



TC06636

Appeals numbers: TC/2015/6751, TC/2015/6737, TC/2016/5817 & TC/2017/3062

*VAT – Exemption – welfare services – art 132(1)(g) PVD – Item 9 Group 7 sch 9 VATA 1994
– Supporting People programme – housing related support - identity of recipient of supplies
– whether distressed persons – whether instruction – whether designed to promote physical
or mental welfare – interaction with welfare advice and information in Group 9 sch 7A VATA
1994*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**YMCA BIRMINGHAM
YMCA BLACK COUNTRY GROUP
YMCA LEICESTER
YMCA BURTON UPON TRENT DISTRICT**

Appellants

-and-

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: Judge Peter Kempster

Sitting in public at Centre City Tower, Birmingham on 12-15 February 2018

Mr David West (Booker Associates) for the Appellants

**Ms Natasha Barnes of counsel, instructed by the General Counsel and Solicitor to HM
Revenue & Customs, for the Respondents**

DECISION

1. In this decision notice the parties are referred to by the following abbreviations:

- 5 YMCA Birmingham – “**Birmingham**”
 YMCA Black Country Club – “**Black Country**”
 YMCA Leicester – “**Leicester**”
 YMCA Burton upon Trent and District – “**Burton**”
 The Respondents – “**HMRC**”

- 10 2. The Appellants appeal against formal decisions by HMRC, respectively: Birmingham decision dated 19 June 2015, upheld on internal review on 14 October 2015; Black Country decision dated 19 June 2015, upheld on internal review on 15 October 2015; Leicester decision dated 27 September 2016; and Burton decision dated 27 March 2017. In summary, each of the disputed decisions stated that the
15 provision of “housing related support” did not constitute the supply of welfare services that were exempt for VAT purposes.

Background

3. Most of this section on background is derived from HMRC’s statement of case but is uncontroversial. YMCA (or The Young Men’s Christian Association) is a well-
20 known worldwide organisation founded in 1844. In England it operates through 114 bodies, each registered as a charity and each separately registered for VAT. The aims of each of the Appellants as stated on the Charity Commission website are:

25 (1) Birmingham: “[Birmingham’s] mission is to inspire young people to discover their potential so that they can live in all its fullness. To serve its mission’s aims the association runs supported housing projects, affordable childcare, community and leisure facilities across the city of Birmingham.”

30 (2) Black Country: “The YMCA’s vision is of an inclusive Christian movement, transforming communities, so that all young people truly belong, contribute and thrive. We fulfil this vision through supported housing for homeless young people, family support & childcare services in areas of deprivation, physical activity and health living services which promote wellbeing, and community learning activities.”

35 (3) Leicester: “[Leicester] is a diverse community organisation whose mission is to empower young people to achieve skills, independence, and fulfilment through access to supported accommodation, education, arts and sports. The Y’s vision is to support our communities to achieve their objectives, empowering people to make positive transitions from childhood to

independent adulthood and enrich the lives of our communities through providing community based services that are open, accessible and affordable.”

5 (4) Burton: “Our vision is that, one day, everyone in our area will have a place to call home and enough to live on; one day, family members will be able to talk to each other without hatred or intolerance, one day we will have learned how to enjoy each others' differences, and to truly help each other to grow and develop. One day we will share a great hope and expectation for the future. Until then, [Burton] will work with others to defeat homelessness and poverty, disadvantage and intolerance, and to promote faith and hope in enterprising ways.”

10 4. In April 2003, the Department for Communities and Local Government launched the Supporting People Programme (“SPP”). The aims of the programme were:

15 “Housing related support services make an immense and very cost-effective contribution to improving the quality of lives of vulnerable people, and to the development of community wellbeing ... The aim of [SPP] is to enable people to remain in a more independent living situation, avoiding institutional care such as hospitals or, at the extreme, prison or a life on the streets. Equally it aims to help people in such institutional care to move to a more independent and stable home in the community.”

20 5. Under the programme, several funding streams were brought into a single ringfenced grant of £1.8 billion to local authorities (pursuant to s 93 Local Government Act 2000) to provide housing related support services, aimed at helping vulnerable people live independently in the community. The groups the programme was intended to assist were:

- (1) People who have been homeless or a rough sleeper
- (2) Ex-offenders and people at risk of offending and imprisonment
- (3) People with a physical or sensory disability
- 30 (4) People at risk of domestic violence
- (5) People with alcohol and drug problems
- (6) Teenage parents
- (7) Elderly people
- (8) Young people at risk
- 35 (9) People with HIV and AIDS
- (10) People with learning difficulties

(11) Travellers

(12) Homeless families with support needs.

6. The government allocated the SPP grant to administering local government authorities who assumed responsibility for implementing the programme within their local area. The services were intended to be delivered through a working partnership of local government, probation, health, voluntary sector organisations, housing associations, support agencies and service users.

7. The SPP grant conditions set down a framework in which the administering authorities had flexibility to determine how the money was spent. Pursuant to those conditions, grant monies could only be spent on “eligible welfare services”. The main category of eligible welfare services was “housing related support services” (“HRS”) which were defined as “services with the purpose either of developing or sustaining an individual's capacity to live independently in accommodation”.

8. In 2009, the ring-fence around the SPP funding stream was removed. The programme is now wholly decentralised with each administering authority exercising complete discretion over where best to direct their funding to meet local needs. Since April 2011, the allocation of funds for SPP has been subsumed within the area-based grant made to each local authority. This means that the allocation of funds for SPP is no longer separately identified.

20 **Law**

9. Article 132 VAT Directive 2006 (Dir 2006/112/EC) provides, so far as relevant:

“Exemptions for certain activities in the public interest

1. Member States shall exempt the following transactions:

...

25 (g) the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people's homes, by bodies governed by public law or by other bodies recognised by the Member State concerned as being devoted to social wellbeing; ...”

30 10. Section 31 VAT Act 1994 provides, “A supply of goods or services is an exempt supply if it is of a description for the time being specified in Schedule 9 ...”. Group 7 of sch 9 VATA provides, so far as relevant:

“Group 7 — Health and welfare

Item No

...

35 9 The supply by—

(a) a charity,

...

of welfare services and of goods supplied in connection with those welfare services.

5

...

NOTES

(6) In item 9 “welfare services” means services which are directly connected with—

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(a) the provision of care, treatment or instruction designed to promote the physical or mental welfare of elderly, sick, distressed or disabled persons,

(b) the care or protection of children and young persons, or

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(c) the provision of spiritual welfare by a religious institution as part of a course of instruction or a retreat, not being a course or a retreat designed primarily to provide recreation or a holiday,

and, in the case of services supplied by a state-regulated private welfare institution, includes only those services in respect of which the institution is so regulated.”

20

11. Section 29A(1) VATA provides, “VAT charged on any supply that is of a description for the time being specified in Schedule 7A ... shall be charged at the rate of 5 per cent.” Group 9 of sch 7A provides (so far as relevant):

“Group 9 Welfare Advice or Information

Item No

25

1 Supplies of welfare advice or information by—

(a) a charity, ...

NOTES:

Meaning of “welfare advice or information”

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1 In this Group “welfare advice or information” means advice or information which directly relates to—

(a) the physical or mental welfare of elderly, sick, distressed or disabled persons, or

(b) the care or protection of children and young persons.

...

Supplies not included in item 1

3 Item 1 does not include—

5 (a) supplies that would be exempt by virtue of Group 6 of Schedule 9 (education) if they were made by an eligible body within the meaning of that Group,

(b) supplies of goods, unless the goods are supplied wholly or almost wholly for the purpose of conveying the advice or information, or

10 (c) supplies of advice or information provided solely for the benefit of a particular individual or according to his personal circumstances.”

Caselaw Authorities

12. The following caselaw was cited to the Tribunal, and the abbreviations below are
15 used in this decision notice.

<i>Case</i>	<i>Court</i>	<i>Citation</i>	<i>Abbreviation</i>
<i>CCE v Redrow Group plc</i>	House of Lords	[1999] STC 161	<i>Redrow</i>
<i>RCC v Loyalty Management UK Ltd</i>	Supreme Court	[2013] STC 784	<i>LMUK</i>
<i>Airtours Holiday Transport Ltd v RCC</i>	Supreme Court	[2016] STC 1509	<i>Airtours</i>
<i>Yoga For Health Foundation v CCE</i>	High Court	[1984] STC 630	<i>Yoga For Health</i>
<i>HMRC v LIFE Services Ltd</i>	Upper Tribunal	[2017] UKUT 0484 (TCC)	<i>LIFE Services</i>
<i>Hillingdon Legal Resources Centre Ltd v CCE</i>	VAT Tribunal	[1991] VATTR 39	<i>Hillingdon</i>
<i>Watford & District Old People's Housing Association Ltd (t/a Watford Help in the Home Service)</i>	VAT Tribunal	(1998) VAT 15660	<i>Watford</i>
<i>Wolverhampton Citizens Advice Bureau</i>	VAT Tribunal	(1999) VAT 16411	<i>Wolverhampton CAB</i>
<i>Edinburgh Leisure & others</i>	VAT Tribunal	(2004) VAT 18754	

<i>Age Concern Leicestershire & Rutland v HMRC</i>	VAT Tribunal	(2008) VAT 20762	<i>Age Concern</i>
<i>Bath Festivals Trust Ltd v HMRC</i>	VAT Tribunal	(2008) VAT 20840	<i>Bath Festival</i>
<i>Woking Museum & Arts & Crafts Centre v HMRC</i>	FTT	[2014] UKFTT 176 (TC)	<i>Woking Museum</i>
<i>The Learning Centre (Romford) Ltd v HMRC</i>	FTT	[2017] UKFTT 0492 (TC)	<i>Learning Centre (Romford)</i>

HMRC Notices

13. I was referred to extracts from HMRC Notices, which it is convenient to set out here.

5 14. HMRC Notice 701/1 “Charities” stated:

“5.18 Welfare

Welfare services provided by charities, public bodies and state-regulated private welfare institutions or agencies are normally seen as business and are exempt from VAT, but see paragraph 5.18.2.

10 You can find more information in Welfare services and goods (Notice 701/2).

5.18.1 Welfare services

Welfare services are directly connected with:

- 15 • the provision of care, treatment or instruction designed to promote physical or mental welfare of elderly, sick, distressed or disabled people, distressed people do not include the unemployed
- care and protection of children or young people
- 20 • the provision of spiritual welfare provided by a religious institution as part of a course of instruction or a retreat, it must not be designed primarily to provide recreation or a holiday

5.18.2 Welfare services that can be treated as non-business

25 Charities that provide welfare services significantly below cost, to distressed persons for the relief of their distress, may treat these supplies as non-business and outside the scope of VAT.

‘Significantly below cost’ means subsidised by at least 15%, and the subsidy must be available to everyone. The charity must be providing the service to the distressed individual, and not a local authority.

5 By ‘distressed’ we mean someone who is suffering severe mental or emotional pain, anguish or financial straits. It denotes severe, rather than mild emotional or physical discomfort.

10 An example of a non-business welfare service would be a night shelter for the homeless where a nominal charge of £1 per bed per night is made by the charity. But the cost to the charity of providing the shelter might be £20 per bed per night.”

15. HMRC Notice 701/2 “Welfare services and goods” stated:

“2.1 Services that are directly connected with the provision of care, treatment or instruction

2.1.1 Care, treatment or instruction

15 Care, treatment or instruction includes the protection, control or guidance of an individual when this is provided to meet their medical, physical, personal or domestic needs.

20 Any instruction must relate to the care or treatment of the individual for example showing them how to dress or bath themselves. It does not include the supply of information in the form of advice or help to enable them make an informed decision.

For a service to be exempt under this heading the following must be satisfied:

- 25 • the recipient must be an elderly, sick, distressed or disabled person
- the care, treatment or instruction must be part of a specific individual care plan and the service must relate to it
- an assessment of the recipient’s health condition and medical needs has been carried out by an appropriately trained person

30 Examples include:

- personal or nursing care (including assistance with bathing, dressing, toileting and other personal hygiene)
- general assistance and support with everyday tasks such as form filling, letter reading or writing, bill paying
- 35 • certain routine domestic tasks see paragraph 2.1.2
- counselling

- 5
- looking after or supervising vulnerable people
 - support or instruction designed to develop or sustain a person's capacity to live independently in the community
 - protection, control, guidance or companionship that is required to meet an individual's personal or domestic needs
 - residential care, including accommodation, board and other services provided to residents as part of a care package"

Evidence

10 16. There were several agreed bundles of documentation. I took evidence from the following witnesses for the Appellants.

(1) For Birmingham, Mr Alan Fraser confirmed and adopted a witness statement dated 25 April 2017, and gave oral evidence.

15 (2) For Black Country, Mr Stephen Clay confirmed (with a minor amendment) and adopted a witness statement dated 28 April 2017, and gave oral evidence.

(3) For Leicester, Mr Tom Lin confirmed and adopted a witness statement dated 24 April 2017, and gave oral evidence.

(4) For Burton, Mr Paul Laffey confirmed and adopted a witness statement dated 25 April 2017, and gave oral evidence.

20 (5) For all the Appellants, Mrs Aileen West confirmed and adopted a witness statement dated 26 April 2017, and gave oral evidence.

Mr Fraser's evidence

17. Mr Fraser's evidence included the following.

25 (1) He is the Chief Executive Officer of Birmingham. His earlier career included working as a local authority housing officer. He was one of the team who tendered for the HRS contract with Birmingham City Council.

30 (2) Birmingham provides a range of services to young people, particularly at times of need. These include accommodation and support to help them make the transition to adulthood; for those who do not need support Birmingham provides affordable accommodation at below market rents; in addition, Birmingham aims to give young people the best start in life by providing affordable childcare in areas of deprivation and holiday play schemes that engage children in informal learning; Birmingham has a service user involvement officer who aims to get users involved in decision-making.

(3) Birmingham operates from ten locations across Birmingham and Solihull, and offers the following services:

5 (a) *Accommodation* - Birmingham runs several supported housing, emergency housing and independent living housing projects in the Birmingham, providing 166 supported housing units, 64 independent living units and 72 emergency units. These housing projects provide a total of 302 residential units and provide a safe place to stay and help individuals to develop life skills to establish successful independent lifestyles.

10 (b) *Family* - Birmingham runs three day nurseries; promotes early years education; works alongside Children Centres and supports families to remain economically active; and runs out-of-school clubs and holiday play schemes.

15 (c) *Training & Education* - Birmingham works with residents and the wider community to improve life skills, education and employability skills, and runs a range of professional development courses leading to accredited qualifications for individuals working in the social housing sector.

20 (d) *Support & Advice* - Birmingham has only one housing project where there is an HRS contract in place. This is at The Orchard in Erdington. HRS is provided by a third-party contractor at some of Birmingham's other housing projects. In addition to the HRS Birmingham runs courses to improve life skills, education and employability skills of residents in supported housing projects. These courses are funded separately from the HRS services and provided by a different team of staff. HRS is just part of the suite of support offerings available to residents in the emergency accommodation and supported housing projects.

30 (4) Not all the services listed in Birmingham's HRS contract were provided at the Orchard – for example, not accompanied minor refugees. There are 83 flats, of which nine are two-bedroomed. The services were augmented by partnerships with other agencies, such as CRISIS (employability), Addaction (mental health, drugs and alcohol), and Aquarius (alcohol, drugs and gambling). Each person at the Orchard would go through CRISIS, with the others used if signposted. Persons at the Orchard tended to be at the lower end of the needs scale; often the only identified need was the risk of homelessness; they were unlikely to be in a current drug or alcohol crisis, although that may be in their background; they tended not to be disruptive people.

40 (5) Common reasons for homelessness of young people were: moving out of the care system, burnt bridges with family, family breakdowns and unwanted re-formations, escaping from gangs, concerns about forced marriages. People may have made wrong life decisions or simply suffered bad luck.

(6) An engagement officer would be appointed. Personal qualities (such as patience, empathy and perseverance) were more important than formal qualifications (although staff may be encouraged to acquire a level 3 qualification in supporting homeless people).

5 (7) Residents at the Orchard needed nudging and encouragement; the emphasis was on carrot, not stick. For example, they might be shown how to use a vacuum cleaner, but it would be up to them to do the hoovering.

10 (8) Suitable individuals must be comfortable living independently. Referrals came through the local authority central hub; the authority determined entitlement.

(9) The aim of HRS was to have a person living without need for support; they may have difficulties on arrival but they must have the scope to live independently going forward; that was why it was not suitable for people needing permanent help.

15 *Mr Clay's evidence*

18. Mr Clay's evidence included the following.

(1) He is the Chief Executive Officer of Black Country.

20 (2) Black Country operates from around 19 locations across the Black Country and surrounding area. The services provided by Black Country include:

25 (a) *Accommodation*: Black Country runs several supported housing projects in the Sandwell, Wolverhampton, Dudley, Rugeley and Walsall areas. Black Country supports over 300 young people each day through a range of supported housing projects, providing a safe place to stay and helping them develop life skills to establish successful independent lifestyles. The YMCA Open Door Project provides supported lodgings in family homes for teenagers right across the Black Country as well as emergency Night-stop accommodation for young people in crisis.

30 (b) *Family Work*: Black Country runs several day nurseries, playgroups, and holiday clubs, providing childcare for over 200 children in West Bromwich and Wolverhampton, and promotes early-years education, working alongside Children Centres, and supports families to remain economically active.

35 (c) *Health & Wellbeing*: Black Country provides fitness facilities to communities in Sandwell at YGym, based in West Bromwich and offers a variety of wellbeing initiatives.

(d) *Training & Education* - Black Country works with both YMCA residents and the wider community to improve life skills, education and employability skills.

5 (e) *Support & Advice*: Through direct delivery and various partnership projects Black Country provides support and advice to vulnerable adults experiencing a range of difficulties including substance misuse, homelessness, mental health and unemployment. The chaplaincy service provides an additional support and listening ear working alongside a number of projects.

10 (3) Black Country has lost most of its HRS contracts and at present only has one main active HRS contract with Wolverhampton Metropolitan Borough Council and a small much reduced contract in Rugeley (less than 15% of original). The HRS service forms only part of the support and advice provided by Black Country. The contract with Wolverhampton covered 70-80 young people (16-25 years of age). A support worker was allocated to each individual; the individual would transition through stages, with reduced needs at each stage.

20 (4) For most young people homelessness resulted not from their own actions but from problems caused by the adults in their lives (such as family breakdown) or by their leaving the care system that had looked after them up to age 16. Family mediation was important if it was preferable for the individual to move back with their family, but the relationships may have broken down.

25 (5) The local authority acted as a single point of access and evaluated the individual first, then made a referral to YMCA. People did not voluntarily choose to enter supported housing care. They were normal young adults who had faced some adversity in their lives, and had an immediate crisis that may be shortlived; there was no stereotype and there was usually no problem with the individual themselves; for example, the only obstacle may be their age because they could not sign a tenancy if under 18, or they may have been living with a grandparent who had died – there the young person needed support not because of the bereavement but because of the resulting housing situation problem. They must have the capability to develop independent living skills; the project was not suitable for those who were not able to live independently (for example, those with severe learning disabilities).

35 (6) Workers had an NVQ in advice and guidance; they provided emotional support but were not counsellors.

40 (7) A support plan was given and encouraged, but not imposed; it was agreed with the individual and reviewed periodically; it provided a supported pathway for the individual to progress.

(8) The details in the contracts did not reflect the categories of work used by particular charities – for example, YMCA were not involved with elderly

people, nor in supervising medication, or helping with aids and appliances. For YMCA it was provision of advice, guidance and support.

5 (9) YMCA offered support to young people apart from the council contracted services – for example, Lottery funded projects such as Talent Match aimed at employment outcomes for longterm unemployed individuals – and liaison with local colleges for opportunities.

Mr Lin's evidence

19. Mr Lin's evidence included the following.

10 (1) He is the Deputy Chief Executive Officer of Leicester. He is a Chartered Accountant and his role includes oversight of finance.

(2) The beneficiaries of Leicester's charitable works are principally children, young people and adults. It provides accessible supported accommodation and community services to the local communities. It has three main locations and has other supported housing locations.

15 (3) Leicester's business focus comprises three parts:

(a) Youth and homelessness: this includes youth homelessness, adult homelessness, young people with disabilities, and young offenders.

20 (b) Health & wellbeing: Leicester runs several sports and fitness classes open to the local community and to the residents in Leicester's supported housing.

(c) Theatre & community: Leicester operates the Y Theatre which has numerous performances throughout the year and offers creative opportunities to persons. Facilities are also hired out.

25 (4) Leicester has 110 residential places reserved for individuals aged between 16 and 25 years old. Residents stay an average of six months during which time Leicester staff give them the support they need to move towards independent living. The residential accommodation is located across Leicester and Leicestershire but there are 2 main centres at East Street and the Aylestone
30 Centre. Each individual has an HRS support worker (referred to as an individual's "keyworker") who will assist the individual to develop for themselves a "support pathway" i.e. issues to resolve for themselves. The support may be intensive at the outset and scaled down to a less intensive support regime, or even less intensive from outset, depending on the
35 circumstances of an individual. The keyworker will also refer individuals to other specialist sources for specialist support that Leicester has in-house such as "Moneywise advisor", "Education team", "Learning disabilities team" or "Mental health access worker", or to specialist third party agencies that deal with, for example, substance misuse.

(5) HRS is just part of the suite of support offerings available to residents in the supported housing projects.

5 (6) Individuals came because they had nowhere else to go. Local authorities evaluated individuals and would not refer individuals with serious drug addiction problems, or persons on the sex offenders register. The most common causes of homelessness in people referred were family breakdown, and young offenders just out of youth prison.

10 (7) The aim was to ensure individuals had the skills to apply for independent accommodation, and would not return to homelessness. They were shown the door but they had to walk through it.

(8) The local authority contract is for 85 units, predominantly at the two main centres.

15 (9) Each person accommodated signed a housing licence agreement. Rent came not from the individuals but directly from their housing benefit. Individuals did pay a charge for certain personal usage facilities. Although HRS was not imposed on individuals, they were expected to co-operate; HRS was intertwined with the provision of the accommodation; the accommodation could be ended if the person was not engaging in HRS. An individual might abandon their room; after a period of time it would be reallocated.

20 (10) The keyworker was the first point of contact in the process. Leicester's staff were not trained in specialist skills; they had training in health and safety, first aid, and de-escalation; they could refer individuals to specialist advisers.

Mr Laffey's evidence

20. Mr Laffey's evidence included the following.

25 (1) He is the Chief Executive Officer of Burton. He was also able to speak to the situations of the other three Appellants

30 (2) Every local authority has a housing department that is responsible for ensuring individuals in its area are not homeless. That department acts as a single point of access to assess the individual's circumstances and determine whether they can live independently. The assessment will place the person in one of three categories:

35 (a) Stage 1 is unexpectedly homeless and urgently requiring accommodation; the person must demonstrate a capability to develop adequate housing-related life skills to live independently; the department will identify a suitable housing provider; the provision is short (no more than six months) and is to solve an urgent need; the key driver is to move the individual on to independent living.

5 (b) Stage 2 is for persons who are likely to become homeless but also demonstrate a capability to develop adequate housing-related lifeskills to live independently; the department will identify a suitable housing provider; the provision is between six months and two years; the individual is expected to develop the skills to find accommodation in either the private housing sector or in general social housing within two years.

(c) Stage 3 is the move from supported housing to housing with no support.

10 (3) Providers (including YMCA) will specify the categories of individuals they will accept onto their housing projects. For YMCA that will typically be persons aged 16 to 25, and who are ready to start the process of settling down. Individuals experiencing severe problems would not be suitable. YMCA's access & resettlement team would at the pre-letting stage assess history and needs; undertake a risk assessment; confirm the individual is willing to engage in the support provision on offer, and be willing to sign up to the project's conditions and rules. A support worker (also called the keyworker) is appointed for each individual and assists them in drawing up a support plan, being a list of issues and problems the individual wants to address, with a time scale. The support worker provides information to assist the service user to arrive at a reasoned solution to the problem but it is up to the user to resolve the issue raised. There will be meetings of varied frequency. For example, a list of goals might be to register for housing benefit and job seekers allowance, register with a doctor, inform relevant persons of change of address, shop for groceries, wash own clothes, and so on.

25 (4) Birmingham offers only Stage 2 accommodation (at the Orchard), and has a single contract with Birmingham City Council. Black Country offered both Stage 1 & 2 accommodation; all contracts (Wolverhampton and Sandwell) ceased by April 2016. Leicester offers only Stage 2 accommodation. Burton offered both Stage 1 & 2 accommodation. The local authority contracts were on identical or similar terms.

30 (5) YMCA (as landlord) charges rent to tenants. YMCA also charges for support including HRS; the respective council pays the Appellant to provide the HRS service on its behalf; pricing varied – for Birmingham's contracts it was on an hourly rate, while Black Country made a charge for each staff member; the contracts had key performance indicators which considered the proportion of persons moved on into accommodation in the community.

35 (6) The provision of the housing is designed to address the fact that the individual is, or is in the very near future likely to become, homeless. The individual may have a range of distressing issues they face personally but the only one addressed by the provision of the housing is their homelessness. The HRS provision provides support including life skills aimed at equipping the individual to be able to avoid a repetition of homelessness.

5 (7) SPP commenced in 2003 and was designed to address the problem of cyclical repeated homelessness. SPP was run through the housing departments of local authorities, who contracted third party providers to deliver the service on behalf of the local authority. The provider could be a housing association or other charity with suitable housing stock (including the Appellants) - where the provider provided both accommodation and HRS – or a contractor only providing HRS (termed “floating support”).

10 (8) There is no compulsion to follow the plan. The individual can move on at any time, without any competency test. The support worker will not deal with personal health (including mental health) problems; those would have to be referred to relevant professionals.

(9) YMCA provide a variety of other support services outside HRS, eg family mediation services.

15 (10) If an individual becomes distressed during their tenancy then the supported accommodation would be maintained if possible but otherwise the person would be removed to more appropriate accommodation. He had never known a case where an individual was removed only because an HRS plan was not followed.

20 (11) Being homeless is very distressing but being rehoused in safe accommodation resolves that issue.

Mrs West's evidence

21. Mrs West's evidence included the following.

(1) She is a retired qualified social worker. She is married to Mr West.

25 (2) She explained the “care pathways” approach adopted by social workers. The HRS plan never forms part of the caring services care plan or care package.

Appellants' case

22. Mr West submitted as follows for the Appellants.

23. The appeals raised three questions:

30 (1) Who is the recipient of the supply of services?

(2) Are the services supplied “welfare services” within Item 9 Group 7 sch 9 – and thus exempt supplies?

(3) Are the services supplied “welfare advice or information” within Group 9 sch 7A – and thus reduced rate supplies?

Who is the recipient of the supply of services?

24. There were two supplies for VAT purposes. First, a supply by YMCA to the local authority for managing and performing the HRS services that the local authority was legally obliged to provide but outsourced to YMCA; this was akin to a local authority outsourcing other statutory functions such as waste collection services; these were standard rated for VAT purposes. Secondly, a supply by YMCA to the young persons benefiting from the HRS services; the individuals had no control over the provision of the services; there was no consideration provided by the individuals for these services and thus the supplies were outside the scope of VAT.

25. The outsourcing of HRS obligations by local authorities was recognised from the outset of the initiative; local authorities did not have inhouse the resources to provide HRS, and outsourcing was at that time encouraged by central government; the local authorities maintained a monitoring role to ensure the provision of HRS was satisfactory. A contractor was commissioned after a formal tender process; the contracts entered into were generic local authority services contracts that were intended to accommodate a number of purposes and could not be tailored specifically to HRS provisions, and so, unfortunately, the detail in the contracts was not particularly informative; the Tribunal should look beyond the wording of the contracts to what was done in practice, as evidenced by the witnesses: *Airtours*.

26. There can be no VATable supply if there is no consideration: art 2 of the 2006 VAT Directive. The only consideration is the fees paid by the local authorities.

27. In *LMUK* there were two interlinked outsourcing triangles. First between the sponsor (Sainsburys), LMUK and the collectors (customers) – there was a VATable supply to the sponsor. Secondly, between LMUK, the redeemers (outsourced third parties) and the collectors – the redeemers enabled LMUK to perform its obligations; this was the case here with YMCA in the position of the redeemers, the individuals as the collectors, and the local authority as LMUK. Payments received from the local authorities were not grants, they were payments for services. The position was different from, for example, where a local authority pays a care home part of the cost of a contract between the home and a resident.

28. *Hillingdon* concerned a council grant (to a legal advice centre), as did *Wolverhampton CAB* (to a CAB). In *Bath Festival* it was held that the monies received by the taxpayer were not a grant but instead consideration for services to the council (and thus VATable). A similar conclusion was reached in *Woking Museum*. *Age Concern* held that the recipients of a supply were the elderly individuals, not the local authorities (and primary care trusts) commissioning the services; it was suggested to the VAT Tribunal that the arrangements were a tax avoidance scheme, which may have coloured the outcome; *Age Concern* did not mention *Redrow*, and preceded *Bath Festival*, *Woking Museum* and *LMUK*; if decided today then the outcome would be different.

29. The cases show that an outsourcing arrangement gives rise to a supply by the contractor to the commissioner. Here the supply was to the local authority.

Are the services supplied “welfare services” within Item 9 Group 7 sch 9 – and thus exempt supplies?

30. HMRC contend that HRS services comprise “services which are directly connected with the provision of ... instruction designed to promote the physical or mental welfare of ... distressed ... persons.”

31. The Appellants’ housing projects offer a solution to the pressing issue of offering safe and secure accommodation. The purpose of HRS is to address the intractable problem of individuals being unable to maintain tenancies and so suffering repeated homelessness; it aimed to prevent distress and encourage better personal organisation. Once an individual has been located, they are visited by the keyworker at intervals, to assess how they are managing the tenancy. The agreed support plan is a rolling programme of flagging problems and issues, helping the individual to solve those problems themselves, and providing a timeframe for progress. The support plan is very different from the care plan that would be drawn up by a social services department. Individuals would not be accepted on the plan if they were not in a reasonable state of mind to have the capacity to acquire the skills offered by HRS.

32. The act of accepting a potentially homeless person into YMCA accommodation solves the problem of lack of accommodation and so prevents distress. Any distress of the individual after being accommodated was only mild, if that. Any particular concerns of the individual (eg financial or drug issues) were referred to specialist staff and were not part of the HRS services provided by the keyworker.

33. Provisions relating to exemptions should be construed narrowly. In *Watford* home help services were provided to elderly persons only in certain defined categories, and were held to be exempt supplies. HMRC’s published guidance appears to be based on the *Watford* decision (see Info Sheet 06/99 March 1999). However, the individuals supported by YMCA in the current appeals are not of the same description as in *Watford*.

34. The advice provided in the course of HRS did not amount to “instruction”. Instruction means teaching and required an element of compulsion, which HRS did not involve. The key worker provides information, advice and assistance to the individuals, to help them develop their own lifeskills. In the words of Notice 701/2, it was “the supply of information in the form of advice or help to enable them make an informed decision”, and thus not welfare services – this was the guidance on which the Appellants had relied in charging VAT to the local authorities. This was clearly different from the services described in *Watford* and *Age Concern*.

Are the services supplied “welfare advice or information” within Group 9 sch 7A – and thus reduced rate supplies?

35. Although this point was not covered by the decision letters under appeal, it was instructive to consider sch 7A. HMRC’s approach to the meaning of welfare services in sch 9 rendered sch 7A redundant.

Respondents' case

36. Ms Barnes submitted as follows for the Respondents.

Recipient of supplies

37. This matter was not determinative of the nature of the supplies and was irrelevant to the dispute. Even if the supplies were made to the local authorities, they were still “directly connected with the provision of ... instruction designed to promote the physical or mental welfare of ... distressed ... persons” and so fell within Item 9. HMRC’s view was that the supplies were made to the individuals by YMCA, on behalf of the councils who had a statutory duty to provide HRS.

38. The Appellants had varied their stance on this issue over time; their current stance was that there were two supplies by YMCA, one to the individuals and one to the council, and the supply to the individuals was for no consideration while that to the council was VATable. HMRC did not accept that analysis; the correct position was that YMCA makes a supply of HRS services to the individuals and receives third party consideration from the local authority; having subcontracted the services, the council stepped out of the picture and played no continuing role in the provision of HRS. That was the analysis in *Age Concern*. In *Airtours* the Supreme Court had emphasised that one must look at the economic reality of who receives the supplies.

39. In the recent FTT case of *Learning Centre (Romford)* the taxpayer was paid direct by the council for provision of day-care services; similarly, in the recent Upper Tribunal case of *LIFE Services* the taxpayer provided day services on behalf of the council; there was no suggestion in either case that the arrangement prevented the services potentially falling within Item 9.

Welfare services exemption in Item 9

40. There were three requisite elements:

(1) The individuals must constitute “distressed persons”;

(2) HRS must constitute “services directly connected with the provision of instruction”; and

(3) Such instruction must be “designed to promote the physical or mental welfare” of the individuals.

41. *Distressed persons:*

(1) The individuals were young people, usually aged 16 to 25, who were homeless or at risk of homelessness; there was an immediate crisis that needed to be resolved; the problems were not trivial; Mr Clay’s evidence was that no one would voluntarily choose to enter supported housing care. The Appellants suggested there were sequential services; first the provision of accommodation to resolve the distress of homelessness, and then the provision of HRS after

the distress of homelessness had been resolved; that was artificial – what the Appellants provided was all part and parcel of the same service; the HRS provided by YMCA was only available to persons housed by the YMCA – that was clear from the contracts – and there was the power to terminate if an individual was uncooperative (although that sanction was rarely used).

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(2) The evidence as to the reasons why the young individuals found themselves homeless was that there were major family breakdowns, or fear of domestic violence or forced marriages, or released young offenders, or exiting from the case system. Young persons dealing with these significant issues could properly be described as distressed. Further, this distress was not immediately solved by the provision of accommodation, and did not evaporate when the individuals were accepted into a YMCA housing project; that notion went against the ethos of the Supporting People programme, whose point was not just a roof over one’s head but the learning of new skills for independent living. It was accepted that the primary purpose of HRS was not to address the underlying sources of distress, being instead to develop independent living skills, and that the keyworkers would refer individuals to specialist colleagues to address directly the causes of distress. However, that did not mean that the individuals were not distressed.

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20 42. *Provision of instruction:*

(1) A suitable definition of instruction was “detailed information about how something should be done or operated”. The evidence was that the keyworkers provided instruction on how to complete forms, how to get involved with the local community, how to book appointments, how to Hoover. Contrary to the Appellants’ contention, there was no requirement for compulsion in instruction.

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(2) The direction of HRS was that individuals should learn lifeskills necessary for them to break the cycle of repeated homelessness, by learning how to manage their ability to maintain independent living. HRS provides the instruction on how those lifeskills can be acquired and developed.

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(3) HMRC guidance in Notices was not authoritative but was instructive of HMRC’s interpretation. However, the guidance must be read in full and in context; it was not appropriate for the Appellants to pick and choose selected extracts that happened to support their case. When read in their entirety, the guidance given in the HMRC Notices exactly addressed HRS services provided by YMCAs. To the extent that guidance needed to be clarified or revised, that would certainly be taken up by HMRC’s Policy Division, who were present at the hearing.

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(4) HMRC’s interpretation of “instruction” did not render sch 7A (the reduced rate for certain welfare advice or information) of no effect. Instruction is targeted at particular individuals, unlike “advice or information” which was of more general application. That was clear from Note 3(c) to sch

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5 7A which excluded “supplies of advice or information provided solely for the benefit of a particular individual according to his personal circumstances.” For example, a video on YouTube explaining how to fill out a housing benefit form is not targeted at any particular individual; that contrasted with a keyworker and an individual working together to draw up a list of tasks including to complete a housing benefit form, with the keyworker taking the individual through the form.

43. *Designed to promote physical or mental welfare:*

10 (1) This was implicit in the aims of HRS – to enable an individual to live independently and not become homeless again.

The reduced rate in sch 7A

15 44. This was not a matter in the disputed decisions and, as accepted by the Appellants, did not need to be determined by the Tribunal. If it was raised to attempt to show that it conflicted with the exemption in Item 9 then that point was answered above.

Consideration and Conclusions

45. I shall deal with the points in the following order:

- 20 (1) Findings of fact on the nature of the HRS services.
- (2) The Appellants’ contentions on the identity of the recipient of the services.
- (3) Whether the HRS services are exempt pursuant to Item 9 Group 7 sch 9 VATA 1994.
- (4) The Appellants’ contentions on the reduced rate under Group 9 sch 7A VATA 1994.

25 ***The HRS Services***

46. Before undertaking any legal analysis of the services for VAT purposes, it is necessary to determine the factual nature of the HRS services provided by the Appellants.

30 47. This requires consideration of the economic and commercial realities of the transactions. Per the ECJ in *Revenue and Customs Commissioners v Newey (trading as Ocean Finance)* [2013] STC 2432:

35 “42. As regards in particular the importance of contractual terms in categorising a transaction as a taxable transaction, it is necessary to bear in mind the case law of the court according to which consideration of economic and commercial realities is a fundamental criterion for the application of the common system of VAT (see, to that effect, *Revenue*

and Customs Comrs v Loyalty Management UK Ltd, Baxi Group Ltd v Revenue and Customs Comrs (Joined cases C-53/09 and C-55/09) [2010] STC 2651, [2010] ECR I-9187, paras 39 and 40 and the case law cited).

5 43. Given that the contractual position normally reflects the economic and commercial reality of the transactions and in order to satisfy the requirements of legal certainty, the relevant contractual terms constitute a factor to be taken into consideration when the supplier and the recipient in a 'supply of services' transaction within the meaning of arts
10 2(1) and 6(1) of the Sixth Directive have to be identified.

44. It may, however, become apparent that, sometimes, certain contractual terms do not wholly reflect the economic and commercial reality of the transactions.”

15 48. The contract which gives the most detail of the services to be performed is that between Black Country and Sandwell Borough Council (undated but covering the period from 1 October 2013). Schedule 1 states:

20 “Housing-related support is defined as support services which are provided to any person for the purpose of developing that person's capacity to live independently in accommodation or sustaining his capacity to do so provided:

that the service user

- 25 • has specific and identifiable vulnerabilities that render them in need of support services, and that the support service is therefore allocated on the basis of a defined selection I admission criteria that the individual applicant is assessed against
- 30 • is over the age of 16, except where the support is provided as part of a package for their parent(s) or carer(s) and the support provided to the under 16 year old(s) has a direct impact on the effectiveness of the support provided to the parent(s) or carer(s)

and that the support service provided

- is principally focused on enabling the service user to secure or maintain their accommodation
- is the subject of a formal support plan/agreement
- 35 • distinguishes clearly between short-term resettlement and ongoing support maintenance where the service is anticipated to be long-term
- is not the responsibility of a statutory body to fund from other budgets than Supporting People Grant

- is not designed to enforce an order of the court
 - is supplementary to any housing management service provided by the same Service Provider to the same service user
 - includes no element that would be defined as personal care
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- includes the provision of cleaning services where these are not a landlord responsibility, and where the provision is essential in order to ensure that the service user is able to retain their accommodation, and where this service was in receipt of legacy funding”

10 49. Schedule 2 of the Sandwell contract then sets out a list of tasks and, for each, states eligible and ineligible activities. The tasks are: Developing domestic/life skills; Help in setting up/maintaining a home or tenancy; Advice, advocacy & liaison; Counselling & emotional support; Help in gaining access to other services; Help in establishing social contacts & activities; Peer support & befriending; Help finding other accommodation; Help maintaining safety & security of the dwelling; Cleaning of own rooms; Advice & support on repairs/home improvements; Management of handyperson services; Help with shopping errands & other good neighbour tasks; Provision of child care; Supervision of health & well being, including supervision of medication; Personal care; and Domiciliary & home care.

20 50. The listed activities are lengthy and specific – for example, within “Developing domestic/life skills” YMCA is required to provide advice and guidance on undertaking essential daily living tasks such as cooking, cleaning and shopping; but excluded are actual shopping, cleaning or preparing meals for the individual. Another example, within “Counselling and emotional support” YMCA is required to provide low level emotional support, but not specialist counselling on drug and alcohol issues.

30 51. Burton had two contracts with Staffordshire County Council (dated 17 July 2003 and 16 March 2004) which are in broadly similar form. In Schedule 1 to the 2003 contract the Eligible Support Tasks are stated to be: Help in setting up and maintaining home or tenancy; Developing domestic/life skills; Developing social skills/behaviour management; Advice, advocacy and liaison; Help in managing finances and benefit claims; Emotional support, counselling and advice; Help in gaining access to other services; Help in establishing social contacts and activities; Help in establishing personal safety and security; Supervision and monitoring of health and well being; Peer support and befriending; Help finding other accommodation; Help maintaining the safety and security of the dwelling; Access to local community organisations; Security support related to racial harassment; Signposting to culture specific health/treatment services.

40 52. In Leicester’s contract with Leicester City Council (undated but covering the period from 28 February 2014) Schedule 2 Part C defines the services by reference to Schedule 4, which states only “support the Council in the delivery of national requirements ...”

53. Birmingham's contract with Birmingham City Council (dated 11 August 2010) refers to services defined in Schedule 1 but there is (at least in the hearing bundle) no such schedule.

54. Mr West for the Appellants submitted that none of the local authority contracts spell out exactly what services are to be provided by the Appellants. While I think that goes too far, I accept the explanation given by the witnesses that these were generic contracts intended to apply to a range of various service providers, and the details had not been adequately specified for some of the particular agreements. I consider that the contracts entered into by Black Country and Burton do give an accurate representation of the sort of services that the parties envisaged, and that was likely to be in the minds of the parties to the contracts of Birmingham and Leicester. I accept that the Appellants did know what was expected of them under the contracts, even if that was not stipulated in the contracts, and I accept the general descriptions of those services provided by the witnesses, all of whom were clearly very familiar with HRS provision.

55. I make the following findings on what services were provided by the Appellants under the local authority contracts.

(1) HRS was part of the Government's Supporting People Programme, launched in 2003. The Government describes it thus: "People living in supported housing receive 'housing related supported services' in order to enable them to live independently. Examples... include... assistance for young care leavers to prepare for greater independence through training in basic skills such as cooking and hygiene; ..."

(2) HRS is the responsibility of local authority housing departments, who receive central government grants to fund the service. Most local authorities outsource the provision of HRS to appropriate agencies through a tendering process. The services might be contracted together with accommodation provision, or on a standalone basis. Each of the Appellants won such contracts: Birmingham has a contract with Birmingham City Council; Black Country had a number of contracts, two of which continue; Leicester has a contract with Leicester City Council; and Burton has at least one contract.

(3) Local authority housing departments act as a central access gateway to establish the needs and entitlements of homeless (or potentially homeless) applicants. The local authority determines what housing provision should be made for an individual, including whether they should receive HRS services.

(4) Individuals admitted to supported housing had nowhere else to go. They had suffered some adversity and reached a crisis (which may be shortlived) in their lives. They included young persons released from youth detention, or who had reached the maximum age for youth care eligibility; a frequent cause was serious family breakdown or bereavement, or some other problem usually caused by the adults in their lives.

5 (5) Suitable individuals are allocated by the local authority to YMCA, and YMCA undertake a preliminary evaluation of the individual to ensure that he/she satisfies the criteria for accommodation in a YMCA supported housing project; for example, persons with current drug problems, or disruptive behaviour, or persons who need permanent supervision, would not be suitable. A key expectation is that the individual should be able to develop within two years the skills necessary to live independently (and so not return to homelessness). With YMCA the period of accommodation is usually shorter than that, probably around six months. A support worker (keyworker) is assigned to each individual. The keyworker and the individual together draw up a support pathway plan, being a list of issues and problems to be addressed, with a timescale, designed to equip the individual with lifeskills necessary for future independent living; example tasks might be to register for housing benefit and job seekers allowance, register with a doctor, inform relevant persons of change of address, shop for groceries, wash own clothes, etc. The support plan is different from the formal care plans used by professional social workers. The keyworker meets periodically with the individual to review progress, offer encouragement, and update the plan. The keyworker does not perform the tasks for the individual, but instead advises how to achieve them and assists if appropriate. The keyworker is not expected to deal with serious or specialised problems (eg health issues, addictions, financial difficulties, learning disabilities) but would guide the individual to appropriate expert assistance within or known to YMCA.

25 (6) YMCA charge rent to residents, usually mandated straight from the resident's housing benefit entitlement. YMCA receive fees from the local authority, which are calculated on various bases. The contracts have performance criteria, measured by reference to the number of individuals who successfully move on to independent living.

30 (7) HRS is just one of a suite of support offerings available to residents in YMCA supported housing projects. YMCA also offers services such as family mediation and employability courses.

35 (8) Co-operation with the support plan was expected but not mandatory. Although in theory a refusal to engage with HRS was grounds to terminate the accommodation, that was rarely if ever done. A resident could leave the supported housing at any time; there was no competency evaluation for moving on. If an individual's circumstances worsened while in accommodation then alternative housing provision might be considered, more suitable to his/her new needs.

The Recipient

40 56. The Appellants' first contention is that the supplies of HRS services cannot fall within Item 9 because (i) the recipients of the supply are the young people, who pay no consideration; and (ii) although the local authority pays, it cannot itself be a

distressed person within Note 6 and thus does not receive welfare services. The Appellants contend the identity of the recipient of the services is important.

57. Looking first at the EU legislation, there is nothing in art 132(1)(g) that stipulates the identity of the recipient of the welfare supplies as relevant to the qualification of the services for exemption. That contrasts with, for example, the exemption for sporting services in art 132(1)(m) which does specify the identity of the recipient and requires it to be a participant (emphasis added): “the supply of certain services closely linked to sport or physical education by non-profit making organisations *to persons taking part in sport or physical education.*”

58. Turning to the UK legislation in Item 9 of and Note 6 to Group 7, there is again nothing that stipulates the identity of the recipient of the welfare supplies. Indeed, I consider the words “directly connected with” in Note 6 may envisage a wider scope than the elderly, sick, distressed or disabled persons who benefit from the welfare services – those words certainly do not impose any restriction.

59. I conclude that the identity of the recipient is not determinative. Further, that although the young individuals clearly benefit from the HRS services, that does not undermine the existence of the supply made to and paid for by the local authorities. The answer is, I consider, given by *Redrow*. In *Redrow* estate agents charged a housebuilder for their services of selling the existing homes of the housebuilder’s potential customers; the House of Lords determined that the VAT on the fees was input tax for the housebuilder; per Lord Hope (at 165-166) (emphasis added):

“Clearly the estate agents were supplying services to the prospective purchasers, as they were engaged in the marketing and sale of the existing homes which belonged to the prospective purchasers and not to Redrow. But Redrow was prepared to undertake to pay for these services in order to facilitate the sale of its homes to the prospective purchasers. The estate agents received their instructions from Redrow and, so long as the prospective purchasers completed with Redrow, it was Redrow who paid for the services which were supplied. *I do not see how the transactions between Redrow and the estate agents can be described other than as the supply of services for a consideration to Redrow.* The agents were doing what Redrow instructed them to do, for which they charged a fee which was paid by Redrow. ...

Questions such as who benefits from the service or who is the consumer of it are not helpful. The answers are likely to differ according to the interest which various people may have in the transaction. The matter has to be looked at from the standpoint of the person who is claiming the deduction by way of input tax. Was something being done for him for which, in the course or furtherance of a business carried on by him, he has had to pay a consideration which has attracted VAT? *The fact that someone else, in this case, the prospective purchaser, also received a service as part of the same transaction does not deprive the person who instructed the service and who has had to pay for it of the benefit of the deduction.*”

60. Lord Millett (at 171) stated:

5 “... the taxpayer [ie Redrow, the housebuilder] did not merely derive a benefit from the services which the agents supplied to the householders and for which it paid. It chose the agents and instructed them. In return for the payment of their fees it obtained a contractual right to have the householders' homes valued and marketed, to monitor the agents' performance and maintain pressure for a quick sale, and to override any alteration in the agents' instructions which the householders might be minded to give. Everything which the agents did was done at Redrow's request and in accordance with its instructions and, in the events which happened, at its expense. The doing of those acts constituted a supply of services to Redrow.”

15 61. Although the individuals receive the benefit of the HRS services, YMCA is instructed by and paid by the local authority; the local authority does that by way of an outsourcing of its statutory obligation to provide HRS. So, per *Redrow*, there is a supply of services by YMCA to the local authority.

20 62. In *Redrow* there was a dispute as to whether the VAT charged by the agents was recoverable by the housebuilder. Here, the local authority enjoys a statutory right of reclaim under s 33 for VAT chargeable on services supplied “not for the purpose of any business carried on by the body”. Thus any VAT chargeable by YMCA on its fees is recoverable by the local authority. I understand HMRC do not contest that analysis - their stance is that YMCA should not be charging VAT in the first place.

25 63. I consider that the Appellants' attempts to analyse the position as involving separate supplies by them to the individuals and to the local authorities are incorrect. The true position is analogous to *Redrow*, with YMCA standing in the shoes of the estate agents, the local authority in the place of the housebuilder, and the individuals in the place of the potential customers.

30 64. I should address the VAT Tribunal case of *Age Concern*, where there was a situation similar to the current appeals; councils and PCTs outsourced to the taxpayer charity a range of services for the elderly within the areas for which they were responsible. One argument by the taxpayer was that the services were supplied to the commissioners of the services, not the elderly persons. The Tribunal held (at [24]), “We ... conclude that the services are provided by the [taxpayer] to the end recipients”. That conclusion must be seen in the context of the point being put to the Tribunal; the contention of HMRC's counsel (at [22]) was:

40 “Mr. Puzey submitted that Item 9 and Note 6 imposed no requirement as to whom the supply had to be made to, merely that the services were “directly connected...”. The local authorities could not be recipients of welfare in the sense of being the beneficiary of the service but there was no requirement that they should be. It was perfectly possible to provide a service to the benefit of one party but pursuant to a contract with another ... Mr. Puzey went on to argue that as what the Appellant supplies and what is received by the elderly is exactly the same thing, unaltered by either the interposition of the company or the local

authority, if it is welfare services when supplied by the latter it must be welfare services when supplied by the Appellant.”

5 Reading together paragraphs [18] to [23] of the decision, I interpret the Tribunal as saying that the beneficiaries of the welfare services were the elderly and thus the services were *provided* to those individuals. However, that is not the relevant test for VAT purposes; it is whether there were services *supplied* – and that, as I have said, is confirmed by *Redrow* in that the fact that someone else also received a service as part of the same transaction does not change the fact that there was a supply made between the parties to the contract. The Tribunal was not referred to *Redrow* (see at [17]) and
10 also did not address HMRC’s point that the identity of the recipient was anyway irrelevant for the purposes of Item 9. For those reasons I do not consider the decision in *Age Concern* (which in any event is not binding on this Tribunal) provides an answer to the determination of the current appeals.

65. I conclude there is a supply of services for VAT purposes by YMCA to the local authority (regardless of the fact that the main beneficiaries of the HRS are the young residents), and the identity of the recipient does not affect whether the supply falls within Item 9.
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Exemption under Item 9 Group 7 sch 9

66. HMRC contend the HRS services are exempt under Item 9 because they constitute “services which are directly connected with the provision of ... instruction designed to promote the physical or mental welfare of ... distressed ... persons” (Note 6 to Group 7 refers).
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67. Several of the cases cited to me consider a distinction between a voluntary grant and commercial consideration: *Hillingdon*, *Wolverhampton CAB*, *Bath Festival*, and *Woking Museum*. That point does not arise in the current appeals; it is agreed that YMCA receives fees from the local authorities as consideration for performing the HRS services that YMCA has been contracted to provide.
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Distressed persons

68. Mr West for the Appellants contends that the relevant individuals were not “distressed persons” when they received the HRS services. More specifically, (i) HMRC’s guidance (Notice 701/1 para 5.18.2 – see [[14] above) was that distress for these purposes meant “severe rather than mild emotional or physical discomfort”; and (ii) while the individuals may have suffered some distress at being actually or potentially homeless, that distress was relieved when the individual was accommodated by YMCA, and so the HRS services were then provided to a person who was no longer distressed.
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69. The appropriate definition of “distressed” in the OED is, “Afflicted with pain or trouble; sorely troubled; in sore straits. Applied *spec.* to a person living in impoverished circumstances.” I consider that is an accurate description of the young people whom YMCA accommodate and provide with HRS services. The witnesses explained that the individuals were already homeless or expected to become homeless
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soon; that this was not a voluntary choice made by the young person; that this was almost always through no fault of their own, thus they were the victims of circumstance; that other avenues were also available and would be explored by the local authority before nominating the individual for supported housing with YMCA.

5 All those factors point to the young people being “afflicted with trouble”, “in sore straits” and “living in impoverished circumstances”. I do not accept Mr West’s distinction between pre-accommodation distress and an absence of distress after accommodation was offered. I accept that a young person who is accommodated by YMCA will be more comfortable than he/she was before securing the offer of supported housing; however, the witnesses’ descriptions of the challenges still faced by the individuals after acceptance into the supported housing programme showed, to my satisfaction, that they can still properly be described as distressed while they were resident and receiving the HRS.

70. The contents of the HMRC Notices are HMRC’s views and, of course, are not binding on this Tribunal. I agree with HMRC that mere mild emotional or physical discomfort is unlikely to constitute “distress” but I think that the use of the descriptor “severe” is unfortunate, and that there can be genuine distress experienced short of severe circumstances. I do note that a specific example of welfare services given by HMRC in the same paragraph is “a night shelter for the homeless”, which is not dissimilar to the situation faced by the young persons accommodated by YMCA.

Instruction

71. Mr West contends that “instruction” connotes compulsion, and the HRS is voluntary not compulsory. I do not agree that compulsion is necessary or inferred by “instruction”. There are several definitions in the OED and the one that I consider most applicable to the current situation is, “That which is taught; knowledge or authoritative guidance imparted by one person to another.”

72. I consider the HRS services meet that definition. The keyworker draws up, maintains and reviews an individualised support plan for each young person; the keyworker does not perform identified tasks for the individual (who is expected to perform them themselves) but instead imparts the knowledge of what is required and how to do it, and provides guidance to the individual.

73. I have already commented that the contents of the HMRC Notices are HMRC’s views and not binding on this Tribunal. I note that in Notice 701/2 (see [15] above) examples given by HMRC of matters they consider constitute “care, treatment or instruction” include “support or instruction designed to develop or sustain a person’s capacity to live independently in the community”, and “general assistance and support with everyday tasks such as form filling, letter reading or writing, bill paying”. Both those are adequate descriptions of the tasks undertaken as part of HRS. Mr West highlighted that the Notice also states, “the ... instruction must be part of a specific individual care plan and the service must relate to it”, and he contrasts the formal care plans used by social services professionals, with the support plan used by HRS keyworkers. While a social worker’s care plan may be more formal, I do not see that the sort of plan described by the witnesses (and the example contained in the

hearing bundle) cannot constitute “a specific individual care plan” as envisaged by HMRC. Therefore the approach adopted by HMRC in these appeals is in accordance with their views set out in Notice 701/2.

Designed to promote physical or mental welfare

5 74. On this point I have found the VAT Tribunal (Dr Avery Jones) decision in *Watford* instructive. In *Watford* home help services were provided to elderly persons only in certain defined categories (at [7]):

10 “Hertfordshire Social Services lay down criteria for deciding whether people qualify for services arranged and funded by social services. The people whose services by the Appellant are funded by the Council are in bands 1 and 2. In band 1 there is current substantial risk to health/welfare of the person, or that they will harm themselves or others. These are persons unable to provide even basic self care who require supervision to prevent risk of harm. Their substantial and regular carer is unable to continue or alternative or additional provision is required. In band 2 there is imminent substantial risk to health/welfare of the person, or that they will harm themselves or others. They have major difficulty in safely carrying out some key daily living tasks. They are disorientated, anxious, unable to communicate or at some risk of harm. Their substantial and regular carer needs additional support to enable them to continue helping. It is only for persons in these two bands that the Council pays for domestic help. Persons in these two bands are clearly severely disabled and rely on social services, including the Appellant, to continue to life in their own homes.”

25 75. At [10] the VAT Tribunal stated:

30 “Looked at on their own, the type of services provided by the Appellant do not at first sight appear to be directly connected with the provision of care. On this basis, they could easily be supplied to people who find it convenient to have some home help. However, contrary to the Commissioners' submission, we do not think that we should look at the services in isolation and ignore the type of person to whom they are supplied. “Welfare services” are defined to mean services which are directly connected with the provision of care designed to promote the physical or mental welfare of elderly persons. It is only by considering the type of recipient that one can determine what services qualify. The services are provided under contract with the Council to people in bands 1 and 2, which means that they are people for whom there is either current or imminent substantial risk to the health and welfare of the person, and who are unable to provide even basic self care or have major difficulty in safely carrying out some key daily living tasks. For such people the services provided by the Appellant are not an additional help but are either part of the necessary care which the people need in order to continue to live at home, or they are so directly connected with it that they fall within the terms of the statutory provision. Accordingly,

in our view, the services which are supplied under contract with the Council to persons in bands 1 and 2 are exempt.”

76. I respectfully agree with the VAT Tribunal that the services should not be looked at in isolation, ignoring the type of person to whom they are supplied, and that it is only by considering the type of recipient that one can determine what services qualify. The local authorities determined that certain young people required supported housing and HRS. The HRS services might in a different context appear to be divorced from physical or mental welfare – for example, instructing someone how to Hoover, or how to fill in a claim for housing benefit – but in the actual context of a distressed and vulnerable young person anxious to avoid repeat homelessness I consider the HRS services are indeed designed to promote physical or mental welfare of the young recipient.

Conclusion on Item 9

77. For the above reasons, the HRS services in dispute do constitute exempt welfare services within Item 9 Group 7 sch 9 VATA 1994.

The reduced rate under Group 9 sch 7A

78. This is not a matter raised in the disputed decisions and, therefore, does not fall to be determined by the Tribunal. The only aspect on which I should comment is Mr West’s contention that HMRC’s interpretation of “welfare services” in the Item 9 Group 7 sch 9 exemption renders otiose the reduced rate provisions for “welfare advice or information” in Group 9 sch 7A. I do not agree with that contention; it seems to me that there is a distinction between the two provisions. The reduced rate provisions specifically exclude “supplies of advice or information provided solely for the benefit of a particular individual or according to his personal circumstances” (Note 3(c)). There could be “advice or information” that is “provided solely for the benefit of a particular individual or according to his personal circumstances” but which does not amount to “instruction” in Item 9, and so does not constitute “welfare services” within Item 9.

The effect of the decision

79. In response to a question from the Tribunal as to how HMRC would apply a decision in their favour, Ms Barnes on instructions replied as follows. If HMRC win then for each Appellant other than Burton, HMRC would apply the Tribunal outcome to supplies made after the date of the relevant disputed decision letter. This was because HMRC was aware that those three Appellants had received correspondence in 2005 which suggested that HRS supplies were not exempt, so the effect of a Tribunal decision that exemption was not available would be delayed until the time when HMRC stated their views in the decision letters. For Burton, no suggestion had been made that supplies were not exempt and so the amendment would go back to VAT period 03/13, through to when the relevant contracts ended.

80. I must not go beyond the Tribunal’s statutory jurisdiction but I would comment (completely *obiter*) that it strikes me as strange that Burton should be

5 afforded a less favourable treatment just because, say, they did not receive a control visit at which the matter of exemption had been mentioned; if HMRC communicated a view to YMCA then perhaps the same treatment should be afforded to all similarly affected taxpayers within the YMCA organisation. However, that is not a matter for me to determine.

Decision

81. The appeals are DISMISSED.

10 82. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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Peter Kempster
TRIBUNAL JUDGE
RELEASE DATE: 21 June 2018