

Auditing the RICS Service Charge Code – A Cautionary Tale

By Andrew E. Haris FRICS FCIM

The Service Charge Residential Management Code prepared by the RICS and approved by HM Government provides guidance for good managing agents and support for flat leaseholders and tenants with bad ones. For the latter reason I was asked in early 2024 to report on whether the recently-appointed managing agent of a multi-block estate of more than 100 flats was complying with the code. This was my experience.

The residents' association had about 75% of the leaseholders in membership but trying to manage a string of disagreements with the managing agent who they thought – with good reason – had been told by the freeholder to get tough with them. The moment I was commissioned to undertake the audit – on an honorary basis – the fun started.

The agent suggested that I was joining his team. The next tactic was to require that all communication to him should come via the secretary of the residents' association. I declined. He pointed out for no obvious reason that I was not a resident, owner or a member of the management committee of the residents' association. After commenting that I was 'purporting' to act as a surveyor I was sent a copy of the RICS Rules of Conduct – the first time in more than 50 years as a chartered surveyor! He added "The RICS Code of Conduct is what I will be referring to in your conduct".

My 4-page report identified a number of ways in which the managing agent was not complying with the RICS Code. These include multiple failures to consult leaseholders when required. He protested that I had not surveyed the property although the audit process does not require a survey. I was accused of being paid (I wasn't) and his solicitor would be getting back to me but he never did. With no consultation he withdrew the payment of £500 a year of service charge income which supported the residents' association. Then matters became more serious.

Members of the management committee were threatened with unspecified legal action if they did not each provide an "unambiguous apology" for commissioning the audit and for the resulting report. They were told that the managing agent had demanded an apology from me when he had not. My solicitors referred to the Protection from Harassment act 1997 and concluded "We repeat that you are put on notice that continuing behaviour of this nature will be considered as conduct amounting to harassment". The damage was done, however, and elderly and vulnerable members felt intimidated and resigned followed by the chairman and secretary. The residents' association ceased to exist although some tougher residents continued to protest.

The managing agent then lodged a complaint with the RICS which responded "this matter does not warrant an investigation for the following reasons . . . the evidence you have provided does not show a competence concern regarding the . . . audit report. The audit report is based on the member's professional opinion from the information which has been

provided to him by the Residents' Association". The RICS added "After reviewing the correspondence that you have provided . . . there is no evidence . . . that the member has bullied or harassed you." The findings concluded with the RICS pointing out the statutory right of two or more leaseholders to have an audit carried out but nothing the RICS said stopped the managing agent from taking every opportunity to allege that I lied and was incompetent.

This episode may be over but the leaseholders' war continues. The managing agent is placing a works contract for more than half a million pounds with a contractor who has less than £25K in the bank and no employees. The leaseholders were given no real choice of contractors as others were excluded by the managing agent. He warned that the cost of maintenance will increase because the bricks had become porous!

In theory, flat leaseholders have a right to manage, enfranchisement or change managing agent but all have to be exercised slowly at great expense and block by block which is not very practical in a multi-block estate where facilities above and below ground are shared by several blocks.

This cautionary tale evidences the need for a regulator of residential managing agents so that when leaseholders are abused and exploited the 'right to manage' of the agent can be swiftly terminated without expense so that leaseholders and tenants can feel empowered and financially secure in their own homes.

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