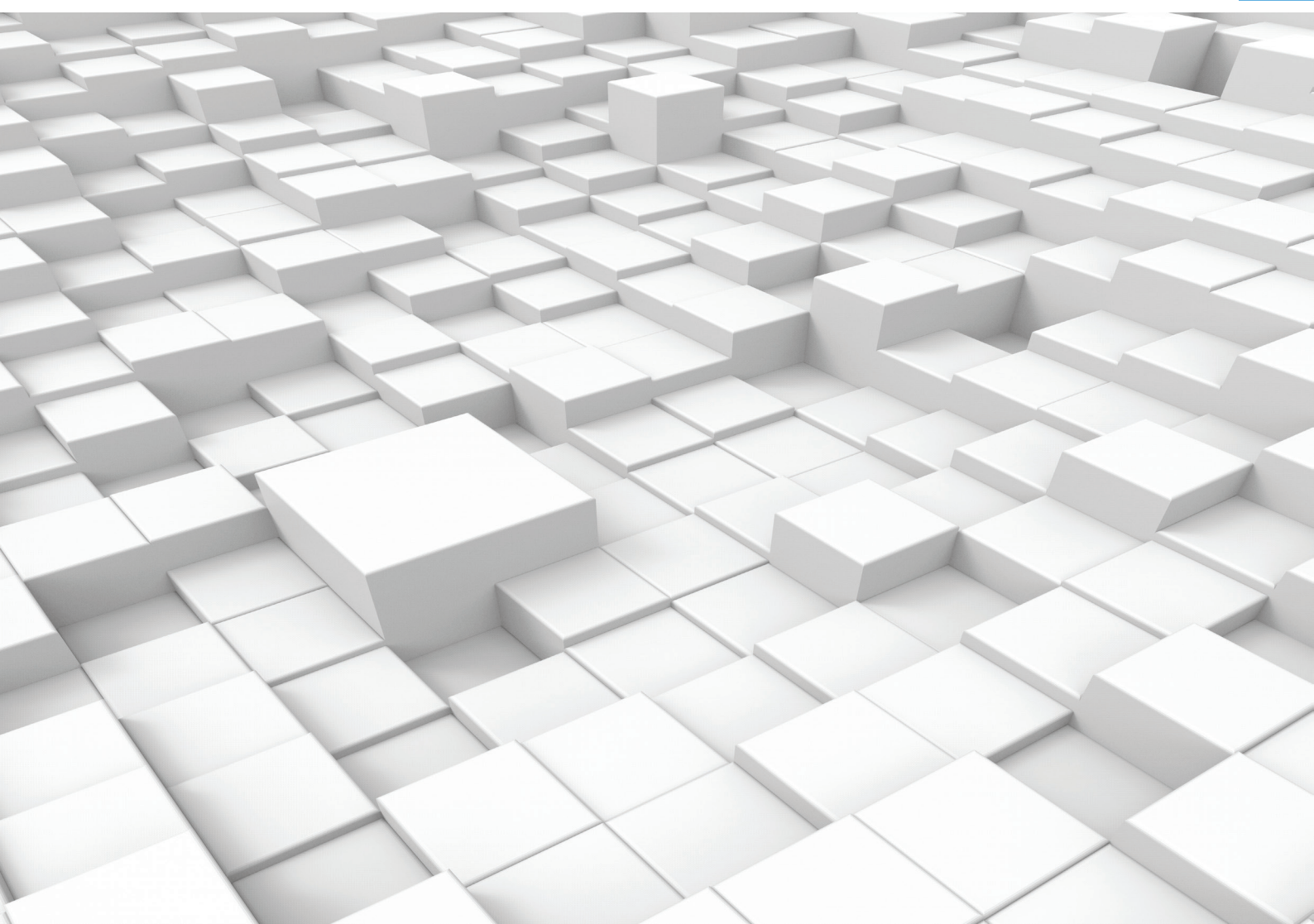




Code of Practice

**Service charge residential  
management Code  
and additional advice to landlords,  
leaseholders and agents**

3rd edition



# Service charge residential management Code and additional advice to landlords, leaseholders and agents

## Code of Practice

3rd edition

### Important note

The following parts of this document are approved by the Secretary of State under the Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2016. (S.I. 2016/518)

All parts except 'RICS guidance notes'.

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## Special note

The Code does not contain authoritative or comprehensive statements of the relevant law. If you are in doubt about the statutory rights or are considering taking legal action you would be well advised to consult a solicitor, qualified surveyor or other suitably qualified professional or to seek information from a Citizens Advice Bureau, community legal advice centre, or through the Leasehold Advisory Service (LEASE). You should also consider mediation.

The existence of this document, and where it can be seen and/or purchased, should be brought to the attention of all leaseholders of relevant private sector dwellings.

This Code only applies to properties in England. Except where indicated in the text, all the requirements are upon the managing agent (who may be the landlord, a manager, or another) who is therefore addressed as 'you'. In this connection it is therefore important to read the definitions and glossary before studying the Code itself.

Some paragraphs in the Code are deliberately repeated in different sections for clarity.

(Note: For convenience this Code has been written as though the manager is not the same person as the landlord. Where the manager is the landlord, they are responsible for complying with the Code). See Part 1, Definitions applicable to this Code.

The Code does not apply where the landlord is a public authority (or an arm's length management company contracted by the public authority) or a non-profit registered provider of social housing, unless in cases where it acts as an agent managing private sector accommodation. The exclusion from the Code of such landlords occurs because of fundamental differences which apply to the legal provisions relating to the service charges which they apply, their accounting rules and the

overall nature of their finances. The Chartered Institute of Housing Practice Briefs: *Managing Home Ownership and Promoting Home Ownership* (available at [www.cih.org](http://www.cih.org)) offer best practice guidance relevant to public sector authorities and registered providers and the Association of Retirement Housing Managers (ARHM) for retirement leasehold properties ([www.arhm.org](http://www.arhm.org)).

Members of any professional bodies continue to be bound by the rules of those bodies, subject to there being any statutory requirements that conflict with those rules. This Code does not override any statutory requirement, and you should be aware of all the applicable legislation concerning the management of residential premises and service charges. This Code also gives guidance on best practice.

To ensure that this document maintains its effectiveness readers are invited to make comments in writing to RICS so that its contents can be kept under review. Please send your comments to:

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# Glossary

This glossary provides the definitions of terms, most of which are based on those used in the RICS UK *Residential property standards*. These definitions may differ from strict legal definitions.

|   |   |
|---|---|
| <b>Client</b>                                       | A person or organisation who has instructed you or your organisation to act on its behalf. For example, this may include the freeholder, superior leaseholder, residents' management company or right to manage company.  |
| <b>Client money</b>                                 | <p>The term used to describe all money held or received by a managing agent over which they have control but which does not belong to the agent or their organisation. It is not restricted to money held on behalf of a client. It can include rents, service charges, reserve funds, deposits and retentions in respect of taxation obligations. It is a statutory requirement to hold service charge contributions in trust.</p> <p>All client money that is service charge money should therefore be held in a separate bank account that includes words in its title to clearly indicate that it is 'client money'.</p> <p>The term used in this Code for such a separate bank account is 'service charge bank account'.</p> |
| <b>Conflict of interest</b>                         | Circumstances in which an agent has an interest that could appear, or potentially appear, to influence the objective exercise of their professional duties.   |
| <b>Contingency</b>                                  | A future expense which is possible but cannot be predicted with certainty at the moment. Contingencies are usually for excess unforeseen day-to-day expenses. [see Reserve/sinking fund]  |
| <b>Contract</b>                                     | The contract between the landlord and managing agent setting out the terms of appointment. Also known as Management Agreement, Management Contract or Terms of Engagement [the term 'Contract' is used in this Code]  |
| <b>Customer</b>                                     | Any person who, either directly or indirectly, receives the services of a managing agent.   |
| <b>Fidelity insurance</b>                           | An insurance to protect organisations from loss of money etc. resulting from crime, including employee dishonesty.  |
| <b>First-tier Tribunal (Property Chamber) (FTT)</b> | <p>Formerly called the Leasehold Valuation Tribunal [LVT].</p> <p>The First-tier Tribunal – Property Chamber [Residential Property] provides impartial adjudication in England for settling disputes involving leasehold and private rented property.</p> <p><a href="http://www.justice.gov.uk/tribunals/property-chamber">www.justice.gov.uk/tribunals/property-chamber</a></p>   |
| <b>Flat</b>   | Covers any dwelling unit separated from others horizontally [and possibly vertically as well], or from commercial premises. However, the 'flat' could be a maisonette or duplex on more than one floor and can be in purpose-built blocks as well as conversions and mixed-use buildings or estates.  |
| <b>Ground rent</b>                                  | A rent payable to the landlord by the leaseholder on a specified date as required by the lease, subject to a statutory demand served by or on behalf of the landlord.   |
| <b>House</b>  | Any dwelling for the purposes of this Code which is not a 'flat' is referred to as a 'house'. [This definition is not the same as the definition of 'house' contained in the <i>Leasehold Reform Act 1967</i> ].  |
| <b>Interest in land</b>                             | A form of legal title in land, for example freehold, leasehold or commonhold interests. [For definitions of these terms, you should consult your legal adviser.]  |

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| <b>In writing, or written</b>                                | Typed or handwritten letters/notes, emails, faxes and Braille.   |
| <b>Landlord</b>  | The person or company which owns and rents or leases a flat or house. This person may also own the freehold or may have a superior leasehold interest in the property themselves but is not the manager.<br><br>[ <b>Note:</b> For convenience this Code has been written as though the managing agent is not the same person as the landlord. Where the managing agent is the landlord, they are responsible for complying with this Code.] |
| <b>Lease/tenancy agreement</b>                               | The legal contract between the landlord and the leaseholder/tenant by which the leaseholder is allowed to occupy the subject property [flat or house] setting out the terms and conditions that both parties must comply with.   |
| <b>Leasehold Advisory Service (LEASE)</b>                    | The Leasehold Advisory Service is a non-departmental public body (NDPB) funded by the government to provide free advice on the law affecting residential leasehold property in England and Wales. See <a href="http://www.lease-advice.org">www.lease-advice.org</a>   |
| <b>Leaseholder/lessee/tenant</b>                             | The person who, or company which, owns the leasehold interest and is liable to pay the service charge and ground rent under the terms of the lease. Throughout this Code the term 'leaseholder' has been used for consistency but this also includes the term lessee and tenant. The term 'tenant' is used in most statutory legislation.  |
| <b>Live/Work Units</b>                                       | A property specifically designed for dual use, combining both residential and business use. It usually has a formal division between the residential and business areas. Specific planning consent falling within the General Use Classes. The unit may be covered by some areas of residential leasehold legislation and the lease will have specific obligations for both the landlord and leaseholder.                                    |
| <b>Long leasehold</b>  | Lease originally granted for a period in excess of 21 years.   |
| <b>LPE1 and LPE2</b>   | The Leasehold Property Enquiries forms [LPE1 and LPE2] for leasehold property enquiries. Their aim is to standardise the collection of information required for the conveyancing process. They have been approved by The Law Society and trade bodies<br><br><a href="http://www.lawsociety.org.uk">www.lawsociety.org.uk</a>  |
| <b>Manager/managing agent/block manager/property manager</b> | An agent who typically manages, within terms of reference and/or instructions, whole blocks of flats or estates with communal areas. The managing agent will be engaged by the freeholder, superior landlord, the residents' management company or right to manage company. Service charges will normally be paid to this agent. [The term 'managing agent' has been used in this Code.]   |
| <b>Money laundering</b>                                      | The ways of converting a source of money that has been gained by illegal means.  |
| <b>Plurals</b>   | Words in the plural also usually include the singular.   |
| <b>Professional indemnity insurance (PII)</b>                | Insurance to cover you against a compensation claim if you have made a mistake or are negligent.   |
| <b>Reasonable</b>  | A particular standard which is judged on the standard of conduct expected of a professional, experienced person dealing with the same situation or in assessing whether the costs of services are appropriate and proportionate.   |
| <b>Reserve/sinking fund</b>                                  | A provision for future major expenditure. These terms have become interchangeable over recent years. This Code uses the term reserve fund. [see Contingency]   |
| <b>Residential property</b>                                  | Property used as living accommodation.   |
| <b>Residents' management company (RMC)</b>                   | An organisation which may be referred to in the lease, which is responsible for the provision of services and manages and arranges for maintenance of the property to be carried out, but which does not necessarily have any legal interest in the property. An RMC may instruct a managing agent to carry out these duties on its behalf.  |

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| <b>Residents'/tenants' association<br/>Recognised tenants' association (RTA)</b> | A group of leaseholders with or without a formal constitution or corporate status is called a residents association. It is also possible to have a residents' association 'recognised' (recognised tenants' association) by law with a formal constitution  |
| <b>Right to manage company (RTM)</b>   | A specific company created by the <i>Commonhold and Leasehold Reform Act 2002</i> enabling qualifying leaseholders of the building to take on the management without proving their existing manager is at fault. RTM is restricted to leasehold flats and maisonettes, but is not available to individual leasehold houses or estates.  |
| <b>RICS</b>  | Royal Institution of Chartered Surveyors.   |
| <b>Service charge</b>  | Where an amount is payable by a leaseholder as part of or in addition to rent in respect of services, repairs, maintenance, insurance, improvements or costs of management (and the amount may vary according to the costs incurred or to be incurred) this is called service charge. Details are usually set out in the lease.   |
| <b>SI</b>  | Statutory Instrument (Regulations or Order) that has been made by the Secretary of State to supplement the primary legislation and which must be complied with as it is the law.  |
| <b>TECH 03/11 Residential Service Charge Accounts</b>                            | Residential service charge accounting guidance issued jointly by RICS, Association of Residential Managing Agents (ARMA) and the professional accountancy bodies comprising the Association of Chartered Certified Accountants (ACCA), the Institute of Chartered Accountants in England and Wales (ICAEW) and the Institute of Chartered Accountants in Scotland (ICAS)<br><br>Available from <a href="http://www.icaew.com">www.icaew.com</a> |
| <b>Vulnerable customers</b>  | Customers who may require special treatment as a result of physical, mental, or emotional impairment, or for any other reason.  |

# Foreword and application of the Code

## Foreword

Whilst the Secretary of State has approved this Code under section 87(7) of the *Leasehold Reform, Housing and Urban Development Act 1993* (excluding the section 'RICS Guidance Notes' on page 7), approval of the Code does not have the effect of making a breach of the Code a criminal offence or create civil liability. (See section 24 of the *Landlord and Tenant Act 1987*, as amended by section 85 of the *Housing Act 1996*.)

In this Code the word 'must' is used to indicate a legal obligation. Breaches could lead to either civil and/or criminal action. The word 'should' is used to indicate best practice. There is often a very close correlation between a statutory requirement and best practice. It should be understood that non-compliance with best practice is a serious matter and practitioners would need to justify the reasons for not following best practice. This Code, having been approved by the Secretary of State, can be used for evidential purposes before courts and tribunals as well as disciplinary measures by RICS against regulated firms and members.

This Code has been prepared to promote desirable practices in respect of the management of residential leasehold property. Successful management can only be achieved through cooperation and a mutual understanding of the procedures necessary for the effective management of property as well as of the problems that can arise. The Code is therefore intended to be read by landlords, leaseholders, managing agents, managers and occupiers of leasehold property. Although most of the Code is aimed directly at managing agents of residential leasehold property, parts are specifically intended for other parties such as owners and professional advisers. Whilst there are cost implications of managing residential properties to the standard specified by this Code, the benefits in terms of improved service and the level of satisfaction should make any additional cost worthwhile in the long run. A managing agent should provide a compliant, transparent and value for money service.

## Aims and objectives: the core principles

- To improve general standards and promote best practice, uniformity, reasonableness and transparency in the management and administration of long leasehold residential property.
- To ensure the timely issue of all documentation including budgets and year end accounts.
- To reduce the causes of disputes and to give guidance to resolving disputes where these do occur.

Best practice requires services to be procured on an

appropriate value for money basis and that competitive quotations are obtained or costs are benchmarked. All costs should be transparent so that all parties, owners, leaseholders and managing agents are aware of how the costs are made up.

Depending on the terms of the lease, the basis and method of apportionment, where possible, should be demonstrably fair and reasonable to ensure that individual occupiers bear an appropriate proportion of the total service charge expenditure that reflects the availability, benefit and use of services.

Managing agents should communicate with all parties to ensure services are delivered effectively for the benefit of all and to ensure that everyone understands what services they can expect to receive and how much they are required to pay.

In incurring costs in the provision of services, the managing agent is spending other people's money and must demonstrate competence, objectivity and transparency in dealing with client money including service charge monies.

Communication and consultation between managing agents and leaseholders should be timely and regular to encourage and promote good working relationships and understanding with regard to the provision, relevance, cost and quality of services

Transparency is essential to achieving good communication. By being transparent in the accounts, the explanatory notes, policies and day-to-day management, the managing agent will prevent disputes. Prompt notification of material variances to plans or forecasts ensures better relationships between landlord, managing agent and leaseholder.

Service quality should be appropriate to the location, use and character of the property. The managing agent should procure quality service standards to ensure that value for money is achieved at all times. The aim is to achieve value for money and effective service rather than the lowest price.

The Code cannot override the lease but, if read in conjunction with it, will enable users to identify the best way forward in interpreting the lease terms to ensure effective management of services are provided.

## Application of the Code

The Code applies only to residential leasehold properties in England but it deals with flats, houses and all other dwellings whether in towns or in the country, on estates, in groups or on their own. It covers all lengths of leases and statutory tenancies where variable service charges are payable. The Code does not apply where the landlord is a public sector authority, or a registered social landlord, but it does apply where a public sector authority or registered

social landlord is an agent managing for a private sector owner.

In this Code, whenever a statutory reference is given, there is a legal obligation to act in accordance with the statute (see 1.1). Where appropriate, statutory references are provided at the end of each section or paragraph.

The references to a statute or statutory instrument are to be taken as being a reference to it as amended by any subsequent Act or instrument.

In considering the guidance given, factors such as the age and location of the property, the terms of occupation, the level of payment for services and the management fee need to be taken into account. Fundamentally, the following should be considered when taking management decisions

to reflect this Code. This is not an exhaustive list.

- statutory requirements
- terms of the lease or tenancy agreement
- cost effectiveness
- transparency
- efficiency
- reasonableness; and
- the quality of service.

Whilst compliance with the best practice guidance given is not mandatory, managing agents should be able to justify departures from it.

# RICS guidance notes

This Code of practice has the status of a guidance note. Where recommendations are made for specific professional tasks, these are intended to represent 'best practice', i.e. recommendations that in the opinion of RICS meet a high standard of professional competence.

Although members are not required to follow the recommendations contained in the guidance note, they should take into account the following points.

When an allegation of professional negligence is made against a surveyor, a court or tribunal may take account of the contents of any relevant guidance notes published by RICS in deciding whether or not the member acted with reasonable competence.

In the opinion of RICS, a member conforming to the practices recommended in this guidance note should have at least a partial defence to an allegation of negligence if they have followed those practices. However, members have the responsibility of deciding when it is inappropriate to follow the guidance.

It is for each member to decide on the appropriate procedure to follow in any professional task. However, where members do not comply with the practice recommended in this guidance note, they should do so only for good reason. In the event of a legal dispute, a court or tribunal may require them to explain why they decided not to adopt the recommended practice.

Also, if members have not followed this guidance, and their actions are questioned in an RICS disciplinary case, they will be asked to explain the actions they did take and this may be taken into account by the Panel.

In some cases there may be existing national standards which may take precedence over this guidance note. National standards can be defined as professional standards that are either prescribed in law or federal/local legislation, or developed in collaboration with other relevant bodies.

In addition, guidance notes are relevant to professional competence in that each member should be up to date and should have knowledge of guidance notes within a reasonable time of their coming into effect.

This guidance note is believed to reflect case law and legislation applicable at its date of publication. It is the member's responsibility to establish if any changes in case law or legislation after the publication date have an impact on the guidance or information in this document.

## Document status defined

RICS produces a range of professional standards, guidance and information documents. These have been defined in the table below. This document is a guidance note.

| Type of document                 | Definition   | Status  |
|----------------------------------|--|---|
| <b>Standard</b>                  |  |   |
| International standard           | An international high-level principle-based standard developed in collaboration with other relevant bodies.  | <b>Mandatory.</b>   |
| <b>Professional statement</b>    |  |   |
| RICS professional statement (PS) | A document that provides members with mandatory requirements or a rule that a member or firm is expected to adhere to.<br><br>This term also encompasses practice statements, Red Book professional standards, Global valuation practice statements, regulatory rules, RICS Rules of Conduct and government codes of practice. | <b>Mandatory.</b>   |
| <b>Guidance and information</b>  |  |   |
| RICS code of practice            | Document approved by RICS, and endorsed by another professional body/stakeholder, that provides users with recommendations for accepted good practice as followed by conscientious practitioners.  | Mandatory or recommended good practice [will be confirmed in the document itself].<br><br>Usual principles apply in cases of negligence if best practice is not followed. |
| RICS guidance note (GN)          | Document that provides users with recommendations or approach for accepted good practice as followed by competent and conscientious practitioners.   | Recommended best practice but not deemed by RICS to be in category of 'mandatory' for all practitioners.  |
| RICS information paper (IP)      | Practice-based information that provides users with the latest technical information, knowledge or common findings from regulatory reviews.  | Information only.   |
| RICS insights                    | Issues-based input that provides users with the latest information. This term encompasses Thought Leadership papers, market updates, topical items of interest, reports and news alerts.   | Information only.   |
| RICS economic/market reports     | A document usually based on a survey of members, or a document highlighting economic trends.   | Information only.   |
| RICS consumer guides             | A document designed solely for use by consumers, providing some limited technical advice.  | Information only.   |
| Research                         | An independent peer-reviewed arm's-length research document designed to inform members, market professionals, end users and other stakeholders.  | Information only.   |

# Part 1 Definitions applicable in this Code

## 1.1 Must/should

In this Code the word 'must' is used to indicate a legal obligation. Breaches could lead to either civil and/or criminal action. The word 'should' is used to indicate best practice. There is often a very close correlation between a statutory requirement and best practice. It should be understood that non-compliance with best practice is a serious matter and practitioners would need to justify the reasons for not following best practice. This Code, having been approved by the Secretary of State, can be used for evidential purposes before courts and tribunals apart from disciplinary measures by the RICS against regulated firms and members.

## 1.2 You

This Code considers property management from the perspective of managing agents (sometimes referred to as property managers or block managers) that typically manage whole blocks of flats or estates with communal areas. Except where indicated in the text, all requirements are for the managing agent, acting on behalf of a client, who is addressed as 'you' or referred to as the 'managing agent'.



## Part 2 Ethics

### 2.1 Introduction to ethics and professionalism

The managing agent has both legal and ethical responsibilities. The legal responsibilities are governed by both the rules established in legislation and the rights and liabilities arising out of relationships with individuals set out in civil law.

Ethical obligations impose a higher level of responsibility and may have not only legal but also moral obligations. The resolution of issues often involves a subjective decision based on your own personal ethical values and those ethical rules set out in professional codes of conduct. Laws may also set out the legal responsibilities regarding your conduct.

Professional ethics are the standards of performance and service that the general public can expect to receive from a professional managing agent and ensure that you act professionally at all times.

You should always ensure that you carry out all services with reasonable care and skill. What is 'reasonable' is measured by the standards of a reasonably competent and experienced managing agent. The duty of care and skill applies to every aspect of your services.

### 2.2 Core principles

The following core principles are based on those from the RICS Global Practice statement and Guidance Note: *Real estate management guidance* (2nd edition).

- 1 To conduct business in an honest, fair, transparent and professional manner.
- 2 To carry out work with due skill, care and diligence, and ensure that any staff employed have the necessary skills to carry out their tasks.
- 3 To ensure that clients are provided with terms of engagement which are fair and clear. These should meet all legal requirements and relevant codes of practice, including reference to complaints-handling procedures and, where it exists, an appropriate redress scheme.
- 4 To do the utmost to avoid conflicts of interest and, where they do arise, to deal with them openly, fairly and promptly.
- 5 Not to discriminate unfairly in any dealings.
- 6 In all dealings with clients, to ensure that all communications (both financial and non-financial subject matters) are fair, clear, timely and transparent.
- 7 To ensure that all advertising and marketing material is honest, decent and truthful.
- 8 To ensure that all client money is held separately from other monies in appropriately designated accounts and is covered by adequate insurance.
- 9 To have adequate and appropriate professional indemnity insurance, or equivalent, in place that complies with RICS Rules of Conduct. Having proper cover is a key part of managing your risk.
- 10 To ensure that it is made clear, to all parties with whom you are dealing, the scope of your obligations to each party.
- 11 Where provided as part of the service, to give a realistic assessment of the likely selling, buying or rental price, associated cost of occupancy or the likely financial outcome of any issues, using best professional judgment.
- 12 To ensure that all meetings, inspections and viewings are carried out in accordance with the client's lawful and reasonable wishes, having due regard for the security and personal safety of all parties.

### 2.3 Dealing with conflicts of interest

A conflict of interest is anything that impedes your ability to focus on the best interests of the client. This is a matter for your judgment – not the client's. You must make every attempt to avoid a conflict of interest. In the interests of best practice you should disclose all interests but in all cases you should consult your client, take the client's instructions and keep full notes of the discussion and instructions in the file.

### 2.4 Understanding discrimination

You must not:

- Discriminate on the basis of gender reassignment, age, religion or belief, disability, sexual orientation, gender, marriage and civil partnerships, pregnancy or race.

*Equality Act 2010*

You should not:

- Where in a position of authority you should not favour any party because they are likely to instruct you on other property matters or use services offered by you or your related parties.

## 2.5 Equality Act 2010

A victim of discrimination that is unlawful under any of the statutory provisions in the *Equality Act* is entitled to bring an action for damages in respect of any loss suffered, including injury to feelings.

*Equality Act 2010*

## 2.6 Vulnerable customers

Vulnerability can include anything that may have an impact on a person's ability to make a sound and reasoned decision.

You must ensure that you do not discriminate against vulnerable customers – either explicitly or implicitly – by your actions.

Customers have the ultimate responsibility for their decisions but you should ensure that each individual is given all the relevant information necessary to make as informed a decision as possible in the circumstances.

## 2.7 Responsibility for others

If you employ staff you may be responsible for their actions as well as your own. You should:

- a) train staff initially and on a continuous basis, and keep records of that training and who received it
- b) maintain awareness of the legislation and relevant codes of practice
- c) supervise staff adequately
- d) be aware of who your related parties are and satisfy yourself they are aware of any legal and ethical requirements and can be relied up to comply with them; and
- e) ensure that there is documentary evidence showing that all staff have been given proper instructions and training about complying with relevant laws and best practice.

*Equality Act 2010*

*Employment Acts 2002 and 2008*

# Part 3 Appointment of a managing agent: securing instructions

## 3.1 Introduction

Prior to accepting an instruction (commencing work), you should clarify for whom you will be working and how you will be paid, thereby spelling out unequivocally whose interests you will be representing. There may be a chain of leasehold interests for which you may be managing a landlord/tenant relationship on behalf of a freeholder, head landlord or an intermediate landlord. Section 30 of the *Landlord and Tenant Act 1985* however, extends the definition of a landlord to 'include any person who has a right to enforce payment of a service charge'. The landlord and tenant structure is not easily understood by many leaseholders or members of RMC/RTM companies so it is imperative that you understand the structure to correctly advise your clients.

*s.30 Landlord and Tenant Act 1985*

The relationship between you and your client will be based on terms of engagement, a management agreement or a contract, which will determine the rights and duties of both parties. (The term 'contract' has been used in this Code.)

Money laundering is an international concern and, as general guidance, you must use every reasonable effort to confirm the identity of your client before accepting instructions.

*Money Laundering Regulations 2007*

## 3.2 Contract [management contract/management agreement/terms of engagement]

You should give written confirmation to your client. This should include details of your fees and expenses, of your business terms and the duration of your instructions. You should give your client these details before the client is committed or has any liability towards you. The contract should clearly state the scope of the duties you will carry out and specify all activities for which an additional fee is chargeable. A basic summary of your terms and duties, including all fees, should be made available to leaseholders on request.

When submitting proposals for new business you should represent yourself and your services in an honest and transparent manner. If you are a member of any trade or professional bodies, you should inform your client of this

and comply with any codes of practice published by those organisations.

You must ensure that your terms are fair and the documentation is written in plain, intelligible language. If you use a standard contract you should ensure that you give clients an opportunity to negotiate individual terms.

Contracts between landlords and managing agents are normally governed by the *Supply of Goods and Services Act 1982* (as amended), which implies into such contracts terms to the effect that services shall be provided to a reasonable standard, time and cost (usually previously agreed).

*Supply of Goods and Services Act 1982 [as amended] and Provision of Services Regulations 2009 [SI 2009/2999]*

You should understand and fulfil your obligations to clients and potential clients. These relate to the provision of basic information and the handling of complaints. You should make your client aware of the provisions of the *Unfair Terms in Consumer Contract Regulations 1999*.

*Unfair Terms in Consumer Contracts Regulations 1999 [SI 1999/2083]*

The length of your appointment should be agreed prior to commencement and clearly detailed within the contract, together with any process for renewal, review of fees and termination. Unless your appointment has been fully consulted under section 20 of the *Landlord and Tenant Act 1985* (as amended) (see 9.11 Qualifying Long Term Agreements), you should ensure that your contract does not constitute a qualifying long-term agreement. You should take legal advice on this point, if necessary.

Your contract should be signed by both you and your client. You should take all reasonable steps to satisfy yourself that your client is entitled to instruct you. All future changes to your contract must be agreed with your client, promptly confirmed in writing and signed by yourself and your client.

Your entitlement to payment depends entirely on the terms of the contract between you and your client. You may have a legal right to interest on late payment.

## 3.3 Fees and charges

Your charges must be reasonable for the task involved and be pre-agreed with the client whenever possible. Where there is a service charge, basic fees are usually quoted as a fixed fee rather than as a percentage of outgoings or

income. This method is considered to be preferable so that leaseholders can budget for their annual expenditure. However, where the lease specifies a different form of charging, the method in the lease should be used by managing agents.

#### ss.18 and 19 Landlord and Tenant Act 1985

You should give reasonable and adequate notice of any increases in charges in accordance with the terms of your contract. If the charges are agreed to be subject to indexation, the index to which they are linked should be agreed in advance in writing.

You should make it clear what services you are proposing to provide and at what cost, as well as the extent and limit of any additional services available. You must not purposely underestimate costs or provide leaseholders with misleading estimates of future service charge contributions required.

### 3.4 Annual fee

Subject to the terms of any written contract, for an annual fee (where the level of service provided will normally have regard to the amount of the fee), a managing agent should normally carry out the following work:

- a) prepare invoices for and collect service charges from leaseholders
- b) instruct, with the client's consent, solicitors or debt recovery agents in the collection of unpaid service charges, subject to any statutory procedures that need to be followed. (Preparing for and attendance at courts/tribunals is not normally covered by the annual fee.)
- c) prepare and submit service charge statements and demand service charge contributions
- d) pay for general maintenance out of funds provided and ensure that service charges and all outgoing monies are used for the purposes specified under the lease and in accordance with legislation
- e) produce annual spending estimates/budgets to calculate service charges and reserves, as well as administering the funds
- f) produce and circulate service charge accounts that comply with TECH 03/11 and supply information to leaseholders and any residents' association, liaising with and providing information to accountants where required
- g) administer building and other insurance if instructed and authorised, subject to Financial Conduct Authority (FCA) regulations
- h) if instructed, on behalf of clients engage and supervise staff such as caretakers, gardeners and cleaners
- i) arrange and manage contracts and services in respect of, for example, lifts, boilers and cleaning
- j) arrange periodic health and safety, fire and other

appropriate risk assessments in accordance with the statutory requirements and, where necessary, in liaison with the relevant public authorities

- k) visit the property to visually check its condition and deal with minor repairs to buildings, plant, fixtures and fittings. An appropriate frequency for visits should be agreed with the client and set out in the contract
- l) deal reasonably and as promptly as possible with enquiries from leaseholders having regard to any requirements or constraints in the contract
- m) keep records on leases having regard to the data protection legislation
- n) keep clients informed of changes in legal requirements, including any statutory notices and other requirements of public authorities, and check compliance with lease terms; and
- o) advise on day-to-day management policy.

You should provide a basic summary of the terms and duties to leaseholders upon request.

### 3.5 Menu of charges

As part of the terms of engagement, you should have a 'menu' of charges for duties outside the scope of the annual fee. Examples include (this is not an exhaustive list):

- preparing statutory notices and dealing with consultations where qualifying works or qualifying long-term agreements are proposed
- preparing specifications, obtaining tenders and supervising substantial repairs of works; and
- attending courts and tribunal proceedings.

Some of these additional charges may be the responsibility of individual leaseholders, for example:

- considering leaseholders' applications for alterations
- advising on and dealing with assignments of leases, subletting and change of use;
- dealing with breaches of the lease, for example, late payment of service charges and
- giving information to prospective purchasers, vendors or their agents of the leasehold interests in the individual dwelling including pre-contract enquiries.

All charges should be proportionate to the time and amount of work involved and any service or provision of information should be delivered within a reasonable timeframe.

You should provide a basic summary of your charges for duties outside the scope of your annual fee to leaseholders upon request.

### 3.6 Other income

All other sources of income and benefits to the managing agent arising out of the management should be declared to the client and to the leaseholders and should only be retained in return for a service of value. These may include insurance fees (including commissions). The amount of the income should be declared annually with the year-end service charge accounts.

### 3.7 Company secretarial services

Managing agents may also provide administration services and/or company secretarial services to their RMC and RTM company clients. The level and extent of these services should be set out in an agreement. The rules of the company are governed by the memorandum and articles of the company and the *Companies Act*. It is important to understand the need to differentiate the company administration from managing the landlord company/leaseholder relationship.

#### *Companies Act 2006*

Provision of company secretarial services is a regulated activity under the *Money Laundering Regulations 2007* and you should be mindful of the need to undertake 'know your own client' checks for all clients for whom you provide company secretarial services.

#### *Money Laundering Regulations 2007*

# Part 4 Duties/conduct of a managing agent

## 4.1 Introduction

You should not act outside the scope of your authority nor outside your competence and you should follow your client's instructions where necessary.

In undertaking a management function, you must comply with the law and observe the terms of the lease. You should have effective and fair policies and procedures for dealing responsibly with management matters.

You should routinely monitor the quality and cost effectiveness of all services under your control. Any service delivery issues should be addressed in a timely manner and your client and leaseholders should be kept informed of your actions.

You should manage the property on an open and transparent basis. So far as is reasonably practicable and consistent with statutory and contractual obligations, you should keep confidential and not disclose personal information about leaseholders or landlords to other people without their consent.

## 4.2 General property management activities

You should respond promptly to reasonable requests from leaseholders for information or observations relevant to the management of the property indicating a timescale by which the request will be dealt with. Relevant information may be provided, if the lease/tenancy agreement obliges or if it is reasonable. A reasonable charge may be made if appropriate and first agreed with the leaseholder. If there is a conflict with your duties to the landlord you should advise the leaseholder to seek independent advice. You should never mislead your client or leaseholders. In all communications you should be accurate, clear, concise and courteous.

You should send communications by whatever means are appropriate so that they reach the intended recipients promptly and in compliance with any legislative or lease requirements. You should be aware of the need to prove to the satisfaction of a court the service of certain documentation.

## 4.3 Data protection

You should be aware of the requirements regarding the holding and handling of information and data. As an overall guide you must ensure that any personal information is:

- fairly and lawfully processed
- processed for limited purposes
- adequate, relevant and not excessive

- accurate and up to date
- not kept for longer than is necessary
- processed in line with an individual's rights
- secure; and
- not transferred to other countries without adequate protection.

You should also bear in mind that other issues of client confidentiality may apply to particular types of personal data, including that provided by a client. This will mean that not everyone within your firm is entitled to access the data and it should not be made available to others.

You may need to be registered under the *Data Protection Act 1998* and must comply with data protection law. The Act gives individuals the right to know what information is held about them. It provides a framework to ensure that personal information is handled properly and states that anyone who processes personal information must comply with the Act.

### *Data Protection Act 1998*

## 4.4 Applications for consent

You should deal with written applications for permissions and consents expeditiously and act within the scope of your authority. When an application is refused, you should give the landlord's reasons. Bear in mind there is a statutory duty when dealing with licences not to withhold consent unreasonably. You and the landlord are under a duty to the leaseholder to respond in a reasonable time to all applications for consent. Failure to do so is a breach of your statutory duty and may render you and the landlord open to a claim for damages.

### *Landlord and Tenant Act 1988*

Subject to the requirements of legislation, the landlord will nearly always have the ultimate authority over any other manager. One exception to this would be where the leaseholders have exercised the right to manage (see Part 15, Right to Manage.) Where instructions from the landlord put the managing agent in contravention of this Code, this should be brought to the attention of the landlord and if the landlord persists in those instructions, the managing agent should consider whether to decline to act further for the landlord.

If requested, you should assist leaseholders to understand their lease/tenancy agreement and/or refer them to [www.direct.gov.uk](http://www.direct.gov.uk) or [www.lease-advice.org](http://www.lease-advice.org) for independent advice. You should not give advice about the leaseholder's legal rights and avoid a conflict of interest when giving advice.

You should also consider the issues concerning discrimination set out in Part 2, Ethics.

## 4.5 Withholding services

You must not do any activity likely to interfere with the peace or comfort of occupiers, or withdraw or withhold services reasonably required for the occupation of the premises with the intent of causing the leaseholders to give up possession. You must not harass leaseholders as it is a criminal offence.

You should have policies and procedures for responding to incidents of harassment from any party.

*Protection from Eviction Act 1977 [as amended by s.29(1) and (2) Housing Act 1988]*

## 4.6 Contact

You should be available during normal working hours to:

- be contacted by telephone and email
- meet clients and leaseholders; and
- inspect property at reasonable times and intervals.

You should also address the issue of how to deal with incidents/emergencies that occur out of normal hours, and inform landlords and leaseholders of any arrangements. Out of hours meetings and inspections requested by leaseholders may be subject to an additional charge by managing agents depending upon the terms of their contract.

## 4.7 Inspection

You should have procedures in place to visit the building at regular intervals having regard to the type and the nature of the occupation and the complexity of the facilities provided. Subject to the terms of any lease or tenancy and where access is needed to an individual flat you should always give leaseholders as much notice as possible that you require access, giving the reasons why, and have due regard to the lease/tenancy and any difficulties in providing access during normal working hours, and the potential costs of out of hours working. In the event that you hold a spare key, entry by that key while the leaseholder is out should only be with the express consent of the occupier or in the case of a genuine emergency and you should inform the occupier that you have been into the property. You should keep a record of your findings during your visit.

In the case of leases granted for a term of less than seven years there is an implied covenant that the leaseholder will allow access at reasonable times of the day and on 24 hours' notice to view the condition/state of repair.

## 4.8 Forcible entry

This may be necessary in conjunction with the need to undertake urgent repairs. It may also be necessary in other extreme circumstances. You should read the lease and not

assume a power to enter and you should have a procedure for this set out. Forcible entry should only be considered if all other avenues to entry are closed. Witnesses should be sought, the police should be notified and immediate arrangements made to repair and re-secure the premises you have entered. A full explanation should be given to the occupier. See also Part 9.8, Forced entry.

## 4.9 Personal safety

- You must ensure the safety of your staff and all others involved in management at all times.
- You should agree a set of procedures to cover this and when staff are out of the office ensure these procedures are followed at all times.
- In particular you should record the time staff leave the office and monitor their safe return.
- You should ensure there is a procedure to be followed where staff do not return to the office at the end of their working day confirming they have completed their tasks safely.
- It is your responsibility to ensure that staff are adequately trained to guard their personal safety.

*Health and Safety at Work etc Act 1974  
Management of Health and Safety at Work Regulations 1999 [SI 1999/3242]*

## 4.10 General

You should levy all charges in accordance with the law, the terms of the lease and your contract.

You should maintain efficient records relating to the building and keep records during the periods of statutory limitation of action. You should seek advice from clients and professional indemnity insurers.

You must comply with all applicable health and safety requirements. You should devise and maintain, with specialist help if necessary, a health and safety policy and arrange regular health and safety, fire and any other applicable risk assessments; for example, a water risk assessment.

*Health and Safety at Work etc Act 1974  
Management of Health and Safety at Work Regulations 1999 [SI 1999/3242]*

You should take out and maintain sufficient indemnity insurance cover or equivalent and fidelity insurance cover to protect client money.

You may advise leaseholders to seek advice where you think they may have a right to housing benefit and other statutory benefits.

You should consider where appropriate whether to liaise with social services but not attempt to undertake the powers and duties of public authorities.

You should take steps to keep yourself informed as to developments in the law affecting residential management to enable you to keep wholly within the law.

## 4.11 Consultation

You should consult with representative organisations where necessary and must do so when required by law.

It is better to keep in touch with leaseholders than to remain silent and the legislative requirements to consult where qualifying works and long-term agreements are concerned (see 9.9–9.12 Consultation) should be regarded as the minimum standard required, not the optimum. You should be aware that, by law, you must consult leaseholders about works which are to be carried out at a cost above the statutory limits.

*s.20 Landlord and Tenant Act 1985 (as amended by s.151 Commonhold and Leasehold Reform Act 2002)*

*Service Charge [Consultation Requirements] (England) Regulations 2003 [SI 2003/1987]*

*Service Charges [Consultation Requirements] (Amendment) [No.2] (England) Regulations 2004 [SI 2004/2939]*

You must consult with leaseholders individually and with any recognised tenants' association and, if appropriate, hold meetings. When a meeting is convened, the managing agent should give reasonable notice of it to all leaseholders including the place, date and time of the meeting and the matters to be considered.

A recognised tenants' association has the right to serve notice on the landlord asking them to consult with the association about the appointment or employment of a managing agent.

When such a notice has been served and it is proposed to appoint or reappoint a managing agent, the landlord must serve a notice on the association stating the name of the proposed managing agent, and which of the landlord's obligations it is proposed that the agent should discharge. The landlord must allow a period of at least one month for comments to be sent to a person named by the landlord at an address in the UK. The landlord shall have regard to observations made by the association.

On written request the landlord must provide the secretary of a recognised tenants' association with details of the managing agent's duties and allow a reasonable period for them to comment on the managing agent's duties and performance. The landlord must provide the details and invite comment every five years thereafter and whenever the landlord appoints a new managing agent, if a notice has previously been served by a recognised tenants' association. Unless the appointment of the managing agent has been fully consulted under section 20 of the *Landlord and Tenant Act 1985* (as amended), the landlord should ensure that the managing agent's contract does not constitute a qualifying long-term agreement.

*s.30B Landlord and Tenant Act 1985*

*s.30 Landlord and Tenant Act 1985 (as inserted by s.44 Landlord and Tenant Act 1987)*

*s.20 Landlord and Tenant Act 1985 (as amended by s.151 Commonhold and Leasehold Reform Act 2002)*

## 4.12 Income tax

The treatment of income tax should be covered in the agreement with the landlord. All landlords will require sufficient information to manage their tax affairs. When a landlord lives overseas, unless there is a valid exemption certificate from HM Revenue & Customs, the agent must deduct income tax from payment to them. Further information is available from the Non-Resident Landlord Scheme, a scheme for taxing the UK rental income of non-resident landlords. Information about this scheme can be obtained from HM Revenue & Customs (HMRC).

*Finance Act 2007*

*ss.11, 479 and 480 Income Tax Act 2007*

## 4.13 Money laundering

You must comply with the *Money Laundering Regulations* and *Proceeds of Crime Act*. Money laundering may be used to conceal serious criminal activities. Any method whereby the proceeds of criminal activities are disguised or converted and then realised as legitimate funds or assets constitutes money laundering. Investing in property as a means of conversion and subsequent resale or mortgaging can release clean funds. Legislation has created three broad criminal offences. These are:

- assisting a criminal to obtain, conceal or retain or invest funds if the person giving assistance knows or suspects the funds to be the proceeds of crime
- tipping off a person who is the subject of suspicion or is under investigation; and
- failure to report knowledge or suspicion of laundering acquired in the course of a person's trade, profession, business or employment.

The *Money Laundering Regulations 2012* apply to those who undertake relevant financial business. All managing agents must implement procedures in order to minimise the risk of committing a criminal offence.

*Money Laundering Regulations 2007*

*Money Laundering (Amendment) Regulations 2012*

*Proceeds of Crime Act 2002*



## 4.14 Bribery

You must comply with the *Bribery Act 2010*. It is a criminal offence to make or receive a bribe. There is also a corporate offence of failing to prevent a bribe.

You should ensure that both you and your staff know what constitutes a bribe and have a proper training programme in place.

*Bribery Act 2010*

You should have an appropriate supervision and support system in place, and ensure that proper practices and procedures are being followed to the satisfaction of your client. Disciplinary, grievance and harassment procedures should be in place, details of which should be communicated to all staff.

*Health and Safety at Work etc Act 1974*

*Management of Health and Safety at Work Regulations 1999 [SI 999/3242]*

## 4.15 On-site staff

From time to time, landlords/managing agents may be required to employ 'on-site' staff and there is significant legislation affecting their employment and housing rights which you should be aware of.

Your terms of engagement should define who is the employer of any on-site staff. This is usually the landlord or the manager under the lease, rather than the managing agent; however, HMRC may still consider the managing agent to be the employer. Therefore you should take relevant advice if necessary.

Your recruitment policies and procedures must fully comply with the requirements of the *Equality Act 2010*. You should make enquiries into the legal status, employment history, relevant personal qualities and background of all prospective employees, either directly or on behalf of your clients. You should also be satisfied they are legally entitled to work in the UK, and are honest, trustworthy and suitable for the job.

You must issue all staff with a contract of employment and job description that clearly defines their duties and responsibilities. You should agree these duties, hours of employment and other job-related details with your clients and share them with the leaseholders.

*Equality Act 2010*

*Employment Act 2002*

*Employment Act 2008*

*Immigration Rules [UK Visas and Immigration]*

An appropriate training programme based on the complexity of the tasks required and the experience and qualifications of the employee should be identified and provided. It is recommended that a full induction training programme is offered shortly after commencement of employment. You must provide all employees with a copy of your health and safety policy and ensure that they are fully trained and competent before undertaking any duties with health and safety implications.

# Part 5 Complaints and disputes

## 5.1 Introduction

You should have clear procedures in place for handling complaints and dealing with disputes. You must also belong to one of the government approved redress schemes. The procedures should include a series of steps that clients, leaseholders and neighbours can take to help resolve problems and misunderstandings. Complaints and disputes are time consuming and often arise out of a lack of information; they can often be avoided if information is provided in a timely manner and there is transparency.

*Redress Schemes for Lettings Agency Work and Property Management Work [Requirement to Belong to a Scheme etc] [England] Order 2014 [SI 2014/2359]*

In dealing with disputes in particular, you should be careful that, by your actions, you do not assume a responsibility you do not have.

## 5.2 Disputes between occupiers

You should always refer to the lease when dealing with disputes between occupiers. You cannot go further in dealing with the parties than the landlords remit under the lease.

Most leases will not allow you to recover any costs from the service charge in connection with disputes between occupiers.

The local authority may help in establishing evidence of noise, anti-social behaviour or keeping animals in unsuitable conditions.

You should always have regard to the enforceability clause in the lease before embarking on any action which involves expense from the service charge.

Leases typically contain a mutual enforceability clause requiring landlords to seek an indemnity for their costs from leaseholders requesting enforcement. This may also leave the landlord the option of choosing not to enforce if it is not 'in the interests of good estate management'.

Any enforcement action should be with your client's authority and confirmation that the client will be responsible for the costs until or unless recovered from the leaseholder. This can be by way of requesting estimated costs in advance as part of the indemnity.

Complainants should be given realistic estimates of the likely time and cost involved in any enforcement. You should also consider other methods of dispute resolution such as mediation, be familiar with local mediation services and suggest this method of dispute resolution, where appropriate. Information on mediation service providers can be obtained from the National Mediation Helpline. (See Part 5.5 Alternative dispute resolution and mediation.)

## 5.3 Disputes between landlord and leaseholder

The lease agreement may contain a disputes procedure such as arbitration, which may involve extra costs. Following the introduction of the *Commonhold and Leasehold Reform Act 2002*, such clauses are likely to be void, and arbitration must be agreed post-dispute.

*s.27A(6) Landlord and Tenant Act 1985 [as inserted by s.155 Commonhold and Leasehold Reform Act 2002]*

*Schedule 11 Commonhold and Leasehold Reform Act 2002*

The landlord should try to resolve the dispute by informal means and consider suggesting mediation or arbitration by agreement, rather than litigation, as a way of settling particular disputes. The leaseholder should be recommended to seek legal advice on any such suggestion.

Unresolved disputes concerning level, quality and/or cost of services recovered as service charges may form the basis of an application to the FTT. You should, therefore, respond to any notification of dissatisfaction from clients and customers by ensuring that services and monitoring procedures are adequate and represent value for money. Any genuine service delivery issues should be addressed in a timely manner, and your client and customers should be kept informed of your actions.

## 5.4 Complaints

It is not always straightforward to differentiate between a complaint against an agent and landlord/leaseholder disputes. Complaints about matters such as service delivery, timescales and cost are typically landlord/leaseholder disputes (see Part 5.3, Disputes between landlord and leaseholder). This section covers complaints against the direct actions and/or behaviour of the managing agent.

You must have a formal written complaints handling procedure in place to deal with complaints about your own work and that of your staff. The procedure should be made available to your client and leaseholders. It should include a short series of steps and response times for its various stages and should provide for leaseholders to complain to the landlord. The procedure should provide for complaints about your staff to be made to a responsible principal and for them to be investigated quickly and fairly. It must include details of the nominated Ombudsman Scheme to which you belong.

*Redress Schemes for Lettings Agency Work and Property Management Work [Requirement to Belong to a Scheme etc][England] Order 2014 [SI 2014/2359]*

The lease/tenancy agreement may contain a disputes procedure such as arbitration. Such formal arrangements may involve extra costs, and any such agreement contained in a long lease is not valid, unless it is as a result of an agreement after the dispute has arisen. It is desirable to try to resolve the dispute by informal means before turning to any formal provision in the lease or tenancy agreement.

Qualifying leaseholders have the right to have a management audit carried out. Landlords and managers must comply with valid notices in this respect.

*s.76 Leasehold Reform, Housing and Urban Development Act 1993*

You should bear in mind that, where the dispute refers to service or administration charges, any clause specifying that arbitration must be used is not valid unless it is as a result of an agreement after the dispute has arisen.

*s.27A Landlord and Tenant Act 1985 [as inserted by s.155 Commonhold and Leasehold Reform Act 2002]*

*Schedule 11 Commonhold and Leasehold Reform Act 2002*

## 5.5 Alternative dispute resolution and mediation

The Ministry of Justice Practice Direction – Pre-Action Conduct aims to:

- enable parties to settle the issues between them without the need to start proceedings (that is a court or tribunal claim); and
- support the efficient management by the court and the parties of proceedings that cannot be avoided.

Increasingly, courts and tribunals are recommending that disputing parties seek alternative dispute resolution (ADR) including mediation before cases are heard and you should encourage all parties to seek alternative ways of resolving their issues as this can prove a more cost effective way of resolving disputes.

There are different forms of ADR:

- Mediation
- Independent expert determination
- Early neutral evaluation
- Arbitration

### Mediation

Mediation is a non-binding structured settlement negotiation facilitated by a neutral third party – the mediator – who has no decision-making power. The objective of

mediation is to achieve a mutually satisfactory agreement between the parties, rather than have something imposed by a third party.

### Independent expert determination

Independent expert determination is an ADR process where an independent third party determines the outcome of the dispute. The basis of the appointment is that the independent expert is empowered by an agreement between the parties to make a final and binding decision. The agreement of two parties to refer their dispute to independent expert determination creates a contractual obligation for them to be bound by the decision of the independent expert. The independent expert will usually be a specialist in the subject of the dispute.

### Early neutral evaluation

Early neutral evaluation is an ADR process whereby both parties retain a neutral party to provide a non-binding evaluation on the merits of a dispute. As the name suggests, this is usually most effective if attempted early in the life of the process, before positions become entrenched and significant costs have been incurred. There are no procedural requirements for early neutral evaluation beyond those agreed between the parties.

### Arbitration

The *Arbitration Act* 1996 governs all arbitrations in England and Wales. A request may be made for an arbitrator to be appointed (often set out in the terms of a lease) or the involved parties can agree on one. The process is more formal. The arbitrator (who should have some knowledge in the subject of the dispute) will decide the outcome of the dispute based on the evidence before him or her but is not allowed to stray outside the evidence.

## 5.6 First-Tier Tribunal – Property Chamber

The First-tier tribunal – Property Chamber (Residential Property) provides an independent service in England for settling disputes involving leasehold and private rented property.

Legislation has given the tribunal powers to settle certain types of dispute which would otherwise have to be dealt with by the courts. The tribunal aims to provide easier and cheaper access to justice. It also promotes the use of alternative dispute resolution and mediation.

## 5.7 Redress (Ombudsman) schemes

The *Enterprise and Regulatory Reform Act* 2013 requires that all letting and property management agents in England are a member of a government-approved redress scheme.

*Redress Schemes for Lettings Agency Work and Property Management Work [Requirement to Belong to a Scheme etc][England] Order 2014 [SI 2014/2359]*

# Part 6 Accounting for other people's money (client money)

## 6.1 Introduction

You should make sure that you have a clear understanding of the meanings of 'client money' and 'client'. Any money you receive or hold which is not entirely due and payable to you is called client money because it belongs to someone else and as such you should be very careful in handling and accounting for it. You hold client money in trust and if you fail to account for that money properly you are open to legal action for breach of that trust, and criminal liability could also arise.

Remembering that it is not your own money that is involved, you should decide, having regard to the amounts involved and the volume and frequency of activity affecting the account, whether to place client money in an interest-bearing account. Unless the client has agreed otherwise in writing, client money should be available immediately to your clients, so a deposit account with a withdrawal notice period may not be suitable. You should discuss with a new client where you will keep the money.

Special rules apply to service charge funds you collect. Section 42 of the *Landlord and Tenant Act 1987* establishes a statutory trust so that service charge funds for each property must be identifiable and either be placed in a separate bank account, or in a single client account where the accounting records of the manager separately identify the service charge funds attributable to each property.

*s.42 Landlord and Tenant Act 1987*

## 6.2 Bank accounts

You must open one or more client bank accounts which should be held at a recognised bank; that is, an institution authorised by the *Financial Services and Markets Act 2000* or a deposit account (and not invested in deferred shares) of a building society within the meaning of the *Building Societies Act 1986*.

*s.42 Landlord and Tenant Act 1987*

*The Service Charges Contributions [Authorised Investments Order 1988 [SI 1988/1284 [Amended by the Financial Services and Markets Act 2000 [Consequential Amendments and Repeals] Order 2001 [SI 2001/3649]*

On opening a client bank account, you should give written notice to and seek written confirmation from the bank or building society that:

- a) all money standing to the credit of that account is client money
- b) the bank or building society is not entitled to combine the account with any other account or to exercise any right of set-off or counter-claim against money in that account in respect of any sum owed to it or any other account of yours; and
- c) any interest payable in respect of sums credited to the account should be credited to that account.

Self-managed blocks should obtain a statement from their bank that the funds are ring-fenced.

You should advise, in writing, all those whose money you are holding including each client, the name of the account and the name and address of the institution. Further account details should be provided if requested. This may include whether or not it is an interest-bearing account and, if it is, the withdrawal notice period and any restrictions on withdrawals. If not immediately accessible, such restrictions will require the client's approval in writing.

You should hold your own or your office account separately from client money. You cannot be a client of your business and, as a result, your personal or office transactions should not be conducted through a client bank account. Office money should not be kept in a client account. Client money should be kept separately. If money is paid in to open the client account, it should be withdrawn at the earliest opportunity.

You should pay any client money you receive into a client bank account either on the same working day or the next working day after receipt or as soon as practical.

When you receive a cheque, banker's draft or other receipt which includes any element of client money, you should pay it into a client bank account before withdrawing any monies which are due to you from that client.

You should be cautious about drawing against a cheque before it has been cleared because, if it is not honoured, you will have to make up the shortfall.

You should never overdraw a client bank account. You should ask your client to supply you with funds before the payment is made or you may make a payment from your own funds, but in so doing you may be at risk if your client fails to pay you. You should never lend one client's funds to another.

You must only draw money from a client bank account:

- a) if it is your own money paid into a client bank account for the purpose of opening or maintaining the account
- b) for payment to a client

- c) for duly authorised payment on behalf of a client to a third party
- d) for payment of your fees and/or disbursements provided that your client has a copy of your account and your client has authorised payment in writing or it is permitted by your contract
- e) if it is paid in by mistake
- f) to transfer it on behalf of a client to another client account; or
- g) when a payment into a client bank account includes non-client monies.

### 6.3 Records

You should keep account records to differentiate clearly the money which you hold for different clients. You should keep the records in written form, or on computer (provided that they can be reproduced in written form) all accounts, books, ledgers and records maintained in respect of all client accounts and all bank or building society statements, for at least 12 years from the date of the last entry therein.

You should keep properly written records to show all of your dealings with client money received, held or paid and to show all your other dealings through client bank accounts.

You should keep properly written records in respect of each client to show all of your dealings with client money and enable the current balance of that client to be shown.

You should keep a list of all persons for whom you are or have been holding client money and a list of all bank and building society accounts in which client money is held.

You should reconcile your cash books with your client bank account statements and with your client ledger balances within a reasonable time and keep a record of your reconciliation. Reconciliations should be completed by the end of the following month, at the latest. Discrepancies should be investigated and shortfalls on client accounts should be made good.

You should send a written account to your client (or as they direct) for all client money held, paid or received (whether or not there is any payment due to your client) at appropriate intervals agreed with your client but not less than once a year.

### 6.4 Ending the instructions and handover process

Your contract should provide clear means of termination if either party breach its obligations. It should also provide for a clear period of notice and means of termination, on behalf of both parties, irrespective of any fault. In other words, both parties should be free to terminate after the effluxion of a specified period of time.

If you or your client decides to terminate your contract, you should deal with any handover in a professional, competent and efficient manner within agreed timescales. All pertinent

information should be provided with the minimum of delay to your client or the new agent.

There are no statutory requirements as to what information must or should be handed over, or when. Therefore, your contract should contain comprehensive details of the services to be undertaken and information to be provided to the client, or any other agent appointed, following termination. It is far better to agree the process when you have a good working relationship than trying to rectify the issues after the event, with the possibility of antagonism between the parties.

Another key issue that should be covered within the contract includes who will deal with ongoing litigation, disputes and arrears collection.

### 6.5 Written confirmation of termination

If you receive instructions from your client that they wish to terminate your contract or if you decide that you no longer wish to manage on their behalf, you should confirm the termination in writing. You should make it clear at which date you will cease to manage and spell out how and when you will pass over to the client all relevant documentation and monies held.

Your contract should detail the notice period(s) required. Longer periods can allow for a more structured handover.

### 6.6 Handover of documentation

For the sake of future clarity, your contract should confirm which information belongs to the client and which remains the property of the agent. You should, in any event, refer to the RICS UK information sheet *Whose files are they anyway?* (2013) which contains comprehensive advice as to the ownership of documentation held by the agent.

Generally speaking, if you are acting as an agent, all documents that you produce or receive from third parties during your appointment belong to your client. It therefore follows that the vast majority of documents held by you as an agent, such as copy leases, leaseholder's files, tender documents and contracts, belong to your client and are only being held by you on the client's behalf during the term of your agency. Records of service charge demands, accounts, payments, arrears, books of account, invoices and other similar documentation also belong to your client but you can retain copies. You should agree arrangements for handing over all your client's documents in a timely manner.

You are entitled to keep your copy of the client's letters to you and your file copies of letters or reports to the client. These are your records of contract. If you receive your instructions by phone, you can also keep notes that you make for your own purposes.

## 6.7 Accounting for client monies and service charge funds upon termination

This is often an area of dispute between managing agents and their ex-clients. Your contract should make clear provision for how and when client monies and uncommitted service charge monies are to be calculated and handed over to your client or the appointed agent.

You should ensure that you can account in a timely manner for any money that you hold directly on behalf of a client.

Service charge monies are usually handed over in two stages. At handover the outgoing agent should handover the balance of funds that are not required to meet commitments already made. Then the remaining balance is handed over at an agreed later date, along with the statement of accounts made up until the date of handover. It is important that this procedure and timescale is detailed within your contract to avoid unnecessary disputes.

# Part 7 Service charges, ground rent and administration charges

## 7.1 Introduction

Leases typically provide for a landlord to be responsible for maintaining and insuring the structure and common parts of a development, and for providing relevant services. The landlord's costs are usually recoverable as a service charge from the leaseholders. Recovery of these costs, often in advance, is normally a primary role of the managing agent.

You should have regard to specific lease terms to identify what costs are recoverable as a service charge and when they are due for payment and should advise clients if their instructions deviate from the lease provisions. There are no statutory rights for landlords to recover any costs or to collect service charges in advance; the rights are purely contractual, thus the lease is paramount.

## 7.2 Variable service charges

You should be fully aware of the extensive statutory protection for leaseholders and tenants paying variable service charges. Variable service charges are defined within section 18 of the *Landlord and Tenant Act 1985* as:

'[...] an amount payable by a tenant of a dwelling as part of or in addition to the rent—

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.'

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The legislation is limited to a leaseholder (tenant) of a dwelling, but covers service charges which are payable 'directly' or 'indirectly'. These terms can have particular relevance when managing mixed use or mixed tenure developments or where there is more than one landlord. It is important that you are aware of these rights, whichever party you are acting for, when managing any properties.

Service charge provisions within residential long leases usually fall within the section 18 definition, but this is not always the case. Therefore, you should have regard to the actual lease terms and take further advice if necessary.

## 7.3 Budgeting/estimating service charges

The lease commonly provides for the landlord to recover expenditure as an estimated interim service charge payable in advance. When calculating a service charge budget, you should use due diligence and professional expertise to make an assessment of expenditure required to maintain the development and services for the forthcoming period (typically a year) and beyond. Similar to when securing instructions, here too you must not purposely underestimate costs or provide leaseholders with misleading estimates of future contributions required.

Some leases, however, do not require advance payments to be made or specify a rate of payment which is out of date and therefore do not allow for recovery of the actual costs adequately. From a landlord's point of view it is not a satisfactory system if all the bills have to be paid by the landlord without sufficient advance contributions from leaseholders. Services may be difficult to provide but the landlord must follow the terms of the lease.

In such a situation, the landlord may have to wait over a year to recover the expenditure incurred early in the service charge year and may have to pay for the cost of borrowing money to finance the costs. Sometimes the landlord cannot recover any interest charged on borrowings as part of the service charge.

This problem of financing the service costs can also cause difficulties where the leaseholders themselves are responsible for providing services and the charges are payable in arrears. If any of the leaseholders are late payers, funds to carry out maintenance and repairs may run out before the end of the year. Failure to provide such services may constitute a breach of the landlord's obligations, leading to legal action.

You should consider an application to the FTT for a variation of the lease if the lease deals inadequately with the payment of service charges. However, leaseholders have no obligation to agree to variation of their leases.

The best information available should be used to inform the budget estimate. This is likely to be, in descending order of importance:

- actual costs where contracts are already in place and/or the actual costs for the following period have already been agreed, taking into account any known or anticipated major works, or cyclical costs to be incurred during the year
- estimates based on likely out-turn of current year, actual accounts for the last completed financial year

and any known or likely variations/increases for the future year; and

- comparable evidence from similar schemes, which is often the best information available for some costs on new developments.

Unless your contract delegates specific authority to you for service charge budgets, they should be approved by your client prior to demanding any service charges. Initial service charge demands should be accompanied by a copy of the approved budget. This budget should have sufficient detail to enable leaseholders to understand the nature of the charges being levied and the rationale behind the level of estimated expenditure. To allow comparison between years, there should be a standard format for presentation to leaseholders.

While it is prudent to slightly over-estimate the total level of funds required to run the development for the following year, the estimated budget should always be as close to the subsequent final accounts as possible. It is appropriate to make some explained allowance for a contingency within the estimated budget.

The purpose of an estimated budget is to ascertain and support the level of interim service charges demanded on account and to provide a robust benchmark for monitoring service costs throughout the period (typically a year). You should explain to leaseholders that it is only an estimate upon which the interim service charge is based. The budget may also include contributions to reserve funds. The final level of service charge contributions will be based on the actual expenditure incurred, which may be more or less than anticipated, especially where unforeseen matters arise during the year. The amount of the actual service charge contributions may also reflect any surplus or deficit from the previous year, depending on the terms of the lease. You should notify leaseholders of significant departures from the budget and should be willing and able to explain the reasons for them.

## 7.4 Applications to the FTT

It is essential that managing agents can justify the reasonableness of any item of expenditure and the level of the charge. Leaseholders can apply to the FTT if they feel that the charges proposed are not reasonable or payable. In that scenario, collection may prove difficult, and cash flow compromised, until the FTT has determined the reasonableness of any charges.

In most cases both landlords and leaseholders have the right to apply to the FTT before or after a service charge is incurred for determination as to the liability to pay a service charge and if so:

- a) the person by whom it is payable
- b) the person to whom it is payable
- c) the amount which is payable
- d) the date at or by which it is payable; and
- e) the manner in which it is payable.

The same rights apply where costs have yet to be incurred for services whether or not any payment has been made. Payment by a leaseholder should not always be taken as agreement that the leaseholder has agreed or admitted any matter as this will depend on the particular circumstances.

### Landlord and Tenant Act 1985

## 7.5 Reserve funds (sinking funds)

The lease often provides for the landlord to make provision for future expenditure by way of a 'reserve fund', or 'sinking fund'. You should have regard to the specific provisions within the lease that may, for example, provide for a general reserve fund(s) for the replacement of specific components or equipment.

The intention of a reserve fund is to spread the costs of 'use and occupation' as evenly as possible throughout the life of the lease to prevent penalising leaseholders who happen to be in occupation at a particular moment when major expenditure occurs. Reserve funds can benefit both the landlord and leaseholder alike by ensuring monies are available when required for major works, cyclical works or replacing expensive plant.

It is, therefore, considered good practice to hold reserve funds where the leases permit. If the lease says the landlord 'must' set up a fund, then this must be done. Neglecting to have a fund when the lease requires one could be deemed to be a breach of the terms of the lease. No attempt to collect funds for a reserve fund should be made when the lease does not permit it.

Where there is no provision in the lease for reserve funds, there is no entitlement to create or hold one, and any money collected for such a purpose can be demanded back by the leaseholders. In these circumstances, or where the current provisions are likely to prove inadequate, you should make leaseholders aware and encourage them to make their own long-term saving provisions towards the estimated expenditure. You should also consider recommending to your client that consideration be given to discussing with leaseholders the benefits of a variation to the leases to allow for a reserve fund to be set up.

You should also recommend your clients to have a costed, long-term maintenance plan that reflects stock condition information and projected income streams. This should be made available to all leaseholders on request and any potential purchasers upon resale.

The level of contributions for simple schemes should be assessed with reference to the age and condition of the building and likely future cost estimates. On more complicated developments, the assessment should reference a comprehensive stock condition survey and a life-cycle costing exercise, both undertaken by appropriate professionals.

The usual method of working out how much money is to go into the fund each year, assuming the lease/tenancy agreement does not make any other provision, is to take



the expected cost of future works, including an allowance for VAT and fees, and divide it by the number of years which may be expected to pass before it is incurred. The level of contributions should be reviewed annually, as part of the budget process, and the underlying survey information should be reviewed at appropriate intervals. This will vary for each scheme depending on complexity, age, condition and the relative size of funds held.

If after the termination of any lease there are no longer any contributing leaseholders, any trust fund shall be dissolved and any assets comprised in the fund immediately before dissolution shall, if the payee is the landlord, be retained by them for their own use and benefit, and in any other case, be transferred to the landlord by the payee. Again this is subject to any express terms of the lease relating to distribution, either before or at the termination of the lease.

*s.42[7] Landlord and Tenant Act 1987*

## 7.6 Holding service charge funds in trust

You must hold service charge monies, and any interest accruing, by way of statutory trusts in accounts established in accordance with section 42 of the *Landlord and Tenant Act 1987*. Service charge payments must be kept separate from the landlord and managing agent's own money and must only be used to meet the expenses for which they have been collected.

*s.42[6] Landlord and Tenant Act 1987*

They should be held in either separate client service charge bank accounts for each scheme you manage, or a universal client service charge bank account for all service charge monies but where monies for each scheme are separately accountable. If you operate one universal account it is a breach of trust to allow funds held for one scheme to be used to finance any other scheme. The accounts should include the name of the client or the property (or both) within the title of the account.

You should not commit expenditure unless you have the funds available to cover the costs in full. Some leases provide for the service charge account to borrow funds to meet required expenditure, but you cannot assume this to be the case without reference to the lease. In any event, you should ensure those funds have been made available prior to committing to the expenditure and should not allow service charge bank accounts to go into deficit.

You must hold such sums in trust for the purpose of meeting the relevant costs in relation to the property and they should not be distributed to the leaseholders when the lease is assigned/terminated, subject to any express terms of the lease relating to distribution, either before or at the termination of the lease.

*s.42[6] Landlord and Tenant Act 1987*

Funds held for longer terms, or comprising large balances, should be held in an interest-earning account. Funds required to meet day-to-day expenditure should be immediately accessible. Where reserve funds are invested these must be invested in accordance with current regulations.

*s.42 Landlord and Tenant Act 1987*

*Service Charge Contributions [Authorised Investments] Order 1988 [SI 1988/1284][as amended by the Financial Services and Markets Act 2000 [Consequential Amendments and Repeals] Order 2001 [SI 2001/3649]*

A trustee is under a duty to invest the trust funds not required to meet day-to-day expenditure. The investment must be in accordance with the terms of the trust, the *Trustee Investments Act 1961* or an order made under the *Landlord and Tenant Act 1987* (which enables funds to be deposited at interest with the Bank of England or with certain institutions under Part 4 of the *Financial Services and Markets Act 2000*, including a share or deposit account with a building society, or a European Economic Area firm mentioned in Schedule 3 to the Act). Trustees who want to take advantage of the wider powers of investment under the *Trustee Investment Act 1961* (as amended by the *Trustee Act 2000*) should have regard to the provisions of that Act, and to the various subsequently enacted statutory instruments.

*s.42 Landlord and Tenant Act 1987*

*Service Charge Contributions [Authorised Investments] Order 1988 [SI 1988/1284][as amended by the Financial Services and Markets Act 2000 [Consequential Amendments and Repeals] Order 2001 [SI 2001/3649]*

*Trustee Investments Act 1961 [as amended by the Trustee Act 2000]*

*Financial Services and Markets Act 2000*

If leaseholders contribute towards different costs (e.g. one group of leaseholders contributes towards the lift, whilst another group contributes towards gardening), the funds should be differentiated. This should be done by way of different service charge schedules, each schedule should total 100 per cent although you should be aware that percentages under some leases do not add up to 100 per cent.

## 7.7 Demanding service charges

The lease will normally dictate individual apportionments of the overall service charge expenditure and the method and frequency of payments. Leaseholders are only obliged to pay service charges where the lease/tenancy agreement requires this, where reasonably incurred and where the works or services have been carried out to a reasonable standard.

Service charge percentages do not always add up to 100 per cent, and you should advise your client of any

discrepancies and, if necessary, suggest that further advice should be taken regarding an application to the FTT for lease variations.

The lease may provide for individual proportions to be 'fair and reasonable' (or similar words) and often to be determined by the landlord or the landlord's surveyor. You should ensure that proportions have been assessed in accordance with the lease and that your client has satisfied any professional requirements regarding assessment or re-assessment.

All service charge demands should be clear, easily understandable, relate to available budget estimates or actual accounts and be served in accordance with the lease. They must contain the landlord's name and address where the landlord can be found. In the case of an individual this should be their place of residence or place from which they carry out business (in England or Wales). In the case of a company this should be the registered office or the place from which it carries out business in accordance with the requirements of section 47 of the *Landlord and Tenant Act 1987*.

*s.47 Landlord and Tenant Act 1987 [as amended by Schedule 11, Part 2(10)] Commonhold and Leasehold Reform Act 2002*

They must also be accompanied by a summary of rights and obligations in accordance with section 21B of the *Landlord and Tenant Act 1985*. It should be noted that the Act provides a right for the form and content of such summaries to be prescribed by regulations. Different regulations have been issued in England and Wales and are potentially subject to amendments over time. You should ensure that you keep yourself informed of the current prescribed content and format.

*s.21B Landlord and Tenant Act 1985*

*Service Charges [Summary of Rights and Obligations and Transitional Provisions] Regulations 2007 [SI 2007/1257]*

Where required by the lease, service charge demands should be based on the assessment of the relevant professional and 'signed off' accordingly.

## 7.8 Service charge arrears

You should have an efficient system to monitor service charges received when due and those that go into arrears, and issue leaseholders with timely reminders. Your contract should specify the extent of your services in terms of recovering outstanding service charges and any fees payable for those services. You should provide regular statements of service charge payments, in accordance with the frequency set out in the lease, to all those who are making payments.

Your client should be informed, in writing, of any significant arrears situation immediately and your client's instructions should be taken as to the appropriate next steps. If a

legal adviser needs to be appointed, this should be with your client's authority and confirmation that they will be responsible for the costs until or unless they are recovered from the leaseholder.

You should have regard to the Practice Direction – Pre-Action Conduct made under the Civil Procedural Rules (see [www.justice.gov.uk](http://www.justice.gov.uk)) prior to commencing any court action for recovery of outstanding service charges.

### *Ministry of Justice Practice Direction – Pre-Action Conduct*

The lease typically provides for interest to be added on service charges not paid within a certain period of time (typically 14, 21 or 28 days) and often at a prescribed, and relatively high, rate. This can be a useful mechanism to encourage reluctant leaseholders to make timely payments, but may make the situation more serious for those who are having genuine difficulty in meeting payments. While having full regard to your fiduciary duties to your client and other leaseholders, you should attempt to contact defaulting leaseholders and discuss any difficulties regarding payments. You should take your client's instructions, or have agreed standing instructions in place, as to deciding phased payment or other options in preference to commencing legal proceedings.

You should inform leaseholders in arrears about the availability of independent financial advice or debt advice from, for example, National Debt Helpline, Citizens Advice Bureau, Money Advice Service and Stepchange Debt Charity (previously the Consumer Credit Counselling Service).

Where arrears are related to service delivery or cost disputes, you should consider offering mediation or alternative dispute resolution (see Part 5.5 Alternative dispute resolution and mediation), where appropriate, before commencing any legal proceedings. If not resolved, these disputes are likely to end up being determined by the FTT. Your advice to your client should balance the risks of a negative determination with the requirements for positive cash flow.

## 7.9 Forfeiture

Where you are acting on behalf of the freeholder or head landlord with a reversionary interest, you should have procedures in place to guard against the possibility of a waiver of the right of forfeiture. Legal advice should be taken, if necessary.

You should be fully aware of the restrictions on forfeiture imposed by the *Housing Act 1996* and sections 167–171 of the *Commonhold and Leasehold Reform Act 2002*. In particular, the Act outlines the limitations on commencing forfeiture proceedings for small debts owing for short periods of time, and breaches of covenant are to be determined by a court or FTT. You must not commence forfeiture proceedings or attempt to recover any associated costs or administration charges from the leaseholder until or unless these requirements have been fully met.

**Housing Act 1996**

ss.167–171 *Commonhold and Leasehold Reform Act 2002*

You should be aware of any restrictions imposed by the *Limitation Act 1980* and advise your client accordingly on the need to take timely recovery action.

**Limitation Act 1980**

## 7.10 Accounting for service charges

An annual statement should be issued to leaseholders following the end of each service charge period, giving a summary of the costs and expenditure incurred and a statement of any balance due to either party to the lease. It is also recommended that explanatory notes are included. The accounts should be transparent and reflect all of expenditure in respect of the account period.

Many leases set out the procedures regarding preparation of the annual statement and often require for it to be certified by the landlord's surveyor, managing agent and sometimes the landlord's accountant. In addition, certain leases might also require the statement to be audited.

It is essential that contractual requirements in the lease are followed. Compliance with the requirements and procedures set down in the lease may be a condition precedent. You should therefore ensure that service charge statements are issued strictly in accordance with the procedures and requirements as set down under the terms of the lease.

If the lease does not specify the form and content, service charge accounts should be prepared in accordance with TECH 03/11 (see glossary for details). It is best practice and helpful to users of the accounts if prior year numbers and/or budgeted figures are included.

The law protects leaseholders against costs that are unreasonably incurred, unreasonably high and services and works that are not of a reasonable standard. The FTT can be asked to make a determination on whether costs have been reasonably incurred or works have been completed to a reasonable standard.

s.19 *Landlord and Tenant Act 1985*

s.27A *Landlord and Tenant Act 1985*

s.13 *Supply of Goods and Services Act 1982*

If leaseholders believe that the charges that they are being asked to pay are unreasonable and they are not satisfied with the manager's explanation then they should seek professional advice or consult either the Citizens Advice Bureau or a local law centre.

Service charge funds for each property should be identifiable and either be placed in a separate bank account, or in a single client/trust account where the

account records of the manager separately identify the fund attributable to each property.

Where interest is earned this belongs to the fund collectively. Interest should not be distributed to the contributing leaseholders but should be shown as a credit in the service charge accounts and should be retained within the fund and used to defray service charge expenditure.

Where statutory trusts apply, the contributions are held:

- a) on trust to meet the relevant costs; and
- b) subject to the point above, on trust for the contributing leaseholders for the time being in proportion to their respective liability to pay the relevant service charges. (This does not mean, however, that the leaseholders are entitled to any repayment of the service charge fund. Upon the termination of any lease, their share of any service charge fund remains part of the service charge fund, and upon the termination of the last lease, the fund passes over to the landlord.)

The trusts set out in section 42 of the *Landlord and Tenant Act 1987* do not always apply. Where there are express trusts created by a lease before 1 April 1989, the statutory trusts apply only to the extent they are not inconsistent with the express trusts. Also, express or implied trusts created by a lease on or after that date may vary the statutory trusts in certain respects.

Section 42 does not include service charges payable under the terms of a tenancy which is regulated by the *Rent Act 1977* unless the rent is registered as a variable rent on the basis that service charges are payable which vary according to the costs payable from time to time.

s.42 *Landlord and Tenant Act 1987*

## 7.11 Tax

The two main aspects to the tax treatment of service charges covered in this section are the tax treatment so far as the landlord is concerned of the service charge payments receivable, and the tax treatment of income earned on service charges received before they are spent on the provision of the relevant services. Other tax considerations, for example VAT obligations, should be considered.

If the statutory trusts apply without any modification, then HMRC have confirmed that, in its view, so long as the trust terms are observed:

- a) the receipt of service charge payments subject to the section 42 trusts will not give rise to any tax liability in the hands of the payee; and
- b) any investment income accrued on the service charge trust fund is subject to tax but not at the special trust rates that would otherwise apply. Instead this income is taxable at the basic rate applicable to other persons.

The purpose of this summary is only to draw attention to the general tax position and it does not refer to all the possible tax charges that can arise in connection with

service charge funds. This summary does not apply if there is any modification to the statutory trusts, or if they do not apply to all (e.g. where the service charge payments are governed by express trusts set out in a lease entered into before 1 April 1989).

Specialist advice should be taken in all cases.

## 7.12 Summary of costs

A leaseholder or the secretary of a recognised tenants' association can request that you provide a summary of relevant costs incurred during the last accounting year or, where accounts are not kept on that basis, the 12 months before the leaseholder's request. You must comply with the request within one month of the request or within six months after the end of the accounting period, whichever is later.

### s.21 Landlord and Tenant Act 1985

The summary provided in response to a request must cover all costs incurred by the landlord for works and services and so on showing how they are reflected or will be reflected in demands for service charges. The reasonable cost of preparation and external examination of the summary is properly chargeable to the service charge account.

The summary must distinguish:

- between items/costs for which no payment has been demanded of the landlord within the period to which the summary relates
- for which payment has been demanded of the landlord but not paid within that period; and
- for which the landlord has paid within that period.

### s.21 Landlord and Tenant Act 1985

The summary must also include the total of any money received by the landlord for service charges and still standing to the credit of the leaseholders paying these charges at the end of the period, and any costs which relate to works for which grants have been or will be paid and show how they have been reflected in the service charge demands.

### s.21 Landlord and Tenant Act 1985

If within six months of receiving the summary under section 21 a leaseholder or the secretary of a recognised tenants' association makes a request to inspect the accounts, receipts and other supporting documents, you must provide such an opportunity. You must not charge for the inspection and copies or extracts from any documents supporting the summary may be taken. You are not precluded from including a charge for the inspection in the cost of management but any charges made for providing copies of any documents or having a member of your staff in attendance must be reasonable.

### s.21 Landlord and Tenant Act 1985

You must respond to the leaseholder's or recognised tenants' association's secretary's written request to inspect the accounts, receipts and other supporting documents within one month, and must allow them a period of two months beginning no later than one month after the request is made, to inspect the accounts, receipts and other documents supporting the last accounts or the expenditure in the last 12 months. A leaseholder may make a request for information themselves. Where they are represented by a recognised tenants' association they may also consent to the secretary of that association making such a request on their behalf. Where the request for information is made by the leaseholder, the information is supplied to that leaseholder. Where the request for information is made by a secretary of a recognised tenants' association, the information request should be supplied to the secretary and leaseholder.

### S.22 Landlord and Tenant Act 1985

Where a request is made for information from a superior landlord the intermediate landlord must make a written request to their superior landlord who must in turn comply within a reasonable time.

### s.23 Landlord and Tenant Act 1985

Where a request is made for facilities to inspect, the landlord must inform the leaseholder or recognised tenants' association of the name and address of the superior landlord, to whom they should address the request instead as section 22 would apply to the superior landlord in this case.

### s.22 Landlord and Tenant Act 1985

If the service charges are payable by the leaseholders of more than four dwellings, the summary must be certified by a qualified accountant as a fair summary sufficiently supported by accounts, receipts and other documents which have been produced. A qualified accountant means a person who is eligible for appointment as a statutory auditor under section 1212 of the *Companies Act 2006*.

### s.21(6) Landlord and Tenant Act 1985

### s.1212 Companies Act 2006

If you fail to comply with the requirements in sections 21, 22 and 23 of the *Landlord and Tenant Act 1985* without reasonable excuse you will be committing a summary offence and will be liable on conviction to a fine.

### s.25 Landlord and Tenant Act 1985

### s.37 Criminal Justice Act 1982

You must notify the leaseholders in writing of costs incurred within 18 months of incurring those costs or the cost may not be recoverable.

*s.20B Landlord and Tenant Act 1985*

When a leaseholder has paid service charges in advance, the amount payable must be reasonable and you must repay any excess paid, or deduct it from subsequent charges as the lease directs once the costs have been incurred. The lease often dictates how any surpluses or deficits arising at the end of the accounting period should be handled. Advance payments and actual expenditure should be presented clearly.

*ss.19 and 27A Landlord and Tenant Act 1985 [as inserted by s.155(1) Commonhold and Leasehold Reform Act 2002]*

Service charge accounts should be prepared, and copies made available to all contributors, within six months of the end of the financial period, or any shorter timescales required by the lease. If for some reason the accounts cannot be prepared within six months of the year end (for example, because of a change of managing agent), all parties should be informed of the reasons and any statutory notices served.

*s.20B Landlord and Tenant Act 1985*

## 7.13 External examination of service charge accounts

Service charge accounts should be subject to an annual examination by an independent accountant unless the costs cannot be recovered. The form of the examination will depend on the requirements in the lease and should be proportionate to the circumstances of the property. You should follow the guidance contained in TECH 03/11 as to:

- the qualification and eligibility of the independent accountant; and
- the alternative forms of examination, being an engagement to report on specified findings or an audit

## 7.14 Ground rent

The lease normally provides for an annual consideration to be payable to the freeholder or head lessee as ground rent and prescribes its amount and frequency. It is not uncommon for a lease to provide for increases in the level of ground rent payable during its lifetime. In some leases, ground rent is reserved as 'a peppercorn', which is a nominal rent intended only to preserve the status of the lease.

The lease typically states that ground rent is payable whether demanded or not. Section 166 of the *Commonhold and Leasehold Reform Act 2002* introduced a requirement for all ground rent to be demanded in

a prescribed form. Ground rent is not payable until demanded, nor until 30 days after receipt of the statutory demand. The demand may be served up to 60 days prior to the due date within the lease. If you are retained to collect ground rent on behalf of your client, you should serve the demand between 30 and 60 days prior to the due date, otherwise your client's cash flow may be compromised.

*s.166 Commonhold and Leasehold Reform Act 2002*

You should have an efficient system to monitor ground rents collected and any arrears. Leases typically provide for interest to be added on ground rent not paid within a certain period of time (typically 14, 21 or 28 days). This is often at a prescribed, punitive rate. Forfeiture proceedings can also be commenced for non-payment of ground rent and leases typically provide for the costs of such action to be payable by the leaseholder but you should be fully aware of the restrictions on forfeiture imposed by the *Housing Act 1996* and sections 167–171 of the *Commonhold and Leasehold Reform Act 2002*. In particular, the Act outlines the limitations on commencing forfeiture proceedings for small debts owing for short periods of time, and breaches of covenant are to be determined by a court or FTT. You should not commence forfeiture proceedings or attempt to recover any associated costs or administration charges from the leaseholder until or unless these requirements have been fully met.

*Housing Act 1996*

*ss.167–171 Commonhold and Leasehold Reform Act*

Non-payment of ground rent when due can therefore have serious financial consequences for the leaseholder. When ground rents are not received when due, you should communicate promptly with the leaseholder to chase payments not received before applying any punitive interest or other charges.

You should keep your client informed, in writing, of any significant arrears situation as soon as reasonably practicable. Your client's instructions should be taken as to the appropriate next steps. If a legal adviser needs to be appointed, you should have your client's authority for this and confirmation that the client will be responsible for the costs until or unless they are recovered from the leaseholder, if applicable.

## 7.15 Administration charges

Administration charges are defined within Schedule 11 to the *Commonhold and Leasehold Reform Act 2002*. In general terms, they are amounts payable by a leaseholder for, or in connection with, the following:

- approvals, or applications for approvals
- the provision of information, or documents by or on behalf of the landlord
- failure to make a payment by the due date; or

- a breach, or alleged breach, of a covenant or condition in the lease.

You must only seek to recover administration charges that are provided for within the lease, and only to the extent that they are reasonable.

*Schedule 11 Commonhold and Leasehold Reform Act 2002*

Administration charges are commonly retained by the managing agent to cover the costs of providing the services. Your contract should specify any fees payable for services for which administration charges may be made and retained by the managing agent. You should only retain administration charges with the express consent of your client.

Any demand for administration charges must be accompanied by the summary of rights and obligations prescribed under section 158 of and Schedule 11 to the *Commonhold and Leasehold Reform Act 2002*. It should be noted that the Act provides a right for the form and content of such summaries to be prescribed by regulations. Different regulations have been issued in England and Wales and are potentially subject to amendments over time. You should ensure that you keep yourself informed of the current prescribed content and format.

*Schedule 11 Commonhold and Leasehold Reform Act 2002*

*Administration Charges [Summary of Rights and Obligations] [England] Regulations 2007 [SI 2007/1258]*

*s.166 Commonhold and Leasehold Reform Act 2002*

## 7.16 Surpluses and deficits

The lease often dictates how any surpluses or deficits arising at the end of the financial year should be handled. It typically provides for surpluses to be:

- credited towards the following year's service charge budget
- credited to the reserve fund; or
- refunded to the leaseholders by their due proportion.

Deficits will typically be:

- due from leaseholders on demand for their due proportion; or
- recoverable during the following year, in addition to the estimated costs for the year.

Unless the lease states otherwise, you should not use any reserve fund as a float for the credit of surpluses and the debit of any deficits. This practice can lead to costs being irrecoverable, by virtue of section 20B of the *Landlord and Tenant Act 1985*. Instead, you should advise your client of the consequences of not demanding any under-payments in accordance with the lease.

*s.20B Landlord and Tenant Act 1985*

## 7.17 Appointment of a surveyor or manager

The requisite number of leaseholders have the right to have an audit carried out which relates to the management of the property. The purpose is to ascertain whether the landlord's obligations are being discharged in an efficient and effective manner and the extent to which service charges are being applied in an efficient and effective manner. The audit must be carried out by a qualified accountant or qualified surveyor.

*s.76 Leasehold Reform, Housing and Urban Development Act 1993*

In addition a recognised tenants association may appoint a qualified surveyor to advise on matters relating to service charges payable.

*s.84 Housing Act 1996*

# Part 8 Health and safety: risk management

**Note:** The list of laws and regulations set out in this section is a guide to the main laws and regulations which might be applicable when managing a residential building/estate. You should be aware, however, that this is not an exhaustive list. The age, type and complexity of a building/estate will determine exactly what laws and regulations should be followed. You should seek advice from either the Health and Safety Executive (HSE) ([www.hse.gov.uk](http://www.hse.gov.uk)) or a relevant competent person. You should also take into account that legislation is constantly changing and therefore, the references to any statute below may not be the latest.

## 8.1 Introduction

Managing agents should satisfy themselves that all buildings/estates under their management meet the relevant standards under the health and safety statute and regulations. Where they do not, managing agents should ensure that corrective action is taken or that problems are brought to the landlord's attention.

You should be satisfied that any proposed method of work is safe and appropriate for the task in hand.

You must comply with your duties under relevant legislation, such as the *Health and Safety at Work etc Act 1974*, to ensure the health and safety of your employees, visitors and contractors.

*Health and Safety at Work etc Act 1974*

*Management of Health and Safety at Work Regulations 1999 [SI 1999/3242]*

*Workplace [Health, Safety and Welfare] Regulations 1992*

## 8.2 Employers/employees

The *Health and Safety at Work etc Act* places a legal duty on all employers to provide and maintain equipment and systems of work that are safe and without risk to the health of employees, or others who may be affected by their work. Equally, employees need to take reasonable care of their own safety and that of others who may be affected by their acts or oversights.

Other regulations that are important to know and adopt include:

- the *Workplace (Health, Safety and Welfare) Regulations 1992*; and
- the *Management of Health and Safety at Work Regulations 1999*

## 8.3 Risk assessments

As the common parts of residential developments are deemed to be a 'place of work' (*Westminster City Council v Select Managements Ltd* [1984] 1 All E.R. 994), they are hence subject to health and safety at work legislation. The *Management of Health and Safety at Work Regulations 1999* require employers to assess and manage health and safety risks.

Risk management involves identifying and controlling, by sensible health and safety measures, any potentially significant risk of accident or ill health to you, staff under your supervision, contractors, leaseholders, members of the public and visitors.

*Management of Health and Safety at Work Regulations 1999*

You should ensure that periodic risk assessments are carried out by competent persons at every scheme with common parts. The frequency of formal review should form part of the risk assessment process but should be carried out whenever there are significant changes at the scheme. The risk assessment should be treated as a 'live document' which the property manager should refer to from time to time. FTTs have been critical of some managers incurring costs on a regular basis by frequently procuring new risk assessments. Regular reviews do not necessarily entail producing a completely new risk assessment document. The extent of any review should be proportional to the risks identified and the complexity of the installations at each scheme.

The Health and Safety Executive (HSE) publishes detailed guidance on managing health and safety and recommends that risk management should be about practical steps to protect people from real harm and suffering. It has also produced an example risk assessment for the common parts of a block of flats. You should be aware of the guidance and other advice published by the HSE (see [www.hse.gov.uk](http://www.hse.gov.uk)).

A managing agent is likely to be deemed as a 'responsible person'; you should therefore ensure that risk assessments are undertaken by a 'competent person'. This may be you or other suitably qualified and experienced person(s). If you are employing specialist consultants, they should be registered on the Occupational Safety and Health Consultants Register (OSHCR). This scheme was launched in January 2011 and can be accessed online at [www.oshcr.org](http://www.oshcr.org).

Copies of the risk assessment should be made available to anybody attending, or working, on-site. You should also make occupiers aware of any issues that have an impact

on their safety, and provide copies of the risk assessment on request. The risk assessment should be regarded as a 'live' document and kept under continual review. Any variations or newly identified risks should be assessed and appropriate controls actioned without delay.

## 8.4 Fire risk assessments

The *Regulatory Reform (Fire Safety) Order 2005* came into force in October 2006 and replaced over 70 pieces of fire legislation. It applies to all non-domestic premises in England and Wales, including the common parts of blocks of flats and houses in multiple occupation (HMOs).

Under this Order, the 'responsible person' must ensure that a fire safety risk assessment has been undertaken by a 'competent person' and must implement and maintain a fire management plan. This may be included within the generic risk assessment, or undertaken separately by a fire safety specialist. You should ensure that assessments have been undertaken and an up-to-date fire management plan has been implemented for every scheme.

Article 3 of The Order defines the 'responsible person' as

- an employer, if the workplace is under his or her control,
- a person who has control of the premises in connection with trade or business, or
- the owner of the property.

*Regulatory Reform (Fire Safety) Order 2005 [SI 2005/1541]*

Guidance is available from:

- Local Government Regulation (formerly LACORS) at [www.lacors.gov.uk](http://www.lacors.gov.uk)
- the Department for Communities and Local Government guide *Fire safety risk assessment: offices and shops* (available at [www.gov.uk/government/publications/fire-safety-risk-assessment-offices-and-shops](http://www.gov.uk/government/publications/fire-safety-risk-assessment-offices-and-shops)); and
- the Local Government Association's guidance on fire safety for purpose-built blocks of flats ([www.local.gov.uk](http://www.local.gov.uk)).

You should ensure that you are familiar with these publications and wider guidance from the HSE on fire risk assessments and management plans.

Any works required to fulfil the action plan should be planned with your client without delay. To ascertain if costs are recoverable as a service charge you should refer to the lease. Where service charge monies are insufficient to meet any expenditure required, you should consult with your client regarding longer term planning or arranging other funding options. Health and safety should not be compromised due to lack of funds and further advice should be taken if necessary.

It is essential that escape routes, and the means provided to ensure they are used safely, are managed

and maintained to ensure that they remain usable and available at all times. Corridors and stairways should be kept clear and hazard-free at all times. You should monitor compliance and, if necessary, arrange for items to be removed. Where necessary consideration should be given to taking action against leaseholders breaching the terms of their lease.

You should have regular testing and servicing arrangements in place for any fire-fighting and detection equipment.

## 8.5 Control of asbestos

The duty to manage asbestos is contained in regulation 4 of the *Control of Asbestos Regulations 2012*. It is not always clear who has the duty but it is, generally speaking, the person(s) who has the responsibility for maintenance and repair or who is in control of the building. In the common parts of residential properties this is likely to encompass both the landlord and the managing agent (jointly and severally).

There is also a requirement on anyone to co-operate as far as is necessary to allow the duty holder to comply with the regulations.

*Control of Asbestos Regulations 2012 [SI 2012/632]*

## 8.6 Gas safety

You must comply with the *Gas Safety (Installation and Use) Regulations 1998*. The landlord must ensure that the gas fittings and flues which fall within their area of responsibility are maintained in a safe condition. Gas appliances should be serviced in accordance with the manufacturer's instructions. An annual gas safety check may also be required to ensure that boilers and heaters in communal areas are certified as safe to use.

*Gas Safety [Installation and Use] Regulations 1998*

## 8.7 Electrical equipment

The *Electrical Equipment (Safety) Regulations 1994* require that all electrical equipment supplied by a landlord is safe. You must ensure that periodic portable appliance (PAT) testing is carried out on electrical equipment situated in communal areas.

The *Electricity at Work Regulations 1989* require electrical installations to be tested.

*Electrical Equipment [Safety] Regulations 1994*

*Electricity at Work Regulations 1989*



## 8.8 Furniture and furnishings

If the landlord supplies furniture and furnishings in a property, the landlord must meet the levels of fire resistance set out within the *Furniture and Furnishings (Fire) (Safety) Regulations* 1988, as amended for soft furnishings.

*Furniture and Furnishings (Fire)(Safety) Regulations 1988 as amended*

*SI 1988/132*

*SI 1989/2358*

*SI 1993/207*

## 8.9 Hazardous substances

The *Control of Substances Hazardous to Health Regulations* 2002 (COSHH) require employers to control substances that are hazardous to health. These may include everyday cleaning materials.

COSHH covers chemicals, products containing chemicals, fumes, dusts, vapours, mists and gases (including asphyxiating gases), and biological agents (germs). If the packaging has any of the hazard symbols, then it is classed as a hazardous substance. COSHH also covers asphyxiating gases.

Germs that cause diseases, such as leptospirosis or Legionnaires' disease, and germs used in laboratories are also addressed in these Regulations.

*Control of Substances Hazardous to Health Regulations 2002*

## 8.10 Working at height

The *Work at Height Regulations* 2005 apply to all work at height where there is a risk of a fall liable to cause personal injury. They place duties on employers, the self-employed and any person that controls the work of others; for example, facilities managers or building owners who may contract others to work at height.

The Regulations include schedules giving requirements for existing places of work and means of access for work at height, collective fall prevention (e.g. guardrails and working platforms), collective fall arrest (e.g. nets, airbags), personal fall protection (e.g. work restraints, fall arrest and rope access) and ladders.

*Work at Height Regulations 2005*

## 8.11 Manual handling

Employees are required under the *Manual Handling Operations Regulations* 1992 (as amended) to take steps to reduce risks from manual handling, and employees must make full and proper use of any systems provided.

As part of the steps to reduce risk, there is a requirement for employees to receive relevant training on manual handling injury risks and prevention.

*Manual Handling Operations Regulations 1992 as amended*

## 8.12 Water risk assessments

You have a duty to keep water supplies wholesome and to monitor the quality of water, including the presence of bacteria, in the communal areas of the properties you manage, in particular where the water supply is provided other than by a water provider; for example, when you have communal tanks. You must arrange for a water risk assessment from a competent person. If there are risks then a written action plan should be produced and acted upon following discussion and instructions from the client, to reduce the risks. Water tanks, taps and showers within lessees' demises are the responsibility of the lessee unless the lease puts the repairing responsibility for them on the landlord.

*Health and Safety at Work etc Act 1974*

*Management of Health and Safety at Work Regulations 1999 [SI 1999/3242]*

*Control of Substances Hazardous to Health Regulations 2002*

The HSE have published an Approved Code of Practice (ACOP) and guidance, *Legionnaires' disease: The control of legionella bacteria in water systems* (2013), which gives further detail on managing and controlling legionella risks.

## 8.13 Construction

Everyone controlling site work has health and safety responsibilities. Checking that working conditions are healthy and safe before work begins, and ensuring that the proposed work is not going to put others at risk, require planning and organisation. This applies whatever the size of the site.

The *Construction (Design and Management) Regulations* 2015 (CDM) place legal duties on virtually everyone involved in construction work and therefore can all be categorised as duty holders.

*Construction (Design and Management) Regulations 2015*

## 8.14 Signs and signals

The *Health and Safety (Safety Signs and Signals) Regulations 1996* cover various means of communicating health and safety information, such as the use of illuminated signs, hand and acoustic signals (e.g. fire alarms), spoken communication and the marking of pipework containing dangerous substances.

Employers are required to provide specific safety signs whenever there is a risk that has not been avoided or controlled by other means; for example, by engineering controls and safe systems of work.

Fire safety signs (i.e. signs for fire exits and fire-fighting equipment) are also covered by the Regulations.

*Health and Safety (Safety Signs and Signals) Regulations 1996*

## 8.15 Lifting equipment

The *Lifting Operations and Lifting Equipment Regulations 1988* aim to reduce risks to people's health and safety from lifting equipment provided for use at work. They apply to employers or self-employed persons providing lifting equipment for use at work, and to those who have control of the use of lifting equipment.

Any equipment used at work for lifting or lowering loads is covered in these Regulations, including attachments used for anchoring, fixing or supporting. There is a wide range of equipment included, such as cranes, fork-lift trucks, lifts, hoists and mobile elevating work platforms ('cherry pickers') that are considered lifting equipment. The HSE definition also includes lifting accessories such as chains, slings and eyebolts.

You must ensure that statutory lift inspections take place twice a year by a competent person (usually an insurance inspector). Their reports will normally indicate the priority of works required or recommended.

*Lifting Operations and Lifting Equipment Regulations 1988*

Approved Code of practice and guidance (2014) available from HSE ([www.hse.gov.uk](http://www.hse.gov.uk))

## 8.16 Personal protective equipment

Personal protective equipment (PPE) is defined in the *Personal Protective Equipment at Work Regulations 2002* as 'all equipment (including clothing affording protection against the weather) which is intended to be worn or held by a person at work and which protects him against one or more risks to his health or safety'.

This includes safety helmets, gloves, eye protection, high visibility clothing, safety footwear and safety harnesses.

The main requirement of these Regulations is that PPE is to be supplied and used at work wherever there are risks to health and safety that cannot be adequately controlled in other ways

*Personal Protective Equipment at Work Regulations 2002*

## 8.17 Environmental protection

You should be aware of the terms of part 2 of the *Environmental Protection Act 1990* in so far as they affect the management of residential properties. You must ensure that all waste in your care is transferred safely and by a registered contractor.

*Environmental Protection Act 1990*

## 8.18 Pressure systems

The *Pressure Systems and Safety Regulations 2000* outline the maintenance and inspection regimes you should apply to boilers, communal space heating and domestic hot water systems. You should also have regard to the requirements of insurance inspectors.

*Pressure Systems and Safety Regulations 2000*

# Part 9 Repairs and other services

## 9.1 Introduction

You should have regard to the lease in determining the respective repairing obligations of landlord and leaseholder. The lease may also contain prescribed time periods for cyclical works, especially for decoration.

The landlord owes a duty of care to all persons who might reasonably be affected by defects to any property that they own, to see that they are reasonably safe from personal injury and from damage to their property which might be caused by a relevant defect. The managing agent acting on behalf of the landlord also has this duty of care. This can include, for example, taking reasonable care to repair paths, driveways or stair carpets so that they are reasonably safe to use.

### *S.4 Defective Premises Act 1972*

As not all repairs can be predicted or pre-planned, reactive works will always be necessary on some occasions. The requirement for reactive works can, however, be reduced, or even minimised, by good inspection and planning regimes. You should have adequate servicing contracts in place for any plant and machinery.

You should ensure that you have sufficient funds prior to instructing a contractor, or that the method of payment has been agreed between all parties prior to works commencing.

Contractors should issue appropriately detailed invoices for all works carried out, however minor, which state clearly what the charges are for.

## 9.2 Repairs

Leaseholders should be told how and to whom repairs should be reported. This process should be as straightforward as possible and can include modern forms of communication, such as email and text messaging, to improve the ease and availability of reporting regimes. You should deal promptly with leaseholder's reports of disrepair, the remedy of which is the landlord's responsibility, and you should have a notified procedure for dealing with urgent and out-of-hours repair work. You should also have a procedure for dealing with any health and safety implications.

You should keep residents informed of any actions or proposed actions and, where necessary, make convenient appointments for contractors to attend. Communal parts or services, however, will require most of the repairs, which should not need access arrangements. You should notify residents of target timescales for responses to repairs, which may vary depending upon the urgency and nature of the repair. Depending on the nature of the repair and its impact, residents should be informed of contractors'

start dates and any contact details prior to works being commenced.

You should have control systems in place to ensure that works have been completed to an acceptable standard prior to authorising payment of any invoice. Checks should be proportionate to the level or costs incurred. Repair work should be cost effective taking into account its durability and expense. In the long term it may prove more cost effective to replace than to continue to repair. In certain circumstances work which is considered not to be of a reasonable standard can be the subject of court action on the basis of a breach of contract.

### *s.13 Supply of Goods and Services Act 1982*

## 9.3 Planned and cyclical works

You should use scheme inspections to inform a programme of planned and cyclical works. This plan should be used to inform budget calculations and reserve fund contributions and should cover a minimum period of three years. Programmes for large, more complicated developments should cover a longer period. You should consider the use of experienced or qualified building consultants/specialists, depending on the size and complexity of the project. The building specialist should also inspect reported defects before work is done if it is likely to be complicated and/or costly. Their use should also be considered for carrying out periodic inspections to identify defects.

The programme should reflect a realistic cost of maintenance including periodic redecoration work. You should be aware of the adverse cost implications for older buildings. Your planned and cyclical works programmes should be agreed with your client, communicated to leaseholders and be included as a note in each year's service charge budget. A budget for the cost of maintenance should be included in each year's service charge budget to ensure an adequate fund to meet the cost where permitted in the lease.

Your contract should specify the level of your authority to instruct contractors and commit to expenditure. The level of financial authorisation should also be stated and may vary according to urgency of works required. You should not exceed your authority to instruct contractors or your financial authorisation without your client's instructions. On-site staff should be aware of the (limited) extent of their authority to order urgent repair work.

## 9.4 Services

Unless it is a leaseholder's or other party's obligation, and where costs are recoverable under the terms of the lease, you should arrange for the regular cleaning of all internal

common areas including among other things corridors, staircases, glass in doors and windows accessible from common areas. Cleaning materials must be stored safely in accordance with the COSHH 2002 Regulations. Landings, corridors and staircases should be kept clear and safe.

*Control of Substances Hazardous to Health Regulations 2002*

*Regulatory Reform (Fire Safety) Order 2005*

*Health and Safety at Work Act etc. 1974*

Unless it is a leaseholder's obligation, you should keep shared garden areas tended to a reasonable standard consistent with the quality of the property. The gardening service should normally include:

- a) grass cutting and lawn maintenance
- b) weeding and pruning; and
- c) appropriate replacement of shrubs, trees and plants.

Garden waste should be removed or composted on-site in a suitable screened compound remote from any dwelling or removed by a suitably licensed contractor.

*Environmental Protection Act 1990, Controlled Waste Regulations 1992*

You should carefully consider the implications of requests by leaseholders to be allowed to undertake the above roles themselves, subject to the arranging of insurance cover and consideration of safety requirements.

## 9.5 Bulk buying

If you enter into a bulk buying agreement involving the provision of goods or services to more than one property you:

- a) must ensure that the prices and services which are the subject of the agreement meet the test of reasonableness
- b) must have regard to the consultation requirements for long-term agreements
- c) should notify your clients of the agreement; and
- d) should enter into the agreement in your name on behalf of the clients for the properties subject to the agreement.

*ss.18 and 19 Landlord and Tenant Act 1985*

*s.20 Landlord and Tenant Act 1985 [as amended by s.151 Commonhold and Leasehold Reform Act 2002]*

You or your clients should be able to withdraw from the arrangement without penalty on reasonable notice.

## 9.6 Central utility supplies

Where there is a master electricity meter and electricity is resold to the leaseholders for electricity used within their premises rather than a communal supply, the charge should be reasonable and you must have regard to the maximum resale price set by the Gas and Electricity Markets Authority (Ofgem).

*ss.18 and 19 Landlord and Tenant Act 1985*

There are also restrictions set by the Water Services Regulatory Authority (Ofwat) on water charges and administration costs which you should be aware of.

## 9.7 Access

Staff or contractors may need to gain entry to individual dwellings to carry out building works or repairs. You should always give adequate notice and try to arrange a convenient appointment with occupiers.

The lease often grants powers for landlords to gain access to a leaseholder's property to:

- undertake repairs for which the landlord is responsible
- monitor the leaseholder's performance of repairing obligations
- undertake works in default; and
- undertake emergency works.

Each of these powers is specific and different; the circumstances should not be confused with each other.

Reasonable notice will be required, and the lease often specifies what the minimum notice periods are. In any event, you should give leaseholders as much notice as possible and have due regard to their valid difficulties in providing access during normal working hours. Even after giving reasonable notice, you should not assume that you have any rights to force entry unless specified in the lease for the premises and an application to the courts for permission may be required. In the event of an emergency, such as a fire, gas or electrical emergency, escape of water or something similar, the police or fire brigade may attend and force entry if necessary. In other situations, forced entry should only be contemplated in extreme circumstances. (See Part 9.8 Forced Entry)

## 9.8 Forced entry

No decision to force entry should be taken until you have exhausted all timely possibilities of contacting the leaseholder and the occupier. You should also read the lease to establish what power of entry you have. If the decision to force entry is taken you should (as a minimum):

- advise the police and request their attendance (remember that many properties are now fitted with alarms, in which case police attendance is required)
- find an independent witness and keep photographic or video records

- avoid damaging the property or its contents unreasonably
- make the property safe and secure before leaving
- organise repairs to make good any damage without delay; and
- take identification and evidence of your authority to act.

To reduce the likelihood of forced entry being necessary, occupiers should be advised to keep you informed of emergency contact and of key holder details. Many leasehold properties have been underlet on assured shorthold tenancies (ASTs). You should bear in mind the tenant in occupation has a right to 'quiet enjoyment', as does the leaseholder.

## 9.9 Consultation

You should aim to achieve good and effective communication with clients, leaseholders, residents, occupiers and any RTAs. In addition to any statutory consultation requirements you should consult with leaseholders on management matters that are likely to have a significant effect on the level, quality or cost of services provided.

When managing on behalf of RMCs or, in particular, RTM companies, you should distinguish between seeking the views of shareholders/guarantors, clients ('landlords') and consulting with leaseholders. You will frequently need to do both.

You should also be aware of the importance of the lease with regard to the landlord's obligations and right to recover costs as service charges. Obtaining majority support from leaseholders does not override the terms of the lease. You should ensure your clients are in a position to make fully informed decisions regarding any proposed works or services and the cost recovery implications thereof.

In addition, consultation with clients, leaseholders, residents, occupiers and any RTAs may be required under section 20 of the *Landlord and Tenant Act 1985* (as amended) before any contractors are selected or tendering is commenced. You should allow adequate time to complete the consultation process and collect any additional funds required to undertake the works. In addition, reasonable allowance should be made in the programme of works for leaseholder's absence; for example, when they are away from the property when the works are being undertaken and access is required. (See Part 9.10 Section 20 consultation.)

*s.20 Landlord and Tenant Act 1985 [as amended]*

## 9.10 Section 20 consultation

You should be aware that there is considerable case law in connection with section 20 of the *Landlord and Tenant Act 1985* (as amended) and you should keep yourself up to date with case decisions. The most notable decision is *Daejan Investments Ltd v Benson & Ors* [2013] UKSC 14.

You should be fully aware of the consultation requirements of section 20 of the *Landlord and Tenant Act 1985* (as amended). Your clients must fully comply with the consultation requirements and take further advice where necessary. Non-compliance can have serious financial consequences for landlords and, potentially, managing agents.

There are five different consultation routes depending on the particular circumstances, and their requirements are prescribed by law. When undertaking consultations you may need to refer to the specific detail contained within the Service Charges (Consultation Requirements). You should take further advice if necessary.

*Service Charges [Consultation Requirements] [England] Regulations [SI 2003/1987], or the Service Charges [Consultation Requirements] [Wales] Regulations [SI 2004/684 [W.72]]*

ARMA and LEASE have produced joint guidance, s.20: *Consultation for private landlords, resident management companies and their agents* (2013), and precedent notices for each of the consultation stages within each of the five routes. These notices have been upheld and recommended by the Lands Tribunal (now Upper Tribunal – Lands Chamber).

Where you are managing on behalf of head or intermediate landlords, you should understand the obligations to consult and the rights to be consulted. Where your client is an intermediate landlord, you should be aware of their obligations to cascade any consultation to their own leaseholders and both parties' rights to challenge the reasonableness of service charges.

## 9.11 Qualifying long-term agreements

A qualifying long-term agreement is an agreement entered into by the landlord with an organisation or contractor for a period of more than 12 months, where the amount payable by any one contributing leaseholder under the agreement in any accounting period exceeds the statutory limit.

Where the costs are above the statutory limit and in order for the costs to be recoverable above the statutory limit, the landlord must consult with every leaseholder and any recognised tenants' association. Thus, in a property with unequal service charge proportions, the landlord must consult all leaseholders if any one of them would have to pay more than the statutory limit in any one year (i.e. the accounting period). The figure is to be calculated on the basis of the leaseholder's total contribution resulting from the relevant costs incurred under the agreement, including VAT.

*s.20 Landlord and Tenant Act 1985 [as amended by s151 Commonhold and Leasehold Reform Act 2002]*

*The Service Charges [Consultation Requirements] [England] Regulations 2003 [as amended]. SI 2003/1987*

If consultation is not undertaken in full compliance with the procedures the landlord may not be able to recover more than the statutory limit per leaseholder in any accounting period towards the costs under the agreement.

## 9.12 Qualifying works

Qualifying works are works on a building or any other premises; that is, works of repair, maintenance or improvement. The inclusion of 'improvement' in the definition of qualifying works does not allow a landlord to recover costs of improvement works, unless a provision for the recovery of costs of improvements is included in the lease. However, a renewal of something which may result in an improvement being made, may be regarded as a repair where this represents a cost-effective solution.

Where the costs are above the statutory limit the landlords must consult with every leaseholder contributing to the costs, and must consult with any RTA, if the amount payable by any one contributing leaseholder is more than the statutory limit. Thus, in a property with unequal service charge proportions, the landlord must consult all contributing leaseholders if any one of them would have to pay more than the statutory limit.

*s.20 Landlord and Tenant Act 1985 (as amended by s.151 Commonhold and Leasehold Reform Act 2002)*

*The Service Charges (Consultation Requirements) [England] Regulations 2003 (as amended). SI 2003/1987*

If consultation is not undertaken in full compliance with the procedures the landlord may not be able to recover costs over the statutory limit per leaseholder.

## 9.13 Emergencies and escalation of works

The consultation regulations do not provide any exceptions from the procedures due to urgency. Even if you believe that works are urgently required, non-compliance with the regulations may lead to any costs in excess of the statutory limit for each leaseholder, being irrecoverable.

Under section 20ZA of the *Landlord and Tenant Act 1985* the FTT can, however, dispense with all or any of the requirements, if satisfied that it is reasonable to do so. If works are urgently required that are likely to exceed the consultation threshold, you should advise your client to seek dispensation from the FTT if the client wishes to recover the full costs of the works as service charge.

In extremely urgent situations your client may wish to undertake works prior to obtaining dispensation from the FTT, which can be granted retrospectively. Such situations have resulted in a number of challenges in the FTT, but one common theme from resulting determinations is that landlords should undertake as much of the consultation process as possible. They should attempt to ensure that leaseholders are not prejudiced and that demonstrable value for money has been obtained.

The FTT will look at every individual application on its merits, so you should not assume that dispensation will be granted. Dispensation is unlikely to be forthcoming where consultation has not occurred due to incompetence, ignorance or lack of forward planning. Before instructing any contractor to undertake works at a cost above the consultation threshold and without fulfilling all the statutory consultation requirements, you should make your client fully aware of all the financial risks involved and only proceed with the client's express instructions to do so.

It is not uncommon for contracts to be specified, tendered and works commenced, only to subsequently discover that more extensive works are required at greater cost. This may lead to further consultation being required. It can frequently be prudent or more cost effective to complete the required works, rather than suspending the contract until the consultation requirements can be fulfilled. This is another situation in which a request can be made to the FTT to grant dispensation from the (further) consultation requirements so that the works can continue in a timely manner.

The FTT will consider carefully the circumstances of each individual case in deciding if the consultation requirements have been fully met and, if not, whether to grant dispensation. This is a complex area of case law and tribunal determinations, with which you should familiarise yourself and take further advice where necessary.

# Part 10 Contractors and suppliers

## 10.1 Introduction

The landlord or manager under the lease should normally be the employer under any contract, not the managing agent.

All persons, including managing agents and landlords, should only undertake property-related services or repairs where they are competent to do so.

Where you have a connection with any proposed company, individual, contractor or supplier, whether financial or otherwise, this should be declared to your client and the leaseholders as a note with the year end service charge accounts. The statutory consultation requirements (s.20 *Landlord and Tenant Act 1985*) also require any connections to be identified).

Any charges for specifying, tendering and monitoring contracts should be pre-agreed with your clients and proportional to the tasks involved. All appointments or re-appointments should be confirmed by a written works order providing contractors with a 'licence to work'.

## 10.2 Selection, approval and tendering

You should have criteria in place for the selection of contractors prior to employing them. This should include:

- identity
- competency and experience
- appropriate insurance – employers' liability and third-party liability
- tax – HMRC Construction Industry Scheme, VAT
- health and safety – compliance with codes and regulations, provision of safe working method statement; and
- compliance with your equal opportunities and anti-discrimination policy.

For more major works you should also include:

- financial position
- membership of relevant trade organisations; and
- compliance with *Construction (Design and Management) Regulations 2015* (CDM).

You may have a list of pre-selected, approved contractors for small value or urgent works. In these cases you should have agreed pricing mechanisms (e.g. hourly rates) and financial limits that are reviewed at appropriate intervals. You should be able to justify the reasonableness of expenditure to your client and have some process for market testing and ensuring value for money.

For larger value works, you must obtain competitive prices from a minimum of two selected contractors one of which must not be connected with the landlord. For low-value contracts or extremely urgent works, however, this may not always be appropriate. Selection should be by competitive tender based upon a uniform specification. Selection criteria should have regard to economy, quality, value for money, and health and safety policies, and final selection should be approved by your client unless you have delegated authority to act. You should clearly define the duties of the contractor including expected response times.

*s.20 Landlord and Tenant Act 1985 (as amended by s.151 Commonhold and Leasehold Reform Act 2002)*

All 'qualifying works' must be fully consulted under section 20 of the *Landlord and Tenant Act 1985* (as amended) before the appointment of a contractor (see Part 9.9–9.12 Consultation).

## 10.3 Health and safety method statements

You should obtain a health and safety method statement from all contractors before entering into a contract. You should be satisfied that the proposed method(s) of work is safe and appropriate to the task in hand. No contractors should undertake any work until you are fully satisfied with the proposals, and the contract should be conditional upon full compliance.

## 10.4 Monitoring

You should have procedures in place for monitoring all contractors, either in-house or via appropriate external consultants (e.g. building surveyors, chartered engineers).

You should make sufficient checks that all contractors give due attention to any health and safety issues on-site that have been identified before work started. You should also ensure that they work in a safe manner, in accordance with their health and safety method statement.

You should have procedures for checking the standard of work carried out and for ensuring that contractors behave courteously, are trustworthy and work in a manner that does not cause undue inconvenience to occupiers. The views of leaseholders and residents should be sought and taken into account. This monitoring process should have regard to the value and extent of the works and be linked to any interim payments and the final payment to the contractors. The results of such monitoring will also be a material factor in deciding whether to award further work to those contractors.

Contractors should issue appropriately detailed invoices for all works carried out, however minor, which should state clearly what the charges are for.

Contracts for major works may provide for liquidated and ascertained damages as another device that can be used to ensure that work is carried out promptly and to a reasonable standard.



## Part 11 Works to extend or develop an existing block or new phase

When arranging new construction works the landlord should have regard to any requirements under the terms of the leases, be aware that leaseholders are entitled to the quiet enjoyment of their homes, and should seek to minimise disruption.

The landlord should consult leaseholders on the details of and programme for carrying out such works and reasonable allowance should be made in the programme if possible for leaseholders' absence; for example, when they are away from the property, when the works are being undertaken and access is required.

Following an increase in occupied floor area, you should discuss with your client/landlord reapportionment of leaseholders' responsibilities for making financial or other contributions. You should be aware, and make your client aware, that alterations in obligations or rights under existing leases can only be made with the consent of the leaseholders or, in certain circumstances, by order of the FTT or by a court.

# Part 12 Insurance

## 12.1 Introduction

Significant restrictions are now placed on managing agents acting in various insurance matters. These restrictions are administered by the FCA and regulations allow varying levels of involvement subject to strict procedures being adhered to.

All parties should be aware of the risks to the interests of landlords, leaseholders and residents if sufficient levels and types of insurance do not exist.

Insurance fees (including commissions) and all other sources of income and related income or other benefits in relation to the service charge arising out of the management should be declared annually to the client and to leaseholders and should reflect the level of work carried out.

## 12.2 Obligations

The lease usually sets out the obligations of the parties with regard to insuring the premises. Where there is an intermediate landlord or manager under a tripartite lease, it is not uncommon for the insuring obligations to remain with the freeholder, or for the freeholder to retain rights to nominate the insurers and/or brokers. RTM companies take responsibility for insuring the premises following acquisition of the right to manage. You should be aware of all the insurance obligations of your client and any restrictions imposed in the lease.

Where the obligations are not set out in the lease, a managing agent should draw the landlord's attention to the risks for which the property and its facilities are insured.

Under section 30A and Schedule 1 of the *Landlord and Tenant Act 1985*, leaseholders paying service charges, directly or indirectly, towards the cost of insurance (and any recognised tenants' association) can request a written summary of insurance cover. They can also ask to inspect the policy and related documents, which may include receipts for payment of the premium. Non-compliance, within 21 days of receipt of a written notice, is a summary offence. You should ensure you have sufficient information to comply, or forward the request to the relevant landlord without delay.

### *s.30 and Schedule 1 Landlord and Tenant Act 1985*

Facilities for the inspection of insurance documents must be made available free of charge. However, a reasonable amount may be charged as part of the costs of management. A reasonable charge may also be made for doing anything else in compliance with a requirement imposed by a notice served under the legislation. Failure to comply, without reasonable excuse, is a criminal (summary) offence subject to a fine, on conviction.

### *s.30A Landlord and Tenant Act 1985*

Leaseholders should be reminded that the landlord's insurance policy does not cover the contents of their demise and it is the leaseholder's responsibility to insure their possessions.

## 12.3 Financial Conduct Authority

You should be fully aware of the general insurance regulations issued by the Financial Conduct Authority (FCA) under the *Financial Services and Markets Act 2000*.

Before carrying out any insurance-related work, including claims handling, you must be authorised to do so. There are several options available for landlords and managing agents:

- register with the FCA as an authorised firm that can transact insurance business with insurers or brokers
- be an appointed representative of a single insurer or broker (some brokers will still be able to offer a choice of insurers as they are considered authorised firms and thus work with many insurers)
- limit activities to that of an introducer, whereby the only involvement would be introducing clients to an insurer or broker; or
- be licensed under a designated professional bodies scheme, such as the one run by RICS which, as a designated professional body, can grant a licence to member firms to regulate them for the purpose of general insurance activities.

### *Financial Services and Markets Act 2000*

You will be acting illegally and could be fined or imprisoned if you continue to help your customers with insurance products without authorisation.

## 12.4 Reinstatement valuations

There is a need for regular reviews of the level of insurance and reinstatement value, which should be advised to your client. You should ensure that there is adequate insurance and that the leaseholders are not paying for excessive or unnecessary coverage.

Incurring a loss when inadequately insured can cause financial disaster. In the event of a claim, the insurers will apply an 'average clause' and reduce the amount of any claim proportionately to the amount of any under-insurance. The level of cover should be related to reinstatement valuations. These should be undertaken regularly by appropriately qualified and experienced professionals in accordance with the RICS guidance note

*Reinstatement cost assessments of buildings* (2nd edition, 2011), and index-linked to rebuilding costs.

Where individual leaseholders within a block are responsible for insuring the dwelling and a landlord has the right to nominate or approve the insurers, leaseholders can apply to the FTT to determine whether the insurance from the nominated insurer is unsatisfactory, or the premiums payable are excessive.

## 12.5 Placing insurance

You should not exceed your authority to undertake insurance activities. You should ensure that suitable insurances are in place to satisfy the requirements of the lease, your client and the landlord/freeholder. Your client's instructions should be taken on any further cover required, which may include:

- provision of alternative accommodation
- loss of rent
- legal fees
- fidelity cover; and
- flood cover.

In particular, serious consideration should be given to the taking out of terrorism insurance.

Recommendations should be made, where appropriate, that relevant cover is in place for:

- employers' liability
- third-party liability
- communal contents; and
- engineering insurance and engineering inspection insurance.

You should be aware that some of these insurances are compulsory in certain circumstances and you should take advice.

When managing on behalf of RMCs, RTM companies or similar, it is prudent for your clients to be covered by directors' and officers' liability insurance. This will be a cost to the company. If the cost is to be recovered as a service charge item, you should have regard to the terms of the lease.

You should be aware of the requirements for costs, recoverable as a service charge, to be 'reasonably incurred' and for the possibility of leaseholders to challenge it at the FTT. Insurance procured may not necessarily be the cheapest available, but should cover appropriate risks and be subject to market testing. You should regularly review the extent of cover and level of premiums for all insurances under your control.

## 12.6 Remuneration including Commissions

Your client and leaseholders should be notified annually of any remuneration, commission and other sources of income and related income or other benefits you receive in connection with placing or managing insurance. You should also obtain your client's informed consent to retain any commission received.

It is best practice to declare any other sources of income and related income or other benefits including commissions arising from the provision of services with the annual service charge accounts. On request, you should declare what services are provided for the income received and the costs must be proportionate to the service.

*ss.18 and 19 Landlord and Tenant Act 1985*

## 12.7 Claims

Sufficient detail of the building insurance should be available to enable a claim to be made and for you to advise on the process. When a claim arises, and you are authorised to undertake this work, you should process it promptly. Where you are not authorised you should refer the matter to the broker without delay.

You should keep leaseholders informed of the progress of any claims that affect them directly, or provide them with sufficient information to pursue the matter themselves. Any claim settlement funds received should be treated as belonging to the persons suffering the damage. You should not, therefore, make any deduction, without express consent, when passing funds received to the claimant. You are recommended to obtain a mandate allowing you or the claimant to receive insurance claims payments, as these are often made payable to the insured who may not be the beneficiary of the claim.

## 12.8 Excess

There may be a trade-off between cost of premiums and the level of excess applied to some claims. In some circumstances, such as poor claims history, location or method of construction, obtaining competitively priced insurance cover without agreeing to a large excess may not be possible. These difficulties may be reduced by insuring a landlord's portfolio under one policy and thus effectively spreading the insurers' risk. There is likely to be a contrary effect on 'low-risk' properties within the portfolio, the implications of which you should consider carefully.

You should consider whether the terms of the lease/tenancy agreement contain provision that, where an insurance claim is as a result of a negligent act by the leaseholder, you are entitled to recover the excess from the leaseholder or whether the lease allows the excess to be paid from service charges.

## 12.9 Other insurance

You should carry the appropriate insurance cover for your own business. This could include (this is not an exhaustive list):

- buildings and contents
- employer's liability
- legal assistance
- fidelity cover
- third-party liability
- professional indemnity
- business interruption
- cover for clients' money
- plant and machinery; and
- staff sickness.

## Part 13 Provision of information

### 13.1 Introduction

Many other sections within this Code refer to legislation which requires specific information to be given to leaseholders. In certain circumstances the following information must be provided.

This is not an exhaustive list.

Where reasonable information and/or copies of documents are requested you should provide them within reasonable timescales. This does not apply to commercially sensitive documents nor documents protected by the *Data Protection Act 1998*.

Any charge that can be made should be reasonable, and you should be aware that you may be liable to your client, and a wide range of parties for the accuracy of the information you supply.

You should publish a list of proposed charges where possible (see subsection 3.5, Menu of charges) and indicate what the timescales are likely to be for providing the information. It is recommended that a response to an enquiry should be sent no more than 10 working days from receipt of the request. This information should be made available on request and be available online where possible.

### 13.2 Landlord's name and address

You must provide the leaseholder with an address in England and Wales for the service of notices. This could be the landlord's own address. Until such information is provided any rent, service charge or administration charge is deemed not to be lawfully due from the leaseholder.

Where a written demand is issued to a leaseholder, it must contain the landlord's name and address and if that address is not in England and Wales an address in England and Wales at which the leaseholder may serve notices of proceedings on the landlord.

The address for the landlord on the written demand must be the address where the landlord can be found. In the case of an individual this must be their place of residence or place from which they carry out business. In the case of a company this must be the registered office or the place from which it carries out business.

*ss.47 and 48 Landlord and Tenant Act 1987*

You should at the commencement of the lease/tenancy, and must within 21 days of a written request, give the leaseholder the name and address of the landlord. If the landlord is a company and the leaseholder makes a further request, after receiving the name and address of the

landlord, then you must also give the name and address of the directors and secretary of the company within 21 days of that further request. Failure without reasonable excuse to comply with these requests is a summary offence liable to a fine on conviction.

*ss.1 and 2 Landlord and Tenant Act 1985*

When seeking to exercise a right to enfranchise, a leaseholder may request the name and address of every person who owns a freehold interest in the property, including any superior leasehold interest in the property. You must provide the information within 28 days.

*s.11 Leasehold Reform, Housing and Urban Development Act 1993*

### 13.3 Management policy

You should manage the property on as open and transparent a basis as is practicable, subject to maintaining confidentiality in respect of commercially sensitive information and personal information. You should explain to the leaseholders your relationship with the landlord. Any interest, financial or otherwise, you may have in any companies employed to provide services should be provided, following written request, or declared voluntarily.

### 13.4 Landlord's change of address

Landlords should inform the managing agent or, in the event of there being no managing agent, the leaseholder, of any change of address, especially if they are going abroad. Managing agents must be aware of the provision of the *Finance Acts 1995 and 2007* and the Non-Resident Landlord Scheme especially with regard to the requirements to deduct tax from rent received.

*Taxation of Income from land [non-residents] Regulations 1995, SI 1995/2902*

*Finance Acts 1995 and 2007*

### 13.5 New landlord

A landlord who has just acquired the property must give notice in writing of the purchase and of their name and address to the leaseholders not later than the next day on which rent or service charge is payable under the lease/tenancy agreement, or if that is within two months after the assignment not later than the end of that period of two months.

Where the leaseholder has 'rights of first refusal' additional information must be given: that the leaseholders have such rights, that the leaseholders may (with other qualifying leaseholders) have rights to information about the disposal and to acquire the landlord's interest, and must give the time limit for exercise of these rights.

*s.3 Landlord and Tenant Act 1985*

*s.3A Landlord and Tenant Act 1985*

The new landlord will be committing a criminal (summary) offence if they fail to give this information without reasonable excuse. A local housing authority has the power to bring proceedings. The 'old' landlord as well as the new one is liable for any breaches of the landlord's covenants until the leaseholders have been notified of the identity of the new landlord (by either the former or current landlord).

*s.34 Landlord and Tenant Act 1985*

*s.3 Landlord and Tenant Act 1985*

*s.3A Landlord and Tenant Act 1985*

## 13.6 Change of occupier or correspondence address

Leaseholders should tell the manager in writing about any change of occupier and any change in their own address. This is for security reasons, and because they are entitled to receive certain information. It is also in the interest of good estate management. Leaseholders also have ongoing responsibilities under the terms of their leases. It may also be helpful for leaseholders to tell the manager if they are going to be absent for more than four weeks. There is no statutory obligation for them to do so although there may be a requirement under the buildings insurance policy.

## 13.7 Change of managing agents/managers

Likewise, managers should tell leaseholders in writing about any change of address or where they no longer manage the property.

## 13.8 Demands for service or administration charges or ground rent

Information relating to tenants' rights and obligations must be sent with any demand for service or administration charges; if this is not sent payment can be withheld. The particular wording and other requirements to be used for each summary are specified in regulations. Likewise, ground rent does not become payable until it has been demanded using the particular form of notice specified in regulations. Different regulations have been issued

in England and Wales and are potentially subject to amendments over time. You should ensure that you keep yourself informed of the current prescribed content and format.

*s.21B Landlord and Tenant Act 1985*

*Service Charges [Summary of Rights and Obligations, and Transitional Provision] [England] Regulations 2007 [SI 2007/1257]*

*Schedule 11 Commonhold and Leasehold Reform Act 2002*

*Administration Charges [Summary of Rights and Obligations] [England] Regulations 2007 [SI 2007/1258]*

*s.166 Commonhold and Leasehold Reform Act 2002*

## 13.9 Sales of individual dwellings

Information which will be of interest to prospective purchasers of individual leasehold homes is often held by the landlord or managing agent, and where documentary information has not been retained by the leaseholder, the landlord or managing agent may be the only reasonable source of such information. A fee can be charged for providing this information which should reflect the level of work carried out. (see section 13.10 Pre-contract enquiries)

There are statutory rights for leaseholders to obtain certain information (explained in other parts of this Code), including insurance and service charge information. However, provision by the landlord or managing agent of information or documents sought in respect of the sale of a dwelling is regarded as good practice and helpful to all parties.

You should send an introductory letter setting out basic information to new leaseholders.

## 13.10 Pre-contract enquiries

Information can also be requested in respect of pre-contract enquiries, which would normally occur at a later point during the sale process. Pre-contract enquiries would most commonly be made by or on behalf of the purchaser, through the seller or their representative. The Law Society has issued standard leasehold property enquiries forms known as an LPE1 and LPE2 (see Glossary). Your standard pack should answer the relevant questions within this form.

You should supply prospective sellers or their representatives with information about the premises that you manage to satisfy the pre-contract enquiries and any other reasonable enquiries they may have. The information sought may vary, but in most cases is likely to be of a 'standard' nature and could include information about:

- landlord
- ownership of the block/estate
- management

- other formal/information arrangements affecting the property
- residents' associations
- ground rent
- service charges, sinking funds, major works (existing and future plans including details of any long-term plans) and other maintenance related agreements
- insurance
- disputes (including any FTT/LVT or court cases)
- complaints
- notices/consents; and
- other general information that may be relevant.

You should provide the information within a reasonable timescale bearing in mind the transaction taking place and the potential effects of any delays. A fee can be charged for this information which should be reasonable and reflect the level of work carried out.

# Part 14 Residents'/tenants' associations

## 14.1 Introduction

Leaseholders may get together to form a recognised residents'/tenants' association, which is a type of association that has established statutory rights. The creation of an association can bring advantages to the management in general, and in particular can ease communication with the leaseholders to establish what they want and to appreciate the differing points of view. It is desirable to establish how representative the association is and to seek a copy of its constitution at regular intervals, as well as its membership list. You should be informed when officers of the association change.

*s.29 Landlord and Tenant Act 1985*

## 14.2 Recognition

A tenants' association can be recognised by a written notice from the landlord, or alternatively by application to the FTT which may grant a certificate of recognition. A notice withdrawing recognition of a recognised tenants' association can be given by the landlord, to take effect no earlier than six months after the notice is given, but only where the landlord has given written recognition. A certificate given by the First Tier Tribunal (previously the certificate would have been given by a Rent Assessment Committee) can only be cancelled by that Tribunal.

Where a recognised tenants' association has no secretary, the landlord or managing agent should arrange with the chairman or other responsible officer to nominate a substitute officer to receive notices on behalf of the association.

*s.29 Landlord and Tenant Act 1985*

## 14.3 Appointment of managing agents

The landlord must provide to a recognised tenants' association on written request details relating to the appointment, employment or proposed employment of a managing agent and allow a reasonable period for them to comment, including on the managing agent's duties and performance. The landlord must state which of their obligations it is proposed that the agent should discharge, and must allow a period of at least one month for comments to be sent to a person named by the landlord at an address in the UK. The landlord shall have regard to observations made by the association.

The landlord must provide the details and invite comment every five years thereafter and whenever the landlord

appoints a new managing agent, if a notice has previously been served by a recognised tenants' association. Unless the appointment has been fully consulted under section 20 of the *Landlord and Tenant Act 1985* (as amended), the managing agent should ensure that the contract does not constitute a qualifying long-term agreement. Legal advice should be sought if necessary.

*s.30B Landlord and Tenant Act 1985 [as inserted by s.44 Landlord and Tenant Act 1987]*

*s.20 Landlord and Tenant Act 1985 [as amended by the Commonhold and Leasehold Reform Act 2002]*

## 14.4 Accounts, receipts and other documents

If requested, you must send a summary of relevant costs to the secretary of the recognised tenants' association, and provide an opportunity for the secretary of a recognised tenants' association to inspect the accounts, receipts and other documents supporting the service charge. You must not charge the secretary for inspection, although the cost of the inspection can be included in the cost of management. You must allow copies or extracts to be taken from any document, although for this service you can levy a reasonable charge.

*ss.21 and 22 Landlord and Tenant Act 1985*

Recognised tenants' associations have rights to appoint qualified surveyors who are members of RICS to advise on service charges. The surveyor has the right to request reasonable access to inspect documents and also to the common parts of relevant premises, including the structure and exterior of the building. Reasonable facilities for taking copies or extracts from documents must be given.

*s.84 and Schedule 4 Housing Act 1996*

## 14.5 Management audit

Two or more qualifying leaseholders of the same landlord are entitled to have a management audit carried out on their behalf, as is a single qualifying leaseholder where there is no other dwelling in the premises. This will enable an investigation for the purpose of ascertaining whether the management functions and expenditure of service charges are being discharged in an efficient and effective manner.

*s.76 Leasehold Reform, Housing and Urban Development Act 1993*



## 14.6 Insurance

If requested, within a period of 21 days the landlord must provide the secretary of a recognised tenants' association with a written summary of the insurance cover. If requested, the policy or associated documents must also be made available for inspection and reasonable facilities afforded for taking copies or extracts. If requested, copies or extracts must be taken and either sent to the secretary, or facilities allowed for collecting them. Failure to comply without reasonable excuse is a summary offence, subject on conviction to a fine. If a superior landlord insures, a written application must be made to them for insurance details.

*Landlord and Tenant Act 1985 (as amended by Schedules 10 (8 and 9) Commonhold and Leasehold Reform Act 2002)*

## 14.7 Nomination of contractors

Recognised tenants' associations have rights to nominate contractors for major works and long-term agreements (see Part 9.9–9.12 Consultation).

*s.20 Landlord and Tenant Act 1985 (as amended by s.151 Commonhold and Leasehold Reform Act 2002  
Service Charges (Consultation Requirements)(England) Regulations (SI 2003/1987)*

# Part 15 Right to Manage

## 15.1 Introduction

The Right to Manage (RTM) is provided by legislation and is a complex provision likely to require specialist professional advice.

RTM is a group right for qualifying leaseholders of flats to manage their own building in which they live. They do not have to prove fault with the existing landlord or management nor pay any premium save for their own and the landlord's costs in exercising the right. Once they have acquired the right to manage and appointed directors to act on their behalf, they can employ a managing agent of their choice should they wish. They must exercise this group right through a special company set up by the leaseholders for that acquisition called an RTM company.

*ss.71–113 Commonhold and Leasehold Reform Act 2002*

*Right to Manage [Model Articles][England] Regulations 2009 [SI 2009/2767]*

*The Right to Manage [prescribed Particulars and Forms] [England] [SI 2010/825]*

## 15.2 Rights

You should be aware of the leaseholders' rights in respect of the right to manage and be aware that leaseholders must meet certain qualifying criteria and use prescribed forms to set up an RTM company and acquire the right to manage a building.

Where an RTM acquires the right to manage, the management functions transfer from the landlord to the RTM company.

The right to grant consents transfers to the RTM company subject to certain rules.

*(Land Registry Practice Guide 27 – Right to Manage Companies, available from [www.gov.uk/government/publications](http://www.gov.uk/government/publications))*

(See 6.4–6.7 Ending the instruction and handover process.)

## 15.3 Right to Manage on part only of a development

Where as a result of the acquisition of the Right to Manage of part only of a development with shared estate services, more than one party has responsibility for providing the shared estate services, the parties should enter into a written agreement with each other to clarify:

- how the shared services are to be carried out in the future
- which party is to carry them out; and

- establish obligations in order to ensure that any party agreeing to undertake the shared services can recover all reasonable and proper costs incurred in doing so from residents on the development.

Where managing agents propose to enter into such agreements, this must be with their clients' authority and instructions.

Such agreements should take the form of a management agreement or subcontract agreement and establish, amongst other things:

1. A single party to be authorised or appointed and responsible for budgeting, providing and accounting for costs incurred in providing the shared estate services, unless it is possible to sever the services. If the parties propose to sever services, the agreement should provide for any necessary amendments to the service charge matrix, or variations to title documents as required, which party is to deal with these, and liability for costs of such amendments or variations (if any).
2. That any parties delegating their responsibilities for shared estate services to another must agree to pay the relevant contribution towards the cost of those shared services on receipt of a demand from the party accepting responsibility to carry them out. Alternatively, delegating parties may authorise the responsible party to serve demands on their behalf on the leaseholders within their RTM parts of the development, and recover individual contributions from those leaseholders.
3. That the relevant contribution is that which is provided for in the title documents for the development, or the aggregate of all the individual leaseholders' contributions within an RTM part of the development.
4. That the party providing the shared services should consult with the other parties over choice of contractors and costs and provide documentation to support costs incurred. They must be mindful of consultation requirements and other legislative provisions affecting how service charges are to be accounted for, reasonableness of service charges and inspection of supporting documents.
5. That the party providing the shared services should agree that it has a duty of care to the other parties and their customers to ensure that the costs incurred are reasonable, of a reasonable standard and validly demanded in accordance with legislation.
6. That the party providing the shared services should agree to assist the other parties with information and documents concerning how services are provided, and the costs incurred and in particular should the cost of those shared services be unpaid or disputed by a customer of one of the RTM parts of the development.

7. That all parties delegating responsibility to another to carry out the shared services should agree to assist that party, and authorise any necessary action without delay to enable recovery of all contributions towards the cost of the services.

When deciding which party should provide the shared estate services the general principle should be that the party with responsibility for shared estate services to the largest number of customers contributing towards the shared estate services should be appointed or authorised to provide those services on behalf of all responsible parties.

When a single managing agent is to be appointed to manage the development or provide the shared estate services, the terms of the managing agent's appointment should clarify the matters agreed between all parties as set out above, and from whom the managing agent should seek their instructions on matters relating to the provision of services.

*ss.71–113 Commonhold and Leasehold Reform Act 2002*

*Right to Manage [Model Articles][England] Regulations 2009 [SI 2009/2767]*

*The Right to Manage [prescribed Particulars and Forms] [England] [SI 2010/825]*

In the event of a disagreement between the parties they should appoint an expert to adjudicate, or go to mediation before issuing court proceedings against each other.

# Appendix A: Lease variations

## Introduction

A lease can be varied by mutual agreement between all the parties concerned but part IV of the *Landlord and Tenant Act 1987* also provides for the ability to seek a variation of long leases in certain circumstances where a variation cannot be agreed.

*Part IV Landlord and Tenant Act 1987 [as amended by the Commonhold and Leasehold Reform Act 2002]*

## Grounds to vary a lease

Either party to a long lease of a flat can apply to an FTT to vary a lease considered to be defective. Section 35 of the *Landlord and Tenant Act 1987* sets out the grounds where this procedure applies. These are principally where the lease does not make satisfactory provisions for the following:

- a) repair or maintenance of the flat or block or any other building let under the lease or any building or land over which the lease confers rights; for example, staircases and common parts
- b) the insurance of the building containing the flat or of any such land or building let under the lease
- c) the repair or maintenance of any installations and the provision or maintenance of services which are reasonably necessary to ensure a reasonable standard of accommodation
- d) the recovery of expenditure where the lease provides for leaseholders to be liable for the charges of expenditure incurred for the benefit of any other party
- e) the computation of a service charge payable under the lease
- f) amounts payable (by way of interest charges or otherwise) where there is a failure to pay the service charges (in respect of (d) above); and
- g) such other matters as may be prescribed by regulations made by the Secretary of State.

*s.35 Landlord and Tenant Act 1987 [as amended by ss.162 and 163 Commonhold and Leasehold Reform Act 2002]*

There is also provision for varying leases of two or more flats let by the same landlord where a majority of the parties require a variation. Where there are more than eight leases at least 75 per cent must consent to the variation and not more than 10 per cent oppose it. Where there are fewer than nine leases all or all but one of the parties must consent, but an FTT must agree to it and the landlord constitutes one of the parties concerned.

*ss.35 and 37 Landlord and Tenant Act 1987 [as amended by ss.162 and 163 Commonhold and Leasehold Reform Act 2002]*

# Appendix B: Statutory rights of leaseholders

## Introduction

Throughout this Code reference has been made to leaseholders' statutory rights on service charges. In this appendix, a summary has been made of those principle statutory rights. There are other statutory rights given in legislation and this is a summary only rather than a full interpretation of the law. Each right is strictly regulated by detailed provisions. A statutory right is a specific right given through legislation by parliament which cannot be denied or removed by contract.

## Names and addresses

The landlord must notify the leaseholder of an address in England and Wales where leaseholders can serve notices (for example in connection with court proceedings). This may be the address of a representative such as a solicitor (section 48 *Landlord and Tenant Act 1987*. Failure to do this means any rent or service charge is not payable until this information is provided.

*s.48 Landlord and Tenant Act 1987 (as amended by the Commonhold and Leasehold Reform Act 2002)*

This name and address must also appear on any written demand for service charge or rent.

*s.47 Landlord and Tenant Act 1987 (as amended by the Commonhold and Leasehold Reform Act 2002)*

New landlords must notify leaseholders in writing within two months of the assignment of the freehold otherwise they commit a criminal offence.

*ss.3 and 3A Landlord and Tenant Act 1985*

## The right to form a recognised tenants' association

Tenants' associations may seek recognition from the landlord or the FTT. Recognised tenants' associations have certain additional rights to information over and above those available to individual leaseholders (see Part 14 Residents'/tenants' associations).

Recognition is formally given in writing and as a general guide such an association should represent at least 60 per cent of the flats in the block where variable service charges are payable.

*s.29 Landlord and Tenant Act 1985*

## Information about service charges and the right to challenge those charges

An individual leaseholder or the secretary of a recognised tenants' association may ask the landlord for a summary of the costs on which the service charge is based. The landlord must provide leaseholders with a summary of the costs for the last service charge accounting year giving prescribed information. This summary should be supplied within strict time limits, must be certified by a qualified accountant as defined, and supported by financial evidence (receipts, etc).

*s.21 Landlord and Tenant Act 1985*

The landlord must provide an opportunity for the inspection and copying of documents within set time limits.

*s.22 Landlord and Tenant Act 1985*

A leaseholder may challenge their liability for any part of the service charge they feel is unreasonable at an FTT, whether they have paid it or not but not if the charge has already been determined (by a court or arbitral tribunal for example) or admitted by the leaseholder.

*s.27A Landlord and Tenant Act 1985 (as inserted by s.155 Commonhold and Leasehold Reform Act 2002)*

A summary of tenants' rights and obligations containing words prescribed in regulations must accompany any demand for service charges, otherwise the service charge is not payable until a demand with an accompanying summary has been sent.

*s.21B Landlord and Tenant Act 1985 (as inserted by s.153 Commonhold and Leasehold Reform Act 2002)*  
*Service Charges (Summary of Rights and Obligations and Transitional Provision)[England Regulations 2007 (SI 2007/1257)]*

## Information about administration charges and the right to challenge those charges

Any variable administration charge that is demanded under the lease is only payable to the extent that it is reasonable. A leaseholder may challenge their liability to pay and reasonableness of the charge at an FTT, whether they

have paid it or not unless the charge has already been determined or admitted.

*Schedule 11 Commonhold and Leasehold Reform Act 2002*

Any party to the lease may also seek to vary a lease on the grounds that any administration charge or any formula specified in the lease is unreasonable by application to the FTT.

A summary of tenants' rights and obligations containing words prescribed in regulations must also accompany any demand for administration charges, otherwise the service charge is not payable until a demand with an accompanying summary has been sent.

*Administration Charges [Summary of Rights and Obligations][England] Regulations 2007 [SI 2007/1258]*

## The rights of consultation on certain qualifying works and long term agreements [See Part 9.9–9.12 Consultation]

Current legislation gives leaseholders the statutory right to be formally consulted if the landlord (or managing agent) wishes to enter into long-term agreements for more than 12 months or if they wish to undertake qualifying works to the block.

*s.20 Landlord and Tenant Act 1985 [as amended]*

Detailed regulations include the requirement to serve notices on leaseholders, invite observations and obtain nominations for contractors (in some cases), and where appropriate give reasons for the contractor chosen.

The landlord will not be able to recover charges beyond the statutory financial limits if they fail to carry out any of the consultation procedures or alternatively fail to obtain a dispensation from an FTT.

*Service Charges [Consultation Requirements][England] Regulations 2003 [SI 2003/1987]*

*Service Charges [Consultation Requirements] [Amendment][No2][England] Regulations 2004 [SI 2004/2939]*

## Information about building insurance

Buildings insurance costs must be reasonable, and leaseholders have the right to challenge the landlord's insurance arrangements at the FTT if this is not believed to be the case, whether the costs are demanded as part of a service charge, or whether the leaseholder is required to insure the property with an insurer nominated or approved

by the landlord under the lease.

Schedule – *Landlord and Tenant Act 1985* (as amended by the *Commonhold and Leasehold Reform Act 2002*)

Leaseholders also have the right to ask the landlord in writing for a written summary of the current insurance.

Leaseholders have the right to inspect the insurance policy.

*Schedule – Landlord and Tenant Act 1985 [as amended by the Commonhold and Leasehold Reform Act 2002]*

Leaseholders with a long tenancy of a house with a nominated or approved insurer clause in the lease/tenancy have the right to choose their own insurer if the provisions of section 164(2) (a) to (d) of the *Commonhold and Leasehold Reform Act 2002* are satisfied and they give a notice of cover to the landlord within the period specified in that section.

*Schedule – Landlord and Tenant Act 1985 [as amended by s.157 and Schedule 10[9] Commonhold and Leasehold Reform Act 2002]*

*The Leasehold Houses [Notice of Insurance Cover] [England] Regulations 2004 [SI 2004/3097]*

*The Leasehold Houses [Notice of Insurance Cover] [England] [Amendment] Regulations 2005 [SI 2005/177]*

## Right to a management audit

Leaseholders have the right to arrange for a management audit of all the management functions which landlords or their agents undertake at the block. Leaseholders will have to pay the cost of the audit which must be undertaken by a qualified surveyor or accountant who is not connected with the block or the landlord.

*ss.76–83 Leasehold Reform, Housing and Urban Development Act 1993*

Such a management audit allows the auditor to look at both the accounts and at the structure of the building.

## Appointment of a manager by the FTT

Leaseholders may, subject to certain exceptions, ask the FTT to appoint a manager if they believe the block is poorly managed or the landlord cannot be found. This is a fault-based right. Briefly, the general criteria for seeking the appointment of a manager are:

- that there is a breach of the lease/tenancy relating to the management of the block
- that unreasonable service charges have or are proposed to be made
- that there has been a failure to comply with any relevant provision of a Code of Practice approved by the

Secretary of State under section 87 of the *Leasehold Reform, Housing and Urban Development Act 1993*; or

- where the FTT is satisfied that other circumstances exist.

*ss.21–24 Landlord and Tenant Act 1987 [as amended by the Commonhold and Leasehold Reform Act 2002]*

In all cases it must be regarded by the FTT as being just and convenient to make the order.

## Right to Manage – subject to qualifying criteria [See also Part 15 Right to Manage]

Leaseholders also have the right to take over the management of the block themselves or to appoint a managing agent to manage on their behalf by exercising their rights contained in the Right to Manage (RTM) provisions. There need not be a fault in the current regime. Again regulations are prescribed to govern procedures needed to exercise this right.

*ss.71–113 Commonhold and Leasehold Reform Act 2002 [Note: ss.76[2][c] and 77[1][a] have been amended by the Civil Partnership Act 2004 and ss.87[4][a] and 105[3][a] have been amended by the Enterprise Act 2002 [Insolvency] Order 2003 [SI 2003/2096]*

*The Right to Manage [prescribed Particulars and Forms] [England] [SI 2010 825]*

## Right to compulsory acquisitions

In extreme circumstances where the landlord is in breach of their obligations, leaseholders may apply to the county court to acquire the landlord's interest. This is not to be confused with the right to enfranchise.

*ss.25–34 Landlord and Tenant Act 1987*

## Right of first refusal

In most circumstances a landlord who wishes to dispose of their interest in a block must give qualifying leaseholders the opportunity to buy it. This right is strictly regulated and subject to time limits and legal advice is essential.

*ss.1–19 Landlord and Tenant Act 1987*

## Right to enfranchise or extend your lease

Enfranchisement is the process whereby qualifying leaseholders of flats who meet the requirements can form a group and buy the freehold interest from the landlord if the building itself satisfies certain criteria.

There are particular requirements over notice periods, deposits, costs and valuation procedures that need to be adhered to.

Similar rights apply to leaseholders of houses under the *Leasehold Reform Act 1967*.

*Leasehold Reform, Housing and Urban Development Act 1993*

*Leasehold Reform [Collective Enfranchisement and Lease Renewal] Regulations 1993 [SI 1993/2407] [as amended by the Leasehold Reform [Collective Enfranchisement and Lease Renewal][Amendment] [England] Regulations 2003 [SI 2003/1990]*

*Leasehold Reform [Collective Enfranchisement] [Counter-notices][England] Regulations 2002 [SI 2002/3208]*

## Right to vary your lease

Subject to the agreement of all parties concerned, leases may be varied. This is a particularly useful right in the case of an inadequate or defective lease. In the event that agreement cannot be reached, an application may be made to the FTT to vary the lease.

*Part IV Landlord and Tenant Act 1987 [as amended by ss.162 and 163 Commonhold and Leasehold Reform Act 2002]*

## Right to security of tenure at the end of a long tenancy

Subject to certain exceptions, leaseholders with a long tenancy have security of tenure at the end of the tenancy. This means that they have the right to stay in the property under an assured periodic tenancy. Particular procedures need to be adhered to and where these circumstances occur it may be necessary to seek independent advice.

*Schedule 10 Local Government and Housing Act 1989*

*Long Residential Tenancies [Principal Forms] Regulations 1997 [SI 1997/3008]*

*Long Residential Tenancies [Supplemental Forms] Regulations 1997 [SI 1997/3005]*

*Long Residential Tenancies [Principal Forms] [Amendment][England] Regulations 2002 [SI 2002/2227]*

## Additional Advice

Further guidance is available from the following:

- The Leasehold Advisory Service (LEASE) [www.lease-advice.org](http://www.lease-advice.org)
- Department of Communities and Local Government (DCLG) [www.communities.gov.uk](http://www.communities.gov.uk)

## Appendix C: Information leaseholders can expect to receive during the ownership of a flat

| Item   | From Whom   | When  | Comments  |
|--|---|---|---|
| Information sheet about leasehold  | Estate Agent.   | When you first show interest in purchasing a flat.  | Also available from <a href="http://www.lease-advice.org">www.lease-advice.org</a>  |
| Pre-contract enquiries   | Your solicitor/ conveyancing practitioner will request information from the vendor's solicitor/managing agent. [see Glossary LPE1 form] | During the conveyance stage of your purchase  | There is likely to be a separate charge made for this information. See Code 'Pre-Contract Enquiries'.   |
| A copy of your lease   | Your solicitor/ conveyancing practitioner   | It should form part of the pack provided to you during the conveyancing process                           | If you are not given a copy of your lease you should request one as it sets out the obligations of the parties. It is the contract between you and your landlord.   |
| Welcome letter   | The managing agent of the block or perhaps your landlord, depending on the size and ownership of the block                              | When you have completed your purchase and/or moved into the flat  | It is likely to include information about how to contact your managing agent and/or landlord including details of any out of hours emergency service provided.  |
| Landlord's name and address  | Landlord, Managing agent or other agent appointed by the landlord, for example, an auditor.   | When you have completed your purchase, and on all subsequent demands for ground rent and service charges. | See Code 'Landlord's Name and Address'.   |
| Details of the services provided by your managing agent and the fees they charge | Managing agent (if appointed)   | Upon request  | Depending on the terms of the lease, your managing agent will charge an annual fee for providing day to day management services. In addition, they may have a 'menu of charges' for duties not covered by the annual fee. |
| Annual service charge Budget   | Managing agent or landlord if no managing agent appointed   | Shortly before the start of the service charge year   | Dates of the service charge year are usually set out in your lease. See Code 'Budgeting/estimating Service Charges'.  |
| Explanatory notes to the budget  | Managing agent or landlord if no managing agent appointed   | With the budget   | Explanatory notes may be included within an accompanying letter. They may not always be needed if there is no unusual expenditure anticipated during the year   |



|  |   |   |   |
|--|---|---|---|
| Major works plan   | Managing agent or landlord if no managing agent appointed | Usually with the Budget   | It should set out brief details of any anticipated major works to the block likely to be carried out during the course of the next 3 years. For larger blocks/estates, the period covered is likely to be longer. See Code 'Planned or Cyclical Works'. |
| Invoice for service charges  | Managing agent or landlord if no managing agent appointed | This will depend on the terms of your lease but most common are half yearly or quarterly  | A copy of 'Service Charges Rights and Obligations' sheet must accompany the invoice. See Code 'Demanding Service Charges'.  |
| Invoice for ground rent (if applicable)  | Managing agent or landlord if no managing agent appointed | This will depend on the terms of your lease but most common are yearly or half yearly   | See Code 'Ground Rent'.   |
| Year-end service charge accounts   | Managing agent or landlord if no managing agent appointed | Within six months of the end of the service charge year   | Dates of the service charge year are usually set out in your lease. Depending on the size of your block and the terms of your lease, the accounts may be certified or audited. See Code 'External Examination of Service Charge Accounts'.              |
| Explanatory notes to the year-end service charge accounts  | Managing agent or landlord if no managing agent appointed | With the year-end service charge accounts   | Explanatory notes maybe included within an accompanying letter. They may not always be needed if there has been no unusual expenditure during the year  |
| Details of any additional income/ commission/benefits the managing agent has received during the year arising out of the management of the block | Managing agent (if appointed)                             | It is best practice to declare any other sources of income and related income or other benefits including commissions arising from the provision of services with the annual service charge accounts. |   |
| Section 20 Consultation Notices for major works  | Managing agent/ appointed surveyor or landlord            | When major works or long term agreements are planned but before work commences or the agreement is entered into.  | See Code 'Section 20 Consultation'  |



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