

SPSO decision report

Case: 201405491, The Highland Council
Sector: local government
Subject: land and property
Outcome: not upheld, no recommendations

Summary

Mr and Mrs C sold their property but established that a part of an extension to the property was built on land not under their ownership. They approached the council with a request to purchase the land as they thought that the land may be common good land. Their solicitors advised the council that this matter was urgent as the sale of the property had already gone through. Mr and Mrs C were unhappy that there was then a delay of a few months before the council determined that the land was not in common good ownership.

In responding to the complaint, the council advised that they were told by Mr and Mrs C's solicitor that this was common good land and, in order to speed up the sale, they immediately sought approval, through the appropriate procedure, to obtain councillors' agreement to the sale. Once this was obtained, and a price negotiated, and agreed, with Mr and Mrs C's solicitor, the council then asked their solicitor to conclude the sale. At this stage, the council's solicitor established that the land was not common good and Mr and Mrs C's solicitor was provided with information of the current owners. Although the council accepted that, in hindsight, they could have identified the ownership earlier, they said that they were asked to arrange the sale of land which was held in the common good and they did so. They were also of the view that it was for Mr and Mrs C to establish title of their property before proceeding with a sale.

We considered the evidence. This clearly showed that Mr and Mrs C's solicitor was of the view that this was common good land and that they did not approach the council for clarification of title, they asked to buy the land. As responsibility for clarifying title rests with Mr and Mrs C's solicitor, and as we found no evidence of administrative failing in the way the council dealt with this matter, we did not uphold the complaint.