

FILE NOTE:

DATE:	17 November 2011
AUTHOR:	OSCR
SUBJECT:	REPORT UNDER SECTION 33 OF THE CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005 ON INQUIRY: LOMOND SCHOOL LIMITED (SC007957)

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 the Lomond School Limited 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 Lomond School 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. Lomond School Limited 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 possible unduly restrictive conditions were as follows:

1. Lomond School is a medium sized independent school in Helensburgh. The school operates a Nursery, a Junior School and a Senior School. It also has boarding facilities.
2. In the 2007-08 academic session, there were 592 beneficiaries in attendance at the school. Of these, 39 attended the Nursery, 179 attended the Junior and 374 the Senior School. There were 70 pupils boarding at the school.
3. The fees charged by the school in that year were as follows:

Nursery	£2,850 per annum
Junior School (Day)	£3,960 to £7,485 per annum
Senior School (Day)	£8,085 per annum
Boarding	£9,210 per annum (boarding costs only)
4. The day fees charged for access to the education provided were substantial. They were 'average' compared to the fees charged by other schools in the independent sector, but appeared high when compared to the cost of providing education in the state sector. The boarding fee was 'average' compared to the fees charged by other boarding schools in the independent sector.
5. Information on the tuition fees in place is available from the school upon request and is available from the school's website. The information that was provided was appropriate, and advised that means tested provision was available.
6. There was some evidence of the charity providing other benefits in furtherance of its charitable purposes, for which it made no fee or charge. This partly extended to the wider educational curriculum. Examples included the provision of teaching practice placements for students and supporting the Scottish Qualifications Agency (SQA) in examination setting, marking and examining.

7. Means tested support for access to the school was offered through the school's Bursary Programme. This was launched in January 2007. Bursaries were offered to both day and boarding pupils. In the 2007-08 academic session, two beneficiaries were awarded means tested bursaries, to the value of £17,100. Bursaries of up to 100 per cent were available. This Bursary Programme was in development, and the school had a clear strategy in place to increase the bursary provision in the next few years.
8. The school itself offered non means tested rebates in the form of a Services Bursary Scheme. This assisted 38 pupils (all of whom were also in receipt of the CEA – see below), whose parents were armed service personnel, to the value of £24,510 in 2007-08.
9. A variety of external sources of non means tested support was identified in the case of Lomond School. Part funding was available from Argyll and Bute Council for children over 3 years of age who attended the nursery. This was not based on an assessment of the financial circumstances of the parents. We were not able to establish the exact value of this, but estimated this at the most to extend to 35 children and have a value of £45,000.
10. The Continuity of Education Allowance (CEA) is paid by the Ministry of Defence (MOD) to serving armed services personnel that qualify for this form of assistance. The funds awarded were offered at a fixed rate, and were not means tested. In 2007-2008, 38 boarding pupils at Lomond School were in receipt of this allowance as well as an estimated 20 day pupils. The estimated total value of this support was £718,550.
11. The pupils of Lomond School attracted further funding from other external funding sources to help offset the full cost. These were, as far as known to OSCR on the basis of information provided by the school, not means tested. This financial support extended to nine pupils at a total monetary value of £60,295.
12. In 2007-08, the total number of pupils in receipt of some form of support was therefore at the most 104, representing 17.5 per cent of all beneficiaries (excluding, as in all cases, non means tested sibling discounts). Two pupils were in receipt of means tested bursaries, representing less than 1 per cent of the school roll.
13. The total value of support amounted to approximately £865,000. This represented 18.5 per cent of the charity's income for the year 2006-07. However, means tested support represented less than 1 per cent of the annual income of the charity in that year.
14. The school was actively building up reserves/contingency funds and had an ambitious programme of capital projects. In addition the bursary programme was being developed.

15. On balance, having had regard to possible unduly restrictive conditions and access, we concluded that public benefit was not provided by Lomond School 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 for which it made no fee or charge being provided in furtherance of its charitable purposes.
16. At that time, there were very limited arrangements specifically aimed at facilitating access for those unable to pay the fees from their own resources. We recognised that this was partly due to the fact that the school's means-tested Bursary Programme was still in its infancy.
17. Evidence was presented of financial support from external sources. However, the impact of this support on opening up access to the school specifically for those that may not be able to pay the fees was limited, as this support was not aimed at those not able to pay, and eligibility was determined on a different basis.

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

Further Action

We issued a Direction to Lomond School Limited 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 intended to comply with the 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 showed how the charity would increase the facilitated access arrangements for the benefit it provided, or set out some other strategy that would ensure that the charity would 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.

Lomond School Limited indicated its intention to comply with the direction on 15 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, staff remissions and MOD boarding bursaries) so that by 2011-2012 means-tested assistance would be provided at the school:
 - o At a value of 6.1% of fee income

- to around 10.9% of pupils on the roll
 - with average level of assistance of 60% of day fee
 - including bursaries for students from disadvantaged backgrounds in South Africa and Eastern Europe
2. Provide accessibility through activities for public benefit for which no charge is made, including:
- Weekly use of Games Hall, PE teaching and transport for 6 local primary schools
 - Creative writing workshops using charity's writer in residence in 2 local primary schools
 - Community Sports Leadership PE coaching in local primary schools
 - Choral event for local schools
 - Hosting Annual triathlon event for Scottish schools
 - Marking of public examinations, hosting placements for student teachers and also other smaller scale and one-off activities,

Situation as at 28 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 (including means-testing of MOD, sibling and staff discounts) in session 2011-2012 provided at
 - 6% of fee income
 - to 13.4% of pupils on the school roll
 - 10 pupils (2% of roll) in receipt of 100% bursaries
 - with average level of assistance of 53% of day fee
 - including assistance for students from South Africa and Eastern Europe

2. The school provides public benefit at no charge through the following activities:
 - Weekly use of Games Hall, PE teaching and transport for 6 local primary schools
 - Community Sports Leadership PE coaching in local primary schools
 - Choral event for local schools
 - Hosting Annual triathlon event for Scottish schools
 - Marking of public examinations, hosting placements for student teachers and also other smaller scale and one-off activities,

The following additional activities are being undertaken at no charge for public benefit:

- Integration of local youth rugby teams with Lomond School teams to allow compliance with SRU rules, provision of transport and facilities

Lomond School has undertaken a variety of other activities during the period of the direction. These are not noted here but have also provided public benefit, at no cost to individual beneficiaries. Also, children of eligible age attending the nursery at the school are in receipt of local authority partnership funding, which covers 50% of fees. This funding is not means tested and was not an element in the plan, but does mean that all beneficiaries in that part of the school are assisted in paying the fees.

Decision on Compliance

While there is some variation in the make-up of the types of assistance provided, the increase in the amount of means-tested financial assistance provided has taken place broadly as planned. Compared to the projections in the charity's plan, there is some increase on the amount of funding available in comparison to the charity's income, and the proportion of the school roll in receipt of assistance, over the projections in the plan.

All major activities providing benefit for no charge have been delivered, and in most cases have been in place since early in the direction period. There has also been some additional activity on this front over and above what was in the plan.

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

OSCR
17 November 2011