

Is it the end of the line for property insurance commissions on multioccupancy buildings?

By Yiannis Kotoulas | 3 February 2023

The UK government has indicated its intention to ban managing agents and freeholders from taking commissions when arranging buildings insurance

The issue of secret commissions paid to property managing agents and freeholders by insurance brokers has been bubbling under the surface for a long while – and this particular cauldron now looks set to bubble over.

This week (30 January 2022), Michael Gove, secretary of state for levelling up, housing and communities, indicated that he would move to ban this practice and end “unusually high broker commissions”.

Freeholders of multioccupancy buildings or their property managing agents are the parties that place buildings insurance with brokers.

Leaseholders within these properties, on the other hand, are beholden to the choices of their freeholders where buildings insurance is concerned – despite the fact that the cost of the policy is covered by service fees levied on them by freeholders.

This setup is ripe for potential abuse. It allows freeholders or their agents to agree higher premiums for cover with brokers, benefiting the underwriter and allowing brokers to take a larger service fee themselves, which is then often cut back to the freeholder as a commission.

Leaseholders – who end up paying for these higher premiums – have no ability to procure their own buildings cover or even view the policy arranged by the freeholder because they are not defined as customers to the policy.



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The Department for Levelling Up, Housing and Communities said in its January 2023 statement that Gove would “take action to ban managing agents and freeholders from taking commissions when they take out buildings insurance”.

The government department added that it would also bring forward measures to make service charges more transparent and empower leaseholders who wanted to challenge their bills.

In a separate letter to Nikhil Rathi, chief executive of the FCA, delivered on the same day as his department’s statement, Gove thanked the [regulator for its September 2022 report that suggested potential interventions to improve the multioccupancy buildings market](#).

Gove said: “The report confirmed my concerns regarding large buildings insurance premium increases in multioccupancy residential buildings, evidence of weak competition in the market and unacceptable issues faced by leaseholders around the transparency of their insurance costs.

“I am also concerned about the lack of regulatory protections for leaseholders under FCA rules – ensuring that buildings insurance is widely available, is affordable and offers fair value to leaseholders remains one of my top priorities.”

Government needs to act

Gove went on to explain that while he believed there remained “urgent work to be done by the FCA and by [the insurance] industry”, he was “clear that government too needs to act”.

He explained: “[The FCA] report identifies the practice of insurance firms sharing commissions and other payments with property managing agents and freeholders, with such payments making up at least 30% of the total premiums paid by leaseholders for their buildings insurance.”

As a result of these findings, Gove said he would replace commissions paid to freeholders, landlords and property managing agents with “more transparent fees”.

He added that he also planned to pressure insurance firms and those that benefit from this arrangement to change their practices “as a matter of priority”.

A brief history

These events represent the beginning to a conclusion of a saga that has rumbled on for years.

It was in January last year when Gove first ordered an inquiry into the buildings insurance market because of concerns around “unfair service fees” being charged to leaseholders.

Then, in March 2022, *Insurance Times* reported that Manchester-based broker Reich Insurance had been hit with a forced commission disclosure order by the First-tier Tribunal of the Property Chamber, which required it to hand over a spreadsheet containing details of any broker fees or commissions that leaseholders at a property it arranged cover for may have been paying.

In this case, Reich Insurance had been employed to arrange buildings cover for Canary Wharf-based tower block Canary Riverside by Canary Riverside Estate Management (CREM) and property managing agent Octagon – two companies under the ownership of Monaco-based billionaire property magnate Yiannikis ‘John’ Christodoulou.

This led some MPs to call for FCA regulation on commission fees in Parliament, before the regulator announced that it was collecting data on fair value for leaseholders in May 2022.

Read: [MPs take aim at insurance sector in Building Safety Bill debate](#)

Read: [Gove welcomes FCA findings on buildings insurance market](#)

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The subsequent FCA report was then released in September 2022 – in it, the regulator suggested that it could use its powers to increase the amount and transparency of information related to leaseholders on the pricing of insurance they were paying for, or make it easier for leaseholders to challenge high insurance costs passed on to them.

Then, in December 2022, the First-tier Tribunal of the Property Chamber released its decision on the case of Canary Riverside.

The tribunal found that commissions of £1.5m and related insurance premium tax of £121,338 paid to a freeholder-linked firm between 2010 and 2019 were “not reasonably incurred”.

In a statement, the tribunal said: “The respondent’s complete lack of transparency with leaseholders regarding these commission payments 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 added that it supported the need for “greater transparency in insurance fees and commission charges”.

A spokesperson for **One West India Quay**’s – another property owned by Canary Riverside owner Christodoulou – residents’ association welcomed the tribunal’s decision

They said: “We speak not of our own situation, but of the industry generally when we say this – the [Canary Riverside] insurance victory at the tribunal is just a drop in the ocean of leaseholder overcharging that involves everyone in the sector, including landlords, managing agents, brokers, insurance companies and even banks.

“This grossly unfair, opaque system allows insurance companies to sell policies that are overpriced and inappropriate for residential leaseholders like ourselves precisely because we have no control over the process.

“Meanwhile, the FCA sits on its hands, citing its own Insurance Conduct of Business rules to excuse its refusal to drain the swamp.”

Insurance Conduct of Business Sourcebook (Icobs) rules define what information the customer of an insurance contract is entitled to receive – the application of these rules is dependent upon whether the leaseholder or the freeholder are identified as the customer in relation to a buildings insurance contract.

Under many of these contracts – such as the one for Christodoulou’s properties at One West India Quay and Canary Riverside – leaseholders are not defined as policyholders and are not covered by Icobs rules that would entitle them to information about the buildings insurance policy.

Potential ramifications

At part of **its manifesto launch on 24 January 2023**, broking trade body Biba explained that it intended to work alongside its broker members to support them “as they review their remuneration practices for the distribution of insurance for multioccupancy buildings”.

It noted the findings of the FCA report and added: “The aim is for members to only make payments to third parties in this sector where they are satisfied that such payments comply with the relevant FCA fair value requirements – this includes payments to property managing agents or freeholders.”

However, following Gove’s announcement a week after the manifesto launch, the broker body noted that the government’s intention to ban managing agents, landlords and freeholders from receiving



Michael Gove said he would pressure insurance firms to change their practices “as a matter of priority”.

(Image credit: Richard Townshend)

commission when dealing with insurance for multioccupancy buildings went “further than the FCA question in its report regarding payments to unauthorised property managing agents”.

It added: “It is a major change that could theoretically catch managing agents that may be authorised by the FCA, but we recognise the government’s desire to create a level playing field and our members will, of course, respect this decision.”

Additionally, Biba welcomed the government’s decision to not bring forward proposals to cap or restrict brokers’ earnings in this area - it noted the FCA report’s findings that brokers’ retained earnings had reduced to an average of 13% in this area.

John Batty, director of technical services for Biba member Bridge Insurance Brokers, told *Insurance Times* that Gove’s announcement “makes some of the good work being performed in the sector largely irrelevant”.

He explained: “Despite giving assurances that some property managing agents do operate in a transparent way for the benefit of leaseholders, it seems the government have now set a course that is punitive for everyone rather than focusing on eradicating the poor actions of a few.

“Saying that, I am largely supportive of a ban on commission payments as the choice of broker in the future will be based upon service levels and quality of policy coverage – those property managing agents already operating in a transparent manner [will] probably [see] little disruption as a result of switching from a commission model to a fees model.”

However, Batty added that he felt the tools at the disposal of the FCA should have been sufficient in dealing with the issue at hand. He believes the “devil, as always, will be in the detail” of how the UK government intend to achieve this ban.

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Insurer checks?

Commenting on Gove's announcement to bring forward measures to end commissions to freeholders and their agents, Branko Bjelobaba, principal at compliance consultancy Branko, questioned insurers' roles in this process.

He said: "What work have insurers already done to assess whether the commission being paid to the broker is indeed commensurate with the work they are doing, as they provide the pot of cash that has allowed this to happen?"

"While [Gove's announcement] is good news, the devil will be in the detail and I strongly believe leaseholders should be joint insured parties to the [buildings] insurance and be able to place their own policy as flat owners do in Scotland and across the world.

"The fact that leaseholders cannot arrange their own insurance is the issue. The one thing that would massively help is to allow the real person at the end of the chain who is paying for all of this – which **Consumer Duty** talks about all the time – to procure their own policy."

Bjelobaba may well get his wish – on the same day as his department's announcement on insurance commission fees, Gove committed to abolish the "outdated, feudal" leasehold system all together by the next general election.

Gove said: "In crude terms, if you buy a flat, that should be yours. You shouldn't be on the hook for charges that managing agents and other people can land you with, which are gouging."