MP highlights loophole in Leasehold Reform Bill

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Matt Brewis, head of insurance for the Financial Conduct Authority, has appeared before a parliamentary committee to discuss the Leasehold and Freehold Reform Bill and been challenged by MPs over whether the current crop of rules ensure insurance costs are reasonable.

Barry Gardiner, Labour MP for North Brent, pressed Brewis on the transparency elements of the Bill.

In November, Michael Gove, Secretary of State for Levelling Up, Housing and Communities, **introduced the Bill to parliament**, and it is currently in the committee stage within the House of Commons.

The current version of the Bill limits the ability of the landlord to charge insurance costs.

When the government unveiled the Bill, it stated it would "ban opaque and excessive buildings insurance commissions for freeholders and managing agents, replacing these with transparent and fair handling fees".

Canary Riverside

Gardiner cited the **Canary Riverside tribunal**, which found that £1.6m in commissions paid by leaseholders to a freeholder-linked company was wrongly incurred.

He said: "This Bill outlaws commission for landlords to charge. However, in that tribunal case, it was not regarded as a commission, it was regarded and accounted for as a fee.

"How is the leaseholder [who brought the Canary Riverside case to tribunal] going to know she is not going to be ripped off in the same way as she was in this case?"

Brewis answered by talking about the fair value assessments the FCA requires from firms.

He said: "The value assessment requires firms to prove what value they are providing and are transparent to the leaseholder."

Gardiner replied: "But how can you do that if you cannot get a written contract?"

The Canary Riverside tribunal stated how neither Reich (the broker) nor any Yianis Group (the freeholder) firms managed to provide any evidence of a contract outlining the sharing of commission, fees or otherwise with Westminster Management Service (the property managing agent that was paid the £1.6m).

While Brewis said he was not able to comment on specific cases, when asked by Gardiner if the idea that an FCA regulated broker was unable to provide a first-tier tribunal with a written contract was "strange", Brewis simply answered: "Yes."

Transparency

This point brought into question the transparency element of the Bill and the FCA rules that are currently in effect.

New **FCA reforms that came into place on 31 December 2023** state insurers or brokers must provide important information about their policy and its pricing, including the detail of any commission paid for leaseholders.

Brewis said: “Under new rules that came into force at the start of this year, that [contract] does need to be provided.”

FCA rules state a broker or insurer must provide the contract of insurance to the landlord, so Gardiner pointed out he was talking about the landlord providing the contract to the leaseholder, to which Brewis replied that the regulator does not oversee landlords.

Brewis said: “In the event that the freeholder is not forthcoming with the contract, it is incumbent on the insurer to provide a copy of the contract to the leaseholder directly. So it is within the FCA rules that the leaseholder has the option of going directly to the insurer now, in order to get a copy of that contract. That wasn’t previously possible.”

Gardiner asked: “So a leaseholder can write to the insurer to get a copy of the insurance contract the landlord has that insures their

property?"

To which Brewis replied: "Yes, and the insurer will be in breach of FCA rules if they do not provide it."

However, Gardiner then pointed out a potential loophole in the rules. "Does that rely on the landlord telling the leaseholder who the contract is with?

"At the moment, there is no compulsion on the landlord to do that, is there? It is certainly not in this Bill."

Brewis said: "If you follow that chain of events where a leaseholder doesn't know who the insurer or broker is, and the landlord refuses to provide the documentation…"

Gardiner interrupted: "Then the leaseholder has no access to the contract."
Brewis conceded that this scenario could play out. He said: "One would hope and expect that to be a very low likelihood situation, but that would be the case, yes."

Gardiner said: "We have made legislation on the basis of optimism before, and it has not proved successful."

Reasonable

Brewis reiterated his content with fees being paid for arranging insurance, and the fees being itemised properly.

"There is a case, for some buildings that have material issues around fire safety or other issues, it can be very difficult to place insurance. It is a time cost and there is value in the services that brokers provide and, sometimes, some of that work is outsourced to property managing agents.

"Assuming that is done appropriately, itemised billing appropriately, I have no issue with the payment of commission or brokerage, where it is for services that have been effectively rendered."

But Gardiner said: “There’s nothing in the Bill that says they have to be reasonable. The Bill says they have to be attributable to a permitted insurance, but not that they have to be costs that are reasonable.

“There’s a difference between a permitted insurance payment and a reasonable permitted insurance payment.”

Brewis predicted the secondary legislation within the Bill would set out further stipulations.

Gardiner added: “So we are waiting to see if the Secretary of State introduces the word ‘reasonable’ into the secondary legislation, or would it be better to just have the word ‘reasonable’ on the face of the primary legislation?”

Brewis said: “One would still have to define ‘reasonable.”

Gardiner said: “I think we have done a pretty good job of that over the last few years.”

While there is a potential loophole in the current form of the Bill, it looks as though MPs have recognised this and will work within parliamentary debates to ensure leaseholders can get access to information surrounding their insurance policies.
