

# Transfers of Land to Minors under English Law: The Function and Role of the Trust

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Interestingly, before 1926, a minor was capable of holding both legal and equitable interests in land. After 1925, however, they cannot hold a legal estate in land, but may still hold an equitable interest.<sup>1</sup> Moreover, a minor cannot be appointed a trustee.<sup>2</sup>

Prior to the enactment of the Trusts of Land and Appointment of Trustees Act 1996, a transfer of a legal estate to a minor operated under s.27(1) of the Settled Land Act 1925 as an agreement for valuable consideration to execute a settlement in favour of the minor. The intending landlord meanwhile held the legal estate on trust for the minor.<sup>3</sup> The Law Commission in its Report, *Law of Contract: Minors' Contracts*,<sup>4</sup> put the matter this way:

"The relevant provisions are section 19(1) of the Law of Property Act 1925 and section 27(1) of the Settled Land Act 1925, the combined effect of which is to make a conveyance of a legal estate in land to a minor operate as an agreement to execute a settlement in his favour, with the vendor/lessor in the meantime holding the land in trust for the minor. As a trustee, he holds the land for the minor on the terms and conditions of the original purported grant; this is not inconsistent with the minor's obligation to pay the rent and observe the conditions of the 'lease'".

Any such agreement to execute a settlement subsisting on 1 January 1997 is now converted into a declaration that the land is held on trust for the minor.<sup>5</sup>

## Current law

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<sup>1</sup> Section 1(6) of the Law of Property Act 1925; Schedule 1, para 1, Trusts of Land and Appointment of Trustees Act 1996.

<sup>2</sup> Section 20 of the Law of Property Act 1925.

<sup>3</sup> Section 27(1) of the Settled Land Act 1925.

<sup>4</sup> Law Com No 134, 28 June 1984, para 5.15.

<sup>5</sup> Section 2(6), Schedule 1, para 1(3) of the Trusts of Land and Appointment of Trustees Act 1996.

Any attempted transfer of a legal estate to a minor (under the age of 18) operates after 1996 instead as a declaration of trust that the land is held on trust for the minor.<sup>6</sup> The underlying policy here is that the trust gives the trustee(s) capacity to sell, thereby overcoming the contractual deficiency of the minor given contracts are voidable at the instance of the minor. In other words, a trust is imposed in order to secure saleability of the land and allow for relevant rights (including equitable interests arising under the trust) to be overreached. The 1996 Act also simplified the law by avoiding the complexities of using an agreement to execute a settlement in favour of the minor which, as we have seen, was the position prior to 1997.<sup>7</sup> The Law Commission, in its Report, *Transfer of Land, Trusts of Land*,<sup>8</sup> stated the position in the following way:

"The substitution of the new system in these cases will again simplify matters . . . Minority will remain a disability and an attempted conveyance to a minor will take effect as a declaration of trust, the land being held by the relevant trustee or trustees under the new system. Where the conveyance is made inter vivos, the grantor will hold the land as trustee for the minor. Where the disposition is testamentary, the personal representatives of the settlor will act as trustees."

Thus, a trust of land also arises where a minor becomes entitled on intestacy or in any other circumstances.<sup>9</sup> If land is passed jointly to two people - one adult and the other a minor - a trust of land is imposed by which the adult holds the land on trust for both of them either as joint tenants or as tenants in common according to the terms of the transfer.<sup>10</sup>

### **Position of the trustees**

The trustees may allow the minor (as beneficiary) to occupy the property as a home.<sup>11</sup> More generally, the powers of the trustee(s) will be equivalent to that of an absolute owner.<sup>12</sup> Thus, the trustee(s) can sell the land, grant a mortgage over it, grant a lease of all or part, etc. The exercise of such powers are, of course, subject to the overriding duty owed by a trustee to have regard to the rights of the beneficiaries.<sup>13</sup> A trustee is also subject to the usual fiduciary

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<sup>6</sup> Schedule 1, para 1(1)(b) of the 1996 Act and *Hammersmith & Fulham LBC v Alexander-David* [2009] EWCA Civ 259; [2010] Ch 272. The declaration of trust falls to be treated as a statutory trust created in order to resolve the problem of a minor being unable to own a legal estate.

<sup>7</sup> The whole policy rationale underlying the Law of Property Act 1925 was to create a simplified and more streamlined framework of land law rules which would make land much more alienable and, therefore, help create wider economic benefits generally.

<sup>8</sup> Law Com No 181, 8 June 1989, at 5.1.

<sup>9</sup> Schedule 1, paras 1 and 2, of the 1996 Act.

<sup>10</sup> Section 1(1) and (2), Schedule 1, para 1(2) of the 1996 Act. Trusts created under Schedule 1 of the 1996 Act are excluded from registration with the HMRC Trust Registration Service which was introduced in 2017 as a result of anti-money laundering regulations.

<sup>11</sup> Sections 12 and 13 of the 1996 Act.

<sup>12</sup> Section 6 of the 1996 Act.

<sup>13</sup> Section 6(5) of the 1996 Act.

duties of trustees.<sup>14</sup> These include a duty to preserve the assets of the trust and, where appropriate, manage the trust property.<sup>15</sup>

### **Trustees as bare trustees**

One significant difference between bare trusts and other types of trust is that the trustees have no active duties relating to the trust property. Accordingly, the trustees of a bare trust are under no obligation to invest the trust property or otherwise manage it, but merely to hold it until called for by the beneficiary. In particular, the trustees have no discretion as to the disposal of the trust property. Essentially, the trustees stand merely as nominees (in the sense of those who hold property in the name of another) for the beneficiary.

It is not uncommon to use an express bare trust in order to hold assets on behalf of a minor. Bare trusts offer tax advantages to individuals who wish to set up a trust in favour of their children or grandchildren. Thus, as soon as the deceased's assets are put into a bare trust, they are taxed as if they belong to the child, which usually means there is little or no tax to pay on any income or gains.

Once the minor reaches majority, he may request that the legal title to the trust property be transferred to him – being a bare trust, the trustees must comply with the beneficiary's request. In *Saunders v Vautier*,<sup>16</sup> trustees held £2,000 of East India stock on trust for Vautier. They were required to accumulate the dividends until Vautier reached the age of 25 and then transfer the capital (and accumulated dividends) to him. When he reached majority (which, at that time, was the age of 21), he demanded that the whole fund be paid to him. The court held that he was entitled to the whole fund as he had an absolute interest in the money.

### **Contracts**

A minor who enters into a *contract* for the acquisition of an interest in land (for example, a lease) will be bound to carry out the obligations under it until he renounces the contract.<sup>17</sup> Thus, a minor is liable for rent until the lease is renounced.<sup>18</sup> Since a minor can have an equitable leasehold interest in the land (i.e., equivalent to a contract for a lease) after 1996, he will be bound to pay rent in the same way.<sup>19</sup> Since such a contract relates to the supply of a

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<sup>14</sup> Section 6(6) of the 1996 Act.

<sup>15</sup> See, *Target Holdings v Redferns* [1996] 1 AC 421; *AIB Group v Mark Redler* [2014] UKSC 58, at 51; *Henderson v Merrett Syndicates* [1995] 2 AC 145, at 206. Apart from ensuring that legal title to the property is registered in their names, the management duties of trustees will include an obligation to maintain and insure the trust property, pay rent and insurance premiums, and discharge any tax liabilities. The parties may decide to incorporate these into an express trust for the benefit of the minor beneficiary.

<sup>16</sup> [1841] 4 Beav 115.

<sup>17</sup> If the contract is rescinded by the court, this will normally be on terms to make appropriate restitution where necessary.

<sup>18</sup> *Blake v Concannon* (1870) 4 Ir Rep Cl 320; *London & North Western Railway v M'Michael* (1850) 5 Ex 114; 155 ER 49.

<sup>19</sup> *Davies v Benyon-Harris* (1931) 47 TLR 424; *Portman Registrars v Mohamed Latif* [1987] 6 CL 217.

"necessary",<sup>20</sup> it will fall within the categories of contracts with minors which remain enforceable in law.<sup>21</sup>

Accommodation is generally assumed to be a "necessary", so that a contract relating to the provision of accommodation to a minor, but with sufficient capacity, is binding on him (i.e., valid and fully enforceable against him). If rent arrears accrue, the landlord can recover the unpaid rent from the minor through the courts. The Law Commission in its Report, *Law of Contract: Minors' Contracts*,<sup>22</sup> set out the position in the following terms:

"The first point we wish to emphasise is that a lease is one of the four classes of contract, referred to in our Working Paper,<sup>73</sup> which are binding on a minor unless and until repudiated by him. It is not a contract unenforceable against him and the authorities show that a minor who rents land is liable to pay the rent accruing during the currency of the tenancy, up to the time he repudiates it - if he does."

Interestingly, it seems possible also for a child to succeed to a Rent Act statutory tenancy since such a tenancy does not create an interest in land and a minor, as we have seen, does have sufficient capacity to contract for necessities such as housing, which will bind the child during their minority.<sup>23</sup>

### **Landlord as trustee**

In *Hammersmith & Fulham LBC v Alexander-David*,<sup>24</sup> the minor was 16 years old and homeless. The local authority, in accordance with its duty under the Housing Act 1996, had entered into a written agreement with her granting her a non-secure tenancy. However, following complaints about her behaviour at the premises, the local authority served a notice to quit on her in accordance with the terms of the agreement. Possession proceedings were subsequently commenced and the local authority was granted a possession order. The Court of Appeal held that a local housing authority could, in principle, grant tenancies to minors that were effective in equity as a declaration of trust. Accordingly, para. 1(1), Schedule 1 to the Trusts of Land and Appointment of Trustees Act 1996 applied to the minor's tenancy.

If, however, the landlord holds the land on trust for the minor, as was the case in *Hammersmith*, it cannot lawfully destroy the subject matter of the trust by serving notice to quit on the minor.<sup>25</sup> The normal powers of the landlord cannot be exercised when they would prejudice the tenant. The landlord can, however, end the trust of land once the minor turns

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<sup>20</sup> *Lowe v Griffiths* (1835) 4 LJCP 94, at 96.

<sup>21</sup> *Valentini v Canali* (1989) 24 QBD 166, at 167; *Davies v Benyon-Harris* (1931) 47 TLR 424.

<sup>22</sup> Law Com No 134, 28 June 1984, at para 5.15.

<sup>23</sup> *Portman Registrars and Nominees v Mohammed Latiff* [1987] C.L.Y. 2239; [1988] 18 E.G. 61, H.H. Judge Hill-Smith, Willesden County Court), where a 16 year old daughter was held to succeed to a statutory tenancy.

<sup>24</sup> [2009] EWCA Civ 259; [2010] Ch 272.

<sup>25</sup> *Hammersmith & Fulham LBC v Alexander-David* [2009] EWCA Civ 259; [2010] Ch 272.

18.<sup>26</sup> Moreover, once the trust is brought to an end, the landlord can end the tenancy in the normal way.

### **Secure tenancies and succession rights**

When a residential tenant dies, the tenancy may pass by succession to a spouse, cohabitee or family member provided the successor meets certain residence requirements in the period leading up to the tenant's death. So far as a periodic assured tenancy is concerned, under the s.17 of the Housing Act 1988, only one succession is allowed in favour of the tenant's spouse. The Rent Act 1977, on the other hand, in relation to deaths after early 1989, permits a first succession to a surviving spouse, in which case a second succession is allowed on the spouse's death to another spouse or family member. If the tenant leaves no qualified spouse, there is only a single succession to a family member.<sup>27</sup>

Under the Housing Act 1985, the same rules apply to a secure tenancies. Section 87 of the 1985 Act provides that a person is qualified to succeed to a secure tenancy if he (or she) is the tenant's spouse or another member of the tenant's family and has resided with the tenant throughout the period of 12 months ending with the tenant's death. The phrase "member of the tenant's family" is defined in s.113(1) as being "that person's parent, grandparent, child, grandchild, brother, sister, uncle aunt, nephew or niece". A child, therefore, qualifies to succeed to a secure tenancy under the 1985 Act.

The difficulty, however, as we have seen, lies with the fact that a legal estate in land does not vest in a minor but is held in trust for him (or her) until majority. The upshot, therefore, is that the child will acquire only an equitable interest in the secure tenancy pending majority. If the deceased tenant died intestate, the legal estate in the tenancy will vest automatically in the Public Trustee pending the grant of letters of administration to an appropriate relative. Alternatively, if the tenant died leaving a will, the legal estate will pass to their executor(s) named in the will. Either way, it is apparent that the legal estate will have vested in a person who does not qualify to succeed to the tenancy. Does this, therefore, preclude the child from succeeding to the tenancy under s.87 of the 1985 Act?

Such a result would be surprising given that the 1985 Act itself presupposes that a child may succeed to a secure tenancy despite their incapacity to hold a legal estate in land. So, how may this conundrum be resolved?

#### *An equitable tenancy in favour of the child*

In *Kingston-upon-Thames RBC v Prince*,<sup>28</sup> the Court of Appeal concluded that the 1985 Act clearly included minors within its succession provisions. In that case, the deceased's adult

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<sup>26</sup> Section 6(2) of the 1996 Act.

<sup>27</sup> Section 39 and Schedule 4 to the Housing Act 1988.

<sup>28</sup> (1999) 31 HLR 794.

daughter (Wendy) was held to succeed to the legal tenancy (even though she did not qualify) so as to enable her to hold the legal estate on trust for the deceased's granddaughter (Marie, aged 13) who was entitled to succeed under s.87 because she had lived with the deceased (her grandfather) for almost three years prior to his death. It seems that the daughter was willing to act in this way in order to avoid the difficulties associated with the legal tenancy not passing to the granddaughter during her minority. Hale J. (giving the leading judgment) stated:<sup>29</sup>

“A minor is quite capable of becoming a tenant, albeit only in equity. Marie's mother was declared trustee because she was willing to act and no one objected. But the relevant tenancy is the equitable tenancy held by Marie. Housing legislation may include an equitable tenancy without catering for it expressly . . . If there is nothing to stop a local authority granting a tenancy effective in equity to a minor in appropriate circumstances, there can be no insuperable technical objection to Parliament rendering that equitable tenancy secure. If Parliament had wanted to limit these provisions to adults, it could easily have said so: but it did not.”

The point was also considered in *Newham London Borough Council v Ria (A Child)*.<sup>30</sup> Here, the minor had resided with her mother until the latter's death in 2001. The mother had left in her will her entire net estate to be held upon trust for the minor (her daughter) and appointed her aunt as sole executrix and trustee. The minor was clearly a person qualified to succeed to her mother's secure periodic tenancy. The Court of Appeal, applying *Prince*, held that the legal tenancy vested in the child's aunt by virtue of the mother's will. Moreover, the 1985 Act did not prevent the aunt from holding the tenancy in this way on trust for the daughter despite the fact that she was not someone who could qualify to succeed to the tenancy herself. On reaching her majority, however, the daughter would be entitled (by way of an assent from her aunt) to have the legal estate in the tenancy vested in her absolutely as legal and equitable owner.<sup>31</sup> Significantly, Sir Martin Nourse rejected the notion that the legal estate had vested in the Council on the mother's death. His Lordship stated:<sup>32</sup>

“. . . the notion of a landlord being a trustee of a tenancy of the demised premises for the benefit of the tenant is a very curious one, to which effect should not be given without express provision. Nor can the court accept any argument that the vesting of the legal estate is in some way suspended or in limbo until [the minor] attains her majority.”

His Lordship also made reference to paragraph 2 of Schedule 1 to the Trusts of Land and Appointment of Trustees Act 1996 which refers to a legal estate in land vesting in a person

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<sup>29</sup> (1999) 31 HLR 794, at 802.

<sup>30</sup> [2004] EWCA Civ 41.

<sup>31</sup> [2004] EWCA Civ 41, at [17]. It may be argued, however, that the trust in favour of the minor ends automatically when the minor reaches majority (so that legal title vests in the minor by operation of law) without the need for a formal assent. However, Schedule 1 to the Trusts of Land and Appointment of Trustees Act 1996 is silent on the point.

<sup>32</sup> [2004] EWCA Civ 41, at [14].

by reason of intestacy “or in any other circumstances” which clearly contemplated not only intestate succession, but also (as in the instant case) dispositions of land by will.

### *Practical difficulties*

It is noteworthy that, in *Prince*, the deceased's adult daughter was willing to hold the legal estate in the tenancy on behalf of the deceased's granddaughter until the latter reached majority. In *Newham*, the deceased had expressly appointed her sister trustee of her entire estate in her will, who (again) was willing to act and give an assent of the legal estate in favour of her niece upon reaching majority.

Had, however, the daughter and sister in these cases refused to co-operate and act as trustee, then presumably an application to court would have been necessary so as to appoint someone suitable (for example, the child's uncle or other guardian) to act in their place as trustee of the legal tenancy until the child reached full age. Interestingly, the Court of Appeal in *Newham* ruled out the possibility that the legal estate in the tenancy could simply remain in abeyance pending majority. Equally, as we have seen, the Court did not favour the suggestion that the legal estate should vest in the local authority (as landlord) in trust for the minor. No doubt, such an approach would have the huge potential for a conflict of interest if a local housing authority acted both as landlord and legal tenant of its own property. There is also the more fundamental point here that the same person cannot be both landlord and tenant at the same time. This was decided in the well-known case of *Rye v Rye*,<sup>33</sup> where the House of Lords held that s.72(3) of the Law of Property Act 1925 did not enable a person to grant himself a lease of land of which he was also the legal owner. Thus, if a landlord acquires the lease (for example, through a surrender of the leasehold estate), or a tenant acquires the reversion (by means of a merger of leasehold and freehold estates), the lease is absorbed into the reversion and ceases to exist. As Lord Millett explained in *Barrett v Lounova*:<sup>34</sup>

“The destruction of the tenancy by surrender reflects the principle that a person cannot at the same time be both landlord and tenant of the same premises. *Nemo potest esse tenens et dominus*: see, *Rye v Rye* [1962] AC 496, 513, per Lord Denning.”

The better course, in such cases, is that the person with parental responsibility for the child should act as independent trustee. Of course, there may rare cases where the child has no one to look after their well-being after the tenant's death. As was suggested in *Prince*, in these circumstances, the local social services authority may have to step in to provide accommodation for the child under the Children Act 1989. Unless the child can be supported in their own home, social services may have little choice but to place the child in other premises, in which case the tenant condition under s.81 of the 1985 Act will no longer be fulfilled and the tenancy will cease to be a secure tenancy. There may be other difficulties. For example, the child may not be able to pay the rent or otherwise discharge the obligations

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<sup>33</sup> [1962] AC 496.

<sup>34</sup> [2000] 2 AC 264, at 271.

of the tenancy.<sup>35</sup> The landlord (assuming it is not also a trustee) would then be able to bring the tenancy to an end and obtain possession of the premises under one of the grounds listed in Schedule 2 to the 1985 Act.<sup>36</sup> If, however, the child is able to comply with the terms of the tenancy (because they are working or are being provided for by other means), then there would be no obvious difficulty in allowing them to continue to occupy the premises as their only or principal home pending majority.<sup>37</sup>

It may also be asked whether the child would have the right to acquire the freehold (or be granted a lease) of the premises under Part V of the 1985 Act. Since an equitable secure tenancy satisfies the definition of a secure tenancy under s.79, there seems no reason why this could not be possible, especially as neither equitable secure tenancies nor minors are expressly excluded from the right to buy provisions under the Act. In the words of Hale J. in *Prince*:<sup>38</sup>

“... there is ample reason to conclude that minor children are not ‘non persons’ in the law of landlord and tenant let alone the law of property generally. The modern tendency of the law is to recognise that children are indeed people. It simply cannot be assumed that they are omitted from legislation unless the contrary is expressly stated.”

#### *A more fundamental objection?*

Aside the practical difficulties, however, there is a more fundamental objection to allowing the device of the trust to be used so as to permit a minor to succeed to a secure tenancy in equity pending majority. As has been noted by other commentators,<sup>39</sup> the decision in *Prince* may be explained on the basis that:

“If both the legal and equitable interests in a tenancy vest in a non-qualifying person, that tenancy cannot be secure by virtue of section 89(3). If, however, the equitable estate vests in a qualifying minor and the legal estate vests in a non-qualifying adult, the equitable tenancy will remain secure by reason of *Prince*, although bizarrely the legal tenancy may lose its secure status.”

The inherent problem with the *Prince* ruling is that the tenancy will cease to be secure when it is vested or disposed of to a person not qualified to succeed to the tenancy unless it is vested in accordance with one of the limited exceptions contained in s.89(3). The Court of Appeal, on the other hand, concluded that Marie’s mother could hold the legal tenancy even

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<sup>35</sup> The trustee/personal representative will also be liable to pay rent due under the tenancy, but limited to the assets in the deceased's estate. He is not, however, under any obligation to use his own resources to meet the obligations of the estate so as to preserve the tenancy. Apart from the liability to pay rent, he may be sued for breach of other covenants in the tenancy (for example, nuisance and annoyance committed by the minor). In these circumstances, the landlord may be minded to bring proceedings against both the legal trustee and equitable tenant so that any court order binds both of them.

<sup>36</sup> See, *Kingston-upon-Thames BBC v Prince* (1999) 31 HLR 794, at 804.

<sup>37</sup> *Ibid*, at 804.

<sup>38</sup> (1999) 31 HLR 794, at 804.

<sup>39</sup> S. Mills and N. Joss, “Children and Secure Tenancies”, (2001) 5 L. & T. Rev. 53, at 54.



though she did not qualify under s.87 and the exceptions did not apply because it was enough that the child held an equitable tenancy of the premises whilst a minor.

Interestingly, it was argued in *Prince*, on behalf of the local authority, that the 1985 Act did not permit the separation of the legal and equitable estates in this way. The word “tenancy” in the 1985 Act referred only to the legal estate and excluded an equitable tenancy. Consequently, succession could not apply to a minor because the minor could not hold the legal estate which is the “tenancy” within the meaning of the Act. In essence, the effect of the order in *Prince* was to constitute Marie’s mother the “tenant” of the property and, therefore, a secure tenant even though she was not qualified to succeed.

### *A pragmatic approach*

Despite the technical arguments associated with the separation of the legal and equitable interests, there is no doubt that the *Prince* ruling provides an obvious solution to the conundrum of allowing a child to succeed to a secure tenancy notwithstanding their incapacity to hold a legal tenancy until majority. As Mills and Jones conclude in their article,<sup>40</sup> the Court of Appeal “may have simply taken a pragmatic approach in order to do justice in the case”. However, whilst, no doubt, providing a just solution, the decision is not without its practical difficulties which may (in less fortunate circumstances) deny the minor the opportunity to succeed to a secure tenancy or operate so as to give the local authority reason to bring to an end the tenancy and seek possession of the premises.

### **Conclusion**

Although the mechanism of the trust provides a useful device for allowing a transfer of land to a minor to take effect pending his majority, there are several other ways in which the device of the trust can be used in order to grant occupation rights in land to a minor. First, the landlord may grant a tenancy to a third party on trust for the minor until he reaches 18. In this scenario, the minor has a beneficial interest, which means they will have the right to live in the property. The trustee holds the legal title to the tenancy. Secondly, the landlord may grant a joint tenancy to an adult who is willing to enter into the tenancy with the minor. The effect of this arrangement is that the adult tenant holds the legal estate as trustee for both joint tenants. A separate agreement between all parties (including the landlord) could state that a sole tenancy will be granted to the minor when he reaches majority, at which time the joint tenancy will be surrendered.

Finally, the landlord may wish to grant a licence to the minor to occupy the land. There is no restriction on minors being granted a licence in the form of a personal permission to occupy land. A full tenancy can be granted to the minor when they reach 18. This last option, does not, of course, involve the intervention of a trust. Interestingly, it was specifically referred to

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<sup>40</sup> Ibid, at 54.

in the *Hammersmith* case as a possible course of action for local authority landlords intending to grant occupation rights to a minor. However, although a licence is not a legal estate, describing an agreement as an agreement to grant a licence will not suffice to avoid the creation of a tenancy if the landlord allows the occupier to have exclusive possession of the premises for a term.<sup>41</sup> The way out of this potential difficulty, however, was alluded to by Sullivan LJ in *Hammersmith*,<sup>42</sup> in the following terms:

" . . . the applicants in question are 16-17 years old. They may well require support and assistance going beyond the mere provision of accommodation. It should not be too difficult for the [landlord], in discharging both its local housing authority and social services functions to co-ordinate matters so that, whether by making provision in the agreement for some attention or services, or by permitting inspection of the premises by those charged with the child's welfare, and thereby preventing the grant of exclusive possession, any agreement with a 16-17 year old is not merely expressed to be, but is the grant of a licence rather than a tenancy."

In the absence of such attendance or services, however, the preferred option for a landlord is likely to be the grant of a tenancy to a third party, or the grant a joint tenancy, relying in each case on the device of a trust to confer beneficial rights of occupation on the minor.

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<sup>41</sup> *Street v Mountford* [1985] AC 809.

<sup>42</sup> *Hammersmith & Fulham LBC v Alexander-David* [2009] EWCA Civ 259; [2010] Ch 272, at [37].