

# Tribunal rules against 'lamentable' freeholder in £1.6m insurance broker commission battle



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**In a tribunal ruling last month, it was judged that secret insurance commissions amounting to a total of £1,638,710, including Insurance Premium Tax, were not reasonably incurred.**

The leaseholders of the Canary Riverside estate in east London challenged the reasonableness of the insurance premiums they had paid through their service charges, believing that they included **significant commissions** paid to their landlord – Octagon Overseas and Canary Riverside Estate Management.

Canary Riverside, located in Canary Wharf, is a mixed-use development with 325 flats, a hotel, a health club, and commercial units. It is owned by the Yianis Group [incorrectly spelt 'Yiannis' in the tribunal ruling], owned by British billionaire property developer John Christodoulou.

Octagon is the freeholder and CREM is the head lessee of a residential part of the estate. The leaseholders submitted their application in July

2019, more than three years ago.

When it came to finding insurance for the property, CREM and Octagon claimed they used their managing agent, an unregulated firm called Westminster Management Services to engage with [Reich Insurance Brokers](#).

WMS, according to another tribunal ruling from 2016, was set up by the Yianis Group to provide consultancy, payroll and HR services to its 6500 hotel staff.

However, last month's tribunal decision notes: "WMS is a separate standalone company which the Respondents [CREM and Octagon] say is not part of the Yiannis Group."

### **Fees and charges**

Reich received a broker's fee of around £6000 per year from 2010 to 2020. Between 2010 and 2016, it also invoiced for financing charges for the premiums.

Over the course of a decade, from 2010 when Reich were appointed to arrange insurance for the estate, the broker had retained fees of £483,182, plus £38,696.42 in IPT. WMS however, for the same time period, was being paid up to three times as much as Reich, earning as much as £176,405 a year.

A source told *Insurance Post* that the leaseholders had no idea of WMS's involvement in buildings and terrorism insurance at the estate until Reich complied with an order made by the tribunal requiring details of any commission or remuneration in relation to the insurance of the estate for the insurance periods 2013/14 to 2019/20 inclusive.

Prior to this, Octagon and CREM had submitted a written statement to the tribunal claiming they knew nothing of any additional commissions earned by Reich or WMS, except a yearly fee of between £110,000 and £145,000 per annum for "all property services and not specifically for insurance related services." But the leaseholders say they were not aware of the fees paid to WMS until much later, when the tribunal order was made.

The tribunal ruled that the service charge accounts were “silent on the question of commissions and fees”. It also stated that the amount of commission initially said to have been retained by Reich in the Respondents’ 28 August 2020 statement was “woefully inaccurate”.

According to Reich’s final disclosure, it had paid to WMS commissions and fees totalling £1,517,372, with an extra £121,338.58 added on in IPT.

In total, over £2m of fees were incurred by the two firms for ‘insurance related services,’ with WMS receiving over 75%.

### **Insurance rent**

The leaseholders contended that the fees paid to WMS and the commissions retained by Reich were “unreasonably incurred in their entirety and were not payable”.

They argued that it did not fall under the definition of ‘Insurance Rent’, which is defined in the court document as:

“meaning a due proportion to be fairly and properly determined by the Landlord of all sums (including insurance tax, the cost of periodic valuations for insurance purposes and any VAT or other tax which may become payable in connection with the supply to the Landlord of goods or services relating to insurance .....which the Landlord shall from time to time pay in respect of the insurances required by Clause 6.1(a) (iii) and (iv).....”

The tribunal stated how neither Reich, Octagon or CREM managed to provide any evidence to the tribunal of a contract outlining the sharing of commission or fees or otherwise with WMS. The tribunal heard that WMS was “just told” about the fees payable and the money was then sent to them.

The tribunal ruling states: “There is considerable uncertainty about the exact arrangements regarding that commission structure because we have not had sight of any contractual documents between the Respondents and either WMS or Reich concerning the sharing of commission, payment of fees or otherwise.”

The source added that while WMS may have been instructed to carry out managing agent functions, "WMS had never been a managing agent at the estate".

In response to that order, on 15 March 2022 Reich provided a one page spreadsheet setting out the premiums paid under the Yianis Group policy, as well as the total commission retained by Reich, and the total fees paid to WMS.

The source says this was the first time leaseholders learned of WMS's involvement.

### **'Lamentable'**

The tribunal determined that fees payable to Reich were acceptable, but that payments to WMS were not.

It said: "Sums paid for WMS's activities do not fall within the definition of Insurance Rent, and there is no contractual liability on the Applicants to contribute towards these costs. We conclude that all the work said to have been carried out by WMS is more accurately described as the provision of services concerning management of the Estate, including obtaining insurance."

The tribunal ruled that any activities carried out by WMS fell under the definition of 'management of the estate' rather than 'insurance related services.'

The tribunal also criticised CREM and Octagon's lack of transparency when it came to what leaseholders were paying.

It stated: "In our view, the Respondents' complete lack of transparency with leaseholders regarding these commission payments, paid since 2010, has been lamentable. The sums involved are large and constitute a very substantial percentage of the premium towards which leaseholders were asked to contribute, without any notification to them as to the nature and amount of the commissions involved. It was only through these proceedings that the full extent of these commissions became apparent."

The tribunal also said it agreed with the leaseholders “about the need for greater transparency in insurance fees and commission charges” and referred to the 2013 RICS Code.

Currently, leaseholders have no automatic right to disclosure from insurers and brokers as to commissions data under the FCA’s own ICOBS rules because they are not the policyholder. The FCA has recently consulted on remedies to ensure true pricing transparency for leaseholders in the multi-occupancy residential buildings market.

While the tribunal did not find Reich fees unreasonable, its decision notes the Manchester-based broker took twice the amount of commission it originally had claimed it received.

It is anticipated that CREM and Octagon, the Yianis Group freeholder and landlord companies at the development, will appeal the decision.

Yianis Group and Reich have been approached for comment.

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