

North West Fire and Rescue Authorities PFI Project

Insurance Due Diligence Report

February 2011



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Executive Summary

Aon Limited has been appointed by Dexia Crédit Local and Norddeutsche Landesbank Girozentrale (the "Lenders") to undertake due diligence on the insurance programme to be put into place for the North West Fire and Rescue Authorities PFI Project (the "Project").

We present our insurance due diligence report which is based upon the information and relevant information documentation provided to date. The insurance report is a review of the documentation and highlights the insurance related issues.

We would confirm that all issues relating to the Project Agreement, Credit Agreement, Building Contract and FM Agreement and sub-contractors collateral warranties have now been addressed, insofar as concerns the insurance provisions.

With regard to insurance programme placement and costs, we have now received details from JLT and are satisfied that the placement is compliant with the requirements of the Project and Credit Agreement and that the costs are reasonable and acceptable..

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Mike Durejko'.

Mike Durejko
Director

22nd February 2011



Role of Parties

Balfour Beatty Fire and Rescue NW Limited	The Borrower
Mansell Construction Services Limited	The Building Contractor
Balfour Beatty Workplace Limited	The FM Contractor
Jardine Lloyd Thompson (“JLT”)	The Borrower’s Insurance Advisers
Ashfords LLP	The Borrower’s Legal Advisers
Cumbria County Council, Lancashire Combined Fire and Rescue Authority and Merseyside Fire and Rescue Authority	The Authorities
Willis	The Authorities’ Insurance Advisers
Dexia Crédit Local and Norddeutsche Landesbank Girozentrale	The Lenders and Arrangers
Dexia Crédit Local	The Facility Agent and Security Trustee
Tods Murray LLP	The Lenders’ Legal Advisers
Appleyards	The Lenders’ Technical Advisers
Aon Limited	The Lenders’ Insurance Advisers



Report Issues

Comment herein on scope of coverage is subject to actual insurance policy terms, conditions and limitations. Ungrammatical use of capital letters, unless defined herein, follows terms identified in the relevant Project documentation.

This report has been prepared by Aon Limited on behalf of the Lenders and for their sole use. This report may not be released to any third party, other than the Lenders and any other financial institution that participate in the funding of this Project, including financial institutions to whom you have transferred your rights or obligations (or parts thereof) under the financing (by way of syndication, secondary market sale of sub-participation of the debt or analogous mechanism), without the prior written agreement of Aon Limited.

Aon Limited has relied upon the accuracy and completeness of the information provided to it by the various Project parties and has not made any particular or special enquiries outside of or in addition to such information when compiling this report. Aon Limited does not accept responsibility for any inaccuracy contained in or omission from the report which has been caused by, arises from or relates to any inaccuracy contained in or omissions from the information provided to it and/or Aon Limited failure not to make any particular or special enquiries outside of or in addition to the information provided to it.

The views and opinions expressed in this report are those of Aon Limited (unless specifically stated otherwise) as at the date of this report, and cannot be relied upon by any person other than the Lenders and any other financial institution that participates in the funding of this Project.

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Project Information

Introduction

Working in collaboration, the Fire and Rescue Services of Merseyside, Lancashire and Cumbria have created a Private Finance Initiative (PFI) Project to construct 16 new Community Fire Stations in the North West of England.

Background

This Project will provide new community-orientated facilities and in a number of cases, will deliver improved response times by replacing aging, inappropriate and/or poorly located facilities.

Scope

The Project scope includes the design, construction, funding and facilities management for sixteen community fire stations including an Operational Resource Centre (ORC - garaging centre for strategic appliances and equipment) and a joint fire & ambulance station. The facilities to be provided range in size from single appliance fire stations to multi-appliance stations with additional garaging for special equipment. Some of the sites include training facilities and additional office space. The fire stations are to be constructed on a mixture of new and existing sites, in some cases involving demolition and phased working around operational units or other emergency service facilities. At other sites, complete decant arrangements will be required during the building phase.

Financial Value

The capital value of the scheme is GBP 47,886,000 with additional lifecycle and associated service costs, including facilities management.

Locations

The proposed Community Fire Stations are located as follows:

Cumbria:

Carlisle East, Carlisle West, Patterdale, Penrith (including Emergency Planning Unit and County Council Emergency Control) & Workington

Lancashire:

Blackburn, Burnley, Chorley & Fleetwood (with Optimum Crewing System accommodation)

Merseyside:

Belle Vale, Birkenhead, Bootle/Netherton, Formby, Kirkdale (including ORC), Newton-le-Willows & Southport (shared facilities with the Ambulance Service)



Risk Review

We have undertaken a review of the general and insurable risks associated with the Project and detail below our summarised Hazard Probability level, together with insurance/contractual protection available, as follows:

Risk	Hazard	Probability	Insured under Required Insurances	Comments
Physical Damage to the Works, temporary accommodation, the completed Works and all property associated therewith.	Physical Damage.	Low, increasing to medium for low level attritional vandalism occurrences during the Services Period.	Yes, under the project specific Contractors "All Risks" and Property Damage Insurances, to be procured by the Borrower on an "All Risks" basis during the Works and Services Periods, as appropriate.	Standard risk-insured to full reinstatement value, subject to maximum deductibles, which we consider are in line with a project of this size and nature, and acceptable to us, of: Contractors' "All Risks" GBP 10,000 each and every claim increasing to GBP 150,000 for DE5/95 (defective works) losses. 20% co-insurance for Additional Costs of Completion claims. Property Damage GBP 10,000 each and every claim increasing to GBP 25,000 for water perils.
	Breakdown	Low	Yes, under the project specific Construction "All Risks" and Property Damage Insurances, to be procured by the Borrower during the Works and Services Periods as appropriate. Cover limited to Property Services in relation to	Standard lifecycle risk – insured to full reinstatement value, subject to maximum deductibles, which we consider are in line with a project of this size and nature, and acceptable to us, of: Contractors' "All Risks"

			the latter	<p>GBP 10,000 each and every claim.</p> <p>Property Damage</p> <p>GBP 10,000 each and every claim</p>
	Damage to Construction Plant	Low	No	Plant is the responsibility of, and should be insured by the Building Contractor (and their subcontractors) under their respective annual group insurance arrangements, which is acceptable to us.
Delay in Completion of the Works	Physical Damage	Low	Yes, under the project specific Delay in Start Up Insurance, to be procured by the Borrower during the Works Period on an "All Risks" basis.	Standard risk – insured for full loss of revenue and increased costs of working subject to a 30 day waiting period and a 20 months Indemnity Period, which is acceptable to ourselves and is in line with a Project of this type and nature.
	Denial of access (physical damage event)	Low	Yes, under the project specific Delay in Start Up Insurance, to be procured by the Borrower during the Works Period on an "All Risks" basis.	Standard risk – insured for loss of revenue and increased costs of working subject to a 30 day waiting period and a 20 months Indemnity Period, (with a loss limit of GBP 1,000,000) which is acceptable to ourselves and is in line with a Project of this type and nature.
	Utilities Interruption	Low	Yes, under the project specific Delay in Start Up Insurance, for perils of Fire Lightning, Explosion	Standard risk – insured for loss of revenue and increased costs of working subject to a

			and Aircraft, to be procured by the Borrower during the Works Period.	30 day waiting period and a 20 months Indemnity Period, (with a loss limit of GBP 1,000,000) which is acceptable to ourselves and is in line with a Project of this type and nature.
	Loss at Suppliers premises	Low	Yes, under the project specific Delay in Start Up Insurance, for perils of Fire Lightning, Explosion and Aircraft, to be procured by the Borrower during the Works Period.	Standard risk – insured for loss of revenue and increased costs of working subject to a 30 day waiting period and a 20 months Indemnity Period, (with a loss limit of GBP 1,000,000) which is acceptable to ourselves and is in line with a Project of this type and nature.
	Site Conditions Risk	Low	No	This risk to be passed down to the Building Contractor under the relevant Building Contract which is acceptable to us – liquidated damages in respect of advance loss of revenue to apply in the event of Works delay.
	Contractor Delay (non-physical damage event)	Low	No	This risk to be passed down to the Building Contractor under the relevant Building Contract which is acceptable to us – liquidated damages to apply in respect of advance loss of revenue to apply in the event of Works delay.
Business Interruption	Physical Damage	Low	Yes, under the project specific Business Interruption Insurance,	Standard risk – insured for loss of revenue and

			to be procured by the Borrower during the Services Period on an "All Risks" basis.	<p>increased costs of working subject to a maximum deductible of GBP 10,000 each and every claim, and a 20 months Indemnity Period, reducing to three months for the Breakdown risk, which is acceptable to ourselves and is in line with a Project of this type and nature.</p> <p>The Breakdown risk is a lifecycle risk which is to be passed down to the FM Contractor under the relevant FM Agreement in accordance with standard practice.</p>
	Denial of Access	Low	Yes, under the project specific Business Interruption Insurance, to be procured by the Borrower during the Services Period	<p>Standard risk – insured for loss of revenue and increased costs of working subject to a maximum deductible of GBP 10,000 each and every claim, and a 20 months Indemnity Period,</p> <p>which is acceptable to ourselves and is in line with a Project of this type and nature.</p>
	Utilities Interruption	Low	Yes, under the project specific Business Interruption Insurance, to be procured by the Borrower during the Services Period.	<p>Standard risk – insured for loss of revenue and increased costs of working subject to a maximum deductible of GBP 10,000 each and every claim, and a 20 months Indemnity Period, (with a loss limit of not less than GBP</p>

				250,000) which is acceptable to ourselves and is in line with a Project of this type and nature.
	Loss at Suppliers premises	Low	<p>Yes, under the project specific Business Interruption Insurance, following fire,</p> <p>lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or</p> <p>articles dropped there from, riot and civil commotion, to be procured by the Borrower during the Services Period.</p>	<p>Standard risk – insured on a Fire and Full Perils basis for loss of revenue and increased costs of working subject to a maximum deductible of GBP 10,000 each and every claim, and a 20 months Indemnity Period, (with a loss limit of not less than GBP 250,000) which is acceptable to ourselves</p> <p>and is in line with a Project of this type and nature.</p>
Third Party Liability	To Third Parties, including an indemnity to the Authority and related parties	Low (subject to comments later in this section in relation to the asbestos risk)	Yes, under the project specific Public Liability Insurances, to be procured by the Borrower during the Works and Services Periods.	<p>Cover to be arranged for claims arising from Project activities for a minimum indemnity level of GBP 25,000,000 any one occurrence and in the aggregate for pollution/products liability, and a third party property damage deductible of GBP 5,000, (and not more than GBP 10,000 during the operational period) all of which we consider is in line with a project of this size and nature and is acceptable to us.</p> <p>It is noted that asbestos liability will be excluded under the project specific</p>

				insurance placement (but see our later comments relating to cover placement under the specialist subcontractor's insurances under the heading Asbestos Removal on page 15).
Environmental impairment	Third Party liability arising out of site pollution or contamination during the Construction and Services phases. Including own/ third party sites clean-up costs	Low (subject to comments later in this section under the heading Environmental Impairment on page 16)	No	<p>This risk has been passed down to the Building and FM Contractors under the relevant subcontracts, In accordance with standard practice, and we consider this to be acceptable.</p> <p>We are not aware of any significant risk at the sites where we consider that insurance cover is necessary as it would not offer any value for money.</p>
Miscellaneous Exposures				
Employee Fidelity		Low	No	This is a risk which attaches to the Building & FM Contractor and we therefore consider there is no necessity for the Borrower to procure insurance protection.
Professional Indemnity		Low	No	This is to be insured by the Building Contractor and Principal Subcontractors under their respective corporate group insurance programmes, for a

				<p>minimum indemnity level of GBP 10,000,000 either each and every loss or in the aggregate (if in the aggregate then in any one year of insurance a minimum of one automatic reinstatement of the aggregate indemnity limit is required). We consider this to be acceptable.</p>
Ground Conditions Risk		<p>Low (subject to comments in relation to mine workings risk as detailed later under the headings Unexploded Ordnances and Mining on pages 14 and 16 respectively)</p>	<p>No except for Subsidence cover under the Contractors' "All Risks"/Property All Risks Insurances</p>	<p>This risk is has been passed down to the Building and FM Contractors under the relevant subcontracts, in accordance with standard practice, and we consider this to be acceptable.</p>
Latent Defects		<p>Low</p>	<p>No</p>	<p>This risk has been passed down to the Building Contractor under the relevant subcontract, in accordance with standard practice, and we consider this to be acceptable.</p> <p>Although cover is available it is both expensive and limited in coverage, and in our experience is rarely if ever taken out. In line with projects of this nature, some comfort can be taken from the requirement for the Building Contractor to procure Professional Indemnity Insurance,</p>



				which provides an indemnity relating to defective design
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In relation to the specific risk issues which were raised in our initial report dated 21 October 2010, following further analysis, the updated position is as follows:

Reference	Issue
Proposed retained structures and temporary accommodation	<p>We established that as regards the existing structures there are no Services carried out by the Contractor in relation thereto, and that loss or damage to such property remains the responsibility of the Authorities until they are ready to be demolished or disposed of. However, where new facilities are being constructed on existing sites, the Contractor will in certain circumstances be providing temporary accommodation, which the Authorities will decant into, whilst the Works (including demolition of existing structures) are being carried out. During the Works Period we have been advised that Initial Services will be undertaken in relation to the temporary accommodation for a payment and that this will be subject to a payment mechanism.</p> <p>Following further review we have established that the payment mechanism for the Initial Services is separate from that applicable during the Service Period, and does not form part of the Unitary Charge. Accordingly we do not consider this to be a Lender issue.</p> <p>We would also advise that:</p> <ul style="list-style-type: none"> ▪ the payment mechanism for the temporary accommodation is relatively insignificant (GBP 78,000 per annum) and we estimate that the maximum loss of revenue is likely to be in the region of GBP 10,000 given that the replacement period for the temporary accommodation would be in the region of 6 – 8 weeks. ▪ any potential loss of revenue claim would likely fall within the Business Interruption policy excess of GBP 10,000. <p>Accordingly, we are satisfied that there is no necessity to procure insurance cover for the above detailed risks.</p>
Unexploded Ordnances	<p>Appleyards made an initial comment that there was a (medium) risk of unexploded ordnance at the following sites:</p> <ul style="list-style-type: none"> ▪ Carlisle West ▪ Birkenhead ▪ Kirkdale <p>Appleyards advised that confirmation has been provided by the Contractor (as at 4 November 2010) that the “UXO from the rifle range is 50 metres west of the site” and that “the risk is considered to be low”. They have also advised that the risk will be further mitigated by appropriately informing the site staff of the potential risk and by seeking specialist advice during the excavation works if required.</p> <p>Appleyards also confirmed that this is a contractor risk at Project Agreement level which has been passed down to the Building Contractor under the relevant subcontract.</p>

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	<p>We also enquired from JLT whether they had incorporated specific details of the unexploded ordnance risk within their Insurance Risk Presentation, and they confirmed this to be the case.</p> <p>We are therefore satisfied that this risk will be catered for under the Munitions of War extension of the relevant insurance cover.</p>
<p>Asbestos Removal</p>	<p>Appleyards commented that there is an asbestos risk at the following sites:</p> <ul style="list-style-type: none"> ▪ Patterdale ▪ Burnley ▪ Fleetwood ▪ Belle Vale ▪ Birkenhead ▪ Bootle/Netherton ▪ Formby ▪ Kirkdale ▪ Newton-le-Willows ▪ Southport <p>We would not expect either the PFI Project specific Public Liability insurance or the Building Contractor's corporate P.L. insurance programme to provide an indemnity for asbestos liability as this is a standard market exclusion. We would, however, expect the Asbestos Removal Contractor's corporate P.L. insurance to provide such cover. Accordingly we proposed that there is a requirement under the sub-subcontract for the Asbestos Removal Contractor to procure such cover for an indemnity limit of not less than GBP 5,000,000 and for the insurance to incorporate an indemnity to Principals provision. We considered that this would then provide the funders with reasonable comfort given the PFI insurance market treatment of asbestos liability.</p> <p>In accordance with our recommendations a new clause 64.13A has been inserted into the latest Building Contract draft which reads:</p> <p>64.13A Public Liability Insurance for Asbestos</p> <p>64.13A.1 The Building Contractor shall procure that each specialist asbestos removal sub-contractor engaged for the purposes of the Works shall prior to their start on site have taken out and have in force at that time public liability insurance with an indemnity limit of not less than five million pounds (GBP 5,000,000.00), such insurance to provide cover in respect of all of the anticipated activities of each such specialist asbestos removal sub-contractor in respect of the Works and to include an "indemnity to principals" clause.</p>

	<p>64.13A.2 On:</p> <p>(a) the start on site date for each such specialist asbestos removal contractor; and</p> <p>(b) each renewal date for the insurance cover referred to in clause 64.13A.1, the Building Contractor shall request written confirmation (together with reasonable supporting evidence) from each specialist asbestos removal contractor that it is maintaining insurance cover which complies with clause 64.13A.1.</p> <p>64.13A.3 In the event that the Building Contractor becomes aware (whether pursuant to clause 64.13A.2 or otherwise) that a specialist asbestos removal sub-contractor engaged by the Building Contractor for the purposes of the Works has ceased to maintain insurance cover which complies with clause 64.13A.1 or that such cover is likely to lapse, be withdrawn or not be renewed, the Building Contractor shall notify the Contractor as soon as reasonably practicable and in any event within two (2) Business Days.</p> <p>64.13A.4 Subject to clause 64.13A.5, where the circumstances described in clause 64.13A.3 arise and the relevant specialist asbestos removal sub-contractor has not completed the works it was contracted to undertake, the Contractor may instruct the Building Contractor to replace the relevant specialist asbestos removal sub-contractor and appoint a replacement specialist asbestos removal sub-contractor in compliance with clause 64.13A.1, save that the replacement specialist asbestos removal sub-contractor shall only be required to provide insurance cover in respect of its appointment. The Building Contractor shall comply with any such instruction as soon as reasonably practicable following receipt.</p> <p>64.13A.5 Where:</p> <p>(a) the circumstances described in clause 64.13A.3 arise due to the insurance cover described in clause 64.13A.1 being no longer generally available in the European market to specialist asbestos removal sub-contractors at commercially reasonable rates; and</p> <p>(b) the elements of the Works at the relevant Site(s) which the relevant specialist asbestos removal contractor was engaged to perform have not been completed,</p> <p>the Contractor may instruct the Building Contractor to procure that the relevant specialist asbestos removal contractor (or any replacement appointed by the Building Contractor) takes out the best public liability insurance in respect of the anticipated activities of such specialist asbestos removal sub-contractor in respect of the Works that is generally available in the European market to specialist asbestos removal sub-contractors at commercially reasonable rates (and the Building Contractor shall comply with any such instruction as soon as reasonably practicable following receipt).</p> <p>64.13A.6 Notwithstanding any other provision of this Agreement, neither:</p> <p>(a) the issue by the Contractor of an instruction in accordance with clause</p>
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	<p>64.13A.4 or clause 64.13A.5; nor</p> <p>(b) the Building Contractor's compliance with any such instruction, shall entitle the Building Contractor to any additional cost, extension of time or other relief from any other obligation under this Agreement.”</p> <p>We consider that the above clause is acceptable.</p>
Flood	<p>Appleyards commented that the following sites are situated in flood zones:</p> <ul style="list-style-type: none"> ▪ Patterdale (zone 2) ▪ Fleetwood (zone 3) <p>We subsequently established from Tods Murray that this risk was a Relief Event.</p> <p>JLT also confirmed that Flood Risk assessment details had been included within the Insurance Risk Presentation to Insurers and they were satisfied that the flood risk had been suitably designed out. Accordingly we are satisfied that this risk will be catered for under the relevant Material Damage and Loss of Revenue insurances.</p>
Mining	<p>Appleyards commented that there was a mining hazard within a zone of influence at the following sites:</p> <ul style="list-style-type: none"> ▪ Burnley ▪ Newton-le-Willows <p>Appleyards subsequently confirmed that the risk is deemed to be low to moderate.</p> <p>JLT also advised that specific details had been included within their Insurance Risk Presentation, and that the risk was acceptable to Insurers.</p> <p>Accordingly we are satisfied that the subsidence risk will be catered for under the relevant Material Damage and Loss of Revenue insurances.</p>
Party Wall	<p>Appleyards advised that the existing fire station, is to be demolished, at the Newton-le-Willows site, which adjoins an ambulance station. A Party Wall Award has been made in view of this.</p> <p>We informed JLT of this to ensure that Insurers have been informed of the increased third party risk during the demolition process. They have subsequently confirmed Insures have been notified and have accepted the loss/damage risk thereto under the Public Liability insurance</p> <p>We are also satisfied that there is little or no Services delay exposure arising out of this risk on the basis that the demolition of the existing building takes place after completion of the new facility.</p>
Environmental Impairment	<p>Appleyards commented that there were potential contamination risk at the following sites:</p>



	<ul style="list-style-type: none">▪ Fleetwood▪ Belle Vale▪ Birkenhead▪ Kirkdale▪ Southport <p>Upon further review they have advised that the risk at these sites is not significant and that the risk is acceptable.</p>
Living roof	<p>We understand that a living roof forms part of the design of the facility at the Blackburn site.</p> <p>JLT confirmed that details had been included within the Insurance Risk Presentation, and that the risk was acceptable to Insurers.</p>



Contractual Review

Project Agreement	We carried out a review of the Project Agreement and our observations are as follows:
Clauses	
63.1.1	<p>This states that:</p> <p>“The Contractor shall, subject to clause 63.2 (Contractor not Responsible), be responsible for, and shall release and indemnify the Authorities or any Authorities Related Party, their employees, agents and contractors on demand from and against all liability for Direct Losses...</p> <p>We queried why the indemnity is required to be given to all Authority Related Parties, including Authority contractors, as we considered such an indemnity to be too wide. We also felt that the Contractor’s Insurers would wish to retain their rights of subrogation against Authority contractors.</p> <p>We also noted that there is no reference to an indemnity to Authority Related Parties being required in clause 63.2 (Contractor not Responsible).</p> <p>We were subsequently informed by Tods Murray that the clause reflected standard form drafting which had been previously accepted by BBFR and Lenders, although they acknowledged that our comment on the lack of reference to Authorities Related Parties in clause 63.2 was a correct observation. They also noted our concerns that the Contractor will be unable to comply with this provision insofar as concerns insurance placement, as Insurers will not extend the policy indemnity to Authority contractors or subcontractors.</p> <p>However, they advised that as an Authority Related Party would be a third party to the provisions of the Agreement this would exclude their ability to claim under clause 63.1 directly. Therefore as any claim would be via the Authority the protection afforded by clause 63.2 should apply to such claims.</p> <p>We are therefore satisfied that as an Authority Related Party would not have the ability to claim under 63.1 then no revision is required to clause 63.1.1.</p>
63.1.2	<p>This states that:</p> <p>“The Contractor shall, subject to clause 63.2 (Contractor not Responsible), be responsible for, and shall release and indemnify the Authorities or an Authorities Related Party, on demand from and against all liability for Direct Losses and Indirect Losses arising from third party actions, claims and demands (as described in clause 63.1.1) brought against the Authorities or any Authorities Related Parties for breach of statutory duty which may arise out of, or in consequence of a breach by the Contractor of its obligations under this Agreement to the extent that there are no other remedies available to the Authorities under this Agreement.”</p> <p>Similar comments to those detailed above under clause 63.1.1 likewise apply here and we are therefore satisfied that no revision is required to clause 63.1.2.</p>

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<p>63.2.1</p>	<p>We queried why there was no liability cap in relation to breach of statutory as any claim relating thereto is unlikely to be covered under the Public Liability insurance, and would normally expect to see a GBP 500,000 cap on liability being proposed, aggregated for any 'rolling' five year period.</p> <p>We further reviewed Chapter 24 of SoPC guidance and noted that this allows a cap on liability in respect of breach of statutory duty only. We also noted that there is no provision in the guidance for liability caps on all uninsured losses, although we have seen such provision but only on Housing PFI projects.</p> <p>Our concern here was that without such cap, the Contractor is exposing himself to an unlimited liability on a risk which is almost certainly going to be uninsured under the P.L. insurance as no injury or property damage (required trigger event) is likely to occur with this risk.</p> <p>From our experience, we have seen a cap on liability on all recent BSF projects, and would have expected to see a similar cap on all this project.</p> <p>It was noted that Lenders believe this issue was raised at bid stage but was somehow omitted in the final bid submission.</p> <p>BBFR's subsequently advised that this issue was discussed in detail at bid stage of the project and that they had looked carefully at this risk and raised this with their fire consultant. They also had Ashfords research case law with respect to fire and rescue and found no successful claims against fire and rescue authorities for breach of stat duty. Based upon a clear steer from Authorities that proposing a cap would not be viewed well BBFR took the decision that it would be a bid winning solution to accept the Authority stance.</p> <p>We therefore considered this had become a commercial rather than an insurance issue ,which required to be resolved by Tods Murray, and that no further input was subsequently required from ourselves.</p>
<p>63.2.2</p>	<p>We note from discussions with Tods Murray that this includes a statement that the Contractor is not responsible...for any...damage...caused by the negligence or wilful misconduct of the Authorities...or any Authority Related Party, and it is unclear whether this is intended to cover Authority/Authorities Related Parties vandalism,</p> <p>Following a conference call on 12/11/10, this was considered to be a commercial rather than an insurance issue which required to be resolved by Tods Murray, and that no further input was subsequently required from ourselves.</p> <p>We subsequently received communication from Tods Murray who advised that no revision to the wording was necessary as in their view they were unable to see how the term "wilful misconduct" would not include vandalism.</p>
<p>64.3.1</p>	<p>This stated that:</p> <p>"With the exception of any insurances required by law, the insurances referred to in clause 64.1 shall:-</p> <p>(a) subject to clause 00 below name the Contractor as co-insured with any other party maintaining the insurance;"</p>

	<p>However, clause 64.3.1(e) reads :</p> <p>“in respect of the Physical Damage Policies provide for payment of any proceeds received by the Contractor to be applied in accordance with clause (Reinstatement and Change of Requirement After Insured Event).”</p> <p>We therefore queried whether the drafting was correct and whether reference should instead be made to clause 64.3.2, in line with Chapter 25 of SoPC4 guidance.</p> <p>Although we did not consider this to be a contentious issue, we noted that BBFR were happy to raise this point with the Authorities, and note that the correct cross referencing has been made in the latest Project Agreement drafting.</p> <p>We are therefore satisfied that this course of action is acceptable and duly resolves this issue.</p>
64.3.2	<p>This states that:</p> <p>“Wherever possible, the insurances referred to in clause 64.1 shall name the Authorities as co-insureds for its separate interest.”</p> <p>However, we considered that this clause should be qualified by adding the words “to the extent required under Schedule 14 (Insurance), which we have seen recently agreed on other PFI projects.</p> <p>Notwithstanding the above, following a conference call on 12/11/10, it was subsequently agreed that the current drafting was acceptable and that it was not necessary to amend it in line with the above proposal.</p>
64.9	<p>This clause states:</p> <p>“64.9.1</p> <p>Subject to clause 64.14 (Sharing of Insurance Cost Differentials) the insurance premia for the Required Insurances and the amount of any loss that would otherwise be recoverable under any of the Required Insurances but for the applicable uninsured deductible and limit of indemnity in respect of such insurance shall at all times be the responsibility of the Contractor.</p> <p>64.9.2</p> <p>The insurance premiums in respect of the insurances referred to in clause 64.1 (Requirement to Maintain) shall be the responsibility of the Contractor.”</p> <p>We queried why clause 64.9.2 was included as it appeared to repeat clause 64.9.1.</p> <p>However, notwithstanding the fact that the two clauses are repetitious, it was considered that they both reflected standardized drafting.</p> <p>Accordingly, following a conference call on 12/11/10, it was agreed that the current drafting was acceptable and that no revision was necessary.</p>
64.11.1	<p>This requires the Contractor “to procure that the Building Contractor, its Principle Building Sub-Contractor(s) and members of the Professional Team take out and</p>

	<p>maintain in force professional indemnity insurance ("PI Insurance")", and to:</p> <p>"provide evidence satisfactory to the Authorities (as and when reasonably required by the Authorities) of the PI Insurance being in full force and effect from the date of this Agreement until the date twelve (12) years from and including the completion of all the Works (such evidence to include details of the cover) including confirmation of territorial limits, levels of excess, insurers, policy number and indemnity limit (which shall be a minimum of ten million pounds (GBP 10,000,000) either each and every loss or in the aggregate (if in the aggregate then in any one (1) year of insurance a minimum of one (1) automatic reinstatement of the aggregate indemnity limit is required);"</p> <p>We queried whether the Contractor was able to fully comply with the requirement that all of the Principle Building Sub-Contractor(s) and members of the Professional Team have a minimum cover of GBP 10,000,000.</p> <p>We were subsequently advised by JLT that all of the requirements will be met and confirm this is acceptable to us. .</p>
64.11.2	<p>This requires the Contractor to "provide the Authorities with notice of:-</p> <ul style="list-style-type: none"> (a) any cancellation of the PI Insurance not less than thirty (30) Business Days prior to the relevant cancellation date; and (b) any adverse material changes to or suspension of cover relevant to the Project not less than thirty (30) Business Days prior to the relevant change or suspension. <p>As Insurers will only offer 30 days prior notice of cancellation, we considered that the drafting should likewise refer to "30 days" and not "30 Business Days".</p> <p>This issue was raised with the Authorities and we noted that they agreed to amend the drafting as proposed above. This required revision has been implemented within the latest Project Agreement drafting which we confirm is acceptable.</p>
64.12	<p>This states that:</p> <p>"The Contractor shall where it is obliged to effect insurance under this clause not bring any claim or action against the Authorities (or any Authorities Related Party) in respect of any loss or damage in circumstances where the Contractor is able to recover such loss or damage under such insurance (or where it would have been able to recover such loss had it been complying with its obligations under this Agreement) provided that, to avoid doubt, this sub-clause shall not by itself prevent the Contractor from claiming against the Authorities (or any Authorities Related Party) for any loss or damage not covered because of the level of deductibles under such insurance permitted by this Agreement or to the extent such loss or damage exceeds the maximum level of such insurance required by this Agreement."</p> <p>We queried why the indemnity is required to be given to all Authority Related Parties, including Authority contractors, as we consider such an indemnity to be too wide. We also felt that the Contractor's Insurers will wish to retain their rights of subrogation against Authority contractors.</p> <p>In consultation with Tods Murray, the following drafting amendment was being</p>

	<p>sought:</p> <p>Add in line 2, the following words after Authority Related Party:</p> <p>"(other than any contractor or sub-contractor (of any tier) of the Authority or of any Authority Related Party)"</p> <p>BBFR confirmed that the above revision has been accepted by the Authorities and we have noted that it has been implemented in the latest Project Agreement draft, which we consider is acceptable and suitably resolves this issue.</p>
64.13.3	<p>This states that:</p> <p>"The Contractor's insurance broker shall prepare a report on behalf of both the Contractor and the Authorities (the "Joint Insurance Cost Report. The Joint Insurance Cost Report is to be prepared at the Contractor's expense..."</p> <p>We made further enquiries with JLT to establish whether their quoted fees include the cost for preparing such a report, and revert. They subsequently confirmed that allowance had been made, which is acceptable to us, and this issue can therefore be closed.</p>
65.2	<p>This clause states that:</p> <p>"The Contractor shall set up and at all times maintain an account in the joint names of the Authorities and the Contractor (the "Joint Insurance Account"). All insurance proceeds paid under any Physical Damage Policy in respect of a single event (or a series of related events) in an amount in excess of twenty five thousand pounds (GBP 25,000) (indexed) shall be paid into the Joint Insurance Account."</p> <p>However, unlike clause 65.3 which has a mechanism for loss proceeds to be released from the Joint Insurance Account, under clause 65.3.6(e), there is no such stated provision under clause 65.2. Accordingly, any claims payments for amounts between GBP 25,000 and GBP 250,000 (the Reinstatement plan threshold) could theoretically remain stuck within the Joint Insurance Account. We therefore suggested that a wording on the lines of the following should be included under clause 65.2:</p> <p>"Where reinstatement monies are required to be released from the Joint Insurance Account, the Contractor shall obtain the Authority's consent, and the Authority shall give its consent to the release of monies from the Joint Insurance Account within [three (3) Business Days] of a request from the Contractor (such consent not to be unreasonably withheld)."</p> <p>However, on the basis that this was not a contentious issue, coupled with the fact that the clause is standard drafting, we consider that the current drafting is acceptable and that no revision is necessary.</p>
66.3.1	<p>There is a minor grammatical error in this clause and we proposed that the revised clause be amended to read:</p> <p>"In respect of any period between the Authorities receiving notification in accordance with clause 66.2.1 that a TPL Risk has become Uninsurable and the Authorities' notification to the Contractor in accordance with clause 66.3.1(a) in respect of such</p>

	<p>risk then, provided it is ultimately agreed or determined that the requirements of clause 66.2.2 are satisfied in respect of an Uninsurable TPL Risk and subject to clause 66.3.1(f) below, Clause 66.3.1(b) shall apply in respect of occurrences of the Uninsurable TPL Risk during such period unless the parties otherwise agree how to manage the risk during this period; and”</p> <p>BBFR subsequently raised the issue with the Authorities and we note that the above drafting has been implemented within the latest Project Agreement drafting which is acceptable..</p>
<p>66.7.4/5</p>	<p>This states that:</p> <p>66.7.4</p> <p>“Where the Authorities have exercised the waiver pursuant to clause 66.7.2, it shall be entitled to deduct from the annual Unitary Charge the “Adjusted Amount”, such amount being an amount equal to the amount paid for the particular Insurance Term in the preceding Contract Year (using a reasonable estimate of such amount where a precise figure is not available) less any annual amount paid or payable by the Contractor to maintain and/or procure the maintenance of any (whether full or partial) alternative or replacement insurance in respect of such Insurance Term pursuant to clause 66.7.3. Where this clause 66.6.7.4 applies the Contractor shall use reasonable endeavours to procure that the insurer in respect of the relevant insurance over the preceding Contract Year provides details of the amount paid for the particular term or condition of insurance in the preceding Contract Year (but such information shall not be determinative as to the amount of the Adjusted Amount in any event and the Adjusted Amount shall be determined pursuant to this clause 66.7.4 either by the Parties’ agreement or pursuant to the Dispute Resolution Procedure).</p> <p>66.7.5</p> <p>While clause 66.7.1 applies, the annual Unitary Charge shall be reduced each Contract Year by the Adjusted Amount, indexed from the date that the particular Insurance Term is no longer available, save in respect of any deduction made in respect of an alternative or replacement term or condition.</p> <p>Although we considered these clauses to be inequitable, we felt that the issue was non-contentious, as Insurers are unlikely to charge an additional premium for standard extensions, hence no return premium is likely if they withdrew cover.</p> <p>Accordingly, following a conference call on 12/11/10, it was agreed that this issue could be dropped.</p>

<p>Schedule 14</p>	
<p>Contents</p>	<p>There was a minor typographical error in that this refers to four parts, when in fact there are five.</p> <p>We note that the drafting has now been suitably revised.</p>
<p>Part 1</p>	
<p>1.5</p>	<p>The Territorial Limits were defined as “United Kingdom including offsite storage and whilst in transit.”</p> <p>We were subsequently informed that the lifts are manufactured and transported from Germany to the United Kingdom as road freight via the channel tunnel.</p> <p>Accordingly we considered that the Territorial Limits were incorrectly defined and needed to be amended to read:</p> <p>“United Kingdom and elsewhere in the European Union including offsite storage and whilst in transit.</p> <p>This is to ensure that Uninsurable Risk protection is provided by the Authorities for materials being transported from outside the United Kingdom.</p> <p>We note that the drafting has now been suitably amended to reflect the above.</p>
<p>1.6</p>	<p>The Period of Insurance under the C.A.R. insurance refers to a 12 months defects liability period, however, the period is shown as 18 months in JLT’s insurance broking presentation.</p> <p>We note that the drafting has now been suitably amended to reflect the correct defects liability period.</p>
<p>2.1.3</p>	<p>This requires Authority AICOW to be covered for a limit of GBP 250,000 under the Delay in Start Up insurance.</p> <p>We queried why this cover is required to be procured and were informed that the Authority may have alternative accommodation or additional transportation costs.</p> <p>We considered the above explanation to be acceptable.</p>
<p>2.5</p>	<p>This required a minimum Indemnity Period of 24 months under the Delay in Start Up insurance, however, we were subsequently informed that the Authority had accepted a request from the Contractor to reduce the period to 20 months.</p> <p>Following discussions with Appleyards, they advised that the construction periods for the Burnley site is 15.5 months and for the various other sites a maximum of 14 months.</p> <p>Whilst it was noted that the buffer period is normally 6 months Appleyards,</p>

	<p>considered that in relation to the Burnley site, a 20 months Indemnity Period would be sufficient due to the following:</p> <ol style="list-style-type: none"> 1) The building which would need to be cleared would not contain asbestos and could be cleared quickly. 2) The station appears to be no different in complexity from the others (albeit that there is a small but simple garage to be built. 3) The underground structures and services could be reused. <p>Accordingly, we consider that a 20 months Indemnity Period is sufficient for all sites, including Burnley.</p>
<p>2.7.8</p>	<p>This is a Delay in Start Up extension which requires a “waiver of subrogation for the benefit of the Authorities”, but not in relation to sub-contractors. Given that the Building Contractor will be entitled to Insurance Relief under Clause 94 of the Building Contract, we considered that the waiver of subrogation rights should extend to sub-contractors.</p> <p>JLT subsequently confirmed that the insurance placement will include a waiver of subrogation in relation to the Building Contractor.</p> <p>As this is not a contentious issue under the Project Agreement, we reviewed the issue and considered that inclusion of a reference to such subrogation waiver is not an absolute necessity, and that this issue can be dealt with solely under the Loan Agreement.</p> <p>We would confirm that this issue has now been dealt with under 3.7(i) of Part 2 of Schedule 7 of the Loan Agreement, which we consider is acceptable.</p>
<p>3.2</p>	<p>This requires a Public Liability minimum indemnity limit of GBP 25,000,000 for liability arising in connection with the Works,.</p> <p>From our perspective, the Public Liability risk exposure is relatively low as the facilities are not being built near to high third party risk areas.</p> <p>Accordingly, we considered the minimum limit proposed of GBP 25,000,000 to be reasonable and acceptable.</p>
<p>3.4</p>	<p>This requires the territorial limits under the Public Liability Insurance to be on a worldwide basis as opposed to being United Kingdom and worldwide for commercial visits as standard.</p> <p>JLT confirmed that the proposed programme offers the wider scope of cover, which is acceptable to us, and this issue can therefore be closed.</p>
<p>3.6</p>	<p>This shows the insurance period under the Public liability insurance to be:</p> <p>“From the date of the Agreement until the completion of all of the Works”</p> <p>However, this does not cater for liability arising in connection with the Works during the defects liability period.</p>

	<p>We note that the drafting has now been correctly amended to read</p> <p>“From the date of the Agreement until the completion of all of the Works including the defects liability period”</p> <p>This is now acceptable.</p>
3.7	<p>We originally considered that the extensions should also included Corporate Manslaughter defence costs.</p> <p>However, on the basis that this extension would be deemed to be an Insurance Term rather than a Risk, its inclusion would not offer Uninsurable Risk protection under the Project Agreement.</p> <p>Accordingly, upon reflection, we felt its inclusion was not an absolute necessity and considered that this issue could be suitably dealt with as a requirement under the Loan Agreement.</p> <p>We would confirm that this issue has now been dealt with under 4.7(j) of Part 2 of Schedule 7 of the Loan Agreement, which we consider is acceptable.</p>
3.8	<p>We originally considered that the additional exclusions should also include:</p> <p>Asbestos liability.</p> <p>War and related perils (UK market agreed wording).</p> <p>Nuclear/radioactive risks (UK market agreed wording).</p> <p>However, on the basis that:</p> <ul style="list-style-type: none"> ▪ the exclusions are more by way of clarity than absolute necessity ▪ the current drafting of paragraph 3.8 is in accordance with SoPC4 guidance ▪ the requested exclusions do not affect the Uninsurability provisions under the Project Agreement <p>then we consider that the existing drafting is acceptable and no revision is required.</p>
Part 2	
Insureds	<p>We consider that Insured 4 was mistakenly shown as “Sub-contractors of Insureds (1) and (2) to the extent their liabilities are to be insured under contract;”</p> <p>This should more properly refer to Insured (2), the Contractor and Insured 3, the FM Contractor, as Insured (1) is the Authority.</p> <p>We note that the drafting has now been suitably amended to reflect the above.</p>
1.2	<p>This relates to Property Damage insurance coverage and requires ““All risks” of physical loss or damage to the Insured Property from any cause not excluded, including machinery breakdown and computer breakdown in respect of building</p>

	<p>services equipment.”</p> <p>We made enquiries as to whether the Contractor was responsible for any equipment which is exposed to the risk of breakdown, but is not classed as building equipment, and established that there were no such items of property.</p> <p>We therefore considered that the existing drafting was acceptable and that no revision was necessary.</p>
1.3	<p>This requires the sum insured to be based upon the following:</p> <p>“At all times an amount not less than the total reinstatement or replacement value of the Insured Property plus provision to include other Principal Extensions as appropriate.”</p> <p>We understood that stations would be taken over for the provision of services until such time as the new facilities are completed. In relation to buildings which are ultimately scheduled for demolition we therefore questioned the necessity for such property to be insured on a full reinstatement basis, especially as Insurers do not normally offer this cover where the property is to be demolished.</p> <p>This issue was subsequently discussed further with Appleyards and we would refer to our previous comments under the Risk Review section in relation to “Proposed retained structures.” in which it was noted that in fact no services are provided in relation to existing stations.</p> <p>Accordingly, we would advise that this issue can be dropped</p>
1.4	<p>This relates to the Property Damage insurance deductible and reads:</p> <p>“Ten thousand pounds (GBP 10,000) each and every claim (escalated periodically as appropriate).”</p> <p>Given that clause 66.5 outlines the mechanism for indexation of the deductibles and indemnity limits, we considered that the above should be more specifically amended to read:</p> <p>“Ten thousand pounds (GBP 10,000) each and every claim (escalated in accordance with clause 66.5).”</p> <p>BBFR commented that clause 1.4 of the Project Agreement provides that, in the event of inconsistency between the Project agreement and Schedules, the main body of the Project Agreement will take precedence. They therefore considered that there was no need for our proposed revision</p> <p>We noted the above and, in consequence agreed with their comments and therefore considered that the matter need not be further pursued..</p>
1.5	<p>This relates to the Property Damage insurance territorial limits, which reads:</p> <p>“United Kingdom including offsite storage and whilst in transit.”</p> <p>Our issue here is that if lifts have to be replaced during the Services period then the</p>

	<p>current Territorial Limits are incorrectly defined and should be amended to read:</p> <p>“United Kingdom and elsewhere in the European Union including offsite storage and whilst in transit”</p> <p>This is to ensure that Uninsurable Risk protection is provided by the Authorities for materials being transported from outside the United Kingdom.</p> <p>We note that the drafting has now been suitably amended to reflect the above.</p>
2.1.2	<p>This shows the Business Interruption insurance insured as the “Lender”, instead of “Senior Lender” as under the definitions.</p> <p>BBFR agreed that "Lenders" is not a defined term and they requested Authorities to amend this reference to “Senior Lenders.”</p> <p>We note that the drafting has now been suitably amended to reflect the above.</p>
2.1.3	<p>This requires Authority AICOW to be covered for a limit of GBP 250,000 under the Delay in Start Up insurance.</p> <p>We queried why this cover is required to be procured and were informed that the Authority may have alternative accommodation or additional transportation costs.</p> <p>We considered the above explanation to be acceptable.</p>
2.4	<p>This relates to the Business Interruption insurance excess and reads:</p> <p>“GBP 10,000 each and every occurrence”</p> <p>with no reference to indexation.</p> <p>We considered it should be amended to read:</p> <p>“Ten thousand pounds (GBP 10,000) each and every claim (escalated in accordance with clause 66.5).”</p> <p>BBFR commented that clause 66.5 provides for indexation and that the operation of this paragraph is not limited by any wording which suggests indexation should not apply where Schedule 14 is silent on the operation of indexation.</p> <p>We noted the above and, in consequence agreed with their comments and considered that the matter need not be further pursued.</p>
2.5	<p>This required a minimum Indemnity Period of 24 months under the Business Interruption insurance, however, we were subsequently informed that the Authority had accepted a request from the Contractor to reduce the period to 20 months.</p> <p>Following discussions with Appleyards, they advised that the construction periods for the Burnley site is 15.5 months and for the various other sites a maximum of 14 months.</p> <p>Whilst it was noted that the buffer period is normally 6 months Appleyards, considered that in relation to the Burnley site, a 20 months Indemnity Period would</p>

	<p>be sufficient due to the following:</p> <ol style="list-style-type: none"> 1) The building which would need to be cleared would not contain asbestos and could be cleared quickly. 2) The station appears to be no different in complexity from the others (albeit that there is a small but simple garage to be built. 3) The underground structures and services could be reused. <p>Accordingly we consider that a 20 months Indemnity Period will be sufficient for all sites, including Burnley.</p>
3.2	<p>This requires a Public Liability minimum indemnity limit of GBP 25,000,000 for liability arising in connection with the Works,.</p> <p>From our perspective, the Public Liability risk exposure is relatively low as the facilities are neither high rise buildings nor are they densely populated.</p> <p>Accordingly, we considered the minimum limit proposed of GBP 25,000,000 to be reasonable and acceptable.</p>
3.3	<p>This relates to the requirement for a Public Liability insurance deductible of:</p> <p>“Ten thousand pounds (GBP 10,000) for each and every occurrence of property damage (escalated periodically as appropriate), (personal injury claims will be paid in full).”</p> <p>We considered that it should more properly read:</p> <p>“Ten thousand pounds (GBP 10,000) for each and every occurrence of property damage (escalated in accordance with clause 66.5), (personal injury claims will be paid in full).” BBFR commented that clause 66.5 provides for indexation and that the operation of this paragraph is not limited by any wording which suggests indexation should not apply where Schedule 14 is silent on the operation of indexation.</p> <p>We noted the above and in consequence agreed with their comments, and that the matter need not be further pursued.</p>
3.4	<p>This requires the territorial limits under the Public Liability Insurance to be on a worldwide basis as opposed to being United Kingdom and worldwide for commercial visits as standard.</p> <p>JLT confirmed that the proposed programme offers the wider scope of cover, which is acceptable to us, and this issue can therefore be closed.</p>
3.7	<p>We originally considered that the extensions should also included Corporate Manslaughter defence costs.</p> <p>However, on the basis that this extension would be deemed to be an Insurance Term rather than a Risk, its inclusion would not offer Uninsurable Risk protection under the Project Agreement.</p> <p>Accordingly, upon reflection, we felt its inclusion was not an absolute necessity and</p>

	<p>considered that this issue could be suitably dealt with as a requirement under the Loan Agreement.</p> <p>We would confirm that this issue has now been dealt with under 4.7(g) of Part 3 of Schedule 7 of the Loan Agreement, which we consider is acceptable.</p>
3.8	<p>We originally considered that the additional exclusions should also include:</p> <p>War and related perils (UK market agreed wording).</p> <p>Nuclear/radioactive risks (UK market agreed wording).</p> <p>However, on the basis that:</p> <ul style="list-style-type: none"> ▪ the exclusions are more by way of clarity than absolute necessity ▪ the current drafting of paragraph 3.8 is in accordance with SoPC4 guidance ▪ the requested exclusions do not affect the Uninsurability provisions under the Project Agreement <p>then we consider that the existing drafting is acceptable and no revision is required.</p>
Part 3	
Endorsements	<p>We noted that the drafting reflected standard S0PC4 guidance, however, Insurers often wish to use their standard set of endorsements.</p> <p>JLT confirmed that the insurances would incorporate Authority endorsements as drafted, which is acceptable, and we would confirm that the draft cover notes issued by them suitably comply with this requirement.</p> <p>In relation to Endorsement 4, this reads:</p> <p>“All proceeds of this policy shall be payable without deduction or set-off to the Joint Insurance Account.”</p> <p>Although this is incorrect, as only claims in excess of GBP 25,000 should be paid into the Joint Insurance Account, we note that the main body of the Project Agreement holds precedence over the Schedules in the event that there is a conflict.</p> <p>Accordingly, we consider that this issue is not contentious and that the matter can be dropped.</p>
Part 4	
4.1.3	<p>This reads:</p> <p>“to pay into the Joint Insurance Account without set off or deduction of any kind for any reason all payments received in relation to the Required Insurances specified at clause 65 of the Agreement;”</p> <p>We considered that it should more properly refer to clause 65.2, however, BBFR</p>



	<p>commented that they don't consider this needs to be raised with the Authorities.</p> <p>On the basis that:</p> <ul style="list-style-type: none">▪ this matter is non-contentious,▪ clause 65.2 falls within clause 65▪ the main body of the Project Agreement takes precedence over Schedule 14, <p>then we agree that the matter can be dropped.</p>
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<p>Loan Agreement</p>	<p>We have carried out a review of the Credit Agreement and our observations are as detailed below. For the purposes of this report we have not included comments on typographical or grammatical errors, although these areas have, as a matter of course, been raise with Tods Murray. .</p>
<p>Schedule 7</p>	
<p>Part 2</p>	
<p>2.3</p>	<p>Similar to the Project Agreement, this requires the sum insured under the C.A.R. insurance to be based upon the following:</p> <p>“At all times an amount not less than the full reinstatement or replacement value of the Insured Property, but not less than the value specified in the Building Contract plus provision to include Principal Extensions as appropriate.</p> <p>We understood that stations will be taken over for the provision of services until such time as the new facilities are completed. In relation to buildings which are ultimately scheduled for demolition we would question the necessity for such property to be insured on a full reinstatement basis, especially as Insurers do not normally offer this cover where the property is to be demolished.</p> <p>This issue was subsequently discussed further with Appleyards and we would refer to our previous comments under the Risk Review section in relation to “Proposed retained structures” which notes that in fact no services are provided in relation to existing stations.</p> <p>Accordingly, we would advise that this issue can be dropped</p>
<p>2.4</p>	<p>There is a water damage deductible of GBP 50,000 currently shown under the C.A.R. insurance. However, we considered that GBP 25,000 is a more realistic maximum, and arranged for a suitable revision to be made to the Schedule, which we confirm has been suitably implemented therein.</p>
<p>2.5</p>	<p>The Territorial Limits under the C.A.R. insurance are defined as “United Kingdom including offsite storage and whilst in transit and anywhere in the EU.”</p> <p>We enquired from Appleyards whether any key items are to be sourced from outside the United Kingdom, to establish whether any Marine transit insurance was necessary.</p> <p>We were informed that although lifts are manufactured and transported from Germany to the United Kingdom this will be done as road freight via the channel tunnel.</p> <p>Accordingly we considered that the Territorial Limits were correctly defined.</p>
<p>2.6</p>	<p>The Period of Insurance under the C.A.R. insurance is defined as “From the date of the Agreement until the later of the completion of the Works, and thereafter in respect of defects liability until expiry of the 18 months' defects liability period.</p> <p>We subsequently established that the defects liability period is in fact 18 months,</p>

	accordingly no amendment to drafting was required.
3.5	<p>This required a minimum Indemnity Period of 24 months under the Delay in Start Up insurance, however, we were subsequently informed that the Authority had accepted a request from the Contractor to reduce the period to 20 months.</p> <p>Following discussions with Appleyards, they advised that the construction periods for the Burnley site is 15.5 months and for the various other sites a maximum of 14 months.</p> <p>Whilst it was noted that the buffer period is normally 6 months Appleyards, considered that in relation to the Burnley site, a 20 months Indemnity Period would be sufficient due to the following:</p> <ol style="list-style-type: none"> 1) The building which would need to be cleared would not contain asbestos and could be cleared quickly. 2) The station appears to be no different in complexity from the others (albeit that there is a small but simple garage to be built. 3) The underground structures and services could be reused. <p>Accordingly, we consider that a 20 months Indemnity Period will be sufficient for all sites, including Burnley.</p>
4.2	<p>This required a Public Liability minimum indemnity limit of GBP 50,000,000 for liability arising in connection with the Works,</p> <p>However, from our perspective, the Public Liability risk exposure is relatively low as the facilities are not being built near to high third party risk areas.</p> <p>Accordingly, we considered a minimum limit of GBP 25,000,000 to be reasonable and acceptable, and the drafting has been suitably amended.</p>
4.3	<p>The Maximum Deductible under the Public Liability insurance read "GBP 5,000 for each and every occurrence of property damage. (Personal injury claims will be paid in full)." Whilst we would normally expect the level to be set at GBP 10,000 we have noted that JLT have procured cover with a GBP 5,000 each and every occurrence of property damage deductible. Accordingly, we consider the existing drafting to be acceptable and do not propose any change be made to the Schedule.</p>
5	<p>There was no requirement included under Schedule 7 for Professional Indemnity insurance and we therefore arranged for this insurance to be included therein.</p>
Part 3	
2.2	<p>Coverage under the Property Damage insurance is defined as ""All risks" of physical loss or damage to the Insured Property from any cause not excluded, including machinery breakdown and computer breakdown in respect of building services equipment."</p> <p>We made enquiries as to whether the Contractor is responsible for any equipment which is exposed to the risk of breakdown, but is not classed as</p>

	<p>building equipment, and established that there were no such items of property.</p> <p>We therefore considered that no revision to the existing drafting was required and that the matter need not be further pursued</p>
2.4	<p>There was a water damage deductible of GBP 50,000 currently shown under the Property Damage insurance, however, we considered that GBP 25,000 was a more realistic maximum, and arranged for a suitable revision to drafting to be made to the Schedule which we confirm has been suitably implemented therein.</p>
3.5	<p>This required a minimum Indemnity Period of 24 months under the Delay in Start Up insurance, however, we were subsequently informed that the Authority had accepted a request from the Contractor to reduce the period to 20 months.</p> <p>Following discussions with Appleyards, they advised that the construction periods for the Burnley site is 15.5 months and for the various other sites a maximum of 14 months.</p> <p>Whilst it was noted that the buffer period is normally 6 months Appleyards, considered that in relation to the Burnley site, a 20 months Indemnity Period would be sufficient due to the following:</p> <ol style="list-style-type: none"> 1) The building which would need to be cleared would not contain asbestos and could be cleared quickly. 2) The station appears to be no different in complexity from the others (albeit that there is a small but simple garage to be built. 3) The underground structures and services could be reused. <p>Accordingly, we considered that a 20 months Indemnity Period will be sufficient for all sites, including Burnley.</p>
4.2	<p>This required a Public Liability minimum indemnity limit of GBP 50,000,000 for liability arising in connection with the Works,</p> <p>However, from our perspective, the Public Liability risk exposure is relatively low as the facilities are neither high rise buildings nor are they densely populated.</p> <p>Accordingly, we considered a minimum limit of GBP 25,000,000 to be reasonable and acceptable, and the drafting has been suitably amended.</p>
4.3	<p>The Maximum Deductible under the Public Liability insurance for the Services reads "GBP 5,000 for each and every occurrence of property damage. (Personal injury claims will be paid in full)." We would normally expect the level to be set at GBP 10,000 rather than GBP 5,000 and this is the case under the NEFRA PFI project and also under the Project Agreement. .</p> <p>We therefore arranged for the deductible level to be increased as proposed above, and this revision has now been implemented to our satisfaction.</p>
Part 4	



Endorsement 11	<p>Paragraph (a) read:</p> <p>“In respect of the insurance under this Policy of material damage risks only All claim payments or return premium shall be paid into the Joint Insurance Account.”</p> <p>This, however, was incorrect as the Joint Insurance Account should only receive claims payments in excess of GBP 25,000.</p> <p>We therefore arranged for the drafting to be amended to resolve the above matter and would confirm that the required revision has been implemented.</p>
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<p>Building Contract</p>	<p>We have carried out a review of the Building Contract and our observations are as detailed below.</p>
<p>Clauses</p>	
<p>63A.1(b)</p>	<p>This states that the limitation of liability does not apply to “any liability arising out of the death or personal injury or damage to or loss of property caused by the Building Contractor’s negligence, act, error or omission”. It was, however, unclear to us whether the Building Contractor was limiting his liability for breach of statutory duty (which does not necessarily involve personal injury or damage), whereas the Contractor does not currently limit his liability for this risk under the Project Agreement.</p> <p>We subsequently established that this issue is catered for under clause 63A.1(b) (iv) of the Building Contract, which states that the Liability Limitation shall not apply to or be reduced by any liability of the Building Contractor in respect of any other indemnity provided under this Agreement (other than the indemnity granted pursuant to clause 21D (Delay in Post Completion Works));</p> <p>We therefore considered that the current drafting was acceptable and that the matter need not be further pursued.</p>
<p>64.7.2</p>	<p>This clause of the Project Agreement has not been stepped down to the Building Contract, relative to the Building Contractor Required Insurances.</p> <p>BBFR advised that clause 64.7.2 is not flowed down since the Contractor would be assumed to be holding the information required pursuant either to clause 64.9.1 or clause 94 of the Building Contract. Clause 94 (Insurance Relief and Building Contractor’s Entitlement) obliges the Building Contractor to notify the Contractor of any claim that the Building Contractor may have under the Required Insurances.</p> <p>The above comments were noted, however :</p> <ul style="list-style-type: none"> (a) we were unable to trace details of where there is a requirement under clause 94 of the Building Contract for a claims update to be made every three months (b) the Project Agreement requires claims above GBP 10,000 to be notified irrespective of whether they fall within or above the Required Insurance policy excess. As the Works Insurance is likely to have a Water damage deductible of GBP 25,000 there could be instances where the Building Contractor does not need to notify such claims between GBP 10,000 and GBP 25,000 but the Contractor does. <p>We therefore considered that this obligation needed to be passed down to the Building Contractor to provide such notification to the Contractor.</p> <p>Following receipt of the latest draft subcontract, we note that clause 64 which was previously stated as “Not used”, now incorporates a suitable claims notification</p>

	provision which we would confirm we find to be acceptable.
64.13	<p>This requires the Building Contractor and all of the Principle Building Sub-Contractor(s) and members of the Professional Team have a minimum cover of GBP 10,000,000, and we queried whether this requirement could be complied with.</p> <p>We have established that the requirement can be complied with, which we consider is acceptable, therefore no revision to the existing drafting is necessary.</p>
65A	<p>This states that the Building Contractor and its sub-contractors of any tier shall be included as co-insureds under the Required Insurances, however, this will not be the case in relation to the Delay in Start Up insurance.</p> <p>BBFR suggested that the line relating to the Building Contractor being a co-insured should be deleted, as it does not add anything.</p> <p>The clause has been suitably amended and is now acceptable, accordingly we consider that this matter can be closed.</p>
66	<p>Although there was reference to Uninsurable risk, we noted that there was no reference in relation to Unavailability of terms and conditions.</p> <p>We raised the issue with Tods Murray who agreed that the current drafting didn't qualify the obligation on the Contractor to take out the Required Insurances in clause 65A to the extent that insurance is unavailable.</p> <p>Following a review of the latest draft of the subcontract we note that this clause has been suitably revised and would confirm that it is acceptable.</p>

<p>FM Contract</p>	<p>We have carried out a review of the FM Contract and our observations are as detailed below.</p>
<p>Clauses</p>	
<p>63.2</p>	<p>This states that “The FM Contractor shall not be responsible or be obliged to indemnify the Authorities (or any one or more of them) or any Authorities Related Party....., however, under the Project Agreement such provision only applies to the Authority.</p> <p>BBFR commented that this is a pass down from a standard form position at Project Agreement level and therefore reflects the BB generic positions. Accordingly, they considered that no amendment is required.</p> <p>We consider that the BBFR position can be accepted and that no revision is necessary.</p>
<p>64.1.1</p>	<p>This refers to a requirement for the Contractor to procure insurances as detailed in Part 1 of Schedule 14 of the Project Agreement, however, we considered that the reference should be made to Part 2.</p> <p>We raised this issue with Tods Murray but as it was subsequently considered to be a FM Contractor rather than Lender issue we felt that the matter need not be further pursued.</p>
<p>64.4.1</p>	<p>This refers to the Contractor providing the FM Contractor with “copies of all insurance policies referred to clause64.1”, however, this clause also applies to the Works period insurances, which we did not consider are relevant to the FM Contractor.</p> <p>We raised this issue with Tods Murray but as it was subsequently considered to be a Contractor administration issue rather than a Lender risk issue we felt that the matter need not be further pursued.</p>
<p>64.6</p>	<p>This makes reference to circumstances where the FM Contractor is in breach of clause Error! Reference source not found., however, we consider that it should refer to clause 64.1.2.</p> <p>BBFR agreed with our comments and arranged for suitable amendment to the clause, which we would confirm has been done and is acceptable.</p>
<p>64.11</p>	<p>We originally queried why this clause has not been used as it relates to approval of the FM insurances.</p> <p>Following discussions with Tods Murray it was agreed that it wasn't feasible for the FM Contractor to allow the Contractor to approve their corporate insurances as these provided cover for activities which were not related to this Project</p> <p>Accordingly we agreed that this matter could be dropped.</p>
<p>64.13</p>	<p>We queried why the obligation under the Project Agreement for the Contractor not</p>



	<p>to bring any claim or action against the Authorities (or any Authorities Related Party) has not been passed down under the FM Contract.</p> <p>Following a review of the latest draft of the subcontract we note that such provision is now suitably incorporated and would confirm that it is acceptable.</p>
66	<p>We were unable to trace any provision whereby the FM Contractor is responsible for any increases in premium or deductible which results from their actions.</p> <p>BBFR advised that Special condition 30.1 relates to the increase in premia, and, having reviewed Special Condition 30.1, we accept that this caters for the issue raised by us. Accordingly, we can confirm that the matter can be dropped.</p>



Insurance Programme and Costs

Works Period

We have reviewed Required Insurances programme and would comment that a detailed breakdown of the sums insured and premiums have been provided. We note that the Works and Advance Loss of Revenue sums insured are stated as follows:

Works	GBP 47,886,000
Advance Loss of revenue	GBP 10,416,666 (based on an annual revenue figure of GBP 6,250,000)

We are satisfied that the above sums insured are sufficient to cater for the relevant risk values.

We have also reviewed the proposed insurance costs and would advise these are as follows:

Construction "All Risks"	GBP 133,674
Delay in Start Up	GBP 44,271
Terrorism (C.A.R.)	GBP 1,507 (12 months only)
Terrorism (D.S.U.)	GBP 2,708 (12 months only)
Public Liability (GBP 2.5M)	Included under C.A.R.
Excess Public Liability	GBP 55,000
Total	GBP 237,160

The above costs are subject to 6% Insurance Premium Tax.

We consider that the above costs are reasonable and acceptable in relation to the proposed insurance programme placement, we have received the relevant Broker's Letter of Undertaking to Lenders together with cover notes from JLT, and we consider that the proposed programme:

- represents cover that is in accordance with market practice and deals with the major insurable exposures customarily insured under a PFI accommodation project.
- is compliant with the requirements of the Project and Credit Agreements including Lender's and Authority's specific requirements.

We have also reviewed the Insurer placement and would advise this is as follows:

Contractors All Risks/Delay in Start Up/Primary Public Liability

25% Lloyd's Syndicate 3210	A-
25% ACE European Group Limited	AA-
25% QBE Insurance (Europe) Limited	A+

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25% Royal & Sun Alliance Insurance PLC A

100%

Excess Public Liability

30% Chartis Insurance UK Ltd A+

30% ACE European Group Limited AA-

20% CNA Insurance Company Limited A-

20% Liberty Mutual Insurance Europe Limited A-

We are satisfied that the current insurance market security for the above Insurers is acceptable

Services Period

The relevant insurance cover is to be procured upon commencement of the Services at a future date, hence no cover notes have been issued for this period at this moment in time. We have, however been provided with details of the Base Cost (together with premium calculations) We consider that the premiums shown are highly competitive, which we have established is due to the proposed insurances being procured via a portfolio insurance programme which offers terms at discounted rates. We have established that a 30% increase on the portfolio rates has been applied to cater for the long run median costing which, if this is the case, we consider to be reasonable, as a 20% uplift is more the market norm. However, in relation to the Contractor's contingency for the premium risk i.e. increases not the subject of premium risk share, we note that no amount has been incorporated within their bid cost. Although we would normally expect to see some contingent amount included, BBFR consider that the loading to cater for the long run median cost is sufficient, and in line with their normal practice. We consider that an overall 30% contingent amount for the premium risk is reasonable and feel that Lenders can accept this position.

Allowance for annual insurance costs during the Operational period, and upon which the Base Cost has been calculated, is as follows:

Property Damage	GBP 21,549
Business interruption	GBP 7,188
Terrorism (Property Damage)	GBP 3,160
Terrorism (Business interruption)	GBP 2,637
Public Liability	GBP 15,000
Total	GBP 49,534

We consider that the above costs are competitive within the current market and acceptable.

We would also confirm that in the event of the actual annual net premium exceeding the Base Cost by more than 30%, then the Authorities will contribute towards 85% of the excess cost in the event that such increase is caused by insurance market trends.



Finally, we note that the insurance sensitivity, which assumes insurance costs are increased by 100% throughout the operations period and which assumes that the insurance risk premium risk sharing mechanism is not active, results in ratios above lock-up levels.



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