

FCA publishes a Consultation Paper – CP23/8 – Multi-occupancy buildings insurance

The issue of multi-occupancy leasehold buildings insurance is now under a significant FCA and Government spotlight. The FCA is concerned about the amount brokers are earning, and the amounts paid away to freeholders and property managing agents. The Consultation contains proposals to mandate full commission disclosure, to include leaseholders within the reach of some ICOBS rules, and to require insurers and brokers to provide more information to leaseholders.

Firstly, we need to bear in mind that this is a [Consultation](#). It has come in the wake of Government intervention and the FCA's [report on multi-occupancy buildings insurance](#), but the current Secretary of State for Levelling-up, Housing and Communities, Michael Gove, is strongly indicating in letters to the FCA and to BIBA that he wants to see measures that go much further than the FCA's proposals – and this is supported by FCA recommendations to Government. At this stage, therefore, this overview is deliberately high-level; we do not know what any potential legislation will look like or what the outcome of the Consultation will be. There will, though, likely be changes.

The FCA is proposing new rights and protections for leaseholders to improve the transparency of the multi-occupancy leasehold buildings insurance market. **The Consultation gives no clear indication whether it relates purely to residential multi-occupancy leasehold buildings, or to multi-occupancy leasehold buildings in general.**

The FCA is concerned about the amount brokers are earning, the amounts paid away to freeholders and property managing agents and, therefore, whether leaseholders, who are typically the ultimate payers, are getting fair value. Previously leaseholders have had limited or no rights as they were not the policyholder and hence the FCA's rules did not directly protect them, but the FCA is proposing to change this together with greater disclosure to leaseholders, including full commission disclosure.

Under the proposals, leaseholders would be defined, in effect, as 'customers' of buildings insurance. The rule changes would explicitly require insurance firms to act in leaseholders' best interests, and bar firms from recommending a policy based on commission or remuneration levels. Insurers and brokers would also need to provide more information about insurance policies to leaseholders, including detail of any commission paid.

The FCA requested information from 16 firms (13 brokers and 3 managing general agents) about their work on multi-occupancy buildings insurance. They were included in the sample due to the levels of commissions received. The report on the review ([FCA review on broker remuneration](#)) contained some startling headline findings and numbers. As a result, the FCA continues to urge Government (as does BIBA) to introduce legislation to ban commission sharing with property managing agents and freeholders.

What is the FCA seeking?

- The interests of leaseholders (and others in similar positions) are properly considered when firms design their products
- Prices represent fair value to leaseholders as well as freeholders
- Remuneration of all parties involved in insurance distribution has a fair relationship to the benefits provided to leaseholders
- Leaseholders have sufficient information to challenge poor practices and unfair costs passed on to them

The implications of these draft rules are significant. The FCA expects brokers to immediately stop paying commissions to third parties (including property managing agents and freeholders) where they do not have appropriate justification and evidence for doing so in line with its rules on fair value. Additionally, following this review, the FCA will take appropriate action where firms have significant weaknesses in meeting their regulatory obligations, including on fair value, and will engage the senior managers of firms requiring improvement so they are fully meeting their obligations.

What is the FCA planning to do?

Most of the brokers in the sample did not provide adequate evidence to show that they deliver fair value consistently for multi-occupancy buildings products or take into account the interests of leaseholders when assessing whether they are providing value. This is due to a range of factors including deficiencies in their product value assessment work, shortcomings in their recording and analysis of their own costs and insufficient scrutiny of the commissions they pay to others. We should remember, though, that there is currently no regulatory requirement, other than a wider interpretation of fair treatment, to consider the interests of the leaseholders themselves.

The FCA is proposing, therefore:

- to amend its existing rules so that firms are required to ensure products are designed to meet the needs of leaseholders and provide fair value to them;
- to introduce enhanced disclosure requirements which will provide leaseholders with information about the policy, potential conflicts of interests, remuneration of brokers, and the number of alternative quotes obtained; and
- prohibit remuneration practices which conflict with leaseholders' interests.

What should affected firms be doing?

Firms involved in the sale of multi-occupancy buildings insurance should review these publications and take action where necessary. Firms wishing to comment on the Consultation Paper, must do so by 9th June 2023. Suggested actions:

- Ascertain whether you arrange multi-occupancy buildings insurance contracts
- Gather all the MI you can – commission percentages, commission shares, who the commissions are shared with

- Document who you arrange them for and the capacity in which your customer / source of business is dealing:
 - Property Managing Agent (PMA) acting as an agent
 - Sub-broker, Appointed Representative (AR) (including a PMA AR), PMA as an Exempt Professional Firm (EPF) under the Royal Institute of Chartered Surveyors (RICS)
 - PMA acting as a Director / Secretary of a Residents Management Company
 - PMA as the property owner
 - The property owner
 - A Residents' Management Company
- Check your product reviews for these contracts: what the result was, and what it was based on – in light of the FCA comments about fair value.

The FCA intends to publish the final rules in the last quarter of 2023.

Related to this issue:

- The FCA [has provided an update](#) to the Department for Levelling Up, Housing and Communities;
- Michael Gove, Secretary of State, [has replied to the FCA](#) in strong terms;
- BIBA [has published its response](#) to the FCA's findings;
- Michael Gove [has written to BIBA](#) in strong terms.

If you would like any help or information in relation to this update or any FCA-related compliance issues or ICS services, please contact your usual ICS representative or Head Office on 01892 539600 or admin@insurancecompliance.co.uk and we will be happy to discuss further.

The above information is a summary of certain matters which will affect the majority of firms conducting Insurance Distribution and reflects ICS's views at the date of publication. Each firm's requirements are individual, and rules are regularly changing; it is therefore important that you always seek specific advice from ICS before acting on anything contained in this publication.

Hot TopICS 2023-5 (Issued 12/05/2023)

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