

The Property Institute



Consumer Charter & Standards

Edition 2B



Introduction

From January 2015 all The Property Institute (TPI) members must operate according to the principles contained in the Consumer Charter and meet the requirements of the Standards. The aim being to raise standards of residential leasehold management through independent regulation, a Consumer Charter and Standards that are specific to managing agents.

Together with the requirements set out in TPI's Articles of Association and Bye-Laws, these will form the rules of TPI membership. Corporate conduct of TPI members is set out in the Bye-Laws, relevant aspects of which are available separately.

The Consumer Charter and Standards are a milestone for consumer protection in the residential leasehold sector. Membership of TPI is voluntary so managing agents who join TPI are showing a clear commitment to providing the best customer service and operating to the highest possible standards.

This document sets out the Consumer Charter and Standards and is intended to be read by landlords, leaseholders, occupiers and managing agents of residential leasehold property.

The Standards are effective from 1 January 2015.

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Abbreviations

The following abbreviations are used where statutory references are given throughout the Standards:

S/s section
Ss/ss sections

Application

Status

Whilst compliance with the Consumer Charter and Standards is mandatory for TPI members, a breach of the Standards is not a criminal offence nor does it create any civil liability. However, the contents of the Standards may be used in evidence and taken into account, if relevant, in disciplinary matters, court and tribunal proceedings.

Application

These Standards have been written to apply to residential long leasehold properties (a lease for a term in excess of 21 years when originally granted) in England and Wales where a service charge, which varies according to the expenditure, is payable.

Landlord and Tenant Legislation does not apply to freehold houses on managed estates and therefore the Standards are not applicable to these properties. However, the principles of the Consumer Charter do still apply.

All the requirements in the Charter and the Standards are addressed to managing agents, who have responsibility for compliance. They are advised to take account of the following points:

- Factors such as the age and location of the property, the terms of occupation, the level of payment for services and the management fee may have an impact on the application of the Standards;
- In the Standards, whenever a statutory reference is given, there is a legal obligation to act in accordance with the statute;
- Subject to the requirements of legislation, the client will usually have the ultimate authority over the managing agent. Where instructions from the client would put the managing agent in contravention of the law, this should be brought to the immediate attention of the client, advising the client of that risk and the potential penalties of non-compliance;
- If the client persists in those instructions the managing agent should consider whether to decline to act further for the client;
- Managing agents are advised to study the definitions in Part 1 of this document. In particular they should observe the following points: “should” is used to indicate an obligation to adhere to the Standard unless there is a justifiable reason not to comply that the managing agent must be able to demonstrate; “must” is used to indicate an obligation to adhere to the standard in all circumstances. In some instances, breach of the latter could lead to civil and/or criminal action.

When taking management decisions within the framework of the Consumer Charter and Standards, consideration should also be given to: statutory requirements; terms of the lease; cost effectiveness; convenience; efficiency; reasonableness and the quality of service.

Special Provisions for Housing Associations

Registered social providers that manage private residential leasehold property not only have to have regard to the Standards, but also the Regulatory Framework of the Regulation Committee of the Homes and Communities Agency. The Regulatory Framework contains the fundamental obligations of housing associations which are registered social providers in meeting the regulatory requirements.

Managing agents that are registered social providers are not required by statute to hold service charge money in trust if they are the landlord of an estate, but they must provide the same degree of protection as for private estates by following Standards 4.1 and 4.2. If a registered social provider is acting as managing agent for a private landlord, then it must comply with 4.1 and 4.2.

Consumer Charter

The TPI Consumer Charter covers the work of residential managing agents and requires the highest standards of client and customer service.

TPI members will adopt the Charter and must:

- I.** Be honest, fair, open and transparent and provide a timely and professional service with access to the information needed;
- II.** Act with skill, care, diligence and without discrimination;
- III.** Make sure that all their staff are appropriately trained and knowledgeable;
- IV.** Have written terms of business;
- V.** Provide their Complaints Handling Procedure specifying the Ombudsman Scheme to which they subscribe;
- VI.** Comply with all relevant legal requirements and relevant codes of practice;
- VII.** Avoid conflicts of interest;
- VIII.** Maintain clear, accurate and up-to-date financial records;
- IX.** Ensure that any client money held is held separately from the managing agent's other monies;
- X.** Hold appropriate Professional Indemnity Insurance.

Standards

1.0 Definitions applicable in the Standards

Throughout the Standards reference to the masculine includes the feminine and reference to the singular includes the plural and vice versa.

Administration Charges

An amount payable by a Leaseholder for a service under a lease in addition to any Ground Rent or Service Charge.

Annual Declaration

An annual declaration In Writing made with the Service Charge Accounts.

Associated Company

A person, corporation or organisation with an association to the Client and/or Managing Agent. This can include but is not limited to: business associates; the directors or controllers of a limited company; partners in a partnership (and the partnership itself) and the officers or managers of an unincorporated association; as well as in-house service providers. The term 'associate' includes a sibling, spouse, civil partner, in-law, aunt, uncle, cousin, niece, nephew, parent, child, grandparent and grandchild.

Client

A person, organisation or company that has instructed a Managing Agent to act on its behalf.

Client Bank Account

A bank account used for holding Client Money separately from the Managing Agent's own money which includes words in its title to clearly indicate that it is 'Client Money' and is held at a recognised bank (an institution authorised by the Financial Services and Market Act 2000) or a deposit account of a building society (within the meaning of the Building Societies Act 1986) by way of statutory trusts in accounts established in accordance with S.42 Landlord and Tenant Act 1987.

See: S.42 Landlord and Tenant Act 1987

See: S.58 Landlord and Tenant Act 1987 (exempt Landlords)

Client Instruction

Instructions received by a Managing Agent from a Client and recorded In Writing.

Client Money

All money held or received by a Managing Agent over which they have control but which does not belong to their organisation. Client Money must be held in a Client Bank Account.

Ground Rent

A rent payable under the Lease.

In Writing

Typed or handwritten record, notice, email, fax or in Braille.

Landlord

A Landlord includes any person who has a right to enforce payment of a charge. This will include any person, corporate or Limited Liability Partnership that has a right to collect monies under a long lease including Ground Rent and Service Charge Monies. This will also include RMC and RTM companies.

See: S.30 Landlord and Tenant Act 1985

Lease

The legal contract between the Landlord and the Leaseholder by which the Leaseholder has exclusive possession of a property (flat or house) setting out the terms and conditions that both parties must comply with, including any deed of variation.

Leaseholder

The person who, or company or Limited Liability Partnership that, owns the leasehold interest and is liable to pay the Service Charge and/or Ground Rent under the terms of the Lease. Sometimes referred to in law as a tenant.

Management Fee

The remuneration of the Managing Agent for managing the Services comprised in the Management Agreement or otherwise instructed by the Client.

Managing Agent

A person or organisation that acts on behalf of the instructing party within terms of reference and/or instructions from the instructing party, subject to any legal restrictions.

Management Agreement

An agreement In Writing between the Managing Agent and the Client containing a statement of the duties and Services to be provided, the Management Fee to be charged and how the Managing Agent will routinely monitor the quality and cost effectiveness of all Services.

Must

An obligation to adhere to the Standard.

Property Chamber

A first-tier tribunal to which residential Leaseholders and Landlords may take certain disputes for a determination.

Proportionate Charge

A reasonable charge, fee or commission which may include a profit.

Reserve Fund

A fund that builds up over the years to pay for repairs and other work to a property. Sometimes referred to as a sinking or cyclical fund.

Residents' Association

A group of Leaseholders with or without a formal constitution or corporate status. It is also possible to have a Residents' Association 'recognised' by law and with a formal constitution. This is known as a 'Recognised Tenants' Association' which applies where a Residents' Association successfully gains formal recognition from the Landlord or the Property Chamber. Formal recognition confers extra rights.

Residents' Management Company (RMC)

An organisation which may be referred to in the Lease, which is responsible for the provision of Services, but which does not necessarily have any legal interest in the property.

Right to Manage Company (RTM)

A specific company created by the Commonhold and Leasehold Reform Act 2002 enabling qualifying Leaseholders of the building to take on the management without proving fault. RTM is particular to leasehold property.

Section 20B Notice

A time limited notification In Writing under S.20B Landlord and Tenant Act 1985 that costs have been incurred and the Leaseholder is required under the terms of the Lease to contribute to them by the payment of a Service Charge.

Service Charge/Variable Service Charge

An amount payable by a Leaseholder as part of, or in addition to, rent in respect of services, repairs, maintenance, insurance, improvements or costs of management. Where the amount may vary according to the costs incurred or to be incurred this is called a 'Variable Service Charge'. If the Service Charge is fixed under the terms of the Lease, this is referred to as a 'fixed service charge'.

The service charge provisions of the Landlord and Tenant Act 1985 and 1987 do not apply to fixed service charges.

For the purposes of S.42 Landlord and Tenant Act 1987 the term 'service charge' does not include service charges payable under the terms of a tenancy which is regulated by the Rent Act 1977, unless the rent is registered as a variable rent on the basis that service charges are payable which vary according to the costs payable from time to time.

Service Charge Accounts

The statement or statements prepared to account for Service Charges.

Service Charge Monies

The money paid by Leaseholders in respect of Service Charges.

Services

Works (such as maintenance and repair of the fabric and structure), insurance and true services such as the provision of lighting, cleaning, security, utilities, etc.

Should

An obligation to adhere to the Standard unless there is a justifiable reason not to comply that the Managing Agent must be able to demonstrate.

Statutory Instrument (SI)

Regulations or an Order made by the Secretary of State to supplement primary legislation and which must be complied with.

Test of Reasonableness

To be fair and reasonable having regard to the circumstances.

See: Ss. 19 and 27A Landlord and Tenant Act 1985 (as inserted by S.155(1) Commonhold and Leasehold Reform Act 2002)

Void Service Charge

The Landlord's irrecoverable Service Charge expenditure where there is no lease of a unit.

2.0 Instructing a Managing Agent

2.1 New Business & Tendering

When seeking new business the Managing Agent:

- a) Must not seek business by methods involving the use of any misleading or inaccurate statements;
- b) Should ask about any on-going disputes, request relevant documentation and agree In Writing who has responsibility for resolution;
- c) Must understand and fulfil the obligations to Clients and potential Clients contained within the Provision of Services Regulations 2009;
- d) Must make it clear what services they are proposing to provide and at what cost, as well as the extent and limit of any additional services available;
- e) Must not purposely underestimate costs or provide misleading estimates of future Service Charge contributions required;
- f) Should quote their Management Fee as a fixed fee, unless the Lease specifies otherwise;
- g) Should pre-agree charges;
- h) Must only incorporate an RTM on the instruction of a Leaseholder In Writing and must serve notices inviting participation within a reasonable time;
- i) Should not act as a director of a RMC or RTM without an instruction In Writing from another director of that company or in the case of an RMC, from a developer Client.

2.2 Contract & Charges

When agreeing a contract and charges for management services the Managing Agent:

- a) Should enter into a Management Agreement signed by all parties to that agreement;
- b) Should agree and clearly detail the length of appointment prior to commencement together with any process for renewal, the Management Fee, review of the Management Fee (if the Management Fee is agreed to be subject to indexation, the index to which it is linked should be agreed in advance In Writing) and the provisions for termination and handover;
- c) Must clearly state the period of notice or penalty charges for early termination in the termination provision;
- d) Must ensure that every Leaseholder is provided with full contact details of the Managing Agent;
- e) Should subsequently make available a basic summary of their contractual terms and duties to Leaseholders on request.
- f) Must ensure that the written management contract complies with the Supply of Goods and Services Act 1982 (as amended) and the Provision of Services Regulations 2009;

See: Ss.13, 14 and 15 Supply of Goods and Services Act 1982

See: Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083). (Amended by the Unfair Terms in Consumer Contracts (Amendment) Regulations (SI 2001/1186))

- g) Must ensure that a charge made for any other service not covered by the Management Fee is a Proportionate Charge.

2.3 Annual Declaration

The Annual Declaration is defined as “An annual declaration In Writing made with the Service Charge Accounts.”

The Managing Agent:

- a) Must make an Annual Declaration to the Client and to Leaseholders, identifying all sources of income and related income or other benefits it has received in relation to the Service Charge including insurance fees, interest, Associated Companies and in-house service providers;
- b) It is best practice to make an Annual Declaration to the Client and to Leaseholders, identifying all amounts of income and related income or other benefits in relation to the Service Charge including insurance fees, interest, Associated Companies and in-house service providers.

2.4 New Developments

When dealing with new developments the Managing Agent:

- a) Must not purposely underestimate or provide misleading estimates of future Service Charge contributions;
- b) Should agree arrangements for Void Service Charge In Writing with the developer unless these are specified in the Lease so as to prevent the risk of Leaseholders paying a higher Service Charge than they would if there was no Void Service Charge payable.

3.0 Client Matters

3.1 Manager by Order of the Property Chamber

Prior to any appointment, the proposed manager Must make adequate enquiries, prepare the draft order, and ensure that he or she is competent and has the resources to carry out the duties and functions required and the capability of resolving the problems and deficiencies of the present management.

When acting as an appointee of the Property Chamber the manager Must comply with the terms of any order issued by the Property Chamber.

See: Ss.21–24 Landlord and Tenant Act 1987 (as amended by the Commonhold and Leasehold Reform Act 2002)

3.2 Residents' Association

Where there is no RMC or RTM in existence, Managing Agents when requested, Should facilitate the formation of and co-operate with a properly constituted Residents' Association.

See: S.29 Landlord and Tenant Act 1985

3.2.1 Granting Voluntary Recognition

Subject to Client instruction, Managing Agents Should have a procedure by which to give voluntary recognition to Residents' Associations that can demonstrate that they meet the requirements for statutory recognition, without recourse to the Property Chamber.

The procedure adopted for voluntary recognition Must be set out In Writing when recognition is first given and procedures put in place to ensure that these criteria are continually met to ensure that the Residents' Association continues to act in the interests of the majority of Leaseholders in a fair and democratic manner.

3.2.2 Recognised Residents' Association

Where there is a recognised Residents' Association (including voluntary recognition) the Managing Agent:

- a) if requested to do so, Must send a summary of Service Charges to the secretary and provide an opportunity for the secretary to inspect the accounts, receipts and other documents supporting the Service Charge;

See: Ss.21 and 22 Landlord and Tenant Act 1985

- b) Must comply with their right to appoint a qualified surveyor and/or qualified accountant to advise on the Service Charge;

See: S.84 and schedule 4 Housing Act 1996

- c) Must comply with their right to a Management Audit;

See S.76 Leasehold Reform, Housing and Urban Development Act 1993

- d) Should comply with their right to request details relating to the appointment of a Managing Agent;

See: S.30B Landlord and Tenant Act 1985 (as inserted by s44 – Landlord and Tenant Act 1987)

- e) if requested to do so, Must provide the secretary with a written summary of the insurance cover within a period of 21 days;

See: Schedule – Landlord and Tenant Act 1985 (as amended by schedule 10 (8 and 9) – Commonhold and Leasehold Reform Act 2002)

- f) if requested to do so, provide for inspection of the insurance policy together with any supporting documents giving evidence of payment of premiums due in the current period and that immediately preceding it;

*See: S.30A Landlord and Tenant Act 1985 (as inserted by S.43(1) Landlord and Tenant Act 1987 and modified by paragraph 5 of schedule 7 Commonhold and Leasehold Reform Act 2002)
See: Schedule 1 Landlord and Tenant Act 1985 (substituted by schedule 10 Commonhold and Leasehold Reform Act 2002)*

- g) Must comply with their right to nominate a contractor for major works and long term agreements following service of the Notice of Intention;

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

- h) Should arrange with the chairman or other responsible officer to nominate a substitute officer to receive notices on their behalf if there is no secretary.

3.3 Assignments, Alterations, Improvements & Other Permissions

When dealing with assignments, alterations, improvements or other permissions required from a Landlord the Managing Agent:

- a) Should have procedures in place for responding to requests from Leaseholders for permissions required under the Lease;
- b) Should ensure the Lease terms are complied with and avoid imposing any restrictions that are not provided for within the Lease;
- c) Must seek Client Instructions in a timely manner if the Management Agreement does not contain express authority to deal with a request directly;
- d) Should ensure that any permission is not unreasonably withheld.

3.4 Breach of Covenant, Enforcement & Forfeiture Proceedings

Prior to and when dealing with any breach of covenant, enforcement or forfeiture proceedings the Managing Agent:

- a) Should take reasonable steps to monitor and record non-compliance with Lease covenants on an on-going basis;
- b) Should take reasonable steps to check the reliability of the relevant facts when dealing with reports of non-compliance with Lease covenants from third parties;
- c) Should bring any material breach of covenant to the Client's attention without delay, and seek Client Instructions as to any enforcement action required together with confirmation that the Client will be responsible for the costs unless these are recovered from the Leaseholder(s);
- d) Must have procedures in place, as agreed with their Client, to remedy any breaches of covenant in a timely manner;
- e) Must be aware of the doctrine of waiver and ensure that they do not compromise their Client's right to take forfeiture action.

3.5 Lease Extension & Enfranchisement

When dealing with Lease extensions and enfranchisement the Managing Agent Must:

- a) have appropriate procedures in place for dealing with any notices in a timely manner;
- b) not act outside their area of professional competence and Must hold adequate professional indemnity insurance.

3.6 Lease Variations

When dealing with variations to Leases the Managing Agent Must:

- a) have appropriate instructions In Writing from the Client to act;
- b) not act outside their area of professional competence and must hold adequate Professional Indemnity Insurance.

See: Ss.35–40 Landlord and Tenant Act 1987

4.0 Financial Matters

4.1 Bank Accounts

If holding Client Money, the Managing Agent Must open one or more Client Bank Account.

See: The Service Charge Contributions (Authorised Investments) Order 1988 (SI 1988/1284. Amended by the Financial Services and Market Act 2000 (Consequential Amendments and Repeals Order 2001 (SI 2001/3649))

On opening a Client Bank Account the Managing Agent:

- a) Must give or receive notice In Writing to or from the bank or building society concerned:
 - i) that all money to the credit of that account is Client Money and that 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 on any other of the Managing Agent's accounts;
 - ii) that any interest payable in respect of sums credited to the account should be credited to that account;
 - iii) that they request the bank or building society to acknowledge In Writing that it accepts such notice.
- b) Should inform all Leaseholders:
 - i) of the name and address of the institution where their money is held;
 - ii) of the account name;
 - iii) whether or not it is an interest bearing account and if it is, the withdrawal notice period and any restrictions on withdrawal. If not immediately accessible, such restrictions will require the Client's approval In Writing.
- c) Must keep properly written up general records to show all dealings with Client Money received, held or paid and to show all dealings through Client Bank Accounts on behalf of that Client and enable the current balance of that Client Bank Account to be shown. Records Should be retained for at least 12 years from the date of the last entry;
- d) Should carry out reconciliations of their cash books with the Client Bank Account statements and with the Client ledger balances on a monthly basis within four weeks of that month end and keep a record of this. Discrepancies Must be investigated and shortfalls on Client Bank Accounts Must be made good within a reasonable period of time;
- e) Should send a written account to the Client (unless requested otherwise) for all Client's Money held, paid or received, (whether or not there is any payment due to the Client) at appropriate intervals agreed with the Client but Must not be less than once a year;
- f) Should pay any Client's Money received into a Client Bank Account either on the same working day or the next working day after receipt;
- g) Must pay any cheque or banker's draft which includes any element of Client's Money into a Client Bank Account before withdrawing any monies which are due to the Managing Agent from that Client;
- h) Must not endorse cheques;
- i) Should never overdraw a Client Bank Account;

- j) Must never use one trust fund for the benefit of another trust fund;
- k) Must not withdraw money from a Client Bank Account unless:
 - i) it is the Managing Agent's own money paid into a Client Bank Account for the purpose of opening or maintaining the account;
 - ii) it is for payment to a Client (this must be the designated Client if a specific Client Bank Account is held for that Client);
 - iii) it is for duly authorised payment on behalf of a Client to a third party;
 - iv) it is for payment of the Managing Agent's fees and/or disbursements provided these have been approved by the Client;
 - v) it was paid in by mistake.

4.2 Service Charge Monies

On opening a Client Bank Account the Managing Agent:

- a) Must hold this money, and any interest accruing, by way of trust funds in a Client Bank Account;
- b) Should only use the monies to meet the expense for which the money has been collected within the overall context of the annual budget;
- c) Should obtain and retain documentation with sufficient information for authorisation of payment.

4.2.1 Budgets & Estimates

When dealing with Service Charge budgets and estimates the Managing Agent:

- a) Should only seek to recover estimated or interim Service Charges if the Lease permits and in the manner permitted by the Lease;
- b) Must be able to justify that Service Charges are reasonable;
See: Ss. 19 and 27A Landlord and Tenant Act 1985 (as inserted by S.155(1) Commonhold and Leasehold Reform Act 2002)
- c) Must not purposely underestimate or overestimate costs or provide Leaseholders with misleading estimates of future contributions required having regard to the age and condition of the building and plant and the Services being considered;
- d) Must seek approval from the Client prior to demanding any Service Charges unless specific authority has been delegated to the Managing Agent for Service Charge budgets;
- e) Must ensure that the budget has sufficient detail of the charges being levied to justify the level of estimated expenditure;
- f) Should support initial Service Charge demands with a copy of the budget approved by the client;
- g) Should notify Leaseholders of significant departures from the budget and Must be willing and able to explain the reasons for them on request.

4.2.2 Reserve Funds

When dealing with Reserve Funds the Managing Agent:

- a) Must only collect these if permitted by the Lease;

- b) Must only collect and spend Reserve Funds on those items prescribed in the Lease. If Leaseholders are contributing to different costs, the funds should be differentiated by way of different Service Charge schedules as prescribed by the Lease;
- c) Must be able to justify that contributions satisfy the Test of Reasonableness;
See: Ss. 19 and 27A Landlord and Tenant Act 1985 (as inserted by S.155(1) Commonhold and Leasehold Reform Act 2002)
- d) Must ensure that Reserve Funds are held as trust funds;
See: S.42 Landlord and Tenant Act 1987
- e) Must hold the funds in an interest bearing account in accordance with current regulations and interest must be credited to the trust account;
- f) Should review the level of contributions annually as part of the budget process;
- g) Must not use Reserve Funds to finance year-end deficits on the Service Charge account if the Lease does not permit borrowing from the Reserve Fund;
- h) Must not distribute Reserve Funds to a Leaseholder at the termination or assignment of a Lease, subject to any express terms of the Lease relating to distribution.

4.2.3 Service Charge Collection

When sending demands for Service Charges the Managing Agent Must:

- a) send demands with a summary of tenants' rights and obligations before they become payable and in accordance with English or Welsh regulations as appropriate;
See: S.21B Landlord and Tenant Act 1985
- b) ensure that demands are clear and legible and comply with the terms of the Lease.

4.2.4 End of Year Service Charge Accounts

Where the Lease sets out the way in which Service Charges are to be accounted for, then the requirements of the Lease Must be followed. Managing Agents Should also follow the guidance contained in the publication Residential Service Charge Accounts Technical Release 03/11 issued by the professional accountancy bodies jointly with the Association of Residential Managing Agents and the Royal Institution of Chartered Surveyors.

Managing Agents Must always prepare documentation to enable the production of Service Charge Accounts.

Service Charge Accounts Should be distributed within 18 months of the date expenditure exceeded the budget or any tighter timescales that are required by the Lease and copies made available to all Leaseholders paying Variable Service Charges.

If Service Charge Accounts are not distributed within 18 months of the date expenditure exceeded the budget, a Section 20B Notice Should be served on an interim basis and any such notice Must be followed by Service Charge Accounts within a reasonable time.

See: S.20B Landlord and Tenant Act 1985

When preparing Service Charge Accounts the Managing Agent:

- a) Must ensure these, and any supporting documents, are transparent in that they reflect all the expenditure in respect of the accounting period whether paid or accrued;

- b) Must not distribute interest earned to the contributing Leaseholders but show this as a credit in the Service Charge Accounts and this Should be retained within the fund and used to defray Service Charge expenditure;
- c) Must follow the requirements of the Lease where the Lease sets out the way in which surplus and/or deficits shall be accounted for. Where the Lease does not, Managing Agents Must follow S.19(2).

See: S.19(2) Landlord and Tenant Act 1985

4.2.5 Statutory Information

When requested In Writing by a Leaseholder the Managing Agent Must provide a summary In Writing of the Service Charge costs from the Landlord.

See: S.21 Landlord and Tenant Act 1985

When requested In Writing by a Leaseholder the Managing Agent Must provide for the inspection of the accounts, receipts and other documents supporting the summary of relevant costs as a follow-up, to provide more detail on the summary.

See: S.22 Landlord and Tenant Act 1985

4.3 Ground Rent & Other Income

4.3.1 Ground Rent

Managing Agents Must only seek to recover Ground Rents which are provided for within the Lease and where instructed to do so by the Client and in accordance with the statutory requirements using the prescribed form.

See: S.166 Commonhold and Leasehold Reform Act 2002

See: Landlord and Tenant (Notice of Rent) (England) Regulations 2004 (SI 2004/3096)

4.3.2 Other Income

If funds are collected through the Articles of Association of an RMC or RTM and held by the Managing Agent, they Must be treated as Client Money.

4.4 Administration Charges

The Managing Agent Must:

- a) agree with the Client any fees payable outside the Management Agreement for services for which Administration Charges may be made and retained by the Managing Agent in addition to those set out in the Lease or by statute;
- b) only seek to recover Administration Charges that are provided for within the Lease, by statute, under the Management Agreement or by separate instruction;
- c) ensure that any payment of Administration Charges due to the Client or another person shall be paid without unreasonable delay with a statement of account if appropriate;
- d) ensure that only a Proportionate Charge is made for Administration Charges if raised;
- e) ensure that demands for Administration Charges are accompanied by a summary of tenants' rights and obligations before they become payable in accordance with the English or Welsh regulations as appropriate.

See: Schedule 11 Commonhold and Leasehold Reform Act 2002

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

4.5 Insurance

Managing Agents Must not advise, arrange or administer insurance or handle claims unless they are either licensed under the RICS Designated Professional Body Scheme or directly authorised to do so under the rules of the Financial Conduct Authority (this requirement does not apply to registered social landlords acting as a Managing Agent, an exempt professional firm or a Managing Agent acting in the capacity of company secretary).

When dealing with insurance, the Managing Agent:

- a) Should ensure the appropriate cover is in place and that it meets the requirements set out in the Lease;
- b) At renewal, Should ensure the extent of cover, sum insured and the level of premiums are reviewed;
- c) Should ensure that any notification of risk improvements received following an insurer's inception survey or other survey are completed in a timely manner;
- d) Must be able to justify that insurance costs satisfy the Test of Reasonableness;
See: Ss. 19 and 27A Landlord and Tenant Act 1985 (as inserted by S.155(1) Commonhold and Leasehold Reform Act 2002)
- e) Should treat any excess as instructed by the Client unless otherwise prescribed in the Lease;
- f) Must not receive any income from any insurance premiums they, or any Associated Company, have dealt with other than to receive a Proportionate Charge for services provided;
- g) Must only request a payment for handling insurance activities if:
 - i) this is a Proportionate Charge;
 - ii) this is disclosed and agreed In Writing with the Client;
 - iii) the source is included within the Annual Declaration.
- h) Must disclose In Writing the amount of the Proportionate Charge if requested by a Leaseholder.

4.6 Arrears & Recovery

Managing Agents Must have a written procedure for monitoring arrears and debt recovery which is clearly, consistently and reasonably applied and, if necessary, tailored for individual Clients.

Clients Must be made aware of those procedures, how far they will go and at what stage the Client may have to pay or indemnify the Managing Agent if further action is taken. When dealing with arrears the Managing Agent:

- a) Must inform the Client promptly In Writing of any situation involving significant arrears and take the Client's Instruction as to the next steps or have agreed standing instructions in place;
- b) Must ensure that if permitted to charge a Leaseholder a fee for arrears letters, then that fee is a Proportionate Charge;
- c) Should have regard to the Practice Directions on Pre-Action Protocol made under the Civil Procedure Rules prior to commencing any court action;

- d) Should have procedures in place to guard against the possibility of waiver of the right to forfeiture when acting on behalf of the freeholder or head Landlord with a reversionary interest.

4.7 Money Laundering

Managing Agents Must have regard to and comply with the guidance contained in the publication 'Guidance Note — D11 Money Laundering for Managing Agents' issued by the Association of Residential Managing Agents.

5.0 Management Matters

5.1 Contractor Appointment & Administration

When appointing a contractor the Managing Agent Must not exceed the authority given to them by the Client and:

- a) Should recommend contractors suitable and competent to provide the service to a reasonable standard having due regard to the size and nature of the contract, cost, efficiency, quality, and value for money;
- b) Must require that all contractors comply with health and safety legislation, and Should comply with current Health and Safety Executive Guidance Notes, and Must maintain appropriate and current public liability insurance (contractor or Client);
- c) Must comply with the Construction (Design and Management) Regulations 2015, Construction Industry Scheme and understand the requirements of the Contractor and Principle Contractor;

See: Construction (Design and Management) Regulations 2015

- d) Should agree prior to commencing a competitive tender process the specification and frequency of service delivery or standard with the Client;
- e) when undertaking a competitive tender process, Must select from a minimum of two contractors, at least one of whom is unconnected with the Client and Managing Agent, and provided with contracts In Writing appropriate to the scope of works;
- f) Must be able to demonstrate, if requested, how and why it appointed contractors, including cases in which it decided not to carry out a competitive tendering process;
- g) Must ensure that sufficient funds will be available to meet the payments due prior to committing to expenditure;
- h) Must be able to justify that the costs of work satisfy the Test of Reasonableness;

See: Ss. 19 and 27A Landlord and Tenant Act 1985 (as inserted by S.155(1) Commonhold and Leasehold Reform Act 2002)

- i) Should ensure the contractor takes appropriate care to avoid damage or unreasonable disturbance, and remedies any damages in a timely manner;
- j) Must have appropriate control systems in place to ensure that works have been completed to an acceptable standard;
- k) Must have a procedure in place to deal with complaints by Leaseholders alleging unsatisfactory work or damage;

5.2 Repairs, Maintenance, Renewals & Improvements

When dealing with repairs, maintenance, renewals and improvements the Managing Agent:

- a) Must not exceed the level of authority specified in the Management Agreement;
- b) Must take reasonable care to see that anyone who could be affected by the work or the condition of the property is safe from personal injury and from damage to their property;
- c) where responsible under the terms of the Lease or by statute for repairs, Must adhere to the obligations for inspection of the property and to view its condition. If this is stated in the Management Agreement, then it Must be complied with and records maintained;

- d) Should advise their Client about a programme of cyclical maintenance and servicing contracts for parts of the building, including plant and services, which require regular maintenance where the Lease does not set out a maintenance regime;
- e) Must ensure that procedures are in place to deal with repairs and maintenance within appropriate timescales having regard to the urgency of the matter and the availability of funds;
- f) Should monitor works and take appropriate steps to ensure completion in a reasonable time and to a reasonable standard so that, unless they are of a temporary nature, they do not need to be repeated within an unnecessarily short period;
- g) Should have procedures in place for dealing with urgent out-of-hours emergency repair work.

5.3 Staff Employment & Staff Management

The Managing Agent Must clearly define who the employer of any on-site staff is and all documentation issued should reflect this. Where agency staff are employed there Should be an appropriate agency contract.

When the Managing Agent is the employer of staff, the Managing Agent Must:

- a) consider and follow TUPE Regulations if applicable;
See: The Transfer of Undertakings (Protection of Employment) Regulations 2006
- b) fully comply with the requirements of the Equality Act 2010 and other relevant legislation;
See: Equality Act 2010
- c) issue all staff with a contract of employment and job description which clearly defines their duties and responsibilities as agreed with the Client;
- d) put procedures in place and follow these to induct and provide on-going training to ensure staff are professionally competent to undertake their defined duties;
- e) display a copy of its current 'certificate of employers' liability insurance' at each place of business at which staff are employed;
See: S.4 Employers' Liability (Compulsory Insurance) Act 1969
See: Employers' Liability (Compulsory Insurance) regulations 1998 (SI 1998/2573)
See: Employers' Liability (Compulsory Insurance Amendment) regulations 2008 (SI 2008/1765)
- f) ensure that all employees are trained and competent before undertaking duties with health and safety implications and have access on site to a copy of the employer's health and safety policy;
- g) ensure a safe working environment for all staff at all times as far as reasonably practicable.

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

5.4 Insurance

5.4.1 Reinstatement Cost Assessments

Where insurance forms part of the Managing Agent's duties, assessments Should be undertaken as often as is required by the Client, the insurer or having due regard to RICS recommendations.

Reinstatement Cost Assessments Must be carried out by a competent person or company with appropriate skill and experience in the type of property being assessed.

5.4.2 Insurance Claims

Where the Managing Agent is not authorised to undertake claims-handling, the claimant Must be referred to the broker or insurer.

Where the Managing Agent is authorised to deal with claims they Must:

- a) have a procedure for processing the claim without unnecessary delay being aware that Leaseholders have the right to notify insurers of possible claims;
- b) not judge the merits of a claim but provide any additional relevant information;
- c) consider if it is necessary for both the Landlord and Leaseholder to sign the claim form;
- d) keep the claimant informed of the progress of a claim or provide him with sufficient details to enable the claimant to pursue the matter if dissatisfied;
- e) be authorised by the Management Agreement or separate mandate to receive insurance claim payments;
- f) not deduct (unless otherwise agreed) arrears or other payments due when passing claim monies on to the claimant;
- g) credit monies received as a result of an insurance claim to the Client Bank Account when insured reinstatement/damage is charged to this account.

5.4.3 Statutory Information

When dealing with insurance, if requested In Writing by a Leaseholder the Managing Agent Must provide within 21 days:

- a) a summary In Writing of the current insurance cover setting out the name of the insurer, the risks covered in the policy and the sum for which the property is insured or alternatively a copy of every relevant policy;

See: S.30A Landlord and Tenant Act 1985 (as inserted by S.43(1) Landlord and Tenant Act 1987 and modified by paragraph 5 of schedule 7 Commonhold and Leasehold Reform Act 2002)
See: Schedule 1 Landlord and Tenant Act 1985 (substituted by schedule 10 Commonhold and Leasehold Reform Act 2002)

5.5 Consultation

The Managing Agent:

- a) Must comply with the statutory consultations requirements:
 - i) Qualifying works: These are ‘works on a building or any other premises’ — that is, works or repair, maintenance or improvement. Consultation is required where the relevant contribution (including VAT) of any one Leaseholder exceeds £250;
 - ii) Qualifying long-term agreements: Is an agreement entered into by the Landlord with a wholly independent organisation or contractor for a period of more than 12 months. (Agreements before 31st October 2003 are exempt). Consultation is required where the cost to any one Leaseholder incurred under the agreement will be more than £100 (including VAT) per annum in any relevant accounting period;

See: Ss.20 and 20ZA Landlord and Tenant Act 1985 (as amended by S.151 Commonhold and Leasehold Reform Act 2002)
See: Service Charges (Consultation Requirements) (England) Regulations (SI 2003/1987)

- b) Should consult with Leaseholders on management matters that are likely to have a significant effect on the level, quality or cost of the Services.

5.6 Pre-sales Enquiries

When dealing with pre-sales enquiries the Managing Agent:

- a) Must inform the Leaseholder, or their representative, of all fees in relation to the supply of information at the outset;
- b) Should supply the Leaseholder, or their representative, with information about the premises that they manage to satisfy the pre-sales enquiries and any other reasonable enquiries that may arise;
- c) Should only provide confidential information to the Leaseholder, Leaseholder's solicitor or other person authorised In Writing to receive it by the Leaseholder;
- d) Must not knowingly give inaccurate or misleading answers;
- e) Should ensure responses are given by someone of appropriate experience and training, limited to questions of fact as distinct from opinions;
- f) Should provide information or copies of documents within a reasonable timescale after receipt of payment of the agreed fee.

5.7 Mixed Developments (freehold house/commercial/mixed use)

Managing Agents Should follow the guidance contained in the publication *Managing Mixed Use Developments* issued by RICS.

6.0 Legal Matters

6.1 Statutory Information & Inspection Rights

The Managing Agent Must comply with any statutory request by a Leaseholder for the disclosure of the identity of the Landlord and the directors of a corporate Landlord.

See: Ss.1 and 2 Landlord and Tenant Act 1985

Where the Managing Agent, has on behalf of their Client, the statutory duty, they Must provide Leaseholders with an address for service of notices.

See: S.48 Landlord and Tenant Act 1987 (as amended by the Commonhold and Leasehold Reform Act 2002)

6.2 Statutory Compliance

The Managing Agent Must have regard to and comply with:

- a) legislation relating to equality and discrimination;
- b) legislation relating to employment;
- c) legislation relating to data protection;
- d) legislation relating to tax and VAT;
- e) legislation relating to bribery;
- f) relevant legislation to ensure the health and safety of employees;
- g) obligations under the regulations regarding fire safety;
- h) health and safety regulations relating to buildings under their management including but not limited to water and asbestos;
- i) all other relevant legislation.

7.0 Disputes & Terminations

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When dealing with disputes the Managing Agent Must follow the guidance contained in the publication 'Guidance Note — F01 Complaints Handling' (replicated to be publicly available: 'Advice Note Making a complaint about the management of your block') issued by the Association of Residential Managing Agents and Must:

- a) maintain and fully implement a published complaints handling procedure appropriate to the size and structure of their organisation meeting the minimum requirements of TPI and/or any other professional organisation to which they are members;
- b) be a member of a redress scheme for dealing with complaints in connection with their work which is either a redress scheme approved by the Secretary of State or a government administered redress scheme;
See: S.84 Enterprise and Regulatory Reform Act 2013
- c) offer Clients and Leaseholders access to the redress scheme if the complaint has not been resolved 'in-house' within an eight week period or is deadlocked and abide by their decisions;
- d) make all staff aware of its complaints handling procedure;
- e) publicise the existence of the complaints handling procedure and ensure this is well known to all Clients and Leaseholders, including response times for the various stages included. The full contact details of the Ombudsman must be provided (including address, telephone number, email and website);
- f) when requested, provide a copy of their procedure to any Leaseholder or Client;
- g) ensure that for complaints about their staff, the procedure provides for them to be made to an appropriately senior person.

Managing Agents Should also have clear written policies and procedures for handling disputes between occupiers, complaints of nuisance from neighbours or contractors.

7.2 Terminations & Handovers

Managing Agents Must follow the guidance contained in the publication 'Guidance Note — F07 Management Handovers' (replicated to be publicly available: 'Advice Note Changing Managing Agent') issued by the Association of Residential Managing Agents and:

- a) Must deal with any handover in a professional, competent and efficient manner which Should be within agreed timescales in accordance with the provisions for termination in the Management Agreement;
- b) Must confirm any termination In Writing with the Client clearly stating the date at which management ceases and when all relevant documentation and Client Money will be handed over to the Client and confirm who will deal with on-going litigation, disputes, arrears collection and any fees to be charged;
- c) Should supply all relevant information to facilitate the handover not less than four weeks prior to the date of handover, or as otherwise directed In Writing. This Should include Leaseholder contact details, contractor details and insurance information as a minimum;
- d) Must pass all agreed documents relating to the management to the Client on the date of handover or as otherwise directed In Writing;

- e) Must prepare reconciled accounts (no later than three months unless otherwise agreed) with itemised accruals and prepayments up to the final date of management, including schedules of arrears, creditors and debtors;
- f) Must hand over the balance of funds that are not required to meet commitments already made at the date of handover. The remaining balance Must be handed over at an agreed later date (no later than three months unless otherwise agreed) along with the statement of accounts made up to the date of handover.



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