Email response sent to Councillor Press on leaseholder insurance following discussion at the January 2014 Tenants' Consultative Committee

From: Asha Gupta **on Behalf of** Rock Feilding-Mellen
Sent: 20 February 2014 16:54
To: Monica Press
Cc: Cllr, Feilding-Mellen, Rock; Parsons, William: HS-Housing
Subject: Re: Tenants Consultative Committee: question re: leaseholder insurance from meeting 8 July 2013

Dear Ms Press,

I write with reference to your email of 13 January 2014 to me regarding issues that arose out of the Tenants Consultative Committee meeting of 8 July 2013. I have been advised of the following which I hope provides clarification.

There are two different insurance policies which serve different purposes and operate in a different manner.

- Your leasehold buildings insurance policy is a first party property insurance policy that providing damage occurs due to a valid insured peril, such as fire damage, will cover you against the cost of re-instatement of the damage property. The Council is required to arrange this cover by the terms of leaseholders' leases and it is also required to comply with the Council of Mortgage Lenders' insurance criteria before lenders will release funds.

- The second policy you are referring to is a third party legal liability insurance under which the TMO is insured against legal liability for negligence arising from their service operations causing property damage or personal injury.

The first insurance policy does not therefore require a claimant to demonstrate liability in negligence against the TMO in accordance with English Law but focuses on property re-instatement within a timely manner and is therefore focused on resolving the leaseholders property damage.

The second policy would require a tenant to personally pursue a claim in negligence against the Council and/or the TMO. If such a claim were made, the insurers would have to investigate it before making a decision on liability. Even if legal liability was accepted, the insurers would then be legally justified in making deductions for wear and tear in accordance with the legal principals of indemnity.

Leaseholders have not been charged for the 2nd policy ie the legal liability policy.

The insurers of the first insurance policy are able to pursue a recovery of their costs against the insurers of the second policy should they feel it appropriate to do so, and in doing so spare the leaseholder the burden of a protracted recovery process. However, the costs of pursuing recovery and the resources involved probably result in this option rarely being exercised, although the decisions are made by the insurers and not Council officers.

It is difficult to comment on the facts of the specific cases you are raising. However, a leak from a tenanted property, even if caused by disrepair, would not necessarily establish a cause of action in negligence against the Council.

The insurance team and the new Tri-Borough Insurance Manager are acutely aware and sympathetic regarding how significant the increases in insurance premiums have been for

leaseholders after the previous long period of low premiums and price stability. The insurance team did therefore undertake a market tender to ensure best terms available after the indications from the previous insurer that they would seek large premium increases. Unfortunately, the current rates via a different insurer were the best outcome based on the insurance claims experience.

Yours sincerely,
Rock Feilding-Mellen

On 13 January 2014 00:33, Monica Press wrote:

Dear Councillor Feilding-Mellen,

At the last TCC 8 July 2013 I was asked to put my question in writing to you in order that it could be considered and answered at our next meeting. My question was:

At the meeting on 8 July, members of the TCC became aware for the first time that the Council holds two discreet insurance policies for its tenants in TMO housing: one held by itself for all tenants and one held with a private insurance company for its leaseholders with premiums being paid by the leaseholders. In my 18 years as a leaseholder I have had two serious incidents of water ingress due in both cases to a disrepair of a tenant's property by TMO contractors and after months of inaction requiring extensive repairs to my property through buildings insurance. In both cases the TMO & Council directed me to contact the leaseholder insurers myself in order to arrange repairs. I did this, assuming that all residents in TMO managed properties were covered by the same insurers and therefore responsibility and claims history were not as per usual policies.

As Chair of my RA and an active leaseholder in touch with other leaseholders as a group in my own and other estates, I know that my case is not unique and the other many cases I know all resulted from tenant property lack of repairs or disrepair damaging leaseholder property and leaseholders being directed by the Council and TMO to their own insurers. Zurich or Aspen.

Since the Council and the TMO know and knew there were two separate policies I should have been directed to claim against the tenant's insurance policy since they and the TMO contractors were responsible for the ingress and disrepair. We are now told that the recent high average 85% rise in leaseholder insurance premiums is due to the high claims rate.

I would like an explanation for responsible Council officers as to why leaseholders have not been informed before this year of the 2 separate policies and why we have been directed back to our own insurers in cases when we had no responsibility for the incident and are now paying a higher premium due to our high claims rate.

If the process and reasons are not clearly explained there is a high probability that leaseholders can assume that their premiums and policies have been subsidising the Council and TMO's "tenant insurance" funds by providing repairs they should be funding.

Sincerely

Monica Press
Chair: Tavistock Crescent Residents Association