

RICS Service Charge Code Professional Statement Update

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Introduction – RICS Professional Statement

- RICS professional standards and guidance, UK
- Service Charges in Commercial Property, 1st Edition, September 2018
- Comes into force – 1 April 2019
- Service Charge Code – "the Code" - <https://www.rics.org/uk/upholding-professional-standards/sector-standards/real-estate/service-charges-in-commercial-property/>
- Professional Statement
- Set out the requirements of practice for RICS members.
- Professional or personal standard for the purposes of RICS Rules of Conduct.
- Previous Code (3rd Edition) – set non-mandatory guidance on "best practice"

Mandatory v Good Practice Provisions

- Sections which use the word "**must**" set mandatory professional, behavioural, competence and/or technical requirements
- From which members "**must not**" depart.
- Use of the word "**should**" constitutes areas of good practice.
- A member may depart from a provision of good practice but a member may be required to justify their decisions and actions.
- Regulatory and Disciplinary Proceedings.

Limitations - Comments

- Existing Lease Terms
- Professional statement cannot override the terms of the lease. Service charge deals with the costs of servicing and operating property to comply with the landlords obligations, those obligations arise from the terms of the lease and take precedence.
- Departing from the mandatory requirements of the professional statement may give rise to legal and/or disciplinary consequences.
- In a conflict between the professional statement and terms of the lease – the lease will have precedence.
- If complaint with the terms of the lease, failure to meet that standards set out in the professional statement offers no basis for a tenant not to pay the service charge as required by the terms of the lease.
- Non-compliance with the lease terms – would offer such a basis for non-payment.

Structure of the Code

- **Mandatory Requirements**
- 9 "must" mandatory requirements. Members must act in accordance with these mandatory requirements.
- **Core Principles**
- 11 Headings which include 24 core principles which underpin and support the 9 mandatory requirements. Strict compliance may not always be possible - appropriate level of compliance may be based on professional judgement of all parties.
- **Best Practice**
- 11 general areas of recommendations to assist RICS members and regulated firms achieve compliance with the mandatory requirements.

Mandatory Requirements

- All expenditure to be recovered **must** be in accordance with the terms of the lease.
- One **must** seek to recover no more than 100% of the proper and actual costs of the provision or supply of the services.
- Service charge budgets **must** be issued annually to all tenants.
- An approved set of service charge accounts showing a true and accurate record of the actual expenditure **must** be provided annually to all tenants.
- A service charge apportionment matrix **must** be provided annually to all tenants.

Mandatory Requirements

- Service charge monies (including reserve and sinking funds) **must** be held in one or more discrete (or virtual) bank accounts.
- Interest earned on service charge accounts **must** be credited to the service charge account after appropriate deductions have been made.
- Disputes – acting for Tenant - **must** advise client that any service charge payment withheld should reflect only the sums in dispute.
- Disputes – acting for landlord – must advise that following resolution of a dispute, any service charge which has been raised incorrectly should be adjusted to reflect the error without undue delay.

Core Principles - Summary

- The Service Cost
- Allocation and Apportionment
- Communication and Consultation
- Duty of Care
- Financial Competence
- Occupiers Responsibilities
- Challenge/ADR
- Timeliness
- Transparency
- Value for Money
- Exclusions

Core Principles – Service cost

- A costs transparent.
- Management fees fixed price.
- Best practice recommends **value for money basis** – competitive quotes and benchmarking
- No profit from provision of services.
- Reasonable commercial management fee allowed, reflecting actual costs.

Core Principles – Allocation and Apportionment

- Costs allocated to relevant expenditure category. Industry standard.
- Costs allocated to those who benefit from them.
- Basis of apportionment should be **demonstrably fair and reasonable**.
- **Individual occupiers bear an appropriate proportion of the total service charge expenditure that clearly reflects the availability, benefit and use of services.**

Core Principles – Duty of Care and Financial Competence

- Recognition of a duty of care to both owners and occupiers to act with professional care, diligence, integrity and objectivity.
- Duty of care to occupiers to who fund the provision of the services
- Duty of care to owner whose investment they are servicing.
- In issuing statements of account/certification – to act as experts.
- Independent Review.

Core Principles – Disputes, Value for Money and Exclusions.

- All new leases should make provision to require ADR – cost-effective alternative to court.
- RICS Mediator, IE appointment. AD hoc agreements to mediate.
- **Value for Money.** Service quality should be appropriate to the location, use and character of the property.
- Value for money rather than merely the lowest price.
- Exclusions – original design and original development, improvement costs?
- **Future** redevelopment costs
- Legal costs

Best Practice

- Best practice recommendations to help to achieve the following of the mandatory requirements. Includes 11 general areas of recommendations, divided into various sub-clauses. Constitutes the majority of the Code documentation.
- Language and terminology is a bit confusing.
- Not intended to be a comprehensive guide, but parts will have formal status of good practice.
- Recommendations which include the word **should** constitute areas of good practice. There may be exceptional circumstances where good practice may be departed from – any decision to depart from good practice will require justification of such decision and actions.

Best Practice - Recommendations

- Administration
- Allocation and apportionment
- Communication and consultation
- Existing and new leases
- Financial control and competencies
- Dispute Resolution
- Mixed –use developments
- Provision of anticipated future developments
- Initial provision, replacement and improvement of fabric, plant and equipment
- Sustainability and Additional best practice (special cases)

Discussion Points

- CP, 9-11. **Duty of Care.** Liability for Breach? Is this new?
- CP, 12-14. **Financial Competence.**
- CP, 18-19. **Right to ADR.** Right to opt out by agreement.
- CP, 1 & 23. **Value for Money.**
- CP 6 & 24. **Redevelopment.** Standard of development – as compared to repair obligating.

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