(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to

(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.."

9. Section 20 Landlord & Tenant Act 1985:
. (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7)(or both) unless the consultation requirements have been either—
(a)complied with in relation to the works or agreement, or
(b)dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

10. The Service Charges (Consultation Requirements) (England) Regulations 2003:
Regulation 3: *(2) An agreement entered into, by or on behalf of the landlord or a superior landlord -*
(a) before the coming into force of these Regulations; and
(b) for a term of more than twelve months,
is not a qualifying long term agreement, notwithstanding that more than twelve months of the term remain unexpired on the coming into force of these Regulations.

11. Section 20C Landlord & Tenant Act 1985 provides:
(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application..

12. Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 provide:
9. - (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

13. **LEASE**
The Lease provided for the Tenant to pay a proportion of the Landlord's costs of maintenance. The Landlord was required to clean and maintain the external windows and frames and the bin area, and to maintain the gutters, to clean and maintain the common parts, and to keep the gardens in good order. The Lease contained a covenant requiring the Landlord to make available the Arun Community Care Lifeline Alarm Service, but not to pay for medical or personal care, and to insure the entire property. The Lease provided that the Tenant would bear the Landlord's costs of employing managing agents.

14. **INSPECTION**
The Tribunal inspected the property immediately prior to the hearing. It constituted a block of 14 purpose built flats, adjoining an older building known as 'The Grange' Care Home which provided residential retirement accommodation. The property had

been built in the recent past, and had a pitched tiled roof and uPVC windows. The buildings were set in communal grounds with areas of lawn, hedges, and planted beds, and were fitted with CCTV. To the side and rear there were a number of parking areas and service access for the property and for The Grange. There was a bin store area, with some leaves and other debris on the ground. One section of aluminium guttering to the rear of the property had a noticeable bulge, and there was plant growth visible in the gutter. The exterior window sills and one pane in the communal hall were dirty and dusty. The exterior of the property appeared otherwise to be in good condition. In the communal hall there was a meter cupboard in which cleaning materials were stored, the lock of which was not secured. A wall switch had cracks in the plaster behind, and was loosely fixed so that it could be partly rotated by hand. A box on the wall held fire safety inspection logs dating from 2007 and 2008. The property was served by a lift. Along the carpeted ground floor corridor a square area of carpet appeared to cover a hatch but the edges stood slightly proud of the rest of the carpet. The internal common parts were generally in good condition.

15. **HEARING**

A hearing took place at Chichester which was attended by the Applicants and by Mr Peter Eaton, of Countrywide Managing Agents ("CMA"), and by Ms Wisdom, Legal Advisor, representing the Respondent. Both parties had filed statements and documents. The Tribunal agreed to admit a supplemental statement of Mr Eaton dated 9 June 2009, having determined that the Applicants had had the opportunity to consider it.

16. **SUBMISSIONS AND REASONS**

The Respondents challenged the right of the Applicants to make the application in respect of year ending 2007 because they did not become owners until 14 February 2008. The Applicants responded that final accounts for the year ending December 2007 were not provided until June 2008 and they were therefore liable for those charges; in any case, they had a financial interest because they had purchased an indemnity from the vendor of their flat. The Tribunal noted that section 27A of the Landlord & Tenant Act 1985 places no restrictions on who may make such an application. On the evidence the Applicants clearly had an interest in the outcome of the application. The Tribunal proceeded to hear all parts of the Application.

17. The Applicants raised a number of challenges to the accounting procedures, record keeping and information handling by the managing agents, CMA. These issues were common both to the year ending 2007 and to 2008. They objected that the accounts were not presented within time, and no facilities had been provided for inspection of invoices and documents until the issue was pressed again and eventually an appointment was made. In the course of that it was noticed that a bank account for The Mews had been closed, but no information was provided to them about where the money had gone. The quality of service provided by the managing agents was said to be insufficient. Individuals had been rude and insensitive. Other objections made by the Applicants included that the agents allowed the cleaner to use the meter cupboard as a cleaning storage cupboard, and failed to monitor cleaning or provide an adequate cleaning specification. Telephone bills had an extra charge on them which appeared to be a late payment charge. There was no out-of-hours contact number, and the poor management of documents and accounts referred to above meant that the charges for the managing agents ought not to be allowed. An increase of 4.25% year on year was too high.

18. On behalf of the Respondent, Mr Eaton said that he did not construe the initial request to see documents as a formal request under the legislation. Once this was made clear an appointment was arranged. The service charges were held in an appropriate secure account in accordance with RICS recommendations. There had been delays in producing the accounts, and an apology had been made. The lease did not require an out-of-hours contact number to be provided, but CMA was in the process of introducing a 24 hour helpline service for all the properties it managed. There would be an additional charge for that helpline. The management charge was £130 per annum per flat in year ending 2007; this was a market rate. The Respondent could not explain the payment charge on the phone bill, but it was common knowledge that payment charges can be levied if the bill is not paid by direct debit, and the Code of Guidance for management of properties issues by the Royal Institute of Chartered Surveyors which CMA followed did not permit bills to be paid by direct debit.

19. The Tribunal noted that details had still not been provided in respect of the bank account, other than the oral evidence of Mr Eaton at hearing that the funds were held in a NatWest account. No attempt had been made to provide even a partial statement of account, or other documentary reassurance to the tenants. The letter written by the Applicants asking to see documents was very clearly a formal request to exercise their statutory rights to do so. It was inconceivable that it could have been interpreted in any other way by CMA, and a proper response had not been made to that first request. There had not been any proper explanation of the delay in certifying accounts. Responses to the Applicants' correspondence, and to the Application itself, had been made in a high-handed and dismissive manner. It was understandable that the Applicants felt that they had been treated rudely. However the management of the property on behalf of the Respondent was being carried out. Accounts and records were kept, inspections took place, and work was commissioned when required. The cleaning might have been carried out with more attention to detail, but there was no abandonment of management duties such as to justify a reduction in fees. The fees being charged were, in the experience of the Tribunal, typical for a property of this size and were not excessive on their face. No evidence had been produced by the Applicants to show that another agency would be willing to manage the property for a lower rate. In all the circumstances the Tribunal considered that the standard of management was sufficient for the fees charged to be payable.

20. The Applicants objected that tenants were not consulted about expenditure. They said that although the Lease did not require it, good practice would have been to consult tenants about the Respondent's intentions to incur costs in each year. Moreover, the lift maintenance contract was a long-term qualifying agreement that fell within the consultation provisions. Expenditure in excess of £100 per flat had been incurred but there had not been any consultation.

21. The Respondent said that the lift contract was a five-year contact placed in 2002 when the property was built, and before the relevant parts of the consultation provisions came into effect. Since the expiry of that agreement there had been annual contracts, which did not attract the provisions and did not require consultation. Informal consultation on planned expenditure was not required by the lease and would be costly.

22. The Tribunal drew to the parties' attention Regulation 3 of ***The Service Charges***

(Consultation Requirements) (England) Regulations 2003 (set out above). The five-year agreement in the present case commenced on 24-01-2003, before the Regulations came into effect, and it was not to be regarded as a qualifying agreement. The subsequent one-year agreements did not fall within the scope of the Regulations. No consultation was therefore required by law in relation to this expenditure. Whilst it was understandable that tenants, particularly those on a fixed or limited income, might prefer to have some say in decisions about expenditure that would affect them, the Respondent and its agents were under no such obligation and could not be criticised for acting in accordance with the Lease in making expenditure decisions.

23. The Applicants raised a number of specific challenges to individual charges in the service charge accounts. For year ending 2007 the Applicants made the following objections: items had been charged to the account without invoices to support them, namely for cleaning, window cleaning, gardening, and electricity, and accountancy work. Charges to the service charge account had been made for the Careline alarm which ought to be paid by the individual tenants. The Applicants objected that insurance had been placed on the basis that The Mews was a commercial property, probably because it was coupled with The Grange by the Landlord who also owned and insured that property; the Applicants contended that it ought to have been treated as 'domestic'.

24. Mr Eaton gave evidence about the way that invoices were processed by CMA at their central accounts centre, first being signed off by the property manager at the local Brighton office. A record was kept of all items and entries would not be made on that record without an invoice. It was true that some invoices could not now be located. The Respondent's case was that the Lease required the Landlord to 'make available' the Careline service, and it was reasonable that the service charge account should bear the cost of the Respondent doing so by the provision of capital equipment.

25. The Tribunal accepted that certain invoices were missing, but the log of charges showed payment in that month, and the contracts in question were rolling monthly contracts rather than one-off expenditure. In the circumstances the Tribunal found as a fact that the payments had been made, and there was no reason why they should not be payable.

26. The Tribunal accepted the Respondent's case on the evidence that the Lease required the Landlord to ensure that tenants could access the Careline service, and this entailed the provision of the relevant equipment, which the tenants as a whole were obliged to pay for under the maintenance/service charge. There was no evidence that the 'use' fees for callouts were being charged to the service charge account.

27. The insurance objection was misconceived. Whilst individual flats were in use as residences, the block as a whole was not a residence, the Respondent's interest in it was commercial, and the obligation under the Lease was for the Respondent to insure the entire property. In any event the insurance policy showed that the policy was a "pure flats policy", thereby recognising the residential character of the property. The premium was payable in full.

28. In relation to the year ending 2008 the Applicants made specific challenges to items relating to guttering, cleaning of the bin store, a light switch in the communal hall, apportionment of gardening costs, and cleaning of the communal hall and stairs.

29. The Applicants objected that the Respondent had not made arrangements to repair the guttering at the rear of the property. This had been damaged by the Respondent's workmen when they tried to clear it. The bulge now remaining caused rainwater to tip over the side of the gutter and cascade onto the roof below, making a lot of noise.

30. The Respondent itself provided no evidence on this point. The managing agents who represented the Respondent at hearing said that as the guttering was formed in one single piece, it was thought that the cost of repair would be very high. No expert evidence was provided on this point, and there was no evidence about whether or not the Respondent intended to arrange for the repair to be done. The agents had notified the Respondent that the gutter had become distorted.

31. The Tribunal noted that no help on this topic had been forthcoming from the Respondent. The managing agents and their legal advisor had not apparently sought any evidence from the Respondent to deal with the Applicants' objection. Whilst the agents themselves had no liability to repair, beyond such authority or instructions to do so as may be given by the Respondent, they had been appointed by the Respondent to deal with tenant's queries on matters such as this. It did not appear to the Tribunal that any proper response had been given. Nor did it appear that the standard of the work done in 2008 which caused the damage to the gutter was reasonable, as apparently no care had been taken to avoid the damage. The Tribunal therefore disallowed the charge of £70 for the work carried out to the gutter in 2008.

32. The Applicants said that the bin store had not been cleaned, contrary to the terms of the Lease, and some elderly tenants had taken it on themselves to clean it. CMA responded that it had historically not been instructed by the Respondent to carry this work out. However the Tribunal has no jurisdiction to compel a party to carry out Lease obligations, and no charge had been made for this item. No adjustment to the service charge account would be made.

33. The Applicants said that work done to the light switch in the hall was to a poor standard. The Respondent said that the switch had been appropriately repaired, but the electrician who did it had not been asked to make good the plaster, and this would be picked up on the next round of internal decorations. The Tribunal took the view that the evidence did not show that the electrical works themselves had been done to a low standard; it might be desirable aesthetically for the switch to be sealed to the wall and any cracks be filled, but there was no gap behind it and no threat to safety. The tenants had not been charged for redecoration work, and it was reasonable for minor matters such as this to be picked up in a more extensive redecoration when due.

34. The Applicants objected that the gardening costs were apportioned on a 50:50 basis between 'The Mews' and 'The Grange' but no evidence of the underlying costs were provided, the tenants were simply invoiced by the Respondent. Mr Eaton gave evidence of the monthly rate charged, and produced a letter from the Respondent stating how the costs were apportioned. This letter was dated 20 May 2009 and had not been sent to the Applicants before it was disclosed in the evidence for the hearing. The monthly figure quoted for The Mews was £98; this differed from the figure quoted by Mr Eaton in his letter to the leaseholders dated 17 September 2008 at which time he quoted "under £80 a month".

35. The Tribunal noted that the Lease simply required the Respondent to maintain the

garden, and for the tenants to pay those costs; on the face of it, there was nothing under the Lease which required the Respondent to apportion the costs at all and they could all have been charged to 'The Mews'. It did not seem unreasonable that the two properties should each bear half of the costs of cutting the grass; there was unrestricted access to the whole garden for all residents, and the garden as a whole contributed to the amenity and appearance of both properties. Once again, it was unsatisfactory that no proper documentation had been provided to the Applicants before the matter came to the Tribunal. The only evidence available was the letter from the Respondent which set out the figures charged for border maintenance and grass cutting. These figures did not seem unreasonable as the grounds looked well maintained. In the circumstances the Tribunal would allow the charges for garden maintenance.

36. In relation to cleaning of the communal stairs, the evidence before the Tribunal was that it had improved after complaints were made of cobwebs being left, but that there had not been complaints by other residents and none prior to 2008. The focus of the Application was on supervision of the cleaner by CMA, rather than the performance of the cleaning work. On inspection the standard of cleanliness appeared reasonable, although as noted the exterior window frames appeared not to have bee cleaned as the Lease required. No evidence was provided that another cleaner would do more work for the same money. The Tribunal determined that the charges for cleaning were payable. If the Respondent instructed the cleaner to clean the exterior of the windows, it may be that the charges would increase.

37. **DECISIONS ON COSTS**
The Tribunal took the view that many of the concerns raised by the Applicants could have been resolved if they had received full and accurate responses to their enquiries. It was unacceptable that a clear formal request from a tenant to inspect documentation had been ignored. Other documentation was inaccurate or incomplete. There was no reason why information about the whereabouts of the service charge balance, and the account in which it was held, should not have been given to the Applicants when they asked about it. However, the outcome of the application was that almost all the sums charged were deemed by the Tribunal to be payable. On balance the costs incurred by the Respondent in dealing with the application ought to be borne equally by the Respondent and the tenants. The Tribunal therefore made an order that 50% of the costs incurred by the Respondent in connection with the Tribunal proceedings were not to be regarded as relevant costs for the purposes of any service charges.

38. The Tribunal decided for the same reasons that the Respondent and the Applicants should both be liable in equal shares for the fee payable for the Application (which was £70). The Tribunal requires the Respondent to reimburse the Applicant the sum of £35.

Signed---

Dated---24 Jan 2019

IN THE LEASEHOLD VALUATION TRIBUNAL

RESPONSE TO REQUEST FOR LEAVE TO APPEAL

Case No	CHI/45UC/LSC/2009/0044
Property	15 The Mews, St Flora's Road Littlehampton
Applicants	Mr Paul Jepson Mrs Denise Jepson (Flat 15)
Respondent	Oakland (Littlehampton) Ltd Rep by Countrywide Managing Agents/ Leasehold Legal Services
Date of request for permission	5 August 2009
Date of decision refusing permission	10 August 2009
Members of Tribunal	Ms H Clarke (Chair) (Barrister) Miss C D Barton MRICS Ms J K Morris

1. **The Applicants' request for permission to appeal is refused.**

2. **REASONS FOR REFUSING PERMISSION**
   The Tribunal considers that no substantial procedural defect occurred in the course of the Application, and no error of law is disclosed by the Applicants' proposed grounds of appeal.

Signed: Helen Clarke (Chair)

Dated: 10 August 2009

IN THE LEASEHOLD VALUATION TRIBUNAL

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Signed.....Chair

Dated.....10-8-09.....