

Private matters

An investigation into independent schools and charitable status in England

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Executive summary

The political debate over the role, status and taxation of independent ('private') schools in England shows no sign of abating. Two issues have attracted considerable attention in recent months: the prospect of VAT being added to independent school fees; and the charitable status of independent schools. [In the first part of this research project – published in June 2023 – EDSK analysed the claim that adding VAT to fees would raise £1.6 billion a year](#), and found that such a policy was unlikely to raise such a significant sum and could end up raising very little money at all. This report – the second half of the same project – explores the issue of charitable status to understand why it has become so contentious in relation to independent schools and whether the suggestion that independent schools should be 'stripped' of their charitable status deserves consideration.

Getting the basics right

In any discussion of the charitable status and societal contribution of independent schools, it is important to recognise that the stereotype of these schools as large single-sex senior boarding schools is entirely unrepresentative of the sector as a whole. If you were to pick one of the 2,400 independent schools in England at random, you would be far more likely to encounter a co-educational primary day school with fewer than 300 pupils. Moreover, only half of independent schools even hold charitable status. These figures immediately raise questions about the general level of understanding of the independent school sector within political circles.

Further misconceptions are not hard to find, particularly in relation to the concept of charitable status. Some politicians and commentators clearly feel uncomfortable with the notion of an independent school being classed as a charitable organisation. In truth, the charitable status of some independent schools is unsurprising. There are two legal tests of whether an organisation is classed as charitable: first, it must have a 'charitable purpose'; and second, it must be 'for the public benefit'. In terms of the first test, 'the advancement of education' has been viewed as a charitable purpose since 1601 and remains codified in law as one of 13 permissible charitable purposes in the *2011 Charities Act*. It is hard to imagine that any politician would relish the prospect of trying to argue that independent schools do not advance their pupils' education. It is, though, the second test – on 'public benefit' – that has often been used to criticise independent schools, yet such criticisms are typically dogged by two fundamental misunderstandings.

First, it is perfectly legal for a charity to charge fees, as demonstrated by care homes, galleries, theatres, private hospitals and many membership organisations (e.g. conservation charities). Even if those fees are more than most families can afford then the trustees of a charity can meet their legal obligation to ensure that poorer families can access their services by, for example, offering fee reductions. On that basis, even if an independent school charges substantial fees to many pupils, offering bursaries to some pupils is likely to mean they are delivering what is legally required of them.

Second, the phrase ‘public benefit’ is widely misinterpreted. Critics often assume that charitable independent schools cannot offer such a benefit because they are too expensive for large sections of the public, but ‘public benefit’ does not translate as ‘everyone is able to benefit from it’. From a legal perspective there are two ways to offer a public benefit. First, a charity could benefit the ‘public in general’ if “the benefit of the purpose [in this case, advancing education] is not limited to people with a particular need or who have to satisfy some other criteria”. In other words, “if a [charitable] purpose does not specify who can benefit, it will generally be taken to mean that it will benefit the public in general.” Second, if a charity does not benefit the ‘public in general’, it may instead benefit ‘a sufficient section of the public’ based on a charitable need (such as ‘advancing education’) and there is no legal minimum for how many people must benefit to count as a ‘sufficient section’. Either way, charitable independent schools are certainly able to offer a ‘public benefit’. This conception of public benefit may be unsatisfying to some observers, but it is nonetheless how the law operates for all charities, including independent schools.

Are independent schools doing enough for students from poorer families?

Even if there are no legal grounds to question the charitable status held by many independent schools, these institutions should not ignore questions over their role within and beyond our education system. For instance, given the fees they charge it is reasonable to ask whether the financial support that these schools provide is reaching the most disadvantaged families. At first glance, the overall picture seems positive. The latest annual census from the Independent Schools Council (ISC) – an umbrella body for seven associations that cover the operations of around 1,300 independent schools in England – shows that 34 per cent of their pupils receive some kind of ‘fee assistance’ such as a bursary or scholarship, with around £1 billion a year being spent by schools on such assistance. Almost £500 million of this fee assistance is spent on means-tested bursaries, with the average bursary approaching £12,000. Nearly half of the pupils who receive a bursary have more than half of their fees remitted, with 18 per cent of bursary recipients paying no fees at all.

However, it is impossible to say from the publicly available data whether these means-tested bursaries are reaching pupils from low-income households because this information is not routinely collected. It is conceivable that low-income families are benefitting in some cases, but it is equally possible that the fee assistance may be going to better-off households. Most independent schools do not publish details of the households that receive partial or full bursaries, nor do they provide a breakdown of the level of fee assistance awarded to recipients. Of the small number of independent schools that publish the income thresholds used to make decisions about bursaries, examples can be found of families earning up to £150,000 a year who still qualify for some form of fee assistance even though they are in the top 3 per cent of the income distribution.

What's more, the £500 million of 'fee assistance' distributed outside of means-tested bursaries raises other issues. By far the most common type of fee assistance is given to "eligible families", which includes "HM Forces discounts, staff discounts, sibling discounts and clergy discounts." Almost half of all pupils getting fee assistance are receiving this type of financial support - 97 per cent of which is not means-tested i.e. it is unrelated to financial needs and therefore may be going to middle- and high-income families. It is unlikely that many politicians or voters would consider fee discounts for siblings or the children of independent school teachers to be a charitable act.

As noted above, charitable independent schools must ensure that poor families are able to access their services, but the legal threshold is merely that charities must offer at least 'minimal or token' support to those who cannot afford the fees – a rather uninspiring benchmark. Moreover, there is no universal definition of 'the poor' in this context and guidance from the Charity Commission asserts that 'the poor' is a relative term that does not just mean the very poorest in society and can include people of 'modest means'. Consequently, charitable independent schools do not appear to be breaking any rules if they hand out bursaries or scholarships to well-off families. Even so, 58 per cent of voters agree (and only 10 per cent disagree) that independent schools should lose their charitable status if they do not admit a high proportion of students from deprived backgrounds. Irrespective of the legal issues that such a policy might encounter, such strong feelings suggest that if charitable independent schools fail to reach the less privileged parts of society then it will embolden their detractors.

Are independent schools doing enough to support local state schools?

Aside from distributing bursaries and scholarships, charitable independent schools can contribute to society and provide 'public benefit' through partnerships with state schools and local communities. Such partnerships are voluntarily created and can take a variety of forms. These include seconding staff to, and sharing staff with, state schools (particularly for niche

subjects such as Latin or subjects with acute staff shortages such as physics), sharing facilities (e.g. sports pitches and swimming pools), helping Sixth Formers prepare their university application, and inviting state pupils to participate in joint classes for drama or music or attend joint events on various themes such as science, careers and art exhibitions. The ISC census reports that their independent schools partner with an average of 11 state schools.

At their best, these partnerships can add value to local schools and the most disadvantaged members of society, particularly those initiatives aimed at young people who have faced the most challenging circumstances – for example, providing free boarding places for children or teenagers in, or on the edge of, the care system. That said, some partnerships present a less encouraging picture. According to the ISC, the most common type of ‘partnership’ created by independent schools is “playing sporting fixtures with or against state schools”, which is hard to describe as an entirely selfless and charitable activity. Similarly, the second most common ‘partnership’ is “having members of staff serving as [state school] governors”, which does not appear to require any commitment on the part of the independent school.

As with bursaries and scholarships, there are also problems with the transparency of these partnerships. A single census cannot cover every detail of every partnership. Nevertheless, even the more encouraging activities such as ‘seconding teaching staff’ could mean anything from going into a state school for a one-off lesson through to weekly lessons for an entire academic year, but it is not possible to determine this from a simple list of ‘activities’. There is also a lack of focus on the impact of independent-state partnerships in terms of whether the state schools and their pupils actually feel the partnership is useful. That is not to question the motivation of the independent schools, but in the context of ‘public benefit’ it cannot be assumed that the mere existence of a partnership is beneficial to local pupils and communities in the absence of supporting evidence. Furthermore, while some partnership activities may be inexpensive and relatively simple to arrange and sustain (e.g. hosting sporting events), others could require a far greater investment of time and money (e.g. collaborating on professional development programmes). Again, though, this crucial information about the level of investment in these partnerships is not available in the published data.

Conclusion

The political attention directed at the charitable status of some independent schools is evidently not underpinned by a commensurate level of understanding about what charitable status entails and why it applies to these schools as much as any other organisation. As it stands, charitable independent schools appear to be meeting their legal obligations, so any talk of ‘stripping’ them of their charitable status is both unhelpful and uninformed. Indeed,

allowing a government to remove charitable status at will from any institution(s) that it deems to be unworthy of this title would surely be intolerable from a moral or legal perspective.

While it would be wrong (and almost certainly futile) for a government to attempt to forcibly remove charitable status from independent schools under current legislation, it would be unwise for these schools to disregard the debate over their impact on society. 50 per cent of the public feel that independent schools harm Britain as they ‘reinforce privilege and social divisions, give children from better-off families an unfair advantage and undermine the state school system’. An even higher proportion of voters want independent schools to lose their charitable status and tax exemptions. When one combines voters’ scepticism with the recent increase in political pressure, the independent school sector finds itself in an unenviable position. While many of the criticisms that they receive are misguided or simply inaccurate from a legal standpoint, there remains a widely held perception that these schools are not making a large enough contribution to our education system or local communities.

Charitable independent schools therefore face a simple choice. They could try to defend the status quo and use existing charity law to fend off any proposed reforms to their charitable status or tax exemptions, although this is unlikely to win over their critics and, if anything, could antagonise them further and leave independent schools at risk of even harder-edged reforms. Alternatively, charitable independent schools could engage with what the polling data shows that the public want from them: a greater commitment to supporting the poorest families and local state schools. While many means-tested bursaries are handed out every year and there are numerous examples of valuable partnerships between independent and state schools, the lack of transparency surrounding these activities will do little to assuage concerns that less privileged families and state schools are missing out.

Instead of becoming embroiled in pointless (and, most likely, unsuccessful) legal disputes, the main goal for policymakers should be to reinforce the good work already being done by many charitable independent schools while also demanding a greater contribution from those independent schools that are not offering enough benefits to the most deprived pupils and localities despite having the capacity and resources to do so. In addition, independent schools should embrace a fully transparent approach to their charitable activities. Instead of seeing this as a burden, the most proactive schools have nothing to fear from such openness and public perceptions are more likely to improve if voters can see tangible changes in the breadth and depth of support being provided. The following recommendations set out a route by which government could achieve these objectives in the coming years, with the aim of improving the lives of many disadvantaged families and communities – something that both policymakers and charitable independent schools can surely agree is a worthy ambition.

Recommendations

- **RECOMMENDATION 1:** Given the significant legal and financial risks associated with trying to remove charitable status from independent schools or charge VAT on independent school fees, these reforms should not be pursued by either the current or a future government.
- **RECOMMENDATION 2:** To ensure that charitable independent schools are accessible to families across the income spectrum, the 2011 Charities Act should be amended to include a legal definition of 'public benefit'. This should include the condition that the fees charged by any charity (including independent schools) cannot be 'unduly restrictive' in terms of who is able to access their services – particularly the poorest households.
- **RECOMMENDATION 3:** The Charity Commission should issue new guidance alongside the proposed amendments to the 2011 Charities Act. The guidance would require charitable independent schools to report annually on how much financial support they provide to pupils (e.g. bursaries), how they determine who receives such support and the income of families that receive this support. The mainstream charitable schools with the highest fees would also be expected to provide the most financial support.
- **RECOMMENDATION 4:** To demonstrate their commitment to valued and sustainable partnerships with state schools and local communities, charitable independent schools should be expected to publish full and transparent details of the cost, frequency and scale of their partnership activities.

1. Introduction

“We shall ...withdraw charitable status from private schools and all their other public subsidies and tax privileges. We will also charge VAT on the fees paid to such schools.”¹

Contemporary as this quote may seem, it is in fact taken from the Labour Party election manifesto in 1983. After declaring that “private schools are a major obstacle to a free and fair education system”, the same manifesto listed several changes that were awaiting these schools under a Labour administration. This included the desire to “abolish the Assisted Places Scheme” (through which the Government provided free or subsidised places at private schools), “phase out fee charging” and “integrate private schools within the local authority sector where necessary”.² As it turned out, the Labour Party were comfortably defeated in the 1983 election, with senior Labour figures famously describing their manifesto as “the longest suicide note in history”.³ This wasn’t the first time that Labour had tried to reshape the private – or, more accurately, independent – school sector, as its 1974 manifesto had previously announced that “all forms of tax-relief and charitable status ... will be withdrawn”.⁴ On that occasion, Labour narrowly won the election but their minority government was unable to enact this proposal.

Under successive Conservative Prime Ministers, the 1980s and 1990s passed largely without incident from the perspective of independent schools. The Labour Party’s bold plans to reorganise independent schools did not materialise even under the next Labour government, aside from the abolition of the ‘Assisted Places’ scheme by newly elected Prime Minister Tony Blair in 1997 to fund a reduction in class sizes in state nursery schools.⁵ This lengthy period of relative calm lasted until 2016 when, shortly after being appointed Prime Minister, Theresa May decried the ‘burning injustice’ still visible in our society, noting that “if you’re at a state school, you’re less likely to reach the top professions than if you’re educated privately.” Ms May declared that she would “make Britain a country that works not for a privileged few, but for every one of us” while assuring the audience that “when it comes to opportunity, we won’t entrench the advantages of the fortunate few.”⁶

Two months later, a government consultation set out their “ambition to create an education system that extends opportunity to everyone, not just the privileged few.”⁷ The consultation accepted that “the UK’s independent schools have a long history and the best have a world-wide reputation for excellence”, yet “despite the fact that many of the top public schools began life as foundations for poor, bright pupils, these same schools are now increasingly out of

reach” as fees had increased by more than 20 per cent over the previous five years.⁸ The consultation asserted that “there is much more [these schools] should be doing so that children from a much wider variety of backgrounds truly benefit from the excellent education they can deliver”. It also noted that many independent schools have charitable status and enjoy advantages such as relief from business rates, leading the Government to conclude that “independent schools could and should do more as a condition of these benefits and their privileged position.”⁹ The consultation’s main proposal was that larger independent schools should meet one of two expectations “in recognition of the benefits of their charitable status”:

- Sponsor academies or set up a new free school in the state sector
- Offer a certain proportion of places as fully funded bursaries to those who are insufficiently wealthy to pay fees (“We expect this figure to be considerably higher than that offered currently at most independent schools”)¹⁰

Meanwhile, smaller independent schools were set less onerous expectations, such as providing direct support to state schools (e.g. assisting with teacher development, providing greater access to their facilities or supporting teaching in smaller subjects such as Classics). The 2017 Conservative Party election manifesto emphasised that the Government was “keeping open the option of changing the tax status of independent schools if progress is not made”.¹¹ Around the same time, former Education Secretary Michael Gove branded independent schools as “welfare junkies” and called on the Government to “soak the rich” by stripping independent schools of their charitable status and forcing them to pay business rates on the basis that these financial benefits constituted “egregious state support to the already wealthy”.¹²

The 2017 election did not work out well for the Conservative Party as they ended up with 13 fewer MPs than they had beforehand,¹³ diminishing their capacity to deliver radical reforms. When the now-weakened Conservative Government finally responded to their consultation in 2018, the proposed requirements around sponsoring academies and providing more bursaries had been replaced by a ‘joint understanding’ between the Department for Education (DfE) and independent schools that aimed to support collaborative working between the two sectors and ‘encourage’ them to work together in future¹⁴ - a far cry from the Government’s original plans.

During this same period, the Labour Party seemed equally convinced of the need for change – perhaps even more so than the Government. Labour’s 2017 election manifesto called for the removal of the VAT exemption on independent school fees,¹⁵ which they claimed would raise £1.6 billion a year.¹⁶ Their 2019 manifesto went a step further by stating that the Labour Party would “close the tax loopholes enjoyed by elite private schools and use that money to improve

the lives of all children” while also considering “integrating private schools and creating a comprehensive education system.”¹⁷ Regardless, just like the Conservative Party in 2017, a disappointing election result halted the Labour Party’s ambitions.

Although a change of Conservative Party leader after the 2019 General Election signalled the end of their pursuit of reforms to the independent school sector in England, the appointment of Sir Keir Starmer as leader of the Labour Party appeared to revive Labour’s interest in this area. In 2021 he pledged to end the VAT exemption for independent school fees and charge them full business rates, which would supposedly raise a total of £1.7 billion a year: £1.6 billion from adding VAT on fees and around £100 million from higher business rates.¹⁸ It was later confirmed that these reforms would include removing independent schools’ charitable status.¹⁹

This issue has since become a source of heated political arguments, with Prime Minister Rishi Sunak claiming that Labour’s plans amount to “attacking the hard-working aspiration of millions of people in this country” while declaring that “this is a country that believes in opportunity not resentment”.²⁰ In addition, Chancellor Jeremy Hunt has described Labour’s plans as “ideological”.²¹ That said, the Conservative Party has not rekindled their own recent proposals or offered an alternative way to reconfigure the relationship between government and independent schools. Meanwhile, the Liberal Democrat education spokesperson Munira Wilson recently took a more nuanced view in a parliamentary debate, stating that “if we are to give private schools charitable status, they need to do much more across the board to earn and to keep that status.”²²

The political attention paid to independent schools is not necessarily commensurate with the realities of this famous corner of our education system. There are approximately 2,400 independent schools in England.²³ Of that 2,400, 1,324 are members of the Independent Schools Council (ISC)²⁴ – an umbrella body for seven associations that cover the operations of independent schools in this country – with the remaining thousand or so schools being an unaffiliated mix of for-profit and non-profit providers (359 ISC members are also for-profit schools). Contrary to some media stereotypes, nearly half (46 per cent) of ISC schools are junior schools (up to age 12) and 81 per cent are co-educational.²⁵ In addition, half of ISC schools have under 290 pupils, only 7 per cent have 1,000 pupils or more²⁶ and just 12 per cent of pupils are boarders.²⁷ These figures illustrate why it is unwise to begin an assessment of independent schools from the position that large single-sex senior boarding schools such as Eton and Harrow are representative of the sector as a whole.

With the next General Election due by January 2025 at the latest, it is likely that independent schools will remain in the political spotlight in between now and then (and possibly well beyond that). Consequently, this report by EDSK investigates the history, role and impact of independent schools delivering mainstream education in England. Through this analysis, the report seeks to build an evidence-based understanding of the contribution made by independent schools in our society (specifically, those schools with charitable status) while also assessing whether the criticisms aimed at independent schools are justified. Based on this analysis, the report will conclude with a set of recommendations for how a new approach towards charitable independent schools could be constructed. It is therefore hoped that this report makes a timely and valuable contribution to the debates over the future of independent schools in England.

2. The historical role of independent schools in England

The arrival of St Augustine in England in 597 led to the creation of two types of school: the 'grammar school' to teach Latin grammar and literature to priests and monks, and the 'song school' where boys were trained to sing in cathedral choirs. It is generally accepted that the first grammar school – the King's School – was established at Canterbury around this time.²⁸ The schools created in the following centuries were also closely associated with the church. It was not until after the Norman conquest in 1066 that schools began to operate as distinct institutions outside of monasteries. By the 12th century, most of the 19 cathedral cities had schools and they spread throughout the 12th and 13th centuries to other towns, with many operating on a secular basis.²⁹ By operating outside of the church, secular schools were essentially open to anyone who the 'master' of the school accepted and had paid the required fees, but by the 14th century some schools were instead being endowed by wealthy benefactors so that the master would not have to charge fees.

Two famous examples stand out. First, Winchester College was founded in 1382 by William of Wykeham, Bishop of Winchester and Chancellor of England.³⁰ Having himself benefited from an education paid for by wealthy patrons, he sought to benefit "the many poor scholars intent on school studies suffering from want of money and poverty".³¹ On its opening, the school offered scholarships for 70 pupils including free board, lodging and education.³² Second, Eton College was founded by Henry VI in 1440 as he wanted his subjects to have the opportunities of gaining an education that he had enjoyed.³³ Eton was designed to be "a close copy of Winchester but on an even grander scale".³⁴ As such, Henry made provision for 70 poor boys (known as 'King's Scholars') to be housed and educated at Eton free of charge. Alongside these scholars, other boys (for example, sons of the nobility) could also benefit from free education but had to pay for their own accommodation, while poor pupils were offered food and clothing in return for acting as servants.³⁵

In the statutes for Eton and Winchester, the intended scholars are described as being "poor and needy" (*pauperes et indigentes*).³⁶ Many of the most highly regarded schools that followed had similar aims when they were established. Christ's Hospital (1553) was founded as part of an extensive scheme of assistance for the poor and sick in London, meaning that children were educated and maintained free if they proved a lack of means before being admitted. Charterhouse (1611) focused on "poor children and scholars"³⁷ and admitted 'foundations' free of charge alongside boys who were fee-paying.³⁸ Meanwhile, St. Paul's (1512) offered free education to boys except for an entrance fee of fourpence, and at Merchant Taylors' (1561) 100 boys out of a total of 250 were educated for free.³⁹

Between 1560 and 1670, more than £293,000 (approximately £70 million in 2023 prices) was donated by individuals for the establishment of new grammar schools, with 142 new ones opening between 1603 and 1649.⁴⁰ The 17th century also witnessed other cultural shifts. There was a small amount of provision for girls' education, with the first girls' private school thought to have appeared in Hackney, London, in 1643 to teach classical subjects as well as mathematics, writing and modern languages.⁴¹ Following this rush of new institutions there were fewer educational donations from wealthy individuals in the latter part of the 17th century, but endowed grammar schools were still supported by the gentry.⁴²

Up to this point, a broad spectrum of the population had used the local grammar school but from the 17th century onwards "no longer did the commercial classes normally attend the same educational institutions as the landed gentry and the clergy".⁴³ Instead, members of the ruling class sent their sons to the most established grammar schools; most notably Eton, Westminster (1560) and Harrow (1571).⁴⁴ Harrow was the first of the local grammar schools to reach a comparable status to the 'great schools', followed by Rugby (1777).⁴⁵ These schools largely taught a traditional curriculum of the classics. At the same time, boys of middle-class parents (e.g. sons of successful merchants) would usually attend less renowned grammar schools, while educational opportunities for most other children depended on a "haphazard system"⁴⁶ of other schools, including those still run by the church, that varied in quality.⁴⁷

By the close of the 17th century there was a decline in demand for the teaching of classical subjects (e.g. Latin, grammar, geometry),⁴⁸ yet the grammar schools remained "firmly committed to the old classical curriculum and taught little else."⁴⁹ Despite such concerns, some schools continued to become increasingly well-known and respected. London day schools such as St Paul's and Merchant Taylors', alongside Christ's Hospital and Charterhouse, had developed an elevated "standing in popular regard".⁵⁰ This ensured they remained closely associated with the 'great schools', who were by then "an identifiable group, patronized by the aristocracy and the gentry".⁵¹

Separate preparatory schools for younger boys (between age 8 and 13) developed from the 1830s, which sought to prepare the boys for entry into the leading grammar schools.⁵² A considerable number of new boarding schools were also established during this period, including Cheltenham College (1841), Wellington College (1853) and Epsom College (1855).⁵³ These institutions were designed "to make boarding schools accessible to the sections of the middle class who found difficulty in paying the fees of the older and more expensive"⁵⁴ institutions that had "defined themselves more strictly in social terms by separating off the sons of tradesmen and the lower orders".⁵⁵ Wellington College was created as a memorial to the Duke of Wellington, who died in 1852, to cater mainly for the orphans of army officers,

while others such as Cheltenham were defined from the outset as ‘places of education for the sons of gentlemen’.⁵⁶ Regardless of their origins, these newer schools soon established reputations on a par with the older institutions.

The 1851 Census of Great Britain noted that two-thirds of grammar schools’ income was still from permanent endowments.⁵⁷ Even so, many endowed grammar schools faced falling pupil numbers by the middle of the 18th century as parents increasingly sent their children to schools offering a wider range of subjects that better reflected the changes in society brought about by the Industrial Revolution.⁵⁸ Faced with growing criticism and difficulties in recruiting scholars for classical subjects, some of the old grammar schools began to broaden their curriculum but this involved charging fees for non-classical subjects. Schools that followed this pattern therefore began to exclude the very children they had been established to serve.⁵⁹ The grammar schools that were most successful during this time were those that succeeded in attracting boarders and fee-paying day pupils, with “very few” grammar schools surviving on endowment alone.⁶⁰ The end result of this movement towards fees was that grammar schools were increasingly no longer made up of a “broad social basis”.⁶¹

Although the term ‘public school’ has never been formally defined, it has typically been used to describe a small collection of schools that emerged from the grammar school tradition – Eton, Harrow, Winchester, Westminster, Charterhouse and Rugby – although other schools such as Shrewsbury, Dulwich, Marlborough, Cheltenham, Christ’s Hospital, Clifton, Haileybury, St Paul’s and Merchant Taylors are sometimes included within this same bracket. These schools were often referred to as being ‘public’ in the sense that they were open to pupils irrespective of locality, denomination or paternal trade or profession and they were not run for the personal (private) profit of their owner.⁶² The difference between these schools and other grammar schools was largely based on status and social composition.⁶³

In 1861 the ‘Clarendon Commission’ was set up to investigate nine of these public schools (Eton, Winchester, Westminster, Charterhouse, St Paul’s, Merchant Taylors’, Harrow, Rugby and Shrewsbury) after two past Eton students complained about how their old school was being run.⁶⁴ Given the reputation of the schools in question, the Commission’s findings were both surprising and alarming. For example, Winchester and Eton were found to have significant “educational deficiencies”,⁶⁵ Westminster and Charterhouse were in disastrous decline and at St Paul’s all 153 boys were being taught in one room using textbooks recommended by its founder in 1512.⁶⁶ The Commission’s final report in 1864 – the Clarendon Report – raised several concerns about the practicalities of adhering to the wishes of the schools’ founders. For instance, it was not clear which individuals or classes were equivalent in the middle of the 19th century to the *pauperes et indigentes scholares* of the Lancastrian and

Tudor periods. The Report also suggested it may be better to tackle poverty by helping poorer young people find work rather than placing them into a grammar school. Furthermore, the Report questioned the continued role of 'local privilege' whereby a boy living near a school could be favoured over someone who had moved from elsewhere to attend the same school (and was willing to pay for their education), particularly when pupil mobility had dramatically increased since the schools were founded.⁶⁷ The Report also recommended that competitive examinations should be used for admissions (as already happened at Eton and Winchester), even when allocating free school places.⁶⁸

The Clarendon Report laid the groundwork for the 1868 *Public Schools Act*, which removed these schools from the direct jurisdiction of government, the church or the Crown and allowed new governing bodies to make decisions about admissions, board and lodging, fees and charges among other things.⁶⁹ It also freed the schools of their obligations under the founding charters to educate 'Foundation Scholars' (i.e. boys paying nominal or no fees). Scholarships were no longer awarded to local boys but rather on a national competitive basis through examinations, which inevitably favoured boys from preparatory schools.⁷⁰ As a result, public schools survived as "a new kind of school, with Eton as its model, founded on public funds but available only through fees."⁷¹ The Public Schools Act has been described as "an effective means of transferring public endowments, and the great educational assets of buildings and historic sites, from the community to private use."⁷²

A further commission – the Taunton Commission – was appointed in 1864 to examine the remaining 782 grammar schools that the Clarendon Commission had not covered.⁷³ Its final report in 1868 (the 'Taunton Report') prioritised reforming the charities on which the grammar schools were based. The Taunton Report recommended that free places should be awarded by competition to ensure that those best able to make the most of a grammar school education would receive it.⁷⁴ Based on the findings and proposals of the Taunton Report, the 1869 *Endowed Schools Act* created the Endowed Schools Commission (ESC) which had extensive powers over the endowments of individual schools. Within four years, the ESC had published 317 'schemes' that guided individual schools on how to use their endowments. This meant that the endowments given by benefactors to provide free schooling to those who were unable to pay fees could now be used to benefit the middle-classes.⁷⁵ The *Endowed Schools Act* also established more grammar school scholarships for elementary school pupils, but the poorest children rarely benefitted from such support. The Charity Commission had been set up in 1853 to regulate the use of endowments but, from the evidence presented to the Taunton Commission, its powers appeared inadequate.⁷⁶ In response to complaints about the decisions made by the ESC it was soon disbanded, and its powers transferred to the Charity Commission, although this failed to quell the protests against the reduction in free schooling.⁷⁷

By the 1900s, education was now a public service⁷⁸ but two types of school were still independent of the state system of education: the 'direct grant' schools (including many of the old endowed grammar schools) and the 'public' schools. The former received government grants in return for taking on local elementary school pupils, while the latter retained their "leading position and total independence from both the state and local authorities."⁷⁹ In 1942 Rab Butler, then President of the Board of Education, appointed a committee chaired by David (Lord) Fleming to advise the Government on how public schools should proceed.⁸⁰ The 'Fleming Report' rejected calls to abolish public schools and argued that any change which would associated them with the general education system "must be accomplished by voluntary means". That said, the Report agreed that "things cannot be left as they are" with public schools "confined almost exclusively to the children of those able to pay the full fees."⁸¹ Consequently, the Report proposed that public schools should open one-quarter of their places to non-fee-payers, but only on a voluntary basis and paid for by a mixture of central and local government funding.⁸²

In the end, nothing came of the Fleming Report as it was not submitted until July 1944 – a week before the far larger and more influential *1944 Education Act*, which set the framework for the post-war education system in England and Wales and contained nothing of any significance about public schools. As a result, the Fleming Report's recommendations were 'quietly forgotten'.⁸³ Following the end of the Second World War, pupil numbers at public schools rose due to the increasing influence of the upper and middle classes, yet some public schools were keen to gain financial support from the taxpayer without ceding any control.⁸⁴ In 1946, the Ministry of Education sought to encourage local authorities to pay for 'normal' children, not just those with special needs, to attend boarding schools (most of which were privately owned).⁸⁵ Eton and Harrow provisionally took part in this scheme, but in the end few arrangements emerged because many public schools no longer needed state funding.⁸⁶

Nevertheless, questions about the future of these schools persisted, resulting in the Labour administration of 1964-70 setting up the 'Public Schools Commission'.⁸⁷ The Commission produced two separate reports, the first of which – the 1968 Newsom Report – dealt with boarding schools.⁸⁸ Much like the Fleming Report, the Newsom Report argued that public schools should be integrated into the state system.⁸⁹ However, it went further and aimed to end the perceived "divisive influence"⁹⁰ of these schools by making more than half of their places available not just to pupils from maintained schools but to those who were either socially or educationally deprived, or from difficult home backgrounds.⁹¹ It also aimed to ensure that such schools "should be open to boys and girls irrespective of the income of their parents."⁹² The Report's other recommendations included the suggestion that these boarding schools "should be encouraged to work closely ...with maintained day schools"⁹³ and that

“action should be taken to terminate the fiscal and similar reliefs of schools which are charities but which do not serve a truly charitable purpose.”⁹⁴

Meanwhile, the second report produced by the Commission – the 1970 Donnison Report – focused on private day schools, direct grant and ‘maintained’ (state-funded) grammar schools.⁹⁵ The Report argued that day schools receiving grants from central or local authorities should participate in the movement towards comprehensive organisation and should no longer charge fees.⁹⁶ It also suggested that “the procedure for determining boarding fees at maintained schools, the income scale used for parental contributions and the criteria for distinguishing pupils for whom no contribution is required should be standardised.”⁹⁷ However, very little came of either the Newsom or Donnison report’s recommendations and these private schools were largely left to their own devices once more.

The direct grant system was eventually phased out by the Labour Party in 1975.⁹⁸ Direct grant grammar schools were told that they would have their central government funding withdrawn and the schools had to decide whether to become comprehensive or fully independent.⁹⁹ The vast majority of direct grant schools choose to become private rather than joining the state sector.¹⁰⁰ In 1979, then Prime Minister Margaret Thatcher introduced the ‘Assisted Places Scheme’ that provided funding for 30,000 children to go to private schools,¹⁰¹ with free or subsidised places available for those who had reached the desired standard on school entrance exams.¹⁰² These places were paid for out of the Government’s education budget, thus consuming resources that would otherwise have been available to local authorities and their schools.¹⁰³ By 1994, there were around 34,000 pupils and 355 schools in the scheme.¹⁰⁴

The Assisted Places Scheme was abolished by the Labour government under Tony Blair in 1997¹⁰⁵ due to the belief that it “subsidises the independent fee-paying sector at the expense of the public sector and denies equality of opportunity.”¹⁰⁶ Despite the withdrawal of this Scheme, then Schools Standards Minister Stephen Byers said that Labour wished to “build bridges” across educational divides as the “educational apartheid created by the public/private divide diminishes the whole system”, adding that Labour was “fully committed to fostering closer links between the state and private sector.”¹⁰⁷ Some of these sentiments may help explain the stance taken by the Labour Party 25 years on as they now seek to increase the pressure on the independent school sector while steering clear of calls for its abolition. As the next chapter will explain, this balancing act could prove more complicated than it seems.

3. The charitable status of independent schools

There are two reasons to immediately query the fixation of many politicians and commentators on the charitable status of independent schools. First, only around half of independent schools in England even hold charitable status,¹⁰⁸ which makes the level of consternation on this issue look somewhat disproportionate. Second, the designation of these independent schools as charitable organisations can be traced back to the very origins of the concept of a ‘charity’, which emerged several centuries ago. The formative legal description of a charity, from which the modern law of charitable status derives, can be found in the preamble to the *Charitable Uses Act* of 1601. This included, among other things, “the maintenance of schools of learning, free schools, and scholars in universities”.¹⁰⁹ It was not until 1891 that the four most widely recognised categories of charities were set out:

- Trusts for the relief of poverty
- Trusts for the advancement of education
- Trusts for the advancement of religion
- Trusts for other purposes beneficial to the community¹¹⁰

The ‘advancement of education’ remains one of the 13 purposes that are legally capable of being defined as ‘charitable’ in the *Charities Act 2011*.¹¹¹ Precisely what constitutes ‘education’ has always been interpreted broadly in case law and includes research as well as teaching instruction of various kinds.

Legal debates over the ‘public benefit’ of independent schools

As noted earlier in this report, the Charity Commission was first conceived in 1853 to provide advice to charitable trusts in England and Wales. In its modern guise, the Commission has five objectives described in the *Charities Act 2011* such as “increase public trust and confidence in charities” and “promote awareness and understanding of the operation of the public benefit requirement.” The Commission also has six statutory functions, including “determining whether institutions are or are not charities.”¹¹²

In addition to having one of the 13 purposes that are capable of being charitable (of which the ‘advancement of education’ is listed second), the *Charities Act 2011* states that a charity “must be for the public benefit”.¹¹³ Given its central role in charitable law, it may be a surprise to some policymakers that precisely what constitutes ‘public benefit’ has never been defined in

statute. That said, there are two critical aspects to the concept of public benefit that are considered when determining if an organisation's purpose is indeed charitable:

- It must be beneficial, and any detriment or harm that results from the purpose must not outweigh the benefit ('the benefit aspect');
- It must benefit the public in general, or a sufficient section of the public ('the public aspect').¹¹⁴

The question of whether independent schools meet both these tests came to a head in 2008 when the Charity Commission published guidance on their 'public benefit' requirement along with specific guidance on the advancement of education for the public benefit as well as guidance on charging fees within the context of demonstrating such benefits. Subsequently, the Commission launched a set of 'public benefit assessments' that included five fee-charging independent schools. Two of the schools were deemed to not be meeting all aspects of the public benefit requirement and were given a year to agree a plan with the Charity Commission to show how they would ensure that those who could not afford the fees still had a 'sufficient opportunity' to benefit from the school's work.¹¹⁵

In 2010, the High Court granted permission to the ISC, the representative body for the main associations related to independent schools, to bring a judicial review that sought to quash parts of the Charity Commission's public benefit guidance. This culminated in a tribunal hearing in May 2011, and in October 2011 the tribunal published its decision:

*"...a charitable independent school would be failing to act for the public benefit if it failed to provide some benefits for its potential beneficiaries other than its fee-paying students (unless this was a merely temporary state of affairs). However, ...each case depends upon its own facts and (provided the de minimis threshold is crossed) it is a matter for the trustees of a charitable independent school (rather than the Charity Commission or the Tribunal) to decide how trustees' obligations might best be fulfilled in the light of their circumstances. Benefits for potential beneficiaries who are not or will not become fee-paying students may be provided in a variety of ways... including, for example, the remission of all or partial fees to "poor" students and the sharing of educational facilities with the maintained sector."*¹¹⁶

In other words, the tribunal was clear that it was for trustees to decide how to demonstrate their public benefit rather than the Charity Commission, and that each case would depend on its own particular merits.¹¹⁷ A government-commissioned review in 2012 reiterated the position that no statutory definition of 'public benefit' should be created "in order to retain the flexibility attached to the common law definition" that had developed over the course of

many decades.¹¹⁸ In 2013, the House of Commons Public Administration Select Committee declared that “it is for Parliament to resolve the issues of the criteria for charitable status and public benefit, not the Charity Commission”, adding that the Charities Act was “critically flawed” on the question of public benefit.¹¹⁹ Yet again, the Government declined to intervene on the grounds that a statutory definition of public benefit would be difficult to achieve and ‘inflexible’.¹²⁰

After the tribunal’s ruling, the Charity Commission released new guidance on the public benefit requirement for charities. In the context of independent schools, the question of ‘public benefit’ remains one of the most politically fraught issues because it may appear difficult, at least to some observers, for an institution that charges substantial fees to contend that it ‘benefits the public in general’. There are two important factors to consider in this regard.

First, it is perfectly legal for a charity to charge fees for its services, but charity trustees are required to ensure that their charity does not exclude the poor from benefitting from their activities. If the trustees consider that their fees are of a level that the poor cannot afford then they must ‘act reasonably’ to ensure that the poor can benefit (e.g. offering fee reductions).¹²¹ That said, there is no universal definition of ‘the poor’ in this context or a universal definition of the charges that they cannot afford. Indeed, the guidance recognises that ‘the poor’ is a relative term, which depends on the circumstances in individual cases, and ‘the poor’ does not just mean the very poorest in society and can include people of ‘modest means’.¹²²

Following the tribunal’s ruling in 2011, the Charity Commission’s updated guidance states that charities are legally required to ensure that their provision for ‘the poor’ “must be more than minimal or token”. However, again, the guidance makes clear that “there are no objective benchmarks for trustees to follow regarding what is more than minimal or token provision for the poor [as] this is a matter for the trustees to decide, taking into account all the circumstances of their charity.” For example, supporting ‘the poor’ could include “a reduction in charges for people who cannot afford the full cost” of a charity’s provision.¹²³ The 2011 tribunal made the following statement on this matter:

*“Each case must depend on its own facts. It is an approach which is not, we readily acknowledge, without difficulty of application and, of its nature, it makes it very difficult to lay down guidelines. ...the process is one of reaching a conclusion on a general survey of the circumstances and considerations regarded as relevant rather than of making a single conclusive test. The very nature of this approach means that it is not possible to be prescriptive about the nature of the benefits which a school must provide to the poor nor the extent of them.”*¹²⁴

The second factor to consider is that phrases such as the ‘public in general’ in the context of ‘public benefit’ are potentially confusing. The notion of the ‘public in general’ is not intended to convey the idea that ‘everyone is able to benefit from it’, but rather that “the benefit of the purpose [in this case, advancing education] is not limited to people with a particular need or who have to satisfy some other criteria”. In other words, “if a purpose does not specify who can benefit, it will generally be taken to mean that it will benefit the public in general.”¹²⁵ Thus, if an independent school is open to educating any pupil, it could be seen to benefit the public in general.

Even if a charity does not benefit the ‘public in general’, it may instead benefit ‘a sufficient section of the public’ so long as the section is “appropriate (or ‘sufficient’) in relation to the specific purpose”.¹²⁶ The Charity Commission’s guidance states that “there is not a set minimum number of people who have to benefit” to be described as ‘sufficient’,¹²⁷ and the courts will generally accept that a purpose benefits a sufficient section of the public if its beneficiaries are defined by ‘a charitable need’ such as advancing education. That said, charities are not generally allowed to define who can benefit by reference to, for example, a personal / family connection or a named individual,¹²⁸ although this is unlikely to apply to an independent school. In short, the legal version of ‘public benefit’ may be unsatisfying to some politicians and commentators but it is nonetheless the verdict of current charity law and associated guidance, thus undermining any accusation that independent schools do not currently provide a ‘public benefit’.

A different approach to ‘public benefit’ in Scotland

As in England, charity law in Scotland is defined in legislation - *the Charities and Trustee Investment (Scotland) Act 2005*.¹²⁹ When it comes to ‘public benefit’, many of the sentiments published by the Office of the Scottish Charity Regulator (OSCR) echo those of the Charity Commission. For example, “public benefit in a charitable sense is only provided by activities which are undertaken to advance an organisation’s charitable purposes” and “charities can provide public benefit in many different ways and in differing amounts.” In addition, “there is no specific level of benefit that a charity must provide”.¹³⁰ When it comes to assessing the public benefit of a charity, the language is again similar. The OSCR considers “the comparison between the benefit to the public from an organisation’s activities; and any disbenefit (which is interpreted as detriment or harm) to the public from the organisation’s activities [and] any private benefit (benefit to anyone other than the benefit they receive as a member of the public).”¹³¹

However, there is a crucial difference between the English and Scottish approach because the 2005 Act states that when determining if an organisation in Scotland provides ‘public benefit’, it will be considered whether:

*“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.”*¹³²

The key legal phrase is ‘unduly restrictive’. The OSCR’s accompanying guidance explains that “an unduly restrictive condition is a limit on who can access the benefit provided by an organisation where the restriction is not reasonable or justifiable in the context of what the organisation does and what its purposes are, or is unlawful.”¹³³ One of the main types of potential restrictions is ‘charges and fees’. The guidance is clear that “few charities benefit the whole of the public” and “many charities can and do restrict access to their services or activities, but still provide public benefit and so meet the charity test” (e.g. a charity set up to help people who suffer from a particular disease).¹³⁴ When making a judgement about what counts as ‘unduly restrictive’, the OSCR bases their decision on the following factors:

- **“Help for those who cannot pay:** Where fees are charged which affect access to a benefit, we expect there to be arrangements in place to help people who cannot afford those fees. For example, discounts, grants, or bursaries to help with fees. Help that is targeted based on the individual’s ability to pay and helps people on a range of incomes, including low incomes, will count the most here.
- **“The full scope of the benefit provided:** If an organisation provides some benefits for free but charges for others, we will look at the whole picture of benefit and restriction when making a decision.
- **“Proportionality:** The greater the fee, the more evidence we will need about help for those who cannot pay.
- **“Transparency:** Any fee structure and arrangements for help with fees must be well publicised and clearly explained.
- **“The cost of providing benefit is relevant:** Some benefits are more expensive to provide than others, and charities need to be able to cover the cost of doing what they do. We will consider this when looking at the fees and charges. We will look at how far the cost of providing the benefit is subsidised by the organisation (or others) to keep the fees charged to individuals low. If an organisation’s charges are so high that it is impossible for those who cannot afford them to benefit, and no help is offered to meet those costs, then this would be an undue restriction.”¹³⁵

From 2012 to 2014, the OSCR conducted a review of the charitable status of 39 Scottish independent schools based on findings from earlier reviews of a small number of independent schools that had highlighted concerns about whether they were meeting their legal obligations. Of the 39 schools covered by this review, five failed the charity test. In the case of four of the schools, the OSCR decided that “the level of gross income spent on means-tested assistance was insufficient in relation to the fees charged.”¹³⁶ Each of the four also demonstrated “infrequent or minimal activity for which no fee was charged and lack of clarity and transparency around the allocation of means-tested assistance.” The remaining school that failed the test had a value of means-tested assistance that “was problematically low”.¹³⁷

All five schools were subsequently issued with ‘directions’ by the OSCR “to take steps to remove the undue restriction on obtaining the benefit provided by the charity within 18 months.” In the end, all five schools responded well within the permitted timescale and the OSCR “found that all five had addressed the issues we had set out in the directions we had issued to them [and] we therefore found that they had complied with the directions and that they met the charity test”.¹³⁸

The tax reliefs available to charities

The 2011 tribunal ruling on the Charity Commission and independent schools in England recognised that tax reliefs for such schools was a “matter of a huge divergence of opinion of a political nature”, but they acknowledged that “the fact that fiscal privileges are given underlines the need for genuine public benefit”.¹³⁹ That Parliament, not the courts, must resolve such matters was emphasised again in the tribunal’s judgement:

*“Political debates must have political conclusions, and it should not be expected of the judicial process that it should resolve the conflict between deeply held views. We venture to think, however, that the political issue is not really about whether private schools should be charities as understood in legal terms but whether they should have the benefit of the fiscal advantages which Parliament has seen right to grant to charities. It is for Parliament to grapple with this issue.”*¹⁴⁰

Schools with charitable status are eligible, like other charities, for various tax reliefs. These include being able to reclaim Gift Aid on donations, reliefs on paying corporation tax on trading profits and a discount of up to 80 per cent on ‘business rates’ (paid to local councils by owners of most non-domestic properties). In addition, parents and guardians of pupils at fee-charging schools are exempt from paying VAT as the *VAT Act 1994* creates an exemption for “the provision of education, vocational training and closely-related goods and services”.¹⁴¹

This covers a wide range of activities delivered by ‘eligible bodies’ that includes both free (state-funded) and fee-charging schools alongside other providers such as colleges, universities and other approved Higher Education institutions.¹⁴² However, as noted in the introduction to this report, the Labour Party is planning to remove independent schools’ charitable status (including reliefs from business rates)¹⁴³ and also remove the VAT exemption on school fees. It was claimed at the time that these measures would raise £1.6 billion a year from VAT on fees and around £100 million from business rates.¹⁴⁴

[EDSK recently published a detailed investigation of the assertion that £1.6 billion a year could be raised by adding VAT onto fees.](#) Although our analysis did not claim to present a definitive conclusion on this matter or provide advice to the parties involved, it showed that the calculations behind this projection were flawed for several reasons:

- The calculations boosted their projected revenue by charging VAT on nursery-aged children in independent schools, which seems highly unlikely given that this could lead to other nursery providers around the country becoming liable for VAT as well.
- Accommodation in boarding schools is currently exempt from VAT and may remain so even if VAT is added onto independent school fees, yet the original calculations behind the £1.6 billion figure simply added 20 per cent – the standard rate of VAT – onto the fees of all independent schools, even though a significant proportion of boarding school fees will be associated with providing accommodation. Again, this will have artificially boosted the calculation’s projected revenues.
- It assumed that VAT receipts would equate to 20 per cent of an independent school’s fees, yet removing the VAT exemption on fees would make the school eligible to claim back the VAT that it had itself paid on goods and services supplied to it (e.g. utility bills, maintenance costs). This could reduce the net VAT receipts for government to around 15 per cent rather than 20 per cent – cutting projected revenue by a quarter.
- The original calculations assumed that no pupils would be forced to leave independent schools following the imposition of VAT on fees, but even the Labour Party recently admitted that at least five per cent of pupils would be likely to leave in this scenario. This would result in lower VAT revenue for government as well as greater government expenditure on the extra places needed in state schools. More pessimistic estimates for pupil drop-off are as high as 25 per cent.
- No consideration was given to additional costs that the government may incur by adding VAT onto independent school fees. For example, if an independent school becomes registered for VAT because it is now deemed to be making ‘taxable supplies’ of private education, the school may be able to reclaim some of the VAT that it incurred on large ‘capital’ (building or refurbishment) projects prior to their date of registration

- including swimming pools, lecture halls, indoor and outdoor sports facilities, classrooms and laboratories delivered over the last decade. This could provide an unexpected tax windfall for any independent school in this situation.

- Crucial behavioural effects were also ignored. For example, parents who can pay independent school fees in advance before a school's VAT exemption is removed may be able to avoid the imposition of VAT altogether, potentially saving them thousands of pounds for every year of schooling paid in advance. This could significantly reduce the likely revenue from removing the VAT exemption and would also benefit the wealthiest parents more than others.

As part of our investigation, EDSK attempted to produce up-to-date estimates of the revenue that could be generated by adding VAT onto independent school fees. The higher estimate (assuming only five per cent of pupils leave independent schools) was around £1 billion a year whereas the lower estimate (if 25 per cent of pupils were forced to leave) was essentially no new revenue at all. These estimates excluded the impact of other variables such as parents paying fees in advance and reclaiming VAT on capital projects, which would further diminish a government's financial position following a change to the VAT rules.

Leaving to one side the sums that may or may not be raised by charging VAT on independent school fees, there are other important factors to consider. Again, without providing (or intending to provide) advice or guidance on such matters, there appear to be significant legal and accounting risks attached to either attempting to remove the VAT exemption on school fees or remove charitable status from those independent schools that currently hold it:

- **Changing VAT legislation:** at present, independent schools are classed as an 'eligible body', meaning that their provision of education is exempt from VAT. Indeed, VAT regulations state that "an organisation is likely to be an eligible body, where it's a charity, professional body or company that cannot and does not distribute any profit it makes, [and] with any profit that might arise from its supplies of education, research or vocational training is used solely for the continuation or improvement of such supplies."¹⁴⁵ A government could seek to impose VAT on the fees of independent schools as well as their related goods and services by removing independent schools from the list of 'eligible bodies', although this may prove problematic if independent schools retained their charitable non-profit status. Moreover, targeting independent schools in this way while leaving VAT exemptions unchanged for other fee-charging institutions such as nurseries and private tuition companies could potentially breach the principle of 'fiscal neutrality', under which goods or services with a similar purpose that are in competition with each other cannot be treated differently in relation to VAT.

- **Removing charitable status from independent schools:** a government may (as the Labour Party is supposedly planning) seek to remove charitable status from independent schools. As described earlier in this report, the classification of ‘advancement of education’ as a charitable activity dates back several hundred years and remains rooted in legislation. It is not obvious how a government could set about arguing that the provision of education to children and young people in an independent school is not ‘charitable’ and does not provide any ‘public benefit’. Again, it is worth noting that many other fee-charging education providers would presumably not be targeted in the same manner, potentially making a government’s position less tenable.
- **Making independent schools liable to pay business rates:** the Labour Party’s plans to raise £1.7 billion from independent schools includes £100 million from removing the schools’ existing 80 per cent tax relief on business rates, although other estimates put the potential revenue gain closer to £150 million.¹⁴⁶ Yet again, Scotland provides a useful comparison because this change has already been enacted for Scottish independent schools in April 2022.¹⁴⁷ In response, John Edward, director of the Scottish Council of Independent Schools, pointed out that “these unique measures have not been undertaken elsewhere in the UK, nor for any of the more than 25,000 other charities – of all kinds – on the Scottish register [and] that includes higher education institutions which, unlike independent schools, do receive some state funding and substantial non-domestic rates relief.”¹⁴⁸

In short, it would be wrong to conclude that any attempt to change the rules and regulations that apply to independent schools in England is guaranteed to fail, yet it would equally be wrong to assume that such attempts would proceed without encountering significant legal and accounting obstacles.

4. How much do independent schools contribute to society?

The use of bursaries and scholarships

As part of their analysis of how the ‘public benefit’ requirement should apply to fee-charging charitable schools, the 2011 tribunal (discussed in the previous chapter) commented on the specific question of how bursaries and scholarships contributed to meeting this requirement:

*“Nobody has suggested that fee-paying schools are not entitled to charitable status provided that they do enough to promote access whether by way of scholarships, bursaries or other provision, but paying regard to the need to charge fees to operate at all. Nobody complains that the schools are educating fee-paying students; the concern is that they must be seen to be doing enough for those who cannot afford fees.”*¹⁴⁹

As with the wider ‘public benefit’ requirement, the tribunal concluded that it was up to trustees to decide how much provision should be made for the ‘poor’ and what form this should take. As a result, charitable independent schools offer various forms of ‘fee assistance’. Bursaries are awarded to pupils based on financial need (‘means-tested’). Scholarships can also be based on financial need but can be unrelated to needs (‘non-means-tested’), in which case they are often awarded on the basis of academic attainment (e.g. performance on entrance exams) or extracurricular achievements (e.g. sporting or musical aptitude).

The 2023 ISC census states that a total of 183,434 pupils received some kind of assistance with their fees in the previous year, representing 34 per cent of all ISC pupils.¹⁵⁰ The total value of fee assistance was over £1.2 billion - an increase of 6 per cent on the 2022 census.¹⁵¹ Of the total assistance, the majority (80 per cent) is provided directly by ISC schools themselves, at a value of just over £1 billion annually.¹⁵² The ISC also notes that the value of means-tested bursaries and scholarships provided by schools has increased by over £220 million since 2011.¹⁵³

Of the types of fee assistance provided by ISC schools (Table 1 overleaf),¹⁵⁴ around 7 per cent of pupils receive ‘means-tested bursaries’. The average bursary is approaching £12,000, with a total of £465 million being spent on such bursaries over the last year – almost half of the total spent on fee assistance.¹⁵⁵ Nearly half of the pupils who receive a means-tested bursary have more than half of their fees remitted, with 18 per cent of bursary recipients (about 1.3 per cent of all pupils) paying no fees at all.¹⁵⁶ Scholarships provide another source of fee assistance from ISC schools, with 11.4 per cent of all pupils receiving one.¹⁵⁷

TABLE 1: Contribution to fees from ISC schools ¹⁵⁸

	Total (pupils)	Average help received by a pupil (£)	% of all pupils	Total (£m)
Means-tested: bursaries	39,358	11,807	7.1	465
Means-tested: scholarships	2,134	8,384	0.4	18
Means-tested: eligible families	2,543	4,682	0.5	12
Non-means-tested: scholarships	60,697	3,375	11.0	205
Non-means-tested: eligible families	75,435	4,041	13.6	305
Total number of pupils helped	159,762	6,293	28.8	1,005

Some independent schools – particularly older institutions with endowments – seem to go above and beyond to ensure that they are open to a diverse range of pupils. For example, Christ’s Hospital is one of the most generous schools in terms of bursaries and scholarships, providing free or substantially reduced cost places to over 630 of their 900 pupils each year.¹⁵⁹ Another example is the Latymer Foundation, which expended £4.3 million on bursaries and scholarships during the 2021/22 academic year in support of their Upper School and Prep School.¹⁶⁰ Inevitably, smaller independent schools without endowments are unlikely to be able to match this generosity, although their charitable status nevertheless requires them to offer ‘public benefit’ in some form.

£1 billion being spent by independent schools on fee assistance is no small feat, yet there are reasons to be cautious about this apparent progress. First and foremost, despite the sums of money being distributed, it is difficult to say with any certainty whether the bursaries and scholarships are benefitting pupils from the lowest-income households because the data collected by the ISC does not provide a breakdown of the household earnings of bursary and scholarship recipients. Most independent schools do not publish details (or even a summary) of the household income distribution of recipients of partial or full bursaries, nor do they provide a breakdown of the level of fee assistance awarded to recipients. From the small number of independent schools that at least display the income thresholds used to make decisions about awarding bursaries, examples can be found of families earning significant incomes who still qualify for some form of fee assistance:

- Haberdashers’ Girls’ School: “The ceiling for eligibility for financial support is approximately £85,000 gross”¹⁶¹
- Dulwich College: the criteria that “guide of the circumstances in which a household might be eligible for a bursary award” includes “a combined gross income of less than £100,000”¹⁶²

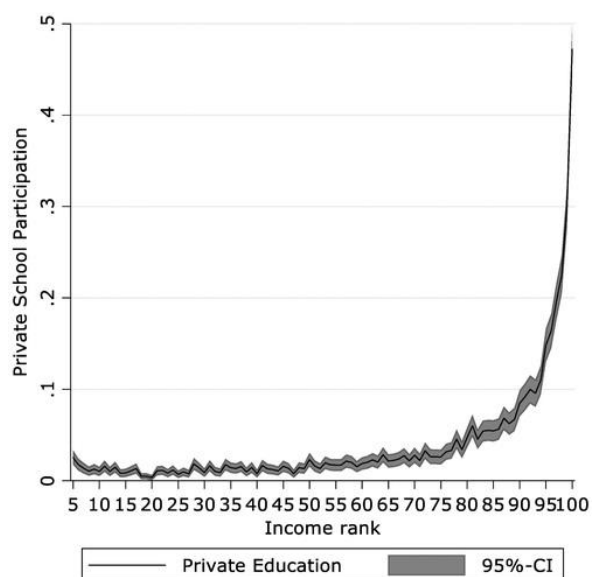
- St Paul’s School: “Families with a gross household income of up to £126,000 [per annum] or less and net assets up to £1.4m may be eligible for a bursary.”¹⁶³
- Sevenoaks School: “Combined income up to £100k would likely be considered for assistance with the level depending on other factors. Combined income up to £150k may still be considered in certain circumstances.”¹⁶⁴

The headteacher of St Paul’s School has previously declared his intention for their partial bursaries to support families earning as much as £190,000 on the basis that fees had become “unaffordable” and that “it was our founder’s vision [to educate] boys indifferently of their background and we’ve drifted away from that.”¹⁶⁵ It is important to note that these examples of bursary thresholds are from secondary schools based in London and the South East and are therefore not representative of all independent schools in England. Nevertheless, a household income of £85,000 – the lowest of the four examples above – would put a family of two adults and two teenage children in the top 15 per cent of the income distribution while a household income of £150,000 would put them in the top 3 per cent,¹⁶⁶ neither of which are likely to be what politicians have in mind when they talk about ‘poorer families’.

Empirical studies have confirmed the uneven participation at independent schools depending on a family’s income level. Despite the existence of means-tested bursaries and scholarships that have the potential to widen participation, independent school attendance is very low among most earnings groups. Researchers at the Institute of Education, part of University College London, found that the proportion of children in Britain attending independent school is close to zero across the vast majority of the income distribution, and does not rise above 10 per cent of the cohort except among those with the top five per cent of incomes (Figure 1).¹⁶⁷ Although these figures are based on the proportion of the cohort rather than pupil numbers and do not distinguish between England, Scotland and Wales, they suggest that independent school attendance is skewed towards the highest-earning households.

Even some independent school headteachers have publicly stated that the sector is not doing enough for children from lower-income households. Richard Russell, head of Colfe’s School in South London, recently said that “too many [independent schools] give discounts to middle-class families rather than targeting bursaries at genuinely disadvantaged children.”¹⁶⁸ He called for 200 selective independent schools to reserve 10 per cent of their sixth form places for disadvantaged bursaries, arguing that this would “signal that the independent sector is serious about its commitment to be part of the solution, not part of the problem.”¹⁶⁹

Figure 1: Income distribution of private school participation, 1997-2018 ¹⁷⁰



Similarly, Dr Anthony Wallersteiner, head of Stowe School, has said that independent schools are not doing enough to reach children from deprived households. He suggested that independent school headteachers should work harder to encourage these pupils to apply for fee assistance, including putting adverts in local papers and simplifying the language they use – for example, talking about “free places” rather than scholarships and bursaries.¹⁷¹

The issue of financial assistance being awarded to pupils from middle- and high-income families appeared in the deliberations of the 2011 tribunal when considering the public benefit of independent schools. In the evidence received by the tribunal, it emerged that only 10 per cent of families with a child at an independent school had a household income below £40,000¹⁷² (around £55,000 in 2023 prices - putting them in the top half of the income distribution¹⁷³). Even so, the tribunal did not object to this outcome so long as there was an ‘appropriate’ level of support for the poorest families:

“Not all of the benefits which the school provides to those other than students paying full fees need to be for the poor. We see no reason why the provision of scholarships or bursaries to students who can pay some, but not all, of the fees should not be seen as for the public benefit. Provided that the operation of the school is seen overall as being for the public benefit, with an appropriate level of benefit for the poor, a subsidy to the not-so-well-off is to be taken account of in the public benefit. It is certainly our view that in the right circumstances, remission of fees for an existing student who has become unable to meet any of the fees due to changed circumstances, should be seen as being not only for the public benefit but as a benefit provided to a person who has become ‘poor’.” ¹⁷⁴

Aside from questions over the support available for the poorest families, the most common type of fee assistance is given to “eligible families”, which includes “HM Forces discounts, staff discounts, sibling discounts and clergy discounts.”¹⁷⁵ As shown earlier in Table 1, almost half of all pupils receiving any fee assistance are receiving this type of assistance and the vast majority of this assistance – 97 per cent – is not means-tested i.e. is unrelated to financial needs and may be going to middle- and high-income families. There is no further breakdown of these figures in terms of which of the named groups received the most discounts. As discussed in Chapter 3, the Charity Commission guidance states that it is a legal requirement for charities to not have a purpose that defines who can benefit by reference to, for example, a personal or family connection. It is therefore unclear to what extent this assistance for ‘eligible families’ could or should count towards the charitable activities of each school, suffice to say that politicians and voters are unlikely to view discounts for siblings and the children of independent school teachers as a charitable act.

Partnerships with other schools

Most independent schools contribute to wider society through ‘partnering’ with state schools. Such partnerships seek to build relationships between schools so that they can share resources and knowledge, as well as bringing together pupils from different backgrounds in some cases.¹⁷⁶ These partnerships are voluntary arrangements, with no obligation on independent schools (from government or elsewhere) to engage in such activities. Nevertheless, many of these schools have developed and subsequently expanded their partnership activities over the years, although these activities will inevitably vary depending on the size, capacity and resources of individual schools.

The latest ISC census shows that three quarters of their members are involved in partnerships, having risen 11 per cent in the last year from 936 to 1,043 schools.¹⁷⁷ There has also been an increase in the number of partnership activities taking place, up from 6,963 to 8,793 this year.¹⁷⁸ On average, each of the 1,043 ISC schools work with approximately 11 state schools, and 374 state-funded pupils, despite only 70 per cent of ISC schools holding charitable status.¹⁷⁹ The census highlights the variety of partnerships that their schools are engaged in, including “seconding staff to state schools, sharing facilities, helping sixth formers prepare their university application, serving as a state school governor, and inviting state pupils to participate in joint classes or events.”¹⁸⁰

There is an array of existing partnerships that demonstrate the potential value of a long-term tangible relationship between independent and state schools. The ‘Schools Together’ website showcases different partnerships and sometimes offers information about the specific

activities taking place as well as how many pupils are participating. In addition, a new charity – ‘The Schools Partnership Alliance (SPA)’ – was set up by the independent school sector in 2021 to formally support partnership work between schools.¹⁸¹ Below are various examples of these independent-state partnerships:

- Teachers from Wellington College have delivered weekly Latin lessons to a small number of local state school pupils for the past six years, with an aim of widening state school access to Classical Languages. Some pupils have completed a short course qualification in Latin, while others have gone on to complete the full GCSE.¹⁸²
- Shrewsbury House Prep School allows two local state primary schools to use their swimming facilities. Swimming sessions take place on a weekly basis, with the primary schools bringing their Year 4-6 students on a rotational basis.¹⁸³
- Lady Eleanor Holles School has partnered with Hampton School and the state-funded Reach Academy to establish a new Sixth Form College for Feltham. The new Feltham College is committed to being accessible - it does not select pupils by GCSE results and offers A-level courses as well as vocational qualifications.¹⁸⁴
- A singing outreach programme (‘MusicShare’) - delivered by the independent Lichfield Cathedral School, Lichfield Cathedral and The Music Partnership - works with local primary, secondary and special schools to encourage children to sing. Since it began in 2003, more than 15,000 pupils have engaged with the programme through a mixture of projects and one-off workshops.¹⁸⁵
- Winchester College has joined forces with various partners such as the Institute of Physics, Hampshire and Dorset STEM Learning Partnership, Saint George Catholic College and UTC Portsmouth to provide free continuing professional development workshops for specialist and non-specialist physics teachers, which aim to develop participants’ confidence in physics teaching at Key Stage 3 and 4.¹⁸⁶
- Norwich School hosts an annual university access summer school for local 16- and 17-year-old pupils. It is targeted at those considering the top universities including Oxbridge as well as high-demand courses such as medicine. It offers activities such as interview practice and university-level seminars. In 2022, 40 pupils took part in the summer school from 16 Norfolk schools.¹⁸⁷
- Harrow School set up ‘Lumina Tutoring’ during the first national COVID-19 lockdown to deliver online, subject-specific, one-to-one tuition for children in care.¹⁸⁸ Lumina Tutoring partnered with other like-minded schools and the programme currently runs with 50 teachers across 15 different schools.¹⁸⁹

Aside from school-to-school partnerships, some independent schools contribute to society by directing educational opportunities towards young people who need the most support. During his tenure as Education Secretary, Nadhim Zahawi endorsed paying for disadvantaged and vulnerable children to attend independent schools, particularly those who are in care. In 2019, he announced a programme backed by £500,000 of government funding to improve access to top independent schools for disadvantaged children, building on a commitment to see up to 1,000 independent schools involved in schemes that offer opportunities to children in care. With as many as 9,000 unfilled spots in boarding schools in 2021, this appears to be a promising initiative, although the current level of investment is only enough to fund about 13 boarding places a year.¹⁹⁰

In addition, there are existing charities with programmes that aim to direct educational opportunities to young people in care or at risk of going into care. For example, the Royal National Children's Springboard Foundation (RNCSF) works with the UK's boarding and independent sector to expand the number of 110 per cent bursary places (those that cover all fees and extra costs).¹⁹¹ The RNCSF targets these bursaries at young people who have faced challenging circumstances – for example, children or teenagers in or on the edge of care, or those growing up in households and communities with limited opportunities to flourish. In the 2021/22 academic year, the RNCSF supported 422 such children and young people through fully funded bursary places.¹⁹² 47 per cent of the places were entirely funded by participating schools.¹⁹³ Pupils on the RNCSF's 'Looked-After and Vulnerable Children programme' have been shown to get significantly higher exam results than those achieved by vulnerable pupils nationally.¹⁹⁴

Evidently independent-state partnerships can offer high-quality activities and add significant value to all those involved, yet these are only visible where independent schools have made a conscious effort to highlight the good work taking place. At the same time, partnerships that are less impressive have also been uncovered. One independent school considers a once-a-month breakfast club for state school students to be 'outreach work' and a way to 'broaden horizons',¹⁹⁵ while another independent school lists allowing a nearby nursery to use their school grounds in the event of a fire as 'community work'.¹⁹⁶ Given the general lack of transparency around the frequency, prevalence and value of school partnerships, it is not easy to determine whether these examples of underwhelming activities are widespread.

The ISC census presets a mixed picture on the volume and variety of partnerships taking place. Some of the 'partnership activities' highlighted in the census do not necessarily require a significant investment in time or energy from the independent school in question (Table 2 overleaf). The two most common activities are 'playing sporting fixtures with or against state

schools' (753 schools with at least one partnership of this type) and 'having members of staff serving as [state school] governors' (627)¹⁹⁷ – neither of which are likely to come at any great cost to the independent school.

TABLE 2: 10 most common partnership activities between independent schools and local state schools ¹⁹⁸

PARTNERSHIP ACTIVITY	NUMBER OF SCHOOLS WITH AT LEAST ONE SUCH PARTNERSHIP
Playing sporting fixtures with or against state schools	753
Having members of staff serving as governors	627
Invite pupils to attend lessons, workshops or other educational events	575
Share knowledge, skills, expertise and experience	562
Host joint sporting events	490
Invite pupils to attend drama classes or performances	353
Invite pupils to attend music lessons or performances	352
Participate in teacher training events with local state school teachers	331
Invite pupils to attend coaching sessions	315
Share sports field	261

From the ISC census, it is also difficult to find information on exactly what is taking place during these partnerships between schools, for several reasons:

- **Frequency of partnership activities:** the census does not provide information on how regularly such activities take place. For example, it highlights that many schools second their academic teaching staff (280 in total across different subject areas),¹⁹⁹ but it is unclear how regularly this occurs throughout an academic year and could be anything from a one-off lesson once a year through to weekly lessons for an entire academic year.
- **Definitions of activities:** many partnership activities are grouped into relatively broad categories. For example, 562 schools have at least one partnership that involves 'sharing knowledge, skills, expertise and experience' with state schools.²⁰⁰ However, without further information it is unclear what sort of activities are included within this or how valuable these activities are for the state school.
- **Impact of a partnership:** it is hard to quantify whether some partnership activities are having a discernible impact on state school pupils, as the aggregated ISC census data does not offer a breakdown of how many pupils are involved in each specific partnership activity or whether the pupils found the activity valuable. For example,

although 174 independent schools help prepare A-level students in state schools for entry to higher education,²⁰¹ it is not clear what the partnership entails (e.g. mentoring state school pupils with applications; interview preparations; attending careers events or information evenings etc) or how many pupils have benefitted from such support.

- **Resources required:** how much financial investment and effort a partnership requires from an independent school is also not reported in the census. While some activities may be inexpensive and not too difficult to arrange and sustain (e.g. hosting joint sporting events), others may require a far greater investment in terms of time and resources (e.g. participating in teacher training events with local state school teachers or seconding teaching staff). Again, such valuable information is not available in the published data.

None of these issues negate the commendable work being done by many charitable independent schools. Nonetheless, it clearly cannot be assumed at present that all such schools are making a concerted effort to support the most disadvantaged families and state schools. As the next chapter will illustrate, this could ultimately be affecting how the public perceive independent schools in the present day.

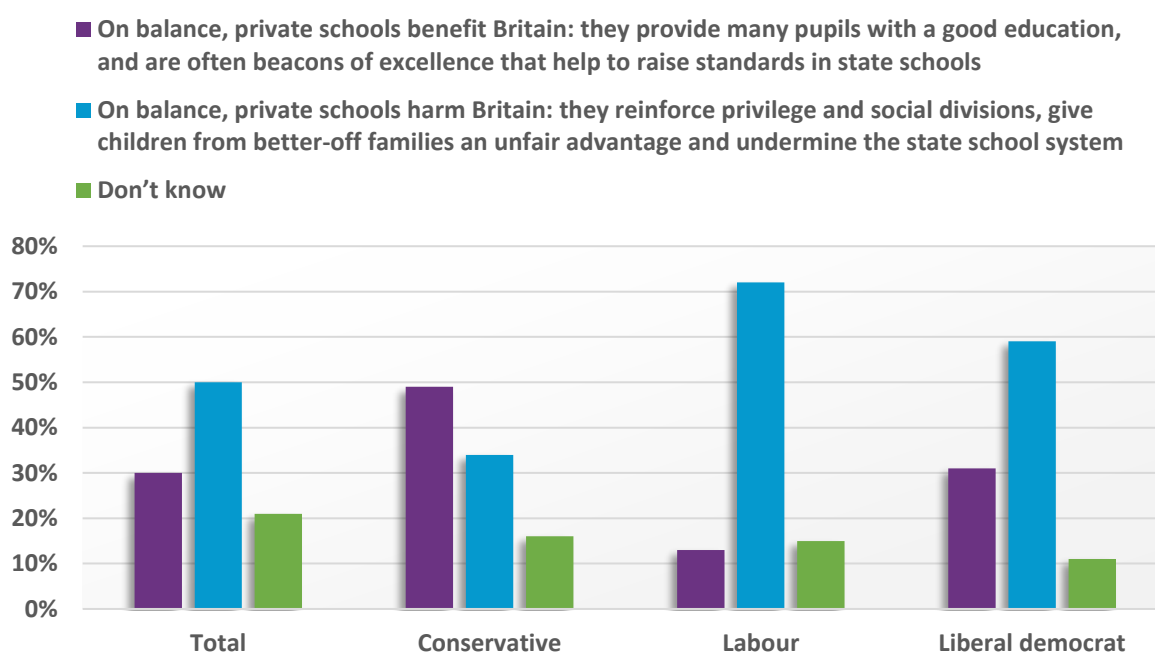
5. Public perceptions of independent schools

Alongside the debate over the ‘public benefit’ of independent schools and their charitable status, the views of the general public are an important consideration. This chapter will summarise a range of evidence from established polling companies that has sought to capture the perceptions of independent (‘private’) schools among the public as well as voters who support different political parties.

What impact do the public think independent schools have on Britain?

In a 2021 survey by YouGov of 2,931 adults in England, half (50 per cent) of respondents said that on balance, private schools harm Britain as they ‘reinforce privilege and social divisions, give children from better-off families an unfair advantage and undermine the state school system’ (Figure 2). This view was held most strongly by those who voted for the Labour Party in the 2019 General Election (72 per cent), followed by Liberal Democrat voters (59 per cent) and Conservative voters (34 per cent). There were striking differences between age groups, with just 17 per cent of 18 to 24-year-olds believing that private schools are beneficial compared to 41 per cent of those aged 65 and over.

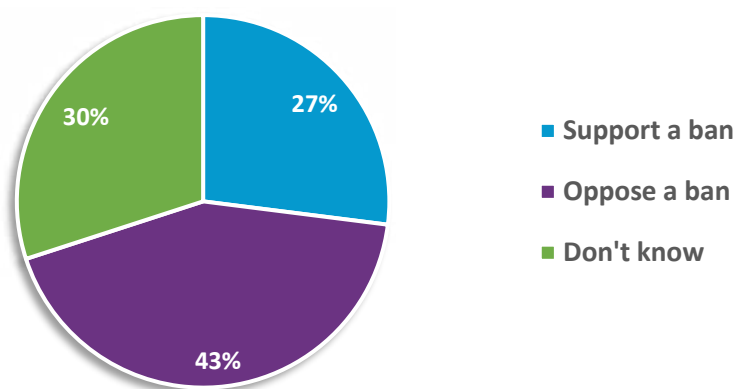
**Figure 2: “Which of these statements comes closer to your view?”
(YouGov, 2021) ²⁰²**



YouGov had previously asked a similar question in 2014 and found that 36 per cent of respondents felt that on balance private schools benefit Britain while 48 per cent felt they harm Britain. This suggests that public opinion has shifted slightly in recent years, with fewer respondents now feeling that private schools are beneficial to Britain and slightly more perceiving them to be harmful.²⁰³

Nonetheless, these concerns do not translate into a desire to ban private schools. Twice a year, YouGov ask around 1,600-1,800 British adults the same question: ‘Would you support or oppose completely banning private schools?’. The latest data from this ‘tracker’ (March 2023) shows that the public are much more likely to oppose a ban than support one, although many respondents were unsure (Figure 3).

Figure 3: “Would you support or oppose completely banning private schools?” (YouGov, 2023) ²⁰⁴



A survey in 2021 by Savanta ComRes - commissioned by the ‘Left Foot Forward’ website - asked a similar question (‘To what extent do you support or oppose the private school system being abolished?’) to 2,083 British adults. In this instance, 42 per cent of respondents believed they should be abolished, compared to 24 per cent who opposed such a move – almost the exact opposite of the results from the YouGov survey. Again, though, a large proportion of respondents (27 per cent) were unsure.²⁰⁵

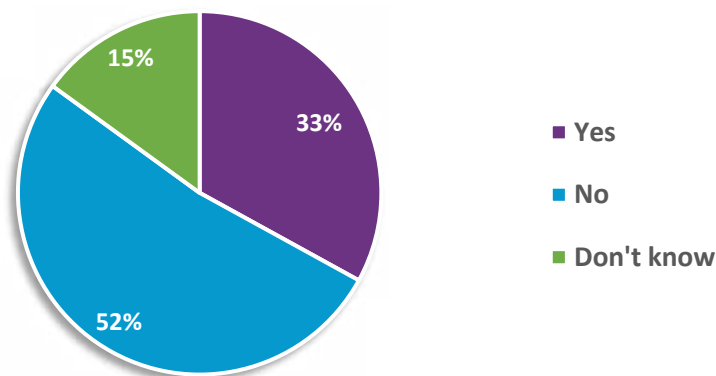
Another way to explore public perceptions of private schools is to ask parents whether they would consider educating their children privately. A YouGov poll of 2,210 British parents in 2013 found that, even if they did not have to pay for it, half of parents would still want their child to go to a state school, while 32 per cent said that they would be likely to send their child

to a private school.²⁰⁶ Meanwhile, a smaller survey of 590 parents commissioned by the ISC in 2012 found that 57 per cent of parents would educate their child privately if they had the money to do so.²⁰⁷

Should independent schools retain their charitable status and tax reliefs?

Rather than asking about the public's views on private schools in a broad sense, some surveys have probed public opinion of issues related to charitable status and associated tax reliefs. For example, a survey by Redfield and Wilton in 2022 of 1,500 British adults asked whether 'in principle' private schools should retain their charitable status and tax exemptions. Over half of overall respondents and 73 per cent of 2019 Labour Party voters stated that they should not be allowed to do so (Figure 4). Conservative Party voters were more divided, with 43 per cent believing private schools should retain their charitable status and tax exemptions and 42 per cent saying they should not.

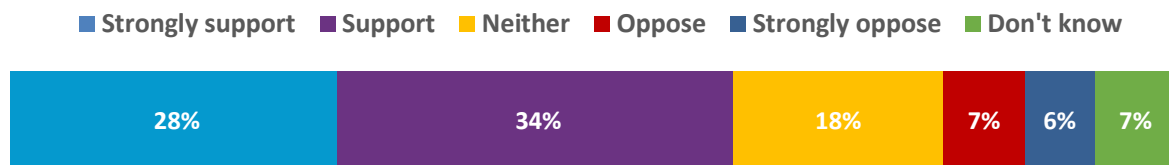
Figure 4: “In principle, do you think that private schools in the UK should be allowed to retain their charitable status and continue to be tax-exempt?” (Redfield and Wilton, 2022) ²⁰⁸



The same survey also looked at the Labour Party's plan to remove charitable status from private schools. Respondents were given a brief overview, including that scrapping charitable status would oblige private schools to add 20 per cent in VAT on school fees for their pupils, and that Labour has said an extra £1.7 billion would be raised by this measure – which would then be spent on improving state education. Leaving to one side that this purported link between charitable status and VAT is incorrect, more than half (62 per cent) of respondents supported Labour's plan, with just 13 per cent opposing or strongly opposing it (Figure 5).

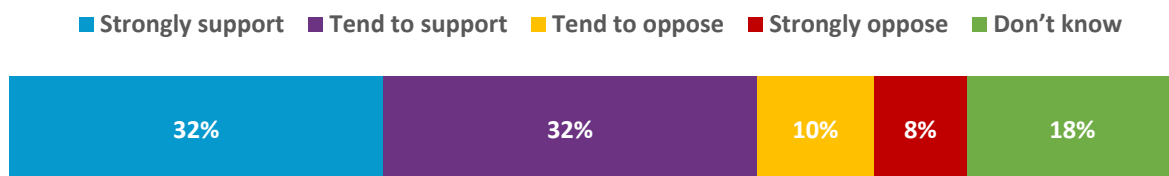
What’s more, only 22 per cent of Conservative Party voters opposed or strongly opposed Labour’s plan.

Figure 5: “To what extent, if at all, do you support or oppose Labour’s plan to remove charitable status from private schools?”
(Redfield and Wilton, 2022) ²⁰⁹



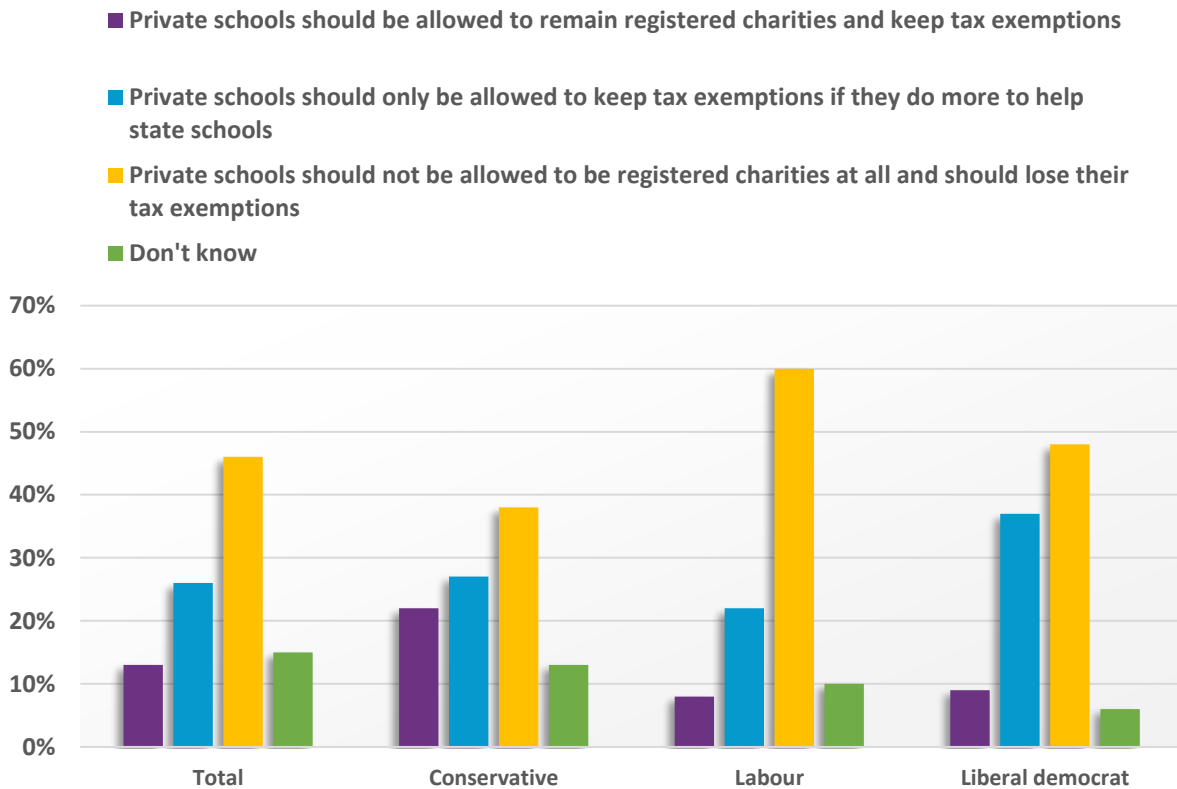
The aforementioned YouGov survey in 2021 that asked respondents whether they believed that private schools ‘benefit’ or ‘harm’ Britain also investigated their views on these schools having charitable status. Again, over half (64 per cent) of respondents said that they would strongly support or tend to support private schools no longer having charitable status and having to pay more tax.

Figure 6: “Would you support or oppose ending private schools’ current charitable status, meaning they would have to pay more tax?”
(YouGov, 2021) ²¹⁰



However, when presented with more nuanced options about the charitable status of private schools, the public appears to be slightly more open-minded. YouGov’s biannual tracker finds that close to half of respondents (46 per cent) believe that private schools should not be registered charities and thus lose their ‘tax exemptions’ but a quarter (26 per cent) believe that private schools should be able to maintain their exemptions if they do more to help state schools (Figure 7 overleaf). Meanwhile, just over one in ten respondents (13 per cent) believed that private schools should be able to remain charities without any change in their behaviour, with Conservative voters almost three times more likely than Labour voters to have this view (22 per cent versus 8 per cent respectively).

Figure 7: “Currently, most private schools are registered charities, meaning they are exempt from or can claim back many taxes. Should UK private schools be exempt from tax?” (YouGov, 2023) ²¹¹



Other surveys have explored what actions the public would like to see private schools take to justify their charitable status. For example, the 2021 Savanta ComRes survey described earlier also asked: “To what extent do you support or oppose private schools losing their charitable status if they do not admit a high proportion of students from deprived backgrounds?”. More than half (58 per cent) of respondents supported this idea while just 10 per cent opposed it, with no significant variation between supporters of different parties.²¹²

Meanwhile, the 2021 YouGov survey also asked the public about specific charitable actions that they may like to see in future. When asked whether they would be supportive of ‘state funding for private school places for children from poorer backgrounds’, the majority (60 per cent) of respondents said that they would strongly support or tend to support the idea. Again, there was little variation across political parties, with more than half of Conservative, Labour and Liberal Democrat voters either strongly supporting or tending to support this proposal (59 per cent, 63 per cent and 55 per cent respectively). There was also no variation between age groups, with all sections of the population showing majority support for this idea – a stark

contrast to the substantial differences between age groups when asked whether private schools harm or benefit Britain. In other words, younger voters are much more likely than older voters to believe that private schools harm Britain yet – as both the Savanta ComRes and YouGov surveys show – all voters want to see private schools doing more to spread opportunities to children from poorer households and to state schools.

6. Recommendations

This report began with the aim of building an evidence-based picture of the contribution made by charitable independent schools to our society. Below is a summary of what the subsequent analysis has shown in terms of the role and impact of independent schools delivering mainstream education in England:

- **Drifting away from the historical roots of the sector:** many of the earliest independent schools were created with the explicit goal of educating some of the poorest members of society. Through a combination of political interventions and societal changes over time, the evidence suggests that many independent schools are now more likely to be educating children from well-off families. The use of bursaries and scholarships can help to correct this imbalance, with some independent schools being very proactive in this regard, but relying on goodwill alone cannot overcome the drift away from the noble and charitable roots of the independent sector.
- **Misunderstandings over charitable status:** the ‘advancement of education’ has been a charitable activity for over 400 years, yet the charitable status of independent schools remains a contested issue due to the enduring questions over their ‘public benefit’. However, the 2011 tribunal ruling made clear that, as it stands, these independent schools can meet the necessary legal requirements by their trustees ensuring that they act responsibly and offer at least a ‘minimal or token’ level of support to those who cannot afford the fees. In addition, the phrase ‘public benefit’ seems to be widely misunderstood, thereby contributing to the sense among some politicians and commentators that charitable independent schools are failing to meet their legal obligations when this is not currently the case.
- **The room for interpretation around ‘public benefit’:** even though charitable independent schools appear to be complying with the law in relation to their ‘public benefit’, this does not immediately translate into these schools making a substantial contribution to wider society. The 2011 tribunal accepted that there is considerable room for interpretation around phrases such ‘minimal or token’ in the context of the financial support available to less well-off households. Perhaps surprisingly, there is not even an agreed legal definition of ‘the poor’. The lack of clarity over how much support a charitable independent school must offer will inevitably lead to concerns over whether all these schools are delivering tangible benefits for the poorest families.
- **The political focus on VAT:** although the debate over whether VAT should be charged on independent school fees has attracted an enormous amount of political attention, the analysis in this report and its associated research note suggests that it

would be unwise for any political party to assume that adding VAT to fees would be either straightforward or guaranteed to raise large sums of money. The complexity of VAT legislation means that a future government could easily become entangled in numerous legal and accounting problems that undermine their plans as well as their projected revenue gains from pursuing such policies.

- **Uncertainty over the use of bursaries and scholarships:** the increased scope and scale of ‘fee assistance’ provided to pupils attending charitable independent schools is a positive development. Even so, the level of fee assistance now being awarded on a non-means-tested basis raises uncomfortable questions about the extent to which more well-off families are benefitting as much as poorer households. The absence of transparent data related to the household incomes of those who receive bursaries and scholarships adds to this sense of uncertainty, even if individual schools have made great strides in this area. The number of scholarships being awarded to staff and siblings at independent schools does not help matters either.
- **The unfulfilled potential of independent-state school partnerships:** many independent schools have strived to create valuable and sustainable partnerships with state schools that generate a range of new opportunities to state-funded pupils and local communities. That said, some of the reported ‘partnerships’ do not appear to amount to much in terms of the time and resources required from independent schools. The general opaqueness of the content of partnerships as well as the level of financial investment from independent schools in those partnerships is also unhelpful and easily resolved.
- **Negative perceptions among the general public:** the polling data leaves little room for doubt that the British public are sceptical about the value and impact of independent schools. Although there does not appear to be much support for banning independent schools, there is a widespread sense that these schools are not doing enough to support state schools or disadvantaged families, and that their charitable status is therefore open to question.

In line with these findings, the following pages of this report will outline a set of recommendations that seek to address each of these issues. In doing so, it is hoped that the good work already being done by many independent schools can be reinforced while also demanding a greater contribution from those independent schools that are not currently offering enough benefits to the communities in which they are situated – particularly in relation to the poorest members of society.

RECOMMENDATION 1

Given the significant legal and financial risks associated with trying to remove charitable status from independent schools or charge VAT on independent school fees, these reforms should not be pursued by either the current or a future government.

Despite grabbing many political headlines in recent years, this report has explained why seeking to add VAT onto independent school fees is considerably more challenging than it sounds even if voters seem keen on the idea. The complexity of VAT legislation means that trying to single out one type of education provider with such a specific financial penalty is a complicated task, to say the least. That the financial gain for the government from adding VAT onto fees, assuming that it is indeed possible, could fall anywhere between around £1 billion and £0 further illustrates how much uncertainty is attached to this seemingly simple policy change. Moreover, the eventual financial outcome for the government finances depends to a large extent on variables such as how many pupils would be forced to leave independent schools if VAT was added onto fees, yet these variables are impossible to quantify with any confidence.

The legal barriers to removing charitable status from independent schools seem even more daunting, given that the 2011 tribunal ruling was clear that independent schools have a charitable purpose and meet the ‘public benefit’ test. Regardless of how disgruntled some politicians may be at the perceived lack of contribution from independent schools in our society, this has no bearing on the legal requirements placed on these schools. As demonstrated by the judicial review launched in 2011 against the actions of the Charity Commission, new legal challenges to the removal of charitable status from hundreds of independent schools are surely likely. On that basis, and given the challenges posed by aiming to add VAT onto school fees, there is too much legal and financial risk attached to these changes to make them worthwhile.

RECOMMENDATION 2

To ensure that charitable independent schools are accessible to families across the income spectrum, the 2011 Charities Act should be amended to include a legal definition of ‘public benefit’. This should include the condition that the fees charged by any charity (including independent schools) cannot be ‘unduly restrictive’ in terms of who is able to access their services – particularly the poorest households.

As it stands, charitable independent schools are complying with existing legislation around delivering a ‘public benefit’. Indeed, many go above and beyond what is legally required of them in terms of providing benefits to wider society. However, the permissive nature of the

rules around ‘public benefit’ and the fact that trustees are left to determine whether an independent school is doing enough to help the poorest members of society leaves too much room for interpretation. Polling data suggests that the public want to see independent schools doing more, particularly for those from disadvantaged backgrounds, yet the 2011 tribunal hearing demonstrated that the Charity Commission does not currently have any legal basis for requiring charitable independent schools to give more support to the poorest families.

Consequently, this report recommends that the *Charities Act 2011* should be amended along the lines of the *Charities and Trustee Investment (Scotland) Act 2005* to set clearer expectations for charitable independent schools (and indeed other charities) in terms of the level of support that they must offer to those who cannot afford any fees that they charge. This report proposes making three amendments to the *Charities Act 2011* in this regard:

- The current approach to assessing ‘public benefit’ should be codified in the legislation to put it on a statutory footing.
- A new ‘public benefit’ requirement should be included in the legislation, so that any condition of obtaining the benefit provided by a charity (e.g. school fees) cannot be ‘unduly restrictive’ - as is already the case for charities in Scotland.
- In line with the historical roots of the independent school sector, the legislation should make reference to the poorest households to ensure that all charitable independent schools (and other charities) focus on providing opportunities to this group.

To enact these changes, the Charity Commission should consult on incorporating the following new ‘public benefit’ test into the *Charities Act 2011*, including a reference (highlighted in bold below) to the poorest families in relation to ‘undue restrictions’:

“In determining whether a body provides or intends to provide public benefit, 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, with specific regard given to access to the benefit for members of low-income households.”

By making this change, the Charity Commission will be able to intervene in future where they had evidence to suggest that a charity (be it a school or otherwise) was failing to make sure that people from low-income backgrounds can access their provision. Consequently, any independent school that does not adequately demonstrate that it is following the new legislation will be faced with the risk of losing their charitable status and associated tax reliefs. While many independent schools and other charities will be entirely unaffected by this new approach and will already meet the new requirements through their existing work, the proposed amendments to the *2011 Charities Act* will require all charitable independent schools to provide a genuine and measurable benefit to the public, especially the poorest households.

RECOMMENDATION 3

The Charity Commission should issue new guidance alongside the proposed amendments to the 2011 Charities Act. The guidance would require charitable independent schools to report annually on how much financial support they provide to pupils (e.g. bursaries), how they determine who receives such support and the income of families that receive this support. The mainstream charitable schools with the highest fees would also be expected to provide the most financial support.

Despite considerable investment by the independent school sector in ‘fee assistance’ such as bursaries and scholarships, it is not clear which pupils and families are receiving this assistance or how much they receive. Alongside the amended legislation outlined in the previous recommendation, the Charity Commission should therefore issue new guidance for all charities including charitable independent schools that sets out detailed requirements on how these organisations can meet the new and more rigorous ‘public benefit’ test.

Under this new guidance, independent schools and other fee-charging charities should be required to demonstrate how they are providing financial support to the families that need it the most. This will be implemented by requiring them to publish a breakdown of their fee assistance in terms of how much was awarded each year, the basis on which it was awarded and the household income levels of recipients. This would mean that, for example, instead of merely stating the amount of fee assistance given to ‘eligible families’, independent schools would now need to publish figures for the numbers of pupils receiving, say, ‘sibling’ discounts on their fees. In addition, all fee assistance would need to be described in terms of the income levels of the families who received it, so that there is transparency for current and future pupils as well as the general public and Charity Commission over who received each specific form of assistance (e.g. means-tested bursaries).

Again, Scottish law offers a useful template of what could be implemented, particularly on issues such as the ‘proportionality’ of financial support provided relative to a school’s fees, the required ‘transparency’ over fees and fee assistance, and consideration of how any help for those who cannot afford to pay is distributed across families of different income levels. Further consultation would be needed in terms of whether it should be a requirement to simply publish all the required information on a school’s website or whether it should be formally stated in their annual report to the Charity Commission. In Scotland, the OSCR requires charities including independent schools to include all the following information in their annual accounts:

- The charity’s policy on offering means and non-means-tested assistance, including the eligibility and assessment criteria, and any conditions of award for those in receipt of financial assistance.
- A brief description of how the charity publicises the availability of financial assistance.
- The sum the charity expended on means and non-means-tested assistance.
- The number of pupils in receipt of both types of financial assistance.
- A break-down of recipients of financial assistance by the level of fee remission awarded to them.²¹³

Regardless of the exact delivery mechanism, this new Charity Commission guidance is intended to ensure that potential applicants to independent schools would have a clear understanding of the type and amount of financial support available as well as the eligibility rules for such support. By incorporating the Scottish approach of requiring ‘proportionality’, the new proposed guidance is also intended to make sure that the mainstream charitable independent schools charging the highest fees will distribute the most means-tested bursaries and wider financial assistance.

RECOMMENDATION 4

To demonstrate their commitment to valued and sustainable partnerships with state schools and local communities, independent schools should be expected to publish full and transparent details of the cost, frequency and scale of their partnership activities.

Many independent schools have well-established and beneficial partnerships with state schools and local communities. However, not every independent school has demonstrated such commitment, and not every partnership requires an equal commitment of time and resources from independent schools. There is also a lack of transparency around the

investment of time and resources that each partnership requires. To address this, charitable independent schools should be asked to share more details about their partnerships. For each partnership activity, the school should share details on:

- How often the partnership activity takes place (e.g. weekly, monthly)
- What exactly the partnership activity consists of (e.g. the type of activities involved; the number of hours per week; details of who organises the activities)
- The impact of the partnership activity (e.g. how many people have benefitted; feedback from partnership participants)
- A breakdown of the resources required by the partnership (e.g. direct and indirect costs to the independent school and the associated calculations; how many members of staff are involved; the time needed to establish and maintain the partnership).

There are various ways that this new level of transparency could be achieved. As a starting point, this report suggests that publishing details of each partnership should begin as a voluntary action from independent schools, who will display this information on their own websites. However, the Government could consider making it a compulsory requirement as part of the *Charities Statement of Recommended Practice*. At present, charitable independent schools typically list their partnership activities in their annual accounts and cite a figure for the total expenditure every year on partnerships, but this lacks the crucial details needed for parents, local schools, politicians and the Charity Commission to gain a full picture of the commitment being shown by an independent school to such partnerships. On that basis, charitable independent schools should be given the opportunity to take the lead in this area, but their progress should be closely monitored and the Government is entitled to keep its options open for further intervention if the necessary transparency does not materialise.

Conclusion

*“...it must be one of our aims to work to establish a state of society where the advantage and privileges which hitherto have been enjoyed only by the few should be more widely shared by the many and the youth of the nation as a whole.”*²¹⁴

This report opened by noting that political pressure on the independent school sector has been evident for several decades, with most pressure emerging from the left of the political spectrum. That said, the above quotation – from a speech at Harrow School in December 1940 by Winston Churchill – shows that concerns about the relationship between independent schools and the rest of society are not confined to a single political party or a single historical era. In the present day, voters are unpersuaded that the answer is to simply ban independent schools altogether, yet they want to see charitable independent schools do much more for disadvantaged students and local state schools.

When the tribunal delivered its final verdict in 2011 on the judicial review launched by the ISC, they observed that “the political issue is not really about whether independent schools should be charities as understood in legal terms but whether they should have the benefit of the fiscal advantages which Parliament has seen right to grant to charities.”²¹⁵ As this report has discussed, there is a growing perception that many independent schools do not deserve the financial advantages that they receive as charities because they are not seen to be doing enough – by politicians or the public – to open their arms to those beyond their school gates.

This report has proposed a dual solution to address these concerns. First, charity legislation should be amended so that any independent school enjoying the tax reliefs associated with being a charity must demonstrate that it is striving to educate pupils from less privileged families. This should include a fully transparent approach to how much financial support the school offers, and to whom. Second, independent schools should be required to be more open about their partnerships with local state schools in terms of how many pupils benefit from them, what impact they have and how much effort and money independent schools are investing in such partnerships. Through this dual approach, politicians and policymakers will have far more clarity about the contribution that charitable independent schools can (and, in many cases, already do) make to our education system and society as a whole. Conversely, if a charitable independent school fails to demonstrate that it is making tangible progress on this matter, they will have little cause for complaint if a Prime Minister attempts to withdraw the fiscal advantages that they currently enjoy.

Political clashes over independent schools are unlikely to subside anytime soon, meaning that the next 18 months will be an anxious time for many of their pupils, parents, teachers and leaders. In line with EDSK's mission statement – to improve pupil outcomes, particularly for the most disadvantaged learners – this report has sought to build a new approach to charitable independent schools that recognises the good work being done by many schools while applying far more pressure to any schools that are not contributing enough to local families, schools and communities. As a result, it is hoped that this report's rejection of political dogma in favour of evidence-based policymaking can provide a solid basis for discussions about the current and future role of charitable independent schools in England.

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