

A. Declaration of insurance remuneration and commissions

*Questions:*

- Can you share any evidence related to undesirable practices and most common complaints on this issue?

**No reply.**

- Can you share evidence of good practice in this area?

**When considering this issue for lettings and sales agents it is important to remember that they may use very different charging models dependent upon the services they are providing, their local market, and their clients' preference.**

**These inconsistencies in general charging are likely to be reflected in inconsistencies in relation to the declaration of insurance remuneration and commissions. For this reason it may be difficult to identify good practice which can be applied to all property activities.**

- Should there be a level playing field when it comes to mandatory disclosure of commission, whether the firm is regulated directly by the Financial Services Authority or via a Designated Professional Body scheme?

**Yes. What information is provided to consumers should relate to the product or service being provided, and all consumers purchasing the same product or service should benefit from the same information. The division of regulatory roles and responsibilities between the FSA and the DPBs should not lead to perverse inconsistencies which disadvantage some consumers.**

- Can the different requirements on disclosure of commission be justified?

**No. Different approaches to the disclosure of commission for the same product or service cannot be justified. Inconsistent requirements not only disadvantage consumers, they are also difficult for property professionals to manage as they may be subject to different requirements in respect of their different business activities, e.g. if different requirements apply to sales , lettings, and block management.**

**There are a number of trade and professional bodies for property professionals, including the RICS and the divisions which form the NFOPP. Ideally all of these bodies should adopt the same approach.**

- Does it matter whether the client is acting as a consumer or as a business/commercial organisation, for example, should there be mandatory disclosure of commission for all consumer clients?

**It can be difficult to distinguish between individual consumers and business/commercial organisations, e.g. in relation to landlords. In our view the fact that the consumer is a business/commercial organisation doesn't necessarily mean that they do not require the same information as individual consumers.**

B. Service charges in leasehold property

*Questions:*

Residential

- Does the package of legislation cover the majority of complaints by leaseholders in this area?

**There may be issues around secret profits and disbursements for repairs, please see our covering letter.**

**We suggest that the RICS makes reference to Association of Residential Managing Agents, who are included in the consultation list.**

- Is the balance between the rights of leaseholders and the rights of landlords correct?

**No reply.**

- Is there enough advice/case law that defines the boundaries of what reasonableness is when considering taking cases to the Leasehold Valuation Tribunal?

**No reply.**

- Are there any issues around the ability or affordability to seek redress by leaseholders in this area?

**No reply.**

- Can you share any evidence related to undesirable practices and most common complaints on this issue? Does this show any differences between regulated and unregulated managing agents?

**No reply.**

- Can you share evidence of good practice in this area?

**No reply.**

- Do you agree with the recommendation put forward by Sir Bryan Carsberg, in his review that landlords, letting agents and managing agents should be subject to

appropriate regulatory requirements in order to achieve consumer protection, efficient markets and cost effectiveness?

**Yes. Of course the NFOPP jointly commissioned this review with the RICS, and this matter is currently under consideration in the context of the Government's response to the Rugg Review.**

Commercial

**The NFOPP includes the Institution of Commercial and Business Agents (ICBA), but unfortunately the way that information is currently collated by our members makes it difficult for us to present an overall picture in relation to commercial service charges.**

- Can you share any evidence on the take up and usefulness of the 2006 Service Charges in Commercial Property: RICS Code of Practice?

**No reply.**

- Can you share any evidence related to undesirable practices and most common complaints on this issue?

**No reply.**

- Can you share evidence of good practice in this area?

**No reply.**

C. Commission on letting renewals

**In general we feel it is inappropriate to comment in detail on this area given the court's decision in the OFT's case against Foxtons Ltd is awaited, and it is possible this decision may be appealed.**

*Questions:*

- Is this issue actually about transparency or is it more to do with the use of unfair contract terms?

**Our view is that the issue of transparency and unfair contract terms are inextricably linked.**

- If the issue is a matter of contract terms that the letting agent and the landlord sign up to, is it sufficient that the letting agent gets the informed consent of the landlord that they are aware of the terms and agree to them?

**No reply.**

- Does it make a difference if the landlord is acting as a consumer or a business?

**The same level of transparency should apply whether the landlord is a consumer or a business. However, we recognise that the Unfair Contract Terms legislation creates different levels of protection for consumers and businesses.**

- Can the contract terms used in these instances be justified? For example, on the basis that the client (landlord) benefits from the original choice of tenant by the letting agent, who has presumably proved an acceptable tenant therefore avoiding the risk factors:
  - Voids.
  - Unsatisfactory new tenant.
  - Expense in making accommodation suitable for new tenant.

**The industry itself feels there are strong arguments which justify commissions on lettings renewals.**

D. Commission on Home Information Packs (HIPs) and the Energy Performance Certificates (EPCs)

**The OFT have recently been asked to investigate this issue<sup>1</sup>.**

*Questions:*

- Should the existence of a commission-based relationship for the provision of HIP/EPC services be disclosed to consumers and, if so, should the amount of commission be declared?

**The existence of the relationship should be disclosed. In fact non disclosure may be a breach of the standards of conduct set by the National Association of Estate Agents and by the Association of Residential Lettings Agents.**

**A relevant issue to the question of the whether the amount of commission should be declared may be the value of the service in comparison with the overall value of the transaction. HIPs/EPCs may be a relatively minor cost in comparison with the overall value of sales transactions. However, this may not be the case in relation to lettings transactions and the cost of EPCs.**

**Agents may qualify as Domestic Energy Assessors themselves. Particularly if their EPC services are provided through a separate company, there may be a need for greater transparency around choice of provider and charges.**

- Should an agent be obliged to explain all available options for the procurement of a HIP/EPC as part of their terms and conditions?

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<sup>1</sup> Parliamentary question posed by Caroline Spelman MP, Conservative Shadow Secretary of State for Communities and Local Government.

**Agents should be required to advise consumers that they have the option of procuring services from other third parties if they wish to do so. However, it is impractical and unrealistic to expect agents to explain all of the available options to consumers, especially as transactions may be expedited.**

- Do factors, such as compatibility of IT systems, put in place barriers to effective open working?

**We suggest further information on this issue is gathered from software providers, HIPs/EPC providers, and tenancy deposit schemes. It may be helpful to bear in mind that many agents use property portals which require IT systems to be of certain specifications.**

- Can you share any evidence related to undesirable practices and most common complaints on this issue?

**In our view it is too premature to respond to this enquiry.**

- Can you share evidence of good practice in this area?

**In our view it is too premature to respond to this enquiry.**

E. Valuation fees

**As valuations undertaken by members of the NFOPP are not accepted by lenders we cannot assist with this topic.**

*Questions:*

- Can you share any evidence related to undesirable practices and most common complaints on this issue?

**No reply.**

- Can you share evidence of good practice in this area?

**No reply.**

- Do you think borrowers are clear about exactly what they are paying for in relation to valuations or other survey work?

**No reply.**

- Are borrowers clear about the chain of events involved in the arrangements of a survey?

**No reply.**

**F. The agreement of fees for commercial loan security valuations**

**As valuations undertaken by members of the NFOPP are not accepted by lenders we cannot assist with this topic**

*Questions:*

- Is this issue actually about transparency or is it more to do with the potential for undue influence?

**No reply.**

- Do you agree that the agreement of the fee is a matter for the lender and the valuer?

**No reply.**

- Can you share any evidence related to undesirable practices and common complaints on this issue?

**No reply.**

- Can you share evidence of good practice in this area?

**No reply.**

- Is there a need for greater clarity in this area?

**No reply.**

G. General comments on commissions

Do you think the system of commission based payments is a good thing or a bad thing?

**Overall payment on a commission basis is a good thing because it incentivises agents to provide the best service they can for their clients.**

What factors make commissions acceptable or justified and what factors render commissions unacceptable?

**Expressing fees and charges as percentages of a total amount can confuse or mislead consumers. The Property Ombudsman requires sales agent to provide their clients with actual amounts.**

Would some of the following points help to increase client confidence in commission payments?

- All fees and commissions should be made fully transparent in all situations.

- Commission should be seen as something that is earned for value added services.
- Clients, especially consumers, should be made aware about what fees are taken, at what point, by whom and just what the added value is.
- The client's informed consent should be obtained in order for the professional to keep the commission?

**We agree with the first, third, and fourth bullet point above. However, the second bullet point introduces an element of subjectivity- seen by whom?**

Other issues

Do you have any other issues around transparency in fees that you would like to raise?  
(Please provide evidence around the issue.)

**Whilst in general we support transparency with consumers, we are conscious that any potential solution in this area must be focussed upon what information consumers want and are likely to understand. In reality property transactions are often very stressful for consumers and this may impact upon their interest in what they may regard as peripheral or trivial information.**

**We are conscious of Rule 9 of the Solicitor Regulation Authority's Code of Conduct for solicitors which requires them to ensure that their introducers, including estate agents, advise clients about:**

- Their relationship with the solicitor, and
- The amount of the referral fee they will be paid by the solicitor if the client instructs the solicitor.

**We question whether all agents should be required to make a high level statement to all of their consumers that they may earn fees as a result services provided to them by third parties, but that a detailed breakdown of these potential or actual earnings are available on request. In other words we favour the FSA's 'on request' regime, and we note that in the area of insurance the CRA report also noted that mandatory disclosure was cost prohibitive. However, we appreciate that in the area of insurance remuneration and commission in particular the DPBs, including the RICS, may be reluctant to move away from the higher standard of mandatory disclosure and informed client consent which they have imposed.**

**We also think it is important to balance this debate with the wider public interest which is served by the provision of the services of third parties through property professionals. Consumers may not be aware of their legal obligations, or of the risks posed by the transaction they are entering into, e.g. the need for building/contents/legal insurance. Property professionals play an important role in educating consumers about these requirements, and assisting them with fulfilling these requirements.**