

SPSO decision report

Case: 201202301, The City of Edinburgh Council
Sector: local government
Subject: statutory notices
Outcome: not upheld, no recommendations

Summary

Mr C owns, but does not live in, a flat which is in part of a tenement building. In the building there are 11 other flats occupied by a mixture of private owners and council tenants. One of the tenants on the top floor reported to the council that there was water coming in, and the council arranged an external inspection of the property. The inspection indicated that repairs were needed to prevent further water penetration.

As a co-owner, the council issued a notice of repair to all other current occupiers under the terms of the Tenements (Scotland) Act 2004. This explained the broad legal position about repairs and offered three options for carrying these out. An estimate for the works was enclosed. It was made clear that there had to be a majority decision to proceed or a statutory notice for essential repairs might be needed.

Mr C said that he did not receive the council's notices, and he complained to the council that they did not deal with the matter in accordance with their tenement management scheme. He also complained that he was unreasonably pressed by the council into making payment, despite his request for the matter to be put on hold while it was under investigation.

Our investigation found that the council had acted in accordance with the relevant legislation and their own procedures and, while it was accepted that Mr C did not receive the notices, we also accepted that these were posted to him, which completed the council's obligations. Through their own investigation, the council had identified that there were some improvements that could be undertaken (for example, it was accepted that the description of the work contained in the statutory notices was not sufficiently accurate and they would be revising their processes in the future).

On looking into the issue of putting on pressure to make payment, we found that the legislation provided that once a majority decision was reached, it was binding on the owners and could be enforced by any owner against another. Accordingly, we did not uphold this complaint.