Service charge residential management code and additional advice for landlords, leaseholders and agents

Code of Practice, England

4th edition

Glossary

Client	A person or organisation who has instructed a managing agent or organisation to act on their behalf. Clients may include the freeholder, superior leaseholder, residents' management company or right to manage company.
Client money	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 on trust. 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'. Although included within the definition of 'client money', service charge monies **do not** belong to the client. They are held on trust for the benefit of 'persons who are contributing tenants for the time being'. The term used in this Code for such a separate bank account is 'service charge bank account'.
Conflict of interest	A circumstance in which an agent has an interest that could appear, or potentially appear, to influence the objective exercising of their professional duties. This Code specifically refers to managing agents, but other agents may be appointed by a landlord and they too may have a conflict of interest.
Consumer	Any person who, either directly or indirectly, receives the services of a managing agent. This will include clients, landlords, leaseholders and occupiers.
Contingency	A future expense that 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*).
Contract	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.
Fidelity insurance	An insurance to protect organisations from loss of money, etc. resulting from crime, including employee dishonesty.

First-tier Tribunal (Property Chamber) (FTT)	The First-tier Tribunal (Property Chamber) provides impartial adjudication in England for settling disputes involving leasehold and private rented property. Formerly known as the Leasehold Valuation Tribunal (LVT).
Flat	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.
Ground rent	Rent payable to the landlord by the leaseholder on a date and in a fixed amount specified in the lease or by a formula set in the lease, but not a service charge.
House	Any dwelling that is not a 'flat' is referred to as a 'house' for the purposes of this Code. (This definition is not the same as the definition of 'house' contained in the *Leasehold Reform Act* 1967).
Interest in land	A form of legal title in land, for example freehold, leasehold or commonhold interests.
In writing, or written	Typed or handwritten letters/notes, emails, faxes and Braille.
Landlord	The person or company that owns and rents or leases a flat or house. This person may own the freehold or may have a superior leasehold interest in the property, and may be a company formed by leaseholders to hold the freehold interest. Additionally, under the definition in section 30 of the *Landlord and Tenant Act* 1985, the term landlord 'includes any person who has a right to enforce payment of a service charge'. 'Person' here may be an actual person or a body corporate. Under this definition, 'landlord' may include (among others) a manager under a tripartite lease, a residents' management company (RMC) or a right to manage (RTM) company. Where 'landlord' is used in this document, both of these definitions apply.
Lease	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.
Leasehold Advisory Service (LEASE)	A non-departmental public body funded by the government to provide free advice on the law

	affecting residential leasehold property in England and Wales. See www.lease-advice.org
Leaseholder/tenant	The person or company that owns the leasehold interest and is liable to pay the service charge and ground rent under the terms of the lease. For ease of reference, the Code uses the term 'leaseholder' to include all tenants paying a variable service charge on a relevant property. The term 'tenant' is used in most statutory legislation
Live/work unit	A property specifically designed for dual use, combining both residential and business use with specific planning consent falling within the general use classes. It usually has a formal division between the residential and business areas 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.
Long leasehold	A lease originally granted for a period in excess of 21 years.
LPE1 and LPE2	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.
Management functions as defined in the *Leasehold Reform, Housing and Urban Development Act* 1993	See *Relevant person*.
Manager	In this Code, all persons having day-to-day control of the management of a dwelling are called the 'manager'. This person could be one or all of the landlord personally, a member of staff of a corporate landlord or a managing agent. Where a managing agent is engaged, this Code applies to both the client landlord and the managing agent. For the purposes of this Code, 'manager' includes all 'relevant persons' and all 'landlords', including those defined within section 30 of the *Landlord and Tenant Act* 1985, any manager appointed by a Tribunal and all managing agents engaged by a landlord to fulfil any management function.
Managing agent	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 a client, who may be the freeholder, superior landlord, residents' management company or right to manage company. Service charges will normally be paid to this agent. This Code applies to managing agents as

	'managers'. The Code also includes additional sections that explicitly apply to managing agents in respect of their relationship with their clients and consumers.
Money laundering	Concealing the source of the proceeds of criminal activity to disguise their illegal origin. This may take place through hiding, transferring and/or recycling illicit money or other currency through one or more transactions, or converting criminal proceeds into seemingly legitimate property.
Professional indemnity insurance (PII)	Insurance to cover the cost of compensating clients for loss or damage resulting from negligent services or advice provided by a business or an individual.
Relevant costs as defined in section 18 of the *Landlord and Tenant Act* 1985	'the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.'
Relevant person as defined in the *Leasehold Reform, Housing and Urban Development Act* 1993	'"relevant person" means any landlord of residential property or any person who discharges management functions in respect of such property, and for this purpose 'management functions' includes functions with respect to the provision of services or the repair, maintenance, improvement or insurance of such property.'
Reserve/sinking fund	A provision for future major expenditure. These terms have become interchangeable over recent years. This Code uses the term 'reserve fund' (see *Contingency*).
Residential property as defined in the *Leasehold Reform, Housing and Urban Development Act* 1993	'"residential property" means any building or part of a building which consists of one or more dwellings let on leases, but references to residential property include— (i) any garage, outhouse, garden, yard and appurtenances belonging to or usually enjoyed with such dwellings, (ii) any common parts of any such building or part, and (iii) any common facilities which are not within any such building or part'
Residents' management company (RMC)	An organisation that is a party to the lease, 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.

Residents'/tenants' association **Recognised tenants' association (RTA)**	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' (an RTA) by law with a formal constitution.
Right to manage (RTM) company	A specific company created by the *Commonhold and Leasehold Reform Act* 2002 enabling qualifying leaseholders of the building to exercise the right to manage (RTM) and take on the management functions of the landlord.
Service charge as defined in section 18 of the *Landlord and Tenant Act* 1985	'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.'
Service charge expenditure	Costs incurred by, or on behalf of, the landlord that are recoverable as a service charge under the lease.
Service charge monies	Monies collected by, or on behalf of, the landlord as service charges and held by, or on behalf of, the landlord towards future anticipated service charge expenditure.
SI	A Statutory Instrument (Regulations or an 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.
TECH 03/11 Residential service charge accounts	Residential service charge accounting guidance issued by the Institute of Chartered Accountants in England and Wales (ICAEW), available from www.icaew.com

Part 1 Introduction: structure, aims and objectives

1.1 Introduction

Section 87 *Leasehold Reform, Housing and Urban Development Act* 1993 enables the Secretary of State to approve any Code of Practice that appears to them to be designed to promote desirable practices in relation to any matter or matters directly or indirectly concerned with the management of residential property by relevant persons.

Any such code may make provision with respect to:

1. the resolution of disputes with respect to residential property between relevant persons and the tenants or licensees of such property
2. competitive tendering for works in connection with such property, and
3. the administration of trusts in respect of amounts paid by tenants or licensees by way of service charges.

This code of practice has been written with the above powers in mind and has been approved in England by the Secretary of State under section 87(7) of the *Leasehold Reform, Housing and Urban Development Act* 1993.

It is designed to promote desirable practices in relation to the management of residential property by relevant persons. It applies to landlords and to any person engaged to discharge management functions of any long leasehold or other residential property in England where a tenant is required (or may be required) to pay a variable service charge.

1.2 Application of this Code of Practice

The RICS professional statement *Real estate management* (3rd edition, October 2016) states that it 'outlines the principles that shape the culture of fairness and transparency that underpin all activities undertaken by real estate managers within whichever country they practice'. It is mandatory and applies to all RICS members involved with 'the sale, letting, leasing and management of real estate, whatever the form of tenure by which it is held or occupied.'

This Code incorporates those principles in providing detailed best practice guidance. Having been approved by the Secretary of State, the requirements of this Code are not restricted to RICS members; they apply to all landlords and managers discharging management functions to relevant properties.

Members of professional bodies continue to be bound by the rules of those bodies, subject to there not 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.

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 or other suitably qualified professional, or to seek information from the Leasehold Advisory Service (LEASE). Prior to taking legal action, you should also consider mediation.

While the Secretary of State has approved this Code under section 87(7) of the *Leasehold Reform, Housing and Urban Development Act* 1993, approval of the Code does not have the effect of making a breach of the Code a criminal offence or create civil liability.

It should be understood, however, that non-compliance with best practice is a serious matter, and landlords and managing agents would need to justify their 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, in redress scheme investigations and in disciplinary procedures instigated by RICS and other professional bodies against regulated firms and members.

1.3 Private registered providers of social housing

This code of practice applies to private registered providers of social housing (PRPs; these are usually, but not always, housing associations) in respect of their role as 'relevant persons' as the landlord and/or manager of residential property let on a long lease and subject to the payment of a variable service charge.

PRP landlords are exempt from some statutory requirements. In particular:

- Section 42 of the *Landlord and Tenant Act* 1987 requirements to hold service charge monies on trust. PRPs must follow their own regulatory requirements on holding service charge monies. However, when holding reserve funds or sinking funds, PRPs should follow best practice guidance (see sections 5.5 and 5.6) and should hold these monies in a trust account separately from other monies.

- Mandatory redress schemes. PRP landlords are required to be members of the Housing Ombudsman Service.

PRPs should follow all the core principles detailed in section 1.6 when managing residential properties and recovering costs as variable service charges or variable estate rent charges.

1.4 Local authorities

Variable service charges payable by tenants of a local authority, National Park authority or new town corporation are excluded from the section 18 definition in the *Landlord and Tenant Act 1985*, except for service charges payable by tenants under a long lease (granted for a term certain exceeding 21 years).

This code of practice applies to local authorities in respect of their role as 'relevant persons' as the landlord and/or manager of residential property let on a long lease and subject to the payment of a variable service charge.

Local authority landlords are exempt from some of the statutory requirements. In particular:

- Section 42 of the *Landlord and Tenant Act* 1987 requirements to hold service charge monies on trust. Local authorities must follow their own regulatory requirements on holding service charge monies.

- Local authorities are exempt from criminal sanction under section 25 of the *Landlord and Tenant Act 1985* for non-compliance with sections 21–23. Local authorities are however required to abide by the requirements of sections 21–23 of the Act and follow best practice guidance (see section 5.15).

- Mandatory redress schemes. Local authorities are required to be members of the Local Authority Ombudsman Service.

Local authorities should follow all the core principles detailed in section 1.6 when managing residential properties and recovering costs as variable service charges or variable estate rent charges.

1.5 Freehold houses and variable estate rent charges

It has become common in recent years for freehold houses to be sold subject to variable estate rent charges being payable in return for services. At the time of publication of this Code, the statutory requirements applicable to variable service charges do not extend to variable estate rent charges.

Rent charge holders and managers should follow all the core principles in section 1.6 when managing such properties and recovering service costs as variable estate rent charges.

1.6 Aims, objectives and core principles

This Code is designed to promote desirable practices in relation to the management of residential property subject to a variable service charge. The key aims and objectives are:

- to improve general standards and promote best practice, uniformity, reasonableness and transparency in the management and administration of long leasehold and other residential property where tenants are required to pay a variable service charge
- to ensure timely issuing of all documentation, including budgets and year-end accounts
- to reduce the causes of disputes and give guidance on resolving disputes where they do occur, and
- to encourage sustainable, planned and cost-effective long-term management through the use of costed capital expenditure plans funded by adequate reserve fund collections (where possible under the lease).

Services should be procured on a value-for-money basis as part of an appropriate process. This process should include obtaining competitive quotations or benchmarking costs as appropriate. All costs should be transparent to all parties, including landlords, leaseholders and managing agents.

The basis and method of apportionment of service charges will often be prescribed in the lease. Where the lease is not prescriptive, the basis and method of apportionment 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 and benefit of services to the building or estate.

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 landlord and managing agent are spending other people's money and must demonstrate competence, objectivity and transparency in dealing with client money and service charge monies.

Communication and consultation between landlords, 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. Transparent provision of budget forecasts with explanatory notes, certified accounts with explanation of variances, planned capital expenditure programmes and day-to-day management policies will help 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 landlord and managing agent should procure quality service standards to ensure that value for money is achieved at all times. The aim is to achieve effective value-for-money services rather than the lowest cost.

Managing agents should agree the appropriate and desired level of service provision with their landlord clients. The level and frequency of services to be provided and the level and structure of any fees should be clearly documented in the management agreement.

This 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 the effective management of services and buildings.

Successful management of residential property can only be achieved through cooperation between all parties involved and a mutual understanding of the procedures necessary for effective management, as well as of the problems that can arise. This Code is therefore intended to be read by landlords, leaseholders, managing agents, managers and occupiers of residential property and their respective professional advisers. While there are cost implications of managing residential properties to the standard specified by this Code, the benefits in terms of improved service and level of satisfaction should make any additional costs worthwhile. Landlords and managing agents should provide a compliant, transparent and value-for-money service.

1.7 Structure of the code

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

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. Practitioners are expected to ensure their knowledge remains fully up to date on the law and its interpretation by the courts and tribunals.

In considering this guidance, 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. 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
- cost effectiveness
- transparency
- efficiency
- reasonableness
- quality of service
- consumer service level expectations
- structural integrity of buildings and
- health and safety of occupiers and visitors.

While compliance with the best practice guidance is not mandatory, all landlords and managing agents should be able to justify any departures from it.

1.7.1 Must/should

In this Code, the word **must** is used to indicate a legal obligation. Breaches of a legal obligation 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, in redress scheme investigations and in disciplinary procedures instigated by RICS or other professional bodies against regulated firms and members.

1.7.2 You

This Code considers property management from the perspective of relevant persons, as defined in section 87 of the *Leasehold Reform, Housing and Urban Development Act* 1993. Relevant persons include all landlords, including any person who has the right to enforce payment of a variable service charge (as defined by section 30 of the *Landlord and Tenant Act* 1985), any manager appointed by a tribunal and all managing agents engaged by a landlord to fulfil any relevant management function. Where a managing agent has been appointed, there will be more than one relevant person: the managing agent and the instructing landlord. Except where indicated in the text of this Code, all requirements are for the relevant person(s), who is/are addressed as 'you' or referred to as the 'manager'.

The Code includes additional best practice guidance for managing agents, specifically related to the contractual relationship between the managing agent and the landlord.

1.7.3 Leaseholders

This Code applies to residential properties let on long leases, assured, assured shorthold, contractual and regulated tenancies or licences to occupy. For ease of reference, the Code uses the term 'leaseholder' to include all tenants paying a variable service charge on a relevant property. The Code also refers, in places, to 'consumer' to reflect the fact that the ultimate beneficiary of services provided by landlords and managing agents may not be the leaseholder.

The existence of this document, and where it can be seen and/or obtained, should be brought to the attention of all variable service charge payers and leaseholders of relevant dwellings in England.

Part 2 Ethical obligations and professionalism

2.1 Ethical obligations and professionalism

The manager 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 manager. You should 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 manager. The duty of care and skill applies to every aspect of your services.

2.2 Core principles

The following core principles are taken from Real estate management (3rd edition), RICS global professional statement:

'You should:

1 Conduct business in an honest, fair, transparent and professional manner.
2 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 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 Do the utmost to avoid conflicts of interest and, where they do arise, to deal with them openly, fairly and promptly.
5 Not discriminate unfairly in any dealings.
6 In all dealings with clients, ensure that all communications (both financial and non-financial subject matters) are fair, clear, timely and transparent.
7 Ensure that all advertising and marketing material is honest, decent and truthful.
8 Ensure that all client money is held separately from other monies in appropriately designated accounts and is covered by adequate insurance.
9 Have adequate and appropriate professional indemnity insurance, or equivalent, in place that complies with the RICS Rules of Conduct. Having proper cover is a key part of managing your risk.
10 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, give a realistic assessment of the likely selling, buying or rental price, associated cost of occupancy or of the likely financial outcome of any issues, using best professional judgment.

12 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. You should not accept any client instructions that conflict with legal or regulatory requirements, and you should cease your engagement if necessary.

This Code requires that you mitigate conflicts of interest and deal with them openly and fairly, and immediately as they arise. You must disclose any conflict of interest promptly and in writing, taking account of any duty of confidentiality. With informed consent from your client, it may be possible for you to continue to act for them but if consent is not forthcoming or you are unable to disclose your interest due to confidentiality, you should cease your activities for all clients involved.

2.4 Duties regarding protected characteristics

A landlord or manager is a service provider for the purposes of the *Equality Act* 2010 in the disposal and management of premises. There is a duty on the service provider not to discriminate in relation to a person because they have, or are believed to have, a 'protected characteristic'.

The 'protected characteristics' under the *Equality Act* 2010 are:

- age (this does not apply to property management or disposal of property services)
- disability
- gender reassignment
- marriage or civil partnership (this does not apply to property management or disposal of property services)
- pregnancy and maternity
- race
- religion or belief
- sex and
- sexual orientation.

Equality Act 2010

2.5 Direct discrimination

This is when you treat someone worse than another person or other people because:

- they have a protected characteristic
- you think that they have a protected characteristic or
- they are connected to someone with a protected characteristic.

Direct discrimination is always unlawful and cannot be justified (save for age discrimination, which is lawful in certain prescribed circumstances).

Equality Act 2010

2.6 Indirect discrimination

This is where there is a policy, practice, rule or arrangement that applies in the same way for everybody but disadvantages a group of people who share a protected characteristic, and a person is disadvantaged as part of this group.

Indirect discrimination is possibly unlawful but can sometimes be justified. For this, you must show that there is a good reason for the policy, and that it is a reasonable and proportionate means of achieving that end.

Equality Act 2010

2.7 Duty to make reasonable adjustments

Where a disabled person is at a substantial disadvantage compared with people who are not disabled, there is a duty to take reasonable steps to remove that disadvantage by making or permitting changes ('reasonable adjustments'), subject to it being practical and reasonably affordable in the circumstances.

This does not extend to making physical alterations to the building structure, but may extend to signage, door handles or fittings, door entry systems or colour of a wall or door in any common parts, as well as to adjusting a practice or procedure. It may extend to varying a lease term to the extent necessary to enable a leaseholder to make the required alterations to the leased property.

Equality Act 2010

2.8 Vulnerable consumers

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

Consumers have the ultimate responsibility for their decisions, but you should be aware of the needs of vulnerable consumers and ensure that each individual is given all the relevant information necessary to make as informed a decision as possible in the circumstances.

2.9 Responsibility for others

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

- train staff initially and on a continuous basis, and keep records of that training and who received it
- maintain awareness of the legislation and relevant codes of practice
- supervise staff adequately
- be aware of who your related parties are, and satisfy yourself they are aware of any legal and ethical requirements and can be relied upon to comply with them, and
- ensure 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 Duties and conduct of a manager

3.1 Introduction

You should not act outside the scope of your authority, nor outside your area of competence. When managing as an agent, you should only act in accordance with your client's instructions, which should be clearly documented in your management agreement. You should seek and follow further instructions from your client 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 personal information about leaseholders or landlords confidential and not disclose it to other people without their consent.

3.2 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 for the request to be dealt with. Relevant information should be provided if statute and/or the lease obliges, or if it is reasonable. Where permissible and appropriate, a reasonable charge may be made subject to prior notification and agreement of the leaseholder that they wish the information to be provided on the stated terms. If there is a conflict with your duties to your client, 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 and in compliance with any legislative or lease requirements, so that they reach the intended recipients promptly. You should be aware of the need to prove the serving of certain documentation to the satisfaction of a court.

3.3 UK General Data Protection Regulations (GDPR)

You will need to be registered with the Information Commissioner's Office under the *Data Protection Act* 2018 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. Further information is available from the Information Commissioner's Office.

You should be aware of the requirements regarding the holding and handling of information and data. As an overall guide, in accordance with the seven principles of GDPR, 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.

Data Protection Act 2018

3.4 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 most licences not to withhold consent unreasonably. You 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 or 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. Exceptions to this would be where there is a manager appointed by the FTT or 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. 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 help leaseholders to understand their lease and/or refer them to appropriate independent advice agencies such as LEASE. Managing agents should avoid a conflict of interest in giving advice to their client's leaseholders and signpost them to appropriate advice agencies where necessary.

You should also consider the issues concerning discrimination set out in Part 2, *Ethical obligations and professionalism*.

3.5 Quiet enjoyment

You should have regard to consumers' contractual rights to quiet enjoyment. You must not perform 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)

3.6 Contact

You or your authorised agent 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.

When acting as a managing agent, you should agree with your client how incidents/emergencies that occur out of normal hours will be dealt with. You should inform leaseholders and occupiers of any contact 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.

3.7 Inspection

You should have procedures in place to regularly visit and inspect the building and the services being provided. In determining the frequency of inspection visits, you should have regard to the type and nature of the occupation, and the complexity of the facilities provided.

This type of inspection does not involve or imply a survey of the building; it is a visual inspection of the open and accessible areas of the common parts with a view to identifying matters requiring attention, and to check on the quality of services being provided within those common parts. The inspector must recognise the limit of their expertise and where necessary recommend further investigation by an appropriately qualified competent person.

3.8 Personal safety

You must ensure the safety of your staff and all others involved in management at all times.

You should have comprehensive procedures to ensure safe working. These should be communicated to all staff, who should be adequately trained and kept up to date at all times.

Health and Safety at Work etc. Act 1974
The Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)

3.9 Consultation

You should consult with representative organisations where appropriate and must do so when required by law. You should advise leaseholders of their rights to form recognised residents' associations, and support attempts by unrecognised associations to obtain leaseholders' contact details and to form a recognised association.

It is better to keep in touch with leaseholders than to remain silent. The legislative requirements to consult where qualifying works or qualifying long-term agreements are concerned (see sections 9.9–9.12) should be regarded as the minimum standard required, not the optimum. You should be aware that if you wish to recover service charge costs above the prescribed thresholds, you must consult leaseholders about proposed works or proposed long-term agreements.

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.

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 (SI 2003/1987)

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

3.10 Money laundering

You must comply with *The Money Laundering Regulations* 2007 and the *Proceeds of Crime Act* 2002. 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 (Amendment) Regulations 2012 apply to those who undertake relevant financial business. In order to minimise the risk of committing a criminal offence, all managing agents must implement procedures to the minimum standard required by the regulations for the services that they provide. Independent advice should

be taken if unsure whether the services provided meet the criteria for registration.

The Money Laundering Regulations 2007

The Money Laundering (Amendment) Regulations 2012

Proceeds of Crime Act 2002

3.11 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

3.12 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.

A managing agent's terms of engagement should define who is the employer of any on-site staff. This is likely to be the landlord or the manager under the lease but may be the managing agent, a third-party service provider or more than one party through 'joint employment' contracts. Employment (and other service) costs may be liable for VAT. This is a complex area of tax law, and 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 they are fully trained and competent before

undertaking any duties with health and safety implications. Staff should be provided with access and signposted to appropriate mental health support services.

You should provide on-site staff with a manual setting out their duties, responsibilities and operating procedures. This should be available to leaseholders on request. 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 (where applicable). Disciplinary, grievance and harassment procedures should be in place, details of which should be communicated to all staff.

When employing agency staff, e.g. to cover sickness/holiday periods or for temporary assignments, you should take appropriate steps to ensure that necessary and adequate training is provided and that the employer agency is meeting similar standards of employment conditions as those detailed above.

Health and Safety at Work etc Act 1974
The Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)

3.13 Additional duties

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 where necessary.

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. The health and safety policy should be communicated to all staff, who should be adequately trained and kept up to date at all times.

Health and Safety at Work etc Act 1974
The 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 Universal Credit or any other statutory benefits.

If you suspect someone is at risk of abuse, exploitation or neglect, you should alert the appropriate agencies to your concerns.

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

Part 4 Complaints and disputes

4.1 Introduction

You should have clear procedures in place for handling complaints and dealing with disputes. Managing agents must also belong to one of the government-approved redress schemes. The procedures should include a series of steps that clients, leaseholders and third parties 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.

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 (SI 2014/2359)

4.2 Disputes between occupiers

You should always refer to the lease when dealing with disputes between occupiers. You should consider whether your involvement is appropriate, and whether the parties are better advised to consult with other bodies, e.g. local authorities, in respect of noise nuisance or antisocial behaviour.

Local authority and registered provider landlords are likely to have their own in-house teams or procedures, which should be referred to. They have additional statutory/regulatory duties relating to antisocial behaviour and are likely to be more involved in disputes between occupiers than private sector landlords and managing agents.

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

Leases typically contain a mutual enforceability clause enabling landlords to seek an indemnity for their costs from leaseholders requesting enforcement. You should always have regard to the mutual enforceability clause in the lease before embarking on any action that involves legitimate expense from the service charge.

Complainants should be given realistic estimates of the likely time and cost involved in any enforcement. You should also consider recommending 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 section 4.5, *Alternative dispute resolution and mediation*).

4.3 Disputes between landlord and leaseholder

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.

The lease may specify a dispute procedure such as arbitration or expert determination, which may be costly to implement. Following the introduction of the *Commonhold and Leasehold Reform Act* 2002, such clauses are likely to be void and any agreed dispute resolution (other than the courts or tribunals) must be agreed by the parties 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 encouraged to seek legal advice on any such suggestion and signposted towards the free advice services offered by LEASE.

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 consumers 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 consumers should be kept informed of your actions.

4.4 Complaints

This section covers complaints against the direct actions and/or behaviour of the managing agent.

Managing agents must have a formal written complaints handling procedure in place to deal with complaints about their work and that of their staff. The procedure should be made available to their client and leaseholders. It should include a short series of steps and response times for its various stages. The procedure should provide for complaints about staff to be made to a responsible principal, and for them to be investigated quickly and fairly. The procedure should provide leaseholders with a right to escalate complaints to the client landlord.

All managing agents undertaking relevant activities must belong to a government-approved redress scheme. At the date of publication of this Code, there are two approved schemes, the details of which are available at GOV.UK.

The complaints procedure must include details of the relevant approved redress scheme and advise leaseholders of their right to escalate their complaint if they remain dissatisfied following the in-house resolution proposals.

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 (SI 2014/2359)

4.5 Alternative dispute resolution and mediation

The Ministry of Justice *Practice Direction – Pre-Action Conduct and Protocols* explains the conduct of parties and sets out the steps the court would normally expect parties to take before commencing civil proceedings. It aims to:

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

Increasingly, courts and tribunals are recommending that disputing parties seek alternative dispute resolution (ADR), including mediation, before cases are heard. 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. Upon receipt of an application (subject to the usual application fee) from any party, the FTT may be able to provide a free mediation service before the case progresses to a formal hearing and/or determination.

There are different forms of ADR:

- mediation
- independent expert determination
- early neutral evaluation and
- 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 in which 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 in which 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 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 parties involved can agree on one. The process is more formal than other ADR options. 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 them, but is not allowed to stray outside the evidence.

4.6 First-tier Tribunal – Property Chamber

The First-tier Tribunal – Property Chamber (Residential Property) is part of HM Courts and Tribunals Service in England. Leasehold Valuation Tribunals still operate in Wales.

Legislation has given the Tribunal jurisdiction in many areas of landlord and tenant disputes that would otherwise have to be dealt with by the courts. The tribunal also promotes the use of alternative dispute resolution and mediation.

4.7 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 5 Service charges, ground rent and administration charges

5.1 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 must always have regard to lease terms to identify what costs are recoverable as a service charge, when they are due for payment and any conditions precedent to demanding payment. You 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 so the lease is paramount.

5.2 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 in 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.'

The legislation is limited to a leaseholder (tenant) of a dwelling, but covers service charges that 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 in 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.

5.3 Budgeting/estimating service charges

The lease commonly provides for the landlord to recover costs incurred as an estimated interim service charge payable in advance. That is not always the case however, and many leases provide for the landlord to recover costs only when incurred or after the end of the financial year in which they were incurred.

When calculating a service charge budget, you should use due diligence and professional expertise to assess the likely expenditure required to maintain the development and services for the forthcoming period (typically a year) and beyond. You must not purposely underestimate costs or provide leaseholders with misleading estimates of future contributions required.

On new developments in particular, you should satisfy yourself that the initial service charge budget is reflective of future costs. Any deviation from steady-state costs should be justified and explained to potential leaseholders prior to purchase. Deviations may include savings as a result of contractor warranties or developer contributions.

Service charge budgets should be approved by the landlord before demanding any service charges. Initial service charge demands in any year should be accompanied by a copy of the approved budget and the apportionment schedule, making it clear to leaseholders how their proportion has been calculated. 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 and against actual expenditure, there should be a standard format for presentation to leaseholders using the industry standard cost codes (see section 5.11 and Appendix A).

While it is prudent to slightly overestimate 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 in the estimated budget.

The purpose of an estimated budget is to provide leaseholders with an estimate of their liabilities, ascertain and support the level of interim service charges demanded on account, and provide a robust benchmark for monitoring service costs throughout the period (typically a year). Throughout the period, you should notify leaseholders of significant departures from the budget and should be willing and able to explain the reasons for them.

Some leases do not provide for the landlord to recover costs on account by way of advance payments, or specify a restricted level of on-account payments that do not adequately reflect the likely level of actual costs to be incurred.

The landlord should ensure sufficient funds are available during the year to meet the service obligations in the lease. Without rights to collect adequate advance funding, landlords may be reluctant to provide services beyond the bare minimum required to meet their contractual obligations. Landlords in this situation should consider engaging with leaseholders to seek sufficient support for an application to the FTT to vary the leases.

Financing service costs without rights to collect adequate advance payments can be particularly problematic for leaseholder-controlled landlords, e.g. following enfranchisement or right to manage. The landlord may have to consider borrowing money to finance services during the year. The leases may provide for the cost of interest on borrowing to be recoverable as part of the service charge, but in some cases they will not. In those circumstances, it may be necessary for a landlord company to seek voluntary contributions from its members or, with the support of an adequate number of leaseholders, seek lease variations from the FTT.

5.4 Applications to the FTT

Costs are only recoverable as service charges to the degree they have been (or will be) reasonably incurred and the services provided to a reasonable standard. The FTT can limit the level of costs recoverable accordingly.

Both landlords and leaseholders have the right to apply to the FTT for a 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 that 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 of a service charge does not, in itself, imply that the leaseholder has agreed the charge is payable, nor that the costs have been reasonably incurred.

In making a determination, the FTT will have regard to the contractual terms of the lease, the reasonableness of the costs being incurred, and the quality and value for money of those services.

Landlord and Tenant Act 1985

5.5 Reserve/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 in the lease that may, for example, provide for a general reserve fund or for collection towards the replacement of specific components or equipment. Leases may not specifically include such terms as reserves or sinking fund, but may still provide for service charge income to be retained towards costs to be incurred in future years.

Where reserve funds are for a designated purpose, they should not be 'dipped into', used for day-to-day maintenance costs or used to make up non-payment by either leaseholders or landlords.

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 the specific 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 leases permit it. 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. Where there is no contractual provision for service charges to be held towards

costs to be incurred in the future, landlords should consider engaging with the leaseholders to seek sufficient support for an application to the FTT to vary the leases.

You should plan for future major works, cyclical works and replacements. All buildings should have a costed long-term planned preventative maintenance (PPM) plan that reflects the age and condition of the building. The level of reserve fund collections should be informed by the PPM plan, which should be used as the basis for projected income streams to ensure that funds are available and works can be undertaken in a timely manner when required. The PPM and projected levels of reserve fund contributions should be made available to all leaseholders on request and to any prospective purchasers upon resale.

Where there is no provision in the leases enabling the landlord to hold monies in a reserve fund, and there is insufficient support for lease variations, you should make leaseholders fully aware of the future service charge cost implications and encourage them to make their own long-term saving provisions towards the estimated expenditure.

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 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.

s.42(7) Landlord and Tenant Act 1987

5.6 Holding service charge funds on 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

Service charge funds for each property should be identifiable. They should be held in either separate client service charge bank accounts for each scheme, 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) in the title of the account.

You should not commit to 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 on trust for the purpose of meeting 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.

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 that is regulated by the *Rent Act* 1977, unless the rent is registered as a variable rent on the basis that service charges are payable that vary according to the costs payable from time to time.

You should provide confirmation of the trust status of the service charge account with any demand for service charges and/or in the approval statement for the annual summary of income and expenditure/service charge accounts (see section 5.12).

Service charge bank accounts should be reconciled against your cashbook records at regular intervals. You should provide confirmation of the frequency of reconciliation with any demand for service charges and/or in the approval statement for the annual summary of income and expenditure/service charge accounts (see section 5.12).

s.42(6) Landlord and Tenant Act 1987

It is best practice to hold reserve funds and day-to-day service charge monies in separate trust accounts. The funds have been collected and retained for different purposes and should only be used to defray the relevant expenditure. 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

5.7 Demanding service charges

The lease will often dictate individual apportionments of the overall service charge expenditure and the method and frequency of payments. Unless the lease provides for the apportionment to be varied, the leaseholder will not be liable for any higher proportion of the costs incurred.

Service charge percentages do not always add up to 100%. If the total service charge proportions do not enable the landlord to fully recover the cost of fulfilling its obligations, an application may be made to the FTT for an order to vary one or more leases. However, you should note that the FTT has discretion on whether to make an order varying the lease(s), and to the terms of that order. There is no automatic assumption that landlords can fully recover costs incurred and you should seek legal advice if necessary.

The lease may provide for individual apportionments to be varied by the landlord in appropriate circumstances. Any such variation should be communicated to the leaseholders, with accompanying reasons and a copy of the revised apportionment matrix. The ability to vary apportionments, in what circumstances (if any) and the notification requirements will often be detailed in the lease, and these requirements should be followed. Variation of apportionments may be challenged and determined by the FTT.

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. This cannot be taken as 'agreement' by the tenant to pay the proportion that is determined. Any such agreement is void by virtue of section 27A(6) of the *Landlord and Tenant Act* 1985, and the ability to determine such apportionments rests with the FTT. You should ensure that proportions have been assessed in accordance with the lease, and be prepared to defend the underlying rationale and the resulting apportionment to the FTT.

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. Initial service charge demands in any financial year should be accompanied by a copy of the budget and a copy of the apportionment schedule so that leaseholders can see how their proportion has been calculated (see section 5.3). They must contain the landlord's name and address – and if that is not in England or Wales, an address in England or Wales for the service of notices. 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

Every service charge demand 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 *The 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.

5.8 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. Managing agents' agreements should specify the extent of their 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.

You must have regard to and follow the debt pre-action protocol made under the Civil Procedural Rules prior to commencing any court action for recovery of outstanding service charges.

You must have regard to and follow *The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations* 2020, which give someone in problem debt the right to legal protections from their creditors.

Ministry of Justice Practice Direction – Pre-Action Protocol *The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020*

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. You should attempt to contact defaulting leaseholders and discuss any difficulties regarding payments. You should consider accepting 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.

Where arrears are related to service delivery or cost disputes, you should consider offering mediation or alternative dispute resolution (see section 4.5, *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.

5.9 Forfeiture

Freeholders, head landlords and their agents 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 2002 Act outlines the limitations on commencing forfeiture proceedings for small debts owing for short periods of time, and breaches of covenant not agreed or determined by a court or the 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 *Ss167-171 Commonhold and Leasehold Reform Act 2002*

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

Limitation Act 1980

5.10 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. Explanatory notes should be produced to provide leaseholders with details of variances between budget and actual expenditure. The accounts should be transparent and reflect all expenditure in respect of the account period.

Many leases set out the procedures regarding preparation of the annual statement and often require 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, content and certification requirements, service charge accounts should be prepared in accordance with TECH 03/11 (see the *Glossary* for details.

s.19 Landlord and Tenant Act 1985 *s.27A Landlord and Tenant Act 1985* *s.13 Supply of Goods and Services Act 1982*

5.11 Industry standard cost classifications

Appendix A includes details of industry standard cost classifications that should be used in reporting budget and actual expenditure. To ensure consistency and transparency

(especially in mixed-use developments), the cost classifications are consistent with the Service charges in commercial property (1st edition), RICS professional statement.

The industry standard cost classifications provide three levels of analysis:

- cost class
- cost category and
- cost description.

As a minimum acceptable level of reporting, service charge budgets and statements of actual expenditure should be prepared at cost class and cost category level.

Adoption of the industry-standard cost classifications will aid transparency and facilitate better cost comparison and benchmarking between properties. It will also reduce costs and assist in the transfer of information between landlords when properties are sold, or when there is a change of manager (from in-house to external, or between managing agents).

However, to achieve transparency in accordance with the principles of this Code, it is recommended best practice that budget and actual expenditure analyses are provided at the detailed cost description level whenever practicable, and particularly in respect of larger properties, with a summary of the total costs under each cost category.

In accordance with the core principle of proportionality, it is acceptable for smaller properties or those with limited service charge expenditure to report at the higher cost category level, although this is generally regarded as an exception rather than the norm.

To maintain consistent standards and to facilitate benchmark comparison, managers and those responsible for preparation of the accounts are encouraged to use all best endeavours to comply with the cost class and cost category analysis as set out, and not permit the creation of new cost categories or cost classes.

However, the detailed cost descriptions set out are not intended to represent an exhaustive list but are included for illustrative and guidance purposes only. Individual cost descriptions may vary from manager to manager, and the inclusion of additional cost descriptions is encouraged where this will facilitate greater transparency and clarity with regard to the expenditure incurred or proposed.

The use of the standard cost classes and categories in an industry-standard format are essential if benchmarking is to be effective. However, for benchmarking purposes, accounts are only required at cost category and cost class level. It is not intended that benchmark analysis of expenditure be carried out at the cost description level.

5.12 Approval and external review of service charge accounts

The purpose of approving the service charge accounts is to confirm that the accounts produced represent the actual expenditure incurred by the landlord in supplying the services, and that the expenditure the landlord is seeking to recover is in accordance with the terms of the leases.

The accounts should be approved by, or on behalf of, the landlord as complying with the statements above. In approving the accounts, the manager is required to act in a professional, non-partisan manner, and not suppose that the only task is to recover as much money as they can for the landlord.

Where the lease specifies certification or approval requirements, the approver should be the appropriate person, e.g. the landlord or landlord's surveyor. Where the lease does

not contain specific certification or approval requirements, the approver should be the landlord or an appropriately qualified competent person with experience in dealing with service charges. The approver should also recognise that in approving the service charge accounts, they have a duty of care to both the landlord and the leaseholders to act with professional care, diligence, integrity and objectivity.

For transparency, the status of the person approving the service charge accounts, and the capacity in which they are acting, should be made clear (for instance, a director or employee of the landlord, or the manager or surveyor as agent for the landlord).

5.13 External examination of service charge accounts

In addition to being approved by, or on behalf of, the landlord, service charge accounts should be subject to an annual examination by an independent accountant, where the costs of the examination are recoverable as service charges under the lease and are proportionate to the service costs incurred. 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, these being an engagement to report on specified findings or an audit.

5.14 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 set out all costs incurred by the landlord, 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 (accruals)
- items/costs for which payment has been demanded of the landlord but not paid within that period (creditors) and
- items/costs for which the landlord has paid within that period (paid expenditure).

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 that relate to works for which grants have been or will be paid, and show how they have been reflected in the service charge demands.

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. A qualified accountant means a person who is eligible for appointment as a statutory auditor under section 1212 of the *Companies Act* 2006.

As detailed in section 5.10, you should produce and circulate annual accounts in accordance with the lease and, to the extent that the lease requirements are compatible, in accordance with Tech 03/11, irrespective of any request under section 21 of the *Landlord and Tenant Act* 1985 being received.

s.21 Landlord and Tenant Act 1985

You must respond to the leaseholder's or secretary of the recognised tenants' association's written request to inspect the accounts, receipts and other documents supporting the summary 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 the 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 of the *Landlord and Tenant Act* 1985 would apply to the superior landlord in this case.

s.21(6) and s.22 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 on conviction will be liable for a fine. Section 25 (summary offence) does not apply to landlords who are local authorities, national park authorities or new town corporations.

s.25 Landlord and Tenant Act 1985
s.37 Criminal Justice Act 1982

Costs are only recoverable as service charges if demanded within 18 months of being incurred, unless leaseholders have been correctly notified in writing within the 18 months that the cost has been incurred and will be charged in the future, in accordance with the prescribed requirements of s.20B(2) of the *Landlord and Tenant Act* 1985.

S20B Landlord and Tenant Act 1985

Service charge accounts should be prepared, and copies made available to all contributors, within six months of the end of the financial period, or on 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 for the delay.

s.20B Landlord and Tenant Act 1985

5.15 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 prescribed 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 cashflow 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. However, 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 1996 and 2002 Acts outline 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 the 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 2002

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.

When acting as an agent, you should keep your client informed, in writing, of any significant arrears as soon as is 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.

At the time of publication, the *Leasehold Reform (Ground Rent) Act* 2022 had received Royal Assent but was yet to come into force. The Act will abolish ground rents of more than a peppercorn in any future qualifying long leases. The Act will also introduce a ban on landlords seeking any administration charges for the recovery of a peppercorn ground rent. You should ensure you keep up to date on the introduction of this and other relevant legislation.

5.16 Administration charges

Administration charges are defined in 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 in the lease, and only to the extent that they are reasonable in amount.

Any party to a lease of a dwelling may apply to the FTT for a determination of the payability and reasonableness in amount of variable administration charges. The FTT may also make an order (on application) varying the lease on the grounds that:

- any administration charge specified in the lease is unreasonable, or
- any formula specified in the lease, in accordance with which any administration charge is calculated, is unreasonable.

Schedule 11 Commonhold and Leasehold Reform Act 2002

Administration charges are commonly retained by the managing agent to cover the costs of providing 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

The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 (SI 2007/1258)

s.166 Commonhold and Leasehold Reform Act 2002

5.17 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 that 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. All surpluses and deficits should be credited or demanded in accordance with the lease. The recovery of any deficits carried forward (in accordance with lease terms) should be protected by the service of a notice under section 20B(2) of the *Landlord and Tenant Act* 1985.

s.20B Landlord and Tenant Act 1985

5.18 Event fees

Event fees are fees that become payable by an individual leaseholder on events, such as the resale or subletting of some properties held on long leases. Examples include transfer fees payable to a landlord, payment into a scheme reserve fund and other fees that were agreed at the commencement of the lease but were deferred until a specified future event.

Event fees are most common in leasehold retirement leases and were the subject of a report published by the Law Commission on 31 March 2017. The Law Commission recommended regulation backed by a binding code of practice but, as of the date of publication of this Code, no regulations have been introduced. A number of freeholders and developers in the retirement sector provided undertakings to the Competition and Markets Authority regarding future lease terms and enforcement of existing lease terms. You should be aware of any such undertakings that impact on properties you manage.

You should include a clear and prominent explanation of the terms of any event fees in any pre-sale information you provide. A 'key facts' summary document explaining financial liabilities should be provided, including how the fee is calculated plus worked examples.

Managers should make clear to leaseholders and prospective purchasers whether or not a given event fee is payable simply as a consequence of an assignment or surrender, and is not related to the provision of any services. For example, contingency fees will usually be related to the provision of services but transfer fees may not.

Managers should, wherever possible, provide the explanation of the event fees direct to a purchaser and their solicitor. If this is not possible, it should be provided to the seller's solicitor with prominent instructions that it be passed to the purchaser as soon as possible.

5.19 Remuneration, including commissions

Leaseholders should be notified annually of any remuneration, commission and other source of income and related income or other benefits received by the landlord or the managing agent (see section 6.7) in connection with the placing or managing of insurance (see section 12.6), or the provision or procurement of services or utilities.

Any commissions, fee income or remuneration of any sort received by a landlord should be offset against the costs recoverable as service charges, unless the landlord is able to demonstrate that the remuneration is in return for a service, the cost of which would otherwise be recoverable as a service charge. Any service provided by the landlord should be supported by a service level agreement or contract.

The amount or value of the income should be declared annually with the year-end service charge accounts/summary of expenditure, and should be proportional to the value of the service provided.

5.20 Appointment of a surveyor or accountant

The requisite number of leaseholders have the right to appoint a qualified surveyor or qualified accountant to undertake an audit of 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.

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

A recognised tenants' association may appoint a qualified surveyor to advise on any matters relating to, or which may give rise to, service charges payable to a landlord by one or more members of the association.

s.84 Housing Act 1996

Part 6 Additional guidance for managing agents: terms of engagement

General note

All parts of this Code apply to landlords and to any person engaged to discharge management functions of any long leasehold and other residential property in England where a tenant is required (or may be required) to pay a variable service charge.

Parts 6 and 7 provide additional guidance to managing agents (any person engaged to discharge management functions) and their clients.

6.1 Introduction

Prior to accepting an instruction and commencing work, a managing agent should clarify for whom it will be working and how it will be paid. This lays out unequivocally whose interests the managing agent will be representing. There may be a chain of leasehold interests, within which a managing agent may be managing a landlord/tenant relationship on behalf of a freeholder, head landlord or an intermediate landlord. However, section 30 of the *Landlord and Tenant Act* 1985 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 a managing agent understands the structure to correctly advise their client.

s.30 Landlord and Tenant Act 1985

The relationship between a managing agent and their 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 'management agreement' has been used in this Code.

6.3 Contract (management contract/management agreement/terms of engagement)

Some landlords will wish to provide or directly manage some services included under the lease. Other landlords will require an agent to provide comprehensive management of all services under the lease. Some landlords may require an agent to provide additional services over and above those for which costs are recoverable as service charges under the lease. The level of management service required by a landlord will often be dictated by the capacity, capability and experience of the landlord.

Managing agents should agree the appropriate and desired level of service provision with their landlord clients prior to instruction. The agreed level and frequency of services to be provided, and the level and structure of any fees and expenses, should be clearly documented in a written management agreement signed by both parties. The agreement should clearly detail any services to be provided outside the lease and the client's responsibility for, and agreement to pay, all agreed fees not recoverable as service charges under the lease.

A managing agent should ensure that they are fully aware of all service obligations under the lease and that responsibility to fulfil those obligations is agreed and clearly defined in writing between the landlord client and the managing agent.

The management agreement should include details of the managing agent's fees and expenses, of their business terms and the duration of their instructions. The managing agent should give their client these details before the client is committed or has any liability towards the managing agent. The contract should clearly state the scope of the duties the managing agent will carry out and specify all activities for which an additional fee is chargeable. A summary of the managing agent's terms and duties, including all fees, should be provided to leaseholders at the commencement of their appointment and be made available to leaseholders on request.

When submitting proposals for new business, a managing agent should represent themselves and their services in an honest and transparent manner. If the managing agent is a member of any trade or professional bodies, they should inform their client of this and comply with any codes of practice, rules and regulations or best practice guidance published by those organisations. The managing agent should also inform their client as to which redress scheme they are a member of.

The managing agent must ensure that their terms are fair and that the documentation is written in plain, intelligible language. If the managing agent uses a standard contract, they should ensure that they 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 requires the services provided under the contract to be to a reasonable standard, time and cost (usually previously agreed).

Supply of Goods and Services Act 1982 (as amended) *The Provision of Services Regulations 2009 (SI 2009/2999)*

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

The Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083)

The length of the managing agent's appointment should be agreed prior to commencement and clearly detailed in the contract, together with any process for renewal, review of fees and termination. Unless the appointment is for a fixed term of a year or less, or has been fully consulted under section 20 of the *Landlord and Tenant Act* 1985 (as amended; see section 9.11), the managing agent should advise their client that the contract may constitute a QLTA and the consequences of this. The client should take legal advice on this point if necessary.

The contract should be signed by both the managing agent and their client. A managing agent should take all reasonable steps to satisfy themselves that their client is entitled to instruct them. All future changes to the contract must be agreed with the client, promptly confirmed in writing and signed by the managing agent and their client.

A managing agent's entitlement to payment depends entirely on the terms of the contract between them and their client. The managing agent may have a legal right to interest, payable by their client, on late payment.

6.4 Fees and charges

Managing agents are engaged by landlords but the costs of their services are typically recovered as service charges from leaseholders. Leaseholders should therefore expect transparency of service levels and costs.

A managing agent's charges must be reasonable and proportionate to the task involved and be pre-agreed with the client. A managing agent cannot assume that the costs of all management services required by their client are recoverable as service charges under the lease. The managing agent should have regard to the lease terms and agree with their client how any additional services outside the service charge recovery are to be funded.

Where management costs are recoverable as a service charge, annual fees are usually quoted as a fixed fee rather than as a percentage of outgoings or income. Fees based on a percentage of service costs are no longer considered appropriate, unless prescribed in the lease, as they are a disincentive to the delivery of value-for-money services and do not provide leaseholders with sufficient information to budget for their annual expenditure.

ss.18 and 19 Landlord and Tenant Act 1985

A managing agent should give reasonable and adequate notice of any increases in charges in accordance with the terms of their 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.

The managing agent should provide a summary of the agreed terms and duties, including details of all fees that may be chargeable during the lifetime of the agreement, to leaseholders at the commencement of their appointment and upon request.

6.5 Annual fee

A managing agent should agree the appropriate and desired level and frequency of service provision with their client prior to instruction. The agreed level and frequency of service provision should be clearly documented in the management agreement prior to beginning to manage (see section 6.3). The charges must be reasonable and proportionate to the task involved and be pre-agreed with the client.

Depending on the terms of the lease, leaseholders should normally expect the following services to be provided either directly by their landlord or by the managing agent in the agreed annual fee:

a) prepare and issue demands for service charges from leaseholders, in compliance with lease obligations and statute
b) prepare service charge statements and demand outstanding service charge contributions
c) 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 attending courts/tribunals are not normally covered by the annual fee)
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 administer the funds
f) produce, approve and obtain certification and circulate service charge accounts that fully comply with the lease and TECH 03/11 where not in contradiction with the lease or where the lease is silent, liaising with and providing information to accountants where required, and supplying supporting information to leaseholders and any residents' association
g) administer building and other insurance if instructed and authorised, subject to Financial Conduct Authority (FCA) regulations
h) if instructed, engage and supervise staff such as caretakers, gardeners and cleaners on behalf of clients
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 in liaison with the relevant public authorities where necessary
k) to visit the property at a pre-agreed frequency 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 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.

The management agreement should clearly state which of the above (and any additional) services are provided within the annual fee; which services are provided at a pre-agreed additional cost or pre-agreed hourly rate, and what that cost or rate will be; which services may be available at negotiated rates on request; and which service are not provided.

6.6 Menu of charges

As part of the terms of engagement, any additional services offered and/or agreed to be provided outside the scope of the annual fee should be detailed in a 'menu' of charges. Examples include (this is not an exhaustive list):

- carrying out additional site visits where necessary, for example when reacting to unplanned repairs or incidents
- attending additional residents' meetings, extraordinary general meetings, etc.
- 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
- preparing witness evidence and attending court 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 on the leasehold interests in the individual dwelling, including pre-contract enquiries.

All charges, including administration charges, should be reasonable and proportionate to the time and amount of work involved. Any service or provision of information should be delivered within a reasonable timeframe. Administration charges are only recoverable if, and to the extent, provided for in the lease. The management agreement should specify any fees payable for services for which administration charges may be made and retained. A managing agent should only retain administration charges with the express consent of their client.

The managing agent should provide a summary of their hourly rates and fixed charges for duties outside the scope of their annual fee to leaseholders at the commencement of their appointment and upon request.

6.7 Other income

All other sources of income and benefits to the managing agent arising out of management should be declared to the client and annually to the leaseholders, and should only be retained in return for a service the cost of which would otherwise be recoverable as a service charge. These may include insurance fees (including commissions), income or other benefits (including commissions) arising from the provision or procurement of services or utilities. The amount or value of the income should be declared annually with the year-end service charge accounts/summary of expenditure and should be proportional to the value of the service provided.

Managing agents should also obtain their client's informed consent to retain any commissions or other remuneration received, and this should be noted in the annual notification to leaseholders. Any service provided by the managing agent should be supported by a service level agreement or contract.

6.8 Redress scheme

All managing agents undertaking relevant activities must belong to a government-approved redress scheme. At the date of publication of this Code, there are two approved schemes, the details of which are available from GOV.UK.

A managing agent should advise their client and the leaseholders as to which redress scheme they are a member of and provide a copy of their complaints procedure.

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

6.9 Company secretarial services

Managing agents may also provide administration services and/or company secretarial services to their RMC, RTM and other 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. Company administration costs may not be recoverable as service charges under the lease, and a managing agent should agree with

their client as to how those services are to be funded.

Companies Act 2006

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

The Money Laundering Regulations 2007

6.10 Manager appointed by tribunal

On receipt of an application from one or more leaseholders of a flat(s), the FTT has the power to appoint a manager to carry out such functions in connection with the management of premises containing the flat(s) as the Tribunal thinks fit. The appointed manager is an officer of the Tribunal, and their duty is to the Tribunal.

The FTT will have regard to the lease terms and the management requirements of the building/estate when considering the terms of the order. The order will make provision for the exercise by the manager of their functions under the order. Without limitation, the order will usually detail the powers, duties and remuneration of the appointed manager, which may be more or less extensive than the terms of the lease.

An appointed manager may make an application to the FTT for additional or varied powers. The appointment will usually be for a defined fixed period of time, and may be varied or discharged by the tribunal following application from any interested party (e.g. leaseholder, landlord or appointed manager).

An appointed manager must comply with the terms of the order and should comply with the requirements of this Code wherever those requirements are compatible with the terms of the order.

Leaseholders making an application for the appointment of a manager and the intended appointee should have regard to the following Practice Statement issued by the Property Chamber: *Appointment of Managers under Section 24 of the Landlord and Tenant Act 1987: Practice Statement on the Tribunal's Consideration of Who to Appoint as a Manager*.

Section 24 Landlord and Tenant Act 1987

Part 7 Accounting for other people's money (client money)

7.1 Introduction

You should make sure that you have a clear understanding of the meanings of 'client money'. Any money you receive or hold that is not entirely due and payable to you is called client money because it belongs to someone else. As such, you should be very careful in handling and accounting for it. You hold client money on trust and if you fail to account for that money properly, you are open to legal action for breach of that trust. 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 requires service charge monies to be held on trust in the specified manner. Service charge funds for each group of contributing leaseholders 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 group of contributing leaseholders.

s.42 Landlord and Tenant Act 1987

7.2 Bank accounts

You must open one or more client bank accounts, which should be held at a recognised bank: 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 as defined in the *Building Societies Act* 1986.

ss.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 ringfenced.

You should inform, in writing, all those whose money you are holding, including each client, of 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 that includes any element of client money, you should pay it into a client bank account before withdrawing any monies that 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 doing so 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.

7.3 Records

You should keep accounting records to clearly differentiate the money that you hold for different clients. You should keep records in written form or on computer (provided that they can be reproduced in written form) of 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 in those records.

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 period, 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.

7.4 Ending the instruction and handover process

The management agreement should provide clear means of termination if either party breaches its obligations. It should also provide for a clear notice period 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 specified period of time.

If a managing agent or its client decides to terminate the management agreement, it should deal with any handover in a professional, competent and efficient manner within the agreed timescale. All pertinent information should be provided with the minimum of delay to the client or the new agent. A manager must provide all information required by statute, or by order of the court or FTT, within the specified time periods. A managing agent should provide all assistance necessary to ensure their client meets the deadlines.

There are no statutory requirements as to what information must or should be handed over upon change of managing agent, or when. Therefore, the management agreement 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 the parties have a good working relationship than try to rectify the issues after the event, with the possibility of antagonism between the parties.

Another key issue that should be covered in the contract is who will deal with ongoing litigation, disputes and arrears collection, and the preparation of any outstanding service charge accounts (see section 7.7).

7.5 Written confirmation of termination

If you receive instruction 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 on which date you will cease to manage, and spell out how and when you will pass over all relevant documentation and monies held to the client.

The management agreement should detail the notice period required. Longer periods can allow for a more structured handover.

7.6 Handover of documentation

For the sake of future clarity, the management agreement should confirm which information belongs to the client and which remains the property of the agent.

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

A managing agent is entitled to keep their copy of the client's letters to them and their file copies of letters or reports to the client. These are their records of contract. If a managing agent receives their instructions by phone, they can also keep notes that they make for their own purposes.

7.7 Accounting for client monies and service charge funds upon termination

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

A managing agent should ensure that they can account in a timely manner for any money that they hold directly on behalf of a client.

Service charge monies are usually handed over in two stages. At handover, the outgoing agent should hand over the balance of funds that are not required to meet commitments already made. Then the remaining reconciled 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 are detailed in the management agreement to avoid unnecessary disputes.

When there is a change of contractual landlord/manager, e.g. right to manage or appointment of a manager by the FTT, the outgoing manager must hand over all uncommitted service charges required by statute, or by order from a court or the FTT, fully reconciled, within the specified time periods. A managing agent should provide all necessary assistance to ensure its client meets the deadlines.

A managing agent should agree with its client (preferably in the management agreement at the outset) who will deal with ongoing litigation, disputes and arrears collection, and the preparation of any outstanding service charge accounts after termination.

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 that might be applicable when managing a residential building/estate. However, you should be aware 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) 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. You should be aware of, and have regard to, Health and safety for residential property managers, RICS guidance note.

8.1 Introduction

Managers should satisfy themselves that all buildings/estates under their management meet the relevant standards under health and safety legislation and guidance. Where they do not, managers should ensure that timely corrective action is taken or that problems are brought to the landlord's attention, and timely instructions should be requested.

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

The Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)

The Workplace (Health, Safety and Welfare) Regulations 1992

8.2 Building Safety Bill

At the time of publication of this Code, the Building Safety Bill is being debated in Parliament. You should ensure that you keep fully informed on the progress of the Bill and the requirements of the subsequent *Building Safety Act*. As initially drafted, the Building Safety Bill introduces duties on accountable persons for the assessment and management of building safety risks (currently the spread of fire and structural failure), and to document and demonstrate how they are meeting these duties, mainly through the safety case and safety case report.

8.3 Employers/employees

The *Health and Safety at Work etc. Act* 1974 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.

8.4 Risk assessments

The common parts of residential developments are deemed to be a 'place of work' (*Westminster City Council v Select Management Ltd* [1985] EWCA Civ J0208-3). Therefore, they are 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.

The 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 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.

Both the landlord and a managing agent are likely to be deemed as 'responsible persons'. You should therefore ensure that risk assessments are undertaken by a 'competent person'. This may be you or other suitably qualified and experienced persons. If you are employing specialist consultants, they should be registered on the Occupational Safety and Health Consultants Register (OSHCR).

Copies of the risk assessment should be made available to relevant persons 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. As a 'live' document, the risk assessment should be kept under continual review. Any variations or newly identified risks should be assessed, and appropriate controls actioned without

delay.

8.5 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). The *Fire Safety Act* 2021 confirms that the requirements also apply to the structure and external wall systems, including any attachments (e.g. balconies) of buildings containing two or more residential premises, and to all doors between domestic premises and the common parts.

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 in 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 their 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)
Fire Safety Act 2021

You should ensure that you are familiar with guidance from the HSE and other relevant bodies on fire risk assessments and management plans. Guidance in this area is liable to change and/or be updated regularly, and you should ensure you are aware of up-to-date compliance requirements and guidance. Any works required to fulfil the action plan should be planned with your client without delay. To ascertain whether 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 a 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, consider taking action against leaseholders breaching the terms of their lease.

You should have regular testing and servicing arrangements in place for any firefighting and detection equipment.

8.6 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 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 cooperate as far as is necessary to allow the dutyholder to comply with the regulations.

The Control of Asbestos Regulations 2012 (SI 2012/632)

8.7 Gas safety

You must comply with *The Gas Safety (Installation and Use) Regulations* 1998. The landlord must ensure that the gas fittings and flues that 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.

The Gas Safety (Installation and Use) Regulations 1998

8.8 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 testing (PAT) is carried out on electrical equipment situated in communal areas.

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

The Electrical Equipment (Safety) Regulations 1994 *The Electricity at Work Regulations 1989*

8.9 Furniture and furnishings

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

The Furniture and Furnishings (Fire) (Safety) Regulations 1988 as amended *SI 1988/132* *SI 1989/2358* *SI 1993/207*

8.10 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, it is classed as a hazardous substance.

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

The Control of Substances Hazardous to Health Regulations 2002

8.11 Working at height

The Work at Height Regulations 2005 apply to all work carried out 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.

The Work at Height Regulations 2005

8.12 Manual handling

Employers 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.

The Manual Handling Operations Regulations 1992 as amended

8.13 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, a written action plan should be produced, managed and implemented to reduce those risks, following discussion with and instructions from the client where applicable. Water tanks, taps and showers in leaseholders' demises are the responsibility of the leaseholder, unless the lease puts the repairing responsibility for them on the landlord.

Health and Safety at Work etc. Act 1974 *The Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)* *The Control of Substances Hazardous to Health Regulations 2002*

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

8.14 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 all of these people can be categorised as dutyholders.

The Construction (Design and Management) Regulations 2015

8.15 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, such as by engineering controls and safe systems of work.

Fire safety signs (signs for fire exits and firefighting equipment) are also covered by the regulations.

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

8.16 Lifting equipment

The Lifting Operations and Lifting Equipment Regulations 1988 (LOLER) 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 over 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 work required or recommended.

Further details on LOLER can be found in the latest edition of the Safe use of lifting equipment approved code of practice and guidance, published by HSE.

The Lifting Operations and Lifting Equipment Regulations 1998

8.17 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.

The Personal Protective Equipment at Work Regulations (2002)

8.18 Environmental protection

You should be aware of the terms of Part 2 of the *Environmental Protection Act* 1990 insofar 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

8.19 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.

The Pressure Systems and Safety Regulations 2000

Part 9 Repairs and other services

9.1 Introduction

You should always 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 that 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 or 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 clearly state 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 simplicity and availability of reporting regimes. You should deal promptly with leaseholder's reports of disrepair 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. However, the building structure, communal parts or services 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 work commencing.

You should have control systems in place to ensure that work has been completed to an acceptable standard prior to authorising payment of any invoice. Checks should be proportionate to the level of 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 that 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 costed programme of planned and cyclical works (a PPM plan). This plan should be used to inform budget calculations and reserve fund contributions, and should cover a minimum period of three years (see section 5.5). Programmes for large, more complicated developments should cover a longer period. You should consider the use of experienced and 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 PPM plan should reflect a realistic cost for maintenance, including periodic redecoration work. You should be aware of the adverse cost implications for older buildings. The PPM plan 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 there are adequate funds to meet the likely costs.

Management agreements should specify the level of authority the management agent has to instruct contractors and commit to expenditure. The level of financial authorisation should also be stated and may vary according to the urgency of the work required. Managing agents should not exceed their authority to instruct contractors or their financial authorisation without their client's instructions. On-site staff should be aware of the limits to 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. These include 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.

The Control of Substances Hazardous to Health Regulations 2002 *The 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:

- grass cutting and lawn maintenance
- weeding and pruning, and
- 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
The 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 that are the subject of the agreement are correctly and reasonably allocated to the subject property and 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 and an application to the courts for permission is likely to be required.

9.8 Forced entry

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.

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 keyholder 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 recognised tenants' association (RTA). 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 RTM companies, you should distinguish between seeking the views of shareholders/members of your client company (the landlord) 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 variable service charge payers 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 begins. You should allow adequate time to

complete the consultation process and collect any additional funds required to undertake the work. In addition, reasonable allowance should be made in the programme of works for leaseholder's absence, for example if they are away from the property when the works are being undertaken and access is required.

s.20 Landlord and Tenant Act 1985 (as amended)

9.10 Section 20 consultation

There is considerable case law in connection with sections 20 and 20ZA of the *Landlord and Tenant Act* 1985 (as amended) and you should keep up to date with case decisions. The most notable decision is *Daejan Investments Ltd v Benson and others* [2013] UKSC 14.

You should be fully aware of the consultation requirements of section 20 of the *Landlord and Tenant Act* 1985 (as amended). Landlords must fully comply with the consultation requirements if they intend to fully recover the costs incurred as service charges. You should take professional advice where necessary. Non-compliance can have serious financial consequences for landlords, and potentially managing agents too.

There are five different consultation routes depending on the particular circumstances, and their minimum requirements are prescribed by law. When undertaking consultations you may need to refer to the specific details contained in *The Service Charges (Consultation Requirements) (England) Regulations* 2003 or *The Service Charges (Consultation Requirements) (Wales) Regulations* 2004. You should take further advice if necessary.

The Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987), or *The Service Charges (Consultation Requirements) (Wales) Regulations* 2004 (SI 2004/684 (W.72))

The Association of Residential Managing Agents (ARMA) and LEASE have produced joint guidance, *Section 20 Consultation for Private Landlords, Resident Management Companies and their Agents* (2013), and precedent notices for each of the consultation stages in each of the five routes.

Where you are managing on behalf of head or intermediate landlords, you should understand the obligations to consult with all relevant tenants and under-tenants.

9.11 Qualifying long-term agreements

A qualifying long-term agreement is an agreement entered into by the landlord 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 appropriate amount. At the time of publication, the appropriate amount is £100.

Where the costs are above the appropriate amount, the landlord must consult with every contributing leaseholder and any RTA if costs (including VAT) above the appropriate amount are to be recovered.

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

9.12 Qualifying works

Qualifying works are work on a building or any other premises – including work for repair, maintenance or improvement – where the amount payable by any one contributing leaseholder exceeds the appropriate amount. At the time of publication, the appropriate amount is £250.

Where the costs are above the appropriate amount, the landlord must consult with every leaseholder contributing to the costs, and with any RTA, if costs (including VAT) above the appropriate amount are to be recovered.

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*

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 appropriate amount being irrecoverable.

However, under section 20ZA of the *Landlord and Tenant Act* 1985, the FTT can dispense with all or any of the requirements if satisfied that it is reasonable to do so. If works that are likely to exceed the consultation threshold are urgently required, you should provide leaseholders with as much information as possible and consider seeking dispensation from the FTT. Managing agents should advise their clients without delay and take instructions. You should keep leaseholders informed throughout the process. You and/or your client should take further advice where necessary.

It is not uncommon for contracts to be specified and tendered, and work begun, only to subsequently discover that more extensive work is required at greater cost. This may lead to further consultation being required. It is often 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 an application may be made to the FTT for dispensation from the requirement to have a further consultation so that the works can continue in a timely manner. You should 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 the manager or their managing agent has a connection with any proposed company, individual, contractor or supplier, whether financial or otherwise, this should be declared to the leaseholders as a note in the year-end service charge accounts. Managing agents should notify their clients of any existing connections before the management agreement is signed, and of any subsequent connections without delay. The statutory consultation requirements (s.20 of the *Landlord and Tenant Act* 1985) require any landlord connections to be identified, but any connections the proposed company may have with the managing agent should also be disclosed in the relevant notices.

Any charges for specifying, tendering and monitoring contracts should be pre-agreed by a managing agent with their client and be proportional to the tasks involved. All appointments or reappointments 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. These 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 major works, you should also include:

- financial position
- membership of relevant trade organisations and
- compliance with the CDM regulations.

You may have a list of pre-selected, approved contractors for low-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 and have some process for market testing and ensuring value for money.

For higher-value works, you must obtain competitive prices from a minimum of two selected contractors, one of whom must not be connected with the landlord. For low-value contracts or extremely urgent works, this may not always be appropriate, but you should have regard to the consultation requirements of section 20 of the *Landlord and Tenant Act* 1985 and the possibility of making an application for dispensation to the FTT.

Selection should usually 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 a managing agent's client unless they have delegated the 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)

10.3 Health and safety method statements

You should obtain appropriate health and safety information from all contractors before entering into a contract. You should be satisfied that the proposed method of work is safe and appropriate to the task in hand, and risks have or will be appropriately assessed (e.g. by submission of risk assessment and method statements, or evidence of an appropriate point-of-work risk assessment process). 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 or 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 clearly state 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 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, work is being undertaken and access is required.

Following an increase in occupied floor area, you should consider the reapportionment of leaseholders' responsibilities for making financial or other contributions. You should be 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. You should take advice where necessary.

Part 12 Insurance

12.1 Introduction

Insurance distribution is a function regulated in the UK by the Financial Conduct Authority (FCA) under the *Financial Services and Markets Act* 2000 and subsequent amendments. Managing agents need to be authorised by or registered with the FCA in order to conduct a range of insurance activities. You will be acting illegally and could be fined or imprisoned if you conduct regulated insurance functions without authorisation. All parties should be aware of the significant risks to the interests of landlords, leaseholders and residents if appropriate insurance coverage is not in place.

Insurance fees (including commissions) and all other sources of income (including share of risk schemes such as captives and related income or other benefits) in relation to the service charge and arising out of the management should be declared annually to the client and to leaseholders, and should reflect the level of work carried out. Managing agents should also ensure they comply with the commission disclosure requirements defined by their route to regulation.

12.2 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 regulated insurance-related work, including some claims handling, you must be authorised to do so. There are several options available for firms:

- register with the FCA as an authorised firm that can transact insurance business with insurers or brokers
- be an appointed representative of one or more insurance brokers who will act as the principal and be responsible for overseeing your insurance conduct (brokers will still be able to offer a choice of insurers)
- limit activities to that of an introducer appointed representative, whereby the only involvement would be introducing clients to an insurer or broker; this arrangement does not allow for any direct involvement with the insurance distribution process, or
- be licensed under a designated professional body's 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.

The regulation of a firm can be checked on the FCA register.

Financial Services and Markets Act 2000

If you carry out insurance-related work with policyholders without authorisation, you will be acting illegally and could be fined or imprisoned.

Insurance policyholders such as landlords, RMCs or RTM companies and their directors who arrange cover to discharge their leasehold obligations are outside the scope of regulation.

12.3 Placing insurance

You should not exceed your authority to undertake insurance activities. You should ensure that suitable insurance is 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
- employee dishonesty
- cyber and
- flood excess cover.

In particular, serious consideration should be given to including terrorism insurance, which may be required in most instances.

Where appropriate, recommendations should be made 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 engineering inspection insurance is a commonly used term for statutory inspection of plant such as lifts, communal boilers and window cleaning cradles. These inspections need to be conducted periodically by a competent and independent person.

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. You should have regard to the terms of the lease before seeking to recover the costs as a service charge item.

You should be aware of the requirements for costs, recoverable as a service charge, to be 'reasonably incurred' and for the possibility of leaseholders challenging those costs at the FTT. The insurance procured may not necessarily be the cheapest available, but should cover appropriate risks and be subject to market testing to establish it is within a reasonable range of what is available. You should regularly review the extent of cover and level of premiums for all insurance types under your control.

12.4 Obligations

The lease usually sets out the obligations of the parties with regards 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 the right to nominate the insurers and/or brokers. Following acquisition of the right to manage, RTM companies obtain the landlord's insurance rights. You should be aware of all the insurance obligations and any restrictions imposed in the lease. You should comply with any obligation to insure in joint names, and great care should be taken if an RTM company is adopting responsibilities with such a lease. You should ensure that you have assessed and fully understood the insuring needs of the property, including all mechanical and engineering equipment. 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 (except for local authority landlords). 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.

12.5 Reinstatement valuations

There is a need for regular reviews of the level of insurance and reinstatement value. You should ensure that there is adequate insurance and that the leaseholders are not underinsured or paying for excessive or unnecessary coverage.

Incurring a loss when inadequately insured can cause financial disaster. In the event of a claim, the insurers may 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, which should form the values declared for insuring. These should be undertaken at appropriate intervals, having regard to the nature of the building, by building surveyors or other suitably qualified professionals with appropriate skills and experience, in accordance with the RICS guidance note *Reinstatement cost assessments of buildings* (3rd edition, 2018), and be index-linked to rebuilding costs.

Policies should contain a provision for inflation, and cover should be indexed using a suitable index at renewal.

12.6 Remuneration, including commissions

Leaseholders should be notified annually of any remuneration, commission and other sources of income and related income, or other benefits, including share of risk schemes such as captives, received by the landlord or the managing agent in connection with the placing or managing of insurance.

Any commissions, fee income or remuneration of any sort received by a landlord in return for placing insurance should be offset against the premium costs recoverable as service charges, unless the landlord is able to demonstrate that the remuneration is in return for a service the cost of which would otherwise be recoverable as a service charge. Any service provided by the landlord should be supported by a service level agreement or contract.

Managing agents should also obtain their client's informed consent to retain any commissions or other remuneration received. This should be noted in the annual notification to leaseholders. Any commissions, fee income or remuneration of any sort received by a managing agent in return for placing insurance should be in return for a service the cost of which would otherwise be recoverable as a service charge. Any service provided by the managing agent should be supported by a service level agreement or contract.

The annual notification should include details of the services provided in return for the remuneration received. The amount or value of the income should be declared annually with the year-end service charge accounts/summary of expenditure, and must be proportionate to the value (alternative cost) of those services provided.

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 from the insurers intended for reinstatement should be used explicitly for that purpose. You should not make any deduction without express consent. You are recommended to obtain a mandate allowing payment to any party other than the policyholder and ensure you comply with the requirements of the lease at all times.

12.8 Excess

There may be a trade-off between the 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 insurer’s risk. There is likely to be a contrary effect on low-risk properties in the portfolio, the implications of which you should consider carefully.

You should consider whether the terms of the lease contain a 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.

Where large flood or fire excesses exist, you should draw the policyholder’s attention to the availability of excess policies.

12.9 Other insurance

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

- buildings and contents, plant and machinery
- employer’s liability

- legal assistance
- employee dishonesty cover
- third-party liability
- professional indemnity
- directors and officers
- business interruption
- cover for client money
- staff personal accident, sickness and key man
- cyber cover.

Part 13 Provision of information

13.1 Introduction

Many other sections in this Code refer to legislation that requires specific information to be given to leaseholders.

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 or 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 other parties for the accuracy of the information you supply.

You should publish a list of proposed charges where possible (see section 6.6, *Menu of charges*) and indicate what the timescales are likely to be for providing the information. These details 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 give the leaseholder the name and address of the landlord at the commencement of the lease/tenancy, and must do so within 21 days of a written request. If the landlord is a company and the leaseholder makes a further request, after receiving the name and address of the landlord you must also give the name and address of the directors and secretary of the company within 21 days of that further request. Failure to comply with these requests without reasonable excuse is a summary offence liable for 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. Managing agents should explain their relationship with the landlord to the leaseholders. Any interest, financial or otherwise, you may have in any companies employed to provide services should be declared following a 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.

The 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, 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 the time limit for exercising 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 previous 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 agent/manager

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

13.8 Demands for service or administration charges or ground rent

Prescribed 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 headings and the particular wording and other requirements to be used for each summary are prescribed in regulations. Likewise, ground rent does not become payable until it has been demanded in the prescribed form. 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

The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (SI 2007/1257)

Schedule 11 Commonhold and Leasehold Reform Act 2002

The 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 that 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).

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 regarding pre-contract enquiries, which would normally occur at a later point during the sale process. Pre-contract enquiries are most commonly made by or on behalf of the purchaser, through the seller or their representative. The Law Society has issued standard leasehold property enquiry forms known as an LPE1 and LPE2 (see *Glossary*).

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 and 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 live tribunal 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. Details of any fees payable for providing this information and your proposed response times should be published to all leaseholders, and should be made available to the information requestor at the earliest opportunity. The level of fees should be reasonable and reflect the level of work carried out.

Part 14 Residents'/tenants' associations

14.1 Introduction

Leaseholders and/or residents may get together to form a residents'/tenants' association. The creation of an association can offer advantages to the management in general, and in particular can simplify communication with the leaseholders to establish what they want and to appreciate 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, if its membership represents at least 50% of the qualifying tenants, 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 FTT (previously a Rent Assessment Committee) can only be cancelled by the FTT.

The FTT must have regard to formal criteria detailed in *The Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018* when considering granting or cancelling a certificate of recognition for a recognised tenants' association. These Regulations also make it easier for a non-recognised (or recognised) tenants' association to make contact with non-members with a view to increasing membership, often with the aim of achieving the threshold for recognition. A tenants' association has the power to serve a request notice on the landlord or the landlord's managing agent to obtain known information about qualifying tenants who are not currently members of the association. The landlord must acknowledge receipt of the request notice in writing within 7 days, and must provide a substantive response within 4 months of the notice being received.

As soon as is practicable, the landlord must give a signed and dated information form to each tenant in relation to whom known information has been requested, asking the tenant for written consent to disclose the known information.

If the landlord does not consider the request notice to be valid, they must inform the secretary of the tenants' association in writing within 7 days that they will not provide a substantive response, giving reasons why the request notice is invalid.

Managing agents who receive a request notice should inform their client and take instructions within 7 days following receipt.

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 *The Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018*

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 make observations, 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 observations to be sent to a person named by the landlord at an address in the UK. The landlord 'shall have regard to any such observations that are received by that person within the period specified in the notice'.

If a notice has previously been served by a recognised tenants' association, the landlord must provide the same details and invite observations every five years thereafter and whenever the landlord appoints a new managing agent. Unless the appointment has been fully consulted on 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 (see section 9.11). 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 the right 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 access common parts of relevant premises, including the structure and exterior of the building. Reasonable facilities for taking copies or extracts from documents must be provided.

s.84 and Schedule 4 Housing Act 1996

14.5 Management audit

Two or more qualifying leaseholders of the same landlord are entitled to appoint a qualified surveyor or qualified accountant to undertake a management audit, 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, the landlord must provide the secretary of a recognised tenants' association, within a period of 21 days, 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 provided for taking copies or extracts. If requested, copies or extracts must be taken and either sent to the secretary, or facilities provided for collecting them. Failure to comply without reasonable excuse is a summary offence, subject on conviction to a fine. If a superior landlord insures the property, 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 the right to nominate contractors in response to a Notice of Intention for qualifying works and qualifying long-term agreements (see sections 9.9–9.12).

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. They do not have to prove fault with the existing landlord or management, or 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
The Right to Manage (Model Articles) (England) Regulations 2009 (SI 2009/2767)
The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 (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 company acquires the right to manage, the management functions are transferred from the landlord to the RTM company.

The right to grant consents is also transferred to the RTM company, subject to certain rules (see sections 6.4–6.7).

15.3 Right to manage only part of a development

Where – as a result of the acquisition of the right to manage of only part 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 provided in the future and which party is to provide them, and
- establish obligations in order to ensure that any party agreeing to provide the shared services can recover all reasonable and proper costs incurred in doing so from residents on the development.

ss.71–113 Commonhold and Leasehold Reform Act 2002
The Right to Manage (Model Articles) (England) Regulations 2009 (SI 2009/2767)
The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 (SI 2010/825)

Appendix A Standard industry cost classifications

A1 Notes

- These cost descriptions are for illustrative purposes only and not intended to represent an exhaustive list.
- Managers are encouraged to include additional cost descriptions where this will facilitate greater transparency and clarity with regard to the expenditure incurred or proposed. However, to maintain industry standards and to facilitate benchmark comparison, the cost class and cost category structure should not be altered.
- Where reasonable and appropriate, costs should be allocated to separate schedules. Separate cost categories are not to be used to describe activities provided across different elements of a subject property, such as the estate or car park. However, where multiple schedules are not used, in order to achieve transparency it may be necessary to repeat certain cost descriptions to make a clear distinction between specific areas where costs have actually been incurred, for example cleaning costs for estates and car parks.

A2 Cost classifications

Cost class			
	Cost category		
		Cost description	Notes
Management			
	Management fees		
		Management fees	Manager's fees for managing and administering the services that are permitted to be recovered under the terms of the lease, excluding rent collection, asset management, etc.
	Accounting fees		
		Service charge accounting fees	Fees for preparation of year-end service charge statement and reconciliation.
		Independent accountant's fees	Independent accountant's fees to review the year-end service charge accounts.
		Audit fees	Auditor's fees for carrying out a formal audit of the service charge.
	Site management resources		
		Staff costs	Direct employment or contract costs for provision of staff for management of on-site facilities.
		Receptionists/concierge	Direct employment or contract costs for provision of reception and

			concierge staff, including associated administrative and training costs.
		Site accommodation (rent/rates)	Rent, service charge and rates associated with the site-management accommodation.
		Office costs (telephones/stationery)	Day-to-day running costs of the on-site management office.
		Systems	Costs of computer licences, etc. and other systems.
		Petty cash	Any miscellaneous minor expenditure incurred in relation to site management duties.
		Helpdesk/call centre/information centre	Operational costs for providing helpdesk/call centre/information centre facilities.
		Administration fee	Fees for HR and payroll costs associated with dealing with on-site staff (where not included as part of the management fee).
	Professional fees		
		Landlord's risk assessments, audits and reviews	Consultancy fees and other costs associated with provision and review of landlord's health and safety (H&S) management systems.
		Other professional fees	Fees for specialist consultants engaged in respect of the provision of services.
		Legal fees	Legal advice in respect of the placing or termination of contracts for the provision of services.
Utilities			
	Electricity		
		Electricity	Electricity supply to common parts, retained areas and central plant, excluding the direct consumption of occupier(s).
		Electricity procurement/consultancy	Consultancy and procurement fees for negotiating the electricity supply contract and auditing energy consumption.
	Gas		
		Gas	Gas supply for the landlord's central plant, excluding the direct consumption of occupier(s).
		Gas procurement/consultancy	Consultancy and procurement fees for negotiating the gas supply

			contract and auditing energy consumption.
	Fuel oil		
		Fuel oil	Fuel oil supply for the landlord's central plant, emergency generators, etc., excluding the direct consumption of occupier(s).
		Fuel oil procurement/consultancy	Consultancy and procurement fees for negotiating the oil supply contract and auditing energy consumption.
	Water		
		Water and sewerage charges	Water supply to central plant, common parts and retained areas, excluding the direct consumption of occupier(s).
		Water consultancy	Consultancy fees incurred in reviewing water usage.
Soft services			
	Security		
		Security guarding	Direct employment or contract costs incurred in providing security guarding for the building(s).
		Security systems	Servicing and maintenance of building security systems (e.g. CCTV, access control, intruder alarms, etc.).
	Cleaning and environmental		
		Internal cleaning	Cleaning of internal common parts and retained areas.
		External cleaning	Cleaning of external common parts and retained areas.
		Window cleaning	Cleaning of external windows.
		Hygiene services/toiletries	Cleaning and servicing of common part toilets and toiletry accommodation.
		Carpet/mat hire	Provision of dust and rain mats for common part areas.
		Waste management	Refuse collection and waste management services provided for building occupiers.
		Pest control	Pest control services provided to common parts and retained areas.
		Internal floral displays	Providing and maintaining floral displays in common parts.

		External landscaping	Provision and maintenance of external landscaped areas and special features.
		Snow clearance/road gritting	Costs incurred in clearing snow and supplying snow clearing equipment and gritting salt.
		Seasonal decorations	Provision and maintenance of seasonal decorations to common parts.
		Events and entertainment	Events and entertainment in common parts.
	Marketing and promotions		
		Marketing	Marketing and advertising in accordance with marketing strategy.
		Research	Research into local market conditions, customer surveys, pedestrian flow counting systems, etc.
		Staff costs	Direct employment of staff or staff contract costs for marketing and promotional activity.
		Landlord's contribution to marketing	Financial contributions made by landlord towards marketing and promotions.
Hard services			
	Mechanical and electrical services (M&E)		
		M&E maintenance contract	Planned maintenance to the owner's M&E services, including the contractor's H&S compliance.
		M&E repairs	Repairs of the landlord's M&E services.
		M&E inspections and consultancy	Auditing the quality of maintenance works and the condition of M&E plant to ensure H&S compliance.
		Life safety systems maintenance	Planned maintenance of the landlord's fire protection, emergency lighting and other specialist life safety systems, including the contractor's H&S compliance.
		Life safety system repairs	Repair works to the landlord's fire protection, emergency lighting and other specialist life safety systems.
		Life safety system inspections and consultancy H&S (M&E)	Works carried out to M&E plant and equipment in accordance with H&S regulations or recommended British Standards.

		Car parking	Maintenance and repair of entry systems, payment systems, car counting systems and other specialist car park equipment.
	Lifts and escalators		
		Lift maintenance contract	Planned maintenance works to lifts in the common parts and retained areas, including the contractor's H&S compliance.
		Lift repairs	Repair works to common part lifts.
		Lift inspections and consultancy	Auditing the quality of maintenance works, the condition of lift plant and H&S compliance.
		Escalator maintenance contract	Planned maintenance works to escalators in the common part and retained areas, including contractor's H&S compliance.
		Escalator repairs	Repair works to common part escalators.
		Escalator inspections and consultancy	Auditing the quality of maintenance works, the condition of escalator plant and H&S compliance.
		H&S (lifts and escalators)	Works carried out to lifts and escalators in accordance with H&S regulations or recommended British Standards.
	Suspended access equipment		Suspended access equipment includes all forms of high-level access equipment maintenance, e.g. hatchways, eyebolts, fall arrest systems and cradles.
		Suspended access maintenance contract	Planned maintenance work on the landlord's suspended access equipment, including the contractor's H&S compliance.
		Suspended access repairs	Repair works to the landlord's suspended access equipment.
		Suspended access inspections and consultancy	Auditing the quality of maintenance works, the condition of suspended access equipment and H&S compliance.
	Fabric repairs and maintenance		
		Internal repairs and maintenance	Repair and maintenance of internal building fabric, common parts and retained areas.
		External repairs and maintenance	Repair and maintenance of external building fabric, structure, external common parts and retained areas.

		Redecorations	Redecoration and decorative repairs. Works carried out to building fabric in accordance with H&S regulations or recommended British Standards.
Income			Distinct activities that yield a true income to the service charge account.
	Interest		
		Interest	Interest received on service charge monies held in the trust bank account.
	Income from commercialisation		Income yielded from any facilities installed and/or maintained at the occupier's expense.
		Car park income	
		Vending machine income	
		Other	
	Operational expenses		
		Contract charges	Overheads, expenses and operational costs incurred in providing any of the commercialisation facilities.
		Repairs and maintenance	
		Staff costs	
Insurance			
	Engineering insurance		Landlord's engineering insurance.
		Engineering insurance	
		Engineering inspections	
	All-risks insurance cover		Landlord's all-risk insurance costs.
		Building insurance	
		Loss of rent insurance	
		Public and property owner's liability	
		Landlord's contents insurance	
	Terrorism insurance		Landlord's terrorism insurance cover.
		Terrorism insurance	
Exceptional expenditure			
	Major works		
		Project works	Exceptional and one-off project works, over and above routine operational costs.
		Plant replacement	Replacement of the whole or major components of plant and equipment where beyond economic repair.

		Major repairs	Significant one-off repairs or maintenance costs over and above the costs of routine operational maintenance and repair.
	Forward funding		
		Sinking funds	Forward funding of specific major replacement projects (e.g. plant and equipment replacements, roof replacements, etc.).
		Reserve funds	Forward funding of specific periodic works to even out fluctuations in annual service charge costs (e.g. internal/external redecorations).
		Depreciation charge	Depreciation charge in lieu of sinking/replacement fund contribution for major plant and equipment costs.
		Agreed contribution to future works	Forward funding of major projects but where the lease does not allow for a sinking or reserve fund to be set up. This is a voluntary arrangement and must therefore be agreed in writing between the landlord and individual occupiers, and full details provided in the notes to the service charge expenditure report.

Appendix B Lease variations

B1 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)

B2 Grounds to vary a lease

Either party to a long lease of a flat can apply to the 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, 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 that 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% must consent to the variation and not more than 10% oppose it. Where there are fewer than nine leases, all or all but one of the parties must consent, but the 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 C Statutory rights of leaseholders

C1 Introduction

Throughout this Code, reference has been made to leaseholders' statutory rights on service charges. This appendix provides a summary of those principal 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.

C2 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 of the *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 a 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

C3 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).

Recognition is formally given in writing and as a general guide such an association should represent at least 50% of the flats in the block where variable service charges are payable.

s.29 Landlord and Tenant Act 1985

C4 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 must be supplied within strict time limits, must be certified by a qualified accountant as defined, and should be 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 the FTT, whether they have paid it or not, but not if the charge has already been determined (by a court or arbitration 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)
The Service Charges (Summary of Rights and Obligations and Transitional Provision) (England Regulations 2007 (SI 2007/1257)

C5 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 the 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.

The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 (SI 2007/1258)

C6 The right to consultation on certain qualifying works and long-term agreements

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 (see sections 9.9–9.12).

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 to 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 the FTT.

The Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) *The Service Charges (Consultation Requirements) (Amendment) (No2) (England) Regulations 2004 (SI 2004/2939*

C7 Information about buildings 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 the leaseholder is required to insure the property with an insurer nominated or approved by the landlord under the lease.

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.

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.

Landlord and Tenant Act 1985 (as amended by s157 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)

C8 Right to a management audit

Leaseholders have the right to arrange for a management audit of all the management functions that 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 the structure of the building.

C9 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 been 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.

C10 Right to manage – subject to qualifying criteria

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 provisions. There need not be a fault in the current regime. Regulations prescribe the procedures needed to exercise this right (see also Part 15, *Right to manage*).

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) Regulations 2010 (SI 2010 825)

C11 Right to compulsory acquisition

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

C12 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

C13 Right to enfranchise or extend a 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 *The 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)* *The Leasehold Reform (Collective Enfranchisement) (Counter-notices) (England) Regulations 2002 (SI 2002/3208)*

C14 Right to vary a 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, in specific circumstances, requesting it to vary the lease to one or more flats.

Part IV Landlord and Tenant Act 1987 (as amended by ss.162 and 163 Commonhold and Leasehold Reform Act 2002)

C15 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 *The Long Residential Tenancies (Principal Forms) Regulations 1997 (SI 1997/3008)* *The Long Residential Tenancies (Supplemental Forms) Regulations 1997 (SI 1997/3005)* *The Long Residential Tenancies (Principal Forms) (Amendment) (England) Regulations 2002 (SI 2002/2227)*

C16 Additional advice

Further guidance is available from the following:

- Leasehold Advisory Service (LEASE)
- Department for Levelling Up, Housing and Communities

Appendix D 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 the Leasehold Advisory Service.
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 section 13.10.
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.
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 section 5.3.
Explanatory notes to the budget	Managing agent, or landlord if no managing agent appointed.	With the budget.	Explanatory notes may be included in 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 section 9.3.
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 the *Service Charges Rights and Obligations* sheet must accompany the invoice. See section 5.7.
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 section 5.16.
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 section 5.13.
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 may be included in 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 management of the block	Managing agent (if appointed).	With the annual service charge accounts.	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.
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 section 9.10.