

**COBTREE MANOR ESTATE  
CHARITY COMMITTEE**

**23<sup>RD</sup> MARCH 2016**

Is the final decision on the recommendations in this report to be made at this meeting?

**No**

**Management Letter 2014/15 Update**

<b>Final Decision-Maker</b>	Cobtree Manor Estate Charity Committee
<b>Lead Head of Service</b>	Head of Finance & Resources
<b>Lead Officer and Report Author</b>	Paul Holland, Senior Finance Manager – Client Accountancy
<b>Classification</b>	Public
<b>Wards affected</b>	Boxley

**This report makes the following recommendations to this Committee:**

1. That the Committee notes the current position with regards to the issues identified in the External Auditor's Management Letter that accompanied the Accounts for 2014/15.

**This report relates to the following corporate priorities:**

- Keeping Maidstone Borough an attractive place for all – Ensuring that there are good leisure and cultural attractions.

**Timetable**

<b>Meeting</b>	<b>Date</b>
Cobtree Manor Estate Charity Committee	23 <sup>rd</sup> March 2016

# Management Letter 2014/15 Update

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The External Auditor's Management Letter, which was presented to this Committee on 27<sup>th</sup> January 2016, identified a number of significant issues relating to the accounting records of the Charity, treatment of VAT and the legal status of the Charity.
  - 1.2 The Committee asked that an update report be brought to this meeting.
  - 1.3 The Committee is asked to note the progress made to date on dealing with the issues raised.
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 The accounts of the Charity for 2014/15 were audited by UHY Hacker Young, and their final document included a Management Letter which brought a number of issues to the attention of the Committee. A copy of the Letter is attached at **Appendix A**.
  - 2.2 The main issues raised were as follows:
    - Due to some difficulties in agreeing the figures in the accounts it was recommended that the Charity has its own accounting records separate from those of Maidstone Borough Council.
    - It was recommended that Maidstone Borough Council stop reclaiming input VAT on behalf of the Charity with immediate effect.
    - It was recommended that consideration be given to changing the legal status of the Charity.
  - 2.3 These issues are dealt with in more detail in the following sections of this report.
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## 3. ACCOUNTING RECORDS

- 3.1 It was recommended that the Charity have its own accounting records separate from those of Maidstone Borough Council to ensure that transactions relating to the Charity can be more clearly identified, and to assist in providing a clearer audit trail.
- 3.2 It was suggested that this could be achieved by a spreadsheet or a separate piece of accounting software. Following discussions by officers in the Council's finance team work is currently being undertaken on the feasibility of creating a new company within Agresso, which is the Council's Financial Management System. This would allow the financial transactions of the

Charity to be processed completely separately.

- 3.3 As is detailed later in this report the Charity will now be registered as a separate body for VAT purposes, and the establishment of a separate company would be appropriate to ensure that VAT transactions are correctly recorded and accounted for. There would also be a need to use the Cobtree Charity Trust bank account for all day to day transactions rather than the Maidstone Borough Council account, and a new credit card account would also need to be set up to process transactions at the café.
  - 3.4 The possible change of legal structure for the Charity discussed later in this report could also require a new company to be set up.
  - 3.5 Setting up a new company could however incur a significant one-off expense for the Charity, and there would possibly be an increase in the recharge of staff time from the Council depending on the nature of any additional processes that may need to be undertaken.
  - 3.6 There would be two main processes that would need to be undertaken. Firstly the setting up of the new company itself, which would require the services of a consultant for 8 days at an estimated total cost of £7,000, and secondly the setting up a BACS payment facility, which would take around 3 days at an estimated total cost of £3,000, so total costs of £10,000.
  - 3.7 It should be stressed that these are estimated costs and that further work will be done to confirm both the likely timescales and costs. There are also likely to be some other minor costs around setting up the bank account for handling more transactions and the credit card facility. It should be possible for the Charity to fund these costs from existing resources.
  - 3.8 Members may be aware that the Council is undertaking a number of commercial initiatives that may result in the need to create new legal entities such as a trading company or a subsidiary. It is likely that such entities would also require a new company to be set up in Agresso. So the possibility does exist to share some of these set-up costs with the Council, as this would be first new company to be set up and would effectively be a pilot scheme for any that may follow.
  - 3.9 Given the timescales that are likely to be involved it is proposed that a spreadsheet based solution be implemented initially, with a view to moving to a separate system should this be agreed as the way forward. At present the finance team are committed to developing a new Agresso Contracts Register which will restrict the time they have available to work on a new Cobtree company so the likelihood is that it would be formally established at a later date during the next financial year.
  - 3.10 A report will be brought back to the Committee with a final recommendation once all the likely costs and timescales have been identified and confirmed. There is a meeting scheduled with the auditors in April to update them on the position with regards to the issues raised in this report.
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## 4. VAT

- 4.1 The auditors considered the VAT status of the Charity in a separate report following a request from the Council, and it was recommended that Maidstone Borough Council stop reclaiming input VAT on behalf of the Charity with immediate effect.
  - 4.2 The auditors were of an opinion that the management fee paid to Mytime for running the golf course at Cobtree was in fact a lease payment. This would mean that as the income is exempt of VAT no input VAT could be reclaimed unless this is below a de minimis level, which would not be the case for Cobtree. Therefore, the auditors were thinking that the input VAT would need to be repaid to HMRC. However, from reading the management and lease agreements, the fee is a management fee for running a golf course on behalf of the Trust and not a fee for the lease, so this fee is a standard rated supply and therefore all input VAT can be reclaimed.
  - 4.3 Following further discussions with the auditors, it would appear that VAT has been claimed correctly and that no VAT would need to be repaid to HMRC.
  - 4.4 The Trust should be registered under its own right for VAT as the taxable supplies for the Trust are over the threshold for registering for VAT and these supplies are separate to Maidstone Borough Council's supplies. It is agreed that this will be discussed at the meeting, and the Council's VAT Officer will be present to answer any questions.
  - 4.5 Changes have also been implemented within the Council's payment processes to ensure that the VAT for transactions relating to the Charity is recorded separately so that it can be accounted for correctly with HMRC.
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## 5. LEGAL STATUS OF THE CHARITY

- 5.1 There was a recommendation that consideration be given to changing the legal status of the Charity, and two alternative structures were suggested – a limited by guarantee company and a charitable incorporated organisation.
- 5.2 Attached at **Appendix B** is the Charity Commission guidance document that outlines the various structures that a charity can choose from. At present the Cobtree Manor Estate Charity Committee is an unincorporated trust, which means there is no limited liability for Maidstone Borough Council in its role as the corporate trustee.
- 5.3 To date there has not been the opportunity to fully consider the available options and the implications of adopting a new structure, so a more detailed report will be brought to the Committee once this work has been done. However it is hoped that a verbal update can be given at the meeting.

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## 6. AVAILABLE OPTIONS

- 6.1 The Charity could continue with a spreadsheet based solution to ensure there is more clarity with its financial records, or it could choose to set up a new company within the Council's financial management system.
- 6.2 The Charity will set up a separate VAT registration with HMRC. There is no alternative option based on the advice that has been received.
- 6.3 The Charity will consider whether or not a change of legal structure would be appropriate, and if so which one of the two available options it should be.
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## 7. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 7.1 Further reports will be brought to the Committee making final recommendations with regards to the accounting records and the legal structure of the charity.
- 7.2 This will ensure that the Charity has the most appropriate financial and legal structures in place for the future.
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## 8. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 8.1 Not applicable.
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## 9. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 9.1 Not applicable.
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## 10. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Impact on Corporate Priorities</b>	None	[Head of Service or Manager]
<b>Risk Management</b>	The Charity needs to ensure it has the most appropriate financial and legal structures in place to minimise the risk to both itself and Maidstone Borough Council.	[Head of Service or Manager]

<b>Financial</b>	It is important to ensure that both the financial and VAT records of the Charity are dealt with correctly and in such a way to minimise any risk to the available resources.	[Section 151 Officer & Finance Team]
<b>Staffing</b>	None	[Head of Service]
<b>Legal</b>	The correct legal structure needs to be in place to protect the interests of both the Charity and Maidstone Borough Council.	[Legal Team]
<b>Equality Impact Needs Assessment</b>	None	[Policy & Information Manager]
<b>Environmental/Sustainable Development</b>	None	[Head of Service or Manager]
<b>Community Safety</b>	None	[Head of Service or Manager]
<b>Human Rights Act</b>	None	[Head of Service or Manager]
<b>Procurement</b>	None	[Head of Service & Section 151 Officer]
<b>Asset Management</b>	None	[Head of Service & Manager]

## 11. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix A: Management Letter 2014/15
- Appendix B: Charity Commission guidance on legal structures

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## 12. BACKGROUND PAPERS

None