

**Wellington School (Ayr) Limited**  
**Scottish Charity Number: SC005052**

**Inquiry Report under section 33 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act)**

Following inquiries OSCR found that the charity did not provide public benefit and therefore failed the charity test. As a result, on 1 May 2013, OSCR issued a Direction to the charity to remove the undue restriction on obtaining the benefit it provided to ensure the charity met the charity test. The charity trustees have now implemented measures to remove this undue restriction and on 13 March 2014 requested that OSCR re-assess their charitable status on the basis of the following:

- In the financial year 2013-14, 78 pupils are in receipt of a means-tested award from the school to the total value of £279,400. This represented 17% of the school roll and 5.8% of the school's available income. The bursaries awarded by the school were of varying values, while the 60% of the awards made were of lower value, there has been a significant increase in the number of higher value awards including full fee remissions. In total, 4 pupils (0.8% of the school roll) received a full award, entitling them to 100% fee remission.
- In terms of activity carried out for which there is no charge, or nominal charge only the school has introduced a number of new activities as well as building on some of the significant activity already provided. The benefit of this type now being offered is set out at the end of this updated section 33 report.
- Cumulatively the steps taken by the school have satisfactorily removed the undue restriction that was previously in place and we therefore conclude that the charity provides public benefit and therefore passes the charity test.

**Executive summary of initial decision**

- After an inquiry, OSCR found that Wellington School (Ayr) Limited ('the charity'), a co-educational independent day school in Ayr, failed the charity test, and directed the charity to take steps to ensure that it passed the test.
- OSCR found that, having had regard to possible unduly restrictive conditions on accessing the benefit provided, the charity did not provide public benefit.
- The fees charged by the charity were substantial and represented a restriction on accessing the majority of the benefit the charity provides.

- Although the charity offers means-tested assistance to those who are unable to pay the full fees, it committed only 3.1% of its income to such assistance and it focused primarily on lower-value bursary awards.
- The charity also provided a significant level of benefit for which it made little or no charge. However, this activity, combined with the low expenditure on means-tested bursary support, was not substantial enough to mitigate the level of fees charged.
- The charity had not taken sufficient steps to mitigate those fees and therefore OSCR concluded that they are unduly restrictive.
- For these reasons, OSCR found that the charity did not provide public benefit and it therefore failed the charity test.
- OSCR directed the charity to remove the undue restriction on obtaining the benefit it provides by increasing its spend on means-tested assistance by 31 October 2014.
- The charity implemented various measures in an attempt to meet the terms of the direction. This included increasing its means-tested assistance spend to 5.7% of its gross income
- OSCR is now satisfied that the school has satisfactorily removed the undue restriction that was previously in place and we conclude that the charity provides public benefit and therefore passes the charity test.

## 1. Introduction

Following previous reviews of charitable status, the Office of the Scottish Charity Regulator (OSCR) has identified fee charging schools as having a higher possibility of failing the charity test due to the fees charged to beneficiaries. Our concern is that these fees may unduly restrict access to the benefit these charities provide. Fee charging schools are therefore a priority in our ongoing programme of reviews.

As part of this programme, OSCR has undertaken an inquiry into the charitable status of Wellington School (Ayr) Limited (SC005052) under section 28 of the 2005 Act.

## 2. Background

Wellington School (Ayr) Limited is a co-educational day school situated in Ayr. In summary, the charitable purposes of the charity are the advancement of education and the advancement of citizenship and community development.

The charity operates a nursery, junior school and senior school. Our review is based on the 2012-13 financial year of the charity which was the most recent period for which the school was able to provide complete, reliable financial information. In this year, the charity had a roll of 553 pupils; of these 66 attended the pre-school and 487 were enrolled in the main school. The charity's projected unrestricted income for the year is £4,702,760; we have used this figure for the purposes of our assessment.

### 3. Decision

To maintain their charitable status, charities must continue to meet the 'charity test' as laid out in sections 7 to 8 of the 2005 Act. The charity test requires charities 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.*

#### **4. Relevant factors**

##### **a. Benefit provided**

In furtherance of its charitable purposes, the charity operates a fee-charging day school and nursery for children aged 3 to 18 years. Pupils in the junior and senior school are taught a broad curriculum until Senior III, when they choose specialist subjects. Pupils are presented for Scottish Qualifications Authority (SQA) examinations in Senior 4, 5 and 6. The charity also offers a wide range of co-curricular activities including arts, sport, music, drama, public speaking and debating as well as participation in the John Muir Award, the Duke of Edinburgh's Award and foreign trips and exchanges.

Wellington School additionally provides public benefit in furtherance of its purposes for which it does not charge a fee or, charges a nominal fee only. This included:

- Participating in placement programmes for student and probationary teachers as well as work experience placements for pupils from other schools. These activities benefit up to approximately 24 individuals each year.
- Regularly organising and delivering training courses or providing training at educational events which are also attended by staff from other schools and nurseries. Examples of such activities include organising the South Ayrshire Health and Wellbeing Fair, presenting at two NHS Health Education conferences, delivering training to other teachers on the new National 5 examinations and the provision of an expert practitioner lecturer to local universities and colleges.
- Sharing teaching resources and strategies with staff from other schools and nurseries, for example, course notes, text books and presentations. The school has provided numerous examples of such activities, including:
  - providing a number of other schools with full course materials and support with assessments for courses they are delivering for the first time
  - hosting visits to the school's outdoor nursery
  - sharing topic resources with other schools
  - sharing attainment record and pupil assessment documents with other schools and nurseries.
- Providing staff to set, mark and verify SQA examinations as well as to develop and support the new SQA syllabus and National examinations in a number of subjects via national Quality Development Teams and Subject Working Groups. These activities involve 15 staff each year.

- Organising events and activities to which a large number of pupils from other local schools are also invited. Examples of such activities include the charity's annual Higher Education fair, a week-long physics event and the annual English Speaking Union's Junior Debating competition.
- Making its Duke of Edinburgh Award staff and resources, including its minibus, available to Ayr secondary schools to train staff and pupils from those schools.
- Providing annual refereeing and coaching courses in rugby and hockey which are open to and attended by approximately 15 representatives from other Ayrshire schools and clubs.
- Participating as an active member of the British Council's Comenius project initiative, part of the EU Lifelong Learning Programme. This project facilitates exchanges of staff, pupils and experiences between schools. The current programme involves annually around 50 pupils and five/six staff from three different schools in France, Germany and Slovenia spending one week at Wellington School each year.
- Encouraging pupil involvement in a broad range of volunteering activity. Examples include delivering training and assistance to local sports organisations and other community groups, assisting in charity shops, hospices as well as conservation work and charitable fundraising. A large number of pupils are involved in this annually.
- Providing access to the charity's facilities and resources (including its minibus) to external organisations on a free of charge or break-even basis. A local music school, art club and the Scottish Rugby Union use the facilities regularly with around 30-40 children benefiting on each occasion, with a number of other groups using the facilities on an infrequent basis.

#### **b. Accessing benefit**

There are two main ways in which access to benefit provided by the charity is restricted; the entrance criteria and the fees charged for the education provided.

Entrance to the nursery and junior school is via a combination of interview with the head teacher and a report from the child's existing school. Children are then invited to spend a day in the relevant class at the school. Entry to P7 and senior school is via a combination of entrance test, interview and a report from the applicant's previous school.

The charity advises that it is not highly selective and the purpose of interview and testing is to admit applicants that will benefit from the wide range of opportunities available to them. The entrance criteria appear to be reasonable and justifiable in the context of the charity's purposes and therefore we did not consider that they were unduly restrictive.

The annual fees charged by the school in the year reviewed (2012-13) were as follows:

Year	Fee	Sector average fee <sup>1</sup>	Variation
Nursery fee (full-time)	£6,348	£5,913	+ £435
Average junior school fee  Comprising: Primary 1 and 2 - £5,304 Primary 3 - £6,972 Primary 4 - £8,427 Primary 5 - £9,018 Primary 6 and 7 - £9,621	£7,752	£8,016	- £264
Senior school fee	£10,407	£10,173	+ £234

In addition to the benefit provided for which there is little or no charge, the charity sought to mitigate the impact of the fees it charges by offering both means-tested and non means-tested fee remissions to its pupils.

Means-tested financial assistance in the form of bursaries of 10-100% fee remission was offered by the charity to new entrants entering Primary 1 upwards. Bursaries are reviewed annually to assess continued eligibility. Where a child is awarded a bursary, the percentage reduction of the tuition fee is similarly applied to other expenses incurred in relation to schooling, including items such as travel to and from school, uniform costs and music tuition. The charity advertises its bursary policy on its own website, at local events and in advertisements through national and local media as well as in public areas such as on buses and at train stations.

In the financial year assessed (2012-13), 48 pupils were in receipt of a means-tested award from the school to the total value of £146,000. This represented 9.9% of the main school roll (excluding the nursery children) and 3.1% of the school's available income.

<sup>1</sup> *Indicative average fees for SCIS schools analysis at September 2012, [www.scis.org.uk](http://www.scis.org.uk)*  
(Note: comparison made with average nursery, junior and senior fees charged by day schools)

The bursaries awarded by the school were focussed primarily on lower value bursaries of 40% or less, with the highest number of awards being in the 21-40% bracket. In total, one pupil (0.2% of the main school roll) received a full award, entitling them to 100% fee remission.

The charity also offered two non means-tested forms of financial assistance, these being sibling discounts and staff discounts. Cumulatively, these discounts benefited 181 pupils in the 2012-13 year, with the total value of the awards amounting to £157,000. This represented 37.2% of the main school roll and 3.3% of the school's available income.

In addition, the bursar meets with parents and directs them towards possible alternate sources of funding to assist with the payment of fees from external sources. However, the charity did not hold information about the amount of external assistance such individuals received.

Further, the charity also confirmed that all of its nursery pupils in 2012-13 were (or will be) eligible to benefit from a local authority grant through its partnership arrangement with North, East and South Ayrshire Councils. This arrangement sees children who are eligible on the basis of age receiving part of their nursery fee from the local authority (up to a maximum of five sessions per week). The total value of this assistance was expected to be approximately £136,000 in the 2012-13 school year. This initiative serves to facilitate access to the benefit provided by the charity, albeit it is not primarily directed at those in financial need.

## 5. Conclusion

We were satisfied that Wellington School has charitable purposes and that there is no evidence of any significant private benefit or disbenefit arising as a consequence of the charity's operations. These parts of the charity test were therefore met.

In assessing whether Wellington School provides public benefit, we considered the conditions in place on accessing the benefit provided by the school – namely the fees charged - and whether these are unduly restrictive.

In doing so, we had particular regard to the principles we established from our experience to date in assessing whether fees and charges amount to undue restriction; these are set out as follows in our guidance publication, 'Meeting the Charity Test':

- **Transparency is important, whatever the scale of fees** – the charity should be able to demonstrate that its fee structure and arrangements to facilitate access are well publicised.



- **There are otherwise no absolute requirements** - it is for the charity to decide in what way it can best ensure that any fees or charges do not unduly restrict access to its benefits, but the overall decision on whether there is public benefit is for OSCR to make.
- **Proportionality is a factor in assessment** – in the case of small or insignificant fees less evidence is generally required to assess whether these constitute an undue restriction. The greater any fee, the more evidence may be needed, and the more important any measures on the part of the charity or others to mitigate the impact of the fee become.
- **The scale of any fee will be weighed against the full scope of the benefit(s) provided (those that are being charged for as well as any that are not being charged for)** - this means that we will take into account any other benefits the body provides in furtherance of its charitable purposes, for which it makes no charge.
- **Where a fee is charged which may affect the access to a benefit, we expect some kind of facilitated access or other mitigation to be in place** - we will assess the cumulative impact of any support to help potential beneficiaries to access charged for benefit. We will take account of the extent to which any facilitated access makes provision for people with a wide range of incomes, including low incomes.
- Forms of facilitated access which are clearly linked to the financial situation of potential beneficiaries (for instance through means-testing) are likely to have the greatest impact in addressing undue restriction in this context. Facilitated access arrangements, such as support to pay any fees or charges, which come from a body that is not a charity or is not connected with the charity can and do in practice facilitate access to the benefit a charity provides. The cost of providing the benefit that is being charged for is relevant to assessing whether any fee or charge is unduly restrictive – some benefits are more expensive to provide than others and we recognise that charities must be able to cover the cost of providing benefit.

Whilst the fees charged by Wellington School are largely in line with the sector average fees, it should be noted that the comparison was made for the purposes of context only. The average sector fee is still substantial and represents a restrictive condition on accessing the benefit provided by the school. In order for public benefit to be provided, there must therefore be significant mitigation of the school's fees in place if they are not to be undue.



We acknowledged, however, that the provision of educational benefit through the operation of a school is costly and that charity trustees must bear in mind their duties to act with care and diligence in managing the charity's affairs. In order to ensure future sustainability, charities in this sector – as in any sector where benefit is expensive to provide - must be able to generate income which meets the charity's necessary expenditure to allow the charity trustees to fulfil their legal duties and responsibilities.

The charity took steps to mitigate its fees in a number of ways. It had in place a means-tested bursary assistance scheme which is well-advertised to potential and existing beneficiaries. The awards offered under this scheme were of varying values, with the potential to benefit families on a wide range of incomes.

However, compared to other charities we have reviewed operating on the basis of similar activities and fee levels, the school committed a low proportion of its available annual income to the provision of means-tested assistance (3.1%) although, a considerable proportion of the pupils attending the school were in receipt of this type of facilitated access (9.9% of the main school roll).

Additionally there was a focus on low value awards which means that recipients of bursaries may in many cases have to supplement their award with a substantial personal contribution to the remaining fee balance. We did not consider that this level of expenditure on means-tested assistance and focus on low value awards was sufficient to open up access to the benefit provided, taking into account the level of fees charged and the resources available to the charity.

The school also took steps to mitigate its fees through the operation of non means-tested fee remissions, namely sibling and staff discounts. The school committed a similar level of resources to this form of mitigation as it did to means-tested bursary support (£157,000 compared to £146,000) and it benefited a significantly larger part of the school roll than the means-tested bursaries (37.2% of the roll compared to 9.9%). However, the impact of the non means-tested financial assistance on mitigating the fees charged by the school is considerably lower than that of means-tested bursaries, as they are not focussed on addressing the need of those who are less able to pay.

As noted in section 4b above, the school is in partnership with three local authorities to provide pre-school education. This assistance – though not targeted at financial need – nevertheless facilitates access for all of the nursery children at some point during the school year.

As well as providing benefit which is charged for, the school provides benefit which is free or subject only to a nominal charge. This type of activity benefits a wide range of beneficiaries outwith the school itself and therefore forms part of our overall assessment. The not charged for activities undertaken by the school which have most impact are:

- its staff contribution to educational development and standards
- its contribution to training of other educational professionals
- the sharing of teaching resources with other schools
- the organisation of educational events to which pupils from local schools are invited, and
- the regular use of its facilities by a small number of groups.

We considered that these activities benefited a large number of beneficiaries both within and outwith the school; they appeared to be regular, scheduled and showed a clear commitment by the school to opening up access to the benefit it provides for those who are unable to afford the fees it charges. This type of activity therefore contributed to mitigating the fees charged by the charity.

However, we did not consider that this type of benefit was in itself significant or substantial enough to fully mitigate the fees charged by the charity for the majority of the benefit it provides. In reaching this conclusion, we took into account the level of those fees and the other forms of facilitated access it offered (particularly its low level of expenditure on means-tested bursary support).

On balance, and having had regard to possible unduly restrictive conditions on accessing the benefit provided we concluded that public benefit was not provided by Wellington School. This was due to the fees and charges that are in place and the absence of sufficient mitigation of the impact of those fees through means-tested bursary support.

For the reasons set out above, OSCR found that Wellington School (Ayr) Limited did **not** meet the charity test.

## **6. Issue of the Direction**

On 1 May 2013, OSCR directed Wellington School (Ayr) Limited under section 30(1)(a) of the 2005 Act to take the following steps for the purposes of meeting the charity test:

- **To remove the undue restriction on obtaining the benefit provided by the charity (which is detailed in ‘Section 5 Conclusion’ of the enclosed Section 33 Report on Inquiry) by increasing the proportion of income spent on means-tested bursaries, by 31 October 2014.**

## 7. Situation as of March 2014

Following the Direction issued to the charity in May 2013, the charity trustees began to take further measures to remove the undue restriction on obtaining the benefit provided. They have now implemented these measures and on 13 March 2014 requested that we re-assess their charitable status on the basis of the following:

In the financial year 2013-14, 78 pupils are in receipt of a means-tested award from the school to the total value of £279,400. This represents 17% of the school roll and 5.8% of the school's available income. The bursaries awarded by the school were of varying values, while the 60% of the awards made were of lower value, there has been a significant increase in the number of higher value awards including full fee remissions. In total 4 pupils (0.8% of the school roll) received a full award entitling them to 100% fee remission.

In terms of activity for which there is no charge or nominal charge only the school has built on the significant activity already provided as well as introducing some new activities. The benefit of this type now being offered includes:

- Making provision for a local state secondary pupil to join their Advanced Higher Business Management Course in 2013/14. The course was not run at any state secondary schools in Ayrshire.
- Making provision for a state secondary pupil to participate in a week-long exchange with Wellington's partner school in France. The exchange allowed the pupil to gain in-depth French language exposure for their Higher French studies which was an opportunity they would not otherwise have had available to them.
- Continuing to participate in placement programmes for student and probationary teachers as well as work experience placements for pupils from other schools.
- Continuing to regularly organise and deliver training courses or providing training at educational events which are also attended by staff from other schools and nurseries. A new example of this is that the school hosted and organised the Association for Science Education training event for 24 teachers from local state schools.
- Continuing to share teaching resources and strategies with staff from other schools and nurseries, for example, course notes, text books and presentations.

- Continuing to provide staff to set, mark and verify SQA examinations as well as to develop and support the new SQA syllabus and National examinations in a number of subjects via national Quality Development Teams and Subject Working Groups. A new example of this includes the provision of a team leading one of the work groups at the 2013 European Physics Teachers conference in Slovenia which will be further expanded in 2014 to involve shared delivery of the course itself.
- Continuing to organising events and activities to which a large number of pupils from other local schools are also invited. New examples of this are that the school will host the Scottish National Archery competition in August 2014 and have organised and hosted the 2013 Association for Science Education 'Outer Space' training event.
- Continuing to make its Duke of Edinburgh Award staff and resources, including its minibus, available to Ayr secondary schools to train staff and pupils from those schools.
- Continuing to provide annual refereeing and coaching courses in rugby and hockey which are open to and attended by approximately 15 representatives from other Ayrshire schools and clubs.
- Continuing to participate as an active member of the British Council's Comenius project initiative, part of the EU Lifelong Learning Programme. This has been expanded in 2013 to include a formal exchange programme with St Edmunds School in Jaipur, India. Wellington will host pupils and staff from St Edmunds in June 2014.
- Continuing to encouraging pupil involvement in a broad range of volunteering activity.
- Continuing to provide access to the charity's facilities and resources (including its minibus) to external organisations on a free of charge or break-even basis.

## **Conclusion**

We consider that the school has sufficiently addressed the issues identified in the original review. In particular the substantial increase in the amount of income expended on means-tested bursaries as well as the increase in the number of full remissions awarded has had the effect of impacting on those who cannot afford the full fee. Part of the increase in means-tested spend has been brought about by the school introducing a new policy to means-test both sibling and staff discounts for new entrants. The introduction of this policy is reassuring to us as it demonstrates the school has a clear focus to assist those who are less able to pay.

We previously considered that the school participated in a significant amount of activity for which it did not charge a fee. They have however built on the activity provided which demonstrates to us an ongoing commitment to the school to provide this type of benefit.

**OSCR**

**29 April 2014**