



HOUSE OF COMMONS

LONDON SW1A 0AA

Dr Andrea Coscelli CBE
Chief Executive, CMA
The Cabot,
25 Cabot Square,
London, E14 4QZ

Your reference: MP000969

Our reference: SO16978

5 April 2022

Dear Dr Andrea Coscelli,

Re: Buildings insurance in residential blocks

Thank you for your considered letter of 18 November 2021.

We have taken note of the CMA's prioritisation principles in writing to you a second time.

Since our last communication there have been other visible developments concerning the notion of 'high premiums' on buildings insurances for the UK residential sector.

On 28 January 2022, Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities wrote to the CMA and the FCA:

"The market lacks transparency and there is not currently useful data to explain the rationale behind the increasing premiums charged by insurers and the conditions associated with the cover. The role and remuneration of brokers, managing agents and freeholders is also unclear ... My overall goal is for there to be a more affordable marketplace for buildings insurance that offers widely available and affordable cover for those who live in flats and other multiple-occupancy buildings."

The Financial Conduct Authority responded immediately with four bullet point action points, albeit each being 'very late on in the day' in this decade-long plight of leaseholders.

On behalf of the CMA, you replied to the Secretary of State's January 28 letter:

"... strengthening our understanding of what is driving high premiums will be key to taking effective action to protect residents."

So we approach you now in full support and in applause with your desire to go beyond a cursory regard of insurance costs being a mere complaint about service charges payable.

A probe of this 'high premium' will unveil a vice that goes deep and wide.

Conceptualisation of ‘high premiums’ in the insurance markets

In a block of residential flats, it is the freeholder (often, with his property managing agent) who is the person whose judgment needs to be influenced and who’s position is prone to being influenced by reason that the costs of insurance does not come from his pocket but his leaseholders. The insurer and their broker are motivated to secure a sale and are in a position to wield influence over the freeholder.

All parties undoubtedly are aware that the ultimate person paying for the cost of insurance is the leaseholder. Yet, the leaseholder is the only party in the chain who is denied access to know the true cost of the insurance policy. Instead, what the leaseholder is asked to pay is a bundled price known as the ‘**premium**’. This amalgam, more often than not, includes a deal sweetener benefitting solely the freeholder and property managing agent, not the leaseholder.

To describe this component as a ‘kick-back’ or ‘deal sweetener’ would be too obvious. Labels like ‘commissions’, ‘distribution costs’, ‘facilitation fee’, ‘placing fee’ are British cultural euphemisms for the B-word.

The Merriam-Webster dictionary defines a bribe as “(1) *money or favour given or promised in order to influence the judgment or conduct of a person in a position of trust or* (2) *something that serves to induce or influence*”.

Indeed ‘bribe’ is an ugly word but one cannot escape fact that the public do know what they are forced to chew on. We do not take the public as simpletons and nor should the Government.

Direct effect on consumers (impact)

Paying and receiving ‘facilitation fees’ acculturates a **rent-seeking mindset** in our society.

“Freeholders, in compensation for leaseholders using their land and property, can charge them a ground rent. Then there are service charges for the maintenance and repair of buildings, landscaped grounds and facilities used by leaseholders, as well as the provision of insurance ... All this can mean a multitude of income streams – covering ground rents, management fees and commissions, as well as capital payments from lease extensions and the sale of spaces – which can make freeholds a strong investment opportunity indeed.” [\[1\]](#)
Freeholders secure above-normal returns from an asset – not by adding value to it through investment but rather through manipulating the environment.

The system is self-sustaining because to be the first insurer to opt-out of paying ‘facilitation fees’ would render that insurer uncompetitive in the market place.

Transactional privity between a freeholder and insurer is the reason that residential leaseholders are locked out of the knowledge equation. **Leaseholders are captive and vulnerable consumers.**

Paragraphs 4.4 and 4.5 of CMA’s prioritisation principles seem to encapsulate this precise scenario. This is a classic case of a principal–agent relationship where information asymmetry has arisen from the agent (freeholder) having better information than the principal (leaseholder), the former acts in a disloyal fashion to his leaseholders, he accepts a facilitation fee for his own benefit without any clearance from his leaseholders. Here lies the betrayal, conflict of interest and the ‘high premiums’.

Another example of a conflict of interest scenario: in cases of damage to common parts of a

block where the risk should be covered by the insurance policy, a freeholder is economically incentivised instead to suppress claims in order to ‘earn’ his bonuses and rebates offered by insurers. In pursuit of this self-interest, he inaccurately informs the leaseholders that the damage falls outside of the policy and that the leaseholders instead must absorb the loss.

If such unethical practices be allowed to continue any longer, then clearly there is a systemic failure in the UK markets to protect consumers.

Indirect effect on consumer welfare (impact)

Weak governance and weak institutions lead to corrupt practices and ineffective competition in the markets. More than before, the UK needs to stand as a sovereign state possessing credible and robust institutions, especially in the financial sector. The governance and ethical practices of insurance companies and property managing agents has already been questionable for over a decade.

Strategic significance and commencing an investigation

We recognised that the CMA has undertaken with the Treasury^[2] that the CMA is to deliver direct financial benefits to consumers of at least **ten times** the CMA’s relevant costs to the taxpayer (measured over a rolling three-year period).

In this regard, we wish to draw your attention to recent UK case law – where bribes (aka secret commissions) have been transacted, the payer of bribes and the recipient can each, separately and independently, be found culpable for procuring a breach of duty owed to the consumer^[3]. Moreover, more for policy reasons than anything else, any tracing of such ‘bribes’ into the hands of the recipient (agent) of the ‘bribes’ and beyond, is **not time barred** when the consumer (principal) seeks the return of what is rightfully his^[4].

No doubt you will pass this onto your colleagues in the Legal Department to verify but it does appear to us that the CMA’s cost-benefit test can be met without much difficulty if a decade-long of ‘facilitation fees’ can be placed in the scales of direct financial benefits to consumers. No time bar to enforcement of legal rights is heavy tonnage making this investigation worthwhile.

Insurers, insurance brokers, freeholders and property managing agents when placing insurance cover for residential buildings or mixed-use buildings are operating in the **consumer market**.

James Dalton, director of general insurance policy of the Association of British Insurers, categorically acknowledged to the Levelling Up, Housing and Communities select committee in Parliament last month, Q144 and 154:

“One of the challenges that we have faced as an industry in that context is around what we can do collectively as an industry in the context of competition law. My hope is that the involvement of the FCA and the CMA will help us work through some of those challenges.”

“One of the significant costs in the price of insurance is commission and if we are going to do anything to reduce the costs that fall on leaseholders, all things need to be on the table. And my submission to you is that commission and distribution should be one of them.”^[5]

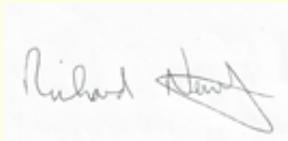
We applaud the CMA for commencing its joint investigation with the Financial Conduct Authority into collusive and predatory rent-seeking practices that eventuate in these ‘high premiums’. We ask that this call for evidence be well publicised to enable a wider stakeholder participation, especially from consumers.

Yours sincerely,

Sarah Olney
Member of Parliament for Richmond Park



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



Rabina Khan
Liberal Democrat Councillor for Shadwell



[1] <https://www.allsop.co.uk/media/the-foundations-remain-solid-for-freehold-ground-rent-investments/>

[2] Paragraphs 1.4 and 4.16 of CMA's Prioritisation Principles

[3] [Wood v Commercial First Business Ltd & Ors \[2021\] EWCA Civ 471](https://www.bailii.org/ew/cases/EWCA/Civ/2021/471.html)
<https://www.bailii.org/ew/cases/EWCA/Civ/2021/471.html>

[4] [FHR European Ventures LLP and others v Cedar Capital Partners LLC \[2014\] UKSC 45](https://www.supremecourt.uk/cases/docs/uksc-2013-0049-judgment.pdf)
<https://www.supremecourt.uk/cases/docs/uksc-2013-0049-judgment.pdf>

[5] <https://committees.parliament.uk/oralevidence/3363/pdf/>