

St Columba's School Ltd
Scottish Charity Number: SC012598

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

Executive summary

- After an inquiry, OSCR finds that St Columba's School Ltd, a co-educational independent day school in Kilmacolm, fails the charity test, and has directed the charity to take steps to ensure that it passes the test.
- OSCR finds that, having had regard to possible unduly restrictive conditions on accessing the benefit provided, the charity does not provide public benefit.
- The fees charged by the charity are substantial and represent 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 commits only 3.5% of its income to such assistance and only 5.4% of the school roll benefit from it.
- The school also provides benefit for which it makes little or no charge. However, much of this activity is relatively infrequent or ad hoc and therefore is not substantial enough to mitigate the level of fees charged by the school.
- The charity has not taken sufficient steps to mitigate those fees and therefore OSCR concludes that they are unduly restrictive.
- For these reasons, OSCR finds that the charity does not provide public benefit and it therefore fails the charity test.
- Under the direction the charity must remove the undue restriction on obtaining the benefit it provides by increasing its spend on means-tested assistance and any other measures as the charity trustees think appropriate to ensure that the charity meets the charity test by 31 July 2014.
- If the charity does not comply with the direction, OSCR will take steps to remove it from the Scottish Charity Register.
- The charity has the right to seek a review of OSCR's decision to issue a direction.

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 St Columba's School Ltd (SC012598) under section 28 of the 2005 Act.

2. Background

St Columba's School Ltd is a co-educational day school situated in Kilmacolm. In summary, the charitable purposes of the school are the advancement of education, the advancement of citizenship and community development and the provision of recreational facilities.

The school operates a pre-school, 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 school had a roll of 712 pupils; of these 27 attended the pre-school and 685 were enrolled in the main school. The school's projected unrestricted income for the year is £6,106,757; 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 school operates a fee charging day school and nursery. 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 IV, V and VI. The school also offers a range of instrumental tuition to pupils from Junior 3 upwards and a wide range of co-curricular activities from Junior 4 to Senior VI.

St Columba's School Ltd additionally provides public benefit in furtherance of its purposes for which it does not charge a fee or, charges a nominal fee only. This includes:

- The school's staff participating in a number of education groups and boards as well as acting as setters, markers, examiners, visiting assessors and verifiers for the SQA.
- Advancing education and the arts through the school's 'Creative Communities' project; this includes a staff member working with various community groups and external organisations on themed projects. The school also invites other local schools to an annual creative writing workshop.
- Running two evening classes, in art and bridge, which are open to the public and which benefit approximately 20 and 40 individuals respectively. These classes run once a week for two eight-week periods of the year.
- Providing access to the school's sports facilities to external organisations on a break-even basis. A local boys' football club and a rugby club use the facilities regularly, with a number of other sports and recreational clubs using the facilities on an ad hoc or relatively infrequent basis.

- In furtherance of their citizenship and community development purpose, pupils of the school participate in various volunteering and fundraising activities. Pupils raised £14,000 for various charities in 2012 and, under the Duke of Edinburgh scheme, have volunteered for a number of charities and voluntary groups.

b. Accessing benefit

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

Entrance to Nursery (age three), Preparatory (age four) and Junior 1 is by informal assessment. Children are then invited to visit the school in small groups. Entry to the junior school and senior school is via a combination of entrance test, interview and a report from the applicant's previous school. The school advises that the purpose of testing is to ensure that applicants would be able to cope with the level of education offered by the school. The entrance criteria appear to be reasonable and justifiable in the context of the charity's purposes and therefore we do not consider that they are unduly restrictive.

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

Year	Fee	Sector average fee ¹	Variation
Average nursery fee	£2,905	£5,913	- £103
Comprising: Nursery - £2,490 (4 sessions per week) Preparatory - £3,320 (5 sessions per week)	(approximately £5,810 full-time equivalent)	(full-time)	(based on comparison of full-time equivalent figures)
Average junior school fee	£8,231	£8,016	+ £215
Comprising: Junior 1 and 2 - £7,150 Junior 3 - £7,830 Junior 4 - £8,310 Junior 5 and 6 - £8,730 Transitus (Year 7) - £9,720			
Senior school fee	£9,720	£10,173	- £453

¹ Indicative average fees for SCIS schools analysis at September 2012, www.scis.org.uk
(Note: comparison made with average fees charged by day schools)

In addition to the benefit provided for which there is little or no charge, the school seeks 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 between 10 and 100% is offered by the school to new entrants entering Transitus (Year 7) upwards. Bursaries are reviewed annually to assess continued eligibility. The school advertises its bursary policy on its own website and in advertisements placed in national and local press as well as in public areas such as shopping centres.

In the financial year assessed (2012-13), 37 pupils were in receipt of a means-tested award from the school to the total value of £212,510. This represented 5.4% of the main school roll (excluding the nursery children) and 3.5% of the school's available income. The bursaries awarded by the school were of varying values with the highest number of awards being in the 81-100% bracket. In total, eight pupils (1.2% of the main school roll) received a full award, entitling them to 100% fee remission.

Additionally, four pupils received means-tested assistance from external charitable trusts to the total value of £21,750; these pupils were also in receipt of assistance through the school's means-tested awards. The cumulative value of means-tested bursaries from the school and external sources was £234,260.

The school also offers two non means-tested forms of financial assistance, these being sibling discounts and staff discounts. Cumulatively, these discounts benefited 65 pupils in the 2012-13 year, with the total value of the awards amounting to £170,185. This represented 9.4% of the main school roll and 2.8% of the school's available income.

5. Conclusion

We are satisfied that St Columba's School Ltd 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 are therefore met.

In assessing whether St Columba's School Ltd provides public benefit, we have 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 have had particular regard to the principles we have 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 St Columba's School Ltd are largely in line with the sector average fees, it should be noted that the comparison is 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 acknowledge, 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 school has taken steps to mitigate its fees in a number of ways. It has in place a means-tested bursary assistance scheme which is well-advertised to potential and existing beneficiaries. The awards offered under this scheme are of varying values, benefiting families on a wide range of incomes. There is also a particular focus on high value awards which benefit those on low incomes. Additionally, we also note that external charitable trusts supplement the school's own means-tested bursary assistance for a small number of pupils.

However, compared to other charities which we have reviewed operating on the basis of similar activities and fee levels, the school commits a low proportion of its available annual income to the provision of means-tested assistance (3.5%) and a low proportion of the pupils attending the school are in receipt of this type of facilitated access (5.4% of the main school roll). We do not consider that this level of expenditure on means-tested assistance is 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 takes steps to mitigate its fees through the operation of non means-tested fee remissions, namely sibling and staff discounts. This form of mitigation benefits a larger part of the school roll than the means-tested bursaries (9.4% of the roll compared to 5.4%) but its impact on mitigating the fees is considerably lower as it is not focussed on addressing the need of those who are less able to pay.

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 range of beneficiaries outwith the school itself and therefore forms part of our overall assessment. However, taking the full scope of the benefits provided by the school into account we do not consider that the benefit provided in this way is significant or substantial enough to mitigate the level of fees charged by the school for the majority of the benefit it provides.

The not charged for activities undertaken by the school which have most impact are its staff contribution to educational development and standards, and its work with the community in the creative arts. These activities appear to be regular and ongoing. However, the remaining activities – particularly the use of the school’s sporting facilities – are for the most part relatively infrequent or ad hoc. While they do provide a limited level of benefit, the majority of such activities are not regular and scheduled and therefore do not demonstrate a clear, ongoing commitment by the school to mitigating the impact of its fees.

St Columba’s School Ltd is an all through school catering for a relatively large number of pupils. As such, it has a comparatively higher level of resources available to it than, for example, a small junior school and therefore has greater opportunity to offer benefit which is not charged for. The school has not evidenced that it is committed to offering a regular, meaningful level of benefit for which there is little or no charge and so this type of activity consequently has a limited impact on mitigating the fees it charges.

On balance, and having had regard to possible unduly restrictive conditions on accessing the benefit, we conclude that public benefit is not provided by St Columba’s School Ltd. This is due to the fees and charges that are in place, the absence of sufficient mitigation of the impact of these fees through means-tested bursary support and the insufficient level of other benefit being provided in furtherance of its charitable purposes for which no fee or charge is made.

For the reasons set out above, St Columba’s School Ltd does **not** meet the charity test.

6. Action

On 10 January 2013, OSCR directed St Columba's School Ltd 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 (as set out in section 5 of this report) by 31 July 2014.

This action must include increasing the charity's means-tested assistance spend and taking such other measures, as appropriate, to ensure that the charity meets the charity test such as by:

- a) increasing the benefit for which there is no charge (or nominal charge only); and/or**
- b) taking any other actions that appear to the charity trustees to be necessary at present or, following a change in circumstance, in the duration of this direction.**

If St Columba's School Ltd does not comply with this direction within the given timescales, OSCR will remove it from the Scottish Charity Register under section 30(3) of the 2005 Act.

The charity has the right to request a review of OSCR's direction. Throughout the duration of the direction, and throughout the duration of any review and appeals process, the charity will remain entered in the Register and its charitable status will remain unaffected.

10 January 2013