

TENANCY ISSUE CASE STUDIES

MENTAL CAPACITY ACT AND SHELTERED AND SUPPORTED HOUSING

Taking on a Tenancy

Mrs Wardle lives in a general needs property. She is in the early stages of dementia. She is beginning to neglect her appearance and personal hygiene, starting to forget appointments, tries to make tea in the kettle, and can't remember whether she has eaten or not. She has a fall which causes her to break a hip and she is admitted to hospital where she becomes much more confused. There is uncertainty whether this is as a result of the trauma of admission to hospital or whether she has also had a mini-stroke. Her family think it would be a good idea if she applied for a tenancy in the town's Extra Care scheme.

Explore this scenario in the context of the Mental Capacity Act

- What should be done in order to assess her capacity to agree to the move?
- If, despite every attempt to assist her, she still cannot understand what is proposed, what should then happen?
- If it is concluded that a move to the scheme would be in her best interests, what should the housing provider do?
- If it transpires that no-one has formal authority to sign the Tenancy Agreement on Mrs Wardle's behalf, what options are available to her and her family, and what are some of the risks and benefits of each to the parties – i.e. Mrs Wardle, the family and the prospective landlord

Using the principles of the Act to tackle a tenancy dilemma

(Thanks to Stonham Housing for this example)

Clive, who has a learning disability, has lived with his parents all his life. They are now getting elderly and have had a few bouts of ill health. Clive and his parents feel that it's time for him to move out of home whilst his parents are still around to support him with the move.

Clive has met with the new housing provider. They have been talking through what it means to have a tenancy agreement. Clive's parents are not sure Clive knows what he's signing and are worried about the legal consequences of their son having a tenancy agreement which he doesn't understand. The housing provider who are a generic provider, are feeling unsure and don't know what they should do next.

Clive approaches you and asks you to help the housing provider and to reassure his parents that he knows what he's doing. [Assume that with appropriate help and support, Clive does have the capacity]

- Using the 5 principles of the act, how would you advise the service provider to proceed?

- Using the framework of the act, how would you approach Clive's parents?

Surrendering a Tenancy

Fred Smith moved into Pinewood Court EC scheme several years ago. He was perfectly capable of signing his own Tenancy Agreement. Over a period of years, Fred develops dementia. He becomes disinhibited, making unwanted advances to the female residents. Staff try to explain to him that his behaviour is upsetting but he cannot retain the information or modify his behaviour. At night he is prone to walking around the scheme and on a number of occasions has entered the flats of other residents, even climbing into the bed of one on one occasion. However, it is the fact that he is physically very fit and frequently leaves the scheme that is of greatest concern. Several times staff have had to fetch him back, and twice he has been found wandering miles from the scheme. Staff are finding it increasingly difficult to cope, other tenants are becoming intolerant, and he is becoming aggressive if he feels thwarted or if someone gets in his way.

Fred's family and staff discuss the situation and conclude that the scheme is no longer a suitable setting for him. They try to discuss the situation with him but he lacks insight into the risks and issues and insofar as he understands what is being proposed, doesn't want to move.

A place is found for Fred in a specialist dementia care home and he is moved without his consent. He is prevented from leaving that home by dint of doors controlled by entering a code.

Even if he didn't object to the move, it is questionable whether he would have had the understanding necessary to surrender his Tenancy Agreement. No-one in his family has EPA or Property and Affairs LPA.

- Is this way of relinquishing a tenancy legal? What if his daughter had held a Property and Affairs LPA?
- Could the principles of the Act have provided a framework for a different solution?
- Are there any "deprivation of liberty" implications in this scenario? (MCA lead to explain)

Sue Garwood
Extra Care Specialist
On behalf of the Housing LIN
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