

RICS advice on service charges during the COVID-19 pandemic

The effects of the COVID-19 pandemic are now beginning to be felt very deeply but what hit first as a health crisis is rapidly becoming an economic crisis impacting many areas, including the commercial property sector, with potential financial problems faced by both landlords and tenants.

These issues will also extend to service charges. Tenants might be reluctant to continue contributing towards the landlords' cost of providing services at a time when they themselves have been forced to suspend operations in accordance with government restrictions. But even though many businesses are currently suspended, premises may not be empty and continue to contain goods and equipment owned by tenants. Moreover, services such as security and essential maintenance will still be required.

Tenants should continue to pay their service charges as set out in their lease but landlords and occupiers may wish to negotiate appropriate temporary service charge arrangements, and these negotiations should take place in a constructive and collaborative manner.

Landlords and managing agents have also expressed some concerns as to compliance with RICS professional standards during what is a very difficult and challenging period of disruption. This document provides advice on the application of the RICS *Service charges in commercial property code* (2019) to help firms and members during this time but does not change or add to the standard.

The principle aim of the code is to promote best practice, uniformity, fairness and transparency in the management and administration of services charges in commercial property and this is especially true at the present time. We hope that managers and occupiers will recognise this challenge and work together to agree solutions for each unique situation that are tailored and appropriate for all parties.

The RICS code contains mandatory provisions including:

- owners and managers **must** ensure that service charge budgets, including appropriate explanatory commentary, are issued annually to all tenants
- 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 (p. 10).

However, where the code states that it is considered best practice that an annual statement of expenditure should be issued within four months of the service charge year-end, it should be noted that this is a best practice guidance principle for normal circumstances. The appropriate level of compliance should be based on the professional judgement of all parties as to what is appropriate and reasonable considering all the circumstances.

Wherever appropriate, costs should be limited to the provision of works and services required to keep properties safe and secure and at a level to comply with health and safety concerns.

However, there may be situations where one or more tenants within a multi-occupied building or complex may need to continue to operate from their premises as an essential business in securing the supply of goods and services in the national interest.

In such circumstances, landlords may still be obliged to provide essential services to facilitate the continued occupation of the building/complex. In the interest of a collaborative and cooperative approach in dealing with the current situation, it may not be appropriate that the whole of the cost of providing additional services above a minimal level should be passed solely to those that are able to continue to trade, and costs could continue to be apportioned to all tenants in the same way that landlords are generally liable to pay the full cost attributable to unlet premises.

Notwithstanding any continued occupational requirements, costs should still be limited so far as is reasonably practicable, as set out earlier.

Where appropriate, and notwithstanding the provision of leases, landlords and managing agents should immediately factor anticipated reductions in the cost of providing services into revised budget estimates and adjust tenant contributions accordingly.

It is not considered necessary to reissue budget documents to tenants but there should be clear communication with occupiers as to the action being taken to reduce costs and to ensure tenant payments do not exceed the revised estimate of anticipated expenditure.

Landlords and managing agents should also give sympathetic consideration to agreeing to adjust the frequency of on-account payments to ease cash-flow for all occupiers.

Where such arrangements are put in place, tenants should acknowledge that this will also be a difficult time for landlords in maintaining their own cash flow and should continue to ensure prompt payment of service charge demands.

Clear records of all conversations and negotiations should be kept.

The current position places a huge burden on all parties – occupiers, owners and managing agents – and RICS encourage all parties to work together on a case-by-case basis to recognise these challenges and create an approach that is proportionate and appropriate for each set of unique circumstances.