



Cabinet Member Report

Meeting or Decision Maker: Cabinet Member for Finance and Council Reform

Date: 24 February 2023

Classification Part Exempt

The Part B of this report is currently exempt from disclosure on the grounds that (i) it contains information relating to the financial or business affairs of a particular person (including the authority holding that information) under paragraph 3 of Schedule 12A of the Local Government Act 1972, (ii) it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings under paragraph 5 of Schedule 12A of the Local Government Act 1972; (iii) and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

Title: Residential Leasehold Buildings Insurance Renewal

Wards Affected: All

Policy context Fairer Housing

Key Decision: Yes

Financial Summary: The proposal in this report will provide leaseholder insurance for the next financial year at a cost of £4.864m inclusive of Insurance Premium Tax.

Report of: Gerald Almeroth, Executive Director – Finance and Resources

1. Executive Summary

- 1.1 The lease agreement between the Council and residential leaseholders requires the Council, as freeholder, to arrange building insurance to cover the re-instatement value of the leaseholder's asset. The current insurance provider, Avid Insurance Services Limited (Avid)

indicated a renewal increase of 60% due to claims experience and inflation. This was deemed unacceptable, so an alternative quotation was sought from the Council's main insurance programme provider, Protector Insurance (Protector).

- 1.2 A quotation was obtained from Protector Insurance, the Council's insurer for the main Property and Liability risks. Due to the very difficult state of the leasehold insurance market, it is considered preferable to enter a one-year arrangement and then be in the position in 2024 to re-tender the Council's full insurance programme and also consider any other available options. Additionally, it is hoped the situation will have improved in 12 months, including the re-entrance of Avid, should they secure an alternative underwriter. The Council has in place an agreement with Protector to provide Property and Liability insurances. Incorporating the residential leasehold cover is considered a variation of this contract.

2. Recommendations

- 2.1 The Cabinet Member for Finance and Council Reform is recommended:

2.1.1 To approve that the current contract with Protector Insurance is varied to include the provision of leasehold buildings insurance for a period of one year effective from 01 April 2023 for a contract value of £ 4,684,424.

2.1.2 To approve a variation of the current contract with Protector Insurance to cover claims below the £100,000 deductible directly, which on current estimates could cost the Council £2,300,000, and which will be funded from insurance reserves.

2.1.3 To approve a waiver for the requirements under the Procurement Code.

3. Reasons for Decision

- 3.1 Following the exit of all previous leasehold buildings insurers, Protector provide the only option available as no other alternative market is available at this current time.

4. Background, including Policy Context

- 4.1 The lease arrangement requires the Council as Freeholder to arrange building insurance to cover the reinstatement value of the leaseholder's asset. Insurance must therefore be arranged. The insurance policy covers the leaseholder's asset against traditional home buildings insurance for fire and perils.
- 4.2 The insurance was last tendered in 2019. The Council received 4 quotations from Zurich, Protector, Avid and Ocaso. Aspen declined to provide a quotation as London authorities are now outside of their underwriting acceptance criteria. Avid were the most competitive and awarded the contract on a five-year period, this kept the leasehold insurance in line with the main Property and Liability policies next scheduled for tender in 2024. Tendering the whole programme together achieves the most preferential terms and premiums for the Council.
- 4.3 Shortly after providing their renewal terms for leaseholder insurance (at an increase of 60%), Avid advised that their underwriting provider, Accelerant, had made the decision to withdraw their capacity, leaving Avid unable to accept new business or offer renewals beyond 23 March 2023. Their earlier terms are therefore withdrawn. In 2022 Ocaso, Zurich and now Avid have each made the decision to withdraw from the market. Avid are looking for an alternative underwriting provider but this has not yet been secured.
- 4.4 Following Avid's decision, the service engaged Protector to obtain quotations on two options as below

Insurer/excess level	Quote inc IPT @ 12%	Terrorism estimate	Claims handling	Self-funding	Total
Protector £100 excess	£5,029,289	£167,334	N/A	N/A	£5,196,623
Protector £100k deductible	£2,128,000	£167,334	£89,424	£2,300,000	£ 4,684,424
Avid*	£5,990,000 est.	Inc in Avid figure	N/A	N/A	£5,990,000

* Avid premium indication incorporating 60% increase included for comparison purposes only

- 4.5 A £100 policy excess (subsidence £1,000) will continue to be apply to all leaseholder claims and be payable by the leaseholder,
- 4.6 The self-funding figure is calculated based on the previous three-year claim costs of both settled and outstanding reserves. Whilst we cannot be certain of future claims costs, using insurers standard underwriting and pricing practices, calculations are estimated using previous years claims experience data.
- 4.7 The 2022 Avid renewal premium was £3,743,759.27 inclusive IPT @ 12% and Terrorism cover.
- 4.8 For renewal 2023 Avid initially intimated a 60% premium increase however, this option is no longer valid for the reasons explained above.
- 4.9 Index linking is currently a major factor. The indexation figures used by insurers and applied to the buildings reinstatement value are derived from the guidance figures provided by the Royal Institute of Chartered Surveyors (RICS). In line with this guidance a figure of 17.5% for inflation has been agreed and will be applied to all Buildings reinstatement values across the Council including residential leasehold.

5. Financial Implications

- 5.1 The equivalent charge for 2022/23 is £3,743,759. This proposal reflects a 20% increase for 2023/24 to £4,684,424.
- 5.2 The Leasehold Insurance Premium is entirely recharged to Housing on annual basis (and is split as follows: HRA 98%, Housing GF 2%). The breakdown below shows the actuals from 2020/21 to 2022/23 and the proposed costs for 2023/24:

	2020/21	2021/22	2022/23	2023/24 proposed
Leasehold Insurance Renewal	3,076,830.08	3,185,149.71	3,743,759.28	4,684,424.00
% increase from previous year		3%	15%	20%
*Recharged to HRA	3,015,293.48	3,121,446.72	3,512,549.79	4,590,735.52
*Recharged to Housing	61,536.60	63,702.99	70,762.84	93,688.48
*recharge reduced by £250k across all council premiums for 22/23				

- 5.3 The majority of the cost falls on the HRA where a large proportion of the overall insurance charge is eligible to be passed through to leaseholders as part of the service charge calculation. This means that most of the increase will be directly recoverable (as it is not a cost that can be subsidised using tenant rents). A sufficient budget will therefore be created within the HRA on this basis. Any residual element that is not eligible to be included in the service charge calculations will be covered in the HRA using the inflation allowance for 2023/24 that has been set aside in the revised HRA Business Plan (approved by Cabinet in February 2023). A similar mechanism will need to be applied to the General Fund element (i.e. use of the central inflation contingency).
- 5.4 The Council is proposing to self-insure to the value of £2.3m, this reduces the risk the insurer is taking and keeps the overall premium chargeable to leaseholders at a lower level than it would otherwise be. The funding will be in a reserve to assist in the payment of claims and will be reviewed in the future in light of actual claims history.

6. Legal Implications

- 6.1 The report is seeking approval to vary the existing contract with Protector Insurance to include provision for leasehold building insurance. The reasons for the proposed variations are set out in the body of the report.
- 6.2 Under Regulation 72(1)(c) of the Public Contracts Regulations 2015 (PCR 2015) a contract may be modified without a new procurement exercise which has been brought about by circumstances which a diligent Council could not have foreseen, and the contract changes does not alter the overall nature of the contract so long as any increase in the contract price does not exceed 50% of the original value.
- 6.3 Approval of the contract variation is required by the relevant Cabinet Member.
- 6.4 By Law, Landlords must consult leaseholders before carrying out qualifying work or entering into a long-term agreement or providing service. The insurance contract to be entered into by the Council would be caught within the consultation regime under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 as a Qualifying Long Term Agreement. Failure to comply with the consultation requirements will mean that the Council will be limited to recover a total of £100 from each tenant for each accounting period.

However, section 20ZA(2) of the Act provides as follows:

“(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.”

Provided that the that the contract term of the intended insurance contract does not exceed 12 months, the consultation requirements do not have to be complied with.

6.5 It will, however, be prudent to inform the tenants of the contract to be entered into and to explain why the consultation provisions do not apply.

6.6 There are further legal implications set out in Part B of this report.

7. Staffing Implications

7.1 N/A

8. Consultation

8.1 As the contract is for one year a formal leaseholder consultation would not be required. However, the intention is to write to leaseholders to explain the situation. We will outline that full consultation will take place as part of the full tender of all the Council’s insurances for contracts starting 1 April 2024.

9. Procurement

9.1 Procurement contracts and policies were agreed in 2019 for a 5 year period via competitive procedure. The removal of cover by the incumbent at such short notice has left the Council with little ability to consider a competitive procedure. The Council has engaged with the market as far as possible via its broker but we have been unable to identify any other party to quote for this cover leading us to require a variation to existing agreements without further competition. The term proposed is the minimum realistic term for cover to minimise risk of challenge and the Council will endeavour to undertake a compliant competitive procedure for future awards.

10. Carbon Impact

10.1 None

11. Equality Impact Assessment

11.1 See attached

If you have any queries about this Report or wish to inspect any of the Background Papers please contact:

Beverly Mills, Assistant Head of Insurance

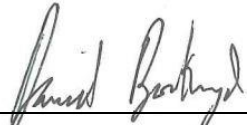
BACKGROUND PAPERS:

None

For completion by the **Cabinet Member for Finance and Council Reform**

Declaration of Interest

I have no interest to declare in respect of this report

Signed:  Date: 24 February 2023
NAME: Councillor David Boothroyd

State nature of interest if any

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled Residential Leasehold Buildings Insurance Renewal and reject any alternative options which are referred to but not recommended.

Signed 

Cabinet Member for Finance and Council Reform

Date ...24 February 2023.....

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Head of Legal and Democratic Services, Chief Operating Officer and, if there are resources implications, the Director of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.