

Response to the Scottish Government

In general, I feel that the response to my petition from the Scottish Government has been dismayingly narrow and unprincipled. It has failed to engage with the profound issues raised by the petition - primarily, the role of the private education establishment in perpetuating social and educational inequality, the very understanding and purpose of charity, and the integrity and credibility of the current legislation governing OSCR - and instead resorted to evasive platitudes and impenetrable bureaucratic speak, often copying and pasting the exact same paragraphs into each piece of correspondence.

Despite several lengthy previous responses detailing my manifold concerns with the charitable status of private schools and the workings of OSCR, the Scottish Government persists in misunderstanding and misrepresenting my petition, stating in its latest response that:

we understand that the petitioner is seeking to remove the charitable status of independent schools as the fees which they charge unduly restrict the access of potential pupils to the educational benefit the charity provides.

As already stated on several occasions, whilst unduly restrictive access is a central argument against the charitable status of these schools, reducing the petition to this single issue is highly disingenuous. The response fails to acknowledge the most worrying aspect of private schools which is their clear role in perpetuating and entrenching profound social inequality, and categorically fails to engage with the question of whether the charity test is fit for purpose or whether OSCR can be seen as lacking in integrity and consistency in their interpretation and application of the charity test as it stands.

Stating, and restating, the fact that private schools have to pass the charity test, and that decisions on charitable status are made by OSCR, is **not** a defence of private schools' charitable status. In fact, it says nothing.

Just because something conforms to current legislation, it does not mean that it is right.

For me, as for many others, amongst them the Scottish Council for Voluntary Organisations, a charity test that allows elitist private schools, which serve the rich and privileged, to qualify as charities is clearly unfit for purpose.

The debate over private schools' charitable status sparked by this petition raises wider questions about what we understand by charity and its purpose in society.

The very notion of charity can be dangerous, distracting attention from the injustice which creates the need for charity in the first place and perpetuating the provision of charity as an alternative to tackling the root injustices - that is, charity is used as a substitute for justice, to borrow the words of Alistair McIntosh.

As renowned philosopher Paulo Freire wrote in his 1972 *Pedagogy of the Oppressed*:

In order to have the continued opportunity to express their 'generosity', the oppressors must perpetuate injustice as well. An unjust social order is the permanent fount of this 'generosity', which is nourished by death, despair and

poverty... True generosity consists precisely in fighting to destroy the causes which nourish false charity. False charity constrains the fearful and the subdued, the 'rejects of life', to extend their trembling hands.

To apply this to private schools, in order to express their 'generosity' (in the form of bursaries or community services), the oppressors (private schools) 'must perpetuate injustice as well' (unduly restrictive fees and unfair advantages over state schools in terms of money and resources) and 'an unjust social order is the permanent fount of this 'generosity'".

Oscar Wilde makes a similar point in his essay *The Soul of Man Under Socialism* (1891) when he writes that:

But this [charity] is not a solution: it is an aggravation of the difficulty. The proper aim is to try and reconstruct society on such a basis that poverty will be impossible. And the altruistic virtues have really prevented the carrying out of this aim. Just as the worst slave-owners were those who were kind to their slaves, and so prevented the horror of the system being realised by those who suffered from it, and understood by those who contemplated it, so, in the present state of things in England, the people who do most harm are the people who try to do most good; and at last we have had the spectacle of men who have really studied the problem and know the life – educated men who live in the East End – coming forward and imploring the community to restrain its altruistic impulses of charity, benevolence, and the like. They do so on the ground that such charity degrades and demoralises. They are perfectly right. Charity creates a multitude of sins.

Do the Scottish Government and the Committee agree that private schools' provision of bursaries and community services constitutes an example of charity being substituted for justice?

I have been raising the following concerns about OSCR's workings for months. None of them have yet been addressed. I restate these concerns here in the hope of a response from the Scottish Government or from OSCR and in the hope that (a) member(s) of the committee may consider them significant enough to take the time to raise them at the next meeting.

1. Apparent Double Standards

OSCR does not consider private schools as an establishment for the purposes of judging the scale of their disbenefit to society, but it does in terms of sector average fees and the provision of bursaries, information which it uses to advise private schools on what measures must be taken to maintain charitable status.

Concerningly, then, it appears to be the case that where it would compromise the charitable status of private schools, their wider context is not taken into account, but that where it is favourable to helping them maintain their charitable status, it is.

Can either the OSCR or the Scottish Government defend or explain this seeming anomaly?

2. Arbitrariness Of Decision Making

When a private school is awarded charitable status it is because OSCR has decided that the provision of bursaries and other services 'mitigates' the unduly restrictive nature of access to the school in the form of considerable fees. As I have made extremely clear on previous occasions, no amount of bursaries or community services can mitigate the unduly restrictive nature of access to these schools, or atone for their profound role in the entrenchment and perpetuation of social inequality, however, for the purposes of this discussion, allow us to assume, as does OSCR, that such mitigation were possible.

When deciding on what level of support a private school is required to provide in order to 'mitigate' the unduly restrictive level of fees charged, how does OSCR calculate:

What percentage of their budget must be spent on provision?

What percentage of their school roll must be on 100% support?

What percentage of their school roll must be on what level of subsidised support?

How are the particular figures in each case arrived at by the OSCR and what is the justification and logic behind them? Does the OSCR apply strict and universal criteria or is each decision entirely at the discretion of unelected OSCR civil servants?

To make reference to a few examples:

Loretto increased the number of those in receipt of means-tested awards from 14.7% (2012-13) of the school roll to 18.6% (2014-15) and from 6% to 9% of school's income. The number on 100% support increased from 1 (0.2% of school roll) to 7 (1.2%).

Fettes increased the number of those in receipt of means-tested awards from 9.6% (2010-11) of the school roll to 10.6% (2012-13) and from 7% to 8.4% of school's income. The number on 100% support increased from 5 (0.7% of school roll) to 6 (0.8%).

Wellington increased the number of those in receipt of means-tested awards from 9.9% (2012-13) of the school roll to 17% (2013-14) and from 3.1% to 5.8% of the school's income. The number on 100% support increased from 1 (0.2%) to 4 (0.8%).

In each case, the same questions can be asked. For example, Loretto's increase from 6 to 9% of the school's income was considered satisfactory. Would an increase to 8% have been unsatisfactory and an increase to 10% more than necessary? Why?

3. The 'Benefit' of Bursaries

3.1 The implications for state education

The unquestioned 'benefit' of the provision of bursaries implicit in the current workings of OSCR is problematic. The uncritical assumption that allowing private school access to a child otherwise destined for state education is of benefit to that child implies the superiority of private education. This undermines state education and insults the 96% of the population who attend state schools, their families, and the tens of thousands of state school teachers who educate them. Can OSCR explain why they consider bursaries to be beneficial to children otherwise destined for state education?

3.2 The 'benefit' to society

Assuming for the purposes of this discussion that bursaries are of benefit, it is in any case unclear how the provision of bursaries benefits anyone in society apart from the few children who are awarded one. Could OSCR explain?

4. Accountability of OSCR

Pursuing this petition has caused me to become extremely concerned and uncertain as to the accountability of OSCR as an operationally independent body.

To draw on Tony Benn's 'five little democratic questions', I wonder if either OSCR or the Scottish Government could fill in the blanks with regard to OSCR (assuming my answers to the first two are correct, if not, please feel free to change them too).

What power have you got?

The power to interpret and apply charity law based on the 2005 Act.

Where did you get it from?

The Scottish Parliament.

In whose interests do you exercise it?

To whom are you accountable?

And how can we get rid of you?

In more specific terms, if, for example, OSCR were judged incapable of explaining or justifying how it makes informed, genuine and honest decisions on the charitable status of private schools, on the scale of their public benefit and disbenefit, when these are made in a social, political and economic vacuum, or of explaining or justifying the anomaly of considering private schools as an establishment when it is of benefit to them, but not when it is detrimental to them, then what happens? To whom is OSCR accountable?

The Scottish Government states that it does not believe that there is enough evidence to merit a formal review of current charity legislation.

The Scottish Government has previously made clear that it measures public confidence through a combination of 'consultation with the general public and key stakeholders and representations from the general public, MSPs, and relevant organisations and bodies'.

I once again note that my petition gathered hundreds of signatures from the general public, has the unqualified support of the Scottish Council for Voluntary Organisations, as well as several MSPs and academics, and that it has received serial national media coverage and support. Furthermore, the results of an online public poll conducted by The Courier on 14/01/15 were as follows:

Should private schools qualify for charitable status?

No 83% (969) Yes 17% (201) Total number of votes: 1170

If the above does not demonstrate a lack of public confidence, suggesting the need for a formal review, may I ask the Scottish Government what would?

For any government truly committed to creating a fairer and more equal society, private schools have no place. Whilst they still exist, however, the removal of their charitable status is a moral necessity. Anything else is the perpetuation and condoning of profound social injustice.

Charity cannot be a substitute for, or a distraction from, justice.

The silence of the Scottish Government on the issue of private education is a serious omission and questions the integrity of its proclaimed values and goals. Could the Scottish Government explain to me why we should take seriously any of the SNP's declarations as regards achieving greater equality, when, beyond a good speech and press conference, the real sources and impact of inequality are not being addressed?

I reiterate once more that it is impossible to tackle the profound inequality that scars Scotland without addressing the issue of the private education establishment. My petition is calling *merely* for the removal of the injustice of charitable status and the moral approval and financial support that this embodies. That the Scottish Government has proven itself incapable of acting on what is ultimately a modest and widely supported change means that any other utterances with regard to its commitment to greater equality carry next to no integrity or credibility. This is heightened by the fact that the Scottish Labour Party display much stronger credentials on this issue - with Kezia Dugdale stating that 'if private schools are serious about giving kids from poorer backgrounds opportunity, they won't need a tax cut to do that - they should be doing it anyway' and that she would 'end charitable status for private schools' - lending weight to their often expressed claim that the SNP merely pose opportunistically as a party of social justice.

If I may conclude by quoting Kevin McKenna, who wrote in The Guardian earlier this year that this petition constitutes the 'first test of the integrity behind the admirable aspirations' of the Scottish Government to create a more equal society, and that the progress of this petition should 'provide an early indicator of how well the country will proceed along the highway of fairness and scale the chalk face of equal opportunity'.

I remain hopeful of a more constructive response in the future.

Yours sincerely,
Ashley Husband Powton