

Andrea Coscelli  
Chief Executive of the Competition and Markets Authority  
Competition and Markets Authority  
The Cabot  
25 Cabot Square  
London  
E14 4QZ  
United Kingdom

22 September 2021

Dear Mr Coscelli,

**Re: Unfair practices in the insurance market affecting flat leaseholders**

We are writing to request action from the Competition and Markets Authority (“CMA”) to protect leaseholders suffering unfair practices by third-party freeholders, insurance brokers and managing agents in the placement of their buildings insurance.

The unfair practices include illegitimate mark-ups of premiums (aka ‘bribes’ and ‘hidden commissions’), profit sharing arrangements and “first payee” clauses.

**Crisis point**

Spiralling premiums induced by the regulatory fallout from the Grenfell tower fire of June 2017 and the subsequent discovery of dangerous apartment blocks in the private sector has put leasehold buildings insurance contracts under new scrutiny. According to the Association of Residential Managing Agents (“ARMA”), insurance has risen 400% on average, up from £363 to £1,447 per flat annually for those leaseholders in the post-Grenfell building safety crisis.<sup>1</sup>

Leasehold consumers are already standing at the edge of a precipice. Therefore to allow the unfair practice that subject many leaseholders to hefty hidden mark-ups into their already punishingly high premiums is to rub salt into sore wounds. Urgent action is needed to protect an already vulnerable sector of society.

**What supports and drives unfair practices**

We applaud the CMA’s long-needed and bold stance taken in its publication ‘Leasehold Housing update report’ of 28 February 2020. The structural inequalities in the property market that sustain unfair practices are identified by the CMA in its update report pages 14-29. And it is these same structural defects that enable third-party freeholders, insurance brokers and managing agents to occupy a conflict of interest position when placing buildings insurance for leaseholders and to exploit this position, seldom without any fear of retribution.

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<sup>1</sup> <https://committees.parliament.uk/publications/5515/documents/54941/default/>

A building insurance policy that carries a financial reward offered to the placer of the insurance contract becomes irresistibly seductive, especially when England has a property title regime which permits hidden commissions being baked into the insurance premium and allowing the costs to be passed through the service charges account for the leaseholders to pay.

The CMA is well placed to deepen its investigation and to take action against freeholders, landlords, insurers, brokers and managing agents who engage in concealment of the true premium pricing from leasehold consumers.

### **Regulation of the payer of bribes / hidden commissions**

In October 2018, Bank of England governor Andrew Bailey, then chief executive of the Financial Conduct Authority (“FCA”), warned insurers of the “significant risk of consumer harm if your firm has not implemented an appropriate pricing strategy with effective governance and controls to determine and monitor your pricing activities and evaluate how your pricing decisions affect consumer outcomes”.<sup>2</sup>

Mr Bailey’s letter to institutions to ‘get your house in order’ followed the FCA’s thematic report on household pricing practices which, among other findings, observed that “differential pricing leading to some identifiable groups of consumers paying significantly higher prices than other identifiable groups of consumers with similar risk and cost to serve characteristics”.<sup>3</sup>

However, whilst the FCA is well intentioned, its policy reach and regulations are not potent enough to protect leasehold consumers because leasehold consumers are not the named insured on record.<sup>4</sup>

### **Regulation of the recipient of bribes / hidden commissions**

Secret commissions and other hidden remuneration fees is a well-publicised scandal in the leasehold flats market. In April and July 2019, The Times newspaper reported that leaseholders are “losing millions from bribes” to renew insurance, with secret commissions on buildings insurance for leasehold blocks averaging between 40-60%.<sup>5</sup>

Currently, there exists no readily accessible avenue for a leaseholder to prevent (or even compel disclosure of) bribes and hidden commissions received by third-party freeholders, insurance brokers and managing agents when the latter engages in the placement of the leaseholder’s buildings insurance.

One tower block in the E14 area has shared with us their setbacks when trying to obtain transparency in the pricing of their buildings insurance. They not only have been spurned by the recipient of bribes and hidden commissions but also by a big name insurer and an FCA-regulated broker, all who shield behind a technicality that appears in the FCA ICOBS rules

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<sup>2</sup> <https://www.fca.org.uk/publication/correspondence/dear-ceo-letter-fca-expectations-general-insurance-firms-undertaking-pricing-activities.pdf>

<sup>3</sup> <https://www.fca.org.uk/publications/thematic-reviews/tr18-4-pricing-practices-retail-general-insurance-sector-household-insurance>

<sup>4</sup> For example, While the FCA has recently issued a clarification regarding its approach as an regulatory body to these issues on its website (“Buildings insurance for leasehold properties”, 30 April <https://www.fca.org.uk/firms/buildings-insurance-leasehold-properties>), it passed on the opportunity to extend protection to leaseholders which it could have done by mandating that leasehold consumers are to be named as the joint insured party on all buildings insurance policies.

<sup>5</sup> <https://www.thetimes.co.uk/article/leaseholders-losing-millions-from-bribes-to-renew-insurance-6359jw2k8> <https://www.leaseholdknowledge.com/leaseholders-pay-up-to-60-more-for-buildings-insurance-because-of-secret-commissions-reports-the-times/>

that the leaseholder is not the 'customer' under the FCA rules notwithstanding that none deny that the leaseholder is the ultimate payer.

**Market distortion and anti-competitive practices**

Needless to say, bribes and hidden commissions create a distortion in the buildings insurance market. The motivation of the payer and the recipient of bribes and hidden commissions is precisely to inject a wily bias into market pricing. It is a profit-seeking exercise that yields no reciprocal benefit or value-added to the leasehold consumer.

Flat leaseholders who are experiencing high and inflated premiums would benefit from the CMA intervening in this sector to extinguish all bribes and hidden commissions and to take enforcement action against those companies which have been engaging in market distortion and unfair and anti-competitive practices.

Yours sincerely,

Sarah Olney  
Member of Parliament for Richmond Park



The Rt Hon Lord Newby  
Leader of the Liberal Democrats in the House of Lords

Rabina Khan  
Liberal Democrat Councillor for Shadwell on Tower Hamlets Council

