

MOST PRIVATE SCHOOLS ARE NOT CHARITIES

'Most private schools are not charities' was the conclusion of the Education Review Group ('ERG') following the decision of the High Court today. The High Court reached its decision after lengthy deliberation and its conclusions means that many schools will need to look again at their approach in light of today's judgement.

The High Court challenge initially only related to the wording of guidance issued by the Charity Commission. The guidance was found to be in need of change. However the court was also asked to answer a lengthy series of questions put to the court by the Attorney General about what is and what is not a public benefit and so would attract charitable status. The conclusions suggest many schools will need to carry out stringent reviews of their current approach.

The ERG was a party to proceedings and is an organisation made up of leading academics and educationalists. In the course of proceedings the ERG identified charitable schools providing such 'gold plated' services as beagling packs, nine-hole golf courses, stables and shooting to its pupils. The court stated that many would find this simply "astonishing." The court concluded at paragraph 219 that "where such luxury provision is made, a stringent examination of how it is provided and how the public benefit is satisfied is appropriate."

Anne Mountfield for the ERG said: *"In light of this decision we call on the charity commission to review whether such schools are in the public benefit. The court is saying "stringent examination" is needed and the ERG calls on the Charity Commission to now apply this decision and review what schools are doing and what real changes are needed to ensure private schools really are of public benefit."*

The schools argued that providing education was in itself a public benefit and that they did not have to specifically consider the poor. The High Court rejected this. The court found that such a school would simply not be charitable (para 237). In addition, the court found that fees of £12,000 a year would exclude the poor in practice (para 241). In the course of the hearing the ERG pointed out that the average day pupil pays £12,000 a year and fees for an average boarder are £18,000. Fees in over 50 schools already exceed £29,000 a year.

Paul Ridge stated: "If a school is offering education at £12,000 a year is doing little else to ensure that poor people have access then they are simply not complying with the law relating to charities. The court is telling schools more is needed. The difficulty with the decision is that the court will not draw a firm line as to what a school should and should not do. The court points out that one per cent of funds allocated for poor pupils would simply not be sufficient. Similarly it would be hard to say that if 10 per cent of funds were used for poor pupils that this would not be enough (para 251) but where the line is to be drawn remains unclear".

Despite indicating public benefit would not be met the court has failed to set a clear line or give power to the charity commission to determine what public benefit is. Charity trustees will make the decision and must make more than de minimis or token provision for the poor. The ERG believes this is a missed opportunity to give real weight to the public benefit requirement for charities.

Anne Mountfield added "although the court recognised that the poor cannot be excluded the decision does not go far enough in saying how they can be included in real terms. As the Prime Minister recently pointed out there is educational

apartheid between state and private schools. The court points out that the poor should not be excluded but then fails to really give the Charity Commission the tools to ensure such exclusion does not continue.”

“The ERG fears that trustees will not take the point that there must be real provision for poor pupils and that it is not enough to claim that education itself at whatever cost is a public benefit in itself. This is a missed opportunity to address fundamental problems with so called charitable schools. When even the Prime Minister is calling for an end to educational apartheid between state and private schools it is regrettable that the court has not done more to ensure this happens. There are indications within the judgement that the lavish ‘gold plated’ provision within schools without any thought for poor pupils cannot continue but unless the charity commission can go in and check this will mean little in practice” said Mountfield.

Paul Ridge added “Although the ERG agrees with the court in finding poor pupils cannot be excluded the underlying problem remains the lack of public scrutiny. The court found many would conclude it ‘astonishing’ that schools could provide beagling packs, dressage, 9 hole golf courses and the like in the name of charity. Sadly this decision is a missed opportunity in getting to grips with such practices and fails to give the charity commission support in tackling these issues.”

Ends

Notes for editors

The Charities Act 2006 removed the presumption that all charities providing education also automatically provide public benefit. It is now necessary for charities to show that they are for ‘public benefit’ and report this to the Charity Commission.

Guidance issued by the Charity Commission on how this might be established has been criticised by private schools through its representative body, the Independent Schools Council, which brought a judicial review against the Charity Commission challenging the lawfulness of the guidance.

At the same time the Attorney General has for the first time used his statutory powers to ask the Upper Tribunal (Charity) a series of notional questions designed to test out what is and is not a charitable school. The High Court heard matters over a two-week hearing in July 2011.

The ERG was given permission to intervene in the case. It is made up of over 30 leading academics and educational specialists. Its submissions support the Charity Commission’s guidance and seek to encourage the Charity Commission to spell out adequate eligibility criteria for bursaries, alternative forms of state school partnership activities and more rigorous ways of measuring the impact private schools can make on social disadvantage.

For more information see:

<http://educationreviewgroup.org/index.html>

The High Court/Tribunal documents are here:

<http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/charity/references.htm>

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