



**Ministry of Housing, Communities
and Local Government: Introducing
permitted insurance fees for
landlords, freeholders and property
managing agents**

A response by
The Chartered Institute of Legal Executives
(CILEX)

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Introduction

- 0.1. CILEX would like to take the opportunity to respond to the MHCLGs consultation in relation to the introduction of permitted insurance fees. CILEX represents a substantial number of property practitioners within the housing sector.
- 0.2. The Chartered Institute of Legal Executives (CILEX) is the professional association and governing body for Chartered Legal Executive lawyers (commonly known as 'CILEX Lawyers'), other legal practitioners and paralegals. Under the Legal Services Act 2007, CILEX acts as the Approved Regulator (AR) and delegates these regulatory powers to the independent regulator, CILEx Regulation Ltd (CRL).
- 0.3. CILEX represents over 17,500 members of which 77% of the membership are female, 16% of members are from an ethnic minority background, 4% are LGBT and 6% have a disability. Additionally, in terms of social mobility, 77% of CILEX members attended a state-run or state-funded school and 41% have an undergraduate university degree (of which 63% of those members were the first to attend university).
- 0.4. CILEX has responded to questions where there is sufficient evidential data, and where there is a direct experience related to conveyancers and property practitioners. CILEX is supportive of the work being undertaken by MHCLG in beginning to recognise the regulation of property agents in the property sector.

1. Question 2: Either from 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?

- 1.1. CILEX does not believe that the current system of remuneration for property managing agents and freeholders provides fair outcomes for both leaseholders and those supplying services.
- 1.2. CILEX notes that the lack of transparency and fees is a clear barrier to achieving fairness for all. CILEX is aware of managing agents, freeholders and landlords who have increased fees, such as administration fees, without adequate justification or breakdown of the service costs. This way, leaseholders or bodies supplying services are unable to identify the relevant profit margin or commission rate, and therefore cannot understand or consent to the level of remuneration that property managing agents and/or freeholders are receiving. Furthermore, CILEX recognises that the value of services is subjective, and often dependent on the circumstances of the leaseholder in question to determine whether the outcomes of the current system of remuneration are fair based on the information available to them.

- 1.3.** CILEX understands that leaseholders have previously expressed their concerns around remuneration practices¹, and understands that in various cases, managing agents and/or freeholders are not providing leaseholders sufficient guidance on what kind of coverage is required for their property. This often leads to inadequate or overly expensive insurance on the premise of a higher commission or remuneration rate. CILEX believes that a transparent model, providing leaseholders with all available insurance options could result in a fairer outcome in comparison to the current remuneration model.
- 1.4.** Overall, CILEX notes that the introduction of Regulation of Property Agents (RoPA) increases the likelihood of all parties reaching a fair outcome. Leaseholders have previously commented on their concerns around the lack of regulatory protection or access to recourse². Introducing RoPA could mitigate some of the concerns of leaseholders, in addition to promoting a fairer outcome overall. CILEX continues to support the work of MHCLG in promoting the role of RoPA in the property sector.

2. 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?

- 2.1.** Yes, CILEX agrees that only specific activities relating to insurance management should be remunerated through permitted insurance fees. CILEX understands that between 2019–2021, absolute levels of remuneration, including commissions, have risen by nearly 40% despite reductions in commission percentages³. Leaseholder groups continue to raise concerns about remuneration and the potential for secret or hidden commissions and profits⁴; therefore, CILEX believes it is reasonable to limit the scope of activities to avoid leaseholder exploitation.
- 2.2.** CILEX understands that there are legitimate and reasonable activities that are provided by freeholders, property managing agents and landlords that extend beyond the remit of insurance management. However, without transparency rules and regulatory protection, CILEX believes that limiting remuneration for specific activities directly related to the management of insurance only can promote an adequate safeguard for leaseholders until RoPA can be enacted.

¹ Financial Conduct Authority, 'Report on insurance for multi-occupancy buildings', September 2022.

² Ibid.

³ Financial Conduct Authority, 'Multi-occupancy buildings insurance – broker remuneration', April 2023.

⁴ Financial Conduct Authority, 'Report on insurance for multi-occupancy buildings', September 2022.

3. 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.

3.1. CILEX is aware that various parties interpret the roles of freeholders, landlords and property managing agents differently, and what they are remunerated for. CILEX hopes that as a result of this consultation, specific guidance and clarification can be made by MHCLG to rectify any sector ambiguity.

3.2. CILEX notes some of the activities identified by property practitioners as below:

- **Arranging and securing appropriate insurance policies for the property.** This role can be further specified as obtaining quotes, selecting insurance providers, choosing policy types, carrying out negotiations in relation to the policy price, and managing policy renewal. CILEX highlights that a large proportion of commissions and remunerations are received through these activities and relationships with brokers.
- **Communicating with leaseholders.** Freeholders, landlords and property managing agents communicate with leaseholders to issue certificates of insurance, and providing notification of insurance details. This is remunerated (most commonly) through the service charge leaseholders are liable for.
- **Processing and handling insurance claims.** Most commonly remunerated via service charge fees, CILEX believes that this is an area of concern from legal professionals. CILEX recognises that there is a fine line between administration of insurance claims and providing legal advice to leaseholders in dispute resolution claims. CILEX hopes that the introduction of RoPA could avoid the potential overlap and protect leaseholders from unregulated legal services.

3.3. CILEX notes that there are many other activities that freeholders and property managing agents conduct in relation to the management and arrangement of insurance that result in remuneration. CILEX welcomes other views and additions following publication of the consultation.

4. 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?

4.1. CILEX surveyed members practicing in property and conveyancing matters in response to this consultation. Members recommended that freeholders, property managing agents and landlords should be permitted to carry out the following non-exhaustive set of activities:

- Arranging and securing appropriate insurance policies for the property building, ensuring that leaseholders are informed about the different

policies available as well as understanding the potential commissions/remuneration received.

- Managing and processing claims on behalf of the leaseholders related to property insurance only. CILEX believes that only administrative tasks should be permitted. This includes completing relevant documentation for the insurer's claim, notifying leaseholders of any updates, and communicating with insurers as appropriate throughout the claims process.
- Negotiating premiums and coverage terms with insurance providers. CILEX recognises that freeholders, property managing agents and landlords have specialist knowledge compared to the prudent leaseholder seeking property insurance. However, CILEX recommends that full transparency be provided to leaseholders when choosing a negotiated insurance policy. This way, leaseholders can reasonably consent.
- Coordinating the renewal of insurance policies and ensuring continued coverage. CILEX believes this activity is permissible on the premise of being in the leaseholder's best interests. CILEX concurs with the points raised in relation to transparency of insurance policies with leaseholders.

5. 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?

- 5.1. The consensus view of CILEX property and conveyancing members was that several activities should not be permitted in relation to remuneration of a leaseholder's service charge. Firstly, CILEX is aware that there remains ambiguity as to what is directly related to the management and arranging of insurance. Members noted that they have experienced unethical practices from freeholders, property managing agents and landlords and therefore CILEX hopes that the introduction of a regulatory framework may clarify this issue for all parties involved.

Most importantly, CILEX members noted that unnecessary and/or excessive administrative tasks should not be permitted and remunerated through a leaseholder's service charge.

6. Question 11: Do you think that 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 activities therein – or that a transparent fee subject to the reasonableness measures in the Landlord and Tenant Act 1985 would be sufficient?

- 6.1. CILEX recognises the benefits of introducing structured calculations, whether this is via specific percentages, maximum charges and/or fixed fees for the arranging and managing of insurance activities therein. Introducing permitted fees in prescribed ways can reduce ambiguity and ensures consistency across different

insurance arrangements. However, CILEX is of the view that fixed calculations do not provide for flexibility in particularly complex cases or insurance agreements. In these cases, CILEX is concerned that overly prescriptive caps and fixed fees may place parties at a significant disadvantage.

- 6.2. CILEX accepts that there are ambiguities within the Landlord and Tenant Act 1985, which may prevent leaseholders from successfully enforcing unreasonable fees. An example being: *where costs are reasonably incurred, where they are incurred on the provision of services or carrying out of works, only if the services or works are of a reasonable standard*⁵. CILEX is concerned that the average leaseholder may not appreciate, nor understand what is reasonable in the circumstances.
- 6.3. Overall, CILEX recommends that a combination of both proposals is the most effective method in introducing permitted insurance fees. CILEX notes that there is an already formulated template in the Landlord and Tenant Act 1985, which could be adapted with more prescribed amendments to provide clearer guidance for legal professionals and leaseholders in determining whether fees were unreasonable.
- 6.4. Furthermore, CILEX notes that a key solution to these issues, and a more easily ascertainable alternative than changing statute, would be through introducing a regulatory framework for property agents. A code of conduct could rectify some of the ambiguities on the sides of leaseholders and freeholders, property managing agents and landlords. CILEX recommends working with industry bodies promoting the role of RoPA, as well as those protecting the rights of leaseholders to create a code of conduct and/or regulatory framework for permitted fees could assist MHCLG in achieving this⁶.

7. Question 12: Are there any exceptional cases or circumstances you would suggest merit different treatment with regards to what is permitted or not permitted?

- 7.1. CILEX appreciates that there are various circumstances and exceptional cases that may require different treatment regarding what is permitted or not permitted. CILEX believes that in adopting the model as set out above, a determination can be made on a case-by-case basis as to whether the activity and/or cost was reasonable and justified.

⁵ Section 19(1)(a-b) Landlord and Tenant Act 1985.

⁶ Examples include Home Buying and Selling Council and The Leasehold Advisory Service.

8. 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 appropriate?

- 8.1. CILEX property and conveyancing practitioners are of the view that the current framework for challenging unreasonable service charges is sufficient with some adjustments. CILEX refers to the points made in response to question 11.
- 8.2. An example of one adjustment is introducing standardised disclosure of financial documents. CILEX hopes that high quality disclosure of financial documents could assist in the successful challenging of unreasonable service charges, alongside use of the current framework found in the Landlord and Tenant Act 1985.

9. 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?

- 9.1. CILEX agrees that additional criteria are required; however, it further notes that the current ‘reasonableness test’ is also a suitable framework with the relevant additions. CILEX recommends a combination of both approaches would be most effective in ensuring any permitted insurance fee is both proportionate and fair to all parties involved.

10. 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?

- 10.1. CILEX believes 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.
- 10.2. However, as identified in the 2023 FCA report on multi-occupancy buildings, there is a clear gap in where freeholders, property managing agents and landlords find difficulty in analysing their own costs and expenses⁷. CILEX hopes that support and relevant guidance can be provided to the relevant parties in ascertaining clear and accurate reports of their costs when assessing remuneration and fair value. CILEX in turn hopes that this can help MHCLG understand and calculate the most effective use of permitted fees for proportionate remuneration.

⁷ Ibid.

11. 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?

- 11.1.** As referred to in response to question 15, CILEX raises concerns that freeholders, property managing agents and landlords are finding difficulty in obtaining accurate projections of their costs and remuneration. CILEX is concerned that where there is insufficient data for those directly and indirectly involved in remuneration and fair value of service charges, there is no way to clearly project any progress in the sector. When comparing this with the additional proposed criteria, without tangible records, there is no clear way to measure the relationship between the leaseholder and the benefits provided by the service charge. CILEX recognises that there is a financial burden associated with such work; however, once there is an established framework available for MHCLG, the continuous costs are marginally less in maintaining data and record standards.
- 11.2.** CILEX recommends that the first reasonable step is to provide clear sector guidance on not only the importance of detailed financial records, but also implement a standard that can be used to ensure consistent reporting across the sector. Not only will this support internal work of MHCLG, but CILEX property and conveyancing members recognised that additional guidance or a standard template would be helpful for freeholders and property managing agents to ensure compliance with the permitted fee insurance rules. CILEX hopes that MHCLG can work with the relevant sector stakeholders in creating guidance that is fair to all involved.

12. Conclusion

- 12.1.** CILEX welcomes the proposals of MHCLG in introducing permitted insurance fees for landlords, freeholders and property managing agents. CILEX believes that introducing permitted fees will increase transparency and fairness across the property sector. CILEX hopes that the role of RoPA will be acknowledged in providing clarity to those directly and indirectly related to leaseholder service charges and insurance disputes.