

# Almshouses: Setting Aside

---

Anna Phillips and Marina Leigh



---

# Setting Aside Beneficiaries of an Almshouse Charity

## An Overview

---

- The legal relationship between an Almshouse Charity and its beneficiaries
- Appointing the “right” beneficiary
- The Letter of Appointment and Handbook
- Setting aside an appointment
- What to do if the beneficiary refuses or fails to vacate



# The Legal Relationship Between an Almshouse Charity and its Beneficiary



**What is a beneficiary?**

**The nature of occupation (beneficiary under a trust, not tenant!)**

**Why are tenancies not appropriate?**

**Using the right language:**

- **Weekly Maintenance Contribution v Rent**
- **Beneficiary/Occupant v Tenant**

# Appointing the “Right” Beneficiary For your Almshouse Charity

## Power to appoint?

### Who can be appointed?

The majority of Almshouse residents are:

- of retirement age
- of limited financial means
- Living within the vicinity of the Almshouse Charity (or have family connection to the area)
- Fewer, but still some, will cater for families, disabled persons, and veterans

*“Poor persons of good character”?*

Ensure definition is clear and obtain Charity Commission consent for changes to class of qualifying beneficiaries.

## Practical Tips

1. At application stage, ensure that you are following your Charity’s Objects and policies when considering an appointment
2. Appointment is at the Trustees’ discretion so apply a fair, clear and detailed criteria for appointment and ensure that the beneficiary most in need is appointed
3. Ensuring you avoid personal bias or discrimination (at interview avoid discrimination)
4. Make enquiries into your potential beneficiary’s financial circumstances
5. Check that the potential beneficiary has nowhere else to live?
6. Obtain references (current landlord)

# The Letter of Appointment and Handbook

## Your most important assets!



- What are they?
- Use helpful precedents to create both documents
- Keep duplicate signed copies and minutes of the meeting where the Letter/Handbook were reviewed by the Resident
- Ensure that you include clear terms in the Handbook and Letter of Appointment relating problem areas
- Policies and procedures



---

# Statutory protections for the Beneficiary

## Which laws apply?

### Poll:

Which of these statutory protections apply to a beneficiary of an Almshouse Charity?

- Disability Discrimination Act 1995 /Equality Act 2010
- Tenants Fees Act 2019
- Protection from Eviction Act 1977
- Homes Fitness for Habitation Act 2018
- Renter's Rights Bill



# Setting Aside the Appointment of a Beneficiary

## Why?

### Why would a Charity want to set aside an appointment?

#### Breach of terms by the beneficiary, e.g.:

- Anti-social behaviour/nuisance
- Failing to pay maintenance contribution
- Refuses to allow access for maintenance or repairs
- Beneficiary is absent/has abandoned the premises
- No longer qualifies as a beneficiary (e.g. change in financial circumstances)
- Other parties occupying in breach of the single occupancy policy

### Considerations if there is a breach of the terms?

- Vulnerable people residing at the Almshouse – duty to protect the other residents and staff members.
- Duty to protect the vulnerable beneficiary (against others occupying)
- Duty to ensure that the Charity's objectives are met – permitting a non-qualifying resident to reside may be in breach of this duty.
- Reputation is paramount!

# Setting Aside the Appointment of a Beneficiary How?

## Before the matter escalates discuss informally with the beneficiary

- Exhaust informal avenues first
- Crime report to police
- Follow policies and procedures
- Investigate /report to trustees
- Then formal warning(s) in line with trustee decision / terms of Letter of Appointment
- Ensure that the beneficiary is kept updated as to the setting aside process so that there are no surprises

What about emergencies?

Can usually set aside immediately in extreme circumstances (e.g. fear of violence)! But..

Act with care / seek police input or injunctive relief

## Formal Process:

Refer to your Regulations/Policies, e.g.:

- ☐ Call an Emergency General Meeting to pass a resolution setting aside the appointment (ensure policies and governing documents allow you to meet remotely/virtually)
- ☐ Ensure clear minutes are kept (including detailed reasons and any steps already taken)

## Next step, serve:

- ☐ Notice Setting Aside Appointment
- ☐ Notice to Quit (1 month)



# The Beneficiary is co-operative/agrees to vacate...

## Prior to vacating

**Remind the beneficiary of the expectations for their departure:**

- Ensure that the weekly/monthly maintenance contribution is up to date (i.e. to the departure date or end of the notice period, depending on circumstances)
- Ensure property is cleared of all possessions
- Leave property in a clean state
- Take meter readings and ask beneficiary to notify utility companies
- Beneficiary to notify Local Authority regarding Council Tax
- Beneficiary to notify housing benefit team, if applicable
- Arrange with the beneficiary to hand over the keys

## What if the beneficiary vacates without taking these steps?

**Generally wait until the Notice to Quit period has expired before re-entering the property**

- If it is obvious that the beneficiary has vacated, enter the property and change the locks
- If the beneficiary has left any possessions, serve a Torts (interference with Goods) Act 1977 notice – more to come on this!



# What if the Beneficiary Fails to Vacate?

## Court Proceedings

- **County Court (Part 55 of the Civil Procedure Rules)**
  - **Protection from Eviction Act 1977**
  - **Instruct solicitors**
  - **Claim form and Particulars should clearly set out that the right to occupy was NOT a through a tenancy, but a form of licence.**
  - **File all evidence with the particulars of claim (including witness statements)**
  - **Can seek mesne profits (amounting to lost weekly maintenance contribution) and legal costs**
    - **What about Housing Benefit in the meantime?**

### Attending the possession hearing

- ✓ **Defence – 14 days (or can just attend)**
- ✓ **Counsel/Solicitor represent**
- ✓ **Trustee and any witnesses should attend**

### Likely outcomes:

- ✓ **Possession Granted**
- ✓ **Claim dismissed**
- ✓ **Hearing adjourned**



# Possession Order Granted

## What next?

Hopefully the beneficiary vacates!  
But if they don't...

- Apply for a writ or warrant of possession
- Once writ/warrant is obtained serve notice of eviction 14 days before the writ or warrant is executed.

On the day:

- A trustee should attend the property with a locksmith and the court enforcement officer (bailiff)
- The money aspect (costs/mesne profits) can be enforced at the same time. Up to £5,000 - only if have a warrant of control!
- Police assistance, if circumstances require them

## Torts (Interference with Goods) Act 1977

Any belongings left by the resident need to be removed to allow another resident to occupy – what do you do with the belongings?

- Trustees become involuntary bailees
  - Must take care of the items left behind
- Post a Torts Notice at the premises including information:
  - List of the goods
  - Where they are being kept
  - How long they will be kept (e.g. 14 days)
  - If they are to be sold, when and where the sale will take place.

# Setting Aside Beneficiaries of an Almshouse Charity

## Summary

### Things to remember:

- ❖ The beneficiary occupies as a beneficiary under a trust (form of licence) – not a tenant!
- ❖ Remember statutory protections
- ❖ Keep your charity's policies and procedures up to date and follow your Letter of Appointment and Handbook if issues arise
- ❖ Give plenty of warnings
- ❖ Seek legal advice if issues escalate



# Any Questions?

---



# Thank you for listening



**Anna Phillips**  
Head of Charity Property  
Foot Anstey LLP  
Anna.phillips@footanstey.com  
+44 (0) 1392 685241  
+44 (0) 7813 752485



**Marina Leigh**  
Senior Associate, Charity Property  
Foot Anstey LLP  
Marina.leigh@footanstey.com  
+44 (0) 1392 685371  
+44 (0) 7815 603996

**Charlie Harding**  
Hybrid LSA/ Paralegal, Charity Property  
Foot Anstey LLP  
Charlotte.harding@footanstey.com  
+44 (0) 1392 685308

