

**Loretto School Ltd**  
**Scottish Charity Number: SC013978**

**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 1 October 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 in May 2014 requested that OSCR re-assess their charitable status on the basis of the following:

- In the financial year 2014-15, 107 pupils will be in receipt of a means-tested award from the school to the total value of £998,000. This represents 18.6% of the school roll and 9.6% 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 (52 pupils are in receipt of this level of award). The school has removed the previous cap on the value of bursaries awards, which has led to an increase in the number of awards in the 41 – 100% fee remission brackets. In total 7 pupils (1.2% of the school roll) will receive a full award, entitling them to 100% fee remission.
- In addition to increasing the overall spend on means-tested assistance, the school has also taken steps to increase the transparency of the awards, both in relation to clarifying the level of award available and increasing their advertising of the awards.
- 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. 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 Loretto School Ltd provides public benefit and **passes** the charity test.

## Executive summary of initial decision

- Following a review, OSCR found that Loretto School Ltd, a co-educational independent day and boarding school in East Lothian, failed the charity test, and directed the charity to take steps to ensure that it passed the test.
- OSCR found that access to the benefit the charity provides was unduly restricted, and therefore considered that the public benefit element of the charity test was not met.
- The fees charged by the charity are substantial and represent a restriction on accessing the benefit the charity provides.
- Although the charity offered means-tested assistance to those who were unable to pay the full fees, the value of the awards offered was not sufficient to mitigate the effect of the level of fees charged by the school for those on low incomes.
- The charity also provided benefit for which it made little or no charge. However, the level of such activity and the impact it had was not significant enough to mitigate the school's fees.
- The charity had not taken sufficient steps to mitigate those fees and therefore OSCR concluded that they were unduly restrictive.
- For these reasons, OSCR found that the charity did not provide sufficient public benefit and it therefore failed the charity test.
- Under the direction issued the charity had to remove the undue restriction on obtaining the benefit it provided by increasing the impact of means-tested bursaries on the fees charged, and taking other measures, as appropriate, to ensure that the charity met the charity test by 31 March 2015.
- 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 the value and effectiveness of its means-tested awards, improving the transparency of the financial assistance available and building on the activity it provided for no charge.
- OSCR is now satisfied that the school has 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 made inquiries into the charitable status of Loretto School Ltd (SC013978) under section 28 of the 2005 Act.

## 2. Background

The charity is an all-through, co-educational day and boarding school situated in East Lothian. In summary, the charitable purposes of the school are the advancement of education and the advancement of citizenship and community development.

The charity operates a junior school and senior school for children aged five to 18 years, and a nursery for children aged three to four years. Our review was based on the 2012-13 financial year of the charity which was the most recent financial year for which the school was able to provide complete, reliable financial information. In this year, the school had a roll of 616; of these 34 attended the pre-school and 582 pupils were enrolled in the main school, of whom 259 (44.5% of the main school roll) regularly boarded. The charity's available income for the year was £9,880,725; we used this figure for the purposes of our assessment. We also took into account more current information where available.

## 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 charity's main activity is the operation of a fee charging junior and senior school. In the junior school, younger pupils are taught core subjects by their form teacher and older pupils learn specialist subjects from specialist teachers. In the senior school, pupils learn specialist subjects throughout. In the fourth and fifth forms pupils study for GCSEs and in the sixth form pupils study for AS and A Levels.

The charity offers a wide range of co-curricular activities which include the Duke of Edinburgh Award, Cadet Force and adventure training

The charity 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:

- Providing further education/career guidance to young people in various ways including manning a stand and running a seminar at a local authority school's career week, hosting a Canadian University seminar open to external pupils and providing guidance and preparation on a weekly basis for four months for a local-authority school pupil applying to Oxford and Cambridge Universities.
- Undertaking and encouraging activity which advanced citizenship and community development, such as pupils working in local charity shops and visiting sheltered housing and nursing homes.
- Hosting the East Lothian Charity Tennis Tournament which is attended by approximately 150 members of the community annually and ultimately benefits special needs play schemes in the area.
- Providing netball classes and rugby classes on a weekly basis for two terms per year to a local state school. The classes were taught by Loretto pupils as part of a community service initiative of the school.
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- Allowing local authority schools to use its facilities on a regular basis for various activities such as the Chapel for end of term services, and the grounds for the Forrest Schools (an outdoor play and learning initiative).
- Providing a learning support teacher to teach chanter to local authority school pupils and the school's Pipe Major to teach at two local authority schools.
- Hosting three gap-year students per year from Australia or New Zealand. These students assist in sports and recreational activities at the school and this provides them with an opportunity to experience working in an educational environment and to develop inter-personal skills. Loretto School pay the gap year students monthly, as well as providing free accommodation and catering.
- Hosting various annual events such as the Prestonpans Tapestry Exhibition, the return to Scotland of the Mary Queen of Scots Book of Honours and Edinburgh Doors Open day which allows members of the public to tour Pinkie House Painted Gallery, the walled garden and the Chapel.

#### **b. Accessing benefit**

There are two main ways in which access to benefit provided by the charity is restricted; the entrance criteria and the fees charged for the education.

Prospective pupils are required to sit age-appropriate assessments and attend an informal interview and/or taster day. The charity advises that the purpose of the written assessment is to ascertain whether the abilities of the pupil match the standards of the school. Where a prospective pupil has already been a student at another school, a report is required from that school. The charity advises that it is academically selective, but that it seeks to admit children who will benefit from the range of opportunities offered to them. 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) were as follows:

<b>Year</b>	<b>Fee</b>	<b>Sector average fee<sup>1</sup></b>	<b>Variation</b>
Average junior day fee	£10,616	£11,664	-£1,048
Comprising			
Years 1 – 3 - £7,410			
Years 4 – 7 - £13,020			

<sup>1</sup> *Indicative average fees for SCIS schools analysis at September 2012, [www.scis.org.uk](http://www.scis.org.uk)*  
 (Note: comparison made with average day and boarding fees charged by boarding schools as Loretto School is primarily a boarding school).

Junior boarding fee	£18,150	£19,416	-£1,266
Average senior day fee  Comprising 2 <sup>nd</sup> Form - £13,620 3 <sup>rd</sup> Form - £17,850 4 <sup>th</sup> - Upper 6 <sup>th</sup> Form - £18,870	£17,825	£17,643	+£182
Average senior boarding fee  2 <sup>nd</sup> Form - £18,150 3 <sup>rd</sup> Form - £ 26,460 4 <sup>th</sup> – Upper 6 <sup>th</sup> Form - £ 27,750	£25,935	£26,910	-£975

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 is in the form of bursaries. The charity's policy at the time of the review stated that these were mostly valued up to 30% of fees, but that some could be increased to 50%, and that any exceptions were at the decision of the Headmaster. Bursaries are available to new entrants entering Year 1 upwards. Bursaries are reviewed annually to assess continued eligibility. The charity advertised its bursary policy on its own website and via its Admissions and Awards booklet which is sent to potential parents.

In the financial year assessed (2012-13), 91 pupils were in receipt of a means-tested award from the charity to the total value of £756,210. This represented 14.7% of the school roll and 6% of the school's available income. Although the bursaries awarded by the school were of varying values, the majority were remissions of low value. In total 79 of the 91 awards made were remissions of 40% of the fee or below, with the highest number of awards being in the 21-40% bracket. One pupil (0.2% of the main school roll) received an award of over 81% of the fee. This was a 100% award in the form of a Headmasters' & Headmistresses' Conference (HMC) Scholarship. The HMC Scholarship is offered to pupils from low income families in Eastern Europe and provides a fully funded place in Lower 6<sup>th</sup> Form.

The charity also offered non means-tested forms of financial assistance, these being scholarships and exhibitions as well as sibling, staff, clergy and armed forces discounts. One of the scholarships offered by the charity was the Almond Scholarship: this was open to state school pupils entering at 2nd form, 3rd Form and Lower 6th Form and involved a highly challenging academic examination. The scholarship award had a starting value of 25% of the fee; however, this could be increased and the charity could add to it through means-tested bursary top-up. In the year of review there were six Almond Scholars at the school, five of whom received substantial means-tested top-ups resulting in those families paying no fee at all or, in one case, only a very small contribution.

Cumulatively, the non means-tested discounts benefited 338 pupils in the 2012-13 year, with the total value of the awards amounting to £1,452,181. This represented 58% of the school roll and 14.7% of the school's available income.

The charity is also a nursery partner provider, meaning that children who are eligible will receive part of their nursery fee from the local authority (up to a maximum of five sessions per week). The total value of this assistance in the 2012-13 school year was £57,775. Further, the charity also accepts childcare vouchers; this is a scheme which enables parents to make tax savings on their childcare costs. Both of these initiatives serve to facilitate access to the benefit provided by the school, albeit they are not primarily directed at those in financial need

## 5. Conclusion

We were satisfied that Loretto 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 Loretto 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 these were unduly restrictive.

In doing so, we had particular regard to the principles we 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.

As the table in Section 4b above indicates, the fees charged by the charity for junior day, junior boarding and senior boarding are moderately lower than the sector average fees, with the senior day fee being marginally higher. It should however be noted that this comparison was made for the purposes of context only.

The average sector fee is substantial and represents a restrictive condition on accessing the benefit provided by the charity. 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 acknowledge, however, that the provision of educational benefit through the operation of a school is costly and that charity trustees must bear in mind their duty to act with care and diligence when 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 charity had taken steps to mitigate its fees in a number of ways. It had in place a means-tested bursary assistance scheme which was advertised to potential and existing beneficiaries through its Admissions and Awards Brochure and YouTube. Other than the YouTube clip and their own website however, the school did not publicise its bursary scheme through any other external media, thereby limiting the opportunity for potential families to become aware of the assistance available. Additionally, there was a lack of clarity for potential beneficiaries as to the level of award available, in particular, under what circumstances the award would be valued up to 30% and under which it could be increased to up 50%.

During the year under review (2012-13), awards of varying values were made under the means-tested bursary scheme. There was a particular focus on low value awards which do not benefit those on low incomes.

The charity's expenditure on means-tested bursary support, at 6% of its 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 (15.6% of the school roll). However, the school advised the bursaries available are mostly valued up to 30% of fees, that some can be increased to 50% and that any exceptions were at the discretion of the Headmaster.

As such, the majority of the bursaries actually awarded during 2012-13 provided a limited reduction of the total fee. Awards such as those meant recipients had to supplement the fee with a substantial personal contribution to the balance. **This meant the impact of this assistance on removing the restriction constituted by the charity's' fees for those on low or no incomes was very limited.**

One pupil (0.2% of the roll) was in receipt of 100% means-tested assistance from the HMC, but this assistance was restricted to students from Eastern Europe.

Because our review took place at the beginning of the academic year we, in the interests of fairness and proportionality, took into consideration details of financial assistance already awarded for the 2013-14 year. However, as with the previous year, the main focus of the awards made was on lower value awards of under 40% of the fee.

In 2013-14, there was an increase in the number of 100% remissions in the form of HMC Scholarships which are for children from low income Eastern European families and which are available for for one year only.

Including the HMC Scholarships, the value of the means-tested assistance already awarded amounted to 7.5% of the projected income for the 2013-14 year. While there had been an increase in the spend on means-tested assistance, we considered that, given the focus on low value awards, the assistance available was not sufficient to open up access to the benefit provided taking into account the level of fees charged.

The charity also took steps to mitigate its fees through the operation of non means-tested fee remissions, namely scholarships and exhibitions as well as well as sibling, staff, clergy and armed forces discounts. This form of mitigation benefited a larger part of the school roll than the means-tested bursaries (58% of the roll compared to 15.6%) but its impact on mitigating the fees was considerably lower as it is not focussed to any degree on addressing the need of those who cannot afford the fees charged

As well as providing benefit which is charged for, the charity provided benefit for which there was no or little fee. This type of activity did benefit a range of members of the public outwith the school itself and therefore formed part of our overall assessment. However, taking the full scope of the benefits provided by the charity 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 charity for the majority of the benefit it provided.

The not charged for activities undertaken by the charity which had the most impact were the regular use of its grounds and facilities by a local primary school, the organisation of events open to pupils from other schools (in sports, maths and career development/ further education), the provision of two employees to provide musical instrument tuition at local authority schools and the facilitation of three gap-year students per year.

While the activities appeared to be regular and ongoing and did provide benefit to a number of beneficiaries, the charity did not participate in a significant enough level of such activities to fully mitigate the fees it charged, taking into account the level of those fees and the other forms of facilitated access it offered.

Loretto School is an all through school located in East Lothian 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, rurally-located junior school and therefore had greater opportunity to offer benefit which is not charged for. While aspects of the not charged for benefit provided by the school did provide some benefit in furtherance of its purposes, the charity did not participate in a significant enough level of such activities to fully mitigate the fees it charges, taking into account the other forms of facilitated access it offers.

On balance, and having had regard to possible unduly restrictive conditions on accessing the benefit, we concluded that public benefit was not provided by Loretto School Ltd. This was due to the fees and charges that were in place, the insufficient mitigation of the impact of these 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 is made.

For the reasons set out above OSCR found that Loretto School Ltd did **not** meet the charity test.

## **6. Issue of the direction**

On 1 October 2013, OSCR issued Loretto 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 (as set out in section 5 of this report), by 31 March 2015.*

*This action must include increasing the impact of means-tested bursaries on the fees charged, and taking other measures, as appropriate, to ensure that the charity meets the charity test 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 October 2013, the charity trustees began to take 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 forthcoming financial year 2014-15, 107 pupils will be in receipt of a means-tested award from the school to the total value of £998,000. This represents 18.6% of the school roll and 9.6% of the school's available income. The bursaries awarded by the school are of varying values. The bracket with the highest number of awards remains 21-40% of the fee. However the number of pupils receiving awards of higher value than this has now increased. In total, seven pupils (1.2% of the school roll) will receive a full award, entitling them to 100% fee remission, six of these being 100% awards and one being the new 105% award.

In addition to increasing the value of the means-tested awards to 105% of the fee (to cover any additional on-costs associated with attending the school), the charity has also increased the overall spend on these awards

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 benefit of this type now being offered includes:

- Developing a new indoor golf centre which will open in April 2015. The centre will be made available to the Scottish Golf Union for the development of golf in Scotland and will be opened up to the local community to promote golf to all ages.
- Continuing to allow local authority schools to use their facilities on a regular basis for various activities. This activity has been extended with the school now also providing free use of their minibuses to two schools in East Lothian.
- Continuing to undertake and encourage activity which advances citizenship and community development, such as pupils working in local charity shops and visiting sheltered housing and nursing homes. This activity has been extended with 25 pupils now undertaking this activity.
- Continuing the community service initiative of pupils providing assistance at a local state school. Again, this activity has been extended to include more Loretto pupils providing help in a wider range of classes.

- Continuing to provide a learning support teacher to teach chanter to local authority school pupils and the school's Pipe Major to teach at two local authority schools.
- Hosting the Loretto Lecture on a termly basis. These educational lectures are open to members of the public and external schools. There are normally around 100 – 160 attendees at each lecture.
- Continuing to host the East Lothian Charity Tennis Tournament which is attended by approximately 150 members of the community annually and ultimately benefits special needs play schemes in the area.
- Continuing to host events which have and will include junior golf championships, Musselburgh Rotary Club's Young Musician of the Year, a girls' cricket tournament attracting local schools and clubs and the first Bill McLaren Foundation and Loretto School Under 10 Rugby Festival in September 2014. All Scottish rugby clubs are invited to this with free entrance and the offer of assistance with transport
- Providing further education/career guidance to young people by holding a UCAS week at the end of the summer which is open to all local schools.
- Continuing to host three gap-year students per year from Australia or New Zealand.

The school has also increased the transparency of the awards available. The school's website now makes clear that awards are no longer limited to awards of 30% or 50% and that remissions are now offered up to the value of 105% of the fee. The school has participated in media advertising and released press statements regarding the assistance now on offer. Additionally the school has written to a number of primary schools to highlight this and have taken part in a programme of visits to other schools to promote the new scheme.

## **8. Conclusion**

We consider that the school has sufficiently addressed the issues identified in the original review.

Loretto School already spent a relatively high proportion of its income on means-tested assistance, with the amount allocated to this type of assistance for the coming school year (2014-15) having been further increased to a considerable level. The level of income dedicated to this type of assistance was not a particular concern of ours in the original decision but we nevertheless acknowledge and welcome this move.

Our main concern at the time of our review was the low value of awards offered to beneficiaries and we consider that the changes the school has made - namely removing the cap on bursary awards and increasing their value up to 105% - have sufficiently addressed this issue.

While the highest number of awards made is still in the 21-40% bracket, these represent existing low-value bursary recipients to which the school is already committed. The school's new policy has resulted in an improved spread of bursaries being made available to people on a range of incomes. We also acknowledge and welcome the efforts the school now makes to encourage bursary applicants such as writing to and visiting primary schools to let them know about the assistance available.

Finally, the school has maintained and built on the activity it provides or is involved in for which it does not charge a fee. Activities which will provide a significant level of benefit to young people outwith the school include the increase in the number of Loretto pupils assisting at a local state school and the development of the indoor golf centre.

**Cumulatively the steps taken by the school have satisfactorily removed the undue restriction that was previously in place and we therefore conclude that Loretto School Ltd provides public benefit and passes the charity test.**

17 June 2014