
**Decision Session: Cabinet Member for
Health, Housing and Adult Social Services**

28 June 2011

Report of the Assistant Director – Housing and Public Protection

Approval of the change to the CYC Tenancy Agreement

Summary

1. Minors are prohibited from holding legal estate under section 1 (6) Law of Property Act 1925. Recent case *Alexander-David v LB Hammersmith and Fulham (2009)* has clarified that all young people aged under 18 require an independent Trustee to hold the legal estate relating to a tenancy.
2. The Cabinet Member will be asked to agree the proposed amendment to the CYC tenancy agreements (introductory tenancy and secure tenancy)

Background

3. There is a requirement to have a 'fit for purpose' tenancy agreement which on occasions needs amending to take account of recent changes in good practice or legislation.

Under s1(6) of the Law of Property Act 1925 minors – including 16 and 17-year-olds - cannot hold a legal estate in land (a legal tenancy).

4. If a minor is provided with accommodation which – if they were over 18 – would be provided under a secure or introductory tenancy then it cannot be called anything other than a tenancy. For instance, it cannot be called a "licence". In providing the accommodation to a minor and accepting rent, the Local Authority will have granted a tenancy but (under the Trustees of Land and Appointment of Trustees Act) they will automatically be deemed to hold the tenancy on trust for the minor until they turn 18, if no other trustee is appointed. The problem which then arises and which was highlighted in *Alexander David* is that, if the landlord wishes to take any remedial action against the tenant – eg. giving notice of possession proceedings – it will be deemed to be in breach of trust. The local authority must still be able to carry out its management functions without creating an unlawful situation whereby this breach of trust arises.
5. The result of *Alexander David* is that it has been established that an independent trustee should be formally appointed to hold the legal estate (the tenancy) until the tenant reaches 18. The minor, meanwhile, would hold an

equitable tenancy – which is not a legal estate in land. This is the tenancy they will hold until they turn 18 at which time the legal tenancy will vest in them and the role of trustee will no longer be required.

6. All housing providers must now abide by this and a trustee who is independent of the landlord must be appointed where there is an Under 18s tenancy. The tenancy created will be the same as it would be if the tenant were over 18. For instance an introductory tenancy will remain an introductory tenancy; a secure tenancy will remain a secure tenancy. Similarly, a tenancy, once created, may be demoted. The difference is that whatever tenancy is granted would be held on trust.
7. A further issue which has arisen out of *Alexander-David* is that where the landlord in question is a Unitary Authority (as is CYC), no council employee – eg. a support worker – can be appointed as Trustee since they are not independent.

Trustees' Obligations

8. The tenancy agreement must clearly show that there is a trust in operation and that the purpose of the trust is the residence of the minor. The minor must agree in writing to abide by the terms of the tenancy agreement (by signing the tenancy agreement) and the trustee must be aware of this agreement and should be served with all notices in respect of the tenancy alongside the minor. The trustee must also sign that part of the tenancy agreement relating to the trust.
9. The trustee will **not** be liable for rent – the minor will. Although a minor generally cannot hold a legal contract, he/she **can** be held contractually liable in law for “necessaries”, which include shelter (as well as food and clothing). The minor will therefore be liable for the rent because it relates to provision of shelter (the property).

A multi-agency procedure has been developed to address this issue

10. The North Yorkshire Home Choice (CBL) requires all under 18's to have a trustee before any tenancy can be offered to them. The proposed go live date for CBL is June 2011. CYC permanent accommodation is granted as either an introductory tenancy for initial 12 months or a secure tenancy and following this case law. The proposed changes to the tenancy agreement are:
 - a. A provision within the tenancy agreement that, where the tenant is a minor, he/she cannot and will not hold the legal estate and will be a beneficiary only of the estate until such time as he/she reaches 18 and the trust lapses.
 - b. A provision stating that the Trustee is aware of the minor's agreement to abide by the terms of the tenancy agreement.
 - c. A provision stating that Notices must be served on both the trustee and the beneficiary (the tenant).

- d. A provision that states that full legal rights to the estate will vest in the minor upon attaining the age of 18.
- e. A signature block for the Trustee, whereby the name and address of the Trustee is stated.

Consultation

- 11. Relevant discussion have taken place between CYC Housing Department and with CYC Legal Department to draw up the agreed changes.

Options

Option one

- 12. To agree the proposed changes to ensure that the tenancy agreements are legally binding

Option two

- 13. To reject / amend the proposed tenancy agreements

Analysis

- 14. The existing tenancy agreement needs to be amended to take account of this recent case law.
- 15. The new tenancy agreements need to be operational to coincide with North Yorkshire Home Choice (CBL) go live date

Corporate Priorities

- 16. The changes to CYC tenancy agreements supports corporate priorities relating to a healthy city, and inclusive city and a safer city in ensuring we provide stable accommodation for vulnerable young people

Financial Implications

- 17. There are no specific financial requests as a result of this proposed amendment to the tenancy agreements.

Equalities Implications

- 18. This proposal will ensure that minors can be offered tenancies of self-contained properties – eg. properties that do not have shared facilities with others and are therefore classed as licences, to ensure they are given the same opportunities as adults. The council will undertake an Equalities Impact Assessment in the next four weeks to ensure that there is no discrimination.

Legal Implications

- 19. Legal have been fully consulted and agree that by ensuring that an independent trustee is appointed to hold the legal estate on the tenant's

behalf no unlawful situation would arise whereby the council's management obligations gave rise to a breach of trust.

Risk Management

20. That CYC will be challenged by customers on the Housing Needs register if they cannot access social housing because CYC are unable to grant an equitable tenancy to a young person aged 16 or 17 following the introduction of North Yorkshire Home Choice (sub regional CBL scheme)

Recommendation

21. The Cabinet member is asked to agree the changes to the tenancy agreement

22. Reason : It is a legal requirement that tenancies granted to minors are held on trust by an independent Trustee until the minor reaches the age of 18.

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Wards Affected: *List wards or tick box to indicate all*

All

For further information please contact the author of the report

Background Papers:

Annexes

Appendix 1 – Proposed Introductory Tenancy Agreement

Appendix 2 – Proposed Secure Tenancy Agreement