

IN THE FIRST-TIER TRIBUNAL
PROPERTY CHAMBER

CASE REF:
LON/OOBE/LDC/2023/0074
All residential leasehold properties
managed by the London Borough of
Southwark

LONDON BOROUGH OF SOUTHWARK

Applicant

and

ALL LEASEHOLDERS

Respondents

WITNESS STATEMENT OF LOUISE TURFF

I, Louise Turff of 160 Tooley Street, London SE1 WILL SAY;-

1. I am employed by the Applicant as the Head of Home Ownership Services which deals with the management of the Applicant's Leasehold properties. I make this statement in support of the current Application. Save where it is hereinafter referred to the facts deposed to are from my own knowledge or from the Applicant's files.
2. The Applicant is legally obliged to insure its leasehold properties. In the leases there is a covenant "to insure the building to the full insurance value thereof against destruction or damage by fire tempest flood and other risks against which it is normal practice to insure or to make other appropriate and adequate arrangements and in the event of destruction or damage by any such risk as aforesaid to rebuild or reinstate the flat and the building".

3. The Applicant had an insurance contract with Zurich to insure the leasehold properties under a contract entered into from 1 April 2018 to 31 March 2021 with the option to extend for 2 twelve month periods at the Applicant's sole discretion. Those options were exercised with the second of those extensions expiring on 31 March 2023.
4. The Applicant decided to test the market and re-tender the building insurance contract as the second single year extension with Zurich had been made and it was agreed that using the Applicant's insurance broker Arthur J Gallagher would potentially increase the number of bids received by including those insurance companies who only deal through an insurance broker as well as direct insurers. The Applicant served a Notice of Intention on leaseholders in respect of this on 30 June 2022. A copy of the Notice of Intention is attached marked "LT1". The process began with a market engagement meeting in September 2022 with 2 potential bidders. The tender went out publicly on 4 October 2022 with a closing date of 11 November 2022.
5. Zurich advised the Applicant on 26 September 2022 that it would not be submitting a bid due to a change in their corporate strategy. Zurich did offer the Applicant the possible option of an extension if the Applicant's procurement process was unsuccessful. The terms of the extension and premium payable were not provided.
6. The Applicant provided information on cladding, insulation and construction for all block of 7 storeys and above as required by the Building Safety Act 2022. Questions were raised during the

tender process for the same information for blocks of 6 storeys. This is not required by Building Safety Act 2022 and we did not yet have this information. Another question raised was reinstatement valuations for every leasehold property or block in the borough. Again this was not available. The Applicant had undertaken some archetypal valuations which were included in the documentation sent out. Extensions were requested by the potential bidders and this was granted with the tender closing on 25 November 2023. The tender closed at 12 noon on 25 November when it was confirmed that no bids had been received.

7. Various options were considered. One was to approach Zurich for contract terms for an additional year. Another was to approach the private sector insurance market which would necessitate the Applicant bypassing its procurement policy. This proved to be unviable as the information required for the private sector market is not yet available.
8. The Applicant has also looked at alternatives by reaching out to the London Insurance Consortium, a group of Local Authorities who tender collectively for insurance. The Consortium lead however advised that they were not taking on new members at present. The Applicant also reached out to the Crown Commercial to explore whether this would be an alternative but the Crown Commercial does not offer leasehold buildings insurance
9. In the event we received Zurich's terms for extension on 10 March 2023.

Zurich's offer was:

- 3 months extension
- £100 Any One Loss (AOL), £350 Escape of Water (EOW) and £1,000 Subsidence excesses :-
 - o £8,465,936.00 excluding Insurance Premium Tax annual premium.
 - o **£2,116,484.00 excluding IPT three month pro-rata premium.**
- £350 AOL, £500 EOW and £1,000 Subsidence excesses :-
 - o £8,228,436.00 excluding IPT annual premium.
 - o **£2,057,109.00 excluding IPT three month pro-rata premium**

10. Protector's final terms were received on 16 March, and were:

- 3 year contract with 2 further annual extensions
- £8,723,934.00 exclusive of IPT - £350 excess AOL, £500 excess EOW and £1k subsidence

11. The terms offered by Protector were less favourable than the previous policy in that the new policy would have excesses for all claims. The previous policy only had an excess for subsidence and extended accidental damage. Also under the previous policy the council received a service fee of 12.5% of the annual premiums (excluding IPT) for providing the initial claims handling service, managing the contract and associated costs. Under the new contract the council will no longer receive this as Protector require claims to be submitted directly to them. However, there will still be contract management and associated costs incurred. The service fee had been used to cover these overheads. These overheads, therefore will now be chargeable to leaseholders.
12. Whilst Zurich was offering a slightly lower premium compared to Protector Insurance, the offer was made on the proviso that the council had no other insurance provider. Once Protector had made an offer, the proposal from Zurich was no longer available. Even if it had been there was no guarantee that it would be extended after three months, and it would have been for twelve months maximum. Zurich also made it clear that there would be no further extensions beyond the twelve months if this was granted. The Zurich option is likely to have been too precarious even if it had remained open to the council.
13. In the circumstances it was considered to be the best option to accept the Protector terms to ensure that the leasehold properties were insured.
14. The Applicant has made this Application and has served the leaseholders with a Notice of Proposal insofar as is possible with

details of this application and how to respond to it. A copy of that Notice dated 21 May 2023 is exhibited as "LT2".

15. The Applicant wrote to the Department for Levelling Up, Housing and Communities (DLUHC) on 24 March 2023 on behalf of the London Leasehold Officers Forum, to raise the concerns of a large number of London authorities who were having difficulties in obtaining leasehold property insurance. A copy of that letter is exhibited as "LT3".
16. The Applicant has also met with the DLUHC and the Local Government Association (LGA), to discuss the lack of providers in the local authority leasehold insurance market, the marked increase in premiums seen by a large number of London (and other) authorities and the addition of excesses to insurance contracts along with requests for a large amount of additional information and full reinstatement values across the portfolios. A round table discussion, chaired by the LGA and with representatives from local authorities, insurers, brokers and DLUHC, took place in July. Representatives at the meeting discussed the key concerns of both insurers and insured and potential mitigations. The discussions will be ongoing.
17. The Applicant has raised with DLUHC a recommendation for a legislative change giving local authorities the ability to charge leaseholders a premium for self-insurance. This would allow local authorities to choose the option of self-insurance when faced with a non-competitive market, and to charge a reasonable premium to leaseholders to cover the cost.
18. The Applicant asks for dispensation from the consultation requirements pursuant to sections 20 and 20ZA of the Landlord and Tenant Act 1985 (as amended). In particular it seeks

dispensation for the requirement to give at least two proposals to leaseholders and from the notice requirement of the Service Charges (Consultation Requirements) (England) Regulations 2003, and from the requirement to give a 30 day observation period prior to entering into contract. The Applicant submits that in these circumstances it is reasonable to do so.

I believe the contents of this statement are true

A handwritten signature in black ink, appearing to read "Louise Turff". The signature is written in a cursive, slightly slanted style.

Louise Turff

Date: 8th August 2023

Section 20 Landlord and Tenant Act 1985
Notice of Intention

30th June 2022

Reference: cwg 22/263

Team: [Service Charge Construction Team](#)

Boroughwide Buildings Insurance 2023

The council is responsible for arranging buildings insurance for council owned blocks. The current cover with Zurich will come to an end on 31st March 2023 and the Council is about to commence negotiation to arrange for new insurance cover. The insurance premium is billed in the annual service charge.

Before inviting tenders the council is required to consult with leaseholders and Recognised Tenants Associations (RTAs) over what they are proposing, and why it is necessary. This Notice has been sent to all leaseholders in the borough.

Why we are writing to you?

Section 20 of the Landlord and Tenant Act 1985 requires leaseholders and RTAs to be consulted before the council enters into a long term agreement. The council is required to consult leaseholders on an agreement where their contribution towards the works will amount to £100 or more in any one year. This Notice of Intention is the first stage in the consultation process.

This notice has been sent to all leaseholders and to any relevant RTA

Outline of Proposed Contract:

Subject to this consultation exercise insurers will be invited to provide a price for buildings insurance cover against a range of perils that could affect the building including:

- Fire, lightning, explosion or earthquake.
- Aircraft and other flying objects, or items dropping from them.
- Storm, wind or flood.
- Subsidence
- With regard to accidental damage, insurers will be asked to offer a tender for cover with and without accidental damage, and the effect of the premium payable will be assessed as part of the tender appraisal

Insurance is in respect of the fabric of the building and does not include cover for the contents of the property. An excess might be associated with some perils.

How long is the contract for?

The contract is for a period of 3 years, with an option for the council to extend the contract by two twelve month periods.

Why is the council proposing this contract?

Under the terms of the lease the council is responsible for insuring leasehold properties and blocks against destruction or damage by fire, tempest, flood and other risks against which it is normal practice to insure.

How do leaseholders make legal observations?

Where the council is inviting individual tenders for contracts leaseholders and RTAs are entitled to nominate a contractor to be included in the tender list. However in the case of this contract the budget estimate exceeds the threshold at which it is necessary to give public notice. Under these circumstances the council is not required to invite nominations from leaseholders and any company may express an interest. You may however draw the attention of any preferred contractor to the public notice in the Find a Tender Service if you wish.

Section 20 requires the council to allow leaseholders and RTAs 30 days from the date of this notice to submit written observations regarding the proposed contracts. The final contracts are subject to observations made at this stage in the consultation process.

If you would like to make such observations, they should be addressed to:

Service Charge Construction
PO Box 71994
160 Tooley Street
London
SE1P 5FW

Or [make the observations online.](#)

Observations must reach the Service Charge Construction Team by **1st August 2022**. When making written observations please include the property address and contract reference code at the head of the notice on all correspondence.

What happens next?

If this contract proceeds you will receive a further Section 20 notice which will contain details of the rates received in the tender process. It will give a summary of leaseholder observations provided at this Notice of Intention stage.

Leaseholders and any RTA will be given a further 30 days to comment on the tenders. The council's decision to enter into contract is subject to leaseholder observations made at this time.

Further information

[Further information on the council's insurance cover can be found on the council's website.](#)

[Service Charge Construction](#)



LT2

To the Leaseholder of***

Homeownership Services
Exchequer, Finance & Governance

[Contact website](#)

Date: 21 May 2023

Ref: cwg - 22/263

LBS Property:*****

Property Ref:*****

Dear Leaseholder

Re: Leasehold Buildings Insurance

I am writing to update you on the procurement of the leasehold buildings insurance contract. The council served you with a Section 20 Notice of Intention on 30th June 2022 informing you that the current buildings insurance contract with Zurich Municipal was coming to an end on 31st March 2023 and the council were procuring a new contract.

The council went out to tender on 4th October 2022 and received no bids. Since then the council has worked with its insurance advisor to negotiate a contract with public sector providers and in March received one offer from Protector Insurance.

The council has entered into an agreement with Protector for a period of three years from 1 April 2023 with two twelve month extensions (details are contained within the Section 20 Notice of Proposal enclosed with this letter). Due to the need to have a leasehold building insurance policy in place by 1 April 2023 an urgent process was followed to obtain Cabinet Member approval to enter into the contract. As a result we were unable to issue the second statutory consultation notice before entering into the contract.

The council have therefore applied to the First Tier Tribunal (FTT) for dispensation on those aspects of Section 20 with which we are unable to comply. The hearing directions have been received, so the council is now in a position to issue the Section 20 Notice of Proposal.

As a result of the impact to the insurance market, we have seen a significant increase in premiums and the application of new excesses on the policy. Further details of the premiums and excesses can be found in the enclosed Section 20 notice.

[Answers to questions that you may have regarding the procurement of this contract can be found on the Southwark Council website.](#)

Yours sincerely

Louise Turff
Head of Home Ownership Services



Section 20 Landlord and Tenant Act 1985

Notice of Proposal

To the Leaseholder of***

Homeownership Services
Exchequer, Finance & Governance

[Contact website](#)

Date: 21 May 2023

Ref: cwg - 22/263

LBS Property:*****

Property Ref:*****

Boroughwide Building Insurance

The Council is responsible for arranging building insurance cover for your building, providing insurance for a range of perils that could affect the fabric of the building. The premium is billed in your annual service charge. The current cover with Zurich came to an end on 31 March 2023 and the Council has arranged for replacement cover.

The Council is required to consult with leaseholders on the tender received and on the premium that will be payable in the service charge. This Notice gives you these details and invites you to make observations.

The Notice has been served on all Southwark Council leaseholders. Please note that insurance is in respect of the fabric of the building and does not include cover for the contents of your property. You are strongly advised to arrange your own contents insurance.

Purpose of the Notice of Proposal

The Council is obliged to consult with leaseholders on a contract like this in two stages.

A Notice of Intention is served before inviting tenders. The notice consults with leaseholders over what the contract is about and why it is necessary. We wrote to you regarding this on 30th June 2022.

A Notice of Proposal is the second stage of this consultation and sets out the tenders received and the costs that you will pay as a leaseholder

Dispensation from Section 20 requirements

For the reasons set out in the covering letter, it was not possible to obtain tenders through the normal tender process, nor was it possible to delay the Building Insurance agreement until this notice could be served and the 30 day observation period concluded.

Under circumstances where a landlord is unable to fully comply with the consultation regulations, they are directed to make an application to the First Tier Property Tribunal which will consider whether the actions taken are reasonable. Such an application has been made and the Council has now received directions from the Tribunal.

[A copy of the directions is available on the council's website on a dedicated page titled Buildings Insurance 2023.](#)

If you wish to receive a printed copy of the directions you should [request this using the eform on the council website](#), or in writing to the address at the end of this letter

The key points in the directions are as follows:

- If you wish to oppose the application, you should do so by **19th June 2023** using the form supplied by the Tribunal as part of the directions on the website, which is also attached to this notice
- The case will be decided on paper unless any leaseholder requests otherwise. Any request for a hearing must be made to the Tribunal by **3rd July 2023**. Further details on this are contained in the directions
- Advice regarding remote hearings and giving evidence from abroad is contained within the directions
- The council's statement of case will be uploaded to the website by **3rd July 2023** and can be viewed on the web page identified above
- Additional documents will be added to the website as the case progresses
- The Tribunal will consider the council's application in the week beginning **17th July 2023** and the final decision of the Tribunal will be uploaded to the website on or after that date.

How to make observations on this Notice

Section 20 requires the Council to allow leaseholders and any RTA to submit written observations regarding the cost and the content of the agreement within 30 days from the date of this notice. The details that are available with regard to the agreement are on the attached statement.

If you would like to make such observations, they should be addressed to:

Service Charge Construction
PO Box 71994
160 Tooley Street
LONDON
SE1P SFW

[Or make the observations online.](#)

Observations must reach the council by **30 June 2023**.

Note that observations on the Notice and the statement are separate to representation that you may wish to make to the Tribunal. Representation to the Tribunal should be on the form that the Tribunal have provided, which is attached and is also available on the website as part of the directions.

Service Charge Construction
Home Ownership Services

**Statement under paragraph 4 of the Service Charges (Consultation Requirements)
(England) Regulations 2003**

When entering into an agreement like this the Council is required to provide a statement of the tenders and service charge costs, and a summary of leaseholders' observations.

Outline of the contract

The scope of the contract is insurance against a range of perils that could affect the fabric of the building, including:

- Fire, lightning, explosion or earthquake.
- Aircraft and other flying objects, or items dropping from them.
- Falling trees
- Storm, wind or flood
- Theft and malicious damage
- Escape of water from a fixed appliance or pipe through burst or freezing (with an excess of £500)
- Subsidence (with an excess £1,000)
- Accidental damage to fixed glass and to fixed heating and water installations

There is an excess of £350 on all perils except where specifically identified above

The full statement of cover is available by post on request or you can [access the full statement via the council's website](#).

Insurance is in respect of the fabric of the building and does not include cover for the contents of your property.

Details of the tender

The Council invited tenders for this contract in October 2022, however no tenders were received at that time. An offer was received outside of the tender process from Protector Insurers, which the council has accepted.

Protector Insurance

7th Floor, 3 Hardman Street, Manchester, M3 3HF

The Council has appointed Protector Insurance in advance of this Notice in order to ensure continuity of cover. The council believes that the bid is representative of the current market for public sector buildings insurance and that further interest in providing cover from alternative providers is not likely.

The contract is for a period of three years with an option to extend for two further twelve month periods.

Annual uplifts will be based on the declared values being inflated annually, in line with BCIS (Building Cost Information Service) recommendations.

There is no connection, as defined in The Commonhold and Leasehold Reform Act 2002, between the Council and Protector. [A full copy of the tender from Protector is available on the Council's website](#) or by post on request

Details of premiums payable

Premiums are calculated on the basis of the number of bedrooms in each property and are shown below inclusive of the Insurance Premium Tax (IPT) that is payable, currently set at 12%.

	Sum Insured	Premium including 12% IPT
Bedsit	£268,543	£508.30
1 Bed	£317,357	£600.69
2 Bed	£344,826	£652.69
3 Bed	£425,747	£805.85
4 Bed	£454,230	£859.77
5 Bed	£468,563	£886.90
6 Bed	£538,847	£1,019.93
7 Bed	£619,674	£1,172.92
8 Bed	£712,625	£1,348.86

The premiums are based on an indicative sum insured for each property based on the bedroom numbers, as set out in the table above. The premium is calculated on a rate payable per £1,000 of the sum insured, and subject to Southwark Council providing Protector with updated declared values within the first year of cover. Where we revise valuations of our properties the sum insured figure might change, which will mean that the premium may change next year in addition to annual uplifts that are applicable.

The premium does not include council overheads for the administration of the contract and claims.

The estimate that you received in February 2023 included an estimated increase in premiums from the previous year of 11%, and this has been billed to you. The premiums offered by Protector Insurers are considerably higher than the estimated figure and the balance will be billed in the actual service charge for 2023/24 to be issued in September 2024. You will be able to spread the payment over six months from the date of the bill.

Observations received in response to the Notice of Intention

Fifteen responses were received following the Notice of Intention, served in June 2022. Most observations asked about the perils that would be insured against, requesting that the council ensure that they remained the same as those of the last policy. There was particular reference to escape of water. Responses advised that the insured perils would remain the same.

Some observations were received about the apportionment of the costs and advice was given on how premiums are calculated by the insurer in relation to both bedroom numbers and property types.

Some leaseholders queried the length of the agreement and were advised that the period that was included in the tender invitation was considered the optimum period to attract bids and to obtain the best price.

One leaseholder queried the service fee that is payable as part of the insurance and an explanation was given on the work that is undertaken by the council to log, investigate, and monitor claims referred to the Insurer.

Tribunal Reply Form for Leaseholders

Case Reference: LON/OOBE/LDC/2023/0074	
Property:	Various residential leasehold properties in the London Borough of Southwark

ONLY COMPLETE AND RETURN THIS FORM IF YOU OBJECT TO THE APPLICATION

If you do object please complete and return this form to:

The First-tier Tribunal Property Chamber (Residential Property) by email to: London.RAP@justice.gov.uk

And, send a copy to the landlord's representative, Carla Blair

London Borough of Southwark

Address: 160 Tooley St, London SE1 2QH

Email: Hsg.homeownership@southwark.gov.uk

	Yes	No
Have you sent a statement in response to the landlord?	<input type="checkbox"/>	<input type="checkbox"/>
Do you wish to request an oral hearing?	<input type="checkbox"/>	<input type="checkbox"/>
Name address of any spokesperson or representative appointed for the leaseholder:		

Please also complete the details below:

Date:	
Signature:	
Print Name:	
Address of affected property:	
Your correspondence address (if different):	
Telephone:	
Email:	

The Rt Hon Rachel Maclean MP,
Minister of State for Housing
House of Commons
London
SW1 0AA

Louise Turff
Head of Homeownership Services
Homeownership Services
Customer and Exchequer Services

Louise.turff@southwark.gov.uk

Tel: 0207 525 7558

Date: 24 March 2023

Ref: Leasehold Buildings Insurance

Dear Rachel Maclean

Leasehold Buildings Insurance

I am writing on behalf of the London Leasehold Officers Forum in regard to current issues with providing leasehold buildings insurance for local authority properties.

The London Leasehold Officers Forum is formed of a number of officers from London Local Authorities, and some Housing Associations, responsible for the management of the owned (mainly right to buy) portfolios. The Forum represents authorities managing several hundred thousand residential properties, both secure tenanted and owned.

I am writing to express our concern regarding the current state of buildings insurance provision in both the public and private sector markets for local authority landlords. Under the provisions of the Right to Buy, we are obliged to provide full buildings insurance cover on behalf of our leaseholders, and recharge the premiums via the service charge. While previously there have been a limited number of insurers who would tender for local authority leasehold buildings insurance it has always been possible to obtain cover. However, in the last few years the market has been hardening, and last year one of the main providers (Zurich Municipal) announced that they were withdrawing from the mortgage market entirely. That left two main suppliers, one of whom (Avid) lost their underwriter earlier this year. London authorities who were insured with either ZM or Avid were notified that their insurance policies would cease on 31st March, leaving limited time to procure new policies in a difficult market.

Of those authorities who still have insurance cover, many have seen a large rise in premiums, and those who need to procure new cover anticipate that the premiums will

double or more for our leaseholders. With Housing Revenue Accounts under increasing pressure it is not an option to subsidise leasehold insurance premiums, which will cause financial problems for many of our leaseholders particularly in the current cost of living crisis.

One option which we would like to explore is the feasibility of self-insurance. This is currently not a possibility for most authorities as we have no mechanism within the lease to charge an appropriate premium. The option would need a legislative change, allowing a retrospective clause to be added to leases allowing for self-insurance with the ability to charge a reasonable premium (inclusive of overheads and legal costs). However, even with this option it is likely that the Council of Mortgage Lenders would not accept self insurance, and leaseholders may still find themselves in a position where they could not sell their properties, and prospective purchasers would have difficulty buying. Any legislative change would therefore also require consultation with the Council of Mortgage Lenders to encourage a change of approach and set a defined criteria to allow assessment of the landlord's financial viability.

We would like to invite you or a representative(s) from the Department for Levelling Up, Housing and Communities to attend one of our Forum meetings to discuss these concerns and potential resolutions, and to work with you to find an appropriate solution that will benefit both social housing landlords and their leaseholders.

Yours sincerely

A handwritten signature in black ink that reads "Louise Turff". The signature is written in a cursive, slightly slanted style.

Louise Turff
Head of Homeownership Services
London Borough of Southwark

cc The Right Honourable Michael Gove, MP, Secretary of State for Levelling Up,
Housing and Communities

London Leasehold Officers Forum

Anthony Essien, Leasehold Advisory Service

IN THE FIRST-TIER TRIBUNAL
PROPERTY CHAMBER

CASE REF:
LON/OOBE/LDC/2023/0074
All residential leasehold properties
managed by the London Borough of
Southwark

LONDON BOROUGH OF SOUTHWARK

Applicant

and

ALL LEASEHOLDERS

Respondents

WITNESS STATEMENT OF TABITHA COX

I, Tabitha Cox of 160 Tooley Street, London SE1;-

1. I am employed by the London Borough of Southwark ("Southwark") as a Homeownership Manager which deals with the management of Southwark's leasehold properties as well as to procure and manage the leaseholder's buildings insurance. I make this statement in support of the current Application. Save where it is hereinafter referred to the facts deposed to are from my own knowledge or from Southwark's files.
2. Southwark is legally obliged to insure its leasehold properties. In the leases there is a covenant "to insure the building to the full insurance value thereof against destruction or damage by fire tempest flood and other risks against which it is normal practice to insure or to make other appropriate and adequate arrangements and in the event of destruction or damage by any

such risk as aforesaid to rebuild or reinstate the flat and the building".

3. Southwark had an insurance contract with Zurich to insure the leasehold properties under a contract entered into from 1 April 2018 to 31 March 2021 with the option to extend for 2 twelve month periods at Southwark's sole discretion. Those options were exercised with the second of those extensions expiring on 31 March 2023.
4. A leasehold working group was formed in February 2021 to discuss whether Southwark should re-tender or accept the last 1 year extension with Zurich. The members of the working group concluded in March 2021 that Southwark should accept the final extension from Zurich then go out to the market to tender for a new contract in 2022. In April 2022, Southwark contacted the Residents Participation team for advice on forming a smaller working group, who would be used to assist in the evaluation of the tenders. In previous tenders, a working group of 2 homeowners were used. Resident Participation recommended a maximum of 5 homeowners. Southwark contacted the original members of the February 2021 working group and asked that the first 5 to express interest, would form the new working group. Southwark received 4 expression of interest. One member dropped off after the first meeting in August 2022, leaving the group with 3 members.
5. Southwark worked closely with the Leasehold working group, keeping the three members updated on Southwark's progress on going to the market and any advice from the Insurance broker.

6. Southwark decided to test the market and re-tender the building insurance contract as the second single year extension with Zurich had been made and it was agreed that using Southwark's insurance broker Arthur J Gallagher would potentially increase the number of bids received by including those insurance companies who only deal through an insurance broker as well as direct insurers. Southwark also explored other options such as approaching the Insurance London Consortium (ILC) on 25th November 2020 to enquire on whether they were accepting new members. The consortium lead informed Southwark that they were not taking on new members. The ILC is a group of local authorities who tender collectively for insurance. Southwark served a Notice of Intention on leaseholders in respect of this on 30 June 2022. A copy of the Notice of Intention is attached marked "TCI".

7. The process began with a market engagement meeting on 27th September 2022. Southwark was chasing the current provider at the time Zurich on a response on whether they would be attending the market engagement set for 27th September 2022. It was only on the 26th September 2022 Zurich informed Southwark that they would not be submitting a bid on the upcoming tender. Southwark had 2 other potential bidders attend the market engagement. The tender was sent out publicly by AJ Gallagher on 4 October 2022 with a closing date of 11 November 2022. During this period Southwark received questions from the two potential bidders, which were all answered. The questions received were mainly around the stock condition surveys for blocks 6 storeys and above. Southwark's Asset Management team have a legal requirement to provide stock condition surveys for 7 storeys and above, but the potential bidders wanted from 6 storeys. Extensions were requested by

both potential bidders and was granted until the 18th November 2022. Southwark had hoped that because of the request for an extension, a bid would be submitted but this wasn't the case. Southwark received no bids on the close of the tender.

8. Following the failed tender, Southwark arranged a meeting on the 23rd November 2022 with the broker to discuss what happens next. The broker suggested Southwark contacts Zurich to request a 1 year extension and also to work on approaching the private market. The private insurance market is very different from the public insurance market in that the broker would need to contact companies directly and present Southwark's contract proposal. Also, insurers would take on different amounts of risk.
9. Another meeting was held on 28th November 2022 with Southwark's Head of Service of Homeownership Services, Procurement, Legal services and the broker to seek legal advice on the broker's proposal to approach Zurich for an additional year's contract and to approach the private market and whether this would be considered an appropriate procurement route, bearing in mind it would be outside of the Council's procurement process. Both approaches would be supported because of the circumstances and the failed tender in November 2022. Also, because Southwark has a legal obligation to have a contract in place by 1st April 2023 and every possible avenue should be explored.
10. On 20th December 2022 a meeting was held with the broker at which point he presented Southwark with a spreadsheet layout of the expected stock information Protector would accept before considering submitting an offer. This session was used to

determine how much more information is needed and how much work needs to go into getting this information needed if Southwark was to approach the private market.

11. On 22nd December 2022 a meeting was held with Southwark's Director of Finance, Head of Service of Homeownership to discuss the current situation and the possible increase in financial impact.

12. On 11th January 2023 a meeting was held with Zurich and Southwark to discuss the current situation, progress on what Southwark was proposing to do. Zurich advised Southwark's proposal of a 1-year contract would be put forward to head office for consideration, however they would only be willing to assist as the insurer of last resort and can't guarantee it would be a one year contract, it might be short term. That Southwark would need to pursue the private market and keep Zurich updated on the progress. Also, to inform Zurich by mid-February on the approach and progress on going to the private market.

13. On 17th January 2023 Southwark met with the broker to update on the meeting with Zurich. Updating on Zurich's position with being the insurer of last resort and that Southwark needed to update Zurich by mid-February on the tender going out to the private market.

14. On 24th January 2023 a meeting with Asset Management was held to determine what level of information was needed to complete the stock condition data for AJ Gallagher and to make

clear what was expected to approach the private insurance market.

15. On 1st February 2023 a meeting was held with the broker to analyse the information received from Asset management. The broker advised Southwark to obtain further and better information in relation to the portfolio so to enhance chances of securing bids.
16. On 10th February 2023 a meeting was held with Asset Management, the broker and Southwark to discuss the data received and what was expected in preparation to approach the private insurance market.
17. On 14th February 2023, a meeting was held with the broker to discuss the information received from Asset Management. At that meeting, it was discovered the information available was insufficient. Southwark did not have complete information on construction type, external material and relevant information which would be required by the private market.
18. On 24th February 2023 a meeting with Zurich to advise Southwark could no longer approach the private insurance market due to insufficient information.
19. On 1st March 2023 a meeting with Zurich to discuss options following Southwark's latest decision not to approach the private insurance market. Zurich had to take this information to the board of directors for consideration.

20. On 10th March 2023 Southwark received an offer from Zurich for 3 months. Zurich's offer was:
- (i) 3 months
 - (ii) £100 Any One Loss (AOL), £350 Escape of Water (EOW) and £1,000 Subsidence excesses :-
 - o £8,465,936.00 excluding Insurance Premium Tax annual premium.
 - o £2,116,484.00 excluding IPT three month pro-rata premium.
 - (iii) £350 AOL, £500 EOW and £1,000 Subsidence excesses :-
 - a. £8,228,436.00 excluding IPT annual premium.
 - b. £2,057,109.00 excluding IPT three month pro-rata premium
21. On 16th March 2023 Protector's final terms were received and were:
- (iv) 3 year contract with 2 further annual extensions
 - (v) £8,723,934.00 exclusive of IPT - £350 excess AOL, £500 excess EOW and £1k subsidence
22. On 15th March 2023 a meeting was held with the broker after receipt of the Zurich offer to discuss what Southwark had been offered.
23. On 27th March 2023 a meeting was held with Zurich to inform them Southwark had decided to accept the offer from Protector because it was for a longer term, as Zurich had only offered a 3 months contract to Southwark.
24. On 29th March 2023 a meeting was held with Protector to accept their offer after it had just been signed off that day by Southwark's Director of Finance and Leader of the Council.

25. The terms offered by Protector were less favourable than the previous policy in that the new policy would have excesses for all claims. The previous policy only had an excess for subsidence and extended accidental damage. Also under the previous policy the council received a service fee of 12.5% of the annual premiums (excluding IPT) for providing the initial claims handling service, managing the contract and associated costs. Under the new contract the council will no longer receive this as Protector require claims to be submitted directly to them. However, there will still be contract management and associated costs incurred. The service fee had been used to cover these overheads. These overheads, will now be chargeable to leaseholders under the terms of their leases.
26. Although Zurich offered a slightly more favourable offer, Zurich's offer was only a 3 month contract, whereas Protector offered Southwark a 3 year contract. Both contracts now have excess applicable to all perils.
27. In the circumstances it was considered to be the best option to accept the Protector terms to ensure that the leasehold properties were insured and for a longer period, given the unstable public sector insurance market.

I believe the contents of this statement are true



Tabitha Cox

Date: 15th November 2023

Section 20 Landlord and Tenant Act 1985 Notice of Intention

30th June 2022

Reference: cwg 22/263

Team: [Service Charge Construction Team](#)

Boroughwide Buildings Insurance 2023

The council is responsible for arranging buildings insurance for council owned blocks. The current cover with Zurich will come to an end on 31st March 2023 and the Council is about to commence negotiation to arrange for new insurance cover. The insurance premium is billed in the annual service charge.

Before inviting tenders the council is required to consult with leaseholders and Recognised Tenants Associations (RTAs) over what they are proposing, and why it is necessary. This Notice has been sent to all leaseholders in the borough.

Why we are writing to you?

Section 20 of the Landlord and Tenant Act 1985 requires leaseholders and RTAs to be consulted before the council enters into a long term agreement. The council is required to consult leaseholders on an agreement where their contribution towards the works will amount to £100 or more in any one year. This Notice of Intention is the first stage in the consultation process.

This notice has been sent to all leaseholders and to any relevant RTA

Outline of Proposed Contract:

Subject to this consultation exercise insurers will be invited to provide a price for buildings insurance cover against a range of perils that could affect the building including:

- Fire, lightning, explosion or earthquake.
- Aircraft and other flying objects, or items dropping from them.
- Storm, wind or flood.
- Subsidence
- With regard to accidental damage, insurers will be asked to offer a tender for cover with and without accidental damage, and the effect of the premium payable will be assessed as part of the tender appraisal

Insurance is in respect of the fabric of the building and does not include cover for the contents of the property. An excess might be associated with some perils.

How long is the contract for?

The contract is for a period of 3 years, with an option for the council to extend the contract by two twelve month periods.

Why is the council proposing this contract?

Under the terms of the lease the council is responsible for insuring leasehold properties and blocks against destruction or damage by fire, tempest, flood and other risks against which it is normal practice to insure.

How do leaseholders make legal observations?

Where the council is inviting individual tenders for contracts leaseholders and RTAs are entitled to nominate a contractor to be included in the tender list. However in the case of this contract the budget estimate exceeds the threshold at which it is necessary to give public notice. Under these circumstances the council is not required to invite nominations from leaseholders and any company may express an interest. You may however draw the attention of any preferred contractor to the public notice in the Find a Tender Service if you wish.

Section 20 requires the council to allow leaseholders and RTAs 30 days from the date of this notice to submit written observations regarding the proposed contracts. The final contracts are subject to observations made at this stage in the consultation process.

If you would like to make such observations, they should be addressed to:

Service Charge Construction
PO Box 71994
160 Tooley Street
London
SE1P 5FW

Or [make the observations online](#)

Observations must reach the Service Charge Construction Team by **1st August 2022**. When making written observations please include the property address and contract reference code at the head of the notice on all correspondence.

What happens next?

If this contract proceeds you will receive a further Section 20 notice which will contain details of the rates received in the tender process. It will give a summary of leaseholder observations provided at this Notice of Intention stage.

Leaseholders and any RTA will be given a further 30 days to comment on the tenders. The council's decision to enter into contract is subject to leaseholder observations made at this time.

Further information

[Further information on the council's insurance cover can be found on the council's website.](#)

[Service Charge Construction](#)

IN THE FIRST-TIER TRIBUNAL
PROPERTY CHAMBER

CASE REF:
LON/OOBE/LDC/2023/0074
**All residential leasehold properties managed
by the London Borough of Southwark**

LONDON BOROUGH OF SOUTHWARK

Applicant

and

ALL LEASEHOLDERS

Respondents

WITNESS STATEMENT OF STEPHEN ANGEL

I, Stephen Angel of Gallagher, Station Square, 2nd Floor, One Gloucester Street, Swindon SN1 1GW state as follows;

1. I am a Client Director at Gallagher Insurance Brokers ("Gallagher") specialising in Public Sector insurance, including Local Government.
2. I have been asked to provide this witness statement by the London Borough of Southwark ("the Borough") in connection with its application for dispensation from the requirements of section 20 of the Landlord and Tenant Act 1985 (the "LTA 1985")
3. The facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true.

Professional background

4. I am an Associate of the Chartered Insurance Institute and have over 40 years' experience in the insurance industry.
5. I started my career at Aon Insurance Brokers in 1989, where I spent over 20 years arranging insurance for clients in both the public and private sectors. I joined Gallagher (or Heath Lambert as it then was) in 2009, and have spent the last 14 years dealing exclusively with the insurance

arrangements for public sector organisations.

6. In my role as Client Director, I have experience in arranging insurance for all manner of public sector organisations; ranging from local government (including district councils, county councils and London Boroughs) through to police and fire authorities, universities and colleges, social housing and NHS trusts.

An overview of the insurance market for Local Government Insurance

7. Unlike central government (which has sufficient financial resource to retain its risk), local government relies upon purchasing commercial insurance in order to manage its risk and insure its potential liabilities as a local authority.
8. The market for local government insurance has been challenging for many years, with very few insurers willing to underwrite risks for public bodies.
9. Whilst there are more insurers that have an appetite to underwrite general liability risks (such as public liability and employer's liability), there are very few insurers who are willing to provide cover in respect of local government leasehold property portfolios.
10. Unfortunately, leasehold insurance is one of those areas that attracts a high volume of claims. Many of these claims, involve escape of water. It has also become increasingly difficult (and expensive) for insurers to find alternative accommodation for the leaseholder in the event of a significant incident at the property such as a fire or flood. In addition, local government leasehold insurance has historically been one of those areas which has attracted either a £NIL or a fairly modest excess in the event of claims.
11. The Grenfell Fire disaster in 2017 had a profound impact on the landscape for leasehold insurance, with insurers becoming acutely aware of the increased potential risk posed in respect of high-rise buildings; particularly those containing certain types of cladding materials. Ultimately, Grenfell served as a tipping point in respect of what was already a very difficult industry.
12. Thankfully, in the immediate aftermath of Grenfell, the insurance market remained relatively stable. However, Insurers increasingly began to ask for more information in respect of properties above six or seven storeys in height. However, there remained enough competition in the market, such that premiums remained relatively low.
13. Following Grenfell, the insurance market for local government leasehold insurance comprised just five or six insurers: Zurich Municipal, Aspen, Accelerant via Avid, NIG, Protector and a Spanish insurer called Ocaso.

14. However, the market worsened with effect from 1 April 2022, when Ocaso announced its complete withdrawal from the UK residential property market; citing difficulties caused by additional regulatory requirements due to Brexit.
15. At that time however, the gap in the market left behind by Ocaso was filled by the remaining markets.
16. However, the most seismic shock to the market came when one of the largest public sector insurers, Zurich Municipal, announced its intention in September 2022 to withdraw from the local government leasehold insurance market due to a change in its corporate strategy. Zurich's withdrawal came as a surprise to the whole of the public sector insurance market; as leasehold insurance had traditionally been a mainstay of Zurich Municipal's business.
17. This was followed in December 2022, by the announcement that Accelerant via Avid would no longer provide cover for leasehold portfolios with a renewal date of 23rd March 2023 or later. This, and the aforementioned withdrawal of capacity by Zurich Municipal, created a very unstable market place with many local authorities all seeking to find alternative cover (away from either Zurich Municipal or Accelerant).

The tender process and placement of the policy with Protector

18. The Borough has been a client of Gallagher dating back to the early 2000s.
19. Whilst Gallagher had traditionally advised upon and placed cover for certain other aspects of the Borough's insurance arrangements, the Borough had historically placed its leasehold insurance directly with Zurich Municipal, without the assistance of an insurance broker.
20. Prior to the events giving rise to this application, I understand that Zurich Municipal had been the Borough's leasehold insurer for at least 10 years.
21. The Borough's insurance arrangement with Zurich Municipal during the period 1 April 2018 to 31 March 2021 was a 3 Year Long Term Agreement (LTA), with an option to extend on further 1 plus 1 year basis, meaning the Agreement, if it ran its full term, would expire on the 31 March, 2023. This involved a commitment from the Insurer to continue to offer insurance to the Borough over the course Agreement at prescribed rates.
22. Gallagher was approached by the Borough in 2020 (in advance of the March 2021 policy expiry) with a view to assisting it with regards to the potential re-tender of the Borough's leasehold insurance programme. The Borough chose to engage Gallagher's services because, unlike Zurich Municipal, many other insurers in this sector are only prepared to offer terms to local authorities if

the risk is placed via a broker.

23. Ultimately however, as the Borough was happy with the service provided by Zurich Municipal, the Borough opted instead to trigger the option contained in the Zurich LTA, extending the policy for two further 12 month periods; such that the insurance policy with Zurich would come to an end on 31 March 2023.
24. In or around June 2022, the Borough decided to test the market by re-tendering the leasehold insurance policy for the insurance period due to commence on 1 April 2023. Between June and October 2022, various information was requested and obtained from the Borough to assist Gallagher in drafting the tender documents. After undertaking a market engagement meeting with prospective insurers in September 2022, the formal invitation to tender went out to the market on 4 October 2022, with a closing date of 25 November 2022. This allowed more than the time required under the relevant regulations, which at the minimum is 30 days.
25. It is my view that the timing of the tender process was appropriate. If the formal tender process had started sooner than the 4 October, bidders might well have reserved their rights to change their terms prior to the inception of cover to allow for the possibility of a deterioration in claims experience. This would have left the Borough in a difficult position, having to decide at the last minute whether they should accept any revised terms or re-start the evaluation process by approaching all bidders to request revised bids.
26. In advance of the tender submission, Zurich Municipal had communicated with us and the Borough regarding its intention to exit the market; meaning that it did not intend to participate in the tender process.
27. At that time however, Zurich Municipal indicated that it may be prepared to offer an extension to the insurance policy if the tender process was unsuccessful. However, Zurich did not give any indication as to the likely premium involved.
28. As part of the tender process, information was provided by the Borough in respect of properties within the leasehold portfolio that comprised of blocks over seven storeys high. However, many insurers began to ask further questions in respect of reinstatement valuations, as well as information in respect of buildings six storeys in height. That information was not readily available to the Borough and therefore the tender process was extended to 25 November 2022 to allow the Borough to supply the further information for insurers to consider.
29. Unfortunately, the formal tender process did not produce any bids from any of the insurers involved; namely: Aspen, Accelerant via Avid, NIG and Protector.

30. Gallagher therefore approached the market directly in order to see if alternative cover could be secured:
 - 30.1 Accelerant via Avid made it clear that they were not in the market to accept any new leasehold insurance business after the 23 March 2023;
 - 30.2 Aspen explained that whilst it would seek to retain its existing risks, it was not in the market for new business;
 - 30.3 NIG also declined to quote, indicating that it had reached capacity in terms of the leasehold risks it was willing to underwrite.
31. That left only Protector Insurance, who at that point had requested further information in order to consider whether it would be willing to offer terms.
32. The Borough therefore approached Zurich Municipal who had previously explained that they might be prepared to offer terms if the tender process was unsuccessful. Zurich provided terms in respect of a 3 and 12 month policy extension on 10 March 2023. In doing so, it made it clear that it was only prepared to offer said terms if no other quotation could be secured from the market. If an alternative quote could be secured, the Zurich quotation was no longer available for acceptance.
33. Zurich quoted two separate premiums, which varied depending on the amount of the policy excess applied. The premium quotation from Zurich (which was more closely aligned to the quote ultimately received from Protector) offered 3 months of cover for £2,057,109 (excluding insurance premium tax) whereas 12 months was quoted at £8,228,436 (excluding insurance premium tax). That quotation compared to the premium of £4,753,404.14 that was charged by Zurich for the policy period 1 April 2022 to 31 March 2023.
34. Protector ultimately provided a quotation on 16 March 2023. That quotation, which contained the same policy excesses applicable as per the Zurich quote (highlighted above), was £8,723,934 for an annual 12 month policy. However, Protector were prepared to offer a 3 year LTA, which contained the option to extend by two further 12 month periods.
35. Whilst the Zurich quotation was no longer available for acceptance, there was a concern that even if it had been accepted, the Borough was likely to find itself back in the same position (with Zurich unwilling to offer terms) at the expiry of either the 3 or 12 month extension offered by Zurich. The Protector policy therefore came with the additional security of long term provision of cover afforded by an LTA. The Borough therefore considered that the best (and indeed only) option was to proceed with Protector's policy, in order to comply with its statutory obligations to insure its leasehold interests.

36. The Leasehold insurance policy was therefore placed on behalf of the Borough with Protector with effect from 1 April 2023.

Statement of Truth

I believe that the facts and matters contained in this statement are true.

Signed



**Position or
office held**

Client Director

**Print Full
Name**

Stephen Angel

Date

16 November, 2023