

Can we sign the tenancy for someone with limited capacity? (ref 51)

1. It is best not to. The first step is to decide whether they have capacity to take the decision themselves. A person can be said to have capacity if they are able to understand the basics to sign the tenancy - the essentials, the basic concept of money, payment for the home, rules to be kept, it need not be complicated.

There is a Housing Options/National Housing Federation Easy Read Tenancy Guide to cover the basics. [www.housing.org.uk]

2. If people lack capacity they may still be able to appoint an agent, someone may have Lasting Power of Attorney or the Court of Protection can be asked to appoint a Deputy to act on their behalf. For more details, see our *Factsheet Mental Capacity Act 2005* (ref 22).

3. The *Mental Capacity Act 2005* says we should help to maximise a person's capacity.

- Use simple materials, pictures and language
- Take time to explain relevant information.
- Explain effects of decision.
- If there is a choice, explain the options.
- Consult family members/advocates on communication
- Someone who knows the person well: social workers; advocates

4. If people can understand the basics of having a tenancy of their own home they can sign a tenancy and you can record how this was explained and understood. If a person seems to lack the capacity to understand what are the options?

a. A person with capacity to understand that the idea of a tenancy is difficult to understand can authorise someone else to sign it for them as their agent.

b. Someone with Lasting Power of Attorney or existing Enduring Power of Attorney can sign as the agent of the incapacitated person.

c. A receiver, or its replacement - the court-appointed deputy - can also sign a tenancy. A Single Order can be obtained from the Court of Protection for the appointment of a deputy.

5. Anything else is less certain but the risks may be limited if there is agreement to the practical arrangements for proper conduct of the tenancy, payment of rent and proper support for the tenant.

6. The person themselves can sign the tenancy. It will be presumed valid unless challenged. If the landlord knows they lack capacity a landlord may not be able lawfully to evict for breach of the contract for nuisance or annoyance but a charge for occupation would be recoverable. Tenancies could be arranged without signature so long as the landlord was happy to take on tenants who could not understand the conditions in the tenancy or be liable for breaking tenancy conditions.

7. The *Mental Capacity Act 2005* is helpful. We are expected to show that we are acting in the best interests of someone who may lack capacity. There is good guidance on the *Act* but it remains to see how the Courts will deal with disputes in this area.

8. Other useful references:

[[Housing Learning Information Network Information Sheets](#)]

[[Law and Guidance](#)]

[[Mental Capacity Act 2005](#)]

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

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