

## The Mental Capacity Act and Housing (*ref 38*)

- 1.** *The Mental Capacity Act*, which came into full force on 1st October 2007, is a legal framework which supports people in taking their own decisions, and imposes duties on those who take decisions for other people.
- 2.** The key principles of the Act are:
  - an assumption of capacity: every adult has the right to make his/her own decisions and is assumed to have capacity unless proved otherwise;
  - capacity is decision specific: an assessment of capacity must be based on the decision to be taken at the time, not a blanket test;
  - participation in decision-making: everyone should be encouraged and enabled to make his/ her own decisions and express a choice;
  - decisions on behalf of people should be made in their best interests;
  - decisions made on behalf of someone else should be those which are the least restrictive of basic rights and freedoms.
- 3.** People with learning disabilities who are eligible for help with accommodation and support, and who get housing and other benefits, often do not face major problems because of 'capacity' issues. However, the Act is useful in clarifying rights and responsibilities. See the *Quick Brief on Tenancy and Capacity* (*ref 18*).
- 4.** Where people lack capacity to make decisions about important things like serious medical treatment or changes in long-term accommodation, the position of Independent Mental Capacity Advocate (IMCA) has been set up to support and represent them if they have no family or friends to do this. There is guidance about how decisions should be taken and how 'acting in someone's best interest' is defined.
- 5.** Lasting Powers of Attorney (LPAs) - LPAs allow people to appoint an attorney to act on their behalf on welfare, healthcare and financial matters.
- 6.** Court appointed Deputies can be appointed to take decisions for people who lack capacity on welfare, healthcare and financial matters. Having a deputy to act on behalf of someone without capacity can make it easier to sign tenancies etc on their behalf.
- 7.** There is a new Court of Protection which considers applications for financial decisions and serious healthcare issues.
- 8.** The Public Guardianship Office is the registering office for LPAs and Deputies and will provide information to help the Court make decisions.
- 9.** New Codes of Practice and safeguards have been introduced, particularly for people who have been deprived of their liberty.
- 10.** Further details can be found on the [Ministry of Justice](#) website

If you require further information or have other queries contact Housing Options.

Housing Options, Stanelaw House, Sutton Lane, Sutton, Witney, Oxfordshire, OX29 5RY, United Kingdom  
Telephone: +44 (0)845 4561497 E-mail: [enquiries@housingoptions.org.uk](mailto:enquiries@housingoptions.org.uk)

Although we try to ensure that statements as to the law and other facts are accurate this report gives general guidance and does not aim to cater for individual cases. Housing Options and our sponsors cannot accept responsibility for any loss incurred as a result of relying on such statements, specific advice should always be obtained on individual cases.

© All rights reserved. No reproduction is permitted without written permission from Housing Options.