COMPLAINT BROUGHT AGAINST COLLEGIATE AC STUDENT ACCOMMODATION IN RELATION TO IRIS BROOK AND ORCHARD LISLE, LONDON SE1

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, how that affects the accommodation provider in relation to remaining in the Code of Standards.

THE PROPERTY

I quote from the Operations Director's email to the Code Administrator: *The property is owned by Guy's and St Thomas' Charity…Collegiate was appointed to convert and refurbish the property from a key worker scheme to a student scheme, and to manage the property for the Charity once complete. The refurbishment was achieved on time…completing last August, and is widely looked on as a model refurbishment. Around the same time last year, King's College London agreed a 20 year nomination agreement for the refurbished property, which comprises one building made up of two self contained blocks.*

SUMMARY OF THE COMPLAINT

In an email of 30th April to the Code Administrator, Collegiate's Operations Director wrote: *The landlord decided that it would be nice for the residents and the campus the buildings are located on if the tired courtyard garden, outside of the residences, was also refreshed. The landlord made the decision on a design in the late summer last year and a contractor was formerly appointed in October, and landscaping commenced in November, with a break over Christmas, and concluded at the end of March – a small team not there every day.*

The complainants say that after contracts were entered into, and without any mention of it in pre-contractual publicity, the tenants were told in the middle of September 2013 that there would be construction work in the courtyard, which would take *3-6 weeks to complete*.

Construction work started towards the end of November and the tenants were told by email that it would continue to the end of March 2014. The complainants found the disturbance very substantially reduced the comfort and amenity of their accommodation. They complain that it was a breach of paragraph 3.0 of the Code.

Collegiate acknowledge that there was some disruption, but say that the construction work was ultimately for the tenants' benefit as it would enhance the accommodation, that disruption was to some extent inevitable given the nature of the work, that not all the tenants complained, that the work kept to environmental health standards, that they did all that they could to mitigate disruption, and that it was not in any event their decision to do the work and they were themselves caught in the middle, and tenants have been offered monetary compensation.

Paragraph 3.0 of the Code of Standards states:

SECTION 3 : MARKETING PROPERTY PRIOR TO LETTING TO TENANTS

Managers will ensure that
3.0 All property details are reported accurately without misrepresentation to prospective tenants. This will include details provided in brochures and websites. Where a development is being promoted in a University prospectus then the organisation will request the University to make clear if the operator of the scheme is not the University and will also request the University to state clearly the management organisation charged with both tenant and building responsibilities;

ANALYSIS

I do not find anything factitious or trumped-up about the complaint of noise disruption and general disturbance as a result of the construction work. I accept the complainants' evidence about the noise and other problems and have come to the conclusion that they have a genuine grievance and that their capacity to use and enjoy their accommodation was diminished as a result of the construction work.

In his email of 13th May to the Code Administrator, the Managing Director deals very fully with the issue. It is clear from what he writes there (and from the Operations Director's email of 30th April, which I have quoted from above) that Collegiate were not responsible for the decision to go ahead with the construction work:

Most fundamentally, the garden works were not arranged nor managed by Collegiate.

Collegiate were provided with sketches of a vision of the courtyard garden in September 2013 which were put on every floor to show tenants the vision for the courtyard from spring of 2014. Collegiate were not informed that there would be any clearance works during term time at all at the residence until September 2013. Collegiate could not have notified tenants in advance of booking of these works as accommodation offers were initially made by King's College London in July and August 2013.

The Managing Director puts forward a number of other points, all of which I have considered carefully, and which he puts with some force, as when he says towards the end: *Clearly if Collegiate had a crystal ball and had know that clearance works in the courtyard would take place during the following academic year we could have notified tenants in advance of them being made offers of accommodation – but we did not know that and we cannot change that fact. It is therefore not fair to say or suggest that Collegiate acted in any way un-properly or un-professionally during these garden works, for which a majority of tenants are very grateful as the landlord was not required to undertake them.*

Similarly, the Operations Director in her email writes: *I ought to also make clear that these were not works instructed, nor managed, nor appointed by Collegiate as they were outside of the residences and we were not involved in their formulation.*

The email continues:

Neither Collegiate, nor King's, both of us who were featuring the property, thought it material to mention on either website that the garden courtyard was going to have some work done. Neither of us expected it to be at all disruptive to have gardening works done, particularly as all works would take place over winter so that students would have a new garden for the spring. The project managers ensured at the outset that all works would take place during the hours approved by the environmental health department of the local council – who did not receive a single complaint of disruption during the works – and that the works would be undertaken by professional specialist contractors.

Posters of the new garden designs were posted in all the communal areas around the scheme and following the first project team meeting that we were invited to we communicated to the tenants the expected programme of the garden works. Though we did not think it relevant, this notification was given to tenants within their cooling off period, where they had a chance to cancel their contract.

In an email dated 25th March to all tenants the Managing Director accepts that there has been disturbance because of the courtyard works, as he starts by apologising for it, points out that the landlord is a small charity and writes: *Prior to the arrival of all tenants, posters were put up throughout the residence to communicate the works and all students had a cooling off period and right to cancel their contract after move-in.*

As regards the reference there to cancelling the contract and the Operations Director's statement that *notification was given to tenants within their cooling off period, where they had a chance to cancel their contract,* I have seen no evidence that tenants were informed they could cancel their contracts in the light of the impending construction works, and I find both statements a little disingenuous. It is difficult to see how international students could arrange at that point to change their accommodation. Furthermore, the acknowledgement that tenants were free to cancel their contract could be taken to suggest that Collegiate knew there might be a breach of contract entitling the tenant to repudiate the contract.

I go back to the statement in the Operations Director's email: *Neither Collegiate, nor King's, both of us who were featuring the property, thought it material to mention on either website that the garden courtyard was going to have some work done.*

Collegiate have acknowledged that nothing about the construction work in the garden was on the website or otherwise made available to prospective tenants; these admissions are in the Operations Director's email and the email in which the Managing Director accepts that tenants were not notified in advance. They have explained why.

The provisions in paragraph 3.0 that *All property details [must be] reported accurately without misrepresentation to prospective tenants* is not in my view merely a statement that there will be no misrepresentation, in the restricted sense that lawyers give to that term, technical and a little complicated and with a circumscribed ambit, where put at its very simplest it means to make false statements of material facts which have the effect of inducing someone to enter into a contract.

The Code is not meant to be legislation or subject to the precise technicalities of legal interpretation. It is there to foster best management practice. In light of that, I interpret the provision in the Code to be a much more comprehensive obligation - not just the slightly negative legal duty not to mislead prospective tenants but a more positive duty to give as much information as possible. I accept that there might be some ambiguity in the first sentence of paragraph 3, but given the whole thrust of the Code towards transparency, inspiring confidence in prospective tenants and the importance of being as open and straightforward as possible, I am prepared to conclude that it can cover a situation where prospective tenants are not told that there is likely to be substantial noise disruption for more than a very short period. This could be a vital consideration in whether to enter into a tenancy.

I have taken into account what Collegiate say about not really being a party to the decision to carry out construction work because it was taken by the landlord without consulting or informing them until quite late in the day. The fact that a landlord is a charity does not absolve it from rational management, which includes taking into account the effect of its decisions on prospective and actual tenants, not just filling its properties; it must include, surely, involving those who manage the property in anything which might have a potentially adverse effect on the tenants.

It is possible to imagine that Collegiate themselves felt a certain amount of frustration, caught as they were in the middle, not responsible for a management decision that disturbed a number of tenants, but having to try to deal with it as best they could.

Be that as it may, my conclusion is that there was a breach of the obligation to give full and accurate details about the accommodation.

At the same time as I have been dealing with this complaint I have had to deal with another complaint against Collegiate, which has some related issues. I am going to put here what I wrote in that case.

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.

I find that there was a breach of 3.0. The tenants were entitled to be informed about what they could actually expect if they took the accommodation.

I recommend no further action, for the same reasons as in the other complaint. I will repeat the conclusion I came to there, as the two complaints have a lot in common and it seems stupid to regard them separately.

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