**FIRST-TIER TRIBUNAL**
**PROPERTY CHAMBER**
**(RESIDENTIAL PROPERTY)**

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| **Case Reference** | **:** | **LON/00AW/LSC/2018/0465** |
| **Property** | **:** | **Various residential leasehold properties in Kensington and Chelsea** |
| **Applicant** | **:** | **Royal Borough of Kensington and Chelsea** |
| **Representative** | **:** | **Mr R Bhose QC** |
| **Respondents** | **:** | **Multiple Leaseholders** |
| **Representative** | **:** | **Leasehold Representatives; Mr R Bowker (counsel)** |
| **Type of Application** | **:** | **Landlord and Tenant Act 1985, s.27A(1)** |
| **Tribunal Members** | **:** | **Judge Siobhan McGrath<br>Judge Timothy Powell<br>Mrs Helen Bowers** |
| **Date of Decision** | **:** | **22nd June 2020** |

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**DECISION**

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## Introduction

1. This is an application by the Royal Borough of Kensington & Chelsea for a determination by the Tribunal of the payability and reasonableness of the insurance premium payable by their leaseholders in the Borough as part of their service charge. The leaseholders have all been made respondents to the application. Over 2,600 leaseholders are affected. The service charge year that the Tribunal is concerned with in this application is 2018-19. In that year, the average increase in the insurance cost for the leaseholders was 82% but it became clear during the hearing that some leaseholders were faced with costs that had increased by well over 100%.

2. In June 2017, the Grenfell Tower fire occurred. Grenfell Tower is located within Kensington & Chelsea. The impact of the fire and its tragic consequences are felt across the Borough and more widely in London and the rest of the country. Very soon after the fire, the council were required to consider the basis and availability of insurance for its buildings. The decision to make the application to the Tribunal was explained to leaseholders in a letter dated 15th March 2018 as follows:

> "In addition to the terrible loss of life and ongoing suffering of all those affected by this tragedy, a number of leasehold flats were damaged by the fire and the anticipated costs of this unprecedented event are reflected in the claims experience in the appendix below.
>
> Anticipating that variations of the questions above will rightly be asked and reflecting the Council's commitment to openness and transparency, the Council has decided to make a formal application to the First-tier Tribunal (Property Chamber) under section 27A of the Landlord and Tenant Act 1985. We will be asking the Tribunal to determine whether these leasehold building insurance premiums have been reasonably incurred by the Council and – accordingly – whether the individual premiums … are properly payable by individual leaseholders."

3. The application was heard over two days in January 2020. About 40 leaseholders attended. The Council was represented by Mr Ranjit Bhose QC. About 26 leaseholders were represented for part of the hearing by Mr R Bowker, who is a barrister and who had been instructed on 13th January 2020. A number of leaseholders and leaseholder representatives made written submissions and a number spoke at the hearing and asked questions of the Council's witnesses. Further written representations were invited from leaseholders and the Council was given an opportunity to make a written response.

4. The rest of this decision falls broadly into three parts: in the first part, we summarise the background to the application. It should be noted that in this part of the document we are simply setting the scene rather than making any findings. In the second part we set out the issues that we need to consider in order to make our determination and summarise what the Council and leaseholders say about those issues. In the third part we set out our decision and the reasons for that decision.

## Background

5. The Council owns approximately 500 individual residential buildings, comprising individual houses, flat conversions, and purpose-built blocks of flats, including tower blocks. In total these residential buildings contain approximately 6,700 flats that are let to tenants and 2,600 which are held on long leases.

6. The Council does not insure its residential buildings under one common policy of insurance. Instead it insures the leasehold flats under a "Leaseholder Policy" and it insures the tenants' flats within a general commercial property policy, the "General Policy." The General Policy includes all of the Council's other buildings including its offices, leisure centres and schools.

7. Under the General Policy the council has an excess of £250,000 per building claim and therefore insurance is only called on where there is a very substantial loss. It is said that the tenant contributions to the cost of the General Policy are rolled up in their rental payments. Local Government accounting rules under Part 6 of the Housing and Local Government Act 1989 require the council to maintain a "ring fenced" housing revenue account and the Council is not permitted to subsidise these insurance costs from its General Fund or from council tax payers.

8. Leaseholders are required to contribute to the costs of insurance for their buildings under the terms of their leases and this is not in dispute. The Leaseholder Policy is similar to domestic residential buildings insurance. The policy excess is £100 for each claim save for in cases of subsidence where it is £1,000. Since April 2016, the policy has included cover against accidental damage and cover for alternative accommodation (or loss of rent) in the event that the leasehold flat is rendered uninhabitable by an insured event. As a matter of process, leaseholders report claims directly to the insurer (or its claims handler) which they maintain with the insurer until settlement.

9. Kensington and Chelsea recovers the entire premium for the Leaseholder Policy from its leaseholders. However, as will be seen later

in this determination, for the year 2018/19, the Council agreed to bear 40.4% of the increase in the annual premium said by the insurers to be attributable to the effect of the Grenfell Tower fire.

10. The "sum insured" figure for each leasehold flat is based on the cost of rebuilding that flat (and includes a contribution towards the cost of rebuilding the common parts). It is said that a similar process of calculation is undertaken for each tenanted flat under the General Policy. However, the figure insured for rented flats and leasehold flats may not be the same even if they are of a similar configuration in the same block. On behalf of the council, Mr Bhose said that this is because a greater allowance needs to be made to reflect the higher specification of leaseholder fixtures and fittings.

11. The cost of the Leaseholder Policy is partly based on the previous claims experience under that policy and takes no account of the Council's claim history under the General Policy. It was submitted that this is beneficial to leaseholders who are insulated from the influence of the claims history on non-residential buildings insured under the General Policy.

*The History of the Leasehold Policy*

12. In his written submissions, Mr Bhose provided the following table which gives relevant details for the Leasehold Policy since 2008/9:

| Policv Year | Insurer | Premium (Before IPT) | Claims Exp. | Loss Ratio | Nos |
|---|---|---|---|---|---|
| 2008/09 | Zurich | £301,854.11 | £478,957.30 | 158.6% | 157 |
| 2009/10 | Zurich | £316,783.70 | £328,665.58 | 103.7% | 134 |
| 2010/11 | Aspen | £450,545.08 | £805,621.00 | 178% | 236 |
| 2011/12 | Aspen | £466,314.10 | £662,443.00 | 142% | 213 |
| 2012/13 | Aspen | £472,662.19 | £589,439.00 | 124.7% | 227 |
| 2013/14 | Ocaso | £917,856.46 | £296,783.81 | 32% | 168 |
| 2014/15 | Ocaso | £939,955.22 | £487,898.43 | 51.9% | 165 |
| 2015/16 | Ocaso | £932,737.32 | £1,139,348.57 | 122% | 189 |
| 2016/17 | Ocaso | £694,502.18 | £896,082.82 | 129% | 138 |
| 2017/18 | Ocaso | £724,107.09 | £5,787,543.13 | 799% | 154 |
| 2018/19 | Ocaso | £1,346,722.75 | Not yet known | | |
| 2019/20 | Protector | £942,738.76 (Terrorism Insurance for 2019/20 placed with Charles Taylor) | | | |

13. In this table: "Claims Exp" means claims experience and includes sums both for claims paid out and the insurer's reserve for current claims; "Nos" means the number of individual claims in the year and "Loss Ratio" is a comparison between the premium payable (before IPT) and the claims experience.

14. Mr Bhose said that it is the council's understanding that insurers seek to operate a loss ratio of between 80-85% as, in addition to the costs of claims paid out to individual leaseholders, they will have to pay reinsurance costs, salary costs, and costs of administration. In eight of the last eleven years, the loss ratio exceeded 100%. He contended that this history of a poor loss ratio was the principal factor in explaining why the Leasehold Policy premium had increased over the last few years and quite apart from the exceptional events of 2017/18 or other factors.

15. For a number of years the Leasehold Policy has been provided under a "long-term agreement." For 2013/14 the agreement was with Ocaso which was placed following a statutory consultation under section 20 of the Landlord and Tenant Act 1985. In September 2015, the council gave leaseholders a statutory notice of their intention to seek tenders for both a 3 year and a 5 year agreement for the provision of insurance starting on 1st April 2016.

16. In October 2015, an invitation to tender was launched. This was a joint procurement exercise with the London Borough of Hammersmith and Fulham and the City of Westminster each of which also insures their leasehold flats on policies separate from their general policy. Although this was a joint exercise, the tender for each authority was an independent lot. On receipt of tenders each authority was then to make its own decision about to whom the contract should be awarded in accordance with the published tender evaluation criteria; "the most economically advantageous" criteria.

17. The proposed contract for Kensington and Chelsea was known as "Lot 3." The Tender Evaluation Criteria noted that tenderers had to be "'A' rated by Standard and Poor's or equivalent otherwise their submission will be automatically rejected." The specification noted that Lot 3 comprised a list of each of the 2,582 leasehold properties to be included in the policy, along with the sum insured for each flat. It stated as follows:

> "**Sum Insured**
> Provisional Leasehold Flats sum insured £483,601,893
>
> Please see Lot 3 Appendix A for a current full property listing including postcodes, the sums insured have been index linked for the 2016-17 period of insurance by 3%. These are only

provisional figures and the sums insured may decrease if properties are sold before inception of the policy.

Sums insured are on a reinstatement basis. The sums insured for cover requirements such as loss of rent, alternative accommodation and trace and access are in addition to the reinstatement sum insured per leasehold dwelling."

18. The specification recorded that the loss of rent or costs of alternative accommodation were to be up to 25% of the sum insured for the flat or a minimum of £40,000 per flat, whichever was the greater. This was 20% increase on the previous policy.

19. Importantly, the council also specified that "the option to convert to bedroom rated basis at subsequent renewals is required." Under a "bedroom rated" basis within a policy, the insurer insures each flat up to the same maximum reinstatement sum. The insurer is informed how many of the flats are 1 bedroom or 2 bedroom flats etc. Taking this into account along with all other relevant information, the insurer assesses the risk and calculates a premium. The insurer also advises, in its view, how much of the premium is fairly referable to flats with different numbers of bedrooms.

20. In this exercise, the City of Westminster tendered exclusively on a bedroom rated basis whereas the London Borough of Hammersmith & Fulham adopted the same approach as Kensington & Chelsea. On behalf of the council it was averred that either approach is acceptable insurance practice and that bedroom rated policies account for more than half of all private building insurance policies.

21. As part of the Invitation to Tender, tenderers were asked to confirm that they would accept they needed to give "150 days' notice of Long Term Agreement break". As will be seen, this provision later became relevant.

22. Four insurers returned tenders which were evaluated by the Council and by its insurance brokers, JLT Speciality Limited ("JLT"). Ocaso provided the lowest quotation on each of three separate bases (Standard cover – nil excess, Standard Cover - £100 excess; Accidental Damage included - £100 excess). It was also confirmed that Ocado would give 150 days' notice if they intended to break the Long Term Agreement.

23. In January 2016, the Council's Insurance Manager produced a report entitled "2016 Tender for Buildings Insurance – Leasehold Dwelling Properties." This sought approval from the Council's Chief Executive to proceed to the second stage of the statutory consultation process and, depending on the outcome of that consultation, to award the contract

to Ocaso on the basis which included cover against accidental damage. Conditional approval was given and the Council then gave the second stage Notice of Proposal to enter into a Qualifying Long Term Agreement to the leaseholders on 17th February 2016. Six responses to the notice were received and to which the Council had regard.

24. The Council decided to place insurance with Ocaso with the Chief Executive's endorsement as follows (although the copy in the hearing bundle is unsigned):

> "I confirm I have given due regard to the observations from leaseholders and notwithstanding the one response critical of the general level of premium recharges I agree to the award of the Council's leasehold dwellings buildings insurance from 01 April 2016 for a period of 5 years to Ocaso S.A. UK Branch in the sum of £760,479.89 inclusive of IPT noting that the tender was fully compliant with OJEU tendering rules and the Council's procurement rules and has delivered premium reductions; enhanced policy coverage outcomes for all leaseholders and invited bids from any qualifying insurance provider"

25. The contract of insurance for the Leasehold Policy was therefore in place from 1st April 2016. It is the council's case that the 2016/2017 premium represented a 34% saving on the 2015/16 premium, and also provided increase loss of rent/alternative accommodation cover, together with new accidental damage cover.

26. The Leasehold Policy premium for 2017/18 increased to £724,107.09 excluding IPT. On behalf of the Council it was said that this was in a context where the Claims Experience for 2016/17 had been £896,082.82, representing a loss ratio for Ocaso of 129%.

*The impact of the Grenfell Tower fire*

27. On 14th June 2017, the Grenfell Tower fire broke out with catastrophic consequences and the tragic loss of many lives.

28. In terms of the Leaseholder Policy, it gave rise to claims in excess of £5 million, relating to the 14 leasehold flats in the building (and also 3 in Grenfell Walk). In additional to discussions about claims from the fire, there were also discussions about Ocaso's intentions for the 2018/19 year. In October 2017, JTL informed the Council that the insurers intended to break the Long Term Agreement. It also stated that in 2016/17 and 2017/18 to date, the claims amount was £6.143 million (£5.46 million since 1st April 2017), which represented a net loss ratio of 755.9% (2,256.39% since 1st April 2017) and that Ocaso was currently

considering an indication of terms which would result in a premium increase of 85.98%. JTL also advised as follows:

> "As you are aware, the alternative to working with Ocaso on the 2018 renewal would be to carry out a tender exercise. In the event that a tender was published we may well end up with worse terms as we will have new pricing for a new 5 year agreement, opposed to the current pricing which is for the tail end of the current agreement. We should also point out that as the market has hardened since 2015 along with deterioration in the claims experience for Tri-Borough, the terms quoted in 2015 from the alternative markets at that time, are very unlikely to be a reflection on how they would respond to a future tender.
>
> Following our discussions with insurers, in view of the above and on our review of the relevant data, we would recommend serious consideration be given to continuing a relationship with Ocaso and working with them to commit to the 2018 renewal."

29. On 16 November 2017 a report by the Assistant Head of Insurance Services on the Council's 'Insurance Risk Financing Proposals' was considered by Mr Buss, Interim Executive Director Resources and Assets. The report advised:

(a) The Leasehold premium would be increasing but that this was not only related to the Grenfell Tower fire and that "Ocaso are not attempting to recover the Grenfell Tower claims cost: they have only considered part of their reinsurance contract in calculations and not the full reimbursement premium insurers have to pay due to this claim."
(b) That there were further reasons for the premium increase including various adverse weather conditions impacting on reinsurance such as earthquakes and storms, specifically for the Council, a high level of escape of water claims.
(c) A further reason was that alternative accommodation costs had increased in particular where leaseholders might require that accommodation be provided on a like-for-like basis.

30. The recommendation which was approved was to continue the relationship with Ocaso. However, the Council also decided that it would be necessary to commission independent valuers to undertake a revaluation of the Residential Buildings but, because there was insufficient time to undertake the exercise in advance of 2018/19, it decided to ask Ocaso to switch the Leasehold Policy to a bedroom rated basis.

31. The Council decided that this should be on a similar basis to that of City of Westminster, under which the sum insured would go up to a

maximum of £400,000 per flat (save for the 24 flats whose Sums Insured were already above this), together with an increase in the loss of rent/cost of alternative accommodation cover to a maximum of £80,000 per flat (from £40,000) or 33% of the sum insured, whichever was the greater. By email dated 9 January 2018 from the Council to JLT, JLT was asked to approach Ocaso on that basis.

32. Ocaso was willing to switch to a bedroom rated basis, and to increase the cover as requested. By email dated 20 February 2018 from Ocaso to JLT, and in response to a request for how the proposed premium increase to £1,346,772.75 had been calculated, Ocaso stated that the 86% increase in the renewal premium had been calculated as follows:
    (a) "Loss Ratio Issues—general claims experience 13.60%"
    (b) "Sums Insured adjustments 31.99%"
    (c) "Grenfell 40.41%".

33. In March 2018, JLT provided the Council with its formal 2018 renewal report for the Leaseholder and other policies. In respect of the Leaseholder Properties it cited the increase from the 2017/18 premium at £724,107.09 to the offered premium of £1,346,772.75 (excluding IPT) and recommended renewal with Ocaso. The advice was accepted and the Leaseholder Policy was renewed on that basis.

34. On 15th March 2018, the Council wrote to all leaseholders to explain the increase in the premium and the reasons for it. That letter is referred to in paragraph 2 of this decision and the reasons summarised at paragraph 28. In a further letter dated 17th May 2018, the council stated: "…following our letter of 15th March which informed you of an increase in the cost of buildings insurance, we have listened carefully to your feedback. As a result we have decided that the cost of the entire 85.56% increase may not be reasonable." The letter continued that the Council had therefore decided to obtain a ruling on the issue from the Tribunal. As a result of that letter, the council received numerous letters from leaseholders expressing their dissatisfaction.

35. On 6th June 2018, the Council Executive considered a report on Leaseholder Buildings Insurance prepared by Doug Goldring, Director of Housing Management. His recommendations are set out in paragraph 2 of the report as follows:

> "2.1 To waive the increased insurance charge for 2018/19, to Council leaseholders for the percentage increase attributed to Grenfell Tower;
> 2.2 To seek a determination from the First Tier Tribunal (FTT) on the 'reasonableness' of the other elements of the increased premium.
> 2.3 To proceed with a re-tender of the leasehold insurances for the period commencing 1st April 2019 ….."

Those recommendations were adopted and in particular it was agreed that the 40.41% element of the increase would not be passed on to the leaseholders who were notified of the decision in a letter dated 27th June 2018.

36. For the purposes of the Tribunal hearing the Council prepared a document which sets out, flat by flat, the service charge payable for insurance for 2015/16 to 2018/19. This demonstrates that there are substantial variations between the charges for 2017/18 and 2018/19 for a large number of the flats. This is because not only has there been a 45.6% increase in the premium which the Council is seeking to recover, but the basis for charging has also changed to a bedroom rated basis.

37. At the hearing, Mr Bhose gave a further explanation of the figures which represent the increase of the premium from the previous year as follows: the premium *increased* by £622,665.65 (excluding IPT). This represents an increase of 85.99%. Of that increase:

(a) 40.41% of the increase was attributed to matters relating to the Grenfell Tower fire. This represents 46.99% of the increase or £292,590.59;
(b) 13.06% of the increase was attributed to loss ratio issues and general claims history. This represents 15.82% of the increase or £98,505.71;
(c) 31.99% of the increase was attributed to the increase in the value of the sum insured. This represents 37.27% of the increase or £231,631.62.

38. Finally, although our determination in this application is confined to the premium for 2018/19, it is worth noting that on 4th March 2019, following revaluation modelling and fresh procurement and consultation, the Council entered into a contract with Protector Insurance for 2019/2020 in the sum of £1,055,867.41.

## The issues

39. In opening the case, Mr Bhose said that the Tribunal should be concerned both with the process in securing the insurance and the outcome. We needed to be satisfied that the decision to enter into the agreement with Ocaso for insurance for the year 2018/19 was rational and that the resulting sum charged was reasonable. We agree with that analysis. He said that the burden falls to the Council to show on the balance of probabilities that this is the case.

40. In closing, Mr Bhose submitted that on the facts of this case it was a reasonable approach; leading to a reasonable outcome:

(a) For the Council to enter into one policy of insurance for all of its leasehold flats;
(b) For the Council to enter into the Leaseholder Policy with Ocaso on the terms that it did, including as to premium;
(c) For the Council to change to a bedroom rated policy for 2018/19 and demand charges from leaseholders for this year on the basis that those with more bedrooms pay proportionately more than those with fewer bedrooms;
(d) For the Council to require leaseholders (only) to contribute to the costs incurred by it under the Leaseholder Policy, and not to require any contribution towards the costs incurred by it under the General Policy;
(e) To include within the charges to leaseholders the 31.3% increase from the 2017/18 Leaseholder Policy which was referable to the sums insured under the Policy being increased — both the increase to £400,000 per flat and the doubling of the loss of rent/alternative accommodation cover;
(f) To include within the charges to leaseholders the 13.6% increase from the 2017/18 Leaseholder Policy which was the result of loss ratio issues (excluding Grenfell Tower) and general increases in the costs of building insurance, particularly in Central London.

And accordingly he said, the amount demanded of each was both an "appropriate contribution" under their lease, and also was reasonably incurred for the purpose of section 19 of the Landlord and Tenant Act 1985.

41. Before turning to the detail of the Leaseholders' submissions on these matters we propose first to set out the relevant provisions in the leases which impose a duty on the Council to secure buildings insurance and also to set out the law which we will apply to our consideration. Also, we must deal with an important preliminary issue which relates to the extent to which the Tribunal can consider questions of the causation of the fire at Grenfell Tower and the allocation of responsibility for the cause of the fire.

*The Leases and the Applicable Law*

42. For the purposes of the application we were provided with a sample lease from the Council which imposes the following obligation:

"(ii) That subject to the Lessee paying the Service Charge referred to in Cause 3(ii) hereof:
(a) The Lessors will at all times during the said term ….insure and keep insured the Building (including the demised premises) against loss or damage by fire and such other risks (if any) as the Lessors shall deem desirable or expedient in the full value thereof in such insurance office of repute as the Lessors may decide….."

43. Under section 27A of the Landlord and Tenant Act 1985, the Tribunal is able to decide the "payability" of service charge costs. In deciding whether costs are payable the Tribunal must be satisfied that the costs have been "reasonably incurred," (see section 19 of the 1985 Act).

44. The leading case on the reasonableness of insurance costs is a decision made in the Upper Tribunal in 2017. This is *Cos Services Limited v Nicholson & Willans* [2017] UKUT 382 (LC). The case concerned the insurance premiums for three years between 2014 and 2017. The property was a purpose-built block of flats in its own grounds. It was four storeys high comprising 16 flats and garages. The clause imposing a duty on the landlord to insure was very similar to that in the Council lease referred to above.

45. After hearing from the parties, His Honour Judge Stuart Bridge explained landlords' decisions in respect of service charge costs must be rational but that section 19 goes further than rationality and requires that costs be reasonably incurred. In the context of insurance, he said as follows:

> "48. Context is, as always, everything, and every decision will be based upon its own facts. It will not be necessary for the landlord to show that the insurance premium sought to be recovered from the tenant is the lowest that can be obtained in the market. However, the Tribunal must be satisfied that the charge in question was reasonably incurred. In doing so, it must consider the terms of the lease and the potential liabilities that are to be insured against. It will require the landlord to explain the process by which the particular policy and premium have been selected, with reference to the steps taken to assess the current market. Tenants may, as happened in this case, place before the Tribunal such quotations as they have been able to obtain, but in doing so they must ensure that the policies are genuinely comparable (that they "compare like with like"), in the sense that the risks being covered properly reflect the risks being undertaken pursuant to the covenants contained in the lease.
>
> 49. It is open to any landlord with a number of properties to negotiate a block policy covering the entirety or a significant part, of their portfolio….It is however necessary for the landlord to satisfy the Tribunal that invocation of a block policy has not resulted in a substantially higher premium that has been passed on to the tenants of a particular building without any significant compensating advantages to them."

46. We take those observations into account in reaching our determination in this application. We turn now to the preliminary issue.

*The causes of and the responsibility for the Grenfell Tower fire.*

47. During the period leading up to the hearing, requests for disclosure of information were made on behalf of leaseholders which clearly related to the causes of and responsibility for the Grenfell Tower fire. In response the Council made an application to the Tribunal for the following ruling:
    (1) Neither the alleged cause(s) of the Grenfell Tower fire nor the attribution of responsibility or liability for any such cause (whether civil or criminal) are relevant to the determination of the application;
    (2) No party may call or rely on evidence, ask questions, or make submissions on either matter.

48. Mr Bhose explained on behalf of the Council, that some leaseholders maintain that the causes of the Grenfell Tower fire are relevant to the determination but the Council rejected that argument. As has already been explained, the Council decided to bear that portion of the increase in insurance that was attributed by Ocaso to the Grenfell Tower fire (40.41%). Mr Bhose said that there was no evidence that the other increases had to do with the causes or responsibility for Grenfell Tower. Also, there is an ongoing public inquiry on the causes of the fire which has not yet concluded and it would be wholly inappropriate for the Tribunal to consider these matters.

49. On behalf of the leaseholders, it was accepted that the Tribunal should be reticent to consider these issues but it was submitted that Sir Martin Moore-Bick was clear in the report from the first part of the Grenfell Tower inquiry, that cladding was the cause of the fire spreading and that it was clear in the lease agreement that the local authority have a responsibility to maintain and keep the building in repair. However, it was acknowledged that the fact the Council had decided not to pass on the increases attributable to Grenfell was an important point but that this had not been clear to some leaseholders until the day of the hearing.

50. The Tribunal decided to grant the Council the ruling that it sought and informed the parties of that decision on the first day of the hearing. The Tribunal acknowledges the strength and depth of feeling about the Grenfell Tower fire. We do not seek to diminish this in any way. The Tribunal's ruling is based on the fact that the Council has not passed on that part of the insurance costs attributed to Grenfell Tower on to the leaseholders and also on the fact that there is an ongoing and very detailed public inquiry in to the causes of and responsibility for the fire. It would not be right for the Tribunal to seek to anticipate the inquiry findings and conclusions.

## The Issues

51. In dealing with the issues we will refer to the submissions made by the Council and by and on behalf of the leaseholders. At the hearing it was agreed that we would not attribute submissions to any particular leaseholder.

52. At the hearing we also heard from the following witnesses on behalf of the Council:
    (a) Mr Ray Chitty who is the Head of Tri-Borough insurance service in the Council's Resources and Assets Directorate;
    (b) Mr Neil Walker who is the Assistant Head of Insurance Service in the Council's Resources and Assets Directorate; and
    (c) Ms Julia Reffell who is a Senior Partner and Head of Practice at JLT Speciality Ltd (JLT).

    Where relevant, we will refer to the evidence that they gave in their statements and during the course of the hearing.

53. In the following paragraphs we have summarised the Leaseholder submissions and the Council's response under a number of headings.

*The Council's decision to insure all leasehold flats under one "blanket" policy*

54. A number of leaseholders submitted that the Council's decision to insure all leasehold flats under one "blanket" policy led to unreasonable and unfair charges being made. It was submitted that the blanket policy does not differentiate between the great variety of properties within the Borough and the risks covered. It was said that at least to "group" the properties in distinct parcels would provide a better allocation of risk and a basis to obtain cover from multi-providers with different appetites for risk. Those parcels could include groups of blocks or even whole estates. It was pointed out that when securing tenderers for such a large blanket policy, the Council was "fishing in very small pond," limited to 5 or 6 insurers, the "usual suspects."

55. It was also submitted that the Council had chosen a blanket policy for its own convenience and because it was simpler and involved less work. This, it was said, made it impossible for any insurance provider to accurately measure and thus price the risks involved to an acceptable level of accuracy. The result is that where risks are only approximated and averaged out over an extremely diverse portfolio it will result in a price where insurance provider is likely to adjust upwards so as provide themselves with reasonable level of contingency and it is therefore possible that a blanket policy is more expensive simply by virtue of being a blanket policy.

56. It was said that the Council had failed to demonstrate that there was significantly more administrative work involved in securing separate policies for parcels of properties. It was suggested that, in any event, the cost of this work should not be the concern of the Council or the leaseholders.

57. One leaseholder also argued that cross borough portfolio insurance has not created economies for leaseholders. The obligation to insure is an obligation in respect of that specific property as part of the overall block or buildings policy and that this requirement was not met by a blanket policy.

58. The same leaseholder also contended that the Council's justification that some leaseholders would otherwise be potentially open to significant premium increases if the claims experience for their building was to deteriorate and that having a blanket policy "ensures that should an individual leaseholder or a number of individuals have poor claims record, they are protected from being singled out with increased premiums and issues of affordability. Therefore, and by design, it is the whole of the claims experience for all of the leasehold flats which determines the ultimate premium paid by all" was not a reasonable or acceptable approach. He said it was not appropriate for applicant to seek to "play God" or apply a socialist approach across leaseholders generally. On the other hand, a representative of some 53 leaseholders said that they agreed that a blanket block policy is the best way to spread the risk across all leasehold properties.

59. On behalf of the Council, it was said that in circumstances where the Council is the reversioner of some 2,600 leasehold flats pepper-potted within different residential buildings across the borough, the use of a 'block' or 'blanket' policy is a reasonable way to proceed. The Council argued that it is the most reasonable, and certainly most practical and cost-effective way of arranging building Insurance. In addition, by including all the leasehold flats under the same policy, the necessary administrative costs for both the Council and the insurers are kept to a minimum.

60. In evidence Mr Chitty said that the majority of portfolio landowners, whether commercial or residential, including virtually all local authority landowners, insure their properties under blanket policies.

61. This was also the evidence of Ms Reffell who has worked with JLT for 20 years and, before that, for Zurich Municipal, after previously working for a local authority. She said that the Council's approach of insuring leasehold stock under one policy is a very typical approach. She was not aware of any Local Authority or housing association which insures their property on a block by block policy and she had dealt with

over a hundred local authorities in the last 20 years. She now only deals with Local Authority and Housing Associations and all of them arrange their property insurance under blanket policies covering numerous locations.

62. Ms Reffell described a number of difficulties that might arise if the Council moved to smaller policies. She said that there would be a very significant increase in the administration on the part of the Council, brokers and insurance. She also elaborated on the submission that a blanket policy protects and benefits the whole of the leaseholder community, so that leaseholders in a block with a poor claims history (though no fault of the lessees) would not find themselves with substantial increases in premiums or, in an extreme case, an inability to secure insurance at all. In her experience, the most cost-effective way of providing insurance is to insure all the properties together.

63. In closing, Mr Bhose contended that the fact the Council acted in the same way as other local authorities goes a long way to support the approach as being reasonable. He said that the blanket policy was something that the leaseholders were aware of and were consulted upon in 2015 but no adverse comments were received.

*The Council's decision to change to a bedroom-rated policy for 2018/19*

64. On behalf leaseholders it is said that the Council's decision to change to a bedroom-rated policy is arbitrary and disregards claims history, the nature of each property, the size of individual flats, whether they are mixed tenure including commercial properties, whether there is a history of subsidence etc. It was pointed out that it had resulted in exceptionally large rises for some types of property, for example, for studios, and also the same premium being applied to 3 bedroom flats which may be significantly different sizes.

65. For some leaseholders this represented a positive change as, historically, there had been severe anomalies with similar properties being charged widely different premiums. This was acknowledged by leaseholders on the World's End Estate where there had been stark difference in the premium paid by leaseholders in similar flats of similar sizes, stating that that bedroom rated cost allocations were fairer than the historic valuations used previously. In the financial year 2013/14 the buildings insurance premium increased from £472,662.19 to £917,856.46 which is an increase of 94%. On investigation many similar sized properties were paying vastly different amounts for buildings insurance and it was said that this was because costs were allocated in relation to sum insured whereas in fact there was no relevant difference. Having regard to those anomalies, the bedroom-

based costs allocations policy used in 2018/19 seemed to the residents' association which he represented, to be more reasonable as it did address the problem of unsupportable discrepancies.

66. On behalf of the Council, it was also said that the decision was made in order to ensure that the sums insured for the flats were sufficient. In the light of the experience of the Grenfell Tower fire and the level of the unanticipated costs, the Council considered that a revaluation of the properties was required but, because this exercise could not be carried out soon enough for negotiation of the 2018/19 premium, Ocaso were asked to switch to the bedroom rated basis which they agreed.

67. By the time of procurement for the 2019/20 insurance, the Council had obtained revaluations from Jones Lang LaSalle of its tenanted properties in Residential Buildings. From these valuations it had then applied a model for the leasehold flats, taking account of the numbers of bedrooms, standard rebuild costs, the west London location, the age and height of the building, so as to arrive at an appropriate sum to be insured for that particular flat (on a reinstatement basis). As a result of this modelling, it arrived at a sum insured for each leasehold flat. The bedroom rated basis was therefore no longer applied.

*Relationship between the Leasehold Policy and General Policy and impact on Claims History*

68. A number of leaseholders observed that there is an uneasy relationship between the Leaseholder Policy and the General Policy. Water escapes were said to be a factor in claims under the Leaseholders Policy without any acknowledgment that the escapes arise both from poor maintenance and from other causes arising in tenants' flats for which leaseholders cannot claim against the General Policy. The only way they can do so is if they can cross the very high hurdle of proving negligence in respect of damage caused by tenants on their estate. In this way it was submitted the Leaseholder Policy is subsidising the General Policy. At the hearing the Tribunal was told about problems on the World's End Estate where there had been flooding into top floor flats from flat roofs, it was said, because the gutters had not been maintained properly and there had been many claims over the years.

69. Another leaseholder said that there was a lack of clarity and transparency surrounding the relationship between the Council's General Policy and the Leaseholder Policy and that, despite requests, the leaseholders had not seen a history of the premium for General Policy or claims record. Again, it was said that this is significant as the Council had often quoted water escape as a large factor in the claims record without acknowledging that this arises from its own poor

maintenance of the housing stock and often from causes in tenanted flats.

70. Furthermore, the leaseholders found the claim that tenants contribute through rent is difficult to accept as rents rarely change. A copy of a letter to an unnamed tenant was produced and a zero figure was given for "building insurance."

71. In response the Council maintained that the leaseholders' assertion that the Council's "very poor maintenance" was the cause of the high number of escape of water claims should be rejected as there was no evidence from which the Tribunal could reliably draw any conclusions. Although individual leaseholders were able to give anecdotal evidence, it was notoriously difficult to identify the cause of water leakage which is a common risk to all occupiers in a multi-occupied block of flats.

72. In evidence, Mr Walker said that every building includes both tenants and leaseholders and therefore two policies were maintained. The Council did not want to have one group claiming against the other and therefore be responsible for the claims of each. He said that the explanation of the zero figure is that insurance is not an "additional" service charge because it is included in the basic rent.

73. Mr Walker was specifically asked whether there is a loss ratio that is acceptable to insurers. He said that when insurers consider whether they want to make a bid, they get 10 years' claim experience and it is for them to calculate what is the right premium to quote to win business but not make a loss every year and he accepted that if there are more claims, this will increase costs so insurers quotations will be higher.

74. Mr Walker was also asked whether he had a breakdown of the claims that had been paid which would mean the Council could take steps to help reduce the loss ratio? He said that the insurer is required to give a monthly report of all claims so that this can be fed back to housing colleagues in case there are trends that can be addressed. He said that work to address such trends was being undertaken.

*Loss of Rent and alternative accommodation costs too high*

75. Many leaseholders considered that the increase in the amount insured for loss of rent and alternative accommodation was too high. One leaseholder said that it was unreasonable for the council to double the amount of cover for alternative accommodation to £400,000 or loss of rent to the absurdly high level of a maximum of £80,000 per dwelling or 33% of the sums insured on the Buildings damaged or destroyed

whichever is the greater and that this directly led to a greatly increased premium.

76. The reason he categorised this as absurd was that he said rents in the area were nothing like £80,000 per annum and were more likely to be £20,000 - £30,000 as these were ex-council properties and any leaseholder renting out a flat could not command greater rent. He said that at the very least the Council should have insured for different amounts for different properties and that they should have considered an application of risk likelihood on a risk-weighted basis across the whole portfolio. It was, he said, unreasonable for the council to over-insure for likely risks whilst taking no steps to assess that risk. He argued that the increases in reinstatement values and cover accounted for 31.99% increase which had been unreasonably incurred.

77. On behalf of the Council, Mr Chitty said that depending on where the property is in the borough, the cost of renting can be extremely high. Outside of London, the assessment is usually a percentage of your sum insured but inside London, rents are proportionately much higher and there is also a scarcity of accommodation.

78. Mr Bhose submitted that making the increases was a prudent and reasonable stance, given Grenfell Tower fire circumstances and previously unforeseen additional costs of rebuilding, demolition, etc. The Council chose £440,000 as a maximum with £375,000 average rebuilding costs which is the same as Westminster. The evidence of Julia Reffel was that if applicant had requested £325,000 it would have made no difference to the premium, because the insurer calculates its perceived risk and the likelihood of claims, not on the basis that this figure would be reached: it was to cater for an exceptional case, like Grenfell Tower.

79. He said that for the £80,000 rents cover, the same points apply. It was possible that alternative accommodation in Kensington and Chelsea could be £2,000 per week and £80,000 would only give 40 weeks' of cover. If there was bad fire damage, 40 weeks would be well within the range of what would be required. So, the Council had made a reasonable decision. A number of flats in the portfolio are sublet on market, so those leaseholders need to be satisfied that their interests are sufficiently protected, if they cannot re-let after a fire.

*Level of Excess*

80. A number of lessees argued that the level of excess at £100 was too low. One of the leaseholders suggested that many people would be happier with a higher excess and this would operate as a disincentive to

claiming, with the consequence that the claims history would be better. It was submitted that it was far more usual for an excess of £250 or £500 to be found in leasehold policies.

81. On behalf of the council, Mr Chitty observed that no objection had been taken to the level of excess during the section 20 consultation exercise. He pointed out that a leaseholder with a claim might be asset-rich but not necessarily income-rich, and that trying to find £250 might cause a genuine problem.

82. Mr Bhose told the Tribunal that overall, the feedback was that £100 was proportionate and in fact there was some disappointment that it moved from nil to £100, some years ago. Although some leaseholders would prefer a higher excess, that was just one view. It was a reasonable exercise of the Council's discretion

*Other issues on level of premium*

83. One of the leaseholders questioned the value of long term contracts in circumstances where an insurer is unilaterally able to withdraw cover with a change of circumstance. In her evidence, Ms Reffell explained that break clauses giving roughly five months' notice were a usual term in insurance contracts and that it was not possible to get insurers to agree any more notice than this.

84. Several leaseholders questioned the decision to include terrorist cover which it was suggested was expensive and unnecessary. On behalf of the council it was submitted that this is commonly included as an insured risk, that it was a prudent decision and that it did not excessively increase the premium.

*Whether 40.41% is a genuine figure*

85. On behalf of those leaseholders that he represented, Mr Bowker submitted that the Tribunal should be concerned that the figure of 40.41% discount, to reflect the impact of the Grenfell Tower fire, is accurate. During the course of Ms Reffell's evidence he sought to establish with her, how that figure had been reached. Ms Reffell said that she did not know how it was calculated. In preparation for the hearing she had asked Mr Jim Starling who is at senior level in Ocaso, but she had not received a reply. In summary, she asked if Ocaso could provide any detail of the calculations behind the figures but was told that they could not share that information. She said she would expect that Ocaso looked at the claims experience to see what element related to Grenfell together with the cost of their reinsurance and therefore they were likely to have carried out a fairly scientific calculation. She had no reason to believe it's not a reasonable and accurate figure.

86. Mr Bowker submitted that as the sum charged to leaseholders is calculated having regard to the 40.41%, that figure is an inexorable part of the question whether the sum had been reasonably incurred and was reasonable in amount. He said that in order for the 40.41% figure to be accurate or realistic, it would be necessary to have a witness statement from James Sterling to explains the claims history and the method of assessment and calculation. Applying those two points, he said the absence of a witness statement means that the Tribunal should dismiss the application as it could not properly be satisfied that the outstanding amount is reasonable or reasonably incurred.

87. On behalf of the Council, Mr Bhose said there is no evidential basis on which the Tribunal could reject the 40.41% and there is no reason for saying it is wrong. Ocaso gave the figure on the basis that the whole of the premium would be recovered from leaseholders by the Council and it was to be expected that the head of underwriting would give an accurate statement of the breakdown. Furthermore, the breakdown was not given in confidence, but in an open letter. There were clear issues of commercial sensitivity and nothing more could have been done.

*Alternative quotations*

88. A number of alternative quotations for insurance of buildings was produced to the Tribunal. All of the quotations would result in a reduced premium for the leaseholders. However, on behalf of the Council, it was submitted that none were comparable.

89. Firstly, Mr Bhose made a general point that the quotations relate four buildings: 63 & 36 Finbourough House, Talbot House and Slaidburn Street. He said the significance of the evidence cannot extend beyond those buildings and that it was not open to the tribunal to draw any conclusion that they can be applied across the board.

90. Secondly, he submitted that the alternative quotations were not obtained on a like for like basis. Dealing first with Finborough House, he said there is a third building, Walnut Tree House. He submitted that the quote from Covea is not comparable with an excess of £1,500 for escape of water and damage to the felt roof. Also, he said the quote had not been provided on a correct factual basis. Although there are 32 properties 50% are owned by leaseholders and 50% are tenanted. The allowance for loss of rent is £4m which is equivalent to £123,000 each but there is no evidence that the insurer took into account the tenants. Furthermore, he said the premium excludes terrorism cover. Under the Ocaso policy terrorism is included. Finally, the quote makes no allowance for the additional costs of administering the portfolio on a block-by-block basis. He also said that the second quotation from

Allianz was also not like-for-like. In this quote there was a £1,000 water excess.

91. In the case of Talbot House, the quotation was obtained from Lansdown. Here the water excess was £500. Also, it seemed to have been obtained on the basis that all 20 flats are leasehold whereas in fact, 13 are tenanted. He said that the quotation could not be regarded as being properly comparable.

*Claims Handling*

92. A number of leaseholders complained about the standard of claims handling by Ocaso. Claims handling is managed on behalf of Ocaso by Davies Managed Systems. It was said that they had refused to accept notification of claims by letter or email and only by telephone which was permanently engaged and this created unnecessary difficulty. In one case, a leaseholder had sent as many as 47 emails.

93. In response, the Council suggested that this type of difficulty should be raised with Ocaso which had an effective complaints handling system.

## Decision and Reasons

*Decision*

94. In reaching our decision we bear in mind the strong views expressed by the leaseholders in their written submissions and at the hearing in January. We were impressed by the professionalism demonstrated by all of those who took so much care and time to prepare their arguments and are grateful for the assistance that this provided to the Tribunal.

95. We are also conscious that there has been a great deal of discontent with the way in which insurance provision for leasehold properties has been managed over a number of years. Having said this, the events of June 2017 when the Grenfell Tower fire occurred and the decisions in respect of insurance made during the Autumn and Winter of 2017-218 must be considered in context.

96. The single question for the Tribunal to decide in this case is whether the insurance premium for the 2018-19 Leasehold Policy is payable. We are satisfied that the premium is payable in accordance with the terms of the leases and we are satisfied that it was reasonably incurred.

97. However, we have insufficient information to decide whether the way in which the calculation of premiums for individual leaseholders has been carried out has in every case been accurate or that sufficient credit to reflect the decision not to pass on the 40.41% of the increased costs has

been properly implemented. We recommend that if any individual leaseholder has concerns about the calculation of their premium, the Council should provide them with a detailed written explanation and, if appropriate, a refund.

*Reasons*

98. It is a basic principle of leasehold law and practice, that it is a matter for a landlord to decide the manner in which obligations under a lease are to be discharged. As observed in *Cos Services Limited v Nicholson & Willans* [2017] it will not be necessary for the landlord to show that the insurance premium sought to be recovered from the tenant is the lowest that can be obtained in the market. However, the premium must be reasonably incurred and for that reason we have reviewed the main submissions made by the leaseholders in some detail. Having done so, overall, we are satisfied that the Council's decisions were rational and reasonable.

99. We start with the arguments about whether it was reasonable for the Council to secure insurance under a blanket policy. We are satisfied that this is industry practice where a landlord has a large property portfolio and accept the evidence given on behalf of the Council that this approach is adopted by the vast majority of local authority landlords and housing associations but also by landlords in the private sector.

100. We acknowledge the leaseholders' concern that this approach means that there is a distribution of risk across all leasehold properties and that this might mean that there is an unevenness in premium allocation. However, we do not consider this to be unreasonable. For the reasons given by the Council, there are overarching benefits in dealing with its leasehold stock in this way. These include savings in administrative cost and claims handling but more importantly it avoids unacceptable differences in premium allocation and provides security and certainty to all leaseholders whether they occupy a high-risk property or not. We do not regard this as being high-handed or reflecting a paternalistic or "socialist" approach. It makes good commercial sense and fulfils the landlord's obligation under the leases. There is a difference in opinion between the leaseholders about the merits of a blanket policy. This is not surprising but we consider that it illustrates that there is more than one way in which insurance could have been secured and that in those circumstances, it is the landlord who is entitled to decide which of two reasonable routes it wishes to take. By its very nature, insurance is concerned with the spreading of risk and we are satisfied that the Council acted reasonably in entering into a blanket policy which overall enhances the spread of risk.

101. Turning now to the Council's decision to change to a bedroom-rated policy for 2018/19. Here it is important to understand that the context of this decision was not simply the need to deal with the ongoing consequences of the Grenfell Tower fire, but also the historic anomalies in the allocation of premiums between similar properties. We are satisfied that this was a problem that had to be addressed. The differences between the valuation of flats seemed to us to have been made worse by the simple application of RPI as a way of uprating historic valuations. Inevitably, this would mean that the gap in the valuation of similar properties would become wider, year on year.

102. The ability to change to bedroom rating had been included in the insurance contract and therefore had been the subject of consultation. There is no question that the change was welcomed by numerous leaseholders. The Council considered whether it would be possible to carry out a revaluation in time to procure the 2018/19 insurance and decided realistically that it was not. They were therefore faced with the choice either to proceed on the basis of unrealistic and unfair valuations for one more year or to adapt a broad-brush approach. Arguably, either course would have been reasonable but the Tribunal is satisfied that the better approach was to change to a bedroom-rated policy for that year.

103. As indicated in our decision however, we cannot be satisfied that the relatively complex exercise of recalculating premiums to reflect the new valuation basis has been correct in every case. Mathematical errors may also have been made following the Council's decision in June 2018 not to recharge that part of the insurance costs said to have been attributable to the Grenfell Tower fire.

104. The relationship between the Leasehold Policy and the General Policy did initially cause the Tribunal some concern. Whilst we accept Mr Bhose's submission that we do not have evidence that demonstrates a systematic failure on the part of the council to maintain their residential building stock, we do have anecdotal evidence that such failures do occur. The fact that there is a subrogation clause in the two policies is of no comfort to the leaseholders who are obliged to make claims in cases of water escape. However, we appreciate that there is difficulty in managing the relationship between two policies which subsist in buildings where there are both leaseholders and tenants. We accept that this is the case in most or all of the Council's properties with residential leases.

105. We consider that the Council is correct to maintain a policy for leaseholders which is separate from the General Policy and that therefore they must find a way of managing claims which arise between co-occupiers. As Mr Bhose submitted, the allocation of liability for the

cause of water escapes is notoriously difficult and is not a matter for claims handling. If there is a clear case of failure to maintain by the Council, then this is a breach of covenant in respect of which the lessee could make a claim.

106. We were satisfied that the Council are taking appropriate steps to monitor claims and to review the question of whether better maintenance is required. We express the view that this should be a priority going forward. Additionally, we would encourage the Council to ensure that provision for claims handling with the new providers is efficient and robust.

107. Whilst we acknowledge that the claims history relating to the escape of water in the Borough was specifically cited as one of the reasons that the premium increased, we do not consider that this renders the decision to enter into the insurance contact or the level of the premium to have been unreasonable. The risk was clearly there and leaseholders needed the protection of an effective policy.

108. It is convenient here to also consider whether the level of excess at £100 was too low. This is another instance where there is no unanimity in leaseholder views. There is no question but that a lower excess will lead to a higher premium. It is also likely that a higher excess might have the effect of discouraging claims which would in turn improve the claims history for an insurer's consideration. Fundamentally, however, this is a management question for the Council. Mr Bhose said that overall the feedback from lessees had been in favour of keeping the excess level low. We consider that the Council's decision was proportionate and reasonable.

109. Turning now to the increase in the loss of rent and alternative accommodation costs allowance. The value of both was significantly increased and led to a much higher premium. We do not consider those values to be absurd or unrealistic. We accept Ms Reffell's evidence that when insurers fix a premium, those figures are regarded as a maximum that will be reached rather than a benchmark. Furthermore, we are satisfied that the view of the insurance market following the Grenfell Tower fire was that the costs of alternative accommodation or loss of rent had previously been underestimated.

110. We appreciate that this is valuation question but note that the levels decided upon had already been adopted by the London Borough of Westminster. So far as the submission that these are ex-council properties, we do not accept that this would have had a significant dampening impact. Also, if alternative accommodation were to be required within the region, it may well have to be found in the private sector and possibly within a high value area.

111. So far as the inclusion of terrorist cover is concerned, under the lease it is a matter for the landlord to decide which risks to insure against and terrorism cover is now often routinely included.

112. In the *Cos Services* case, HH Judge Stuart Bridge said that tenants may, as happened in that case, place quotations before the Tribunal, but in doing so they must ensure that the policies are genuinely comparable (that they "compare like with like"). Here, a number of leaseholders did take steps to obtain quotations from some of the most reputable insurers. However, the Tribunal was not satisfied that these were "like for like". In particular, the excess figures for water escape were much higher and it seems that insufficient consideration was given to the circumstances that all of the buildings concerned are occupied by a mixture of leaseholders and tenants. The Tribunal appreciate that trying to obtain comparable quotations is an extremely difficult task but, in this case, we are not assisted by the quotations that were given.

113. Finally, we turn to Mr Bowker's submission that we cannot be satisfied that the premium is reasonable unless we have evidence that the percentage of the premium that was said to have been allocated to the effects of the Grenfell Tower fire was accurate. We reject this submission. There is no reason at all to doubt that figure. It was provided by Ocaso on the basis that the whole of the premium was to be recovered from the leaseholders and indeed that had been the Council's original intention. The figures were provided in good faith in open correspondence. In our view the Council were correct to rely on that advice. We also endorse their decision not to pass on that part of the costs to the leaseholders.

114. Accordingly, we find that the premium for 2018/19 was reasonably incurred. We consider that the Council were correct to rely on the advice of JLT and in particular we found Ms Reffell to be an expert and reliable witness. We find that the process followed by the Council in placing the insurance was competent and rational.

Siobhan McGrath

22nd June 2020