

Case 200802763: The City of Edinburgh Council

Summary of Investigation

Category

Local government: buildings; statutory notices to repair private property

Overview

The complainant (Ms C) bought her present flat in a tenement in Edinburgh in September 2004. She raised a number of concerns about the issue and administration of statutory notices that were served on owners in June 2005 by The City of Edinburgh Council (the Council) under subsection 24(1) of the City of Edinburgh District Council Order Confirmation Act 1991. She was aggrieved that as an owner, the notices of June 2005 had not been served on her and that she was not alerted to the scale of her liability until September 2008.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) failed to inform Ms C as a co-owner of the service of statutory notices on 24 June 2005 (*upheld*);
- (b) and their agents failed to update Ms C on the progress of the works (*upheld*); and
- (c) delayed in serving the accounts for the works until September 2008 and failed to give Ms C appropriate opportunity to make financial arrangements (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) review their procedures in updating their database on property ownership to ensure that the database is current; and
- (ii) consider whether, given their failures to issue Ms C with the statutory notice and to directly update her, there is scope for them to commute part of their administration charge in respect of the contract.

The Council informed the Ombudsman that they accepted the findings in the report, and had set in place action in implementation of the recommendations including the waiving of a third of their administration charge.

Main Investigation Report

Introduction

1. The complainant (Ms C) bought a second floor tenement flat in Edinburgh on 6 September 2004 and moved in four days later. The sale was registered in the Registers of Scotland on 21 October 2004. Ms C resided in the flat for the next year. Although she was unaware of it, The City of Edinburgh Council (the Council) served notices under section 24(1) of the City of Edinburgh District Council Order Confirmation Act 1991 (the 1991 Act) on 24 June 2005, on the owners of the block and the adjoining tenements calling on them to rectify aspects of disrepair. After the owners failed to respond by seeking tenders to implement the works, Council officers sought authorisation to organise the works themselves and to bill the owners. The Council appointed an agent and contractor. Ms C left the country in October 2005 to work abroad for two years. She informed the Council's Revenues and Benefits that her tenant would be responsible for council tax and directed enquiries to her parents' address in the West of Scotland. Ms C returned to Edinburgh in October 2007.

2. The complaints from Ms C which I have investigated are that the Council:
- (a) failed to inform Ms C as a co-owner of the service of statutory notices on 24 June 2005;
 - (b) and their agents failed to update Ms C on the progress of the works; and
 - (c) delayed in serving the accounts for the works until September 2008 and failed to give Ms C appropriate opportunity to make financial arrangements.

Investigation

3. I considered information provided to me by Ms C, and interviewed relevant officers of the Council. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Ms C and the Council were given an opportunity to comment on a draft of this report.

(a) The Council failed to inform Ms C as a co-owner of the service of statutory notices on 24 June 2005

4. Ms C bought her second floor tenement flat with a date of entry of 6 September 2004 and moved in four days later. She informed me that the sale was registered in the Registers of Scotland on 21 October 2004. Although she had by then been resident for nine months, when the Council came to issue

notices on her tenement and the adjoining tenement blocks in respect of roof and chimney repairs on 24 June 2005, the notices were not served on her as current owner. Ms C informed me that she was aggrieved because she did not have the opportunity to negotiate with her neighbours to instruct the works. Had they done so, she suspects that there would have been a significant reduction in the costs. Ms C conceded that she may have physically received the envelopes containing the statutory notices but since these were not addressed to her she would probably have forwarded these to the previous owner. The former owner did not redirect the correspondence to her.

5. The Council informed me that the notices for roof and chimney repairs were served on affected owners based on the Council's property ownership records, which are updated periodically on the basis of changes in ownership of properties registered in the Registers of Scotland. In this instance, the change in ownership to Ms C was not made in their records and the notices of 24 June 2005 were addressed to the previous owner.

(a) Conclusion

6. Clearly, the Council's records on ownership should have been updated in the nine month period between Ms C's purchase on 6 September 2004 and the service of the two notices on 24 June 2005. That did not happen. Ms C did not directly receive her own copy of the notices and, was deprived of the opportunity to discuss the notice with her fellow owners and to arrange for quotes. It is a matter of speculation, however, that, had she done so, Ms C would have received the agreement of all of her fellow proprietors and would have had the ability to arrange the works before she left for a two year period abroad. The Council have offered no explanation for their failure to update their ownership records in the period before the notices were sent. I uphold the complaint.

(a) Recommendation

7. The Ombudsman recommends that the Council review their procedures in updating their database on property ownership to ensure that the database is current.

(b) The Council and their agents failed to update Ms C on the progress of the works

8. Since the owners did not advise the Council that they had agreed to do the works themselves, on the instance of an affected proprietor, the matter was reported to the relevant committee and officers were instructed to arrange the works on a rechargeable basis. A firm of surveyors (the Surveyors) was appointed as contract administrators and they wrote to owners on 19 December 2006 informing them that a contractor had been nominated, that the overall estimated cost would be £121,482.06, detailed their projected individual liability, and confirmed that the contract period would be 16 weeks. The Council stated that the contractor would have hand delivered information to individual properties prior to starting works on site in 2007. The Surveyors issued newsletters as works progressed. Following the commencement of works, an outbreak of dry rot was noted and a further statutory notice was issued on 1 November 2007. This notice, unlike the first two, was served on Ms C. For various reasons, the contract period was extended but was taken to have been practically completed on 17 January 2008. On 14 September 2008, at around the time invoices were issued for the work, the Surveyors wrote to owners explaining the delays in the work which had extended the contract period. The final cost was valued at £120,546.05 which was less than their initial estimate.

(b) Conclusion

9. Ms C had not been directly informed of the statutory notices of 24 June 2005 although ironically she may have physically received the envelopes containing the statutory notices. Had she received the notices, then she might have been able to give the Council's Corporate Property and Contingency Planning a contact address for the period when she was out of the country. Although it is possible that the updates on progress of the contract were also received by her tenant during her absence abroad, if these were addressed to the previous owner then Ms C would not have known of the content. Certainly, on her return, a third statutory notice necessitated by discovery of an outbreak of dry rot was correctly served on Ms C on 1 November 2007. Given that her property was tenanted for the previous two years, I cannot with certainty conclude that salient updates were not delivered to Ms C's flat. I conclude that, since the updates were not correctly addressed to her, I must uphold the complaint.

(b) Recommendation

10. The Ombudsman recommends that the Council consider whether, given their failures to issue Ms C with the statutory notice and to directly update her, there is scope for them to commute part of their administration charge in respect of the contract.

(c) The Council delayed in serving the accounts for the works until September 2008 and failed to give Ms C appropriate opportunity to make financial arrangements

11. Three invoices were sent to each of the current owners on 11 September 2008 in respect of the works. One of these invoices (for the replacement of metal chimney cowls), as the result of an oversight, was not sent at that time to Ms C.

12. Ms C stated that she was shocked to receive accounts for a total of £7,643. She wrote to the Director of Finance on 3, 10, 17 and 24 October 2008 and emailed a local councillor on 27 October 2008 expressing her concern about lack of notification of the works, the scope of the works, the non receipt of an invoice and the short period being given to her to arrange repayment. Payment methods were set out in replies from the Council's Finance Department dated 20 October and 3 November 2008.

13. A Council conservation surveyor (Officer 1) responsible for liaising with the Surveyors, responded on 6 November 2008 to points raised by Ms C. He pointed out that while it was to be regretted that Ms C was not included in correspondence, that did not affect Ms C's liability to maintain her property and, when unable to do so, to pay for any default works properly authorised. He answered specific points regarding scaffolding, contingencies and costs, the previous history of repair, guarantees, and the missing invoice. He apologised for any inconvenience caused by the failure to include the invoice for metal chimney cowls with the letter of 11 September 2008. He said he had asked that the invoices be put on hold until 27 November 2008 to provide Ms C more time to arrange payments with the Council's Finance Department.

14. Concerned at the lack of sympathy to her plight, Ms C enquired on 13 November 2008 about the Council's complaints procedure. Officer 1 furnished details on 14 November 2008 and invited her to a meeting with himself or his line manager, the Group Leader, Property Conservation

(Officer 2). Ms C then submitted an email on 18 November 2008 which was passed to Officer 2 for a response.

15. Officer 2 wrote to Ms C on 9 December 2008 apologising that his response had been delayed due to annual leave but he had asked that a hold be put on the outstanding invoices until 9 January 2009. He reiterated what was said by Officer 1. He expressed regret that the Council's records on ownership had not been up-to-date, but maintained that that did not affect Ms C's liability to maintain her property and, when unable to do so, to pay for default works properly authorised. Officer 2 enclosed a leaflet regarding the Council's Scheme of Assistance.

16. Ms C paid the bill for the third statutory notice in respect of the dry rot works in January 2009. She pursued her complaint to the final stage of the Council's complaints procedures and received a reply from the Head of Corporate Property and Contingency Planning on 28 January 2009. After reviewing the case files and correspondence, he replied:

'While I apologise for any perceived inconvenience and anxiety to you that may have been caused by this Department's actions in this matter, I consider that the processes involved were reasonable in terms of the legislative requirements, in researching Registers of Scotland's database at that time, in the nature of the works, the costs involved, and in acting on the request of an owner to carry out the remedial works in default. Therefore, I do not intend to waive costs or interest in this case.

I do however appreciate that this has led to unplanned expense on your part and will recommend to my colleagues in the Finance Department that a suitable method of payment is followed to suit your present circumstances.'

17. Ms C did not take up the opportunity of repaying under the Council's Scheme of Assistance at an interest rate of 8 percent since this would have meant her repaying an additional £1,313 on top of the principal outstanding sum of £7,643. Instead she decided to pay the full amount over a period of three months without any interest being levied. Ms C informed me that she had had to delay her wedding for which she had been saving for the previous three years. Ms C maintained that if she had been properly notified in 2005 then she would have had three years notice of the large bill and a reasonable opportunity to plan her finances. In the circumstances she considered that the Council

should have waived the interest and given her two to three years to pay. She was aggrieved that, at every stage, the Council had failed to apologise, refused to take responsibility for their error, and had not waived the repayment of interest.

(c) Conclusion

18. I have considerable sympathy for Ms C who was understandably shocked to receive invoices in September 2008 for what was a substantial sum. It would have been better for Ms C's own forward planning had she been alerted to the works in June 2005, and had the initial letter from the Surveyors been received by her in December 2006. That was the first intimation that other owners had of the likely outturn cost. Had she too received that letter she would have had the better part of two years to plan her finances. Had she herself made enquiry on receiving the third notice of 1 November 2007, as to the full extent of the work and the likely extent of her liability, she would have had nearly a year to plan how she would eventually meet her obligations as a joint owner.

19. At a time when interest rates were in decline nationally, the Council's Scheme of Assistance offer was one which Ms C could readily refuse. While the demand for £7,643 unfortunately served to delay Ms C's wedding plans, the bill arose because the owners of the tenement did not meet their joint responsibility to keep it in a good state of repair and work was instructed by the Council in default of the private owners. The public purse required to be reimbursed and I see no basis for the Council allowing a two to three year period of repayment of the principal or waiving interest. I do not uphold the complaint.

20. The Council informed the Ombudsman that they accepted the findings in the report, and had set in place action in implementation of the recommendations including the waiving of a third of their administration charge. The Ombudsman asks that the Council notify him when the recommendations have been implemented.

Explanation of abbreviations used

Ms C	The complainant
The Council	The City of Edinburgh Council
The 1991 Act	The City of Edinburgh District Council Order Confirmation Act 1991
The Surveyors	A firm of surveyors appointed by the Council to administer the works required in the statutory notices
Officer 1	A Council conservation surveyor, Corporate Property and Contingency Planning
Officer 2	The Council's Group Leader, Property Conservation

Relevant Provisions of the City of Edinburgh District Council Order Confirmation Act 1991

24(1) When from decay, or in consequence of storm or otherwise, the structure of part of any building or anything affixed to any building, or any wall or fence connected with, or pertinent to, a building (including any part thereof so formed or maintained as to allow satisfactory drainage of its surface or subsoil to a proper outfall) has become insecure, worn out, or damaged or is in need of repair, the Council may, by notice, require the owner of such building to execute any works necessary for securing, restoring or repairing such structure, fixture, wall or fence.

27(1) Where any building comprises a tenement the owner of every part of such building which is separately owned shall, for the purposes of this Part of this Order, be deemed to be the owner of such building, and notices shall, so far as is reasonably practicable, be served upon the owner of every such part accordingly.

(2) Every owner of every such part of such building shall be liable in equal shares to the Council for any expense incurred by the Council in executing any works in pursuance of this Part of this Order but nothing in this section shall affect any right competent to any owner of any part of such building, under the conditions of his title or otherwise, to recover from the owner of any other part the amount, or any part thereof, paid by, or recovered from, him.

28 Any person aggrieved by any requirement of a notice under this Part of this Order may appeal to the sheriff.

