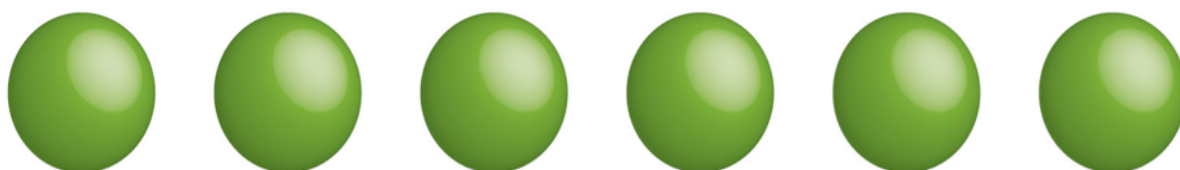




National Development Team **for inclusion**

Real Tenancy Test

Supporting information specifically relating to housing
for people with learning disabilities and the
relevance of the Real Tenancy Test





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Introduction

This document supplements, and is designed to be read in conjunction with, the Real Tenancy Test guidance and tools updated by the NDTi in November 2015. Having originally been written in relation to people with learning disability, the Real Tenancy Test now addresses good practice in housing and support for all people, regardless of disability or diagnosis as the vast majority of issues are applicable across all traditional ‘client groups’.

However, there remain a small number of issues that still relate solely to those supporting people with learning disabilities, mainly in relation to capacity and ability to hold a tenancy and these are addressed specifically, along with supporting FAQs here.

Background

It is estimated that 16% of people with learning disabilities in England and Wales live in ‘supported accommodation’¹, with demand for housing expected to rise over the coming years. Launched in 2003, the Supporting People programme encouraged the development of tenancy related housing schemes by introducing new funding to support people in their

¹ ‘Housing for people with a learning disability’ Mencap (Dec 2012) <https://www.mencap.org.uk/housingreport>

own homes. This encouraged the development of supported housing, extra care housing and 'floating support' for many groups of people that needed support to live independently including people with learning disabilities and offered a real alternative to residential care.

The picture for people with learning disabilities using Supporting People funding generally looks different to other groups. For some people with learning disabilities, Supporting People funding has, as envisaged, meant being able to have 'floating support' to live in their own home as a tenant or owner, or get their own flat in a supported housing or extra care scheme. However, the response by many learning disability commissioners and providers was to de-register existing care homes and issue people with tenancies. Whilst this was a valid way to enable people with learning disabilities to live in their own homes, it has resulted in many care providers becoming landlords or having to work with landlords and a new type of housing based service emerging that is neither an ordinary home, supported housing (as we know it), or a care home.

For most people with learning disabilities, getting a place to live is about settling down (for a period of time at least) in a home where you can learn, grow and get on with your life. Most people with learning disabilities are not in crisis seeking temporary accommodation and are simply looking for a place to live for the next phase of their life. Shared supported housing for most groups of people (people with mental ill health, homeless, in domestic violence situations etc.) is often designed to be a more temporary solution either in periods of crisis or as a halfway solution before moving to a permanent home. This temporary environment does not allow for a more secure tenancy. It also does not lend itself naturally to providing a permanent home environment.

The supported housing structure, funding and regulation that is used for temporary housing has been adopted in some housing based schemes for people with learning disabilities that are supposed to be settled and permanent living environments. This means that for some housing based services, people with learning disabilities have an insecure tenancy when they should have a secure tenancy. For other people that do have a secure tenancy, particularly in former care homes, there is often a lack of clarity around tenancy rights; for many people, the rights they should enjoy as tenants are not experienced in everyday lives.



Supporting people to understand tenancy rights and responsibilities

Whilst tenancy type is important, what is just as important is how it works in practice and how people with learning disabilities are able to exercise real control of their homes and lives. Making sure that the tenancy agreement itself is easily understood by tenants, families and staff is a good starting point. There are many examples of how a tenancy agreement can be made easily understood using plain English, symbols, photographs and pictures. Further information can be found on the Housing and Support Alliance website² and for some good examples, see MacIntyre Housing, Housing Solutions and Advance UK's websites.

What is also important is helping tenants, families and staff understand what their rights as tenants are in practice.

People with a learning disability, families and professionals are used to operating within a service culture where professionals have control of the service and our support systems often do not operate in a way that gives people real control over their home. This manifests in practices that mirror those in a registered care home where the home is actually in the control of the support provider even though it is a tenancy.

FAQs

If a real tenancy is based on the choice and control of the tenant, does this mean that people who do not use words to communicate cannot have a real tenancy?

People who do not use words still make choices by showing preferences, likes and dislikes and these choices are just as valid as those made with words. A choice of support provider may not be an active verbal choice but may be indicated by the person showing they like a member of staff, clearly enjoying life and those that know them well and care about them witnessing this. The Mental Capacity Act is a legal framework that supports choice and decision-making and can be used to determine the choice and control a person has as a tenant if this is being challenged.

² <http://www.housingandsupport.org.uk/tenancy-agreements-for-people-with-learning-disabilities>

If the tenant does not understand the tenancy agreement, does this mean it is not a real tenancy?

For most people with learning disabilities, understanding the basics of the tenancy agreement (e.g. the tenant pays rent in return for specific accommodation and must look after the property) is sufficient to make it a legally binding agreement. This can be helped by providing simple tenancy agreements and using diagrams and pictures to explain.

For those people who do lack mental capacity to understand the basics of a tenancy agreement, this should not be a barrier to enabling a person in this situation to have their own home. The law is not clear in this area however, most landlords accept that there is little risk in practice of granting a tenancy to someone who lacks mental capacity and do so regularly.

Many landlords accept unsigned tenancy agreements, but if they are insisted upon it is possible for another person to sign if they are appointed as the person's Deputy by the Court of Protection³, although this is widely regarded as excessively bureaucratic if the purpose of the deputyship is solely to sign a tenancy.

³ <https://www.gov.uk/become-deputy/overview>