

Good practice: briefing Tenancies for minors

An overview of the law on, and good practice in, letting to 16- and 17-year-olds

Summary

Many housing providers express the concern that, for legal reasons, they cannot grant tenancies to 16- and 17-year-olds. This briefing argues that, despite legal complications, 16- and 17-year-olds can be granted tenancies.

- Tenancies for 16- and 17-year-olds are held in trust for them by an adult or the landlord until they reach 18. The trustee is not liable for the rent.
- Sixteen and 17-year-olds can be granted a licence if the conditions for a tenancy (eg exclusive occupation) are not met.
- Sixteen and 17-year-olds can be bound by a contract for necessities. Thus, where granted a tenancy or licence, they can be held liable for the rent. It is not, therefore, necessary to get a guarantor when letting to minors.
- Local authorities should provide extra support to ensure that 16- and 17-year-olds understand and can participate in choice-based lettings schemes.
- Support is particularly necessary at the outset of the tenancy, as many 16- and 17-year-olds will have no prior experience of setting up a home and are likely to need support with practical and financial matters, particularly benefit claims.
- Sixteen and 17-year-olds are more likely to be successful in tenancies where the provider has taken account of the young person's needs, and appropriate support is provided.
- Housing corporation guidance indicates that registered social landlords (RSLs) should not refuse to let to 16- and 17-year-olds.
- Housing providers should think creatively about using properties that they have an oversupply of to meet the needs of 16- and 17-year-olds.
- Housing providers should meet regularly with local authorities' homelessness sections to identify, and seek early solutions for, 16- and 17-year-olds who are homeless or likely to become homeless.
- Local authorities cannot exclude 16- and 17-year-olds from their allocation schemes. Indeed, where a 16- or 17-year-old is owed a duty under the homelessness legislation, the local authority is under a duty to give them a reasonable preference under the scheme.

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The legal position

Many landlords refuse to let to 16- and 17-year-olds because they fear that minors cannot be bound by a contract (and so cannot be held liable for rent) and/or believe that minors cannot hold a tenancy. These beliefs have some basis in law, but neither prevents letting to 16- and 17-year-olds.¹

Contracts

Minors cannot enter into a contract if they are too young to understand it. However, the majority of 16- and 17-year-olds will be able to understand a contract, and will therefore be able to enter into one. A minor is not bound by a contract that is not for 'necessaries'. Accommodation, however, is a 'necessary', and thus a contract for accommodation is enforceable. Landlords can recover any unpaid rent (provided that it is not an excessive rent) through the courts in the normal manner (although a litigation friend should be appointed; see below). This means that there is no legal necessity for landlords to seek a guarantor when letting to 16- and 17-year-olds.

Tenancies

A tenancy is a legal estate in land. Minors cannot hold a legal estate in land², and therefore it can be argued they cannot hold a tenancy at all. That argument has been rejected by the Court of Appeal, which decided that a 13-year-old could succeed to a secure tenancy, albeit only in equity.³ An equitable tenancy is one where the legal title is held in trust by an adult (or corporate entity). In that case the mother held the legal title, but the trustee could be an adult relative or friend, social worker, or even the landlord.

Where a minor is granted a tenancy, and an express trust (see below) is not created, the minor becomes an equitable tenant. The landlord retains the legal title on trust for the benefit of the minor, and the minor holds the tenancy in equity. A joint tenancy can be granted if the minor will be living with someone who is over 18; the older tenant will hold the tenancy in trust. In all cases where a trust is implied, the tenancy will be held in trust until the minor reaches 18.

Although there will be cases where a trust is imposed as a matter of law, an express trust can be created. In many cases, the trust is simply for the trustee to hold the legal estate until the minor reaches 18, and the legal position will be no different to that with an implied trust. However, a trust can impose additional

obligations and benefits. The legal position of 16- and 17-year-olds who occupy accommodation under an express trust has not been the subject matter of any recent case law. In some cases, depending on the terms of the trust deed, it could be argued that the minor is merely the beneficiary of a trust and does not enjoy the statutory protection which would be enjoyed by a tenant.⁴ Shelter's view is, however, that in most cases the minor will be both a beneficiary under a trust and will at the same time be treated by the courts as an equitable tenant.

Where the terms of an express trust allow the beneficiary to occupy accommodation, reasonable conditions can be imposed by the trustee. However, trustees cannot exercise their powers in a way likely to result in the minor giving up occupation, or so as to prevent the minor from occupying land subject of the trust unless the minor consents, or the approval of the court is given.⁵ The trustee is not liable to pay the rent unless s/he has made a personal guarantee to do so or unless that obligation appears in an express trust deed. A trustee can apply to the court for guidance about the exercise and extent of her/his powers if unsure.⁶ Where a trustee is unwilling or unable to act and hold the legal interest, the court has the power to appoint a new or replacement trustee.⁷

Licences

A licence is a personal permission to occupy, not an estate in land, so there is no problem in principle with a landlord granting a licence to a 16- or 17-year-old. If the landlord is a local authority, a secure licence can be granted, which offers a similar level of security to a secure tenancy. The Housing Corporation recommends that RSLs only offer licences to 16- and 17-year-olds where the conditions for a tenancy are not met, and should otherwise grant an equitable tenancy.⁸ In all cases however, where the conditions for a tenancy are met, (put simply, the tenant has exclusive occupation, rent is payable, and there is an intention to enter into a legal relationship) then any purported grant of a licence should take effect as the grant of a tenancy with an implied trust.

Succession

Tenancies do not cease when a person dies (although licences do). When a minor's parent(s) or carer(s) die, the minor may succeed to their tenancy. A minor can succeed to a tenancy by it being passed to her/him

1 See Law Commission, *Law of Contract: Minors Contracts* (Law Com. No.134), 1984, para.5.14: 'We are satisfied that the fears of those who have raised it are based on a misunderstanding of the existing law which ought to be removed.'

2 s.1(6) Law of Property Act 1925.

3 *Kingston upon Thames RBC v Prince* [1998] EWCA Civ 1891.

4 *Gray & Ors v Taylor* [1998] EWCA Civ 603.

5 s.13(7) Trusts of Land and Appointment of Trustees Act 1996.

6 s.14 Trusts of Land and Appointment of Trustees Act 1996.

7 s.41 Trustee Act 1925.

8 Housing Corporation, *Code of Practice on Tenure*, 1999, page 23.

in the parents' will, through intestacy, or, with secure tenancies, through statutory rules on succession.⁹ In succession cases where there is no express trust the law implies a trust. Succession to a secure tenancy takes place even if the minor is under 16 years old.¹⁰ Social services may need to conduct a 'child in need' assessment to ensure that the minor will be cared for.

Court action against minors

Court action against a minor must be brought through a litigation friend.¹¹ This is an adult who can represent the minor's interests (CPR 21.4(3)). If there is a trustee, s/he will usually act as the litigation friend; if not, an adult relative or social worker can do so. The litigation friend will need to file a certificate of suitability (CPR 21.5(4) and (5)), or the court can appoint a litigation friend (CPR 21.6(1)). If a landlord is aware that a 16- or 17-year-old has no litigation friend, they must make an application to the court for an order appointing one (CPR 21.6(3)) when making a claim. Where no other suitable person is available, the Official Solicitor may act as the litigation friend, or the court may make an order allowing proceedings to continue without a litigation friend (CPR 21.2(3)).

Other issues

Homelessness

A 16- or 17-year-old who is no longer able to reside with her/his parents or can make a homelessness application. S/he will have a priority need for accommodation, unless s/he is a relevant child or a child in need owed an accommodation duty by social services. As many 16- and 17-year-olds that need accommodation are likely to have approached the local authority as homeless, landlords should liaise with the authority's homelessness section. This will enable providers to be aware of potential 16- and 17-year-old tenants (for example, those currently in temporary accommodation threatened with homelessness). Conversely homelessness sections need to be aware of the provision and support that is available for 16- and 17-year-olds.

Local authority allocation schemes

The only persons that can be 'excluded' from local authorities' allocation schemes are some people from abroad, and those who are unsuitable to be tenants because of unacceptable behaviour.¹² Any blanket exclusion of 16- and 17-year-olds from an allocation

scheme is therefore unlawful, and those who are no longer living with their parents can apply for permanent accommodation. Moreover, reasonable preference must be given to people who are owed certain duties under the homelessness provisions.¹³ This is likely to include some 16- and 17-year-olds (given their priority need status). This applies even if the local authority has decided that the young person is intentionally homeless. The Allocation Code of Guidance notes that there are legal complications with letting to minors, but states that 'social services authorities may consider it to be appropriate to underwrite a tenancy agreement for an applicant who is under 18'¹⁴ (presumably this means to act as a trustee of an equitable tenancy where there is no other appropriate adult).

Choice-based lettings schemes

Local authorities operating choice-based lettings schemes advertise available properties, and applicants bid for suitable properties. If more than one person bids, it will go to the person who has the highest priority under the local authority's allocations scheme. Such a scheme can act against the interests of vulnerable people who are in most need and who are forced to bid for low demand properties. Very often this can be because they are not given the necessary support with the bidding process. RSLs and local authorities need to take steps to make sure that 16- and 17-year-olds, especially care leavers and those who have been homeless, are not at a disadvantage. This could be done by reviewing the criteria of the scheme and by offering more support to young people bidding for properties.

RSL lettings policies

The Housing Corporation Regulatory Code and Guidance states that RSLs should be 'using lettings policies that are fair and reflect the diversity of their client groups' and are 'flexible, non-discriminatory and responsive to demand, while contributing to the need to be inclusive and the need to ensure sustainable communities'.¹⁵ Further guidance from the Housing Corporation states that blanket bans, including those of age restrictions, should not be used and expects 'efforts [to be] made to resolve any possible ineligibility'.¹⁶ Many RSLs impose a minimum age for registering for housing that excludes 16- and 17-year-olds. This is contrary to the Housing Corporation's guidance; restrictions should be lifted, and associations should draw up criteria for

9 ss.87-90 Housing Act 1985.

10 *Kingston upon Thames RBC v Prince* [1998] EWCA Civ 1891.

11 Civil Procedure Rules rule 21.2(2) (henceforth referred to in the text as CPR, followed by the rule number).

12 s.160A Housing Act 1996.

13 s.167 Housing Act 1996.

14 para.5.49 *Code of Guidance on the Allocation of Accommodation*, ODPM, November 2002.

15 paras.3.5.5 and 3.6a *The Regulatory Code and Guidance*, Housing Corporation, August 2005.

16 para.2.5.1 *Regulatory Circular 07/04*, Housing Corporation, July 2004.

assessing the housing and support needs of each individual applicant.

Local lettings policies

Landlords who have an oversupply of a particular type of property – for example, two-bedroom or three-bedroom terraces – could explore different ways to use it. This could be by under-letting or

housing young couples or groups of young people. If there is a surplus of one-bedroom properties, which would be suitable for young people, a review of standard lettings policies may be beneficial. Young people could be given increased priority for one-bedroom flats and, if not already doing so, the landlord should accept applicants aged 16 and 17.

Recommendations

Housing providers that offer tenancies to 16- and 17-year-olds, support schemes, and young people have identified that the following can contribute to successful tenancies for 16- and 17-year-olds.

- Treating 16- and 17-year-olds in the same way as other applicants are treated. Not putting discriminatory conditions in place based on an individual's age, but assessing each applicant's needs to enable them to manage their tenancy.
- Liaison with homelessness sections.
- Undertaking a full assessment of the tenant's needs prior to a tenancy being granted, ensuring that as much information as possible is gathered about the young person's situation.
- Giving the 16- or 17-year-old a realistic and clear overview of independent living and their tenancy responsibilities.
- Allocating an appropriate property in an area where there is a mix of tenants. Placing a young person in an area that is mostly populated with retired persons is likely to be unsuitable for all concerned.
- Providing (or ensuring provision of) an appropriate support package (through internal or external support services) where necessary, and ensuring this is put in place before the tenancy starts so that support is available from the first day.
- Ensuring that the tenant is fully aware of the terms of the tenancy and their responsibilities within it. Provide information on, and consider providing support around, setting up a home (for example, connecting to services, furnishing a home, Housing Benefit claims, etc). Information provided should be clear and jargon free.
- Ensuring any issues are dealt with quickly. Clear communication between support services and housing providers can help to ensure this.
- Supporting the 16- or 17-year-old with all aspects of their needs (eg education, employment, budgeting, etc), not just housing management related support.
- Providing accommodation of a decent standard to give incentive to maintain it.
- Supporting young people to engage with their neighbours, to overcome the prejudices (often engendered by media stereotypes) that some people hold towards them.
- Having regular contact with the tenant during the early stages of their tenancy to build a relationship.
- Offering furnished or part-furnished accommodation to young people.

To give Shelter feedback on these issues, email: goodpractice@shelter.org.uk

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