

**FILE NOTE:**

<b>DATE:</b>	17 November 2011
<b>AUTHOR:</b>	OSCR
<b>SUBJECT:</b>	REPORT UNDER SECTION 33 OF THE CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005 ON INQUIRY:  HUTCHESONS' EDUCATIONAL TRUST (SC002922)

**Background**

As part of the Rolling Review of charities the Office of the Scottish Charity Regulator (OSCR) undertook an inquiry into the charitable status of Hutchesons' Educational Trust under section 28 of the Charities and Trustee Investment (Scotland) Act 2005 ('the 2005 Act').

This involved a desk-based review of written materials in order to determine whether public benefit was provided by the charity. A face to face meeting was also held with the School to help gather this information.

**Consideration**

To have charitable status, bodies have to pass the 'charity test' as laid out in sections 7 - 8 of the 2005 Act. The charity test requires bodies 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.*

On balance, and having had regard to possible unduly restrictive conditions and access to the benefit (education) that is provided, OSCR considered that public benefit was not provided by Hutchesons' Educational Trust due to the fees that were in place, the absence of sufficient mitigation of the impact of these fees and the lack of other benefit for which it made no fee or charge being provided in furtherance of its charitable purposes. Hutchesons' Educational Trust therefore failed to comply with section 7 (1) (b) of the 2005 Act and so did not meet the charity test.

The key information and considerations in relation to public benefit, and in particular to possibly unduly restrictive conditions were as follows:

1. Hutchesons' Educational Trust is a large independent school in Glasgow. The school operates a primary and a secondary school. At the start of the 2007-08 academic session, there were 1,750 pupils enrolled at the school; 550 in the Primary; and 1,200 in the Secondary.
2. The fees charged by the School ranged from £6,417 in P1 to £8,243 in S1; and to £8,029 in S2-6 per annum. These fees were substantial. They were 'average' compared to the fees charged by other schools in the independent sector, but appear high when compared to the cost of providing education in the state sector.
3. Information on the tuition fees in place was available from the school upon request and is available from the school's website. The information that was provided is appropriate, and advised that means tested provision is available.
4. There was some evidence of the charity providing other benefits in furtherance of its charitable purposes for which it makes no fee or charge. This partly extended to the wider educational curriculum. Examples included the provision of teaching practice placements for students, placements for probationary teachers and the moderation of examinations. Each year, a number of pupils from Hutchesons' teamed up with pupils from Holyrood Secondary School to undertake a number of community projects. This included running anti-sectarian workshops for Kingarth Street and Holy Cross Primaries.
5. The school made provision for means tested bursaries through the income derived from its endowed funds. These bursaries were awarded to newcomers to the Secondary school. The value of the bursaries awarded was based on financial need and academic merit. Once awarded, bursaries continue with the child throughout their attendance at the school. It was the intention of the school to significantly increase the bursary provision over the medium to long term.

6. A total of 45 pupils were in receipt of means tested bursaries in the 2007-08 academic year, to the total value of £291,552. Of these 45 beneficiaries, 15 received a bursary of 100 per cent of the fee.
7. At the time of conducting the review, six external trusts supported four pupils at the school. These provided financial assistance to the value of £20,563. The circumstances concerning these arrangements were not known to the school.
8. In 2007-08, the total number of pupils in receipt of financial support was 49, with the total value of the awards amounting to £312,115 (this does not include the sibling discount).
9. Therefore, 2.8 per cent of the school roll was in receipt of some form of facilitated access, and within that 2.6 per cent of the school roll was in receipt of means tested support. The total value of support (from all sources, whether means tested or not but again excluding the value of the sibling discount) was £312,115, representing 2.1 per cent of the annual income of the charity for the year 2005-06. Means tested support represented 90 per cent of the total support (and less than 2 per cent of the annual income).
10. The cost to the school of providing the benefit was more than was charged directly to beneficiaries through the fees. Charitable donations and fundraising income of £586,334 helped to offset the full cost of provision to beneficiaries.
11. On balance, and having had regard to possible unduly restrictive conditions and access, we concluded that public benefit was not provided by Hutchesons' Educational Trust due to the fees and charges that were in place, the absence of sufficient mitigation of the impact of these fees and little other benefit being provided in furtherance of its charitable purposes, for which it made no fee or charge.
12. Our conclusion was based principally on the low numbers of pupils (given the size of the school) for whom financial support to access was available, and the low overall monetary value of the support (again set in the context of the size of the school).
13. We recognised that arrangements are in place to facilitate access for those unable to pay these fees from their own resources, and there was strong evidence of these monies being targeted at those on lowest incomes (relative to other applicants). We also recognised that the school makes this support available from the income from its endowed funds. Nevertheless, when viewed in the context of the size of the school, we considered the range of arrangements in place to facilitate access to be insufficient to mitigate the restriction on access.

For the reasons outlined above, the charity test was not met.

## **Further Action**

We issued a Direction to Hutchesons' Educational Trust on 27 October 2008 under section 30 (1) (a) of the 2005 Act:

- a) To notify OSCR in writing by 28 January 2009 (three months from the date of the Direction) that the charity intends to comply with this Direction in full.**
- b) To develop and submit a plan to OSCR by 28 October 2009 (12 months from the date of the Direction) that shows how the charity will increase the 'facilitated access' arrangements for the benefit it provides, or sets out some other strategy that will ensure that the charity will be able to meet the public benefit requirement of the charity test.**
- c) To meet the objectives of the above plan or strategy by 28 October 2011 (three years from the date of the Direction).**

to ensure that it complies with section 7 (1) (b) of the 2005 Act.

Hutchesons' Educational Trust indicated its intention to comply with the direction on 26 January 2009, and submitted a plan by 28 October 2009 which in OSCR's view complied with section (b) of the direction.

## **The plan**

The plan which was approved had two main elements:

1. Increasing accessibility to the benefit provided by the school by increasing provision of means-tested bursaries (including means-testing of sibling discounts) so that by 2011-2012 means-tested assistance would be provided at the school:
  - At a value of 4.5% of fee income
  - to around 8.5% of pupils on the roll
  - 2% of roll in receipt of 100% awards
  - Amend criteria for bursary awards to widen access to these
2. Provide accessibility through activities for public benefit for which no charge is made, including:
  - Provision of Advanced Higher tuition in Drama, Physics and other subjects to pupils of state secondary schools where these subjects are not taught
  - Use of new specialist sports facilities (athletics and hockey) and coaching for local children
  - One day conferences and events for pupils and staff from other Scottish schools and overseas schools
  - Joint environmental and other projects with local schools
  - Marking of public examinations, hosting placements for student teachers and also other smaller scale and one-off activities,

### **Situation as at 29 October 2011**

At the end of the direction period, the situation in regard to the main aspects of the plan was as follows:

1. Means-tested bursaries in session 2011-2012 provided at
  - at 4.9% of fee income
  - to 9.9% of the school roll
  - 2.2% of roll in receipt of 100% bursaries
  - Criteria amended resulting in wider spread of bursary provision
  
2. The school provides public benefit at no charge through the following activities:
  - Use of new specialist sports facilities (athletics and hockey) by local school age teams (coaching has not been taken up)
  - One day conferences and events for pupils and staff from other Scottish schools and overseas schools
  - Joint environmental and other projects with local schools
  - Marking of public examinations, hosting placements for student teachers and also other smaller scale and one-off activities,

While Advanced Higher tuition has been provided, this provision has been taken up on a very limited basis.

The following additional activities are being undertaken:

- Mentoring and classroom assistant work by Hutchesons' S6 pupils weekly in 3 state primary schools, by agreement with the local authority education department
- Provision of Saturday morning Primary Maths Master classes under the auspices of the Royal Institution

### **Decision on Compliance**

The school has exceeded its projected outcomes in terms of the increase in the absolute numbers of pupils receiving means tested assistance, the spend on assistance and the percentage indicators. The planned shift of resources to means-tested assistance has therefore been more than achieved, and against the background of a falling school roll.

On the other part of the plan, other activities provided for public benefit, there has been some variance from the plan in respect of the Advanced Higher teaching for pupils from other schools, which was a key activity. While this has taken place on a very limited basis, it was not possible to agree wider take-up with local authority schools. A replacement activity, involving weekly mentoring and classroom assistance from senior Hutchesons' students in 3 local primary schools, was taken up at the suggestion of the local authority.

Other activities have proceeded largely as planned, with some replacement activity, such as the Maths master classes.

Overall, OSCR is satisfied therefore that the charity met the objectives of its plan by 28 October 2011, and that it has therefore fully complied with the direction issued to it on 27 October 2008. The issues identified in the original review have therefore been addressed and the charity provides public benefit and therefore passes the charity test.

OSCR

17 November 2011