

COMPLAINANT: SJ AND OTHERS

ACCOMMODATION PROVIDER: THE NIDO COLLECTION

PROPERTY: CAMDEN BUILDING, NIDO WEST HAMPSTEAD

SJ and a number of other occupiers complained about breaches of the Code of Standards on the part of the accommodation provider.

The relevant sections of the Code are 4.9 and 6.30

RELEVANT SECTIONS OF THE CODE

Before looking at the complaint I am setting out the relevant sections of the Code.

Managers will ensure that

4.9 Any repair works that are required meet with the following performance standards

Priority One – Emergency Repairs – are completed within 24 hours of a report of a defect. These would be any repairs required to avoid a danger to health, a risk to the safety of residents or serious damage to buildings or residents belongings;

Priority Two – Urgent Repairs – are completed within five working days of report of the defect. These would be any repairs which materially affect the comfort or convenience of the residents;

Priority Three – Non-Urgent Repairs – are completed within 28 days of a report of a defect. These would be any repairs not falling within the above categories;

6.30 Where a failed lift means a tenant with a disability can no longer obtain access to their room, alternative access arrangements will be made. In the event that overnight access is not possible then alternative accommodation will be provided throughout the period of duration of the lift failure.

INTRODUCTION

Before I analyse the complaint I want to make clear that I can only consider whether there have been breaches of the Code; and where there are such breaches, what the consequences should be. I cannot adjudicate on contractual disputes nor can I make any orders about compensation. For those matters the complainants' remedy is through the courts.

The details of the complaint and the responses from the accommodation provider are set out in an exchange of emails and other documents. The parties have had a full opportunity to deal with the issues and the points raised by the other side.

I have considered all the written evidence very carefully. If I do not mention a particular statement that does not mean I have not read it or considered it.

THE FACTS

SJ has a knee problem. Her accommodation is on the sixth floor. On 14th December 2015 she gave notice by email to Nido that the lift to her floor was out of order.

The next day Nido emailed her: *As you are aware the lift within your block has been out of order since Friday evening [11th December]. We are working to get this fixed as soon as possible. If you are leaving for the holidays and need a helping hand with a heavy suitcase please contact our front of house team on [number given] and we will be happy to help.*

SJ gave more details of the problem in an email response to the Code Administrator on 15th February 2016:

I was actually the one with the knee problem and I did speak to the manager in person [further on she says this was on 14th January after return from the Christmas break] and asked for temporary accommodation on a lower floor however she said this was unavailable but also said that I could be escorted to my room via another buildings lift only with a member of staff and often I had to wait for this process and to come down was also an issue at times.

This connection from the other building however was only to be used alongside a member of staff as it required opening an emergency fire door which could set off the alarm and so us residents were not granted access to it alone.

The email goes on to give further details.

Jamel Lee from Nido responded very promptly to the Code Administrator's email concerning the complaint, as follows:

*When equipment such as a lift breaks down, we are completely in the hands of the manufacturers and **this cannot be classed as an urgent 5 day repair** [my emphasis]. The delay was due to our lift company awaiting the delivery of new ropes, pulleys and a specially made hoist in order to carry out the works; many of these parts had to be made and delivered from Spain. The company attended site on two occasions within this period and found subsequent problems, thus delaying the repair further. During the time the lift was out of order, all residents within the block in question were kept notified of progress made, as well as being provided with the reasons for any delays. Residents were also escorted to their floors by a member of the front of house team via the lift in the block connected to the block in question, 24 hours a day. Let me know if you would like me to request a report from Orona with diagnosis and timeline of repairs.*

*Although alternative accommodation was not available due to the residence being 100% full, this resident was escorted up to her room in the lift in a different block each time she requested this at front desk. Our team have also assisted this resident bringing her luggage down from her room during the times that the lift was out of order whenever requested. **Please note that the resident in question is not registered disabled and has not provided us with medical evidence** [my emphasis].*

In a later email, Jamel Lee accepts that no record was kept regarding escorting residents to their rooms. On 24th February he states in an email: *As mentioned, this repair [the lift], cannot fall into the realm of an "Urgent repair - completed within 5 days" as we were at the mercy of the lift maintenance company. During this time residents were shown up to rooms on request. The student made reference to this on the 4th point of their letter of complaint "it is incredibly inconvenient to have to call the front of house team to send somebody upstairs to escort you down".*

He states further: *A robbery did take place within the building whereby some iPads that we had on the front desk were stolen whilst the guard on shift was in the toilet. As a result we have increased the amount of staff to two guards every night...This is another positive step towards the safety and security of our residents.*

A further statement is: *As I have mentioned, residents were advised that they could be escorted to and from their rooms via a lift in a different block, and residents were utilising this facility (as the complainant confirmed), also we have no residents in this block **that are registered disabled, the complainant has also not provided any documentation to confirm this** [my emphasis]. Even though this was the case, unfortunately we do not have any written documentation to confirm that residents were being escorted to their rooms 24 hours a day, but this was, indeed on offer.*

I have a number of comments to make at this stage.

COMMENTS AND ANALYSIS

Speaking very generally, I applaud Jamel Lee for responding promptly and fully to the issues as soon as they were raised with him. I have taken that into account in forming my conclusion. I hope he is able to learn from this experience and in particular that a complaints procedure is not some form of covert litigation, where you must win at all costs, but an attempt to resolve disputes in as constructive and amicable a way as possible; and essential to effective, productive management. I have been Chair of this Tribunal for over 10 years now and have seen time and again how the relationship between residents and accommodation providers breaks down into endless squabbling and sniping, each side becoming increasingly aggressive and/or defensive. That is not what the complaints procedure in the Code of Standards is about.

I can see that the patience of both parties wore thin. Mr Lee states in his 7th April email: *I am sure you will agree that the resident has either contradicted the arguments in her initial complaint, or is using the argument that her friends and "other people" are having the same issues. Further to this, none of the points raised*

in this most recent response have any valid grounds in terms of the evidence that I have provided you with, as shown below.

I appreciate that it is not always easy when you are faced with what seems like hostile criticism, but to see this as a battle in which the other side must be defeated is not going to achieve the best resolution and gain the confidence of residents, present and future. Perhaps there should be more training that concentrates on the best way to deal with complaints and solve disputes.

I wish to make two specific points:

1. URGENT REPAIRS: I will just recall the definition in the Code: *Urgent Repairs – are completed within five working days of report of the defect. These would be any repairs which materially affect the comfort or convenience of the residents.*

I will decide whether a repair is urgent within the definition of the Code, not the provider. Mr Lee is putting forward an argument that in this case the lift repair could not be classed as urgent because repair was essentially out of Nido's control. In terms of the definition it clearly fits the words: *repairs which materially affect the comfort or convenience of the residents.* Leaving aside age and/or disability it is probably healthier to take the stairs than go by lift, but in my view an inoperative lift much above the first floor does affect the comfort or convenience of the residents, particularly if they are carrying something.

I accept Mr Lee's statement that the lift repair was out of Nido's control. Nevertheless, in my view this was an urgent repair within the Code definition and it was not remedied within 5 days.

However, the extent to which Nido tried to mitigate the consequences of the delay to the repair would have some bearing on the final decision. I shall deal with that in due course.

2. DISABLED: Mr Lee makes reference to being registered disabled and medical confirmation/evidence. I hope he will accept what I am saying and learn from it: there is no longer any such thing as a register of disabled people. The only people that register themselves as having a disability are those that are registered blind or partially sighted. Apart from that there is no registration process to go through.

There are rules about qualifying for Attendance Allowance and Disability Living Allowance (the latter now replaced by Personal Independence Payment), Employment and Support Allowance and about applying for a Blue Badge. These are becoming increasingly more restrictive.

Under the Equality Act 2010 you are disabled if you have a physical or mental impairment that has a *substantial and long-term* negative effect on your ability to do normal daily activities.

Rights and duties under the Act, and access to benefits, are technical legal matters. The ordinary, dictionary meaning of disabled is *of a person having a physical or mental condition that limits their movements, senses, or activities.*

Obviously Nido must ensure that they conform to the law in their duties towards people with disabilities, but it would be my hope that, in questions of management and conduct and policy generally, they embrace the much wider definition. If someone needs to use the lift let there be no talk of being registered disabled or having medical confirmation.

In my opinion, this is not a case that should be referred to the full Tribunal, though I have invited the views of the Vice-chairs. There is some conflict of evidence, but I do not think a Tribunal could come to any more definite a conclusion on those points than I can; and in any case, even if it could, I do not think it would help in arriving at a conclusion. By and large I accept the complainant's account. The provider has been unable to show any convincing evidence that the alternative access system was operated effectively by staff.

I accept what the complainant is saying about her experience and see no need to challenge her assertion that she had to overcome hurdles and put up with frustration. I am sorry she had to endure the lift being out of order for so long and that there were inconveniences involved in the solution that was offered. I appreciate that at times she felt she was constantly being faced with difficulties and that this diminished her accommodation and studying experience.

This accommodation is clearly at the top end of the market, which is reflected in the rent and marketing. Inevitably expectations will be higher too.

Let me recall paragraph 6.30 of the Code:

6.30 Where a failed lift means a tenant with a disability can no longer obtain access to their room, alternative access arrangements will be made. In the event that overnight access is not possible then alternative accommodation will be provided throughout the period of duration of the lift failure.

I read into the words *alternative access arrangements will be made* the obvious implication that the access arrangements will be effective, properly carried out and adequately supervised.

I accept that the complainant asked for alternative temporary accommodation on the ground floor (I am not going to insist on documentary proof: I see no reason to doubt what she is saying). The fact is, however, that if all the rooms were taken this was simply not possible. Nido could not conjure up a room for her. Alternative access arrangements were made. Again, I accept the complainant's account that it was inconvenient and not always satisfactory; given the lay-out of the building, and the fact that she had to alert a member of staff, it was no doubt bound to be disruptive, a nuisance and not to run smoothly every time.

I am not satisfied that there was sufficient monitoring or supervision of the alternative access arrangements. It was a serious matter and some log or record should have been kept, if only to show how much the system was being used. I am not satisfied that the on-site staff, particularly the night staff, appreciated how important the arrangement was or that they carried it out properly. The complainant refers to an

occasion when the night guard told her that the manager has said the emergency door was not to be used at night and in any case was only to be used for luggage - and that grocery bags did not fit that description. After further discussion he did take the complainant and another resident up, but I do see this incident as indicative of the system not working properly or being adequately managed.

It was bound to be a problem for a lift to break down in a building with so many floors. Fixing a lift is not always straightforward. I have already explained that Nido were in breach of 4.9, by not repairing the lift within 5 days. I prefer that conclusion to finding no breach; however a common-sense view would be to read into the obligation to repair a qualification that there would be no further action as long as the delay was entirely out of the control of the accommodation provider; and if the provider mitigated the inconvenience with proper alternative access arrangements.

The alternative access arrangements inconvenienced the complainant. I think they fell short of being fully effective, properly carried out and adequately monitored. That is a breach of paragraph 6.30 of the Code.

I am not seeking to minimise the problems all this caused the complainants when I decide there should be no further action against the provider at this stage. It would be irrational to penalise them over the breach of 4.9. In the case of 6.30, although there were some shortcomings, there was an alternative arrangement in place. I note that the night guard was eventually helpful in the luggage/grocery incident. If Mr Lee, who has been frank and co-operative in this matter, can assure the Code Administrator that lessons have been learnt from this experience, there will be no further action.

I am quoting from the response of one of the Vice-chairs, as I think this is a very fair summary of the issue: *I have some sympathy with the operator as it is not always possible to make repairs on a lift in a time scale any of us would recognise and equally the best quality lifts are not always fitted to student schemes which adds to the problems. Equally the customer in the case in a large building needs to have some credible and visible support and I would suggest all operators of high rise blocks should have a more considered contingent plan. Something for a future code review perhaps.*

I have two final comments, neither of which I have any power to enforce. Training is always useful on how to improve a service. The complainant would perhaps feel a little less aggrieved if there were some acknowledgment that she had found it difficult to cope without the lift.

JOHN MARTIN
CHAIR OF THE COMPLAINTS TRIBUNAL

27th April 2016