



CONSULTATION ON INTRODUCING PERMITTED INSURANCE FEES FOR LANDLORDS, FREEHOLDERS AND PROPERTY MANAGING AGENTS

CONSULTATION RESPONSE

PREPARED AND SUBMITTED BY

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DEMOGRAPHIC QUESTIONS

Are you based in England or Wales?

- England

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Are you responding on behalf of an organisation?

- Yes

If "Yes" what is the name of the organisation?

British Property Federation

If you are responding on behalf of an organisation, which of the following best describes you

- I am responding as a freeholder organisation (private) – trade body

KEY POINTS:

- Potential expensive implementation costs and reduced income will likely lead to the loss of a portfolio approach to placing insurance (acknowledged by the FCA as an insurance solution that drives better value (FCA report September 2022)). It would lead to some consumers being worse off, as they would not benefit from the discounts and cover benefits associated with bulk buying. Properties with a high risk would also not benefit from the diversification within a portfolio, resulting in higher premiums and/or higher excesses, or in the most extreme cases not being able to insure.
- The FCA, and RICS equivalent, have already tightened regulation of commissions. A better and more targeted approach to regulation would be to only apply the proposed new fees regime to only organisations that are neither FCA, or RICS regulated.
- We believe implementing any form of capping of fees would be fraught with difficulty. Set caps too high and it will be seen as the 'going rate'. Set caps too low and it could hurt service provision to leaseholders. Ensuring any cap was sufficiently dynamic and therefore responsive to keep up with external events and market dynamics would be difficult.
- We support measures to deliver greater transparency and fully endorse the 2023 FCA reforms.
- And to maintain a reasonableness test. But believe the main barrier to testing reasonableness is the cost and hassle of going to the First Tier Tribunal, which is having various burdens added to its busy workload. We therefore think it would be better to allow what is reasonable to be enforced via an Ombudsman, which s100 of the 2024 Act makes provision for.
- To assist consumers to judge whether they have valid claims of unreasonableness MHCLG should consider publishing regular data on fees.

CONSULTATION QUESTIONS

Question 1

To what extent do you recognise the above description of how freeholders, property managing agents, brokers and insurers manage and arrange insurance and how they are remunerated for it? For example – what other intermediaries are involved in the supply chain of building insurance for multi-occupancy buildings, how are they remunerated and what for? [Open]

- There are three aspects of the description, which need augmenting, or explaining more.
- The first is that most large freeholders will place insurance on a portfolio basis. This aids the overall customer base by placing more business at a lower overall price. In moving to a fee's basis, some of that benefit of bulk-buying by aggregating may be lost, leading to higher premiums.
- Placing insurance on a bulk basis also allows for risk dispersion. A riskier building in a portfolio will gain the benefit of the overall risk of the portfolio, rather than the specific risk of their individual building. Moving to a fee's basis, will mean more buildings being assessed on their specific risks and therefore incurring a higher premium, or perhaps in some cases being uninsurable.
- Thirdly, the consultation paper recognises that “although FCA rules do enhance disclosure of insurance information by brokers and insurers, property managing agents and freeholders – many of whom are not regulated by the FCA – are not obligated to provide insurance policy information to leaseholders to the same level of detail.” The consultation paper then goes on to stress that FCA rules “do not extend to all property managing agents and freeholders.”
- It is not clear from the consultation paper though, what proportion of freeholders and managing agents are FCA regulated, or part of the equivalent Royal Institution of Chartered Surveyors Designated Professional Body scheme. If the proportion of freeholders and managing agents covered by FCA and RICS regulation is high, then that would suggest it may be better in terms of better and targeted regulation to exempt organisations from the proposed fees regime, if they are FCA or RICS regulated.

Question 2

Either from your personal experience, or knowledge of practices more widely, to what extent do you think the current system of remuneration for property managing agents and freeholders for their activities managing and arranging insurance provides fair outcomes for both leaseholders and those supplying these services? Do you have examples or case studies to illustrate? [Open]

- We support transparency, which has been a long-term objective of all those involved on this issue for decades, and fully understand the need now for Government intervention, voluntary mechanisms having failed. As we have explained in answer to question 1., however, as currently designed, is likely to lead to other consumer detriments, particularly if less insurance is placed on a portfolio basis.

Question 3

If you are a leaseholder, are you aware of what payments – if any – your freeholder or property managing agent receives for the arranging or managing of insurance? Payments could take the form of direct remuneration – such as the sharing of commission – or be more indirect such as through retaining money from discounts or non-monetary payments. [Yes / No]

- Not applicable.

[If yes] Please provide further details. For example – are these payments for particular services in relation to the managing and arranging of insurance? If so, which activities? Do you know what percentage of your insurance costs is accounted for by these payments? [Open]

- Not applicable.

Question 4

If you are a leaseholder, have you tried to challenge the payment of your freeholder or property managing agent for the arranging or managing of insurance? [Yes/ No]

- Not applicable.

[If yes] How did you challenge this? What information did you obtain in support of your challenge, and how did you obtain it? What was the outcome? [Open]

- Not applicable.

Question 5

If you are a property managing agent or freeholder, what type of payments – if any – have you received for arranging and managing insurance? Payments could take the form of direct remuneration – such as the sharing of commission – or be more indirect such as through retaining money from discounts or non-monetary payments. [Open]

- Most of our members are paid via the sharing of commissions. In fact, commission sharing is seen as almost 100% of current practice.
- It should be noted, however, that one of our institutional members reported that *“it is perfectly possible that the ability to charge fees could result in increased costs for tenants. For example, we*

currently levy 0% commission on our residential portfolio but if we are able to charge specific fees we might do to recover some of our costs."

Question 6

If you are a property managing or freeholder, for which activities have you been remunerated for through payments – such as commission by the broker? [Open]

Of these, which of these are regulated activities as defined in the Financial Services and Market Act, such as through the FCA or the RICS Designated Professional Body scheme, and which are not? [Open]

- Most of our members are regulated by the FCA or the RICS Designated Professional Body scheme.

Question 7

A permitted insurance fee would be defined to only allow remuneration for specific activities being provided by freeholders and property managing agents, and prevent leaseholders being charged for any other payments to freeholders and property managing agents relating to the managing and arranging of insurance. Do you agree with this approach? [Yes / No]

- No - to the extent that what is being described could be improved.

Please explain your answer

- Our understanding is that in some ways these proposals take us back to the future in that prior to the use of commissions to remunerate freeholders and property managing agents, there was a 'Levy' for such a purpose. It would be good to know more about the history and why the actors of the time moved away from it. One aspect of history we do know, is that levy rates migrated towards the maximum and that perhaps provides some lessons for designing a fees regime, and avoiding a cap.
- We have concerns also about what costs will be recoverable. Freeholders and their managing agents will have costs that they have sunk into systems and support services. For example, call centres for handling claims or queries must be there when needed, and paid for, regardless of whether an individual insured has used them or not. A bank of surveyors for claims assessment is similar. It has to be there and ready, regardless of whether an individual insured makes use of it. Freeholders and their managing agents will also engage in risk management, seeking to prevent risks, rather than dealing with them after they have occurred.

Question 8

What specific activities relating to the management and arranging of insurance do freeholders and property managing agents currently carry out and are remunerated for? Please define these activities as fully as possible. [Open]

- Distribution of documentation (including FCA disclosure documents)
- Qualifying leaseholder interest
- Queries and Complaints handling
- Premium recovery and credit risk
- Risk Assessment and disclosure of material facts
- Tendering
- Contracting
- Claims handling support
- Risk mitigation and management

Question 9

What specific activities relating to the management and arranging of insurance should freeholders and property managing agents be permitted to carry out and be remunerated for through a leaseholder's service charge? [Open]

- Risk Assessment
- Tendering
- Contracting
- Claims handling support
- Risk mitigation and management

Question 10

Are there any specific activities relating to the management and arranging of insurance that freeholders and property managing agents should not be permitted to carry out and be remunerated for through a leaseholder's service charge? [Open]

- No, all current activities add value.

Question 11

Do you think the permitted fee should be calculated in prescribed ways – such as specific percentages, maximum charges and / or fixed fees for the arranging and managing of insurance or activities therein – or that a transparent fee subject to the reasonableness measures in the Landlord and Tenant Act 1985 would be sufficient? [Open]

- We would caution against the permitted fees being calculated in prescribed ways. It is very hard to set any sort of cap and to get it right. Set it too high and the market will migrate to the capped amount or percentage. It becomes seen as the “going rate”.
- Setting a cap that is too low can equally be as detrimental. If freeholders or property agents cannot recover their costs, then they are likely to provide an inferior service, or not provide some services at all to the detriment of the consumer.
- There is a further challenge, which is ensuring that any cap is up to date. The last few years have shown that events such as pandemics and wars can lead to significant inflation and therefore an increase in costs. A cap set by Government may not be responsive to market conditions and may be slow to react.
- We therefore support transparency and think the process of challenging reasonableness can be enhanced, which we set out elsewhere in this response.

Question 12

Are there any exceptional cases or circumstances you would suggest merit different treatment with regards to what is permitted or not permitted? [Open]

- No, we cannot think of any activities freeholders currently perform that it would make sense to ban.
- An issue to clarify is mixed-use buildings where there is an element of commercial as well as residential use. Fees that were capped could for example be out of kilter with what is charged for a whole building including commercial uses.

Question 13

Do you consider that the existing framework for challenging unreasonable service charges – such as the Landlord and Tenant Act 1985 – is sufficient to ensure that if freeholders or property managing agents charge excluded insurance costs to leaseholders, that they could be challenged and that any permitted insurance fees would be proportionate? [Yes / No]

- Yes

Please give your reasons [Open]

- As set out in response to question 11 we support transparency, and subject to a test of reasonableness.
- There are, however, two enhancements we would make to the test of reasonableness.

- Firstly, we worry about the capacity of the First-Tier Tribunal to cope with what seems to be a significantly expanding workload. Also, that such commercial disputes are clogging up the courts. Few people enjoy going to court to enforce their rights, either defendants or plaintiffs. The Leasehold and Freehold Reform Act 2024 (section 100) made provision for redress schemes, such as an Ombudsman, in leasehold and estate management. Government has not yet enacted section 100. Arguably, this consultation should be encouraging fewer cases to go to court, and seeking, simpler, faster and cheaper ways to deliver redress, such as an Ombudsman.
- Secondly, whilst we would not support a cap for all the reasons that we set out in response to question 11., it may be helpful for the consumer to have more information on what fees are being charged. MHCLG could collate or commission someone else to collate a regular survey of fees charged.

Question 14

Do you think a permitted insurance fee – however calculated – should be subject to additional criteria to ensure it is proportionate and fair, or that the “reasonableness test” set out in the Landlord and Tenant Act 1985 would be sufficient? [Yes / No]

- No – We worry about additional layers of complexity and explain more in question 15 below.

Question 15

If additional criteria were included in the definition of permitted fees to ensure fair and proportionate remuneration for activities by freeholders and property managing agents, what criteria do you think would be most effective and how could they be calculated?

That the price of permitted fees for services paid by the leaseholder should provide fair value to leaseholders [Open]

- This seems very subjective. For example, there may be a lot more work involved in placing buildings insurance for a building with significant fire remediation issues, resulting in higher fee. Somebody would have to make a subjective judgement about whether it represents fair value.

That the price of permitted fees for services paid by the leaseholder should have a reasonable relationship to the benefits provided, considering the costs incurred in providing it [Open]

- This may add a layer of complexity that it is challenging for leaseholders and service providers to prove. The Government is not appointing a regulator, with significant knowledge of, and expertise in, a market. These are instances where enforcing any cost/benefit analysis on fees will be done in the First-Tier Tribunal (FTT). Decisions of the

FTT do not create legally binding precedents, so leaseholders will have to make their case on each occasion.

That any conflict of interest with related parties in the insurance supply chain, such as the broker, can be shown to have been considered [Open]

- We would support the declaration of any potential conflicts of interest.

Other (please set out alternate / additional criteria) [Open]

Question 16

If additional criteria referred to above were applied to permitted fees to ensure fair and proportionate remuneration for activities by freeholders and property managing agents, what evidence should be required to prove this? What costs or challenges would there be in gathering and providing that evidence? Which are singular implementation costs and which would be recurring? [Open]

- We think it would be very difficult to provide evidence that was sufficiently conclusive and at a cost that was proportionate to what are often small sums for tasks performed. As we have set out elsewhere, we think a better approach would be to continue to rely on a test of reasonableness, but allow that to be tested via an Ombudsman, rather than the stress and expense of going to the Tribunal. And then to give leaseholders some steer as whether fees are reasonable to publish regular market information on what is being charged.

Question 17

What implementation changes, challenges and/ or costs do you anticipate landlords, freeholders and property managing agents will face in moving from existing remuneration practices for the managing and arranging of insurance – such as commission sharing – to a new permitted fee structure charged directly to leaseholders? [Open]

- Current commission sharing is relatively simple. A fees structure will be more complex, requiring freeholders and managing agents to cost the various tasks they perform and update on a regular basis. For relatively small fees the costs could be disproportionate, and make service provision unviable.
- Lease agreements currently do not allow for billing leaseholders for insurance-related fees. The resources needed to amend millions of leases would be substantial, creating significant challenges for the entire sector.

Question 18

Do you anticipate that a permitted insurance fee to remunerate property managing agents and freeholders will lead to higher or lower insurance costs for leaseholders? [Open]

- It is difficult to say as we don't know what fees will be accepted, at what level, and whether there will be caps or not.
- A fear is that it may lead to a race to the bottom, cost becoming the dominant factor in choice of insurance arrangements, rather than overall value, taking account of cover, as well as cost.
- The consultation paper itself, also pinpoints other factors that will increase costs, fees being subject to VAT, rather than commissions, which would command Insurance Premium Tax at a lower rate.

Question 19

What impact will the removal of the ability to share commission with freeholders and property managing agents have on overall commissions received by brokers? [Open]

- We are not best placed to respond to this question specific to brokers.

Question 20

What impact will the removal of commission sharing have on insurance premiums more widely? [Open]

- Our primary concern is not that premiums will rise across the board, but that high risk buildings, that previously will have been taken as part of a diversified portfolio of risks, could end up under a fees regime being placed individually with an insurer. That may in turn mean significantly greater premiums or excesses, or in the most extreme cases, struggling to obtain insurance.
- It is therefore very important that the Government in designing this new regime gives some consideration to how it would work in a portfolio scenario, where there may be aggregated service provision, that needs to have a 'price' allocated to it.
- Premiums may rise if managing agents or freeholders are not fairly compensated. A decrease in their income could lead to a reduced capacity to provide underwriters with the extensive data needed to assess risks accurately. Without this data, underwriters may take a more cautious approach, resulting in higher premiums.

Question 21

If you are a freeholder or property managing agent, how do you currently structure your services relating to arranging and managing insurance? [Open]

- No response

Question 22

Do you anticipate that the ending of percentage-based commissions for remuneration could lead to alternate ways of securing profits in relation to the arranging and managing of insurance? [Yes/No]

- It is hard to predict and much depends on what model the Government pursues.

If so, what are they? [Open]

- What is important is that whatever method is used is transparent and offers leaseholders good value for money but also ensures service provision is viable. We have explained several concerns throughout our response, that any cap could lead to higher fees or poorer service provision might leave consumers worse off.

Question 23

Do you believe any of the proposals put forward could negatively or positively impact individuals who have a protected characteristic? Please explain your rationale, and evidence your thinking where possible.

- No response

Question 24

Do you anticipate any environmental impacts from this policy, either positive or negative? [Yes / No]

- No response

Question 25

Do you anticipate that this policy would be likely to impact the judicial system? Examples could be an increase or decrease in applications to court or tribunals, increasing the length or complexity of cases, and new requirements on judicial recruitment or training. [Yes / No]

- Yes

[If yes] Please elaborate

- The introduction of a complex fee system will likely be less understood and as we elaborate elsewhere in this response, the proposals are likely to lead to an increase in applications to courts or tribunals, and some additional training needs. We have advocated that given the increase in workload on the First-Tier Tribunal from measures in the Renters' Rights Bill for example, and Building Safety Act, there should be an effort to

try and reduce additional burdens on the Tribunal, rather than increase them. Therefore, our suggestion that Government should prepare for, and then enact, section 100 of The Leasehold and Freehold Reform Act 2024, and its redress measures.

Question 26

Do you anticipate that this policy would disproportionately impact local authorities? [Yes / No]

- No

[If yes] Please elaborate.

Question 27

If you are a leaseholder, where is your property located? [England / Wales / I own properties in both]

- Not applicable

Question 28

If you are a property management agent, freeholder, broker, insurer, or other interested party, where are the properties that you deal with located? [England / Wales / both]

- Mainly England

Question 29

Are you aware of any differences in the operation of buildings insurance for multi-occupancy residential buildings between England and Wales? [Yes / No]

- No

[If yes] Please elaborate [Open]

Question 30

What, in your opinion, would be the likely effects of these proposals on the Welsh language? We are particularly interested in any likely effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English. [Open]

- No response

Do you think that there are opportunities to promote any positive effects? [Open]

Do you think that there are opportunities to mitigate any adverse effects? [Open]

Question 31

In your opinion, could these proposals be formulated or changed so as to have positive effects or more positive effects on using the Welsh language and on not treating the Welsh language less favourably than English? [Yes / No]

- No response

[If yes] Please elaborate [Open]

Question 32

In your opinion, could these proposals be formulated or changed so as to mitigate any negative effects on using the Welsh language and on not treating the Welsh language less favourably than English?

- No response

[If yes] Please elaborate [Open]