Scottish Parliament Region: Lothian

Case 200801344: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Property; statutory notice to repair private property

Overview

The complainant (Mr C) raised a number of concerns about the administration by The City of Edinburgh Council (the Council) of works instructed in consequence of statutory notices served under section 24(1) of the City of Edinburgh District Council Order Confirmation Act 1991. Those notices were served on Mr C and his wife (Mrs C) and other owners in their tenement building in 2001 and 2002. Mr and Mrs C decided to sell their flat in 2003. Mr C sought to establish the possible cost of the works necessitated by the statutory notices before concluding a sale. From information he obtained in 2003, Mr C anticipated that their share of the projected costs would be of the order of £2,800, when their share of the outcome costs was over £17,000. Mr C believed that the Council failed properly to administer the works to Mr and Mrs C's considerable financial disadvantage.

Specific complaints and conclusions

The complaints which have been investigated are that:

(a) the Council too broadly defined the works required, instructed significantly different work than set out in the notices, included extensive renewal and rebuilding instead of repair and limited replacement, and allowed additional work of betterment/improvement (*partially upheld*); and

(b) Council officers sought to mislead Mr C by maintaining that renewals or replacements constituted general repair work (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council review the extent that they were responsible for the delays and increase in contract price and commute part of their administration charge. The Council have accepted the recommendation to commute part of the administration charge and had authorised his staff to take this to a suitable conclusion.

Main Investigation Report

Introduction

1. The complainant (Mr C) and his wife (Mrs C) lived until mid 2003 in a first floor flat in a tenement block at 8, 9 and 10 X Street in Edinburgh. The 11 owners in that block were served with a statutory notice served under Section 24(1) of the City of Edinburgh District Council Order Confirmation Act 1991 (the 1991 Act) in April 2001. That notice was superseded in August 2002 by a more detailed notice served on those 11 owners and by another notice served on the 22 owners of 5, 6, 7, 8, 9 and 10 X Street. Mr and Mrs C negotiated to sell their flat in mid 2003 in advance of the works commencing. Mr C made his own enquiries at that time as to what the cost of the works was likely to be. A retention was made of part of the purchase price. The works took several years to organise and complete and accounts were not issued to the owners for their proportionate shares until February 2008. The outturn cost was some six times greater than the sum Mr and Mrs C had anticipated in mid 2003. They considered that The City of Edinburgh Council (the Council)'s actions and inaction had contributed to the escalation in the cost of the works. Mr C complained to the Scottish Public Services Ombudsman on 4 September 2008.

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

(a) the Council too broadly defined the works required, instructed significantly different work than set out in the notices, included extensive renewal and rebuilding instead of repair and limited replacement, and allowed additional work of betterment/improvement; and

(b) Council officers sought to mislead Mr C by maintaining that renewals or replacements constituted general repair work.

Jurisdiction

3. Subsection 7(8)(c) of the Scottish Public Services Ombudsman Act 2002 states that the Ombudsman must not investigate any matter in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law unless the Ombudsman is satisfied that, in the particular circumstances, it is not reasonable to expect the person aggrieved to resort or have resorted to the remedy. Section 8 and sub paragraph 7(1) of Schedule 4 state that the Ombudsman must not investigate action taken in matters relating to contractual or other commercial transactions of a listed authority.

Investigation

4. Mr C supplied me with relevant information on his complaint and I met with him on two occasions. I obtained and considered the Council's comments, inspected the relevant file, and met with officers of the Council's Corporate Property and Emergency Planning Section of City Development. 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.

5. Mr and Mrs C formerly owned and resided until mid 2003 in a first floor tenement flat at 9 X Street, Edinburgh. On 25 April 2001, a statutory notice (Statutory Notice 1) was served on the 11 owners at 8, 9 and 10 X Street to renew a severely weathered stone mullion to a front bay window of a second floor flat. No immediate action was taken by the owners and, following further contact with the Council, a second notice was served on the same 11 owners on 6 August 2002 (Statutory Notice 2) requiring:

> 'Repair defective tiling to all tile surfaces of roof (minor in nature). Uplift and renew defective felt covering of roof. Strip then replace defective panes of glass and reseal common stair cupola. Renew defective zinc ridging at cupola apex vent. Hack out defective skews and replace with lead watergates. Clear debris from entire rhones and roofpipes, then repair defective joints and replace defective sections of rhone and pipe. Repair defective roof hatch. Pick, point and repair defective 8 vent rear wallhead chimney stack. Repair defective render to 7 vent front centre and both 4 vent open gable chimney stacks. Pick, point and repair defective masonry to all elevations of building (worst at window mullions at front left hand side of building).'

6. Also on 6 August 2002 another statutory notice (Statutory Notice 3) was served on 22 owners of properties at 5, 6, 7, 8, 9 and 10 X Street to pick, point and repair a mutual gable chimney stack.

7. Mr and Mrs C decided to sell their flat in mid 2003 after the notices were served but in advance of repair work commencing. Mr C sought to clarify the likely costs of works. He said that a Council officer who he telephoned confirmed that the works should cost 'between £15,000 and £20,000'.

8. The Council have informed me that a senior member of Corporate Property and Contingency Planning remembers speaking to Mr C on the

telephone at that time. He had stated that, generally, removal of a chimney stack might involve costs in excess of £25,000 but that as he was not acquainted with the content of the notice for the proposed works, Mr C should speak with the contract administrator.(Mr C has no recollection of that discussion and notes that the contractor administrator was not appointed until some time later.)

9. Mr C also contacted a roofing and contracting firm (who are not on the Council's list of approved contractors) and they provided a written quotation to Mr C on 15 July 2003. The first three pages of this quotation related to the minimum repairs required to satisfy the notice (£23,195 plus VAT). Subsequent sections of the quotation related to recommended works in respect of other faults found when they inspected. Mr C passed the information to his solicitors. The solicitors instructed by the purchaser of the flat (Ms B) negotiated a retention of part of the purchase price and looked to Mr and Mrs C to make up the difference in the event that the invoice for the proportionate share of the final costs exceeded the amount retained.

10. Following the service of Statutory Notice 2 and Statutory Notice 3, the matter lay dormant until Ms B wrote to the Council on 14 October 2003 urging that, since owners were unlikely to reach agreement, action be taken by the Council. Ms B was informed on 18 November 2003 that the matter would be reported to the appropriate committee. When the committee met on 3 December 2003 officers were authorised to have the works undertaken and to charge the owners.

11. The Council accept that due to the heavy workload of the section at the time, there were long delays between allocation of the file to a Conservation Officer (Officer 1) on 4 March 2004 and acceptance of the contract. They informed me that Property Conservation officers are not time barred in the instance of acting on committee authorisation to implement works under notice. The time in question, from late 2003 to late 2005, however, was a period of extremely heavy work loads, high staff turnover and a lack of qualified and experienced consultants and contractors to take the conservation works forward. Based on the nature of the particular project and the experience it offered him, Officer 1 informed his line manager that he wished to retain the project in his workload.

12. Officer 1 visited the building on 20 and 25 January 2005 and again on 10 October 2005 to complete his survey. The survey information was used to prepare an estimate of the works under a major term contract agreement. Officer 1's calculations were checked by his line manager on 26 January 2006 and the contract was awarded to a contractor (the Contractor) on 6 February 2006. Officer 1 wrote to owners on 16 February 2006. He confirmed the cost of work in relation to Statutory Notice 2 at £163,000.61 (11 shares of £14,818.24). The cost in respect of Statutory Notice 3 was £11,774.35 (22 shares of £535.20). A breakdown of the main categories of expenditure was also provided (see Annex 2). Officer 1's letter was sent to Mr and Mrs C at their former address at 9 X Street, rather than to the new owner, Ms B.

13. The Council informed me that the level of cost in the contract was not uncommon for this type of work. In response to my enquiry the Council informed me that the Building Construction Indices Service revealed a 7.34 percent rise in prices over the two year period from early 2004 to early 2006.

14. The contract commenced in late May 2006. An update was sent to the owners by Officer 1 on 15 September 2006 some 13 weeks into the contract. This indicated an increase in the region of 20 to 25 percent in the original estimate. At that stage, work had yet to be carried out on the mutual chimneys. In a further letter sent on 10 November 2006, Officer 1 anticipated completion of works during the week of 18 December 2006.

15. On 8 February 2007, however, a further statutory notice (Statutory Notice 4) was served on the 22 owners, including Mr and Mrs C at 9 X Street to:

> 'Take down mutual chimney stack to a safe level due to loose and decayed masonry and rebuild to existing dimensions. Repair/renew decayed masonry and rake out and repoint boss/overjointed joints and beds to the remainder of the chimneyhead. (These works to be carried out under the existing contract).'

16. On 28 February 2008 the Council issued accounts to the 22 owners at 5, 6, 7, 8, 9 and 10 X Street. By that time Ms B was recorded as the owner. The works were described as:

> 'Repair defective tiling to all tile surfaces of roof (minor in nature) uplift and renew entire defective felt covering of roof. Strip then replace defective panes of glass and reseal common stair cupola. Renew defective zinc

ridging at cupola apex vent. Hack out defective skews and replace with lead Watergates. Clear debris from entire rhones and roofpipes, then repair defective joints and replace defective render to seven vent front centre, four vent front centre chimney stacks. Pick, point and repair defective masonry to all elevations of building (worst at window mullions at front left hand side of building). Take down and rebuild both four vent open gable chimney stacks; take down and rebuild eight vent rear wallhead chimney stack. Remove and replace defective masonry units to all elevations. Install new lead coverflashings to all masonry projections at roof level and to backgutters to chimneys, to valleys and to aprons. Take down and rebuild outside face of gable wall down to level of rear skew putt. Remove and renew astragals and timber capping pieces to cupola. Dowel in situ all skew copes to front and rear elevation.'

17. The total cost of the works on 8, 9 and 10 X Street in terms of Statutory Notice 2 was £158,440.48. With the Council's 15 percent administration charge of £23,766.05 and VAT (17.5 percent) on the Council's administration charge (£4,158.99), the total cost was £186,365.52. The gross share for each of the 11 owners was £16,942.32. Works carried out to the defective eight vent mutual gable chimney stack under Statutory Notice 3 amounted to £2,715.24, with a one twenty second share being £123.42. The gross cost of the works under Statutory Notice 4 issued on 8 February 2007 (paragraph 13), including the Council's administration charge and VAT on the charge was £6,837.91. The one twenty second share (£310.81) of that work was erroneously initially invoiced to Mr and Mrs C, when it should have been sent to Ms B. That error was subsequently corrected.

18. Mr and Mrs C, who by then had a young family, were extremely upset when the accounts were forwarded to them to settle with the Council. On 23 June 2008, Mr C submitted a formal complaint to the Director of City Development (the Director) maintaining that work completed under the notice was significantly different to that stated on the notice issued; that costs billed for provisional, emergency and additional work went beyond the scope of the original notice; that further notices should have been issued where increases in scope were identified and issued to the residents then in situ; that he was not liable for the actual costs where work exceeded the scope of work on the notice; that the scope of the work changed and his right to appeal or object was removed; and that the cost of the work jumped from no more than £30,000 in mid 2003 to a final cost of £186,000 without explanation. Mr C maintained that

he should only be responsible for a sum of no more than £2,800 in relation to the statutory notices and that if additional work items and costs needed to be recovered, they should be recovered from the individual resident at the property when the work was completed.

19. Mr C's letter was acknowledged by the Council on 10 July 2008. In the absence of an immediate reply, Mr C wrote to the Chief Executive on 16 July 2008. He emphasised his significant anxiety because of the substantial sum of money involved.

20. The Director responded on 7 August 2008. He apologised for the delay in replying to the letter of 23 June 2008 which had been caused by the fact that the officer tasked with replying had been on leave. He provided a detailed response to the complaint and offered Mr C the opportunity to examine the project file with a Senior Conservation Officer (Officer 2) in attendance.

21. Mr C attempted, unsuccessfully, to speak with the Director. He subsequently reviewed the project file with a representative of the Council. He responded to the Director on 29 August 2008 seeking further information. By the date (19 September 2008) the Director replied, Mr C had submitted his complaint to the Ombudsman.

(a) The Council too broadly defined the works required, instructed significantly different work than defined in the notices, included extensive renewal and rebuilding instead of repair and limited replacement and allowed additional work of betterment/improvement

22. Mr C maintained that by defining the works too broadly in the statutory notices, interested parties were denied the ability to make appropriate challenge to the scope, scale and necessity of the work. From his research, carried out after receiving the Council's invoices in 2008, Mr C compared what he saw as the lack of specification in Statutory Notice 2 and Statutory Notice 3 with more detailed descriptions in other contemporary notices. Mr C also maintained that work undertaken on the contract instructed by the Council went beyond the scope of these statutory notices. In particular, extensive renewal and rebuilding and works of betterment and improvement were included rather than a simple rectification of a state of disrepair. Mr C maintained that prior to implementation of additional work not covered by the terms of the notices, the Council should have issued a fresh notice or notices. Had that been done, then the liability for those works would have fallen on Ms B as the current owner.

23. I obtained a copy of the City Development Department Property Management Division's protocol instructions to their conservation surveyors. Protocol 18 relates to additional works required during the course of a contract. It states that:

> '1. Additional works required (i.e. work required that was not on the original notice) are not to be carried out unless the owners have been notified in writing (in the case of additional works which result in a small increase in cost). However, if the additional works result in an increase cost in excess of 10% then an additional notice should be served.
>
> 2. For additional works carried out as a matter of public safety, then the owners should be notified in retrospect (i.e. by emergency notice).'

24. The Council's Property Conservation Manager clarified that Protocol 18 was an internal document, without legislative force, developed through a desire to achieve better practice and intended to ensure that owners are made aware of major changes to a project with these being communicated through newsletter updates. At the time of this project, it had been common practice to leave the decision to the surveyor in charge of the project to decide what constituted a major change. Usually, this was where completely new work outwith the extent of the original notice was uncovered through further investigation. In this particular case a decision not to notify had been taken because it was deemed to be an increase in volume of work, rather than a change in its content. The Property Conservation Manager stated that, following a number of other cases coming to light with this ambiguity, he had issued an instruction to staff to adhere to the wording of the protocol and ensure that where the ten per cent trigger limit is exceeded, all owners are notified accordingly through a newsletter.

25. The contractor whom Mr C approached, provided Mr C with a quotation on 15 July 2003 in three parts. The first part (for £23,195 plus VAT) excluded repairs and renovations to rhones and rainwater goods but was inclusive of safety equipment and scaffolding; renewal of main platform roof coverings; minimum upgrade, repairs and renovations to glass cupola above common stair; the installation of new watergates in place of mortar fillets forming skews; general repairs to roof tiles; repairs and renovations to five chimney heads and stone repairs; and pointing on the front, rear and gable elevations. A second quotation (for £2,000 plus VAT) recommended works additional to the statutory

notice to rainwater goods and pipes in the front and rear elevations. The third quotation (for £2,108 plus VAT) recommended additional work in the form of renewal of the lead apron flashing to the front and rear elevations including valleys and watergates relating to the central chimney stack saddle and both front bay window saddles. In the main quotation, in relation to stone repairs, the quote allowed for the cutting back of defective and spalling stone lintels, mullions and cills etc around both top floor bay windows, the second floor left bay window, and spalling and defective random stone in the rear and gable elevations and thereafter preparing surfaces and repairing same in layers of plastic stone mortar.

26. Mr C was particularly aggrieved that rather than being repaired, one chimneyhead was taken down and rebuilt, that there was extensive replacement rather than repair of stonework and of a greater extent than initially surveyed, that the outside face of the gable wall was rebuilt, that the roof ended up being completely tiled and that there was a huge increase in scaffolding costs, due to additional scope and contract duration. In his formal complaint to the Council of 23 June 2008 (paragraph 18) Mr C stated that he was shocked by the extent of the work and costs and believed that the level of work and cost were not applicable to Statutory Notice 2 and Statutory Notice 3. He considered that he should only be responsible for a sum of no more than £2,800 in relation to the two notices. In his view, if additional work items and costs needed to be recovered, they should be recovered from the individual resident at the property when the work was completed.

27. The Director responded to this letter on 7 August 2008. He stated that the increased cost for the main roof and masonry was approximately 14 percent higher than the estimate of February 2006. He maintained that the original estimate/tender figure was always subject to change and re-measurement as certain areas of the roof, stone repairs to the façade and chimney stacks cannot be safely accessed and assessed until a full scaffold has been erected. The Director maintained that replacement of an individual stone with a new stone was still a repair and would not be considered grounds for issuing an additional notice. He commented on the particular chimney that had been taken down and rebuilt, and the reasons for the emergency notice for the front mutual chimney at 5 to 10 X Street (Statutory Notice 4, paragraph 15). He stated that the private quotation Mr C obtained in July 2003 (paragraph 25) did not cover all the works that required to be done under the notices. He explained the formula used to ascertain the scaffolding cost in the type of term contract let at 5 to

10 X Street. In respect of Mr C's statement that he should only be liable for a maximum of £2,800, the Director stated that the Council issues the final accounts to the owner of a property at time of billing and it is up to the respective lawyers for the buyer and seller to negotiate the costs based on retention monies held.

28. At interview, senior officers of the Council's Corporate Property and Contingency Planning informed me that following the accidental death in 2001 of a waitress in Edinburgh when a coping stone became dislodged from the roof above a busy restaurant and the findings of the Sheriff at the subsequent Fatal Accident Inquiry in early 2002, the Council's practice in instructing works under statutory notices had evolved. The Council's attention had been drawn in recent years to problems arising from what were now considered to be unsatisfactory methods undertaken in previous tenement repairs (a significant proportion of which had been undertaken under grant aid in the 1970s and 1980s).

29. The Council informed me that while they had not banned the use of 'plastic' mortar stone repairs on conservation projects, it was recognised that these types of repair were not as durable as full stone replacement. Wherever defective stone is discovered, the repair is site specific with a preference for 'like for like'. If the damage is not severe, or the removal of stonework could lead to complications, or exposure is not critical, then a common plastic mortar repair could be carried out. The officers did not accept that in this particular project there had been unnecessary extensive renewal and rebuilding. The Council provided me with digital images of the building at 5 to 10 X Street before the contract works which showed, in particular, the extent of stonework defect around windows.

(a) Conclusion

30. The 1991 Act (Annex 2) allows for appeal against the terms of a statutory notice exercisable by summary application to the sheriff within 14 days. The 1991 Act provides no right of appeal in respect of accounts issued for works instructed by the Council. In this particular instance, no owner availed themselves of the opportunity, following service of Statutory Notice 2 and Statutory Notice 3 on 6 August 2002, to appeal either the need for the works or that the notice was insufficiently specific. In the period between service of these two notices and the matter being reported to committee on 3 December 2003 the owners failed to organise the works themselves which would have obviated

the Council's further involvement. In terms of costs, had the works been organised by the owners themselves in late 2002 then in all probability they would have been considerably less, in part, because owners might have been more discriminating in what they instructed. The Council informed me that the 1991 Act puts no time limits on the instruction of works. In response to my request they established that the relevant building costs index rose 7.34 percent in the two years between early 2004 and early 2006.

31. I accept Mr C's point made on the draft report that it would have been unreasonable to have appealed to the sheriff against Statutory Notice 2 and Statutory Notice 3, given that he and his fellow owners had no reason to doubt that the text of the notice appeared to specify in reasonable detail the repairs that were considered necessary. Mr C's grievance arose much later when, after receiving an account for his share, he learned of the work undertaken and considered this was inadequately presaged. At that stage, he and other owners had no right of appeal. Mr C then scrutinised the updates sent to the owners' stair representative in 2006 (paragraph 14), and considered that it pointed to a contemporary need for a further notice (or indeed notices) to be issued while work was on site. Had that been done Ms B, rather than Mr and Mrs C, would have been liable.

32. In my view, a statutory notice has a relationship to the works put out to contract in that it scopes the parameters rather than proscribes the precise details of repair. In a simple case with good initial access to view the reported disrepair, the correspondence of the notice to the contracted works might be relatively precise. In other, more complicated, cases where initial access is restricted, even at the stage of the contract for the project being awarded, uncertainty may remain over the magnitude of necessary work needed or the precise details of implementation, and an element of contingency may apply.

33. After the service of Statutory Notice 2 and Statutory Notice 3 there was a lengthy delay of three and a half years before the Council arrived at a position where they could more precisely specify the work required and award the contract to the Contractor. I see no evidence that the works required in the contract departed significantly different from Statutory Notice 2 and Statutory Notice 3.

34. Neither Mr C nor I have first hand knowledge of whether there was further decay of stonework between the time that the two main statutory notices were

served on 6 August 2002 and the translation of the notice into specific instructions in the contract in February 2006. In the period of three and a half years it is a possibility that there could have been some deterioration of stonework.

35. Once the appropriate committee has authorised officers to implement works in default of the owners, however, I consider that day-to-day decisions regarding what the contract specification allows for are matters at the professional discretion of officers. I also take the view that section 8 and subparagraph 7(1) of the Scottish Public Services Ombudsman Act 2002 places a significant restriction on the scope of my investigation in this regard.

36. Given that the full extent of stonework decay would not have been ascertained until after the scaffolding was erected, it was inevitable that earlier estimates would have required revision upwards. Some 13 weeks into the contract, Officer 1 updated the owners' stair representative and pessimistically predicted a rise in costs of the order of 20 to 25 percent (paragraph 14) In the event, the invoiced cost exceeded the contract award figure by 14 percent. I am unable, however, to conclude that that was the result of a 'catch all' description which the Contractor exploited. There is, however, given Officer 1's anticipated increase, it seems to me that there should have been documentary evidence on file about the applicability of invoking protocol 18 (paragraphs 23 and 24).

37. I accept as a general principle, that where the Council are acting on behalf of defaulting owners, the Council should be able to specify a standard of repair which constitutes best practice and ensures public safety. The cost was undoubtedly higher and description of repair in the narrative to the accounts (paragraph 16) was different from what Mr C anticipated. The salient point is that the Council became involved because Mr C and other owners defaulted in their responsibility to undertake repairs after receiving Statutory Notice 2 and Statutory Notice 3 in August 2002. Authorisation was given to officers to arrange for the implementation of the works and, after a delay, they did so.

38. Council officers appear to me to have acted correctly within their protocol by serving Statutory Notice 4 on 8 February 2007 in respect of work to a mutual chimney.

39. In summary then, I accept Mr C's point that he could not reasonably have been expected to have appealed in August 2002 to the sheriff about a lack of specificity in Statutory Notice 2 and Statutory Notice 3. For reasons set out at paragraph 32, I am unable to uphold that the Council too broadly defined the works required. I consider that given the delays that occurred between December 2003 and February 2006, the works instructed could have been both more expensive and more extensive than envisaged in August 2002 and to that extent I partially uphold the complaint. On the present evidence, I also partially uphold Mr C's complaint that the Council, faced with increased costs during the contract, should in terms of the relevant protocol have considered the need for a fresh notice as they correctly did with the taking down and rebuilding of one of the mutual chimneyheads (paragraph 15). I believe that the matter of best practice with regard to the standard of repair, and in particular in respect of masonry repairs, is a matter for the discretion of the Council and that it is wholly appropriate for them to give paramount consideration to matters of public safety. I am not in a position to uphold Mr C's complaint that the Council engaged in betterment rather than repair and unnecessarily renewed and replaced defective stonework. Notwithstanding, I can readily empathise with Mr C's position that Ms B (rather than he and his wife) will be the beneficiary of repairs carried out. Overall, I partially uphold this complaint.

40. I consider that to recompense Mr and Mrs C for the Council's administrative flaws, the Council should consider reducing part of their administration charge to Mr and Mrs C.

(a) Recommendation

41. The Ombudsman recommended that the Council review the extent that they were responsible for the delays and increase in contract price and commute part of their administration charge. The Council's Director of Development informed the Ombudsman that the Council accepted the recommendation to commute part of the administration charge and had authorised his staff to take this to a suitable conclusion. The Ombudsman has asked the Council to notify him when the recommendations have been implemented.

(b) Council officers sought to mislead Mr C by maintaining that renewals or replacements constituted general repair work

42. Mr C was aggrieved that the Director, in his letter of 7 August 2008 (paragraph 27), misled him that renewal or replacements were part of general repair work.

(b) Conclusion

43. I consider that this head of complaint is in essence a disagreement between Mr C and the Council about whether renewals or replacements can properly be considered to be repairs. The Council have explained to Mr C their view is that repair can include works of renewal or replacement. If Mr C considers that the Council have exceeded their powers to his detriment in instructing works which they had no power to instruct then that is a matter which would ultimately require to be tested in the courts. While it is unfortunate for Mr C, that he is apparently liable for the costs of installing replacement masonry, that he does not have the benefit to enjoy as current owner, that situation in my view does not arise out of maladministration or service failure by the Council. I do not uphold this complaint.

44. The Council have accepted the recommendation and will act on it accordingly. The Ombudsman asks that the Council notify him when the recommendation has been implemented.

Annex 1

Explanation of abbreviations used

Mr C	The complainant
Mrs C	Mr C's wife
8, 9 and 10 X Street	The tenement block where Mr and Mrs C resided until mid 2003
The 1991 Act	The City Of Edinburgh District Council Order Confirmation Act 1991
5, 6 and 7 X Street	The adjoining tenement block
The Council	The City of Edinburgh Council
Statutory Notice 1	A statutory notice served on 11 owners at 8, 9 and 10 X Street under section 24(1) of the 1991 Act on 25 April 2001
Statutory Notice 2	A statutory notice served on 11 owners at 8, 9 and 10 X Street under section 24(1) of the 1991 Act on 6 August 2002
Statutory Notice 3	A statutory notice served on 22 owners at 5, 6, 7, 8, 9 and 10 X Street under section 24(1) of the 1991 Act on 6 August 2002
Ms B	The person who bought Mr and Mrs C's flat in mid 2003
Officer 1	A Council Conservation Officer

The Contractor	The firm who carried out the works on 5, 6, 7, 8, 9 and 10 X Street under Statutory Notice 1 and Statutory Notice 2
Statutory Notice 4	A further notice served on the 22 owners at 5, 6, 7, 8, 9 and 10 X Street on 8 February 2007
The Director	The Council's Director of City Development
Officer 2	A Council Senior Conservation Officer

Annex 2

Breakdown of estimated costs of works in respect of Statutory Notice 2 and Statutory Notice 3 sent to owners by Officer 1 on 16 February 2006

a) Notice for works to 8-10 X Street (11 shares)

Scaffolding and preliminaries (e.g. site welfare facilities, transport, site management)	£48,723.46
Repairs to chimneys and parapet walls (8 vent rear wallhead, 7 vent front centre, 4 vent front centre and both 4 vent gable chimneys)	£24,156.19
Re-pointing of masonry to all elevations	£12,857.68
Repairs/renewals to masonry to all elevations	£29,838.35
Repairs to tiling	£2,000.00
Lead/zinc replacement	£8,310.95
New felts to platform roof	£4,545.07
Repairs to and re-glazing of cupola	£2,067.07
Repairs to and re-painting of cast iron rain water and soil water goods	£6,077.73
Total estimated cost	**£138,576.50**
Administration fees @15%	£20,786.48
VAT on fees only	£3,637.63
Total Cost to be recovered from owners	**£163,000.61**
Each owner's share	£14,818.24

b) Notice for works to 5-10 X Street (22 shares)

Scaffolding and preliminaries (e.g. site welfare facilities, transport, site management)	£3,519.54
Repairs to chimneys and parapet walls (8 vent rear mutual chimney)	£6,490.54
Total estimated cost	**£10,010.08**
Administration fees @15%	£1,501.51
VAT on fees only	£262.76
Total Cost to be recovered from owners	**£11,774.35**
Each owner's share	£535.20

Annex 3

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.