

**Case 200502320: Glasgow City Council**

**Summary of Investigation**

**Category**

Local government: Statutory Notice

**Overview**

The complainant (Mr C) raised a number of concerns about Glasgow City Council (the Council)'s handling of a Statutory Notice issued in relation to the property he owns.

**Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) by failing to issue a Statutory Notice in 1995, the Council concealed the condition of Mr C's property (*not upheld*);
- (b) the decision not to issue a Statutory Notice in 1995 should have been taken by the full Council (*not upheld*);
- (c) the Council failed to monitor the condition of Mr C's property between 1995 and 2004 (*not upheld*);
- (d) the Property Enquiry Certificate (PEC) obtained by Mr C's solicitor when Mr C purchased the property was incomplete and, therefore, misleading (*not upheld*); and
- (e) the Statutory Notice issued in 2004 in respect of Mr C's property was inaccurate, and his property was not in a serious state of repair (*not upheld*).

**Redress and recommendations**

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. On 21 November 2005 the Ombudsman received a complaint from a man (Mr C) against Glasgow City Council (the Council). Mr C was advised of the need to exhaust the Council's complaint process. Mr C subsequently approached the Ombudsman confirming that he had completed the Council's process and detailing his continuing concerns about the Council's handling of a Statutory Notice which had been issued in relation to the property he owned.

2. The complaints from Mr C which have been investigated are that:

- (a) by failing to issue a Statutory Notice in 1995, the Council concealed the condition of Mr C's property;
- (b) the decision not to issue a Statutory Notice in 1995 should have been taken by the full Council;
- (c) the Council failed to monitor the condition of Mr C's property between 1995 and 2004;
- (d) the Property Enquiry Certificate (PEC) obtained by Mr C's solicitor when Mr C purchased the property was incomplete and, therefore, misleading; and
- (e) the Statutory Notice issued in 2004 in respect of Mr C's property was inaccurate, and his property was not in a serious state of repair.

### **Investigation**

3. The investigation of this complaint involved examining all documents and correspondence provided by Mr C and written and telephone enquiries were made of the Council.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

#### **(a) By failing to issue a Statutory Notice in 1995 the Council concealed the condition of Mr C's property**

5. The Housing (Scotland) Act 1987 requires that local authorities exercise judgement in relation to the condition of a property, and the timing of the issue of any Statutory Notice requiring property owners to carry out necessary repair works.

6. In relation to Mr C's property a survey of the ground in the area of the City where Mr C's property was situated was carried out in 1995. The survey had been carried out as part of an investigation undertaken by the Council into the mineral stability of a number of areas of the City. When the results of the ground condition survey were made available, it was the Council's judgement that other properties in the City were in a more serious state of disrepair and should be given priority for the scarce grant funding resources that were available to them at that time.

7. In addition, as part of the ground investigation, a Structural Engineer had examined the building in which Mr C's property was situated for signs of structural distress. The Structural Engineer's inspection of the property identified no evidence of structural distress on the building. Nor did the ground investigation indicate that deterioration of the fabric of the building was likely in the short term. I have been advised by the Council that, if evidence to the contrary had been provided, it was likely that a system of 'tell tale' studs would have been used to actively monitor movement in the building.

8. The Council have clarified that they exercised their judgement over the condition of Mr C's property and the timing of the issue of the Statutory Notice. They have confirmed their view that the decision to serve the Statutory Notice in 2004, was compatible with the condition of the property at that time.

*(a) Conclusion*

9. I understand that Mr C disagrees with the Council's position in relation to the timing of the issue of the Statutory Notice. However, this was a decision for the Council to take. I am satisfied that relevant information was taken into account when reaching the decision and that the decision was taken properly. In addition, advice from the Council's solicitor has confirmed that there was no requirement to release information about the ground investigation and that it was for Mr C as a potential purchaser to satisfy himself as to the condition of the property before purchasing it. (This point is explored further at paragraph 14.) I am aware from the information provided by Mr C that, when purchasing his property, his surveyor had not indicated that the property was in a serious state of disrepair. This would appear to confirm the Council's position as to the condition of Mr C's property at the time of the ground investigation. In all the circumstances I do not uphold this aspect of Mr C's complaint.

**(b) The decision not to issue a Statutory Notice in 1995 should have been taken by the full Council**

10. The Council have satisfied me that, in line with accepted practice at that time, the ground investigation carried out in 1995 was not reported to Committee.

*(b) Conclusion*

11. I am satisfied from the evidence available that, the Council did not, in fact, take a formal decision in 1995 to delay issuing a Statutory Notice. In view of the funding situation and the results of the ground investigation, the Council decided not to proceed with mineral consolidation (remedial work carried out to prevent ground collapse) of the building in which Mr C's property was situated. In view of this the Council did not reach the stage where they had to decide whether to issue a Statutory Notice or not. I am satisfied that the decision not to proceed with mineral consolidation was for the Council to take and I have seen no evidence that the decision was not taken properly. For this reason, I do not uphold this part of Mr C's complaint.

**(c) The Council failed to monitor the condition of the property between 1995 and 2004**

12. The Housing (Scotland) Act 1987 placed no specific requirement on Councils to monitor the condition of properties, this being the responsibility of home owners. However, in relation to Mr C's property, as well as many of the City's older properties, periodic visual checks by local building control officers were carried out. This was considered by the Council to be sufficient. I have been advised that Mr C's property did not deteriorate and begin to show signs of structural distress prior to remedial action being taken in 2004.

*(c) Conclusion*

13. I am satisfied that the Council have explained why, in the absence of any evidence of structural distress, there was no reason to carry out formal monitoring of Mr C's property. Ultimately, it was for Mr C, as owner of the property, to satisfy himself as to the condition of his property. In the circumstances, I do not uphold Mr C's complaint.

**(d) The Property Enquiry Certificate (PEC) obtained by Mr C's solicitor when Mr C purchased the property was incomplete and, therefore, misleading**

14. PECs form part of the normal conveyancing process and are designed to identify any Statutory Notices that may have been served on a property. The PEC system operates on the basis of guidance issued by the Law Society for Scotland. In this case, no notice had been served on Mr C's property when the PEC was obtained by Mr C's solicitor from the Council. This guidance also requires that solicitors acting for a purchaser should contact the Coal Authority for information when dealing with properties which were located in coal mining areas (as in Mr C's case). Although not part of the PEC, information on ground conditions is held by the Council and is made freely available to anyone upon request, subject to a search fee. The Council have explained that in 2004, 48 such requests were received mainly from solicitors and mining agents. While the service was not advertised, the Council confirmed that it was widely known among solicitors in the Glasgow Area. In relation to Mr C's property the Council have no record of such a request being made either by Mr C, or anyone on Mr C's behalf, for information relating to ground conditions.

*(d) Conclusion*

15. I am satisfied that the Council have responded properly to Mr C's concerns on this matter and, have explained the purpose of the PEC and that the onus was on Mr C to satisfy himself about the condition of the property prior to purchase. In all the circumstances, I do not uphold this aspect of Mr C's complaint.

**(e) The Statutory Notice issued in 2004 in respect of Mr C's property was inaccurate, and his property was not in a serious state of repair**

16. The Council have told me they consulted widely with the neighbourhood before issuing the Statutory Notice in December 2004. A public meeting was held which Mr C attended. At the meeting, the Council say they outlined their plans and the reasons for them. Potential costs for the affected households were discussed.

*(e) Conclusion*

17. I am satisfied that the Council have explained to Mr C why the Statutory Notice was served in 2004. In these circumstances, and given that it was open to Mr C to have appealed against the issue of the Statutory Notice, I do not uphold this aspect of his complaint.

20 June 2007

**Explanation of abbreviations used**

Mr C

The complainant

The Council

Glasgow City Council

PEC

Property Enquiry Certificate