

ALMSHOUSE ASSOCIATION MEMBERS DAY CONFERENCE

Mediation: Avoiding and Resolving Disputes





MEDIATION: AVOIDING AND RESOLVING DISPUTES PART 1

Key procedural and documentary issues

- Beneficiaries of the Charity **not** tenants (affirmed by Court of Appeal)
- Licence to reside in their accommodation with Trustees' permission
- Trustees exercise powers to appoint beneficiaries
- Qualifying beneficiaries
- Trusts of Charity
- Class of beneficiaries
 - Charity Commission consent required to authorise changes
 - Trustees' legal duties to keep up to date
- Eligibility? Trustees' discretion
 - who is most in need within class of beneficiaries?
 - criteria, policy, fairness

Application form - Standard of Almshouse Management

- Start off on a good footing
 - information about applicant
 - about their family
 - about their present home
 - intentions about present home
 - details of income, benefits, details of capital
 - health and social factors
 - name and address of GP (consent form for medical certificate)
 - unspent convictions
 - references
 - declaration
- Template consent form (Trustees/staff to contact GP, next of kin in an emergency)

Finding out about the applicant

- Interview applicants? In current accommodation if possible
- Standards of Almshouse Management
 - ability to live independently
 - ability to live harmoniously with neighbours
 - collection of WMC
 - role and function of trustees/staff
 - no legal interest in almshouse (Letter of Appointment)
 - complaints policy/grievance procedures
 - health & safety, fire precautions, smoking, pets, visitors/overnight stays
 - cleaning, maintenance, condition (hoarding issues)
 - arrangements for communal facilities and master keys
 - setting aside (circumstances residents can be required to leave)
 - arrangements and permissions for contacting GP/next of kin (Consent form)

Letter of Appointment - a key document

- Beware “DIY” documents
- Almshouse Association Model Letter of Appointment
- Letter of Appointment issued and signed in duplicate (copy for resident and Almshouse)
- Read and understood, go through it with residents beforehand, and minute this has happened
- Confirms appointment as a beneficiary (resident) **not** a Tenant
- Specifies regulations for residents
- Weekly maintenance contribution
- Access for maintenance, repair, decoration, inspection (e.g. alarm monitoring systems)

Letter of Appointment - a key document

- Right to move residents to another dwelling of the Almshouse
- Almshouse Association Model Letter of Appointment confirms Trustees' powers to set aside appointment if:
 - serious misconduct/anti-social behavior
 - breach of regulations
 - if resident is no longer a qualifying beneficiary
 - risk to themselves or other residents/staff
 - failure to pay weekly maintenance contribution
- Residents informed of Trustees' powers to set aside appointments and in what circumstances used

Risk Management

- Trusts' and Charity's aims/objects up to date?
- Clear and up to date definition of qualifying beneficiaries?
- The Charity Commission, prior written consent to regulated alterations
- Application form - Standard of Almshouse Management
- Clear criteria for guidance of trustees/panel selecting residents
- Residents Handbook (Almshouse Association specimen handbook)

*** More information on key administrative and governance issues will be covered in a separate talk at 11:20 ***

Risk Management

- Complaints/grievance procedures (communicated to residents) (Almshouse Association Model)
- Anti-social behaviour policy and procedures - Standards of Almshouse Management
- Trustees need to be aware of difficulties and genuine complaints (avoid 'disconnect')
- Review documents and policies to keep up to date

*** More information on key administrative and governance issues will be covered in a separate talk at 11:20 ***

A man with short dark hair and a beard, wearing a dark blue pinstripe suit, a white shirt, and a blue and red striped tie, is smiling and standing in an office. The background is a blurred office environment with desks, computers, and other people working. The image is framed by a colorful border at the top and bottom.

MEDIATION: AVOIDING AND RESOLVING DISPUTES PART 2

Disputes

- These will be between
 - the Charity and a Resident
 - Residents
- May be necessary to take advice at an early stage
- Resolution always better than litigation
- Mediation or other ADR

Disputes between Residents and Charity

- Almost always these disputes will arise from a breach of the terms of the Letter of Appointment. The Letter of Appointment is, therefore, key
- Residents Handbook
 - Is it stated to form part of the Letter of Appointment?
 - Is it up to date?
- When did you last check your application form? Is it up to date? If it refers to documentation, is that documentation still valid?

Disputes between Residents and Charity

- Are there any procedures that you refer to in the Letter of Appointment, the Residents Handbook, or the Application forms? If so, are these available?
- When do you provide documents to residents?
 - Provide a blank copy of the up to date documents before they apply
 - If any changes are made between the application being made and a resident being appointed, make sure they are aware before the appointment is confirmed



Disputes between Residents and Charity

- Keep records of what is provided to Residents, ideally with acknowledgments of receipt signed by the residents
 - If any changes are made to any documents, keep records of these too
 - Clarity is key - don't use confusing language
- 



Disputes between Residents and Charity

- Don't always assume the worst.
 - Is the issue at hand one covered by the Letter of Appointment?
 - Is it just a clash of personalities between resident and a contact of the Charity?
 - Is it a serious issue that needs urgent attention, or one that could form part of a multitude of smaller issues that all add up?
 - Is there an underlying issue for the resident, whether that be health or financial?
- 

Disputes between Residents and Charity

- Document
 - each complaint received about a resident, and acknowledge it. Keep the complainants, residents and third parties on side as you may need them at a later date
 - steps taken, including internal meetings and conversations with residents and third parties
- Keep all parties updated on what steps, if any, are being taken.
- If there is a possibility of action being taken to set aside an appointment, ensure that the resident is made aware of this
- Follow your procedures, and be able to evidence that you have done so

Disputes between Residents

- Approach every matter with an open mind - easier said than done!
- It is a genuine grievance, or a clash of personalities?
- We wary of being seen to take one side, but do not be afraid to make a decision which favours one party
- Document
 - each complaint received about a resident, and acknowledge it. Keep the complainants, residents and third parties on side as you may need them at a later date
 - steps taken, including internal meetings and conversations with residents and third parties

Disputes between Residents

- Keep all parties updated on what steps, if any, are being taken
- If there is a possibility of action being taken to set aside an appointment, ensure that the resident is made aware of this
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Dispute Resolution - applies in all disputes

- This is not rocket science, but sometimes personalities, principles, characters mean that we have a blind spot to the obvious, sensible, course of action
- “Jaw jaw, not war war”
 - meetings with residents
 - consider someone attending on behalf of the Charity that has not been involved before
 - 3rd party mediation - can be expensive, but doesn't need to be. Not imposing a decision, but helping the parties to come to a mutually agreeable conclusion
- Keep a written record of all discussions and ideally let the attendees have a copy to verify it is an accurate record.

Set Aside

- The subject of a separate talk at 11:20am, so not too much detail provided here
- This is the last resort. Not a course of action to be taken lightly
- Appointment of a beneficiary may be set aside in various circumstances, including (but not limited to) :
 - no longer qualifying
 - failure to pay Weekly Maintenance Contribution;
 - breach of regulations/anti-social behaviour/serious misconduct/nuisance to neighbours
 - refusal to allow reasonable access to maintain/repair (e.g. monitoring equipment); or
 - risk to themselves or other residents/staff
 - abandonment of almshouse dwelling

Set Aside

- Where there is a dispute between residents, setting aside multiple appointments may have to be done
- Need to ensure that the appropriate procedures are followed
- Failure to follow procedures, or not take any action, could delay the conclusion of the matter, or even leave the Charity at risk of sanction
- Ensure residents are repeatedly warned of the risk of set side
 - Verbal warning
 - Written warnings - distinguish between occupation could be at risk and occupation is at risk

If all else fails - Court Proceedings

- Section 3 Protection from Eviction Act
- Part 55 Civil Procedure Rules
 - Be alert to issues of capacity (more to follow on this shortly)
- Local County Court
- Must provide full details of the occupancy and the nature of the claim
- Resident has 14 days to respond
- Possession Hearing

If all else fails - Court Proceedings

- Enforcement
- Costs
- The dispute can still be settled even when proceedings have been issued, though the relationship is likely to be (although not always) irreparably damaged.

The image features a solid blue background. At the top and bottom edges, there are horizontal rows of seven colored squares each. The colors of the squares, from left to right, are: yellow-green, purple, orange, light blue, magenta, green, and dark teal. The text "Any questions?" is centered in the middle of the slide in a white, sans-serif font.

Any questions?



Thank you for listening

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