

Taking charge

16 July 2018

The new commercial service charge code will be published as a professional statement to ensure best practice across the profession, writes Peter Forrester

Currently in its final editorial stages before regulatory approval, the 4th edition of the RICS code of practice for management and administration of service charges in commercial property is to be issued as a professional statement and come into force in the autumn.

Adopted as RICS guidance in 2007, the code has had a profound and positive impact on the commercial property sector and enabled major improvements in standards of delivery of landlord services and accountability for spending what is, in effect, tenants' money.

However, while there are numerous examples of managing agents and landlords following the principles in the code, there are many instances where best practice has been ignored or positively flouted.

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RICS continues to be concerned by the behaviour of certain landlords and managing agents and has long called for a fairer and more professional approach to property management to help outlaw these rogue elements. Formalising the code as a professional statement with mandatory obligations for RICS members and regulated firms is a significant step towards regulating such activity.

Best practice

The statement will set the highest standards, continuing the evolution of best practice and recognising demand for such standards in an increasingly complex and challenging area of commercial property management. With the change to a professional statement, the mandatory requirements to which an RICS professional or regulated firm is now expected to adhere will have more serious regulatory implications, and departure from the requirements may now have disciplinary or legal consequences, or even both.

As currently drafted, the statement includes 9 new mandatory requirements, as follows.

1. All expenditure that the owner and manager seek to recover must be in accordance with the terms of the lease.
2. Owners and managers must seek to recover no more than 100% of the proper and actual costs of the provision or supply of the services.
3. Owners and managers must ensure that service charge budgets, including

- appropriate explanatory commentary, are issued annually to all tenants.
4. Owners and managers must ensure that an approved set of service charge accounts showing a true and accurate record of the actual expenditure constituting the service charge are provided annually to all tenants.
 5. Owners and managers must ensure that a service charge apportionment matrix for their property is provided annually to all tenants.
 6. Any service charge monies, which will include reserve and sinking funds, must be held in one or more discrete or virtual bank accounts.
 7. All interest earned on service charge accounts ? or where separate accounts for each property are not operated, a proper and reasonable amount of interest calculated on normal commercial rates ? must be credited to the service charge account after appropriate deductions have been made. This applies, for instance, to bank charges, tax and so on.
 8. Where acting on behalf of a tenant, RICS members must advise clients that, if there is a dispute, any service charge payment withheld by the tenant should reflect only the actual sums in dispute.
 9. When acting on behalf of a landlord, RICS members must advise their clients that following resolution of a dispute, any service charge that has been raised incorrectly should be adjusted to reflect the error without undue delay.

Principles

In addition to the mandatory requirements, considered to be the minimum acceptable standards of performance, practitioners must also have regard to the statement's best practice principles. These underpin the mandatory requirements, and have been reviewed and updated, though their aims and objectives remain unchanged.

In introducing the code as a professional statement it is acknowledged that, in rare circumstances, strict compliance may not always be possible. But RICS professionals should only depart from best practice for justifiable reasons and, where this might have a material impact on their advice, clients must be informed in writing of the departure and the reason.

As with the existing code, the professional statement cannot override the terms of existing leases, and a failure to meet the standards will not of itself negate or limit a tenant's liability to pay service charge under the lease.

Produced in collaboration with bodies representing owners, occupiers, investors and managing agents, together with support of the [Institute of Chartered Accountants in England and Wales](#) , the statement is also to be endorsed by the [Law Society](#) .

The increased regulatory importance of the professional statement should lead all parties to consider its principles and, in particular, requirements, carefully before entering into new leases.

Peter Forrester is an independent service charge consultant, chairman of the RICS commercial service charge professional group, and lead author for the Service charges in commercial property professional statement

Further information

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