

# London Borough of Merton Council (Appellant) v Nuffield Health (Respondent) [2023] UKSC 18

## On appeal from: [2021] EWCA Civ 826

Date: 7 June 2023

### Justices

Lord Briggs, Lord Kitchin, Lord Sales, Lord Hamblen and Lord Leggatt

### Background to the Appeal

Section 43(5) and (6)(a) of the Local Government Finance Act 1988 ("the **LGFA**") provides for a mandatory 80% relief from business rates where "the ratepayer is a charity or trustees for a charity" and the premises are "wholly or mainly used for charitable purposes (whether of that charity or of that and other charities)". In this appeal, the Supreme Court is asked to decide whether the respondent, Nuffield Health, is entitled to this mandatory 80% relief in respect of its members-only gym known as Merton Abbey.

Nuffield Health is a registered charity whose purposes are "to advance, promote and maintain health and healthcare of all descriptions and to prevent, relieve and cure sickness and ill health of any kind, all for the public benefit." It pursues those purposes primarily through the provision of gym facilities, including the gym at Merton Abbey. It also operates private hospitals and clinics. The facilities at the Merton Abbey gym are mainly restricted to fee-paying Nuffield Health gym members. In April 2019, the standard membership fee was £80 per month (or £71 per month for those who committed to a longer period of membership). Nuffield Health offers certain services to non-members through the Merton Abbey gym, but these are limited.

Nuffield Health claimed the mandatory 80% relief from business rates under section 43(5) and (6)(a) of the LGFA from 1 August 2016, when it acquired the Merton Abbey gym from Virgin Active. The appellant rating authority, London Borough of Merton Council ("the **Council**") refused the relief because the membership fees were set at a level which excluded persons of modest means from enjoying the gym facilities. In the Council's view, this meant that the Merton Abbey gym was not used for charitable purposes because the requirement for public benefit was not satisfied.

Nuffield Health challenged this decision and succeeded, both in the High Court and, by a majority, in the Court of Appeal. The Council appeals to the Supreme Court.

### Judgment

The Supreme Court unanimously dismisses the Council's appeal. It holds that Nuffield Health uses the Merton Abbey gym for its charitable purposes. Nuffield Health is therefore entitled to the mandatory 80% relief from business rates under section 43(5) and (6)(a) of the LGFA with effect from 1 August 2016. Lord Briggs and Lord Sales give a joint judgment with which the other members of the Court agree.

### Reasons for the Judgment

The Supreme Court holds that section 43(5) and (6)(a) of the LGFA imposes two conditions for entitlement to the mandatory 80% relief from business rates, to be tested by a two-stage enquiry [49].

The first condition is that the ratepayer is a charity or trustees for a charity. At this stage of the

enquiry, the rating authority should first consider whether the ratepayer is a registered charity. If it is, the first condition will be satisfied since, by section 37(1) of the Charities Act 2011 ("the **2011 Act**"), the ratepayer is conclusively presumed to be a charity [22], [49], [52]. However, if the ratepayer is not registered, the rating authority should consider whether it meets the test for charitable status. This is a question of charity law [52]. To qualify as a charity, a ratepayer must be established for exclusively charitable purposes. That is, for purposes which fall within section 3(1) of the 2011 Act and are for the public benefit as defined in section 4 [22]-[25]. These purposes should ordinarily be identified by reference to the ratepayer's written constitution. However, if the ratepayer does not have a written constitution, or the constitution is inconclusive, they can be determined by a review of the ratepayer's activities and the purposes they serve. In considering whether the requirements of section 4 are satisfied, one looks at the ratepayer's activities as a whole, not just as carried on at any one particular site [24], [30]-[31], [49], [56].

The second condition is that the premises in question are used wholly or mainly for the charitable purposes of the ratepayer, or of the ratepayer and other particular charities. At this stage of the enquiry, the rating authority is required to consider how the premises are, in fact, being used. In contrast with stage one, this is a question of fact, not a question of charity law. If the premises are being used for the (necessarily charitable) purposes of the charity or for incidental activities which are sufficiently closely connected with those purposes, then the second condition will be satisfied. In contrast, if the premises are used for activities which are not sufficiently closely connected with the charity's purposes (such as fundraising or investment), then the second condition will not be met. The same is true if the activities are conducted in breach of the trustees' fiduciary duties and not in pursuit of the charity's purposes [43], [50]-[52].

The Supreme Court holds that both of the conditions set out in section 43(5) and (6)(a) of the LGFA are satisfied on the facts of this case. Nuffield Health is a registered charity and therefore meets the first condition. Even though the services provided at the Merton Abbey gym do not, taken by themselves, satisfy the public benefit test in section 4 of the 2011 Act, Nuffield Health's purposes are exclusively charitable in all the places where they are carried on and, viewed as a whole, satisfy the public benefit test in that section. The second condition is also met because Nuffield Health uses the Merton Abbey gym for the direct fulfilment of its charitable purpose of promoting health through exercise [44], [63]-[64]. Both the rich and the poor form part of the section of the public served by this purpose. Accordingly, Merton Abbey is used for charitable purposes, because the provision of gym facilities to those who can afford to pay the membership fees is itself carried out as part of the public benefit requirement [26]-[29], [64].

The parties agree that the Nuffield Health's trustees are not in breach of their fiduciary duties. It must therefore be assumed that people of modest means are not excluded from benefitting from Nuffield Health's activities overall, even if they are excluded from the facilities at Merton Abbey gym. It follows that Nuffield Health is entitled to the mandatory 80% relief from business rates [64]-[65].

*References in square brackets are to paragraphs in the judgment*

## **Note**

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at [Decided cases - The Supreme Court](#)