

## **Additional Notes to response to the Scottish Government, OSCR, SCIS, COSLA and EIS on PE1531: Remove Charitable Status from Private Schools**

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#### **1. Flaw in current legislation and criticism of the OSCR**

My correspondence with both the OSCR and the Scottish Government on the charitable status of private schools has thus far resulted in a tiresome pattern of passing the buck, with the Scottish Government stating that OSCR works independently of government and that it can pass no judgement on its decisions, and the OSCR stating that it simply fulfils its guidelines as set out by the Scottish Parliament, on which it can have no opinion.

Could the Scottish Government please make clear who is accountable for the controversial charitable status of private schools and for the issues with the integrity and workings of the OSCR listed below - the Office of the Scottish Charity Regulator or the Scottish Parliament who devised the Charities and Trustee Investment (Scotland) Act 2005 by which it operates?

I also note that I have yet to receive a response to my letter to the OSCR of 15th July 2014.

- 1.1 Methodological Flaw

Currently, in accordance with the 'Meeting the Charity Test' guidance, the decision on the charitable status of a given private school is made on an individual basis without acknowledgement of, or reference to, its membership of a larger group of similar organisations and the OSCR does not take into account what it terms the 'perceived general advantages or disadvantages of a type of organisation'.

How can the OSCR possibly make informed, genuine and honest decisions on the charitable status of private schools when these are made in a social, political and economic vacuum?

This is a profound methodological flaw which allows the OSCR to blind itself to the clear role of the private education establishment in perpetuating and entrenching social inequality and to relieve itself of the responsibility of engaging with this.

## 1.2 The Duplicity of the OSCR

The 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.

For example, its report on St Columba's is unambiguously based on comparison with other private schools:

'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).'

Similarly, in the OSCR's report on Fettes College it is stated that:

'The school's expenditure on means-tested bursary support, at 7% of the charity's available income, was **higher than that of some of the other schools reviewed by OSCR to date**, as was the number of pupils in receipt of such assistance (9.6% of the school roll). However, The Fettes Trust's fees were **notably higher than the sector average fees** and therefore a proportionately higher level of mitigation was required if the fees are not to be undue'.

Can either the OSCR or the Scottish Government defend or explain this untenable case of double standards?

### 1.3 The Arbitrariness of Decisions

When a private school is awarded charitable status it is because the 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.

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 the 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?

It is crucial that greater emphasis is placed on the provision of 100% bursaries. Not only does this tend to be negligible, the provision of 100% support is crucial due to the fact that any support of less than 100% requires that considerable fees still be paid. This means that access can be seen to remain unduly restrictive *even with a bursary award*. At Loretto, as an example, the majority of awards are in the 21-40% bracket. Given that fees can reach up to £29,460 per a year (2014-15), a discount of 21% would leave £23, 274 still to be paid.

### 1.4 The Integrity of the Process

The process of being awarded charitable status appears to reverse intuitive reasoning. Should one should not first demonstrate charitable activity and then be awarded charitable status, as opposed to first being awarded charitable status and then being required to demonstrate charitable activity, as appears to be the case for private schools?

Related to this, perhaps the OSCR could outline what proportion of its time and resource is devoted to the continuous assessment and re-assessment of private schools?

## 2. The impossibility of unrestricted access

The entire current justification for the charitable status of private schools is based on a chimera, on the spurious notion that bursaries do in fact mitigate unduly restrictive access. OSCR advises private schools to 'remove the undue restriction on obtaining the benefit provided by the charity'. Short of abolishing fees completely, this is **impossible**. The reality is that *no amount* of bursaries can cease to make access to these schools unduly restrictive for the vast and overwhelming majority of the Scottish population.

## 3. The 'benefit' of bursaries

### 3.1 The implications for state education

The unquestioned 'benefit' of the provision of bursaries 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.

### 3.2 The 'benefit' to society

It is in any case unclear how the provision of bursaries benefits anyone in society apart from the few children who are awarded one. Perhaps the SCIS could explain?

## 4. The 'advancement of education'

When discussing private schools there is an underlying and unquestioned acceptance that these schools provide a higher quality of education than their state counterparts and that they fulfil the charitable purpose of 'advancement of education'. We cannot overlook that research consistently affirms that state schooled pupils outperform their privately educated counterparts at university when the two have similar results from school and are studying the same subject. This calls into question the purpose and integrity of a private school education beyond that of simply an expensive ticket into a top university regardless of the genuine ability or motivation of pupils. Would the SCIS argue that the privately educated who dominate our universities are inherently more intelligent or more capable than the 96% of Scottish pupils who attend state schools?

## **5. The 'financial benefit' of private schools**

The SCIS referred in its response to the 'financial benefit' of private schools to society.

### **5.1 Inequality and inhibited economic growth**

The recent OECD report 'Focus on Inequality and Growth - December 2014' clearly demonstrates how 'income inequality has a negative and statistically significant impact' on a country's economic growth and that rising inequality is estimated to have knocked nearly 9 points off growth in the UK, whereas countries with greater levels of equality saw increased GDP per capita. The report also stated that 'inequality significantly shapes the opportunities of education and upward mobility of disadvantaged individuals' and concluded that 'policies that help to limit or reverse inequality may not only make societies less unfair, but also wealthier.'

Far from benefiting the economy, given their role in perpetuating and entrenching social inequality, private schools can be seen to stagnate the economy and inhibit growth.

### **5.2 The overall cost of social inequality**

The cost to the Scottish state and taxpayer of profound inequality in areas such as health, education, housing and employment, and of the high levels of crime and poverty which result from this, is so great as to be unquantifiable. Private schools exacerbate and perpetuate these inequalities and must be implicated in the resulting cost to the state and taxpayer. The overall cost to society of private schools far outweighs any alleged financial benefit.

### **5.3 Morality**

Above all, the case for the removal of private schools' charitable status is one based not on finances, but rather on morality, on doing the right thing. It is simply wrong that elitist, inequality perpetuating private schools should have the moral approval and financial support of charitable status. The economic figures of the SCIS, questionable in any case, are greatly outweighed by the strength of the moral case against the charitable status of private schools.

## **6. The misleading comparison of private schools to universities and Royal Colleges**

### **6.1 Compulsory Provision**

Private schools provide alternative general compulsory education, otherwise provided by the state. This is not comparable to the education provided by universities and Royal Colleges, which are centres of specialist academic instruction and research and are not compulsory for citizens.

### **6.2 Criteria for Access**

The main criterion for access to a private school is the ability to pay, regardless of whether this obligation is fulfilled by the family of the pupil or a bursary. This is incomparable with admission to a university or Royal College, where, in addition to

the ability to pay (greatly aided in Scotland by the abolition of tuition fees and provision of maintenance loans and bursaries), one must demonstrate outstanding academic ability and potential.

### 6.3 Public Benefit

Scotland's universities and Royal Colleges demonstrably bring great benefit to society, in Scotland and beyond, by contributing to human knowledge. Private schools, by contrast, provide benefit to only a very limited proportion of the public and this limited benefit is any case greatly outweighed by their huge disbenefit to society through their role in perpetuating and entrenching social inequality.

It is of great significance that the admittedly gross over-representation of the richest and most privileged at Scotland's universities and Royal Colleges is to a huge extent the result of the private education establishment.

## 7. Charitable status and the provision of bursaries and services

Those who defend private schools' charitable status often comment that were they to lose it, they would no longer be able to provide the bursaries and community services they do currently. Not only can this claim be viewed as a thinly veiled threat, it is also baseless.

As observed by Gordon Anthony in a recent article for the Scottish Statesman:

This is, of course, a red herring designed to distract attention away from the real issue. Parents who send their children to Fettes pay around £30,000 p.a. for the privilege. In other words, Fettes could more than cover the increased costs caused by loss of charitable status by taking on an extra six children each year. If that is too difficult, which we find hard to believe, an alternative would be to increase their fees. We have not been able to track down details of the pupil roll at Fettes, so we don't know how much of an increase would be required on a per pupil basis but even if there are fewer than 100, an extra cost of £2,000 p.a. would more than cover the lost subsidy. One thing we are pretty sure of is that the parents of pupils at the school could cope with this increase far better than local community groups who are probably more deserving of charitable status than a private school.

It is not in doubt that these schools could continue to provide such services without the financial support of their current charitable status. That they would nonetheless withdraw these services were they to lose their charitable status exposes their lack of any genuine spirit of charity.

## References

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