

## Local Authority and property vendors both responsible for checking lease agreement

<b>Legislation</b>	Ombudsmen Act 1975
<b>Agency</b>	Local Authority
<b>Ombudsman</b>	David McGee
<b>Case number(s)</b>	W58265 (previously unpublished)
<b>Date</b>	2009

---

*Local Authority—unreasonable not to have contacted previous lease holder three months after licence to occupy had expired and before agreeing to lease land to another person—Local Authority agrees to apologise to complainant*

This complaint concerned a Council’s decision to grant a new licence, to occupy adjoining road reserve land, to another party. The complainants (previous licensees) claimed that this was unreasonable as, when at a meeting with a Council officer, they had told the officer that they intended to sell their property and move from the district and wished to know if a new licence to occupy the road reserve would be transferred/granted to whoever purchased their property.

There was a fundamental disagreement between the Council officer and the complainants as to whether the Council officer had requested that they confirm in writing their request for this transfer of the licence. Shortly after the meeting, the Council issued a new licence to occupy to another applicant in the absence of any further confirmation of a request having been received from the complainants.

The Ombudsman concluded that the complaint was sustained to the extent that the Council had failed to make the necessary inquiries. However, the Ombudsman doubted whether the Council had any legal grounds on which it could revoke the new leaseholder’s license to occupy and could therefore not recommend that the Council do so. The Ombudsman considered that the Council should apologise to the vendors for its failure to make inquiries with them before

granting the new license to another party, however the complainants advised the Ombudsman that they would not accept an apology in resolution of their complaint.

The Ombudsman was also of the view that regardless of the disagreement between the two parties, the complainants' position as intending vendors of their property made it prudent for them to take steps to regularise the position regarding the future occupation of the road reserve land, especially where in advertising their property for sale they, and their land agent, had represented that the Council would grant a licence to occupy the adjoining road reserve land to whoever purchased their property.

While the complaint was sustained in part, the case illustrates that both parties were at fault for the situation arising and that they should both have clarified the position of the license to occupy before the property was put on the market.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*