

St George's School for Girls
Scottish Charity Number: SC012632

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 10 January 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 30 September requested that OSCR re-assess their charitable status on the basis of the following:

- In the financial year 2013-14, 102 pupils are in receipt of a means-tested award from the school to the total value of £618,555. This represented 13.7% of the school roll and 6.9% of the school's available income. The bursaries awarded by the school were of varying values with 50% of the awards made were of high value representing 61% of the fee and over. In total, 16 pupils (2.1% 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 activity already being 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 St George's School for Girls, a single-sex independent day school in Edinburgh, 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 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 committed only 4.3% of its income to such assistance in the year of review (2011-12). This assistance benefited 12.4% of the main school roll but the charity's main focus was on lower-value bursaries.
- The school also provides benefit for which it makes little or no charge. However, the school was involved in only a small number of such activities. They were therefore not substantial enough to mitigate the level of fees charged by the school.
- The charity had not taken sufficient steps to mitigate the fees and therefore OSCR concluded that they were 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 provided by increasing its spend on means-tested assistance and any other measures as the charity trustees thought appropriate to ensure that the charity met the charity test by 31 July 2014.
- The charity was advised that if it did not comply with the direction, OSCR would take steps to remove it from the Scottish Charity Register.
- The charity implemented various measures in an attempt to meet the terms of the direction. These included increasing its means-tested assistance spend to 6.9% of its gross income and increasing the activity it provided for no charge.
- 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 undertook an inquiry into the charitable status of St George's School for Girls (SC012632) under section 28 of the 2005 Act.

2. Background

St George's School for Girls is a single-sex school for day and boarding pupils situated in Edinburgh. In summary, the charitable purpose of the school was the advancement of education through the operation of the school.

The school operates a nursery, junior school and senior school for girls aged two to 18 years old. Our review was based on the 2011-12 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 860 pupils; of these 79 attended the nursery and 781 were enrolled in the main school. Approximately 7% of the main school roll were regular boarding pupils.

The school's available income for the year (including unrestricted income and that restricted income which was available for bursary provision) was £9,459,500; we used that figure for the purposes of our assessment.

3. Our Original 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 school for day and boarding pupils as well as a nursery. Pupils in the junior and senior school are taught a broad curriculum until Fifth Form, when they choose specialist subjects. Pupils are presented for Scottish Qualifications Authority (SQA) or Edexcel examinations in Fifth and Sixth Forms. The school also offers a wide range of co-curricular activities to pupils from Primary 1 to Sixth Form.

St George's School for Girls additionally provides public benefit in furtherance of its purposes for which it does not charge a fee or, charges a nominal fee only. In 2011-12 this included:

- The school's staff participating in a curriculum review, development activities and supporting the work of the SQA by acting as examination setters, examiners and verifiers.
- Contributing to the maintenance and improvement of educational standards through:
 - support for the implementation of the national educational leadership agenda
 - participation in teachers' continuing professional development, including hosting termly Practitioner Research seminars open to all local teachers
 - providing placements at the school for student teachers and exchange teachers
 - staff contribution to educational bodies and committees and
 - supporting HMIE in its external review of schools and in the development of the new inspection framework.
- Providing access to the school's facilities to external organisations on a break-even basis. A local junior hockey club, toddler group, music school and the National Youth Choir of Scotland use the facilities regularly, with a number of other sports and recreational clubs using the facilities on an ad hoc or relatively infrequent basis.

- Working with community partners and local authority schools to enhance the learning environment. For example, it provides its facilities for use as the Confucius Classroom for Edinburgh. Confucius Classrooms are local hubs, based in Scottish schools or colleges, which stimulate and support innovative teaching and learning of Chinese language and culture. All Edinburgh schools can benefit from the Confucius Classroom.

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 the school at all stages is via a combination of assessment and report from the child's existing school. Children are also invited to visit the school for a taster day. The school advises that the purpose of testing is to ensure that it can meet the educational needs of the child. 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 (2011-12) were as follows:

Year	Fee	Sector average fee¹	Variation
Average full-time nursery fee Comprising: Pre-Nursery - £12,000 Little Nursery - £10,110 Big Nursery & Pre-School - £5,850	£8,846	£6,027	+ £2,819

¹ *Indicative average fees for SCIS schools analysis at August 2011, www.scis.org.uk*

(Note: comparison of charity's day fees has been made with average fees charged by day schools due to the very low number of regular boarding pupils, and comparison of its boarding fees have been made with average fees charged by boarding schools)

<p>Average junior day school fee</p> <p>Comprising: Primary 1 and 2 - £6,765 Primary 3, 4 and 5 - £7,920 Primary 6 - £8,835 Remove - £9,945</p>	£8,010	£8,028	- £18
<p>Average junior boarding school fee</p> <p>Comprising: Average junior day fee plus annual boarding fee of £11,460</p>	£19,470	£18,693	+£777
<p>Average senior day school fee</p> <p>Comprising: Lower 4 - £ 9,945 Upper 4, Lower 5, Upper 5, Lower 6, Upper 6 - £11,130</p>	£10,932	£9,954	+£978
<p>Average senior boarding school fee</p> <p>Comprising : Average senior day fee plus annual boarding fee of £11,460</p>	£22,392	£26,079	-£3,687

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 up to 100% is offered by the school to existing and new pupils of the junior and senior school. Bursaries are reviewed annually to assess continued eligibility. The school advertises its bursary policy on its own website and in relevant external publications.

In the financial year assessed (2011-12), 97 pupils were in receipt of a means-tested award from the school to the total value of £402,904. This represented 12.4% of the

main school roll (excluding the nursery children) and 4.3% 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 21-40% bracket. In total, four pupils (0.5% of the main school roll) received a full award, entitling them to 100% fee remission.

Additionally, three pupils received financial assistance from external trusts to the total value of £7,800; the school does not know if these awards were means-tested.

The school also offers three forms of non means-tested financial assistance, these being sibling discounts, pre-payment of fee discount and discount for pupils who have brothers attending Merchiston Castle School. Cumulatively, these discounts benefited 93 pupils in the 2011-12 year, with the total value of the awards amounting to £169,019. This represented 11.9% of the main school roll and 1.8% of the school's available income.

5. Conclusion of initial review of charitable status

We were satisfied that St George's School for Girls had charitable purposes and that there was 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 St George's School for Girls provides public benefit, we considered the conditions in place on accessing the benefit provided by the school – namely the fees charged - and whether these were unduly restrictive.

In doing so, we 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.

The fees charged by St George's School for Girls were in some cases lower than the sector average fees (senior boarding fees were considerably lower) and in other cases, they are moderately higher than the sector average fees (junior boarding fees and senior day fees). The nursery fees were also considerably higher than the sector average fees, but this is largely because the nursery offers care to very young children which will incur higher staff costs; in many other cases, nursery care is offered to older children only.

It should be noted, however, that the comparison to the sector average fees 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 school took steps to mitigate its fees in a number of ways. It had in place a means-tested bursary assistance scheme which offered awards of varying values, benefiting families on a wide range of incomes.

However, compared to other charities which 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 (4.3%). Although a relatively high proportion of the pupils attending the school were in receipt of this type of facilitated access (12.4% of the main school roll), there was a particular focus on low value awards. This meant that recipients of bursaries may in many cases had 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, nor the focus on low value awards, sufficiently opened 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 discounts (including a reciprocal arrangement scheme) and pre-payment discounts. This form of mitigation benefited a similar part of the school roll to the means-tested bursaries (11.9% of the roll compared to 12.4%) 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.

OSCR was also aware that the school is in partnership with the City of Edinburgh Council to provide pre-school education. As part of the scheme, the Council pays the school directly for children aged three to four years old to receive up to five sessions per week (this grant is currently capped at a maximum of £1,550 per year for five sessions). This assistance – though not targeted at financial need – nevertheless facilitated access for a number of the nursery children.

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 benefited a range of

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

Of the activities for which the school made little or no charge, those which had most impact were its staff contribution to educational development and standards, the regular use of its facilities by a small number of groups and the Confucius Classroom. We considered that these activities will benefit a wide range and large number of beneficiaries both within and outwith the school and therefore they contributed to mitigating the fees charged by the charity.

However, these were the main activities undertaken by the school for which it made little or no charge. In addition to these, the school told us that other groups used its facilities on an ad hoc basis and that it was involved in other community partnerships. Other than the Confucius Classroom, these community partnerships were not named and the school advised that it was difficult to quantify their impact beyond saying that there was at least weekly contact which contributed to the education environment in Edinburgh. The ad hoc use of facilities – while resulting in a limited level of benefit – was not regular or scheduled and therefore did not demonstrate a clear, ongoing commitment by the school to mitigating the impact of its fees.

St George's School for Girls is an all through school catering for a relatively large number of pupils in the centre of Edinburgh. As such - compared to, for example, a small, rural junior school - it has a greater opportunity to offer benefit which is not charged for through its location and higher level of resources. In summary, while aspects of the not charged for benefit provided by the school do provide some benefit in furtherance of its purposes, the school does not participate in a significant enough level of such activities to fully mitigate the fees it charges, taking into account the other forms of facilitated access it offers.

On balance, and having had regard to possible unduly restrictive conditions on accessing the benefit, we concluded that public benefit was not provided by St George's School for Girls. This was due to the fees and charges that were in place, the absence of sufficient mitigation of the impact of those fees and the insufficient level of other benefit being provided in furtherance of its charitable purposes for which no fee or charge was made.

For the reasons set out above OSCR found that St George's School for Girls did **not** meet the charity test.

6. Issue of the Direction

On 10 January 2013, OSCR directed St George's School for Girls 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.

Situation as of September 2013

Following the Direction issued to the charity in January, 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 30 September requested that we re-assess their charitable status on the basis of the following:

In the financial year 2013-14, 102 pupils are in receipt of a means-tested award from the school to the total value of £618,555. This represented 13.7% of the school roll and 6.9% of the school's available income. The bursaries awarded by the school were of varying values with 50% of the awards made were of high value representing 61% of the fee and over. In total, 16 pupils (2.1% of the school roll) received a full award, entitling them to 100% fee remission.

In April the charity adopted revised charitable purposes. In summary the school's objects are now the advancement of education, the advancement of citizenship or community development, the provision of recreational activities and facilities, the advancement of public participation in sport and the advancement of heritage.

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 activity already being provided. The following is not an exhaustive list but benefit of this type now being offered includes:

- Organising several special educational events which involve the school's teachers delivering lessons and workshops to children from local schools the events include, Modern Languages day, Junior Schools Thinking day and Nutrition day. Cumulatively these events benefit around 140 external pupils.
- Hosting a number of other educational events at the school to which pupils from other schools are invited. Whilst St George's have not organised these events they do contribute to the delivery. Cumulatively these events benefited around 1700 external pupils.
- Participating in a joint initiative with a local state primary school whereby a St George's music teacher provided weekly lessons to the state school pupils during the summer term.
- Making provision for eight students from a state school to be entered for Early Education and Childcare Higher through St George's.
- Forming a partnership with a local state school whereby they were invited to participate in a week-long drama workshop (twice during 2013)
- Continuing to contribute to the maintenance and improvement of educational standards in the various ways previously described. In addition the school has increased its work with student teachers by releasing staff to participate in various activities including acting as an assessor in oral presentations by PGDE students, being involved in the selection of students for the PGDE course and involvement in a consultation group to comment and advise on the PGDE Secondary course. They have also increased the number of CPD events for staff from other school which now includes training for local nursery staff and art teachers.
- Continuing to provide access to the school's facilities. There are a number of new regular users of the facilities which include:
 - A local primary school use the sports hall each Saturday morning for extra-curricular sport involving around 20-25 children.
 - An independent school use the sports hall one evening per week.
 - Another independent school uses the all-weather pitch one evening per week in the winter months.

- Continuing to offer access to materials and teaching of Chinese as part of its Confucius Classroom activity both to local students and those from the rest of Scotland.
- Supporting a number of local and national voluntary sector organisations through voluntary and fundraising work.
- Facilitating academic research through the conservation of an archive and the archivist supports researchers in their study. The school will also publish parts of the archive online for the use of Higher and Advanced Higher students throughout Scotland.

Conclusion

We consider that the school has sufficiently addressed the issues identified in the original review. In particular the increase in the amount of income expended on means-tested bursaries as well as the increase in the number of full remissions awarded and the continued trend of issuing higher value awards overall has had the effect of impacting on those who cannot afford the fee.

Finally, the school has increased the activity it provides or is involved in for which it does not charge a fee. As well as the increase in activity we have also been able to take into consideration other activities the school carried out but which could not be covered under their previous sole purpose of the advancement of education. We now consider the level of not charged for benefit to be substantial which has a high impact on a high number of beneficiaries from outwith the school.

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.

19 November 2013