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Recovering insurance commission payments: tenant considerations post-Trocadero v Picturehouse

19 June 2025 Hannah Parry

A significant decision was handed down in May 2025 with regards to a landlord's ability to recover sums from its tenant through insurance rent and, in particular, whether landlord's commission can be charged to the tenant.

The expert evidence in the case revealed that commission sharing structures in relation to building/property insurance were widespread, and it had become standard practice for commission of 28.75% to be charged to tenants. The decision in Trocadero is therefore likely to have significant ramifications across the retail market. Subject to the terms of the lease, this 'standard' fee could be subject to challenge and previous payments could be recoverable. The case is of particular relevance and interest to tenants, who could find themselves in a similar position to Picturehouse, and due a substantial refund from their landlords.

Importantly, depending on facts of the case, any claim for recovery of commission may be limited to sums paid in the preceding six years. It's therefore essential for tenants to consider their position and the relevance of Trocadero without delay.

Before considering if Trocadero could give rise to a claim, we'll briefly summarise the facts:

Case Summary: London Trocadero (2015) LLP v Picturehouse Cinemas Ltd and others

The case formed part of a wider dispute concerning a claim from the landlord (Trocadero) against tenants (Picturehouse and others) for the recovery of arrears, which included annual rent and insurance rent. As part of those proceedings, the tenants raised a counterclaim regarding the level of insurance rent.

Trocadero owned the freehold interest in the Trocadero Centre in London. As is standard in many retail leases, Trocadero as landlord had an obligation to insure the Centre, and was entitled to recover the associated costs from the occupational tenants. More specifically, the tenants were required to pay the 'premium payable by the landlord for keeping the Centre insured'.

The case concerned three issues regarding insurance rent, one of which (and the one central to this note) was whether the covenant to pay the premium included an obligation to pay the landlord commission, in addition to the premium itself.

In the background, Trocadero had entered into a commission sharing arrangement with its insurance broker, whereby the broker would charge high commission (up to 65% on occasions) with the full amount (the net insurance premium plus the fees/commission) being re-charged to the occupational tenants. Trocadero and its broker agreed that the broker would retain 25%, and it would repay the rest back to Trocadero. The result of this structure therefore being that the commission was not incurred in connection with insuring the building and/or the work required to put an appropriate policy in place, but was to put money in the pocket of Trocadero.

The judgment found that:

- Trocadero was not entitled to charge commission or fees as part of the insurance rent.
- Picturehouse was able to recover such sums previously paid on the basis that Trocadero had been unjustly enriched.

- The commission did not form part of the cost of keeping the Centre insured, or as consideration for any service provided by Trocadero. For both reasons, the commission was not capable of being charged to Picturehouse.
- There was no obligation in the lease for Picturehouse to pay an insurance fee, in addition to the insurance premium for keeping the Centre insured.

Going forward: Applying *Trocadero* in practice

Legal basis for claims against landlords

Assuming a lease does not allow a landlord to recover commission in addition to the premium payable for insuring a building, how does a tenant recover any such costs previously paid?

Broadly speaking there are two causes of action to consider:

- Contractual provisions. The starting point should always be the terms of the lease and whether there are any rights of repayment under the lease.
- Restitution. In the alternative, a claim for restitution can be explored which would consider whether the payment by the tenant was unjust (and led to unjust enrichment of the landlord)
- Picturehouse successfully recovered a substantial six figure sum from their landlord.

Act without delay

We mentioned earlier possible time limits to bring claims against landlords. Broadly speaking (and there may well be exceptions we can explore – so all is not lost if these time limits have passed) the time limit to bring a claim under the lease (i.e. if there is a contractual provision allowing recovery) is 12 years. A claim under restitution is time limited to six years.

We encourage tenants to consider the possibility of a claim for recovery of insurance commissions as early as possible.

When can a tenant claim their money back?

Our good friends at Wilberforce Chambers (the Barristers who acted for the successful tenant in Trocadero) helpfully summarised the judgment into five conditions which must be satisfied in order for there to be grounds for a claim by a tenant against a landlord for overpaid commission:

1. The tenant must not have known it was paying commission.
2. The landlord must have known it was receiving commission.
3. The landlord must have been able to get insurance for the building at the same level, without having had to pay the commission.
4. The commission was not something imposed by insurers.
5. The payment received by the landlord must have been disproportionate to the work it carried out in respect of insurance/arranging the policy.

Next steps

Given how commonplace the sharing of commission arrangements are in the market, as highlighted by Trocadero, it is likely that many tenants have previously inadvertently paid to their landlords sums in respect of commission which may not have been properly chargeable pursuant to the terms of the lease.

We would welcome the opportunity to discuss the above with you and explore whether you have been overcharged for your insurance.

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