

## SPSO decision report

**Case:** 201603268, Scottish Borders Council  
**Sector:** local government  
**Subject:** public hygiene/shops/dairies/food processing  
**Decision:** some upheld, no recommendations

### Summary

Mr C complained about the council's handling of assessments of his business following the imposition of a remedial action notice under the Food Hygiene (Scotland) Regulations 2006. He also complained that the council incorrectly registered his business and failed to correct this within a reasonable time-frame.

The council inspected Mr C's business and served a remedial action notice. Mr C said he sought to comply with the notice, but that the council continuously changed what was being required from him. He also said that the council failed to take into account the expert views of a food hygiene consultant who was assisting him to comply with the notice. Finally, Mr C said it had emerged that the council had not managed his earlier application for registration correctly.

After reviewing submissions from the council and Mr C we found that the council had relied on the professional judgement of their officers in assessing compliance with the remedial action notice. We found that there was extensive correspondence between the council, Mr C, and his consultant. In this correspondence we saw evidence that the council had taken into account opposing views, and had sought to explain their position. There was no requirement for the council's officers to reach the same view as Mr C's consultant. While Mr C had said that the council had shifted what was being required, we found that the correspondence suggested that the council were seeking to explain what evidence they needed to be satisfied that compliance had occurred, and not that they were changing what they were asking for. We did not uphold Mr C's complaint that the council had failed to assess his business reasonably following the imposition of the remedial action notice.

Regarding Mr C's complaint about the incorrect registration of his business, the council acknowledged that there had been problems in the handling of applications. They explained that they had not requested the appropriate form from Mr C at the time he made his application for registration. They said that they had apologised to Mr C and had taken action to improve their management of the files. We upheld Mr C's complaint. However, as the council had apologised to Mr C and taken action to address this issue, we made no further recommendations.