**STARTING AND ENDING A TENANCY**

**Guidance and Procedure**

London Borough of Camden

Adults and Health Directorate

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# Purpose

* 1. This document sets out the guidance for staff working in Supporting People including
		+ Camden Learning Disability Service (CLDS),
		+ London Borough of Camden (LBC)
		+ Camden and Islington Mental Health Trust (C&I)
	2. The guidance applies to staff supporting individuals who require assistance with starting or ending a tenancy including people who lack mental capacity.

# Scope

* 1. To ensure all staff have clear guidance and procedures to follow when supporting an adult with care and support needs with tenancy issues.
	2. Further support can be found in the following guidance:
* Mental Capacity Act and Tenancy Flowchart (Appendix 1)
* Human Rights Act 1988, Equality’s Act 2000, and all other legislation applicable to adults in England and Wales.

# Responsibilities

* 1. All heads of services, team managers and their equivalents in the LBC and Camden and Islington Mental Health Foundation Trust (C&I) should ensure staff teams have access to and adhere to this guidance.
	2. Front line workers are responsible for liaising with their team managers if they require further information and support to adhere and action this guidance and procedure.
	3. It is the responsibility of the lead worker to liaise with the professional network and the person’s family to ensure that relevant MCA assessments and best interests processes are clearly documented and followed robustly.

# Principles

* 1. People must be enabled and assisted to manage their own tenancy where possible. The individual should be encouraged to appoint Lasting Power of Attorney (LPA) while they still have capacity.
	2. If an individual lacks capacity any intervention must be strictly in accordance with the Mental Capacity Act (MCA 2005) principles. Where necessary staff need to be proactive in supporting the individual to prevent delays.

# Assumed capacity

* 1. The MCA 2005 sets out a robust legal framework. There is an assumption a person is able to make all their own decisions until proved otherwise. The test of capacity must be time and decision specific.
	2. If there are no issues with capacity the ASC practitioner should liaise with housing colleagues to start or end the tenancy.

*Tenancies beginning*

* 1. Early dialogue with landlords can help them identify any necessary adjustments around the tenant’s needs, getting tenancies off to a good start and reducing risk of tenancy failure.
	2. Social landlords often have resources that can be helpful (welfare benefits specialists for example). There is an [**Easy Read guide to the Council’s tenancy conditions**](https://www.camden.gov.uk/about-your-tenancy).

*Tenancies ending*

* 1. Notifying landlords that a tenant is in hospital or residential care is important. It reduces risk (for example) that they will force entry out of concern the tenant hasn’t been seen. Ending tenancies is important in order to ensure that tenants do not get into rent arrears and so that that empty homes can be let without delay to people in housing need. If it is a Council property you can find the housing officer or rent service officer on the [**Housing property list within the Housing Practice Guide**](https://ascpractice.camden.gov.uk/connecting-people-to-support/housing-matters/tenancies/starting-a-tenancy/#main).
	2. Social services has a legal responsibility to safeguard the individual’s property. Please refer to the protection of property guidance in the Adult Social Care Practice Guide.

# Lacks Capacity

* 1. If there is reason to believe an individual lacks capacity to consent to beginning or ending a tenancy a clearly documented MCA assessment must be completed. If it is established the person lacks capacity to consent a best interests meeting/decision must be made to decide whether it is in the person’s best interests to enter into a tenancy or have the tenancy terminated.
	2. It is important to consider any potential deprivation of liberty (DoLS) issues as part of the best interests decision making process. Where deprivation of liberty is indicated the necessary referrals/authorisations must be sought/obtained. Where unclear contact the DoLS team. The same principle will apply when DoLS is replaced with Liberty Protection Safeguards.
	3. If there is an LPA or deputy for property and affairs please liase with the relevant person if they have the authority to start or end the tenancy. Please ensure you see the order to verify that the LPA or deputy has authority to make the decision.
	4. Please refer to section 8 and 9 on family responsibilities and advocacy. If there is no appointed LPA or deputy the person must be referred to Court of Protection (CoP) for the final decision A referral to an independent advocate must also be considered if the person is unbefriended.

# Preventing Delay

* 1. If the person lacks capacity and the best interests process has confirmed that it is in the persons best interests to either start and/or relinquish a tenancy the **Court of Protection process must be started as soon as possible to prevent delay.** The referral to the Court of Protection can take place as soon as the person moves into a home, it does not have to wait until the 6 week review. If there is a disagreement about the placement legal advice should be sought.
	2. The Court of Protection will require evidence that the new accommodation meets the individual’s needs and they and their relatives have been consulted on the placement and are content with it. The views of the person and their relatives need to be included in the social worker’s court of protection statement.
	3. If there is a deputy order in place, please confirm with the individual who holds the order on the best course of action. It is important to verify whether they have the authority to end the individual’s tenancy as not all deputies can.

# IMCA/Advocate

* 1. The role of the Independent Mental Capacity Advocate (IMCA) is to support and represent people who lack capacity and have no one else to support them with major, potentially life-changing decisions. IMCAs cannot sign a tenancy on behalf of a person as they act as an advocate only.
	2. In some situations where family and friends are involved there may be concerns about a potential conflict of interests, especially when relinquishing a tenancy. If this is the case then it is vital to instruct an IMCA. Further information on IMCAs can be found on the **[ASC Practice Guide](https://ascpractice.camden.gov.uk/mental-capacity-and-dols-1/advocacy/)** and a referral can be made using

[**Camden and Islington’s Integrated Advocacy Service (CIIAS) Referral Form**](https://ascpractice.camden.gov.uk/what-matters-to-people/advocacy/referral-process/#main) which can also be found on the ASC Practice Guide.

# Family Responsibilities

* 1. If family members are actively involved in the care of the person they should be encouraged to make an application to the Court of Protection. The decision maker can support the family through the process or sign post.
	2. If family members confirm they are either unwilling or unable to make an application to the court of protection this must be clearly recorded. The social worker will be required to complete the court of protection application.
	3. If a family agrees to make an application but fails to do so within a 28 day period and following repeated requests, this must be discussed with the Team Manager as there may also be safeguarding considerations.

# Housing Benefit

* 1. Capacity has no bearing on entitlement to Housing Benefit. A lack of capacity does not mean the person is not liable to pay rent, and so not entitled to benefit. There is a legal liability to pay rent until the property is returned to the landlord with vacant possession and, therefore, entitlement to housing benefit.

* 1. Housing Benefit claims must be made at the earliest possible opportunity. If a person is temporarily absent from their home, housing benefit can continue to be claimed if the person intends to return. This can be paid up to 13 or 52 weeks depending on circumstances such as domestic violence, long period in hospital or residential home[[1]](#footnote-2).

***New tenancy***

* 1. If person has been offered a new tenancy but needs to give notice on an existing tenancy they may be able to receive two homes allowance. However, the person must have moved into their new tenancy. This allowance allows the person to claim for two homes and housing benefit will cover the old and new home for a period of 4 weeks.

***Residential or nursing home***

* 1. If a person is moving to a residential or nursing home, housing benefit on the person’s home can be claimed for up to a period of 13 weeks involving a mix of Temporary Absence from Home elements and ‘Unavoidable overlapping tenancy’, element.
	2. For instance a person could receive 6 weeks housing benefit under temporary absence and 4 weeks ‘ overlapping’ or 9 weeks ‘temporary absence’ and ‘4 weeks overlapping’.
	3. It is important that you discuss the individual circumstances of the case with Housing Benefit as soon as possible to ensure that the person receives the maximum housing benefit entitlement.

***Council tax exemption***

* 1. There is also the possibility the person could receive a discount or be exempt from council tax charges, particularly if person meets the severely impaired criteria.
	2. You must discuss the circumstances with the Council Tax Team and they will be able to advise on specific cases.

# Process when someone lacks capacity

* 1. The following sets out the process that must be completed in this specific order;
* The completion and record of a mental capacity assessment that demonstrates clearly the person lacks capacity to make a decision about their tenancy
	+ Best Interests decision and clear records-;
* Liaise with individual, family, friends and professionals including GP, care agency and landlord.
* Consider referral to IMCA/advocate for independent advocacy with the decision
* The worker must consider the person’s wishes, beliefs and values prior to and after losing capacity. This information can be gathered from the person’s network or any written information that may exist (previous assessments)
* Convene a best interests meeting and agree a best interests decision
* Record clearly the best interests decision clearly noting options considered and any conflicts that arose
	+ Clarify there are no Deprivation of Liberty Safeguards in place to ensure there are no disputes and/or make sure the necessary referrals for DoLs authorisation are made. Deprivation of Liberty Safeguards will be changing to Liberty Protection Standards.
	+ Discuss referral to Court of Protection with Team Manager and if deprivation of liberty indicated in the community consider submitting a joint application (CoP, DoLS and tenancy). (For advice on CoP and DoLS contact the DoLS team or the legal department).
	+ Complete all forms required for one off CoP applications-:
		- CoP1
		- CoP3
		- CoP24
		- CoP44a exemption fee (to exempt £365) customer could have an exemption if low income/capital/ disability benefits
	+ Social Worker/Decision Maker to sign all documents
	+ Team Manager to approve the application
	+ Scan and retain a copy of all documents
	+ Legal services will email all documents to **courtofprotectionenquiries@hmcts.gsi.gov.uk**
	+ On receipt of the sealed order from the Court of Protection -;
		- The Notice to Quit/tenancy agreement needs to be signed by the authorising officer of LBC, currently the Director of Adult Social Care.

# References

* 1. Shelter, (undated) Housing benefit while away from home, Shelter Organisation
	2. <https://england.shelter.org.uk/housing_advice/housing_benefit/housing_benefit_while_away_from_home>
	3. UK Government (2015) The Care Act
	4. <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>
	5. Mental Capacity Act 2005
	6. <https://www.legislation.gov.uk/ukpga/2005/9/contents>
	7. Mental Health Act Code of Practice
	8. Office of the Public Guardian (OPG) ([www.guardianship.gov.uk](http://www.guardianship.gov.uk)).

# Appendix 1

**Applications to the Court of Protection in relation to tenancy agreements**

1. Housing benefit while away from home

https://england.shelter.org.uk/housing\_advice/housing\_benefit/housing\_benefit\_while\_away\_from\_home [↑](#footnote-ref-2)