

Council Meeting – 6 February 2017

Demonstrating Public Benefit – Independent Schools

Motion proposed by Councillor Steve Ross and seconded by Councillor Libby Lisgo

This motion is a means to facilitate a voluntary agreement in which local Independent Schools and Taunton Deane Borough Council innovate to jointly deliver and demonstrate the local charitable public benefit of the schools, while ensuring schools whose public benefit is not commensurate with the Business Rates Relief they receive from this Council are scrutinised and challenged.

The motion recognises that the charitable status and unique global perspective of our Independent Schools as international businesses has a key role to play in the growth agenda of Taunton Deane and in improving the lives and outlook of local people.

A supporting briefing will be circulated to Councillors.

Motion

1. From February 2017, and annually in February thereafter, it will be the policy of this Council to invite Taunton Deane's Independent Schools who receive Business Rates Relief to each make a donation equivalent to 10% of their mandatory Business Rates Relief to a fund to be held by the Community Council for Somerset.
2. The fund will be established for educational, environmental and recreational initiatives towards health and well-being in Taunton Deane. 50% of that fund will be targeted at projects within the Taunton Deane Priority Areas, projects to be considered on a criteria prepared by a Public Benefits Panel, comprising of representatives of the schools and the Council's Voluntary and Community Sector (VCS) Grants Panel.
3. The Council will additionally invite the Independent Schools to provide volunteer resourcing and support to the One Teams in Taunton East, North Taunton and Wellington and to specific service providers in the rural areas, by jointly offering and organising 25 One Team days per year, each day for 30 young people who are tenants of Taunton Deane Borough Council.
4. It will be the policy of this Council to support and endorse the formal Public Benefit Statements of schools in receipt of Business Rates Relief and participating in the initiatives above, to ensure that they are able to clearly evidence to the Charity Commission and the Courts the public benefit our community derives from their operation in our area and their status as charities.

5. From February 2017, Independent Schools in receipt of mandatory Business Rate Relief will be required to provide a detailed report of public benefit for the previous calendar year with their application for mandatory Business Rates Relief to be eligible to receive that relief from Taunton Deane Borough Council. This must be considered by the Council's VCS Grants Panel, who must report to the Corporate Scrutiny Committee on the levels of public benefit the organisations offer and the amount of relief given.
6. If in the opinion of the VCS Panel and the Corporate Scrutiny Committee a charity fails to demonstrate public benefit the Chairman of Scrutiny will recommend that the Chief Executive writes to the trustees and the Charity Commission to address issues and report to the Section 151 Officer, who must consider responses to assess whether the trustees are offering public benefit and whether mandatory relief can be still applied.
7. This Council will write to the Prime Minister, Department of Communities and Local Government, the Local Government Association and the Charity Commission to request that the Government changes the law to describe Discretionary and Mandatory Relief to charities as 'Public Benefit Relief' to recognise and distinguish its special status in allowing charities to give public benefit.

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A Supporting Briefing submitted by Councillors Steve Ross and Libby Lisgo

Independent Schools - Delivering and Demonstrating Public Benefit – Taunton Deane Borough Council Overview

- Independent Schools contribute significantly to our local economy.
- The mandatory element of Business Rates relief to Independent Schools in Taunton Deane is around £1million per year. Independent Schools in Taunton Deane have a rateable value of approximately £1.2million and receive 80% rebate on this, £981,848.96 in Mandatory Business Rates Relief.
- This equates to **£392,000** Business Rates to the Deane alone, with the County Council and Fire Authority receiving another £98,000 and the rest going to Central Government.
- Previously and reflecting public finances Taunton Deane decided to remove Independent Schools from extra 20% Discretionary Relief that is paid to other charities. These other charities need Ward Councillor support to qualify for Discretionary Relief. This scheme related to 20% works by charities asking Ward Councillor for a letter of support and is a public benefit test.
- Taunton Deane therefore already operates a simple system which scrutinises other local charities delivery of public benefit. The Council does not do this for Independent Schools.

National Overview (See July 2015 letter annexed for general summary)

- Under the Local Government Finance Act 1988 Section 45(6) – the Council **MUST** grant 80% Mandatory Business Rates Relief to charities and Independent Schools for property wholly or mainly for charitable purposes of charity or other charities.
- For 80% relief '**MUST**' is dependent on two things:-
 - (1) Charitable status being confirmed for charities (confirmed by registration on and listing on Charity Commission website); **AND**
 - (2) On test of public benefit.
- Public benefit is no longer assumed. Charity Commission guidance (2013), separated the public benefit requirement in relation to charitable status from the public benefit test in relation to the charity's operations, making it clear that fee-charging charities such as Independent Schools would only lose their charitable status if their charitable purposes failed to be for the public benefit - not their operations

- The House of Lords decided not to legislate for public benefit of Independent Schools, leaving the Charity Commission to issue guidance and scrutinise benefit. The Charity Commission check a random sample each year and note that scrutiny of public benefit is a matter for the public and other organisations i.e. it is possible to complain to the Charity Commission about adequacy of public benefit.
- The Commission's intention is to commission and publish independent research to assess the impact of initiatives to increase partnerships between charitable schools and the state sector.
- In September 2016 the Prime Minister said she would launch a consultation on the charitable status of Private Schools, which would lead to a "tougher test" - "Through their charitable status, Private Schools collectively reduce their tax bills by millions every year. And I want to consult on how ... to enact a tougher test on the amount of public benefit required to maintain charitable status".
- The Government is currently consulting. The Independent Schools responded to this threat to their charitable status with plans for 10,000 means-tested places costing the Government £5,500 a year per pupil. The Government has not accepted this.

House of Commons Library Briefing: SN0522 Charitable status and Independent Schools July 2016 (available online)

- The *Charities Act 2011* (a consolidation act) defines a charity as an institution which is established for a charitable purpose and provides benefit to the public. The advancement of education is a charitable purpose and so Independent Schools are capable of being charities.
- There is no longer a presumption that any type of charity is for the public benefit. Educational charities, like all other charities, **must demonstrate that they are for the public benefit.**
- There is no statutory definition of public benefit.
- The Charity Commission is required by statute *to issue guidance to promote awareness and understanding of the operation of the public benefit requirement.* In 2008, it published guidance, including guidance on public benefit and fee charging, in which the Commission set out issues to be considered by charities charging high fees that many people could not afford.
- The guidance stated that offering free or subsidised access was an obvious and, in many cases, the simplest way in which charities could provide opportunities to benefit for people who could not afford the fees; it also stated that this was not a requirement.
- The Independent Schools Council was granted permission by the High Court to bring a judicial review of the Charity Commission's public benefit guidance. This was heard by the Upper Tribunal at the same time as a reference by the Attorney General asking the Tribunal to consider how the public benefit requirement should operate in relation to fee-charging charitable schools.

- The Upper Tribunal's decision, published in October 2011, concluded that in all cases there **must be more than minimal or token benefit for the poor**, but that trustees of a charitable Independent School should decide what was appropriate in their particular circumstances. Benefits could be provided in a variety of ways.
- The Charity Commission has since published revised public benefit guidance. The Commission has also published some specific examples of ways in which charitable Independent Schools might make provision for the poor to benefit.

The role of Trustees and Reporting in Accounts under new guidance (Charity Commission Website)

- Trustees must consider who can potentially benefit from the purpose of their charity/organisation and give proper consideration to the full range of ways they could carry out the purpose, have proper reasons for decisions and make decisions in accordance with the framework for trustee decision making.
- Other factors that can also affect who can benefit from their charity's purpose include membership provisions, physical access to facilities provided by the charity (such as opening hours) and charging for a charity's services.
- Where a charity's charges are more than the poor can afford, trustees must run it in a way that makes more than minimal provision for the poor to benefit.
- It is not for the Courts or the Charity Commission to tell trustees which decision to make if there is a range of decisions open to them, so there is choice about how to carry out a charity's purposes, provided that discretion is exercised in a way which:-
 - is in accordance with the charity's purpose;
 - is for the public benefit;
 - has regard to the Commission's public benefit guidance where relevant;
 - is in accordance with the general framework for trustee decision making.
- The Commission would expect trustees to address and resolve a situation in which the charity's purposes were not being carried out for the public benefit.
- The trustees' **annual report** must explain how the charity has carried out its purpose for the public benefit. A detailed report is required if a charity's gross income exceeds £500,000; otherwise a brief summary is all that is needed. Trustees must state that they have had due regard to the Commission's public benefit guidance when exercising any powers or duties to which the guidance is relevant.
- The Commission checks a random sample of trustees' annual reports for the quality of reporting, including about public benefit, and would consider persistent non-reporting of public benefit a potential regulatory issue.
- Reporting on public benefit should not just be seen as a legal requirement that trustees must meet and that the Commission regulates. Done well, it should help trustees stay focused on what the charity is there to achieve. It can also

help trustees demonstrate the value and impact of their work to its supporters, beneficiaries, grant makers and funding bodies.

Public Benefit and Taunton Deane Borough Council

- People can challenge whether the public benefit offered is real.
- Trustees of Private School charities have an obligation to ensure that they are running the school for the public benefit. They are obliged to take action to ensure that the school does not solely benefit those who pay full fees.
- Though it is up to the trustees to determine how to do this it is an area where trustees will be under increasing scrutiny with public benefit law evolving, public benefit difficult to quantify in financial terms and tax relief harder to justify in the context of society's financial challenges.
- Local examples of public benefit include one local school in 2014 awarded reduced fees and scholarships worth £1.9 million to 407 pupils. 200 of these or £900,000 were means tested, **one pupil having their full fees paid.** Means tested is however a relative term - for example one question considered by the Courts has been the extent to which charitable public benefit is actually demonstrated by reducing fees for those who could afford to pay for private school in the first place.
- There is of course well documented interaction with local state schools – swimming, sports events, science and arts days but statements of public benefit from the Private Schools on the Charity Commission website also list the voluntary activity of pupils in the wider community as a demonstration of their public benefit justifying Mandatory Tax Relief including students participating in the Duke of Edinburgh Scheme. Should Duke of Edinburgh volunteering be evidence of public benefit and a tick in the box to get tax relief that is not afforded to state schools who do similar activities?

21 July 2015 from gov.uk Letter Charity Commission to Independent Schools Council

The annexed letter that follows summarises the Charity Commission's position on issues relating to the public benefit of Independent Schools raised by Peers in the debates on the Charities (Protection and Social Investment) Bill. It covers:-

- Commission guidance on public benefit;
- Whether there is potential for more to be done to encourage charitable Independent Schools to consider sharing sporting facilities or other resources as part of their responsibility to operate for the public benefit;
- Public benefit reporting; and
- The Commission's intention to commission and publish independent research to assess the impact of initiatives to increase partnerships between charitable schools and the state sector.

Annex

Julie Robinson
General Secretary
Independent Schools Council
First Floor
27 Queen Anne's Gate
London SW1H 9BU

Dear Ms Robinson

In the last week or so there have been a number of discussions between officials at the Charity Commission and you and your colleagues at the Independent Schools Council about issues raised by peers relating to the public benefit of independent schools in the debates on the Charities (Protection and Social Investment) Bill. This letter summarises the current position.

Public benefit is part of what it means to be a charity, to operate as a charity and to report on a charity's work. The Charity Commission produces guidance for charity trustees on each of these aspects of public benefit, and the particular issues that relate to the different charitable purposes which the law recognises. All charity trustees have a duty to 'have regard' to the Commission's public benefit guidance and must report each year on how they have carried out their charity's purposes for the public benefit. We publish these reports on the online public register of charities and check a random sample of reports; we also commission occasional research reports to assess the quality of public benefit reporting and consider particular aspects and issues raised.

In recent Parliamentary debates on the Charities Bill a number of peers, most notably Lord Moynihan, have argued that some charitable independent schools could do more to share their facilities for sports, music and the arts with schools in the maintained sector and that doing so is one of the ways in which such charities meet the public benefit requirement and contribute to the health and wellbeing of the community. Amendments to the Bill have been tabled to create a new duty for charitable independent schools to share their facilities and require the Charity Commission to produce new statutory guidance setting out the minimum that must be done.

As charity law regulator, we are concerned that introducing this new duty on a particular sub-set of the registered charity sector into primary legislation could have wide and unintended consequences, which we have not been able to consider fully. It is an important principle of charity law that trustees have the freedom to make decisions about how to carry out their legal duties in the appropriate way for their charity's individual circumstances. We regulate more than 160,000 charities carrying out a wide range of activities so our regulatory guidance must set out the legal principles trustees must follow, without being prescriptive.

However, we recognise the spirit of these proposals and the intentions behind them. As charity regulator we have sought to consider whether there is a non-legislative

route to progress these issues. Specifically, we have considered whether there is potential for more to be done to encourage charitable independent schools to consider sharing sporting facilities or other resources as part of their responsibility to operate for the public benefit. On this basis we approached the Independent Schools Council last week to outline our intentions.

Public benefit reporting

The Charity Commission's existing guidance Public Benefit: Running a Charity has links to examples of how charitable schools can provide benefit for people who can't afford their fees, including by sharing sports facilities. This guidance is still in effect and we commit to doing more to promote it to schools and to the wider public. We have also considered our guidance Public Benefit: Reporting and our example Trustees Annual Report for a charitable school, and consider that this guidance should include more examples of reporting on sharing sports, arts or music facilities to encourage charitable schools to consider what they are doing and how they report in this area. We will publish and promote this revised guidance to charitable schools and I am grateful to you for your assurances that the ISC and Associations will also promote this guidance to its members.

Data and research

The Commission will commission and publish independent research approximately a year after the publication of revised guidance to assess the impact of initiatives to increase partnerships between charitable schools and the state sector. I understand you intend to collect data through the census of ISC members on provision of facilities and will make this available in aggregated form to the researchers.

In our discussions, you and your colleagues have clearly recognised that the ISC has a role to play in encouraging and supporting partnerships between its member schools and the state sector, and I am glad to hear that you expect to be able to provide an online facility that will make it easier for state schools to identify opportunities for partnerships with ISC members and for member schools offering partnerships to provide their details. I look forward to hearing more details.

I hope we will be able to continue this dialogue and work with the Parliamentarians and other stakeholders who have championed the benefits of partnership initiatives between charitable independent schools and the state sector over the coming months.

I will publish a copy of this letter on our website.

Yours sincerely

Sarah Atkinson

Director of Policy and Communications

Taunton Deane Borough Council

Motions to Council – Assessment Form

On receipt of a Motion from a Councillor, the Democratic Services Manager will carry out an assessment as to its contents to establish whether there are likely to be significant consequences to the Council should the Motion be carried at the subsequent Full Council meeting.

The first question to be addressed will be:-

“Can the Motion, if approved, be implemented without the need for any resource (financial and otherwise) to be identified outside existing budgets or staffing capacity?”

If the answer is ‘yes’, then the Motion can proceed towards discussion and resolution.

An example of a Motion which would fall into the above category would be where the Council is being asked to lobby the Government, Somerset County Council or other body on a particular issue. If the motion is carried, the action required will usually involve no more than a letter being prepared and sent to the intended recipient.

However, as in the case of the recent Motion on ‘Legal Halls’, the answer to the above question would clearly be ‘no’.

In such circumstances, detailed analysis of the wording of the Motion will be required to identify what will be needed if the Motion – when it comes before Full Council – is carried.

Such analysis will include:-

- What additional resource would be required to ensure the Motion (if approved) could be implemented?
- What needs to be done to identify the level of resource necessary both in financial and staff terms?
- Are any approvals needed to provide these resources?
- Will this require reports to be submitted through Scrutiny and the Executive? If a Supplementary Estimate is required, Full Council approval will be required too.

If such analysis is required, the Democratic Services Manager will arrange for the attached pro-forma to be completed and this will accompany the relevant Motion onto the agenda of the Full Council meeting so all Members are aware that further investigation will be required before the Motion – even if it is carried – can be implemented.

Motions to Council – Assessment Proforma

(To be used in circumstances where it appears the wording of a proposed Motion will commit the Council to providing further financial or staffing resources which cannot be met from existing budgets)

Brief Details of the Motion -

Motion

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must consider responses to assess whether the trustees are offering public benefit and whether mandatory relief can be still applied.

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Questions to be addressed

What additional resource would be required to ensure the Motion (if approved) could be implemented?

General Background:

In accordance with the Local Government Finance Act 1988, Section 45 (6), then we have no discretion, but MUST grant relief (mandatory) where "...the ratepayer is a charity or trustees for a charity and it appears that when next in use the hereditament will be wholly or mainly used for charitable purposes (whether of that charity or of that and other charities)."

We must be satisfied that the organisation is a charity and if the Charity Commission considers them to be a charity then they will be listed on the Charity Commission's website.

Likewise, if the organisation is not a registered charity, but has charitable status for the purposes of HMRC, that is currently deemed satisfactory for the purposes of Mandatory Relief.

From a Revenues perspective, asking for additional proof of charitable status to receive Mandatory Relief is not necessary and would require additional administration resource for both the Council and the rate payers.

Motion 1 – This would need further investigation to understand the resource implications fully. Firstly resources through staff time and administration would be needed to develop outline proposals and engage with relevant schools to determine if such voluntary arrangements could be established in principle. If strong support is evident then further resources through staff time and administration will be needed to develop a formal policy and supporting processes to implement such policy including engagement with the Community Council for Somerset. The motion proposes to "invite" and as such will not be enforceable. This would presumably also have resource implications for the Community Council for Somerset in administration arrangements.

Motion 2 – Accountability, accounting, reporting, banking, insurance arrangements would be needed. This might be incorporated into existing arrangements within the Community Council for Somerset? Clarity would be required on resources needed to establish and maintain a "Public Benefits Panel".

Motion 3 – Resources would be needed to engage with schools and identify relevant young people, and organise the days. May also have other resources implications such as transport, insurance, expenses etc.

Motion 4 – The form of support and endorsement would need to be determined and any supporting activity to assess beforehand. It is unclear what additional resources would be needed at this stage.

Motion 5 – Additional administration costs would be incurred to collect information from the schools and collate and report to a grants panel and committee. This is likely to be in the form of staff time and minor disbursements.

Motion 6 – Clear criteria would need to be established to enable the VCS Panel and the Corporate Scrutiny Committee to assess any demonstration of public benefit. Proposals would require the time of the Chief Executive and the S151 Officer. Potentially legal costs would also be incurred.

Motion 7 – Leader and officer time, plus legal advice would be required.

What needs to be done to identify the level of resource necessary both in financial and staff terms?

An assessment would need to be undertaken to identify additional resource requirements for the various elements of the proposals. Clarity would be needed whether this is considered a fixed term or ongoing arrangement. Clarity would also be needed on which body is proposed to undertake related activities and the associated administration.

Any assessment would likely include, but not necessarily be limited to, the following:-

- Understand the proposals in more depth including requirements or policy development and administration.
- Understand financial accountability, accounting, reporting, administration and control arrangements.
- Staff resource requirements for policy development, business process creation and implementation.
- Insurance and taxation implications.
- Banking / transaction costs.
- Data security, information systems, FOI / transparency reporting requirements.

Are any approvals needed to provide these resources?

Yes, if additional budget is required for the additional resources required to administer such a scheme, unless a commensurate reduction of resource requirements in existing activities is identified and such resources reprioritised to deliver this proposal in which case budget virement could be approved in line with financial regulations.

***Will this require reports to be submitted through Scrutiny and the Executive?
If a Supplementary Estimate is required, Full Council approval will be required too.***

Yes

Likely timescale involved –

To be determined.