

SPSO decision report

Case: 201706717, Angus Council
Sector: local government
Subject: wayleaves / rights of access / feu duties / servitudes
Decision: not upheld, recommendations

Summary

Mr C complained that the council failed to reasonably uphold access rights to a field. Mr C was of the view that the landowner had unreasonably locked the gate without providing a stock gate or a stile. Mr C noted that the public had accessed the field for over 20 years. The council contacted the landowner, who confirmed that there was now livestock in the field and that the gate had to be locked to keep the animals in.

The council cited the Land Reform (Scotland) Act 2003 and the Scottish Outdoor Access Code as guiding parameters for their decision not to take enforcement action against the landowner for locking the gate. We found that the council had given due time and consideration to all of the issues brought before them, and had assessed a number of different sources of evidence. The council have stated that they expect the gate to be unlocked at times when no livestock are in the field. We confirmed that it is not for this office to give a definitive interpretation of the Land Reform (Scotland) Act 2003, or the Scottish Outdoor Access Code. We noted that the Land Reform (Scotland) Act 2003 sets out in section 28 that it is for a Sheriff to determine the existence and extent of access rights. We did not uphold Mr C's complaint.

While Mr C did not ask us to investigate how the council handled his complaint, during our investigation we observed that the complaints handling fell below the standard that we would expect. We have therefore made a recommendation that the council apologise to Mr C for this.

Recommendations