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Our ref:

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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 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.

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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 to do more 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 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



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