



BRIEFING PAPER

Number CBP-01821, 4 March 2016

Long leaseholders: building insurance requirements

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Summary

Responsibility for arranging building insurance for flats/houses owned on a long leasehold basis, along with the charges levied for this insurance, can often give rise to disputes. Leaseholders often resent the requirement to insure with a company nominated by the landlord as they feel it interferes with their ability to obtain the best terms available. A further issue has arisen in relation to the inclusion of cover against terrorism in building insurance arrangements.

Leaseholders do have rights to challenge the standard of cover and charges they believe to be unreasonable. Changes introduced by the *Commonhold and Leasehold Reform Act 2002* gave additional rights to long leaseholders of houses in respect of buildings insurance.

Leasehold building insurance arrangements were the subject of a Westminster Hall debate on 22 October 2014 and the Competition and Markets Authority (CMA) considered building insurance as part of its 2014 [market study](#) into the residential property management services sector in England and Wales. As a result of this work, the CMA encouraged the Financial Conduct Authority and the Government to consider regulation in this area. The Government has not indicated an intention to proceed with regulation.

This note explains long leaseholders' rights in relation to buildings insurance and summarises the Westminster Hall debate and CMA findings.

The [Leasehold Advisory Service](#) publishes a number of helpful advice guides on a range of issues for long leaseholders.

1. Insurance clauses in a lease: background

Where a lease agreement specifies that the freeholder will nominate a company with whom the building insurance will be organised the leaseholder is obliged to comply with this contractual provision (but see section 2 below). Leaseholders often resent the requirement to insure with a company nominated by the landlord as they feel it interferes with their ability to obtain the best terms available.

It is not unusual for a long lease to include a provision giving the freeholder the right to nominate the insurer with whom the building insurance should be organised. Failure to comply with such a provision can amount to a breach of the lease and may form a basis for legal action.

Where leaseholders object to the insurer nominated by the freeholder they may apply to a First-Tier Tribunal (Property Chamber)¹ in order to challenge the choice of insurer on the grounds that:

- the insurance cover available is unsatisfactory; or
- the premiums payable are excessive.

The Tribunal has the power to make an order requiring the freeholder either to nominate another insurer, as specified in the order, or to nominate another insurer who satisfies the requirements specified in the order if either of the above grounds are proven.

The question of the freeholder's right to nominate a particular insurance company was discussed during the passage of the *Housing Act 1996*. This Act gave long leaseholders the right to apply to a Leasehold Valuation Tribunal (LVT)² for a determination where the insurance available from the nominated insurer is felt to be unsatisfactory or where the premiums payable are excessive. Tribunals are currently able to recover a fee of no more than £630 from applicants; it was hoped that they would provide a cheaper and faster means of resolving leaseholder/freeholder disputes.³

If it is not a requirement of the lease that the building insurance be organised with a company nominated by the freeholder the freeholder will not be able to require the leaseholder to comply with such a request.

¹ In England – in Wales the application would be to a Leasehold Valuation Tribunal.

² Now First-Tier Tribunals (Property Chamber) in England.

³ See the Leasehold Advisory Service's leaflet: [Application to First-Tier Tribunal \(Property Chamber\) England](#)

2. Leasehold houses

The [*Commonhold and Leasehold Reform Act 2002*](#) was amended during its passage through Parliament to include provisions aimed at dealing with the problem of long leases (of houses) that require the leaseholder to insure the property with an insurer nominated by the landlord. The Act received Royal Assent on 1 May 2002 but the provisions relating to leasehold insurance were not brought into force immediately.

The Minister explained the purpose of what is now section 164 of the 2002 Act during the Standing Committee debate on the Bill:

Ms Keeble: New clause 17 is intended to deal with the problem of provisions in house leases that require the leaseholder to insure the property with an insurer nominated by the landlord. [...] All Committee members will agree that it is wrong for landlords to exploit a monopoly over the provision of insurance to gain higher commission. At the same time, we recognise that landlords have a legitimate interest in ensuring that leasehold property is insured. The new clause will allow leaseholders the opportunity to shop around for the best deal while providing protection for the landlord's interest.

The new clause provides that any clause in a lease requiring the leaseholder to insure with an insurer nominated or approved by the landlord will be deemed to be satisfied if certain conditions are met. They are that the leaseholder must insure the property with an insurer authorised to carry on business in the UK; that the policy must note the interests of both the landlord and the leaseholder; that it must cover the risks that are required to be covered in the lease and the amount of cover must not be less than that required by the lease; and that the leaseholder must provide the landlord with evidence of cover or renewal within 14 days of the insurance being taken out or renewed. Provision is also made for notification of insurance details to a new landlord if the freehold is sold. [...] As the question has been raised, I would say that part 1 of the 1967 Act is wide and covers anything that would normally be regarded as a house.⁴

Section 164 did not change the position for long leaseholders in blocks of flats who are required to take out building insurance with a company nominated by the freeholder. Nor did it affect arrangements where the lease provides for the freeholder to take out building insurance for the house or block of flats and recover the cost of doing so through a service charge. During consideration of Commons amendments in the Lords the Minister, Lord Falconer, commented on this situation:

It is our understanding that most house leases place the duty to insure on the leaseholders. While there are exceptions, there are usually good reasons for them. For example, where houses on an estate are interdependent structures with communal parts there may be advantages - as the Noble Lord, Lord Goodhart, acknowledged and as in the case of blocks of flats - in having a single policy covering the whole complex. Failure to insure

⁴ SC (D) 24 January 2002 c218-9

properly by one lessee may have knock-on effects for other parts of the estate.

In such cases, we would not want arrangements whereby a landlord or residents' management company insured the whole complex to be disrupted.⁵

Lord Falconer pointed out that an owner of a leasehold house with a lease that requires the freeholder to organise the building insurance could apply for a variation of the lease to transfer this responsibility. He also stressed that leaseholders would still be able to challenge the reasonableness of insurance premiums at an LVT (now First-Tier Tribunal (Property Chamber)).⁶

Implementation of section 164

On 6 May 2003 the Office of the Deputy Prime Minister (ODPM) issued a consultation paper on the prescribed form of tenant's notice of cover.⁷ The 2002 Act places a duty on the leaseholder to serve a 'notice of cover' on the landlord and sets out the conditions which need to be satisfied; the time limits within which a notice of cover must be served on the landlord; and the content of the notice which must be supplied by the leaseholder. The Act also provides a power to prescribe additional information that must be included in the notice of cover. The notice of cover must be in a form prescribed by regulations made by the Secretary of State (in relation to England) and the National Assembly of Wales (in relation to Wales).

The [consultation paper](#) sought views on the additional information to be included in the notice and the form of the notice. The consultation period closed on 8 August 2003. The [Leasehold Houses \(Notice of Insurance Cover\) \(England\) \(Amendment\) Regulations 2004](#) (SI 2004/3097) came into force on 28 February 2005.

The 5th Commencement Order under the 2002 Act was made on 25 November 2004. *The Commonhold and Leasehold Reform Act 2002 (Commencement No.5 and Saving and Transitional Provision) (England) Order 2004*⁸ also brought section 164 of the Act into force on 28 February 2005.

⁵ HL Deb 15 April 2002 c720

⁶ HL Deb 15 April 2002 c721

⁷ [The Prescribed Form of Tenant's Notice of Cover](#)

⁸ SI 2004/3056

3. Terrorism insurance

Long leaseholders have raised particular concerns around the inclusion of cover for damage arising from acts of terrorism in building insurance policies arranged on their behalf.

The issue was raised by Stella Creasy during a Westminster Hall debate on leaseholders' rights (insurance) on 22 October 2014.⁹ She quoted a 40% terrorism surcharge that had been added to leaseholders' insurance charges.¹⁰ During the debate Members also raised concerns about the level of building insurance charges levied and the issue of information about insurance policies being withheld from long leaseholders.

Stella Creasy referred to an Upper Tribunal case from 2014 in which the Tribunal endorsed the inclusion of cover against terrorism. The case related to a development of 13 flats in Swindon. One of the long leaseholders challenged the inclusion of terrorism cover as part of the general insurance package that the freeholder had taken out for the building. The leaseholder was initially successful at the Leasehold Valuation Tribunal; however, this decision was overturned on the landlord's appeal. The landlord argued that he had a "duty to insure in line with the CML [Council of Mortgage Lenders] guidelines [and that] those included "explosions" as a usual risk; [and] that was [...] apt to include explosions caused by terrorism."¹¹ The landlord further contended that they had used reasonable discretion in obtaining the insurance and that "evidence from brokers [said] that Swindon was in the same "risk" category as central London; and [...] the RICS [Royal Institution of Chartered Surveyors] Code strongly suggested that terrorism insurance should be obtained."¹²

The Upper Tribunal agreed on both counts. In particular, the RICS Code was viewed as important, as a code given the force of statutory guidance (under section 87 of the [Leasehold Reform, Housing and Urban Development Act 1993](#)). The proper approach to the Code was therefore the same as in the public law sphere, i.e. that it should be afforded great respect and should only be departed from on well justified grounds.¹³

Responding to the debate, the Minister, Brandon Lewis, stated that leaseholders have a right to access and obtain copies of documents relating to the insurance they contribute towards, and have a right to request a copy of the insurance policy, as provided in sections 20 to 22 of the [Landlord and Tenant Act 1985](#). If a landlord or managing agent refuses access to these documents, they are committing a "summary offence," and are liable for a fine of up to £2,500. The Minister noted that the Competition and Markets Authority was looking at the ability of tenants or leaseholders to be involved in decisions on accessing

⁹ [HC Deb 22 October 2014 c268WH](#)

¹⁰ Ibid.

¹¹ Nearly Legal, [Come friendly bombs...](#), 13 June 2014

¹² Ibid.

¹³ Ibid.

documents and policies relating to service charges generally, including buildings insurance (see section 4).

The Minister pointed out that there is also legislation requiring that service charges, including insurance charges, are reasonably incurred. If leaseholders judge that their charges are not reasonably incurred, they can apply to the Property Chamber of the First-Tier Tribunal to determine whether the costs are reasonable. Members also raised concerns about the cost to leaseholders of applying to a Tribunal.

The Minister referred to the introduction, on 1 October 2014, of a duty on letting and managing agents to belong to one of three redress schemes approved by the Government. There are also two codes of practice relating to protections for service charges that have been approved by the Secretary of State for Communities and Local Government, and published by the Royal Institution of Chartered Surveyors and the Association of Retirement Housing Managers. These codes are under review.

4. Competition and Markets Authority study (2014)

In December 2014, the Competition and Markets Authority (CMA) published the findings and recommendations of its [market study](#) into the residential property management services sector in England and Wales.

The study identified issues including:

- high service charges arranged by property managers or poor standards of service;
- leaseholders suffering unexpected costs and being charged for works they consider unnecessary; and
- difficulties in obtaining redress.¹⁴

The study found that buildings insurance could be very high for leaseholders and that there is little transparency relating to charges or the commission received by the freeholder:

Insurers may pay a commission or fee which can distort incentives in relation to the purchase of buildings insurance. In many cases it is the freeholder who places insurance and receives commission; the property manager may have no involvement, and there is no transparency of commissions to leaseholders. Where property managers place insurance they may receive fees or commissions, although recent FTT decisions have limited these to reflect services performed.

We were told by both leaseholders and property managers that commissions charged could be very high (in some cases, more than 40% of the premium). We found that this could result in high charges to leaseholders. While leaseholders can challenge the reasonableness of such charges, poor transparency and inadequate disclosure provisions under the existing regulatory regime, make this difficult for leaseholders to assess.¹⁵

The CMA did not make specific recommendations on this issue. However, in light of evidence of high charges and commission rates, and a lack of transparency, the CMA encouraged the Financial Conduct Authority and the Government to consider regulation in this area:

This study is into the supply of RPMS [residential property management services] rather than the wider leasehold system and so we have not considered remedies in relation to freeholder-placed insurance, even though the cost may be passed on through the service charge. Nonetheless we do observe that this is an important issue; there is evidence of high commission rates being paid that will be expected to impose high costs on leaseholders. Given the difficulties of finding out whether such arrangements are in place and the difficulty of benchmarking insurance costs, it will be extremely challenging for leaseholders to discover whether the costs they are paying are excessive in relation to what might be achieved. Even then, the recourse open

¹⁴ Gov.uk, [CMA pushes for improvements to residential property management](#), 2 December 2014

¹⁵ Competition and Markets Authority, [Residential property management services: A market study](#), December 2014, page 12

to them is to the FTT [First-tier Tribunal – Property Chamber (Residential Property)] on the different grounds of reasonableness (rather than value for money), which will be difficult to demonstrate without suitable transparency. We note the incentives and opportunity applying given the unusual structure within the leasehold system. We therefore would encourage consideration of the appropriate coverage of regulation in this case by the FCA [Financial Conduct Authority] and by Government more generally.¹⁶

¹⁶ Competition and Markets Authority, [Residential property management services: A market study](#), December 2014, page 100

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