FINANCIAL CONDUCT AUTHORITY

Policy Statement

PS23/14

Multi-occupancy building insurance

Feedback to CP23/8** and final rules

September 2023

This relates to

Consultation Paper 23/8
which is available on our website at
www.fca.org.uk/publications

Email:
cp23-08@fca.org.uk

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Chapter 1

Summary

1.1 Our reports in September 2022 and April 2023 found significant issues in the multi-occupancy building insurance market, which are leading to poor outcomes for leaseholders. We published a consultation paper setting out our proposed remedies to address issues with transparency, product design and remuneration practices.

1.2 In this paper, we summarise the feedback we received on our proposals and our response.

Who this affects

1.3 This policy statement is likely to affect and be of interest to:

- regulated insurers and intermediaries
- industry groups and trade bodies
- unregulated firms involved with multi-occupancy buildings, such as property managing agents)
- freeholder owners who are landlords of multi-occupancy buildings
- leaseholder representative groups and individual leaseholders

Our consultation

1.4 In April 2023, we published a consultation and proposed a number of rule changes. These changes were intended to address the harms identified in the multi-occupancy building insurance market:

- Leaseholders are bound to pay insurance charges. They have no influence over policy selection or price and are not 'customers' of the insurer or broker. Where leaseholders are not customers, there is no express requirement to consider their interests.
- The lack of transparency makes it harder for leaseholders to challenge whether costs have been reasonably incurred and allows firms to hide poor practices.
- Some remuneration practices within the market seem excessive and do not deliver fair value. Distribution of insurance often involves multiple parties taking remuneration that is included in the premium being paid. Our work identified commissions of up to 62% being paid to brokers in some cases. Most firms could not explain why current remuneration practices were justified. Of particular concern was the practice of commission being shared onwards with freeholders and their property managing agents (PMAs).
- These issues have caused considerable distress for many leaseholders, including affecting their mental health and wellbeing.

1.5 In our consultation we proposed:

- introducing new disclosure requirements aimed at providing key information to leaseholders
- including leaseholders, and others in a similar position, as 'customers' within the scope of some of our rules.

How it links to our objectives

1.6 Our proposals are intended to enhance consumer protections and competition.

Consumer Protection

1.7 At present, this market is not working well for leaseholder consumers (and others in a similar position), and this is leading to poor outcomes. Our proposed rules are designed to address this. Firms will need to act honestly, fairly and professionally in the best interests of leaseholders and others in a similar position. Firms will need to ensure their communications are clear, and that their remuneration practices do not conflict with leaseholders' interests. Firms will also need to expressly demonstrate their products provide fair value to leaseholders and others in similar positions.

Competition

1.8 Although primarily focused on consumer protection, we expect our disclosure rules will make it easier for leaseholders to understand and challenge insurance costs passed on to them. This should result in greater competitive pressure by encouraging firms to market better value products with competitive premiums and remuneration.

Secondary International competitiveness and growth.

1.9 We consider our new rules are compatible with advancing the FCA's secondary international competitiveness and growth objective. By requiring firms to ensure their products are consistent with the needs of leaseholders and other policy stakeholders, and are priced and remunerated for, in a way that provides fair value, we hope to promote fairer and more effective competition in the UK insurance market. Further, our new rules on disclosure and engagement will increase transparency and empower leaseholders and other policy stakeholders to identify and continue to challenge poor practices, also increasing trust in this market. In advancing fairer competition and trust in the interests of securing better outcomes for consumers, and potentially positively influencing pricing, innovation and product variety, we are promoting sustainable economic growth in the UK economy.

Outcomes we are seeking

1.10 We want to ensure better outcomes for leaseholders in the multi-occupancy building insurance market, and other policy stakeholders in a similar position to leaseholders. Our rules will do this by:

- Increasing transparency for leaseholders. This will make it easier for them to identify and challenge poor practices and incentivising firms to deliver better outcomes.
- Requiring firms to ensure their products are consistent with the needs and interests of leaseholders and other policy stakeholders, are priced in a way that provides fair value and that remuneration practices do not lead to poor outcomes.

Measuring success

1.11 As part of our ongoing supervision of firms we will monitor intelligence, feedback, and complaints to us about how the rules are being implemented, including from consumers.

Summary of feedback and our response

1.12 We received 101 responses to the consultation. These came from a wide range of interested parties, with most respondents being individual leaseholders affected by price increases. We are pleased that we received such strong engagement.

1.13 Overall, respondents broadly supported the proposals. The most significant disagreement was with our proposed 3-month implementation period. We discuss this in Chapter 2. We received a significant number of questions and requests for clarification, mostly from insurance industry respondents. We reply to the points raised to each consultation question in the following chapters.

Disclosure

1.14 Most respondents supported the idea of specific disclosures aimed at leaseholders. The information to be disclosed was generally supported (including remuneration disclosure), although some thought we should include additional information. Some respondents asked whether the rules should apply to commercial leaseholders as well as residential.

Product governance, customer's best interests and remuneration

1.15 Most respondents agreed with our proposal to include leaseholders as 'customers' within these rules. A small number had concerns about how conflicting freeholder and leaseholder interests should be managed.

1.16 No respondents disagreed with the principle of extending the rules to cover 'policy stakeholders', but some challenged whether the proposals were too broad; particularly in including stakeholders who are commercial entities.

What we are changing from the consultation

1.17 Although we are making the rules and guidance broadly as they were in the consultation paper, we have made some amendments to them. These amendments are:

- We are clarifying the 'leaseholder' definition to set out more clearly that it covers residential leaseholders. This means that the disclosure rules only apply to multi-occupancy building insurance policies for residential leaseholders. Firms will not need to provide disclosures intended for commercial leaseholders.
- We are also including an additional part to the definition of 'policy stakeholder' so that it only captures natural persons who are acting outside of their trade or profession. This is to clarify that commercial entities (including commercial leaseholders) will not be considered policy stakeholders.
- We are introducing guidance to make clear that the required remuneration disclosure for leaseholders must include all forms of remuneration or financial incentive, including contingent remuneration (payment that depends on a policy being taken out) and other remuneration earned post-contract.
- We are making provision in the disclosure rules to allow firms to estimate the premium breakdown at building or dwelling level if they are unable to identify an exact figure.

1.18 As well as the above, we have also given further explanations and clarifications throughout this policy statement.

Next steps

1.19 The rules will come into force on 31 December 2023.

Chapter 2

The wider context

2.1 In this chapter we discuss broader issues raised by the consultation and address feedback to our proposed 3-month implementation period.

Our role and the work of others

2.2 Alongside our work, The Department for Levelling-up, Housing and Communities (DLUHC) is considering ways in which leaseholders can be better protected from problems in the multi-occupancy building insurance sector. They have announced their intention to ban building insurance commissions and other payments from being passed on to the leaseholder through their service charge, replacing these with transparent handling fees. DLUHC has also announced their intention to improve service charge transparency to make it harder for landlords to hide unreasonable and unfair costs, and remove barriers so leaseholders can challenge their landlord if their service charge is unreasonable by ensuring they are not subject to unjustified legal costs and where appropriate, having the ability to claim their own legal costs from the landlord.

2.3 The rules we are introducing are important to protect leaseholders. However, as we made clear in our consultation, the multi-occupancy building insurance market involves a large number of parties who are not required to be FCA authorised. For example, freeholder property owners arranging insurance for their buildings do not require FCA authorisation, and many PMAs are regulated by their Designated Professional Body. This means they are outside the scope of our rules. Any changes to the requirements on those organisations would be likely to require legislation. We are continuing to work closely with DLUHC and others on these issues.

Implementation period

2.4 In CP23/8 we proposed that the rules come into force 3 months after they are made.

Q1: ***Do you have any comments on our proposed 3-month implementation period?***

2.5 Most respondents agreed with our proposed 3-month implementation period. Most of those who did not support the proposals were industry respondents. They told us that the implementation period should be substantially longer.

2.6 Most leasehold respondents agreed that 3 months was an appropriate period to implement changes. However, a considerable number felt that this was too long. They said that rules needed to be introduced as soon as possible to stop the significant ongoing harm to leaseholders. Several also noted that there are high levels of awareness of this issue and so firms should be prepared to comply with new rules.

2.7 Some industry respondents said 3 months was insufficient given the various changes they expected they would need to make to their processes. Examples cited were:

- designing and testing new disclosure documents suitable for leaseholders where existing documents are unsuitable
- system and IT changes that have long lead times
- staff training

2.8 These respondents noted that other regulatory reforms, particularly the Consumer Duty, mean that there is limited resource to implement these changes.

2.9 Some respondents said that with renewal processes for multi-occupancy building insurance beginning up to 90 days in advance, it would be challenging to comply with the rules within 3 months. Respondents also requested clarification on whether the rules would come into force as each policy renews across a 12-month period, rather than on a fixed date.

2.10 Several industry respondents also told us the implementation period was too short to fully consider the implications of extending Product Intervention and Product Governance Sourcebook (PROD) rules to cover policy stakeholders. They argued this would require considerable work to identify all policies that would fall within the widened scope.

Our response

The rules will come into force on 31 December 2023. We consider it important for the rules to be in force for the beginning of 2024, when many multi-occupancy insurance contracts will be renewed.

While we recognise the issues raised by industry respondents, we are also aware of the ongoing harm to leaseholders from problems in this sector. We remain of the view that the changes we are proposing build on existing requirements. As such, we consider that 3 months is sufficient time for firms to make any required changes to their systems and processes.

The disclosure rules build on existing requirements within the Insurance: Conduct of Business sourcebook (ICOBS) and we have included the flexibility for firms to utilise existing disclosure documents where these meet the new requirements. Even where the information is not currently required to be proactively disclosed under existing rules, we expect this information to already be readily available for disclosure where requested by customers.

We recognise that the changes we are making will increase the number of products subject to the PROD rules and other rules. However, firms have been required to have processes in place to comply with PROD 4 and the customer's best interests rule (ICOBS 2.5.-1R) since 2018. The requirements to ensure products give fair value to customers in the target market were introduced in 2021. Multi-occupancy building insurance products have been subject to the rules since then.

In January 2022, we wrote to the CEOs of insurers and intermediaries to remind them of their obligations not just to consider the freeholders as their customer, but also the freeholder's duties owed to their leaseholders. The explicit obligations we are introducing now build further on our expectations under these existing obligations rather than creating entirely new obligations. We consider most firms will already be well placed to comply with these obligations.

We have also made changes which we think will ensure firms have greater clarity about what they will need to do to implement the changes. Firstly, we are clarifying that the terms 'leaseholder' and 'policy stakeholder' are not intended to cover commercial entities, which will reduce the number of products brought into scope by this change. Secondly, we have amended the leaseholder disclosure requirements in relation to the premium breakdown to allow firms to estimate this at building or dwelling level where the insurance is written on a portfolio basis. We give further details of this in Chapter 3.

The new obligations will only apply to contracts which are concluded once the rules have come into force. That means where a firm concludes a contract from 31 December 2023 onwards, they will need to provide the disclosure documents as soon as practicable after the conclusion of the contract. Product manufacturers and distributors will need to ensure the products and distribution strategies are approved by 31 December 2023 in order to continue marketing/distributing these products. That includes reviewing their remuneration structures to ensure they are consistent with the best interests of all customers.

Other issues raised by respondents

2.11 Respondents raised several other issues about our work which were not directly in response to questions we asked in the Consultation. We address these here.

2.12 Many leaseholder respondents, while welcoming our interventions, argued they did not go far enough. They pointed to their inability to choose the insurer or insurance product and said that disclosure of information would not change that. Some called for greater disclosure and involvement of leaseholders in the purchasing decision. Some also called for caps on commission levels, or for commission to be banned entirely. They suggested that without further interventions, prices were unlikely to come down to an acceptable level.

2.13 Some leaseholder respondents also doubted whether firms would comply properly with our proposed rules.

2.14 Some industry respondents said that the interventions would be unlikely to reduce prices because the biggest contributor to them was increased risk. A small number argued that remuneration would not reduce because current levels were a fair reflection of the work being done to place insurance.

2.15 A small number of respondents asked how the rules would apply in Scotland, which has differing property ownership structures.

2.16 A small number of respondents queried whether our changes would create additional rights of action under Section 138D of the Financial Services and Markets Act 2000 (FSMA).

Our response

We recognise that leaseholders are not usually involved in the purchase decision. That is a consequence of them not usually being the contractual customer, and also of leases typically making the freeholder responsible for purchasing the insurance. These are not things we are able to change. The aim of our interventions is to enable leaseholders to better identify and challenge service charges relating to insurance where there have been poor practices.

While we noted in paragraph 2.3 that many parties involved are not required to be FCA authorised and are therefore outside the scope of our rules, those who are authorised by us must comply with our rules. Where we find firms are not doing so, we will take action accordingly.

Our work identified that cost increases are largely driven by increased premiums for properties with flammable cladding or other materially increased risks. Issues with building quality are outside of our remit. However, our work also found other poor practices which inflate prices. In particular, we found excessive remuneration levels which firms were unable to justify. We have been clear that we expect these levels to reduce.

The rule changes we are making to the definition of 'customer' will be relevant to insurance being sold in all parts of the UK. We recognise that leasehold is less common in Scotland, and that our definition of 'leaseholders' will not apply. However, where there are similar arrangements, they are likely to be classed as policy stakeholders and so would benefit from our new requirements. Most multi-occupancy building residents in Scotland will already be classed as 'customers' due to the ownership structure of the building. As such, the harms we identified are less likely to occur, and the new rules will have correspondingly less impact on firms.

We considered proposing further restrictions on remuneration and set out our rationale for not doing so in paragraph 5.9 of the consultation. For example, unauthorised parties such as freeholders and PMAs may carry out important work as part of arranging insurance and, in their absence, brokers may have to do more work and retain more commission for this. Also, we cannot prevent unauthorised parties from taking remuneration from leaseholders in other ways such as increased service charges. As noted in paragraph 2.2 above DLUHC intend to ban building insurance commissions and other payments from being passed on to the leaseholder through their service charge, replacing these with

transparent handling fees. None of the responses we received have changed our view on this.

Under Section 138D FSMA, where a private person suffers loss because of a firm breaching our rules, they will generally be able to bring a legal claim against the firm based on that breach (unless we have specified that such a right has been removed). Our changes follow the existing approach in relevant sourcebooks on whether section 138D FSMA rights are available.

Equality and diversity considerations

2.17 We have considered the equality and diversity issues that may arise from the rules and guidance in this policy statement. Overall, we do not consider that they materially impact any of the groups with protected characteristics under the Equality Act 2010 (in Northern Ireland, the Equality Act is not enacted but other anti-discrimination legislation applies).

Environmental, social & governance considerations

2.18 In developing this policy statement, we have considered the environmental, social and governance implications of our proposals and our duty under ss. 1B(5) and 3B(c) of FSMA to have regard to contributing towards the Secretary of State achieving compliance with the net-zero emissions target under section 1 of the Climate Change Act 2008 and environmental targets under s. 5 of the Environment Act 2021. Overall, we do not consider that the rules are relevant to contributing to those targets.

Chapter 3

Disclosure

3.1 Our consultation proposed new disclosure rules for multi-occupancy building insurance. These rules are designed to improve transparency for leaseholders and make it easier for them to challenge poor practices.

3.2 In this chapter we set out the feedback received and our response.

New disclosure for multi-occupancy building insurance

Content of the disclosure

3.3 In the consultation, we proposed that firms be required to disclose key information about the product and about their services. This disclosure would include:

- A summary of the features of the policy, including main benefits, coverage and exclusions of the policy, duration and insured sum.
- The policy premium. Where the policy covers a portfolio of buildings, firms must disclose the premium at building or dwelling level.
- The remuneration which any authorised intermediaries received for arranging the insurance, as well as remuneration they pay to other parties including unregulated PMAs and freeholders.
- Information about potential conflicts of interests, such as ownership links between the intermediary and the insurer, and about the insurers with whom the intermediary may place the policy.
- The number of alternative quotes they have obtained (with further details of these to be provided on request) and a brief explanation of why they have proposed or recommended that the policy is in the interests of both the freeholder and leaseholders.

3.4 Responsibility for producing the information would be split between the insurer and intermediary. The insurer would be responsible for providing the policy summary and pricing information. The intermediary would be responsible for producing remuneration, conflicts or interests and placing and history information. The firm who is in contact with the customer would be responsible for providing the information to them.

3.5 As leaseholders are typically not the contractual 'customer' of the insurer or intermediary, we proposed that the information should be provided by the insurer or intermediary contractual customer with a clear instruction that it should be passed on to leaseholders.

Queries from leaseholders

3.6 We proposed that firms should be required to deal promptly with queries they receive from leaseholders, and to provide good, outcomes focussed support to them. In

particular, we proposed that firms should provide the information within the disclosure rules directly if they are notified that the freeholder or PMA has failed to pass it on to the leaseholder in question.

3.7 We asked:

Q2: ***Do you agree with our proposal to introduce new disclosure requirements for multi-occupancy building insurance policies? If not, please explain why.***

Q3: ***Do you agree with the proposed content of the disclosure? If not, please explain why.***

3.8 The majority of respondents supported our proposals. Most other respondents gave neutral responses, with only a small minority disagreeing with our proposals. Leaseholder respondents were particularly supportive of the proposals, although some doubted whether the information would be passed on by freeholders and PMAs.

3.9 A mixture of industry and leaseholder respondents asked what would be classed as 'remuneration' within the rules, with some respondents saying that the rules must apply broadly to any remuneration which may be received. Some respondents had concerns that too much information could create an issue of information overload; particularly about remuneration. They emphasised the need for the information to be clear and accessible.

3.10 Some leaseholder respondents, although supporting the idea of information disclosure, argued the proposals did not go far enough. Respondents suggested additional information should be included, such as:

- claims information, and how this affects the premium
- reinsurance arrangements
- full details of all alternative quotes

3.11 A number of leaseholder respondents also argued the disclosure should include full details of the use of captive insurance arrangements, in particular, where policies are either underwritten or reinsured by firms linked to the freeholder or PMA.

3.12 Some respondents said that it may be difficult for insurers to provide the premium at building-level where buildings are insured as part of a portfolio. They said that this apportionment may currently be done by the freeholder or PMA.

3.13 A number of industry respondents had concerns that the requirement to provide information directly to leaseholders could lead to increased costs. They emphasised that freeholders or PMAs were better placed to be the primary point of contact for leaseholders. These respondents were also concerned that requiring firms to provide information on paper to potentially large numbers of leaseholders could increase costs.

3.14 A small number of respondents asked how the rules would apply to insurance contracts covering properties overseas.

Our response

We welcome the support for our new disclosure requirements, and we are making the rules broadly as they were in the consultation. However, we are making 2 minor changes:

- For properties insured on a portfolio basis, it is important for leaseholders to see the premium at building (or dwelling) level. This is more likely to be meaningful than the premium for an entire portfolio. It is also beneficial to allow leaseholders to see if their freeholder is apportioning the premium fairly between leaseholders. However, we accept that firms may not be able to provide the precise figure. To avoid creating significant additional work and cost to firms, the rules will allow the building (or dwelling) level breakdown of the premium to be estimated where necessary and the figure being provided is reasonable.
- We consider it important that firms disclose any remuneration they or others may receive in relation to the multi occupancy building insurance contract in question. This includes remuneration such as contingent commissions or profit-shares which may only be earned or paid after the contract is concluded. We are including additional guidance to clarify what is required to be disclosed (estimated if necessary).

Our proposed rules were intended to give leaseholders access to the right information to enable them to understand the arrangements and challenge insurance costs which have been incurred through poor practices, without creating significant additional costs that could be passed on to leaseholders. We have already considered some of the additional information suggested by respondents. We set out our reasons for not including it in paragraph 3.24 of the consultation paper.

We are not including further information about captive arrangements. We understand that most captives are based overseas and are outside our regulatory scope. As such, we cannot ensure consistent provision of information about these arrangements, nor could we ensure this information is disclosed in a way that is accessible for leaseholders.

We recognise the risk that the information may not be passed on by freeholders or PMAs. As noted in paragraph 2.3, many of these organisations will not be FCA regulated firms and not subject to our rules. This limits our ability to require them to pass the disclosures on to leaseholders.

We are introducing a requirement for firms to provide the information directly to leaseholders on request. However, this is not intended to be the primary way in which the information will be passed to the leaseholder. We have clearly stated in the rules that the person making the arrangements to take out the insurance (usually the PMA or the freeholder) should be told to pass this information on to leaseholders. While we know dealing with direct queries from leaseholders may take some time for insurers or intermediaries, we understand such direct contacts are rare. It is not our intention to materially increase the number

of contacts firms receive from leaseholders. The feedback we received to our report indicated that leaseholders generally wanted information to be provided electronically and the rules contain flexibility about the format in which the information can be provided to leaseholders. As such, we do not expect our rules to increase the amount of information given on paper.

We note that there may be some contracts underwritten by UK firms covering properties overseas. We understand such business would usually be arranged through an overseas intermediary who is in contact with the customer. The application of the rules we are proposing follows the general application rules in ICOBS 1. Where the customer and the insured properties are outside the UK, it is unlikely the disclosure rules will apply. We do not consider the current rules will create any additional challenges.

Format and timing of the disclosure

3.15 The new disclosure requirements are intended to be consistent with our existing ICOBS 4 and ICOBS 6 disclosure rules. We proposed to allow firms discretion over whether to provide the information through existing documents or to create new documents.

3.16 We proposed that the information must be disclosed as soon as reasonably practicable after the conclusion of the contract.

Q4: ***Do you agree with the proposed format and timing of the disclosures? If not, please explain why.***

3.17 The majority of respondents agreed with our proposals, although a significant minority disagreed.

3.18 Some leaseholder respondents who disagreed with the proposals said that the rules were ambiguous. They felt we should specify a timescale within which the information should be disclosed. Others argued that disclosure should be made before the conclusion of the contract. A small number asked for disclosure requirements to be made retrospective so leaseholders can identify historic poor practices.

3.19 A few respondents suggested we should create a standardised template so information was disclosed in a consistent way.

3.20 Industry respondents supported our approach of requiring disclosure as soon as reasonably practicable after the conclusion of the contract. However, some doubted that existing documents could be used to meet the rules in all cases. Some also had concerns that the rules could drive leaseholders to contact insurers or intermediaries directly, and this would increase costs.

Our response

We will make the rules on format and timing of the disclosures as they were in the consultation.

Although we understand leaseholders want to have information as early as possible, we do not think providing information before conclusion would produce any benefits compared to providing it after. Leaseholders are generally only able to challenge insurance costs once they are charged to them by the freeholder. Providing information earlier could increase costs which would be likely to be passed on to leaseholders. We understand that the current market position means more complex insurance contracts are often only concluded shortly before they come into force. Adding work into that process before a contract is concluded would increase the risk of the building going uninsured.

We do not think that either a prescribed format or timescale for disclosure would better meet the intended aims. Unlike in some other parts of the insurance industry, these are not standardised, homogeneous products. We consider it important that the rules give firms flexibility to provide the right information about potentially complex insurance arrangements without incurring additional costs which will be passed on to customers.

The rules give firms flexibility to use either existing documents or newly created ones. We remind firms to be mindful of other obligations and expectations under our rules, including ensuring the information is accessible and easy to understand for leaseholders.

Scope of the rules

3.21 We proposed that the rules would apply to multi-occupancy building insurance contracts. We defined this by reference to the Landlord & Tenant Act 1985.

3.22 ICOBS disclosure rules do not typically apply in relation to commercial customers covered by a contract of large risks. For multi-occupancy building insurance, it is possible that some arrangements would be in this position because the freeholder meets the criteria defining a contract of large risks, even though individual leaseholders do not. We proposed that the disclosure rules should apply to all multi-occupancy building insurance contracts.

Q5: ***Do you agree with the inclusion of contracts of large risks in our proposals? If not, please explain why.***

3.23 This question received very few responses from leaseholder respondents. Industry respondents mostly gave neutral responses, with very few opposed to the proposals. Most respondents who commented agreed that the rules should apply consistently to

all multi-occupancy building insurance policies, but some said that the increased scope could increase costs.

3.24 As well as commenting on the inclusion of contracts of large risks, a small number of industry respondents had concerns about our proposal to define multi-occupancy building insurance contracts by reference to the Landlord & Tenant Act. Some pointed out that this definition would capture all residential leasehold properties, not just those in higher-rise buildings more impacted by fire safety issues.

3.25 Some respondents asked whether our definition would mean disclosure would need to be provided for the benefit of commercial leaseholders as well as residential. They said including commercial leaseholders could lead to higher costs as different documents may be required.

Our response

We will make the rules as they were in the consultation. We welcome that respondents recognised the need for disclosure requirements to apply broadly. From a leaseholder's perspective, it makes little difference if their landlord's policy is considered a contract of large risks or not.

We do not consider it would be appropriate to differentiate between leaseholders in higher-rise buildings and others. While it is correct to say our reports have focused on buildings above 11m, the insurance products are not different. The issues we identified around lack of competitive pressure and consideration of leaseholder interests are the same.

We confirm the rules apply only in relation to residential leaseholders. We have clarified this position in the definition of 'leaseholders' and in guidance at the start of ICOBS 6A.7.

Chapter 4

Product governance and other changes

4.1 Our consultation set out our proposed amendments to PROD, ICOBS and to the Senior Management Arrangements, Systems and Controls (SYSC) rules.

4.2 This chapter summarises the feedback we received and our responses, including where we have altered our draft rules.

Changes to PROD

4.3 We proposed changing our PROD rules to include leaseholders as customers for the purposes of PROD 4. This would require insurers and intermediaries to:

- Consider leaseholders as a relevant part of the target market when designing, pricing and distributing their products.
- Demonstrate that products provide fair value to leaseholders as well as any other customers. This means there must be a fair relationship between the total price and the overall benefits leaseholders receive.

4.4 In CP23/8 we said we expected these rules to have an impact on current remuneration practices. Intermediaries who receive percentage-based commissions that have increased in absolute amounts as risk premiums have risen would likely need to reduce the percentage they receive. Earnings that increase purely because of premium increases would be unlikely to reflect additional benefits provided to leaseholders, so would not meet our fair value requirements.

4.5 We also said that firms would need to consider the amount of remuneration they share with other parties in the distribution chain, such as freeholders and PMAs. Our rules would not allow such payments unless firms can demonstrate they provide fair value to leaseholders.

Q6: ***Do you agree with our proposed changes to how the PROD rules apply for the protection of leaseholders? If not, please explain why.***

4.6 Most respondents agreed with our proposed changes to apply the PROD rules to leaseholders, although some industry respondents gave neutral responses that highlighted some concerns.

4.7 Most leasehold respondents agreed with the application of PROD rules, but a small number said this will not be sufficient given what they viewed as the industry's history of poor practice. Some reiterated the view that there should be a ban on firms sharing commission with freeholders or PMAs.

4.8 Half of industry respondents agreed with our proposals. Most others had a neutral view, agreeing with the rules in principle but concerned about the practical difficulties of complying with the rules. A small number disagreed with our changes.

4.9 Respondents told us that situations where freeholder and leaseholder interests are not aligned would make justifying fair value more challenging. A small number of respondents were concerned that this could lead to leaseholders taking action against firms.

4.10 Respondents also told us they needed further clarity on whether the PROD rules apply only for the protection of residential leaseholders or if they also apply for commercial leaseholders. They argued that including commercial leaseholders would significantly widen the scope of the rules to areas where our work had not identified any harms. They also pointed out that the interests of commercial and residential leaseholders may be significantly different, and this would make complying with the rules challenging.

4.11 Some industry respondents argued that percentage commission rates would not necessarily fall because of these rules, challenging our view set out in paragraph 4.11 of the consultation. They said we need to recognise that higher premiums and remuneration will be justified in some cases, and that commission rates are not unreasonable given the operating costs and inflationary pressures firms face. Additionally, 1 respondent said that based on our rules, the percentage commission rate would increase if the premium fell.

4.12 A small number of respondents asked how the rules would apply to cross-border business, where policies may cover properties in the UK and overseas.

Our response

We welcome the broad support for extending PROD to expressly include consideration of leaseholders and we are making the rules largely as set out in the consultation. As set out above we are making a change to clarify that the leaseholder definition only covers residential leaseholders and does not include commercial leaseholders.

We have considered respondents' concerns around the challenges of including commercial leaseholders within the rules. We agree that the harms we identified primarily affect residential leaseholders. Our approach targets these specific harms, where residential leaseholders' interests have not been properly considered in firms' product design and distribution processes to date.

Our changes to the PROD rules will require firms to consider the interests of the freeholder and leaseholders equally. There will be considerable alignment between the interests of the freeholder and leaseholders. Both parties have a stake in the property so have an interest in it being properly insured. Neither takes priority over the other. This does not mean that every aspect of the policy will benefit both the freeholder and leaseholders. Only the freeholder will benefit from certain elements

of the cover such as loss of rent. Similarly, only leaseholders will directly benefit from cover such as alternative accommodation.

However, we recognise that there will be times where there may be differences in the interests of freeholders and leaseholders and firms will need to ensure these are appropriately addressed. For example:

- a policy that has very high excesses may nonetheless be in the interests of freeholders but not leaseholders, as these excesses could make the costs of claiming prohibitive
- distribution arrangements where freeholders or PMAs benefit from remuneration paid to them. Such payments will need to be consistent with leaseholders' interests.

To be compliant, firms would need to ensure their products are consistent with the interests of and provide fair value to leaseholders as well as the freeholder. This includes considering their existing remuneration practices. Where products do not deliver on these obligations, firms must make changes to their products and/or distribution strategies. For example, firms will need to reduce or stop making payments to freeholders and PMAs where these do not provide the leaseholder with fair value.

We consider that our PROD rules will lead to lower commissions being charged. Our reports found high levels of commission taken, with intermediaries often failing to justify how this offered value to leaseholders. There is a particular risk with commission based on percentage rates, where a rise in premiums leads to an automatic increase in total commission. We expect firms to ensure commission based on percentage rates is consistent with providing fair value to leaseholders. Intermediaries should not earn more in absolute amounts unless there is a corresponding increase in benefits provided to leaseholders.

We have considered how the rules would apply where there is overseas distribution, or the policy covers an overseas policyholder or property. Our PROD rules already give firms flexibility where a product is exclusively for non-UK customers and risks. The ICOBS rules also do not apply to an insurer where the customer or risk is overseas, and there is a non-UK intermediary dealing with them. We consider that the changes we have made will further restrict the application of the rules to policies covering overseas property.

Policy Stakeholders

4.13 In addition to the specific rules relating to leaseholders in multi-occupancy buildings, we also proposed to apply some of the rules to other similar situations where a person both has:

- a contractual or statutory obligation to pay for a part or all of the insurance premium
- where the obligation arises in relation to the person having an interest and/or benefit in the subject matter of the insurance We referred to these people as policy stakeholders.

4.14 PROD 4 excludes contracts of large risk. We also proposed amending the scope of this exclusion so that all policyholders and retail policy stakeholders are considered in firms product governance arrangements.

Q7: ***Do you agree with our proposed extension of the PROD rules to cover all policyholders and policy stakeholders? If not, please explain why.***

4.15 Most respondents agreed with our proposals. However, there was a significant difference between the types of respondents, with most leaseholders supporting the proposals while the majority of industry respondents either opposed the proposals or gave a neutral view.

4.16 The issues industry respondents raised were primarily about how the rules would apply to commercial risks, with fewer opposing the proposals where they would benefit stakeholders acting as consumers. Respondents generally agreed with the principle that those who pay for and benefit from a policy should be brought into the scope of the PROD rules.

4.17 Those who opposed our proposals mainly did so on the basis that they were too broad and would extend the rules to include consideration of too many people. In particular, a small number of respondents questioned whether the proposed definition of a policy stakeholder was intended to capture commercial entities as well as individuals. They pointed out that a single policy may cover both types of stakeholder (for example, a policy covering a building which includes a large hotel, offices, and private residences), and that many of our rules would not normally apply to these commercial entities because they would be classed as large risks.

4.18 Some respondents also pointed out that the interests of policyholders and policy stakeholders may not align. They argued this was particularly likely where some policyholders and stakeholders are akin to consumers, but others are larger commercial entities. They also raised issues such as excess levels, where some policyholders and stakeholders may be better able to pay higher excesses than others.

4.19 Some respondents argued the proposals would be challenging for firms to implement because they cannot easily identify when a product will have policy stakeholders. Others argued that the proposals would increase firms' compliance costs.

4.20 A small number of respondents suggested that the proposals were not sufficiently clear. They also felt that including them in a consultation paper which was primarily focused on issues in the multi-occupancy building insurance sector would mean some interested parties would not be fully aware of them. They also suggested the harms we identified

apply solely to individuals such as residential leaseholders, and so it was unnecessary to extend protections to others.

4.21 Respondents questioned whether the PROD rules would apply in specific examples, including:

- short-hold tenants
- employer salary sacrifice schemes, such as travel insurance or income protection
- sports club memberships which include liability insurance as a benefit
- situations where an individual either has an obligation to pay for the insurance or has a direct benefit from it

Our response

We welcome the support the proposals received, including industry respondents' agreement with the principle of protecting policy stakeholders who are acting as consumers (ie the insurance is not connected to their trade or profession). None of the responses we received have led us to change our view that those who both directly pay for the insurance and have an interest in the thing insured should be considered as part of the product design process. Indeed, the responses were broadly supportive of this proposition.

We note the feedback that our proposals to widen the scope of the rules beyond just leaseholders were not clear from the title of the consultation. However, we consider that these changes were clearly communicated as the consultation included a detailed explanation of the proposals and an explicit question was included seeking views from respondents. The fact that we received such a large number of responses indicates that interested parties were able to engage with the proposed changes as part of the consultation process.

However, we recognise that there was uncertainty based on the rules as drafted in the consultation as there was potential for commercial entities to be classed as policy stakeholders. Having considered the feedback, we have clarified the scope of 'policy stakeholder' as we do not consider the inclusion of commercial entitles would be the appropriate outcome.

- We recognise that commercial entities and private individuals are likely to have different insurance requirements. In most parts of the insurance sector there are significant differences between products designed for consumers and those for commercial customers.
- We agree that the harms we are seeking to reduce (such as the lack of involvement and control over the product) are more likely to arise with consumer-type stakeholders than commercial entities, who will generally be better able to protect themselves.
- We have also considered that the PROD rules currently apply to products which do not include large risks. Extending the rules to cover commercial policy stakeholders of such products would lead to inconsistencies in the regulatory requirements.

The changes we have made make clear that policy stakeholders only include natural persons acting outside of their trade or profession regarding the insurance. The effect of this is that the changes to the PROD rules will be focused explicitly on those in a similar position to residential leaseholders who are paying for and have an interest in the subject matter of an insurance policy. In our view, this will appropriately address the harms we have identified. We expect firms to be able to identify where products are solely commercial and those which have a 'consumer' element.

We have set out our view below on the specific examples respondents raised with us.

- We do not expect that sub-tenants or those with assured short-hold tenancies will be either leaseholders or policy stakeholders. This is because tenants in these cases do not typically have a specific contractual obligation to pay an amount relating to the insurance premium for buildings cover. Instead, we understand they would pay a general rent, where some of which may indirectly be used by their landlord to fund the insurance. In that way, their situation is like the shop customer example we gave in paragraph 4.17 of CP23/8. Their obligation to make any payment is not sufficiently closely related to the insurance premium to be covered by the definition.
- Those paying for travel insurance or income protection through salary sacrifice schemes may already be classed as customers within our rules (eg if they are group policyholders). However, if they are not, we expect they would meet the definition of being policy stakeholders. This is because they are paying an amount for the insurance and clearly have an interest in the subject matter of the policy.
- We do not think it is likely members of sports clubs benefiting from liability insurance would be policy stakeholders. Their situation is more akin to those on short-hold tenancies who do not pay a specific amount for the insurance.
- As we stated above, the rules are intended to capture only those who meet all the criteria for being a policy stakeholder. Merely either paying an amount relating to the premium or having an interest in the subject matter of the insurance would be insufficient. A person will need to meet both criteria and would also need to be acting outside of their trade or profession in order to be a policy stakeholder.

Changes to ICOBS

4.22 We proposed applying the ICOBS customer's best interests rule for the benefit of policy stakeholders. This requires firms to act honestly, fairly and professionally in accordance with the best interests of leaseholders.

Q8: ***Do you agree with our proposed changes to the ICOBS customer's best interests rule, and related rules? If not, please explain why.***

4.23 The majority of respondents agreed with our proposed changes. Other respondents disagreed, with a small minority remaining neutral to our proposals.

4.24 Some leasehold respondents said that the proposed changes to ICOBS do not go far enough and that leaseholders or any legally constituted Tenant's Association should be considered as customers for the purposes of ICOBS. Respondents said this was necessary to give leaseholders control over claims management and provide Right of Action for damages.

4.25 A number of respondents said there is potential for conflicts between the interests of different buildings or leaseholders covered by a policy, and between freeholders and leaseholders. This lack of alignment between customers may make it difficult for firms to act in the customers' best interests.

Our response

We will make the rules as set out in the consultation subject to the clarifications we have explained above.

In Chapter 5 of CP23/8, we set out our view that there would be substantial practical challenges to making leaseholders 'customers' for the purposes of all ICOBS rules. The responses have not changed our views on this. We consider that our disclosure requirements, extension of the PROD rules and changes to the customer's best interests rule are the most appropriate interventions to address the harms leaseholders face.

We accept that the interests of all freeholders and all individual leaseholders may not fully align, although we consider that all have a clear interest in ensuring their properties have the right insurance cover at a fair price. Firms are already required to act in the best interests of customers and to manage conflicts of interests between different customers. We do not consider our new rules will lead to any more substantial challenges.

Changes to SYSC

4.26 We proposed the change to include leaseholders and other policy stakeholders as customers should also apply in relation to SYSC 19F.2. This rule requires firms to ensure their remuneration practices do not conflict with their duty to comply with the ICOBS customers' best interests rule.

4.27 We also proposed new guidance for insurance distributors when assessing their compliance with SYSC 19F.2.2R. This is that firms:

- must consider all the remuneration they receive, whether or not they intend to retain the whole amount or make payments to another person such as the PMA or freeholder
- must ensure any remuneration they pay to another person is consistent with the best interests of customers (including policy stakeholders).

Q9: ***Do you agree with our proposed changes to the SYSC remuneration rules? If not, please explain why.***

4.28 The vast majority of respondents were in favour of our proposed changes to SYSC. Most other responses were neutral.

4.29 A small number of respondents noted that there may be instances where the freeholder and leaseholders' interests do not align, which would need to be considered carefully to comply with SYSC 19F.2.2R.

Our response

We welcome the broad support for our changes to the SYSC remuneration rules. We will make the rules and guidance as proposed in the consultation.

The guidance makes clear that where remuneration arrangements are not in the interests of all customers of the policy, including both the freeholder and leaseholders, this would not be compliant with our rules. Where firms identify their remuneration practices – whether in relation to amounts they receive or incentives they provide to others – are not consistent with the interests of all customers including leaseholders, they will need to make appropriate changes.

Chapter 5

Cost benefit analysis

5.1 As required by FSMA, we published a cost benefit analysis (CBA) estimating the impacts of our proposal in CP23/8. We provided monetary values for the impacts where we believed it is reasonably practicable to do so. For others, we provided an analysis of outcomes in other dimensions. We invited respondents to provide feedback on our CBA.

Q10: Do you have any comments on our cost benefit analysis?

5.2 The majority of respondents made no comments about our CBA. The very small number of leaseholder respondents who commented were broadly supportive. Some pointed out the costs were minimal compared to the insurance charges they are paying. However, some pointed to the need for leaseholders to challenge unfair practices for some of the benefits to be realised, and suggested this was unlikely to happen. Some also expressed doubt over firms complying with the rules, and freeholders following the instruction to pass on disclosure documents.

5.3 A small number of leaseholders said the CBA failed to address issues around a lack of competition in the market, with only a small number of insurers offering quotes, and some firms favouring use of captives.

5.4 Of the industry respondents who commented, most suggested that the CBA either underestimated costs or overestimated benefits (or both). The points made by respondents were:

- Prices were unlikely to be significantly affected by the proposals, because the main reason for price increases are increased risk and workload in placing policies. As such, the benefits are likely to be lower than anticipated.
- The costs of implementing the proposals are likely to be higher than our CBA suggested. This is mainly due to IT systems changes, staffing adjustments, training, and work required to test and deliver clear communications to leaseholders and policy stakeholders.
- Applying the proposed rule changes to all multi-occupancy buildings, rather than just to those over 11m, would increase the costs.
- We underestimated the costs of dealing with leaseholder queries. Concerns were expressed that our proposals will lead to an increase in direct contacts from leaseholders; something insurers and brokers are not currently set up to handle.
- Disclosing the number of alternative quotes obtained would increase pressure on firms to 're-broker' policies each year. The costs of this were not included in the CBA.
- Firms would be less able to rely on existing disclosure documents than we anticipated. In particular, some respondents said the IPID was not used in most cases. Instead, they will need to create new documents that are appropriate for leaseholders, and this will increase costs.
- The costs of extending the PROD rules to cover all policyholders and policy stakeholders are likely to be higher than estimated.

5.5 Many industry respondents said that increased costs would need to be paid and would be likely passed on to leaseholders and other policyholders. A small number also raised concerns about firms exiting the market.

Our response

We welcome that the majority of respondents either supported our CBA or did not comment on it.

We recognise there were a number of areas where the costs and benefits were unquantified. We set out the reasons for this in the CBA, but they were areas where it is not reasonably possible for us to quantify the costs or benefits due the impact of things like behavioural factors which we cannot assess. However, we did set out the ways in which these are likely to produce costs or benefits, and we think the relatively small number of comments received on these assessments suggests our analysis was broadly correct. We address the comments made on specific points in the section below.

We agree that the proposals will not affect prices which are driven by risk. However, we do not accept they will not lead to reductions where prices are driven by things such as unjustified remuneration practices. It is these practices our proposals are intended to tackle.

We consider that the costs set out in the CBA are an accurate reflection of the costs firms are likely to incur. Although some respondents suggested they would be higher than our estimates, only a very small number of respondents provided alternative figures. These were slightly higher than our estimates but would not lead to a significant difference in the breakeven analysis set out in paragraphs 75 to 78 of the CBA. We also noted that those estimates appeared to included costs which we had been unable to quantify. On that basis, we do not consider our overall assessment of costs or benefits to be inaccurate.

We do not agree that the CBA was limited to buildings over 11m, although we accept the breakeven analysis was based on these buildings. There is nothing in the responses to indicate the overall assessment would be significantly different. While costs may be slightly higher, benefits would also be higher. Overall, we consider the breakeven analysis would remain broadly the same. If anything, we consider the breakeven analysis would be more favourable because firms would benefit from economies of scale meaning they incur only incremental costs, whereas every leaseholder would benefit in roughly the same way.

We accept that some of the costs identified could be higher than we anticipated based on how leaseholders react to the changes we are implementing. For example, there could be an increased number of contacts directly to insurers and brokers. There could also be an increased number of challenges leading to more frequent re-broking. We cannot quantify these costs because they entirely depend on factors

such as freeholders passing on information to leaseholders, and the nature and frequency of leaseholders challenging firms.

In paragraph 46 of the CBA, we said we expected firms would be able to rely on existing disclosure documents to meet many of the proposed rules. We do not agree with respondents who said this was incorrect, especially as we are clarifying that the rules only apply to residential leaseholders.

Annex 1

List of non-confidential respondents

Dawid Karbowniczek

Fiona Stuart

Gary Nock

George Green

Joe Douglas

Joe Swinburn

John Killick

Jonathan Sheldrake

Margaret Jones

Marie Leith

Matthew Burchell

Neal Dolden

Nicola Hawkins

Peter Goodman

Residents' Association of Canary Riverside

Rhona Ericsson

Richard Burgess

Richard Evans

Richard Gardner

Robert Charles Speirs

Stephen Wornell

The Leasehold Advisory Service

The Royal Institution of Chartered Surveyors (RICS)

Tom Benn

Tony Thekkekkara

Annex 2

Abbreviations used in this paper

Abbreviation	Description
CBA	Cost benefit analysis
DLUHC	The Department for Levelling-up, Housing and Communities
FCA	The Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
ICOBS	Insurance: Conduct of Business sourcebook
IPID	Insurance Product Information Document
PMA	Property managing agent
PROD	Product Intervention and Product Governance sourcebook
SYSC	Senior Management Arrangements, Systems and Controls sourcebook

Appendix 1

Made rules (legal instrument)

MULTI-OCCUPANCY BUILDING INSURANCE DISCLOSURE AND OTHER NON-INVESTMENT INSURANCE CONTRACTS RELATED AMENDMENTS INSTRUMENT 2023

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of:

(1) the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(a) section 137A (The FCA's general rules);
(b) section 137T (General supplementary powers);
(c) section 138D (Actions for damages); and
(d) section 139A (Power of the FCA to give guidance); and

(2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 31 December 2023.

Amendments to the Handbook

D. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Insurance: Conduct of Business sourcebook (ICOBS)	Annex C
Product Intervention and Product Governance sourcebook (PROD)	Annex D

Notes

E. In the Annexes to this instrument, the notes (indicated by "**Note:**") are intended for the convenience of the reader but do not form part of the legislative text.

Citation

F. This instrument may be cited as the Multi-Occupancy Building Insurance Disclosure and other Non-Investment Insurance Contracts Related Amendments Instrument 2023.

By order of the Board
28 September 2023

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

freeholder (in *ICOBS*, *SYSC* 19F.2, *PROD* 1.4 and *PROD* 4) in relation to a *multi-occupancy building insurance contract*, a landlord within the meaning of paragraph 1 of Schedule 1 to the Landlord and Tenant Act 1985.

leaseholder (in *ICOBS*, *SYSC* 19F.2, *PROD* 1.4 and *PROD* 4) in relation to a *multi-occupancy building insurance contract*:

(1) a *policy stakeholder* or a *policyholder* (who is a natural *person* acting for purposes that are outside their trade or profession), who is:

(a) a tenant within the meaning of section 30 of the Landlord and Tenant Act 1985; and

(b) liable to pay a service charge as defined in section 18 of the Landlord and Tenant Act 1985; and

(2) (where relevant) a recognised tenants' association within the meaning of section 29 of the Landlord and Tenant Act 1985.

multi-occupancy building insurance contract a *policy* within the meaning of paragraph 1 of Schedule 1 to the Landlord and Tenant Act 1985.

policy stakeholder a natural *person* (excluding a *policyholder*) who is under a contractual or statutory obligation, which does not arise solely from that *person's* trade or profession, to pay an amount:

(1) relating to:

(a) the *premium*; and

(b) any other costs connected to the distribution,

of a *non-investment insurance contract*; and

(2) where the obligation arises in relation to the person having an interest and/or benefit in the subject matter of the insurance.

Amend the following definition as shown.

customer …

(B) in the *FCA Handbook*:

…

(3) (in relation to ~~*SYSC* 19F.2,~~ *ICOBS*, *retail premium finance*, *DISP* 1.1.10-BR, and for *PROD* 1.4 and *PROD* 4 in relation to a *life policy* only) a *person* who is a *policyholder*, or a prospective *policyholder*, excluding a *policyholder* or prospective *policyholder* who does not make the arrangements preparatory to the conclusion of the *contract of insurance*.

(3A) (in relation to *ICOBS* 2 (General matters) and in respect of that chapter also *ICOBS* 1 (Application), *SYSC* 19F.2 and for *PROD* 1.4 and *PROD* 4 in relation to a *non-investment insurance product*) a *person* who is:

(a) a *policyholder*, or a prospective *policyholder*~~.~~; and

(b) (in relation to *ICOBS* 2.5.-1R, and for *PROD* 1.4 and *PROD* 4 in relation to a *non-investment insurance product*) in addition to (a), a *policy stakeholder*.

…

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

19F Remuneration and performance management

…

19F.2 IDD remuneration incentives

…

Remuneration and the customer's best interests

19F.2.2 R …

(2) In particular, an *insurance distributor* must not make any arrangements by way of *remuneration*, sales target or otherwise that could provide an incentive to itself or its *employees* to recommend a particular *contract of insurance* to a *customer* in contact with the *firm* when the *insurance distributor* could offer a different insurance contract which would better meet the *customer's* needs.

[**Note:** article 17(3) of the *IDD*]

(3) In relation to a *non-investment insurance contract*, an *insurance distributor* must not make any arrangements by way of remuneration or incentive to any *person*, including itself, its *employees* or any third party, that could lead:

(a) the *firm* or its *employees* to arrange a particular *contract of insurance*; or

(b) the *customer* to take out a particular insurance contract,

where that would not be consistent with the interests of all *customers* of the *policy*, including prospective or actual *policyholders* or *policy stakeholders* including *leaseholders* (as the case may be).

19F.2.2A G (1) When assessing whether it complies with *SYSC* 19F.2.2R, an *insurance distributor* should consider all of the *remuneration* it receives in connection with a *non-investment insurance contract*, whether or not it intends to retain that *remuneration* or make payments out of that amount to another *person*. A *firm* should consider whether the gross amount of any sum it receives by way of *remuneration*, whether in the form of *commission* or of any other

type, is consistent with *ICOBS* 2.5.-1R, rather than the net amount that the *firm* intends to retain.

(2) Where a *firm* has arrangements to provide incentives, including partial *premium* refunds or commission-like payments, to third parties (including the *customer* taking out the *policy*), this may encourage those *persons* to use the services of the *firm*. Where that is the case, those arrangements would be expected to lead to the *firm* receiving a financial or non-financial benefit or other incentive in respect of the *insurance distribution activities* to which it relates and so would be *remuneration* to which *SYSC* 19F.2.2R(1) applies.

…

Annex C

Amendments to Insurance: Conduct of Business sourcebook (ICOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Application

…

1 Annex 1 Application (see ICOBS 1.1.2R)

Part 1: Who?				
Modifications to the general application rule according to type of firm				
…				
7	Gibraltar-based firms and TP firms			
7.1	R	…		
		(2)	The provisions specified for the purposes of (1) are:	
			…	
			(c)	*ICOBS* 5.1.3CR(1A), *ICOBS* 6.2.6R, ~~and~~ *ICOBS* 6.2.7G, *ICOBS* 6.5.1R(3)(d) and *ICOBS* 6A.6 (Cancellation of automatic renewal); ~~and~~
			(d)	*ICOBS* 6B (Home and motor insurance pricing)~~.~~; and
			(e)	*ICOBS* 6A.7 (Disclosure requirements for multi-occupancy buildings insurance).

Part 2: What?			
Modifications to the general application rule according to type of firm			
…			
2	Contracts of large risks		
2.1	R	Subject to Part 3 of this Annex:	
		…	

		(2)	only *ICOBS* 2 (General matters) ~~and~~, *ICOBS* 6A.3 (Cross-selling) and *ICOBS* 6A.7 (Disclosure requirements for multi-occupancy buildings insurance) apply to a *firm* distributing a *contract of large risks* for a *commercial customer* where the risk is located within the *United Kingdom*; and
		…	
…			

…

2 General matters

…

2.5 Acting honestly, fairly and professionally, exclusion of liability, conditions and warranties

…

Other requirements

2.5.4 G …

2.5.5 G *Firms* are reminded that for *non-investment insurance contracts*, their obligations under the *customer's best interests rule* (and in *SYSC* 19F.2 and *PROD* 4) will include consideration of the interests of any *policy stakeholder* of which the *firm* should be aware (which, in relation to a *multi-occupancy building insurance contract*, will include any *leaseholder*).

Customer's best interests rule and third-party incentives

2.5.6 G (1) A *firm* that offers incentives to third parties in connection with a *non-investment insurance contract* should consider whether doing so conflicts with its obligations under the *customer's best interests rule*, including whether this is consistent with the interests of *policyholders* and any *policy stakeholder* in relation to a *multi-occupancy building insurance contract*.

(2) A 'third party incentive' is a benefit offered to any third party, with a view to that *firm*, or that *person*, adopting a particular course of action (for a *customer*, this includes taking out a particular *contract of insurance*), or which could be perceived as having that effect. This can include, but is not limited to, cash, cash equivalents, *commission*, goods, hospitality or training programmes.

Insert the following new section, ICOBS 6A.7, after ICOBS 6A.6 (Cancellation of automatic renewal). The text is not underlined.

6A.7 Disclosure requirements for multi-occupancy buildings insurance

Application

6A.7.1 R This section applies in relation to a *multi-occupancy building insurance contract*.

Purpose

6A.7.2 G (1) The purpose of this section is to:

(a) improve transparency in the *multi-occupancy building insurance contract* market; and

(b) enable *leaseholders* to receive clear and accessible information about the building insurance arrangements in connection with the building in which they are tenants to allow them to better understand:

(i) the scope of insurance cover in relation to that building; and

(ii) how any tenancy charges relating to the *multi-occupancy building insurance contract* have been incurred.

(2) The *rules* in *ICOBS* 6A.7 require *firms* to produce disclosures to be provided to *leaseholders*. In the *FCA Handbook*, the term *leaseholders* will include any natural *persons* who are *policy stakeholders* or *policyholders*, who are acting outside of their trade or profession and who are liable to pay service charges in relation to tenancies for dwellings (in line with the Landlord and Tenant Act 1985) and, where relevant, a recognised tenants' association.

What information must be disclosed

6A.7.3 R (1) As soon as reasonably practicable after the conclusion of a *multi-occupancy building insurance contract*, and upon any subsequent *renewal*, a *firm* must:

(a) give the *customer* the information specified in (2); and

(b) tell the *customer* to pass a copy of this information on promptly and in full to any *leaseholder* of the building in relation to which the *multi-occupancy building insurance contract* provides cover.

(2) The information in (1) must include:

(a) a summary of the cover (in accordance with *ICOBS* 6A.7.5R);

(b) pricing information (in accordance with *ICOBS* 6A.7.6R);

(c) remuneration information (in accordance with *ICOBS* 6A.7.8R);

(d) (for an *insurance intermediary*) placing and shopping around information (in accordance with *ICOBS* 6A.7.11R); and

(e) (for an *insurance intermediary*) conflicts of interest information (in accordance with *ICOBS* 6A.7.14R).

(3) Where the *firm* is in contact with, or has contact details for, a *leaseholder*:

(a) it may meet the requirements in (1) by instead providing the information directly to the *leaseholder*; and

(b) where it has been made aware that the *leaseholder* has not received any information in (2) from the *customer*, it must provide the *leaseholder* with that information.

6A.7.4 G The table in *ICOBS* 6A.7.21R sets out the responsibilities of *insurers* and *insurance intermediaries* in relation to which *firm* will be responsible for producing the information required by this section and which *firm* will be responsible for giving this information to the *customer*, or *leaseholder*, in order to meet *ICOBS* 6A.7.3R(1).

Summary of the cover

6A.7.5 R The summary of the cover under *ICOBS* 6A.7.3R(2)(a) must include, where applicable, the following information:

(1) name of the *insurance undertaking* and its regulatory status;

(2) type of insurance;

(3) main risks insured;

(4) summary of excluded risks;

(5) the insured sum, together with:

(a) in the case of a flat, the amount for which the building containing it is insured under the *policy* and, if specified in the *policy*, the amount for which the flat is insured under it; and

(b) in the case of a dwelling other than a flat, the amount for which the dwelling is insured under the *policy*;

(6) excesses;

(7) term or duration of the *policy* including the start and end dates of the contract;

(8) exclusions where claims cannot be made; and

(9) significant features and benefits.

Pricing information

6A.7.6 R The pricing information required by *ICOBS* 6A.7.3R(2)(b) must set out the total *premium* for the *policy* and include:

(1) the amount of insurance premium tax;

(2) the amount of value added tax; and

(3) a breakdown of the *premium* at:

(a) (in the case of a flat) building level and (if specified in the *policy*) the flat; and

(b) (in the case of a dwelling that is not a flat) at dwelling level.

6A.7.7 R (1) For the purposes of *ICOBS* 6A.7.6R(3), where a *firm* is unable to identify the specific amount of *premium* at building or dwelling level, the *firm* may provide an estimate of the breakdown of the *premium* for that building or dwelling.

(2) A *firm* relying on (1) must take reasonable care when producing the estimate to ensure the *leaseholder* can rely upon the amount to understand the building or dwelling level *premium*.

Remuneration information

6A.7.8 R The remuneration information required by *ICOBS* 6A.7.3R(2)(c) must include:

(1) the total *commission* that the *firm* and any *associate* receives; and

(2) any remuneration or other financial incentive offered or given by the *firm* to any third party, including the *freeholder* or anyone acting on their behalf, in particular where the *firm* knows, or should be reasonably aware, that the sum will be included in the amount a *leaseholder* would be liable to pay,

in connection with the *multi-occupancy building insurance contract*.

6A.7.9 R The disclosure in *ICOBS* 6A.7.8R must be in cash terms (estimated, if necessary).

6A.7.10 G The disclosure under *ICOBS* 6A.7.8R should include all forms of remuneration or financial incentive, that would or could be received by the

firm, its *associates* or any third party, in connection with a *multi-occupancy building insurance contract*, whether before or after the conclusion of that *policy*. This would include arrangements for sharing profits or where the remuneration is contingent on future events such as payments that rely on certain targets being met.

Placement and shopping around information

6A.7.11 R The information required by *ICOBS* 6A.7.3R(2)(d) must include:

(1) the number of alternative *policy* quotes the *firm* obtained from:

(a) the *insurance undertaking* with which the *multi-occupancy building insurance contract* was taken out; and

(b) any other *insurance undertaking(s)*; and

(2) an explanation of why the particular *multi-occupancy building insurance contract* taken out was consistent with the interests of both the *customer* and the *leaseholder*.

6A.7.12 R In relation to the information in *ICOBS* 6A.7.11R(1), a *firm* must, on request from a *customer* or a *leaseholder*, provide further details about the quotes it obtained.

6A.7.13 G The explanation in *ICOBS* 6A.7.11R(2) may be adapted according to whether the *firm* provided a *personal recommendation* in relation to the *policy* or not. It would be expected that where a *personal recommendation* has been provided, the explanation will set out why the particular *policy* was presented as suitable for the *customer*, taking into account its level of cover and cost, and relevant exclusions, excesses, limitations and conditions. Whether or not the *policy* was taken out following the provision of advice to the *customer*, the explanation should provide sufficient detail to enable the *customer* and *leaseholder* to understand why the particular *policy* was proposed.

Conflicts of interest information

6A.7.14 R The information required in *ICOBS* 6A.7.3R(2)(e) must include:

(1) whether the *firm* has a direct or indirect holding representing 10% or more of the voting rights or capital in a given *insurance undertaking*;

(2) whether a given *insurance undertaking* or its *parent undertaking* has a direct or indirect holding representing 10% or more of the voting rights or capital in the *firm*; and

(3) whether the *firm* is representing the *customer* or is acting for and on behalf of the *insurer*.

Providing required information under ICOBS 6A.7

6A.7.15 R (1) The information required by *ICOBS* 6A.7.3R may be provided:

(a) in a standalone document; or

(b) in a combination of documents including documents provided to the *customer* for the purposes of other *ICOBS rules*.

(2) A *firm* must ensure that the information required by *ICOBS* 6A.7.3R, in particular when presented in a combination of documents, is:

(a) clear, fair and not misleading;

(b) accessible and easy to understand for *leaseholders*; and

(c) sufficiently prominent and clearly identifiable as containing key information that the *leaseholder* should read (individually and when the documents are taken together).

6A.7.16 G (1) When determining the format in which the *firm* will provide the information for the purposes of *ICOBS* 6A.7.15R, a *firm* should consider what a *leaseholder* needs in order to understand the relevance of any information provided by the *firm*.

(2) In order to provide the information required in *ICOBS* 6A.7.3R, a *firm* may rely, at least in part, on the content in existing documents that are provided to the *customer* to meet disclosure requirements elsewhere in *ICOBS*, for example the *IPID* or *policy summary*, which include that information.

Means of communication

6A.7.17 R (1) The information in *ICOBS* 6A.7 must be given on paper or another *durable medium* in accordance with *ICOBS* 4.1A (Means of communication to customers).

(2) A *firm* must use reasonable endeavours to ensure any election of the medium in which the information is to be provided is appropriate for the *leaseholders* receiving the information.

Receiving and responding to queries from customers and leaseholders

6A.7.18 R Where a *firm* is contacted by a *customer* or *leaseholder* in relation to the information required to be provided by any of the *rules* in *ICOBS* 6A.7, it must:

(1) respond promptly; and

(2) provide good outcomes-focused support that is appropriate given the nature of the query, including by providing:

(a) an appropriate level of information to meet their needs;

(b) information that is:

(i) clear, fair and not misleading; and

(ii) accessible and easy to understand; and

(c) the information required under *ICOBS* 6A.7.3R where this has not been passed on to a *leaseholder*.

6A.7.19 G (1) When considering the good outcomes in *ICOBS* 6A.7.18R(2) in relation to a query from a *leaseholder*, a *firm* should consider the purpose of the *policy* and the interests of the *leaseholders*.

(2) Where the *firm* receiving the query considers that another *firm* is better placed to provide a response (for example, due to that other *firm* having been responsible for producing the information to which the query relates), it should take all reasonable steps to refer the query to that other *firm* and reasonably support the *leaseholder* in obtaining a response.

(3) Where a *firm* receives a query from a *leaseholder*, it should not create or rely on unreasonable barriers to responding to that query. In particular, where the *leaseholder* asserts that it has not received the information in *ICOBS* 6A.7.3R, *ICOBS* 6A.7.3R(3) requires the *firm* to provide this information proactively, and not wait to be asked for it or refer the *leaseholder* to the *customer*. This includes providing the information to the *leaseholder* regardless of whether a *customer* is purporting to withhold consent to the required information being passed to a *leaseholder*.

Production and provision of information: responsibilities of insurers and insurance intermediaries

6A.7.20 R Where a *firm* is responsible for producing information required by the *rules* in *ICOBS* 6A.7 as set out in *ICOBS* 6A.7.21R but is not in contact with the *customer* (or its representative), it must provide that information to the relevant *insurance intermediary* in contact with the *customer*.

6A.7.21 R The table in this *rule* sets out the responsibilities of *insurers* and *insurance intermediaries* for producing and providing to a *customer* the information required by this section in order to meet *ICOBS* 6A.7.3R(1).

Requirement	Item of disclosure	Production	Providing to customer
ICOBS 6A.7.3R(2)(a)	Summary of the cover	*Insurer*	*Firm* in contact with *customer*
ICOBS 6A.7.3R(2)(b)	Pricing information	*Insurer*	*Firm* in contact with *customer*

ICOBS 6A.7.3R(2)(c)	Remuneration information	Any *insurance intermediary* involved with the distribution	*Firm* in contact with *customer*
ICOBS 6A.7.3R(2)(d)	Placing and shopping around information	*Insurance intermediary* in contact with the *customer*	*Firm* in contact with *customer*
ICOBS 6A.7.3R(2)(e)	Conflicts of interest information	*Insurance intermediary*	*Firm* in contact with *customer*

Responsibilities of insurers and insurance intermediaries in certain situations

6A.7.22 R The table in this *rule* modifies the *rule* in *ICOBS* 6A.7.21R on the responsibilities of *insurers* and *insurance intermediaries* for producing and providing to a *customer* the information required by this section.

	Situation	Insurance intermediary's responsibility	Insurer's responsibility
(1)	*Insurance intermediary* operates from an establishment in the *United Kingdom* or Gibraltar *Insurer* or *insurance undertaking* does not operate from an establishment in the *United Kingdom* or Gibraltar	Production and providing	None
(2)	*Insurance intermediary* does not operate from an establishment in the *United Kingdom* or Gibraltar; or where the distribution is carried on by a *person* that is not *authorised* or an	None	Production and providing

	authorised professional firm carrying on *non-mainstream regulated activities* *Insurer* operates from an establishment in the *United Kingdom* or Gibraltar		
(3)	*Insurance intermediary* does not operate from an establishment in the *United Kingdom* or Gibraltar *Insurer* or *insurance undertaking* does not operate from an establishment in the *United Kingdom* or Gibraltar	The *firm* with the contact with the *customer* has the responsibility for production and/or provision	The *firm* with the contact with the *customer* has the responsibility for production and/or provision

Annex D

Amendments to the Product Intervention and Product Governance sourcebook (PROD)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Product Intervention and Product Governance sourcebook (PROD)

…

1.4 Application of PROD 4

…

1.4.3 R *PROD* 4 does not apply in relation to an insurance product that is:

(1) a *contract of large risks*~~,~~ where the insurance product meets the conditions in *PROD* 1.4.-3AR; or

(2) a *reinsurance contract*.

[**Note**: article 25(4) of the *IDD*]

1.4.-3A R The conditions in *PROD* 1.4.3R(1) are that the insurance product is used exclusively for effecting *contracts of large risks* where there are no:

(1) *policyholder(s)*; or

(2) (where relevant) *policy stakeholders*, including, in relation to a *multi-occupancy building insurance contract*, any *leaseholder*,

who in that context are natural *persons* acting for purposes outside of their trade, business or profession.

…

Modification of PROD 4.2 and PROD 4.3 for overseas non-investment insurance products

…

1.4.12 G …

Meaning of 'customer' in PROD 4 for non-investment insurance contracts: consideration of policyholders, and policy stakeholders (including leaseholders)

1.4.13 G *Firms* are reminded that in *PROD* 4, in relation to *non-investment insurance contracts*, as the context requires, 'customer' includes:

(1) a *person* who is a *policyholder*, or a prospective *policyholder*, whether or not they make the arrangements preparatory to the conclusion of the *contract of insurance*; and

(2) a *policy stakeholder* including a *leaseholder*.

1.4.14 G For a *non-investment insurance product* that is or will be used to effect a *multi-occupancy building insurance contract*, when meeting the requirements under *PROD* 4, including in particular whether the product provides fair value for the purposes of *PROD* 4.2.14AR, a *firm* should consider the interests of:

(1) any *policyholder* making the arrangements preparatory to the conclusion of the *contract of insurance*;

(2) the *freeholder* and any other *policyholder* of the product; and

(3) *leaseholders*.

…

4 Product governance: IDD and pathway investments

…

4.2 Manufacture of insurance products

…

Fair value for non-investment insurance products: meaning of value

…

4.2.14 R … FA

(2) …

(3) A *non-investment insurance product* that is used for effecting a *multi-occupancy building insurance contract* is excluded from (1).

…

4.3 Distribution of insurance products

…

4.3.6E R … A

(2) …

(3) A *non-investment insurance product* that is used for effecting a *multi-occupancy building insurance contract* is excluded from (1).

…

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