RICS PROFESSIONAL STANDARD

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

England

4th edition, March 2026

Effective from 7 April 2026

RICS®

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RICS professional standard, England

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Important note

The following parts of this document are approved by the Secretary of State under *The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order* 2026 (SI 2026/298).

All parts except 'RICS standards framework' and section 1.5 'Freehold houses and variable estate rent charges'.

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RICS standards framework

RICS' standards setting is governed and overseen by the Standards and Regulation Board (SRB). The SRB's aims are to operate in the public interest, and to develop the technical and ethical competence of the profession and its ability to deliver ethical practice to high standards globally.

The RICS Rules of Conduct set high-level professional requirements for the global chartered surveying profession. These are supported by more detailed standards and guidance relating to professional conduct and technical competency.

The SRB focuses on the conduct and competence of RICS members, to set standards that are proportionate, in the public interest and based on risk. Its approach is to foster a supportive atmosphere that encourages a strong, diverse, inclusive, effective and sustainable surveying profession.

As well as developing its own standards, RICS works collaboratively with other bodies at a national and international level to develop documents to aid professional practice, such as cross-sector codes, guidance and standards. The application of these collaborative documents by RICS members will be defined either within the document itself or in associated RICS-published documents.

Document definitions

Document type	Definition
RICS professional standards	RICS professional standards set mandatory requirements that govern the manner in which RICS members and regulated firms conduct their profession or business in order to protect clients and other stakeholders. They use the word 'must' to indicate a requirement. Non-compliance with a requirement constitutes a breach of the standard.
RICS practice guidance	RICS practice guidance provides information to support the practice, knowledge and performance of RICS members and regulated firms. It supports consistency or improvements in professional practice. It uses the word 'should' to describe expected practice. It is recognised that there may be acceptable alternatives to expected practice that achieve the same or a better outcome.

An RICS document may include both mandatory requirements and expected practice, which will be differentiated by the use of the words 'must' and 'should' as defined above.

RICS will take into account relevant professional standards and may take into account relevant practice guidance documents when deciding whether an RICS member or regulated firm acted appropriately and with reasonable competence, including in regulatory or disciplinary proceedings. It is also likely that during any legal proceedings a judge, adjudicator or equivalent will take RICS professional standards and practice guidance into account.

Glossary

Term	Definition
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 (RMC) or right to manage (RTM) company.
Client money	All money held or received by a managing agent over which they have control but that 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'.
Client money protection	An insurance to protect organisations from loss of client money, etc. resulting from crime, including employee dishonesty.
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**).

Term	Definition
Contract	The contract between the landlord and managing agent setting out the terms of appointment. Also known as a management agreement, management contract or terms of engagement. The term 'contract' is used in this code.
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.
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.
FME1	The Freehold Management Enquiries form, approved by the Law Society and trade bodies, for standardised property enquiries where a freehold property has a shared amenity requiring maintenance, either through an estate rent charge or covenants set out in the title.
Freeholder	The owner of the freehold interest in a property, which may include a building, other property or land. Also see **Landlord**.
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.

Term	Definition
Landlord	The person or company that owns and rents or leases a flat or house. This person may own the freehold (see **Freeholder**) 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 corporate body. 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 (including any deed of variation) 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.
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, this 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. Live/work units may also comprise either residential or business use, giving the tenant the option to elect which use they wish to occupy the premises as.
Long leasehold	A lease originally granted for a period in excess of 21 years.

Term	Definition
LPE1 and LPE2	The Leasehold Property Enquiries forms 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	Management functions include functions with respect to the provision of services or the repair, maintenance, improvement or insurance of such property. Also 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 in section 30 of the Landlord and Tenant Act 1985, which includes self-managed lay boards, 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 (RMC) or right to manage (RTM) company. Service charges will normally be paid to this agent. This code applies to managing agents as 'managers'. This 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.

Term	Definition
Planned preventative maintenance (PPM)	A costed programme of planned and cyclical works.
Private registered provider (PRP), as defined in the Housing and Regeneration Act 2008	Private registered providers of social housing who are registered with and regulated by the Regulator of Social Housing. This includes non-profit and profit-making registered providers.
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.
Registered provider (RP), as defined in the Housing and Regeneration Act 2008	Registered providers of social housing who are registered with and are regulated by the Regulator of Social Housing. RPs include private registered providers (PRPs) and local authorities (LAs) with housing stock (whether managed in-house or by a third party such as an arm's-length management organisation (ALMO)).
Relevant costs, as defined in section 18 of the Landlord and Tenant Act 1985	'[T]he 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	Any landlord of residential property or any person who discharges management functions in respect of such property. See **Management functions**.
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**).

Term	Definition
Residential property, as defined in the Leasehold Reform, Housing and Urban Development Act 1993	'[A]ny 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)	A 'third-party management company', in which residential leaseholders or residential freeholders are members or shareholders, 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 that 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' (as an RTA) by law with a formal constitution.
Responsible person, as defined in the Regulatory Reform (Fire Safety) Order 2005	The person having control of the non-domestic parts of multi-occupied residential buildings. This may be the owner, landlord or managing agent.
Right to manage (RTM) company	A specific company, formed in accordance with 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 (as amended).	'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.'

Term	Definition
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.
Statutory instrument (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).
Third-party management company	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 that does not necessarily have any legal interest in the property. Often, but not always, a residents' management company (RMC).

Building Safety Act 2022 glossary

The Building Safety Act 2022 defines a number of terms. Some of those terms have different definitions relating to different sections of the Act.

Several terms are referred to in section 9, and the appropriate definition is included in that section. The defined terms referred to in section 9 include:

- Building Safety Regulator
- higher-risk building
- building safety risk
- accountable person
- principal accountable person
- common parts
- leaseholder protections
- relevant defect
- qualifying lease
- contribution condition

- landlord certificate and
- leaseholder certificate.

1 Structure, aims and objectives

1.1 Introduction

Section 87 of the 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:

- the resolution of disputes with respect to residential property between relevant persons and the tenants or licensees of such property
- competitive tendering for works in connection with such property and
- 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, including self-managed blocks and self-managed lay boards (such as residents' management companies (RMCs) and right to manage (RTM) companies), and to any person engaged to discharge the 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.

This code is accurate at the time of publication. However, the government is rolling out a number of reforms, including through the Leasehold and Freehold Reform Act 2024, which means that some aspects of this code will be superseded. Parties should be aware of the legislative changes and **must** ensure compliance with these new requirements when they come into force.

1.1.1 Leasehold and Freehold Reform Act 2024

The Leasehold and Freehold Reform Act 2024 has introduced a number of measures that will impact on this code, including:

- a proposed ban on insurance commissions for landlords, property managing agents and freeholders forming part of the service charge
- the introduction of a standardised format for service charges

- annual service charge reports. Where variable service charges are collected and there are four or more properties in a block, a service charge account statement must also be provided and
- a right to request information on service charges from a landlord, who will be required to comply.

These measures require secondary legislation, which at the time that this code has been approved has not yet been introduced. The code will be updated in line with the legislation when it becomes law.

1.2 Application of this code of practice

The current edition of RICS' Real estate management '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 contains mandatory requirements 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 when providing detailed best practice guidance. Having been approved by the Secretary of State, the best practice principles 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 applicable legislation concerning the management of residential premises and service charges.

This 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.

However, it should be understood 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.

1.2.1 Must/should

In this code, the word **must** is used to indicate a legal obligation. Breaches of a legal obligation could lead to 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.

1.3 Private registered providers of social housing

This code of practice applies to both for-profit and non-profit 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 the following.

- The requirements of section 42 of the Landlord and Tenant Act 1987 to hold service charge monies on trust do not apply to 'exempt landlords', who include non-profit PRPs and registered social landlords, as defined in section 58(1). 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 Scheme (see section 4.7).

PRPs should follow all the core principles detailed in section 1.6, and where applicable in section 2.2, when managing residential properties and recovering costs as variable service charges or variable estate rent charges.

Sections 6 and 7 do not apply to PRPs managing their own stock; however, they will apply where they manage on behalf of a third party. A third party may include partnerships between housing associations and private developers via a separate entity, company or limited liability partnership (LLP).

1.4 Local authorities

Variable service charges payable by tenants of a local authority (LA), 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 LAs (and third-party management organisations, for example arm's-length management organisations or tenants' management organisations) 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.

LA landlords are exempt from some statutory requirements, in particular the following.

- The requirements of section 42 of the Landlord and Tenant Act 1987 to hold service charge monies on trust do not apply to 'exempt landlords', who include LAs, as defined in section 58(1). LAs **must** follow their own regulatory requirements on holding service charge monies.
- LAs are exempt from criminal sanction under section 25 of the Landlord and Tenant Act 1985 for non-compliance with sections 21–23. LAs 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. LAs with retained housing stock are required to be members of the Housing Ombudsman Scheme.

LAs (and any third-party management organisations) should follow all the core principles detailed in section 1.6, and where applicable in section 2.2, when managing residential properties and recovering costs as variable service charges or variable estate rent charges.

Sections 6 and 7 do not apply to LAs managing their own stock; however, they will apply where they manage on behalf of a third party. A third party may include partnerships between an LA and private developers via a separate entity, company or LLP.

1.5 Freehold houses and variable estate rent charges

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

Rent owners and managers should follow all the core principles in section 1.6 when managing estates or the public amenities for which they are responsible and recovering service costs as estate charges or 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 which reflects the availability and benefit of services to the building or estate.

Landlords and managing agents should communicate with all relevant 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 sufficient 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 or audited 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 levels 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.

Where managing agents have been appointed, they 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 often depends on cooperation between the parties involved, as well as on a mutual understanding of the procedures necessary for effective management and 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. 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. Property management professionals and landlords are expected to ensure their knowledge of the law and its interpretation by the courts and tribunals remains fully up to date.

In considering this, factors such as the age and location of the property, terms of occupation, level of payment for services and 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:

- consumer service level expectations
- cost effectiveness
- efficiency
- health and safety of occupiers and visitors
- quality of service
- reasonableness
- statutory requirements
- structural integrity of buildings
- terms of the lease and
- transparency.

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 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.

1.7.2 Leaseholders

This code applies to residential properties let on long leases, assured, assured shorthold, contractual and regulated tenancies or licences to occupy, subject to a variable service charge. 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 the '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.

2 Ethical obligations and professionalism

2.1 Introduction

Managers have 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 include 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

There are core principles and requirements that relate to this work set out in RICS' Rules of Conduct and other RICS professional standards covering important elements such as:

- conducting business in an honest, fair, transparent and professional manner
- carrying out work with due skill, care and diligence, and ensuring that any staff employed have the necessary skills to carry out their tasks
- ensuring that clients are provided with terms of engagement that are fair and clear, and that meet all legal requirements and relevant codes of practice/standards including reference to complaints-handling procedures and, where it exists, an appropriate redress scheme
- avoiding conflicts of interest and, where they do arise, dealing with them openly, fairly and promptly
- not discriminating unfairly in any dealings
- in all dealings with clients, ensuring that all communications (both financial and non-financial subject matters) are fair, clear, timely and transparent

- ensuring that all advertising and marketing material is honest, decent and truthful
- ensuring that all client money is held separately from other monies in appropriately designated accounts and is covered by adequate insurance when required by statute or a relevant professional body
- having 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
- ensuring that it is made clear to all parties with whom you are dealing the scope of your obligations to each party
- where provided as part of the service, giving 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 judgement
- ensuring 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

Managing agents **must** make every attempt to identify and avoid a conflict 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 judgement – not the client's. 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. Informed consent may only be sought if you are satisfied that proceeding despite a conflict of interest is in the best interests of all those who are or may be affected, and is not prohibited by law.

The current edition of RICS' Conflicts of interest provides clear rules for RICS members and regulated firms to identify and manage conflicts of interest.

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 less favourably 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 and marriage or civil partnership discrimination, which can be 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 that 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 the 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/standards
- 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 Act 2002

Employment Act 2008

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 within a reasonable time 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.

Leaseholders are key stakeholders in residential management and not the opposing parties to the landlord. While the landlord is the principal, the views of leaseholders should be

canvassed and respected. A failure to do so is against the spirit of the landlord and tenant legislation, tends to make litigation more likely and is of little assistance to landlords in any litigation.

3.3 UK General Data Protection Regulation (GDPR)

You will need to be registered with the Information Commissioner's Office under the Data Protection Act 2018, and you **must** comply with data protection law. The Act gives individuals the right to know what data is held about them. It provides a framework to ensure that personal data is handled properly and states that anyone who processes personal data **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.

CCTV systems are an increasingly common feature in residential property, often providing coverage of external and/or internal common parts. The provision of CCTV equipment is almost certainly an activity covered by data protection laws, as it involves the processing of personal data of individuals.

As well as the general principles of GDPR, other considerations in the context of CCTV systems are:

- appropriate signage
- location of monitors to avoid unintended viewing
- operator licences and training for authorised users and
- a robust CCTV policy.

Consideration should be given by all parties involved as to who the data controller is in relation to the CCTV system, and whether there are data processors and/or joint controllers in relation to the data. Parties should ensure they are cognisant of and comply with their duties.

UK GDPR

Data Protection Act 2018

3.4 Applications for consent

You **must** deal with written applications for permissions and consents expeditiously and act within the scope of your authority. When an application is refused, you **must** 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 First-tier Tribunal (Property Chamber) (FTT) or where the leaseholders have exercised the right to manage (see section 16). 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. However, 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 section 2.

3.5 Quiet enjoyment

You should have regard to consumers' contractual rights to quiet enjoyment. You **must not** unreasonably perform any activity likely to interfere with the peace or comfort of occupiers, unless contractually permitted and reasonably conducted, 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 ss. 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 by prior arrangement 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. It is recommended that you have regard to the current edition of RICS' Surveying safely.

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. Where appropriate and if requested, you should make information available to leaseholders on their right to form recognised residents' associations, and support attempts by unrecognised associations using the requisite powers under the law to obtain leaseholders' contact details and to form a recognised association (see section 15.2).

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 9.8–9.11) 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 hold meetings if appropriate. 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)

The Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018 (SI 2018/1043)

3.10 Money laundering

You **must** comply with The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 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, 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, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 requires businesses to register for money laundering regulation by HMRC if they offer company services to other companies as part of their business. These include forming companies, acting or arranging for others to act as a director or secretary of a company or 'providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or legal arrangement'.

Managing agents who act as a company secretary or director of an RMC or RTM company, or who provide the correspondence address for these client companies, will need to consider whether they need to register with HMRC for anti-money laundering supervision or whether they fall within the exclusions provided by paragraph 15(2) of The Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

It is recommended that you undertake a risk assessment of business activities to determine whether they are covered by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. RICS-regulated firms are also reminded that they should be carrying out a risk assessment of all of their business activities, whether or not they are covered by the Money Laundering Regulations, in order to comply with the current edition of RICS' Countering financial crime.

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

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 a summary of them with the leaseholders.

Equality Act 2010

Employment Act 2002

Employment Act 2008

Immigration Rules (UK Visas and Immigration)

HMRC Land and property (VAT Notice 742)

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 employment commences. 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 to 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, in accordance with data protection principles and reflected in your data protection policies, 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 employee-related health and safety, fire safety and building 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 of places of work. 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 appropriate indemnity insurance cover or equivalent and client money protection insurance when required by statute or a relevant professional body.

If you suspect someone is at risk of abuse, exploitation or neglect, you should alert the appropriate agencies to your concerns. Managers to whom safeguarding duties apply should ensure they are aware of those duties.

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.

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. All RPs (i.e. PRPs and LAs with retained housing stock) are required to be members of the Housing Ombudsman Scheme. 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. LAs, in respect of noise nuisance or antisocial behaviour.

LAs and other RP 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.

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, even if directed at the agent, unless the agent is performing the services under delegated authority.

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

Sch 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 disputes. The leaseholder should be encouraged to seek legal advice on any such suggestion and should be 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 an ombudsman or 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 on request to their client, leaseholders and relevant third parties. 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 the complaints to be investigated quickly and fairly.

The complaints procedure **must** include details of the relevant approved redress scheme (see section 4.7) 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's 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) (FTT)

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

Legislation has given the tribunal jurisdiction in many areas of landlord and tenant disputes, including disputes relating to building safety, that would otherwise have to be dealt with by the courts. The tribunal also promotes the use of ADR and mediation.

4.7 Redress (ombudsman) schemes

The Enterprise and Regulatory Reform Act 2013 requires that all letting and property management agents undertaking relevant activities in England are a member of a government-approved redress scheme. At the date of publication of this code, there are two approved schemes (in addition to the Housing Ombudsman – see below), the details of which are available at Registering with a redress scheme as a property agent.

Enterprise and Regulatory Reform Act 2013

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

All bodies registered with the Regulator of Social Housing **must** be in the Housing Ombudsman's jurisdiction. Registered providers of social housing are generally not-for-profit landlords (like most housing associations) but can also be for-profit organisations, as well as local housing authorities with housing stock (whether retained or managed by a third party, for example an arm's-length management organisation).

Mandatory membership covers all the housing activities of the bodies concerned (and their subsidiaries) for all types of tenure, as long as they are about the landlord and tenant relation.

Organisations that have been at any time registered with the regulator but subsequently de-registered remain in the jurisdiction of the Housing Ombudsman.

Private landlords and managing agents may also register with the Housing Ombudsman on a voluntary basis.

Sch 2 *Housing Act* 1996

ss. 180–182 *Localism Act* 2011

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 in order to identify what costs are recoverable as a service charge, when they are due for payment, how they should be apportioned 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.

The Building Safety Act 2022 introduces some implied terms into leases of higher-risk buildings relating to building safety obligations, rights of access for building safety purposes and the recovery of costs incurred on building safety matters as part of the service charge (see section 9.5). See section 9.2 for the definition of a higher-risk building.

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. However, that is not always the case, 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 or overestimate costs, nor 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 or by the managing agent where the contract delegates specific authority, before any on-account service charges are demanded. Initial service charge demands in any year should be accompanied by a copy of the approved budget and sufficient information to make 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.

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:

1. the person by whom it is payable
2. the person to whom it is payable
3. the amount that is payable
4. the date at, or by which, it is payable and
5. 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 reserve fund or sinking fund but may still provide for service charge income to be retained towards costs to be incurred in future years.

Reserve funds should not be used to subsidise day-to-day service charge expenditure (other than in exceptional circumstances as outlined in section 5.6), for day-to-day maintenance costs or 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.

Service charges should only ever be collected and/or retained at the end of the financial year in accordance with contractual lease provisions. Where there is no contractual provision for service charges to be collected or retained 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 so they can 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. Housing associations, LAs and other large landlords may have long-term, stock-wide investment

plans. These should inform building/estate level assessments of likely future expenditure and the level of contributions.

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 in trust

You **must** hold service charge monies, and any interest accruing, by way of statutory trusts in accounts established in accordance with section 42 of the Landlord and Tenant Act 1987. Service charge payments **must** be kept separate from the landlord and managing agent's own money and **must** only be used to meet the expenses for which they have been collected. Monies held on behalf of a specific building **must not** be utilised for another building managed by the same manager, even if the same client owns both buildings.

You should inform all leaseholders of the name and address of the institution where their money is held, the account name and sort code, confirmation that it is an interest-bearing account, the withdrawal notice period and any restrictions on withdrawals.

Members of professional bodies should ensure they comply with any additional or more stringent rules of their own body.

s. 42(6) *Landlord and Tenant Act* 1987

Section 42 of the Landlord and Tenant Act 1987 does not apply to 'exempt landlords', who include LAs, non-profit PRPs of social housing and registered social landlords, as defined in section 58(1).

Where an exempt landlord holds reserve funds or sinking funds, they should ensure those funds are separately identifiable and should consider holding them in trust accounts separate from the landlord's own money.

s. 58(1) *Landlord and Tenant Act* 1987

Service charge monies for each property should be identifiable. They should be invested at interest in the United Kingdom with the Bank of England or with a person who has permission under Part IV of the Financial Services and Markets Act 2000 to accept deposits, or with a European Economic Area firm that has the appropriate permissions to accept deposits. They should be held either in separate ring-fenced service charge bank accounts for each scheme or in a universal 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. Any scheme-specific service charge account should include the name of the client or the property (or both) in the title of the account.

There is no legal requirement for PRP and LA landlords to hold service charge monies in trust, separate from their own monies. However, they should be able to account for all service charge monies held in respect of each scheme and/or each leaseholder.

You should not commit to expenditure unless you have the funds available to cover the costs in full, either from service charges collected and held for the purpose or provided by the landlord until recovered as service charges. 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 you should not allow service charge bank accounts to go into deficit.

You **must** hold such sums in 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 account details of the service charge bank account(s) 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 least monthly.

s. 42 *Landlord and Tenant Act* 1987

The 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)

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

You should not use reserve fund monies to subsidise day-to-day service charge expenditure, other than to cover for very short-term cash flow difficulties, when you should know how and when the money will be repaid and it should be transferred back into the reserve funds, in full, at the earliest opportunity. 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

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 IV 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 Investments 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

The 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 – and may award compensation payable by any party to the lease to any other party. 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. The ability to vary apportionments, in what circumstances (if any) and the notification requirements will often be detailed in the lease. These requirements should be followed. As a minimum, any variation should be communicated to the leaseholders with reasons related to the revised apportionment matrix. Variation of apportionments may be challenged, and the apportionment 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. 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 sufficient information to make it clear to leaseholders 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 Sch 11, Pt 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 Provision) (England) 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 you should 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 **must** only seek to recover fees, by way of administration charges, that are provided for in the lease, and only to the extent that they are reasonable in amount (see section 5.15). 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 Procedure 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 conduct and protocols*

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 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 Debtline, Citizens Advice, Money and Pensions 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) where appropriate, before commencing any legal proceedings. If not resolved, these disputes are likely to end up being determined by the FTT.

5.9 Possession proceedings on grounds of forfeiture of the lease

Landlords, and especially their agents, should have procedures in place to guard against the possibility of waiving their rights to forfeiture. Legal advice should be taken if necessary.

You should be fully aware of the restrictions on commencing possession proceedings on grounds of forfeiture of the lease 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 possession proceedings on grounds of forfeiture 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 possession proceedings on grounds of forfeiture or attempt to recover any associated costs or administration charges from the leaseholder until or unless these requirements have been fully met.

Housing Act 1996

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

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

Limitation Act 1980

5.10 Accounting for service charges

Information confirming the financial position should be issued to leaseholders following the end of each service charge period by way of a set of service charge accounts. This information should include a summary of the costs and expenditure incurred, explanatory notes with details of variances between the budget and actual expenditure, a balancing statement of assets and liabilities with appropriate notes, and a compliant demand for payment, or notice of credit, as necessary. The information should be transparent and reflect all financial activity in respect of the accounting period.

Where all costs are reconciled and demanded on a cash accounting basis, e.g. LA or housing association pepper-potted right to buy or right to acquire leasehold properties, an individual leaseholder statement, in the form of a demand for payment summarising all costs incurred and detailing the amount payable, will often suffice in place of a full set of service charge accounts. Where any balance is carried forward to a future year (positive or negative), service charge accounts accompanied by a balancing statement and statement of reserves should be prepared and issued to leaseholders along with a compliant demand for payment or notice of credit.

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, leases often require service charge accounts to be issued, and might require those accounts to be certified or 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 demands and/or accounts are issued strictly in accordance with the procedures and requirements as set down under the terms of the lease.

Service charge accounts, where required, should be prepared in accordance with TECH 03/11 (see the Glossary for details) to the extent that the lease requirements are compatible.

ss. 19 and 27A *Landlord and Tenant Act* 1985

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

5.11 Approval of service charge statements and accounts

The purpose of approving the service charge statement/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 service charge statement and/or accounts should be approved by, or on behalf of, the landlord as complying with the statements above. In approving the accounts, the manager is confirming that they are authorised to make the statement on behalf of 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).

5.12 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.

LA landlords are exempt from the restrictions that 'an officer, employee or partner of the landlord or of an associated company' cannot provide the certification required under section 28 of the Landlord and Tenant Act 1985. LA landlords may therefore choose for the annual examination and certification to be undertaken by a suitably qualified officer or employee of the landlord. Subject to satisfying the lease terms, this may be the same person who approves the accounts (see section 5.11).

PRP landlords may choose for the annual examination and certification to be undertaken by a suitably qualified officer or employee of the landlord, but in doing so should follow any guidance of the Regulator of Social Housing. Subject to satisfying the lease terms, this may be the same person who approves the accounts (see section 5.11). PRPs are not exempt from the requirements for examination and certification under section 28 to be provided by an external accountant, and **must** follow this requirement where a leaseholder or recognised tenants' association (RTA) has requested a summary of expenditure in accordance with section 21 (see section 5.13).

ss. 21 and 28 *Landlord and Tenant Act* 1985

5.13 Summary of costs

A leaseholder or the secretary of an RTA 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 an external (except for LA landlords – see section 5.12) 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.

s. 21 *Landlord and Tenant Act* 1985

You **must** respond to the leaseholder's or secretary of the RTA'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 an RTA, 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 an RTA, the information request should be supplied to the secretary and leaseholder.

s. 22 *Landlord and Tenant Act* 1985

If a request under section 21 relates to relevant costs incurred by or on behalf of a superior landlord, and the landlord to whom the request is made is not in possession of the relevant information, the intermediate landlord **must** make a written request to their superior landlord, who **must** in turn comply within a reasonable time.

If a request under section 22 relates to a summary of costs incurred by or on behalf of a superior landlord, the landlord to whom the request is made **must** inform the tenant or secretary of that fact and of the name and address of the superior landlord, and section 22 shall then apply to the superior landlord as it applies to the immediate landlord.

s. 22 *Landlord and Tenant Act* 1985

Where a request is made for facilities to inspect, the landlord **must** inform the leaseholder or RTA 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.

ss. 21(6) and 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 LAs, National Park Authorities or new town corporations.

ss. 21–23 and 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 section 20B(2) of the Landlord and Tenant Act 1985.

s. 20B *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

5.14 Ground rent

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

The lease typically states that ground rent is payable whether demanded or not. Section 166 of the Commonhold and Leasehold Reform Act 2002 introduced a requirement for all ground rent to be demanded in a prescribed form before it is payable. The demand **must** specify the date upon which the rent is due, which **must not** be either less than 30 days or more than 60 days after the day on which the notice is given, or before that on which the leaseholder would have been liable to make the payment in accordance with the lease. If you are retained to collect ground rent on behalf of your client, you should serve the demand between 30 and 60 days prior to the due date, otherwise your client's cash flow may be compromised.

s. 166 *Commonhold and Leasehold Reform Act* 2002

You should have an efficient system to monitor ground rents collected and any arrears. Leases typically provide for interest to be added on ground rent not paid within a certain period of time (typically 14, 21 or 28 days). This is often at a prescribed 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 applicable 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.

The Leasehold Reform (Ground Rent) Act 2022 abolished ground rents of more than a peppercorn in any new qualifying residential long leases granted on or after 30 June 2022 and on the extended part of an informal lease extension (a prohibited rent). There was a transition period that applied to regulated leases of retirement homes until 1 April 2023. The Act also bans landlords seeking any administration charges for the recovery of a peppercorn ground rent. Landlords may be liable for a financial penalty if found to have breached the provisions of the Act.

Managing agents **must** only collect charges that are legal and also **must** be prepared to take responsibility where their actions contravene the Act. Managing agents **must** refund incorrectly collected ground rent, but they will not be liable for a financial penalty under the provisions of the Act.

Leasehold Reform (Ground Rent) Act 2022

5.15 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:

- 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.

Sch 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.

s. 158 and Sch 11 *Commonhold and Leasehold Reform Act* 2002

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

5.16 Surpluses and deficits

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

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

Deficits will typically be:

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

5.17 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 an Office of Fair Trading (OFT) investigation in 2013 and a report published by the Law Commission in 2017. The OFT found that some lease terms imposing event fees were potentially unfair contract terms under what is now the Consumer Rights Act 2015. 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 (previously the OFT) 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.

Consumer Rights Act 2015

5.18 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 13.6) 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 and proportionate to the cost and value of that service. 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.

5.19 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

An RTA 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

6 Additional guidance for managing agents: terms of engagement

6.1 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.

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

6.2 Introduction

Prior to accepting an instruction and commencing work, a managing agent should clarify who will be its client and how it will be paid. 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, a head landlord or an intermediate landlord. 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 RMCs/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 a management agreement, management contract or terms of engagement, which will determine the rights and duties of both parties. The term 'management agreement' has been used in this code.

6.3 Management agreement (management contract/terms of engagement)

Some landlords will wish to provide or directly manage some services 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, or otherwise recorded as agreed, 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 statute 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, 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 management agreement should clearly state the scope of the duties the managing agent will carry out and detail the agreed fee structure. A summary of the managing agent's terms and duties should 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/standards, 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.

A managing agent should understand and fulfil their obligations to clients and potential clients. These relate to the provision of basic information and the handling of complaints. Contracts between landlords and managing agents are normally governed by the Consumer Rights Act 2015, which requires the services provided under the contract to be to a reasonable standard, time and cost (usually previously agreed).

Consumer Rights Act 2015

The length of the managing agent's appointment should be agreed prior to commencement and clearly detailed in the management agreement, 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 9.10), the managing agent should advise their client that the contract may constitute a qualifying long term agreement (QLTA) and the consequences of this. The client should take legal advice on this point if necessary.

The contract should be signed, or otherwise recorded as agreed, 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 or otherwise recorded as agreed, 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 rightfully, therefore, expect transparency of service levels and costs.

The level of service required by landlords varies (see section 6.2), and it is not appropriate for this code to prescribe or recommend any specific fee charging arrangement, as this would tend to imply a 'one size fits all' culture and may discourage innovation and the flexibility that bespoke service delivery can offer in meeting a landlord's individual management service needs.

Managing agents often offer different levels of service packages, with bolt-on services at additional and transparent cost. Some landlords opt for a leaner day-to-day management service, preferring to pay extra for services as and when they need them, e.g. additional site visits or evening meetings.

A managing agent's charges **must**, however, be reasonable and proportionate to the tasks involved and be pre-agreed with the client where the tasks to be undertaken are known, for example by reference to the landlord's obligations within the lease. 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.

The recovery of costs of management directly by a landlord and/or management agent's fees should not be based on a percentage of service costs unless so prescribed in the lease. Percentage management fees are potentially a disincentive to the delivery of value-for-money services.

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 management agreement. If the charges are agreed to be subject to indexation, the index to which they are linked should be agreed in advance in writing.

6.5 Core management services

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 the commencement of management (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 'core services' to be provided either directly by their landlord or by the managing agent within the agreed fee structure:

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, on behalf of the client and 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

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 appropriate 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' associations

g administer building and other insurance if instructed and authorised, subject to Financial Conduct Authority (FCA) regulations

h engage and supervise contractors or employed staff such as caretakers, gardeners and cleaners under agreed employment arrangements

i arrange and manage contracts and services relating to the landlord's maintenance and service obligations, for example lift maintenance and servicing, boiler maintenance and servicing, and cleaning common parts

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 visit the property at a pre-agreed frequency to visually check its condition and instruct minor repairs to buildings, plant, fixtures and fittings. Managing agents should notify the client of more extensive repairs and take instructions, in accordance with the terms of the management agreement. An appropriate frequency for visits should be agreed with the client and set out in the management agreement

l deal reasonably and as promptly as possible with enquiries from leaseholders, having regard to any requirements or constraints in the lease or management agreement

m keep records relating to leases and leaseholders, having regard to data protection legislation

n advise clients of changes in legal requirements, including any statutory notices and other requirements of public authorities, and check compliance with lease terms

o comply with all statutory obligations and

p advise on day-to-day management policy.

The management agreement should clearly state which of the above (and any additional) services are to be provided by the managing agent within the agreed fee structure, which services may be available at pre-agreed or negotiated rates on request and which services are not provided.

6.6 Additional management services

In addition to the core services, the management agreement may provide for the provision of additional services within the agreed charging structure. 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. and whether rates are different inside/outside normal office hours
- 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 or works contracts, and
- assisting in landlord/tenant dispute resolution, preparing witness evidence and attending court and tribunal proceedings.

The cost of some of these services 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 or nuisance, 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, **must** be reasonable and proportionate to the tasks involved (see section 5.15). 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.

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) and income or other benefits 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 transparent and proportional to the value of the service provided. Fees or commissions earned on the placing or management of insurance **must** be in compliance with the FCA's fair value rules.

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 in England **must** belong to a government-approved redress scheme (see section 4.7).

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 company secretary is an officer of the company. The level and extent of services to be provided 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 2006. Company secretaries should be aware of their duties to the company and the obligations imposed on the company by the 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, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. Managing agents providing these services should consider whether they need to register with HMRC for anti-money laundering supervision (see section 3.10).

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

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 tribunal will usually appoint a named person as a manager rather than a company or a firm.

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.

s. 24 *Landlord and Tenant Act* 1987

7 Additional guidance for managing agents: 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.

The current edition of RICS' Client money handling provides clear rules for RICS members and regulated firms on the appropriate controls and procedures to keep client money safe.

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 propose to 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 in trust in the specified manner (see section 5.6).

s. 42 *Landlord and Tenant Act* 1987

7.2 Bank accounts

If you collect or hold client monies, you **must** open one or more client money accounts, which should be held at an institution authorised by the Financial Services and Markets Act 2000 for the holding of deposits.

Details about the statutory requirements for holding service charge monies in trust are given in section 5.6.

Financial Services and Markets Act 2000

On opening a client money 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 counterclaim 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.

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 money account. Office money should not be kept in a client money account. Client money should be kept separately. If agent/landlord money is paid in to open the client money account, it should be withdrawn at the earliest opportunity.

You should pay any client money you received into a client money 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 money 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 may have to make up the shortfall.

You should never overdraw a client money 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 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 money account:

a if it is your own money paid into a client money 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 money account, or

g when a payment into a client money 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 money 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 money 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 banks and building society accounts in which client money is held.

You should reconcile your cash books with your client money account statements and with your client ledger balances monthly and keep a record of your reconciliation. Reconciliations should be completed within four weeks of the month end. Discrepancies should be investigated and shortfalls on client money 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 a clear process for termination if either party breaches its obligations. It should also provide for a clear notice period and means of termination by either party.

If a managing agent or its client decides to terminate the management agreement, it should confirm the termination in writing and deal with any handover in a professional, competent and efficient manner within the agreed timescale. Managing agents should make it clear on which date they will cease to manage and confirm how and when they will pass over all relevant documentation and monies held to the client. Termination dates should follow any clauses within the signed management agreement.

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 to 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 management agreement is who will deal with ongoing litigation, disputes and arrears collection, and the preparation of any outstanding service charge accounts.

7.5 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, leaseholders' 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.

7.6 Accounting for client monies and service charge funds upon termination

The management agreement should make clear provision for the financial handover upon termination, and managers should ensure that they can account in a timely manner for any client monies they hold.

Contractors should be informed of the change of manager as early as possible in the process and be advised of the new manager's details. This enables them to submit invoices where works were instructed prior to the date of termination and to follow up regarding

payment for unpaid invoices already submitted. The contractual liability for settling these costs remains with the landlord and therefore transfers to the new manager to settle on the landlord's behalf.

An interim payment should be made, where funding allows, ready for day one of the transfer of management. This is to aid cash flow while the full financial reconciliation is carried out. The full and final reconciliation, including outstanding debtors and creditors, should be provided within three months of the date of termination along with any remaining monies held.

The situation is different when there is a change of contractual landlord/manager under the right to manage process or by appointment of a manager by the FTT. In these instances, the outgoing manager will carry out a reconciliation to determine the amount of any uncommitted service charges as required by statute, or by order from a court or the FTT, at the date of the contractual change. This reconciliation needs to take into account liabilities due to contractors and any debt to be collected from leaseholders that remain in the outgoing landlord's name.

8 Health and safety and fire 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 which 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 the current edition of RICS' Health and safety for residential property managers.

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. The current edition of RICS' Surveying safely sets out basic good practice principles for the management of health and safety.

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 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 comply with are:

- The Workplace (Health, Safety and Welfare) Regulations 1992 and
- The Management of Health and Safety at Work Regulations 1999.

Employers should have mental health and well-being policies and procedures for all staff. They should also have a clear and enforced policy on abuse of staff by consumers and members of the public.

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

8.3 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 to all, including employees, residents and visitors.

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 (SI 1999/3242)

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. The FTT has 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.

The landlord is very likely to be deemed a 'responsible person'. Managing agents are very likely to be 'duty holders' and, subject to the terms of their agreement, could also be a responsible person. Managing agents should therefore ensure the terms of their agreement and the extent of their liabilities are understood.

You should 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.

8.4 Fire risk assessments

The Regulatory Reform (Fire Safety) Order 2005 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 that it is regularly reviewed and up to date. This may be included in the generic risk assessment or undertaken separately by a fire safety specialist.

The responsible person **must** implement and maintain a fire management plan for every building. A live record of completed and outstanding actions, with expected resolution dates, should be maintained and made available to residents and leaseholders on request.

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

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.

The Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541)

Fire Safety Act 2021

You should ensure that you are familiar with guidance from the Home Office, 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.

The Fire Safety (England) Regulations 2022 introduce additional requirements in multi-occupied residential buildings. Responsible persons **must** provide residents with fire safety instructions and information on the importance of fire doors.

In buildings over 11m in height, responsible persons **must** ensure that flat entrance doors are subject to an annual check and all fire doors in common parts are subject to quarterly checks.

There are additional duties on responsible persons in 'high-rise' buildings over 18m in height. These include the following.

- **Building plans**: provide the local fire and rescue service with up-to-date electronic building floor plans and place a hard copy of these plans, alongside a single-page building plan that identifies key firefighting equipment, in a secure information box on site
- **External wall systems**: provide the local fire and rescue service with information about the design and materials of a high-rise building's external wall system and any material changes to these walls, information in relation to the level of risk that the design and materials of the external wall structure gives rise to, and any mitigating steps taken
- **Lifts and other key firefighting equipment**: undertake monthly checks on the operation of lifts intended for use by firefighters and evacuation lifts, and check the functionality of other key pieces of firefighting equipment. Report any defective lifts or equipment to the local fire and rescue service as soon as possible after detection if the fault cannot be fixed within 24 hours. Record the outcome of checks and make them available to residents
- **Information boxes**: install and maintain a secure information box in the building. This box **must** contain the name and contact details of the responsible person and hard copies of the building floor plans
- **Wayfinding signage**: install signage visible in low light or smoky conditions that identifies flat and floor numbers in the stairwells and firefighting lift lobbies of relevant buildings.

Fire Safety (England) Regulations 2022

8.5 Control of asbestos

The duty to manage asbestos is contained in regulation 4 of The Control of Asbestos Regulations 2012. It is essential that you know who the duty holder is; this is generally 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 duty holder to comply with the Regulations.

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

8.6 Gas safety

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

8.7 Electrical equipment

The Electrical Equipment (Safety) Regulations 2016 require that all electrical equipment supplied by a landlord is safe. You should ensure that periodic portable appliance testing (PAT) is carried out on electrical equipment situated in communal areas.

Fixed electrical installations in common parts **must** be inspected and tested by a qualified person, producing an Electrical Installation Condition Report (EICR) every five years.

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

The Electrical Equipment (Safety) Regulations 2016

The Electricity at Work Regulations 1989

8.8 Furniture and furnishings

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

The Furniture and Furnishings (Fire) (Safety) Regulations 1988 (SI 1988/1324) (as amended by SI 1989/2358 and SI 1993/207)

8.9 Hazardous substances

The Control of Substances Hazardous to Health Regulations 2002 (COSHH) require employers to risk assess and 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

8.10 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 who controls the work of others, for example facilities managers or building owners who may contract others to work at height. Work at height **must** be properly planned, appropriately supervised and carried out in a manner which is, so far as is reasonably practicable, safe.

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 and airbags), personal fall protection (e.g. work restraints, fall arrest and rope access) and ladders.

The Work at Height Regulations 2005

8.11 Manual handling

Employers are required under The Manual Handling Operations Regulations 1992 (as amended) to assess the risks from manual handling and to take steps to reduce those risks. 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)

8.12 Water risk assessments

You have a duty to keep water supplies wholesome and to monitor the quality of water, including the presence of bacteria, in the communal areas of the properties you manage, in particular where the water supply is provided other than by a water provider, for example when you have communal tanks. You **must** arrange for a water risk assessment from a

competent person. If there are risks, 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 has 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.

8.13 Construction

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

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

The Construction (Design and Management) Regulations 2015

8.14 Signs and signals

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

Employers are required to provide specific safety signs whenever there is a risk that has not been avoided or controlled by other means, 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

8.15 Lifting equipment

The Lifting Operations and Lifting Equipment Regulations 1998 (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 any equipment used for lifting persons is subject to statutory lift inspections by a competent person (usually an insurance inspector) twice a year. 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 the HSE.

The Lifting Operations and Lifting Equipment Regulations 1998

8.16 Personal protective equipment

Personal protective equipment (PPE) is defined in The Personal Protective Equipment at Work Regulations 1992 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 the person against one or more risks to that person's 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 free of charge 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 1992

8.17 Environmental protection

You should be aware of the terms of Part II 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

8.18 Pressure systems

The Pressure Systems 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 Safety Regulations 2000

9 Building Safety Act 2022

9.1 Introduction

This section provides a very brief overview of the provisions of the Building Safety Act 2022 relating to the management of occupied residential buildings. You should ensure that you are aware of your (and/or your client's) duties under the Act, and ensure you keep fully informed on the progress of secondary legislation as it is enacted and commenced. Obligations under the Act are highly complex, and you are advised to seek legal advice as appropriate.

The stated intention of the Act is to overhaul previous regulations, creating lasting change and making clear how residential buildings should be constructed, maintained and made safe.

The Act creates three new bodies to provide effective oversight of the new regime: the Building Safety Regulator (BSR), the National Regulator of Construction Products and the New Homes Ombudsman Service. The Act broadly has two main parts for the purposes of management.

- **a** Remediation of 'relevant buildings' (see section 9.7).
- **b** Ongoing new duties in respect of higher-risk buildings (see section 9.2).

9.2 Higher-risk buildings

The Act brings forward a new regime for building safety, which will be directly overseen by the BSR. Higher-risk buildings will be subject to the requirements of the new regime in design and construction and during occupation. During the occupation part of the new regime (post construction), a higher-risk building is defined as a building in England that:

> '(a) is at least 18 metres in height or has at least 7 storeys, and
>
> (b) contains at least 2 residential units'

that is not an excluded building (as defined in The Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023).

A higher-risk building is 'occupied' if there are residents of more than one residential unit in the building.

Building safety risk is defined as:

> 'a risk to the safety of people in or about a building arising from any of the following occurring as regards the building—
>
> (a) the spread of fire;

(b) structural failure;

(c) any other prescribed matter.'

All occupied higher-risk buildings **must** have been registered with the BSR by October 2023. Accountable persons will need to ensure that all higher-risk buildings are registered and demonstrate that they have effective, proportionate measures in place to manage building safety risks in those buildings.

Pt 4 *Building Safety Act* 2022

9.3 Accountable persons

The Act defines 'accountable person' (and where there is more than one, the 'principal accountable person') in some detail. An accountable person (AP) is a person who:

a holds a legal estate in possession in any part of the common parts, or

b does not hold a legal estate in any part of the building but who is under a relevant repairing obligation in relation to any part of the common parts.

'Common parts' is defined for the purposes of the Act as:

'(a) the structure and exterior of the building, except so far as included in a demise of a single dwelling or of premises to be occupied for the purposes of a business, or

(b) any part of the building provided for the use, benefit and enjoyment of the residents of more than one residential unit (whether alone or with other persons)'.

That definition is likely to differ from defined common parts in a particular lease (specifically in that it includes the 'structure and exterior of the building').

A person who holds a legal estate in the common parts is not an AP if each lease provides that a particular person, who does not hold a legal estate in any part of the building, is under a relevant repairing obligation in relation to all of the relevant common parts, or if all those repairing obligations are functions of a right to manage company.

A 'manager' under a tripartite lease, which may be a residents' management company, is therefore likely to be an AP, as is a right to manage company. With a two-party lease, the AP will typically be the direct landlord or superior landlord.

You should identify all APs and the principal AP. There is no limit on the number of APs in a building, and there may be different APs for different parts of the building. It is necessary to identify APs on a building-by-building basis.

Where there is only one AP, that person is automatically the principal AP. Where there are several APs, the principal AP will typically be the person who holds the relevant repairing obligation for the structure and exterior of the building.

Duties of an AP include (see sections 82–90 of the Act) to:

- cooperate with other APs and the principal AP

- assess and manage building safety risks; this includes a duty to prevent building safety risks materialising and to reduce the severity of any incident resulting from the risk materialising
- cooperate and share information with relevant persons including the BSR, responsible persons and residents
- keep and maintain the golden thread of information and ensure that this information is accessible and up to date
- comply with mandatory reporting requirements, which may be stipulated by the BSR, and keeping prescribed information up to date
- respond to residents' requests for information
- engage with residents about the building's safety
- carry out duties relating to the resident engagement strategy
- keep, update and provide information about the building to the principal AP
- transfer building safety information to any incoming AP
- notify the BSR if there is a change to an AP, and
- issue contravention notices.

The principal AP will be subject to additional duties, including to:

- register the building with the BSR
- prepare a building safety case report and revise where necessary
- establish and operate a mandatory occurrence reporting system
- apply for and display a building assessment certificate when directed to do so by the BSR
- prepare a resident engagement strategy, which **must** be reviewed and revised within prescribed time periods, and
- establish and operate a system for the investigation of relevant complaints.

All APs are responsible for assessing and managing building safety risks and ensuring that statutory obligations are complied with. Each AP is responsible for identifying, assessing and managing the building safety risks in the part of the building for which they are responsible. The principal AP should meet with all APs, and where appropriate, landlords and managing agents, to ensure there is clarity about roles and responsibilities.

You can find out more about the duties relating to APs here.

The duties of the principal AP and AP are largely new and additional statutory duties relating to the management of higher-risk buildings. It is unlikely that pre-existing management agreements will make provision for assisting with the duties. Landlords (who are APs) should agree with their managing agents the extent to which relevant services will be provided by the agent, by a third party or by the landlord themselves. Managing agents and third

parties should ensure they have declared the relevant duties to their professional indemnity insurance provider and that appropriate cover is in place.

Where a managing agent is instructed to provide any additional services in respect of AP (and principal AP) duties, they **must** ensure the person(s) managing the building safety risks have the necessary competencies. The BSI competency standard PAS 8673:2022 sets out a competence framework to support those managing buildings (including managing building safety risks). The HSE has also provided a summary document of this PAS, Competence information for managing building safety on higher-risk buildings, which focuses specifically on the competencies required to deliver the duties under the Building Safety Act 2022 (i.e. the management of building safety risks).

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, or otherwise recorded as agreed, by both parties.

Organisations providing services to, for or on behalf of the principal AP or AP **must** have the competence and organisational capability to deliver the services they seek to deliver. The principal AP or AP should undertake due diligence in regard to the competence and organisational capability of services providers before deploying them.

ss. 71–94 *Building Safety Act* 2022

9.4 Duties on residents and owners

The Building Safety Act 2022 imposes duties on residents and owners of residential units in a higher-risk building:

- not to act in a way that creates a significant risk of a building safety risk materialising
- not to interfere with a relevant safety item, and
- to comply with a request, made by the appropriate AP, for information reasonably required for the purposes of a duty to assess and manage building safety risks.

The AP can issue a contravention notice on any resident who appears to be breaching these duties and, if necessary, can apply for a court order to enforce compliance and/or recover costs of repair or replacement items.

ss. 95–97 *Building Safety Act* 2022

9.5 Implied lease terms related to building safety

When it has been commenced, section 112 of the Building Safety Act 2022 will insert new sections 30C–30I and 20F into the Landlord and Tenant Act 1985. Implied terms are inserted into long leases of premises that comprise or include dwellings in higher-risk buildings. In general terms, these sections imply covenants on both landlords and tenants to comply with building safety obligations and/or to cooperate with relevant persons complying with their building safety obligations. There is an implied covenant to allow the landlord, a relevant

person or an authorised person to enter the demised premises for a relevant building safety purpose, at reasonable times having given at least 48 hours' notice in writing. Costs incurred in the taking of building safety measures are recoverable as service charges unless they are excluded costs under section 20F, subject to being reasonably incurred in accordance with section 19 of the Landlord and Tenant Act 1985.

Landlords and managers of higher-risk buildings, and other relevant persons, should ensure they are familiar with these sections and other provisions of the Building Safety Act 2022 as they are introduced.

s. 112 *Building Safety Act* 2022

9.6 Leaseholder protections

The Building Safety Act 2022 and subsequent regulations create a range of leaseholder protections from recovery of costs of remediating 'relevant defects' through service charges or otherwise.

This section provides a summary of some of the key legislation in force at the time of writing. It is not a comprehensive statement of the law, which is likely to develop and may be amended in future. You or your client should take appropriate advice if necessary.

The stated purpose of sections 117–125 and Schedule 8 of the Act is to ensure that those who built defective 'relevant buildings' take responsibility for remedying them, the industry contributes to fixing the problem and leaseholders are protected in law from crippling bills for historical safety defects.

The provisions do not apply to all leaseholders and apply in different ways to different remedial works.

ss. 117–125 and Sch 8 *Building Safety Act* 2022

9.7 Relevant building

All of the leaseholder protections apply only to leaseholders of a 'relevant building', which is defined as:

> 'a self-contained building, or self-contained part of a building, in England that contains at least two dwellings and—
>
> (a) is at least 11 metres high, or
>
> (b) has at least 5 storeys.'

There are no service charge protections for leaseholders of shorter buildings.

A self-contained building or a self-contained part of a building that is leaseholder-owned is not a relevant building. 'Leaseholder-owned' means where:

- **a** the right of first refusal has been exercised, or

b the right to collective enfranchisement has been exercised, or

c the freehold estate is solely owned by tenants in the building, whether through a corporate structure or otherwise, or

d the building is on commonhold land.

s. 117 *Building Safety Act* 2022

9.8 Relevant defect

A 'relevant defect' is defined as:

'a defect as regards the building that—

(a) arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works [including professional services in connection with such works] and

(b) causes a building safety risk.'

A 'building safety risk' is defined as:

'a risk to the safety of people in or about the building arising from—

(a) the spread of fire, or

(b) the collapse of the building or any part of it.'

'Relevant works' include construction or conversion and refurbishment or remediation works (undertaken or commissioned by or on behalf of a relevant landlord or management company) completed in the 30 years prior to 28 June 2022. They also include any work done after 29 June 2022 to remediate an earlier defect.

s. 120 *Building Safety Act* 2022

9.9 Qualifying lease

The protections only apply to dwellings held under a 'qualifying lease'.

'A lease is a 'qualifying lease' if—

(a) it is a long lease of a single dwelling in a relevant building,

(b) the tenant under the lease is liable to pay a service charge,

(c) the lease was granted before 14 February 2022, and

(d) at the beginning of 14 February 2022 ('the qualifying time')—

(i) the dwelling was a relevant tenant's only or principal home,

(ii) a relevant tenant did not own any other dwelling in the United Kingdom, or

(iii) a relevant tenant owned no more than two dwellings in the United Kingdom apart from their interest under the lease.'

'Relevant tenant' means the tenant or any of the tenants under the lease at 14 February 2022. That includes any joint tenants and tenants in common.

A person owns a dwelling if they have a freehold interest in it or are a tenant of it under a long lease.

The relevant date for determining the qualification status of a lease is 14 February 2022. Any purchaser of a qualifying lease after 14 February 2022 will inherit the protections, or lack of them. See also section 119A of the Act (as recently introduced) in relation to arrangements made in respect of continuity of leases.

s. 119 and Sch 8 *Building Safety Act* 2022

9.10 Leaseholder protections (qualifying leases)

External cladding costs

No cladding remediation costs of a relevant building are recoverable as service charges (or by any other means) from the leaseholders of qualifying leases.

Any costs already paid in respect of a cladding defect before 28 June 2022, such as waking watch costs, will not have to be repaid by the landlord but will count towards the cap on non-cladding costs (see below). No such costs can be recovered as service charges after 28 June 2022.

Non-cladding costs

There is a cascade of liability for non-cladding costs in respect of qualifying leases, referred to as the 'waterfall'.

a If the building owner is the developer, no costs of remediating the relevant defects are recoverable as service charges (or by other means).

b If the building owner is 'associated' with the developer, no costs of remediating the relevant defects are recoverable as service charges (or by other means). ('Associated' is described below.)

c If the immediate landlord (or 'landlord group') meets the 'contribution condition', no costs of remediating the relevant defects are recoverable as service charges (or by other means). This restriction does not apply to registered providers of social housing or LAs. ('Contribution condition' is described below.)

d If the value of the qualifying lease at 14 February 2022 was less than £175,000 (outside London) or £375,000 (Greater London), no costs of remediating the relevant defects are recoverable as service charges (or by other means).

e If none of the conditions (a) to (d) are met, then the total level of costs of remediating the relevant defects recoverable as service charges (or by other means) is capped at:

i £15,000 if the premises are in Greater London

ii £10,000 if the premises are elsewhere in England

iii £50,000 if the value of the lease at 14 February 2022 was more than £1m but no more than £2m

iv £100,000 if the value of the lease at 14 February 2022 exceeded £2m

v where the qualifying lease is a shared ownership lease, and the lessee held a share of less than 100% at 14 February 2022, the maximum amount recoverable from the lessee is the pro rata share of the permitted maximum according to the 'share' held by the lessee (e.g. 25% of £10,000 = £2,500 in respect of a 25% share outside of London). The value of a shared ownership lease for the purposes of (iii) and (iv) is determined as if the lessee held a 100% share at the appropriate time.

The level of costs of remediating the relevant defects recoverable as service charges in any one year is also capped at 10% of the permitted maximum over a ten-year period.

Costs relating to a relevant defect, including costs such as a waking watch or new alarm installation that have already been charged to leaseholders since 28 June 2017 and prior to 28 June 2022 do not have to be refunded but count towards the overall cap for subsequent years.

'Associated party': a company is associated (or connected) with another company if they were the beneficiary of the trust at the qualifying time (14 February 2022), or were a partner in the partnership, a director of the company or were controlling the responsible company at any time in the five years prior to 14 February 2022.

'Landlord contribution condition': landlord or landlord group have a net worth of £2m per relevant building.

Where a landlord is prohibited from recovering all or part of its costs from leaseholders by reason of Schedule 8, the landlord may have recourse to other landlords for a contribution to those costs under The Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022, regulations 3–5.

Sch 8 *Building Safety Act* 2022

The Building Safety (Leaseholder Protections) (England) Regulations 2022

9.11 Landlord certificate and leaseholder certificate

A landlord cannot pass any relevant costs on to leaseholders unless they have completed and provided leaseholders with a landlord certificate stating that they do not meet the developer/associated party/contribution condition requirements.

The landlord **must** complete a landlord certificate within four weeks of a request from a leaseholder, or within four weeks of a leaseholder's notification that their property is to be sold. A landlord who fails to provide a landlord certificate is deemed to meet the contribution condition.

A lease is deemed to be a qualifying lease unless the landlord has requested the leaseholder to complete and send to the landlord a leaseholder certificate. If the leaseholder has not provided a leaseholder certificate (after being requested to do so), the lease is deemed to be a non-qualifying lease and the protections detailed above do not apply.

Sch 8 *Building Safety Act* 2022

The Building Safety (Leaseholder Protections) (England) Regulations 2022

9.12 Disputes

The FTT has jurisdiction to deal with disputes relating to the leaseholder protections. In addition to jurisdiction on the payability of service charges and whether costs have been (or will be) reasonably incurred (section 27A of the Landlord and Tenant Act 1985), interested persons can apply to the FTT for remediation orders or remediation contribution orders.

Interested persons include:

- the Building Safety Regulator
- the LA for the area in which the building is located
- the fire and rescue authority for the area in which the building is located
- the Secretary of State and
- any person with a legal or equitable interest in the building or any part of it. A person with a legal or equitable interest in the building will include, for example, leaseholders of flats in the building, as well as the freeholder and other building owners for the building.

A remediation order may require a relevant landlord to remedy specified relevant defects in a specified relevant building by a specified time.

A remediation contribution order may require a specified body corporate or partnership to make payments to a specified person, for the purpose of meeting costs incurred or to be incurred in remedying relevant defects (or specified relevant defects) relating to the relevant building.

For the purposes of remediation contribution orders, a body corporate or partnership may be specified only if it is:

a a landlord under a lease of the relevant building or any part of it

b a person who was such a landlord at the qualifying time (14 February 2022)

c a developer in relation to the relevant building, or

d a person associated with a person in any of paragraphs (a) to (c).

s. 123 *Building Safety Act* 2022

The Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022

9.13 Code of practice for the remediation of residential buildings

When remediating a residential building, building owners should follow the Code of practice for the remediation of residential buildings. The code is focused on works required to mitigate fire safety risks caused by an external wall system.

10 Repairs and other services

10.1 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, that clearly state what the charges are for.

10.2 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 leaseholders' reports of repair issues, 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

10.3 Planned and cyclical works

You should use scheme inspections to inform a costed programme of planned and cyclical works (a PPM plan) or a stock-wide investment plan. This plan should be used to inform budget calculations and reserve fund contributions (subject to the terms of the lease) 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.

10.4 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 Control of Substances Hazardous to Health Regulations 2002. Landings, corridors and staircases should be kept clear and safe.

Health and Safety at Work etc. Act 1974

The Control of Substances Hazardous to Health Regulations 2002

The Regulatory Reform (Fire Safety) Order 2005

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 arranging insurance cover and considering safety requirements.

10.5 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.

10.6 Central utility supplies

Where there is a master electricity or water meter, and electricity or water is resold to the leaseholders for use in their premises rather than a communal supply, the charge should be reasonable and you **must** have regard to the maximum resale prices and administration costs set by the Gas and Electricity Markets Authority (Ofgem) and the Water Services Regulation Authority (Ofwat).

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

s. 44 *Electricity Act* 1989

s. 150 *Water Industry Act* 1991

The Water Resale Order 2006

10.7 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. Even after giving reasonable notice, you should not assume that you have any right to force entry, and an application to the courts for permission is likely to be required.

10.8 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 the landlord has.

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.

10.9 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 residents' management companies (RMCs) or right to manage (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 or RMC/RTM directors 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 their cost recovery implications.

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 leaseholders' 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)

10.10 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 decisions to date are Daejan Investments Ltd v Benson and others [2013] UKSC 14 and Collingwood v Carillon House Eastbourne Ltd [2021] UKUT 246 (LC).

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))

LEASE has published guidance on its website outlining the consultation process.

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.

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

10.12 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 writing, 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. Where costs are being met (partly or in full) out of reserve funds, consultation **must** still take place in the prescribed manner.

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

10.13 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.

11 Contractors and suppliers

11.1 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 (section 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.

11.2 Selection, approval and tendering

You should undertake due diligence in regard to the competence and organisational capability of services providers before deploying them. 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, public liability and, potentially, professional indemnity and/or insurance backed product guarantees
- 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 Construction (Design and Management) Regulations 2015 (CDM).

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 subject to section 20 consultation, you should obtain competitive prices from a minimum of two selected contractors, one of whom should 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)

11.3 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.

11.4 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 on-site health and safety issues that had been identified before work started. A 'permit to work' methodology should be in place for high-risk works. You should ensure that all contractors 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.

12 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 if they are away from the property when 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.

13 Insurance

13.1 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.

13.2 Financial Conduct Authority

You should be fully aware of the general insurance regulations issued by the 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 (unusually) 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 their 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 Financial Services 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, residents' management companies (RMCs) or right to manage (RTM) companies and their directors or company secretaries who arrange cover to discharge their leasehold obligations are outside the scope of regulation.

13.3 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 insurance 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, pumps, pressure vessels, fixed anchor points 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 and level of cover, and level of premiums, for all insurance types under your control.

13.4 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 the Schedule to 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 LA landlords). You should ensure you have sufficient information to comply or forward the request to the relevant landlord without delay.

s. 30A and Sch *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 cost 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.

13.5 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 underinsurance. 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 current edition of RICS' Reinstatement cost assessment of buildings, 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.

13.6 Remuneration, including commissions

Insurance fees (including commissions) and all other sources of income (including share of risk schemes such as captives and related income or other benefits) received by the landlord or the managing agent, arising out of the placing or management of insurance, should be declared annually to leaseholders, and should be transparent and proportionate to reflect the value for money of the services carried out/undertaken/being provided.

In accordance with FCA rules, any commissions (or other remuneration) **must** be in line with a fair value assessment that demonstrates the price the leaseholder (as the ultimate consumer) is paying for the insurance product (including commissions) is reasonable compared to the overall benefits they receive.

Managing agents should also ensure they comply with the fee/commission disclosure requirements defined by their route to regulation.

Managing agents should also obtain their client's informed consent to retain any commissions or other remuneration received (see section 6.7). This should be noted in the annual notification to leaseholders.

The government has signalled its intention to legislate to prohibit managing agents and freeholders from including commission payments on the purchase and/or management of buildings insurance within the service charge. More details will be set out in secondary legislation, and landlords and managing agents should keep abreast of developments in the proposed legislation.

In the meantime, a number of the most prominent insurance brokers that provide buildings insurance for multi-occupancy buildings have signed a voluntary pledge to improve disclosure for buildings insurance to residential leaseholders in buildings over five storeys or over 11m in height with fire safety issues.

The insurance brokers have each committed to:

- stopping the practice of sharing commissions with those parties who place/arrange buildings insurance. Those parties include managing agents, landlords and freeholders
- having a cap on any retained commission of no more than 15% of the total premium (for all brokerage work including any undertaken by parties on behalf of the broker) on buildings which have or have not yet been remediated, and

- disclosing their commissions to leaseholders in accordance with FCA regulations (as permitted to do so) if requested and work with third parties to deliver transparency on fees to leaseholders.

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

13.7 Claims

Sufficient details of the buildings 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.

13.8 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, 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.

13.9 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

- employers' 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 person, and
- cyber cover.

14 Provision of information

14.1 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, and certainly within prescribed statutory limits where applicable. This does not apply to commercially sensitive documents or documents protected by the Data Protection Act 2018. You should be aware that the Data Protection Act 2018 and General Data Protection Regulation (GDPR) do not prohibit the disclosure of information in all circumstances. In particular, there are exceptions in litigation.

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 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.

Data Protection Act 2018

General Data Protection Regulation (GDPR)

14.2 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

14.3 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 to leaseholders following a written request or declared voluntarily.

14.4 Landlord's change of address

Landlords should inform the managing agent or, in the event of there being no managing agent, the leaseholders of any change of address, especially if they are going abroad. Managing agents **must** be aware of the provision of the Finance Act 1995 and Finance Act 2007 and the Non-resident Landlords 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 Act 1995

Finance Act 2007

14.5 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.

ss. 3 and 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.

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

14.6 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 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.

14.7 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.

14.8 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)

s. 166 and Sch 11 *Commonhold and Leasehold Reform Act* 2002

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

14.9 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 14.10).

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.

14.10 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 property enquiry forms known as LPE1, LPE2 and FME1 (see the 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 requester at the earliest opportunity. The level of fees should be reasonable and reflect the level of work carried out.

15 Residents'/tenants' associations

15.1 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. Managers choosing to engage with an unrecognised association may find it 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, and request to be informed when officers of the association change.

s.29 *Landlord and Tenant Act* 1985

15.2 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 (RTA) 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 an RTA. 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 seven days and **must** provide a substantive response within four 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 seven 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 seven days following receipt.

Where an RTA 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

15.3 Appointment of managing agents

The landlord **must** provide to an RTA, 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 an RTA, 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 9.10). 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)

15.4 Accounts, receipts and other documents

If requested, you **must** send a summary of relevant costs to the secretary of the RTA and provide an opportunity for the secretary of an RTA 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

RTAs 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 Sch 4 *Housing Act* 1996

15.5 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

15.6 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 Sch 10 (8 and 9) *Commonhold and Leasehold Reform Act* 2002)

15.7 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 9.8–9.11).

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)

16 Right to manage

16.1 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 RTM 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 RTM (Model Articles) (England) Regulations 2009 (SI 2009/2767)

The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 (SI 2010/825)

The Leasehold and Freehold Reform Act 2024 (Commencement No. 3) Regulations 2025

16.2 Rights

You should be aware of the leaseholders' rights in respect of the RTM 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 that you should ensure you are fully aware of.

Appendix A: Lease variations

A1 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.

Pt IV *Landlord and Tenant Act* 1987 (as amended by the *Commonhold and Leasehold Reform Act* 2002)

A2 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:

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 B: Statutory rights of leaseholders

B1 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.

B2 Names and addresses

The landlord **must** notify the leaseholder of an address in England or 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

B3 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 section 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

B4 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 (such as receipts).

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)

B5 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.

Sch 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)

B6 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 9.8–9.11).

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 they 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) (No. 2) (England) Regulations 2004 (SI 2004/2939)

B7 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)–(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 s. 157 and Sch 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)

B8 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.

B9 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.

B10 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 section 16).

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)

The Leasehold and Freehold Reform Act 2024 (Commencement No. 3) Regulations 2025

B11 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

B12 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

B13 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)

B14 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.

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

B15 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.

Sch 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)

B16 Additional advice

Further guidance is available from the:

- Leasehold Advisory Service (LEASE)
- Ministry of Housing, Communities and Local Government.

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

Item	From whom	When	Comments
Information sheet about leasehold	Estate agent	When interest is first shown in purchasing the flat	Also available from LEASE
Pre-contract enquiries	The solicitor/conveyancing practitioner will request information from the vendor's solicitor/ managing agent (see Glossary, LPE1 form)	During the conveyancing stage of the purchase	There is likely to be a separate charge made for this information. See section 14.10
A copy of the lease	Solicitor/conveyancing practitioner	It should form part of the pack provided during the conveyancing process	If a copy of the lease is not provided, one should be requested as it sets out the obligations of the parties. It is the contract between the leaseholder and the landlord
Welcome letter	The managing agent of the block, or perhaps the landlord, depending on the size and ownership of the block	When purchase has been completed and/or the leaseholder has moved into the flat	It is likely to include information about how to contact the managing agent and/or landlord, including details of any out-of-hours emergency service provided

Item	From whom	When	Comments
Details of the services provided by the managing agent and the fees they charge	Managing agent (if appointed)	Upon request	Depending on the terms of the lease, the 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 the 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 three years. For larger blocks/estates, the period covered is likely to be longer. See section 10.3

Item	From whom	When	Comments
Invoice for service charges	Managing agent, or landlord if no managing agent appointed	This will depend on the terms of the 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 the lease but most common are yearly or half-yearly	See section 5.15
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 the lease. Depending on the size of the block and the terms of the 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

Item	From whom	When	Comments
Details of any additional income/ commission/ benefits the landlord or managing agent has received during the year arising out of management of the block	Landlord and/or 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 fees or commissions arising from the provision of services
Section 20 consultation notices for major works and/or long-term agreements	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 10.10

Appendix D: Additional information leaseholders can expect to receive during the ownership of a flat if they live in a higher-risk building

Item	From whom	When	Comments
A summary of the most recent fire risk assessment for the part of the building the resident lives in (and other parts which the accountable person is responsible for)	Accountable person (AP) for the part of the building in which the leaseholder lives	As soon as reasonably practicable after the information or document has been created or updated As soon as reasonably practicable after the AP becomes aware that the resident has moved in	
A summary of the safety case report	AP	As soon as reasonably practicable after the information or document has been created or updated As soon as reasonably practicable after the AP becomes aware that the resident has moved in	

Item	From whom	When	Comments
Information on how residents and owners of residential units can prevent and reduce the severity of incidents that happen in their residential unit	AP	As soon as reasonably practicable after the information or document has been created or updated As soon as reasonably practicable after the AP becomes aware that the resident has moved in	
Information on how to report a building safety risk relating to their building, such as by using the complaints system	AP	As soon as reasonably practicable after the information or document has been created or updated As soon as reasonably practicable after the AP becomes aware that the resident has moved in	
The location of any fire escape routes, fire doors and other aids such as fire and smoke alarms, emergency lighting and fire alarm activation devices	AP	As soon as reasonably practicable after the information or document has been created or updated As soon as reasonably practicable after the AP becomes aware that the resident has moved in	

Item	From whom	When	Comments
A list of the fire and smoke control equipment for that building	AP	As soon as reasonably practicable after the information or document has been created or updated As soon as reasonably practicable after the AP becomes aware that the resident has moved in	
The location of the fire and smoke control equipment	AP	As soon as reasonably practicable after the information or document has been created or updated As soon as reasonably practicable after the AP becomes aware that the resident has moved in	
Instructions for use of the fire and smoke control equipment by residents, where it is intended for use by residents	AP	As soon as reasonably practicable after the information or document has been created or updated As soon as reasonably practicable after the AP becomes aware that the resident has moved in	

Item	From whom	When	Comments
Evacuation information for the building	AP	As soon as reasonably practicable after the information or document has been created or updated As soon as reasonably practicable after the AP becomes aware that the resident has moved in	
A summary explaining the role, duties and contact details of each relevant person in relation to the higher-risk building	Principal AP	As soon as reasonably practicable after the information or document has been created or updated As soon as reasonably practicable after the principal AP becomes aware that the resident has moved in	
Most up-to-date version of the resident engagement strategy	Principal AP	As soon as reasonably practicable after the information or document has been created or updated As soon as reasonably practicable after the principal AP becomes aware that the resident has moved in	

Item	From whom	When	Comments
Information about the complaints system	Principal AP	As soon as reasonably practicable after the information or document has been created or updated As soon as reasonably practicable after the principal AP becomes aware that the resident has moved in	
A list of the information and documents that principal APs and APs must provide to residents	Principal AP	As soon as reasonably practicable after the information or document has been created or updated As soon as reasonably practicable after the principal AP becomes aware that the resident has moved in	
Details of the information and documents a resident or an owner of a residential unit can request, including how they can make a request and why any request is declined	Principal AP	As soon as reasonably practicable after the information or document has been created or updated As soon as reasonably practicable after the principal AP becomes aware that the resident has moved in	

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