Service charges in Commercial Property
The RICS Code of Practice Second Edition (“the Code”)

The key elements are as follows:

- The Code is not legally binding but represents best practice for property professionals. Observing or failing to observe the Code may be a relevant factor if negligence is alleged in the performance of management duties.

- While the terms of the lease are paramount, the Code can provide an useful aid to the interpretation and operation of service charge provisions. It is based upon a number of core principles.

- Services should be procured on a value for money basis and owners should not profit from their provision. Transparent communication is important. Costs should be clearly allocated and apportioned. Those certifying accounts should recognise that they have a duty of care to both owners and occupiers.

- Tenants have a role to pay in the delivery of services if they want value for money and the maintenance of quality standards. They should ensure prompt payment in accordance with the terms of the lease and, if there is a legitimate dispute, only withhold the actual sums in dispute.

- New leases should make provision for the resolution of disagreements through the use of alternative dispute resolution (ADR). Even if the lease does not expressly require them to do so, the landlord and tenant should consider using ADR or neutral evaluation.

- Managers must certify statements of account in a ‘non-partisan spirit’ and act as experts. They must ensure that all certified costs have been incurred and are properly recoverable under the terms of the lease.

- Service charge money must be held in a discrete bank account and interest earned must be credited to the account.

- To encourage a good working understanding between landlord and tenant, communication and consultation needs to be timely and regular. Budgets with an explanatory commentary should be issued to tenants at least one month before the start of the service charge year; detailed statements of actual expenditure should be issued within 4 months of the end of the service charge year.

- The core principles are supported by a lengthy section on recommended best practice. This covers, in addition to the operation of the service charge basics, some principles of mixed use schemes and environmental sustainability and additional best practice guidance for shopping centres.

- The Appendices contain a best practice compliance checklist, a list of standard industry cost classifications and some example reports.

- The Code comes into effect on 1 October 2011.

These materials are written and provided for general information purposes only. They are not intended and should not be used as a substitute for taking legal advice. Specific legal advice should be taken before acting on any of the topics covered.