

**Case:** 201100821, Stirling Council  
**Sector:** local government  
**Subject:** construction by developers/adoption of roads  
**Outcome:** not upheld, no recommendations

### Summary

Mr C complained that the council unreasonably failed to give him the correct information on how to appeal to the Sheriff Court. He said that this resulted in his appeal against a notice under Section 13 of the Roads (Scotland) Act 1984 not being heard.

Mr C lived on an estate of houses constructed before legislation (introduced in the 1980s) required a developer to lodge a road security bond. The developer at the time did not apply to the roads authority to have the roads and footpaths of the estate adopted and maintained at public expense. The residents association (of which Mr C was not a member) pursued the matter of adoption with the council. Mr C informed the council that, purely based on his own financial resources, he would be unable to support the adoption of his road. A majority of residents, however, voted for the adoption.

A Section 13 notice was issued by the council under the Roads (Scotland) Act 1984. (A Section 13 Notice requires the owners of any land fronting or abutting a road to make up that road to the required standard.) This notice said that if the majority of households which fronted the road agreed to the road being adopted, the council would carry out the maintenance work on the residents' behalf and recover the costs.

A second letter was issued the same day advising residents of the right of appeal against the notice to the local Sheriff Court. It said that they should do so within 28 days, and that if they wished to do so or were in any doubt as to the consequences of the notice then they should consult a solicitor immediately. Mr C said that he was given misleading information in a telephone conversation with an officer of the council that his right of appeal could be made in letter form to the sheriff clerk. Mr C said that he wrote to the sheriff clerk, but did not retain a copy of the letter. The sheriff clerk did not respond and, when several months later, Mr C contacted the sheriff clerk's office he was told that they had not

received his letter. The evidence we saw about Mr C's telephone conversation with the officer from the council suggested that the officer was not acquainted with this particular appeals procedure, but sourced the address of the sheriff clerk from a colleague in the council's legal services department and provided it to Mr C.

We found that the written advice in the council's letters was unequivocal and correct. It was unfortunate that Mr C understood the oral information given in his telephone conversation with the officer from the council to contradict those letters, persuading him that a letter to the sheriff clerk would suffice as a valid submission of an appeal against the Section 13 notice. On balance, and after full consideration of the matter, we did not uphold Mr C's complaint that he was misled or that he lost his right of appeal in consequence.