Ombudsman
Fairness for all

Case note

Council failed to meet obligations under Rating Powers Act 1988

Legislation	Ombudsmen Act 1975, Rating Powers Act 1988
Agency	Local authority
Ombudsman	Nadja Tollemache
Case number(s)	A3215
Date	1992

Unlawful setting of rate—section 110 of Rating Powers Act not complied with

A complaint was received that a local authority had acted unlawfully in the setting of the 1990/91 rates. The basis of concern was stated to be that the *'rates were not promulgated as 'stated amounts' as required by section 109 of the Rating Powers Act 1988, and were not included in the Public Notice to Section 110 of the same Act.'*

The *Rating Powers Act 1988* required:

> *(1) Every local authority shall, not less than 14 days before making any rate or rates, give public notice of-*
>
> *(a) Its intention to make the rate or rates:*
>
> *(b) The period for which the rate or rates are to be made:*
>
> *(c) The day or days on which the rate or rates or any instalment thereof is to become payable:*
>
> *(d) Any discount in terms of section 131 of this Act or additional charge or charges in terms of section 132 of this Act to be applied:*
>
> *(e) The fact that the valuation roll and rate records for the district of the local authority are available for inspection.*

> *(2) The public notice required to be given by subsection (1) of this section shall be given separately and shall not be combined with any other public notice required to be given by the local authority.*

Central to this complaint was the validity of the section 110 notice. As stated above, a Council was required to give notice of its 'intention to make the rate or rates'. Council's notice stated:

> *'Notice is hereby given that the [District Council] intends at an ordinary meeting of the Council on Wednesday, 24 October 1990, to make the rates for the financial year 1 July 1990 to 30 June 1991. All rates, service and uniform annual charges will become due and payable in four instalments on (23 July 1990, 5 November 1990, 23 January 1991, 22 April 1991). No discounts will be offered. A first additional charge of 10 will be enforced on all unpaid rates, service and annual charges on: 20 August 1990, 20 November 1990, 20 February 1991, 20 May 1991. Valuation rolls and rate records are open for public inspection during normal office hours at Council Service Centres…'*

The Ombudsman was of the opinion that to support the Council's notice, the drafting of section 110 would have had to be 'intention to make rates'. The inclusion of the definite article shows that something more was required in the way of detail. This led the Ombudsman to consider the purpose of requiring notice. As she understood, it is so that interested ratepayers can make submissions to Council opposing or suggesting modification of the proposed rates. To do that ratepayers need at least to know what kind of rate is proposed. The Ombudsman formed the view that failure to specify the kind of rate meant that the mandatory requirement of the notice was not complied with.

That left for consideration whether further detail was required, in other words, was it necessary to notify the rate in the dollar of each rate proposed? To decide this, the section as a whole needed to be looked at and the question was asked about the purpose of notifying the availability of valuation rolls—unless there is the implied intention that ratepayers should be able to calculate what the proposed rate would work out for them, and make submissions accordingly. That means the proposed rate in the dollar would need to be included in the section 110 notification. The contrary argument was put that this would prevent Council after debating the matter making an amendment to the proposed rates as notified. The Ombudsman did not think the argument valid. Notice of a meeting, with specific proposals, does not commit Council to an affirmative decision and does not prevent amendments to the motion, proposed. The same would be true for intended rates.

The Ombudsman's tentative view was therefore that section 110 certainly required the kind of rate or rates to be specified, and probably also the rate (value) in the dollar. She was mindful of the fact that it is not the function of an Ombudsman to make a definitive interpretation of the statute, rather to give an opinion whether the act complained of appeared to, be contrary to law.

Even if there had been some question about that, there was no doubt in her mind that the form of notice was unreasonable. The whole thrust of legislation in recent years has been for greater public participation in decision making, for increased availability of information and for

accountability and transparency. Even if (which the Ombudsman did not believe) the notice complied with the technical requirements of section 110, she considered it to unreasonably restrict the rights of ratepayers to informed input to the Council's decision. The Ombudsman decided that she should in any case sustain the complaint on that basis. The fact that it appeared that the Council had failed to obtain advice on the change of the format of notice reinforced her view.

Having come to the above view on the validity of the notice, it was then necessary to address the current position if the mandatory requirements of section 110 had not been complied with. It seemed to the Ombudsman that the only course open to the Council was to ask for validating legislation, which she put to the Council in her preliminary view of the complaint.

A month later the Ombudsman received advice from the Council indicating its acceptance of her preliminary view that the Council had not met its obligations under section 110 of the *Rating Powers Act*. It further advised that it would proceed with validating legislation to correct the error.

At that point the investigation was discontinued. As at June 1992, validating legislation had not been enacted.

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