

SETTING ASIDE APPOINTMENTS POLICY AND PROCEDURE

RESPONSIBLE DIRECTOR:	Director of Homes and Wellbeing
RESPONSIBLE OFFICER:	Head of Specialist Housing
LAST UPDATED:	January 2020
NEXT UPDATED:	January 2023

1. PURPOSE

- 1.1 To follow the Almshouse Association standards of almshouse management guidance.
- 1.2 To ensure the process of setting aside appointments is fair and transparent.

2. RISKS

- 2.1 Failure to follow fair processes for the setting aside of appointments.
- 2.2 Failure to maintain sustainable communities within the almshouse schemes.

3. REFERENCES

- 3.1 The Charity Commission Schemes.
- 3.2 The Almshouse Association Standards of Almshouse Management 2014.
- 3.3 Intermediate Housing Team Income Management Policy
- 3.4 NCHA ASB and Hate Crimes Policy

4. PROCESS

- 4.1. The Court of Appeal in the case of Gray v Taylor (1998) established that almshouse residents occupy properties as beneficiaries under a trust and are therefore not tenants. The appointment letter is in effect a licence to occupy and as such the resident has no security of tenure.
- 4.2 Despite the insecurity of tenure the appointment of a resident is viewed as a long term decision and an appointment will only be set aside in specific circumstances and after much consideration of the individual's situation. The decision to set aside will be taken by the Trustee after consultation with the Housing Officer.
- 4.3 Although every effort should be made to avoid setting aside an appointment, it is recognised that there are occasions when this is the responsible action to take. Specific circumstances that may lead to setting aside an appointment are:
 - a) The resident is no longer able to live independently due to increased frailty or disability, even with the support of social services care packages or other assistance
 - b) The resident no longer qualifies as a beneficiary
 - c) The resident is in arrears with the Maintenance Contribution
 - d) The resident persistently breaches the regulations under which they were appointed (as set out in the letter of appointment)
 - e) The resident upsets, endangers, abuses or repeatedly causes a nuisance to other residents or members of staff.

- 4.4 If a resident is in any of the circumstances described in a) to e) then the Housing Officer should investigate the circumstances with the resident and decide upon a course of action. Officer actions must be carefully recorded at all stages and demonstrate that they are reasonable, measured and made in good faith.
- 4.5 Dealing with arrears should be undertaken with reference to the IHT Income Management Policy. Anti social behaviour as in e) should be investigated in line with the NCHA ASB and Hate Crimes Policy and Procedure.

5. SETTING ASIDE THE APPOINTMENT

- 5.1 Depending upon the reasons for setting aside, the following process should be followed in order to reach a decision to set aside the appointment:

5.1.1 Ill Health or Frailty

The Trustee has a duty of care to ensure the safety of residents, therefore when they consider that a resident is no longer able to live independently without endangering themselves or others, they have a responsibility to set aside the appointment.

- 5.1.2 Consultation must be made with the resident, their next of kin, GP and social services so that suitable alternative accommodation can be sourced. Although these may resist the setting aside of the appointment it is the trustee's decision to make. Each step of this consultation must be recorded in full in the Capita diary system.

5.1.3 No Longer Qualified as a Beneficiary

If a resident is found to have lied about their circumstances and does not fit the scheme criteria then they no longer qualify and the appointment will be set aside.

- 5.1.4 Alternatively a resident's circumstances may have altered due to marriage or a windfall and their financial position changed to the extent that they no longer qualify for the scheme. In this situation a sensitive approach should be taken with the resident but ultimately it may be decided that the appointment be set aside in order that the property can be allocated to someone who does meet the criteria.

5.1.5 Breach of Regulations including Non-payment of Maintenance Contribution

The letter of appointment clearly states what the Maintenance Contribution is, whether weekly or monthly and that it is a condition of occupancy that the full amount of Maintenance Contribution is paid.

- 5.1.6 NCAC allows residents to pay their MC in arrears (depending on when the appointment started as most are now 1st of each month), paying on the 27th of the month. Any arrears in addition to this are not permitted.

- 5.1.7 Reference should be made to the Intermediate Housing Team Income Management Policy for managing almshouse arrears but the process below of issuing verbal and written warnings should be followed.
- 5.1.8 Where regulations are breached, including anti-social behaviour, the resident must be warned that their behaviour and/or actions are in breach of the regulations detailed within their letter of appointment and that they are at risk of losing their home. Phone contact should be made with the resident to discuss the issue, offer support and advice to rectify the issue and a verbal warning given that continued behaviour in this way may result in the setting aside of their appointment.

At all times the NCHA ASB and Hate Crimes Policy and Procedure must be followed. This sets out the tools available for Housing Officers to use and the principles that must be applied and evidenced.

- 5.1.9 If the behaviour continues then a visit should be made and a formal verbal warning issued. This should be made in the presence of another member of staff. Support and advice for example access to mediation should again be given. All verbal and written warnings must be recorded on the Capita diary system.
- 5.1.10 If the behaviour continues and the offer of support and advice is not taken up then this should be followed up with a letter setting out the following:
- the breach of regulations in question
 - the resident's explanation of the issue and the Housing Officer's interpretation of this as discussed at the visit
 - warning that if the behaviour continues then the resident's appointment will be at risk
 - the offer of support and signposting given to resolve the problem
- 5.1.11 If the behaviour continues then a final warning letter including the points above must be sent.
- 5.1.12 **Resident Nuisance to Other Residents or Members of Staff.**

In circumstances where a resident causes a nuisance to others this may take the form of harassment, stalking, unwanted contact, unwarranted or vexatious complaints or similar behaviours.

Reports of such behaviours will be followed up with a visit to the resident by the Housing Officer to discuss the complaint. The Housing Officer will make it clear to the resident the nuisance behaviour that must cease. This meeting should be recorded.

- 5.1.13 If the nuisance behaviours persist then the Housing Officer should discuss setting aside the appointment with the Clerk to the Trustee.

5.2 Serving the Notice to Quit and Notice to Determine, and Applying to Court

Once the Housing Officer has made a decision that the appointment should be set aside then this must be discussed with the Clerk to the Trustee to

confirm that the appointment will be set aside. The Clerk will refer to the NCHA Executive Team and Board of Management, as appropriate.

- 5.2.1 A meeting should be arranged with the Housing Officer and Clerk to the Trustee (as representative of the Trustee) to which the resident is invited. This is to give the resident the opportunity to state their case for the appointment to not be set aside.
- 5.2.2 The decision, and the reasons for it, should be made in writing to the resident within 5 working days of the review meeting. If the decision is made to continue with setting aside the appointment then the relevant Notice and accompanying letter should be served (see Appendix 1 and 2) and when the notice period is complete an application must be made to the County Court if the resident has not left the property. The Court may consider whether setting aside an appointment would be proportionate to the reasons for the application.
- 5.2.3 At all stages of the process the residents must be offered support and advice, including signposting to relevant agencies and all contact must be fully documented in the Capita diary system.

Appendix 1

Notice to Quit and Notice to Determine (to be sent on one page)

Notice to Quit

To:

Of:

From the Trustees of:

Date: The day of 20.....

TAKE NOTICE

This notice is served without prejudice to the contention of the Trustees of that you are neither a licensee nor a tenant, but if you are a licensee or tenant, that any licence or tenancy you may have is respectively an Excluded Licence and that you DO NOT have the protection afforded under the Protection from Eviction Act 1977 (as amended).

**NOTICE TO QUIT
and
NOTICE TO DETERMINE**

We, the Trustees of

HEREBY GIVE YOU NOTICE TO QUIT and deliver up possession of the premises known as

.....

on the day of 20.....

or on the expiration of the first period of any tenancy or licence under which you hold the above mentioned premises expiring not less than one month nor less than the length of one period of such tenancy or licence after service of this Notice.

And FURTHER TAKE NOTICE that all notices including notices relating to legal proceedings may be served upon the Trustees at the address specified below.

Date: The day of 20.....

Signed:

.....

Name:

.....

Address:

.....

Telephone:

PRESCRIBED INFORMATION

1. If the licensee does not leave the dwelling, the landlord or licensor must get an Order for possession from the Court before the licensee can lawfully be evicted. The Landlord or Licensor cannot apply for such an Order before the Notice to Quit or Notice to Determine has run out.
2. A licensee who does not know if he has the right to remain in possession after a Notice to Quit or Notice to Determine runs out can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the Legal Aid Scheme. He/she should also be able to obtain information from a Citizens Advice Bureau, a Housing Aid Centre or a Rent Officer.

Appendix 2 Letter to be sent with the Notice

Notice to Set Aside

[DATE]

Dear

I write further to my letter dated inviting you to attend the Trustees' meeting on

At that meeting the Trustees, following careful consideration of all relevant matters, made the following resolution:

“The Trustees having considered the provisions of the Scheme of Charity, information concerning and the circumstances thereof, resolve that in the best interests of the charity and its residents, the appointment of be set aside and that the Trustees take all necessary and appropriate steps to remove to include, if necessary, the pursuit of legal remedies.”

The effect of this resolution is that the Trustees require possession of the property from you and request that you deliver up vacant possession on

The Trustees are left with no alternative but to take this action in view of *[insert reasons for the decision]*.....

Accordingly I am writing to give you notice on behalf of the Trustees of the

Charity setting aside your appointment to occupy the property and requiring you to deliver up possession of the property on

I also enclose formal Notice to Determine and Quit and suggest that you consider seeking advice and assistance under the Legal Aid Scheme or from a Citizens Advice Bureau, Housing Aid Centre or Rent Officer

I would be grateful if you could sign the duplicate copy of this letter and the duplicate copy of the Notice, to acknowledge safe receipt of the originals.

Yours sincerely

(Endorsement to be completed and added to the duplicate copy of the letter and Notice)

I acknowledge safe receipt of the original **[letter] [Notice]** of which this is a true copy.

Signed:

Name:

Date: