



## Housing Solutions Service

# Deed of Trust Procedure

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This document is **APPENDIX 38** of the Housing Solutions Procedures Manual and should be read in conjunction with the Manual.

## Contents

1. Introduction.....	Error! Bookmark not defined.
2. The Protocol.....	5
3. General principles .....	5
4. Requesting a Deed of Trust .....	6
5. Support prior to possession proceedings.....	7
6. Securing legal advice prior to proceedings .....	7
7. Monitoring .....	8

## **1. Introduction:**

- 1.1 The Council is the Local Housing Authority and Social Services Authority for County Durham. There are a number of statutory duties that require the Council to secure accommodation for persons who have not, as yet, attained the statutory age of majority (eighteen years). Examples of such duties can be found in section 20 of the Children Act 1989 and Part VII of the Housing Act 1996.
- 1.2 There is a joint protocol for 16/17 year olds and a Care Leavers Accommodation and Support Protocol in place between Children and Young People's Services and the Housing Solutions Service to ensure that the Council complies with its statutory duties and for each service to assist the other in securing a package of support for minors that meets their needs. In practice, it has been standard for the Council to secure tenancies for children but those arrangements have usually been on the basis of the providers standard tenancy agreement.
- 1.3 A minor is not able to hold a legal estate in land by virtue of section 1(6) of the Law of Property Act 1925. Any tenancy granted was therefore considered to be a tenancy in equity. This is not a legal estate in land, but a form of agreement between the organisation granting the tenancy and the minor as to the rights and responsibilities of the tenant in occupying the premises.
- 1.4 However, the case of Hammersmith and Fulham London Borough Council v. Alexander-David [2010] Ch. 272 confirmed that seeking to secure a tenancy for a minor in such a manner was not effective. The Court of Appeal took the view that in essence the organisation granting the tenancy was making a declaration pursuant to paragraph 1(1) of Schedule 1 of the Trusts of Land and Appointment of Trustees Act 1996 that the tenancy would be held on trust by the organisation for the benefit of the minor.
- 1.5 This has subsequently created a number of problems for Social Landlords. Where such a trust has arisen, the Landlord is not able to seek possession as it has a duty as trustee to act in the best interests of the child. Seeking possession against that child is unlikely to ever be in the child's best interests. This has meant that Social Landlords began to face difficulties in securing possession where there was anti-social behaviour and/or rent arrears.

In order to avoid falling into the situation highlighted by the Hammersmith case it is proposed that a third party, who is not the Landlord, will be appointed to act as the trustee of a tenancy with the child occupying the property as the beneficiary. This should protect the Landlord's interests in the event that possession is to be sought as well as protecting the child's interests by obtaining legal advice.

1.6 To ensure this protocol operates effectively, the Housing Solutions Core Team will operate as the main administrator of the process. This will ensure a central spreadsheet of all deeds established for 16/17 year olds will be appropriately managed and monitored and the process to support young people who face legal action to end occupation is completed appropriately and to support the young person to access legal advice.

1.7 In light of the Council's statutory duties it is essential that the Local Authority is able to secure accommodation for children. In the case of 16 and 17 year olds this may well include independent living without supervision but with support from the Local Authority.

1.8 There are two situations that need to be addressed:

- a. Where the child is to be housed through the Council either by Durham City Homes or in a Council owned property managed by either Dale & Valley Homes or East Durham Homes; and
- b. Where the child is to be housed through a third party Registered Social Landlord.

1.9 In either case, it is considered appropriate to use a Deed of Trust to secure the accommodation.

#### **1.10 When to use this protocol.**

1.11 This protocol should only be used when there is no other responsible person to sign an equitable tenancy grantor for the young person, and only following agreement at a Joint Protocol Panel Meeting. Where there is a responsible adult, the housing providers own procedure should be followed to secure accommodation for the young person.

## **2. The protocol:**

### **Pre Application for Durham Key Options:**

- 2.1 In all cases where a 16/17 year old applies to Durham Key Options a Joint Protocol will be called by the Housing Provider. Where a 16 / 17 year old first approaches Housing Solutions, One Point, Youth Offending Service or Children & Adults Service, the first point of contact organisation will call the Joint Protocol. Where a young person applies directly to a partner of Durham Key Options, the partner will call the Joint Protocol. At this panel meeting alternative housing options will be discussed and / or what support can be put in place to support the young person to remain at home, if appropriate. Should the panel conclude that Durham Key Options is a suitable housing solutions for the client, an agreement will be made that the HTASS (Joint Protocol) support worker will be contacted by the Housing Provider upon property match to commence the Deed of Trust procedure.
- 2.2 Once a referral by the Housing Provider has been made to HTASS – a further Joint Protocol meeting will be called to agree any support required to assist the young person to move into and sustain their home. This will not delay the signing of the Deed of Trust, the panel meeting is solely to assess any ongoing support needs. If support is required, HTASS will deliver this support for up to 14 weeks.

## **3. General principles:**

- 3.1 Where Durham County Council or Home Group Limited is to act as the trustee and sign the Deed of Trust, the responsible department will be Children & Adult Service. Signing the Deed will be completed as soon as possible to limit the void costs of match property.
- 3.2 Where a Deed of Trust has been signed it is for the Housing Provider to monitor. Where issues arise and a further Joint Protocol is deemed appropriate the Housing Provider will call a new Joint Protocol to discuss appropriate action and support to sustain the tenancy.
- 3.3 Where action is required to recover possession of a property secured via a Deed of Trust, the Housing Provider will serve notice on the trustee either Stonham or Durham County Council Housing Solution's

Core Team. The Housing Provider will further call a Joint Protocol Panel Meeting before issuing court proceedings for possession.

- 3.4 Where a young person is approaching their 18<sup>th</sup> birthday, it is for the Housing Provider to monitor and take appropriate action to issue a tenancy agreement.

#### **4. Requesting a Deed of Trust:**

##### **East Durham Homes, Durham City Homes or Dale & Valley Homes:**

- 4.1 The Council cannot act as trustee as it is also the Landlord. If it were both trustee and Landlord then difficulties would arise if the Council had to seek to enforce the terms of the tenancy agreement.
- 4.2 It has therefore been agreed that a third party voluntary partner, Stonham Limited, act as trustee for the child. Home Group Limited will be given a Deed of Trust to sign and in the event of legal action to recover the a property, will be obliged to make a referral to an appropriately qualified Solicitor or advice agency to ensure the young person has access to legal advice in defence of the possession action. While the Deed creates a trust it is worded to ensure that it does not give rise to any guarantee of rent by the third party. The approved third sector partner is Stonham Limited.

##### **Other Registered Provider(s).**

- 4.3 The Council will act as trustee for the child in question. The proposed Deed of Trust is attached to this as Appendix 4. While the Deed creates a trust it is worded to ensure that it does not give rise to any guarantee of rent by the Council, unless there is a statutory duty by Children and Young People's Services to pay the rent on behalf of the young person. This could be the case, whereby the young person is a care leaver or a looked after young person under the age 18yrs.
- 4.4 The Council will have a duty to act in the child's best interests, but this will be discharged by ensuring that the child receives relevant legal advice. While the Council (Housing Solutions / Children & Adults Services) may have to act as litigation friend for the child, it is the child's means that are assessed and it is therefore anticipated that the child will be eligible for Legal Aid in the majority of cases.

- 4.5 The landlord in all cases will ensure that the signature to the deed of trust (Children & Adults Services) is notified of any proposed or actual legal proceedings to seek possession of the property to ensure the young person is able to access appropriate legal advice. This should be done following a Joint Protocol called by the Housing Provider prior to court action to recover possession..

## **5. Support prior to possession proceedings:**

- 5.1 In the event that the Council / Registered Provider was seeking to enforce the terms of the tenancy agreement then the third party trustee would act in the best interests of the child and would instruct Solicitors to act for the child. This would be done once a Joint Protocol had met to review support arrangements to seek to prevent eviction.
- 5.2 Where it is not possible to avoid eviction, when acting as trustee, or Durham County Council will have a duty to act in the child's best interests, but this will be discharged by ensuring that the child receives relevant legal advice. Should Home Group Limited / Durham County Council be required to act as litigation friend for the child, it is the child's means that are assessed and it is therefore anticipated that the child will be eligible for Legal Aid in the majority of cases.
- 5.3 The above procedure enables the Council to discharge its statutory duties while at the same time ensuring that Landlords are able to enforce the terms of their tenancy agreements without difficulty.

## **6. Securing legal advice prior to proceedings:**

- 6.1 Where an organisation, either Durham County Council or Home Group Limited has signed a deed of trust for a young person, this will ensure that the organisation will seek to secure appropriate legal advice for the young person should legal action be taken to end occupation of the property.
- 6.2 Durham County Council or Home Group Limited will work with the young person to ensure they are aware of the legal action against them.

6.3 Durham County Council or Home Group Limited will contact the chosen legal firm / organisation to ensure the young person is referred to and engages with appropriate legal advice.

<b>7. Monitoring:</b>
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7.1 Where a deed of trust is to be established the relevant referral form will be submitted to the Housing Solutions Core Team. (See below).

7.2 The Housing Solutions Principal Core Team Officer will update the relevant information onto the spread sheet. If at any time legal action is taken to recover the property, the signatory to the deed of trust will notify the Housing Solutions Core Team who will further update the spreadsheet sheet and contact the young person to establish if any further advice and support is required and that the referring Housing Provider has called a Joint Protocol.