

THE CHARTER TRUSTEES OF BOURNEMOUTH



Report subject	VAT Position Update Report
Meeting date	26 October 2020
Status	Public Report
Executive summary	Officers have made an application for the Charter Trustees to be registered under Section 33 of the VAT Act. If there are no delays to the statutory instrument then the Charter Trustees will be able to reclaim VAT from 4 November 2020, but will not be able to reclaim VAT retrospectively.
Recommendations	It is RECOMMENDED that: That the Charter Trustees note the content of the report.
Reason for recommendations	To update the Charter Trustees on the position regarding VAT.
Report Authors	Dan Povey, Assistant Chief Financial Officer
Classification	For Information

Background

1. The Charter Trustees of Bournemouth were created in order to preserve the historic and civic functions of the preceding council following local government reorganisation on 1 April 2019.
2. The Charter Trustees were established by the Local Government (Structural and Boundary Changes) (Supplementary Provision and Miscellaneous Amendments) Order 2019 which was made on 20 March 2019.
3. There are currently 17 extant Charter Trustees in England. Charter Trustees set up under Section 246 of the Local Government Act 1972 are already covered by S33 of the VAT Act 1994 and so can reclaim all VAT incurred on their non-business (statutory) activities.
4. When new Charter Trustees are established they are not automatically treated as S33 bodies, as they are covered by a different part of the legislation, but can apply to be added to the Treasury Order. Once added to the Order VAT can be reclaimed from the date the Order was made. VAT cannot be reclaimed retrospectively.
5. Based on information published on the HMRC website there are currently five Charter Trustees that received S33 status through the Treasury Order process and are therefore able to reclaim VAT. Not all Charter Trustees register to reclaim VAT.
6. Due to the limited number of Charter Trustees nationally, and with not all of these registered to be able to reclaim VAT, the process to receive S33 status is unusual and not well trodden. There is no clear guidance available that details what Charter Trustees are required to do to enable them to benefit from the same VAT status as a local authority. The complexity and uniqueness of the process was reflected in the fact that HMRC Officers had to refer queries from BCP Council on this issue to their Policy Team for further guidance as no direct instructions were available.

Establishing the Charter Trustees

7. Work to establish the Charter Trustees was carried out by officers alongside the work to establish Bournemouth, Christchurch and Poole Council. The priority was on providing for a safe and legal landing for the new Charter Trustees, as the timescale from when the Secretary of State approved local government reorganisation in August 2018 was very tight with an implementation date of 1 April 2019.
8. The work to establish the Charter Trustees centred on the following activities:
 - a. The process of setting a budget and raising a precept;
 - b. Drafting standing orders and the Charter Trustee's handbook;
 - c. Establishing the role of the Mayor and Mayor making arrangements.
9. The arrangements for raising a precept in the first year of operation for the Charter Trustees were complex and officers liaised with the Ministry for Housing, Communities and Local Government in order to ensure a legal precept was set.
10. For the first year of operation, 2019/20, the Local Government (Structural Changes) (Further Financial Provisions and Amendments) Regulations 2009 required the BCP Shadow Authority to "anticipate the amount likely to be required in that financial year for the discharge of the Charter Trustee's functions". As such this anticipated amount formed part of the council tax requirement of BCP Council for 2019/20 and

was included in the calculation of the BCP Council referendum limit. Only from 2020/21 would the Charter Trustees raise a separate precept in their own right.

VAT Registration

11. There was an assumption that because the Charter Trustee's precept was part of the council tax requirement for BCP Council in the first year, that this funding formed part of the council's budget and so the council would be able to reclaim all VAT incurred on expenditure as part of their own VAT registration. This was on the basis that both income and expenditure would remain part of the council's budget and would not be transferred to a separate entity, at least not in the first year of operation. Once it was confirmed that Charter Trustees were required to prepare separate accounts showing all activities from the date of its incorporation officers took the necessary action and contacted HMRC for further instructions.
12. In December 2019 officers received the initial advice from HMRC which stated that:
 - a. Charter Trustees are not automatically treated as S33 bodies but can be added to the Treasury Order;
 - b. Once the Order is issued Charter Trustees can be added to the S33 list and reclaim VAT;
 - c. VAT claims could be submitted retrospectively to 1 April 2019 if required;
 - d. Verification of the statutory order that created the Charter Trustees was required.
13. The required evidence for the application was submitted to HMRC in January 2020, stating that officers were seeking approval to be added to the list of S33 bodies in order to ensure that VAT is reclaimed on statutory services and reclaim any retrospective VAT incurred since 1st April 2019.
14. HMRC replied at the end of February 2020 seeking further clarification as to which legislation had established the Charter Trustees, confirming that if they were established under the Local Government Act 1972 then Section 33 status would already apply. If they were not established under this Act then an application would be needed.
15. In March 2020 officers confirmed with HMRC that the Charter Trustees were established under the Local Government and Public Involvement in Health Act 2007 and that we wished to apply for S33 status per our email of January 2020.
16. On 1 April HMRC confirmed that the application for S33 status met the conditions for admission. The application was forwarded by HMRC to the Treasury with an indication that the earliest date for approval was September 2020. At this point HMRC confirmed that the S33 status cannot be applied retrospectively, with refunds only allowed from the date that the Order takes effect.
17. Officers further considered the Charter Trustee's VAT position and sought guidance from HMRC as to whether in the first year of operation BCP Council could recover the Charter Trustee's VAT on the basis that for 2019/20 their precept was part of the council tax requirement for BCP Council as set out in paragraph 10. HMRC confirmed in May 2020 that this would only be possible if the cost was not passed to the Charter Trustees but remained part of the council's budget. This was in line with the initial assumption set out in paragraph 11.

18. In June 2020 HMRC confirmed that the statutory instrument would be laid on 14 October and come into force on 4 November 2020, and as such Charter Trustees could reclaim VAT under Section 33 from that date, provided that there were no delays.

Summary of financial implications

19. The Charter Trustees of Bournemouth incurred £22 thousand in VAT for 2019/20. This VAT was not reclaimable but was managed within the annual budget, with the Charter Trustees achieving £8 thousand of reserves at the year-end compared to the budgeted figure of £4 thousand.
20. If there are no delays to the statutory instrument coming into force on 4 November 2020, it is anticipated that the Charter Trustees will incur approximately £11 thousand of VAT in 2020/21 which will not be reclaimable.

Summary of legal implications

21. None.

Summary of human resources implications

22. None.

Summary of sustainability impact

23. None.

Summary of public health implications

24. None.

Summary of equality implications

25. None.

Summary of risk assessment

26. None.

Background papers

None.

Appendices

None.