


Fee Charging Schools: Outcome of Public Benefit Tribunal case



Judgment in The Independent Schools Council's case for judicial review of the Charity Commission Guidance on Public Benefit, incorporating answers to the Attorney General on public benefit and fee-charging, was published on Friday 14 October.

1. Charity trustees of educational charities must ensure the "poor" (i.e. those that cannot ordinarily afford fee-levels), are not excluded from benefit by the effect of their policies.

2. The assertion that independent schools are charitable simply by virtue of their primary purpose of providing education services is not correct. (There are a number of commercial providers of education services.)

3. The Commission's guidance which sought to impose rules

(such as a required bursary percentage), to determine what must be done not to exclude the "poor", is flawed. So the Guidance must be re-written.

4. It is for the trustees to address the question of how they provide public benefit and to determine relevant criteria on a case by case basis. They have always had this duty and discretion.

5. Trustees could be challenged for not doing sufficient to ensure that the poor are not excluded from benefit. Such a challenge would be to the trustees' policy, not the charity's legal status.

6. New legislation would be necessary if more specific rules were considered desirable or appropriate.

The judgment carefully describes the limited extent to which there

are relevant rules of charity law. This reflects the apparent legislative intention to re-focus on the charity law relating to independent schools, without changing the status quo.

Further developments and guidance will no doubt be published as the sector bodies such as the Independent Schools Council, the Bursars' Association and others study the judgement and its implications. We will advise you as soon as we become aware of any such developments. Meanwhile, we recommend that school Governing Bodies continue to review and develop policies to widen access to their facilities, whether by way of bursaries, links with other schools, secondment of teachers to schools in the maintained sector, provision of sports facilities etc.

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