

PE1531
21 April 2015

OSCR's submission of 20 April exposes the major and crucial flaws at the heart of its operations.

1.

OSCR states that 'it is not part of OSCR's functions to assess the social good provided by the charities it regulates, and we are not equipped to do so...in particular, we take into account only the benefit provided by a charity in the exercise of its functions – that is, in line with its charitable purposes. We do not assess or take into account other aspects of activity which might fall under the broader heading of 'social good'.'

In previous correspondence, OSCR has also made clear that 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 that OSCR does not take into account what it terms the 'perceived general advantages or disadvantages of a type of organisation'.

The above makes clear that OSCR's decisions on the charitable status of mainstream private schools are made in a social, political and economic vacuum, with no consideration for the reality of their wider role and impact in society.

Please explain how OSCR makes informed, genuine and honest decisions on the charitable status of mainstream private schools, devoid of meaningful context?

This profound methodological flaw allows OSCR to blind itself to the clear role of the private education establishment in perpetuating and entrenching social inequality, thereby relieving itself of the responsibility of engaging with such profound and significant issues regards the spirit of 'charity'.

Whilst private schools advance the charitable purpose of education, they do so in the interests of the few, and at the expense of the many.

Should OSCR take into account the wider role and reality of the private education establishment, namely its clear and undeniable role in perpetuating and entrenching social inequality, then it is unthinkable that it could come to the conclusion to award mainstream private schools charitable status, as this profound detriment to society would surpass any contrived benefit.

2.

This brings me to my second major point of concern. It is very frustrating and patronising that OSCR continues to focus on the provision of bursaries in defence of the charitable status of mainstream private schools. This point I have addressed in several previous responses and I politely ask that the issue, which has been categorically dealt with and disproven, is not cited again.

Nevertheless, please indulge my frustration as I outline, again, why the provision of bursaries does not weaken any of the arguments against the charitable status of

mainstream private schools, as well as highlighting some other crucial issues relating to bursary provision.

2.1 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.**

Allow me to make this clear. Even if 100% of every private school's roll were on 100% bursaries, it would change not at all the fact that still only around 4% of pupils in Scotland would be privately educated, and the remaining 96% unable to afford this privilege.

Does OSCR accept the fact that **no amount of bursary provision** 'removes the undue restriction on obtaining the benefit provided by the charity?'

2.2 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. What is OSCR's response to this?

2.3 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. Could OSCR explain?

3.

Most importantly, no amount of mitigatory measures can be allowed to excuse the overwhelmingly negative role of these schools in our society.

It is most insulting and deplorable that OSCR accepts the limited provision of bursaries and community services as fair compensation for the perpetuation of a Scotland divided by inherited wealth and privilege.

4.

Another major concern with OSCR's workings that is yet to be addressed is the seeming anomaly of not considering private schools as an establishment for the purposes of judging the scale of their benefit or disbenefit to society, but doing so 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. Could OSCR defend or explain this seeming anomaly?

5.

Yet another cause for concern is the arbitrariness of OSCR's decisions

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. This notion of 'mitigation' is indefensibly flawed in itself (see above), but even following this logic, there remains a huge degree of ambiguity and unaccountability.

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 OSCR apply strict and universal criteria or is each decision entirely at the discretion of unelected OSCR civil servants?

6.

The last issue of concern which I will address here is the accountability of OSCR as an operationally independent body.

To draw on Tony Benn's 'five little democratic questions', I wonder if OSCR could fill in the blanks (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?

7.

I conclude this response by politely enquiring as to how one would go about seeking an investigation into the workings of OSCR and/or a review of the interpretation and application of the 2005 Act?

I look forward to receiving direct answers to the above concerns.

Yours sincerely,
Ashley Husband Powton