

The complaint

A has complained about the level of commission St Giles received when they arranged buildings insurance for the block of flats it is responsible for. A is represented by one of the directors, who I'll refer to as Ms R.

What happened

A is a residents property management company set up by leaseholders to manage and maintain the block of flats they live in. A instructed a managing agent (MA) to provide professional management services, such as sourcing the buildings insurance and ensuring the building was maintained.

MA asked St Giles to arrange buildings insurance for the block. They did this for a number of years and for the last time in October 2020. At this time the premium was considerably higher than the previous year due to issues with the materials used in the construction of the building. A found out that St Giles received a commission of £28,556.01, compared to £6,927.56 the previous year. A said it complained about this in October 2020 and asked if St Giles would agree a flat fee. It said it did not receive a response to the complaint.

St Giles said they did not receive a complaint from A. However, they did eventually provide their submissions on it for us to consider. In doing so they told us they'd paid £12,732.04 of their remuneration to MA as a fee for the extensive work involved 'in cladding preparation, handling leasehold queries etc'.

One of our investigators considered A's complaint and issued his view on it. He said A's complaint should be upheld for the following reasons:

- St Giles didn't meet their obligations under the Insurance Conduct of Business Sourcebook (ICOBS) because they failed to provide A with clear information about their charging structure. In particular, they didn't make it clear to A that the cost of the policy would be higher because of the amount they were paying to MA.
- St Giles didn't act fairly when they added the amount they were paying to MA to the premium and didn't act with due regard to A's interests or treat it fairly when they increased the cost of the policy because of this.
- St Giles failed to manage the conflict of interest that arose due to the payment they made to MA.
- Bearing in mind A was already paying MA for their services, there wasn't any need for A to pay them as well.

The investigator said that to put things right St Giles should pay A the £12,732.04 they paid to MA on the basis this compensated them for money they should have had.

A said it agreed with the investigator's view.

St Giles did not agree with it and made the following points:

- They did not increase the commission to cover the payment made to MA. The risk was placed with four insurers due to its complex nature and the difficulty in obtaining cover. And the premium required was purely the risk premium requested by the insurers. Neither the premium nor the commission rate was increased to cover the payment to MA.
- The commission rate was a materially lower percentage rate than the percentage they received for arranging the policy for A in 2019.
- As they covered the costs of placing the risk into the Lloyd's market their 'effective commission rate' was under 16%.
- MA's involvement went beyond mere sourcing of insurance. They carried out extra work relating to the cladding issue and related leaseholder enquiries, the provision of risk and underwriting information, invoicing tenants, ensuring the implementation of risk improvement work; all of which underpinned a payment being made to them in respect of each policy period.
- With reference to our investigator's comment that a payment to MA could represent a conflict of interest, they pointed out that MA is not a customer of theirs, but a part of the distribution chain necessary to meet the demands of A.
- They agreed it would have been unreasonable for MA to have benefited from the significant increase in premium, which is why the amount paid to them was exactly the same as it was in 2019.
- ICOBS 4.3 requires the 'nature' and 'source' of the remuneration to be declared by a broker to their customer, but does not require them to list the services within the distribution/placement chain which might be funded from that amount. And the renewal documents provided in 2020 said this.
- They accepted ICOBS 4.4.1 required them to declare the commission that any 'associate' firm receives, but this is only where a disclosure request has been made by the client. They have no record of having received such a request from A.
- In summary, they believed they acted fairly and met their regulatory obligations.

I issued a provisional decision on 9 August 2023 in which I set out what I'd provisionally decided as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm satisfied from the evidence St Giles have provided that the payment they made to MA did not directly increase the premium for the cover they put in place. And I don't think there is any evidence to suggest it impacted the premium indirectly. I say this because the main insurer has told us the premium they wanted to cover their part of the risk was the premium A was charged. And I've got no reason to think they'd have reduced the premium if St Giles had agreed to accept a lower amount in commission. And I have no reason to think the other insurers involved would have been willing to reduce the premium they were charging if St Giles had agreed to a lower level of commission.

In view of this, I do not think it is right to say St Giles treated A unfairly by increasing the cost to A to cover what they had to pay to MA, as there's not sufficient evidence for me to say this is what happened.

I also agree with St Giles point that there was no conflict of interest on their part on the basis they had agreed to make a payment to MA. I say this because I'm satisfied St Giles had to work harder than normal to obtain the cover A needed due to the nature of the risk. And this meant that they had limited options. So, if the premium was not going to be impacted by the

level of commission I can't see how the fact they had to pay MA £12,732.04, whatever the commission they received was, created any conflict of interest.

Of course, if St Giles had had more options, they could of course have been inclined to arrange cover at the highest commission rate available to make sure they got as much as possible and didn't lose out by having to pay MA. But there is no evidence that this was the case. And I need to be clear that I am not suggesting this is what they would have done. It seems to me that the insurers decided on the level of commission they were willing to pay to St Giles for the work they did and St Giles accepted that and felt it was appropriate. After all – as far as I know – the majority of St Giles revenue as a business comes from commission. And, at the time they were arranging cover for A, they were entitled to negotiate with the insurers they were dealing with on the level of commission they would receive. And provided their decision making on where to place the risk wasn't influenced by this, I don't think they can be said to have acted inappropriately or treated A unfairly.

I also accept St Giles point about ICOBS not requiring them to provide details of other firms in the supply chain when detailing the nature and source of their own remuneration. However, I do need to consider the fact that ICOBS 4.4.1 required them to disclose any commission they passed on to associate firms if they were asked by A to declare their commission prior to it paying for the cover St Giles arranged in 2020. ICOBS 4.4.1 says the following:

'An insurance intermediary must, on a commercial customer's request, promptly disclose the commission that it and any associate receives in connection with a policy.'

St Giles have said that if they had received a request from A to disclose their commission they would have disclosed it and told A they were paying part of it to MA and exactly how much this was. But, they've said they did not receive such a request from A and were not obliged to disclose their commission to them or the part of this they were paying to MA. In view of what St Giles have said, I've checked the evidence provided and I agree that this shows it is more likely than not that A did not make a request to St Giles to disclose their commission. From the chain of emails provided by A it is clear it was told the commission St Giles were going to receive prior to the renewal of the policy in October 2020 by MA. But MA did not tell it that they were going to receive part of this. MA asked St Giles if they'd be willing to discount the premium by rebating some of their commission to A and it seems St Giles weren't willing to do this. But there is no evidence to show St Giles received a request from A directly to declare their commission.

And, even if I were to accept that they did make such a request indirectly through MA, I don't consider St Giles would have needed to let MA know that part of this was going to them, as MA would have known this and St Giles could reasonably have expected them to share this with A. MA were not acting as an agent for St Giles, they were acting as an agent for A, so St Giles are not responsible for any failure on MA's part to provide clear information about their remuneration to A.

In view of what I have said, I am satisfied that St Giles fulfilled their obligations when arranging the policy for A in October 2020 and treated them fairly. Therefore, while I appreciate A's concern about the level of commission St Giles received, I do not consider this in itself was unfair, bearing in mind the increase in premium and the difficulties St Giles had in arranging cover due to the nature of the risk. And, while a significant part of this was passed to MA, there was no reason for St Giles to share this with A. Neither do I think that the fact they passed part of their commission to MA had any impact on the premium the insurers involved charged.

This all means, that I've provisionally decided it is not appropriate for me to uphold A's

complaint.

I gave both parties until 23 August 2023 to provide further comments and evidence in response to my provisional decision.

Ms R has responded on behalf of A and made the following additional comments:

- A request was made to St Giles to disclose their commission in a telephone meeting on 16 October 2020 between the directors of A, MA and St Giles. And the email trail makes direct reference to the meeting and shows the directors requested a breakdown of costs.
- The majority of the 'extra work' mentioned by St Giles as carried out by MA was covered by the contract A had with them to act as managing agents. And – in addition to that - MA levied multiple additional construction material related charges that year to the leaseholders.
- It is curious that St Giles agree it would have been unreasonable for MA to have benefited from the significant increase in premium, which is why the amount paid to them was exactly the same as it was in 2019. Ms R thinks this is curious because it seems in 2019 MA received £8-9,000, whereas in 2020 they received around £12,000.
- Ms R would appreciate my thoughts on the fact St Giles only provided a quote 2-3 days before renewal.
- It appears I have had direct contact with St Giles and the directors would like the opportunity to discuss the case with me.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've checked with St Giles and they have said they have no record of the telephone meeting on 16 October 2020. This doesn't mean the meeting didn't take place and I can see references to a meeting on that day in emails between the directors of A and MA. However, even if the directors did ask St Giles to disclose their commission in this meeting, I think having let MA know what the commission was and what their share would be, St Giles could reasonably have expected MA to pass on all the details to A, including what MA's share of the commission was. I appreciate Ms R feels neither St Giles nor MA were transparent about their remuneration. But I can't ignore the fact that MA were A's agent and were not acting for St Giles. So – as I see it - St Giles needed to make sure MA had all the information they needed on commission and it was then up to MA to pass this on to A as their client. Therefore, even if the directors of A did ask St Giles to disclose their commission in a meeting prior to renewal, it doesn't alter my view that A's complaint against St Giles shouldn't be upheld.

I appreciate MA were being paid separately for their role as a managing agent. But I think St Giles was entitled to take into account the value they added to the renewal process and decide what they felt it appropriate to share with them in terms of commission. So, the fact they were paid for their services as a managing agent, doesn't alter my view that St Giles decision to share part of their commission with them was reasonable.

St Giles have confirmed that they did share the same amount of commission with MA in 2019 and 2020. But, even if the amounts were different, it wouldn't alter my view that what St Giles did in sharing their commission in 2020 was reasonable.

I can see that A were trying to obtain renewal terms from St Giles well before renewal and

wanted to involve another broker. However, the risk St Giles were trying to place was complex in view of issues with the materials used in the construction of the building and so it wasn't easy. Therefore, in view of this and the difficulty St Giles had in placing the risk, I think providing the renewal quote only two or three days before renewal was reasonable. I note the other broker also said it would be very difficult, if not impossible, for them to place the risk. So, I doubt very much if St Giles had provided the renewal quote earlier there is much more the other broker could have done.

I have exchanged emails with St Giles on this case, but I have not spoken with anyone there. I have also now exchanged emails with Ms R and offered to speak with her. So, I consider I have given both parties a reasonable opportunity to make further representations.

It therefore follows that it remains my view that for the reasons set out in my provisional decision and above, I do not think it is appropriate for me to uphold A's complaint about St Giles.

My final decision

My final decision is that I don't uphold A's complaint about St Giles Insurance and Finance Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 3 October 2023.

Robert Short
Ombudsman