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| <b>Item No.</b>                    |                                |
| <b>Classification</b>              | Open                           |
| <b>Date:</b>                       | 1 September 2021               |
| <b>Meeting Name:</b>               | North East Local Housing Forum |
| <b>Report title:</b>               | Homeownership Update           |
| <b>Ward(s) or groups affected:</b> | All                            |
| <b>From:</b>                       | Head of Homeownership Services |

## **RECOMMENDATION**

- 1 That the North East Local Housing Forum receives this report for information and notes the contents.

## **BACKGROUND INFORMATION**

- 2 The North East Local Housing Forum requested an update on three areas of recent work carried by Homeownership Services. Two of these areas had been the subject of a task and finish group, with the third being a policy update, which had been subject to consultation with the now defunct Homeowners Council and with homeowners on the on-line residents panel. The three areas are:

- Leasehold building insurance contract.
- New Homeowner Loans Policy
- Changes to Section 20 Notices

### **3 Service Charge Loan Policy Summary**

- 3.1 Sections 450A, 450B, and 450C of the Housing Act 1985 (the 'Act') enabled the Secretary of State to make regulations to empower local authorities to grant loans in respect of service charges to leaseholders. The Secretary of State made those regulations in the Housing (Service Charge Loans) Regulations 1992/1708 (the 'Regulations') which came into force on 17 August 1992 and have been amended a number of times since then. These loans must be secured as a mortgage on the property.
- 3.2 Southwark's service charge loan policy was originally put in place on 4 May 2004 and was updated on 9 March 2021.
- 3.3 The policy states if Right-To-Buy leaseholders meet the prescribed criteria for a loan set out in the Housing Act 1985, the leaseholder must be given a mandatory service charge loan if they request one. The terms of the mandatory loans are also set out in the act.

- 3.4 The policy also allows Southwark Council to give discretionary service charge loans to leaseholders for larger service charges. The council defines most of the conditions, fees, and interest rates. Southwark Council currently has 3 discretionary loan products:
- Resident Repayment – tracker (simple) interest rate of 2.5% above the Bank of England base rate. Monthly repayments are required.
  - Non-Resident Repayment - tracker (simple) interest rate of 4% above the Bank of England base rate. Monthly repayments are required.
  - Exceptional Hardship – tracker interest rate of 2% above the Bank of England base rate. The loan is a ‘lifetime’ loan, which means there are no monthly repayments. Instead, the (simple) interest is rolled into the loan. The interest is not compounded. The loan becomes due upon death of the leaseholder(s), sale of the property, or re-mortgage.
- 3.5 There is no maximum on the interest rate, but the council has set a minimum interest rate for each product. The minimum interest rate is the additional interest added to the Bank of England base rate e.g. the Resident Repayment loan has a minimum interest rate of 2.5%.
- 3.6 The council charges administrative and legal fees, which can be added to the amount of the loan.
- 3.7 When assessing for ‘exceptional hardship’, the council will apply the same criteria set out in para 4(a)-(g) of the Social Landlords Discretionary Reduction of Service Charges (England) Directions 2014.
- 3.8 The policy reflects the Financial Conduct Authority Mortgage’s Perimeter Guidance manual and Mortgage Conduct of Business Regulation where possible in the treatment of customers and responsible lending.

#### **4 Leaseholder Buildings Insurance Contract**

- 4.1 The council is responsible for arranging buildings insurance for its leasehold portfolio. This is a requirement of both the lease and the legislation governing the right to buy. The buildings insurance is usually procured as a long term agreement with a reputable supplier, with a contract length of three years with the option to extend for a further two years. The current contract is with Zurich Municipal and has been in place since 1 April 2018, with the original three years coming to an end on 31 March 2021.
- 4.2 The contract was extended for one year, but with an increase in premiums due to claims experience. At the time Zurich indicated that there would be a further increase in premiums for the final year extension. As a result the council considered it prudent to prepare to procure a new contract, while keeping the option open to negotiate with Zurich.
- 4.3 The council carried out benchmarking with other London Authorities, which suggested that the insurance market had hardened considerably, leading to premium increases averaging 21%. Alternative options were explored, including

joining a current framework or self-insurance, but these were found to be unfeasible.

- 4.4 The council formed a task and finish group with leaseholder representatives from the on-line panel to be involved in the procurement of the new contract. The group was informed that the council would be opening negotiations with Zurich for the final year extension, and would bring Zurich's offer back to the group for a decision to be made on whether or not to accept.
- 4.5 Zurich offered to extend the contract into its final year with no further increase to the premiums outside of the standard inflationary increase of 4%. The council took this offer to the task and finish group, with a recommendation that it was accepted, as a new procurement could see a much higher increase to the premiums. The group agreed to accept Zurich's offer, subject to certain clarifications from the council which were provided on 15 April 2021:
- 4.6 *With the existing contract, do we receive "commission" for part-processing claims? If we do, what is the annual amount?*

The Council currently receives a 15% service fee (based on the total premium payable excluding Insurance Premium Tax) from the insurer for the administration of the initial claims handling process and overheads relating to providing information for claim queries, staffing, I.T. and resources required to procure manage the contract effectively. Please note the council does not recharge these costs to homeowners as an overhead cost for building insurance. This is not the same as a commission payable to the council and is outlined in a separate contract between the Council and Zurich. This was reduced from 20% in 2013, and has been reduced further for 22/23 to reflect economies of scale with the increase to the portfolio. The service fee is separate from the 10% administrative fee applied to service charges which is for the construction, calculation and billing of service charges. The basis for this arrangement is upheld by case law in both the Upper Tribunal and at the LVT/First Tier Tribunal (please refer to the original Williams v Southwark case in Chancery in 2000).

- 4.7 *Water damage. If this emanates from a council owned flat, shouldn't this be its responsibility to put it right?*

It is not the case that all escapes of water from a council-owned flat are the result of the council's failure to repair and maintain the property and therefore liable to pay for subsequent damages to a leasehold property. The insurance policy is there to cover damage cause to leaseholder's property. Leaseholders are responsible for the internal parts of their property therefore the policy will cover irrespective of who the damage was caused by i.e. council owned or leasehold property. The Council will liaise with the insurers to confirm that the appropriate repair has been carried out before remedial works to the leasehold property are carried out by the insurers.

- 4.8 *For the new procurement process, can there be a more extensive and longer consultation exercise with leaseholders. This should also include the Local Housing and Homeowners Forums.*

The procurement process is on hold until next year. We will set up meetings with appropriate homeowner forum groups once we've spoken to the resident

involvement team. For this procurement they recommended a task and finish group.

4.9 *Was there a short term option B to Zurich's offer?*

The options available were either Zurich's offer for the final extension in the current contract or to go out to procure a new buildings insurance contract.

4.10 *Communal repairs, particularly those connected with vandalism. How many are dealt with through the council's insurance?*

Communal repairs dealt with through the council's insurance, particularly those connected with vandalism. The figures for 20/21 are not yet available since we have only just ended that financial year.

|                            | 2018/19    | 2019/20    |
|----------------------------|------------|------------|
| Number of vandalism claims | 231        | 311        |
| Value of vandalism claims  | £10,640.14 | £15,223.70 |

4.11 *Who is the Lead Member – Cllr Rebecca Lury or Cllr Cryan?*

Cllr Cryan is the lead member as Cabinet Member for Council Housing at present.

4.12 The approval for the contract extension is currently being processed.

## 5 Section 20 Notices

5.1 The consultation notices issued under Section 20 of the Landlord and Tenant Act 1985 (as amended) must comply with the statute, containing all the relevant information required by the legislation. The format of the notices issued by Southwark were reviewed and significantly altered in 2012 in accordance with the recommendations of the leasehold representatives on a task and finish group administered by the Investment Delivery Manager.

5.2 The 2012 review resulted in the following changes being made to the notices:

- the inclusion of a prominent summary box on the front page to emphasise the service charge and estimated billing date. It was suggested by the leasehold representatives that homeowners may not see this information if required to read through the notice to the point that explained the charge
- toning down the legal language as far as possible while still allowing compliance with the statutory requirements
- moving elements of information that were useful but not legally necessary to an information section at the end of the notice to ensure that important information in the main body of the notice wasn't overwhelmed

5.3 A further significant review was carried out in 2014 to bring the notices in line with the decision in *LBS v Woelke* (2013 UKUT0349 (LC)). This resulted in the council including notifications (the technical service charge demand under the lease) with each Section 20 notice. A frequently asked questions sheet was drafted to be added to the notice to explain the notification.

5.4 From 2014 there have been regular reviews of notices in response to suggestions from both homeowners and officers. Many of these have revolved around

rewording of sections to make them more understandable or movement of sections to increase their prominence in the notice.

- 5.5 In the last two years we have included the ability to respond via e-form as part of the section 20 observation period.
- 5.6 We have also recently amended the notices to include a section on homeowner involvement drawing homeowners attention to the Local Housing Forum and online residents panel and providing a link for further information.
- 5.7 A second task and finish group was held in 2020 by the Head of Investment, to look at the quality and efficacy of the resident consultation carried out by the Investment Delivery team for major works schemes. Within the context of that task and finish group the leasehold representatives made a number of comments on the notices, although no recommendations as to changing the structure or wording. A few minor grammatical and stylistic changes were made as a result of the comments received.
- 5.8 The most recent notice review which took place 10 days ago included among others a revision “to make it clear that administration fees are just for homeowners” which was a suggestion received from a homeowner.

#### AUDIT TRAIL

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| <b>Lead Officer</b>  | Dominic Cain, Director of Exchequer          |
| <b>Report Author</b> | Louise Turff, Head of Homeownership Services |
| <b>Version</b>       | Final  |
| <b>Dated</b>         | 1 September 2021                             |