

On behalf of: The Applicant
Name of witness: K J Blundell
Number of witness statement: First
Exhibits: KJB1
Date: 28 March 2024

**IN THE FIRST TIER TRIBUNAL PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

**BETWEEN (1) Nehemiah United Churches Housing
Association Limited**

Applicant

and

(2) Various tenants

Respondents

FIRST WITNESS STATEMENT OF KIERON JACK BLUNDELL

I, KIERON JACK BLUNDELL care of 7-9 Stafford Road, Wallington, Surrey, SM6 9AN, will say as follows:-

1. I am employed as Executive Relationship Manager at The Monarch Partnership Ltd ("Monarch"). Monarch's business address is 7-9 Stafford Road, Wallington, Surrey, SM6 9AN.
2. I am making this Statement in support of the Applicant's application for the dispensation of all the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of certain energy contracts that the Applicant entered into in 2022.

3. The facts and matters set out in this statement are within my own knowledge unless otherwise stated and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.
4. Attached to this witness statement is a paginated exhibit marked "KJB1". All references to documents in this statement are to that exhibit.
5. Monarch are the retained energy consultants to Nehemiah United Churches Housing Association Limited ("Nehemiah"), the Applicant. Founded in 1987, Monarch Partnership are an experienced team of energy consultants and market analysts. We work with clients in social housing, charity, education and social care.
6. I manage a portfolio of clients on behalf of Monarch and have done so for almost 3 years.
7. I have just over 10 years of experience within utilities, working within brokers as a procurement account manager for several years and prior to this for suppliers and similar companies within the industry.
8. I am familiar with the consultation obligations in the Service Charges (Consultation Requirements) (England) Regulations 2003/1987 (the "Regulations").
9. I have read the statement setting out the Grounds for the application and confirm that the comments made in that statement concerning the workings of the energy markets and the incompatibility of the Applicant's energy procurement arrangements with the Regulations are correct.

10. Nehemiah entered into an agreement with Monarch on 28 February 2022 for Monarch to procure gas and electricity from the wholesale market (“Master Agreement”).

11. Monarch’s role under the Master Agreement was to secure fixed term energy supply contracts that are compliant with or exempt from the Public Contracts Regulations 2015 and procure energy from wholesale markets in line with the instructions given by Nehemiah.

12. Nehemiah instructed Monarch to enter into 3 fixed term, fixed price contracts as follows:

a. In respect of Nehemiah’s electricity supply needs:

i. An agreement dated 12 May 2022 between Nehemiah Housing Association (1) and EDF Energy Customers Limited (2), for a term of 2 years starting on 1 June 2022 (in respect of 44 Meter Point Administration Number (MPAN) locations); and

ii. An agreement dated 12 May 2022 between Nehemiah Housing Association (1) and EDF Energy Customers Limited (2), for a term of 2 years starting on 1 June 2022 (in respect of 4 Meter Point Administration Number (MPAN) locations),

together the “Electricity Contracts”; and

b. In respect of Nehemiah’s gas supply needs, an agreement dated 27 October 2022 between Nehemiah United Churches Housing (1) and SEFE Energy Limited (2), for a term of 2 years starting on 1 December 2022 (in respect of 12 Meter Point Reference Number (MPRN) locations) (the “Gas Contract”).

together, the “2 Year Contracts”.

13. A graph that I have prepared using data from Reuters, compiled in Excel, demonstrating market movements in the wholesale price of electricity and gas over the past 2 and a half years, is exhibited at KJB1. The graph identifies the key factors that have influenced the significant fluctuations, and overall increases, in wholesale electricity and gas prices between March 2021 and October 2023. Whilst this data comes from Reuters it is readily verifiable from the suppliers’ own data, who also publish market reports twice a day. The movement of the market can therefore quite easily be linked back to specific events and drivers.

14. I have annotated the graph exhibited at KJB1 to indicate the point at which Monarch locked in the electricity and gas prices in respect of the 2 Year Contracts, and which were agreed in the 2 Year Contracts. The electricity prices were locked in on 12 May 2022 and the gas prices on 27 October 2022. The horizontal lines therefore indicate the approximate unit prices that Nehemiah continues to pay for the supply of electricity and gas under the 2 Year Contracts, until the expiry of the 2 Year Contracts in May 2024 and November 2024 respectively, and hence the costs of providing energy that Nehemiah seeks to re-charge to its tenants in line with the terms of their occupancy agreements.

15. I have referred to this exhibit KJB1 where appropriate throughout this witness statement.

Background to the Electricity Contracts procurement

16. Monarch started the Electricity Tender Process in respect of the electricity supply in March 2022, ahead of completing it on 12 May 2022 (the “Electricity Tender Process/Period”). While in the past Monarch has looked to start the Electricity Tender Process with customers between 4 and 6 months in advance of contract termination (which was coming up in June 2022), a

tender process lasting 2 to 3 months is generally considered sufficient in the industry now. The reason for that is there has been a time of quite extraordinary market movements.

17. Considering the major events immediately before Monarch started the Electricity Tender Process in March 2022, and by reference to the graph exhibited at KJB1:

a. The market reacted to post pandemic supply shocks in late 2021 and early 2022, and we also had the first rumblings, rumours and instances of smaller suppliers going under, which was essentially unprecedented in the industry; and

b. There was also a large spike in the graph where Russia began its invasion of Ukraine in February to March 2022.

18. These events caused the market to move several times more often than it would usually do in a year, within a week. The price increases were far more than a market would ordinarily experience in a year, and were happening on a daily basis.

19. It was the first time the industry had seen these kinds of shocks outside of the pandemic in 2020 to 2021. The pandemic created a huge movement in the energy markets, but this was then eclipsed by the movement seen over the next 2 years.

20. Therefore, during the Electricity Tender Period and in common with many energy brokers, Monarch was not trying to engage with the market overly, but rather waiting for the market to become a little bit more calm. This was partially because the market was moving so quickly, and so it was hard to advise clients, but also partially because many suppliers were not offering pricing, since they were hedging their bets. In some cases, suppliers were

offering extremely high pricing because they did not know what the market was going to do over the next year, week or month.

21. This was therefore a time when Monarch, in common with the rest of the industry, was very much working day-to-day, as opposed to business as usual. Every procurement was carried out with an individual targeted procurement plan. There were many factors to consider that generally as a broker Monarch would not need to consider at all, such as which supplier was likely to still be in existence over the next 12 months.
22. There was therefore a slightly truncated Electricity Tender Period of around 2 to 3 months in relation to the Electricity Contracts that Nehemiah entered into, compared to the normal 4 to 6 months, for those reasons.
23. During the Electricity Tender Period, Monarch completed 8 tender rounds in total, where we went to market 8 times with the intention of potentially locking in. We often test the market a few times before we lock in, which is standard practise. Doing so 8 times is more than we usually would, but in consideration of the amount the market was moving, it was necessary because the industry had never seen that kind of overnight market movement before. There was a lot of due diligence involved in finding out what the price points were, which suppliers were going to be able to price and whether the suppliers who were pricing were offering a fair price.
24. At this time there was a far bigger variation in pricing than I would usually see. Since suppliers have all got the same product, the difference is usually in margin and discounts. Normally, it would not be common to see a variation of, say, 13% to 14% variation in price, which is quite a big variation between suppliers, but this was another oddity that I was seeing frequently during the Electricity Tender Period. Nehemiah was therefore under an increased amount of pressure during the tender time to make a good decision for tenants in quite a hostile market.

25. As the tender progressed, we started to identify the lead supplier, EDF Energy. We then started to move into a conversation of whether the contracts would be for 12 or 24 months, around the start of May 2022.
26. Generally the factors to consider when choosing between 12 and 24 month fixed price contracts are just any advantage in terms of costs, and some soft benefits such as being able to plan ahead, knowing how much your energy will cost for 2 years rather than 12 months.
27. Prior to 2020, longer contracts were generally slightly more expensive because they represented more risk to the energy supplier, which essentially had to guess the price it would be paying to obtain the supply for 2 years, rather than for 1 year. So suppliers tended to build in a little more margin to their 2 year deals. However, recently over around the past 2 to 3 years we have seen what is called backwardation in the markets. This is where buying energy further out is actually cheaper than purchasing it from near markets.
28. Therefore, Nehemiah was able to obtain better prices when entering into 2 year deals for its energy needs with EDF Energy, than 1 year deals with the same supplier. For example, compared to the equivalent 1 year contract on offer, costs under the 2 year Electricity Contracts entered into by Nehemiah were around £6,000 to £7,000 per year cheaper on the half hourly tariff, and up to around £13,000 per year cheaper on the non-half hourly tariff. So there were savings to be made.
29. Bearing in mind the shocks that the energy market was seeing, Monarch was generally recommending that a customer took the savings that it could see rather than gambling. There might have been savings in the future, but all indications were that there might not be. This was in light of how volatile the markets were, how quickly prices were changing and how uncertain things felt at that time. In early 2022, the Russians were posturing about shutting off the Nord Stream pipeline supplying Europe, which we considered a credible threat, and which they did end up doing. The opinion generally was that these

supply issues were not going to blow over in 12 months, but would continue to have fundamental shocks on the energy market for a long time.

30. Towards the end of the Electricity Tender Period, by April to May 2022, we started to see a relative period of stability in the market that had been developing since December 2021, before when there had been a lot of very sharp, short shocks to the market.
31. The price that was locked in for Nehemiah in relation to the Electricity Contracts is low based on the average for the last 24 months, but is still high overall, because it is about 3 times what in the industry we would now call historical pricing, that is, compared to prices available pre-2020.
32. Following the Electricity Tender Period and after the prices were locked in for the Electricity Contracts on 12 May 2022, prices on the wholesale market shot up to almost 4 times higher than those achieved for Nehemiah, reaching historic high levels that had never been seen before. The entire system effectively shut down and we were unable to obtain pricing for an extended period from around August to November 2022.
33. In hindsight, had Monarch been re-tendering for Nehemiah after 12 months, from around December 2022, somewhat lower prices may have been achieved for the next 12-month period. Prices could have been locked in at around the same price point or a little lower, had a re-tender taken place in late 2022 or early 2023.
34. However, we could not have known that in advance. It would have been very hard for Monarch to recommend a 12 month contract during the Electricity Tender Period, simply because of what happened to the market very shortly afterwards, when events that we had been concerned about actually then took place.

35. It made sense during the period of relative stability that occurred in the Electricity Tender Period to lock in a longer term contract, taking what little savings we could obtain. Many organisations entered into longer term contracts at that time, like Nehemiah, to benefit from secure, stable prices.
36. It was also important to secure a contract before the current contract ended. With the current electricity contract due to end in June we had to be mindful of time. Out of contract rates during this period were exceptionally high. As a general rule of thumb, out of contract or “deemed” prices are around 2 times more expensive than contracted rates. Out of contract rates reached record levels in 2022 and so allowing the portfolio to languish on deemed rates while the market potentially fell was not an option.

Background to the Gas Contract procurement

37. Monarch started the tender process in respect of the gas supply around the beginning of October 2022, ahead of completing it on 27th October 2022 (the “Gas Tender Process/Period”). A truncated tender process of 2 to 3 months before the current contract end date (which was coming up in December 2022) was generally considered sufficient at the time within the industry, because of the extraordinary market movements.
38. In view of the major events immediately before Monarch started the Gas Tender Process in October 2022, the graph exhibited at KJB1 shows that the market had hit its peak, hitting highs which were completely unprecedented in September 2022. Following this we saw prices ease off as strong energy conservation schemes were put in place throughout Europe.
39. The Gas Tender Period therefore saw a falling market, with the market trying to find a price to rebalance itself. This resulted in an extremely hostile market with suppliers reluctant to price, due to the cost risk of potentially getting it wrong.

40. It was key that the Applicant engaged at the best possible time to take advantage of the dropping prices, but without getting caught out on one of the price spikes that we saw in late 2022.

Broad factors influencing the procurements relating to the energy markets

41. When advising Nehemiah in relation to their electricity and gas procurement, I considered a number of relevant factors in relation to the operation of the wholesale energy markets, during an unprecedented period of turmoil in those markets.

42. In relation to prices themselves, the price of energy that a customer pays can be broken down into two elements:

- a. Wholesale prices, which currently makes up about 40% of the end unit price. This is the variable aspect of the price that end users negotiate with suppliers (through their brokers), which is changing the market day-to-day. This is the aspect that has been pulling the market to extreme highs and extreme lows in recent years.
- b. Non commodity and pass through costs, which currently makes up about 60% of the end unit price. These are taxes, levies, government costs and other costs such as transmissions costs. As these costs make up around 60% of the costs, they are quite substantial and increase on average by about 15% year on year. The size of that increase is partially because of interest levels and inflation, and partly because the tax burden tends to go up every year.

43. Non commodity and pass through costs increased by more than the previous average of about 15% per year in 2022, and I expect they are likely to continue to do so for the next couple of years. This is because industry costs have gone up, and because a lot of suppliers went out of business in 2022. All of those costs have to be paid and within the global energy market make their

way into non commodity costs as pass through costs, network and transmission costs, taxes and levies.

44. Therefore, when locking in a 2 year contract, the non commodity and pass through costs are determined for 2 years rather than 1 year. In an uncertain market, when the only thing you do know is that the costs making up 60% of your bill will increase (by an indeterminate amount, but by larger increases recently), there is generally a strong argument for locking in a longer term contract and having the benefit of price certainty for a longer period of time.

45. In relation to the 2 Year Contracts entered into by Nehemiah, these advantages, together with a small saving on the unit price as against the 1 year deals being offered, meant that a 2 year deal was likely to be beneficial for Nehemiah and their tenants. By entering into a 2 year deal, neither Nehemiah nor their tenants would need to be concerned about the market increase expected over the coming 12 months, and Nehemiah could inform tenants clearly what their energy was going to cost for the next 2 years.

46. By around May 2022, there was an expectation of government help for winter fuel costs, in the shape of the Energy Bill Relief Scheme, one of the first wave of government discounts that was announced. There was therefore the hope that, in taking the step of fixing the cost for 2 years at the best available price, the Government would ultimately help take the edge off the costs for tenants. The possibility of this support was discussed during the tender processes with Nehemiah and taken into account.

47. Government support did assist during the period from winter 2022 to spring 2023. The support going forward has been reduced, but is not insubstantial. This factor was therefore relevant to the decision-making process that I undertook with Nehemiah during the Electricity Tender Period.

48. The renewal date for Nehemiah's previous contracts was 1 June 2022. Monarch locked in prices for Nehemiah on 12 May 2022, just 19 days before

the contract end date. Within the electricity industry, at least 5 days must be allowed for electricity accounts to transfer, and it is good practice to allow for 14 days due to the possibility of errors or needing to resolve disputes about debts, for example. In addition, the incumbent supplier (that is, the supplier you are currently with) obviously becomes aware that the customer is close to their contract end date. Knowing that it is getting more time sensitive, the incumbent supplier knows that the longer the customer leaves it, the greater the risk of going out of contract.

49. At around the time of the Electricity Tender Period, out of contract prices were very expensive at around 3 times greater than contract rates. Therefore, even spending a couple of days out of contract, especially for a client the size of Nehemiah, would be to incur quite a severe financial penalty. For that reason, Monarch worked with Nehemiah to lock in the prices in good time in May 2022, for Nehemiah to enter into the 2 year Contracts and avoid such a scenario.

50. At the point of locking in the prices for the Electricity Contracts on 12 May 2022, in the context of the market at the time, wholesale prices were rising slowly but steadily, with very little indication of prices dropping. We saw a very small drop during a previous contract round, but essentially ended up locking in very soon afterwards since the view in the industry was that market volatility at that time was not positive.

51. When the market started showing signs of volatility, Nehemiah had to make quite a fast decision as to whether to lock in on the basis of current prices, or risk the market shooting up. I am aware that, when the market starts to wobble, prices can almost immediately increase at a fast rate, without ever falling back down to the same price level. As an industry, we had just seen this happen in December 2021, January 2022 and February 2022.

52. At the point of locking in at the end of the Electricity Tender Period, some of the lowest prices that had been seen in the previous 5 months were available.

When there was some volatility in the market, showing just a little peak in prices, Monarch considered that this could be another shake before a big jump upwards in prices.

53. After Nehemiah entered into the Electricity Contracts, in the following 3 to 4 months the market saw unprecedented high prices cumulating in a peak in September 2022, when prices were going up daily to higher levels than the industry had ever seen. The graph exhibited at KJB1 identifies some of the reasons for those increases, including the ongoing war in Ukraine and European countries endeavouring to fill up their gas storage facilities ahead of the winter in the face of Russia threatening to cut off the Nord stream pipeline and eventually doing so. Of course, no one could have known at the time what was going to happen.

54. Under the circumstances, it was safer to lock in while seeing relatively good prices, rather than risk prices shooting up, which could have doubled or tripled the cost to every tenant. For that reason, we locked in to the Electricity Contracts on the prices offered at 12 May 2022, such that Nehemiah could hopefully build those into tenants' costs, with the expectation of Government help.

55. We locked in the Gas Contract on 27 October 2022, after a few weeks of careful market watching. At the time the general feeling from traders was that the winter had the potential to be extremely tough. If the winter of 2022 was a cold one, then with limited gas supplies available to Europe, the UK could have been facing blackouts. When we began to see the market settle and show indications of potentially rising, the decision to lock in the contract was made.

56. Another factor that affected the decisions was supplier availability. Prior to 2020, we would not conduct a tender exercise for a client with fewer than 5 suppliers. Engagement with 3 suppliers would be the bare minimum, in circumstances where a customer had a poor credit history or were particularly

difficult to manage, for example. This was not the case with Nehemiah, who have a good payment history, number of sites and level of consumption.

57. However, during the pandemic in 2020 and up to 2022, and even now to an extent, suppliers have been quite protectionist, being unwilling to bid for what were considered 'high risk' portfolios. Housing associations are considered high risk because they do not have a static portfolio. The number and types of their properties can change quite a lot, with residents moving out, sites being bought or sold, or demolished, and so on. Energy suppliers generally see low consumption for a high number of residential sites (Nehemiah has around 200 sites), as compared to a corporate client which may be, for example, running a data farm from 1 or 2 sites or even just running a large office block with lifts, heating and air conditioning. This means that there is a relatively high administration cost associated with housing associations as clients.

58. As a result it was extremely difficult to even get 3 suppliers to tender as part of the Electricity Tender Process based on the market in early 2022. Eventually, EDF Energy, TotalEnergies Gas & Power and SSE Energy Services tendered, but SSE Energy Services effectively made it known that they did not really want to win the tender by pricing with a high premium. TotalEnergies Gas & Power were also not very engaged in the Electricity Tender Process, so while they were tendering for the supply contract they were not in reality expending much effort.

59. However, EDF Energy were quite keen. They are quite adept with residential supply contracts and known to be quite good at housing associations. It also helped that they are a French-backed supplier, since they have the reassurance of access to nuclear energy, which allows them greater insight into the nuclear generation. They have tended to be more stable than a lot of the other suppliers within the UK as a result.

60. We saw similar behaviour in relation to the Gas Tender Process, with suppliers very reluctant to procure. We had very recently seen CNG collapse,

who were a large a reputable supplier, making gas suppliers particularly careful about taking on new business. As we saw during the Electricity Tender Process most suppliers were focusing on their core business and avoiding larger multisite clients.


61. Nehemiah therefore had limited options in terms of the number of offers that they were getting from the market, compared to the choice that would generally have been available pre-2020. This also means that practically speaking, even if given the opportunity as part of a consultation process, tenants would not in reality have had very minimal opportunity to nominate alternative suppliers because of the limited tender market.

62. Taken together, these factors affected the decisions Nehemiah made with the benefit of my advice as their broker at Monarch.

63. Overall, by entering into the 2 Year Contracts, I consider that Nehemiah carried out the necessary due diligence to allow it to make informed decisions as to the deals that were likely to benefit their tenants most, including entering into 2 year rather than 1 year deals, on the basis of factors known at the time of contract placement. This is in spite of the unprecedented market turmoil taking place at the point of contract placement for both its electricity and gas supplies.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed 

Kieron Jack Blundell

Date 28.03.2024

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EXHIBIT KJB1

A graph prepared using data from Reuters showing wholesale electricity and gas prices between March 2021 and October 2023

