

# Cracking the Commercial Property Codes

## SERVICE CHARGES IN COMMERCIAL PROPERTY – THE NEW RICS CODE OF PRACTICE

Service charges often represent a significant overhead for commercial tenants and can be unpredictable.

It is perhaps surprising therefore that there is no material legislation governing service charges in business leases - 'what you read is what you get'. The situation is therefore quite different to residential property where a large amount of legislation has been enacted.

This illustrates how important negotiating the terms of a lease can be, as its contents will be the only factor determining how the service charge will be governed.

The new RICS Code of Practice – 'Service Charges in Commercial Property' (the 'Code') was introduced on 1 April 2007 in an attempt to regularise service charges in commercial leases.

The basis of the Code is to promote 'best practice' and to encourage landlords to draft clear and more explicit service charge provisions. The introduction to the Code states that "best practice requires owners and occupiers ensure their advisers" incorporate the code when preparing documentation prior to a new letting and at lease renewal.

Yet the Code is merely advisory. Indeed whether leases were prepared before and after 1 April 2007 there is no obligation to follow its contents. The extent to which it is incorporated into the relevant documentation is a matter for the client's instruction.

### Objectives

The Code has five basic objectives.

- 'Best practice on a value for money basis'

- A reduction of conflict
- That service charges are operated on a 'not for profit, not for loss' basis
- That services charges are Budgeted and can be a forecastable part of the occupiers overhead and
- That service charge regimes are cash – neutral to the owners income.

### 'Best Practice Procedures'

These five objectives are incorporated into 'best practice procedures' which are separated into six different areas: Management, Communication, Transparency, Service Standards and Provision; Administration and Additional Shopping Centre Services.

The Code then sets out under each head its recommendations for the operation of a code complaint service charge regime. For example a clear communication structure should be established and suppliers of all services should be required to perform to written performance standards.

Significantly the Code recommends that any management fee charged should not be linked to a percentage of expenditure but should be fixed for a reasonable period of time and possibly subject to RPI and must be fair and reasonable. The Code does not consider a fee linked to a percentage of expenditure appropriate as it does not provide good 'value for money'.

### Limits on Effectiveness

As the Code is only advisory it is somewhat curious that it has been given a date of effect. There is no compulsion to follow its content either before or after 1 April 2007. It will not override existing leases.

- It remains the case that the terms negotiated between each party are binding
- There is no real sanction for non compliance, though it has been speculated that surveyors may be sanctioned by the RICS.

It is nevertheless good practice for all commercial property practitioners to be aware of the Code's content.

There is no statutory requirement for the Code to be taken into account when resolving service charge disputes and no requirement in English law for best practice guidance to be taken into account when interpreting service charge or any other lease terms.

### Conclusion

The Code provides useful advice to landlords who wish to manage their buildings well and avoid disputes with their tenant. However, unless and until supported by legislation, the Code is toothless. The extent to which practitioners incorporate its proposals into documentation is a matter entirely for the client.

'A managing agent should not follow the Code to the disadvantage of its client, the landlord, without the latter's prior approval. Tenants should not assume a landlord's failure to comply with the Code will give them any rights they would have enjoyed without it'.



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