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# GUIDANCE NOTE C09

## WATER DAMAGE

Revised – March 2021

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### ARMA Standards

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The Standards have been written to apply to residential long leasehold properties (a lease of a term in excess of 21 years when originally granted) in England and Wales where a service charge, which varies according to expenditure, is payable.

They represent the core of good practice for managing agents. We believe they are achievable by any well-run company. The applicable (if any) Standards related to this Guidance Note are stated below.

**Standards in RED:** An obligation to adhere to the Standard

**Standards in GREEN:** An obligation to adhere to the Standard unless there is a justifiable reason not to comply that the Managing Agent must be able to demonstrate

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#### 4.5 Insurance

Managing Agents Must not advise, arrange or administer insurance or handle claims unless they are either licensed under the RICS Designated Professional Body Scheme or directly authorised to do so under the rules of the Financial Conduct Authority (this requirement does not apply to registered social landlords acting as a Managing Agent, an exempt professional firm or a Managing Agent acting in the capacity of company secretary).

When dealing with insurance the Managing Agent:

- a) Should ensure the appropriate cover is in place and that it meets the requirements set out in the Lease;
- b) At renewal, Should ensure the extent of cover, sum insured and the level of premiums are reviewed;
- c) Should ensure that any notification of risk improvements received following an insurer's inception survey or other survey are completed in a timely manner;
- e) Should treat any excess as instructed by the Client unless otherwise prescribed in the Lease;
- g) Must only request a payment for handling insurance activities if this is:
  - i) a Proportionate Charge;
  - ii) disclosed and agreed In Writing with the Client.
  - iii) the source is included within the Annual Declaration.
- h) Must disclose In Writing the Proportionate Charge if requested by a Leaseholder.

#### 5.2 Repairs, Maintenance, Renewals & Improvements

When dealing with repairs, maintenance, renewals and improvements the Managing Agent:

- a) Must not exceed the level of authority specified in the Management Agreement;

## ARMA Standards (continued)

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- b) Must take reasonable care to see that anyone who could be affected by the work or the condition of the property is safe from personal injury and from damage to their property;
- c) where responsible under the terms of the Lease or by statute for repairs, Must adhere to the obligations for inspection of the property and to view its condition. If this is stated in the Management Agreement, then it Must be complied with and records maintained;
- d) Should advise their Client about a programme of cyclical maintenance and servicing contracts for parts of the building, including plant and services, which require regular maintenance where the Lease does not set out a maintenance regime;
- e) Must ensure that procedures are in place to deal with repairs and maintenance within appropriate timescales having regard to the urgency of the matter and the availability of funds;
- f) **Should monitor works and take appropriate steps to ensure completion in a reasonable time and to a reasonable standard so that, unless they are of a temporary nature, they do not need to be repeated within an unnecessarily short period;**
- g) Should have procedures in place for dealing with urgent out-of-hours emergency repair work.

### 5.4.2 Insurance Claims

Where the Managing Agent is not authorised to undertake claims-handling, the claimant Must be referred to the broker or insurer. Where the Managing Agent is authorised to deal with claims they Must:

- a) have a procedure for processing the claim without unnecessary delay being aware that Leaseholders have the right to notify insurers of possible claims;
- b) not judge the merits of a claim but provide any additional relevant information;
- c) may consider it necessary for both the Landlord and Leaseholder to sign the claim form;
- d) keep the claimant informed of the progress of a claim or provide him with sufficient details to enable the claimant to pursue the matter if dissatisfied;
- e) be authorised by the Management Agreement or separate mandate to receive insurance claim payments;
- f) not deduct (unless otherwise agreed) arrears or other payments due when passing claim monies on to the claimant;
- g) credit monies received as a result of an insurance claim to the Client Bank Account when insured reinstatement/damage is charged to this account.

## ARMA Standards (continued)

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### 6.2 Statutory Compliance

The Managing Agent Must have regard to and comply with:

- f) relevant legislation to ensure the health and safety of employees;
- g) obligations under the regulations regarding fire safety;
- h) health and safety regulations relating to buildings under their management;
- i) all other relevant legislation.

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## Overview

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- This Guidance Note includes the following:
- Tips to prevent water leaks.
- Buildings insurance and water damage.
- Excesses on insurance policies.
- Devices to reduce water damage.
- Responsibility of water companies for leaks.

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### Size Of The Problem

Research, conducted by Cadogan Keelan Westall, property insurance specialists, has revealed that a quarter of claims made on flats are for damage caused by escape of water. An estimated 9.7 billion litres of water a year is lost through residential properties and it is costing £2 million every day (source: ABI, August 2011).

It is in the agents' interest to reduce this damage as far as possible. The benefits are to reduce insurance premiums and escalating excesses – which cause contentions with lessees; to reduce your time spent on dealing with lessees over leaks and establishing who is responsible for what.

### Tips To Prevent Water Damage

- Inform leaseholders about precautions they can take to prevent leaks;
- Encourage leaseholders to make an annual check of all water fittings;
- Issue reminders to leaseholders each winter of steps to prevent frozen pipes. See 'Further Information' below for a suitable leaflet;
- Inform leaseholders and any residents that contents insurance is essential and that third party cover should be asked for in the contents policy;
- Are you sure that you and the contractors who attend to emergencies on your behalf know where the stopcocks are positioned in every block that you manage? It will help reduce damage if so. (If in individual flats then advise leaseholders that they should ensure they know the location); and
- Encourage leaseholders to install products that shut off the water supply if it continues to run for an extended period or ones that place a switch to shut off the stopcock in an easily located position. See 'Devices to Reduce Water Damage' below for further information.

### Buildings Insurance And Water Damage

Only general advice can be given here about water damage and buildings insurance. If you are faced with water damage check the lease to find out who is responsible for what pipework in the building and then check the policy. If necessary seek advice from your insurer or broker on what the policy will or will not cover.

Most buildings insurance policies taken out by landlords will cover water damage to buildings from whatever source. But it is often finding the source of a leak that requires far more expenditure than the damage that ensued e.g. digging up concrete floors that have pipes buried in them. It is essential that the buildings insurance includes trace and access cover – to include the costs of finding the source of leaks. Trace and Access may exclude roof leaks. It may be that alternative accommodation is also required as a flat could be uninhabitable if say the floor in the kitchen and or bathroom needs to come up especially in the case of concrete flooring. Not all policies cover this automatically so you should check – clients/ leaseholders are likely to expect it to be available. As a general rule this would be covered for an Owner Occupier but not a Sub-tenant.

Once a leak has been traced and further damage prevented, buildings insurance will cover certain types of consequential damage caused. It will not cover the cost of repairs to the damaged pipework unless the damage was caused by freezing water in the pipes.

If a leak is in a pipe which is only used by one flat, even when located in common parts, the position may be more complex. It would normally be the leaseholder of that flat that should pay for the repair if caused by normal wear and tear, but any consequential damage would be covered by the buildings policy. Buildings insurance taken out by landlords will cover any necessary repairs and redecoration to the fabric of the flat itself, including fittings and fixtures, but not replacement of damaged contents owned by residents except in certain circumstances. Residents should be made aware therefore of the need of contents insurance - see below. Buildings cover will normally include damage to floor boards and in some instances

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laminated floors laid by leaseholders; but generally not carpets. If you picked the building up, turned it upside down and gave it a light shake, anything still attached is covered by the building insurance anything now on the ceiling isn't.

### **Leaseholders' Contents And Consequential Damage To Them**

The insurances taken out by a landlord or managing agent do not include insuring leaseholders' or tenants' household contents and personal effects, although the building insurance policies will normally cover fixtures and fittings such as baths, basins and toilets.

It is important that managing agents make clear to leaseholders that they need to obtain contents cover. For example if a water leak from one leaseholder's flat causes damage to the contents of the flat below, the items can only be replaced by insurance cover if both leaseholders hold current contents policies. It may seem unreasonable but the lessee who is not at fault in any way may have to claim on his/her contents insurance if the leaseholder from whose flat a leak occurred does not have third party contents cover. (Note that many contents policies do not allow for third party damage cover.)

### **What If A Leaseholder Or Sub-Tenant Has No Contents Insurance?**

Disputes between leaseholders over damage to contents are not the responsibility of agents and you should not become involved or give advice on what is a difficult matter. Tell leaseholders to take their own advice.

### **Buildings Insurance Excesses**

Most policies will have an excess on water damage claims. Where there has been a series of claims the excess can be punitive. Who should pay? The service charge fund, or the leaseholder in whose flat the leak originated?

The treatment of excesses varies and there are no hard and fast rules.

First of all check the leases; in some cases the leases will specify the treatment of excesses. Some leases contain a clause making the leaseholder liable for all costs in the event of leaks from their flats, in which case there is a route to recovery through enforcement of the lease clause. However, this is by no means universal.

Some argue that as all share the benefit of a lower premium because of the excess, all should share the excess irrespective of the circumstance. Others distinguish according to the incident, i.e. if the cause is communal then the excess is paid through the service charge, whereas if the cause is within a flat's demise or responsibility (leaking pipe, overflowing sink etc.) then the flat owner should pay. Managing agents should bear in mind that the payment of an excess may not necessarily be a lawful use of the service charge and open to challenge, so it is important to be familiar with the terms of the lease, any rules or regulations at the particular block, and the RICS Code as set out below.

The RICS Code covers the subject of excesses in para 12.8 as follows: "You should consider whether the terms of the lease/tenancy agreement contain provision that, where an insurance claim is as a result of a negligent act by the leaseholder, you are entitled to recover the excess from the leaseholder or whether the lease allows the excess to be paid from service charges."

Essentially, it is the client who has the right and the obligation to place the buildings insurance for most blocks of flats and of course it is the client who would be challenged at the FTT - so the handling of claims is their decision. All managing agents can do is to make sure to publicise excess arrangements adequately so that nobody can claim they did not know. If there is a clause in the lease allowing the landlord to publish/amend rules and regulations, then consider adding the excess arrangement to the rules and regulations, and circulating it to all leaseholders.

### Devices To Reduce Water Damage

There are devices on the market that can be installed by leaseholders and landlords to reduce the likelihood of prolonged water damage.

One device is to install a switch similar to an electric socket switch in an easily accessible position in a flat which will turn off the water supply at the stopcock. Lessees can be encouraged to use the switch regularly just as one would turn off the lights when going out.

Another device does the above but will also turn off the water supply automatically if it has run continuously for a specified period, so stopping prolonged escape of water.

There are also devices that use sensors that will turn off the water supply if a leak is detected. These devices can be wired or wireless and even send a call to another party if a leak is detected.

### When Is The Water Company Responsible For Leaks?

There are three different types of water pipes.

1. Water mains are the large company pipes that distribute water around the network. They are often, but not always, laid under highways.
2. Communication pipes carry water between the water mains and the boundary of private property. If a company stop-tap has been fitted, this will normally mark the end of pipework that is the responsibility of the company and pipework that is the responsibility of the property owner. Not all properties will have their own stop-tap in the footpath but where one has been fitted, this is normally the responsibility of the company to maintain.
3. Supply pipes are the smaller pipes that carry water from company pipework into the property. Supply pipes run from the boundary of the property (where there may be a company stop-tap) up until the first water fitting or stop-tap inside the property. Stop-taps along the length of the supply pipe, and any water fittings, are the property owner's responsibility to maintain.

Usually, responsibility for different types of water pipes is as shown in the table and diagram below. However, there may be special cases in some areas; you should contact your water company and consult the deeds to your property to find out more.

Type of pipe	Laid under	Responsibility for pipe
Water mains	Highway	Water company
	Property owner's land	
	Land owned by someone else	
Communication pipe	Highway	Water company
Supply pipe serving a single property	Highway	Property owner
	Property owner's land	
	Land owned by someone else	
Shared supply pipe serving more than one property	Highway	Joint responsibility of all property owners served by pipe
	Land owned by any of the property owners served by the pipe	
	Land owned by someone else	

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All water companies are required to have policies to control leakages. Many will assist with repairs but each one has its own approach. So it is worthwhile checking with the water supply company when any leak occurs particularly if the leak is outside the block but within the curtilage.

If the leak is outside the property boundary then you should contact your water supplier to arrange repairs.

If you have a water meter and your bill was abnormally high because of leakage that has since been repaired, you may be able to claim an allowance for the cost of water lost. You should contact your water company for more information. Companies have specific responsibilities to check supply pipes for leakage when meters are fitted and to carry out repairs where no further excavation is required to do this work.

### Further Information

Information leaflet on preventing frozen pipes titled 'Wrap up for Winter' that can be given to leaseholders is available from Water UK at: <http://www.water.org.uk/home/policy/publications/archive/customers/wrap-up>

- There are many companies that supply and install water leak detection products.
- ARMA does not recommend any particular one. Here are some examples:
  - <http://www.wayscale.com/water-leak-detection/products-overview>
  - <http://www.waterguard.co.uk/>
  - <http://www.surestop.co.uk/sector.asp?sid=2>
- For information on water companies' responsibilities go to: <http://www.ofwat.gov.uk/consumerissues/watercompanies/map/>



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