

SPSO decision report

Case: 201200322, Fife Council
Sector: local government
Subject: rights of way and public footpaths
Outcome: some upheld, action taken by body to remedy, no recommendations

Summary

Mrs C complained about the council's failure to assert what she believed to be a public right of way. In addition, she raised concerns about the council's failure to take enforcement action against a resident who used part of this area as a garden and had enclosed it, preventing access.

Our investigation looked at the council's responsibilities in terms of rights of way. We found that they carried out a substantial consultation exercise to determine whether or not the local residents were aware of a right of way at this location. They decided that they did not have sufficient evidence to establish whether or not a right of way existed and that they would, in all likelihood, be unable to defend such a decision in court.

The council also explained the process they followed when considering whether to take enforcement action. Having considered all relevant background information, and sought evidence, they were satisfied that they should not pursue enforcement action in relation to the change of use of the land or the enclosure of the ground.

Having considered the information provided by both parties, we were of the view that these were discretionary decisions - ie decisions that officers were entitled to take. We cannot look at such decisions if there is no evidence that something has gone wrong when taking them. As we did not find evidence of administrative failure, we did not uphold these complaints.

We did uphold a complaint about the way the council dealt with the complaints raised by Mrs C. As they had already apologised for the delay in responding to correspondence, however, we did not make any recommendations.