation for students from other schools
  - Marking of public examinations, hosting placements for student teachers and also other smaller scale and one-off activities,

### **Situation as at 29 October 2011**

At the end of the direction period, the situation in regard to the main aspects of the plan was as follows:

1. Fee increases averaged below the rate of inflation through the period of the direction
2. Means-tested remissions in session 2011-2012 provided at
  - 5.2% of gross income
  - 10.1% of the school roll
  - 39 pupils (7.1% of roll) having high levels of remissions (40-100%)
  - 7 pupils (1.3% of roll) having 100% levels of remissions
3. The school provides public benefit at no charge through the following activities:
  - Use of the school's experience in the International Baccalaureate Diploma to support provision of IB in Motherwell College and other schools
  - Hosting Associated Board music exams and 'Music for All' scheme
  - Science and creative writing conferences and workshops with participation for students from other schools
  - Marking of public examinations, hosting placements for student teachers and also other smaller scale and one-off activities,

Within the Scottish education system there has been little activity in respect of the Scottish Baccalaureate, and this has been reflected in low uptake generally of this initiative. Links with local secondary schools have not resulted in the anticipated take-up; however, collaboration has provided benefit particularly through sport and drama. The following additional activities are being undertaken at no charge for public benefit:

- Use of Queen Mary's Library and archive items for history visits by Fife primary schools
- Drama outreach workshops in local state primary schools and in conjunction with the East Neuk Youth Theatre Group
- Classics roadshow in local state primary schools

### **Decision on Compliance**

The school achieved its aim of keeping fee increases at or below inflation for most of the direction period, and therefore maintaining the real terms fees at their notional 2005 level.

It is also spending more in absolute terms than its plan suggested on provision of means-tested assistance to students unable to pay the fees. While the proportion of the roll in receipt of assistance is significantly lower than the projections, this reflects the outcome of means-testing and the response from beneficiaries, with a higher proportion of high value assistance being provided than was anticipated.

The cost of means-tested assistance as a proportion of applicable income is lower than the best-case projection in the plan, but this reflects the particular circumstances of the school over the period of the plan.

The outcomes of the school's actions in providing benefit without charge have in part reflected developments in the education environment during the period of the plan, particularly lack of take up of the Scottish baccalaureate. Efforts to forge partnerships with primary schools have also been more productive of benefit than those with secondary schools.

Overall, taking into account the changes in the operational context affecting the school, OSCR is satisfied that the public benefit being provided within the charity is sufficiently close to what was set out in the plan. The charity has therefore complied with the direction issued to it on 27 October 2008. The issues identified in the original review have been addressed and the charity provides public benefit and therefore passes the charity test.

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