

**Exempt welfare services
Age Concern Leicestershire and Rutland v HMRC**

This case considers whether services commissioned by a local authority were supplied to the local authority or to the ultimate beneficiaries of the services; whether they were welfare services; and whether they were supplied by the appellant (a charity) or its wholly owned subsidiary. Age Concern Leicestershire and Rutland (Age Concern) argued that the supplies were made to the local authority, and that they were made by the subsidiary, hence did not qualify for exemption as the sub was neither a charity, public body or state regulated private welfare institution. As a fall back, Age Concern also argued that the services were not welfare as they were too general, (day care, lunch clubs, information and advice), and hence were taxable even if supplied by the charity. This arrangement allowed for additional VAT recovery without creating any cost as the local authority could recover any VAT incurred on supplies to it received in the course of it fulfilling its statutory obligations to provide welfare and support services to the elderly of the area.

HMRC argued the supplies were made to the end user, were welfare services, and were made by the charity as the subsidiary had no staff or resources. Hence they were exempt. There was a single supply of welfare, as the ultimate aim was to benefit the needy elderly, the supply of meals could not be separated from this.

The charity agreed to act as agent of the subsidiary in providing the services the local authority had contracted for (the original service level agreements with the local authority were transferred from the charity to the sub). The charity charged VAT on its supply of staff and facilities to the sub.

The Tribunal found for HMRC. Despite the contracts between the parties the Tribunal concluded the supplies were made to the elderly end users. The legislation did not specify the need for any contract to exist between the users of the service and the provider, and it was possible for services to be provided to one party under a contract with another. The Tribunal also found the services were welfare because the recipients had to be assessed as being in need first before they qualified for the services on offer. A further argument by the appellant that it was wrong to exempt the cost of the meals provided to the elderly because the elderly person paid a contribution for the meal. Therefore, it was argued the provision of the meals was not essential to the welfare supply, generated additional income, and was a transaction in competition with commercial enterprises that are liable for VAT (Art 134 of the Directive). The Tribunal also rejected this, seeing the meal, and any contribution to its cost paid by the elderly person, as simply part of the value of the overall welfare supply.

Many charities may be affected by this decision as it is likely that HMRC will seek to apply it elsewhere. Any business that has set up similar structures should seek expert advice.