

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)

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 15 May 2014 requested that OSCR re-assess their charitable status on the basis of the following:

- In the forthcoming financial year 2014-15, 80 pupils have been awarded a means-tested bursary from the school to the total value of £421,656. This represents 11.8% of the main school roll and 6.7% of the school's projected available income. The bursaries awarded by the school are of varying values with the highest number of awards being in the 21-40% bracket. In total, 11 pupils (1.6% of the school roll) have been awarded a full bursary, 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 and developing some of the activity already being provided at the time of OSCR's direction. Details of this type of benefit which is now being offered are 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 St Columba's School Ltd provides public benefit and **passes** the charity test.

Executive summary of initial decision

- After an inquiry, OSCR found that St Columba's School Ltd, a co-educational independent day school in Kilmacolm, 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 3.5% of its income to such assistance and only 5.4% of the school roll benefited from it.
- The school also provides benefit for which it makes little or no charge. However, much of this activity was relatively infrequent or ad hoc and therefore was 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 by taking 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 6.7% of its projected available 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 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 was 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 was £6,106,757; we used this 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 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. In 2012-13, this included:

- 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 included a staff member working with various community groups and external organisations on themed projects. The school also invited other local schools to an annual creative writing workshop.
- Running two evening classes, in art and bridge, which were open to the public and which benefited approximately 20 and 40 individuals respectively. These classes ran 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 used 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 participated 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 fee¹	Variation
Average nursery fee Comprising: Nursery - £2,490 (4 sessions per week) Preparatory - £3,320 (5 sessions per week)	£2,905 (approximately £5,810 full-time equivalent)	£5,913 (full-time)	- £103 (based on comparison of full-time equivalent figures)
Average junior school fee Comprising: Junior 1 and 2 - £7,150 Junior 3 - £7,830	£8,231	£8,016	+ £215

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)

Junior 4 - £8,310 Junior 5 and 6 - £8,730 Transitus (Year 7) - £9,720			
Senior school fee	£9,720	£10,173	- £453

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 offered two non means-tested forms of financial assistance, those 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 were satisfied that St Columba's School Ltd 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.

In assessing whether St Columba's School Ltd provided public benefit, we considered the conditions in place on accessing the benefit provided by the school – namely the fees charged - and whether they were unduly restrictive.

In doing so, we had 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 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 was well-advertised to potential and existing beneficiaries. The awards offered under this scheme were of varying values, benefiting families on a wide range of incomes. There was also a particular focus on high value awards which benefit those on low incomes. Additionally, we noted that external charitable trusts supplemented the school's own means-tested bursary assistance for a small number of pupils.

However, compared to other charities which we 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 (3.5%) and a low proportion of the pupils attending the school were in receipt of this type of facilitated access (5.4% of the main school roll). We did not consider that this level of expenditure on means-tested assistance 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. This form of mitigation benefited 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 provided 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 provides.

The not charged for activities undertaken by the school which had most impact were its staff contribution to educational development and standards, and its work with the community in the creative arts. These activities appeared to be regular and ongoing. However, the remaining activities – particularly the use of the school’s sporting facilities – were for the most part relatively infrequent or ad hoc. While they did provide a limited level of benefit, the majority of such activities were not regular and scheduled and therefore did 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 had not evidenced that it was committed to offering a regular, meaningful level of benefit for which there is little or no charge and so this type of activity consequently had 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 concluded that public benefit was not provided by St Columba’s School Ltd. This was due to the fees and charges that were in place, the absence of sufficient mitigation of the impact of those 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 was made.

For the reasons set out above, OSCR found that St Columba’s School Ltd did **not** meet the charity test.

6. Issue of the direction

On 10 January 2013, OSCR issued St Columba's School Ltd with the following direction under section 30(1)(a) of the 2005 Act to take steps for the purposes of meeting the charity test:

To remove the undue restriction on obtaining the benefit provided by the charity 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.*

7. Situation as of May 2014

Following the direction issued to the charity in January 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 in May 2014 requested that we re-assess their charitable status on the basis of the following:

In the school session 2014-15, 80 pupils will be in receipt of means-tested awards from the school to a total value of £421,656. This represents 11.8% of the main school roll and 6.7% of the school's projected 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, 11 pupils (1.6% 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 following is not an exhaustive list but indicates the main activities the school has undertaken:

- Substantially developing its involvement in The Duke of Edinburgh's Award programme, including embarking on a number of new ventures through their Head of Outdoor Education. The work in this area includes:
 - Developing course materials nationally.
 - Running an assessor accreditation course open to local Scout and Guides leaders as well as the Inverclyde Award Group.
 - Hosting a course for local leaders from schools, Scouts and Guides groups (up to 20 free places will be available).
 - Piloting the 'Award Leadership Programme' for Inverclyde Schools; this includes setting up, preparing and evaluating a SCQF level 5 course, providing the leader free of charge for a minimum of 47 hours and providing learning materials.

- Extending the 'Creative Communities' project which advances education and the arts. As well as running four workshops open to any child in the community, the school has also held workshops at and now also runs a weekly Creative Writing Club at Kilmacolm Primary School. This project has also seen the school hold an author event at which 60 members of the public were in attendance as well as continuing its annual creative writing workshop for senior school pupils from throughout the West of Scotland.

- Expanding the range of non-vocational evening classes offered to the community from two to five (three further classes were also offered but there was insufficient interest to allow these to proceed). The school now offers classes in art, bridge practice and seminar, Chinese and Spanish which run twice a week during autumn and spring terms, as well as classes in creative writing referred to above. Approximately 113 individuals now benefit from these classes compared to 40 individuals the previous year.

- Continuing to provide access to the school's sports facilities to external organisations on a break-even basis. The majority of the users of these facilities now attend on a regular and scheduled basis, with local football, rugby and hockey clubs benefitting in particular. The school has also reduced the hire costs to these groups.

- The School is in discussion with Inverclyde Council and Birkmyre Rugby Club concerning the upgrading of the rugby pitches at Birkmyre Park which are used by the School and the Rugby Club. The School has offered to make a significant contribution towards this development.

- Creating a new support project with Kilmacolm Primary School. This project, initiated by St Columba's School, sees five of their Sixth Year students each giving one hour per week during the autumn and Easter terms to assist the Primary School's classes on a range of tasks including providing learning support in both numeracy and reading and supporting preparations for the Christmas Show; one pupil also runs the library during one hour each week.
- Continuing to support 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. The majority of the teaching staff now participates in curriculum development or examination duties.
- Advancing education and community development through supporting and leading elements of Kilmacolm's new town twinning initiative aiming to establish links with a village (and its schools) in France. Whilst still in the planning stages, the school has already provided free of charge translation services, photocopying and use of its mini bus.

Conclusion

We consider that the school has sufficiently addressed the issues identified in the original review. In particular, there has been a very substantial increase in the school's financial commitment to means-tested bursary provision. In 2014-15, the school expended nearly twice the sum it committed to means-tested bursaries in 2012-13, and the proportion of pupils in receipt of awards also increased greatly (11.8% of the main school roll compared to 5.4% of the roll in 2012-13).

While the number of lower value awards has increased significantly in 2014-15, with an award of 21-40% fee remission being most common, we acknowledge that there will be natural fluctuations in the level of need demonstrated by applicants and are satisfied that this is not a reflection of the school's bursary allocations policy. Indeed, the charity trustees have advised us that every bursary applicant who passed the school's entrance exam was provided with financial assistance.

Overall, the awards made by the school facilitate access to those with a wide range of incomes. We also note that the number of pupils receiving higher level awards, including full remissions, is relatively high; this positively impacts on those with little or no income who cannot otherwise afford the fee.

In making our decision, we have also taken into account the increase in activity provided by the school for which it does not charge a fee (or nominal fee only). We have given particular weight to the increased level of activity associated with the Duke of Edinburgh's Award and the increase in non-vocational courses and creative writing classes available to the general public and local school children. We now consider the school participates in and facilitates a significant level of activity which is regular and scheduled, showing a clear commitment by the school to widening access to the benefit it provides to beneficiaries' 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 St Columba's School Ltd provides public benefit and passes the charity test.

17 June 2014