



## London Borough of Enfield

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<b>Report Title</b>	Leasehold Property Insurance – Award of Contract
<b>Report to:</b>	Cllr Tim Leaver, Cabinet Member for Finance and Procurement
<b>Date of Report</b>	23 March 2023
<b>Directors:</b>	Terry Osborne, Director of Law & Governance
<b>Report Author:</b>	Gemma Young gemma.young@enfield.gov.uk
<b>Wards affected:</b>	All
<b>Key Decision Number</b>	5584/U243
<b>Implementation date, if not called in:</b>	1 April 2023
<b>Classification:</b>	Part I Public

### Purpose of Report

1. The council's leasehold property stock (4,974 properties) is currently insured with Avid Insurance Services Ltd (Avid). Avid have advised that they will no longer be able to provide insurance to the market from 1 April 2023 as their reinsurer has withdrawn cover. This report details the options the council has considered and puts forward the recommendation to agree a one-year policy with an alternative insurance provider, Protector Insurance.

### Recommendations

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| <ol style="list-style-type: none"><li>I. Agree to insure the council's leasehold properties with Protector Insurance for one year only (policy period: 1 April 2023 – 31 March 2024).</li><li>II. Agree for a full procurement process to be followed within the next 6-9 months for a start date of 1 April 2024.</li></ol> |
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## **Background and Options**

2. The Council's leasehold property stock is currently insured with Avid Insurance Services Ltd (Avid). The contract is a 5-year contract (3 years + 1 +1) and is due to end on 31 March 2024. The insurance premium is recharged in full to leaseholders via their service charge.
3. Avid have advised that they are not able to provide this cover after 31 March 2023 as their reinsurer has withdrawn cover.
4. Due to the construction of the insurance contract 3 years +1 +1, there are breaks in the contract at the end of year 3 and year 4. This means that we would not be able to take any legal action against Avid for breaking the terms of the contract.
5. As the Council was only notified of this issue on 11 January 2023, there was insufficient time to undertake a full tender process and the time to research alternative provision was limited.
6. The leasehold property insurance market is very limited. Only a small number of insurers are willing to cover this type of risk and through our own investigations and discussions with our insurance broker we have only been able to identify two other insurers – Protector Insurance and NIG - who provide cover for this type of risk.
7. In our opinion and given the timescales involved and the fact that the insurance contract is due for re-tender during 2023-24, the Council has 3 options open to it:
  - i. Agree a one year policy with an alternative insurer
  - ii. Insure the risk internally

## **Preferred Option and Reasons for Preferred Option**

8. Our preferred option is to agree a one-year policy with an alternative insurer, Protector Insurance (Protector).
9. Protector have confirmed that they are able to provide buildings insurance for the Council's leasehold properties. They have provided two quotations, one for a one-year policy and one for a five-year policy. Details can be found in Part II report.
10. By accepting Provider's quote:
  - i. We would need to procure this insurance via a direct award to Protector
  - ii. A comparable level of insurance will be provided to leaseholders as is currently provided by Avid (except for the issue noted in Part II of this report, paragraph 12)
  - iii. Any additional cost to the Council is limited

9. Due to the tight timescales involved in this contract we are unable to seek a quotation from NIG.
10. The quote from Protector includes a per building limit on high rise blocks (18m and higher). Protector have requested further information from the council in order to remove this limit. At the time of writing, we should be able to provide this information to Protector by 24 March 2023.
11. Section 20 of the Landlord and Tenant Act 1985 (as amended by S151 of the Commonhold and Leasehold Reform Act 2002) sets out the precise procedures landlords must follow before requiring leaseholders to pay variable service charges; these are the Service Charges (Consultation Requirements) (England) Regulations 2003 ('the Regulations'). As this contract is for 12 months there is no requirement to consult leaseholders.
12. We do not consider that the five-year option offered by Protector (refer to paragraph 8) to be a suitable option. To ensure best value for money over the 5 year period, a full procurement process would need to be run. Also s20 consultation with leaseholders would need to be undertaken. The current timescales don't allow for these to be carried out.
13. Although we understand that a number of other councils who currently insure their leasehold property stock with Avid are looking to insure the risk internally, we do not know of any other councils who currently insure this risk internally.
14. Additionally there are legal, procurement and financial issues that need to be investigated before we could make a decision to take this route. Again, the timescales do not allow us to fully investigate these issues at this time. However, we propose that in the coming months, we look at this option more fully to inform the tender exercise later in 2023-24.

#### **Other options considered**

15. To consider the option of Council insuring the leasehold property insurance internally, we commissioned our actuary to produce a report on the effects of following this route.
16. Our historical data shows that on average 120 claims are made by leaseholders every year. Due to the time critical nature of managing these claims, the Council would require a claims handling agent, with the ability to operate 24/7 to deal with these claims.
17. Financial Information detailing this option is shown in Part II of this report.
18. If the Council were to insure the risk internally from 1 April 2023, we would need to appoint a claims handling company to deal with claims and arrange repairs. Due to the nature of the type of claims made on this policy, there would need to be a 24/7 helpline to assist leaseholders in the event of an emergency/major loss.

19. We have approached Questgates, the company who currently handle all leasehold property claims and they have confirmed that they would be able to assist the council and deal with all leasehold property claims if the decision was made to insure this risk internally.
20. Even if we appoint Questgates, additional work will need to be undertaken by the internal Insurance team.

29. **Financial Implications**

Omar Syed, 20 March 2023

The proposal to insure the Council's leasehold properties with a new insurance company - Protector Insurance for a duration of a year from 1 April 2023 to 31 March 2024 will have no financial implications to the Council. Any increase in insurance premium will be recharged in full to the leaseholders via their service charge.

The Council does not subsidise or contribute to the premium and therefore there are no direct financial implications to the council.

30. **Legal Implications**

Ludmilla Iyavoo, 22 March 2023

31. Section 20 of the Landlord and Tenant Act 1985 (as amended by S151 of the Commonhold and Leasehold Reform Act 2002) sets out the precise procedures landlords must follow before requiring Leaseholders to pay variable service charges; these are the Service Charges (Consultation Requirements) (England) Regulations 2003 ('the Regulations').
32. If the proposed contract is likely to last more than 12 months, this would be considered a qualifying long-term agreement, in this circumstance the Council will be required to consult where the amount payable by any one contributing leaseholder under the agreement in any accounting period exceeds £100. There are usually 3 stages to the consultation for qualifying long-term agreement: (i) Pre-tender stage where we send a Notice of intention; (ii) Tender stage – Preparation of landlord's proposals and (iii) Award of contract Notification of the award of contract. The first two stages require a 30-day consultation period and the last stage requires the Council to provide a 21-day period for leaseholders to respond. If consultation is not undertaken, the landlord may not be able to recover more than £100 per leaseholder in any accounting period towards the costs under the agreement.
33. Alternatively, the Council can make an application with the Tribunal to dispense with the consultation requirements under S 20ZA of the Landlord and Tenant Act 1985 if satisfied that it is reasonable to dispense with the requirements. The Supreme Court in a case in 2013 set out its views on

how Tribunals should deal with applications for dispensation from landlords (*Daejan v Benson*). The Court confirmed that the financial consequences of the grant or refusal of dispensation are irrelevant to the exercise of discretion under section 20ZA and held that significant prejudice to the leaseholders is a fundamental consideration in exercising the discretion to dispense.

Legal implications provided by CP and KS based on version of report circulated 23.3.23

34. Section 111 of the Local Government Act 1972 permits local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of their functions. In addition, the Council has a general power of competence under section 1(1) of the Localism Act 2011 to do anything that individuals may do, provided it is not prohibited by legislation and subject to Public Law principles.
35. As the estimated contract value exceeds the threshold under Part 2 of the Public Contracts Regulations 2015, 'PCR 2015' (currently £213,477 inclusive of VAT), the Council must ensure compliance with the PCR 2015 and its Constitution - in particular, the Contract Procedure Rules ('CPRs').
36. The contract must be in a form approved by Legal Services on behalf of the Director of Law and Governance. Due to the value, it will need to be sealed as a Deed.
37. Under the CPRs, for a contract of this value, Council should ensure that Protector provides sufficient security in one of the forms outlined in CRP 7.3. If such security is deemed not to be required then the Executive Director of Resources must approve such a decision, with reasons and risk mitigation measures set out in the relevant delegated authority report for the contract award.
38. The Housing Act 1985, Part III, paragraphs 14(1),14(2), 14(3) and paragraph 16A apply where the dwelling house is a flat  
Under 14(2), in summary, there are implied covenants by the landlord to keep in repair the structure and exterior of the dwelling-house and of the building in which it is situated (including drains, gutters and external pipes) and to make good any defect affecting that structure; and to ensure, so far as practicable, that services which are to be provided by the landlord and to which the tenant is entitled (whether by himself or in common with others) are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services;  
Under Clause 14(3) there is a further implied covenant that the landlord shall rebuild or reinstate the dwelling-house and the building in which it is situated in the case of destruction or damage by fire, tempest, flood or any other cause against the risk of which it is normal practice to insure.
39. The Housing Act 1985 further provides that the lease may require the tenant to bear a reasonable part of the costs incurred by the landlord in discharging or insuring against the obligations imposed by the covenants implied by virtue of paragraph 14(2) relating to repairs, making good

structural defects, provision of services, etc.), or (in insuring against the obligations imposed by the covenant implied by virtue of paragraph 14(3) (rebuilding or reinstatement, etc.),

40. Where the lease requires the tenant to contribute to the costs of insurance, it shall provide that the tenant is entitled to inspect the relevant policy at such reasonable times as may be specified in the lease.

41. **Equalities Implications**

An Equality Impact Assessment has been prepared and is included in Part 2 to this paper.

42. **Property Implications**

Adrian Smallwood, 21 March 2023

43. Any property implications are to be found in the body of this report. However there are very few property implications that arise (the only significant one being the limitation of insurance value on high rise buildings if 100% cover cannot be achieved) as the recommended option does not involve any change to the method of how the Council insures its properties, only the supplier and sum of the insurance premium.

44. **Procurement Implications**

Chris Mulhull, 24 March 2023

45. Any procurement must be undertaken in accordance with the Councils Contract Procedure Rules (CPR's) and the Public Contracts Regulations (2015).
46. The award of the contract, including evidence of authority to award, promoting to the Councils Contract Register, and the uploading of executed contracts must be undertaken on the London Tenders Portal including future management of the contract.
47. All awarded projects must be promoted to Contracts Finder to comply with the Government's transparency requirements.
48. Due to the incumbent supplier exiting the market, all possible procurement options were reviewed but given the nature of the contract and the impact on leaseholders a direct award is the most appropriate route. This will be a short-term contract to co-terminate with the existing insurance requirements, the Council will then go out to the market next year for all insurance services.
49. The Leasehold Property Insurance requirement from April 2024 will be sourced under an appropriate procurement route, ensuring the Council is

in adherence with the Contract Procedure Rules and Public Contracts Regulations.

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**Background Papers**

None

**Departmental reference number, if relevant:** None