

SCSI & RICS Practice Standards

Commercial Property Management in Ireland

Guidance note

1st edition



Commercial Property Management in Ireland

Guidance note

1st Edition

Published by
Society of Chartered Surveyors Ireland (the Society),
38 Merrion Square,
Dublin 2, Ireland
Tel: + 353 (0)1 644 5500
Email: info@scsi.ie

No responsibility for loss or damage caused to any person acting or refraining from actions as a result of the material included in this publication can be accepted by the authors or SCSi & RICS.

Published December 2016

© Society of Chartered Surveyors Ireland (SCSi) and the Royal Institution of Chartered Surveyors (RICS) October 2016. Copyright in all or part of this publication rests with the SCSi and RICS save by prior consent of SCSi or RICS, no part or parts shall be reproduced by any means electronic, mechanical, photocopying or otherwise, now known or to be advised.

Foreword

We are delighted to introduce the SCSi guidance note for surveyors working in commercial property management. The guidance note covers best practice in the management of commercial property, with particular emphasis on how the person(s) in control of a building should manage, communicate and control income and expenditure.

The guidance applies to all members who undertake property management for the landlord as managing agent, although the general principles apply to any property manager.

Séan Aylward MSCSI MRICS
Property and Facilities Professional Group Chairperson

Acknowledgments

With special thanks to the SCSi Service Charge Working Group:

Jerome O Connor
 Roy Deller
 Fergus Byrne
 David Mc Kenna
 Ward Frisby
 Natasha O'Gara
 Ed Mc Culloch

SCSi / RICS professional and ethical standards

Behaving ethically is at the heart of what it means to be a professional. It is what distinguishes professionals from others in the marketplace. Having a clear set of professional and ethical standards to guide behaviour gives all those we deal with confidence in the way we do things.

It is also a changing landscape. What is acceptable behaviour now may not be in the future. So it is sensible for all professions to review, from time to time, the kinds of behaviour expected of members. This is particularly true for SCSi / RICS members given the global nature of RICS membership.

This information paper is drawn up in line with the five current SCSi / RICS ethical standards. For the purpose of this document, they apply to any firm, regardless of whether or not they are SCSi / RICS regulated and registered. For more information, please see www.rics.org/ethics

Act with integrity

Be honest and straightforward in all that you do.

Always provide a high standard of service

Always ensure your client, or others to whom you have a professional responsibility, receive the best possible advice, support or performance of the terms of engagement you have agreed to.

Act in a way that promotes trust in the profession

Act in a manner, both in your professional life and private life, to promote you, your firm or the organisation you work for in a professional and positive way.

Treat others with respect

Treat everyone with courtesy, politeness and respect and consider cultural sensitivities and business practices.

Take responsibility

Be accountable for all your actions - don't blame others if things go wrong, and if you suspect something isn't right, be prepared to take action.

SCSI / RICS professional guidance

International standards

SCSI / RICS is at the forefront of developing international standards, working with organisations around the globe, acting in the public interest to raise standards and increase transparency within markets. International Property Measurement Standards (IPMS – ipmsc.org), International Construction Measurement Standards (ICMS), International Ethics Standards (IES) and others, when published, will be mandatory for SCSI / RICS members.

This information paper links directly to and underpins these standards and SCSI / RICS members are advised to make themselves aware of the international standards (see www.rics.org) and the overarching principles with which this practice statement and guidance note comply. Members of SCSI / RICS are uniquely placed in the market by being trained, qualified and regulated by working to international standards and complying with this practice statement and guidance note.

SCSI / RICS information papers

This is an information paper. Information papers are intended to provide information and explanation to SCSI / RICS members on specific topics of relevance to the profession.

The function of this paper is not to recommend or advise on professional procedure to be followed by members. It is, however, relevant to professional competence to the extent that members should be up-to-date and have knowledge of information papers within a reasonable time of their coming into effect.

Members should note that, when an allegation of professional negligence is made against a surveyor, a court or tribunal may take account of any relevant information papers published by SCSI / RICS in deciding whether or not the member has acted with reasonable competence.

In some cases there may be existing national standards which may take precedent over this information paper. National standards can be defined as professional standards that are either prescribed in law or federal/local legislation, or developed in collaboration with other relevant bodies.

This information paper is believed to reflect case law and legislation applicable at its date of publication. It is the member's responsibility to establish if any changes in case law or legislation after the publication date have an impact on the guidance or information in this document.

In order for the practice statement and guidance note to operate effectively, both Property Managers and companies who provide Property Management services must take responsibility for compliance with the core principles. Senior managers of companies which provide Property management services should ensure that internal systems and procedures are in place to support these principles.

Document status defined

SCSI / RICS produce a range of professional guidance and standards products. These have been defined in the table below.

Document status defined		
Type of document	Definition	Status
Standard International standard	An international high level principle based standard developed in collaboration with other relevant bodies	Mandatory
Practice statement SCSI / RICS practice statement	Document that provides members with mandatory requirements under Rule 4 of the Rules of Conduct for members	Mandatory
Guidance SCSI / RICS code of practice	Document approved by SCSI / RICS, and endorsed by another professional body / stakeholder, that provides users with recommendations for accepted good practice as followed by conscientious practitioners	Mandatory or recommended good practice (will be confirmed in the document itself)
SCSI / RICS guidance note (GN)	Document that provides users with recommendations for accepted good practice as followed by competent and conscientious practitioners	Recommended good practice
SCSI / RICS information paper (IP)	Practice based information that provides users with the latest information and/or research	Information and/or explanatory commentary

1. Introduction

1.1 Purpose of the Guidance Note:

The purpose of this document is to provide guidance and summarise best practice on how best to effectively and efficiently manage commercial property, and to advise Property Managers of potential risks they may encounter.

This guidance note does not specifically deal with Asset, Residential or Facilities Management.

Where a development is a mixed use scheme containing a residential element, the provisions of the Multi Unit Developments Act 2011 and the Property Services (Regulation) Act 2011 may apply – Property Managers should be familiar with the SCSi Information Paper Chartered Surveyors & Property Managers of Multi-Unit Developments Mixed-use schemes and the SCSi Consumer Guide to Apartment Ownership Under the Multi-Unit Developments (MUD) Act 2011.

1.2 Best Practice

Best practice guidelines are designed to inform actions and behaviours in the workplace, thus ensuring that Property Managers, at a minimum, conform with legal requirements and client expectations.

Property Managers should manage property on an open and transparent basis, subject to maintaining confidentiality in respect of site specific information. They should always deal with all stakeholders (i.e. landlords, tenants & 3rd party contractors) constructively, courteously, openly and honestly throughout the term of the instruction.

Property Managers should also be aware of evolving best practice guidelines, for example through attendance at CPD's, and adapt their approach accordingly.

This information paper cannot override the lease, but if read in conjunction with it, can enable the Property Manager to identify the best way forward in interpreting the lease to ensure effective management.

1.3 Commercial Property Management

Commercial Property Management is the administration, operation and oversight of a defined property, as used in its broadest terms, on behalf of a party holding a legal interest in that property whether as landlord, tenant or otherwise. The objective is to manage that property in line with the principles of best practices and the business interests of that party.

Commercial real estate typically covers the office, retail, industrial and leisure sectors.

1.4 Client types

A commercial Property Manager may act for different types of client who will typically have a legal interest in the asset. It is common for some Property Managers to act in regard to a group of assets or a portfolio.

The typical types of client a Property Manager may act for, as agent or directly in an 'in house' role, would include (but not limited to):

- Landlord
- Investor
- Tenant
- Asset Manager
- Receiver
- Management Company

1.5 Duty of Care

The primary duty of care that a Property Manager has is to his/her client.

It is an important principle that the Property Manager manages the property on behalf of a client. Although the client is delegating the management of the property to the Property Manager, the client still retains the primary responsibility for the property. The client would have made the necessary capital investment and will therefore take the capital risk or reward arising from that.

This does not mean that the Property Manager has no responsibility at all but it is important to bear in mind this agency relationship.

This is usually set out in the management contract with the client. However, even in the absence of a written contract, the courts are likely to find that a Property Manager has a 'duty of care' to his / her client. This means that the Property Manager will have legal liability if he/she is negligent – i.e. fails to manage the property with reasonable skill and care.

The commercial Property Manager will always act on behalf of their client with partiality, though in doing so, they should be cognisant of other stakeholders involved with the property and have due regard to their interests.

A Property Manager will not just have responsibilities to their client; they will also have significant day-to-day contact with the occupiers and other users of the building among others. At the very least this creates commercial and reputational duties to those occupiers, and could have the potential to create a legal duty of care to those occupiers. Therefore a good Property Manager will need to ensure they take good care of the occupiers and other relevant stakeholders.

A Property Manager may also be asked to agree to have a duty of care to parties providing finance in connection with the properties being managed (see section 6.3 on duty of care deeds).

1.6 The role or duties of a Commercial Property Manager / Summary of Typical Duties

The role of a commercial Property Manager can be extensive depending on the terms of their appointment and will usually have an emphasis on mitigating costs and maximising value for their client having regard to the terms of their property management agreement.

2. Securing instructions

Prior to accepting a property management instruction, a Property Manager should clarify for whom they will be working and how they will be paid, thereby spelling out unequivocally whose interests they will be representing. It is recommended that this be confirmed by the Property Manager in writing.

This section gives advice on the securing of instructions to help the Property Manager meet the SCSi / RICS global best practice:

2.1 Introduction

The relationship between the Property Manager and their client will be based on the Property Management Agreement or a contract, which will determine the rights and duties of both parties. If the contract does not set out specific terms, these may be implied by law.

A Property Manager may act for many different types of client and it is important that they understand their client and their objectives before entering into terms of engagement.

2.2 Before taking instructions

2.2.1 Conflict of interest checks

Before commencing to act for a client, the Property Manager must check that there are no conflicts of interest.

Any possible conflict of interest must be declared and the potential client's written permission obtained prior to the Property Manager acting for them.

2.2.2 Confirming the identity of your client

Money laundering is an international concern. Individual countries have implemented regional and international regulations in slightly different ways and therefore the specific legislation for Ireland should be referred to.

As general guidance, every reasonable effort to confirm the identity of the client should be made before accepting instructions.

Property Managers should refer to the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as may be amended and the SCSi Money Laundering Guidelines for further information.

2.3 Property Management Agreement

Before confirming terms of engagement, you should communicate with the client and discuss their requirements and the reasons for these in reasonable detail.

You should take all reasonable steps to satisfy yourself that your client is entitled to instruct you.

You should act within the limit of your experience, knowledge and competence to meet your client's requirements.

Agree with your client the level of feedback and reporting they wish to receive and how you will present information to them.

You should give written confirmation to your client of their instructions for you to manage real estate on their behalf in the form of a draft Property Management Agreement setting out the terms of engagement.

This should include details of your fees and expenses, clearly setting out the basis for calculating the fee and any additional fees, your business terms and the duration of your instructions. You should give your client these details before they are committed or have any liability towards you.

The Property Management Agreement should clearly state the scope of the management activities that will be carried out which will typically include:

- Liaising and reporting
- Collection of monies
- Managing client accounts
- Occupier liaison
- Dealing with defaulting occupiers
- Service charge management
- Procurement of third party suppliers
- Property insurance
- Energy management
- Health & safety and fire safety

The Property Management Agreement should also specify what activities are not included, for example, formal valuations including reinstatement valuations, building surveys or technical surveys, rent reviews, rating consultancy etc.

The Property Management Agreement may be set out in a single document or in a number of documents, which are to be read in conjunction with each other.

You should ensure that your terms are fair and that the documentation is written in plain, intelligible language.

If a standard Property Management Agreement is used, you should ensure that you give clients an opportunity to negotiate individual terms.

Your Property Management Agreement should also state that a copy of your complaints handling procedure is available on request.

The Property Management Agreement should be signed by both parties and a copy of the signed agreement provided to your client.

Any future changes to your Property Management Agreement should be agreed with your client, promptly confirmed in writing and signed by both yourself and your client.

You may choose to include matters such as any agreed expenditure in a separate letter.

Prior to commencement, the length of your appointment should be agreed and clearly detailed within the Property Management Agreement, together with any process for renewal, review of fees and termination.

Your Property Management Agreement should also define who is the employer of any on-site staff; which may be the management company, the landlord or the managing agent.

2.4 Fees, charges and taxes

You should provide full and clear written details of your fees and expenses to your potential client, as stated in section 2.3 which should also include:

- details of the fee or commission that will be payable by the client and the basis of its calculation.
- particulars of any payments which do not form part of the management fee, but which will, or may, in certain circumstances, be payable by the client or any third party, and particulars of the circumstances in which these payments will become payable.
- you should ensure that there is absolute transparency and that fees relate only to the work done and for which the client or third party is strictly liable.
- You should make clear reference to whether the fee or any expenses are exclusive or inclusive of any relevant taxes.

2.5 Commissioning Services from Third Parties

When managing a property, there may be specific requirements regarding the services that should be provided, or contracts that need to be procured.

There may not be any defined form of procurement for these services, but you should make it clear how these will be dealt with within your Property Management Agreement and following good business practices.

You should, of course, satisfy yourself of the ability of any third party provider or contractor to perform the service required, meet the standards and timescales set out in the Property Management Agreement and hold adequate insurance cover.

The way in which payment is to be made for these activities should also be clearly set out.

You should disclose to your client any commission or fee sharing arrangement you may have for the provision of any services.

2.6 Ending the instruction

2.6.1 - A termination of a Property Management Agreement should be done in accordance with the termination provisions of the management agreement.

2.6.2 - You should give written confirmation to your client confirming the termination of the instruction and noting the actual date of termination and details of any fee or charges that may be owed

If it is proposed to charge a fee in respect of the collation and handover of information, this should be in accordance with the Property Management Agreement and the amount should be agreed in advance with the client

2.6.3 - For the sake of future clarity, your terms of engagement should confirm which information belongs to the client and which remains your property. The majority of documents held by you will belong to your client, having only been held by you on their behalf during the term of the property management instruction.

You should agree arrangements for handing over all your client's documents in a timely manner.

Keep a copy of your clients' letters to you and your file copies of letters or reports to them. These are your records of contract.

2.6.4 - Accounting for client's monies and service charge funds upon termination can be an area of dispute between Property Managers and their former clients. Your terms of engagement should give clear provision for how and when client's monies and uncommitted service charge monies are to be calculated and handed over to your client or their appointed agents.

Guidance on the handover of documentation, information and funds relating to service charges is provided in the SCSl Guidance Note - Commercial Service Charge – Handover Procedures

3. The Property Manager's Core Duties

3.1 Liaising and reporting

3.1.1 The Property Manager has three core duties, and the application of the following points differs between multi-let and single-let properties:

- (a) the financial administration of the property which may include, depending on whether one is acting for a landlord or a tenant, the collection / disbursement of rent, service charge and other sums.
- (b) the operational management of the property.
- (c) the management of leases and other occupational agreements.

3.1.2 It is critical that the Property Manager seeks to develop a positive relationship with their client, understands their client's objectives and requirements, and establishes a format and frequency for reporting.

A typical client report might include:

- A general commentary on each property
- A detailed occupancy schedule for each property
- A schedule of key dates including rent reviews, lease renewals and expiries, and break options
- The financial section of the report would typically provide:
 - Monthly Aged Debtor Report showing amounts due at quarter end for both Rent and Service Charges.
 - Charges and Receipts Report which will show opening balance, amounts demanded, cash received and closing balances for a period.
 - Expenditure Report for the quarter including amounts invoiced during the period.
 - Payments Report showing amounts paid during the quarter.
 - Creditors listing showing outstanding amounts due at quarter end (reconciled to Creditors Statements).
 - List of services received/contracted for, but invoice has not been received / processed at quarter end for accruals purposes.
 - Breakdown of bank movements during the quarter including any intercompany movements.
 - Breakdown of the allocation of service charge expenditure between tenant and void areas.
 - List of all invoices received during that period in excel format and a list of invoices scheduled to be paid.
 - Preparation and agreement of an annual service charge budget.
 - Service Charge accounts with Actual vs Budget and Actual vs Forecast.
 - Preparation of financial figures for the audit of service charge expenditure post year end – reconciled accounts should be issued within four months of the year end.
 - Management of Sinking Funds, Reserve Funds etc (see Page 15).

3.2 Collection of monies

- 3.2.1** A key role, when acting for a landlord, is the collection and management of sums owing by occupiers relating to rent, service charge, insurance, and any other amounts. It is important that a Property Manager has an established process in place to arrange for the efficient collection of these monies. This means that a Property Manager will:
- (a) have a thorough understanding of the relationship between landlord, tenant and other occupiers in the building;
 - (b) request from the landlord, copies of all relevant documents including leases, licences and other documentation as set out in the SCSI Professional Guidance – Commercial Service Charge – Handover Procedures;
 - (c) understand from those documents the payment and other obligations;
 - (d) maintain a database of all occupiers to record all relevant terms including the unit, occupier, term, reviews, break options, charges, financial position including statement of account, and other obligations under the terms of each agreement;
 - (e) put clear payment processes in place so that the occupiers are clear exactly how much, when and to whom rent, service charges, insurance and other amounts are due;
 - (f) have a mechanism in place to notify of any default in payment or a dispute over any payment and promptly report this to the client in the manner previously agreed;
 - (g) have a process in place to pursue occupiers for defaults in payments bearing in mind that legal costs may not be recoverable;
 - (h) have arrangements in place to forward sums collected, less deductions where agreed, e.g. service charge, onto the landlord. The landlord will require these sums to be forwarded as quickly as possible;
 - (i) in circumstances where rental monies are directly receipted to a landlord controlled rent account, the Property Manager should seek viewing rights for credit control purposes and;
 - (j) report to the landlord on the reconciliation of the amount actually paid to the landlord and the amount collected.

3.3 Client accounts

- 3.3.1** Landlords can have confidence in Property Managers who are members of the Society of Chartered Surveyors Ireland (SCSI) as they are subject to regulatory review on client accounts, being required to comply with both the SCSI members' accounts regulations and with the Property Services (Regulation) Act 2011 (Client Moneys) Regulations 2012.

RICS Regulation has also issued a help sheet, Clients' Money: General Advice for Firms, that sets out guidance on its requirements for the handling of client money.

3.4 Defaulting occupiers

3.4.1 It is recommended that the Property Manager agrees with the client how defaulting occupiers should be dealt with; in particular, when the client wants to be alerted to a default. As a recommended minimum, Property Managers should inform the client as soon as the Property Manager feels it is appropriate to escalate matters.

3.4.2 A recommended escalation process would involve:

- Make contact with occupier to seek payment / establish reason for non payment
- Review of occupancy agreement and options available including alternative dispute resolution processes and legal proceedings
- Seek instructions from the client
- Issue of 7 day notice
- Implement agreed strategy

3.4.3 It is important that the Property Manager, if they do instruct a solicitor, ensure that their client and solicitor are aware that they are acting as an agent on behalf of the client, as the legal costs incurred may not, in all cases, be recoverable through service charge.

3.5 Service charge

3.5.1 Calculating the service charge budget and corresponding apportionment is a key duty of the Property Manager and needs to be handled with care.

- Occupiers will be anxious to ensure that the service charge budget is appropriate in its amount and allocation.
- Landlords will want to ensure their obligations under the occupational leases are fulfilled and the property is properly maintained.
- The Property Manager will advise the landlord on its responsibilities in law to the building's occupiers, licensees and contractors.
- Service charges can be the cause of significant friction between occupiers and landlords, which mean the Property Manager will need to take particular care to communicate in a clear and transparent manner.

3.5.2 The Property Manager should keep monies collected as part of the service charge in a separate service charge account with transparent records for all income and expenditure.

The SCSI/RICS code of practice, "Service charges in commercial property" goes into more detail on this.

3.6 Deposits

- 3.6.1 The Property Manager will need to review the occupational leases and associated rent deposit deeds to understand what deposits are held and on what terms.

It is recommended that the Property Manager establishes a separate, interest-bearing account to hold occupiers' deposits and manages the funds and any accrued interest in accordance with the relevant legal documentation.

3.7 Sinking Funds

- 3.7.1 Where provision for significant future expenditure is permitted under the terms of the lease, a sinking fund or reserve fund account should be set up.

It is recommended that this account is a separate, interest-bearing account to be maintained in trust for the occupiers.

For further information, Property Managers should refer to the SCSi/RICS Code of Practice, "Service charges in commercial property" which goes into more detail on this.

3.8 Managing the building

- 3.8.1 The Property Manager should ensure the effective operation of the property; anticipating and monitoring potential problems; maintaining regular contact with occupiers; and seeking to comply with the service charge budget.
- 3.8.2 It is essential that the Property Manager has copies of all of the leases and related documents with each and every tenant, licensee and other occupier. The Property Manager should review and understand these documents and identify any missing information relevant to fulfilling their role - where gaps or missing information are identified, these should be promptly notified to the landlord.
- 3.8.3 The handover of financial and supplier information and documentation from the previous Property Manager (and handing over to the next Property Manager) is an important process. The SCSi Guidance Note - Commercial Service Charge - Handover Procedures provides useful information.
- 3.8.4 It is important that the Property Manager has a good understanding of the landlord's legal responsibilities. Appendix 1 lists the key statutory responsibilities in Ireland at the time of publication. The Property Manager should keep abreast of key statutory changes and advise the landlord accordingly.
- 3.8.5 The Property Manager should maintain full and comprehensive records to demonstrate compliance with key statutory responsibilities in relation to the building. The Property Manager should ensure that their electronic database is secure and in full compliance with the Data Protection Act 1988 as amended by the Data Protection (Amendment) Act 2003.

3.9 Operating Procedures

3.9.1 It is recommended that comprehensive documentation is kept by the Property Manager detailing the following:

- (a) calculation and management of the service charge account;
- (b) collection of rent, service charge and other monies;
- (c) repair and maintenance of the building;
- (d) operation of the building;
- (e) appointing and managing contractors;
- (f) health and safety compliance;
- (g) insurance;
- (h) liaising with occupiers – generally, and also specifically in relation to consents such as consent to assign, sublet, alter and so on; and
- (i) management of procurement.

3.10 Marketing and Promotions

3.10.1 The Property Manager may be required to co-ordinate the Marketing and Promotional activity to drive footfall for retail schemes. Where some or all of the cost is to be recouped from the occupiers, the Property Manager should ensure that the cost is provided for within the occupational leases.

3.11 Insurance relating to the property

3.11.1 The landlord is normally required under its occupational leases to obtain insurance against damage to the property, including loss of rent, and public / employers liability insurance, and the lease will usually allow the landlord to recoup from the occupiers their due proportion of the insurance premium.

3.11.2 The Property Manager will advise, in liaison with building surveyors and insurance brokers, on the appropriate level and type of cover required for each property taking account of the potential risks. Depending on the property the insurance cover required may include –

- Reinstatement cover for plant and buildings
- Consequential loss cover for loss of income (rent and service charge) following loss to reinstatement – often 3 to 4 years
- Engineering cover for plant
- Public liability cover
- Employers liability cover

3.11.3 It is important for the Property Manager to understand the insurance arrangements and the Property Manager's role in these insurance arrangements as a failure to have appropriate insurance in place could result in the non-recovery of the full amount of the loss, leading to a consequent claim against the Property Manager. Making sure, in liaison with a building surveyor and broker that adequate insurance is in place is a simple step to manage this risk.

3.11.4 The Property Manager will advise on the apportionment of the insurance premium between the various occupiers based on their respective terms of agreement and will charge and collect the premium from occupiers to pay for the insurance.

3.11.5 It is recommended that the Property Manager seek advice from their own broker on the appropriate levels of public liability / professional indemnity insurance that they should hold.

If a person is injured while in the managed property then they will consider making a claim against all stakeholders – the landlord, the relevant occupier, the relevant service provider (e.g. cleaning or security service provider) and the Property Manager.

This risk is especially high for buildings open to the public with high footfalls, such as shopping centres.

Traditionally the landlord and Property Manager hold separate public liability insurance, recognising that their interests are different.

It is recommended that Property Managers ensure that their interest is noted on the public liability insurance (especially where a high footfall public building is being managed) of the property or alternatively that they secure a comprehensive indemnity within the management agreement.

3.11.6 The Property Manager will also need to consider which insurances they are required to hold by law

The Property Services (Regulation) Act 2011 (Professional Indemnity Insurance) Regulations 2012 require a property services provider to provide a policy of professional indemnity insurance which adequately covers the principal officer or the employee of the provider.

The SCSi Rules of Conduct require that members shall ensure that all previous and current professional work is covered by adequate and appropriate professional indemnity insurance cover which meets standards approved. Failure by a member to comply with the Bye-Laws and / or the Rules may lead to action by the Director of Regulation and Professional Conduct Committee.

3.12 Occupier liaison

3.12.1 Seeking to create a good relationship with occupiers is essential to good property management. Therefore the Property Manager should:

- ensure the occupiers know who the Property Manager / Property Management Team is and how to contact them;
- seek regular contact with each occupier;
- establish a regular occupier's forum;
- provide emergency contact details for out of hours incidents e.g. a helpdesk facility operated by a specialist third party or in house operation;
- promptly respond to occupier queries; and
- comply with the communication and consultation provisions set out in the latest edition of the SCSI/RICS code of practice, "Service charges in Commercial Property".

3.12.2 Part of the Property Manager's role is to manage applications by occupiers under the occupational leases, such as licences to assign, sublet and alter.

The Property Manager should have a system in place to ensure that tenant applications are dealt with properly and efficiently, reviewing them and ensure that sufficient information is available in order to make a recommendation to the landlord.

The Property Manager should ensure that it acts in accordance with statutory requirements under the Landlord & Tenant legislation (please refer to Appendix 1).

A particular consideration is the issue of time limits when responding to a tenant's application. In circumstances where a landlord is under an obligation (direct or implied) to act reasonably, the courts have determined that decisions must be made within reasonable timeframes.

Failure to issue a decision within a reasonable timeframe could expose the Property Manager (as agent for the landlord) to a potential claim for damages should the tenant subsequently lose an opportunity to assign or sub let.

3.13 Energy management

3.13.1 Energy management is increasingly important with rising energy costs and growing responsibilities around CO emissions and energy conservation.

The Property Manager should be aware of any new regulations relating to environmental performance of buildings. Where a property is transacting, the Property Manager may be required to advise on the requirement for a BER Cert under the EU Energy Performance of Buildings Directives (EPBD), which have been transposed into Irish Law from 2006 onwards.

The Property Manager also needs to be mindful that energy procurement, energy conservation and regulatory competence is given a high profile. Ultimately the Property Manager should look for cost effective opportunities to improve the energy efficiency of each property they manage.

3.13.2 It should be noted that where a landlord is responsible for the electricity supply for a multi-let property, and there are sub-meters recording consumption by the occupiers, the sub metered supplies will still be recorded against the owner's consumption profile.

In this event the Property Manager will also need to consider the need to implement a recharging of electricity consumption to the occupiers. The 3rd edition of SCSI/RICS code of practice, "Service Charges in Commercial Property (2015)" indicates that 'reasonable administrative charges' are appropriate for a Property Manager operating a mechanism of recharging utility costs.

3.14 Building management systems (BMS)

3.14.1 Many buildings now have a building management system – in effect, an IT system to operate the building. It is the Property Manager's responsibility to ensure the system is operating properly and is maintained regularly, not least because the system will be a key part of ensuring compliance with the regulatory obligations applying to the building.

3.15 Health & safety and fire safety

3.15.1 A key role for the Property Manager is overseeing health & safety and fire safety in the property, ensuring that a process of preparing and updating the safety statement and fire register is in place and that the property is managed to comply with all legal obligations.

Keeping the building safe and ensuring compliance with relevant legislation will require the establishment of systems and procedures to ensure statutory inspections are in place and systems monitored. Appendix 1 sets out the key legal rights which Property Managers need to be mindful of.

3.16 Managing third party suppliers

3.16.1 The Property Manager will carry out some significant tasks, but many substantial aspects of the operation of a building will be fulfilled by other suppliers such as various providers of facilities management services (e.g. security, cleaning, plant maintenance). Therefore, the Property Manager will ensure that the property is successfully operated, not necessarily by doing everything but by managing others to do so.

To source the services required, the Property Manager will normally enter into arrangements with third party suppliers as agent for the landlord. This means that the contracts (if properly created) are actually between the client and supplier. This has the effect that:

- the supplier is liable to the client for the performance of the services, which is important as the client is, in turn, responsible to its occupiers
- if the Property Manager changes, the third party contracts will not be affected
- ultimately, the client is responsible for paying the suppliers so if, for example, the client becomes insolvent owing money to the suppliers, the Property Manager is not liable to the supplier.

3.16.2 It is recommended that the Property Manager has an appropriate procedure for selecting third party suppliers that are capable, reputable, insured and good value for money. That procedure should identify when (e.g. annual contract value trigger) a more formal competitive tender should be used. Where the services procured are substantial, consideration should be given to using a procurement specialist.

3.16.3 The Property Manager will not be able to manage a property if the service charge account is insufficiently funded. If the building is fully occupied and occupiers are paying their service charges then the service charge account should normally be sufficiently funded.

However, Property Managers should ensure that the client funds the service charge account for any shortfall such as in relation to voids or defaulting tenants. It is recommended that the Property Manager does not instruct a supplier to provide a service where there are insufficient funds, unless the Property Manager has the agreement of their client to fund the shortfall.

3.16.4 The Property Manager is advised:

- to have a comprehensive, signed contract in place with all third party service providers;
- that contracts clearly state that the Property Manager is entering the contract as agent for the client;
- that the contracted scope of services is clear and unambiguous;
- that the contract with the service provider complies with any requirements the client has included in its property management contract;
- ideally, all contracts with service providers should be capable of being terminated upon notice;
- that services contracts should incorporate a performance management regime / service level agreement;
- Property Managers should fully inform themselves of the requirements of construction warranties when preparing maintenance plans and appointing contractors.

3.17 Management fees

3.17.1 It is important that details of the Property Manager's fee, such as the amount, when and how it is payable and the invoicing and reporting processes are made clear to the client.

SCSI guidance in relation to management fees is set out in the SCSI/RICS code of practice, "Service Charges in Commercial Property (2015)", which provides that the management fees charged should comprise only the reasonable costs and overheads borne in the process of operating and managing the services, including a reasonable profit element.

3.17.2 The management fees should be set on a fixed price basis, subject to annual review or indexation, rather than being calculated as a percentage of expenditure. Percentage is no longer appropriate and is considered to be a disincentive to the delivery of value for money.

3.17.3 It is recognised that many leases refer to the management fee as a percentage of the total service charge or contain a percentage cap where the lease limits the amount or quantum of the fee recoverable from occupiers. This is a matter between the owner and occupier and should not prevent or limit the Property Manager's ability to charge a commercial fee that reflects the requirements of the SCSI/RICS code of practice, "Service Charges in Commercial Property".

- 3.17.4 It is worth noting here that the code expressly states that the cost of collecting rent should be excluded from the service charge management fee.
- 3.17.5 The mechanics for payment will need to be established. The Property Manager will want to have express authority to deduct (to the extent appropriate) payment from the service charge account, and require the client to fund the account if the service charge is not adequate (e.g. vacant building, high level of voids, defaulting tenants).

4. Additional Responsibilities of the Property Manager

4.1 Over and above, and in addition to their core duties, Property Managers are often requested to become involved in other property issues, for example:

- acquisition and sale support and advice
- rent reviews
- rating reviews
- lettings
- commercialisation
- development advice and appraisal
- compulsory purchase orders
- valuations
- asset management
- dilapidations advice

4.2 It is essential that Property Managers work within their professional competence and seek appropriate professional advice should additional services outside of their competence be required.

4.3 Property Managers should always be cognisant of legislative requirements including specifically the requirements of the Property Services Regulatory Authority (PSRA).

4.4 Property Managers should ensure that any additional services (and their related fees) are properly documented.

4.5 Property Managers should be aware of the SCSi Business Leasing Code for Landlords and Tenants – available from the SCSi website.

5. Employees and Employment Law

- 5.1** Property management will usually employ one or more people whose duties will include managing certain aspects of the property.

If a property is large or especially complex (e.g. a shopping centre or multi-let office) then it is likely there will be a number of employees who will focus on the management of the property or, where applicable, a particular landlord's portfolio of properties. In addition, the various suppliers of services to the property (e.g. security, cleaning and so on) will also employ individuals who will spend a significant amount of their time working in or in relation to that property.

- 5.2** This means that the employees of the Property Manager and the service suppliers to the property are likely to have the benefit of the European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations 2003 ("the TUPE Regulations"), as supplemented by the Employees (Provision of Information and Consultation) Act 2006.

TUPE has the effect, in certain situations, of moving employees automatically from old supplier to new supplier.

If mishandled it can present a significant liability to Property Managers and their clients. Therefore it is essential for Property Managers to seek appropriate advice, to ensure they understand and avoid the risks and are able to explain them to their client.

6. Specialist Issues

6.1 Managing a portfolio

Where a landlord has a portfolio of properties and a Property Manager is appointed to manage all, or part, of them, it is possible to do that with a single contract. When drawing up this contract it is worth considering

- how properties are added and removed (and consequential impact on fees);
- TUPE – it is more likely the Property Manager will have dedicated staff (not just on site but also back office) and therefore TUPE is an increased risk;
- whether or not the types of service are the same across all properties.

6.2 Offshore ownership

It is not unusual for properties to be owned offshore. This raises potential issues, which the Property Manager needs to be aware of and give due consideration to - professional taxation advice should be sought on the correct tax treatment for handling non-resident client funds.

It is often a requirement that the Property Manager withholds or pays over tax to revenue as advised by the client's adviser. In these situations the Property Manager should obtain a standing approval from their client to take instructions from their client's adviser in respect of amounts to be withheld or remitted to revenue.

6.3 Duty of care deeds

A duty of care deed is a document between a Property Manager and the landlord's funder.

The purpose is to create a direct legal relationship between Property Manager and funder.

It is strongly recommended that the Property Manager seek legal advice prior to signing a Duty of Care Deed.

6.4 Insolvent Landlords, Examiners, Liquidators and Receivers

- 6.4.1 If a landlord becomes insolvent then an examiner, liquidator or receiver is likely to be appointed. Each of these have different powers and approaches.

6.4.2 Examinership

Examinership is a process whereby the protection of the Court is obtained to assist the survival of a company. Essentially it allows a company to restructure with the approval of the High Court.

The process usually results in creditor balances being reduced, while intangible assets of the company are protected, investment is obtained and in the short term at least, directors retain control.

Examinership is an option available to an insolvent company that enables it to explore all opportunities to provide for its survival. It is a management friendly process that is inclusive of customers, creditors, suppliers and staff.

An examiner will be looking to operate the landlord's business as a going concern with a view to selling the business and maximising the return to creditors. Therefore to an examiner the Property Manager is important to collect rent and manage the building pending the sale of the business.

6.4.3 Liquidation

Liquidation is the process by which a company is legally dissolved. Under the provisions of the Companies Acts, 1963 to 2001, a company may be wound up either by order of the Court or, voluntarily, by resolution of the company. The liquidation of a company is the process by which a company is legally dissolved.

The main distinction between the two types of winding up is that while a compulsory liquidation is undertaken under the supervision of the High Court (the court appoints a liquidator to act on its behalf), a voluntary liquidation is normally carried out with little or no reference to the courts, with members or creditors playing a more active role.

The principal duties of a liquidator, either court appointed or voluntary, are to inquire into the company's affairs, realise its assets, pay its debts and distribute any surplus to its members.

The Property Manager will often be required to continue to manage a building pending its disposal.

6.4.4 Fixed Charge Receiver

A fixed charge receiver is a receiver appointed by a lender over a fixed asset i.e a property, rather than a business, where the mortgage has gone into default. They are not to be confused with insolvency practitioners who traditionally handle a floating charge over the assets of a company.

In simple terms, a fixed charge is a mortgage over a property. When a mortgagor (i.e the borrower) defaults on the loan on the property, the mortgagee (i.e the financial institution), requires a professional to take charge of the asset and appoints a fixed charge receiver.

When appointed, the fixed charge receiver assumes the full responsibilities and rights of the owner of the property. A chartered surveyor, acting as a fixed charge receiver, has the property market expertise and experience to act on their behalf in such a professional capacity.

6.4.5 The Property Manager should:

- monitor the financial health of the client so that he/she can be aware of a potential insolvency.
- ensure the contract with the client allows the Property Manager to terminate on the client's insolvency, which means that if the client becomes insolvent the Property Manager at least has a choice.
- contact the Examiner, Liquidator or Receiver immediately if their client becomes insolvent to request a copy of their appointment; identify if the Property Manager's services are required; and obtain confirmation that the Property Manager will be paid, preferably in advance rather than in arrears.
- Given the onerous legal duties that arise from owning a property then the Property Manager's services are likely to be needed at least in the short-term, but the Property Manager will require commitment on fees before proceeding.

Appendix 1

Main Irish Legislation relevant to the management of a commercial property

This schedule sets out the principle relevant Irish legislation that applies to the operation of commercial property.

The information is not exhaustive. In particular, it focuses on legislation specific to property management or arising in relation to a property. It does not include the variety of laws that any company will need to comply with.

A short summary is included for each item. This is only intended to be a very brief summary for reference and is not legal advice. Specific legal advice should be sought to understand the impact of legislation.

Property Managers should refer to the SCSi Guidance Note – Facilities Management Handbook on Critical Legislation for comprehensive information.

Main Irish legislation relevant to management of a commercial property

Name of legislation	Name of legislation
1 The Building Control Act 1990, 2007 & 2014	<p>1. Provides for making Building Regulations, deals with issues such as building standards, workmanship, conservation of fuel and energy and access for people with disabilities.</p> <p>2. Provides for making of Building Control Regulations - Commencement Notices, Fire Safety Certificates and Fees- Administration by Building Control Authorities.</p> <p>3. Gives powers of enforcement and inspection.</p>
2 Building Regulations 1997 & 2014	<p>The primary purpose of the Building Regulations is to provide for the health, safety and welfare of people in and around buildings. In general, the Building Regulations 1997 - 2002 apply to the construction of new buildings and to extensions and material alterations to existing buildings and to certain changes of use of existing buildings. These Regulations apply to all types of construction.</p>
3 Safety, Health and Welfare at Work Act 1989 & 2005	<p>This Act clarifies and enhances the responsibilities of employer's, employees etc in relation to safety & health at work.</p> <p>Section 19: Identify hazards, assess risks and have a written risk assessment.</p> <p>Section 20: Production of property specific Safety Statement</p>
4 Safety, Health & Welfare at Work (exposure to Asbestos) Regulations 2006 and 2010	<p>These Regulations give effect to Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work.</p>
5 Fire Services Act 1981 & 2003	<p>Section 18(2) of the Fire Services Act, 1981 and 2003 provides that it shall be the duty of every person having control over premises to which this section applies to:</p> <ol style="list-style-type: none"> 1. Take all reasonable measures to guard against the outbreak of fire. 2. Provide reasonable fire safety measures for such premises and prepare and provide appropriate fire safety procedures for ensuring the safety of persons on such premises.
6 Waste Management Acts 1996 & 2008 and the Environmental Protection Act, 1992	<p>Introduces measures designed to enhance performance in relation to the prevention and recovery of waste</p>
7 The Property Services (Regulation) Act 2011	<p>Established the Property Services Regulatory Authority (PSRA) with effect from 3 April 2012</p>
8	<p>Statutory Instrument No. 199 of 2012 Property Services (Regulation) Act 2011 (Client Moneys) Regulations 2012 was issued on 11 June 2012 and identifies the compliance requirements for Client Money Regulations.</p>
9 Arbitration Acts 1954, 1998 & 2010	<p>The Act creates a more streamlined, cost-effective and user-friendly system for commercial entities. Adopting arbitration in a contract as a means of dispute resolution.</p>

Main Irish legislation relevant to management of a commercial property

Name of legislation	Name of legislation
10 Arbitration Acts 1954, 1998 & 2010	The Act creates a more streamlined, cost-effective and user-friendly system for commercial entities. Adopting arbitration in a contract as a means of dispute resolution.
11 Valuation Act, 2001	The Valuation of properties for the purposes of making rates and categories for properties.
12 Local Government Reform Act 2014	Landlord has 2 weeks to inform the local authority if theres a change in occupancy or may be held liable for 2 years of rates. Effective from 01/07/14.
13 Landlord & Tenant Act 1967 to 1994	The main legal rights and responsibilities as a private tenant derive from landlord and tenant law as well as from any lease or tenancy agreement between tenant & landlord.
14 Data Protection Acts 1988 and 2003	The 2003 Amendment Act brought Irish law in line with the EU Data Protection Directive 95/46/EC. The ePrivacy Regulations 2011 (S.I. 336 of 2011) deal with data protection for phone, e-mail, SMS and Internet use. They give effect to the EU e Privacy Directive 2002/58/EC (as amended by Directive 2006/24/EC and 2009/136/EC).
15 Companies Act 2011	The act took effect on 1 June 2015 and colsolidates and reforms Irish Company Law and impacts every Company, Director and Shareholder. Came into on 9 August 2011.
16 Criminal Justice Act 2011	Came into effect on 9 August 2011 and was enacted with the aim of granting An Garda Síochána more extensive powers to investigate "serious and complex offences". The Act makes substantial changes to both the substantive and procedural law surrounding offences of dishonesty and "white collar crime".
17 Multi-Unit Developments (MUD) Act 2011	The Act took effect on 1 April 2011 and it applies to all multi-unit developments, i.e. developments with not less than five apartments with shared amenities, facilities and services. This includes mixed-use developments which are residential but have also some commercial elements such as retail or offices.

Appendix 2

Fire Safety and Services Schedule

This schedule sets out a recommended minimum service requirement for Fire Safety Equipment - this is only intended as a general guidance summary.

Professional advice must be sought in relation to the specific service requirements of Fire Safety Equipment for each individual building.

Property Managers should refer to the SCSi Guidance Note – Facilities Management Handbook on Critical Legislation for comprehensive information.

Fire Safety Equipment & Services Schedule

Equipment	Service Requirements	EN / IS / BS Code	Building Regulations
Fire Alarm	Quarterly Service Per Annum	I.S. 3218 : 2009	
Bell Testing	Once per week		
Evacuation Drills	Twice per annum - 6 month intervals		
Emergency Lighting	Quarterly Service Per Annum	I.S. 3217:2008	
Fire Extinguisher Servicing	Annual inspection	IS 291:2002	
Fire Hydrant Testing	Pressure Test	IS EN 14339:2005	
Dry Riser Testing	Visual inspection every 6 months & wet testing annually	7.4.3.1 of BS 9990:2006	Section B.1.2 of B5
Anchor Devices / Eyebolts	Annual inspection and testing	BS 7883:2005	
Lightning Protection	Annual inspection	EN 62305 / BS 6651	
Intruder Alarm	Service to protect unauthorised entry	IS 50131	
CCTV	Closed circuit maintenance	IS EN 50132:2010	
Access Control	Service and access restriction on cards	IS EN 50133:2002	
Passenger & Goods Lifts	Twice per annum - thorough examination	S.I. 299:2007	
Measuring Practice Guidelines	Office and Retail Net Internal Area (NIA)		
Tailte Eireann	New Organisation, with merger of Property Registration Authority, Ordnance Survey Ireland & Valuation Offices		

Dating back to 1895, the Society of Chartered Surveyors www.scsi.ie Ireland is the independent professional body for Chartered Surveyors working and practicing in Ireland.

Working in partnership with RICS, the pre-eminent Chartered professional body for the construction, land and property sectors around the world, the Society and RICS act in the public interest: setting and maintaining the highest standards of competence and integrity among the profession; and providing impartial, authoritative advice on key issues for business, society and governments worldwide.

Advancing standards in construction, land and property, the Chartered Surveyor professional qualification is the world's leading qualification when it comes to professional standards. In a world where more and more people, governments, banks and commercial organisations demand greater certainty of professional standards and ethics, attaining the Chartered Surveyor qualification is the recognised mark of property professionalism.

Members of the profession are typically employed in the construction, land and property markets through private practice, in central and local government, in state agencies, in academic institutions, in business organisations and in non-governmental organisations.

Members' services are diverse and can include offering strategic advice on the economics, valuation, law, technology, finance and management in all aspects of the construction, land and property industry.

All aspects of the profession, from education through to qualification and the continuing maintenance of the highest professional standards are regulated and overseen through the partnership of the Society of Chartered Surveyors Ireland and RICS, in the public interest.

This valuable partnership with RICS enables access to a worldwide network of research, experience and advice.

www.scsi.ie

Society of Chartered
Surveyors Ireland
38 Merrion Square,
Dublin 2, DO2 EV61,
Ireland
Tel: + 353 (0)1 644 5500
Email: info@scsi.ie