Ombudsman
Fairness for all

Case note

Local Authorities not obliged to adopt narrow user-pays approach when setting rates

Legislation	Ombudsmen Act 1975, Rating Powers Act 1988
Agency	Local authority
Ombudsman	Sir Brian Elwood
Case number(s)	A4311
Date	1995

Complaint concerned a service provided by local authority for which a rate was levied—believed as he did not benefit from it, his rates liability should be adjusted—Ombudsman concluded ratepayers cannot expect the level of services/benefits will reflect precisely the rates paid

The complaint was made by a rural land owner whose property fell within the boundaries of a 'pumping scheme'. The scheme had been established some years earlier to alleviate flooding on productive land. Following local authority restructuring in 1989, the scheme was formalised and the rates for it were set on a per hectare basis pursuant to section 48 of the *Rating Powers Act*. The complainant argued that because part of his land was on a hillside he should pay less per hectare than the majority of other ratepayers within the boundaries of the scheme. He had asked the local authority to reclassify the land in the scheme with a view to adjusting rating liabilities, but it had declined to do so on the grounds of cost.

The potential costs to the local authority of reclassification were of the order of $3,500. On this basis the decision to decline to reclassify the land did not seem unreasonable because the costs exceeded the annual budget for the scheme and the most the complainant could have saved by reclassification was $90 per annum. Accordingly, reclassification was not an economic proposition.

From a practical standpoint, it is unrealistic for a ratepayer to expect that the level of services or benefits received from a local authority will reflect precisely the rates paid. As noted by the Court of Appeal in *Mackenzie District Council v Electricorp* [1992] 3 NZLR 4, while a local authority must have regard to the level of services when setting rates it is nevertheless *'not*

obliged to adopt a narrow user pays approach and to tailor the quantum of the rates and its incidence for ratepayers in general and categories of ratepayers in particular, to the immediate commercial value of the benefits referable either directly to particular services or more broadly to the enhancement of property values.' In *Vincent v Kaipara District Council* [1993] DCR 1042, where the validity of a drainage rate was at issue, the Court held that '*it would clearly be impractical when levying a rate on part of a district to determine and assess a benefit for every individual property within the district.'*

In the case under investigation, while the landowner may not have received the same level of benefit as other landowners within the scheme, he did receive some benefit that generally reflected the purpose of his pumping scheme rates. The complaint could not be sustained.

Comment

This case illustrates that while rates bear some relationship to level of services provided, local authorities are not obliged to adopt a narrow user pays approach.

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