

# LEGAL UPDATE

Edition 7

*This month we'd like to tell you about an interesting case which we have handled in the last few months. It is relevant to any householder who feels that his part of town, or indeed any other part of town, is not as clean as it might be. Don't let the council fob you off with excuses, because...*

## **It's unlawful for councils to give litter complaints the brush off**

Do you ever feel that the more you pay in council tax the less you receive in return?

This summed up the feelings of one group of concerned Edinburgh residents in relation to services provided by the city council, or at least one of its departments - environmental services or, as it was called in simpler times, "cleansing".

They all lived in the same residential street and, over time, had become increasingly concerned by the build up of litter on the pavement and roadway outside their respective homes. They could readily recall the days when the old cleansing department employed street cleaners who would regularly sweep up pavement litter and take it away in

portable bins. But that service seemed to have ceased without any diminution in council tax to compensate so, understandably, they were not inclined to take on the job themselves. Upright citizens all of them may have been but they were not prepared to be taken for mugs.

They initially petitioned the council to tackle the problem but when this did not achieve any success they came to McKay Norwell. Initially, we thought this one would be a hard nut to crack but we agreed to start digging. After a few hours in the library we discovered the Environmental Protection Act 1990, section 89 of which requires a local authority "to ensure that the land [within its designated area] is, so far as is

practicable, kept clear of litter and refuse."

This applies to every "public road other than a trunk road", which effectively covers most streets and open places.

If such a place is covered in litter then a member of the public can complain under section 91(5). Before instituting proceedings under this section, "the complainant shall give to the [local authority] not less than five days written notice of his intention to make the complaint and the notice shall specify the matter complained of".

The council then has to clean up the area, and if it fails to do so the complainant has the option to go to court for a Litter Abatement Order. Under section 91(6), "if the court is satisfied that the highway or land in question is defaced by litter or refuse" or, in the case of a highway, "is wanting in cleanliness", the court has the power to make an 'abatement order' requiring the defendant to clear away the litter or refuse or, as the case may be, clean the highway within a specified time.

Consequently, we submitted a preliminary complaint to the City of Edinburgh Council on behalf of the residents and when this was ignored we then went on

to make an application to the sheriff court under the Act. This seemed suddenly to concentrate minds wonderfully at the City Chambers; no sooner had the application been served than workmen were despatched to the location and the offending litter cleared away. We then withdrew our action – but only after securing an agreement from the city council to pay our clients' legal expenses.

So the moral is clear: if you live in an area where public litter and refuse is a constant problem because of inaction or indifference by the local authority, don't start looking out a brush and shovel – reach for the telephone instead and put the matter in our hands.