WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT 1304

Date of Decision: 9 April 2019

Complaint

In 2004, the customer took up occupancy of a property in [ ], which comprised a takeaway restaurant and a self-contained flat above it. The company billed the takeaway business and the flat separately under two different rateable values ("RV"). The customer argued that they should have been billed as one and not classed as two separate properties. Following a visit in November 2018, the company backdated the RV charges to 1 April 2012. The customer contends, however, that the refunding should go back to 2004 and claims £14,910.14 in this respect. They also seek (1) evidence of how the RV charges have been calculated; (2) £2,500.00 compensation for inconvenience and distress; and (3) an apology for time wasted because this matter has been ongoing since October 2018.

Defence

The first contact that the company received on this issue (i.e. about the two properties being one) was on 11 October 2018. The company charges for its services based on the information held on file. Until the charges are queried or changes are confirmed, the company would not have had any awareness of the issue. The company does not consider that it is liable to pay compensation in this case because it was not in breach of its obligations. It does not believe that it should be required to make a more extensive refund to the customer than that already credited.

No offer of settlement has been made.

Findings

The company (1) is not liable or 'at fault' for charging the customer in the way that it has historically; and (2) it cannot be said to be guilty of overcharging in this case. (3) The remedial measures that it applied in the customer's favour, after its visit to the property in November 2018, were fair, reasonable, proportionate and sufficiently extensive. (4) The company has provided its services in this case to the standard reasonably expected.

Outcome

The company does not need to take any further action.

The customer must reply by 9 May 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 9 April 2019

Party Details

Customer: [ ]

Customer's representative: [ ]

Company: [ ].

Case Outline

The customer's complaint is that:

- In 2004, they took up occupancy of:
  - 1 Oak Street, a takeaway restaurant ("the Takeaway Business"); and
  - 1a Oak Street, a self-contained flat ("the Flat") above the Takeaway Business.
- The company operated two accounts and the Takeaway Business and the Flat were billed separately under two different rateable values ("RV").
- The customer argued, however, that the Flat and the Takeaway Business should have been billed as one and not classed as two separate properties.
- On 6 November 2018, the company visited the property and confirmed that there is only one main entrance. It was agreed therefore:
  - to remove the RV charges from 1 April 2012 (i.e. back-dating six years); and
  - to put the Takeaway Business on commercial assessed charges; and
  - to close the account for the Flat.
- The customer is not satisfied that the company's response goes far enough in this respect.
- The customer would like the company to provide evidence of how the account has been calculated - specifically as to the calculation of the second RV.
- The Takeaway Business and the Flat should always have been regarded as a single property (attracting a single RV charge.) The company was billing the property incorrectly for the whole of the period of the customer's occupancy. Moreover, the customer notes that the company

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cannot provide evidence of the two Valuation Office Agency ("VOA") assessments on which it relies. For these reasons, the customer contends that the relevant charges should be refunded all the way back to 2004, with interest, as follows:

Description	Amount claimed (£)
Account no. 14819[] for period 2004-17	11,908.66
Account no. 14819[] for period 2017-19	2,246.40
Account no. 1482[] for period 2004-17	4,571.08
Account no. 1482[] for period 2017-19	760.49
10% interest on 14 years' incorrect billing	1,949.00
LESS refund already received from company	(6,525.49)
TOTAL	**14,910.14**

- In addition, the customer:
  - seeks compensation of £2,500.00 for distress and inconvenience suffered; and
  - would like a full apology from the company for the time wasted because this matter has been ongoing since October 2018.

The company's response is that:

- Its records show that 1 Oak Street was split from one property into two on 1 August 1984.
- The customer has been named on the accounts at the Takeaway Business and the Flat since 2 June 2003. The first contact that the company received on this issue (i.e. about the two properties being one) was on 11 October 2018.
- The company charges for its services based on the information held on file. Until the charges are queried or changes are confirmed, the company would not have had any awareness of the issue.
- A viewing of the information given on the VOA website shows that the Takeaway Business and the Flat are valued as two separate properties.
- When it visited the property on 6 November 2018, it confirmed that there was no separate entrance to the Flat and on this basis, the company agreed to change its records to show the Takeaway Business and the Flat as one property. This included cancelling the RV charges for the Flat back to 1 April 2012 and removing the Flat from its billing records. The Takeaway Business' charges were also changed from RV to commercial assessed from 1 April 2012.
- The company also agreed not to bill the Takeaway Business from 1 April 2017 onwards as this

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should be in the open market. The customer received a refund of £6507.49 in this respect.

- There is nothing documented in the company's Scheme of Charges as to how far charges for substantially altered properties are amended back to. The company made an informed decision in this case to backdate the charges to 1 April 2012. This was done to support the customer's request in amending the charges as far back as possible. The company considers this to be fair and reasonable based on the information that it held at the time.
- The RV of a property is an assessment used by local councils before the Council Tax and the Community Charge were introduced. It was calculated by the District Valuer and based upon the size of the property, the amenities available and overall location.
- The RVs were set by the District Valuer in accordance with the 1973 Valuation List. With the introduction of the Community Charge on 1 April 1990, the 1973 Valuation List ceased to exist with effect from 31 March 1990. Therefore, all unmeasured water charges are based on RV as at 31 March 1990. Alterations to these values are not possible.
- The company was not responsible for setting these values and it only uses them for billing purposes when there is no meter at a property. With this in mind, the company does not hold official proof of RVs. All enquiries about this should be pursued with either the District Valuation Office or the local council. A customer does have the option to have a meter fitted if they wish.
- Section 145 of the Water Industry Act 1991 explains that water companies can use RVs for the setting of charges. It does not state that proof needs to be held by the water companies.
- Also, section 142 of the Water Industry Act 1991 gives the water provider the power to fix, levy and recover charges from those that it supplies. Subsection 4 allows water providers to adopt appropriate methods for calculating and levying the charges they fix.
- Section 143 then gives water companies the power to make a charges scheme and fix times and methods of payment within that scheme. This sets out how the company bills for its unmeasured charges and the calculation that it uses. It also refers to the sections of the Water Industry Act 1991 mentioned.
- As to the customer's call for evidence to be provided on how the second RV was calculated:
  - the company does not have any official record of the second RV except for an internal note;
  - it does not hold official proof of the RV because, as explained above, the RV was set by the District Valuer on behalf of VOA;
  - the RV was provided to the company and used for billing purposes as set out in its Scheme of Charges;
  - the company was told that the RV was 567 for the Takeaway Business and 219 for the

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Flat.

- As to the claimed amendment of charges back to 2004, the company's position is that no further amendments are due and that the reasoning behind the RV has been explained (above).
- The company does not consider that it is liable to pay compensation in this case. For the reasons stated above, it is not in breach of its obligations.
- As to the request for an apology, the company does apologise if the customer believes that it has taken a while in this matter to get a final decision.
- The customer's first contact about the matter was received on 18 October 2018. Their accounts were updated on 12 November 2018. Since this time, there has been a number of communications in order to decide if an alternative outcome should be given after the customer remained unhappy. After reviewing the case, however, the decision was made that the outcome would not be changed.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing by the company.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and that as a result of this failure the customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

I have carefully considered all of the evidence provided. If I have not referred to a particular document or matter specifically, this does not mean that I have not considered it in reaching my decision.

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How was this decision reached?

1. I have reviewed in particular:

    a. the documents supplied alongside the customer's WATRS application form;

    b. the detailed comments ("Comments") filed by the customer in reply to the company's defence;

    c. the chain of events set out on pages 1 to 5 of the company's defence, together with the customer's point-by-point annotations against that chain of events, included as part of their Comments;

    d. the 51 appendices that comprise the company's defence bundle ("Defence Bundle"), together with the customer's annotations against the Defence Bundle documents, included as part of their Comments.

2. The customer's central complaint is that the company has overcharged them. My starting point has been to assess what specific failing is alleged against the company in this regard.

3. The customer is essentially contending that the company owed them a duty to ensure that it was calculating and applying its charges in a correct manner. There is no doubt that the company was subject to a general duty along these lines. However, it seems to me that this duty was not an absolute one. That is to say, if it transpires that an error has occurred in the way that charges have been applied, it will not *necessarily* follow that the company has breached its duty to the customer. Against this backdrop, the consideration that I have focused on is:

    a. whether the company was at fault and/or could be criticised for charging the customer in the way that it did over the relevant period (i.e. since 2004); and

    b. whether any conduct by the company meant that its services (in this context, with regard to applying its charges) were not provided to the standard that one would reasonably expect.

4. Prior to the customer making contact in October 2018, I do not see how the company could reasonably have been expected to be alerted:

    a. to the fact that the records it held were potentially misleading or unreliable. I take the company's point on this that it "… *charges for [its] services based on the information*

held on file. Until the charges are queried or changes are confirmed, [it] wouldn't have been aware …" On this aspect, I also attach some weight to:

i. Appendix 1 in the Defence Bundle - the company's records show that 1 Oak Street was split from one property into two with effect from 1 August 1984; and

ii. Appendices 50 and 51 in the Defence Bundle - the VOA website apparently shows that the Takeaway Business and the Flat were valued as two separate properties.

b. to the actual configuration of the Takeaway Business and the Flat and the consequent implication (specifically - that its charges to the customer might need to be calculated differently.)

5. I note the comprehensive explanation that the company gives about the way that the RVs were set by the District Valuer and how the RVs were provided to it to be used for billing purposes in keeping with its Scheme of Charges. Again, in this respect, it is difficult to reach a conclusion that there has been a culpable failure by the company in this regard.

6. Taking into account the available evidence and the submissions made, I am not persuaded that:

   a. the company has been guilty of overcharging in this case; or

   b. that it would be appropriate to find the company liable to make a refund to the customer of the charges going back to 2004 (in line with the entitlement that the customer claims).

7. I turn next to the measures that the company took once it realised, after its visit to the property on 6 November 2018, that there was no separate entrance to the Flat ("the Measures"). The Measures, I note, were that the company:

   a. changed its records to show the Takeaway Business and the Flat as one property; and
   b. cancelled the RV charges for the Flat back to 1 April 2012; and
   c. removed the Flat from its billing records; and
   d. changed the Takeaway Business' charges from RV to commercial assessed from 1 April 2012; and
   e. agreed not to bill the Takeaway Business from 1 April 2017 onwards; and
   f. issued a refund / credit to the customer in the sum of £6507.49.

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8. As I see it, the revelations from the visit on 6 November 2018 gave rise to an obligation on the part of the company to address the situation with regard to the Takeaway Business and the Flat being treated as one single property. I have given specific consideration to whether, in the circumstances, the Measures were extensive enough. I have come to the conclusion that they were extensive enough. In reaching this conclusion, I have taken account of the following factors:

    a. that according to my findings (above), the company should not be held liable or 'at fault' for charging the customer in the way that it did historically;

    b. that the company appears to have based some of the Measures on an application of its 'Substantial Alteration Policy' (which I regard as a reasonable approach for it to take);

    c. that the rules on limitation and the Limitation Act 1980 appear to have had some broad influence on the company's approach. (However, I should make clear that I do not see that the Limitation Act 1980 comes into play in this case - not least because, in my assessment, no breach of contract or negligence has been proved against the company).

9. For these reasons, I am satisfied that the Measures taken by the company were:

    a. fair, reasonable and proportionate; and

    b. sufficient to discharge its obligation to the customer, which arose after the 6 November 2018 visit.

10. In view of my findings, above, that - in effect - the company has provided its services in this case to the standard that would be reasonably expected, it follows that I do not consider:

    a. that it would be appropriate to award any financial compensation against the company (or any interest on refunded charges); or

    b. that the company should be required to produce evidence to the customer of the basis of the RV calculations. (I am not persuaded either that the fact that there may be a lack of such evidence means that the company should incur a liability to make a more extensive refund of charges in the customer's favour).

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11. Finally, I note that - within the body of its defence - the company has (already) given an apology in response to the time that the customer says has been wasted on this matter since October last year.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 9 May 2019 to accept or reject this decision.
- When you tell WATRS that you accept or reject the decision, the company will be notified of this. The case will then be closed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.

Nik Carle, LLB (Hons), Solicitor, DipArb, FCIArb

Adjudicator

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