

SPSO decision report

Case: 201303095, Comhairle nan Eilean Siar
Sector: local government
Subject: wayleaves, rights of access, feu duties, servitudes
Outcome: not upheld, recommendations

Summary

Mr C complained that the council had failed to uphold a public right of way, following works by a landowner. These works meant that a channel of water that could previously be crossed on foot had been deepened. Although the council had provided details of an alternative route, Mr C complained that they had failed to uphold the right of way. He also complained that the alternative route was blocked by various fences and so was impassable.

When we reviewed the correspondence, we found that Mr C had not complained to the council about the fences that he alleged blocked the alternative route. The law does not normally permit us to investigate a complaint until it has fully completed the council's complaints procedure (unless we do not consider it reasonable to expect this). As we considered this to be a serious allegation, we felt that it would be appropriate and reasonable for the council to firstly have a chance to respond. Although we did not consider that point further in determining Mr C's complaint, we made a recommendation that they should do so.

When we considered the rest of Mr C's complaint, we found that the fundamental issue he was complaining about related to the council's legal obligations under the Land Reform (Scotland) Act 2003. We can only look at what happened in terms of administration and cannot rule on legality, which is a matter for the courts. We reviewed the information that the council gave Mr C about possible alternative access, and on balance, did not consider that there had been an administrative failing on their part. Although we did not uphold Mr C's complaint, we made a further related recommendation.

Recommendations

We recommended that the council:

- respond to Mr C's allegation that the alternative access is impassable; and
- confirm to the Ombudsman that they have, as detailed in a letter to Mr C, contacted the property owner to remind them of their obligations.