

HOUSING
OPTIONS



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*CHOICE, CONTRACTS AND
MENTAL CAPACITY ACT 2005*

*Housing and support decisions
for people with
learning
disabilities*

*A practical guide
from Housing
Options*



Contributors

Dave Abbey
Maurice Harker
Amanda Johnson
Jenny Pannell
Sam Sly
Amanda Wendon
Andrew Young



Legal advice from Linda Convery, Lewis Silken Solicitors

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Editing by Diane Berry

This guide was written by Maurice Harker of Housing Options for the Department of Health.

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PART 1 CHOICE, CONTRACTS AND MANAGING IN YOUR HOME

1. Introduction

1.1 Choices, contracts and managing in your home

More and more people with learning disabilities are living in their own home. Local authority social care and housing staff, housing and support providers, and families are often faced with practical issues concerning decisions and capacity. The Guide looks at three areas of understanding for the person with a learning disability:

- ❑ Choice: how to encourage informed choice (and provide evidence) when supporting an adult with a learning disability with their housing and support choices, both before they move in, and throughout their tenancy or home ownership
- ❑ Contracts and agreements: how best to support someone when they are entering into a contract for their tenancy/ownership, and for their support;
- ❑ Support for the owner or tenant in managing in their own home, help with understanding and keeping formal agreements and managing money.

This Guide is written primarily for staff working with people with learning disabilities and with their families and support networks. We assume some knowledge of the Mental Capacity Act 2005. The Guide complements our publication *Easy-read tenancy and support agreements: 2nd edition* (National Housing Federation 2009). It also refers to a wide range of material on housing and support on the Housing Options website www.housingoptions.org.uk.

The Guide:

- ❑ Gives advice and information of the Act impact on housing decisions
- ❑ Shows how barriers can be overcome
- ❑ Gives examples and materials

The Mental Capacity Act provides a statutory framework to help people to understand and make choices, including about where and how they live. The Code of Practice [www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf] gives guidance on good practice and case studies.

1.2 Decision-making

The Mental Capacity Act provides advice and practical ways of enabling decision-making at all three stages: housing choices, entering into a contract, and what happens once the person has moved into their own place: helping someone manage in their home, support with their tenancy and keeping the rules.

Sometimes a person's capacity for decision-making is underestimated. This is because planning, choosing and buying or contracting through a formal agreement is quite complicated for any of us, not just someone with a learning disability. Think of the forms and the small print. Do you really understand what Annual Percentage Rate means or how it is calculated? What is the difference between a covenant and an easement?

Although transactions can be complicated financially or legally, most of us do know what we do and do not want but need help or advice with the best way to go about it and someone to check the details for us.

1.3 Five principles of the Mental Capacity Act 2005

Section 1 of the Act sets out the five 'statutory principles' – the values that underpin the Act. The Act is intended to be enabling and supportive of people who lack capacity, not restricting or controlling of their lives. It aims to protect people who lack capacity to make particular decisions, but also to maximise their ability to make decisions, or to participate in decision-making, as far as they are able to do so. The five statutory principles are:

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
5. Before the act is done, or the decision is made, consideration should be given to what is least restrictive of the person's rights and freedom of action.

The kind of support people might need to help them make a decision varies. It depends on personal circumstances, the kind of decision that has to be made and the time available to make the decision. It might include:

- ❑ Using a different form of communication (for example, non-verbal)
- ❑ Providing information in a more accessible form (for example, photographs, drawings, or tapes)
- ❑ Treating a medical condition which may affect the person's capacity or
- ❑ A programme to improve a person's capacity to make particular decisions (for example, learning new skills).

The Guide is in two parts: Part One has three further sections: on making housing choices, on tenancy and mortgages agreements, on managing in your home. Part Two provides practical examples, materials and links to provide evidence that you have done so.

2. Housing choices

2.1 The planning stage

Questions may be raised about the person's capacity to decide between different options, even before the question of whether they have capacity to enter into a contract (tenancy or mortgage agreement or shared ownership lease).

Making a choice about where and how you live, for any of us, will usually be quite complex. There is what you want, what you can afford, what is realistic and 'do-able'. If you are on benefits and need care or support in your home, the range of choices might seem quite limited and making decisions tough.

On the following page there is an illustration of the decision making process. It is tempting to think there should be a simple step by step logic – the so called 'customer journey map' but in reality it is more complex. Imagine that for a financial decision you pick up the telephone to seek help, you face a sequence of ordered steps with an automated response, which wants you to select from the following options but does not have the option you want. If lucky, you get to 'speak to an advisor'. Someone who can understand your circumstances, wishes, needs and can begin to frame the possible choices.

It's like shopping:

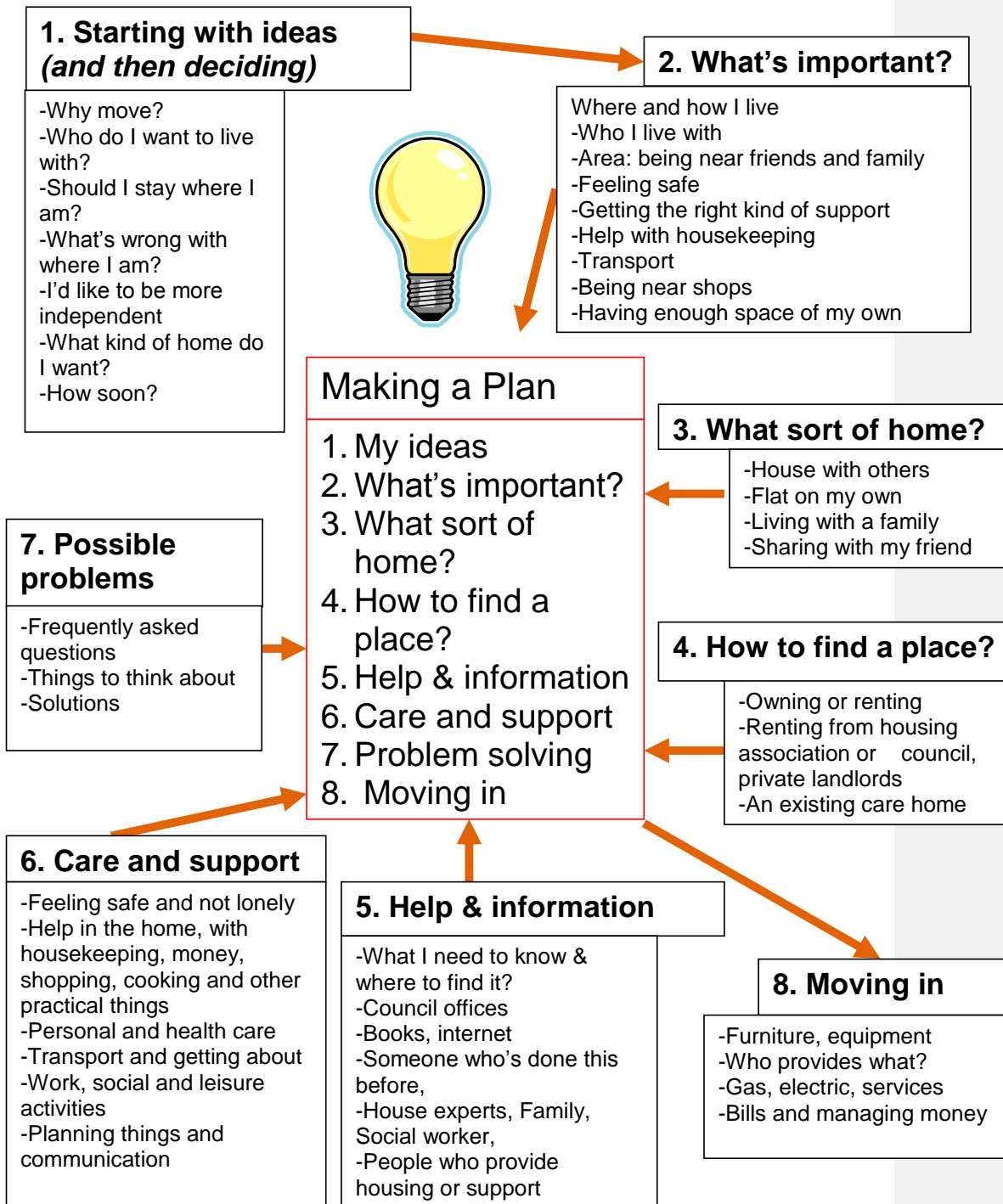
- Do you know exactly or vaguely what you want?
- Does it exist?
- Where do you go to get it?
- Do you just need to have a look round at things first?
- Do you need to do some research about what's best for you?
- Do you need friendly help?
- What is available and affordable?

But because it's a complex matter it begins to look as if it needs a plan.

- Make a list, where to start?
- Who can help?
- How long will it take?
- What order to do things in?
- What other risks and contingencies?
- What's most important – timing, quality, security?
- How to get the right house.

The figure below shows the possible contents of someone's plan and what goes into it. It needs to begin with what the person wants and then map out a way to a best result. That's something that fits the bill and is 'do-able'. Help with planning for where and how you live should be done on the Mental Capacity Act principle of best interests but in the case of disagreements about the recommended best options, a 'best interests meeting' may need to be held to seek an agreement.

2.2 Making a plan (using principle of best interests)



2.3 Best Interests

Any staff involved in the care of a person who lacks capacity should make sure a record is kept of the process of working out the best interests of that person for each relevant decision, setting out:

- How the decision about the person's best interests was reached
- What the reasons for reaching the decision were
- Who was consulted to help work out best interests, and
- What particular factors were taken into account.

This record should remain on the person's file.

If someone wants to challenge a decision-maker's conclusion, there are several options:

- Involve an advocate to act on behalf of the person
- Get a second opinion.
- Hold a formal or informal 'best interests' case conference.
- Attempt some form of mediation
- Pursue a complaint through the organisation's formal procedures.

Ultimately, if all other attempts to resolve the dispute have failed, the Court of Protection might need to decide what is in the person's best interests.

2.4 Independent Mental Capacity Advocate (IMCA)

The new Independent Mental Capacity Advocate service was created under the Act. The purpose of the IMCA service is to help particularly vulnerable people who lack the capacity to make important decisions about serious medical treatment and changes of accommodation, and who have no family or friends that it would be appropriate to consult about those decisions. The IMCA service will work with and support people who lack capacity, and represent their views to those who are working out their best interests.

An IMCA *must* be instructed, and then consulted, for people lacking capacity who have no-one else to support them (other than paid staff), for decisions about moves into long-term accommodation (in a care home, ordinary supported social or private rented housing) or about a change of accommodation. The responsible body for this will be usually the local authority that has carried out an assessment of the person under the NHS and Community Care Act 1990 and decided the move may be necessary. For information on the role of the IMCA see Chapter 11 of the Code of Practice [www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf].

2.5 Creating a Housing Options Plan

In Part 2 there are some examples of the steps to be taken when considering different housing options, including sharing or living alone, and renting or buying. If you have supported someone by going through the Housing Options Plan process and evidencing the steps, then you will have complied with the first points in the Mental Capacity Act Code of Guidance:

- By providing all the relevant information
- On all the options
- In a way that takes into account their communication needs
- In consultation with those who know them best (including family members/circle of support).

If it is agreed that the person does not have capacity to make a choice, despite the steps taken in the Housing Options Plan process, then you will need to show how you have involved others and if need be have a 'best interests' meeting to ensure proper consultation and agreement. (See 3.7)

2.6 Sources of information to help with plans

If you are supporting someone to make housing choices there is more material available on the Housing Options website, much of it free to download - www.housingoptions.org.uk .

- Housing Options – a series of 21 rented and ownership choices
- My Home and Money
- Finding a Place to Live – help with your plans (for families and others)
- Your Place to Live – a more accessible DIY guide
- DVDs e.g. *Your Place to Live, My Safe Home*
- And many more detailed Factsheets and Quick Briefs

You can investigate locally:

- Get brochures and application forms from housing providers
- Visit lettings agents (for private rented housing) and look at web-based or printed materials (for choice-based lettings of social rented housing)
- Arrange visits to different types of housing
- Learn from others who have moved home or from other families
- Contact housing or support providers direct

Keep records as evidence of help with decision-making

- Keep a copy of any checklists you have filled in, with dates.
- Keep a note of materials and contacts used to help someone in making choices, with dates.
- Use appropriate communications for the person concerned and record the methods used.

The national websites will often give good sources for local information e.g. local Citizens Advice Bureau [www.citizensadvice.org.uk], Mencap [www.mencap.org.uk], Shelter [www.shelter.org.uk] for benefits and housing advice services. These are very good and can also direct you to local agencies.

The local council and its housing department (district or unitary authority) is the other obvious place to start local searching. Here you will find details of local housing plans, allocation schemes for social housing and how to apply for housing. Each local authority will have someone primarily responsible for housing strategy and planning new housing investment. They may also have an approved list of private landlords.

Local care and support service providers with local offices are another source of local contacts and information. Support and care providers can be found through social services or national listings e.g. CQC has a purchasing listing of care service providers.

Local housing providers: you can find local housing associations through the Homes and Communities Agency or District Council websites. Some will know more about *supported housing* than others. They may have a special department or person that concentrates on housing and support so if you are ringing the inevitable switchboard see if they can direct you to such a person.

3. The Mental Capacity Act and Housing

3.1 An assumption of capacity

By law you must start from the assumption that people have the capacity to make their own decisions. This goes for considering different housing options, and then deciding to rent or buy a property and taking on the rights and responsibilities that go with this. Making blanket assumptions about someone's capacity because they have a disability, or making hasty judgements based on superficial knowledge of someone, are both unlawful and must be avoided.

The processes involved in any question about peoples' capacity are similar whether tenancies or house purchase are concerned, although there may be different criteria about exactly what information needs to be understood about these different transactions when thinking about someone's capacity to enter into agreements.

Where capacity is assumed and no-one involved in setting up the tenancy or purchase has raised concerns about someone's understanding, then the grant of the tenancy, mortgage and/or lease etc can go ahead without further ado. If someone's capacity is questioned by anyone involved in the planning process when they are looking to take on new accommodation, then the person's ability to make the necessary decisions has to be facilitated as much as is practicable and appropriate.

There are a variety of reasons why someone's capacity may be questioned; - their behaviour may cast doubt on whether they have capacity to make the decision, somebody else says they are concerned about the person's capacity, or they may have already been diagnosed as having an impairment or disturbance of the way their mind or brain works and it has already been shown that they lack capacity to make other decisions.

3.2 If it is thought someone lacks capacity

The Mental Capacity Act Code of Practice [www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf] advises that if anyone thinks that someone lacks capacity, these questions have to be asked and then worked through:

- Does the person have all the relevant information?
- If they are choosing between alternatives, do they have information on all the options?
- Would the person have a better understanding if things were presented in a different way?
- Are there times of day or locations that will be easier for the person?
- Can anyone else who knows the person well help them to make choices or express a view?

The onus of proof here is on the person who believes that the individual lacks capacity. The person who is of the opinion that someone lacks capacity has to be able to prove their case, and has to show that all practicable steps have been taken to help someone make their own decision.

This facilitation can only happen lawfully and properly where you know the individual concerned well enough to communicate with them effectively. Useful here is a Communication Skills Pre-interview assessment (see Part 2) which can be a part of what the Mental Capacity Act calls “all practicable means” to help people formulate and communicate their decisions. Regard also must be had to the guidance in Chapter 3 of the Mental Capacity Act Code of Practice [www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf] especially pp 31 – 39.

3.3 What counts as understanding tenancy?

Capacity is decision-specific, and so another point around which there needs to be clarity and agreement is not just of someone’s understanding in general, but also what the basic points are that the person needs to understand about the transaction involved. These will vary from decision to decision. Although there are several tests of capacity for some acts, such as making a will or getting married there are no set tests for entering into a tenancy or buying a property.

Tenancies – there is scope for differences of opinion around how much needs to be understood about the tenancy before the tenant can enter into a fully valid arrangement.

The Department of Health information agency DH Care Networks Housing LIN Factsheet 20 says that : *“evidence that the individual understood the essentials of the deal, i.e. the basic concept of money, owning it, exchanging it in return for something, and the basic concept of promises and rules which need to be abided by (even though they may require help to manage to keep to what they had promised), is likely to satisfy a court that the individual had the required capacity at the time the tenancy commenced, to be held to the contract terms.”*

[www.dhcarenetworks.org.uk/library/Resources/Housing/Support_materials/Factsheets/Mca_factsheet_20.pdf].

This is a relatively modest level of understanding. Insisting on a deeper understanding - that you have to understand all 15 pages of small print - may mean that the person taking this view may be acting unlawfully under the Disability Discrimination Act by not making reasonable adjustments for the effects of someone’s disability.

Once the specifics that need to be understood are agreed, there are useful tools for supporters or housing staff to use. (See Part 2)

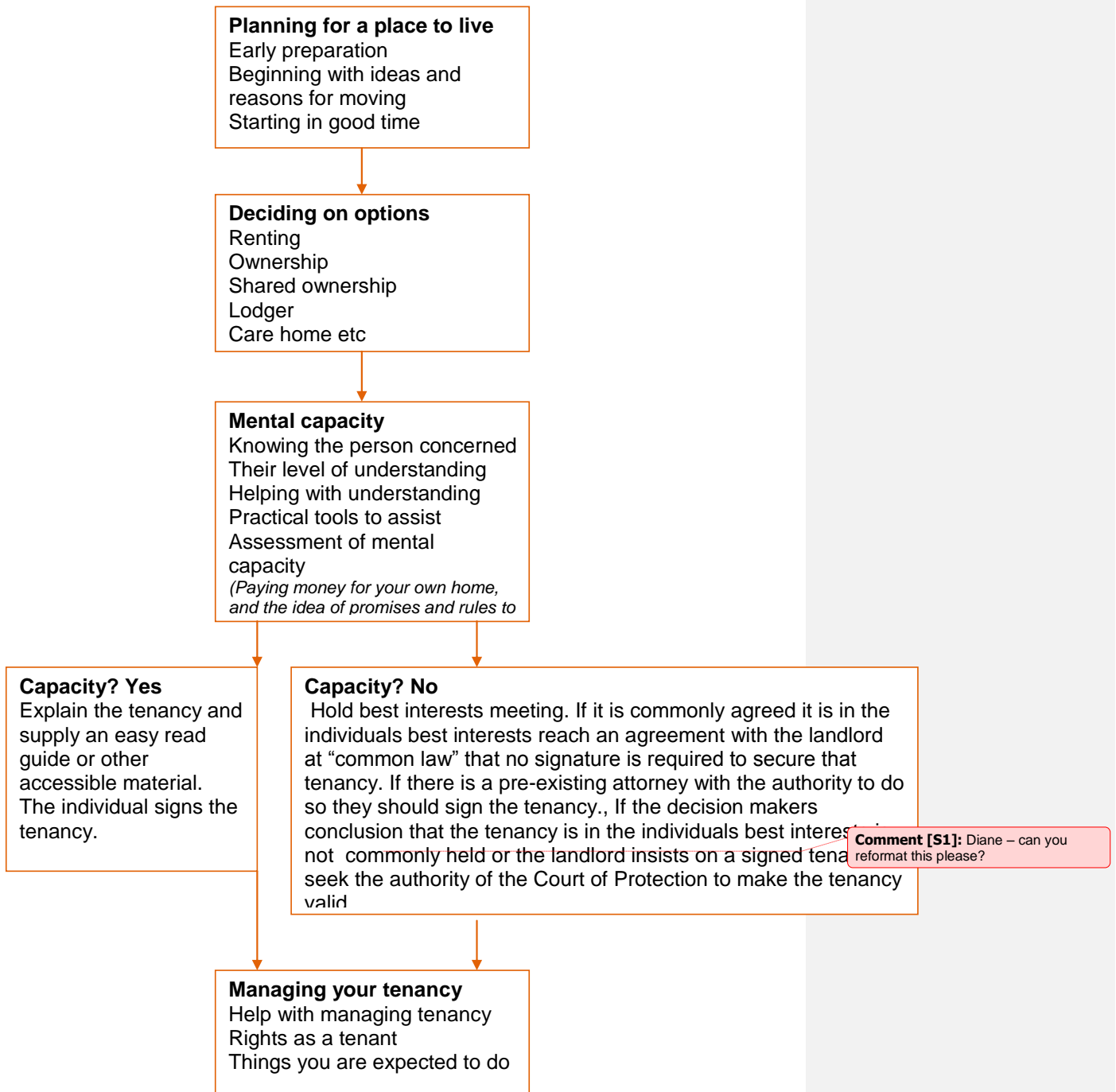
3.4 Buying your own home

Buying property, either outright or on a shared ownership lease, requires extra understanding around the mortgage loan and the ability to instruct a solicitor and possibly a broker to act on your behalf. A useful check list of what you need to understand comes from the specialist brokers, MySafeHome [www.mysafehome.info].

- You are buying your own home
- You do not have the money to do this
- You need to borrow the money from the bank
- The mortgage requires regular payment but this is paid by benefits
- You need to be able to sign to say you understand.

As with tenancies, this is a pragmatic approach to make sure that the whole question of capacity is kept specific to the decision at hand so that people can be helped as much as possible to make their own valid decisions consistent with the law and guidance under the Mental Capacity Act.

3.5 Home in five moves



3.6 If someone has capacity

If the assumption that someone is capable is confirmed then they sign the necessary paperwork and enter into the tenancy agreement or shared ownership lease, becoming bound by the terms of these contracts.

If there is a disagreement between any parties concerned, e.g. the parents believe their son or daughter does understand the nature of the agreement and/or a solicitor doesn't accept they have capacity, then the Court of Protection is the final judge of whether the person has capacity to take the decision.

These types of transactions very rarely get as far as the Court for a declaration on capacity. In nearly all cases, it will be agreed that someone does or does not have the necessary capacity.

The Volunteer Advocate

You are a volunteer advocate and are asked to work with Frank, who lives in a residential care home. The local authority wants to close the home and move the occupants out to their own tenancies into a new supported housing scheme. You are not sure that Frank understands what these plans involve and are uncertain whether he understands what a tenancy is all about.

What steps would you take?:

You would have to get to know Frank and assess the best ways and times in which he communicates and understands. You would present the information about the basics of a tenancy and check his understanding, getting him to reflect back to you the questions and concepts. If he can retain and use the information to make an informed choice which he can communicate to you, then you may be happy he has capacity to make a decision on this. If you have reason to doubt Frank's understanding you would want to see that a "best interests" meeting is called. IMCA involvement as well if you feel that your involvement is too formal or insufficient to mean Frank is "befriended"?

3.7 If someone does not have capacity: 'best interests'

If there is an agreement that the person doesn't understand the basics of the contract, or if the person can't communicate their decision, then there should be a meeting of the interested parties to decide what, in the circumstances, it is best to do for that person in their best interests – a best interests meeting (Chapter 5 of Mental Capacity Act guidance). This guidance goes into details about how to formulate best interests.

It should be remembered that a "best interests" decision does not give a third party the right to sign a tenancy for someone else, nor take on a mortgage.

Decisions reached through the best interests' process, coupled with a reasonable belief that you are acting properly for someone who lacks capacity, protect those taking the decision from allegations of unreasonable or improper conduct.

Who is best able to help with housing choices and tenancy agreements? The case study below gives an example how different parties may contribute to the decision making process. The roles and interests of these parties must be understood: family member, advocate, care manager, support provider and housing provider. For example as one of the parties to a tenancy the landlord is clearly an interested party but may be well placed to help explain its terms. Support with managing a tenancy (we say later) may well need to be included in someone's support or care plan and would be a job for the support provider. The care manager has carried out an assessment of need so has a role in advising what sort of place to live is suitable.

Whoever is involved in the process, someone will need to act as the final "decision maker". This is the person who in any given situation, "must decide on a person's capacity. The 'decision maker' is the person who, if the person lacks capacity, would be doing wrong by going ahead, or who would need the cloak of legal protection provided by the Act, to protect them from liability for doing what they propose doing, without the consent of the person in question" (Housing LIN Factsheet 20)

The decision maker will need to consider all relevant factors, having taken into account the incapacitated person's own tastes, beliefs and values and consulted with all relevant parties and come to a view on whether or not it is in their best interests to take on a particular tenancy offer. Identifying where this authority lies in a situation with many people involved in a person's care is critical.

It might be helpful to answer the following questions to get an idea of best interests that genuinely delivers on one of the Mental Capacity Act's principles of sourcing the least restrictive option. If the answer to any of these questions is "no" careful consideration will need to be given to whether or not a tenancy at an alternative address may need to be considered

1. Getting Somewhere to Live

Is it a good place to live?

- Is it the right location
- Is it near social networks that are important to me?
- Is it near facilities and services that are important to me?
- Is it near to transport links that I need?
- Is there enough personal space?
- Will I be safe?
- Are there any better options available in the timescales that I need to move by?

Am I going to be supported to manage my tenancy properly?

- Reporting repairs, looking after the property, being a good neighbour?
- Reminders, practical help to contact Landlord or get decorations done, getting equipment and looking after it?
- Learning about my tenancy responsibilities and rights?
- Managing and making decisions about the tenancy – agreeing any changes, dealings with the Landlord, notifying repairs, making a complaint?

Am I going to get the General Social Care and Support I need?

- Shopping
- Planning & preparing food
- Housework (cleaning, laundry)
- Health care, taking medication
- Personal care (getting up, bathing, dressing)
- Managing day to day money & paying bills
- Making financial decisions
- Arranging transport
- Relationships & communication
- Daytime activities (paid or unpaid work, college)

2. Paying Rent

What is my rent?

What services are included in this rent?

- White Goods
- Communal areas furniture
- Fire Safety equipment
- Communal Interior decor
- Refuse disposal
- Pest Control
- Door entry and security systems
- PAT and Gas testing
- External Lighting
- Gardening
- Communal window cleaning
- Communal heating and lighting
- Council Tax
- Lifts
- Communal area cleaning

Are there any services I need that are not included and how much do they cost?

What else do I need to pay for and how much will it cost?

- Food
- Clothing
- Personal utility bills
- Personal Furniture
- TV License
- Entertainment
- Holidays
- Anything else

How much will these cost if I have to pay for them myself?

Have I maximised my income to pay for my rent and other essential expenses as much as possible?

Can I afford everything I need to pay out for?

Are my circumstances or income likely to change?

If they do, will I still be able to afford everything I need to pay out for?

3. Being a good neighbour

After I've moved in, am I going to be a good neighbour to people I live with and/or people in my immediate community?

If not, can I be helped to make sure my tenancy is not put at risk?

- Sound Proofing
- Changing building design
- Adequate on-going support
- Anything else?

4. Not damaging property

Am I likely to damage property that does not belong to me?

If so, can arrangements be put in place to make sure my tenancy is not put at risk?

- Reducing risk of damage
- Ensuring people know about the risk of damage and putting arrangements for replacement in place through rental service charge, personal contribution, third party underwrite or other appropriate method
- Anything else?

If, following completion of this process, the decision maker believes the arrangement is in the person's best interests but others do not, it may be necessary to apply for the appropriate authority from the Court of Protection

Help with choosing a property for someone lacking capacity

John lived in a shared supported living house where he had been for all of his adult life. At the age of 32 John was assessed as not having capacity to make a decision about moving. John is severely autistic and has no verbal communication. It is hard for the people supporting John to know how much understanding he has of what is said to him.

It was decided that he would benefit from living on his own with one to one support. As John had no next of kin and no unpaid friends a referral was made to the Independent Mental Capacity Advocate service (IMCA).

The decision making process involved several people in different roles: The social worker, the support provider, the Speech and Language Therapist, the Occupational Therapist, an Advocate and the IMCA. To make the decision about a property to buy a housing specification was agreed with all involved. Properties were visited and John was involved in each viewing and his reactions to each property were noted. Eventually an ideal bungalow was found. It matched all the main points people felt were important for him. It was in a quiet village location, in a cul-de-sac, it had a large open plan lounge/diner and a secluded garden. The property was purchased and John has been very happy and settled in his new home.

The Social worker and support provider worked jointly to ensure the housing specification was right for John. The Speech and Language Therapist was able to inform supporters of the best way to inform him about the move and devised a pictorial system to help him understand this. The Occupational Therapist was able to assess the property for adaptations needed and make suggestions on the layout. The IMCA advised on John's behalf to see that John was as involved as much as possible and that the correct procedures had been followed.

3.8 Someone lacking capacity

In law, a tenancy taken on by someone whose lack of capacity is known by landlord is 'voidable'. The person has the same rights as any other tenant and the same obligations unless the tenancy is voided. Only the tenant or someone acting on behalf of the tenant with the legal authority to do so (an attorney or a person / deputy appointed by the Court of Protection) can void a tenancy by showing that at the time the tenancy was taken on, the tenant did not have the capacity to make the decision and the arrangement was not in their best interests, When the tenancy is voided the tenant is no longer bound by the terms of the contract. Voiding a tenancy for lack of capacity is therefore possible at law, but it is rare that a tenant or their attorney, person / deputy

appointed by the Court will decide to do this unless they wanted to stop the arrangement because if they did they would not have any right to remain in the property and would in practice simply be giving notice in the normal way. Therefore, the fact that the tenancy is voidable is unlikely to have any practical impact if the tenant is receiving proper support to manage their tenancy. They are entitled to Housing Benefit to pay their rent in the usual way regardless of their capacity. (See also www.housingoptions.org.uk).

3.9 Can a third party sign for someone?

A tenancy can be left unsigned by the tenant and still be an enforceable contract in all respects on both parties (the tenant and the landlord) where best interests decision documentation and evidence is appended or referenced. However, some landlords may insist on a signature.

The only lawful way in which a third party can sign a tenancy for someone without capacity is either

- (a) they have the necessary authority as part of a lasting power of attorney to act for the person, or
- (b) the Court makes an order that gives them the authority solely to sign the contract or
- (c) they are appointed by the Court of Protection as the person's Deputy, with the power to make an ongoing series of decisions, including that of signing the contract .

In this context powers of attorney are unlikely, because you have to have capacity to appoint someone as your Attorney and it would be unusual for someone to be capable of doing this but not capable of understanding the basics of a tenancy, unless their condition is one where previously they had the capacity to have created an attorney and now lack that capacity.

Applying to be a Deputy simply to sign a tenancy does not make the Deputy the tenant, nor does the Deputy become liable for anything in the tenancy. The Deputy acts merely as the agent for the tenant; all the tenancy obligations remain with the named tenant. Past advice from the Official Solicitor said that going to the Court of Protection just to enable someone to sign a tenancy if no other assets or issues were involved was excessively bureaucratic and unnecessary as the tenancy would be valid. (See 3.8 above).

Signing for someone else

You are Samantha's care manager. Samantha lives with her parents and her person centred planning has produced an agreed objective that she move into her own flat. However, she's been waiting for over three years and nothing has become available. Her parents have arranged the rental of a 2 bed flat in the part of town that Samantha wants, and tell you that they will call to the office later today so that you can sign the lease for her. What do you do?

You can not sign the tenancy, as you have no power to do so and would be acting "ultra vires" with the risk of becoming the tenant yourself or letting your employer into becoming the tenant. However, bearing in mind the lack of success from the Local Authority side, you would need to see whether the flat would be a feasible option, what she thinks of the idea and has the capacity to understand what it would mean to be a tenant.

3.10 Court of Protection

Applying to the Court takes time and involves filling out the required paperwork properly. Copies of forms are available from the Court. A Deputy may be a friend, family member, paid professional or an official appointed by the Court. For finances the Deputy has to get approval for large items and submit annual accounts to the Court. There are annual fees payable as well to the Trust Division of the Court.

For one off decisions such as tenancy or loan agreement only a single order may be needed. A Court decision can take up to 20 weeks, and will cost £400, if there are no remissions on grounds of low income

Families should be able to get advice on form filling from the local authority, the housing or support provider. If not law firms will usually have someone who specialises in Court of Protection work to help with paperwork for a fee.

Deprivation of Liberty

There are provisions in the Mental Capacity Act in relation to depriving a person of their liberty if they lack the capacity to consent to being in a care home or hospital. There is no simple definition of a deprivation of liberty leading to grey areas between "restriction" and "deprivation". The following factors need to be considered when considering if any deprivation might be taking place

- Whether professionals have complete and effective control over assessment, care, treatment, contacts, movement and residence
- Whether the person will be under constant supervision and control and not free to leave

Comment [S2]: Diane – this new para needs numbering and adding to contents page

- Whether restraint is used including sedation
- Whether the person would be prevented from leaving if they attempted to do so
- Whether a request from carers for the person to be discharged into their care is likely to be refused
- Whether the person can maintain social contacts
- Whether the person has choice about their life within their home

The Mental Capacity Act provides for the deprivation of liberty of people in care homes or hospitals following the application of a statutory process.. This does not apply to people in their own homes. However, recent case law (MIG & MEG [2010] EWHC 785) ruled that if an element of a support plan drawn up for somebody in their own home requires that some form of personal restriction be applied it needs to be:

- dictated by their disability, rather than imposed on them by their carers.
- it should meet assessed care needs rather than restrain in any way and be
- the least restrictive or invasive intervention that could be devised to meet assessed care needs

If the above conditions are in place, those restrictions may not amount to a “deprivation of Liberty”.

A common example of restriction in supported living would be locked doors specifically to prevent people leaving and/or high staffing ratios relying on staff to prevent the person leaving in order to keep them safe. Situations where people do not have door keys are clearly indicative of restrictions but if a tenant does not have a door key because they are unable to use one, good person centred planning and approaches can determine how best the person would manage getting in and out of their home and who can hold keys on their behalf, without that necessarily amounting to a deprivation of liberty.

Where this approach has been taken and there are any concerns raised by anyone involved in the assessment and/or any best interests’ decision that a deprivation of liberty is occurring, the matter should be referred to the Court of Protection.

3.11 Purchase

Ownership has now become an increasingly significant option, outright ownership less commonly but shared ownership and family funded trust ownership much more prominent. A new publication Ownership Options 2nd Edition will soon be published by the National Housing Federation [www.housing.org.uk] and also available from Housing Options [www.housingoptions.org.uk] and Valuing People Now [www.valuingpeoplenow.dh.gov.uk] and housing providers Advance Housing [www.advanceuk.org], Golden Lane [www.glh.org.uk] and Progress Care [www.newprogress.co.uk] all now have some years of experience in this for

people with learning disabilities. Their websites give helpful information and contacts.

Because of the extra legal work around the mortgage, there may be a greater need for deputyship when someone with limited capacity goes in for purchase or shared ownership. However, the mortgage will be a binding charge on the property whatever the level of the owner's capacity. Experience from MySafeHome [www.mysafehome.info] shows that a minority of their purchases by people with long-term disabilities require an application for deputyship (about 10%).

Where an application is being made to the Court of Protection [www.publicguardian.gov.uk/about/court-of-protection.htm] you need to be specific about what the purpose of the application is and what powers you are asking for; e.g. a person or Deputy is authorised in the name of (the name of applicant) to purchase a property under shared ownership with XYZ Housing Association and to secure a mortgage thereon.

We are also seeing more Deputyship for Property and Affairs with broad decision making powers For the purpose of giving effect to any decision the Deputy may execute or sign any necessary deeds or documents. Sometimes both of these statements are included within the under the Authority of such Deputyships.

3.12 For landlords

The law around capacity is important but perhaps the critical success factor is to have willing landlords (or lenders). If a landlord doesn't want to let to someone because they have a disability which raises a question around their capacity to contract, then the landlord may have justification under the Disability Discrimination Act not to offer accommodation if the processes around best interests and/or Court of Protection intervention described here have not been followed.

If you have a willing landlord, housing association or council and they had a reasonable belief that the person lacked capacity, they can still offer a tenancy if they were satisfied that it was in the individual's best interests to do so and it would be valid and all reasonable terms enforceable, unless the Unfair Contract terms Act applies and the County Court decides that some of the terms are unfair or unusual, in which case those parts of the contract would be ignored as invalid. Any legal action against an incapacitated tenant for breach of covenant will require the appointment of someone as a litigation friend, because the court rules require it if the person is incapable of managing their own property and affairs. So a serious breach of tenancy offered on reasonable terms would be grounds for eviction and a defence through the Disability Discrimination Act rules unlikely to succeed. If there are terms of the tenancy that could be considered unreasonable, the best interests documentation would need to show why they were imposed and that they were the least restrictive of the terms possible, and justified as part of the individual's assessed housing care and support needs

For the cautious landlord the use of Shorthold Tenancies means that re-possession can be guaranteed after the fixed term ends, so this provides reassurance for the landlord if not the tenant. Housing Associations and Councils have used shortholds and even licences but this is not good practice and the matter could be taken up through a complaints procedure or with the Tenants' Services Authority [www.tenantservicesauthority.org] who have the Housing Corporation Good Practice Note 14 on Tenure now being updated for the TSA.

We go on in the next section to look at Help in your home and it is worth underlining the importance of clarity between housing and support organisations just what their respective responsibilities are - for tenant selection, problem solving, getting rent and bills paid, repairs reported and carried out, ending a tenancy or eviction proceedings. Lack of a mutually understood approach on this may allow gaps to appear with serious consequences for a tenant.

4. Help with managing in your home

4.1 Help moving in and managing your home

Supporting someone to make decisions and manage their tenancy or home ownership is in three stages:

- Preparation for moving in, and the move itself
- Managing throughout the period of occupation
- Ending the tenancy or ownership.

As we have seen, the Mental Capacity Act says that any judgement about someone's capacity has to be decision-specific. The help need will depend on what sort of issue or problem arises. Help may come from:

- The support provider
- The housing provider
- Other professionals involved (such as an occupational therapist or psychologist)
- People in their circle of support (family, friends)
- The Deputy or Attorney or anybody else appointed by the Court for that purpose.

The people who support someone with a learning disability will need to work together. Everyone needs to know who will take the lead and the responsibility for helping with different issues. In many cases there will need to be effective multi-agency working to tackle issues that are more complex.

Usually support with your tenancy would be expected to be a part of the tenant's support plan and the support provider, through the support workers, a key worker or service manager would be responsible for *help managing your tenancy*. The Mental Capacity Act would say you could do this as long as you followed their guidance – presuming capacity and acting in the person's best interest.

4.2 If someone has capacity

If someone has capacity to hold a tenancy or shared ownership lease then it is likely that (with appropriate support if needed) they will also have capacity for the "lesser" decisions such as choosing and buying furniture, or deciding who comes into their home. In principle they should also be able to choose to move elsewhere, e.g. to relinquish their tenancy or sell their owner-occupied home, or to choose to change their day activity or their support provider but it would be advisable for this to be also agreed with the local authority funding the tenant's support package.

However, over time someone who had capacity at the outset may lack capacity for later decisions. If they have already made a Lasting Power of Attorney for property and finance and/or for health and welfare, then their appointed Attorney could make such decisions on their behalf (e.g. to spend money on their property, or to move to more suitable accommodation).

Someone who has capacity to make decisions

Pat wanted to live alone. He lived in a supported living house with 3 other people and had been unhappy for a long time. Pat felt he had no control over his life, from when he could go out, to when he had dinner. He was always dependent on others and did not like sharing staff and transport with the other tenants.

Although Pat did not manage his own money and had an appointee, a formal capacity assessment had never been carried out. An assessment showed that with the right information, Pat did have capacity to understand the consequences of managing his own money. The Appointeeship was relinquished and Pat managed his own bank account with support.

Pat decided to move out and contacted a local housing provider who dealt with shared ownership. Pat was able to choose and purchase a house through this scheme.

Pat continues to learn about managing money and the responsibility of being a tenant. This sometimes means making mistakes. His support is tailored to his learning and education. Pat is encouraged to make his own decisions and his team respect his right to make choices that enable him to learn.

4.3 Rights and responsibilities as a tenant or home owner

Anyone who is a tenant or homeowner has legally enforceable housing rights as well as responsibilities. Many people with learning disabilities will need support to help them enforce their rights as well as to fulfil their responsibilities.

The rights will depend on what sort of tenancy or ownership they have, so staff supporting someone will need to know the details of the tenancy or ownership title. In principle they include

- Being able to stay in the housing, for the period set out in the tenancy (can be a fixed term, or weekly tenancy)
- Not being evicted (unless the landlord or mortgage lender has followed the steps required by law)
- Deciding who comes into their house or flat (or room in shared housing).

Tenants and shared owners in social housing (housing associations that are Registered Social Landlords, and council housing) also have further rights:

- Greater security of tenure and therefore more protection from eviction
- To a complaints procedure
- Under the Disability Discrimination Act.

4.4 Support to keep to the terms of the tenancy/mortgage agreement

There are things that a tenant or owner is expected to do. Breaking the terms of the agreement will put someone at risk of losing their home and being evicted. The details will vary so it is important that they get help to understand their tenancy agreement/shared ownership lease/mortgage agreement. They may need someone to help, advise or act for them (this could be an Attorney or Deputy) if they cannot understand (even with help).

The things that are covered in the tenancy agreement/shared ownership lease/mortgage agreement usually include:

- Paying for housing costs (rent, mortgage, council tax – with money from benefits if necessary)
- Paying bills (electricity, gas, water)
- Living in the property themselves (not sub-letting without agreement, or living elsewhere)
- Not causing damage to the property
- Keeping the property in good condition and reporting repairs that are needed
- Letting staff in to carry out repairs and safety checks (but with prior notification except for emergencies)
- Keeping to any rules
- Not being a nuisance to other tenants or neighbours.

4.5 Security of tenure

In most cases, social housing tenants cannot be evicted unless they have broken the tenancy agreement (for example rent arrears, serious nuisance to other tenants or neighbours), *and* the landlord has applied to the Court, *and* the Court has agreed. The main exception is if a shorter tenancy period is given at the start of a tenancy (Introductory Tenancy or use of an Assured Shorthold). Private (including charity) landlords can terminate an Assured Shorthold tenancy for no reason after the initial period (usually 6 or 12 months), without going to Court, even if the tenant has kept to the terms of the tenancy agreement.

However, there can be difficulties where someone with a learning disability is not keeping to their tenancy agreement and is at risk of eviction, especially if there are questions about their mental capacity. In many cases, they may

need support to help them keep to their tenancy agreement. If this does not work then there will need to be effective multi-agency working between social services, the landlord, the support provider and others (advocate or family, circle of support), perhaps to find alternative housing and care provision.

Avoiding evictions

After 2 years in a home shared with two other tenants Sam's keyworker left and he became unsettled and erratic. Any stress could tip him over into bad behaviour and one of the other tenant's family members complained to the housing association landlord. There was a potential case for serious breach of tenancy. Meetings were held with the housing manager, the family and support service manager. The local care manager and support services discussed the case and what to do. The option for arranging moves was considered but it was agreed for the time being that special attention be given to support for Sam and work to improve relationships and behaviour between tenants. Eviction was not openly considered and better management and support in the home achieved results.

4.6 Complaints procedure

Social housing providers must have a complaints procedure. This should be accessible to people with disabilities. If someone has been through the complaints procedure and they are not satisfied, they can take the complaint further. Complaints can be a useful method to challenge poor practice (e.g. delays in carrying out repairs; nuisance from other tenants).

Private landlords are not obliged to have a complaints procedure. Most not-for-profit providers (for example Golden Lane) have a complaints procedure as good practice. If a private landlord uses a managing agent and the agent is a member of ARMA (the Association of Residential Managing Agents) then the agent must have a complaints procedure, and in theory there is a right of appeal to ARMA.

If someone needs support to make a complaint, it is important to follow the stages of the complaint procedure. Someone with a learning disability may need help, usually from their support provider or someone in their circle of support, or perhaps from their social landlord.

Social housing providers must comply with the Disability Discrimination Act (DDA). This could include making adjustments to procedures and to written material (such as tenancy agreements) and giving permission for changes to the property. The provision is much more limited for private landlords.

4.7 Mental capacity and money

If someone lacks capacity for tenancy or ownership then they may or may not lack capacity for the “lesser” decisions: this will have to be decided based on the decision in question.

In the case of someone having an Appointee for work and welfare benefits, (e.g. Income Support, Disability Living Allowance) then the DWP has determined that they are not capable of managing their benefits. The Appointee is permitted to spend money to meet the person’s needs without the need of a Power of Attorney or Deputyship. The Appointee can spend money on the person’s behalf from regular income and savings that have built up from these benefits, and Social Fund loan. For example, an Appointee could spend money on furnishing and equipping a house or flat (rented or purchased), or choosing a fuel supplier and setting up the contract.

However, the Appointeeship only covers DWP state benefits. If the person has other savings (e.g. inheritance or compensation) or other income (including Direct Payments or Personal Budget from the local authority) then if the person lacks capacity, there needs to be a legal basis for spending the disabled person’s money (an Attorney or Deputy or other authority from the Court).

An appointee for benefits

You are Mohammed’s appointee for his benefits. He gets Local Housing Allowance but this only covers £120 per week of his rent which is £150 per week. The landlord has said he is now owed £300 and will take legal action if he’s not paid. Mohammed has a bank account of his own with £5,600 in it but he does not see the need to give any of this to the landlord. It becomes clear that Mohammed does not understand he has to pay rent at all. What do you do?

Mohammed may have a voidable tenancy if he doesn’t understand the essentials (e.g. he has to pay rent) but the landlord can still expect remuneration from M for his occupation. The fact that HB is only paying a proportion of the rent doesn’t prevent arrears increasing. As M’s appointee you have to pay over the HB. You may also be legally protected if you use some of M’s savings to pay the arrears, under the rules about pledging other peoples’ credit.

For further information and materials for working with potential tenants/owners, see Part 2 and:

- ❑ *My Home and Money Dimensions & Housing Options* [www.housingoptions.org.uk/general_information/gi_publications_docs/valuing_people_now_publications/my_home_and_money_2010.pdf]

- United Response & ARC *Making Money Easier* [www.making-money-easier.info]
- My Money Matters* ARC [www.arcuk.org.uk]
- Suto, Clare and Holland Financial decision-making BILD [www.bild.org.uk/03books_pca.htm]
- Mencap Consent and decision-making, financial matters [www.mencap.org.uk/displaypagedoc.asp?id=1739]

4.8 Other housing-related decisions

In addition to the provisions of the tenancy agreement or lease, there are other aspects to be addressed for someone to live in their own place. They may need help to:

- Choose and buy anything not provided by the landlord (for example carpets, curtains, furniture, kitchen appliances, utensils, household linen, TV)
- Repair or replace these items
- Arrange improvements, adaptations or interior decorations before they move in, or later
- Choose suppliers for heat, light and phone/broadband, set up payment systems and get connected
- Plan a budget and manage money

The costs and the choices will depend on the type of housing. In a shared house, most or all furniture and equipment is usually provided, and there will be shared services some of which will be met from housing benefit, so there is little or no cost to the tenant. Utility suppliers are decided by the landlord.

Moving into a self-contained, unfurnished rented or shared ownership property may involve more choices and higher costs (up to hundreds or even thousands of pounds to equip the property) to be paid for from:

- Social Services Direct Payments or Personal Budget for support and activities
- Grants (Social Fund Community Care Grant, Disabled Facilities Grant, charities)
- Loans (Social Fund loan, other)
- Savings (from benefits income or other sources)
- Family or Trust money.

As discussed above, someone without mental capacity to take decisions on choosing and paying for support, activities and to equip their new home may need to be supported through a formal route:

- Appointee (if spending income or savings from benefits)
- Attorney if there is an Enduring or Lasting Power of Attorney
- Deputy or single order through the Court of Protection.

Materials in Part 2 can be adapted to record how someone has been supported to make the choices and decisions in this section.

Help with moving in

For Sally, there was a three month period between finding her newly built shared ownership flat and completing the purchase. A support provider started to work with Sally before she moved in. They drew up a budget and Sally decided to spend less on clothes to save up for equipping her new flat. Sally and her support worker looked at catalogues and visited furniture shops. She had a small amount of savings and also applied for a Social Fund Community Care Grant. Before moving in, Sally chose furniture, floor coverings, equipment and fuel supplier. The Occupational Therapist applied for a Disabled Facilities Grant to adapt the shower to a wet room suitable for Sally to use with her special wheelchair.

Sally had chosen furniture in advance, and kitchen appliances were included in the price of the flat. The new-build flat had bare concrete floors and large windows overlooked by neighbours. The housing association agreed to supply floor coverings, curtains and blinds, to be paid for through the service charge and covered by Housing Benefit. The developer gave permission to fit in the week before purchase completion so Sally could move in straight away.

BT did not connect the phone immediately, so the Lifeline community alarm did not work, but Sally was confident about using her mobile phone in the meantime. Otherwise a family member could have stayed overnight in the flat, or the local authority could have paid the support provider for sleep-in until the Lifeline was working.

4.9 Making things happen in time for moving in

Most people with learning disabilities need benefits (Housing Benefit, Support for Mortgage Interest) to rent or buy their own housing. The problem is that to get the benefits, you need to move in as soon as the tenancy or ownership starts. But you can't move in without carpets, curtains, furniture and so on. You may not be able to move in until adaptations have been completed (for example a disabled shower), or the landline telephone connected (especially if the person needs a community alarm).

There should be some flexibility over paying Housing Benefit for up to 28 days after the tenancy starts whilst waiting to move in, but this *must* be clarified in advance with the local council and the housing provider. If there is a question about mental capacity, this can cause even more delays. You need to start any process (such as appointing a Deputy) well before someone wants to move, not just for signing the tenancy and perhaps the mortgage agreement, but also to start planning, ordering and buying what is needed. There are checklists about what to do in My Home and Money

[\[www.housingoptions.org.uk/general_information/gi_publications_docs/valuing_people_now_publications/my_home_and_money_2010.pdf\]](http://www.housingoptions.org.uk/general_information/gi_publications_docs/valuing_people_now_publications/my_home_and_money_2010.pdf).

PART 2 MATERIALS TO HELP PLANNING AND RECORD-KEEPING

Introduction

Thinking about the impact of the Mental Capacity Act 2005 and a place to live there seems to be three types of understanding to consider. The Act sets out to help people to understand and make choices, for example about where and how they live. The Act provides advice and practical ways of enabling decision-making with respect to contracts such as tenancies. Then there is the matter of help with managing in your home, support with your tenancy and keeping the rules. In short the three types of understanding are:

- Choosing where and how you live
- Making a contract granting rights of ownership or occupation
- How to manage in your home and keep to an agreement

If you are supporting someone to make housing choices there is lots more material available on the Housing Options website. As well as the materials here, you can:

- Show DVDs e.g. Your Place to Live, My Safe Home
- Get brochures and application forms from housing providers
- Visit lettings agents (for private rented housing) and look at web-based or printed materials (for choice-based lettings of social rented housing)
- Arrange visits to different types of housing
- Learn from others who have moved home

As well as helping people with their understanding the Mental Capacity Act guidance encourages recording how such help is provided and decisions reached.

- Keep a copy of any checklists you have filled in, with dates.
- Keep a note of materials and contacts used to help someone in making choices, with dates.
- Use appropriate communications for the person concerned and record the methods used.

As well as making choices and understanding agreements help with managing in your home is the vital long term priority. This should be part of someone's support agreement, or support plan.

- Support plans and agreements need to set out what help someone may need with maintaining their home or tenancy
- Landlords and support providers need to be aware of each other's requirements and responsibilities e.g. in case of breach of tenancy or new lettings in a shared home

At the beginning of the process it may be useful to look at how people communicate and understand.

1. Communication skills assessment

How many key words in a sentence does the person understand?	
Can the person indicate Yes and No? If so, how?	
Can the person indicate Not sure or Don't know? If so, how?	
Does the person use a symbol communications? Which one? (For example Widget, Change picture bank)	
Does the person use objects of reference? (For example a coffee cup to prompt for a drink.)	
Does the person use signing? Which system? (For example Makaton, Singalong) Or does the person have their own signs that we should be aware of? What are these?	



How does the person show you s/he has had enough of an activity?	
Does the person have any hearing problems? If yes is there anything we need to do to aid understanding?	
Does the person have any sight problems? If yes is there anything we need to do to aide understanding?	
Is there anything else we should know that would aide communication with the person?	

2 Thinking about a move

There are lots of possible reasons for a move:

- Sometimes it's because you choose to move
- Or things happen and you have to move
- It could be about the building or the area
- Sometimes it's to do with relationships or support
- Leaving residential school or college
- Family changes or moves

Here is a checklist you can use.

			You can add more here about why
Are you leaving residential school or college?			
Is your family moving away, or abroad?			
Do you want more independence?			
Are you sharing, but want to be on your own?			
Are you on your own, but want to be with other people?			
Do you want to live with a friend, or friends?			
Do you need more space?			
Do you want to move to a new area?			
Do you want to move nearer to work, to friends, to family?			
Are there things wrong with your home (too noisy, not safe)?			
Is your family carer getting old or ill or finding it hard to look after you?			
Do you have other reasons to move? Write them in here:			

3 Your own home or living with others?

It's important to get on well with the people you live with. It makes all the difference. How much choice will you have about who you live with if you share with others? If you have your own place this is not a problem but you might want company. Are there special people – family or friends – you want to be able to keep in touch with?

Shared housing is most common, for example in group homes. Some people can choose who they share with, especially when setting up a new shared house. Others don't have much choice about who else lives with them.

Some people with learning disabilities have their own accommodation. This is becoming more common and is popular. It could be a house or flat on its own, or in a group of flats.

What's good and bad about sharing or your own home?



Sharing

Company and friends	
Staff in the house	
Security	
Help from other residents	
Organised activities	
Not getting on well	
Anything else?	

Your own home

Independence	
More privacy	
In charge	
Freedom	
Individual support	
Loneliness, boredom	
Anything else?	

4 What sort of home?

<p>House or flat on your own</p>	<p>Self contained house or flat in a block or converted house</p>
<p>How KeyRing works</p> 	<p>Community support networks separate flats or houses where residents arrange to live and work together as a local community</p>
	<p>Group of flats (cluster flats) with a manager or support workers also on the site which may have some communal living area</p>
	<p>Group of bedsits where you have your own room but share some facilities – such as kitchen and bathrooms</p>
<p>Living with a family</p>	<p>Shared lives which is a kind of adult fostering scheme</p>
	<p>Staying put if you are not sure about moving to your own home or convert part of the family home to make a separate self contained flat</p>

<p>Sharing a house or flat with others</p>	<p>Flat-sharing – managing your home with your flatmates usually with help from support workers</p>
	<p>Group home – shared house with each tenant having a separate tenancy of their own room with some communal living as well</p>
	<p>Registered care home – where the manager has full responsibility for the home and how it is run</p>
	<p>Supported lodgings or adult placement – living in someone else’s house as a lodger but with some extra support for help at home</p>
	<p>Homeshare – where you share a house or flat with a ‘support tenant’</p>
	<p>Intentional communities (such as Camphill) – where you live in the town or the country and share your lives – home, work and leisure – in a mutually supportive community</p>

5 What is important to me?

	Very important	Quite important	Less important
Location e.g. a safe area			
Neighbours I know			
Friends, family nearby			
Knowing people locally (shops, pub, bus drivers)			
Near to public transport			
Local amenities, shops, leisure, college			
Enough personal space and storage			
Quiet-no noisy neighbours Privacy			

6 What about getting the right kind of help and support?

	Notes
Shopping	
Planning & preparing food	
Feeling safe	
Housework (cleaning, laundry ...)	
Health care, taking medication	
Personal care (getting up, bathing, dressing)	
Managing day to day money & paying bills	
Making financial decisions	
Arranging transport	
Relationships & communication	
Daytime activities (paid or unpaid work, college)	
Other things ...	

7 Ownership, renting, residential care or what?

The next steps could include thinking and finding out more:

- What housing choices are there in my area?
- Do I want to rent or buy? What can I afford? What help can I get from others?
- If I rent, who from? Social landlord (like a housing association)? Private landlord?
- If I buy, how? What about shared ownership?
- Am I already in paid work, or do I want to have paid work in the future? This is important to think about because the housing choices you make can affect being in paid work.
- What about help and support to manage in my new home?
- What might suit me best, looking at what is available or possible?

If you are supporting someone with a learning disability to make a choice between different types of housing, they need to understand enough to make an informed choice. So you need to understand enough about the advantages and disadvantages of different types of tenancies, and home ownership, to advise them – or talk to someone who does understand the differences (like Housing Options).

If they do not have mental capacity to do this, even with support, then those making the decision on their behalf (such as the Attorney or Deputy) will also need enough information and understanding to evidence the reasons for their choice.

8 Summary housing option plan

Do you want to move?

Yes/ No

Do you want a move	<input type="checkbox"/>	
Do family agree with you	<input type="checkbox"/>	
Attitude of service provider(s) to move	<input type="checkbox"/>	
Care manager/commissioner want a move	<input type="checkbox"/>	
Would you stay where you are if possible	<input type="checkbox"/>	

Main reasons for a move

Tick any that apply ✓

It's what I want	<input type="checkbox"/>
To get more support for living	<input type="checkbox"/>
Problems where I am, lack of space or privacy, risk,	<input type="checkbox"/>
My accommodation is not very good where I am	<input type="checkbox"/>
I am not able to stay where I am	<input type="checkbox"/>
Anything else	<input type="checkbox"/>

Urgency

✓

Tick one box only

Now	<input type="checkbox"/>
Within a year	<input type="checkbox"/>
Within 3 years	<input type="checkbox"/>
Not urgent	<input type="checkbox"/>

Type of accommodation wanted

Tick any that apply

✓

Independent house or flat	<input type="checkbox"/>
A network of flats or houses in an area	<input type="checkbox"/>
Cluster flats – group of flats or bedsits together	<input type="checkbox"/>
Small shared house or flat	<input type="checkbox"/>
Shared lives - living with a person or family in their home	<input type="checkbox"/>
A care home	<input type="checkbox"/>
Other or don't know.	<input type="checkbox"/>

Family investment options*Tick any that apply*

✓

Continuing to live in family home?	<input type="checkbox"/>
Parents might consider using a discretionary trust	<input type="checkbox"/>
I or my family have capital or significant savings	<input type="checkbox"/>
Has legal capacity been discussed	<input type="checkbox"/>
Has homeownership or shared ownership been considered	<input type="checkbox"/>
Purchase and renting from relatives	<input type="checkbox"/>

Further Help Needed

✓

Tick any that apply

On housing	<input type="checkbox"/>	
Money or benefits	<input type="checkbox"/>	
Support arrangements	<input type="checkbox"/>	
Other	<input type="checkbox"/>	

Sources of help

✓

Tick any that apply

Social worker	<input type="checkbox"/>	
Housing experts	<input type="checkbox"/>	
Family or friends	<input type="checkbox"/>	
Local organisations	<input type="checkbox"/>	
Support provider	<input type="checkbox"/>	

Issues or problems

✓

Tick any that apply

Legal capacity	<input type="checkbox"/>	
Funding for support costs	<input type="checkbox"/>	
Benefits	<input type="checkbox"/>	
Mortgage available	<input type="checkbox"/>	
Using trust or company	<input type="checkbox"/>	
Renting from parents	<input type="checkbox"/>	
Finding the right place	<input type="checkbox"/>	
Other	<input type="checkbox"/>	

Making it happen



This is the Housing Option Plan for
.....

Date completed:

These are the people that have helped.
We all agree to work to make it happen (signature and relationship -family member, social worker, advocate, housing or support worker etc.)

Named person.....

(Responsible for updating form)

Others involved:

.....
.....

These are the first things we will do:

- 1
- 2
- 3
- 4
- 5

We will look at what we have done again in (Month year)

9 Help to understand a tenancy

Tenancy or ownership should be the foundation for security in your own home they convey rights of occupation; some people with learning disabilities, who rent or own their home, will need support to understand and agree to the legal rights and responsibilities.

Others will not have the capacity to understand their tenancy and will require someone acting for them to agree the tenancy on their behalf such as a Court of Protection appointed Deputy. This guidance has been produced to enable as many people with learning disabilities as possible to be able to understand and agree to their tenancies without recourse to the Court of Protection.

It shows the steps that should be taken to enable someone to understand and agree/disagree with their tenancy and provides evidence of this involvement that can be stored with the person's tenancy agreement. The Mental Capacity Act says that we should presume capacity to make decisions unless it can be shown that some lacks capacity to make a decision for themselves. The chart below assumes that a supported housing option is agreed to be in the person's best interests. If not a meeting will be needed to seek agreement.

Comment [S3]: Diane – can you delete this chart as it has been brought together with changes to “Home in 5 moves” at 3.5

10 Tenancy made easy capacity assessment

People should receive support to help them make their own decisions about their tenancy. Before concluding that individuals lack capacity to make a particular decision, it is important to take all practicable steps to try to help them reach a decision themselves. Here are some ideas to make the person's tenancy more understandable:

- How do they best understand and put the tenancy in a helpful format.
- Use the 'tenancy made easy!' toolkit.
- Use pictures, photos, makaton, or any other communication tool.
- Give information with someone present who knows the person well.
- Somewhere the person feels comfortable and able to concentrate.
- Give time for them to absorb, discuss and reflect on the information
- Give information in manageable 'chunks'.
- Give information separately on each different topic.
- Ask another tenant to explain to the person.

Part I Help with the landlord's tenancy agreement They should be supported to understand and agree the original version of the tenancy agreement.

It is recommended that if a Landlord's tenancy is not easy to understand they are given feedback to this effect so that they can make efforts to make the tenancy more accessible.

Part II Help with an Easy Read Tenancy If the Landlord's tenancy agreement is not understood by the person, after every effort is made to support them, then agreement should be reached with the Landlord that if the tenant understands Easy Read Tenancy the Landlord would agree to this demonstrating an understanding of the essentials of a tenancy.

If this is agreed then the person should be supported to understand and agree/disagree to the 'Tenancy made easy!' version.

If a tenant has the capacity to understand and agree their tenancy but cannot physically sign it, no one should do so on their behalf. Instead evidence should be kept of any tools used to make the tenancy understood, and a statement from the person witnessing that the tenancy is understood but cannot be signed and for what reasons should be recorded. An unsigned tenancy is a fully enforceable contract for both parties in law

Part III Assessment for lack of capacity

If after using some of the above ideas, or any other tools that may be of use, or one of the following has occurred:

- The person's behaviour or circumstances cause doubt as to whether they have the capacity to make a decision about their tenancy
- Someone else says they are concerned about the person's capacity

- ❑ The person has previously been diagnosed with an impairment or disturbance that affects the way their mind or brain works and it has already been shown that they lack capacity to make other decisions in their life. And this impairment means that the person is unable to make the decision in question at the time it is needed.

Then you should assess the capacity of the person to make the decision being asked about their tenancy.

We stress the importance here of spending time and energy in developing a person's skills and understanding of tenancy rights and responsibilities wherever possible as once a Deputy is appointed it is harder to gain decision-making power back.

If the person cannot complete all the following steps in making a decision about their tenancy then a "Best Interest decision should be made

1. Has a general understanding of the decision
2. Has a general understanding of the likely consequences of being a tenant
3. Is able to understand, retain, use and weigh up the information relevant to making the decision
4. Can communicate their decision (verbally or by other means)

Part IV Action on behalf of someone lacking capacity

If the person is thought to lack capacity and it is agreed that a specific tenancy offer is in the person's best interests the completion of a contract will need to be lawful.

If the person already has someone with an enduring power of attorney or a lasting power of attorney, with the necessary authority, then this person should be approached for the required signature.

If there is common agreement to the view on best interests held by the decision maker the tenancy may be left unsigned by the individual and still be a fully enforceable contract on both parties

If there is not common agreement to the view on best interests held by the decision maker, or the landlord insists on a signature, seek the authority of the Court of Protection to make the tenancy valid

(See 3.7, 3.8, 3.9 and 3.10 for more detail)

References:

Suto, I., I. Clare & Holland, A (2007) Financial decision-making. Guidance for supporting financial decision-making by people with learning disabilities.
D.H (2005) Mental Capacity Act Guidance

Tenancy made easy capacity assessment

This assessment should be completed if you are involved in helping the person to understand their tenancy agreement.

Name of Tenant:
Name of Assessor:
Date:

Part I Help with the Landlord's tenancy agreement

What steps did you take to enable the tenant to understand the Landlord's original tenancy agreement? (Include the tools you used)

Is the tenant able to understand and agree/disagree to their tenancy agreement?
Yes: _____ No: _____

Is the tenant able to sign their agreement?
Yes: _____ No (with reasons): _____

I witnessed thathas the capacity to understand and agree to their tenancy agreement in its original format at this time.
Signed: _____

Now store a copy of this assessment with the tenant's original tenancy agreement and send a copy to the Landlord.

Copy filed with tenancy and sent to Landlord?	Yes/No
---	--------

Part II Help with an Easy Read Tenancy

(Copy at the end of this Section)

What steps did you take to enable the tenant to understand the ‘*Tenancy made easy!*’ version of a tenancy agreement? (Include the tools you used)

Is the tenant able to understand and agree/disagree to the ‘Tenancy made Easy!’ version of a tenancy agreement?

Yes: _____ No: _____

Is the tenant able to sign their agreement?

Yes: _____ No (record reasons): _____

I witnessed thathas the capacity to understand and agree the Easy Read version of a tenancy at this time.

Signed: _____

Now store a copy of this assessment with the tenant’s original and ‘Tenancy made easy!’ version of the tenancy agreement and send a copy of both to the Landlord.

Copy of both filed with tenancy and sent to Landlord? Yes/No

Part III Evidence of lack of capacity

Does the person have impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works?

Yes:

No:

If Yes, does that impairment or disturbance mean that the person is unable to make the decision in question at the time it needs to be made?

Yes:

No:

If Yes, why do you feel that the person may lack the capacity to make a decision about their tenancy agreement?

Who else have you consulted (those people that know the person best) in making a judgement about the person's capacity to agree/disagree to their tenancy?

Does the person have a general understanding of the rights and responsibilities involved in being a tenant?

Yes:

No:

Comments:

Does the person have a general understanding of the likely consequences of signing their tenancy and being a tenant?

Yes:

No:

Comments:

Is the person able to understand, retain, use and weigh up the information relevant to making a decision about becoming a tenant?

Yes:

No:

Comments:

Can the person communicate their understanding (by speech or any other means) of the decision to be made?	
Yes:	No:
Comments:	

What steps will be taken before the review date to develop the person's skills to be able to gain the capacity to agree/disagree to their tenancy in the future?
Review date:
Signed:

This assessment should inform the person's support plan. The support plan should detail the decision outcome, who is acting on behalf of the person, in what capacity and what, if any aspects of the tenancy rights and responsibilities the person can do for themselves.

Part IV Action for those lacking capacity

If it is agreed that the person lacks capacity to understand the essentials of a tenancy and that an application will be made to the Court of Protection for due authority this and any other action points should be recorded below.

<i>Action to complete tenancy agreement</i>
Responsible
Signed

It is for your own home



You must pay your rent



Keep the tenancy rules



And look after your home
Keep it clean and tidy



The Landlord is

Insert photo
or logo of
landlord

The tenant is

Your photo

Address

Description
including rooms
furniture and
equipment



Starting date

.....



Weekly rent

.....



Services

The landlord may also provide services listed in the Tenancy Agreement such as (tick the boxes)

- Lighting and Heating
- Hot water
- Telephone
- Alarm system and fire safety equipment
- Furnishings and equipment
- Cleaning
- Gardening
- Insurance* for the building, landlords equipment and furniture
- Other things



*Insurance money is paid to put things right if anything goes wrong in the house.

The Landlord must

- ✓ Keep the house or flat in good repair - heating, plumbing and electrics
- ✓ Tell you how they do repair work
- ✓ Tell you how to make a complaint
- ✓ And any other rules they follow



What you must do as tenant

- ✓ To live in your home and keep clean and tidy
- ✓ Tell your landlord if repairs are needed
- ✓ Let the landlord in to do repairs or decorate
- ✓ Be a good neighbour
- ✓ To keep any house rules that go with this Agreement especially about health, fire and safety



What you must not do

- X You must not damage your home, or fittings
- X You must not be a nuisance to others
- X You must not be too noisy



If you want to move out
You should tell the Landlord



And if you break the tenancy
rules you could be asked to leave



12 Tenancy Passport

*A **Tenancy Passport** should be completed by the support worker or care manager and will form the basis of the person's support plan for tenancy support. This passport should be regularly reviewed as the person gains skills enabling them to manage more of their tenancy tasks. It should be regularly reviewed and updated not something only carried out once.*

What the person understands about their tenancy and what help they may need with managing in their home and keeping to their agreement.

Tenant name:.....Date:.....

What I understand about my tenancy rights and responsibilities

What does the person know about their tenancy rights and responsibilities?

What the landlord must do

- ✓ Keep the house or flat in good repair - heating, plumbing and electrics
- ✓ Tell you how they do repair work
- ✓ Tell you how to make a complaint
- ✓ And any other rules they follow

What you must do as the tenant

- ✓ To live in your home and keep clean and tidy
- ✓ Tell your landlord if repairs are needed
- ✓ Let the landlord in to do repairs or decorate
- ✓ To ask if you want to keep any pets
- ✓ To keep any house rules that go with this Agreement especially about health, fire and safety

What you must not do

- X You must not damage your home, or fittings
- X You must not be a nuisance to others
- X You must not be too noisy

Other housing-related decisions

As well as any terms of agreement there may be other things where help may be needed:

- Getting furniture and equipment
- Doing decorations or minor improvements
- Getting supplies for heat, light and phone and a payment system
- Plan for a budget and managing money

Tenancy Passport

What I can do, and the decisions I can make about my tenancy independently or with some support.

Reporting repairs, looking after the property, being a good neighbour?
What support do they need - reminders, practical help to contact Landlord or get decorations done, getting equipment and looking after it?

What help I am getting to learn more about my tenancy

What help is the person getting to learn more about their tenancy responsibilities and rights?

Decisions I need someone else to make for me about my tenancy

What help managing and decisions about the tenancy – agreeing any changes, dealings with the Landlord, notifying repairs, making a complaint?

Those who help me with my tenancy

The names and roles (including their legal standing with regard to decision-making) of people who provide the above support.

Checking to make sure my tenancy is looked properly

What is needed to ensure the tenancy condition are met, avoiding breach of tenure? This could include a review of performance, work with person to gain skills and understanding about their rights and responsibilities)

Person completing passport:

Role:

Date: