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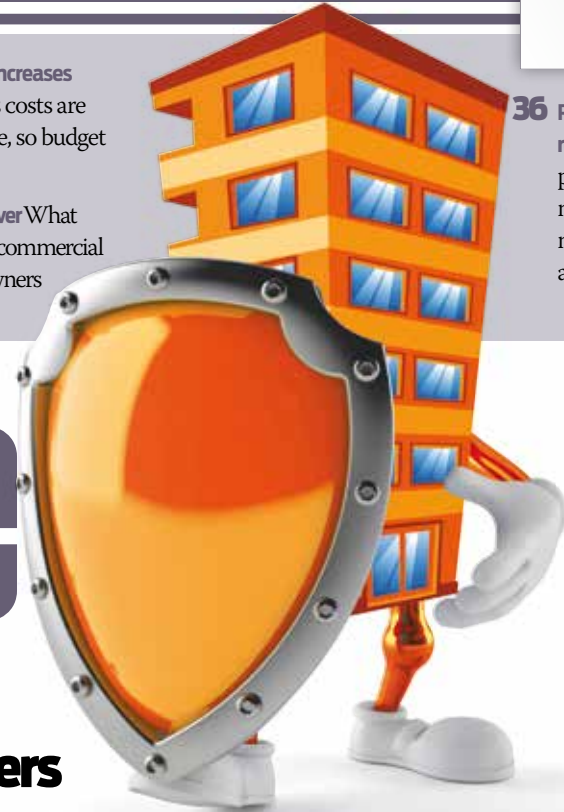
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# Insurance

**This pull out and keep guide to the key concepts is written by independent industry practitioners**



## IF YOU ARE ACQUIRING,

or considering acquiring, the freehold of your building, you will know that the process requires a great deal of planning and that there are many legal and technical issues to consider.

Once formed, your new freehold company will have full responsibility for the management of your building and this includes insurance. It's something which many people overlook.

Directors of residents associations have, broadly speaking, two options when considering how to insure the property they are responsible for. There is the non-advised route, such as buying your policy direct from the internet with no professional help, or the advised route where you use a broker such as ourselves to present to you a number of suitable options.

For some simple insurance policies we would actually recommend the non-advised route; indeed as a company we

do offer non-advised web-based services for tradespeople, for example, looking to cover their liabilities on their equipment or business activities.

However with something as complex as protecting a building, with all the unforeseen accidents and instances which can happen, we would certainly recommend going down the advised route.

The main reason is that you need to know that the limits of the sums that you're trying to insure for are adequate, so that the policy will pay out the right amount when you make a claim.

For example, we recently took on a new client in Shepherd's Bush in London who had not had their block of flats valued for three years. On their previous year's policy it was valued at £21m but on our recommendation the owners revalued the property and, it transpired, that it was valued at £42m.

At the time the residents

association had an average clause in place, which meant that any claim against the property would be reduced by the proportion by which they were underinsured. As the property had been valued at half of its current worth, it would have meant the value of any claim they made would also have been halved. Without us there to advise them, it could have had serious ramifications.

There are also some specific covers which are particularly suitable for residents associations – features which you might struggle to find out about without the assistance of a broker who is expert in this field.

For example, did you know about trace and access cover, which protects you against repairing the source of a water leak and not just the damage it causes? Costs here could run into thousands, when you're looking at removing tiling and getting into plumbing work.

Residents associations might

also be interested in 72-hour claims provision, which covers all claims which result from one problem, as long each piece of damage is reported within 72 hours of the first.

Changes brought about by the Insurance Act 2015 placed extra onus on brokers when providing information to insurers about the risks their clients face. This gives us an opportunity to create better value by ensuring that the policy is at less risk of a challenge from the insurer if a claim happens. It's just one more reason why we would recommend the advised route as being the option that residents associations take when they are looking to insure themselves.

Residents associations can find themselves in trouble if they are underinsured and we would encourage residents to speak to a broker who understands the nature of a risk in its totality.

Tom Russo is Business Development Executive at Kerry London Ltd



# WHY BLOCKS NEED SPECIALIST KNOWLEDGE

**Jan Goodchild** explains how insurance for blocks of flats is different to normal residential policies



**OUR STORY BEGAN** in 1989 when Deacon Insurance Brokers first opened its doors for business. iPads, tablets, smart phones and even Facebook hadn't been invented. However did we manage?

Fast forward almost three decades and it's not just the world around us that has changed... a lot!

Based in Bournemouth since 1990, Deacon is one of the country's longest established property brokers specialising in buildings insurance for flats and apartments, often referred to as 'block' insurance. We offer a range of allied products too, such as director and officers liability, terrorism cover and estate management, including private roads.

More recently, we've added let property to our portfolio, providing cover for professional landlords as well as buy-to-let investors.

We are trusted to insure more

than £14bn pounds worth of property, ranging from just two flats in a converted property to more than 200 in a purpose built block, and 9 out of 10 customers renew their policies with Deacon every year.

For insurance purposes, blocks of flats are considered commercial property. And it takes specialist knowledge and experience to navigate the often complex property insurance market to find an appropriate level of cover at a sensible price.

We employ more than 50 talented individuals who work with our panel of insurers, including LV, Zurich, XL Catlin, NIG and Covea, to find you the right level of cover. We insure property of standard and non-standard construction, as well as conversions and listed buildings – blocks of flats really do come in all shapes and sizes.

Our skilled specialists draw on their extensive experience to

find you a competitive price and, should the worst happen, our award-winning in-house claims team is here to help guide you step-by-step through the claims process.

We were awarded Broker Claims Team of the Year 2016 by Insurance Times Magazine and, for the past two years, our customers and peers have voted us Block Insurer of the Year at the Property Management Awards, hosted by News on the Block.

As part of Arthur J. Gallagher, one of the biggest insurance brokers in the world, recognised by the Ethisphere Institute as one of the World's Most Ethical Companies for the sixth consecutive year this year, we harness market insights to help simplify and enhance insurance cover – innovatively and cost effectively.

But while the world around us and Deacon have changed a lot over the years our mission has

**“it takes specialist knowledge and experience to navigate the often complex property insurance market to find an appropriate level of cover at a sensible price”**

never faltered: to work with our insurers to ensure our clients are protected from both the expected and unexpected.

To find out more about Deacon and meet some of our team visit [www.deacon.co.uk](http://www.deacon.co.uk)

Jan Goodchild is Acquisition Marketing Manager, Deacon Insurance

# Specialist not standard

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Deacon is an award-winning broker\* specialising in blocks of flats insurance. Standard and non-standard construction, from purpose built and conversions to listed buildings, we cover blocks of all shapes and sizes.

Our skilled specialists draw on their extensive experience to find competitive block cover, delivered in an award-winning service. For the past two years our customers and peers have voted us *Block Insurer of the Year* at the Property Management Awards and we were awarded *Broker Claims Team of the Year 2016*\*.

As part of Arthur J. Gallagher, our market insights can help simplify and enhance your insurance cover – innovatively and cost effectively.

With more than 27 years' experience we work with a well-known panel of insurers to ensure that your cover protects you against the expected and unexpected.

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\* Broker Claims Team of the Year, Insurance Times Magazine, May 2016.

\*\* Data collected by Deacon 1 January 2016 and 1 January 2017

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# CHANGES TO HELP SPEED UP CLAIMS

**Kevin Donegan** explains the effects on property insurance claims under the new Enterprise Act 2016



## THE ENTERPRISE ACT

comes in to force on 4 May 2017, bringing with it new legislation for the insurance industry relating to the handling of claims. The Act provides that insurers and their representatives must ensure that claims are dealt with in a reasonable time frame. If this goal is not achieved, then the act will enable the insured to claim for subsequent losses incurred.

## SO, THE ACT BENEFITS POLICYHOLDERS?

Many people in the industry expect that the main beneficiaries of the new rules will be small to medium sized businesses – businesses with up to 250 employees operating in England and Wales (The Act does not extend to Scotland or Northern Ireland).

The act places the onus on insurers to settle claims promptly, i.e. in a 'reasonable time'. However, this does not stop the insurer from

investigating and assessing the claim.

'Reasonable time' is not defined although the Act provides that a "reasonable time" includes time to investigate and assess the claim.

## WHAT ARE THE REMEDIES?

Under the Act, it will be an implied term of every contract of insurance that if the insured makes a claim under the policy, the insurer must pay any sums due within a reasonable time. Breach of this implied term may give rise to a claim against the insurer for damages.

Claimants have up to 1 year to submit a compensation claim after settlement is received if they discover that the delay has had additional cost implications. After the expiry of that one-year period, any claim for damages against the insurer will be time-barred.

However as this is a new piece of legislation there are no

legal precedents or case studies that illustrate how the new act will work in practice. It could be said that the legislation is dealing with a problem that has not been significant to Property Managers or landlords as some claims always take time to resolve, such as subsidence claims. Also, there is no great benefit to insurers in delaying settlement as a damaged building is likely to be at greater risk of further damage than a weatherproof structure.

## CONTRACTING OUT

You may recall that the Insurance Act allowed insurers to 'contract out' of many of the provisions. This again appears as an option with the new rules.

The right to damages for late payment of claims will be an implied term in all insurance policies, therefore it does not need to be stated in policy documents. Parties can agree to contract out, although this is most likely to be seen where the insurer imposes it and

policyholders can choose to accept it or purchase cover elsewhere.

## LOOK TO YOUR BROKER FOR MORE HELP

Your broker should bring you the benefits of their relationships with and knowledge of the insurers covering the property world, including the ways in which they will be dealing with the new requirements. Remember that the broker usually acts as your agent in sourcing and arranging the insurance and in dealing with you claims.

In some cases, brokers will act under a delegated authority to settle claims on behalf of insurers – acting as the agent of the insurer as well as for the customer. In these cases much of the responsibility for meeting the new rules lies with the broker.

Kevin Donegan is Property Account Director at Clear Insurance Management Ltd

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- **Claims Management**- our online portal makes it easy to manage claims
- **Professional**- a dedicated team of property specialists

### Get in touch

For expert insurance advice and guidance contact:

Kevin Donegan 020 7280 3469 [kevin.donegan@thecleargroup.com](mailto:kevin.donegan@thecleargroup.com)



# STRESSED OUT WITH YOUR INSURANCE CLAIM?

**Ralph Pearson** remembers how he quickly stepped in to deal with a large loss after a fire that gutted a flat

**INSURANCE CLAIMS** under a certain value, usually £5,000, are normally dealt with easily and quickly on a desktop basis by the insurer's in house claims team.

Claims over £5,000 generally become more complex due to the increase in cost and parties involved. Firstly, insurers will look to instruct a loss adjuster to visit site to meet the insured or their representative to view and assess the damage. The loss adjuster will confirm the extent of policy liability and then effectively take over the running of the claim. The loss adjuster will confirm the degree of works and authorise costs as appropriate. Larger losses will also include the involvement of some or all of the following: managing agents, surveyors, engineers and others dependant on the type and size of loss.

One of our clients recently suffered such a loss when fire completely gutted a flat in a block. It quickly became clear that this was going to be a large complex loss as the insurer immediately appointed a loss adjuster to attend site.

With a loss of this nature, as claims manager at Residents Insurance Services, I'm keen to assist in providing an efficient claims process for the client.

This could involve an initial site visit, meeting with insurers/loss adjuster/client and other necessary parties involved during the course of the claim.

This particular large loss needed just such an intervention when the loss adjuster was slow to respond to the client on quotations for stripping out works. I contacted the loss adjuster to stress the urgency in him contacting the client to confirm costs which he then did which enabled the claim to move to the next stage. I will continue to monitor this claim and will intervene when necessary.

Claims need not necessarily be of a large nature to require my involvement. Smaller or contentious claims can have issues which require my intervention. Due to the close relationship I have with insurers and other claims related parties this is something often an insured or agent would find very difficult to manage.

When arranging insurance on a block of flats you should be asking your broker if they have a dedicated claims manager with

the experience to assist and resolve all issues on their behalf. Someone you are able to call on for absolutely any claims related issue; someone who won't just fob you off to insurers; someone willing to come out and meet with all involved parties to ensure your claim is managed efficiently; someone like me!

Don't wait until you have a serious incident to discover you are on your own.

Ralph Pearson is claims manager at Residents Insurance Services

**“Don't wait until you have a serious incident to discover you are on your own”**





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\*as at 27 March 2017



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# THE REASONABLENESS OF INSURANCE PREMIUMS

**Mark Loveday** and  
**Ibraheem Dulmeer**  
explore the cost of  
insurance and the rights  
of residential leaseholders



**LEASES GENERALLY** require leaseholders to contribute to insurance of their block – whether by including the cost in the general service charges or by way of a separate charge known as an “insurance rent”.

Residential leaseholders have statutory rights in relation to insurance, but the most important is the ability to challenge the costs in the First-tier Tribunal (Property Chamber) in England, or the Leasehold Valuation Tribunal in Wales. Insurance costs are limited in three ways:

The lease may expressly or impliedly say the insurance costs must be reasonable.

Insurance charges are usually required to be reasonable under section 19(1) of the Landlord and Tenant Act 1985.

The Royal Institution of Chartered Surveyors (RICS) Service Charge Residential Management Code and The Association of Retirement

Housing Managers (ARHM) Code gives best practice for arranging insurance.

## EXPRESS/IMPLIED TERMS

An express stipulation that the landlord may make ‘reasonable’ provision for insurance premiums is clear enough. But even if the lease does not say so, can a similar limitation be an implied? The answer to this is “yes”. The very recent case of *Hounslow v Waaler* [2017] EWCA Civ 45 has confirmed.

## LANDLORD AND TENANT ACT 1985 S.19(1)

Section 19(1) requires two things. Under section 19(1) (a), an interim service charge must be ‘reasonable in amount’. Under section 19(1)(b), a charge relating to expenditure already undertaken requires the relevant insurance costs to have been ‘reasonably incurred’.

## THE RICS CODE

The code requires managers to regularly review levels of insurance and landlords should therefore consider the level of cover where necessary. Furthermore, the code provides the landlord to have regard to the insurance company’s record of handling claims in addition to the level of premium charged.

## THE ARHM CODE

This code is for retirement housing managers and in the same it is asked that the insurance policy should be transparent and be prepared to demonstrate value for money to the landlord, or leaseholders.

## WHAT IS REASONABLE?

*Hounslow v Waaler* mainly dealt with the test for reasonableness in s.19(1), and most importantly, it reaffirmed a two stage test derived from the earlier case of *Forcelux v Sweetman* [2001] 2 EGLR 173. The

two stage test was:

Whether the landlord’s actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. In particular, did the landlord ‘test the market’ for alternative insurance premiums?

Whether the amount charged was reasonable in the light of that evidence. In effect, is the premium grossly out of line with the market norm?

However, a landlord need not shop around to find the very cheapest insurance. So long as the insurance is obtained in the market and at arm’s length, the premium will generally be a reasonable one: *Avon Estates (London) Ltd v Sinclair Gardens Investments (Kensington) Ltd* [2013] UKUT 0264 (LC).

Mark Loveday is a barrister Tanfield Chambers. Ibraheem Dulmeer is a solicitor at LEASE

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# THE RATE OF CHANGE — UPDATE YOUR BUDGETS



With an increase in Insurance Premium Tax due and other factors such as a snap election and Brexit, costs are likely to rise, warns

**Paul Robertson**

## IN JUNE WE SEE THE RATE

of Insurance Premium Tax (IPT) increase to 12% from the current rate of 10%. But remember, not so long ago it had gone up to 9.5% from a previous rate of 6% and that was only 18 months ago. A treasury spokesperson stated that this was a tax on insurers and should not be passed onto customers. After all insurers can afford it, or can they?

Last year saw the introduction of "Solvency 2" which required insurers to have larger solvency margins. This was designed to protect customers from insurers going bust and was triggered by the banking crisis. Whilst this greater customer protection is a good thing it comes with a cost. And then of course the recent reforms to the Ogden tables caught everyone by surprise.

These tables determine how much an insurer will pay as a lump sum in personal injury claims. The Lord Chancellor changed the rate by only a few percent and UK insurers were impacted by £2.1bn overnight. Given this latest surprise many smaller insurers are in big trouble and absorbing the IPT rise is clearly not going to happen.

Let's not forget, however, that in August last year we saw the implementation of the Insurance Act. This provides a fairer balance of power between insurer and customer. Again a great thing as it applies to block insurance and long overdue as it updated legislation that was over 100 years old. The act also had the impact of placing more responsibility on insurance

brokers and managing agents.

Historically the biggest factor that affects insurance premiums is the behaviour of re-insurers. These are the global insurance giants that enable UK insurers to operate by offering insurance to cover their major losses. They are also significantly impacted by the reforms to the Ogden tables. As we approach a surprise election and the uncertainty of how the UK insurance market will operate post-Brexit, I suspect there is only one likely conclusion. Re-insurers will increase their rates and this will cascade into the UK market with potentially significant resultant price increases.

On the horizon we have the implementation of the Insurance Distribution Directive which comes into effect in February 2018. This updates the regulation of insurance by focusing on distribution and will impose a number of requirements on both insurance brokers and managing agents. Whilst the changes are still in consultation it appears

**“With all these changes it would be prudent to consider the inevitable financial impacts and reflect these in your service charge budgets this year”**

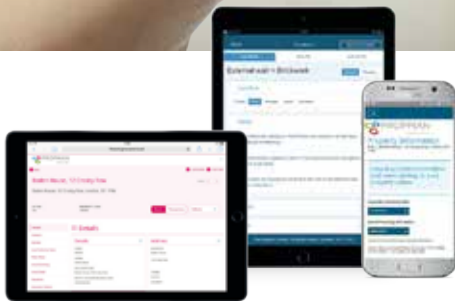
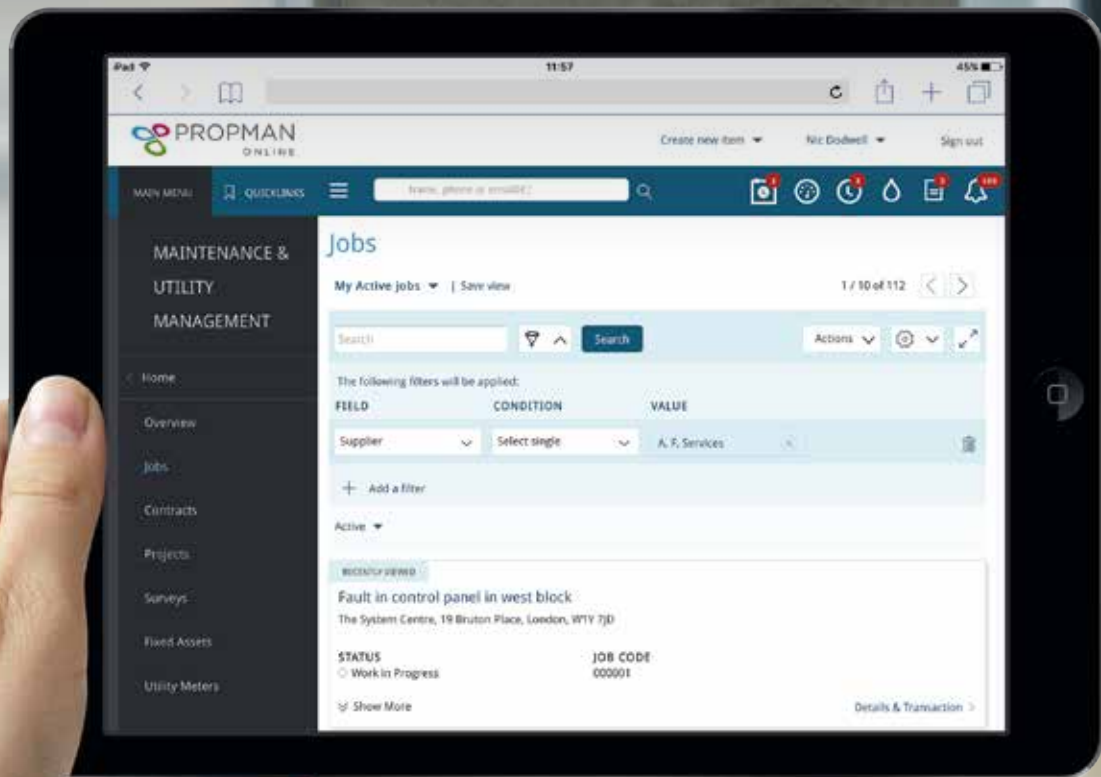
that anyone handling insurance (including those in a managing agents) will have to not only be competent but also will have to demonstrate a minimum level of continuous professional development in insurance.

With all these changes it would be prudent to consider the inevitable financial impacts and reflect these in your service charge budgets this year.

**Paul Robertson, managing director of Midway Insurance & 1st Sure Flats**

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# ARE YOU COVERED FOR TERRORISM?



With recent events highlighting the risk of terrorist activity, **Bridge Insurance Brokers** considers the options open to commercial building owners in the event of such attacks

**The bombing of** the Baltic Exchange buildings in the City of London in April 1993 – which was estimated to have cost the insurance industry over £250m – led the insurance market, without support from their reinsurers, to withdraw cover for property damage by terrorism.

The insurance industry found a solution, however, and the Pool Re Insurance Company was established with the backing of the UK Government. Since 1993, Pool Re has been the main provider for terrorism cover for the vast majority of commercially insured buildings throughout the UK. In particular, they provide cover for 'high-risk' properties in city centre locations and for other 'target risks' such as airports and shopping centres.

Cover is available from Pool Re

via the insured's main insurance carrier (as a member of Pool Re) at an annual premium cost that is separately chargeable.

As an alternative to arranging terrorism cover via Pool Re, other facilities, mainly supported by Lloyds Underwriters, are available. These alternatives, sometimes at a cheaper premium, often with a loss limit applicable, can have the benefit of providing cover for specific locations rather than for all locations as required by Pool Re.

Unlike Pool Re, however, cover for damage as a consequence of terrorism by a nuclear, radiological, biological or chemical attack is often not readily available.

The likelihood of a 'dirty bomb' seems unthinkable but, nonetheless, the threat remains.

Terrorism is now a global phenomenon and the prospect of further terrorist attacks in the UK remain ever present. The recent events in France, Belgium and Westminster have further served to heighten our awareness.

For residential management companies with a responsibility to insure their apartment blocks, and for commercial property owners and others such as leaseholders, the requirement to insure against damage by terrorism will often be stipulated under the terms of any lease or as a condition of finance with a bank. The prospect of not insuring damage by terrorism could be considerably costly.

Bridge Insurance Brokers Limited are specialists in insurance for blocks of flats

**“ Since 1993, Pool Re has been the main provider for terrorism cover for the vast majority of commercially insured buildings throughout the UK ”**





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# ARE YOU AWARE OF REGULATION RULES?

The regulation of general insurance has indirectly resulted in the necessity for property managers to become authorised, warns **Paul Houston**

## INSURANCE REGULATION

for general insurance was on a voluntary basis until the European Insurance Mediation Directive was passed by the European Parliament. The then Financial Services Authority (now known as The Financial Conduct Authority, or FCA) was designated by the UK Government to regulate General Insurance from 14 January 2005.

But who is covered by this regulation, what is covered, how is it regulated and why?

## WHO

Regulation covers insurance companies and brokers plus other professions who get involved in the placing and handling of general insurance policies. This includes managing agents and multi-discipline property practices, therefore, potentially estate agents, letting agents and surveyors. The FCA sees property managers as selling cover to the property whereas they often see themselves as buying on the property's behalf. It's a subtle difference, but often at the heart of confusion as to the need to be regulated.

## WHAT

After understanding who is

covered by regulation, we need to look at what insurance activities are being regulated. The directive covers:

**Arranging Insurance:** This includes seeking quotes on behalf of a client.

**Advising:** This covers recommending a particular product to you client.

**Assisting in the Administration and Performance:** This includes placing the insurance, paying the premium to the broker or insurer, assisting with an insurance claim and sending out documentation to solicitors and lenders for purchases/sales.

Consequently, property managers are firmly caught in the net and need to be authorised and regulated.

## HOW

There are several options for property managers to be authorised and regulated.

### 1. Direct Authorisation –

A number of managing agents have become directly authorised and regulated by the FCA. This option gives the property manager the widest scope but does incur extra cost

in terms of time and money. Your broker should be fully assisting you with this.

### 2. Appointed Representative

(AR) – The property manager becomes an AR of their insurance broker who takes responsibility for their regulation and compliance. However this has limitations compared with direct authorisation that often tie you into dealing with the principal broker.

### 3. Designated Professional

**Bodies** – Organisations including the RICS and Chartered Accountants have taken responsibility for the regulation of their members, therefore, surveying practices with management divisions can be regulated via their designated professional body.

### 4. Company secretaries for the properties they manage –

Managers are deemed to be buying for themselves under guidance from the property. The FCA is keen to ensure any conflicts of interest and identified and avoided or managed.

**“The FCA sees property managers as selling cover to the property whereas they often see themselves as buying on the property's behalf”**

## WHY

Consumer protection is a principle reason for regulation of general insurance in order to protect client money. Other reasons include the formalisation of best practices with regard to the provision of advice and treating customers fairly

## CONCLUSION

The regulation of general insurance has indirectly resulted in the necessity for property managers to become authorised. Therefore, you should check your regulatory status and consult with your insurance broker if you are unsure or the writer.

Paul Houston is compliance manager at St Giles Insurance



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Our staff have many years' experience with us and as such understand the needs of our clients plus know the requirements of insurers which benefits both in smoother handling of claims and policy documents.