

Edinburgh Conveyancers' Forum (ECF) represents most of the solicitors' firms involved in buying and selling residential property in Edinburgh and the Lothians. In the course of our work we are involved in dealing with outstanding statutory notices on a very regular basis with most tenements having at least one.

Our work here involves ascertaining which notices affect a property and the status of these – served, works underway, completed or accounts issued – and finally agreeing and holding retentions from the price to cover outgoing owners' responsibility for such notices. Members hold millions of pounds of retentions awaiting completion of works and invoicing to settle these.

This has been an aspect of our workload for at least the last 30 years with increasing volumes of notices being served in more recent years. The reason for this is not hard to ascertain – the lack of any significant efforts on the part of homeowners to carry out repairs of their own accord. This is endemic in Edinburgh which has no history of factoring of tenement flats unlike the likes of Glasgow.

In the late 70's and into the 80's Edinburgh had to instigate a scheme of Housing Action areas for Improvement, due to the condition the housing stock had fallen into. A system of grants was needed to help those homeowners who simply did not have the cash to pay for the necessary repairs and to avoid the alternative of buildings being condemned and ultimately demolished.

The outcome of such common repairs schemes being carried out was not for tenement owners to start undertaking ongoing repairs to maintain their newly repaired buildings but to assume that no repair would now be required for years. The continuing failure to repair resulted in the Council serving notices and carrying out repairs. This has become the de facto and expected course over the decades and, until the suspension of statutory notices following the Council investigation, actually worked relatively well but, more importantly, provided an important function in preserving the housing stock.

Flat owners in Edinburgh have had no history over many decades of undertaking repairs off their own backs and this unlikely to change for a number of reasons:-

- 1 the now well-established culture of leaving the Council to carry out repairs and bill everyone.
- 2 The shorter length of tenure of flatowners since the home ownership expansion of the 80's which leaves owners with less connection with the building.
- 3 The increasing move towards rental rather than home ownership with absentee landlords tending to own only single flats in a building rather than multiple ones or whole blocks as in past decades.
- 4 The current economic climate which leaves more flatowners with less available cash to pay for repairs and with diminished property values leaving them unable to borrow such funds.

ECF members are overwhelmingly of the view that leaving common repairs of tenements to flatowners to deal with collectively will result in a lack of any discernible action on this front. This will simply store up problems for the city further down the line with many major repairs being required at some not distant point. It will increase the risks of

further incidents of injury to property or person from disrepair

blight to large areas, particularly in poorer areas, which will become slum areas, and

the loss of large parts of Edinburgh's established streetscape which it is world renowned for.

In short, any replacement scheme which does include an element of compulsion will be a disaster for the City of Edinburgh and will come back to haunt the Council in the foreseeable future. The ability of the Council to continue to serve notices and carry out work when owners do not do so must be preserved and used.

However our members also recognise certain important facts –

- 1 flat owners fail to maintain their buildings and seem to believe that they should somehow not need to expend money on such repairs
- 2 especially in the current economic climate, the costs to the Council of carrying out repairs and fulfilling its general functions in regard to the condition of the housing stock, impose financial constraints upon it
- 3 the Council is extremely sensitive to the damage to its perceived reputation of the investigation (ECF members do not actually agree that the old scheme is as tainted as the Council may feel – it is felt that the abuse of the system was the issue, not the system itself)
- 4 the abuse of the system seems to have coincided with the ending of the use of committees to approve statutory notice repairs
- 5 ECF members have been heavily involved in the operation of the statutory notice regime for decades and given our role in purchases, sales and letting of these properties, they both wish and feel entitled to be involved in both the formulation and delivery of a replacement scheme.
- 6 there can and should be a multi faceted approach to repairs in the future.

ECF would make the following suggestions towards any replacement scheme the Council introduces.

- Under the Tenements Act, a majority of homeowners can appoint a factor to manage their building. That factor is then imbued with certain powers as regards repairs. Private factors are unlikely to seek out such appointments unless there is unanimous agreement amongst owners. A private factor does not have the same range of powers to recover costs as the Council do. The Council could however take a role in providing a factoring service to homeowners (either directly or via some entity set up for that purpose) charging for doing so.
- Under such a scheme the Council would be able to use the ultimate tool of the statutory repair notice to ensure works are carried out.
- It would seem beneficial to all concerned if there were some form of inspection service available to carry out detailed surveys of buildings to identify repairs and estimate the costs of these. Such a service would no doubt be used by the Council factoring service on an ongoing basis. This would be funded by fees payable by flat owners, either singly or collectively. Again this might be provided direct by the Council or an entity created by it or contracted out but would need to be self-funding.

- Repairs required would undoubtedly raise their heads at the time of sale of a flat. Where there is a planned repair at that point, the seller's share could be paid from the sale proceeds to the Council factor as part of the sinking fund. As factor the Council would also have power to register Notices of Potential Liability for Costs. Any such Notices would have to be settled by the seller to give clear title to the buyer.
- A scheme of public information to homeowners, both on the need to maintain and repair their buildings and as to how they may achieve that, would be welcomed, supported and facilitated by ECF members.
- The Council continue to use notices for repairs, not just for emergency repairs, but these are seen as one of a number of tools and are the stick amongst the carrots in encouraging owners to meet their own responsibilities.