COMPLAINT BROUGHT AGAINST COLLEGIATE AC STUDENT ACCOMMODATION IN RELATION TO ACADEMIC HOUSE, HERNE HILL, LONDON SE24

I have carefully read through all the documents relating to this complaint. If I have not mentioned anything specifically that does not mean I have not read or taken it into account.

I wish to make some general preliminary observations:

- I am unable to deal with questions of monetary compensation for any breaches of the Code. That is a contractual matter between the tenants and the accommodation provider and completely outside the jurisdiction of the Complaints Tribunal.

- The fact that the parties have reached what they call a full and final settlement, which includes compensation, does not mean that I cannot deal with a complaint. The Tribunal is not a party to the settlement and is not bound by it. If the parties wish to enforce the terms of the settlement they must make use of their legal remedies. The Tribunal's role is to decide whether there has been a breach of the Code and where there has what that means for the accommodation provider remaining in the Code.

SUMMARY OF THE COMPLAINT

The complainants allege that work on the accommodation they had agreed to rent was not finished on time and that they were not correctly informed about the state of the building when they moved in, nor were they informed of progress and when the work would be completed, and at the date of the complaint they still did not know when that would be. In particular, work was not completed in respect of secure electronic access, laundry provision, lifts, mailbox and intercom system. They claim that workers on site entered their rooms without permission. They also say that business was not conducted in a professional way and that communication was poor.

In relation to that last point, the complainants said they felt *deceived* by the company and that the company was *lying*. An email from one tenant (GN) to the Code Administrator on 2nd May, which was in answer to Collegiate's response to the complaint, contains the words *However, the statement from Collegiate below was a complete lie.* These are strong words; I accept that the tenants were frustrated and angry, but I do not think it is appropriate to use such language in making a complaint unless there is very clear evidence to back up the allegation. I can see that there was something of a muddle in the management of Academic House at times and that the relationship between the two sides in the dispute really deteriorated, but I have found

nothing to substantiate any allegations of deception or lying and I do not uphold any accusation of such behaviour on the part of Collegiate.

The relevant paragraphs of the Code of Standards under which the complaints have been made are:

Members make a commitment to ensure that
1.0 Business is pursued in a professional, courteous and diligent manner at all times;

3.7 Where a building is new, or undergoing refurbishment and the building programme is running late and where this may result in pre-let rooms not being ready for occupancy, the manager informs the future tenant at the earliest possibility of this likelihood and its consequences for them.

Managers will ensure that
4.1 Where access is required for routine inspections each tenant will be given at least 24 hours notice of the date, time and purpose of the visit;

4.5 Where practical, contractors and their subcontractors will be escorted by a representative of the owner to ensure that access is properly ordered and that work being undertaken is not unduly disruptive of occupants. Contractors should not enter against tenants wishes unless required to do so by the owner because of an emergency;

The complainants also expressed dissatisfaction with the way they were communicated with and with the way Collegiate handled their complaints.

ANALYSIS

On 30th April the Collegiate's Operation Director sent an email to the Code Administrator responding to the different issues in the complaint. It is clear from the email that there were difficulties.The Operations Director writes:

Collegiate were engaged to manage the property in Herne Hill with contractors already employed by the developers and owners to complete the project. The developers indicated at a very late date that the site was not going to be ready in time for the anticipated and advertised move-in date. Collegiate considered resigning our management of the scheme due to this delay, however we recognised that we had a responsibility to tenants and so we decided to persist with managing the scheme at our financial cost, to minimize the effect the continued works would have on the tenants and to ensure their convenience and safety was fully considered through the delay.

The rest of the email consists of various acknowledgements that there were problems and explains how they arose and what was done to rectify them. Details of compensation are also mentioned.

GN's email of 2nd May, which I mentioned above, profoundly disagrees with the points made by the Collegiate's Operations Director in her email of April 30th.

There is a particular point I wish to make arising from that email. She writes:

4.1 & 4.5 – Collegiate staff are fully aware that 24 hours notice must be given to gain access to tenants rooms. The contractors that have been doing this are not engaged by Collegiate but by the owners of the building to work on the completion of the site. We have insisted that the contractors book appointments to gain access, it would appear that unbeknown to Collegiate staff, an appointment would be booked, the contractors would miss that appointment slot, but still thought it would be OK at a late time or date to enter the tenants room based on the initial notice given. As soon as Collegiate was made aware of this action was taken to ensure that such behaviour did not continue.

This is an important issue, as privacy and the covenant of quiet enjoyment are fundamental to the proper management of tenancies. The first sentence is possibly ambiguous and I wish to stress that it is not the law that a landlord is entitled to enter a tenant's room simply by giving notice that they wish to do so – whether 24 hours or at regular intervals. Access has to be agreed by the tenant; if, having agreed access, the tenant does not allow access, no doubt the tenant is in breach of the agreement, and possibly the terms of the tenancy, but that does not give the landlord (or their agents) the right to enter.

I wished to make that point clear because of the potential ambiguity; from the rest of that paragraph in the email it does seem to me that Collegiate do in fact know and follow the law in this regard, a view that is reinforced by their swift response when it came to light that contractors had been entering tenants rooms unlawfully.

I need to explain that I am dealing with a separate complaint against Collegiate where the question of an owner's actions is also an issue. I feel it is right to mention this, not because I wish to denigrate Collegiate by referring to two complaints at the same time – rather the opposite in fact, as I hope will be clear in a moment.

Common to both complaints has been the fact that Collegiate have taken on the management of properties which are not their own, and where the landlords have been involved in development or refurbishment. And in both complaints it has been clear to me that Collegiate have found themselves caught in the middle, having to deal with complaints of incompletion and outside contractors, for whom Collegiate are not responsible and over whom they do not actually have control. Yet Collegiate have had to face the tenants and deal with things that are going wrong – and in the case of both complaints things have gone wrong, for which the tenants blame Collegiate.

I felt I needed to say that, because it has a bearing on my final decision in both cases. But in my eyes, rather than reinforcing Collegiate's shortcomings, it goes some way towards explaining them. I must not be thought to be in any way playing down or

underestimating the tenants' frustrations, or their feelings that they have been – to put it more mildly than they themselves obviously feel they want to – fundamentally let down.

And I am not ignoring the very strong feelings of distrust the complainants have expressed, when I say that I have seen some effort to get to grips with the issues in Collegiate's attempt to deal with the problems, which have included attempts to further the tenants' interests where they can. Managing someone else's properties can give rise to conflicts of interest if you want to do a good job. Of course, that is not the tenants' problem.

I hope that what I have just written will not be taken amiss by either party to the dispute.

A breach of the Code of Standards can occur even when it is not the fault of those managing the property or arises from events beyond their control. Intention, motive, other people's involvement, and so on, do not prevent there being a breach. It might affect the consequences.

The Operations Director's email of 30th April contains a number of admissions. Quite properly, the Director was doing her best to put the case for her employers and she does it with spirit. Nevertheless, in my view she confirms that there were breaches of the Code in regard to paragraphs 3.7, 4.1 and 4.5. Perhaps Collegiate were not directly responsible, but that does not mean there were not breaches.

As regards paragraph 1.0, business to be conducted in a professional, courteous and diligent manner. The perception of the tenants is that it was not. There is a conflict of evidence, or at any rate of allegations, on this point, but I have not seen any clear evidence that Collegiate staff were discourteous, unprofessional or that they were not diligent; on the contrary there is evidence of an effort to find a solution and a settlement.

On balance, although I think there was some muddle, and it is obvious that communication between the parties was very strained indeed, with some defensiveness on the part of Collegiate, I am not prepared to find a breach of paragraph 1.0.

I uphold the complaint in respect of paragraphs 3.7, 4.1 and 4.5.

As regards 4.1 and 4.5, I am satisfied from what the Operations Director wrote in her email of 30th April, when she candidly acknowledged the problem, that Collegiate have understood the issue and dealt with it. I recommend no further action on this point.

As regards 3.7, I am making what I hope is not an unwarranted or over-bold assumption that Collegiate have learnt from this (and the other) complaint and I am going to give them the benefit of the doubt and trust that they are finding ways to deal with the issues that have arisen in both cases. I would recommend no further action, provided Collegiate could give the Code Administrator some indication of how they are going to ensure such problems do not arise again.

If there were to be more complaints I might not have the same approach.

Although I said at the outset that settlement and monetary compensation are none of my business, I hope the parties can find some basis for a settlement. It probably doesn't help them if I say that in a settlement neither party gets what they really want, but the alternative might well be worse.

JOHN MARTIN
CHAIR OF THE COMPLAINTS TRIBUNAL

2nd June 2014