

What to do about Statutory notices?



by Richard Godden, Partner in McKay Norwell Solicitors.

We invited Edinburgh Solicitor, [Richard Godden](#) to offer his advice to city residents who might find themselves affected by the statutory notice system employed by The City of Edinburgh Council.

Two investigations are in train, one being an independent investigation by Deloittes at the instigation of the council and the other by Lothian and Borders police who are investigating alleged fraud in the council department responsible for implementing the programme of works.

“Many people in Edinburgh will have been following the recent news stories about possible corruption in the City Council’s building works department with mounting concern.

The accusations concern the way in which the Statutory Notice system operates. To put it simply, if the council notices that a building is in need of repair, it serves a Notice on the proprietor or proprietors, requiring them to carry out repair works within a certain period of time. Very often the proprietors ignore the Notice, or “never get round to it”, or find themselves stymied by awkward neighbours on the stair who refuse to participate in any discussions. In that case, after a reasonable period of time has elapsed, the Council appoints its own contractors and carries out the work itself. It bills the various proprietors in roughly equal shares, and chases up recalcitrant payers. The system is a perfectly good one so long as those administering it behave fairly and honestly, and is particularly necessary in a city like Edinburgh, with so many old and historic buildings requiring constant

maintenance.

Unfortunately, recent events have cast grave doubt on whether the system is indeed being administered fairly and honestly. The number of complaints about its operation has increased drastically over the last few years, and certain recurring themes have emerged. A common tale of woe is that the proprietors, having been unable to agree amongst themselves, receive a letter from the Council stating that they are going to carry out the repairs themselves. A quote from contractors is enclosed, which seems reasonable. The proprietors are relieved, and allow the Council to proceed. A few weeks into the works, the proprietors receive a letter saying that, most unfortunately, once the work was started it was realised that the necessary repairs were far more extensive than had first been thought, and that consequently the bill has increased dramatically. In some cases these surprise increases have taken place more than once, raising a bill by hundreds of thousands of pounds above its original level.

The major weakness of the system is the helplessness of the proprietors once the Council has taken over the works. They have no contractual relationship with the Council's contractors, and cannot sack them, or even question them. They can do nothing but sit and watch in dismay as the bills roll in, and eventually pay up. It is all too obvious that such a system can easily be abused if the officials and contractors are unscrupulous enough.

Adding to householders' suspicions have been claims of cosy relationships between contractors and council officials revealed on a recent BBC television programme. In one case known to us, the contractor used by the Council was not on their approved list. The BBC understands that police have been passed evidence of a council officer going on holidays paid for by a contractor, and it has not helped the Council's reputation that the property conservation department's hospitality records until 2009 have now been lost.

It is clear that the Statutory Notice procedure has been a major source of revenue for contractors and the Council (which charges householders a 15% administration fee) in recent years, with the value of Notices increasing from £9.2m in 2005 to more than £30m in 2010. Unfortunately, it cannot even necessarily be said that these works have improved the city, since there have been accusations of shoddy workmanship, the use of unauthorised contractors, and works having to be done all over again.



Of course, the police investigations are at an early stage, and it is too soon to say whether accusations of corruption will prove to be justified. However, the suspension of nearly half the Council's staff in the relevant department indicates how seriously it is being taken.

At the time of writing, the Council is not carrying out any further works on buildings.

If you have been on the receiving end of a Statutory Notice procedure, and have suspicions about the way it was carried out, please call us on 0131 222 8000 for a free, no obligation discussion about your legal rights. "

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