HMRC - VATSC51980 - Grants: Bath Festivals Trust

Court Reference: LON 2006/0511

The Trust was a limited company and registered as a charity. It was acquired from the Bath Festival Society in 1993, from which it also acquired the intellectual rights to the Bath International Music Festival which had been in existence from 1948. The Society had previously promoted the music festival but after financial difficulty, the Arts Council was unwilling to continue its financial support without significant changes being made, both to the running of the festival and the basis of the support given by Bath County Council.

Hence the Trust took over promotion of the festival with a wider remit – a year round festival with a wider range of activities - and received money from the Council under a service level agreement as the Council wished for the festival to continue in line with its cultural/regeneration policies. In addition to the music festival, the Trust was expected to offer services such as ‘financial, managerial, programming, promotional, administrative, technical or other assistance’ to the Bath Fringe, Literature and Film Festivals.

The service level agreement contained the wording “In consideration of the payment of the Contract Fee by the Council the Organisation agrees to provide and supply the Services to the Council upon the terms and conditions of this Agreement.” It went on to say the payment was made “to obtain a range of services which contribute to the delivery of the Council’s Corporate Objectives, Community Strategic, Cultural Strategy, and Service Strategies …”

The decision took a lead from Edinburgh Leisure

the presence or absence of a statutory duty (in this case The Local Government Act 2000) to provide services ‘is irrelevant as to the question whether the requisite “direct link” between the “thing done” and the “consideration received” can be said to exist’. But if the Trust was not providing these services, the Council would itself be required to provide them in some form through its in-house arts department, but as it was unable to attract the Arts Council grant ‘it must be assumed that it would be limited in what it provided’. (Also note: this point relates to the recipient of services having a statutory duty, not whether the provider has a statutory duty).

to obtain an Arts Council grant the applicant had to set out his proposed programme of activities and define his own targets, whereas under the service level agreements the Council approached the Trust and imposed specific requirements for what was provided

an Arts Council grant would mean the Trust would have to measure itself against its own targets, whereas with the service level agreement the targets were largely set by the Council and it was up to the Trust to decide whether to accept them or not

the Arts Council would not attempt to control how the money was spent beyond seeing that the funds were properly managed. The Council’s monitoring amounted to more than simply ensuring that the payments were spent properly, it was also to ensure that the Council received the services it expected and to the standard it required.

if the Arts Council withdrew the funding there would be no further action the Trust could take, whereas if the Council withdrew its funding, the Trust could litigate against it as there was a properly structured, binding, legal agreement between them.

The Council regarded the provision of tourism and cultural services as essential to its role as a local authority in a locality where these elements are critical for the local economy. They had to assess whether the Trust’s project fitted in with its Arts Development Strategy priorities and the new approach was ‘very much tailored to its own specific requirements, strategies and policies’ ie there were matters which were imposed on the Trust by the Council, rather than being matters which the Trust had itself wished to provide.

The council outsourced the single largest portion of its cultural provision to the Trust because the Trust could create services that were more effective, more competitive, more creative and more responsive to the market and more efficient than the Council itself could provide.

It was not the case that if the Arts Council grant increased then the amount of finance provided by the Council would be reduced proportionately

There was no merit in the argument for the payment that without the funding from B&NES the Trust would still be able to continue operating

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