

Councils cannot act without proper authority regarding water usage charges

Legislation	Ombudsmen Act 1975, Local Government (Rating) Act 2002
Agency	Local authority
Ombudsman	Mel Smith
Case number(s)	C7734
Date	2004

Council installed water meter on landowner's property so that water charges would be based on quantity used rather than flat domestic rate—owner complained that he was not consulted and there was no evidence that he was using water indiscriminately—Ombudsman reviewed legislation empowering Council to impose charges—legislation required Council resolutions – none passed—Council acted without proper authority—levies refunded and domestic rate reinstated

A property owner was advised by his District Council that his property was one of a small number on which it had decided to install a water meter. This would mean that the Council would charge for water based on the quantity used rather than a flat domestic rate. He complained on the basis that his water usage met none of the Council's criteria for installing a water meter and that the Council had decided to do so without any evidence that he was using water indiscriminately, without any investigation of his water usage, and without consulting him. The Council responded by explaining its policy as to when water meters are required. It said the area where his property was located met the Council's criteria and whilst it acknowledged that his particular property was borderline, it did exceed the size where standard domestic consumption was likely. It therefore qualified for a water meter.

The property owner complained to the Ombudsman. He said the Council's decision was not based on his perceived water usage but on another person's use further up the road. As approximately 97 percent of the households in the district were not metered, the property owner believed the Council's policy as it had been implemented was unreasonable and improperly discriminatory.

The Council confirmed with the Ombudsman that the charges set for water by quantity used were derived from section 26 of the then *Rating Powers Act 1988*, with the aim of creating a balance between property owners' rights to pay a uniform fee for an average volume of water per annum, and their rights to use an unlimited amount but to pay for it via a water meter.

The Ombudsman noted that section 26 permitted a territorial authority to replace a uniform annual charge for water consumption with a charge '*according to the water consumed by any person receiving the same as measured or controlled by meter or other device.*' However, there was no specific amount of water consumption identified in the legislation that triggered the Council's authority to install a meter pursuant to this section. Rather, all the section required was that the amount of consumption that triggered a territorial authority's decision to install a meter be '*fixed by resolution in that behalf publicly notified*' (or as may be agreed with any person).

The Ombudsman then wrote to the Council requesting copies of the relevant Council resolutions. The Council advised that it was unable to locate any such resolution or any public notification. However, it submitted that the situation had since been regularised by the enactment of section 19(1) of the *Local Government (Rating) Act 2002*. The Ombudsman considered this provision and noted it states that a local authority may set '*a targeted rate in accordance with its funding impact statement for the quantity of water provided by the local authority.*' However, the Ombudsman was not provided with a copy of any Council resolution setting a targeted rate in this respect.

Finally, the Ombudsman noted that the Council's policy was to install water meters on properties in one of three situations and requested confirmation as to which one it had applied to the property in question. The Council confirmed it had assessed the property to be of a size where water use would be in excess of the single domestic supply of 1,000 litres per day. It acknowledged that the size of the property in this case just exceeded the area that the Council had assessed as possibly exceeding the permitted daily amount, but explained that in order to achieve consistency with other water users in the area, and to address the overall pressing concerns of water conservation within the district, the Council decided it was appropriate to install a meter on the complainant's property.

Given that there was no record of any Council resolution pursuant to section 26 of the former *Rating Powers Act* to fix the amount of any charge for water consumption, or any resolution under section 19 of the *Local Government (Rating) Act* setting a targeted rate in accordance with any funding impact statement for the quantity of water provided by the Council, the Ombudsman formed the view that charges for water by quantity used had been levied by the Council without proper authority. The Ombudsman concluded that the Council's decision to impose the charges had been unreasonable.

The Council agreed to apologise by letter to all the relevant property owners, including the complainant, in the area where the meters had been installed, and to acknowledge that it did not have the requisite authority to levy the charges. It also agreed to refund the levy imposed on affected property owners and to apply a uniform charge for water as provided for in the Council's funding impact statement in its Long-term Council Community Plan for the following year. The complainant accepted that this would resolve his complaint.

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