

Michelle Bank
Chief Executive
ARMA
178 Battersea Park Road
LONDON
SW11 4ND

28 January 2013

Dear Michelle

ARMA Q CONSULTATION

There are two questions FPRA needs to look at when commenting on ARMA Q.

1. Is it useable?
2. Is it useful?

QUESTION ONE

Firstly looking at 'Is it useable?' - FPRA has three groups of members - RMC's, RTM Co's and RA's.

The most vulnerable group are Leaseholders - whom we represent through Residents Associations.

Can Leaseholders use the Standard and can they activate the disputes procedure? For the Code to be used by the most vulnerable group of our members the following need clarification:

- (A) Who may refer disputes?

The Code needs to make it clear that although Leaseholders are not 'the client' or 'the customer' disputes will be accepted from them.

ARMA Q should review the wording of 1.10 "where complaints are received from clients or customers, freeholders, landlords or leaseholders who are collectively managing their flats".

It is welcomed (after conversation with ARMA) that ARMA is willing to accept disputes referred by leaseholders and this should be clearly stated for the code to be useable to our membership.

(B) What is the Remit of the Agent?

The Agent steps into the shoes of the Freeholder and carries out all or some of their responsibilities under the lease depending on the terms of the contract.

Para 4.2.1, which involves monitoring of Residents Associations, does not come under the Landlord's responsibilities and could allow an agent to interfere in the running of a residents association particularly where there is a dispute. This is not in our members' interests.

ARMA should be encouraged to re-think their remit to the Agent of monitoring RAs.

(C) Financial Conduct - can ARMA clarify if the client's bank account will be available as a supporting document to accounts on request by a leaseholder?

Where there is a Statutory Trust for Leaseholders' funds, the Client may inspect the account - Can ARMA clarify, as the leaseholders are the beneficiaries under the Trust, that Leaseholders may inspect the Bank Account records as 'supporting documents' to the accounts as part of a S.21 request (see section 5 C).

QUESTION TWO

Is the Code useful to our members?

General Comment

The code in general is useful if it provides a standard that can be monitored without going to Court or LVT so not involving our members in additional costs.

Comments here are in two sections:

(1)(A) Does it fulfil its purpose in terms of regulating ARMA Agents?

(B) Can we suggest any amendments or additions which might help our members?

(2)(A) Does the Code fulfil its purpose in terms of regulating ARMA Agents?

If an Agent is asked to leave ARMA it would have a more powerful effect if that was announced in the local press. Para 1.10 could be more effective if it were to state:

(i) where decisions will be published; and

(ii) how leaseholders might have access to transcripts of proceedings.

(B) Can we suggest any amendments or additions which might help our members?

- (i) Consumer Charter 2.i could be enhanced if the Agent is required to have response times stated as part of their contract - see Code of Conduct for Property Factors Scotland para 2.5;
- (ii) Consumer Charter 2.ix - add in a 'designated Trust Account';
- (iii) 3 - Definitions - define 'consumer' and 'customer' and ARMA agents responsibility to them;
- (iv) 3 - Instructing a managing agent see section j - This is not in the interests of our members in that it allows the agent to interfere in Board matters. If an instruction is given by the Chair - that is the instruction - the Board of Directors deals with its own internal affairs. Suggest re-wording (j) to say the Agent should only take instruction from the designated representative(s) of the Client as named in the Contract;
- (v) 4 - Recognised Residents Associations - comply with their right to nominate a contractor add 'and leaseholders';
- (vi) Ref 4.3 - (b) change 'and' to 'but' e.g. 'must ensure the lease terms are complied with BUT avoid imposing any restrictions that are not provided for within the Lease';
- (vii) Ref 4.4b - Agent should take reasonable steps to check the reliability of the relevant facts when dealing with reports of non-compliance with lease covenants from third parties. QUERY - definition of 'third parties'.

Add after 'reasonable steps' ...'where the freeholder is required under the lease' and 'obtain a prior indemnity as to costs from the complaining party where required under the lease';

- (viii) Management Matters 6.1 Contractor Appointment and Administration:

Suggest adding:

The Agent should always use a contractor approved by the JCT for Minor Works. Major Works or 'home owner's contract' where works are less than £10,000(?). The Agent should not use the Contractors Contract unless it is a JCT Contract; and

- (ix) Insurance - 6.4.1:

Add the Agent should always advise that the Client should insure only for those risks that the Client is responsible for under the Lease.

General Comments on behalf of FPRA

The Code is useful to Leaseholders where it confirms legal rights in that it gives leaseholders an avenue, rather than the Courts or LVT, where they are not liable for expenses.

Where the Code goes beyond legal rights our comment is:

1. Where standards are mentioned these should be specified i.e. response times.
2. Where Agents duties are specified these should not go beyond the Clients' responsibilities under the Lease.
3. The enhanced financial standards are welcomed.

We hope you find our thoughts helpful and we are happy to discuss these issues further with you.

Yours sincerely,

Shula Rich
Hon. Committee Member
On behalf of FPRA.