

District Council agrees to backdate effect of rate fee to when notice of ownership received

Legislation	Ombudsmen Act 1975, Rating Powers Act 1988
Agency	Local authority
Ombudsman	Sir Brian Elwood
Case number(s)	W40778
Date	1998

Rating—uniform annual general charges levied on adjoining properties—local authority not notified that adjoining properties were occupied by same ratepayer—application for a refund on the basis that only a single uniform annual general charge was payable—Rating Powers Act 1988, ss 21(1) and 23.

The complainants, a husband and wife, bought their first property in 1980 and both were registered as joint owner/occupier. They bought the adjoining property in 1982, and registered the wife only as the new owner/occupier. The complainants could give no explanation for their decision to register the second property in the wife's name only. The two properties were occupied by them both and used as a single property.

However, the District Council was unaware that the properties were occupied by the same ratepayer, being registered in different names, and issued rates assessments for both properties, including a uniform annual general charge for each.

In 1998 the complainants were alerted to the fact that adjoining properties owned by the same ratepayer may be subject to only one uniform annual general charge. They wrote to the Council explaining the situation and seeking a refund of all the extra payments made. The Council amended its records to show both properties in joint ownership and waived one uniform annual general charge from 1 July 1997 (the start of the 1997/98 financial year), but declined to backdate the waiver further.

The investigation focused on the Council's powers, derived from the provisions of the *Rating Powers Act 1988*, to make, levy and in certain circumstances, waive rates and charges. Section

19 stated that a territorial authority may levy a separate uniform annual general charge on every separately rateable property. However, section 23 provides that where two or more separately rateable properties are contiguous, occupied by the same ratepayer and used jointly as a single property, they shall be deemed to be one property for that purpose. In this case the properties were registered in different names, and the Council had not been advised that they were occupied by the same ratepayer. It therefore appeared that the rates' assessments prior to 1997 were properly made in accordance with the facts available to the local authority at that time.

There were two bases on which the Council could consider providing the complainants with a remedy for the double payment of uniform annual general charges.

First, sections 116 and 118 of the Act allowed objections to the rates records and an amended assessment of rates where a 'relevant error' in the rates records was corrected. Section 116 set out eight grounds for objections to the rates records. The most relevant was (f):

... that the rates on any rateable property are incorrectly computed.

This provision could be narrowly interpreted to encompass only the arithmetic calculation performed on the data held, or more widely interpreted to draw into question the status of calculations made using incorrect data. The Council preferred the narrow interpretation, and as that also seems the more natural meaning it could not be said that the Council had acted unreasonably in deciding that these provisions did not authorise an amended assessment of rates.

The second basis for considering the complainants' situation was section 21(1) of the Act which allowed any uniform annual general charge to be reduced or cancelled if the local authority considered it reasonable in the circumstances to do so. It was under the authority of this provision that one of the charges in question was waived effective from 1 July 1997.

In the circumstances it was concluded that the Council's decision not to further backdate the waiver of the charge was reasonable. The Council was initially notified that the two properties were in different ownership. Having then been notified in 1998 that the occupiers were in fact the same, the Council was under no legal obligation to deem the two properties to be one for the purpose of making and levying a uniform annual general charge until the 1998/99 rating year, the financial year following the notification of the change of occupier. However, the Council decided to backdate the effect of the notice of change of ownership to the 1997/98 rating year but considered that further backdating of the waiver would be at a cost to other ratepayers, the Council having already committed the rate revenue received in earlier years. It was considered that the Council's decision represented a fair compromise in all the circumstances.

Comment

The Council provided some general information about the rating system on the rates assessment form. As it is impossible to outline all the provisions of the Act in the limited space available, a local authority can be expected to draw attention only to those matters which are

the subject of the most common inquiries. The Council could not be criticised for not referring to the provisions of the *Rating Powers Act 1988* in greater detail.

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