



PRIVATE RETIREMENT HOUSING

Code of Practice - England

Association of Retirement Housing Managers

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FOREWORD, APPLICATION, STRUCTURE AND MONITORING

Foreword

This Code (**up to and including appendix 2**) has been approved by the Secretary of State under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act). This allows the Secretary of State to approve codes of practice designed to promote desirable practices in relation to any matters concerned with the management of residential property.

Section 87 of the 1993 Act provides that failure to comply with the provisions of a code approved by the Secretary of State does not, of itself, cause a person to be liable to any proceedings. However, in any proceedings before a court or tribunal any such approved code shall be admissible in evidence and, any provision of any such approved code which appears to the court or tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

However, it should be pointed out that the procedure whereby leaseholders can seek a new manager under the Landlord and Tenant Act 1987 (the 1987 Act), using the code as evidence, does not apply where the landlord is a Registered Provider.

The Approval of Codes of Management Practice (Residential Property) (England) Order 2016 no.505 brings the Code into force from 1 June 2016.

This Code of Practice has been prepared by the Association of Retirement Housing Managers (ARHM) to promote best practice in the management of **leasehold** retirement properties in England which are specifically designed and designated for retired older people, sometimes called private retirement or extra care housing.

In most cases, this Code will also apply to the management of freehold bungalows and houses, which have been specifically designed and designated for retired, older people. In all cases, the owner will be obliged to pay a service charge in return for a package of management services provided by the manager/landlord. See section 24 of this Code for exceptions.

Application of the Code

This Code applies in England only; it does not apply in Wales or Scotland, for which the ARHM has separate codes of practice. It does not apply to rented sheltered housing but it does apply to private retirement housing whether managed by private companies or registered providers.

All corporate members of the ARHM should follow this Code; affiliate members of the ARHM do not manage private retirement housing and so are not required to follow this Code.

 **This Code applies in England only; it does not apply in Wales or Scotland, for which the ARHM has separate codes of practice.**

ENFORCEMENT, GUIDANCE FOR REGISTERED PROVIDERS, ACKNOWLEDGEMENTS AND DISCLAIMER

Structure

In this Code the word 'must' is used to indicate a statutory (legal) requirement, a contractual requirement, or a requirement of common law. The word 'should' indicates recommended or best practice. **Recommended best practice cannot override the provisions of the lease or other written contractual agreement between the landlord and leaseholder, but should nevertheless be given appropriate consideration.**

By virtue of membership, where the word 'should' is used in the Code, there is a requirement for members of the Association of Retirement Housing Managers to comply with this standard; subject to the limitations of this Code noted in Chapter 1.

This Code applies to any person or organisation managing property in the private leasehold retirement housing sector, including for example, residents' management companies and Right to Manage companies. These are referred to as 'managers' throughout this Code. 'Manager' as used in this Code does not refer to a scheme manager or warden.

The Code does not contain authoritative or comprehensive statements of the law. If in any doubt you should consider seeking independent advice from a qualified solicitor, surveyor, or other suitably qualified professional.

Initial advice and information is available from the Leasehold Advisory Service (LEASE), or you may wish to seek information from a Community Legal Advice Centre, or a Citizens Advice Bureau in the first instance.

Monitoring

The ARHM will monitor the effectiveness of this Code and undertake periodic reviews. Written comments on the content of the Code are welcome.

ARHM members are subject to audit checks in relation to their compliance with the Code. These checks may be raised in response to complaints received about members.



In this Code the word 'must' is used to indicate a statutory (legal) requirement, a contractual requirement, or a requirement of common law.

Enforcement

It is a condition of membership of the ARHM that members comply with the requirements of the Code (subject to any existing restrictions in individual leases and the limitations noted in Chapter 1).

The ARHM will investigate any reported breach of the Code. Any member found to be in breach of the Code will be required to rectify that breach and offer a remedy that addresses any disadvantage suffered by leaseholders. Thereafter, to commit to maintaining the standards stated within the Code

Where members fail to take appropriate steps to remedy a breach of the Code, they will no longer be eligible for membership.

The content of the approved sections of the Code can be used in evidence against ARHM members, and other managers, in court or tribunal proceedings.

Guidance for Registered Providers

Registered providers of social housing that manage private retirement housing should have regard to this Code, but must also comply with the Regulatory Framework of the Regulation Committee of the Homes and Communities Agency (HCA). The Regulatory Framework for Social Housing sets out the revised regulatory standards and expectations of registered social housing providers following changes to the Housing and Regeneration Act 2008, brought about by the Localism Act 2011. The regulatory standards contain the outcomes that registered providers of social housing are expected to achieve, and the specific expectations of the HCA as the social housing regulator. Where necessary, the HCA regulatory standards reflect directions issued to the regulator by Government.

Acknowledgements

The Code has been the subject of widespread consultation with leaseholders, housing, professional and residents' representatives and organisations, as well as with ARHM member organisations. The Association is most grateful for the advice and support it has received in the preparation of this Code.

Disclaimer

The Code only applies to properties in England and does not purport to be a comprehensive statement of law. No liability can be accepted by the ARHM for errors or omissions or for any loss or damage sustained by anyone acting in accordance with this Code. If readers are in any doubt about their rights or obligations, they should seek specialist advice from organisations like Age UK, Citizens Advice, or the Leasehold Advisory Service (LEASE), or consult a solicitor.



Registered providers of social housing that manage private retirement housing should have regard to this Code, but must also comply with the Regulatory Framework of the Regulation Committee of the Homes and Communities Agency (HCA).

DEFINITIONS AND ABBREVIATIONS

Definitions

In this Code the following definitions apply:

Contract Law

This is the type of law which binds parties to a contract (or lease) to meet the conditions of that contract (or lease). In this Code, where the word 'must' in the text is accompanied by a reference to 'contract law' in the margin, this indicates a provision common to most leases and therefore a 'contract law' requirement.

Gender etc.

References to 'he', 'his' or 'him' cover also 'she' or 'her'. Words used in the plural usually include the singular.

Landlord

The landlord is the person or organisation owning the freehold or superior leasehold interest in the property or scheme who has a defined legal relationship with the leaseholder governed by the lease and relevant legislation. The landlord may or may not be the manager. The landlord may also be called the 'lessor' or 'freeholder' but in this Code the term 'landlord' is used. The landlord may be a resident management company named in a lease or a Right to Manage Company that has acquired the statutory right to take over the landlord's management functions.

Lease

A written, witnessed, legal document that transfers from the landlord to the leaseholder the exclusive possession (i.e. the leasehold) of certain property for a fixed period of time (such as 99 or 125 years). The terms of the lease fix the rights of the landlord and leaseholder in respect of the property and cannot usually be changed without the agreement of all parties or an application to a tribunal or court for a variation. If a service charge, ground rent, or other charges are to be paid they must be provided for by the lease.

Leaseholder

The person who in law has the right to exclusive possession of property under a lease. A leaseholder may also be called a 'lessee', 'owner', 'tenant', or 'service charge payer', but in this Code the term leaseholder is used exclusively. In retirement housing the leaseholder is usually the resident of the property. Sometimes, however, the son or daughter may take a lease of a property so that an elderly parent can live there.

Leaseholders' Handbook

The Leaseholders' Handbook is the document that contains essential information for purchasers and leaseholders of retirement housing, the contents of which are set out in Chapter 3 of this Code.

Manager

The person or organisation having day-to-day control of the management of the retirement property, estate or development, is called the 'manager'. This person could be the landlord personally, a member of staff of a corporate landlord, a managing agent, a group of flat owners who have formed themselves into a formal management or maintenance company, or a statutory Right to Manage Company that has acquired the right to manage. Where the manager levies a charge for costs, overheads etc., it is called a management fee in this Code (see Chapter 2). The manager is different to the "Scheme Manager", which is defined below. The manager is a person or organisation responsible for the provision of all the services under the lease. The "Scheme Manager" provides support to residents and assists in the management of the scheme, and is often called the warden or house manager.

Managing Agent

A person or an organisation that is employed by a landlord, Residents' Management Company or Right to Manage Company to provide some or all management services required. A contract or agency agreement should be signed between the parties to set out the duties of the agent.

The managing agent's responsibility is to the landlord, Right to Manage Company, or Residents' Management Company, often referred to as the agent's client, and not directly to the individual lessees.

Recognised Tenants' Association

There is also a legal term, Recognised Tenants' Association, which applies when a tenants' or residents' association successfully applies to the landlord, or a tribunal to become formally recognised. This confers extra rights which are set out in Chapter 11 of this Code.

Registered Provider

This means a registered provider within the definition in the Housing and Regeneration Act 2008. Registered Providers include local authority and housing association landlords, and private registered providers (such as not-for-profit housing associations and some for-profit bodies), that are registered with the regulator for social housing providers in England.

Reserve Fund

A fund created to ensure that sufficient money is available to pay for large items of expenditure in the scheme, rather than towards day-to-day, regular repairs, maintenance or management. Sometimes also called contingency or sinking funds or long term maintenance funds, the funds can only be used for the purpose for which they

have been collected. Such funds are raised either by contributions from service charges where the leases allow this and sometimes by the operation of a formula in leases, which provides for a fixed amount to be paid on any sale of a relevant dwelling. These funds are subject to being held in trust in accordance with the Landlord and Tenant Act 1987.

Resident

The person who actually occupies the dwelling who may or may not be the leaseholder.

Residents' Association

A group of tenants, leaseholders or occupiers with or without a formal constitution or corporate status is called a residents' association.

Residents' Management Company (RMC)

The management of some long leasehold flats is run by companies whose members or shareholders are all or some of the leaseholders of those blocks. The leaseholders, or the board of directors appointed by the leaseholders, choose which managing agent to appoint and become the managing agent's client. Alternatively the leaseholders may manage the common parts themselves.

These companies may or may not be the landlord or freeholder of the block. In many instances the freeholder delegates all the management responsibilities to an RMC under the terms of the lease, but keeps the freehold ownership of the block.

Right to Manage Company (RTMCo)

A particular type of Company formed by the leaseholders using a legal right to take over the management of their block of flats.

CHAPTER

01

PRINCIPLES OF MANAGEMENT IN THIS CODE

Retirement Housing

Housing that is purpose built or converted exclusively for sale for older people with a package of estate management services, and which consists of grouped, self-contained accommodation normally with additional services such as an emergency alarm, usually with communal facilities, and normally with a scheme manager. It is often called private sheltered housing or extra care housing.

Scheme

The term used for a group of retirement dwellings with a package of estate management services, also known as a development, estate or facility.

Scheme Manager

The person that provides support to residents, assists in the management of the scheme, and responds to emergency alarm calls. This person may also be called the warden, house manager, estate manager or resident secretary. The role may be a residential or non-residential one.

Service Charge

An amount payable by a tenant or leaseholder as part of or in addition to rent for services, repairs, maintenance, improvements, insurance or the costs of management. The amount may be paid directly or indirectly, may vary according to the costs incurred or to be incurred, and is normally a proportion expressed in the lease of the total costs of running the scheme. Service charge and relevant costs for the purpose of the Landlord and Tenant Acts is defined in S.18 of the 1985 Act (as amended by S.150 and Schedule 9 to the Commonhold and Leasehold Reform Act 2002).

Service charges can also be a fixed amount expressed in the lease. Where this is the case certain rights provided in the Landlord and Tenant Acts would not apply. If in any doubt advice should be sought.

Service charges are subject to being held in trust in accordance with section 42 of the Landlord and Tenant Act 1987.

Tribunal

Tribunal means the First Tier Tribunal (Property Chamber).

Abbreviations

The following standard abbreviations are used throughout this Code:

The '1985 Act' means the Landlord and Tenant Act 1985 (c.70)

The '1987 Act' means the Landlord and Tenant Act 1987 (c.31).

The '1993 Act' means the Leasehold Reform, Housing and Urban Development Act 1993 (c.28).

The '1996 Act' means the Housing Act 1996 (c.52).

The '2002 Act' means the Commonhold and Leasehold Reform Act 2002 (c.15).

'ARHM' means the Association of Retirement Housing Managers.

'LEASE' means the Leasehold Advisory Service.

RMC means a residents' management company

RTMCo means a statutory Right to Manage Company

'SI' means a Statutory Instrument (i.e. a Regulation)

Any references to legislation in this Code are references as amended at the time that the Code is published.

Managers must:

- Behave in an honest and fair manner
- Act with integrity
- Be accountable and transparent in all dealings with landlords and leaseholders
- Provide equality of service to everyone and not discriminate unfairly against any person
- Comply with this code of practice and any other legal or regulatory obligations
- Comply with the decision of any ombudsman service or redress scheme of which it is a member, and decisions of the courts or tribunals where applicable
- Hold professional indemnity cover.

Managers should:

- Not profit from the provision of services or works required in accordance with the terms of the leases and charged to leaseholders, apart from a reasonable management fee
- Offer leaseholders the opportunity for services provided to them or by associated companies to be competitively tendered and delivered by an independent provider, where the services have not already been subject to competitive tendering - statutory or otherwise
- Protect leaseholders' service charge monies by keeping them separate from any other monies
- Cooperate and respond in a timely and appropriate manner with leaseholders, outside agencies, or other persons that are advising or acting on behalf of leaseholders.

Limitations of this Code of Practice

The manager shall comply with this code unless:

- The code conflicts with the terms of the leases of a scheme in which case the terms of the leases shall prevail
- A statutory requirement exists, this will prevail over the terms of a lease
- The code conflicts with the terms agreed between a manager acting as an agent and the landlord, but only in respect of management agreements entered into before the commencement of this edition of the code
- The manager believes it is a better course of action to depart from a 'should' in exceptional or emergency circumstances. If the manager chooses to do this then an explanation should be given to leaseholders. In any complaint made by a leaseholder about such a departure it will be incumbent upon the manager to justify why a departure was made.

CHAPTER
02

THE STATEMENT OF MANAGER'S DUTIES, MANAGEMENT AGREEMENTS AND FEES

The Statement of Duties

- 2.1** All leaseholders should be made aware of the duties that the manager will undertake, and the cost of the management fees and any other charges that the manager may receive for those duties.
- 2.2** The manager should produce a statement of duties that every leaseholder and other contributor towards the service charges should be able to access. This should include being made available on a website and provided by electronic means where appropriate. It should also be part of a Leaseholders' Handbook.
- Where a change of manager occurs or the duties of the existing manager change, a new statement of duties should be provided.
- 2.3** **The statement should include the following:**
- A list of the duties that the manager will provide for leaseholders in return for the management fee
 - A list of other duties that the manager will provide relating to services required under the terms of the lease but for which an additional fee may be chargeable
 - A list of other charges that may be payable by leaseholders and the amount where they are not related to the service charge parts of the leases
 - How and when the management fees and other charges may be reviewed
 - The term of any management agreement or contract entered into
 - A declaration of the amounts of any commissions or other profits being taken by the manager arising from the duties carried out, including insurance commissions.
- 2.4** The following duties should be provided for within the management fee. This is not a comprehensive list and other duties may be added where appropriate and reasonable to do so and if agreed with the landlord:
- Opening and administering bank accounts
 - Preparing and distributing service charge budgets/estimates
 - Collecting service charges
 - Accounting for service charges prior to examination by an independent accountant
 - Providing information to auditors for the production of annual accounts
 - Collecting routine service charge arrears
 - Providing management and service charge information to residents
 - Liaising with residents' associations
 - Providing professional indemnity insurance for the manager
 - Employing management staff (excluding scheme-based staff)
 - Inspecting the property regularly (period to be explicitly agreed with the landlord and made known to leaseholders) to check condition and deal with any necessary repairs
 - Periodic health and safety checks but not specialist checks and tests
 - Holding regular (at least annual) meetings with residents
 - Regular visits to supervise scheme managers
 - Recruiting and training of scheme managers but not the cost of advertising or agency fees
 - Keeping records of residents and tenancy details
 - Keeping landlords advised on management policy when working as an agent
 - Preparing specifications for minor works and services
 - Providing information to advice agencies and ombudsman services.

- 2.5** Examples of other management services that may be included within the management fee include some or all of the following:
- Administering buildings and other insurance
 - Preparing replacement cost assessments on buildings and landlords contents for insurance purposes
 - Entering into and managing maintenance contracts
 - Carrying out consultation on management matters, major works and long term agreements
 - Drawing up and reviewing risk assessment plans
 - Preparing specifications, obtaining tenders and supervising major works
 - Fees for specialist advice in assessment of major repairs and decoration
 - Negotiating with local and statutory authorities regarding operation or amendment or improvement to communal services
 - Providing copy documents including insurance policies
 - Employing and working with advisers of a specialist nature where required
 - Recovery of unpaid service charge or ground rents or non-compliance with leases, including instructing solicitors.

The requirement to provide a list of duties for the management fee and those that may be subject to an additional charge is also a requirement in the Leaseholders' Handbook. See Chapter 3 of this Code.

Management Agreements or Contracts

- 2.6** Where managers are acting as agent for a landlord, resident's management company or Right to Manage Company they should enter into a written management agreement which sets out the services and fees. The ARHM provides a model management agency agreement suitable for retirement housing schemes.
- 2.7** Residents should be able to see and/or have a copy of the management agreement on request. Managers should ensure that residents know this is available if required.
- 2.8** **The agreement should be offered to the landlord/RMC or RTMCo / developer for approval, and should meet the following requirements:**
- Include a list of duties to be provided in return for the management fee
 - Include a list of other duties relating to the services to be provided arising out of the obligations under the leases, for which additional fees may be charged, identifying the fee payable for each service
 - Identify any administration charges that may be levied on individual lessees in return for administration not related to the service charges
 - Comply with the Provision of Services Regulations 2009
 - Declare any commissions or any other sources of income which the manager intends to take arising out of the agreement. The express approval of the client must be received for anything that has been declared. (See Chapter 9)
 - Specify the level of authority to instruct contractors and commit expenditure from service charge monies
 - Include a list of documents and funds which will be handed over to the landlord within what timescales if the agreement is terminated. (See Chapter 19)
 - Contain an undertaking by the agent that they agree to abide by this code.

CHAPTER
03

THE LEASEHOLDERS' HANDBOOK

Calculation of Management Fees

S.19 of
1985 Act (as
amended)

- 2.9 Managers must charge management fees that are reasonable having regard to the services provided.
- 2.10 Managers should calculate management fees as an average cost per unit of accommodation. Managers should not use any other method of calculating management fees unless the lease specifically provides for another method of collection, or unless it can be shown that such an arrangement does not operate to the advantage of leaseholders.

The use of an average cost per unit to calculate management fees does not mean that managers shall not apportion fees to leaseholders according to the basis set out in leases. Managers must apportion the total fees for the scheme according to the fractions, percentages or other requirements set out in leases.

Managers should identify management fees as one identifiable amount in service charge budgets and accounts presented to leaseholders and residents.

Limits on Management Fees for some Private Registered Providers

- 2.11 The Government (through the Regulator of Registered Providers – the Homes and Communities Agency), is responsible for considering and approving any annual increases in respect of the limit on management fees chargeable for private retirement schemes managed by some Registered Providers, in order to safeguard residents on schemes built with public subsidy.
- 2.12 The limit applies to the management element of relevant service charges in Leasehold Schemes for the Elderly, Shared Ownership for the Elderly, and other types of grant-funded retirement leasehold accommodation, where a clause appears in leases to specify that the limit should apply. The limit does not apply automatically where no such clause appears.
- 2.13 The limits are per unit, are set on a flat-rate basis and do not take account of different property sizes or types of schemes. Where these limits apply no individual leaseholder should pay more than the limit for those management charges that are covered by the limit. Information about and changes to the limit is published by the Regulator of Registered Providers of Social Housing (currently the Homes and Communities Agency).

3.1

Managers should ensure that all potential purchasers of dwellings that they manage are made aware of the handbook, and provide each purchaser with a copy of the handbook at completion of the sale or in advance of completion if requested.

Managers should also give all existing residents access to the current version of the handbook for their scheme, and provide a copy to all recognised tenants' associations. The handbook should be regularly reviewed and updated when necessary. Electronic provision of the handbook or parts of it are acceptable, where a resident has indicated this as a preference, and it should be made available in other formats where requested.

3.2

The Leaseholders' Handbook should contain but not be restricted to, the following information. It should be produced in a minimum of 12 point (plain) font and the content should be clearly and fully described using plain English. The handbook may also be called a purchasers' information pack, owners' or residents' handbook, or similar name as the manager thinks appropriate. A generic version of the handbook for the manager's schemes explaining that each scheme may vary in detail is an acceptable way of producing a Leaseholders' Handbook, but the manager should be able and prepared to identify scheme-specific variations where applicable.

The handbook should contain at least the information set out below:

- The name and address of the landlord and/or freeholder, resident management company or Right to Manage Company, and the managing agent
- Details of the contractual relationship between the parties for whom a name and address has been given above
- A description of the duties of the scheme manager, including hours of service, and how back-up support or emergency cover is provided during the periods of absence, together with details of the emergency alarm system and how it works
- A description of all the services for which the leaseholder is being charged, including buildings insurance
- Information about how leaseholders should report repairs that are needed, and target timescales for their completion
- A full, clear, complete breakdown of all charges that the leaseholder will be expected to pay as outlined in Chapter 2
- A summary of the legal rights of leaseholders, including the following:
 - The provision of information
 - Challenges to service charges
 - Challenges to administration charges
 - Right to Manage
 - Right to appoint a manager
 - Lease extensions
 - Enfranchisement
 - Varying the lease

CHAPTER 04

SERVICE CHARGES AND GROUND RENT COLLECTION

- Information on consultation and complaints procedures, and about residents' associations (either existing, or the ability to form an association)
- A plain English explanation of the main terms of the lease or freehold transfer, including the landlord's obligations and leaseholder's liabilities
- Any detailed rules concerning the management of the scheme
- Any re-sale arrangements
- Details of how copies of the management organisation's policies on equal opportunities, confidentiality and access to information may be obtained
- Details of other organisations providing advice to leaseholders, such as Age UK, LEASE and Citizens Advice
- Information on whether the manager is a member of the ARHM, and the ability of leaseholders to take a complaint to the ARHM where this is the case
- Information about which statutory-approved redress scheme the manager belongs to.

Managers should also offer assistance in understanding this code of practice when required.



The handbook should be regularly reviewed and updated when necessary.

- 4.1 The terms of the lease will govern the frequency and method of service charge and ground rent collection and payment.

Budgeting of Service Charges

Managers should use proper care in the preparation of budgets using the best information available. Budgets should be reasonable taking into account such factors as the age and condition of the building and plant, and maintenance and other works anticipated. Managers should seek quotations or estimates from contractors wherever possible before determining the budget.

- 4.2 Managers **must** be able to justify that service charges are reasonable, and should not purposely underestimate or overestimate costs or provide misleading information. In the case of new schemes where warranties may replace contracts in the initial period, managers should prepare the budget on the assumption of a normal full year's costs.

4.3 Managers should consult leaseholders and residents' associations on budgets and the long-term maintenance programme, normally once a year, and prior to any review of, or increase or decrease in the service charge. Managers should hold an annual budget meeting at a time and place convenient to leaseholders, to which all leaseholders should be invited. Managers should give a minimum of two weeks notice of the meeting and send copies of the proposed budget to arrive at least seven days in advance of the meeting. Managers should issue notes of these meetings which include confirmation of any commitments or budget changes made at the meeting (see also paragraphs 10.4 to 10.9 of this Code regarding meetings).

- 4.4 Managers should provide sufficient detail of the charges being levied to justify the level of expenditure, and present budgets in a standard format compatible with the format of annual accounts to allow ease of comparison by leaseholders.

- 4.5 Managers should explain to leaseholders any significant variations between the current level of expenditure and the budget for the year and give reasons.

Collection of Service Charges

Service charges must only be collected in accordance with the terms of the lease. Any demand for service charges must be reasonable, and be accompanied by a summary of rights and obligations containing the information prescribed by Regulations. Service charges do not become payable until and unless a summary accompanies a demand.

Costs of Services for Unsold Homes Prior to Their First Sale – Void Service Charges

Managers should ensure that no contribution is sought from leaseholders to meet service costs attributable to unsold homes prior to the first sale of those units. Appropriate contributions to services charges, including reserve funds, for unsold homes prior to first sale should be sought from the developer/owner of a scheme. Managers should not enter into a management agreement that unfairly restricts contributions from developers for the cost of services for unsold homes prior to their first sale.

Collection of Ground Rents

Any demand for a ground rent must be done in a specific manner prescribed by law. Section 166 of the 2002 Act, and the Landlord and Tenant (Notice of Rent) (England) Regulations 2004 no. 3096 (amended on 26 April 2011 by a correction slip) refers. If a prescribed notice is not served in the correct manner, the leaseholder is not liable to pay the ground rent. The notice must specify, amongst other things, the amount of rent due, the period to which the demand for rent relates, the name of the landlord and to whom the rent is payable, and the date on which it is payable. The notice must also contain information for leaseholders and landlords in the form of notes as set out in the regulations.

Section 5,
Consumer
Protection
from Unfair
Trading
Regulations
2008

S.21B, 1985
Act. The Service
Charges (Summary
of Rights and
Obligations
and Transitional
Provision) (England)
Regulations.

S.166 of
2002 Act

- S.166 of 2002 Act**
- 4.9 The date on which the ground rent is payable must not be less than 30 days or more than 60 days:
- after the day on which the notice is given; or
 - before the date on which it would be due as set out in the lease.
- 4.10 If the date that the ground rent is payable (because of the 30 days rule in paragraph 4.9 above) is different from the date specified in the lease, the notice must also include the date on which the ground rent would have been payable according to the lease.
- S.166 of 2002 Act**
- 4.11 If the date on which the ground rent is payable by notice is after that on which it would have been payable according to the lease, because of the need to give at least 30 days notice, then any provisions in the lease relating to late or non-payment will only have effect from the date payable by notice.
- S.47 of 1987 Act**
- 4.12 Managers must give the name and address of the landlord on any written demand for service charges, ground rents or administration charges. A 'care of' address or the address of the agent (if not the registered office of the landlord) is not sufficient to comply with this requirement.
- S.48 of 1987 Act**
- 4.13 Managers must also give a name and address in England or Wales for the service of notices on the landlord.
- 4.14 Upon request, managers should make available to any leaseholder a statement of service and other charges demanded of and paid by him. This is separate to the provision of an annual service charge statement in section 5 of this Code.
- Debt Recovery**
- 4.15 Managers should have an agreed, written procedure setting out how arrears of payments due from leaseholders will be collected, which should be available to all leaseholders.
- Any demand for payment of a service charge where the relevant costs were incurred more than 18 months before the demand, will not be recoverable unless managers have notified the leaseholder in writing of the costs payable by them within 18 months of incurring those costs, and that they are required to contribute under the terms of their lease.
- 4.16 Any charges for late payment should be as set out in the leases and/or be reasonable.
- 4.17 Interest on late payments is only chargeable if allowed in the leases.
- 4.18 Managers should not threaten or use forfeiture as part of any debt collection strategy unless the breach has been admitted by the lessee, or the lessee is advised in advance that forfeiture is being considered but cannot be granted by a court without a determination from a tribunal that a breach of the lease has occurred.
- 4.19 Managers should not contact the mortagor of a lessee without informing the lessee in question of its intention to do so, and allowing the lessee a reasonable period of time in all the circumstances to respond.
- 4.20 Where a leaseholder has died or has had to go into hospital or care and a dwelling remains unsold, the estate of the leaseholder remains responsible for all charges until the assignment of the lease by way of sale. While no direct services may be being received by the estate of the leaseholder, it may still be necessary for the manager to collect the full service charges and ground rent, to help avoid putting the continued provision of services to other leaseholders at risk.

- S.167 of 2002 Act**
- 4.21 Managers should offer guidance on the range of state benefits available to help meet service charges and/or indicate where further advice on benefits and debt counselling can be obtained and provide the name and address of agencies concerned.
- 4.22 Managers should offer to meet with a leaseholder who is in arrears (and/or a representative of the leaseholder where the leaseholder wishes), to explore options for repayment before considering legal action. Managers should not take legal action without giving adequate written warning; such warning to include a recommendation that leaseholders seek advice on the consequences of non-payment. Consideration should also be given to resolving the matter through alternative dispute resolution, including an Ombudsman or redress scheme to which the manager belongs where this may be possible, rather than through the courts or tribunals.
- Limits on the Use of Forfeiture**
- 4.23 Managers should seek to solve problems of non-payment of ground rent and service charges without recourse to forfeiture and only use forfeiture as a last resort, after other alternative dispute resolution attempts to remedy the breach have failed.
- 4.24 Managers should notify any known mortgagee of any intention to take action to forfeit the lease in advance.
- S.81 of 1996 Act & S.170 of 2002 Act**
- 4.25 Forfeiture is not available to recover small debts consisting of rent, service charges or administration charges (or combinations of them) where the amount does not exceed £350, unless all or any part of that debt has been outstanding for more than three years.
- 4.26 Unless the leaseholder has admitted that the charge is payable, a landlord must not exercise a right of re-entry or forfeiture regardless of what the lease might say for failure to pay a service charge or administration charge (or for any other breach of a condition of a lease), unless it has been finally determined by a tribunal or court that a breach has occurred, and the amount of the charge is payable. A landlord may not serve a notice of forfeiture until after a period of 14 days beginning with the day after the final determination by a tribunal or a court.
- 4.27 Where forfeiture action is granted by a court, the landlord should repay the value of the forfeited lease to the former leaseholder and others with a legal interest in the lease, subject to deduction of costs and expenses incurred in taking forfeiture action. These costs may include, but are not limited to, legal and management costs in taking forfeiture action had the lease not been forfeited, up to the point of forfeiture.

CHAPTER
05

SERVICE CHARGE ACCOUNTS

Annual Service Charge Account to be given to all Leaseholders

- 5.1 All managers should provide an annual service charge account to every lessee within six months of the end of the relevant financial year.
- 5.2 The service charge account should include an income and expenditure account, a balance sheet and be prepared on an accruals basis. The account should include comparative figures for the previous year, the budget, or both. Managers in addition should follow the guidance in "Residential service charge accounts - guidance on accounting and reporting in relation to service charge accounts for residential properties on which variable service charges are paid in accordance with a lease or tenancy agreement", and any associated amendments or additions. This guidance was published by the Institute of Chartered Accountants in England and Wales as a Technical Release (Tech 03/11) in October 2011. It has been developed by a joint working group of the Association of Chartered Certified Accountants, the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Association of Residential Managing Agents and the Royal Institution of Chartered Surveyors.
- 5.3 The service charge account should include a note to explain the position of any reserves held; the amount held in cash and any debtors that may mean the reserves are not fully funded.
- 5.4 The service charge account should include a note explaining that leaseholders have the right to request to inspect supporting receipts and invoices.

Sections
21 and 22,
Landlord and
Tenant Act
1985

S19(2) of 1985
Act

Service Charge Accounts, and RMCs and RTMCo's Accounts for Companies House

- 5.5 In addition to the requirement to produce annual service charge accounts, RMCs and RTMCo's have a requirement to submit annual company accounts to Companies House and to HMRC.

Deficits and Surpluses in Service Charge Accounts

- 5.6 Managers should deal with surpluses and deficits according to the relevant leases.
- 5.7 If the leases are silent as to the treatment of surpluses and deficits, a surplus must either be credited to future payments of the leaseholders or repaid. Deficits should be billed with the next service charge bill or separately on demand, but should only be done after the final service charge accounts have been audited, certified or otherwise as required, and distributed to the leaseholders.
- 5.8 Managers should not seek to transfer surpluses to, or claw back deficits from a reserve fund, unless the lease expressly allows for this. Contributions to reserve funds should be assessed only as part of the budgeted interim or advance service charges.

External Examination of Service Charge Accounts to Reassure Leaseholders

- 5.9 If the leases require the service charge accounts to be audited or certified in some way then these requirements must be followed. If the exact requirements of the lease are not followed then service charge deficits may not be recoverable.
- 5.10 The service charge accounts for every scheme should be subject to an external examination by an independent accountant, unless the leases do not allow for the recovery of the cost and it is not proportionate to do so.
- 5.11 The external examination should follow the guidance referred to above in para. 5.2. i.e., either an audit to International Standard on Auditing 800 (ISA800), or a report of factual findings.

Right of Leaseholders to Scrutinise Expenditure - Scrutiny of Supporting Receipts and Invoices

- 5.12 Managers should be transparent in the way that service charge monies are spent. These monies do not belong to the manager or landlord and are paid by leaseholders.
- 5.13 The annual account and an examination of it by an independent external accountant offer some assurance to leaseholders. However managers should offer greater opportunity for scrutiny, and leaseholders should be given the opportunity to establish how the service charge money has been spent where they wish to do so.
- 5.14 Leaseholders should be offered access to view supporting receipts, invoices and bank statements relating to the annual service charge accounts. Managers should be pro-active by offering greater opportunities for scrutiny of supporting documentation and not simply require leaseholders to use their statutory right to inspect.
- 5.15 There is no single correct way to offer scrutiny by leaseholders, and a variety of methods and arrangements may be appropriate depending on the circumstances. Whatever method is offered, managers must not require leaseholders to travel to the offices of the manager or any other location away from their scheme if they do not wish to do so. Leaseholders who request copies of documents to be sent to them should be offered this option, although a reasonable charge for copies may be made, the costs for which should be brought to the leaseholder's attention. Making documents available by electronic means is appropriate where access to them is available to the leaseholder(s) making the request and this has been agreed with the leaseholder.

Scrutiny if the Landlord is an RMC or RTMCo, and the Manager is an Agent

- 5.16 If the landlord is an RMC or RTMCo, the Directors of that company would normally decide what level of scrutiny is required for the leaseholders and themselves, in accordance with their responsibilities and any requirements of the lease. It is normal practice for regular reports on expenditure to be provided to the Directors by the manager acting as agent.

Section 22,
Landlord &
Tenant Act
1985

CHAPTER 06

PROTECTION FOR SERVICE CHARGE FUNDS

- 6.1 To protect leaseholders' service charge funds (including reserve funds) managers should hold them separately from any other monies held including any ground rents. Funds for each scheme should be separately identifiable.

Protection for Private Schemes

- Section 42, Landlord & Tenant Act 1987**
- 6.2 Managers that are not registered providers, which include RMCos and RTMCos, must hold service charge funds in trust and note that these funds are subject to trust law.
- 6.3 To comply with this requirement, managers should open one or more bank accounts for lessees' service charge funds, at one or more of the institutions prescribed by law (see 6.16 below).
- 6.4 If the manager is acting as agent then it should be a decision of the landlord, RMC or RTMCo as applicable, as to what bank account arrangements it prefers. If the manager is also the landlord then the lessees of a scheme should be offered the option of having a separate bank account for that scheme.
- 6.5 The trust account for service charges for any scheme, or for a portfolio of schemes, should have in its title the words 'client', 'trust' or the name of the scheme or landlord.
- 6.6 The manager should obtain from the bank holding any trust account(s) a letter confirming that the account is a trust account. There need not be separate letters for every account with the same bank; one letter per bank should be sufficient.

Protection if the Manager is a Registered Provider

- 6.7 Registered providers are not required by statute to hold service charge funds in trust if they are the landlord of a scheme. However, they should seek to provide the same degree of protection as for private schemes by following paras 6.3 - 6.6 above wherever practicable.
- 6.8 If a registered provider is acting as a manager for a private sector landlord, it must comply with the requirement to hold service charge funds in trust (as well as with the other provisions of this Code in respect of that property). If the registered provider is both the landlord and the manager, the lessees of a scheme should be offered the option of having a separate bank account for that scheme, wherever this is practicable.

Requirement to Inform Lessees of Bank Accounts

- 6.9 Managers should inform any client and lessees of the arrangements made to protect service charge funds, and any changes, without waiting for a request. A note to the annual service charge account should explain the bank account details for service charge monies (including whether it is an interest bearing account, and any restrictions on withdrawals).

Benefit of Any Interest Earned

- 6.10 Any interest earned on service charge funds held by a manager belongs to the service charge account, for the benefit of the scheme and is taxable-see page TSEM5710 in HMRC's Trusts, Settlements and Estates Manual.

Section 42, Landlord & Tenant Act 1987

Deficits and Service Charge Monies Held in Trust

- 6.11 It is a breach of trust to allow a service charge fund for a scheme to run in deficit if there is a requirement to hold monies in trust. Managers should monitor cash flow carefully and seek advice if schemes are at risk of going into deficit.
- 6.12 If a manager holds one bank account which contains the service charge monies of several schemes, it is breach of trust to use the monies of one scheme to pay for expenditure or provide a loan on any other scheme.
- 6.13 It is possible for a loan to be made to fund service charge expenditure on a scheme that is at risk of going into deficit, but any loan must be with the consent of the landlord, and the leaseholders should be informed of the terms of any loan arranged. Any interest charged must conform to the lease where this is relevant.

Section 42, Landlord & Tenant Act 1987

- 6.14 It is not a requirement to hold reserve funds in a separate bank account to other service charge monies, unless required by the lease of a scheme, or a landlord instructs a manager acting as agent to do so. But any reserve funds are deemed to be held in trust and should be placed in an interest bearing bank account, which may be the same account as that used for current service charge income and expenditure.
- 6.15 Reserve funds created under the terms of a lease ensure sufficient build up of funds to pay for large items of scheduled expenditure in the scheme. Reserve funds should not be routinely used to pay for day-to-day or other routine type expenditure. Where a departure from this approach is felt to be necessary, it should be considered on an exceptional basis only, and managers should notify the landlord as client, and leaseholders, and be prepared to justify and explain the decision.

**Trustee Act 2000
The Service Charge Contributions (Authorised Investments) Order 1284/1988 amended by Financial Services and Markets Act 2000**

Money Laundering Regulations. SI 2007/2157 (as amended)

Investment of Service Charge Monies

- 6.16 Service charge monies held as trust funds must be invested in accordance with the terms of the Trustee Act 2000, or an order made under the 1987 Act which enables funds to be invested in a deposit account with certain banks or in share or deposit accounts with a building society.

Money Laundering

- 6.17 Managers must comply with the Money Laundering Regulations arising out of the Proceeds of Crime Act 2002. Money laundering may be used to conceal criminal activities. Any method whereby the proceeds of criminal activities are disguised or realised as legitimate funds or assets constitutes money laundering, including investing in property and subsequent resale or mortgaging.

A number of broad criminal offences have therefore been created details of which can be found in the Money Laundering Regulations.

Managers must therefore implement procedures in order to prevent money laundering from taking place, and a criminal offence being committed.

CHAPTER 07

VARIATION TO CUSTOM AND PRACTICE

Definition of Custom and Practice

7.1 Custom and practice relates to services or the use of facilities that are allowed within the terms of the lease but for which it is not expressly determined how it is delivered.

The manager should provide details about customs and practice at the scheme or property and these should be made available to leaseholders without the need for them to request the information.

Where a service is expressly set out in the lease the following procedures do not apply. Leases can only be varied by mutual consent, or by reference to a tribunal or court, and the procedures for variation of leases by reference to a tribunal are set out in sections 35-40 of the 1987 Act.

Examples of Custom and Practice

7.2 Custom and practice may vary depending on the lease and the scheme in question, but may include:

- the way in which the scheme manager service is delivered, e.g. resident or non-resident scheme manager
- the type of emergency alarm system and the way in which it links to a monitoring centre, e.g. hardwired or non-hard-wired system
- the use of certain communal facilities such as a residents' lounge, guest suite, laundry or scheme manager's office.

A variation to custom and practice may be:

- the removal
- a significant change, or
- a variation to the charges for a service or facility.

Restriction on Variation of Custom and Practice

7.3 You should not vary custom and practice without:

- Holding a meeting to inform and explain the proposal to vary the custom and practice (inviting all of those affected by the proposal); and
- Holding a secret written ballot of all leaseholders on any proposal to vary custom and practice; and
- Achieving a result in favour of the proposal of at least 66% of those voting (where at least 51% of those eligible to vote did so), **and** the number of votes counted against the motion are not more than 25% of those leaseholders eligible to vote.

The Meeting to Inform and Explain

7.4 Managers should hold a meeting at a time and place convenient to leaseholders, to which all leaseholders should be invited, and should give a minimum of two weeks' notice of the meeting.

7.5 Managers should provide all leaseholders with documents explaining the proposal(s) and any documents/papers should be received at least seven days in advance of the meeting.

7.6 Any documents should be written in simple language and should contain:

- A summary of the proposed change to custom and practice, including any issues to be addressed, and the objective
- Who is likely to be affected and how
- Other options identified (including no change), together with evidence and arguments for and against them
- A full explanation of the costs of the identified options
- An explanation that other options may be put forward for consideration by those affected, to be received at least three days prior to the meeting
- The appropriate contact details (including a name and telephone number) of a person with whom leaseholders can discuss issues relevant to the proposal prior to the meeting.

The Ballot

7.7 The ballot should be a secret postal vote.

7.8 The ballot paper should contain the proposal/resolution to be considered. It should state clearly the majority required approving the proposal (as set out in paragraph 7.3 above), who will count the ballot, and how the count will take place. The period allowed for votes to be returned should be a minimum of one calendar month.

7.9 The ballot papers should be returned to, and counted by, a person or organisation independent of the landlord, manager, scheme manager, residents' association, and any leaseholder. It should not be possible for the votes of leaseholders to be identified by other leaseholders or managers.

7.10 Each leaseholder may cast one vote. Joint leaseholders will receive one ballot paper. Where the leaseholder is not resident the ballot paper should be sent to any alternative address provided.

7.11 The manager should inform all leaseholders (in writing by letter or a notice on the scheme notice board) of the result of the ballot, including the total number of votes for and against the proposal, the number of abstentions from voting on the motion, and any votes rejected from the count with the reason for rejection.

7.12 The ARHM has issued a good practice note for its members about the variation of custom and practice, which members of the ARHM should refer to.

CHAPTER
08

APPOINTMENT OF CONTRACTORS AND ASSOCIATED COMPANIES

- 8.1 The appointment of contractors to provide works or services should be transparent and managers should not profit from their appointment.

Where a corporate or other associated link exists between a company or firm tendering or engaged for works and the landlord or manager, this should be disclosed to leaseholders and service charge payers in advance of any contract or works being carried out.

Managers should have regard to quality and value for money at all times, ensure that the work required from contractors is clearly defined, and have adequate control systems in place to ensure that works have been completed to an acceptable standard, prior to payment of invoices.

- 8.2 Managers must not take any facilitation payments, fees, or benefits in kind from contractors appointed to provide works or services. It is also an offence to offer, promise or give a bribe, and to request, agree to receive or accept a bribe.

Approved Lists of Contractors

- 8.3 Managers are required to ensure the suitability, skills and competence of contractors, and must comply with any statutory requirements including the Construction (Design and Management) Regulations 2007, and any subsequent amendments.

In order to do so managers should make use of industry approved lists of validated contractors, rather than seek to carry out all of the checks independently (for a fee).

- 8.4 If a manager retains a list of approved contractors, and if a fee is charged for admission to that list, the fee should cover only the cost of checking the suitability of the contractor. Fees should not include any profit element.

Use of Competitive Tendering

- 8.5 Contracts for qualifying long term agreements and qualifying works should only be awarded after competitive tendering has taken place, and the statutory consultation requirements have been met in full.

Scrutiny of Tenders Received

- 8.6 All tenders should be received in sealed envelopes to be provided by the manager or if received electronically, in a confidential manner, and not be opened until the due date.
- 8.7 All tenders should be documented in a tender book and signed as accurate by a responsible person, or in an equivalent electronic format.
- 8.8 A summary of the policy for receiving tenders along with the tender book or other records should be available for inspection by any leaseholder on request.

Associated Companies and Associates

- 8.9 Associated companies and associates include but are not restricted to the following:

- Companies in the same group as the manager (see definitions) e.g. insurance broker, entry phone equipment supplier
- Companies not in the same group but in which any employee, partner, or director, of the manager has an equity stake e.g. gardening, cleaning
- Parts of the same company or organisation which offer services to leasehold schemes e.g. company secretarial work, emergency call monitoring, direct labour organisations
- Associates may include for example, an individual's spouse, cohabitee, partner, civil partner, child, step child, parent, parent in-law son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law.

- 8.10 If a manager provides a service through an associated company or associate and that service has not been competitively tendered, then the manager should allow any scheme to choose not to use that provider. The manager should use the voting procedure set out in Chapter 7 to determine whether the service should be competitively tendered, subject always to compliance with any statutory consultation requirements.



Managers should have regard to quality and value for money at all times.

CHAPTER
09HANDLING INSURANCE AND THE
DISCLOSURE OF COMMISSIONS

S.19 of
Financial
Services &
Markets Act
2000

Regulation of Insurance Activities

Managers must not advise, arrange or administer insurance or handle claims unless they are authorised to do so under the rules of the Financial Conduct Authority. This requirement does not apply to Registered Providers.

Policy content and value for money

Managers should, when asked, be transparent and prepared to demonstrate value for money to the landlord, or leaseholders, without the need for an application to be made to a tribunal for a determination of reasonableness.

Managers should consider the need for, and arranging valuations for insurance purposes, such valuations to be carried out by a qualified valuer. (See also 8.9).

Managers should identify to landlords and leaseholders in a clear manner, any non-standard cover or additions to any relevant insurance policy, as well as the reason and cost of those additions. This can include but is not restricted to such things as terrorism and flood insurance.

Managers should also notify landlords and residents of any increases to the excess relevant to the policy, and any associated increases to the premium.

Managers should notify landlords and leaseholders of any material change in cover.

Bribery Act
2012
Consumer
Protection
from Unfair
Trading
Regulations
2008

Handling of Insurance and Commissions

No manager or any associated company of that manager must place insurance on behalf of a landlord or leaseholders in order to increase the receipt of any commission or other profit or income of any kind to it or any other party.

It is an accepted legal principle that in dealing with service charge monies, the landlord and/or manager should not profit from those monies, other than to take a reasonable commission for carrying out insurance-related activities, which may include a profit or surplus element. This principle is extended to any associated company or associate of the manager or landlord.

Managers should ensure that the landlord and leaseholder(s) are kept informed on the progress of any claims, and settlements.

Receipt and Disclosure of Commissions

Receipt of a commission or other payment of any kind by a manager, whether for insurance or any other activity, is permissible but only if:

- It does not breach any statutory requirements
- It is in receipt for services related to that activity of an equivalent value to the commission or other payment received. The services provided for the income should be declared on request
- The cost of providing those services is not also part of the manager's management fee
- It is disclosed to the landlord before the manager acts for that client landlord, and is agreed in writing by the landlord as acceptable
- It is disclosed as a percentage of the sum or premium payable, and also as a sum, to all leaseholders who pay the relevant charges that attract that commission – without the need for a request by any lessee, at least once per annum
- The disclosure regarding insurance commission includes details of the relevant authorisation held by the manager under the rules of the Financial Conduct Authority
- Receipt of any commission payable to the landlord including the amount, is disclosed to leaseholders.

9.9 Disclosure as a separate entry in the annual service charge account is acceptable.

9.10 See also paragraph 8.2 of this Code.

CHAPTER
10CONSULTATION WITH
LEASEHOLDERS

10.1 Managers must consult by law on qualifying works and long term agreements. See below for details.

10.2 In addition all managers should seek to consult and inform leaseholders to a greater degree than that required by statute. Managers should consider what arrangements are required and the most appropriate forms of communication to consult with those leaseholders and residents, including those who are frailler than others and for whom meetings may not be appropriate. All communications should be accurate, clear and concise.

10.3 If a tenants association has been formed on a scheme, the manager should agree with the association how it will consult and keep it informed of the manager's activities. If the tenants' association has been recognised by law, managers must ensure as a minimum, that consultation takes place in accordance with the rights acquired by the association. See Chapter 11 below for more details.

Annual Meetings of Leaseholders

10.4 Where the manager is also the landlord, or is appointed by a landlord which is not a resident controlled company, the manager should hold at least one meeting each year to which all leaseholders are invited. The meeting, which may include the explanation of the annual budget and/or accounts for service charges, should allow leaseholders the opportunity to comment on the extent and quality of services provided, any proposed changes to service charges, proposed works, and other relevant management matters.

10.5 A minimum of two weeks' notice of the annual meeting should be given to all leaseholders and papers for the meeting should be sent to leaseholders to arrive at least seven days in advance of the meeting.

10.6 The meeting should be held at a time and place convenient for leaseholders, and should be attended by a member of the manager's staff who is responsible for the setting of service charges and is able to answer questions on the general management of the scheme and other relevant matters.

10.7 Managers should consult on the quality and efficiency of all contracts for services at the annual meeting and take into account the views of leaseholders.

10.8 Managers should confirm in writing any commitments made at the meeting.

10.9 Where the manager is agent for an RMC/RTMCo then the arrangements for an annual meeting or other meetings should be agreed with the directors of the company.

Consultation with Relatives of Leaseholders

10.10 Leaseholders may wish to or need to have relatives or other persons to represent their views, vote on their behalf, and/or receive communications in respect of meetings or consultations. Managers should allow leaseholders to nominate others to represent them and should accept that nomination.

In these cases or where there is Power of Attorney being exercised managers should not exclude the leaseholder themselves from also attending any meeting. If managers require that the leaseholder confirms a nominated in person in writing to them then that is acceptable, but should take into any circumstances where this may not be possible.

S.20 of
1985 Act as
amended by
S.151 of 2002
Act

The Service Charges
(Consultation Requirements)
(England) Regulations
2003. No. 1987
(as amended)

The Service Charges
(Consultation Requirements)
(England)
Regulations
2003 No.
1987

The Service Charges
(Consultation Requirements)
(England)
Regulations
2003 No. 1987

- Statutory Consultation on Qualifying Works (not under a long term agreement)**
- 10.11 Managers must consult with leaseholders and the Secretary of any relevant Recognised Tenants' Association where it is proposed to carry out qualifying works costing service charge payers (normally leaseholders) more than the amount prescribed by regulation. The prescribed amount at the time of publication is £250 for any leaseholder. This figure may change subject to amendment by regulations. Failure to consult in the proper manner may mean that the expenditure incurred over the prescribed amount may not be recoverable.
- 10.12 Managers should informally consult with leaseholders and the Secretary of any Recognised Tenants' Association before commencing the statutory requirements for major works, to explain why proposed works are required and how they will be funded. The annual meeting referred to in 10.4 above is appropriate for this consultation.
- 10.13 Managers must by law give all leaseholders and the Secretary of any relevant Recognised Tenants' Associations, notice of intention to carry out the qualifying works. As part of this notice managers must invite all leaseholders and the Recognised Tenants' Associations to nominate contractors for the works.
- 10.14 All leaseholders and Recognised Tenants' Associations have 30 days to make comments on the proposed works and nominate contractors. Managers must have regard to these comments.
- 10.15 As a second stage of the consultation process, managers must, by law, seek at least two estimates for the proposed works, at least one of which must be from a contractor nominated by the leaseholders and Recognised Tenants' Association, according to the detailed rules that apply. See the Service Charges (Consultation Requirements) (England) Regulations 2003 No. 1987 (as amended) for details. These estimates must be supplied to the leaseholders who are required to contribute to the costs of the works, and the Secretary of the Recognised Tenants' Association, with a further notice describing the works.
- This notice must give the costs of at least two estimates received, and state where all of the estimates may be inspected. At least one of the estimates provided must be from a firm or contractor wholly unconnected with the landlord.
- Wherever practical, managers should obtain three estimates for works. If a contractor nominated by leaseholders or Recognised Tenants' Association provides an estimate, it must be one of the minimum of two required, and provided. The notice sent at this stage must also include a response to any comments made by leaseholders and the Recognised Tenants' Association about the works after the first stage of consultation.
- 10.16 Managers must also declare to leaseholders and any Recognised Tenants' Association, which estimates, if any, are from contractors with a connection to the landlord or the manager.
- 10.17 Managers must again invite comments on the proposed works and estimates received, and give the name and address of the person in the UK to whom comments may be sent, giving at least 30 days for a reply from the date when the notice is given.

The Service Charges
(Consultation Requirements)
(England)
Regulations
2003 No. 1987

S.20 ZA of
1985 Act

S.20 of 1985 Act as
amended by S.151
of 2002 Act
The Service Charges
(Consultation Requirements)
(England)
Regulations 2003
No. 1987 (as
amended)

- 10.18 Managers must have regard to comments received before placing a contract for the works. Once managers have entered into a contract managers must, as soon as reasonably practical, write to all leaseholders and the Recognised Tenants' Associations stating the reasons for the choice of contractor, and replying to any observations received at the second stage of consultation (see paragraph 10.15). However, managers need not write in this fashion if the contract is placed with the person submitting the lowest estimate, or with a contractor nominated by the leaseholders or Recognised Tenants' Association, though it would be good practice to do so.
- 10.19 If costs of major repairs carried out after consultation seem likely to overrun, or the nature of works to be undertaken changes after those works commence, then managers should consider carefully how to proceed before committing further expenditure. Further consultation, or if the additional works are of an urgent nature request for dispensation either before, during, or after works are carried out, may be appropriate.
- 10.20 Only a tribunal or a court can agree to dispense with the need to consult under section 20 of the 1985 Act. In the event of an emergency, managers should adhere to as much of the consultation process as possible, whilst informing leaseholders and the Recognised Tenants' Association of the reasons for any emergency action as soon as possible. If the cost of any works is to be recovered from leaseholders and a dispute about consultation has arisen, managers will need to consider whether to seek a dispensation from a tribunal and in doing so the manager will have to satisfy the tribunal that they have acted reasonably.
- 10.21 A tribunal may agree to dispense with the need for consultation if satisfied that it is reasonable to do so. An application can be made to the tribunal before the works are carried out, or in the case of an emergency, either during or after the works where a dispute has arisen.
- 10.22 Where the landlord is a Registered Provider they must ensure that they are adhering to all relevant statutory duties, for example public procurement rules, and any contract for work that requires statutory consultation should be properly procured and a proper decision, taking into account all relevant factors made. Where the responsibility is not clear in respect of the procurement rules or any other statutory duties on Registered Providers legal advice should be sought.
- Statutory Consultation on Long Term Agreements**
- 10.23 Managers must consult with leaseholders and the Secretary of any relevant Recognised Tenants' Association when it is proposed to enter into an agreement of more than 12 months for the provision of a service (including a contract for management services). Consultation is required where the cost of the works under the proposed agreement is estimated to exceed the prescribed amount of £100 in any of the relevant accounting years (e.g. per annum) for any one leaseholder. This figure may change subject to amendment by Regulations. Failure to consult in the prescribed manner may mean that any expenditure incurred in excess of the prescribed amount may not be recoverable.
- 10.24 Consultation must be in two stages. Before tenders are invited managers must send to all leaseholders and to the Secretary of any Recognised Tenants' Association, a notice of intention of entering into the agreement, explaining what is involved or where a detailed explanation can be inspected.
- 10.25 As part of the notice of intention managers must invite comments on the proposed agreement and invite any leaseholder or Recognised Tenants' Association to nominate contractors for the service, where this is not subject to the Public Procurement Rules. At least 30 days to comment or nominate must be given. Managers must deal with any nominations made according to the detailed rules that apply which can be found in the Service Charges (Consultation Requirements) (England) Regulations 2003 no. 1987 (as amended).

CHAPTER **11**

RESIDENTS' ASSOCIATIONS AND RECOGNISED TENANTS' ASSOCIATIONS

- The Service Charges (Consultation Requirements) (England) Regulations 2003 No. 1987**
- 10.26 After seeking tenders or estimates as the second stage, managers must notify all leaseholders and the Recognised Tenants' Associations of the proposals. At least two proposals from potential contractors describing the service to be provided and the estimated costs, together with a response to any comments received at the first stage of consultation must be supplied. Managers must also inform leaseholders and the Recognised Tenants' Association where all the estimates received can be inspected.
 - 10.27 At least one of the proposals must be from a contractor wholly unconnected to the landlord. Wherever practical managers should obtain three estimates for such agreements. If a contractor nominated by leaseholders or the Recognised Tenants' Association provides an estimate, it must be one of the minimum of two provided.
 - 10.28 Managers must declare to leaseholders and any Recognised Tenants' Association, which estimates, if any, are from contractors with a connection to the landlord or manager.
 - 10.29 Managers must invite comments from leaseholders and any Recognised Tenants' Association on the estimates, and give the name and address of the person in the U.K to whom comments may be sent. Managers must give at least 30 days for comments from the date when the notice of the proposals is given.
 - 10.30 Managers must have regard to comments received before placing the long term agreement and, once the agreement is entered into must provide a notice in writing within 21 days to all leaseholders and Recognised Tenants' Associations setting out reasons for the choice of contractor and responding to any observations received at the second stage of consultation in paragraph 10.26. As an alternative the notice may state where the reasons and the response can be inspected. Managers do not need to send this final notice if the agreement has been entered into with a contractor nominated by leaseholders or the Recognised Tenants' Association, or the contractor with the lowest estimate, although it would be good practice to do so.

Statutory Consultation on Qualifying Works under a Long Term Agreement

- 10.31 Consultation for a long-term agreement may include provision for the carrying out of works (for example, a schedule of rates agreement for general maintenance). If any of these works result in a charge to any one leaseholder of more than the prescribed limit of £250, then a separate consultation must be carried out under the provisions of Schedule 3 of the consultation Regulations where appropriate. The original consultation in respect of the agreement itself does not provide any exemption from consultation for the works.

Statutory Consultation for Contracts requiring Public Notice

- 10.32 The consultation Regulations refer to contracts 'for which public notice is required'. Registered Providers are subject to rules about contracts requiring public notice. This is a reference to contracts where the sum involved will be of a level where Public Contracts Regulations apply, and the proposed contract must be advertised in the Official Journal of the European Union (OJEU). The relevant thresholds are updated annually and are expressed in Euros. The appropriate thresholds can be found in the Public Contracts Directive. Whilst the opinions and views of leaseholders must be invited and considered, they do not have the right to nominate a contractor for these contracts because they must already be openly tendered.

S29 (1)(a)
1985 Act

- 11.1 Managers should have a formal commitment to encourage properly constituted and democratically run residents' associations at their schemes. Managers should supply literature to leaseholders giving guidance on how to set up and run an association. The ARHM has produced a model constitution for residents' associations that is available free of charge to managers and leaseholders. Other guidance is available from Age UK and the Property Chamber of the First-Tier Tribunal. Guidance may also be available from the Federation of Private Residents Associations.

S29 (1)(a)
1985 Act

- 11.2 Managers should recognise an association (subject to the landlord's agreement if required) which has a membership representing 51% or more of the leaseholders and other tenants on the scheme that contribute to the same costs by way of a variable service charge, and where the association has a proper constitution and elected officials. Where statute or government guidelines specify a lower minimum membership this need to be complied with. Managers should retain a copy of the constitution, details of officials and levels of membership and ask the residents' association to supply details of any changes as they occur. Managers should give notice in writing to the secretary of the residents' association that the association is a Recognised Tenants' Association under S29 (1) (a) of the 1985 Act, and that such status confers certain legal rights.

S29 1985 Act

- 11.3 Alternatively to 11.2 above, residents' associations can apply to the Tribunal for a certificate of recognition. This will generally be given if the association satisfies the membership required by statute or government guidelines, an acceptable constitution, and elected officials. Recognition can also be considered where there are less than the minimum number of qualifying residents. The tribunal has issued guidance on seeking recognition. The residents' association will then become a Recognised Tenants' Association, which is a statutory expression under S29 of the 1985 Act and confers certain legal rights.

Where leaseholders require information in connection with the right to seek recognition of a tenants' association managers should be prepared to provide the information where they are able to do so, or otherwise assist where it is reasonable to do so.

Legal Rights of Recognised Tenants' Associations

- 11.4 Managers should be aware that recognition of an association under S29 of the 1985 Act confers additional legal rights on it over and above those available to the individual leaseholder, whether the association was recognised voluntarily by the landlord, or following application to the First-Tier Tribunal in England.
- 11.5 In addition to individual leaseholders, managers must give Recognised Tenants' Associations the opportunity to nominate contractors for qualifying works and long term agreements on the scheme, and send a copy of the proposals to the Secretary before going out to tender.
- 11.6 Managers must supply the Secretary of a Recognised Tenants' Association with a summary of insurance cover on request in writing.
- 11.7 The Secretary of a Recognised Tenants' Association may request a summary of relevant service charge costs incurred. Managers must also allow the Secretary of a Recognised Tenants' Association the opportunity to inspect the relevant accounts and receipts relating to a summary of costs.

S.20 of
1985 Act as
amended by
S.151 of 2002
Act

s.30A of & Sch.
To 1985 Act as
amended by
Sch 10 to 2002
Act

S.21 & 22 of
1985 Act

HANDLING COMPLAINTS

S.30B of 1985
Act

- 11.8 Where a landlord is served with a notice by a Recognised Tenants' Association requiring him to consult that Association on matters relating to the employment by him of a managing agent, they must inform the Association of the name of the managing agent and duties that the managing agent discharges or will discharge, on his behalf and:
- allow the Association one month to make observations on any proposed managing agent
 - allow the Association a reasonable time to make observations on the manner in which an existing managing agent has been discharging their duties and on the desirability of continuing to discharge them
 - specify the name and address in the United Kingdom of the person to whom observations should be sent; and
 - have regard to the observations made by the Association.

S.30B of 1985
Act

- 11.9 Recognised Tenants' Associations can also serve a notice on the landlord asking to be consulted about matters relating to the appointment of a managing agent where one is not already employed. Where this is done the landlord would need to give the name of the proposed agent, the proposed duties that the agent is to discharge, and allow at least one month for observations to be made.

S.30B of 1985
Act

- 11.10 Where a notice as described in 11.8-11.9 above is served on the landlord, at least once in every five years the landlord must provide the Recognised Tenants Association with information about any changes to the managing agents obligations or duties, allowing a reasonable period of time for observations to be made, including on the desirability of the agent continuing to discharge the relevant duties. There is no need to provide this information where the association serves a notice withdrawing the request to be consulted. Recognised Tenants' Association can also appoint a surveyor to advise on service charges.

Withdrawal of Recognition

S.29 (2) & (3)
of 1985 Act

- 11.11 For Recognised Tenants' Associations which have been recognised by the landlord, at least six months' notice must be given if they intend to withdraw recognition. Reasons for the withdrawal must be given in writing to the Secretary of the Association. Alternatively if the Association was recognised by a tribunal, the recognition may be cancelled by the tribunal at any time if there is good reason.

Good Relations with Residents' Associations

- 11.12 Managers should endeavour to maintain good working relationships between staff and residents' associations. Generally, good relations can be maintained by proper consultation and keeping associations up to date with any proposed changes or works. However when dealing with residents' associations, managers should also remember that they also have a responsibility to, and should maintain dialogue with, individual leaseholders.
- 11.13 Managers should regard the legal requirements about consultation with residents' associations as a minimum, and seek to consult and advise associations on issues affecting the scheme other than minor day-to-day matters.
- 11.14 Managers are recommended to ensure that information held on residents' associations is reviewed and revised on an annual basis, and that they are informed of the residents that are members and those who have authority to speak on behalf of the association.
- 11.15 Managers should be aware that their staff or associates cannot be full or associate members of a residents' association and therefore cannot attend residents' association meetings unless specifically invited.

- 12.1 Managers should have a clear procedure for handling and dealing with complaints and grievances from leaseholders, residents' associations, and any landlord clients about their services. The procedure should be readily available, and managers should at an early stage decide whether contact by a leaseholder is to be handled as a complaint or not, and inform the complainant of this fact. If the leaseholder wishes a matter to become a formal complaint then the manager should accept it as such.

- 12.2 The complaint handling procedure should state to whom complaints should be made in the first instance, and the steps they should follow if satisfaction is not obtained at that stage. Managers should not require that complaints need to be made in writing, and they should ascertain when a complaint may need to be made in a different format and assist with this. In these cases managers should clarify the leaseholder is content with the manager's understanding of the complaint before it is formally considered, although a written record of any complaint should be made and agreed by the complainant as best practice.

- 12.3 There should be no more than three stages in the procedure and a full response should be received at each stage of the complaint handling procedure. The complaint handling procedure should identify reasonable response times for dealing with each stage of the procedure. The whole procedure should normally take no longer than eight weeks. If the manager has good reason to be unable to respond within the identified response times the leaseholder should receive an explanation.

- 12.4 The complaint handling procedure should allow the complainant the right to a face-to-face hearing with a person or a panel at a senior level in the management organisation, if that is what the complainant wants. A hearing by telephone or video conference may be an acceptable alternative but only if agreed by all parties to the complaint.

- 12.5 The complainant should be allowed to be accompanied by a person of their choosing during any hearing arranged.

- 12.6 Managers should offer mediation and conciliation at no cost as an option for resolving complaints, to be available at any stage of their complaint handling procedure.

- 12.7 If the manager is acting as an agent then the complaint handling procedure should allow for the leaseholder to complain to the landlord direct if that is what they wish to do.

- 12.8 Managers should provide each leaseholder with an up to date copy of their complaint handling procedure on request or inform them where a copy can be obtained. This information may be supplied by electronic means.

- 12.9 Managers should train staff to welcome complaints and value them as a way to learn and improve services.

- 12.10 Managers should make leaseholders aware of other organisations which can provide advice, casework or take up complaints. E.g. Citizens Advice, LEASE, and Age UK. Managers should offer maximum cooperation with all recognised advice agencies that handle complaints and requests for information and carry out casework and with any other intermediary consulted by the leaseholder.

CHAPTER

13

FIRE, HEALTH AND SAFETY, AND RISK MANAGEMENT

Access to Redress

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

- 12.11 Managers must belong to, and give all leaseholders access to, a Government-approved redress scheme if, after using the manager's procedure, they are still not satisfied. Failing to belong to a government approved scheme can result in a fine of up to £5,000.
- 12.12 Managers that are Registered Providers are required to become members of the Housing Ombudsman Service and must offer access to this independent redress scheme.
- 12.13 Managers should automatically provide leaseholders and the Secretary of any Recognised Tenants' Association with details of the approved redress scheme(s) to which they belong, and where any changes occur.
- 12.14 Managers must abide by the decisions of the approved Redress Schemes and any Ombudsman Service of which they are members.



Managers must belong to, and give all leaseholders access to, a Government-approved redress scheme if, after using the manager's procedure, they are still not satisfied.

13.1

Managers have a range of duties to ensure the safety of the persons living in or visiting the schemes that they manage. Managers should satisfy themselves that the properties and schemes for which they are responsible meet the relevant standards under fire, health and safety and other relevant statute and regulation. They should also be aware of the requirements of the Housing Health and Safety Rating System.

Case law (*Westminster City Council v Select Managements Ltd [1984] 1 All ER 994*), has determined that common parts of residential developments are deemed to be a place of work. Managers should therefore ensure that an appropriate health and safety policy is in place (and available to leaseholders) which is subject to regular review, and that periodic risk assessments of properties and schemes are carried out by competent persons as appropriate. Consideration should also be given as to whether and when, a full risk assessment is required, having regard to all relevant circumstances. A summary of some of the main duties follows, but this is not an exhaustive list.

13.2

Regulatory Reform (Fire Safety) Order 2005

Managers must arrange for a fire risk assessment of common parts to be carried out by a competent person and for a review of that assessment at appropriate intervals. Leaseholders and the Secretary of any residents or Recognised Tenants' Association should be informed when an assessment is taking place, and copies of the fire risk assessment should be made available on request.

13.3

Managers must arrange for the maintenance and testing of fire alarm systems and equipment and emergency lighting where provided.

13.4

Guidance on managing fire safety in purpose built blocks of flats is available from the Local Government Association (LGA). It can also be found on the LGA website at local.gov.uk/publications/-/journal_content/56/10180/3369777/PUBLICATION

Advice on managing fire safety in other types of housing such as houses converted into flats, and houses in multiple occupation, is available from Local Government Regulation (formerly LACoRS). It can be found at cieh.org/library/Knowledge/Housing/National_fire_safety_guidance_08.pdf



Case law determines that common parts of residential developments are deemed to be a place of work.

CHAPTER

14

DISCRIMINATION AND EQUAL OPPORTUNITIES

Health and Safety

**Health &
Safety at Work
Act 1974**

- 13.5 Managers must arrange for a risk assessment of health and safety in common parts to be carried out by a competent person, and for a review of that risk assessment at intervals assessed to be relevant to the particular circumstances. Where possible leaseholders, and the Secretary of any residents or Recognised Tenants' Association, should be informed when an assessment is taking place, and copies of the risk assessment should be made available on request.

**Lift Operation and
Lifting Equipment
Regulations 1998
- SI 1998/2307**

- 13.6 Managers must arrange for regular thorough inspections and maintenance of lifts.

**Electricity at Work
Regs 1989**

- 13.7 Managers must arrange for fixed wiring and portable electrical equipment in common parts to be tested in accordance with best practice.

**Control of
Asbestos at Work
Regs 2012**

- 13.8 Managers must comply with the duty to manage asbestos in common parts.

**The Private
Water Supplies
Regulations 2009
No. 3101**

- 13.9 Managers must comply with the requirements to monitor the quality of water supplies where the supply to properties or communal areas is other than direct from the water provider or where there are communal tanks. The Private Water Supplies Regulations 2009, and the Approved Code of Practice on the Control of Legionella Bacteria in Water Systems, published by the Health and Safety Executive (Legionnaires' disease. The control of legionella bacteria in water systems), are relevant.

Other requirements and duties that may apply:

- The Workplace (Health, Safety and Welfare) Regulations 1992. Statutory Instrument 1992/3004
- The Management of Health and Safety at Work Regulations 1999. Statutory Instrument 1999/3242
- The Gas Safety (Installation and use) Regulations 1998. Statutory Instrument 2451
- The Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended). Statutory Instrument 1988/1324
- The Electrical Equipment (Safety) Regulations 1994. Statutory Instrument 1994/3260
- The Working at Height Regulations 2005. Statutory Instrument 2005/735.

The above list is not exhaustive. For example, consideration will also need to be given to the handing of hazardous substances; the use of Personal Protective Equipment; the use of lifting equipment at work; the maintenance of pressure systems; and the need for signs and safety information.

Advice should be sought if in any doubt.

**Human Rights
Act 1998**

14.1

**Equality Act
2010**

14.2

**Equality Act
2010
Part 4**

14.4

**Anti-Social
Behaviours
Crime and
Policing Act
2014**

14.8

Human Rights

Registered Providers must ensure that they follow the European Convention on Human Rights as incorporated into UK law. Managers of private sector property should also endeavour to follow the convention. Article 8 refers to respect for home, private and family life. Article 14 prohibits discrimination. The enjoyment of the rights and freedoms in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Equal Opportunities and Prohibition of Discrimination

In the provision of services, the sale of properties or the granting of permission for sales or assignment managers must ensure that there is no discrimination within their organisation on the grounds of race, colour, nationality, religion, ethnic or national origin or sex, and should ensure that there is no discrimination on the grounds of marital status, age, sexual orientation or disability. Managers should not discriminate on the grounds of age, but must comply with any restriction on age that is specified in leases.

- 14.3 Managers should also have an equal opportunities policy statement, procedures and practices covering management, maintenance, sales and recruitment.

Safeguarding of Older and Vulnerable Persons

- 14.4 Managers should have written policy and procedures in place to safeguard older people and to deal with any allegations and complaints.

Racial Discrimination and Harassment

- 14.5 Managers should have anti-harassment policy and procedures in place to prevent and deal with harassment of staff, residents and their carers or representatives. The policy should support victims of discrimination or harassment.

- 14.6 Managers should communicate effectively with all leaseholders and make or recommend arrangements to translate material if needed.

- 14.7 Managers and their staff must not discriminate or harass a person on grounds referred to in paragraph 14.1 above, or in the terms on which they offer to sell or let properties.

Anti-Social Behaviour

- 14.8 Managers must ensure that they have regard to and comply with legislative requirements. They should have policy and procedures in place to prevent and deal with anti-social behaviour.

CHAPTER

15

REPAIRS AND MAINTENANCE

Age Discrimination

- S197 of the Equality Act 2010 & The Equality Act 2010 Commencement Order no. 9 SI 1569*
- 14.9 Managers must not discriminate in the provision of services in relation to age unless it can be objectively justified or it is covered by the specified exceptions in the Equality Act.
- 14.10 Managers should not discriminate on the grounds of age in the employment of staff and must not operate a default retirement age unless it can be objectively justified.

Disability Discrimination, reasonable adjustments and consent

- Equality Act 2010 Part 4*
- 14.11 Managers must not discriminate against disabled people when letting, selling or managing property. A person has a disability if they have a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
- 14.12 Managers have a duty to make reasonable adjustments to premises to assist disabled persons if requested. This duty is in three parts: adjustments to policies, procedures and practices; changes to terms of lettings; and the provision of auxiliary aids. The duty does not apply to physical alterations to common parts of schemes but see 14.16 and 14.17 below. Managers should follow the code of practice issued.
- 14.13 Where a lease entitles a leaseholder to make improvements or alterations with the landlord's consent, the landlord cannot unreasonably withhold consent if a leaseholder wants to make a disability related adaptation to their flat/house. (Part 13 Equalities Act 2010).
- 14.14 If a lease contains an absolute prohibition against alterations a disabled leaseholder may still request a change to the terms of the lease.
- 14.15 Registered Providers are under a public sector equality duty. (Part 11 Equality Act 2010) and should follow the Disability Equality Duty for Housing Providers Code of Practice from the Equalities and Human Rights Commission.

Disability-related Alterations in Common Parts

- 14.16 Managers should consider in a reasonable manner requests for alterations to common parts which would assist disabled persons, particularly where the relevant leaseholder is willing to pay for the alteration, ongoing maintenance and reinstatement, if that is a requirement for consent.
- 14.17 Consultation with other lessees about any proposed alteration requested should be carried out.
- 14.18 If, after consultation, it is decided to proceed, the manager should arrange for a draft contract between the manager and the relevant leaseholder to be drawn up which includes liability for payment of works, ongoing maintenance costs and reinstatement, and any fees which the manager proposes to charge for dealing with the proposed alteration. That contract is subject to agreement with the relevant leaseholder or a nominated representative.

Data Protection

- Data Protection Act 1998*
- 14.19 Managers must adhere to the provisions of the Data Protection Act 1998 and should refer to the Act if in doubt.
- 14.20 Leaseholders have the legal right to see the information which managers hold about them. Where a leaseholder makes a written subject-access-request, the manager has 40 calendar days in which to respond.
- 14.21 Managers must issue a fair processing notice to individuals before processing their information. Managers should notify leaseholders what information they require, will keep, disclose and for what purpose. This should be a statement at the point of collection of any information supplemented by a general statement.

- 15.1 Managers should deal promptly with repairs and tenant's report of disrepair, and must not attempt to recover the costs of repairs, maintenance or improvements from service charges, including reserve funds, unless the lease specifically allows for this.
- 15.2 Managers should set out in writing the respective repairing obligations of the landlord and leaseholder, and make this information available to leaseholders and the Secretary of any residents association, or Recognised Tenants' Association as appropriate.
- 15.3 Managers should provide a service that is as cost effective as possible.
- 15.4 Managers should set out in writing as part of the Leaseholders' Handbook how leaseholders should report repairs, and should publish target time scales for the completion of repairs which are the landlord's responsibility under the terms of the lease.
- 15.5 Managers should arrange for maintenance work to be undertaken by either someone sufficiently qualified to carry out the work, or approved contractors who provide a customer-orientated and competitively priced service.
- 15.6 Managers should have systems in place which will enable leaseholders to seek assistance in the event of an emergency arising out of normal working hours.
- 15.7 Where repair works are necessary but not urgent, managers should consider grouping them with other works in the interests of economy. Leaseholders should be kept informed of any proposals to do so and the reasons why.

Cyclical and Planned Maintenance

- 15.8 Managers should draw up and implement an adequate and cost effective long-term programme of planned or cyclical maintenance for communal parts of the scheme together with all plant and services that require regular maintenance (including the maintenance and replacement when necessary of communal furniture and fittings). Managers should make a realistic assessment of the cost of that programme and include an appropriate item in the proposed annual budget for consultation with residents.

The programme should, as a minimum, cover the relevant accounting period for which service charges are being demanded, and where possible should seek to cover a longer period (e.g. the length of the managing agents contract). It should be clear and simple to understand identifying the specific maintenance or works in question, and how the works or maintenance are to be funded (e.g. via the reserve fund). Where possible the programme should also identify the amount available in the reserve fund.

The programme should be monitored and updated regularly (at least annually), and a copy given to leaseholders and the Secretary of any representative body/ Recognised Tenants' Association at least once a year, (or following a material change).

CHAPTER
16

ADMINISTRATION CHARGES AND CONSENTS

Major Repairs and Reserve Funds

- 15.9 Managers should arrange all necessary major repairs and renewals to the buildings to ensure that the scheme is kept to a reasonable standard of repair and decoration.
- Managers should monitor works, and take appropriate steps to ensure completion in a reasonable time and to a reasonable standard, to ensure that where the works are not of a temporary nature, they do not require repeating within an unnecessarily short period of time.
- 15.10 Managers should maintain reserve funds to defray the cost of major repairs and renewals whenever the lease allows.
- 15.11 If a lease says contributions to a reserve fund "shall" or "will" be collected, then managers must do so.
- 15.12 Any contributions collected towards a reserve fund must pass the test of reasonableness.
- 15.13 Unless a lease specifies a particular method or manner in which contributions to reserve funds are calculated, contributions to reserve funds for specific building elements and refurbishment of communal areas in particular, should be calculated by the life-cycle costing method, and should be based on the condition of and be specific to each scheme. A minimum life cycle of 10 years should be used including all building components. Life-cycle costing is the estimating of the life of each component of the building or scheme and its replacement cost. A schedule is put together of the components for the scheme which will demonstrate how much will be required to save for replacement of components as they fall for replacement.
- 15.14 The replacement cost of building elements should include V.A.T where applicable, and the cost of any professional or other fees that may be incurred in carrying out works to those elements in the future.
- 15.15 Managers should consider from time to time whether a review of the calculation of the adequacy of funds is appropriate, and inform leaseholders at the annual meeting.
- 15.16 Where possible, and if a manager intends to introduce a new method of calculation of contributions to reserve funds, the manager should advise all leaseholders accordingly, and justify why a change is to be made.
- 15.17 Managers should only consider transferring service charge funds into reserve funds in accordance with the provisions made in the annual budget for the service charge. Where this is considered necessary or appropriate, leaseholders should be informed in advance of the reasons why, and any observations or comments received should be duly considered and where appropriate a response provided within a reasonable timescale.

Contract Law

S.19 of
1985 Act as
amended by
Sch. 14 to
2002 Act

S.158 of &
Sch.11 to
2002 Act

16.1

Administration Charges

Administration charges are charges payable by leaseholders directly or indirectly for or in connection with the application or grant of approvals under a lease, for provision of information or documents, for recovery of outstanding amounts under the lease from a leaseholder's failure to make a payment, or in connection with a breach or alleged breach of a covenant in a lease.

16.2

A variable administration charge is payable by a leaseholder only to the extent that the charge is reasonable.

S.158 of &
Sch.11 to
2002 Act

16.3

A leaseholder or a landlord may apply to a tribunal for an order to vary the lease on the grounds that an administration charge specified in the lease or any formula for calculation of the administration charge in the lease is unreasonable.

S.158 of &
Sch.11 to
2002 Act

16.4

A leaseholder or landlord may also apply to a tribunal for a determination whether an administration charge is payable and if so, to whom payable, by whom payable, the amount payable, the date at or by which it is payable, and the manner in which it is payable. An application can be made whether the relevant administration charge has already been paid or not.

The
Administration
charges (Summary
of Rights and
Obligations)
(England)
Regulations 2007
(as amended). SI
2007/3162.
S.19 of L&T Act
1927 and S.1 of
L&T Act 1988

16.5

A summary of the rights and obligations of the leaseholder in relation to administration charges which have been prescribed by Regulations, must accompany a demand for an administration charge.

16.6

Applications for Permissions and Consents

Managers must reply to applications for permissions or consents arising out of leases in a reasonable time and where the application is refused give reasons. Managers should specify the number of working days in which the managers will reply to requests. Legislation specifies that in certain circumstances consent cannot be unreasonably withheld (e.g. consent to assign the lease). See also paragraphs. 14.12 & 14.13 for special conditions regarding applications for permissions and consents from disabled persons.

Any leaseholder making a formal request for permissions or consent relating to adaptations in common parts may be required to pay a reasonable administration fee for that permission or consent. See paragraph.14.18.

CHAPTER
17

RE-SALES AND RE-SALES ENQUIRIES

- 17.1 Some managers may offer a re-sales service by introducing prospective purchasers to the vendor. In these circumstances the manager must comply with the Estate Agents Act 1979 and the Consumer Protection from Unfair Trading Regulations 2008.
- 17.2 Leaseholders should have the option of finding their own buyer and/or appointing an estate agent of their choice (subject to any rights of the landlord to approve a purchaser according to the criteria set out in the lease). Where restrictions do apply, the manager should inform leaseholders of this where they wish to seek their own buyer.
- 17.3 Managers should not make any charge or require any payment on resale except where it is stated or implied in the lease, or where a service has been offered and accepted at an agreed fee. Any charge should be reasonable.
- Equality Act 2010**
- 17.4 It is unlawful for anyone selling, managing or granting permission to sell property to racially discriminate in any of the following ways:
- In the terms on which a property is offered for sale
 - By refusing to let a person buy
 - By treating a person differently than others who want to buy
 - By refusing to transfer a lease.
- Equality Act 2010 part 4**
- 17.5 The Equality Act 2010 makes it unlawful for those involved with selling and letting property or granting permission to sell or let to discriminate against disabled people.
- S.330 of Proceeds of Crime Act 2002**
- 17.6 Managers have a duty to report to the Serious Organised Crime Agency if they know or have reasonable cause to suspect that anyone connected to their business is or has been involved with money laundering. Managers are obliged to report without the knowledge or consent of the person suspected.
- 17.7 Some leases on retirement schemes are non-assignable and the leases require the lessee to surrender or sell the lease back to the landlord in return for a premium. In the case of these leases it will be the landlord who will be the seller of a new lease and the requirements in 17.2 above may not apply.
- 17.8 Irrespective of whether the manager offers a re-sales service, the manager will be expected to answer questions on behalf of the vendor in relation to key facts about the management of the scheme.
- 17.9 The manager should provide as much information as possible to enable the vendor to instruct an estate agent to market the property. The manager should also be willing to engage directly with an estate agent to ensure that the property is described as fully and accurately as possible.
- 17.10 The manager should provide as much information as possible to enable the vendor to answer questions arising from the purchaser about the property during the conveyancing stage of the sale. It is common for these enquiries to be in the format of the Law Society's Leasehold Properties Enquiries Form 1 (LPE1) or any subsequent amendment.
- 17.11 Throughout the re-sales process the manager should be willing to engage with the prospective purchaser to answer any queries they might have regarding their purchase. By doing so, the manager will help to ensure that the purchaser makes a fully informed regarding their decision to buy.
- 17.12 The manager may charge an administration fee (see sections 16.2 – 16.4) for providing this service, which is different to providing the re-sales service described above.

CHAPTER
18

EVENT FEES

- 18.1 'Event fees' are sometimes known as 'exit fees', because they are fees that become payable on events such as the resale or sub-letting of some retirement leases. The fees are payable by leaseholders to landlords of their scheme, who may or may not be the manager, even though it is often the manager who will collect the fees on behalf of the landlord. The fees are often calculated as a percentage of the price or value of the property.
- 18.2 Event fees include different varieties such as: transfer fees, deferred service charges and payment into a scheme reserve fund (see Chapter 6 and Chapter 15, paras 15.8 – 15.17); and any other model where a fee has been agreed to be deferred.
- 18.3 Managers should include a clear and prominent explanation of the terms of any event fees in any pre-sale information they provide. A 'key-facts' summary document explaining financial liabilities should be provided, including how the fee is calculated, plus worked examples. Managers should include a similar explanation in the Leaseholders' Handbook - see Chapter 3.
- 18.4 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.
- 18.5 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.
- 18.6 Regarding transfer fees only, managers should ensure that they are familiar with any undertaking entered into by the landlord with the Office of Fair Trading (now the Competition and Markets Authority) under the Enterprise Act 2002, in respect of how they enforce any transfer fee covenants in leases.
- Schedule 11, Commonhold and Leasehold Reform Act 2002**
- 18.7 This chapter does not include administrative charges payable for approvals, information or documents etc. which fall within the definition of administration charges in Schedule 11 to the Commonhold and Leasehold Reform Act 2002 . See chapter 16.

CHAPTER
19

HANDOVERS BETWEEN MANAGERS

- 19.1 Handovers should be handled in a professional, timely and cooperative manner between managers within agreed timescales.

Handover of Documents where the Manager is Agent

- 19.2 All documents produced by a managing agent or received from third parties including leaseholders during its appointment in respect of the properties and/or scheme, belong to the landlord. The new manager will need information before handover to be able to commence management effectively on the date of handover. The outgoing manager should therefore fully cooperate, such that the new manager can commence effectively at the date of handover.

Documents should therefore be handed over without the need for a request by the landlord before the date of handover, or no later than the date of handover where this is not possible.

The correct test to be applied is whether the new manager would need the documents to carry on the management effectively at the date of handover. If so, the document or a copy should be handed over as soon as possible in advance.

Handover of Documents where the Manager is also the Landlord

- 19.3 The manager should not seek to frustrate the handover or make things difficult for the new manager. The new manager will need information before handover to be able to commence management effectively on the date of handover. The outgoing manager should cooperate such that the new manager can commence effectively at the date of handover.

Handover of Service Charge Funds

- S94 2002 Act**
- 19.4 At the date of handover or before the outgoing manager must pay to an RTMCo a sum equal to the accrued uncommitted service charge monies.
- 19.5 In other circumstances, either on or before the date of handover, the outgoing manager should pay a sum equal to the accrued uncommitted service charge monies as at the date of handover. The outgoing manager may retain a sum to meet any costs incurred before the handover date, but the amount and reasons for this must be clearly identified when handing over the service charge funds.
- 19.6 Any balance remaining that becomes due to the new manager should be paid when a final statement of account, as at the date of handover, has been agreed.

Preparation of Final Account

- 19.7 The outgoing manager should produce a final statement of account for service charges as at the date of handover no later than three months from the date of handover. The statement should include income and expenditure, balance sheet, creditor and debtor lists, bank statements and all supporting receipts and invoices for expenditure incurred in the financial year to the date of handover.

TUPE

- 19.8 Managers and RTMCo's must comply with the TUPE regulations (Transfer of Undertakings Protection of Employment Regulations). Managers should be particularly sensitive to the needs of scheme managers and other employees at the scheme when a transfer of management is proposed. Professional advice should be taken about the employment rights of staff.

Right to Manage (RTMCo's) and Handovers

- 19.9 Right to manage handovers require managers to comply with statutory requirements in the 2002 Act. Managers must:
- comply with requests for information made by an RTMCo under S82
 - comply with requests for rights of access made by an RTMCo under S83
 - comply with the requirement to serve contractor and contract notices under S93
 - comply with the handover of service charge monies under S94.

CHAPTER
20

NEW SCHEMES

- 20.1 Managers should not place unnecessary restrictions on the assignment of leases such that they would retain the right to charge fees for resales even if the management of the scheme had passed to another party.

- 20.2 Managers should not seek to place restrictions in leases on who can place insurance for the premises such that the right to place insurance would not pass across if the landlord were to change.

- 20.3 Managers should not be named as the management party in a tri-partite lease, or place unreasonable conditions in leases to deter the statutory right to manage.

- 20.4 Managers should not sign management agreements with developers of new schemes prior to the sale of any dwellings in that scheme for a period of longer than three years.

- 20.5 Managers should not seek a rental income from a scheme manager's dwelling in a lease of a new scheme.

- 20.6 Managers should seek to ensure that all leases of new schemes include a requirement for the developer/landlord to pay the appropriate amount of service charges for unsold dwellings.

Managers should be mindful of the Office of Fair Trading investigation into Transfer (exit) fees – see chapter 18 - and the insertion of a requirement into a lease requiring the payment of a Transfer (or Exit) fee.

Managers should ensure that the first years service charges are carefully calculated, with the assistance of professional guidance where necessary, using up to date information. Service charges should not be calculated on an artificial basis and should not be misleading.

Defects

- 20.7 Managers should ensure that staff are aware of the terms of the defects and structural warranty offered to leaseholders in respect of new dwellings.

- 20.8 Whilst the warranty on a new dwelling is a contractual matter between the leaseholder purchasing the property and the developer, managers should be prepared both to offer advice to leaseholders on the terms of that warranty, and the steps they should pursue if they wish to make a claim, and also to initiate claims under any common parts warranty.

- 20.9 Managers should use best endeavours to have defects to common parts of new schemes covered by warranty carried out by the developer or through the warranty scheme. Except in exceptional circumstances and by agreement with leaseholders, managers should not use scheme funds to rectify defects that are covered by warranty or other insurances. Care should also be taken not to invalidate any warranty or insurance.

- 20.10 Managers should be aware that the Sale of Goods Act 1979 may apply in relation to defects of items of equipment.

CHAPTER
21**SCHEME MANAGERS
AND OTHER STAFF**

**Safeguarding
Vulnerable
Groups Act
2006 as
amended by
the Protection
of Freedoms
Act 2012**

Appointment

- 21.1 Managers should make enquiries into the employment history, relevant personal qualities and background of anyone they are intending to appoint as a scheme manager, to satisfy themselves as far as possible that any prospective scheme manager is honest and trustworthy and a suitable person to supervise retirement housing.

- 21.2 Managers must not knowingly employ a barred individual in relation to regulated activities.

- 21.3 Managers should require a criminal records disclosure from employees working with older people. If managers consider that a role is within the definition of regulated activity under the Safeguarding Vulnerable Groups Act 2006, and ask the individual to apply for an enhanced criminal records disclosure check, they must request the appropriate 'barred list' check for children, adults or both.

Scheme Managers' Duties

- 21.4 Managers should issue scheme managers with a job description that clearly defines their duties and responsibilities. Managers should also make clear what scheme managers can and cannot do for residents to protect them from unreasonable demands.
- 21.5 Managers should inform residents of the scheme manager's terms of employment, duties and responsibilities and should provide them with a copy of the scheme manager's job description and hours of duty upon request. Managers should inform residents of any intention to change the job description and hours of duty of scheme managers. See also chapter 7 of this Code.
- 21.6 Managers should issue each scheme manager with a manual which sets out all duties, responsibilities and operating procedures. The manual may be in electronic form. Issues which should always be included are policies on dealing with emergencies and master keys, the use of communal facilities, dealing with petty cash and other monies, authority over on-site contractors, health and safety, and administering medicines/drugs. Managers should allow residents to view or take copies of the manual on request.
- 21.7 Managers should ensure that all scheme managers keep a daily diary recording all significant events on site and dealings with residents (such as, emergencies, injuries, disputes and maintenance works), and keep it in a safe place for not less than six years. These diaries are a valuable record in recalling important facts and actions, should these ever be called into question at a later date. A diary may be kept in electronic form.
- 21.8 Managers should be familiar with the Data Protection Act 1998 principles and associated Code of Practice, and allow individual residents, on request, to know what is recorded about them (but not other residents) in the scheme manager's diary, by providing a copy or extract.
- 21.9 Managers should make clear to scheme managers and residents where responsibility lies for repairs or improvements to the scheme manager's dwelling and fixtures and fittings therein.

Supervision

- 21.10 Managers should provide supervision and back-up support for scheme managers, as the nature of their job means that scheme managers can feel isolated. A specific person should be available to them to provide help and advice, and to ensure they are part of the management team. That person should visit the scheme manager on site at least every eight weeks (on average) and should be able to be contacted by telephone at other times.

- 21.11 The specific person should ensure that the scheme manager is following the organisation's proper practices and procedures, and is observing the correct hours of duty. They should also deal as promptly as possible with any difficulties the scheme manager cannot resolve, and with any problems that arise between scheme manager and residents.

- 21.12 Managers should ensure that the relationship between the scheme manager and the specific person is monitored and reviewed on a regular basis.

- 21.13 Managers should have written policy and procedures in place to deal with aggressive behaviour towards, and harassment of, scheme managers by residents or others. These policies and procedures should be notified to scheme managers. See also paragraphs 14.4 and 14.5 of this Code.

Training

- 21.14 Managers should provide a training programme for each scheme manager based on the experience and qualifications of that scheme manager, and the knowledge of the landlord's policy and procedures.

- 21.15 Scheme managers should undergo an induction course shortly after starting work with the organisation; thorough on-site training in procedures and policies; regular skills training and updating on new procedures and organisational changes.

- 21.16 Managers should ensure that staff responsible for supervising scheme managers are given full and proper job training. It is also recommended that senior managers review the performance of those staff at regular intervals and identify and address any individual training needs.

Code of Conduct for Scheme Managers

- 21.17 Managers should provide scheme managers with a copy of the Code of Conduct for scheme managers of private retirement housing issued by the Association of Retirement Housing Managers, and give training to ensure understanding of its principles. (See Appendix 2). The Code should be available for inspection by residents on request, and should be made available in other formats where requested, and reasonable to do so.

Scheme Manager's Accommodation

- 21.18 Managers should ensure that any rent payable to the landlord for accommodation provided to staff employed to provide services is reasonable having regard to the age, geographical location, condition, size and purpose for which the accommodation is used, unless the rental sum is a fixed amount determined by the terms of the lease.

**CHAPTER
22**

PROVISION OF SERVICES AND INFORMATION

Provision of Services

- Contract Law**
- 22.1 Managers must meet the obligations set down in individual leases to provide or arrange services. If managers do more than the lease requires they may not be able to recover the costs.
 - 22.2 Managers should ensure that services are provided or arranged in an efficient and cost-effective way and in a manner which provides value for money for leaseholders.
 - 22.3 Managers should monitor the quality and efficiency of services provided and publish target time scales for the delivery of services, where appropriate, taking into account the views of leaseholders. Managers should take reasonable action to improve services based upon feedback from such monitoring.
 - 22.4 Managers should consult on the quality and efficiency of all contracts for services at the annual meeting and take into account the views of leaseholders.
 - 22.5 Managers must use their best endeavours to ensure that any scheme's emergency call system is kept fully operational and that arrangements are made to monitor and respond to emergency calls from residents.
 - 22.6 Managers must ensure that all master keys are accounted for, are kept in a safe and secure place and are only used by authorised personnel in appropriate circumstances.
 - 22.7 Managers should take appropriate steps to control access into buildings on schemes so as to establish, as far as possible, a secure environment for residents while ensuring access for emergency services.
 - 22.8 Managers must arrange for furniture, fittings, equipment and carpeting in any common room, laundry, guestroom or other communal room or area to be maintained and renewed when necessary.
 - 22.9 Managers must arrange for the gardens and grounds to be maintained to a standard consistent with the quality of the development and use reasonable endeavours for paths, driveways and car parks to be kept in a safe condition. Managers must ensure that gutters, downpipes and gullies are kept clear.
 - 22.10 Where heating equipment is provided in common parts managers must arrange for it to be maintained in a safe manner, and for it to be set to provide a temperature that meets the wishes of a majority of residents.

Provision of Information - General

- 22.11 Managers should respond promptly to requests for information from leaseholders, their representatives or organisations acting on their behalf. Managers should publish target time-scales for responding, and reply within these time scales, including where a full response will be forthcoming at a later date. Leaseholders should not have to exercise a statutory right for information before it is provided.

Exceptions to the provision of information could include commercially sensitive documents, and documents protected by the Data Protection Act 1998, although where an exception is relevant an explanation should be provided.

Pre-Contract Enquiries

- 22.12 Information that will be of interest to a prospective purchaser is often held by the landlord or managing agent, who may be the only reasonable source of such information. Leaseholders have statutory rights to obtain certain information. However, the provision of information and/or documents sought in respect of the sale of a dwelling is regarded as good practice and helpful to the parties. Provision of this information should not therefore rely on a statutory right being exercised by the leaseholder. Pre-contract enquiries are normally made by or on behalf of the purchaser, through the seller or their representative, and can be critical to the sale of the property. The Law Society has produced a standard leasehold property enquiries form (LPE1) to assist and the ARHM recommends the use of this form to provide consistency, although the information sought may vary. ARHM members should be expected to answer queries raised in the sales process.
- Contract Law Managers should inform the leaseholder or their representative at the outset of all fees in connection with the provision of information, and provide information to satisfy the pre-contract enquiries, and any other reasonable enquiries that may arise. Where the information cannot be provided by return, managers should provide the leaseholder or their representative with an indication of when a reply will be forthcoming. Any information or documents provided should be made within a reasonable timescale. Information sought may vary, but is likely to be of a 'standard' type in most cases. If not already available, managers should consider developing a 'standard' type pack, to expedite enquiries. This could include information about:
- The landlord; ownership of the block/scheme; management arrangements; other formal agreements or arrangements affecting the property; residents associations; ground rent; service charges and reserve funds; major works (existing and future plans); other maintenance agreements; insurance; disputes; complaints; notices and consents.

Change of Occupier or Address for Correspondence

- 22.13 Leaseholders should inform the manager/landlord in writing, and as soon as possible, about any change of occupier or correspondence address.

Change of Manager/Managing Agent or Address

- 22.14 Managers should inform leaseholders as soon as possible of any change of address, and where they no longer manage the property or scheme.

S.47 & s.48
Landlord &
Tenant Act
1987

CHAPTER 23

CARE AND SUPPORT SERVICES

- 23.1 There is a range of different types of retirement housing schemes, and some of them may provide care and support services. Terms used are 'extra care', 'very sheltered' and 'housing with care'.

Care Services

- 23.2 Managers who are responsible for domiciliary care services, 'extra care' housing and some supported living services, should ascertain whether they are required to register with the Care Quality Commission.
- 23.3 Managers of retirement schemes that are required to be registered with the Care Quality Commission must have regard to the essential standards of quality and safety issued by the Commission.
- 23.4 Managers must carry out criminal record checks on those working with vulnerable people or in healthcare.
- 23.5 Managers are under a legal duty to notify the Disclosure and Barring Service of relevant information, so that individuals who pose a threat to vulnerable groups can be identified and barred from working with these groups. If a manager dismisses or removes a member of staff/volunteer from working with vulnerable adults (in what is legally defined as regulated activity) because they have harmed a vulnerable adult, a manager has a legal duty to inform the Disclosure and Barring Service. An organisation which knowingly employs someone who is barred is breaking the law. If managers believe a crime has been committed the police should be informed.

Care Services Charges and Service Charges

- 23.6 Managers should distinguish clearly between charges for care services, and service charges as defined by the Landlord and Tenant Act 1985 - S18, in any budget or accounting information provided.

Housing - Related Support Payments

- 23.7 A minority of leaseholders have been paid housing-related support payments, formerly known as supporting people payments, which were merged into the core budgets of local authorities. These payments are discretionary and most local authorities do not make payments to leaseholders of retirement schemes unless there is an element of additional support or care.
- 23.8 Managers should offer reasonable assistance to leaseholders who require additional information to confirm their eligibility for such payments.

Health and social Care Act 2008 (Regulated Activities) Regulations 2010 SI 781 Care Quality Commission (Registration) Regulations 2009 SI 3122 Safeguarding Vulnerable Groups Act 2006 Sch 4 as amended by the Protection of Freedoms Act 2012 Safeguarding Vulnerable Adults Act 2006 as amended by the Protection of Freedoms Act 2012

CHAPTER 24

SOME EXCEPTIONS TO THIS CODE

- 24.1 There is a range of different retirement schemes to consider. This Code is principally aimed at private retirement schemes sold on long leases, and the requirements of this Code and may sometimes appear difficult to apply to certain retirement schemes. However, if the principles of this Code apply to some parts of a scheme then it would be best practice to apply them to the whole scheme.

Freeholders of Bungalows and Houses (and Mixed Tenure Schemes)

Some private retirement housing schemes consist only or partly of bungalows and houses which are sold as freeholds, rather than long leases. This Code is written for leasehold retirement housing and so cannot address in full the position of these freeholders.

S.1993 Leasehold Reform Act 1967; Chpt 4 or s.93 Leasehold Reform, Housing and Urban Development Act 1993

- 24.2 In general, freeholders on a scheme will pay a charge for services in a similar way to leaseholders. However, because of the nature and terms of the freehold ownership, freeholders do not have the same statutory rights as long leaseholders (as set out in Appendix 1 of this Code). In particular they cannot challenge the reasonableness of the charge before a tribunal, unless the property/scheme is part of a statutory Estate Management Scheme. While likely to be rare in respect of private retirement schemes, Estate Management Schemes allow landlords to retain some management control over properties, amenities and common areas, where the freehold has been sold to the leaseholders.

- 24.3 Managers of freeholders of retirement housing schemes should, as far as possible, treat freeholders and leaseholders equally, although it is recognized that this may not always be possible given the different legal interests.

- 24.4 It is possible for freeholders to be given additional protection in the contracts of sale of their homes (the deed of transfer). Where this is the case, managers must comply with the terms of these contracts.

Shared Ownership and Shared Equity

- 24.6 Some leaseholders on private retirement schemes will have bought their property under a part buy/part rent arrangement, usually referred to as shared ownership.

- 24.7 Shared ownership means that the leaseholder buys a percentage/share of the value of the home, and pays a rent based on the remaining share (see 24.8 below). The lease normally allows for the leaseholder to buy out the whole or part of the remainder of the equity at a later date if they wish to do so. This should not be confused with the Leasehold Scheme for the Elderly (LSE), which was a shared equity scheme whereby the leaseholder buys a fixed percentage of the value of the home but can never buy the remainder.

- 24.8 Another home ownership scheme called 'Older People's Shared Ownership' is available for those aged 55 or over. It works in the same way as the general shared ownership scheme, but a person can only buy up to a maximum 75% share in their home. Once 75% ownership is achieved then no rent is payable on the remaining 25% share.

- 24.9 The legal position for shared owners is not the same for all matters within this Code. Managers should always try to treat shared owners in the same way as leaseholders whilst accepting that the legal position may sometimes be different. For example, shared owners can challenge service charges at a tribunal and have legal rights relating to consultation and insurance. However, in relation to grounds for repossession, the rights of shared owners are totally different.

APPENDIX

01

LEGAL RIGHTS OF LEASEHOLDERS

Mixed Schemes of Rented and 'For Sale' Homes

- 24.10 Some retirement schemes have a mixture of homes for sale on long leases and to rent on shorter tenancies. It is often thought that service charges for the two types of home should be the exactly same; this is rarely the case. Different costs are involved in dealing with the different tenures, with some elements of the service charge costs payable by leaseholders included within the rent paid by tenants for their rented homes.
- 24.11 If tenants of the rented homes in the private sector pay service charges that are defined as variable according to the 1985 Act, the same rights that apply to leaseholders regarding service charges, information about insurance and consultation, apply to those tenants.
- 24.12 However, if leaseholders or the tenants of rented homes pay service charges that are defined as fixed, the rights that apply to leaseholders regarding service charges and consultation do not apply.
- 24.13 Tenants of rented homes paying service charges also do not have any statutory rights regarding the statutory right to manage, the right to buy the freehold (enfranchisement) or the right to seek the appointment of a manager.
- 24.14 Managers should treat the tenants and leaseholders on such mixed schemes as equally as possible, including in the provision of information, subject to the differing legal requirements.

S.47 of 1987
Act amended
by Sch. 11 Part
2 of 2002 Act

S153 of 2002
Act and
SI 2007/1257
(as amended)

S.19 & S.27A
of 1985 Act
as amended
by Sch 14 to
2002 Act

S.27A of 1985
Act inserted
by S.155 of
2002 Act

S.35 Landlord
& Tenant Act
1987

1.1

1.2

1.3

1.4

1.5

1.6

The following does not purport to be an authoritative or comprehensive statement of the law or leaseholders rights. A number of rights available to leaseholders have already been described in the relevant Chapters of this Code.

Leaseholders' Rights Regarding Service Charges

Demands for service charges must contain the name and address of the landlord, and if that is not in England and Wales a further address in England and Wales where notices may be served on the landlord.

Demands for service charges must be accompanied by a summary of rights and obligations, the content of which is prescribed in Regulations. A leaseholder may withhold payment of a service charge that has been demanded without the summary, and any provision relating to non-payment or late payment of service charge in a lease does not have effect in relation to the period in which the service charge is withheld. Once the demand accompanied by a summary has been served, the right to withhold ends.

Managers must ensure that service charges are reasonable. A leaseholder (or a landlord) may ask a tribunal to make a determination about whether a service charge is payable, including whether costs incurred for services, repairs, maintenance, improvements, insurance or management have been reasonably incurred or whether services or works are of a reasonable standard.

A tribunal also has the power to determine in advance (upon application by the landlord or leaseholder) whether costs about to be incurred for services, repairs, maintenance, improvements, insurance or management, would be reasonable, or whether services or works proposed would be of a reasonable standard, or what amount payable in advance is reasonable before costs are incurred.

In determining a matter, a tribunal can decide whether a service charge is payable (or would be payable if costs were incurred), and, if it is, as to the person by whom it is payable; the person to whom it is payable; the amount which is payable; the date at which or by which it is payable; and the manner in which it is payable.

Leaseholders may make an application to a tribunal to challenge a service charge whether payment of that charge has already occurred or not. However, an application may not be made where the matter in dispute has already been admitted or agreed by the leaseholder, or has been or is to be referred to arbitration using a post-dispute arbitration agreement, or has been determined by a court or by an arbitral tribunal following a post-dispute arbitration agreement. But the leaseholder is not taken to have agreed or admitted any matter in dispute as a consequence of having already paid the service charge.

Leaseholders (or the landlord) have the right to apply to a tribunal to ask it to determine whether the lease should be varied on the grounds that it does not make satisfactory provision in respect of the calculation of a service charge payable under the lease.

Rights to Information about Insurance

S.30A of & Sch. to 1985 Act (as amended by Sch 10 to 2002 Act)

- 1.7 Managers must, on request in writing, provide a summary of the insurance cover, and afford reasonable facilities for inspecting the policy document and evidence of payment of premiums, and for taking copies or extracts from them. Alternatively managers must, on request in writing, take copies for the leaseholder and either send them, or arrange for them to be collected, as the leaseholder prefers. Managers must comply with the leaseholder's request within 21 days beginning with the day on which the request in writing is received.
- 1.8 Managers must not make a charge for making facilities available for inspection as set out in the paragraph above, but may treat the costs of such inspections as part of their management fee.
- 1.9 Managers may make a reasonable charge for doing anything else, apart from the inspection, in complying with a request for copies of insurance documents in paragraph 1.7 above. Managers should advise the leaseholder in advance of any charges.
- 1.10 If insurance is effected by a superior landlord, managers must pass any request on to the superior landlord by giving notice in writing requiring the superior landlord to give the relevant information to the leaseholder.
- 1.11 Failure to comply with the requirements set out in paragraphs above is a criminal offence.
- 1.12 The assignment of a lease or tenancy does not affect the validity of a request under paragraphs above.
- 1.13 Leaseholders have the right to notify the insurer of any damage caused to their dwelling or any part of the building containing their flat where the insurance policy provides that claims must be notified within a specified period.
- 1.14 Where a leaseholder is required to insure the dwelling with an insurer nominated or approved by the landlord, they may apply to a tribunal for an order requiring the landlord to nominate another insurer. A tribunal may issue such an order where the insurance available from the insurer nominated by the landlord is determined to be unsatisfactory in any respect or where the premium payable is excessive.
- 1.15 Where the leaseholder of a house is required to insure the house with an insurer nominated or approved by the landlord, the leaseholder has the right not to insure with the landlord's choice of insurer, if they fulfil certain conditions. Namely, that the house is insured with an authorised insurer under a policy that covers both the landlord and the leaseholder for all risks required by the lease and for an amount not less than the lease requires to be covered. The leaseholder must also have given the landlord notice in the prescribed form before the end of 14 days from which the policy took effect if not renewed, or, if it has been renewed, 14 days from when it was last renewed. The prescribed contents and form for the notice to be served on the landlord can be found in the Leasehold Houses (Notice of Insurance Cover) (England) Regulations 2004. SI 2004 No. 3097.

S.30A & Schedule to 1985 Act as amended by Sch 10 to 2002 Act

*S.30A & Sch. to 1985 Act 1985 as amended by Sch. 10 to 2002 Act
Schedule to 1985 Act as amended by S.165 to 2002 Act*

S.164 of 2002 Act and SI 2004/3097

Right to a Summary of Relevant Costs

S.21 of 1985 Act

- 1.16 Managers must provide for a leaseholder or the Secretary of a Recognised Tenants' Association, on request, a summary of relevant costs (as defined by S18 of the 1985 Act) incurred during the last accounting year, or where accounts are not kept on that basis, the 12 months before the request.
- 1.17 The summary must cover all costs incurred by the landlord for which the service charge is payable and should show how they are reflected or will be reflected in demands for service charges. The cost of preparation of the summary is regarded as properly chargeable to the service charge account where the lease so allows.
- 1.18 The summary must distinguish between items:
 - For which no payment has been demanded of the landlord within the period to which the summary relates
 - For which payment has been demanded of the landlord but not paid within that period; and
 - For which the landlord has paid within that period.
- 1.19 The summary must also specify the total of any money standing to the credit of the leaseholders paying these charges at the end of the period and any costs which relate to works for which improvement grants have been or will be paid and show how they have been reflected in the service charge demands.
- 1.20 Managers must supply the summary within one month of the leaseholder's request or within six months of the end of the period covered by the summary, whichever is the later.
- 1.21 If the building has more than four dwellings, the summary must be certified by a qualified accountant as a fair summary sufficiently supported by accounts, receipts and other documents. A qualified accountant must belong to one of the recognised accountancy bodies and may not be an officer or employee of the landlord or managing agent or, if the landlord is a company, of any associated company. Guidance on accounting for service charges is published by the Institute of Chartered Accountants in England and Wales as a Technical Release (Tech 03/11).

Right to Inspect Supporting Documents to Accounts

- S.22 of 1985 Act**
- 1.22 If requested by a leaseholder or the Secretary of a Recognised Tenants' Association within six months of their receiving a summary of costs (see above), managers must provide an opportunity for the inspection of the accounts, receipts and other supporting documents. Managers must not charge the leaseholder for the inspection and the leaseholder has a right to take copies or extracts from any documents. The cost of the inspection can be included in the cost of management.
- S.22 of 1985 Act**
- 1.23 Any charge made for providing copies of any documents or having a member of staff in attendance for that purpose must be reasonable. Managers should inform leaseholders of any charges for this service in advance.
- S.22 of 1985 Act**
- 1.24 Managers must respond to the leaseholder's request in writing within one month and must then allow the leaseholder an opportunity to inspect the accounts, receipts and other supporting documents during the next two months.
- S.23 of 1985 Act**
- 1.25 Intermediate landlords who do not possess all the relevant information or documents necessary to comply with the requirements must make a written request to their own landlord for this information.
- S.25 of 1985 Act**
- 1.26 It is a summary offence to refuse or ignore a request for a summary of costs, or a request to inspect documents under S.21 and S.22 of the 1985 Act.

Right of First Refusal

- Part 1 of the 1987 Act**
- 1.27 Managers who are landlords, and who are not Registered Providers must, if they wish to dispose of the freehold or any other interest in the property or scheme, give their 'qualifying' leaseholders first refusal on the purchase. In general qualifying tenants are those holding long leases for a term over 21 years, and statutory tenants.

The Right to Buy the Freehold (Enfranchise)

- Part 1, Leasehold Reform, Housing and Urban Development Act Urban Act 1993**
- 1.28 Leaseholders of flats have the right to buy the freehold of their building if they and their building qualify. They have this right even if the landlord does not wish to sell and, after buying the freehold, can decide for themselves how to manage the building.
- 1.29 To qualify, leaseholders must have leases that were first granted for more than 21 years. Shared ownership leases do not qualify unless the leaseholders now own 100% of the equity.
- 1.30 For the building to qualify at least two thirds of the flats in it must be owned by leaseholders that qualify (see paragraph 1.29 above) and no more than 25% of the building must be in non-residential use.
- 1.31 The law and process to be followed is not explained in full detail here but, in essence, the leaseholders will make an offer of a price to buy the freehold to the landlord, and seek to agree the price and other terms. If terms cannot be agreed then either the leaseholders or the landlord may refer the dispute to a tribunal, which will decide the terms and price for the freehold. Statute sets out the qualifying and valuation criteria in full, including any exceptions.

The Right to Seek the Appointment of a Manager

- S.21- 24 of 1987 Act as amended by S.160 of & Sch 9 to 2002 Act**
- 1.32 Leaseholders have the right to apply to a tribunal for the appointment of a manager if dissatisfied with their current one. This right does not apply if the landlord is a Registered Provider. The tribunal will make the order if it is just and convenient in all the circumstances, and where at least one of the following applies:
- The landlord or manager is in breach of his obligations to a leaseholder under the lease relating to the management of the premises or part of the premises
 - Unreasonable service charges or administration charges have been made, or are proposed or likely to be made
 - The landlord or manager is in breach of any relevant provision of a code of practice approved by the Secretary of State under Section 87 of the 1993 Act (including the ARHM Code); or
 - Where other circumstances exist by which it is just and convenient for the order to be made.

1.33 Leaseholders need only prove one of the above grounds. However, if they intend to prove grounds 1, 2, or 3 they must also satisfy ground 4 to the tribunal that it is just and convenient in the circumstances to make an order to appoint a manager.

The Right to Manage (RTM)

- Part 2 Chapter 1 of 2002 Act**
- 1.34 Leaseholders of flats collectively have the right to take over the management functions of their landlord, if they and their building qualify. This right to manage is different to the right to seek the appointment of a manager, because it can be used by leaseholders even if their landlord or current manager is not at fault.
- 1.35 To qualify, leaseholders must have leases that were first granted for more than 21 years.
- 1.36 For the building to qualify at least two thirds of the flats in it must be owned by leaseholders that qualify, and no more than 25% of the building must be in non-residential use. Buildings owned by a local housing authority do not qualify if a local authority is the immediate landlord of any of the qualifying tenants, nor do buildings where there are different freeholders of parts of the building, or where there is a resident landlord in a building with no more than four units. It also does not apply where the right has already been exercised and a RTM Company is already in place, or where the right has been exercised but the RTM Company has ceased to be responsible for the management within the previous four years.
- 1.37 To exercise the right to manage leaseholders must form a RTM Company. It is the RTM Company that will take over the management functions.
- 1.38 All qualifying leaseholders have the right to become members of the RTM Company and must be invited to do so by the RTM Company. For the right to manage to proceed the RTM Company must have, as members, qualifying tenants equal to 50% or more of the total number of flats in the building. The landlord also has the right to become a member of the RTM Company once the right has been acquired.
- 1.39 The RTM Company begins the process of taking over the management functions by serving a claim notice on the landlord, containing detailed information prescribed by statute. The landlord then has one month in which to accept the claim or issue a counter notice. The landlord may only deny the claim to the right to manage if it can be shown the leaseholders, the building, or the RTM Company itself do not qualify, or if statutory procedures have not been followed.
- 1.40 The right to manage is not meant to be an adversarial process. If the claim is accepted the landlord must hand over to the RTM Company all management functions according to the prescribed procedure. If the claim is disputed and a counter notice has been served by the landlord, the RTM Company can refer the matter to a tribunal to decide, for example, if the company is entitled to acquire the Right to Manage.

- 1.41** The RTM Company does not have to pay the landlord any compensation for loss of management if it successfully claims the right to manage. However it will have to pay the landlord's reasonable costs arising from the claim. Disputes about the reasonableness of a landlord's costs may be referred to a tribunal. If a manager or landlord is served with a claim notice it may be advisable to consider seeking independent legal advice.
- S.76 of 1993 Act**
- 1.42** Two thirds or more leaseholders of a scheme that consist of or include three or more dwellings have the legal right to have a management audit carried out by a suitably qualified person. Where the relevant premises consist of only two dwellings, either or both of the leaseholders have the right to have such an audit.
- S.78 & 79 of 1993 Act**
- 1.43** This right includes having a qualified accountant or qualified surveyor appointed by leaseholders to check the accounts and any supporting documentation sought by the auditor, which must be provided by the manager on behalf of the landlord.
- 1.44** The manager must allow the auditor to inspect the accounts, receipts or other relevant documents, and take copies of them; or the manager must take copies and either send them to the auditor or leave them for collection, whichever the auditor prefers.
- 1.45** The purpose of the audit is to help leaseholders ascertain the extent to which the obligations of the landlord owed to the leaseholders, are being discharged in an efficient and effective manner, and the extent to which the service charges are being applied in an efficient and effective manner.
- S.80 of 1993 Act**
- 1.46** Leaseholders exercise their legal right to have a management audit carried out on their behalf, by having their auditor give a notice signed by each leaseholder (on whose behalf it is given) to their landlord. The notice should specify any documents required to be inspected or copied and any communal parts to be inspected, as well as give the full name of each of the leaseholders and the address of the property.
- S.79 of 1993 Act**
- 1.47** The landlord may include his costs of providing for the inspection of documents in respect of a management audit as part of cost of management. For any other costs the manager may make a reasonable charge.

S.84 of & Sch. 4 to 1996 Act as amended by Sch. 9 to 2002 Act

- 1.48** In addition to the right to a management audit referred to above, a recognised tenants' association has the legal right to appoint a qualified surveyor to advise on any matters relating to the service charges payable by one or more members of the association. The surveyor is given legal rights of access to the landlord's documents and common parts of the premises.

S1 1985 Act

- 1.49** Any leaseholder at any time can make a request for disclosure of the identity of the landlord. The request must be in writing and there is no prescribed wording that needs to be used. The request can be made to a manager, any managing agent or other person who demands or receives rent paid by the lessee. If the request is served on the manager or managing agent a written statement of the landlord's name and address must be sent within 21 days from the date of receipt.

S2 1985 Act

- 1.50** If a leaseholder has made a request under 1.49 above and the landlord is a body corporate, then the leaseholder can follow it with a request for the disclosure of the name and address of every director and the company secretary of the landlord. There is no prescribed wording for the request but it must be in writing.

S3 1985 Act

- 1.51** If the landlord's interest in a block is assigned (sold to another party), then the new landlord must give notice in writing to every leaseholder of the name and address of the new landlord, not later than the date within two months of the assignment. There is no prescribed wording but the notice must be in writing. A summary offence is committed for a failure to comply, without reasonable excuse, with the requirements of sections 1 to 3 of the 1985 Act.

Administration Charges

- 1.52** Leaseholders have the right to challenge the reasonableness of administration charges at a tribunal (See Chapter 16).

Sources of Advice for Leaseholders about their Rights

- Age UK Advice Line
Telephone: 0800 169 6565
ageuk.org.uk
- The Leasehold Advisory Service (LEASE) - Free initial legal advice and information on leaseholder's rights:
Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX
Telephone: 020 7832 2500. Lines are open Monday to Friday from 9am to 5pm
E-mail: info@lease-advice.org
lease-advice.org
- Citizens Advice consumer helpline
Telephone: 03454 04 05 06
- Local Community Legal Advice Centre
lawcentres.org.uk

If, as a leaseholder, you are concerned about the manager of your scheme, please speak to the manager first of all to try to resolve any problems. If this is not possible, you can also use the formal complaint handling procedure that your manager should have in place – see chapter 12.

APPENDIX
02CODE OF CONDUCT FOR
SCHEME MANAGERS

This Code of Conduct for Managers and Scheme Managers sets out established principles of the way that managers should perform their roles. The ARHM wishes to thank the Centre for Housing and Support for its assistance in publishing these principles.

Managers should be able:

- To offer equal opportunities and fair treatment to all residents without discrimination on account of race, gender reassignment, disability, religion and belief, age, marriage and civil partnerships, sex and sexual orientation
- To recognise, respect and safeguard the individuality and personal rights of each resident whilst acknowledging the responsibility to others, and to encourage residents to accept their responsibility towards each other
- To understand and respect the confidentiality of knowledge and information relating to individual residents and the employer
- To facilitate independence and the well-being of residents both as individuals and within the group as a whole
- To be sensitive and impartial in the delivery of services
- To act always with honesty and integrity
- To ensure that professional responsibility is never sacrificed for personal interest
- To establish and maintain high standards of personal conduct and professional relationships
- To acknowledge the need for continuing professional training and self-development
- To ensure that internal procedures relating to statutory obligations of the employer are understood and implemented
- To understand the role of other service providers and significant people in the lives of residents and be committed to working effectively with them
- To be aware of and to accept a responsibility to contribute to the setting of objectives, policies and procedures of the employer.

APPENDIX
03OBJECTS OF THE ASSOCIATION OF
RETIREMENT HOUSING MANAGERS

The ARHM represents management organisations who together manage over 100,000 private sheltered housing flats, houses and bungalows in England, Scotland and Wales. The Association is committed to high standards and ethics in the management of private sheltered housing.

Objects

The main objects of the ARHM are to:

- Promote high standards of practice and ethics in the management of retirement housing and in the provision of services to residents
- Set standards for membership of the Association and promote quality and professionalism through training and education of members
- Monitor standards of members including implementing a compliance-testing regime so that further improvements in standards can be made
- Consider and comment on matters affecting the Association and retirement housing, and to promote the views of the Association in the business, social, educational and political communities
- Investigate and determine complaints against members in a fair, open and transparent manner
- Provide the principal forum for the discussion and progression of issues facing retirement housing
- Promote the benefits of retirement housing
- Provide and disseminate information on retirement housing and to act as a source of professionally-based knowledge
- Foster the exchange of ideas and information between members and organisations.

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