

Family Investment in Supported Housing



A guide for people who want to purchase property for family members with disabilities to live in

Contents

Introduction	3
Section One – Family Investment Options	4
Buy to Let	4
Buy to let and housing benefit claims	4
Let to Buy	6
Shared Ownership and using Support for Mortgage Interest	6
Joint Ownership.....	8
Joint Ownership with the family member	8
Company Ownership	9
Inheritance.....	10
Leasing to a third party Housing Provider.....	10
Section 2 – What do families need to consider?	12
When individual tenants leave shared accommodation.....	12
Damage, breakages, maintenance and wear and tear.....	12
Houses in Multiple Occupation.....	13
Section 3 – What financial help is available for my relative?	14
Capital	14
Trusts.....	14
Discretionary trusts	14
Revenue	15
Council Tax Reduction	15
Housing Benefit	15
Renting in the private sector	15
Costs eligible for Housing Benefit.....	16
Housing Benefit eligibility and capital restrictions.....	19
Housing Benefit and deprivation of capital issues	19
Help with paying for daily living costs	19
Applying for Employment Support Allowance	20
Job Seekers Allowance	20
Personal Independence Payment (PIP).....	20
Universal Credit	20
Benefits and deprivation of capital	21
Appendix 1 – Supported Living	22
Appendix 2 – Mental Capacity	25
Appendix 3 – Example Tenancy Agreement	32
Appendix 4 – Guide to Direct Payments	37
Appendix 5 – Flow Chart to Housing Options	39



Introduction

"Oxfordshire County Council is committed to commissioning a wide range of housing choices for adults with disabilities so that they can enjoy living in the community rather than in a care home. With over 660 such housing places we believe that we have a good track record of delivering these aspirations but our recently published 'Big Plan' highlighted the need for still greater numbers and choices of housing.

Whilst nearly all our supported housing is provided by various housing association partners there has been an increased interest of late from the parents of some disabled young people and adults who wish to invest in providing their own housing in order to further 'take control' and extend choice. We are happy to support these parents as part of our wider duties to provide information and advice and create more 'market opportunities' for all.

Consequently, we are very pleased to publish this guide in partnership with expert assistance from the Learning Disability England, a charity which specializes in helping people with learning disabilities access their own housing. It is intended as an introduction to this vital but often complex subject and, whilst not able to answer every matter, should help parents and families who wish to consider investing their own resources in such housing for their family members. We know that a number of local families have successfully developed such housing and we are also grateful for their help in producing this guide and offering their case studies for the benefit of others"

A handwritten signature in black ink, appearing to read 'Kate Terroni'. The signature is fluid and cursive.

Kate Terroni

Director of Adult Services

SECTION ONE – FAMILY INVESTMENT OPTIONS

If you are considering investing in a property for a family member who has a disability, there are a number of different options available to you. This document will outline some of those options along with the pros and cons for each. More detailed information can be obtained from the Learning Disability England <http://www.learningdisabilityengland.org.uk/>.

This publication is for guidance only and you should obtain professional advice should you decide to pursue any of these options.

1. Buy to Let

You can buy a property to let to your family member using capital, via a mortgage or a combination of both. You can manage the property directly as landlords, or lease it to a third party housing provider so that they manage the property on your behalf (*see leasing to a third party housing provider*).

The property could be any ordinary house, flat or bungalow – adapted if necessary. It might also be an annexe to your home or a small building in the garden.

Buy to let and housing benefit claims

If you want to manage the property directly as landlords, and your family member (the tenant) needs to claim Housing Benefit to cover the rent, it is important to ensure you comply with Housing Benefit regulations. The payment of housing benefit may be refused if it is determined that the arrangement is uncommercial and/or contrived to take advantage of the housing benefit system, and the landlord is a close family member.

A close family member is defined as parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, spouse or unmarried partner of any of these people.

You may find that some authorities want more information or evidence of the agreement from you before they are willing to accept that the tenancy is a commercial one. Please note it is for the claimant/landlord to prove the agreement is commercial.

How do local authorities decide if the tenancy was contrived?

When deciding if a tenancy has been contrived to take advantage of the housing benefit system the local authority will look at the individual facts surrounding each case.

For example they may look at whether the rent is very high compared to other properties in the area or whether the property is too large for the occupant(s). The fact that landlord and tenant knew that the tenant could not pay the rent without claiming Housing Benefit when the tenancy was set up would not in itself be sufficient reason to refuse Housing Benefit on the grounds of contrivance.

Housing Benefit claims can only be submitted once the tenant has moved in, and the local authority is not obliged to provide any indication of how the claim will be treated before the tenancy is entered into.

Housing Benefit is not payable in the following circumstances:

- Where a person rents their accommodation from a trust of which they are a trustee or a beneficiary
- Where a person rents their accommodation from a company of which they are a director or employee
- Where a person rents accommodation from a trust of which his/her child or partner's child is a beneficiary (*see section on trusts for more details*).
- Where the person who rents the accommodation was previously a non-dependent of someone who still resides in the property
- Where the accommodation is not self contained and separate from accommodation occupied by a landlord who is a close family member

When the Housing Benefit claim is accepted

Assuming the claim is accepted as commercial and/or not contrived, the amount of Housing Benefit payable will be limited to the appropriate bedroom rate within Local Housing Allowance (LHA) (*see section on revenue*). If the LHA level is under any rental requirement the landlord has, consideration will need to be given as to how the shortfall will be met.

If the shortfall cannot be met, or you are concerned about the risks of commerciality and contrivance, or you do not want to act as landlord to your relative, you can consider leasing to a third party housing provider (*see leasing to a third party housing provider*) who may also be able to access a rate of Housing Benefit that meets your costs (*see Revenue, exempt accommodation and excluded tenancies*).

The Pros and Cons of Buy to Let

Pros:

- Any property that is affordable is potentially available, meaning there is an extensive choice of type, location, size and facilities.
- It can be an investment. In the long term the property could be passed on to the relative, possibly free of debt. This in turn can provide financial security and the ability to move and choose another property if it is required in the future.
- The property can be shared with others if desired.
- It can offer long-term, permanent housing for your family member.

Cons:

- Not all families may be able to manage arranging a buy to let mortgage whilst dealing with the other tasks involved.
- Not all families may be in a financial position to raise a buy to let mortgage, provide an initial deposit and fund the legal, valuation survey and other set up fees.
- If you are the landlord you will need to have alternative plans in place for when you are no longer able to manage the property.
- Unless you use a third party housing provider there is some risk that a Housing Benefit claim may not be approved.
- The amount of Housing Benefit paid may not meet the full rental cost for your family member.

2. Let to Buy

You may choose to move out of your home, so that your family member can remain in the home they have always known. You can let the property directly to your family member, or lease it to a third party housing provider (*see leasing to a third party housing provider*) and use the income to rent or buy new accommodation for yourselves.

The Pros and Cons of Let to Buy

Pros:

- Allows your relative to stay in the family home.
- There are fewer complications that can arise when searching for new accommodation for your family member.

Cons:

- There can be income shortfalls if your family member wants to live alone. It is more likely to work if the property is set up for the disabled person to share with others, which brings additional risks in income shortfall to cover voids when rooms are unoccupied.
- If you are the landlord you will need to have alternative plans set up for when you are no longer able to manage the property.

3. Shared Ownership and using Support for Mortgage Interest

It may be possible for your family member to apply for Support for Mortgage Interest to contribute to interest payments on a mortgage of up to £100,000.

Getting Support for Mortgage Interest is dependent on meeting the criteria set out in Schedule 3 of the General Income Support Regulations This states that:

'Housing cost shall be met in any case where the loan was taken out, or an existing loan increased, to acquire alternative accommodation more suited to the special needs of a disabled person than the accommodation which was occupied before the acquisition by the claimant'

Qualifying criteria

Your family member must be claiming:

- a) the higher rate of the care component of Disability Living Allowance, or the daily living component of Personal Independence Payments; and
- b) one or more of:
 - a. Income Support,
 - b. Incapacity Benefit,
 - c. Employment Support Allowance (Support Group),
 - d. Severe Disablement Allowance,
 - e. Pensions Credit.

If your family member qualifies for Support for Mortgage Interest, the interest payments on a new mortgage they take out will be partly subsidised. On a £100,000 mortgage (the maximum amount possible) they would need to contribute around £25 per week from other income to meet the full mortgage payment. They will also need to pay a 10% deposit and mortgage broker fees.

It is possible for you to contribute to the purchase and/or set up costs.

If the house costs more than the £100,000 maximum Support for Mortgage Interest allowance, the difference can be made up by yourselves, a housing provider, or both.

Example of using Support for Mortgage Interest

- Step 1:** Your family member takes out a mortgage funded through Support for Mortgage Interest up to £100,000.
- Step 2:** You fund an agreed percentage of the total cost directly and/or through a loan to a Housing Provider.
- Step 3:** The Housing Provider meets the balance of cost of the property by borrowing.
- Step 4:** The Housing Provider charges your family member Housing Benefit eligible rent which re-pays any loan.

Please note, that it may be possible for the Housing Provider to meet all the purchase costs using their own resources and/or capital grants. The example above applies when you want or have to contribute some capital yourselves.

The Pros and Cons of using Shared Ownership and Support for Mortgage Interest

Pros:

- It maximises the amount of capital available to allow for higher design standards, better location, size and type.
- You can invest in the property by agreeing terms with the Housing Provider if the property is ever sold because your relative sells it for any reason.

Cons:

- In this model you would be offered the third legal charge, behind the mortgage lender and the Housing Provider. A legal charge is the right a person/organisation who lends money has to take someone's property, if that person does not pay back the money they borrowed to buy the property.
- Returns on the loan may be low – it may not be an attractive investment although your family member will share in any increase in the property value.

4. Joint Ownership

Joint ownership is where a group of people pool their resources to buy a property between them. This could be a group of families coming together to acquire a property for their family members to share. This means they will be 'jointly and severally' liable for loan repayments. That is to say if one ceases to pay the mortgage for any reason the other remains liable for all the repayments, not just their share.

It is usual for two people to be joint owners, but in legal terms it is as simple for up to four people to be joint owners. There can be more than four joint owners, but this is much more complex.

It is possible, although not common, for up to four disabled people to be the joint owners rather than their parents (or other relatives). Where the owners are parents or other family members, those who live in the property will be tenants.

4a. Joint Ownership with the family member

A variation on joint ownership is for you to buy a property jointly with the family member in question. The reason for doing this is to satisfy a lender that the person they are lending to has 'legal capacity', which can be a barrier to being offered a loan (*see Appendix 2 on mental capacity*).

Legal capacity can be an issue where the lender believes the person they are lending to has insufficient understanding of the nature of the obligations they are entering into i.e. paying the mortgage and the consequences of breaking the terms (e.g. becoming homeless). From a legal perspective if the lender knew the borrower lacked legal capacity, the contract is voidable and this is a risk lenders will be wary of.

This issue can be overcome if the other person signing jointly for the mortgage has capacity. It is important to note that Support for Mortgage Interest may not be payable where one of the joint owners is not disabled or eligible for any or all of the qualifying benefits.

The Pros and Cons of Joint Ownership with the family member

Pros:

- This will allow greater choice of property and location.
- It allows someone with high needs to live independently.

Cons:

- The persons may be unable to manage the property and maintain it themselves and be dependent on their relative.
- If there are no other funds available, paying for major repairs may be difficult.
- A long term solution may be required if the family member no longer wants to live there.

4b. Company Ownership

Another variation for joint ownership is for a company to be set up by a group of families to acquire or build property. Family members can become directors and/or shareholders of this company.

Pros:

- The arrangement can act as a vehicle for bigger developments – it can be used for example to buy a plot of land and develop a block of purpose designed flats.
- Forming a company needs all concerned in the process of preparing objectives, memorandum and articles of association to think through in some detail what the purpose is and how matters will be managed in practice.
- As a legal entity the company can borrow - although families may be asked to offer guarantees.
- It can provide a vehicle for managing and maintaining property.

Cons:

- The person may be unable to manage the property and maintain it themselves.
- If there are no other funds available, paying for major repairs may be difficult.
- The property may need to be sold in order for tax demands, such as Inheritance Tax, to be paid.
- It can be difficult to secure agreement for any care and support package from Adult Social Care when the exact required start date is not known. Parents should consult with their care manager about Oxfordshire's social care charging policies.

Ending the joint agreement

A common question in a joint ownership model is 'how can we get our money out?' This is particularly relevant where one person who shares a single building with others wants or needs to move out.

There are various possible solutions to choose from, and you will need to agree these before setting up the joint arrangements. All parties must go into the arrangements on the basis this will be each person's home for as long as they want or need it. No one individual or family must be able to undermine the living arrangements or make the other sharers homeless. As a consequence, all the parties should agree no family is able to withdraw their funds unless three conditions are met:

1. There is another family/person able to replace the funding which one of the families is taking out.
2. The person moving in must want to share with those already living in the house and be compatible.
3. The person moving in must be acceptable to those already living there.

4. Inheritance

The Pros and Cons of inheritance

If the property is inherited with the intention that it continues to be occupied by the disabled family member, then the various benefits of continuing to live at home may be realised.

Pros:

- Inheriting the family home allows the individual to continue to live in a familiar property and neighbourhood where they are known or even supported by the local community
- Avoids trauma of a forced move on the death of a relative
- Being given a property now allows a thoughtful selection of the right property, in the right place and tested. The family (or other relative) can be involved
- Delivers security of tenure and the asset the property represents means more choice and control over future housing is possible if circumstances or needs change
- All normal advantages of ownership in terms of investment and control over lifestyle, ability to carry out adaptations

Cons:

- How to afford and organise maintenance and repairs in the future has to be resolved since no rent is payable by an outright owner, no housing benefit can be claimed. Shared ownership is better from this perspective as maintenance costs can be met through housing benefit
- Individual takes on all normal responsibilities of being a home owner.

Leasing to a third party Housing Provider

If the property is inherited with the intention that it continues to be occupied by the disabled family member, then the various benefits of continuing to live at home may be realised.

Pros:

- It meets the needs of those people that don't want to move from the family home.
- It avoids the need to find, buy or develop new property.
- Housing Associations are familiar with the relevant standard properties need to be to be let to

Cons:

- You will need to pay the Housing Provider a fee to manage the accommodation.
- You will be locked into the agreement for a fixed period of time, usually a minimum of five years.

Example of leasing to a Housing Provider

A family leases their property to a Housing Provider for a fee of £100 per week. The third party Housing Provider agrees to pay this amount to the property owner. They may also agree to carry out housing management, day-to-day repairs and provide furniture, which might cost £50 a week.

The tenant signs a tenancy agreement with the Housing Provider with a rent set at £150 per week. The tenant pays the rent to the Housing Provider, claiming Housing Benefit if eligible. The Housing Provider then keeps the £50 required for the direct services they provide, and passes the remaining £100 to the owner of the property to settle the lease fee.

This option is commonly used when the following is an issue:

- The property rent that needs to be charged by the family exceeds Local Housing Allowance (*see section on paying for housing*) and the relative can't afford to top up the difference
- Because the tenancy agreement is between a Registered Provider or Not for Profit Organisation the Housing Benefit claim can be assessed by the local authority as either exempt accommodation or as an excluded tenancy (*see Revenue* – exempt accommodation and excluded tenancies).
- The insecurity associated with the standard 6 month or 12 month assured shorthold tenancy agreement offered by the private landlord is a an unmanageable risk to the tenant (the tenancy agreement can be granted for the life of the head lease agreement, subject to any termination clauses included in that agreement).
- The property has been bought/is owned by a person who does not want to act as their family member's direct landlord or they are not able to take the risk of Housing Benefit being refused. Because the tenancy agreement is between the Housing Provider and the tenant, the landlord is not the family member, therefore the tests of commerciality and contrivance should not be applied. In these and other such cases it is important that parents or family members should contact their local district/city council housing benefits office for guidance on respective local policies.

It can be hard to find a landlord or a Housing Provider willing to get involved. It often needs a certain amount of negotiation in terms of explaining the benefits to the landlord (e.g. guaranteed rental income, no direct housing management) and agreeing mutually acceptable lease terms.

This problem has often been overcome in Oxfordshire where Adult Social Care and Housing Departments work together to manage the market by evidencing demand, recruiting good quality landlords and Housing Providers – generally supporting the process.

SECTION 2 – WHAT DO FAMILIES NEED TO CONSIDER?

This section summarises some of the issues you may need to consider before deciding to proceed with an investment for a family member.

When individual tenants leave shared accommodation

In shared accommodation, each tenant should have his or her own individual assured shorthold tenancy agreement. This would grant them exclusive occupation of their own bedroom, alongside shared access to any communal areas, including kitchen, living room and bathroom (if appropriate).

The overall rent should then be split equally between each tenant, unless service levels vary considerably between tenants). The overall rent is set at the cost of providing the accommodation including mortgage repayments, management and service costs if that is greater than the market rate for shared accommodation of that type and location, or at or less than the market rate if the cost of provision is less.

Because the rent is paid individually rather than jointly, when an individual tenant moves out, overall rental income drops until such point as the room is re-let. This loss can be offset by including voids uplift or voids insurance costs in the rent, effectively building up a “sinking fund” to be drawn upon at times of under-occupancy.

In some cases, the Local Authority or Clinical Commissioning Group may have agreed with the parent landlord to nominate new tenants into unoccupied rooms, in which case it may be necessary to negotiate with them a voids underwriting arrangement to cover any period of rental loss not covered by voids insurance or voids uplift in the rent. However, most parent landlords choose to remain independent of such local authority nomination agreements so that they can choose and select their own tenants.

(See Appendix 3 for an example tenancy agreement)

Damage, breakages, maintenance and wear and tear

Before agreeing a final rent, it is important to give as much consideration as possible to the likely scale and cost of repairing and maintaining the accommodation. Any future costs that haven't been included in the rental income will need to be paid for in other ways.

If the costs are likely to be high, you might consider increasing the rent payable to make sure the property remains sustainable. If that means rents going over the appropriate Local Housing Allowance rates it would be necessary to consider third party leasing to a Housing Provider who can claim the higher exempt accommodation or excluded tenancy rents *(see revenue section)*.

Houses in Multiple Occupation

Any accommodation that has more than one household living in it is a house in multiple occupation (HMO).

For the purposes of the Housing Act 2004 a household is defined as members of the same family living together including:

- Couples married to each other or living together as husband and wife (or in an equivalent relationship in the case of persons of the same sex).
- Relatives living together, including parents, grandparents, children (and step-children), grandchildren, brothers, sisters, uncles, aunts, nephews, nieces or cousins.
- Half-relatives will be treated as full relatives. A foster child living with his foster parent is treated as living in the same household as his foster parent.

Any domestic staff are also included in the household if they are living rent-free in accommodation provided by the person for whom they are working.

This means that three friends with their own individual tenancies, but sharing together would be considered three households.

HMOs and Council Tax Liability

Council Tax liability in HMOs lies with the landlord. The cost of Council Tax can be included in the rent as a service charge and is Housing Benefit eligible, unless the cost exceeds the relevant Local Housing Allowance rate and the claim is not being treated as exempt accommodation or an excluded tenancy ([see revenue section](#)).

Houses in Multiple Occupation and Fire Safety

HMOs with 5 or more tenants

HMOs with 5 or more tenants (with individual tenancy agreements) and/or 3 stories or more should be registered with the local authority as [Licensable Homes in Multiple Occupation \(HMO\)](#). The local authority will stipulate the required fire safety measures needed.

HMOs with fewer than 5 tenants

HMOs with fewer than 5 tenants, (with individual tenancy agreements) and/or 2 stories or less do not need to be licensed with the local authority (unless they are located in an area that has been designated by the local authority as licensable). The communal parts of these properties are regulated by the [Fire Reform Safety Order](#).

In essence, this says that a risk assessment should be carried out by a designated responsible person and measures appropriate to the accommodation, the needs of the tenants and local fire safety policy should be identified. The responsible person is likely to be the person with most knowledge of the above; in the case of shared supported living, the support provider. The responsible person would make recommendations as a result of the risk assessment and the landlord is most likely to be the person implementing the recommendations.

If the organisation responsible for carrying out the recommendations is different to the responsible person, they may decide that the recommendations are inappropriate, or not possible to implement. If that happens, the responsible person would need to decide whether to agree or escalate to the local authority and request enforcement action.

SECTION 3 – WHAT FINANCIAL HELP IS AVAILABLE FOR MY FAMILY MEMBER?

This section provides more information about what type of financial help may be available to support your family member including capital, revenue, Housing Benefit and help with paying for daily living costs.

Capital

Trusts

When you die, you want to pass on your wealth to family members for their future security but you may want to provide for the future of your disabled family member now. A trust can be set up at any time so that relatives can leave money to a disabled person without affecting the person's benefits or care package by making a payment from the trust.

A trust is a formal transfer of assets (property, shares or just cash) to a number of people (at least two and not more than four) or to a trust Company with instructions that they hold the assets for the benefit of others. If a trust is made in your lifetime, so that it takes immediate effect, then you will need to create a 'Trust Deed', which sets out the conditions of the trust. If it is to be created after your death, then the trust rules can be set out in your Will.

There is no minimum or maximum amount of money that you can place in trust, but obviously the amount of the trust fund will need to be enough to make sure that running the trust is financially viable.

Discretionary Trusts

A Discretionary Trust is the most flexible form of trust. Under a Discretionary trust, the benefits (the trust assets or the income from them) are allocated entirely at the trustees' discretion to any one or more of several beneficiaries or class of beneficiaries' e.g. disabled people. The primary intended beneficiary must have no absolute right to either the capital or the income.

It is recommended that a "Letter of Wishes" is written for the trustees to outline your wishes as to how the trust fund should be spent, but this is a moral rather than a legal obligation on their part. You are usually advised to name more than one person and/or organisation as a beneficiary so as to avoid the trust being classed as a "sham".

Once assets are put into the trust they belong to the trust not the person intended to benefit. He or she may get gifts or even payments from the trust but they cannot be said to have any assets themselves.

The key features of a Discretionary Trust are:

- Trustees have discretion as to how the assets are used – the trustees are free to make all the decisions.
- The person to benefit from the trust must not have a right to the income or capital.
- The intended beneficiary must not be the only person named in the trust i.e. must not be the 'sole' beneficiary.

Without these features the Discretionary Trust is not properly constituted and the person may be treated as though they own the house or have the money.

That may affect their entitlement to Income Support (IS, Employment Support Allowance (ESA), Job Seekers Allowance (JSA) and other benefits, and to care services funded by the Local Authority or Clinical Commissioning Group. The position on Local Authority care funding in this case should be checked with the allocated care manager.

If you are considering setting up a Discretionary Trust you should seek specialist legal advice when thinking about setting up a Discretionary Trust.

Revenue

Council Tax Reduction

Local Authorities now have discretion on how to manage what used to be known as Council Tax Benefit. Each Local Authority has made its own decisions on how much help they will give to its residents with their Council Tax bill. For this reason, it's not possible to describe here what help may be available. For an up to date calculator that will tell you how much help you may be entitled to, [click here](#).

Housing Benefit

Housing Benefit is the only welfare benefit available to pay for rented housing. It is administered by local authorities and is paid to eligible adults to help cover their rent.

Housing Benefit is available to most tenants over age 16 renting their homes in either the private or social rented sectors but it does not provide help with mortgage costs or non-rent related housing costs.

The government has recently consulted on proposed changes to Housing Benefit for supported housing from 2019. Currently supported housing tenants are eligible for a higher rate of Housing Benefit that recognises the additional costs involved in providing this type of housing. The government is proposing that from April 2019 the Housing Benefit for supported housing is capped at LHA rates and the intention is to transfer the difference between existing rents and LHA to local authorities so that they can top up LHA

Renting in the private sector

Where the rental is in the private sector and Housing Benefit is claimed Local Housing Allowance (LHA) rules apply. Local Housing Allowance is the Housing Benefit entitlement for people who rent from a private landlord.

The Local Housing Allowance amount you can receive is based on the average of local market rents, covering quite large geographical areas. The rates are up-dated every year.

There are four different rates and these are:

1. Shared room rate
2. One bedroom rate
3. Three bedroom rate
4. Four bedroom rate.

It is possible to find out rates by postcode or Local Authority by entering the relevant information here.

Those who are under the age of 35 and living on their own are usually only eligible for the shared room rate. However, if they receive the care component of Disability Living Allowance or Personal Independence Payment at the middle or higher rate, they will be eligible for the one room rate, even if they are living in shared accommodation

A bedroom that is used overnight by an overnight non-resident carer may enable the claimant(s) to be eligible for the two-bedroom rate. The person who requires overnight care will either need to be in receipt of the middle or highest rate care component of Disability Living Allowance, or be able to provide the local authority (Local Authority) with sufficient evidence to show that this type of care is required.

If a shared house is being rented, and each occupier has their own tenancy agreement for their room and the shared areas, each will be able to individually claim up to the 2 room rate if they all use the services of the overnight carer.

LHA Eligibility for property type summary	
Under 35, not claiming mid or high rate DLA Care (PIP), regardless of accommodation type	Shared Room Rate
Over 35, living in self-contained accommodation, not claiming mid or high rate DLA Care (PIP)	One room rate
Over 35, not claiming mid or high rate DLA Care (PIP), living in shared accommodation	Shared Room Rate
Any age, claiming mid or high rate DLA Care (PIP), regardless of accommodation type	One bedroom rate
Any age, needing a room to be made available for a non-resident carer on a reasonably regular basis	Two room rate. Available for all individual claimants in a shared property if they all have access to the single non-resident carers service

Costs eligible for Housing Benefit

There are a range of costs that are eligible for Housing Benefit when the services are provided by the landlord. These are:

Property Rent

- Core rent (Bricks and Mortar costs)
- Repairs and Maintenance
- Development Costs
- Architects, Conveyancing, etc

Housing Management

- Buildings Insurance
- Administration and Management costs
- Voids Cover (percentage or insurance)
- Bad Debts allowance

Service Charges (to include where provided but not necessarily limited to the acquisition, depreciation and servicing (where appropriate) of:

- White Goods
- Communal areas furniture
- Fire Safety equipment
- Communal Interior décor
- Refuse disposal
- Pest Control
- Door entry and security systems
- Portable Appliance and Gas testing
- External Lighting
- Gardening
- Communal window cleaning
- Communal heating and lighting
- Lifts
- Communal area cleaning

If the total cost of these combined services comes to more than the appropriate LHA amount, the tenant will need to pay the difference from other income, unless the claim is treated as exempt accommodation or an excluded tenancy (see below).

What if the rent is higher than it would be in private rented housing?

Where property has been specifically obtained on behalf of an individual or group of people and a higher level of rent (i.e. above the standard housing benefit amount) is required then Exempt Accommodation or Excluded Tenancy rules may apply. For example, this may be the case for some people with a learning disability who have very specific housing requirements, resulting in the need for a more expensive property type.

Families will be considered as private landlords working to LHA regulations, so will not be able to directly access exempt accommodation or excluded tenancy rates, as these allowances are only available to not for profit organisations. Where their costs cannot be met by LHA rates families can consider leasing the property to a not for profit provider, (see Leasing to a Third Party Housing Provider) who could then structure the rent as an exempt accommodation or excluded tenancy claim.

Exempt Accommodation and Excluded Tenancy requirements

Exempt	Excluded
Registered Provider or Not for Profit Landlord	Registered Provider (RP) landlord only
No suitable cheaper alternative housing should be available	As Exempt
Only essential landlord services are provided and these services should be costed at a reasonable level	As Exempt
More than minimal care support or supervision is commissioned and provided by or on behalf of the landlord in addition to any Local Authority commissioned general social care or personal care	Not required
Full rent to be met regardless of amount if the above is shown to be present	Rent can be referred to Rent Officer for potential capping if HB feels that the rent is unreasonably high. HB to have agreements and guidance developed in partnership with local RPs to what constitutes "unreasonably high"
Partial Central Government subsidy repaid to Local Authority	Full subsidy repaid to Local Authority

Housing Benefit eligibility and capital restrictions

People with capital of over £16,000 are ineligible for Housing Benefit, and will only be able to claim full entitlement when they have less than £6,000. Housing Benefit will be paid at a gradually increased taper level for capital between £6,000 and £16,000. Income from paid employment of more than 16 hours a week will also be offset against full payment.

Housing Benefit and deprivation of capital issues

It's important that you don't deliberately give away money in order to qualify for or increase your entitlement to Housing Benefit.

The essential test for deliberate deprivation is not what the money may have been spent on but the intention of spending the money. If you are deemed as having deliberately spent your savings to ensure that you qualify for Housing Benefit, then this is likely to be considered as deprivation and you will be treated as still owning that capital.

For example, expensive holidays are more likely to be seen as deprivation whereas the purchase of furniture or personal items because you are moving in to a new home is more likely to be considered reasonable.

Each situation is unique and must be assessed on its own specific circumstances.

Help with paying for daily living costs

Employment Support Allowance

For people who are too ill or cannot work because of a disability, there is a benefit called Employment and Support Allowance (ESA). Employment Support Allowance is to help with daily living costs like food, clothing, utilities etc.

Some people who are unable to work may already claim Income Support or Incapacity Benefit, but Employment Support Allowance is replacing these benefits.

There are two types of Employment Support Allowance:

Contribution based Employment Support Allowance

To qualify for contribution based Employment Support Allowance the recipient will need to have paid enough national insurance contributions. Contribution based Employment Support Allowance is not means tested, so it is not affected by savings or income.

Income-related Employment Support Allowance

This type of Employment Support Allowance is for recipients who have not paid enough National Insurance contributions. Income-related Employment Support Allowance is means test which means it may be affected by the amount of money the person has.

Applying for Employment Support Allowance

Employment Support Allowance claims are based on a Work Capability Assessment to determine eligibility. There is a detailed claim form to fill in and most people will then be required to attend a face-to-face assessment with a healthcare professional. This will happen if the claim assessor feels that information provided on the form needs to be clarified or verified. A claimant can have someone go with them to the meeting to provide support.

Details of how to claim and the assessment process can be found [here](#):

Job Seekers Allowance

Those people who are not found to be eligible for Employment Support Allowance may be eligible for Jobseekers Allowance (JSA) instead.

Personal Independence Payment (PIP) (Previously DLA Care & Mobility)

PIP is to help with the extra costs of having a disability. It has two parts – one looking at daily living activities (the daily living component) and one part looking at activities relating to mobility and the ability to move around and get out and about (the mobility component). Some people might be eligible for both parts. Others may be eligible for one or other of the parts.

PIP is not means-tested so it doesn't matter what income the claimant has or whether or not they work.

There is a detailed claim form to fill in and most people will then be required to attend a face-to-face assessment with a healthcare professional.

Details of how to claim, the amounts you will receive and the assessment process can be found [here](#).

Universal Credit

Universal Credit is a new welfare benefit in the United Kingdom that will replace six of the main means-tested benefits and tax credits. Universal Credit combines these benefits into a single payment.

The six benefits are:

- Income-based Job Seeker's Allowance
- Income-related Employment & Support Allowance
- Income Support
- Housing Benefit
- Child Tax Credit
- Working Tax Credit

These changes are being phased in between 2014 and 2017, although some legacy cases, including those from vulnerable people, may remain after this date, and moved over once Universal Credit is established.

The single payment will be initially capped at 350 per week for single people and 500 per week for families. In certain cases exemptions will apply.

You find out more information about Universal Credit [here](#).

Benefits and deprivation of capital

It's important that you don't deliberately give away money in order to qualify for or increase your entitlement to means tested benefits.

If you are deemed as having deliberately spent your savings to ensure that you qualify for means tested benefits then this is likely to be considered as deprivation and you will be treated as still owning that capital. Rules covering deprivation of capital are very complex. Each situation is unique and must be assessed on its own specific circumstances.

APPENDIX 1 – SUPPORTED LIVING

Supported living is an approach that is based on the belief that people have a right to decide where, how and whom they live with, and who should provide them with the support they need to do this. The fundamental principle is that you live in your own home, shared, with a partner, or on your own and you get the sort of care and/or support that works for you. This can look different for different people. For example, it might be:

- Living in a place that is rented through an assured or an assured short hold tenancy; this might be a joint or an individual tenancy, in shared or self-contained accommodation.
- Living in an owned property, either outright or as shared ownership.
- You might have all your support paid for. It might be for a few hours a week or it might be 24 hours.
- You might have a mixture of paid-for support and informal or “natural” support from family, friends and/or community support.
- You might not have any paid-for support, but some “natural” support.
- You might have set up your supported living from scratch, by planning for and getting your housing and support as you have designed it.
- You might have moved into an existing service – some accommodation with support that had a vacancy.

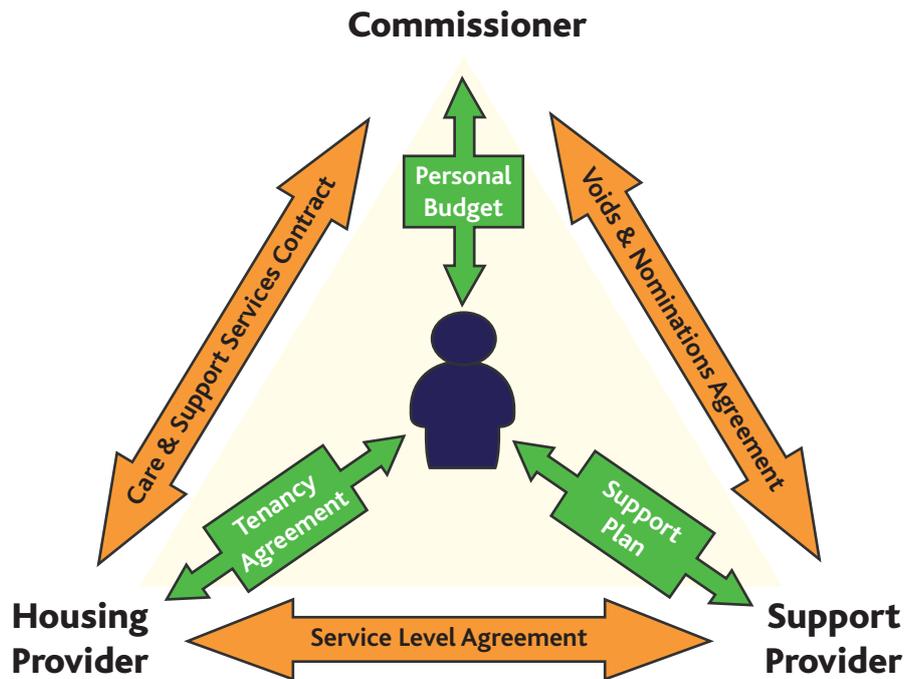
If you live in your own home, you have the right to stay in the property for the period and to the terms stated in your contract (usually 6 or 12 months for an assured shorthold tenancy, which can be renewed, or indefinitely, subject to certain conditions, for an assured tenancy), and to control entry in and out of the property (subject to the conditions in the contract) If you own your own home you can stay for as long as you are able if you own it outright, or as long as you pay your mortgage if you have one.

The separation of housing and support

Traditionally, residential care provides a full package of housing, care and support. A common element of supported living is the separation of housing and support. This means that as a tenant or homeowner, the person has a right to choose who provides their support and can change support arrangements without moving home or move home without changing support arrangements.

With supported living options, subject to their fairer charging procedures, social care and health funding can pay for care and support that is needed. The welfare benefits system can help pay for housing and everyday living costs.

(The model below is an example of how it might look, but there is no absolute rule about the way these activities are carried out and managed)



In this model, the commissioner funds the care and support. This may be commissioned and paid for by a Local Authority or a Health Authority (e.g. the Clinical Commissioning Group).

In Oxfordshire the County Council Adult Social Care service, prefers the above model and funds the care and support costs of individuals who have eligible needs. This is expressed as a personal budget and can also be provided to the individual as a Direct Payment or to their parent or advocate. More information can be obtained from your care manager.

The Housing Provider provides the housing, unless the property is owned outright. If the property is rented the tenant will pay this privately or, if they are eligible (see factsheet 1), may claim Housing Benefit to help with the rental costs.

If the occupier needs personal care services, the provider of the services must be registered with the Care Quality Commission as a domiciliary care provider. For more details about this look here:

Housing Services

Housing services include:

- **Property Rent** – this includes things like your core rent costs (i.e. the costs of the 'bricks and mortar') and repairs and maintenance.
- **Housing Management** – this includes things like building insurance and management costs.
- **Service charges** – this includes things like the provision and servicing of communal area furniture and fire safety equipment, as well as things like communal heating and lighting.

Support Provider

Care and Support services funded privately or publicly can include:

- **General Social Care** – this can include things like assistance with daily living tasks (e.g. preparation of meals) and getting out and about.
- **Housing Related Support** – this can include things like support with money matters and personal administration or support to use household equipment.
- **Health Care** – for example, support with any health care need that has been identified by primary health care consultation.
- **Personal Care** (Regulated by Care Quality Commission) – things like physical and intimate personal care.

(Payment for staff expenses such as transport, staff meals, entertainment can vary according to commissioning and/or support provider policies.)

APPENDIX 2 – MENTAL CAPACITY

The Mental Capacity Act provides advice and practical ways of enabling decision-making at all three stages: housing choices, entering into a contract, and what happens once the person has moved into their own place: helping someone manage in their home, support with their tenancy and keeping the rules.

Sometimes a person's capacity for decision-making is underestimated. This is because planning, choosing and buying or contracting through a formal agreement is quite complicated for any of us, not just someone with a learning disability. Think of the forms and the small print. Do you really understand what Annual Percentage Rate means or how it is calculated? What is the difference between a covenant and an easement?

Although transactions can be complicated financially or legally, most of us do know what we do and do not want but need help or advice with the best way to go about it and someone to check the details for us.

The principles of the Mental Capacity Act

The Mental Capacity Act is intended to be enabling and supportive of people who lack capacity, not restricting or controlling of their lives. It aims to protect people who lack capacity to make particular decisions, but also to maximise their ability to make decisions, or to participate in decision-making, as far as they are able to do so. There are five main principles:

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
5. Before the act is done, or the decision is made, consideration should be given to what is least restrictive of the person's rights and freedom of action.

The kind of support people might need to help them make a decision varies. It depends on personal circumstances, the kind of decision that has to be made and the time available to make the decision. It might include:

- Using a different form of communication (for example, non-verbal)
- Providing information in a more accessible form (for example, photographs, drawings, or tapes)
- Treating a medical condition which may affect the person's capacity or
- A programme to improve a person's capacity to make particular decisions (for example, learning new skills).

Mental Capacity and housing

The processes involved in any question about peoples' capacity are similar whether tenancies or house purchase are concerned, although there may be different criteria about exactly what information needs to be understood about these different transactions when thinking about someone's capacity to enter into agreements.

Where capacity is assumed and no-one involved in setting up the tenancy or purchase has raised concerns about someone's understanding, then the grant of the tenancy, mortgage and/or lease etc. can go ahead without further ado.

If someone's capacity is questioned by anyone involved in the planning process when they are looking to take on new accommodation, then the person's ability to make the necessary decisions has to be facilitated as much as is practicable and appropriate.

There are a variety of reasons why someone's capacity may be questioned; - their behaviour may cast doubt on whether they have capacity to make the decision, somebody else says they are concerned about the person's capacity, or they may have already been diagnosed as having an impairment or disturbance of the way their mind or brain works and it has already been shown that they lack capacity to make other decisions.

If it is thought that someone lacks capacity

The Mental Capacity Act Code of Practice advises that if anyone thinks that someone lacks capacity, these questions have to be asked and then worked through:

- Does the person have all the relevant information?
- If they are choosing between alternatives, do they have information on all the options?
- Would the person have a better understanding if things were presented in a different way?
- Are there times of day or locations that will be easier for the person?
- Can anyone else who knows the person well help them to make choices or express a view?

The person who is of the opinion that someone lacks capacity has to be able to prove their case, and has to show that all practicable steps have been taken to help someone make their own decision.

This facilitation can only happen lawfully and properly where you know the individual concerned well enough to communicate with them effectively. Useful here is a Communication Skills Pre-interview assessment (see Part 2) which can be a part of what the Mental Capacity Act calls "all practicable means" to help people formulate and communicate their decisions. Regard also must be given to the guidance in Chapter 3 of the Mental Capacity Act Code of Practice.

What counts as understanding tenancy?

Capacity is decision-specific, and so another point around which there needs to be clarity and agreement is not just of someone's understanding in general, but also what the basic points are that the person needs to understand about the transaction involved. These will vary from decision to decision. Although there are several tests of capacity for some acts, such as making a will or getting married there are no set tests for entering into a tenancy or buying a property.

Tenancies – there is scope for differences of opinion around how much needs to be understood about the tenancy before the tenant can enter into a fully valid arrangement.

The Department of Health information agency DH Care Networks Housing LIN Factsheet 20 says that: *“evidence that the individual understood the essentials of the deal, i.e. the basic concept of money, owning it, exchanging it in return for something, and the basic concept of promises and rules which need to be abided by (even though they may require help to manage to keep to what they had promised), is likely to satisfy a court that the individual had the required capacity at the time the tenancy commenced, to be held to the contract terms.”* [www.dhcarenetworks.org.uk/_library/Resources/Housing/Support_materials/Factsheets/Mca_factsheet_20.pdf].

This is a relatively modest level of understanding. Insisting on a deeper understanding - that you have to understand all 15 pages of small print - may mean that the person taking this view may be acting unlawfully under the Disability Discrimination Act by not making reasonable adjustments for the effects of someone's disability.

Once the specifics that need to be understood are agreed, there are useful tools for supporters or housing staff to use. (See Part 2)

Someone lacking capacity and tenancies – what the law says

If a tenancy is taken on by someone whose lack of capacity is known, the tenant has the same rights as any other tenant and the same obligations unless the tenancy is voided.

Only the tenant or someone acting on behalf of the tenant with the legal authority to do so (an attorney or a person / deputy appointed by the Court of Protection) can void a tenancy by showing that at the time the tenancy was taken on, the tenant did not have the capacity to make the decision and the arrangement was not in their best interests. When the tenancy is voided the tenant is no longer bound by the terms of the contract. Voiding a tenancy for lack of capacity is therefore possible at law, but it is rare that a tenant or their attorney, person / deputy appointed by the Court will decide to do this unless they wanted to stop the arrangement because if they did they would not have any right to remain in the property and would in practice simply be giving notice in the normal way.

Therefore, the fact that the tenancy is voidable is unlikely to have any practical impact if the tenant is receiving proper support to manage their tenancy. They are entitled to Housing Benefit to pay their rent in the usual way regardless of their capacity.

Can a third party sign a tenancy for someone?

A tenancy can be left unsigned by the tenant where best interests decision documentation and evidence is available. However, some landlords may insist on a signature.

The only lawful way in which a third party can sign a tenancy for someone without capacity is either

- (a) they have the necessary authority as part of a lasting power of attorney to act for the person, or
- (b) the Court makes an order that gives them the authority solely to sign the contract or
- (c) they are appointed by the Court of Protection as the person's Deputy, with the power to make an ongoing series of decisions, including that of signing the contract

In this context powers of attorney are unlikely, because you have to have capacity to appoint someone as your Attorney and it would be unusual for someone to be capable of doing this but not capable of understanding the basics of a tenancy, unless their condition is one where previously they had the capacity to have created an attorney and now lack that capacity.

Applying to be a Deputy simply to sign a tenancy does not make the Deputy the tenant, nor does the Deputy become liable for anything in the tenancy. The Deputy acts merely as the agent for the tenant; all the tenancy obligations remain with the named tenant. Past advice from the Official Solicitor said that going to the Court of Protection just to enable someone to sign a tenancy if no other assets or issues were involved was excessively bureaucratic and unnecessary as the tenancy would be valid.

If someone does not have capacity: 'Best Interests'

If there is an agreement that the person doesn't understand the basics of the contract, or if the person can't communicate their decision, then there should be a meeting of the interested parties to decide what, in the circumstances, it is best to do for that person in their best interests – a best interests meeting (Chapter 5 of Mental Capacity Act guidance). This guidance goes into details about how to formulate best interests.

It should be remembered that a "best interests" decision does not give a third party the right to sign a tenancy for someone else, nor take on a mortgage. Decisions reached through the best interests' process, coupled with a reasonable belief that you are acting properly for someone who lacks capacity, protect those taking the decision from allegations of unreasonable or improper conduct.

Who is best able to help with housing choices and tenancy agreements?

The roles and interests of the different parties involved must be understood: family member, advocate, social worker, support provider and housing provider.

For example, as one of the parties to a tenancy the landlord is clearly an interested party but may be well placed to help explain its terms. Support with managing a tenancy (we say later) may well need to be included in someone's support or care plan and would be a job for the support provider. The social worker will have carried out an assessment of need so has a role in advising what sort of place to live is suitable.

Whoever is involved in the process, someone will need to act as the final "decision maker". This is the person who in any given situation, "must decide on a person's capacity.

The decision maker will need to consider all relevant factors, having taken into account the incapacitated person's own tastes, beliefs and values and consulted with all relevant parties and come to a view on whether or not it is in their best interests to take on a particular tenancy offer. Identifying where this authority lies in a situation with many people involved in a person's care is critical.

Questions to consider when deciding if a tenancy is in the person's 'Best Interests'

It might be helpful to answer the following questions to get an idea if the tenancy meets the principles of the Mental Capacity Act.

If the answer to any of these questions is "no" careful consideration will need to be given to whether or not a tenancy at an alternative address may need to be considered

1. Finding somewhere to live

Q: Is it a good place to live?

Q: Is it the right location?

Q: Is it near social networks that are important to me?

Q: Is it near facilities and services that are important to me?

Q: Is it near to transport links that I need?

Q: Is there enough personal space?

Q: Will I be safe?

Q: Are there any better options available in the timescales that I need to move by?

Q: Am I going to be supported to manage my tenancy properly?

- Reporting repairs, looking after the property, being a good neighbour?
- Reminders, practical help to contact landlord
- Getting decorations done, getting equipment and looking after it?
- Learning about my tenancy responsibilities and rights?
- Managing and making decisions about the tenancy
- Dealing with the landlord, notifying repairs, making a complaint?

Q: Am I going to get the General Social Care and Support I need?

- Shopping
- Planning & preparing food
- Housework (cleaning, laundry)
- Health care, taking medication
- Personal care (getting up, bathing, dressing)
- Managing day to day money & paying bills
- Making financial decisions
- Arranging transport
- Relationships & communication
- Daytime activities (paid or unpaid work, college)

2. Paying Rent

Q: What is my rent?

Q: What services are included in this rent?

- White Goods
- Communal areas furniture
- Fire Safety equipment
- Communal Interior décor

- Refuse disposal
- Pest Control
- Door entry and security systems
- PAT and Gas testing
- External Lighting
- Gardening
- Communal window cleaning
- Communal heating and lighting
- Council Tax
- Lifts
- Communal area cleaning

Q: Are there any services I need that are not included and how much do they cost?

Q: What else do I need to pay for and how much will it cost?

- Food
- Clothing
- Personal utility bills
- Personal Furniture
- TV License
- Entertainment
- Holidays
- Anything else

Q: How much will these cost if I have to pay for them myself?

Q: Have I maximised my income to pay for my rent and other essential expenses as much as possible?

Q: Can I afford everything I need to pay out for?

Q: Are my circumstances or income likely to change?

Q: If they do, will I still be able to afford everything I need to pay out for?

3. Being a good neighbour

Q: After I've moved in, am I going to be a good neighbour to people I live with and/or people in my immediate community?

If not, can I be helped to make sure my tenancy is not put at risk?

- Sound Proofing
- Changing building design
- Adequate on-going support
- Anything else?

4. Not damaging property

Q: Am I likely to damage property that does not belong to me?

Q: If so, can arrangements be put in place to make sure my tenancy is not put at risk?

- Reducing risk of damage
- Ensuring people know about the risk of damage
- Putting in place arrangements for replacement in place through rental service charge, personal contribution, third party underwrite or other appropriate method
- Anything else?

If there is dispute about a person's best interests

If, following completion of this process, the decision maker believes the arrangement is in the person's best interests but others do not, it may be necessary to apply for the appropriate authority from the Court of Protection.

Applying to the Court of Protection

Applying to the Court takes time and involves filling out the required paperwork properly. Copies of forms are available from the Court. A Deputy may be a friend, family member, paid professional or an official appointed by the Court. For finances the Deputy has to get approval for large items and submit annual accounts to the Court. There are annual fees payable as well to the trust Division of the Court.

For one off decisions, such as tenancy or loan agreement only a single order may be needed. A Court decision can take up to 20 weeks, and will cost around £400, if there are no remissions on grounds of low income

APPENDIX 3 – EXAMPLE TENANCY AGREEMENT

11. Easy Read Tenancy Agreement

It is for your own home



You must pay your rent



Keep the tenancy rules



And look after your home
Keep it clean and tidy



The Landlord is

Insert photo
of logo
or landlord

The tenant is

Your photo

Address

.....

.....

Description including rooms furniture and equipment



Starting date



Weekly rent



Services

The landlord may also provide services listed in the Tenancy Agreement such as (tick the boxes)

Lighting and Heating



Hot water



Telephone



Alarm system and fire safety equipment



Furnishings and equipment



Cleaning



Gardening



Insurance for the building, landlords equipment and furniture.
(Insurance money is paid to put things right if anything goes wrong in the house.)

Other things

The Landlord must

- ✓ Keep the house or flat in good repair - heating, plumbing and electrics
- ✓ Tell you how they do repair work
- ✓ Tell you how to make a complaint
- ✓ And any other rules they follow

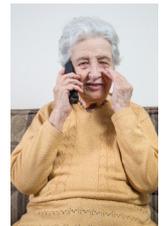
What you must do as tenant

- ✓ To live in your home and keep clean and tidy
- ✓ Tell your landlord if repairs are needed
- ✓ Let the landlord in to do repairs or decorate
- ✓ Be a good neighbour
- ✓ To keep any house rules that go with this Agreement especially about health, fire and safety

What you must not do

- ✗ You must not damage your home, or fittings
- ✗ You must not be a nuisance to others
- ✗ You must not be too noisy

If you want to move out You should tell the Landlord



And if you break the tenancy rules you could be asked to leave



APPENDIX 4 – GUIDE TO DIRECT PAYMENTS

Direct payments

Payments we can give you instead of providing you with a council managed care service.

What are direct payments?

Direct payments, are payments that allow you to organise care services yourself, rather than the council arranging them for you. This can give you more choice, flexibility and control over the care you receive.

You can opt in and out of using a direct payment at any time.

Who can receive a direct payment?

To determine if you are entitled to receive a direct payment, we must complete an assessment with you to confirm whether you have eligible needs (whether you are eligible for help from the council). You have the right to an assessment no matter what your ability is to pay for the care you may need.

If you have eligible needs, we will draw up a support plan with you. It covers what you want to achieve and outlines the ways in which you want your needs to be met.

If you or someone you know need to have their needs assessed or have a general enquiry, please [complete our online form](#) or call us on 0345 050 7666.

Financial assessment

If you have eligible care needs, we will assess your finances to determine what you will pay towards the cost of your direct payment; most people have to pay something. [Find out more about paying for care.](#)

How you can spend your direct payment

You can choose to use your direct payment to purchase a variety of care and support services as long as they help you to meet the outcomes set out in your support plan.

Some people use the money to buy care from an agency and others, to directly employ their own staff, for example by hiring a personal assistant. If you employ a personal assistant, there are certain rules and regulations you must comply with. [Find more information about personal assistants.](#)

The contract will be between you and the agency/person providing your care. This means you will be responsible for dealing directly with them and resolving any issues or disputes that arise.

You cannot use a direct payment to pay for a permanent placement in a care home.

Unless there are exceptional circumstances, you can't use the money to employ a close relative or person living in your home.

You must not use your direct payment to pay for anything illegal or to pay for items such as food, drinks, utilities, gifts or for other everyday items.

If you can't account for everything you spend your direct payment on, or you use the money for items that are not in your agreed support plan, you could be asked to reimburse Oxfordshire County Council.

The National Minimum Wage

If you decide to use your direct payment to directly employ your own staff, you'll need to ensure you pay them at least the National Minimum Wage.

The calculation for the minimum wage is based on the full amount (gross) before any tax, National Insurance and other deductions have been taken off. You can find out more information about the National Minimum Wage and the rates you must pay at <https://www.gov.uk/national-minimum-wage-rates> or by calling the National Minimum Wage Helpline on 0845 6000 678.

You'll also need to make sure that the hourly rate you choose is affordable, based on your direct payment amount, and can be maintained in the long term.

Managing your direct payment

If you decide to receive a direct payment, you will be responsible for its administration. This includes:

- managing your direct payment account
- arranging care and support
- making sure your direct payment is spent in a way which meets your eligible needs and the outcomes set out in your support plan
- accounting for every payment you make
- ensuring that spending is within your budget
- managing invoices and timesheets where necessary
- sending statements and receipts to the council.

You have a choice to manage your direct payment yourself or you can choose someone to do it on your behalf, such as a friend or relative. Alternatively, you may decide to use an organisation that specialises in managing direct payments such as Purple. You can find more at www.wearepurple.org.uk

You can find more detailed information in [A guide to direct payments \(pdf format, 236 Kb\)](#)

APPENDIX 5 – FLOW CHART TO HOUSING OPTIONS

Flowchart guide for parents – process to obtain independent housing options

