

## Lease Conferences



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## Disclaimer



Whilst we make reasonable efforts to ensure our content is accurate and up-to-date, information and guidance in this webinar does not and is not intended to amount to legal advice in any particular case.

No responsibility for any consequence of relying upon the webinar material or presentations of the webinar is assumed by LEASE or any of our advisers

The law is stated as at 1 December 2016

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## CODES OF HONOUR - UNDERSTANDING AND IMPLEMENTING THE ARHM CODE OF PRACTICE

By Alero Orimoloye  
12 January 2017

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## What is the ARHM code?

- S87 of the Leasehold Reform, Housing and Urban Development Act 1993 (LRHUDA 1993)
- Secretary of State is authorised to approve a code:
  - *"which appears to him to be designed to promote desirable practices in relation to any matter or matters directly or indirectly concerned with the management of residential property by relevant persons"*
- Approval of Codes of Management Practice (Residential Property) (England) Order 2016 no.505
  - Effective 1 June 2016

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## Application

### Applies to:

- Leasehold properties
- Private retirement housing whether managed by private companies or RPs
- Variable service charge
- England only – Wales separate Code approved

### Does not apply to:

- Commonhold property
- Public sector authority landlords
- Registered social landlords (but does apply where they act as managing agent for private sector)

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## Who is it for?

- Landlords
- Tenants/leaseholders
- Occupiers
- Managers of leasehold property (landlords, freeholders, managing agents, surveyors)

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## Why consider it?

- Successful building management
- Outlines desirable practices
- Used in evidence/considered where relevant:
  - S27A Landlord and Tenant Act (LTA) 1985 applications
  - Part II LTA 1987 appointment of a manager – but doesn't apply if LL is RP
  - Part III of the LTA 1987 compulsory acquisition
    - *Arrowgame Ltd v Wildsmith* [2012] EWHC 3315
  - LTA 1988 consents
- Avoid
  - appointment of a surveyor
  - management audit

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## Useful caselaw

- *The Leaseholders of Flers Court v Selwood Housing Limited*
- CHI/OOHY/LIS/2010/0053
- 21 March 2011
- Service charge dispute for the periods 2000 – 2010
- LVT suggested that Selwood should comply with the code of practice issued by ARHM relating
- to private retirement housing

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## Useful caselaw

- LVT determined that it is good practice to have a maintenance plan in accordance with paragraph 4.8 of the ARHM code of practice
  - Managers should draw up and implement an adequate and cost effective programme of planned or cyclical maintenance for communal parts of the scheme

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## Useful caselaw



- Mr HD Lederman & Ors. V Anchor Trust
- CHI/24UE/LSC/2009/0049
- 15 July 2009
- Service charge dispute with an application for reimbursement of fees

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## Useful caselaw



- LVT considered landlord's failure to take steps to resolve the complaint which was made before Tribunal proceedings were issued
- No evidence put before the LVT that the landlord had or followed a complaints procedure recommended by para.13.0 of the ARHM Code of Practice
- Considered that even if there was such a procedure in place, landlord had failed to address concerns raised by any of the Applicants
- LVT ordered reimbursement of fees

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## Useful caselaw



- Mr Frank Lee V Regent Management Limited
- Re: Wyre Mews, The Village, Haxby, York
- 10 December 1998
- Application for the appointment of a manager pursuant to section 24 (1) LTA 1987

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## Useful caselaw

- Tenants contended that landlord failed to adhere to the ARHM Code of Practice
  - Failed to hold meetings for the benefit of all tenants.
  - Failed to comply with para 1.5 of the ARHM Code of Practice which states that:
    - Lessees should be provided with a statement of the income and expenditure account and a cyclical maintenance and Sinking Funds Accounts despite repeated requests
- Landlords argued that as they were not members of the ARHM, compliance with the RICS Code sufficed

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## Useful caselaw

- Discussed and agreed that the actual Codes had only been relatively recently approved, as the approval of Codes of Management Practice (Residential Property) Order 1996 (SI1996 number 2839) only came into force
- on 17 March 1997
- Useful discussion about the

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## Useful caselaw

- Breaches of the ARHM Code included failure by the managers to attend the subject premises for meetings with tenants who could not readily travel to the manager's offices
- Failure to call a meeting of all leaseholders
- LVT decided the case for the appointment of another manager had been well made in view of the considerable difficulty the tenants have had over a long period of time in discovering the true position in relation to substantial amounts of their money

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## Summary of contents

- 24 chapters
- 3 appendices, 2 in force
  - Appendix I – Legal rights of leaseholders
  - Appendix II – Code of Conduct for Scheme Managers
  - Appendix III – Objects of the Association of Retirement Housing Managers

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## Structure

MUST	SHOULD
Statutory legal requirement	Recommended best practice
Contractual agreement	Recommended best practice cannot override lease but should be given appropriate consideration
Requirement of common law	Requirement for members of ARHM to comply

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## Monitoring & Enforcement



<p>ARHM will monitor and undertake periodic reviews</p>	<p>ARHM members are subject to audit checks</p> <ul style="list-style-type: none"> <li>• may be raised in response to complaints</li> </ul>	<p>Compliance is condition of AHRM membership</p>
<p>ARHM will investigate any reported breach of code</p> <ul style="list-style-type: none"> <li>• If breach found then they will be required to rectify that breach</li> <li>• Will need to offer a remedy that addresses any disadvantage suffered by leaseholders</li> </ul>	<p>If member fails to take appropriate steps, will no longer be eligible for membership</p>	<p>Content of approved sections of the code can be used in evidence in court or tribunal proceedings</p>
<p>RPs 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)</p>		

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## Definitions - highlights



<p><b>Leaseholders' Handbook</b></p> <ul style="list-style-type: none"> <li>• The document that contains essential information for purchasers and leaseholders of retirement housing – chapter 3</li> </ul>	<p><b>Registered provider</b></p> <ul style="list-style-type: none"> <li>• Within the definition in Housing and Regeneration Act 2008</li> <li>• Include LA and HA landlords and private registered providers that are registered with the regulator</li> </ul>	<p><b>Retirement Housing</b></p> <ul style="list-style-type: none"> <li>• Housing that is purpose built or converted exclusively for sale for older people with a package of estate management services. Often called private sheltered housing or extra care housing</li> </ul>
<p><b>Scheme</b></p> <ul style="list-style-type: none"> <li>• The term used for a group of retirement dwellings within a package of estate management services, also known as a development, estate or facility</li> </ul>	<p><b>Scheme Manager</b></p> <ul style="list-style-type: none"> <li>• The person that provides support to residents, assists in the management of the scheme and responds to emergency calls.</li> <li>• Also known as the warden, house manager, estate manager</li> <li>• Different to the "manager"</li> </ul>	

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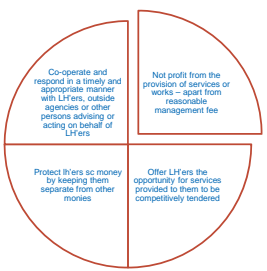
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## Principles of management



<p><b>Managers must:</b></p> 	<p><b>Managers should:</b></p> 
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## Limitations – managers should comply unless:

The code conflicts with the terms of the lease - lease prevails

A statutory requirement exists - this will prevail over the 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 commencement of this edition of the code

Manager believes it is a better course of action to depart from a "should" in exceptional or emergency circumstances - explanation to leaseholders and justify any complaint

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## Statement of managers duties, management agreements & fees

**Statement of Duties**

- Manager should produce one that every LH'er should be able to access
- Should be part of Leaseholder's Handbook

**Management Agreements or Contracts**

- If acting as agent for LL, M should enter into written MA setting out service and fees that residents should see
- ARHM have a model agreement

**Management fees**

- Calculation of management fees
- Limits on management fees for some private RPs

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## The Leaseholders' Handbook

Should be given to any purchasers and existing residents

Should contain (amongst other things):

- Name and address of LL/MA/RMC/RTM Co
- Description of duties and services provided/will be charged for
- How to report repairs
- Summary of LH'er legal rights
- Complaints

Should be regularly reviewed and updated when necessary

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## Service Charges and Ground Rent Collection



Budgeting

Collection of service charges

Costs of services for unsold homes prior to their first sale – void SC

Collection of Ground rent

Debt recovery

Limits on the use of forfeiture

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## Service Charge Accounts



Annual SC account to be given to all LH'ers

SC accounts/RMCs/RTM Co accounts to Companies House

Deficits and surpluses in SC accounts

External examination of SC accounts to reassure LH'ers

Right of LH'ers to scrutinise expenditure

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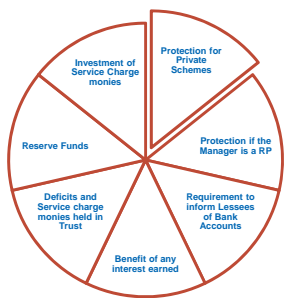
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## Protection for SC Funds



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## Variation to Custom & Practice

Services allowed under the lease but not expressly determined how it is delivered

Variation:

- Removal
- A significant change, or
- A variation to the charges for a service or facility

Restriction on variation of custom & practice

- Meeting to inform and explain
- Ballot
- Result
  - in favour = 66% (where at least 51% eligible to vote did so) **and**
  - the number of votes counted against were not more than 25% of Lh'ers eligible to vote

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## Appointment of contractors and associated companies

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

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## Handling Insurance and Disclosure of commissions

Regulation of Insurance Activities	• Doesn't apply to RPs
Policy content and value for money	• Transparency
Handling of insurance and commissions	• Not to profit other than reasonable commission for carrying out insurance related activities • M should ensure that LL and LH'er are kept informed on progress of any claims and settlements
Receipt and disclosure of commissions	• Only permissible under certain circumstances

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## Consultation with Leaseholders

Annual meetings of Lh'ers

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Consultation with relatives of Lh'ers

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## Residents' Associations and RTAs

Encouraging Residents Associations

Maintain good relations with RAs

Be aware of the legal rights of RTA

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## Handling complaints

Clear procedure

Allow for face to face meeting

No more than 3 stages

Offer mediation

Make leaseholders aware of other organisations who provide advice is LEASE, Age UK, CAB

Managers must belong to, and give all leaseholders access to a government approved redress scheme

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## Fire, Health and Safety, And Risk Management



Fire safety-risk assessment of common parts

Health and Safety-risk assessment in common parts

Other requirements and duties

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## Discrimination and equal opportunities



Human Rights

Equal opps.

Older/vulnerable persons safeguarding

Racial discn/harassment

Anti-social behaviours

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## Discrimination and equal opportunities



Age discn.

Disability discn.reasonable adjustments and consent

Disability-related alterations to common parts

Data protection

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## Repairs and maintenance



- Leaseholders handbook
- Cyclical and planned maintenance
- Major repairs and reserve funds
- Review

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## Administration charges and consents



- Charges
  - Reasonable
- Consents
  - Reply within reasonable time
  - Give reasons

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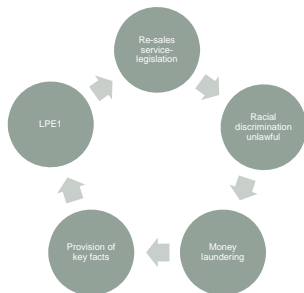
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## Re-sales and re-sales enquiries




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## Event fees

- Clear and prominent explanation in pre-sale information
- Key facts summary
- Worked examples
- Enterprise acts 2002 undertakings

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## Handovers between managers

Manner	Where manager is agent	Where Manager also the landlord
<ul style="list-style-type: none"> <li>• Professional</li> <li>• Timely</li> <li>• Competent</li> <li>• Agreed timescale</li> </ul>	<ul style="list-style-type: none"> <li>• Full co-operation</li> <li>• Correct test to be applied</li> </ul>	<ul style="list-style-type: none"> <li>• Do not seek to frustrate</li> <li>• Co-operation</li> </ul>

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## Handovers between managers

- Handover of service charge funds
- Preparation of final accounts – three months
- TUPE

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## New Schemes

- Not to place unnecessary restrictions on lease assignment
- Not to restrict insurance purchase
- Not to be named as managers in tri-partite lease
- Not seek rental income from scheme manager's dwelling
- Ensure lease provides for developer to pay service charges for unsold dwellings
- Careful calculation of first years service charges
- Defects

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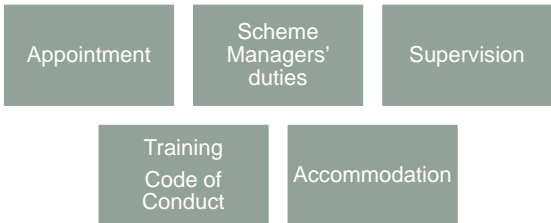
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## Scheme Managers and other staff




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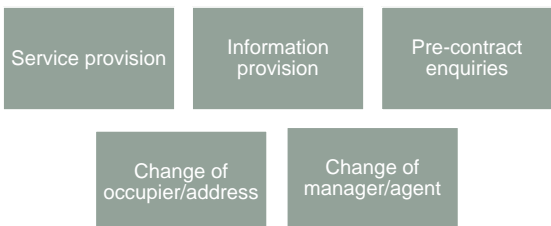
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## Provision of services and information




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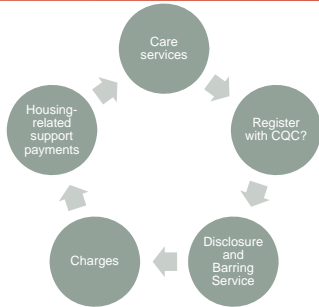
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## Care and support services




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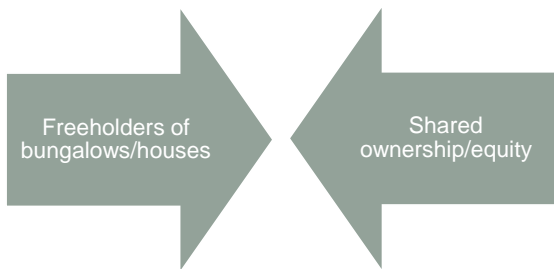
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## Some exceptions to the Code




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## Legal Rights of leaseholders



- Service charges
- Insurance
- Summary of costs
- Inspection of supporting documents
- RFR

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## Legal Rights of leaseholders

- CE
- Appt. of Manager by Tribunal
- RTM
- Management Audit
- Appointment of Surveyor
- Information about landlord
- Administration charges

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## Code of Conduct for Scheme Managers




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## Some key changes in the ARHM code of practice:

- Accounting info
- Commission
- Leaseholders monies
- Event Fees
- Greater transparency of information
- Are fees a consequence of a service?

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### Some key changes in the ARHM code of practice:

- Purchaser information
- Associate Companies
- Transfer of Management
- Uncommitted monies at handover of management
- Disabled adaptations
- Rent on accommodation
- Relatives

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### Other codes

- RICS – Service Charge Residential Management Code (3<sup>rd</sup> edition)
- RICS – Rent Only Residential Management Code
- RICS – Service charges in commercial property

#### Wales

- ARHM – Code of Practice for Private Retirement Housing (Wales)
- RICS – Service Charge Residential Management Code (first edition 1997)
- RICS – Rent Only Residential Management Code for Wales

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## Questions?

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London EC4Y 8JX

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## Next webinar: 19 January 2017

- Codes of Honour (Part 2) - RICS
  - This Code has been prepared to promote desirable practices in respect of the management of residential leasehold property. Successful management can only be achieved through cooperation and a mutual understanding of the procedures necessary for the effective management of property as well as of the problems that can arise.

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